

City v. PBA, 23 OCB 14 (BCB 1979) [Decision No. B-14-79 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-14-79

-and-

DOCKET NO. BCB-343-79
(A-890-79)

PATROLMEN'S BENEVOLENT
ASSOCIATION,

Respondent.

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DECISION AND ORDER

Issue to be Addressed

Is a request for arbitration by a municipal union time-barred when it is filed and served several days beyond the time limitation set forth in the agreement between said union and the City of New York?

Factual Background

Petitioner, the City of New York (herein, the "City"), and respondent, the Patrolmen's Benevolent Association (herein the "PBA"), are parties to a collective bargaining agreement dated October 13, 1978. On January 11, 1979, the PBA submitted a grievance on behalf of ten (10) police officers alleging that payment of overtime and night shift differential for the month of October 1978, had not been paid on time, and, consequently, these monies became subject to Social Security taxes which would have been avoided had these monies been timely paid to the officers. The PBA bases its grievance on Article 111, §3, of the collective bargaining agreement which

reads:

"Overtime shall be computed on a monthly basis and shall be paid no later than six (6) weeks after submission of the monthly report."

The relief requested by the ten officers is that they be reimbursed the Social Security taxes withheld on the said monies.

The PBA alleges and the City does not refute that the monies were due on December 22, 1978. In January 1979, the monies were paid the officers.

On or about June 29, 1979, the grievance was denied at Step IV by Police Commissioner Robert J. McGuire. The PBA received notice of the denial on July 5, 1979. Subsequently, the PBA sought to have the matter arbitrated pursuant to Article XXIII, §8, of the parties' collective bargaining agreement. It reads:

"Within twenty (20) days following receipt of the Police Commissioner's Step IV decision, the Union shall have the right to bring grievances unresolved at Step IV to impartial arbitration pursuant to the New York City Collective Bargaining Law and the Consolidated Rules of the New York City Office of Collective Bargaining."

However, the request for arbitration was filed with the office of Municipal Labor Relations (OMLR) on August 2, 1979 -- twenty-eight days after the receipt of the Step IV denial (though the request was dated July 20, 1979).

The City's argument against the arbitrability of the matter is two-fold. First, as the monies were paid to the ten officers in January 1979, their grievance is moot. Second, the request for arbitration is time-barred because it was filed twenty-eight days after the denial of the grievance at Step IV, a violation of Article XXIII, §8, of the parties' contract.

In its answering pleadings, the PBA claims that their filing and serving of the request for arbitration is not subject to strict time tables set forth in the contract, and, therefore, the request is not time-barred. Furthermore, the PBA objects to the "unclean hands" of the City, for the City, the PBA notes, can hardly take issue with the timeliness of the PBA's request for arbitration when the City, itself, precipitated the dispute with the untimely payment of the overtime and night shift differential monies due the grievants. In response to the "mootness" of the grievance, the PBA states that delinquent payment of the monies owed the police officers does not indemnify them, that is, make them whole for the additional Social Security taxes to which they were unfairly subject.

Discussion

The only genuine issue in contention is whether the PBA is time-barred for having failed to file a request for arbitration within the contract's stipulated twenty-day period after the Police Commissioner's Step IV denial of the police officers' grievance. The Board has passed on this issue many times. It has consistently held that the timeliness of a request for arbitration under a contract is a matter of procedural arbitrability best left to the discretion of the arbitrator. Office of Labor Relations v. Social Service Employees Union, B-6-68; Office of Labor Relations v. Social Service Employees Union, B-7-68; City of New York and Related Public Employers v. District Council 37 and Local 1321, AFSCME, AFL-CIO, B-11-77; City of New York v. District Council 37, AFSCME, AFL-CIO, B-6-78.

Though the dictates of the NLRB and the Federal Courts concerning labor relations issues are not binding either on the Board or on the New York State Public Employment Relations Board, "the wealth of experience in the private sector need not be completely disregarded." Saratoga Springs School District v. New York State Public Employment Relations Board, 416 NYS 2d 415 (App. Div., 3rd Dept. 1979).

In fact, private sector decisions are often accorded great weight by the Board. The Board has previously cited and relied on the rule enunciated by the Supreme Court in John Wiley and Sons v. Livingston, 376 U.S. 543, 55 LRRM 2769, at 2775 (1964), concerning the area of procedural arbitrability. Office of Labor Relations v. Social Service Employees Union, B-6-68. Justice Harlan's opinion renders further support to the aforementioned Board rulings:

"Questions concerning the procedural prerequisites to arbitration do not arise in a vacuum; they develop in the context of an actual dispute about the rights of the parties to the contract. . . .

"Once it is determined . . . that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear upon its final disposition should be left to the arbitrator."

The only other issue raised by the City is that the PBA's grievance is moot, for the monies were paid to the complaining officers in January 1979. That this amounts to a non-issue is addressed in paragraph 9 of the PBA's "Answer to Challenge to Arbitrability." We can summarily dispose of the City's mootness argument by simply pointing out that the indemnification sought by the grievants is not for overtime and night shift differential but rather for the Social Security taxes which would not have been withheld but for the alleged delinquent payment of these monies by the City.

We, therefore, must deny the City's Petition Challenging Arbitrability and submit this case to arbitration.

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 petition of the City challenging arbitrability should be, and the same hereby is, denied and it is further

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

DATED: New York, New York
October 10, 1979.

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

EDWARD SILVER
M e m b e r

FRANKLIN J. HAVELICK
M e m b e r

MARK J. CHERNOFF
M e m b e r