

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

- - - - - x

In the Matter of

THE CITY OF NEW YORK

DECISION NO. B-4-69

-and-

DOCKET NO. BCB-45-69

DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

- - - - - x

The City's petition herein, filed May 12, 1969, alleges that seventeen (17) collective bargaining proposals made by District Council 37, herein called the Union, are not within the scope of collective bargaining and hence are not proper for fact-finding. On May 13, 1969, the Union's petition was filed, requesting that the Board find all twenty-nine (29) proposals made by the Union to be within the scope of bargaining.

The matter involved here is before an impasse panel (Docket No. I-32-69) for hearings and, ultimately, for a report and recommendations for settlement. The impasse panel has had presented to it certain items which the City claims are not within the scope of bargaining. Thus, the City's and the Union's petitions, seek a ruling by the Board of Collective Bargaining as to the matters which the impasse panel may or may not consider. Determination of what is within the scope of bargaining is the responsibility of the Board of Collective Bargaining.<sup>1</sup>

---

<sup>1</sup>NYCCBL, §1173-5.0a(2); City of New York and Uniformed Firefighters Association et ano, Decision No. B-9-68.

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

THE ISSUES

The Union's demands consist of twenty-nine items, numbered 1 through 28 (item 7A is treated as a separate 2 item). As to items 1, 2, 3, 4, 5, 6, 7, the first phrase of 17<sup>2</sup>, 21, 24, 25, 26, and 28, the City does not dispute bargainability. Those items, therefore, are not before the Board as both parties recognize that they are within the scope of bargaining.

The remaining demands of the Union are challenged on several grounds, as follows:.

1. Attempted abridgement of management rights reserved in Executive Order 52, §5c.
2. The subjects concern matters which must be uniform for all career and salary plan employees under Executive Order 52, §5a(2).
3. The subjects concern matters which are covered by Civil Service Law, or are matters for the Civil Service Commission.
4. The Union's demand requires further clarification. Each proposal challenged by the City will be reviewed individually.

PROPOSAL NO. 7a

All vehicles must be driven  
by Motor Vehicle Operators

The City's claim of non-bargainability is based on its

---

<sup>2</sup>The proposal contained in the second phrase of item 17 has been withdrawn by the Union.

position that the matter is covered by the Civil Service Law, a stipulation authorizing arbitration of the dispute and the disposition of the matter in Arbitration

The Union asserts that the subject matter is within the scope of bargaining.

The parties effectively removed this issue from bargaining through a suit in the Courts, a stipulation to submit the matter to arbitration, an arbitration hearing resulting from the stipulation (not from a contractual provision), and an arbitration award which clearly refers: to Civil Service Law, rules and regulations of the City, and the stipulation "which governs in this case."<sup>3</sup>

We do not hold that the subject of jurisdiction over the work might not be within the scope of bargaining under other circumstances in the circumstances here, however, we do find it is not within the scope of bargaining, for the reasons stated.

---

<sup>3</sup>District Council 37, AFSCME, AFL-CIO and The City of New York - Arbitration Opinion and Award, Case #1330 0501 67. Monroe Berkowitz, Arbitrator. Dated, Sept. 10, 1968.

PROPOSAL NO. 8

All Motor Vehicle Operators who are "grounded" for medical reasons shall be retained in their positions and shall perform duties within their title which they are physically capable of carrying out. Alternatively, any Motor Vehicle Operator with 15 years of service who is grounded for medical reasons shall be eligible to retire at half pay.

The City challenges the first part of the proposal as an attempted invasion of management's rights to set standards for selection of employees.<sup>4</sup> The City challenges the alternative proposal as not within the scope of bargaining between these parties because the subject is one which requires City-wide uniformity.

Executive Order 52, §5c specifically reserves to the City the right to determine the standards of selection for employment.\* \* \* [and] the content of job classifications." The principal and basic function of Motor Vehicle Operators is to drive motor vehicles. The union's proposal that partially incapacitated or disabled Motor Vehicle Operators should retain the title and pay, without performing the basic duty of the job, seeks a (significant variation of the job content and standards of selection, and thus infringes upon these reserved managerial rights. Absent agreement to submit the proposal to an impasse panel, or proof of a practical impact, the proposal is not within the scope of mandatory collective bargaining, and hence not a proper subject for consideration by the panel.<sup>5</sup>

In the second sentence of Proposal No. 8, the Union seeks a change in the pension plan for employees who are "grounded" for medical reasons. This is clearly a pension-wide matter, specifically covered Executive Order 52, §5a (5), and is not a subject for bargaining between these parties.

---

<sup>4</sup>Executive Order 52, §5c.

<sup>5</sup>Executive Order 52, §5c; City of New York and Uniformed Firefighters Assn. et ano, Decision No. B-9-68.

PROPOSAL NO. 9

All differentials and overtime premium  
pay shall be paid by the second payroll  
date after having been, earned.

The City challenges this proposal on the ground that the subject matter is City-wide and that this general subject is in litigation before the Office of Collective Bargaining.

The Union asserts it has the right to bargain on this proposal in these negotiations.

The Board finds that this subject is not negotiable here, since it is a matter for City-wide or at least departmental bargaining. We do not pass upon the effect of the pending litigation before the Office of Collective Bargaining,\* since we find this proposal is not within the scope of bargaining on other grounds.

PROPOSALS NOS. 10, 11, 13,  
14, 15, 16, 18, 19, 20, 27.

The proposals numbered above refer to the following subject matters:

#10. Advance payment for vacations.

#11. Hours and work week.

#13. Shift differentials --

1st sentence - rates.

2nd sentence - rotating shifts

---

\*District Council 37 v. Sweet et al, BCB-17-68.

#14. Shift differentials --

Saturdays and Sundays.

#15. Overtime pay.

#16. Retirement plan.

#18. Sick leave.

#19. Compensatory time in lieu of  
summer hours.

#20. Holiday pay.

#27. Additional pay increases if delay of  
90 days in payment of salary increases.

As we stated in a similar case: "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."<sup>6</sup>

Section 5a (2) of Executive Order 52 specifies overtime and time and leave rules as two examples of subjects which must be uniform" and are, therefore, subject to City-wide bargaining only. Our decision No. B-11-68 makes it clear that all of the proposals listed above seek bargaining on matters which we have held to be City-wide.

---

<sup>6</sup>City of New York v. S.S.E.U., Decision No. B-11-68.

PROPOSAL NO. 12

All Motor Vehicle Operators shall be on  
standard shifts from 8:00 am to 4:00 pm,  
4:00 pm to 12:00 pm, or 12:00 pm to 8:00 am.

This proposal is challenged by the City on the ground that it seeks to infringe the managerial right to establish shifts. We find that the establishment of shift hours is a reserved right under Section 5c of Executive Order 52, and, absent a showing of practical impact, not within the scope of bargaining.

PROPOSAL NO. 22

Motor Vehicle Operators shall be eligible  
to take examinations for Foreman titles,  
Basin Machine Operator, Tractor Operator,  
and Motor Grader Operator.

The City contends that the subject of this proposal is "not bargainable - advisory only to Personnel Department."

Section 1173-7.0c(3)(b) provides that where a matter requires implementation by a body, agency or official not a party to the negotiations, the impasse panel may address its recommendations to such body, agency or official. Section 5b of Executive Order 52 provides that the City will bargain on matters which require such implementation and will negotiate on whether the City should request the body, agency or official to take such action. The sole limitation is that the panel's recommendation (§1173-7.0c(3)(b) and (c); Executive Order 52, §5b).



The Union's proposal thus is within the scope of collective bargaining, and a proper subject for the impasse panel, subject to the above-mentioned limitation.

PROPOSAL No. 23

Each City agency employing M.V.O.s shall negotiate seniority provisions with the Union.

The City's petition alleges that this proposal "needs clarification."

Seniority is a subject within the scope of collective bargaining. However, the Office of Labor Relations is the collective bargaining representative of the City Executive Order 38, Lindsay, 1967) and negotiations must be conducted with it, and not with the individual departments or agencies. This, of course, does not preclude the negotiation of special provisions to meet departmental needs.

Pursuant to the powers vested in it by the New York City Collective Bargaining Law, the Board of Collective Bargaining concludes and determines:

DECISION

1. Union proposals 7a, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, and 27 are not within the scope of collective bargaining herein and are not matters properly before the impasse panel appointed herein; and

2. Union proposal 22 is within the scope of collective bargaining and properly before the impasse panel appointed herein, subject to the limitation contained in §1173-7.0c(3)(b) and (c) of the New York City Collective Bargaining Law; and

3. Seniority is a subject within the scope of collective bargaining herein, and properly before the impasse panel appointed herein, but subject to negotiation by the New York City Office of Labor Relations.

DATED,       New York, N.Y.

June 12, 1969.

ARVID ANDERSON  
C h a i r m a n

ERIC J. SCHMERTZ  
M e m b e r

SAUL WALLEN  
M e m b e r

PAUL HALL  
M e m b e r

TIMOTHY W. COSTELLO  
M e m b e r

EDWARD SILVER  
M e m b e r