

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

OFFICE OF LABOR RELATIONS

DECISION B-3-68

Petitioner,

DOCKET NO. BCB-3-68

vs.

DISTRICT COUNCIL 37, A.F.S.C.M.E.,
AFL-CIO,

Respondent.

DECISION and ORDER

_____The petition herein challenges the arbitrability of a grievance pressed by respondent union. Issue was joined by the service and filing of the Union's answer and Petitioner's reply. Oral argument was heard by the Board and the parties have filed briefs.

The grievance, as stated by the Union, is: "the failure of the City to live up to its agreement to waive the 1 in 3 rule and to appoint the person who is No. 1 on the list to the position of Chief of Hospital Transportation."

The "1 in 3 rule," to which reference is made, is Section 61 of the Civil Service Law, which provides:

"Appointment or promotion from an eligible list shall be made by the selection of one of the three persons certified by the appropriate civil service commission as standing highest on such eligible list. . ."

Briefly, summarized, the uncontroverted facts are as follows:

In March, 1965, the retirement of the then Chief of Hospital

Transportation Services created a vacancy which was filled by the

appointment of John D. McMullen, a Senior Garage Foreman, as provisional Chief. Subsequently, Deputy Commissioner Mangum, as Acting Commissioner, agreed that a promotional civil service examination should be given for all three Senior Garage Foremen (McMullen, Wildman, and Gio), and that the one who received the highest grade would be appointed Chief of Hospital Transportation.

The examination was not held until January, 1967, at which time Commissioner Mangum was no longer connected with the Department of Hospitals. Wildman received the highest grade, with Gio second, and McMullen third. The new Commissioner, however, appointed McMullen, who had been serving as provisional chief in the interim.

The issue as stated by the Union is broader than required by the facts of this dispute. The narrow issue presented by the particular facts herein is:

"Was Wildman improperly denied promotion to the position of Chief of Highway Transportation in light of Commissioner Mangum's agreement and other relevant and legal considerations?"

Under Section 61 of the Civil Service Law, an appointing officer has discretion to select any one of the top three eligibles on the civil service list. In the instant case, the examination was promotional and limited to three known department employees. There is no dispute that Commissioner Mangum agreed to appoint the employee who placed first on the list, and that Wildman placed

first but was not appointed by the succeeding commissioner.

In these particular circumstances, we find and determine that the issue we have set forth above is a proper subject for arbitration. Whether the agreement to appoint was binding on Commissioner Mangum's successor, and, if so, what remedy, if any, would be appropriate, are questions which should be presented to,

and determined by, the arbitrator.

O R D E R

_____It is hereby,

ORDERED, that the dispute between the parties as stated above, be, and the same hereby is , referred to an arbitrator to be agreed upon by the parties or to be appointed by the Director of the Office of Collective Bargaining in accordance with the New York City Collective Bargaining Law and the Rules of this Board.

DATED: New York, N.Y.
 June 11, 1968

ARVID ANDERSON
CHAIRMAN

TIMOTHY W. COSTELLO
MEMBER

JESSE FREIDIN
MEMBER

ERIC J. SCHMERTZ
MEMBER

HARRY VAN ARSDALE, JR.
MEMBER

SAUL WALLEN
MEMBER

