

BOARD OF COLLECTIVE BARGAINING
OFFICE OF COLLECTIVE BARGAINING

----- x

In the Matter of

THE CITY OF NEW YORK,

DECISION NO. B-12-79

Petitioner,

-and-

DOCKET NO. BCB-362-79
(I-142-79)

LOCAL UNION NO. 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO,

Respondent.

----- x

DECISION AND ORDER

The City of New York (the City) and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (the Union) have been engaged in the negotiation of a contract for the period July 1, 1978 to June 30, 1980, covering a unit of employees in the Electrical Inspector series of titles represented by the Union.

On January 5, 1979, the Union filed a request for the appointment of an impasse panel to make recommendations on three demands not resolved in negotiations between the parties. By letter dated January 22, 1979, signed by Bruce McIver, Director of the Office of Municipal Labor Relations, the City consented to appointment of an impasse panel but reserved the right to file a scope of bargaining petition with this Board as to those demands claimed by the City to be non-mandatory subjects of bargaining. A panel was appointed on February 1, 1979, and impasse hearings have since been in progress.

By letter dated April 4, 1979, signed by Robert W. Linn, Special Counsel to the Office of Municipal Labor Relations, the City raised objection to the submission to the panel of the following three demands:

1. Payment of deferred six percent (6%) salary increase due July 1, 1975.
2. Addition of Area Supervisors as needed to departments other than Bureau of Gas and Electricity.
3. All City electrical inspections to be performed by certified New York City Electrical Inspectors.

Following an exchange of correspondence in April 1979, and based upon informal discussion between the Office of Collective Bargaining and the parties, the City and the Union undertook to attempt to compromise the differences as to those three items. These attempts having failed, the Board has been requested to issue its decision in the matter.

O p i n i o n

As to Demand No. 1, we find that the Union's demand for payment of a deferred six percent (6%) salary increase due on July 1, 1975, is a demand relating to wages, and, as such, is a mandatory subject of bargaining. The only basis presented by the City for its objection to submission of this matter to the impasse panel is the claim that the subject of deferred salary increases was disposed of conclusively in Matter of the Coalition Unions and the City of New York (Docket No. 743/78 1-141-78). This is true, of course, as to all persons party to that proceeding but does not apply to those, such as the Union herein, who were not party to the cited arbitration/ impasse proceeding. We know of no principle under the doctrine of collateral estoppel cited by the City nor of any other theory under which the award in the cited proceeding might be held to apply to parties, such as the Union here, not members of the coalition of unions nor participants in the arbitration/impasse proceeding between the coalition and the City. We find, accordingly, that this demand relates to a mandatory subject of bargaining and should be submitted to the impasse panel.

Our finding that this demand is a mandatory subject of bargaining is no more or less than a determination of the technical status of the subject matter and the consequent bargaining rights and duties of the parties and is not to be construed as an endorsement of the merits of the particular demand presented.

We find that Demand No. 2, above, relates to matters of management prerogative and impinges upon the City's right unilaterally to determine standards of services to be offered by its agencies, to determine standards of selection for employment, to maintain the efficiency of governmental operations and to determine the methods, means and personnel by which government operations are to be conducted as provided in §1173-4.3b of the New York City Collective Bargaining Law.

The Union's contention, set forth in the April 5, 1979 letter of Norman Rothfeld, Esq., counsel to the Union, that the demand at issue "supports the management right of each department to determine whether it needs" additional bargaining unit personnel is irrelevant since the various departments of City government do not constitute independent bargaining entities and have no standing to establish City policies as to the hiring and deployment of personnel nor authority to engage in collective bargaining on behalf of the City; the only entity within City government having such authority is the Office of Municipal Labor Relations which is the bargaining agent for the City.

Accordingly, we find that Demand No. 2, above, relates to a non-mandatory subject of bargaining and that the City has no duty to bargain with regard thereto nor any obligation to submit the matter to impasse procedures.

The submissions by the parties on the matter at issue herein, consist of the City's letter of April 4, 1979 and the Union's letter of April 5, 1979, both of which are mentioned and more fully identified above. Neither of these submissions is sufficiently clear or detailed with regard to Demand No. 3 to afford an adequate basis for a resolution of the question of the bargainability of the subject. The City maintains that the Union demand "that all City Electrical Inspection be performed by certified New York City Electrical Inspectors" impinges upon the City's right, allegedly a matter of management prerogative, to subcontract work and is therefore a non-mandatory subject of bargaining. The Union contends that the demand "is an assertion of a legal right which the New York City Charter provides"; and appears to state that the demand is not intended to prevent the contracting out of the work in question but the assignment of such work to City employees other than those party to this matter. Without further elucidation of the respective and conflicting conclusions thus far offered by the parties, we find it impossible to render an informed decision. We shall, accordingly, direct that the parties be afforded the opportunity to supplement their earlier submissions on this issue.

DETERMINATION AND ORDER

For the reasons set forth above and 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 Union's demand for payment of deferred six percent (6%) salary increase due July 1, 1975, relates to the subject of wages and constitutes a mandatory subject of bargaining and may be submitted to the impasse panel; and it is further

DETERMINED, that the Union's demand seeking addition of Area Supervisors as needed to departments other than the Bureau of Gas and Electricity, relates to a matter of management prerogative as to which the City has no obligation to bargain, and, as such, may not be submitted for disposition by an impasse panel without the consent of the City; and it is further

ORDERED, that the parties submit to the Board within fifteen (15) days of service of this order, briefs addressed to the issue of the duty to bargain on the subject of the Union's demand "that all City Electrical Inspections be performed by certified New York City Electrical Inspectors."

DATED: New York, New York
October 10, 1979.

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

EDWARD SILVER
M e m b e r

FRANKLIN J. HAVELICK
M e m b e r

MARK J. CHERNOFF
M e m b e r