City Employees Union, Local 237, IBT,
77 OCB 27 (BCB 2006)

[Decision No. B-27-2006] (Arb.) (Docket No. BCB-2542-06) (A-11634-06).

Summary of Decision: The City challenged the arbitrability of a grievance asserting that Grievant was wrongfully terminated in violation of NYCHA's Personnel Manual, which sets forth grievance procedures for employees. NYCHA argued that the Manual affords rights for certain non-disciplinary grievances but not for disciplinary actions. The Board found that the Manual enunciates rules and regulations that establish grievance rights for NYCHA employees and because the obligation to arbitrate is broad enough to include the dispute over Grievant's termination, denied NYCHA's petition, and granted the Request for Arbitration. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between-

NEW YORK CITY HOUSING AUTHORITY

Petitioner,

-and-

CITY EMPLOYEES UNION, LOCAL 237, IBT,

Respondent.

DECISION AND ORDER

On March 17, 2006, the New York City Housing Authority ("NYCHA" or "Authority") filed a petition challenging the arbitrability of a grievance brought by the City Employees Union, Local 237, International Brotherhood of Teamsters, ("Local 237" or "Union") on behalf of Tijuan Evans ("Grievant"). The Request for Arbitration ("RFA") alleges that Grievant was terminated in violation of the Authority's Personnel Manual ("Manual"), the grievance procedures of which

the Union asserts are applicable to Grievant and preclude dismissal for grounds other than for incompetence and misconduct. In its petition, the Authority asserts that the Manual does not provide arbitration rights for Grievant's discipline, because the Manual is not in itself a source of arbitration rights, and secondarily because Grievant, whom the Authority asserts to be a probationary employee despite his four years of service in different titles, could not invoke any such rights. This Board finds, consistent with our prior holdings, that the Manual does create grievance and arbitration rights for NYCHA employees and that the duty to arbitrate encompasses at a a minimum the threshold issue of the Grievant's tenure status. Accordingly, we deny NYCHA's petition and grant the RFA.

BACKGROUND

The Trial Examiner found that the totality of the record established the relevant background facts to be as follows.

Grievant was provisionally appointed as a Special Officer by NYCHA effective July 16, 2001. On July 28, 2003, he was provisionally appointed to the title of Senior Special Officer. Effective September 3, 2004, Grievant received civil service appointment in the title of Special Officer and, pursuant to Rule VI of the Rules and Regulations of the Department of Citywide Administrative Services ("DCAS"),[1] this civil service appointment was transferred to NYCHA,

---

[1] DCAS Rule 6.1.6 provides:

> An employee on probation shall be eligible for transfer; provided however, that:
>
> (a) if such transfer is voluntary such employee shall serve the entire period of probation on the job in a pay status in the new position in

where he was immediately placed on leave from that title so that he could continue his provisional service as a Senior Special Officer. Grievant continued this provisional service until April 4, 2005, when he was provisionally appointed to the title of Supervising Special Officer. During this time, he remained on leave from his position as a Special Officer.

On July 29, 2005, NYCHA's administrator of security Sean Ryan reported to Director of Human Resources Dale Kutzbach that Grievant had compromised confidential information with which Grievant had been entrusted during the course of an investigation by NYCHA's Inspector General. Specifically, Grievant was accused of having informed the target of an investigation of the investigation's focus. As a result of this complaint, Grievant's provisional appointment as a Supervising Special Officer was terminated, effective August 1, 2005, and, NYCHA asserts, he began serving as a Special Officer with a tenure designated as "probable permanent," pending satisfactory completion of probationary service.[2] On August 2, 2005, Kutzbach notified DCAS

> the same manner and subject to the same conditions as required upon such employee's employment in the position from which transfer is made, and in accordance with the provisions of paragraph 5.2.1 [pertaining to probationary term]. . . .

DCAS Rule 5.2.1 provides:

> (a) Every appointment and promotion to a position in the competitive or labor class shall be for a probationary period of one year unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of [DCAS]. Appointees shall be informed of the applicable probationary period. . . .

[2] DCAS Rule 5.2.5 provides:

> Whenever a probationary who has not completed a probationary term has been granted a leave of absence to accept appointment on a provisional, temporary emergency, or an exceptional basis to another position in the city service or to accept permanent

that NYCHA opposed crediting Grievant's provisional service towards his probationary service requirement in his civil service appointment. DCAS noted its files accordingly. [3]

In a memorandum dated October 27, 2005, Grievant was accused by NYCHA's security manager of multiple derelictions, including unauthorized absence from his post, use of his cell phone while on duty, and failure to make log entries. Grievant's employment was terminated effective November 3, 2005.

On November 9, 2005, the Union filed a purported "Step II grievance" alleging that Grievant had been terminated in violation of the Civil Service Law. The grievance did not cite any contractual or statutory authority other than the Civil Service Law as having been violated, and asserted that Grievant had reached permanent status as of September 3, 2005.

On November 18, 2005, NYCHA's chief of labor relations denied the grievance on the grounds that the relief sought was not obtainable at arbitration and asserting that the purported

---

> appointment to a position in another jurisdictional classification, the period of service for such position or positions may, in the discretion of the agency head who appointed the person as probationer, be counted as satisfactory probation service in determining the completion of such probationary term.

[3] An entry on a Personnel Reporting and Information System report, prepared by DCAS and run March 9, 2006, concerns Grievant's "voluntary transfer" to the Special Officer title as of September 3, 2004, pursuant to Rule 6.1.6, and notes:

> Employee must serve a one year probationary period in NYC Housing Authority – time served as a prov Sr & Supvsing Special Officer shall not count toward the completion of the prob period as a Special Officer (NYCHA memo dated 8/2/05)

(Pet. Ex. 15.)

violation of the Civil Service Law was not grievable.[4] The denial cited the Union's alleged failure to identify a rule, regulation, or contract provision which was allegedly violated by the termination. The Step II decision further asserted that the Grievant was a probationary employee at the time of the termination, and that he thus had no recourse, either contractual or statutory.

On December 9, 2005, the Union requested a Step 3 hearing to contest Grievant's termination and, for the first time, claimed the termination violated Article 43 of what the Union described as the "Parties' Agreement." Article 43 of the collective bargaining agreement between NYCHA and the Union for the term commencing April 1, 2000, through June 30, 2002, dated October 26, 2005, ("Housing Authority agreement") creates disciplinary procedures applicable to employees in the title Caretaker (HA), who have successfully completed their probationary period, and for provisional employees in that title who have actively serve for two consecutive years in that title or within the same occupational group, who are accorded the same disciplinary rights as permanent competitive class employees. Article 43 does not purport to establish procedural rights for employees in any other titles employed by NYCHA including the title of Special Officer. Indeed, the Housing Authority agreement does not contain any provisions specifically referring to the title of Special Officer.

On December 28, 2005, NYCHA's chief of labor relations denied the grievance again on the same grounds as before. The decision further stated noted that, pursuant to Personnel Service Bulletin No. 200-6R, based on DCAS Rule 5.2, NYCHA was acting within its authority when it determined that it would not count towards Grievant's probationary period the period of time

[4]In addition, the grievance was deemed premature because it was filed initially at Step 2 rather than at Step 1 of the NYCHA Manual's grievance procedure which cannot be bypassed.

Grievant was on leave of absence from the title of Special Officer to serve provisionally in higher titles in that series. The decision asserted that Grievant had been apprised of that when given a copy of Kutzbach's August 2, 2005, letter to DCAS to that effect, and concluded that Grievant's dismissal from service without a hearing was accordingly proper.

On January 19, 2006, the Union filed its RFA alleging violation or misapplication of the "rules, regulations and policies applicable to [NYCHA] in connection with the Grievant's termination and probationary period." In the RFA, the Union asserts violations of the following purported sources of rights: (1) the Housing Authority agreement, in one of its incarnations [5]; (2) The Special Officers' agreement for 2000-2002 (Article VI, § 1(a), (b), and (e), of the 2000–2002 Special Officers agreement; (3) The Manual (Chapters I , III , and VIII); (4) The Personnel Rules and Regulations of the City of New York (Rule V, Appointments and Promotions, and Rule VI, Personnel Changes) and (5) DCAS Personnel Services Bulletin No. 200-6R (Probationary Period). The relief demanded in the RFA was Grievant's reinstatement on a non-probationary basis, full back pay and benefits retroactive to the date of Grievant's termination, and expungement from his personnel file of any references to the facts and circumstances culminating in Grievant's termination.

Currently, NYCHA and the Union are parties to an expired collective bargaining agreement the terms of which remain in effect pursuant to the status quo provisions NYCCBL §

---

[5] The 4/1/95–3/31/2000 Housing Authority agreement, which the Union describes as terminating 3/31/2004, was succeeded by the 4/1/2000–6/30/2002 Housing Authority agreement which, in turn, was succeeded by a 6/16/2005 Memorandum of Understanding covering the period 7/1/2002–11/6/2005. Although the Union cites the earliest agreement explicitly, the record is unclear whether, in its RFA, the Union means to assert one of these documents.

12-311(d) ("Housing Authority agreement").[6] However, the Housing Authority agreement pertains only to employees in titles that are unique to NYCHA. Special Officers are not unique to NYCHA but are also employed by the City of New York and other related public employers. They are not covered by the terms of the Housing Authority agreement.

A collective bargaining agreement between the City of New York and the Union governing the terms and conditions of employment of Special Officers has likewise expired, but its terms also remain in effect pursuant to the status quo provisions of the NYCCBL ("Special Officers agreement").

NYCHA's Personnel Manual, at Chapter I, § VII, sets forth procedures by which employees may redress grievances when no other means are available. It reads, in pertinent part:

> A. Policy
>
> The processing of grievances of all employees of the Authority is patterned upon the provisions of Section 8(a) of Executive Order No. 52 of the City of New York, dated September 29, 1967, except as may otherwise be provided in a collective bargaining agreement.
>
> Any employee may present his/her own grievance through the first three

[6] NYCCBL § 12-311(d) provides, in relevant part:

> During the period of negotiations between a public employer and a public employee organization concerning a collective bargaining agreement . . . the public employer shall refrain from unilateral changes in wages, hours, or working conditions. This subdivision shall not be construed to limit the rights of public employers other than their right to make such unilateral changes, or the rights and duties of public employees and employee organizations under state law. For the purpose of this subdivision the term "period of negotiations" shall mean the period commencing on the date on which a bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or an impasse panel is appointed.

steps set forth in Section C below either personally or through an appropriate representative of an organization of which he/she is a member . . .

B. Definition of Grievance

The term "grievance" shall mean:

1. A dispute concerning the application and interpretation of the terms of:

a. Written collective bargaining agreements and written rules or regulations.

(Emphasis in original.)

* * *

2. A claimed violation, misinterpretation, or misapplication of the rules and regulations of the Authority affecting the terms and conditions of employment.

C. Procedure

* * *

1. Step 1 – An employee on any level below Project Manager/ Division Chief may present his/her grievance orally or in writing to the Project Manager/Division Chief . . . not later than 120 days after the grievance arose. . .

2. Step 2 – If the grievance is not resolved at Step I within two working days after its presentation, the grievant may appeal to the Director of Personnel by filing a written statement of the grievance within seven working days after the presentation of the grievance at Step 1 . . .

3. Step 3 – The grievant has the right to appeal the determination of the Director of Personnel to the General Manager or his/her designee . . . by filing a written statement of such an appeal within five working days after the decision in Step 2 has been issued . . .

* * *

4. Step 4 – An employee organization certified for the title which the grievant holds shall have the right to bring grievances unresolved at Step 3 to impartial arbitration by an arbitrator on the register of the Office of Collective Bargaining, under procedures established by such Office. . . .

Chapter III, § I of the Manual, addressing probationary periods, provides, in pertinent part:

> The probationary period for new appointees and for promotees is one year. The minimum period of probation for new appointees is two months and, for promotees, four months. . . .

Chapter III of the Manual also governs evaluations of probationary employees and extension of an employee's probationary service. Finally, the Manual, at Chapter VIII, § I, in a section defining what NYCHA deems "Grounds for Disciplinary Action," states:

> This chapter applies to employees with due process rights under Civil Service law § 75 and/or collective bargaining agreements. Incompetence and misconduct are the only causes for disciplinary action. . . .

POSITIONS OF THE PARTIES

NYCHA's Position

NYCHA contends that the Union has failed to establish a nexus between Grievant's termination and the agreements which the Union claims to have been violated. NYCHA asserts that the Housing Authority agreement contains an explicit list of "unique titles" governed by that agreement, and its omission of Special Officers acts to exclude them from the agreement's provisions.

Additionally, NYCHA asserts that the City of New York, not NYCHA, is a signatory to the 2000-2002 Special Officers agreement, and that NYCHA is therefore not bound by that agreement. Even if the Special Officers agreement was deemed binding on NYCHA, it argues that the exclusion in Article VI of that agreement of disputes involving the Personnel Rules and

Regulations of the City of New York from arbitration acts to bar the instant grievance over the interpretation and application of City personnel rules regarding Grievant's probationary period.

NYCHA admits that Special Officers have grievance rights derived from NYCHA's election, in 1968, to have the terms of the NYCCBL made applicable to its employees. (Petition ¶¶ 85, 92.) However, it asserts, those rights do not encompass allegedly wrongful termination of probationary employment, or the computation of the time of completion of probationary service under City personnel rules. NYCHA asserts that DCAS prescribes the terms for every NYCHA appointment, including terms of probationary service, and that NYCHA is required to comply with the rules as promulgated and applied by DCAS, including Rule 5.2.1, which requires competitive-class employees, such as Grievant, to serve a one-year probationary period. Thus, NYCHA argues, the Union has failed to articulate a nexus between Chapter III of NYCHA's Personnel Manual, which addresses probationary service, and the Grievant's termination from his probationary service. Moreover, NYCHA contends, DCAS determines the employment status of any given employee, the instant matter cannot proceed to arbitration because DCAS has not been named as a necessary party.

Independently of this position, the Authority asserts that, should this Board consider limiting the issues herein to a claimed violation of the provisions of Chapter III of the Manual regarding probation, then NYCHA "may be able to agree that such an allegation is appropriate for arbitration." NYCHA contends, however, that the record in this case does not "suggest" that the Union is seeking to arbitrate "anything from the procedures in Chapter III." (Petition ¶ 55.)

NYCHA denies that Grievant is able to avail himself of the provisions of Chapter VIII of

the Manual limiting the permissible grounds for disciplinary action, on the ground that this section by its own terms applies only to employees eligible for due process under Civil Service Law § 75 or a collective bargaining agreement.[7] Due to Grievant's failure to complete his probationary period of service, NYCHA maintains, Grievant falls outside of the scope of this chapter's provisions.

Finally, NYCHA contends that its Personnel Manual simply articulates, for informational purposes, the rights of its employees as derived from statutory and contractual provisions, and does not constitute an independent source of rights.

Union's Position

The Union asserts that the grievance in this matter turns on the Union's claim that Grievant was improperly deemed to be a probationary employee and was thus wrongfully terminated without the due process afforded permanent employees under the collective bargaining agreements and the Manual. (Ans. ¶ 102.) The Union does not specify either the

---

[7] Civil Service Law § 75(1) provides, in relevant part:
A person described in paragraph (a) or paragraph (b), or paragraph . . . of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section:

(a) a person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board. . . .

Housing Authority agreement or the Special Officers agreement as the sole source of right, but urges that both agreements as well as the Manual are applicable here.

The Union seeks to rebut NYCHA's reference to the Housing Authority agreement's list of titles to which it applies by claiming that "Grievant is also an employee of NYCHA, and the collective bargaining agreement between the Housing Authority and Union provides for a broad grievance and arbitration procedure and disciplinary due process." (Ans. ¶ 127.) Likewise, the Union does not specifically address NYCHA's contention that it is not bound by the Special Officers agreement, merely stating that "Grievant is a Special Officer, and the collective bargaining agreement for Special Officers provides for a broad grievance and arbitration procedure and disciplinary due process." (*Id.*)

With respect to NYCHA's claim that the personnel Manual does not create enforceable arbitration rights, the Union argues that this matter is controlled by *Civil Service Bar Association*, Decision No. B-5-2005, in which this Board determined that the grievance at issue in that case was arguably related to the provisions of the Personnel Manual and, therefore, arbitrable. The Union invokes Chapters III and VIII of NYCHA Personnel Manual. The Union claims that Chapter III's provisions governing the duration of probation and setting forth specific procedures for the extension of probationary terms govern the question of Grievant's tenure. (Ans. ¶ 104.) Chapter VIII, specifically limiting the grounds for disciplinary action to employee incompetence and misconduct, govern the merits of the discipline imposed on Grievant.

The Union insists that it has demonstrated a reasonable relationship between the question of Grievant's tenure status and Chapter III and between the claim of wrongful termination and

Chapter VIII. The Union, not unlike NYCHA in this regard, contends that the arbitrator should in the first instance decide whether Grievant had actually completed his probationary service at the time he was terminated and maintains that NYCHA's admission that it would arbitrate violations of Personnel Manual procedures relating to probation (Petition ¶ 55) warrants arbitration of the grievance in the instant case.

Finally, should this Board ascertain that DCAS is a necessary party to these proceeding and order that DCAS be joined, the Union requests permission to amend its RFA in compliance.

DISCUSSION

In determining the question of arbitrability posed in this case, three potential sources of a right to arbitration have been asserted: the Housing Authority agreement, the Special Officers' agreement, and, finally, NYCHA's Personnel Manual. This Board finds that we need not address the impact of either collective bargaining agreement because, as previously determined in our opinion in *Civil Service Bar Ass'n*, Decision No. B-5-2005, the Personnel Manual created a right to arbitration, in view of the material issue of disputed facts that will govern the question of whether the Grievant has achieved permanent status. Those questions are, under the circumstances here, for the arbitrator to decide in determining the merits of the grievance; the issues presented by the RFA have the required reasonable relationship to the Personnel Manual to permit arbitration to go forward.

Pursuant to § 12-302 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), the policy of the City is to favor and

encourage arbitration to resolve grievances. *See Civil Service Bar Ass'n*, Decision No. B-5-2005 at 7; *see also Plumbers Local Union No. 1 of Brooklyn and Queens*, Decision No. B-27-92 at 21, *aff'd sub nom. City of New York v. Plumbers Local Union No. 1*, No. 43764/92 (Sup. Ct. N.Y. Co. Aug. 13, 1993), *aff'd*, 204 A.D.2d 183 (1st Dep't 1994).

This Board has previously determined that the same Personnel Manual invoked by the Union in this case acts to create a right of arbitration on the disciplinary matters which form the subject of the RFA. *Civil Service Bar Ass'n*, Decision No. B-5-2005. In that decision, we held that our previous rulings that an employer's provision of a grievance remedy through rule or other policy could bind the employer, even in the absence of an applicable collective bargaining agreement provision, were applicable to NYCHA's Personnel Manual. *Id.; See Local Union No. 3, IBEW*, Decision No. B-13-77, *aff'd upon rehearing*, Decision No. B-1-78, *aff'd sub nom. City of New York v. Anderson*, No. 40532/78 (Sup. Ct. N.Y. Co. July 17, 1978); *Plumber's Local Union No. 1*, Decision No. B-27-92 at 24 (holding that based on the procedures in EO 83, an employee of the Department of Sanitation covered by a determination under Labor Law § 220 but not by a collective bargaining agreement could grieve claims alleging violation of rules and regulations of the Department of Personnel); *Local Union No. 3, IBEW*, Decision No. B-18-83 (holding that parties not signatories to a collective bargaining agreement are governed solely by grievance and arbitration procedures of EO 83).

In finding that NYCHA's Personnel Manual creates a grievance procedure, we held that a grievance right inured in favor of a non-competitive permanent employee terminated without a due process determination as to whether he was guilty of incompetence or misconduct, the only grounds for disciplinary action under Chapter VIII of the Personnel Manual. *Civil Service Bar*

Ass'n, Decision No. B-5-2005 at 13. In that case, we found a reasonable relationship between the termination and Chapter VIII of the Manual, which gives employees the right to a finding of incompetence or misconduct as a precondition to dismissal. *Id.* We reasoned that, had NYCHA intended to exclude non-competitive employees from such due process, it could have stated so in the Manual, and rejected NYCHA's argument that Chapter VIII, in conjunction with Chapter III (pertaining to the probationary period of service), applies only to employees entitled to due process under Civil Service Law § 75, and we sent the question – whether grievant's termination was wrongful – to arbitration. *Id*.

Similarly, in the instant case, the Union submits that a reasonable relationship exists between the NYCHA Manual and the employer's determination that Grievant was still a probationer when his employment was terminated, as well as the termination itself. Specifically, the Union cites Chapter I, which concerns grievance procedures for employees not otherwise subject to grievance procedures, Chapter III, which concerns the status of probationary employees, and Chapter VIII, which addresses discipline of NYCHA employees. We agree with the Union's contention and find a reasonable relationship to these sections of the Manual.

In *CSBA*, we reasoned that NYCHA could have excluded certain employees from the due process provisions to determine proper grounds for dismissal if NYCHA had so wanted and that it did not do so, thus, we held that the grievance procedure articulated in the Manual applied to the grievant in that case. So too the broad language chosen by NYCHA in Chapter III to permit "the processing of grievances of *all* employees of the Authority" and its declaration that "*any* employee may present his/her grievance" through the three step grievance process (Personnel Manual Ch. I § 7(A) (emphasis added)) create a reasonable relation between the dispute

contained in the RFA and the Manual. As in *CSBA*, we see no reason to create exceptions that NYCHA has failed to create to NYCHA's own policy language. Decision No B-05-2005 at 12-13. Our prior analysis, fully applicable here, accords, of course, with the well-established rule of interpretation that a finder of fact and law must not "under the guise of judicial construction, imply additional requirements to relieve a party from asserted disadvantages flowing from the terms actually used." *Collard v. Incorporated Village of Floral Hill,* 52 N.Y.2d 594, 604 (1981); *see also Babbit v. Sweet Home Chapter, Communities for Great Ore*., 515 U.S. 687, 698 (1995); *Civil Service Employees Ass'n v. Patchogue-Medford Sch. Dist.*, 2 A.D.3d 848, 849 (2d Dept. 2003).

NYCHA again asserts that Personnel Manual cannot be read to create rights beyond those mandated by the CSL. This argument is amply rebutted by our holding in *CSBA* that the CSL does not prohibit the extension of arbitration rights to determine actual grounds for termination and thus Chapter VIII is not in conflict with external law. *Id*. at 13. We reaffirm our previous statement that Chapter VIII "may grant rights greater than those the CSL provides." *Id*.

NYCHA in this matter further argues that probationary employees are excluded from the due process provisions described in the Personnel Manual by virtue of City Personnel Rule V, particularly Rule 5.2.1 which requires competitive-class employees to serve a one-year probationary period, and by Chapter III of the Manual which sets the terms of probationary service. We disagree. As a threshold matter, just as we found in *CSBA* that the Manual did not specifically exclude non-competitive employees from the due process provisions at issue, so do we also find that the Manual does not specifically exclude probationers from the Manual's grievance provisions. Thus, the Grievant must have an opportunity to have an arbitrator

determine his tenure status. Moreover, Chapter VIII, by its use of the conjunctive "and" as well as the disjunctive "or", may grant rights greater than those of the CSL, and that question is in the first instance once for the arbitrator. *Id.*

Our holding in *CSBA* that NYCHA, a non-mayoral agency, in promulgating the Manual, established grievance rights for all of its employees is therefore dispositive of the issues raised in the petition. NYCHA has not effectively distinguished this case in any manner from *CSBA*, nor has it pointed to any change in circumstances or policy since the rendering of our opinion in *CSBA*. Rather, NYCHA has offered in its petition the same arguments which this Board rejected in *CSBA*, without in any manner engaging the holding of that case – indeed, without even mentioning that decision. In its reply, by contrast, NYCHA makes an argument that it describes as "[c]ontrary to the Board's analysis in *Civil Service Bar Association*" (Reply ¶4). Under the circumstances, a more detailed review of and response to NYCHA's arguments on this issue is superfluous; we adhere to our prior decision, and reject NYCHA's efforts to relitigate a claim that it has already unsuccessfully litigated to completion. *See, e.g., Social Services Employees' Union, Local 371* , Decision No. B-37-97 at 13-14 (applying collateral estoppel; citing cases).

The Union describes the subject matter of the grievance as whether Grievant was improperly deemed to be a probationary employee and wrongfully terminated. NYCHA, seeking to distinguish this Board's prior holding in *CSBA,* argues that its conclusion as to the disputed fact that Grievant was still a probationer destroys any reasonable relationship between the grievance asserted in the RFA and the Manual. We disagree and find that the Manual articulates rules and regulations that prescribe probationary periods and procedures for the extension thereof (Chapter III, § I). We find that there is a reasonable relationship between that part of the Manual

and the grievance over Grievant's probationary status. In the event that it is determined that Grievant had completed his probation period under the Manual(Chapter VIII § I), he can, as even NYCHA concedes in its reply, avail himself of the provision stating that the Authority can take disciplinary action only for incompetence and misconduct. Chapter VIII also contains a full description of procedures for local and general disciplinary cases, including hearings and post-trial processing.

Since NYCHA's Manual contains written policies covering probationary service and grounds for disciplinary action, we find a reasonable relationship between the Union's claims and the source of its right to grieve. Guided by our opinion in *CSBA*, we are not persuaded here that grievance rights under the Manual expressly apply only to employees entitled to due process under CSL § 75. We leave to an arbitrator the remaining questions concerning Grievant's termination, including the threshold question of whether he was a probationer when discharged, as presented in the RFA. We caution the parties herein, however, that only upon a finding by the arbitrator that Grievant had completed probationary service under Chapter III of the Manual by the time of his termination may the arbitrator address the claim of wrongful termination under Chapter VIII.

Because the Manual enunciates rules and regulations that establish grievance and arbitration rights for NYCHA employees and because the obligation to arbitrate is broad enough in scope to include the dispute over Grievant's probationary dates and his termination, we deny NYCHA's petition and grant the RFA for 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 New York City Housing Authority's petition challenging arbitrability, docketed as BCB No. 2542-06, hereby is denied; and it is further

ORDERED, that the RFA filed by the City Employees Union, Local 237, International Brotherhood of Teamsters, on behalf of Tijuan Evans, and docketed as A-11634-06, hereby is granted.

Dated: September 12, 2006
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

CHARLES G. MOERDLER
MEMBER

BRUCE H. SIMON
MEMBER

I dissent.

M. DAVID ZURNDORFER
MEMBER

I dissent.

ERNEST F. HART
MEMBER