OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

DECISION NO. B-28-81

Petitioner,

DOCKET NO. BCB-453-80

-against- (A-1118-80)

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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DECISION AND ORDER

On October 8, 1980, the City of New York, appearing by its office of Municipal Labor Relations (the "City"), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Patrolmen's Benevolent Association (the "PBA") on August 28, 1980. After several extensions of time, the PBA submitted its answer on December 1, 1980, although such submission was not completed until the filing of the required verification on December 22, 1980. On January 12, 1981, The City filed a letter reply in which it reiterated its request that the grievance be found not arbitrable or, in the alternative, that the matter be stayed pending a decision in A-861-79.[1]

[1] A-861-79 is a proceeding which evolved from the allegedly wrongful assignment of certain police officers of the 30th Precinct to work other than the 9 squad duty chart, allegedly in violation of Paragraph 20 of the same 1978-80 Memorandum of Understanding between the PBA and the City that is at issue in the instant proceeding. The question before the arbitrator was the meaning of "steady tour" as used by the parties.

At the request of the Office of Collective Bargaining ("OCB"), a clarification was submitted by the PBA on February 9, 1981, together with a copy of the 1978-80 Memorandum of Understanding ("Memorandum") between the PBA and the City, the applicability of which, the PBA contends, bears directly and significantly upon the determination of arbitrability herein. In this connection, the City filed a letter dated May 4, 1981, conceding the Memorandum's coexistence with the 1978-80 collective bargaining agreement ("Agreement") between the PBA and the City, but denying the Memorandum's viability in the subsequent contract term. On August 19, 1981, an award issued in A-861-79, and on October 22, 1981, the City submitted to the Board its comments as to the effect of that award upon the issues before us herein.

Request for Arbitration

The request for arbitration alleges that the City violated Paragraph 20 of the Memorandum.

Paragraph 20 of the Memorandum provides, in relevant part, as follows:

> A "steady tour" shall be filled by volunteers in order of seniority. As vacancies occur they shall be posted for a reasonable time and shall be filled on the basis of seniority. If sufficient volunteers cannot be found within the precinct, assignments

> will be made in inverse order of seniority (unless special skills are required). The "steady" tour to be established by the precinct commander may be changed once during the period from the implementation of the new duty schedule through December 31, 1979 upon 30 days' notice of such change to the officer whose schedule is to be changed. Thereafter, any schedule change on a steady tour may be made upon the above 30 days' notice only once during a calendar year.

The grievance sought to be arbitrated is the transfer of officers to work other than the 9 squad chart. More particularly, the grievance brought on June 17, 1980 was addressed to the transfer of police officers in the 105 Precinct to summer details in the 100, 101 and 110 Precincts, and the subsequent assignment of these officers to a scooter chart. By letter dated July 3, 1980, signed by Deputy Inspector Francis McGhee, the grievance was denied at the third step. The letter reads, in pertinent part, as follows:

> There has been no violation, misapplication or inequitable application of the terms of the collective bargaining agreement between the City and the Association cited.
>
> There has been no violation, misinterpretation or misapplication of the rules, regulations or procedures of the Police Department cited.

In a letter dated August 14, 1980, the grievance was denied at Step IV. Commissioner McGuire noted that a predicate to the filing of a grievance was the recitation of a violation of a section of the contract, or a departmental

rule, regulation or procedure, and that the PBA failed to do so.

Positions of the Parties

The City's Position

The City contends that the PBA has failed to cite a section of the Agreement or a departmental rule, regulation or procedure which has been violated. With respect to the 1978-80,Memorandum, the City contends that the PBA has failed to establish the requisite relationship between the act complained of and the source of the alleged right. The City's position may be summarized as follows:

> 1. Under Section 1173-4.3b of the New York City Collective Bargaining Law ("NYCCBL"),[2] the authority to deploy manpower and resources is reserved to management (¶9 of the petition);

[2] §1173-4.3b of NYCCBL provides as follows:

b. It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications, take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

2. Nothing has been cited which can be construed as a limitation on management's right to transfer police officers unilaterally (¶11 of the petition);

3. ¶20 of the Memorandum does not, nor was it intended to, detract from the Department's authority to transfer employees in the exercise of its managerial prerogative. Instead, the Memorandum provides that employees may volunteer for a steady tour (¶13 of the petition);

4. The PBA is seeking to expand the scope and distort the meaning of ¶20's treatment of the subject of volunteers for steady tours. "The language on its face clearly does not cover transfer situations" (January 12, 1981 letter reply); and

5. At any event, the City argues, the award which issued in A-861-79 is entirely dispositive of the matter herein. In that proceeding, as in the instant proceeding, the issue was whether an assignment to a scooter chart was an assignment to a steady tour governed by ¶20 of the Memorandum. Since Benjamin wolf found it was not, the only arguably arbitrable issue herein has already been decided and the request for arbitration should, accordingly, be denied.

PBA's Position

In its request for arbitration, and again in its answer to the petition challenging arbitrability, the PBA cites ¶20 of the Memorandum as the violated provision and Article XXIII of the Agreement as the section pursuant to which the demand for arbitration is made.

In ¶3 of its answer, the PBA characterizes the violation as the "transfer of officers to work other than

the 9 squad chart," in disregard of the Memorandum's explicit mandate that steady tour shall be manned initially by volunteers in order of seniority and, if there are insufficient volunteers, by assignment in inverse order of seniority. In the PBA's view, ¶20 of the Memorandum designates the sole criterion to be used in the selection of police officers for steady tours. A selection effectuated in any other manner, it argues, constitutes an arbitrable violation.

Discussion

The gravamen of the grievance which generated the request for arbitration is that 1120 of the 1978-80 Memorandum of Understanding compelled the assembling of "steady tours" in a specified manner and that the assignment of these officers to a scooter chart in a contrary manner constituted an arbitrable violation. Since, however, Arbitrator Wolf dealt with that precise issue in A-861-79, and found that a scooter chart, i.e. a rotating tour, was not a steady tour, which he determined was a tour characterized by fixed hours, the assignment herein to a scooter chart need not have conformed with ¶20 of the Memorandum which is addressed solely to assignments to steady tours.

For the foregoing reasons, there remain no arbitrable issues in this matter, and the request for arbitration must, therefore, be denied.

Since we have found that the grievance herein would not be arbitrable even if the Memorandum was otherwise applicable, we need not reach the merits of any other contentions contained in the petition herein.

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 arbtrability be, and the same hereby is, granted, and it is further

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

DATED: New York, N.Y.
November 6, 1981

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

WALTER L. EISENBERG
MEMBER

EDWARD J. CLEARY
MEMBER

MARK J. CHERNOFF
MEMBER

EDWARD SILVER
MEMBER

FRANKLIN J. HAVELICK
MEMBER