

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of:

THE CITY OF NEW BRITAIN

Case No. MPP-1520

- and -

LOCAL 1186, AMERICAN FEDERATION OF STATE

Decision No. 773

COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 4,

November 13, 1967

AFL-CIO

A P P E A R A N C E S:

For the Municipal Employer - Jay Siegel, Esq.

For the Federation - William S. Zeman, Esq.

DECISION AND DISMISSAL OF COMPLAINT

Statement of the Case

On November 7, 1966, an amended complaint was filed with the Connecticut State Board of Labor Relations, hereinafter referred to as the Board by Local 1186, American Federation of State, County and Municipal Employees, Council 4, AFL-CIO, hereinafter referred to as the Union, alleging that the City of New Britain, hereinafter referred to as the Municipal Employer, has engaged and is engaging in prohibited practices within the meaning of Section 7-470 (a)(1)(4) and (5) as set forth in and defined in the Municipal Employee Relations Act, hereinafter referred to as the Act.

On September 25, 1967, the Board held a hearing on the complaint at Wethersfield, Connecticut. The Union appeared and was represented by William S. Zeman, Esq., its Attorney. The Municipal Employer appeared and was represented by Jay Siegel, Esq., its Attorney. Full opportunity to be heard and to examine and cross-examine witnesses was afforded all parties. Briefs were also submitted by counsel of both parties.

THE COMPLAINT

The amended complaint alleges that the Municipal Employer, on June 14, 1966 repudiated the settlement of the following grievances:

1. Grievance involving Eleanor Kerrigan, Judith Schleicher, and Helen Venturo, settled June 1, 1966.
2. Grievance involving Mary O. Scheyd, Jane H. Linton, and Nancy G. Smith, settled May 23, 1966.

DISCUSSION

It appears from the evidence adduced before the Board at the hearing that two groups of employees each filed a grievance requesting re-classification to a higher pay classification on the ground that the work they actually performed warranted the raise.

The collective bargaining agreement between the City and the Union provides a grievance procedure in which a grievance is defined as "any dispute between the City and the employee concerning the interpretation or application of the terms of this agreement." Contract-Section 12.0.

The first step in this proceeding is to take the grievance to the employee's immediate supervisor. Contract-Section 12.1.

An appeal by the employee is provided if he is dissatisfied with the disposition of the grievance at this stage, but no appeal by the City is expressly provided.

In each case the immediate supervisor granted the grievance, i.e., purported to re-classify the grievants. (Exhibits 2, 3).

Thereafter the personnel director wrote a letter to the Union's president denying each of the grievances for the stated reason that he found no violation of the contract and that the grievants were not working out of their classification.

The City takes the position that the grievance procedure under the contract was never intended to provide a method for securing re-classification and that this may be done only under the personnel rules which are applicable when not in conflict with the contract. Contract-Section 14.1. The only conflict claimed is with the grievance procedure. The grievance machinery provides for arbitration by the Connecticut Board of Mediation and Arbitration as the final step. Contract-Section 12.4. Decisions of the Board are to be "binding on both parties." Id.

The question whether the City's action constitutes a breach of the contract has been submitted by the parties to the Board of Mediation and Arbitration. A hearing was held before that Board, but before the proceedings in arbitration were concluded, the Union filed the present complaint before this Board claiming that the City's conduct constitutes a prohibited practice in violation of Section 7-470 (a)(4) and (c).

The City has moved to dismiss for a want of jurisdiction, claiming that what is involved here is merely a question of contract interpretation and not a prohibited practice.

The Union points to a line of cases under the Federal Labor Management Relations Act holding that where conduct constitutes an unfair labor practice, the NLRB is not ousted of jurisdiction, because a question of contract interpretation is also involved. Thus in NLRB v. C. & C. Plywood Corp., 385 U.S. 421 (1967) the company initiated unilaterally a premium pay scale for a group of workers during the term of a collective bargaining agreement with the certified representative of the employees. This was concededly improper under the statute, unless the contract permitted it. The employer claimed that it did but the Board construed the contract as not permitting such unilateral action as the company had taken. The Supreme Court upheld the Board. In doing so it pointed to the lack of any arbitration provision in the contract and concluded that the Board's order was not, therefore, "inconsistent with its previous recognition of arbitration as an instrument of national labor policy for composing contractual differences." 385 U.S., at 426.

This and other cases show clear recognition of the propriety of the arbitration process for resolving questions of contract interpretation. NLRB v. Acme Industrial Co., 385 U.S. 432, 438 (1967) (upholding a Board order that the Company make disclosure of information which might prove relevant in a dispute under an agreement having an arbitra-

tion clause, in part because the order "Far from intruding upon the preserve of the arbitration, was in aid of the arbitral process.")

In the present case the City has taken its position in reliance upon its interpretation of the contract. It has not "repudiated" it as in Hyde's Super Market, 339 F. 2d 568, nor has it sought to remove its interpretation of the contract from the dispute settling procedures provided in the contract. Instead, the City has participated in submitting the dispute to the very tribunal specified in the contract, and the one peculiarly suited to decide questions of contract interpretation.

Under the circumstances we find:

(1) That this Board lacks jurisdiction over this dispute, and (2) That even if the conclusion is mistaken, the Board should refrain from exercising whatever jurisdiction it may have out of deference to the jurisdiction of our sister Board which is unquestionably proper and which was first invoked by the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The City of New Britain is a municipal employer within the meaning of Section 7-467, subsection (1), of the Act.
2. The Union is an employee organization within the meaning of Section 7-467, subsection (3), of the Act, and is the exclusive representative of the employees within the appropriate unit, as described in Article I of the Contract (Exhibit 1).
3. On and since November 7, 1966, the municipal employer has not and is not engaging in the prohibited practices as set forth in Section 7-470 (a)(1)(4) and (5) of the Act.

DISMISSAL

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

ORDERED, that the petition herein be, and the same hereby is, dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By Fleming James, Jr.
Chairman

Dorothy Kane McCaffery
Member

Patrick F. Bosse
Member