

City v. PBA, 21 OCB 8 (BCB 1978) [Decision No. B-8-78 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter

CITY OF NEW YORK,

DECISION NO. B- 8-78

Petitioner

DOCKET NO. BCB-293-78  
(A-734-78)

-and-

PATROLMENS BENEVOLENT ASSOCIATION

Respondent

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DECISION AND ORDER

Request for Arbitration

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

"The Police Department's arbitrary assignment of excusal days for those police officers who performed duty with the twenty squad patrol duty schedule on 11/11/76, 5/30/77 and 11/11/77 in order to circumvent the excusal that would be due a veteran of the Armed Services had he or she performed duty on said day.

The remedy sought is "compensatory time for those eligible members affected."

The Union does not cite an express provision of the collective bargaining agreement as having been violated. Instead, the Union relies on Article XXIIII §1a2 of the contract which defines a grievance, inter alia, as:

a claimed violation, misinterpretation or misapplication of the rules, regulations or procedures of the Police

Department affecting terms and conditions of employment

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Positions of the Parties

The Union asserts that the Police Department Patrol Guide 120-32 (Patrol Guide, "Special Leave for Former Members of Armed Forces"), promulgated on November 18, 1977, controls the facts of the grievance. The Union contends that the Patrol Guide, effective before, during, and after the collective bargaining process, sets out the intent and binding obligation on the part of the Police Department to provide for a procedure wherein veterans would be granted two excusal days, on Memorial Day and Veterans Day. The Union, in support of its position, cites two sections of Patrol Guide 120-32 which provide:

- (5) Members of the Department who do not or cannot avail themselves of this leave on the specific day shall be excused from one (1) tour of duty for each day upon request within six (6) months after each day.
- (6) Members of the Department who are on vacation, sick report, absent with leave or excused from duty on either of these days according to the regular duty chart will not be considered eligible for this leave.

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

The City argues that the Request for Arbitration does not raise an arbitrable issue. The City claims that the

Request, including the belated citation<sup>1</sup> of the Police Department Patrol Guide does not establish a basis for arbitration of the dispute. The City asserts that there was no violation, misinterpretation or misapplication of the Patrol Guide. The City contends that the actual basis of the PBA's claim is an alleged conflict between Patrol Guide provisions and Section 63 of the Public Officers Law (a state statute), which is not a subject that the parties agreed to submit to arbitration. In essence, the City is claiming that a remedy does not lie in arbitration, but must instead be sought from the courts. The City also argues that since the Union failed to cite any contract provision or Department rule or regulation relating to the assignment of excusal days, it has failed to state a basis under which arbitration may be had. In addition, the City claims that Article XXIII of the contract is devoid of any reference to excusal days, patrol duty schedules or excusals "due a veteran."

Finally, the City states that since there is no express provision to arbitrate the dispute, the grievance should be denied. Liverpool Central School District v. United Liverpool Faculty Assn., 42 NY2d 509, 399 NYS 2d 189 (1977).

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<sup>1</sup> The Patrol Guide was not cited in the Union's Request for Arbitration, but was submitted at a later date.

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Discussion

The documents submitted by the parties reveal that the PBA filed this grievance on behalf of those veterans who claim to be entitled to special veterans holiday excusals as per Patrol Guide 120-32(5). The PBA claims that 120-32(6) has been misapplied to these veterans.

In the instant matter, the parties have expressly agreed to arbitrate "a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department." Manifestly, the Patrol Guide is a rule, regulation or procedure of the Police Department, therefore it is clear that the PBA is claiming a violation of a regulation of the Department which falls squarely within the contractual definition of a grievance (quoted above).

The City's argument of an alleged conflict between the Patrol Guide and Section 63 of the Public Officers Law seems to be misplaced herein. While it may be true that the parties are not contractually bound to arbitrate violations of state law, e.g., Section 63 of the Public Officers Law, in this case the PBA is not grieving a violation of law.<sup>2</sup> The possibility that there is a conflict between the cited statute and the

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<sup>2</sup> In City of New York and Patrolmens Benevolent Association, Decision No. B-4-78, the PBA claimed that a regulation was wrongfully revised by the Department in violation of state law. The claim was held non-arbitrable under the definition of a grievance agreed upon by the parties. In the instant matter grievant alleges a violation of the Patrol Guide 120-32(6) and not a violation of state law. Therefore the rule in that case does not apply.

Patrol Guide rule, as the City points out does not mean that the grievance herein, relating as it does to the Patrol Guide rule, is not arbitrable. It is the Union's contention that misapplication of the Patrol Guide is in violation of contractual rights and a subject arbitrable under the contractual definition of grievance that we deal with herein. The Union alleges that scheduling of police officers so that excusal days and off duty days coincide, thus depriving such officers of excusal days, is a misapplication of Patrol Guide 120-32(6).

The alleged misapplication is clearly arbitrable under the definition of a grievance agreed upon by the parties and jointly incorporated by them into the collective bargaining agreement.

The City's reliance on Liverpool, supra, is misplaced. The court in Liverpool refused to infer "that the parties to collective bargaining agreements in the public sector always intend to adopt the broadest permissible arbitration clauses." 399 NYS 2d at 192. No such inference is required by the instant case. In the present case, the City and the PBA have agreed to a broader arbitration clause than was the case in Liverpool; the court in Liverpool stressed the fact that the parties had entered into an explicitly "limited arbitration agreement." 399 NYS 2d, at 194. The controlling decision in the instant case South Colonie Central School District v. Longo, 43 NY 2d 136 (1977).<sup>3</sup> In the South Colonie case there was an agreement by the

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<sup>3</sup> See Board Decision B-1-78 for a full discussion.

parties to commit a very broad range of issues to ultimate arbitral determination. The contract provision in the present matter would allow arbitration on "a claimed violation, misinterpretation or misapplication of the rules, regulations or procedures of the Police Department." In view of the broad nature of the grievance provision of the collective bargaining agreement, the question whether there was a misapplication or violation of the Patrol Guide is properly a subject for arbitration.

Of course, our finding that the matter is arbitrable does not relate to the merits of the grievance. It is solely within the jurisdiction of the arbitrator to determine whether there has been a misapplication or a violation of the Patrol Guide and whether a remedy should be granted.

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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

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7.

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

DATED: New York, N.Y.

July 5, 1978

ARVID ANDERSON

CHAIRMAN

ERIC J. SCHMERTZ

MEMBER

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WALTER L. EISENBERG

MEMBER

THOMAS J. HERLIHY

MEMBER

EDWARD J. CLEARY

MEMBER