

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JAMES BOYLE, as President of the
Uniformed Firefighters Association
of Greater New York and the
UNIFORMED FIREFIGHTERS ASSOCIATION
OF GREATER NEW YORK,

Index No. 118517/93
MOTION #18 JAN. 7, 1994
IAS PART 5

Petitioner,

-against-

MALCOLM D. MacDONALD, as Chair
of the New York city Board of
Collective Bargaining, the NEW
YORK CITY BOARD OF COLLECTIVE
BARGAINING, and the CITY OF NEW YORK,

Respondents.

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BRUCE McM. WRIGHT, J.

This is a proceeding pursuant to Article 75 and Article 78 of the CPLR, challenging a decision of the New York City Board of Collective Bargaining dated June 18, 1993 which affirmed a report and recommendation of an Impasse Arbitration Panel. Petitioner James Boyle is President of the Uniformed Firefighters Association of Greater New York ("UFA"), the union which is the certified bargaining representative for firefighters and fire marshals employed by the New York City Fire Department. Petitioner seeks an order annulling the decision on the ground that it is arbitrary and capricious, contrary to law, not supported by substantial evidence, irrational and in excess of an Impasse Panel's authority. In the alternative, petitioner seeks a

determination that the decision is violative of Administrative Code section 12-311 because that section mandates that the statutory criteria be outlined in an award and precludes an award in excess of a contract term.

The background of this proceeding is summarized as follows:

In August, 1990, the City and the UFA commenced collective bargaining negotiations for an agreement to succeed the contract expiring on June 30, 1990. The time frame for the new contract was July 1, 1990 through September 30, 1991. In May, 1992, after both parties had filed a request for appointment of an Impasse Panel alleging an impasse in negotiations, a three member panel was appointed by the New York City Board of Collective Bargaining ("BCB") to hear the dispute.

The Impasse Panel held hearings and issued an interim award on March 12, 1993 which contained 14 recommendations for the terms of settlement between the parties for the 1990-91 period. The interim award included a determination that the Panel had Jurisdiction to consider the impact of firefighters working 39.6 hours less per year. The Panel also stated as follows:

In order to give the parties an opportunity to discuss this matter, this interim award does not deal with the merits of the impact of the reduction in hours. The Panel retains jurisdiction over this matter and will, upon the request of either the UFA or the City, do whatever it deems it necessary to issue a final award.

[Interim Award, p. 22]

In March, 1993, the UFA rejected that portion of the award which provided that the Panel had jurisdiction to consider the impact of firefighters returning to a 25 Group Chart (that is, working 39.6 hours less per year). The UFA also objected to the Panel's issuance of an interim award and its retention of jurisdiction. Further, the UFA also objected to that portion of the Interim Award which related to uniform allowance and protective gear (the issue of the quartermaster system).¹

While the UFA's appeal was pending, the City requested that the panel reconvene to take evidence on the issue concerning the change in the work chart (the change that would result in the firefighters working 39.6 hours less per year). In April, 1993 the parties met with the Chairman of the Panel and the parties agreed that no further hearings would be necessary and that they would rely on the evidence already in the record. However, the parties did submit supplemental briefs.

On May 4, 1993, the BCB issue a decision which, inter alia, affirmed that part of the Panel's interim award concerning the Panel's power to issue an interim award and its jurisdiction to consider the effect of firefighters working 39.6 hours less per year. On May 18, 1993, the Panel issued its Final Award and recommended as follows with regard to the issue of hours worked per

¹The court has been informed that prior to submission of this proceeding, the parties resolved their dispute regarding the quartermaster system.

year:

Simultaneous with the chart change from 24 group work chart to a 25 group work chart' [39.6 less hours of work, per. year] firefighters' vacation time shall be reduced by 39 hours in the manner proposed by the City so as not to violate the 25 group work chart.

[Final Award, p. 7, ¶ 12)

On May 24, 1993, the UFA gave notice of its rejection of that portion of the award regarding the reduction of vacation time. The UFA's Petition of Appeal alleged as follows:

That by determining that a firefighter's vacation would be reduced by 39 hours as proposed by the City, the Panel exceeded its authority by responding to a City proposal which

- 1) was not properly before it;
- 2) was not supported by substantial evidence;
- 3) was contrary to the evidence submitted to the Panel;
- 4) failed to follow the precedent-and pattern of bargaining dollar costs as opposed to hour concessions;
- 5) was contrary to the instructions issued by the Board of Collective Bargaining;
- 6) was in excess of its authority in that it issued an award substantially beyond the contract term that the Panel was appointed to decide;
- 7) failed to address UFA arguments that the schedule had been advanced through the contract time frame of the Panel's jurisdiction

[Petition of Appeal p. 6 - 7]

The BCB subsequently rejected UFA's appeal, finding that ". . . the Panel fully axxLfairly considered the facts in the record, the arguments advanced by the parties and properly applied the statutory standards and criteria set forth in New York City Collective Bargaining Law S 12-311 (c) (3) (b) (BCB's decision p. 29),

In this proceeding, one of petitioner's principal arguments is that the BCB should have granted the UFA's appeal because the Impasse Panel's award does not include an analysis of the statutory criteria that are to be considered by the Panel. Title 12, Chapter 3 of the New York City Administrative Code (commonly known as the New York City Collective Bargaining Law "NYCCBL" pro vides as follows with regard to the statutory criteria to be considered by the Impasse Panel:

- (b) An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:
 - (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York City or comparable community;
 - (ii) the overall compensation paid to the employees involved in the impasse proceeding, including. direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;
 - (iii) changes in the average consumer prices

for goods and services, commonly known as the cost of living;
(iv) the interest and welfare of the public;
(v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

[NYCCBL § 12-311c(b)]

NYCCBL § 12-311c(4) provides that review of an impasse panel's recommendations "... shall be based upon the record and evidence made and produced before the impasse panel and the standards set forth in subparagraph (b) of paragraph (3) of this subdivision ...". In its Decision and Order denying the UFA's appeal of the Impasse Panel's final award, the BCB states as follows:

As we have consistently held, the scope of review under NYCCBL § 12-311c(4) is limited to the determination of questions of compliance with mandates of law and of due consideration of statutory criteria applicable to the determinations of impasse panels. Where the recommendations of an impasse panel meet this test, we will not substitute our judgment for that of the Panel.

[Decision and Order, p. 20]

In that regard, the BCB found that the Panel had given "... due consideration to the evidence in accordance with the standards set forth in NYCCBL §12-311c(3)(b)." (Decision, p. 17).

However, an examination of the Impasse Panels award does not reveal any rational basis upon which the BCB could conclude that the Panel gave due consideration to the statutory criteria.

The impasse Panel's award is devoid of any analysis of the evidence presented in relation to the statutory criteria. The award includes a vague reference to "... comparisons with other employees both in other jurisdictions and within New York City." (Impasse panel's Award, p. 3) However, the text of the award does not reveal which statutory criteria were considered by the Panel. Thus, there is no demonstration that the Impasse Panel gave due consideration to the criteria and its application to the evidence presented, as required by NYCBBL §12-311c(3)(b).

It is instructive to compare and contrast the BCB's review of the impasse Panel's decision here, with the BCB's review of an Impasse Panel's decision in a case entitled In the Matter of Impasse Proceeding between City of New York's and Patrolmen's Benevolent Association of the City of New York, Inc., Decision No. B-12-76 (Respondents' Appendix, Ex. D). In the PBA case, the BCB concluded, as it has done so here, that the Impasse Panel had given due consideration to the evidence in light of the standards set forth in NYCCBL S 1173-7.0C(3)(b) (now numbered § 12-311c(3)(b)). However, in the PBA case, the BCB noted that "[t]he Impasse Panel Report discusses and evaluates fully the proposals and contentions of both parties, and gives a detailed rationale for each finding made including a discussion of the weight given to the arguments of the parties on each point in dispute." (Decision No. B-12-76, p. 9-10). Further, the PBA case involved a dispute regarding work hours and schedules. In that case, the BCB found that "[t]he Panel fully considered the PSA's contentions regarding the historical

basis for the present chart system, the value of the system to the Police officers, the need or lack thereof for a change in charts and the effects of such a change on police officers of (Decision No. B-12-76, p. 11) Here, there are no such declarations by the BCB regarding the Panel's discussion and evaluation of both parties' contentions, nor could there be.

In sum, there was no rational basis for the BCB's determination that the Impasse Panel had given "... due consideration to the evidence in accordance with (the' statutory criteria]." (Decision, p. 27). Accordingly, the petition is granted to the extent that the BCB's decision affirming paragraph 12 of the Panel's award is vacated and this matter is remanded to respondents for further proceedings.

Settle Judgment

Dated: July 23, 1994

J . S. C.