

City v. PBA, 41 OCB 37 (BCB 1988) [Decision No. B-37-88 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

THE CITY OF NEW YORK,

DECISION NO. B-37-88

Petitioner,

DOCKET NO. BCB-990-87  
(A-2608-87)

-and-

PATROLMEN'S BENEVOLENT  
ASSOCIATION,

Respondent.

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DECISION AND ORDER

On August 12, 1987, the City of New York ("the City") by the Office of Municipal Labor Relations, filed a petition challenging the arbitrability of a grievance submitted by the Patrolmen's Benevolent Association ("the Union"), on or about June 1, 1987. The Union filed an answer dated November 1, 1987, to which the City submitted a reply dated November 13, 1987.

Background

On or about January 21, 1987, the Union submitted to the City an informal grievance<sup>1</sup> regarding the alleged harassment of Police Officer Joseph Anella, Jr. ("Grievant"), a union delegate. Specifically, the grievance alleged that on or about January 1, 1987, then Captain Sanderson ordered Grievant to open his attache case

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<sup>1</sup> The agreement under which this dispute arises is the July 1, 1984 to June 30, 1987 contract between the parties ("the Agreement").

which he was carrying in the station house. Grievant asked permission of Captain Sanderson to call Richard Hartman, counsel for the Union, regarding the propriety of such a request. Captain Sanderson refused Grievant's request and ordered him to either open his attache case or be suspended. Upon examining the contents of the case, Captain Sanderson determined that there was nothing improper in it. The next day, Sergeant Kolarik was ordered to give Grievant a "command discipline" requiring that he refrain from carrying his attache case in the future.

The Union has alleged other acts of harassment against the Grievant. Specifically, the Union alleges that:

D.I. Sanderson had notified the Medical Division while P.O. Anella was out on sick leave and informed them that P.O. Anella spent sixteen (16) hours per day in the 75th Precinct. This was totally untrue. P.O. Anella had been advised that he was assigned to limited capacity. The Special Medical Division was notified that they should monitor [sic] P.O. Anella's conduct. The following day, after notification by D.I. Sanderson, P.O. Anella was visited by a sergeant of the Special Medical Division.

Further, D.I. Sanderson had listed P.O. Anella as a footman and has directed that he be put in that assignment as soon as he is taken off limited capacity.

The Union claims that the purpose of these aforementioned acts was to harass Grievant and to discourage

him in his representation of Union members.

On or about April 24, 1987, the Union filed a grievance pursuant to Article XXIII, Section 4, Step IV of the Agreement which the City later denied on May 28, 1987.

On June 1, 1987, the Union requested arbitration under Article XXIII, section 1a.1 and 2 of the Agreement. It specifically alleged a violation of Article XVIII, sections 1, 2 and 3 which provides the following:

Section 1.

Time spent by Union officials and representatives in the conduct of labor relations shall be governed by the provisions of Mayor's Executive Order No. 75, dated March 22, 1973, or any other applicable Executive Order or local law, or as otherwise provided in this Agreement. No employee shall otherwise engage in Union activities during the time the employee is assigned to the employee's regular duties.

Section 2.

PBA trustees and delegates shall be recognized as representatives of the PBA within their respective territories and commands. For the purpose of attending the regularly scheduled monthly delegate meeting, PBA delegates shall be assigned to the second platoon and excused from duty for that day.

In the event the delegate so assigned to the second platoon is unable to attend said monthly delegate meeting because of illness which requires remaining at home or hospitalization, or absence from the New York metropolitan area on leave or by assignment, or required court appearance, then and only then will a designated alternate delegate be excused from duty as spelled out in this Section. The Union will provide the City with a list of those

attending each such meeting, which shall be the basis for their payment.

Section 3.

The parties shall explore a further clarification of departmental rules and procedures to enable PBA delegates and officers to represent properly the interests of employees. An appropriate departmental order in this regard shall be issued.

The Parties' Positions

The City's Position

The City's petition challenging the arbitrability of the Union's grievance claims that the Union has not established a proper nexus between the acts complained of, i.e. the alleged "harassment of P.O. Anella ... [and] the interference with his ability to properly function as a PBA delegate" and the substantive contractual rights claimed to have been violated.

Specifically, the City asserts that Article XVIII, sections 1, 2 and 3 relates only to the scheduling of assignments to insure that PBA delegates have leave time to attend regularly scheduled monthly meetings. It claims that Article XVIII does not refer or relate to the harassment of Union members. Furthermore, the City claims that the Union has not alleged that the Grievant was prevented from attending Union meetings, or that the alleged acts of harassment were in any way related to such attendance, the

only subject grievable under Article XVIII.

The City relies on Decision No. B-8-81 in which this Board denied the City's petition challenging arbitrability. We found in that case that in order to defeat a petition challenging the arbitrability of a grievance, the Union must "... allege sufficient facts to establish a prima facie relationship between the act complained of and the source of the alleged right." In that decision, we held that a "bare allegation that a transfer was for a disciplinary purpose will not suffice."

#### The Union's Position

The Union alleges that it has pleaded an adequate nexus between the acts complained of and the terms of the Agreement. Article XVIII, the Union claims, guarantees that the City will not interfere with Grievant's ability to function as a union representative.

Specifically, the Union relies on the first sentence of Article XVIII, section 2 which states that, "PBA trustees and delegates shall be recognized as representatives of the PBA within their respective territories and commands." In order to function as a delegate, the Union reasons, a delegate "must be allowed to perform his organizational responsibilities free from the intimidation and harassment of superior officers." According to the Union, the actions

taken by Captain Sanderson interfered with Grievant's ability to function as a union delegate as guaranteed by Article XVIII.

Therefore, the Union seeks an arbitration award ordering the City to cease and desist from further harassment of Grievant and to expunge all requests, charges and other specifications regarding "the incident in this grievance which may have been lodged against" Grievant. Moreover, the Union submits that its grievance is clearly arbitrable under the provisions of the Agreement.

#### Discussion

This Board undertakes a two step analysis on a challenge to the arbitrability of a grievance. First, we must determine whether there is an agreement to arbitrate grievances. Second, we must determine whether the provision of the Agreement relied upon by the Union creates the right which allegedly has been violated and if there is an arguable relationship or nexus between the acts complained of and that right.<sup>2</sup>

In the instant case, the parties do not dispute that they have agreed to arbitrate their disputes. Rather, the nub of their disagreement is whether the contract provision

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<sup>2</sup> Decision Nos. B-8-86; B-8-82; B-8-81.

relied upon by the Union creates the substantive right which the Union claims has been violated.

The Union, when challenged by the City, "has a duty to show that the contract provisions invoked are arguably related to the grievance to be arbitrated."<sup>3</sup> Even on such a challenge, however, we cannot engage in an inquiry into the merits of the underlying dispute.<sup>4</sup>

The Union relies on Article XVIII as the sole source of the right which it claims gives rise to its claim. However, a plain reading of the contract reveals that Article XVIII is, as the City has argued, related only to time spent by Union officials on Union activity and to the procedures for arranging work schedules so that PBA delegates can perform their union delegate functions within the parameters of being effective police officers.

Section 1 of Article XVIII defines the limits on time to be spent by Union officials and representatives on labor relations activities.

Section 2 of Article XVIII, has prefatory language regarding the recognition of Union trustees and delegates as representatives of the Union within their commands.

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<sup>3</sup> Decision Nos. B-8-82; B-7-81.

<sup>4</sup> Decision No. B-17-80.

The substantive provisions of this section consist of the mandate that Union trustees and delegates shall be assigned to the second platoon on regularly scheduled monthly delegate meeting days. It also delineates the limited circumstances in which substitutes for the delegate may be so assigned.

Section 3 of Article XVIII provides for prospective joint efforts by the parties to achieve "further clarification of departmental rules and procedures to enable PBA delegates and officers to represent properly the interests of employees"; and that "an appropriate departmental order in this regard shall be issued." The section includes no further substantive provision.

Nothing on the face of Section 2 Article XVIII of the Agreement deals expressly with the subject matter underlying the grievance herein. The Union offers no suggestion as to why it may believe that the section has implicit relevance to the grievance nor do we perceive one.<sup>5</sup>

The Union, where challenged to do so by objections to arbitrability such as those presented here, has the duty of identifying the specific substantive contractual right it asserts and of establishing a nexus between that right and

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<sup>5</sup> See Decision No. B-8-81.



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the action or inaction of management which it claims is in violation of the right.<sup>6</sup> The Union has failed to do so in the instant matter. Accordingly, the City's objection to the arbitrability of the grievance herein must be sustained.

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, 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.  
July 27, 1988

MALCOLM D. MacDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

EDWARD F. GRAY  
MEMBER

JEROME E. JOSEPH  
MEMBER

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<sup>6</sup> Decision No. B-21-80.

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DEAN L. SILVERBERG  
MEMBER

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EDWARD SILVER  
MEMBER