SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. DORIS LING-COHAN PART 62
Justice

INDEX NO. 404987/01

Mayor of City of New York
Plaintiff/s,

-v-

MOTION DATE

MOTION SEQ. NO. 002

Council of City of New York
Defendant/s

MOTION CAL. NO.

The following papers, numbered 1- 6 were considered on this motion to/for summary judgment

PAPERS	NUMBERED
Notice of Motion & Proposed Order — Affidavits — Exhibits	1, 2
Answering Affidavits — Exhibits	3, 4
Replying Affidavits	5
Other	6

2 **Cross-Motion:** [✓] Yes [ ] No

Upon the foregoing papers, it is ordered that this/these 2 cases motion/s is/are resolved in accordance with the accompanying memorandum decision.

HON. DORIS LING-COHAN

Dated: 1/3/05

DORIS LING-COHAN, J.S.C.

Check one: [✓] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION
Check if Appropriate: [ ] DO NOT POST

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

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THE MAYOR OF THE CITY OF NEW YORK,

Plaintiff,

-against-

Index No.
404987/01
002

COUNCIL OF THE CITY OF NEW YORK,

Defendant,

-and-

LILLIAN ROBERTS, as Executive Director of District Council 37, AFSCME, AFL-CIO, PATRICK BAHNKEN, as President of Local 2507, District Council 37, AFSCME, AFL-CIO, DONALD ROTHSCHILD, as President of Local 3621, District Council 37, AFSCME, AFL-CIO; DAVID ROSENZWEIG, as President of the Fire Alarm Dispatchers Benevolent Association, Inc.; and JOEL A. FRIEDMAN, as President of the EMS Superior Officers Association,

Intervenors-Defendants.

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DORIS LING-COHAN, J. S. C.:

Plaintiff Mayor of the City of New York (the Mayor) moves for summary judgment, pursuant to CPLR 3212, seeking a declaration that Local Laws 18 and 19 of 2001 (the local laws) are unlawful, and for related relief. Defendant Council of the City of New York (the Council), which enacted the local laws in its capacity as the legislative body of the City of

New York, and the intervenor-defendants, who are the principal officers of the municipal unions who supported the passage of the local laws, cross-move for summary judgment declaring the local laws valid and enforceable.

BACKGROUND

The local laws alter the method by which two groups of employees of the New York City Fire Department collectively bargain with the City of New York. These two groups are employed in the emergency medical technician (EMTs), and fire alarm dispatcher (FADs) lines. The Mayor argues that these local laws allegedly violate New York Civil Service Law §§ 200 et seq. (the Taylor Law); Municipal Home Rule Law § 23 (2) (f); and NYC Charter § 38 (5).

On February 27, 2001, the Council passed the local laws, with no votes cast against passage. The then-incumbent mayor, Rudolph Giuliani, vetoed the local laws shortly thereafter, and the City Council in turn overrode the veto, again with a totality of the votes cast, and none opposed.

Prior to the enactment of the local laws, Fire Department EMTs and FADs were treated as non-uniformed personnel for purposes of collective bargaining. The net functional result of the local laws was to treat both groups as being "uniformed service" members for purposes of collective bargaining. Designation as "uniformed service personnel" changes the negotiation procedure, given that (1) it eliminates one level of the two-tier negotiation

process, as explained further below, and (2) the union representing the affected employees is the only entity that negotiates with the City on behalf of these employees.

The City of New York negotiates its collective bargaining agreement with non-uniformed employees in two levels: the "unit" level, and the "Citywide" level. New York City Collective Bargaining Law (NYCCBL) § 12-307 (a). At the unit level, the employees' certified unit representative negotiates the most significant terms and conditions of employment, including wages and hours. However, certain issues such as overtime, and time-and-leave matters, may not be raised at the unit level of negotiations unless there are "considerations special and unique" to the unit. A unit level agreement is binding only on the employees within the individual bargaining unit.

At the next level, certain matters, which are denominated "Citywide," and which, from the Mayor's perspective, require uniformity in treatment among many classes of municipal employees, such as overtime, and time-and-leave rules, are negotiated between the City of New York and the union representing more than 50% of the City's employees. In this "Citywide" phase, the negotiating union is not necessarily the actual union which represents the employees for whom it is collectively bargaining. The agreement reached at this second-tier level is binding upon all of the employees and their unions, and is commonly referred to as "the Citywide Agreement."

If a group of employees seeks a provision or accommodation different than that reached in the Citywide agreement, and it is not represented by the designated union which

is doing the negotiating, the group must attempt to persuade the designated negotiating union to seek the variation on the employees' behalf.

New York City Collective Bargaining Law §12-307 (a) (2) provides that:

> matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated ... as being the certified representative or representatives of bargaining units which include more than fifty percent of all such employees, but nothing contained herein shall be construed to deny to a public employer or certified employee organization the right to bargain for a variation or a particular application of any city-wide policy or any term of any agreement executed pursuant to this paragraph where considerations special and unique to a particular department, class of employees or collective bargaining unit are involved.

However, employees in the "uniformed service" of specified departments are not subject to this statute, but to section 12-307 (a) (4) of the New York City Charter. Employees covered thereunder need only to participate in a single level of negotiations, during which all negotiated employment issues are resolved. There is no uniformed services Citywide agreement; that is, there is no second-tier of negotiations for uniformed services.

The local laws result in the treatment of EMTs and FADs as being covered by the single-tier negotiating process of NYCCBL § 12-307 (a) (4), with collective bargaining representation by their own unions, and not as part of the bulk Citywide negotiating process. After holding hearings, the Council's stated rationale for enacting the local laws was that employees working in these job titles performed functions much more akin to those performed by uniformed members of the Fire Department, than to non-uniformed

service personnel.

This one-step bargaining process is set forth in NYCCBL § 12-307 (a) (4):

> 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...

Local Law 18 of 2001 added the following sentence to the quoted statute:

> For purposes of this paragraph only, employees of the uniformed fire service shall also include persons employed by the fire department of the city of New York as fire alarm dispatchers and supervisors of fire alarm dispatchers.

Local Law 19 of 2001 added the following sentence:

> For purposes of this paragraph only, employees of the uniformed fire service shall also include persons employed by the fire department of the city of New York as emergency medical technicians and advanced emergency medical technicians, as those terms are defined in section three thousand one of the public health law, and supervisors of emergency medical technicians or advanced emergency medical technicians.

Prior to passage of the local laws, testimony was taken at Council hearings that EMTs have been stabbed, pinned down in gunfire and assaulted, with the job being so dangerous that a predecessor Mayor directed that bulletproof vests be made available to every member of the EMTs. (Committee Hearing Transcript, p.86, Exhibit D, attached to City Council's Memorandum of Law in Opposition). In addition, testimony was taken regarding EMTs contracting serious illness as a result of "exposure in terms of level of danger, comparable to life-threatening circumstances..." and that the first peer suicide program in New York City

was set up for EMTs (Committee Hearing Transcript, p.86-7, Exhibit D, attached to City Council's Memorandum of Law in Opposition). With regard to FADs, testimony was taken that the job entails enormous responsibility, with tremendous physical and emotional stress; FADs are required to work extraordinary amounts of overtime, as well as ordered involuntary overtime, which contributes to higher than normal instances of occupational diseases such as hypertension, cardiac, diabetic and other stress-related problems. (Committee Hearing Transcript, p.131, Exhibit D, attached to City Council's Memorandum of Law in Opposition).

After the legislative hearings in which a number of witnesses testified, the Council found that the nature of the FADs' and EMTs' work was similar to the uniformed services (police, fire, sanitation and correction) rather than citywide collective bargaining non-uniformed civilian counterparts. (Legislative Committee Report, Exhibit B, attached to City Council's Memorandum of Law in Opposition). The legislative record noted that FADs and EMTs operate on tour of duty schedules similar to those of uniformed firefighters. (Legislative Committee Report, Exhibit B, attached to City Council's Memorandum of Law in Opposition). Also, the Council specifically found that FADs coordinate FDNY responses to emergency incidents and, under certain circumstances, dispatchers respond to major emergency incidents. " and EMTs "respond to medical emergencies and other emergency incidents citywide, providing prehospital medical treatment and transportation to medical facilities." (Legislative Committee Report, Exhibit B, attached to City Council's Memorandum of Law in Opposition).

DISCUSSION

The primary thrust of the Mayor's argument is that the local laws run afoul of the Taylor Law because it invades his exclusive province to negotiate and execute collective bargaining agreements as the local laws confer a benefit on the affected unions. He also argues that these laws violate the Municipal Home Rule Law § 23 (2)(f) and the New York City Charter (Charter) § 38(5) by curtailing his powers to negotiate the terms and conditions of the FADs' and EMTs' contract, thereby requiring a referendum.

Violation of the Taylor Law

The Taylor Law was promulgated "to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government." Civil Service Law § 200; ***see Shanker v. Helsby***, 515 F Supp 871, 874 (SDNY 1981). The law attempts to effectuate this policy by, *inter alia*, (a) giving public employees the right to form unions; (b) requiring both state and local governments "to negotiate with, and enter into written agreements with employee organizations representing public employees..."; © "encouraging such public employers and such employee organizations to agree upon procedures for resolving disputes." Civil Services Law §200; ***Shanker***, 515 F Supp at 874. The Taylor Law applies to "public employees," who are defined to include "any person holding a position by appointment or employment in the service of a public employer ..." Civil

Service Law § 201(7)(a).

The State Legislature recognized the benefit of decentralizing the administration of labor relations involving the public sector. ***Levitt v. Board of Collective Bargaining of the City of New York***, 79 NY2d 120, 126 (1992). As stated by the Court of Appeals, the Taylor Law "permits local government bodies--including New York City--to enact substantive and procedural provisions governing labor relations, so long as they are "substantially equivalent" to the Taylor Law (Civil Service Law § 212 [1], [2])." ***Id.*** at 126 . Unlike most jurisdictions, in which the local laws must be approved before going into effect, New York City's procedures are deemed effective unless a court of competent jurisdiction finds that they are not substantially equivalent to the procedures established in the Civil Service Law. Civil Service Law §212(2); ***see Shanker***, 515 F Supp at 876; ***City of New York v. District Council 37***, 181 Misc 2d 131 (Sup Court, New York County 1999).

Plaintiff Mayor and defendant Council have differing views on the scope of the Council's powers with respect to the collective bargaining process. Plaintiff urges that the Taylor Law relegates to defendant the mere ministerial role of "codifying" the results of the negotiations between plaintiff and public employee unions, where such codification is required. However, it is clear from the language that the Taylor Law "permits local government bodies... to enact substantive and procedural provisions governing labor relation, so long as they are 'substantially equivalent' to the Taylor Law (Civil Service Law § 212[1][2])." ***Matter of Levitt v. Board of Collective Bargaining of City of New York***, 79

NY2d 120, 126 (1992); ***Patrolman Benevolent Assoc.v. City of New York***, 97 NY2d 378, 382-3 (2001) ["The Taylor Law includes a 'local' option that permits local government to enact their own procedures...Such local collective bargaining laws are required to be substantially equivalent to the provisions and procedures applicable to the State as set forth in the Taylor Law." Nor has plaintiff cited to any provision of the Taylor Law which requires a two-tiered negotiation procedure for employees, which these local laws would then conflict.

Specifically, plaintiff Mayor argues that the Taylor Law, Civil Service Law § 201(12), vests in him the "exclusive power and authority to bargain and negotiate for agreements with employee organizations". (Plaintiff's Memorandum of Law, p.3). However, the section cited for this proposition is contained in the general "Definitions" section of the Taylor Law, Civil Service Law § 201(12) . Nowhere in Civil Service Law § 201(12) are the words "exclusive power and authority" used at all; rather, the cited section merely defines the term "agreement":

> The term 'agreement' means the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee organization which becomes a binding contract, for the period set forth therein, except as to any provisions therein which require approval by a legislative body, and as to those provisions, shall become binding when the appropriate legislative body gives its approval.

In fact, this section cited by plaintiff appears to contemplate a role by the legislative body in appropriate circumstances in that the section refers to "approval by a legislative body".

Furthermore, defendant Council, as the City's "legislative body", is also specifically

accorded the power to establish procedures, not inconsistent with the Taylor Law: "Every government..., acting through its legislative body, is hereby empowered to establish procedures not inconsistent [with Civil Service Law § 207] ... to resolve disputes concerning the representation status of employee organizations of employees ... ". Civil Service Law § 206 (1). Plaintiff has not cited any provision of Civil Service Law § 207 with which these enactments conflict. Given the template for the division of powers provided for by the Taylor Law, which allocated to the legislative branch the methodology/procedure for the conduct of negotiations, and to the executive branch, the execution and implementation thereof, exercise of that authority by the City Council is not inconsistent with the Taylor Law.

Moreover, as stated in the legislative purposes section, the Taylor Law's " policies are best effectuated by ....(b) requiring the state, local governments and other political subdivisions to negotiate with, and enter into written agreements with employee organizations representing public employers which have been certified or recognized..." (emphasis supplied) . Civil Service Law § 200. Notably, the State Legislature did not use the term "chief executive". Plaintiff Mayor has authority to negotiate and execute collective bargaining agreements with unions representing municipal employees. The legislative body of a governmental unit – such as defendant Council – unlawfully invades this power when the legislative body extends material substantive benefits affecting the "terms and conditions of employment" to a public employee union.

The issue before the Court is not whether the disputed local laws conferred "benefits"

upon the EMTs and FADs and their respective unions in the broad colloquial sense. Rather, it is whether the City Council has affected "terms and conditions of employment" by passage of these laws. The Taylor Law provides that " 'terms and conditions of employment' means salaries, wages, hours and other terms and conditions of employment..." . Civil Service Law § 201(4). Where local laws created an imperative for minimum wages, or wage parity between uniformed services, such legislation has indeed been found to impinge upon a municipality's right to negotiate a collective bargaining agreement. ***Matter of Doyle v. City of Troy***, 51 AD2d 845 (3d Dept 1976). The simple reason for this is that "terms and conditions" previously subject to negotiation have been "taken off the table" by the legislation.

However, this is not the situation at bar. The local laws merely affect the procedural manner in which bargaining is done for EMTs and FADs and the determination of which employee organization is the representative of the employees in the negotiation. They do not expand the subjects to be bargained on behalf of the affected employees, merely the level at which the issues may be raised, and through which employee representative. As there is no uniformed services Citywide agreement, each union representing a bargaining unit of uniformed service employees has its own contract. Thus, the designation of EMTs and FADs as being within the "uniformed services" for purposes of collective bargaining does not carry with it the application of any "term or condition" contained in any existing Citywide uniformed services collective bargaining agreement; for example, the FADs and EMTs will

not receive the same wages as uniformed firefighters because of the designation. Nor do the laws make a change in the identity of the entity who will bargain with the unions representing the EMTs or FADs – it will still be the Mayor. The local laws do not require wage parity for the EMTs and FADs with other uniformed service employees. Stated another way, the laws prescribe how bargaining is to be conducted - a bargaining process - not a particular bargaining result. Plaintiff herein is not obligated to offer any particular benefit (i.e. term or condition such as a particular salary or wage parity) to the FADs or EMTs as a result of the local laws. ***Cf. Doyle v. Troy,*** 51 AD2d 845 (3rd Dept 1976) [invalidating a local provision which set minimum wage for fireman at parity with police, stating "(T)he Taylor Law, which has been determined to be a general law, [requires that]...the power of a local government to adopt a local law in respect to the regulation of its employees' wages has been limited thereby".]

Plaintiff's articulated fear is that he will lose the leverage which the two-tier process presently affords him. This concern is rooted in policy, and is not a proper subject for judicial scrutiny. Simply stated, this argument has no bearing upon the legality of the enactment of these local laws. ***See Tilles Inv. Co. v Gulotta***, 288 AD2d 303 (2d Dept 2001), *lv denied* 98 NY2d 605 (2002).

In any event, such enactments arguably further the stated legislative purpose of the Taylor Law "to promote harmonious and cooperative relationships between government and the employees... " which are " best effectuated by ... encouraging such public employers and

such employee organizations to agree upon procedures for resolving disputes..."[1] Civil Service Law § 200; *see* Civil Service Law §§ 206, 207. The allocation to the legislative body of responsibility for the design of procedures, rather than the executive branch, would present sound policy reasons when the executive branch is designated with the authority to negotiate with the union. Thus, in order to promote a "harmonious and cooperative" relationship envisioned by the Taylor Law, it would be best served that the executive branch not also dictate the rules and procedures by which the negotiations take place. Otherwise, it would be the equivalent to the Red Sox dictating the rules of the World Series games against the Yankees.[2] Rather than divesting the City Council of authority to enact legislation on the bargaining procedures, the Taylor Law expressly accords such responsibility to the legislative body, the City Council. Thus, the local laws are consistent with the stated legislative policy of the Taylor Law which explicitly grant to the City Council the authority to enact such legislation.

Necessity for a Referendum

Plaintiff also argues that pursuant to the provisions of the Municipal Home Rule, as

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[1] The term "public employer" is not defined as exclusively the chief executive, but rather, inter alia, "the State...a county, city, town, city ....". Civil Service Law § 201 (6)(a).

[2] ***See similarly, Levitt,*** supra at 128 (" [I]n the first instance the threshold issue whether a particular subject matter is bargainable should be decided by the impartial body with expertise in the area..., rather than by the public employer [City Personnel Director], who could by declaring conditions of employment to be "qualifications" unilaterally put such matters beyond the statutory duty to bargain.").

embodied in section 38 of the New York City Charter, the Council was not empowered to enact the local laws without a referendum.

Municipal Home Rule Law § 23 (2) (f) of this State requires that a local law be the subject of a mandatory referendum if, unless otherwise provided by or under authority of a state statute, it "abolishes, transfers or curtails any power of an elective officer." Plaintiff Mayor argues that the local laws curtail his power, by restricting the bargaining tools available to him – i.e., by exempting the EMTs and FADs from demonstrating special circumstances sufficient to exempt them from the Citywide negotiating system. However, as set forth above, section 212 of the Taylor Law authorized the enactment of the local laws and neither the Municipal Home Rule Law, nor the Charter, immunizes the City from the application of the Taylor Law. ***See City of Amsterdam v. Helsby***, supra at 26-7. Further, the plaintiff has offered no authority for the claim that the powers of the Commissioner of the Department of City-wide Administrative Services (DCAS) are curtailed, other than citing to a provision which merely enables the Commissioner to "develop and recommend to the mayor standard rules...and plans [governing working conditions, leave and wage]." Charter § 814 (a)(10). In any case, any such power is expressly made subject to other "provisions of this charter, the civil service law, other applicable statutes and collective bargaining agreements." ***Id.*** Even assuming, arguendo, that the local laws did represent a curtailment of plaintiff's negotiating power, it is not so substantial a curtailment as would require a referendum. ***See Meredith v Connally***, 38 AD2d 385 (3d Dept 1972).

It is noted and conceded that subsequent to and pursuant to the Taylor Law's "local option" provision (Civil Service Law § 212), the City Council, based on the report of the

Tripartite Committee[3], enacted legislation in 1967 (the NYCCBL, NYC Admin Code § § 12-302 *et seq.*, Local Law number 53 of 1967) providing a procedural framework for conduct of municipal negotiations. "Utilizing its power under Civil Service Law section 212, the City has promulgated its own regulations governing the collective bargaining of its employees.... (the New York City Collective Bargaining Law, hereinafter NYCCBL)." ***City of New York v. District Council 37***, 181 Misc 2d at 133. It is further conceded that on four prior occasions the NYCCBL has been similarly amended by Local Law, enacted by the City Council, rather than by referendum.[4] There is no discernable distinction other than, on those occasions, the Mayor supported the procedural changes enacted by the City Council. As the City Council is duly empowered by the Taylor Law (Civil Services Law § 212) to enact "substantive and procedural provisions governing labor relations" in New York City, the disputed local laws are valid and enforceable.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that the cross motions of defendant Council, and the intervenors-defendants, for summary judgment are granted; and it is further

ORDERED, ADJUDGED, AND DECREED that Local Laws 18 and 19 of 2001 are valid; and the Clerk of the Court is directed to enter judgment accordingly; and it is further

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[3] The Tripartite Committee was appointed by Mayor Wagner to propose a framework for the conduct of municipal labor relations in New York City and consisted of representatives of the City, the municipal unions and labor relations professionals. Their recommendations were embodied in NYCCBL, with the support of the Mayor. [Plaintiff's Memo, p. 4].

[4] Local Law Numbers 1, 2, 71 of 1972; Numbers 43, 44 of 1975; number 51 of 1980; and number 26 of 1998.

ORDERED that intervenors-defendants shall serve a copy of the decision, order and judgment within 30 days of entry.

Dated: January 3, 2005

ENTER

DORIS LING-COHAN, JSC

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