City v. PBA, 43 OCB 20 (BCB 1989) [Decision No. B-20-89 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
----------------------------------- X
IN THE MATTER OF THE ARBITRATION

-between-

THE CITY OF NEW YORK
Petitioner,
-and
THE PATROLMEN'S BENEVOLENT ASSOCIATION
Respondent.
----------------------------------- X

Decision No. B-20-89
Docket No. BCB-1145-89 (A-2890-88)

DECISION AND ORDER

On March 1, 1989, the City of New York ("the City"), appearing by its Office of Municipal Labor Relations filed a petition challenging the arbitrability of a request for arbitration that was filed by the Patrolmen's Benevolent Association ("the Union") on September 14, 1988. The Union filed an answer on March 9, 1989. The City, after receiving an extension of time, filed a reply on March 21, 1989.

BACKGROUND

On or about March 29, 1987, the Union filed an informal grievance on behalf of the grievant, P.O. Stephen Setteducato of the 30th precinct. In its grievance, the Union alleged that the Police Department ("the Department"), in order to avoid paying the grievant for overtime work, improperly assigned the processing of an arrest to another officer.

The grievant arrested an assault suspect on or about February 27, 1987 and submitted the paperwork for this arrest to

his superior, Sergeant Delia Mannix. The Sergeant thereafter inquired as to the amount of overtime that the grievant had earned that month. When the grievant replied that he had earned 35 hours of overtime to date, the Sergeant informed him that she would assign P.O. Robert Rehren to take the arrest to court.

Upon being informed of the Sergeant's decision, P.O. Rehren told the Sergeant that he could not legally process the arrest in question, since he could not swear out an affidavit based on third party information. He also told her that according to his experience, the District Attorney would only accept the affidavit of an arresting officer. The Sergeant directed him to take the arrest to court anyway.

At the Manhattan Criminal Court arrest area, A. D.A. Armond Durastanti informed P.O. Rehren that due to his lack of direct knowledge of the facts of the case, he could not accept his affidavit for the arrest in question. The A. D.A. subsequently called the 30th precinct house and spoke to Sergeant Sullivan, the desk officer, requesting that the grievant be assigned to process the arrest forthwith. Sergeant Sullivan replied that he was not authorized to assign overtime, and that neither the duty officer nor the commanding officer were available to do so. Thereafter, upon appearing for his regularly scheduled tour, the grievant was told by Sergeant Sullivan to report immediately to criminal court in order to finish processing his arrest.

In its informal grievance, the Union contended that the grievant was improperly and unjustly deprived of performing his duties. It sought a remedy of 15 1/2 hours of overtime

compensation, which was the amount earned by P.O. Rehren in attempting to process the grievant's arrest. The grievance was denied on or about July 22, 1988. Thereafter, on or about July 26, 1988, the Union submitted a grievance at Step IV of the grievance procedure, which was denied on or about August 31, 1988. No satisfactory resolution of the dispute having been reached, the Union filed a request for arbitration on or about September 14, 1988, alleging a violation of Article III, §la of he collective bargaining agreement ("the Agreement").[1] It seeks 15 1/2 hours of overtime compensation for the grievant.

Positions of the Parties

City's Position

The City contends that the Union has not demonstrated a nexus between the contractual provision cited and the grievance. It argues that Article III, §la provides that only "ordered and/or authorized overtime" is compensable at the overtime rate and that there has been no allegation that compensation for such ordered and/or authorized overtime was denied to the grievant.

---

[1] Article III, §la 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-half, at the sole option of the employee . . . .

It also notes that this Board has determined that Article III, §1(a) of the Agreement does not guarantee employees the right to be assigned overtime work.[2]

Moreover, the City asserts that the Board has long recognized that NYCCBL §12-307b[3] provides it with the statutory authority to assign overtime as it sees fit.[4] It therefore argues that since it has not agreed to any contractual limitation on this authority, the Department's decision not to assign overtime to the grievant was an exercise of its "unfettered" managerial authority.

Union's Position

The Union argues that Article III, §la is directly related to the instant grievance. Consequently, it asserts that it has

---

[2]The City cites Decision Nos. B-52-88, B-41-88, B-27-87, B-16-87, B-35-86, B-7-81.

[3]Section 12-307b. of the NYCCBL provides 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 and services to be offered by its agencies; 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 governmental 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 . . . .

[4] The City cites Decision Nos. B-41-88, B-16-87, B-35-86.

demonstrated a nexus between the grievance and the source of the right being invoked, and that its request for arbitration must be granted.

Discussion

In resolving disputes which involve the arbitrability of a grievance, this Board must determine whether a prima facie relationship exists between the act complained of and the contractual provision cited, and whether the parties have agreed to arbitrate disputes of that nature.[5] 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.

It is undisputed in this case that an alleged violation of Article III, §1a is a proper subject for arbitration within the meaning and intent of the parties' Agreement. The argument which the City raises in opposition to the Union's request for arbitration involves the existence, or lack thereof, of a nexus between the contractual provision cited and the instant grievance. Although contractual provisions should be interpreted in the arbitral forum, [6] we have long held that when the arbitrability of a grievance is at issue, we will examine the contractual provision invoked to determine whether, on its face, it exhibits a **prima facie** relationship to the grievance in

[5]Decision Nos. B-5-88, B-16-87, B-35-86, B-22-86.

[6]Decision Nos. B-36-88, B-30-86, B-27-86, B-31-85.

question.[7]

After having considered the arguments in this case, we agree with the City's contention that the Union has failed to demonstrate a nexus between Article III, §1a and the instant grievance. We have repeatedly held that Article III, §1a mandates that an overtime assignment be specifically ordered and/or authorized by the Department in order to be compensable at the overtime rate,[8] and that pursuant to its statutory managerial authority, the Department is under no obligation to order the performance of such an assignment.[9]

` Thus, in Decision No. B-35-86 when a police officer was refused authorization to process an arrest while incurring overtime, we held that Article III, §1a

> in no way establishes that an employee is quaranteed the right to perform overtime work in any particular circumstance. To the contrary, Section la expressly recognizes that overtime must be "ordered and/or authorized" by the Police Department in order to be compensable.

We reiterated this position in Decision No. B-16-87 when we consolidated three grievances alleging that the Department violated Article III, §1a by denying overtime assignments to two grievants, and issuing a memorandum which urged supervisors of the Street Crime Unit to carefully scrutinize all overtime activity within the Unit.

---

[7]Decision Nos. B-24-88, B-4-85.

[8]Decision Nos. B-12-89, B-71-88, B-52-88.

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

Consequently, we find in the instant case that the Department's decision not to assign the grievant to process his arrest in court on overtime, was within its statutory managerial prerogative. We emphasize again that managerial decisions involving the assignment of overtime are solely within the Department's discretion. Article III, §la does not set forth a guaranteed right to be assigned overtime work, but rather, mandates that overtime compensation be paid for authorized overtime assignments.

Accordingly, we dismiss the Union's request for arbitration.

0 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.
April 27, 1989

MALCOLM D. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

DEAN L. SILVERBERG
MEMBER

FREDERICK P. SCHAFFER
MEMBER

EDWARD F. GRAY
MEMBER

JEROME E. JOSEPH
MEMBER