

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
-----X

In the Matter of
OFFICE OF LABOR RELATIONS

Petitioner

DECISION NO. B-2-69

vs.

DOCKET NO. BCB-26-68

SOCIAL SERVICE EMPLOYMENT UNION

Respondent
-----X

DECISION AND ORDER

The petition herein challenges the arbitrability of a grievance urged Respondent. Issue was joined by the service of Respondent's answer and Petitioner's reply.

Upon consideration of the pleadings herein, and after due deliberation, the Board of Collective Bargaining issues the following decision:

The grievance which constitutes the subject matter of this proceeding alleges that certain "Caseworkers working as Resource Consultants... are doing supervisory out-of-title functions".

Petitioner maintains that out-of-title assignments if made might constitute violation of Section 61 of the Civil Service Law, which prohibits out-of-title work, but that they would not be violative "of any contract, practice or procedure of the Department". Petitioner urges that "an alleged violation of law is not a grievance within the definition of that term contained in the Social Service Employees Union Contract, Article 14, Section 1", and that "the Contract sections enumerated by the Union as having been violated by the Department... are totally unrelated to the issue at hand".¹

The Respondent's answer asserts., in substance, that out-of-title assignments violate Articles VII and XIX of the contract; that a grievance may be arbitrable despite the fact that it also constitutes a violation of law; and that this is particularly true in public employment which is governed by law.

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Section 1173-3.0o of the NYCCBL and Section 8a(2) of Executive Order 52 define "grievance" as including "a claimed assignment of employees to duties substantially different from those stated in their job classifications". See also Section 1173-8.0b.

It contends that the definition of grievance in Article XIV of the contract between the parties includes,, "Claims... of a violation, misinterpretation or inequitable application of existing policy, orders, rules and regulations, or then existing practice..."; that policy, orders, rules etc. are "components" of law and that the out-of-title assignment here complained of violate such policy.

Section 13.73-5.0(2) of the New York City Collective Bargaining Law expressly authorizes the Board of Collective Bargaining "to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure". In determining arbitrability, the Board must decide whether the parties are in any way obligated to arbitrate their controversies and if so, whether the obligation is broad enough in its scope to include the particular controversy presented. In this case, Article XIV of the contract obligates the parties to arbitrate controversies between them. Among the categories of controversies specifically covered by Article XIV are claimed violations of the contract. Here.. the Respondent claim that the work assignment of certain Caseworkers are in violation of Articles VII and XIX of the contract. Whether the assignments do violate those articles of the contract is for the arbitrator to decide. We find and conclude that the grievance is a proper subject for arbitration.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the Now York City Collective Bargaining Law, it is hereby

ORDER, that this proceeding be, and the same hereby is, referred to Walter Eisenberg, the arbitrator designated by the parties in their collective bargaining agreement.

DATED: New York, N. Y .
February 17, 1969

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

TIMOTHY W. COSTELLO
MEMBER

EDWARD SILVER
MEMBER