

OLR v. DC 37,1 OCB 2 (BCB 1968) [Decision No. B-2-68 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

OFFICE OF LABOR RELATIONS,

DOCKET NO. BCB-2-68

Petitioner

Decision No. B-2-68

vs.

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,  
Respondent

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**DECISION AND ORDER**

Respondent filed a request for arbitration (A-2-68). On January 22, 1968, the Petitioner filed a petition pursuant to Rule 7.3. On February 5, 1968, Respondent filed an answer to the petition. No reply was filed by Petitioner and its time to do so has expired.

Upon consideration of the pleadings herein, and after due deliberation, the Board of Collective Bargaining issues the following decision:

The grievance herein concerns an alleged failure or refusal to upgrade nine employees in the Department of Parks.

A determination made by the Comptroller, pursuant to Section 220 of the Labor Law, provides:

"Laborer in Charge - Laborers, who, by assignment, are in charge in any one of the above classifications shall be graded to the next higher group."  
(emphasis in original)

The classifications referred to in the above quotation are as follows:

GROUP A - Laborers  
GROUP B - Laborers (special services)  
GROUP C - Laborers (highway maintenance)  
GROUP D - (water repair services)  
GROUP E - (sewers)

Respondent alleges that the nine grievants are all laborers in charge of Group B laborers and should, therefore, be graded in Group C. (Such allegation is not denied by Petitioner.)

Section 1173-3,0o(1) of the Collective Bargaining Law and Section 8a(2) of Executive Order 52 both define a grievance as including "a dispute concerning the application or interpretation of the terms of \*\*\* a determination under section two hundred twenty of the labor law affecting terms and conditions of employment \*\*\*."

The grievance clearly involves a dispute concerning the application of a Comptroller's determination under Section 220. The only possible issue disclosed by the pleadings is whether the grievants are in charge of Group B laborers, by assignment. That issue is of course, for the arbitrator since it concerns the merits of the grievance and not its arbitrability. Accordingly, we find that the grievance is a proper subject for arbitration.

### O R D E R

It is hereby

ORDERED, that this proceeding, be, and the same hereby is referred to an arbitrator to be appointed by the Director of the Office of Collective Bargaining, or agreed upon by the parties, pursuant to Rule 6.5.

DATED: New York N.Y.  
March 21, 1968

ARVID ANDERSON  
C h a i r m a n  
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