

Queensborough Public Library v. Dc 37 & L. 1321, 15 OCB 26 (BCB 1975) [Decision No. B-26-75 (Scope)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

QUEENS BOROUGH PUBLIC LIBRARY,

DECISION NO. B-26-75

Petitioner

-and

DOCKET NO. BCB-208-74

DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO

-and

LOCAL 1321, AFSCME, AFL-CIO,

Respondents.

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**DECISION AND ORDER**

On May 22, 1975, D.C. 37 and Local 1321 moved for reconsideration of Decision No. B-12-75 in which the Board, upon the petition of the Library, had determined that supper allowance benefits are a mandatory subject of bargaining at the City-wide level rather than the title unit level. The Board made this determination over the protest of the Unions who urged that it take no action during the pendency before PERB of an improper practice proceeding filed by Local 1321 on December 12, 1974, some five months before the Library initiated its case before the Board of Collective Bargaining. In its case before PERB Local 1321 charged that the Library had unilaterally rescinded the supper allowance benefits on April 22, 1974 during the negotiations for a successor contract to the agreement which expired August 31, 1973.

In Decision B-12-75 the Board of Collective Bargaining noted that although it no longer had authority to determine improper practices, it retained authority to determine scope of bargaining issues. Since the Library had requested submission to arbitration of the issue of alleged contract violation resulting from the Library's unilateral rescission of the supper allowance benefits, the Board in its decision ordered arbitration of "the rights and duties of the parties, if any, under the Library contract and the current City-wide contract, as well as any conflict which may exist with regard to any such several rights and duties." The Board also ordered that "any issue as to the alleged violation of the status quo under the Taylor Act or under Section 1173-7.0d of the NYCCBL, shall not be submitted to, considered by, or disposed of by the arbitrator." At the time of the decision the parties had not advised the Board that only the union could request arbitration under the terms of the last contract.

The Board issued Decision B-12-75 on May 7, 1975. On May 22nd the Unions moved for reconsideration, contending that the Board had erroneously assumed that the grievance called for "harmonizing the provisions of the City-wide contract between the City and D.C. 37 with those of the contract between the Library and Local 1321 and D.C. 37," and therefore had improperly made "the City" a party to the proceeding. The Unions further maintained that the Board had erred in going ahead with the case and ordering arbitration during

the pendency of the PERB improper practice proceeding, that this acceded to the City's "forum shopping", and that the Board's arbitration order was in violation of the contract which declares that the employer shall not have the right to initiate a grievance or arbitration.

On May 27, 1975 the PERB Hearing Officer dismissed the Union's improper practice charge. Two days later the City filed an answer to the Union motion for reconsideration and modification of Decision B-12-75. Then, on June 2, 1975, the Library withdrew its request for arbitration without prejudice to renewing its claim, citing the PERB Hearing Officer's dismissal of the Union's charge that the Library had unilaterally withdrawn the supper time allowance in violation of the statutory obligation to negotiate in good faith.

The Union filed exceptions to the PERB Hearing Officer's decision. on September 26, 1975 PERB issued its decision upholding the Hearing Officer in all regards. In effect, PERB arrived at the same scope of bargaining conclusion as had the Board of Collective Bargaining in Decision B-12-75. Rejecting the Union's argument that the Library had an unlimited statutory duty to bargain with the certified title Union, Local 1321, on all matters, PERB declared:

"Although we have exclusive jurisdiction over this charge (CSL Sec. 205.5 (d)), the applicable substantive provisions regarding the level

at which a mandatory subject of negotiations must be negotiated are those of the New York City Law so long as they are substantially equivalent to the Taylor Law (CSL Sec. 212)."

PERB's decision points out that an employer's unilateral action on a non-mandatory subject, although it may involve a possible breach of contract, raises no Taylor Law question of refusal to bargain. The charging party is thus left to its remedies for breach of the collective bargaining agreement. Referring to Decision B-12-75 of the Board of Collective Bargaining, PERB said:

"The above-cited decision of New York City's Board of Collective Bargaining directed the parties to arbitration. We assume the parties will comply with the direction of the Board of Collective Bargaining...."

#### **ANALYSIS**

There is no inherent procedural or substantive inconsistency between PERB's dismissal of the improper practice charge and BCB's scope of bargaining finding in its order to arbitrate. Indeed, the two decisions are concordant. Both agencies have determined that the subject of supper-time allowances is one for bargaining by the City-wide representative, not the certified title union. PERB's decision finds that the unilateral termination of such benefits after the last Library contract expired, but during the term of the current City-wide contract, was not a refusal

to bargain with Local 1321. But that decision does not dispose of the question whether the termination of the benefits was a violation of the terms of the Library contract which continue in full force and effect during the status quo period between the expiration of the old Library contract and the signing of a successor one. The issues ordered by BCB to be submitted to arbitration relate not to the bargainability of the supper-time allowance benefits by the title unit representative, Local 1321, but to the extent to which the terms of both the Library contract and the City-wide contracts obligate the Library to provide such benefits, and how, if at all, those terms may have been violated by the Library.

We shall therefore deny the Union's request for reconsideration of Decision B-12-75.

The Unions call upon the Board of Collective Bargaining not to approve the Library's withdrawal of its request for arbitration, although they also contend that the Library has no authority under the Library contract to initiate a grievance or arbitration.

We cannot, however, decline to approve a withdrawal of a request for arbitration which had no contractual basis in the first place. Accordingly, we shall approve the Library's withdrawal of its request for arbitration, with leave, however, to Local 1321 (under the Library contract) and D.C. 37 and the City (under the City-wide contract)

to request arbitration of the issue of supper allowance benefits. We do this because the parties, in the lengthy concurrent proceedings before both PERB and this Board, failed to indicate that only the Union could initiate arbitration under the Library contract. Consequently, we ordered arbitration of the issue of possible contract violation arising from the Library's unilateral rescission of supper allowance benefits, and PERB, in its decision, cited with approval the Board's direction of arbitration and expressly stated its expectation that the matter would be submitted to arbitral resolution. Under the circumstances, and in the light of the concordant decisions of the two agencies that the issue is properly submissible to arbitration, we desire to preserve the arbitration forum as a means of resolving the issue, and to preserve the right of all the parties to seek such arbitration if they desire it. Therefore, the time to request such arbitration under the appropriate contract shall begin to run from the date of service of this decision.<sup>1</sup>

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<sup>1</sup> In order that the City, the Library, and the\*employee representatives under both the City-wide and the Library contracts shall not be deprived of such right to proceed to arbitration on the issue of supper allowance benefits, if they desire to, we explicitly rule out the availability of the defense of laches to any party if a request for arbitration is timely made after service of this decision. If both the City and the unions request arbitration under the appropriate contracts, we shall consolidate the requested arbitrations for the purpose of hearing in view of the possible overlap or duplication of supper allowance benefits in the City-wide and Library contracts.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Bargaining Law, it is hereby

ORDERED, that the motion for reconsideration of Decision B-12-75 made by D.C. 37, AFSCME, AFL-CIO, and Local 1321, AFSCME, AFL-CIO, be, and the same hereby is, denied; and it is further;

ORDERED, that the request of the Queens Borough Public Library to withdraw its request for arbitration under the Library contract, be, and the same hereby is, approved; and it is further

PROVIDED, however, that the City, the Library and the employee organizations which are party to the City-wide and Library contracts, shall be permitted to file requests for arbitration of the respective rights and duties of the parties, if any, under the contracts in regard to supper allowance benefits.

DATED: NEW YORK, NEW YORK  
November 5, 1975

ARVID ANDERSON  
C h a i r m a n

WALTER L. EISENBERG  
M e m b e r

ERIC J. SCHMERTZ  
M e m b e r

EDWARD F. GRAY  
M e m b e r

THOMAS J. HERLIHY  
M e m b e r

N.B. Member Edward Silver did not participate.