UFA v. City, 45 OCB 39 (BCB 1990) [Decision No. B-39-90]

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

DECISION NO. B-39-90 UNIFORMED

FIREFIGHTERS
ASSOCIATION OF GREATER NEW YORK,
Petitioner,

DOCKET NO. BCB-1265-90

-and-

THE CITY OF NEW YORK,
Respondent.

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INTERIM DECISION AND ORDER

On March 26, 1990, the Uniformed Firefighters Association of Greater New York ("the UFA" or "the Union") filed a petition pursuant to Section 12-307b of the New York City Collective Bargaining Law ("NYCCBL")[1] in which it is alleged that implementation of the "Roster Manning Program" by the New York

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[1] Section 12-307b of the NYCCBL states as follows:

> b. 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; to 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. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining. (emphasis added)

City Fire Department ("the Department") has resulted in an excessive threat to the safety of New York City firefighters and an unreasonably excessive and unduly burdensome workload. On April 23, 1990, the City of New York ("the City") filed a motion to dismiss the petition and an affidavit and memorandum of law in support thereof,[2] asserting that the petition is barred by the doctrines of res judicata and/or collateral estoppel and, in any event, is premature. In the alternative, the City argued that the Board of Collective Bargaining ("the Board") should issue an order staying the processing of the scope of bargaining petition pending determination by the New York State Supreme Court, Appellate Division, and the New York State Supreme Court, New York County, of the challenges to Board Decision Nos. B-4-89 and B-70-89, respectively, filed by the UFA pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"). In the event its motion to dismiss is denied, the City requested fourteen days from the date of its receipt of such denial to file its answer to the UFA's petition.

On May 11, 1990, the Union filed an affidavit and memorandum of law in response to the City's motion to dismiss or stay the scope of bargaining petition.[3] In its response, the UFA requested, inter alia, that the Board order immediate injunctive relief. Thereafter, with the consent of the UFA, the City, on June 4, 1990, filed a reply to the Union's response to the motion to dismiss.

BACKGROUND

On February 24, 1989, this Board rendered its determination in a scope of bargaining proceeding between these same parties, Decision No. B-4-89, wherein we held, inter alia, that the subject of manning is within the City's

[2] The City's time in which to file an answer to the scope of bargaining petition filed by the UFA was extended by the Board upon the request of the City, with the consent of the UFA.

[3] The UFA's time in which to file a response to the City's motion to dismiss was extended by the Board upon the request of the Union, with the consent of the City.

statutory managerial prerogative and, therefore, beyond the scope of mandatory collective bargaining. We also held that the deletion of the minimum manning provision from the successor to the parties' 1984-1987 collective bargaining agreement could not result in a practical impact on the safety or workload of the firefighters in that the City had not proposed a reduction in manning levels. Since the determination of the levels of manning is within the City's managerial prerogative, this Board determined that an inquiry into the practical impact of its decision in that area would be necessary only if the City took affirmative steps to change the existing manning levels.

Sometime after we issued the scope of bargaining decision, the City notified the UFA that it was developing a plan which included the assignment of four rather than five firefighters to certain fire engine companies. When the proposed change in manning levels was brought to the attention of the Office of Collective Bargaining ("OCB"), a notice of hearing was sent to the UFA and the City, on June 6, 1989, stating the question to be considered at a hearing before a Trial Examiner designated by the OCB as follows:

> Whether the reduction of minimum manning levels in firefighting companies, from five-man to four-man crews, creates a practical impact on the safety and workload of firefighters.

Thereafter, on July 14, 1989, the Fire Department issued a draft order setting forth its proposed roster manning program, adaptive response policy and revised engine company tactics (hereinafter collectively referred to as the Roster Manning Program), thus making it clear that the plan proposed by the City included more than just a reduction in the existing minimum manning levels. Consequently, the scope of the question originally noticed for hearing by the OCB was expanded to include all of the elements of the City's newly proposed plan.

Hearings were held before Professor Walter Gellhorn, a Trial Examiner designated by the OCB, in July and August 1989. The question addressed by the City and the UFA at those hearings was whether implementation by the City of its proposed Roster Manning Program will result in a practical impact on the

workload and safety of the affected firefighters.

On December 18, 1989, this Board rendered its final decision in the matter. In Decision No. B-70-89, we held that after carefully reviewing the record of the hearings before Professor Gellhorn, we were unpersuaded that the City's plan to assign four rather than five firefighters to certain engine companies, considered together with its roster manning program, adaptive response policy, and the revision of engine company tactics, would have the objectionable effects the UFA has feared. Therefore, this Board held that the City's proposed plan may be made operative by unilateral management action rather than as a product of negotiation. In reaching our decision, we stated that:

> We wish to emphasize that our decision is based upon the configuration of elements described by the City and set forth in the record in this case and that we make no finding with respect to the practical impact that some other configuration of elements not presented here may or may not have on the safety or workload of firefighters in the future.

Accordingly, this Board dismissed, in its entirety, the petition filed by the UFA requesting that the City be directed to bargain concerning its plans to reduce the manning levels in some fire engine companies.

On January 31, 1990, the City implemented its Roster Manning Program. Thereafter, on March 26, 1990, the UFA filed the scope of bargaining petition at issue in the case at bar, claiming that "the City's roster manning program as implemented by the Department clearly creates an excessive threat to the safety of New York City firefighters and an unreasonably excessive and unduly burdensome workload." The Union asserted that "[e]ven though its history is relatively brief, roster manning has already proved itself to be thoroughly unworkable as a substitute for five-firefighter minimum staffing." In support of its

position, the UFA alleged that:

> 1. the Roster Manning Program has failed to produce the staffing levels projected by the City in the practical impact hearings before Professor Gellhorn;

2. the Department has found it to be administratively impossible to allocate firefighters according to the priorities set forth in the Roster Manning proposal;

3. because of the problems caused by the Roster Manning Program the City has abandoned its Alarm Assignment and Response Policy, which normally provides for the dispatch of two engine companies and two ladder companies on receipt of an alarm for a structural fire from an alarm box;

4. because the Department is operating at an absolute minimum in terms of staffing, the Department has been forced to run ladder companies with four firefighters and engine companies with as few as three firefighters for the remainder of a tour whenever a fire results in Fire Department medical officers placing firefighters on medical leave because of fire-related injuries; and

5. the Department has been forced to increase detailing of firefighters to equalize staffing levels, resulting in a reduction of firefighting effectiveness because firefighters are working in unfamiliar companies in unfamiliar areas.

As a remedy, the Union requests that the Board make a determination pursuant to Section 12-307b of the NYCCBL finding that the City's Roster Manning Program, as actually implemented and operated by the Department, has a practical impact on New York City firefighters and, therefore, falls within the scope of collective bargaining. The Union further requests that the Board issue an order:

1. directing the City to engage in collective bargaining with the UFA over the means to alleviate the practical impact caused by Roster Manning;

2. directing the City to discontinue its implementation of Roster Manning and to return to the level of staffing required by the 1984-1987 collective bargaining agreement between the City and the UFA; and

3. granting the UFA such other and further relief as may be deemed just and proper by the Board.

POSITIONS OF THE PARTIES

CITY'S POSITION

The City maintains that the only facts relevant to the Board's consideration of its motion to dismiss are:

A. the identity between the issues raised in the instant scope of bargaining petition filed by the UFA and those that were or could have been raised in the prior scope of bargaining proceeding; and

> B. the "paucity of experience" that could be accumulated between January 31, 1990, the date the Roster Manning Program was implemented, and March 26, 1990, the date the UFA filed the instant scope of bargaining petition.

Considering these facts, the City argues that the Board should grant its motion and dismiss the petition filed by the UFA.

While the City does not dispute that on a motion to dismiss the facts alleged in the petition are deemed true, it argues that "... only the facts, not conclusions, arguments, opinions and lawyer's rhetoric" are deemed true. In this regard, the City claims that the only material fact alleged by the UFA in its scope of bargaining petition is that during the first seven weeks of Roster Manning attendance levels were lower than the City had projected. "Everything else in the Petition," the City claims, "is either irrelevant, immaterial or nonfactual."

The City disputes the Union's assertion that it abandoned the Alarm Assignment and Response Policy. Additionally, the City argues, the Union's assertion that it has changed the policy of staffing ladder companies with five firefighters at the start of the tour is false. Under Roster Manning, the City submits, all ladder companies start the tour with five firefighters. Reductions may occur during the tour, but this was true before Roster Manning as well.

The City contends that the Union is seeking to relitigate a matter that has already been tried and decided by the Board. Accordingly, it maintains that the petition is barred by the doctrines of res judicata and/or collateral estoppel, and must be dismissed.

In support of its position, the City notes that with its petition the UFA submitted the same exhibits, the same testimony, the same arguments and the same challenges to the Roster Manning Program as it offered into evidence in the hearings held before Professor Gellhorn. Since the UFA had ample opportunity to challenge the projections, assumptions and theories on which the Department's Roster Manning Program was based, and took full advantage of that opportunity in the prior proceeding, the City contends that "[t]he Union

has already had a full and fair bite at the apple; it is not entitled to another."

With regard to the Union's assertion that the attendance projections set forth by the Department in the prior scope of bargaining proceeding were unreasonable, the City maintains that the Board considered this contention and rejected it. In any event, the City argues, the Board did not invite the parties to come back and retry the case each time staffing levels fall below that which was projected. To the contrary, the City asserts that the Board has explicitly held that the doctrine of res judicata applies to preclude litigation arising from events that had not occurred at the time of the first litigation where, as in the instant matter, such subsequent events might have been contemplated in the earlier case.[4]

The City further argues that the Union's case is not advanced by the suggestion in its petition that now that the UFA has had several weeks of experience under the Roster Manning Program it has "better evidence" with which to challenge the data presented by the City in the prior proceeding. The City submits that in Decision No. B-70-89, the Board determined that the Department's statistics, projections and assumptions were reasonable, but could not and did not purport to foretell with unerring accuracy what would happen on any given day or month, and certainly not what would happen during the initial transition period at the commencement of the Roster Manning Program. Therefore, the City contends, "[w]hatever the experience of the first seven weeks, it would not justify the Board's reversal of its previous decision."

The City also asserts that to the extent the petition seeks to prove the existence of a practical impact based upon the parties' experience under the Roster Manning Program, it must be dismissed as premature. The City does not dispute that in Decision No. B-70-89 the Board left open the possibility that some configuration of elements, other than that which was presented in the

[4] Decision No. B-27-85.

proceeding, may or may not have a practical impact on the safety or workload of firefighters. Instead, it argues that "[w]hatever has happened during the first seven weeks (and we dispute much of the Union's contentions in this regard), the Board can draw no meaningful, valid or useful conclusions from such a short period, especially the initial transition period [because] an argument based on actual experience must necessarily await the accumulation of actual experience."

Moreover, the City contends that the "facts asserted in [UFA President] Sforza's hearsay supplementary affidavit are simply wrong." The City asserts that it has not "fixed" staffing at the level of "C plus one". Rather, the City maintains that during the transition period it "has ordered sufficient overtime to maintain at least a higher level (`C' plus one) to provide a cushion for any unforeseen problems that might arise in the implementation of the new program." The City emphasizes that "[t]his is a floor, not a ceiling." In fact, according to the City, manning has often exceeded this level by substantial amounts. As recent Citywide Daily Manpower Reports show, staffing levels have occasionally risen above, or closely approached, "B" level (which is equivalent to "C" plus 72).

In the alternative, the City argues that the petition should be stayed pending the outcome of the challenges to Decision Nos. B-4-89 and B-70-89 filed by the UFA pursuant to Article 78 of the CPLR. The City maintains that the relief sought by the Union in those proceedings would, if granted, duplicate and obviate the relief sought in the instant scope of bargaining petition. It claims that "[n]o useful purpose is served by the simultaneous processing of three duplicative litigations." To the contrary, the City contends that "[i]t would certainly be an unfair imposition on the City, and waste of the City's scarce resources, to compel it to proceed in three forums at the same time." Furthermore, the City argues, in prior proceedings with circumstances analogous to that presented in the case herein the Board has held that the matter under its consideration should be stayed pending the

issuance of a final determination by the courts.

Finally, the City characterizes the Union's suggestion that it be ordered to suspend implementation of the Roster Manning Program pending the outcome of the Article 78 proceedings as "absurd". The City notes that the Board has already authorized it to proceed with Roster Manning; the courts have not ordered a stay. Accordingly, the City argues that "[t]he mere pendency of the appeal is not grounds to order the City to forego its rights."

UNION'S POSITION

The UFA submits that it is well-settled that on a motion to dismiss the moving party concedes the truth of the facts alleged in the petition. Since the City must concede the truth of every fact stated in the scope of bargaining petition, the Union argues that it must also concede that the Roster Manning Program, as implemented by the Department, has resulted in a practical impact on the safety and workload of New York City firefighters. Therefore, the Union contends, the Board cannot order the scope of bargaining petition dismissed or stayed. Rather, it "should immediately order the City to rescind its implementation of roster manning and commence bargaining over the alleviation of the practical impact caused by roster manning."

The Union maintains that in asserting the doctrines of res judicata and collateral estoppel in support of its motion to dismiss, the City "flagrantly disregards this Board's express declarations that the UFA may bring another scope of bargaining petition if the roster manning program does not work out as the City predicted." In this regard, the UFA notes that in Decision No. B-70-89, the Board stated that:

> We wish to emphasize that our decision is based upon the configuration of elements described by the City and set forth in the record in this case and that we make no finding with respect to the practical impact that some other configuration of elements not presented here may or may not have on the safety or workload of firefighters in the future. (emphasis added)

The Union further notes that in the Memorandum in response to the UFA's Article 78 challenge to Decision No. B-70-89, this Board expressly stated that:

> [I]n the event the City's proposed plan once implemented results in circumstances which allegedly have a practical impact on the safety or workload of the affected employees, [the UFA] would not be precluded from filing another scope of bargaining petition with the Board. (emphasis added)

In any event, the Union contends that application of the well-established standards for determining claims of res judicata and collateral estoppel mandate denial of the City's motion to dismiss. The UFA alleges that in determining a claim of res judicata, or collateral estoppel, the Board has used a three part test: (1) there must have been a final judgment on the merits in an earlier suit; (2) there must be an identity between the cause of action in both the earlier and later suit; and (3) there must be an identity of the parties or their privies in the two suits. In applying the test, the Union argues, the Board has repeatedly held that it will not consider causes of action to be the same when "claims, though factually close, are not identical." Thus, inasmuch as "... this Board has already recognized [that] there is a world of difference between evaluating the City's roster manning program according to the City's computer projections and evaluating the program according to its actual performance," the Union claims that the prior scope of bargaining proceeding does not preclude the Board from considering the petition at issue in the instant case.

In addition, the Union asserts that its petition raises other "substantial criticisms" of the Roster Manning Program, such as the reduction in ladder company staffing and the change in the City's alarm dispatch policy, that were not addressed in the practical impact hearing before Professor Gellhorn. These matters, the UFA argues, provide entirely new, separate and independent bases for a finding of practical impact which clearly are not affected by the City's claim of res judicata or collateral estoppel.

The Union also disputes the City's contention that the scope of

bargaining petition is premature and, therefore, must be dismissed. In support of its position, the UFA notes that for the purpose of deciding the instant motion to dismiss, the Board must accept as true the Union's allegations concerning the Department's experience under the Roster Manning Program since its implementation on January 31, 1990. Furthermore, the UFA notes that in the period of time between the filing of the scope of bargaining petition and the filing of the Union's response to the City's motion to dismiss, staffing levels have decreased further - - it now appears that staffing will be fixed at the dangerously low level of only 15 out of 210 engine companies starting the tour with five firefighters. The UFA submits that if, as the City argues, "[n]o meaningful assessment of experience under Roster Manning can be derived from such a small sample" one would expect that staffing levels would improve as the City gained more experience. "The fact that the exact opposite is happening," the UFA argues, "...gives no hope that staffing levels will eventually improve under roster manning."

Because of the dangerous situation faced by New York City firefighters, the UFA urges the Board to decide that the Roster Manning Program, as implemented, has had a practical impact on New York City firefighters. It maintains that "the Board cannot afford to wait and see if the roster manning program eventually fulfills the City's dreams and produces better staffing levels." Finally, the UFA argues that given the clear threat to the safety of New York City firefighters under the Roster Manning Program, the Board cannot await the outcome of "other indeterminate legal proceedings." Instead, it must order the City to rescind the Roster Manning Program and commence bargaining immediately. In any event, however, the Union claims that a proper application of the Board's "stay doctrine" will result in a finding by the Board that it should proceed immediately with the UFA's petition challenging the Roster Manning Plan, as implemented, because it presents a substantially different issue than that addressed in the Article 78 proceedings filed by the Union in the courts.

DISCUSSION

It is well established that for purposes of evaluating a motion to dismiss, we must deem the factual allegations of the petition to be true and limit our inquiry to whether, taking the facts as alleged by the petitioner, a cause of action under the NYCCBL has been stated.[5]

In the present case, the UFA contends that the staffing levels achieved by the Department since the Roster Manning Program was implemented by the Department on January 31, 1990 fall far below that which was projected by the City in the prior scope of bargaining proceeding before this Board. Therefore, the Union argues, implementation of the Roster Manning Program has resulted in a practical impact on the workload and safety of firefighters. Accordingly, the City should be directed to bargain with the Union to alleviate the impact.

The City, on the other hand, contends that the scope of bargaining petition filed by the UFA is barred by the doctrines of res judicata and/or collateral estoppel because all of the issues addressed therein were decided, or could have been decided, in the prior scope of bargaining proceeding. In any event, the City argues, the Union's petition must be dismissed as premature in that it seeks to prove a practical impact on the workload and safety of firefighters based upon only seven weeks experience under the Roster Manning Program.

This Board has long held that in appropriate cases, the doctrine of res judicata[6] may be employed to prevent vexatious or oppressive relitigation of a

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[5] Decision Nos. B-34-89; B-7-89; B-36-87; B-20-83; B-17-83; B-25-81.

[6] Although in its motion to dismiss the City alleged that the scope of bargaining petition filed by the UFA is barred by the doctrines of res judicata and/or collateral estoppel, the City did not present any arguments in support of its claim concerning collateral estoppel (as opposed to and distinguished from res judicata) in its motion to dismiss or in its reply to the UFA's response thereto.

In Decision No. B-22-86, we noted that a party who asserts collaterally the estoppel of a prior judgment must establish that: (1) the issue is identical with an issue in the prior action; (2) the issue was actually

(continued...)

previously litigated dispute. As noted by the Union in its response to the City's motion to dismiss, this Board has established a test to decide whether such an attempt at relitigation is being made. The test sets out three criteria, or "essential elements," that must be met before we will apply the doctrine of res judicata to bar arbitrability. They are as follows:

> 1. there must have been a final judgment on the merits in an earlier suit;
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> 2. there must be an identity between the cause of action in both the earlier and later suit; and
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> 3. there must be an identity of the parties or their privies in the two suits.[7]

Applying the above-stated test to the instant matter, we find that numbers one and three have been satisfied. With regard to item number two, however, we find that contrary to the City's assertion, there is a significant difference between the issues presented by the parties in the proceeding leading to Board Decision No. B-70-89, and the issues presented by the UFA in the instant scope of bargaining petition.

At issue in the prior scope of bargaining proceeding was a proposed plan (the Roster Manning Program). The question considered by the Board in that proceeding was whether the configuration of elements described by the City and set forth in the record therein would result in a practical impact on the workload and safety of the affected firefighters. At issue in the instant case, however, is a fully implemented program. The question to be addressed by the Board is whether the Roster Manning Program, as implemented by the Department, has resulted in a practical impact on the workload and safety of

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(...continued)
litigated and determined in the prior action; and (3) the issue was necessary to the determination of the prior judgment. Because a prior action is not conclusive as to matters which were not actually litigated under the doctrine of collateral estoppel, and considering our finding, infra, that the issue raised in the instant scope of bargaining petition was not raised in the prior proceeding before this Board, we find it unnecessary to address the issue of collateral estoppel separate and apart from our consideration of the issue of res judicata.

[7] Decision Nos. B-17-90; B-35-88; B-25-88; B-27-85; B-16-75.

firefighters. In this regard, we note that the UFA has alleged that under the Roster Manning Program staffing levels have been much lower than projected by the City; ladder companies are being staffed with less than five firefighters for substantial parts of the tour; and there has been a change in the Department's Alarm Dispatch Policy upon which the City relied heavily in the prior proceeding.

Recognizing that once a plan is implemented it may differ substantially from that which was proposed originally, in Decision No. B-70-89 we expressly stated that our decision was based upon the configuration of elements described by the City and set forth in the record in that proceeding "and that we make no finding with respect to the practical impact that some other configuration of elements may or may not have on the safety or workload of firefighters in the future." The UFA's allegations in the instant scope of bargaining petition raise new issues never before considered by the Board and, therefore, we find that res judicata does not bar the Board's consideration of the petition. We note that our determination is consistent with prior decisions of this Board wherein we have held that the doctrine of res judicata will not apply when claims, though factually close, are not identical.[8]

We reject the City's assertion that the Union's scope of bargaining petition must be dismissed because it is premature. Where, as here, a practical impact on employee safety is alleged it is the Board's policy to expedite the matter due to the sensitive nature of the subject matter and the fact that time may be of the essence in alleviating any safety impact that may be found to exist. Moreover, we note that since the time the petition was filed by the UFA more time has elapsed, and both the City and the UFA have gained considerably more experience under the Roster Manning Program.

Finally, with regard to the City's assertion that the instant matter must be stayed pending the outcome of related court cases, we note that this Board has exclusive, non-delegable jurisdiction over scope of bargaining

[8] Decision Nos. B-17-90; B-25-88; B-27-82.

issues.[9] However, in a case in which a party has chosen to litigate his or her rights in the courts, we may decline to exercise our jurisdiction over that party's claims because the same matter is pending in the judicial forum.[10] This is a matter within the discretion of the Board and will be decided on a case-by-case basis after careful examination of the particular facts at issue therein. In Decision No. B-53-89, referred to by the Union in support of its position, this Board held that we are not bound by any statutory or other legal requirement to defer our jurisdiction merely because a case involving similar issues was being considered concurrently in a judicial forum.

In any event, we find that the Article 78 proceedings referred to by the City differ substantially from the matter now before the Board, and do not provide a basis upon which to stay the instant petition pending resolution of those matters by the courts. At issue in the Article 78 challenges to Decision Nos. B-4-89 and B-70-89 is the Board's scope of bargaining determination concerning a plan that was proposed by the City. As noted previously, in Decision No. B-70-89 we expressly stated that our determination was based upon the configuration of elements described by the City and set forth in the record therein. Since the issue raised by the UFA in the instant scope of bargaining petition concerns a plan that has been implemented, and the parties' actual experiences under the plan so far, the issues are completely different. Accordingly, we find that no basis has been alleged by the City upon which to stay the instant proceeding pending the outcome of the

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[9] See Section 12-307b of the NYCCBL set forth supra at n. 1.

[10] Decision No. B-8-84, referred to by the City in support of its position, is distinguishable from the instant matter. In Decision No. B-8-84, the claims asserted by the petitioners in their improper practice petition were virtually identical to those raised in an action previously filed in federal district court. In fact, in Decision No. B-8-84, the petitioners, in their correspondence and pleadings, acknowledged the existence of a nexus between the improper practice proceeding and the pending federal litigation. Accordingly, we determined that it would serve no useful purpose to permit the simultaneous litigation of the same claims and issues in two different forums and, therefore, stayed the improper practice proceeding pending a final determination of the court action.

Article 78 proceedings.[11]

Accordingly, for all of the reasons stated above, we will deny the City's motion to dismiss, and order the City to file an answer to the Union's scope of bargaining petition within ten days of its receipt of the instant decision.

ORDER

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

DETERMINED, that the motion of the City of New York to dismiss the scope of bargaining petition filed by the Uniformed Firefighters Association of Greater New York be, and the same hereby is, denied in all respects; and it is further

ORDERED, that the City of New York shall serve and file an answer to the scope of bargaining petition within ten (10) days

[11] In its response to the City's motion to dismiss, the UFA requested that the Board order immediate injunctive relief. We note that we do not the authority to issue such relief. Accord, United University Professions v. Barry, 18 PERB Par. 3077 (1985) (PERB rejected the charging party's request for temporary injunctive relief, holding that "there is no basis in the Taylor Law for granting [the injunction].")

of receipt of this Interim Decision and Order.

DATED: New York, N.Y.
June 27, 1990

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

THOMAS J. GIBLIN
MEMBER

SUSAN ROSENBERG (dissenting)
MEMBER