L.444, SEIU, et. al v. City, Dep't of San., et. al, 35 OCB 10 (BCB 1985) [Decision No. B-10-85 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

- x

In the Matter of

SANITATION OFFICERS ASSOCIATION, LOCAL 444, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

DECISION NO. B-10-85
DOCKET NO. BCB-746-84

Petitioner,

-and-

THE CITY OF NEW YORK, THE DEPARTMENT OF SANITATION OF THE CITY OF NEW YORK and the DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK,

Respondents.

- X

In the Matter of

THE CITY OF NEW YORK, DEPARTMENT OF SANITATION,

DOCKET BCB-749-84
(a-2004-84)

Petitioner,

-and-

SANITATION OFFICERS ASSOCIATION, LOCAL 444, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Respondent.

- -X

DETERMINATION AND ORDER

On November 5, 1984, the Sanitation Officers Association, Local 444, SEIU, AFL-CIO ("SOA" or "the Union") filed an improper practice pitition ,docketed as BCB-746-84, in which it is alleged as follows:

> The Department of Sanitation is unilaterally attempting to assign civilians to perform duties presently performed by Sanitation Officers, in violation of the job description Provisions of the Collective Bargaining Agreement between the Union and he City of New York .... By their actions ... respondents will change the terms and conditions of the Union memberships' employment in violation f respondents' duty to bargain in good faith with the Union as the sole and exclusive collective bargaining representative for Sanitation officers and in violation of Section 209-a of article 14 of the Civil Service Law.

On that day, the Union also filed a request for arbitration alleging that:

> The Department of Sanitation plans to unilaterally assign civilians to perform duties presently performed by Sanitation Officers. The Department's proposed action violates the Union's Collective Bargaining Agreement which provides that these duties are to be performed exclusively by Sanitation Officers ....

On November 15, 1984, the City of New York, by its Office of Municipal Labor Relations ("the City" or "OMLR"), challenged the arbitrability of the SOA's grievance in a petition which we have docketed as BCB-749-84. On November 16, 1984, OMLR filed an answer to the improper practice petition, in response to which the Union filed a reply on December 14, 1984. On

December 14, 1984, the SOA also filed an answer to the petition challenging arbitrability and a memorandum of law. On December 20, 1984, the City filed a sur-reply[1] in BCB-746-84 and, on January 4, 1985, a reply in BCB-749-84. All extensions of statutory time limitations for the filing of responsive pleadings were granted on consent.

Background

These proceedings arise out of a proposal for, and he subsequent implementation of, an experimental program at the Department of Sanitation's Fresh Kills Marine Unloading Facility-Staten Island ("the Facility"), whereby six Sanitation Officers, previously assigned to supervise Tractor Operators, were replaced by civilian employees in the newly-established title of Supervisor of Tractor Operators.[2]

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[1]Our Rules do not provide for the submission of pleadings subsequent to the reply. However, as the SOA' reply advances legal arguments not previously raised, we shall consider the City's sur-reply to the extent that it is responsive to such new matter.

[2] The title Supervisor of Tractor Cperators was created by Resolution No. 84-22, adopted by tho City Personnel Director on September 5, 1984.

On October 31, 1984, during negotiations for a successor to the 1982-1984 collective bargaining agreement between the City and the SOA ("the Agreement"), the SOA learned that the Department of Sanitation ("the Department") had obtained approval for the new civil service classification, and that it intended to implement the title immediately. On November 2, 1984, in Supreme Court, New York County, the Union obtained a temporary restraining order which prevented the City from implementing the new title pending a hearing on a motion for a preliminary injunction. In a decision dated November 15, 1984, Justice Beatrice Shainswit denied the motion, stating that she found:

> [n]o reason ... why petitioners should not first exhaust their available contractual remedies .... [3]

The temporary restraining order was vacated.

Thereafter, on December 3, 1984, the City implemented its experimental program. The displaced Sanitation officers were reassigned to other duties within the Department.

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[3] Sanitation Officers Association, Local 444, SEIU v. City of New York, Index No. 25494, Sup. Ct., N.Y. Cty., Spec. Term, Pt. 1 (Nov. 15, 1984).

As the improper practice and arbitrability pro ceedings involve the same parties and factual circumstances, and present related and overlapping issues, have consolidated them for purposes of decision.

Positions of the Parties

Union's Position

In the improper practice proceeding, the Union contends that the City, by assigning civilian employees to perform duties previously performed by Sanitation Officers,[4] unilaterally changed the terms and conditions of employment of SOA members, in violation of the duty to bargain in good faith with the Union, in violation f the 1982-1984 Agreement between the parties, and in violation of the duty to maintain the status quo under the New York City Collective Bargaining Law ("NYCCBL") and it state law equivalent, the New York Civil Service Law ("CSL").

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[4] The instant proceedings were commenced aft-er the City announced its intention to implement, but before it implemented, the Supervisor of Tractor Operators title. Since the challenged program is now in place, we shall consider the allegations of the parties as they pertain to the actual implementation of the program. In any event, no request for a provisional remedy was or is now before us.

In the arbitrability proceeding, the Union maintains that the assignment of civilians to perform duties that historically have been assigned to uniformed officers violates Article VII, Section 7(c)(i) of the Agreement, dealing with the subject of Job Assignments, and which provides as follows:

> [w]hen any equipment is assigned to functional operations, an officer ust be assigned for supervision.

Arbitration is sought pursuant to Article X, Section 2 of the Agreement which defines the term "grievance" to include:

[a) dispute concerning the application or interpretation of the terms of this collective bargaining agreement (Article X, Section 2 (a) (A))

n addition, the job description for the title Foreman (Sanitation) is cited as authority for the position that supervisory duties are properly reserved to uniformed officers.[5]

Although the Agreement has expired, the SOA contends that its terms and conditions continue in effect

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[5] The SOA is the exclusive bargaining representative for employees in the titles Foreman (Sanitation) and General Superintendent (Sanitation), Level 1. Certification No. 16-79. As a result of steps taken by the City to "gender neutralize" the classified service, the title of Foreman (Sanitation) has now been chanced to 'Supervisor (Sanitation). Decision No. 50-82.

by virtue of Section 1173-7.Od of the NYCL'BL.[6] Thus, it is alleged:

> the implementation of the newly-created, non-Union position of Supervisor of Tractor Operators constitutes a violation of the expired collective bargaining aqreement as extended by the status quo provision .... and therefore an improper employer practice under [NYCCBLI §1173-4.2(a) [7]

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[6] NYCCBL section 1173-7.Od provides, in relevant part:

Preservation of status quo. During the period of negotiations between a public employer and a public employee organization concerning a collective bargaining agreement,... the public employee organization party to the negotiations, and the public employees it represents, shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall such public employee organization induce any mass resignations, and the public employer shall refrain from unilateral changes in wages, hours, or working conditions .... For the purpose of this subdivision the term "period of negotiations" shall mean the period commencing on the date on which a bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or an impasse panel is appointed.

[7] Docket No. BCB-746-84, Union's reply, para. 15.

In response to the City's affirmative defense to he allegations of improper practice, the Union argues that the City may, and has, expressly waived its management prerogative to assign civilians to supervise Tractor Operators, because it negotiated concerning this permissive subject of bargaining and incorporated the results of its negotiations into the Agreement. Waiver is also said to result from the promulgation of a job description for the title Foreman (Sanitation) which contemplates the assignment of the disputed duties to Sanitation Officers.

The SOA contends that the waiver of a management prerogative in this case is not foreclosed by a supervening "public policy", as the City alleges. It is asserted that, unlike Honeoye Falls-Lima Central School District v. Honeoye Falls-Lima Educational Association, 42 N.Y. 2d 732, 426 N.Y.S. 2d 263, 401 N.E. 2d 1165 (1980), relied upon by the City, there is no area of significant public interest involved here, nor any clear and explicit statutory prohibition on bargaining concerning which personnel should be assigned to supervise Tractor Operators.

Countering the City's arguments in opposition to arbitration, the SOA maintains that NYCCBL section

1173-8.0d, which requires as a condition precedent to arbitration the waiver of any right to submit the underlying dispute to any other tribunal, is not violated by a party's attempt to avail itself concurrently of arbitration and improper practice procedures. According to the Union, the Board has held that:

> [t]he filing of an improper practice petition alleging violation of statutory rights does not constitute a waiver of the right to seek contractual relief through arbitration of a dispute arising out of the same circumstances which involve the same parties. [8]

The SOA argues that the request for arbitration and the improper practice petition in this matter seek vindication of different rights, the former asserting a violation of contract, which is for an arbitrator to determine, the latter involving a statutory violation, which is within the exclusive jurisdiction of the Board.

The Union argues, moreover, that the City should be estopped from invoking the statutory waiver provision as to a bar to arbitration because:

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[8] The Union quotes from Decision No. B-39-80, at 9.

(1) in an effort to prevent the court from asserting jurisdiction over his matter, the City argued, and and therefore concedes, that the Union had non-judicial, administrative remedies;

(2) in an effort to expedite the administrative process, the City waived the first four steps of the grievance procedure; and

(3) the General Counsel of OMLR suggested that the Union file a request for arbitration as well as an improper practice petition.

For a remedy, the SOA requests that the improper practice petition be granted, and that the City be ordered: to cease and desist from departing from the terms of the Agreement; to cease and desist from implementing the position of Supervisor of Tractor Operators within the Department; and to reassign the six Sanitation Officers who were transferred from their former positions. If the improper practice petition is denied, the Union requests that the dispute be directed to arbitration.

City's Position

The City's position is based primarily on the assertion that the replacement of Sanitation Officers by civilian employees is within its management rights

under section 1173-4.3b of the NYCCBL.[9] OMLR argues that civilianization, of which the contested program is an example, is "a well-established, accepted and ongoing principle," which has been upheld by the Board as ., valid exercise of management rights, and which may not form the basis of a an improper practice.[10]

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[9]NYCCBL section 1173-4.3b provides:

> It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. 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.

[10] The City cites Decision Nos. B-8-80, B-27-80 and B-35-82.

The City denies that it has at any time waived its statutory right unilaterally to replace uniformed employees with civilians. According to OMLR, neither the collective bargaining agreement nor the joh description for Sanitation Officers affords the Union exclusive jurisdiction" over the duties in dispute. The City asserts that civil service job specifications are descriptive and general, and often reflect duplication and overlap of duties between titles. Accordingly, OMLR maintains that it acted within its rights when it removed job duties from one title and assigned them to a different title.

For its first challenge to arbitrability, OMLR asserts that the rights prescribed by NYCCBL section 1173-4.3b are not within the scope of bargaining. Since the issue of whether the Department may unilaterally assign civilians to perform duties previously performed by Sanitation officers allegedly requires a determination as to the scope of bargaining, which is a matter exclusively for the Board, the City contends that this issue cannot be raised before, or decided by, an arbitrator.

The City argues further that the stntutory grant

of management rights found in NYCCBL section 1173-4.3b constitutes a "public policy" which cannot be subject to arbitration. OMLR contends that certain management decisions,such as those affecting safety, efficiency and the cost-effective delivery of services, raise issues of such vital public importance that the City must be free to act without negotiating or arbitrating in these areas. In support of this argument, OMLR cites Honeoye Yalls-Lima Central School District, supra, where, in a case arising under the Education Law, the New York Court of Appeals held that:

> it is beyond the power of a school board to surrender through collective bargaining a responsibility vested in the board in the interest of maintaining adequate standards in the classrooms .... (49 N.Y. 2d at 734).[11]

The City asserts additionally that arbitration should be barred in this case because the SOA violated NYCCBL section 1173-8.Od[12] by submitting to the improper

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[11]Docket No. BCB-749-84, City's petition, para. 8.

[12]NYCCBL section 1173-8.Od provides:

> As a condition to the right of a municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the

(more)

practice forum the same dispute as it seeks to submit to arbitration. Since the Board has consistently held that the waiver requirement imposes a condition precedent to arbitration,[13] and since this requirement has been breached here, the City argues that arbitration should be denied.

OMLR concedes that its General Counsel had a conversation with the Union's counsel concerning administrative procedures under the NYCCBL, in which the consequences of filing an improper practice and/or a request for arbitration were discussed. However, it is alleged, at no time did the City waive its right to challenge either form of process.

For all of the aforementioned reasons, the City requests that the improper practice petition and the request for arbitration be dismissed in their entirety.

(Footnote 12/ continued)

> director a written waiver of the right, if any, of said grievant or grievants and said organization to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

[13]The City cites Decision Nos. B-10-74, B-11-75, B:15-75, and B-7-76.

Discussion

In BCB-746-84, the Union alleges that the City has committed an improper practice in that, during negotiations for a successor collective bargaining agreement, it unilaterally altered a term of the expired Agreement in violation of the Agreement, in violation of the duty to maintain the status quo under section 1173-7.Od of the NYCCBL, and in violation of sections 1173-4.2a of NYCBL [14]

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[14] NYCCBL section 1173-4.2a provides:

Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 1173-4.1 of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activiies of, any public employee organization;

(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.

and 209-a of the CSL.[15] In BCB-749-84, the Union alleges that an arbitrable dispute exists in that the City has, in violation of the Agreement, assigned to civilians duties that the Agreement expressly reserves to Union members. Having carefully considered the pleadings of the parties in the improper practice and arbitrability pro-

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[15] CSL section 209-a provides, in relevant part:

> Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere ith, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activoties of, any employee organization; (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees; or (e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article.

ceedings, we find that the focus of the dispute ir. both cases is on a matter arising out of and requiring interpretation of the Agreement. The Union's claims under NYCCBL sections 1173-7.Od and 1173-4.2(a) essentially concern the alleged violation of Article VI1, Section 7 (c)(i), while the City's position is founded upon the asserted management right to determine which employees shall perform supervisory duties. At the heart of the matter, therefore, are competing claims of a management right to act unilaterally and of a contractual limitation placed on any such right.

In District Council 37, AFSCME, AFL-CIO v. City of New York (Decision No. B-10-80), a similar situation was presented. The union asserted that the promulgation of a Personnel Policy and Procedure on the subject of employee lateness violated sectio.n 1173-4.2a(4) of our statute in that the City acted unilaterally without bargaining with the union. The relevant collective bargaining agreement incorporated by reference certain time and leave rules which also addressed the subject of lateness policy.

In that case, the Board noted that determination of the improper practice charge depended upon inter-

pretation of the contract and of the newly promulgated lateness policy that the City asserted should be followed. Noting that the National Labor Relations Board ("NLRB"), in a series of cases commencing with Collyer Insulated Wire (77 LRRM 1931 (1971)), had deferred to an existing grievance-arbitration procedure where an unfair labor practice charge concerning a bargaining obligation under the Act was also subject to, and resolvable by, a contractual grievance-arbitration procedure, the Board deferred resolution of the dispute to the parties' contractual grievance-arbitration procedure.[16] We found that th e conditions for deferral established by Collyer had been met, i.e., the dispute arose within the context of a longstanding bargaining relationship; the respondent was willing to arbitrate the dispute under agreed upon grievance-arbitration procedures; it appeared that contract interpretation would resolve both the improper practice and contractual issues; and there was no assertion of animus or hostility toward the union.[17]

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[16] The Board noted that public sector labor boards in several jurisdictions have also adopted the NLRB's deferral doctrine. Decision No. B-10-80, at 11, n.5.

[17] Id. at 10-12. The NLRB recently reaffirmed the Collyer doctrine of pre-arbitral deferral in United Technologies Corporation, 115 LRRM 1049 (1984).

In dealing with controversies involving alleged violations of the status quo provision of our law, we have adopted a similar deferral policy, based upon the reasoning that

> where the underlying controversy derives solely from the statutory extension of the provisions of a prior contract, the arbitration provisions ... which applied during the term of the contract provide the most appropriate means of dealing with such a controversy arising during the [status quo] period .... [18]

We have also indicated, however, that since the rights and duties of the parties during the status quo period are founded upon the statute, the Board could, alternatively, exercise its jurisdiction over the alleged violation of status quo and treat the matter as a statutory question.[19]

In the instant matter, the expired Agreement between the parties provides that Sanitation Officers shall be assigned to supervise equipment under prescribed circumstances. It is undisputed that this provision continues in effect by operation of NYCCBL section

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[18] Decision No. B-1-72. See, Decision No. B-13-76.

[19] Decision No. B-1-72.See, Decision No. 3-7-712.

1173-7.0d. Because the controversy presented "derives solely from the statutory extension of the provisions of a prior contract" - as discussed infra, the City would be under no obligation to assign Sanitation Officers to supervise equipment under any circumstances were it not for the inclusion of a provision to this effect in the Agreement - and since it appears that interpretation of the Agreement will resolve the statutory as well as the contractual dispute, we find that the arbitration procedures of the Agreement provide the most appropriate means of resolving this matter. However, in any given case, we may not defer to arbitration unless the matter in dispute is subject to arbitration.[20] Since the City has challenged the arbitrability of the grievance herein, we shall now examine the City's arguments in this regard in order to determine whether its petition presents a bar to deferral.

The City's first objection to arbitration is based upon the assertion that the exercise of a manage-

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[20] See, Collyer Insulated Wire, 77 LRIRII 1931 (1971); Board of Education of the City of New York, 6 PERB ¶3006 (1973).

ment right is not subject to review in the arbitral forum, either because section 1173-4.31) rights are not within the scope of bargaining or because the issue souqht to be arbitrated requires a determination as to the scope of bargaining which is within the sole Jurisdiction of the Board. The Union concedes that the issue raised in its request for arbitration involves a management right. However, the SOA argues that the City has expressly waived its right unilaterally to determine which employees shall supervise Tractor Operators by engaging in negotiations and by incorporating into the Agreement an express provision on that permissive subject of bargaining.

We have held on numerous occasions that the rights defined in NYCCBL section 1173-4.3b, and reserved to management therein, are not within the scope of mandatory negotiations.[21] We have also held, however, that management prerogatives constitute permissive subjects of negotiation which the parties may discuss and agree

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[21] E.q., Decision Nos. B-11-68; B-7-69; 13-5-RO; B-14-80; B-23-81; B-35-82.

to include in a collective bargaining agreement.[22] Where such subjects are discussed and agreed to, any rights and obligations created by such agreement are contractual and may be enforced by means of a grievance procedure, including arbitration.[23]

In the instant matter, Articie VII, Section 7(c)(i) of the Agreement evidences that the parties have negotiated concerning which personnel are to perform supervisory duties when "equipment is assigned to functional operations." We find that this provision constitutes an explicit waiver of the City's otherwise unilateral right to determine supervisory assignments. Therefore, the allegation that the terms of Article VII, Section 7(c)(i) have been violated by the City's re-assignment of supervisory duties to civilian Supervisors of Tractor Operators raises an arbitrable issue as to a possible violation of the contract.

[22]Decision No. B-11-68.

[23]Decision Nos. B-11-68; B-7-69; B-2-71.

Further, we reject the City's argument that waiver of its management rights, and arbitration of the dispute in this matter, are barred by "public policy". While the courts in this state have delineated certain areas of governmental interest and public concern as to which a public employer may not negotiate, and which may not be waived, the public policy must be a strong one, almost always involving an important constitutional or statutory duty.[24] it is well-settled that, absent "plain and clear prohibitions" in statute or controlling decisional law, a public employer may negotiate any matter in controversy and may agree to submit such controversies to arbitration.[25] Not inconsistent with

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[24] Port Jefferson Station Teachers Association v. Brookhaven-Comsewoque Union Free School District, 45 N.Y. 2d 898, 411 N.Y.S. 2d 1, 383 N.E. 2d 553 (1978).

[25] 411 N.Y.S. 2d at 2. See, Board of Education v. Nyquist, 48 N.Y. 2d 97, 421 N.Y.S. 2d 853, 397 N.E. 2d (1979); Susquehanna Valley Central School District v. Susquehanna Valley Teachers Association, 37 N.Y. 2d 614, 37 N.Y.S. 2d 427, 339 N.E. 2d 132 (1975); Syracuse Teachers Association v. Board of Education, 35 N.Y. 2d 743, 361 N.Y.S. 2d 912, 320 N.E. 2d 646 (1974); Board of Education v. Associated Teachers of Huntington, 30 N.Y. 2d 122, 331 N.Y.S. 2d 17, 282 N.E. 2d 109 (1972).

this principle is Honeoye Falls-Lima Central School District v. Honeoye Falls-Lima Education Association, cited by the City herein, where the Court of Appeals denied arbitration of a dispute involving the job security provision of a teachers' contract because enforcement of the provision would have contravened the express direction of the Education Law on the same subject.

In the matter before us, the City argues that section 1173-4.3b of the NYCCBL constitutes a similar statutory prohibition. We reject this contention, however. While section 1173-4.3b is a broad and general grant of management authority, permitting the City, inter alia, "to determine the standards of services to be offered by its agencies; ... maintain the efficiency of governmental operations; [and] determine the methods, means and personnel by which government operations are to be conducted," all without bargaining concerning its decisions in those areas,[26] we find that section 1173-4.3b, unlike the State Education Law, prescribes waivable rights, not non-delegable duties.

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[26] We note, however, that the statute itself limits management's authority to the extent that it requires the City to bargain concerning the practical impact that may result from its decisions.

The New York Court of Appeals addressed this very issue in City of New York v. Uniformed Firefighters Association, Local 94,[27] where it upheld an arbitrator's ruling enjoining the use of civilian inspection employees to perform duties which were found to have been reserved to firefighters in the City's contract with the UFA. Reversing an orderof the Appellate Division, the Court of Appeals noted that the arbitrator's award could only be overturned

> if it is contrary to law or if 'without engaging in extended fact finding or legal analysis ... [the court can) conclude that public policy precludes its enforcement' (citation omitted).

The Court concluded:

> [n]either subdivision a of section 487 of the City Charter nor subdivision b of section 1173-4.3 of the Collective Bargaining Law de clares'~ 'public policy which is beyond waiver ... (emphasis added).[28]

The issue having been finally determined by a court of last resort, we therefore hold that any public policy which may be expressed by the management rights clause of our

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[27] 58 N.Y. 2d 957, 460 N.Y.S. 2d 521, 447 N.E. 2d 69 (1983).

[28] 460 N.Y.S. 2d at 522.

statute does not preclude arbitration of the controversy presented here.

The remaining objection to arbitration in this case is based upon the waiver requirement of NYCCBL section 1173-8.0d, which the City contends has been violated by the simultaneous submission of the underlying dispute to improper practice and arbitration forums. However, since we deem the dispute presented herein to be an appropriate instance for deferral to arbitration,[29] we need not consider at this time the City's argument relating to the effectiveness of the Union's waiver. We have previously held that the purpose of the waiver provision is to prevent unnecessary or repetitive litigation and thereby to foster speedy and final resolution of disputes.[30] This purpose will not be defeated by deferral of a dispute to one of two requested forums, and the retention of jurisdiction to consider at a later date whether the dispute will be permitted to proceed in the other forum. Thus, we find that the waiver provision does not require the denial of arbitration in this case.

We conclude that where, as here, the collective bargaining agreement clearly provides for grievance arbitration, the improper practice charge raises a claim of

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[29]See discussion at pages 17-20 supra.

[30]Decision No. B-13-76.

contract right which is subject to arbitration, and it appears that arbitration may resolve the issues in both proceedings, the policies and purposes of the NYCCBL will, be advanced, and not hindered, by the submission o f the dispute to arbitration. Accordingly, we shall defer to the arbitration procedures that the parties have included in their agreement. We shall retain jurisdiction over this matter, however, in order to ensure that any arbitration award is consistent with, and not repugnant to, the NYCCBL. In the event that we are called upon to assert our jurisdiction over the parties' dispute, we shall consider, as a threshold matter, the City's contention that our exercise of such jurisdiction is barred by the statutory waiver provision.

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 hereby

ORDERED, that the petition challenging arbitrability filed by the City of New York in Docket No. BCB-749-84 be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration filed by the Sanitation Officers Association in Docket No. BCB-749-84 be, and the same hereby is, granted; and it is further

ORDERED, that the improper practice petition filed by the SanitatJLon Officers Asscciation in Docket No. BCB-746-84 bel and the same hereby is, dismissed, except that jurisdiction is retained for the purpose of hearing and determining, upon demand', whether the disposition of this matter is consistent with, and not repugnant to, the New York City Collective Bargaining Law and considering, as a threshold question, our assertion of jurisdiction is precluded by section 1173-8.0d of the NYCCBL.

Dated: New York, N.Y.
March 27, 1985

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

DEAN L. SILVERBERG
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

JOHN D. FEERICK
MEMBER