

City v. DC 37, 9 OCB 12 (BCB 1972) [Decision No. B-12-72 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of  
THE CITY OF NEW YORK,  
Petitioner,

DECISION NO. B-12-72

v.

DOCKET NO. BCB-114-12

DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO, DOCKET NO. BCD-114-72

Respondent.  
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**DECISION AND ORDER**

In this matter the City challenges arbitrability of the Union's grievance alleging that, in violation of the collective agreement, the City has refused to pay cash benefits to the beneficiaries or the estates of deceased employees for accrued annual leave and compensatory time (see Article X, 514, of the City-wide agreement)

The City's challenge is both statutory and substantive. As for the former, the failure to file written waivers, we find that the grievance is a Union grievance and not one uniquely personal to the grievant. The persons who the Union claims are entitled to cash benefits are the legal survivors of deceased employees and, therefore, the nature of the claim is union related. The Union has brought the grievance to obtain contractual benefits claimed to be due to survivors of deceased employees. Under such circumstances, the execution of a written waiver by the Union alone is sufficient (Matter of City of N.Y. and Local 246, SEIU, AFL-CIO, Decision No. B-12-71).

As for the various challenges to the substantive aspects of the grievance, we find that they are without merit. In summary, the City's challenges are as follows: (1) that the beneficiaries are not public employees; (2) that neither the decedents, the beneficiaries, nor the decedents' estates are covered by the grievance procedure; and (3) that the Union's rights did not accrue while decedents were public employees. In each instance we find that the grievance is subject to the broad and general provision of Article XIV of the City-wide agreement which requires that "Any grievance concerning matters covered by this agreement" is subject to arbitration pursuant to Local Law 53 of 1967 (NYCCBL), Executive Order No. 52, and the rules, regulations and procedures of the Board of Collective Bargaining. It is our view, and we find and conclude, that each of the challenges involves the interpretation and application of the collective agreement. Furthermore, the broad provisions for arbitration make "any" grievance concerning matters covered by the agreement subject to arbitration.

We wish to comment upon a matter related to the issue of arbitrability which, nevertheless, is of concern to the Board. We refer to the possibility suggested by the City of double liability in the event that a claimant may appear on the scene claiming the benefits of the contract subsequent to the rendition of an award and payment by the City to a beneficiary in accordance with the contract and the award. The equities suggest an earnest attempt to resolve the matter directly prior to proceeding to arbitration, or to request the arbitrator in the event that he should find any liability to deal with the matter as part of his award involving the possibility of double payment by the City.

We find and conclude that the gri arbitrable.

**O R D E R**

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

ORDERED, that the petition filed herein by the City of New York be, and the same hereby is, dismissed; and it is further

ORDERED, that this proceeding be, and the same hereby is, referred to an arbitrator to be agreed upon by the parties or appointed pursuant to the Consolidated Rules of the Office of Collective Bargaining.

DATED: New York, N.Y.  
May 22 , 1972.

ARVID ANDERSON  
C h a i r m a n

WALTER L. EISENBERG  
M e m b e r

ERIC J. SCHMERTZ  
M e m b e r

THOMAS J. HERLIHY  
M e m b e r

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