

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-4-88

Petitioner,

DOCKET NO. BCB-987-87  
(A-2639-87)

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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DECISION AND ORDER

The City of New York, by its Office of Municipal Labor Relations (hereinafter "the City"), filed a petition on August 4, 1987 challenging the arbitrability of a grievance concerning dormitory space in the 75th Police Precinct which was the subject of a request for arbitration submitted by the Patrolmen's Benevolent Association (herein after "PBA" or "the Union") on July 21, 1987. After several extensions of time granted by the Office of Collective Bargaining, with the consent of the City, the PBA submitted an answer on November 4, 1987. The City filed a reply on November 13, 1987.

Nature of the Grievance

The Union's request for arbitration complains of "Inadequate and unhealthy dormitory space in the 75<sup>th</sup> Pct." As further detailed in a letter which constituted

the initial grievance, the PBA alleges that:

"There are presently almost 300 Police Officers assigned to this Command who are being forced to utilize a very small room as a dormitory. This room, #242, which has only three (3) beds, cramped into a space which is measured 8' x 10', has no windows, no air conditioning and no fresh air vents. This condition is not conducive to healthy atmosphere. This problem has been discussed with the Precinct Commanding Officer who was concerned with the problem but could not afford a better dormitory area due to the fact that there are no other rooms available."

The Union asserts that the existence of this condition in the 75th Precinct is violative of Article XVII, section 3 of the collective bargaining agreement, which provides:

" All commands and other Departmental places of assignment shall have adequate heating, hot water and sanitary facilities. The Union shall give notice to the Department of any failure to these conditions. If not corrected by the Department within a reasonable time, the Union may commence a grievance at Step 3 of the grievance procedure concerning that failure."

#### Positions of the Parties

##### City's Position

The City submits that the PBA has failed to establish any nexus between the subject of the grievance and the contractual provision relied upon. The City notes that

the grievance complains of overcrowded or otherwise inadequate dormitory facilities, while the cited contractual provision, Article XVII, section 3, only pertains to the maintenance of adequate heating, hot water, and sanitary facilities. The City further asserts that nothing in the collective bargaining agreement creates a right to dormitory facilities in a precinct station house.

The City concludes that since the Union has failed to demonstrate the required nexus, its request for arbitration must be dismissed.

#### PBA's Position

The Union contends that it has demonstrated the required nexus between the subject of its grievance and the cited provision of the collective bargaining agreement. The Union alleges that the grievance constitutes an attempt to insure that adequate sanitary conditions are maintained in existing facilities. According to the PBA, the cramped, unhealthy dormitory space in the 75th Precinct is an unhealthy and unsanitary facility within the meaning of Article XVII, section 3 of the agreement. The Union asserts that it is not claiming a right to dormitory facilities, but rather is grieving the fact that the existing dormitory facilities are unhealthy. It submits that this grievance should be found to be arbitrable.

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Discussion

It is well established that where the parties, as here, do not dispute that they have agreed to arbitrate their controversies, the question before this Board on a petition challenging arbitrability is whether the particular controversy at issue is within the scope of the agreement to arbitrate.<sup>1</sup> In determining this question, the 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. In this regard, 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>2</sup>

Applying these standards to the present case, we find that the Union has failed to demonstrate the required nexus between the subject of its grievance and the contractual provision upon which it relies. Article XVII, section 3 of the collective bargaining agreement, which the PBA claims has been violated, provides, in pertinent part that:

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<sup>1</sup> See, e.g., Decision Nos. B-12-87; B-6-86.

<sup>2</sup> Decision Nos. B-35-86; B-10-86; B-4-83; B-8-82; B-7-81.

"All commands and Departmental places of assignment shall have adequate heating, hot water and sanitary facilities...."

The PBA does not contend that the 75th Precinct lacks adequate heating or hot water. It does argue that the alleged "inadequate and unhealthy dormitory space" in that Precinct constitutes an unsanitary facility, in violation of the quoted contractual provision. Superficially, this argument may be appealing, but, upon closer examination, we find that this contention is merely conclusory.

The only facts alleged in the grievance in this matter in support of the Union's assertion that the dormitory space in question is "unhealthy" concern the allegation that only an 8' x 10' room containing three beds and no window or air conditioning is available for the use of almost 300 Police Officers assigned to that Precinct. While the PBA concedes that it does not possess a contractual right to any dormitory facilities, it appears to argue that the limited size of the dormitory space the City voluntarily has chosen to provide has created an "unsanitary facility" in violation of the contract. However, the PBA has not alleged what, other than size and ventilation, has rendered the dormitory space unhealthy or unsanitary. In this regard, we note that the Union does not allege why the lack of a window or air conditioner makes conditions in this room "unsanitary".

We previously have held that in submitting a request for arbitration, it is incumbent upon the party seeking arbitration to allege facts which, if proven, would constitute a grievance within the contractual definition.<sup>3</sup> We are not persuaded that the Union has satisfied this burden in this case. We find that its allegations of an unsanitary condition in the dormitory space of the 75th Precinct are merely conclusory and are insufficient to establish a prima facie relationship to the cited contractual provision. Accordingly, we will grant the City's petition and dismiss the request for 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 City's petition challenging arbitrability be, and the same hereby is, granted; and it is further

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<sup>3</sup> Decision No. B-28-82.

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(A-2639-87)

7.

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

DATED: New York, N.Y.  
February 25, 1988

MALCOLM D. MacDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

CAROLYN GENTILE  
MEMBER

DEAN L. SILVERBERG  
MEMBER

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PATRICK F.X. MULHEARN  
MEMBER