

City v. PBA, 31 OCB 10 (BCB 1983) [Decision No. B-10-83 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of
CITY OF NEW YORK,
Petitioner,

DECISION NO. B-10-83
DOCKET NO. BCB-627-82
(A-1575-82)

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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DECISION AND ORDER

On November 29, 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 Patrolmen's Benevolent Association (hereinafter "the Union" or "the PBA") on behalf of former Police officer Martin P. McGorty on August 24, 1982. The PBA filed an answer on December 16, 1982, to which the City replied on January 12, 1983.

Request for Arbitration

The request for arbitration alleges that the City violated Article III, Section 1(a) of the 1980-1982 collective bargaining agreement (hereinafter "the Agreement")

entered into between the parties. Article III, Section 1(a) reads as follows:

ARTICLE III - HOURS AND OVERTIME

Section 1.

a. All ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty chart, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

The Union seeks to grieve the "(d)enial of overtime for court appearance (sic) in which grievant was defended and eventually exonerated." As a remedy, the PBA seeks "(a)pplicable overtime compensation."

Background

On August 6, 1980, Martin P. McGorty and four other police officers were arrested. McGorty attended numerous criminal court proceedings as a defendant in August, 1980; May, June and November, 1981; and January 1982. The criminal charges against McGorty were dropped by the Queens District Attorney on January 18, 1982.

Intradepartmental disciplinary charges were also filed against McGorty. Proceedings on these charges com-

menced on April 20, 1982. A negotiated settlement was arrived at on April 22, 1982. As part of the settlement, McGorty agreed: a) to waive all salary and benefits for the seven day suspension period following the arrest; and b) to immediately file for service retirement.

On April 29, 1982, McGorty filed for service retirement, which became effective on July 2, 1982. During the interim, McGorty received payment for accrued leave.

On June 10, 1982, McGorty wrote to the Union, informing it of his intention to seek overtime for "all the time lost going to court." The Union submitted his letter as a grievance to Police Department (hereinafter "the Department") headquarters on July 14, 1982. By letter dated July 23, 1982, the Department replied:

Since Officer McGorty is not an employee he is not entitled to the grievance procedures of the current collective bargaining agreement.

PBA President Phil Caruso appealed this determination on July 28, 1982. Police Commissioner Robert McGuire responded on August 16, 1982, affirming the denial on the grounds that McGorty was no longer a Department employee.

Positions of the Parties

The City's Position

The City challenges the arbitrability of the instant grievance on several grounds. It cites Patrol Guide Procedure No. 118-12, which states in pertinent part:

"Members who are defendants in a criminal action shall not appear in court on these cases while on duty. Such appearances shall be made on regular days off or with authorized excusals."

Pursuant to this language, OMLR contends that when McGorty attended court as a criminal defendant, he did so on his own time and is therefore not entitled to any overtime compensation whatsoever. The City also cites the following demand made by the PBA during the course of the 1982-1984 negotiations:

DISCIPLINARY PROCEDURES (Reporting)

- a) An employee who is suspended shall not be required to report in person or by any other manner at any time during the suspension period.
- a) If an employee who is suspended is required to report for court or other duty, he shall be compensated at the premium rate for any time so spent.

OMLR argues that the demand, which was not achieved and incorporated into the new agreement, evidences the fact that Police officers who appear in court as criminal defendants

are presently not entitled to overtime compensation.

The City maintains that the grievance cannot be considered because it was initiated by correspondence dated July 14, 1982, nearly two weeks after McGorty's effective date of retirement. Thus, McGorty was not an "employee" at the time of filing and cannot be deemed a "grievant" under the definition of that term found in Article XXIII, Section 1(e) of the Agreement:

For the purposes of this Agreement the term "grievant" shall mean an employee or group of employees asserting a grievance or the Union or both as the context requires.

It is OMLR's position that the grievance should have been commenced sometime prior to McGorty's retirement and before the disposition of the criminal and disciplinary charges.

The City notes that McGorty is the only police officer of the five arrested on August 6, 1980, to request overtime for court appearances as a criminal defendant.

The Union's Position

The PBA disputes the relevancy of Patrol Guide Procedure No. 118-12 to the issue of overtime. It argues that this portion of the Patrol Guide relates to the requirement that Police Officer/criminal defendants on modified assignment receive an excusal before going to court while on duty. Thus, Patrol Guide Procedure No. 118-12

has no bearing on the issue of whether a Police officer/criminal defendant should receive overtime compensation when required to appear in court on a regular day off or on a working day when otherwise not on duty.

The Union also denies the relevancy of the bargaining demand advanced during negotiations to the present proceeding. The PBA contends that both portions of the demand refer to suspended employees; McGorty was on modified assignment following his arrest and was compensated as if he were on full duty.

The Union argues that the instant grievance could not have been filed until the criminal and disciplinary proceedings against McGorty were completed. The PBA argues that neither the Agreement, case law nor statutory law requires that a proceeding be commenced until the action complained of is finally determined. In this matter, the necessary determination was not made until after McGorty completed his active service. Furthermore, the actions being grieved occurred while McGorty was an active member of the Department.

The Union also states that the fact that McGorty was the only Police officer of the five affected to come forward with a claim is totally irrelevant to the question of entitlement to overtime compensation.

Discussion

Before reaching the other arguments raised in the pleadings of the parties, this Board must initially determine whether grievant McGorty has the necessary standing to assert his claim.

Grievant first corresponded with the Union while he was still technically an "active" employee. Although the Union did not file his grievance with the Department until after the effective date of McGorty's retirement, it is clear that the grievance relates to actions which occurred during grievant's term of employment. Nonetheless, the City would bar the instant claim, arguing that McGorty was no longer an "employee" at the time the grievance was initiated.

An extension of the City's argument would result in barring all discharged employees from filing grievances, for after their employment has been terminated they also are no longer on the City payroll. Similarly, it would bar a newly retired employee from grieving computation errors that might have been made regarding compensation for accrued leave. Clearly, such inequitable results are contrary to the intentions of the parties and to sound labor relations. The claim herein asserted allegedly accrued while grievant was in the employ of the Department.

A vested right is not forfeited merely because the employment relationship has ended. Therefore, unless otherwise time-barred, we find that McGorty has the requisite standing to grieve matters which he claims took place during his tenure as a Police Officer. We do not reach the question of timeliness which is an issue of procedural arbitrability for resolution by the arbitrator.¹

Similarly, all questions relating to the merits of the grievances are for arbitral determination.² It is therefore not for us but for the arbitrator to determine whether Article III of the Agreement, cited by the Union, or Patrol Guide Procedure No. 118-12, cited by the City, is controlling in this matter. The PBA has met its burden of establishing an arguable relationship between the subject of its grievance, i.e., overtime, and Article III, which relates to overtime. A prima facie relationship having been shown, it is now for the arbitrator to interpret and decide the applicability of the cited provisions.

¹ Decision Nos. B-6-68, B-28-75, B-20-79, B-3-80, 19-15-81, B-33-82.

² Decision Nos. B-12-69, B-8-74, B-5-76, B-17-80, B-7-81, B-4-83.

Based upon the above considerations, we find that the grievance should be submitted to 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, denied; and it is further

ORDERED, that the PBA's request for arbitration be, and the same hereby is, granted.

DATED: New York, N.Y.
April 20, 1983

ARVID ANDERSON
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MILTON FRIEDMAN
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