

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

PHIL CARUSO, as President of the  
Patrolmen's Benevolent Association  
of the City of New York,

Petitioner,

Decision No. B-35-82

-and-

Docket No. BCB-567-82

ROBERT J. MCGUIRE, as Police  
Commissioner of the City of New York,  
THE POLICE DEPARTMENT OF THE CITY OF  
NEW YORK, and THE CITY OF NEW YORK,

Respondent.

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DECISION AND ORDER

On February 2, 1982, the Patrolmen's Benevolent Association (hereinafter "PBA" or "the Union") filed a petition seeking a determination by the Board of Collective Bargaining (hereinafter "the Board") that the replacement of police officers by civilians in the Manhattan Central Booking Division (hereinafter "MCB") of the New York City Police Department is a mandatory subject of bargaining pursuant to Section 1173-4.3a of the New York City Collective Bargaining Law (hereinafter "NYCCBL")<sup>1</sup> and Section

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<sup>1</sup> NYCCBL Section 1173-4.3a provides in pertinent part:

Subject to the provisions of subdivision b of this section and subdivision c of section 1173-4.0 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave

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of the Office of Collective Bargaining ("OCB Rules").<sup>2</sup>

With the PBA's consent, the City of New York (hereinafter "the City") was granted an extension of time in which to file an answer to the petition. The City filed its answer on February 23, 1982. The PBA did not file a reply.

#### POSITIONS OF THE PARTIES

##### PBA's Position

The PBA challenges the alleged replacement of police officers in the MCB Division of the Police Department by police attendants, who are civilian employees, not members of the PBA bargaining unit, to perform functions such as fingerprinting and body searches of prisoners, vouchering prisoners' personal property, watching prisoners or witnesses in a hospital ward, and other allegedly police officer duties. The PBA contends that police attendants are not trained or qualified to perform the tasks of a police officer, that police officers are not satisfied with the performance of the police attendants and that this situation results in low morale among police officers in the

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benefits), working conditions ....

<sup>2</sup> Section 7.3 of the OCB Rules provides as follows:

A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is within the scope of collective bargaining under Section 1173-4.3 of the statute, or whether a matter is a proper subject for the grievance and arbitration procedure established pursuant to Section 1173-8.0 of the statute or under an applicable executive order, or pursuant to collective bargaining agreement may petition the Board for a final determination thereof.

Division and in a danger to security at MCB.

Specifically, the PBA asserts that the shortage of police officers at MCB and the influx of a large number of police attendants will endanger the safety of police officers employed at MCB, as well as the safety of all arresting officers. The PBA notes that MCB has requested additional police officers without success. The Union asserts, on information and belief, that this unsafe condition was brought to the attention of the commanding officer, but the City has taken no action to ameliorate the situation, and, further, that the City, relying on its managerial prerogative, has refused to correct conditions at MCB. The Union attributes the security problem at MCB to the City's failure to maintain minimum police manning levels, which failure it characterizes as a condition precedent for the instant petition.

The PBA requests a finding by this Board that the above-described actions on the part of the City affect the safety and working conditions of PBA members and therefore constitute mandatory subjects of bargaining.

#### City's Position

The City admits that civilian personnel, including 30 additional police attendants since April 1981, have been hired and assigned to the MCB Division as part of an ongoing civilianization program in the Police Department. The City acknowledges that two requests for additional police officers have been made. However, neither the City nor the Union indicates by whom such requests were made or the reason for the requests.

The City denies that it is attempting to replace police officers with civilian police attendants. It maintains that the use of civilians to search, fingerprint, and guard prisoners at the MCB Division is within its management rights under NYCCBL Section 1173-4.3b<sup>3</sup> as are other aspects of its civilianization program. Under this program, the City asserts, it is attempting to deploy the work force in a fashion most conducive to effective, efficient and safe delivery of police functions. Civilianization allows the City to assign police officers to duties more directly related to law enforcement, using civilians to perform functions related to the operation of the Police Department as distinguished from the delivery of police services.<sup>4</sup>

The City notes that, in prior cases,<sup>5</sup> the Board has found that the decision to "civilianize" certain functions

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<sup>3</sup> NYCCBL Section 1173-4.3b provides as follows:

It is the right of the city, or any other public employer acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; 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 classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other 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 employees, such as questions of workload or manning, are within the scope of collective bargaining.

<sup>4</sup> City's answer, ¶15.

<sup>5</sup> The City cites Decision Nos. B-8-80, B-14-80, B-26-80, B-27-80 and B-23-81.



is amply within management's rights, and is therefore not within the scope of bargaining. Furthermore, the City asserts, since, in its Decision B-23-81, the Board dismissed the PBA'S improper practice petition challenging the use of civilian male attendants in the MCB Division (Docket No. BCB-494-81), the instant petition constitutes a "disingenuous attempt" to re-litigate a matter already resolved by the Board.

The City refutes the PBA's contention that the Department's failure to maintain minimum manning levels at MCB has resulted in a safety impact on police officers, asserting: (1) that manning is a well-recognized management right not within the scope of mandatory negotiations, and (2) that the PBA has failed to allege facts sufficient to support its conclusory allegations of safety impact.

The City explains that police attendants are being used to supplement rather than to replace uniformed personnel, that they are performing only duties which are set forth in the job description for the title<sup>6</sup> and which are within the scope of their training. For this and all of the aforementioned reasons, the City requests that the PBA's scope of bargaining petition be dismissed.

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<sup>6</sup> The City submits the job specification for the title Police Attendant (Female). Apparently, although the title Police Attendant (Male) has been certified for bargaining (Decision 16-82), and the duties assigned to the title are identical to those assigned to the Female counterpart, the title was not formally established or classified at the time the City filed its answer in this case.

DISCUSSION

It is now well established that civilianization programs are a proper exercise of management rights set forth in NYCCBL Section 1173-4.3b and that implementation of such programs will not give rise to a duty to bargain under Section 1173-4.3a unless the employer's exercise of these rights has an effect on employees which rises to the level of a practical impact.<sup>7</sup> In the instant case, the PBA seeks a finding that the use of civilian police attendants in Manhattan Central Booking to perform functions previously performed by police officers has an impact on the safety and working conditions of PBA members and therefore constitutes a mandatory subject of bargaining.

Initially, we note that the use of police attendants in the MCB Division of the Police Department was the subject of an improper practice petition filed by the PBA in May of 1981 (Docket No. BCB-494-81). In that case, the PBA challenged the "replacement of an employee's unit by another employee unit not affiliated with the recognized employee union (PBA)" as constituting a violation of NYCCBL Section 1173-4.2a (2),

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<sup>7</sup> Our most recent decision to this effect is Decision No. B-34-82.

(3), and (4).<sup>8</sup> The PBA's petition was consolidated for decision with two related petitions (Docket Nos. BCB-493-81 and BCB-495-81), in which the PBA challenged the use of civilians in the positions of cell attendant and roll call officer in the 120th Precinct. In Decision No. B-23-81, the Board dismissed all three petitions.

We note the City's objection that the instant petition is a disingenuous attempt by the PBA to relitigate an earlier proceeding. It is true that, in Decision No. B-23-81, the Board determined that the use of civilians to fingerprint and search prisoners in the Central Booking Division was within the City's statutorily protected management rights and not a mandatory subject of bargaining. The PBA has failed to allege any facts which might persuade us to reconsider our prior holding in this regard. However, in the instant petition, the PBA has additionally alleged that the use of police attendants adversely affects the security of the MCB Division and is a "very unsafe and

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<sup>8</sup> NYCCBL Section 1173-4.2a provides in pertinent part:

It shall be an improper practice for a public employer or its agents: ...

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities 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.



a dangerous practice."<sup>9</sup> The Union claims that police officers at MCB and all arresting officers will be endangered by the influx of police attendants and the concomitant shortage of police officers at MCB.

As we said in our Decision No. B-5-75:

Where it is apparent to this Board that a particular exercise of management prerogative would constitute a threat to employee safety, we believe there is warrant for a finding which will require bargaining at the time when implementation of any projected change is proposed. (p.13)

In the instant proceeding, the assignment of civilians to certain tasks previously performed by police officers in the MCB Division has already taken place, but the PBA has presented no evidence to support its allegation that the safety of police officers has been or will be jeopardized by such assignments. The Union's allegations are vague and speculative.

We have long held that a finding of practical impact which would give rise to a duty on the part of the City to alleviate the impact or, failing in this, to bargain over the alleviation of the impact<sup>10</sup> will lie only upon the submission of sufficient facts by the Union. We find that the PBA has failed to support with specific facts its argument that civilianization in the MCB Division of the Police Department has created or will create

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<sup>9</sup> PBA's petition, ¶7.

<sup>10</sup> See Decision No. B-9-68.

a practical impact on the safety of police officers. Although it had the opportunity, pursuant to OCB Rule 7.9, to file a reply refuting the City's defenses to its petition, the PBA failed to do so.

Nor has the PBA demonstrated that the particular civilianization complained of in this proceeding affects working conditions of police officers in any other manner which this Board might deem to constitute a practical impact. Although the PBA contends that the City's failure to maintain minimum police manning levels is a "condition precedent for this scope of bargaining petition,"<sup>11</sup> the case before us does not concern manning levels; rather, it involves work assignments. We are persuaded by the City's assertion that the reassignment of police officers to functions within the ambit of traditional police duty and the use of non-uniformed personnel "to perform functions related to the operation of the Department as distinguished from delivery of police services" is an attempt to deploy the work force in a fashion most conducive to effective, efficient and safe delivery of police functions. We have previously held and we again find that such decisions by the City are within its right, under NYCCBL Section 1173-4.3b, to determine the "methods, means and personnel by which governmental operations are to be conducted," and are therefore not within the scope of mandatory collective bargaining.<sup>12</sup>

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<sup>11</sup> PBA's petition, ¶11.

<sup>12</sup> See, e.g., Decision No. B-26-80.

For all of the foregoing reasons, we shall dismiss the PBA's petition.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby Benevolent Association be, and the same hereby is, dismissed.

DATED: New York, N.Y.  
September 23, 1982

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ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

MILTON FRIEDMAN  
MEMBER

EDWARD SILVER  
MEMBER

JOHN D. FEERICK  
MEMBER

CAROLYN GENTILE  
MEMBER