City v. L.1180, CWA, 23 OCB 19 (BCB 1979) [Decision No. B-19-79]

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

THE CITY OF NEW YORK — DECISION NO. B-19-79

-and-

DOCKET NO. BCB-350-79
I-144-79

LOCAL 1180, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
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DECISION AND ORDER

On July 12, 1979, an impasse panel was designated to resolve the disputed issues which arose during negotiations between Local 1180, Communications Workers of America, AFL-CIO (Local 1180), and the City of New York for a successor contract to the one that had expired on June 30, 1978, covering Principal Administrative Associates. The City, by its Office of Municipal Labor Relations, contended that five of the demands which Local 1180 wished to submit to the impasse panel were not mandatorily bargainable and therefore, such demands could not be considered by the panel over the City's objections.

The parties' negotiations continued and four out of the five disputed demands were dropped. The remaining demand - Demand 44 - has been modified by Local 1180 since the City filed its original objections to the bargainability of the disputed demands on September 6, 1979.

The City created the title of Principal Administrative Associate by vertically broadbanding the titles of Administrative Assistant, Administrative Associate and Senior Administrative Associate. The new title has three assignment levels and each assignment level is accorded a different salary.

Initially, Demand 44 sought to insure that any employee who had performed satisfactorily at Level II or Level III for six months would not be subject to an assignment to a lower level. The City refused to negotiate claiming that inclusion of this Demand in the parties' contract would affect job classification, an area reserved to management by Section 1173-4.3b of the New York City Collective Bargaining Law (NYCCBL).[1]

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[1] Section 1173-4.3b of the NYCCBL provides in pertinent part:

> "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; determine 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...."

Demand 44 now reads:

> "An employee in the title of Principal Administrative Associate who is assigned to a Level II or III position shall, after 6 months (or such other period as the Impasse Panel may determine to be appropriate), maintain the salary he or she was receiving at that level if thereafter he or she is reassigned to a lower level position in the same title. This shall not apply to disciplinary matters."

The City, by letter dated October 4, 1979, still insists that a "scope" question remains because the Demand as modified will cause a significant variation in job classification by providing a guaranteed salary rate to an employee after six months of service at a particular assignment level. This would result, the City continues, in the loss of flexibility to assign employees within one broadbanded title to different duties, which is one of the purposes behind the broadbanding concept.

Local 1180, in a letter dated October 8, 1979, takes the position that Demand 44 is a "money demand" and therefore mandatorily bargainable despite the possible validity of the City's argument that the effect of the Demand is to provide protection against reassignment of employees to lower level positions within the broadbanded title. The Union also contends that Demand 44 would have no effect on the classification system adopted by the Department of Personnel for it only involves salaries, differentials and wage guarantees, issues traditionally subject to collective bargaining.

DISCUSSION

At the outset it should be made clear that although the City's submissions herein are addressed to alleged interference with the management prerogative to determine classifications, there is no indication that Demand 44 in either its former or present form would interfere with management's right to create classifications such as the broadbanded title which is the subject of this case. It may more reasonably be maintained that there is an impact upon the related management right unilaterally to make assignments within titles.

Section 1173-4.3a. of the NYCCBL provides, in pertinent part, as follows:

> "... public employees 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) . . . "

The issue before the Board is whether a demand providing that employees who have performed satisfactorily in a higher level position in their title are guaranteed the pay level they achieve despite possible subsequent reassignment to lower level positions, is one coming within the ambit of "wages." The United States Court of Appeals for the First Circuit has ruled that "wages", as used in the National Labor Relations Act, "embraces within its meaning direct and imme-

diate economic benefits flowing from the employment relationship."[2] Demand 44 is a demand for such an economic benefit.

The Board, in Decision No. B-4-71, held that a demand for the establishment of a minimum pay rate for a title, with increases for additional years of service in the grade, is a mandatory subject of bargaining. This was followed by Decision No. B-2-73 in which a demand to bargain for wage differentials based upon work assignments was found to be mandatorily bargainable where unit employees were assigned to perform higher title work, even though the work belonged to another unit represented by a different union. In the same case, the Board ruled that a union may bargain for standards relative to promotions within a unit. It is not significant that Demand 44 in its present form may indirectly have, in part, the same effect as it would have had in its original form, which aimed not at determining wages but at controlling assignments. So that even if it is assumed that the earlier demand would have been a non-mandatory subject of bargaining, the demand in its present form is bargainable. It is significant that the demand in its present form comes within the purview of wages and is thus a mandatory subject of bargaining. The Board has held that a demand for an alternative economic benefit is mandatorily barganiable despite the alleged prohibited or permissive nature of the benefit initially sought.[3]

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

[3] See Decision Nos B-1-74; B-23-75.

Clearly, application of the principles established in the above-cited cases to the issue presented herein compels a finding that Demand 44 is a demand for a direct and immediate economic benefit flowing from the parties' employment relationship. Salaries, pay differentials and wage guarantees are not properly set by management alone; nor may management claim the right unilaterally to increase and decrease wages whether by direct action or as the indirect result of the exercise of a claimed management right.

In short, we find that management has the right, as a matter of management prerogative pursuant to §1173-4.3b, to determine assignments unilaterally. We also find that the Union has the right to bargain on a demand to give permanence to wage levels achieved and maintained by covered employees. We perceive no grounds for a conclusion that those respective rights must be deemed mutually exclusive, nor do we believe that either right can be asserted to the point of obliterating the other.

Accordingly, we find that Demand 44, as modified, is a mandatory subject of bargaining.[4]

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[4] As the Board recently stated in Decision No. B-12-79:

> "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."

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 Demand 44, as modified, relates to the subject of wages and constitutes a mandatory subject of bargaining.

DATED: New York, N.Y.
November 16, 1979

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
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ERIC J. SCHMERTZ
MEMBER

EDWARD G. GRAY
MEMBER

FRANKLIN J. HAVELICK
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MEMBER