

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

DECISION NO. B-28-85F

DOCKET NO. BCB-794-85
(A-2153-85)

THE CORRECTION OFFICERS BENEVOLENT
ASSOCIATION,

Respondent.

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DECISION AND ORDER

Respondent Correction Officers Benevolent Association herein "COBA" or "the Union") submitted a request for arbitration, dated May 24, 1985, in which it sought to arbitrate the grievance Correction Officer A.R. Davis. The City of New York through its office of Municipal Labor Relations, filed a petition challenging the arbitrability of this grievance on June 1985 The Union filed its answer on June 25, 1985, and the City submitted a reply on July 10, 1985.

Background

The grievance alleges a violation of Article X and Article XX of the collective bargaining agreement as well as 'applicable State law' due to the City's refusal to include payment of a night shift differential for the period of time the grievant was excused -from his duties in order to partici-

pate in military training.

The relevant contract provisions are as follows. Article X, Section 4 of the collective bargaining agreement provides:

Section 4. Military Leave

Military leave not exceeding a total of thirty (30) days in one calendar year and not exceeding thirty (30) days in any one continuous period of such absence shall be granted with pay to satisfy military obligations.

Article XX of the collective bargaining agreement provides in pertinent part:

Article XX - Night Shift Differential

a. Effective July 1, 1978 a 10% night shift differential shall continue to be paid to Correction officers assigned to rotating tours of duty for all work actually performed between the hours of 4:00 P.M. and 8:00 A.M. Effective July 1, 1978 a 10% night shift differential shall continue to be paid to all other Correction Officers for work actually performed between the hours of 4:00 P.M. and 8:00 A.M., provided that more than one (1) hour is actually worked after 4:00 P.M. and before 8:00 A.M....

The grievance was denied at Steps I, II and III of the contractual grievance and arbitration procedure whereupon the

instant request for arbitration was filed in accordance with Article XXI, Section 2, Step IV. The remedy sought by the grievant includes:

1. Payment of the night shift differential for all tours of duty during which the grievant was excused from duty to attend military training; and
2. A cease and desist order.

Positions of the Parties

City's Position

The City does not challenge arbitrability in so far as the grievance alleges a violation of Article X and Article XX of the collective bargaining agreement. However, since the scope of the obligation to arbitrate is defined by the parties' contract, and the definition does not include claimed violations of State law, the City asserts that the grievance is not arbitrable to the extent that it is based on an alleged violation of the Military Law. The City maintains that "if Respondent believes there has been a violation of state law, then it should seek relief in the appropriate forum."

Union's Position

In its answer to the City's petition, COBA asserts "a violation and inequitable application and denial of the night

shift differential provisions of the Contract as they relate to both the Contract and Military Law." In this connection, the Union identifies the contractual provisions which it alleges have been violated and inequitably applied and concludes that an arbitrable grievance has been presented under Article XXI, Sections 1 and 2 of the contract. Article XXI, Section 1 provides:

Section 1. Definition

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

- a. a claimed violation, misinterpretation 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 1a, 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 title specification.

Article XXI, Section 2 prescribes the procedure to be followed in processing a grievance.

Discussion

The function of this Board, in determining questions of arbitrability, is to decide whether the parties are in any way obligated to submit their disputes to arbitration under the terms of the contract between them and, if so, whether the obligation is broad enough in scope to include the particular controversy at issue before the Board.¹ Since parties are mandated to submit matters to arbitration only to the extent that they have previously agreed to do so,² it is the practice of this Board to require that a prima facie relationship between the act complained of and the source of the alleged right be demonstrated by the proponent of arbitration.

In the instant matter, COBA has met its burden of establishing a prima facie relationship between the subject matter of the grievance and rights prescribed by the contract between the parties. A sufficient nexus exists between the alleged denial of a night shift differential for time spent by the grievant on military leave and Articles X and XX of the contract dealing, respectively, with the sub-

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Decision Nos. B-28-84; B-21-80; B-17-80 and Decisions cited therein at footnote 3.

²Decision Nos. B-41-82; B-15-82; B-12-77.

jects of Military Leave and Night Shift Differential, to warrant a finding that this matter is arbitrable to the extent that the claim is founded upon an alleged violation or inequitable application of the cited contract provisions. Indeed, the City does not challenge arbitrability with respect to alleged violations of contract.

Having determined the grievance to be arbitrable under the contract, we now address the City's contention that arbitration should be denied to the extent that the claim is based on an alleged violation of the Military Law. As the City observed in its petition challenging arbitrability, we have previously held that allegations of violation of State law do not present arbitrable issues where the parties have not included such disputes within the range of matters that they have agreed to arbitrate.³ The agreement between the parties herein does not refer to rights arising under State law. Accordingly, to the extent that the instant grievance is based upon an alleged violation of the Military Law, we find it to be non-arbitrable.

For the reasons stated above, therefore, we grant the

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Decision Nos. B-29-83 and B-4-78. See also, Decision No. B-13-79 (alleged violation of the Administrative code of the City of New York found non-arbitrable); Decision No. B-18-83 (alleged violations of Federal and State statutes found non-arbitrable).

Union's request for arbitration to the extent that it is based on an alleged violation and inequitable application of Articles X and XX of the collective bargaining agreement, and deny the request to the extent that it seeks arbitration of an alleged violation of the Military Law.

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 request for arbitration filed by the Correction officers Benevolent Association be, and the same hereby is, granted to the extent that it is based upon allegations of contract violation; and it is further

ORDERED, that the request for arbitration be, and the same hereby is, denied to the extent that it is based upon allegations of violation of State law; and it is further

ORDERED, that the petition challenging arbitrability filed by the City of New York be, and the same hereby is, granted.

Date: New York, N.Y.
August 15, 1985

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