

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING  
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In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK,  
  
Petitioner,

DECISION NO. B-19-87  
  
DOCKET NO. BCB-930-86  
(A-2493-86)

-and-

LOCAL 1180, COMMUNICATIONS WORKERS  
OF AMERICA, AFL-CIO,

Respondent.

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DECISION AND ORDER

On December 22, 1986, the City of New York, appearing by its Office of Municipal Labor Relations (herein "City") filed a petition challenging the arbitrability of a grievance filed on July 28, 1986 by Ernestine Myles, an employee of the New York City Department of Social Services in a unit represented by Local 1180, Communications Workers of America, AFL-CIO (herein "CWA" or "Union"). The Union filed an answer on March 4, 1987, and the City submitted a reply on May 6, 1987.

The gravamen of the grievance herein is that Myles was denied a merit increase in spite of her evaluation rating of "outstanding," and that this denial violated Appendix A,

Section 5 of the collective bargaining agreement between the parties.

BACKGROUND

The City and Union were parties to a collective bargaining agreement effective July 1, 1982 to June 30, 1984. Article VI, Section 1 (A), cited by the Union in its demand for arbitration, defines the term "grievance" to include "a dispute concerning the application or interpretation of this agreement." However, the provision claimed to be violated herein was not contained in the 1982-84 agreement.

On May 21, 1986, the parties executed a memorandum of understanding by which they agreed, inter alia: 1) that all sections of the prior contract would continue unless modified by the memorandum of understanding; and 2) that the memorandum of understanding, plus the Municipal Coalition Economic Agreement previously agreed to, and the Stipulation of Settlement regarding OCB Case No. I-182-85, would "constitute the collective bargaining agreement from July 1, 1984 to June 30, 1987."

Appendix A, section 5 of the Stipulation of Settlement in Case No. 1-182-85 reads:

The following shall be criteria for the granting of merit increases:

- A. outstanding productivity in the work assigned;
- B. outstanding performance in the work assigned;
- C. outstanding initiative and resourcefulness.

On June 12, 1986, Myles' supervisor recommended that Myles receive a merit increase for the 1984-85 evaluation period, as her performance was outstanding.

Myles did not receive the increase and filed her grievance on July 28, 1986.

The Step III decision, issued October 22, 1986, found that Appendix A was to be attached to the 1984-87 contract

which is currently being negotiated. Accordingly, the complaint must be dismissed since it was filed pursuant to a contract which is not yet finalized.

#### POSITIONS OF THE PARTIES

##### The City's Position

The City challenges the arbitrability of the grievance on the basis that:

there is no provision in the 1982-84 Collective Bargaining Agreement, under which this request for arbitration has been made, that sets forth the criteria as grieved. Therefore, the instant request for arbitration, which has as its basis a contract which does not exist, cannot be entertained....

In its reply, the City further contends that the terms of the 1984-87 agreement were not in effect at the time the grievance was filed because it had not been executed and because the entire agreement had not been approved by the Financial Control Board. The City did not address the effect of the Stipulation of Settlement.

The Union's Position

The CWA's position is that by the terms of the memorandum of understanding, the definition of a grievance in Article VI of the 1982-84 contract continues unchanged. The Union argues, in essence, that the memorandum of agreement executed by the parties incorporates all material terms and conditions of employment, including criteria for merit increases as well as the grievance/arbitration provision, and that this memorandum thus constitutes an agreement upon which rights may accrue even though the parties have not yet executed a final collective bargaining agreement.

DISCUSSION

As we have long held, the Board's function in determining arbitrability is to decide whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the obligation is broad enough to include the particular controversy.<sup>1</sup> In this case, the City argues that there is no such obligation. The City takes the position that as the provision allegedly violated was not contained in the 1982-84 contract, and the 1984-87 could not take effect until it was

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<sup>1</sup>E.g., Decision Nos. B-2-69; B-27-86.

executed and approved by the Financial Control Board, no obligation to arbitrate the grievance herein could arise under either contract.<sup>2</sup> We disagree.

It is a well-established principle of our national labor law that technical rules of contract do not control the question whether a collective bargaining agreement has been reached; once the parties have agreed to the substantive terms and conditions of a contract, they can be held to those terms.<sup>3</sup> The agreement need not be contained within a single document in order to constitute a valid contract.<sup>4</sup> Nor need it be formally executed.<sup>5</sup> Even an agreement which has not been reduced to writing may be enforced.<sup>6</sup> Finally, this Board has previously rejected the argument that a contract is not effective until approved by the Financial Control Board, observing that such a conclusion

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<sup>2</sup>Although the City focused, in its petition, on the fact that the request for arbitration cites the grievance procedure in the 1982-84 contract, it is clear from the record herein - and the City has had notice at least since the date of the Step III hearing - that the grievance is based on the successor agreement.

<sup>3</sup>American Federation of Television & Radio Artists, AFL-CIO (AFTRA) v. Inner City Broadcasting Corp., 784 F.2d 884, 117 L.R.R.M. 3199 (2d Cir. 1984).

<sup>4</sup>Decision No. B-4-72.

<sup>5</sup>See, e.g., Georgia Purchasing, Inc., 230 N.L.R.B. 1174, 95 L.R.R.M. 1469 (1977); Bendix Corp. 210 N.L.R.B. 1026, 86 L.R.R.M. 1547 (1974).

<sup>6</sup>AFTRA, supra.

could have the effect of rendering a contract ineffective during some or all of its intended term merely because of delays in submission to or consideration by the Financial Control Board.<sup>7</sup>

Turning to the instant case, the memorandum of May 21, 1986 incorporates by reference the 1982-84 agreement as modified, as well as the Stipulation of Settlement setting forth the criteria for merit increases, and recites that these items, inter alia, "constitute the [1984-87] collective bargaining agreement." The memorandum embodies all material terms and conditions of employment. It is for a definite term. It is executed by the Deputy Director of the Office of Municipal Labor Relations and by the Union president. It is a valid and enforceable collective bargaining agreement.<sup>8</sup>

The merit increase was denied and the grievance filed after this 1984-87 agreement was concluded. The grievance is based upon a dispute concerning the application of a provision of this agreement concerning criteria for merit increases, and it therefore falls within the contractual definition of a grievance. Accordingly, we find the grievance arbitrable.<sup>9</sup>

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<sup>7</sup>Decision No. B-16-85.

<sup>8</sup>See Deer Park Teachers Assn. v. Deer Park Union Free School District, 13 PERB Para 3048, fn.3 (1980).

<sup>9</sup>In view of our finding that the 1984-87 agreement was in effect at the time the grievance arose, we find it unnecessary to address the parties' arguments concerning the retroactivity of Appendix A of the Stipulation.

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 CWA's request for arbitration be, and the same hereby is, granted; and it is further

ORDERED, that the petition challenging arbitrability filed by the City of New York herein be, and the same hereby is, denied.

DATED: New York, New York  
May 21, 1987

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

CAROLYN GENTILE  
MEMBER

EDWARD F. GRAY  
MEMBER

EDWARD SILVER  
MEMBER

DEAN L. SILVERBERG  
MEMBER