

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

OFFICE OF LABOR RELATIONS,

DECISION NO. B-12-69

Petitioner,

DOCKET NOS. BCB-49-69

vs.

BCB-50-69

SOCIAL SERVICE EMPLOYEES UNION
LOCAL 371, AFL-CIO,

Respondent.

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DECISION AND ORDER

Respondent seeks to arbitrate claims that the Department of Social Services denied William Behuniak (Case No. BCB-49-69) and James Pettiford (Case No. BCB-50-69) provisional promotions to Senior Caseworker in violation of the terms of the collective bargaining agreement. It contends that the Department improperly excluded military leaves, taken by the two employees, in determining their service eligibility for such promotions.

Petitioner challenges the arbitrability of the grievance on the ground that the management rights clause in the agreement reserves the right of the City to make provisional appointments; that under Article V, §1(e) of the agreement selection of Senior Caseworkers is entirely within the discretion of the Department of Social Services; and that the provision of the contract claimed by the respondent to have been violated is inapplicable to provisional appointments.

The title of Senior Caseworker was established pursuant to agreement between the parties set forth in Article V, §1, of the contract between them.

Article XIV of the contract provides for arbitration of unresolved grievances (§2, Step IV), and defines the term grievance, inter alia, as:

"1. A claimed violation, misinterpretation, inequitable application, or non-compliance with the provisions of this contract or of any supplemental agreement."

Article V §1(e) of the 1967-1968 contract between the parties provides:

"The parties agree that to be eligible for promotion to Senior Caseworker, an employee shall have at least two years of service as a Caseworker, shall pass a competitive promotion examination and shall successfully complete 8 credits in a school of social-work within two years of the next nearest Fall or Spring enrollment date of appointment to such positions. The Department agrees to recommend these requirements to the City Civil Service Commission and the New York State Department of Social Services and shall also request that the Senior Caseworker shall have the authority to issue grants."

The management rights clause referred to by Petitioner reads (Article XVII):

"It is recognized that the Department of Social Services has complete authority over the policies and the administration of the Department and of the Social Service program exercisable under the provisions of law and in fulfillment of its rights and responsibilities under the contract."

Respondent's claim that the employees were improperly denied provisional promotions because of erroneous exclusion of military leave from their service credits presents questions concerning the interpretation, application, and possible violation of contractual provisions (see O.L.R. v. Social Service Employees Union, Decision No. B-10-68; O.L.R. v. Social Service Employees Union, Decision No. B-6-68; O.L.R. v. Social Service Employees Union, Decision No. B-5-68). The dispute thus concerns a grievance within the meaning of the definitions contained in the contract and in §1173-3.0o of the New York City Collective Bargaining Law.¹

Petitioner's contentions that Respondent's claim impinges on the management rights clause, that the contract provision leaves the selection of Senior Caseworkers within the exclusive discretion of the Department and that such provision is entirely inapplicable to provisional appointments do not derogate from this conclusion. The management rights clause does not remove the questions raised by respondent from the scope of the grievance provision. Those questions, of course, are for the arbitrator to determine. (O.L.R. v. District Council 37, Decision No. B-4-68. See also, CPLR §7501 ².)

¹ The definition of "grievance" contained in 51173-3.0o expressly includes "a dispute concerning the application or interpretation of the terms of a written collective bargaining agreement" and "a dispute defined as a grievance . . . by a collective bargaining agreement."

² CPLR §7501 provides that in determining whether a dispute is arbitrable "the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute."

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

O R D E R E D , that this proceeding be and the same hereby is, referred to Walter Eisenberg, the arbitrator designated by the parties in the collective bargaining agreement.

DATED: New York, N.Y.
October 7, 1969

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

TIMOTHY W. COSTELLO
M e m b e r

EDWARD SILVER
M e m b e r

EARL SHEPARD
M e m b e r

HARRY VAN ARSDALE, JR.
M e m b e r