SERGEANTS' BENEVOLENT ASSOCIATION OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK AND LIEUTENANTS' BENEVOLENT ASSOCIATION OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Petitioners,

-against- Index No. 11950/79

BOARD OF COLLECTIVE BARGAINING OF THE OFFICE OF COLLECTIVE BARGAINING OF THE CITY OF NEW YORK, CITY OF NEW YORK and POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Respondents,

FOR JUDGMENT UNDER CPLR ARTICLE 78.

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RICCOBONO, J.:

This is an Article 78 proceeding brought by the Sergeant's Benevolent Association ("SBA") and the Lieutenants' Benevolent Association ("LBA") of the Police Department of the City of New York for a judgment enjoining the implementation of respondent Board of Collective Bargaining's ("Board") decision of May 24, 1979 and modifying said decision by deleting certain restrictions contained therein and requiring respondent Police Department to bargain with petitioners on all matter which petitioners perceive as relating to safety.

On or about April 6, 1979 respondent Police Department issued operations order #40 requiring sergeants and lieutenants to be alone in radio patrol cars. Petitioner SBA (later joined by the LBA) protested this order and filed an improper practice petition before the Board claiming that the order involved safety

issues and therefore should have been the subject of collective bargaining.

The controlling law is Section 1173-4.3(b) of the New York City Collective Bargaining Law ("NYCCBL") which provides in essence that the City has the right, which is not subject to collective bargaining, to “. ..determine the methods, means and personnel by which government operations are to be conducted...” and to “. ..exercise complete control and discretion over its organization and the technology of performing its work...” but that “...notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.” (emphasis added) .

The City agreed not to implement order #40 pending a determination by the Board as to whether solo car patrol by Sergeants and lieutenants had a “practical impact” on their safety.

In its decision and order #B-6-79 of May 24, 1979, which is the subject of the instant proceeding, the Board determined that order #40 would create a practical impact on safety in three areas and ordered the parties to bargain concerning these areas. The decision stated that "...if no agreement had been reached by July 1, 1979 ... an impasse in negotiations shall be deemed to exist..." and an impasse panel shall be appointed.

Petitioners contend that this determination limiting negotiations to 3 safety matters was arbitrary and capricious and contrary to law. According to petitioners, numerous other factors, which were rejected by the Board have a “practical impact” on safety and should therefore be the subject of collective bargaining. Petitioners claim that the Board's May 24th decision

severly and unreasonably constrains the bargaining process by narrowing it to a few selected issues and wrongfully preempts the right of the parties to determine the scope of the collective bargaining. Petitioners also contend that the pre-setting of July 1, 1979 as an impasse date was unlawful.

Respondents, in opposition, support the finding of the Board and claim that petitioners' application is premature because an impasse panel has not yet been convened and petitioners have therefore failed to exhaust their administrative remedies.

In the court's opinion the instant application is not premature. The Board's May 24th decision limits the scope of bargaining and thus has an immediate and irreparable impact on petitioners which cannot be addressed or alleviated by a continuation with the administrative process. The court, however, disagrees with petitioners' contention that the Board’s decision to limit collective bargaining to three areas was arbitrary, capricious or unlawful.

It is the function of the Board to determine whether a particular matter is within the scope of collective bargaining (see NYCCBL sect. 1173-5.0[a]). This is the exact function that the Board performed herein. It determined that three of the numerous situations presented by petitioner rose to the level of “practical impact” on safety contemplated by NYCCBL sect. 1173-4.3b and directed the parties to bargain with respect to these matters only.

Petitioners by the instant application seek to substitute their judgment, (that all of the issues they presented have a if practical impact" on safety),ratified by this court for the judgment of the Board. The Board reached its decision after 5

days of hearings reflected in 685 pages of transcript. The decision itself is 31 pages, comprehensive and well reasoned. Each and every issue raised by petitioners is thoughtfully and reasonably addressed.

Under these circumstances the court will not and can not substitute its judgment for that of the Board (see Matter of Sullivan County Harness Racing Association v Glasser 30 NY2d 269). There is, however, one problem with the decision. The Board stated on page 29 that " ... if no agreement has been reached by July 1, 1979... an impasse in negotiations shall be deemed to exist..." and an impasse panel shall be appointed. In the court's opinion this pre-determination of an impasse date was improper and unlawful. A determination that an impasse exists. (See NYCCBL 1173-7-0 c. [2]). It is highly likely that the Board's pre-determination of an impasse date distorted the initial bargaining process notwithstanding the fact that the July 1, date was withdrawn by the Board on June 26th. The Board's error is not, however, irremediable or fatal since negotiations are ongoing. The court hereby instructs the Board to make no further determination of impasse except in good faith and in compliance with law.

In view of the above the court concludes that the Board's determination to limit collective bargaining to three areas was neither arbitrary nor unreasonable.

Accordingly, the application is denied and the petition is dismissed.

Settle judgement.

Dated: August 7, 1979.