City v. L.1180, CWA, 57 OCB 45 (BCB 1996) [Decision No. B-45-96 (Arb)]

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

-between-

City of New York,

Petitioner,

- and -

Decision No. B-45-96
Docket No. BCB-1700-94
(A-5582-94)

Local 1180, Communication Workers of America,

Respondent.
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INTERIM DECISION AND ORDER

On November 21, 1994, the Human Resources Administration ("HRA"), by the Office of Labor Relations ("OLR"), filed a petition challenging arbitrability of a grievance filed by Local 1180 of the Communication Workers of America ("Union"). The grievance alleges that "grievants appealed the Step II decision to OLR more than nine months ago, OLR has not responded; grievants' workload continues to grow; grievants are not being compensated for the increases in their workloads; grievants continue to perform duties substantially different from those stated in their job specifications." As a remedy, the Union asks that the grievants be paid appropriately, retroactive to the date that the Step I grievances were filed, and that they be placed in the appropriate titles.

By letters dated November 29, 1994, January 19, 1995, February 2, February 15, and March 17, the Union requested

extensions of time in which to file its answer, which were granted. In a letter dated April 5, 1995 to the Chairman of the Office of Collective Bargaining ("OCB"), HRA stated that by agreement with the Union it was withdrawing references in its petition to a 1986 Stipulation of Settlement between the parties, and consented to a further extension of time for the Union to file its answer.

In a letter to the City dated April 19, 1995, the Union requested information that it considered necessary to prepare its answer.[1] In a letter dated June 14, 1995, the Union told the City that it needed the requested information to prepare its case because "[i]f the City, by its conduct, has continued to treat the settlement 'as a living and binding document' [Decision No. B-17-71] then evidence of that conduct is relevant to the Union's position that the instant matter is arbitrable."

By letters dated April 12, 1995, May 23, 1995, June 26, 1995 and July 21, 1995, the Union requested extensions of time in which to file its answer, which were granted. In the letters of June 26 and July 21, it stated that these requests were occa-

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[1]The Union requested the following information:

"1. The staffing charts of the Income Support Centers between July 1, 1987 and July 1, 1993 listing the PAA IS and ES IIIs;

2. Number of PAA IS and ES IIIs assigned to Income Support Centers in Undercare on July 1, 1987, January 1, 1988, July 1, 1988, January 1, 1989, July 1, 1989, January 1, 1990, July 1, 1990, January 1, 1991, July 1, 1991, January 1, 1992, July 1, 1992, and January 1, 1993."

sioned by "unresolved issues involving documents requested by CWA from the City." By letter dated July 27, 1995, the City refused to provide the documents. It stated:

> the City is under no obligation to turn over the documents you requested because the issue of arbitrability is presently pending before the Board of Collective Bargaining. The issue before the Board is whether the Stipulation of Settlement is arbitrable. The information that you are requesting deals with the merits of the Union's claim that the Agency violated the Stipulation of Settlement, and not with the arbitrability issue.

On July 27, 1995, the General Counsel of the OCB advised the parties to bring their dispute concerning the documents before the Board of Collective Bargaining. By letter to the OCB dated August 2, 1995, the Union requested that the Board order the City to produce the information. By letters dated August 29 and October 18, 1995, the Union requested extensions of time in which to file its answer while it waited for the Board's decision.

In May 1996, pursuant to §12-309a(1) of the New York City Collective Bargaining Law ("NYCCBL"), the Trial Examiner assigned to the case directed the City to respond to the Union's letter of August 2, 1995. The City did so on June 12, 1996. A subsequent exchange of letters between the City and the Union discussed time limits for filing pleadings.

Background

The Union represents employees in the title Principal Administrative Associate I ("PAA") who are employed by HRA at

Income Support Centers. Each PAA is responsible for supervising employees in the title Eligibility Specialist III. Each Eligibility Specialist has a caseload of up to 200 cases. Because the PAA's are responsible for all cases assigned to Eligibility Specialists under their supervision, the caseloads of the PAA's depend on the number of Eligibility Specialists assigned to be supervised by each PAA.

On May 13, 1986, the City and the Union executed a Stipulation of Settlement in which they agreed to submit to the Board of Collective Bargaining the issue of whether a practical impact existed with respect to workload and span of supervision for PAA's who worked in the Undercare Sections of Income Support Centers. On May 21, 1986, the parties entered into a Memorandum of Understanding which modified the collective bargaining agreement which ran from July 1, 1982 to June 30, 1984.

The parties incorporated the Memorandum of Understanding, the Municipal Coalition Economic Agreement and a Stipulation of Settlement dated March 24, 1987 into the collective bargaining agreement which ran from July 1, 1984 to June 30, 1987. The 1987 Stipulation of Settlement contained terms of a settlement in an impasse proceeding between the parties.[2] The agreement estab-

[2]Docket No. I-182-85.

lished, as a pilot project, new procedures for double coverage and span of supervision in Undercare Groups.[3]

A number of grievances were filed in 1993 by employees in the title PAA Level I who work at some Income Support Centers. Each grievance alleged a violation of the 1987 Stipulation of Settlement and claimed that a practical impact existed because the grievants were "double covering" vacant Undercare Groups. At the time that the grievances were filed, a collective bargaining agreement running from October 1, 1990 to December 31, 1991 was in effect.

Between August and October 1993, Step II decisions were issued denying all of the grievances, on the grounds that double coverage of PAA I supervisors at the Income Support Centers was not prohibited. The grievances were denied at Step III between

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[3]The 1987 Stipulation of Settlement provides, in relevant part:

> SECOND: The City agrees that its policy shall be that the regular span of supervision shall be five (5) Eligibility Specialists to one (1) Principal Administrative Associate - Level I supervisor, for all group supervisors in the Undercare Section of the Income Maintenance Centers subject to the conditions stated in this stipulation of settlement.
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> THIRD: The City and the Union further agree that the City shall have the right to assign six (6) Eligibility Specialists to a Principal Administrative Associate - Level I supervisor when necessary, provided that a new group be created in an Income Maintenance Center when the number of six worker Undercare groups reaches three (3) in that Income Maintenance Center.

August and November 1993. The Union filed a request for arbitration of all the grievances on June 14, 1994.

Positions of the Parties

Union's Position

The Union maintains that the City's duty in this matter is set forth in §12-306c(4) of the New York City Collective Bargaining Law ("NYCCBL").[4] It cites Decision No. B-8-85 for the proposition that a duty to provide information which may reasonably be needed by the certified bargaining representative to fulfill its representative duties is part of an employer's obligation to bargain in good faith under our statute.

The Union questions the City's contention that the information it seeks is relevant to the merits of its claim, but not to the issue of arbitrability. Although this information may be

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[4]Section 12-306 of the NYCCBL provides, in relevant part:

> **c. Good faith bargaining.** The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
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> * * *
>
> (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining . . . .

relevant to the merits, the Union asserts, it does not follow that it is not also relevant to the question of arbitrability.

According to the Union, the arbitrability issue turns on whether the 1987 stipulation is part of the current contract. It maintains that the information it requests will show whether the City has complied with the 1987 stipulation during the terms of three successor contracts. It cites Decision No. B-17-71 for the proposition that a settlement agreement remains binding when neither party has given notice that the agreement will expire and the parties have conducted themselves as if the settlement in question were still binding even after the expiration date of the contract. To answer the City's petition, the Union maintains, it needs documents that it says will show that the City complied with the Stipulation during the terms of three successor agreements.

City's Position

The City notes that, under §12-306a(4) of the NYCCBL, an employer is required to furnish information "necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." It agrees with the Union that information must be provided in order for a union to fulfill its representative duties, but only when the information

requested is relevant to and reasonably necessary for collective negotiations or contract administration.[5]

The City contends that in Decision No. B-17-71, a Memorandum of Understanding was found to have survived a contemporaneous collective bargaining agreement because the City did not challenge arbitrability of a subsequent grievance based on the Memorandum. Here, it argues, it did challenge arbitrability, so it cannot be found to have treated the stipulation as a binding document. Further, the City maintains, the Union cannot cite an instance in which the City participated in the grievance procedure, after the contract expired, for a grievance deriving from the Stipulation.

Even if the City had, by its conduct, treated the Stipulation as being in effect after expiration of the contract, it argues, it would still not be obligated to provide the requested information. In Decision Nos. B-4-72 and B-6-76, it argues, the Board found that supplemental agreements are incorporated into collective bargaining agreements if they actually supplement the contract and if they specifically reference the collective bargaining agreements. In the instant case, the City contends, the Stipulation expired with the 1984-1987 contract because it is

[5]Decision No. B-8-85 at 14.

neither referenced by nor incorporated into a successor agreement.[6]

If the City were to provide the requested information, it maintains, it could show at most only a past practice of following the Stipulation. However, the City states, the contractual definition of a claimed grievance does not include a grievance based on a past practice; the Board has consistently denied arbitration of claimed violations of past practice or policy without an agreement defining the term "grievance" to include such claims.

Discussion

The question before us is only whether the City should be ordered to produce the information requested by the Union. The parties' arguments about whether the Stipulation has expired are premature, since we are not now determining arbitrability of the grievance. We direct the City to provide the information requested by the Union no later than November 15, 1996.

INTERIM DECISION AND ORDER

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

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[6]Decision No. B-14-77.

DIRECT, that the City of New York and its Human Resources Administration, by the Mayor's Office of Labor Relations, provide to Local 1180 of the Communication Workers of America no later than November 15, 1996, the staffing charts of the Income Support Centers between July 1, 1987 and July 1, 1993 listing the PAA IS and ES IIIs; and the number of PAA IS and ES IIIs assigned to Income Support Centers in Undercare on July 1, 1987, January 1, 1988, July 1, 1988, January 1, 1989, July 1, 1989, January 1, 1990, July 1, 1990, January 1, 1991, July 1, 1991, January 1, 1992, July 1, 1992, and January 1, 1993.

Dated: New York, New York
October 31, 1996

Steven C. DeCosta
CHAIRMAN

Daniel G. Collins
MEMBER

George Nicolau
MEMBER

Robert Boqucki
MEMBER

Carolyn Gentile
MEMBER

Richard Wilsker
MEMBER

Saul G. Kramer
MEMBER