

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-8-69

DOCKET NO. BCB-46-69

vs.

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Respondent

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DECISION AND ORDER

The Petition herein challenges the arbitrability of a grievance urged by Respondent. Issue was joined by the service of Respondent's Answer.

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

The underlying claim of the grievants in this matter is that they are entitled to promotion increases in their wages in connection with their promotions from positions as Public Health Assistants to positions as Senior Clerks; and that such wage increases have been withheld by the City. They allege that the subject of wage increases is covered by the collective bargaining agreement between the City of New York and District Council 37, AFSCME, AFL-CIO (herein called the Union) of which they are members, Article VIII of which reads as follows:

"ARTICLE VIII - SALARIES

Salaries and wage increases shall be paid in accordance with Implementing Personnel Order No. 67/1, as amended, Sections I through XI."

They allege further that the term "grievance" is defined in Article VII of the collective bargaining agreement which reads, in pertinent part, as follows:

"ARTICLE VII - GRIEVANCE PROCEDURE  
Section I-Definition: The term 'grievance'  
shall mean  
(A) A dispute concerning the application  
or interpretation of the terms of  
(i) this collective bargaining agreement ...  
(ii) a Personnel Order of the Mayor. . ."

In its petition dated May 19, 1969, challenging the arbitrability of this matter, the City:

"...contends that the subject matter sought to be arbitrated as grievance by the Union is not proper for arbitration 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, specifically, standards for employees and rules and regulations governing these issues are narrowly a management right and, therefore, not an arbitrable issue."

Section 1173-5.0a(2) of the New York City Collective Bargaining Law (NYCCBL), pursuant to which the City seeks dismissal of the request for arbitration herein, 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 ..."; but the law does not authorize the Board to act as arbitrator and to make decisions relating to the merits of such disputes.

Arbitrability is determined by ascertaining 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 the parties are obligated by Article VIII of the contract between them to arbitrate their controversies; among the categories of controversy specifically covered by Article VII

claimed violations of the contract and of a Personnel Order of the Mayor. Here the grievants claim that the failure and refusal of the City to grant them wage increases is a violation of the salary and wage increase provisions of Article VIII of the contract and of Personnel Order 67/1 which is incorporated in the contract by reference. It does not appear on the face of the matter that this claim is without foundation. Further examination of the issues and of the merits of the respective contentions of the parties must be left to the arbitrator. We find and conclude that the grievance is a proper subject for arbitration.

O R D E R

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

ORDERED, that this proceeding be, and the same hereby is, referred to an arbitrator agreed upon by the parties or to be appointed by the Director of the Office of Collective Bargaining in accordance with the provisions of the New York City Collective Bargaining Law and the Rules of the Board.

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

ARVID ANDERSON  
Chairman

ERIC J. SCHMERTZ  
Member

SAUL WALLEN  
Member

TIMOTHY W. COSTELLO  
Member

EDWARD SILVER  
Member

HARRY VAN ARSDALE JR.  
Member

EARL SHEPARD  
Member