

UFA v. City, 40 OCB 19 (BOC 1987) [19-87 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE UNIFORMED FIREFIGHTERS
ASSOCIATION OF GREATER NEW YORK,

Petitioner,

DECISION NO. 19-87

-and-

THE CITY OF NEW YORK,

DOCKET NO. RU-988-87

Respondent.

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DECISION AND ORDER

On March 24, 1987, the Uniformed Firefighters Association of Greater New York ("the UFA" or "the union"), filed petition for modification of its certification to establish separate bargaining unit for Fire Marshals. The City of New York, through its Office of Municipal Labor Relations ("the City"), submitted a letter on April 23, 1987 expressing its opposition to the petition. A hearing was held on July 20, 1987, and the parties submitted memoranda of law on September 16, 1987.

Background

The UFA is the certified collective bargaining representative for a unit that includes employees in the titles of Firefighter and Fire Marshal. Of the 10,000 employees in the bargaining unit, the Fire Marshals number approximately

325. Fire Marshals became a part of the unit when they were added to the certification covering Firefighters in 1970. Since that time, both titles have been covered by the collective bargaining agreements between the UFA and the City.

In the negotiations for the 1984-87 agreement, however, the UFA sought a separate agreement for the Fire Marshals as well as a salary differential comparable to that received by Fire Lieutenants.¹ The City rejected the UFA's demands and maintained that the Fire Marshals should be included in the same agreement with the Firefighters. The parties eventually agreed to submit their differences to an impasse panel for resolution. To justify the salary increase it was seeking, the UFA introduced evidence to demonstrate that the Fire Marshals' duties had substantially changed since the position was established as a uniformed title in 1969. This evidence covered such matters as the expansion of the training program for Fire Marshals, the implementation of specialized arson units, and the increasing technical sophistication of the position.

In its report and recommendations in case number I-187-86, the impasse panel noted that it was impressed with the

¹ Lieutenants receive approximately 28% over the basic firefighter's salary, while Fire Marshals receive a differential of 9.68%.

UFA's evidence. The panel concluded that "the job has evolved over a short span of time into one more complex and demanding than it was" and that "the changes in the duties of [Fire Marshals] are sufficient to call into question the differential that exists" between the salaries of Fire Marshals and Firefighters.

Citing the impasse panel's report, the UFA thereupon filed the instant petition, claiming that the evolution and change in the Fire Marshal title "give rise to extraordinary circumstances which warrant a separate bargaining unit for the Fire Marshals."

Positions of the Parties

UFA's Position

1. Community of Interests

The UFA first argues that the Fire Marshals should be placed in a separate bargaining unit because they lack a community of interests with Firefighters in the areas discussed below.

a. Duties

According to the UFA, the basic distinction between Fire Marshals and Firefighters lies in the dissimilar nature of their work; i.e., "Fire Marshals investigate the cause and origin of fires and undertake criminal investigations

in cases of arson, while Firefighters extinguish fires and respond to certain emergencies." As part of their investigative responsibility, Fire Marshals interview witnesses, apprehend and arrest suspects, and assist in the preparation of cases for Assistant District Attorneys. Unlike Firefighters, Fire Marshals carry firearms and possess full police powers.

The UFA further argues that, because Firefighters perform an entirely different job, they have little interaction with Fire Marshals. Although they concededly interview Firefighters during the course of their investigation and direct Firefighters in the overhaul of a fire scene, Fire Marshals similarly interview and direct numerous others in such activities. Thus, one Fire Marshal testified that he spent approximately 5% of his time with Firefighters, while another Marshal asserted that he had no contact with Fire Marshals during his fifteen years as a Firefighter.

b. Working Conditions

The UFA also maintains that Fire Marshals and Firefighters have different working conditions. The two groups work different schedules out of separate Fire Department facilities. While all Fire Marshals drive City cars, only one of six Firefighters does so. Furthermore, Fire Marshals are supervised through a separate chain of command and,

unlike Firefighters, perform their work with substantial autonomy.

c. Relative Positions within the Fire Department

The UFA points out that Fire Marshals occupy a promotional level above the Firefighter title, for which they must take a competitive examination and are paid an approximate 10% differential above the Firefighter salary. The UFA thus argues that the Fire Marshal title should be treated in the same manner as the Lieutenant title, which is also a first line promotion from the Firefighter title and has been placed in a separate bargaining unit.

2. Substantial Changes in the Fire Marshal Position

As detailed below, substantial changes in the Fire Marshal's job are an additional factor contributing to the need for a separate bargaining unit, in the UFA's view._

a. Increased Sophistication of Skills

When the Fire Marshal title was first added to the Firefighter unit, there was no training program. However, because increasingly sophisticated skills are necessary for the job, the training program has evolved into an eight-week course, which covers such matters as criminal law and procedure, firearms training, and forensic pathology.

b. Additional Duties

Fire Marshals have undertaken additional duties as part

of certain new projects, such as the Red Cap program. Under this program, participating Fire Marshals are assigned to targeted arson-prone communities which they continually patrol to ensure a rapid response to radio calls. As part of this program, Fire Marshals have greater involvement with the community.

In addition, the Burns Reporting Law, which became effective November 1, 1985, has added to the workload of Fire Marshals. Under this law, doctors and hospitals must report burn victims to the Office of Fire Prevention and Control, and Fire Marshals must respond to these reports as part of their effort to detect arsonists.

c. Change from Peace officer to Police Officer Status

The UFA points-out that Fire Marshals attained full police officer status four years ago by legislative amendment to the New York City Administrative Code.

d. Explanation of operations

The UFA notes that the Bureau of Fire Investigation, under which Fire Marshals work, has greatly expanded over the years. At the time the Fire Marshal title was added to the uniformed force, there were 25 Fire Marshals; approximately 325 Fire Marshals are now employed by the Bureau of Fire Investigation.

3. The Parties' Bargaining History

The UFA claims that as a direct result of the changes in the scope and nature of Fire Marshals' work and the increasing lack of a community of interests between the two titles in the bargaining unit, the Marshals have been the subject of separate bargaining with the City over the last two agreements. According to the Union, this bargaining history demonstrates a tacit acknowledgment on the part of the City that the Fire Marshal title has evolved into a unit warranting separate attention and separate negotiations.

4. Diminished Ability to Exercise Bargaining Rights

The UFA argues that Fire Marshals are hindered in bargaining for their separate interests when they are forced into unified negotiations with the Firefighters. As an example, the UFA points to its recent attempts to increase the Fire Marshal's ten percent salary differential over Firefighters' salaries. Coalition bargaining, in the UFA's view, has made such an effort "all but impossible" in recent years, since the premise of coalition bargaining is that salary increases will consist of uniform increases within an existing salary structure. That there is no coalition bargaining for the successor to the 1984-87 contract is irrelevant, according to the Union, because a coalition may again be formed, even for the current round of negotiations.

Furthermore, the UFA argues that it is not free simply to refuse to join the coalition, since such a decision might not be equally advantageous for both the Firefighters and the Fire Marshals, and one group thus would be denied the "fullest freedom in bargaining."

5. Efficient Operation of Fire Department and Sound Labor Relations

The UFA contends that the creation of separate bargaining units would have no impact on the operation of the Fire Department, since the Firefighters and Fire Marshals perform different work within distinct organizational subdivisions and with little interaction. The UFA further asserts that separate bargaining units would contribute to stable labor relations, since the difficulties in reaching the 1984-87 agreement simply reflect the rapidly diminishing community of interests between the two employee groups and the increasing hardship of working within the confines of a single bargaining unit.

City's Position

1. Community of Interests

Contrary to the UFA, the City asserts that Fire Marshals share a community of interests with Firefighters and, therefore, should not be severed from the current bargaining certificate. The City alleges that both groups are respon-

sible for ensuring the safety of the public against the dangers of fire and work together at the scene of a fire. The interrelated nature of the two jobs is further demonstrated, in the City's view, by the requirement of fire-fighting experience for the Fire Marshal position.

Moreover, the City argues that the duties and responsibilities of Firefighters and Fire Marshals have not changed in a way which disturbs the community of interests that existed when the unit was originally certified. In this regard, the City points to the testimony of a Union witness conceding that the "basic job of a Fire Marshal to investigate the cause and origin of fires" has not changed over the years. Citing Uniondale Union Free School District, 19 PERB ¶4063 (1986), the City also argues that the Public Employment Relations Board ("PERB") has ruled that "a request to fragment a bargaining unit of longstanding is one which will not be granted lightly."

2. Bargaining History

The City contends that the unit's bargaining history does not reflect any existing or potential conflict of interest between the titles, noting the Union's testimony that, in the past, it has been able to present separate demands for Fire Marshals and that the collective bargaining agreements have made specific references to the working conditions of this group.

3. Decisional Law of PERB and the Board of Certification

The City argues that the present structure of the bargaining unit meets the purposes and policies of the New York City Collective Bargaining Law ("NYCCBL"). According to the City, the Board of Certification ("the Board") has long adhered to the policy of preventing the proliferation of small and fragmentary units.

Furthermore, the City argues that "PERB has consistently held that in order to sever an existing unit structure the petitioner must show that the existing unit structure was unworkable or that the incumbent union was not providing adequate representation." In the City's view, the UFA has failed to produce such evidence. Again, the City points out that the UFA has had the opportunity in prior negotiations to present separate Fire Marshal demands, over which the City has bargained.

Discussion

Section 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining provides that the Board, in determining appropriate bargaining units, shall consider, among other factors, the following:

- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;

- b. The community of interest of the employees;
- c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
- d. The effect of the unit on the efficient operation of the public service and sound labor relations;
- e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
- f. Whether the unit is consistent with the decisions and policies of the Board.

Applying these factors to the instant case, we conclude that the current unit consisting of Firefighters and Fire Marshals remains appropriate. In reaching this conclusion, we note that the Board has established a policy favoring consolidation of bargaining units and discouraging fragmentation of units whenever possible. As set forth in our previous decisions,² the rationale for this policy is rooted in the purposes underlying public sector labor law. Each unit is yet another entity with which the City must bargain, requiring a separate contract to be negotiated and

² See, Decision Nos. 28-78, 67-78, and 24-79.

administered, and generating its separate grievances, interpretations, and arbitrations.³ Thus, in the absence of convincing proof that the current bargaining unit prejudices the collective bargaining status of the employees involved, the creation of an additional bargaining unit with which the City must deal would be in derogation of both the public interest and the legislative intent of the drafters of the NYCCBL.⁴

Such proof has not been adduced herein. We are not convinced, at the outset, that the Fire Marshals lack a community of interests with the Firefighters. Because of the requirement for firefighting experience, Fire Marshals are former Firefighters, who surely identify with this group even after their promotion to the Fire Marshal title. Furthermore, it is apparent that both groups share the common purpose of protecting the public from the dangers of fire. Finally, there is interaction between Fire Marshals and Firefighters in the performance of their work. In this regard, we note that three witnesses who appeared on behalf of the UFA all testified that they have occasion to work with Firefighters in their capacity as Fire Mar-

³ Decision No. 24-79

⁴ Id. at 9.

shals. That Fire Marshals also work with other persons, such as assistant district attorneys and sanitation workers, does not establish a lack of interaction with Firefighters.

We recognize that the position of Fire Marshal and Firefighter do vary in certain respects; i.e., Fire Marshals receive more exhaustive training and work out of separate facilities on different schedules than Firefighters. Yet, these differences do not alter the fundamental interests that exist between the groups, nor do we believe that the UFA is truly arguing that their interests are so basically in conflict that they cannot be placed in the same unit.

Rather, we believe that the underlying basis for the Union's argument is their view that the economic interests of the Fire Marshals are not being sufficiently fulfilled. We note that one UFA witness testified that the Fire Marshal desired a separate certification because the Fire Marshals' "needs and labor management problems are different from the firefighting force." Another UFA witness testified that the Union seeks a separate Fire Marshals' unit because it has "had extreme difficulty in negotiating fully the needs and concerns of Fire Marshals." However, other than their difficulties in increasing the Fire Marshals' salary differential, the Union produced no evidence of any speci-

fic Fire Marshal "need" that they had been unable to address in negotiations. Nor has the UFA refuted the City's claim that separate negotiations for issues relating uniquely to Fire Marshals have regularly occurred.

Thus, while we recognize the Fire Marshals' frustration in failing to achieve the economic goals they feel they deserve, we fail to see how the Fire Marshals' plight differs from that of any other minority group comprising part of a larger unit. This concern alone is insufficient to overcome the Board's policy against fragmentation of units in the absence of sufficient evidence to prove that the Fire Marshals' goals have been submerged by or sacrificed to the interests of the remainder of the unit.⁵ Furthermore, the City has demonstrated in the past a willingness to negotiate on separate Fire Marshal demands and, indeed, the parties have agreed upon separate provisions relating to Fire Marshals in their prior agreements. There is thus no reason to assume that further and more extensive attention to the specific needs of the Fire Marshals may not be achieved within the existing bargaining unit.

For the foregoing reasons, the petition of the UFA seeking to establish a separate bargaining unit for the Fire Marshal title is hereby denied.

⁵ Decision No. 29-82.

O R D E R

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED that the petition of the Uniformed Firefighters Association be, and the same hereby is, dismissed.

DATED: New York, N.Y.
October 14, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

* George Nicolau did not participate in the determination of this decision.