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

Local No. 3, IBEW, AFL-CIO

DECISION NO. B-23A-75

-and-

DOCKET NO. BCB-218-75

THE CITY OF NEW YORK
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DECISION AND ORDER

On August 29, 1975, the Board Issued Decision No. B-23-75 which dealt with several scope of bargaining issues that arose during negotiations between Local No. 3, IBEW, AFL-CIO and the City of New York. On October 10, 1975, the Union submitted papers in support of its motion for reconsideration relating to Demand Nos. 4(A)-overtime, 4(B)-Premium Pay for Weekend Work, and 6-Banking of Hours. The City filed its reply opposing the union's motion on October 24, 1975. By letter, dated November 3, 1975, the Union withdrew Demand No. 6-Banking of Hours, from its motion for reconsideration.

DISCUSSION

The Board, in Decision No. B-23-75, ruled that Union demands concerning overtime and premium pay for weekend work were not bargainable at the unit level, there being no special or unique considerations established peculiar to dispatchers with respect to these matters which would warrant a variance of the City-Wide Contract.

The Union has not presented any new evidence concerning the issue of overtime except to tie it into the concept of premium pay for weekend work. Thus, the Union's motion for reconsideration boils down to one issue, premium pay for weekend work.

The Union's position is based solely upon the Impasse Panel Report in case 1-106-73, which concerned the City-Wide Contract negotiated by District Council 37 and the City. In that case, Union Demand No. 53, presented by DC-37 to the panel for determination, read:

> "All work on a holiday, or on a day observed as a holiday, or on Saturday, or Sunday, or on a 6th or 7th day of a week shall be considered overtime and compensated in accordance with the provisions of Article IV (overtime)."

This demand was dealt with by the panel at pages 23 and 24 of its report and recommendations:

> "This Demand has several parts including a request for overtime compensation, at time and one-half, for work on Saturday and Sunday.
>
> With few exceptions comparable public employers do not have weekend premiums.
>
> In contrast to the public sector, a premium for Sunday work and, to a somewhat lesser extend Saturday is provided in the private sector. No doubt the difference in part reflects the fact that private sector work most often can be scheduled as desired, whereas in the public sector essential services must be available continuously. However, one consequence of this difference in treatment is that 'prevailing rate' employees in the public sector, whose terms and

> conditions of employment are statutorily determinable by reference to private sector practice, enjoy weekend-premium. What this means; in terms of City employment, is that an employee represented in these negotiations may on occasion be assigned to supervise or work along with prevailing rate employees on weekends, for which they but not he receive a premium. we discern an inequity in that situation. Unfortunately, we are not in a position to delineate exactly which employees are so affected, or to determine the scope of any relief to be accorded them. We will recommend, therefore, that this matter be referred to the next 'unit negotiations.'"

The Union contends that this "award represents a final determination of the Board by virtue of New York City Collective Bargaining Law §1173-7.0c. (4) (d)"[1] and therefore its demand concerning premium pay for weekend work is bargainable at the unit level. However, scope of bargaining and level of bargaining questions, are matters solely within the domain of the Board's

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[1]NYCCBL §1173-7.0c.

"(4) Review of impasse panel recommendations:

(d) The recommendations of the impasse panel shall be deemed to have been adopted by the board if the board fails to issue a final determination within thirty days of the filing of the notice of appeal, or within forty days of a notification of rejection to the director of the board where the board, upon its own initiative, reviews the panel's recommendations, provided, however, that when a hearing is ordered pursuant to subparagraph (b) of this paragraph four relating to allegations of prejudice, the impasse panel's recommendations shall be deemed to have been adopted by the board only if the board fails to issue a determination thereon within thirty days after the close of such hearing, and provided further, that the director may extend the thirty day or forty day periods mentioned in this subparagraph for an additional period not to exceed thirty days."

jurisdiction,[2] the impasse panel award in 1-106-73 notwithstanding.

Even if the Board was to give credence to the impasse panel's recommendation, we do not find conclusive evidence in support of the Union's contention that dispatching personnel work closely with prevailing rate employees on weekends, the standard by which the panel would apparently determine if a demand for a weekend premium was bargainable at the unit level. The statement by David J. Rosenweig, a member of the Union's executive board, referred to by the Union as Memorandum "C," establishes that it is the exception rather than the rule that prevailing rate employees, whose duties are in anyway related to the dispatching function and who receive weekend premiums, actually work on weekends. When such prevailing rate employees are called in for weekend duty, they do not work alongside dis patchers in the manner contemplated by the panel in 1-106-73.

Finding no special and unique considerations peculiar to dispatchers concerning the issues of premium pay for weekend work or overtime, and review and reconsideration of Board decisions not being statutorily mandated, this board finds no basis for granting such motion in this case.

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[2]NYCCBL § 1173-5.0

"a. Board of collective bargaining. The board of collective bargaining, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:

(2) on the request of a public employer or certified or designated employee organization to make a final determination as to whether a matter is within the scope of collective bargaining;"

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 Union's motion for reconsideration is denied.

DATED: New York, N.Y.
November 5, 1975

ARVID ANDERSON
Chairman

WALTER L. EISENBERG
Member

ERIC J. SCHMERTZ
Member

THOMAS J. HERLIHY
Member

EDWARD SILVER
Member

EDWARD F. GRAY
Member