City v. MEBA, 7 OCB 2 (BCB 1971) [Decision No.1 B-2-71 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE-BARGAINING

In the Matter of

THE CITY OF NEW YORK, DECISION NO. B-2-71

Petitioner DOCKET NO. BCB-76-70

vs.

DISTRICT NO.1, PACIFIC COAST DISTRICT,
MARINE ENGINEERS BENEFICIAL ASSOCIATION,
AFL-CIO,

Respondent

DECISION AND ORDER

Respondent Marine Engineers Beneficial Association, as the certified representative of the pilots marine engineers, and assistant marine engineers on fireboats (Dec.#11-68), has requested arbitration of a grievance alleging that the Fire Department failed to maintain a licensed marine engineer or assistant marine engineer aboard a fire boat as security watch. The City's petition herein requests a determination that the grievance presented by Respondent is not arbitrable.

A Letter of Understanding signed by the parties and an Impasse panel chairman on the same day the current contract was executed, recites that it "was agreed to during the contract negotiations ... in order to resolve certain issues." It provides:

> Without limiting or interfering with Management prerogatives (sic) of the City or the Fire Department with regard to manning or to changes in job specifications, the Fire Commissioner shall notify District No.1 - P.C.D., M.E.B.A., sixty (60)days prior to either a change in the manning structure or to a change in the job specifications of any titles represented by the Union.
>
> Such notification shall be for purposes of discussion only.
>
> In the absence of other overriding considerations which shall be within the sole discretion of the Fire Commissioner, the intent of the Fire Department has been and continues to be the appointment

> of licensed men to the position of Pilot (Uniformed), Marine Engineer (Uniformed), and Assistant Marine Engineer (Uniformed).

On March 7, 1970 Chief Joseph F. Connor of the Marine Administration Division of the Fire Department, without prior notice to the Union, issued the following M.A.D. circular to company commanders of all marine units:

> It will be a matter of policy that security of the vessel during company drills will be effected through the services of an available wiper. He is expected to perform his routine assigned maintenance duties during this period as well as to provide security.
>
> Additionally when a marine unit is evaluated by the Welfare Island Training personnel, an available wiper will assume the responsibility for security of the vessel.

At the time of the issuance of this circular Fire Department Rule 14.9.5 provided:

> When fireboats are in service, at least one marine engineer or assistant marine engineer shall remain aboard at all times for security purposes.

On March 9, 1970, when Engineers Gorin and Reith, and Assistant Marine Engineer Martin of Marine Company 2 attended a firehouse land drill, Wiper Savella, who is represented by another union, was left aboard the vessel on security watch by the commanding officer. On July 20, 1970, the Fire Department issued Departmental Order 01.40 formally amending Rule 14.9.5 to add the words "or one wiper."

The City's petition contends that the grievance is not arbitrable because Rule 14.9.5, which is alleged to have been violated on March 9th, had already-been amended on March 7th, when the M.A.D. circular issued, and later was further amended by Departmental Order #140. The City maintains that the grievant seeks "rescission of a Departmental rule under guise and pretext of a Departmental rule having been violated," and asserts that change or amendment of such a rule is not a grievable matter under Executive Order 52, and, being the exercise of a management prerogative, is not reviewable by an arbitrator unless specified by contract.

The Union's answer asserts, in essence, that the assignment of a wiper to security duty was a change in manning structure and/or job specifications, that such a change required 60 days prior notice to the Union, that the M.A.D. circular did not legally amend Department Rule 14.9.5 because of the failure to give such notice, and that the circular, together with the acts of March 9th, therefore constituted Violations of a department rule as well as of contract, grievable under Article XIII of the collective agreement. That article defines a grievance as to a complaint arising out of the claimed violations, misinterpretations or inequitable applications of the provision of this contract or of existing policy or regulations of the Department." The Union also asserts that no management prerogative is involved because "whatever management prerogative exists, if any, has been limited by Exhibit A" (the Letter of Understanding).

In its answer the Union additionally advances two other claims: (1) that the assignment of the wiper to security duty violated the Letter of Understanding in that it constituted "the appointment or assignment of the wiper to the positions of Marine Engineer and Assistant Marine Engineer without the Fire Commissioner's having

demonstrated the existence of such overriding considerations as would excuse him from adhering to his expressed intent-to appoint licensee men to the position's-of Marine Engineer and Assistant Marine Engineer; and (2) that the assignment of the wiper to security duty was an improper out-of-title invasion of the duties and functions of the marine engineers, hence a violation. of Executive Order 52, § 8a(2)(C).

The City in its repl~ denies that any change in manning structure or job specifications occurred as a result of the M.A.D. circular. It argues that the circular effected only "a change in job class or Job allocation of the wiper," and that "manning structure refers to the overall manpower allocation, i.e., the title and quantity of men assigned to a boat." It further denies that an unlicenced man was hired in place of a licensed mar~and contends that the Union's claim of out-oftitle work is not grievable under the collective agreement, which defines grievance" more narrowly than Executive Order 52, §8.

The issues in dispute between I the parties - the meaning of the term "manning structure"; whether the M.A.D. circular effected a change in manning structure; whether the failure of the City to give the 60 days notice constitutes a violation of contract; and whether the M.A.D. circular served to amend the Department Rule or was in itself a violation thereof - all these are clearly questions of involving the interpretation or application of the contract, and are to be determined by an arbitrator The propriety of the remedy sought by the Union, also is a question for the arbitrator.

In view of our finding that the Union's grievance is arbitrable as a claimed violation of contract and/or departmental rule, we deem it unnecessary to consider the other contentions advanced by the Union to establish arbitrability.

O R D E R

Pursuant to the power 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 this proceeding be, and the same hereby is, 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

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

EARL SHEPARD
M e m b e r

HARRY VAN ARSDALE, JR.
M e m b e r