City v. PBA, 25 OCB 15 (BCB 1980) [Decision No. B-15-80 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE CITY OF NEW YORK

DECISION NO. B-15-80

Petitioner,

-against-

DOCKET NO. BCB-400-80 (A-994-80)

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

DECISION AND ORDER

On February 14, 1980, the Office of Collective Bargaining received a request for arbitration filed by the Patrolmen's Benevolent Association (hereinafter "PBA") which sought to arbitrate a group grievance arising out of the Police Department's alleged actions denying "line of duty designations", authorized treatment, and payment of bills incurred related to line of duty injuries or illnesses. The City of New York filed a petition challenging arbitrability on March 7, 1980. Thereafter, the PBA filed its answer to the petition on March 24, 1980, and the City submitted a letter in reply to the answer on March 28, 1980.

NATURE OF THE GRIEVANCE

When a Police Officer is injured or becomes ill, and the Police Department "designates" that such injury or illness occurred "in the performance of Police duty", the affected Officer is granted certain benefits, including payment for hospital care and treatment[1] and possible retirement for accident disability.[2] The PBA alleges that Departmental rules, regulations and procedures recognize that

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[1] Administrative Code §B49-10.0.

[2] Administrative Code §B18-43-0.

an injury may be incurred "in the performance of Police duty" regardless of whether the individual was on or off duty at the time the injury was incurred. The PBA claims that the Police Department has denied so-called "line of duty designations" to the individuals included in this group grievance, and the concomitant benefits flowing from such designation, in violation of specified Departmental rules, regulations and procedures. Implicit in the PBA's grievance, though not expressly stated, is the PBA's contention that the Police Department has denied these line of duty designations on the ground that the grievants allegedly were not on duty at the time they were injured, and thus could not have been performing Police duty.

POSITIONS OF THE PARTIES

The City argues that the collective bargaining agreement does not deal with line of duty designations; that a memorandum relied upon by the PBA is not a Departmental rule or regulation, but rather an internal legal interpretation prepared by counsel for the Department; and that the provisions of the Patrol Guide relied upon by the PBA involve only the reporting and recording of line of duty injuries and not the designation of injuries as occurring in the line of duty. The City states that the designation of line of duty injuries requires a determination of the causal relationship between the injury and the performance of Police duty. This determination, the City contends, necessarily involves a question of medical judgment which is beyond the authority of an arbitrator to review.

The PBA does not dispute the allegation that the contract is

silent on the question of line of duty designations. And, it concedes that the memorandum from Assistant Commissioner Carroll is an internal document not binding herein, although it argues that said memorandum is persuasive support for the PBA' position in this case. However, it asserts that Sections 120-3 and 120-7 of the Patrol Guide are rules and/or regulations of the Police Department, and that these sections have been violated and/or misapplied by the Department with respect to these grievants, to their severe monetary detriment. The PBA points out that a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department constitutes an arbitrable grievance pursuant to Article 23, section 1 (2) of the collective bargaining agreement.

The PBA also alleges that, contrary to the City's contention, the designation of an injury as line of duty is not a question of medical judgment, but rather a question of the interpretation of the Patrol Guide's language concerning "the performance of Police duty".

DISCUSSION

We agree with the City that the substantive provisions of the collective bargaining agreement do not mention line of duty designations and that the memorandum written by Assistant Commissioner Carroll does not provide any basis for the arbitration of the grievance herein. However, the contractual agreement to arbitrate does encompass claimed violations and/or misapplications of Departmental rules and regulations, and we have previously held that the Police Department's Patrol Guide con-

stitutes such rules and regulations.[3] Therefore, we shall direct our inquiry to the provisions of the Patrol Guide relied upon by the PBA.

We have held that in determining arbitrability, this Board will inquire as to the prima facie relationship between the act complained of and the source of the alleged right, redress of which is sought through arbitration. The grievant, where challenged to do so, has a duty to show that a departmental rule invoked is arguably related to the grievance to be arbitrated.[4]

The PBA states that its grievance turns on the question of whether an injury can be said to have been incurred in the performance of police duty where an Officer was not on duty at the time of injury. The provisions of the Patrol Guide cited by the PBA do appear to deal with this question. In this regard, we note that Patrol Guide section 120-3 states, under the heading "Procedure", that a Police Officer is to take certain actions:

> "Upon receiving an injury in the performance of police duty whether on or off duty...." (Emphasis added)

The section also provides that the injured Officer's Patrol Supervisor is to prepare Part A of a "Line of Duty Injury Report", and to instruct the injured Officer to prepare Part C of said report.

Additionally, Patrol Guide section 120-7 defines "Injured in line of duty outside New York City" as including, inter alia, an Officer who is injured:

> ...while taking police action as authorized by Section 140.10 of the Criminal Procedure Law."

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[3] Decision No. B-8-78.

[4] Decision Nos. B-1-76, B-3-78.

Section 140.10 of the Criminal Procedure Law authorizes a Police Officer to make an arrest outside the geographical area of his or her employment when he or she has reasonable cause to believe that an individual has committed a crime.

Thus, it is apparent that the Patrol Guide as well as the provision of State law referred to in the Patrol Guide contemplate that a Police Officer may perform police duty while not technically on duty.

To the extent that the PBA's grievance is addressed to the narrow issue of the Police Department's purported denial of line of duty designations on the sole basis that the grievants were not on duty at the time of injury, there is a sufficient connection between the issue raised and the cited provisions of the Patrol Guide to warrant submitting this matter to arbitration. We cannot say that the rule relied upon by the PBA is not arguably related to the grievance to be arbitrated.[5] In deciding this matter, we are guided by our long-standing policy that doubtful issues of arbitrability are to be resolved in favor of arbitration.[6]

[5] However, in finding the grievance arbitrable to this extent, we in no manner express our view on the merits of the underlying dispute. Decision Nos. B-7-77, B-9-78.

[6] See Decision Nos. B-14-74, B-18-74, B-12-75, B-28-75, B-13-77, B-14-77, B-1-78.

The City has argued that, notwithstanding the above-quoted provisions of the Patrol Guide, this matter should not proceed to arbitration because the quoted provisions deal with the reporting of line of duty injuries and not with the designation of injuries as being in the line of duty. The City asserts that these provisions were not intended to create any rights on the part of the grievants.

However, this is an argument on the merits of this case, calling for an interpretation of the intent and application of the provisions of the Patrol Guide. We have long held that the interpretation of contract terms and the determination of their applicability in a given case is a function for the arbitrator and not for the forum dealing with the question of the arbitrability of the dispute.[7] We note, in this regard, that Section 7501 of the CPLR similarly provides that a Court, in determining questions of arbitrability,

> "... shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute."

This statutory mandate is consistent with the United States Supreme Court's holding in United Steelworkers of America v. American Manufacturing Co.[8] that the role of a tribunal considering issues of arbitrability is,

[7] Decision Nos. B-8-68, B-4-72, B-25-72, B-1-76, B-2-77, B-5-77, B-6-77, B-10-77.

[8] 363. U.S. 564, 46 LRRM 2414 (1960)

> "... confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it-was his judgment and all that it connotes that was bargained for.
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> The courts therefore have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious."[9]

Based upon these considerations, we are not persuaded by the City's argument, and we shall order that this matter be submitted to arbitration.[10]

In view of the increasing number of challenges to arbitrability which have been filed with the Office of Collective Bargaining in recent months, we take this opportunity to review the current State of New York law, to the extent that the decisions of the courts may have a bearing on the approach taken by this Board in dealing with questions of arbitrability.

In Matter of Acting Superintendent of Schools of Liverpool Central School District v. United Liverpool Faculty

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[9] Id., 46 LRRM at 2415-2416.

[10] We have also considered the City's argument that to read the Patrol Guide as granting grievants any rights would be inconsistent with the provisions of the Administrative Code regarding injuries in the line of duty. We fail to find any such inconsistency nor any requirement that the Administrative Code's provisions be the exclusive statement on this matter.

Association,[11] a case often cited in support of challenges to arbitrability the Court of Appeals held that in arbitrations which proceed under the Taylor Law[12] the determination of arbitrability is to be guided by the principle that:

> "... the agreement to arbitrate must be express, direct and unequivocal as to the issues or disputes to be submitted to arbitration; anything less will lead to a denial of arbitration."[13]

The court stated that it recognized that in private sector labor relations,

> " ... the courts have held that controversies arising between the parties to such an agreement fall within the scope of the arbitration clause unless the parties have employed language which clearly manifests an intent to exclude a particular subject matter...."[14]

However, the court concluded that this broad approach to questions of arbitrability would not be followed in arbitrations under the Taylor Law because, in the court's view,

> "In the field of public employment,... the public policy favoring arbitration - of recent origin - does not yet carry the same historical or general acceptance...."[15]

The context in which this Board considers questions of arbitrability necessarily differs from that considered by the court

in Liverpool because the New York City Collective Bargaining Law, unlike the Taylor Law, contains an express statement that it is the policy of the City to favor and encourage arbitration:

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[11] 42 N.Y. 2d 509 (1977).

[12] Civil Service Law, §200 et seq.

[13] 42 N.Y. 2d at 511.

[14] Id. at 512.

[15] Id. at 513.

> "It is hereby declared to be the policy of the city to favor and encourage... final, impartial arbitration of grievances between municipal agencies and certified employee organizations."[16]

It has been judicially recognized that the existence of this provision of our law renders the Liverpool standard inapplicable to our determination of arbitrability.[17]

Moreover, in decisions subsequent to Liverpool the Court of Appeals has considerably modified its position and now applies a less stringent standard which is more consistent with the court's rulings prior to Liverpool. The court has not required an "express, direct and unequivocal" agreement to arbitrate particular issues or disputes where the parties have agreed to a broad arbitration clause. In Matter of South Colonie Central School District v. Longo,[18] the court ordered arbitration where it found that the parties' agreement to arbitrate was "not a narrow one" and that the parties had undertaken:

> " ... to commit a very broad range of issues to ultimate arbitral determination."[19]

The court has since stated in Board of Education o f New Paltz Central School District v. New Paltz United Teachers,[20]

that where a court finds that there is a "broad agreement" to arbitrate extending to a "claimed violation, misinterpretation or inequitable application of the... Agreement", and that the union's claim is based upon a provision of that agreement,

> "This ends the judicial inquiry; resolution of the merits of the controversy must be left to

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16 NYCCBL §1173-2.0.

17 Matter of City of New York v. Anderson, Index No. 40532/78 (Sup. Ct., N.Y., Co., 1978).

18 43 N.Y. 2d 136 (1977)

19 Id. at 141.

20 44 N.Y. 2d 890 (1978).

arbitration (CPLR 7501)."[21]

The court has further held most recently, in Matter of Wyandanch Union Free School District v. Wyandanch Teachers Association,[22]

> "That the substantive provisions of the contract which are the subject of the grievance may be ambiguous does not serve to bar arbitration. It is the function of the arbitrator, and not the courts, to resolve any uncertainty as to those substantive rights and obligations of the parties."[23]

The court's current willingness to submit a wide range of matters to arbitration under a broad arbitration clause is consistent with pre-Liverpool case law.[24] The decisions of this Board are clearly in harmony with this most current rule of the Court of Appeals.[25]

It is clear that the agreement to arbitrate in the present case is an extremely broad one, its definition of a grievance including a claimed violation, misinterpretation or misapplication of rules, regulations and procedures of the Police Department, as well

as the other substantive provisions of the collective bargaining agreement. Inasmuch as the PBA has grieved a claimed violation or misapplication of a rule or regulation of the Police Department, we believe that our finding of arbitrability is in full accord with the current judicially recognized standard of arbitrability.

In view of the pleadings filed in this matter, we believe it is necessary to clarify exactly what we are submitting to

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[21] Id. at 892.

[22] 48 N.Y. 2d 669 (1979).

[23] Id. at, 421 N.Y.S. 2d at 874.

[24] See Matter of Susquehanna Valley Central School District v. Susquehanna Association, 37 N.Y. 2d 614 (1975)Board of Education of Union Free School District No. 3 v. Associated Teachers of Huntington, Inc., 30 N.Y. 2d 122 (1972)

[25] Decision Nos. B-5-74, B-1-75, B-2-75, B-10-77.

arbitration. Our review of the documents submitted annexed to the request for arbitration indicates that some of the individual grievants included within this group grievance were denied line of duty designations for reasons other than the fact that they were not on duty at the time of injury. It appears that some of the denials were based upon an alleged lack of a causal connection between purported Police duties and an injury suffered, The PBA has not demonstrated any grounds justifying arbitration of such disputes. And, as argued by the City, review of such disputes might involve questions of medical judgment with regard to causality. It has not been shown that the parties have agreed to arbitrate such disputes. Therefore, we wish to emphasize that we are directing arbitration herein only of the PBA's claims that individuals were denied line of duty designations solely because they were not on duty when injured. These claims require interpretation of the term "performance of police duty". To the extent that other claims are raised, they are outside the scope of the issue presented for arbitration, as limited by the PBA's answer, and we will not determine the arbitrability thereof.

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 City's petition challenging arbitrability be, and the same hereby is, denied, to the extent that it concerns the issue of the denial of line of duty injury-designations on the sole ground of not being on duty at the time of injury; and it is further

ORDERED, that the PBA's request for arbitration be, and the same hereby is, granted, to the extent that it seeks to arbitrate the issue of the denial of line of duty injury designations on the sole ground of not being on duty at the time of injury.

DATED: New York, N.Y.
May 20 1980

ARVID ANDERSON
CHAIRMAN

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MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

EDWARD F. GRAY
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