UFA v. City & FDNY, 71 OCB 19 (BCB 2003) [Decision No. B-19-2003 (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-19-2003
Docket No. BCB-2310-02

UNIFORMED FIREFIGHTERS ASSOCIATION,

Petitioner,

-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 November 15, 2002, the Uniformed Firefighters Association ("Union") filed a verified improper practice/scope of bargaining petition alleging that the City of New York and the New York City Fire Department ("City," "FDNY," or "Department") have refused to bargain in violation of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") over aspects pertaining to the City's unilateral decision to provide enhanced training for members of the Department in areas of hazardous materials and terrorism response. The Union further alleges that the City's actions create a practical impact on the safety and workload of firefighters. The City argues that the decision to institute the enhanced training, as well as matters attendant to that decision, are lawfully reserved to the Department, and it further argues that the Union has not alleged facts sufficient to articulate a claim of practical impact. We find that, with one exception, the matters

over which the Union seeks to negotiate relate to non-mandatory subjects of bargaining. Since we find no breach of the duty to bargain, the instant petition is denied. With respect to the Union's request for information about the proposed training, we find its request is reasonably necessary for a full and proper understanding of whether the actions of FDNY will result in a practical impact on the terms and conditions of affected firefighters. Therefore, we direct the Department to provide the information sought by the Union.

BACKGROUND

FDNY provides specialized training to certain firefighters who staff Special Operations units. These units respond to major emergencies such as airplane crashes, train derailments, rescue operations in confined spaces, and conditions in which hazardous materials are present. Currently, FDNY maintains one Hazardous Materials ("Haz-Mat") unit citywide, one Rescue Unit located in each borough, and seven citywide companies designated as "Squads," which also conduct rescue and Haz-Mat operations. In addition, seventeen ladder companies are currently designated "Rescue Support Ladder Companies." They may respond if a Rescue Unit is unavailable or needs assistance. Firefighters who staff the Rescue Support Ladder Companies receive special training, though less extensive than that of firefighters assigned to Rescue Units.

As part of a plan to increase and decentralize Special Operations capabilities throughout the City, FDNY has proposed designating approximately 20 Ladder Companies as Special Operations Support Ladder Companies. Under this program, firefighters assigned to these Companies would receive 40 hours of Haz-Mat training and 40 hours of rescue training. From September 2002, when the Union issued its formal demand to bargain over the safety and

workload impact of the plan, to date, no bargaining has taken place. The City asserts that the Department is drafting the response protocol for the new Companies.

PRELIMINARY MATTERS

The petition herein is labeled as an "improper practice/scope of bargaining" petition. This label acknowledges the dual nature of the Union's claims and, implicitly, the differing procedures prescribed for their adjudication. This Board has explained that this dichotomy is based on:

> the distinction between a duty to bargain which arises when a public employer wishes to make changes in the wages, hours or working conditions of its employees and a duty to bargain concerning the means for alleviation of a practical impact, which cannot arise until this Board has determined (a) that a practical impact exists and (b) that the employer has failed to alleviate the impact. A refusal to bargain charge is brought to the Board by means of an improper practice petition asserting a violation of section 12-306a(4), while a practical impact claim should be initiated by a scope of bargaining petition in which specific allegations of impact are set forth. The determination of the existence of a practical impact – a question of fact which may necessitate a hearing – is a condition precedent to a determination whether there are any bargainable issues arising from the impact. *Sergeants Benevolent Ass'n*, Decision No. B-56-88 at 15-16. (Citations omitted.)

In the instant case, we will examine the Union's claims to determine whether each presents a bargainable issue and, if so, whether there has been a refusal to bargain. As to the claims of practical impact, we reiterate that any assertion of a refusal to bargain is premature; we will determine only whether there is a sufficient showing of practical impact and, if so, we will direct bargaining over alleviation prospectively.

THE CLAIMS

Specifically, the Union seeks to bargain with respect to the following claims: (1) as a consequence of the "additional" training, firefighters will be assigned duties that will involve a practical impact on their safety and workload, requiring bargaining over alleviation; (2) the scope of the "additional" training required to obviate a safety impact on firefighters chosen to staff the Support Ladder Companies is a bargainable issue; (3) additional compensation for firefighters selected to undergo "additional" training in order to be selected to staff the Support Ladder Companies is a bargainable issue; and (4) the procedures for selection of firefighters who will undergo "additional" training in order to staff the Support Ladder Companies is a bargainable issue.

1. CLAIM THAT AS A CONSEQUENCE OF THE "ADDITIONAL" TRAINING, FIREFIGHTERS WILL BE ASSIGNED TO DUTIES THAT WILL INVOLVE PRACTICAL IMPACT ON THEIR SAFETY AND WORKLOAD, AND THUS REQUIRE BARGAINING OVER ALLEVIATION

Union's Position

The Union claims that, due to the "additional" training firefighters assigned to the newly designated Support Ladder Companies will be required to respond to terrorist attacks and to provide greater protection to the public. They will, thus, experience a *per se* practical impact as a result of this "enhanced workload." In addition, they will be exposed to hazardous materials and, thus, will face increased risks to their safety.

The Union does not dispute that the Department has a unilateral right to make decisions about duties to be performed by firefighters assigned to the Special Operations Support Ladder Companies and about training for personnel in those Companies. The fact that management determined it necessary to establish those Companies and enhance training for firefighters who

staff them is evidence that they soon will be expected to meet a higher standard of performance than before and that heightened safety risks have "changed qualifications for continued employment." The City's failure to meet with the Union, following a formal demand, constitutes an improper practice under the NYCCBL § 12-306(a)(4).[1]

City's Position

The City argues that its actions constitute an exercise of its statutory right under NYCCBL §12-307(b) to "maintain the efficiency of governmental operations, determine the methods, means and personnel by which government operations are to be conducted, determine the content of job classification, and take all necessary action to carry out its mission in emergencies. . . ." Under such authority, the City has the right to make determinations about the duties appropriate for firefighters in the Special Operations Support Ladder Companies. The City contends that the Union has failed to allege facts in its pleadings to demonstrate that any practical impact exists with respect to safety or workload. Moreover, the Board has made no finding of practical impact on the basis of documentary evidence presented in the pleadings nor has the Union presented the Board with sufficiently specific, factual allegations to warrant a hearing into the matter. Without such a factual basis, no duty to bargain arises.

In support of its position, the City offers an affidavit by Salvatore Cassano, Chief of Operations. According to Chief Cassano, the proposed Haz-Mat and rescue training is similar to that for current Haz-Mat and Rescue Unit personnel. In addition, the Union has not presented any facts to suggest a workload impact, "let alone an 'unreasonably excessive or unduly

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[1] Pursuant to §12-306(a)(4), 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 with certified or designated representatives of its public employees. . . ."

burdensome' one." Further, the new assignments, scheduled to begin in several months, will start only after firefighters are fully trained. In the meantime, Cassano states, FDNY is working on the response protocol for these specialized Companies whose "main responsibility . . . will likely be to assist" the Rescue and Haz-Mat Units and Squads.

Thus, in the absence of factual allegations that the program has or will have the impact that the Union claims, and, further, without a determination by this Board that such an impact exists, FDNY cannot be held to a duty to bargain over the training at issue and the Union's claim that the Department violated the NYCCBL is, at best, premature.

Discussion

It is an improper practice 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. . . ." NYCCBL § 12-306(a)(4). A duty to bargain arises over mandatory subjects which include, generally speaking, wages, hours, and working conditions. *Uniformed Firefighters Ass'n of Greater New York*, Decision No. B-21-87. However, the NYCCBL reserves to the public employer exclusive control and sole discretion to act unilaterally in certain enumerated areas outside the mandatory scope of bargaining. NYCCBL § 12-307(b). Such areas include assigning and directing employees, determining their duties during working hours, and allocating duties among employees unless the parties themselves limit that right in bargaining. *Correction Officers Benevolent Ass'n*, Decision No. B-26-99 at 9; *Local 621, SEUI*, Decision No. B-34-93 at 9. Training and the determination of the adequacy of such training are also included. *Patrolmen's Benevolent Ass'n*, Decision No. B-12-99 at 7; *Patrolmen's Benevolent Ass'n*, Decision No. B-5-80 at 9-10.

When the exercise of a management right is shown to result in a practical impact, a duty to bargain arises over the means of alleviating that impact. *Local 300, SEIU*, Decision No. B-36-90 at 7. *See, also, Police Benevolent Ass'n of the Police Dep't of the County of Nassau*, 31 PERB ¶ 3164 (1998) (generally, safety issues which affect terms and conditions of employment as provided for through collective bargaining are mandatory subjects of negotiations). However, there is no duty to bargain – and therefore no violation of NYCCBL § 12-306(a)(4) by way of refusal to bargain – arising out of a claim of practical impact until the Board has first found that a practical impact exists as a result of the exercise of a management prerogative pursuant to NYCCBL § 12-307(b). *Communications Workers of America, Local 1180*, Decision No. B-47-89 at 17. Moreover, in a case in which there is a clear present or future threat to employee safety, the Board may direct the parties to bargain over the alleviation of any threatened practical impact on safety. *United Probation Officers Ass'n*, Decision No. B-37-87 at 5-6. Where the existence of such a threat is not clear, the Board may require a hearing to resolve a factual dispute on the issue; however, a precondition to such a hearing on an impact claim is the presentation by a petitioner of sufficiently specific factual details, not merely unsupported allegations. *Id.* at 7. Here, the Union has failed to offer factual support for its contention that the work that firefighters will be assigned to perform will result in a safety impact. The Union has presented no specific allegations of probative fact to show that the work necessarily will subject firefighters to increased hazards and thus implicate a duty to bargain over safety.

Although the McArdle affidavit asserts safety problems in the past with respect to untrained individuals who were rotated into a post left vacant by a trained member or supervisor, the affidavit does not allege facts about any such safety risk currently at issue here. The Union in

the instant case has not alleged specific facts supporting its claim that a safety impact necessarily will result from the "extra hazards" posed by terrorist threats which assertedly are inherent in the "changing needs of the City."

With respect to the Union's claim of workload impact, a duty to bargain arises in a case in which the exercise of a management right is shown to create an "unreasonably excessive or unduly burdensome workload as a regular condition of employment." *District Council 37, Local 1549*, Decision No. B-37-2002 at 9. *See, also, New Rochelle Housing Authority*, 21 PERB ¶ 3154 (1988) (increase in amount of assigned work affecting terms and conditions of employment as provided for through collective bargaining gives rise to duty to bargain when it increases work day/week or changes amount/scope of work required on day-to-day basis). As with safety impact, a union claiming a practical impact on workload must allege specific details. *Id.*; *District Council 37*, Decision No. B-6-90 at 36-37. Merely alleging more difficult duties or higher level work is insufficient to establish unreasonably excessive or unduly burdensome workload. *District Council 37, L. 1549*, Decision No. B-37-2002 at 9-10.

Here, we find that the Union has failed to offer factual support for its contention that the training program will result in an unreasonably excessive or unduly burdensome workload as a regular condition of employment. The McArdle affidavit states that "additional tools and equipment will need to be serviced and maintained [and that] this constitutes additional work, and additional work is something that is bargainable." The assertion is unsupported by sufficient facts in the record to warrant a hearing on the question. The Union does not explain how this will necessarily result in an unreasonably excessive or burdensome workload. The Union's workload impact claim does not take into account ways in which the response protocol

currently in preparation may obviate the workload issue by providing firefighters sufficient time to service and maintain the equipment.

Thus, we dismiss the Union's claim that the proposed training will result in a practical impact on firefighter safety or workload that would give rise to a duty to bargain. This holding is without prejudice to the Union's sufficiently specific assertion, in the future, of facts alleged to constitute a safety and/or workload impact.

2. CLAIM THAT THE SCOPE OF THE "ADDITIONAL" TRAINING REQUIRED TO OBVIATE A SAFETY IMPACT ON FIREFIGHTERS CHOSEN TO STAFF THE SUPPORT LADDER COMPANIES IS A BARGAINABLE ISSUE

Union's Position

The McArdle affidavit states that the Union does not seek to bargain over the content of the training to be provided to members who staff the new companies but rather only over the issue whether the training provided will leave firefighters in a position where their expertise will let them work comfortably in a safe environment. . . ." It is that assurance over which the Union sought to bargain when it demanded bargaining in its September 23, 2002, letter to the New York City Labor Relations Commissioner. The Union notes that it does not seek to challenge the "actual training," "amount of training," or "training procedures." Because the City has failed to provide the Union with information regarding "the scope of the training" by which the Union can "ensure" that the training meets "minimum specifications," McArdle states that "there is no way that the UFA can ascertain whether the training will have an impact on the safety of firefighters who are assigned to perform the responsibilities of the new units."

Specifically, McArdle continues, the training outline that the City attached to its Answer offers no details on the use and maintenance of special equipment and protective clothing and the

administration of drugs needed to counteract the effects of chemical, biological, or nuclear contaminants. Nor does the training outline offer details about the following: how many firefighters will be assigned to the new units and trained, how skills will be maintained and competency determined, whether untrained replacements will be allowed to work in the new units, how new technology will be addressed, whether untrained superior officers will be allowed to supervise firefighters through "detailing" and "post coverage," and whether the "level of training" will be "adequate" to monitor air quality and interpret data in order to formulate strategies for addressing environmental factors.

Apart from the demand for the above specifics, the Union also seeks to bargain over the proposed training as a qualification for initial assignment to and continued employment in one of the new Companies. The Union contends that FDNY must bargain in good faith with respect to the "methods and means and type of training to be provided," and as the Department has failed to do so, it has violated its duty to bargain.

City's Position

Training is a managerial prerogative. The Department's decision to provide training concerning hazardous materials and rescues to Fire personnel assigned to the Special Operations Support Ladder Companies is encompassed by the Department's right to direct public employees, maintain efficiency with respect to governmental operations, and determine the methods, means, and personnel by which its operations are to be conducted. In addition to the content of training, the amount of training to be provided here also falls within management's prerogative to act unilaterally and is outside the scope of mandatory bargaining.

Discussion

Under NYCCBL § 12-307(b), the determination of the quantity and quality of training provided is a management prerogative. *Uniformed Fire Officers Ass'n,* Decision No. B-6-2003 at 9; *Communications Workers of America*, Decision No. B-7-72 at 6. *See, also, New York State Supreme Court Officers Ass'n*, 32 PERB ¶ 3063 (1999) (decision to train, without allegation of improper motive, is management prerogative); *see, also, Dobbs Ferry Policy Ass'n*, 22 PERB¶ 4516, *aff'd,* 22 PERB ¶ 3039 (1989). An exception arises only when training is required by an employer as a qualification for continued employment, for improvement in pay or work assignments, or for promotion. *Uniformed Fire Officers Ass'n,* Decision No. B-6-2003 at 9; *District Council 37*, Decision No. B-20-2002 at 5-6; *Uniformed Firefighters Ass'n*, Decision No. B-43-86, at 15.

We find that FDNY's requirement that members of the Department successfully undergo additional training in order to be assigned initially to the proposed Support Ladder Companies defines a level of achievement necessary for performance in those new companies. The training at issue here does not constitute a new requirement for members in their current assignments, nor is it a requirement for their continued employment. Therefore, we find that the training required for initial assignment to the proposed companies is a non-mandatory subject of bargaining and FDNY is under no duty to bargain over that training.

With respect to the Union's demand for information concerning the contents of the proposed training, NYCCBL § 12-306(c)(4) states that a public employer's duty to bargain in good faith includes 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;

See, Civil Service Technical Guild, Local 375, Decision No. B-41-80 at 10. This duty to provide information extends to any subject which is "relevant to and reasonably necessary for purposes of collective negotiations or contract administration which our statute and the processes of this Board are designed to protect." *District Council 37*, Decision No. B-35-99 at 11-12; *Correction Officers Benevolent Association*, Decision No. B-9-99 at 12. Information that concerns matters outside the scope of bargaining need not be provided. *See, e.g., Uniformed Firefighters Association*, Decision No. B-6-98.

When information is requested for the purpose of enabling a union to determine whether a management action will have a practical impact on affected members of a bargaining unit, the employer's duty to supply information is not as clear. In cases in which the union's petition raised both a claim of refusal to provide requested information and a practical impact claim, this Board, after determining that there was insufficient proof of practical impact, has dismissed related information claims on the ground that, absent a finding of practical impact, there was no matter within the scope of bargaining as to which information should have been supplied. *Sergeants Benevolent Ass'n*, Decision No. B-56-88 (finding no practical impact resulting from employer's assignment of additional duties, therefore, no duty to provide information pertaining to those duties); *Civil Service Technical Guild, Local 375*, Decision No. B-41-80 (finding no actual or threatened practical impact resulting from employer decision to relocate part of work unit to a second facility, therefore no duty to provide information pertaining thereto). The difficulty with that analysis is that it fails to recognize one of the policies underlying the statutory language set forth in NYCCBL § 12-307(b) that:

> questions concerning the practical impact that [management decisions] have on terms and conditions of employment . . . are within the scope of bargaining.

Further, that analysis places the burden on the union to establish to our satisfaction that a practical impact does or will exist, without the benefit of certain information that is within the employer's possession that might shed light on the existence of such impact. Thus, while the alleviation of a practical impact is a mandatory subject of bargaining, our decisions have viewed a request for information concerning an alleged or potential practical impact as not relating to a mandatory subject. Upon re-examination, we find that this analysis does not reasonably effectuate the purposes of the NYCCBL.

We believe that the purposes underlying the statutory obligation to bargain over the alleviation of practical impact will be better served if reasonable requests for information from which a certified representative can assess whether a management action or decision will result in a practical impact within the meaning of the law are granted. Therefore, harmonizing NYCCBL § 12-306(c)(4) with the practical impact bargaining clause of § 12-307(b), we now hold that the duty to bargain includes the duty 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 understanding of the question whether a management action or decision will result in a practical impact on the terms and conditions of employment of affected employees. Whether a particular request is reasonably related to a *bona fide* question of practical impact is a matter to be determined on a case by case basis. To the extent our prior decisions differ from this approach, we will not follow them.

In the present case, the Union has requested information about the content of the Haz-Mat

and rescue training so that it can "ensure" that "the training provided will leave firefighters in a position where their expertise will let them work . . . in a safe environment . . . ." The safety practical impact alleged relates to the duties to be performed following the training, not during the training itself. The Union's September 23, 2002, letter to the City notes that:

> The UFA has repeatedly requested administrators of the Fire Department to advise them regarding the type of teaching so that the safety and workload of Fire Department members can be appropriately analyzed.

Given the subject of the training and the potential duties of the Support Ladder Companies to which those who complete the training will be assigned, we find that the subject of the Union's request for information is reasonably related to a *bona fide* question of practical impact. Accordingly, we will order that the City provide the requested information to the Union.

3. CLAIM THAT ADDITIONAL COMPENSATION FOR FIREFIGHTERS SELECTED TO UNDERGO "ADDITIONAL" TRAINING IN ORDER TO BE SELECTED TO STAFF THE SUPPORT LADDER COMPANIES IS A BARGAINABLE ISSUE

Union's Position

The Union contends that, in the face of terrorist and Haz-Mat threats, higher performance standards are required of firefighters as a regular condition of employment and that, "the losses from September 11, 2001," have "never caused a greater need to satisfy the [Union]. . . ." Thus, the Union seeks to bargain with the Department over "compensation" to be paid to firefighters for undergoing the enhanced training to serve in the Support Ladder Companies, "*i.e.,* overtime or replacement of firefighters directed to receive in-service training to ensure minimum safety."

City's Position

The City asserts its right to assign firefighters to "certain ladder companies" and to require them to undergo training.

Discussion

To establish that an employer is obligated to bargain, a petitioner must articulate and support the claim that the matter sought to be negotiated is a mandatory subject of bargaining. NYCCBL § 12-307(a); *Doctors Council*, Decision No. B-21-2001 at 7. Wages are included in the mandatory scope of bargaining. *New York State Nurses Ass'n*, Decision No. B-2-2002 at 4. However, once parties have concluded collective bargaining, thus fulfilling their obligation to bargain, no duty to bargain arises mid-term. NYCCBL § 12-311(a)(3).[2]

Before this Board will find a duty to bargain mid-term over a mandatory subject of bargaining such as wages, a petitioner must demonstrate that there has been a significant change in circumstances that could not have been anticipated by the parties, that warrants bargaining. *Uniformed Firefighters Ass'n of Greater New York*, Decision No. B-61-91 at 11 (no duty to bargain over employer decision to supplement Fire Marshals duties because of employer's unilateral right to determine the duties appropriate for the position and because the new duties implicated no change in wages, hours, or working conditions); *see, also, Local 1757, District Council 37,* Decision No. B-10-2001 at 16 (changes in the duties of the City Assessors were not mandatorily bargainable and, here, did not give rise to a duty to bargain over their wage scale); *Lieutenants Benevolent Ass'n*, Decision No. B-14-92 (employer's decision to assign police

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[2] 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.

lieutenants to solo supervisory patrols did not change the essential duties and functions of lieutenants' position and was not a mandatory subject of bargaining).

The Union has not alleged facts sufficient for this Board to find a demonstrable change in working conditions. Thus, we find no refusal to bargain over wages and decline to direct mid-term bargaining over the wage scale previously negotiated to conclusion by the parties. We note, however, that the Union may raise its compensation demand in negotiations for a successor collective bargaining agreement.

4. CLAIM THAT THE PROCEDURES FOR SELECTION OF FIREFIGHTERS WHO WILL UNDERGO "ADDITIONAL" TRAINING IN ORDER TO STAFF THE LADDER SUPPORT COMPANIES IS A BARGAINABLE ISSUE

Union's Position

The Union seeks to bargain over the procedures by which FDNY will select individuals to staff the Support Ladder Companies contending that FDNY has not indicated who will receive the training, whether it will be open to volunteers, how the Department will select members for training.

City's Position

The City contends that the assignment and duties of firefighters in the new companies are part of its statutory prerogative to determine the personnel by which government operations are to be conducted. Any union attempt to define duties appropriate for employees in the relevant job title is an infringement on the City's right to act unilaterally in such matters.

Discussion

As stated above, the NYCCBL reserves to the public employer exclusive control and sole discretion to act unilaterally in certain enumerated areas – including assigning and directing

employees – outside the mandatory scope of bargaining. NYCCBL § 12-307(b). *Correction Officers Benevolent Ass'n*, Decision No. B-26-99 at 9; *Local 621, SEIU*, Decision No. B-34-93 at 9; *see, also, Local Union No. 3, Int'l Brotherhood of Electrical Workers*, Decision No. B-12-79 (no duty to bargain over union demand for hiring additional personnel).

Apart from decisions to hire, this Board has upheld the non-bargainability of management decisions to select employees for particular tasks. For example, management generally may reassign personnel to maintain efficiency in government operations. *Communications Workers of America*, Decision No. B-27-93 at 19, *aff'd*, *City of New York v. MacDonald*, Index No. 405350-93 N.Y. Co. Sup.Ct., September 29, 1994, *aff'd,* 223 A.D.2d 485, 636 N.Y.S.2d 793 (1st Dept. 1996) (holding, *inter alia*, employer's unilateral determination of duties set forth in job title specification was lawful); *see, also, Griffiths*, Decision No. B-3-99 at 10 (denying requested rescission of assignment to night hours); *New York State Nurses Ass'n*, Decision No. B-46-92 at 20 (finding no duty to bargain over reassignment involving change of duties within general job title description without change in length of work day or week); and *Sergeants Benevolent Ass'n*, Decision No. B-56-88 at 12-13 (employer may unilaterally reassign employees to tasks appropriate to title). *See, Peekskill Police Ass'n*, 35 PERB ¶ 4509 (2002) (holding that procedures by which employer's work is "doled out" among eligible employees is mandatorily negotiable only insofar as those procedures affect employees' hours of work and compensation); *see, also, Civil Svc. Employees Ass'n, Local 100, AFSCME,* 34 PERB ¶ 3009 (2001) (generally, decisions to hire and deploy personnel are management prerogative and distinct from issues re: wages).

Here, the Union seeks to bargain over procedures for selecting personnel to receive the

training at issue. Specifically, the Union wants to know who will be selected, how the selection will be made, how many firefighters will ultimately staff the newly trained companies, and whether personnel without the specialized training will be allowed to serve as temporary replacements or as supervisors in the newly designated Companies during Haz-Mat and Rescue operations. In *United Probation Officers Ass'n*, Decision No. B-66-88 at 14, we held that decisions such as the hiring and deployment of personnel constitute a management right. Here, the Union does not dispute that; nor has it pointed to any contractual limitation on that right. Moreover, the Union has not explained how procedures for selection for training and for determining the staffing of the Companies do not fall squarely within the employer's right to assign and reassign personnel and to determine and/or change duties of employees in a title within the scope of their job description while not changing length of their work day or work week. Therefore, the Union's demand for bargaining over the procedures for selection of firefighters to undergo the proposed training relates to a non-mandatory subject of bargaining.

Conclusion

Accordingly, we find the Union's demands for bargaining unavailing on all counts and deny those aspects of the petition without prejudice to refiling, following implementation of the proposed training and establishment of the Special Operations Support Ladder Companies, based upon sufficient factual allegations of any practical impact as may warrant further consideration by this Board. We further grant that part of the petition regarding the Union's request for information concerning the training, and direct the City to provide the requested information.

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 the Uniformed Firefighters Association, docketed as BCB-2310-02, be, and the same hereby is, granted insofar as the Union's request for information concerning the training at issue is concerned, and the City hereby is directed to provide such information concerning the content of the Haz-Mat and rescue training as is normally maintained in the regular course of business, reasonably available, and necessary for full and proper understanding of the question whether the training together with the resultant assignment to duties will cause a practical impact on the terms and conditions of employment of affected Firefighters; and it is further

ORDERED, that the improper practice petition be, and the same hereby is, denied in all other respects, without prejudice to refiling in accordance with the provisions set forth hereinabove in this Decision and Order.

Dated: June 9, 2003
New York, New York

MARLENE A. GOLD
CHAIR

CAROL A. WITTENBERG
MEMBER

BRUCE H. SIMON
MEMBER

M. DAVID ZURNDORFER