

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

- v. -

DECISION NO. B-7-69

DOCKET NO. BCB-42-69

UNIFORMED FIREFIGHTERS' ASSOCIATION
LOCAL 94, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, AFL-CIO

Respondent.

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DECISION AND ORDER

Respondent Union has requested arbitration of a grievance concerning a claimed contract violation caused, according to Respondent, by a Fire Department directive (All-Units Circular #147) which assigned additional clerical duties to firemen.

Petitioner challenges the arbitrability of the grievance in that it 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 because "job descriptions and specifications are strictly within the confines of the management prerogative clause."

Section 1173-3.0 of the New York City Collective Bargaining Law defines the term "grievance" to include "a dispute defined as a grievance . . . by a collective bargaining agreement." The contract between the parties provides for the arbitration of grievances and (in Article XIII) defines the term "grievance" as "a complaint arising out of claimed violations, misinterpretations or inequitable application of the provisions of this Contract or of existing policy or regulations of the Department."

The contract enumerates in Article V and in an annexed schedule those matters which are included among and those excluded from the duties of firemen. Under the general caption "Fire Prevention operations" it lists certain functions to be performed, and follows this with a list of exclusions. Among functions listed as excluded is "clerical, other than those specifically related to required duties."

Respondent, asserting that the departmental directive of which it complains unilaterally and materially alters clerical fire prevention duties as limited by the contract, further asserts that such conduct constitutes a contract violation.

While the City's decisions on matters relating to the direction of employees and determining the content of job classifications are not mandatory subjects of bargaining, once the City in fact has bargained on such matters and reached agreement which has been embodied in a contract, the provisions of such contract are enforceable.* See Matter of Social Service Employees Union, Decision No. B-11-68. Under the circumstances, whether the employer thereafter has the right to assign additional duties by unilateral directive is a question involving "claimed violations, misinterpretations or inequitable application" of the collective bargaining agreement between the parties.

*As noted in the cited case, "the fact that such agreement has been reached and included in a contract cannot transform a voluntary subject into a mandatory subject in subsequent negotiations, for the latter is fixed and determined by law."

Accordingly, we conclude and determine that the grievance herewith is arbitrable.

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 an arbitrator to be agreed upon by the parties or appointed pursuant to the Consolidated Rules of the Office of Collective Bargaining.

DATED: New York, N.Y.
July 18, 1969.

ARVID ANDERSON
Chairman

ERIC J. SCHMERTZ
Member

SAUL WALLEN
Member

EDWARD SILVER
Member

TIMOTHY W. COSTELLO
Member

HARRY VAN ARSDALE JR.
Member

EARL SHEPARD
Member