

City v. PBA, 43 OCB 51 (BCB 1989) [Decision No. B-51-89 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

DECISION NO. B-51-89

THE CITY OF NEW YORK,
Petitioner,

DOCKET NO. BCB-1143-89
(A-2975-88)

-and-

PATROLMEN'S BENEVOLENT
ASSOCIATION,
Respondent.

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DECISION AND ORDER

On February 23, 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 "PBA") on December 28, 1988. The Union filed an answer to the petition on March 9, 1989. The City filed a reply on March 20, 1989.

BACKGROUND

On August 16, 1988, the Union filed an informal grievance on behalf of police officers in Manhattan, protesting their alleged improper rescheduling and the failure to continue overtime until the start of their rescheduled tour of duty. The Union claimed that a situation has developed in Manhattan whereby "police officers, who process an arrest through Central Booking and

complete that processing by, let us say, 3:00 a.m. or 4:00 a.m. in the morning, are being released and told to report back at 8:00 a.m. to the District Attorney's office complaint room to continue the processing of the arrest." According to the Union, the police officers' "tour for that day is being switched from a 4-12 to an 8-4 so that they receive no overtime after 8 o'clock in the morning." The Union further argued that "when they are released at, let us say, 4:00 a.m., they are being taken off the payroll and told that their overtime stopped at 4:00 a.m., assuming they had previously been scheduled for a 4-12 tour, and that they would not be paid from 4:00 a.m. to 8:00 a.m." The Union asserted that "this obvious injustice" must be remedied by continuing the police officer on overtime until 8:00 a.m., with the department having the right to assign the officer to any duties it might deem appropriate under the circumstances or merely keeping the officer on reserve. "In any event," the Union maintained, "there is no basis for denying the member continued overtime because the District Attorney's Office has decided not to provide Assistant District Attorneys after midnight and has decided to continue that policy now for seven days a week."

The informal grievance was denied on October 11, 1988¹ and,

¹ In its response, the Police Department stated that the Step I grievance

"protesting the rescheduling for court of police officers who affect arrests in the borough of Manhattan on the third platoon, and are subsequently released from duty and

(continued...)

on October 17, 1988, the PBA filed a grievance at Step IV of the grievance procedure. On December 20 1988, the Step IV grievance also was denied.² No satisfactory resolution of the dispute having been reached, on December 28, 1988, the Union filed a request for arbitration, claiming that the "[f]ailure to provide overtime compensation from the time members are released from Central Booking until the time they are ordered to report to the District Attorney's Office complaint room at the commencement of their rescheduled tour of duty" violates Article III, Sections 1a and 1b of the collective bargaining agreement.³ As a remedy, the

¹(...continued)

directed to report to court during the second platoon, is being returned as not grievable ... The members concerned were properly rescheduled, and are not entitled to be paid overtime for the intervening period when their services were not needed."

² In his response, the Police Commissioner stated that the Step IV grievance

"protesting the denial of overtime to members rescheduled for court appearances, is denied. 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 ... There has been no contractual violation."

³ Article III of the collective bargaining agreement, entitled Hours and Overtime, states in relevant part as follows:

Section 1.

a. All ordered and/or authorized overtime in excess of the hours required of

(continued...)

PBA requested "overtime compensation at the rate of time and one half for all hours between the time of release and the rescheduled reporting time."

³(...continued)

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.

b. In order to preserve the spirit and intent of this Section on overtime compensation, there shall be no rescheduling of days off and/or tours of duty. Notwithstanding anything to the contrary contained herein, tours rescheduled for court appearances may begin at 8:00 A.M. and shall continue for eight (8) hours thirty-five (35) minutes. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory reassignment of personnel to different days off and/or tours of duty. In interpreting this Section, T.O.P. 336, promulgated on October 13, 1969, shall be applicable. Notwithstanding anything to the contrary contained herein, the Department shall not have the right to reschedule employees' tour of duty, except that on the following occasions the Department may reschedule an employee's tour of duty by not more than three hours before or after normal starting for such tours, without payment of pre-tour or post-tour overtime provided that the Department gives at least seven days' advance notice to the employee whose tours are to be so rescheduled: New Year's Eve, St. Patrick's Day, Thanksgiving Day, Puerto Rican Day, West Indies Day, and Christopher Street Liberation Day.

POSITIONS OF THE PARTIES

CITY'S POSITION

The City contends that the request for arbitration must be denied because the Union has failed to state a provision of the collective bargaining agreement which is even arguably related to the grievance sought to be arbitrated. The City notes that Article III, Section 1a provides that "all ordered and/or authorized overtime ..., 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." It asserts, however, that in prior decisions, the Board of Collective Bargaining ("the Board") has held that Article III, Section 1a only provides "payment for the performance of such overtime work as is ordered and/or authorized by the Police Department, and does not guarantee that any employees will be assigned to perform overtime work." Since grievants were not ordered or authorized to work overtime between the time of their release from one tour of duty and the start of their rescheduled tour of duty, the City contends that Article III, Section 1a is not applicable to the matter at issue in the case herein.

Moreover, the City claims that in Decision No. B-41-88, the Board dismissed a request for arbitration that was virtually identical to the request for arbitration in the instant case. In that case, the City alleges, the Board recognized that the

denial of overtime compensation for the one hour and twenty-five minutes grievant spent off-duty between tours of duty may work a hardship. Nevertheless, it denied the Union's request for arbitration, finding that "Article III, Section 1a does not create any limitation on the City's reasonable exercise of its prerogative regarding the assignment of overtime where, as here, no evidence has been presented to show that overtime work was authorized or performed."

Finally, the City notes that Article III, Section 1b expressly refers to rescheduling. It maintains, however, that "as there is no allegation that the grievants were rescheduled during the intervening period between tours, no nexus exists, nor can one exist, between the Request and Article III, Section 1b." Therefore, for all of the reasons stated above, the City claims that its petition challenging arbitrability should be granted.

UNION'S POSITION

The Union denies the City's contention that it has failed to cite any contractual provisions which relate to the grievance sought to be arbitrated. To the contrary, it submits that "the necessary nexus has been shown since the section[s] cited directly [address] the violation[s] cited in the instant grievance." Moreover, the Union claims, inasmuch as a nexus has been shown to exist, the prior Board decisions cited and relied upon by the City in its petition challenging arbitrability are

not applicable to the case herein. Accordingly, the Union requests that the Board deny the City's petition challenging arbitrability, and direct that its grievance proceed to arbitration.

DISCUSSION

In considering challenges to arbitrability, this Board has a responsibility to ascertain whether a prima facie relationship exists between the act complained of and the source of the alleged right, redress of which is sought through arbitration. Thus, where challenged to do so, a party requesting arbitration has a duty to show that the contract provision invoked is arguably related to the grievance to be arbitrated.⁴

It is clear that the City and PBA have agreed to arbitrate grievances, as defined in Article XXIII of their agreement, and that the obligation encompasses claimed violations of the provisions of that agreement. In the instant proceeding, however, the City contends that the PBA has failed to cite any contractual provisions which are arguably related to the grievance sought to be arbitrated. Therefore, the City argues, the Union has failed to establish the necessary nexus between the alleged wrongful action (failure to provide overtime compensation from the time members are released from Central Booking until the start of their rescheduled tour of duty) and the contractual

⁴ Decision Nos. B-41-88; B-5-88; B-16-87; B-35-86; B-15-79.

provisions cited as the basis for its claim (Article III, Sections 1a and 1b).

We agree. As noted by the City, the instant case is virtually identical to another case decided by this Board, Decision No. B-41-88. In that case, we stated that Article III, Section 1a:

"in no way establishes that an employee is guaranteed the right to perform overtime work in any particular circumstances. To the contrary, Section 1a expressly recognizes that overtime must be 'ordered and/or authorized' by the Police Department in order to be compensable."

Moreover, we noted that

"in the absence of a limitation in the contract or otherwise, the assignment of overtime is within the City's statutory management right to determine the methods, means and personnel by which government operations are to be conducted."⁵

In the instant case, the PBA argues that the denial of overtime compensation for the four or five hours between the time members are released from Central Booking until 8:00 a.m., the time they are ordered to report to the District Attorney's Office complaint room to start their rescheduled tour of duty, was improper. It is not alleged, however, that the work performed by grievants commencing at 8:00 a.m. was compensable at the overtime rate. Thus, it appears that the gap of time at issue in this grievance constitutes the period between two tours of duty rather

⁵ See also, Decision Nos. B-16-87; B-35-86.

than between two periods of overtime within a single tour. As in Decision No. B-41-88, where grievant was denied overtime compensation for the one hour and twenty-five minute period between the end of one tour of duty and the time he was required to appear in court, we recognize that the refusal to pay overtime compensation for this relatively short period of time may work a hardship. Nevertheless, we find that Article III, Section 1a does not create any limitation on the City's reasonable exercise of its prerogative regarding the assignment of overtime where, as here, no evidence has been presented to show that overtime work was authorized or performed.

With regard to the alleged violation of Article III, Section 1b, we note that in the lower steps of the grievance procedure the Police Department referred to the rescheduling of grievants' tours of duty as rescheduling for court appearances.⁶ Since the PBA has not denied that grievants were rescheduled for that purpose and Article III, Section 1b expressly authorizes the rescheduling of an officer's tour of duty for the purpose of court appearances, beginning at 8:00 a.m., without the payment of overtime compensation, we find that the Union also has failed to allege any facts which arguably could constitute a violation of this provision of the collective bargaining agreement.

Thus, inasmuch as the Union has failed to state a claim which is grievable under the parties' agreement, we shall deny

⁶ See supra notes 1 and 2, at pp. 2 and 3, respectively.

the Union's request for arbitration and grant the City's petition challenging arbitrability.

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 petition challenging arbitrability filed by the City of New York be, and hereby is, granted, and it is further

ORDERED, that the request for arbitration filed by the

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Patrolmen's Benevolent Association be, and the same hereby is,
denied.

DATED: New York, N.Y.
September 13, 1989

CHAIRMAN

MEMBER

MEMBER

MEMBER

MEMBER

MEMBER

MEMBER