

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK
AND RELATED PUBLIC EMPLOYERS,

DECISION NO. B-27-75

Petitioner,

DOCKET NO. BCB-217-75

-and-

A-450-75

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

Respondent.

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DETERMINATION AND ORDER

The grievant, Florence Martin, a provisional stenographer in the Office of the Chief Medical Examiner, was compelled on February 4, 1974, to utilize forty days of accrued annual leave following a report from the Department of Investigation that she had illegally accepted monies from a funeral home.

On February 10, 1975, the Union filed a request for arbitration (A-250-75), asserting that the City, by forcing the grievant to take a forty day vacation, violated Article VII, Section 1 (B) and (E) of the unit contract.¹

On April 1, 1975, the City filed a petition challenging the arbitrability of the grievance, alleging that the Union's request for arbitration does not raise an arbitrable issue since at the lower steps of the grievance procedure the only issue raised

¹"ARTICLE VII - GRIEVANCE PROCEDURE

Section 1. - Definition: The term 'grievance' shall mean

- (B) A claimed violation, misinterpretation, or misapplication of the rules or regulations, existing policy, or orders applicable to the agency which employs the grievant affecting the terms and conditions of employment, provided, disputes involving the rules and regulations of the New York City Civil Service Commission shall not be subject to the grievance procedure or arbitration;

- (E) A claimed wrongful disciplinary action against an Employee."

was a claimed violation of Article V, Section 1 of the City-Wide

Contract,² and therefore the Union's present "claim constitutes a hitherto unpleaded allegation."

The Union does not deny that the alleged unit contract violation is being raised for the first time in its request for arbitration.

Discussion

The Board in Decision No. B-22-74, in finding that a request to amend a grievance just prior to its submission to an arbitrator was untimely, said:

"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."

²ARTICLE V - TIME AND LEAVE - SECTION 1

All provisions of the Resolution approved by the Board of Estimate on June 5, 1956 on 'Leave Regulations for Employees Who Are Under the Career and Salary Plan' and amendments, and official interpretations relating thereto, in effect on the effective date of this Contract and amendments which may be required to reflect the provisions of this Contract shall apply to all employees covered by the Contract.

Interpretations shall be defined as those rulings issued by the City Personnel Director pursuant to Section 6.6 of the Leave Regulations and which are printed in the Official Leave Regulations.

This Section shall not circumscribe the authority of the City Personnel Director to issue new interpretations subsequent to the effective date of this Contract. Such new interpretations shall be subject to the grievance and arbitration provisions of this Contract."

In Decision No. B-20-74, the Board, in denying the Union's application to amend its request for arbitration, said:

"Under the grievance process, the parties are required to follow certain definite steps which offer the possibility of self-adjustment by the parties, before any matter can be submitted to final and binding arbitration by an outside neutral. Ideally, sound, effective, and speedy grievance procedure entails the clear formulation of the issues at the earliest possible moment, adequate opportunity for both parties to investigate and argue the grievance under discussion, and encouragement by the parties of their representatives to explore and conclude settlements at the lower steps of grievances which do not involve broad questions of policy or of contract interpretation. Obviously, none of these elements is achievable if easy amendment of the grievance at the penultimate moment, i.e., at the arbitration step, were to be permitted."

In the instant case, the Union, by alleging in its request for arbitration a claimed violation of the unit contract, rather than the earlier pleaded City-Wide Contract violation, is in effect attempting to amend its grievance and therefore, in line with the above-noted cases, the Board grants the City's petition challenging arbitrability.

ORDER

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 City's petition challenging arbitra-
bility be, and the same hereby is, granted; and it is further

ORDERED, that the Union's request for arbitration
be, and the same hereby is, denied.

DATED: New York, N.Y.
November 5, 1975

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER

EDWARD F. GRAY
MEMBER

THOMAS J. HERLIHY
MEMBER

EDWARD SILVER
MEMBER