City v. L. 599, SEIU, 15 OCB 29 (BCB 1975) [Decision No. B-29-75 (Arb)]

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

THE CITY OF NEW YORK,

Petitioner DECISION NO. B-29-75

-and- DOCKET NO. BCB-237-7

PROBATION AND PAROLE OFFICERS
ASSOCIATION, LOCAL 599, SEIU, AFL-CIO,

Respondent.
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DECISION AND ORDER

Request for Arbitration

The Union requests arbitration of its grievance that "the City failed to advise four unit members of their right to be hired at a higher salary base." This conduct is alleged to have violated Article III, Section 2B of the collective bargaining agreement between the Union, the City and the Judicial Conference of the State of New York effective from July 1, 1971 to June 30, 1974. The grievance is brought under the grievance and arbitration provisions of the July 1, 1974 to June 30, 1976 contract. The remedy sought is elevation of grievants to the higher salary grade and back pay with interest.

The grievance originates from job offers made by the Office of Probation in June, 1971 to sixteen eligible persons on the then existing probation officer list. The prospective employees were given a choice of starting dates of June 28, 1971 or July 6, 1971. The grievants herein chose the latter date. During June and July 1971 and thereafter negotiations were in progress for a new contract between the City, the Judicial Conference and

the Union. The bargaining culminated in October, 1972 with a new agreement effective as of July 1, 1971. As a result of the selection of July 6, 1971 as an initial employment date, the grievants received a $500 per year increase instead of the $1,000 per year general increase accorded Probation Officers who were on staff as of July 1, 1971.

Positions of the Parties

The City's petition challenges arbitrability on three grounds:

1. There is no violation of any provision in the current collective bargaining agreement, effective from July 1, 1974 to June 30, 1976, under which the demand for arbitration is made. The grievance alleges a violation of the previous contract, which covered a period from July 1, 1971 to June 30, 1974.

2. The grievance is one which, on its face, is not governed by the contract.

3. The claim is barred by laches Correspondence was exchanged beginning in October, 1972 and ending on April 12, 1973 between at least one of the grievants and officials of the Judicial Administration pertaining to the present grievance, while formal steps in this matter were not instituted until April 9, 1975, a delay of almost two years.

The Union's answer states that the appropriateness of utilizing the present contract machinery to bring the grievance goes

to the merits of the grievance and therefore is a decision for the arbitrator. It maintains that a violation in the implementation of the old contract constitutes an ongoing violation of the new agreement, in that salary increases in the new agreement are predicated on bases established by the prior contract. In addition, the respondent contends that the City's argument that there is no room for any contract interpretation upon the face of the contract also goes to the merits of the dispute and as such is a matter for the arbitrator. Finally, respondent contends that the City's allegation that the grievance is not timely prosecuted is a procedural matter which should properly be decided by the arbitrator.

Analysis

In view of our finding that the Union is guilty of laches in prosecuting its claim, we need not deal with the City's other arguments contesting arbitrability.

The Board has held that questions of procedural arbitrability, including the timeliness of a request for arbitration under a contract are for the arbitrator.[1] However, in City v. Social Services Employees Union, Local 371; Decision No. B-6-75, this Board denied a request for arbitration by finding a union guilty of laches for its belated prosecution of a claim. In that case, a grievance was not filed until two years after the alleged contract violation arose and three years after the contract creating

[1] See Decision Nos. B-18-72, B-7-68.

the grievants' rights had terminated. The decision distinguished between "intrinsic" and "extrinsic" delay or untimeliness, relying on the opinion in Flair Builders, Inc. v. I.U.O.E., 80 LRRM 2441. In substance, "intrinsic" delay is deemed to be failure to observe time limitations for the processing of grievances as set down in a contract. On the other hand, "extrinsic" delay denotes a lack of diligence in initiating a claim, thereby imposing an undue burden on the defense. The undue burden comes as a result of the defense acting or not acting in reliance that the grievant has abandoned his claim.

In the instant case we are faced with what the Board has previously characterized as "extrinsic" delay (laches). The grievants' claim arose in October, 1972, when the 1971-1974 contract was executed. One of the grievants kept up correspondence between herself and the Judicial Administration from October 11, 1972 until April 12, 1973, alleging wrongful payment. Thereafter, we find no notice of intent to pursue this claim until April 9, 1975 when the Union initiated the instant grievance. The consequences of the City's alleged breach of contract were compounded every payday during the interim, yet no explanation or excuse is given for the inordinate delay by the Union. Thus, we find that the City's laches argument has validity and we shall deny the request for arbitration.

0 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 the City's petition challenging arbitrability 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, New York
November 5, 1975

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

THOMAS J. HERLIHY
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