City v. L.94, UFA, 37 OCB 27 (BCB 1986) [Decision No. B-27-86 (Arb)]

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

-between-

DECISION NO. B-27-86

THE CITY OF NEW YORK,

DOCKET NO. BCB-868-86
(A-2351-86)

Petitioner,

-and-

UNIFORMED FIREFIGHTERS ASSOCIATION
OF GREATER NEW YORK LOCAL 94,

Respondent.
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DECISION AND ORDER

On April 16, 1986, the City of New York, appearing by its Office of Municipal Labor Relations (herein "the City" or "Fire Department"), filed a petition challenging the arbitrability of a grievance filed by the Uniformed Firefighters Association of Greater New York, Local 94 (herein "the Union" or "UFA"), on April 1, 1986. The Union filed an answer on April 29, 1986, to which the City replied on May 12, 1986.

The gravamen of the UFA's grievance is that the Fire Department's alleged failure to maintain an operative emergency radio system endangers fire marshals and violates the Fire Department's "policy and practice to equip fire marshals with operating emergency radios when they are investigating fire scenes."

Positions of the Parties

The Union's Position

It is the position of the UFA that, as the above grievance alleges a violation of a departmental practice and policy, it falls squarely within the definition of a grievance set forth in the collective bargaining agreement between the parties. Article XX, Section 1, states:

> A grievance is defined as a complaint arising out of a claimed violation, misinterpretation or inequitable application of the provisions of this contract or of existing policy or regulations of the Fire Department affecting the terms and conditions of employment.

The Union also relies on Article XX, Section 3 of the agreement, which provides that a grievance "involving potential irreparable harm concerning health and safety" may be initiated directly at Step IV of the grievance procedure. The UFA contends that this language indicates the parties' agreement to arbitrate disputes relating to safety and health of unit members.

The City's Position

The City, citing the above definition of a grievance in Article XX, Section 1, challenges arbitrability on

the basis that the request "does not cite any contractual provisions or policy upon which a claim can be based." The City further contends that if the alleged violation is of a policy, it must be a written Policy.

Discussion

As we have long held, the Board's function in determining a arbitrability is to decide whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the obligation is broad enough to include the particular controversy.[1] It is clear that the parties in the instant matter have agreed to arbitrate grievances as defined in Article XX, Section 1 of their contract. The question remaining is whether the Fire Department's alleged actions fall within the categories defined above so as to present an arbitrable claim.

Initially, we note that the contractual definition of a grievance is stated in the disjunctive: a claimed violation "of the provisions of this contract or of existing policy or regulations....."[2] Thus, a grievance is not confined to a claimed violation of the contract; it can also be based upon a claimed violation of existing policy.

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[1] B-2-69.

[2] Emphasis supplied.

Nor is it necessary, under the definition of a grievance set forth in this particular contract, that a grievance allege a violation of a written policy, as the City suggests. It is true that where the contractual definition specifically limits grievance matters to, inter alia, alleged violations of a "written" policy, the Board has held alleged violations of unwritten policy to be inarbitrable.[3] There is, however, no such limitation here. The contract merely specifies "existing policy."

Moreover, the City's reliance on Decision No. B-20-72 for the proposition that the mere-passage of time does not convert a practice into a rule or regulation is inapposite.[4] In B-20-72, the definition of a grievance was limited to a claimed violation of certain rules or regulations; the definition did not include a violation of existing policy. In the instant case, the definition allows the grievance of an alleged violation of existing policy, but does not require that it be either written or expressed in a rule or regulation.

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[3] See, e.g., Decisions No. B-30-84, B-28-82.

[4] We assume that the citation of B-2-72 in paragraph 19 of the City's reply is a typographical error, as that decision does not address the issues herein. The language quoted in paragraph 19 does appear in B-20-72.

The grievance sought to be arbitrated herein does not allege a violation of the contract, or of a departmental rule. It does allege a violation of a specific policy or practice: that of equipping fire marshals with effective emergency radios. Thus, the claimed violation falls within the contractual definition of a grievance.

The question whether such a policy or practice exists is another matter, and it is not for this Board to decide. We hold herein, as we held in a prior case interpreting a nearly identical provision of an earlier UFA contract, that the meaning of the term "existing policy" as used in the contract; whether the City's provision of operative emergency radios systems constitutes a "policy" or "practice" within the meaning of that term; and whether the employer has the right to change an "existing policy" are questions involving interpretation of the contract.[5]

Accordingly, we conclude that the grievance herein is arbitrable.

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[5] Decision No. B-6-69, which concerned the alleged elimination of an ambulance. See also B-7-68 (unequal distribution of case assignments), B-5-69 (removal of parking privileges), B-9-75 (changes in rotating work schedule), B-22A-83 (no on-call room for female radiology residents).

In view of our finding that the dispute herein falls within the contractual definition of a grievance, we find it unnecessary to resolve the second issue raised by the Union: whether Article XX, Section 3 expands the definition of a grievance set forth in Article XX, Section 1 to include any dispute involving potential irreparable harm to "health and safety" or whether it merely provides an expedited procedure for resolving such disputes as fall within the definition of a grievance set forth in Article XX, Section 1.

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 UFA's request for arbitration be, and the same hereby is, granted; and it is further

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

DATED: New York, N.Y
May 29, 1986

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