

OFFICE OF COLLECTIVE BARGAINING

BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK AND THE FIRE  
DEPARTMENT OF THE CITY OF NEW YORK,

DECISION NO. B-4-87  
DOCKET NO. BCB-921-86  
(A-2485-86)

Petitioners,

-and-

THE UNIFORMED FIREFIGHTERS  
ASSOCIATION OF GREATER NEW YORK,

Respondent.

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DECISION AND ORDER

On November 10, 1986, the City of New York ("City"), through its Office of Municipal Labor Relations, filed a petition challenging the arbitrability of a grievance submitted by the Uniformed Firefighters Association of Greater New York ("Union"). On November 20, 1986, the Union filed its answer to the petition, and the City filed its reply on December 2, 1986. The Union filed a "reply memorandum" on December 8, 1986.

Position of the Parties

Union's Position

The Union claims that the Fire Department of the City of New York ("the Department") has imposed arbitrary disciplinary measures by (1) denying thirty-five firefighters

from Engine Company 207/Ladder Company 110 ("Company") the right for one month to exchange their regularly scheduled tours of duty with other members of the Company, a practice commonly known as the granting of "mutuals", and (2) transferring seven members of the Company to firehouses "located almost as far as possible from their residences, thereby greatly increasing their commuting time and expense." According to the Union, the Department imposed these disciplinary measures because a dispute between two firefighters had occurred at the Company, one of whom was formally charged with misconduct. At the conclusion of the formal disciplinary proceedings and simultaneous with its announcement of the discipline imposed on that one firefighter, the Department allegedly announced the transfers and the denial of mutuals, even though none of the firefighters involved herein had been subject to either formal or informal disciplinary charges or procedures.

In challenging the propriety of the Department's action, the Union cites Chapter 26 of the Department's Regulations, which details the procedures to be followed "in the processing of formal disciplinary action against members." Specifically, Chapter 26 deals with such matters as the preparation of written charges and the procedures for a trial on the charges.

The Union points out that §8.1 of Chapter 26 states that "Unit Commanders may, when minor infractions are committed by members under their command, invoke command discipline procedures." Thus, the Union claims that, in the alternative to the Chapter 26 procedures, the Department was required to follow the procedures for less formal command discipline, as outlined in Personnel Administrative Informational Directive 3-75 ("PA/ID 3-75").

Finally,<sup>1</sup> the Union cites Article XIX, which sets forth the "individual rights" of an employee with respect to "interrogations, interviews, trials, and hearings." In the Union's view, Article XIX, along with Chapter 26 and PA/ID 3-75, "guarantee firefighters the right to be free from arbitrary punishment and are therefore directly related to the [Union's] claim that the arbitrary punishment imposed on the affected firefighters exceeds the Department's authority to discipline."

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<sup>1</sup>Although the request for the arbitration also cited Article XII, Section 4 and the contract side letter regarding mutuality, the Union in its answer indicates that these provisions were cited "'to bolster its position on the merits' and they are therefore 'more properly presented to an arbitrator' rather than the Board." We construe this to mean that the Union is not claiming a violation of these provisions as a basis for proceeding to arbitration, and we accordingly will not address whether there is an arguable relationship between these provisions and the disputed actions of the City.

City's Position

The City argues that the Union has failed to establish a nexus between the actions challenged herein and the cited provisions of the collective bargaining agreement or the regulations of the Department.

Furthermore, the City argues that it had the "unfettered right" to detail or transfer the affected employees as it saw fit. In support of this argument, the City cites §1173-4.3b of the New York City Collective Bargaining Law ("NYCCBL"), which empowers the City to "determine the methods, means and personnel by which governmental operations are to be conducted" and All Units Circular 263 ("AUC 263"), which expresses the policy of the Department to assign and transfer members "in a manner that will insure optimum levels of service to the public."

Discussion

Contrary to the City's assertion, this Board has never found that management has the "unfettered right" to transfer or assign employees as they see fit. Rather, the Board has recognized that an action which on its face falls within an area of management prerogative may conflict with the rights granted to an employee in the collective bargaining

agreement. In these cases, we have noted that the right to manage is not a delegation of unlimited power nor does it insulate the City from an examination of actions claimed to have been taken within its limits.<sup>2</sup>

In cases such as this one, the Board has fashioned a test of arbitrability which endeavors to balance the competing interests that arise when a disputed action falls within the scope of an express management right.<sup>3</sup> Thus, the Union is first required to allege sufficient facts to establish a prima facie relationship between the act complained of and the source of the alleged right. The bare allegation that a transfer or an assignment was for a disciplinary purpose will not suffice; rather, the Union must establish to the satisfaction of the Board that the case involves a substantial issue concerning the disciplinary nature of an assignment or transfer.

We find that the Union has met its burden in this case. In their collective bargaining agreement, the parties defined an arbitrable grievance as "a claimed violation, misinterpretation or inequitable application of the provisions of the contract or of existing policy or regulations of the Fire Department affecting the terms and conditions

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<sup>2</sup>See Decision Nos. B-8-81; B-27-84.

<sup>3</sup>See Decision Nos. B-8-81; B-9-81; B-5-84; B-27-84; B-40-86.

of employment." We are satisfied both that the dispute herein falls within the parties' definition of an arbitrable grievance and that the provisions of Article XIX, Chapter 26, and PA/ID 3-75 are arguably related to the Union's claim that the Department exceeded its disciplinary authority.

Furthermore, we find that the Union's specific factual allegations concerning the circumstances surrounding the transfers and the denial of mutuels raise a substantial question as to whether the actions were disciplinary in nature. Having so found, it remains for the arbitrator to determine the merits of the Union's allegations.

We note that the Board reached the same conclusion in a case involving issues similar to those raised in this proceeding. In Decision No. B-36-80, the Union claimed that the Fire Department had transferred the grievant as a disciplinary measure, shortly after an administrative law judge had found him not guilty on the charge that he had allowed alcoholic beverages into quarters. As in the instant case, the union asserted that the Department's actions violated the "individual rights" section of the contract and Chapter 26 of the Regulations. Rejecting the City's argument that its actions fell within the protected area of management rights, the Board found that the dispute was arbitrable. We see no basis for distinguishing this decision from the matter presented herein.

For the above reasons, we will grant the Union's request for arbitration and deny the City's petition challenging arbitrability.

O R D E R

Pursuant to the power vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the petition of the City of New York be, and the same hereby is, denied; and it is further

ORDERED, that request for arbitration of the Uniformed Firefighters Association of Greater New York be, and the same hereby is, granted.

DATED: New York, N.Y.  
January 27, 1987

ARVID ANDERSON  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

CAROLYN GENTILE  
MEMBER

EDWARD F. GRAY  
MEMBER