

L. 211, Allied Bldg Insp., IUOE v. Hsing & Dev. Adm., 5 OCB 6
(BCB 1970) [Decision No. B-6-70 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Petition

of

ALLIED BUILDING INSPECTORS, LOCAL
UNION NO. 211, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO,

DECISION NO. B-6-70

Petitioner,

DOCKET NO. BCB-66-70

-and-

HOUSING AND DEVELOPMENT
ADMINISTRATION,

Respondent.

DECISION AND ORDER

On July 29, 1970, the Union filed its petition herein alleging that Respondent had violated Section 1173-7.0c(3)(d) of the New York City Collective Bargaining Law by unilaterally changing the work schedules of Inspectors while impasse proceedings were pending, and that Respondent violated the parties' contract by failing to conduct discussions with Petitioner prior to effecting the change in schedules. Petitioner urges the Board "to take action which will insure the preservation of the status quo and the integrity of the collective bargaining agreement by ordering Respondent to rescind (the change in schedules), and such other relief as the Board determines."

Respondent's answer denies that it violated either §1173-7.0c(3)(d) or the contract, and alleges that the change in schedules was discussed with Union representatives prior to its effective date. The answer further alleges that the only change was that "employees start the day with field duty at a construction or building site at 8:30 A.M. and, following field duty, report to a Borough Office for work rather than report to a Borough Office for office work at 8:30 A.M. and thereafter report for field duty; and that the change "comports with the prerogative of Respondent to direct and assign its personnel to achieve maximum efficiency."

Petitioner did not reply to the answer, and neither party filed a brief (see Rules 7.8 and 7.9).

Petitioner and Respondent are parties to a collective bargaining agreement covering a stated term from January 1, 1968, to December 31, 1969. On September 10, 1969, Petitioner sent a bargaining notice to Respondent, and, negotiations having reached an impasse, an impasse panel was designated by this Board on June 19, 1970.

Both parties concede and allege that their contract is still in full force and effect. Article VII thereof provides:

"changes in work schedules affecting 50% of a unit or 30 or more in a unit of employees covered by this agreement shall be made by the Employer only after prior discussion with the Union."

Article XV of the contract provides for arbitration of unresolved disputes "concerning the application or interpretation of the terms . . . of this collective bargaining agreement or any supplemental bargaining agreement."

Although negotiations for a new contract have been conducted, and an impasse panel appointed, the contract between the parties concededly still is in effect and governs the present rights and obligations of the parties. Article VII thereof expressly deals with changes in work schedules and the issue between the parties is whether there has been a violation of that provision. That question manifestly involves "the application and interpretation" of Article VII and thus is within the arbitration provision in Article XV.

As no request for arbitration and waiver has been served and filed (NYCCBL §1173-8.0d; Rules 6.2, 6.3), we shall dismiss the petition herein without prejudice to Petitioner's right to seek arbitration of the dispute.

O 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,

O R D E R E D , that this petition be, and the same hereby is dismissed without prejudice to Petitioner's right to seek arbitration of the dispute herein.

DATED: New York, N.Y.
October 19, 1970.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

TIMOTHY W. COSTELLO
M e m b e r

EDWARD SILVER
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