OFFICE COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

DISTRICT COUNCIL 37,
A.F.S.C.M.E., AFL-CIO,

Petitioner

-against-

THE CITY OF NEW YORK,

Respondent

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DECISION NO. B-3-69

DOCKET NO. BCB-23-68

A P P E A R A N C E S:

Daniel J. Nelson,
Director of Research and Negotiations,
for District Council 37,
A.F.S.C.M.E., AFL-CIO

Thomas Laura,
Assistant Director of Labor Relations,
Office of Labor Relations
for the City of New York

DECISION and ORDER

On October 7, 1968, District Council 37, A.F.S.C.M.E., AFL-CIO, hereinafter called the "Union," requested the Board of Collective Bargaining to appoint an impasse panel to “resolve the problems" relating to providing promotional opportunities for Elevator Operators by creating additional positions for Elevator Starters in the Department of Hospitals. The City objected on the grounds that:
(1) all matters within the scope of bargaining had been agreed upon, and that the matter of additional starter positions had not been reserved for further discussion and was not within the scope of bargaining; and (2) the Union's remedy, if there is a claim that Elevator Operators are working as Starters is to process a grievance.

The Board of Collective Bargaining thereafter directed that a hearing be conducted before a trial examiner on the issues: (1) whether the Union's request for the creation of additional Elevator Starter positions is within the scope of collective bargaining, and (2) whether that issue had been kept open for further negotiations.

A hearing was held on November 26, 1968, before Arvid Anderson, acting as Trial Examiner.

Subsequent to the hearing, this matter was transferred to the Board, pursuant to Rule 12.5.

Proposed Findings of Fact, Conclusion of Law and Decision were issued by the Board on April 24, 1969. No exceptions thereto have been filed (Rules 12.3, 12.5, 12.-6).

Upon consideration of the record and arguments herein, the Board of Collective Bargaining issues the following Decision and Order:

D E C I S I O N

The Board reaches both issues specified above when it acts pursuant to the mandate of §1173-5.0(a) (2) of the New York City Collective Bargaining Law which reads, in part, that the Board "shall have the power and duty: . . . (2) on the request of an employer or certified public employee organization engaged in negotiations, to make a final determination as to whether a matter is within the scope of collective bargaining in such negotiations under the terms of the applicable executive order. . . ."

Reservation of the Subject

The Union herein represents Elevator Operators. Employees in the title "Elevator Starter" are represented by Local 733, Building Service Employees Union. Negotiations between the Union and the Department of Hospitals through the Office of Labor Relations resulted, on or about September 27, 1967, in agreement on wages, uniform allowances, welfare fund contributions and a service increase. Implementing Personnel order No. 68/2, implementing the monetary terms agreed upon, was issued on January 9, 1968.

In its written proposals for a new contract, dated December, 1966, the Union had sought the creation of a new title, "Senior Elevator Operator," as a line of promotion from Elevator Operator, with an additional $500 per year. The City refused to establish a new title or provide for that line of promotion, but agreed to talk about additional starter jobs in the Department of Hospitals.

After IPO 68/2 had been issued, the parties met on a number of occasions, including, at least, February 7th .and 27th, 1968, and April 24, 1968. Various members of the Union, employed as Elevator operators, were granted released time to participated as members of t1he Negotiating Committee on the above mentioned dates. During such meetings, the City offered to increase the number of Elevator Starter positions in the Department of Hospitals, but no agreement could be reached on the number of additional starter jobs.

On August 23, 1968, the Union filed a request for mediation. The City declined to mediate, contending that the contract was closed, that the establishment of additional starter jobs had not been reserved for later bargaining, and that the discussions between the Union, the Department of Hospitals and the Office of Labor Relations on that subject were not in the nature of negotiations. The City further took the position that the proper procedure for the Union to follow, if any was required, would be to file a grievance alleging that Elevator Operators were working out of title as Elevator Starters in the Department of Hospitals. The Union, however, continued to demand an increase in the number of starter positions or, in the alternative, the creation of the title "Senior Elevator Operator.

In City v. Communication Workers of America, Local 1180, Decision No. B-8-68, this Board stressed the importance of reducing to writing the terms of collective bargaining agreements in order to minimize misunderstandings over the interpretation and application of contract terms. This same rationale applies to any reservation of a particular subject for further negotiations or discussion. Accordingly, the Board wishes to make clear that in future cases, absent written proof, a reservation of a subject matter for further bargaining will not be found. However, as much that occurred here was prior to the effective date of the NYCCBL, we shall not require a written reservation in this matter.

The Board, accordingly, finds that the parties, in order not to delay settlement of wages, uniform allowance, welfare fund contributions and service differentials for Elevator operators in all City departments, agreed to reserve the questions of promotional opportunities for Elevator operators in the Department of Hospitals for further negotiation.

Scope of Bargaining

In Matter of the City of New York v. Social Service Employees Union, Decision No. B-11-68, we said:

> "The parties may discuss, and reach agreement on, any lawful subject. However, since there is no legal duty or obligation to discuss voluntary subjects, they may be discussed only on mutual consent, and submitted to an impasse panel only on mutual consent. . ."

The hearing in this matter was held on November 26, 1968, prior to the Board's decision in the above-quoted matter. The stated positions of the parties do not indicate whether they regard the matter of promotional opportunities as a mandatory or permissive subject of bargaining. If the subject is mandatory, it is a proper subject for an impasse panel's recommendation, but if it is voluntary or permissive, it is not a proper subject for an impasse panel except upon mutual consent or a Board finding of "practical impact" within the meaning of §5c of Executive Order 52. (Uniformed Firefighters Association et al v. City of New York; Decision No. B-9-68; City of New York v. Social Service Employees Union, Decision No. B-11-68.) Here, the City has not agreed to submit the issue of promotional opportunities for Elevator

Operators to an impasse panel, and no facts have been presented which would justify a finding that a practical impact exists.

The Board finds that the subject of promotional opportunities, as raised herein, namely, the creation of additional Elevator Starter positions, whether under the title "Elevator Starter" or a new title, "Senior Elevator Operator," is not a mandatory subject of bargaining. We reach that conclusion on the ground that under S5c of Executive order 52, the creation of new titles comes under the right of the City to determine the methods, means and personnel by which governmental operations are to be conducted, as well as the right to determine the content of job classifications. Accordingly, in the absence of a "practical impact," promotional opportunities are not a mandatory subject.

Our conclusion herein is also supported by the fact that the Union here is seeking promotional opportunities through an increase in the number of starter jobs, which jobs are in a bargaining unit represented by another union. The rights and interests of employees represented by that union, Local 733, necessarily are directly involved in any consideration of the number of starters to be employed.

Thus, the real issue in this matter is whether it is mandatory upon the City to bargain with the Union on the number of positions in a unit represented by another union. if the City had a mandatory duty to bargain with District. Council 37 concerning the number of Starter jobs, it would impinge on the rights of Local 733 as the exclusive bargaining representative for Elevator Starters. The Board would not, in any event, appoint an impasse panel in such

a case without affording the other union, in this case Local 733, the opportunity of presenting its position.

Our determination does not mean that a certified representative is precluded from bargaining for pay differentials to compensate its members for additional duties they are required to perform, Matter of Social Service Employees Union, Decision No. B-11-68, nor does it preclude the Union from processing grievances for out-of-title work. Furthermore, the determination herein does not mean, that all questions concerning promotions are merely voluntary subjects of bargaining. Such other questions will be reserved for future determinations.

CONCLUSION OF LAW

For the reasons set forth above, the Board concludes that conditions are not appropriate for the appointment of an impasse panel to resolve the dispute herein over the number of Elevator Starter positions in the Department of Hospitals.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

0 R D E R E D , that the request for the appointment of an impasse panel, filed by District Council 37, A.F.S.C.M.E., AFL-CIO, be and the same hereby is, denied.

Dated, New York, N.Y.
May 7, 1969

June 2, 1969

ARVID ANDERSON
Chairman

ERIC SCHMERTZ
Member

SAUL WALLEN
Member