

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----x

In the Matter

THE CITY OF NEW YORK,

DECISION NO. B-15-69

Petitioner,

DOCKET NO. BCB-47-69

vs.

SOCIAL SERVICE EMPLOYEES UNION,

Respondent.

-----x

DECISION AND ORDER

Respondent Union seeks arbitration of a grievance concerning the City's failure to pay an employee, who had resigned, money assertedly due as a retroactive pay increase and for unused annual leave. The Union asserts that these payments are due under the terms of a collective bargaining agreement, executed after the employee had resigned, but retroactive to a date preceding the resignation.

The City contests arbitrability asserting that the matter "fails to constitute grounds for a grievance pursuant to Executive Order 52 and Local Law 53 of 1967 and the applicable rules pertaining thereto" and "specifically," that the employee in question, having resigned, is "not a member of the bargaining unit and, therefore, the union does not represent this person"; that "no employer-employee relationship exists"; and that redress is sought "in the wrong forum."

Martha Resnikoff, an employee in the Department of Social Services, resigned on August 28, 1967. On September 21, 1967, a collective bargaining agreement was signed covering the period from January 1, 1967 to December 31, 1968. The contract thus became effective on the date the parties' prior contract expired.*

* Cf. Executive Order 52 (1967) §9, providing for retroactively of collective bargaining agreements.

The agreement, dated September 21, 1967, provides for wage increases retroactive to January 1, 1967 (Article II), and for annual leave allowances (Article IV, W. It further provides for arbitration as the final grievance procedure step, and defines a grievance, among other things, as (Article XIV, §1):

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

The basic substantive issue between the parties is whether the employee is entitled to the benefits provided in a contract executed subsequent to her resignation, but retroactively applicable to an eight month period prior to the employee's resignation. That question patently involves and requires interpretation and application of the contract. Accordingly, it constitutes an arbitrable grievance.

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 grievance herein be,
and the same hereby is, referred to Dr. Walter Eisenberg,
the arbitrator designated by the parties in their contract.

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