OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	:	
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Between	:	
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Uniformed Firefighters Association of Greater New York and Charles Bohan, UFA Sergeant-at-Arms,	:	
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Petitioners,	:	
	:	
And	:	Decision No. B-6-98
	:	Docket No. BCB-1917-97
The City of New York and the New York City Fire Department,	:	
	:	
Respondents.	:	

DECISION AND ORDER

On June 20, 1997, the Uniformed Firefighters Association of Greater New York ("Union") and Charles Bohan, the Union's Sergeant-at-Arms, filed a verified improper practice petition. It alleged that the New York City Fire Department ("Department") did not give the Union and Bohan notice of certain meetings, thereby not giving them information about, or allowing them to participate in decisions concerning, the location of the Department's Quartermaster Program and changes in clothing and equipment provided to Union members.

After requesting and receiving an extension of time in which to file an answer, the City did so on July 23, 1997. The Union then requested an extension of time in which to file a reply, in order to try to resolve the dispute. When the parties failed to reach a resolution, the Union filed a reply on September 29, 1997.

On November 20, 1997, the City sent a letter, which it characterized as a sur-reply, to the General Counsel of the OCB. In it, the City claimed that the Union had raised new facts in its reply by referring to a November 9, 1993, stipulation between the Department and the Union.

BACKGROUND

In 1990 and 1991, the Union and the Department attempted to negotiate a contract, but the negotiations failed and the parties sought a declaration of impasse from this Board. In the resulting impasse award issued in 1992, the uniform allowance for Firefighters was eliminated and the Quartermaster program ("Program") was instituted to provide clothing and equipment to Firefighters. The Program, which is derived from what the Union characterizes as an extensive, formal Request for Proposal ("RFP"), has been in effect for several years. According to the Union, Bohan serves as the Union's representative in discussions with the Department about planning for the Program.

In the spring of 1997, the Union believed that the Department intended to change the location of the Quartermaster depot, as well as some kinds of clothing and equipment provided to Firefighters, without including its representative in the decision-making process. In letters dated May 23, 1997 and May 29, 1997, the Union told the Department that, since the Program had been the subject of negotiations for the current contract, its refusal to include the Union in Program planning constituted a refusal to bargain in good faith and interference with the legitimate operations of the Firefighters' certified bargaining agent.

By letter dated June 25, 1997, the Department told the Union that it had issued a new RFP for procurement of clothing and uniforms in March, 1997, and that a "pre-proposal meet-

ing" had been held in April. It confirmed that the types of equipment were unchanged except to conform with federal safety standards and that the Program depot was being moved. The Department regretted that Union representatives had not received notice of the release of the RFP, and ended the letter by stating, "we have furnished copies of the RFP and minutes of the meeting to the union, and will keep them apprised of any changes or developments in the procurement process." The City acknowledges that the letter was not sent to the Union until July 15, 1997.

POSITIONS OF THE PARTIES

Union's Position

The Union asserts that it does not want to usurp the City's managerial rights. Rather, it maintains, it wants to know details of Program procedures and the new RFP, particularly in regard to what it believes to be matters concerning the safety and comfort of its members.

According to the Union, the City has acknowledged its responsibility to bargain about issues relating to the Program. This duty to bargain arose, the Union maintains, because the Program was the subject of demands made by the City and bargained about during negotiations for the current contract. By excluding Bohan from the planning meetings, it claims, the City has interfered with the exercise of rights granted to public employees and their certified representative; discriminated against Union representatives for the purpose of discouraging participation in its activities; interfered with the administration of a public employee organization; and refused to bargain in good faith.

The Union argues that the Taylor Law requires an employer to provide appropriate

information, as long as the request is reasonable and satisfies a demonstrated need.[1] Regarding the June 25, 1997 letter from the Department, the Union claims that it has never been informed about changes or other developments in the procurement process. It needs this information and has the right to participate in planning meetings, it says, because it has the right to verify the City's information and ensure compliance with safety standards. Further, it maintains, the New York State Public Employment Relations Board ("PERB") has always considered proposals that relate to the employee's comfort to be mandatory subjects of bargaining.

City's Position

The City states that it does not intend to include the Union in Program planning meetings and contends, further, that it is not required to include union representatives in the internal managerial meetings of any New York City agency. The City cites several PERB cases for the proposition that a public employer is only required to provide a public employee union with information if the union shows that the information is necessary and relevant to collective bargaining.[2] If there is no bargaining obligation on the part of the City, it argues, there is no requirement to provide information. Here, the City maintains, the issues in dispute are managerial prerogatives and it is not obligated to provide information.

According to the City, it has the right to determine where its facilities will be located[3] and

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[1]The Union cites *Schuyler-Chemung-Tioga BOCES*, 15 PERB 3036 (1982).

[2]The City cites *City of Albany*, 6 PERB ¶ 3012 (1973); *Addison CSD*, 13 PERB ¶ 4601 (1980); *County of Ulster*, 25 PERB 4632 (1992).

[3]The City cites Decision No. B-4-89 at 51 and § 12-307b of the New York City Collective Bargaining Law.

that capital improvements are a non-mandatory subject of bargaining.[4] Therefore, it argues, since none of its actions here are subject to bargaining, its failure to allow the Union to participate in planning meetings is not an improper practice.

The City argues that the Union has failed to allege facts to support its allegations about improper employer practices other than failure to provide notice and to bargain in good faith. As to what it characterizes as a sur-reply, the City maintains that the November 9, 1993 stipulation was not mentioned in the petition. It claims that the Union cannot enforce the stipulation in the improper practice forum.

DISCUSSION

Under our statute, a union may request information from a municipal employer on matters related to mandatory subjects of bargaining and on matters necessary for the administration of the collective bargaining agreement, such as grievance administration.[5] Mandatory subjects generally include wages, hours and working conditions,[6] and any subject with a significant or material relationship to a condition of employment might be designated a mandatory subject of bargaining.[7] However, not every decision of a public employer which might affect a term and

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[4]It cites *Chateaugay CSD*, 12 PERB ¶ 3015 ("capital improvements are a management prerogative that does not involve terms or conditions of employment").

[5]Decision Nos. B-39-88; B-8-85. *See also,* Decision No. B-56-88 ("Section 12-306c(4) of the NYCCBL only requires an employer to furnish information relating to subjects within the scope of collective bargaining").

[6]*See, generally,* Decision No. B-21-87.

[7]Decision No. B-63-91.

condition of employment is so classified.[8] The scope of bargaining is restricted when it intrudes on areas that involve a basic goal or mission of the employer.[9]

Since the City is required to provide information concerning mandatory subjects of bargaining, we must decide whether the disputed actions concern mandatory or non-mandatory subjects of bargaining. In the past, when classifying mandatory and non-mandatory subjects, we distinguished between existing and proposed work conditions. Unlike PERB,[10] we held that the City's prerogative with respect to capital improvements is not always absolute.[11] We found, for example, that furnishing clean-up and storage facilities for Fire Marshals is a working condition because the nature of the job made clean-up and storage a requirement for employees and because there was a regular and traditional practice of providing such facilities.[12] Similarly, we found that providing housing for nurses is a mandatory subject of bargaining because there was a regular and traditional practice of providing such facilities.[13] However, where a demand for parking facilities went beyond bargaining for the existing benefit and sought alteration of the physical layout of the department's facilities, we found that the subject of the demand was not mandatory.[14]

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[8]Decision No. B-46-92.

[9]Decision No. B-63-91.

[10]*Chateaugay*, *supra,* n. 7.

[11]Decision No. B-4-89 at 190.

[12]Decision No. B-43-86 at 12.

[13]Decision No. B-2-73.

[14]Decision No. B-16-81 at 65.

Because decisions concerning the management of its property are reserved to the Department,[15] the future location of the Quartermaster depot is a non-mandatory subject of bargaining. Making changes in equipment and clothing provided to employees is also a non-mandatory subject.[16] We find, therefore, that the Department is not required to provide that information to the Union.

The City is also not required to allow the Union to participate in planning the proposed changes. The reason for requiring the City to give the Union information about mandatory subjects of bargaining is so that the Union will have information necessary to represent its members adequately in contract negotiations. Planning capital improvements or expenditures is a management prerogative, and the Union has no right to participate in such planning because failure to participate does not affect its statutory duty to represent its members.

In addition, we find that the Union has failed to allege facts to support its charges of interference, coercion or discrimination. Accordingly, the petition is denied.

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[15]Decision No. B-4-89 at 192-193. *Cf., Peekskill,* 16 PERB ¶ 4586 (while related to employee comfort, a decision which would limit the painting or repair of classrooms to non-school hours more directly affects the employer's responsibility for the upkeep of its facilities and is nonmandatory).

[16]*See, e.g.,* Decision No. B-4-89 at 65-68 (proposed change in equipment is a non-mandatory subject unless the City intends for an employee to pay for equipment or the union proves that there is a practical impact on employee safety).

DECISION AND ORDER

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

ORDERED, that the petition docketed as BCB-1917-97 be, and the same hereby is, denied.

Dated: New York, New York
March 24, 1998

STEVEN C. DECOSTA
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