L. 2627, DC 37 v. City & DOT, 59 OCB 14 (BCB 1997) [Decision No. B-14-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of		
DISTRICT COUNCIL 37, AFSCME, AFL-CIO, AND ITS AFFILIATED LOCAL 2627,	:	
Petitioners,	:	DECISION NO. B-14-97
-against-	:	DOCKET NO. BCB-1677-94
CITY OF NEW YORK AND NEW YORK CITY DEPARTMENT OF TRANSPORTATION,	:	
Respondents.	:	

DECISION AND ORDER

On August 31, 1994, District Council 37, AFSCME, AFL-CIO, and its Affiliated Local 2627 ("the Union") filed a verified improper practice petition against the City of New York and New York City Department of Transportation ("the City"). A memorandum of law accompanied the petition. The Union alleges that the City failed to bargain in good faith over the practical impact of the City's unilateral decision to close the Department of Transportation's Traffic Computer Room on the July 4, 1994 holiday. Following requests for extensions of time to file responsive pleadings, the City filed a verified answer on November 4, 1994, and the Union filed a verified reply on November 21, 1994. The City filed a sur-reply on December 2, 1994.

Background

Petitioner represents employees in the Computer Services and Signals Division ("the Division") in the Bureau of Traffic of the Department of Transportation. The Division has, for many years, served as the central control room housing the computers that control the City's traffic lights ("Traffic Computer Room") and as the technical support staff for the agency-wide personal computer network. Until March 14, 1994, the computer mainframe

equipment that operated the traffic signals required 24-hour per day monitoring. Thus, some employees in computer operator titles were scheduled to work 12-hour shifts. The Traffic Computer Room was staffed 24 hours per day, seven days per week.

On or about March 14, 1994, a more advanced computer system was installed in the Traffic Computer Room. According to the City, this equipment does not require continuous monitoring. The City further alleges that, with the installation of the new computer system, the primary function of the employees in the Computer Services and Signals Division, including those who formerly monitored the traffic signals mainframe, has become the technical support of the agency-wide personal computer network. Accordingly, on or about March 14, 1994, the Division converted to a business week schedule, i.e., Monday through Friday from 7:30 a.m. to 7:30 p.m. The Union denies that the new system does not require continuous monitoring. It is undisputed that five of the twelve employees in computer titles were continued on a compressed schedule, working 12 hours per day, three days per week.

Consistent with the decision to convert the Computer Services and Signals Division to a business office schedule, the City claims that since March 14, 1994, the Division has not been staffed on holidays when other Department bureaus, divisions, and offices serviced by the Division are closed. The Union states that the Computer Room was open on Memorial Day, 1994, but it does not dispute that the Petitioner's members were ordered not to report to work on the July 4, 1994, holiday. It is also undisputed that two Computer Associates generally scheduled to work on Mondays were advised not to report to work on that holiday. The Union further alleges that engineers and electricians were required to work in the Computer Room on July 4, 1994.

The Union alleges that prior to the July 4, 1994, holiday, employees who worked the compressed schedules in the Traffic Computer Room regularly worked on holidays and received holiday premium pay, a 10% night-shift differential, and suffered no deductions from their holiday or annual leave banks. The two

Traffic Room Computer Associates who were ordered not to work on July 4, 1994, did not receive premium holiday pay or night-shift differential, and the holiday was deducted from their holiday and annual leave banks as a consequence of not working that day. The City alleges, and the Union does not deny, that the two employees' regular bi-weekly base pay was not reduced, even though they were not required to work the holiday.

The parties to this proceeding were also parties to the 1990-91 Accounting and Electronic Data Processing Unit Agreement ("the Unit Agreement") which, at Article III, provides as follows:

> Incumbents in the electronic data processing related titles covered by this Agreement, duly assigned to and working a three day per week, twelve hour per day schedule shall be paid, in addition to their regular annual salary, one (1) hour's pay at straight time, for the 36th hour in each week plus a ten percent (10%) premium. Said one (1) hour's pay shall be calculated as 1/1827 of the employee's annual salary as described in Article III, Section 2. Employees shall receive the payment for the 36th hour of work described above as long as the employee is regularly assigned to 3-day, 12-hour per day week and remains in pay status.

Positions of the Parties

Union's Position

The Union argues that the City had a duty to engage in good faith bargaining over the practical impact of the City's unilateral decision to close the Traffic Computer Room on July 4, 1994, on the pay and benefits of two Computer Associates, and that the City's failure to bargain violates § 12-306(a)(4) of the New York City Collective Bargaining Law, which defines improper public employer practices, in relevant part, as follows:

> a. Improper employer practices. It shall be an improper practice for a public employer or its agents:
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> * * *
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> (4) To refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives.

As a result of the holiday closure, the Union claims that two Computer Associates lost holiday pay and night-shift differential compensation, which the Traffic Computer Room employees "have come to expect" on holidays, and had time deducted from their leave-bank hours as a result of not working the

holiday, thus obviating a credit to their leave-time bank.

While the Union does not dispute management's right to make decisions concerning how it will manage its operations, the Union contends that, under § 12-307(b) of the NYCCBL, hours of work, holiday pay, night-shift differential, and annual and holiday leave are mandatory subjects of bargaining and that the City must bargain over decisions which affect these working conditions. The Union claims the City failed to consider or address the impact which the Traffic Computer Room's closure would have on the Computer Associates who would not work on the July 4, 1994, holiday.

The Union requests that the Board grant the following relief:

a. Order the City to restore to all affected employees any and all monies with interest, annual leave time, holiday leave time, or any other emolument which they may have lost or would have earned due to the City's closure of the Traffic Computer Room on July 4, 1994;

b. Order the City to bargain in good faith concerning the practical impact upon employees of the shut down of the Traffic Computer Room on July 4, 1994;

c. Order the posting of appropriate notices of Respondent facilities or work sites;

d. Order such after and further relief as may be just and proper.

City's Position

The City contends that the Union's claim is one of contract violation; i.e., the Union arguably is asserting that the City's decision to close the Traffic Computer Room for the July 4 holiday denied employees their right to contractually provided benefits. The City argues that the Board does not have jurisdiction over such claims, citing Section 205-5(d) of the Civil Service Law:

> [T]he board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer practice or employee organization practice.

Next, the City contends that the decision not to staff the Traffic Computer Room on a holiday is a management prerogative and therefore that the City was not required to bargain over this decision. The City also contends that, because decisions concerning holiday staffing are a managerial

prerogative, issues concerning the impact of such a decision are not properly raised in an improper practice petition, but rather by means of a scope-of-bargaining petition. The City further argues that a Board finding of a practical impact is a condition precedent to a duty to bargain to alleviate any such impact.

Finally, the City argues that the Board has not determined that the decision not to staff the Traffic Computer Room on holidays resulted in a practical impact. Therefore, the City asserts that it has exercised a management right granted by the NYCCBL to determine holiday staffing levels and that there is no obligation to bargain over this matter in the absence of either a contractual limitation on that right or a Board determination that a practical impact resulted.

For the above reasons, the City requests the Board to dismiss the petition.

Discussion

Section 12-307(a) of the NYCCBL requires public employers and employee organizations to bargain in good faith on wages, hours and other matters that are within the scope of collective bargaining. Section 12-307(b) of the NYCCBL expressly reserves to management the authority to determine the standards of services to be offered by city agencies, and the methods, means, and personnel by which government operations are to be conducted. These sections of the law are not inconsistent in their application.

Once agreement between the City and a union is reached in bargaining over the maximum number of hours of work per day, per week, and per year, and the maximum number of appearances per year, as well as time off for vacation, sick leave, and other purposes,[1] it is then management's prerogative to determine the level of staffing to be provided, by means of work schedules,

[1] See, generally, Decision No. B-4-89 and the decisions cited therein. See, also, Decision Nos. B-10-81 and B-24-75, aff'd sub nom. PBA v. Board of Collective Bargaining, N.Y. Co. Supreme Court (N.Y. Law Journal, Jan. 2, 1976, at p.6).

within the limitations of the agreement on hours and leave benefits.[2] In other words, unless the work schedule is made a part of the contract, the City is free unilaterally to change the configuration of existing work schedules, limited only to the extent that the change would alter contractual provisions relating to maximum hours of work, number of days of leave[3] or to the extent that the Union has alleged and this Board has found that the exercise of management's prerogative has resulted in a practical impact on employees affected by the change.[4]

The Union does not dispute the City's managerial prerogative to assign work on holidays. Rather, the Union contends that a schedule change, in which the two unit members were assigned to work days other than the July 4, 1994, holiday, has had the practical impact of an undisputed loss of the opportunity of those two unit members to earn holiday pay and night-shift differential and their undisputed loss of the opportunity to be credited for leave time.

Where a contract provides for compensation for overtime worked pursuant to order or authorization, as the applicable Unit Agreement provides,[5] such a provision "in no way establishes that an employee is guaranteed the right to perform overtime work in any particular circumstance."[6] There is no claim here that overtime hours which were assigned and were worked were not compensated. What the Union protests here is a reduction in the total compensation and leave time credit earned as a consequence of a change in scheduling. The essence of the Union's complaint concerns a subject within management's prerogative, viz., scheduling.[7] Further, the issues about which

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[2] Decision Nos. B-59-89 and B-10-81.

[3] Decision Nos. B-59-89 and B-10-81.

[4] Decision Nos. B-59-89 and B-21-87.

[5] See text at 4, supra.

[6] Decision Nos. B-29-87 and B-35-86.

[7] Decision No. B-66-88 (where the employer unilaterally allocated fiscal savings generated by a wage freeze for new

the Union complains here, i.e., holiday pay, night differential and leave time accrual, involve matters over which the parties have already bargained and which they have included in their collective bargaining agreement. Having bargained over them, there is no duty on the part of the City to bargain further over the consequences of unilateral management action which is not claimed by the Union to be violative of the collective bargaining agreement.

An earlier case concerning holiday pay, which the Union cites to support its position, is distinguishable. It concerned demands for a contract provision providing holiday pay (i) for the federal holiday marking the birthday of Dr. Martin Luther King, Jr., and (ii) for "all scheduled work actually performed on designated holiday[s] to be compensated at time-and-a-half in cash." We held those demands to constitute mandatory subjects of bargaining.[8] They differ, however, from the issues in the instant proceeding. The demands in the earlier case did not concern the decision of whether or not to schedule work during holiday time, as concerns the instant matter. The earlier case concerned payment for work "actually performed." The issue in the instant matter does not concern compensation for work "actually performed." The case cited by the Union herein is inapposite.

With respect to the Union's claim herein that the City's actions resulted in a practical impact on the affected employees' pay and economic benefits, we do not view the matter herein as an issue of practical impact. As we stated above, the parties have already bargained over and memorialized in their collective bargaining agreement the terms concerning compensation for holiday pay, night differential and leave time accrual. There is no dispute that the agreement does not guarantee that unit members will work on holidays or that they will be entitled to additional leave time credit for holiday time which they do not work.

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hires, the essence of the union's economic demand which was "linked" to a matter within the prerogative of management to act unilaterally does not create a duty to bargain).

[8] Decision No. B-45-92 at 23.

For the reasons stated above, we find the City under no duty to bargain over its unilateral decision to close the Traffic Computer Room on July 4, 1994.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition filed by District Council 37, AFSCME, AFL-CIO, and its Affiliated Local 2627, in the case docketed as BCB-1677-94, be, and the same hereby is, dismissed.

DATED: New York, New York
March 25, 1997

STEVEN C. DeCOSTA
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

SAUL G. KRAMER
MEMBER

ROBERT H. BOGUCKI
MEMBER

CAROLYN GENTILE
MEMBER