City v. COBA, 43 OCB 69 (BCB 1989) [Decision No. B-69-89 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of
THE CITY OF NEW YORK,

Petitioner,

-and-

Decision No. B-69-89
Docket No. BCB-1207-89
(A-3127-89)

THE CORRECTION OFFICERS BENEVOLENT ASSOCIATION,

Respondent.
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DECISION AND ORDER

On September 8, 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 on or about June 19, 1989. The Correction Officers Benevolent Association ("the Union") filed an answer on September 15, 1989. The City filed a reply on September 25, 1989.

BACKGROUND

It is undisputed by the parties that pursuant to a Department of Corrections ("the Department") policy, employees of the Correctional Institution for Men on Rikers Island ("the CIFM") are prohibited from walking between their designated worksites and the Control Building and Front Gate of the facility at either the commencement or conclusion of their tours.

In the instant case, the Union seeks to arbitrate a dispute

arising from two incidents which occurred respectively on March 29, 1988 and April 4, 1988. It alleges that on the days in question, delays in bus service to the Control Building and the Front Gate caused certain employees ("the Affected Employees") to wait 26 minutes and 30 minutes respectively, for bus service away from their worksites at the end of their tours.

On or about April 7, 1988, the Union, on behalf of the Affected Employees, filed a grievance at Step I of the grievance procedure seeking overtime compensation for the waiting periods which were caused by the delays in transportation. The grievance was denied on or about April 8, 1988, by Bruce R. Sullivan, the warden of the CIFM. Although Mr. Sullivan determined that there was no precedent for an award of overtime compensation to the Affected Employees, he informed the Union that in the future when departing staff members incurred delays of more than 15 minutes while waiting for the bus, the supervisors of the General Office or Receiving Room would provide transportation to the Control Building and Front Gate.

The grievance was subsequently submitted at Step II of the grievance procedure.[1] Due to the lack of a response at Step II, the grievance was submitted at Step III on or about July 6, 1988. In its Step III grievance, the Union alleged that the "[c]reation of a situation . . . that causes . . . [a correction] officer to

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[1]Since the Step II grievance was not included in the record, the date upon which it was submitted is unknown

be at his assigned institution in excess of the contractually mandated 40 hour work week without overtime compensation" is a violation of the collective bargaining agreement between these parties ("the Agreement"). The grievance was denied at Step II on or about July 7, 1988, on the ground that the grievants failed to cite a specific contractual provision or Departmental policy that had been violated. Thereafter, on or about June 6, 1989, the grievance was denied at Step III.

No satisfactory resolution of this dispute having been reached, the Union filed a request for arbitration alleging that the City had violated Article 111, §1 of the Agreement.[2] As a remedy, it seeks overtime compensation for the time the Affected Employees spent waiting for transportation away from their respective worksites on Rikers Island.

POSITIONS OF THE PARTIES

City's Position

The City argues that the Union has failed to demonstrate a nexus between Article 111, §1 of the Agreement and the instant

[2] Article 111, §1 of the Agreement provides in relevant part as follows:

> All ordered and/or authorized overtime in excess of forty (40) hours in any week or in excess of the hours required of an employee by reason of his regular duty chart if a week's measurement is not appropriate, 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. . . .

grievance. It notes that Article 111, §1 provides that only "ordered and/or authorized overtime" is compensable at the overtime rate, and argues that the Union has not alleged the existence of such an order or authorization in the instant case. Therefore, the City maintains that the Union's request for arbitration must be dismissed.

Union's Position

The Union contends that it has established a nexus between Article 111, §1 and the instant grievance. It asserts that Article 111, §1 "unequivocally" grants each Correction officer overtime compensation for all hours worked in excess of the contractually mandated forty hour workweek.

Moreover, the Union argues that since the Department prohibits Corrections Officers from walking between their individual institutions and the Front Gate, it imposed "compulsory overtime" on the Affected Employees by "condoning" delays in bus service away from their worksites. Therefore, the Union maintains that the City's refusal to compensate the Affected Members at the overtime rate is a contractual violation.

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. Where challenged to do so, a party must demonstrate that the dispute in question is within a category contemplated by a contractual arbitration clause, and that the right being invoked is arguably related to the grievance.[3]

In this case, neither of the parties disputes that the alleged violation of Article 111, §1 is a proper subject for arbitration. We note that Article XXI, §1 of the Agreement defines an arbitrable grievance to include alleged violations of provisions of that agreement. However, the City contends that the Union has not established the existence of a prima facie relationship between Article 111, §1 and the instant grievance because it has not demonstrated that the Affected Employees were either "ordered or authorized" to perform overtime work when the arrival of the buses to the Control Room and the Front Gate was delayed on the days in question.

We note that in determining the arbitrability of grievances arising under a similar contractual provision, we have held that a contractual allowance of overtime compensation for authorized or ordered overtime work in no way guarantees an individual the right to perform overtime work,[4] nor does it entitle an individual to overtime compensation for duties performed absent a

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

[4]Decision Nos. B-16-87; B-35-86; B-7-81.

Departmental authorization for overtime work.[5] Moreover, we have held the assignment of overtime to be within the City's statutory management prerogative.[6]

In resolving the instant dispute, however, we recognize that pursuant to a Departmental policy which prohibits employees from walking to the Front Gate at the end of their tours, Corrections Officers at the CIFM are otherwise unable to leave their worksites when their tours are over. Since the City has not alleged that the Affected Employees could reach the Front Gate without relying upon the buses in question, and has in fact forbidden them to walk from their worksites to the Front Gate, we find that in both of the incidents complained of, the Affected Employees were arguably "ordered" to remain at their worksites until the delayed buses arrived.

We note, in holding that there is an arguable relationship between the Article 111, §1 and the instant grievance, that the issue of whether time spent waiting for transportation to the Front Gate is "overtime" within the meaning of the Agreement is a question of contract interpretation.[7] We have long held that matters of contract interpretation are appropriately resolved in

[5]Decision Nos. B-12-89; B-71-88; B-52-88.

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

[7]See also, Decision Nos. B-71-88; B-2-77 aff'd B-7-77 wherein the Board held that the issue of what constitutes "overtime work" was a matter of contractual interpretation.

the arbitral forum.[8]

Accordingly, we find the instant dispute to be arbitrable, and we dismiss the City's petition challenging arbitrability.

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 petition challenging arbitrability filed herein by the City of New York be, and the same is hereby dismissed; and it is further

[8]See, Decision Nos. B-27-89; B-65-88; B-4-85; B-37-80.

ORDERED, that the request for arbitration herein filed by the correction Officers Benevolent Association be, and the same hereby is, granted.

Dated: New York, N.Y.
November 20, 1989

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