

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

DECISION NO. B-10-70

Petitioner,

DOCKET NO. BCB-70-70

vs.

DISTRICT COUNCIL 37,
AFSCME, AFL-CIO

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DECISION AND ORDER

The City's petition herein seeks a determination that a grievance urged by the Union is not arbitrable.

The grievance, as stated in Respondent's request for arbitration'. is that the City failed to pay five Senior Toll Collectors in the Department of Ports and Terminals (EDA) an assignment differential pursuant to Implementing Personnel Order 69/1, Sec. IV, which provides:

"Effective January 1, 1968, a pro-rated annual differential of \$500 shall continue to be paid to incumbents in the title of Senior Toll Collector (Markets) while assigned to supervise the overall tax collection function of the Department of Markets."

The Office of Labor Relations, on September 10, 1970, filed a petition challenging the arbitrability of the issue on the ground that "the subject matter sought to be arbitrated as a grievance by the Union is not proper for arbitration in that * * * the alleged violation grieved by the Union is premature and unwarranted on the grounds the Senior Toll Collectors have not been designated to supervise the overall tax collection function. Senior Tax Collectors are responsible to supervise toll collecting functions on their respective shifts. However, the responsibility for the overall toll collecting function is that of the Hunts Point Market manager and the assistant market manager who set the policies and procedures thereat."

The Union's answer sets forth that the request for arbitration clearly falls within the wording of §8(a)(2) of Executive Order 52, defining grievance, and maintains that the City's allegation regarding prematureness "goes to the merits, not to the question of arbitrability."

In its reply, the Office of Labor Relations asserts, "The Union, pursuing an issue which has not yet occurred, is in effect asking the Board to make a declaratory judgment interpreting an act to take place in futuro."

Section 1173-3.0.o of the New York City Collective Bargaining Law, and §8(a)(2) of Executive Order 52, both define the term "grievance" to include a dispute concerning "the application or interpretation of a personnel order of the Mayor."

The grievance herein patently falls within that definition. Whether the employees have been assigned, and are performing duties which entitle them to the differential provided in the personnel order, presents a factual issue as to the merits of the grievance. That question, including the City's claim of prematureness, involves the "interpretation and application" of the personnel order and is a matter for determination by the arbitrator.

Accordingly, we find and conclude that the grievance here involved is arbitrable.

O R D E R

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

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3.

O R D E R E D , that this proceeding be and the same hereby is, referred to an arbitrator to be agreed on between the parties, or appointed pursuant to the Consolidated Rules of the Office of Collective Bargaining.

Dated: New York, N.Y.
November 16 , 1970.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

EDWARD SILVER
M e m b e r