City v. L. 1180, CWA, 9 OCB 25 (BCB 1972) [Decision No. B-25-72 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of
THE CITY OF NEW YORK,

DECISION NO. B-25-72

Petitioner,

-and-

DOCKET NO. BCB-130-72

LOCAL 1180, COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO 31

Respondent.

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DECISION AND ORDER

The petition herein challenges the arbitrability of grievances brought by the Communications Workers of America when administrative employees represented by it at two welfare centers were docked pay for alleged absence from work as an outgrowth of job actions to protest the alleged failure of the City to provide adequate police protection..

At the time of the incidents which occasioned the wage deductions, in February 1972, CWA did not have a contract with the City, the last contract having expired December 31, 1970. However, pursuant to the status quo provisions of the New York City Collective Bargaining Law §1173-7.0.d), the grievance clause of the expired contract continued in full force and effect and was governing when the incidents occurred. That clause, ¶1, Article 9, in pertinent part defines a grievance as:

"A. A dispute concerning the application or interpretation of the terms of

(1) This collective bargaining agreement
(2) A Personnel Order of the Mayor;

"B. A claimed violation, misinterpretation, or misapplication of rules and regulations, existing policy, or orders applicable to the agency by whom grievant is employed affecting the terms and conditions of employment."

In essence, the Union's grievances are that the City has improperly made deductions from the contractually set pay of the affected employees. It advances two grounds or arguments in support of the allegation of breach of contract. In the first instance, it contends, the deductions were unjustified because the City has an obligation under Article VIII, §8.a., of the city-wide contract with District Council 37, AFSCME, AFL-CIO, to provide all employees with "adequate, clean, safe and sanitary working conditions in conformity with minimum standards of applicable law." In the second instance, it maintains, the wage deductions were improper because they were unilaterally imposed by the City without according the employees a prior hearing on stated charges..

The City does not contest the arbitrability of the first "cause of action" relating to the provision of safe working conditions, but it does contend that the second count is not arbitrable for the reason that the action of the Department of Social Welfare in docking the pay of the employees was not a disciplinary action, and that, therefore, any statute or regulation cited by the Union as mandating a hearing in disciplinary actions is inapplicable and cannot be the basis of a grievance.

We find that both "causes of action" advanced by the Union are but diverse arguments in support of a single gravamen: that the collective bargaining agreement was violated by the failure to pay the employees the contractual wage. Such an alleged violation of contract is patently a basis for grievance arbitration. The Union cites §75 of the State Civil Service Law (in its requests for arbitration) an Executive Order No. 500 of the Commissioner of Social Services (in a later letter) as the bases for its contention that a hearing on stated charges was required before the City could properly dock the employees. The City counters that these citations are inapplicable because the docking of the employees' pay was not a disciplinary action in response to employee misconduct, but merely a-deduction because of absence from work. The City further maintains that the Union's assertion of the Executive Order in support of the grievances is untimely, having been advanced for the first time almost three months after the filing of the requests for arbitration and nearly two months after the City filed its petition challenging arbitrability. However, the relevance or applicability of the cited statute or departmental regulation to the situation herein and to the basic grievance propounded by the Union, i.e., the failure to pay the contractual wage, is a matter going to the merits of the case,. and,.hence,.one for an arbitrator to determine whether, in docking the employees, the Department was merely deducting for an absence from the workplace, as the City contends, or was, as the Union urges, disciplining employees for misconduct (failing or refusing to return to the work station after protesting the alleged lack of police protection)

is clearly a question for the arbitrator to decide as too, it is for the arbitrator to determine the procedural issue as A whether the Union timely amended its request for arbitration by the addition of the allegation that the City had improperly failed to grant a hearing pursuant to Executive Order No. 500 dealing with procedural requirements and rights of employees in disciplinary actions based on employees' work and/or misconduct.

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 Arbitration proceedings A-230-72 and A-231-72 be, and the same hereby are, referred to an arbitrator to be agreed on between the parties, or appointed pursuant to the Consolidated Rules of the Office of Collective Bargaining, to arbitrate the question whether there have been improper deductions from the pay of the grievant employees in violation of the contract.

DATED: New York, N.Y.
December 29, 19720

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

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