

City v. PBA, 45 OCB 22 (BCB 1990) [Decision No. B-22-90 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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IN THE MATTER OF THE ARBITRATION

-between-

THE CITY OF NEW YORK,  
                    Petitioner,

Decision No. B-22-90  
Docket No. BCB-1253-90  
                    (A-3155-89)

-and-

THE PATROLMAN'S BENEVOLENT  
ASSOCIATION,  
                    Respondent.

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**DECISION AND ORDER**

On February 15, 1990, 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 July 17, 1989. The Patrolman's Benevolent Association ("the Union") filed a verified answer on February 20, 1990, and the City filed a reply on March 2, 1990.

**BACKGROUND**

On July 31, 1987, the grievant, P.O. Michael Coombs of the 32nd Precinct, parked his car illegally in a "No Parking Zone" in order to personally pay his car insurance bill. As a result, he was issued a summons by Traffic Enforcement Agent, Angela Willis ("the Traffic Agent"). The grievant and the Traffic Agent thereafter became involved in a verbal and physical altercation.

At some point during this altercation, the grievant informed the Traffic Agent that she was under arrest.<sup>1</sup>

Upon the arrival of police officers at the scene of the incident, the grievant and the Traffic Agent were both removed to Elmhurst Hospital. The grievant was treated for a puncture wound to the upper chest, and the Traffic Agent was treated for injuries to her head and face. Both individuals were subsequently released from the hospital.

As a result of the grievant's involvement in this incident, he was placed on modified work assignment. In a memorandum to the First Deputy Commissioner of the Police Department regarding this matter, the Commanding Officer of the 100th Precinct, Harold Leibowitz, stated that "P.O. Combs acted in a manner unbecoming a Police Officer and by his actions precipitated and escalated this

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<sup>1</sup> From statements made to the police, the details of the scuffle between the grievant and the Traffic Agent emerged as follows:

The grievant claimed that the Traffic Agent issued him a summons even though he had previously advised her that he was a police officer. He stated that when he attempted to get her shield number in order to file a complaint against her, she kept "bobbing and weaving" so that he could not see it. He further stated that he told her she was under arrest after she punched him in the chest with a pen.

The Traffic Agent asserted that the grievant became verbally abusive, and punched her on the left ear and left side of her face when she tried to get away from him. She contended that although she had a pen in her hand during the incident, she had no recollection of stabbing the grievant with it. She noted that the grievant had also been holding a pen during the incident.

An eye witness stated that "the Police officer was in her [the Traffic Agent's] face, and when she went to push him back, she pushed the pen in his chest." The eyewitness also stated that the police officer, "out of anger", punched the grievant in the face.

incident." Leibowitz further recommended that the grievant be referred to "psychological services" for evaluation due to his erratic and violent outburst of behavior.

Thereafter, on or about October 31, 1987, the Union filed an informal grievance alleging that the grievant improperly had been denied overtime compensation for an off-duty arrest on July 31, 1987 between the hours of 1115 and 1515.<sup>2</sup> The grievance thereafter was submitted at Step III of the grievance procedure and was denied at Step III on March 9, 1989.<sup>3</sup> On March 15, 1989 the grievance was submitted at Step IV. It subsequently was denied at Step IV on July 5, 1989.

No satisfactory resolution of this dispute having been reached, the Union filed a request for arbitration alleging that the "denial of overtime compensation to P.O Combs, 32 Pct. for work performed on July 31, 1987 from 1115 hours to 1515 hours" was a violation of Article III, Section 1(a) of the collective bargaining agreement negotiated by the parties ("the Agreement").<sup>4</sup> As a remedy, the Union seeks overtime compensation

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<sup>2</sup> The disposition of the informal grievance is not part the record.

<sup>3</sup> The grievance submitted at Step III is not- part of the record.

<sup>4</sup> Article III, Section 1(a) of the Agreement provides in relevant part 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  
(continued...)

at the rate of time and a half for four hours of overtime work.

**POSITIONS OF THE PARTIES**

**City's Position**

The City argues that the Union has not demonstrated the existence of a contractual provision which arguably is related to the instant grievance. It notes that pursuant to the plain language of Article III, §1(a) of the Agreement, an overtime assignment must be specifically ordered and/or authorized in order to be compensable at the overtime rate. The City asserts that in the instant case, the grievant was not ordered or authorized to perform overtime work when he confronted the Traffic Agent on July 31, 1987. Therefore it concludes that the grievant has no grounds upon which to seek overtime compensation for any "work" performed on that date.

Moreover, the City argues that Article III, §1(a) does not create a limitation on management's authority to assign overtime. Consequently, the City contends that in the instant case, the Police Department's determination not to assign overtime work to the grievant on the date in question was an exercise of its "unfettered" managerial authority.

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<sup>4</sup> (...continued)  
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 . . .

**Union's Position**

The Union bases its request for arbitration on its contention that the issue which it seeks to present for arbitration is whether the work which the grievant performed was in fact "ordered and/or authorized" overtime work within the meaning of the Agreement. It asserts that the instant grievance involves a "necessary police action . . . [which was] taken by a member, and required as part of his legal responsibilities both under the Criminal Procedure Law and the patrol and administrative guides of the New York City Police Department." Consequently, the Union maintains that Article III, §1(a) and the dispute presented herein are arguably related, and that the resolution of this grievance requires an arbitral determination of whether the grievant's actions on July 31, 1987 constituted "necessary" police work.

**DISCUSSION**

In determining the arbitrability of a grievance, we have the responsibility of ascertaining whether there is a nexus between the grievance presented and the source of the right which is alleged to have been violated.<sup>5</sup> Moreover, we must examine the contractual arbitration clause negotiated by the parties and determine whether the parties are bound to arbitrate the dispute

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<sup>5</sup> Decision Nos. B-74-89; B-71-89; B-68-89.

in question.<sup>6</sup> Once we are satisfied that the requisites of our two pronged arbitrability test have been established, we will direct that the merits of the grievance in question be resolved in arbitration.

In the instant case, the parties do not dispute the fact that they have agreed to arbitrate alleged violations of their collective bargaining agreement. However, the City argues that there is no nexus between the contractual provision cited by the Union and the grievance which it seeks to arbitrate. The City asserts that Article III, Section 1(a) of the Agreement mandates that compensation at the overtime rate be paid only for "ordered and/or authorized overtime," and argues that in the instant case, there was no such order or authorization for the grievant to arrest the Traffic Enforcement Agent.

The Union maintains, on the contrary, that the grievant's action was "necessary police action . . . required as part of his legal responsibilities both under the Criminal Procedure Law and the patrol and administrative guides of the New York City Police Department." Therefore, it asserts that it has established the existence of an arguable relationship between Article III, Section 1(a) and the instant grievance, and has passed our threshold arbitrability test.

Initially, we note that Article III, Section 1(a) provides on its face that in order to be compensated at the overtime rate,

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<sup>6</sup> Decision Nos. B-73-89; B-65-89; B-64-89.

an overtime assignment must be specifically ordered and/or authorized by the Department. We have examined this provision in several prior cases and have consistently held that it in no way guarantees a police officer the right to perform overtime work,<sup>7</sup> nor does it entitle a police officer to overtime compensation for duties performed absent a specific Departmental authorization for overtime work.<sup>8</sup>

We take administrative notice that Criminal Procedure Law, Section 140.10 provides in relevant part as follows:

**Arrest without a warrant; by police officer; when and where authorized:**

1. Subject to the provisions of subdivision two, a police officer may arrest a person for:

(a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence, and

(b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.<sup>9</sup>

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<sup>7</sup> Decision Nos. B-13-90; B-12-89; B-16-87; B-36-86.

<sup>8</sup> Decision Nos. B-20-89; B-12-89; B-71-88; B-52-88.

<sup>9</sup> C.P.L., §140.10 further provides in relevant part as follows:

2. A police officer may arrest a person for a petty offense pursuant to subdivision one, only when:

(a) Such offense was committed or believed by him to have been committed within the geographical area of such police officer's employment . . .

(continued...)

This provision has been interpreted by the courts to indicate that a police officer may arrest suspects on a 24-hour basis.<sup>10</sup> Therefore, it is clear that a police officer who makes an off-duty arrest does not exceed the scope of his statutory authority.

However, we are not convinced that CPL §140.10 arguably constitutes an order or authorization for the performance of overtime work within the meaning of Article III, §1(a) of the Agreement. We note that CPL §140.10 merely sets forth the circumstances pursuant to which an officer may effect an arrest. It is not a specific order or authorization for an officer to make a particular arrest. Moreover, this provision in no way requires the payment of compensation for time spent making an arrest under its provisions. Therefore, we find that even though the grievant was arguably authorized pursuant to CPL §140.10 to arrest the Traffic Agent in the course of the incident described herein, he was not arguably ordered or authorized to perform compensable overtime within the meaning of Article 111, §1(a) of the Agreement.

We further note, with respect to the Union's allegation that

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<sup>9</sup> (...continued)

(b) Such arrest is made in the county in which such offense was committed or believed to have been committed . . . .

<sup>10</sup> See, People v. Neuschatz, 88 Misc.2d 433, 389 N.Y.S.2d 507 (Sup. Ct. 1975), aff'd, 40 N.Y.2d 935, 390 N.Y.S.2d 61, 358 N.E.2d 885 (Ct. App. 1976); Matter of Washington v. New York City Housing Authority, 24 N.Y.2d 912, 301 N.Y.S.2d 642, 249 N.E.2d 481 (Ct. App. 1969).



the grievant was authorized by the "patrol guide and the administrative guide of the New York City Police Department" to arrest the Traffic Agent, that the Union has not cited specific provisions of those documents which support its position. It is well established that where challenged to do so, the burden is on the proponent of arbitration to demonstrate the existence of a nexus between the grievance and the provisions alleged to have been violated.<sup>11</sup> Consequently, insofar as the Union argues that the grievant's, action was authorized by unspecified provisions of the Police Department patrol guide and administrative guide, we find its contention to be vague and conclusory. Therefore, we hold that this claim does not satisfy the Union's burden of overcoming the City's challenge to arbitrability.

In conclusion, we find that even if the work performed by the grievant on July 31, 1987 was "necessary" police action as the Union has alleged but has not proven, it has not been established that this work was arguably ordered or authorized overtime within the meaning of Article III, Section 1(a). Accordingly, we dismiss the Union's request for arbitration.

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<sup>11</sup>Decision Nos. B-71-89; B-68-89; B-63-89; B-55-89; B-51-89.

**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

O R D E R E D, that the petition challenging arbitrability filed herein by the City of New York be, and the same is hereby granted, and it is further

O R D E R E D, that the request for arbitration filed herein by the Union be, and the same is hereby denied.

Dated: April 25, 1990  
New York,,N.Y.

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