

City v. DC 37, 5 OCB 2 (BCB 1970) [Decision No. B-2-70 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK,

DECISION NO. B-2-70

Petitioner,

DOCKET NO. BCB-53-69

vs.

DISTRICT COUNCIL 37,
AFSCME, AFL-CIO,

Respondent.

Respondent District Council 37 as certified representative of Motor Vehicle Dispatchers invokes arbitration of the alleged departmental assignment of District Foremen to perform Motor Vehicle Dispatchers' duties in sewer maintenance garages. Respondent urges that said practice is an unauthorized out-of-title assignment and also violates the "general duties of Dispatchers and standard practice of assignment City-wide" and the job specification for Motor Vehicle Dispatcher.

Petitioner City contests arbitrability on the ground that departmental assignments and appointments are managerial prerogatives, and that the City is not obligated to appoint Motor Vehicle Dispatchers.

No contract is alleged to exist between the parties.

Section 8 of Executive Order 52, which controls arbitrability in the absence of a contract grievance procedure, defines a grievance in subdivision a(2), inter alia, as:

"(B) a claimed violation, misinterpretation, or misapplication of the rules or regulations of the mayoral agency by whom the grievant is employed affecting the terms and conditions of employment;

(C) a claimed assignment of employees to duties substantially different from those stated in their job classifications."

The rule violated, as alleged by the union, is the job specification for Motor Vehicle Dispatcher. A job specification is issued by the Department of Personnel, which is not the department "by whom the grievant is employed," nor is it a rule or regulation.

However, the union's allegation that District Foremen are being assigned out-of-title work falls within the definition of grievance contained in §8a (2) (C).

§8a (2) (C) is not limited to claims of assignment of the grievant to out-of-title work (cf. §8b (1) (e) (C), police force grievance procedure) but also encompasses a claim that employees in a different title have been improperly assigned work within the grievant's duties and functions. (Carolan v. Schechter 5 Misc. 2d 753, 166 NYS 2d 348, aff'd 8AD 2d 804, aff'd 7 NY 2d 980, 199 NYS 2d 40; Sheridan v. Kennedy, 19 Misc. 2d 765, 194 NYS 2d 115, aff'd 8 NY 2d 794, 201 NYS 2d 805.)

Respondent's claim of wrongful assignment of District Foremen to duties substantially different from those stated in their job classifications, and infringing upon those of the grievants, is therefore found to be subject to arbitration.

Since rights of the District Foreman title are involved here, the certified representative of that title is a proper party and should be afforded an opportunity to be heard before the arbitrator.

The Board does not pass upon the remedy sought.

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

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

DATED: New York, N.Y.
January 29, 1970

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

WALTER L. EISENBERG
M e m b e r

TIMOTHY W. COSTELLO
M e m b e r

EDWARD SILVER
M e m b e r

EARL SHEPARD
M e m b e r

HARRY VAN ARSDALE, JR.
M e m b e r