

City v. United Brother. of Carpet. & Joiners of Amer., 29 OCB 15 (BCB 1982)
[Decision No. B-15-82 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

Decision No. B-15-82

Docket No. BCB-563-82
(A-1396-81)

UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS
OF AMERICA,

Respondent.

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DECISION AND ORDER

On January 21, 1982, the City of New York, appearing by its Office of Municipal Labor Relations (hereinafter "the City" or "OMLR"), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the United Brotherhood of Carpenters and Joiners of America (hereinafter "the Union") on behalf of employee Gordon Penny on January 5, 1982. The Union filed an answer on February 11, 1982 to which the City did not reply.

REQUEST FOR ARBITRATION

The request for arbitration alleges that the City violated Executive Order 83, in which the term "grievance" is defined as

(A) a dispute concerning the application or interpretation of the terms of (i) a written, executed collective bargaining agreement; or (ii) a determination under Section two hundred twenty of the Labor Law affecting terms and

_____ conditions of employment; (B) a claimed violation, misinterpretation or misapplication of the written rules or regulations of the mayoral agency by whom the grievant is employed affecting the terms and conditions of his or her employment; and (C) a claimed assignment of a grievant to duties substantially different from those stated in his or her job classification. (Section 5, subdivision b)

The request for arbitration states the grievance as follows:

To overturn and make right the unjust, harsh and capricious penalty of ten (10) days suspension with loss of pay for infracting rules which were never made known, nor were they posted on any bulletin board to our knowledge, to the grievant Gordon Penny or to any other dockbuilder employed by Marine and Aviation.

POSITION OF THE PARTIES

The City contends that the Union has not alleged an arbitrable grievance and thus the request for arbitration should be dismissed. The City argues that the Union seeks to grieve what it alleges to be a wrongful disciplinary action. However, OMLR maintains that Executive Order 83 does not contain any provisions which permit the grievance of allegedly wrongful disciplinary action. Thus, absent mutual agreement to arbitrate such a dispute, the City cannot be compelled to arbitrate the instant claim.

The Union argues that grievant Penny has been denied due process. It claims that the charges against the grievant were

based on a series of unpublished rules and regulations and that the preliminary departmental hearing steps were permeated with bias. As an example of this prejudice against the grievant, the Union cites the statement of Michael Mondschein, Director of Legal Affairs for the New York City Department of Transportation in which Mondschein states that the grievant's actions demanded a greater penalty than that originally imposed.

The Union contends that Penny "deserves to be given an opportunity to be heard before an impartial hearing officer of the Office of Collective Bargaining.

DISCUSSION

It is the policy of the New York City Collective Bargaining Law (hereinafter "NYCCBL") to promote and encourage arbitration as the selected remedy to redress grievances.¹ However, this Board cannot create a duty to arbitrate where none exists nor can we enlarge a duty to arbitrate beyond the scope established by the parties by contract or party may be required to submit to arbitration only to the extent that it has previously consented and agreed to do so.²

The parties herein are not signatories to a written collective bargaining agreement. Thus, they are governed by the grievance-arbitration procedures set forth in Executive Order 83.³

¹ See NYCCBL Section 1173-2.0 and Decision Nos. B-8-68, B-1-75, and B-19-81.

² Decision No. B-12-77.

³ Decision No. B-13-77.

Executive Order 83, which is the sole basis for any obligation of the City to submit disputes with the respondent Union to arbitration, and which defines and limits the extent of that obligation, clearly does not provide for the arbitration of disputes concerning allegedly wrongful disciplinary action. While this Board is empowered by statute to determine whether an executive order provides for arbitration of a grievance,⁴ we are without authority to expand upon or alter the definition of a grievance found in a mayoral order.

The NYCCBL does not provide procedures whereby grievances may be brought to arbitration. By way of Executive Order 83, the public employer unilaterally and voluntarily consents to arbitration of those types of disputes set forth in the Order. The Executive Order does not purport to preclude bargaining for broader arbitration agreements, nor could it effectively do so. Any bargaining unit which finds the provisions of Executive Order 83 insufficient is free to seek more satisfactory terms in collective bargaining, including a provision for the arbitration of allegedly wrongful disciplinary actions.

O 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

⁴ Decision No. B-1-78.

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5.

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
April 21, 1982.

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

JOHN D. FEERICK
MEMBER

FRANKLIN J. HAVELICK
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER