CEA v. City, 61 OCB 27 (BCB 1998) [Decision No. B-27-98 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition	:	
	:	
-between-	:	
	:	
CAPTAINS ENDOWMENT ASSOCIATION	:	
	:	Decision No. B-27-98
Petitioner,	:	Docket No. BCB-1982-98
	:	
-and-	:	
	:	
CITY OF NEW YORK,	:	
	:	
Respondent.	:	

DECISION AND ORDER

On May 1, 1998, the Captains Endowment Association (hereinafter "the CEA" or "the Union") filed a verified improper practice petition with the Office of Collective Bargaining ("OCB") requesting that the Board of Collective Bargaining ("Board") issue an order directing the City of New York ("the City" or "Respondent") to bargain in good faith for any changes to the Bill of Rights/Guidelines for Interrogation of Members of the Department. The City filed an answer on May 18, 1998. The CEA filed its reply on June 1, 1998.

During negotiations for the 1995 through 2000 collective bargaining agreements between the CEA and the Office of Labor Relations ("OLR"), OLR Commissioner James F. Hanley presented the CEA with a letter dated February 4, 1998 informing the Union that "it is the intent of the City not to continue non-mandatory provisions in the next collective bargaining agreement. Specifically, the above agreement will not contain Article XVII - Bill of Rights . . . This letter will constitute official notice that Article XVII will be deleted in the 1995-2000 Agreement." According to the

CEA, in subsequent collective bargaining sessions, the City repeatedly refused to discuss or negotiate the Bill of Rights.

Consequently, on May 1, 1998, the CEA filed an improper practice petition with the OCB, alleging that the City has engaged in and is engaging in improper practices within the meaning of the New York City Collective Bargaining Law ("NYCCBL") §12-306. The petition asked the Board to draft an order directing the City to "bargain in good faith for any changes to Article XVII - Bill of Rights in the Captain's collective bargaining agreement."

We note here, that in Decision No. B-22-98 (BCB-1968-98/BCB-1976-98), issued on July 7, 1998, this Board dealt with an improper practice petition identical to the one before us now; the legal theories pertaining to the claims and defenses are nearly identical. However, the CEA's pleadings differ from those of the petitioner unions in those cases (representing Police Sergeants and Lieutenants) when they rely on *Montella v. Bratton*, 670 N.Y.S.2d 10, 1998 WL 107463 (N.Y.App.Div. 1 Dept. 1998). We find that the holding of the court in *Montella* is not relevant to our determination of the instant matter because the issue decided in *Montella* relates to the interplay of appeal rights under §§ 75 and 76 of the Civil Service Law with the Police Commissioner's powers under the Administrative Code. Here, the Board is called upon to decide if the Bill of Rights is a mandatory subject of bargaining within the context of collective bargaining, an issue not addressed by the court. We therefore refer the parties to Decision No. B-22-98 for a full and complete discussion of the remaining positions of the parties and the rationale for the Board's decision.

Accordingly, for the reasons stated in Decision No. B-22-98, we will deny the instant improper practice petition.

ORDER

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 herein by the CAPTAINS ENDOWMENT ASSOCIATION, docketed as BCB-1982-98 be, and the same hereby is, dismissed.

DATED: New York, New York
July 30, 1998

STEVEN C. DeCOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

SAUL KRAMER
MEMBER

RICHARD A. WILSKER
MEMBER

I dissent. JEROME E. JOSEPH
MEMBER

I dissent. ROBERT H. BOGUCKI
MEMBER