OTB v. L.858, IBT, 33 OCB 30 (BCB 1984) [Decision No. B-30-84 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

NEW YORK CITY OFF-TRACK BETTING CORPORATION,

Petitioner,

DECISION NO. B-30-84

DOCKET NO. BCB-728-84 (A-1957-84)

-and-

LOCAL 858, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondent.
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DECISION AND ORDER

On August 21, 1984, the New York City Off-Track Betting Corporation ("petitioner" or "OTB"), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by Local 858, of the International Brotherhood of Teamsters ("Local 85800 or "respondent") on July 31, 1984. On September 7, 1984, Local 858 filed a response in which it requested that an order be entered dismissing the petition challenging arbitrability. No reply was submitted.

Background

On May 8, 1984, Local 858 filed a group grievance on behalf of all branch managers who work on Sundays. The gravamen of the grievance was that the OTB arbitrarily discontinued the practice of staffing branches in accord-

ance with a verbal agreement which the respondent had with Branch Operations since the inception of Sunday Racing. Pursuant to this agreement, the volume of business, relative to $25,000, would determine whether or not a second manager would be assigned. On May 6, 1984, the OTB discontinued this practice and, it is alleged, advised respondent that "with the exception of six branches, all branches will operate with one manager regardless of handle."

> This was done without negotiating, without calling a Labor-Management Meeting, without informing us of what guidelines they are now using to staff branches. This arbitrary move on the part of management is outrageous and completely contrary to normal Labor-Management Relations.

For its remedy, the Union has requested "[c]ompliance with the agreement concerning assignment of managers to Sunday work, full backpay and such other rights and benefits and relief as will be just and proper."

The OTB challenges the submission of this grievance to arbitration on the ground, inter alia, that the assignment of Branch Office Managers ("BOMs") to Sunday work is covered by neither the collective bargaining agreement ("Agreement") nor the grievance-arbitration provision contained in such Agreement. Petitioner further asserts that the manning of OTB branch offices by BOMs on

Sundays is a prerogative reserved to management under Section 1173-4.3(b) of the New York City Collective Bargaining Law ("NYCCBL").[1] Since, it is alleged, a determination with respect to Sunday manning management right which was not qualified or in the collective bargaining agreement or is a reserved restricted a written policy of the OTB, it is not subject to arbitral review. Petitioner, therefore, requests that an order be entered granting its petition challenging arbitrability and dismissing the request for arbitration.

Discussion

We have long held that it is the policy of the NYCCBL to promote and encourage arbitration as the

[1] §1173-4.3(b) provides, in pertinent part, as follows:

> 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 ...

selected means for the adjudication and resolution of grievances.[2] However, we have also stated repeatedly that 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 to this proceeding stipulated, at Article VI, Section 1 of their Agreement, that the term "grievance" shall mean:

> (A) A dispute concerning the application or interpretation of the terms of
>
> > (i) this collective bargaining agreement or any other collective bargaining agreement applicable to employees.
>
> (B) A claimed violation, misinterpretation, or misapplication of rules and regulations, written policy, or orders applicable to OTB affecting the terms and conditions of employment, provided, disputes involving the rules and regulations of the OTB Civil Service Commission shall not be subject to the grievance procedure or arbitration;

It is clear that Article VI, which defines a grievance and describes the mechanism by which grievances are processed, does not create any substantive rights and does

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[2] See NYCCBL Section 1173-2.0 and Decision Nos. B-8-68, B-1-75, B-19-81, B-15-82, B-41-82.

[3] Decision Nos. B-12-77, B-15-82, B-41-82.

not, therefore, furnish an independent basis for a grievance. Thus, in order to fall within the contractual definition of a grievance, a party must cite either another provision of the Agreement which it is claimed has been violated, or a rule, regulation, written policy or order which allegedly has been violated, misinterpretated or misapplied. Respondent has done neither; instead, Local 858 has alleged a violation of a past practice purportedly established by a "verbal agreement" between the parties. The violation of a past practice or an unwritten policy is not included within the contractual definition of a grievance, and respondent has failed to show that the subject of its claim is otherwise encompassed within any of the broad categories which the parties have agreed to submit to arbitration. Since the contract is clear and explicit in its terms as to the duty to arbitrate, we are compelled to find that the matter is not arbitrable.

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 Off-Track Betting Corporation's petition challenging arbitrability be, and the same hereby is, granted, and it is further

ORDERED, that Local 858's request for arbitration be, and the same hereby is, denied.

DATED: New York, N.Y.
December 18, 1984

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

JOHN D. FEERICK
MEMBER

DEAN L. SILVERBERG
MEMBER