City v. L.94, UFA, 23 OCB 10 (BCB 1979) [Decision No. B-10-79 (Arb)]

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

DECISION, NO. B-10-79

THE CITY OF NEW YORK

DOCKET NOS.:

-and-

BCB-323-79 (A-839-79)
BCB-335-79 (A-827-79)

UNIFORMED FIREFIGHTERS
ASSOCIATION, LOCAL 94,
IAFF, AFL-CIO
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DECISION AND ORDER

On April 10, 1979, the Uniformed Firefighters Association (UFA) filed a Request for Arbitration (Docket No. BCB-323-79), stating as the grievance to be arbitrated:

> "Does issuance and implementation of Personnel Administrative Information Directive (PA/ID) 1-75 (revised as PA/ID 5-78) - 'Policy Regarding Assignment and Transfer of Uniformed Personnel' violate the 1978-1980 collective bargaining agreement between the UFA and the City or, the applicable rules, regulations or policy statements of the Fire Department? If so, what shall be the remedy?"

On July 30, 1979, the UFA, filed another Request for Arbitration Docket No. BCB-335-79), stating as the grievance to be arbitrated

> "Has the Fire Department violated the collective bargaining agreement by refusing to change the vacation leave of Fireman Thomas Hall to sick leave? If so, what shall be the remedy?"

The City, by its Office of Municipal Labor Relations, has filed petitions challenging arbitrability in both cases. The City contends that the UFA's requests do not raise arbitrable issues and should therefore be dismissed.

CONSOLIDATION OF CASES

The issue involved in each of these cases is identical - the meaning to be afforded contract language stating that the Fire Department's decision as to certain questions is to be final. The City contends that the alleged contract violations raised by the UFA do not constitute appropriate subjects for arbitration.

Section 13.12 of the Revised Consolidated Rules of the Office of Collective Bargaining empowers the Board to consolidate two or more proceedings. In Decision No. B-18-71 we stated:

> "Consolidation is proper where there is a plain identity between the issues involved in two or more controversies and a substantial right of one of the parties is not prejudiced by consolidation. (See Symphony Fabrics Corp. v Bernson Silk Mills, 12 NY 2d 409, 240 14YS 2d 23; Vigo Steamship Corp. v Marship Corp., 26 NY 2d 157, 309 NYS 2d 165)."

In the instant case, the parties are identical, the arbitrability issue to be addressed the same and it does not appear that a substantial right of either party will be prejudiced by consolidation. Therefore, the Board has consolidated the two cases for the purpose of decision.

FACTUAL BACKGROUND

Both of the requests for arbitration are made pursuant to Article XXII of the parties' collective bargaining agreement which defines a grievance as:

> "...a claimed violation, misinterpretation or inequitable application of the provisions of this contract or of existing policy or regulations of the Fire Department affecting the terms and conditions of employment."

In Docket No. BCB-323-79, the UFA contends that the promulgation of PA/ID 5-78 - "Policy Regarding Assignment and Transfer of Uniformed Personnel," violates Article XX- "Vacancies" and Article XXI- "Individual Rights" of the parties' contract.

The City maintains that PA/ID 5-78 establishes the Fire Department's policy regarding assignment and transfer of the uniformed, personnel, and that by the language of Article XX- "Vacancies," the issue is excluded from the grievance-arbitration procedure. Article XX reads:

> "In filling vacancies, the Department recognizes the importance of seniority (measured by the time in the Department) provided the senior applicant has the ability and qualifications to perform the work involved. However, the Department's decision is final." (emphasis supplied)

The City concludes that this language makes it abundantly clear that a decision by the Fire Department in this area cannot be challenged by the UFA.

Moreover, the City claims:

> ". . . assuming the contract did not provide 'the Department's decision is final' and the subject matter of the PA/ID in question were arbitrable, it would only be arbitrable if the Department has not included seniority as one of the elements to be considered in making adjustments and transfers of personnel as Article XX of the collective bargaining agreement suggests the Department do. Inasmuch as seniority was taken into consideration by the Department in establishing its policy regarding assignments and transfers, the PA/ID is not violative of Article XX of the collective bargaining agreement and is thus not arbitrable."

In Docket No. BCB-335-79, the UFA seeks arbitration of dispute concerning an allegedly improper refusal by the Fire Department to change a fireman's annual leave to sick leave, a matter dealt with by Article XII, Section 4B of the contract and applicable PA/IDs.

The City again argues that the contract provision allegedly violated, by its own language, precludes arbitration of the matter.

Article XII, Section 4B, reads as follows:

> "An employee's annual leave shall be changed to sick leave during a period of verified hospitalization or if he is seriously disabled but not hospitalized while on annual leave. The medical leave provided herein shall be administered in the same way as the medical leave program for employees who are not on leave. The Department's decision shall be final in granting leave under this paragraph." (emphasis supplied)

In BCB-323-79, the UFA rejects the contention that the Fire Department's decision concerning assignments and transfers is final and nonarbitrable asserting that the meaning of the contract language involved is for the arbitrator to determine:

> "... it is obvious that many issues, including the meaning of the term 'final,' whether the Department's policy conflicts with other contractual provisions or existing policies, whether the practical impact of the Department's policy conflicts with other provisions, remain for the arbitrator ...."
>
> "In any event, a decision that the Fire Department's decision is final and that its decision concerning a new transfer policy therefore cannot be overturned, goes to the merits and is for the arbitrator, not the Board."

Respondent claims that the above argument applies with even greater force to the City's "fall-back" argument that since seniority was taken into account by the Fire Department in establishing its transfer and assignment policy, PA/ID 5-78 does not raise an arbitrable question. Respondent declares:

> "... determination of whether it is enough for the Fire Department to take seniority 'into consideration' in formulating transfer and assignment policy goes to the merits and is for the arbitrator."

The UFA's position in BCB-335-79 is based on similar argument:

> "...interpretation of the meaning of the language of Article XII, Section 4B of the collective bargaining agreement, including the last line of Section 4B, is for the arbitrator, where as here, there is an arguable connection between the grievance and the section cited. It is the function of the arbitrator, not the Board, to determine the meaning and application of the term 'final' as it is used in this section."

DISCUSSION

Resolution of these cases pivots solely on the interpretation and meaning ascribed by the Board to the phrase "the Department's decision is (shall be) final."[1] The City asks that we determine that this language effectively removes the provisions in question from the scope of the contractual grievance-arbitration procedures. The UFA argues that the contract language cited does not mean that the grievances herein are not arbitrable and, that, in any case, interpretations of contract language are matters for the arbitrator and may not properly be treated as issues of arbitrability. Respondent maintains that it has met the arbitrability standards established by the Board and that the disputes should therefore be submitted to arbitration.

Section 1173-2.0 of the New York City Collective Bargaining Law (NYCCBL), states that:

> "It is hereby declared to be the policy of the city to favor and encourage... final, impartial arbitration of grievances between municipal agencies and certified employee organizations."

However, while it is the policy of the NYCCBL and this Board to favor arbitration of grievances, the Board cannot create a duty to arbitrate where none exists, nor can it enlarge a duty to arbitrate beyond the scope established by the parties in their contract. As we stated in Decision No. B-12-77:

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[1] We find no arguable relationship between the other contract provisions and PA/IDs cited by the UFA and the alleged improper actions taken by the Fire Department herein.

> "It is well settled that a person may be required to submit to arbitration only to the extent that he has previously consented and agreed to do so."

In determining arbitrability, the Board 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 in question. Thus, the authority of the Board to find a matter arbitrable rests upon the contractual obligation incurred by the parties to arbitrate such disputes.

In the instant cases, there is no question that the parties have included in their collective bargaining agreement (see Article XXII) a grievance procedure culminating in final, binding arbitration. It is also clear, however, that the parties have limited the rights created by Article XX and Article XII, Section 4B of the contract. These Articles provide that the Fire Department's decisions concerning the filling of vacancies and the granting of leave, respectively, are final.

The UFA would have the Board send these cases to arbitration on the ground that any and all questions of contract interpretation are for the arbitrator. If the Board were to carry this proposition to its logical conclusion, reductio ad absurdum, it would have to send to arbitration disputes involving contract provisions containing language specifically barring such disputes from the grievance procedure, in order to afford the arbitrator the opportunity to interpret the meaning of the exclusionary language. This would not only be an abuse of the process but would necessitate that the parties incur the expense of needless arbitration proceedings.

Moreover, it would force the City to submit to arbitration a matter it rightfully believed to be an issue on which, by agreement, it had the last word.

The dictionary defines "final" as "leaving no further chance for action, discussion, or change; deciding; conclusive." As the Board has stated in Decision No. B-19-75, where contract language is clear and unambiguous on its face, there is no need to look to the intent of the parties or to the other provisions of the contract to aid in the interpretation of the clause at issue. There is no doubt, on the face of the contract, that the wording of Article XX and Article XII, Section 4B, maker, the Fire Department's decisions, pertaining to the subjects covered by these provisions, final. The City has not consented by contract or otherwise, to submit such questions to arbitration and therefore, we must deny the UFA's requests for arbitration in these cases.

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 petitions of the City challenging arbitrability should be, and the same hereby are granted; and it is further

ORDERED, that the Union's requests for arbitration should be, and the same hereby are, dismissed.

DATED: New York, New York.

September 21, 1979.

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

FRANKLIN J. HAVELICK
MEMBER

MARIA T. JONES
MEMBER

MARK J. CHERNOFF
MEMBER

EDWARD J. CLEARY
MEMBER

NOTE: Impartial Member Schmertz did not participate in this decision.