

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

OFFICE OF LABOR RELATIONS,
Petitioner

Docket No. BCB-13-68

Vs.

Decision No. B-7-68

SOCIAL SERVICE EMPLOYEES UNION,
Respondent

DECISION AND ORDER

The petition herein challenges the arbitrability of a grievance urged by Respondent 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:

The grievance which Respondent seeks to arbitrate is that certain employees at the Amsterdam Center of the Department of Social Services were assigned to special project units and relieved of their "pending cases", with the result that other employees at the Center had to handle a greater share of "pending cases" than was customary.

Petitioner contends that the matter sought to be arbitrated is not a grievance, and further challenges arbitrability on the grounds that "submission to Step III was made a month after the receipt of Step II Decision"; that "there was no claim of a violation in the request for arbitration"; and that the grievance fails to state "the policy, procedure, practice or contractual provision which has been violated". Respondent contends that Petitioner's action violated "Existing policy and practice in the Department ** to distribute 'pendings' arising in a work location to Caseworkers on an equal basis".

Petitioner and Respondent are parties to a collective bargaining agreement which provides in Article XIV:

"Section I - Definition: A grievance is defined as:

2. Claims by an employee or a group of employees or by the union in his or their or its behalf, of a violation, misinterpretation or inequitable application of existing policy, orders, rules and regulations, or then existing practice applicable to the Department of Social Services or its employees or the Union".

Thus, it is clear that Respondent's contention that some employees were compelled to handle a greater share of "pending cases", contrary to the customary policy and practice of the Department of Social Services, is a grievance within the express language of the above quoted section of the collective bargaining agreement. Since the dispute is a grievance under the terms of the contract between the parties, it is also a grievance within the meaning of the New York City Collective Bargaining Law (Sec. 1173-3.0(o)).

The issue raised by Petitioner concerning the timeliness of Respondent's invocation of the grievance procedure presents a question of procedural arbitrability. The proper forum for resolving that issue is the arbitrator, not the Board. (See discussion in Office of Labor Relations v. Social Service Employees Union, Decision No. B-6-68).

Accordingly, we find and conclude that the grievance is a proper subject for arbitration, and that the question whether Respondent has complied with the contractual prerequisites for invoking arbitration also is appropriate for arbitral determination.

O R D E R

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

ORDERED, that this proceeding be, and the same hereby is, referred to Walter Eisenberg, the arbitrator designated by the parties in their collective bargaining agreement.

DATED: New York, N. Y.
September 4, 1968

ARVID ANDERSON
Chairman

ERIC J. SCHMERTZ
Member

EDWARD SILVER
Member

SAUL WALLEN
Member