

COURT DECISIONS
NEW YORK COUNTY
SUPREME COURT
SPECIAL TERM, PART 1

JUSTICE GREENFIELD

MATTER OF PATROLMEN'S BENEVOLENT ASSOCIATION, INC. (McGuire)

In this article 78 proceeding, petitioner seeks to overturn a determination of Respondent Board of Collective Bargaining that the practice of replacing police with civilian employees in the Traffic Division of the Police Department is not an improper labor practice.

Petitioner contends that the practice has a significant impact on its police members and is therefore subject to collective bargaining, further that the police have exclusive jurisdiction over traffic and lastly that respondent's determination departs from equivalent decisions by Public Employment Relations Board (P.E.R.B.) under the Taylor Law.

The court is unable to agree with petitioner's contentions for reasons well briefed in respondent Board's Decision and Order and in the opposing memorandum.

The City has a statutory management right to "determine the methods, means and personnel by which the government operations are to be conducted." Such decisions are not within the scope of collective bargaining unless they raise the questions concerning the practical impact . . . on employees, such as questions of workload or manning." (New York City Collective Bargaining Law [NYCCBL] 1173-4.3[b]).

The court notes that at no time has petitioner been able to cite any job layoffs, wage reductions, transfers out of the Department or worsened working conditions resulting from the allegedly violative practice (cf. Fibreboard Paper Products Corp. v. NLRB, 57 LRRM 2809 [1964] relied on by petitioner).

Nor can petitioner's claim of exclusive jurisdiction over traffic be sustained in light of Chap. 71 of the N.Y. City Charter, Section 2903 b (14) Which specifically gives concurrent jurisdiction to the Department of Transportation.

Finally, this court finds respondent's determination in this proceeding to be substantially equivalent to relevant PERB decisions. These hold that without evidence that the hiring of civilian personnel has an impact on the terms and conditions of police employment, no basis exists upon which an improper practice can be charged (County of Suffolk v. Suffolk Co., PBA 12 PERB section 3123 [1979]; City of Albany v. Albany Officers Union, 13 PERB section 3011 [1980]).

The scope of the court's review of the Labor relations Board's

interpretation of a complex labor statute is limited. Unless the Board's determination was affected by an error of law or was arbitrary and capricious or an abuse of discretion the court may not interfere (Matter of Incorporated Village of Lynbrook v. N.Y. PERB 48 NY 2d 398 [1979]).

In the absence of petitioner's demonstration of practical impact and in the statutory presence of the City's reserved management rights, respondent's determination that there was no duty to bargain was correctly and rationally based.

Accordingly, the petition is denied. Settlement judgement