City v. L. 1180, CWA, 9 OCB 24 (BCB 1972) [Decision No. B-24-72 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK — DECISION NO. B-24-72

Petition

DOCKET NO. BCB-129-72

-and-

LOCAL 1180, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Respondent

DECISION AND ORDER

The City's petition herein seeks a determination that a grievance urged by Respondent Union is not arbitrable.

Local 1180, CWA, filed a request for arbitration of a grievance alleging that Lester Goldshied, A Clerk Grade 5 in the Department of Social Services had performed work in a higher level position than the one to which he had been equated and seeking back pay for the work performed. (Clerk Grade 5 is a Rule X title which survives from a previous system of job classification. A Clerk Grade 5 has a wide ranging and comprehensive job description which permits a variety of assignments. For purposes of devising an equitable pay scale for Clerk Grade 5, the Departments of Personnel and Budget equate" the duties being performed by the incumbent to a comparable job description in the present Rule XI system of classification.)

The record reveals that Goldshied had been equated to Administrative Associate (salary range $9,950-$14,500)

and worked as a Unit Head, but that subsequently he worked as an Office Manager for, eleven months. The previous Office Manager had been equated to Senior Accountant (Group Chief).(salary range $12,300-$17,675). In August, 1971, the Department of Social Services requested the Personnel Department and the Bureau of the Budget to permit Goldshied to be equated to Senior Administrative Assistant (salary range $10,000-$16,050), but this request was denied. Personnel and Budget evaluated the job of the Office Manager as being equivalent to a lower title than Administrative Associate. Thereafter, Goldshied filed a grievance alleging that he was working out of title and asking to be returned to his former duties and for back pay for the eleven months worked out of title. At the time the request for arbitration was filed, the grievant had been returned to his former duties,, but he had not been granted back pay.

The City contends that the grievance seeks review of a managerial decision -- whether to equate Goldshied to Senior Administrative Assistant or Administrative Associate, and that the grievance seeks review of the content of grievant's job classification. The City asserts that grievant should have brought his case to the Classification Appeals Board of the Civil Service Commission.

The Union denies that the request for arbitration demands that grievant's work be equated to the higher title or that the grievance seeks review of the City's managerial decision on the content of a job classification. The Union argues t hat the grievance is concerned solely with a claim for back pay. "The grievant is seeking additional compensation for performing work of greater responsibility and scope than his regular duties . . . ."

Section 1 of Article 9 of the parties' contract defines a grievance as inter alia:

> "(B) A claimed violation, misinterpretation, or misapplication of rules or regulations, existing policy, or orders applicable to the agency by whom the grievant is employed affecting the terms and conditions of employment;
>
> "(C) A claimed assignment of employees to duties substantially different from those stated in their job classifications."

The Union asserts that the grievant's claim is within both these paragraphs.

First, the Union argues that the City's action violated "existing policy" applicable to the agency by whom the grievant is employed.

On July 9, 1954, the Board of Estimate issued a Resolution adopting a Career and Salary Plan. The Resolution contains a "Policy Statement" which provides:

> "The purpose of this resolution is to provide fair and comparable pay for comparable work, and regular increases in pay in proper proportion to increase of ability as demonstrated in service."

The Union argues that t he policy of "comparable pay for comparable work" was violated in the instant case.

We find that the grievance is not arbitrable as a violation of the policy expressed in the Resolution establishing the Career and Salary Plan because the Plan does not apply to employees in collective bargaining.[1] The distinguishing feature of the Career and Salary Plan was a fixed

[1] Association of Building Inspectors v. HDA, Decision No. B-4-71.

structure of annual increments which was found to be incompatible with the collective bargaining process. Therefore, with the advent of collective bargaining, new regulations were issued establishing an alternative career and salary plan applicable to employees covered by collective bargaining agreements. The alternative regulations provide, in Section IV, that the General Pay Plan Regulations issued by the Board of Estimate (the Career and Salary Plan), shall no longer apply once an employee has been compensated pursuant to a collective bargaining agreement.

The alternative regulations further provide:

> "If a position has been equated for salary purposes by the Personnel Director and the Director of the Budget to a class of positions subject to these regulations, the incumbent of the position so equated shall, for salary purposes, be governed solely by those provisions of the Implementing Personnel Order and of these regulations. . . ." (Section VI)

We further find, however, that the grievance is arbitrable as "a claimed assignment of employees to duties substantially different from those stated in their job classification" under Article 9, §1(B) of the parties' contract. The grievant clearly asserts that he performed a job for eleven months in an out of title capacity. Therefore, he has a contractual right to arbitrate that claim and seek a remedy.

The City has the management right to determine the content of job classifications; however, in the contract herein the City has agreed to arbitrate questions relating to the assignment of employees to duties not contained in their job classifications.

The fact that there may be another forum available to grant a different type of relief does not bar arbitration. The grievant has filed the waivers required by §1173-8.0d of the NYCCBL thereby choosing arbitration and relinquishing his right t to proceed in any other fashion. This is the result contemplated by the statute.

The grievance constitutes a claim for additional compensation for performing higher duties. The lower classification to which the grievant had been equated (Administrative Associate) and the higher classification to which it was unsuccessfully sought to equate grievant (Senior Administrative Assistant) are both titles set forth in the contract as "equation" titles to Restored Rule X titles (Clerk Grade 5). The contract requires that all employees "shall be paid the wages and salaries in accordance with Implementing Personnel Order No. 69/41, dated June 12, 1969." (See Article 10, Wages and Salaries.) Whether the demand for back pay requires an interpretation of the contractual provision relating to wages and salaries and the pay plan which is incorporated by reference in the contract is a matter for the arbitrator. We find and conclude that the matter is arbitrable.

We shall grant the request for arbitration and dismiss the petition herein.

The Petitioner's request for a hearing is denied, there being no reason cited by the City or apparent to the Board for the holding of a hearing.

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 herein be, and the same hereby is, denied; and it is further

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

DATED: New York, N.Y.
December 29, 1972.

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

WALTER L. EISENBERG
M e m b e r

WILLIAM MICHELSON
M e m b e r