COBA v. Correction & OLR, 75 OCB 17 (BCB 2005) [Decision No. B-17-2005 (IP)]

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

-between-

CORRECTION OFFICERS BENEVOLENT ASSOCIATION,

Petitioner,

Decision No. B-17-2005
Docket No. BCB-2362-03

-and-

THE NEW YORK CITY DEPARTMENT OF CORRECTION, NEW YORK CITY OFFICE OF LABOR RELATIONS,

Respondents.
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DECISION AND ORDER

On October 24, 2003, the Correction Officers Benevolent Association ("Union" or "COBA"), filed a verified improper practice petition against the New York City Department of Correction and the New York City Office of Labor Relations ("City" or "DOC").[1] The Union alleges that the City violated §§ 12-306(a)(4) and 12-306(c)(4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by failing to provide the Union with information concerning assignments which it requested in order to administer the applicable collective bargaining agreement ("CBA"). The City contends that it has provided the Union with pertinent information in its possession and that other relevant information has been available to the Union since 1999. Moreover, the City argues that DOC is

[1] At the request of the parties, this matter was held in abeyance for 12 months for settlement negotiations.

under no obligation to provide the additional information which the Union is demanding.

This Board finds that the information which the Union seeks is relevant to and reasonably necessary for purposes of contract administration. Therefore, we grant the Union's petition.

BACKGROUND

On October 1, 2003, DOC announced that 27 Correction Officers, 14 of whom were designated chronically absent, would be transferred from their posts in accordance with Directive No. 2258R-A, entitled "Assignment to Preferential/Special Units or Commands" ("Directive"). The Directive established a program to reduce chronic absenteeism among Correction Officers. It provides, in § G, that a commanding officer may deny or revoke one or more "discretionary benefits and privileges" of a Correction Officer who abuses DOC sick leave policy. "Discretionary benefits and privileges" are defined, in § C, as including "assignment to a steady tour or to a specified post or duties, access to voluntary overtime, transfers and promotions, secondary employment, and assignment to preferential/special units or commands."

On October 2, 2003, the Union and DOC held a labor-management meeting to discuss the transfers announced one day earlier. COBA contends that a Union official asked for a listing of all DOC preferential/special units or commands, but the City asserts that DOC does not recall the request. By letter dated October 3, 2003, the Union demanded a list of "(a) All the department's Preferential/Special Units, and (b) All the department's Preferred Commands." The Union contends that this demand also went unanswered. The City alleges that DOC does not maintain a list of such assignments other than the list of "special units" within the Special Operations Division, as stated in Operations Order No. 02/99.

Operations Order No. 02/99 describes DOC standards for permanent assignment to "special units" within the Special Operations Division. "Special units" are defined as the Canine Unit; Gang Intelligence Unit; Emergency Service Unit (ESU); ESU Support Team; Communications Unit; Harbor Unit; and the Hostage Negotiation Unit. Of these, the Union asserts that only the Canine and Gang Intelligence Units still exist. It also asserts that of the three special units which the DOC website listed at the time the petition was filed, namely, ESU, HIIP, and RAP – the latter two are not defined or described – only two were still in existence, namely, ESU and HIIP. We take administrative notice that the DOC website lists only the ESU in existence as of this date.

On October 6, 2003, the transfers took effect. By letter dated October 15, 2003, the Union made another written request for the same information. On October 24, 2003, the Union filed the instant petition, alleging that DOC violated NYCCBL §§ 12-306(a)(4) and (c)(4). By letter dated November 3, 2003, the Union repeated its demand for information about preferential/special units and preferred commands. On November 5, 2003, the Union and DOC held another labor-management meeting to discuss, among other matters, the transfer of the Corrections Officers. At the meeting, DOC Labor Relations supplied the Union with a DOC Table of Organization and a teletype order about Tactical Search Operations. DOC reiterated that it did not maintain a list of preferential/special units and preferred commands.

As relief, the Union seeks an order of this Board directing DOC to provide the requested information.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that DOC violated NYCCBL §§ 12-306(a)(4) and (c)(4),[2] when it failed to provide information necessary to administer the parties' CBA.[3] The Union claims that it needs accurate information to determine whether its members have been adversely affected by the transfers pursuant to the Directive and whether the filing of grievances is warranted. Furthermore, the current information heretofore disseminated by DOC is unreliable. The Union explains that the listing of "special units" contained within Operations Order No. 02/99 is neither comprehensive nor reliable because it concerns only the Special Operations Division. Moreover,

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[2] Section 12-306(a) of the NYCCBL provides, in pertinent part:
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;
* * *
(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.

Section 12-305 of the NYCCBL provides, in pertinent 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.

Section 12-306(c) of the NYCCBL provides, in pertinent part:
The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
* * *
(4) 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. . . .

[3] Article XXI, § 1(b), provides that the Union or member may grieve "a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment, provided that . . . the term 'grievance' shall not include disciplinary matters. . . ."

some specialized units listed in Operations Order No. 02/99 are "extinct," namely, ESU Support Team, Communications Unit, Harbor Unit, and Hostage Negotiation Unit. In addition, DOC's website identifies three specialized units – ESU, HIIP, and RAP – the last of which was defunct as of the filing of the instant petition. Further, the Union does not dispute DOC's right to assign employees but argues that the instant matter concerns DOC's duty to provide information for contract administration. As to the City's contention that any assignments denoted as "special" or "preferred" are given those characterizations by the Correction Officers themselves, the Union points to the Directive which refers specifically to "special/preferred units or commands."

In sum, the Union does not seek bargaining over DOC's right to assign Correction Officers but clarification of what constitutes such assignments. Finally, the Union argues that the information it seeks is normally maintained by DOC in its regular course of business and can be readily produced.

City's Position

The City argues that it has provided the Union with information which DOC possesses pertaining to the subject at issue and that the Union has not identified any other reasonably available data normally maintained in the regular course of business that has not been furnished. Beyond that information which has already been provided, the City argues that the directive by which the Correction Officers were transferred concerns a non-mandatory subject of bargaining and that DOC is not required to provide information pertaining to that subject matter. As to information concerning assignments of a preferential, special or preferred nature, such information is based on individual preference and does not exist in a form that DOC can be compelled to provide.

DISCUSSION

The issue before us is whether DOC violated § 12-306(a)(4) and § 12-306(c)(4) of the NYCCBL, and derivatively, § 12-306(a)(1), by failing to provide the Union with information concerning assignments which it requested. We find that the information which the Union seeks is relevant to and reasonably necessary for purposes of contract administration, and, therefore, we grant the petition.

Pursuant to NYCCBL § 12-306(c)(4), a public employer has a duty to furnish a union, at its 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." We have held that this duty to provide information extends to that which is relevant to and reasonably necessary for (a) collective negotiations on mandatory subjects of bargaining, as well as (b) matters necessary for the administration of the collective bargaining agreement, such as grievance administration. *Correction Officers Benevolent Ass'n*, Decision No. B-9-1999 at 12-13 (employer required to provide names of employees on "indefinite sick leave" since union administered contractual sick leave benefit); *cf. Committee of Interns and Residents*, Decision No. B-8-85 at 14 (union failed to show that information was relevant and reasonably necessary to bargaining or contract administration).

Here, the City does not dispute that the information requested by the Union is relevant to the Union's duty to represent unit members with respect to contractually provided benefits. The Union claims it needs this information to evaluate whether any violation of the CBA occurred when 27 Correction Officers were transferred on October 6, 2003. Pursuant to the Directive, DOC may deny or revoke one or more "discretionary benefits" of a member who is designated as

"chronic absent" under DOC's sick leave policy; such "discretionary benefits" are defined to include "preferential/special units or commands." The Union states it seeks to learn what DOC determines to be "preferential/special units or commands" as referred to in § C of the Directive so that the Union can assess whether the revocation of the Correction Officers' assignments and their transfers to other assignments were in compliance with the Directive. Under Article XXI, § 1(b), the Union has the right to grieve "a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment." Given these facts, we find that the Union has made a sufficient showing why the requested information is reasonably necessary for purposes of contract administration.

The City's argument – that it had no duty to provide the information because the assignments, as well as the provisions of the Directive, do not involve mandatory subjects of bargaining – is misplaced. The Union expressly disclaimed any desire to bargain these subjects; it asserts that it needs the requested information solely for purposes of contract administration. Since contract administration constitutes an independent basis for the duty to supply information under NYCCBL § 12-306(c)(4), the City's argument that the request concerns a non-mandatory subject is also unavailing.

Turning to whether DOC provided the Union with the requested information, the Union raises issues as to the reliability of that information. The Union notes that four of the units described in Operations Order No. 02/99 – ESU Support, Communications, Harbor, and Hostage Negotiation – are now defunct. Furthermore, the information provided by DOC is from 1999 and is out-dated. Moreover, it is not clear from the record whether, in addition to those units, there are other assignments which DOC considers preferential/special units or preferred commands.

Thus, we cannot conclude that DOC has supplied a current and accurate statement of the information requested by the Union.

NYCCBL § 12-306(c) defines the duty to supply information under subdivision (c)(4) as being included in the duty to bargain in good faith; consequently, a failure to supply information within the scope of that subdivision, whether for purposes of collective bargaining or contract administration, necessarily constitutes a violation of the duty to bargain in good faith pursuant to NYCCBL § 12-306(a)(4). *Correction Officers Benevolent Ass'n*, Decision No. B-9-99 at 15 (contract administration); *Committee of Interns and Residents*, Decision No. B-22-92 at 19 (collective bargaining); *see also Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers*, 36 PERB ¶ 3021 (2003). Since the denial of information to which the Union is entitled renders the Union less able effectively to represent the interests of the employees in the unit, the employer's failure to supply the information also interferes with the statutory right of employees to be represented, in violation of NYCCBL § 12-306(a)(1). *See Schuyler-Chemung-Tioga Educational Ass'n*, 34 PERB ¶ 4521 (2001); *see also Greenburgh No. 11 Federation of Teachers*, 33 PERB ¶ 3059 (2000); *New York State Public Employees Federation*, 26 PERB ¶ 3072 (1993).

Therefore, we hold that DOC's failure to provide COBA with a complete and accurate list of assignments which are designated by DOC as preferential/special units or commands is violative of §§ 12-306(a)(1) and (4) and § 12-306(c)(4) of the NYCCBL. Therefore, we direct the City to provide the Union with a complete and accurate list of assignments designated by DOC as preferential/special units or commands.

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 verified improper practice petition docketed as BCB-2362-03 is granted, and it is further

DIRECTED, that the City provide the Union with a complete and accurate list of assignments designated by DOC as preferential/special units or commands.

Dated: May 10, 2005
New York, New York

MARLENE A. GOLD
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