

City v. PBA, 25 OCB 22 (BCB 1980) [Decision No. B-22-80 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between

THE CITY OF NEW YORK,

Petitioner,

-and-

PATROLMEN'S BENEVOLENT
ASSOCIATION,

Respondent.

DECISION NO. B-22-80

DOCKET NO. BCB-421-80
(A-1039-80)

DECISION AND ORDER

On April 30, 1980, the Patrolmen's Benevolent Association (hereinafter "PBA" filed a request for arbitration, in which it seeks to arbitrate the Police Department's mandate that police officers purchase a new-model uniform duty jacket. The City filed a petition challenging arbitrability on May 9, 1980, asserting that the union's claim does not fall within the contractual definition of a grievance. The PBA submitted an answer to the City's petition on May 27, 1980, and a letter in reply was submitted by the City on June 6, 1980.

Nature of the Grievance

The request for arbitration filed by the PBA alleges a violation of Article XXIII, section 1(a)2 of the collective bargaining agreement. This section provides:

"Section 1. - Definitions

a. For the purposes of this Agreement the terms, 'grievance,' shall mean:

* * *

1. 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;"

The PBA alleges that the Police Commissioner issued Interim Order No. 4, dated February 4, 1980, which required that a new type of uniform duty jacket be purchased, regardless of whether prior uniform jackets were worn out, or serviceable. The union contends that the Police Commissioner's actions in unilaterally changing the uniform requirements, are violative of the above-quoted provision of the agreement.

In its answer to the petition challenging arbitrability, the PBA also refers to Article VII of the agreement, which states:

"In each fiscal year, 1978-1979 and 1979-1980 the City shall pay to each employee a uniform allowance of \$265.00 in accord with the existing standard procedures."

The PBA argues that this provision supports its grievance. However, it does not contend that Article VII has been violated.

The remedy requested by the PBA is that police officers be given the option either to purchase the new uniform duty jacket or to continue to use current serviceable uniform jackets.

Positions of the Parties

The City asserts that the PBA's claim does not fall within the contractual definition of a grievance. The City notes that aside from a citation of Article XXIII, section 1(a)2 of the collective bargaining agreement, the PBA has failed to allege a violation of any other provision of the agreement, or any rule, regulation or procedure of the Police Department affecting terms and conditions of employment. Additionally, the City argues that the prescribing of authorized uniforms is a managerial prerogative, not within the scope of the collective bargaining agreement, and not subject to the contractual grievance procedure.

The PBA argues that the definition of a grievance contained in Article XXIII of the collective bargaining agreement¹ is "extremely broad" and that the union could not and did not agree to a grievance and arbitration procedure so restrictive as to preclude arbitration of the instant claim.

The PBA further argues that the provision for payment of a uniform allowance of \$265 per year, pursuant to Article VII of the contract, was negotiated and agreed to on the assumption that the then-existing uniform requirements would continue in effect. The union notes that the subject of uniform allowances is a mandatory

¹ The request for arbitration relies upon section 1(a)2 of Article XXIII (quoted supra). The PBA's answer to the petition challenging arbitrability refers to section 1(a)1 of that Article (defining a grievance as "a claimed violation, misinterpretation or inequitable application of the terms of this Agreement"), but continues to argue the substance of a claim under section 1(a)2. PBA Answer, paragraph 9.

subject of bargaining under section 1173-4.3 of the New York City Collective Bargaining Law, and it concludes that this fact renders this grievance "...clearly within the scope of collective bargaining..." and thus arbitrable.

In its reply to the PBA's answer, the City contends that while the union has a right to bargain over a uniform allowance, it does not have the right to bargain over the type of uniform to be worn. This, it is realleged, is a management prerogative. The City points out that in the present round of negotiations, the union has made a demand to increase the amount of the uniform allowance. It is implied that the PBA's recourse, if any, in this matter lies through negotiations and not through the grievance and arbitration procedures of the agreement.

Moreover, the City again asserts that the union has failed to specify a provision of the agreement or a rule, regulation or procedure of the Department which it claims has been violated. The City submits that the parties' agreement to arbitrate is not as broad as alleged by the PBA, but is limited to the types of matters enumerated in Article XXIII. In the absence of an alleged violation of one of the types of matters enumerated in the contractual definition of a grievance, the City argues that this claim may not be arbitrated.

Discussion

We have long held that in determining disputes concerning 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.² Since the parties in the present matter have agreed to arbitrate grievances, as defined in Article XXIII of the collective bargaining agreement, it is the responsibility of this Board to determine whether the instant claim is within the range of matters which the parties, by contract, have agreed to submit to arbitration.

The only contract provision, rule or regulation alleged by the PBA to have been violated is Article XXIII, sections 1(a)1 and/or 1(a)2³ of the agreement. These sections are merely two categories of the five part contractual definition of the term "grievance". As such, they do not furnish an independent basis for a grievance. It has not been shown how either of these definitions have been violated, misinterpreted or misapplied.

In submitting a request for arbitration, it is not enough to rely solely upon the contractual definition of a grievance. It is incumbent upon the party seeking arbitration to allege facts which, if proven, would constitute a grievance within the contractual definition. As applied to the instant case, it was incumbent

² Decision Nos. B-17-80; B-15-79 and decisions cited therein at footnote 7.

³ See footnote 1, supra.

upon the PBA to specify a claimed violation, misinterpretation or inequitable application of some other provision of the agreement, in order to constitute a grievance under section 1(a)1; or to specify a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department affecting terms and conditions of employment, in order to satisfy the definition of a grievance under section 1(a)2 of the agreement. The PBA has wholly failed to specify any provision of the agreement (other than the definition sections) or any rule, regulation, or procedure which it claims has been violated, misinterpreted, inequitably applied, or misapplied. Accordingly, we find that no arbitrable grievance has been stated, within the terms of the parties' agreement.

The PBA also relies upon Article VII of the agreement, concerning payment of a uniform allowance, but it does not allege that the provisions of this article have been violated. Rather, the PBA argues that since a uniform allowance has been negotiated and made a part of the agreement, a change in the uniform upon which the allowance was based should also be arbitrable under the agreement.

We are not persuaded by this argument. First, we note that the provisions of the agreement are silent on the question of the uniform to be worn. In negotiating payment of a uniform allowance, the PBA may have assumed that the required uniform would remain the same during the life of the contract, but there is no indication that the City agreed with this assumption, and, clearly, no such assumption is expressed in the contract.

Second, we agree with the City that while a uniform allowance is a mandatory subject of bargaining, the determination and prescription of authorized uniforms is a management prerogative.⁴ Thus, the fact that the parties bargained for and reached agreement on a uniform allowance, does not compel a finding that they also reached an agreement concerning what the required uniform would continue to be. Such an agreement would have to be expressly stated in the contract in order to restrict the City's exercise of its management prerogative in this area.

The union's assertion that the instant claim is within the scope of collective bargaining and is thus arbitrable, is without merit. The question of whether or not this matter is a mandatory subject of bargaining is irrelevant to the determination of the issue of arbitrability, and thus we do not pass on this question. Arbitrability is dependent upon what the parties have bargained for and included in their contract, not what they might be required to bargain over. The scope of the parties' agreement to arbitrate need not be (and usually is not) as broad as the scope of collective bargaining.⁵

⁴ We believe that the determination of appropriate uniforms falls within the employer's statutory right to determine the methods, means and personnel by which its function is to be performed, and its right to exercise control and discretion over the technology of performing its work. NYCCBL, section 1173-4.3(b).

⁵ As stated supra, the City alleges that in the current round of negotiations, the PBA has made a demand to increase the amount of the uniform allowance. We take administrative notice that demands 146 and 147 of the 1980 Unit Bargaining Demands filed with the office of Collective Bargaining by the PBA, call for an increase in the uniform allowance and the establishment of a Uniform and Equipment Committee which would select the uniform and equipment to be used by police officers. It thus appears that the PBA's remedy, if any, for the matter complained of herein lies through the collective bargaining process.

The PBA's interpretation of the contractual arbitration provisions is overly broad. We have previously characterized these provisions of the contract between the City and the PBA as being "extremely broad".⁶ However, the scope of the parties' agreement to arbitrate is not unlimited. 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.⁷ In this case, the PBA has failed to show that the subject of its claim is encompassed within any of the broad categories which the parties have included within their contractual arbitration provisions. Accordingly, we find that this matter is not arbitrable.

ORDER

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, granted; and it is further

⁶ See Decision No. B-15-80.

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

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

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

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

EDWARD J. CLEARY
MEMBER

EDWARD F. GRAY
MEMBER

JOHN D. FEERICK
MEMBER

FRANKLIN J. HAVELICK
MEMBER