***Patrolmen's Benevolent Ass'n*, 39 OCB 24 (BCB 1987) [Decision No. B-24-87], *aff'd*, *Caruso v. Anderson*, 138 Misc.2d 719, 525 N.Y.S.2d 109 (N.Y. Co. 1987), *aff'd*, 145 A.D.2d 1004, 536 N.Y.S.2d 689 (1st Dept. 1988), *leave denied*, 73 N.Y.2d 709, 540 N.Y.S.2d 1004 (1989).**

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

-between-

PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK, INC.,

Petitioner,

DECISION NO. B-24-87
DOCKET NO. BCB-920-86

-and-

NEW YORK CITY POLICE DEPARTMENT
AND THE CITY OF NEW YORK,

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

DECISION AND ORDER

This proceeding was commenced on November 10, 1986 with the filing of a verified improper practice petition by the Patrolmen's Benevolent Association of the City of New York ("PBA" or "petitioner") against the New York City Police Department and the City of New York ("NYPD" or "City"). The City, appearing by its Office of Municipal Labor Relations, filed a verified answer on May 22, 1987. The PBA submitted a reply on June 8, 1987, and the City filed a surreply on June 18, 1987.

The petition alleges that the City has violated Section 1173-4.2a(4) of the New York City Collective Bargaining Law ("NYCCBL")[1] by unilaterally enacting

[1]This section states that that it is an improper practice for an employer "to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified cr designated representatives of its public employees."

Interim Order No. 60, which establishes a point system to determine eligibility for assignment and promotion, and revokes a 1976 series of interim orders on the same subject.

Background

Interim Order No. 60 was issued on September 26, 1986, and it describes the "Career Program for Police Officers." According to the text of the order, the goal of this program is to establish a system that "allows the department to place and promote qualified, experienced police officers" and "permits police personnel, on their own initiative, to become qualified for their own assignment and career preference." Order No. 60 sets forth a point system by which a numerical value, or point, is assigned to various types of job assignment, educational attainment, evaluation ratings, departmental recognition, etc. After compiling a minimum of 15 points, a police officer becomes eligible to request and to be considered for transfer to the precinct of choice, or to a nonprecinct or investigative assignment. Specifically, paragraph 12 of Interim Order No. 60 provides that the criteria for consideration for an "investigative assignment" include the successful

completion of two years in an investigative assignment in certain commands[2] or four years in certain other units.[3]

Positions of the Parties

The Petitioner's Position

The PBA takes the position that "the point system is inherently unfair and violative of the contract of employment of the New York City Collective Bargaining Law because it unduly and unwarrantedly gives preference" to members of departmental units listed in footnote 2 below over those listed in footnote 3. The PBA charges that certain units given preference

> are filled with favorites and cronies of the superior officers and the management of the Police Department. The work done by these units is ... completely secondary to the original aim of the Police Department, which is protection of the public from criminals .... The personnel of these units have as their primary goal... observation and informing upon the police [whereas the objective of the

[2]Organized Crime Control Bureau, Inspectional Services Bureau, Field Internal Affairs Units, Civilian Complaint Review Board, Bias Incident Investigation Unit.

[3]Applicant Investigation Section (Personnel Bureau), Accident Investigation Squad (Highway District), Robbery Identification Program, Warrant Division.

> units not given preference is] the detection and apprehension of criminals and the rendering of assistance to injured citizens. Surely service in these units is just as valuable as service in the internal spy squads,...

The PBA alleges that this allocation is not a legitimate exercise of discretion, "but a naked attempt to elevate favorites and cronies over members of the petitioner's membership who cive honest and legitimate service to members of the public."

The petitioner contends that the changes made in the Career Program by Interim Order No. 60 not only violate the collective bargaining agreement but also "directly affect the working conditions of all Police Officers seeking advancement ... [and thus constitute] a matter within the scope of collective bargaining...."

The City's Position

The City argues that the establishment of objective means for selecting personnel for assignment and promotion falls within the statutory rights granted by NYCCBL Section 1173-4.3(b).[4] Secondly, the City contends that

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[4]This section reads, in relevant part:

> It is the right of the City,...acting through its agencies, to determine the standard of services to be offered by its agencies; determine the standards of selection for employment;

(continued...)

Interim order "defines levels of achievement necessary for optimum on-the-job performance," and that the establishment of such qualifications for promotion is a managerial prerogative, citing a number of" PERB decisions.

Discussion

The gravamen of the petition herein is that the PBA disagrees with the NYPD's judgment that experience in certain units is more valuable preparation for investigative assignments than experience in other units. In making this judgment, the Department has, in effect, set qualifications for special assignments and promotion. Thus, the issue presented herein is whether the setting of such qualifications is within the scope of collective bargaining. We find that it is not.

(...continued)

> 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.

It is well settled PERB law that a term or condition of employment is a mandatory subject of bargaining, but that the setting of qualifications for initial employment[5] or for promotion is not a mandatory subject of bargaining.[6] We have agreed that the establishment of qualifications for advancement and promotion fall well within the realm of those powers reserved to the City by Section 1173-4.3(b).[7] Thus, we find in the instant case, that the judgment that some types of experience are more valuable than others in preparing employees for particular assignments or promotion is the type of judgment reserved to the City by Section 1173-4.3(b).

We find the PBA's allegations of cronyism and favoritism to be mere conclusions unsupported by any factual allegations, and in any case these allegations do not state an improper practice within the definition of Section 1173-4.2a of the NYCCBL.

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[5]Rochester School District, 4 PERB 4509, aff'd 4 PERB 3058 (1971).

[6]Rensselaer City School District, 13 PERB 3051 (1980), aff'd 15 PERB 7003, App. Div., 488 N.Y.S. 2d 883 (1982); Fairview Professional Firefighters Assn, 13 PERB 3083 (1979); West Irondequoit Board of Education, 4 PERB 4511, aff'd 4 PERB 3070 (1971).

[7]Decision No. B-38-86.

Although the petition alleges that the contract has been violated, the provision alleged to be violated is not specified. Furthermore, under the circumstances herein the Board has no jurisdiction over a claimed contractual violation;[8] any such claim is subject to the grievance-arbitration procedure.

For the reasons set forth above, we are compelled to dismiss the petition herein.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

[8]Section 205.5(d) of the Taylor Law, which is applicable to this agency, provides that:

> ...the board shall not have authority to enforce an agreement between a public employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

ORDERED that the improper practice petition filed by the Patrolmen's Benevolent Association in Docket No. BCB-920-86 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
June 22, 1987

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