City v. L.1180, CWA, 37 OCB 36 (BCB 1986) [Decision No. B-36-86 (Scope)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1180, AFL-CIO,

Respondent.

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DECISION NO. B-36-86

DOCKET NO. BCB-839-85
(I-182-85)

INTERIM DECISION AND ORDER

The City of New York, by its office of Municipal Labor Relations (hereinafter "the City" or "OMLR"), filed a scope of bargaining petition, dated December 13, 1985, in which it sought a determination that several demands made by Local 1180 of the Communications Workers of America (hereinafter "CWA" or "the Union") were outside the scope of mandatory collective bargaining. The Union submitted an answer to the City's petition, dated January 21, 1986. A stipulation resolving, inter alia several of the issues in dispute, was submitted on May 22, 1986. A reply with respect to one remaining issue was filed by the City on June 2, 1986.

Background

Respondent CWA submitted a written request for the appointment of an impasse panel on October 9, 1985. The pro-

ceeding initiated by this request was docketed as case number I-182-85. In its request, the Union alleged that collective bargaining between the City of New York and CWA had been exhausted and that conditions were appropriate for the creation of an impasse panel. CWA further specified that impasse had been reached as to Union demands, numbers 14, 29, 37, 52, 53, 54, and 86, as well as City demands, numbers 3, 4, and 8.

Upon receipt of CWA's impasse request, then Deputy Chairman Thomas M. Laura was designated to attempt to mediate the parties' bargaining dispute, and to report his findings to the Board. On November 25, 1985, Deputy Chairman Laura wrote to inform Chairman Arvid Anderson that his mediation efforts had been unsuccessful and that he was recommending that the Chairman find that an impasse in collective bargaining existed at that time. Subsequently, on November 27, 1985, the Union's attorney, Neil Lipton, Esq., renewed CWA's request that an impasse panel be appointed.

On December 4, 1985, the City's Director of Labor Relations, Robert W. Linn, wrote to advise Chairman Anderson that the City would be filing a scope of bargaining petition, for the purpose of seeking a determination that the Union's demands are outside the scope of bargaining. In a letter dated December 6, 1985, Neil Lipton, Esq., replied on behalf of CWA and asserted that all of the Union's demands clearly

were bargainable. Finally, on December 13, 1985, the City submitted the instant scope of bargaining petition.

Following submission of the Union's answer to the petition, the parties resumed voluntary discussions of both this proceeding and a related improper practice proceeding which had been filed by the Union.[1] On the basis of these discussions, Board consideration of these matters was held in abeyance at the City's request and with the Union's consent. The parties' efforts culminated in the execution of a stipulation of settlement which provided, inter alia, that the improper practice petition was withdrawn; that Demand Nos. 14, 37, 54, and 86 were withdrawn by the Union; that Demand Nos. 3, 4, and 8 were withdrawn by the City; that Union Demand No. 86 had been resolved by the negotiation of agreed - upon language with respect to criteria for determining eligibility for merit in creases; that the practical impact issues raised in Union Demand Nos. 52 and 53 should be submitted for hearings and determination by the Board; and that the Board be requested to rule on the negotiability of Union Demand No. 29 following submission of the City's reply on this issue.

Union Demand No. 29, the only remaining issue which may be determined on the pleadings submitted herein, provides

[1] Docket No. BCB-838-85.

as follows:

> "Permanent employees serving in the same (bargaining unit) title and agency earning less money than a provisional shall be raised to the same level of pay as such provisional employee."

The other remaining demands, Union Demand Nos. 52 and 53, raise issues of alleged practical impact relating to allegedly excessive workload which can only be resolved after the holding of evidentiary hearings. The parties have recognized this fact, and have requested the scheduling of hearings in their stipulation. Therefore, we will consider only Demand No. 29 in this interim decision.

Positions of the Parties

City's Position

The City submits that Demand No. 29 is designed to prevent the hiring of provisional employees at a salary above that being paid to other employees within a given level of the Principal Administrative Associate ("PAA") title. The City contends that this demand would limit the City's flexibility in selecting persons to fill vacancies and, therefore, infringe upon the City's statutory managerial prerogatives.

Moreover, the City argues that the negotiation of this demand is barred under the terms of the 1984-87 Municipal Coalition Economic Agreement, to which CWA is a signatory,

which provides in pertinent part at Section 3 thereof:

> "No party to this Coalition Agreement shall make additional economic demands during the term of this Coalition Agreement or during the negotiations for or the term of the applicable Separate Unit Agreement...."

The City asserts that Union Demand No. 29 is an "additional economic demand" within the meaning of Section 3, and thus cannot be maintained in unit bargaining.

Union's Position

CWA alleges that its Demand No. 29,

> "... seeks only to bring the salaries of lower paid PAA's up to the level of any provisional PAA."

The Union characterizes its demand as "a straight money demand." It submits that the demand deals only with the rate of pay permanent employees will receive based upon certain contingencies occurring.. The Union asserts that as a money demand, it clearly is within the scope of mandatory bargaining.

Discussion

Pursuant to §1173-5.0a(2) of the New York City Collective Bargaining Law (hereinafter "NYCCBL"), this Board has the power and duty:

> " ... on the request of a public employer or certified or designated employee organization to make a final determination

as to whether a matter is within the
scope of collective bargaining."

The City's petition herein asks that we make such a determination as to the three remaining CWA demands which have not been resolved as of this date. Further, as to two of the demands, Demand Nos. 52 and 53, the parties jointly request that we schedule hearings to determine the practical impact issues raised therein. Clearly, the determination by this Board of the existence of a practical impact is a condition precedent to determining whether there are any bargainable issues arising from management's actions.[2] Moreover, the issue of whether a management action has had a practical impact on employees is a question of fact which may require the holding of a hearing.[3] Accordingly, we agree that a hearing is warranted as to the allegations of practical impact implicit in Demand Nos. 52 and 53, and we will direct that such hearing be scheduled before a Trial Examiner designated by the Office of Collective Bargaining.

With respect to Union Demand No. 29, we find that there is a sufficient basis in the record of this case to decide this matter without further proceedings. It is undisputed that the

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[2] Decision Nos. B-2-76; B-16-74; B-1-74; B-9-68.

[3] See, Decision No. B-16-74.

1984-87 Municipal Coalition Economic Agreement, which was signed by CWA, bars the submission of "additional economic demands" during negotiations for a separate unit agreement. The City contends that Demand No. 29 is such a prohibited additional economic demand. We agree.

We note initially that the question whether a particular demand in unit bargaining constitutes an "additional economic demand" within the meaning of the Municipal Coalition Economic Agreement ordinarily is a matter to be submitted to arbitration under the dispute resolution provisions of Section 8 of the Coalition Agreement. However, under the special circumstances of this case, and given the fact that this question is intertwined with the statutory scope of bargaining issue and that both parties have requested that this Board determine these matters, in the exercise of our authority under NYCCBL §1173-5.0a(2), we find that we may address this question.

It is apparent that Demand No. 29 involves wages, and calls for an increase in wages for any permanent employee earning less than a provisional employee serving in the same title and agency. In its answer, CWA characterizes this as a "money demand" and states that it is intended "...to bring the salaries of lower paid PAA's up...." Under the circumstances, there can be no doubt that this is an "economic demand." In-

asmuch as the parties agreed in the Municipal Coalition Economic Agreement that they would not raise any "additional economic demands" during the term of the Coalition Agreement or in unit bargaining, the Union may not maintain Demand No. 29 at this time. Therefore, we will grant the City's request and rule that this demand may not be submitted to an impasse panel.[4]

INTERIM ORDER

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

ORDERED, that Union Demand No. 29 may not be bargained nor submitted to an impasse panel; and it is further

ORDERED, that a hearing be held before a Trial Examiner designated by the Office of Collective Bargaining on the alle-

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[4] In view of our disposition of Demand No. 29 based upon the preclusive effect of the Municipal Coalition Economic Agreement, we do not reach the merits of the issue of whether this demand otherwise would be within the scope of mandatory bargaining.

gations of practical impact on workload implicit in Union Demand Nos. 52 and 53.

DATED: New York, N.Y.
June 18, 1986

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

DEAN L. SILVERBERG
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER