

UPOA v. Dep't of Probation, 67 OCB 48 (BCB 2001) [Decision No. B-48-2001 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

UNITED PROBATION OFFICERS ASSOCIATION,

Decision No. B-48-2001
Docket No. BCB-2208-01

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF PROBATION,

Respondent.

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DECISION AND ORDER

On May 7, 2001, the United Probation Officers Association (“Union” or “Petitioner”) filed a verified improper practice petition against the New York City Department of Probation (“Department” or “Respondent”). The petition alleges that the Department violated the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) when the Department unilaterally reduced the opportunity of certain Probation Officers to work overtime on a specific category of cases. The Union contends that this represents an unlawful, unilateral change in the “wages and hours” of those Officers and seeks an order of this Board of Collective Bargaining (“Board”) directing the Department to bargain in good faith over “this wage issue.” The Department defends its action as a lawful exercise of management prerogative. Because the assignment of overtime is a managerial prerogative, this Board denies this petition.

BACKGROUND

The Union represents Probation Officers who work in the Bronx division of the Department's Adult Supervision Restructuring Program for probationers at high risk for violent recidivism. The program consists of several tracks designed to meet the needs of various levels of non-violent and violence-prone offenders. Probationers from any track with a pending violation of probation are moved to an Enforcement Track Unit designated as the "Red Track." Probation Officers in the Red Track Unit are assigned to contact probationers frequently, update probationers' files, and prepare Pre-Sentence Investigation ("PSI") reports for submission to court concerning probationers whom they supervise, among other duties.

Before the Red Track program came into existence in 1995, the Department required the Officers to submit prior, written requests to work overtime on their PSI reports. When the Red Track program was implemented two years later in the Bronx, the Department assigned Probation Officers to work overtime to complete PSI reports, apparently without requiring Officers to request the overtime assignments.

On April 2, 2001, Acting Assistant Commissioner Iris M. Hill told Probation Officers working the Red Track in Bronx Adult Supervision that in general no overtime would be approved for work on new Red Track cases unless they demonstrated the need in a particular case. Probation Officers unable to complete work on PSI reports during regular work hours would be permitted to have other Department employees complete the work without incurring overtime.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that Assistant Commissioner Hill's directive – to complete PSI reports on new Red Track cases without resorting to overtime unless a need for it were demonstrated – changed terms and conditions of employment without “consultation” with the Union. The Union contends that this unilateral directive violated §12-306(a)(4) of the NYCCBL.¹ While Petitioner contends that the Department's action affects both wages and hours of the employees at issue, it asks this Board to issue an order directing good-faith bargaining over “this wage issue.”

City's Position

The City contends that it has not changed the way Probation Officers work overtime assignments, pointing to a requirement at the inception of the Adult Supervision program that Officers submit written requests for overtime assignments in advance. In any event, Respondent defends its unilateral action as a lawful exercise of managerial prerogative under § 12-307b of the NYCCBL to “direct its employees . . . maintain the efficiency of governmental operations; determine the means, methods and personnel by which government operations are . . . conducted . . . and exercise complete control and discretion over its organization. . . .” It also points to

¹Section 12-306(a) provides in pertinent part:

Improper practices; good faith bargaining. a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees. . . .

United Probation Officers Association, Decision No. B-29-87, involving the same parties in an earlier dispute concerning overtime to complete PSI reports in Brooklyn. The Department relies on the Board's statement that "the decision as to when and how much overtime is to be authorized or ordered falls within the realm reserved by the City by [§ 12-307b], and thus it is outside the scope of the City's obligation to bargain collectively."

Here, in a case nearly identical to the prior case, the Department is merely reducing the number of hours of overtime it assigns to its employees to complete PSI reports. The Respondent submits that, here, as in the earlier case, the Department's decision to restrict the assignment of overtime to situations where a need can be demonstrated squarely falls within its managerial prerogative to act unilaterally in the absence of any contractual provision restricting that right.

DISCUSSION

The assignment of overtime falls within the City's management right to determine the methods, means and personnel by which government operations are to be conducted.² We have so held, both as a general proposition³ and in an earlier case involving the parties herein which also addressed the question whether a unilateral reduction in the amount of overtime assigned to Probation Officers for the completion of PSI reports implicates the Department's duty to bargain over wages.

²*United Probation Officers Ass'n.*, Decision No. B-29-87 at 4; *Local 858, Int'l Bro. of Teamsters*, Decision No. B-29-92 at 13.

³*See, e.g., District Council 37, AFSCME*, Decision No. B-3-2001 at 7.

The earlier case involved Probation Officers in Kings County who were ordered to reduce the amount of overtime they were allowed to prepare PSI reports. This Board reaffirmed the public employer's managerial prerogative to determine when and how much overtime is necessary. It reiterated that such decisions are outside the scope of the City's obligation to bargain collectively,⁴ in the absence of a limitation in the parties' collective bargaining agreement,⁵ as here. The Board also observed that, even where a collective bargaining agreement specifically provides for overtime worked pursuant to order or authorization, such a provision "in no way establishes that an employee is guaranteed the right to perform overtime work in any particular circumstance."⁶

In the instant case, the Union argues that its members' wages have been affected by the Department's unilateral decision to reduce overtime authorized for completion of PSI reports but the Union has not alleged that members who actually worked any overtime in this regard have not been compensated. The allegation relates only to the opportunity to work overtime, the determination of which is a managerial prerogative and thus outside the scope of the City's duty to bargain.⁷

Because the claim in the instant case does not relate to other aspects of overtime which,

⁴*United Probation Officers Ass'n*, Decision No. B-29-87 at 4.

⁵*Id.*; see also *Fire Alarm Dispatchers Bene. Ass'n.*, Decision No. B-1-95 (INJ) at 15.

⁶*United Probation Officers Ass'n*, Decision No. B-29-87 at 4.

⁷We need not reach the question of whether Hill's directive constitutes a change in the manner in which overtime assignments are made or worked.

on other facts, could require bargaining,⁸ the instant petition is denied in its entirety.

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 instant improper practice petition docketed as BCB-2208-01 be, and the same hereby is, denied in its entirety.

Dated: December 18, 2001
New York, NY

MARLENE A. GOLD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

EUGENE MITTELMAN
MEMBER

I dissent.

GABRIELLE SEMEL
MEMBER

⁸*E.g., District Council 37, AFSCME*, Decision No. B-3-2001 (distribution of available overtime among employees, after the agency has determined the need for overtime, is mandatorily bargainable).