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

DISTRICT NO. 1 - PACIFIC COAST
DISTRICT, MARINE ENGINEERS
BENEFICIAL ASSOCIATION, DECISION NO. B-16-74

Petitioner, DOCKET NO. BCB-186-74

-and-

THE CITY OF NEW YORK,

Respondent.
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DECISION, ORDER
AND DETERMINATION

District No. 1 - Pacific Coast District, Marine Engineers Beneficial Association (herein called the Union or MEBA) by petition dated August 6, 1974, requested this Board to determine pursuant to §1173-5.0 of the New York City Collective Bargaining Law and §7.3 of the Consolidated Rules of the Office of Collective Bargaining, whether certain specified matters are within the scope of collective bargaining.

The City declined to bargain on said matters, contending that they are not mandatory subjects of bargaining. The Union requests the Board to find that its four demands are within the scope of collective bargaining. The Union's demands are as follows:

I. (Item 8) Increase manning on large or big fireboats to three engineers.

II. (Item 9) Manning of the fireboats shall be by Marine Company and not by fireboat.

III. (Item 10) A familiarization, training and refresher program shall be instituted for Pilots Marine Engineers and Assistant Marine Engineers.

IV. (Item 15) Backup boats shall be placed in service at Marine Company 9 and Marine Company 4 and these vessels shall be maned by Pilots, Marine Engineers, and Assistant Marine Engineers.

Positions of the Parties

MEBA's Position

The Union contends that its demand for "increased manning of large fireboats to three engineers" is a bargainable issue. In support of its contention, the Union alleges that prior to the last agreement there were three engineers on large fireboats, and also that a practical

impact with respect to work load and safety has resulted from the use of only two engineers.[1] The Union submitted the affidavits of two marine engineers (Uniformed) who testified that the use of only two engineers has caused a serious practical impact on the work load of the remaining marine engineers and increased safety hazards.

The Union contends that its demand that the manning of fireboats shall be by Marine Company and not by fireboats" is a bargainable issue. The Union alleges that that issue is already in the last contract and that the Union is merely seeking to clarify the existing provision.[2] The Union also argues that while the decision to use personnel is not bargainable, its demand pertaining to manning by Company relates to the practical impact on work load and is within the scope of bargaining. The Union alleges that the work load of Pilots, Marine Engineers, and Assistant Marine Engineers who travel with vessels to shipyards would be substantially reduced if fireboats were

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[1] The Union maintains that while the last contract provided for only two engineers, during the negotiations it had emphasized that the Union's agreement for two engineers was without prejudice to a demand by it in later contract demands that the manning be increased upward because of the practical impact on the work load and the increase in the safety hazard.

[2] The Union refers to Article XX - Details to Other Units. But this provision only deals with compensation for assignments to a unit other than the unit to which the employee is permanently assigned. At no point in the three pages of text does this Article refer, directly or indirectly, to the manning issue here under consideration.

manned by Company regardless of which boat was assigned to the Company. In effect, the union is contending that personnel should be assigned to a Company and not a particular boat.

The Union contends that a "familiarization, training, and refresher program which 'would be instituted for Pilots, Marine Engineers and Assistant Marine Engineers," is a bargainable item since this demand is identical with the demand which was negotiated with and agreed upon with the Uniformed Fire Officers Association. The Union maintains that the parties have agreed since 1969 that Pilots (Uniformed), Marine Engineers (Uniformed), and Assistant Iviarine Engineer (Uniformed) would have a parity relationship with the Uniformed Fire Officers with respect to wages, working conditions, and fringe benefits.

The Union further contends that the City's refusal to bargain over this demand is discriminatorily motivated and designed to interfere with the legitimate rights of the bargaining unit personnel or to discredit the Union. In support of this argument the Union alleges that during negotiations the City's Assistant Director

of Labor Relations, Vincent Mase, falsely accused the Union's representative of being a liar in front of the Union's Negotiating Committee. The Union also alleges that an arbitration award by Milton Rubin, dated 6/27/74, supports the allegations as to discrimination and the demand for parity.[3]

Rubin's award analyzed the negotiating history of Article XX as a method of establishing the meaning of the Article. The award in no way suggests that the parties' agreement to include in MEBA's contract a clause already existing in UFOA's contract implied an agreement to create a parity relationship between the two groups.

The Union contends that its "demand for backup boats" is a bargainable demand since the lack of backup boats creates a practical impact relating to work load and that the safety of the City requires backup boats.

The City's Position

The City contends that the Union's demands for bargaining involve manning (increase manning to three engineers and the manning of fireboats by Company rather

[3] Rubin's decision reads as follows: "The substantiated evidence is that the Union had sought Article XX as it exists in the City's Agreement with the UFOA (Uniformed Fire Officers Association), demanding in the negotiations that the benefits realized from this provision be extended to the MEBA agreement. The City agreed, with additional exclusions peculiar to the operation of the boats."

than by fireboat), the training of City employees, and the use of City equipment which are subjects within the management prerogative and therefore not mandatory subjects of bargaining. [4]

The City maintains that the union's demands for bargaining based on allegations of practical impact are premature since there has been no finding by the Board that a practical impact exists. It argues that prior bargaining and agreement on the permissive subject of manning (two engineers instead of three) does not render the matter a mandatory subject of bargaining in current negotiations. And, as to the Union demand regarding training, the City shows that prior Board decisions have clearly established that this is a permissive subject of bargaining,[5] and that the Board has also held that the City may bargain with one union on a permissive subject and refuse to bargain with a second union on that subject. The City denies that its refusal to bargain herein on the subject of training was improperly discriminatory.

[4] Section 1143-4.3(b)

[5] B-11-68; B-7-72.

Discussion

The Union has made two bargaining demands involving manning, one involving training, and one involving the use of City equipment.

Manning, training, and the allocation of City equipment are subjects specifically within the area of management prerogative as described in 51173-4.3 (b) of the NYCCBL and as dealt with in prior decisions of this Board. [6]

The fact that the City has bargained with the Union in the past with regard to the manning of fire-boats, or that agreement on that issue has been included in a prior contract, does not affect the bargainability of the subject since agreement on a voluntary subject and inclusion of the agreement in a contract does not transform it from a voluntary subject into a mandatory subject.[7] Again, for basically the same reasons, the City is allowed to reach agreement on a voluntary subject (training) with one union and not bargain on it with a second union.[8] The Union's attempt to show that the parties agreed to parity as to wages, working conditions, and fringe benefits by

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[6] B-4-71; B-7-72; B-2-73.

[7] In B-11-68, the Board found that, "Generally, full and free discussion and airing of problems are the keystones of good labor relations. If agreement is reached on a voluntary subject, the agreement may be embodied in the collective bargaining contract. The obligation then is contractual, and may be enforced as such during the term of the contract. But the fact that such agreement has been reached and included in a contract cannot transform a voluntary subject into a mandatory subject in subsequent negotiations, for the latter is fixed and determined by law. Moreover, any doctrine that agreement reached on a voluntary subject forever obligates bargaining thereon would, as a practical matter, constitute a formidable deterrent to the highly desirable freedom of discus ion and negotiation on voluntary subjects."

[8] B-7-72.

Milton Rubin's arbitration decision is equally without merit. That decision makes no reference to any agreement on parity.

The Union's attempt to show that the City was discriminatorily motivated in refusing to bargain as to training by alleging that the City's Assistant Director of Labor Relations, Vincent Mase, accused the Union's representative, Anthony DiMaggio, of being a liar in front of the Petitioner's negotiating committee, is, at best, a non-sequitur. Arbitrator Milton Rubin's unrelated decision regarding the compensation due one Pilot provides no more support for the Union's claim of discrimination than it does for the contention that parity with Fire Officers has ever been agreed to, is presently justifiable, or was in any sense contemplated by Arbitrator Rubin.

The Union is also attempting to bargain on its demands as to manning and backup boats by contending that it is actually requesting bargaining only on the practical impact of decisions reserved to management.

The Board has established procedures for dealing with questions of practical impact. If a union alleges practical impact and the Board determines that practical impact exists, the City is given an opportunity to eliminate the impact; if the Board finds that an

impact still remains, the City shall then bargain with the union over the means to be used and the steps to be taken to relieve the impact. [9]

There has been no determination by the Board that practical impact exists and, certainly, there has been no opportunity for the City to eliminate the impact if one existed. We, therefore, find that it is premature for the Union to argue that its demands are within the scope of bargaining since they are attempts to relieve practical impact. Furthermore, we cannot make a determination if Practical impact exists, as it is a factual question and the Union's Petition and Reply provide insufficient facts on which to base a decision. [10]

However, our findings are without prejudice to the Union requesting a hearing for the purpose of determining practical impact. If the Union files a written request to this Board, with notice to the City, we will schedule a hearing to establish whether practical impact exists.

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[9] B-9-68; B-1-74, B-7-74.

[10] The parties filed no briefs. The two affidavits filed by the Union are also insufficient to support a finding on practical, impact.

Accordingly, we find that the Union's four demands, as discussed above, are not mandatory subjects of bargaining.

DETERMINATION AND ORDER

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

DETERMINED, that the Unions demands designated Nos. 8, 9, 10, and 15, are voluntary subjects of bargaining, and it is further

ORDERED, that the Union's petition requesting a finding that its demands designated Nos. 8, 9, 10, and 15, involve mandatory subjects, be and the same hereby is, dismissed without prejudice to the Union's right to request a hearing for the purpose of determining practical impact.

DATED: New York, N.Y.
October 10, 1974.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

THOMAS J. HERLIHY
M e m b e r

HARRY VAN ARSDALE
M e m b e r

EDWARD F. GRAY
M e m b e r

NOTE: Member Edward Silver did not participate.