ADW/DWA v. City & DOC, 69 OCB 16 (BCB 2002) [Decision No. B-16-2002 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper Practice Proceeding

-between-

ASSISTANT DEPUTY WARDENS/DEPUTY WARDENS ASSOCIATION
Petitioner,

Decision No. B-16-2002
Docket No. BCB-2231-01

-and-

CITY OF NEW YORK AND THE DEPARTMENT OF CORRECTION,
Respondents.
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DECISION AND ORDER

The Assistant Deputy Warden/Deputy Wardens Association ("Union" or "ADW/DWA") filed a verified improper practice petition against the Department of Correction and the City of New York ("DOC" or "City") on August 6, 2001. The Union alleges that pursuant to § 12-307b of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), DOC must bargain over the workload impact resulting from its revision of Directives 4102R-A and 1502R concerning inmates discharged on bail. Respondents argue that the petition must be dismissed because the Union has failed to show that its actions have created an "unreasonably excessive or unduly burdensome workload" for the ADWs. Since we find that the Union has failed to support its workload impact claim, we dismiss the petition.

BACKGROUND

An ADW, also known as a Tour Commander, "supervises and coordinates the work of

Captains and is responsible for the proper performance of duties by all personnel assigned to such tour." DOC Directive 4102, entitled " Processing of Inmates for Discharging or Transferring," which became effective September 17, 1996, states that Captains are responsible for transfers and/or discharges of inmates from a detention or sentence facility. Directive 4102 lists thirteen tasks that the Captains must perform prior to discharging an inmate from a DOC facility. The tasks involve a paperwork and pedigree review of the inmate to be released.

On March 23, 1999, William J. Fraser, Chief of DOC,[1] sent a memorandum entitled "Erroneous Discharges," to the Commanding Officers of DOC Facilities regarding occasional erroneous discharges of inmates from DOC. The memo emphasized that the ADWs, as Tour Commanders, were responsible for supervising the work of the Captains and responsible for the efficient operation of the tour.

According to an affidavit submitted by the Union from Sidney Schwartzbaum, President of the ADW/DWA, DOC and the Union met in September 1999 to discuss ways to curtail erroneous inmate discharges. Schwartzbaum drafted and submitted a discharge checklist for the Captains to follow. The items listed on the checklist, which was subsequently formalized into a departmental form, were nearly identical to those tasks outlined in the DOC Directive 4102.

On November 10, 1999, DOC issued revised Directive 4102R, which included Schwartzbaum's formalized checklist and emphasized the ADWs' supervisory role over the Captains during the inmate discharge process. Section III, A, of Directive 4102R states:

> The ultimate authority for verifying all inmate discharges from the Department's custody, including transfers to sentence facilities or discharges pursuant to release on bail etc., shall be the responsibility of the rank of Captain. Tour Commanders

[1] Shortly after March 1999, William Fraser was appointed Commissioner of DOC.

> are responsible for supervising Captains and ensuring that the processes detailed herein are complied with. (Emphasis added.)

As outlined in the directive, Captains were still responsible for completing several tasks involving the paperwork and pedigree review of the inmate prior to a discharge. However, unlike the previous directive, Directive 4102R required that the Captains also complete the accompanying discharge checklist form and that ADWs "review" and sign the checklist attesting that the Captains had completed it. The checklist consists of two pages, the first entitled "Paperwork Review" and the second, "Pedigree Review." The tasks to be performed – counting bail money, reviewing legal documents, and pedigreeing the inmate to be discharged on bail – are the same as those already outlined in the directive.

By letter dated June 26, 2001, Nicholas Santangelo, DOC Director of Labor Relations, wrote to Schwartzbaum, regarding a future revision of another DOC directive that concerns bail procedures. His letter referred to Directive 1502, which was entitled "Bail Procedures," and which was first issued May 6, 1992. The directive explains the policies regarding the receipt, recording, depositing and processing of bail in DOC facilities. Santangelo informed the Union that in July 2001, DOC would issue a revised version of Directive 1502 to "specify the responsibility of the tour commanders in ensuring that the bail procedures are strictly adhered to and that the correct amount of bail is posted prior to the release of an inmate."

By letter dated July 6, 2001, Schwartzbaum responded to Santangelo's letter. Arguing that the discharge process should remain unchanged, Schwartzbaum stated that if ADWs are required to undertake duties customarily performed by Captains, then DOC should eliminate the Captain's line altogether.

On July 13, 2001, Directive 1502R (Bail Procedures) was issued in conjunction with a newly-revised Directive 4102R-A (Discharge Process). The difference between the final versions of both directives and their predecessors concerns only inmate discharges resulting from bail paid. Now, Directive 4102R-A requires that the Captains perform the first steps of the directive, then requires that ADWs repeat those steps and complete the discharge checklist by themselves. Both directives state that ADWs are the ultimate authority for verifying all inmate discharges resulting from the payment of bail.

By letter dated July 18, 2001, the Union's attorney, Michael C. Axelrod, wrote to DOC Commissioner Fraser "to request impact bargaining over the DOC's unilateral change of job duties of tour commanders regarding bail procedures." DOC did not respond to the Union's letter.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner asserts that the only basis for filing its charge was DOC's failure to respond to its July 18, 2001, letter requesting impact bargaining. Previously, when dealing with inmates released on bail, the ADWs assumed the limited responsibility of "reviewing" the work of the Captains. The Captains performed the tasks outlined in the directive and completed the discharge checklist. Petitioner argues that revised Directives 4102R-A and 1502R, increase the ADWs' workload when dealing with inmates released on bail because they require the ADWs to repeat the work of the Captain by performing the tasks listed in the directive and complete the discharge checklist themselves. Petitioner claims that Respondents must bargain over the

workload impact of such a time-consuming task.

Respondents' Position

Respondents assert that the petition must be dismissed because: (1) the Union should have initiated its practical impact claim by a scope of bargaining petition rather than by filing an improper practice petition; and (2) the Union has failed to present any evidence to demonstrate that the revised directives have created an "unreasonably excessive and unduly burdensome workload" for the ADWs.

Respondents also argue that there is no significant difference between Directives 4102, 4102R, and 4201R-A because as the Captains' supervisors, the ADWs have always assumed the ultimate responsibility for all inmates discharged from DOC facilities – regardless of whether the discharge was the result of bail having been paid. The revised directives were intended as a safeguard to minimize the likelihood of erroneous discharges and to clarify how the ADWs should conduct their "review" of a Captain's work.

DISCUSSION

We will first address DOC's claim that the petition should be dismissed because the Union failed to initiate its practical impact claim properly through a scope of bargaining petition. In such instances, we have previously held that rather than dismissing the Union's improper practice petition outright, we would consider it as though it were a scope of bargaining petition. *District Council 37,* Decision No. B-6-90 at 19; *Communications Workers of America*, Decision No. B-37-82 at 24. Accordingly, in spite of the Union's technical oversight, we will decide the Union's claim as a scope of bargaining matter.

The Union alleges that pursuant to NYCCBL §12-307b,[2] DOC must bargain over the workload impact stemming from the revision of Directives 4102R-A and 1502R. A public employer is not required to bargain over a question concerning a practical impact prior to this Board's determining that a practical impact exists. *Social Service Employees Union, Local 371*, Decision No. B-1-2002 at 8; *Patrolmen's Benevolent Ass'n*, Decision B-18-93 at 8-9; *Uniformed Firefighters Ass'n*, Decision No. B-9-68 at 4-5. To establish practical impact on workload, the union must provide specific details showing that management's action has resulted in "an unreasonably excessive or unduly burdensome workload as a regular condition of employment." *Lieutenants' Benevolent Ass'n and Sergeants' Benevolent Ass'n*, Decision B-45-93 at 31, *aff'd, Toal v. MacDonald*, 216 A.D.2d 8, 627 N.Y.S.2d 372 (1st Dept. 1995); *Uniformed Firefighters Ass'n*, Decision No. B-9-68 at 4.

In *Probation and Parole Officers Ass'n*, Decision B-2-76, the Union alleged that the City's decision to lay off employees had a practical impact on the workload of the remaining Probation Officers. As evidence of an unreasonably excessive or unduly burdensome workload, the Union argued that Probation Officers had difficulty filing court-required pre-sentence reports within the prescribed time limit and coping with a backlog of cases, and were forced to spend

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[2] 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 the above matters have on terms and conditions of employment, such as questions of workload . . . , are within the scope of collective bargaining.

less time on each case because of an increased caseload. This Board found that the increase in caseload was "accompanied by the relaxation of other requirements," such as a reduced work week. *Id*. at 16. Although the Union had demonstrated "some increase in workload," we were not persuaded that the increase was sufficient to constitute an unreasonably excessive or unduly burdensome workload as a regular condition of employment. *Id*. at 15.

In *Sergeants Benevolent Association*, Decision B-56-88 at 16, the Union argued that the City's implementation of a new field training program had a practical impact on workload because it required sergeants to perform "new, additional, and expanded duties." Furthermore, the Union claimed that the Board could infer that there had been an increase in workload since more work time was required of sergeants during each tour of duty. Since the Union failed to allege facts sufficient to establish that any unreasonably excessive or unduly burdensome workload had resulted, we were "unable to determine to what extent, if at all, the workload of sergeants may have increased," and the Union's claim was dismissed. *Id*. at 18. *See also District Council 37*, Decision No. B-6-90 at 32-33 (despite the Union's assertion of a workload increase, we were not persuaded that the increase was sufficient to constitute "an unreasonably excessive or unduly burdensome workload as a regular condition of employment"); *United Probation Officers Association*, Decision No. B-66-88 at 18-19 (the Union failed to provide any factual evidence to demonstrate that the hiring of several Probation Officer Trainees instead of Probation Officers had increased the workload of the remaining Probation Officers to an unduly burdensome degree).

Here, pursuant to the revised directives, the ADWs must both repeat the work of the Captain by performing the tasks listed in the directive and complete the discharge checklist by

themselves. According to the Union, this change has resulted in an increase in the ADWs' workload because now each ADW must follow the checklist by counting bail money, reviewing legal paperwork, and questioning the inmate on pedigree. However, the ADWs previously had to review the Captain's work closely, including the very tasks listed in the directive and checklist. The Union has failed to plead specific facts to demonstrate a workload impact. For example the Union has not shown that due to increased time spent reviewing inmate discharges, the ADWs are now, among other consequences, forced to work overtime in order to complete their work, or are unable to meet assigned deadlines.

Since the Union provides no evidence to establish that any unreasonably excessive or unduly burdensome workload has resulted from DOC's revision of its directives, the Union's practical impact claim is dismissed.

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 Assistant Deputy Wardens/Deputy Wardens Association be, and the same hereby is, dismissed in its entirety.

Dated: May 28, 2002
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

RICHARD A. WILSKER
MEMBER

EUGENE MITTELMAN
MEMBER

BRUCE H. SIMON
MEMBER