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

THE CITY OF NEW YORK, DECISION NO. B-7-85

Petitioner, DOCKET NO. BCB-759-85

-and-

CORRECTION OFFICERS BENEVOLENT
ASSOCIATION,

Respondent.
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DECISION AND ORDER

On January 14, 1985, 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". COBA filed an answer on January 23, 1985, to which the City replied on January 31, 1985.

Request for Arbitration

The Union states that the Department violated Rule and Regulation 2.10.030 by its

> failure to adhere to the Bronx House of Detention Organization Table regarding "B" Post Assignments.

Rule 2.10.030 (entitled Uniformed Personnel, Head of Institution) reads as follows:

> Each head of an institution shall submit in writing to the Commissioner a plan of organization for the operation of his institution accompanied by an organization chart and such descriptive material as is necessary to define fully the functions of the various units and employees. This plan of organization shall not be placed in effect until approved by the Commissioner. Amendments to the plan shall be made in like manner. Once approved it shall be the responsibility of the head of the institution to make sure that his or her subordinates understand and follow the plan.

As a remedy, the Union seeks "(c)ompliance with (the) Organization Table".

Positions of the Parties

The City's Position

The City contends that Rule 2.10.030 is unrelated to the subject matter of the Union's grievance. OMLR argues that the Rule pertains solely to the duties and responsibilities of a head of an institution; it does not give rise to any rights, responsibilities or duties for bargaining unit employees.

The City further maintains that issues pertaining to staffing, budget, the utilization of employees and the

structure of operations are managerial prerogatives within Section 1173-4.2 (b) of the New York City Collective Bargain ing Law (hereinafter "NYCCBL"). Thus, urges the City, any organizational table plan dealing with these subjects can be unilaterally changed or modified by management at any time without the City's actions being subject to the arbitral forum.

The Union's Position

COBA cites that portion of the "Foreword" to the Rules and Regulations for the New York City Department of Correc- tion which states:

> They (the Rules and Regulations) are published for the guidance of all members of the department in carrying out the duties and responsibilities imposed upon them by law.

Thus, concludes the Union, it has a right to challenge non- compliance with Rule 2.10.030 under Article XXI, Section 1(b) of the parties' collective bargaining agreement, which provision defines a grievance as:

> a claimed violation, misinterpreta- tion or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment ...

In the initial steps of the grievance procedure, the Union stated that the Department's actions have created "a dangerous working condition which in addition to breaches of security have an adverse impact on the members' ability to perform the duties for which they are held responsible."

Discussion

We have long held that it is the policy of the NYCCBL to promote and encourage arbitration as the selected means for the adjudication and resolution of grievances.[1] 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.[2]

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

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

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

Rule 2.10.030 deals with the head of an institution's responsibility to formulate a plan of organization and, once approved, to make sure that the plan is complied with. The substance of the Rule runs between the Department and the head of an institution; it does not deal with rights and responsibilities of employees represented by petitioner. Because the Rule cited herein does not relate to bargaining unit personnel, the Union may not grieve its alleged non-compliance.

With regard to the Union's allegation in the early steps of the grievance procedure of an impact on the security of its members as a result of the City's actions, we note that such a claim in and of itself does not create a duty to arbitrate nor does it empower an arbitrator to fashion corrective measures. Furthermore, such allegations must be supported by probative, factual evidence, rather than by mere conclusory assertions.

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.
March 27, 1985

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
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