City v. L.1549, DC37, 57 OCB 32 (BCB 1996) [Decision No. B-32-96 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-32-96
DOCKET NO. BCB-1797-95
(A-5554-94)

-and-

DISTRICT COUNCIL 37, LOCAL 1549,

Respondent.

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DECISION AND ORDER

On November 17, 1995, the City of New York ("City"), appearing by its Office of Labor Relations ("OLR"), filed a petition challenging the arbitrability of a grievance submitted by District Council 37, Local 1549 ("Union") on behalf of Union members that work within Police Headquarters at One Police Plaza ("grievants"). On March 22, 1996, the Union submitted an answer. The City did not file a reply.

Background

The grievants in this case work in the "ID Section of the 6th Floor" at One Police Plaza. It is undisputed that from December 11, 1993 through approximately the second week of

January 1994, there was no heat in the ID Section.[1] Due to the extreme cold that resulted, the grievants did not report to work and their absences were charged to their leave balances.

The Union's request for arbitration seeks to submit to an arbitrator:

> Whether the employer has failed to provide adequate, clean, structurally safe and sanitary working facilities for all employees and, if [so], what shall be the remedy?

As the contract provisions alleged to have been violated, the Union cited Article XIV, Section 2 of the 1990-92 Citywide Agreement ("Citywide Agreement")[2] and Article XVII of the 1992-95 Clerical Agreement ("Clerical Agreement").[3] As a remedy, the Union requested "immediate correction of all inadequate, unclean, unsafe and unsanitary working conditions, and all other remedies

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[1] According to the City, a heating vent coil had ceased working but was repaired subsequently.

[2] Article XIV of the Citywide Agreement, entitled "Occupational Safety and Health", provides, in pertinent part:

> Section 2.
> a. Adequate, clean, structurally safe and sanitary working facilities shall be provided for all employees.

[3] Article XVII of the Clerical Agreement provides, in pertinent part:

> The Employer agrees to provide for all Mayoral agencies and Health and Hospital corporation employees covered by this Agreement, the following:
>
> a. Adequate, clean, structurally safe and sanitary working facilities shall be provided for all employees.

necessary to make the grievants whole."[4]

Positions of the Parties

City's Position

The City contends that the Union's request for arbitration should be denied because the Union has failed to demonstrate a nexus between the grievance and Citywide Agreement.[5] According to the City, the Union is claiming that the Citywide Agreement was violated when the City failed to reimburse the grievants for leave taken during the heating malfunction. The City argues that there is no arguable relationship between a grievance concerning the right to reimbursement for leave and the Citywide Agreement which pertains only to maintenance of adequate, clean, structurally safe and sanitary facilities. Furthermore, the City argues, "the heating malfunction has since been repaired and the condition ceases to exist."

Union's Position

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[4] The Step III decision indicates that the Union had requested restoration of the leave time used by the grievants when they did not report to work. On April 6, 1994, the Union's Step III grievance was denied on the ground that "there is no contractual or documentation procedure" concerning the Union's request for the reimbursement of leave time used during the heating malfunction.

[5] The City's petition challenging arbitrability does not address the Clerical Agreement. We note, however, that Article XIV, Section 2 of the Citywide Agreement and Article XVII of the Clerical Agreement are virtually identical.

The Union argues that the grievance concerns a failure to provide adequate heat and that the cited contractual provisions are broad enough to cover this claim.

The Union contends that the City's petition challenging arbitrability does not dispute that there is a nexus between a grievance concerning a lack of heat and the cited provisions. Rather, the Union argues, the City has taken the position that the remedy requested is inappropriate. The Union argues that the Board has long held that arguments addressed to the question of remedy are not relevant to the arbitrability of a grievance.

Discussion

In considering challenges to arbitrability, this Board has a responsibility to ascertain whether an apparent relationship exists between the grievance and the contract provisions claimed to have been violated.[6] Thus, when challenged to do so, a union must establish a nexus between the act complained of and the contract provisions it claims have been breached.[7] 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.[8]

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[6] E.g., Decision Nos. B-24-92; B-29-91.

[7] E.g., Decision Nos. B-24-92; B-29-91.

[8] Decision Nos. B-24-92; B-46-91; B-29-89.

In the instant matter, the City claims that there is no arguable relationship between a grievance concerning the right to reimbursement for leave and the cited provision of the Citywide Agreement, which addresses the maintenance of adequate, clean, structurally safe and sanitary facilities. The Union, on the other hand, argues that the nexus between a grievance concerning a lack of heat and the cited provisions is obvious.

We find that there is an arguable relationship between the Union's claim and the cited contractual provisions. The City's argument that the Union has failed to demonstrate a nexus between its grievance and the cited provisions is based upon the City's characterization of the Union's claim. However, the Union's request for arbitration does not claim, as the City suggests, that the City violated the cited provisions when it failed to reimburse the grievants for leave taken during the heat malfunction. Instead, we find that the Union claims that the City violated the cited provisions when it failed to provide heat in the ID Section for several weeks during the months of December 1993 and January 1994. The Union's claim that the failure to provide heat violated the cited provisions of the Citywide Agreement and the Clerical Agreement, which require the employer to provide "adequate, clean, structurally safe and sanitary working facilities", is not patently unreasonable; it represents an arguable interpretation of the cited provisions, the merits of which must be judged by an arbitrator.

In the petition challenging arbitrability, the City apparently maintains that an arbitrator is not empowered to award one of the remedies requested by the Union, i.e., the reimbursement of leave time. However, the Board has long held that questions of remedy are separate and distinct from questions or arbitrability; arguments addressed to questions of remedy are not relevant to the arbitrability of the grievance.[9] The propriety of the remedy sought is a matter for the arbitrator, not the Board to decide.[10]

Accordingly, we shall deny the City's petition challenging the arbitrability of this matter in its entirety.

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[9] E.g., Decision No. B-72-89.

[10] Id.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining it is hereby,

ORDERED, that the petition filed by the City of New York be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration filed by District Council 37, Local 1549 be, and the same hereby is, granted.

Dated: New York, New York
September 26, 1996

Steven C. DeCosta
CHAIR

George Nicolau
MEMBER

Daniel G. Collins
MEMBER

Richard A. Wilsker
MEMBER

Saul G. Kramer
MEMBER

Jerome E. Joseph
MEMBER

Robert H. Bogucki
MEMBER