

UPOA v. City, DOP, 43 OCB 38 (BCB 1989) [Decision No. B-38-89
(Scope)]

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

UNITED PROBATION OFFICERS
ASSOCIATION,

DECISION NO. B-38-89

DOCKET NO. BCB-1107-88

Petitioners,

-and-

CITY OF NEW YORK, DEPARTMENT
OF PROBATION,

Respondent.

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DECISION AND ORDER

The United Probation Officers Association ("the Petitioner" or "the Union") filed a scope of bargaining petition on November 2, 1988, against the New York City Department of Probation ("the Department" or "the Respondent"), alleging that the respondent has refused to negotiate over the impact on the health and safety of Probation Officers who have been given new job specifications and have been assigned to the Field Services Unit. The Department, appearing by the Office of Municipal Labor Relations ("the City"), filed its answer to the petition on November 21, 1988. The Petitioner filed a reply on December 9, 1988.

In an interim ruling (Decision No. B-70-88) rendered on December 20, 1988, this Board found that the Union's petition

raised an issue of practical impact, and directed that a hearing be held in order to permit the resolution of factual questions related to that issue. Accordingly, a hearing was held which began on March 1, 1989, was continued on March 7, and was conditionally concluded on March 15, with the Union reserving the right to request that the hearing be reopened in order for it to submit a supplemental exhibit. At the Union's request, the hearing was briefly reopened on April 12, 1989, and an additional exhibit was entered into the record.

On May 9, 1989, the parties submitted their post-hearing briefs. On May 18, 1989, the Union filed a reply brief to the City's post-hearing brief. On June 6, 1989, the City filed an answer to the Union's reply brief. Thereupon, the record was closed.

FACTS

On or about September 28, 1988, the New York City Department of Personnel notified the Petitioner by letter that it was revising the job specification for Probation Officers to include the duties that were being performed by members of the Field Services Unit. The letter reads as follows:

Based on a request from the Department of Probation and after careful study, we have

determined that it is appropriate to revise the class specification for subject title. Attached is a copy of our proposed revision.

Please be advised that the City Personnel Director plans to adopt this revised class specification five (5) days from now.

Attached to the letter was a revised job specification for the title of "Probation Officer." Among the revisions was a newly-added section containing the following provision:

When assigned to the Field Services Unit, may be required to perform violation of probation warrant investigations; make collateral field visits; enforce violation of probation warrants; execute warrants; perform "failure to report" investigations and requisite field visits; detain or take into custody probationers wanted by law enforcement agencies; assist the Office of General Counsel in the preparation of cases for the Violation of Probation process; and execute search orders.

There are approximately 30 Probation Officers and Supervising Probation Officers currently working as Field Services Unit ("FSU") members, out of a bargaining unit of approximately 800 Officers. The issues raised by this revised job specification concerns the work of FSU members, who, unlike other Probation Officers, are issued various articles of police equipment, including firearms, soft body armor, chemical Mace, handcuffs, portable radios capable of operating on police frequencies, rain gear, binoculars, windbreakers with "POLICE" stenciled on the back panel, and cars equipped with sirens and

flashing lights. FSU officers are expected to execute warrants, make field visits to absconders, and engage in periodic "sweeps" in attempts to apprehend probation violators.

The parties dispute whether the revised job specification reflects existing work of Probation Officers, or whether it constitutes a unilateral change in Probation Officers' job duties and requirements. The City contends that the Field Services Unit has been formally in existence since March of 1985, and that the only actual change since then has been the amendment of the Probation Officer job description. Therefore, according to the City, the Union has waived its right to raise a claim of practical impact on the safety of Probation Officers working in the FSU because it has had full knowledge of the Unit's activities and assignments since 1985. In contrast, the Union asserts that the promulgation of the revised job specification in September, 1988, constitutes a major change in Probation Officers' work because, in the past, all FSU members were volunteers, whereas under the revised specification, the Department has the ability to require qualified Probation Officers to serve involuntarily in the Field Services Unit.

The Union's Evidence

In support of its position, the Union produced eleven witnesses who described the equipment and training that members of the Field Services unit receive, and recounted some of the more dangerous situations that they had been involved in while serving with the FSU. The witnesses all said that they volunteered to serve in the Field Services Unit, and many of them contrasted FSU work with the more typical duties of non-FSU Probation Officers.

Probation Officer Joseph Espanol testified that he has worked with the Manhattan Field Services Unit for about a year and a half, and he contrasted his present assignment and training with his former work as a Probation Officer in supervision. While in the FSU, he has been teamed up with law enforcement officers from the New York City Police Department, as well as with federal agents from the Bureau of Alcohol, Tobacco and Firearms, and the Drug Enforcement Administration. He said that during the time that he has worked in the FSU, he has made hundreds of hands-on arrests.

Officer Espanol stated that he is currently working on a case involving a "drug empire," and that, during the last six months, he and his partner arrested one of the biggest drug dealers in the Bronx "who was bringing in four and a half kilos of heroin a week and was dealing in Uzi machine guns." He testified that, as a result, a "contract" had been placed on his

life and on the life of his partner. Officer Espanol also recounted an episode when he attempted to make an arrest of a PCP user on a fire escape and almost got thrown off. He said that his work has been the subject of T.V. news stories and of newspaper articles. Officer Espanol testified that his job causes him a great deal of stress, that he does not sleep well, and that his wife is very concerned about his work.

Under cross examination, Officer Espanol acknowledged that the rooftop PCP incident occurred before the Field Services Unit came into existence. He explained, however, that at the time, he had been working as a member of the Warrant Liaison Unit, which was a precursor of the FSU and essentially was no different.

Supervising Probation Officer Richard Bollenbacher testified that he has been the supervisor of the Queens Field Services Unit since October of 1987. Officer Bollenbacher said that FSU officers receive firearms training at the police range and are re-certified every six months, and that they are also taught the Penal Law, authorization of the use of deadly physical force, self-defense, how to handle emotionally disturbed persons, and arrest tactics and techniques. He identified various departmental publications, including a 102-page handbook for Probation Officers assigned to the FSU, two memoranda on boobytraps, and a memorandum requiring that teams of no fewer than three FSU officers undertake warrant investigations which

may reasonably be expected to result in an arrest.

Officer Bollenbacher stated that separate departmental policies apply to the Field Services Unit, explaining that Probation Officers typically work alone and in the office, whereas the FSU officers always work in teams and most of their work is in the field. He said that much of the FSU work involves joint operations with other agencies, noting that the FSU has been involved with the Tactical Narcotics Team program since the TNT program started.

Officer Bollenbacher cited the arrest of Andrea Thomas, sought for being involved in the homicide of Police Officer Edward Byrne, as an example of the dangerous individuals with whom FSU members come into contact. He also described the arrest of an individual thought to be in possession of a hand grenade, a raid on a crack den, an altercation during an arrest where a police officer working with one of his teams was struck in the head with a brick resulting in an injury serious enough to force his retirement, and the unsuccessful attempt to locate and apprehend a man who was believed to be a "hit man" responsible for five to seven homicides and who was featured on the television program, "The Ten Most Wanted." Officer Bollenbacher testified that the hours that he works result in the loss of sleep and in less social activities, and that FSU work poses greater danger to his health and safety than his former work in

investigations.

Supervising Probation Officer Miguel Ibarra testified that he is a member of the Bronx Field Services Unit, and that he has held that position for four years. He reiterated the training and equipment that FSU members receive, and he said that regular Probation Officers receive much less training. He recounted an incident where he and two other officers went to make an arrest of a man who went "berserk" and tried to throw members of his team out of a window. Officer Ibarra stated that his job had changed his lifestyle because of the increased stress, greater danger, and inability to spend as much time with his family. He said that his wife hates his job and that she constantly worries about its danger.

Probation Officer Maryann Salley testified that she works in the Bronx Field Services Unit, and she identified herself as a member of the team that arrested the man who attempted to throw team members out of a window. She said that she got hurt during the very first week that she worked in the FSU, when her hand was slashed in a crack house, and that, on another occasion, she was physically thrown across a television set. Officer Salley estimated that she works with her gun drawn approximately seventy percent of the time, and said that her job is very stressful. She complained that as a result of the irregular hours she must juggle the time that she has available to spend with her son.

Probation Officer Joseph Augustyn testified that he is a member of the Queens Field Services Unit. He reiterated the equipment and training that Field Services Unit members receive, and he contrasted FSU work with that of regular Probation Officers. Officer Augustyn recounted his apprehension of a woman who was confirmed as being HIV-infected, and who was thought to be reaching for a ten inch butcher knife at the time of her arrest, and he also spoke of a rooftop chase where the wanted individual escaped by climbing through a skylight. He said that he has responded to numerous radio calls for help by other officers, and that, upon his arrival, he has been forced to draw his weapon a number of times in the face of hostile crowds. Officer Augustyn attributed his recent divorce, in part, to the stress and irregular hours of FSU work, and he said that he has become suspicious of people because they might be "revengeful."

Probation Officer Mark Patterson testified that he is a member of the Manhattan Field Services Unit, and that he volunteered for FSU work after reading about it in departmental memos. He reiterated the training and equipment that FSU members receive, and he described sweeps that he had participated in with members of the Police Department's warrant unit. He recounted one incident where an individual who had been hiding in a bathroom threatened him with an attack by a pit bull, and he spoke of another occasion when his partner nearly fell through a

partly missing stairway. Officer Patterson said that he conducts investigations in heavy drug areas on a daily basis, and that his lifestyle has been changed due to the irregular hours and anxiety from the constant danger of his work.

Dominic Coluccio testified in his capacity as a Supervising Probation Officer who formerly served in the FSU and who is currently on full time release from the Probation Department while serving as Union president. He explained how the Warrant Unit Liaison function evolved into the Field Services Unit. He spoke of an injury that he suffered during a chase, and he said that there is no comparison between FSU work and other regular work in the Probation Department. He stated that the work was much more dangerous, and that he had had many occasions to draw his weapon while working in the FSU. He attributed the danger, in part, to the presence of crack in the City.

Under cross examination, Mr. Coluccio acknowledged that he had volunteered to work in the Field Services Unit. He also acknowledged that, during the last round of collective bargaining, the Union had demanded a \$5,000 pay differential for FSU members, but that the demand was withdrawn during negotiations.

Probation Officer Camille Piccininni testified that she is a member of the Brooklyn Field Services Unit, and she described the type of work that she typically performs and the equipment and

the training that she has received. She described a typical sweep as an operation during which three-member teams, armed with approximately seventy-five warrants within a particular police precinct, begin a neighborhood search for the wanted individuals starting at about five o'clock in the morning. Officer Piccininni recounted one incident when her team entered an apartment to execute a warrant and found three Uzi machine guns, two shotguns, and 780 vials of crack. She said that she draws her gun between sixty and seventy percent of the time while making arrests, and that she has dreams about somebody being shot. She also said that she is newly married, and she complained that the irregular hours of FSU work are long and difficult.

Probation Officer Kenrick Mead testified that he is a member of the Brooklyn Field Services Unit, and he reiterated the testimony of the earlier witnesses concerning training, equipment, and job responsibilities of FSU members. He recounted an incident during which he was injured while attempting to arrest a female subject, and he spoke of another occasion when police hostage negotiators had to be called because the person whom he was trying to arrest was reportedly armed and refused to come out of his basement apartment. Officer Mead said that many of the arrests that he makes take place in crack dens, and that his gun is drawn much of the time because of the infestation of

crack users.

Probation Officer Irma Torres testified that she is a member of the Kings Field Services Unit, and she reiterated the testimony of earlier witnesses concerning training, equipment, and job responsibilities of FSU members. She recounted an incident during which a person that she was attempting to arrest was found to be armed with a shotgun. On another occasion, Officer Torres testified, a police officer drew a gun on her by mistake. She stated that she has worked with the FBI in making the arrest of a terrorist, and that her life is now centered around her job.

Supervising Probation Officer Linda Reynolds testified that she is the supervisor of the Manhattan Field Services Unit and that her work takes place in both Manhattan and Staten Island. She described the training and equipment that she received when she joined the FSU, and she compared it with that of regular Probation Officers. She said that her work involves coordination with police TNT teams, and that the people whom she arrests are placed in police precinct holding pens.

Officer Reynolds noted that the Park Hill Houses on Staten Island is a known crack and drug area, and she said that she has interrupted crack deals while working at that location. She also recounted several other incidents involving drug dealings. On one occasion, she said that she participated in a late night raid

with police officers which netted two caches of cocaine with a weight of 1.5 ounces. On another occasion, she entered an apartment in the Staten Island Mariners Harbor project and discovered that crack dealers had taken over the apartment of a senior citizen for dealing drugs. On a third occasion, Officer Reynolds said that, as she entered a building in upper Manhattan, she told the "lookout" that "I hope you made all your customers clear." Then, when she went into the apartment of the person being sought, he made a dash for a gun, but it turned out to be an imitation. She stated that she works with her gun drawn sixty to seventy percent of the time.

Officer Reynolds distinguished Field Services Unit work from that of her former assignment as a supervisor in the Intensive Supervision Program, by explaining that regular Probation Officers are not equipped with firearms or radios, and they never have to enter dangerous buildings. She characterized the normal work as being more like counseling, where probationers receive advance notice of visits, and where confrontation almost never takes place. In contrast, FSU work involves unannounced raids in apartments that she described as being dilapidated and squalid. She stated that the stress of FSU work has affected her sleep, and that her family is constantly worried about her safety. In summary, Officer Reynolds said that there is no comparison between the danger of FSU work and other work in the Department.

The City's Evidence

The City called two witnesses to testify in support of its position. The first witness, Michael McDonald, is the Assistant Director of the Office of Municipal Labor Relations, and has been the City's negotiator for various bargaining units, including the United Probation Officers Association. Mr. McDonald testified that he negotiated the 1987-1990 UPOA Agreement, and he recalled that the Union initially had presented thirty separate bargaining demands, including a fifteen percent pay differential for Field Services Unit employees because they perform duties similar to police. He said that the Union agreed to withdraw the FSU differential demand in October of 1987.

The City's second witness, Richard Roberts, is the Director of Field Services. He recounted the history of the FSU, explaining that the unit came into existence in March of 1985. The original roster included incumbent warrant liaison officers, together with twelve newly created positions. Four supervisors were also added. Mr. Roberts said that during the first few months of its operation, most FSU work was conducted in the office. In September or October of 1985, however, the FSU began to actively engage in field work, to the same degree as currently exists. He agreed that FSU members receive significant

additional training in laws of arrest, firearms and defensive tactics, and drug awareness, and that they carry all of the special equipment previously testified to.

Under cross examination, Mr. Roberts agreed that Field Services Unit work is different from regular probation work, and that it appears to be more dangerous. Although he was unable to directly respond to question of whether involuntary transfers into the FSU could occur under the revised job specification, he seemed to agree that an expansion of the Unit without sufficient volunteers being available could result in such transfers being made.

Positions of the Parties

The Union's Position

Essentially, the Union contends that there have been two changes in the nature of Field Services Unit work, one a gradual development and the other an affirmative modification of a personnel practice by the City, that have created a practical impact on safety and that must be alleviated by bargaining. The Union points out that FSU Officers initially worked side by side with Police Department Warrant Enforcement personnel. Gradually,

however, the responsibility for the dangerous work of warrant execution has fallen to an ever greater degree upon FSU Officers. In other words, according to the Union, Probation Officers working in the Field Services Unit are now "performing a NYPD function with concomitant practical impact on their safety."

Secondly, the Union argues that the promulgation of the revised job specification for Probation Officer changes the very nature of appointment to the Field Services Unit. Whereas prior to the revision all FSU members were volunteers, under the new job specification, expansion of the unit without sufficient volunteers would result in involuntary transfers. In this regard, the Union maintains that the Department has consistently viewed FSU as an "assignment," and the Union believes that the modification of the job specification to include the FSU as a typical task reflects the intent of the Department to preserve its ability and legal right to require qualified Probation Officers to serve in the Unit, whether they wish to or not.

Finally, the Union, in its reply brief, denies the City's claim that it has waived its right to demand bargaining over the practical impact on the safety of Field Services Unit members. The Union notes that the City failed to raise the waiver issue in its answer to the scope of bargaining petition, and, therefore, it should be estopped from raising the issue at the hearing or in its post-hearing arguments. More importantly, however, according

to the Union, the Department did not formalize the FSU "as an inherent part of the duties to which Probation Officers and Supervising Probation Officers could be assigned" until September, 1988, several months after the 1987-1990 contract negotiations had been completed. Therefore, the Union argues, any practical impact that occurred before September of 1988 could have been obviated on short notice by simply abolishing the FSU. The Union contends that once the Unit was made a part of the class specification for Probation Officer, however, "there was, for the first time, a permanency to the UPOA practical impact claim."

The City's Position

The City maintains that the Union has failed to prove any change in circumstance that would lead to a finding of practical impact. It supports its position by raising two waiver arguments, and contending that, because the Union has known of the activity and assignment of the Field Services Unit members since 1985, it cannot now assert a practical impact claim.

The City points out that the Field Services Unit was the successor to the Warrant Liaison Unit, and that, in fact, some of the original members of the FSU came from the Warrant Liaison

Unit. It also notes that the attendant safety risks, equipment and mission of the FSU have remained essentially unchanged. Therefore, according to the City, there can be no practical impact at this late date because "the only real change since 1985 has been the amendment of the Probation Officer job description."

The City acknowledges that this Board has recognized instances of practical impact where there was a demonstrated change in policy by management or where it was established that management failed to act in the face of changed circumstances. It goes on to argue, however, that in every instance where practical impact was found, the actions or inactions of management affecting wages, hours or working conditions was a necessary predicate. In this case, the only change has been the revision of the job specification, which, according to the City, merely reflects the work that is actually being done, and does not prove practical impact.

The City's second waiver argument concerns the fact that the Union first sought, and then withdrew, a demand for a salary differential for Field Services Unit members during the last round of collective bargaining. According to the City, in Decision No. B-21-81, this Board held that if a union never requested bargaining over the effects of an alleged practical impact, although the issue arose during negotiations for a new collective bargaining agreement, it could not successfully raise

the issue at a later date. Therefore, the City contends, inasmuch as the Union had ample opportunity to raise any safety concern that it might have had at the bargaining table, but chose to demand an economic benefit instead, this Board "should not reward" the Union for failing to exercise its rights when it had the knowledge and opportunity to do so.

DISCUSSION

In Decision No. B-70-88, we directed that a hearing be held on the question of whether or not the promulgation of a revised job specification for Probation Officers has created a practical impact upon the safety of Probation Officers assigned to the Field Services Unit.

There is no dispute that the issuance of the revised job specification in question is within the scope of the City's express statutory prerogative to

... direct its employees; ... determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; ... and exercise complete control and discretion over its organization and the technology of performing its work.... (Emphasis added.)¹

However, the New York City Collective Bargaining Law ("NYCCBL") recognizes that a decision made by an employer in the exercise of its managerial prerogative, and, thus, outside the scope of bargaining, may give rise to issues within the scope of bargaining concerning the practical impact such decision has on matters of employment, including matters of employee safety.²

It was for this reason, in Decision No. B-70-88, that we directed a hearing on the Union's claim of a practical impact on safety, stating that:

where a proposed change [in the content of the job classification for Probation Officers] is challenged as a threat to safety, it must, if there is a dispute as to

¹ New York City Collective Bargaining Law §12-307b.

² NYCCBL §12-307b. further provides that:
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.

bargainability, be submitted to this Board which, on the basis of the relevant evidence, will determine whether or not the proposed plan in fact involves a threat to safety.

Thus, the burden was placed upon the Union to demonstrate (1) that the revised job specification constituted a change in policy, and (2) that the change resulted in a practical impact upon employees.

Having carefully considered the record of the hearing as well as all of the pleadings and the exhibits submitted herein, we find that the Union has met its burden of establishing the elements of its claim as set forth above.

As to the first element, the record shows that prior to September of 1988 when the job specification was revised, there was no requirement that any Probation Officer unwilling to subject himself or herself to the rigors of Field Services Unit work would have to do so. Indeed, every FSU officer who testified said that they volunteered for the position, and the City did not suggest that any current members of the unit were serving involuntarily.

The revised job specification, however, represents a significant departure from voluntary FSU duty. The revision, for the first time, gives management the authority to assign Probation Officers to the Field Services Unit without regard to their inclination to serve, and, thus, presages a major change in a departmental personnel practice.

As to the second element, the record clearly shows that Field Services Unit work is dangerous. The program is unique in the Department, and it was created with a view toward supervising probationers in the field, rather than by the more traditional method of having probationers make office visits. The parties do not dispute that FSU members receive higher levels and different types of training and equipment than is provided to officers in traditional supervision, investigation, and court liaison work, and that their work is more dangerous. In addition, volunteers for FSU duty have been selected only after completion of oral interviewing and psychological screening.

Testimony disclosed that 85%-90% of the warrants assigned to Field Services Unit officers for enforcement involve felonies, and that their work has resulted in arrests of probationers wanted for homicide or attempted murder, aggravated assault, serious narcotics offenses, and participation in car theft rings. FSU officers have had to deal with severely emotionally disturbed persons and with probationers who have been on a "ten most-wanted list." Some officers have been threatened with attack by pit bulls, others have had threats made against their families, and one testified that he has had a "contract" put on his life. FSU officers are frequently exposed to persons with AIDS, to hypodermic needles and to weapons, and their work generally takes them into high crime and drug-infested areas. Several FSU

officers have been injured while apprehending probation violators, and most officers who testified said that the work has had an emotional impact upon them by increasing stress and adversely affecting their family life.

For all of these reasons, we find that the 1988 change in the content of the job specifications for Probation Officers amounts to a substantial change in an existing Department personnel practice. In view of the overwhelming body of evidence attesting to the danger involved in Field Services Unit work, we agree that a practical impact would result if that revision were implemented and Probation Officers were forced to accept involuntary assignments to the Field Services Unit.

The question of waiver, however, remains to be addressed. We believe that the parties' focus on Decision No. B-21-81, stemming from a Correction Officers' improper practice petition concerning a change in roll-call assembly points, is misdirected. In that case, we dismissed the petition primarily because, at the same time that the charge was pending before us, negotiations between the parties for a successor collective bargaining agreement were in progress, but the Union failed to submit any demand to the City concerning roll-call assembly points. We noted that the Union had 272 other demands, but it did not raise this issue during bargaining, and it also failed to raise it during mediation. We held that "under these circumstances the

Board is unwilling to allow the filing of an improper practice petition to substitute for a demand for bargaining."

The present situation is dissimilar because bargaining between the Probation Officers' Union and the City concluded in October of 1987, but the Department of Personnel did not announce its intention to revise the job specification until September 28, 1988, almost a full year later.

We turn to several other decisions that appear to be more analogous to the present situation. Decision No. B-44-86 was issued in response to an improper practice petition filed by the Probation Officers' Union stemming from an announcement by the Department that it intended to implement a merit pay plan. The Union demanded bargaining, but the City refused, contending that it was acting pursuant to an administrative order which had been in place for nine years without protest, and, therefore, the Union, by its inaction, had waived its right to bargain.

We held that the Union had not waived its bargaining rights because there had been no regular or systematic program of merit increases prior to the announcement of the plan. We said that:

It is well-settled that a Union appropriately interposes itself only where an action of management has immediate impact on the employees represented by the union or necessarily entails such impact in the immediate or foreseeable future,

and that, until the March 1986 announcement, the Union had no "actual or constructive knowledge of definitive acts which would

put it on notice of the need to complain."

In our view, the facts underlying Decision No. B-44-86 were similar to those underlying the instant case. When the Probation Officer's Union concluded its bargaining with the City in 1987, it evidently had no knowledge that the Department intended to adopt a revised job specification that would have the effect of removing the ability of Probation Officers to decline to work in the Field Services Unit.

An earlier waiver case is equally noteworthy. Decision No. B-21-75 concerned the demand of District Council 37 to bargain with the City over the impact that layoffs and terminations would have on employees. The City filed a scope of bargaining petition, alleging that the demand was outside of the scope of collective bargaining because, during earlier negotiations, the issue of layoffs had been raised, and, therefore, the Union gave up its right to bargain about layoffs mid-term.

We decided that the City was required to engage in "practical impact" bargaining for all demands except those that had been raised, negotiated, and submitted to an impasse panel during contract negotiations. The decision exhaustively explored National Labor Relations Act decisions and PERB rulings before adopting the standard that "the employer violates (the law) if during the contract term he refuses to bargain, or takes unilateral action with respect to the particular subject, unless

it can be said from an evaluation of the prior negotiations that the matter was fully discussed or consciously explored and the union consciously yielded or clearly and unmistakably waived its interest in the matter."

Based upon all of the above, we find that the Union did not waive its right to bargain over the impact on the safety of Probation Officers working in the Field Services Unit merely because the Unit has been in existence since 1985, or merely because the Union proposed, and then withdrew, a pay differential demand for FSU members.

Based upon the foregoing reasons, we find that if the Department were to exercise its right to assign Probation Officers to the Field Services Unit without regard to their inclination to serve, such change in practice would have a practical impact on the safety of Probation Officers.

Accordingly, we will order that, before the Department can do so, it must notify the Union of its intention to make such involuntary assignments, and the Union must be given an opportunity to bargain over the means to be used and the steps to be taken to relieve the impact.

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 issuance of the revised job specification for Probation Officers so as to include Field Services Unit duties is a proper exercise of reserved managerial authority, as defined in Section 12-307b. of the New York City Collective Bargaining Law except as set forth below; but it is further

DETERMINED, that the issuance of such revised job specification can have a practical impact on the safety of Probation Officers, and, therefore, the alleviation of such practical impact is a matter within the scope of collective bargaining; and it is accordingly

ORDERED that, prior to implementation of involuntary assignments to the Field Services Unit, the Department of Probation shall bargain in good faith concerning the means to be used and the steps to be taken to relieve the practical impact.

DATED: New York, N.Y.
July 19, 1989
