OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

NEW YORK CITY HOUSING AUTHORITY,

Petitioner,

-and-

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,

Respondent.

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DECISION NO. B-3-87
DOCKET NO. BCB-904-86
(A-2416-86)

DECISION AND ORDER

On September 16, 1986, the New York City Housing Authority ("Housing Authority") filed a petition Challenging the arbitrability of a grievance submitted by the Social Service Employees Union ("Union"). The Union filed its answer on November 12, 1986, to which the Housing Authority replied on December 4, 1986. With the permission of the Board of Collective Bargaining ("Board"), the Union filed a sur-reply on December 16, 1986 to address new matters raised in the Housing Authority's reply.

Positions of the Parties

Union's Position

In 1976, the Housing Authority hired Franklin S. Irwin ("grievant") to work in the Farragut Houses Community Center

as a Community Associate. The Housing Authority transferred grievant in 1977 to the Albany Houses Community Center and again in April 1985 to the Bushwick P60 Community Center. In June 1985, grievant was transferred to Stuyvesant Gardens Community Center, where he currently works.

According to the Union, the April and June 1985 transfers violated the parties' collective bargaining agreement since the Housing Authority failed to post the openings or request volunteers for the positions. Furthermore, the Union claims that the involuntary transfers were improper because, in both instances, grievant was not the most junior Community Associate at his location.

Specifically, the Union argues that the Housing Authority violated Article 4 (30) of the agreement, which provides as follows:

> The parties agree to continue the existing posting transfer procedure to fill authorized job vacancies. However, when a second vacancy in the same title occurs in a division or a project within ninety (90) days subsequent to the first vacancy, a second posting will not be necessary if there are names remaining from the first posting. Those employees who are interested in the location for which the posting is being made, and who will become eligible for transfer within ninety (90) days of the posting, may also submit their names and they will be considered when eligible and in seniority order for subsequent openings at the location within the ninety (90) day period. [Emphasis added].

In the Union's view, this provision establishes posting procedures that must be followed in filling job vacancies, as well as seniority rights for interested applicants.

In addition, the Union claims that the Housing Authority violated the following provision of Article 4:

> 32.(a) In the event of an involuntary transfer, caused by excess staff, the employee with the least seniority in the title within each department shall be subject to transfer. Where there is no transfer list as a result of a posted vacancy such employees may be permitted to select among the available positions in order of seniority.

In final support of its allegation that a posting procedure is to be followed when filling vacancies, the Union cites Article 9(50), which provides as follows:

> All supervisors are required to immediately forward requests for transfers by employees under their jurisdiction to the Personnel Department with respect to the filling of posted vacancies.

The Housing Authority's Position

The Housing Authority argues that the provisions cited by the Union do not limit or affect management's prerogative, in accordance with Section 1173-4.3b of the New York City Collective Bargaining Law, to "direct its employees" and "determine the methods, means and personnel by which govern-

ment operations are to be conducted." In its view, the Housing Authority directed an "administrative transfer" of grievant within its statutory management powers, not a "voluntary transfer" within the purview of the contractual provisions cited by the Union. Thus, the Housing Authority argues that the Union has failed to establish a nexus between the claimed improper transfer of grievant and Article 4 (30), which allegedly applies only to "voluntary transfers."

Furthermore, the Housing Authority "amended" its original petition to include in its reply an additional basis for challenging arbitrability. Specifically, the Housing Authority's reply contends that the "title of Community Associate is not now, nor has it ever been, covered by the posting procedures" cited by the Union.[1]

Discussion

Where the parties, as here, do not dispute that they have agreed to arbitrate their controversies, the question before the Board on a petition challenging arbitrability is

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[1]The Housing Authority, however, does not dispute that the Union is certified as the bargaining representative for employees in the Community Associate title or that the collective bargaining agreement cited here applies in various other respects to such employees.

whether the particular controversy at issue is within the scope of their agreement to arbitrate.[2]

The essence of the Union's claim is that the Housing Authority violated certain provisions of the contract by failing to post the April and June 1985 vacancies and to seek volunteers or transfer employees with less seniority than grievant. We find that this claim clearly falls within the parties' agreement in Article 10 to arbitrate a "dispute concerning the application and interpretation of the terms of written collective bargaining agreements and written rules or regulations."

The Housing Authority's contention that Article 4 (30) relates only to "voluntary transfers", and not to "administrative transfers" undertaken pursuant to its statutory management powers, does not defeat the arbitrability of the claim. Such a contention involves the merits of the claim, which are within the province of an arbitrator to resolve.[3]

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[2] E.g., Decision Nos. B-1-86; B-6-86.

[3] E.g., Decision Nos. B-9-80; B-1-84.

Furthermore, nothing in Section 1173-4.3b precludes the Housing Authority from entering into an agreement that would modify or restrict the powers granted therein. Again, the Union's claim that the Housing Authority has agreed to certain transfer procedures which limit its management powers involves an issue concerning the merits to be resolved in arbitration.

Finally, we reject the Housing Authority's argument that the provisions cited by the Union in support of its request for arbitration are inapplicable to the title of Community Associate.[4] The Housing Authority offers no explanation or supporting citations for this position, while the Union contends that Schedule A of the agreement includes "Community Associate" as a category of employees covered by the terms of the agreement. Whether the provisions relied upon by the Union apply to qrievant's title is a question involving the merits of the dispute, which must be resolved by an arbitrator.

For the foregoing reasons, the petition challenging arbitrability will be denied.

O R D E R

Pursuant to the powers vested in the Board of Collective

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[4]Since the Union raised no objection to the Housing Authority "amending" its petition in this regard, we will address the validity of the argument.

Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the request for arbitration filed by the Social Service Employees Union be, and the same hereby is granted; and it is further

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

DATED: New York, N.Y.
January 27, 1987

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