

hours of swing time before their next scheduled tour.

The Police Department ("the Department") denied this grievance on or about August 10, 1988, on the ground that the Department had no role in scheduling Civil Service Exams and that the dispute was therefore not appropriate for consideration under the contractual grievance procedure. The Department specifically noted that the exam had been administered by the Examining Services Division of the New York City Department of Personnel and stated that the grievants' complaints should be addressed to the "agency concerned".

Thereafter, on or about August 17, 1988, the Union filed a grievance at Step IV of the grievance procedure. The grievance was denied at Step IV of the grievance procedure on or about October 17, 1988. No satisfactory resolution of this dispute having been reached, the Union filed a request for arbitration alleging that the Union violated Article III, Section 1(a)¹ of the collective bargaining agreement ("the Agreement") when it denied the grievants overtime compensation for two hours of lost swing time between the two examination sessions.

¹Article III, §1(a) of the Agreement provides in relevant part 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

Positions of the Parties

City's Position

The City contends that the Union has failed to demonstrate a nexus between the contractual provision cited and the grievance it seeks to have arbitrated. It maintains that Article III, Section 1(a) of the Agreement provides that only "ordered and/or authorized overtime shall be compensated . . ." at the overtime rate, and that the Union has not demonstrated the existence of such an order or authorization in this case. It also notes that the grievants volunteered to take the instant Sergeant's Exam. Consequently, the City argues that the Union is attempting to prove the existence of a nexus between the grievance and contractual provision cited with conclusory arguments that fail to demonstrate that the overtime compensation denied to the grievants was incurred from an ordered and/or authorized overtime assignment.

Union Position

The Union maintains that the instant grievance relates to a situation where the "[D]epartment's actions caused members to work more than expected". Therefore, it argues that Article III, Section 1(a) of the Agreement directly addresses the violation set forth in the grievance, and that the City's petition challenging arbitrability must be denied.

Discussion

In considering challenges to arbitrability, this Board must determine whether a prima facie relationship exists between the act complained of and the source of the right being invoked, and whether the parties have agreed to arbitrate disputes of that nature. Therefore, where challenged to do so, a party must demonstrate that a contractual arbitration clause applies to the dispute in question, and that the right being invoked is arguably related to the grievance.²

In the instant case, neither of the parties dispute that the alleged violation of Article III, Section 1(a) is a proper subject for arbitration. We note that Article XXIII, Section 1 of the Agreement defines an arbitrable grievance to include "claimed violation(s) . . . of the provisions of this Agreement". However, the City contends, and we agree, that the Union has not demonstrated a prima facie relationship between Article III, Section 1(a) of the Agreement and the instant grievance.

Article III, Section 1(a) provides on its face that in order to be compensated at the overtime rate, an overtime assignment must be specifically ordered and/or authorized by the Department. We have examined this contractual provision on several occasions and have held that it in no way guarantees an individual the right to perform overtime work,³ nor does it entitle an individual to overtime compensation for duties performed absent a

²Decision No. B-5-88, B-16-87, B-35-86, B-22-86.

³Decision Nos. B-16-87, B-35-86, B-7-81.

Departmental authorization for overtime work.⁴ Moreover, we have held the assignment of overtime to be within the City's statutory managerial prerogative.⁵

In Decision No. B-71-88, when we found a grievance alleging the violation of Article III, Section 1(a) to be arbitrable, the grievant, who was seeking overtime compensation for 6 hours and 20 minutes spent at the hospital, had been directed to go there by his operation supervisor after he was injured in the line of duty. We found in that case, that since the grievant was ordered to report to the hospital, he had arguably been authorized to perform an act which extended beyond the hours he normally would have worked. We also held that the issue of whether time spent receiving treatment for a line of duty injury constitutes "overtime" within the meaning of the Agreement, is a matter of contractual interpretation.

In contrast to the facts with which we dealt in Decision No. B-71-88, the Union has not presented any evidence in the instant case which demonstrates that the two hours of lost swing time between the 8:30 A.M. Sergeant's Exam and the 10:30 A.M. Exam arguably constituted an ordered or authorized overtime assignment. Since the grievants volunteered to take the Sergeants Exam, the Union has not established the existence of a Department order or authorization for the performance of overtime work. Therefore, it has failed to demonstrate the existence of a

⁴Decision Nos. B-71-88, B-52-88.

⁵Decision Nos. B-3-89, B-41-88, B-16-87, B-35-86, B-7-81.

nexus between Article III, Section 1(a) and the grievance.

Accordingly, we dismiss the Union's 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

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

Dated: New York, N.Y.
March 30, 1989

MALCOLM D. MACDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

EDWARD SILVER
MEMBER

DEAN L. SILVERBERG
MEMBER