

Levy, 5 OCB 4 (BCB 1970) [Decision No B-4-70 (IP)], aff'd, Levy v. Anderson, 65 Misc. 2d 763, 318 N.Y.S.2d 86, (Sup. Ct. N.Y. Co. Jan. 28, 1971).

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING  
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In the Matter of the Petition

of

LOUIS H. LEVY and MAYNARD D. HARDWICK,

DECISION NO. B-4-70

Petitioners,

-against-

DOCKET NO. BCB-61-70

ARVID ANDERSON, as Chairman of the  
Office of Collective Bargaining  
of the City of New York and  
THOMAS F. Mc COY as State Administrator  
of the Administrative Board of the  
Judicial Conference of the State of  
New York, and HERBERT L. HABER, as  
Director of the Office of Labor  
Relations of the City of New York,

Respondents

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DECISION AND ORDER

Petitioners, both Probation Officers (Incumbent) employed in the Supreme Court located in the City of New York, by their petition filed May 8, 1970, seek review of the findings and recommendations of an impasse panel.

The petition is erroneously addressed to the "Office of Collective Bargaining." Administration of the impasse provisions of the New, York City Collective Bargaining Law (herein NYCCBL) is vested in the Board of Collective Bargaining (herein the Board). We shall treat the application as one made to that Board.\*

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\*Arvid Anderson, "as Chairman of the Office of Collective Bargaining" is named as a respondent herein. The petition seeks no remedy as against him and contains no allegations explaining, justifying or warranting his inclusion as a party.

The Petition alleges that the Probation and Parole Officers Association of Greater New York (hereinafter the Association) is the certified representative of a unit of various probation officers' titles including Probation Officers (Incumbent) for the purposes of collective bargaining; that the Association entered into collective bargaining negotiations with the Office of Labor Relations of the City of New York and the Administrative Board of the Judicial Conference of the State of New York; that such negotiations were exhausted; that an impasse panel was appointed by the Board of Collective Bargaining; that the impasse panel issued findings and recommendations for a general wage increase; that the findings and recommendations are illegal, arbitrary, capricious, without foundation in fact or in law, and that they discriminate against petitioners and all others classified in the title of Probation Officer (Incumbent).

Petitioners, citing no Authority, contend that "The Office of Collective Bargaining . . . has the inherent power to review the findings and recommendations of the Panel and to correct mistakes of such Panel and remedy any wrongs created thereby ." Petitioner has declined to file a brief in support of its contention although requested to do so. (See Rule 7.9).

The answer of the Office of Labor Relations denies the material allegations of the Petition and sets forth various affirmative defenses, including Petitioners' lack of standing and the absence of any statutory provision for review.

It further alleges, and Petitioners do not deny, that the Panel's recommendations were accepted by the public employer and the Probation and Parole Officers Association of Greater New York, the certified employee organization.

An administrative agency possesses only those powers conferred upon it by statute (Bd. of Higher Education v. Carter, 16 AD 2d 443, 228 NYS 2d 704 modified 14 NY 2d 153, 250 NYS 2d 33).

Section 1173-7.0c of the NYCCBL provides for the appointment of an impasse panel when collective bargaining negotiations between a public employer and a certified employee organization have been exhausted. The section contains specific provisions concerning the appointment of panels, the method of selection of the members thereof, the sharing of the cost, the powers of the panel, the content of its report, the parties and persons upon whom the report is to be served, and the time for mandatory release of the report to the public. Such affirmative and meticulous detailing of the nature, functions, powers and procedures of impasse panels stands in stark contrast to the absence of any provision for review of their reports and recommendations.

The recommendations of an impasse panel are advisory only, and may be rejected, in whole or in part, by either party (OCB Rule 5.11c). The terms of settlement suggested by neutral third parties carry a strong moral obligation, but in no sense do they constitute a binding or final determination. Since the manifest intent and purpose of the statute is to leave acceptance or rejection

of the recommendations to the parties, there is no warrant for administrative review thereof. As the law now stands, Board review of impasse panel recommendations would constitute a substitution of its own recommendations for those of the panel, a procedure neither provided by the statute nor contemplated in the procedure for the selection of members of the panel.\*\*

Moreover, even if the Board had the power of review, Petitioners would lack standing to bring the proceeding. The "parties" referred to in §1173-7.0c are "a public employer and a certified employee organization." They are the parties who may request the appointment of a panel, who select the members and pay the expenses thereof, and who may reject or accept the recommendations.

A certified representative, by law, is the exclusive representative of all employees in the appropriate bargaining unit [NYCCBL, §1173-5.0b(2)]. It is the union's function, not the Board's, to resolve the conflicting views of the employees it represents. To permit individual employees to seek and obtain review of a panel's recommendations would subvert the exclusive right of the bargaining representative, permit multiplicity of suits and destroy the collective bargaining process. Particularly is that true where, as here, the recommendations have been accepted by the parties.

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\*\* A bill, empowering the Board to review rejected impasse panel recommendations and providing appropriate procedures and safeguards, has been introduced in the New York City Council (Int. No. 1163. 3/24/70). It provides for appeal to the Board by the public employer or certified employee organization, from rejected panel recommendations, and makes the Board's determination final and binding, subject to limited judicial review and preservation of legislative functions.

Accordingly, we shall dismiss the petition herein.

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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

O R D E R E D, that the petition be, and the same hereby is, dismissed.

DATED: New York, N.Y.  
July 17, 1970.

ARVID ANDERSON  
C h a i r m a n

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WALTER L. EISENBERG  
M e m b e r

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ERIC J. SCHMERTZ  
M e m b e r

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TIMOTHY W. COSTELLO  
M e m b e r

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EDWARD SILVER  
M e m b e r

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EARL SHEPARD  
M e m b e r