City, HRA v. L.118, CWA, 41 OCB 7 (BCB 1988) [Decision No. B-7-88 (Arb)]

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

-between-

THE CITY OF NEW YORK and THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,
Petitioners,

DECISION NO. B-7-88

DOCKET NO. BCB-985-87 (A-2612-87)

-and-

THE COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1180,

Respondent.
- - - - - - - - - - - - - - - - - - -X

DECISION AND ORDER

On July 30, 1987, the City of New York, appearing by its Office of Municipal Labor Relations ("the City"), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Communications Workers of America, Local 1180 ("the CWA" or "the Union"), on.,June 12, 1987. On August 12, 1987, the CWA filed its answer and, after several extensions of time, the City filed a reply on September 18, 1987.

Background

On December 13, 1985, Ms. Marilyn Jack ("the grievant"), a Principal Administrative Associate I employed by the Human Resources Administration ("the HRA" or "the Agency"),

was suspended and subsequently incarcerated for misconduct associated with her employment.[1] Ms. Jack continued to receive biweekly paychecks from December 13, 1985, through March 6, 1986. On the latter date, the Agency held an Informal Conference, serving Ms. Jack with disciplinary charges and recommending her dismissal. A written determination, stating that the charges alleged were now "established" and further recommending her dismissal, was served on the grievant on March 7, 1986. This notice additionally advised Ms. Jack that her options in responding to the Informal Hearing Officer's determination were as follows:

> 1. Accept the penalty and, as a condition of accepting, sign a waiver of the right to the procedures available under Section 75 & 76 of the Civil Service Law;
>
> 2. Refuse to accept the penalty, whereupon the employer shall proceed with the disciplinary procedures set forth in Section 75 of the Civil Service Law; or
>
> 3. Refuse to accept the penalty and elect, as an alternative, to submit the matter to the Grievance Procedure as outlined in Article VI of the Collective Bargaining Agreement.

As a condition for submitting her claim to the Grievance Procedure, the contract requires that the grievant and

[1] The details of her misconduct are irrelevant to our consideration-of the arbitrability of this matter.

the Union file a written waiver of the grievant's right to utilize the procedures available pursuant to Section 75 & 76 of the Civil Service Law and submit a written appeal of the Agency's determination to the Agency head within five (5) working days after its receipt.

Ms. Jack allegedly refused to accept the penalty of dismissal and she states that she executed a waiver of her Section 75 rights on, April 9, 1986, giving a copy of Form M-300J, "Waiver of Section 75 Hearing and Election of the Grievance Procedure", to the Union on that date. The City states that a signed Form M-300J was never received by their office nor was there any contact from the Union regarding the matter prior to the filing of the Step I grievance on January 18, 1987. The City states that failure of the grievant and/or Union to respond to the notice of March 7, 1986, within the prescribed period of time, rendered their decision to dismiss final on March 14, 1986. Nevertheless, the petitioner sent a letter to Ms. Jack on July 21, 1986, requesting that she either return to work immediately or resign. In response to this letter, Ms. Jack executed a Form M-402, "Notice of Resignation", with an effective date of July 30, 1986.[2]

[2] We take administrative notice of the fact that the grievant was incarcerated from May 1986 through March 1987, as a consequence of her alleged misconduct.

Subsequently, the grievant submitted a Step I grievance on January 18, 1987, alleging that since she refused to accept the recommended disciplinary penalty issued on March 7, 1986, the City violated the contract in not taking further action relating to final disposition of the charges and claiming entitlement to back pay from March 7, 1986, through July 30, 1986, as well as longevity pay and caseload differential.

Upon denial of the Step I grievance, the Union filed a Step II grievance on February 2, 1987. The City's denial of the Step II grievance dated March 17, 1987, stated the "(g)rievant's acknowledgment of guilt at the Informal Conference, along with her failure to elect any option to proceed with the disciplinary action, justifies the agency's action in accepting the recommended penalty of the Informal Conference and in making no further attempt to contact the grievant."

On April 1, 1987, the Union requested a Step III review which the City denied on May 27, 1987. The City claimed, in addition, that the grievant was precluded from pursuing this matter because she lacked standing and was guilty of laches. On June 12, 1987, the Union filed the instant request for arbitration.

POSITIONS OF THE PARTIES

City's Position

The City challenges the arbitrability of the instant grievance on several grounds. It asserts that the grievant lacks standing to bring a claim nearly six months after her resignation, citing in support of its position Board Decision No. B-4-76, in which we denied arbitrability of a grievance submitted 2½ years after the grievant was terminated. In the instant matter, the City argues that since Ms. Jack was a non-employee at the time of filing the grievance, there is no contractual obligation which now binds the employer to arbitrate the dispute.

The City also contends that the Union is guilty of laches, claiming the delay in initiating the grievance, allegedly ten months after it arose and not within the contractually mandated time limit of 120 days, places an undue burden upon the petitioner in defending the claim.

The City further contends that this matter has been brought in the wrong forum because the Union claims an alleged-violation of the grievant's Section 75 right to a hearing as the basis of the grievance. It submits "... that appeals of Section 75 matters are

properly brought to the Civil Service Commission, not to the Board." Furthermore, the City contends that "(a)ssuming arguendo a finding by the Board ..." that the matter is arbitrable, the appropriate remedy would be a remand back to the Section 75 forum rather than back pay.

The City maintains that there is no nexus between the remedy requested, back pay, and the contract provision relied upon by the Union as the source of the alleged right [Article VI, Section 5, Step B(i)], and alternatively, that the only appropriate remedy, remand back to the Section 75 forum, would leave the Board confronted with resolving an issue of arbitrability in favor of a potentially moot claim. The City argues that since

> ".....the grievant admitted that the charges and specifications against here (sic) were accurate, [that her claim of being] denied an opportunity to defend against those identical charges at a Section 75 hearing [is) ludicrous [and] the issue of a favorable outcome at a Section 75 hearing is, and was at anytime after March 6, 1986, moot."

The City relies on Board Decision No. B-2-79, to support its contention that the Board has the power to deny arbitrability when "... in the interest of sound

labor relations ... the proceeding would be a futility because the remedy sought no longer exists." In the instant matter, the petitioner contends that since the outcome of a Section 75 hearing necessarily must be moot, given the grievant's admission of guilt, remand back to that forum would prove futile.

Finally, the City argues that since the grievant allegedly

> ". . . .admitted her guilt in stealing HRA funds, it would be inequitable and contrary to public policy to now permit her to recover back pay."

To support its position the petitioner cites, In U.S. Postal Service v. National Association of Letter Carriers, BNA Daily Labor Report No. 140, July 23, 1987 at page A-1, wherein "... the U.S. District Court overturned an arbitrator's award which would have reinstated an employee who admittedly engaged in criminal mischief against his employer ..." on public policy grounds.[3]

The Union's Position

The Union claims that the Agency violated the Grievance Procedure of the Collective Bargaining Agreement

[3] We take administrative notice of the fact that this case was subsequently reversed on appeal by the U.S. Court of Appeals for the Third Circuit, Government Employee Relations Report Vol. 26, February 15, 1988 at page 229, which ruled-that "the district court overstepped its authority by vacating the arbitrator's judgement ... " We note further that the reversal on appeal occurred after submission of the City's brief.

in failing to schedule a Section 75 disciplinary hearing and by rendering final the decision of the Informal Conference without affording the grievant an opportunity to be heard. The Union contends that if an employee is not satisfied with the recommendation made and has not waived her Section 75 rights, that the Agency has an affirmative burden of going forward in scheduling a Section 75 hearing, the stated purpose of which is that:

> "[A] person ... shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for ... misconduct shown after a hearing upon stated charges pursuant to this Section." (emphasis added)

Although the grievant claims that she did execute a waiver of her Section 75 rights on April 9, 1986, and gave a copy of same to her Union representative, the Union now asserts that because the City admittedly never received such waiver until after the grievant's resignation, that it was incumbent upon the City to proceed as if the grievant did not waive these contractual rights before the determination of the Informal Conference Officer, could become final.

Furthermore, the Union contends that the City recognized its procedural failure, and questions " ... why was it necessary for the agency to write to

Ms. Jack in July soliciting her resignation ..." if the March 7, 1986 determination had become final on March 14, 1986, as they now claim. The Union also points to the agency's March 7, 1986 letter to the grievant, which stated:

> "If [Ms. Jack] did not accept [the Informal Hearing Officer's] decision, or [did] not respond within [a] five (5) day period, then the HRA shall proceed to hold a hearing, in accordance with Section 75 of the Civil Service Law ....." (emphasis added)

The Union asserts that the agency's failure to schedule a Section 75 hearing and failure to advise the grievant that the determination of the Informal Conference Officer had become final on March 14, 1986, constitutes a deprivation of statutorily mandated due process but more importantly, as it relates to these proceedings, a violation of the Collective Bargaining Agreement's Grievance Procedure provisions.

In response to the City's challenge that the grievant, as a non-employee, lacks standing to bring her claim, the Union contends that the violation occurred and the claim accrued before Ms. Jack resigned, bestowing a vested right that is not forfeited merely because the employment relationship terminated.

In response to the defense of laches, the Union breaks down the City's argument into two distinct issues, one of laches and the other of procedural timeliness. As to the former, the Union asserts that for laches to bar a request for arbitration, there must be an unexplained or inexcusable delay in asserting a known right which causes injury or prejudice to the City. Relying upon Board Decision No. B-11-77; the Union contends that the City must make an actual showing of prejudice, i.e., that they changed their position in a way that would not have occurred had the grievant not delayed. The Union asserts that the alleged delay in the instant matter of "slightly over five (5) months ..." is not sufficient to "cause injury or prejudice the defendent." As to the procedural timeliness issue, the Union states that such matters are within the province of the arbitrator as it relates to compliance with contractual procedures.

The Union asserts that the grievant is entitled to back pay between the date the City took her off the payroll, March 7, 1986, and the effective date of Ms. Jack's resignation, July 30, 1986, which, they point out, the City itself solicited. The Union claims that this

> "... is the only remedy appropriate for the invasion into [the grievant's] due process rights ... and that failure to give her remedy [would be] contrary to the state purpose of statutory civil law."

The Union attempts to rebut the argument that a back pay remedy has no nexus to the contract provision cited, relying upon the Board's long standing position that it will not intrude into the matter of the remedial powers of the arbitrator if the arbitrator deems particular relief to be appropriate.[4]

As to the City's claim that a back pay remedy would be contrary to public policy, the Union states that

> "[t]he Board has held in more stringent circumstances that the mere possibility that the arbitrator may render an award that would violate specific statutory proscription is not grounds enough for denying an otherwise valid request for arbitration."

The Union challenges the City's contention that this matter is brought in the wrong forum, claiming that the grievance is based upon the City's failure to adhere to the requirements of the contractual Grievance Procedure, which allegedly prescribes the employer's affirmative.

[4]Decision Nos. B-32-82, B-4-82, B-15-81, B-14-81.

obligation to schedule a Section 75 hearing. Therefore, the Union contends that whether this failure to act violated the contract is appropriately a question for the arbitrator. Similarly, the Union asserts that whether a request for arbitration should be denied because an issue is moot, is a question going to the substance of a claim and is more properly argued before an arbitrator.

Finally, the Union contends that it would be improper for the City to decide unilaterally that a Section 75 hearing is either "unnecessary" or is "not justified" given the grievant's admission of guilt. Because it is the employer's duty to initiate the Section 75 hearing the Union asserts that such discretion on the part of the City would effectively negate the intent and purpose of Section 75 hearing rights.

Discussion

This Board has consistently stated its position that, in determining the arbitrability of a grievance, it must first decide whether the parties are obligated by the collective bargaining agreement to arbitrate their disputes and, if so, whether a particular controversy falls within the scope of the contractual obligation.[5]

[5] Decision Nos. B-28-85, B-28-84, B-28-82.

The applicable 1984-87 collective bargaining agreement between the CWA and the City includes at Article VI a detailed grievance procedure which affords a grievant two alternatives to pursue an alleged wrongful disciplinary action in violation of the contract.[6]

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[6] Article VI, Section 5, in part, states:

"In any case involving a grievance under Section 1(E) of this Article, the following procedure shall govern upon service of written charges of incompetency or misconduct:

STEP A. - Following the service of written charges, a conference with such employee shall be held with respect to such charges by the person designated by the agency head to review a grievance at STEP I of the Grievance Procedure set forth in this Agreement. . .

The person designated by the agency head to review the charges shall take any steps necessary to a proper disposition of the charges and shall issue a determination in writing by the end of the fifth day following the date of the conference.

If the employee is satisfied with the determination in STEP A above, the employee may choose to accept such determination as an alternative to and in lieu of a determination made pursuant to the procedures provided for in Section 75 of the Civil Service Law ... As a condition of accepting such determination, the employee shall sign a waiver of the employee's right to the procedures available to him or her under Section 75 and 76 of the Civil Service Law ...

It is clear that the parties have agreed to arbitrate grievances as defined in their collective bargaining agreement. The threshold question in this matter appears to be whether a dispute concerning the City's alleged failure to schedule a Section 75 hearing and its continued suspension of the grievant without pay for more than 30 days without holding such a hearing is a grievance falling within the scope of the collective bargaining agreement and, as such, is an issue which the parties have agreed to submit to arbitration.

(... continued)

STEP A(i). - If the Employee is not satisfied with the determination at STEP A above, then the Employer shall proceed in accordance with the disciplinary procedures set forth in Section 75 of the Civil Service Law ... As an alternative, the Union with the consent of the employee may choose to proceed in accordance with the Grievance Procedure set forth in this Agreement, including the right to proceed to binding arbitration pursuant to STEP submitting the matter to the Grievance Procedure the employee and the Union shall file a written waiver of the right to utilize the procedures available to the employee pursuant to Section 75 and 76 of the Civil Service Law ... or any other administrative or judicial tribunal, except for the purpose of enforcing an arbitrator's award, if any. Notwithstanding such waiver, the period of an employee's suspension without pay pending hearing and determination of charges shall not exceed thirty (30) days. Step IV of such Grievance Procedure. As condition for submitting the matter to the Grievance Procedure the employee and the Union shall file a written waiver of the right to utilize the procedures available to the employee pursuant Section 75 and 76 of the Civil Service Law ... or any other administrative of judicial tribunal, except for the purpose of enforcing an arbitrator's award, if any. Notwithstanding such waiver, the period of an employee's suspension without pay pending hearing an determination of charges shall not exceed thirty (30) days.

(ii)- If the election is made to proceed pursuant to the Grievance Procedure, an appeal from the determination of STEP A above, shall be made to the agency head or designated representative. The appeal must be made in writing within five (5) work days of the receipt of the determination ..."

The contract between the parties defines a grievance as

> "(a) dispute concerning the application or interpretation of the terms of this Agreement; (a) claimed violation, misapplication of the rules or regulations ... applicable to the agency which employs grievant affecting terms and conditions of employment; ... (a) claimed wrongful disciplinary action taken against a permanent employee covered by Section 75(l) of the Civil Service Law ... upon whom the agency head has served written charges of ... misconduct while the employee is serving in the employee's permanent title or which affects the employee's permanent status."

The Union herein asserts that the City has violated the terms of the Collective Bargaining Agreement and violated applicable-agency procedures by failing to

> . . .schedule a Section 75 Disciplinary Hearing since the City contends they never received Grievant's waiver of her Section 75 rights and election to use the contractual grievance procedure."

The City does not deny that there is a contract between the parties, or that a controversy relating to the interpretation thereof exists. Rather than addressing itself to the contractual nexus of the alleged violation, the City bases its challenges to arbitrability either on the merits, assertions which are appropriately heard in the arbitral forum, or on misplaced jurisdictional arguments.

We find that the subject of this matter falls within the scope of the parties' agreement to arbitrate disputes. The grievant alleges a violation of Article VI, Section 5 of the contract, which on its face, prescribes procedural prerequisites the City must follow to insure the proper disposition of written charges served on an employee. It is undisputed that the grievant did not accept the penalty recommended by the Informal Hearing Officer. In this regard, Article VI, Section 5, STEP B (i) of the agreement, above provides, "... [i]f the Employee is not satisfied with the determination ... then the Employer shall proceed in accordance with the disciplinary procedures set forth in Section 75." This provision goes on to state, ". . .the period of an employee's suspension without pay pending hearing and determination of charges shall not exceed thirty (30) days." The Union alleges that the

City violated Article VI, Section 5, Step B(i) to the extent that they did not adhere to the contractual grievance procedure as prescribed therein. Clearly, it is reasonable to conclude that the acts complained of fall within the scope of the agreement, constituting a grievable matter.[7]

Therefore, we find this to be a dispute concerning the application or interpretation of the terms of the collective bargaining agreement and within the contemplation of the parties' agreement to arbitrate disputes. Additionally, and for these same reasons, we find that this claim has been brought before the appropriate forum and that the City's argument in this regard is misplaced.

Having established to our satisfaction that this Board's threshold requirements for arbitrability have been met, before turning to the remaining arguments raised by the parties, we wish to state that whether or not the contract entitles the instant grievant to the relief requested, is a question which goes to the merits of the dispute. It is well settled that this Board, in deciding a question of arbitrability, will not inquire into the merits of a grievance, as the City asks us to do here.[8]

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[7] In Decision No. B-10-82, citing Gibbs v. Health and Hospitals Corporation, No.41411/79 (Sup. Ct., N.Y. County, Spec. Term, Pt. 1 (1979) at 3, this Board noted the Supreme Court's recognition of the fact that an employee's entitlement to a disciplinary hearing derives from Section 75 of the Civil Service Law as well as from the collective bargaining agreement.

[8] Decision Nos. B-31-82. B-7-79, B-8-74.

The City challenges the grievant's standing to bring a claim since, it asserts, at the time the Step I grievance was filed, nearly six (6) months after the grievant resigned, she was a non-employee. The Union contends that, under this set of facts, the standing issue is not properly raised in a petition challenging arbitrability but rather it is one of contractual interpretation and, thereby, properly a question for the arbitrator. The Union maintains that Ms. Jack's due process and contractual rights were violated while she was employed and further, that "the issues to be addressed in arbitration are concerning the events which [led] to her resignation."

We see merit in the Union's argument, having found that standing was established under similar facts in Board Decision No. B-10-83. We held there that a retiree, whose claim was asserted for the first time two weeks after his resignation date, did not lack the requisite standing to grieve matters which took place during his tenure as a Police Officer. We found support in this position based on the fact that the

> "[g]rievant first corresponded with the Union while he was still technically an "active" employee ... [a]lthough the Union did not file his grievance with the Department until after the effective date of [the grievant's] retirement."

This Board reasoned that "... an extension of the City's argument would result in barring all discharged employees from filing grievances ..." and that "... such inequitable results are contrary ... to sound labor relations." We find this reasoning equally applicable to the facts of the present case, and so we hold that the grievant herein possesses standing to assert her claim.

The City further asserts that the instant request for arbitration should be denied because the Union failed to comply with the 120-day contractual statute of limitations and is guilty of laches. The City correctly points out while questions of procedural arbitrability, including timeliness of a request for arbitration under a contract, are for an arbitrator to decide, the question of laches is to be resolved by the Board.[9]

Laches (extrinsic delay) differs from procedural timeliness (intrinsic delay) in that it does not involve interpretation of contract provisions. Laches is an equitable defense, not a contractual one, which arises from the recognition that belated prosecution of a claim imposes upon the defense an additional burden. Long delay

[9] Decision Nos. B-26-85, B-17-84, B-23-83, B-36-82, B-33-82) B-3-82, B-38-80.

in bringing a grievance gives an advantage to a party because of his own inaction, while at the same time it subjects the defense to a greater risk of liability because of actions taken, or not taken, in reliance on the apparent abandonment of the claim.[10] In determining whether the defense of laches is available, this Board has adopted the standard expressed by the U.S. Court of Appeals for the Fourth Circuit, which requires a finding of "unexplained or inexcusable delay in asserting a known right which causes injury or prejudice" to the party relying on the defense.[11]

The City argues that the respondents in the instant matter failed to assert a known right for almost one year, occasioning an undue burden on the petitioner which is now faced with the prospect of having to gather evidence which may no longer be available and may have to rely on the testimony of witnesses whose memories may have been dimmed by the passage of time.

The Union's response to this challenge rests on their assertion that "the delay ... [of] slightly over five (5) months, is not so long of a delay that would automatically cause injury or prejudice to the defendant."

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[10] See B-6-75, citing Prouty v. Drake, 182 NYS 2d 271.

[11] See Decision No. B-11-77 at page 6, citing Tobacco Workers v. Lorillard Corp., 78 LRRM 2993, 2280 (1971). See also Decision Nos. B-23-80, B-18-80, B-3-80.

Although there is a factual dispute as to when the employment relationship ended, either on or about March 14, 1986, as the City claims, or on July 30, 1986, when the grievant resigned, we do not pass on the substantive merits of this issue. Rather, we address the question whether the City has demonstrated prejudice from the delay, whatever its duration.[12]

We find the City's general contention that the delay in filing may result in an undue burden to be without factual support. The City has not demonstrated any direct proof of harm. It has offered no evidence tending to show that necessary witnesses are unavailable or that evidence has been lost because of the delay. Further, it has not established that its potential liability has increased because of the grievant's delay and in this connection we note that regardless of whether a 10 month or a 5 month delay occurred, the amount of the petitioner's potential liability remains fixed.

In Decision No. B-23-80, we held that the passage of sixteen months before initiation of a grievance did not constitute a "long delay" in the absence of any specific showing of prejudice or increased potential liability. In finding the issue arbitrable, we noted

[12] In B-4-76 this Board held that the doctrine of laches will not apply unless the delay has occasioned some prejudice.

that "... if the Union (prevailed) at arbitration ... the City's liability (would) not be any greater than it would have been had the claim been filed earlier." We, therefore, conclude that in the absence of any evidence of the necessary element of prejudice there can be no finding of laches in this matter.

However, in light of the absence of any explanation of the Union's delay in filing this grievance within the 120-day contractual time limit, we emphasize that our refusal to consider this point in determining arbitrability is without prejudice to the right of the City to raise the procedural objection if the case proceeds to arbitration.[13]

In considering the City's challenge to arbitrability based on improper forum, as stated earlier, it is the finding of this Board that the grievant is not asserting her right in the instant matter under the Civil Service Law. On the contrary, she is asserting a procedural right under Article VI, Section 5 of the contract between the parties which refers to and arguably incorporates the disciplinary procedures of Civil Service Law Section 75

[13]We take administrative notice of the fact that, in its responsive pleading, the Union does not deny the allegation of receiving the grievant's Form M-300J, Waiver of Section 75 Hearing Rights, on April 9, 1986.

which allegedly have been violated. Therefore, we find that there is a nexus between the acts complained of and the parties agreement to arbitrate grievances, sufficient to warrant consideration in the arbitral forum.

We again emphasize that our decision holds only that the controversy between the parties, insofar as there may be a contract violation, is within the category of disputes which the parties have agreed to arbitrate and that we make no comment as to the merits of the case. Furthermore, it is well settled that it is solely within the jurisdiction of the arbitrator to determine whether there is merit to an alleged contract violation, and whether a remedy should be granted, which brings us to the remaining challenge to arbitrability raised by the City, pertaining to the appropriateness of the requested remedy of back pay.

Our ruling upholding the arbitrability of this matter only affords an arbitrator the opportunity to consider a remedy and fashion one, if needed, appropriate to the circumstances of this particular case. The City's assertion that arbitrability should be denied because the requested remedy is either moot, not arguably related to any provisions

cited in the contract, or in contravention of public policy, are questions separate and distinct from questions of arbitrability. These issues are exclusively within the purvue of an arbitrator and, as the Court of Appeals has stated, "arbitration is analogous to a proceeding in equity and an arbitrator like a chancellor, is not strictly limited to remedies requested by the parties but is empowered to reach a just result regardless of the technicalities'."[14] We have consistently held that arguments addressed to questions of remedy are not relevant to the arbitrability of a grievance.[15]

Based upon the above considerations, we find that this grievance should be submitted to arbitration.

0 R D E R

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

[14] See B-2-78, citing Board of Education, Bellmore-Merrick v. Bellmore-Merrick United Secondary Teachers, 383 NYS 2d 242 (1976) and Matter of Associated Teachers of Huntington v. Board of Education, Town of Huntington, 351 NYS 2d 670 (1973).

[15] Decision Nos. B-5-85, B-4-85, B-32-82.

ORDERED, that the City's petition challenging arbitrability be, and the same hereby is, denied; and it is further

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

Dated: New York, N.Y.
April 28, 1988

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER

DEAN L. SILVERBERG
MEMBER