City v. L. 2461, SEIU, 5 OCB 7 (BCB 1970) [Decision No. B-7-70 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of
THE CITY OF NEW YORK,
Petitioner, DECISION NO. B-7-70

Vs.

NEW YORK CITY LOCAL 2461, S.E.I.U., AFL-CIO, DOCKET NO. BCB-67-70

Respondent.

DECISION AND ORDER

Respondent, the certified representative of a unit of automotive repair and service employees (Decision No. 54-70) has requested arbitration of a grievance alleging that the Department of Sanitation assigns Sanitationmen to perform the work of the automotive employees. The City's petition herein requests a determination that the grievance presented by Respondent is not arbitrable.

Upon consideration of the papers and proceedings herein, and the briefs filed by the parties, the Board renders the following decision.

Respondent asserts that the assignment of Sanitationmen to perform automotive repairs violates Article VI of the Memorandum of Understanding between it and the City, and violates §61 of the Civil Service Law which prohibits out-of-title work.

Article VI, Section 1 of the Memorandum of Understanding between the parties provides:

> "Work within the department requiring the services of employees shall be performed by the appropriate employee or employees only, as such duties are set forth in the Rules of the New York City Civil Service Commission."

The agreement adopts and incorporates by reference the grievance and arbitration procedure set forth in Executive Order 52. Executive Order 52, §8a(2), subdivisions (A) and (C), respectively, define a grievance as "a dispute concerning the application or interpretation of the terms of . . . a collective bargaining agreement" and "a claimed assignment of employees to duties substantially different from those stated in their job classifications."

The City contends that Article VI, §1, of the agreement "pertains to those titles covered by said memorandum and cannot be construed as governing other titles which are outside of the agreement." In its brief, the City argues that the Board's prior decision in City of New York v. District Council 37, Decision No. 2-70, is erroneous and should be overruled.

The gist of the City's argument is that §8a(2)(C) of Executive Order 52 "was never intended to cover more than a complaint that the grievant himself was assigned out-of-title work" (emphasis added).

As noted in Decision No. 2-70, Executive Order 52 establishes one grievance-arbitration procedure for employees of Mayoral agencies other than the police force (subd. a) and a separate procedure for the police force (subd. b). The latter expressly limits out-of-title work grievances to "a claimed assignment of the grievant to duties substantially different from those stated in his job classification"(§8b(l)(e)(C); emphasis added). The former contains no such limitation, defining "grievance" to include "a claimed assignment of employees to duties substantially different from those stated in their job classifications (§8a(2)(C); emphasis added).*

* The definitions of "grievance" in the two subdivisions also differ in other respects.

The differences in the language employed are patent. Under established canons of construction, significance and effect are to be accorded, if possible, to every section, clause, word, sentence or part of an enactment (Emerson v. Buck, 230 N.Y. 380). Words are not to be rejected as superfluous when it is practicable to give each a distinct and separate meaning. Effect must be given to all the language employed, and it may not be disregarded under the guise of interpretation (In re Karron's Will, 52 Misc. 2d 367, 275 N.Y.S. 2d 933; Palmer v. Van Santvoord, 153 N.Y. 612$ 616; In re Bailey, 265 A.D. 758$ 40 N.Y.S. 2d 746, affd. 291 N.Y. 584; N.Y. State Bridge Authority v. Moore, 299 N.Y. 410).

The establishment of separate grievance-arbitration procedures within a single section of the Executive Order, with the language differences noted above, manifestly cbmonstrates a deliberate intent to provide a broader definition of out-of-title work grievances in the procedure provided for Mayoral agencies generally, and a narrower definition in the procedure provided for the police force. Accordingly, we find no merit in, and again reject, the contention that §8a(2)(C) should be so interpreted as to incorporate the restrictive language of §8b(l)(e)(C).

In any event, here, as distinguished from Decision No. 2-70, there is an express contractual provision governing the assignment of work. The City contends that this provision "cannot be construed" as covering employees in titles not covered by the agreement. But the construction of that contractual provision clearly is Via dispute concerning the application or interpretation of the terms of . . . a collective bargaining agreement" and thus an arbitrable grievance within the meaning of §8a(2)(A),

Finally, whether the automotive employees were or are "adversely affected" by the alleged out-of-title assignments of Sanitationmen is a matter to be determined by the Arbitrator.

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

As the rights of Sanitationmen are, or may be involved, we shall provide that a copy of this Decision and Order be served upon their certified representative, and that said representative may apply to intervene, or may be interpleaded by the City, as a party to the arbitration.

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

ORDERED, that the petition of the City of New York to stay arbitration of the grievance herein be, and the same hereby is, denied; and it is further

ORDERED, that a copy of this Decision and Order be served upon Uniformed Sanitationmen's Association, Local 831, I.B.T.; and it is further

ORDERED, that within ten (10) days after service of a copy of this Decision and Order:
(A) Uniformed Sanitationmen's Association, Local 831, I.B.T., may apply to the Board, on notice to the other parties, for leave to intervene in said arbitration;
(B) the City of New York may apply to the Board, on notice to the other parties, to interplead Uniformed Sanitationmen's Association, Local 831, I.B.T., as a party to said arbitration; and it is further

ORDERED, that the grievance herein shall be 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.
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
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EDWARD SILVER
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