CWA v. City, 9 OCB 22 (BCB 1972) [Decision No. B-22-72]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA

Petitioner DECISION NO. B-22-72

-and DOCKET NO. BCB-89-71

THE CITY OF NEW YORK,

Respondent.

DECISION AND ORDER

On March 15, 1972, we issued our decision herein (Decision No. B-7-72) without prejudice to the union filing petition for the designation of a Trial Examiner to hear and report to us with regard to the union's contention that the Cit had breached its alle ed obligation with respect to the created by a prior and expired period following the termination herein by the Union maintenance of a training fund contract during the status quo of that contract. Such a petit on March 29, 1972, and Malcolm D. MacDonald, Esq., Trial Examiner, was designated by us to hear and report on the matter. At a conference called by the Trial Examiner on May 15, 1972, it was agreed by the parties that there were no disputed issues of fact and that a hearing would therefore serve no purpose; the parties requested and were granted the opportunity to submit briefs setting forth their respective positions and the arguments and legal principles upon which they were based.

Pursuant to the agreement thus reached, the parties thereafter submitted briefs. Upon the entire record before us including the pleadings and briefs filed by the parties herein, we make the following determination.

It is the union's contention that in its prior contract with the City which expired on December 31, 1970, there was provision for City contributions to a training fund; that for a time thereafter[1] the City was required, by the provisions of NYCCBL Section 1173-7.0d, to maintain the status quo between the parties by continuing, during the period covered by that section of the law, to perform all duties and conditions created by the contract which expired on December 31, 1970; and that there is consequently due and owing to the Union from the City the prorated amount of training fund contributions for the period of hiatus between the predecessor and successor contracts.

---

[1] The union offers alternative claims as to the length of the period during which they maintain that the status quo provision of Section 1173-7.0d was applicable.

In addition, the union includes allegations relating to the amounts that should have been paid by the City during the term of the expired contract; the validity of any such claims as these would be a matter subject to the grievance and arbitration provisions of the contract and not for our consideration here.

The City maintains that the training fund provision of the prior contract had a term independent of the term of the contract itself and that the City's obligation under that provision was fully discharged within the prescribed term; and that the union, by accepting the report of the impasse panel which was issued on July 1, 1971, and by entering into the successor contract which was signed on September 6, 1972, bargained away whatever rights it might otherwise have had to payments in connection with a training fund during the hiatus between termination of the prior contract and execution of the successor contract.

The record shows that in the bargaining between the parties for a successor contract the union demanded a continuation of the training fund contained in the prior contract and that the City took the position that bargaining on this subject was permissive and that the City therefore had and would exercise the option of refusing to bargain on the matter. In consequence, the contract which the parties ultimately agreed upon contained no provision for training fund contributions by the City; the contract by its express terms is retroactive to January 1, 1971.

In Matter of District No. 1, MEBA, AFL-CIO and City of New York and Department of Marine and Aviation, Decision No. B-1-72, we held that Section 1173-7.0c(3)(d) of the New York City Collective Bargaining Law, the

status quo section, operates to preserve and to continue in full force and effect all of the terms and conditions of an expired contract during the period between the expiration of that contract and the execution of a successor contract. Section 1173-7.Oc (3)(d) reads as follows:

> "(d) Preservation of status quo. During the period of negotiations between a public employer and a public employee organization concerning a collective bargaining agreement, and, if an impasse panel is appointed during the period commencing on the date on which such panel is appointed and ending thirty days after it submits its report, the public employee organization party to the negotiations, and the public employees it represents, shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall such public employee organization induce any mass resignations, and the public employer shall refrain from unilateral changes in wages, hours, or working conditions. This subdivision shall not be construed to limit the rights of public employers other than their right to make such unilateral changes, or the rights and duties of public employees and employee organizations under state law. For purpose of this subdivision the term period of negotiations' shall mean the period commencing on the date on which a bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or an impasse panel is appointed."

That rule was applied in our Decision No. B-7-72 in the instant matter. It was there held that all of the conditions created by the predecessor contract, including

provisions created by bargaining on permissive subjects and thus including the provision relating to a training fund, with which we are here concerned, continued unchanged during the hiatus between the expiration of the predecessor contract and the execution of a successor contract.

It is not necessary for the Board to reach the question of whether there was a breach of the status quo because the union has not shown that it has incurred any obligation or acted to its prejudice by making any outlays of monies for training nor has the union factually demonstrated that it has been disadvantaged by the City's declining to continue making contributions to a training fund program. This being the case and in light of the fact that the parties have entered into a collective bargaining agreement which defines their mutual rights and obligations for a period which includes the whole of the status quo period, we find that no monies are owing to the union from the City for training programs for the status quo period following the expiration of the prior contract between the parties.

O R D E R

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

ORDERED, that the Union's petition herein be, and the same hereby is, dismissed.

DATED: New York, New York
November 13, 1972

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

JOHN MORTIMER
M E M B E R

EDWARD SILVER
M E M B E R