

City v. MEBA, 7 OCB 21 (BCB 1971) [Decision No. B-21-71]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK,

Petitioner,
-and

DECISION NO. B-21-71

DISTRICT NO. 1, PACIFIC COAST
DISTRICT, MARINE ENGINEERS
BENEFICIAL ASSOCIATION,
Respondent.

DOCKET NO. BCB-101-71

A P P E A R A N C E S

John E. Sands, Esq.,
Counsel for the
New York City Office of Labor Relations

Joel Glanstein, Esq.,
for District No. 1,
P.C.D., Marine Engineers Beneficial Association

DECISION AND ORDER

A three-man impasse panel was appointed by the Board on March 16, 1971, to seek to resolve the impasse between the parties herein. The panel issued its report and recommendations on July 26, 1971. The office of Labor Relations (OLR) advised the Board and respondent by letter dated July 29, 1971, that there were points in the report and recommendations that were unclear and that the OLR was communicating with the panel "for the purpose of clarification."

On August 3, 1971, the OLR filed its motion herein requesting the Board of Collective Bargaining to remit to the impasse panel the Report and Recommendations issued on July 26, 1971, and requesting the Board to toll the parties' time to accept or reject the report and recommendations "until such time as the same is properly submitted in accord with the requirements of the NYCCBL."

On August 6, 1971, the Union filed a cross motion to dismiss

the City's motion on the ground that the Board lacks jurisdiction to remit the panel's Report and Recommendation.

The City submitted its reply on August 13, 1971.

Prior thereto, on July 30, 1971, Mr. George Marlin, Chairman of the impasse panel, advised Deputy Chairman Robins of the OCB that the OLR had requested clarification of certain points in the Report and Recommendations. Mr. Marlin told Miss Robins that clarification was required and that he had so advised Mr. Anthony DiMaggio, the Union's Director of New York Inland and Harbor Contracts.

On July 30, 1971, the Union, by hand-delivered letter to the OCB, accepted the impasse panel report in its entirety. The Board heard oral argument on October 6, 1971, having directed the parties to address themselves to the following questions.

"1. An impasse panel having issued its report and recommendations to the parties, does the OCB have the power to remit such report and recommendations to the impasse panel for correction or clarification of claimed errors in findings of fact or recommendations?"

"2. An impasse panel having issued its report and recommendations to the parties, does the impasse panel on its own motion or on of the parties, have the power to correct or clarify any claimed errors in findings of fact or recommendations?"

The City alleges that the Report and Recommendations contain "numerous mistakes, inconsistencies, and points of confusion which preclude evaluation and acceptance or rejec-

tion within the meaning and purposes of the NYCCBL and OCB rules." The affidavit submitted by the City specifies instances where the impasse panel allegedly misstated or misunderstood the evidence presented to it, made recommendations on a subject not within the scope of bargaining, failed to adhere to its own declared standards and made inconsistent recommendations. Thus, though the City, by its motion, seeks clarification and correction of errors of the panel's report, the motion also calls into question various substantive aspects of the report.

At the oral argument, the City contended that the purpose of the impasse panel procedure is to offer the parties an opportunity to resolve the impasse. Further, the Director of the OCB oversees and administers the impasse panel procedure, and, indeed, the panel submits its report and recommendations to the parties and the Board. Thus, the City maintained, under the Board's power to administer the Law, the Board may determine that no true submission of a panel Report and Recommendations has taken place. The City does not ask the Board to modify the Report and Recommendations, but, rather:

"We are merely saying that . . . where both a party and the Chairman of the impasse Panel . . . agree that there is a need for clarification, that you exercise your administrative power to return the report to the panel, and to give them an opportunity to clarify it." (Tr. P. 7).

The Union relies on Board Decision No. B-4-70 which held that the Board of Collective Bargaining has no jurisdiction to review the report and recommendations of an impasse panel. The Union points out that the record before the impasse panel was lengthy and argues that "a panel having this experience and learning would not possibly have confused its report and recommendations to the extent suggested by the City." At the oral argument, the Union stated, *arguendo*: "We say that if the Panel itself . . . were to consider modifying or amending its report and recommendations in this case, it should do so within the confines suggested by CPLR §7511, that is, the ground for modifying an arbitrator's award We feel that if an arbitrator can do these things, even though this Impasse Panel is not an arbitral body, it at least should have this type of function or power." (Tr. pp. 18-19)

The BCB has declined formally to review the Report and Recommendations of an impasse panel. (Levy v. Anderson, Decision No. B-4-70) A proposal conferring such review powers upon the Board is now pending before the City Council (Intros. 162 and 163).

However, the, NYCCBL gives the Board authority over the procedural functioning of an impasse panel. Thus, various subdivisions of §1173-7.0c provide that the Board "shall maintain a register of impasse panel members"; the Board shall determine that "negotiations . . . have been exhausted"; the Board shall "instruct the director to appoint such a panel"; the director shall determine whether an impasse panel is unable to resolve an impasse and prescribe the period of time within which the panel shall render a written report; and "the director shall, with the advice and guidance of the Board . . . determine the times at which such report shall be released to the public"

The policy of the NYCCBL is to facilitate settlements of unresolved contract disputes through the use of impasse panels. The function of the impasse panel is to obtain a full understanding of the respective positions of the parties and of all facts and circumstances which may have a bearing upon the controversy, and to formulate a solution to the problems constituting balanced and objective recommendations for the terms of settlement which the panel shall communicate to the parties (§1173-7.0c(3)(a) NYCCBL). Manifestly, if the impasse panel's communication to the parties is unclear the function which the law imposes on the panel

has not been carried out until the report is clarified. In order to have a proper submission to the parties, the parties must be able to understand the terms of the recommended settlement. In the instant case, the City maintains that it cannot understand the Report and Recommendations and that, therefore, it cannot evaluate it in order to decide whether to accept or reject it.

We need not discuss the question of our authority to return the recommendations to the panel, because we conclude that an impasse panel, having independent statutory power ("take whatever action it considers necessary to resolve an impasse," §1173-7.0c(3)(a)), may, on its own motion, or on motion of the parties, exercise the power to clarify its recommendations. Either of the parties may, upon notice to the other, apply to the impasse panel for clarification and the panel may take whatever steps it deems necessary to make such clarifications it deems appropriate. Further, in this case, the Chairman of the impasse panel herein has indicated that clarification of the panel's recommendations is required.

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

ORDERED, that the motion of the City of New York herein be, and the same hereby is, denied and it is further

ORDERED, that the cross motion of the Union herein be, and the same hereby is, denied.

DATED: New York, N.Y.
December 13, 1971

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

TIMOTHY W. COSTELLO
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M e m b e r

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M e m b e r

NOTE: City Member Silver did not participate in the decision of this case.