

**NYSNA, 2 OCB2d 39 (BCB 2009)**  
(Arb.) (Docket No. BCB-2779-09)(A-13133-09).

**Summary of Decision:** The City filed a petition challenging the arbitrability of a grievance brought by NYSNA. The City claimed that no nexus exists between the alleged harm and the parties' collective bargaining agreement. The Union argued that its grievance, concerning the transmittal of dues pursuant to the dues checkoff provision of the collective bargaining agreement, presented an arbitrable dispute. The Board found a nexus between the Union's grievance and the parties' agreement. Accordingly, the petition challenging arbitrability was denied, and the request for arbitration granted. (*Official decision follows.*)

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**OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING**

**In the Matter of the Improper Practice Petition**

*-between-*

**THE CITY OF NEW YORK,**

*Petitioner,*

*-and-*

**THE NEW YORK STATE NURSES ASSOCIATION,**

*Respondent.*

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**DECISION AND ORDER**

On July 2, 2009, the City of New York ("City") filed a petition challenging the arbitrability of a grievance brought by the New York State Nurses Association ("NYSNA" or "Union"). The Union's request for arbitration, dated June 2, 2009, alleged that the City's Office of Payroll Administration ("OPA") "stopped transmitting dues and the corresponding paperwork" in violation of the collective bargaining agreement between the City and NYSNA covering the period from December 1, 2007, to January 20, 2010, ("Agreement"), including Article II, entitled "Dues

Checkoff.” (Pet., Exs.1 and 2). The City argued that the request for arbitration should be denied because the Union has failed to establish a nexus between the subject of the grievance and the Agreement, which contains no provision permitting the Union to challenge the method by which the City sends dues to the Union. We find that the Union's grievance is arbitrable; the subject of the grievance falls within the parties' obligation to arbitrate. Accordingly, the petition challenging arbitrability is denied, and the request for arbitration is granted.

### **BACKGROUND**

The Union and the City are parties to the Agreement, which provides the following, in pertinent part:

#### ARTICLE II – DUES CHECKOFF

##### Section 1.

- a. The Association shall have the exclusive right to the check-off and transmittal of dues on behalf of each employee in accordance with the Mayor's Executive Order No. 98, dated May 15, 1969 entitled "Regulations Relating to the Check-off of Association Dues" and in accordance with the Mayor's Executive Order No. 99, dated May 15, 1969 as amended by Executive Order No. 107 dated December 29, 1986 entitled "Regulations Governing Procedures for Orderly Payroll Check-off of Union Dues" or any other applicable Executive Order.
- b. Any employee may consent in writing to the authorization of the deduction of dues from the employee's wages and to the designation of the Association as the recipient thereof. Such consent, if given, shall be in a proper form acceptable to the City, which bears the signature of the employee.

##### Section 2.

The parties agree to an agency shop to the extent permitted by

applicable law, as described in a supplemental agreement hereby incorporated by reference.

(Pet., Ex. 1 at 3). The Agreement provides for a grievance procedure at Article VI.

The City, through OPA, is responsible for administering the “Dues Checkoff Program” through which an eligible union may have a portion of its members’ wages withheld and collected by the City and thereafter distributed to the union, thereby obviating the need for a union to collect dues directly from its members. Prior to 2009, OPA collected the dues and sent the dues along with other documented information, including the name, Social Security number, civil service title, and amount of dues for every member in the Dues Checkoff Program, directly to the unions by certified mail each month.

The City asserts that, in December 2008, another union that was part of the Dues Checkoff Program notified OPA that it had not received its dues and related documentation. After an investigation, it was discovered that someone at that union signed for the package containing its dues and documentation, but that union did not ultimately take possession of it. Dues money and the documentation were reissued to the union. In addition, the affected employees were notified that their confidential information might have been disclosed. The City took other remedial measures at its own expense.

Thereafter, the City stopped mailing the dues and related documents to unions participating in the Dues Checkoff Program. OPA informed NYSNA that it would no longer send the dues and accompanying information and that, instead, a Union representative or a messenger service bearing proper identification would be required to retrieve the dues and documents from OPA’s office.<sup>1</sup>

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<sup>1</sup> Under the City’s new procedure, collected dues are now available for unions to pick up at the OPA offices at or about the same time that they would have been mailed to unions under the

On February 25, 2009, NYSNA submitted its grievance in which it alleged a violation of Article II of the Agreement and claimed that it had not received dues from various agencies including the Administration for Children's Services, the Department of Aging, the Department of Correction, the Fire Department, the Department of Sanitation, the Human Resources Administration, and the Police Department. The grievance proceeded through the three-step process, and on April 20, 2009, the Step III decision was issued finding that the matter was not grievable, for the following reasons:

The Union contends that the manner by which OPA transmits dues and related reports to the Union violates the contract. However, the contract does not specify a manner by which this is to be accomplished. Likewise, while the contract refers to various Mayoral Executive Orders governing dues check-off procedures, none of these determine the manner of transmission. Significantly, the challenged transmission procedure is neither established nor facilitated by any of the agencies named in the grievance; thus it is not within the purview of these agencies to provide the remedy sought by the grievance.

(Pet., Ex. 2).

On June 2, 2009, the Union filed its request for arbitration.

### **POSITIONS OF THE PARTIES**

#### **City's Position**

The City asserts that there is no nexus between the alleged harm and the Agreement; therefore, the request for arbitration must be dismissed. Specifically, neither the Agreement nor any of the Executive Orders it incorporates contain any provision that would allow the Union to

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prior procedure. The City asserts that this changed the collection procedure for all city unions. Also, according to the City, at a Municipal Labor Committee meeting in February 2009, the City notified unions of the new procedure and told the unions to designate an individual to come to the OPA office to retrieve the dues and accompanying documents. In a letter dated March 25, 2009, the City reiterated these changes to all affected unions.

challenge the procedure by which the City transmits dues to the Union. Article II of the Agreement, which concerns dues checkoff, does not specify the manner in which dues will be transmitted to the Union. The Union erroneously interchanges its right to have dues transmitted with an “illusory right” to have its dues transmitted through a particular procedure. (Pet. ¶ 32). As Article II creates no contractual duty to transmit dues in any particular way, the manner in which dues are transmitted falls within the City’s discretion. To hold otherwise would “enlarge the obligation and the corresponding rights outlined in the contract to include a right to have dues transmitted by a specified procedure [and] would add a new term to the contract without bargaining and limit the authority of the City.” (Pet. ¶ 33).

**Union’s Position**

The Union argues that the Agreement provides for the Union’s right to “transmittal of dues.” Given that the City ceased its practice of delivering dues to the NYSNA office and now requires NYSNA to pick up the dues at the City’s offices, the Union’s grievance raises a genuine question of whether the City has violated the Union’s right to “transmittal of dues.” This is clearly a question of contract interpretation, which is arbitrable. The City’s argument presumes that requiring the Union to pick up dues from the City’s office falls within the meaning of “transmittal,” however the City may not assert that a matter is not arbitrable simply by presuming a fact not established, that the City would be required to prove at arbitration.

Further, instead of addressing the actual grievance, the City simply challenges the Union’s requested remedy. The City is effectively attempting to argue that because the Agreement does not expressly allude to the Union’s requested remedy, the underlying grievance is not arbitrable. While the City conflates the two, the grievance and the requested remedy are separate and distinct. Thus,

the City's argument fails to set forth any basis for finding this matter non-arbitrable.

### **DISCUSSION**

Pursuant to NYCCBL § 12-309(a)(3), this Board is empowered "to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure established pursuant to section 12-312 of this chapter." Specifically presented here is the issue of whether the Union's grievance, that the City "stopped transmitting dues and the corresponding paperwork," presents a matter suited to arbitration under the parties' Agreement. We find that it does.

While "we cannot create a duty to arbitrate if none exists or enlarge a duty to arbitrate beyond the scope established by the parties," the policy of the NYCCBL, "as is made explicit by § 12-302 of the NYCCBL, . . . is to favor and encourage arbitration to resolve grievances," and we have thus long held a "presumption . . . that disputes are arbitrable, and that doubtful issues of arbitrability are resolved in favor of arbitration." *OSA*, 1 OCB2d 42, at 15-16 (BCB 2008) (citations and internal quotation marks omitted); *DC 37*, 13 OCB 14, at 12 (BCB 1974). In order to determine whether a matter is arbitrable, we apply the following two-prong test:

- (1) whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions, and, if so
- (2) whether the obligation is broad enough in its scope to include the particular controversy presented. In other words, whether there is a nexus, that is, a reasonable relationship between the subject matter of the dispute and the general subject matter of the [collective bargaining agreement].

*Local 924, DC 37*, 1 OCB2d 3, at 8-9 (BCB 2008) (citations and internal quotation marks omitted).

There is no doubt or disagreement that the parties' Agreement provides for arbitration. The City does not argue that arbitration would violate public policy or is otherwise constrained by statutory or constitutional restrictions. Therefore, our remaining consideration is whether a reasonable nexus has been stated between the parties' Agreement and the controversy presented.

In the instant case, where the City has ceased mailing dues checkoff funds to the Union, and instead is requiring the Union to retrieve the dues from the OPA office by sending an agent or designee, we find that there exists an arguable relationship between the act complained of, the manner in which the City transmits dues checkoff monies, and the source of the alleged right, redress of which is sought through arbitration. *See Local 924, DC 37*, 1 OCB2d 3, at 12. The City's obligation with respect to "transmittal of dues" is explicitly in the Agreement. The Union's arbitration demand concerns whether making funds available for pick up by the Union, as opposed to the prior practice of delivery through certified mail, constitutes compliance with this obligation. We do not decide this question; it is sufficient for us to find that the contractual language asserted constitutes a viable source for the claimed right to arbitration. *OSA*, 1 OCB2d 42, at 16-17.

Accordingly, we deny the City's petition challenging arbitrability and direct that the parties proceed to arbitration.

**ORDER**

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

ORDERED, the petition challenging arbitrability filed by the City of New York, docketed as No. BCB-2779-09, hereby is denied; and it is further

ORDERED, that the Request for Arbitration filed by the New York State Nurses Association, docketed as A-13133-09, hereby is granted.

Dated: November 23, 2009  
New York, New York

MARLENE A. GOLD  
CHAIR

CAROL A. WITTENBERG  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

CHARLES G. MOERDLER  
MEMBER