City v. CEA, 9 OCB 19 (BCB 1972) [Decision No. B-19-72 (Mot for Reconsideration)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK — DECISION NO. B-19-72

VS. — DOCKET NO. BCB-124-72

CAPTAINS ENDOWMENT ASSOCIATION

DECISION AND ORDER

We have considered the Association's motion for reconsideration of a portion of our Decision No. B-17-72, herein, the brief submitted for the motion and the oral argument held before us on October 12, 1972, and find, for the reasons stated below, that the motion should be denied.

We affirm, in all respects, Decision No. B-17-72.

In City of New York vs. C.W.A. Local 1180, Decision No. B-8-68 we said:

> "Where the existence of a contract, or provision thereof, is disputed, that issue properly is resolved by the forum charged with the responsibility of determining substantive arbitrability". (Emphasis added)

The City herein claims that there was no agreement as to specific items 3,4,5 and 6 of "Point 1.3." The forum "charged with the responsibility of determining substantive arbitrability" herein is this Board and we cannot determine that issue without a hearing. In

Fitzgerald v. General Electric Co., 19 NY 2d 325, 280 NYS 2d 104, (cited at p.8 of the Association's brief) there was a collective bargaining agreement between the parties. The Court said:

> "In our view, the union's grievances present arbitrable issues as to the 'interpretation or application' of the recognition (art. I) and layoff (art. XII) provisions of the collective bargaining agreement." (Emphasis ours)

There was also a contract between the parties in L.I. Lumber Co. v. Martin, 15 NY 2d 380, 259 NYS 2d 142, (cited at pp.7 & 8 of the Association's brief) where the Court of Appeals said:

> "The parties have conceded that this case and the contract involved in it are within the purview of our national labor legislation **." (Emphasis ours)

The problem, however, as we view it, is not with the principle of law enunciated in the cases cited by the Association, but, rather, with the fact that in each of those cases there was no dispute with respect to the existence of the contractual provision sought to be arbitrated, or, upon analysis, the arbitration clause was found to be sufficiently broad to cover all disputes arising out of the employment relationship in addition to a dispute concerning the application or interpretation of any provision of the agreement. (See Matter of Howard & Co. v. Daley, 27 NYS 2d 285, 317 NYS 2d 326)

The function of an arbitrator is to interpret the terms of a contract between the parties. Substantive questions of arbitrability such as whether or not there is a contract between the parties, whether or not a contract between the parties by its terms obligates them to submit their disagreements to arbitration, whether or not an agreement to arbitrate covers a particular subject matter which is in dispute, are questions which have repeatedly been found to be properly within the jurisdiction of the courts, not of arbitrators;[1] and, in the present context, are properly within the jurisdiction of this Board.[2]

We have found that there was an agreement between the parties for the period October 1, 1968 to December 31, 1970. There is a dispute, however, as to whether that agreement included the provisions, having application to a period subsequent to December 31, 1970, and allegedly intended for inclusion in the next contract, which the Association seeks to have interpreted by an arbitrator. The issue which must be resolved by a hearing is whether

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[1] Local 998, UAW v. B&T Metals Co., 315 F 2nd 432, 436; 52 LRRM 2787, 2790.

[2] NYCCBL, Section 1173-5.0a(2); Matter of City of New York v. DC 372 AFSCME, APL-CIO, Decision No. B-8-69.

the specific items, 3,4,5 and 6 of "Point 1.B." were included by the parties in their "basic agreement".

0 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 motion of the Captains Endowment Association for reconsideration of a portion of Decision No. B-17-72 be, and the same hereby is, denied; and it is further

ORDERED, that the hearing to be held herein will be held at the Board's hearing room on the 17th floor at 250 Broadway, on October 31, 1972 at 2:30 P.M. and on November 3, 1972 at 2:00 P.M.

DATED: New York, N.Y.
October 24, 1972

Arvid Anderson
CHAIRMAN

Walter L. Eisenberg
MEMBER

Eric J. Schmertz
MEMBER

William Michelson
MEMBER

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Alternate MEMBER

Edward Silver
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