

City v. L. 3, IBEW, 59 OCB 8 (BCB 1997) [Decision No. B-8-97 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----x
In the Matter of the Arbitration :

--between-- :

THE CITY OF NEW YORK, :
Petitioner, :

DECISION NO. B-8-97

DOCKET NO. BCB-1827-96
: (A-6245-96)

--and-- :
:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 3, :
Respondent. :
-----x

DECISION AND ORDER

On April 18, 1996, the City of New York, appearing by its Office of Labor Relations ("the City") filed a petition challenging a request for arbitration of a group grievance submitted by the International Brotherhood of Electrical Workers, Local 3, ("Union"). On May 9, 1996, the Union requested and was granted an extension of time, until June 17, 1996, to file its Answer. When the Answer was not filed on the agreed-upon date, the Trial Examiner wrote to inquire as to the status of the Answer; the Union did not respond. On December 10, 1996, the City requested in writing that the Board of Collective Bargaining ("Board") find the Union in default and grant the City's Petition Challenging Arbitrability. The Union failed to answer the Trial Examiner's letter of December 12, 1996, which directed a response by December 20, 1996. To date, the Union has failed to submit an Answer or any response or reason for its default.

Background

The grievance was filed at Step III, pursuant to Article V (Grievance Procedure) of the parties' Collective Bargaining Agreement ("Agreement"), on July 21, 1995. As to "nature of grievance," the Union's submission states that it was brought "on behalf of all N.Y.C. Electrical License Holders at N.Y.C. Department of Environmental Protection Bureau of Clean Water." Further, it states:

Specifically, this group grievance charges D.E.P. with instituting and continuing agency policy and practice which violates, misinterprets and misapplies the rules and regulations of the City of New York applicable to the agency including, but not limited to the NYC Electrical Code, adversely affecting the terms and conditions of employment including, but not limited to, the health and safety of the grievants.

A Step III hearing was held on December 5, 1995. At that time, according to the City, the Union was provided with an opportunity to present documentation relevant to the contractual definition of a grievance but, the City continues, the Union failed to specify a grievable rule or regulation upon which it based its grievance. Instead, the City avers, the Union focused its discussion on the allocation of electrical work and presented documentation concerning work assignments of non-unit Stationary Engineers.

The Step III decision dated February 27, 1996, rejected the grievance, stating, inter alia, that the Union failed, both in its written submission and at the Step III conference, to cite any document that was claimed to have been violated or misapplied. The decision stated that "the thrust of the Step III Conference . . . involved a dispute over allocation of electrical work." The Step III hearing officer also rejected the grievance on the ground that, under the New York City Collective Bargaining Law ("NYCCBL"),¹ the employer has the right to determine the means and personnel by which its operations shall be conducted. The Step III hearing officer concluded that the grievance was not subject to review under the contractual grievance procedure.

The Request for Arbitration, which was filed on March 11, 1996, reiterates the grievance as:

Whether NYC DEP has instituted and maintained agency policy and practice which misinterprets and misapplies the laws, rules and regulations of the City of NY, including, but not limited to the NYC Electrical Code, adversely affecting the terms and conditions of employment, including, but not limited to the health & safety of grievants in violation of Article[s] IV [Productivity and Performance] and IX [Labor-Management Safety Committee] of the Non-Economic Agreement.

The Request for Arbitration is made under Article V (Grievance

¹ NYCCBL § 12-307b.

Procedure).² As a remedy, the Union demands a cease and desist order and any other, appropriate, equitable relief.

City's Challenge to Arbitrability

The City contends that the Union's failure to cite any sections of the Agreement before filing the Request for Arbitration has deprived the City of the beneficial effect of the earlier steps of the grievance procedure by preventing it from addressing the complaint(s) in the earliest possible forum.

Moreover, the City argues that the citation of Articles IV and IX of the Agreement are unavailing to the Union. Article IV relates to the establishment of productivity and performance standards of unit members. Article IX concerns the establishment of a Labor-Management Safety Committee. The City asserts that these sections "do not and were never intended" to address any issues related to the City's assignment of non-unit Stationary Engineers to various tasks associated with a preventive maintenance program in the Department of Environmental protection for electrical equipment. Such assignments, the City continues, are within the purview of the management

² Article V of the Agreement provides, in pertinent part, as follows:

Section 1 -- Definition: The term "Grievance" shall mean:

- 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 conditions of employment; provided, disputes involving the Rules and Regulations of the New York City personnel Director of 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....

rights clause of the NYCCBL, and such are not subject to the contractual grievance procedure.

The City also maintains that the parties have not included, within the contractual definition of a grievance, a claimed violation of statute, such as the Administrative Code of the City of New York generally and the New York City Electrical Code specifically. The City also avers that the Union has specified no other rule, regulation, policy or order of the City of New York which arguably was violated.

For these reasons, the City requests that its Petition Challenging Arbitrability be granted.

Discussion

While the Union has defaulted in answering the Petition in this case, it is still the responsibility of this Board to ascertain the prima facie sufficiency of the City's Petition before granting the relief requested by the City. We have reviewed the Petition as well as the Request for Arbitration and the documents attached thereto, including the statement of the grievance at Step III of the grievance procedure. We are satisfied that the City's Petition, on its face, is meritorious and should be granted.

It is public policy, expressed in the NYCCBL, to promote and encourage arbitration as the selected means for the adjudication and resolution of grievances. However, the Board cannot create a duty to arbitrate where none exists, nor can it enlarge a duty to arbitrate beyond the scope established by the parties.³ The grievance herein alleges a violation of that portion of the Administrative Code which constitutes the Electrical Code of the City of New York. It is clear that a violation of that statute is not encompassed within the contractual definition of a grievance under the applicable section of Article V of the Agreement and is not grievable thereunder. No other rule,

³ Decision Nos. B-27-94; B-5-94; B-73-90; B-52-90.

regulation, policy or procedure has been specified as having been violated.

As for the alleged violations of Articles IV and IX of the Agreement, while we have not adopted a strict pleading rule,⁴ the threshold arbitrability test requires more than mere notice pleading of the claims being asserted.⁵ The proponent must establish a nexus between the grievance and the source of the right being invoked. Such a relationship cannot be established on the basis of vague and conclusory allegations. A request for arbitration may be rendered fatally defective by the omission of an allegation, the absence of which impedes the responding party from preparing an adequate defense.⁶

If the Union failed to cite Articles IV and IX of the Agreement at Step III, that fact alone would not defeat the Union's claim if the City had notice of the claim(s) sought to be grieved. The City contends -- and the Union has not denied -- that the grievance at Step III concerned the assignment of personnel to work duties. It has not been alleged by the Union that Articles IV and IX concern this issue or that the City had any notice of the Union's reliance on those sections of the Agreement. Accordingly, we cannot permit the Union to advance, in its Request for Arbitration, a claim that was not raised at the lower steps of the grievance procedure. In addition, the complaint that was articulated by the Union at Step III, i.e., the assignment of certain work to non-unit employees, does not state a contractually based claim. We cannot enlarge a duty to arbitrate beyond the scope established by the parties,⁷ and we will not do so here. Accordingly, no basis exists for the submission of the instant claim to arbitration.

For the reasons stated above, we will grant the City's Petition and deny

⁴ Decision No. B-55-89.

⁵ Decision No. B-70-90.

⁶ Id.

⁷ Decision No. B-29-83 and B-12-77.

DECISION NO. B-8-97
DOCKET NO. BCB-1827-96 (A-6245-96)

6

the Union's Request for Arbitration.

ORDER

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 contesting arbitrability be, and the same hereby is, granted; and it is further

ORDERED, that the Request for Arbitration of the International Brotherhood of Electrical Workers, Local 3, be, and the same hereby is, denied.

DATED: New York, N.Y.
February 25, 1997

STEVEN C. DeCOSTA
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

RICHARD A. WILSKER
MEMBER

CAROLYN GENTILE
MEMBER

ROBERT H. BOGUCKI
MEMBER