L. 237, CEU v. City, 59 OCB 4 (BCB 1997) [Decision No. B-4-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	
- between -	
City Employees Union Local 237, International Brotherhood of Teamsters,	
Petitioner,	Decision No. B-4-97 Docket No. BCB-1616-93
- and -	
The City of New York,	
Respondent.	

DECISION AND ORDER

On November 26, 1993, Local 237 of the City Employees Union, IBT ('Union") filed a verified improper practice petition. It alleged that the City of New York ("City") improperly reclassified some titles to the detriment of members of its bargaining units. As a remedy, the Union asks that the Board find that the City's actions are a mandatory subject of bargaining and order such bargaining to take place.

The City requested, and was granted, numerous extensions of time in which to file an answer. It filed an answer on December 23, 1994. The Union also requested, and was granted, extensions of time in which to file a reply. It filed a reply on November 17, 1995.

Background

By Resolution 93-13, adopted on July 28, 1993, the New York

City Department of Personnel ("DOP") deleted some titles represented by the Union and adopted other titles which were referred to as "reclassified titles." All of the affected titles were in the Housing Maintenance Occupational Group and the Stores Occupational Group and are bargaining units certified to the Union. The change in job titles took place without bargaining between the City and the Union.

The title Assistant Stock Handler (Title Code 12207) was reclassified as Stock Handler (Title Code 12200). The new title includes assignment levels I and II, and promotional examinations are no longer required for promotions between assignment levels.

The title Stock Handler (Title Code 12214) was reclassified as Stock Worker (Title Code 12200). The new title includes assignment levels I and II, and promotional examinations are no longer required for promotions between assignment levels. The Union claims that this revision eliminates supervisory responsibilities for employees in the title and has added other job duties.

The title Storekeeper (Title Code 12215) was reclassified as Supervisor of Stock Handlers (Title Code 12202). The new title includes three assignment levels, and promotional examinations are no longer required for promotions between assignment levels.

The title Senior Storekeeper (Title Code 12220) was reclassified as Supervisor of Stock Workers (Title Code 12202). Promotional examinations are no longer required for promotions between

assignment levels. According to the Union, there are no longer any promotional opportunities from this title to Principal Storekeeper. In addition, it claims, employees in the title are required to perform duties of a previously lower title.

The title Principal Storekeeper (Title Number 12225) was reclassified as Supervisor of Stock Workeres (Title Number 12202). According to the Union, employees in this title are now required to perform the duties of lower titles.

Positions of the Parties

Union's Position

The Union claims that the City had a duty to negotiate the reclassification of titles. The City's failure to bargain, it contends, is a continuing wrong, and a scope of bargaining petition is timely.

The Union maintains that its members have been adversely affected by the City's actions. Where there is no longer a promotional examination, it asserts, employees may only be promoted at the discretion of the employer. In addition, it claims, some employees in affected titles are now performing job duties of titles which previously were ranked lower and the workload in some titles has been increased.

City's Position

The City claims that the disputed action falls within the

scope of its statutory right to manage, as set forth in §12-307b of the New York City Collective Bargaining Law ("NYCCBL").[1] For this reason, it contends, the DOP resolution is not a mandatory subject of bargaining. The City cites previous Board decisions for the proposition that it may act unilaterally to reclassify titles, broadband titles, create and establish new positions, and revise job specifications.[2] It claims that, by its DOP resolution, it reclassified titles and added assignment levels, actions which are within its managerial prerogative under the statute.

The City asserts that matters reserved to management by § 12-307b of the NYCCBL are outside the scope of mandatory bargaining unless they have a practical impact on employees. The City maintains that the Union has failed to allege facts sufficient to demonstrate that the City's claimed failure to bargain has created a practical impact on its members. It cites previous decisions for the proposition that "a practical impact on work-

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[1]Section 12-307 of the NYCCBL provides, in relevant part:

> **b.** It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work....

[2]Decision Nos. B-36-90; B-70-88; B-2-81.

load is not established merely by showing that there has been an increase in the employee's duties. It will be deemed to exist only where there is an unreasonably excessive or unduly burdensome workload as a regular condition of employment."[3]

Discussion

Since the determination to broadband a job title is within the City's statutory managerial prerogative,[4] the actions disputed here do not, by themselves, constitute a mandatory subject of bargaining. However, the City has an obligation to negotiate the alleviation of a practical impact on the workload of employees in broadbanded titles.[5]

The duty to bargain over the alleviation of a practial impact does not arise until we have determined that a practical impact has resulted from an act within the City's managerial prerogative.[6] An allegation or conclusory statement is not sufficient to prove a practical impact.[7]

In similar cases, we have found that the union had an obligation to demonstrate an "unreasonably excessive workload" in

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[3] Decision Nos. B-36-90; B-47-89; B-70-88; B-2-81; B-41-80.

[4] Decision Nos. B-36-90; B-14-83. See also, Decision No. B-2-91 (the revision of job specifications is within the City's managerial prerogative).

[5] Decision Nos. B-36-90; B-47-89; B-2-81.

[6] Decision Nos. B-36-90; B-47-88; B-46-88.

[7] Decision Nos. B-25-93; B-36-90; B-31-88; B-36-86.

order to claim a practical impact.[8] In Decision No. B-66-88, the Union's statement that hiring trainees would increase probation officers' caseloads was found insufficient as a claim of practical impact on workload. In Decision No. B-36-90, the union's claim was found to be insufficient because it offered no evidence of a practical impact. Again, in Decision No. B-26-89, we found that a claim of practical impact on workload requires "more than a mere showing that there has been an increase in employee's duties"[9] and that the union's real complaint was a change in job duties, which does not constitute a practical impact.[10] In that case, too, we found that if the union was contending that the new job duties were outside of the job description, it would be more appropriate to bring the claim as a grievance.

Here, the Union alleges that employees in the new title Supervisor of Stock Handler are now required to perform the duties of lower titles and that employees in the new title Stock Worker have lost supervisory responsibilities but gained other job duties. Such an allegation does not show that an unreasonably excessive workload has resulted from the City's actions. Accordingly, the instant petition is denied.

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[8] Decision Nos. B-36-90; B-26-89; B-66-88.

[9] See also, Decision Nos. B-56-88; B-2-76.

[10] In that case, we found that if the union was contending that the new job duties were outside of the job description, it would be more appropriate to bring the claim as a grievance.

DECISION AND ORDER

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

ORDERED, that the petition in Docket No. BCB-1616-93 be, and the same hereby is, denied.

Dated: New York, New York
January 30, 1997

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