

City v. PBA, 21 OCB 5 (BCB 1978) [Decision No. B-5-78 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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CITY OF NEW YORK,

Petitioner,

-and-

DECISION NO. B-5-78

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

DOCKET NO. BCB-289-78  
(A-707-77)

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DECISION AND ORDER

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

Rescheduling of hours relating  
to court appearances.

In its Waiver, the PBA describes the grievance in more specific language as "the Police Department's policy of mandating police officers to perform 10-1/4 hour tours when rescheduled from their third evening tour for the purpose of a scheduled court appearance."

The PBA seeks as a remedy the "(d)iscontinuance of 2 rescheduled hours or overtime compensation."

The term of contract between the parties, executed on November 28, 1977, is from July 1, 1976 to June 30, 1978. The applicable contract provisions are as follows:

ARTICLE III - HOURS AND OVERTIME

Section 1.

a. All ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty chart, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of fifteen (15) minute segments.

b. In order to preserve the intent and spirit of this section on overtime compensation, there shall be no rescheduling of days off and/or tours of duty. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory re-assignment of personnel to different days off and/or tours of duty. In interpreting this section, T.O.P. 336, promulgated on October 13, 1969, shall be applicable. Notwithstanding anything to the contrary contained herein, the Department shall not have the right to reschedule employees' tours of duty, except that on the following occasions the Department may reschedule employees' tours of duty by not more than two hours before or after normal starting for such tours, without payment of pre-tour or post-tour overtime provided that the Department gives at least seven days' advance notice to the employee whose tours are to be so rescheduled: New Year's Eve, St. Patrick's Day, and Thanksgiving Day.

ARTICLE XXIII - GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. - Definitions.

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 Police Department affecting terms and conditions of employment, provided that, except as otherwise provided in this section 1(a), the term, 'grievance' shall not include disciplinary matters;
3. a claimed violation, misinterpretation or misapplication of The Guidelines For Interrogation of Members of The Department referred to in Article XX of this agreement;
4. a claimed improper holding of an open-competitive rather than a promotional examination;

Position of the Parties

The PBA request for arbitration arises from the issuance by the Police Department, during the period covered by the 1976-1978 PBA/City Contract, of operations Order No. 86 on October 27, 1977, and Operations Order No. 86-1 on November 11, 1977. Operations order No. 86 revoked the then existing twenty squad duty schedule and replaced it with a twenty-two squad duty schedule. Operations Order No. 86-1 provides:

Subject: TWENTY TWO SQUAD POLICE OFFICERS PATROL DUTY SCHEDULE

1. Effective 2340 hours, November 13, 1977, the present Twenty Squad Police Officer Patrol Duty Schedule is revoked and a new Twenty Two Squad Police Officer Duty Schedule becomes operational.
2. This schedule provides for 16 10-1/4 hour tours. (i.e. 1520 to 0135 and 1550 to 0205 hours). When a 10-1/4 hour tour is rescheduled, as per Administrative Guide Procedure No. 304-2, it shall remain a 10-1/4 hour tour. (i.e. 0750 to 1805 hours).
3. Any provisions of the Department Manual or other Department directive in conflict with this order are suspended.

The PBA alleges that "Operations Order No. 86-1 is a device to subvert the provisions of Article III of the contract between the parties." The PBA also alleges that prior to the issuance of Operations Orders Nos. 86 and 86-1, the City and the PBA had discussed the need for some rescheduling "to provide increased patrol during the critical hours between midnight and 2:00 AM," but that paragraph 2 of Operations Order No. 86-1 was not discussed.

The substance of the PBA allegation is that Operations Order No. 86-1 gives the Police Department power to convert an 8-1/4 hour tour into a 10-1/4 hour tour whenever a police officer is required to make a court appearance which would last longer than the contends that through this scheduled 8-1/4 hours. The PBA rescheduling the Police Department is attempting to avoid paying the officer at the overtime rate to which he or she would be otherwise entitled. The PBA argues that the alleged rescheduling of 10-1/4 hour tours to avoid the payment of overtime violates Article III of the 1976-1978 contract between the City and the PBA.

The City contends that the PBA's grievance is not arbitrable. It is the position of the City that (1) the PBA is requesting arbitration of an alleged violation of an oral agreement and that there is no contractual basis for the claim; (2) the PBA is not grieving rescheduling but merely the length of the tour to be worked when police officers are rescheduled; and (3) the subject of the PBA grievance is vague and undefined and is therefore not in compliance with §6.3 of the Revised Consolidated Rules of the Office of Collective Bargaining which requires that "(a) request for arbitration shall contain a plain and concise statement of the grievance to be arbitrated."

Discussion

The contract between the parties defines a grievance, inter alia, as "a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement." The PBA asserts that the City has violated the terms of the collective bargaining agreement between the parties by rescheduling police officers for the purpose of avoiding the payment of overtime. The City does not deny the existence of a contract between the parties, but maintains that there is no controversy relating to the interpretation of the contract provisions. We find that there is a manifest controversy between the parties on the question whether Article III of the contract prohibits the City from rescheduling 10-1/4 hour evening tours as 10-1/4 hour day tours for the purpose of court appearances thus allegedly avoiding, the payment of contractually mandated overtime.

The Board has consistently held that "(w)hether or not a matter is arbitrable depends upon whether the parties are subject to the arbitration process for resolving contract grievances and whether the particular grievance is within the scope of that agreement to arbitrate. If the answer to both of these questions is 'yes,' the matter is

arbitrable." Matter of the City of New York and Communications workers of America, AFL-CIO, and Civil Service Bar Ass'n., Dec. No. B-5-74. See also Dec. Nos. B-8-74; B-14-74; and B-28-75.

The contract between the PBA and the City unambiguously states the parties, mutual agreement to submit contract grievances to arbitration. The question is whether this particular controversy is within the scope of the parties' agreement to arbitrate. The PBA has stated its grievance as the "[r]escheduling of hours relating to court appearances." The contract between the PBA and the City specifically covers "rescheduling of days off and/or tours of duty." The City's argument that the PBA is requesting arbitration of an alleged violation of an oral agreement cannot be sustained, since the grievance alleged by the PBA is quite clearly based upon a dispute regarding the meaning of Article III of the contract. The grievance is therefore an arbitrable grievance within the definition agreed to by the parties.

The City's argument that the PBA's grievance actually concerns the length of the tour to be worked when police officers are rescheduled rather than the rescheduling



itself involves the substance of the claim and is properly for the arbitrator. On its face, the grievance relates to "rescheduling," and it is the function of the arbitrator to determine whether the particular kind of rescheduling alleged (change in the length of the rescheduled tour) does in fact constitute a violation of the agreement.

The contention of the City that the PBA's request for arbitration is not in compliance with §6.3 of the OCB Rules requiring a plain and concise statement of the grievance to be arbitrated is without merit. The PBA has fully complied with the formal requirements of the Request for Arbitration, stating its grievance as the "[r]escheduling of hours relating to court appearances," and clearly indicating that it alleged a violation of Article III of the Agreement between the parties. The statement of the grievance in PBA's Request for Arbitration, as well as the more specific statement in the Answer to Challenge of Arbitrability, have made or should have made the City fully aware of the nature of the contract dispute and the position of the PBA.

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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, granted; and it is further

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

DATED: New York, New York  
July 5, 1978

ARVID ANDERSON  
CHAIRMAN

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ERIC J. SCHMERTZ  
MEMBER

WALTER L. EISENBERG  
MEMBER

EDWARD J. CLEARY  
MEMBER

I dissent \*

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THOMAS J. HERLIHY  
MEMBER

\* Alternate City Member Herlihy's dissent follows on page 10.

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DISSENT OF THOMAS J. HERLIHY

It is clear from the content on which the order is based that the PBA has failed to specify what has been done according to the majority that would allegedly violate the Agreement. While the PBA alleges the Operations Order 86-1 permits the Department: "To convert an 3-1/4 hour tour into a 10-1/4 hour tour" the order does not so provide nor does the majority advert to such an action having taken place. The question which the majority says is the manifest controversy may have never occurred. There is no clear and specific grievance to Arbitrate.