DC 37 v. City, 13 OCB 22 (BCB 1974) [Decision No. B-22-74 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter Of
the Application of

DECISION NO. B-22-74

DISTRICT COUNCIL 37, AFSCME, AF-CIO.

DOCKET NO. BCB-176-74

Movant,

-and-

THE CITY OF NEW YORK,

Respondent.
- - - - - - - - - - - - - - - - - - x

District Council 37, AFSCME, AFL-CIO (D.C. 37), the certified collective bargaining representative of Sewage Treatment Workers and Senior Sewage Treatment Workers, requests that the Board issue an order granting the Union leave to amend its request for arbitration by adding a further allegation of contract violation.[1]

The grievance of District Council 37, Local 1320, filed January 10, 1973, requested arbitration of the question "whether the Department of Water Resources (EPA), violated the Comptrollers determination and existing policy by last minute changes in scheduling to avoid payment of overtime" to members of the unit. The remedy sought was "restoration of former practice in scheduling emergency overtime."

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[1] These employees are subject to Section 220 of the New York State Labor Law. They are therefore not covered by the health and safety provisions of the City-wide contract.

The matter proceeded to arbitration on September 24, 1973.

The parties agree that

> "In connection with the framing of the issue; the Union sought to include as an issue whether the employer's practice of last minute re-scheduling, regardless of whether such practice violated the Comptroller's determination and/or existing policy, gave rise to a danger to the health and safety of the employees.

"The City, however, objected to the submission of that issue on the following grounds:

(a) since the arbitration request as filed did not specifically set forth this issue, the Union must petition the Office of Collective Bargaining for an amendment thereof; and

(b) health and safety factors are not arbitrable.

> "The arbitrator ruled that inasmuch as the issue had not been set forth in the request for arbitration, proper procedure required the Union to seek relief before the Board of Collective Bargaining."

Thereafter, on May 17, 1974, the Union filed a motion requesting the Board to grant the Union leave to amend its statement of the grievance to be arbitrated by adding the words "and whether such re-scheduling resents a danger to the health and safety of the sewage treatment workers."

The affidavit in support of the motion asserts that: that:

> ". . . the issue of health and safety necessarily constitutes part and parcel of the grievance, and one, which through an oversight failed to be included in the arbitration request, ought to be included."

The City opposes the motion and asserts that:

> "Questions of health and safety . . . are questions of impact and must be raised pursuant to the statutory requirements.
>
> "No implied health and safety clause exists in any city contract.
>
> "An implied health and safety [clause] is inconsistent with impact provisions of the New York City Collective Bargaining Law."

In its reply, the Union argues that:

> ". . . questions such as workload and manning are defined as falling within impact under the New York City Collective Bargaining Law and . . . health and safety factors therefore are not barred from being raised under collective bargaining agreements."

The City argues that there is no express health and safety clause in the contract. The union responds, in effect that there is an implied health and safety clause in this as in all contracts covered by the NYCCBL.

We need not decide here whether a grievance claiming a violation of an implied health and safety clause is arbitrable. We find, instead, that the request to amend the grievance to be submitted to the arbitrator is untimely. The parties herein have proceeded through all of the steps of the contractual grievance procedure on the basis that the controversy between them was an alleged violation of "the comptroller's determination and existing policy by last minute changes in scheduling to avoid payment of, overtime." The purpose of the multi-level grievance procedure is to encourage discussion of the dispute at each of the steps. The parties are thus afforded an opportunity to discuss the claim informally and to attempt to settle the matter before it reaches the arbitral stage. Were this Board to permit either party to interpose at this time a novel claim based on a hitherto unpleaded grievance, we would be depriving the parties of the beneficial effect of the earlier steps of the grievance procedure and foreclosing the possibility of a voluntary settlement.[2] We hold, therefore, that it would not effectuate the policies inherent in the mutually agreed upon grievance procedure to permit amendment of the request for arbitration by adding a further alleged contract violation.

[2] See City of New York and DC 37, Dec. No. B-20-74.

Our decision is without prejudice to the Union's right to file a timely grievance alleging a violation of health and safety. However, we do not here decide the arbitrability of such a grievance.

We shall, therefore, refer the original grievance as filed on January 10, 1973, back to the arbitrator so that he may continue with the disposition of the case.

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

ORDERED, that the motion of the Union herein for leave to amend its statement of the grievance to be arbitrated be, and the same hereby is, denied; and it is further

ORDERED, that the arbitration of the grievance as filed on January 10, 1973, proceed forthwith

DATED: New York, N.Y.
December 13, 1974.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

VINCENT F. McDONNELL
M e m b e r

EDWARD SILVER
M e m b e r

EDWARD F. GRAY
M e m b e r