

***Sergeants Benevolent Ass'n, 79 OCB 15 (BCB 2007)***

[Decision No. B-15-2007 (Arb)] (Docket No. BCB-2585-06) (A-12104-06).

***Summary of Decision:*** The City challenged a grievance alleging that Sergeants who were recently promoted from Detective did not receive a salary increase granted to Detectives after the Detectives' new collective bargaining agreement became effective, as per NYPD policy and procedure. The City argued that the Union could not establish a nexus between the subject of the grievance and a provision of the SBA Agreement that grants Grievants the right to a salary increase. The Board found that the request for arbitration should be denied because there was no nexus between the Union's claim and the SBA Agreement. ***(Official decision follows.)***

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

**In the Matter of the Arbitration**

***-between-***

**THE CITY OF NEW YORK and the  
NEW YORK CITY POLICE DEPARTMENT,**

***Petitioners,***

***-and-***

**SERGEANTS BENEVOLENT ASSOCIATION,**

***Respondent.***

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**DECISION AND ORDER**

On December 18, 2006, the City of New York and the New York City Police Department ("City" or "NYPD") filed a petition challenging the arbitrability of a grievance brought by the Sergeant's Benevolent Association ("Union" or "SBA"). The grievance alleges that Sergeants who were recently promoted from Detective did not receive a salary increase that was granted to Detectives after the Detectives' collective bargaining agreement became effective, as per NYPD policy and procedure. The City argues that Grievants cannot establish a nexus between the subject

of the grievance and a provision of the collective bargaining agreement between the SBA and the City (“SBA Agreement”) that grants Grievants the right to a salary increase. The Board finds that the request for arbitration should be denied because there is no nexus between the Union’s claim and the SBA Agreement.

### **BACKGROUND**

The SBA Agreement covers the period of June 1, 2003 through May 31, 2005, and it is currently in status quo pursuant to New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter3) (“NYCCBL”) § 12-311(d). The parties are currently negotiating a successor agreement. The City and the Detectives Endowment Association (“DEA”) are parties to a collective bargaining agreement covering the period of February 15, 2004 through March 31, 2008 (“DEA Agreement”).

Grievants were promoted from the rank of 3<sup>rd</sup> Grade Detective to the rank of Sergeant on February 24, 2006. At the time of Grievants’ promotions, DEA had yet to settle the 2004-2008 DEA Agreement. After their promotion to the rank of Sergeant, Grievants received the first step Sergeant salary of \$67,355. The City and DEA settled, and the DEA approved the DEA Agreement after Grievants were promoted to the rank of Sergeant. Under the terms of the DEA Agreement, the maximum 3<sup>rd</sup> Grade Detective salary rose from \$61,670, effective June 22, 2002, to \$70,032, effective April 1, 2006.

On June 20, 2006, the Union filed a Step III grievance, alleging that:

On February 24, 2006, [a Detective 3<sup>rd</sup> Grade] was promoted to Sergeant. At the time of his promotion, the top pay base for a Detective 3<sup>rd</sup> Grade was approximately \$62,320.00, and [he] was compensated at the 1<sup>st</sup> salary step for Sergeants. Recently,

the DEA approved a Collective Bargaining Agreement which included salary increases. With this agreement a Det. 3<sup>rd</sup> Grade, in grade, on February 23, 2006, would earn approximately \$70,032.00.

I am requesting that [his] salary step be adjusted to reflect this increase.

On August 15, 2006, the NYPD Deputy Commissioner denied the grievance as to the original grievant and all other similarly affected Sergeants. On November 6, 2006, the Union filed a request for arbitration. The Union claimed that the original grievant and other similarly situated Sergeants were denied increases granted to Detectives in the DEA Agreement, unlike other 3<sup>rd</sup> Grade Detectives who were promoted to Sergeants on later dates. The Union cited Article XX, § 1(a), of the SBA Agreement, which defines a grievance as:

(1) a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement;

(2) a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the Police Department affecting terms and conditions of employment. . . .

The request for arbitration requests “an order making whole those Sergeants who have been denied the salary increase approved by the Detective Endowment Association for a Detective 3<sup>rd</sup> Grade, in grade, on February 23, 2006.” The City filed its petition challenging arbitrability on December 18, 2006.

### **POSITIONS OF THE PARTIES**

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

The City asserts that the request for arbitration must be dismissed because there is no nexus between Grievants' demand for 3<sup>rd</sup> Grade Detective salary and Article XX, § 1(a)(1) or (2) of the

SBA Agreement. SBA requests salary increases found in the DEA Agreement but Grievants are not covered by the DEA Agreement, nor does either collective bargaining agreement incorporate or modify the other. Additionally, other than conclusory allegations, Respondent has not alleged facts to support a claim that the NYPD misapplied a rule, regulation, or policy.

The City contends that Grievants received any retroactive monies owed to them under the DEA Agreement, and will be entitled to receive retroactive monies as Sergeants when a successor agreement is negotiated to replace the 2003-2005 SBA Agreement.

**Union's Position**

In its response to the petition, the Union contends that the SBA Agreement, Article VI, sets forth the base annual salary and increment rates for employees within SBA, and that it seeks to enforce the contractual and established practice of the parties in the defined scope of base salary.<sup>1</sup> The language in Article VI, §1 that sets the “base” salary for unit members provides for the floor, not the ceiling, on the salary rate for unit members. The “base” salary listed therein is not the mandated salary for individuals promoted from a separate unit. SBA asserts that it will present at the arbitration evidence of the established practice and procedure that when an individual is promoted to a Sergeant position from a position of higher salary, that promotion will not result in a loss of pay to the individual employee. Effectively, the parties’ practice has been to “hold harmless” the promoted employee.

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<sup>1</sup> Article VI, § 1 states that “the following base annual salary and increment rates shall prevail for employees during the term of this Agreement,” then it continues to lists the applicable class of positions, the corresponding “Step”, the precise salary for unit members at each Step, and the effective date.

**DISCUSSION**

In this case, the Union seeks arbitration on the question of whether the NYPD violated the SBA Agreement when Sergeants who were recently promoted from Detective did not receive a salary increase that was granted to Detectives after the DEA Agreement became effective, as per NYPD policy and procedure. This Board finds that the Union has not established a reasonable relationship between the subject matter of the grievance and the SBA Agreement.

Pursuant to NYCCBL § 12-302, this Board's policy is to favor and encourage the use of arbitration to resolve grievances. However, the Board cannot mandate the parties to arbitrate disputes that do not fall within the scope of the parties' agreement to arbitrate. *District Council 37*, Decision No. B-13-2006 at 8-9; *Service Employees Int'l Union, Local 246*, Decision No. B-9-2006 at 8; *Patrolmen's Benevolent Ass'n*, Decision No. B-22-2004 at 7. When the arbitrability of a grievance is challenged, 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, the first prong of the test has been met. There is no dispute that the SBA Agreement provides for grievance and arbitration procedures concerning discipline, and there is no claim that arbitration of the issue would violate public policy or that it is restricted by statute. Thus, the issue is whether a reasonable relationship exists between the subject matter of the grievance and the SBA

Agreement.

We first address the issue of whether the Union is able to show a reasonable relationship between the Union's claim and Article XX, § 1(a) of the SBA Agreement, which defines the term "grievance" as a claimed violation misinterpretation or inequitable application of the provisions of the SBA Agreement. In the analogous case of *Social Service Employees Union, Local 371*, Decision No. B-28-83, employees of a not-for-profit social services agency who became City employees and members of Local 371 upon the City's purchase of the service contract with the State, and under which they performed services, sought to grieve under the Local 371 collective bargaining agreement the City's failure to award them salary increases due under the original contract with the State. The Board determined that grievants' claim was not arbitrable because the grievance must involve "a dispute concerning the application of the terms of this agreement." (Emphasis in original). *Id.* at 8.

We stated:

Here, the grievants' claim arises not under the terms of the Local 371 agreement but under a contract between the City and a third party. . . . It is evident that the Union is not a party to the [State]-City contract, and that the mutual rights and obligations created by that contract run only between the State and the City. In addition, neither the [State]-City contract nor the Local 371 agreement refers to each other. Thus, it cannot be argued successfully that one agreement incorporates the other.

*Id.* at 8.

In the instant matter, although the City is a party to both the SBA and DEA Agreements, those Agreements, like those in *Social Service Employees Union, Local 371*, Decision No. B-28-83, are two distinct and unrelated agreements, and SBA seeks to grieve under the DEA Agreement despite its contention that there has been some violation of Article VI, § 1 of the SBA Agreement, which concerns salaries. The Union has maintained throughout the grievance procedure that these

Sergeants are entitled to the pay of 3<sup>rd</sup> Grade Detectives under the DEA Agreement, and it references the DEA Agreement repeatedly, asking in the request for arbitration for “an order making whole those Sergeants who have been denied the salary increase approved by the Detective Endowment Association” as a remedy. The Union has not pointed to a relevant contractual provision in the SBA Agreement through which it may proceed to arbitration. The essence of the Union’s claim is a demand that the NYPD pay Grievants, who are currently Sergeants, a salary provided by the DEA Agreement. Since Grievants are not covered by the DEA Agreement, and since it has not been shown that either the SBA or DEA Agreements incorporate, reference, or modify the other, the Union has failed to establish a nexus between its demand for Grievants to be paid a 3<sup>rd</sup> Grade Detective salary and Article XX, § 1(a)(1) of the SBA Agreement.

Although the Union claims in its response to the petition that Article VI, § 1 of the SBA Agreement regarding base salaries has been violated, it has failed to identify anything in that provision that would afford the Union the right to proceed to arbitration in this matter. The wage rates, as listed in the SBA Agreement, are explicit and specific to each Step, and while the SBA claims that NYPD violated Article VI, none of the salaries for which it asks are referenced in that provision or any other provision of the SBA Agreement. Therefore, the Union has not shown a nexus between its claim and Article XX, § 1(a)(1) of the SBA Agreement.

Furthermore, the Union cannot establish a nexus between its demand for Grievants to be paid a 3<sup>rd</sup> Grade Detective salary and Article XX, § 1(a)(2) of the SBA Agreement, which defines the term “grievance” as a claimed violation, misinterpretation or misapplication of the rules, regulations or procedures of the NYPD affecting terms and conditions of employment. In prior cases, we have found arbitrable certain alleged violations of agency written rules, regulations, or policies when these

are incorporated within the definition of a grievance. *Civil Service Bar Ass'n*, Decision No. B-5-2005. When there is a broad definition of the term “grievance,” this Board has authorized arbitration even if the arbitration clause makes no specific mention of the particular type or class of dispute presented in a given case. *Id.* at 11-12; *Local Union No. 3, IBEW*, Decision No. B-1-78 at 13-14. However, in the instant matter, although the Union claims that NYPD has a policy, practice or procedure where Sergeants are held harmless in this situation, and granted the higher pay rate even though that rate stems from another Agreement, the Union does not point to a single NYPD rule, regulation, or procedure which supports this claim.

Since the Union failed to claim a violation of a specific rule, regulation, or procedure, there can be no nexus between the Union’s claim and Article XX, § 1(a)(2) of the SBA Agreement. *New York State Nurses Ass’n*, Decision No. B-42-2001. Therefore, this Board grants the City’s 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, the petition challenging arbitrability filed by the City of New York and the New York City Police Department, docketed as No. BCB-2585-06, hereby is granted; and it is further

ORDERED, that the request for arbitration filed by the Sergeants Benevolent Association, docketed as A-12104-06, hereby is denied.

Dated: March 29, 2007  
New York, New York

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER

CAROL A. WITTENBERG  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

ERNEST F. HART  
MEMBER

GABRIELLE SEMEL  
MEMBER