PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK, INC.

Petitioner,

Index No. 17318/75

-against-

THE BOARD OF COLLECTIVE BARGAINING
OF THE OFFICE OF COLLECTIVE
BARGAINING OF THE CITY OF NEW YORK,
et al. ,

Respondents.

THE CITY OF NEW YORK,

Intervenor,

FOR JUDGMENT UNDER CPLR ARTICLE 78

NYLJ Friday January 2, 1976 p. 6 - Justice Helman

MATTER OF PATROLMEN'S BENEVOLENT ASS'N OF THE CITY OF NEW YORK, INC. (Board of Collective Bargaining of the Office of Collective Bargaining of the City of New York)- In this proceeding brought pursuant to article 78 of the CPLR, the petitioner, Patrolmen's Benevolent Association (PBA) seeks a judgment annulling a determination by the respondents, The Board of Collective Bargaining (BCB), and enjoining a BCB impasse panel from conducting a formal hearing with respect to a collective bargaining dispute involving the PBA and the City of New York.

PBA and the City of New York and entered into a series of collective bargaining agreements which contained a requirement that police officers work eight and one-half hour days in exchange of which they received eighteen additional days off. The City has expressed an intention to eliminate the extra one-half hour of work and thus regain eighteen days work per annum from each police officer.

After several negotiation sessions between the PBA and The City of New York, the "City" appearing hearing as an intervenor-respondent, requested appointment of an impasse panel by the BCB. Following its appointment, the impasse panel held two mediation sessions and scheduled a third, The City declined to attend the third session so that a petition be filed with BCB to determine upon which subjects the City was obligated to bargain since a delineation of the subjects before the panel is required by 1173-7-0(c)(3)(c) in order that its report "be confined to matters within the scope of collective bargaining." In response, the PBA filed an improper practice charge with the Public Employment Relations Board (PERB). The charge alleges that the City has exhibited bad faith in refusing to participate in bargaining over certain issues. PERB has held hearings on the charge, but has not

yet rendered a decision.

On the date that the PERB proceeding was commenced, PBA made a motion before BCB, requesting that BCB dismiss the petition or alternatively stay the impasse panel proceedings pending a decision from PERB. Shortly thereafter, the City formally petitioned the BCB for a ruling on the scope of negotiations, and suspended its participation int eh mediation sessions, as noted above. The PBA then moved to dismiss that petition or in the alternative, to delay a ruling until after the PERB decision. The BCB proceeded to dismiss all PBA motions, issued a decision on the scope of negotiations, and ordered the impasse panel to proceed with mediation or other appropriate action. The instant petition presents a broad challenge to the propriety of BCB's decision.

Section 205(5)(d) of article 14 of the Civil Service Law (The Public Employee's Fair Employment Act), commonly known as the Taylor Law, makes reference to PERB (the "Board") proceedings, and provides in part (sec. 205[5][d]):

"The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article of with collective negotiations."

Section 212. Civil Service Law permits a locality to establish an equivalent to PERB, as New York City has done with the organization of its Office of Collective Bargaining. Significantly, section 212(1) specifically provides that section 205(5)(d) (supra) continues to apply to localities after they have established their own equivalent of PERB proceeding is pending does not afford a ground of suspension of impasse panel activities.

Therefore, that part of the petition which seeks a declaration that the BCB violated lawful procedure by appointing an impasse panel to aid in the negotiations between PBA and the City is dismissed. That part of the petition which seeks a stay of impasse panel proceedings pending a PERB decision is also dismissed (Civil Service Law, secs. 205[5][d] and 212[1]).

PBA also seeks a judgment herein that BCB's decision on the scope of negotiations (contained in BCB Decision No. B-24-75, Sept. 18,1975) "is null and void in that it was made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, and was an abuse of discretion," BCB procedure is governed by the New York City Collective Bargaining Law, Chapter 54 of the Administrative Code, Section 1173-5-0(a)(2) thereof grants BCB authority "... to make a final determination as to whether a matter is within the scope of collective bargaining". In making such determinations, BCB is governed by section 1173-4.3(b), Admin. Code, which makes it "the right of the city... to determine the standards of services to be offered by its agencies... determine the methods, means and personnel by which government operations are to be conducted... and exercise

complete control and discretion over its organization and the technology of performing its work. Decisions of the city or nay other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining."

BCB determined that under this "management rights clause" the City is not required to bargain about the starting and finishing times of shifts, the number of "charts" showing the work schedule, the number of platoons shown on each char, and the percentage of appearances on each platoon. BCB upheld the City's contention that these factors determine the level of manpower on duty at any given time, and do not affect the actual total number of hours of work for individual patrolmen and women. BCB refereed to the impasse panel the PBA's contention that the City cannot alter the present 243-day eight and one-half hour "appearance schedule" and institute in its place a 261-day eight hour appearance schedule. BCB also referred to the panel the issued of the number of hours of a patrolman's time off between shifts.

It is clear that BCB acted lawfully in making a decision on the scope of collective bargaining (sec. 1173-3-0[a][2], N.Y.C. Collective Bargaining Law).

Authority is granted by this section to BCB to exercise jurisdiction over petitions to determine issues in regard to the scope of negotiations. This includes questions as to whether disputed proposals for collective bargaining are mandatory, permissive, or otherwise illegal subjects of such bargaining (West Irondequoit Teachers Ass'n v. Heishy, 35 N.Y. 2d 46, where an Union's challenge to a determination that class size was a permissive subject of bargaining was rejected with administering the statute is to be accepted if not unreasonable.

The PBA has failed to demonstrate that BCB's decision was arbitrary, capricious or an abuse of discretion. On the contrary, ti clearly appears that BCB effected a reasonable exercise of the discretion afforded to it by the applicable law (supra). Absent a showing of arbitrariness, illegality, or other impropriety, the court cannot substitute its judgment for that of the BCB.

That part of the petition which seeks a declaration that BCB's decision No. B-24-75 was null and void is denied and the petition is dismissed. Settle judgment.