L. 371, SSEU v. ACS & City, 69 OCB 10 (BCB 2002) [Decision No. B-10-2002 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

----------x

In the Matter of the Improper Practice Proceeding

-between-

SOCIAL SERVICE EMPLOYEES UNION,
LOCAL 371,

Petitioner,

Decision No. B-10-2002
Docket No. BCB-2204-01

-and-

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

Respondents.

----------x

DECISION AND ORDER

The Social Service Employees Union, Local 371 ("Union") filed a verified improper practice petition against the New York City Administration for Children's Services and the City of New York ("ACS" or "City") on March 26, 2001. The Union alleges that in violation of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), ACS issued an instructional Time and Leave Handbook accompanied by revised timecards without bargaining with the Union. The Union asserts that ACS had a mandatory duty to bargain over the implementation of the Handbook and the issuance of the revised timecard. Respondents argue that the revision of time and leave forms is a proper exercise of its managerial rights under NYCCBL § 12-307b. Since the Union has failed to show that ACS's action has affected a term and condition of employment, the Union's petition is dismissed.

BACKGROUND

By memorandum dated January 20, 2000, ACS announced that it was issuing new timecards to its employees, so that they would no longer be required to submit a separate form to the personnel department when requesting scheduled leave (*i.e.,* sick leave, annual leave, military leave). Instead, employees could indicate the request directly on the timecard and attach any pertinent documentation to it. Furthermore, since ACS's payroll management system operates by social security numbers, each employee would be required to record his/her social security number on the timecard.

On February 3, 2000, a labor-management meeting was held. The Union requested that ACS provide its employees with instructions on how to complete the new timecards. ACS advised the Union that procedures governing the use of the timecards had not yet been implemented. Shortly thereafter, ACS notified the Union that the January 20, 2000, memorandum would be rescinded and that timecards should be used only to punch in and out.

Sometime after the February 3, 2000, meeting and before October 2000, ACS decided to pursue its earlier plan to utilize new timecards. ACS established a Quality Improvement Team that was comprised of ACS staff and bargaining unit employees. The Team developed an instructional handbook ("Handbook") which included a copy of the new timecard. The Handbook indicated the way to complete the revised timecard, the employees who are required to complete it, and the time and person to whom it should be submitted. In addition, the Handbook stated that: "These procedures are to address the proper usage of the timecard. These procedures will not cover all aspects of Agency Time and Leave Rules and Regulations."

According to the City, in or around October 2000, it provided a draft of the Handbook to the Union. The Union alleges that it did not receive a copy until January 2001.

By letter dated February 23, 2001, the Union requested a labor-management meeting to discuss the following five subjects: (1) the inclusion of the social security number on the timecard; (2) the requirement that medical documentation must be attached directly to the timecard, and the fact that undocumented sick leave is not addressed in Handbook; (3) the practice of docking one-half day of annual leave from an employee who fails to clock in or out; (4) the practice of returning a leave request that is denied; and (5) the chain of command for approving leaves of absence. No meeting was held at that time.

On March 19, 2001, ACS issued the Handbook. Shortly thereafter, the Union filed an improper practice petition on March 26, 2001. As of April 1, 2001, ACS employees were required to follow the Handbook when completing the timecard. On April 23, 2001, the parties held a labor-management meeting. The Union raised the same five concerns listed in its February 23 letter and demanded that ACS cease and desist from utilizing the Handbook and revised timecard.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner argues that the five matters raised in its February 23, 2001, letter were all mandatory subjects of bargaining which should have been discussed at a labor-management meeting prior to the implementation of the Handbook. By implementing the Handbook and revised timecard without prior discussion with the Union, ACS violated NYCCBL §12-306a(4).

Petitioner also argues that ACS's actions have resulted in a practical impact on the terms and conditions of employment for ACS employees.

Respondents' Position

Respondents argue that the petition should be dismissed because: (1) ACS's decision to issue an instructional Handbook and revised timecard is a proper exercise of its managerial rights under NYCCBL § 12-307b; and (2) the Union has failed to provide any factual support to prove its allegation that the implementation of the Handbook and revised timecard resulted in a practical impact on the terms and conditions of employment.

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. *District Council 37*, Decision No. B-35-99 at 12. The petitioner must show that the matter to be negotiated is a mandatory subject of bargaining. *Doctors Council*, *S.E.I.U.,* Decision No. B-21-2001 at 7*; DeMilia*, Decision No. B-14-80 at 5. Not every decision of a public employer that may affect a term and condition of employment automatically becomes a mandatory subject of negotiation. *Lieutenants Benevolent Ass'n*, Decision No. B-14-92 at 7 (the police department's implementation of solo supervisory patrols is not a mandatory subject of bargaining).

In *Town of Stony Point*, 26 PERB ¶ 4650 (1993), the police department replaced the

"daily report" with a new "patrol log," which required officers to record the time they signed in and out of the police station. However, whereas the previous method allowed patrol officers to record the time to the nearest quarter hour, the new patrol log required the officers to record their exact time in and out of the station. PERB found that since the information that the officers were required to record in the new patrol log was not "substantially different" from what was previously recorded in the daily report, the employer's action did not change an existing term and condition of employment. PERB stated that: "where the extent of employee participation in such recordkeeping was not changed, even though the method may have been altered, no violation has been found." *Id*. at 4652.

In *Island Trees Union Free School District,* 10 PERB 4590 (1977), a school district unilaterally replaced employee sign-in sheets with time clocks. PERB found that a change in the method used to record attendance, substituting time clocks for sign in sheets, was merely a "mechanical" one. In the absence of any proof that the respondent has initiated a new attendance or disciplinary rule or varied the starting times or the length of the work day or altered its pay practices, there is no evidence . . . . of any change, unilateral or otherwise, in terms and conditions of employment."

As in *Stony Point* and *Island Trees*, we do not find that ACS's issuance of the Handbook and revised timecard affected a term and condition of employment. By revising the timecard, ACS changed only the form used by its employees and added a social security number requirement. However, we do not find the revised timecard to be "substantially different" from the old one; ACS's new social security number requirement was merely a "mechanical" change that did not affect an existing term and condition of employment. Therefore, we do not find that

ACS committed an improper practice when it issued the Handbook accompanied by revised timecards without bargaining with the Union. Furthermore, we note that it was the Union who first requested that ACS provide instruction on how to complete the revised timecards and that ACS sought employee input when drafting the Handbook.

We will now address each of the five matters raised in the Union's February 23, 2001 letter, and explain why they are not mandatory subjects of bargaining. First, the Union objects to the inclusion of an employee's social security number on the new timecard. Since the timecards are publicly displayed, the Union contends that displaying this type of information poses a security risk to ACS employees. ACS argues that its employees have always been required to record their social security number on forms pertaining to overtime and supper money; ACS is merely requiring employees to record the number on their timecards in order to expedite the processing of paychecks. Furthermore, in response to the Union's claim that entering the number creates a security risk, the record shows that the employee can write the social security number on the timecard at the end of the week, immediately before submitting it to a supervisor for approval and then forwarding it to the personnel department. Thus, unauthorized personnel should not have access to such private information. We also note that two other forms (the weekly timesheet and overtime authorization form) currently included in the Handbook also require an employee's social security number. The Union has made no objection to recording such information on those forms. For all these reasons, we do not find that ACS's change affects a term or condition of employment.

Second, the Union objects to the requirement that medical documentation be attached directly to the new timecard when an employee requests documented sick leave and the fact that

the Handbook does not address the subject of undocumented sick leave. The Union asserts that attaching a doctor's note to the timecard, which is forwarded to the personnel department, is a security issue. Previously, such documentation remained at the worksite. We find that ACS's policy requiring an employee to provide medical documentation upon returning from sick leave has not changed. The Union does not deny that ACS employees have been required to provide documentation for proof of sick leave. Thus, the change that the Union is contesting is merely that the note must now be attached to the timecard. This change does not affect a term or condition of employment and is not a mandatory subject of bargaining.

As to the Union's objection that the Handbook does not address the subject of undocumented sick leave, ACS claims that it has not changed the policy on that subject. According to ACS, the Handbook is not intended to cover all the rules related to timekeeping, only to provide instruction on how to complete the timecard. The Union does not allege that ACS's undocumented sick leave policy has changed. Since we find no change in a term or condition of employment, there is no basis to require bargaining on this issue.

Third, the Union alleges that ACS's practice of docking one-half day of annual leave from any employee who fails to clock in or out is a mandatory subject of bargaining. The record shows that this policy has been in effect for several years. We note that Human Resources Administration Procedure 94-8, adopted by ACS on June 23, 1996, states that: " Failing to clock in or clock out is a specific violation of Agency Time and Leave Regulations and may subject the employee to loss of pay for the entire day for each instance." (ACS Answer, Exhibit C.) Since the Handbook's reference to this written policy does not represent a change in a term or condition of employment, there is no basis to require bargaining on this issue.

Fourth, the Union claims that ACS's practice of returning only leave requests that have been denied is a mandatory subject of bargaining. According to the Handbook, an employee must request time off in advance, directly on the timecard for that specific week, and submit the request to the supervisor for approval. If approved, the card will be placed in the Office Manager's folder. When the employee receives the weekly timecard from the Office Manager, the leave request will have already been documented. If a supervisor denies a request, the timecard will be returned to the employee. The Union does not dispute ACS's point that the Handbook's reference to this procedure has not changed. Since the Handbook's reference to this practice does not represent a change in a term or condition of employment, there is no basis to require bargaining on this issue.

Finally, the Union claims that the chain of command in approving or disapproving a leave of absence request is a mandatory subject of bargaining. We have previously held such matters are not within the scope of collective bargaining. *See District Council 37, AFSCME*, Decision No. B-34-99 at 17. Therefore, ACS has the right to decide who will be assigned the task of approving or disapproving leave requests.

We will now address the Union's allegation that the implementation of the Handbook resulted in a practical impact on the terms and conditions of employment of ACS employees. NYCCBL § 12-307b.[1] A public employer is not required to bargain over a question concerning

---

[1] Section 12-307b of the NYCCBL states that it is the right of the employer:

> to determine the standards of services to be offered by its agencies; determine the standards for employment. . . ; determine the methods, means and personnel by which government operations are to be conducted. . . . Decisions of the . . . 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

a practical impact prior to this Board determining that a practical impact exists. *Social Service Employees Union, Local 371*, Decision No. B-1-2002 at 8. The existence of a practical impact, a factual question, cannot be determined when the Union does not provide sufficient facts. *Correction Captains Ass'n, Inc.*, Decision 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*. Here, the Union offers no factual allegations in support of its statements, and the record is devoid of any probative evidence which would support a claim of practical impact. Therefore, the Union's practical impact claim is dismissed.

> the above matters have on terms and conditions of employment . . . are within the scope of collective bargaining.

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 by Social Service Employees Union and Local 371 be, and the same hereby is, dismissed in its entirety.

Dated: April 30, 2002
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

RICHARD A. WILSKER
MEMBER

EUGENE MITTELMAN
MEMBER

CHARLES G. MOERDLER
MEMBER

VINCENT BOLLON
MEMBER