L.211,Inter. Union of Oper. Engineers v. City& Dep't of Build.,51 PCB 25 (BCB 1993) [Decision No. B-25-93 (IP)]

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

- between -

Local 211, International Union of
Operating Engineers,

Petitioner,

Decision No. B-25-93

Docket No. BCB-1437-91

- and -

New York City Department of
Buildings and the City of New York,:

Respondents.
---------- x

DECISION AND ORDER

On November 18, 1991, Local 211 of the International Union of Operating Engineers ("the Union") filed a verified improper practice petition against the New York City Department of Buildings ("the Department") and the City of New York ("the City"). The petition appears to allege a violation of § 12-306a(4) of the New York City Collective Bargaining Law ("NYCCBL").[1] The Department and the City, by its Office of Labor Relations, submitted an answer on November 27, 1991. On January 24, 1992, the Union informed the Office of Collective Bargaining

[1] Section 12-306a of the NYCCBL provides, in relevant part:

> **a. Improper public employer practices.** It shall be an improper practice for a public employer or its agents: ...
> (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

that it intended to submit a reply within two weeks. The Union subsequently requested, and was granted, an extension of time in which to file a reply, but failed to do so.

Background

The Union represents Building Inspectors employed by the Department. Until September 20, 1991, Building Inspectors were not required to wear uniforms. On September 20, 1991, the Department informed the Union that it intended to issue uniform shirts to Building Inspectors and the Union objected.

The Union offered to meet with the Department to negotiate a resolution of the matter. By letter dated October 31, 1991, the Department's Assistant Commissioner of Administration advised the Union that such a meeting would be "redundant." Nevertheless, a meeting was scheduled for November 8, 1991. According to the Union, its representatives appeared for the meeting but representatives of the Department did not. On. November 12, 1991, the Department issued uniform shirts to some Building Inspectors and directed that the shirts be worn during the performance of their duties.

Positions of the Parties

Union's Position

The Union claims that the Department has unilaterally changed a term and condition of employment by requiring Building

Inspectors to wear uniform shirts. This failure to negotiate, the Union maintains, is a violation of § 12-306(4) of the NYCCBL.

The Union maintains that the Department also violated § 12-306(4) by refusing to bargain collectively in good faith on the practical impact of the decision to issue uniform shirts. The Union alleges that Building Inspectors incur an increased risk to safety and health by virtue of wearing uniform shirts which identify them to the public.

City's Position

The City maintains that the Department has not violated §12-306(4) by ordering Building Inspectors to wear uniform shirts because this matter is not within the scope of bargaining. It cites Decision No. B-22-80 for the proposition that the determination of appropriate uniforms falls within the employer's statutory right to determine the methods and means by which its functions are to be performed.

The City argues that the Union's claim of practical safety impact must fail because the Union did not allege facts sufficient to establish that a safety impact exists. The City maintains that, although Building Inspectors have been wearing uniform shirts since November 1991, the Union has not alleged any instance in which an employee's safety was jeopardized as a result of wearing the uniform. The City asserts that wearing

uniform shirts will not jeopardize the safety of Building Inspectors in the future.

Discussion

Both the Taylor Law and the NYCCBL impose upon public employers and public employee organizations the duty to bargain in good faith regarding wages, hours, and terms and conditions of employment. In interpreting the scope and meaning of these statutory terms, the Board of Collective Bargaining has exclusive jurisdiction to determine which matters are mandatory, permissive and prohibited subjects of bargaining.[2] The scope of bargaining is restricted when it intrudes on areas that involve a basic goal or mission of the employer.[3]

In Decision No. B-22-80, we held that "the determination and prescription of authorized uniforms is a management prerogative," and that an agreement concerning required uniforms "would have to be expressly stated in the contract in order to restrict the City's exercise of its management prerogative in this area." In Decision No. B-16-81, we held that the issue of whether corrections officers would be required to wear ties or have the opportunity to wear a certain kind of shirt at certain times was not a mandatory subject of bargaining. Relying on previous decisions of the New York State Public Employment Relations

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

[3] Decision Nos. B-63-91; B-50-90; B-1-90.

Board,[4] we found that changes in uniform requirements, or procedures for review of uniforms, are matters of management prerogative.[5]

Section 12-307(b) of the NYCCBL grants the Department the right to "direct its employees; ... maintain the efficiency of governmental operations; [and] determine the methods, means and personnel by which government operations are to be conducted...." Parties to a collective bargaining agreement may voluntarily agree to restrict a matter that falls within an area of management prerogative.[6] Such a non-mandatory subject of bargaining remains within the managerial prerogative, however, if it is not limited by such an agreement.[7] Where, as here, the Union has not demonstrated an express limitation in the contract or otherwise, the Department has a statutory right to require Building Inspectors to wear uniform shirts.

The Union also alleges that the uniform requirement will have an adverse impact on the safety and health of its members. Where a decision reserved to management under § 12-307 of the NYCCBL has a practical impact on employees, the statute expressly

---

[4] County of Onondaga and County of Onondaga Deputy Sheriff, 14 PERB 4530 (H.O. 1981); City of Albany, 7 PERB 3078 (1974); City of White Plains, 9 PERB 3007 (1976).

[5] Decision No. B-16-81, at 110-11.

[6] Decision Nos. B-19-92; B-64-89; B-67-88; B-53-88; B-31-87; B-14-87; B-29-82.

[7] Decision Nos. B-19-92; B-64-89; B-4-89; B-62-88; B-5-80.

provides that measures for the alleviation of such impact will be within the scope of collective bargaining.[8] We have repeatedly stated, however, that the duty to bargain over the alleviation of a practical impact does not arise until we have first determined, on the basis of factual evidence, that a practical impact has resulted from an act that is within the City's managerial prerogative.[9] We will not declare that a practical impact exists, nor direct a hearing to consider the matter, solely on the basis of conclusory or speculative allegations.[10]

In the instant case, the Union has offered no evidence that a threat to employee safety or health has resulted from the decision to require Building Inspectors to wear uniform shirts. Because no facts have been alleged sufficient to warrant a hearing on this claim, and because the Union has not demonstrated an express limitation on the Department's right to require Building Inspectors to wear uniform shirts, the instant improper practice petition is dismissed.

---

[8] Decision Nos. B-34-88; B-61-6-79; B-5-75; B-3-75.

[9] Decision Nos. B-36-90; B-47-88; B-46-88; B-37-82; B-41-80; B-33-80.

[10] Decision Nos. B-36-90; B-34-88; B-38-86; B-23-85; B-41-80.

ORDER

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

ORDERED, that the improper practice petition filed by Local 211, International Union of operating Engineers be, and the same hereby is, denied.

Dated: New York, New York
July 29, 1993

MALCOLM D. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

JEROME E. JOSEPH
MEMBER

DEAN SILVERBERG
MEMBER