Communications Workers of America, 51 OCB 27 (BCB 1993) [Decision No. B-27-93], aff'd, City of New York v. MacDonald, No. 405350/93 (Sup. Ct. N.Y. Co. Sept. 29, 1994), aff'd, 223 A.D.2d 485, 636 N.Y.S.2d 793 (1st Dept. 1996).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Arbitration

-between-

DECISION NO. B-27-93
DOCKET NO. BCB-1490-92
(A-3987-91)

THE CITY OF NEW YORK,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,

Respondent.
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DECISION AND ORDER

On April 17, 1992, the City of New York ("the City"), appearing by its Office of Labor Relations ("OLR"), filed a petition challenging the arbitrability of a grievance submitted by the Communications Workers of America ("the Union") on behalf of the Assistant Office Managers ("grievants" or "AOMs") at the Bay Ridge Income Maintenance Center. On July 15, 1992, the Union submitted an answer and a brief in support of its answer. The City filed a reply on February 3, 1993.

Background

The grievants are employed by the Human Resources Administration ("HRA") in the Civil Service title of Principal

Administrative Associate ("PAA"), Level II. They serve as AOMs[1] in the Bay Ridge Income Maintenance Center. According to the Union, the grievants have been assigned additional duties including "conducting REOPs, RECAPs and completing DDS 1891 forms." These duties, the Union contends, constitute a "maxi audit" and, as such, should be completed by Office Managers. AOMs, the Union alleges, are only responsible for completing "mini audits." As the basis of this contention, the Union cites the PAA, Level II job description[2] and the AOM job description found in the Undercare Income Maintenance Procedures Manual ("Manual").[3]

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[1] This is evidently an office title used at the grievants' work location.

[2] The Department of Personnel job description for the title Principal Administrative Associate provides, in relevant part:

> Assignment Level II
> Under administrative supervision, with considerable latitude for independent action or decision, performs difficult and responsible supervisory or administrative work in any one or more of the above described settings in a larger or more complex operation. In the temporary absence of supervisor, may assume the duties of that position.

[3] The Undercare Income Maintenance Procedures Manual provides, in relevant part:

> Responsibilities of the Undercare Assistant Office Manager
> The Undercare Assistant Office Manager is responsible

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for the management of all the work in the groups under his/her supervision with the objective of efficiently completing the work due within the time frames set by the Office Manager. To carry out this objective, the AOM must work with the group supervisors under his/her direction to plan, organize, flexibly use staff, direct and coordinate operations, and report on the activities accomplished to the Office Manager. The Undercare AOM has the responsibility to train the group supervisors under his/her direction to efficiently manage their groups in order to meet the objectives. In carrying out the objective the AOM may review samples of work done or conduct audits of the work done in his/her groups. The AOM will report on the results obtained by his/her group supervisors and consult with the Office Manager.

Areas of Responsibility include:

1. Planning:
   a. Coordinating the scheduling of appointments by the Groups under his/her span of supervision to avoid the simultaneous scheduling of interviews which might result in overloading in the interviewing area.
   b. Assisting Group Supervisors in developing corrective action plans to reduce or minimize problem areas in Group functioning.
   c. Assisting Group Supervisors in developing plans to ensure completion of required activity on uncovered caseloads.
   d. Reviewing with Group Supervisors future work plans and schedules prior to approval of planned absences.

2. Assignment of Work:
   Daily, the Assistant Office Manager
   a. Reviews the attendance of supervisory staff and Group Clerks and assigns coverage for uncovered Groups.
   b. Reviews Group progress and establishes priorities for work to be completed.

3. Supervisory Responsibilities:
   a. Reviews for appropriateness case actions

(continued...)

On September 25, 1990, the Union filed a group grievance at Step I of the contractual grievance procedure. According to the City's petition challenging arbitrability, the Union "protest[ed] the assignment of certain tasks to AOMs, contending that [AOMs] should not have been asked to perform these tasks." The Director of the Bay Ridge Income Maintenance Center denied the grievance stating that he found "no violation of Agency rules or

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(...continued)

requiring AOM levels of approval.
b. Ensures that appropriate Group controls are maintained in the individual groups.
c. Ensures that Group reports are received in a timely manner.
d. In Baseline Centers, reviews the WINRO352 Report daily, and ensures that all errored TADs given to the group are returned to the Control Unit by 5PM of the day following their receipt.
e. Provides guidance to the Eligibility Specialist and the Group Supervisor in case situations, when consulted.
f. Completes assigned administrative reports.

4. Evaluation and Training:
a. Evaluates the performance of Groups under his/her span of supervision for both quality and quantity of work performed.
b. Trains and develops Group Supervisors in the performance of their duties.
c. Coordinates training, in conjunction with the Center-based Trainer.

5. Supervisory conferences:
The AOM holds weekly supervisory conferences with each Group Supervisor, and includes in the discussion a review of the Group's activities, including the status or recertification activity and overdue material.

regulations in [Central Office] requiring [Center Section Managers][4] to perform the audits in question."[5]

On October 1, 1990, the Union filed a Step II grievance.[6]

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[4] The title "Center Section Manager" is apparently used interchangeably with the title "AOM."

[5] The Step I decision itself does not set forth, with any specificity, the nature of the grievance or the Union's arguments on the merits; it is silent as to what contractual provisions, if any, were cited. Neither the City nor the Union submitted a copy of the Step I grievance form.

[6] The Union's Step II grievance form provides spaces for the grievant(s) to state the subject of the grievance and to "describe what happened." In the instant case, the grievants indicated that the subject of the grievance was "violations of the rules and regulations of the agency." The Union described "what happened" as follows:

> "The application AOM has her hands full with booking applicants and 25 day cases. The closing of Jay St. W.C. has made the job impossible. The food stamp track sheet is an in-house form and not part of any manual or rules and regulations of the Agency. Our expedited F.S. are mandated to reach the applicant within 5 days. This is not a problem in this center and an F.S. track sheet is not needed. We are in an MRS project which keeps us busy all day.
>
> DDS 1891 is an L & A form and is not the responsibility of the AOMs to deal with this form.
>
> The latest Q.C. meter report (10/89-3/90) shows the P.A. error rate as 2.8% and the F.S. error rate as 6.1%. These percentages are below the city wide average.
>
> We totally disagree with the Director's reply to Step I. He never addressed the application issue. There is nothing in the application or Undercare Manual [indicating] that the AOMs are [] responsible [for] correct[ing] errors. We never got an order from [Central Office] to audit 40 cases per month. He never mentioned the DDS 1891 form, MRS Project, and F.S.

(continued...)

The Step II decision sets forth the grievance as follows:

> "[T]he grievants are protesting the assignment to them of the responsibility for the audit of 40 cases a month - i.e.: 20 FFRs, 10 Reops and 10 MRSs [a month] for Undercare AOMs and two New Accepts a day in Application. The grievants contend that this order is in violation of the rules and regulations of the Agency [] because FFRs, Reops and New Accepts are Maxi Audits, and that the Union had won a grievance [at Step II] in 1985 which specified that AOMs are only required to do Mini Audits (e.g., MRSs)."

In denying the grievance, the hearing officer stated that, based on the AOM job description found in the Manual, "the assignments which are being complained about in this case are a proper exercise of management's prerogative."

A Step III hearing was held on November 4, 1991 and a decision which denied the grievance was rendered shortly thereafter. In describing the grievance, the hearing officer stated that the grievants claimed that they were being "assigned responsibilities outside of their jurisdiction in violation of the Undercare section of the Income Maintenance Procedures Manual."[7] The hearing officer denied the grievance on the ground

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[6](...continued)
> track sheet in applications.
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> [The Director] states that the Center's present two month [] error rate is now at 13%. These are client errors and they should not be charged to the agency. The Agency should give more training on errors that Q.C. finds and reduce the work load of the staff. You cannot get quality and quantity at the same time."

[7] In a letter dated January 23, 1991, the Union wrote to OLR to request the Step III hearing. In that letter the Union
(continued...)

that "[t]he Union [] failed to establish that the Department has violated Agency Policy and Procedure as alleged."

No satisfactory resolution of the dispute having been reached, on November 22, 1991, the Union filed a request for arbitration pursuant to Article VI, Section 2 of the parties' collective bargaining agreement ("the agreement" or "the contract"). Therein, the Union characterized the grievance to be arbitrated as follows:

> Grievants are performing duties and are charged with responsibilities which should be performed by and [are] the responsibility of another title. The Agency is in violation of its own policy.

The Union cited Article VI, Section 1(A) as the contract provision which had been violated.[8] As a remedy, the Union seeks

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[7](...continued)
stated the grievance as follows:

> "The issue regards the duties of the AOMs (PAA IIs) who work in the [Bay Ridge] IMC. As evidence, we have produced a 4/27/84 decision from HRA Labor Relations. This decision clearly stated that mini-audits are the AOM's responsibility, but in addition maxi-audits are the Office Manager's responsibility."

[8] Article VI, Section 1 of the agreement, in relevant part, defines a grievance as follows:

> (A) A dispute concerning the application or interpretation of the terms of this Agreement;
>
> (B) A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and
>
> (continued...)

a ruling that would direct the City to assign the duties and responsibilities in question to the proper employees.

Positions of the Parties

City's Position

The City claims that the Union's request for arbitration must be denied for several reasons. First, the City argues that if the Union is claiming that the assignment of the duties in question are substantially different from those stated in the job specifications for the grievant's title, and is attempting to invoke Article VI, Section 1(C) of the agreement, the grievance is not arbitrable. The City contends that throughout the steps of the grievance procedure, the Union "consistently maintained" that the agency was in violation of its own policy. The City maintains that at no time during the earlier steps of the grievance procedure, or even in the request for arbitration, did the Union allege a violation of Article VI, Section 1(C) of the

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[8](...continued)
conditions of employment; provided, disputes involving the Rules and Regulations of the New York City Personnel Director or the Rules and Regulations of the Health and Hospitals Corporation with respect to those matters set forth in the first paragraph of Section 7390.1 of the Unconsolidated Laws shall not be subject to the grievance procedure or arbitration.

(C) A claimed assignment of employees to duties substantially different from those stated in their job specifications.

contract. Furthermore, the City argues, the Union never attempted to inform the City that it believed that the scope of the grievance was broader than what was stated by the hearing officer. The City asserts that since the Union failed to raise an out-of-title claim pursuant to Article VI, Section 1(C) of the contract in the earlier steps of the grievance procedure, the Union is barred from raising it for the first time at the arbitration stage.

In the alternative, the City contends that, pursuant to Board precedent, there are three requirements that a union must meet in order to arbitrate an out-of-title grievance. The City argues that the Union must demonstrate that the employees are employed in a title that it represents; that there is a job specification establishing the duties for that title; and that the bargaining unit members have been assigned duties substantially different from those stated in the job specification. According to the City, the Union cannot meet these requirements. The City argues that the recognition clause of the parties' collective bargaining agreement states that the Union represents PAAs, not AOMs. The AOM title, the City asserts, is "merely a functional position created by the agency to provide efficient management and supervision of Undercare groups and the work product in the Undercare Sections of the Income Support Centers." Further, the City maintains, while it

has issued a job specification establishing the appropriate work for the PAA, Level II title, it "has not issued a job specification for the position of AOM." Since the PAA job specification if "broad enough in scope to permit agencies to assign specific tasks to PAAs serving in functional positions," the City contends, it cannot be argued that the bargaining unit members have been assigned duties substantially different from those stated in their job specification.

The City next argues that the Union has not established the requisite nexus between the act complained of and Article VI, Sections 1(A) and (B); it has alleged neither a violation of any provision of the agreement, nor a violation of any rule, regulation, or written policy of the employer.

In any event, the City argues, as to Article VI, Section 1(B), even if the Union had cited a rule or regulation or written policy of the employer which had been violated, this dispute still would not be arbitrable. The City contends that this provision contains an explicit limitation on arbitrability, i.e., the rule, regulation or written policy must "affect terms and conditions of employment." Citing a Board decision in an improper practice case, the City argues that the assignment of particular duties, provided they are within the duties covered by the job specification for the title in question, is not a condition of employment. The City contends that since the Union

has not alleged that the duties in question are not within the PAA, Level II job specification, the assignment of particular duties to the AOMs cannot be seen as affecting terms and conditions of employment.

Finally, the City argues, Section 12-307(b) of the New York City Collective Bargaining Law ("NYCCBL")[9] has been construed by the Board "to guarantee the City the unilateral right to assign and direct employees, to determine what duties employees will perform during worktime, and to allocate duties among unit and non-unit employees, unless this right has been limited by the parties themselves in their collective bargaining agreement." The City argues that the Union's allegation, that management has

[9] Section 12-307(b) of the NYCBBL provides:

> It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

assigned the grievants certain tasks that actually belong to another title, amounts to a "claimed right to exclusive work jurisdiction[10] and/or a limitation on management's ability to assign certain duties to unit members." However, the City contends, the Union has not cited a source of this alleged right.

The Union's Position

The Union argues that the instant grievance is an out-of-title claim. According to the Union, the Undercare Income Maintenance Manual sets forth the duties of a PAA, Level II serving in the functional position of AOM. By assigning additional duties to the AOMs, the Union contends, the City "committed a violation of its own rules" since these duties do not fall within either the PAA or AOM job descriptions.

Addressing the City's claim that the grievance is not arbitrable because the Union failed to raise an out-of-title claim in the earlier steps of the grievance procedure, the Union argues that the totality of the grievance put the City on notice as to the nature of the claim. The Union contends that there can be no doubt that the City was aware that the grievants were

[10] We note that the City has misused this term. This Board has used the term "exclusive work jurisdiction" to describe the situation in which a union claims that unit members have an exclusive entitlement to certain assignments or that unit work may not be assigned to non-unit employees.

asserting an out-of-title claim; in the Step II and Step III requests the grievants mentioned that the "DDS 1891 form was not the responsibility of the AOMs" and that the dispute regarded "the duties of AOMs."

Finally, as to Article VI, Section 1(B), the Union contends that the AOM job description constitutes a written policy which affects the grievants' terms and conditions of employment and which limits the City's right to assign its employees. According to the Union, the City's assignment of additional duties to AOMs, which do not fall within the AOM job description, can be said to affect a term or condition of employment. In any event, the Union contends, this is a question of contract interpretation which should be left to an arbitrator.

DISCUSSION

The primary issues to be determined in this case are whether the alleged violation of the out-of-title provision of the collective bargaining agreement was raised in the prior steps of the grievance procedure and, if so, whether the Union has established a sufficient nexus between the act complained of and Article VI, Section 1(C) of the contract to support a finding that the instant dispute is within the scope of the parties' agreement to arbitrate.

This Board has consistently denied requests for arbitration

of claims that have not been raised at the lower steps of the grievance procedure.[11] We have stated on many occasions that:

> [t]he purpose of the multi-level grievance procedure is to encourage discussion of the dispute at each of the steps. The parties are thus afforded an opportunity to discuss the claim informally and to attempt to settle the matter before it reaches the arbitral stage. Were this Board to permit either party to interpose at [arbitration] ... a novel claim based on a hitherto unpleaded grievance, we would be depriving the parties of the beneficial effect of the earlier steps of the grievance procedure and foreclosing the possibility of a voluntary settlement.[12]

Applying these principles, we note that if the party challenging arbitrability had clear notice of the nature of the opposing parties' claim prior to the submission of its request for arbitration, and therefore had an opportunity to attempt to settle the issue at the lower steps of the grievance procedure, the petition challenging arbitrability will be denied.[13] However, in order to place the City on notice of the nature of its claim, it is incumbent on the Union to inform the City if it believes that the scope of a grievance is broader than that stated by a hearing officer.[14]

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[11] Decision Nos. B-29-91, B-29-89, B-40-88, B-31-86, B-6-80.

[12] Decision Nos. B-29-91, B-29-89, B-10-88, B-35-87, B-31-86.

[13] Decision Nos. B-29-91, B-29-89.

[14] Decision Nos. B-29-91, B-29-89.

The record demonstrates that the City had clear notice that the Union's claim concerned the performance of out-of-title work from Step I of the grievance, despite the fact that the Union did not specifically refer to Article VI, Section 1(C) prior to the submission of its answer to the petition challenging arbitrability. The City itself stated in its petition challenging arbitrability that at Step I the Union "protest[ed] the assignment of certain tasks to AOMs, contending that [AOMs] should not have been asked to perform these tasks." Additionally, the hearing officer's Step II decision describes the grievance as a dispute over whether AOMs are required to perform "maxi audits." Finally, the Step III decision states that the grievants claimed that they were being "assigned responsibilities outside their jurisdiction in violation of the Undercare section of the Income Maintenance Procedures Manual."

Moreover, we note that after the grievance was denied at Step I, the Union informed the City of its belief that the scope of the grievance was broader than that stated by the hearing officer. Specifically, the Union stated in its Step II grievance form that the hearing officer "never mentioned the DDS 1891 form, MRS Project, and F.S. track sheet in applications," and that "[t]here is nothing in the application or Undercare Manual [indicating] that the AOMs are [] responsible [for] correct[ing] errors."

The City argues that, in any event, the Union has failed to demonstrate an arguable nexus between Article VI, Section 1(C) of the contract and the complained of act. While the out-of-title provision does not define the term "job specification," the City argues that since the Department of Personnel has not issued an official Civil Service job specification for the AOM title, the PAA job specification applies. Thus, the City contends, the Union has failed to state an out-of-title claim because the additional duties being assigned to the grievants fall within the broad PAA job specification.

It is well-settled that when challenged, a union must establish a nexus between the act complained of and the contract provision it claims has been breached.[15] Once an arguable relationship is shown, this Board will not consider the merits of a case; it is for the arbitrator to decide the applicability of the cited provisions.[16] We find that the Union has demonstrated the requisite nexus between the instant grievance and Article VI, Section 1(C). Article VI, Section 1(C) of the contract defines a grievance as "a claimed assignment of employees to duties substantially different from those stated in their job specification." In the instant case, the Union claims that the grievants, PAAs represented by the Union, are being assigned to

[15] Decision Nos. B-24-92, B-29-91, B-2-91, B-41-90.

[16] Decision Nos. B-24-92, B-46-91, B-29-89, B-54-90.

duties which fall neither within the AOM job description found in the Manual nor the Department of Personnel's PAA job specification, i.e., they are being required to perform "Maxi Audits." Clearly, the out-of-title provision of the contract is broad enough to cover this dispute. Any disputes concerning the meaning of the term "job specification" or the breadth of an applicable job description, are matters of interpretation appropriately resolved by the arbitrator.

Turning our attention to Article VI, Section 1(B), we note initially that while the request for arbitration did not cite this provision, the parties do not dispute that it has served as a basis for the Union's claim throughout the grievance procedure. Two issues are involved in determining whether the Union has established a nexus between the grievance and Article VI, Section 1(B): whether the Union has alleged a violation of a written policy[17] of the employer and, if so, whether that policy affects the terms and conditions of the grievants' employment.

[17] We note that Article VI, Section 1(B) defines a grievance as an alleged violation of four distinct items: rules, regulations, written policies and orders. Throughout the lower steps of the grievance, the Union alleged a violation of the agency's policy as set forth in the AOM job description. However, in its answer to the petition challenging arbitrability the Union, made a reference to an alleged violation of the Agency's rules. Since a job description cannot plausibly be equated with a "rule" and the term "policy" was used throughout the lower steps, we will assume that the Union intended to assert an alleged violation of a written policy.

In prior decisions, we have held that:

> [W]ritten policy generally consists in a course of action, method or plan, procedure or guidelines which are promulgated by the employer, unilaterally, to further the employer's purposes, to comply with requirements of law, or otherwise to effectuate the mission of an agency. The agreement of the union may be sought but is not required. Nevertheless, a policy must be communicated to the union and/or to the employees who are to be governed thereby.[18]

In more recent decisions, we have held that a written statement by the employer will not be accorded the status of a written policy of the employer unless it is "addressed generally to the department and sets forth a general policy applicable to affected employees."[19]

Applying these criteria to the instant matter, we find that the contractual definition of the term "grievance," as defined by Article VI, Section 1(B) of the agreement, does contemplate an alleged violation, misinterpretation or misapplication of the type of document cited by the Union. By the City's own characterization, the AOM title is "a functional position created by the agency to provide efficient management and supervision of Undercare groups and the work product in the Undercare sections of the Income Support Centers." The logical conclusion to be drawn from this statement is that the AOM job description is a guideline which was promulgated to further the employer's stated

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[18] Decision Nos. B-2-92, B-67-89, B-28-83.

[19] Decision Nos. B-2-92, B-74-90, B-59-90.

purpose. Moreover, while there is no indication that the Union was consulted on the contents of the AOM job description, the City cannot deny that it was communicated to the employees via the Manual. Finally, there can be no dispute that the job description applies generally to all employees in the affected title. For all these reasons, we find that the AOM job description found in the Manual embodies a written policy of the employer.

Accordingly, we must further address the issue of whether the AOM job description, as a written policy, affects the terms and conditions of the grievants' employment. The City argues, in essence, that since the complained of act involves an exercise of the City's managerial right to determine what duties employees will perform and since the Union has failed to cite any limitation on this right, the action cannot be said to affect the terms and conditions of the grievants' employment.

As the City correctly contends, in the absence of a limitation set forth in the collective bargaining agreement or in a rule, regulation, or written policy of the employer, the broad managerial authority to direct employees provided in Section 12-307(b) of the NYCCBL permits the employer unilaterally to implement adjusted work assignments as it deems necessary.[20] However, it is well-settled that once an employer unilaterally

[20] Decision No. B-46-92.

adopts a written policy concerning a managerial prerogative, that subject, to the extent so covered, becomes arbitrable under contracts which render employer non-compliance with written policies grievable and arbitrable.[21] Applying this principle in the present case, once HRA created the position of AOM and promulgated a job description for that position, as set forth in its Manual, the subject of whether duties beyond the scope of that job description could be assigned to employees designated as AOMs became arbitrable under Article VI, Section 1(B) of the parties' agreement. In this regard, it is clear that such a job description, so long as it remains in effect, constitutes a part of the affected employees' terms and conditions of employment. That the employer can unilaterally amend or even rescind the job description does not alter the fact that it is a term or condition of employment until it is changed.

Moreover, we note that this Board has stated a caveat to management's general right to assign duties to its employees: management's right extends to the determination of what duties **within a general job description of a title** are appropriate for employees within that title.[22] It does not include the right to require the performance of work outside the scope of the job description which it has established. Clearly, a written job

[21] Decision Nos. B-2-92, B-75-90, B-29-85, B-3-83, B-34-80.

[22] Decision No. B-56-88.

description promulgated by management arguably imposes a limitation of the employer's managerial right to assign its personnel, at least until the employer exercises its right to amend or rescind that job description. Therefore, we find that the alleged assignment of duties which fall outside of the scope of the AOM job description set forth in the Manual constitutes an arbitrable claim. This threshold determination of arbitrability, however, is not intended to reflect, in any manner, the Board's view on the merits of the dispute. Questions concerning whether the AOM job description does, in fact, prevent the employer from requiring AOMs to perform "maxi-audits" relate to the merits of the grievance and are, therefore, matters to be resolved in the arbitral forum.

We disagree with the dissent of City Members Silverberg and Wright, infra. First, the dissenting opinion relies on the assumption that the term "job specification", as used in Article VI, Section 1(C), refers to the official Department of Personnel job specification. As a basis for this assumption the dissenting opinion cites Decision No. B-2-70, a decision in which the Board noted that the job specification presented by the union had been issued by the Department of Personnel. However, we did not hold, in that decision or in any other decision, that whenever the term "job specification" was used in a contract it would be interpreted to mean only the official Department of Personnel job

specification. Clearly, as stated supra, any disputes concerning the meaning of the term "job specification" or the breadth of an applicable job description, are matters of contract interpretation appropriately resolved by the arbitrator. Second, as to Article VI, Section 1(B), the dissenting opinion contends that in Decision No. B-56-88 we held that "[t]he assignment to perform any particular duties, provided they are within the duties covered by the job specification for the title in question, is not a condition of employment." However, the dissent has taken this statement out of context and has assumed that the term "job specification," as used by the Board, refers only to the official Department of Personnel job specification. In fact, we were called upon to decide two issues in Decision No. B-56-88: whether the union had stated facts sufficient to establish that there had been any change in the terms and conditions of employment as a result of the implementation of a training program, and whether the implementation of the program had a practical impact on the employees. Addressing the practical impact issue, the Board made the above quoted statement. As to the question of whether there had been a change in the terms and conditions of employment, however, we stated that "it is well-settled that management has the right to determine what duties within a general job description of a title are appropriate for employees in that title and to assign work in

a manner that it deems necessary to maintain the efficiency of governmental operations." Thus, it is evident that the Board used the terms "job specification" and "job description" interchangeably.

Finally, with respect to the alleged violation of Article VI, Section 1(A) of the contract, we find that the Union has failed to establish a nexus between the grievance and this provision. The Union's answer to the petition challenging arbitrability is silent as to this provision and, as the City correctly points out, the Union has not alleged a violation of any specific term of the collective bargaining agreement.

For the reasons stated above, we grant the City's challenge to arbitrability to the extent that it challenges the alleged violation of Article VI, Section 1(A) of the collective bargaining agreement. In all other respects, we deny the City's challenge to arbitrability and grant the Union's request for arbitration.

ORDER

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

ORDERED that the request for arbitration filed by the Communications Workers of America be, and the same hereby is, granted to the extent set forth above; and it is further

ORDERED that the petition challenging arbitrability filed by the City of New York be, and the same hereby is, denied to the extent set forth above.

DATED: New York, New York
July 29, 1993

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

JEROME E. JOSEPH
MEMBER

I dissent, DEAN L. SILVERBERG
MEMBER

I dissent, STEVEN H. WRIGHT
MEMBER

NOTE: See dissent which is appended hereto.

DISSENTING OPINION OF CITY MEMBERS SILVERBERG AND WRIGHT

We concur with the majority insofar as it finds that there was no nexus between the acts complained of and Article VI Section 1(A) of the contract. However, we respectfully dissent from the decision of the majority in this matter which held that the act complained of is grievable pursuant to Article VI Sections 1(B) and (C) of the grievance procedures of the parties' collective bargaining agreement. The majority's decision creates a right to arbitrate where none exists.

The decision is in error insofar as it finds that the union has alleged a claim under Article VI section 1(C) of the parties' collective bargaining agreement. Section 1(C) defines a grievance as "a claimed assignment of employees to duties substantially different from those stated in their job specification." However, in this matter the Respondent did not even allege that the grievants were assigned duties substantially different from those stated in their "job specification."

Throughout the steps of the grievance procedure the Respondents claimed only a violation of the Agency's Income Maintenance Procedures Manual (hereinafter, the "Manual"). Specifically, they alleged that the grievants were assigned responsibilities outside those delineated in the Manual for their functional positions. This is not the right created by the parties' collective bargaining agreement in Article VI Section 1(C). Section 1(C) specifically refers to duties contained in a job specification. As noted by this Board, in B-2-70, the Department of Personnel issues job specifications. Thus, any claim by respondent that the Petitioner violated provisions of the Manual by assigning the grievants duties outside the functional position description contained therein is not a claimed assignment to duties substantially different than those stated in the grievants' job specifications under Article VI Section 1(C).

The majority's finding that the City was on notice that Respondent claimed that the grievants were assigned to duties substantially different than those stated in their job specifications is not supported by the record. The record is devoid of any such allegation by the Respondent. In fact, the Respondent never alleged that the grievants were assigned to duties substantially different than those stated in their job specifications in any of the steps of the grievance procedure. Respondent raised this claim for the first time in its answer to

the City's challenge to arbitrability. Thus, the record lacks any evidence that supports the majority's finding that the City was on notice of this claim.

The Decision is also in error to the extent it finds the job description in the Manual arbitrable under Article VI Section 1(B) of the parties' collective bargaining agreement. A grievance is defined aunder Section 1(B) as "Aclaimed violation, misinterpretation, or misapplication of a . . . written policy of the employer applicable to the agency which employs the grievant **affecting the terms and conditions of employment; . . .**" (emphasis added) Thus, the contract limits the ability to grieve written policies unless they affect the terms and conditions of employment.

The functional positions contained within the Manual do not affect the terms and conditions of employment, as defined by this Board. The union claims that the City violated the Manual by assigning the grievants duties outside the Manual's functional position of Assistant Office Manager. However, this Board held in B-56-88 that "The assignment to perform any particular duties, provided that they were within the duties covered by the job specification for the title in question is not a condition of employment." (emphasis added) As we previously noted, the union never alleged that the duties outlined in the Manual fell outside the scope of the grievants' job specifications. Without such a claim, the Respondent's claim has not met the definition of a grievance under Article VI Section 1(B). Section 1(B) requires that the written policy affect the terms and conditions of employment.

By finding an alleged violation of the provisions of the Manual arbitrable under Section 1(B) the majority has gone beyond the parties' agreement as to the definition of a grievance. The decision disregarded the collective bargaining agreement's requirement that the written policy affect the terms and conditions of employment. Thus, the majority's opinion impermissibly expands the definition of a greivance as defined by the parties in Article VI Section 1(B) of the collective bargaining agreement.

For all of the above reasons, we respectfully dissent.

DATED: New York, New York
June 10, 1993

DEAN L. SILVERBERG
MEMBER

STEVEN H. WRIGHT
MEMBER