City & Dep't of Parks & Recreation v. DC 37 & L. 1505, 69 OCB 7 (BCB 2002) [Decision No. B-7-2002 (Arb)]

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

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION,

Petitioners,

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO and LOCAL 1505,

Respondents.
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Decision No. B-7-2002
Docket No. BCB-2253-01
(A-8935-01)

DECISION AND ORDER

On November 21, 2001, the City of New York and the City of New York Department of Parks and Recreation ("City" or "Parks") filed a petition challenging the arbitrability of a grievance filed by District Council 37, AFSCME, AFL-CIO and Local 1505 ("Union"). The grievance asserts that Parks is in violation of the parties' Heavy Duty Agreement. Petitioners allege that the grievance is not arbitrable because Respondents improperly raised new claims and theories for the first time in their Request for Arbitration. Because we find that Respondents' claims in the Request are not new, we deny the petition and direct that the grievance proceed to arbitration.

BACKGROUND

Richard Laylock is a long-term Parks employee who holds the title of City Park Worker

("CPW"). Laylock was among the grievants who claimed that they had been assigned to perform work as "laborers" after other employees in that higher-paying title were laid off in 1991. This dispute resulted in a Memorandum of Agreement dated October 31, 1994 ("Heavy Duty Agreement" or "Agreement"). The Agreement provides for the creation of specialized work crews, made up of CPWs and Associate Park Service Workers ("APSW"), who perform heavy duty repairs to Parks' property. The Agreement sets forth the terms and conditions of such assignments.

On April 5, 2000, a number of Parks employees, including Laylock, filed a grievance alleging that Parks "is in violation of [the] specialized Heavy Duty agreement." It is undisputed that Laylock and other employees named in the grievance had previously filed other claims alleging violations of the parties' Heavy Duty Agreement, the unit agreement, and the Citywide agreement. Some of these grievances were for out-of-title claims.

On April 12, 2000, Michael Hood, the President of Local 1505, wrote to Joseph Bernstein, Parks' Director of Labor Relations, and requested a Step II hearing for the "Richard Laylock" grievance. A copy of the grievance was enclosed with the letter.

On April 19, 2000, Bernstein responded that the grievance identified as "Richard Laylock et al. C00-0405-EL1391" regarding the Heavy Duty Agreement would be dismissed. Bernstein asserted that this "grievance is identical to prior grievances already filed by the same employees. The Agency has already issued its decisions for these similar grievances and will not hold another hearing on the same issue." Parks closed the file on this matter.

On April 28, 2000, Hood wrote to the City of New York Office of Labor Relations ("OLR") and requested a Step III hearing for the grievance. According to the City, the matter

was assigned OLR STEP III File No. 35294 and was assigned to Review Officer Philip Alonso.

The parties dispute the date on which the Step III hearing was scheduled. The Union claims that the Step III hearing was scheduled for August 3, 2000, but does not provide any further details as to what occurred that day. The City claims it was scheduled for September 22, 2000. According to the City, Laylock, Hood, Union Representative Anthony Mammalello, and Parks' Labor Analyst Elena Levy appeared on September 22, 2000, before Alonso to discuss "OLR 35294 Richard Laylock" but that no hearing took place. In support, the City provides a copy of an internal e-mail dated September 22, 2000, from Alonso to then Step III Hearing Unit Director/Chief Review Officer Marianna Bellizzi. In the e-mail, Alonso observes that the Union "has filed so many grievances for this particular group of employees it can't keep track of what it is doing" and states that when the Union representatives arrived, they told him that they were "prepared to discuss **another** out-of title grievance" and requested that "this grievance be incorporated into another OLR file it has open." (Emphasis in original.) The Union suspects that Alonso is referring to an out-of-title grievance concerning the construction of a dog run, a grievance the Union wanted to consolidate with other out-of title grievances. It is undisputed that no Step III hearing ever took place.

On July 2, 2001, the Union filed its Request for Arbitration. The Request states that the grievance to be arbitrated is whether, in violation of the Heavy Duty Agreement, Parks created a "specialized digging crew by stepping up CPW's [sic] to APSW within heavy duty crew differential out of seniority."

POSITIONS OF THE PARTIES

Petitioners' Position

Petitioners argue that the Request for Arbitration must be dismissed because the Union changed the nature of the grievance and improperly raised new claims and theories for the first time in their Request. Based on the Alonso e-mail, the City argues that what was originally an out-of-title grievance has been "transmogrified" into a claim that, in violation of the Heavy Duty Agreement, Parks created a specialized digging crew by stepping up CPWs to APSW without considering seniority. The City claims that inasmuch as it had no notice of the claimed violation of the Agreement, it had no opportunity to consider that allegation.

Respondents' Position

Respondents argue that their original grievance was not an out-of-title grievance and that they have not raised new claims in their Request for Arbitration. The grievance states that Parks "is in violation of [the] specialized Heavy Duty agreement" and the Request for Arbitration states that in violation of the Heavy Duty Agreement, Parks created a "specialized digging crew by stepping up CPW's [sic] to APSW within heavy duty crew differential out of seniority." Petitioners' failure to keep track of grievances and failure to hold Step II and Step III hearings to determine the exact nature of this grievance cannot shield them from their obligation to process such grievances. Respondents also claim that they have established the requisite nexus between the alleged wrong (the creation of a specialized digging crew) and the contract right (the Heavy Duty Agreement).

DISCUSSION

In determining questions of arbitrability, this Board decides whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the present controversy is within the scope of that obligation. *Social Service Employment Union,* Decision No. B-2-69 at 2; *Local 30, International Union of Operating Engineers*, Decision No. B-16-98 at 6. We have found that there is a proper subject for arbitration when the City has notice of the union's claim at the lower steps of the grievance procedure. *Local 246, Service Employees International Union*, Decision No. B-32-99 at 11; *Patrolmen's Benevolent Ass'n*, Decision No. B-44-88 at 9.

Petitioners claim that the Union's out-of-title grievance has been altered and that "there was no clear notice of the nature of the union's additional claims, nor was there any circumstance that indicated that the City should have been on notice of the nature of those claims." We disagree. First, we note that both the grievance and the Request for Arbitration clearly state that the matter in dispute concerns a violation of the Heavy Duty Agreement. Second, there is no basis to find that the Union has "transmogrified" its grievance so that, under the word's definition, it has been greatly altered with grotesque or humorous effect. In fact, the nature of the grievance has not been changed at all. The Union has merely clarified that the grievance alleging Parks is in violation of specialized Heavy Duty agreement involves a claim that Parks created a "specialized digging crew by stepping up CPW's [sic] to APSW within heavy duty crew differential out of seniority." Thus, in the Request for Arbitration, the Union has restated in detail the same issue that was previously alleged in the grievance. *Patrolmen's Benevolent Ass'n*, Decision No. B-44-88 at 9.

The City's argument that the grievance was for out-of-title work is not based on a

comparison of the grievance and the Request for Arbitration. Neither document mentions out-of-title work, a subject that is covered by another provision of the parties' unit agreement. Instead, the City's assertion is based on the Alonso e-mail where he observes that the Union "has filed so many grievances for this particular group of employees it can't keep track of what it is doing" and that when the Union representatives arrived on September 22, 2000, for "OLR 35294 Richard Laylock," they came "prepared to discuss **another** out-of title group grievance." (Emphasis in City's Petition.) Petitioners' mistaken belief that this was an out-of-title grievance does not shield it from arbitration of this particular claim.

Moreover, Petitioners' failure to hold Step II and Step III hearings renders their argument that they had no notice of the nature of the Union's claims disingenuous. We have repeatedly stated 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. *Social Service Employees Union,* Decision No. B-27-2000 at 5; *Patrolmen's Benevolent Ass'n*, Decision No. B-77-99 at 9. Petitioners' choice to forego the multi-step process because they assumed that this grievance was identical to prior grievances filed by the same employees is not a basis for challenging arbitrability. Accordingly, for the reasons stated above, the City's petition challenging arbitrability is denied.

ORDER

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

ORDERED, the petition challenging arbitrability filed by the City of New York and the New York City Department of Parks and Recreation hereby is denied; and it is further,

ORDERED, that the Request for Arbitration filed by District Council 37, AFSCME, and Local 1505 hereby is granted.

DATED: March 20, 2002
New York, New York

MARLENE A. GOLD
CHAIR

DANIEL G. COLLINS
MEMBER

BRUCE H. SIMON
MEMBER

RICHARD A. WILSKER
MEMBER