

City v. L. 704, Int'l B'hd Firemen & Oilers, 7 OCB 1 (BCB 1971)
[Decision No. B-1-71 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK

DECISION NO. B-1-71

-and

DOCKET NO. BCB-74-70

LOCAL 704, INTERNATIONAL BROTHERHOOD
OF FIREMEN AND-OILERS, AFL-CIO

DECISION AND ORDER

Respondent Local 704, International Brotherhood of Firemen and Oilers, AFL-CIO, the contractually recognized representative of Stationary Firemen in the Bureau of Waste Disposal, Department of Sanitation, requested arbitration of its alleged grievance that "non-bargaining unit employees have been assigned to perform work of the Fireman job title, viz.: lower chamber cleaning." The request for arbitration alleges that the assignment of Sanitation men violates the Firemen job description, Civil Service Rules on out of title work and Article II of the memorandum of understanding between the parties.

The City's petition herein contests arbitrability on the ground that the matter does not constitute a grievance under Executive Order 52 and the New York City Collective Bargaining Law in that the Union does not represent the affected title of Sanitation man; that a violation of a Civil Service Rule is not arbitrable; and that "the decision of the Department to assign its employees is solely a management prerogative".

The Union's answer asserts that the work to which Sanitation men have been assigned is encompassed by the Fireman job description and not by the Sanitation man description. It urges the Board to "issue a final determination and ruling that the subject infringement grievance is arbitrable, and to issue a panel of arbitrators from which a mutual selection can be made, and direct that the Department of Sanitation proceed with the arbitration forthwith."

Article II of the memorandum of understanding grants exclusive recognition to the Union as certified bargaining representative of Stationary Firemen.

The memorandum provides for a five step grievance procedure culminating in arbitration in accordance with applicable law and the rules and regulations of the office of Collective Bargaining, Grievances are defined in Article VII, Section 1 of the parties' agreement as, inter alia:

"(c) A claimed assignment of employees to duties substantially different from those stated in their job classifications;..."

This language is identical to the definition of grievance in §8a(2)(C) of Executive Order 52.

The Board has consistently held that the above quoted language providing for a grievance relating to out-of-title work is sufficient to permit a union to arbitrate a claim that employees outside the unit have been assigned to duties properly pertaining to employees represented by the grieving union. (See Decisions B-2-70 and B-7-70.) In Decision B-2-70 there was no contract, and the definition of grievance in §8a(2)(C) of Executive Order 52 controlled. In Decision B-7-70 the language of §8a(2)(C) was incorporated into the contract.

The Board's reasoning is extensively set out in these two decisions and need not be repeated here.

The City's petition does not assert any reason why the Board should depart from the clear precedents established in the prior cases. The cause of stable labor relations is not advanced by constant relitigation of firmly established principles.

Accordingly, we find and conclude that the grievance here asserted is arbitrable.

As the rights of the Sanitation men are, or may be involved, we shall provide that a copy of this Decision and Order be served upon their certified representative, and that said representative may apply to intervene, or may be interpleaded by the City, as a party to the arbitration.

O R D E R

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 to stay arbitration of the grievance herein be, and the same hereby is# denied; and it is further

ORDERED, that a copy of this Decision and order be served upon Uniformed Sanitation men's Association, Local 831, I.B.T.; and it is further

ORDERED, that within ten (10) days after service of a copy of this Decision and Order: (A) Uniformed Sanitation men's Association, Local 831, I.B.T., may apply to the Board, on notice to the other parties, for leave to intervene in said arbitration; (B) the City of New York may apply to the Board, on notice to the other parties, to

interplead Uniformed Sanitation men's Association, Local 831, I.B.T., as a party to said arbitration; and it is further

ORDERED, that the grievance herein shall be referred to an arbitrator to be agreed upon by the parties or appointed pursuant to the Consolidated Rules of the office of Collective Bargaining.

DATED: New York, N.Y.
January 15, 1971

ARVID ANDERSON
C H A I R M A N

M E M B E R

ERIC J. SCHMERTZ
M E M B E R

EARL SHEPARD
M E M B E R

EDWARD SILVER
M E M B E R

HARRY VAN ARSDALE, JR.
M E M B E R

Mr. Eisenberg did not participate in the decision herein.