PBA v. NYPD, 41 OCB 34 (BCB 1988) [Decision No. B-34-88]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- X

In the Matter of

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

DECISION NO. B-34-88

DOCKET NO. BCB-956-87

Petitioner,

-and-

THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Respondent.

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INTERIM DECISION AND ORDER

On May 12, 1987, the Patrolmen's Benevolent Association of the City of New York ("PBA" or "petitioner") filed an amended petition[1] seeking a determination that a directive issued by the Office of the Administrative Judge of the New York City Criminal Court involves the safety of some of its members and therefore is an issue within the scope of collective bargaining. The City of New York, appearing by its Office of Municipal Labor Relations ("the City" or "respondent"), filed an answer to the petition on July 26, 1987. On July 31, 1987, petitioner submitted a reply.[2]

[1] In accordance with petitioner's request, its original petition, filed on May 11, 1987, is deemed to be superseded by the amended petition.

[2] Extensions of prescribed time limits for the submission of respondent's answer and petitioner's reply were granted by the Office of Collective Bargaining.

Background

Part AR-2 of the Kings County Criminal Court, located in Brooklyn, is one of two arraignment parts in that court. Adjacent to Part AR-2 is a holding area where persons awaiting arraignment ("prisoners") are confined. Certain procedures attendant to the arraignment process are conducted in the holding area, including conferences between prisoners and their attorneys.

Prior to May 1987, prisoners were brought from the holding area into the courtroom on a case-by-case basis - as many prisoners as there were co-defendants in a case, or as were defendants in companion cases. The prisoners were not handcuffed. Effective May 11, 1987, as a result of a meeting in which representatives of the New York City Police Department ("the Department") participated, it was determined that prisoners would be brought into the courtroom in groups, without regard to any relationship between or among their cases. According to the City, the new procedure is intended to expedite the arraignment process by minimizing time spent escorting prisoners into the courtroom and by making more space available in the holding area.

Three police officers are assigned to maintain custody and control over prisoners during the arraignment

process. These officers do not carry firearms and, at times, the assignment is given to officers who are on limited or restricted duty.[3] Armed court officers are present in the courtroom and are available to assist the police officer, if necessary. However, court officers do not have direct responsibility for the custody and control of prisoners. Under the new procedure, prisoners in the arraignment part continue to be unhandcuffed.

As of June 8, 1987, the new procedure in effect in Part AR-2 was to be extended to Part AR-1.

Positions of the Parties

Petitioner's Position

Petitioner asserts that the change in the arraignment procedure at issue here concerns the safety of PBA members. Since safety is a term or condition of employment, petitioner argues, the change in the procedure necessarily is a matter within the scope of collective bargaining.

The PBA further asserts that the change in the arraignment procedure will have a "definite impact" on the safety of police officers who are assigned to Part AR-2.

[3] The City denies that police officers who are physically disabled are assigned to Part AR-2.

Petitioner states:

> (a] single police officer, unarmed, often on medically restricted duty, would be required to maintain control and custody over five unhandcuffed prisoners, who might well be extremely dangerous individuals, capable of inflicting great bodily harm and supported by family members and friends, seated as close as ten feet away.

Moreover, petitioner asserts, in the event of injury to prisoners or to members of the public, the assigned police officer who is responsible for all occurrences involving the prisoners while they are in the courtroom, may be subjected to investigation, disciplinary action, even indictment.

In its reply to the City's answer, the PBA asserts that in several instances prisoners have been found to possess dangerous instruments or weapons in the courtroom; that court officers are not necessarily available to assist the police officer and may, in some circumstances, aggravate a situation in the courtroom; and that the barriers separating prisoners from spectators in the courtroom gallery are not an effective deterrent to communication between the two groups. Petitioner denies respondent's assertion that, for many years, police officers have been bringing anywhere from two to ten un-handcuffed prisoners into the courtroom at one time

without complaint from the PBA, and concludes that prisoners should be handcuffed while awaiting arraignment in the courtroom.

For a remedy in this proceeding, petitioner seeks a declaration that the change in the arraignment procedure is a matter within the scope of collective bargaining between the parties.

Respondent's Position

The City asserts that in initiating the new arraignment procedure, it is merely exercising its management right pursuant to Section 12-307b (former §1173-4.3b) of the NYCCBL[4] to determine the methods and means by which a part of its operation is to be conducted. Respondent asserts that the procedure by which prisoners

[4] Section 12-307b of the NYCCBL provides:

> It is the right of the City, or any other public employer, acting through its agencies, to 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.

are arraigned is a central element of the mission of the Police Department. In order to accomplish its mission, the City contends, it must be free to act unilaterally in this matter. The City argues, moreover, that a finding that a change in Department procedure is within the scope of collective bargaining would be contrary to established Board precedent.[5]

Respondent also contends that petitioner has failed to establish any practical impact resulting from the new procedure. According to the City, the new procedure does not pose any additional danger to police officers assigned to Part AR-2 because:

(a) as in the past , prisoners are repeatedly searched for weapons prior to entering the holding area adjacent to Part AR-2;

(b) an additional court officer has been assigned to Part AR-2, increasing the total number of such officers to six. These officers are armed and are available to assist police officers, if necessary;

[5] Respondent cites Board Decision No. B-42-86 wherein we held that the promulgation of a notification and assessment procedure relating to civilian complaints filed against police officers was a proper exercise of the City's management rights under the NYCCBL.

(c) the prisoners awaiting arraignment are seated approximately twenty feet from spectators in the courtroom gallery and are separated from the public by two three-foot high barriers and a court officer's desk. Respondent asserts that, for many years, in the New York County and Kings County Criminal Courts, police officers have been bringing anywhere from two to ten unhandcuffed prisoners into the courtroom at one time without complaint by petitioner. In any event, it is alleged, police officers in Part AR-2 may exercise their discretion concerning the number of prisoners to allow in at a given time.

Based upon the foregoing, respondent requests that the petition be dismissed.

Discussion

Although the may 11, 1987 directive that gives rise to the instant dispute has not been placed before the Board, it is clear that the essence of the order is to permit a greater number of persons awaiting arraignment in the Brooklyn Criminal Court to be in the courtroom at one time than was the case when prisoners were brought into the arraignment part on a case-by-case basis. Because of its concern that the prisoners may have a propensity for violence or disruptive behavior, petitioner contends that implementation of the new directive will have an

adverse impact on the safety of police officers assigned to have custody and control over prisoners in the arraignment part. The PBA also claims that there will be an increased potential for investigatory, disciplinary and legal action to be taken against police officers as a result of the new procedure.

It is well-settled that it is the City's prerogative to determine the level and standard of service to be rendered by its agencies, to maintain the efficiency of government, and to determine the methods, means and personnel by which its operations are to be conducted. These rights are expressly reserved to management in Section 12-307b of the NYCCBL and are not subject to mandatory collective bargaining. In the instant matter, we agree with the City that the initiation of a new arraignment procedure was within its management rights under the NYCCBL. Decisions concerning the number of prisoners to be escorted into the courtroom at any one time, whether prisoners should be brought in on a case-by-case basis or not, and whether they should be handcuffed or not, have to do with the "methods" and "means" to be employed in moving prisoners through the arraignment process and clearly are not subjects concerning which the City must consult or negotiate with petitioner. Accordingly, we reject the PBA's claim that the change in the arraignment procedure is a matter

within the scope of collective bargaining.[6]

Section 12-307b of the NYCCBL also recognizes, however, that decisions on matters that are reserved to management under the statute nevertheless may have a practical impact on employees; it expressly provides that questions of practical impact "are within the scope of collective bargaining." Therefore, to the extent that the PBA may establish that the new arraignment procedure has a practical impact on police officers assigned to Part AR-2, the City may be required to bargain with the PBA concerning that impact.[7]

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[6] Cf. Decision Nos. B-31-88 (change in procedure relating to involuntary restraint of hospitalized prison inmates); B-42-86 (initiation of procedure for reporting to superior officers civilian complaints concerning police officers in their commands); B-6-79 (issuance of order instituting solo supervisory patrols for police Sergeants and Lieutenants); B-5-75 (change of formula for manning of precinct radio motor patrol cars; change in 24-squad system in order to afford Police Department flexibility in manning.)

[7] In most cases where a practical impact has been found to exist, the employer is permitted to relieve the impact either through the unilateral exercise of its management rights or by negotiating with the Union concerning changes in wages, hours and working conditions. The employer will be ordered to bargain over the means to be used to alleviate practical impact only if the Board finds that it has not expeditiously relieved the impact through unilateral action. Decision Nos. B-31-88; B-41-80; B-2-76; B-9-69. However, in two categories of practical impact, that resulting from a management decision to lay off employees or from a decision involving a threat to employee safety, the Board has directed immediate bargaining to relieve the impact before implementation of the management decision. Decision Nos. B-6-79; B-5-75; B-3-75.

Here, petitioner has asserted two forms of practical impact. First, it alleges that the safety of police officers will be endangered by the introduction into the arraignment part of a greater number of unhandcuffed prisoners. Respondent contends that the PBA has failed to establish any practical impact resulting from the new procedure. As we have previously held, the question whether a management action has a practical impact on employees is a question of fact which may require the holding of a hearing.[8] Since the parties to this matter dispute many of the facts which clearly have a bearing on whether a safety impact exists, and since we find that a substantial issue has been raised in this regard, we shall direct that a hearing be held before a Trial Examiner designated by the Office of Collective Bargaining. Furthermore, we note that the petition herein, and the amended petition, were filed before the new arraignment procedure was fully implemented in Part AR-2, and that it was understood by both parties that the procedure would be extended to Part AR-1 as of June 8, 1987. As the new procedure has now been in place for a considerable period of time in both arraignment parts of the Kings County Criminal Court, we see no reason not to consider, evidence

[8] Decision Nos. B-31-88; B-43-86; B-38-86; B-18-85; B-2-76; B-16-74.

of alleged practical impact on safety as it may affect police officers assigned to each part. We shall therefore direct the parties to address themselves to the question of safety impact in both arraignment parts.

Petitioner also suggests that under the new arraignment procedure, police officers assigned to the arraignment part may be in greater danger of becoming involved in situations which subject them to investigation, discipline or indictment. We find that this allegation of "practical impact" is conclusory and speculative at best and does not warrant further examination by this Board.

ORDER

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

DETERMINED, that the City of New York acted in the proper exercise of its reserved management rights, as defined in Section 12-307b of the New York City Collective Bargaining Law, when it initiated a new procedure in Part AR-2 of the Kings County Criminal Court; and it is hereby

ORDERED, that the request for an order declaring that the change in the arraignment procedure in Part AR-2 of the Kings County Criminal Court is a matter within scope of collective bargaining between the parties be,

and the same hereby is, denied; and it is further

ORDERED, that the issue of a practical impact on the safety of police officers assigned to arraignment Parts AR-2 and AR-1 in the Kings County Criminal Court since the initiation, on May 11, 1987 and June 8, 1987, respectively, of a new arraignment procedure be referred to a Trial Examiner designated by the Office of Collective Bargaining for the purpose of conducting a hearing and establishing a record upon which this Board may determine whether any practical impact exists; and it is further

ORDERED, that all allegations of practical impact other than the allegation of a practical impact on safety referred to above be, and the same hereby are, dismissed.

DATED: New York, N.Y.
July 27, 2988

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD F. GRAY
MEMBER

JEROME E. JOSEPH
MEMBER

EDWARD SILVER
MEMBER

DEAN L. SILVERBERG
MEMBER