

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

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

DECISION NO. B-41-88

THE CITY OF NEW YORK,

DOCKET NO. BCB-1012-87

Petitioner,

(A-2629-87)

-and

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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DECISION AND ORDER

On November 20, 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 submitted by the Patrolmen's Benevolent Association ("the PBA" or "the Union") on behalf of P.O. Andrew Rindler ("the grievant"). The Union filed its answer on December 9, 1987, to which the City replied on December 21, 1987.

Background

On or about April 22, 1987, the Union filed an informal grievance claiming that on March 15, 1987, P.O. Andrew Rindler "...was doing a tour 2130 x 0605 and made an arrest. The police officer signed out of [the] Street Crime Unit at 0635 and signed into court at 0800.[He]

was not given overtime for the 1-12 (sic) hours in between." The informal grievance was denied on or about June 5, 1987, and the Union filed a grievance at Step IV of the grievance procedure. On or about July 1, 1987, the Step IV grievance was denied. No satisfactory resolution of the matter having been reached, on July 8, 1987, the Union filed a request for arbitration in which it claimed that the Police Department violated Article III, Section 1a of the collective bargaining agreement¹ by improperly denying Officer Rindler overtime compensation for the one hour and twenty-five minutes period between the time he signed out of the Street Crime Unit and the time he signed into court on March 15, 1987. As a remedy, the Union requested "overtime compensation at the rate of time and one half for one (1) hour and 25 minutes in cash or compensatory time, at the option of P.O. Andrew Rindler."

Positions of the Parties

City's Position

The City challenges the arbitrability of the PBA's

¹Article III, Section 1a states 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.

grievance on two grounds. First, the City asserts that the assignment of overtime is clearly within its statutory management prerogatives set forth in Section 12-307b of the New York City Collective Bargaining Law ("NYCCBL").² The City claims that Article III, Section 1a in no way limits the Police Departments right to assign its employees. Rather, it provides that "all ordered and/or authorized overtime" shall be paid at the rate of time and one-half. Since grievant was neither ordered nor authorized to work overtime, the City argues, the Union "failed to state a grievable claim under the parties' agreement".

Secondly, the City claims that the request for arbitration must be denied because the Union has failed to establish the required nexus between the act complained of

²Section 12-307b of the NYCCBL states in relevant 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 operations 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

and the source of the alleged right. The City asserts that in two recent decisions, B-35-86 and B-16-87, this Board held that Article III, Section 1a requires only that compensation be given when overtime work is ordered and/or authorized by the Police Department; it does not guarantee a right to work overtime. The City argues that, in the instant case, "there has been no showing that [grievant was) authorized or ordered to work overtime." Moreover, it maintains, the Union "has utterly failed to demonstrate any contractual clause or departmental rule, regulation or procedure that would provide overtime compensation to an officer between the time his shift ended and the time of his required court appearance."

Union's Position

The Union argues that contrary to the City's assertion, it has stated a claim which is grievable under the collective bargaining agreement. The Union does not deny that it is within the City's statutory management right to assign its employees. It contends, however, that this right is "modified" by Article III, Section 1a, which "necessarily requires that one not arbitrarily be taken off overtime and then placed back on the clock" one hour and twenty-five minutes later in order to make a required court appearance. The Union submits that "if there is not a reasonable interpretation of Article III, Section 1 (a), there could be tremendous abuse of members regarding the

authorization for overtime compensation." According to the Union, "[t]his abuse can only be controlled if Article III, Section 1(a) is reasonably read and understood to mean that the continued authorization for overtime will be done in an equitable and fair manner."

The Union further argues that "there is no question but that grievant was authorized to work overtime. Indeed", the Union asserts, "he did work until 6:35 am" on the day in question even though his tour was scheduled to end at 0605 hours. The Union claims that unlike the prior Board decisions cited and relied upon by the City, B-35-86 and B-16-87, which challenged the right of the Police Department to order and/or authorize overtime, the instant grievance challenges "the City's right to authorize overtime and then arbitrarily temporarily cancel it for one hour and twenty-five minutes when the presence of the member is required a short time thereafter." Therefore, the Union contends that it has demonstrated the required nexus between the act complained of and the contractual provision cited as the basis for its claim; and the request for arbitration should be granted.

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

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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.³

It is clear that the City and PBA have agreed to arbitrate grievances, as defined in Article XXIII 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 which the PBA relies as the source of the right which it asserts simply provides that an employee is entitled to overtime compensation for "[a]ll ordered and/or authorized overtime." Since the Union has alleged no facts which show that grievant was ordered or authorized to perform overtime work, the City argues that it has failed to establish the required nexus between the alleged wrongful action (improper denial of overtime compensation) and the contractual provision cited as the basis for its claim (Article III, Section 1a).

We agree. In Decision Nos. B-35-86 and B-16-87, this Board stated that Article III, Section 1a

"in no way establishes that an employee is guaranteed the right to perform overtime work in any particular circumstances. To the contrary, Section 1a expressly

³Decision Nos. B-5-88; B-16-87; B-35-86; B-8-82; B-15-79.

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recognizes that overtime must be 'ordered and/or authorized' by the Police Department in order to be compensable."⁴

Moreover, we noted that

"in the absence of a limitation in the contract or otherwise, the assignment of overtime is within the City's statutory management right to determine the methods, means and personnel by which government operations are to be conducted."

In the instant case, the Union argues that since grievant worked overtime from 0605 hours to 0635 hours on the day in question, the denial of overtime compensation for the remaining one hour and twenty-five minute period before he was required to appear in court was improper. It is not alleged, however, that work performed by the grievant, commencing at 0800 hours, was compensable at the overtime rate. In this regard, we note that Article III, Section 1b of the parties' agreement expressly authorizes the rescheduling of an officer's tour of duty for the purpose of court appearances, beginning at 8:00 A.M., without the payment of overtime. It thus appears that the gap of one hour and twenty-five minutes at issue in this grievance constitutes the period between two tours of duty rather than between two periods of overtime within a single tour. We recognize that under the circumstances present in the instant proceeding, the refusal to pay

⁴See also, Decision Nos. B-9-83; B-7-81.

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grievant overtime compensation for this short period of time may work a hardship. Nevertheless, we find that Article III, Section 1a does not create any limitation on the city's reasonable exercise of its prerogative regarding the assignment of overtime where, as here, no evidence has, been presented to show that overtime work was authorized or performed.

Moreover, we note that the Union has cited no contractual provision, rule, regulation or procedure which grants police officers minimum recall rights. Therefore, we find that the Union has failed to state a claim which is grievable under the parties' agreement. Accordingly, we shall grant the City's petition challenging arbitrability; and deny the Union's request for arbitration.

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

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DATED: New York, N.Y.
September 6, 1988

MALCOLM D. MacDONALD
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MEMBER

GEORGE NICOLAU
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DEAN L. SILVERBERG
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