Local 1180, Communication Workers of America, **79 OCB 35 (BCB 2007)**
[Decision No. B-35-2007] (Arb) (Docket No. BCB-2219-01) (A-8796-01).

Summary of Decision*: The City challenged the arbitrability of a grievance alleging that the City, in violation of the parties' collective bargaining agreement, eliminated a job title at the HRA. The City argued that the Union could not establish a nexus between the subject of the grievance and provisions of the PAA Contract regarding within title transfers or separation of functions in the Income Support Unit. The Board found that the request for arbitration should be denied because there was no nexus between the Union's claim and the PAA Contract. (Official decision follows.***)**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

THE CITY OF NEW YORK AND
THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Petitioners,

-and-

LOCAL 1180, COMMUNICATION WORKERS OF AMERICA

Respondent.

DECISION AND ORDER

On June 5, 2001, the City of New York ("City") and the New York City Human Resources Administration ("HRA") filed a petition challenging the arbitrability of a grievance brought by Local 1180 of the Communication Workers of America ("Union" or "Local 1180"). On March 30, 2001, Local 1180 had filed a Request for Arbitration ("RFA") alleging that the City eliminated the Principal Administrative Associate ("PAA") job title at the HRA in violation of the parties'

collective bargaining agreement ("Agreement" or "PAA Contract").[1] The City argues that the RFA should be denied because Local 1180 has failed to establish a nexus between the subject of the grievance and the PAA Contract. Local 1180 argues that there is a nexus between the restructuring at the HRA and the provisions of the PAA Contract regarding within title transfers and the separation of functions in the Income Support Unit. The Board found that Local 1180 failed to demonstrate a nexus between its claims and the PAA Contract. Accordingly, the petition is granted, and the RFA is denied.

BACKGROUND[2]

In August 1996, the federal Personal Responsibility and Work Opportunity Act abolished the then existing federally funded welfare program and replaced it with a block grant program to the states. The new federal legislation limited recipients of federal assistance to a lifetime maximum aggregate of five years. In response, the New York State legislature enacted legislation known as the Safety Net Program. Once recipients exceed the federal limit, they become eligible for the Safety Net Program. In response to the new legislation, the HRA created Job Centers as well as a new title

[1] The PAA title exists citywide; only PAAs at the HRA are at issue in this case.

[2] The facts presented herein are drawn not only from the pleadings in the instant matter but also from the numerous Board and Board of Certification ("BOC") decisions already issued regarding the JOS title series, of which this Board takes administrative notice. *See Communications Workers of America, Local 1180*, Decision No. 4-2005; *Local 371, Soc. Serv. Employees Union*, Decision No. 2-2005; *Local 371, Soc. Serv. Employees Union*, Decision No. 1-2005; *District Council 37*, Decision No. B-20-2003; *Local 1180, Communications Workers of America,* Decision No. B-28-2002; *District Council 37*, Decision No. B-23-2002; and *Local 371, Soc. Serv. Employees Union*, Decision No. 11-2001.

series – the Job Opportunity Specialist ("JOS") title series – to staff them.[3] The JOS title series, designed to assist clients from their initial encounter with the HRA through their removal from the welfare rolls, consisted of the JOS title, the Associate Job Opportunity Specialist ("AJOS") title, and the Administrative Job Opportunity Specialist ("Admin. JOS") title. Only the AJOS title is at issue in this case. (Ans. ¶¶ 37 & 46: stating that the RFA concerns only PAAs who work at the HRA and the AJOS title.) Prior to the creation of the JOS title series, each client would see different workers to receive the services they needed; eligibility determination, employment identification, and social service monitoring were performed by four separate title series – PAA, Eligibility Specialist ("ES"), Caseworker ("CW"), and Supervisor [Welfare] ("SUP"). The JOS title series incorporates these areas of responsibility into one title series.

In October 2000, the City began meeting with Local 1180 and other unions to discuss the planned JOS title series.[4] The net result of the reorganization at the HRA was that employees in four titles (PAA, ES, CW, and SUP) represented in three bargaining units (Local 1180, SSEU Local 371, and DC 37 Local 1549) would be now be moved into two titles (JOS and AJOS). According to Local 1180, it informed the City at a December 11, 2000, meeting with the Unions that the AJOS title was so similar to the PAA title that the City was obligated to fill the AJOS title with PAA incumbents pursuant to the PAA Contract.

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[3] An in depth description of the reorganization and the creation of the JOS titles series, as well as the duties performed by all the titles mentioned herein, can be found in *Local 371, Soc. Serv. Employees Union*, Decision No. 1-2005 at 2-16.

[4] The City also met with representatives of Local 371 of the Social Service Employees Union ("SSEU Local 371"), which represented CWs and SUPs, and Local 1549 of District Council 37 ("DC 37 Local 1549"), which represented ESs (collectively, the "Unions").

The City and Local 1180 were parties to the PAA Contract, which applied to the PAA titles at the HRA, in effect from April 1, 2000, through June 30, 2002. On January 25, 2001, Local 1180 filed a Step III grievance alleging that the creation of the JOS title series violates Appendix C of the PAA Contract.[5] Appendix C is entitled "Separation of Income Support from Social Service in the Department of Social Services" and reads, in pertinent part:

> In an Income Support unit resultant from the separation of functions described hereinabove, any vacancy for which job duties have remained substantially unchanged, which was formally held by an employee in the Principal Administrative Associate or predecessor title and which the Employer decides to fill shall be filled by an Employee in the Principal Administrative Associate or predecessor title.

On February 23, 2001, the grievance was amended to include a violation of Article X, § 2, of the PAA Contract. Article X is entitled "Transfer and Reassignment File" and Section 2 reads, in pertinent part:

> Prior to filling through promotion, appointment or reassignment, vacant positions in the titles of Principal Administrative Associate, . . . , or any title represented by Local 1180 which has assignment levels, the agency shall consult its Transfer and Reassignment Request File and give due consideration for transfer or reassignment to all qualified applicants, including their seniority, whose request are contained in said file. To the extent practicable, the Agency agrees that workers to be involuntarily transferred shall receive five (5) days advance notice.

On March 19, 2001, Local 1180 filed a Petition for Certification pursuant to Section 1-02(c) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1), requesting to add the AJOS title to its Certification No. 41-73, which covered PAAs, among other titles. SSEU Local 371, which sought to represent the JOS and AJOS titles, and DC 37 Local 1549, which sought to represent the JOS title, similarly filed Petitions

[5] The grievance did not go through Steps I or II, as grievances claiming a contract violation effecting a large number of employees may be filed directly at Step III pursuant to Article VI, § 8, of the PAA Contract.

for Certification. The BOC consolidated the three petitions. *Local 371, Soc. Serv. Employees Union*, Decision No. 11-2001. The City agreed that during the pendency of the certification petitions, current employees moving into the JOS and AJOS titles would continue to be represented by the union that represented them prior to their transfer and would receive all the benefits of their respective collective bargaining agreements. *District Council 37*, Decision No. B-23-2002 at 3.

On March 30, 2001, Local 1180 filed a RFA with the Board stating that the grievance to be arbitrated was the "Elimination of the PAA title" and that the contract provisions alleged to be violated were "Article X Appendix C & Article VI of the grievance procedure in the PAA contract."[6] The relief requested was to "[s]top the reclassification of 600 CWA jobs which will Replace [sic] other job titles." In response to the filing of the RFA, the Office of Labor Relations closed the grievance on April 27, 2001, without having held any hearings or issuing a Step III determination.

The City began filling positions in the JOS titles series in May 2001. Incumbents in the PAA and SUP titles were asked to voluntarily convert to the new AJOS title.[7] Employees from outside of the PAA and SUP titles were also hired into the AJOS title. As of March 2002, approximately 52% of the employees who converted to the AJOS title formerly held the PAA title. *Local 371, Soc. Serv. Employees Union*, Decision No. 1-2005 at 3. As of October 2003, the primary job titles at the Job Centers were AJOS and JOS, but the old titles of PAA and SUP continued to be used in the

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[6] Article VI is entitled "Grievance Procedure" and defines a grievance as "[a] dispute concerning the application or interpretation of the terms of this Agreement."

[7] At the same time, incumbents in the ES and CW titles were asked to voluntarily convert to the new JOS title, but the JOS title is not at issue in the instant petition.

agency as of January 2005.[8] *Id.*

On January 3, 2005, the BOC, after concluding that the JOS and AJOS titles would be appropriately placed in any of the units, ordered two elections be held between the competing unions to determine which union would represent the JOS title and which union would represent the AJOS title. *Id.* Both elections were won by SSEU Local 371, which was certified to represent the JOS and AJOS titles on April 27, 2005. *Id.*

POSITIONS OF THE PARTIES

City's Position

The City asserts that the RFA must be denied because Local 1180 has not established a nexus between the subject of the grievance and any written rule, regulation, or policy of the HRA. Specifically, the City argues that there is no nexus between the subject of the grievance and either Appendix C or Article X, § 2, of the PAA Contract. The City claims that there was no adverse action to any HRA employee as a result of the creation of the JOS title series. No titles were eliminated, and no HRA employee lost their job, pay, benefits, or union representation. Only volunteers were moved into the new title; those who elected not to transfer remained in their old title.

The City argues that Appendix C, which applies to the separation of Income Support and Social Service functions, is inapplicable here because the creation of the JOS title series is "not a separation of any kind and certainly not separation of Income Support and Social Service functions of HRA." (Pet. ¶ 48.) Rather, the creation of the JOS title series results in "function consolidation"

[8] As of October 2003, at the HRA there were 655 employees in the AJOS title, 163 in the PAA title, and 103 in the SUP title.

within the successor to the Income Support Unit. *Id.* Should Appendix C be found applicable to a function consolidation, it would still be inapplicable in this case because Appendix C, by its terms, is limited to "any vacancy for which job duties have remained substantially unchanged, which was formally held by an employee in the [PAA title]." In the instant case, a brand new title has been created for which PAAs are eligible to apply but these new positions are substantially different from the PAA title and openings in the JOS title series are not vacancies in the PAA title. The JOS title series is not merely a change in nomenclature; it is a separate and distinct title series from the PAA title.

The City notes that Appendix C does not guarantee that any new title that contains some elements present in the PAA title "will be certified to the CWA or the PAA bargaining unit in perpetuity." (Pet. ¶ 54.) Which union or unions will represent employees in the JOS title series is for the BOC to decide, not an arbitrator.

Article X, § 2, which applies to transfers within the PAA title, is also inapplicable. Article X, § 2, by its terms, is limited to "filling through promotion, appointment or reassignment, vacant positions in the titles of Principal Administrative Associate." PAAs applying for an AJOS position are applying for an appointment to a new title, not a PAA title, and, if appointed, the employee's competitive Civil Service status will be changed to the new title. Therefore, there is no nexus between the creation of the JOS title series and Article X, § 2. Also, Local 1180 has not identified any employee who has been prevented from exercising contractual transfer provision rights.

Finally, the City argues the creation of the JOS title series is a managerial right pursuant to

NYCCBL § 12-307(b).[9] The contract provisions cited by Local 1180 do not waive or modify the City's managerial rights, and there is nothing in the PAA Contract which allows "Local 1180 to exert authority over a proper exercise of a managerial right enumerated in NYCCBL § 12-307(b)." (Pet. ¶ 61.)

Union's Position

Local 1180 argues that the reorganization resulting from the creation of the JOS title series equates to a forced transfer because those PAAs who do not elect to voluntarily transfer from the PAA title to the AJOS title "will be transferred to other work locations around the City." (Ans. ¶ 38.) In support, Local 1180 refers to an April 30, 2001, HRA Memorandum titled "Questions and Answers Regarding the Job Opportunity Specialist Title Series" which reads, in pertinent part:

> Q. If I don't want to go to the new title what will happen?
>
> A. Then you will remain in your current title. A minimum number of staff will be able to remain in their current locations; others who don't go into the new title will be reassigned to another location to continue work in their current title.

(Ans. Ex. 9, p. 4.) Local 1180 contends the above proves that the City does not intend to consider the "Transfer and Reassignment File" referred to in Article X, § 2, or any of the criteria in Section 2. Local 1180 states that the "PAAs have been told that if they do not apply for the AJOS title, they will not be able to remain in their current work location, when the next nearest work location may

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[9] NYCCBL § 12-307(b) provides, in pertinent part:

> It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services offered by its agencies; . . . direct its employees; . . . maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; . . . and exercise complete control and discretion over its organization . . . .

be far from home or child care arrangements." (Ans. ¶ 55.) Therefore, the necessary nexus exists between Article X, § 2, and the creation of the JOS title series.

Local 1180 also argues that the AJOS position is "substantially unchanged" from the PAA title and that "the PAAs should 'follow the work,' as Appendix C provides." (Ans. ¶ 49.) Therefore, the necessary nexus exists between Appendix C and the creation of the JOS title series.

As for the City's argument that the creation of the JOS title series is one of function consolidation not function separation, such "is a matter of contract interpretation, which must be left for the arbitrator to decide." (Ans. ¶ 59.) Similarly, "the issue of whether the PAA duties and the AJOS duties are, indeed, 'substantially unchanged' is for the arbitrator, not for the Board." (Ans. ¶ 60.)

Local 1180 argues that the City's managerial rights argument is without merit because "[t]o the extent that any of the City's managerial rights are implicated in the Union's grievance, they are so only to the extent the City agreed they would be when it negotiated the two contract provisions at issue." (Union's Brief, p. 4.) Local 1180 is not seeking to interfere with the City's rights to classify titles; rather it "seeks an arbitrator's determination as to whether the duties of the City's 'new' AJOS title are so similar to the PAA duties that the City is obligated to fill the AJOS positions exclusively with PAA incumbents." *Id.* at 5.

DISCUSSION

It has long been the stated policy of the NYCCBL "to favor and encourage arbitration to resolve grievances."[10] *Communications Workers of America, Local 1182*, Decision No. B-31-2006 at 7; *see also Communications Workers of America, Local 1180*, Decision No. B-8-68 at 6. Therefore, "the presumption is that disputes are arbitrable, and that 'doubtful issues of arbitrability are resolved in favor of arbitration.'" *Id.* (*quoting Org. of Staff Analysts*, Decision No. B-19-2006 at 10); *District Council 37*, Decision No. B-14-74 at 12.[11] However, the Board "cannot create a duty to arbitrate where none exists, [] nor can we enlarge a duty to arbitrate beyond the scope established by the parties." *Corrections Officers Benevolent Ass'n*, Decision No. B-73-90 at 9; *see also Sergeants Benevolent Ass'n*, Decision No. B-15-07 at 5.

This Board's well established two prong test for arbitrability is:

> (1) whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions, and, if so (2) whether the obligation is broad enough in its scope to include the particular controversy presented. In other words, whether there is a nexus, that is, a reasonable

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[10] Section 12-302 of the NYCCBL provides:

> Statement of policy. It is hereby declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations, and final, impartial arbitration of grievances between municipal agencies and certified employee organizations.

[11] Section 12-309(a)(3) of the NYCCBL provides this Board with the unique power as an administrative body "to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure established pursuant to section 12-312 of this chapter." NYCCBL § 12-312 promulgates the parties' rights and responsibilities in arbitrations and the Board's role in administering an arbitration panel. *See New York State Nurses Ass'n*, Decision No. B-21-2002 (in depth discussion of public sector arbitration and the Board's role therein).

> relationship between the subject matter of the dispute and the general subject matter of the CBA.

Org. of Staff Analysts, Decision No. B-22-2007 at 10 (citations and internal quotation marks omitted); *see also New York State Nurses Ass'n*, Decision No. B-21-2002 at 7-8; *Soc. Serv. Employment Union*, Decision No. B-2-69 at 2.

The first prong of the test – whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions – is not in dispute in this case. Rather, the City argues that Local 1180 has failed to meet the second prong – that Local 1180 has not established a nexus between the subject matter of the dispute (the creation of the JOS title series) and the PAA contract.

The heart of Local 1180's argument that a nexus exists is that the AJOS title is not a new title at all, but merely a reclassification of the PAA title. Local 1180 presents a "follow the work" argument – the duties of the AJOS title are so similar to that of the PAA title that the AJOS positions should be filled only with PAAs. However, the issue of similarity of duties has already been fully litigated by these parties and necessarily determined in another administrative proceeding. In *Local 371, Social Services Employees Union*, Decision No. 1-2005, the BOC was required to make an in-depth analysis of the JOS title series and all the titles effected by its creation.[12] The BOC was faced with three different bargaining units seeking to represent employees filling the new JOS title series positions, and therefore had to decide which of the three bargaining units was appropriate. Local

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[12] Whenever the City claims to have created a new title, and its status as such is disputed, the BOC, as a precursor to fulfilling its obligation of determining the appropriate bargaining unit and representative, must first determine whether the title is, in fact, new or whether it is merely a renaming of a previous title. Therefore, whether a title is substantially unchanged is not always a determination for the arbitrator.

1180 argued that "the AJOS title shares the same community of interest with PAAs because both titles perform the same basic duties and share the same job description." *Id.* at 17. The BOC concluded that the new JOS and AJOS position contained tasks from the PAA, ES, CW, and SUP titles and that:

> The use of two titles, instead of four, has expanded the range of duties for employees in the new titles. Therefore, the typical tasks listed in the JOS and AJOS job specifications are more numerous and broader than the tasks listed in either the ES, Caseworker, SUP or PAA job specifications.

Id. at 27. The BOC went on to find that no factor favored one union's proposed unit over another and therefore ordered elections be held to determine which unions would represent the employees in the new titles. In other words, the BOC determined that the AJOS title was a new title and not merely a renaming of the PAA title. Inasmuch as Local 1180 was a party to that BOC proceeding, had a full and fair opportunity to litigate the issue of the similarity (or dissimilarity) of job duties, and had the opportunity to appeal, but chose not to, the determination by the BOC that was adverse to Local 1180's position, there is no basis for this Board to find otherwise or to establish an arguable connection to Appendix C. Accordingly, we find no nexus exists between the creation of the JOS title series and Appendix C.

For the same reasons, Article X, § 2, does not apply to transfers to the AJOS positions. Local 1180 concedes that Article X, § 2, applies only to within title transfers but argues that there is a nexus to the creation of the JOS title series since its creation effectively forces PAAs to transfer as they must choose between a new title or a new work location. More importantly, Article X, § 2, by its terms, is limited to procedures to be followed when there is a transfer; it does not address circumstances that give rise to the transfer. That is, Appendix C requires the City to consult its

Transfer and Reassignment Request File prior to effecting an involuntarily transfer but it does not limit the City's ability to make such involuntarily transfers. As such, even accepting Local 1180's logic that the creation of the JOS title series forced employees to transfer, there is no nexus between Appendix C and the creation of the JOS title series. Since Local 1180 has failed to established a nexus between the claimed sections of the PAA contract and the subject of the grievance, this Board grants the City's petition challenging arbitrability.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, the petition challenging arbitrability filed by the City of New York and the New York City Human Resources Administration, docketed as No. BCB-2219-07, hereby is granted; and it is further

ORDERED, that the request for arbitration filed by the Local 1180 of the Communication Workers of America, docketed as A-8796-01, hereby is denied.

Dated: October 25, 2007
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

ERNEST F. HART
MEMBER

CHARLES G. MOERDLER
MEMBER