City v. UFA, 51 OCB 33 (BCB 1993) [Decision No. B-33-93 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
----------x
In the Matter of the Arbitration

-between-

DECISION NO. B-33-93

THE CITY OF NEW YORK,

Petitioner,

-and-

DOCKET NO. BCB-1548-93
(A-4573-93)

UNIFORMED FIREFIGHTERS
ASSOCIATION OF GREATER NEW YORK,

Respondent.
----------x

DECISION AND ORDER

On January 28, 1993, the City of New York, appearing by its Office of Labor Relations ("the City"), filed a petition challenging the arbitrability of a grievance brought by the Uniformed Firefighters Association of Greater New York ("the UFA" or "the Union") concerning the alleged improper training of fire apparatus chauffeurs. The UFA had submitted a request for arbitration with the Office of Collective Bargaining ("OCB") on January 19, 1993. Responding to one of the City's challenges, the Union, by letter dated March 8, 1993, informed the OCB that it was amending its grievance, and that it would file its request for arbitration directly with Milton Rubin, the contractually designated Impartial Chairman. It did so by letter dated March 5, 1993. On March 17, 1993, the City renewed its challenge to the arbitrability of the grievance by filing a second petition with the OCB. On March 31, 1993, the Union filed an answer and memorandum in opposition to the City's second petition. The City submitted a letter reply on April 12, 1992.

BACKGROUND

All Unit Circular No. 254R ("AUC-254R") concerns the Fire Department's chauffeur selection policy. Paragraph 5. of AUC-254R reads as follows:

> When no member expresses a desire to be a fire apparatus chauffeur, the Company Commander shall select members who will make competent, effective fire apparatus chauffeurs and shall train these members.

Article V, Section 1. of the parties' collective bargaining agreement provides that the job description for firefighters shall be annexed to the end of the Agreement. Section 4. of the job description, attached as Schedule A, pertains to training, and reads as follows:

> Under direct supervision of superior officers, Firefighters engage in training and drill activities to attain and maintain that degree of knowledge and skill required to perform their proper functions as Firefighters in the Fire Department of the City of New York.

Article XVIII of the Agreement contains the parties' grievance procedure. A grievance is defined as "a complaint arising out of a claimed violation, misinterpretation or inequitable application of the provisions of this contract or of existing policy or regulations of the Fire Department affecting the terms and conditions of employment." Under Section 3. of the grievance procedure, the Union has a right to bring a contractual dispute directly to arbitration when it involves safety and health:

> The Union may petition the Impartial Chairman for leave to file a grievance involving potential irreparable harm concerning safety and health directly at Step IV [arbitration]. . . . If the Impartial Chairman determines that the grievance may be properly filed at Step IV, the City retains its right to assert all defenses which may be properly raised at Step IV.

The City presently is purchasing new Seagraves fire apparatus for the Fire Department. Historically, when the Department obtained new equipment, chauffeurs assigned to drive the apparatus received specific training in how to operate it from their superiors. Under the current practice, however, a designated chauffeur is dispatched to pick up the new apparatus at its point of delivery. The chauffeur then receives training on it, returns the rig to the firehouse, and, in turn, is responsible for training other chauffeurs.

The new fire apparatus carries a warning sign affixed to each vehicle that reads as follows:

> Do not operate this piece of equipment without proper training on it. Death or injury may result.

The Union asserts its right to bring the matter of chauffeur training directly to arbitration because of the "potential irreparable harm concerning safety and health by not providing proper training for chauffeurs on new apparatus."

POSITIONS OF THE PARTIES

City's Position

The City challenges the arbitrability of Union's grievance on the ground that there is no nexus between the training of chauffeurs and a provision of the collective bargaining agreement or any other departmental rule or regulation. In its view, neither the job description for firefighters nor All Unit Circular No. 254R have anything to do with the training of chauffeurs.

With respect to the job description, the City claims that it does not guarantee that superior officers will perform all the training that firefighters receive. In addition, it asserts that the job description can only bind firefighters to do their duties; it cannot bind fire officers on theirs.

As far as AUC-254R is concerned, the City maintains that its provisions address the selection of chauffeurs, and not training once a firefighter becomes a chauffeur. It insists that the Circular does not specify whom is to perform chauffeur training.

Finally, the City argues that the statutory management rights clause contained in Section 12-307b. of the New York City Collective Bargaining Law ("NYCCBL") gives it the authority to determine the quality and quantity of training for its employees.[1] Therefore, according to the City, a demand

[1] NYCCBL Section 12-307b. reads, in part, as follows:
b. It is the right of the city . . . to maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; . . . and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those

concerning chauffeur training is a nonmandatory subject of bargaining.

Union's Position

The UFA acknowledges that the City possesses various statutory managerial rights, provided they are not limited by contract or departmental policy. It argues, however, that in the firefighters' case, the inclusion of their job description in the parties' collective bargaining agreement, and the terms of All Unit Circular No. 254R, have circumscribed City's rights with respect to chauffeur training. According to the Union, AUC-254R requires that Company Commanders, not fellow chauffeurs, provide instruction on the operation of the new pumpers. As far as the contract is concerned, the UFA claims that the job description does not permit chauffeurs to train other chauffeurs unless the training is being performed under the direct supervision of a superior officer.

With respect to the City's scope of bargaining objection, the Union denies that it is attempting to negotiate over the issue of firefighters' training. It explains that it simply is seeking to hold the City accountable for the commitment it has made in AUC-254R, as well as in the contract, for the proper training that firefighters must receive.

Justifying its application to take this dispute directly to arbitration instead of first exhausting the lower steps of the contractual grievance procedure, the Union argues that the Department's conduct has an impact upon the immediate safety of firefighters. It notes the presence of the warning signs attached to the new pumpers that cautions fire crews: "Do not operate this piece of equipment without proper training on it. Death or injury may result." In the UFA's opinion, once it has identified a viable grievance involving "potential irreparable harm that impacts upon safety and health," it

---

matters are not within the scope of collective bargaining . . ..

assertedly has the right, under Section 3. of the contractual grievance procedure, to seek the Impartial Chairman's authorization to file it with him directly.

DISCUSSION

It is public policy, expressed in the New York City Collective Bargaining Law, to promote and encourage arbitration as the selected means for the adjudication and resolution of grievances.[2] We cannot create a duty to arbitrate where none exists, however, nor can we enlarge a duty to arbitrate beyond the scope established by the parties.[3] Here, we must decide whether a nexus exists between the act complained of, the failure to the Fire Department to assign superior officers to oversee the training of chauffeurs on new fire apparatus, and certain provisions in Department regulations and in the parties' collective bargaining agreement, which are the sources of the Union's asserted right to arbitration.

The City does not deny that the references to training in the job description for firefighters and in AUC-254R exist currently. It contends, however, that neither document contains the requirement that chauffeur training must be performed by superior officers. The Union, on the other hand, asserts that the parties have restricted the Fire Department's discretion in the manner in which it may provide in-service training for its chauffeurs.

In arbitrability decisions concerning the more general question of management's right to deploy personnel, we often have said that the parties to a collective bargaining agreement may agree voluntarily to restrict management's prerogative when ordering assignments and transfers.[4] In this case, the training provisions in Section 4. of the job description for

---

[2] E.g. Decision Nos. B-24-91; B-76-90; B-73-90; B-52-90; B-41-82; B-15-82; B-19-81; B-1-75; and B-8-68.

[3] Decision Nos. B-24-91; B-76-90; B-73-90; B-52-90; B-31-90; B-11-90; B-41-82; and B-15-82.

[4] See Decision Nos. B-23-92; B-19-89; B-47-88; B-24-88; B-4-87; B-10-86; and B-7-67.

firefighters ("Under direct supervision of superior officers, Firefighters engage in training . . ."), and in All Unit Circular No. 254R (". . . the Company Commander shall select . . . chauffeurs and shall train these members"), arguably narrow the statutory right of management to assign non-supervisory firefighters to train other firefighters.

We have long held that the resolution of disputes concerning contractual intent and application must be left for an arbitrator to decide.[5] Thus, consistent with our well-established policy, we hold that the UFA is entitled to have this dispute heard by the Impartial Chairman, who will decide whether the Union's interpretations of AUC-254R and of the job description for firefighters are reasonable, and whether all provisions of the Agreement, as intended by the parties, have been satisfied.

In passing, we note that although one of the City's initial objections to the arbitration of this dispute concerned the Union's alleged noncompliance with the steps of the grievance procedure, it has dropped this argument from its second petition challenging arbitrability. Since the City apparently reconsidered and has withdrawn this objection, we need not dwell upon it, other than to point out that this, too, would involve a matter of contract interpretation. We would leave it for the arbitrator to decide whether, under the circumstances of a particular case, a serious enough safety and health issue is at stake to warrant the grievance being filed directly at Step IV, according to the parties' evident intent to hasten the final resolution of certain kinds of disputes.

In conclusion, for all the above reasons, we find that the Union has met its burden of establishing an arguable relationship between the subject of this grievance, chauffeur training, and both Schedule A of the Agreement, which contains the job description for firefighters, and AUC-254R, which

[5] Decision Nos. B-24-91; B-71-89; B-69-89; B-2-89; B-71-88; B-65-88; B-24-88; B-30-86; B-10-86; and B-10-83.

concerns the Department's chauffeur selection policy. We emphasize that our finding in no manner reflects this Board's view on the merits of the Union's underlying claim.

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, and docketed as BCB-1548-93, be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration filed by the Uniformed Firefighters Association of Greater New York, in Docket No. BCB-1548-93 be, and the same hereby is granted.

DATED: New York, N.Y.
September 22, 1993

MALCOLM D. MACDONALD
CHAIRMAN

DANIEL COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

THOMAS J. GIBLIN
MEMBER

STEVEN H. WRIGHT
MEMBER