City & NYPD v. L. 1549, DC 37, 69 OCB 29 (BCB 2002) [Decision No. B-29-2002 (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 and
THE NEW YORK CITY POLICE DEPARTMENT,

Decision No. B-29-2002
Docket No. BCB-2256-01
(A-8989-01)

Petitioners,

-and-

DISTRICT COUNCIL 37, LOCAL 1549,
AFSCME, AFL-CIO,

Respondent.
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DECISION AND ORDER

On November 30, 2001, the City of New York and the New York City Police Department ("City" or "Department") filed a petition challenging the arbitrability of a grievance filed by District Council 37, Local 1549 ("Union"). The Union's grievance asserts that the Department unilaterally implemented a new policy in violation of the parties' collective bargaining agreement ("CBA") when it circulated a memorandum regarding compliance with the dress code policy for civilian employees.[1] The Department contends that the memorandum has no reasonable relationship to the cited grievance provisions of the contract. This Board finds that there is no

[1] On February 7, 2002, the Union filed a related improper practice claim (Docket No. BCB-2266-02) pursuant to § 12-306(a) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") alleging that the Department failed to bargain over this change. The petition was withdrawn on May 28, 2002.

reasonable relationship between the subject matter of the dispute and the general subject matter of the parties' CBA. We therefore grant the City's petition challenging arbitrability.

BACKGROUND

In 1988, the Department issued a Civilian Employee Handbook ("Handbook") including "Guidelines for Dress Code" ("Dress Code") in Chapter II-A. The introduction to Chapter II states that it is intended "to acquaint you with certain rules and procedures affecting your employment." The Dress Code prohibits a civilian employee from wearing, for example, short skirts, tank tops, and beach shoes in the workplace. When the Handbook was revised in 1994, the Dress Code was left unchanged.

On April 13, 2001, the Department circulated Communications Section Memo, No. 1/2.3 R&R ("Memo") which states that all civilian personnel in the Communications Section should adhere to the Dress Code outlined in the Handbook. The Memo presents lists of appropriate and inappropriate attire similar to the lists in the Handbook and states: "For a comprehensive listing of appropriate and inappropriate attire, civilian members should refer to, and be guided by, the *Civilian Employee Handbook.*" Further, the Memo states that "members of the Communications Section in violation of this memorandum may be subject to disciplinary action (e.g., verbal re-instruction, Minor Violation Log entry, or Command Discipline)."

The Union filed a grievance at Step III and a request for arbitration at Step IV on behalf of all Police Communications Technicians ("PCTs") and Supervising Police Communications

Technicians ("Supervising PCTs") alleging that the City violated Article VI, § 1(a) and (b),[2] and Article XXIII, § 2,[3] of the CBA by failing to re-open bargaining on the issue of dress code before implementing a new policy. The record does not indicate the result of the Step III grievance.

POSITIONS OF THE PARTIES

City's Position

The City states that the Memo was intended to remind employees that standards of dress are governed by the Handbook. The Memo merely makes explicit what is implicit in the Handbook – that failure to adhere to the Dress Code may result in discipline. The City asserts that in the past, Dress Code violations have been enforced through command discipline and that the Union has provided no evidence regarding over 250 employees who, the Union alleges, were disciplined in a "wholesale" manner subsequent to the issuance of the Memo.

Further, the City points out that PCTs and Supervising PCTs lack standing to grieve an alleged violation of Article XXIII, § 2, of the CBA because the provision is specifically limited

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[2] Article VI, § 1(a) and (b) provide:

Section 1 - Definition
The term "Grievance" shall mean:
a. A dispute concerning the application or interpretation of the terms of this Agreement;
b. A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and conditions of employment . . . .

[3] Article XXIII, § 2 states: "The parties agree that if the Police Commissioner requires a uniform to be worn by the Police Administrative Aides and Senior Police Administrative Aides, the parties shall re-open this Agreement solely as to this matter."

to other titles not included in the grievance – Police Administrative Aides ("PAAs") and Senior Police Administrative Aides ("Senior PAAs").

Alternatively, the City argues that the Union has failed to establish a reasonable relationship between the act complained of and the contractual provision cited as the source of the alleged right. First, as noted above, Article XXIII, § 2, provides rights only to PAAs and Senior PAAs and not the named grievants. Second, Article XXIII, § 2, is applicable to PAAs only "if the Police Commissioner requires a uniform to be worn." The City interprets the term "uniform" to mean, generally, the "official or distinctive clothes worn by the members of a particular group, such as police or soldiers, especially while on duty." The Memo merely reminds employees of the Dress Code and does not institute a uniform requirement.

The City also contends that Article VI, § 1(a), relied upon by the Union, does not provide a basis for arbitration as it merely sets forth the definitions of the term "grievance" within the meaning of the CBA and the Union does not cite to a substantive contractual provision allegedly violated.

In addition, pursuant to NYCCBL § 12-307(b), the City argues that the employer has the right to discipline its employees, to determine appropriate penalties, and to promulgate rules and regulations.[4] Because the Memo merely restates a long-standing rule, which is protected by the management rights clause of the NYCCBL, the instant request for arbitration must be denied.

Finally, the City did not have proper notice of the Union's claim that Article VI, § 1(b) was also violated because the original request for arbitration claimed only a violation of Article

[4] § 12-307(b) states, in relevant part: "It is the right of the city . . . , to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action . . . "

VI, § 1(a).

Union's Position

The Union claims that pursuant to Article VI, § 1(a) and (b), the Memo is a misinterpretation or misapplication of the Department's long-standing written policy on Dress Code because the Memo added a disciplinary component that was not part of the original written policy. Further, the Union argues that since 1988, the Dress Code was never enforced with discipline. Since the Memo was issued, the Department has disciplined over 250 PCTs for failure to adhere to the Dress Code. The Union argues that it has demonstrated the requisite relationship between the complained of conduct, that is, the enforcement of the Dress Code through discipline, and the written policy contained in the Handbook.

The Union also asserts that the Memo violates Article XXIII, § 2, of the CBA, which it characterizes as mandating negotiations between the parties regarding changes in requirements for civilian attire. The City may not unilaterally interpret or declare what the provision means and which employees it covers. Nor should the Board inquire into the meaning of Article XXIII, § 2, for contract interpretation and doubtful issues of arbitrability should be resolved by an arbitrator.

DISCUSSION

This Board finds that the Union has not presented an arbitrable issue in this case. In determining arbitrability, the Board decides first whether the parties are contractually obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions; and, if so, whether "the obligation is broad enough in its scope to include the

particular controversy presented," *Social Service Employment Union,* Decision No. B-2-69; *see District Council 37, AFSCME,* Decision No. B-47-99, or, in other words, "whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA." *New York State Nurses Ass'n,* Decision No. B–21–2002.

We have found no reasonable relationship between the issuance of the Memo and Article XXIII, § 2, which the Union claims mandates negotiations over changes in requirements for civilian attire. We find that this provision on its face does not apply to the grievants but pertains solely to PAAs and Senior PAAs. Therefore, the Union has not established a reasonable relationship between the named grievants, PCTs and Supervising PCTs, who do not serve in the contractually-specified titles, and the rights defined under this provision. Therefore, the arbitrability test has not been met.

We find the Union's remaining arguments unpersuasive and therefore do not address them here. Having found no reasonable relationship between the issuance of the Memo and Article XXIII, § 2, we grant the petition challenging arbitrability.

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 in Docket No. BCB-2256-01 filed by the City of New York be, and the same hereby is, granted; and it is further

ORDERED, that the request for arbitration filed by District Council 37, Local 1549, and docketed as A-8989-01, be, and the same hereby is, denied.

Dated: September 23, 2002
New York, New York

MARLENE A. GOLD
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