***Local 30, International Union of Operating Engineers,* 77 OCB 7 (BCB 2006)**
[Decision No. B-7-2006(Arb.)] (Docket No. BCB-2498-05) (A-11161-05), affirmed, *Matter of City of New York v. NYC Bd. of Certification*, Index No. 404461/06 (Sup. Ct. N.Y.Co.Sept. 19, 2007) (Wetzel, J.).

Summary of Decision: The City filed a petition challenging the arbitrability of five grievances, which asserted that Grievant was subjected to unsafe working conditions, was suspended improperly, failed to receive wages for time worked, had his health insurance benefits suspended, and was improperly docked one day's pay. The City argued that these grievances are not arbitrable because the Union cannot demonstrate that the term "grievance," as defined in the parties' collective bargaining agreement, encompassed violations of § 72 of the New York Civil Service Law, and thus no reasonable relationship exists between the acts complained of and the rights invoked. The Board found that the grievances related to the unsafe working conditions, Grievant's suspension, and the unpaid wages were arbitrable; however, the grievances related to the suspension of health insurance benefits and the loss of one day's pay were not arbitrable. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK and THE DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES,

Petitioners,

-and-

LOCAL 30, INTERNATIONAL UNION OF OPERATING ENGINEERS (COSIMO P. MINERVINI),

Respondent.

DECISION AND ORDER

On August 10, 2005, the City of New York and the Department of Citywide Administrative

Services ("City" or "DCAS") filed a petition challenging the arbitrability of five grievances filed by Local 30 of the International Union of Operating Engineers ("Union" or "Local 30") on behalf of Cosimo P. Minervini ("Grievant"). The grievances assert that Grievant: i) was subjected to unsafe and hazardous working conditions; ii) was suspended, under the guise of New York Civil Service Law ("CSL") § 72, for filing a grievance regarding the unsafe working conditions; iii) was not paid his duly owed wages for the four hours he worked prior to notification of his suspension pursuant to CSL § 72; iv) had his health insurance benefits temporarily cancelled as a result of his suspension; and v) was improperly docked one day's pay for missing a work shift due to his required attendance at a Union meeting regarding his previous grievances. The City argues that these grievances are not arbitrable because the Union has failed to establish that the term "grievance," as defined in the parties' collective bargaining agreement ("Agreement"), encompasses violations of CSL § 72, and thus no reasonable relationship exists between the suspension of an employee pursuant to this provision and the arbitration procedure set forth in the Agreement. We find that the grievances related to the health and safety issues, the alleged retaliatory suspension, and the unpaid wages are arbitrable because a reasonable relationship exists between these three grievances and the rights invoked. However, we find that the grievances related to the suspension of health insurance benefits and the loss of one day's pay are not arbitrable because the union failed to demonstrate a nexus between the acts complained of and the rights invoked. Accordingly, the petition is granted, in part, and dismissed, in part.

BACKGROUND

DCAS is responsible for the oversight of a number of citywide personnel and service matters,

including the maintenance and care of public buildings and facilities. In furtherance of these duties, DCAS employs individuals in the job titles of stationary engineer and senior stationary engineer, titles that are represented by Local 30.

Grievant has been employed by DCAS as a stationary engineer since June 23, 1996. From January 2000 to January 2001, Grievant filed four grievances alleging that DCAS violated the Agreement by, *inter alia*, inequitably assigning overtime, failing to honor his transfer request, and requiring him to work "vacation relief" shifts. By February 2002, the Union investigated these grievances and determined that some lacked merit while others required further investigation. Unhappy with the Union's position, Grievant, on May 13, 2002, filed, *pro se*, his first verified improper practice petition, docketed as BCB-2280-02, alleging that the Union violated its duty of fair representation by failing to process properly his four grievances.[1]

Shortly thereafter, Grievant filed his fifth and sixth grievances, which alleged that DCAS violated the Agreement through its inequitable assignment of overtime and his continued subjection to harassing behavior due to the filing of his previous four grievances. On October 29, 2002, Grievant filed a seventh grievance alleging that he was subjected to a work location with two non-certified chillers, refrigerant leaks, faulty sensors, malfunctioning exhaust fans, and inactive alarms that should warn employees of such hazards ("Grievance No. 7").[2] Additionally, Grievance No. 7

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[1] Pursuant to Article XI, § 7, of the Agreement, either an employee or the Union may present a grievance to the employer at Steps I and II of the grievance process and to Office of Labor Relations at Step III of the grievance process, and that "if the Employer exceeds any time limit prescribed at any step in the Grievance Procedure, the grievant and/or the Union may invoke the next step of the procedure, except that only the Union may invoke impartial arbitration under Step IV."

[2] The numbers attached to each of the grievances that have been defined corresponds with the grievance number enumerated on each of the respective grievance forms.

alleged that Grievant was harassed and threatened by other employees who worked at this location.

On December 15, 2002, Grievant began his shift at 6:00 a.m. At 10:00 a.m., he was ordered to sign out and was notified that he had been suspended pursuant to CSL § 72.[3] It is undisputed that Grievant never received wages for the four hours worked. On January 12, 2003, DCAS ordered Grievant back to work.

On January 15, 2003, counsel for the Union scheduled a meeting with Grievant for January 23, 2003, to discuss his seven previously filed grievances and his recent suspension. According to the Union, Grievant informed his supervisor, senior stationary engineer Tony Grasso, that, pursuant to an Executive Order, he was authorized to miss work, since his attendance was required at a Union meeting. On January 23, 2003, Grievant attended this meeting, thereby missing his regularly scheduled shift. The following day Grasso informed Grievant that he impermissibly missed his shift

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[3] CSL § 72, in pertinent part, states:

1. When in the judgment of an appointing authority an employee is unable to perform the duties of his or her position by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workers' compensation law, the appointing authority may require such employee to undergo a medical examination . . . . Written notice of the facts providing the basis for the judgment of the appointing authority that the employee is not fit to perform the duties of his or her position shall be provided to the employee . . . . [If] such employee is not physically or mentally fit to perform the duties of his or her position, the appointing authority shall notify such employee that he or she may be placed on leave of absence. . . .

* * *

5. Notwithstanding any other provisions of this section, if the appointing authority determines that there is probable cause to believe that the continued presence of the employee on the job represents a potential danger to persons or property . . ., it may place such employee on involuntary leave of absence immediately; provided, however that the employee shall be entitled to draw all accumulated unused sick leave, vacation, overtime and other time allowances standing to his or her credit. If such an employee is finally determined not to be physically or mentally unfit to perform the duties of his or her position, he or she shall be restored to his or her position and shall have any leave credits or salary that he or she may have lost because of such involuntary leave of absence restored to him or her . . . .

and was docked one day's pay.

On January 28, 2003, Grievant filed, *pro se*, his second improper practice petition, docketed as BCB-2317-03, alleging that the Union violated its duty of fair representation by failing to process properly his grievances that alleged that DCAS violated the Agreement through its inequitable assignment of overtime and his continued subjection to harassing behavior due to the filing of his previous grievances. Grievant requested cessation of all forms of harassment, threats and slander, an end to being forced to work in hazardous conditions, equalization of overtime, processing of these particular grievances, reimbursement of out-of-pocket expenses, and lost wages.

On February 5, 2003, Grievant filed another four grievances. First, Grievant alleged that "[u]pon my submission of Grievance No. 7 as retaliation a section 72 Civil Service Law suspension was brought against me" and, as a remedy, requested that DCAS address the employee safety issues ("Grievance No. 8"). Next, Grievant asserted that he never received his duly owed wages for the four hours worked on December 15, 2002, prior to being notified of the suspension by DCAS and, as a remedy, requested that he receive his wages for the time worked ("Grievance No. 9"). Also, Grievant alleged that, during the duration of his suspension, his health insurance benefits were temporarily cancelled and requested that all medical bills incurred during that period be paid by DCAS ("Grievance No. 10"). Finally, Grievant alleged that, in contravention of an Executive Order, he had been improperly docked one day's pay for attending a Union meeting where his presence was required and requested that he receive his wages for that day ("Grievance No. 11").[4]

On March 19, 2003, Grievant filed, *pro se*, his third improper practice petition, docketed as

[4] Grievance No. 7, Grievance No. 8, Grievance No. 9, Grievance No. 10 and Grievance No. 11, which are the subject of this proceeding, shall hereinafter collectively be referred to as the "Grievances."

BCB-2332-03, which raised the same facts and allegations contained in Grievance No. 8, Grievance No. 9, Grievance No. 10 and Grievance No. 11. On March 25, 2003, the Office of Collective Bargaining ("OCB") wrote to the Union, the City, and Grievant informing them that the third improper practice petition, docketed as BCB-2332-03, would not be processed due to its insufficiency. However, Grievant could file an amended petition to remedy the insufficiency, and if not, the matter would be deemed withdrawn.

On July 14, 2003, not having received an amended third improper practice petition, OCB again wrote to the Union, the City, and Grievant informing them that this petition, docketed as BCB-2332-03, was deemed withdrawn. However, Grievant's first and second improper practice petitions, docketed as BCB-2280-02 and BCB-2317-03, respectively, would be placed before this Board for final determination. On September 25, 2003, this Board dismissed Grievant's first and second improper practice petitions finding that the Union did not violate its duty of fair representation owed to Grievant. *See Minervini*, Decision No. B-29-2003.

On December 18, 2003, the Union wrote to the Chief Review Officer for the Office of Labor Relations ("OLR"), on December 18, 2003, stating that:

> Pursuant to an agreement with Ms. Cynthia Averell, Esq. of your legal division, OLR has consented to Local 30 filing on behalf of Mr. Minervini the attached grievances designated, Grievance No. 7, Grievance No. 8, Grievance No. 9, Grievance No. 10, and Grievance No. 11. This agreement was made pursuant to settlement discussion regarding BCB-2280-02, BCB-2317-03, BCB-2332-03.
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> We would appreciate a Step 3 hearing regarding these grievances at your earliest convenience.

On April 5, 2005, a Step III conference was held, and on April 15, 2005, the Step III hearing officer found that the Grievances lacked merit and that DCAS had substantiated the charges against

him.

As a result of the City's denial of the Grievances, the Union filed a single Request for Arbitration, dated April 21, 2005 ("RFA"), which cites "unsafe working conditions, harassment, retaliation, failure to pay wages and benefits" as the nature of the dispute between the Union and DCAS, and invokes Article XIII, § 1, and Article XIV, § 1, of the Agreement as the provisions relevant to the dispute.[5] The Union requests that Grievant be "returned to his position as a Stationary Engineer with full back pay and benefits, including lost overtime, and to have all hazardous conditions remedied immediately."

POSITIONS OF THE PARTIES

City's Position

The City contends that when a grievance alleges a violation of a statutory provision, the grievance will not be arbitrable if that provision is not enunciated in the parties' definition of the term "grievance." The Union has failed to demonstrate a reasonable relationship between the act complained of and the source of the alleged right because Grievance No. 8, Grievance No. 9, and Grievance No. 10 arise out of a suspension, pursuant to CSL § 72, and this statutory provision is not

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[5] Article XIII, § 1, of the Agreement, entitled "Working Conditions," states:
The Employer shall make all reasonable efforts to provide employees with sanitary washing and toilet facilities including hot and cold running water and proper lighting and ventilation.

Article XIV, § 1, of the Agreement, entitled "Safety," states:
All unsafe conditions reported by the Union, in writing, concerning employees covered by this Agreement, shall be rule noticed by the appropriate supervisor and acted upon expeditiously.

referenced in Article XI, § 1, of the Agreement.[6]

Also, the City contends that the Union improperly brought the grievances to arbitration since CSL § 72 provides both review and appeal processes that are designed to address alleged abuses of this provision, as claimed by Grievant and the Union. Accordingly, the City seeks an order dismissing the RFA in its entirety.[7]

Union's Position

The Union contends that the City has waived its right to challenge the arbitrability of the Grievances because in the correspondence, dated December 18, 2003, the Union indicates that the City consented to the processing and the arbitrability of the Grievances, as a result of the "settlement discussion regarding BCB-2280-02, BCB-2317-03, BCB-2332-03." In the alternative, the Union contends that if the Board finds that the City did not waive its right to challenge arbitrability, the City has made arguments only to the grievances that arise out of Grievant's suspension pursuant to CSL § 72. Thus, the City concedes the arbitrability of Grievance No. 7 and Grievance No. 11, which

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[6] Article XI, § 1, states, in pertinent part:
The term "Grievance" shall mean:

a. A dispute concerning the application or interpretation of the terms of this Agreement or of a Comptroller's Determination applicable to the titles covered by this Agreement;

b. A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and conditions of employment . . . ;

* * *

e. A claimed wrongful disciplinary action taken against a permanent employee covered by Section 75(1) of the Civil Service Law . . . ;

[7] The City fails to aver any arguments that address the substantive dismissal of Grievance No. 7 and Grievance No. 11.

make no reference to this statutory provision.

The Union also argues that the suspension that is the subject of Grievance No. 8 was motivated by Grievant's filing of Grievance No. 7. Grievant alleged that DCAS failed to provide a hazard-free workplace and thus compromised the health and safety of all Local 30 members in that building. Grievant's suspension violated Article IV of the Agreement, as well as Article XIII, concerning working conditions, and Article XIV, concerning safety, and, thus, a nexus exists between the act complained of and Articles invoked.[8]

Despite the City's contention that Grievance No. 9 arises out of Grievant's suspension pursuant to CSL § 72, the Union asserts that this grievance is based on a violation of a New York City Comptroller's Determination, dated April 29, 2002 ("Comptroller's Determination"), which sets forth the wages and supplements for stationary engineers.[9] Grievance No. 9 is arbitrable because a reasonable relationship exists between the failure to pay wages and the rights contained in the Comptroller's Determination.

In addition, the Union argues that Grievance No. 10, which involves the suspension of Grievant's health insurance benefits, is arbitrable. By virtue of the Agreement, the Comptroller's Determination, and City policy, DCAS is required to provide health insurance benefits for its employees as long as they remain "in pay status," and an employee who is suspended for less than

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[8] Article IV, § 2, of the Agreement states:
The Employer agrees not to discriminate in any way against any employee for Union activity, but such activity shall not be carried on during working hours or in working areas.

[9] The Comptroller's Determination is incorporated into the Agreement in Article V, which is entitled "Wages and Supplements," and states: "The wages and other supplements applicable to employees covered by the Agreement shall be in accordance with the respective Determinations of the Comptroller."

30 days remains "in pay status" for the duration of the suspension. Thus, Grievant, who was suspended for under 30 days, should have remained "in pay status." Since DCAS improperly suspended his health insurance benefits, Grievance No. 10 is arbitrable. Alternatively, the Union contends that even if Grievant was not "in pay status," he accrued a sufficient amount of sick and annual leave time to allow him to continue to receive health insurance benefits pursuant to § 72(5) of the CSL.

Finally, the Union contends that Grievance No. 11, which relates to the docking of one day's pay for missing a work shift, is arbitrable. Executive Order 75, § 2(a), permits employee representatives of the Union to investigate and assist in the resolution of grievances. On January 23, 2003, Grievant was absent from work to discuss his grievance at a meeting with the Union. Grievant informed his supervisor that he would attend this meeting and that his absence was excusable. Thus, docking Grievant one day's pay violated a regulation, which is within the scope of the term "grievance," and therefore arbitrable.

DISCUSSION

This Board's statutory directive is to promote and encourage impartial arbitration as the selected means for the resolution of grievances. New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-302; *New York State Nurses Ass'n*, Decision No. B-21-2002. However, we cannot create a duty to arbitrate if none exists or enlarge a duty to arbitrate beyond the scope established by the parties. *Social Services Employees Union, Local 371*, Decision No. B-34-2002 at 4.

At the outset, we address the Union's contention that the City waived its right to challenge

the arbitrability of the Grievances when it consented to schedule and conduct a Step III hearing related to these matters, as indicated by the Union's correspondence, dated December 18, 2003. We find this argument without merit.

In *Local Union, No. 3, I.B.E.W.*, Decision No. B-19-83, the union alleged that the City waived its right to challenge arbitrability of a grievance since the City had participated in the lower steps of the grievance process. The Board rejected this contention stating that participation in the lower steps of the grievance procedure does not estop a party from asserting that a claim is not arbitrable because this would discourage the utilization of the full range of grievance resolution procedures. *Id.* at 7; *see also City Employees Union, Local 237*, Decision No. B-20-72. Moreover, the Board rejected this argument since the NYCCBL "provides that challenges to arbitrability are properly raised when the union files a request for arbitration." *Local Union, No. 3, I.B.E.W.*, Decision No. B-19-83 at 8.

Here, the Union requested a Step III hearing, which was held on April 5, 2005. The City's participation in the Step III process indicates that it consented to conduct such a hearing, not that the City waived its right to challenge the arbitrability of the Grievances. The Union's letter to the City cannot be construed as a waiver of its statutory right under the NYCCBL, rather it merely confirmed the Union's intentions to proceed expeditiously with the processing of the Grievances.

We now turn to this Board's substantive standard 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 Services Employment Union*, Decision No. B-2-69 at 2; *see District Council 37, AFSCME*, Decision

No. B-47-99 at 8-9, or, in other words, whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the Agreement. *New York State Nurses Ass'n*, Decision No. B-21-2002 at 7.

We find that all of the Grievances satisfy the first prong of the arbitrability test because the parties are obligated to arbitrate their controversies through the grievance procedure set forth in the Agreement, and we find that no statutory, contractual or court-enunciated public policy restrictions are applicable. Thus, we turn to the second prong of the arbitrability standard to determine whether there is a reasonable relationship between the acts complained of and the provisions cited in the Grievances. We find that only Grievance No. 7, Grievance No. 8, and Grievance No. 9 demonstrate the requisite nexus, while Grievance No. 10 and Grievance No. 11 do not.

Grievance No. 7

Grievance No. 7 asserts that the unsafe hazardous working conditions and the harassing environment to which Grievant was subjected violate Article XIII of the Agreement, which addresses working conditions at the workplace, and Article XIV, which provides that unsafe working conditions are to be remedied. We find Grievance No. 7 arbitrable.

In *District Council 37, Local 1549*, Decision No. B-32-96, a number of the union's members were subjected to a work location that had no heat during the winter months. The union brought a grievance alleging that employees were subjected to an unsafe work environment. Rejecting the City's claim that no nexus existed between the act complained of and the rights invoked in the grievance, the Board held that the union established a reasonable relationship between the City's failure to provide its employees with a heated work location and the health and safety provisions in their collective bargaining agreement. *Id.* at 5; *see also District Council 37, Local 1455*, Decision

No. B-7-96 at 8-9 (grievance alleging that the employer failed to provide its employees with an adequate, clean, and structurally safe work environment is arbitrable because, if substantiated, the employer would have violated the health and safety provision of the collective bargaining agreement); *Uniformed Firefighters Ass'n,* Decision No. B-33-93 at 7 (health and safety issues involve contract interpretation and require an arbitrator's determination).

Here, the Union claims that DCAS violated Articles XIII, § 1, and XIV, § 1, when it subjected Grievant to a work location with two non-certified chillers, refrigerant leaks, faulty sensors, malfunctioning exhaust fans, and inactive alarms. Although the term "unsafe working conditions" is not defined in either Articles XIII, § 1, or XIV, § 1, it is possible that Grievant's work location could be construed as unsafe, and thus a reasonable relationship exists between the facts contained in Grievance No. 7 and the rights set forth in the Agreement. It will be for an arbitrator to determine whether these conditions existed and, if so, whether that environment constitutes unsafe working conditions, as contemplated by the above-referenced provisions of the Agreement.

Grievance No. 8

The issue raised in Grievance No. 8 is whether DCAS's suspension of Grievant, pursuant to CSL § 72, was in retaliation against Grievant for filing Grievance No. 7, thereby violating Article IV of the Agreement, which proscribes DCAS from discriminating in any way against any employee for engaging in Union activity. We find this grievance arbitrable.

We have found that for activity to be protected under the NYCCBL, it must, "at a minimum, be in furtherance of the collective welfare of employees, as distinguished from the welfare of an individual." *Doctor's Council*, Decision No. 12-97 at 8, *citing Procida*, Decision No. 2-87 at 12. In general, the filing of grievances has been recognized as activity in furtherance of the collective

welfare and, thus, protected union activity under the NYCCBL. *See Civil Service Bar Ass'n, Local 237*, Decision No. B-17-2004 at 18; *Civil Service Bar Ass'n, Local 237*, Decision No. B-46-2001.

In *Patrolmen's Benevolent Ass'n*, Decision No. B-15-98, the union's grievance alleged that an employee was improperly transferred for participating in union activity. The union contended that the grievance was arbitrable because the employee was exercising his contractual right to appeal a performance evaluation and to avoid reprisal for engaging in such union activity. The City argued that the grievance was not arbitrable because the union failed to show the requisite nexus and that a charge of retaliation for union activity should be raised in an improper practice petition. The Board found that a specific provision in the parties' collective bargaining agreement, which stated that "there shall be no discrimination by the City against any employee because of Union activity" provided the employees with an independent contractual right to grieve disputes in which union activity was the basis for the alleged retaliatory action. *Id.* at 3. Accordingly, the Board found that a reasonable relationship existed between the employer's alleged transfer for union activity and the provision invoked. *Id.* at 6-7.

Here, Grievant engaged in protected activity when he filed Grievance No. 7. Therefore, when he filed Grievance No. 8, alleging retaliatory action for filing Grievance No. 7, Grievant exercised his independent contractual right under Article IV, § 2, of the Agreement, which prohibits DCAS from discriminating against any employee for engaging in Union activity. Accordingly, a reasonable relationship exists between Grievance No. 8 and the rights contained in Article IV of the Agreement.

Nevertheless, the City contends that since the basis for Grievant's suspension, CSL § 72, is not specifically enumerated in the definition of the term "grievance" in the Agreement, arbitration is precluded. The City cites to *District Council 37, AFSCME*, Decision No. B-33-90, in which the

Board granted the petition challenging arbitrability because the specific statutory provision fell outside the contractual definition of the term grievance. This argument is misplaced in the instant matter.

The text of Grievance No. 8 reads: "Upon my submission of Grievance No. 7 as retaliation a section 72 Civil Service Law suspension was brought against me." In addition, the Union, when filing the RFA, referred to "retaliation" as one of the bases for Grievant's claims. Therefore, we reject the City's characterization of Grievance No. 8 as stemming only from an alleged abuse of CSL § 72, and find that Grievance No. 8 is based upon DCAS's alleged retaliatory actions taken against Grievant in violation of the terms and conditions of Article IV, § 2, of the Agreement. Accordingly, this matter is arbitrable.

Grievance No. 9

Grievance No. 9 asserts that DCAS's failure to pay Grievant his duly earned wages for four hours of work performed violates the Comptroller's Determination, which sets forth Grievant's wage scale and DCAS's obligation to pay such wages, as incorporated by Article V of the Agreement. We find Grievance No. 9 arbitrable as well.

In general, we have held that disputes related to earned wages and the payment thereof are arbitrable. *Social Services Employees Union, Local 371*, Decision No. B-2-91 at 13. We have further held that the "expectation that earned wages will be paid promptly and will be paid in full, is a quintessential quid pro quo of an employment relationship." *Local 621, SEIU*, Decision B-31-90 at 9.

In *Local Union, No. 3, I.B.E.W.*, Decision No. B-19-83, the union grieved a claim that an employee was not paid the proper amount of overtime and night shift differential he was owed. The

City contended that the grievance was not arbitrable because the comptroller's determination, which was incorporated into the parties' collective bargaining agreement, only set forth employees' wage, overtime, and supplemental benefits rates, not when these employees had to be paid. The Board held that even though the comptroller's determination was silent as to when these employees were to be paid, the union established a nexus between the employer's failure to pay and the comptroller's determination. Questions related to "when, how, or in what form such payments are to be effected are patently questions relating to the application of the underlying mandate to make such payments." *Id.* at 16; *see also Committee of Interns and Residents*, Decision No. B-30-86 (alleged failure to pay an employee the contractual wage was an arbitrable matter, and the question whether the employee was entitled to his wages involved the merits of the dispute, and was not for the Board to decide).

Here, it is undisputed that on December 15, 2002, Grievant reported to work at 6:00 a.m., was informed at 10:00 a.m. that he was suspended pursuant to CSL § 72, and never received his wages for that time. In addition, the Union has established that Grievant is entitled to the wage rate set forth in the Comptroller's Determination for hours worked. Since questions relating to the payment of duly owed wages are reasonably related to the Comptroller's Determination, we find the instant dispute to be arbitrable.

We find unpersuasive the City's contention that Grievance No. 9 should be barred from arbitration because it arises out of a suspension pursuant to CSL § 72. The failure to pay Grievant his wages is an issue independent of the basis of the suspension. Rather Grievance No. 9 deals with the quintessential quid pro quo of an employment relationship. As in *Committee of Interns and Residents*, Decision No. B-30-86, the question whether Grievant was entitled to his wages involves the merits of the dispute, and is not for the Board to decide.

Grievance No. 10

As to Grievance No. 10, we find that no reasonable relationship exists between the cancellation of Grievant's health insurance benefits while he was suspended from work pursuant to CSL § 72, and the Agreement, the Comptroller's Determination and City policy. Therefore, Grievance No. 10 is not arbitrable.

Although the Union argues that the subject matter of Grievance No. 10 is addressed in the Agreement, the Comptroller's Determination, and City policy, the Union fails to cite to any particular section that is related to the topic of health insurance. Upon review of the documents submitted into the record, the Board finds that this topic is mentioned only in the Comptroller's Determination, in the section entitled "Welfare Fund," where it states: "Contributions [to the Welfare Fund] shall be made only for such time as said individuals remain primary beneficiaries of the New York City Health Insurance Program."

Despite the Union's allegations stating that DCAS is required to provide health insurance benefits for all employees who are "in pay status," and employees who are suspended for less than 30 days remain "in pay status," the record is devoid of any documentary evidence which sets forth DCAS's obligation to provide health insurance benefits for employees who are "in pay status" and an employee's entitlement to continued health insurance benefits when suspended for less than 30 days.

The Union's reliance on *Correction Officers Benevolent Ass'n*, Decision No. B-72-89 is misplaced. In that case, the union grieved that the employer's use of medical removal procedures, pursuant to CSL §§ 71 and 72, violated provisions concerning salaries, sick leave, and health

benefits contained in the parties' collective bargaining agreement. Despite the City's argument that the exercise of this statutory authority cannot be limited by those contractual provisions, the Board held that the City, in negotiating those sections, arguably limited its statutory authority. Thus, those contractual provisions were reasonably related to the act complained of, and the dispute was arbitrable. Here, since the documents in the record do not contain any such provisions and the Union failed to enunciate any other applicable provisions, we find this grievance not arbitrable. To the extent that the Union seeks to grieve a violation of CSL § 72(5), this statute is not arbitrable under the terms of the Agreement. *See* Article XI, § 1.

Grievance No. 11

With regard to Grievance No. 11, the Union, relying upon Executive Order No. 75, alleges that DCAS improperly docked Grievant one day's pay for missing his entire shift because his attendance at a Union grievance meeting was required. We find that the acts complained of in this grievance are not reasonably related to Executive Order No. 75; therefore, Grievance No. 11 is not arbitrable.

In the instant matter, Executive Order No. 75 applies to "employee representatives, duly designated by certified employee organizations, when acting on matters related only to the interests of employees in their certified bargaining units." Here, however, the Union never contends that Grievant is an employee representative fulfilling duties set forth in this provision, and thus no reasonable relationship exists between Grievant's absence from work, which resulted in a loss of one day's pay, to attend a meeting regarding Grievance No. 7 and Executive Order No. 75. Accordingly, we find that Grievance No. 11 is not arbitrable.

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-2498-05, filed by the City of New York be, and the same hereby is, granted in part, as it relates to Grievance No. 10 and Grievance No. 11, and dismissed in part, as it relates to Grievance No. 7, Grievance No. 8, and Grievance No. 9; and it is further

ORDERED, that the request for arbitration docketed as A-11161-05, filed by the Local 30, International Union of Operating Engineers, on behalf of Cosimo P. Minervini, be, and the same hereby by is, granted in part, as it relates to Grievance No. 7, Grievance No. 8 and Grievance No. 9, and denied in part, as it relates to Grievance No. 10 and Grievance No. 11.

Dated: New York, New York
January 23, 2006

MARLENE A. GOLD
CHAIR

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

ERNEST F. HART
MEMBER

BRUCE H. SIMON
MEMBER