

City v. PBA, 25 OCB 21 (BCB 1980) [Decision No. B-21-80 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of
THE CITY OF NEW YORK,

DECISION No. B-21-80

Petitioner,

DOCKET NO. BCB-420-80
(A-1026-80)

-against-

THE PATROLMEN'S BENEVOLENT
ASSOCIATION,

Respondent.

DECISION AND ORDER

The Patrolmen's Benevolent Association (hereinafter "PBA") filed a request for arbitration on April 15, 1980, in which it seeks to arbitrate the Police Department's "unilateral termination of Health and Welfare funding for Line of Duty Widows". The City filed a petition challenging arbitrability on May 7, 1980, asserting that there exists no basis to arbitrate the issue raised by the union and that the remedy requested is beyond the-authority of an arbitrator to grant. The PBA submitted an answer to the City's petition on May 19, 1980, and a letter in reply was received from the City on June 5, 1980.

NATURE OF THE GRIEVANCE

The grievance which-the PBA seeks to arbitrate is based upon an alleged violation of Article XIV of the collective bargaining agreement which provides in pertinent part:

"The City -shall -contribute the following pro-rata annual amounts for each employee for remittance to the Health and Welfare Fund of the Patrolmen's Benevolent Association of the City of New York" pursuant to the terms of a Supplemental agreement to be reached by the parties subject to the approval of the Corporation Counsel:

Effective July 1, 1978 \$400.00
 * * *

Employees who have been separated from service subsequent to December 31, 1970, and who were covered by the Health and Welfare Fund of the Patrolmen's Benevolent Association at the time of such separation pursuant to a supplementary agreement between the City and the PBA shall continue to be so covered, subject to the provisions hereof, on the same \$400 contributory basis as incumbent employees. Contributions shall be made only for such time as said individuals remain primary beneficiaries of the New York City Health Insurance Program and are entitled to benefits paid for by the City through such Program...."

The supplemental agreements¹ referred to in Article XIV of the collective bargaining agreement define, inter alia, the scope of both the City and the PBA Health and Welfare Fund's obligations and the nature of the benefits to be provided. There are two such agreements, one entered into for the benefit of all persons actively employed in the covered titles, and the other entered into for the benefit of former employees ("retirees") who were separated from service in the Police Department subsequent to December 31, 1970 and who were covered by the PBA's Health and Welfare Fund at the time of their separation from service. The agreement for active employees generally provides benefits for the employee and all dependants, while the agreement for retirees generally provides benefits for the retiree and his or her spouse.

The PBA alleges that prior to November, 1979, the Police Department always remitted the appropriate amount to the PBA Health and Welfare Fund on behalf of the widows of police officers who had

¹ The parties have not submitted copies of these supplemental agreements, but we take administrative notice of said agreements which have previously been filed with this Board as required by section 3.5 of the OCB rules.

been killed in the line of duty ("line of duty widows") in order to continue coverage for them. The PBA further alleges that in November, 1979, the Police Department unilaterally discontinued this practice, thus depriving these widows of health and welfare benefits previously provided by the PBA Health and welfare Fund. The PBA grieves this unilateral action by the Police Department and asserts that it is violative of the above-quoted section of the collective bargaining agreement.²

POSITIONS OF THE PARTIES

The City does not dispute the PBA's factual allegations. However, the City argues that it is obligated under Article XIV of the agreement to make contributions to the PBA's Welfare Fund only "for each employee". The City points out that widows of deceased members of the PBA are not employees of the City. It is the City's contention that the City's failure to contribute funds on behalf of individuals not employed by the City, allegedly not represented by the PBA, and allegedly not covered by either the collective bargaining agreement or the supplemental Welfare Fund agreement, is clearly not arbitrable. The City also asserts that the remedy requested by the PBA,

"Reimplementation of benefit retroactive to 11-1-79
and return of the money funded from 7-1-76 thru 10-31-79
after benefits had been provided to these L.O.D. Widows

² The PBA also claims a violation of Article XXIII, section 1 of the agreement, but that section merely contains definitions of terms used in the agreement including the term "grievance" and does not furnish an independent basis for a grievance. It has not been that any of the definitions in that section have been violated, misinterpreted or misapplied. It is the claimed violation of Article XIV which constitutes a grievance, within the meaning of Article XXIII, section 1.

is outside the terms of the agreement and, therefore, beyond the authority of an arbitrator to grant.

In its reply, the City reiterates the above description, further alleging that it would be unsound to permit a non-employee designated as a beneficiary under the parties' agreement to have recourse to the contractual grievance/arbitration procedure. The City contends that it has never agreed to permit such arbitration.

The PBA argues that the collective bargaining agreement was entered into for the benefit not only of police officers, but of their, families as well. The union supports this contention by reference to Article XXIV of the agreement, which provides for a lump sum payment of \$25,000 to the designated beneficiary or the estate of an officer killed in the line of duty, and Article XXV, which provides for a cash payment to a deceased Officer's designated beneficiary or estate as compensation for the deceased officer's unused accrued leave and compensatory time-off. The PBA claims that these two Articles recognize that there must be some protection for widows of officers who die in the line of duty.

The PBA also observes that the benefits granted to retirees pursuant to the supplemental Health and Welfare Fund agreement are also extended to their spouses. The union contends that this- constitutes further evidence that it was Intended-by the parties that line of duty widows be provided for.

The PBA concludes that the above factors which allegedly indicate the spirit and intent of the negotiators of the collective

bargaining agreement, together with the terms of Article XIV of the agreement, demonstrate that line of duty widows are entitled to Health and Welfare Fund benefits under the agreement. The PBA asserts that the City's unilateral discontinuance of funding for these benefits, as allegedly required by the agreement, renders this matter arbitrable.

DISCUSSION

As we have often stated, in determining question of arbitrability, we must decide whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the obligation is broad enough in its scope to include the particular controversy at issue in the matter before the Board.³ In the present case, the parties have agreed to arbitrate a broad range of grievances as stated in Article XXIII of the collective bargaining agreement. Therefore, the issue before this Board is whether the instant grievance is within the scope of the matters the parties have agreed to arbitrate.

The PBA argues that a claimed violation of Article XIV of the agreement (quoted supra at pp.1-2) constitutes an arbitrable grievance within the terms of Article XXIII of the agreement. However, the City argues that Article XIV does not provide any rights or benefits for line of duty widows, nor does it impose any obligation on-the City to make contributions on behalf of these individuals. Thus, argues the City, Article XIV cannot have been violated by any action taken with respect the line of duty widows, and it cannot serve as a basis to arbitrate a grievance on behalf of these widows.

³ Decision Nos. B-17-80; B-15-79 and decisions cited therein at footnote 7.

This Board has recognized that it has a responsibility to 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. Accordingly, we have held that the grievant where challenged, has a duty to show that the contract provision invoked is arguably related to the grievance to be arbitrated.⁴ The City has challenged the arbitrability of the instant grievance by asserting that the provision of the agreement alleged to have been violated provides no basis for the grievance, and thus we must determine whether the provision relied upon by the PBA, Article XIV, is arguably-related to the grievance to be arbitrated.

The City argues that the collective bargaining agreement cannot be read to permit arbitration on behalf of persons not employed by the City and not within the bargaining unit which the PBA is certified to represent. We disagree with this broad contention. Article XIV, by its express terms, obligates the City to make contributions on behalf of certain retirees, who are neither employees of the City nor members of the PBA's bargaining unit. If it were alleged that the City had failed to make the appropriate contributions to the PBA's Health and Welfare Fund on behalf of such retirees, it could not seriously be argued that the agreement would not provide a basis for an arbitration brought on behalf of the retirees to challenge the City's actions.⁵

For the same reasons, if the PBA had bargained for and obtained a right or benefit for the widows of bargaining unit

⁴ Decision Nos. B-1-76, B-3-76, B-3-78, B-7-79, B-15-79, B-15-80.

⁵ A reading of the collective bargaining agreement demonstrates that it contains several other provisions granting benefits to individuals who are neither employees nor bargaining unit members. These include Article XXIV (line-of-duty death benefit) and Article XXV (death benefit--unused leave and compensatory time).

members and such right or benefit was withheld, violation of the particular contract provision in question would most certainly constitute an arbitrable issue.

The issue, then, is not whether the line of duty widows are employees of the City and members of the PBA's bargaining unit, but whether the provision of the collective bargaining agreement relied upon by the union arguably creates any obligation by the City with respect to these widows. If the agreement creates rights for the benefit of these widows, then their employment and bargaining unit status is irrelevant. On the other hand, if the agreement does not create such rights and obligations then any arguments which may be presented in support of their demand for arbitration are irrelevant.

Article XIV creates rights and obligations with respect to two categories of persons - (a) active employees, and (b) certain qualified retired employees. Further, Article XIV refers to supplemental agreements to be entered into by the parties in order to implement the payment of the City's contributions and the furnishing of Health and Welfare Fund coverage for the benefit of each of the two categories of persons. Therefore, Article XIV as well as the two supplemental agreements must be examined in order to determine their relationship, if any, to the line of duty widows.

Article XIV, on its face, does not refer to line of duty widows. It provides for contributions to be made by the City only for "each

employee" and for certain qualified retirees.⁶ It does not mention contributions on behalf of the spouses, families or dependents of such employees or retirees.

However, as noted by the union, the supplemental agreements entered into pursuant to Article XIV do specify that enumerated benefits flow to the dependents (in the case of employees) or spouses (in the case of retirees) of covered individuals. Thus, the spouse of an employee or a covered retiree would be entitled to Health and Welfare Fund benefits for as long as the employee or covered retiree remains in a status for which the City is required to make contributions.⁷ The crucial point to be recognized here is that the spouse's continued receipt of benefits is contingent upon the employee remaining as an active employee or a covered retiree maintaining eligibility for coverage (i.e., remaining a primary beneficiary under the City or State Health Insurance Program and entitled to benefits thereunder, or a member of the New York City Employees Retirement System).

⁶ The covered retirees are defined as "Employees-who have been separated from service subsequent to December 31, 1970,.and who were covered by the Health and Welfare Fund of the Patrolmen's Benevolent Association at the time of such separation...." The City's contributions for such retirees are to be made ... "only for-such time as said individuals remain primary beneficiaries of the New York City Health Insurance Program and are entitled to benefits paid for by the City through-such Program." (PBA, Contract,-Article XIV).

⁷ The supplemental agreement's-limitation of coverage for retirees is somewhat less restrictive than that contained in Article XIV. It provides for the City's contributions to be made "...for such time as the covered retiree either-remains a primary beneficiary of the New York City Health Insurance Program or the State Health Insurance Program and is entitled to benefits paid for by the City or State through such program; or is a retiree in the New York City Employees Retirement System who has completed at least five years of full-time paid service with -the City..."

Thus, a spouse's entitlement to health and welfare benefits does not stand alone, but is incidental to and derives from the rights of the active employee or covered retiree on whose behalf the City is obligated to make contributions to the Health and Welfare Fund. Stated from a different perspective, the City's contractual obligation to the Health And Welfare Fund is to make contributions only for each active employee and each covered retiree. The agreements impose no obligation to make contributions for the benefit of a spouse or widow in the absence of an active employee or covered retiree.

In the case of the grievants in the instant matter, it is alleged that they are widows of police officers who died in the line of duty. By definition, the deceased spouses of these widows can no longer be active employees or covered retirees. Therefore, after reviewing the express terms of Article XIV of the collective bargaining agreement, as well as the supplemental agreements referred to therein, we are unable to find that the grievance on behalf of these widows is arguable related to the provisions of the agreements. We do not see that these agreements arguably create any obligation on the part of the City toward these grievants, and thus a complaint that the line of duty widows have been deprived of benefits does not arise-under the contract -and does not fall within the parties' agreement to arbitrate:

...a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement.⁸

⁸ Article XXIII, section 1(a)(1).

The PBA's argument that the inclusion of other death benefits in the agreement⁹ demonstrates that health and welfare benefits also were intended to be provided for line of duty widows, is not persuasive. The death benefits referred to by the PBA were clearly and expressly inserted in the agreement, and their terms are specific and limited. No such clear and specific reference was made concerning the continuance of health and welfare benefits in the event of the line of duty death of a police officer. The parties apparently knew how to express the grant of death benefits when that was their intent. Their failure to include provision for health and welfare benefits within such grant of death benefits does not support the union's contention, but rather tends to show that the parties did not intend to provide such benefits.

It is our policy in arbitrability disputes not to adjudicate the merits of a claim. However in certain cases, as in the present one, when required to determine whether the contract provision invoked is arguably related to the grievance to be arbitrated, we necessarily scrutinize the terms of the -agreement more closely than we might otherwise. That is not to say that we Interpret those terms; that is a function solely for the arbitrator. But, we do have a responsibility to ascertain whether the provision of the agreement relied upon

⁹ Article XXIV provides for a \$25,000 cash payment to the designated beneficiary or estate of a police officer who dies as a result of a line of duty injury. Article XXV provides for payment, to the designated beneficiary or estate of a police officer who dies while employed by the City, of an amount representing the officer's unused accrued leave and compensatory time.

provides a colorable basis for the grievant's claim. In the present case, we do not find such a basis. This determination is not an adjudication of the merits of the claim, but rather a finding that there is not a contractual provision upon which the claim can be based.¹⁰

While it is our policy to favor arbitration of grievances we cannot create a duty to arbitrate where none exists, nor enlarge a duty to arbitrate beyond the scope established by the parties in their agreement.¹¹ In this case, the union has failed to establish that the parties' agreement to arbitrate encompasses the question of health and welfare benefits for line of duty widows. Accordingly, we must deny the PBA's request to arbitrate this matter.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is here by

ORDERED, that the City's petition challenging arbitrability be, and the same hereby is, granted; and it is further

ORDERED, that the Patrolmen's Benevolent Association's request for arbitration be, and the same hereby is denied.

¹⁰ See Decision No. B-15-79 at page 21.

¹¹ Decision NOS. B-12-77, B-7-79, B-10-79, B-15-79, B-20-79.

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DATED: New York, N.Y.
June 24, 1980

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

EDWARD J. CLEARY
MEMBER

EDWARD J. GRAY
MEMBER

JOHN D. FEERICK
MEMBER

FRANKLIN J. HAVELICK
MEMBER