

L.3, IBEW v. City, 17 OCB 8 (BCB 1976) [Decision No. B-8-76]

OFFICE 01: COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Hatter of the Impasse

-between-

LOCAL No. 3, IBEW, AFL-CIO

DECISION NO. B-8-76

-and-

THE CITY OF NEW YORK

DOCKET NO. BCBI-11-76  
(I-123-75)

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DETERMINATION AND ORDER

On May 5, 1976, Monroe BerKowitz, the single Impasse Panel designated by the Board of Collective Bargaining to hear and make recommendations in the collective bargaining dispute between the City and Fire Alarm Dispatchers represented by Local S, IBEW, AFL-CIO (the union), issued his Report and Recommendations. The Board, on June 4, 1976, received both the City's rejection of the Report and Recommendations and a letter from the Union requesting that the Report be resubmitted to the Panel for further consideration and clarification. On June 7, 1976, counsel for the Union informed OCB Deputy Director Laura that the Union's June 4th letter would serve as its petition and that no further documentation would be forthcoming. The City filed its Notice of Appeal and Petition requesting the Board to modify certain of the Panel's recommendations on June 4, 1975, which was

subsequently amended by letter dated June 18, 1976. On June 18, 1976, the City filed a brief in support of its appeal of the Panel's Report and Recommendations. The Union responded to the City's Petition by letter dated June 23, 1976.

### The City's Position

The City contends that' the Impasse Panel's recommendations "insofar as they provide for wage increases in excess of 8% (for 7/1/74 - 6/30/75) and 6% (for 7/1/75 - 6/30/76) plus COLA (subject to deferral)" are in excess of the guidelines promulgated and approved by the Emergency Financial Control Board (EFCB). Specifically, the City contends that the recommended wage increases come to 8.191% in the first year and 6.157% in the second year. The City concludes that these figures, when compounded amount to a total percent age increase of 14.843% or 0.363% in excess of the EFCB guidelines for a total payroll cost of above the guidelines for the approximately 195 employees involved. The Union has not contested these computations.

The City argues therefore that (Brief in Support of Appeal, page 2):

" . . . the implementation of any of these recommendations, should they be affirmed in whole or in part by the Board, will more than likely result in further and protracted litigation unless the Board lays down explicit guidelines for the parties and specifically subjects the terms of this award to the approval of the Emergency Financial Control Board."<sup>1</sup>

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<sup>1</sup> The Panel's Recommendations are as follows:

- "1. The fire alarm dispatchers shall be granted an increase of \$()So per ),car effective July 1, 1974,  
and an increase of \$750 effective July 1, 1975. The minimum and maximum should be adjusted so as to reflect such increases.

(continued)

The City requests that the Board modify the Panel's recommendations to provide as follows [Brief in Support of Appeal, page 21:

- "(1) No wage increase shall be granted in excess of those economic terms which have been approved by the Emergency Financial Control Board for labor agreements negotiated through the period 7/1/74 to 6/30/76.
- "(2) Any and all impasse awards, whether they grant increases in benefits or not, are modified by and subject to (a) the provisions of an executed wage deferral
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Footnote 1/ continued:

"2. The supervising fire alarm dispatchers shall be granted an increase of \$1,000 per year effective July 1, 1975. The minimum and maximum should be adjusted so as to reflect such increases.

"3. To take a step toward eliminating the overlap between the salary schedules, the minimum salary of the supervising fire alarm dispatchers, as of July 1, 1975, shall be \$15,340 and the maximum salary shall be \$17,850. In addition to the salary increases of \$1,106 plus \$900, any supervising fire alarm dispatcher whose yearly salary is less than the minimum shall be adjusted so as to bring his salary up to that minimum effective as of July 1, 1975.

"4. The standard cost of living adjustment incorporated in other contracts for bargaining units in the City of New York shall be applicable for the contract year beginning July 1, 1975.

"5. These salary adjustments, the increases in salaries for minimum and maximum and the cost of living adjustment shall be incorporated in agreements between the parties and shall be subject to implementation in a manner and to the extent permitted by applicable law."

agreement and (b) any applicable provisions of the New York State Financial Emergency Act, as amended."

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### The Union's Position

The Union rejects the Report and Recommendations and urges that they be resubmitted to the Impasse Panel for the following reasons [Letter of June 4, 1976] :

- "(1) The determination of the Impasse Panel (p. 18) that the Fire Alarm Dispatchers' pay plan ' . . . should be changed through the process of collective bargaining 'and not through an impasse panel recommendation' is an abdication of function. Collective bargaining had failed, and the issue had properly been referred to the Impasse Panel, and is a proper subject for submission to an Impasse Panel. BCB Decision B-3-73.
- (2) The Impasse Panel failed to set forth the effect of New York City's current financial crisis upon its recommendations. The Panel should be directed to do so, failing which the Panel will not have complied with its duty to clearly set forth the grounds for its decision."

In response to the City Petition and Brief the Union makes the following arguments [Letter of June 23, 1976]:

"The 'Modifications Requested' by the Office of Labor Relations amount to a virtual nullification of the Impasse Panel Procedure provided by the New York City Collective Bargaining Law and to a nullification of the Collective Bargaining Procedure provided by that Law. The maintenance of that Law's procedure is the very quid pro quo for the no-strike agreements which most labor organizations which bargain with New York City have executed. ' The nullification of this Collective Bargaining Procedure would be tanta-

mount to nullification of such no-strike agreements.

"The bases for the 'Modifications Requested' set forth by the Office of Labor Relations go far beyond legal requirements and are not justified by the mandate of any law and are without merit."

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### Discussion

Section 1173-7.0(c) (3) (b) of the New York City Collective Bargaining Law (NYCCBL) states that:

"An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

"(1) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York City or comparable communities;

"(2) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

"(3) changes in the average consumer prices for goods and services, commonly known as the cost of living;

"(4) the interest and welfare of the public;

"(5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings."

Insofar as the parties contend that the Panel's wage recommendations are erroneous and do not properly conform to the standards prescribed in

Section 1173-7.0 (c) (3) (b) of the NYCCBL, a careful review of the 545-page hearing transcript and the 41 submitted exhibits indicates that the Panel reached a result which, although supported by tile record, does not fully conform to the strict limi-

tations imposed by the Financial Emergency Act (FEA) and the financial plan and guidelines issued pursuant thereto by the EFCB.

The Panel recognized the problem as evidenced by its fifth recommendation which subjects the other four recommendations "to implementation in a manner and to the extent permitted by applicable law." In short, the Panel made efforts to shape its recommendations to existing law and guidelines, insofar as possible, but allowed for the fact that implementation of the recommendations would be subject to further and possibly more precise interpretation of the fiscal legislation.

It is the Board's view that all impasse panels are and have been bound by the emergency fiscal legislation since the inception of these laws in September, 1975. The passage by the State Legislature of the FEA and the ensuing creation of the EFCB were actions specifically addressed to the interest and welfare of the public and, as such, applicable to the actions of impasse panels pursuant to the mandate of criterion No. 4 of Section 1173-7.0 (c) (3) (b) - "the interest and welfare of the public." It follows that in an), statutory review proceeding before this Board, in accordance with Section 1173-7.0 c(4) of the NYCCBL, the same is true.

It is clearly evident from a reading of the Report and Recommendations, that in reaching a decision the Panel was not only cognizant of, but took into consideration the fiscal plight of the City and the emergency fiscal legislation addressed to that problem.

"The interest and the welfare of the public are intimately tied in with the budgetary situation of the City of New York.... The evidence is ample that New York City is suffering from a fiscal crisis of unparalleled and unprecedented proportions. The interest and welfare of the public is best served by minimizing any wage increases that ought to be given to any employees, but most particularly to wage increases that would destabilize relationship and act as a precedent for future demands in collective bargaining." (Report and Recommendations, pp. 13-14).

The City, contends, however, that the Panel's recommendations for wage increases in excess of the 8% and 6% wage pattern established in prior negotiations and endorsed by the EFCB for the 174-176 period, constitute a failure of effective implementation of the fiscal legislation. The Panel acknowledges that the recommendations amount to "an increase somewhat greater than the 8% and 6%" pattern but states that such a result may be justified based upon consideration of some of the other issues involved in the case.

The function of the Board in reviewing impasse panel recommendations prior to the inception of the FEA was made clear in Decision No. B-23-72 and affirmed most recently in May, 1975 by Decision No. B-14-75:

"If the Impasse Panel has afforded the parties full and fair opportunity to submit testimony and evidence relevant to the matter in controversy; unless it can be shown that the Report and Recommendations were not based upon, objective and impartial consideration of the entire record; and unless clear evidence is presented on appeal either that the proceedings have been tainted by fraud or bias or that the Report and Recommendations are patently inconsistent with the evidence or that on its face it is flawed by material and essential errors of fact and/or law, the Report and Recommendations must be upheld. (emphasis supplied).

Our deliberations in the instant matter are addressed to the consideration described in the underlined language of the foregoing quotation. For while the Panel's efforts and the Report and Recommendations demonstrate a clear and largely successful effort to apply all the statutory criteria prescribed by Section 1173-7.0 (c) (3) (b), the issue raised by the City is that the recommendations do not conform with sufficient precision to the financial plan Ind guidelines established by the EFCB pursuant to the FEA.



Extensive examination of both the City's financial statistics and the voluminous minutes of the EFCB meetings and detailed inspection of our own contract files indicates that the financial plan and EFCB guidelines do not permit even fractional deviations in excess of the 8% and 6% formula and no such exception has been brought to our attention. Therefore to the extent that the Panel's recommendations exceed the approved 8% and 6% guidelines, the Board must in accordance with applicable law modify the wage recommendations to bring them into conformity with the dictates of the City's financial recover), plan. Such a modification of the Panel's recommendations, should be viewed as an adjustment of the type anticipated by the Panel as evidenced by its fifth recommendation. We note that not everyone in the unit involved received increases in excess of the 8% and 6% pattern and so in order to allow the parties an opportunity to make the required adjustments in an equitable manner, we direct that the), report back to us within 10 days of the receipt of this decision on the method for accomplishing the mandated reductions. Failing this, the Board will have no choice but to reduce the recommended wage increases for each employee on a per capita basis.

We find that the Panel's refusal at this time, and in the circumstances of fiscal crisis now prevailing, to attempt a comprehensive reorganization of the salary structure of this bargaining unit in addition to the specific recommendations made, is sound and well-advised. It is not, as the Union contends, an abdication of the Panel's function, but a recognition that within the constraints presently imposed by law, no such reorganization by an impasse panel would be appropriate or meaningful.

Aside from the above modifications, it appears from a full review of the transcripts of the impasse panel proceeding, the Report and Recommendations of the Impasse Panel, the briefs, and all the relevant exhibits, that the parties were afforded full and fair opportunity to be heard and present all arguments and evidence in support of their respective positions and that the impasse panel gave careful consideration to all the evidence presented by the parties, basing its Report and Recommendations reasonably and soundly upon the various criteria set forth in the NYCCBL and on the record as a whole.

Our Order herein will be in conformity with these findings and conclusions.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective' Bargaining Law, and in accordance with the findings and conclusions of this Board herein above set forth, it is

ORDERED, that to the extent the Panel's recommendations exceed the approved and applicable 8% and 6% guidelines, they will be reduced to bring them into conformity with the guidelines promulgated by the EFCB pursuant to the FEA; and it is further

ORDERED, that if the parties fail within 10 days of receipt of this decision to report back to the Board with the details of an agreement on the method for accomplishing the mandated adjustments, the Board will reduce the wage increases for each employee on a per capita basis; and it is further

ORDERED, that the said Report and Recommendations of the impasse panel

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herein, a copy of which is annexed hereto and made a part hereof, be, in all other respects, and the same hereby are, affirmed.

DATED: New York, N.Y.  
August 11, 1976

ARVID ANDERSON  
CHAIRMAN

VINCENT McDONNELL  
MEMBER

ERIC J. SCHMERTZ  
MEMBER

THOMAS J. HERLILY  
MEMBER

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EDWARD F. GRAY  
MEMBER

JOSEPH J. SOLAR  
MEMBER

WALTER L. EISENBERG  
MEMBER