

UPOA (behalf of Gregg) v. City, DOP, 47 OCB 38 (BCB 1991) [Decision No. B-38-91 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice
Proceeding                               :
:
      -between-                           :
:
UNITED PROBATION OFFICERS ASSOCIATION,   :
on behalf of Dwight Gregg,              :
:
      Petitioner,                         :
:
      -and-                               :
:
THE CITY OF NEW YORK, DEPARTMENT OF
PROBATION,                               :
:
      Respondent.                        :
:
-----X

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DECISION NO. B-38-91
DOCKET NO. BCB-1282-90

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In the Matter of the Arbitration
:
      -between-                           :
:
THE CITY OF NEW YORK,
:
      Petitioner,
      :DOCKET NO. BCB-1339-90
:
      -and-                               :
:
UNITED PROBATION OFFICERS ASSOCIATION,   :
:
      Respondent.                        :
:
-----X

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(A-3607-90)

INTERIM DECISION AND ORDER

On May 21, 1990, the United Probation Officers Association ("UPOA" or "the Union") filed an improper practice petition against the City of New York, Department of Probation ("Department") on behalf of Probation Officer Dwight Gregg ("Gregg"), docketed as BCB-1282-90, alleging:

[T]he Department in retaliation to [Gregg's] refusal to breach the terms of an agreement entered into between [Gregg, the] union and respondent, has sought, in violation of § 12-306(a) of the New York City Collective Bargaining Law¹, to discipline him with the bringing

¹ The New York City Collective Bargaining Law ("NYCCBL")
(continued...)

of baseless and meritless charges, and has sought to interfere, restrain and coerce him in the exercise of his rights as a union member.

As a remedy, the UPOA requests the withdrawal of charges currently pending against Gregg and removal of any and all documents, including the absent without leave ("AWOL") letter, from Gregg's personnel file.

The City of New York ("City"), represented by its Office of Labor Relations, filed an answer to the improper practice petition on June 13, 1990. The UPOA filed a reply on July 3, 1990.

On October 25, 1990, the UPOA filed a request for arbitration (docketed as Case No. A-3607-90) in which it sought to appeal the finding of guilt in disciplinary proceedings against Probation Officer Gregg, and the penalty of termination.² As a remedy, the UPOA requested Gregg's reinstatement and back

¹(...continued)

Section 12-306a provides, in relevant part, as follows:

Improper practices; good faith bargaining.

a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain, or coerce public employees in the exercise of their rights granted in section 12-306 (formerly section 1173-4.1) of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

* * * *

² In its request for arbitration, the UPOA alleged a violation of Article VI, Section 1(E) of the collective bargaining agreement between the parties. Article VI, Section 1(E) defines the term "grievance" as follows:

(E) A claimed wrongful disciplinary action
(continued...)

pay.

The City filed a petition challenging the arbitrability of the UPOA's request for arbitration on November 15, 1990. Sometime thereafter, Dominic Coluccio, President of the UPOA, informed the Office of Collective Bargaining that he had not received a copy of the City's petition challenging arbitrability, docketed as BCB-1339-90. Accordingly, the UPOA was granted an extension of time in which to respond to the City's petition.

The UPOA filed an answer to the City's petition challenging arbitrability on January 18, 1991. The City did not file a reply.

The above-described arbitrability and improper practice proceedings have been consolidated for decision herein as they involve the same parties, events and underlying factual circumstances.

BACKGROUND

To settle disciplinary charges brought against Gregg, a permanent, full time Probation Officer, the Department and Gregg entered into a Stipulation of Settlement, on March 2, 1990, which provided as follows:

- (1) [Gregg] agrees to a placement of this STIPULATION OF SETTLEMENT into his personnel file.
- (2) [Gregg] agrees to be placed on suspension without pay for a period of eight (8) consecutive days. Said suspension shall commence on **MARCH 21, 1990** and shall continue through to and include **MARCH 30, 1990**, as a penalty for the misconduct set out in Exhibit

²(...continued)

taken against a permanent employee covered by Section 75 (1) of the Civil Service Law or a permanent competitive employee covered by the Rules and Regulations of the Health and Hospitals Corporation upon whom the agency head has served written charges of incompetency or misconduct while the employee is serving in the employee's permanent title or which affects the employee's permanent status.

"1"³.

(3) [Gregg] also agrees to relinquish two (2) days of Annual leave from his Annual Leave Bank as a further penalty for the misconduct set out in Exhibit "1". Said relinquishment of two (2) days of Annual Leave from his Annual Leave Bank shall be deducted at the rate of one-half (1/2) day per month for a period of four (4) months or until said two (2) days are fully deducted. In the event [Gregg] resigns from the **DEPARTMENT**, or is separated from employment for any reason whatsoever, prior to the relinquishment of the two (2) days of Annual Leave, the balance due the Department shall be deducted from [Gregg's] paycheck or will be paid by [Gregg] to the **DEPARTMENT**.

(4) The **DEPARTMENT** agrees to accept the following acknowledgements and penalties in lieu of any further proceedings.

(5) [Gregg] acknowledges that he may have rights afforded him under Section 75 and/or 76 of the New York Civil Service Law and/or Collective Bargaining Agreement, and hereby waives his rights to such in this matter.

(6) [Gregg] acknowledges that he has entered into this agreement knowingly without coercion or duress and after consultation with his attorney, and does accept all terms and conditions contained herein.

Prior to March 21, 1990, the day Gregg's suspension was scheduled to commence, the Department instructed Gregg to delay implementation of his suspension so he could complete work on his assigned cases. Gregg refused, and went out on suspension beginning March 21, 1990.

On March 29, 1990, Gregg went to his workplace to pick up his paycheck. Gregg brought with him a recently purchased firearm which he showed to Miguel Ibarra, a Field Services Supervisor. According to the Union, "[a] discussion followed regarding the legal rights pursuant to Department regulations regarding the handgun purchased, and [Gregg] was told by [Ibarra] that the gun was good and there were no facilities in the building to store the gun, but he should put the gun in his brief case and lock it." Upon his return to work, on April 2, 1990, Gregg surrendered the gun at the request of Branch Chief Edith Rubin.

According to the City, Gregg asked Ibarra to check out the gun, which

³ The City included a copy of the March 2, 1990 Stipulation of Settlement with its answer to the UPOA's improper practice petition. Although the Stipulation of Settlement refers to Exhibit "1", we note that no exhibits were appended to the documents submitted by the City.

Ibarra did. Assistant Commissioner Carey and Branch Chief Rubin entered Ibarra's office "seconds later" and informed him that Gregg did not have the required permission to purchase and possess an off-duty weapon. Ibarra thereafter informed Andrew Dubras, Director of Field Services and Agency Armorer, that Gregg had been in his office and showed him a gun that he purchased for off-duty use. Dubras checked the files and found that no application or permission had been granted for Gregg to have the weapon. Dubras later arranged for Gregg to surrender the newly purchased gun, and informed him that he needed special permission pursuant to Departmental regulations to purchase and possess a gun on the Department's premises.

Shortly after returning to work from his suspension, on April 5, 1990, the following disciplinary charges were filed against Gregg by the Department:

- I) purchase of an off-duty firearm;
- II) carrying a firearm onto Department premises;
- III) neglect of assigned duties; and
- IV) failure to obey a superior's lawful order.

In response to these charges, an informal conference was held on April 30, 1990, at which time the charges were sustained and the penalty of termination was recommended.

On May 16, 1990, a conference pursuant to Step II of the grievance procedure set forth in the parties' collective bargaining agreement was held. At the Step II conference, Gregg was found guilty of the charges brought by the Department and, by decision dated May 17, 1990, the recommended penalty of termination was imposed.

A hearing pursuant to Step III of the grievance procedure was held on August 14, 16 and September 6, 1990. On October 3, 1990, the Step III Review Officer issued her decision affirming the finding of Gregg's guilt in the disciplinary proceedings and the penalty of termination of employment. With respect to charges I and II, the Review Officer held that it was uncontroverted that Gregg purchased and possessed a firearm without receiving express written permission from the Department Armorer as required by the Department Code of

Conduct and Executive Policy and Procedure No. 10-8-85. With respect to charge III, neglect of duty, the Review Officer noted that the charge does not allege that Gregg breached the March 2, 1990 Stipulation of Settlement, but rather that he failed to perform his assigned duties (e.g., completion of certain cases by March 21, 1990). The Review Officer made no finding with respect to charge IV, stating that "since I find overwhelming substantial evidence of [Gregg's] guilt with respect to charges I, II and III, especially the seriousness of the gun possession charge, the penalty of termination is justified."

The UPOA filed a request for arbitration on October 25, 1990, which the City thereafter challenged. In accordance with the requirements of Section 12-312d of the NYCCBL⁴, a waiver signed by the Union and Gregg was included with the UPOA's request for arbitration.

POSITIONS OF THE PARTIES

IMPROPER PRACTICE PETITION

Union's Position

_____The UPOA maintains that the Department, in retaliation for Gregg's refusal to "breach" the terms of the suspension agreement, sought to discipline him with the "bringing of baseless and meritless charges, and has sought to interfere, restrain and coerce him in the exercise of his rights as a union member". Therefore, the UPOA alleges, the City has violated Section 12-306a of the

⁴ Section 12-312d of the NYCCBL provides as follows:

As a condition to the right of the municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the director a written waiver of the right, if any, of said grievant or grievants and said organization to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

NYCCBL.⁵

The UPOA contends that Gregg was not notified until two days before his suspension was scheduled to commence that the Department wanted him to "breach" the terms of the stipulation they executed on March 2, 1990, and begin his suspension several weeks later. The UPOA alleges that Gregg, having signed the Stipulation with counsel for the UPOA present, advised the Department that he would not accept the notice concerning the postponement of his suspension "without advice from his attorney." As a result, the Union argues, neither Gregg nor the Union ever received a copy of the notice. The UPOA notes, however, that the Department filed a copy of the notice, as well as an AWOL letter, in Gregg's personnel file.

The UPOA submits that there was no condition established in the Stipulation of Settlement regarding the number of cases to be completed prior to the commencement of Gregg's suspension. "All that was indicated," the Union claims, "was that suspension would begin on a date certain. There were no quotas that [Gregg] needed to meet prior to commencement." Therefore, the UPOA argues, Gregg was not AWOL during the period March 21 through 30, 1990.

The UPOA maintains that the Department charged Gregg with negligence in the handling of his caseload - specifically, failing to prepare and submit in a timely manner pre-sentence investigation reports prior to the agreed upon suspension, in retaliation for his refusal to change the terms of the Stipulation of Settlement entered into by the Union and the Department. Given the unreasonable work load Probation Officers are required to handle, the UPOA contends that Gregg did more than his share of cases during the period of time in question. In any event, the UPOA claims that the Department had adequate time to reassign Gregg's cases, a "practice routinely followed", to avoid cases pending during his suspension, but made no attempt to do so.

In response to the charge of carrying a firearm in violation of Department

⁵ supra, note 1.

regulations, the UPOA asserts that when Gregg showed the gun to Field Services Supervisor Ibarra "[n]o response was made regarding departmental regulations [on] the purchasing of handguns." Furthermore, the Union argues, "[a]t no time was [Gregg] told by Ibarra that he was in violation of department rules by carrying the handgun."

In its reply, the UPOA maintains that Gregg has indeed established a prima facie case of improper practice under the NYCCBL. In support of its position, the UPOA asserts that the Department attempted to change unilaterally the terms of Gregg's suspension, and then charged Gregg with being AWOL because he refused to accede to their demand that the suspension date be changed. Inasmuch as the Department was a party to the Stipulation of Settlement, the UPOA argues that the Department could not direct Gregg to modify the terms of the Stipulation. According to the Union,

... because both [Gregg] and [the Department] were parties to a stipulation, [the department] was bound to the terms of the agreement, and an Order by [the Department] to [Gregg] to change the terms of that agreement without [Gregg's] consent does not amount to a refusal; rather, it amounts to a violation of the stipulation by the [Department]. [Gregg] never removed himself from his job but rather began his previously agreed to suspension on March 21.

In its reply, the UPOA also submits that the "four walls of the contract are silent on the issue of completion of a specific caseload." Consequently, the UPOA alleges that the charge against Gregg of negligently handling his workload is unfounded and, moreover, the Department uses this claim as a "pretext to hide its real motivation." Finally, with regard to the firearm charge, the UPOA argues that Supervisor Ibarra did not caution or advise Gregg that he had violated procedures when he displayed the gun on the Department's premises.

City's Position

The City maintains that the petition should be dismissed because the Union has failed to establish a prima facie case of improper practice. In support of its position, the City cites Decision No. B-51-87 wherein the Board of Collective Bargaining ("Board") adopted the standard set forth by the Public employment

Relations Board in City of Salamanca.⁶

The City contends that contrary to the UPOA's assertion, the Department verbally explained the delay in implementation of Gregg's agreed upon suspension as an opportunity for Gregg to complete his caseload before the suspension was scheduled to begin. According to the City, the Department notified Gregg that "as his caseload had not been reduced, the implementation date for his suspension would be delayed." Nevertheless, Gregg refused to continue working after March 21, and removed himself from his job.

The City asserts that Gregg's actions "in the face of the [Department's] rules and a directive of the Department to remain on duty were the basis for discipline." The City submits that the charges of AWOL, negligence of duty and violations of the firearm policy were all serious enough to justify severe discipline, even without Gregg's prior history of discipline. In conclusion, the City urges that Gregg should not be permitted to invoke Section 12-306a of the NYCCBL to prevent "the legitimate exercise of discipline by the Department." The City argues that "[a]s the discipline of ... Gregg was based upon his actions and not from his union activity, ... the [improper practice] petition should be

⁶ 18 PERB Par. 3012 (1985). The test referred to by the City provides that when an employer is alleged to have violated Section 12-306a of the NYCCBL, the petitioner has the initial burden of showing that:

1. the employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and
2. the employee's union activity was a motivating factor in the employer's decision.

If that can be done, the employer must present uncontroverted testimony and evidence that attacks directly and refutes the evidence put forward by the Union, or it must put forward evidence, unrefuted by the Union, that it had other legitimate and permissive motives which would have caused it to take the action complained of even in the absence of the protected activity.

dismissed."

PETITION CHALLENGING ARBITRABILITY

City's Position

The City contends that the UPOA's request for arbitration must be denied because Gregg failed to execute a valid waiver, as required under Section 12-312d of the NYCCBL. The waiver requirement, according to the City, is intended to prevent multiple litigation of the same dispute.⁷ Under the NYCCBL, the execution of a valid waiver is a condition precedent to the right to bring a grievance to arbitration.⁸

The City argues that the waiver signed by Gregg on October 25, 1990 is invalid because the Union, on behalf of Gregg, previously submitted the same dispute to the Board. The City maintains that the grievance which is the subject of the UPOA's request for arbitration, and the controversy at issue in the UPOA's improper practice petition, filed on May 21, 1990, are identical. In support of its position, the City notes that in its request for arbitration the UPOA alleged that:

- a) Gregg was charged with being AWOL,
- b) Gregg was disciplined for refusing to follow an order to modify a Stipulation,
- c) Gregg was disciplined for violating the regulation regarding purchase of off duty weapons,
- d) Gregg was disciplined for bringing a gun onto the Department's property in violation of the Department's rules, and
- e) "there was a vendetta against [Gregg], in part because of his union activity."

The City claims that the same facts were alleged by the UPOA in its improper practice petition, wherein the Union asserted that:

⁷ The City cited Decision No. B-19-86 in support of its position.

⁸ The City cited Decision No. B-31-80 in support of its position.

- a) an AWOL letter was placed in Gregg's file,
- b) the Department retaliated against Gregg for refusing to modify a Stipulation,
- c) an issue was raised concerning Gregg's purchase of an off-duty weapon,
- d) an issue was raised concerning Gregg's possession of a weapon, and
- e) the Department interfered with and coerced the grievant in the exercise of his rights as a union member.

Because Gregg submitted the identical dispute to the Board prior to the UPOA's filing of the request for arbitration, the City claims that Gregg did not execute a valid waiver. Since Gregg did not, and cannot, comply with the requirements set forth in Section 12-312d of the NYCCBL, the City argues, the petition challenging arbitrability must be granted.

Union's Position

The UPOA claims that the waiver signed by Gregg is valid because the issue addressed in the request for arbitration is "clearly distinct" from the issue presented in the improper practice petition. In support of its position, the UPOA submits that the issue to be presented to the arbitrator is "whether under the terms of the collective bargaining agreement [Gregg] was properly terminated"; while the issue before the Board in the improper practice petition is whether the Department violated Section 12-306a of the NYCCBL "when it brought charges against [Gregg] in retaliation for his exercising his rights as a member of the Union." Thus, the UPOA argues, even if the Board finds that the Department did not commit an improper practice, and therefore, the charges brought against Gregg were not improperly motivated in violation of Section 12-306, "it does not mean that there are not still pending outstanding and different issues for the arbitrator to decide as to whether, under the terms of the collective bargaining agreement, [Gregg's] dismissal was not proper."

The UPOA does not dispute the City's assertion that the purpose of the statutory waiver requirement is to prevent repetitive litigation. It argues,

however, that the waiver requirement should not be used to impede thorough and effective litigation.⁹ "To grant [the City's] challenge to arbitrability," the UPOA alleges, "would certainly impede thorough and effective litigation of the claims against [Gregg] who has been unjustly terminated." Arbitration, the UPOA contends, is the only forum available to litigate the merits of Gregg's termination. If Gregg's contractual right to arbitration is not allowed, the UPOA urges, he will have "no recourse for defending himself against the numerous allegations against him".

Relying on Decision No. B-16-90, the UPOA further argues that there is nothing which prevents the Board from determining whether an employer has engaged in an improper practice, and for an arbitrator to decide simultaneously whether an employer had just cause for dismissing an employee under the terms of the collective bargaining agreement. "The Board," according to the Union, "has held that the assertion of a contractual right does not preclude the assertion of an improper practice even when the same circumstances and parties are involved."

The UPOA also relies on Decision No. B-70-90 in support of its position.¹⁰ It submits that in Decision No. B-70-90, the Board held that even though the causes of action and issues of law underlying the two proceedings arose out of

⁹ The Union cites Decision Nos. B-72-89 and B-13-76 in support of its position.

¹⁰ In Decision No. B-70-90, the Union, filed an improper practice petition alleging that the grievant's reassignment was in retaliation for the prior successful arbitration of a contract grievance. Sometime thereafter, the Union filed a request for arbitration alleging that grievant had been assigned to improper duties, and that her work location was inadequate and ill-placed. The City claimed that the disputes were identical. The Board disagreed, and held that the issue for consideration in the improper practice charge was whether the employer engaged in a course of improperly motivated retaliatory activity; whereas, the issue to be arbitrated was whether grievant's worksite assignment was in violation of the collective bargaining agreement, and whether the duties she was assigned were in fact substantially different from those listed in her job specifications.

the same set of operative facts, and were thus related, the issue to be arbitrated was not the same as the issue presented in the improper practice petition. For this reason, the UPOA maintains, the Board denied the City's petition challenging arbitrability and stayed its decision on the improper practice charge until the arbitrator issued a decision.

The UPOA contends that the situation at issue in the case herein is quite similar to the situation in Decision No. B-70-90. It claims that in the instant case, "[t]he arbitrator has no jurisdiction to hear issues regarding improper practice charges, as the OCB has exclusive jurisdiction to hear those matters." Since "the matter before the arbitrator and the OCB concern the consideration of two separate issues stemming from the same operative facts," the UPOA argues that the waiver provision was not violated and, therefore, the City's petition challenging arbitrability should be denied.

DISCUSSION

In consolidating these two proceedings, we recognize that a controversy arising out of the same set of facts may involve related but separate and distinct rights. That is, a particular dispute may encompass rights which derive from both the NYCCBL and the collective bargaining agreement. In such cases, we have deferred the dispute to the arbitral forum where the circumstances are such that the contractual arbitration procedure provides an appropriate means of resolving the matter.¹¹ In so doing, we have stated that permitting a dispute to proceed first to arbitration is consistent with the declared policy of the NYCCBL "to favor and encourage ... final, impartial arbitration of grievances between municipal agencies and certified employee organization,"¹² provided, however, that:

¹¹ See e.g., Decision Nos. B-16-90; B-31-85; B-10-85; B-10-80.

¹² Section 12-302 of the NYCCBL.

in the event that, either the issue raised in the improper practice petition is not resolved in the arbitral forum, or the arbitration produces a result that is alleged to be inconsistent with policies and purposes underlying the NYCCBL, we shall, upon demand, reassert jurisdiction in this matter to hear and determine the allegations of improper practice.¹³

In prior decisions, this Board has stated that the statutory waiver provision was enacted to prevent multiple litigation of the same dispute, and to ensure that a grievant who elects to seek redress through the arbitration process will not attempt to relitigate the same matter in another forum.¹⁴ A union is deemed to have submitted the same underlying dispute in two forums, and thus to have rendered itself incapable of executing an effective waiver under Section 12-312d of the NYCCBL, where the proceedings in both forums arise out of the same factual circumstances, involve the same parties, and seek the determination of common issues of law.¹⁵ We have held that the statutory waiver provision is not defeated by our deferral of a dispute which is pending in two different forums, to one of the requested forums.¹⁶

Applying these principles to the instant case, we must first determine whether the statutory waiver provision was violated and if not, whether deferral of the improper practice petition to arbitration is appropriate. We note that the request for arbitration and the improper practice claim arise out of the same set of operative facts. However, although the causes of action and issues of law

¹³ Decision No. B-31-85. See also, Decision Nos. B-68-90; B-10-80.

We note that in United Technologies Corporation, 115 LRRM 1049 (1984), the National Labor Relations Board reaffirmed its policy of pre-arbitral deferral as originally set forth in Collyer Insulated Wire, 77 LRRM 1931 (1971) and thereafter expanded in National Radio Co., 80 LRRM 1718 (1972).

¹⁴ Decision Nos. B-70-90; B-72-89; B-54-88; B-35-88; B-10-85.

¹⁵ Decision Nos. B-50-89; B-54-88; B-35-88; B-28-87.

¹⁶ Decision Nos. B-68-90; B-72-89; B-35-88; B-31-85; B-10-85.

underlying the two disputes are related, they are not the same. The sole issue presented for our consideration in the improper practice petition is whether the Department engaged in a course of improperly motivated retaliatory activity in violation of Section 12-306a of the NYCCBL when it brought disciplinary charges against Gregg allegedly for refusing to change the terms of his suspension agreement. The issue presented for resolution in the request for arbitration, on the other hand, is whether Gregg was properly disciplined and thereafter terminated under the terms of the collective bargaining agreement between the parties. Because the statutory issues presented by the UPOA in its improper practice petition are not identical to the contractual issues presented in its request for arbitration, we reject the City's argument that the Union filed an invalid waiver. Accordingly, we shall deny the City's petition challenging arbitrability.

We find that this matter should be evaluated initially, and may be fully resolved, in the arbitral forum. Therefore, we give no further consideration at this time to the merits of the improper practice claim. We will retain jurisdiction over the improper practice petition, but delay taking any action in that proceeding until the arbitration process is complete.¹⁷ In so doing we note that we are acting in a way that is consistent with our waiver and deferral policies. Generally, we have not exercised our improper practice jurisdiction when the same claim and issues are pending in another forum in order to avoid unnecessary duplication of effort and the risk of inconsistent determinations.¹⁸

We stress that our determination herein does not end the matter as far as the UPOA's improper practice charge is concerned. Rather, we shall retain jurisdiction over the pending improper practice charge, docketed as BCB-1282-90, but hold any further action in that proceeding in abeyance until such time as an

¹⁷ See also, Decision Nos. B-70-90; B-16-90.

¹⁸ See e.g., Decision Nos. B-70-90; B-68-90; B-16-90. See also, Decision Nos. B-9-85; B-3-85.

arbitrator has issued an opinion and award upon which we may determine whether an improper practice was committed by the Department, and whether further proceedings in this matter are warranted.

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 filed by the City of New York, docketed as BCB-1339-90 be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration filed by the United Probation Officers Association, docketed as Case No. A-3607-90 be, and the same hereby is, granted; and it is further

ORDERED, that the improper practice petition filed by the United Probation Officers Association, docketed as BCB-1282-90 be, and the same hereby is, deferred until such time as an arbitrator reviews the question whether the New York City Department of Probation wrongfully filed disciplinary charges against Probation Officer Dwight Gregg in violation of Article VI, Section 1(E) of the collective bargaining agreement between the parties and issues an opinion and award upon which this Board may further determine

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(A-3607-90)

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whether an improper practice was committed by the New York City Department of Probation.

DATED: New York, New York
July 30, 1991

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

DEAN L. SILVERBERG
MEMBER

GEORGE B. DANIEL
MEMBER

JEROME E. JOSEPH
MEMBER