City v. L.2021, DC37, 45 OCB 58 (BCB 1990) [Decision No. B-58-90 (Arb)]

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

THE CITY OF NEW YORK,

Petitioner, DECISION NO. B-58-90

-and- DOCKET NO. BCB 1285-90 (A-3353-90)

LOCAL 2021, DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Respondent
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DETERMINATION AND ORDER

The City of New York ("the City"), by its office of Municipal Labor Relations, filed a petition on May 22, 1990, challenging the arbitrability of a grievance submitted by Local 2021 of District Council 37 ("the Union"). The grievance alleges that the Off-Track Betting Corporation (“OTB”) is violating terms of the collective bargaining agreement ("the Agreement") by wrongfully paying different salaries to employees in the same title and level. The Union filed an answer on May 31, 1990. The City filed its reply on June 25, 1990.

Background

On July 13, 1989, the Union filed a grievance at Step I of the grievance and arbitration procedure set forth in the Agreement, alleging that three OTB employees in the title

Computer Associate Level I had been transferred into the Technical Control Department and were being paid at a higher rate of pay than other employees in Technical Control who hold the same job title and perform the same work.

By letter dated January 26, 1990, the grievance was denied at Step III by OTB's Office of Industrial Relations on the grounds that:

> the two new Tech Control employees were transferred there when their budget lines in our [Operations Center] unit were eliminated. They transferred to vacancies in Tech Control which were budgeted at the minimum of Level I. OTB unilaterally "red-circled" these transferred employees at their old, Level I salaries. This means that the salaries they receive are for the present incumbents only. When and if their lines are vacated, the monies paid revert to the minimum of Level I.

On February 16, 1990, the Union filed a Request for Arbitration in accordance with Article VI of the Agreement.[1] It seeks, as a remedy, "immediate raising of the salaries of all Computer Associates, Level I, to the salary level of the newly-transferred employees, and any other action required to make the affected

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[1] Article VI of the Agreement provides:

Section 1.
Definition: the term "grievance" shall mean

(A) A dispute concerning the application or interpretation of the terms of this collective bargaining agreement or any other collective bargaining agreement applicable to employees;

(B) A claimed violation, misinterpretation, or misapplication
of rules and regulations, written policy, or orders applicable to OTB affecting the terms and conditions of employment...

employees whole."

## Positions of the Parties

### City's Position

The City argues that the grievance cannot be maintained because the Union has failed to demonstrate a nexus between a provision of the Agreement and the grievance sought to be arbitrated. The City asserts that Article VI of the Agreement, upon which the Union depends, merely defines the term "grievance", and that this Board has previously held, in Decision B-22-85, that the section of the Agreement that defines the term "grievance" does not, in and of itself, provide the basis of a grievance.

The City states that an alleged violation of Article V of the Agreement also does not provide a nexus for arbitration of a grievance, since Article V neither provides that all Computer Associates are to be paid at the same salary rate, nor sets forth a specific rate at which Computer Associates are to be paid. The City maintains that because Article V does not set forth the salary structure of OTB employees, it is not arguably related to the instant grievance. Merely reading Article V together with the grievance section of the Agreement, the City maintains, does not automatically provide the basis of a grievance concerning salary structure.

The City further argues that there is no nexus between the

instant grievance and other sections of Article V because the Union has not alleged a violation of the applicable Executive Orders (Section 1); grievants are not in job titles unique to OTB (Section 2); and grievants are neither hourly or part-time employees (Section 4) nor Betting Clerks or Betting Clerk Trainees (Section 5).

Union's Position

The Union asserts that Articles V (Salaries)[2] and VI,

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[2] Article V of the Agreement provides:

Section 1.
Pursuant to Section 606 (1) of the Racing, Pari-Mutuel Wagering and Breeding Law, the provisions of appropriate Implementing Personnel order, Labor Relations orders, and Personnel Orders of the Mayor of the City of New York shall be applicable to employees in titles which are equated to titles of the City.

Section 2.
Effective July 1, 1982, the parties shall provide in Appendix "D" the salaries and other economic terms of employment for employees in titles unique to OTB and not equated to City titles.

Section 3.
Economic terms of collective bargaining agreements covering City titles to which OTB titles are equated are and shall be applicable to OTB employees in such equated titles; and the parties agree that OTB employees in such equated titles shall be permitted to participate fully in the City-wide negotiations for such titles.

Section 4.
Hourly and part-time employees regularly scheduled to work 20 hours or more per week, shall receive a pro rata share of the wage increases provided for full-time employees.

Section 5.
Betting Clerk Trainee (OTB) (Part-Time) shall receive an hourly rate of 75 cents per hour less than the minimum hourly hiring rate for Betting Clerk (OTB) (Part-Time). Upon completion
(continued... )

§§ 1(A) and (B) of the Agreement have been violated, and that these provisions, read together, form the basis of a nexus that renders the instant grievance arbitrable. It argues that Article V refers to the salary structure of employees of OTB, and that S 3 therein provides that "economic terms of collective bargaining agreements covering City titles to which OTB titles are equated are and shall be applicable to OTB employees in such equated titles." The Union states that Computer Associate Level I is an equated title within the meaning of § 3. Read together, the Union argues, these contract provisions incorporate by reference specific economic terms of the city-wide collective bargaining agreements into grievants' salary structure.

Discussion

When the City challenges the arbitrability of a grievance, this Board must first determine whether the parties have obligated themselves to arbitrate controversies and, if they have, whether that contractual obligation is broad enough to include the act complained of by the Union.[3] When challenged, the burden is on the Union to establish a nexus between the

2( ... continued)
of the training period, the Betting Clerk Trainee (OTB) Part-Time shall be promoted pursuant to the Rules and Regulations of the OTB Civil Service Commission to Betting Clerk (OTB) (Part-Time) and shall receive the appropriate hourly rate for Betting Clerk (OTB) (Part-Time).

[3] See, e.g., Decision Nos. B-19-89; B-65-88; B-28-82.

City's acts and the contract provisions it claims have been breached.[4] Doubtful issues of arbitrability are resolved in favor of arbitration.[5]

In the instant case, the parties have agreed to arbitrate grievances as defined in Article VI, §§ 2-8 of the Agreement. The City claims that the instant Request for Arbitration must be denied, however, because there is no nexus between a provision of the Agreement and the remedy sought by the Union. The City maintains that because there is neither a term in the Agreement that states that all Computer Associates are to be paid at the same rate, nor a term providing specific salary rates for Computer Associates, there is no substantive relationship between the right claimed to have been violated and a term of the Agreement. The Union counters that Article V (Salaries) of the Agreement provides that "economic terms" of city-wide collective bargaining agreements will apply to OTB employees in job titles that are equated to City titles. Because Computer Associates have titles equated to City titles, the Union argues, by paying different salaries to employees in the same job title OTB has violated the terms of the applicable citywide agreement that sets forth the salary structure for Computer Associates.

[4] Decision Nos. B-1-89; B-7-81.

[5] Decision Nos. B-65-88; B-15-80.

We first consider whether the grievance involves a dispute concerning the application or interpretation of the terms of this Agreement or any other applicable collective bargaining agreement, or a claimed violation of existing policy or regulations of the Department affecting terms and conditions of employment. In the section of the Agreement concerning salaries, the parties have agreed that they will be bound by the economic terms of collective bargaining agreements covering City titles to which OTB titles are equated. The Union claims that the title of Computer Associate Level I is a job title that is equated to a City title, and this claim is not contradicted by the City.

Examination of the Agreement reveals that specific salary rates are provided therein only for employees in titles unique to OTB. It appears that the parties omitted salary terms for the majority of its job titles because they were aware that these terms would be supplied from collective bargaining agreements covering City titles to which OTB titles are equated. Because the Union's grievance relates to an economic term incorporated from other agreements covering City titles into the instant Agreement, it is arguably related to a provision of the Agreement, and thus is a matter for arbitration.

We next consider the issue, raised by the City, of whether any contract term cited by the Union refers specifically to the payment of uniform wages to OTB employees doing the same work. It is alleged that there is no contract term in the Agreement

before us that deals with this matter. Having found, however, that the subject of salaries is encompassed within the scope of Article V of the Agreement, and that the grievance herein concerns the payment of salaries, we hold that the question of whether the Agreement permits or prohibits the payment of disparate salaries involves a matter of interpretation of the Agreement, which is for an arbitrator to determine.[6]

Accordingly, for the reasons stated above, we shall deny the City's petition challenging arbitrability and grant the Union's request for arbitration.

[6] See, Decision Nos. B-10-77; B-5-76.

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

ORDERED, that the request for arbitration filed by Local 2021 of District Council 37 be, and the same hereby is, granted.

Dated: New York, New York
September, 1990

CHAIRMAN

MEMBER

MEMBER

MEMBER

MEMBER

MEMBER

MEMBER