Dep't of Parls & Rec. v. L.983, DC37, 41 OCB 26 (BCB 1988) [Decision No. B-26-88 (Arb)]

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

-between-

DEPARTMENT OF PARKS AND RECREATION,

Petitioner,

DECISION NO. B-26-88
DOCKET NO. BCB-1043-88

-and-

(A-2772-88)

DISTRICT COUNCIL 37, LOCAL, 983, AFSCME, AFL-CIO,

Respondent

DECISION AND ORDER

On March 28, 1988, the City of New York and the Department of and Recreation ("the City" or DPR"), by the Office of Municipal Labor Relations filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by District Council 37, Local 983, AFSCME, AFL-CIO ("the Union") on or about February .17, 1988. The Union filed an answer to the petition on April 28, 1988, to which the City filed a reply on May 16, 1988

Background

Mark Rosenthal ("the grievant), employed as a permanent Associate Park Service Worker (a non-supervisory Blue Collar title) by the DPR, had been appointed to the position of Seasonal Park supervisor (a Supervisory Blue Collar title) in each of the previous ten years with the exception of the 1983 and 1987 summer seasons. The Union alleges that the City's failure to reappoint the grievant for the 1987 season violates Appendix A of the 1982-84 Seasonal Agreement ("the Agreement") that exists between the City and the Union.

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On or about March 2, 1987, the grievant filed a Step I grievance as to which the DPR failed to take any action. On April 21, 1987, the Union filed a step II grievance to which the City responded that the request was incomplete for failure to cite the specific Section, Article and Contract alleged to have been violated. on August 20, 1987, the Union claimed that "Appendix A of the [Agreement] ... for the period from July 1, 1982 to June 30, 1984" was applicable. By letter dated August 28, 1987, the City denied the Step II grievance, asserting that the grievant, a Park Supervisor, was not covered by the Agreement.[1] On September 2, 1987, the Union requested a Step III hearing. No satisfactory resolution of the matter having been achieved, on or about February 17, 1988, the Union filed a request for arbitration pursuant to Article VI, Sections (A), (B) and Step IV of the Agreement, seeking as a remedy that the

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[1]Article 1, Section 1 of the 1982-84 Seasonal Agreement recognizes the Union as the exclusive bargaining agent for the following titles:

Chief Lifeguard
City Seasonal Aide
Field Supervisor (Summer Youth Employment Program)
Lifeguard
Senior Field Supervisor (Summer Youth Employment Program)
Article 1, Section 2 provides:

The terms “employee” and "employees" as used in this Agreement shall mean only those persons in the unit described in Section 1 of this Article.

grievant be "[r]eappoint[ed] to the Seasonal Park Supervisor position [with] back pay plus interest."

Positions of the Parties

City's Position

The City asserts that the Union has failed to "cite any contractual provision or written policy upon which a claim can be based." The City contends that the grievant is not employed as a "Seasonal" employee as such is defined in the contract cited. Because the Union alleges a violation of a contract which does not cover the grievant, the City argues there is no duty to arbitrate his claim.

While the City admits that the agreement for the 1980-82 contract term did incorporate both Blue Collar and Seasonal titles, employees in these titles are now covered by separate agreements as a result of collective bargaining for the 1982-84 contract term. Furthermore, the City points out that the provision relied upon by the Union has been appended only to the Seasonal titles contract, as Appendix A.[2] The City reasons that Appendix A was not incoporated into the 1982-84 Blue Collar

[2]Appendix A of the 1982-84 Seasonal Agreement, in pertinent part provides:

> "All seasonal personnel who have completed the previous season satisfactorily shall have preference for rehiring in the forthcoming season."

contract because it never applied to those titles.

Accordingly, the City argues that since an Associate Park Service Worker, who works during the summer months as a "so-called Seasonal Park Supervisor," is not a "Seasonal" employee as defined in the recognition clause of the Agreement, the request for arbitration does not raise an arbitrable issue and must be dismissed.

Union's Position

The Union takes the position that the City "erroneously appli[ed] the recognition clause of the [Agreement] covering the period July 1, 1982 - June 30, 1984 in arguing that grievant's title is not covered." The Union contends that the basis of the grievant's claim arises from the continuing applicability of Appendix A of the Agreement to the July 1, 1980 - June 30, 1982 Blue Collar and Seasonal Titles Contract, under which the grievant's title was covered.

The Union asserts that Appendix A, which was originally developed as a Memorandum applicable to the 1980-82 contract, did then and continues to apply to the grievant today by virtue of the City's practice of evaluating and reappointing the grievant for the past eight summer seasons. The Union states that "the petitioner has itself applied the provisions of Appendix A governing preference in re-hiring to [P]ark [S]upervisors." In

support of this position, the Union contends that Appendix A constitutes a "written policy of the employer" which the city has chosen to implement beyond the 1980-82 contract term.

The Union also reasons that although the title "Seasonal Park Supervisor" is not enumerated as a "Seasonal" title in the recognition clause of the 1980-82 contract, the provision regarding the rehiring of seasonal personnel can be reasonably interpreted to apply to employees in Blue Collar titles who are appointed to seasonal positions, as well as to "Seasonal" titles. Therefore, the Union argues that "the issue whether all 'seasonal personnel' encompasses the title 'Park Supervisor, is...a matter of contract interpretation to be resolved by an arbitrator."

Discussion

We have long held that it is the policy of the New York City Collective Bargaining Law ("NYCCBL") to promote and encourage arbitration as the selected means for the adjudication and resolution of grievances.[3] Where the parties do not dispute that they have agreed to arbitrate their controversies, the

[3]NYCCBL Section 1173-2.0 (12-302) and Decision Nos. B-25-83; B-41-82; B-15-82; B-19-81.

question before the Board on a petition challenging arbitrability is whether the particular controversy at issue is within the scope of their agreement to arbitrate.[4] We can neither create a duty to arbitrate where none exists nor enlarge a duty to arbitrate beyond the scope established by the parties in their contract. A party may be required to submit to arbitration only to the extent it has agreed to do so.[5]

The particular controversy before us in the instant matter concerns whether the Union may grieve an alleged violation of the Agreement on behalf of a "Seasonal" Park Supervisor. We find that it cannot.

We are unpersuaded by the Union's argument that the Agreement can reasonably be deemed to cover a Non-Supervisory Blue Collar employee who consistently is appointed to a Supervisory Blue Collar title on a seasonal basis. The key to determination of whether a grievant is covered by a particular contract is the language in the union recognition clause. The contract upon which the Union relies as the source of its alleged right to grieve this matter contains language which is both clear and unambiguous in setting forth the titles included in the bargaining unit.[6] It is undisputed that neither the title of

[4]Decision Nos. B-6-86; B-36-80.

[5]Decision Nos. B-24-86; B-20-85; B-28-82; B-36-80.

[6]See Footnote 1 supra.

Associate Park Service Worker nor (Seasonal) Park Supervisor appears therein. Therefore, we find that the grievant is precluded from asserting any rights that would be derived from the Agreement.

Nor do we find merit in the Union's contention that Appendix A of the Agreement continues to apply to employees in Blue Collar titles. We note, in this connection, that whereas both Blue Collar and Seasonal titles were formerly covered by a single contract, that is no longer the case and further, that the language of the Memorandum, now Appendix A, is annexed to the Seasonal titles contract alone. Even if it could be argued that the rehiring provision for Seasonals was applicable to Blue Collar employees during the 1980-82 contract term, the City's obligation to continue applying it to Blue Collar titles was terminated by its absence in the current 1982-84 Blue Collar contract. We conclude from the fact that the Blue Collar and Seasonal titles units are now covered by separate agreements and that the language of the Memorandum has been incorporated into only one of those contracts (the Agreement), that the rehiring provision was not intended to apply to Blue Collar titles, as the City contends.

Finally, we find that the Union's argument that the 1980-82 Memorandum, now embodied as Appendix A, constitutes a "written policy of the employer" is without merit. It is clear that the intent of the parties, as demonstrated by the Memorandum's

subsequent inclusion in the Agreement alone, was that it apply to seasonal titles exclusively. There is no dispute that the successor agreements were the product of collective negotiations between the parties, leading us to find merit in the City's contention that "the [Union] is merely attempting to gain through the arbitration procedure what it could not gain through bargaining."

Accordingly, we conclude that the grievant is not entitled to bring a grievance under the 1982-84 Seasonal Agreement and, therefore, we deny the Union's request for arbitration of the dispute.

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 o~ the City challenging arbitrability should be, and the same hereby is granted; and it is further

ORDERED, that the Union's request for arbitration should be, and the same hereby is, dismissed.

DATED: New York, N.Y.
June 30, 1988

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