City v. Fire Alarm Dispatchers Bene. Ass., 31 OCB 29 (BCB 1983) [Decision No. B-29-83 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

THE FIRE ALARM DISPATCHERS BENEVOLENT ASSOCIATION,

Respondent.

DECISION NO. B-29-83

DOCKET NO. BCB-656-83 (A-1707-83)

DECISION AND ORDER

The respondent Fire Alarm Dispatchers Benevolent Association (hereinafter "the Union") submitted a request for arbitration, dated May 20, 1983, but received by the Office of Collective Bargaining on June 9, 1983, in which it sought to arbitrate a grievance based upon an alleged violation of New York State Public Officers Law §63. The City of New York filed a petition challenging the arbitrability of this grievance on June 27, 1983.

Despite an initial grant of an extension of time, and several inquiries made thereafter by the Trial Examiner assigned to this matter when the Union was in default, the Union has failed to submit an answer or any excuse for its

default.

The City's Challenge to Arbitrability

The City alleges that the Union's request for arbitration fails to cite any section of the collective bargaining agreement or any rule or regulation of the agency (the Fire Department) which pertains to the subject matter of the grievance. The grievance alleges only a violation of State law, a matter which the City submits is not within the scope of the parties' agreement to arbitrate. The City argues that the disposition of this arbitrability dispute is controlled by the Board's decision in the case of City v. Patrolmen's Benevolent Association, Decision No. B-4-78, which the City reads as holding that the City is not obligated to arbitrate allegations of violations of state law under a grievance procedure such as the one contained in the agreement of the parties herein.

For these reasons, the City requests that the request for arbitration be denied.

Discussion

While the Union has defaulted in answering the petition in this case, it is still the responsibility of

this Board to ascertain the prima facie sufficiency of the City's petition before granting the relief requested by the City. We have reviewed the petition as well as the request for arbitration and the documents attached thereto, including the statement of the grievance at the lower steps of the grievance procedure. We are satisfied that the City's petition, on its face, is meritorious and should be granted.

Clearly, the grievance alleges only a violation of State law, specifically §63 of the Public Officers Law, which deals with leaves of absence for veterans on Memorial Day and Veterans' Day. There is no allegation that the leave or holiday provisions of the collective bargaining agreement have been violated. The request for arbitration fails to allege any nexus between the subject of the grievance and the collective bargaining agreement under which the grievance is raised.

Not every dispute arising between a union and an employer must be resolved through arbitration. While it is the policy of the City of New York under the New York City Collective Bargaining Law to encourage the use of

arbitration to resolve grievances between municipal agencies and certified unions,[1] the precise scope of the obligation to arbitrate is defined by the parties in their collective bargaining agreement. This Board cannot enlarge a duty to arbitrate beyond the scope established by the parties.[2]

In the present case, the parties have defined an arbitrable grievance, in pertinent part, as follows:

> (A) A dispute concerning the application or interpretation of the terms of this Agreement;
>
> (B) A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer ....”

This definition does not include a claimed violation of State law. Accordingly, no basis exists for the submission of such a claim to arbitration.[3]

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[1] NYCCBL §§1173-2.0, 1173-8.0.

[2] Decision No. B-12-77.

[3] Our holding in this case is in accord with our ruling in Decision No. B-4-78, cited by the City herein, in which we found that a remarkably similar claim raised by the Patrolmen's Benevolent Association was not arbitrable. That case was fully litigated by the parties thereto. Thus, it seems likely that if the Union had not defaulted in the instant proceeding, the result herein would not have been different.

For the reasons stated above, we will grant the City's petition and deny the Union's request for arbitration. We note, however, that our finding that this matter is not arbitrable does not constitute a ruling on the merits of any claim under the Public officers Law.

ORDER

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 of the City of New York contesting arbitrability be, and the same hereby is, granted; and it is further

ORDERED, that the request for arbitration of the Fire Alarm Dispatchers Benevolent Association be, and the same hereby is, denied.

DATED: New York, N.Y.
December 22, 1983

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
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