

HHC v. L. 1549, DC 37, 9 OCB 18 (BCB 1972) [Decision No. B-18-72
(Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION

DECISION NO. B-18-72

-and-

DOCKET NO. BCB-121-72

LOCAL 1549, DISTRICT COUNCIL 37

DECISION AND ORDER

The Corporation's petition herein alleges that the grievance which Respondent seeks to arbitrate is not arbitrable.

Local 1549, DC 37, the certified representative of messengers in the Health and Hospitals Corporation filed its request for arbitration asserting that a messenger employed by the Corporation had been assigned to duties substantially different from those stated in his job classification in violation of the parties' collective bargaining agreement. On June 14, 1972, the Corporation filed its petition challenging arbitrability on the ground that the request for arbitration was not timely filed under the parties' contract, and that the duties assigned are within the grievant's job description. The Union's answer asserts that the timeliness of the request for arbitration is a procedural matter and is therefore for the arbitrator, and that the Petitioner's objection based on the job description goes to the merits and is also for the arbitrator.

It is well settled that questions of procedural arbitration, including the timeliness of the request for arbitration under a contract, are for the arbitrator. (OLR v. Social Service Employees Union, Decision No. B-6-68; OLR v. Social Service Employees Union, Decision No. B-7-68).

Article VII, Section 1(c) of the contract defines a grievance as "a claimed assignment of employees to duties substantially different from those stated in their job classifications." Respondent's claim clearly comes within this definition. Petitioner's assertion that the assigned duties are within the grievant's job description calls for a determination of the merits of the dispute and is therefore a question for the arbitrator to decide. (City of New York v. District No.1, MEBA, Decision No. B-2-71)

We shall dismiss the Petition and grant the request for arbitration.

O R D E R

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 be, and the same hereby is dismissed; and it is further

ORDERED, that Respondent's request for arbitration be, and the same hereby is, granted.

DATED: New York, N.Y.
October 12, 1972

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

EDWARD SILVER
MEMBER

THOMAS J. HERLIHY
ALTERNATE MEMBER

MORRIS IUSHEWITZ
ALTERNATE MEMBER