City v. SSEU, 1 OCB 11 (BCB 19680) [Decision No. B-11-68 (Scope)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

DECISION NO. B-11-68

THE CITY OF NEW YORK

DOCKET BCB-22-68

-and

SOCIAL SERVICE EMPLOYEES UNION

DECISION, ORDER AND DETERMINATION

The City's petition herein, filed October 28, 1968, challenges the bargainability of numerous collective bargaining proposals made by the Social Service Employees Union, herein called the Union. On November 12, 1968, the Union filed its verified answer which includes twelve separate and distinct defenses.

On November 21, 1968, the parties were notified, ir. writing, that oral argument on the issues herein would be heard by the Board or. December 3, 1968. At the sane time, the parties were directed to file supporting affidavits on or before December 2, 1968,

Because a number of the challenges allege that the subjects are matters Tor City-wide bargaining only, notice of the oral argument also was served on District Council 37, A.F.S.C.M.E., AFL-CIO (herein D.C. 37), the designated representative of career and salary employees for purposes of City-wide bargaining.

Oral argument was heard by the Board on December 3 and 4, 1968. B. C. 37 did not participate in the argument.

The following affidavits and exhibits, among others, were filed by the parties.

For the City: Affidavit of Anthony C. Russo, Deputy Director of Labor Relations, sworn to December 2, 1968; affidavit and supplemental affidavit of Philip J. Ruffo, General Counsel to the office of Labor Relations, sworn to December 2 and 4, 1966, respectively: copy of the City-wide contract between the City and District Council 37, A.F.S.C.M.E., AFLCIO, dated April 19, 1968; copy cf the collective bargaining proposals submitted by District Council 37, preceding the said City-wide contract Personnel order 21/67 establishing the alternate Career and Salary Plan; and Copy of the bargaining demands made by the Union herein.

For the Union: Affidavit and supplemental affidavit of Barton Cohen, Second Vice President of the Union, sworn to December 3 and 4, 1968, respectively; copies of two collective bargaining agreements between the City and the Union, dated June 7, 1965, and September 21, 1967, respectively; and a copy of the City's proposed contract, dated October 28, 1968.

Upon consideration of all the papers and proceedings herein, and the oral arguments of the parties, the Board renders the following decision:

I. The Issues

The Union's demands consist of 24 articles which include 241 subjects. The City's petition contains 212 challenges as to the bargainability of proposed subjects, a number of the subjects being challenged on more than one ground. The grounds of the challenges are as follows:

1. Attempted abridgement of management rights reserved in Executive Order 52, §5c - (123 subjects);

2. Subjects concern matters which must be uniform for all career and salary plan employees under Executive Order 52, §5a(2) - (50 subjects);

3. Subjects concern matters which must be uniform for all employees in the department, under Executive order 52, §5a(3) - (15 subjects);

4. The Union is not the certified representative of the title involved - (19 subjects);

5. No civil service title such as that mentioned in Union's demands -(2 subjects);

6. The persons for whom the Union seeks to bargain are not City employees - (1 subject);

7. The demand is inconsistent with and violates the New York City Collective Bargaining Law and/or Executive Order 52 - (2 subjects).

We shall discuss these challenges seriatim.[1]

[1] We find no merit in the first two affirmative defenses pleaded by the Union, which allege that the City's petition is insufficient in law and not sufficient detailed. The substances of other affirmative defenses are discussed at appropriate points in this decision.

II. Management Prerogatives

There are 123 subjects which the city contends are management prerogatives under §5c of Executive Order 52. The multiplicity and complexity of the issues presented preclude immediate determination. It is possible and desirable at this time, however, to set forth certain principles which may guide and assist the parties in their current negotiations.

Court and labor board decisions concerning the Scope of collective bargaining have established three categories of subjects: (1) prohibited (unlawful); (2) mandatory (required by law); and (3) permissive or voluntary (lawful, but not mandatory).

Prohibited Subjects

Prohibited subjects are those where the obligation or duty is fixed by law, and a contrary agreement would be unlawful. For example, since an employer is under a legal duty to negotiate in good faith with a certified union, the employer may not seek to bargain on the union's status as representative of the employees. (NLRB v Wooster Division of Borg-Warner, 356 U.S. 342, 42 LRRM 2034.) Similarly, where a closed shop is unlawful, bargaining on that subject is prohibited.

The present proceeding itself presents an interesting example. Section 1173-8.Oe of the New York City Collective Bargaining Law (herein NYCCBL) requires the inclusion of a no-strike clause in all written collective bargaining agreements. Accordingly, the exclusion of such a provision is not a bargainable subject.[2]

Mandatory Subjects

The NYCCBL, §1173-3-Orr, provides that the scope of collective bargaining shall be specified by executive order. Section 5a of Executive order 52 specifies the scope of bargaining for Mayoral agencies and their employees. Like most labor relations acts and statutes, §5a mandates collective bargaining on wages, hours and conditions of employment. The specification is more easily stated than applied, for that phrase may include or exclude a host of borderline or debatable subjects.

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[2] See discussion under §5, infra

For present purposes, however, it is only necessary to clarify the legal differentiation between mandatory and voluntary subjects.[3] The statutory obligation or duty to bargain applies only to "wages, hours and working conditions." Any demand which is within that framework must be negotiated. A party may not refuse to bargain on a mandatory subject. (Allis Chalmers Mfc. Co. v. NLRB, 213 F.2d 374, 376; NILB v. Borg Warner, 356 U.S. 342.)Of course, the duty to bargain goes not compel agreement; it only requires negotiation in good faith; that is, negotiation with a sincere resolve to overcome obstacles and to reach an agreement. (NLRB v. Boss Mfg. Co., 118 F.2d 187, 189.) Consequently, a party who negotiates in good faith on a mandatory subject may insist on his position even though it results in an impasse. (NLRB v. Borg Warner, 356 U.S. 342; NLRB v. American Ins. Co., "343 U.S. 395; NLRB v. Davidson, 318 F.2d 550.)

Voluntary Subjects

The fact that bargaining on wages, hours and working conditions is mandatory does not preclude discussion of other lawful subjects. The parties may discuss, and reach agreement on, any lawful subject. (NLRB v. Borg Warner, 356 U.S. 342, 42 LRRM at 2036.) However, since there is no legal duty or obligation to discuss voluntary subjects, they may be discussed only an mutual consent, and submitted to an impasse panel only on mutual consent. Moreover, as distinguished from mandatory subjects, neither party may insist that agreement be reached on a voluntary subject as a condition precedent to collective bargaining on the mandatory subjects, or to the entering into of a collective bargaining agreement. Put another way, neither side may refuse to negotiate or. a mandatory subject because one side has refused to discuss or has not come to terms on voluntary subjects. (NLRB v. Borg Warner, 356 U.S. 342; Allis Chalmers Mfg. Co. v. NLRB, 43 F.2d 374, 376; NLRS v. Davidson, 318 F.2d 550,554.)

Generally, full and free discussion and airing of problems are the keystones of good labor relations. If agreement is reached on a voluntary subject, the agreement may be embodied in the collective bargaining contract. The obligation then is contractual, and may be enforced as such during the term of the contract. But the fact that such agreement has been reached and included in a contract cannot transform a

[3] This statement of principles deals only with the relationship between the employer and a certified (majority) union. it should not be confused with employer discussions with minority unions permissible under §1173-10.0d of the NYCCBL and §5a(2) and (3) of Executive Order 52.

voluntary subject into a mandatory subject in subsequent negotiations, for the latter is fixed and determined by law. Moreover, any doctrine that agreement reached on a voluntary subject forever obligates bargaining thereon would, as a practical matter, constitute formidable deterrent to the highly desirable freedom of discussion and negotiation on voluntary subjects.

Management Prerogatives

In the private sector, a management prerogative clause is a mandatory subject of Collective bargaining. (NLRB v. American Nat'1 Ins. Co. 343 U.S. 395, 409.) In New York City, however, a management prerogative clause, set forth in §5c of Executive Order 52, limits the scope of mandatory bargaining management prerogatives, therefore, are not mandatory subjects of bargaining, except when a managerial decision has a "practical impact" upon employees and then only under the circumstances set forth in Matter of Uniformed Firefighters Assn. and Uniformed Fire Officers Assn., Decision No. BCB-16-68.

Management prerogatives, nevertheless, may constitute voluntary subjects of discussion. As a voluntary subject, however, discussions of a management decision are subject to the limitations mentioned above and may not be referred to an impasse panel except (1) on mutual consent of the parties, or (2) where a practical impact exists (see Firefighters decision supra). Disputes as to whether a subject is mandatory or voluntary will be determined by the Board of Collective Bargaining.

The foregoing statement of principles, we believe, should clarity the rights and responsibilities of the parties and open the way for negotiation and discussion of both the mandatory and the permissive subjects contained in the union's demands. Hopefully, with good faith on both sides, such negotiations will lead to a meeting of the minds, and an amicable adjustment of most, if not all, of the issues raised.

In the interim, we shall continue our consideration of the specific issues, so that we may, if necessary, speedily resolve any remaining questions.

III. City-wide Matters

Section 5a(2) of Executive Order 52 provides:[4]

"§5. MATTERS WITHIN THE SCOPE OF COLLECTIVE BARGAINING.

a. Subject to the provisions of paragraph (c) below the City shall have the duty to bargain in good faith: *** * * ***

(2) with a certified employee organization, council or group of certified employee organizations designated by the Board of Certification as representing more than 50 per cent of all employees subject to the Career and Salary Plan, and only with such employee organization or organizations, on City-wide matters which must be uniform all such employees, such as overtime, and time and leave rules. The terms agreed upon it such bargaining shall be applicable to and binding upon all such employees. The effective date of such terms as to any bargaining unit shall be the subject of collective bargaining, except that the terms agreed upon in such negotiations shall not become effective prior to July 1, 1967. The foregoing shall not: (A) prevent the City from meeting with any other employees organization representing such employees for the purposes of hearing the views and requests for its members on such matters, provided that the organization, council or group designated as representing more than 50 per cent of such employees is informed in advance of the meeting, and any changes in the terms of such City-wide matters is effected only through negotiations with it; or (b) construed to deny to the City or a certified employee organization the right to bargain for a variation or a particular application of any city-wide policy or any term of any agreement executed pursuant to this Section 5 (a) (2) governing any City-wide matter, where considerations special and unique to a particular department,

[4] Section 1173-7.0a(3) and 1173-10.0d of the NYCCBL should be read in connection with §5a(2)of Executive Order 52.

> "class of employees, or collective bargaining unit are involved."

The City contends, in substance: (1) Only the City may determine whether City-wide uniformity is necessary; (2) because uniformity and stability are essential, the exception concerning special and unique considerations must be narrowly construed and strictly applied; (3) the Union's contract with the City contains an express provision binding the Union to any changes agreed upon between the City and the designated City-wide bargaining representative.

The Union contends, in substance: (1) The subjects do not involve matters which most be uniform; (2) if they do, special and unique considerations are present; and (3) the subjects involve interpretation or implementation of the City-wide agreement or City-wide policy.

The Notice of Oral Argument herein directed the City to submit affidavits supporting its contention that the subjects must be uniform, and directed the Union to submit affidavits establishing the existence of special and unique considerations.

We reject the City's contention that the necessity for uniformity is for the City alone to determine. Section 1173-5.0a(2) expressly confers on this Board "the power and duty. . . to make a final determination as to whether a matter is within the scope of collective bargaining in such negotiations under the terms of the applicable executive order." (emphasis added)

In the instant case, a City-wide representative has been designated, a contract negotiated, and the employees concerned herein have received the benefits thereof. The issue presented herein thus is not whether the subjects are bargainable at all, but, rather, which representative of employees is entitled to bargain collectively thereon.

Only two of the subjects which "must be uniform" for all career and salary employees are specified in §502) of Executive Order 52: (1) overtime; and (2) time and leave rules. The City-wide demands made by D.C. 37, and the agreement it negotiated and executed with the City, cover these subjects by particular provisions and through incorporation by reference (Contract Section 5.1) of the Board of Estimate Resolution of June 5, 1956, concerning "Leave Regulations for Employees who are Under the Career and Salary Plan," and all amendments and official interpretations thereof.[5]

Accordingly, we find that the following subjects set forth in the Union's demands, relating to overtime and time and leave rules, are matters which must be uniform City-wide and , as no unique or special considerations have been established, are not bargainable.

Article II

Section 9. Certification by OCB for shift differential.

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[5] The Resolution is a public document of which we may, and do take official notice.

Section 10. Maternity leave, etc., to be deemed uninterrupted service.

Section 11. Increase in number of absences resulting in loss of annual leave.

Section 13. Payment of overtime quarterly, by separate check.

Article III

Section 1. Ordered lunch time work as overtime.

Section 4. Release or heat or cold.

Section 7. Automatic approval of overtime for specified purposes.

Section 8. Use of overtime credits on request.

Section 11. Thirty hour week.

Section 12. Triple compensatory time for summer hours.

Section 13. Work outside regular hours as overtime.

Section 17. Saturday work on voluntary basis only: double time pay.

Article IV

Section 1. Increased annual leave and use thereof.

Section 2. Increased sick leave and use thereof.

Section 3. Leaves with pay.

Section 4. Maternity leave.

Article IV

Section 5. Holidays and holiday pay.

Section 8. Unlimited accrual of all leaves.

Section 13. Employees on vacation or sick leave not to be charged or periods staff released.

Section 11. Payment of accrued leave on resignation.

Section 13. Credits for substitutes for military service.

Section 14. Use of overtime credits.

The other demands challenged on the basis of required City-wide uniformity are disposed of as follows:

Education Leaves and Releases

The Union proposes unpaid leaves for studies leading to educational pal, differentials (Art. IV §4b) daily released time..for employees in specified titles, to obtain high school or college diplomas or graduate degrees (Art. VI, §7); paid release time for afternoon study in courses leading to a pay differential (Art. VI, §10); and not more than one year of service shall be required for each year of paid educational leave (Art. X, §28).

There appears to be no City-wide policy in these matters, and the subjects are not. covered by the City-wide contract. Educational leaves and released time have been left to the discretion of the department head and are determined according to the nature of the positions involved and the needs of the Department.[6] These demands thus involve considerations special and unique to classes of employees, and hence are within the scope of collective bargaining herein.

Illness, etc., Fund and Insurance

The Union seeks establishment of an injury, illness, theft and damage fund (Art. VI, §2); extended medical coverage, applicable to both permanent and provisional employees,

[6] The contract between the parties, and the City's proposals herein include provisions for paid leaves of absence under scholarship (Art. VI, §2). The contract also provides for the establishment of an educational fund (Art. VI, §2).

with the choice of plans open to change at any tins (Art. VI, §3); disability an unemployment insurance coverage (Art. VI, §4); additional benefits for work related illness or injury (Art. VI, §5; Art. VI, §9);[7] and a requirement that the City notify each employee when it is necessary to advise insurance carriers of changes of dependents, with penalties for the City's failure to do so (Art. X, § 10).

The injury, illness, theft and damage fund, demanded by the Union, is not materially different in principle from the welfare benefits now negotiated by collective bargaining representatives as additions or supplements to the basic Blue Cross, Blue Shield and Major Medical, HIP or GHI coverage provided by the City.[8] We find this demand to be within the scope of collective bargaining herein.

The other demands, however, concern either the basic medical coverage now provided on a uniform City-wide basis, or disability and unemployment insurance, and work related illness or injury. These are matters which are not of special or unique concern to the employees represented by the Union herein, are of equal importance to all employees, and require uniformity. Accordingly, we find that they are not within the scope of bargaining by the Union herein.

Pay Practices

The Union seeks provisions that vacation pay shall be paid in advance(Art. IV, SG); that new employees shall receive their first paychecks on the first payday after employment, with penalties for the City's failure to do so (Art. X, 552 and 3); weekly advances against retroactive pay (Art. X, 53); the method of computing part-time pay (Art. II, 514); and, that after three months of employment there shall be no withholding of paychecks because of leave without pay unless such leave is over 10 days (Art. X, §26).

[7] The demands of the designated City-wide representative included provisions covering work related illness and injury. (Demand 29).

[8] The City's proposals herein include provision for such supplementary payments (Art. VI, §1).

As City employees are paid centrally, through the Comptroller's Office, the matters included in Art. II, §14, Art. IV, §6 and in Art. X, §§2 and 3, clearly require City-wide bargaining herein.[9] As to Art. X, §26, there is no City-wide regulation or rule regarding the withholding of checks because of leaves without pay. The practice has been to leave such questions to the discretion and judgment of the department head. Although the matter does not require Citywide uniformity, department-wide uniformity is necessary. The subject, therefore, is not within the scope of collective bargaining between these parties.

Reinstatement Rights

In Art. X, §9, the Union seeks to extend the time for full reinstatement to double the numbers of years worked. The right of reinstatement is a matter in which uniformity is required, and, accordingly, is not bargainable by the Union herein.

Transportation

The Union's proposals for free public transportation passes for all employees, reimbursement of expenses within 30 days of claim, and an increased daily car allowance[10] (Art. XI. §§1, 6, 9), are matters which concern City employees generally, and require uniformity of application. Accordingly, they are not within the scope of collective bargaining by the parties herein.[11]

Legal Counsel

The Union seeks to include a contract provision requiring the City to provide legal counsel for employees in court on official business (Art. X, §11). The necessity or advisability of legal representation turns on the nature of the duties and responsibilities of particular employees. it is not a subject on which uniformity is required and hence is bargainable herein.

Evaluation and Personnel Folders (Article XVI)

Although provisions concerning the right of an employee to examine his personnel file and discuss the evaluation of his services, etc., are contained in the present contract between the Union and the City, the subject is one of general application; requires uniformity

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[9] We so hold despite the provision concerning some of these subjects contained in the City's proposals (Art. X, §1).

[10] The subject of car allowances is covered in the City-wide contract (§7.1).

[11] Our determination that these particular matters must be uniform City-wide is not to be deemed a decision that bargaining on other transportation items are or are not bargainable herein.

and is covered in the City-wide contract (Section 9.1).[12] We find, therefore, that it is not within the scope of collective bargaining by the Union herein.

Orientation of Employees

In Art. XIX, §9, the Union seeks the right to address employees and distribute union literature during orientation sessions. Although a provision on this subject is contained in the City-wide contract (512.2), it is not in our opinion, a matter requiring City-wide uniformity. The extent to which orientation procedures are used, the amount of time devoted thereto, and the conditions under which orientation sessions are conducted, will vary from department. Indeed, the orientation procedure will depend upon considerations special to the class of employees involved, and are of far greater significance to the representative of that class than to the City-wide representative.[13] In the Department of Social Services, here involved, the variety of personnel employed, and the variety of their functions, clearly indicate that neither City-wide nor departmental uniformity is required. we find, therefore, that participation in orientation sessions is a matter within the scope of collective bargaining herein.

Case Aide Credits

Article IV, §12, of the Union's demands seeks to credit Case Aides with 10 days' annual leave and 6 days' sick leave for their prior six months' service as Case Aide Trainees.

Case Aide Trainees are paid by Federal funds provided under the "New Careers Program," and are not City employees. (Matter of Social Service Employees Union, Decision No. 51-66.) The training period, however, is a condition precedent to appointment to the City title of Case Aide. This relationship clearly involves special and unique considerations concerning a particular class of employees, and thus is within the scope of collective bargaining herein.

The remaining subjects challenged as requiring City-wide uniformity also are challenged as involving management prerogatives, and decision thereon is reserved Art. X, §§6, 7. 8).

IV. Department-wide Matters

Section 5a(3) of Executive order 52 provides:

"5a. Subject to the provisions of paragraph (c) below the City shall have the duty to bargain in good faith:

(3) with an employee organization, council or group of employee organizations designated

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[12] The provisions contained in the City-wide contract (art. Ix, 51) and the Union's current contract (Art. XVI) are identical.

[13] Art. XII, 52, of the City-wide contract recognizes this primary interest of the representative of the title, for it provides for the inclusion in orientation kits of union literature provided by the "unions certified to represent such employees.

> by the Board of Certification as representing more than 50 per cent of all employees within a department on matters which must be uniform for all employees in the department, but only if such organization, or in the case of a group or council, each organization in such group or council, has been previously certified as a city-wide bargaining representative for an appropriate bargaining unit. The foregoing shall not prevent the City from meeting with any other employee organization representing such employees for the purpose of hearing the views and requests of its members on such matters, provide that the organization, council or group designated as representing 50 per cent of such employees is informed in advance of the meeting and any changes in the terms of such department-wide matters is effected only through the negotiations with it."

The Union nas not been designated as representing more than 50 per cent of the employees in the department. Accordingly, it is not entitled to bargain collectively on matters which must be uniform throughout the Department.

The last sentence of §5a(3) preserves the right of the City to meet with "other" representatives of employees in the department, and to hear their views and requests, provided the designated representative for department-wide matters is informed in advance, and any changes are negotiated only with the designated departmental representative. We construe this provision as permitting such meetings and expressions of view and requests where, as here, no departmental representative has been designated. Accordingly, any determination that a subject requires departmental uniformity, and is not bargainable by the Union herein, shall not be deemed to bar or preclude such voluntary meetings and expressions of views.[14]

[14] Section 5a(3), like §5a(2),should be read together with §§1173-7.0a(3) and such 1173-10.0d of the NYCCBL.

Lateness

The Union's demands include proposals that lateness caused by forces beyond the control of the employee (transportation delay is cited as an example) shall be excused (Art. III §6), and that no employee shall be penalized more than equal time for lateness (Art. X, §12).

Although time and leave rules are expressly mentioned in Executive Order 52 as City-wide matters, the Board of Estimate Resolution, incorporated by reference in the City-wide contract, leaves lateness (with two exceptions) to the discretion of the agency head.[15] This discretion is emphasized by the Personnel Council's "recommendations" with respect to lateness.[16]

The question, then, is whether rules on lateness other than the two exceptions) must be uniform for all employees in a department. The answer may vary from department to department. In-the Department of Social Services, the nature of the services rendered, the employment of professional, quasi-professional and non-professional employees, and the extensive services rendered outside departmental offices indicate that uniformity is not essential. Accordingly, we hold these proposals to be within the scope of collective bargaining herein.[17]

Time Records

The Union demands that each employee be given quarterly, written leave accrual and charge records (Art. IV, §7).

Leave accruals and charge records involve administrative practices and procedures affecting, and which must be uniform for, all employees in the department. The proposal consequently is not within the scope of collective bargaining by the Union herein.

Physical Plant

The Union demands adequate lighting Wt. VIII, §23), free parking facilities (Art. XI, §3), the immediate release of employees upon failure of the ventilation system in a location where the windows cannot be opened (Art. VIII, §15), prominent display, on each floor,

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[15] The two exceptions are: (1) unexcused lateness must be charged against annual leave (Resolution §2.8), and (2) a central determination will be made as to lateness due to a general breakdown of normal public transportation (Interp. 2.8c).

[16] Where the breakdown is local, rather than general, the lateness may be excused by the responsible departmental officer (§3).

[17] The present contract between the parties (Art. III, §§6, 24), and the City's proposals herein (Art. §§2, 12), contain provisions concerning lateness.

of the official maximum occupancy notice and adherence to the specified maximum. occupancy (Art. VIII, §14), and provision that no employee shall be required to work under hazardous conditions (Art. X, §1c).

The display of, and obedience to, maximum occupancy certificates, adequate lighting, ventilation, etc., are matters which affect all employees in a building, not just those represented by the Union herein. Uniformity is essential for it is neither practical nor possible to negotiate different physical plant conditions with different unions.[18] These items, therefore, are not bargainable by the Union herein.

The Union's request for free parking facilities, on the other hand, directly concerns those employees whose services require the use of an automobile. The parties' present contract (Art. XI, §3, and the City's proposals (Art. XI §2) provide that the City "shall make every possible effort to provide parking facilities close to the work location for employees assigned to car territories." So find, therefore, that this proposal is within the scope of collective bargaining herein.

Working under hazardous conditions is a matter of concern to all employees, but the nature and extent of the danger will vary according to the duties of particular classes of employees. The risks faced by employees whose services, or substantial portions thereof, are rendered away from departmental offices are different from those of office clericals, for example. On the other hand, hazards resulting from conditions in the offices affect all persons who work there, and provisions concerning such hazards necessarily must be uniform.

We conclude, therefore, that only those hazards which are limited to a particular class or classes of employees represented by the union are bargainable by it herein.

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[18] The present contract between the parties (Art. VIII, §1), and the City's proposals Art. VIII, §9), contain a general provision concerning the City's obligation to provide proper work facilities.

In this connection, the Union further demands the right to hold union meetings, on or off departmental premises, whenever hazardous conditions exist (Art. X. §1d). As the Union has the right to hold off-premise meetings during non-working hours and on department premises. Such a proposal is wholly different from an individual's right to decline to work because of personal hazard, and is one which may require either department or City-wide uniformity. In any event, it is not within the scope of bargaining by the Union herein.[19]

Services and Supplies

The Union proposes that coffee wagon service should be allowed in locations where coffee is not otherwise available (Art. VII, §19), that pers be provided for the staff, and stamps be made available where there are no mailing machines (Art. VIII, §22).

Coffee wagon service manifestly concerns employees generally, not Just those in units represented by the Union herein. The proposal is one which cannot be negotiated piecemeal with Unions representing different units of employees.

Pens, and the availability of stamps, however, are matters which relate to particular classes of employees, and are bargainable herein.[20]

The remaining proposals challenged by the City as requiring departmental uniformity also are challenged as involving reserved management rights.[21] Decision thereon, is reserved.

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[19] The proposals of the designated City-wide representative included provisions for hazard pay (Demand 10) and the City-wide contract makes provision for employee disability because of an assault in the course of employment (Art. V, §9).

[20] The present contract between the parties provides for equipment to be furnished certain classes of employees (Art. VIII).

[21] Art. VIII, §18; Art. X, glf. G' 12 (time clocks and sheets); 25.

V. Miscellaneous Issues

Union Not Certified:

Of the nineteen subjects which were challenged on this ground, the City has withdrawn its objection to seventeen (Ruffo; supplemental affidavit, p. 6 §10), and the Union, in its answer (§1), has conceded that it may not bargain on another (item 19).

The remaining demand (Art. V, §4) is to abolish the title "Case Aide Trainee." The City contends that Case Aide Trainees are not City employees and the Union is not certified to bargain for then, (item 6).

The Board of Certification, as noted above, has hold that Case Aide Trainees are not employees of the City within the meaning of the NYCCBL, and dismissed the Union's petition for certification as their collective bargaining representative. (Matter of Social Service Employees Union, Decision No. 51-68).

Accordingly, we sustain the City's challenge to this subject.

No Civil Service Title:

Art. II, §4, of the Union's proposals, seeks to establish a now salary scale for "Teaching Homemakers." The City contends that there is no such civil service title, and, consequently, no employees in such title (Item 2). The Union's answer (§15), alleges that the demand is made on behalf of Case Aiders, for whom the Union is the certified representative.

This dispute apparently involves a type of situation, frequently encountered, in which employees performing more difficult or higher level work are given an office title and differential pay, although they remain in the same civil service title pending reclassification or the establishment of a new title. Under such circumstances, the certified representative of their civil service title may bargain collectively concerning the pay differential they are to receive because of their additional or higher level duties.

Accordingly, we overrule Item 2 of the City's petition.

Violations of NYCC3L and/or Executive order 52:

Art. XVIII of the Union's demands seeks to "delete" the no-strike clause contained in its current contract, and, presumably, to omit any such clause from the contract presently

Section 1173 8. 0e of the NYCCBL provides

> "Public employees and public employee organizations shall not induce or engage in any strikes, slowdowns, work stoppages or mass absenteeism nor shall public employee organizations induce any mass resignations during the term of a collective bargaining agreement. A provision to that effect shall be inserted in all written collective bargaining agreements between public employers and public employee organizations. This subdivision shall not be construed to limit the rights of public employers or the duties of public employees an employee organizations under state law."[22]

The Union contends (Answer, §18) that the very nature of "the demand item requires both parties to bargain and indeed agree to the insertion of such a clause in a contract," but that the section "does not require the agreement to any particular language of a no-strike clause."

The City contends that the language of the section is mandatory; "while . . . the law does not require any particular language of a no-strike clause, nevertheless, the ingredients of such a clause are clearly and unequivocally spelled out in the law."

The inclusion of a no-strike clause in every agreement is mandated by the NYCCBL, and the question of inclusion or exclusion, therefore, clearly is not bargainable. The section expressly provides that public employees and public-employee organizations shall not induce or engage in specified actions, and that "A provision to that effect shall be inserted in all written collective bargaining agreements. . ." We conclude, therefore, that inclusion of the detailed statutory prohibitions is mandatory. This, of course, does not preclude inclusion of the statutory reservation of public employer rights, and duties of public employees and public employee organizations, under state law, or the inclusion of additional clauses not inconsistent with the statutory requirement.

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[22] Section 1173-2.0 of the NYCCBL declares it to be the policy of the City to favor and encourage written collective bargaining agreements. See also §1173-8.0f. This Board has held that the obligation of full faith compliance with the provisions of the NYCCBL requires the execution of a written contract within a reasonable time after agreement has been reached. (Matter of City of New York v. Communications Workers of America, Decision No. B-8-68.)

Future Negotiations

Article XXIII of the Union's proposals, in substance, seeks to fix and determine the scope of Collective bargaining at the expiration of the contract now under negotiation. The purpose of the proposal is said to be "to effectuate collective bargaining on all legitimate issues involved in presently established areas for collective bargaining," and "to eliminate [the City's] previous positions of 'not bargainable' or 'not bargainable at this form' on questions of accepted collective bargaining procedures . . ."

The time to make demands concerning a new contract is fixed by the NYCCBL.[23]

The stated purpose of the Union's proposals ir to establish the proper scope of collective bargaining for the next contract. The propriety of a number of the subjects of future bargaining, listed by the Union, has been determined in this proceeding. Some have been held bargainable, and some not bargainable. Still others, involving managerial decisions, will become bargainable. only if this Board finds that a "practical impact" exists -- a determination which must be made upon the basis of current conditions, not future possibilities.

The proposal manifestly is not appropriate for impasse procedures. Disputes as to the scope of collective bargaining under the express provisions of §1173-5.0(2) of the NYCCBL are to be "finally determined" by this Board, not by impasse panels.

We find that the proposal is not within the scope of collective bargaining.

[23] Section 1173-7.0a(1) of the NYCCBL provides that a request to negotiate a new contract shall be served not less than 90, nor more than 120, days prior to the contract expiration date, unless a different date is specified in the contract.

ORDER AND DETERMINATIONS

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

ORDERED, that decision is reserved on all Union proposals challenged by the City as relating to management prerogatives; and it is hereby

DETERMINED, that the following Union proposals arc within the scope of collective bargaining by the Union herein Art. II, §4; Art. III, S§; Art. IV, §§4b, 12; Art. VI, §§ ,2 7, 10; Art. VIII, §22; Art. X, §§1c (as to risks limited to employees represented by the Union) , 11, 12 (except time clocks and sheets), 28; Art. XI, §3; Art. XIX, §9; and it is further

DETERMINED, that the following Union proposals are not within the scope of collective bargaining by the Union herein: Art. II, §§9, 10, 12, 13, 14; Art. III, §§ 1, 4, 7, 8, 11, 12, 13, 17; Art. IV, §§ 1, 2, 3, 4a, 5, 6, 7, 8, 9, 10, 11, 13, 14; Art. V, §4; Art. VI, §§3, 4, 5; Art. VIII, §§14, 15, 19, 23; Art. X, §§1d, 2, 3, 9, 10, 26; Art. XI, §§1, 6, 9; Art. XVI; Art. XVIII; and Art. XXIII.

Dated, New York, N.Y.

ARVID ANDERSON
C h a i r m, a n

TIMOTHY J. COSTELLO
Member

PAUL HALL
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

EDWARD SILVER
M e m b e r

HARRY VAN ARSDALE
M e m b e r

SAUL WALLEN
M e m b e r