

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- - - - - x

In the Matter of
THE CITY OF NEW YORK,

Petitioner,

-and-

Decision No. B-73-89
Docket No. BCB-1179-89
(A-3112-89)

THE DETECTIVES' ENDOWMENT
ASSOCIATION,

Respondent.

- - - - - x

DECISION AND ORDER

On June 23, 1989, the City of New York ("the City") filed a petition challenging the arbitrability of a grievance brought by the Detectives' Endowment Association of the City of New York ("the Union") in which the Union alleged that the City violated the applicable collective bargaining agreement ("the Agreement")¹ when it failed to take into account a reinstated detective's prior years of service as a detective in determining his salary and other benefits. The Union filed its answer on June 30, 1989. The City filed its reply on July 11, 1989.

¹The applicable collective bargaining agreement covers the period from July 1, 1984 to June 30, 1987.

Background

Detective Richard Bickerton ("grievant") was first detailed as Detective 3rd grade in December, 1973. The city revoked his designation in 1977 following a disciplinary hearing. In February, 1985, he was assigned to the Detective Division of the 62nd Precinct Detective Unit. In December, 1986, Bickerton was again promoted to the rank of detective with a salary of detective 3rd grade with under one year of service. He requested that the City change his salary designation from detective under one year to detective over three years so that he could receive credit for his previous years of service as a detective. The City denied his request.

On or about June 23, 1987, the Union filed a grievance. It argued that the Department had credited non-continuous prior service in the title to two other detectives when it determined their salaries and should do so with grievant. The City denied the grievance by letter dated March 29, 1989. No explanation appears in the record for the two-year hiatus between the filing of the Union's grievance and the City's response.

By letter dated April 3, 1989, the Union asked the Police Commissioner to review the City's earlier decision. By letter dated May 9, 1989, the Police Commissioner affirmed the earlier determination.

On June 1, 1989, the Union filed its request for arbitration. It alleged that the City had "improper[ly] [paid] Detective Richard Bickerton in violation of the Collective Bargaining Agreement" and requested that the City retroactively adjust his salary and benefits.

Positions of the Parties

City's Position

The City argues that the Union has failed to establish a nexus between the benefits sought by the Union and a provision of the Agreement. The City submits that the grievant became a "newly designated detective" when he was reassigned to the Detective Division in 1985, and was paid the correct salary for a newly designated detective. Thus, the City maintains there is no arbitrable dispute.

The City also contends that the Union has failed to specify the articles of the Agreement under which it claims that grievant should receive increased benefits. The City rejects the Union's contention that Articles III ("Hours and Overtime"),² IV ("Recall

² Article III, Sect. 1(a) provides overtime compensation and compensatory time off based on "time and one-half". Article III, Sect. 1(c) provides credit for duty involving travel outside New York City based on "the employee's straight time rate of pay."

After Tour"),³ V ("Computation of Benefits"),⁴ VIII ("Longevity Adjustments") ,⁵ IX ("Payment of Holiday Work"),⁶ X ("Leaves")⁷ and XI ("Vacations")⁸ are the sources of the benefits sought by the union.

³ Article IV, Sects. 1, 2, 3 and 4 provide compensation for recall after tour "pursuant to the regular overtime provisions of this Agreement." Article IV, Sect. 5 provides "pay in cash or compensatory time off" for recall after tour "pursuant to the regular overtime provisions of this Agreement." Sect. 6 states in relevant part that provisions of Article IV are expressly subject to and limited by the terms of Sect. 1(a) and 1(b) of Article III of this Agreement.

⁴ Article V provides, in relevant part, that:

compensation for holidays, vacation days,
personal leave days, annuity fund
contributions and other relevant benefits...
shall remain on the basis of an eight-hour
work day calculation."

⁵ Pursuant to Article VIII, longevity adjustments are paid "upon the completion" of a number of "years of service."

⁶ Article IX provides, in relevant part, that:

Each employee shall receive eleven (11) paid
holidays annually, payments for which shall be
made in accord with existing procedures.

⁷ Article X, Sect. 1 ("Personal Leave Day") provides "one personal leave day for each fiscal year during which the employee is employed by the Police Department...". Sects. 2 ("Sick Leave"), 3 ("Death-in-Family Leave"), 4 ("Military Leave"), and 6 ("Leave to Attend Hearings") all provide "leave with pay."

⁸ Article XI provides, in relevant part, that:

vacation time is accrued according to the number
of years "after appointment as a Patrolman."

Finally, the City claims that because the Union failed specifically to cite Article VI ("Salaries")⁹ in its Request for Arbitration, it cannot seek relief under Article VI.

Union's Position

The Union contends that although it did not specifically cite Article VI as the basis of its request, it has clearly stated that the grievant was improperly paid under Article VI which arguably bases salary on years of cumulative service as a detective. Thus, the reference in the request for arbitration to Article VI, the only provision directly concerning salary, is unmistakable. The other benefits it seeks in the instant grievance, according to the Union, are also based upon years of service.

Finally, the Union characterizes the grievant as a "newly reinstated detective" rather than a "newly designated detective." It contends that the Agreement does not base salary and benefits on continuous years of service but rather that the Agreement, as applied, provides that salary and benefits depend on cumulative years of service as a detective regardless of whether there has been a break in service.

⁹ Article VI, Sect. 1 provides for "base annual rates" for "Class of Positions and Step." Section 2(b) provides a "General Wage Increase" calculated on "the base rates and salary grades fixed for the applicable titles."

Decision No. B-73-89
Docket No. BCB-1179-89 (A-3112-89)

Discussion

As a preliminary matter, we reject the city's argument that because the Union failed specifically to cite Article VI of the Agreement in its request, the Union's request for arbitration cannot be construed to include a claimed violation of rights arising under Article VI. This Board will not automatically dismiss a request for arbitration because of a technical omission when significant issues are clearly raised despite the oversight.¹⁰ The City has not shown that the omission in the Request for Arbitration has impaired its ability to respond to the request or otherwise to prepare for arbitration. Both parties are and have been aware that the instant grievance is based on the payment of an allegedly incorrect rate of pay, and the grant of benefits based on an allegedly incorrect rate of pay and length of service. Accordingly, we deny the City's petition insofar as it seeks dismissal of the request to arbitrate on the ground that the Union failed to specify Article VI of the Agreement as a source of the rights asserted therein.

When the City challenges the arbitrability of a grievance, this Board must first determine whether the parties are in any way obligated to arbitrate controversies and, if they are,

¹⁰ Decision Nos. B-63-89; B-29-89; B-20-89.

whether that contractual obligation is broad enough to include the act complained of by the Union.¹¹ Where challenged, the burden is on the Union to establish a nexus between the city's acts and the contract provisions it claims have been breached.¹² Doubtful issues of arbitrability are resolved in favor of arbitration.¹³

In the instant matter, the parties do not dispute that an alleged misapplication or misinterpretation of the Agreement is an arbitrable grievance. The City, however, challenges the existence of a nexus between the Agreement and the benefits sought by the Union.

The City maintains that because no provision of the Agreement specifically requires that salary be based on cumulative years of service in a title, there is no substantive relationship between the right claimed to have been violated and any provision of the Agreement. The Union notes that pay is a mandatory subject of bargaining and is covered by the Agreement. It alleges that the grievant is being paid an incorrect salary in violation of the Agreement. Thus, it argues that it has

¹¹ Decision Nos. B-19-89; B-65-88; B-28-82.

¹² Decision Nos. B-1-89; B-7-81.

¹³ Decision Nos. B-65-88; B-15-80.

established the required nexus between its claim and the Agreement.

Article VI provides "base annual rates of pay for detectives based on grade and step, but does not expressly state how an employee qualifies for a particular grade or step nor does it provide, on its face, that continuous years of service in title is the sole factor in determining the base rate of pay. The Union argues that a detective's salary is based on cumulative rather than continuous years of service in the title. The Union's claim is not patently unreasonable and represents an arguable interpretation of "step and grade" requirements under the Agreement, the merits of which must be judged by an arbitrator. The City's contention that a detective's salary is based on years of continuous, rather than cumulative service, too, addresses the merits of the grievance and presents a question for an arbitrator, rather than this Board, to decide.¹⁴ We therefore find that there is an arguable relationship between the Union's claim and Article VI of the Agreement.

The Union also alleges that the City violated other articles of the Agreement relating to benefits, the determination of which the Union claims is arguably based on rate of pay and years of service. The City simply contends that there is no nexus between

¹⁴ Decision Nos. B-27-89; B-9-75; B-2-75.

these articles of the Agreement and the benefits claimed by the Union. We note that not all of the articles cited by the Union specifically mention both salary and service, although, for example, Article VIII ("Longevity Adjustments") states that certain benefits are based on "years of service". However, the benefits sought by the Union are arguably based on salary, which in turn is arguably based on years of service. This Board has previously found that a grievance in which a union alleged that prior service with the City shall be considered when determining salary and benefits raised an arbitrable issue of contract interpretation, even where the contract did not expressly mandate that such prior service be considered.¹⁵ We find, therefore, that there is an arguable relationship between the benefits claimed by the Union and Articles III, IV, V, VIII, IX, X and XI of the Agreement.

Once we have found that a nexus exists, we need look no further. Whether the grievant is entitled to pay and benefits based on cumulative years of service in the title, as claimed by the Union, is a matter of contract interpretation appropriately resolved by arbitration.¹⁶ We make no determination of that issue here. Having determined that the Union has demonstrated

¹⁵ Decision No. B-1-84.

¹⁶ Decision Nos. B-30-89; B-5-89; B-4-85.

the requisite nexus between provisions of the Agreement and its claim, we deny 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 of the City of New York challenging arbitrability be, and the same hereby is denied; and it is further

ORDERED, that the request for arbitration of the Detectives' Endowment Association be, and the same hereby is granted.

Dated: New York, New York
December 18, 1989

MALCOLM D. MacDONALD
CHAIRMAN

DEAN L. SILVERBERG
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER