

City v. PBA, 21 OCB 4 (BCB 1978) [Decision No. B-4-78 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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CITY OF NEW YORK,

Petitioner

DECISION NO. B-4-78

DOCKET NO. BCB-287-77  
(A-701-77)

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION

Respondent.

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DECISION AND ORDER

Request for Arbitration

The PBA reouest for arbitration in this case states that the grievance to be arbitrated is as follows:

The Union challenges the Police Department's current practice of denying Veterans and Memorial Day leaves for members of the service who served on active duty in the U.S. Armed Forces for a six month period.

The PBA does not cite a particular section of the collective bargaining agreement as having been violated. Instead, the Union relies on Article XXIII, §1a2, which defines a grievance, inter alia, as:

a claimed violation, misinterpre-  
tation or misapplication of the  
rules, regulations, or procedures  
of the Police Department affecting  
terms and conditions of employment....

The contract has a term from July 1, 1976 to June 30, 1978. It was executed on November 28, 1977.

The PBA alleges that in 1968, the Police Department issued Circular No. 42 concerning leave of absence for Memorial Day and Veterans Day for members of the police force who had

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served in the armed forces on active duty and were separated under honorable conditions. The Circular was based on a 1968 amendment to the Public Officers Law and an informal opinion issued by the State Attorney General. Patrol Guide 120-32, issued on October 1, 1972, incorporated the provisions of Circular No. 42. on November 18, 1977, the Department allegedly revised Patrol Guide 120-32 to provide certain exclusions from the entitlement to Veterans and Memorial Day Leave for members of the force with "Active Duty training only". The PBA is contesting the unilateral amendment of the Patrol Guide. In the view of the Union:

The contract by implication includes all rules, regulations, or procedures of the Police Department affecting terms and conditions of employment.

The Union contends, in substance, that the Patrol Guide is a "regulation" of the Department and that its revision is arbitrable under Article XXIII, §1a2 quoted above.

The City argues that the Department's revision of the Patrol Guide is not arbitrable. The City contends that it is obliged to arbitrate a violation, misinterpretation or misapplication of a rule or regulation of the Department but that the Contract does not require arbitration of the City's determination to revise a rule or regulation. The City asserts that the actual

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basis of the PBA claim is "an alleged conflict between the Patrol Guide revision and the New York Public officers Law," and that a remedy does not lie in arbitration but must be sought in the Courts. Citing the fact that the challenged revision to the Patrol Guide occurred before the November 28, 1977 execution date of the contract under which arbitration is sought, the City argues that the revisions are therefore a part of the contract by implication pursuant to the PBA's own theory of the case.<sup>1</sup>

Finally, the City states that there is no allegation of actual injury to any member of the bargaining unit, in that no member allegedly applied for and was denied leave under the Veterans or Memorial Day provisions of the Patrol Guide.

#### Discussion

The power of the Board of Collective Bargaining to determine that a matter is arbitrable Pursuant to a collective bargaining contract rests upon the agreement of the parties to arbitrate the claim alleged by the grieving party. In the instant case, the parties have expressly agreed to arbitrate "a claimed violation, misinterpretation or misapplication of the rules, regulations or Procedures of the Police Department."

Clearly, the parties are not contractually bound to arbitrate violations of state law, nor is there any agreement to arbitrate

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<sup>1</sup> The PBA asserts that the revision took Place on November 18, 1977, while the city asserts that it occurred on August 26, 1977.

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the Police Department's decision to make revisions in its "rules, regulations or procedures". In substance, the PBA does not claim that the Department has violated a rule, regulation or procedure; rather, the PBA claims that the regulation was wrongfully revised by the Department in violation of State Law. Such a claim is not arbitrable under the definition of a grievance agreed upon by the Parties and mutually incorporated by them into their collective bargaining contract. Therefore, we shall dismiss the request for arbitration.

We need not pass on the City's other objections. However, we note that the papers submitted by the parties show that Police Officer Adam Hartman, the named grievant herein, alleges that "a Patrol Guide amendment dated November 1976 took the [Veterans and Memorial] days away from me." Further, the issue of the precise date of the Patrol Guide revision is not relevant to the instant determination.

We note further that a finding that this matter is not a proper subject for grievance arbitration is not decisive of, and is without prejudice to the assertion of other rights which the PBA may seek to pursue in any other judicial or administrative forum.

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O R D E R

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 of the Patrolmen's Benevolent Association be, and the same hereby is, denied; and it is further

ORDERED, that the petition of the City of New York contesting arbitrability be, and the same hereby is, granted.

DATED: New York, New York  
MAY 31, 1978

ARVID ANDERSON  
C h a i r m a n

WALTER L. EISENBERG  
M e m b e r

ERIC J. SCHMERTZ  
M e m b e r

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THOMAS J. HERLIHY  
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FRANCES M. MORRIS  
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MARK CHERNOFF