***Organization of Staff Analysts*, 61 OCB 11 (BCB 1998) [Decision No. B-11-98 (Arb)], called into question, *see City of New York v. DeCosta*, 95 N.Y.2d 273, 716 N.Y.S.2d 353 (2000).**

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-11-98 |
| | : | Docket No. BCB-1946-97 |
| -and- | : | (A-7030-97) |
| | : | |
| ORGANIZATION OF STAFF ANALYSTS, | : | |
| | : | |
| Respondents. | : | |

## DECISION AND ORDER

On December 4, 1997, the City of New York ("the City"), appearing by it Office of Labor Relations ("OLR"), filed a petition challenging the arbitrability of a grievance which is the subject of a request for arbitration filed by the Organization of Staff Analyst ("OSA" or "the Union"). The issue sought to be arbitrated by the Union is:

> Whether the Office of Investigation and/or The Office of Inspector General violated Article IX Sec.19b of the Citywide Contract by refusing to permit a Union representative to accompany a permanent employee summoned to the DOI or I.G.'s office.

The Union filed its verified answer to the City's petition on December 31, 1997 and the City filed its verified reply on January 15, 1998.

On August 25, 1997, the Union filed a group grievance directly at Step III of the grievance procedure alleging that two members of the union were denied union representation during an interrogation. The Step III grievance, which was dismissed on October 27, 1997, by

OLR's Chief Review Officer, was followed by the Union's request for arbitration, filed on November 13, 1997.

The City challenges the arbitrability of this matter on the grounds that (1) arbitration would violate public policy[1] and (2) the Union lacks standing to demand arbitration because it supplied no evidence that it is authorized by the Citywide representative, District Council 37, to process the grievants' request for arbitration. In response, the Union notes that since it filed the request for arbitration, the necessary authorization has been received.

The Union alleges that the procedural safeguards contained in the city-wide contract do not infringe on any substantive aspect of DOI's responsibility or authority. It contends that Article IX, Section 19, of the current city-wide contract is consistent with Section 75 of the Civil Service Law in that they both require that employees subject to questioning in potential disciplinary actions have the right to have their union representatives present. The Union adds that there is "no rational basis for allowing union representation at agency disciplinary investigations and hearings and refusing to do so at DOI investigations."

According to the Union, contrary to the City's suggestion, DOI and the Inspectors General are not solely "involved in major criminal matters involving corruption, fraud and/or conflicts of interest, the fact is that many investigations involve relatively minor matters of the kind which are often the subject of investigation and disciplinary action by an agency's disciplinary unit." Regarding the City's argument that the presence of a union representative at

[1] The Board decided a nearly identical issue of arbitrability in Decision Nos. B-46-97 and B-2-98. The City, being a party in both of those actions, made public policy arguments identical to those asserted herein; accordingly, for a full and complete discussion of the City's position on the public policy issue, we refer the reader to those Decisions.

questioning would undermine DOI's investigation, the Union asserts that the presence of the union representative and the attorney "does put a restraint on the interviewer from conducting star chamber proceedings or otherwise violating an employee's due process rights. And that is what the collective bargaining agreement requires."

Contrary to the City's position, the Union does have standing to proceed with this matter. As noted by the Union, a letter from District Council 37, granting the Union this authorization, was received by the Office of Collective Bargaining on December 16, 1997.

For the reasons stated in the majority opinions in Decision Nos. B-47-97 and B-2-98, we find that the instant matter is arbitrable and deny the City's petition.[2]

[2] We refer the reader to Decision Nos. B-46-97 and B-2-98 for a full and complete discussion of the rationale for the Board's decision.

**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 challenging arbitrability filed herein, by the City of New York be, and the same hereby is, denied, and it is further,

ORDERED, that the request for arbitration filed herein by the Organization of Staff Analysts, and the same hereby is, granted.

Dated: New York, New York
April 16, 1998

Steven C. DeCosta
CHAIRMAN

George Nicolau
MEMBER

Daniel G. Collins
MEMBER

Carolyn Gentile
MEMBER

Jerome E. Joseph
MEMBER

We dissent for the reasons stated in our dissenting opinions in Decision Nos. B-46-97 and B-2-98.

Richard A. Wilsker
MEMBER

Anthony P. Coles
MEMBER