

City v. PBA, 41 OCB 27 (BCB 1988) [Decision No. B-27-88 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

-and-

DECISION NO. B-27-86

PATROLMEN'S BENEVOLENT ASSOCIA-  
TION,

DOCKET NO. BCB-1001-87  
(A-2645-87)

Respondent.

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DECISION AND ORDER

On October 29, 1987, the City of New York, appearing by its Office of Municipal Labor Relations ("the City") filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Patrolmen's Benevolent Association ("the Union" or "PBA") on or about July 30, 1987. The Union filed its answer on November 16, 1987, to which the City replied on November 30, 1987.

Background

On or about May 19, 1987, the PBA, on behalf of one of its members assigned to the DWI Unit of the Bronx Task Force, filed an informal grievance, claiming that he had been removed from the DWI Unit due to his excessive overtime accumulation. The Union asserted that such reassign-

ment amounted to a denial of overtime, and was in violation of Article III, Section 1.a. of the collective bargaining agreement.<sup>1</sup> It requested the grievant's reinstatement to the DWI Unit as the remedy.

On or about July 27, 1987, the grievance was denied by the Police Commissioner at Step IV after he found that the "assignment of personnel is a managerial prerogative," and that there "has been no violation, misinterpretation, or misapplication of the current collective bargaining agreement, nor has there been any violation, misinterpretation, or misapplication of the rules, regulations, or procedures of the department."

With no satisfactory resolution of the grievance having been reached, on July 30, 1987, the PBA filed a request for arbitration, wherein it reasserted that the Department was in violation of Article III, Section 1.a.

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<sup>1</sup> Article III, Section 1.a. of the agreement reads as follows:

All ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty chart, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

of the collective bargaining agreement and it requested reinstatement of the grievant to the Task Force DWI Unit "together with whatever other remedy the arbitrator believes is appropriate."

Positions of the Parties

City's Position

The City argues that the Union has failed to assert any facts that arguably could establish a violation of Article III, Section 1.a. of the PBA contract. It asserts that the PBA erroneously assumes that this section constitutes an entitlement to overtime when, in fact, it merely prescribes that ordered and/or authorized overtime be paid for either in compensatory time off or in cash, at the rate of time and one-half. The City notes that the Board of Collective Bargaining ("Board") has held that where arbitrability is challenged, the Board will inquire whether there exists a nexus between the alleged wrong complained of and the cited contractual provision.<sup>2</sup> The City concludes that, since there is no relationship between reassignment to avoid excessive accumulation of overtime and the contractual overtime entitlement provision, the

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<sup>2</sup> Decision Nos. B-7-81; B-8-82; B-41-82; and B-9-83.

request for arbitration should be dismissed.

Moreover, the City maintains that, under Section 12-307(b) of the New York City Collective Bargaining Law ("NYCCBL"),<sup>3</sup> it has the affirmative right, as a managerial prerogative, to reassign its employees for the purpose, among other things, of limiting overtime accumulation.

#### Union's Position

The PBA, in its answer, contends that Article III, Section 1.a. of the agreement provides a contractual benefit of overtime compensation for members of the bargaining unit. Therefore, it maintains, the Department is in violation of the agreement when it transfers a member who has availed

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<sup>3</sup> NYCCBL Section 12-307(b) reads, in pertinent part, as follows:

It is the right of the city, or any other public employer, acting through its agencies, 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 operation's 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.

himself of the benefit. According to the Union, a (prima facie) relationship clearly exists between the reassignment and the contractual overtime provisions. The grievance relies on the further assumption that if this cause and effect relationship exists, it is necessarily wrongful.

The PBA acknowledges the existence of the managerial rights provisions of the NYCCBL, but it contends that Section 12-30 7(b) of the Law does not apply in this circumstance because management subordinated its rights when it negotiated Article III, Section 1.a. of the agreement.

#### Discussion

In considering a petition challenging arbitrability, this Board has long held that it has the responsibility for determining 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 in question.<sup>4</sup> In this case, there is no dispute that the parties have agreed to arbitrate unresolved grievances as defined in their collective bargaining agreement, nor is it denied that claimed violations of Article III, Section 1.a. are within the scope of their agreement to

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<sup>4</sup> E.g., Decision Nos. B-23-86; B-4-86; and B-2-69.

arbitrate. The City argues, however, that the Union has failed to establish a nexus between the actions of the City and a substantive provision of the contract.

This Board is called upon, therefore, to determine whether a prima facie relationship exists between the act complained of, a reassignment to avoid accumulation of overtime, and Article III, Section 1.a. of the agreement, the source of the alleged right, redress of which is sought through arbitration. In circumstances such as these, we have held that a union, where challenged to do so, has a duty to show that the contract provision invoked is arguably related to the grievance to be arbitrated.<sup>5</sup>

We find that the PBA has failed to meet its prima facie burden. The contractual provision relied upon by the PBA, Article III, Section 1.a., simply provides that an employee is entitled to overtime compensation for "[a]ll ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty chart, whether of an emergency nature or of a non-emergency nature." This section in no way provides or implies that an employee is entitled to perform overtime work in any particular circumstance. To the contrary,

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<sup>5</sup> E.g., Decision Nos. B-4-81; B-21-80; B-15-80; B-15-79; B-7-79; B-3-78; and B-1-76.

Decision No. B-27-88  
Docket No. BCB-1001-87  
(A-2645-87)

7.

Section 1.a. expressly recognizes that overtime must be "ordered and/or authorized" by the Police Department in order to be compensable. Moreover, we find no limitation, within Article III, Section 1.a. or otherwise, that diminishes the City's right to exercise its managerial prerogative, under Section 12-307(b) of the NYCCBL, regarding the assignment of overtime.

We note that the issue raised herein by the PBA is analogous to the issue in three fairly recent arbitrability cases involving the PBA. In Decision No. B-35-86, the Board held that a grievance which arose when an officer was ordered to sign off duty rather than work overtime to process an arrest was not arbitrable because nothing in Article III, Section 1.a. created any guarantee that an employee would be assigned to perform any particular overtime work. We also ruled in that case that a limitation regarding the assignment of overtime was within the City's statutory management right. In Decision No. B-16-87, a consolidation of three similar deprivation of overtime claims, the Board again denied arbitration to the PBA, holding that:

Nothing ... in Article III, Section 1a creates an entitlement to specific assignments of overtime, nor does this provision of the Agreement entitle an

Decision No. B-27-88  
Docket No. BCB-1001-87  
(A-2645-87)

8.

\_\_\_\_\_ employee to be considered for such assignments in any particular manner.

Most recently, in Decision No. B-20-87, we rejected the PBA's request for arbitration of a grievance concerning denial of overtime compensation due to "improper supervisory action," by holding that Section 1.a. does not guarantee an employee the right to perform overtime work in any particular circumstance, and that there is no prima facie relationship between the failure to authorize overtime and Article III, Section 1.a. of the agreement.

For the same reason cited in those decisions, we find that the dispute herein is not arbitrable. The Union has failed to establish a prima facie relationship between the act complained of, a reassignment to avoid accumulation of overtime, and Article III, Section 1.a. of the collective bargaining agreement.

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,



Decision No. B-27-88  
Docket No. BCB-1001-87  
(A-2645-87)

9.

granted; and it is further

ORDERED, that the Patrolmen's Benevolent Association's request for arbitration be, and the same hereby is, denied.

DATED: New York, N.Y.  
June 30, 1988

MALCOLM D. MacDONALD  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

GEORGE NICOLAU  
MEMBER

DEAN L. SILVERBERG  
MEMBER

PATRICK F.X. MULHEARN  
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