City v. L. 3, IBEW, 15 OCB 23 (BCB 1975) [Decision No. B-23-75 (Scope)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of
THE CITY OF NEW, YORK,

Petitioner, DECISION No. B-23-75

-and

LOCAL No. 3, IBEW, AFL-CIO DOCKET No. BCB-218-75

Respondent

DECISION AND ORDER

The prior contract between the City of New York and Local No. 3, IBEW, AFL-CIO, covering approximately 195 employees in a unit consisting of two titles, Communications Dispatchers and Supervisors -ire Alarm Dispatchers, expired on June 30, 1974. After several collective bargaining, negotiation sessions had taken place, the Union on December 18, 1974, filed a request for the appointment of an impasse panel. Pursuant to an agreement of the parties, the request was held in abeyance until April 7, 1975 to allow for settlement efforts aided by Deputy Chairman Laura.

The City, in its Petition received by this office on April 7, 1975, contested the bargainability of the Union's demands dealing with layoffs, overtime, premium pay, the cash equivalent of subway cards, and "banking of hours" and asked the Board to direct the Union to clarity part of one of its demands dealing with "classification."

The Union, in its Answer filed on April 23, 1975, supported the bargainability of all of the contested demands and in response to the City's clarification request, supplied an explanation of the demand in question.

The City, in its Reply received by this office on May 14, 1975, reaffirmed its position concerning the bargainability of the contested demands.

Scope of Bargaining Issues in Dispute

Demand No. 2 - "No Layoffs because a Work Overload Exists"

The City argues that the demand as set forth above "is outside the scope of collective bargaining under Section 1173-4.3b of the New York City Collective bargaining Law (NYCCBL)."[1]

The Union denies that the demand is outside the scope of collective bargaining, and "requests a finding from an Impasse Panel that the condition of the present work load should bar lay-offs unless and until the present workload decreases."

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[1] NYCCBL Section 1173-4.3
"b. It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; deter-mine 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. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scone of collective bargaining.

Section 1173-4.3b of the NYCCBL specifically gives the City the right "to relieve its employees from duty because of lack of work or for other legitimate reasons." On the basis of this Section of the law and on Board Decisions B-4-71 and B-1-70, where we ruled that layoffs are a managerial right, the Board finds this demand to be a non-mandatory subject of bargaining absent a finding of practical impact by the Board.[2]

Demand No. 4 - "(A) Overtime;

a) Overtime to be payable from the first minute of overtime worked, at the rate of time-and-one-half, in cash.

b) Overtime described in (a) above to be payable for duty performed pursuant to the order of any superior.

c) Any ordered duty necessitating a member to report for any reason while off duty, or kept on duty beyond his regularly scheduled tour of duty, shall be paid for a minimum of two hours for each hour of overtime, a minimum of four hours, as described in (a) above.

d) There shall be an Overtime List established in each Borough Central Office, bearing the names of all individuals covered by this contract. Should overtime personnel be required, this list shall be used to contact personnel in order of least overtime worked, such order to be maintained by the Borough Chief Dispatcher and subject to the periodic inspection of the authorized Delegate (s) of that Borough, as follows:

[2] A finding that this demand is a permissive subject of bargaining, does not rule out the possibility of "impact bargaining" if the exercise of the managerial right to layoff creates an "unreasonably excessive or unduly burdensome workload as a regular condition of employment." (B-9-68).

> The first person on the list shall be asked first. Should he refuse the overtime, then he will be 'charged' with the amount of time which was to have been offered, and his name then be placed on the bottom of the Overtime List. Each member listed shall be canvassed in this manner until a volunteer is found, where upon his name will also be marked and 'charge' and placed at the bottom list. The next member on the list will then become #1 in eligibility for the next available overtime. Names will be marked so that it may be readily observed as to which members refused and which worked the overtime (two different color inks for such notations are acceptable).
>
> (B) Cash payment for work performed on a Saturday to be at the rate of time-and-one-half. Cash payment for work performed on a Sunday shall be at the rate of double time.
>
> (C) Dispatching job to be classified as a 'strenuous duty' occupational title;
>
> (D) Dispatching job to be classified as an Essential (Emergency) Service."

This demand involves four separate issues: overtime, premium pay for weekend work, classification of dispatchers as a "strenuous duty" occupational title, and classification of the dispatching job as an "Emergency service."

The City contends that the subject matter of 4 (A) and 4 (B), overtime and premium pay, are appropriate for City-wide bargaining pursuant to NYCCBL Section 1173-4.3a (2).[3]

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[3] NYCCBL Section 1173-4.3
"a. Subject to the provisions of subdivision b of this section and subdivision c of section 1173-4.0 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits) and working conditions , except that: (over)

Footnote 3 continued

The Union responds that all the subdivisions of Demand No. 4 relate to its position "that the Communications Dispatchers' unit is entitled to special and unique consideration." The Union claim's that dispatchers are "unique among the non-uniformed services in that the majority of work hours are worked outside the normal work shifts."

The City in its reply alleges that "no such considerations special and unique to the Respondent's unit exist" and points to the employees of the New York City Health and Hospitals Corporation (HHC), as an example of another group of employees covered by the City-Wide Contract who work outside the "normal work shifts."

Board Decisions B-11-68 and B-4-69, as well as NYCCBL Section 1173-4.3a(2), specifically hold that the subjects of overtime and premium pay for weekend work are matters which must be uniform City-wide, unless special and unique considerations are present. The one argument presented by the Union in support of its claim that it is entitled to bargain for a variation of the City-wide overtime and premium pay regulations

is that the majority of hours put in by dispatchers are worked outside normal shifts. Though this statement may be true, it does not make dispatchers "unique among the non uniformed service." Many employees in numerous titles who

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(2) matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty percent of all such employees, but nothing contained herein shall be construed to deny to a public employer or certified employee organization the right to bargain for a variation or a particular application off any city-wide policy or any term of any agreement executed to this paragraph where considerations special and to a particular department class of employees, on collective bargaining unit are involved;"

work for the HHC work "around-the-clock" shifts, as do employees in other City-wide Contract covered titles such as Aqueduct Patrolman, Bridge Operator, Custodian, juvenile Counselor, and Mortuary Caretaker. Therefore, there being no special or unique considerations established peculiar to dispatchers with regard to overtime work or premium pay, the Board finds subsections and 3 of this demand inappropriate for title bargaining.

With respect to subdivision C of Demand No. 4 - Dispatching job to be classified as a "strenuous duty" occupational title, the City contends that the demand as set forth is "outside the scope of collective bargaining under NYCCBL Section 1173-4.3(5) since that demand necessarily involves negotiations over aspects of pension benefits."[4] The City

[4] NYCCBL Section 1173-4.3a
"(5) matters involving pension for employees other than those in the uniformed forces referred to in paragraph four hereof, shall be negotiated only with a certified employee organizations designated by the board of certification as representing bargaining units which include more than fifty percent of all employees included in the pension system involved."

further argues that the demand by virtue of Section 201.4 of the New York State Civil Service Law and.. Section 470 of the New York State Retirement and Social Security Law is a prohibited subject of bargaining.[5]

The Union simply denies the City's above contention and repeats that dispatchers are "unique among the non-uniformed services in that the majority of work hours are worked outside the normal work shifts."

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[5] § 201. Definitions

"4. The term 'terms and conditions of employment' means salaries, wages, hours and other terms and conditions of employment provided, however, that such term shall not include any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees of their beneficiaries. No such retirement benefits shall be negotiated pursuant to this article, and any benefits so negotiated shall be void."

§ 470. Temporary suspension of retirement negotiations

Until April first, nineteen hundred seventy-six changes negotiated between any public employer or public employee, as such terms are defined in section two hundred one oi the civil service law, with respect to any benefit provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees or payment to retirees or their beneficiaries, shall be prohibited. Thereafter, such changes shall be made only pursuant to negotiations between public employers and public employees conducted on a coalition basis pursuant to the provisions of this article; provided, however, any such changes not requiring approval by act of the legislature may be implemented prior to July first, nineteen hundred seventy-six, if negotiated as a result of coalition negotiations contemplated by section four hundred seventy-one of this article."

Article XIII Section 13.4 Wand (b) of the City-Wide Contract covering the period July 1, 1967 to June 30, 1970 states:

> "Provisions of the Career Pension Plan. Except for the modification listed hereunder, all existing provisions and definitions of the New York City Employee's Retirement System shall be applicable to members of the Career Pension Plan:
>
> a) Members shall be eligible to retire after having completed twenty five (25) years of service with benefits payable immediately, except that if retirement occurs before age 55, benefit payments will be deferred to age 55.
>
> b) Members in titles which require heavy duty, extraordinary physical effort including such titles as Laborers, Motor Vehicle Operators and Basin Machine Operators and comparable related and similar titles, shall be eligible to retire after having completed twenty five (25) years of service with benefits payable immediately, except that if retirement occurs before age 550, benefit payments will be deferred to age 50. The number of members covered by this pro vision shall not exceed 15,000 during the term of this contract. Any dispute as to employees covered under this pro vision shall be submitted to arbitration in accordance with Article XIV of this agreement." (emphasis added).

Article XII Section 2D (1) and (2) oil the City-Wide Contract[6] covering the period July 1, 1.970 to June 30, 1973 states:

> "(1) Members of the New Career Pension Plan who have at least 20 years of qualifying service at the time of retirement will be eligible to retire for service and after the attainment of age 55 to receive a guaranteed retirement allowance, to replace the annuity, Pension-Providing-For-In-creased-Take-Home-Pay and pension for service, equal to 2½ percent of final compensation for each year of allowable service not to exceed 40 years...."
>
> "(2) For NCPP members who completed at least 20 years of qualifying service in positions which are designated as physically taxing, the same conditions as stated above will apply except that age 50 will be substituted for age. 55." (emphasis added).

Thus, it appears that the demand to be classified as a "strenuous duty" occupational title, is an attempt by the fire dispatchers to qualify for benefits under the "heavy duty" and "physically taxing" sections of the pension provisions.

The Board has held that pension changes are negotiable only by the designated representative of the Pension System, and not by a title representative.[7] Furthermore, as the city points out, the State Legislature by enacting Section 210.4 of the New York State Civil Service Law and Section 470 of the New York State Retirement and Social Security Law has made the subject matter of this

demand a prohibited subject of bargaining. Therefore, the Board

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[6] This Article and the other Articles pertaining to pensions in the 1970-1973 City-Wide Contract, failed to get the required legislative approval, and thus were never implemented.

[7] See Board Decisions B-4-69; B-1-7.

finds that this demand concerns a prohibited subject of bargaining. Even if the Taylor Law proscription on pension bargaining was lifted, the demand herein is inappropriate for title-level bargaining.

The Union in response to the City's request for clarification of subdivision D of Demand No. 4 - "Dispatching Job to be Classified as an Emergency Service" contends:

> "The Communications Dispatchers demands for consideration with respect to working tours and other conditions of employment comparable to those enjoyed by the non-uniformed New York City employees have been met with a response that the Dispatchers must live with unusual conditions of employment because they constitute an 'emergency service'--like the uniformed services. The uniformed 'emergency services, however, enjoy special and unique consideration, statutory and through OCB decisions, which compensate for their onerous working tours. The Dispatchers either are or are not an 'emergency service.' Status as an 'emergency service' either has or does not have meaning and consequence. If the Dispatchers are an emergency service, they have a right to consideration of certain demands compared with those of other services. If they are not an emergency service, their onerous working tours, for example, may not be imposed on the ground that they are an emergency service. So long as they continue to be confronted with this 'classification'; the Dispatchers are entitled to a clarification of their status."

The City replies:

> "...the question of whether 'the Dispatchers either are or are not an emergency service' is irrelevant to matters of scope of bargaining, since Respondent has failed to establish the significance of such a finding. Certainly, a matter cannot be deemed to be within the scope of collective bargaining when the party making the demand is unable to, explain the significance it would achieve were the demand granted. The Board should refrain from involving itself in such trivial requests."

It is the function of the Civil Service Decision to fashion or revise job descriptions and employee classifications. Thus, if the term "emergency service" or a similar phrase is proposed for inclusion in the job description of fire dispatchers, that is a matter to be addressed to the Civil Service Commission but it is not a mandatory subject of bargaining. The Board recognizes that dispatchers perform duties related to the emergency services provided by the Fire Department, but this alone does not necessarily make them unique among the non-uniformed employees of the City. Civilians who man the 911 police emergency system and various hospital personnel, such as nurses, interns, and ambulance drivers, all participate in one way or another in what may be characterized as emergency services. The fact that other City non-uniformed employees provide such services does not make the dispatching job less important; it merely indicates that fire dispatchers may not be unique in this respect.

The Union has failed in its papers to explain the significance of being classified an "emergency service." These words do not constitute a term of art peculiar to the NYCCBL and thus the granting of the demand would have no ascertainable effect on the relationship between the parties herein. The statutory obligation or duty to bargain applies only to wages, hours, and working conditions.[8]

[8] See Board Decision No. B-11-68.

The Board has ruled on the bargainability of demands concerning the creation of new positions or titles but that is not what is sought by the Union in this case.[9] A finding by this Board as to the bargainability of any given demand is an interpretation of the relationship between the demand and the statutory mandate for bargaining on wages, hours, and working conditions. The Board does not make findings of fact as to evidence which might appropriately be offered in the course, of bargaining by either party to support or negate a particular demand. And in the absence of any showing by the Union that the label "emergency service" constitutes a bargainable subject, it would appear that such a finding would bear only upon the justification of some demand which did constitute a mandatory subject of bargaining. The Union has not demonstrated how this demand fits into the definition of wages, hours, and working conditions as outlined in NYCCBL Section 1173-4.3a and therefore the Board finds this demand to be outside the scope of collective bargaining. Demand No. 5 "Cash Equivalent of Subway Cards"

The City argues that the demand is outside the scope of collective bargaining, citing NYCCBL Sections 1173-3.0(g), 1173-4.0 and 1173-4.3, because the Union seeks to negotiate

[9] See Board Decision Nos. B-3-69 B-1-70 - Creation of new positions or titles is a management right.

the matter of subway cards over which the New York City Transit Authority has full control.[10]

The Union answers that the City affirmatively acted to deprive "dispatchers of their long-held subway cards" and that the City "has full control with respect to recompensing them for this unjustified discriminatory misdeed."

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[10] **NYCCBL Section 1173-3.0(g)**
"g. The term 'public employer shall mean (1) any municipal agency; (2) the board of education, the board of higher education, the New York City Health and Hospitals Corporation, the New York City Off-Track Betting Corporation, the New York City Board of Elections, the public administrator and the district attorney of any county within the city of New York, and the administrative board of the judicial conference; (3) any public authority other than a state public authority as defined in subdivision nine of section two hundred one of the civil service law, whose activities are conducted in whole or in substantial part within the city; and (4) any public benefit corporation, or any museum, library, zoological garden or similar cultural institution, which is a public employer or government within the meaning of article 14 of the civil service law, employing personnel whose salary is paid in whole or in part from the city treasury."

§ 1173-4.0 Application of chapter. This chapter shall be applicable to:
a. all municipal agencies and to the public employees and public employee organizations thereof;
b. any agency or public employer, and the public employees and public employee organizations thereof, which have been made subject to this chapter by state law;
c. any other public employer, and to the public employees and public employee organizations thereof, but only to the extent to which the public employer or the head thereof elects by executive order to make this chapter applicable, in whole or in part, upon such terms and conditions as the mayor may approve, provided, however, that any such election by the New York city board of education shall not include any employee appointed through the board of examiners of the New York City board of education or any paraprofessional employees with teaching functions; and
d. any public employer, and the public employees and public employee organizations thereof, to whom the provisions of this chapter are made applicable pursuant to paragraph four of subdivision c of Section 1173-5.0 of this chapter."

The City's contention that it has no control over the issuance of subway cards is not responsive to the Union's demand for the cash equivalent of the cards. The Union's claim that fire dispatchers were issued subway cards for many years is not disputed.

The United States Court of Appeals for the First Circuit has ruled that the word "wages," as used in the National Labor Relations Act, "embraces within its meaning direct and immediate economic benefits flowing from the employment relationship."[11] The demand for the cash equivalent of subway cards is a demand for such an economic benefit.

The New York State Court of Appeals has held that absent an express legislative restriction, the public employer has the obligation to bargain as to all terms and conditions of employment pursuant to the broad provisions of the Taylor Law.[12]

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[11] W.W. Cross & Co., Inc. v. NLRB, 174 F2d 875 (1949).

[12] Board of Education, Union Free School District No. 3, Town of Huntington, v Associated Teachers of Huntington, 30 N.Y. 2d 122 (1972)

In Decision No. B-1-74, the Board determined the bargainability of a union demand for an alternative benefit to unenacted pension benefits agreed upon in an expired contract. In that case, the City maintained that alternative benefits were not bargainable under Section 470 of the Retirement and Social Security Law. The Board found that the Legislature had prohibited bargaining for pension improvements but that bargaining on an economic substitute for pension benefits was permissible. The Board's rationale was that a demand for an alternative benefit was a money demand and was therefore not prohibited.

Similarly, in the instant case, the Union's demand is an economic substitute for subway cards. Therefore, the Board finds this money demand (wages) bargainable pursuant to Section 1173-4.3a of the NYCCBL.

Demand No. 6 - "There Shall Be No Banking of Hours by any Employee Covered by this Contract for any Reason."

The City alleges:

> "...the matter of banking of hours not only involves the manner and means by which dispatchers are to be trained, but involves as well, the managerial right to schedule employees for work for purposes of achieving manning levels and as such is outside the scope of collective bargaining under Section 1173-4.3b. See e.g., B-4-69, p.7, B-6-74, p. 14, B-5-75, p. 18."

The Union simply denies that the demand interferes with the training of dispatchers for the proper execution of their duties as alleged by the City.

Dispatchers work fifty-two (52) hours in a ten (10) day cycle. Each ten day cycle is composed of five (5) eight (8) hour tours and one (1) twelve (12) hour tour. Article V Section 4 of the contract now in effect between the parties by virtue of NYCCBL Section 1173-7.0d[13] provides as follows:

Article V-Productivity and Performance

Section 4.

> "The Fire Department may at its option excuse employees from working a four (4) hour segment of their regularly scheduled twelve (12) hour tour. Such excused time will be credited to a 'Training Program Bank.'
>
> The Fire Department will require the employee to draw upon his credits in the 'Training Program Bank' for Fire Department training subject to the following limitations:

[13] NYCCBL Section 1173-7.0
"d. Preservation of status quo. During the period of negotiations between a public employer and a public employee organization concerning a collective bargaining agreement and, if an impasse panel is appointed during the period commencing on the date on which such panel is appointed and ending thirty days after it submits its report, the public employee organization party to the negotiations, and the public employees it represents, shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall such public employee organization induce any mass resignations,.and the public employer shall refrain from unilateral changes in wages, hours, or working conditions. This subdivision shall not be construed to limit the rights of public employers other than their right to make such unilateral changes, or the rights and duties of public employees and employee organizations under state law. For purpose of this subdivision the term 'period of negotiations' shall mean the period commencing on the date on which a bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or an impasse panel is appointed."

> 1-Training programs will he scheduled only when an employee would be entitled to a ninety six (96) hour leave.
>
> 2-An employee will not have more than 2 ninety six (96) hour leaves interrupted for training purposes.
>
> 3-An employee will not be required to 'Bank' more than four (4) man days (32 hours) in a fiscal year (July 1 to June 30).
>
> 4-The Fire Department shall not schedule training sessions on Sundays and Holidays.
>
> 5-No employee will be required to interrupt more than one (1) 96 hour leave during July and August.
>
> 6-An employee's regularly scheduled vacation will not be interrupted for training sessions.
>
> 7-No employee will be required to attend training sessions on more than 1 Saturday.
>
> 8-No training session will be scheduled for more than two days of an employee's 96 hour leave."

The Board discerns three aspects of this proposal: total hours, training and manning. Insofar as this is an hours demand, in that the elimination of the "Training Program Bank" might affect the total number of hours worked per day, the number of hours worked per week, and in this case - the number of hours worked per ten day cycle, it is a City-wide subject for bargaining. The subject of hours is by specific provision of the NYCCBL and of the Taylor Law, a mandatory subject of bargaining.[14] Under Section 1173-4.3a(2), the subject of hours is bargainable at the City-wide level absent a showing of special and unique circumstances

[14] NYCCBL Section 1173-4.3a and Taylor Law Sections 201.4 and 203.

To the extent that the elimination of "banking" involves the manner and means by which dispatchers are to be trained, and the scheduling of employees to achieve desired manning levels, it falls within the sphere of managerial prerogatives.[15]

The Board, citing Section 1173-4.3b, determined in Decision No. B-4-71 that a demand concerning training procedures or the establishment of a training fund "manifestly falls within the are as reserved to management." In Decision No. B-7-72, the Board held that "the City has the management right to determine the quantity and quality of the services to be delivered to the public, and, therefore, also the quantity and quality of the training required to achieve the service."

In Decision No. B-4-69, the Board held that the scheduling of hours of work as distinguished from the total number of hours worked per day or per week, or in this case -per ten day cycle, is a reserved management right. The Board, in Decision No. B-5-75, confirmed that the City alone has the power and duty to determine the level of manning in the Police Department, "the level of services it will provide to

[15] However, see Board Decision No. B-5-75, p.17. "Therefore [if a schedule change] would result in a change in the total hours worked per day or per week by Patrolmen and Patrol-women, the question of hours is a mandatory subject of bargaining."

the public ... the level of manpower required and the number of Patrolmen who must be on duty at a certain time."

We repeat our conclusion that this demand primarily concerns the hours of work required of fire dispatchers and that the demand is therefore not bargainable at the unit level and is only bargainable at the City-wide level absent a showing, rather than mere allegation, of special and unique circumstances.

ORDER AND DETERMINATION

For the reasons set forth above and pursuant to the powers vested in the Board of Collective Bargaining, it is

DETERMINED, that Demand No. 5 - Cash Equivalent of Subway Cards, is a mandatory subject of bargaining; and it is further

DETERMINED, that the following demands do not concern subjects appropriate for bargaining at the unit level:

Demand No. 4(A) - Overtime
(B) - Premium Pay for Weekend Work,
Demand No. 6 - Banking of Hours,

and it is further

DETERMINED, that the following demands are not mandatory subjects of bargaining:

Demand No. 2 - No Layoffs because a Work Overload Exists,
Demand No. 4(D) - Dispatching job to be classified as an Emergency Service,

and it is further

DETERMINED, that Demand No. 4(C) - Dispatching job to be classified as a "strenuous duty" occupational title, is a prohibited subject of bargaining, and it is further

ORDERED, that Union demands numbered 1, 3, and 5 may be submitted by the parties to an impasse panel.

DATED: New York, N.Y.
August 29, 1975

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

VINCENT D. McDONNELL
MEMBER

THOMAS J. HERLIHY
MEMBER

EDWARD F. GRAY
MEMBER

MEMBER

N.B. See pp.21 and 22 for Mr. Herlihy's Separate Concurrence on Demand No. 5.

Board member Herlihy's
Separate Concurrence
on Demand No. 5

While I agree with the determination that Demand No. 5 is bargainable, I do so because insofar as it relates to getting more money on the pay check it is a wage demand. The fact that the amount of money is related to the value of transportation on mass transit, the privileged use of which had been granted on a voluntary basis by a third party, is irrelevant, except as to determining the dollars and cents additional the employees are seeking.

Where individual and corporate members of the public have regular contact and a friendly relationship with particular classes of public employees, it is not unusual for some material courtesies to be extended. These might extend to such things as a fruit dealer's gift of an apple to the mounted police officer's horse, the serving of a free meal by a restaurant to a police officer on the beat during his meal break, the extension of discount privileges beyond the ordinary on purchases of goods and services to classes of employees who have regular, contact with vendors.

The rationale leading to the Board's decision includes on page fourteen reference to a U.S. Court of Appeals' decision defining the word "wages" stated that it embraces within its meaning direct and immediate economic benefits flowing from the employment relationship. While the this the cited decision is not available to me as I writ item, it is difficult to envision the Court as having considered the free meal, the apple, the discount, the pass to a movie, stage production, or free transportation granted by a third party to be wages Paid by the first party to the second party.

The wage relationship is between the employer and the employee only, and a direct referral to "gifts of things of value" given by a third party should not, as a matter of policy, be cited as the rationale for a wage demand, even though the dollars demanded based on higher living costs, regardless of what generates the higher living cost, are most certainly bargainable.

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