

26, 1986, by the Informal Grievance Board of the Police Department for its failure "to cite a rule, regulation or procedure of the agency that has been misinterpreted or violated, or a violation of the existing collective bargaining agreement." On September 17, 1986, respondent filed a request for arbitration in which it was alleged, through reference to previously submitted papers, that the Department's issuance of the aforementioned memorandum violated Section 116-2 of the Police Department's Patrol Guide as well as Section 322-19 of the Administration Guide.

Section 116-2 of the Patrol Guide provides, in its entirety, as follows:

- | | |
|---------------------------|---|
| PURPOSE | To provide for meal period |
| PROCEDURE | Upon leaving assignment for meal period: |
| MEMBERS OF
THE SERVICE | <ol style="list-style-type: none">1. Notify switchboard operator at beginning of meal, of location where meal is to be taken.2. Obtain meal on assigned post, if possible, and in a place maintained for eating purposes.3. Make Memo/ Patrolman's Log entry prior to leaving post including meal location address, and again upon returning to post.4. Inform switchboard operator on return to post. |
| R.M.P. CREWS | <ol style="list-style-type: none">5. Notify radio dispatcher by appropriate code signal if radio motor patrol car is being put of service during meal period.6. Remain in area designated by commanding officer, if meal is taken in station house.<ol style="list-style-type: none">a. Be available for assignment by station house supervisor. |

7. When taking meal in radio motor patrol car:
 - a. Give location to radio dispatcher and telephone switchboard operator
 - b. Acknowledge call directed to unit
 - c. Remain within assigned sector when practical
 - d. Do not park more than one department vehicle in the same place at the same time
 - e. Comply with any requests for police service and make Memo/Patrolman's Log entry.
8. Notify station house supervisor when deprived of normal meal time due to police service.
- R.M.P. OPERATORS 9. Make appropriate adjustments so members are not deprived of meal.
- MEMBER ON MEAL 10. May assign a foot patrolman, if available, for relief of radio motor patrol crew.
- ADDITIONAL DATA 11. When assigned to relieve radio motor patrol patrolman for meal:
 - a. Remain in view on post at time of relief
 - b. Assume all duties as recorder during relief period.
12. Transport relieved member directly to meal location.
13. Notify station house officer if radio motor patrol fails to return within 15 minutes after end of meal period.

Members on meal period are still on duty and therefore will remain alert and not engage in activity ordinarily prohibited.

The commanding officer of a precinct may designate a portion of an adjoining precinct where members may obtain meals during the hours a suitable eating facility is not available within the precinct of assignment. [Emphasis added]

Section 322-19 of the Administrative Guide of the Police Department provides, in part, that a Roll Call Officer shall:

- ROLL CALL OFFICER 1. List each member of command scheduled to perform duty with platoon.

2. List Supervising Officers in space provided (RANK ORDER).

3. List police officers in following order:
 - a. Patrol Posts in numerical order
 - b. Safety Posts in numerical order
 - c. Scooter Posts in numerical order
 - d. Radior Motor Patrol Sectors, alphabetically
 - e. Other duties within command.
4. Assign one hour meal period.
 - a. Not more than one fourth of the members on patrol will be excused at one time
 - b. Members must be scheduled for eight consecutive hours of duty to be eligible for meal period
 - c. Member will not be assigned time in conflict with special duty, e.g. school crossing, etc.

POSITIONS OF THE PARTIES

City's Position

For its first challenge to arbitrability, the City asserts its management right, pursuant to Section 1173-4.3(b) of the New York City Collective Bargaining Law ("NYCCBL"), to

[d]irect its employees ... maintain the efficiency of governmental operations, determine the methods, means and personnel by which government operations are to be conducted ... and exercise complete control and discretion over its organization ...

The City maintains that in designating "locations" outside the precinct where officers of the 23rd Precinct could eat, it was merely exercising its managerial discretion. The City further claims, by reference to prior Board decisions,

that any attempt to limit an employer in the exercise of its statutory rights "must be based upon a clear and explicit management waiver in the form of contractual provisions or statutory limitations," and that the Union has failed to establish the requisite waiver.

As a second basis for its challenge to arbitrability, the City claims that respondent has failed to cite a provision of the agreement which is even arguably related to the grievance underlying the request herein. The City insists that

neither Section 116-2 of the Patrol Guide nor Section 322-19 of the Administrative Guide grants to an officer the right to exercise discretion as to his or her choice of eating establishments outside the confines of the Precinct.

Moreover, it is claimed, Section 116-2 of the Patrol Guide specifically states that

[t]he commanding officer of a precinct may designate a portion of an adjoining precinct where members may obtain meals during the hours a suitable eating facility is not available within the precinct of assignment.

Thus, it is argued, the respondent has failed to (1) identify any right that has been violated by the City; and (2) establish a nexus between an alleged right and the provisions of the Patrol Guide and the Administrative Guide.

Finally, the City argues that a claimed violation of a past practice does not constitute a grievance as it is de-

fined in Article XXIII, Section 1(a)(1) and (2) of the parties' collective bargaining agreement.

Union's Position

In a June 22, 1986 Memorandum to Charles Peterson, Director of Labor Relations, Edward Mahoney of the PBA protested the issuance of the May 27, 1986 Memorandum, stating that while Captain Harkins of the 23rd Precinct could restrict members from certain areas outside the command, he could not designate "authorized" meal locations.

In the PBA's answer to the petition challenging arbitrariness respondent maintains that

where the commanding officer extends the boundaries of such command or precinct to allow for meal periods to be taken in other locations, the member still enjoys the right to eat in any restaurant he desires within the extended boundary.

Respondent argues that the discretion reserved to the Commanding Officer in the Patrol Guide and Administrative Code is limited to the general designation of locations or "portions" of adjoining precincts and their proximity to the boundaries of the 23rd Precinct. The Commanding Officer "must extend such boundaries on a geographical basis and not name specific restaurants..." The parties' past practice, it is claimed, supports the Union's interpretation of the provisions of the Patrol Guide and the Administrative Guide.

DISCUSSION

It is well established that in an arbitrability proceeding, it is the role of the Board to decide whether the parties are obligated to arbitrate their disputes and, if so, whether the scope of the obligation is broad enough to encompass the particular controversy under Board consideration. Thus, where challenged to do so, a party requesting arbitration must establish a prima facie nexus between its claim and the provision of the agreement which is alleged to have been violated.

Although respondent has cited Section 322-19 of the Administrative Guide, entitled "Roll Call Preparation", it has failed to demonstrate a connection between the claim underlying its request for arbitration and any of the provisions of the aforementioned section of the Administrative Guide. In fact, the only reference to meal periods is in Paragraph "4" which provides, in its entirety, that a Roll Call Officer shall:

4. Assign one hour meal period.
 - a. Not more than one fourth of the members on patrol will be excused at one time
 - b. Member must be scheduled for eight consecutive hours of duty to be eligible for meal period
 - c. Member will not be assigned time in conflict with special duty, e.g. school crossing, etc.

It is this Board's finding, therefore, that insofar as

the Union's claim of a right in regard to meal locations is based on Section 322-19 of the Administrative Guide, it is denied.

We next consider the Union's claim that petitioner violated Section 116-2 of the Patrol Guide. First, we wish to note that this Board has consistently held that the provisions of the Patrol Guide constitute "rules, regulations or procedures of the Police Department ..." within the contemplation of Article XXIII, Section 1(a)(1) and (2) which defines a grievance under the parties' agreement.

Section 116-2 of the Patrol Guide, entitled "Meal Period", deals quite extensively with meal periods, area designations, notification procedures, meal adjustments, and various other specifications and restrictions. Indeed, both parties have relied, in part, on this section of the Patrol Guide to support their respective positions. The City refers to the underscored language of the section to establish the extent of the commanding officer's discretion to "designate a portion of an adjoining precinct where members may obtain meals." The PBA, on the other hand, relies upon this same provision to establish the limits of that very discretion. We, are therefore, satisfied that a question of contract interpretation clearly has been raised insofar as Section 116-2 of the Patrol Guide is concerned, and that any remaining questions are issues of facts to be decided in the arbitral

forum. This threshold determination of arbitrability is not intended to reflect, in any manner, the Board's view of the underlying dispute.

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 petition challenging arbitrability filed by the City of New York be, and the same hereby is, denied, insofar as it is based on Section 116-2 of the Patrol Guide of the Police Department, and granted with respect to Section 322-19 of the Administrative Guide of the Police Department; and it is further

ORDERED, that the request for arbitration filed by the Patrolmen's Benevolent Association be, and the same hereby is, granted, insofar as it is based on Section 116-2 of

the Patrol Guide, and denied insofar as it is based on Section 322-19 of the Administrative Guide.

Dated: New York, New York
August 27, 1987

ARVID ANDERSON
Chairman

DANIEL G. COLLINS
Member

GEORGE NICOLAU
Member

EDWARD SILVER
Member

CAROLYN GENTILE
Member