L. 371, SSEU v. ACS & City, 69 OCB 2002 (BCB 2002) [Decision No. B-1-2002 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

SOCIAL SERVICES EMPLOYEES UNION,
LOCAL 371,

Decision No. B-1-2002
Docket No. BCB-2203-01

Petitioner,

-and-

NEW YORK CITY ADMINISTRATION FOR
CHILDREN'S SERVICES AND THE CITY OF
NEW YORK,

Respondents.

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DECISION AND ORDER

On March 26, 2001, the Social Services Employees Union, Local 371 ("Union") filed a verified improper practice petition against the New York City Administration for Children's Services ("ACS") and the City of New York ("City"). The Union alleges that in violation of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL"), ACS transferred employees to a new facility without bargaining and negotiated directly with the employees concerning the practical impact of the transfer. Respondents argue that the move was an exercise of management prerogative and that ACS did not violate the NYCCBL when it took employees to view the new facility prior to the completion of the renovation. For the reasons set forth below, the petition is dismissed.

BACKGROUND

On November 16, 2000, ACS held a ribbon-cutting ceremony to mark the completion of the renovation of a landmark building in the Bellevue Hospital Complex. The building will serve as the ACS Children's Center ("Center"), housing the agency's Emergency Children's Services division, foster care placement services, and the Satterwhite Academy ("Training Academy") for training of child welfare personnel. At that time, the building had not yet been turned over to ACS or to the City's Department of Citywide Administrative Services. Notification of the November 16, 2000, ceremony and of the projected January 2000 occupancy date was published in the ACS "Commissioner's Bulletin" dated November 10, 2000.

On November 16 and December 6, 2000, there were telephone conversations between the Union's Vice President Fayrce Moore and ACS's Director of Labor Relations Carol Jordan concerning the eventual move of ACS staff to the Center. In the December conversation, Jordan requested that the Union provide ACS with a list of its concerns about the move.

On December 11, 2000, ACS's Office of Labor Relations Consultant Clarence Jeffrey telephoned the offices of Moore and the Union's Health and Safety Coordinator Arnie Goldwag to discuss a "walk-through" of the new facility prior to occupancy so that the Union would have an opportunity to raise any health and safety concerns.

By letter dated December 26, 2000, ACS reiterated its request for a list of the Union's concerns about the move, provided general information on the move, and enclosed information on program areas and staffing of each floor, including Emergency Children's Service ("ECS") and Office of Placement Administration ("OPA") personnel who are represented by the Union.

In January 2001, floor plans for the Center and a list of Training Academy Employees to be transferred to the Center were delivered to the Union.

By letter, dated January 24, 2001, Moore requested a labor-management meeting to discuss issues related to the move. The meeting was scheduled for February 12, 2001.

On January 31, 2001, the walk-through of the floors designated for the Training Academy took place with six representatives of the Union, including Moore and Goldwag, as well as representatives of other unions whose members would be transferred to the Center. As a result of the walk-through, a "punch list" of items to be addressed, including clarification of air quality and asbestos reports, was developed and forwarded to the ACS Office of Facilities. The Union requested certain information, which was provided by Jordan on February 6, 2001.

On February 12, 2001 the labor-management meeting was held. According to the written summary of the meeting, the parties discussed, inter alia, the placement of window guards, electrical outlets, shades, filing cabinets, and computer glare screens, and questions concerning the floor plan, building and fire code standards, air quality, asbestos, and use of toxic chemicals. The Union also asked specific questions concerning who was moving, when, how the move would affect transportation and child care, security, and parking. Some of these questions were addressed by ACS.

On February 13, 2001, ACS staff spoke with Goldwag to clarify some issues raised at the February 12, 2001, meeting and on February 15, ACS provided him with copies of reports on asbestos and air quality tests.

On February 20, 2001, Training Academy staff moved to the Center.

On February 21, 2001, ACS confirmed that its Office of Facilities had scheduled the

remaining units to begin moving to the Center on March 23, 2001.

By letter dated February 23, 2001, the Union requested a labor-management meeting to discuss the move of ECS and OPA employees to the Center. The meeting was scheduled for March 19, 2001.

On March 13 or 14, 2001, Jordan informed Moore that, as the facility would not be ready for occupancy on the projected date, the move would not begin on March 23 and that the March 19, 2001, labor-management meeting would be rescheduled to a later date. They also discussed related matters concerning the fourth floor of the Center and a possible shuttle service to the subway.

According to ACS, in February 2001, Commissioner Brennan determined that it would be useful in planning the move if some of the program administrators and staff could actually see their assigned space before the final renovation was complete rather than continue to rely on blueprints and floor plans. As a result, sometime in March 2001, Marie Antoine, Special Assistant to Commissioner Brennan, visited the Center with two groups. The first group consisted of approximately eleven members of the evening shift staff: manager, office manager, clerical associate, three child welfare specialists, and a total of five child welfare supervisors. The second group consisted of approximately nine members of the day shift staff: principal administrative associate, office manager, clerical associate, staff analyst, child welfare supervisor, and four managers. The purpose of these visits was to estimate how the units' functions and equipment might be accommodated and to determine where the staff would be physically located in relation to, and how they might interact with, supporting services also housed at the Center.

The Union was not advised by ACS of this visit to the Center and did not attend. The Union complains that staff members were given information which was different from the information ACS had given the Union at the February 12 meeting, including but not limited to the area teen clients would be permitted to smoke and the extent of the security staff to be provided at the Center.

On May 15, 2001, ACS informed the Union that the move of OPA and ECS personnel had been rescheduled to begin on June 1, 2001. ASC and the Union agreed that there would be a walk-through of the remaining floors on May 22, 2001, and a labor-management meeting on May 23, 2001. Those events took place as scheduled. An additional labor-management meeting to discuss the move took place on May 30, 2001.

On June 1, 2001, ACS Labor Relations Staff met with the Union to inspect the two remaining office spaces that had not been ready for occupancy when the May 22 walk-through took place. The move of the ECS and OPA personnel began on June 1, 2001, and was substantially completed by June 11, 2001.

POSITIONS OF THE PARTIES

Petitioner's Position

The Union claims that ACS failed to advise it of details concerning the transfer of employees to the Center and failed to negotiate over the impact of the transfer on the employees. The Union also claims that when ACS brought employees to view the Center in March 2001, it negotiated directly with them on the impact of the transfer in violation of NYCCBL § 12-

306a(4).[1]

Respondents' Position

Respondents argue that the petition must be dismissed because: (1) the transfer of employees to a new facility falls within the management's rights clause of the NYCCBL; and (2) Respondents did not negotiate the impact of the transfer directly with its employees.

DISCUSSION

It is an improper practice under NYCCBL §12-306a(4) for a public employer or its agents "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." Mandatory subjects of bargaining generally include wages, hours, and working conditions and any subject with a significant or material relationship to a condition of employment. *See District Council 37, AFSCME, AFL-CIO, Locals 2507 and 3621*, Decision No. B-35-99 at 12. The petitioner must demonstrate that the matter to be negotiated is a mandatory subject of bargaining. *See Doctors Council*, *S.E.I.U., AFL-CIO,* Decision No. B-21-2001 at 7.

NYCCBL §12-307b grants the employer the right "to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees. . . ; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted . . . ; and exercise complete control and discretion over its organization and the technology of performing its work. .

[1] NYCCBL§12-306a(4) provides, in relevant part, that it shall be an improper practice for a public employer to " refuse to bargain collectively in good faith on matters within the scope of collective bargaining. . . ."

. ."

In *Uniformed Firefighters Ass'n of Greater New York*, Decision No. B-4-89 at 49, *aff'd Uniformed Firefighters Ass'n of Greater New York v. New York City Office of Collective Bargaining*, Index No. 12338 (N.Y. Co. S.Ct., 1989), *aff'd*, 163 A.D.2d 251, 558 N.Y.S.2d 72 (1st Dep't 1991), we observed that in dealing with demands concerning the establishment of a department facility "the City's management prerogatives give it broad discretion to allocate its resources and to determine its organizational structure." The Union had demanded that the City increase the number of satellite medical offices. The Board held that the demand infringed on the City's management rights to provide facilities and therefore was not a mandatory subject of bargaining. Further, in *Uniformed Firefighters Ass'n of Greater New York*, Decision No. B-6-98 at 7, we held that because decisions concerning the management of its property are reserved to the City, the future location of the Quartermaster depot was a non-mandatory subject of bargaining.

Here, ACS's creation of the Center and the transfer of employees to the new location is within management's right and is not a mandatory subject of bargaining. Moreover, despite the Union's conclusory claims that ACS never advised it of the move and failed to discuss important details concerning the move, the record shows that between November 2000, when the move was first announced, and June 2001, when the move was substantially completed, ACS provided relevant documents which the Union had requested, and the parties had numerous conversations, labor-management meetings, and inspections of the Center.

The Union further complains that the City failed to bargain over the practical impact of the transfer on the safety of the employees. The determination of the existence of a practical

impact is a condition precedent to determining whether any bargainable issues arise from the practical impact. *See Patrolmen's Benevolent Ass'n of the City of New York*, Decision No. B-18-93 at 8. The existence of practical impact, a factual question, cannot be determined when the Union does not provide sufficient facts. *See Correction Captains Ass'n*, *Inc.,* Decision No. B-28-93 at 8. A petitioner must present more than conclusory statements of a practical impact in order to require the employer to bargain or, indeed, in order to warrant a hearing to present further evidence. *Id.*; *United Probation Officers Ass'n*, Decision No. B-66-88 at 17.

The Union's allegation are based on its statement that there is a clear threat to employee safety which constitutes a *per se* impact and that ACS should bargain over the amount and character of the security to be provided at the Center. The Union offers no factual allegations in support of its conclusory statements, and the record is devoid of any probative evidence which would support the claim of a practical impact of a safety nature. Because the Union has not alleged any facts sufficient to warrant a hearing on this issue, we conclude that there is no basis for a finding that a practical impact on safety attaches to the management action in question.

Finally, the Union claims that ACS negotiated directly with the employees on the impact of the transfer in violation of NYCCBL § 12-306a(4). This claim is based on the fact that ACS brought certain employees to view the Center in March 2001 without telling the Union, and that ACS allegedly gave employees information different from the information given to the Union at the February 12 labor-management meeting. The Union argues that ACS circumvented and undermined the Union.

Although the NYCCBL is silent on this issue, we have recognized that an employer's direct dealing with union members may violate the NYCCBL, when there is an accompanying

threat of reprisal or promise of benefit. In order for the Union to prevail in a direct dealing claim, it must prove that the direct dealing contains a threat of reprisal or force, or that it otherwise subverts the members' organizational and representational rights. *See Committee of Interns and Residents*, Decision No. B-22-92 at 20-22; *Local 1549 of District Council 37*, *AFSCME, AFL-CIO*, Decision No. B-17-92 at 6-9. When measured against this standard, the actions of ACS are insufficient to sustain a claim of an improper practice. The Union fails to allege facts which demonstrate that ACS made any promise of benefit or threat of reprisal.

In addition, the Union has failed to provide any evidence to support its claim of interference. Except for the Union's claims that ACS provided information to the employees concerning the place teen clients would be permitted to smoke and the extent of security staff which would be provided at the Center, the petition is devoid of any factual allegations that the City bargained with the employees on these issues. Except for conclusory allegations, there is nothing in the record which refutes ACS's explanation that it took staff members to the Center to estimate how the units' functions and equipment might be accommodated and to determine where the staff would be physically located in relation to, and how they might interact with, supporting services also housed at the Center. Clearly, such discussions fall within the employer's right under NYCCBL §12-307b "to maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted . . . ; and exercise complete control and discretion over its organization and the technology of performing its work. . . ." Finally, following the March visit to the Center and prior to the move of the move of OPA and ECS personnel, the Union and ACS had a "walk-through" of the Center on May 22 and June 1, 2001 and labor-management meetings on May 23

and 30, 2001.

For all of these reasons, we deny the petition.

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 in the matter docketed as BCB-2203-01 be, and the same hereby is, denied in its entirety.

Dated: January 30, 2002
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

GABRIELLE SEMEL
MEMBER

VINCENT BOLLON
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