SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I
-- X

In the Matter of the Application of

THE CITY OF NEW YORK; ANTHONY C. RUSSO, Director of the Office of Municipal Labor Relations of the City of New York; THE OFFICE OF MUNICIPAL LABOR RELATIONS OF THE CITY OF NEW YORK,

Petitioners,

-against-

Index No. 40532/78

ARVID ANDERSON, as Chairman and impartial Member of the Board of Collective Bargaining, THE BOARD OF COLLECTIVE BARGAINING; THE OFFICE OF COLLECTIVE BARGAINING: LOCAL UNION NO. 3, I.B.E.W. AFL-CIO,

Respondents,

For an order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules.
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KASSAL, J.:

The sole question-to be determined in this Article 78 proceeding is whether respondents committed an error of law in determining that the underlying grievance was arbitrable. A civil servant, supported by his bargaining agent, initiated the grievance procedure alleging that he had been passed over for an appointment to the position of Foreman of Mechanics in

violation of the Mayor Is Executive Order No. 4. The Executive Order provides that, in all city agencies, promotions shall be made in the order in which the names appear on the promotions Just unless the Mayor has approved an exception. Petitioners objected to respondent Board taking jurisdiction of the grievance on the ground that it was- not an arbitrable dispute under the Mayor's Executive Order 83, section 5 (b)(B). That section defines a grievance as a "claimed violation, misinterpretation or misapplication of the written rules or regulations of the mayoral agency by whom the grievant is employed affecting the terms and conditions of his or her employment". Petitioners contend that an Executive Order, which applies across-the-board to all mayoral agencies, is not a written rule or regulation of the employing agency.

Respondent Board determined that Executive Order No. 4 could be construed as a rule or regulation of the employing agency and, after a reconsideration requested by petitioners, adhered to its original decision. The primary bases for the Board's decision were, first, that the New York City Collective Bargaining Law (Chapter 54 of the Administrative Code), section 117308.0(f) declares that the public policy of the City is to encourage the resolution of grievances by binding arbitration, and, second, that Executive order No. 4 can reasonably be construed as a rule or regulation of an employing agency affecting the terms and conditions of an employee's employment.

Petitioners, on the other hand, contend that under the rule most recently set -forth in Liverpool Central School District v. United Liverpool Faculty Association, 42 N Y 2d 509, the intention to arbitrate must be strictly construed and, where the grievance falls into two areas, one of which is arbitrable and the other not arbitrable, arbitration must be denied.

The Court finds that petitioners' argument is strained when applied to the facts in the instant matter. In Liverpool, there was no statement of the public policy of the municipality, as there is in the instant case, that arbitration of disputes is to be favored and encouraged. Perhaps more important, there was in that case a meaningful and express distinction between areas which were arbitrable.(health and safety) and areas which were not (disciplinary matters). Here, the Court finds no such meaningful or express distinction. No reasonable purpose can be observed in distinguishing between a rule or regulation promulgated by an individual city agency and an executive order of the Mayor directing all mayoral agencies to follow a specific policy. Regardless of the source of the directive, it affects both the employee and the employing agency in exactly the same manner. From another point of view, Executive Order No. 4, applicable by its express terms to all city agencies, may be considered as becoming a part of

the rules and regulations of each such agency, just as if it were a rule of regulation promulgated by the individual agency.

The opinion of respondent Board well and cogently covers the various arguments presented and does, in the judgment of the Court, properly resolve the issue, at the same time, highlighting the counter-arguments:

> "Firstly, to say that an alleged violation of an internal rule of an agency is arbitrable, but that an alleged violation of ap Executive of the Mayor <u>applicable to all city agencies</u> is not, could have compromising results. *** Thus, an agency could refuse to implement a policy as dictated by the Mayor, and a grievant should be denied the forum of arbitration to have the dispute settled *** if the Mayor issues a rule in the form of an Executive Order applicable to all mayoral agencies, such rule becomes a rule of each mayoral agency unless a different effect is specifically prescribed***". (Emphasis supplied)

Accordingly, the petition is dismissed.

Settle judgment.

Dated: July 17, 1978.