City v. PBA, 41 OCB 71 (BCB 1988) [Decision No. B-71-88 (Arb)]

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

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. B-71-88
DOCKET NO. BCB-1084-88
(A-2740-88)

-and-

THE PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.
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DECISION AND ORDER

The City of New York ("the City") filed a petition on August 26, 1988, challenging the arbitrability of a grievance initiated by the Patrolmen's Benevolent Association ("the PBA" or "the Union") on behalf of Police Officer Raymond Ott ("grievant") alleging a violation of Article III, §1a of the parties' collective bargaining agreement.[1] The Union filed an answer to the petition on September 4, 1988. The City filed a reply on October 28, 1988.

[1]The pertinent collective bargaining agreement is the 1984-87 collective bargaining agreement between the parties ("the Agreement"). Article III, §1a provides the following:

> 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 discretion of the employee. Such cash of compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

Background

Grievant was scheduled to work a 16 hour tour from 1530 hours on May 15, 1987, to 730 hours on May 16, 1987, while assigned to the Harbor Unit. The Union alleges that in the course of that tour, grievant injured his foot in the line of duty on May 15, 1987, at 2100 hours. He reported the injury to his operation supervisor at approximately 700 or 720 hours on May 16, 1987 at which time, according to a memorandum from Steven Marmorowski, the Harbor Unit Union delegate, to James Sagar, Brooklyn South Union trustee (appended to the City's petition), "the operation supervisor than [sic] directed [grievant] to go to the hospital." He was transported to Long Island Jewish Hospital where he was diagnosed as having a grade 1 sprain to his left ankle and released.

The City denied grievant's request for a line of duty designation for his injury and for 6 hours and 20 minutes of overtime for the time spent at the hospital. On or about June 15, 1987, the Union filed a grievance on the denial of grievant's line of duty injury designation and the denial of 6 hours and 20 minutes overtime. The Informal Grievance Board of the Police Department denied the grievance in its entirety on or about November 20, 1987.

The Union grieved the Informal Grievance Board's determination in accordance with the collective bargaining

agreement on or about November 25, 1987. The City denied the grievance on or about September 17, 1987. The Union filed the instant request for arbitration on January 6, 1988, over the denial of overtime compensation to grievant for 6 hours and 20 minutes during which time grievant was being treated for a line of duty injury. For relief, it seeks payment of overtime compensation at the rate of time and one-half.

The Parties' Positions

The City

The City challenges the arbitrability of the grievance claiming that there is no nexus between Article III, §1a of the Agreement[2] and its denial of overtime compensation to grievant. It cites several of this Board's decisions[3] in which it argues we held, among other things, that the overtime provision of the Agreement does not establish that an employee is guaranteed the right to work overtime, only that overtime must be "ordered and/or authorized" for it to be compensated.

The City argues that because there is no allegation that ordered and/or authorized overtime was denied grievant, regardless of whether he actually worked the time, there is no

[2]The City cites Decision Nos. B-16-87; B-35-86; B-9-83; B-41-82; B-8-82; B-7-81; B-21-80; B-7-79; B-3-78; B-1-76.

[3]Decision Nos. B-16-87; B-35-86; B-7-81.

nexus between the Union's claim and Article III, §1a of the Agreement.

The Union

The Union denies the applicability of the Board's decisions with respect to Article III, §1a, cited by the City to the facts of the instant matter. It contends that those decisions related solely to whether or not an employee should have worked overtime to which he was not assigned. It argues that because grievant actually performed the duty, the only question for arbitration is whether or not he should be compensated pursuant to Article III.

Discussion

It is undisputed that the parties are bound to arbitrate their disputes under the Agreement. Thus, the instant petition asks this Board to determine only whether there is a prima facie relationship between the act complained of and the source of the alleged right, redress of which is sought through arbitration. Where a party is challenged, as the Union is here, it must demonstrate that the contract provision invoked is arguably and substantively related to the grievance to be arbitrated.[4] We find that the Union has established that there is an arguable, substantive relationship between Article III, §1a of the Agreement and its allegation that grievant was denied overtime

[4]Decision Nos. B-52-88; B-41-88; B-5-88; B-16-87.

compensation thereunder.

In the instant proceeding, the City alleges that there is no relationship between its denial of overtime compensation to grievant and Article III, §1a of the Agreement which provides that overtime compensation be paid to police officers who work ordered and/or authorized overtime, because the Union has failed to allege that the time was ordered or authorized. The Union claims that because grievant actually worked the time in question, it has established a nexus.

The PBA's argument notwithstanding, the mere fact that an individual actually worked time for which he seeks compensation is not determinative of a challenge to arbitrability. A police officer must be either ordered or authorized to perform overtime in order for Article III, §1a of the Agreement to form the basis for an arbitrable grievance.

As the City correctly notes, we have held in Decision Nos. B-7-81, B-35-86 and B-16-87 that Article III, §1a does not guarantee that the City will assign an officer overtime work, only that when such work is ordered or authorized and then performed, the officer will be compensated. The pleadings raise, however, a question as to whether grievant was, in fact, ordered to perform duty beyond the hours of his regular tour. Indeed, the City's petition contains a PBA memorandum, referred to supra, which indicates that grievant was "directed" to go to Long Island

Jewish Hospital by his operation supervisor.

In the instant case, the police officer was not told to report to a physician when he was off duty.[5] Grievant arguably was directed to go to the hospital during his regular tour of duty; although the pleadings do not affirmatively so state, grievant may have been compensated for that portion of his scheduled tour spent in the hospital at his regular rate of pay. Thus, the pleadings establish that grievant arguably was ordered to perform an act by his supervisor during his tour of duty, the performance of which extended beyond the hours required of him by reason of his regular duty.

We note that there are no words of limitation in Article III, §1a which would expressly exclude time spent in a hospital at the request of a superior from the purview of either the overtime provision or the grievance arbitration provision of the Agreement. Whether time spent receiving treatment for an injury incurred during a tour of duty, whether or not ultimately designated by the City as a line of duty injury, is "overtime" as that term is used the Agreement is a question of contract

[5]Decision No. B-52-88. But cf. Decision No. B-10-83, wherein we found that the PBA had established a nexus between its claim for overtime for a police officer who was required to appear in court as a defendant on a regular day off or on a working day when otherwise not on duty and the overtime provision of the collective bargaining agreement.

interpretation which we must leave for an arbitrator.[6]

Therefore , without reaching the merits of the underlying grievance, we find that the Union has adequately pleaded an arguable relationship between its claim for overtime compensation and Article III, §1a of the Agreement. Accordingly, we deny the City's petition.

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 filed by the City of New York be, and the same hereby is, denied; and

[6]See Decision No. B-7-77, wherein we found that the issue of whether attendance at a training program is the type of activity encompassed by the overtime provision of a contract is a question of contract interpretation left for an arbitrator.

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

Dated: New York, New York
December 20, 1988

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

DEAN L. SILVERBERG
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER