

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-13-69

vs.

DOCKET NO. BCB-32-69

THE ASSISTANT DEPUTY WARDENS
ASSOCIATION,

Respondent.

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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 collective bargaining representative of the City's Assistant Deputy Wardens, seeks arbitration of its claim that the Department of Correction has failed and refused to establish a joint labor relations committee as provided in Executive Order 52, §7.

The Union contends, and the City denies, that the claim constitutes a grievance within the meaning of §1173-3.00 of the New York City Collective Bargaining Law (NYCCBL), which defines "grievance" to 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 only category of grievance possibly applicable to the dispute herein is that concerning the application or interpretation of "a personnel order of the mayor." We conclude, however, that Executive Order 52 is not a personnel order within the meaning of §1173-3.0o.¹

The definition of "grievance" uses the terms "personnel order" and "executive order" separately and in contradistinction. Questions as to the interpretation and application of "personnel orders," are defined as grievable disputes. An executive order, on the other hand, is referred to, not as a possible subject of grievance disputes, but as a method of defining grievances in addition to those set forth in the statute.

This distinction is emphasized by other statutory provisions. The term "executive order" is expressly defined in §1173-3.0n. The purposes of an executive order are to formalize the election of a particular public employer to come under the procedures of the NYCCBL [§1173.4.0]; to specify the scope of collective bargaining[§1173-3.0m]; to authorize binding arbitration of grievances and incorporate

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The definition of grievance in Executive Order 52. §8a(2), is substantially identical to the statutory definition.

the arbitration procedures established by the Board of Collective Bargaining [1173-8.0a and b]; and otherwise to implement the coverage and procedures of the statute.

"Executive orders" thus are such essential implementations of the NYCCBL, and so integrated therewith, that they manifestly must be differentiated from "personnel orders" issued under the general powers of the employer. The essential nexus between the statute and "executive orders" further demonstrates the necessity that executive orders, like the statute, be interpreted by the Board of Collective Bargaining, rather than by an ad hoc arbitration procedure with its potentials of conflict and inconsistencies. The legislative intent, in this respect, is evidenced by the "scheme of the act as a whole,"² including the provisions vesting in the Board of Collective Bargaining the "power and duty" to interpret the statute, to determine the scope of bargaining "under the terms of the applicable executive order", and to determine arbitrability of grievances [§1173-5.0a(1)(2)].

We conclude, therefore, that the Union's claim herein does not constitute a grievance within the meaning of §1173-3.00 of the NYCCBL or §8a(2) of Executive Order 52, and is not arbitrable.

As the sole question properly before us in this proceeding is the arbitrability of the Union's asserted grievance, we do not reach or pass upon any question concerning the interpretation of §7 of Executive Order 52.

² Metropolitan Life Ins. Co. v. N.Y.S.L.R.B.,
280 N.Y. 194.

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 the petition filed by the City of New York herein be, and the same hereby is granted; and it is hereby

O R D E R E D , that the request for arbitration filed by the Assistant Deputy Wardens Association be, and the same hereby is, denied.

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