City v. COBA, 29 OCB 41 (BCB 1982) [Decision No. B-41-82 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
----------X

In the Matter of

THE CITY OF NEW YORK, DECISION NO. B-41-82

DOCKET NO. BCB-606-82
(A-1551-82)

Petitioner,

-and-

THE CORRECTION OFFICER'S BENEVOLENT ASSOCIATION,

Respondent.

----------X

DECISION AND ORDER

On July 26, 1982, the City of New York, appearing by its Office of Municipal Labor Relations (hereinafter "the City" or "OMLR"), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Correction officers Benevolent Association (hereinafter "the Union" or "COBA") on July 21, 1982. COBA filed an answer on July 30, 1982, to which the City did not reply.

Request for Arbitration

In its original request for arbitration, the Union stated that the City violated Article XX, Section 1(b) of the 1978-1960 collective bargaining agreement (hereinafter "the Agreement") entered into between the

parties. As pointed out by the City in its petition, Article XX concerns niaht shift differentials, a subject unrelated to the instant proceeding. Thereafter, COBA,, in its answer, moved to amend the request for arbitration to allege a violation of Article XXI, Section l(b) Article XXI, Section 1 reads as follows:

Section 1 - Definition

For the purpose of this Agreement the term "grievance" shall mean:

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

b. a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Agency affecting terms and conditions of employment, provided that, except as otherwise provided in this Section la the term grievance" shall not include disciplinary matters;

c. a claimed violation, misinterpretation or misapplication of the Guidelines for Interrogation of Members of the Department referred to in Article XIX of this Agreement;

d. a claimed improper holding of an open-competitive rather than a promotional examination;

e. a claimed assignment of the grievant to duties substantially different from those stated in the employee's job specification.

COBA seeks to grieve

> [t]he assignment of one officer to secure dormitories which require two officers. The result is a direct impact on safety and security.

The remedy requested by the Union is "the assignment of two officers to those dormitories."

Positions of the Parties

The City's-Position

The City contends that COBA's complaint is vague and overbroad, lacks contractual justification, and should be dismissed.

Pointing out that Article XX, Section l(b), the contractual provision alleged by the Union to have been violated, deals with night shift differentials and in no way relates-to the subject matter of this grievance, OMLR argues that the Union "has failed to establish any nexus between the act complained of and the source of the alleged right."

The City further maintains that actions relating to the assignment of personnel are managerial prerogatives within the protection of Section 1173-4.2(b) of the New York City Collective Bargaining Law (hereinafter "NYCCBL").[1]

---

[1] NYCCBL Section 1173-4.2(b) states:

> 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

(more)

OMLR argues that absent a showing by the Union that the Agreement circumscribes these rights, the City may make unilateral determinations regarding personnel assignments and may do so without forming the basis of an arbitrable matter.

The Union's Position

COBA contends that it has "a meritorious claim and should be heard."

It maintains that "act-ions by the employer which have a direct impact on safety, security and well-being of the employees have traditionally been held to be a proper subject for arbitration." The Union argues, further,

---

(Footnote 1/ continued)

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.

that "the unique aspects of the job of correction officer make issues of safety, security and well-being a necessary subject for arbitration."

Discussion

It is the policy of the NYCCBL to promote and encourage arbitration as the selected means for the adjudication and resolution of grievances.[2] However, this Board cannot create a duty to arbitrate where none exists nor can we enlarge a duty to arbitrate beyond the scope established by the parties by contract or otherwise. A party may be required to submit to arbitration only to the extent that it has previously consented and agreed to do so.[3]

The parties herein do not dispute their obligation to arbitrate a broad range of grievances as stated in Article XXI of the Agreement. The issue before us is whether COBA's complaint in this proceeding is within the scope of matters submissible to an arbitrator. 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.[4]

---

[2] See NYCCBL Section 1173-2.0 and Decision Nos. B-8-68, B-1-75, B-19-81 and B-15-82.

[3] Decision Nos. B-12-77, B-15-82.

[4] Decision Nos. B-1-76, B-3-76, B-3-78, B-7-79, B-15-79, B-15-80, B-21-80, B-7-81, B-8-82.

In the instant T-natter, the City claimed that arbitration should be denied because the act complained of - manning changes - had nothing to do with the subject matter - shift differentials - of the cited contract provision. In response, the Union stated that it had cited Article XX, Section l(b) in error and that the citation should have been to Article XXI, Section l(b). Examination of the latter provision discloses that it does not deal with manning levels or other substantive terms but with definition of the term "grievance". As we have previously held, the alleged violation, misinterpretation or misapplication of the definitional section of a contract does not in and of itself furnish the basis for a grievance.[5] While it is entirely appropriate to cite the definition of a grievance in a request for arbitration, such citation must be made in conjunction with the citation of a specific substantive provision, the alleged breach of which the parties have agreed would form the basis of an arbitrable claim. In the instant matter, under Article XXI, Section l(b), it is the alleged violation of some other section of the Agreement or of an agency rule, regulation or procedure which may constitute a grievance.

[5] Decision Nos. B-21-80, B-7-81.

With regard to the Union's allegation of a "direct impact on safety and security" as a result of the City's staffing decision, we note that no matter how sound such a claim may be and regardless of how clearly and graphically it may point the need for some form of corrective action, it cannot, of itself, create a duty to arbitrate or empower an arbitrator to fashion corrective measures. We note, further, that the Union's reference to "direct impact on safety" if it is intended somehow to relate to the NYCCBL's provisions for dealing with "practical impacts" resulting from exercise of management prerogatives is misplaced in the context of a request for arbitration. Questions of practical impact are properly presented to this Board for our determination in the form of a scope of bargaining petition. Furthermore, the' allegations in such petition must be supported by probative, factual evidence, rather than by mere conclusionary assertions, as have been pleaded herein.

Based upon the foregoing reasons, we must deny the Union’s request to arbitrate this matter.

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

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

DATED: New York, N.Y.
November 29, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

MARK J. CHERNOFF
MEMBER

CAROLYN GENTILE
MEMBER

PATRICK F.X. MULHEARN
MEMBER

JOHN D. FEERICK
MEMBER