L. 237, IBT v. Hanley, OLR, 61 OCB 31 (BCB 1998) [Decision No. B-31-98 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition	:	
	:	
- between -	:	
	:	
LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS	:	
	:	
Petitioner,	:	
	:	Decision No. B-31-98
- and -	:	Docket No. BCB-1842-96
	:	
JAMES HANLEY, COMMISSIONER, NEW YORK CITY MAYOR'S OFFICE OF LABOR RELATIONS, and the NEW YORK CITY MAYOR'S OFFICE OF LABOR RELATIONS as the agency charged with negotiating Labor Policy for all City Agencies	:	
	:	
Respondents.	:	

DECISION AND ORDER

On June 26, 1996, Local 237 of the International Brotherhood of Teamsters ("Union" or "Local 237") filed an improper practice petition against the New York City Mayor's Office of Labor Relations ("City" or "OLR") and its Commissioner, James Hanley. The petition alleged that the City assigned persons who were not members of Local 237 to positions that should be held by members of Local 237.

The City filed an answer on July 30, 1996. The Union filed its reply on November 5, 1997. On December 3, 1997, the City filed a sur-reply, arguing that the Union had raised a new theory in its reply.

BACKGROUND

Local 237 and the City are parties to the 1993 Municipal Coalition Agreement. Under Section 9 of the Agreement, a procedure for gainsharing is established.[1] The Union believes that the City has not followed this agreement in good faith.

Local 237 is the collective bargaining representative for a series of titles whose primary function is to perform "stores work". While the stores work encompasses several different occupational groups, stores workers are generally responsible for ordering, stocking, maintaining, and keeping inventory of supplies and equipment for various City departments. While doing stores work is the exclusive function of those Local 237 members at issue in this case, performance of stores work is not entirely exclusive to members of Local 237. In particular, auto mechanics are not members of Local 237, yet among the tasks to be performed by an auto mechanic is the preparation of orders and maintenance of inventory.

Because of the versatility of the job description for auto mechanics, the City had been placing them in stores work positions. In an undated memo, Randy Klein, Shop Steward for Local 237 suggested to the City a plan that, in the Union's view, would save money. He noted

---

[1]Section 9 of the 1993 Agreement provides, in relevant part:
Section 9: Gainsharing Initiatives.
a. The parties hereby agree to a citywide gainsharing initiative. "Gainsharing" is defined as the sharing by labor and management of savings generated by significantly increased and measurable productivity initiatives and reforms while maintaining or increasing existing City service levels. The parties agree to establish a committee to develop a citywide gainsharing program ... The Gainshare Committee will also consider proposals developed and submitted by individual agencies. Such proposals must have meaningful quantifiable and documented savings.

* * *

that, because auto mechanics earn a significantly higher salary than the members of Local 237, the City could save a substantial sum of money by increasing the number of Local 237 workers doing stores work and decreasing the number of auto mechanics performing such tasks.

While the Union claims that it received no response to its proposal, the City maintains that meetings were scheduled to discuss the proposals. Because the Union believed the City to be acting in bad faith with respect to Section 9 of the Agreement, the Union filed a grievance seeking relief.

POSITIONS OF THE PARTIES

Union's Position:

The Union claims that the City failed to respond to its gainsharing proposal, thereby violating Section 9 of the 1993 Municipal Coalition Agreement between the parties.[2] The Union avers that, because auto mechanics are performing stores work in various City garages, members of Local 237 are being deprived of the opportunity to earn wages, and, accordingly, the Union is not collecting as much dues money as it could be. Thus, it argues, there is a practical impact on Local 237 resulting from the alleged improper practice. Furthermore, the Union claims that inasmuch as auto mechanics are being assigned to stores jobs which should be given to Local 237 members, the City is failing to adhere to its job classifications. The Union believes this to be beyond the prerogative of management. Therefore, the Union requests that the gainsharing proposal be implemented, and that the City pay compensatory and punitive damages for failing to meet its contractual obligations.

---

[2]See Footnote 1, *supra.*

City's Position:

The City first claims that the petition has been brought in the wrong forum. The City argues that the present controversy should be addressed through the procedures outlined in the collective bargaining agreement's grievance procedure. The City maintains that Section 16 of the 1993 Agreement details the correct procedure for filing a grievance, and that, because this dispute concerns interpretation of the Agreement, it should be settled through arbitration.[3] Further, the City argues that, where a contractual remedy is available, this avenue should be taken. The City also notes that the Taylor Law precludes the Board from exercising jurisdiction over a claimed contractual violation that does not otherwise constitute an improper practice. Similarly, the City notes that the 1993 Agreement sets forth in Section 9 a process for submission and consideration of any gainsharing proposals.[4] By disregarding this procedure, the Union is

---

[3]Section 16 of the 1993 Agreement provides, in relevant part:
Section 16: Resolution of Disputes.
a. [A]ny dispute, controversy, or claim concerning or arising out of the execution, application, interpretation or performance of any of the terms or conditions of this *Municipal Coalition Agreement* shall be submitted to arbitration upon written notice therefor by any of the parties to this *Municipal Coalition Agreement* to the party with whom such dispute or controversy exists.

* * *

[4]Section 9 of the 1993 Agreement provides, in relevant part:
Section 9: Gainsharing Initiatives.
a. ... The Gainshare Committee will jointly develop gainsharing programs and issue a mission statement within 10 days of the execution of this Municipal Coalition Agreement. Within 45 days of the execution of this agreement, each chair shall submit at least four substantial proposals. The Gainshare Committee will also consider proposals developed and submitted by individual agencies...Within 45 days of the submission of such proposals, the Gainshare Committee shall agree to proceed on a minimum of six significant programs to be implemented before June 30, 1993, or such other date as may be mutually agreed to by the parties.

* * *

improperly attempting to reopen bargaining over a subject previously resolved, according to the City.

The City believes its actions fall within the managerial prerogative granted by §12-307b of the New York City Collective Bargaining Law ("NYCCBL").[5] Because the City has the right to assign and direct employees, to determine what duties employees will perform, and to allocate duties among employees, the City argues that a decision to utilize the more versatile auto mechanics to perform multiple duties, including stores work, is within the permissible discretion afforded to management. As to the Union's practical impact argument, the City claims that this was raised for the first time in the Union's reply, and thus cannot be considered. Furthermore, the City argues that the Union is only suggesting a loss of dues which has a practical impact on its ability to represent its members, while the Board has held that a practical impact will be found to exist only when a managerial decision has an adverse effect on the workload or safety of employees, which is a term or condition of employment.

Finally, the City claims that gainsharing is not a mandatory subject of bargaining, so there is no requirement that a gainsharing proposal be negotiated. According to the City, parties may not demand bargaining on permissive subjects of negotiation. Further, the City argues that the

---

[5]Section 12-307b of the NYCCBL provides, in relevant part:
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; ... direct its employees; ... 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; ... and exercise complete control and discretion over its organization ... Decision of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

Board has already determined that a demand to negotiate over gainsharing does not constitute a mandatory subject of bargaining, so failure to negotiate over such a proposal does not constitute an improper practice.

DISCUSSION

The Union suggests, initially, that placing auto mechanics in a stores work capacity is beyond the permissible scope of managerial discretion. However, Section 12-307b of the NYCCBL explicitly permits the City to "determine the ... personnel by which government operations are to be conducted; determine the content of job classifications; ... and exercise complete control and discretion over its organization." [6] Opting to fill positions which Local 237 members could hold with more versatile and higher-salaried workers who possess the necessary qualifications for those positions falls within the managerial authority granted to the City by the NYCCBL unless that authority is circumscribed by a contrary agreement between the parties.[7]

Since the City's actions were within its statutory management prerogatives, the issue becomes whether those actions resulted in a practical impact within the meaning of the NYCCBL. Though the City contends that the Union initially raised the practical impact argument in its reply, the argument was actually raised, though in cursory form, in the Union's petition. While the Union did not fully elaborate on the argument until its reply, it did refer to the fact that "dues money which should be paid to Local 237 is being paid to another union."

---

[6]See Footnote 5, *supra.*

[7]Decision No. B-8-94 ("Section 12-307b of the NYCCBL gives the City the unilateral right to assign and direct its employees, determine what duties employees will perform during work time, and allocate duties among unit and non-unit employees, unless this right has been limited by the parties themselves in their collective bargaining agreement."); see also B-37-87.

This is the focus of the Union's practical impact argument.

Nevertheless, merely because the Union raised this argument at the appropriate time does not validate it on the merits. For a management decision to constitute a practical impact, it must have some effect on the safety or working conditions faced by employees.[8] In this matter, the Union suggests that the City's decision has a practical impact on the Union itself by reducing its dues income. Such an argument does not constitute a valid allegation of practical impact.[9]

Finally, the Union's complaint that the City did not implement a gainsharing proposal alleges a contract violation by the City. Claimed violations of the collective bargaining agreement which do not otherwise constitute improper practices are expressly beyond the jurisdiction of the Board of Collective Bargaining pursuant to Section 205. 5(d) of the Taylor Law.[10] Accordingly, the Union's claim constitutes a grievance over which the Board cannot exercise jurisdiction.

Accordingly, the Union's improper practice petition is dismissed.

---

[8]Decision No. B-70-89 (A practical impact did not exist when the City unilaterally decided to delete a minimum manning provision from the collective bargaining agreement, as there were no substantial adverse effects on the working conditions of employees through imposition of an unduly burdensome workload or creation of a patent threat to safety.)

[9]In Decision No. B-33-80, the Board said:
"Practical impact," as provided for in the NYCCBL, is a term of art which has no reference to the rights and interests of a labor union. The concept of "practical impact" is addressed to the effect management action will have upon the wages, hours, and working conditions of employees...

[10]Section 205.5(d) of the Taylor Law, in relevant part, provides:
[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 or employee organization practice . . . .

DECISION AND ORDER

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

ORDERED, that the petition docketed as BCB-1842-96 be, and the same hereby is, dismissed.

Dated: New York, New York
August 31, 1998

STEVEN D. DECOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

SAUL G. KRAMER
MEMBER

RICHARD A. WILSKER
MEMBER

CAROLYN GENTILE
MEMBER

THOMAS J. GIBLIN
MEMBER