City v. CEA, 9 OCB 17 (BCB 1972) [Decision No. B-17-72 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of DECISION NO. B- 17-72

The CITY of NEW YORK

v.

CAPTAINS ENDOWMENT ASSOCIATION DOCKET NO. BCB-124-72

DECISION AND ORDER

In this matter the City challenges arbitrability of the Union's grievance.

The facts, in summary, are as follows;

The Association's request for arbitration, dated June 26, 1972, seeks an award adjudicating the rights of its members to certain specified salary adjustments due January 1, 1971, under a claimed agreement, the term of which ran from October 1, 1968, to December 31, 1970, alleging the City's refusal to implement the said agreement. Annexed to, and in support of, the request to arbitrate are two letters, dated May 13, 1970, and May 24, 1972, which were sent by the Association's attorney to the Director of Labor Relations. Both letters invite attention to the claimed agreement. In particular, the letter of May 24, 1972, requests a response as to "whether the City does or does not recognize the above mentioned provisions of the agreement; and, if so, whether or not the City is ready to implement such provisions by paying

out the salary adjustments to those entitled to them at this time." Both letters were unanswered.

The City's challenge to arbitrability denies that there is an agreement concerning the specific claim sought to be arbitrated and asserts that the letter (no reference being made to the letter of May 24, 1972, which requests a response from the City), does not constitute an arbitrable claim because the letter "does not constitute a contract" or a rule or regulation within the meaning of §8a.(2)of Mayor's Executive Order No. 52 or N.Y.C.C.B.L. §1173-3.0(o). In addition, the City contends in its reply that Exhibit B2, attached to the Association's Answer, purports to be nothing more than an agreement to agree with respect to items to be included in a future negotiated contract, including the item in dispute, whose term was to commence January 1, 1971. (Exhibit B2, labeled "OUTLINE OF POINTS OF AGREEMENT between CAPTAINS ENDOWMENT ASSOCIATION and NEW YORK CITY" sets forth nine items allegedly agreed upon, including the disputed items, referred to in the Association's letters of May 13, 1970 and May 24, 1972.) Specifically the disputed items are in "Point I.B." and read as follows:

> "3. The number of increments in the Captain's salary rate will be reduced from 4 to 3 effective January 1, 1971, i.e. there will be a promotion rate followed by three increments spaced one

> year apart, so that a Captain will receive maximum salary in three years from the date of promotion:"
>
> "4. The salary rate of Deputy Inspector at maximum will be 6% more than the salary rate of Captain at maximum:"
>
> "5. The salary rate of Inspector at maximum will be 6% more than the salary of Deputy Inspector at maximum:"
>
> "6. The salary rate of Deputy Inspector at maximum will be 6% more than the salary rate of Inspector at maximum."

Some of the items referred to were apparently implemented by Labor Relations Order No. 70/B, dated April 6, 1970. Two of the items (numbers 8 and 9, being, respectively, "Night Differential" and "Overtime") were implemented as a result of a prior arbitration award dated January 18, 1971. It likewise appears that other items listed in the "Outline of Points of Agreement" were also agreed to. For example, in the proposed Labor Relations Order (Association's Exhibit "A") which was submitted to and approved by the Mayor, the Director of Labor Relations advised the Mayor that in addition to the agreed upon items to be incorporated in the Labor Relations Order, "the City has agreed to prepare, sponsor and support" legislation providing for the computation of retirement

allowances "and for the establishment of a separate fund intended to provide supplemental benefits in the same manner as may be provided for other members of the uniformed force of the Police Department"

The Board, as pointed out by the Association in its Answer, takes note of the prior arbitration award, dated January 18, 1971, between the same parties, which specifically refers to an agreement between the parties as referenced in the identical letter of May 13, 1970.[1]

A reading of that award clearly establishes that in that arbitration proceeding the City acknowledged the existence of an agreement between the parties, the arbitrator stating on page 4 of his award,: "None-the-less, these are obligations and responsibilities of the City under the Agreement which, in presentation at the Hearing the City agrees and readily accepts, The only question at issue has been the time necessary to implement these provisions,"

Implicit in the City's challenge to arbitrability is the contention that the Association's letters are unilateral and self serving and, therefore, are not binding and do not constitute an agreement, The facts indicate that more is involved. We note, for example, that the City acknowledged the existence of an agreement in the prior

[1] The award, in pertinent part, refers to: "Provisions of Agreement between Captains Endowment Association and New York City effective October 1, 1968, referenced in the letter dated 5/13/70 from Association counsel to Director or Labor Relations . . .;" (Emphasis ours) (Case No. A-131-70).

arbitration award. Furthermore, the Proposed Labor Relations Order No. 70/1B, prepared by the City, referred to the agreement and implemented a number of the items described in the Association's letter of May 13, 1970. Under these circumstances we are of the view that principles of estoppel apply and the parties are precluded from denying the existence of a basic agreement. We hold this view though different aspects of the agreement were involved in the prior award (Commarato v Art Steel Co., U.S.D.C. N.Y.., 1972, 79 LRRM 2775). In the cited case, the Court, granting a motion to compel arbitration, stated:

"The specific claim to be advanced in herein is thus different than that of proceeding... but "Since the issue of the contract's validity was adjudicated... respondent may not relitigate that question here.." However, on the basis of the facts before us at this time, the Board is unable to determine whether the parties included the specific items in dispute here in their basic agreement. That is the question which must be resolved by a hearing. Thereafter, the Board will decide whether there are any issues

which should be submitted to arbitration or whether some other statutory provision is more relevant to the resolution of the matters here in dispute.

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 there shall be a hearing before the Board of Collective Bargaining to determine whether or not the disputed issues set forth as items 3, 4, 5, and 6 of "Point 1B" herein were included in the contract between the City and the Captains Endowment Association and, if so, whether there are any issues which should be submitted

to arbitration or whether some other statutory provision is more relevant to the resolution of the matters here in dispute.

DATED: NEW YORK, N.Y.
September 27, 1972

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