

NYFD & City v. UFA, 53 OCB 2 (BCB 1994) [Decision No. B-2-94 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

-----X

In the Matter of

NEW YORK CITY FIRE DEPARTMENT and  
THE CITY OF NEW YORK,

Petitioners,

DECISION NO. B-2-94

-and-

DOCKET NO. BCB-1415-91

(A-3842-91)

UNIFORMED FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK,

Respondent.

-----X

**DECISION AND ORDER**

On August 27, 1991, the New York City Fire Department and City of New York ("the Department" or "the City") filed a petition challenging the arbitrability of a grievance filed by the Uniformed Firefighters Association of Greater New York ("the UFA" or "the Union"). In its request for arbitration, the UFA alleged that the City's proposed plan to merge the Computer Aided Dispatch Operation ("CADO") Unit and the Field Communications Unit ("FCU") would eliminate "Firefighters currently assigned to [FCU] in the resultant entity" and, thus, would violate Article V and Schedule A of the 1987 - 1990 Collective Bargaining Agreement

("the Agreement") between the City and the UFA.<sup>1</sup>

According to the City's petition challenging arbitrability, the Department was considering but had not yet implemented the plan to consolidate FCU and the CADO Unit. Therefore, the issue presented in the UFA's request for arbitration was not ripe for adjudication. On this basis, the City requested that the Board of Collective Bargaining ("the Board") dismiss the UFA's grievance in its entirety.

---

<sup>1</sup> Article V and Schedule A of the Agreement provide, in pertinent part, as follows:

ARTICLE V - JOB DESCRIPTION

Section 1.

The job description for firefighters shall be in Schedule A annexed hereto and made a part hereof as if fully set forth at length.

SCHEDULE A

JOB DESCRIPTION - FULL DUTY FIREFIGHTER

1. Fire and Emergency Operations.

Under immediate supervision of company officers a Firefighter while engaged in fire and emergency operations performs emergency duties varying from those requiring minimal individual judgment to those requiring some independent judgment but in accordance with prescribed methods and procedures. These duties are performed in responding to, working at and returning from fire and emergency operations. They shall include but are not limited to:

\* \* \*

e) All chauffeuring duties and related duties.

\* \* \*

On October 18, 1991, the UFA filed a "Memorandum in Opposition" to the City's petition challenging arbitrability. Therein, the UFA alleged that on or about October 14, 1991, the City implemented the challenged plan.

On November 8, 1991, the City sought permission to file an amended petition challenging arbitrability, inasmuch as "[t]he facts and grounds as stated in the original petition are no longer applicable." In a letter dated November 22, 1991, the UFA objected to the City's request. On November 27, 1991, the Board held that in view of a material change in circumstances, the City's request was granted.

On December 12, 1991, the UFA filed an answer to the City's amended petition. The City did not file a reply.<sup>2</sup>

#### **BACKGROUND**

In a letter dated April 24, 1991, addressed to then City Council President Andrew Stein, the Department provided notice of its intention to relocate the FCU from 172 Tillary Street to 25 Rockaway Avenue, both in Brooklyn. According to the letter:

The function of the FCU is to establish a command post at the fire scene to assist in the coordination of communications. This includes providing progress reports between on-the-scene fire personnel and the Bureau of Fire Communications central dispatch office, which, in turn relays reports to the Department's central command hierarchy. FCU does not respond unless the incident is a second alarm or greater. Since its response area is Citywide, and it is not a firefighting unit, its immediate location does not impact our fire protection mission.

---

<sup>2</sup> On May 8, 1992, the Trial Examiner handling this case ascertained that the City, by its Office of Labor Relations, did not intend to file a reply in this matter.

To increase productivity and provide a savings to our budget, the Fire Department will consolidate the FCU with the [CADO] Unit (already located at 25 Rockaway Avenue) and reduce, through attrition, one (1) firefighter post (5 members) assigned to FCU. The merging of the two units is viable since CADO also provides communications interface at major fire scenes. The similar functions of the two units, and their shared expertise in communications protocol, will, therefore, optimize our capabilities while enabling the Department to reduce staffing and reduce expenditures.

Further, the resources available at the 25 Rockaway Avenue location provide an atmosphere more conducive to the overall mission of field communications since they will allow the FCU to establish a network link to our Starfire dispatch system which is situated at this location. Also, the space accommodations at 25 Rockaway Avenue are more appropriate for this unit.

A Step III grievance hearing was held on July 17, 1991. According to the Step III decision of the Grievance Hearing Officer dated July 31, 1991, the UFA argued "that having a non-bargaining unit person perform chauffeuring duties is a contractual violation." The City denied the grievance as "premature" and, in the alternative, on the merits. The City cited management rights as grounds for the latter determination. The instant request for arbitration was filed on August 1, 1991.

#### **POSITIONS OF THE PARTIES**

##### **THE CITY'S POSITION**

The City submits that the management rights it enjoys under §12-307b of the New York City Collective Bargaining Law ("NYCCBL")<sup>3</sup> includes, inter alia,

---

<sup>3</sup> The City cites NYCCBL §12-307b, which provides, in pertinent part, as follows:

It is the right of the City,... acting through its agencies, to determine the standard of services to be  
(continued...)

the right to unilaterally determine the job assignments of its employees. Therefore, the City argues, it has the unfettered right to merge the FCU and the CADU Unit by assigning civilian fire alarm dispatchers to drive FCU vehicles.

The City characterizes the UFA's grievance as a claim that dispatchers will perform work that Firefighters want to perform. The City submits that absent any limitation on its right to assign duties to its employees, the Board has previously held grievances protesting the assignment of duties to employees outside of the bargaining unit not arbitrable. In particular, the City cites Decision No. B-68-90, where the Board dismissed the claim of the Uniformed Sanitationmen's Association that only its members were entitled "to move garbage by means of new equipment at waste disposal sites," absent a contractual basis for such a claim.

Here, the City cites the language of Article V, Schedule A of the Agreement, and points out that pursuant to scope of bargaining proceedings

---

<sup>3</sup>(...continued)  
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....

that took place during the period of negotiations for the 1987-90 collective bargaining agreement, this provision no longer contains the phrase "as appears."<sup>4</sup> As a result, the City asserts, the previous limitation on its right to unilaterally change the Firefighter's job description no longer exists. In accord with this right, the City submits that the Firefighter job description has been revised,<sup>5</sup> and no longer provides Firefighters with a

---

<sup>4</sup> The City cites Decision No. B-4-89, at 276.

Prior to the 1987-90 collective bargaining agreement, Article V read, in pertinent part, as follows:

The job description for firefighters shall be as appears in Schedule A annexed hereto and made a part hereof as if fully set forth at length. [Emphasis added.]

In Decision B-4-89, the Board found that the inclusion of the words "as appears," which resulted in a limitation on the City's statutory management right to change the Firefighter job description, was a nonmandatory subject of bargaining. Thus, the Board concluded, the City was not required to bargain with the UFA over the continued use of the phrase in the Agreement.

<sup>5</sup> The City attached a copy of the official Department of Personnel job specification for Firefighter, revised on September 18, 1991, which provides, in pertinent part, as follows:

THE FIRE SERVICE

CODE NO. 70310

FIREFIGHTER

General State of Duties and Responsibilities

Under supervision, a Firefighter assists in the control and extinguishment of fire and in the enforcement of laws, ordinances, rules and regulations regarding the prevention, control and extinguishment of fires; performs related work.

\* \* \*

contractual basis for its claim to the exclusive right to perform the job duties that are now assigned to dispatchers.

**THE UFA'S POSITION**

The UFA asserts that incorporation of a job description into a collective bargaining agreement limits the City's managerial right to unilaterally determine assignments. The UFA points out that the City's reliance on Decision No. B-68-90 is misplaced inasmuch as the collective bargaining agreement therein contained no job specification or other contractual provision limiting the City's statutory right to assign job duties. Here, the UFA submits, the duties at issue are embodied in the Firefighter job description, which is set forth in Article V, Schedule A of the Agreement. Because the City's power to unilaterally assign these duties has been circumscribed by the Agreement, the UFA argues, the assignment of these duties to non-unit employees states an arbitrable claim.

The UFA does not dispute that the absence of the phrase "as appears" from Article V of the Agreement may entitle the City to unilaterally amend the job specification. However, it argues,

... said deletion cannot render meaningless ... the job specification as it exists in the parties' collective bargaining agreement.

The Union submits that the incorporation into a collective bargaining agreement of a job description, which delineates the job duties of unit

employees, makes arbitrable any grievance alleging that non-unit employees are performing the delineated unit work for the duration of that agreement.<sup>6</sup>

### **DISCUSSION**

In Decision No. B-68-90, at 19-20, we stated that:

... in the rare instances where job descriptions are set forth or incorporated by reference in City of New York labor contracts [citation omitted], the effect of such inclusion or incorporation may be that the work they describe is reserved to the bargaining unit for the duration of the agreement [citation omitted].<sup>7</sup>

In Decision No. B-17-79, we considered a similar dispute between the instant parties. There, the Department sought to staff the FCU with one (1) Lieutenant and one (1) Firefighter instead of two (2) Firefighters per tour, thereby reducing the total complement of Firefighters assigned to the FCU by five (5) Firefighters. The relevant issues were as follows: 1) Whether the inclusion of the job description as part of the collective bargaining agreement arguably assures to Firefighters an exclusive right to perform those duties; and, 2) Whether the assignment of Lieutenants instead of Firefighters to the FCU arguably violates the terms of the parties' collective bargaining agreement. Without commenting on the merits of the UFA's contentions about the specific duties of Firefighters assigned to the FCU, we found:

... that the UFA's claim, that the inclusion of the job description in the parties' contract reserves the work of the FCU

---

<sup>6</sup> The Union cites Decision No. B-6-81.

<sup>7</sup> See also, Decision Nos. B-4-89; B-17-79.



to firefighters and that this right has been violated, constitutes an arguable and arbitrable claim.<sup>8</sup>

A relevant distinction between the facts presented in Decision No. B-17-79 and the instant matter, however, is the absence of the phrase "as appears" from Article V of the Agreement. The City argues that its removal, pursuant to the Board's determination in Decision No. B-4-89, eliminated any limitation on the City's right to change the content of the job description, as it is set forth in the Agreement, at any time. The UFA responds by claiming that while the City has the right to amend the Firefighter job description unilaterally, it cannot effect such change during the term of the Agreement.

In Decision No. B-43-86, another scope of bargaining dispute between these parties, we considered whether a demand by the UFA for the inclusion of the job description for Fire Marshal in the collective bargaining agreement constitutes a mandatory subject of bargaining. In that case, we stated that:

... in light of the City's statutory prerogative, the City may not be required to include such a job description in the agreement in any way which would limit the City's right unilaterally to change the content of the Fire Marshal classification at any time, or otherwise limit the exercise of management's right under the NYCCBL, unless the parties voluntarily agreed otherwise. [Emphasis added.]

We found that the UFA's demand was a mandatory subject of bargaining, "subject to the condition stated above."<sup>9</sup>

---

<sup>8</sup> According to the records of the Office of Collective Bargaining, this case (No. A-900-79), which was assigned to an arbitrator on August 27, 1980, was closed administratively on July 11, 1986.

<sup>9</sup> We also explained that:

... the inclusion of a job description in a collective  
(continued...)

In Decision No. B-4-89, after having found "that the City voluntarily agreed to negotiate that limitation on the City's statutory management right to change the job description for Firefighter set forth in Article V and Schedule A [emphasis in original]," we held that the City may delete the phrase "as appears" from the Agreement in order to remove that limitation.<sup>10</sup> Giving that determination its intended effect, it is clear that the City is free to revise the Firefighter job description at any time. Therefore, Article V, Schedule A of the Agreement no longer constitutes a contractual basis for an exclusive right to perform the job duties that are now assigned to civilian fire alarm dispatchers.

Accordingly, inasmuch as the UFA has failed to demonstrate that the City's actions constitute an arguable violation of the Agreement, the City's petition challenging arbitrability of this matter is granted.

**ORDER**

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

---

<sup>9</sup> (...continued)  
bargaining agreement may be seen as having some value, since it would put employees on notice of what is expected of them by management. Such a notice would constitute a condition of employment. [Decision No. B-43-86, at 6.]

<sup>10</sup> See note 4, supra, at 6.

ORDERED, that the request for arbitration of the Uniformed Firefighters Association of Greater New York be, and the same hereby is, denied; and it is further

ORDERED, that the petition of the New York City Fire Department and the City of New York be, and the same hereby is, granted.

DATED: New York, New York  
February 28, 1994

MALCOLM D. MacDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

CAROLYN GENTILE  
MEMBER

DENNISON YOUNG, JR.  
MEMBER

ANTHONY COLES  
MEMBER