

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-50-87

DOCKET NO. BCB-961-87  
(A-2574-87)

-and-

THE LIEUTENANTS BENEVOLENT  
ASSOCIATION,

Respondent.

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DECISION AND ORDER

On May 22, 1987, the City of New York ("petitioner"), by its Office of Municipal Labor Relations ("OMLR"), filed a petition challenging the arbitrability of a grievance underlying a request for arbitration brought by the Lieutenants Benevolent Association ("respondent" or the "LBA") on March 31, 1987. On June 15, 1987, the LBA submitted its answer, to which the City replied on June 18, 1987.

BACKGROUND

On or about September 23, 1986, a grievance was filed protesting the issuance by the Police Department of a directive pursuant to which Lieutenants assigned as Desk Officers were to be confined to the station house during their meal periods. The grievance was initially denied by Inspector

Michael J. Philbin, Commanding Officer of the Office of Labor Policy of the New York City Police Department on November 10, 1986. The respondent subsequently filed a Step IV grievance which was denied by the Commissioner of the Police Department on January 7, 1987.

In its March 31, 1987 request for arbitration, the LBA claims that the issuance of the directive by the Police Department constituted a violation of Patrol Guide Procedure No. 103-2 which provides, in pertinent part, as follows:

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|-------------------------------|---|
| LIEUTENANT<br>DESK<br>OFFICER | 1. Sign name and time in Command Log beginning and end of out.<br>2. Perform duty in uniform within Muster Room of station house. (The desk officer's post is limited to the confines of the Muster Room).<br>3. Be responsible for all police operations within command during tour.<br>4. Visit all areas of the station house at least once each tour.<br>5. <u>Sign out in Command Log when leaving post for any reason, e.g. personal necessity, meal, inspection of station house, and sign in upon return.</u><br>a. Place competent, uniformed member in charge prior to leaving.<br>b. <u>Enter meal location if meal taken outside station house.</u> |
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[Emphasis added]

For its remedy, respondent requests compensation for meal periods lost and a Board issued cease and desist order.

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, to

... 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 governmental 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.  
[Emphasis supplied]

The City maintains that in deciding whether or not to allow Lieutenants to leave the precinct for a meal, it was merely exercising its management prerogatives. Moreover, it is claimed, since respondent has failed to demonstrate the presence of any limitations, contractual or otherwise, on the City's prerogative in this regard, the LBA's request for arbitration must be denied.

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 maintains that Procedure No. 103.2 of the Patrol Guide does not grant to a Lieutenant the right to take a meal outside the confines of the station house. Its provisions, it is argued, only state that a Lieutenant Desk Officer is to sign out in the Command Log and enter meal location

if the meal is taken outside the station house. There is, it is claimed, no explicit right to eat outside the station house. Thus,

[r]espondent has failed both to identify any right that has been violated by the petitioner and to establish a nexus between any alleged right and the provisions referred to in its Request for Arbitration. Therefore, respondent's Request for Arbitration must be dismissed.

#### Union's Position

In its answer to the petition challenging arbitrability, the LBA argues that the collective bargaining agreement between the parties operates as a "check" on the City's management prerogatives, and further argues that the City's reliance, in this regard, on Board Decision B-5-80 is misplaced since the earlier proceeding involved an improper practice charge and related issues of bargainability.

Responding to the City's challenge to arbitrability based on the respondent's asserted failure to establish a nexus between the claim underlying the request for arbitration and Procedure No. 103.2, the LBA maintains that the Patrol Guide provision upon which it relies deals, on its face, with the subject of the grievance. The LBA insists that the City's arguments go to the interpretation of the provisions of the Patrol Guide, a function reserved exclusively for the arbitrator.

DISCUSSION

In deciding questions of arbitrability, it is the function 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.<sup>1</sup> Where challenged to do so, the grievant must establish a prima facie relationship between its claim and the provision of the agreement which is alleged to have been violated.<sup>2</sup>

Turning our consideration to the Union's claim that petitioner violated Patrol Guide Procedure 103.2, we first 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 XXII, Section 1(a)(2) which defines a grievance under the parties' collective bargaining agreement.

We find that the LBA has met its burden with respect to the alleged violation of Patrol Guide Procedure 103.2. The cited provision of the Patrol Guide contains clear reference to the subject of the grievance. Specifically,

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<sup>1</sup>Decision Nos. B-33-87; B-32-87; B-36-82; B-33-82; B-38-80.

<sup>2</sup>Decision Nos. B-33-87; B-14-87; B-5-87.

the procedure provides that a Lieutenant Desk Officer shall

[s]ign out in Command Log when leaving post for any reason, e.g. personal necessity, meal, inspection of station house, and sign in upon returning;

and,

[e]nter meal location if meal taken outside station house.

Whether or not the cited provision confers an explicit right to take meals outside the station house is a question of contract interpretation, a function which is reserved exclusively for arbitral consideration. In Decision No. B-33-87, the Board considered the arbitrability of a grievance filed by the PBA protesting the issuance of a memorandum which designated "authorized" meal locations outside the command and thereby restricted members from all other meal locations outside the command. In reviewing the provisions of the Patrol Guide upon which the PBA had relied in its request for arbitration, the Board was satisfied, as we are here, that the provision on its face dealt with the subject of the grievance, and that a question of contract interpretation had thus been raised. We determined, therefore, that any remaining

questions were issues to be resolved in the arbitral forum.

For the reasons set forth above, we find that the City's petition should be dismissed and that the dispute herein should be submitted to 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 petition of the City of New York be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration of the Lieutenants Benevolent Association be, and the same hereby is, granted.

Dated: New York, N.Y.  
October 26, 1987

ARVID ANDERSON  
CHAIRMAN

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DANIEL G. COLLINS  
MEMBER

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MEMBER

CAROLYN GENTILE  
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