

SUPREME COURT: NEW YORK COUNTY
SPECIAL TERM: PART I

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NEW YORK COUNTY
PATROLMEN'S BENEVOLENT ASSOCIATION, INC.,

Petitioner,

-against-

Index No. 16971/80

ROBERT J. McGUIRE, as Police Commissioner
of the City of New York,
CITY POLICE DEPARTMENT,

Respondents

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TAYLOR, J.:

This is an Article 78 proceeding in which the petitioner seeks to set aside the decision of the Board of Collective Bargaining (Board). On December 19, 1979, the petitioner, as a result of the New York City Police Department's transferring of police officers from assigned duties and the replacement of these with civilian employees, filed improper Practice petitions at the Board. The police officers who were transferred were engaged in clerical, time-keeping mechanical repair, statistical, pay roll, role call, communications and record. keeping activity for the police department. The substitution on these duties by civilian employees is known as "civilization" of the police department.

The petitioner is the certified exclusive bargaining representative of patrolmen and policewomen, excluding detectives, for the New York City Police Department. No allegations have been presented that any of the transferred officers had originally been assigned to functions outside the scope of their "job classifications". It would thus appear that the duties from which the officers had been transferred were proper police assignments.

On July 23, 1980, the board rendered its decision in which it held that the City and the Police Department were not in violation of any improper employment practices as defined under NYCCBL Section 1173-1.2 and that the reassignment of the police officers to law enforcement duties and their replacement with civilian employees was within the City's managerial prerogative. The Board noted that it would have required the City to bargain, had the petitioners shown that the decision to replace the police officers with civilians had any practical impact upon the bargaining unit.

The petitioner heavily relies upon the Supreme Court's holding in *Fibreboard Corp. v National Labor Relations Board* (379 U.S. 203) which affirmed the Court of Appeals decision that the contracting out of work previously performed by members of an existing bargaining unit requires employers and the employees' representatives to bargain collectively. The Board correctly noted in *Fibreboard* the members of the

bargaining unit were terminated as a result of the subcontracting and that there was no showing that any of the officers affected by the transfer were terminated from their employment. In the instant case the police were given new assignments.*

Judicial review of an administrative agency's determination is limited to whether the agency acted arbitrarily or capriciously or that the determination was affected by an error of law (Inc. Village of Lynbrook v PERB 48 NY2d 398, 404; Matter of Fink v Cole, 1 NY2d 48,53). Where a rational basis for the determination of the administrative body exists, that determination is conclusive (See Matter of Howard v Wymn 28 NY2d 434, 438; Matter of Swalbach v State Liquor Authority 7 NY2d 513, 526) Generally the administration and management authority of the police department includes the allocation of resources, priorities and the assignment of its employees. In the instant case, the police department has transferred work which had previously been assigned to police officers to another group of police department employees. Under N.Y.C.C.L Section 1173-4.3(b) the city has the right to direct its employees, to maintain the efficiency of governmental

* The record indicates that two officers retired, one died and another was promoted to sergeant.

operations and "to determine the methods, means and personnel by which government operations are to be conducted". This assignment and replacement of police officers by the police department are inappropriate matters for judicial review unless it can be shown that such decisions have a practical impact upon the members of the bargaining unit.

Accordingly, the petition is in all respects dismissed.

Settle judgment.

DATED: July 14, 1981.