

UFA, 31 OCB 8 (BCB 1983) [Decision No. B-8-83]
OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

the Request for Impasse by the Decision No. B-8-83

UNIFORMED FIREFIGHTERS ASSOCIATION Docket No. BCB-638-83
AND THE UNIFORMED FIRE OFFICERS (I-163-81)
ASSOCIATION

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DECISION AND ORDER

By letter dated December 3, 1981 addressed to Chairman Arvid Anderson, office of Collective Bargaining, the Uniformed Firefighters Association ("UFA") and Uniformed Fire Officers Association ("UFOA") jointly requested the appointment of an impasse panel "to address an impasse that has occurred between [UFA and UFOA] and the City of New York ... with respect to the negotiations concerning implementation of the Report and Recommendations of the Meal Study Committee..."

In the course of inquiry as to whether an impasse, as contemplated by Section 1173-7.0c of the New York City Collective Bargaining Law ("NYCCBL"), existed in negotiations between the parties and in light of the conflicting pleadings and other submissions of the parties, we directed that hearings be held in order that our inquiry might be informed by the findings and recommendations forthcoming therefrom. To that end, Joseph R. Crowley, Esq. was

designated as Hearing officer and the parties were so notified by letter dated February 23, 1982 signed by Chairman Anderson. Hearings were held by Professor Crowley on April 20 and 28, 1982 and his Report and Recommendations issued on September 20, 1982.

By letter dated October 26, 1982 UFA and UFOA ("the Unions") filed Exceptions to the Report and Recommendations of the Hearing officer. The City of New York, by its Office of Municipal Labor Relations, in a letter dated November 29, 1982 submitted its Reply to the Exceptions and urged that we adopt the Report of the Hearing officer herein.

Pursuant to the request by the Unions, dated December 10, 1982, Oral Argument before the full Board of Collective Bargaining was held on January 18, 1983.

Our determination herein is based upon the entire record established by all of the pleadings and other submissions of the parties, the hearing held by Professor Crowley and the Oral Argument before us as described above.

Background

The matter of meal periods for firefighters has been an issue in negotiations between the Unions and the City for both the 1978-80 and 1980-82 contracts.

While agreement was reached on some aspects of this issue, the matter of compensation for interrupted meal

periods eluded resolution and, in the 1978-80 contract the parties agreed to gather data and statistics and submit them for study to a joint committee to be appointed at the request of the Unions which would then make recommendations to the parties on the question of meal periods.

Appointment of the Meal Study Committee was not requested within the time frame contemplated by the 1978-80 contract, but the issue was taken up by the parties in the 1980-82 negotiations. UFA's demand Number 75 sought compensation for interrupted or lost meal periods. The City maintained that, as an economic item, this demand should be dealt with in the negotiations for a Uniformed Coalition Economic Agreement (UCEA). But agreement on a tri-partite Meal Period Study Committee, almost identical with that of the 1978-80 contract, was reached and thereafter implemented. The Study Committee issued its Report and Recommendations on October 22, 1981; it included a dissent by the City member of the Committee. The City rejected the Recommendations of the Study Committee by letter dated November 23, 1981.

At that point the parties not only lacked agreement on the issue of compensation for interrupted meal periods or mutual acceptance of the Recommendations of the Study Committee on that subject. They were also at issue as to where these circumstances left them. The Unions maintained that referral of the issue to the Study Committee had not

been a final step and that it had been intended that if the Study Committee did not produce a basis for resolution of the issue mutually acceptable to the parties, negotiation of the issue would resume. The City contested this and it is this dispute which, in essence, constitutes the matter before us. It may be summarized as follows:

Was issuance of the Report and Recommendations of the Study Committee "to be the final step in negotiations ... that is, did the parties agree to be bound by the recommendation of the committee; or, was the recommendation to be advisory, subject to acceptance by the parties and without force or effect unless unanimously accepted; and if not accepted was it to be followed by further negotiations during the term of the 1980-82 agreement?

Hearing officer Crowley found, in pertinent

part:

- (1) that the parties did not agree to be bound by the recommendations of the meal study committee;
- (2) that the parties did not ... agree that the recommendation of the committee would be the subject of negotiations during the term of the agreement.

The Exceptions of the Unions state specifically

that:

The UFA and UFOA do not take exception to the Hearing officers' initial finding that there was no agreement to be bound by the recommendations of the Meal Study Committee.

Discussion

As and for the first of their two exceptions to the Report of the Hearing officer herein the Unions state:

... An oral agreement to reopen negotiations, as evidenced by the transcript testimony of Messrs. Mancuso, Shechtman and Bollon, creates a duty to bargain.

The UFA and the UFOA respectfully request that based upon the facts as adduced from the testimony at the hearing, the Board should reject the finding of [the] Hearing Officer ... [and] should find that the parties did in fact agree to set aside the issue of meal period interruptions for further negotiations pending the Report and Recommendations of the Meal Study Committee. (Emphasis supplied).

If the transcript of testimony contained evidence that such was the agreement of the parties, there would be sound basis for the exception. We have concluded that is not the case, however. This and other language of the Statement of Exceptions of the Unions indicating that there was a clear, affirmative agreement to negotiate after issuance of the Meal Study Committee's Report is not supported by the record. Further, the Union's position in this regard was considerably weakened during oral argument.

In his opening statement, Union counsel made clear that he was not claiming that the parties actually agreed to pursue further negotiations after issuance of the Study Committee's Report. As he put it,

True, there can be agreement to continue negotiations and to hold matters aside evidenced by clear and convincing and explicit language...

And, we note, a fair reading of Section I of the Unions' Statement of Exceptions produces the clear impression that such an agreement is alleged. However, counsel's argument continued as follows:

...but such an agreement can also be implicit and evidenced by the conduct of the parties and we believe that's exactly what happened here.

This position was effectively undermined by counsel for OMLR, who pointed out at a later stage of the oral argument, that the major witnesses for the unions gave no testimony in support of the proposition that the agreement of the parties contemplated - either expressly or by implication - that there would be further negotiations if the Study Committee failed to produce a mutually acceptable report. On the contrary, these witnesses testified repeatedly, on direct, cross and redirect examination, that it was their understanding that the report would automatically roll into the contract between the parties and that there was no further discussion of what would happen when the Study Committee Report issued. In his response to this point, counsel for the Unions conceded it and added that this line of testimony

had included the witness' statement as to his understanding of what would happen if the Study Committee's Report were not implemented by the City: "I guess we would then be left to our legal remedies." Such a statement is a far cry from an express or implied agreement to negotiate further if the Study Committee Report was unacceptable.

At this juncture in his argument, Union counsel pointed out that these negotiator-witnesses were not lawyers. He then asked rhetorically whether the negotiators could have accepted a resolution of the meal interruption problem which left them with no recourse in the event the City rejected the Study Committee Report.

The above issues are merely speculative, however. What is crystal clear and of overriding significance to this inquiry is that neither the Union negotiators nor anyone else present in the negotiations said that, in the event the Study Committee's Report was not mutually acceptable, the parties would resume negotiations on the meal period compensation issue. Nor is the suggestion that such an agreement was implicit in the dealings between the parties consistent with the clear and unequivocal testimony of the Union's own witnesses as to their understanding of the effect of the referral of the issue to the Study Committee.

They admitted that they did not contemplate the possibility of rejection of the Study Committee Report, but believed or assumed that it would automatically and inevitably be rolled into the contract between them and the City. Since the concession has been made repeatedly by the Union in these proceedings that such was not the case,¹ the conclusion is inescapable that there is no basis for any finding on the subject other than that of the Hearing Officer "that the parties did not in the negotiations for the 1980-82 [contract] agree that the recommendation of the committee would be the subject of negotiations during the term of the agreement". Accordingly, we shall dismiss the exception of the Unions addressed to this finding of the Hearing Officer.

The second exception submitted by the Unions herein takes issue with the Hearing officer's treatment of the question as to whether there was agreement between the parties that meal period compensation was not an economic matter as contemplated by the 'Uniformed Coalition Economic Agreement. We find that, in light of the finding of the Hearing officer which is the subject of the Union's first exception, and of our finding regarding that exception,

¹ See, e.g., Union Exception to Hearing Officers' Report, p.1: "The UFA and UFOA do not take exception to the Hearing officer's initial finding that there was no agreement to be bound by the recommendations of the Meal Study Committee.

the issue presented by the second exception is moot. It follows, a fortiori, that there need be no examination of the implication that Deputy Mayor Leventhal's letter of November 23, 1982 inviting further discussion, supports the Unions' contention that the parties had agreed that the subject matter here at issue was not economic in nature. The matter would have been of concern if it had been found that there was agreement to bargain further - or, for that matter, if the Report of the Study Committee had been acceptable to the parties. It would have been necessary to ascertain at some point under these circumstances whether the parties had the right to negotiate or on any other basis to adopt a provision for meal interruption payments or whether they were foreclosed from such actions by the terms of the UCEA. However, since further action on the meal interruption payment is precluded, there is no need to resolve this question. We shall, accordingly, dismiss the union's second exception as moot.

In addition to dismissing the exceptions of UFA and UFOA, we affirmatively find that the Report and Recommendations of Hearing officer Crowley are based upon substantial evidence, are well-reasoned and sound, and are fully consistent with the purposes and provisions of the New York City Collective Bargaining Law. We shall therefore affirm

the Report and Recommendations and adopt them in their entirety. We shall accordingly find, further, that no impasse in bargaining exists between or among the parties herein in contemplation of Section 1173-7.0c of the NYCCBL.

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

ORDERED, that the Exceptions to the Report and Recommendations of the Hearing Officer filed herein jointly by the Uniformed Firefighters Association and the Uniformed Fire officers Association be, and the same hereby are, dismissed; and it is further

ORDERED, that the Report and Recommendations of the Hearing Officer herein be, and the same hereby are, affirmed and adopted as the Decision of this Board; and it is further

ORDERED, that the joint Request of the Uniformed Firefighters Association and the Uniformed Fire officers Association herein that this Board find that an Impasse

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exists in bargaining between the said Associations and the City of New York be, and the same hereby is, denied.

DATED: New York, N.Y.
February 28, 1983

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

EDWARD F. GRAY
MEMBER

PATRICK F. X. MULHEARN
MEMBER

EDWARD SILVER
MEMBER

CAROLYN GENTILE
MEMBER