SUPREME COURT : NEW YORK COUNTY
IAS PART 31
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THE NEW YORK CITY DEPARTMENT OF PROBATION
and the CITY OF NEW YORK,

INDEX NO.
Petitioners, 42861/92

for an Order Pursuant to Articles 75 and
78 of the Civil Practice Law and Rules,

- against -

MALCOLM D. MacDONALD, as Chairman of
the New York City Board of Collective
Bargaining, the NEW YORK CITY BOARD
OF COLLECTIVE BARGAINING, and the
UNITED PROBATION OFFICERS ASSOCIATION,

Respondents.
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JUSTICE BEVERLY S. COHEN:

This is a special proceeding pursuant to Articles 75 and 78 of the CPLR for an order annulling respondent Board of Collective Bargaining's (the "Board") determinations of May 29, 1991, that a dispute pertaining to the City's non-resident tax law is a proper subject for arbitration and enjoining respondents from proceeding with arbitration.

In February 1991, the City's Department of Probation (the "Department") imposed a requirement that members of the United Probation Officers Association ("Union") who were not residents of New York City would have to pay New York City resident income taxes pursuant to Section 1127 of the New York City Charter as a condition of employment. The requirement also encompassed members hired prior to the enactment of Section 1127 (and its

predecessor) and members hired by the State. The Union filed two grievances alleging that the Department's unilateral action violated the parties' collective bargaining agreement (the "Agreement"). The grievances were denied. Thereafter, the Union filed a request with the Board that the parties' dispute be submitted to arbitration. The City filed a petition challenging arbitrability on the ground that the interpretation of Section 1127 involved a legal question which was beyond the scope of the arbitration provision in the parties' Agreement. By decision dated May 29, 1991, the Board dismissed the City's petition while stating that "there is at least an arguable relationship between the subject matter of the grievance and the salary provision (Article III) of the (Agreement)" and determining that the Union's grievance constituted a wage dispute which was arbitrable.

Petitioners brought this proceeding to annul the Board's May 25 determination, arguing that the issue of the applicability of Section 1127 does not involve the interpretation of any term of the Agreement or any rule or regulation of the Department, but involves, rather, a question of statutory interpretation which is for the courts, not an arbitrator, to determine. Petitioners contend that the salary provision in the Agreement (Article III) pertains to gross wages only, and point out that, under the Board's decision, any matter affecting an employee's net wages, such as a garnishment or increase in Federal withholding rates, would be subject to arbitration.

The court finds petitioners' arguments to be unpersuasive.

The Agreement covers "all salary provisions," including "adjustments" (see, Agreement, Article III, Section bl, Exhibit 3 to the Board's answer).

Section 1127 provides as follows:

> "§1127 Condition precedent to employment. a. Notwithstanding the provision of any local law, rule or regulation to the contrary, every person seeking employment with the city of New York or any of its agencies regardless of civil service classification or status shall sign an agreement as a condition precedent to such employment to the effect that if such person is or becomes a nonresident individual as that term is defined in section 11-1706 of the administrative code of the city of New York or any similar provision of such code, during employment by the city, such person will pay to the city an amount by which a city personal income tax on residents computed and determined as if such person were a resident individual, as defined in such section, during such employment, exceeds the amount of any city earnings tax and city personal income tax imposed on such person for the same taxable period."

Although originally enacted in 1974, it was only implemented by petitioner in 1991. The union members grieving the implementation of this section were not required to sign an agreement, but nonetheless, the appropriate amounts are being withheld from their paychecks.

The public policy of this State favors arbitration of disputes which arise under collective bargaining agreements (see, New York Civil Service Law §200; Board of Education of Union Free School District No. 3 of the Town of Huntington v Associated Teachers of Huntington, 30 NY2d 122 [1972]; Board of Education, Yonkers City School District v Cassidy, 59 AD2d 180). Section

12-309(a)(3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) vests the Board with the power and duty "to make a final determination as to whether a dispute is a proper subject for arbitration procedures . . ." The union is not challenging the legality of §1127, but the manner in which it is applied to union members. Petitioners' unilateral action had a direct impact on the grievants' take-home pay. The Board's determination herein, that the Union's grievance constituted a wage dispute under the Agreement and was therefore subject to arbitration, was perfectly rational (cf. Nationwide General Insurance Co. v Investor's Insurance Co. of America, 37 NY2d 91 [1975]).

Petitioners' argument that arbitration of the instant dispute could set a precedent for arbitrating salary garnishments and increases in Federal withholding taxes is, at best, disingenuous. Such actions by third parties have nothing to do with the Agreement.

Accordingly, petitioners' application is denied and the petition is dismissed.

This constitutes the judgment of the court.

DATED March 31, 1993

J. S. C.

**BEVERLY S. COHEN**