

City v. L.237, IBT, Urick Arkord, et. al., 53 OCB 27 (BCB 1994) [Decision No. B-27-94 (Arb)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Arbitration

-between-

CITY OF NEW YORK,

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 237, URICK,  
ARKORD et al,

Respondents.

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DECISION NO. B-27-94

DOCKET NO. BCB-1647-94  
(A-5167-93)

### **DECISION AND ORDER**

On April 29, 1994, the City of New York, appearing by its Office of Labor Relations ("the City") filed a petition challenging a request for arbitration of a grievance that was submitted by the City Employees Union Local 237, International Brotherhood of Teamsters ("Local 237" or the "Union"). The request for arbitration was filed on November 8, 1993. The grievance concerns an inequality in the uniform allowance paid to Special Officers, Senior Special Officers and Hospital Security Officers. The Union filed its answer on June 21, 1994. The City filed a reply on July 21, 1994.

### **BACKGROUND**

On June 26, 1968, the Board of Certification of the New York City Office of Collective Bargaining certified Local 237 as the exclusive bargaining representative for the purpose of collective bargaining for employees serving in the job title of Hospital Security Officer.<sup>1</sup> Hospital Security Officers are employed by the Health and Hospitals Corporation and primarily work in city hospitals. The Local 237 bargaining unit is a mixed unit containing approximately 6,000 supervisory and non-supervisory employees. These employees hold over 60 job titles and serve in a wide variety of job

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<sup>1</sup> Decision 36-68.

classifications. Included among these titles are Special Officer and Supervising Special Officer. Special Officers are employees of both mayoral and non-mayoral agencies.

Since at least 1976, the unit collective bargaining agreement has contained a "Uniform and/or Clothing Allowance" provision. Although the titles covered by the allowance have changed from time to time, the general qualifying criterion has remained verbatim from 1976 through the contract now in effect, and reads as follows:

The following pro-rated annual amount shall continue to be paid to employees in the below indicated titles who are required to wear uniforms and to those employees entitled to a clothing allowance.

In the three successive unit agreements that covered the years 1976 through 1981, Special Officer and Supervising Special Officer titles were included in the uniform allowance schedule, and each such officer received an annual uniform allowance in the amount of \$135. That amount gradually increased to \$350 effective January 1, 1986. Never during this ten year period were Hospital Security Officers contractually entitled to the uniform allowance.

Pursuant to a provision in the 1987-1990 Local 237, IBT Economic Agreement, a "1987-90 Equity Pay Panel on Employee Compensation" was established and given responsibility for adjusting "specific and substantive inequities in the compensation of employees in the bargaining unit." On May 23, 1988, the Equity Panel issued its wide-ranging award, part of which pertained to uniform allowances paid to Special Officers. The Equity Panel award provision reads as follows:

VI E. Special Officers

\* \* \*

(3) The uniform allowance paid to employees in the titles listed below shall be increased by \$50 effective July 1, 1987, an additional \$50 effective July 1, 1988 and an additional \$50 effective July 1, 1989.

ELIGIBLE TITLES

\* \* \*

70830 Hospital Security Officer

\* \* \*

70815 Senior Special Officer

\* \* \*

70810 Special Officer \* \* \*

Thus, by award of the Equity Panel, Hospital Security Officers, for the first time, were given a uniform allowance. The parties retroactively incorporated the provisions of the Equity Panel award in their 1987-1990 collective bargaining agreement for the Special Officers unit,<sup>2</sup> as follows:

Special Officers and Supervising Special Officers received \$400 effective January 1, 1987; \$450 effective January 1, 1988; and \$500 effective January 1, 1989.

Hospital Security Officers received \$50 effective January 1, 1987; \$100 effective January 1, 1988; and \$150 effective January 1, 1989.

Meanwhile, in April of 1990, the Union filed a grievance alleging that Hospital Security Officers were not being fully compensated for the cost of their uniforms. The grievance was denied at the first three steps of the parties' contractual grievance procedure and the Union did not request arbitration after that.

On February 5, 1992, the parties entered into a successor collective bargaining agreement covering the period July 1, 1990, through September 30, 1991. The provisions of the uniform allowance in the successor unit agreement appear as follows:

Special Officers and Supervising Special Officers receive \$500, effective July 1, 1990;

Hospital Security Officers receive \$150, effective July 1, 1990.

The terms of the 1990-1991 contract remain preserved currently under the status quo provisions contained in Section 12-311d. of the NYCCBL.

In March of 1993, unit member James Arkord filed a new grievance, complaining of the inequity in the uniform allowance provisions. The Arkord

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<sup>2</sup> Although this agreement covered the period July 1, 1987 to June 30, 1990, it was not signed and made effective until June 21, 1991.

grievance makes reference to the 1990 grievance, and reads as follows:

I am grieving the unequal pay in the form of uniform allowance given to Hospital Security Officers as opposed to that paid to Special Officers and Senior Special Officers. Special Officers/Senior Special Officers receive \$500.00 dollars as to Hospital Security Officers receiving \$150.00 dollars. Hospital Security Officers are required to wear a uniform. . . . This has been an ongoing grievance and has not been handled expeditiously. Therefore I am requesting that the Office of Municipal Labor Relations have a hearing on this matter as soon as possible.

There has been no action taken by the Union on this matter in three years.

The City, in a Step III decision issued on June 17, 1993, denied the Arkord grievance on the ground that it did not allege any violation of contract or written agency policy or procedure that affects terms and conditions of employment. The Step III Review Officer reasoned that since the complaint was not a grievance within the contractual definition of that term, it did not qualify as an issue that could be adjudicated through the contractual grievance procedure.

When the Union filed its request for arbitration, it referred to the Arkord grievance, as well as to another grievance or grievances filed by "Charles Urick, et al." Those grievances are not part of this record, however. The Union also alleged a violation of "Article VI 1990-91 Special Officers Unit Agreement," (Grievance Procedure) as the basis of its request for arbitration. It is clear from its pleadings, however, that the true basis for the Union's grievance rests upon Article III, Section 8., which contains the uniform allowance provisions. The parties agree that this section calls for Hospital Security Officers to receive an annual uniform allowance of \$150.00. They also agree that each Hospital Security Officer, in fact, is receiving the full \$150.00 allowance.

#### **POSITIONS OF THE PARTIES**

##### **City's Position**

\_\_\_\_\_The City reiterates that Hospital Security Officers are being paid a

uniform allowance of \$150.00 per year, which is the exact amount that the collective bargaining agreement requires for unit members holding this title. It contends that although there may be disparities in the uniform allowances amongst the titles Hospital Security Officer, Special Officer, and Senior Special Officer, these differences do not mean that there has been a violation of the contract. The City concludes that grievances filed by Local 237 in this case assertedly are not arbitrable because there is no nexus between the contract and the cause of action stated by the Union.

### **Union's Position**

According to Local 237, the phrase in Article III, Section 8., "shall continue to be paid" is the provision that establishes the nexus between the contract and the Union's grievance. In its view, the meaning of this section of the contract is unclear and ambiguous.

In support of its claim, the Union submits a copy of a 1991 survey prepared by the Health and Hospitals Corporation's Assistant Vice President for Labor Relations/Human Resources, in which he reported that a wide range of uniform allowances were then being paid to Hospital Security Officers. Of the eight hospitals included in the survey, officers in one (North Central Bronx) received nothing because they were not required to wear or have a uniform; in five of the hospitals, officers were receiving \$150.00 per year; and in two of the hospitals (Metropolitan and Kings County), officers inexplicably were receiving allowances of \$550 and \$600 respectively per year. According to the Union, the varying amounts paid to Hospital Security Officers throughout the City proves that the phrase "shall continue to be paid" is unclear and is subject to interpretation.

The Union concludes that while unequal pay may not amount to a violation of Section 8. of the contract, an alleged failure to pay the proper amount does state a violation of that section. In its view, the Equity Panel's uniform allowance award for Hospital Security Officer should have been added

to a \$350 base, not a zero dollar base. According to the Union, this is a dispute that an arbitrator should hear and resolve.

### 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.<sup>3</sup> 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.<sup>4</sup> Here, we must decide whether a nexus exists between the act complained of, an allegedly incorrect uniform allowance amount being paid to Hospital Security Officers, and the provisions of Article III, Section 8. in the parties' collective bargaining agreement, which is the source of the Union's asserted right to arbitration.

We are mindful that the 1988 Equity Panel award provided the first uniform allowance for Hospital Security Officers. Prior to 1988, the collective bargaining agreement made no provision for Hospital Security Officers to receive reimbursement for their uniforms, although uniforms were required and their Special Officer counterparts were receiving \$350 per annum to cover the costs. When the parties included the Equity Panel uniform allowance award in their 1987-1990 unit Agreement, there is nothing in the record to indicate that the Union objected when the figures for Hospital Security Officer appeared as \$50, \$100, and \$150 for each of the three years covered by that contract, despite having filed a uniform allowance grievance for these officers the previous year. The agreement expired and the parties signed a successor agreement in 1992. Again the record shows no objection by the Union to the figures listed in the uniform allowance schedule, although

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<sup>3</sup> E.g. Decision Nos. B-5-94; B-33-93; 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.

<sup>4</sup> Decision Nos. B-5-94; B-33-93; 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.

there continued to be a disparity of \$350 between Special Officers and Hospital Security Officers.

In these circumstances, we find that the bargaining history between parties with respect to their uniform allowances is well enough developed to foreclose the possibility that the phrase "shall continue to be paid" is ambiguous or should be opened to interpretation. This wording has appeared in the parties' collectively bargained unit agreements since at least 1976, with no apparent problem in its interpretation or application. In 1991, Hospital Security Officers were added to the schedule of covered titles for the first time. By then, the Union already had filed its first grievance, and if there was a problem with interpretation, this would have been a logical time to resolve that issue. Having missed this opportunity, the Union had a second chance when it negotiated the 1990-1992 unit agreement. Again it failed to raise and resolve the issue. If the Union has concluded that there is an inequity in the wage, salary and fringe benefit package, including uniform allowances, for Hospital Security Officer viz-a-viz Special Officer, the bargaining table is the appropriate place at which to make an adjustment.<sup>5</sup> We will not permit the Union to seek in arbitration what it should have sought during collective bargaining,<sup>6</sup> for doing so would involve "contract-making," rather than contract interpretation or application.

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<sup>5</sup> Decision Nos. B-25-90 and B-68-89.

<sup>6</sup> Decision No. B-10-78.

**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-1647-94, be, and the same hereby is, granted; and it is further

ORDERED, that the request for arbitration filed by the City Employees Union Local 237, IBT in Docket No. BCB-1647-94 be, and the same hereby is, denied.

DATED: New York, N.Y.  
November 29, 1994

MALCOLM D. MACDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

JEROME E. JOSEPH  
MEMBER

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