OLR v. DC 37, 1 OCB 4 (BCB 1968) [Decision No. B-4-68 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

OFFICE OF LABOR RELATIONS,
Petitioner — DOCKET NO. BCB-10-68

vs,

DECISION NO. B-4-68

DISTRICT COUNCIL 37, AFSCME, AFL-CIO
Respondent

DECISION AND ORDER

The petition herein challenges the arbitrability of a grievance urged by Respondent Union. Issue was joined by the service of Respondent's answer and Petitioner's reply.

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

Petitioner's reply herein alleges that Respondent, "in the absence of an affirmation" thereof, is not the certified representative of the grievants. The contention manifestly is one which should have been alleged in the petition, not in the reply. In any event, we find it to be without merit.

Respondent was certified by the New York City Department of Labor as the City-wide collective bargaining representative of the title "laborer", the title in which the grievants herein are employed. Section 1173-0.10c of the New York City Collective Bargaining Law (NYCCBL) expressly provides that certificates issued by the Department of Labor shall remain in effect until terminated by the Board of Certification. This Board, of course, will take official notice of outstanding certifications issued by the Board of Certification, or, previously, by the Department of Labor. The certification of Respondent as collective bargaining representative of Laborers has not been terminated, and thus remains in full force and effect.

The grievance which Respondent seeks to arbitrate concerns an alleged failure of the Department of Parks to pay the grievants, allegedly performing "Group C" work, the rate of pay applicable to that group.

A determination made by the Comptroller, pursuant to S§0 of the Labor Law, sets rate schedules for laborers in five groups, designated "A" to "E" inclusive. The determination

also contains a general statement of the duties and responsibilities of, and examples of typical tasks to be performed by, laborers in each of the groups.

Section 1173-330o (1) of the NYCCBL, and §8a(2) of Executive Order 52, both define the term "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 matter which the Respondent seeks to arbitrate clearly falls within that definition. The only possible issue raised by the pleadings is whether grievants are performing the work, and entitled to the pay rate, of Group C Laborers. That issue is for the arbitrator, since it involves the merits of the dispute, not its arbitrability. Accordingly, we find and conclude that the grievance is a proper subject for arbitration.

0 R D E R

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

0 R D E R E D, that this proceeding be, and the same hereby is, referred to an arbitrator to be agreed upon by the parties, or appointed pursuant to the Consolidated Rules of the office of Collective Bargaining.

DATED: New York, N.Y.
August 19, 1968

ARVID ANDERSON
Chairman

TIMOTHY W. COSTELLO
Member

ERIC J. SCHMERTZ
Member

SAUL WALLEN
Member

The late Jesse Freidin participated and joined in the foregoing decision.