

Uniformed Forces Coalition, 35 OCB 6 (BCB 1985) [Decision No. B-6-85], aff'd, Uniformed Forces Coalition v. Office of Collective Bargaining, No. 10330/85 (Sup. Ct. N.Y. Co. Apr. 2, 1986).

OFFICE OF COLLECTIVE BARGAINING  
BEFORE THE BOARD OF COLLECTIVE BARGAINING

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In the Matter of the

CITY OF NEW YORK

DECISION NO. B-6-85

-and-

DOCKET NO. 1-174-84

THE UNIFORMED FORCE COALITION,  
THE NON-UNIFORMED COALITION,  
THE UNIFORMED FIREFIGHTERS ASSOCIATION,  
AND THE UNIFORMED SANITATION MEN  
ASSOCIATION

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DETERMINATION

On January 4, 1985 the Chairman recommended to the Board that the City's request for the declaration of impasse in the negotiations with the above employee organizations be approved. Notice of that recommendation was duly served on the above coalitions and all affected employee organizations. Objections to the recommendations were received from the Uniformed Force Coalition and the Uniformed Sanitation men's Association. A statement of position also was received from the Non-Uniformed Coalition to the effect that ,if the Board were to approve the City's request, it should do so for all organizations. The Uniformed Firefighters Association filed no objection to the recommendation. All affected organizations have made clear that, if an impasse is declared, separate panels should be designated for each employee organization unless the coalitions make clear that they desire to partici-

pate in a coalition panel. The United Federation of Teachers has repeated its position that its participation in these proceedings is optional.

At the request of the Uniformed Force Coalition and with all of the aforementioned associations except the Uniformed Firefighters Association participating, an oral argument was heard before the Board on February 19th on the following questions:

1. Whether conditions are appropriate for the creation of an impasse panel or panels; and
2. if impasse is found to exist, whether the Board should approve the Chairman's recommendation of January 4th that the efforts of the impasse panel or panels be coordinated by this Office and that the panel or panels issue no report and recommendation until all are ready for release or until such release is approved by the Board.

During such argument the Police Benevolent Association requested that the Board clarify the meaning of the Chairman's recommendations in his letters of January 4th and January 21<sup>st</sup> that the Office of Collective Bargaining coordinate the efforts of the impasse panels and that the panel reports be held for release at one time or until release was approved by the Board.

The Uniformed Sanitation men's Association argued that it would be inappropriate for the Board to find an impasse in negotiations when an improper practice charge of refusal to bargain in good faith in said negotiations was pending before the Board. Representatives of the Uniformed Force Coalition made similar arguments although no formal charges of improper practice have been filed. The Uniformed Force Coalition and the Uniformed Sanitation men's Association also asserted that the City's petition was faulty because it did not allege which issues were in dispute and that, since so many issues were potentially in dispute, rational impasse panel proceedings could not take place. Several of the employee organizations raised questions concerning the Mayor's statements reported in the media allegedly to the effect that the City would appeal to the Appellate Division any impasse panel determination which exceeded the tentatively negotiated agreement with the Uniformed Firefighters Association.

Several of the employee organizations have suggested as alternative to impasse proceedings that mediation efforts be resumed.

The City repeated its request for the declaration of impasse and called attention to its written statement of position that an impasse exists over the terms of new agreements including an overall economic package for each of the employee organizations.

The Board has considered all of the above positions and arguments and has reached the following Findings and Determinations.

1. That impasses exist with all of the:  
employee organizations and coalitions  
in this proceeding over the terms of  
new collective bargaining agreements,  
particularly an overall economic package,  
and that conditions are appropriate for  
the creation of impasse panels.
  
2. That the OCB, at the joint request of the City  
and the various employee organizations or at  
the request of the City or an employee organi-  
zation will furnish the respective parties with  
a list for the selection of a panel in accordance  
with the OCB's rules.
  
3. That as to the issues to be submitted to the  
respective impasse panels, we find that all un-  
resolved issues that have been exchanged by the  
parties to date may go to the panels subject to  
the right of either party to submit scope of  
bargaining questions to the BCB.

4. The proceedings of each respective impasse panel, including the possibility of further mediation and the release and review, if any, of the report thereof, will be governed by the NYCCBL, §1173-7.0c, the OCB Rules, and other applicable law.
5. That the pending improper practice charges are not a bar to the appointment of impasse panels under the provisions of NYCCBL, the Taylor Law, Section 205.5(d), and the relevant PERB and court decisions.

MEMORANDUM

The decision to make the above Determinations was reached after the investigation required by the statute and rules. The City made its initial request for the appointment of an impasse panel involving all municipal unions including various Uniformed Coalitions, the Non-Uniformed Coalition, and other employee organizations on November 5, 1984. Thereafter, at the Chairman's suggestion, the City and several of the coalitions and employee organizations agreed to use mediation in an attempt to resolve the current negotiations. The City and various coalitions jointly selected mediators to assist them in their bargaining.

All of the mediators held bargaining sessions with their respective coalitions and organizations. The mediators concluded that, although various degrees of progress had been made on some issues, no progress has been reported which indicated any reasonable prospect of settlement of the fundamental differences of the parties on an overall package. This despite the fact that the contracts were up for renewal as of July 1, 1984 and the parties have negotiated on and off for nine months.

We agree with the conclusion reached by the Director. It is manifestly clear that after nearly eight months after the contract anniversary dates, and after extensive mediation efforts by several distinguished mediators, and after the rejection by the UFA's delegates of the tentative agreement between the City and UFA, that negotiations have been exhausted and that impasses exist within the meaning of the NYCCBL over the terms of new agreements and particularly the economic package with the City and each of the employee organizations and coalitions.

We recognize that some organizations are of the view that a declaration of impasse is not appropriate and that there should be continued negotiations and mediation between them and the City. Although we have determined that impasses exist, we acknowledge that there is a possibility of agreements being reached on certain items in the event of continued negotiations; but we do not believe that overall agreements are achievable under existing circumstances. We also emphasize that under the provisions of the NYCCBL impasse panels have the power to mediate and take whatever action they consider necessary to assist in resolving impasses. Finally, we would note that one

of the specific policies of the NYCCBL is to use impartial and independent tribunals to assist in resolving impasses in contract negotiations.

We point out that upon the declaration of impasse, the role of the Board naturally is delineated by the provisions of the NYCCBL. Our functions involve the appointment, through the Director, of impasse panels; the resolution of scope of bargaining matters, the determination of motions, if any, for consolidation; and the review in the event of an appeal, of the report on an impasse panel. The statute and rules govern the release to the public of an impasse panel report.

It is also clear from the provisions of the Taylor Law, Section 205.5(d), that improper practice proceedings shall not be used as the basis to delay or interfere with collective negotiations. it is well established that collective negotiations include impasse proceedings. PBA v. City of New York, 9 PERB (13013 (1976); PBA v. Board of Collective Bargaining, 9 PERB %7501 (Sup. Ct., N.Y.Co., 1976); and City of Newburgh v. Local 589, International Association of Firefighters, 15 PERB 13116 (1982).



Thus for the reasons stated above, the Board has approved the City's request for the declaration of impasse in the above proceedings and will, proceed to the appointment of impasse panels in accordance with the procedures set forth above.

DATED: February 26, 1985  
New York, N.Y.

Arvid Anderson  
Chairman

Daniel G. Collins  
Member

Milton G. Friedman  
Member

John D. Feerick  
Member

Dean L. Silverberg  
Member

Edward Gray  
Member

Carolyn Gentile  
Member