

City v. PBA, 41 OCB 32 9BCB 1988) [Decision No. B-32-88 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-32-88

DOCKET NO. BCB-1018-87
(A-2582-87)

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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DECISION AND ORDER

On December 18, 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") on or about April 16, 1987. The Union filed its answer on December 28, 1987, to which the City replied on January 28, 1988.

BACKGROUND

On or about December 29, 1986 the Union filed an informal grievance requesting compensation for an alleged temporary rescheduling of the duty tours of officers assigned from Bronx Neighborhood Stabilization Units ("NSUs") to the Manhattan Peddler's Detail ("MPD"). It

contended that an alleged rescheduling of tours from 0730 x 1605 hours to 0800 x 1635 hours,¹ during the period lasting from December 22, 1986 until the end of the detail, violated Article III, Section 1² of the Collective

¹ We note that the timing of the tours as set forth in the Union's informal grievance, and the City's Challenge to Arbitrability (0730 x 1605 allegedly rescheduled to 0800 x 1605) conflicts with their timing as set forth in the Union's Verified Answer (0730 x 1605 allegedly rescheduled to 0800 x 1635). We will assume that the timing in the latter is correct, as there would otherwise be no issue regarding overtime compensation in the instant case.

² Article III - Hours and Overtime (in relevant part)

Section 1.

a. 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.

b. In order to preserve the intent and spirit of this Section on overtime compensation, there shall be no rescheduling of days off and/or tours of duty. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory reassignment of personnel to different days off and/or tours of duty. In interpreting this Section, T.O.P. 336, promulgated on October 13, 1969, shall be applicable. Notwithstanding anything to the contrary contained herein, the Department shall not have the right reschedule employees' tours of duty

Bargaining Agreement. The Police Department ("Department") denied the grievance on or about March 9, 1987. Thereafter, on or about March 12, 1987 the Union filed a grievance at Step IV of the grievance procedure. The Step IV grievance was also denied on or about April 13, 1987.

No satisfactory resolution of the dispute having been reached, the Union filed a request for arbitration claiming the Department violated Temporary Operating Procedure ("TOP") #336/69,³ Operations Order #105/78⁴ and Article III, Sections 1a and 1b of the contract by improperly rescheduling officers from Bronx NSUs to the MPD. It seeks overtime compensation at the rate of time and one half for

³ T.O.P. 336/69 provides in relevant part that:

1. Members of the force shall perform their assigned duties in accordance with their regularly assigned duty charts'. No member of the force shall be rescheduled-to perform any tour of duty other than the tour to which he is assigned unless otherwise specified herein....

⁴ Operations Order 105/78 provides in relevant part that:

Overtime is earned for duty performed after the end of a scheduled tour....

all the time the NSU officers worked outside of their regularly scheduled tours of duty.

POSITION OF THE PARTIES

City's Position

The City maintains that the grievants were assigned tours of duty pursuant to its statutory management prerogative as set forth in Section 12-307(b) of the New York City Collective Bargaining Law (NYCCBL).⁵ It contends that Section 1b of Article III and TOP #336 are inapplicable to the scheduling of tours in this case because they only limit the rescheduling of tours, and not their original assignment. Since the grievants were probationary police officers who had just graduated from the Police Academy, the City argues that they had no regularly scheduled duty tours until they were assigned to

⁵ Section 12-307b Of the NYCCBL provides in relevant part:

It is the right of the city, ... 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 operations are to be conducted;

the MPD. Consequently, it asserts that the tours in question could not have been rescheduled in violation of the cited provisions.

Additionally, the City refers to two Board decisions⁶ which it contends hold that Section 1b of Article III does not guarantee a right to work overtime but merely requires that overtime compensation be paid when overtime work is ordered and/or authorized by the Department. It argues that since there has been no showing that grievants were ordered and/or authorized to work overtime, there is no relationship between the cited contractual provision and the grievance.

The City also maintains that since the Union has not shown that officers assigned to the MPD work any tour other than 0800 x 1635, it has failed as a threshold matter to prove that grievants performed overtime work. Consequently, the City contends that the Union has not demonstrated a nexus between the grievance and the cited contractual provisions.

Union's Position

The Union maintains that it is not questioning the

⁶ Decision Nos. B-16-87; B-35-86.

Department's managerial prerogative to assign employees as it sees fit, but is asserting grievants' right to receive overtime compensation in this instance. It contends that grievants were temporarily rescheduled from their regular tours of duty when they were assigned to the MPD. NSU officers regularly work tours of 0730 x 1605, whereas grievants worked tours of 0800 x 1635. Therefore, the Union argues that grievants are contractually guaranteed time and one half pay for all the hours they worked outside of their regularly scheduled tours of duty. It asserts that even if it is, at best, arguable whether the grievants' tours were rescheduled, it is an issue which should be addressed by an arbitrator.

Finally, the Union denies the applicability of the cases cited by the City in that this grievance does not involve the guarantee of a right to work overtime. The issue here is whether overtime compensation is due to the grievants. The Union contends that only a permanent reassignment allows for the rescheduling of tours without overtime compensation, Since the grievants assigned to the MPD were allegedly temporarily rescheduled from working their regular tours, the Union maintains that they are

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entitled to overtime compensation for the time worked outside of their regular tours.

DISCUSSION

In considering challenges to arbitrability, this Board has a responsibility to ascertain whether a prima facie relationship exists between the act complained of and the source of the alleged right, redress of which is sought through arbitration. Thus, where challenged to do so, a party requesting arbitration has a duty to show that the contract provision invoked is arguably related to the grievance to be arbitrated.⁷

The City and the Union have agreed to arbitrate their grievances as defined in Article XXIII of their Agreement. This obligation extends to all violations of the Agreement as well as the Rules, Regulations and Procedures of the Department. However, in this Instance, the City contends, and we agree, that the provisions upon which the Union relies as the source of the right which it asserts did not limit the City's managerial authority to assign grievants

⁷ Decision Nos. B-5-88; B-16-87; B-35-86; B-8-82; B-15-79.

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to the MPD. Moreover, we find that those provisions are not arguably applicable to the facts which form the basis of the Instant grievance.

Article III, Section 1b. and TOP #336/69 prohibit the temporary rescheduling of officers' tours of duty in order to preserve the spirit of Article III, Section 1a, which guarantees overtime compensation for authorized overtime work. Thus, one underlying question in this case is whether or not the City in assigning the officers in question to the MPD temporarily rescheduled their tours of duty in violation of the Agreement. We do not agree with the Union that this is solely an issue for the arbitrator, since its resolution is a prerequisite to our determination of the existence of a nexus between the grievance and the contractual provisions invoked.

In a recent Board decision, Decision No. B-15-88, we held that a similar assignment of probationary NSU officers to the MPD did not constitute a temporary rescheduling because the officers had not been assigned to any previous duty charts. We noted there as we do in this case, that the Union had not presented any facts to contradict the City's claim that the grievants were assigned to the MPD

directly from the Police Academy. Consequently, we must conclude once again that grievants were not rescheduled to the MPD; they were directly assigned to it.

We therefore hold that the City in exercising its managerial authority did not arguably violate the cited contractual and departmental provisions. Although grievants were temporarily assigned to the MPD, they were not temporarily rescheduled to it.

We reject the Union's argument that the temporal differences between tours regularly worked by NSU officers, and those worked at the MPD are evidence of a temporary rescheduling. The grievants never worked the regular NSU tours; therefore those tours cannot be indicative of grievants' daily schedules. Consequently, we also note that the Union's contention that any temporary rescheduling of assignments requires overtime compensation, is inapplicable to the instant case, since there was no such rescheduling.

Finally, we agree with the Union that the City's citation of Decision.. Nos. B-16-87 and B-35-86 is irrelevant to the instant case. Those decisions Interpreting Article III, Section 1a. of the Agreement,⁸ deal

⁸ The City incorrectly interprets these decisions to construe Article III, Section 1b of the Agreement.

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with the City's managerial prerogative to assign overtime work. The issues raised here involve claimed overtime compensation as a consequence of the alleged rescheduling of the grievants' tours of duty, in violation of Article III, Section 1b and TOP #336/69. We find that the decisions involving Section 1a are inappropriate to the present claim.

Accordingly, for all the reasons stated above, the City's petition challenging arbitrability shall be granted.

ORDER

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 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

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DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

DEAN L. SILVERBERG
MEMBER

PATRICK F.X. MULHEARN
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER