OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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LOCAL 2507, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO DECISION NO. B-22-87

Petitioner, DOCKET NO. BCB-944-87

-and-

EMERGENCY MEDICAL SERVICE,

Respondent.
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DECISION AND ORDER

On April 1, 1987, Local 2507, District Council 37, AFSCME, AFL-CIO ("Local 2507") filed an improper practice petition in which it alleged that the Emergency Medical Service ("respondent" or "EMS") had violated Section 1173-4.2(a)(4) of the New York City Collective Bargaining Law by unilaterally "contracting out" to non-bargaining unit personnel work which had been heretofore performed exclusively by unit members. On May 5, 1987, the Office of Municipal Labor Relations ("OMLR") filed, on behalf of EMS, an answer to the improper practice petition. No reply was submitted.

Positions of the Parties

Union's Position

In an affidavit in support of the improper practice petition, George Engstrom, President of Local 2507, avers that Local 2507

is the constituent part of District Council 37 which represents persons employed by EMS in the job titles Emergency Medical Service Specialist ("EMSS") and Supervising EMSS. Mr. Engstrom claims that among the duties which these individuals are certified, by the State, to perform are: responding to emergency calls involving cardiac arrest and other cardio-pulmonary disorders; and administering the appropriate care. Petitioner claims that since the mid-1970's, such calls have been handled by EMSS personnel. In or about January, 1987, it is alleged, EMS announced publicly that it would explore the possibility of having Police and Fire Department personnel respond to these calls. In fact, it is alleged, EMS has already begun to transfer such work to the Police and Fire Departments.

Local 2507 further alleges that respondent has transferred bargaining unit work to non-bargaining unit personnel without prior negotiations or agreement, thereby breaching its duty to bargain in good faith with the petitioner. Petitioner seeks, as a remedy, a Board order directing respondent "[t]o cease and desist transferring such work and to compensate affected unit employees who have lost wages as a result of Respondent's actions."

EMS' Position

In its statement of facts, EMS claims that cardiac care

assistance has been provided by members of the New York City Police and Fire Departments since 1970. Petitioner, it insists, has not set forth any documents in support of its allegations; nor has petitioner set forth any dates on which the alleged "contracting out" occurred.

> The petitioner herein does not indicate specifically which bargaining unit work has been allegedly transferred, which police emergency service units have begun responding to cardiac emergency calls formerly responded to by EMSS, which cardiac emergency calls were not responded to by EMSS as a result of this alleged transfer of bargaining unit work to non-bargaining unit personnel, how this alleged transfer has adversely affected bargaining unit employees, and so forth.

The petitioner, it is charged, fails to state a claim in that no facts have been alleged which "would support the underlying theory of Petitioner's case that the Respondent has violated Section 1173-4.2(a)(4) of the NYCCBL..."

As a further defense to the improper practice charge, respondent asserts its management right, pursuant to Section 1173-4.3b of the New York City Collective Bargaining Law ("NYCCBL"),

> 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. (Emphasis added).

Respondent argues that decisions on the methods, means and personnel by which its operations are to be conducted are within its management prerogative "unless the Union offers persuasive evidence or argument which demonstrates that limits exist on the City's freedom to act unilaterially in this area. The Union, it is claimed, has not done so. Nor, it is alleged has petitioner presented any evidence of practical impact upon the EMSS. Respondent, it concludes, has not violated any statutory duty to bargain and has not, therefore, committed an improper practice.

For its third and last defense to the improper practice charge, respondent claims that District Council 37 ("DC 37"), not Local 2507, is the certified collective bargaining representative of the EMSS. Since DC 37 has neither authorized nor consented in writing to the filing of the instant

improper practice petition, Local 2507 lacks standing in this action and the petition should, therefore, be dismissed.

Discussion

Respondent maintains that District Council 37, not Local 2507, is the certified bargaining representative for the EMSS, and asserts lack of standing amongst its defenses to the petition herein. Since rules of standing are uniformly regarded as "threshold determinants of the propriety of judicial intervention,"[1] we will consider this defense first and only upon a finding that standing exists, will we address the merits of the underlying dispute.

Section 1173-4.2a of the New York City Collective Bargaining Law, upon which petitioner relies, provides that it shall be an improper practice for an employer "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." [Emphasis added].

Section 1173.30 provides that

> 1. The term "certified employee organization" shall mean any public employee organization: (1) certified by the board of certification as the exclusive bargaining representative of a bargaining unit determined to be appropriate for such purpose; (2) recognized as such

[1]Warth v. Seldin, 422 U.S. 490, at 517-518 (1975).

> exclusive bargaining representative by a public employer other than a municipal agency; or (3) recognized by a municipal agency, or certified by the department of labor, as such exclusive bargaining representative prior to the effective date of this chapter, unless such recognition has been or is revoked or such certificate has been or is terminated.

Section 1173-3.0 also provides that

> q. The terms "designated representative" and "designated employee organization" shall mean a certified employee organization, council or group of certified employee organizations designated for the purposes specified in paragraphs two, three or five of subdivision a of section 1173-4.3.

On December 29, 1975, the Board of Certification of the Office of Collective Bargaining determined, in Decision No. 62-75, that Certification "D", resulting from the consolidation of Certification No. 98-73 and Certification CWR-101/67, was "to be held jointly by City Employees Union, Local 237, I.B.T.; District Council 37, AFSCME, AFL-CIO; and Local 144, Hotel, Hospital, Nursing Home and Allied Service Employees Union, SEIU, AFL-CIO." On August 2, 1983, the Board of Certification amended Certification No. 62D-75 to add the titles Emergency Medical Service Specialist and Supervising Emergency Medical Service Specialist.[2]

[2]Decision No. 17-83.

The express language of the NYCCBL leaves no doubt that an employer owes the duty to bargain in good faith only to the certified or designated bargaining representative. Since Local 2507 is not the certified bargaining representative, petitioner fails to satisfy an essential predicate to the establishment of standing to assert a claimed refusal to bargain under our law. In discussing concepts of justiciability, the Supreme Court, in Warth v. Seldin, explained that essentially the standing question is "whether the constitutional or statutory provision on which the claim rests properly can be understood as granting ... [parties] in the plaintiff's position a right to judicial relief."[3] This test clearly is not met by Local 2507 in the proceeding herein.

In State of New York / Long Island State Park and Recreation Commission, responding to a charge by Local 2744 that the Commission had violated its bargaining obligation by unilaterally changing employees' conditions of employment, PERB held that

> [s]ince a charge of this nature by statute, may be brought only by the certified or recognized employee organization (Act.§209-a.l[a]),[4] the charging party lacks standing to lay the charge in this proceeding.[5]

[3]422 U.S. 490.

[4]Public Employees' Fair Employment Act. Section 209-a.

[5]16 PERB ¶4664 (1983).

And, in State of New York / Insurance Department Liquidation Bureau,[6] PERB found the charge therein "deficient as a matter of law" and stated that

> [a]n employer's duty to bargain is owed only to a duly recognized or certified representative. CSEA lacks the status which would entitle it to negotiate terms and conditions of employment, and therefore, the charge is dismissed.

Since Local 2507 is not the certified bargaining representative of the EMSS, and since the jointly certified representatives, have neither authorized nor consented in writing to the filing of the instant improper practice charge, the petition herein fails to state a cognizable injury under our law and the charge must, therefore, be dismissed.

[6]16 PERB ¶4584 (1983).

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 improper practice petition filed by Local 2507 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
June 8, 1987

ARVID ANDERSON
Chairman

GEORGE NICOLAU
Member

DANIEL G. COLLINS
Member

CAROLYN GENTILE
Member

EDWARD F. GRAY
Member

EDWARD SILVER
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Member