

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

DECISION NO. B-16-69

Petitioner,

v.

DOCKET NO. BCB-39-69

NEW YORK CITY LOCAL 246,
SEIU, AFL-CIO,

Respondent.

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DECISION AND ORDER

Respondent, the certified bargaining representative of Auto Mechanics, Auto Machinists, and certain other Department of Sanitation employees, seeks arbitration of its claim that the City has failed to pay for or replace employees' tools which were stolen from job sites. It asserts that because the employees it represents are required, as a condition of employment, to have their own tools for use on the job, there is an implicit contractual requirement on the part of the City to provide a safe place for storage of tools on the job.

The City asserts that the matter does not constitute a grievance under Executive Order 52 and Local Law 53 of 1967, and the applicable rules; that no arbitrable issue is involved, "in the absence of a violation of any contract or a dispute concerning the application or interpretation of the terms of a written collective bargaining agreement or a personnel order or determination under Section 220 of the Labor Law or a claimed violation, misinterpretation or misapplication of the rules or regulations of a municipal agency affecting the terms and conditions of employment."

The Union and the Department of Sanitation are parties to a Memorandum of Understanding, effective from December 17, 1968, to December 16, 1970. The Memorandum, a document of nineteen pages, contains sixteen Articles covering terms and conditions of employment other than wage rates, the latter being fixed by a Comptroller's Determination under Section 220 of the New York State Labor Law.

Article III of the Memorandum provides that "The grievance procedure shall be in accordance with Mayor's Executive Order #52 dated September 29, 1967."

The Memorandum of Understanding contains no provision respecting the safekeeping of tools, nor has the Union pointed out any rule or regulation of the Department with regard thereto. It follows, and we conclude, that the matter does not constitute an arbitrable grievance, inasmuch as it is not a dispute concerning "the application or interpretation of the terms of a collective bargaining agreement," and it does not otherwise fall under the definition of the term grievance in §8 of Executive Order 52.

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

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

ORDERED, that the request for arbitration filed by New York City Local 246, SEIU, AFL-CIO, be and the same hereby is, denied.

DATED: New York, N.Y.
October 23, 1969.

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

WALTER L. EISENBERG
M e m b e r

TIMOTHY W. COSTELLO
M e m b e r

EDWARD SILVER
M e m b e r