

City v. PBA, 37 OCB 35 (BCB 1986) [Decision No. B-35-86 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

DOCKET NO. BCB-865-86

THE CITY OF NEW YORK,

DECISION NO. B-35-86
(A-2293-85)

Petitioner,

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION

Respondent.

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DECISION AND ORDER

On April 7, 1986, the City of New York, appearing by its Office of Municipal Labor Relations ("the City"), filed a petition challenging the arbitrability of a grievance submitted by the Patrolmen's Benevolent Association ("the PBA"). The PBA filed its answer on April 29, 1986, to which the City replied on June 13, 1986.

Background

On February 5, 1986, police officer John Barba ("grievant") was in the process of issuing a ticket for a traffic violation when a private citizen, Eli Perr, allegedly intervened. Mr. Perr reportedly complained to the motorist about the "unfair tickets" grievant issues and threatened to "make trouble" for grievant. At this

point, grievant allegedly told Mr. Perr that he would issue him a summons if he did not leave the vicinity. According to grievant Mr. Perr replied that he would report grievant to the Internal Affairs Department and attempt to have grievant transferred.

Upon hearing grievant's report of the incident, grievant's commanding officer, Deputy Inspector Slattery, allegedly said that "it was a good thing that [grievant] didn't arrest Mr. Perr or give him a summons because he is a member of the clergy." According to grievant, Inspectors Slattery then told him that he could "go to court on his own time and take out a summons for harassment if he wanted to but to stay out of Mr. Perr's way." After being contacted by a PBA delegate about the matter, Inspector Slattery allegedly instructed grievant that he "could go down to court on Department time", but that he should nevertheless "stay away" from Mr. Perr and not the arrest himself.

On June 2, 1985, the PBA filed a grievance with the Police Department's Grievance Board complaining that the "unfair and improper supervisory harassment on the part of [inspector] Slattery in interferring [sic] with the duties and responsibilities of [grievant] is supervisory harassment which cannot be condoned and constitutes a

grievable violation of the rights of [grievant]."

After the grievance was denied by both the Police Department's Office of Labor Policy and Police Commissioner Benjamin Ward, the PBA filed a request for arbitration alleging that grievant "was ordered by [Inspector] Slattery to process an arrest on his own time and refused to allow the officer to process the arrest while incurring overtime compensation." Inspector Slattery's actions, according to the request for arbitration, violated Article III, Section 1a of the parties' collective bargaining agreement, which provides as follows:

All ordered and/or authorized over-time 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.

Positions of the Parties

City's Position

In challenging the arbitrability of the dispute herein, the City contends that the PBA has failed to show, as required by established legal precedent, that

Section 1a of Article III is arguably related to the grievance it seeks to arbitrate.¹ Section 1a, in the City's view, "in no way addresses the issue of 'improper supervisory practice', nor does it relate in any way to the facts alleged in the petition; it merely provides for the payment of overtime if 'ordered or authorized.'"

PBA's Position

The PBA argues that contrary to the City's contention, the dispute it seeks to arbitrate is related to Section 1a of Article III. In the PBA's view, Section 1a establishes the right "to receive overtime ... for all authorized police action and not have to sign off duty in order to do necessary police work." Thus, according to the PBA, Inspector Slattery violated grievant's arbitrable rights when he refused to allow grievant to process the arrest while on duty.

¹ The City also claims that the PBA only complained of an "unfair supervisory practice" in the prior steps of the grievance procedure and first raised the alleged violation of Section 1a in its request for arbitration. The City, however, has not challenged arbitrability on the ground that the PBA is improperly attempting to interpose a claim based upon a previously unpleaded grievance. Accordingly, this matter will not be addressed further herein.

Discussion

In considering a petition challenging arbitrability, this Board has a responsibility to ascertain whether a prima facie relationship exists between the act complained of and the source of the alleged right, redress of which is sought through arbitration. In circumstances such as these, we have held that a union, where challenged to do so, has a duty to show that the contract provision invoked is arguably related to the grievance to be arbitrated.²

We find that the PBA has failed to meet its prima facie burden here. The provision relied upon by the PBA, i.e. Section 1a of Article III, simply provides that an employee is entitled to overtime compensation for "[a]ll ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty, whether of an emergency nature or of a non-emergency nature." This section in no way establishes that an employee is guaranteed the right to perform overtime work in any particular circumstance. To the contrary, Section 1a expressly recognizes that overtime must be "ordered and/or authorized" by the Police Department in order to be compensable.

² Decision Nos. B-4-81, B-21-80, B-15-80, B-15-79, B-7-79, B-3-78, B-1-76.

Furthermore, in the absence of a limitation in the contract or otherwise, the assignment of overtime is within the City's statutory management right to "determine the methods, means and personnel by which government operations are to be conducted."³ We do not find that Section 1a creates any such limitation here on the City's exercise of its prerogative regarding the assignment of overtime.

We note that a similar issue was raised by the PBA in Decision No. B-7-81. In this case, the PBA, again relying upon Section 1a of Article III, grieved the "[d]enial of requests by police officers ... to work overtime due to being on the chronic sick list." We likewise found that the dispute was not arbitrable since Section 1a "merely provides for payment for the performance of such overtime work as is ordered and/or authorized by the Police Department, and does not guarantee that any employee will be assigned to perform work." See also Decision No. B-9-83 (dispute not arbitrable since union failed to identify any contract provision or rule which arguably would have entitled grievant to overtime assignment denied by his employer).

Accordingly, we find that the dispute presented herein is not arbitrable.

³ NYCCBL §1173-4.3(b).

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.
June 18, 1986

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