

City v. PBA, 25 OCB 28 (BCB 1980) [Decision No. B-28-80 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter

THE CITY OF NEW YORK,

DECISION NO. B-28-80

Petitioner,

DOCKET NO. BCB-414-30
(A-1024-80)

-and-

THE PATROLMEN'S BENEVOLENT
ASSOCIATION,

Respondent.

DECISION AND ORDER

This proceeding was commenced by the filing on April 3, 1980 by the Patrolmen's Benevolent Association (hereinafter "PBA" or "the Union") of a request for arbitration. The PBA alleges that the implementation of a program whereby uniformed members of the Police Department, employed in the Manhattan Property Clerk's Office, are being supervised by a civilian violates rules and regulations of the Police Department, and is therefore arbitrable.

The City of New York by its Office of Municipal Labor Relations (hereinafter "the City" or "OMLR") challenges arbitrability in a petition filed on April 23, 1980, on the ground that the rules and regulations alleged to have been violated are not applicable in this case, and, on the further ground that the assignment of supervisory personnel is a management prerogative.

BACKGROUND

The instant grievance is brought pursuant to the 1978-1980 unit contract between the PBA and the City. Article XXIII of that Agreement sets forth a grievance and arbitration procedure wherein the term "grievance" is defined in pertinent part as follows:

... 2. a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department affecting terms and conditions of employment....

The "rules, regulations, or procedures" alleged to have been violated are sections of the Police Department Patrol Guide and Administrative Guide which include a Patrol Precinct organization Chart (Patrol Guide, Section 103-1) illustrating the hierarchy of supervision within a precinct; Patrol Duties and Responsibilities (Patrol Guide, Section 103-2) including the duties of Commanding Officer and Executive Officer, who are ranked second and third respectively after the Division Commander; Duties and Responsibilities for Area Captains (Administrative Guide, Section 303-1); and procedures for the making of precinct assignments by the Commanding Officer (Administrative Guide, Section 303-2). Among the duties and responsibilities described are supervisory functions of the above-listed officers.

POSITIONS OF THE PARTIES

Union Position

The PBA contends that the supervision of uniformed officers in the Manhattan Property Clerk's office by a civilian Principal Administrative Assistant (P.A.A.) constitutes an "improper supervisory practice" in that a civilian is performing duties which the above-cited sections of the Patrol and Administrative Guides assign to uniformed personnel. The Union maintains that this violation of Police Department rules and regulations affects the terms and conditions of employment of uniformed officers where the civilian P.A.A. replaces a member of the uniformed service in the performance of such supervisory functions.

The PBA also objects to the supervision of uniformed personnel by a civilian on the ground that the position of Commanding Officer has traditionally been held by a member of the police force who has been promoted and progressed through the ranks to achieve a supervisory position. Thus past practice has been violated by the City's unilateral implementation of a procedure involving civilian supervision, according to the PBA.

Finally, the Union cites as authority for its position an arbitration award in a dispute between the Port Authority of New York and New Jersey and the Port Authority Superior Officers Association. There, the arbitrator found that

accepted procedure was violated when civilians were placed in positions traditionally held by Police officers.

As a remedy, the PBA seeks to have its members in the Property Clerk's Office supervised by uniformed personnel only.

City Position

The City challenges arbitrability on the ground that the Patrol and Administrative Guide provisions allegedly violated do not pertain to the Manhattan Property Clerk's office, which is a "non-patrol" command. OMLR maintains that "there is no department rule, regulation or order governing the command or supervisory structure of a non-patrol command" and therefore, no violation has occurred.

The City contends further that even if a relevant Patrol or Administrative Guide Procedure did exist, it would not affect a term and condition of employment as required by the definition of grievance in Article XXIII of the contract. OMLR maintains that the assignment of personnel to a unit, including supervisory personnel, is a management prerogative under the New York City Collective Bargaining Law (§1173 4.3(b)). The City therefore, seeks dismissal of the Union's request for arbitration.

DISCUSSION

It is undisputed that the PBA and the City are parties to a collective bargaining agreement which includes a grievance procedure for the resolution of disputes that may arise thereunder. In the usual case we would first address the question of whether the grievance alleged is within the scope of the parties' agreement to arbitrate. Here, however, there appears to be a preliminary issue resolution of which will dispose of the case, namely, whether the PBA has standing to bring its grievance in the first instance.

In the case before us, the PBA challenges the City's right to use civilians to supervise uniformed personnel. We note that the Union does not allege that this supervisory practice usurps duties that are exclusively reserved for its members. Rather, the PBA complains that the use of civilians violates a past practice of the Police Department under which police officers were promoted from within the ranks to the supervisory position.

The PBA is the certified collective bargaining representative for "employees employed by the City of New York in the titles of Patrolman and Policewoman".¹ It is not, however, the bargaining representative for employees in titles which are eligible for appointment to the position of

¹ Decision No. 54-68.

Commanding Officer. When a Patrolman or Policewoman is promoted to the rank of Sergeant and assigned to such a supervisory position, he or she is no longer in a unit represented by the PBA. Thus, we conclude, the Union has no legal standing to challenge the use of civilians as supervisors in the Property Clerk's Office² and, on this basis, we dismiss the PBA's request for 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 City's petition challenging arbitrability be, and the same hereby is, granted, and it is further

² See Board Decision B-27-80 where, in the context of an alleged improper practice, the Board found that the PBA lacked standing to challenge the transfer and replacement by civilians of two Sergeants in the Property Clerk's Offices of Manhattan and Queens, and found further that the Union had not met its burden of showing a practical impact on the terms and conditions of employment of its members resulting from the City's actions.

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

DATED: New York, N.Y.
September 4, 1980

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

FRANKLIN J. HAVELICK
MEMBER

JOHN D. FEERICK
MEMBER

MARK J. CHERNOFF
MEMBER

EDWARD J. CLEARY
MEMBER