OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

CITY OF NEW YORK,
Petitioner,

-and-

DECISION NO. B-69-90
DOCKET NO. BCB-1311-90
(A-3358-90)

PATROLMEN'S BENEVOLENT ASSOCIATION,
Respondent.
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DETERMINATION AND ORDER

On August 1, 1990, the City of New York ("the City"), by its Office of Labor Relations, filed a petition challenging the arbitrability of a grievance brought by the Patrolmen's Benevolent Association ("the Union") against the Police Department ("the Department") on behalf of Union members in The Bronx. The Union filed an answer on August 7, 1990. The City filed a reply on August 9, 1990.

BACKGROUND

On or about January 6, 1989, the 45th Precinct in The Bronx issued a Roll Call Instruction, entitled "RD0 - Court Appearance". The instruction promulgated new directions for court appearances on regular days off. The contested section directed officers to "[g]o directly to court in civilian clothes (not obligated to start at station house)" [emphasis in the original].

On February 7, 1989, the Union filed a grievance alleging that "members are being required to carry and protect their arrest reports, vouchers, and memo books concerning new arrests because they are directed to appear in court directly from their residence rather than reporting to the precincts to obtain the required paperwork." The grievance was denied on December 26, 1989, by the Informal Grievance Board of the Department for lack of a "violation, misinterpretation, or misapplication of the rules, regulations or procedures of the department" because "[t]here are no provisions for a police officer to receive compensation for safeguarding arrest related paperwork while off-duty."

By letter dated January 22, 1990, the Union asked the Police Commissioner to review the City's earlier decision. By letter dated February 9, 1990, the Police Commissioner affirmed the, earlier determination.

No satisfactory resolution of the dispute having been reached, the Union filed a Request for Arbitration on February 21, 1990. The Request alleges that the Department violated Article III, §§ l(a) and l(b) of the collective bargaining agreement ("the Agreement")[1] by its "denial of overtime

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[1] Article III, § 1 of the Agreement provides:

(a) 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-emergency nature, shall be compensated for either by cash payment or compensatory time off...

(continued...)

compensation to all affected members in The Bronx Narcotics and other similarly situated members throughout the borough of The Bronx, including but not limited to patrol." As a remedy, the Union seeks "overtime compensation at the rate of time spent securing and safeguarding arrest related paperwork while otherwise off duty."

POSITIONS OF THE PARTIES

City's Position

The City argues that the Union has not demonstrated an arguable relationship between a provision of the Agreement and the grievance sought to be arbitrated. It claims that since the Department did not authorize or order overtime work, there is no nexus between the Request for Arbitration and Article III, § 1(a) of the Agreement. The City submits that there is no nexus between the instant Request and Article III, § 1(b) because that provision of the Agreement expressly allows the Department to reschedule tours of duty for court appearances without paying overtime compensation. Since there is no relationship between

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1(... continued)

(b) In order to preserve the intent and spirit 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...

the grievance and either contract provision cited, the City maintains, the Request for Arbitration should be dismissed.

The City argues further that § 12-307 of the New York City Collective Bargaining Law ("NYCCBL") gives the Department the sole right to determine when to assign overtime, relying on our decisions in Nos. B-35-86, B-16-87, B-41-88 and B-51-89. It cites Decision No. B-41-88, in which we held 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." In Decision No. B-51-89, the City asserts, we held that Article III, § 1(a) of the Agreement does not create a limitation on the Department's right to assign overtime where no overtime work was ordered or authorized. The City contends that, in the instant case, there is no evidence that overtime was ordered or authorized; thus, following the above cited decisions, there is no limitation on this management right.

Union's Position

The Union maintains that Article III, § 1(a) of the Agreement states provisions of the contract which relate to the grievance sought to be arbitrated, demonstrating a nexus between the instant grievance and the Agreement. The Union contends that the Board decisions cited by the City are inapposite because they

involve the assignment of overtime, while the instant grievance involves necessary police work required by law and the Department's Patrol Guide. The Union argues that, for the same reasons, there is also a nexus between the grievance and § 1(b) of Article III.

The Union denies that § 12-307 of the NYCCBL applies in this case, arguing that overtime compensation is based on contractual agreement rather than management prerogative. The Union maintains that Decision Nos. B-41-88 and B-51-89 do not apply to this grievance because its members have done necessary police work for which they must be compensated. It argues that the question of whether that work is necessary police work is a matter to be decided by an arbitrator.

DISCUSSION

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[2] and, if they are, whether that contractual obligation is broad enough to include the act complained of by the Union.[3] When 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[4]. Doubtful

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[2] Decision Nos. B-74-89; B-52-88; B-35-88.

[3] Decision Nos. B-19-89; B-65-88; B-28-82.

[4] Decision Nos. B-1-89; B-7-81.

issues of arbitrability are resolved in favor of arbitration.[5] In addition, when the City asserts a management rights defense to arbitration, the Union must establish that a substantial issue under the contract has been presented.[6] This requires close scrutiny by the Board.[7]

The parties have included a grievance procedure in their collective bargaining agreement that culminates in binding arbitration.[8] They have agreed that a dispute concerning application or interpretation of the terms of this Agreement, or a claimed violation of existing procedures or regulations of the Department affecting terms and conditions of employment, is subject to such arbitration.[9]

In the instant matter, the City denies that there is a nexus

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[5] Decision Nos. B-65-88; B-15-80.

[6] Decision Nos. B-16-87; B-8-81.

[7] Decision No. B-8-81.

[8] Article XXII of the collective bargaining agreement provides a grievance and arbitration procedure agreed to by the parties.

[9] Article XXII, § 1 of the Agreement provides, in relevant part:

a. For the purposes of this Agreement the term "grievance" shall mean:

1. A claimed violation, misinterpretation or inequitable application of the provisions of this Agreement.

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

between a provision of the Agreement and the remedy sought by the Union because, it maintains, there is no evidence presented that overtime work was authorized or ordered. The Union contends that the cited sections of the Agreement relate directly to the claimed violation because the grievance addresses necessary and required police work, not overtime.

The City bases its argument on Decision Nos. B-35-86, B-16-87, B-41-88 and B-51-89. In Decision No. B-35-86, we denied arbitrability of a grievance brought by a police officer who was not allowed by his supervisor to incur overtime to process an arrest. We held:

> [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 la expressly recognizes that overtime must be "ordered and authorized" by the Police Department in order to be compensable.

Decision No. B-16-87 consolidated three Requests for Arbitration concerning overtime assignments. In the first, an officer was ordered not to work overtime to process an arrest. The second and third claimed that some officers were discriminated against when overtime was assigned. We held that Article III, § 1(a) does not limit the Department's right to decide whether, and under what circumstances, an arresting officer may process an arrest. We then reiterated our holding in Decision No. B-35-86 that no employee is guaranteed overtime work, and that all such overtime work must be authorized and ordered by the Department.

In Decision No. B-41-88, we considered a grievance in which a police officer claimed overtime compensation for the gap in time between the end of his shift and the beginning of a required court appearance. We noted that Section 1(b) expressly allows the Department to reschedule tours of duty for court appearances without incurring overtime, and denied arbitrability of the grievance because no evidence was presented that overtime was authorized or performed. Decision No. B-51-89 presented a similar situation, in which officers claimed overtime compensation from the time when they were released from Central Booking after processing an arrest until the beginning of their next scheduled tours. We relied upon our decision in B-41-88 to deny the arbitrability of the grievance.

The instant case is distinguishable from the cases cited above. It is true, as the City notes, that we have held that § 1(a) does not guarantee that the Department will assign overtime; it only guarantees that when such work is ordered and authorized, and then performed, the officer will be compensated. The Union's argument notwithstanding, the mere fact that an officer worked hours for which he or she seeks compensation does not determine arbitrability.[10] Here, however, the question is whether officers were authorized or ordered to perform duties beyond the hours of the regular tour.

In Decision Nos. B-41-88 and B-51-89, the alleged overtime

[10] Decision No. B-71-88.

accrued in periods between tours of duty when no work was performed. In the instant case, the Union claims that the Department's instruction implicitly authorized and ordered officers to transport and guard arrest records and other documents between tours of duty. There are no words of limitation in Article III, § l(a) that expressly exclude time allegedly spent guarding such records from the purview of the overtime provision or the grievance arbitration provision of the Agreement, if that work is authorized or ordered by the Department. Whether time spent transporting and guarding these records is actually "overtime", as the term is used in the Agreement, is a question of contract interpretation which must be decided by an arbitrator.

Without reaching the merits of the grievance, we find that the Union has shown an arguable relationship between its claim for overtime compensation and Article III, § l(a) of the Agreement. Accordingly, we deny the City's petition.

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 filed by the City of New York be, and the same hereby is, denied; and

ORDERED, that the Request for Arbitration filed by the Patrolmen's Benevolent Association be, and the same hereby is, granted.

Dated: New York, New York
October 17, 1990

MALCOLM D. MACDONALD
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