

City v. PBA, 43 OCB 3 (BCB 1989) [Decision No. B-3-89 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the
Arbitration

-between-

DECISION NO. B-3-89

THE CITY OF NEW YORK,

DOCKET NO. BCB-1118-88
(A-2857-88)

Petitioner,

-and-

THE PATROLMEN'S BENEVOLENT
ASSOCIATION,

Respondent.

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DECISION AND ORDER

On December 2, 1989, 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" or "the PBA") on or about August 5, 1988. The Union filed its answer on December 9, 1988. The City filed a reply on December 19, 1988.

BACKGROUND

On or about November 17, 1987, the PBA, in behalf of a group of its members assigned to the Bronx Court Section, filed a grievance in protest of an "Equalization of overtime" memorandum

that had been issued by the Section's Integrity Control Officer and dated October 12, 1987. The memorandum reads as follows:

1. A review of overtime that has been accumulated by members of the Bronx Court Section indicates that 19 individuals have accumulated 100 hours or more of overtime in the last year. There are 23 persons who have between 70 hours and 99 hours in overtime. All the remaining officers have fewer than 70 hours and many of those have little or none accumulated.

2. In order to work toward the goal of a more equitable distribution of overtime the following procedure will be instituted:

a. Roll Call personnel and all supervisors will check the Overtime Tracking Chart I have provided and automatically exclude from any overtime assignments those individuals with 100 hours or more of overtime (as shown on the Overtime Tracking Chart). When reviewing this chart you must also consider the total overtime for the current month which is added to the total overtime for the prior 11 months. [Emphasis in original.]

b. Roll Call personnel and supervisors will then attempt to chose an individual for overtime who is below 100 hours in overtime and make every attempt to chose someone who has accumulated fewer than 70 hours. If there is no worker available with fewer than 70 hours, only a person with between 70 and 99 hours may be chosen for overtime.

c. Command Discipline will be administered in those cases in which persons with over 100 hours of overtime are awarded any overtime. There will be no exceptions to this situation, unless the officer makes an arrest.

3. The following individuals have more than 100 HOURS and will not be assigned to overtime duty until further notice: [Nineteen officers listed by name, rank and accumulated overtime.] [Emphasis in original.]

The Union's grievance asserted that the Police Department had no right to deny overtime to any member merely because his or her overtime accumulation exceeded a certain number of hours.

On or about June 30, 1988, the Department's Informal Grievance Board denied the grievance, finding that the protest of the overtime policy was "not grievable," and that the "assignment and equalization of overtime are managerial prerogatives."

On or about July 29, 1988, the grievance was denied by the Police Commissioner at Step VI after he found that there. "has been no violation, misinterpretation, or misapplication of the current collective bargaining agreement, nor has there been any violation, misinterpretation, or misapplication of the rules, regulations, or procedures of the department." The Commissioner reiterated the finding of the Informal Grievance Board, ruling that "[t]he assignment and equalization of overtime are managerial prerogatives."

With no satisfactory resolution of the grievance having been reached, on August 5, 1988, the PBA filed a request for arbitration, wherein it asserted that the promulgation of the "Equalization of Overtime" memorandum on October 12, 1987, by the Integrity Control Officer of the Bronx Court Section was a violation of Article III, Section 1.a. of the collective

bargaining agreement,¹ and it requested "rescission of [the] memorandum and overtime compensation to be awarded police officers who were denied it."

POSITIONS OF THE PARTIES

City's Position

The City argues that the Union has failed to state any provision of the Agreement that arguably relates to the grievance sought to be arbitrated. It cites numerous decisions to show that this Board has held that where arbitrability is challenged, we will inquire whether there exists a nexus between the alleged wrong complained of and the cited contractual provision.² According to the City, in this case the nexus does not exist.

¹ Article III, §1.a. of the Agreement reads 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. Such cash payments or compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

²Decision Nos. B-16-87; B-35-86; B-9-83; B-41-82; B-8-82; B-7-81; B-3-78; and B-1-76.

The City supports its position by referring to a number of decisions wherein we have said that Article III, Section 1.a. of the PBA contract provides for the payment of ordered and authorized overtime, but it does not guarantee that any employee will be assigned overtime.³ According to the City, the "Equalization of Overtime" memorandum does not refer to the payment of overtime that has been ordered and authorized, but rather, it places a restriction on the eligibility of certain employees to earn overtime. Therefore, the city concludes, since there has been no allegation that ordered and/or authorized overtime was denied at any time, there is no nexus between the overtime equalization policy and Article III, Section 1.a. of the Agreement.

Union's Position

The PBA contends that Article III, Section 1.a. of the Agreement "directly addresses the violation cited in the instant grievance." It points out that this section specifically requires that members working overtime must be compensated at the rate of time and one-half. Therefore, according to the Union, it must be "necessarily inferred" that the section was intended to

³Decision Nos. B-52-88; B-41-88; B-16-87; B-35-86; and B-7-81.

preserve "the right of members to work overtime without unreasonably and arbitrarily being denied the opportunity based on prior arrest and related police work activity." The Union reasons that its members cannot enjoy the full benefit of the overtime provision if an action of the Department places unreasonable restrictions on the ability of some members to work overtime. Following this reasoning, the Union contends that the Board Decisions cited by the City have no applicability to the instant grievance.

DISCUSSION

As a preliminary matter, we note that the parties do not dispute that they are obligated to arbitrate their controversies, nor do they deny that a claimed violation of Article III, Section 1.a. of their Agreement is within the scope of their agreement to arbitrate. The dispute before us is limited, therefore, to the City's contention that the Union has failed to establish a nexus between the actions of the Police Department and a substantive provision of the contract.

We have repeatedly held that if challenged, a union has a duty to show that the contract provision it cites is arguably

related to the grievance it is seeking to arbitrate.⁴ we must determine, therefore, whether a prima facie relationship exists between the act complained of, the overtime equalization policy of the Bronx Court Section, and Article III, Section 1.a. of the Agreement, the source of the alleged right.

We find that the PBA has failed to meet its prima facie burden. The contractual provision that it relies upon, Article III, Section 1.a., simply and unambiguously provides that an employee is entitled to overtime compensation for "[a]ll ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty chart . . ." This language in no way provides or implies that an employee is entitled to perform overtime work in any particular circumstance. To the contrary, Section 1.a. expressly recognizes that overtime must be "ordered and/or authorized" by the Police Department in order for it to be compensable. Moreover, we find no limitation, within Article III, Section 1.a. or otherwise, that diminishes the City's right to exercise its managerial prerogative, under Section 12-307b. of the New York City Collective Bargaining Law (the statutory management rights clause), regarding the assignment of overtime.

⁴E.g. Decision Nos. B-27-88; B-35-86; B-25-83; B-28-82
B-6-81; B-9-79; B-3-78; and B-1-76.

This is not the first time that we have been called upon to evaluate an asserted connection between a claimed entitlement to overtime work and Article III, Section 1.a. of the PBA Agreement. In Decision No. B-35-86, we held that a grievance which arose when an officer was ordered to sign off duty rather than work overtime to process an arrest was not arbitrable because nothing in Article III, Section 1.a. created any guarantee that an employee would be assigned to perform any particular overtime work. We also ruled in that case that a limitation regarding the assignment of overtime was within the City's statutory management right. In Decision No. B-16-87, a consolidation of three similar deprivation of overtime claims, we again denied arbitration to the PBA, holding that:

Nothing . . . in Article III, Section 1a creates an entitlement to specific assignments of overtime, nor does this provision of the Agreement entitle an employee to be considered for such assignments in any particular manner.

In Decision No. B-20-87, we again rejected the PBA's request for arbitration of a grievance concerning denial of overtime work, holding that Section 1.a. does not guarantee an employee the right to perform overtime work in any particular circumstance, and that there is no prima facie relationship between the failure to authorize overtime and Article III, Section 1.a. of the Agreement. Most recently, in Decision No.

B-27-88, we denied arbitration to the PBA in an involuntary employee transfer case, where a police officer had been removed from a special highway unit due to his excessive overtime accumulation, again holding that Section 1.a. in no way provides or implies that an employee is entitled to perform overtime work.

Our analysis of Article III, Section 1.a., has remained firmly fixed throughout this entire line of cases. Until such time as the parties may agree to alter the language of this section, we again reiterate that we read Section 1.a. as being strictly limited to the prescription of remuneration for overtime worked after it has been ordered or authorized. We find that its meaning is plain and unambiguous on its face, and we will not infer or imply anything more by it.

We find, therefore, that the dispute herein is not arbitrable. The Union has failed to establish a prima facie relationship between the act complained of, a reassignment to avoid accumulation of overtime, and Article III, Section 1.a. of the collective bargaining agreement.

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.
February 23, 1989

MALCOLM D. MacDONALD
CHAIRMAN

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