

OFFICE OF COLLECTIVE BARGAINING
 BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration	:
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-between-	:
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THE CITY OF NEW YORK AND THE NEW YORK	:
CITY DEPARTMENT OF YOUTH AND COMMUNITY	:
DEVELOPMENT,	:
	:
Petitioners,	:
	:
-and-	:
	:
SOCIAL SERVICE EMPLOYEES UNION,	:
LOCAL 371,	:
	:
Respondent.	:
	:
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Decision No. B-27-2000
 Docket No. BCB-2089-99
 (A-7873-99)

DECISION AND ORDER

On August 31, 1999, the City of New York (“City”) and the New York City Department of Youth and Community Development (“DYCD” or “Department”), appearing by the Office of Labor Relations, filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Social Service Employees Union, Local 371 (“Union” or “Local 371”). The Union filed an answer on February 14, 2000.

BACKGROUND

Ronald Russell (the “Grievant”) was employed as a Contract Specialist, Level II in the Department. On March 1, 1999, the Union filed a Step I grievance on behalf of Russell alleging that his “contract assignments have exceeded one hundred (100); this is an unduly burdensome

and inequitable work load relative to all other contract specialists.” On March 9, 1999, the grievance was denied. A Step II grievance was submitted on March 8, 1999 and was returned to the Grievant on March 9, 1999 for original execution by a union representative. On March 18, 1999, the Grievant filed a revised Step II grievance containing the identical allegations made at the Step I level. The grievance also alleged a violation of the New York City Collective Bargaining Law (“NYCCBL”) and the Department Rules and Regulations. On March 18, 1999, the Department issued a letter stating that it could not reach a decision on the merits of the Grievant’s claim because of his failure to cite which specific provisions of the NYCCBL and the Department Rules had been violated. A Step III grievance was filed on March 29, 1999 alleging that the Department violated the NYCCBL, Department Rules and Regulations, and further alleging that the Department violated Article VI, § 2 of the SSEU Agreement (“Agreement”).¹ The Step III grievance was dismissed on July 22, 1999.

On August 3, 1999, the Union filed the instant Request for Arbitration. The Union stated the grievance to be arbitrated as follows:

Grievant has been wrongfully assigned to duties substantially different from those contained in job specification.

As the contract provision, rule or regulation it claims was violated, the Union lists

Article VI, §1(c) of the Social Services Agreement.² It cites Article VI, §2 of the Agreement as

¹ Article VI, §2, Step III provides in relevant part:
An appeal from an unsatisfactory determination at Step II shall be presented by the Employee and/or the Union to the Commissioner of Labor Relations in writing within ten (10) work days of the receipt of the Step II determination....

² Article VI, §1(c) provides:

(continued...)

the section of the contract under which the demand for arbitration is made.³ The Grievant seeks to be paid for all out-of-title work that she performed, and any other just and proper remedy.

POSITIONS OF THE PARTIES

City's Position

The City, in its Petition Challenging Arbitrability, argues that the Union first alleged a violation of Article VI, §1(c) of the SSEU Agreement in its Request for Arbitration. At no time during the grievance process, prior to the Union's Request for Arbitration, was the Department notified that the Union was alleging an out of title claim brought pursuant to Article VI, §1(c). The City maintains that the Union has consistently claimed an alleged violation of the NYCCBL and Article VI, §2 of the SSEU Agreement, alleging that the Grievant has "an unduly burdensome and inequitable workload relative to other workers similarly situated."

The City argues that the Union should not be allowed to raise a new claim at the penultimate moment and urges the Board to dismiss the Union's Request for Arbitration. The City cites several cases to support the City's proposition that "[t]he Board has consistently denied requests for the arbitration of claims not raised at the lower steps of the grievance procedure."⁴

²(...continued)

A claimed assignment of employees to duties substantially different from those stated in their job specifications.

³ Article VI, §2, Step IV provides in relevant part:
An appeal from an unsatisfactory determination at Step III may be brought solely by the Union to the Office of Collective Bargaining for impartial arbitration within fifteen (15) working days of receipt of the Step III determination....

⁴ See Decision Nos. B-29-89; B-10-88; B-35-87; B-31-86; B-21-84; B-6-80; B-22-74.

The City maintains that to permit the Union to proceed with its Request for Arbitration in which a new claim has been made “deprives the Petitioners of the ability to attempt to resolve the grievance at the lower steps of the grievance procedure and only serves to subvert the grievance process.”⁵

_____The City further argues that the “[Union’s] allegations, made throughout the grievance process, that the City has violated an unspecified section of the NYCCBL is not grievable.” In its Petition Challenging Arbitrability, the City states that “[t]he Board has held that violations of the NYCCBL do not constitute allegations of contractual violation and are therefore not appropriate subject matters for arbitration.”⁶ Thus, the City concludes that the Union’s Request for Arbitration must be dismissed in its entirety.

Union’s Position

The Union argues that “[t]he grievances and the Request for Arbitration, read together, allege that the Grievant was assigned an unduly burdensome and inequitable caseload relative to other similarly situated workers in the DYCD, in violation of the DYCD’s rules and regulations, policies, or orders, and that such assigned duties were substantially different from those stated in his job specification.” The Union contends that the alleged violation of Article VI, §1(c) cited in their Request for Arbitration is not a new claim, but “is based on the identical complaint set forth in the initial grievance and all the subsequent grievances herein, and is therefore sufficiently related thereto to similarly be fully arbitrable.” Thus, the Union concludes that the Petition

⁵ See Decision Nos. B-28-97; B-25-87.

⁶ See Decision Nos. B-50-89; B-27-84.

Challenging Arbitrability should be denied and the Request for Arbitration should be granted.

DISCUSSION

The Board has consistently held that a party may not amend its Request for Arbitration to add claims that it failed to raise in the previous steps of the grievance procedure.⁷ We have stated previously that:

The purpose of the multi-level grievance procedure is to encourage discussion of the dispute at each of the steps. The parties are thus afforded an opportunity to discuss the claims informally and to attempt to settle the matter before it reaches the arbitral stage. Were this Board to permit either party to interpose at this time a novel claim based on a hitherto unpleaded grievance, we would be depriving the parties of the beneficial effect of the earlier steps of the grievance procedure and foreclosing the possibility of a voluntary settlement.⁸

On the record established by the parties, we find that the City did not have notice of the Union's out of title work claim prior to the submission of its Request for Arbitration. Prior to filing its Request for Arbitration, the Union consistently alleged that the Grievant was assigned "an unduly burdensome and inequitable work load relative to all other contract specialists." Furthermore, the Union gave no indication that it was raising or intended to raise an out of title claim. After the Union filed its Request for Arbitration, the Union ceased to pursue its claim regarding an unduly burdensome and inequitable workload and proceeded to raise an entirely new claim brought pursuant to Article VI, §1 (c). An alleged violation of the NYCCBL regarding an inequitable workload, is not, on its face, the same as the later out of title claim brought pursuant to Article VI, §1 (c). We find that the Union's failure to raise the out of title claim during the

⁷ See Decision No. B-35-87.

⁸ See Decision No. B-20-74.

lower steps of the grievance process, before its submission of the Request for Arbitration, denies the City the opportunity to resolve the grievance and hinders the main objective of our multi-level grievance procedure. Thus, the Union's Request for Arbitration must be dismissed in its entirety. To the extent that the Union's out of title claim is a continuing one, this dismissal is without prejudice to the submission of a new grievance based on Article VI, §1 (c), at the appropriate Step of the grievance procedure.

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 by the City of New York, be and the same hereby is, granted; and it is further

ORDERED, that the Request for Arbitration filed by the Social Service Employees Union, Local 371, be and the same hereby is, denied.

Dated: September 7, 2000
New York, New York

MARLENE A. GOLD
CHAIR

DANIEL G. COLLINS
MEMBER

CHARLES G. MOERDLER
MEMBER

BRUCE H. SIMON
MEMBER

RICHARD A. WILSKER
MEMBER
