City v. L. 246, SEIU, 7 OCB 18 (BCB 1971) [Decision No. B-18-71 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

NEW YORK CITY LOCAL 246, SEIU,, AFL-CIO,

Respondent.

DECISION NO. B-18-71

DOCKET NOS. BCB-93-71
BCB-104-71
(A-154-71
A-177-71
A-181-71)

DECISION AND ORDER

On February 24, 1971, New York City Local 246, SEIU, AFL-CIO, the Union herein, served and filed a request for arbitration (Case No. A-154-71) of a grievance alleging that the Fire Department had not complied with Rules XII, XIII, and XIV applicable to civilian employees in the Fire Department. These rules provide for leave in case of injury, death in the family, and religious observance The request for arbitration demanded as a remedy the "retroactive restoration of the benefits provided."

The City's petition contesting arbitrability, based on the Union's failure to file individual waivers, was served and filed on May 11, 1971. The Union filed an answer and, over a period of months, submitted the individual waivers on October 6, 1971, the City withdrew its petition challenging arbitrability in Case No. A-154-71. An arbitrator has been designated to decide this grievance.

Subsequently, on August 5, 1971, and October 7, 1971, while the aforesaid proceeding was pending, the Union served and filed, respectively, two requests for arbitration (Cases Nos. A-177-71 and A-181-71). In all three cases the Union seeks interpretation of a particular and identical provision involving the Comptroller's leave regulations. The City has not contested arbitrability, but has made separate motions, the last of which requests that all three cases be consolidated contending that the cases involve the same parties; that all three cases involve an interpretation of the identical provision of the Comptroller's leave regulations; and that consolidation of all three cases would prevent possible conflicting awards furthering uniformity in the application of leave regulations.

Though the Union requested, and was granted, leave to reply to the City's motions, the Union has not replied. Therefore, the City's allegations not being denied, they are deemed admitted.

Rule 13.12 of the Consolidated Rules of the Office of Collective Bargaining provides that "two or more proceedings may be consolidated or severed."

Consolidation is proper where there is a plain identity between the issues involved in two or more controversies and a substantial right of one of the parties is not prejudiced by consolidation (See Symphony Fabrics Corp. v. Bernson Silk Mills, 12 NY 2d 409, 240 NYS 2d 23; Vigo Steamship Corp. v. Marship Corp., 26 NY 2d 157, 309 NYS 2d 165)

The parties in each of the three arbitrations herein are identical; the underlying issues are the same, and the Union has not alleged or established that a substantial right of the Union would be prejudiced by consolidation. We shall, therefore, order the arbitrations consolidated for hearing.

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 City's petition contesting arbitrability in Case No. A-154-71 be, and the same hereby is, withdrawn; and it is further

ORDERED, that the proceedings in Cases Nos. A-154-71, A-177-71, and A-181-71 be, and the same hereby are, consolidated for hearing and that the parties are hereby directed to proceed to arbitration-before the same arbitrator designated by them in Case No. A-154-71.

DATED: New York, N.Y.
October 27, 1971.

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

WILLIAM MICHELSON
M e m b e r

EDWARD SILVER
M e m b e r