OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

-and-

THE UNIFORMED FORCES COALITION
THE NON-UNIFORMED COALITION
THE UNIFORMED FIREFIGHTERS ASSOCIATION
THE UNIFORMED SANITATIONMEN'S ASSOCIATION

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DECISION NO. B-11-85

DOCKET NO. I-174-84

DETERMINATION AND ORDER

On March 7, 1985, the Uniformed Forces Coalition ("UFC") filed a motion pursuant to Section 13.11 of the Revised Consolidated Rules of the Office of Collective Bargaining ("Rules"), seeking reconsideration of Decision No. B-6-85 of the Board of Collective Bargaining ("Board"), in which the Board found that collective bargaining negotiations for successor agreements to those that expired on December 31, 1983, June 30, 1984, August 31, 1984, and September 9, 1984 between the City of New York ("City") and the various coalitions of employee organizations and individual employee organizations, including the UFC, were at an impasse. The motion was supported by an affirmation of Murray A. Gordon, Esq.[1] As an alternative,

[1] The Patrolmen's Benevolent Association ("PBA") did not join in this motion.

the motion seeks a stay of impasse proceedings pending the Board's determination of improper practice charges filed by the UFC. [2]

On March 12, 1985, the Director of the New York City Office of Municipal Labor Relations ("OMLR") submitted an affidavit in opposition to the UFC's motion. Affirmations in reply to the City's answer and in support of the UFC's motion were filed on March 24, 1985 by Richard Hartman, Esq., and on March 25, 1985 by Adam Ira Klein, Esq.

On March 13, 1985, the City filed a motion pursuant to Section 13.12 Of the Rules, seeking an order consolidating all impasses involving constituent unions of the UFC, including the PBA. By way of the reply affirmations of Messrs. Hartman and Klein, referred to above, the UFC registered its opposition to the City's motion.

On March 27, 1985, oral argument was heard by the Board on the motions for reconsideration and consolidation.

BACKGROUND

As originally constituted for the current round of collective bargaining, the UFC consisted of sixteen employee organizations, as follows:

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[2] Docket No. BCB-766-85.

- Patrolmen's Benevolent Association
- Sergeants Benevolent Association
- Lieutenants Benevolent Association
- Captains Endowment Association
- Detectives Endowment Association
- Uniformed Fire Officers Association
- Correction Officers Benevolent Association
- Correction Captains Association
- Correction Assistant Deputy Wardens Association
- Transit Detectives Endowment Association
- Transit Sergeants Benevolent Association
- Transit Lieutenants Benevolent Association
- Transit Captains Endowment Association
- Sanitation Officers Association, Local 444
- Housing Patrolmen's Benevolent Association
- Superior Officers Association, Housing Police

Although not an original member of the UFC in the current bargaining, the Uniformed Firefighters Association ("UFA") has since announced its desire to be included in the coalition for purposes of the impasse and other proceedings in which the UFC may be involved. As the UFA joins in the instant motion for reconsideration, we shall include in our review of the bargaining history reference to the separate bargaining that took place between the UFA and the City.

The UFC submitted its original demands at the first collective bargaining session with the City on April 19, 1984. At the second meeting of the UFC and the City, on October 18, 1984, the latter submitted its proposals. At

a third collective bargaining session, on November 2, 1984, each party responded to the other's proposals, the City indicating which demands were economic and which were either prohibited subjects of bargaining or permissive subjects on which the City refused to bargain. At a fourth session, on November 16, 1984, the UFC modified its original demands and the parties agreed to establish committees to consider such issues as deferred compensation, health insurance, worker's compensation and disciplinary procedures. These committees met during January and February of 1985.

Negotiations between the City and the UFA commenced on April 9, 1984, at which time the UFA presented its demands. The City presented its proposals to the UFA on May 7, 1984. The parties submitted economic offers on May 19th (UFA) and on June 29th (City). At the latter session, both parties modified their demands. An additional session was held on September 13, 1984.

On November 5, 1984, the City filed a request for the appointment of an impasse panel in the negotiations between the City and the various coalitions and individual employee organizations representing virtually the entire municipal workforce of 265,000 employees. Pursuant to Section 5.3 of the Rules, the Director of the OCB commenced an

investigation to determine if the statutory conditions for the appointment of an impasse panel had been met. In the course of his investigation, the Director suggested that the parties might be aided by mediation. The parties accepted this suggestion.

Mr. Maurice Benewitz was selected as mediator for the City-UFC negotiations, and met with the parties for the first time on November 29, 1984. A second mediation session was held on December 14, 1984. Between these two sessions, Mr. Benewitz met with the parties individually. on January 4, 1985, the UFC had a separate meeting with the mediator. Mr. Benewitz also informed the Director that he had met with the City on that day. No agreement was achieved.

Mr. Paul Yager was selected as mediator for the City-UFA negotiations. The City and UFA met separately and together with Mr. Yager through January 18, 1985. On this date, the City presented its final best offer for a successor collective bargaining agreement to the one that had expired on June 30, 1984.

In the interim, on January 4, 1985, the Director of OCB advised the City and the various coalitions and organizations that, based upon his discussions with the parties and with the designated mediators, he had con-

cluded that, while various degrees of progress had been made on some issues, there did not appear to be any reasonable prospect of settlement on the fundamental differences between the parties. Accordingly, he recommended that the Board authorize the creation of an impasse panel or panels. Recognizing that any impasse panel award would have an effect on negotiations with other organizations, the Director further recommended that if multiple panels were used, the Board should require that their efforts be coordinated by the, OCB.

On January 17, 1985, the UFC submitted a statement setting forth in detail its objections to the Director's recommendation of impasse. The City submitted a letter dated January 23, 1985 reiterating its position that negotiations with the UFC were at an impasse. On January 31, 1985, the UFC met with the City and, on or about February 8, 1985, each party had a separate meeting with the mediator.

The UFA did not file objections to the Director's recommendations, but continued to engage in mediated bargaining sessions which resulted, on January 21, 1985, in a tentative agreement. However, on February 15, 1985, the delegate body of the UFA overwhelmingly rejected the proposed settlement and, on February 25, 1985, the UFA Executive Board voted to rejoin the UFC.

On February 19, 1985, the Board heard oral argument, at the UFC's request, on the issue of whether or not an impasse had been reached in the negotiations between the City and the UFC. Notwithstanding this formulation of the issue, representatives of the following employee organizations and coalitions participated: the Uniformed Forces Coalition; the Non-Uniformed (Municipal) Coalition; the PBA, in its separate capacity and as a member of the UFC; the Housing Patrolmen's Benevolent Association, the Detectives Endowment Association ("DEA"), the Uniformed Fire officers Association ("UFOA"), and the Lieutenants Benevolent Association, as constituent unions of the UFC; the Uniformed Sanitationmen's Association; the United Federation of Teachers and District Council 37, AFSCME, as members of the Municipal Coalition.

One week later, on February 26, 1985, the Board issued its Decision No. B-6-85, reconsideration of which is sought in the instant proceeding. In that decision the Board found, _inter alia_,

> that impasses exist with all of the employee organizations and coalitions in this proceeding over the terms of new collective bargaining agreements, particularly an overall economic package, and that conditions are appropriate for the creation of impasse panels.

The Board also determined that all unresolved issues that had been exchanged by the parties could be submitted to the panel(s).

The City promptly requested that the Board furnish a list of prospective impasse panel members to deal with the UFA-City impasse. A list, accompanied by biographical information, was provided to the parties. However, on March 1, 1985, the UFA informed the Director that it no longer sought arbitration as a separate group and that its desires in the impasse matter were in accord with those of the UFC. The City urged that the designation process go forward and requested that the OCB provide the parties with a second list of prospective panel members.

At a meeting on March 5, 1985, the Board recommended to the Director that a second list of names be provided to the UFA and the City and that a three-member impasse panel be designated. These recommendations were accepted by the Director. Thereafter, the UFA requested an indefinite extension of time to act on the second list of arbitrators until improper practice charges and motions which, it advised, the UFC would soon be filing could be determined. The City registered its objection to any such extension and, on March 15, 1985, the Director advised the parties that the UFA's request is under consideration by the Board.

At about that time, the PBA also requested that the Director furnish a list of arbitrators from which an impasse panel could be designated for the PBA and the City. The City strenuously objected to the appointment

of a separate panel for the PBA. By letter dated March 15, 1985, the Director informed the PBA and the City that this matter also is under Board consideration.

The Issues

The instant matter presents three issues for our consideration:

1. Whether or not the UFC's motion for reconsideration of the Board's determination of impasse in Decision No. B-6-85 should be granted?

2. If the motion is denied, should impasse proceedings be stayed pending the Board's determination of the improper practice charges filed by the UFC?

3. If the motion for reconsideration and a stay are denied, should the impasse proceedings involving members of the UFC be consolidated before a single panel?

POSITIONS OF THE PARTIES

A. Prior Proceedings: The City's Request for Impasse and the Objections thereto.

City's Position

The City contended that the collective bargaining agreement in question had expired over six months ago, and that no real progress had been made in narrowing the differences between the parties. The City asserted that the demands made by the UFC were unreasonable, unrealistic, and represented an unconscionable increase. It was alleged that what movement had been made in negotiations was neither substantial nor significant. The City submitted that the mediation process had not brought the parties any closer together. The City concluded that, inasmuch as the employees represented by the UFC had been working without a contract for over six months,

> "In the interests of the workforce, employee morale, responsible City planning, delivery of services, and the needs and interests of the public, it is time to conclude the bargaining process and resolve the parties' differences through the impasse procedure."

The UFC's Position

The UFC filed objections to the Director's recommendation of impasse. The UFC submitted a review of the bargaining history between the City and the UFC, noting

the modifications and withdrawals of demands made by the UFC in the course of meetings with the City. The course of sessions held with the parties' mediator, Maurice Benewitz, was also summarized, including specifically discussions concerning a UFC wage proposal which involved an increase in the number of annual incremental steps. The UFC contended that this proposal was "critical" to the bargaining between the parties on central economic issues. It claimed that real progress was being made on this issue, with the assistance of the mediator, when the Director's recommendation of impasse was issued. The UFC characterized the effect of the recommendation of impasse as an "abortion of the bargaining process".

The UFC argued that any delay in concluding negotiations was attributable principally to the unreasonable intransigence of the City; the UFC asserted that such conduct by the City created an improper practice under the NYCCBL, not an impasse. The UFC stated that the City should not be "rewarded" for refusing to bargain by the declaration of an impasse.

The UFC further observed that, despite promising, on November 5, 1984, to submit a summary of those issues on which the parties were in disagreement, the City had failed entirely to furnish any such summary or list. The UFC questioned how it could be determined what issues

and demands were included in the proposed impasse, where, allegedly contrary to the Board's Rules, the party seeking impasse had failed and refused to specify the demands upon which impasse had been reached. For all of these reasons, the UFC requested that the Director's recommendation of impasse be rejected by the Board.

B. The UFC's Motion for Reconsideration

UFC's Position

The UFC, on behalf of its constituent member organizations, with the sole exception of the PBA, asks the Board to reconsider its determination that an impasse exists between the City and the UFC (Decision No. B-6-85), based upon two grounds which it contends represents new facts: (1) the fact that the UFA rejected a tentative collective bargaining settlement and rejoined the UFC, and (2) the fact that the PBA announced it was prepared and willing to proceed to impasse hearings with the City, apart from its fellow members of the UFC. It submits that these facts justify reconsideration of the Board's decision.

Additionally, the UFC alleges that the Board may have been confused by the appearance of parties other than the members of the UFC at the oral argument which was held on February 19, 1985. The UFC asserts that the Board's determination dealt with matters and considerations pertaining to bargaining with the UFA and the Non-Uniformed Coalition, and did not refer in any specific fashion to the bargaining history between the City and the UFC. The UFC suggests that, in its view, the Board's decision made no determination as to the UFC's objections to the recommendation of impasse. The UFC reiterates its summary of that coalition's bargaining history, and renews its conclusion that bargaining is not at an impasse.

The UFC notes that it has filed an improper practice charge against the City, asserting a refusal to bargain. The UFC contends, alternatively, that even if reconsideration is not granted, further impasse proceedings should be stayed pending resolution of the improper practice charge. The UFC argues that where the consequence of a refusal to bargain is the very impasse sought to be stayed, it cannot be said that the stay delays "collective negotiations"; rather, the stay delays an impasse proceeding which, itself, under these circumstances, would be an impairment of "collective negotiations".

Finally, the UFC states that its members do not intend to avail themselves of the right to request lists for the selection of impasse panels. The UFC contends that it would be,

> ". . . unseemly and disorderly for all the many units found to be at impasse to go forward simultaneously with impasse panels. Such a process would create the prospect of conflicting panel determinations of common issues of fact (e.g., ability to pay)."

City's Position

The City contends that the UFC has failed to offer any new evidence in support of its motion for reconsideration. It alleges that the UFC's motion is based upon the UFC's continued assertion that the City has failed to bargain, a matter allegedly considered by the Board in making its determination of February 26, 1985. The City submits that the papers filed by the UFC in support of its motion are merely a restatement of arguments raised in its objections to the recommendation of impasse. It is asserted by the City that mere restatement of argument is an insufficient ground for reconsideration of a decision.

The City observes that the UFA rejected the tentative collective bargaining agreement on February 15, and oral argument was held before the Board on February 19, 1985, so that the UFA's actions cannot be considered a new fact, as alleged by the UFC.

Concerning the UFC's alternative request for a stay of impasse proceedings pending determination of the UFC's improper practice charge, the City argues that impasse procedures are recognized as part of the collective bargaining process, and that under Section 205.5(d) of the Taylor Law and relevant PERB precedent, the pendency of an improper practice charge will not be permitted to block collective bargaining negotiations. Accordingly, the City contends that the UFC's alternative motion for a stay should be denied.

C. The City's Motion for Consolidation

City's Position

The City moves to consolidate before a single impasse panel all impasse proceedings between the City and the member unions of the UFC, as constituted on February 8, 1984.[3] The City observes that the UFC is a not-for-profit corporation the purpose of which, according to its Certificate of Incorporation, is to promote, protect and further the mutual interests of its member unions through collective bargaining. The City alleges that it was informed on February 8, 1984 that the UFC wished to begin negotiations with the City on behalf of its sixteen member unions. Prior economic

[3] The UFA was not a member of the UFC as of that date.

agreements had been negotiated by the UFC in 1980 and 1982. It is alleged that negotiations commenced and that the City negotiated with the UFC throughout 1984. The City claims that it dealt with the UFC as the sole voice of its member unions.

The City argues that, despite the PBA's desire to proceed to impasse alone, the City's impasse with the PBA should be consolidated with the impasses concerning the other UFC member unions in a single impasse proceeding. The City contends that consolidation is warranted because the UFC has negotiated with the City as a coalition for over ten months in this round of bargaining, as well as during two prior rounds in 1980 and 1982. It is alleged that there have been long-standing historical relationships regarding economic terms and conditions and other issues between and among the constituent member unions in prior collective bargaining agreements and even before the era of collective bargaining. The City also alleges that these employees all have common working conditions.

The City further argues that, in its view, the most important basis for consolidation is the avoidance of possibly inconsistent determinations by numerous impasse panels on the critical issues of "the interest and welfare of the public" and "the financial ability of the public employer to pay", matters which all impasse panels are

legally required to consider. The City notes that the UFC, in its papers, has similarly expressed concern over the possibility of inconsistent results from different panels.

The City submits that it would be an "administrative nightmare" to deal with all members of the UFC in separate impasse proceedings. There would be duplication of testimony and costs. According to the City, a single proceeding would be more economical and efficient.

The City contends that in civil actions under the New York Civil Practice Law and Rules ("CPLR"), consolidation of different actions or proceedings is granted where there is a plain identity of issues and where a substantial right of one of the parties will not be prejudiced thereby. It is alleged that the Board has adopted this standard in past cases. The City asserts that there is a strong identity of issues involving all members of the UFC, and that the same testimony would have to be presented on those issues by each union if there were separate proceedings. Moreover, the City claims that the UFC has not shown, nor could it show, that any substantial right of its members would be prejudiced by consolidation.

The City points out that the UFA, which rejoined the UFC on or about February 25, 1985, negotiated separately with the City from the Spring of 1984 until that date.

In fact the City and the UFA agreed to a tentative collective bargaining agreement, which was rejected by the UFA's board of delegates on February 15, 1985. The City submits that because of the separate negotiating history existing between the City and the UFA, the impasse between these two parties should not be consolidated with the UFC impasse, but should proceed separately.

UFC's Position

The UFC alleges that, in its dealings with the City, the City was fully informed that if the negotiations reached an impasse, each of the individual member unions of the UFC reserved the right to go forward in impasse proceedings separate and distinct from other bargaining units.

It is argued by the UFC that there has never been an involuntary consolidation in an impasse proceeding under the NYCCBL. Moreover, alleges the UFC, there has never been an involuntary consolidation in an impasse procedure under the Taylor Law, with which the NYCCBL and the continuing implementation thereof are required to be substantially equivalent. The UFC observes that the Public Employment Relations Board ("PERB") does not even have procedures for the consolidation of disputes involving different bargaining units for purposes of fact finding or arbitration. The UFC contends that, if

the Board were to order involuntary consolidation in the present case, its actions would not be substantially in compliance with the requirements of the Taylor law.

Further, the UFC argues that Section 1173-4.3a(4) of the NYCCBL grants to each certified employee organization the right to negotiate and, if necessary, proceed to impasse separately concerning all terms and conditions of employment affecting employees in the uniformed police, fire, sanitation, and correction services. The UFC claims that consolidation of impasse proceedings would be violative of the bargaining rights granted in Section 1173-4.3a(4).

The UFC notes that in oral argument before the Board on February 19, 1985, the City's counsel stated that,

> ". . . whether it be one panel or several panels, and the precise procedures are not important, we would just like to get this process going forward."

The UFC contends that the above statement is inconsistent with the City's motion to consolidate. It is submitted that the motion is part of the City's attempt over the last six weeks to obstruct the PBA's efforts to go forward in impasse proceedings alone.

The UFC asserts that the City has never listed the demands over which the parties are at impasse.

The UFC alleges that when all demands of the coalition members are combined, there are approximately 2,000 demands on the table which would have to be resolved through impasse procedures. Over 1,000 of these demands involve economic items. The number of the demands, as well as the dissimilarity of the member unions' positions, are alleged to militate against consolidation. Such a consolidated proceeding would be unreasonably cumbersome. For all of these reasons, the UFC submits that consolidation should be denied.

UFA's Position

The UFA, which is now a member of the UFC, states that it supports the UFC's position. Specifically the UFA opposes the City's motion to consolidate, and supports the UFC's motion for reconsideration. The UFA submits that if consolidation is ordered, the UFA should be included within that consolidation; to do otherwise would require the UFA to go forward separately in impasse proceedings, with the concomitant risk of differing results which would be inconsistent with historic patterns and relationships. However, the UFA believes that reconsideration should be granted, consolidation denied, and the PBA, alone, as the largest union in the UFC, should be permitted to proceed to arbitration with the City.

DISCUSSION

We first address the motion for reconsideration of the determination of impasse. We have carefully reviewed all of the written submissions and the oral argument of March 27, 1985 and the transcript of that proceeding. This review has failed to disclose any persuasive evidence or argument which would warrant our granting the UFC's motion.

There have been twice presented to us detailed accounts of the dealings between the parties. We fully considered these accounts in making our determination of February 26, 1985. We note, moreover, that there is a lack of consistency in the UFC presentation depending on whether the subject under discussion is the claim that impasse has been reached or the allegation that there has been a refusal to bargain by the City. In support of its claim that the City has refused to bargain and should not be heard to demand resort to impasse procedures, the UFC maintains that the City did little more than reject union demands and threaten resort to impasse on the rare occasions when the parties did meet. On the other hand, in claiming

that the Board's finding of impasse was inappropriate, the UFC repeatedly maintained that progress was being made in negotiations and, in fact, that the Board's action constituted "an abortion of negotiations."

The determination of what the parties' dealings were, and whether they constituted good faith bargaining and, if not, who is responsible for that circumstance will be considered in the pending improper practice case (Docket BCB-766-85). Hearings on the question of improper practice will be scheduled forthwith.

In making the determination of February 26, 1985 which is the subject of the instant motion for reconsideration, however, we were concerned solely with the question whether an impasse existed. The question we had to decide was whether, in all of the circumstances and in light of the facts known to us, the parties, if left to their own devices and in status quo, might reasonably be expected to effectuate prompt and effective movement toward settlement of the bargaining issues between them.

Our review of the facts and circumstances before us at that time showed that in the nine months since the contract anniversary dates not a single one of the Unions of municipal employees, let alone the UFC or any of its members, had succeeded in reaching agreement with the City. Although the UFA, at least, had been within sight of a settlement, the more recent representations of the UFA itself and the UFC make clear that the UFA was not close to an agreement that could be ratified by the UFA.

A fact relevant to our February 26th determination was that despite all the evidence presented by the Unions, including the UFC, as to the alleged dearth of meaningful response by the City to the efforts of the Unions to engage in negotiations, the UFC made no attempt to effect any change in that condition by initiating processes available under our law, including mediation, impasse or an improper practice petition.

After the City's initial request for impasse in November 1984, the Director recommended mediation. Serious efforts to reach agreement were made by able mediators jointly selected by the parties; but their efforts were unsuccessful. Thus, we concluded that further negotiation

would offer the prospect of agreement only if it was aided by an impasse panel; that such intervention with the added prospect of a third-party report and recommendations and a possible final and binding resolution, all of which are provided in our impasse procedures, offered the best promise of effective change in the situation. This action is in implementation of the public policy expressly set forth in NYCCBL Section 1173-2.0 which reads in pertinent part as follows:

> "Statement of Policy. It is hereby declared to be the policy of the city to favor and encourage ... the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations..."

In rejecting the UFC's request for reconsideration we also have considered that at the oral argument the UFOA, the DEA and counsel for the UFC suggested that the City's offer of an economic package of 19.1% over a three-year period, the value placed on the offer which was rejected by both the UFA and the UFC, could under certain conditions form the basis for an agreement and, therefore, the Board should reconsider its declaration of impasse and direct the parties to resume bargaining.

As we observed in our February 26th determination,

the parties are free to resume bargaining at any time with or without the assistance of an impasse panel which, under our law, also has the power to mediate. However, since we recommended mediation as an alternative to the City's request for impasse in November, and since we also approved the parties' requests for further delay in January in order to allow further bargaining, and since both the UFA and the UFC have rejected the City's last offer, we are not optimistic as to the likelihood of the parties reaching agreement through their own efforts in ordinary negotiation without third-party assistance.

In this connection we note that, after nine months of inconclusive negotiations, the UFC asserts that fully 2,000 bargaining issues still remain open in negotiations with 17 unions. Nevertheless, in all those months none of the parties to the motion for reconsideration had taken steps to stimulate bargaining prior to the City's filing for impasse and the PBA's request for an impasse panel list. Thus, we conclude that there is no foreseeable prospect that any change in circumstances is to be expected from the bilateral efforts of the parties. We are therefore reluctant to sanction further delay in the establishment of an impasse panel except on the basis of a

joint request.

It was for all of the reasons stated that we concluded, in February 1985, that an impasse had been reached in the bargaining between the parties and that conditions were appropriate for the appointment of an impasse panel. On the instant motion we have not been shown any persuasive evidence, fact or circumstance which, if known to us in February, would have warranted a conclusion different from that set forth in our Decision No. B-6-85 of February 26, 1985. Therefore we will deny the instant motion for reconsideration of that decision.

We do not believe that it would be an appropriate discharge of our responsibilities to withhold decision and order the parties to engage in further negotiations. Rather, we believe that it is appropriate for an Impasse Panel to so direct the parties, if it chooses, under its statutory power "to mediate, hold hearings ....”

In reaching this conclusion we have also considered several recent developments. On April 17th, District Council 37 and the City reached an agreement which is subject to union ratification, a process which

is now under way. Moreover, the Board, even while the current motions have been pending, has constantly urged further efforts by the parties to resolve their differences. In this connection, we have been informed by the parties and the Director that several bargaining sessions were held by representatives for the UFC and the City during the weeks of April 15th and April 22nd. During such sessions, the latest of which was held on April 26th, areas of differences were further narrowed and positions clarified; but no agreement was reached. Most importantly, both parties, as of April 26th, have remained firmly fixed in their positions, particularly on the size of an overall economic package. Thus, these latest developments have confirmed our conclusion that bargaining has been exhausted and that an impasse exists within the meaning of the NYCCBL.

Having found an impasse to exist, we believe that it is now incumbent on us to decide whether there should be separate or consolidated proceedings. After careful consideration, we conclude that we would fail in our

responsibilities to the parties if we simply ordered the City and the PBA to proceed separately and took no action with respect to the other parties, especially because none of the parties have agreed to be bound by the results of such a separate proceeding.

The UFC has argued alternatively that, even if its motion for reconsideration is denied, this Board should, in any event, stay the commencement of impasse proceedings pending the determination of improper practice charges filed by the UFC against the City. We note that substantially the same contention was advanced by the Union in this Board's recent decision in Uniformed Sanitationmen's Association v. City of New York, Decision No. B-9-85. That case and the present one are factually parallel. In B-9-85, we considered in some detail the relationship between an improper practice - refusal to bargain charge, impasse proceedings, and the collective bargaining process. We will not repeat all of that discussion herein, but we reiterate our holding that the pendency of an improper practice proceeding does not necessarily preclude the appointment of an impasse panel, nor bar the continuation of proceedings before a duly appointed panel. We note

particularly that this holding was based, in part, upon our prior determination in an earlier case involving the PBA (Decision No. B-24-75), in which we similarly denied the PBA's motion to stay impasse proceedings during the pendency of improper practice charges against the City. Our ruling in that case subsequently was affirmed by the State Supreme Court. Patrolmen's Benevolent Association v. Board of Collective Bargaining, N.Y.L.J. 1/2/76, p. 6, 9 PERB ¶7501 (Sup. Ct., N.Y. Co., 1976). The distinction raised by the dissent herein, that the impasse had been ordered pursuant to a joint request of the parties, was not a factor in the decision of PERB or the court, neither of which made any mention of the fact that the PBA had joined in the request for impasse.

Were we to delay the commencement of impasse proceedings pending the outcome of the improper practice proceeding, the result could be a substantial hiatus in the contractual process. This would certainly not be in the public interest. Moreover, we note that if at the end of the improper practice proceeding the charge was dismissed, there would have been substantial

prejudice to the rights of the City since the Board, having found an impasse, did not proceed to appoint a panel as contemplated by the statute. On the other hand, if the charge were sustained, we do not believe it follows that no adequate remedy could be fashioned. Such a remedy would, of course, have to take account of the circumstances existing at the time of such decision; but we do not assume that such a Board order would be moot in the face of ongoing impasse proceedings. For all these reasons, we deny the UFC's motion for a stay pending the improper practice proceeding.

We have also decided to consolidate the Uniformed Forces impasse proceedings, despite the UFC's objections, and also to include the UFA in such consolidation, over the City's objection, for the following reasons.

First, the UFC has been engaged in bargaining with the City for more than eleven months with the PBA at all times acting as the leading spokesman for the coalition. The City and the UFC jointly selected a mediator who made strenuous efforts to reach an agreement. Thus to permit the PBA to proceed separately to impasse without any of the other UFC members would be to ignore the bargaining

history. It would also take no account of the fact that identical statutory criteria apply to all impasse proceedings and that in the instant case there is a significant and extensive commonality of issues. Furthermore, the creation of multiple impasse panels could result in extended impasse proceedings and intentionally differing results for employee organizations which have bargained together.

In deciding to consolidate the impasse proceedings, we note that the parties did not urge the appointment of multiple panels. Thus, the UFA argues that since it has rejoined the UFC, it should not be directed to proceed separately. The City argues that it should not be directed to proceed separately with the PBA since the PBA is a constituent member of the UFC and bargained jointly. The UFC argues that proceedings before multiple panels would be unlikely, unseemly, and disorderly. The common thread throughout these positions, we observe, supports our decision directing consolidation.

We have concluded that the UFA should be included in the consolidated proceeding. While the City opposes such consolidation, the UFA which has rejoined the UFC has made clear that if there is to be such consolidation, it wished

to be included in such impasse proceeding. The City's arguments as to the undesirability of separate proceedings for the other UFC organizations applies with equal if not greater force as to the UFA. The fact that the UFOA is part of the UFC is an additional reason for including the UFA in such proceedings.

We reject the argument that our February 26th determination allowed each employee organization the right to proceed separately to impasse without the possibility of consolidation. That determination dealt with the Uniformed and Non-Uniformed Coalitions as well as other employee organizations. We recognized that bargaining had been carried on with various coalitions and employee organizations, but we made absolutely no finding or decision at that time as to whether some or all or none of the proceedings should be consolidated. That question was not before us. Indeed, our opinion specifically noted the Board's function among others to determine motions for consolidation.

With respect to the argument that NYCCBL Section 1,173-4.3a(4) confers the right to bargain separately on each of the uniformed forces, it is our conclusion

that the provision relates to conditions of work such as pensions, overtime and time and leave rules which are peculiar to the separate uniformed forces. A major purpose of Section 1173-4.3a is the creation of several levels of bargaining based upon specified subject matters and categories of affected employees. It provides, inter alia, that certain subjects such as time and time leave, which must be uniform for all employees subject to the career and salary plan, should be negotiated by a single city-wide representative to cover all such employees. The same is true for pension bargaining. The sole purpose of Section 1173-4.3a(4) is to exempt uniformed employees from these city-wide bargaining provisions.

Neither this nor any other subdivision of Section 1173-4.3 has the purpose, nor in any reasonable reading can be said to have the effect, of exempting any subject matter, any category of employee or any unions from the procedural consolidation provisions of Rule 13.12. And in this connection we stress that consolidation is a purely procedural device for use in simplifying the task of hearing, considering and adjudicating controversies presented to this Board. We are not dealing here

with the consolidation of organizations, but the consolidation of proceedings. Section 1173-4.3a(4) does not preclude a consolidated impasse proceeding to determine an overall economic package, nor does it preclude, if necessary, the right of the impasse panel to make individual determinations on working conditions such as overtime and time and leave rules which are peculiar to the uniformed forces.

If that argument were accepted as a bar to consolidation, then arguably even the voluntary coalitions of the uniformed forces in previous negotiations would have been improper. We do not read the law to that effect.

We recognize that neither the Taylor Law nor the NYCCBL expressly authorizes consolidation. However, Rule 13.12 states that:

> Two or more proceedings may be consolidated or severed by the Board on notice stating the reasons therefor, with an opportunity to the parties to make known their positions. For purposes of this section the term "proceedings" shall include but not be limited to representation, arbitrability, arbitration, mediation and impasse and improper practice proceedings.

This rule, which was unanimously approved by the Municipal Labor Committee and adopted pursuant to statutorily prescribed

procedures, and therefore has the force and effect of law, expressly authorizes consolidated impasse proceedings. We also take administrative notice that Rule 13.12 was adopted in 1972 in part in response to the parity spiral in the uniformed forces which followed the decision of the Court of Appeals in Patrolmen's Benevolent Association .v. City of New York.[4] The Board wanted to ensure, to the extent possible, that varying and disparate impasse panel determinations would not be made inadvertently and that any employee organizations likely to be affected by a salary award would have the opportunity to participate in such a proceeding. If each of the UFC organizations now have the right to proceed separately to impasse after bargaining together for a year, the possibility of inconsistent awards is greatly increased. Thus, we have concluded that there is good cause for its application in the instant matter.

In Decision No. B-18-71 we stated:

> Consolidation is proper where there is a plain identity between the issues involved in two or more controversies and a substantial right of one of the parties is not prejudiced by consolidation (See, Symphony Fabrics Corp. v. Bernson Silk Mills, 12 NY 2d 409, 240 NYS 2d 23; Vigo Steamship Corp. v. Marship Corp., 26 NY 2d 157, 309 NYS 2d 165.)[5]

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[4] 27 N.Y. 2d 410, 267 NE 2d 259 (N.Y. 1971).

[5] See also, Decisions B-8-74 and B-10-79.

in applying this standard, the New York Court of Appeals has held that the burden of showing that some substantial right is in jeopardy rests upon the party objecting to consolidation. The desire to have one's dispute heard separately does not, by itself, constitute a substantial right. [6] The Court has also held that objections to consolidation based upon the dilution of power to select the arbitrator and the added complexity and greater costs in terms of time and money are not sufficient to overcome the need for consistent awards in separate but interrelated disputes. [7]

Where as here the UFC and the City have engaged in joint bargaining in this and prior negotiations, and in other negotiations have entered into Coalition Economic Agreements, it is difficult to envision how consolidation now could prejudice the interests of any UFC constituent organization.

In making the decision to consolidate all of the UFC member unions in one impasse proceeding, we take notice of Section 212 of the Taylor Law, which requires that the provisions and procedures of the NYCCBL be "substantially equivalent" to the provisions and procedures of the Taylor Law, and find no basis upon which to conclude that con-

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[6] Symphony Fabrics Corp. v. Bernson Silk Mills, 12 NY 2d at 412, 240 NYS 2d at 26; Vigo Steamship Corp. v. Marship Corp., 26 NY 2d at 162, 309 NYS 2d at 168.

[7] County of Sullivan v. Nezelek, 42 NY 2d 123 397 NYS 2d 371 (N.Y. 1977).

solidation pursuant to Rule 13.12 violates, the letter or the spirit of the Taylor Law.

The UFC argued also that, since the Taylor law does not permit interest arbitration of longer than two years for Police and Fire departments, the OCB should find that any panel be directed to limit its findings to two years. No such limitation is found in the NYCCBL. Thus, we see no reason to limit the authority of an impasse panel to decide the appropriate length of a new contract.

We recommend that the impasse panel consider first the appropriate economic package and the length of the contract. Once those conditions are established, we further recommend that the panel afford the parties an interim period, of 30 days, or a similar period to attempt to agree on the application of that package to the respective organizations. Should the parties be unable to agree, the panel should retain jurisdiction to resolve at the request of either party such disputes including any disputes over non-economic issues. In the final analysis, however, it is for the panel to decide its own procedures in accordance with the Board's Rules.

<u>O R D E R</u>

Pursuant to the powers vested in the Board of Collective Bargaining, by the New York City Collective Bargaining Law, it is hereby

<u>ORDERED</u>, that the Uniformed Forces Coalition's motion for reconsideration of the declaration of impasse is, denied; and it is further

<u>ORDERED</u>, that the Uniformed Forces Coalition's motion for a stay of impasse proceedings pending adjudication of charges of improper practice is, denied; and it is further

<u>ORDERED</u>, that the City of New York's motion for consolidation of the Uniformed Forces Coalition impasse is, granted except that the Uniformed Firefighters Association shall also participate; and it is further

<u>DIRECTED</u>, that a three member impasse panel shall be established in accordance with the Rules. The parties by agreement may each add a representative to the panel; and it is further

<u>DIRECTED</u>, that the issues to be submitted to an impasse panel shall include all unresolved issues that have been exchanged by the parties to date, subject to the right of either party to submit scope of bargaining questions to

the Board of Collective Bargaining; and it is further

DIRECTED, that the proceedings of the impasse panel including the possibility of further mediation and the release and review, if any, of the report thereof, shall be governed by the New York City Collective Bargaining Law, Section 1173-7.0c, the Rules, and other applicable law; and it is further

DETERMINED, that the pending improper practice charges are not a bar to the appointment of an impasse panel under the provisions of the New York City Collective Bargaining Law, the Taylor Law, Section 205.5(d), and the relevant Public Employment Relations Board and court decisions.

DATED: New York, N.Y.
April 26, 1985

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

JOHN FEERICK
MEMBER

DEAN SILVERBERG
MEMBER

CAROLYN GENTILE -DISSENT
MEMBER

EDWARD GRAY - DISSENT
MEMBER

DISSENTING OPINION

Despite the majority's lengthy and well-drafted decision in this matter, we find that we must dissent from the conclusions reached by our distinguished colleagues because they are incorrect and they do not further either the intent or the purposes of the New York City Collective Bargaining Law.

For the purposes of the following discussion, we accept the majority's statement of the background of this matter as well as the summary of the positions of the parties. [8]

The Board states that it must determine three issues that are described as follows:

1. Whether or not the UFC's motion for reconsideration of the Board's determination of impasse in Decision No. B-6-85 should be granted?

2. If the motion is denied, should impasse proceedings be stayed pending the Board's determination of the improper practice charges filed by the UFC?

3. If the motion for reconsideration and a stay are denied, should the impasse proceedings involving members of the UFC be consolidated before a single panel?" [9]

A. Motion for Reconsideration

In denying the UFC's motion for reconsideration of the

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[8] See Majority Determination pgs. 1-11. (Hereinafter referred to as "Maj.").

[9] See Maj. pg. 9.

Board's determination of impasse, the majority places primary emphasis upon the fact that their review of the record does not disclose any new matter that would warrant the Board's granting the motion.

The U.F.C.'s motion [10] for reconsideration was made under §13.11 of the Revised Consolidated Rules of the office of Collective Bargaining which does not contain standards for determining when such a motion should be entertained. Even assuming that the appropriate criterion is that new matter must be alleged in order for such a motion to be granted, the UFC has raised at least two new material changes in circumstances. Most significant is that fact that subsequent to the Board's determination, the UFA, having previously rejected a tentative collective bargaining agreement, rejoined the UFC and the President of the UFA was directed by the Union's Executive Board not to participate in separate collective bargaining with the City. Secondly, although the P.B.A. did not agree that impasse was reached, it nevertheless was willing to participate in impasse proceedings with the City, separate and apart from the other members of the UFC. By rejoining the UFC, the UFA indicated its willingness to be an active participant in negotiations on behalf of all the uniformed forces with the City, rather than attempting to establish its own "deal". As a member of the UFC, it was more likely that the package pre-

[10] The P.B.A. did not join in said motion.

sented to the UFC in the latter part of January or early February could form the basis of a final settlement. An examination of the transcript of the Hearing that was held before the Board on March 27, 1985, reveals that the unions were ready, willing and able to sit down with the City in an attempt to work out an agreement, the core of which was the City's proposal that was initially made to the UFA and subsequently rejected.[11] Having the Firefighters as members of the Coalition would be a major factor not only in expediting an agreement, but in eliminating discord. Similarly, the willingness of the P.B.A., representing over 50% of the employees within the UFC, to participate in an impasse procedure is a change in circumstances. The Board should not be precipitous in declaring an impasse affecting all labor unions in the UFC if a major constituent is willing to move ahead while the other members of the Coalition are reluctant to do so.

Once the UFC has satisfied the threshold standard adopted by the majority for the granting of a motion for reconsideration, the Board may then reevaluate all of the facts and circumstances before it. Such review reveals that prior to the Board's February 26, 1985 Determination[12] mediators chosen at the Board's suggestion indicated that there had been various degrees of progress on a number of issues. Nevertheless, despite the union's perception

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[11] See Transcript of Hearing before the BCB, March 27, 1985 (Hereinafter "Transcript") pp. 101-107; 125 (lines 3-7); 136 (lines 7-25); 137 (line 1); 158 (lines 10-12).

[12] No. B-6-85.

that an agreement was near, the City sought and was granted impasse. The Board, however, stated in its decision:

> "Although we have determined that impasse exists, we acknowledged that there is a possibility of agreements being reached on certain items in the event of continuing negotiations; but we do not believe that overall agreements are achievable under existing circumstances. We also emphasize that under the provisions of the NYCCBL, impasse panels have the power to mediate and take whatever actions they consider necessary to assist in resolving impasses." [13]

If anything, the parties' proximity to agreement that existed on February 25, 1985 is more real today as a result of events that have occurred subsequently than it was when the Board issued its original decision.

The majority's opinion also emphasizes an alleged UFC inconsistency "depending on whether the subject matter under discussion is the claim that impasse has been reached or the allegation that there has been a refusal to bargain by the City." [14] Usually, decision making bodies acknowledge a party's right to argue in the alternative. However, taking the most favorable view of the majority's statement, such inconsistency is more apparent than real. The record amply supports the UFC's position that until November of 1984 there was little movement which the unions allege

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[13] Id. at pp. 7-8.

[14] Maj. pg. 21.

was the result of the City's failure to bargain. However, since January of 1985, there was substantial progress, and the testimony given by participants in the process was not refuted on the record.[15] Much of the discussion, by the Board and the City, stresses the fact that little was accomplished during the initial nine months of exchanges between the parties. Such emphasis upon a lack of a collective bargaining agreement as of the beginning of February of 1985 overlooks the existing history of prior rounds of collective bargaining in this City. The lapse of many months between the expiration of a collective bargaining agreement and the execution of a successor agreement is far from unusual. Nor can any inferences be drawn from the union's unwillingness to precipitate the formal legal procedures that the Board grapples with today by seeking mediation impasse or an improper practice before this Board prior to the City's acting in November of 1984.

The majority states that:

> "several of the employee organizations at the oral argument... suggested that the City's offer of an economic package of 19.1% over a 3 year period-could under certain conditions form the basis for an agreement..."[16]

However, the majority's solution is not to grant the motion for reconsideration to enable the parties to resume negotiations,

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[15] See Footnote 4, <u>supra</u>.

[16] Maj. pg. 24

but to state "the parties are free to resume bargaining at any time with or without the assistance of an impasse panel." Apparently, the majority chooses to ignore the reality that so long as it is willing to continue on this route of impasse, the City has no incentive to do other than continue to avoid a negotiated settlement.

The strength of the Board and the success of the City in dealing with its municipal labor unions has been due to the emphasis that has always been placed on collective bargaining. In fact, the New York City Collective Bargaining Law states, in Section 1173-2.0:

> "Statement of Policy - It is hereby declared to be the policy of the City to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations and final impartial arbitration of grievances between municipal agencies and certified employee organizations."

Traditionally, impasse panels have been used as an aid or adjunct to the collective bargaining process - not a substitute therefor.

Finally, the representatives of the City express concern

10/ Ibid.

about the welfare of workers and the people of this City. They also complain about the delays inherent in legal proceedings. It is, indeed, strange that the very representatives that have from the outset sought immediate resort to impasse should now lament about the inherent delays of those procedures. The lesson to be learned is clear. The best interest of the workers and the people of this City are served when the parties engage in meaningful collective bargaining which results in a negotiated settlement.

Since the Board's principal responsibility in enforcing the New York City Collective Bargaining Law is to create and foster an atmosphere in which negotiations are the preferred choice for resolving questions between the parties, the Board should take the opportunity presented by the UFC's motion for reconsideration to require that the parties engage in around-the-clock bargaining to obtain a settlement which appears to be well within their reach.

B. Motion for Stay of the Proceedings Until a Determination is Rade on the Pending Improper Practice Charge

In denying the motion for a stay, the majority finds support in Patrolmen's Benevolent Association v. the Board of Collective Bargaining.[17] Such heavy reliance is misplaced because that case is factually distinguishable from the matter that is before the Board. The facts in the P.B.A. case were that the P.B.A.

[17] N.Y.L.J., 1/2/76, p. 6, 9 PERB, Para. 7501 (Sup. Ct. N.Y. County 1976).

and the City of New York _jointly_ requested the appointment of an impasse panel, and a panel was chosen. Said panel held two media-ion sessions and had scheduled a third, but the City declined to attend the last session because it sought a determination from the BCB concerning those subjects that were properly matters within the scope of collective bargaining. In response to the action of the City, the PBA filed an improper practice charge before PERB. When the PBA sought a stay of the impasse proceed-ngs pending the determination by PERB of its improper practice charge, the BCB refused and that action was sustained by the N.Y. Supreme Court.

Clearly, the filing of an improper practice based upon the City's availing itself of the BCB's procedures should not form the basis for a stay of the very impasse proceedings which con-template allowing the parties to seek a determination from the BCB concerning scope of bargaining questions.

The facts of the instant matter are not comparable. More relevant to the ultimate issue before the Board are two cases decided by PERB subsequent to the Supreme Court decision in _PBA v. BCB_. In the first case, _Town of Haverstraw_, [18] PERB found that the PBA had failed to negotiate in good faith. Consequently, the Director of Conciliation was instructed by the Board not to

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[18] 9 PERB, Para. 3063 (9/8/76).

assign an arbitrator at that time, despite the request by the PBA that an interest arbitration be scheduled. PERB held,

> "Interest arbitration is not, and was not, intended as an alternative to, or substitute for, good faith negotiations. Rather, it is a procedure of last resort in police and fire department impasse situations when efforts of the parties themselves to reach agreement through true negotiations and conciliation procedures have actually been exhausted. This did not occur in the instant case. PBA must be required to negotiate in good faith now. The Director of Conciliation should render additional mediation service in order to assist the parties to effect a voluntary resolution of the dispute. In thirty days, he should report to us whether, in his opinion, efforts to achieve a voluntary settlement clearly have been, or will be, unsuccessful. At that time, we will consider if the dispute is appropriate for arbitration."

The decision in Town v. Haverstraw was cited with approval in a later case entitled Binghamton Firefighters Local 729, [19] In Binghamton, as in the present matter before this Board, the party alleged to have had committed an improper practice by failing to negotiate in good faith, had filed a petition with PERB to seek interest arbitration. Since PERB found that the charged party had not negotiated in good faith, it ordered the said party to negotiate with the City of Binghamton. In so doing, it stated: (s)o long as there is 'give' in the position of a party, it is

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[19] 9 PERB, Para. 3072 (10/8/76).

obligated to continue to seek an agreement through negotiations and to refrain from seeking an imposed settlement through interest arbitration. The charged party "did not do so and must be required to negotiate in good faith now. The arbitration should not proceed."

Each of the above cited PERB decisions makes clear that if a party is alleged to have committed an improper practice by failure to bargain in good faith, the improper practice question must be determined before impasse procedures can continue. Should the Board, after a hearing on the pending improper practice, find that the City had been guilty of failing to bargain in good faith, the Board's remedy would be to order the City to bargain. At that point, however, the Board's order would be moot because of the ongoing impasse procedures.

Not only logic, but fairness and due process mandate that the Board stay the impasse proceedings until a determination is made concerning the City's compliance with its statutory duty to bargain in good faith. Only by so doing can the Board preserve its jurisdiction, and avoid seeming to reward the party that is alleged to have committed an improper practice.

C. Motion for Consolidation

The majority's granting of the City's Motion for Consolidation is similarly erroneous because it fails to give appropriate weight to the legal arguments made by the UFC, and the PBA, and

the history of collective bargaining in this City. It is undisputed that the majority's action represents the first time in the history of the State of New York that any agency has mandated a consolidation of impasse proceedings without the consent of the parties. This action contravenes Section 1173-4.3 a(4) of the New York City Collective Bargaining Law which provides:

> "all matters, including but not limited to pensions, overtime and time and leave rules which affect employees in the Uniformed Police, Fire, Sanitation and Correction Services, shall be negotiated with the certified employee organizations representing the employees involved..." (Emphasis added)

The majority attempts to respond to this issue by stating:

> "It is our conclusion that the provision relates to conditions of work such as pensions, overtime and time and leave rules which are peculiar to the separate uniformed forces; but that the provision does not preclude a consolidated impasse proceeding..." [20]

Such answer misses its mark because it overlooks the clear statutory reference to "all matters". Although the parties may voluntarily agree to bargain by coalition or seek consolidated impasse panels, the statute protects the rights of a union that does not wish to do so. In fact, the UFC and the City have voluntarily engaged in joint bargaining in prior negotiations, but the pre-

[20] Maj. pg. 33.

vious actions of the parties are not determinative in the instant matter because the various constituent organizations of the UFC, from the outset of the 1984 round of bargaining, clearly stated their position that should impasse be reached, each unit would assert its right to proceed independently.[21]

It is unnecessary, therefore, to reach the issue of the propriety of consolidation of proceedings if the parties had mutually consented thereto.

The parties have not agreed, and because the Board has previously held that impasse procedures are included within the term "negotiations",[22] it must follow that impasse proceedings cannot be consolidated if the result of such forced consolidation is deprive a party of a statutory protection. Nor, is the majority's determination aided by reference to the Board's rules, specifically Section 13.12. Although the Board's Revised Consolidated Rules have been adopted pursuant to the statutory mechanism, it is foreign to accepted legal principles to find that a rule, promulgated pursuant to a statute, can override an apparently conflicting statutory provision.[23]

No doubt, the Board was cognizant of the parties' right to

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[21] Transcript pg. 175 (lines 21-24)

[22] B-6-85, pg. 8

[23] See e.g. <u>Human Rights v. Genesee Hospital</u>, 50 NY 2d 113, 118 (1980)

voluntarily proceed by coalition or as individual units when in its February 26th Determination it stated:

> "2. That the OCB, at the joint request of the City and the various employee organizations or at the request of the City or an employee organization will furnish the respective parties with a list for the selection of a panel in accordance with OCB's rules." [24] (Emphasis Added)

The Board cannot now redraft that Determination to eliminate its mandate that consolidations occur only upon the joint request of the City and the various employee organizations.

Moreover, it is difficult in this case to comply with the general rule that a consolidation of proceedings is appropriate when there is an identity of issues and the substantial rights of one of the parties will not be prejudiced. If the majority's order were implemented, each of the certified employee organizations would, in fact, be deprived of its entitlement to proceed alone, if it wishes.

Furthermore, an examination of the evidence presented reveals that a substantial question remains as to whether the second prong of the test, i.e., an identity of issues could can be met. While no one could seriously contend that parties are prohibited from agreeing as a matter of convenience, to treat apparently disparate

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[24] B-6-85, pg. 4.

issues in a uniform fashion, here, the parties choose to emphasize their differences. For example, Detectives have a 100 hour cap on their overtime, Sanitation Officers do not get the same overtime rate for work on their days off as do the Sanitationmen. Staffing practices also vary. Thus, when there is no agreement to proceed with consolidation, each union should be permitted to present its best case. Resort need only be made to the specific statutory provision within Section 1173-7.0(c) for support of the proposition that absent consent of the parties, an impasse panel must consider those factors relevant to the particular proceeding. [25]

Since the majority has failed to establish that it has the power to force constituent members of the Uniformed Forces Coalition, without their consent, to proceed with a consolidated impasse panel, the Board should not order consolidation of impasse procedures.

Finally, and most significantly, the majority's decision will not have the desired effect of bringing labor peace to the City.

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[25] It should also be noted, that the impasse procedure under the NYCCBL is a fact-finding process. Generally, the result reached by an impasse panel is a determination that is "acceptable" to the parties. If any one of the unions that participates in a forced consolidation objects to the fact finder's recommendation, recourse would then have to be made to the Board, which has the power to review impasse panel recommendations. Consequently, finality will come only when the Board acts. Just as the Board may ultimately be faced with issuing a decision in order to respond to objections made by one of the parties to a consolidated proceeding, so too the Board, under its review power, can eliminate potential inconsistent results if there are many impasse panels chosen - NYCCBL 1173-7.0(c)(4).

Rather, it is likely to cause not only a continuation of the existing dispute, but also additional conflict and strife. Only by resorting to the time tested method of collective bargaining can the desired result of bringing about an agreement between the City and the representatives of its employees be achieved. The interests of the people of this City, many of whom are represented by the organizations who seek redress from this Board, can best be served not by impasse procedures, but by the Board's ordering the parties to engage in around-the-clock negotiations, with reports of progress made to the Board at 5 day intervals. If after, 30 days, the Board determines that sufficient progress has not been made, then, and only then, should alternative procedures be considered.