OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-23-85

-and-

DOCKET NOS. BCB-770-85,
BCB-787-85
(I-175-85)

UNITED PROBATION OFFICERS
ASSOCIATION,

Respondent.
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DECISION AND ORDER

On March 27, 1985, the City of New York, appearing by its Office of Municipal Labor Relations ("OMLR"), filed a petition in the case docketed as BCB-770-85 seeking a determination on whether a number of matters which have been raised in negotiations between the City and the United Probation Officers' Association ("UPOA") are mandatory subjects of bargaining within the meaning of Section 1173-4.3 of the New York City Collective Bargaining Law ("NYCCBL"). The City challenged the Union's twenty-nine demands, some of which contain a number of subdivisions, that have not been resolved in negotiations between the parties for a successor agreement to their 1982-1984 unit contract. other unresolved bargaining demands, including Union demands whose bargainablity is not challenged by the City, have been

submitted to an impasse panel for resolution pursuant to a request for the appointment of a panel filed by the Union on November 8, 1984.

A mediator was appointed on November 26, 1984, to assist the parties in their negotiations. The mediator held two sessions with the parties. On February 27, 1985, the Board, after an extensive investigation of the negotiations and consultation with the mediator, found that an impasse exists in the negotiations between the parties. A one-man impasse panel was appointed on March 21, 1985.

In its petition before the Board, the City seeks a determination that the demands in question are not mandatory subjects of bargaining and, therefore, are not appropriate for consideration by the impasse panel, unless submitted to the panel by agreement of the parties. The UPOA, having abandoned nine of the demands in question [1] and modified the language of its demand dealing with Seniority, filed an answer to the City's petition on April 19, 1985. OMLR filed a reply memorandum of law on May 6, 1985, to which the Union responded on may 13, 1985.

[1] We take administrative notice of the fact that, though not specifically enumerated as having been abandoned, the Union's demand originally numbered "15" does not appear on its list of final demands. Said demand called for: "a) Educational leave to be granted after 4 years of service; and b) Leave without pay be allowed after 5 years of service for up to one year., "In view of the absence of the demand from the Union's list of final demands, the Board will not rule on its bargainablilty.

The Union subsequently added two more demands to its list of demands. On May 29, 1985, in the case docketed as BCB-787-85, the City filed another petition challenging the bargainability of these demands. The Union filed an answer on June 11, 1985 to which the City responded on June 24, 1985. In order to avoid unnecessary delay and to best effectuate the policies of the NYCCBL, cases BCB-770-85 and BCB-787-85 are hereby consolidated for the purposes of decision.

The demands have been divided into two categories for the purposes of discussion: a) those which primarily deal with management prerogatives; and b) those which pertain to the appropriate level of bargaining. The numbers of the demands correspond to the number on the Union's second list of demands (attached to its May 10, 1985 response). We wish to note that a finding that a matter is bargainable does not constitute a decision on the merits of the demand. Such a decision rests solely with the designated impasse panel.[2]

[2] This policy has been followed in all cases involving determination of the bargainability of subject matters and has been expressly stated in Decision Nos. B-2-73; B-1-74; B-10-75; B-17-75; B-16-81.

RELEVANT STATUTORY PROVISION

NYCCBL, Section 1173-4.3, provides

Scope-of collective bargaining; management

a. 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 benefits) and working conditions, except that:

(1) with respect to those employees whose wages are determined under section two hundred twenty of the labor law; there shall be no duty to bargain concerning those matters determination of which is provided for in said section;
(2) matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified-representative or representatives of bargaining units which include more than fifty percent of all such employees, but nothing contained herein shall be construed to deny to a public employer or certified employee organization the right to bargain for a variation or a particular application of any city-wide policy or any term of any agreement executed pursuant to this paragraph where considerations special and unique to a particular department, class of employees, or collective bargaining unit are involved;

(3) matters which must be uniform for all employees in a particular department shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty per cent of all employees in the department;

(4) all matters, including but not limited to pensions, overtime and time and leave rules which affect employees in the uniformed police, fire, sanitation and correction services, shall be negotiated with the certified employee organizations representing the employees involved;

(5) matters involving pensions for employees other than those in the uniformed forces referred to in paragraph four hereof, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as representing bargaining units which include more than fifty per cent of all employees included in the pension system involved.

b. 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.

CATEGORY "A"

Demand No. 2 RECLASSIFICATION OF TITLES
a) P.O. 1 - (up to 5 years)
b) P.O. 2 -(up to 10 years)
c) P.O. 3 - (after 10 years)

The City argues that this demand would require the City to classify Probation officer titles on a temporal basis contrary to its "absolute right", under NYCCBL Section 1173-4.3b to "determine the ... personnel by which governmental operations are to be conducted" and to "determine the content of job classifications."

The Union contends that the above reclassification of titles is for the purpose of obtaining a "revised salary structure and/or increments in salary structure or to compensate for promotional inequities or inequities in salaries" and is therefore bargainable.

Discussion

In Decision No. B-24-72, this Board held that "the City has the management right to determine the content of job classifications." Prior to that, in Decision No. B-3-69, we held that the creation of promotional opportunities, whether under an existing title or a new title, is not a mandatory subject of bar-aining.

The Union's arguments relating to the purpose of the demand, i.e., to correct alleged salary and promotional inequities, does not negate the fact that the UPOA is seeking to change the structure of existing titles. The demand goes beyond the situations described in the cases relied upon by the Union in that it does not deal with the collective bargaining representative's right to bargain for promotional standards within a unit (Decision No. B-2-73) nor does it concern the bargain-ability of contractual service increases which are effective only for the term of the agreement (Decision No. B-4-71). Thus, while demands for longevity pay increases may constitute mandatory subjects of bargain-ing, we find that demands for reclassification of titles,

do not. The creation of new titles# or the reclassification of existing titles, comes under the right of The City to determine the methods, means and personnel by which governmental operations are to be conducted, as well as the right to determine the content of job classifications. We therefore find Demand No. 2 a non-mandatory subject of bargaining.

Demand No. 5 - GRIEVANCE PROCEDURE AGAINST ADMINISTRATORS

> Grievance procedure against administrators with P.O. appointed by union president to serve for a specific term

The City asserts that the appointment of a union member "to the arbitration committee" would alter its "fundamental right" to "exercise complete control and discretion over its organization." The City urges that the demand ignores the essential structure of the grievance procedure as it-is used in New York public sector labor relations, the culmination of which is arbitration before an independent third party. To allow the Union to play a role in the "review" of a grievance at any step in the process, it is argued,

infringes upon the City's right to manage, in violation of NYCCBL, Section 1173-4.3(b).

The Union challenges the City's assertions, stating that the demand for a grievance procedure against administrators with a Probation officer appointed by the UPOA President to sit on the arbitration committee in reviewing the grievance is negotiable. Also, contrary to the position taken by OMLR in its petition, the Union argues that this demand does not impact upon employees who are not within the UPOA bargaining unit.

Discussion

We have interpreted NYCCBL, Section 1173-4.3(b) as protecting management's right to take disciplinary action but as not diminishing existing rights of employees to appeal from disciplinary rulings. In Decision No. B-3-73, we held that bargaining for the submission to arbitration of disciplinary rulings is mandatory. It follows that bargaining over the composition of the arbitration panel is also mandatory. The City's argument regarding impact upon non-bargaining unit employees is mere speculation and an invalid basis upon which to challenge the nature of a bargaining demand.

We wish to note, however, that grievances may not be filed against administrators in their individual, rather than representative, capacities. Procedures against administrators individually are not mandatory subjects of bargaining. We therefore find Demand No. 5 to be a non-mandatory subject of bargaining unless the Union amends its request within ten days of the date of issuance of the instant Decision and order to withdraw that portion of the demand calling for a "grievance procedure against administrators" and to limit the demand solely to the composition of the arbitration committee.

Demand No. 6 - WORK DONE BY VOLUNTEERS; WORK ASSIGNMENTS

A. No volunteers doing any work that is done by probation officers

B. No PO's or supervisors doing any administrative work. No acting Branch Chiefs or administrative assistants

C. No clerks or anyone not in PO title doing any PO work

The City argues that the instant demand "infringes upon the City's right under the NYCCBL to determine the personnel by which governmental operations are conducted."

OMLR notes that employees assigned to out-of-title work have a right to grieve such assignments as a violation of Mayoral Directive No. 79-3. Additionally, urges the City, while the Union alleges that these demands relate to "practical impact" considerations, the Union offers no proof thereof.

The UPOA contends that the use of volunteers by and through the Department of Probation has a practical impact on the workload of bargaining unit' employees, especially in the areas of manning and health, and therefore must be deemed a mandatory subject of bargaining as well as an arbitrable issue.

Discussion

As stated above,

> Section 1173-4.3(b) of the NYCCBL provides that "it is the right of the City to determine the standards of services to be offered bi its agencies ... [and to] ... determine the methods, means and personnel by which government operations are to be conducted."

Pursuant to this language, in Decision No. B-16-81, we held that demands addressed to the assignment of civilian employees and to restrictions on work performed by non-bargaining unit employees are not

Mandatorily bargainable. Similarly, we have long held that the assignment of personnel is a management right (Decision Nos. B-2-73, B-3-73).

This Board has rendered a number of decisions concerning "practical impact" since that term was first defined in Decision No. B-9-68 as inter alia, "an unreasonably excessive or unduly burdensome workload as a regular condition of employment." [3] We have exclusive jursidiction to determine whether practical impact exists and, if so, whether or not the City has made efforts to ameliorate the impact (Decision No. B-13-74). The duty to bargain as to such matters does not arise until after practical impact has been found to existand the City has failed to act unilaterally to relieve the impact expeditiously by permissible unilateral action.[4]

[3] See also Decision Nos. B-3-75; B-18-75; B-21-75; E-23-75; B-2-76; B-41-80.

[4] Certain actions of the employer will result in a per se practical impact, automatically triggering the rightto negotiate. (Decision No. B-41-80 and cases cited therein.) Such actions include managerial decisions to lay off employees and those that involve imminent threats to safety. (Decision Nos. B-5-75; B-18-75; B-6-79.)

As a pre-condition to our consideration of a claim of practical impact, it is necessary for the Union to specify the details of the impact. The union has failed to do so with regard to the instant demand. Mere conclusory allegations are not enough to support a claim of practical impact. The Union has not demonstrated how the use of 'volunteers or nonbargaining unit employees has in any way resulted inincreased workload for its members or has had an effect on manning and health. Furthermore, the City concedes that should Probation officers be assigned out-of-title work, then the Union has the basis for a grievance.

Based on the above considerations, we find that Demand No. 6 is not a mandatory subject of bargaining.

Demand No. 10 - CAPS OF CASELOADS

a) Adult supervision - no caseloads over 66
b) Adult investigation - no more than 12
c) Family supervision - no caseloads over 40 per month
d) Family investigation - no more than 8 cases per month

e) Family intake not to exceed 4 cases per day

f) CLO's - not to cover more than 2 court parts

g) No supervision in any location to carry more than 5 PO's in the unit

The City states that this demand interferes with the City's right to determine the standards of service to be offered by its agencies, pursuant to NYCCBL Section 1173-4.3b. With regard to the UDion's allegation of "practical impact" deriving from increased caseloads, the Citymaintains that this issue has been previously adjudicated by the Board in Decision No. B-2-76 and that the Union has not alleged or shown any change in the underlying circiumstances of the situation dealt with in that decision so that the request for a finding of practical impact should be denied.

The Union maintains that the continued imposition of caseloads by the City on its members in excess of those set forth in the instant demand has caused a practical impact on the workload, manning, health and safety of UPOA members within the meaning of NYCCBL Section 1173-4.3b. The UPOA requests a hearing to sub-

stantiate its claims of practical impact and submitted an affidavit of Wallace Cheatham, President of UPOA, in support thereof.

In this affidavit, Cheatham avers that, inter alia, from 1979 to 1985 caseload and workload for Probation officers in Supervision and Investigation has doubled "with no significant change in the number of staff during this period." The Mayor's Management Report(s) for the two aforementioned years are cited in support of this statement. Furthermore, Cheatham states that

> (D)espite the fact that the Department of Probation has made greater efforts to increase staff, partly as a result of settlement of BCB-505-81, ... the ultimate result of these efforts simply (has been) increased attrition and turnover leading to loss of experienced staff at the rate of 20% per annum for the past several years. Even though the staff has increased from approximately 650 to 750 in the last year, the caseloads have continued to rise and are projected to rise further and the workload has continued to increase.

As a result of increased caseloads on a "diminishing or static probation officer workforce," Cheatham concludes that: (a) the workload has become professionally and practically unmanageable; (b) backlogs and investi-

gations are being performed on overtime; (c) the physical and emotional health of employees has decreased with "noticeable increases in incidents of alcoholism, psychoses or neuroses;"and (4) there has been a "complete loss of professionalism" among Supervisors completing investigations.

Discussions

In his affidavit, UPOA President Cbeatham refers to the Department's "greater efforts to increase staff, partly as a result of settlement of BCB-505-81

The case docketed as BCB-505-81 relates to a petition filed by the City on July 6, 1981, in which it sought a determination as to whether a caseload standards demand raised in negotiations by the UPOA was a mandatory subject of bargaining. OMLR challenged the bargainability of the demand, stating that it infringed on a management right in that it interfered with the City's ability to utilize its workforce adequately and to determine manning requirements. The Union denied the City's contention and raised various affirmative defenses as to the impact of caseloads on unit employees. Said defenses related to a practical impact on the

workload, manning, health and safety of UPOA members employed by the City.

Hearings were held before a Trial Examiner on eleven days between September 9j 1981 and November 13, 1981. Oral arguments were held before the Board on April 21, 1982.

On May 20, 1982, the Board considered a draft Decision in which it was found: a) that the Union's caseload standards demand is not within the scope of mandatory collective bargaining between the parties; and b) that workload for and among Probation Officers has increased so substantially as to have resulted in "practical impact".within the meaning of Section 1173-4.3b of the New York City Collective Bargaining Law. As a remedy, the parties were ordered to "commence and undertake good faith collective bargaining in accordance with NYCCBL §1173-4.3-for the purposes of reaching agreement on terms for the-prospective alleviation of the practical impact ..." Issuance of the Decision was withheld pending possible resolution of the matters contained therein through negotiations. Shortly afterwards, the parties commenced settlement discussions.

An agreement was reached and the terms thereof were incorporated in a letter dated February 15, 1983, sent by OMLR to the Chairman of this Board. The letter states, in pertinent part:

> This is to inform you that the City of New York and the United Probation Officers Association (UPOA) have reached an agreement in settlement of all issues presented by the above-mentioned petition.

Over the next several months, the Union raised questions concerning the City's compliance with the terms of the Settlement Agreement. The matter was brought to arbitration, with hearings commencing on March 5, 1984. OnSeptember 10, 1984, the Arbitrator issued his Award, in which, inter alia, he ordered the City "to maintain an increase in bargaining unit positions

The issues and arguments currently being presented by the parties relating to the Union's "caps of caseloads" demand.and practical impact are duplicative of those raised in BCB-505-81. As stated, that matter has already been fully litigated in extensive proceedings before this office.

We find that no useful purpose would be served by having this Board relitigate a matter that the parties have already themselves resolved. The present controversy appears to be an extension of the parties' disagreement over whether the terms of the Settlement Agreement entered into in February, 1983 have actually been complied with. it is inappropriate for this Board to entertain disputes relating to that Settlement and/or its implementation. Rather, such disputes should again be submitted for arbitral resolution, as the parties did previously. We therefore decline to rule on the bargainability of the instant demand and will direct the parties to submit any controversies relating to the settlement of BCB-505-81 to arbitration.

Demand No. 11 - HANDGUNS

a) Mandatory handgun training for all PO's
b) Reimbursement for purchase of handguns or department to supply same
c) Handguns to be carried by all PO's or supervisors - wishing to do so
d) Storage facilities for PO's handguns at each location
e) Firing range facilities to be made available for PO's through the department

f) Handgun instruction for department to be from the ranks of PO's and supervisors
g) Handcuffs and bulletproof vests to be supplied to each PO requesting one

The City states that this Board has held demands for equipment, weapons, and weapons training are non-mandatory. With regard to the Union's allegation that the restriction on handguns during employment is a safety hazard unique to bargaining unit employees, OMLR urges that City-wide subjects such as health and safety are bargainable only at the City-wide level absent a showing of special and unique circumstances and maintains that the Union has not made any such a showing herein.

The Union contends that the Department's current restrictions on use of handguns and handcuffs by bargaining unit personnel (during normal work hours) who are peace officers is a mandatory subject of bargaining since such a restriction is a safety hazard uniquely and especially affecting bargaining unit employees who must make field visits to interview felons. A fortiori, concludes the UPOA, training necessary to allow

the employees to familiarize themselves with these weapons,

which are necessary for protection, should be deemed mandatory.

Discussion

Pursuant to NYCCBL Section 1173-4.3(a)(2), the Law requires that matters which must be uniform for all employees subject to the Career and Salary Plan ~Lre to be negotiated at the City-wide level and with the designated collective bargaining reprpsentative. However, where special and unique considerations exist, bargaining may be held on the same subject at both the City-wide and unit levels. The burden of proof falls upon petitioner to show that special and unique considerations do indeed exist to warrant a finding that bargaining should take place at the unit level.

The Union has failed to meet this burden herein. It has done little more than to allege that special and unique circumstances exist, rather than actually show why and how Probation Officers, by virtue of their specific duties, should be considered separate and apart from other employees with regard to this issue.

Furthermore, we have held that demands for equipment constitute non-mandatory subjects of bargaining

(Decision Nos. B-3-75 and B-16-74), as do demands for weapons, in particular, revolvers for premise use (Decision No. B-16-81). A demand which seeks possession of weapons to aid in performance of job duties is an infringement on management's prerogatives to determine the mission of the agency and the equipment necessary to accomplish that purpose (Decision No. B-16-81). Similarly, the subject of training has been held to be a management right (Decision No. B-10-81). : We therefore hold Demand No. 11 to be non-mandatory.

Demand No. 12 - TIME CLOCKS

> No time clocks for staff members with 10 years of service.

The City argues that this demand seeks to deprive it of its right to "exercise complete control over ... the technology of performing its work" under NYCCBL Section 1173-4.3b. OMLR contends that demands for equipment are non-mandatory and further argues that while demands relating to the number of hours worked may be mandatory, the Board has consistently held that scheduling of shifts is a non-mandatory bargaining subject. Therefore, concludes the City,if the number

of hours worked is the sole mandatory bargaining subject with regard to working hours, then the technology of recording the hours worked is not within the scope of bargaining.

The Union urges that since maximum hours per day or per week and freedom to work are bargainable, then time clock requirements for long time unit employees are bargainable at the unit level. Additionally, the UPOA states that methods of controlling employees reporting in and leaving are bargainable.

Discussion

The instant demand does not appear to deal with the unilateral institution of time clocks, which could amount to a mandatory subject of negotiation if a clear and direct impact on conditions of employment were to be shown. (see Police Association of New Rochelle, 13 PERB 13083 (1980)). Rather, the demand seeks to eliminate the time clo ck requirement for certain employees based on their years of service. As such, the demand seeks to infringe upon the City's right to exercise administrative control of em-ployee attendance and does not constitute a mandatory

subject of bargaining. our finding is consistent with that of the New York State Public Employment Relations Board ("PERB") in Island Trees Union Free School District, 10 PERB 54590 (1977), in which it found that the District did not*violate its duty to bargain when it substituted time clocks for sign-in sheets. As stated by PERB:

> In the absence of any proof tha the respondent has initiated a new attendance or disciplinary rule or varied the starting times or the length of the work day or altered its pay practices, there is no evidence, or even claim, of any change, unilateral or otherwise, in terms and conditions of employ-ment (at p.4680)

We therefore find Demand No. 12 to be non-mandatory.

Demand No. 9 - RELEASE TIME

> Union President to receive release time off for arbitration & labor management meetings over and above his or her 3 days off for union business

Demand No. 15

> Elected union officers to receive two days per week for union activities with a reduction of 50% in the workload
>
> b) Release time for Welfare Fund members to be increased to E075 one day a month

The City maintains that release time for union activity is governdd by Executive Order No. 75# as amended, dated March 22, 1973. This order provides for release time for union officials but does not mandate any diminishment of their duties. Thus, states OMLR, while the issue of release time is bargainable (on the City-wide level) a demand related to workloads impinges directly on management rights under NYCCBL Section 1173-4.3b and, absent a showing or detailed allegation of practical impact, is not within the scope of bargaining.

The Union argues that where, as here, the Respondent is not covered by City'-wide bargaining regarding extension or renegotiation of its agreement with a June 30, 1984 expiration date, Respondent is bargaining independently and Respondent should be permitted to bargain with Petitioner on the subject of such leave.

Discussion

In Decision No. B-3-75, we found that a demand for release time for labor relations and union activities was a mandatory subject of negotiations. Similarly, in Decision No. B-22-75, we held that a demand for paid

release time to conduct union activities which signif-icantly and materially affect the bargaining relationship and which serve to further the policy favoring sound labor relations is a mandatory subject of bargaining. Furthermore, as stated in Decision No. B-16-82, "a demand for release time is negotiable at the unit level with the certified collective bargaining representative for the employees in that unit.

In view of the Union's standing as the certified representative of employees in the Probation Officer collective bargaining unit, the UPOA has the right to bargain with the City on the issue of release time. However, the issue of workload is a non-mandatory subject of bargaining. Thus, we find Demands No. 9 and No. 15(b) to be mandatorily negotiable, at the unit level, and we find Demand No. 15 to,be a non-mandatory subject of bargaining unless the Union clarifies its position within ten days of the date of issuance of the instant Decision and Order to withdraw that portion of Demand No. 15 calling for bargaining over workload.

Demand No. 16 - SENIORITY

> Seniority be a significant factor in the assignment of rooms, transfers of workers or any other work related situations

As originally drafted, the instant demand called for "seniority (to) be determining factor in assignment of rooms, transfer of workers, or any other work related situations" [emphasis added]. The City argued that we have held that seniority is a mandatory bargaining subject except where it conflicts with management's rights under NYCCBL, Section 1173-4.3b. By seeking to have seniority be the "determining" factor in transfer of workers and "any other work related situations", contends OMLR, the instant demand impinged on the City's right to determine the personnel by which government operations are carried out.

The Union states that it purposely modified the instant demand to fall within the scope of bargaining.

Discussion

We have held that where seniority is to be used as the sole criterion in filling vacant posts,[5] it is not a mandatory subject of bargaining, in view

[5]Decision No. B-16-81.

of the management rights provision of the NYCCBL. Similarly, a "pick and bid" seniority-only system de--mand was found to be non-mandatory.[6] However we have stated that "to the extent that a demand seeks the use of seniority as one factor among others" in, or example, filling vacant posts, it would be bargainable.[7]

As modified, the instant demand seeks to have seniority utilized as one factor, albeit-a "significant" one, in room assignments, transfers and other work-related situations. As such, the demand does not impinge upon the City's rights regarding the assignment of personnel. We therefore find Demand No. 16 to be a mandatory subject of bargaining.

Demand No. 19 - DECREASED WAITING ROOM CAPACITY

> Decrease waiting room capacity (health and safety issue)

OMLR argues that this demand infringes upon management's right to determine the means by which its operations are conducted. Furthermore, states

[6]Decision No. B-4-81.

[7]See Decision No. B-16-81, p-16.

the City, as a "health and safety issue" this demand is inappropriate for unit bargaining.

In its sur-reply, the Union contends that this demand is "the result of excessive caseloads and the practical impact on the health, safety and manning of the members of the bargaining unit caused by the present waiting room capacity

Discussion

The Union has chosen to relate the : instant demand to its allegations of excessive caseloads and resultant practical impact. However, it has failed to substantiate its allegations with any probative evidence of either practical impact or of unique or special considerations which would allow for bargaining on both the City-wide and unit levels. Thus, we reaffirm our holding in Decision No. B-2-73 to the effect that matters related to health and safety constitute City-wide issues of bargaining and find Demand No. 19 to be a nonmandatory subject of bargaining.

Demand No. 20 - COVERAGE FOR ABSENCES

> No probation officer or supervisor to cover for any vacationing or otherwise absent probation officer or supervisor. The City must provide a floating pro-

> bation officer or supervisor for this coverage or else pay an extra premium compensation to the probation officer or supervisor handling the double coverage.

OMLR argues that this demand seeks to affect the City's right, under NYCCBL, Section 1173-4.3b, to determine the personnel by which its operations are to be conducted and to direct its personnel. Additionally, it notes that while the Union has alleged practical impact with regard to the demand, the UPOA has made no specific allegations nor shown any proof of such impact.

The Union alleges that a practical impact on the health, safety and workload of the UPOA bargaining unit has been caused by the failure of the City of New York, Department of Probation to provide coverage for absences of bargaining unit personnel.

Discussion

We have held that the City has the right, as a matter of management prerogative pursuant to NYCCBL Section 1173-4.3(b), to determine assignments uni-

laterally[8] and has the power and duty to determine levels of manning.[9] Absent a showing of practical impact and a failure of management to alleviate it, the City is under no obligation to bargain these subjects.[10]

The Union has done no more then to allege practical impact herein; it has failed to provide the Board with anything more than mere conclusory allegations rather than specific details to substantiate its position. We therefore find Demand No. 20 to be a non-mandatory subject of bargaining.

CATEGORY "B"

OMLR argues that the following demands relate to City-wide subjects of bargaining and are negotiable only at the City-wide level:

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[8]Decision No. B-19-79.

[9]Decision No. B-5-75.

[10]Decision No. B-13-74.

Demand No. 4

Workers allowed paid overtime 2 1/2 hrs.
on receiving nights

Demand No. 13

Advanced sick leave up to one year
be granted to anyone on staff 10
years with proper medical verification.

Demand No. 17

Union dues or administrative fee be deducted from new workers by their 3rd check and double dues be taken out for periods not paid since new worker is on payroll

Demand No. 21

Martin Luther King holiday to be added to list of approved holidays

Demand No. 22

20 vacation days for starting PO's to be retained

The City states that bargaining levels for the different subjects of collective bargaining are governed by NYCCBL, Section 1173-4.3a(2) and that the certified bargaining representative for employees such as those represented by the UPOA, which are subject to the Career and Salary Plan, is District Council 37. OMLR urges that the Union cannot "withdraw" from the City-wide bargaining, but rather is subject to agreements made on City-wide subjects by the certified representative. Similarly, contends OMLR, although the City may have bargained on variations or particular applications of City-wide subjects with unit representatives,

it is allowed to do so by the NYCCBL. OMLR argues that in order for unit demands on City-wide subjects to be allowed to be presented to an Impasse Panel, there must be "... a showing, rather than a mere allegation, of special and unique circumstances," and that while the Union had made this allegation herein, it has offered no substantiation in support thereof.

The City states that it has not waived its rights to bargain the above subjects on the City-wide level, as alleged by the Union, and argues that the Union has not alleged any express waiver by the Petitioner of its rights in this regard, nor has it cited any authority upon which an implied waiver can be based. Similarly, asserts the City, while the UPOA alleges that Petitioner "... should be deemed ... to be estopped" from insisting that the above subjects be bargained on the City-wide level the Union has not cited any authority for such estoppel nor has it alleged any operative circumstances under which such estoppel would apply.

Finally, in response to the Union's claim that the nature of the City's negotiations with D.C. 37

creates such circumstances as to enable the UPOA to negotiate independently with regard to City-wide subjects, OMLR states that the Union has failed to cite any authority for this claim, and, further, does not indicate how negotiations with regard to the instant City-wide Agreement differ substantively from those conducted in the past, "in that all bargaining on City-wide subjects necessarily has an economic effect upon those employees covered by the City-wide contract." (emphasis supplied)

With regard to the above subjects, the Union asserts that "in view of the nature of Petitioner's bargaining with D.C. 37" the City has waived its rights, or is estopped, from insisting that these subjects be bargained on only the City-wide level. The Union states that

....when the City-Wide representative and the employer herein combine cost or financial elements of the City-wide agreement and cost or financial elements of the agreement covering D.C. 37 and its constituent locals and, in so doing, reduce the level of benefits or the cost package to the detriment of non-D.C. 37 constituents, such acts constitute a waiver of the, right of D.C. 37 and the City of New York to bargain City-Wide concerning

> such demands or estoppel should be applied against the City of New York and D.C. 37 to preclude invocation of a claim of City-Wide exclusivity vis-a-vis such demands.

Furthermore, the UPOA maintains that the city waived its right or is estopped from claiming its right to bargain only at the City-wide level since its representatives negotiated with representatives of individual bargaining units on these subjects in the. 1984 collective negotiations between the City and its various municipal unions.

Additionally, the Union argues that it is not a participant in City-wide or coalition negotiations and is not covered by City-wide bargaining regarding extension or renegotiation of its agreement with a June 30, 1984 expiration date. Thus, reasons the Union, the actions of the City and D.C. 37, in combining City-wide and D.C. 37 constituent negotiations and agreeing upon an economic package based on the same elements, creates unique circumstances entitling the UPOA, bargaining independently, to bargain with the ity over the above demands.

Discussion

NYCCBL Section 1173-4.3(a)(2) is clear in its requirement that

> matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty per cent of all such employees .... (emphasis added)

Demand No. 4, relating to overtime, and Demand Nos. 13, 21 and 22, relating to sick leave, holidays and vacations,respectively, fall within the unambiguous language of the above Section and constitute matters which must be uniform City-wide. Such a finding is in keeping with our prior decisions relating to the same subjects: Overtime (Decision No. B-11-68), Sick leave (Decision No. B-3-75), Holidays (Decision Nos. B-11-68, B-4-69, B-1-70) and Vacations (Decision Nos. B-11-68, B-16-81). In fact, the demand for overtime, by mandating when overtime is to be paid, appears to infringe upon management's right to determine assignments and the level of services to be provided.

With regard to Demand No. 17, concerning "union dues or administrative fee" deductions, we have long recognized the necessity for pay practices to be uniform on a City-wide basis (Decision No. B-11-68). By calling for negotiations on the aforementioned deductions on a unit level, the Union is impinging upon the City's right to establish and implement such practices on a City-wide basis. We therefore hold Demand No. 17 not to be mandatorily bargainable on the unit level.

In summary, while the five demands enumerated above relate to mandatory subjects of bargaining, they are subjects negotiable at the City-wide level. The parties may, ofcourse, voluntarily agree to discuss these and other demands which would normally be mandatorily bargainable only at the City-wide level. However, absent such agreement, or the establishment of unique or special considerations, these subjects remain negotiable only at the City-wide level, with the designated representative of Career and Salary Plan employees.

District Council 37 is the City-wide representative by virtue of the fact that it qualifies as such under the terms of Section 1173-4.3(a)(2). As City-wide representative D.C. 37 is designated and authorized

to negotiate and to contract on behalf of all employees subject to the Career and Salary Plan as to all matters which must be uniform for all such employees. That D.C. 37 engaged in unit bargaining with the City on behalf of its own members separately, rather than as part of a coalition in the latest round of negotiations, does not change or alter its status as the sole and exclusive collective bargaining representative for Career and Salary Plan employees on City-:wide matters of bargaining. Nor does it result in the city's having waived or being estopped from rightfully insisting that City-wide subjects of bargaining continue to be negotiated with the designated representative at the City-wide level. A variation in the structure of negotiations does not create special and unique considerations calling for unit bargaining nor does it remove the UPOA from those provisions of the NYCCBL which obligate it to be bound by agreements that D.C. 37, within its mandate as City-wide representative, has negotiated for Career and Salary Plan employees. We therefore find that the demands numbered 4, 13, 17, 21 and 22 are not mandatory subjects of bargaining at the unit level.

DETERMINATION

NOW, THEREFORE, pursuant to the powers vested the Board of Collective Bargaining by the New York City Collective Bargaining Law, and for the reasons set forth in the foregoing decision, it is hereby

DETERMINED, that the following Union proposals are within the scope of mandatory collective bargaining between the parties herein: 9, 15(b), and 16; and it is further

DETERMINED, that the following Union proposals are not within the scope of mandatory collective bargaining between the parties herein: 2, 4, 6, 11, 12, 13, 17, 19, 20, 21, and 22; and it is further

DETERMINED, that Union proposals 5 and 15 are not within the scope of mandatory collective bargaining between the parties herein unless amended within ten days of the date of issuance of the instant Decision and Order in accordance with the directions described Above; and it is further

Decision No. B-23-85
Docket Nos. BCB-770-85,
BCB-787-85
(I-175-85)

DETERMINED, that questions relating to the follow-

ing Union proposal be submiited to arbitration: 10.

DATED: New York, N.Y.
July 29, 1985

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS

MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER