

NEW YORK COUNTY SUPREME COURT
SPECIAL TERM, PART I
Justice Hughes

MATTER OF DETECTIVES' ENDOWMENT ASSN. OF THE POLICE DEPT.
OF THE CITY OF N.Y. INC. (Anderson)

MATTER OF DETECTIVES' ENDOWMENT ASSN. OF THE POLICE DEPT. OF THE CITY OF N.Y.. INC. (Anderson)-Petitioner, in this Article 78 proceeding seeks a judgment annulling the determination of respondent Office of Collective Bargaining (Office) made on Dec. 30. 1977, that petitioner's demand regarding tenure for detectives in the Police Department is a prohibited subject for bargaining.

The City of New York has intervened by stipulation of the parties and by order of the court.

Respondent Office is vested by law with the power and duty to make final determinations as to whether or not a matter is within the scope of bargaining. Administration Code section 1173-5.0 (a) (2).

However, petitioner asserts that the determination made was arbitrary, capricious and constituted an abuse of discretion. Petitioner's demand for tenure reads as follows:

(a) An employee, designated as a detective, shall be given tenure after three years as a detective and may not be returned to the uniform force unless written charges filed against him are sustained pursuant to the provisions of the Contract. Time served as a detective prior to this agreement will be credited toward the tenure requirement. No detective will be returned to the uniform force in anticipation of this tenure agreement.

(b) Any employee, who is transferred upon request or administratively, to another command, shall maintain his detective status.

Administrative Code Section 434a-3.0 gives the Police Commissioner power to detail members of the police force to the Detective Bureau.

Subdivision (e) provides that any member so detailed shall retain his or her rank in the force and shall be eligible for promotion as if continuing to serve in the uniformed force with the time served in the Detective Bureau counting as if served in his or her rank or grade for credit in the uniformed force.

Subdivision (f) states that the designation of patrolmen as detectives is wholly within the discretion of the Police Commissioner, and may be revoked at his pleasure.

Here, the City Council has clearly enunciated a policy that is expressed in Administrative Code Section 434-a3.0 which gives the Police Commissioner unfettered discretion to detail members of the police force as detectives as well as to revoke that assignment.

The City Council can change the law Neither the Police

Commissioner, the Office or this court can grant the relief petitioner seeks.

It is significant that the assignment of police officers to detective service is neither a promotion or a grade change, nor does it involve transfer to a position requiring an examination or involving tests or qualifications different from or higher than those required for the position of patrolman. Such an assignment does not alter the patrolman's Civil Service status (Detective Endowment Assn. v. Leary, 36 A. D. 2d 289).

Petitioner cites Buffalo P.B.A. v. City of Buffalo (9 P.E.R.B. 30241 which held that tenure was a mandatory subject of negotiation. That case is not in point for the reason that an equivalent to the NYC CBL section 1173-5.0 was not a factor involved in that determination.

Petitioner's attempt by this application to have the office circumvent the legislative mandates clear policy, cannot be sustained.

Accordingly, the petition is dismissed.
Settle judgment.