

City v. L.94, UFA, 23 OCB 17 (BCB 1979) [Decision No. B-17-79  
(Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-17-79

-and-

UNIFORMED FIREFIGHTERS  
ASSOCIATION, LOCAL 94,  
IAFF, AFL-CIO,

DOCKET NO. BCB-345-79  
(A-900-79)

Respondent.

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**DECISION AND ORDER**

On August 22, 1979, the Uniformed Firefighters Association (UFA), filed a Request for Arbitration, stating as the grievance to be arbitrated:

"Manning of the Field Communications Unit by one lieutenant and one fireman per tour and reduction of the total complement of firemen assigned to the Field Communications Unit from ten firemen to five firemen violates the contract and existing policy and regulations of the Fire Department."

The City, by its Office of Municipal Labor Relations, filed a Petition Challenging Arbitrability on August 23, 1979.

### Background

The UFA's Request for Arbitration is made pursuant to Article XXII of the parties' collective bargaining agreement which defines a grievance as:

“. . . a claimed violation, misinterpretation or inequitable application of the provisions of this contract or of existing policy or regulations of the Fire Department affecting the terms and conditions of employment.”

The UFA contends that the unilateral change in the manning of the Field Communications Unit (FCU) violates Article V - "Job Description for Firemen," Article XXII "Grievance Procedure," and Article XXVII - "Five-Man Manning" of the parties' contract, as well as Personnel Administrative Informational Directive (PA/ID) 5-74, Section 1A4. In its "Memorandum in Opposition to Petition Challenging Arbitrability," the UFA also argues that the complained of action of the Fire Department is violative of Article XXIII - "Delegates" and, further, it can demonstrate that the:

"work traditionally done in the Field Communications Unit is work which belongs by agreement and past-practice to employees in the title of 'fireman,' not to employees in the title of 'lieutenant.'"

The City maintains that the contract provisions cited by the UFA "are not applicable to the issue at hand." Absent any contractual limitation, it is the City's position that it has the unilateral right to make all decisions regarding manning. In reference to the alleged violation of PA/ ID5-74, Section IA4, the City notes that this policy was reversed on June 1, 1979, to eliminate the language about two-man manning of the FCU and other special units.

The UFA counters that the policy of having two firemen assigned to the FCU was established and maintained over the years "by mutual agreement between the UFA and the Fire Department, and that the Fire Department may not now unilaterally discontinue the two-fireman complement." The UFA adds that PA/ID5-74 embodied language negotiated by the parties and that the deletion of the pertinent language in June 1979, by the Fire Department was done over the objection of and without the consent of the union. In response to the City's contention that Article XXVII - "Five-Man Manning" does not concern the FCU, the UFA claims that such an assertion ignores the bargaining history and clear intent of the provision.

"The history of manning negotiations between the City and the UFA and the resolution of manning questions concerning the FCU by the UFA and the Fire Department in the spirit of . . . Article XXVII through PA/ID 5-74 clearly establish that the parties intended to and did settle issues involving the manning of special units, including the FCU."

### Discussion

After examining the pleadings submitted by the parties herein, the Board requested that the parties file additional information addressed to the issue of whether there was ever any agreement between them pertaining to the manning of the FCU. Of particular concern to the Board were statements made by the UFA that certain sections of PA/ID 5-74 were the result of the parties' own negotiations and, therefore, the terms of this directive were binding and not subject to unilateral revision. The Board was equally interested in an explanation of the UFA's claim that Field Communication work belongs by agreement and past practice to firemen as opposed to fire lieutenants.

Based on the responses of the parties to the Board's inquiries, it appears that there was never any agreement made by the parties relating specifically to the manning of the FCU nor was there any restriction on the right of the Fire Department to revise unilaterally PA/ID 5-74, Section IA4, eliminating the language concerning two-man manning of this unit. PA/ID 5-74 was, in part, revised in compliance with certain provisions of a Memorandum of Understanding entered into by the parties on September 29, 1978, but said revisions did not concern the manning of the FCU.

There remains, however, the UFA's argument that the inclusion of the job description as part of the contract and the specific mention therein of duties allegedly performed by firefighters assigned to the FCU, assures to firefighters an exclusive right to perform those duties; and that the assignment of fire lieutenants to the FCU therefore violates the terms of the parties' collective bargaining agreement.

Firefighters assigned to the FCU are responsible for gathering information at fire and emergency operations and for monitoring a communications system in the unit vehicle connecting the officers at the scene of a fire with a fire dispatcher. The duties of firefighters assigned to the FCU, the UFA contends, "are precisely those set forth in the job description for a full duty fireman." In support of this statement the UFA points to the following duties listed under part I of the job description entitled "Fire and Emergency Operations":

- (1) monitoring alarm circuits and equipment
- (2) operation of apparatus and other automotive equipment of the department
- (3) use of equipment made available for accomplishment of duties
- (4) all chauffeuring duties and related duties
- (5) patrolling as necessitated by fire and/or emergency conditions.

It is these duties, the UFA continues, that are performed by firefighters assigned to the FCU. The UFA concludes that:

“The best evidence that the duties of firemen assigned to the Field Communications Unit are duties set forth in the job description for a full-duty fireman is that the duties have been performed exclusively by firemen in the past.”

It should be noted that job descriptions are not usually made a part of City of New York labor contracts and the presence of the job description in the firefighters' collective bargaining agreement could have some bearing on the contractual rights of the parties, as the UFA maintains. While we make no finding as to the merits of this contention, noting that further inquiry along these lines would be inconsistent with the well-settled rule that such inquiry is in the jurisdiction of arbitrators and not of this Board, we find that the UFA's claim, that the inclusion of the job description in the parties' contract reserves the work of the FCU to firefighters and that this right has been violated, constitutes an arguable and arbitrable allegation. Therefore, the UFA's Request for Arbitration shall be granted.

O R D E R

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

ORDERED, that the petition of the City challenging arbitrability should be, and the same hereby is, dismissed; and it is further

ORDERED, that the Union's request for arbitration should be, and the same hereby is, granted.

DATED: New York, New York

OCTOBER 31, 1979.

ARVID ANDERSON  
C h a i r m a n

WALTER L. EISENBERG  
M e m b e r

EDWARD SILVER  
M e m b e r

VIRGIL B. DAY  
M e m b e r

EDWARD F. GRAY  
M e m b e r

N.B. Please note that Impartial Member Schmertz did not participate in this decision.