

Correction Captains Ass'n, 75 OCB 35 (BCB 2005)

[Decision No. B-35-2005 (Arb)] (Doc ket No. BCB-2497-05) (A-11034-05).

Summary of Decision: The City filed a petition challenging arbitrability of a grievance alleging that in violation of an existing policy, Correction Captain Donnezzetta Brown was improperly reassigned to a different rotation cycle. The City argued that the policy is inapplicable. The Board found that the Union established a reasonable relationship between Brown's reassignment and the cited policy. Therefore, the petition was denied and arbitration granted. (*Official decision follows.*)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of the Arbitration

-between-

**CITY OF NEW YORK AND
DEPARTMENT OF CORRECTION,**

Petitioners,

-and-

**CORRECTION CAPTAINS ASSOCIATION AND
DONNEZZETTA BROWN,**

Respondents.

DECISION AND ORDER

On August 5, 2005, the City of New York and the Department of Correction, ("City" or "DOC") filed a petition challenging arbitrability of a grievance brought by the Correction Captains Association ("Union"). The Union's grievance asserts that in violation of the parties' collective bargaining agreement ("Agreement") DOC reassigned Donnezzetta Brown to a different rotation cycle from the one she had previously. The City claims that there is no nexus between Brown's reassignment and Operations Order 14/91 ("Order 14/91") which addresses filling new and vacant

jobs, not reassignment to different and existing jobs. The Union argues that there is a nexus because Order 14/91 limits DOC's right to reassign employees, and Article XX, § 1(b), of the Agreement provides that a violation of an agency rule, regulation, or procedure is grievable. This Board finds that since the Union has established a reasonable relationship between Brown's reassignment and Order No. 14/91, this case should be sent to arbitration.

BACKGROUND

Donnezetta Brown has been employed by DOC since 1984. On December 29, 1995, Brown was appointed to the title Correction Captain. The duties and responsibilities of Captains assigned to a clinic post include: supervising clinics, conducting inspection tours, monitoring injury reports, and investigating staff and inmate complaints.

On April 2, 1991, DOC issued Order 14/91 which provides: "This order is promulgated to establish revised guidelines for ensuring equity in the selection process when awarding job assignments to members of the uniformed force, within a command." Order 14/91 contains guidelines on the procedures to announce and post new and vacant job assignments and the criteria to select an individual for a posted assignment.¹ In May 2000, Brown was assigned to DOC's Eric

¹ Order 14/91 provides, in relevant part:

Awarding Job Assignments Within A Command

II. Guidelines

A. Both new and vacant job assignments within a command must be posted for three (3) weeks to permit members an opportunity to apply for the positions.

B. The announcement of these positions shall be posted on employee bulletin boards and in other appropriate areas of the command.

C. During the period that the job assignment is posted, no single person shall be assigned to that position until the selection process has been completed.

NOTE: If a position must be temporarily filled by one person due to the

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M. Taylor Center (“EMTC”) in Queens in the position Post #034 Medical Service. According to the Union, Brown was assigned to this position pursuant to Order 14/91.

On February 26, 2004, Frank Squillante, EMTC’s Warden, issued a memorandum to Brown which stated:

Effective February 26, 2004 your assignment has been changed. You are no longer assigned to Post #034 Medical Service. Your new assignment is Squad # 4 rotating tours. It is my opinion that this change is in the best interest of the Facility.

According to the City, Captains are assigned to rotating tours unless otherwise assigned to a steady tour or post. The City states that Squad # 4 is the designation for a group of Captains with

¹(...continued)

exigencies of the operation, then a written request substantiating the need must be forwarded to the respective Division Chief for authorization. Under these circumstances the individual temporarily filling the assignment shall not be afforded preferential consideration during the selection process but shall be subject to the selection criteria outlined in Section E.

- D. Announcements of job openings must be forwarded to the Assistant Commissioner for Equal Employment Opportunity, located in Central Office.
- E. The awarding of new and vacant job assignments shall be based on the following criteria:
 - 1. Seniority.
 - 2. Work performance.
 - 3. Attendance record.
 - 4. Special skills required for the position.
- F. After selecting an individual for the assignment, the names and shield numbers of all members who applied for the position (including the awardee), shall be posted on employee bulletin boards for a minimum period of ten (10) business days.
- G. To facilitate any subsequent inquiry that may be acted upon by the Office of Equal Employment Opportunity, accurate records of the selection process must be maintained by each command.
- III. Changes In Existing Departmental Procedures
Operations Order # 26/88, dated April 25, 1988, entitled “Procedures for Awarding New and Vacant Job Assignments Within a Command,” is hereby superseded by this Operations Order.
- IV. Special Instructions
Commanding Officers of Facilities and Divisions shall ensure that the provisions of this Operations Order are strictly complied with.

a particular schedule in the weekly rotation of tours and that the Squad's duties are typical of Captains who have supervisory authority over Correction officers in inmate housing areas.

On May 24, 2004, Brown filed a grievance alleging that DOC violated Article XX, § 1(b), of the Agreement by reassigning Brown, on February 26, 2004, to a different rotation schedule from the one she previously held.² In her grievance, Brown stated that she was reassigned after she "attended a ME016 hearing concerning members of service who had reeked of alcoholic [sic] on November 27, 2003."

On June 2, 2004, after no action was taken at Step I, Brown resubmitted her grievance to Nicholas Santangelo, DOC Director of Labor Relations. On July 2, 2004, DOC, in response to Brown's appeal at Step II, replied:

The complaint presented in your memorandum of June 2, 2004, is not grievable. Although styled as a claimed violation of Operations Order 14/91, the complaint concerns your reassignment to a rotating tour, rather than a violation, misinterpretation or misapplication of that operation order, which describes a procedure for awarding job assignments within a command. Operations Order 14/91 is inapplicable to your situation. In any event, job assignments, whether awarded or made otherwise, may be changed in the sole discretion of management, which retains the right to direct and assign employees for the good of the department, or, as the warden's memorandum to you stated, in the best interest of the facility.

Brown appealed at Step III, and the Office of Labor Relations ("OLR") denied the grievance

² Article XX, § 1 states, in pertinent part:

For the purpose of this Agreement the term "grievance" shall mean:

* * *

b. a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment, provided that, except as otherwise provided in this Section 1a the term "grievance" shall not include disciplinary matters

on February 25, 2005. In the Step III Reply, the Review Officer stated:

After a careful review of the record including evidence and testimony taken at the Step III conference, I find that no contractual violation has been established as management retains the right to direct and assign employees for the good of the department and in the best interest of the facility.

On March 8, 2005, the Union filed a request for arbitration to determine the issue whether Captain Brown “was improperly assigned into a rotation cycle.” The remedy sought by the Union is for Brown to be returned to her original schedule.

POSITIONS OF THE PARTIES

City’s Position

The City argues that the Union cannot establish a nexus between the subject of the grievance, Brown’s reassignment to Squad # 4, and Article XX of the Agreement. Order 14/91 provides guidelines for ensuring equity in the selection process when awarding job assignments to members of the uniformed force within a command. Assuming that the Union’s request for arbitration identified a contractual right to arbitrate an alleged violation of Order 14/91, which it does not, the Union has failed to establish a nexus between Order 14/91 and DOC’s right to reassign its employees. Nothing in Order 14/91 restricts this managerial prerogative.

Alternatively, the City argues that the Union has failed to establish a nexus between Brown’s reassignment and Article XX of the Agreement because Article XX does not limit DOC’s right to reassign its employees.

Union’s Position

The Union asserts that at the lower steps the City misconstrued the nature of the Union's grievance by failing to recognize that it was brought under both Article XX of the Agreement and Order 14/91. At Step III, OLR incorrectly denied the grievance by failing to acknowledge that by Order 14/91, DOC limited its managerial right to reassign employees.

The Union argues that there is a direct nexus between Order 14/91 and Article XX of the Agreement. Under Order 14/91, Brown was entitled to remain in Post #034. Because DOC limited its right to reassign employees by issuing Order 14/91, making it a "rule, regulation or procedure of the agency," Brown's involuntary reassignment violated the Order and is grievable under § 1(b) of the Agreement.

DISCUSSION

In this case, the Union seeks arbitration on the question whether DOC's reassignment of Brown to a different rotation schedule violates or misapplies Order No 14/91. This Board finds that the Union has established a reasonable relationship between Brown's reassignment and Order No. 14/91.

Under the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-302, the policy of New York City is to favor and encourage arbitration to resolve grievances. Doubtful issues of arbitrability are resolved in favor of arbitration. *Correction Officers Benevolent Ass'n*, Decision No. B-12-94 at 10. To determine arbitrability, this 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 also 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 agreement. *New York State Nurses Ass’n*, Decision No. B-21-2002 at 8.

Here, there is no dispute that the parties’ Agreement provides for grievance and arbitration procedures. Article XX, § 1, of the Agreement defines the term grievance as “a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment. . . .” Thus, the question is whether a reasonable relationship exists between Brown’s reassignment and Order No. 14/91.

This Board has held that a written policy generally includes “a course of action, a method or plan, procedure or guidelines which are promulgated by the employer, unilaterally, to further the employer's purposes, to comply with the requirements of law, or otherwise to effectuate the mission of the agency.” *International Union of Operating Engineers, Local 30*, Decision No. B-2-92; *see also Communications Workers of America, Local 1180*, Decision No. B-1-2001 at 7. Under the NYCCBL, when an employer promulgates a written policy concerning a managerial prerogative, “that subject, to the extent so covered, becomes arbitrable under contracts which render employer non-compliance with written policies grievable and arbitrable.” *International Union of Operating Engineers, Local 30*, Decision No. B-2-92 at 16-17; *see also Uniformed Firefighters Ass’n*, Decision No. B-19-2005 at 14.

Order 14/91 sets forth guidelines on the procedures to announce and post new and vacant job assignments and the criteria to select an individual for a posted assignment and is, without dispute, an existing policy of DOC. *See Civil Service Bar Ass’n*, Decision No. B-5-2005 at 10-11. Under

the Agreement, such procedures are arbitrable. The Union claims that Brown was improperly reassigned in violation of Order No. 14/91, which governs job assignments. Whether the different rotation tour to which Brown was reassigned is a “job assignment” within the meaning of Order No. 14/91 raises a substantive issue of interpretation that may be resolved by arbitration. *Social Services Employees Union*, Decision No. B-3-98; *District Council 37*, Decision No. B-52-91. Because Brown’s reassignment by DOC may be inconsistent with the procedures outlined in Order 14/91 and thus may violate those procedures, we find that the Union has established a reasonable relationship between Brown’s reassignment and Order No. 14/91. We make no judgment on the merits of the issue whether Brown’s reassignment misapplied or violated Order No. 14/91.

Accordingly, this Board denies the petition challenging arbitrability and sends this grievance to arbitration.

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-2497-05 filed by the City of New York be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration filed by the Correction Captains Association, docketed as A-11034-05, be, and the same hereby is, granted.

Dated: December 5, 2005
New York, New York

MARLENE A. GOLD

CHAIR

GEORGE NICOLAU

MEMBER

CAROL A. WITTENBERG

MEMBER

M.DAVID ZURNDORFER

MEMBER

CHARLES G. MOERDLER

MEMBER

GABRIELLE SEMEL

MEMBER