City v. Corr. Captains Ass., 39 OCB 1 (BCB 1987) [Decision No. B-1-87 (Arb)]

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

-between-

DECISION NO. B-1-87
THE CITY OF NEW YORK, DOCKET NO. BCB-922-86
Petitioner, (A-2467-86)

-and-

CORRECTION CAPTAIN'S ASSOCIATION,
Respondent.
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DECISION AND ORDER

On November 12, 1986, the City of New York, appearing by its Office of Municipal Labor Relations (herein "City" or "Dept. of Correction"), filed a petition challenging the arbitrability of a grievance filed by the Correction Captain's Association (herein "Union" or "CCA") on October 9, 1986. The Union filed a "cross-motion for dismissal of petition" on December 2, 1986. The City replied on December 18, 1986.

The qravamen of the CCA's grievance is that the Dept. of Corrections has reassigned Captains from the midnight to 8:00 A.M. tour of duty to either the 5:00 A.M. to 1:30 P.M. or the 6:30 A.M. to 3:00 P.M. tours for the purpose of avoiding the payment of overtime, in violation of Article III, Section 2 of the collective bargaining agreement between the parties.

Article III concerns hours and overtime. Section 1 sets forth the right of unit members to compensation for ordered and/or authorized overtime. Section 2 states:

> In order to preserve the intent and spirit of this Section, overtime compensation, there shall be no rescheduling of days off and/or tours of duty. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory reassignment of personnel to different days off and/or tours of duty.

Positions of the Parties

The City's Position

The City challenges the arbitrability of the CCA's grievance on two grounds. First, the City asserts that by reassigning Captains from the midnight tour to one beginning at 5:00 A.M. or 6:00 A.M., it was merely exercising its right under Section 12-307b (formerly 1173-4.3(b)) of the New York City Collective Bargaining Law:

> ... 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.

Moreover, the City argues, Section 9-116c (formerly 623(4)-5.1c) of the Administrative Code of the City of New York specifically provides that the City may create miscellaneous tours of duty other than the normal tours commencing at midnight, 8:00 A.M., and 4:00 P.M.:

> Tours of duty shall commence at midnight, eight o'clock ante meridian and four o'clock post meridian of each consecutive twenty-four hours. Such tours of duty shall hereinafter be designated as normal tours of duty. At the discretion of the warden or other officer or officers in charge of an institution, other tours of duty shall hereinafter be designated as miscellaneous tours of duty.

In its reply, the City also asserts that the schedule requiring Captains to work "miscellaneous" tours was posted, giving notice of schedule changes. Apparently the argument is that because the schedule was posted, no rescheduling took place.

As the second basis for its challenge, the City states that the Union “has failed to state a provision of the collective bargaining agreement which is even arguably related to the grievance sought to be arbitrated.” The City asserts that although CCA couches its grievance in

terms of Article III, "what the Respondent is really grieving is the fact that, in some cases, Captains working the midnight tours are required to, perform duties normally performed on the day tour," an issue not addressed by Article III. The City based this assertion on the Step III Decision, which states:

> According to the Union, the Department is violating the cited contract by requiring grievants to work during the midnight tour of duty while performing duties normally performed on a day tour. The Union ... claimed that grievants are now required to start working during the midnight tour ... but are actually assigned to a day post since the midnight posts are filled.

The Union's Position

The Union does not contest the City's statutory right to create miscellaneous tours. It does, however, complain that the City is rescheduling Captains off the normal tour schedule on an ad hoc basis.

The Union's position is that its grievance manifestly alleges a violation of the contractual injunction against rescheduling of duty tours, and that the dispute falls squarely within the contractual definition of a grievance set forth in Article XX, Section 1, which defines the term "grievance" to include, inter alia:

> a claimed violation, misinterpretation or inequitable application of the provisions of this agreement.

Discussion

As we have long held, the Board's function in determining 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] In this case, the City does not deny making the tour changes alleged by the Union. It is undisputed that the parties have agreed to resolve disputes concerning interpretation of their agreement through arbitration. We find that the grievance alleged by the CCA is quite clearly based upon a dispute regarding the meaning of Article III of the contract, inasmuch as Section 2 specifically covers rescheduling of tours of duty.[2] Whether the rescheduling herein amounts to the creation of miscellaneous tours within the meaning of the Administrative Code or rescheduling in violation of Article III, Section 2 is an issue properly considered in the arbitral forum.

[1] E.g., Decision Nos. B-2-69; B-27-86.

[2] The Board has repeatedly found arbitrable similar grievances alleging violations of a provision of the Patrolmen's Benevolent Association agreement that contains language identical to that of Article III, Section 2. Decision Nos. B-5-78; B-7-78; B-3-82.

The City's claim that the grievance is not really about rescheduling but about assignment of duties itself involves the substance of the claim and should also be determined by an arbitrator. On its face the grievance is related to rescheduling, and it is the function of the arbitrator to determine whether the particular kind of rescheduling alleged does in fact constitute a violation of the agreement.[3]

The City argues that the management rights granted by NYCCBL Section 12-307b and Administrative Code Section 9-116c are controlling. However, the management rights clause set forth in the NYCCBL does not preclude bargaining on the covered subject matter that, when engaged in, is binding. Where, as here, it is claimed that a specific contract provision limits or modifies the City's statutory management rights, the matter is one of interpretation of the conflicting documents, and that is properly before an arbitrator.

O R D E R

Pursuant to the powers vested in the Board of Collec-

[3]Decision No. B-5-78.

tive Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the CCA'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.
January 27, 1987

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