SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of
CITY OF NEW YORK, the OFFICE OF
LABOR RELATIONS of the CITY OF
NEW YORK, and the POLICE
DEPARTMENT of the CITY OF NEW YORK,

Petitioners,

Decision and Order
Ind. No. 401424/00

For a Judgment under Article 78 of the
Civil Practice Law and Rules

-against-

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 237, CAROL HAYNES,
as President of International Brotherhood of
Teamsters, Local 237, the BOARD OF
COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK, and
STEVEN C. DECOSTA, as Chair of the
Board of Collective Bargaining
of the City of New York,

Respondents.

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Hon. James A. Yates, J.S.C.

Petitioners, the City of New York ("City"), the 0ffice of Labor Relations of the City of New York ("OLR"), and the Police Department of the City of New York ("NYPD"), bring this Article 78 and 75 proceeding seeking to annul Decision No. B-2-2000 of the Board of Collective Bargaining ("BCB") and to enjoin arbitration of the dispute. BCB rejected an application by OLR and the NYPD to dismiss a request by the International Brotherhood of Teamsters, Local 371 (“Local 371") for arbitration of a grievance concerning holidays and uniform allowances against OLR and the NYPD. In its grievance, the Teamsters claim that the NYPD violated a Citywide Agreement between

the City and District Council 37 and the collective bargaining agreement between the New York City Board of Education and the Teamsters.

The City asserts that Local 237 has no authority to seek arbitration under the Citywide Agreement since it was not a signatory to the contract. Similarly, the Board of Education, is not a signatory to the collective bargaining agreement between the City and the Teamsters. Accordingly, Petitioners assert that BCB exceeded its authority by creating a right to arbitrate and acted arbitrarily and capriciously.

Respondents argue that the parties explicitly agreed to arbitrate. Furthermore, Respondent Local 237 argues that it has secured a waiver from DC 37 which authorizes it to proceed in its place with regard to the Citywide Agreement.

The relevant facts are as follows: Local 237 is a public sector labor union which represents approximately 20,000 individuals employed in municipal agencies throughout New York City. BCB is one of two adjudicative boards under the Office of Collective Bargaining ("OCB"). The OCB is an administrative agency charged with implementing and enforcing the provisions of the New York City Collective Bargaining Law.

Prior to December 20, 1998, Local 237 represented approximately 3,300 employees in the title of "School Safety Officer". These employees worked in schools under the jurisdiction of the New York City Board of Education. The terms and conditions of their employment were governed by a collective bargaining agreement between the Board of Education and Local 237. This agreement covered the period from October 1, 1991 to December 31, 1994. On or about December 20, 1998, almost all of the School Safety Officers represented by Local 237 were transferred from the jurisdiction of the Board of Education to the NYPD. As a result of the functional transfer that took

place on December 20th, the affected employees' civil service titles was changed to that of "School Safety Agents."

In response to the transfer, Local 237, the City of New York and the Board of Education met to negotiate an agreement related to the terms and conditions of employment. Local 237 alleges that during these negotiations the City of New York took the position that the transferred employees would be included in the special Officers' collective bargaining agreement which covers the period from January 1, 1995 to December 31, 1999. This contract was entered into between the City and Local 237. In addition, the transferred employees would be covered by all applicable provisions of the 1990-1992 collective bargaining agreement which is referred to as the "Citywide Agreement."

The Citywide Agreement was entered into between the City of New York and District Council 37 ("DC37"), AFSCME, AFL-CIO. District Council 37 represents thousands of union members employed by the City of New York. The effective period for the Citywide Agreement was from July 1, 1990 to June 30, 1992. The Citywide Agreement defines the general terms and conditions of employment for City employees who are members of unions. It contains provisions related to hours of employment, holidays, overtime, vacations, health insurance benefits, allowances, evaluations, welfare funds, and disciplinary procedures.

On January 29, 1999, a Memorandum of Understanding ("MOU") regarding the transfer of employees and the change of employer was signed by the President of Local 237 and by the Commissioner of the Office of Labor Relations of the City of New York ("OLR"). The MOU provides for the transfer of School Safety Officers to the NYPD from the Board of Education. In this agreement, both parties agreed that the affected employees would no longer be governed by the Board of Education agreement. Nonetheless, the parties agreed that the transferred employees would

be covered by all applicable provisions of the 1990-1992 Citywide Agreement with the exception of the annual leave provisions. As well, the transferred employees would be included in the Special Officers' collective bargaining agreement. Local 237 was recognized as the bargaining agent for the School Safety Officers. On that same day, the parties agreed to include a "side letter" with the MOU. This side letter acknowledges that an outstanding disagreement remained between the parties about the number of holidays and the payment of a uniform allowance. This side letter states that the "union" [Local 237] may seek to resolve these issues through the grievance arbitration procedure contained in the collective bargaining agreement. The letter also states that neither side waives any right it may have regarding the issues. The letter was signed by representatives of both parties, OLR and the Union.

Thereafter, on March 2, 1999, Local 237 filed a Request for Arbitration seeking to resolve the bargaining impasse related to the number of holidays and the payment of a uniform allowance. The arbitration request makes reference to the Citywide Agreement and Board of Education Agreement. Approximately two weeks later, on March 19, 1999, OLR and the NYPD filed a petition with BCB challenging the arbitrability of the grievance filed by the union. OLR and the NYPD asserted that the grievance should be dismissed because the Teamsters had failed to establish a relationship between the subject matter of the grievance and the source of the right being invoked by the Teamsters. They argued that the NYPD could not be held to arbitrate a contractual matter to which it was not a party, namely the contract between the Teamsters and the Board of Education. Petitioners also argued that the Teamsters were not a party to the Citywide Agreement between the City and District Council 37 and cannot be allowed to arbitrate provisions of that agreement. As well, they argued that reliance on the arbitration clause of the Citywide Agreement was improper

because it failed to allege a violation of a provision which created a substantive right.

On April 12, 1999, Local 237 filed an answer to the petition. On April 26, 1999, the City filed its reply. In Decision No. B-2-2000, dated October 26, 1999, the BCB dismissed the City's petition and granted Local 237's request for arbitration. The BCB stated " [w] hen the arbitrability of a grievance is challenged, this Board must first determine whether the parties have obligated themselves to arbitrate their disputes and, if they have, whether that obligation encompasses the act complained of by the Union [Local 237]." The BCB found, "[h] ere, we find that the parties have obligated themselves to arbitrate the precise issues raised by the Union [Local 237]: the issues of holidays and uniform allowance." The BCB based this finding on the language of the MOU and the side letter. As well, BCB held that the issue of whether either of the two agreements, the Citywide Agreement or the collective bargaining agreement between the union and the Board of Education, could serve as a basis for the union's claim was one for the arbitrator. The Board did not hold that the arbitrator would be bound to rely on either agreement. See BCB Letter to Justice Yates, dated January 11, 2001.

On April 6, 2000, Petitioners filed this Article 78 proceeding.

The Public Empolyees' Fair Employment Act, N.Y. Civ. Serv. Law art. 14 (the "Taylor Act", L. 1967, c. 392)) governs labor relations in the public sector. The Taylor Act provides for compulsory arbitration of employment disputes related to working conditions and terms not previously agreed upon. N.Y. Civ. Ser. Law § 209. If an impasse occurs in collective negotiations involving public employees, the compulsory arbitration provisions of section 209 come into effect. The Act also permits public sector parties to submit grievances to arbitrations in certain instances. N.Y. Civ. Serv. Law § 204. Consistent with the Taylor Act, the New York City Collective

Bargaining Law (Administrative Code of the City of New York section 12-301 et. seq.) imposes a duty on public employers to bargain in good faith on wages, hours and working conditions. See Administrative Code § 12-307(a).

In Acting Supt. of Schools of Liverpool Cent. School Dist. v. United Liverpool Faculty Ass'n., 42 N.Y.2d 509, 369 N. E. 2d 746, 399 N.Y.S.2d 189 (1977), the Court of Appeals established a two-step inquiry for determining the arbitrability of a public sector grievance. Initially, the court must determine whether the arbitration claim with respect to the particular subject matter of the grievance at issue is authorized by the terms of the Taylor Act. If the reference to arbitration is authorized, the court must ascertain whether the authority to arbitrate was in fact exercised and the parties consented by the terms of their particular arbitration clause to refer their differences to arbitration. Subsequently, in Board of Education of Watertown City School District v. Watertown Education Association, 93 N.Y.2d 132, 688 N.Y. .2d 463, 710 N.E.2d 1064 (1999), this standard was refitted. Judge Rosenblatt wrote:

> In Liverpool the Court emphasized that arbitration did not yet carry the same historical or general appearance or demonstration of efficacy' in the public sector as it did in the private sector (Liverpool, 42 N.Y.2d at 513). In the absence of unequivocal agreement to the contrary, it was to be taken that a public employer ... did not intend to arbitrate grievances (Liverpool, at 513-514).
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> That was in 1977, and it epitomized an wait-and-see attitude. We have waited, and we have seen. Arbitration in the public arena is no longer unfamiliar or unaccepted. It is a reality, and it is widespread.
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> In re Bd. of Education of Watertown City School District v. Watertown Education Association, 93 N.Y.2d 132, 141, 688 N.Y.S.2d 463,470, 710 N.E.2d 1064,1070 (1999).

The Watertown Court also noted that in the twenty-two years following Liverpool it had been increasingly difficult for a party to contend that a particular issue falls outside the scope of arbitration. A petition to stay arbitration is an *extreme* remedy that will be granted where there is no possibility that the arbitrator could fashion any relief consistent with public policy. See In re Comm. of Interns & Residents [Dinkins], 86 N.Y.2d 478, 634 N.Y.S.2d 32, 657 N.E.2d 1315 (1995).

In this case, the City's position conflicts with the public policy favoring arbitration as a means of resolving labor contract disputes. The parties had reached an impasse with respect to the number of holidays and payment of a uniform allowance in the course of negotiating the transfer of the School Safety Agents. Therefore, compulsory arbitration is required.

In addition, as stated in Watertown, when confronted with a dispute about whether a particular grievance is outside a collective bargaining agreement, a court "should merely determine whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the [collective bargaining agreement]." In re Board of Educ. of Watertown City School Dist. [Watertown Educ. Ass' n.], *supra,* at 143, 688 N.Y.S.2d 463, 710 N.E.2d 1064). If none exists, the issue is not arbitrable as a matter of law. Id. From this Court's perspective, a reasonable relationship exists between the subject matter of the instant dispute and the general subject matter of the collective bargaining agreement. Nevertheless, a review of the record reveals that the parties did unequivocally agree to arbitrate the specific issue before this Court.

Finally, the determination of the BCB is entitled to substantive deference. Petitioners have failed to show that the determination made by the BCB was arbitrary, capricious or legally impermissible. Based on the precise scope of the parties' agreements and the combined legal and public policy considerations favoring arbitration, there was clearly a rational basis for BCB's conclusions.

Accordingly, this Court concurs with the BCB's determination and the parties are ordered to arbitration.

Order signed this 28th day of March, 2001.