City v. UPOA, 41 OCB 35 (BCB 1988) [Decision No. B-35-88 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Arbitration

-between-

DECISION NO. B-35-88

THE CITY OF NEW YORK,

DOCKET NO. BCB-1005-87 (A-2690-87)

Petitioner,

-and-

UNITED PROBATION OFFICERS ASSOCIATION,

Respondent.
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DECISION AND ORDER

On November 9, 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 submitted by the United Probation Officers Association ("the UPOA" or "the Union") on behalf of all Supervising Probation Officers ("SPOs") assigned to the "Pens" project. The Union submitted an answer on November 19, 1987, to which the City replied on November 30, 1987. On December 8, 1987, the Union filed a sur-reply.[1]

BACKGROUND

On or about July 13, 1987, the UPOA filed a grievance at Step III of the grievance procedure claiming that the Department

[1] The OCB, Rules and Regulations do not provide for the filing of a sur-reply; permission to file is discretionary with this Board. Although no application was made to the Board in this case, the City has not filed an objection. Since the sur-reply clarifies the Union's petition with respect to the alleged violation of Article V, Section 2a of the Unit Agreement, we will consider it.

of Probation violated Article V, Section 2a of the 1982-1984 Unit Agreement[2] in assigning SPOs to work in the "Pens"[3] without negotiating with the Union; and Article XIV, Section 2 of the 1980-1982 Citywide Agreement[4] in assigning SPOs to work in an area that does not meet the contractual standards

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[2] Article V, Section 2a of the 1982-1984 Unit Agreement states as follows:

> The Union recognizes the Employer's right under the New York City Collective Bargaining Law to establish and/or revise standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees for employees in supervisory positions listed in Article I, Section 1 of this Agreement. Notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees are within the scope of collective bargaining. The Employer will give the Union prior notice of the establishment and/or revision of standards for supervisory responsibility hereunder.

[3] The "Pens" are areas where criminal defendants are detained while awaiting appearances in court.

[4] Article XIV of the 1980-1982 Citywide Agreement entitled Occupational Safety and Health, states as follows:

> a. Adequate, clean structually safe and sanitary working facilities shall be provided for all employees.
>
> b. Motor vehicles and power equipment which are in compliance with minimum standards of applicable law shall be provided to employees who are required to use such devices.
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> c. When necessary, first aid chests, adequately marked and stocked, shall be provided by the Employer in sufficient quantity for the number of employees likely to need them and such chests shall be reasonably accessible to the employees.

Footnote 4 continued:

d. A Labor Management Health and Safety Committee shall be established in each agency. Each committee shall be composed of three labor and three management representatives for a total of six members. One union representative shall be designated from each of the three largest employee organizations in the respective agency. The management representative shall be designated by the appropriate agency head. The committee shall meet bi-monthly or at the written request of the three labor and three management representatives for the purpose of discussing health and safety problems in the agency and making recommendations to the appropriate agency head. The written request shall indicate the specific condition for which the meeting is being called.

e. The sole remedy for alleged violations of this Section shall be a grievance pursuant to Article XV of this Agreement. Any employee who withholds services as a means of redressing or otherwise protesting alleged violations of this Section shall be docked pay for any unauthorized non-performance of work and may be subject to any appropriate disciplinary action.

f. In construing this Section, an arbitrator shall initially have the power only to decide whether the subject facilities meet the standards of subsection a of this Section 2 but may not affirmatively direct how the Employer should comply with this Section. If the arbitrator determines that the Employer is in violation of this Section, the Employer shall take appropriate steps to remedy the violation. If in the opinion of the Union the Employer does not achieve compliance within a reasonable period of time, the Union may reassert its claim to the arbitrator. Upon such second submission, if the arbitrator finds that the Employer has had a reasonable time to comply with the terms of this Section and has failed to do so, then and only then, the arbitrator may order the Employer to follow a particular course of action which will effectuate compliance with the terms of this Section. However, such remedy shall not exceed appropriations available in the current budget allocation for the involved agency to such purposes.

g. The Employer shall make reasonable efforts to provide for the personal security of employees working in office buildings operated by the Employer during such

hours as said locations are open to the public.

for health and safety. By letter dated August 25, 1987, Jane Morgenstern, the City's Chief Grievance Review Officer, informed Wallace Cheatham, President of the UPOA, that the two issues set forth in the Step III grievance did not lend themselves to one bearing. Therefore, the City separated the out-of-title and health and safety claims into two distinct grievance files.

A Step III hearing was held on or about September 10, 1987 to address the out-of-title grievance. By decision dated October 1, 1987, the Hearing Officer denied the grievance, finding that the Department of Probation was not assigning SPOs to duties substantially different from those set forth in their job specifications. Although a separate Step III bearing was scheduled to address the health and safety claim, the City asserts that the Union withdrew its claim before the hearing was held.

Thereafter, on or about October 21, 1987, the Union filed a request for arbitration alleging that the Department of Probation violated Article XIV, Section 2 of the Citywide Agreement and Article V, Section 2a of the Unit Agreement "by assigning supervising probation officers to perform interview oversight in the 'Pens'." The Union claimed that "[i]n so doing the Department of Probation has placed the [SPOs in] unsafe, unsanitary and unhealthy working locations. In so acting the Department of Probation has failed to bargain over the impact of the said Pens assignment and failed to give the requisite prior

nice." As a remedy, the Union requests that the Department of Probation give proper notice and bargain over the health and safety impact of the "Pens" assignment.

POSITIONS OF THE PARTIES

City's Position

The City seeks dismissal of the instant request for arbitration on several grounds. First, the City claims that the Union has failed to establish a nexus between the act complained of and the source of the right alleged to have been violated. The City asserts that Article V, Section 2a of the Unit Agreement recognizes the employer's right "to establish and/or revise standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees for employees in supervisory positions...." Thus, the City submits, "it is clear that Article V, Section 2a deals with the performance of an employee irrespective of where be or she may be assigned" and "[n]owhere in this provision is any reference made regarding the assignment of personnel." Since the gravaman of the Union's claim is the alleged improper assignment of SPOs to the "Pens", the City argues that there exists no relationship between the alleged wrongful action and the provision cited by the Union as the basis for its claim. Accordingly, the request for arbitration must be dismissed.

The City also argues that it has not been afforded an opportunity to address the health and safety issue presented in

the request for arbitration at the lower steps of the grievance procedure; and it should not be expected to do so for the first time in arbitration. The City claims that while the Step III grievance alleged both a violation of the health and safety provision of the Citywide Agreement and the out-of-title provision of the Unit Agreement, the health and safety portion of the grievance was withdrawn by the Union before the Step III bearing was held. According to the City, this was confirmed in the October 15, 1987 decision of the Hearing Officer, to which the Union did not object. Since the request for arbitration asserts only a violation of the health and safety provisions, and no reference is made to the out-of-title claim, the City contends that it must be dismissed.

Moreover, the City submits that pursuant to Section 12-307b of the New York City Collective Bargaining Law ("NYCCBL") it has the right

> "to determine the standards of services to be offered by its agencies; ... direct its employees; maintain the efficiency of governmental operations; determine the method, means and personnel by which governmental operations are to be conducted; ... and exercise complete control and discretion over its organization...."

It maintains that the right to assign employees is within its statutory management prerogative; and that this right is "unfettered" unless limited by statute or the collective bargaining agreement. In the instant case, the City argues, the UPOA has not and cannot demonstrate any limitation on the

employer's right to assign SPOs to the "Pens".

Additionally, the City asserts that although the Union filed a waiver, as required under OCB Rule 6.3b,[5] it was invalid because the UPOA "has already sought to litigate the issues raised in the instant proceeding in another forum." To support its assertion, the City notes that on or about July 10, 1987, the Union filed an improper practice petition with this Board alleging that the Department of Probation "was unilaterally requiring that supervising probation officers spend extended hours in the 'Pens' and that these facilities were 'noisy, hot [and] have inadequate toilet facilities'..." The City further notes that the remedy requested in the instant proceeding is the same as that sought in the improper practice proceeding - "an order directing the [City] to bargain over the assignment of supervising probation officers to [the Pens] facilities." The City maintains that it is well settled that "where both a statutory and arbitral remedy are available for an alleged violation of contract, the grievants' commencement

[5]OCB Rule 6.3b states as follows:

> If the request for arbitration is served by a public employee organization, there shall be attached thereto a waiver,. signed by the grievant or grievants and the public employee organization, waiving their rights, if any, to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

of a statutory proceeding with knowledge of the arbitral remedy, constitutes an election of remedies and the grievants may not thereafter invoke arbitration."[6] Thus, the City claims that this "Board has a statutory duty to bar arbitration where [as in the instant proceeding] the underlying dispute has been place[d] before another forum."

In any event, the City alleges that the instant request for arbitration is barred from arbitral consideration by the doctrine of res Judicata. The City claims that in prior decisions, this Board has stated that "[r]es judicata will bar the litigation of a claim which has already been decided, where there is an identity as to the parties and as to the claim presented."[7] The City submits that in the instant proceeding, the parties, issues and remedy requested are the same as in the improper practice petition filed by the Union on or about July 10, 1987 and decided by the Board in its Decision No. B-37-87. Therefore, the City asserts, a determination has already been rendered on the merits of the instant dispute and granting the Union's request for arbitration would result in an relitigation of the issues. According to the City, "such a decision would not only be contrary to the decisions of this Board and the courts, but would contravene the purpose of the New York City

[6] Decision Nos. B-8-71; B-11-75; B-15-75; B-7-76.

[7] Decision Nos. B-28-81; B-27-82.

Collective Bargaining Law's Waiver Provision."

Finally, the City contends that the request for arbitration must be dismissed because the remedy sought by the Union, an order directing the City to bargain over the assignment of SPOs to the "Pens", cannot be granted by an arbitrator. The City submits that "the Board has exclusive, non-delegable jurisdiction to determine whether [the City] must negotiate with the [Union] regarding such an issue" and "[a]n arbitrator may not invade the Board's jurisdiction by determining whether the [City] is required to negotiate with the [Union]."

Union's Position

The Union argues that a nexus does exist between the allege d improper assignment of SPOs to the "Pens" and Article V, Section 2a of the Unit Agreement. The Union claims that Article V, Section 2a speaks of "standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees...." The performance expressly referenced in this provision, the Union asserts, is that of the supervised employees, not the supervisors. Therefore, it maintains that the term' "standards of supervisory responsibility" arguably relates to whether or not SPOs work directly in the "Pens" because it "encompass[es] the assignment to a location (as distinct from supervising without physical presence)."

The Union denies the City's assertion that the request for

arbitration does not include the out-of-title portion of the grievance filed at Step III of the grievance procedure. The Union also denies the City's assertion that it withdrew the health and safety portion of the grievance before the Step III bearing was held. Rather, it asserts that the issue was "mooted at one location" because SPOs were no longer being assigned to work at that "Pens" facility. The Union alleges, however, that the conditions of many of the "Pens" facilities violate the contractual health and safety standards. Inasmuch as a mutual misunderstanding may have resulted in a bypass of Step III, the Union asks that the City waive Step III and proceed to arbitration.

The Union admits that it is within the City's statutory management prerogative to assign its employees; and that this right is "unfettered" absent contractual limitations. In the instant case, however, it argues that the City's management right to assign its employees is limited by Article V of the collective bargaining agreement between the UPOA and the City. Therefore, the Union maintains that "[t]he City is compelled to discuss [the] impact [of its decision to assign SPOs to the 'Pens']."

As to the City's waiver argument, the Union claims that the City has cited no authority to support its contention that the waiver is invalid because the Union has decided to pursue both its statutory and contractual rights and, therefore, has filed

both an improper practice petition and a request for arbitration. Moreover, the Union submits that contrary to the City's assertion, it has not sought to litigate the issues raised in the instant proceeding in another forum (i.e., the improper practice proceeding). Instead, it maintains that "the request for arbitration asserts contractual violations which are properly the province of an arbitrator."

Additionally, the Union denies the City's allegations that it is barred from bringing the instant dispute to arbitration under the doctrine of res judicata. It claims that the cases cited by the City to support its position deal with situations wherein the Union sought to "relitigate" in arbitration a matter already decided by a prior arbitrator. While the Union admits that it filed an improper practice petition, which was dismissed by the Board in Decision No. B-37-87, it denies that there exists an identity of issues between that proceeding and the instant proceeding. Therefore, it asserts that a determination has not been rendered on the merits of the instant dispute; and granting the request for arbitration will not result in a relitigation of the issues.

In any event, the Union maintains that it may properly pursue both its contractual and statutory rights. "At most, according to the Union, "the Board may defer, retaining limited jurisdiction of an Improper Practice Petition while arbitration goes forward." The Union submits that in the instant matter

"[c]learly the Board did not believe that [the] contract claims were foreclosed by its improper practice decision" since it stated that "[a]ny claims concerning those matters may be more properly addressed through the grievance procedure specifically provided for therein."[8]

Finally, the Union contends that an arbitrator may rule on whether the City has violated a contractual duty to bargain and, if so, grant appropriate relief.

For all of the above stated reasons, the Union submits that the City's petition challenging arbitrability must be denied.

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.[9]

It is clear that the City and the UPOA have agreed to arbitrate grievances as defined in Article VI of their Agreement, and that the obligation encompasses claimed violations of the provisions of that Agreement. In the instant proceeding, however, the City contends that the provision upon

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[8] Decision No. B-37-87 at 7.

[9] Decision Nos. B-5-88; B-16-87; B-35-986; B-8-82; B-15-79.

which the UPOA relies as the source of the right which it asserts deals with the performance of an employee. Since the gravamen of the Union's claim is the alleged improper assignment of SPOs to the "Pens", the City argues that there is no relationship between the alleged wrongful action and the provision cited by the Union as the basis for its claim.

The Union, on the other hand, argues that Article V, Section 2a deals with "standards for supervisory responsibility", not the performance of an employee. Although perhaps inartfully stated, the Union claims that the recent assignment of SPOs to the"Pens" to perform "interview oversight" of Probation Officers working in those facilities constitutes a change in the "standards for supervisory responsibility" because SPO's did not previously perform this task. Additionally, the Union asserts that the City "failed to give the requisite prior notice" before implementing this change.

Inasmuch as Article V, Section 2a refers to "standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees for employees in supervisory positions" and provides that "[t]he Employer will give the Union prior notice of the establishment and/or revision of standards for supervisory responsibility," we find that the Union has cited a contract provision which arguably deals with the subject matter at issue in the present case. Therefore, we

will not deny the Union's request for arbitration on this basis.

The Union does not dispute that it is within the City's statutory management prerogative to assign its employees; and that this right is "unfettered" unless limited by statute or the collective bargaining agreement. Rather, it argues that in the instant case, the City's right is limited by Article V of the Agreement and, therefore, "[t]he City is compelled to discuss [the] impact [of its decision to assign SPOs to the 'Pens']." The City contends, however, that a determination has already been rendered on the merits of the Union's claim in Decision No. B-37-87. As such, it asserts that the Union's request for arbitration should be barred from arbitral consideration by the doctrine of res judicata.

We recognize that in appropriate cases, res Judicata should be employed to prevent vexatious and oppressive relitigation of a previously litigated dispute.[10] In determining whether the doctrine should apply to bar arbitrability, we have held that the following "essential elements" of res judicata need be met: "(1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits."[11]

[10] Decision Nos. B-25-88; B-27-85; B-16-75.

[11] Decision No. B-25-88; B-22-86.

In order to determine whether the "essential elements" have been satisfied in the present case, it is necessary to review our determination in Decision No. B-37-87. The City asserts, and we agree, that in Decision No, B-37-87 - an improper practice proceeding - the UPOA presented claims which are similar, if not identical, to those presented in the instant request for arbitration. Thus, with regard to the Union's claim that the assignment of SPOs to the "Pens" constitutes a unilateral change in working conditions in violation of the New York City Collective Bargaining Law ("NYCCBL") and the collective bargaining agreement, we stated that

> Although the UPOA alleges that the right of assignment in the instant case is limited by the terms of Article V, Section 2, we note that the contractual provision alleged to be violated appears to affirm the employer's statutory rights, using language virtually identical to that of Section 1173-4.3.(b) [now Section 12-307b]."

We concluded that "the City's action herein falls within the realm reserved to it by the NYCCBL" and, therefore, dismissed the Union's improper practice petition.

The UPOA also alleged that the City violated Article V, Section 2a by failing to give prior notice of its decision to assign SPOs to the "Pens." We determined, however, that "Section 205.5(d) of the Taylor Law precludes this Board from exercising jurisdiction over a claimed contractual violation

that does not otherwise constitute an improper practice." Moreover, we noted that "Any claims concerning [this] matter may be more properly addressed through the grievance procedure specifically provided for [in the parties' Agreement]."

Accordingly, in the instant case, we find that all of the "essential elements" have been satisfied with regard to the Union's claim that Article V, Section 2 limits the City's right to assign its employees. Therefore, arbitral consideration of this claim is barred by the doctrine of res judicata. As to the Union's claim that the City violated the notice requirement set forth in Article V, Section 2a, however, we find that the first element has not been satisfied because no final judgment has been rendered on the merits of this claim.

In view of our finding that res judicata does not bar arbitral consideration of the notice claim, it is necessary to address the City's waiver argument as it pertains to this claim.[12] The City contends that the waiver filed by the Union was invalid because it has already sought to litigate the issues raised in the instant proceeding in another forum. The City maintains that it well settled that "where both a statutory and arbitral remedy are available for an alleged violation of

[12] Since we have determined that res judicata bars arbitral consideration of the Union's claim that Article V, Section 2a limits the City's right to assign its employees, it is unnecessary to consider the City's waiver argument with respect to this claim.

contract, grievants' commencement of a statutory proceeding with knowledge of the arbitral remedy constitutes an election of remedies and grievants may not thereafter invoke arbitration." The Union claims that the City has cited no authority to support its assertion that a waiver is invalid simply because the Union has decided to pursue both its statutory and contractual rights. In any event, the Union argues, "the request for arbitration asserts contractual violations which are properly the province of an arbitrator."

The waiver provision, Section 12-312d of the NYCCBL, states as follows:

> As a condition to the right of a municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the director a written waiver of the right, if any, of said grievant or grievants and said organization to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

In prior decisions, this Board has stated that the purpose of the waiver provision is to prevent multiple litigation of the same dispute and to ensure that a grievant. who elects to seek redress through the arbitration process will not attempt to relitigate the matter in another forum. A union is deemed to have submitted the underlying dispute to two forums where the

matter in controversy involves either common legal issues [13] or common factual issues.[14]

The Board may find that the same underlying dispute has been submitted to two forums even where the union has neither cited the same statute, rule, regulation or contract provision[15] nor requested the same remedy.[16] Furthermore, the Board has denied the request for arbitration even where the party raised additional matters in the other forum beyond those asserted in

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[13] E.g., Decision No. B-8-71 (at issue in both the Article 78 petition and the request for arbitration was whether the Fire Department had violated Article XXI of the parties' contract when it received certain transcripts into evidence at the departmental disciplinary bearing); Decision No. B-8-79 (at issue in both the Article 78 petition and the request for arbitration was whether the Police Department bad violated the contract by rescheduling grievant from his normal tour of duty for the purpose of a court appearance).

[14] E.g., Decision No. B-10-74 (at issue in both the improper practice petition and the request for arbitration was whether the involuntary transfers of certain employees constituted reprisals for an earlier strike); Decision No. B-31-81 (at issue in both the improper practice and the request for arbitration was whether the City departed from its prior practice when it applied Executive Order No. 75 to justify grievant's termination).

[15] E.g., Decision No. B-10-74 (the improper practice petition cited a violation of Section 202 of the Civil Service Law, while the request for arbitration alleged a violation of "existing policy"); Decision No. B-10-82 (the Article 78 petition claimed a violation of Section 75 of the Civil Service Law, while the request for arbitration alleged a violation of the parties' contract).

[16] E.g., Decision No. B-8-71 (Article 78 proceeding sought reversal of the disciplinary determination, while the request for arbitration sought to expunge certain matters from the record of the disciplinary bearing).

the request for arbitration.[17]

Applying these principles to the instant matter, we find that under the facts and circumstances present in the instant case, the waiver filed by the Union was not invalid. In so ruling, we note that the instant case is distinguishable from other waiver cases considered by this Board, and cited by the City, in that the Union filed its request for arbitration subsequent to the issuance of our decision in the improper practice proceeding. Decision No. B-37-87 was issued on August 27, 1987; the request for arbitration was filed on or about October 21, 1987.

While it is true that the Union asserted the notice claim in its improper practice petition, it cannot be said that the claim was fully litigated and effectively disposed of in that proceeding. Instead, as previously stated, in Decision No. B-37-87 we determined that this Board has no jurisdiction over a contractual violation that does not otherwise constitute an improper practice. Moreover, we noted that such claims may be

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[17] E.g., Decision No. B-7-76 (although the Civil Service appeal encompassed an event that was unrelated to the grievance, the grievant made no attempt to limit the appeal to exclude the substance of the contractual grievance); Decision No. B-21-85 (since the Union elected in the judicial proceeding to plead, in part, a violation of a department rule as the basis for injunctive relief and then asserted a violation of the same rule in its request for arbitration, the waiver provision cannot be satisfied); Decision No. B-11-75 (the request for arbitration asserted a violation of Article VI of the parties' contract, while the Article 78 petition asserted violations of the Civil Service Law, the New York State Constitution, and Article VI).

more properly addressed through the grievance procedure. Therefore, at the time the request for arbitration was submitted, and the waiver was executed, the underlying dispute was pending in no other forum as it had been dismissed previously and there was no danger of multiple adjudications or inconsistent results. On this basis, we find that the waiver filed by the Union is not violative of the requirements of Section 12-312d.

Accordingly, for all of the reasons stated above, we shall deny the City's petition challenging arbitrability as it pertains to the alleged violation of the notice requirement set forth in Article V, Section 2a.

Next, we turn our attention to the health and safety claim. It is not disputed that the Union filed a Step III grievance claiming that the City violated the health and safety provisions of the Citywide Agreement. The City argues, however, that the Union withdrew this grievance before the Step III hearing was held, and therefore, it has not been afforded an opportunity to address this claim in the lower steps of the grievance procedure. We agree.

This Board has consistently held that a party may not raise at the point of arbitration new claims or issues which were not raised in the lower steps of the grievance. procedure.[18] The basis for this rule has been expressed as follows:

> The purpose of the multi-level grievance procedure is to encourage

[18] Decision Nos. B-10-88; B-31-86; B-6-80; B-22-74; B-20-74.

> of the steps. The parties are thus afforded an opportunity to discuss the claim informally and to attempt to settle the matter before it reaches the arbitral stage. Were this Board to permit either party to interpose discussion of the dispute at each at this time a novel claim based on a hitherto unpleaded grievance, we would be depriving the parties of the beneficial effect of the earlier steps of the grievance procedure and foreclosing the possibility of a voluntary settlement.[19]

Although the Union denies that it withdrew the health and safety grievance at Step III of the grievance procedure, the record in this case shows that on October 15, 1987, the Step III Hearing Officer issued a decision which stated as follows:

> "The Union has advised the Review Officer that the instant grievance has been withdrawn. Accordingly, OMLR File No. 10223 is hereby closed."

Thus, if the Union did not intend to withdraw its health and safety grievance, it had an affirmative obligation to so notify the City upon receipt of the Hearing Officer's decision. Having failed to do so, we find that the health and safety claim constitutes a new claim which the Union may not present for the first time in arbitration. Inasmuch as the alleged health and safety violations may still exist, however, our decision herein is without prejudice to the filing of another grievance.

Finally, we reject the City's contention that the request

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[19] Decision Nos. B-10-88; B-22-74.

for arbitration must be dismissed because the remedy sought by the Union cannot be granted by an arbitrator. It is well settled that arguments addressed to questions of remedy are not relevant to the arbitrability of a grievance.[20] The propriety of the remedy sought is a matter for the arbitrator, not this Board, to decide. The mere possibility that an arbitrator might render a proscribed remedy will not defeat an otherwise valid request for arbitration.[21]

ORDER

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 filed by the City of New York be, and the same hereby is, denied insofar as it contests the arbitrability of a claimed violation of the notice requirement set forth in Article V, Section 2a of the 1982-1984 Unit Agreement, and granted in all other respects; and it is further

ORDERED, that the request for arbitration filed by the United Probation Officers Association, and the same hereby is, granted insofar as it asserts a violation of the notice

[20] Decision Nos. B-5-85; B-12-83; B-22-81.

[21] Decision Nos. B-12-83; B-22-81; B-2-78.

requirement set forth in Article V, Section 2a of the 1982-1984 Unit Agreement, and denied in all other respects.

DATED: New York, N.Y.
July 27,1988

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

JEROME E. JOSEPH
MEMBER

EDWARD F. GRAY
MEMBER

EDWARD SILVER
MEMBER

DEAN L. SILVERBERG
MEMBER