

Justice Pecora

MATTER OF CITY OF NEW YORK (The Board of Collective Bargaining and District Council 37, AFSCME, AFL-CIO)-The petitioner, City of New York and respondent union, District Council 37, AFSCME, AFL-CIO, are parties to a collective bargaining agreement. The agreement contains a grievance and arbitration procedure.

On September 17, 1980, respondent union filed a request for arbitration of a grievance concerning a decision of the New York My Department of Transportation (DOT) to transfer an employee from one work location to another. Thereafter, and on November 5, 1980, petitioner City filed a petition with respondent Board of Collective Bargaining (Board) challenging the arbitrability of the dispute.

The transfer involved a district foreman (grievant) employed by DOT for a period of 21 years. For the last seven years, grievant was employed at the Sunrise Highway yard. In January, 1980, following an investigation, nine employees supervised by grievant were served with written charges of misconduct, and all nine were subsequently found guilty of the charges. DOT decided to transfer grievant to another location, despite the fact that grievant had been commended for his performance as a supervisor. The grievant was never served with charges of misconduct or incompetence nor were any disciplinary penalties imposed upon him.

Respondent union, in requesting arbitration, alleges that the transfer of grievant constituted a wrongful disciplinary action within the meaning of Title VI, Section 1(e) of the collective bargaining agreement.

Respondent Board, without ruling on the merits of the dispute, has determined that the dispute was arbitrable even though no formal written charges had ever been brought against the grievant.

The managerial powers of the City and the heads of City departments are set forth in the New York, City Charter and Administrative Code. Section 1173-4.3(b) gives the City the absolute right to assign its employees to different locations within a job title. Section 1103 of the New York City Charter vests the head of each City agency with the power to assign employees to their duties. The combined effect of these two statutes gives each department head unfettered discretion to deploy personnel to assign employees to various tasks, and to

manage the internal affairs of the department. DOT accordingly has authority to assign grievant to any in-title duty.

Article (VI91) (c) of the contract between the petitioner and the union states that a party may arbitrate disputes in which

". . . a claimed wrongful disciplinary action taken against a permanent employee covered by Section 75 of the Civil Service Law . . . upon whom the agency head has served written charges of incompetency or misconduct while the employee is serving in the employee's title or which affects the employee's permanent status".

The language of the contract is clear. Grievance procedures do not take effect until written charges have been served.

New York Civil Service Law section 75(1) provides as follows:

"A (permanent employee) . . . shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section".

The Civil Service Law and the contract dictate exactly when disciplinary charges must be served. Respondent Board's decision is tenable only if it can be shown that the action taken by petitioner in transferring the grievant constituted a disciplinary penalty under the law and that charges should have been served.

None of the enumerated disciplinary penalties specified under Civil Service Law section 75(3) were sought to be imposed on grievant. Petitioner did not impose a fine. Grievant was not demoted in grade or title. Grievant was not dismissed. Grievant was simply transferred from one work location to another which this Court finds to be an exercise of petitioner's managerial powers.

Accordingly, this Court finds that the Board abused its discretion on when it granted grievant the right to proceed to arbitration when no such right existed under either the statute or the contract.

Motion is granted in all respects.

Settle judgment.