District Council 37, Local 461 and Local 508, 61 OCB 9 (BCB 1998) [Decision No. B-9-98 (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 BARGAIN BOARD OF COLLECTIVE BARGAIN			
In the Matter of the Arbitration	X :		
between	•		
THE CITY OF NEW YORK,	•		
Petitioner,	•	Decision No. Docket No.	B-9-98 BCB-1918-97
and	:		(A-6771-97)
LOCAL 461, LOCAL 508 and DISTRICT COUNCIL 37, Respondents.	:		
	X		

DECISION AND ORDER

On June 20, 1997, the City of New York ("City"), appearing by its Office of Labor

Relations, filed a petition challenging the arbitrability of a grievance filed by District Council 37

("DC 37" or "Union"). The Union filed an answer on July 28, 1997, and on August 22, 1997, the

City filed its reply.

The Union asserts that in February, 1997, the City's Department of Investigation¹ ("DOI")

conducted investigations of seasonal employees at the Department of Parks and Recreation ("DPR")

who were represented by Locals 461 and 508 of DC 37. In response, on February 27, 1997, the

¹ The DOI is statutorily charged with the duty of investigating criminal misconduct and detecting corruption. *See*, New York State General City Law §20 (21); New York City Charter, Ch. 34, §§ 803 & 805.

Decision No. B-9-98 Docket No. BCB-1918-97 (A-6771-97)

Union filed a Step III group grievance, alleging a violation of Article XXIII, §11 of the Seasonal Unit Agreement ("Agreement") in that investigators were sent to the homes of union members to interview them without,

a) providing proper advance notice; b) informing the employees of their right to union representation or legal counsel; c) affording the right of union representation or legal counsel; d) conducting interviews in an appropriate setting.

On May 29, 1997, without having received a response from the City,² the Union filed a request for arbitration. The request alleges grievances identical to those enumerated in the Step III grievance, cited above, and seeks, as remedies, (i) the cessation of the interviews; (ii) that the City comply with the contract; (iii) punitive damages; and (iv) other relief deemed appropriate.

We note here, that in Decision No. B-2-98 (BCB-1896-97; A-6611-97), issued on January

27, 1998, this Board dealt with a request for arbitration identical to the one before us now; the parties and legal theories pertaining to the claims and defenses are identical. We therefore refer the parties to Decision No. B-2-98, for a full and complete discussion of the i) positions of the parties; ii) the rationale for the Board's decision; and iii) the City members' dissent.³

Accordingly, for the reasons stated in Decision No. B-2-98, we will deny the instant petition challenging arbitrability.

² In light of the fact that the Union filed a request for arbitration, the City issued a letter on July 8, 1997, closing its file on the Step III grievance.

³ See also, Decision No. B-46-97.

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 District Council 37, and

the same hereby is, granted.

Dated: March 24, 1998 New York, N.Y.

	Steven C. DeCosta CHAIRMAN
	Daniel G. Collins MEMBER
	George Nicolau MEMBER
	Carolyn Gentile MEMBER
	Jerome E. Joseph MEMBER

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

Richard A. Wilsker	
 MEMBER	
 Saul G. Kramer	
MEMBER	