City v. L.237, IBT, 57 OCB 53 (BCB 1996) [Decision No. B-53-96 (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-53-96
Docket No. BCB-1819-95
(A-6226-95)

and

International Brotherhood of
Teamsters, Local 237,

Respondent.
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DECISION AND ORDER

On March 25, 1996, the City of New York ("City") appearing by its Office of Labor Relations, filed a petition challenging the arbitrability of a grievance filed by the International Brotherhood of Teamsters, Local 237 ("Union"), on behalf of Special Officers employed by the Health and Hospitals Corporation ("HHC") at Queens Hospital Center ("Hospital"). The Union submitted an answer on June 3, 1996. The City did not file a reply.

Background

The City and the Union are parties to a collective bargaining agreement effective October 1, 1991 through December 31, 1994. There is a facility parking lot at the Hospital in which employees and visitors park their cars when spaces are available. On April 1, 1995, the Hospital issued a regulation requiring, for

the first time, that everyone except Hospital visitors and the drivers of emergency vehicles purchase a monthly parking permit. The Union claims that the new parking permit regulation for Special Officers violates Article III, Section 4, which is the wage increase provision of the contract.[1]

Positions of the Parties

The City's Position

The City contends that the Union has failed to cite a specific contractual provision which gives it the right to arbitrate disputes concerning parking. The City maintains that the Union's mere allegation that parking privileges are in some way related to the wage increase provision of the contract does not establish a nexus. It cites the dissent in Decision No. B-25-92, which was later endorsed on appeal,[2] and argues that the fact that the contractual salary provision relates to the subject of wages, and that the bargaining unit members receive wages, is insufficient to establish the requisite nexus.

The City argues that there are specific limits on what can be addressed in a claim under Article III (the "salary provi-

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[1] Article III, Section 4(a) of the CBA sets forth the general increases for employees effective from April 1, 1993 to April 1, 1994. Article III, Section 4(b) sets forth the method for calculating the increases provided in Section 4(a). Article III, Section 4(c) sets forth specific rates and salary levels.

2 New York City Department of Probation v. MacDonald, 613 NYS 2d 378, 205 A.D.2d 372 (1994).

sion").[3] It maintains that Article III is only a list of salaries for employees and that it contains no reference to parking.

The Union, the City maintains, is attempting to create a right where one does not exist by gaining through arbitration what must be procured through collective bargaining. It maintains that the Board has long held that it cannot create a duty to arbitrate where none exists nor can it enlarge a duty to arbitrate beyond the scope established by the parties of contract.[4] The City argues that prior use of the parking lot does not create a right to free parking for perpetuity. No right to parking was written into the contract, it contends, and the Board cannot create a right based on past practice alone.

Union's Position

The Union contends that it has demonstrated the existence of a nexus between the cited provision of the collective bargaining agreement and the disputed act. According to the Union, pursuant to Article III, Section 4 of the contract, affected employees were supposed to, and did, receive the specified general wage increases.[5] It argues that, by instituting a mandatory parking fee for employees, HHC has reduced the salary paid to Special

[3] Decision No. B-10-92.

[4] BCB Decision Nos. B-4-95; B-27-93; B-30-84; B-41-82.

[5] The salary schedule for Special Officers is set forth in Article III of the CBA, supra, note 1.

Officers, because they now must use part of their salary to pay for parking. The Union claims that HHC has singled out Special Officers because, under the disputed policy, neither the public nor Emergency Service Vehicles (EMS) must pay for parking.

Discussion

The scope of the obligation to arbitrate disputes is determined by the parties in their collective bargaining agreement. The parties to this proceeding stipulated, at Article VI, § 1(a) of the contract, that a grievance is defined as "[a] dispute concerning the application or interpretation of the terms of this Agreement." In order to bring a matter to arbitration, the Union, when challenged, is required to show that an arguable nexus exists between the matter in dispute and a provision of the contract.[6]

The City argues correctly that the Union has failed to demonstrate the requisite nexus between the grievance and the contract provision cited. The gravamen of the Union's grievance is that the promulgation and enforcement of a parking fee for Special Officers violated the wage increase provision of their agreement with the City. However, there is no discussion of parking benefits or provisions in Article III of the contract,

[6] See Decision Nos. B-4-95; B-27-93; B-24-92; B-10-92; B-18-91; B-73-90; B-15-90; B-49-89; B-35-89; B-28-87; B-10-86.

under which the Union brings this grievance. Parking is not discussed as a benefit of employment, a supplement to salary, or part of a wage increase in Article III, or any other part of the contract. Therefore, this is not an arbitrable grievance under the contract because it does not concern the application or interpretation of the terms of the agreement.

The relationship of nexus cannot be established on the basis of vague or conclusory allegations.[7] The Union cannot establish a nexus merely by alleging that since Special Officers will both be entitled to a wage increase and be required to pay for parking, the wage increase provision of their contract has been violated. The Union's claim that, because Special Officers must use part of their salaries to pay for a parking permit, they will experience a reduction in salary, is a conclusory argument and does not establish a nexus.

Accordingly, the petition challenging arbitrability is granted.

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7 Decision No. B-70-90.

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 herein by the City of New York be, and the same hereby is, granted; and it is further,

ORDERED, that the Request for Arbitration filed herein by the International Brotherhood of Teamsters, Local 237, be, and the same hereby is, denied.

Dated: New York, New York
December 19, 1996

Steven C. DeCosta
CHAIRMAN

George Nicolau
MEMBER

Daniel G. Collins
MEMBER

Jerome E. Joseph
MEMBER

Thomas J. Giblin
MEMBER

Saul G. Kramer
MEMBER

Robert G. Wilsker
MEMBER