

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK

DECISION NO. B-6-81

Petitioner,

DOCKET NO. BCB-445-80

-against-

(A-1102-80)

PATROLMEN'S BENEVOLENT ASSOCIATION,,

Respondent.

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DECISION AND ORDER

The Patrolmen's Benevolent Association of the City of New York (hereinafter "PBA") filed a request for arbitration with the Office of Collective Bargaining on August 6, 1980, in which it stated the grievance to be arbitrated as:

"The assignment of overtime to  
Detectives doing Police Officers  
work."

The City of New York, by its representative, the office of Municipal Labor Relations, filed a petition challenging the arbitrability of the PBA's grievance on August 29, 1980. After several extensions of time, the PBA submitted its answer to the City's petition on December 3, 1980, although such submission was not completed until the filing of the required verification of the answer<sup>1</sup> on December 22, 1980. The City filed a letter in reply to the PBA's answer on January 12, 1981.

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<sup>1</sup>See Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules") §7.7.

POSITIONS OF THE PARTIES

City Position

The City contends that the subject of the PBA's request for arbitration does not fall within the contractual definition of a "grievance" which may be arbitrated. The City observes that the only category of contractual grievance which the PBA's claim could arguably fall within would be under Article XXIII, section 1(a)(1) of the Agreement, which provides;

"a. For the purpose of this agreement the term, 'grievance' shall mean:

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

The City states that the PBA's request for arbitration purports to come within the above-quoted definition of a grievance, by claiming a violation of a provision of the Agreement, specifically Article 1, section 1, as the basis for the request for arbitration.

However, the City asserts that Article I, section 1 is "...merely the Union Recognition and Unit Designation clause." The City argues that,

"Nothing in that clause guarantees the police officers represented by the PBA any and all of the overtime authorized by the Department."

Further, the City alleges that this clause "... does not grant exclusive domain over police work". On this basis, the City urges

that Article I, section 1 of the Agreement cannot have been violated by the assignment of overtime to other members of the Department (Detectives) who are not represented by the PBA. There-  
orer contends the City, the PBA has failed to allege a prima facie basis for its grievance, and this matter should not be per-  
mitted to proceed to arbitration.

Union Position

The PBA alleges that money was allocated by the Police Com-  
missioner for the purpose of permitting the scheduling of over-  
in order to provide increased patrol coverage. It is claimed  
by the PBA that this overtime was intended to be scheduled solely  
for police officers.

The PBA further contends that, pursuant to Article 1, section  
1 of the Agreement, the members of the collective bargaining unit  
for which the PBA is the recognized representative are the only  
employees of the Police Department who perform "... ordinary,  
routine patrol duty". The PBA asserts that Detectives, who are  
members of another bargaining unit, do not participate in such  
duty. The PBA alleges that employees in the PBA's bargaining unit  
expect to perform, are entitled to perform, and routinely do per-  
form patrol functions in both a non-overtime and overtime capacity.  
Accordingly, the PBA concludes that:

"...overtime paid for the purpose of  
enhancing traditional police coverage  
or presence contractually belongs to  
the P.B.A. bargaining unit and Detectives  
are not entitled to [such] overtime...."

Under these circumstances, the PBA argues that the City's actions constitute a breach of the Article I. section 1 of the Agreement, and thus present the basis of an arbitrable grievance.

#### DISCUSSION

It is well established that in determining disputes concerning arbitrability, this Board 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.<sup>2</sup> It is clear in the present case that the parties' have agreed to arbitrate grievances, as defined in Article XXIII of their collective bargaining agreement, and therefore the Board will direct its attention to the question of whether the PBA's claim herein is within that range of matters which the parties, by contract, have agreed to submit to arbitration.

The only contract provision, rule, regulation or procedure alleged by the PBA to have been violated is Article I,, section 1 of the Agreement. This section is described by the City as being the "Union Recognition and Unit Designation" clause of the Agreement, and its full text provides as follows:

"The City recognizes the Union as the sole and exclusive collective bargaining representative for the unit consisting of employees of the New York City Police Department in the titles of Patrolman and

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<sup>2</sup>See, e.g., Decision Nos. B-22-80; B-15-79 and decisions cited therein at footnote 7.

Policewoman, except those detailed as  
First, Second and Third Grade Detectives,  
and Patrolman/Policewoman (CETA)."

The PBA argues that this provision gives the members of its bargaining unit, the exclusive right to perform "ordinary, routine patrol duty" and, thus, to earn overtime compensation for the performance of such duty. The City denies that this provision of the Agreement can be read to grant any such rights, and alleges that it therefore cannot serve as the basis of the PBA's request for arbitration.

This Board has a responsibility to inquire as to the prima facie relationship between the act complained of by the grievant, 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.<sup>3</sup> Consistent with this principle, we must determine, in the present case, whether the provision relied upon by the PBA, Article I, section 1, is arguably related to the grievance to be arbitrated. After reviewing the submissions of the parties in this matter, the Board concludes that this provision is not arguably related to the subject of the PBA's claim.

The Board finds that Article I. section 1 of the Agreement is, as alleged by the City, a union recognition and unit designation clause. Moreover, its terms are consistent with the unit certified

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<sup>3</sup>Decision Nos. B-21-80, B-15-80, B-15-79, B-7-79, B-3-78, B-3-76, B-1-76.

to the PBA by the Board of-Certification<sup>4</sup> as of the effective date of the Agreement, However, this section of the Agreement is not and does not purport to be either a job description or a grant of exclusive work jurisdiction. Its clear terms do not deal with the performance of "ordinary, routine patrol duty", nor the scheduling of overtime to perform such duty. We do not find any arguable connection between this provision of the Agreement and the PBA's claim of exclusive entitlement to the scheduling of overtime patrol duties. We do not see how this provision arguably creates any obligation on the part of the City to grant such overtime only to police officers. Thus, the PBA's claim does not arise under Article I, section 1 of the Agreement and does not fall within the parties' agreement to arbitrate;

"...a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement."<sup>5</sup>

As we have often stated, 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. In this case, the PBA has failed to establish that the parties' agreement to arbitrate encompasses the question of the assignment of overtime to employees

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<sup>4</sup>Decision No. 54-68, as amended by Decision No. 22-77.

<sup>5</sup>Article XXIII, section 1(a)(1) of the Agreement.

outside of the PBA's bargaining unit. 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 hereby

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.

DATED: New York, N.Y.  
March 4, 1981

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

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MEMBER

EDWARD SILVER  
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