

City v. PBA, 41 OCB 43 (BCB 1988) [Decision No. B-43-88 (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-43-88

Petitioner,

DOCKET NO. BCB-1064-88
(A-2779-88)

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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DECISION AND ORDER

On June 20, 1988, 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 February 24, 1988. The Union filed its answer on July 6, 1988, to which the City replied on July 18, 1988.

Background

On or about November 17, 1987, the Union filed an informal grievance requesting that two police pilots assigned to the Police Aviation Unit be reimbursed for a meal they missed while outside the City. The Union contended that the City had a longstanding practice of compensating pilots who were unable to avail themselves

of their meal periods.

The Police Department ("Department") denied the grievance on or about December 30, 1987. Thereafter on or about January 7, 1988, the Union instituted a grievance at Step IV of the grievance procedure. The Step IV grievance was also denied on or about February 17, 1988.

No satisfactory resolution of the dispute having been reached, the Union filed a request for arbitration claiming that the Department violated Section 116-2¹ of the Patrol Guide by denying grievants a meal allowance. As a remedy, it seeks \$6.00 per grievant as compensation

¹ PURPOSE: To provide for meal period
PROCEDURE: Upon leaving assignment for meal period:
MEMBER OF THE SERVICE
1. Notify switchboard operator at beginning of meal, of location where meal is to be taken.
2. Obtain meal on assigned post, if possible, and in a place maintained for eating purposes.
3. Make Memo/Patrolman's Log entry prior to leaving post including meal location address, and again upon returning to post.
4. Inform switchboard operator on return to post.
5. Notify radio dispatcher by appropriate code signal if radio motor patrol car is being put out of service during meal period.
6. Remain in area designated by commanding officer, if meal is taken in station house.
(a) Be available for assignment by stationhouse supervisor.
7. When taking meal in radio motor patrol car:
(a) Give location to radio dispatcher and telephone switchboard operator

(Footnote 1/ continued)

- (b) Acknowledge calls directed to unit
 - (c) Remain within assigned sector when practical
 - (d) Do not park more than one department vehicle in the same place at the same time.
 - (e) Comply with any requests for police service and make Memo/Patrolman's Log entry.
8. Notify station house supervisor when deprived of normal meal time due to police service.

S.H. SUPERVISOR

9. Make appropriate adjustments so members are not deprived of meal.

PRECINCT COMMANDING OFFICER

10. May assign a foot patrolman, if available, for relief of radio motor patrol crew.

FOOT PATROLMAN

11. When assigned to relieve radio motor patrol patrolman for meal:
- (a) Remain in view on post at time of relief.
 - (b) Assume all duties as recorded during relief period.

R.M.P. OPERATOR

12. Transport relieved member directly to meal location.

MEMBER ON MEAL

13. Notify station house officer if radio motor patrol fails to return within 15 minutes after end of meal period.

ADDITIONAL DATA

Members on meal period are still on duty and therefore will remain alert and not engage in activity ordinarily prohibited.

The commanding officer of a precinct may designate a portion of an adjoining precinct where members may obtain meals during the hours a suitable eating facility is not available within the precinct of assignment.

Members are not to be assigned meal periods during the first or last hour and one-half of their tour except in emergency situations.

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for the meal in question, or in the alternative, time and one half cash overtime for each officer's missed meal period.

Positions of the Parties

City's Position

The City contends that it is not required to reimburse grievants in this instance because the cited provision of the Patrol guide setting forth the departmental procedure for meal periods, contains no reference to meal allowances or any other form of compensation for missed meal periods. It also argues that the instant alleged violation of an unwritten past practice does not fall within definition of an arbitrable grievance set forth in the contract. Therefore, the City maintains that the Union's Request for Arbitration must be dismissed for failure to establish a sufficient nexus between the alleged grievance and the procedural regulation invoked.

Union's Position

The Union asserts that Procedure No. 116-2 of the Patrol Guide is directly related to the instant grievance. It notes that this procedure directs that all

members are entitled to a meal period.² Consequently, it argues that the Department's past practice of providing pilots with a meal allowance in lieu of a meal period reflects the Patrol Guide's intent by insuring that members are not denied meal periods.

Discussion

This Board has long held that when it considers challenges to arbitrability it has the responsibility of determining 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 contractual provision invoked is arguably related to the grievance sought to be arbitrated.³

It is clear that the City and Union have agreed to arbitrate their grievances in Article XXIII of their

² The Patrol Guide provides in relevant part:

S.H. SUPERVISOR

9. Make appropriate adjustments so members are not deprived of meal.

³ Decision Nos. B-35-86; B-22-86; B-10-86

Agreement. A grievance as defined by this Article includes all violations of the "rules, regulations or procedures of the Police Department affecting terms and conditions of employment..." Consequently, we agree with the City's contention that the Union has not shown a sufficient nexus between the alleged grievance and the procedural regulation invoked. We find that the alleged grievance does not fall within the relevant contractual definition, and therefore is not arbitrable.

Initially, we note that we have held in a number of decisions that the Department's Patrol Guide is a "rule, regulation or procedure" subject to the parties' contractual grievance mechanism.⁴ In this instance however, we accept the City's argument that the Union has failed to show any provision of the Patrol Guide arguably to have been violated or misapplied.

The Patrol Guide provision relied on herein by the Union - Procedure 116-2 - sets forth the procedures to be followed by unit members upon leaving their assignments for meals. Although it directs that appropriate adjustments be made so that members are not deprived of

⁴ See Decision Nos. B-8-82; B-15-80.

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meals, it makes no mention of compensating officers for meal periods they are unable to take. Therefore, we find that the alleged grievance in the instant case is not a violation of any written procedure cited by the Union.

We furthermore reject the Union's argument that the Department has violated Procedure 116-2 because it failed to adhere to an alleged past practice regarding its implementation. As noted by the City, we have previously held that the alleged violation of a past practice does not fall within this contractual definition.⁵ We reaffirm that position now by maintaining that the mere passage of time in and of itself does not convert a past practice into a rule, regulation or procedure.⁶

We therefore grant the City's petition challenging arbitrability.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

⁵ Decision Nos. B-25-83; B-28-82.

⁶ Decision No. B-25-83.

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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 of the Patrolmen's Association for arbitration be, and the same hereby is denied.

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

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

JEROME E. JOSEPH
MEMBER

DEAN L. SILVERBERG
MEMBER
