

L. 2507 & L. 3621, DC 37 v. City & FDNY, 69 OCB 20 (BCB 2002) [Decision No. B-20-2002 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

Decision No. B-20-2002  
Docket No. BCB-2239-01

DISTRICT COUNCIL 37, AFSCME, AFL-CIO  
and its affiliates, LOCAL 2507 and LOCAL 3621,

Petitioners,

-and-

THE CITY OF NEW YORK and the FIRE  
DEPARTMENT OF THE CITY OF NEW YORK,

Respondents.

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**DECISION AND ORDER**

On August 29, 2001, District Council 37 and its affiliate Locals 2507 and 3621 (“Union”) filed an improper practice petition alleging that the City of New York and the New York City Fire Department (“City” or “FDNY”) unilaterally changed the number of days of training in the Paramedic Upgrade Program and refused to provide it with information concerning the training in violation of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3)(“NYCCBL”). The City argues that the duration and quality of employer training is a management right and is not bargainable. We find that because successful completion of the Paramedic Upgrade Program is required for upgrade to a higher paying title and there has been a practice of the FDNY encouraging and supporting participation in this program, the training is bargainable. The City is also required to provide the Union with

information reasonably available and necessary for full and proper negotiation of this training.

### **BACKGROUND**

In 1996, the Emergency Medical Service (EMS) of the New York City Health and Hospitals Corporation was functionally transferred to FDNY. The division is currently known as EMS Operations.

The New York State Department of Health certifies Emergency Medical Technicians (“EMTs”) and Paramedics in New York State. Although EMTs may qualify to be Paramedics in New York State, EMTs are not automatically qualified for the Paramedic title in FDNY. In addition to completing the New York State AEMT-4 and the New York City Regional Emergency Medical Advisory Committee Examinations, FDNY EMTs must also successfully complete the Paramedic Upgrade Program (MUP) given by FDNY. The City states that MUP training is given to ensure that its members of its EMS Operations possess the highest competency and qualifications.

MUP training began approximately 20 years ago and is given by the EMS Bureau of Training. Training is generally given twice a year and covers a range of topics. In order to upgrade to the Paramedic title, EMTs must successfully complete the training and pass a series of four examinations. EMTs enrolled in MUP training attend on City time and according to the Union are paid their full salaries. At various times, FDNY has revised MUP training, including the quantity and quality of training, to reflect changes in technology.

According to the City, over the years, the number of training days has fluctuated from five days originally up to 33 days in 1995. In 2000, the January MUP training lasted 17 days and

the June training lasted 15 days. In May 2001, FDNY reduced MUP training to five days.

The seven EMTs who participated in the May 2001 program failed the written portion of the exam and therefore did not complete the MUP training. An additional day was then added and four of the seven EMTs successfully completed the training.

On May 17, 2001, the Union met with FDNY representatives and voiced its objection to the reduced number of MUP training days. FDNY claimed that it was exercising its managerial right but stated that the program was currently under review. The Union alleges that FDNY represented that it was evaluating this “pilot program.” The Union requested that FDNY share its evaluation. It is unclear from the record whether an evaluation was ever prepared by FDNY.

By letter dated August 17, 2001, the Union again complained to FDNY about the reduction in MUP training to five days and expressed concern that FDNY intended to continue with the same shortened program in September. The Union again requested that FDNY provide it with the “pilot program” evaluation. To date, FDNY has not responded to this request.

On September 7, 2001, FDNY commenced another MUP training course. Due to the events of September 11, 2001, the course was interrupted. It resumed on October 1, 2001, and continued for six days. The total training was eight days. According to the City, all 34 EMTs, including the three who had failed in May 2001, successfully completed the program. The City further states that on January 17, 2002, it offered MUP training which lasted seven days and that 24 out of 25 EMTs successfully completed the training.

### **POSITIONS OF THE PARTIES**

#### **Petitioner’s Position**

The Union claims that the City unilaterally shortened MUP training from 16 to five days in violation of NYCCBL §12-306(a)(1), (3), (4) and (5).<sup>1</sup> According to the Union, this abbreviated training makes it more difficult for EMTs to pass the examination required by FDNY for upgrade to the Paramedic title, adversely affects the safety standards of paramedics by reducing the amount and quality of training, and increases the upgrade test failure rate thereby depriving EMTs of promotional opportunities. In addition, FDNY has neglected to provide the Union with the evaluation of the “pilot program,” a failure which constitutes a further violation of the NYCCBL.

**Respondent’s Position**

The City argues that pursuant to NYCCBL §12-307(b),<sup>2</sup> the quantity and quality of

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<sup>1</sup> Pursuant to §12-306(a), it shall be an improper practice for a public employer to:

(1) interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

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(3) discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

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

(5) unilaterally make any change as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

<sup>2</sup> NYCCBL §12-307(b) 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. . . .”

training provided to EMTs in MUP training involves a managerial right. To the extent the Union alleges an impact on its members, the Union should have filed a scope petition, not an improper practice petition, and, in any event, the Union has failed to allege facts to demonstrate that a practical impact exists. Furthermore, FDNY is not required to provide the Union with evaluations of MUP training since that information concerns a non-mandatory subject of bargaining. The Union has failed to allege facts sufficient to find Respondents in violation of NYCCBL §12-306(a)(1), (3), (4) and (5).

### **DISCUSSION**

It is an improper practice under NYCCBL §12-306(a)(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, 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.*, Decision No. B-21-2001 at 7.

The Board has previously held that “the City has the management right to determine the quantity and quality of the services to be delivered to the public, and, therefore, also the quantity and quality of the training required to achieve that service.” *Communications Workers of America*, Decision No. B-7-72 at 6. However, we have recognized that an exception to this general principle exists when the training is required by the employer as a qualification for

continued employment or for improvement in pay or work assignments or when the union demonstrates that there exists a practice and tradition of the employer's encouraging and supporting employee participation in such training or education. *See Uniformed Firefighters Ass'n*, Decision No. B-43-86 at 15; *Uniformed Firefighters Ass'n*, Decision No. B-20-92 at 8.

In *New York State Nurses Ass'n*, Decision No. B-2-73, we found bargainable a demand to refund tuition to nurses taking approved education courses because the matter concerned an improvement in the nurse's pay. The employer conceded that it granted nurses pay differentials based upon the completion of studies above the minimum requirement level.

Here, the Union's demand to bargain concerns training which is required for an improvement in EMTs' pay. It is undisputed that FDNY promotes EMTs to the higher paying title of Paramedic only upon successful completion of MUP training. Moreover, MUP training is the only means for EMTs to be promoted to Paramedics in the FDNY. We reject the City's argument that this case is distinguishable from *New York State Nurses Ass'n, supra*, in that MUP training does not lead to a pay differential within the EMTs' title but results in a promotion to a different title. The exception to the general rule turns on whether the training is required for improvement in pay and is not limited to improvement within employees' civil service title. Because MUP training is a precondition to promotion to Paramedic, it is a mandatory subject of bargaining.

The City's reliance on *Committee of Interns and Residents*, Decision No. B-10-81, is misplaced. There, we found that the unique circumstances surrounding the employment of interns and residents (who were both students and employees) were not sufficient justification to find bargainable the training component of such employment. In order to deal with the unique

dual character of their employment and training, the Board stated: “to the extent that house staff officers are employees, they may bargain as employees, but that as students they have no right to bargain over curriculum under the NYCCBL.” *Id.* at 12. Here, EMTs’ sole status is that of employees whose training is essential for promotion to Paramedic.

Moreover, the Union has presented sufficient evidence that the City’s practice and tradition is to encourage and support EMTs’ participation in MUP training. FDNY has given MUP training on average two times a year for the past 20 years. Enrolled EMTs attend on City time and according to the Union are paid their full salaries. The City’s statement that MUP training is given by FDNY in order to ensure that members of its EMS Operations possess the highest competency and qualifications constitutes a recognition of the important role of this in-house training. Therefore, we conclude that MUP training also falls within the practice and tradition exception.

The City’s statement that the Union has never demanded bargaining before even though the number of days has fluctuated in the past does not preclude the Union from doing so at this time. Moreover, the fact that FDNY has recently held MUP training for more than five days and has had a high pass rate with the shorter training schedule is irrelevant to the question whether this training is bargainable. Since the Union has presented evidence demonstrating that this matter falls within two exceptions to the general rule, we find that MUP training is within the scope of mandatory collective bargaining. *Cf. Uniformed Firefighters Ass’n*, Decision No. B-4-89 at 346-347 (union failed to present evidence demonstrating that any exceptions to general rule exist; demand concerning employer training found beyond the scope of mandatory bargaining).

With regard to the Union’s request that FDNY provide it with the evaluation of the MUP

“pilot program,” NYCCBL §12-306(c)(4) provides that included within the duty to bargain in good faith is the obligation to “furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.” Because we find that MUP training is a mandatory subject of bargaining, the City is obligated to provide the Union with information reasonably available and necessary for full and proper negotiation of this training. *District Council 37*, Decision B-35-99 at 11.

Having determined this case on the basis of NYCCBL §§12-306(a)(4) and (c)(4), we need not reach the parties’ other arguments.



**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-2239-02 be, and the same hereby is, granted;

ORDERED, that the City of New York bargain with District Council 37 and its affiliate Locals 2507 and 3621 over MUP training;

ORDERED, that the City of New York provide District Council 37 and its affiliate Locals 2507 and 3621, with information reasonably available and necessary for full and proper negotiation of MUP training.

Dated: July 9, 2002  
New York, New York

_____	M ARLENE A. GOLD CHAIR
_____	GEORGE NICOLAU MEMBER
_____	RICHARD A. WILSKER MEMBER
_____	ERNEST F. HART MEMBER
_____	BRUCE H. SIMON MEMBER
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