City v. L.237, IBT, Civil Service Bar Ass., 17 OCB 5 (BCB 1976) [Decision No. B-5-76 (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-5-76

DOCKET NO. BCB-251-76

-and-

THE CIVIL SERVICE BAR ASSOCIATION, LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondent,

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REQUEST FOR ARBITRATION

The Civil Service Bar Association (Union) seeks arbitration of a group grievance of all Attorney Trainees, Attorneys and Associate Attorneys represented by the Union. The statement of grievance alleges that the appointment of Dennis O'Connor, Esq., on March 3, 1975 to the position of Associate Attorney in the Department of Social Services, at a salary of $23,950 per annum, raised the minimum salary rate of the three titles in the Attorney's occupational group by $3,000 each. As the salaries of employees in said titles have not been adjusted to reflect the new minimum rates, the Union demands, "Full implementation of the minimum rates as raised, effective March 3, 1975, with full restoration of appropriate back pay, so that the minimum salary for Attorney Trainee shall be $17,500, for Attorney $18,725, and for Associate Attorney $23,950."

The Office of Labor Relations (the City) argues that the claim fails to state a grievance under the collective

bargaining agreement between the parties and must he dismissed.

BACKGROUND

According to the Union, the City appointed or promoted Dennis O'Connor, effective March 3, 1975, to the permanent position of Associate Attorney, from an open-competitive interdepartmental list for that title, at a salary of $23,950 per annum. The Union notes that Article III, Appendix A, Section 2 of the Attorney's contract provides that the minimum rate for an Associate Attorney as of January 1, 1975 is $20,950 per annum, thus arguing that this action by the City constituted a unilateral raising of the minimum rate for Associate Attorneys to $23,950 per annum.

The Union does not dispute the City's right to unilaterally raise the minimum salaries of Associate Attorneys, as such is provided in a letter agreement intended by the parties to be a rider to the contract between the Union and the City. The letter agreement, dated July 25, 1974, states the following:

> "1) The City shall have the unilateral right, at any time, without prior consultation with and without approval of the Union, to change the minimum rates for the titles of Attorney Trainee, Attorney and Associate Attorney, provided that each minimum rate is changed by the same dollar amount at the same time.
>
> 2) The City shall notify the Union at least 15 days prior to the implementation of any change made pursuant to paragraph (1) of this letter.

3) If a minimum rate is established pursuant to paragraph (1) of this letter, the City shall not unilaterally reduce such minimum rate.

4) No minimum rate shall be changed pursuant to paragraph (1) of this letter until all individuals in Mayoral agencies on promotion lists promulgated on April 24, 1974 for the titles of Attorney and Associate Attorney have been reclassified, provided that such individuals are not otherwise ineligible for such reclassification as of the date the City intends to implement such a change."

Thus, the Union contends that the City, pursuant to paragraph one of the letter agreement, unilaterally raised the minimum rates of Attorney Trainees, Attorneys and Associate Attorneys by the $3,000 amount above the minimum rate received by O'Connor upon promotion to the position of Associate Attorney. The Union grieved the non-implementation of the new minimum rates and the City's failure to comply with the notice requirement set forth in paragraph two of the letter agreement.

The Office of Labor Relations denied the grievance. Its Step IV decision argues that the appointment of a single Associate Attorney at a rate above the minimum rate is not an increase per se in the minimum rate as was contemplated by the July 25, 1974 letter agreement. In addition, the OLR decision states that O'Connor's appointment to Associate Attorney at $23,950 per annum was specifically authorized by a certificate of the Mayor (No.5156), in accordance with the provisions of paragraph V, subdivision 2 of the Alternate

Career and Salary Pay Plan Regulations. The cited section reads:

> Promotions shall be made at the minimum basic salary for the class of positions to which such promotions are made, or at the basic salary received in the lower class of positions, whichever is greater, or as otherwise authorized by the Implementing Personnel Order or by Certificate of the Mayor, but in no case shall the basic salary exceed the maximum basic salary of the new class of positions. (Amended June 28, 1968 by Amendment to P.O. 21/67).

The Step IV decision also notes that the Department of Social Services maintains that O'Connor was appointed provisionally on December 10, 1973 as an Associate Attorney at $21,000 per annum and that he received contractual salary adjustments thereafter, which brought his salary to $23,950 on January 1, 1975. The agency argued that the action taken effective March 3, 1975 was a budget modification, prepared by it, which only changed the employee's status from provisional to permanent in the title of Associate Attorney.

POSITIONS OF THE PARTIES

The City maintains that the Union's claim fails to state a grievance under the collective bargaining agreement between the parties and, therefore, its request for arbitration must be dismissed.

Petitioner points out that Article III, Appendix A, Section 1 states that Article III is "[s]ubject to the

provisions, terms and conditions of the Alternative Career and Salary Pay Plan Regulations, dated March 15, 1967, except that the specific terms and conditions of this Article which supersede any provisions of such regulations inconsistent with this agreement shall be subject to the limitations and applicable provisions of law." Pursuant to paragraph V, subdivision 2 of the Regulations (set forth above), O'Connor's appointment to the position of Associate Attorney at $23,950 per annum was specifically authorized by a certificate cf the Mayor. Thus, the City argues, the appointment was wholly consistent with the Alternative Career and Salary Pay Plan, with Article III, Appendix A, Section 1, 2 and 3 of the Attorney's contract and with the letter agreement rider to the contract.

The Union contends that the request for arbitration does raise an arbitrable issue, pursuant to Article VI, Section 1 of the contract. Therein, a grievance is defined, inter alia, as:

> "(a) A dispute concerning the application or interpretation of the terms of this collective bargaining agreement;
>
> (b) A claimed violation, misinterpretation or misapplication of the written rules or written regulations, existing written policy or written orders of the agency which employs the grievant affecting the terms and conditions of employment;"

The Union further cites Article VI, Section 2 of the contract, which 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.

The Union alleges that it has timely appealed the Step IV decision, and that the dispute concerns the application or interpretation of the terms of the collective bargaining agreement. Moreover, the Union argues that the failure of the various agencies which employ the grievants to pay them the salaries due to them under the contract constitutes a clear violation, misinterpretation or misapplication of the written rules, etc., of the various agencies which employ the grievants, thereby affecting the terms and conditions of their employment.

DISCUSSION

As first announced in Office of Labor Relations v. Social Service Employees Union, Decision No. B-2-69, and consistently adhered to since that decision, in determining the arbitrability of a claimed grievance, the Board of Collective Bargaining must decide whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the obligation is broad enough in its scope to include the particular controversy.

The Union correctly cites Article VI, Section 2 of the contract as providing for impartial arbitration of an unsatisfactory Step IV decision, upon timely request by

the Union to the Office of Collective Bargaining. Hence, the parties are obligated to arbitrate their controversies.

The inquiry then is whether the grievance alleged by the Union is within the scope of the agreement to arbitrate. On its face, the claim asserted by the Union, the failure of the City to pay the new minimum salary rates to attorneys in the covered titles as established by the appointment of a single employee at a salary $3,000 above the minimum rate, requires interpretation of Article III, Appendix A, Section 2 and 4 of the contract and interpretation of the letter agreement rider to the contract. Petitioner implicitly recognizes the need to interpret contractual. provisions in order to resolve this dispute as its argument challenging arbitrability is based on its interpretation of Article III, Appendix A, Section 1 of the contract as governed by the provisions of the Alternative Career and Salary Pay Plan Regulations.

Because the Board has held that in deciding questions of arbitrability, it will not inquire into the merits of the dispute (See, City of New York v. Communications Workers of America, Decision No. B-8-74), we conclude that the instant matter can be resolved only by an arbitrator.

Therefore, we shall deny the petition challenging arbitrability and will grant the request for arbitration.

O R D E R

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

ORDERED, that the petition filed herein by The City of New York is, dismissed, and it is further

ORDERED, that this proceeding be, and the same hereby is, referred to an arbitrator to be agreed upon by the parties or appointed pursuant to the Consolidated Rules of the Office of Collective Bargaining.

DATED: New York, New York
May 12, 1976

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

EDWARD F. GRAY
M e m b e r

THOMAS J. HERLIHY
M e m b e r