SUPREME COURT : NEW YORK COUNTRY
SPECIAL TERM : PART I

In the latter of the Application of
THE CITY OF NEW YORK,

Petitioner,

-against-

BOARD OF COLLECTIVE BARGAINING and
DISTRICT COUNCIL 37, A.F.S.C.M.E.
AFL-CIO,

Respondents.

For an Order and Judgment pursuant to
Article 78 of the Civil Practice Law
and Rules.

Index No.
41993/75

Motion No. 47
Of DEC 1 1975

NADEL, J.:

Petitioner City of New York brings this Article 78 proceeding to annul the determination of the respondent Board of Collective Bargaining, which dismissed the City's petition before the Board and held the practical impact of layoffs by the City was a mandatory subject of collective bargaining, hence the City must enter into negotiations with respondents union (District Council 37, A.F.S.C.M.E., AFL-CIO) with respect to layoffs by reason of the City's financial difficulties.

The City contends that the provisions of Section 1173-7.0a(3) of the New York City Collective Bargaining Law, which it characterizes as a "zipper" clause is controlling. The Board held that the so-called "zipper" clause does not govern a union's demand to bargain concerning the practical impact of a unilateral

decision by management in the proper exercise of its prerogatives. The Board held that bargaining with respect to "practical impact" is governed by Section 1173-4.3b. of the NYCCBL.

The Board contends that the City's interpretation of sections 1173-7.0a(3) makes meaningless the employees' rights which are specifically granted in Section 1173-13.3b whereas the Board's determination tends to harmonize the two sections. The Board states that in reaching its determination it took into account the language of the relevant statutes and also the desirability of reaching a decision consistent with the decisions of the Public Employment Relations Board, under the New York State Taylor Law.

In Howard v. Wyman, 28 N Y 2d 434, 438 the Court stated "It is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld. In W. Irondequoit Teachers v. Helsby, 35 -7 Y 2d 46, 51, the Court stated that the "construction given by the agency charged with administering the statute is to be accepted if not unreasonable."

The determination by the Board was neither irrational nor unreasonable. Its findings were no-L arbitrary or capricious.

The motion is denied and the petition is dismissed.

Settle Judgment.
Dated: March 10, 1976.