L. 1182, CWA v. City & PD, 75 OCB 3 (BCB 2005) [Decision No. B-03-05 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1182,

Petitioner,

Decision No. B-3-2005
Docket No. BCB-2414-04

-and-

CITY OF NEW YORK and NEW YORK POLICE DEPARTMENT,

Respondents.

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DECISION AND ORDER

On July 14, 2004, the Communications Workers of America, Local 1182 ("Union" or "CWA"), filed a verified improper practice petition, and on August 5, 2004, an amended petition, against the City of New York and the New York Police Department ("City" or "NYPD"). The Union alleges that the City violated § 12-306(a)(1), (4), (5), § 12-306(c), and § 12-307(a) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by refusing to bargain over the issuance of parking placards. The City contends that it has no duty to bargain over a subject that falls within its management rights. This Board finds that the Union has failed to make a *prima facie* showing to support its claim that the City has violated the NYCCBL. Therefore, the petition is dismissed in its entirety.

BACKGROUND

The Union represents Traffic Enforcement Agents ("TEAs") who work in NYPD's Traffic Control Division ("TCD"). TCD is responsible for ensuring compliance with all traffic laws and ordinances, promoting traffic safety, and expediting motor vehicle traffic. All TEAs patrol an assigned area to enforce traffic laws and ordinances, prepare and issue summonses for violations, testify at administrative hearings and in court, prepare reports, operate motor vehicles, and receive training in directing traffic.

On February 20, 2004, the Union's counsel sent a letter to NYPD Deputy Commissioner John P. Beirne which stated:

> We are counsel to Local 1182, which represents the Traffic Enforcement Agents in the New York City Police Department. It has come to the attention of Local 1182 that the Patrolmen's Benevolent Association officials has been [sic] provided parking permits. Local 1182 officials have not been afforded such permits. Please call me as soon as possible regarding the scheduling of a meeting concerning this matter.

On March 19, 2004, Deputy Commissioner Beirne replied: "It should be noted the issuance of parking placards was not negotiated with the P.B.A. and the placards were not issued through this office. Currently, it is the policy of the Police Department not to issue any such placards."

NYPD Administrative Guide Procedure No. 325-15 ("AGP No. 325-15") addresses Vehicle Identification Plates, or "parking placards," issued to police officers. A parking placard permits the holder, while on official business, to park a private vehicle in no-parking zones. To receive a parking placard, an official must request one from the Unit Commanding Officer, and the Police Commissioner's office must approve the request.

The Union's initial petition was insufficient under Section § 1-07(c) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter1), and the Office of Collective Bargaining ("OCB") gave the Union an opportunity to file an amended petition.[1] In both petitions, the Union asserts that Local 1182 officials were not offered the same parking placards as those given to Patrolmen's Benevolent Association ("PBA") officials. The Union presented no other facts. At a conference on November 15, 2004, the Trial Examiner gave the Union an opportunity to submit any additional facts or documentation to support its petition. On December 9, 2004, the Union filed an additional submission which states that the Union "learned of facts contained in its Petition from a newspaper article. Petitioner does not at this time have a copy of that article."

The Union requests that the Board find that the City's actions constitute an improper practice; order the City to make whole any agent or member of Local 1182 for damages, including, but not limited to, reimbursement for any parking tickets and/or expenses incurred by the City's failure to provide parking placards to Local 1182; order the City to cease and desist from violating the NYCCBL; post a notice of the provisions of the order; and order the City to reimburse attorneys' fees.

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[1] OCB Rule § 1-07(c) provides, in relevant part, that a petition shall contain: A clear and concise statement . . . of the facts constituting the claim under § 1-07(b) of these rules. . . . If the controversy involves an alleged improper practice, the statement shall include but not be limited to the names of the individuals involved in the particular act specifically alleged and the date, time, and place of occurrence of each particular act alleged. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments. . . .

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the City violated NYCCBL § 12-306(a)(1), (4), (5), § 12-306(c), and § 12-307(a) by refusing to bargain over parking placards.[2] The Union bases its claim on the

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[2] NYCCBL § 12-306 (a) 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;
(5) to 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.

NYCCBL § 12-306(c) provides:
(c) Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
(1) to approach the negotiations with a sincere resolve to reach an agreement;
(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;
(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
(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;
(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

NYCCBL § 12-305 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. . . .

(continued...)

allegations that the City has bargained over parking placards with the PBA and has issued these placards to PBA officials.

The Union also asserts that the City's allegations that AGP No. 325-15 is a procedure whereby a police officer may request a parking placard only when a private vehicle must be used to perform official business, and that the issuance of parking placards is a managerial right under the NYCCBL, are contested factual issues that require a hearing. The City has neither denied that parking placards have been issued to the PBA, nor explained the circumstances pertaining to the issuance of such placards. A hearing is required to determine whether such placards have been issued to PBA officials and under what circumstances negotiations took place.

Finally, the Union contends that the City's allegation that the Union has not provided "concrete facts" is disingenuous because all relevant facts are within the City's control, and the City failed to set forth such facts in its answer.

City's Position

The City argues that the instant petition must be dismissed because the Union failed to provide factual allegations to support its claim that the City violated NYCCBL § 12-306(a)(1), (4) and (5), and failed to establish that the City refused to bargain over a mandatory subject of bargaining.

The City argues that it has not violated NYCCBL § 12-306(a)(4) because the issuance of

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[2](...continued)
NYCCBL § 12-307(a) provides, in pertinent part:
Subject to the provision of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages . . . , hours, . . . , working conditions . . . .

parking placards is a managerial right under NYCCBL § 12-307(b).[3] The City has no duty to bargain over AGP No. 325-15 because the issuance of parking placards is not germane to the working environment. In addition, there is no derivative violation of NYCCBL § 12-306(a)(1) because there is no violation of NYCCBL § 12-306(a)(4).

The City also asserts that parking placards are not an employee benefit because they must be requested and approved, are used only for a limited purpose – when members of the service must use private vehicles to perform official business – and do not provide free parking space. Further, there are no special circumstances that require the use of parking placards for Union officials or TEAs. TEAs use department vehicles to perform their duties and are not required or encouraged to use private vehicles. Moreover, the issuance of parking placards is not an existing provision of the collective bargaining agreements ("Agreements") of the PBA or CWA.

Finally, the City asserts that Petitioner has failed to state a *prima facie* case to establish an improper practice within the meaning of NYCCBL § 12-306(a)(5). NYPD has not made any unilateral change to a mandatory subject of collective bargaining or to any term or condition of employment, nor has NYPD changed how it determines the distribution and negotiation of such placards.

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[3] NYCCBL § 12-307(b) provides, in pertinent part:
It is the right of the city, or any public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; . . . . 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. . . .

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. *Correction Officers Benevolent Ass'n,* Decision No. B-26-2002 at 7. The petitioner must demonstrate that the matter to be negotiated is a mandatory subject of bargaining. *See Doctors Council, SEIU,* Decision No. B-21-2001 at 7.

The Board has stated that in some circumstances the provision of employee parking is a mandatory subject of bargaining. *See Social Services Employees,* Decision No. B-22-68 (free parking for employees is a mandatory subject of bargaining when employees are required to use private vehicles to assist in performing work duties); *and see District Council 37,* Decision No. B-12-2003 (generally, free work-site parking for employees is a mandatory subject). Here, the pleadings do not provide any facts or legal arguments which would indicate whether those cases are applicable.

Petitioner's February 20, 2004, letter to Deputy Commissioner Beirne was vague regarding the subject it sought to bargain. Petitioner stated: "It has come to the attention of Local 1182 that the Patrolmen's Benevolent Association officials has been [sic] provided parking permits. Local 1182 officials have not been afforded such permits." Union counsel requested to meet regarding the matter. NYPD responded that it had not negotiated with the PBA over parking placards and its policy was not to issue any such placards. No further demands were

made. Instead, Petitioner filed the instant verified improper practice petition.

In order to state a claim of improper practice under § 12-306 of the NYCCBL, Petitioner must provide a statement of facts – including specific acts, names, dates, times and places – as required by OCB Rule § 1-07(c). The failure to allege sufficient facts is grounds for dismissal of an improper practice petition. *Morgan,* Decision No. B-15-2003, *aff'g* Decision No. B-10-2003 (ES).

Although Petitioner was given multiple opportunities to present sufficient facts to state a claim, Petitioner has not provided or clarified relevant facts such as: 1) the nature of the parking placards in dispute; 2) for whom Petitioner is now seeking these placards and for what purpose; 3) who issued the PBA placards and who received them; 4) when parking placards were allegedly issued to PBA officials; and 5) the basis for Petitioner's claims.[4] For example, the February 20 letter refers only to "parking permits" for union officials but the request for relief in the petition is on behalf of union officials and all its bargaining unit members. In addition, Petitioner has not alleged specific facts to counter the City's evidence of existing procedures for the issuance of parking placards, or the City's claim that it had not bargained over the placards with the PBA. Based on this record, there is insufficient evidence presented for this Board to determine whether the Union's demand indeed concerned a mandatory subject of bargaining.

As to Petitioner's arguments regarding NYCCBL § 12-306(a) (1) and (5), § 12-306(c), and § 12-307, the Union has not presented any legal arguments or facts from which the Board

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[4] Petitioner relies solely on a statement regarding PBA parking placards discovered from an unidentified newspaper article. The Board has recognized that, generally, newspaper articles are not probative evidence of the information reported therein. *New York City Fire Dep't,* Decision No. B-3-2004. Here, Petitioner did not provide the article on which it relies.

could infer that the City has in any way violated Petitioner's rights under the NYCCBL.

Therefore, the petition is dismissed in its entirety.

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, BCB-2414-04, filed by the Communications Workers of America, Local 1182, be, and the same hereby is, dismissed.

Dated: January 27, 2005
New York, New York

MARLENE A. GOLD
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