

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

-between-

THE CITY OF NEW YORK,
Petitioner,

DECISION NO. B-12-87

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION,

DOCKET NO. BCB-942-87
(A-2521-87)

Respondent.

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DECISION AND ORDER

On March 20, 1987, the City of New York, appearing by its Office of municipal Labor Relations ("the City"), filed a petition challenging arbitrability of a grievance submitted by the Patrolmen's Benevolent Association ("the Union" or "PBA") on behalf of the members of Queens Central Booking ("OCB"). The Union filed its answer on April 8, 1987, to which the City replied on April 13, 1987.

Background

The Union filed a request for arbitration alleging follows:

Beds were removed from the Queens Central Booking locker room/dormitory which were used by police officers due to weather conditions, court appearances demanding a change of tour, and overtime tours of a back to back nature.

The Union identified Article XXIII, Section 1(a)(2) of the parties' collective bargaining agreement as the source of its right to proceed to arbitration. This Section defines the term "grievance" as "[a] claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department affecting terms and conditions of employment."

Positions of the Parties

City's Position

The City argues that the Union here is seeking to arbitrate an alleged violation of past practice. According to the City, the section of the agreement upon which the Union relies only provides for arbitration of claimed violations of "rules, regulations or procedures," not past practices.

In addition, the City contends that the Union has failed to show that the cited provision is arguably related to the grievance it seeks to arbitrate. The City points out that Section 1(a)(2) makes no reference to dormitory facilities and thus cannot provide a basis for arbitration of the claim herein.

Union's Position

The Union argues that the past practice of providing

beds in the OCB locker room is a procedure of the department within the meaning of Section 1(a)(2). Furthermore, the Union claims that it has established a sufficient nexus between the cited section of the agreement and the grievance it seeks to arbitrate, since Section 1(a)(2) specifically provides for arbitration of claimed violations of procedure, and the grievance refers to "a police department procedure which has been established and in existence for a number of years."

Discussion

Where the parties, as here, do not dispute that they have agreed to arbitrate their controversies, the question before this Board on a petition challenging arbitrability is whether the particular controversy at issue is within the scope of the agreement to arbitrate.¹ We find that, contrary to the Union's assertion, the past practice of providing beds in the OCB locker room is not a "procedure" within the meaning of Section 1(a)(2). A "procedure" generally consists of a course of action or a method or plan, unilaterally instituted by the employer to further the mission of the agency; it cannot fairly be said to encompass such amenities as providing locker room beds.

We note that the PBA raised a similar argument in

¹E.g., Decision No. B-6-86.

Case No. BCB-667-83. Citing the same Section 1(a)(2) that has been asserted here, the PBA claimed that the Police Department had violated its long-standing policy of permitting police officers to work in the precinct of their residence. In that case, the Board granted the petition challenging arbitrability in Decision B-25-83, ruling that the "mere passage of time, in and of itself, does not convert a practice into a rule, regulation or procedure."

Similarly, in Case No. BCB-314-79, the PBA maintained that when the Department rescheduled the grievant's tour of duty, it violated Section 1(a)(2) of the contract by changing long-standing Department policy. In denying the request for arbitration in Decision B-15-79, the Board noted that other than the vague reference to long-standing policy, none of the papers submitted by the PBA had identified "any rule, regulation or procedure of the Department that [had] been violated."

Since the Union is claiming once more that a violation of Departmental practice is arbitrable under the section providing for arbitration of "rules, regulations or procedures," we must again deny the request for arbitration.

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, 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.
April 30, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
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MEMBER

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