

City v. PBA, 41 OCB 8 (BCB 1988) [Decision No. B-8-88 (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-8-88

Petitioner,

DOCKET NO. BCB-984-87  
(A-2609-87)

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION

Respondent.

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DECISION AND ORDER

On July 30, 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 filed by the Patrolmen's Benevolent Association (the "PBA") on June 5, 1987. After several extensions of time, on November 1, 1987, the PBA filed its answer, to which the City replied on November 10, 1987.

Background

Renata Herrera (the "grievant") was a Police Officer from January 26, 1981 through August 19, 1983, at which time she resigned upon being denied a requested leave of absence. The grievant states she "vouchered for safe-keeping" her service revolver with the Police Department in compliance with department directives. Subsequently,

the grievant applied for reinstatement on February 23, 1984, and was reinstated on November 17, 1986. In the interim, the grievant's service revolver was destroyed in accordance with applicable procedures of the Police Department.

An informal grievance, requesting reimbursement for the replacement of her service revolver, was submitted by the grievant on March 12, 1987. The grievance was denied by letter dated April 20, 1987, stating that there was "no violation, misinterpretation, or misapplication of the rules, regulations, or procedures of the department." The PBA's request for consideration of this matter pursuant to Article XXIII, Section 4, Step IV of the Collective Bargaining Agreement on April 24, 1987, was denied on June 2, 1987. On June 5, 1987, the PBA filed the instant request for arbitration claiming a violation of Sections 120-21, 120-22, 120-23, 120-24, and 120-25 of the Patrol Guide and seeking restitution for the service revolver that allegedly had been "improperly destroyed by the Police Department."

Police Officer Herrera asserts that her revolver was "lost" in the "performance of police duty" in that the act of vouchering her gun for safekeeping is one of several alternatives outlined in the Patrol Guide for

the disposition of service firearms upon a member's discontinuance of police service. The other alternatives include selling or disposing of revolvers to another uniformed member of the service or to a licensed dealer in firearms (Patrol Guide Section 120-23), or disposal of revolvers to a pistol licensee (Patrol Guide Section 120-42). The grievant claims that since her revolver was "lost" as a consequence of her acting in accordance with the directives of the department, she is eligible for reimbursement provided to members of the service for uniforms or equipment damaged or lost in the performance of police duty (Patrol Guide Section 120-21).

### Positions of the Parties

#### City's Position

The City submits that the PBA, in citing Sections 120-21, 120-22, 120-23, 120-24, and 120-25 of the Patrol Guide to establish the required nexus, has failed to demonstrate a prima facie relationship between the act complained of and the source of the alleged right, for which arbitration is sought.

The City states that Police Officer Herrera's service revolver was destroyed by the Property Clerk Division

of the Police Department, "... in accordance with the applicable procedures of the department." The City challenges the arbitrability of this matter on the ground that "... at the time the grievant's revolver was destroyed, the grievant was, by her own admission, not a police officer." The City contends that the reimbursement referred to in Section 120-21 of the Patrol Guide specifically applies to "... members of the service for ... equipment damaged or lost in the performance of police duty." The City asserts that the grievant "failed to state facts showing even an arguable violation of Section 120-21 of the Patrol Guide" in that Section 120-21 requires a causal relationship between "damage or loss of the equipment" and "the performance of police duty."

The City also contends that the remaining provisions relied upon by the PBA to establish the required nexus do not state a specific claim of violation of the contract or of a departmental rule, regulation, or procedure in that they involve only the recordation of the acquisition of revolvers by uniformed members of the service (Patrol Guide Section 120-22), the recordation of revolver transactions (Patrol Guide Section 120-23), the authorization of uniformed members of the service to dispose of a revolver

to pistol licensees (Patrol Guide Section 120-24), and the procedure for the loaning of a service revolver to Police Officers when required (Patrol Guide Section 120-25). The City contends that these sections of the Patrol Guide ". . . bear no relationship to the facts alleged or the remedy sought...", thereby failing to establish the required nexus between the destruction of the grievant's service revolver and a contractual right to restitution.

PBA's Position

The PBA contends that the grievant was performing within the scope of policy duty in vouchering her service revolver for safekeeping. The PBA alleges that this act was performed in compliance with department directives, thereby, falling within Section 120-21 of the Patrol Guide which provides reimbursement for equipment damaged or lost in the performance of policy duty. The PBA further alleges that since the revolver was "improperly destroyed by the department," it is reasonable to consider it "lost" within the meaning of Section 120-21.

The PBA also contends that Patrol Guide Sections 120-22, 120-23, 120-24, and 120-25 supply the required nexus between the act complained of and the source of the alleged right, based on the assertion that they "bear

relationship to the facts alleged and the remedy sought in that they clarify and expand upon Section 120-21 ... regarding disposition of weapons and the relief to be sought in the event of a 'lost' revolver."

#### Discussion

We have long held that in determining disputes regarding arbitrability, we must decide whether the parties are obligated to arbitrate their controversies and, if so, whether the obligation is broad enough to include the particular controversy at issue in the matter before the Board.<sup>1</sup> This Board further requires that where challenged to do so, the party seeking arbitration must demonstrate a prima facie relationship between the act complained of and the source of the alleged right, the redress of which is sought through arbitration.<sup>2</sup>

The PBA claims that the City violated Sections 120-21, 120-22, 120-23, 120-24, and 120-25 of the Patrol Guide of the Police Department in denying the grievant reimbursement for her service revolver allegedly "lost" in the "performance of police duty." Article XXIII, Section 1a of the Collective Bargaining Agreement includes in the definition of a grievance:

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<sup>1</sup> B-4-83, B-22-80, B-15-79.

<sup>2</sup> B-10-86, B-4-86, B-8-82.

"A claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department affecting terms and conditions of employment. . ."

We have held that under this definition, a claimed violation or misapplication of the Patrol Guide may properly be a subject for arbitration.<sup>3</sup>

In the instant matter, the City challenges arbitrability based upon Police Officer Herrera's status as a non-employee at the time of the alleged harm, stating that "at the time the grievant's revolver was destroyed, the grievant was, by her own admission, not a police officer." The City contends that it is not obligated to arbitrate the claims of a person who is not an employee at the time the grievance arose. The City asserts that this precludes the grievant from exercising any rights that would accrue under Section 120-21 of the Patrol Guide to "members" of the service.

In response, the PBA maintains that Section 120-21 is sufficiently broad in its scope to allow the inclusion of the act of vouchering one's service revolver for safe-keeping with the Property Clerk upon separation from the service as an act in furtherance of the performance of police duty.

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<sup>3</sup> B-17-80, B-8-78.

We are not persuaded by the PBA's argument. Although the stated purpose of Section 120-21 does not draw a distinction between the performance of duty by active members of the service and the acts of those members preparing for separation from the service, we find no basis for reading Section 120-21 even arguably to include the vouchering of firearms for safekeeping upon resignation from the service as "performance of police duty."<sup>4</sup>

Although the policy underlying the New York City Collective Bargaining Law is to promote and encourage arbitration as the selected means for resolving grievances, this Board cannot create a duty to arbitrate where none exists nor can we enlarge a duty to arbitrate beyond the scope established by the parties by contract or otherwise.<sup>5</sup> In matters of controverted arbitrability, the grievant, when challenged, must demonstrate a sufficient relationship, a colorable claim, or a nexus between the issue raised and the provisions of the Patrol Guide alleged to have been violated.<sup>6</sup> Here, no facts are alleged which

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<sup>4</sup> In another matter between these parties in our Decision No. B-15-80, we rejected the proposition that grievants should be deemed "injured while performing police duty" regardless of whether or not they were "on duty" at the time.

<sup>5</sup> B-41-82, B-28-82.

<sup>6</sup> B-4-86.



arguably could establish that the City's destruction of the grievant's service revolver was the direct result of the grievant's performance of police duty. We find no specific reference herein defining the grievant's act of vouchering her service revolver for safekeeping as an act peculiar to the performance of police duty; on the contrary, the vouchering is an act associated with the cessation of the performance of such duty and simultaneous with the termination of Police Officer status. Therefore, Section 120-21 of the Patrol Guide cannot be the source of any right attaching to the grievant here.

As to the PBA's contention that Patrol Guide Sections 120-22, 120-23, 120-24, and 120-25 provide the required nexus between the act complained of and the source of the alleged right, we find, as the City asserts, that none of these sections are even remotely related to the act complained of and do not bring the matter within the scope of the Collective Bargaining Agreement or a department rule, regulation, or procedure.

Accordingly, we find that the claim based on an alleged violation of Patrol Guide Sections 120-21, 120-22, 120-23, 120-24, and 120-35 is not arbitrable.

Decision No. B-8-88  
Docket No. BCB-984-87  
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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.  
April 28, 1988

MALCOLM D. MacDONALD  
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