DC 37, L. 1549 v. City, NYPD & DCAS, 69 OCB 37 (BCB 2002) [Decision No. B-37-2002 (IP)]

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

-between-

DISTRICT COUNCIL 37, LOCAL 1549,

Petitioner,

Decision No. B-37-2002
Docket No. BCB-2122-00

-and-

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT AND NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES,

Respondents.
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DECISION AND ORDER

District Council 37 ("Union"), on behalf of Local 1549, filed a verified improper practice petition against the City of New York, the New York City Police Department, and the New York City Department of Citywide Administrative Services ("City"or "NYPD" or "DCAS") on February 22, 2000. The Union alleges that in violation of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), the City revised the Police Administrative Aide ("PAA") job specification to include cashier duties without bargaining with the Union regarding the change of duties and the mandatory subject of wages. Moreover, the City failed to bargain over the resulting workload impact, interfered with union members in the exercise of their collective bargaining rights, and dominated and interfered

with the administration of the Union. The City argues that the Union's petition must be dismissed because it has the right to revise the content of the PAA job specification and is not required to bargain over PAAs' wages mid-term. Because the City did not violate the NYCCBL, we dismiss the Union's petition.

BACKGROUND

PAAs employed by the NYPD perform administrative duties such as typing, completing department forms, writing reports, and receiving and distributing mail. By letter dated February 11, 1999, DCAS's Director of Classification and Compensation informed the Union that it was planning to revise the PAA job specification to include the performance of cashier duties and provided the Union with a copy of the draft revision.[1] According to the Union, on April 22, 1999, Union representatives met with representatives from NYPD, OLR, and DCAS and objected to the proposed revision. By letter dated July 9, 1999, the Union wrote to OLR demanding to bargain over this additional duty. On October 19, 1999, the Union met with representatives from NYPD, OLR, and DCAS to discuss issues related to the proposed revision. On or about November 10, 1999, the City revised the "General Statement of Duties and Responsibilities" section of the PAA job specification to state that employees in the PAA title "may perform cashier duties." It is undisputed that since the revision, PAAs handle monies; they collect fees for gun permits, fingerprinting, and fines for towing.

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[1] The record indicates that an additional sentence in the job specification describing the duties of a PAA was changed from "handling of classified and unclassified information and material" to "handling of confidential and other information and material." The Union does not argue that the City was required to bargain over this change.

The record shows that PAAs and Level I Cashiers earn $25,983 per annum, while Level II Cashiers earn $28,571. Unlike Level I Cashiers, Cashiers at Level II perform supervisory duties. Currently, the NYPD has no employees in the Level II Cashier position.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the City unilaterally revised the PAA job specification to incorporate duties performed by employees in the Cashier title in violation of NYCCBL § 12-306(a)(4). According to the Union, PAAs have traditionally performed clerical duties, such as typing, retrieval of data, filing and storing records. Before the City revised the PAA job specification, PAAs were not responsible for handling monies. The Union argues that by revising the job specification in November 1999, the City intended to phase out the Cashier title at the NYPD and undermine the Union's position during the pending arbitration of an out-of-title grievance filed on behalf of six Cashiers in October 22, 1996.[2]

The Union also claims that the City is required to bargain over the mandatory subject of wages for the PAA title because PAAs are now called upon to perform the additional duties of a Cashier. Level II Cashiers earn more pay than do Level I cashiers. The revised job specification does not designate the level of Cashier responsibilities that PAAs would be assigned to perform, and there is no indication that PAAs would be limited to performing the duties described in

[2] The arbitration award, issued on June 26, 2001, concluded that Level I Cashiers were performing out-of-title work and should receive compensation consistent with the higher paying job title of Principal Administrative Associate, Level I, which is a title represented by a different union.

Cashier Level I. Responding to the City's claim that PAAs have traditionally performed cashier duties, the Union argues that if certain PAAs were responsible for handling monies, such responsibility was without the knowledge of the Union.

The Union also alleges that the City interfered with Petitioner's rights in violation of NYCCBL §12-306(a)(1), and interfered with the administration of the Union in violation of NYCCBL §12-306(a)(2).[3] Finally, the City's revision of the PAA job specification has resulted in a workload impact in violation of NYCCBL §12-307(b)[4] because PAAs have been assigned "to more difficult or higher level work."

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[3] NYCCBL § 12-306(a) provides:
It shall be an improper practice for a public employer or its agents:
(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
(2) to dominate or interfere with the formation or administration of any public employee organization;

* * *

(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;

* * *

§ 12-305 provides in relevant part:
Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. . . .

[4] Section 12-307(b) 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 . . . are within the scope of collective bargaining.

City's Position

The City argues that the Union's petition is untimely because the last date alleged by the Union is October 19, 1999, when the Union met with the City to discuss the two planned revisions to the PAA job description, but the petition was filed on February 22, 2000, more than four months after the date of the meeting.

Furthermore, pursuant to NYCCBL § 12-307(b), the City has the right to determine, clarify, or revise the content of a job specification. The City denies that it seeks to replace Cashiers with PAAs and asserts that the revision of the job specification is unrelated to the arbitration of a grievance that was initiated several years before the instant petition. Despite the Union's claim that it did not know whether PAAs were previously handling money, the PAA title is "a title which has historically handled money" and that "PAA's with cashier-type assignments are trained to handle money and do the work also assigned to employees in the Cashier title." Therefore, the City revised the job specification "to accurately reflect the traditional performance of certain duties by employees within the PAA title, including the handling of money."

Arguing that it is not required to bargain over the issue of wages at this time, the City states that the six Level I Cashiers currently employed by NYPD earn the same salary as PAAs, and NYPD does not currently employ anyone in the higher-paid Level II Cashier title.

The Union's workload impact claim must also be dismissed because the Union improperly initiated the claim by filing an improper practice petition and failed to provide any factual support to prove this allegation. Moreover, the Union's claim that the City interfered with Petitioner's rights in violation of NYCCBL §12-306(a)(1), and interfered with the

administration of the Union in violation of NYCCBL §12-306(a)(2) must be dismissed because they are conclusory, speculative, and false.

DISCUSSION

As a preliminary matter, we find that the petition is timely. Section 12-306(e) of the NYCCBL and 1-07(d) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1), provide that a petition alleging an improper practice in violation of NYCCBL § 12-306 may be filed no later than four months after the disputed action occurred. Here, the City revised the PAA job specification on November 10, 1999, and the Union's petition was filed on February 22, 2000. Since the Union filed its charge within the four month period, the petition is timely.

The Union argues that the City did not have the right unilaterally to change the content of the PAA job specification and that the City was required to bargain over wages. With respect to the first claim, it is well-settled that § 12-307(b) of the NYCCBL gives management the express right to determine what duties should be included in a job specification and which employees should be assigned to perform particular jobs. *Correction Officers Benevolent Ass'n,* Decision No. B-26-99 at 9; *District Council 37*, Decision No. B-3-69 at 6. In *United Probation Officers Ass'n*, Decision No. B-70-88 at 12-13, we found that since the Union could not "demonstrate that the parties voluntarily agreed, in any way, to limit the Department's right unilaterally to change the content of the job classification . . . or otherwise limit the exercise of management's rights," the City had no duty to bargain over a revision of the job specification for the title of Probation

Officer.[5] Here, there is no indication that the parties agreed to limit the City's right to revise the PAA job specification by including the performance of "cashier duties." Therefore, we find that the City has the right to revise the duties contained in the job specification for the PAA title.

As to the Union's claim regarding bargaining over wages, it is an improper practice under NYCCBL § 12-307(a) 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." First, Petitioner must show that the matter to be negotiated is a mandatory subject of bargaining. *Doctors Council*, Decision No. B-21-2001 at 7. Mandatory subjects of bargaining generally include wages, hours, and working conditions of employment. *New York State Nurses Ass'n*, Decision No. B-2-2002 at 4.

Generally, once the parties have fulfilled their obligation to bargain, they need not bargain mid-term. NYCCBL § 12-311(a)(3).[6] For this Board to find that the City's change in the job

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[5] The Public Employment Relations Board, in discussing a change to a revised job description, has found that the promulgation of a revised job description which does not alter "the essential duties and functions, and the related incidental tasks, of particular employment categories or positions" is a non-mandatory subject of negotiations. *Waverly Teachers Association*, 10 PERB ¶ 3103, at 3177 (1977). *See Matter of Benson v. Cuevas*, 33 PERB ¶ 7008, 272 A.D.2d 764, *appeal denied*, 95 N.Y.2d 760, 714 N.Y.S.2d 710 (2000) (employer's decision to issue a revised job classification for the Psychiatric Nurse II position was a non-mandatory subject of bargaining).

[6] NYCCBL § 12-311(a)(3) provides:

> Nothing herein shall authorize or require collective bargaining between parties to a collective bargaining agreement during the term thereof, except that such parties may engage in collective bargaining during such term on a matter within the scope of collective bargaining where (a) the matter was not specifically covered by the agreement or raised as an issue during the negotiations out of which such agreements arose and (b) there shall have arisen a significant change in circumstances with respect to such matter which could not reasonably have been anticipated by both parties at the time of the execution of such agreement.

specification has created a duty to bargain mid-term over wages for PAAs, the Petitioner must demonstrate that there has been a substantial or significant change in the difficulty, complexity or responsibilities of the job. In *Uniformed Firefighters Ass'n of Greater New York* , Decision No. B-61-91, the Union alleged that the City was required to bargain over its decision to replace police officers with Fire Marshals assigned to Social Club Task Force duty. The Union argued that the change imposed new and additional police duties – task force service – that Fire Marshals had never previously been required to perform and that the current job description for Fire Marshals did not include. We determined that the City had the unilateral right to decide the duties appropriate for the Fire Marshal job specification and that the announced reassignment did not involve a change in wages, hours, or working conditions which required bargaining. We stated: "we find no support for the Union's claim that the announced change in assignment of Fire Marshals . . . has changed or will change an aspect of the essential duties and functions of the Fire Marshals' position." *Uniformed Firefighters Association of Greater New York* , Decision No. B-61-91 at 11; *see also Local 1757, District Council 37, AFSCME, AFL-CIO,* Decision No. B-10-2001 at 16 (changes in the duties of the City Assessors were not mandatorily bargainable and did not give rise to a duty to bargain over their wage scale); *Lieutenants Benevolent Association*, Decision No. B-14-92 (City's decision to assign police lieutenants to solo supervisory patrols did not change the essential duties and functions of lieutenants' position and was not a mandatory subject of bargaining).

Here, the wages paid to PAAs are a mandatory subject of bargaining, but it is a subject that already has been negotiated and incorporated into the parties' collective bargaining agreement. Like the petitioner in *Uniformed Firefighters Ass'n of Greater New York*, Decision

No. B-61-91, the Union in the instant case has not demonstrated that the City's inclusion of the phrase "may perform cashier duties" in the job specification has changed or will change an aspect of "the essential duties and functions, and related incidental tasks" of the PAA position sufficient to create an obligation to bargain over PAAs' wages.[7] In the absence of a demonstrable change in PAAs' working conditions, we cannot find that the City was obligated to bargain over the wage scale previously negotiated by the parties. Therefore, we dismiss the Union's allegation that the City violated § 12-306(a)(4) when it refused to bargain over wages.

The Union's claim that pursuant to NYCCBL § 12- 307(b), the City must bargain over the workload impact resulting from the revised job specification is unsupported. For this Board to find a 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. Here, the Union has not provided sufficient facts to demonstrate the existence of a workload impact. *See Assistant Deputy Wardens/ Deputy Wardens Ass'n,* Decision No. B-16-2002 at 6-7 (union failed to provide evidence that any unreasonably excessive or unduly burdensome workload resulted from the City's revision of its directives); *District Council 37*, Decision No. B-6-90 at 32-33 (same). Merely alleging that PAAs have been assigned "to more difficult or higher level work" is insufficient to establish that any unreasonably excessive or unduly burdensome

[7] Moreover, to the extent that the Union is alleging that PAAs were performing out-of-title work, redress is available through contractually negotiated procedures.

workload has resulted from the revised PAA job specification. Therefore, we dismiss the Union's workload impact claim.

Because we find no evidence to support the Union's allegations that the City violated NYCCBL § 12-306(a)(1), and (2), the claims are 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 District Council 37, AFSME, AFL-CIO, and its affiliated Local 1549, be, and the same hereby is, dismissed in its entirety.

Dated: October 30, 2002
New York, New York

MARLENE A. GOLD
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