NYC Health & Hospitals Corp. V. Social Service union, Local 371, 71 OCB 3 (BCB 2003) [Decision No. B-3-2003]

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

-between-

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Petitioner,

Decision No. B-3-2003
Docket No. BCB-2300-02
(A-9558-02)

-and-

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,

Respondent.
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DECISION AND ORDER

The City of New York ("City") challenges the arbitrability of a grievance brought by the Social Service Employees Union, Local 371 ("Union") on behalf of Alberto Gerardini. The grievance alleges that Gerardini, a provisional employee for more than two years, was discharged for disciplinary reasons in violation of due process rights to contest the charges as required by the parties' collective bargaining agreement ("CBA"). The City contends that because grievant was a provisional who served less than two years in his title or in similar titles or a related occupational group, there is no reasonable relationship between the subject matter of the grievance and Article VI of the CBA. The Union argues that the grievant served as a provisional for more than two years in his title or in similar titles or a related occupational group. This Board finds that this is a question of contract interpretation which should be referred to an arbitrator.

BACKGROUND

On October 17, 1994, the grievant, Alberto Gerardini, was hired to fill a provisional appointment at Queens Hospital Center of the New York City Health and Hospitals Corporation ("HHC"). The City asserts that Gerardini's position was Office Aide, Level III, and that he remained in that position until March 31, 1997, at which time he was appointed to the title of Clerical Associate where he remained as a provisional until October 10, 2000. The Union asserts that the position filled by the grievant was that of Office Associate, Level III. Both parties agree that on October 10, 2000, Gerardini received provisional appointment as Hospital Care Investigator from which he was discharged on July 18, 2002.

On July 22, 2002, the Union filed a grievance alleging that Gerardini was discharged without written charges amounting to wrongful disciplinary action taken against a provisional with more than two years of service in the same or similar titles or in a related occupational group in violation of Article VI, § 1(h), of the CBA.[1] The pleadings do not indicate whether any decisions were issued at any steps of the contractual grievance procedure. On or about August 13, 2002, the Union filed a request for arbitration alleging violation of Article VI, § 1(h), and seeking "exoneration, expungement of the instant charges, reinstatement, and restoration of lost pay and benefits, and all other remedies appropriate to the circumstances."

[1] Article VI, § 1(h), defines "grievance" as a "claimed wrongful disciplinary action taken against a provisional employee who has served for two years in the same or similar title or related occupational group in the same agency."

POSITIONS OF THE PARTIES

City's Position

The City denies the Union's assertion that Gerardini served in the title of Office Associate, Level III, before his appointment to the position from which he was discharged. The City avers that he never served in the Office Associate title but rather in the titles of Office Aide, Level III, and Clerical Associate. Further, Office Aide and Clerical Associate job functions differ from those of Hospital Care Investigator. The former are strictly clerical while the latter are investigative to determine the ability of patients to pay hospital charges. The former positions require no college education while the latter requires either (i) a baccalaureate degree or (ii) a high school diploma or equivalent *plus* four years of experience in interviewing, investigation, or a related field such as credit and collection follow-up or bookkeeping. The Hospital Care Investigator must also receive medical clearance to perform the job but no such clearance is required to be an Office Aide or Clerical Associate.

According to the City, the Union has failed to offer factual support for its allegations that the duties Gerardini performed as Office Aide or Clerical Associate were the same or similar to duties performed as Hospital Care Investigator.[2] Thus, no nexus exists between his termination from the Hospital Care Investigator job and the CBA provision entitling an employee with two or more years of provisional service in the same or similar titles to grieve allegedly wrongful discipline.

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[2] The City contends that, even if Gerardini did perform the *duties* of Office Associate, Level III, while serving in other titles, no out-of-title claim which he might assert would affect the instant dispute regarding arbitrability.

Union's Position

The Union alleges that Gerardini served in the title of Office Associate, Level III, before he became a Hospital Care Investigator and that "the duties he performed in the title of Office Associate, Level III, were the same or substantially similar" to duties performed in the title of Hospital Care Investigator. By the time that Gerardini was discharged from the position of Hospital Care Investigator, he had already acquired due process rights to grieve under Article VI, § 1(h), of the CBA.

DISCUSSION

To determine arbitrability, this Board decides first whether the parties are contractually obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions and if so, whether "the obligation is broad enough in its scope to include the particular controversy presented," *Social Service Employment Union,* Decision No. B-2-69; *see also District Council 37, AFSCME,* Decision No. B-47-99, or, in other words, "whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter" of the CBA. *New York State Nurses Association,* Decision No. B–21–2002 at 7. The interpretation of contract terms and the determination of their applicability in a given case is a function for the arbitrator. *Doctors Council*, Decision No. B-18-2001 at 11; *Social Service Employees' Union, Local 371, D.C. 37, AFSCME*, Decision No. B-4-72 at 2.

The parties to the instant proceeding do not dispute that a provisional who has worked for two years in the same or similar titles or related occupational group has grievance rights to assert a claim of wrongful discipline under Article VI, § 1(h). The dispute here is whether Gerardini's

prior provisional service was in the same or similar title or related occupational group as the title from which he was terminated so as to constitute two years of provisional service that would qualify him to assert the contractual right to arbitrate whether his termination was wrongful. This dispute turns on the meaning of the terms "same or similar title or related occupational group" and the application of those terms to the facts of this case.

This Board has held that such a dispute should be resolved by an arbitrator. *Social Services Employees Union,* Decision No. B-3-98. In *Organization of Staff Analysts,* Decision No. B-28-94, the conflict concerned the parties' differing interpretations of the same provision of the CBA at issue here, that is, whether the grievant had completed the requisite two years of service in order to qualify for disciplinary appeal rights under the contract. This Board determined that the union presented sufficient factual allegations on which to base a question as to whether the grievant was a two-year provisional with appeal rights. The Board found a nexus between the union's claim and the cited contractual provision and granted the request for arbitration. *Id.* at 8-9. Similarly in the case before us, the question as to whether the grievant had completed the requisite two years of provisional service in the same or similar titles in order to qualify him for disciplinary due process rights is a question of contract interpretation for an arbitrator. If that issue is resolved in the grievant's favor, then the arbitrator may decide whether the termination constituted wrongful action. Therefore, we deny the City's petition challenging arbitrability and direct the parties to proceed to arbitration.

ORDER

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 challenging arbitrability docketed as BCB-2300-02 filed by the City of New York be, and the same hereby is, denied; and if it further

ORDERED, that the request for arbitration filed by the Social Service Employees Union, Local 371, docketed as A-9558-02, be, and the same hereby is, granted.

Dated: January 27, 2003
New York, New York

MARLENE A. GOLD
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