

City v. PBA, 43 OCB 30 (BCB 1989) [Decision No. B-30-89 (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-30-89

-and-

DOCKET NO. BCB-1109-88  
(A-2821-88)

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

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**DECISION AND ORDER**

The Patrolmen's Benevolent Association ("PBA" or "the Union") filed a request for arbitration with the Office of Collective Bargaining ("Board") on May 26, 1988, in which the grievance to be arbitrated was stated as:

Denial of Meal period when a member requests lost time prior to the tour and takes any amount of time during that particular tour.

The Office of Municipal Labor Relations, on behalf of the City of New York ("the City"), filed a petition challenging the arbitrability of the PBA's grievance on November 4, 1988. The Union filed its answer on November 10, 1988. The City filed its reply on February 17, 1989.<sup>1</sup>

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<sup>1</sup>The City requested, and with the consent of the Union, was granted several extensions of time in which to file both its petition and reply in this matter.

### Background

On or about February 22, 1988, the PBA submitted an informal "city-wide class grievance" on behalf of all members who were not assigned a meal period when their regularly scheduled tours had been shortened to less than eight hours by their taking of previously accrued and approved compensatory time off. According to the Union, this practice violates Section 322-19, Procedure No. 4 of the Administrative Guide of the New York City Police Department (the "Department"), which constitutes a grievance under the current collective bargaining agreement between these parties.<sup>2</sup> Section 322-19 of the Administrative Guide, dated April 5, 1976, in relevant part provides:

#### Roll Call Preparation

Purpose: To direct and control assignments and personnel.

Procedure No. 4: Assign one hour meal period.

- a. Not more than one fourth of the members on patrol will be excused at one time.
- b. Member must be scheduled for eight consecutive hours of duty to be eligible for meal period.

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<sup>2</sup>The Administrative Guide is a compilation of procedures promulgated by the Department. Article XXIII, Section 1.a. of the applicable collective bargaining agreement, dated July 1, 1984 to June 30, 1987, defines a grievance as, inter alia:

2.A claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department affecting terms and conditions of employment...  
(emphasis added).

- c. Member will not be assigned time in conflict with special duty, e.g. school crossing, etc.

On April 4, 1988, the Department's Office of Labor Policy denied the PBA's grievance, maintaining that this matter is not grievable since the collective bargaining agreement does not provide for a contractually guaranteed meal period. As for the section of the Administrative Guide relied upon by the Union, the Department stated that, by its terms, a member is not eligible for a meal period unless scheduled for eight consecutive hours of duty.

The PBA's request for reconsideration of the matter pursuant to Article XXIII, Section 4, Step IV of the grievance procedure was denied on or about May 17, 1988. No satisfactory resolution of the dispute having been reached, on May 26, 1988, the PBA filed the instant request for arbitration seeking, as a remedy:

Overtime compensation at the rate of time and one half for all meal periods denied members who were scheduled for regular 8 hour + tour[s] and requested in advance lost time which they took during that tour.

### Positions of the Parties

#### City's Position

The City, in its petition challenging arbitrability, contends that the Union has failed to demonstrate a nexus between the gravamen of this dispute and a provision of the collective bargaining agreement which is arguably related to the grievance

sought to be arbitrated.<sup>3</sup>

The City submits that "there is no agency rule or contract which affords police officers an absolute right to a provision hour meal period." The City maintains that Section 322-19 of one the Administrative Guide cannot operate as the source of the Union's right to arbitrate because it merely specifies when a police officer will be "eligible" for a meal period. This concept of eligibility, the City argues, "indicates that the assignment of a meal period is discretionary within the Police Department."

In any event, the City submits, inasmuch as Section 322-19 provides that a "member must be scheduled for eight consecutive hours to be eligible for a meal period," the PBA's grievance filed on behalf of members who were denied a meal period when they worked less than eight consecutive hours is without merit.

#### **Union's Position**

The PBA denies the applicability of the Board decisions cited by the City in support of its nexus argument, contending that Section 322-19 of the Administrative Guide is directly related to the grievance. This provision, the Union maintains, entitles a member to a one hour meal period "as long as they are

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<sup>3</sup>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.

scheduled for eight consecutive hours of duty." The fact that they may have worked less than eight hours in a particular tour is irrelevant, the union argues, since Section 322-19 refers to "scheduled" rather than "worked" hours. Therefore, the Union contends, because the City has "erroneously" interpreted the meaning of a Department procedure which affects a term and condition of employment, the matter is arbitrable under the collective bargaining agreement.

### Discussion

It is undisputed that an alleged violation, misinterpretation or misapplication of a substantive provision of the Department's rules, regulations or procedures constitutes an arbitrable grievance within the meaning of Article XXIII, Section 1.a. of the collective bargaining agreement.<sup>4</sup> The issue presented here for our determination is whether there exists a nexus between Section 322-19, Procedure No. 4 of the Administrative Guide and the act complained of, redress of which is sought through arbitration. We have long held that a grievant, where challenged to do so, has a duty to demonstrate that the procedure invoked is arguably related to the grievance

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<sup>4</sup>See, note 2 at 2, supra.

to be arbitrated.<sup>5</sup>

The City maintains that because Section 322-19 of the Administrative Guide merely prescribes the circumstances under which a police officer becomes eligible for a meal period, it cannot serve as the source of a right to grieve the denial of what is, in essence, a discretionary benefit. The PBA denies this conclusion, contending that the Departmental procedure cited clearly provides for the right alleged. Rather, the Union argues, the gravamen of the dispute concerns the interpretation of Section 322-19.

Where we are required to determine whether a Department rule, regulation or procedure is arguably related to the grievance to be arbitrated, we need only find that the procedure alleged to have been violated provides a colorable basis for the Union's claim.<sup>6</sup> Here, the PBA alleges that the City has denied its members a benefit which, on its face, is arguably provided by Section 322-19, Procedure No. 4 of the Administrative Guide. The procedure itself unequivocally states: "Assign one hour meal period." Therefore, we find that the Union has demonstrated a substantive relationship between the right it claims to have been violated and a Department procedure which arguably affords such a

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<sup>5</sup>See e.g., Decision Nos. B-67-88; B-8-88; B-8-82; B-17-80; B-15-80; B-8-78.

<sup>6</sup>Decision Nos. B-5-89; B-24-88; B-9-83; B-21-80.

right.<sup>7</sup>

In determining the arbitrability of grievances, once we find that an arguable nexus exists, our inquiry is at an end.<sup>8</sup> Accordingly, we decline to delve into the meaning and legal effect of the term "eligible" as the City suggests. Whether the cited procedure was intended to create a right or benefit is a matter of interpretation which is a function appropriately resolved in the arbitral forum.<sup>9</sup> Similarly, it is not our function to interpret whether eight hours of duty must be "scheduled" or "worked" in order for such "eligibility" to arise. This issue, too, is a matter of interpretation which must be submitted to an arbitrator for resolution.

Therefore, having determined that the PBA has demonstrated the requisite nexus between Section 322-19, Procedure No. 4 of the Administrative Guide and its claim so as to constitute a matter falling within the scope of the parties' agreement to arbitrate, we shall deny the City's petition challenging arbitrability.

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<sup>7</sup>See Decision No. B-9-83.

<sup>8</sup>Decision Nos. B-5-89; B-50-87; B-53-88; B-31-87; B-1-84; B-17-80; B-1-76; B-25-72.

<sup>9</sup>See Decision Nos. B-4-83; B-15-80.

**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 City's petition challenging arbitrability be, and the same hereby is, denied; and it is further

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

DATED: May 23, 1989  
New York, N.Y.

MALCOLM D. MacDONALD  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

GEORGE NICOLAU  
MEMBER

JEROME E. JOSEPH  
MEMBER

EDWARD F. GRAY  
MEMBER

DEAN L. SILVERBERG  
MEMBER

EDWARD SILVER  
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