

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

- - - - - X

In the Matter of

NEW YORK CITY HOUSING AUTHORITY,

DECISION NO. B-18-74

Petitioner

DOCKET NO. BCB-182-74

vs.

(A-385-74)

SUPERIOR OFFICERS ASSOCIATION
NEW YORK CITY HOUSING AUTHORITY
POLICE UNION

- - - - - -x

DECISION AND ORDER

The Union requests arbitration of its grievance that Kenneth Shaeffer, a Patrol Captain in The New York City Housing Authority Police, was arbitrarily transferred from his former position as a Commanding Officer of Special Forces, Housing Police Department, "because he wished to pursue a grievance relating to charts." The Union claims that Captain Shaeffer's transfer was in violation of Article XIX, Section 3(a) of the contract and seeks as a remedy "reassignment of Captain Shaeffer to his prior assignment."

The contract between the parties, executed November 23, 1973 covering the period January 1, 1971 to June 30, 1973, provides in Article XIX, Section 3(a):

Every grievant shall have the right to present his or its grievance in accord with the procedure provided herein free from coercion, interference, restraint or reprisal.

The Union's demand for arbitration is based on Article XIX, Section 8, which provides that the Union may bring unresolved grievances at Step III of the Grievance Procedure to impartial arbitration pursuant to the NYCCBL and Revised Consolidated Rules of the O.C.B.

The City's Petition challenging arbitrability argues that Article XIX, Section 3(a) protects employees from coercion, interference, restraint, or reprisal in presenting a grievance. Grievance is specifically defined in Article XIX, Section 1(a), which reads in pertinent part:

- (a) For the purposes of this Agreement the term, "grievance", shall mean:
 - (1) a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement;
 - (2) a claimed violation, misinterpretation, or misapplication of the rules, regulations or procedures of the NYC Housing Authority and NYC Housing Authority Police Department affecting terms and conditions of employment, provided that, except as otherwise provided in this Section I (a), the term "grievance" shall not include disciplinary matters

The City further contends that the collective bargaining agreement between the Employer and Respondent neither provides any limitation on the Employer's right to determine charts nor defines a personal dissatisfaction

with one's chart as a grievance within the meaning of Article XIX, Section 1(a). The City claims that "a question concerning charts is not a grievable matter under Article XIX ... as charts are not a part of the contract, mandatory collective bargaining, or any of the matters defined to be a grievance in that subsection." The City concludes, therefore, that inasmuch as "there is no underlying grievance" in this case, or any matter relating to a grievance which the parties have agreed to arbitrate, Captain Shaeffer is not entitled to use the contractual grievance and arbitration procedures to redress any dissatisfaction he feels about his transfer.

Background

Prior to his transfer, the grievant attempted to "grieve" a matter regarding his assignment, or chart. He did not file a formal grievance but did discuss with his immediate supervisor and Chief Daniel J. Daly his "grievance" that the duties of the Commanding Officer, ' Special Forces, New York City Housing Police Department, should be equated to the duties of Captains assigned to the New York City Police Department, Tactical Patrol Unit. Shaeffer's assignment within the Housing Police Department was equated with that of the Commanding Officers of various Housing Police Divisions and the Commanding Officer of the South Bronx Model Precinct. Apparently, the comparisons with

respect to assignments traditionally have been among Housing Police Commanders only,¹ and neither Captain Shaeffer's supervisor nor chief Daly was persuaded to alter this practice. Moreover, in a letter to James Condon, President of the Superior Officers Association, James Reilly, Director of personnel of the NYC Housing Authority, stated that it is neither "possible nor desirable to equate every assignment and function in the Housing Police Department with that of the City Police."

There is a dispute between the parties as to the facts relating to Shaeffer's transfer. According to the Union, when Shaeffer told Chief Daly that he would not withdraw his grievance and that he intended to discuss the matter with Joseph J. Christian, Chairman of the Housing Authority, he was threatened with a transfer.² The employer, however maintains that Shaeffer's transfer "was only initiated after Captain Shaeffer stated that unless his working chart was changed he would request a transfer to the Captain's Patrol Unit."³

¹ Letter, dated May 13, 1974, from James J. Reilly, Director of Personnel, NYC Housing Authority, to James Condon, President of the Superior Officers Association, NYC Housing Police.

² Letter, dated May 16, 1974, to Mr. John Simon, General Manager, NYC Housing Authority, from James Condon, President, Superior Officers Association, NYC Housing Police.

³ Letter, dated May 13, 1974, to Mr. James Condon, President, Superior Officers Association, from James J. Reilly, Director of Personnel, NYC Housing Authority

Discussion

It is important to distinguish between the two grievances that are referred to in this case. The instant grievance alleges an arbitrary transfer in retaliation for Captain Shaeffer's pursuit of a prior "grievance" relating to his assignment. Although the arbitrability of Captain Shaeffer's original "grievance" regarding his assignment is not at issue in the instant case, a decision as to whether that "grievance" was, in fact, a grievance within the meaning of the contract is crucial to a proper determination of the question before the Board.

The Union claims that in transferring Shaeffer, the Employer violated Article XIX, Section 3(a) of the contract, which guarantees every grievant the right to present his grievance free from coercion, interference, restraint, or reprisal.

Section 1173-3.0 of the New York City Collective Bargaining Law defines the term "grievance" to include "a dispute defined as a grievance ... by a collective bargaining agreement." Article XIX, Section 1(e) of the contract

between the parties defines a "grievant" as "...an employee. . . asserting a grievance." As noted above, the term "grievance" is defined in Article XIX, Section 1(a)(1) as "a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement." Charts are not a part of the contract between the parties and are not grievable under Article XIX, Section 1(a). Thus, Captain Shaeffer never presented a grievance, as the parties defined that term in their agreement, and Article XIX, Section 3(a) cannot protect Shaeffer from a proper managerial decision to transfer him.⁴ Reliance, therefore, on only Section 3(a) would not be sufficient grounds for our finding the instant grievance arbitrable.

⁴ Moreover Section 1173-4.3b of the New York City Collective Bargaining Law gives the employer the right to direct employees, take disciplinary action, determine the methods, means, and personnel by which government operations are to be conducted; and exercise complete control and discretion over its organization and the technology of performing its work. The Board of Collective Bargaining has determined that the City's decisions on matters relating to the direction of employees and the assignment of personnel are not mandatory subjects of bargaining. (See Dec. B-7-79).

Our determination that Shaeffer's complaint about his chart was not a contractual grievance does not, however, dispose of the instant grievance. The grievance before us was generated as a consequence of Shaeffer's initial "grievance" and alleges that he was arbitrarily transferred.

As noted above, Article XIX, Section 1(a)(2) defines a grievance as "a claimed violation, misinterpretation, or misapplication of the rules, regulations, or procedures of the New York City Housing Authority and New York City Housing Authority Police Department affecting terms and conditions of employment..." The Union claims that Shaeffer's transfer was as arbitrary and discriminatory punishment imposed upon him because he complained to his superiors about his chart. This kind of punishment, alleges the Union, violates Housing Department procedures because traditionally the Department has not transferred employees for retaliatory reasons.

Additionally, the Union in its Answer, cites Article XIX, Section 6 of the contract, which provides:

The grievance procedure established hereinbefore is designed to operate within the framework of, and is not intended to abolish or supersede, existing rules and procedures for providing additional methods of

redress. These include, but are not limited to existing rights of a grievant to request an interview with the police chief.

The union claims that "it has been a long-standing practice of the Superior Officers Association to discuss matters such as the one involved in this case with the chairman of the Housing Authority." For this reason and in light of Article XIX, Section 1(a) (2), the Union contends that the grievance relating to Shaeffer's transfer is arbitrable.

In speaking with his superiors, Shaeffer used an informal means of redress which is recognized by Article XIX, Section 6. He claims, however, that his transfer was in punishment for having availed himself of this informal procedure.

The right to use "additional methods of redress" does not require use of the formal grievance machinery. Thus a complaint which may appropriately be put forward may or may not constitute a formal grievance. Whether or not the Employer's decision to transfer Shaeffer was a proper exercise of discretion or a retaliatory act in violation of Housing Authority procedures and in response to Shaeffer's reliance on Article XIX, Section 6, are decisions which relate to contract interpretation and are, therefore, for an arbitrator.

The Board stated in Dec. lJo. B-8-69 that "arbitrability is determined by ascertaining whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the obligation is broad enough in its scope to include the particular controversy presented." In the instant case, Article d'i[IX, Section 8 of the parties' contract obligates them to arbitrate unresolved grievances. Among the categories specifically covered by Article XIX, Section 1 (Definintion of Grievances) are claimed violations of contract terms and claimed violations of rules and procedures of the Housing Authority. Here, the Union alleges that Captain Shaeffer's transfer violated Housing Authority procedures and Article XIX, Section 6.

The United States Supreme Court stated in Warrior and Gulf, a decision which this Board has frequently cited (See e.g. B-5-74):

An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.⁵

⁵ 363 U.S. 574, 46 LRRM 2419 (1960)

We find and conclude that the instant grievance alleging an arbitrary transfer of Captain Shaeffer is a proper subject for arbitration and that the merits of the parties' contentions are for arbitral evaluation.

O R D E R

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

ORDERED, that the City's petition herein be, and the same hereby is denied; and it is further

ORDERED, that the Union's request for arbitration be, and the same is granted.

DATED: New York, N.Y.
October 31, 1974

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
Member

VINCENT D. McDONNELL
Member

WALTER L. EISENBERG
Member

JOSEPH SOLAR
Member

EDWARD F. GRAY
Member

THOMAS J. HERLIHY
Member