SUPREME COURT : NEW YORK COUNTY MM
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In the Matter of the Application of
CITY OF NEW YORK,

Petitioner, Index No.

For a Judgment Pursuant to Articles 75 and 78 of the Civil Practice Law and Rules, 405350/93

- against-

MALCOLM D. MacDONALD, as Chairman of the New York City Board of Collective Bargaining, and ARTHUR CHELIOTES, as President of Local 1180, Communication Workers of America,

Respondents.
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FERN FISHER-BRANDVEEN, J.:

The petitioner City of New York moves-for an order, pursuant to Civil Practice Law and Rules §§6301, 7502, 7503 and 7803, annulling, in part, New York City Board of Collective Bargaining Decision No. B-27-93, staying arbitration of the grievance which is the subject of Decision No. B-27-93 pending the outcome of this proceeding, and permanently enjoining respondents herein from proceeding with arbitration, or otherwise enforcing Decision No. B-27-93.

In this Article 78 proceeding the City of New York seeks to overturn a determination of the NYC Board of Collective Bargaining dated July 29,, 1993, which granted certain requests of the Communications Workers of America, Local 1180 ("the union”) for arbitration of a dispute between certain employees employed by the

Human Resources Administration in the Civil Service title of Principal Administrative Assistant ("PAA") also known as Assistant Office Managers (AOM) and the City. The dispute arose when the PAAs/Assistant Office Managers were instructed to do maxi audits, not performed by PAAs/Assistant-Office Managers previously, which traditionally had been performed by Office Managers.

The Principal Administrative Assistants (thru the union) claimed that such work was out of title work and violated Article VI section 1 (A) (B) and (C) of the collective bargaining agreement, and was an arbitrable dispute.

The respondent Board of Collective Bargaining sustained the City's contention as to VI(A) and sustained the(union)grievants' contention as to VI (B) and VI (C) , i.e. that the fact that the written job specifications in the manual for Principal Administrative Assistant (Assistant Office Manager) did not specify maxi audits made the issue one for arbitration.

Article VI, Section 1 of the agreement, in relevant part, defines a grievance as follows:

"(A) A dispute concerning the application or interpretation of the terms of this Agreement;

(B) A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and conditions of employment; provided, disputes involving the Rules and Regulations of the New York City Personnel Director or the Rules and Regulations of the Health and Hospitals

Corporation with respect to those matters set forth in the first paragraph of Section 7390.1 of the Unconsolidated Laws shall not be subject to the grievance procedure or arbitration.

(C) A claimed assignment of employees to duties substantially different from those stated in their job specifications."

The City contends that it had not been informed of this claim in Step I and step 2 of the grievance procedure. Nevertheless the Board of Collective Bargaining determined that the claim was broad enough to put the City on notice.

The Board took the position that once an employer unilaterally adopts a written policy concerning a managerial prerogative, non-compliance with such written policy constitutes a ground for a grievance and is arbitrable.

Applying this principle to the present case, the Board held that once HRA created the position of Assistant Office Manager and promulgated a job description for that position, as set forth in its Manual, the subject of whether duties beyond the scope of that job description could be assigned to employees designated as Assistant Office Manager became arbitrable under Article VI, Section 1(B) of the parties' agreement. It is clear that such a job description, so long as it remains in effect, constitutes a part of the affected employees' terms and conditions of employment. That the employer can unilaterally amend or even rescind the job description does not altar the fact that it is a term or condition of employment until it is changed.

The words of Justice Kassal (Sup N.Y. SpI) in City of N.Y. v

Anderson Index #40532/78 apply as wall to the present proceeding: "The opinion of respondent Board well and cogently covers the various arguments presented and does, in the judgment of the court, properly resolve the issues, at the same time, highlighting the counter arguments."

This court will not substitute its judgment for the Board which has the expertise in New York City's Collective Bargaining Law.

The petitioner fails to show that the Board's determination was affected by an error of law, was arbitrary or capricious or an abuse of discretion matter of West Irondequoit Teachers v Belsby 35 NY2d 46.

The merits of the dispute are for the arbitrator. The intent of this decision is to confirm the NYCBCB's determination that a bona fide dispute exists, and that it is arbitrable by the terms of the collective bargaining agreement.

Accordingly the motion by the petitioner City of New York is denied and its petition to annul the Office of Collective Bargaining determination is dismissed. The petitioner's application for a stay of arbitration is also denied.

This constitutes the judgment of the court.

Dated: 9/29/94 J.S.C.