

City v. UFOA, 15 OCB 15 (BCB 1975) [Decision No.B-15-75 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK,
Petitioner

DECISION NO. B-15-75

DOCKET NO. BCB-221-75

-and

UNIFORMED FIRE OFFICERS ASSOCIATION,
Respondent

DECISION

On April 11, 1975, the Uniformed Fire Officers Association (UFOA) filed a Request for Arbitration alleging that the Fire Department had violated the parties' collective bargaining agreement by "the proposed implementation of 'Battalion Chief Discretionary Response Procedure' per Fire Department Order No.53, dated March 21, 1975." Along with the Request for Arbitration, the Union filed the required waiver of its right, if any, "to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award." (Section 1173-8.0d of the NYCCBL.)

On or about March 31, 1975, the UFOA filed an action in Supreme Court, County of New York, alleging that the City's proposed Battalion Chief Discretionary Response Procedure ("DRP") was unlawful and in violation

of Section 61 of the Civil Service Law, the Constitution of the State of New York, and Article VI of the parties' collective agreement. The relief sought by the UFOA was an order, pursuant to Article 78, CPLR, (a) declaring and adjudging the proposed action of the City as invalid and unlawful and (b) staying and enjoining permanently and pendente lite the City from instituting the proposed DRP program.

The City, on April 18, 1975, filed a Motion to Dismiss and/or a Petition challenging the arbitrability of the UFOA's grievance. The City alleged that by commencing a court action, the Union waived its right to invoke arbitration under the contract.

On April 22, 1975, the Board issued its Decision No. B-11-75 with respect to the above-docketed matter. The Board determined that the Union could not litigate a dispute in court and simultaneously seek arbitration of the same underlying dispute. Concluding that the relief which the Union sought in the Article 78 proceeding encompassed all of the relief obtainable from an arbitrator, the Board held that it would not entertain an arbitrability proceeding unless and until the Union withdrew its judicial proceeding from the New York State Supreme Court.

The UFOA went forward, however, with its court action. On April 28, 1975, Mr. Justice Thomas J. Hughes of the New York State Supreme Court, New York County, denied the Union's application and dismissed its petition without prejudice to the Union's right to submit a new application after the DRP has been in existence for a reasonable period of time.

The Union's pursuit of its judicial proceeding and the Court's judgment therein constitute an election of remedies. The Union has elected to submit the underlying dispute to the Court, and the Court's decision constitutes a complete adjudication of all issues submitted to the judicial process. The Union has had a full opportunity to argue the merits of its contention that the proposed DRP violated the collective agreement and has obtained the judgment of the Court. Therefore, we will not now allow the Union to use the contractual arbitration machinery to reargue the same underlying dispute.

DETERMINATION

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

DETERMINED, that the Union's Request for Arbitration be, and the same hereby is, denied; and the City's Motion to Dismiss and/or Petition Challenging Arbitrability be, and the same hereby is, granted.

DATED: New York, N.Y.
May 27, 1975

ARVID ANDERSON
CHAIRMAN

WALTER EISENBERG
MEMBER

THOMAS ROCHE
MEMBER

EDWARD GRAY
MEMBER

JOSEPH SOLAR
MEMBER

Mr. Schmertz did not participate in this decision.