

L. 211, IUOE v. City, 9 OCB 8 (BCB 1972) [Decision No. B-8-72 (IP)]

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

ALLIED BUILDING INSPECTORS,  
LOCAL NO. 211, INTERNATIONAL  
UNION OF OPERATING ENGINEERS,  
AFL-CIO

DECISION NO. B-8-72

DOCKET NO. BCB-87-71

-and

THE CITY OF NEW YORK  
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**A P P E A R A N C E S**

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for The City of New York

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**REPORT, CONCLUSIONS  
AND RECOMMENDATIONS**

The collective bargaining agreement between Local 211, Allied Building Inspectors and The City of New York for a unit of various inspector titles, expired on December 31, 1969. Negotiations for a new contract began in September, 1969, and continued until February, 1970, when the negotiations reached an impasse. An impasse panel was appointed by the Board of Collective Bargaining. The panel held hearings on August 4 and September 10, 1970, and February 1, 1971. It issued its recommendations on March 27, 1971, and a supplementary report on April 16, 1971.

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\* On February 18, 1972, the firm of Cunningham and Kaming, Esqs., was substituted as attorneys-of-record in this case.

On April 9, 1971, before the supplementary report was issued by the panel, the Union filed its petition alleging that the City had refused to bargain in good faith on the subject of welfare fund contributions and requested the Board to make a determination that the City was not in full faith compliance with the NYCCBL.

The City accepted the impasse panel's report and recommendations on April 29, 1971.

After first rejecting the impasse panel's report and recommendations on April 28, 1971, the Union accepted on June 28, 1971.

A hearing was duly held before Eleanor L. Sovern, duly designated as Trial Examiner on May 26, 1971. Both parties submitted briefs.

The evidence shows, and the Union conceded, that there was good faith bargaining between the parties concerning welfare fund contributions during the negotiations that preceded the appointment of the impasse panel. The Union demanded an increase in the welfare fund contribution per employee from the previous contract rate of \$110 per year to \$200 per year effective January, 1970. The City originally offered to increase the contribution to \$125 per year effective July 1, 1970, but it later changed its position and offered \$125 per year effective January 1, 1970.

During the City's presentation to the impasse panel, the City's negotiator, Mr. Thomas Laura, explained that the City-wide contract then being negotiated would provide for an increase in welfare fund contributions to \$175 per year and later this would increase to \$250 per year. The exact language of the contract had not yet been worked out and was not available. These amounts would apply to unions which elected the City-wide welfare fund. Mr. Laura

explained that a union which elected the City-wide provision would continue to administer welfare funds for its members and would continue to decide what benefits to purchase for its members, including the carrier or fund from which the benefits are purchased. However, the union would waive its right to bargain for the amount of the welfare fund contribution. In the future, the amounts would be bargained for by the City-wide representative.<sup>1</sup>

The City explained to the impasse panel that this City-wide proposal was an alternative to the City's offer of \$125 per year, and the Union was free either to elect the City-wide contract provision and waive its rights to bargain on this subject, or accept the City's offer of \$125 and continue to bargain for welfare fund contributions .

On or about February 25, 1971 (and before the impasse panel submitted its report and recommendations), the City mailed to the Union an election form pursuant to the 1970-1973 City-wide contract.

The Union did not accept the City's offer contained in the letter of February 25, and it did not execute the election.

On March 27, 1971, the impasse panel issued its report and recommendations, and, on April 16, 1971, it issued a further report. The recommendations with respect to welfare fund contributions provided:

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<sup>1</sup> Each union receiving welfare fund contributions from the City signs a separate contract with the City providing for specific benefits to be purchased and the administration of the fund. Welfare fund contributions are commonly used to buy such benefits as dental insurance, eye care insurance, or additional life insurance for unit members.

- "2. Welfare fund to be increased to \$125 per employee effective January 1, 1970, and \$150 effective January 1, 1971, with the right of the Association to come under the City-wide program, to be exercised within sixty (60) days of-acceptance of these Recommendations unless mutually agreed otherwise by the parties."

The report and recommendations are silent with respect to the waiver of bargaining rights required by the City. There were several meetings between the parties subsequent to the issuance of the impasse panel report. The City maintained its adherence to the impasse panel's recommendations (which it had accepted), and offered the Union either the \$125-\$150 progression recommended by the panel or the City-wide contribution with the waiver.

The Union continued to refuse to make the alternative election offered by the City which required signing of the waiver.

The Union accepted the impasse panel report and recommendations after the Trial Examiner's hearing herein although its letter of acceptance contained no mention of the panel's recommendation relating to welfare fund contributions. Subsequent to the Union's acceptance of the impasse panel report, the City and the Union executed a contract which, inter alia, provided for welfare fund contributions in the \$125-\$150 progression recommended by the impasse panel.

The Union continued to refuse to make the alternative election offered by the City.

Based on the study of the record, the Board attributes various and mixed motives to each of these parties in the bargaining. If the implications of the issue before us were limited to the facts herein, we would be willing to make a determination on the motives of the parties relative to full faith compliance. However, the Board's primary responsibility is to further the good faith collective bargaining purposes of the New York City Collective Bargaining Law. In the furtherance of this primary responsibility, we find no need or useful purpose in delineating at this time any determination of the respective motives of the parties because (1) the instant issue over welfare contributions was subsequently the subject of a completed contract by the parties which provides, inter alia, for contributions in the amounts of \$125 and \$150 as recommended by the impasse panel; (2) the contract expires within a few months; i.e., on June 30, 1972, and a new bargaining notice has already been sent by the Union requesting the City to commence negotiations for a new contract; (3) the negotiations in good faith for a new contract should be the primary objective of the parties under the statute, and in the interests of furthering sound labor relations, we believe the parties should be encouraged to reach agreement on the terms of A new contract, including the amount of welfare fund contributions.

Consequently, we choose not to make a determination on the issue at this time.

Moreover, the NYCCBL has recently been amended to grant the Board explicit jurisdiction to find improper practices and to issue appropriate remedial orders, as well as to provide for finality in bargaining impasses. Thus, two effective remedies are available to the parties under the amended NYCCBL should either of them find it necessary to avail themselves of such remedies.

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

CONCLUDED, that it would not effectuate the policies of the NYCCBL to make a determination on the issue of full faith compliance.

DATED: New York, N.Y.  
March 15 , 1972.

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