

City v. MEBA, 13 OCB 17 (BCB 1974) [Decision No. B-17-74
(Scope)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

MEBA, DISTRICT NO. 1 -
PACIFIC COAST DISTRICT, MARINE
ENGINEERS BENEFICIAL ASSOCIATION,

Respondent.

- - - - - X

DETERMINATION OF MOTION

is a determination of a motion by the
City of New York addressed to the Board of Collective
Bargaining to stay impasse panel proceedings pending
a decision by the Board on the scope of bargaining
questions presented in the above-captioned case.

Background

of New York and the Marine Engineers

Beneficial Association, District No. 1, Pacific Coast District have been engaged in the negotiation of a new contract to replace the prior agreement, which covered the period of July 1, 1970 to August 31, 1973. The employees covered by the agreement, which is currently in force pursuant to the Status Quo provision of the NYCCBL, are Captains, Assistant Captains, Mates, Chief Marine Engineers and Marine Engineers working on ferry boats operated by the City (Economic Development Administration). These employees are licensed ferry officers.

ly 11, 1974, MEBA filed a request for the appointment of an Impasse Panel to make recommendations on thirteen Union demands over which the parties are in disagreement. The City has raised no objection to the submission of these thirteen demands to an Impasse Panel. However, the City has challenged the negotiability of several provisions contained in the expired contract,¹ and alleges that these topics may not be presented to an impasse panel over the City's objection. The Union has requested the Board to find all of the challenged contract provisions to be mandatory subjects of bargaining.

Impasse Panel was designated consisting of Benjamin Wolf, as Chairman, and Monroe Berkowitz and John Sands as members of the Panel. Chairman Wolf informed the parties that hearings before the Impasse Panel would be held on September 30 and October 1, 1974.

¹ Article II - Job Security
Article XIII, Section 2 (d) - Sick Leave
Article XIV, Section 3 - New Vessels
Article XIV, Section 4 - Job Bidding
Article XIV, Section 7 - Provisional appointments
Article XIV, Section 8 - Temporary Appointments
Article XVI, Section 3 - Union Representative

September 9, 1974, the city apprised Chairman Wolf that a postponement of-the Impasse Panel hearings would probably be required in view of the City's Petition challenging the negotiability of the items enumerated above, and in view of the pending departure from the Office of Labor Relations of Messrs. Grossman and Mase, the two individuals who had been handling the case. By letter dated September 12, 1974, Joel Glanstein, Attorney for the Union, notified the Impasse Panel of the Union's objection to any delay in the hearings, and on September 16, Chairman Wolf informed the parties that the hearings would not be postponed.

September 24, 1974, the City filed the instant Motion to Stay the scheduled Impasse Panel proceedings pending a decision on the scope of bargaining matters currently before the Board.

part of this Motion, the City cited two extensions of time which were granted by the Board to Mr. Glanstein within which to file an Answer to the City's Petition and a Brief. The City did not object to these extensions. The City also claimed it would

be severely disadvantaged if it were forced to proceed on the previously schedule dates inasmuch as Mr. (Grossman had left the employ of the O.L.R. on September 20, 1974) would leave on September 27, 1974. The City further alleged:

"Any hearings before the Impasse Panel prior to a decision by the Board regarding the issues of scope of bargaining would not only needlessly protract litigation buy necessarily dictate the means and manner by which the parties will present their respective cases since neither party could be expected to present evidence on issues which may ultimately be determined outside the scope of collective bargaining and thus not fact-parties to sever their presentations into pre-decision and post-decision segments."

In response to the City's Motion to Stay the Impasse Proceedings, Chairman Anderson conferred with the parties in an effort to bring about a compromise on the City's request to postpone the September 30th hearing.

On September 25, 1974, Chairman Anderson wrote to Benjamin Wolf, informing him of the City's Motion requesting the Board to stay the impasse panel proceedings until it resolved the bargainability questions

raised by the City. Based upon his consideration of the City's motion and his conferences with the parties, Chairman Anderson recommended that the City's request for adjournment be granted for a reasonable time in order for the City to secure representation for its presentation before the Impasse Panel. Chairman Anderson advised Mr. Wolf that the Board was proceeding to consider the bargainability questions presented to it, and he requested that in the event the Board's determination was not completed by the time the impasse hearings were scheduled, the Impasse Panel defer any decision on the issues submitted to it until the Board resolved the scope of bargaining matters.

On September 25, 1974, Mr. Wolf notified counsel for the City and Union that the hearing before the Impasse Panel would be adjourned to October 16, 1974.

On September 27, 1974, the Board received an Answer and Cross-Motion, dated September 25, 1974, from MEBA's counsel. The Union, answering the City's Motion to Stay the Impasse Panel Proceedings, alleged that the Board of Collective Bargaining has no power or jurisdiction to overrule the determination of the

Impasse Panel Chairman as to when impasse hearings will be held, and cross-moved that the hearings scheduled for September 30 and October 1, 11074, be ordered to proceed as scheduled.

In support of its position that the

Impasse Panel hearings proceed as scheduled, the Union referred to the OCB's policy of expediting impasse procedures by allowing impasse panels to hold hearings on issues the bargainability of which is not disputed while the Board of Collective Bargaining concurrently resolves scope of bargaining questions. The Union emphasized that none of the matters submitted to the Impasse Panel is currently before the Board for a determination on bargainability. The Union further claimed that litigation could be held to a minimum if the impasse panel were permitted to proceed since many mandatory subjects are now properly before the Impasse Panel. Finally, the Union argued that the City has had

ample opportunity to prepare its presentation before the Impasse Panel inasmuch as Messrs. Grossman and Mase had announced their intention to leave the City's employ several weeks ago.

Impasse Panel Chairman Wolf's letter of September 25, 1974, rendered unnecessary any decision by this Board with respect to the postponement of the hearings scheduled for September 30 and October 1, 1974.

Further, the scope of bargaining questions that have been presented to the Board are still under serious consideration and will not be fully resolved by October 16, 1974, the date on which the Impasse Panel proceedings are now scheduled to commence. The Board, therefore, has addressed itself to the City's Motion that the Impasse Panel proceedings be stayed pending a decision on the bargainability of the issues challenged by the City.

After careful consideration, the Board denies the City's Motion to stay the Impasse Panel proceedings, subject to the following conditions:

"The Impasse Panel may consider the matters now before it as to which there is no dispute as to bargainability.

Absent the consent of both parties, the panel may not hear arguments on or make any determination on matters the bargainability of which has been challenged by the City until such time as the Board rules.

3. Absent the consent of both parties, the panel is not to issue a report or recommendations on any issue until the Board has ruled on the scope of bargaining questions which have been presented to it.

expedited impasse procedure has been adopted in prior disputes (see Decision B-2-73), and in the Board's view it will promote an orderly and swift disposition of all the issues over which the parties are in disagreement without disadvantaging either the Union or the City in their presentations to the Impasse Panel. Meanwhile, the Board

will continue its consideration of the issue;, which the City has challenged as non-bargainable and will issue a decision as promptly as possible.

O R D E R

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

D, that the City's Motion to Stay the Impasse Panel Proceedings pending a Board decision on the scope of bargaining matters before it, be, and the same hereby is, denied, and it is further

DERED, that the Impasse Panel proceed with its hearings, as scheduled, subject to the conditions outlined herein. DATED: New York, N.Y.

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

THOMAS J. HERLIHY
M e m b e r

EDWARD F. GRAY
M e m b e r

HAREY VAN ARSDALE, JR.
M e m b e r

N.B. Board Member Silver did not participate in this matter.

