City, Dep't Housing Pres. & Develop. v. L.371, SSEU, 41 OCB 14 (BCB 1988) [Decision No. B-14-88 (Arb)]

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

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

DECISION NO. B-14-88

DOCKET NO. BCB-1011-87

Petitioners,

-and-

(A-2702-87)

SOCIAL SERVICE EMPLOYEES UNION,

LOCAL 371,

Respondent.
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DECISION AND ORDER

, 1987, the City of New York and the New York City Department of Housing Preservation and Development ("the City" or "the HPD") filed a petition challenging the arbitrability of a grievance filed by the Social Service Employees Union, Local 371 ("the Union") on November 10, 1987. The Union filed an answer to the petition on December 18, 1987, to which the City did not reply.

Background

, 1986, Dorothy Roberts ("the grievant"), who is employed by the HPD as a Community Coordinator, was granted a personal leave of absence without pay beginning January 5, 1987 and ending March 2, 1987. Before her leave, the grievant worked for the

legal division of the HPD. Apparently, because the grievant resides in a building that was involved in litigation with the HPD, the City and the grievant agreed, at the City's urging, that due to a possible conflict of interest she would be transferred to another division upon her return to work. This agreement occurred prior to the expiration of the grievant's leave. The grievant maintains that during the remainder of her leave she interviewed for at least one position and telephoned the HPD weekly to inquire whether any other interviews had been scheduled. The grievant alleges that none were.

7, the date scheduled for her return to work, the Union asserts that the grievant reported to HPD "ready, willing and able to work" but was not assigned to any duties nor restored to the payroll. It was not until April 6, 1987 that the grievant was reassigned to a position (outside of the legal division) and was restored to payroll.

es that on March 2, 1987, the grievant contacted the HPD's Personnel Officer and orally agreed to HPD's request that she extend her leave without pay "until a suitable new location could be found for her;" The City asserts that if the grievant had not agreed to the extension, then" ... it was incumbent upon

her to report to-work ... each and every day [after March 2, 1987]." The Union maintains that the grievant did not agree to an extension of her unpaid leave of absence and that the only reason she did not report to work after March 2, 1987 was because the HPD instructed her not to.

led a Step II grievance on March 27, 1987 alleging that the City violated Article III, Section 2 of the collective bargaining agreement that exists between the parties. This provision is a recital of the salary schedules for titles covered by the agreement. The City denied the Step II grievance by letter dated June 4, 1987, alleging that the grievant to ... willingly agreed to an extension of her leave of absence."

led a Step III grievance on or about June 29, 1987, which the City denied on October 20, 1987 on the same basis. In its decision the City also maintained that because there was no indication from the grievant that she was not in agreement, the HPD did not believe it was necessary to put the extension in writing.

tory resolution of the matter having been achieved, the Union filed a request for arbitration on November 10, 1987, pursuant to Article VI, Section 2 of the contract, requesting full back pay for the period

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from March 2, 1987 through April 6, 1987.

Positions of the Parties

City's Position

that the Union has failed to establish a nexus between the act complained of and the contract provision alleged to have been violated. They assert that the salary schedule provision of the contract does not provide an arguable basis for a grievance concerning whether or not the grievant should be paid for work not performed. Thus, they assert that the Union fails to state a cause of action for which relief may be granted under Article VI of the contract.

Union's Position

ends that there is a clear nexus between the action taken by the City and the contract provision allegedly violated. The Union points out that the grievant was denied pay, to which she was entitled, pursuant to Article III, Section 2 of the agreement, for a period during which she was ready, willing and able to work, but was prevented by the City from doing so. The Union asserts that the grievant "...neither requested nor consented to any extension of her unpaid leave of absence beyond March 2, 1987" and that "...she consented

only to [the City's] request that she accept a reassignment upon her return to work." Therefore, the Union argues that the City had the burden of effecting such reassignment by March 2, 1987 and in failing to do so until April 6, 1987, deprived the grievant of her salary, in violation of the wage article of the collective bargaining agreement.

Discussion

, we note that it is undisputed that the City and the Union are obligated by contract to arbitrate their controversies. Nor is it disputed that an alleged violation of a substantive provision of the contract is a proper subject for arbitration. However, in determining questions of arbitrability, the Board is sometimes required to inquire further as to the prima facie relationship between the act complained of and the source of the alleged right, redress of which is sought through arbitration.[1] Such is the focus of our inquiry in the instant case.

[1] Where challenged to do so, the proponent of arbitration has a duty to show that the contract provision invoked is arguably related to the grievance to be arbitrated. See, e.g., Decision Nos. B-4-83; B-8-82; B-11-81; B-15-9-0.

s that the City's failure to restore the grievant to the payroll until April 6, 1987, violated Article III, Section 2 of the contract in that the grievant reported ready, willing and able to work on March 2, 1987, which was her scheduled date of return from an approved leave of absence. Notwithstanding any alleged agreement to the contrary, the Union contends that failure to compensate the grievant pursuant to the aforementioned contract provision constitutes a grievable matter.

re is at least an arguable relationship between the subject matter of the grievance and Article III, Section 2 of the contract. The Union's contention that the grievant was denied pay accrued pursuant to that Article for a period during which she was scheduled to resume working but allegedly was prevented by her employer from performing any duties, provides the required nexus between the act complained of and the contractual provision cited as violated. We are satisfied that a prima facie relationship exists in this regard.

tion 2 of the contract obligates the parties to arbitrate controversies between them. The

City does not deny that wage disputes are arbitrable generally. Here, the Union claims that the employer's failure to pay the grievant for the period in question constitutes a violation of Article III, Section 2 of the contract. We find that whether or not there was an oral agreement between the parties to extend the period of the grievant's unpaid leave is a question going to the merits of the matter and is plainly an issue to be resolved in the arbitral forum.

O R D E R

e powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

e petition challenging arbitrability filed by the City of New York be, and the same hereby is, denied; and it is further

the request for arbitration filed by the Social Service Employees Union be, and the same hereby is, granted.

DATED: New York, N.Y.
May 26, 1988

MALCOLM D. MacDONALD
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