

LEEBA, 18 OCB2d 7 (BCB 2025)

(Arb.) (Docket No. BCB-4566-24) (A-16064-24)

Summary of Decision: The City challenged the arbitrability of a grievance alleging that the Department of Sanitation violated the Citywide Agreement by unilaterally reducing the base salaries of certain employees and recouping an alleged overpayment. The City argued that the Union failed to establish the requisite nexus between the subject of the grievance and the Citywide Agreement. The Board found that the Union had not obtained authorization to seek arbitration under the Citywide Agreement from the Citywide representative and thus lacked standing to proceed with its claim. Accordingly, the Board found the issue could not proceed to arbitration. ***(Official decision follows.)***

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of the Arbitration

-between-

**THE CITY OF NEW YORK and
THE NEW YORK CITY DEPARTMENT OF SANITATION,**

Petitioners,

-and-

**LAW ENFORCEMENT EMPLOYEES
BENEVOLENT ASSOCIATION,**

Respondent.

DECISION AND ORDER

On June 17, 2024, the City of New York (“City”) and the Department of Sanitation (“DSNY”) filed a petition challenging the arbitrability of a grievance brought by the Law Enforcement Employees Benevolent Association (“LEEBA” or “Union”). The Union’s request for arbitration alleges that DSNY violated Article IX, § 8 of the Citywide Agreement. The City argues that the Union has failed to establish the requisite nexus between the subject of the grievance and the Citywide Agreement. The Board found that the Union had not obtained

authorization to seek arbitration under the Citywide Agreement from the Citywide representative and thus lacked standing to proceed with its claim. Accordingly, the Board found the issue could not proceed to arbitration.

BACKGROUND

The Union is the certified bargaining representative for Associate Sanitation Enforcement Agents (“ASEAs”) and Sanitation Enforcement Agents employed by DSNY. In addition to the Citywide Agreement, ASEAs are covered by the Traffic Enforcement Agent *et. al.* Agreement (“Agreement”).¹ Article XV, § 2 of the Citywide Agreement authorizes the Citywide representative or its designee to appeal grievances to arbitration.

On March 1, 2024, the City notified the Union that it had incorrectly applied salary increases outlined in an impasse award to a subset of eight ASEAs by giving them the maximum salary rate, resulting in an alleged overpayment. The City issued the allegedly incorrect payments on February 16, 2024. Prior to the issuance of the affected employees’ next paycheck, the City adjusted their salaries to what it alleged was the correct rate. The City maintained that a recoupment was needed to recover the overpayment included in the February 16, 2024 paychecks.

The Union grieved the matter, and on May 20, 2024, it filed a request for arbitration describing the nature of the grievance as “Violation of Citywide Agreement, Article IX, Section 8, Page 33 among others.” (Pet., Ex. 1) Article IX, § 8 of the Citywide Agreement addresses recoupment. § 8(a) reads as follows:

In the event of an overpayment to an employee which is agreed by both parties to be erroneous, the employer shall not make wage deductions for recoupment purposes in amounts greater than . . . 25% if the employee’s gross pay is \$32,500 or more. In the event the employee disputes the alleged erroneous overpayment, the

¹ The Agreement was not cited in the request for arbitration.

employee or the union . . . may appeal to the Office of Labor Relations (“OLR”) . . . and no deduction for recoupment shall be made until OLR renders a decision, which decision shall be final. Nothing contained above shall preclude the parties or affected individuals from exercising any rights they may have under law.

Pursuant to NYCCBL § 12-312(g)(1), only District Council 37, AFL-CIO, AFSCME (“DC 37”), as the Citywide representative, or its designee, may arbitrate violations of the Citywide Agreement. The Union did not include with its request for arbitration evidence that it had obtained permission from DC 37 to proceed to arbitration on the alleged violation of the Citywide Agreement. Subsequent to the filing of the petition challenging arbitrability, the Office of Collective Bargaining (“OCB”) contacted the Union regarding the missing statutorily required authorization from DC 37 to grieve a provision of the Citywide Agreement. To date, the Union has not provided OCB with any evidence of such authorization.

POSITIONS OF THE PARTIES

City’s Position

According to the City, disputes over recoupment are excluded from arbitration under the terms of Article IX, § 8 of the Citywide Agreement, which specifies that such disputes are to be decided by OLR and that OLR’s decision is final. The City alleges that the Board has long held that where a contractual provision expressly provides that certain management actions or decisions are final, such actions and decisions are not subject to arbitration. The City asserts that Article IX, § 8 of the Citywide Agreement does not provide substantive rights that a grievant can pursue through the contractual grievance procedure. In support of its argument, the City points to *L. 1180, CWA*, 65 OCB 20, at 5-6 (BCB 2000), in which the Board granted a petition challenging arbitrability on the grounds that OLR’s final determination pursuant to Article IX, § 8 of the

Citywide was not subject to arbitration.

According to the City, Article IX, § 8 of the Citywide Agreement can be subject to arbitration only when there is an allegation that the procedures outlined therein were not followed. The City argues that the request for arbitration does not allege a procedural violation but rather appeals the decision to recoup. Thus, the City concludes that the Union has not demonstrated a nexus between the Citywide Agreement and its right to arbitrate.

Union's Position

The Union argues that the City “knowingly and voluntarily” gave the impacted ASEAs the contractual maximum salary when it appointed them to their positions, and the employees accepted their appointments in reliance on the City’s promise that they would receive the contractual maximum salary, which they believed to be just compensation for their work. (Ans. ¶ 35) Therefore, the Union alleges that the City did not make a mistake when it maintained the contractual maximum salary for those employees upon implementing the Impasse Award. The Union contends that the City is falsely labeling its actions as an “overpayment error,” which is a misrepresentation of Article IX, § 8 of the Citywide Agreement. (Id.)

DISCUSSION

We do not reach the merits of this case, because the Union may not proceed to arbitration based on lack of standing.² NYCCBL § 12-312(g)(1) provides that only DC 37, as the Citywide representative, or its designee, may invoke and utilize arbitration under the Citywide Agreement. Accordingly, the Union must seek, and be granted, permission from the Citywide representative

² The absence of a waiver from the Citywide bargaining representative was not raised by the parties, but it is a statutory matter that must be addressed by the Board. See NYCCBL § 12-312(g)(1).

to process a grievance through the arbitration procedures under the Citywide Agreement. Despite having filed the original request for arbitration over six months ago the Union has, to date, failed to submit the required authorization to proceed. In the absence of such permission by DC 37, we find that the Union lacks standing to bring its grievance concerning Article IX, § 8 of the Citywide Agreement to arbitration. *See SSEU, L. 371, 27 OCB 18, at 13 (BCB 1981).*

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the request for arbitration filed by the Law Enforcement Employees Benevolent Association, docketed as A-16064-24, hereby is denied due to failure to file the required written authorization of District Council 37 within a reasonable period after filing.

Dated: May 21, 2025
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLNES
MEMBER

ALAN M. KLINGER
MEMBER

JEFFREY L. KREISBERG
MEMBER