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

THE CITY OF NEW YORK,

Petitioner,

-and-

UNITED PROBATION OFFICERS ASSOCIATION,

Respondent.
- - - - - - - - - - - - - - - - - - - x

DECISION NOL B-23A-85

DOCKET NO. BCB-770-85,
BCB-787-85
(I-1750-85)

AMENDED 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"). On may 29, 1985, in the case docketed as BCB-787-85, the City filed another petition challenging the arbitrability of two additional demands. In order to avoid unnecessary delay and to best effectuate the policies of the NYCCBL cases BCB-770-85 and BCB-787-85 were consolidated for the purposes of decision.

On July 29, 1985, the Board issued Decision No. B-23-85, determining whether 17 Union demands were within the scope of mandatory collective bargaining between the parties. On August 21; 1985 the Union filed a Motion for Reconsideration and Clarification of that portion of the Decision No. B-23-85 pertaining to "Demand No. 10-CAPS OF CASELOADS." The City filed an Answering Affidavit on August 26, 1985.

Background

The Union's demand regarding caseloads read as follows:

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

In its initial pleadings, the City argued 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 Union's allegation of "practical Impact" deriving from increased caseloads, the City maintained that this issue has been previously adjudicated by the Board in Decision No. B-2-76 and that the Union had not alleged or shown any change in the underlying circumstances of the situation dealt with in that decision so that the request for a finding of practical impact should be denied.

The Union, however, maintained that the continued imposition of caseloads by the City on its members in excess of those set forth in the instant demand has caused practical impact on the workload, manning, health and safety of UPOA members within the meaning of NYCCBL Section 1173-4.3b. The UPOA submitted an affidavit of Wallace Cheatham, President of UPOA, in support of its position.

In this affidavit, Cheatham avers that, inter alia, from 1979 to 1985 caseload and workload for Probation Officers in Supervision and Investigation has

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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 investigations 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 (d) there has been a "complete loss of professionalism" among Supervisors completing investigations.

In Decision No. B-23-85, the Board discussed the case docketed as BCB-505-81, referred~to above by Cheatham. Essentially, in BCB-505-81, the City filed a petition 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. Extensive hearings were held, primarily relating to the impact of increased caseloads on unit employees. In May, 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 resolution of the matters contained therein through negotiations. A Settlement Agreement was

reached in February, 1983. Shortly thereafter, however, the Union raised questions concerning the City's compliancd with the terms of the Settlement Agreement. At the recommendation of the Board, the matter was brought to arbitration in March, 1984. In Septemer, 1984, the Arbitrator issued his award, in which, inter alia, he ordered the City to "maintain an increase in bargaining unit positions...."

In Decision No. B-23-85, we held that

> 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 autually been complied with.

The Board declined to rule on the bargainability of Demand No. 10, presently at issue, and directed the parties to submit any controversies relating to the settlement of BCB-505-81 to arbitration.

Positions of the Parties

The UPOA states that it is not presently claiming a violation of the Settlement Agreement relating to BCB-505-81, which it maintains resolved the Union's demand for caps on caseloads only for the duration of its 1982-1984 unit agreement with the City. Rather, the Union requests that the Board address anew its current claim that a continuing increase in caseloads beyond what was shown to exist in the prior proceedings before us or in the arbitration hearings thereafter has resulted in a practical impact on present employees. The Union states that "caseloads continue to grow for UPOA unit members in practically geometric progression in a period of approximately six years with attendant practical impact" and that this has occurred "while the Department of Probation's personnel increases in the unit are arithmetically diminimus." (emphasis supplied) Based on statistics taken from the Mayor's Management Reports, UPOA President Cheatham points out that

> Since 1979 the number of individuals on probation has increased from under 25,000 to nearly 45,000 and caseloads per probation officer from 120 to slightly over 200.

The Union also notes that its claims of increased caseloads and resultant practical impact stand unrebutted by the City.

The City argues that in the Motion for Reconsideration, the Union has merely restated its arguments made in prior submissions regarding the bargainability of the caseload caps demand. Such restatement of arguments, concludes OMLR, is an insufficient basis for reconsideration.

The City further contends that the Board's finding in Decision No. B-23-85 indicates that "the sole issue for arbitrational determination is whether the terms of the Settlement Agreement have been complied with." (Emphasis supplied). Thus, maintains OMLR, in that the Union has stated that it is not now claiming a violation of the Settlement Agreement, the Union has "foreclosed itself from submitting such issue to arbitration."

Discussion

The explanation and supporting documentation presently submitted by the Union with regard to the current situation at the Department of Proi)ation as it pertains to Demand No. 10 - CAPS OF CASELOADS, warrants reconsideration by this Board of the barqainaLilitv of the

demand. The Union's Motion makes it clear that it .Is not presently alleging a failure to comply with the terms of the Settlement Agreement entered into in resolution of BCB-505-81. Rathei, the Union is arguing that caseloads have continued to increase dramatically, that additions to staff have been minimal, and that there has been and currently is a resultant practical impact on the workload of Probation Officers.

While the Answering Affidavit of the City neither refutes nor denies the statistics relied upon by the Union, we maintain that the present pleadings raise issues sufficient to warrant the holding of hearings to determine whether 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. Such a decision does not, of course, alter our earlier finding that the subject of caseload, in and of itself, is not within the scope of mandatory collective bargaining between the parties. Accordingly, we shall direct that a Notice of Hearing be issued forthwith and that hearings on the issue of practical impact as discussed herein be commenced within fourteen

days of the date of issuance of the instant Amended Decision.

DETERMINATION

NOW, THEREFORE, pursuant to the powers vested in 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

ORDERED, that a Notice of Hearing be issued forthwith scheduling a hearing to commence within fourteen days of the date of issuance of this Amended Decision to determine whether 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.

DATED: New York, N.Y.
October 9, 1985

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER