HHC v. L.237, IBT, CEU, 17 OCB 14 (BCB 1976) [Decision No. B-14-76 (Arb)]

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

NEW YORK CITY HEALTH & HOSPITALS CORPORATION,
Petitioner

DECISION NO. B-14-76

DOCKET NO. BCB-266-76
(A-622-76)

-and-

CITY EMPLOYEES UNION, LOCAL 237
I.B.T.,
Respondent
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DECISION AND ORDER

The New York City Health and Hospitals Corporation filed its Petition on November 15, 1976 contesting the arbitrability of a grievance on behalf of Fred Parrimore, a Special Officer formerly with the Corporation. The request for arbitration, filed on November 3, 1976, alleges that "grievant was dismissed based on untrue allegations" and requests as a remedy that the grievant "be restored to his job."

The Corporation's Petition alleges that the request for arbitration is time barred under the terms of the collective bargaining agreement between the parties. Article VI, Section 2, Step V of that agreement provides that:

> "An appeal from an unsatisfactory decision at Step IV may be brought solely by the Union to the Office of Collective Bargaining for impartial arbitration within fifteen (15) working days of receipt of the Step IV decision."

In the instant case, the Step IV decision was issued on May 29, 1976 and the request for arbitration was filed on November 3, 1976.

The Union's Answer admits that via strict interpretation of the contract language would make us untimely." However, the Union argues that there are unique circumstances in the case. The Union alleges that the dismissal of the grievant herein was due to an altercation with a fellow employee and that after issuance of the Step IV decision, the grievant was acquitted of criminal charges arising from that altercation while the other employee was found guilty. The Union asserts that it did not wish to appeal the Step IV decision to arbitration while criminal charges were pending.[1]

It is clear that the only issue presented for Board decision is whether the request for arbitration is timely under Article VI of the contract. Questions of timeliness in following the steps provided by a contract are matters of procedural arbitrability and are universally held to be for decision by the arbitrator.[2]

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[1] The Step IV decision upholds grievant's termination on the basis of incidents occurring on three separate days.

[2] John Wiley & Sons, Inc. v. Livingston, 376 US 543 (1964), 55 LRRM 2769; Long Island Lumber Co., 15 NY2d 380 (1965); Decision Nos. B-6-68, B-7-68, B-18-72, B-6-75, B-25-75. In a letter of December 10, 1976, the Deputy Chairman and General Counsel of the Office of Collective Bargaining replied to a request by the City for clarification of Rule 6.4 of the Consolidated Rules of the OCB in the light of Decision B-6-68. The letter stated, in pertinent part: "Rule 6.4, which is intended to force the prompt. submission of such objections as are submissible to the BCB, i.e., issues of substantive arbitrability, does not apply to issues of procedural arbitrability which are not submissible to the BCB and which the Board has specifically held, in B-6-68, are submissible solely to the arbitrator."

It is not for this Board but for the arbitrator to construe the provisions of the contract which set forth the time limitations agreed to by the parties, and to decide whether the instant grievance is timely under the contract. Therefore, we shall deny the Corporation's Petition and grant the Union's 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 Corporation's Petition herein be, and the same hereby is, denied; and it is further

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

DATED: New York, N.Y.
December 15, 1976

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

JOSEPH J. SOLAR
MEMBER

DANIEL L. PERSON
MEMBER

VIRGIL B. DAY
MEMBER

EDWARD SILVER
MEMBER

ERIC J. SCHMERTZ
MEMBER