City v. PBA, 25 OCB 40 (BCB 1980) [Decision No. B-40-80 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

between

THE CITY OF NEW YORK, DECISION NO. B-40-80

Petitioner DOCKET NO. BCB-438-80 (A-1066-80)

-and

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

DECISION AND ORDER

The instant matter concerns a motion filed by the Patrolmen's Benevolent Association (hereinafter "PBA") on September 16, 1980, seeking an order of the Board relieving it of its default in this matter and reopening this case for the purpose of receiving the PBA's answer to the City's petition challenging arbitrability herein. The City of New York submitted a letter, dated September 18, 1980, in opposition to the PBA's motion. In view of the interrelation between this motion and the prior proceedings had herein, a brief review of earlier events in this matter is warranted.

On June 17, 1980, the PBA filed a request for arbitration (Docket No. A-1066-80) in which it stated the grievance to be arbitrated as:

> "The Department's determination of having police officers and Detectives selecting vacations together."

The City filed a petition challenging arbitrability of this grievance on July 18, 1980.

The PBA failed to submit an answer to the City's petition, despite repeated inquiries by the Trial Examiner assigned to this matter. Consequently, in Decision No. B-32-80, dated September 4, 1980, we found that the City's petition stated a prima facie case and that, in the absence of any submission by the PBA which would dispute the City's allegations, those allegations were deemed to be true. Accordingly, we granted the petition challenging arbitrability. The instant motion was filed shortly thereafter.

Positions of the Parties

The PBA alleges that its default in this matter was "inadvertent" and was due to "... confusion concerning the assignment of an attorney to this matter." Additionally, the PBA alleges that it "... has a substantial defense to the City's Petition...." However, the Union has not alleged what that defense may be. The PBA further contends that no party would be prejudiced by the reopening of this case.

The City of New York opposes the PBA's motion, arguing that the PBA's excuse for its default "has no merit whatsoever". The City notes that this lack of merit is apparent "... particularly in light of the chronology set forth on pages 1 and 2 of the Board's decision [in B-32-80]."

Discussion

We do not favor determinations based upon the default of a party, and would much prefer that all matters be decided upon a full presentation of the merits. However, where a default is flagrant, it cannot be overlooked lightly. In the present case, the decision and order in B-32-80, based upon the PBA's default, was made one month after the PBA's answer was due to be served and filed, and three weeks after the Trial Examiner reminded the Union's attorneys that the answer was overdue. The PBA's continued default was thus not merely de minimus.

A default under such circumstances can only be opened upon a satisfactory showing of facts sufficient to excuse the default, and facts establishing the existence of a meritorious defense.[1] The papers submitted by the PBA in support of its motion herein do not provide the requisite showing.

The excuse offered by the PBA for its default is that "... there was confusion concerning the assignment of an attorney to this matter." This explanation must be construed to be based upon "law office failure", a ground which

[1] On this issue, we have adopted the standard commonly applied by the Courts on motions to vacate defaults. See, e.g., Manufacturers Hanover Trust Co. v. Stern, 423 N.Y.S. 2d 18, 21 (1st Dept. 191-9); Bishop v. Galasso, 67 A.D. 2d 753, 412 N.Y.S. 2d 214 (3d Dept. 1979).

has long been held to be an insufficient reason to excuse a default.[2] Moreover, the Trial Examiner called the PBA's attorneys, and informed them that the Union's answer was overdue. He further informed them that if an extension of time to answer was desired, a written request should be submitted. These actions by the Trial Examiner clearly gave the PBA sufficient opportunity to correct any "confusion" prior to our consideration of the City's petition. Nevertheless, neither an answer nor a written request for additional time was submitted. Under these circumstances, we cannot find that the PBA's default was excusable.

Even if, in the exercise of our discretion, we were to accept the PBA's excuse for its default, we would still decline to vacate the default herein. The PBA has failed to show that it has a meritorious defense to the City's petition, such as would warrant reopening this matter. The PBA, by its attorney, merely alleges: " ... the P.B.A. has a substantial defense to the City's Petition and should be allowed to address the issues on their merits." This conclusory allegation is not supported by any allegations of fact, nor even by any indication of what the PBA's defense may be.

Mere self-serving conclusions that a meritorious defense exists, do not suffice to justify vacating a default.

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[2] See, e.g., Griffin Brothers, Inc. v. Yatto, 68 A.D. 2d 1009, 415 N.Y.S 2d 114 (3d Dept. 1979); Reed v. Cone, 61 A.D. 2d 877, 402 N.Y.S. 2d 258 (3d Dept. 1978).

Facts must be alleged which demonstrate the existence of a meritorious defense.[3] The PBA has wholly failed to make such a showing, and accordingly, its motion must be denied.

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 Patrolmen's Benevolent Association's motion to vacate its default and to reopen this matter be, and the same hereby is, denied.

DATED: New York, N.Y.
November 5, 1980

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

FRANKLIN J. HAVELICK
MEMBER

JOHN D. FEERICK
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

[3] Montrose Concrete Products Corp. v. Silverite Construction Co., 68 A.D. 2d 904, 414 N.Y.S. 2d 213 (2d Dept. 1979); S. Weiner Furniture Co. v. Dolphin Equipment Leasing Corp., 67 A.D. 2d 755, 412 N.Y.S. 2d 211, 212 (3d Dept. 1979).