

City v. L. 1180, CWA, 7 OCB 10 (BCB 1971) [Decision No. B-10-71
(Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of
THE CITY OF NEW YORK,

DECISION NO. B- 10-71

Petitioner,

DOCKET NO. BCB-86-71

-and

LOCAL 1180, COMMUNICATIONS
WORKERS OF AMERICA,

Respondent.

DECISION AND ORDER

On March 2, 1971, Local 1180, Communications Workers of America, filed a request for arbitration claiming as a grievance the denial of a promotion to George Steinberg employed by the Department of Social Services in that the department refused to assign him to the position of Field Office Consultant in the Bureau of Special Services. The Union claimed that this denial of a promotion or assignment to a higher position was a violation of §III, Par. 5.3.1, of the Rules and Regulations of the Civil Service Commission of the City, and as a remedy asked that Steinberg be assigned to the higher position.

By a petition filed March 30, 1970, the City challenged the arbitrability of the grievance. Issue was joined by service of the Union's answer and the City's reply.

The facts, as set forth in the pleadings are that Steinberg, a Clerk, Grade 5, equated to Administrative Associate, is serving as a Field Auditor in the Bureau of Fiscal Administration and that Virginia O'Neill, the Director of the Bureau of Special Services, requested Irving Damsky, Director of the Bureau Personnel Administration (all bureaus in the Department of Social Services), to assign Steinberg to her bureau as a Field Office Consultant. Steinberg is eligible

for such appointment because as a Clerk, Grade 5, a restored Rule X title, he is eligible to serve as a Senior Administrative Assistant, which is the civil service designation of the position of Field Office Consultant. The assignment to the higher position, if it were granted, would entail an advancement increase. However, the Director of the Bureau of Fiscal Administration declined to release Steinberg for the "promotion," and the position of Field Office Consultant in the Bureau of Special Services remains vacant.

Article IX of the contract, under which the Union seeks arbitration of the grievance, defines a grievance as follows (Subd. 1B):¹

"A claimed violation, misinterpretation or misapplication of rules or regulations, existing policy, or orders applicable to the agency by whom the grievant is employed affecting terms and conditions of employment.

The specific rule or regulation which the Union alleges the City violated, by refusing to assign Steinberg to, the higher position, is Section III, Par. 5.3.1 of the Civil Service Commission's Rules and Regulations, which reads as follows:

¹ It is noted that the contract definition of it "grievance" differs from the definition described in §1173-3.0o NYCCBL and that §8(a)(2) of Executive Order 52 provides, in pertinent part, that a grievance is a claimed violation *** of rules or regulations of the Mayoral agency "by whom the grievant is employed etc."

"Except as provided in paragraph 5.3.10, vacancies in positions in the competitive class shall be filled, so far as practicable, by promotion from among persons holding competitive class positions in a lower grade in the department in which the vacancy exists, provided that such lower grade positions are in the direct line of promotion, as determined by the commission. Where the commission determines that it is impracticable or against the public interest to limit eligibility for promotion to persons holding lower grade positions in the direct line of promotion, it may extend eligibility for promotion to persons holding competitive class positions in lower grades which it determines to be in related or collateral lines of promotion, or in any comparable positions in any other unit or units of governmental service and may prescribe minimum training and experience qualifications for eligibility for such promotion."

In its petition and reply challenging arbitrability, the City argues that the cited Civil Service rule has no relevancy as to its obligation to fill a vacancy; that the grievance is "nothing more than a refusal to grant a request for an interdepartmental transfer from one bureau to another"; and that nothing in the collective bargaining agreement, applicable rules, regulations or policies controls such transfer. Therefore, the decision, whether to transfer or promote, is strictly a management prerogative to grant or deny. The Union's answer points out that the requested assignment of Steinberg to the higher position was an advancement proffered him by the bureau head of another bureau in the same department and not initiated by Steinberg and that since the Department of Social

Services has been designated a single promotional unit by the

City Personnel Director, Steinberg was therefore "eligible" for the higher assignment under the cited section of the Civil Service Commission Rules. Thus, the Union concludes, the denial of a release to Steinberg by the Bureau of Fiscal Administration, so that he might be "promoted" to the higher position available in the Bureau of Special Services was arbitrary, capricious and violated the intent and purposes of the cited rule.

The Board notes that the courts have on many occasions declared that unlimited salary grade titles of the type of Clerk, Grade 5, are not subject to the customary civil service rules relating to "promotions" since such titles are already in the top grade of their service and because there is no maximum salary fixed for the titles. Mandle v. Brown, 177 N.Y.S. 2d 488; Application of Hagan, 239 N.Y.S. 2d 919; Green v. Lang, 276 N.Y.S. 2d 604; Application of Helene N. Meyer, 293 N.Y.S. 2d 866. Such restored Rule X titles may be assigned, without taking an examination, to positions entailing higher duties and responsibilities and commanding higher salaries, but they are not "promoted" as that term is defined in Civil Service Commission Rule, Section III, Par. 5.3-8.

However, in the view we take of this case, we find it unnecessary to reach the question of whether the alleged violation of the Civil Service Rule constitutes a grievance within the meaning of the contract.

We apply Section 5 c of Executive Order No. 52 (1967) and read it to mean that the decision to fill a

vacant position is a managerial prerogative unless limited or modified by contract. Since our attention has not been directed to any specific contractual provision which it is claimed limits or modifies the decision to promote, we conclude that there is no dispute, and, therefore, no arbitrable issue.

The Board has considered the Union's request for oral argument and, after having fully explored and analyzed the record, feels that argument would not be further helpful in resolving this matter. The request is, therefore, denied. Accordingly, for all of the reasons mentioned, we find and conclude that the matter does not constitute an arbitrable grievance.

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

O R D E R E D , that the petition filed by the City of New York be, and the same hereby is, granted; and it is further

DECISION NO. B-10-71
DOCKET NO. BCB-86-71

6

O R D E R E D , that the request for arbitration filed by
Local 1180, Communications Workers of America, be, and the same
hereby is, denied.

DATED: New York, N.Y.
August 18, 19, , 71.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

TIMOTHY W. COSTELLO
M e m b e r

EDWARD SILVER
M e m b e r