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

THE CITY OF NEW YORK, DECISION NO, B-11-69

Petitioner,

DOCKET NO. BCB-33-69

V.

THE ASSISTANT DEPUTY WARDENS ASSOCIATION,

Respondent.
----------x

A P P E A R A N C E S:

Herbert L. Haber, Director of Labor Relations
for Petitioner

Gregory J. Perrin, Esq
for Respondent

DECISION AND ORDER

Respondent, the certified bargaining representative of the City's Assistant Deputy Wardens, by request flied January 6,1969, seeks arbitration of the following asserted grievances against the Commissioner of the Department of Correction: (1) The elimination of promotional opportunities above the rank of Assistant Deputy Warden and (2) A failure to appoint additional Deputy Wardens pursuant to an alleged oral stipulation made in February, 1967, between the Commissioner of the Department of Correction and Respondent.

In seeking arbitration, Respondent asserts that its claimed grievances fall within the definition of the term "grievance" in the New York City Collective Bargaining Law, §1173-3.0:

> "The term "grievance" shall mean: (1) a dispute concerning the application or interpretation of the terms of a written collective bargaining agreement or a personnel

> order of the mayor, or a determination under section two hundred twenty of the labor law affecting terms and conditions of employment; (2) a claimed violation, misinterpretation, or misapplication of the rules or regulations of a municipal agency or other public employer affecting the terms and conditions of employment; (3) a claimed assignment of employees to duties substantially different from those stated in their job classifications; or (4) a claimed improper holding of an open-competitive rather than a promotional examination. Notwithstanding the provisions of this subsection, the term grievance shall include a dispute defined as a grievance by executive order of the mayor, by a collective bargaining agreement, or as may be otherwise expressly agreed to in writing by a public employee organization and the applicable public employer".

The City, by petition filed January 9, 1969, challenges the arbitrability of both asserted grievances, alleging that the first "is a matter pertaining strictly to management prerogatives", and that the second "had no basis of fact or reason", "is merely a fishing expedition"and "does not constitute a violation of Executive Order No. 52".

Respondent filed an answer on February 27, 1968, with an attachment consisting of an arbitrator's award that certain Assistant Deputy Wardens are being assigned to out-of-title work.* In its answer, Respondent set out factual statements and argument respecting the merits of the first grievance and repeated its original statement respecting the second grievance. Petitioner filed no reply and its time to reply has expired.

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*The issue arbitrated was "whether certain Assistant Deputy Wardens, whose assignments have been changed since November, 1967, are performing work outside the range of duties applicable to their classification". The arbitrator, Milton Friedman, on February 10, 1969, made the following award: "Assistant Deputy Wardens now regularly assigned to the duties formerly performed by Deputy Wardens are being assigned to work outside their job classifications". No remedy was provided since the issue submitted to the arbitrator contained no provision therefor.

Respondent does not seek to arbitrate out-of-title work, a question which would come within subdivision 3 of the above-quoted section. Rather it desires to arbitrate the alleged elimination of promotional opportunities and an asserted failure to make appointments pursuant to an oral understanding allegedly made in 1967.

We find that neither of the matters constitutes an arbitrable grievance, inasmuch as neither is "a dispute concerning the application or interpretation of the terms of a written collective bargaining agreement" or otherwise falls under the statutory definition of the term "grievance."

Our determination does not affect Respondent's right to process grievances for out-of-title work, or to arbitrate the question of relief from out-of-title work. Furthermore, the determination herein does not mean that Respondent is precluded from negotiating for higher pay to compensate Assistant Deputy Wardens for any additional duties they are required to perform. See Matter of Social Service Employees Union, Decision No. B-11-68.

CONCLUSION OF LAW

For the reasons set forth above, the Board concludes that the matters alleged by Respondent are not grievances within the meaning of §1173-3.Oo of the New York City Collective Bargaining Law and hence are not arbitrable.

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

0 R D E R E D, that the requests for arbitration of grievances filed by the Assistant Deputy Wardens Association be and the same hereby are denied.

Dated, New York, N. Y.
August 4, 1969

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

SAUL WALLEN
MEMBER

EDWARD SILVER
MEMBER

TIMOTHY W. COSTELLO
MEMBER

HARRY VAN ARSDALE,
MEMBER

EARL SHEPARD
MEMBER