Patrolmen's Benevolent Ass'n, 79 OCB 16 (BCB 2007)

[Decision No B-16-2007] (Arb.) (Docket No. BCB-2592-07) (A-12157-07).

Summary of Decision: The City filed a petition challenging the arbitrability of a grievance filed by the Union alleging that NYPD improperly denied an employee overtime assignments in retaliation for the employee's decision to exercise his contractual right to receive overtime compensation in cash. The City contended that the grievance was not arbitrable because assignment of overtime falls within the scope of NYPD's managerial prerogative. The Board found that the grievance is arbitrable with respect to the limited question of whether NYPD's decisions concerning Grievant's overtime assignments were motivated by his engagement in Union activity because there was a contractual provision prohibiting discrimination based upon Union activity. Accordingly, the petition is dismissed. ***(Official decision follows.)***

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-

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

DECISION AND ORDER

On January 19, 2007, the City of New York and the New York City Policy Department ("City" or "NYPD") filed a petition challenging the arbitrability of a grievance brought by the Patrolmen's Benevolent Association ("Union" or "PBA") on behalf of Michael Barulich ("Grievant"). The grievance, filed on March 9, 2006 at Step III, asserts that NYPD violated Articles

III and XVIII of the parties' collective bargaining agreement when it rescinded two scheduled overtime assignments and denied Grievant future overtime assignments in retaliation for the Grievant's decision to exercise his contractual right to receive overtime compensation in cash, rather in compensatory time. The City contends that this grievance is not subject to arbitration because no nexus exists between the subject matter of the grievance, the denial of overtime assignments, and the source of the alleged right, the provisions of their contract, since assignment of overtime falls within the scope of NYPD's managerial prerogative. Since there is a provision in the parties' collective bargaining agreement which prohibits discrimination against employees based upon their Union activity and PBA alleges that NYPD's actions against Grievant were motivated by anti-Union animus, we find that the grievance is arbitrable with respect to the limited question of whether the rescission of Grievant's scheduled overtime assignments and the denial of future overtime assignments to Grievant were motivated by his engagement in Union activity. Accordingly, the petition is dismissed, and the grievance shall proceed to arbitration.

BACKGROUND

NYPD and PBA are parties to a collective bargaining agreement from August 1, 2002 to July 31, 2004, which is currently in status quo ("Agreement").

Grievant became a police officer in January 1986 and retired on January 31, 2006. For most of his 20 years of service, he was permanently assigned to the 19th Precinct, which is located in Borough Patrol Manhattan North ("Manhattan North"). For the last 15 years of his service, in addition to routine patrolmen's duties performed for the 19th Precinct, he served on the Barrier Unit, which set up and took down metal and wooden barriers used during parades and special events, and

was one of 17 officers within his command qualified to perform barrier duty.[1] Grievant served an average of five to seven shifts per month in the Barrier Unit, and exclusively elected to receive cash payments for overtime earned, rather than compensatory time.

According to the City, NYPD's Office of Management and Budget compiles a list of the top 400 overtime earners for each quarter of the fiscal year. According to the report covering the time period at issue in the instant matter, July to October 2005, Grievant, along with two other officers in the 19th Precinct, appeared in this report.[2] According to the City, presumably based partially on this report, "Grievant earned more overtime than any of the 2,475 members of the service assigned to Manhattan North in October 2005 and November 2005, and received the third most overtime in September 2005." (Reply, p. 2.)

Based upon these results, the Executive Officer of Manhattan North requested from Grievant's commanding officer a further breakdown of the overtime assignments Grievant performed for the period of August 2005 to October 2005. According to the Union but denied by the City, NYPD only requested this further breakdown for Grievant because he was targeted by NYPD due to his election to receive payment for overtime tours worked in cash, rather than compensatory time. On November 18, 2005, Grievant's commanding officer provided this additional report to the Executive Officer of Manhattan North, which indicated the dates, amount of hours and duties worked on each overtime tour worked by Grievant from August 1, 2005 to November 10, 2005. This report also demonstrated that most of Grievant's overtime assignments involved performing duties

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[1] Grievant also served in the Ceremonial Unit, which conducts the funeral services for officers.

[2] The City also provided an overtime accumulation report for November 2005, dated February 17, 2006.

for the Barrier Unit.

According to the City, upon investigating this matter, NYPD determined that Grievant, one of 17 officers qualified to perform duties in the Barrier Unit in the 19th Precinct and one of 157 officers qualified to do such in Manhattan North, had been circumventing equitable distribution guidelines by scheduling overtime assignments directly with the Barrier Unit. Although neither the City nor NYPD claim that Grievant violated any NYPD rule, regulation or procedure, the City asserted that "overtime opportunities for other . . . officers were limited as Grievant scheduled his own overtime opportunities in advance." (Petition, ¶ 11.)

According to the Union but denied by the City, on November 18, 2005, as a result of the report received by the Executive Officer of Manhattan North on that same day, an Inspector from the 19th Precinct contacted a Sergeant at the Barrier Unit and informed him that Grievant would no longer be assigned to that unit. Immediately thereafter, Grievant's assignment to work two tours were cancelled, and Grievant was the only officer frequently assigned to the Barrier Unit to have tours cancelled.

On November 28 and 29, 2005, Grievant was scheduled to receive Chemical or Biological Response Action ("COBRA") training. The record demonstrates that COBRA training provides anti-terrorism training to police officers and is designed to train them to combat the effects of mass casualties resulting from a chemical or biological weapons attack. This federally funded project is mandatory, non-discretionary training that is exclusively conducted on overtime. According to the Union, the receipt of this type of training by police officers was crucial, especially for Grievant who worked in Manhattan North and was frequently assigned to special events involving large crowds. Nevertheless, sometime between November 18, 2005 and November 28, 2005, Grievant's COBRA

training was cancelled and rescheduled for December 9 and 10, 2005.

On November 29, 2005, the Executive Officer for Manhattan North met with Grievant's Integrity Control Officer and, as a result of this meeting, Grievant's COBRA training scheduled for December 9 and 10, 2005 was cancelled because, according to the City, of "Grievant's high accumulation of overtime." (Reply ¶ 12.). According to the Union, officers assigned to the 19th Precinct received COBRA training on a prioritized basis; every other officer in the 19th Precinct had either attended or been scheduled to attend this training at the time of the cancellation of Grievant's training; and Grievant was the only officer to have his COBRA training cancelled and rescheduled on one or more occasions. According to the City, not all officers in the 19th Precinct or Manhattan North were scheduled to attend COBRA training, and, in fact, as of April 24, 2006, 40 officers from the 19th Precinct and approximately 40 percent of the 2,475 members of the service assigned to Manhattan North had not received COBRA training. (See Reply, p. 4.)

On December 7, 2005, the Commanding Officer for Manhattan North submitted a memorandum to the Chief of Patrol analyzing the assignment, utilization, and accumulation of overtime by officers. The memorandum contained, *inter alia*, a list of the ten uniformed members assigned to Manhattan North who have 18 or more years of service and are listed in the First Quarter Fiscal Year 2006 Top 400 Overtime Earners report. Grievant ranked fifth on this list and earned most of his overtime from "programmatic assignments," such the Barrier and Ceremonial Units, unrelated to work at his precinct. According to the City, one of the reasons for issuing this report was to stem the accumulation of overtime from programmatic assignments.

On December 27, 2005, Grievant announced his retirement, effective January 31, 2006, and at such date, he had not received either COBRA training or other overtime assignment since

November 18, 2005.

On March 9, 2006, the Union filed a Step III grievance on Grievant's behalf, pursuant to Article XXI of the Agreement.[3] This grievance was denied on June 16, 2006. On August 12, 2006, the Union appealed this determination and filed a Step IV grievance, which was also denied.

On January 4, 2007, PBA filed a request for arbitration claiming that NYPD violated Articles III and XVIII of the Agreement.[4] According to the Union, NYPD rescinded two of Grievant's scheduled overtime assignments and denied Grievant future overtime tours in retaliation for Grievant's exercising his right under the Agreement to receive overtime compensation in cash rather than in compensatory time. The Union seeks "compensation at the overtime rate of time and one half for the overtime tours that the grievant would have performed had he been assigned his usual and customary tours, as well as for two days of overtime COBRA training which the Department

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[3] Article XXI of the Agreement, in pertinent part, states:
For the purpose of this Agreement, the term "grievance" shall mean:

> 1. a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement
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> * * *
>
> It is understood and agreed by and between the parties that there are certain grievable disputes which are of a Department level or of such scope as to make adjustments at Step I or Step II of the grievance procedure impracticable, and, therefore such grievances may be instituted at Step III of the grievance procedure. . . ."

[4] Article III of the Agreement, in pertinent part, states:
All ordered and/or authorized overtime in excess of forty (40) hours in any week or in excess of the hours required of an employee by reason of the employer's regular duty chart if a week's measurement is not appropriate, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee.

Article XVIII of the Agreement, in pertinent part, states:
In accord with applicable law, there shall be no discrimination by the City against any employee because of Union activity.

improperly cancelled." (Request For Arbitration in A-121257-07.)

On January 19, 2007, the City filed the instant petition challenging the arbitrability of the Union's grievance.

POSITIONS OF THE PARTIES

City's Position

The City argues that the grievance should be dismissed because the Union cannot establish a nexus between the denial of Grievant's overtime assignments and Article III of the Agreement. The Board has consistently held that grievances involving the assignment of overtime that invoke contractual overtime provisions such as Article III are not arbitrable. Overtime assignments are a managerial prerogative, as set forth by New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-307(b), and Article III does not limit or diminish NYPD's exercise of this right.[5] Article III provides that employees who work a certain amount of hours are entitled to overtime payments at the rate of one and one half times the normal rate. In fact, Article III specifically recognizes NYPD's ability to limit overtime assignments because the provision states that only "ordered and/or authorized" overtime assignments are to be compensated. (Petition, Exhibit A.) In sum, Article III of the Agreement provides for the payment of overtime, but does not guarantee that an employee will be assigned overtime work.

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[5] NYCCBL § 12-307(b) states, in pertinent part:
It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of service to be offered by its agencies; . . . direct its employees; take disciplinary action; . . . maintain the efficiency of governmental operations; determine the methods, means and personnel by which governmental operations are to be conducted; . . . and exercise complete control and discretion over its organization. . . .

In addition, the City argues that PBA is unable to establish a reasonable relationship between the denial of Grievant's overtime assignments and Article XVIII of the Agreement. The Union failed to establish that Grievant's decision to receive payment for his overtime tours in cash, rather than compensatory time, is Union activity. Grievant is not a Union delegate, and PBA did not file an improper practice petition alleging that NYPD's denial of Grievant's overtime assignments was in violation of the NYCCBL. Moreover, the Board has held that availing oneself of a benefit contained in the collective bargaining agreement does not limit NYPD's right to assign overtime. Thus, the Union's instant request for arbitration must be dismissed.[6]

Union's Position

The Union contends that a nexus does exist between the rescission and denial of Grievant's overtime assignments and Article III of the Agreement. PBA recognizes that NYPD has the right to assign and/or authorize overtime. PBA further recognizes that PBA members are not entitled to or guaranteed overtime assignments. However, in the instant matter, NYPD used its authority to retaliate against Grievant by rescinding his previously scheduled overtime assignments and refusing to assign any future overtime assignments to him because of Grievant's decision to exercise his contractually protected right to receive payment for overtime assignments in cash, rather than in compensatory time. Since Article III guarantees officers the right to make this election concerning the form of compensation for overtime worked, and Grievant is being discriminated and retaliated

[6] In the City's submissions, the City suggests that NYPD had a legitimate business reason for the rescission and denial of Grievant's overtime assignments. Simply, Grievant accumulated an above average amount of overtime, and NYPD wanted to ensure a more equitable distribution of such assignments. Therefore, NYPD's motivation for taking away Grievant's overtime assignments was not based upon anti-Union animus, but rather upon NYPD's desire to equitably distribute overtime assignments.

against for exercising this right, a nexus exists.

The Union also argues that NYPD's decision to rescind Grievant's assignment to COBRA training, which is federally funded and non-discretionary, is arbitrable because Grievant was the only Union member in the 19th Precinct who did not receive this vital training. Denial of this training for an officer in a command containing several potential terrorist targets because of the form of overtime compensation he elects contravenes the Agreement and is irresponsible and dangerous as a matter of public policy.

In addition, the Union contends that, by rescinding Grievant's overtime assignments, as well as refusing to assign him any further overtime tours, NYPD violated the covenant of good faith and fair dealing that is an inherent part of every collective bargaining agreement. This covenant "embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party." (Answer, ¶ 60.) By rescinding Grievant's previously scheduled overtime assignments and refusing to assign any future overtime tours, NYPD is coercively deterring officers from exercising their contractual right to receive overtime payments in cash, in lieu of compensatory time, and thereby violating the covenant of good faith and fair dealing.

The Union further avers that a nexus exists between NYPD's actions taken against Grievant and Article XVIII of the Agreement. The Board has held that grievances alleging a violation of Article XVIII are arbitrable when "the alleged retaliatory act, in conjunction with alleged union activity, establish an arguable nexus between those acts and the contractual provisions." (Answer, ¶ 62.) Grievant's assertion of a contractual right, in conjunction with the denial of overtime

opportunities, establish a nexus between the grievance and Article XVIII of the Agreement.[7]

DISCUSSION

This Board's statutory directive is to promote and encourage impartial arbitration as the selected means for the resolution of grievances. NYCCBL § 12-302; *New York State Nurses Ass'n*, Decision No. B-21-2002. However, we cannot create a duty to arbitrate if none exists or enlarge a duty to arbitrate beyond the scope established by the parties. *Soc. Serv. Employees Union, Local 371*, Decision No. B-34-2002 at 4.

In determining 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 Services Employment Union*, Decision No. B-2-69 at 2; *see District Council 37, AFSCME*, Decision No. B-47-99 at 8-9, 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 7.

We find that the Union's grievance satisfies the first prong of arbitrability test because the parties are obligated to arbitrate their controversies through the grievance procedure set forth in the Agreement, and we find that no statutory, contractual or court-enunciated public policy restrictions are applicable. Thus, the remaining inquiry is whether a reasonable relationship exists between the

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[7] PBA asserts that this Board need not address whether the exercise of a contractual right is Union activity because that would delve into the merits of the underlying claim. Nevertheless, if the Board does address such issue, the Union avers that a union member's invocation of a collectively bargained for right constitutes protected activity.

acts complained of, the rescission of Grievant's scheduled overtime assignments and the denial of future overtime assignments to Grievant, and the provisions cited in the grievance, Articles III and XVIII of the Agreement. We find that a nexus does exist between NYPD's acts in the instant matter and Article XVIII of the Agreement, but not with Article III of the Agreement.

The case law regarding the arbitrability of overtime provisions such as Article III of the Agreement is well settled. This contractual provision "in no way provides or implies that an employee is entitled to perform overtime work in any particular circumstance. To the contrary, § 1(a) [of Article III] expressly recognizes that overtime must be ordered and/or authorized by the Police Department in order to be compensable." *Patrolmen's Benevolent Ass'n*, Decision No. B-27-86 at 6-7. Further, this Board has held that denial of overtime assignments and refusal to consider employees for overtime assignments in a particular manner is not reasonably related to this contractual provision, and thus not arbitrable. *See e.g. Patrolmen's Benevolent Ass'n*, Decision No. B-3-89 at 7; *Patrolmen's Benevolent Ass'n*, Decision No. B-16-87 at 12-13; *Patrolmen's Benevolent Ass'n*, Decision No. B-35-86 at 5-7.

For example, in *Patrolmen's Benevolent Ass'n*, Decision No. B-27-86, the union sought to arbitrate a grievance alleging a violation of the overtime provision in the parties' collective bargaining agreement occurred when an officer was involuntarily transferred out of a particular unit because he accumulated most of his overtime in this unit. This Board held that, even though this officer accumulated most of his overtime in this particular unit, his involuntary transfer was not reasonably related to the parties' contractual overtime provision because an officer has no entitlement to overtime assignments. *See Id*, at 6-8.

Here, PBA attempts to establish a nexus between the denial of Grievant's overtime

assignments and Article III of the Agreement. However, as set forth above, no reasonable relationship exists between the acts complained of and the provisions invoked therein. Grievant was not entitled to overtime with the Barrier Unit, the Ceremonial Unit, or any other assignment. The assignment of overtime to Grievant, or any other officer, falls within the realm of NYPD's managerial prerogative, and no language contained in Article III limits this right. As such, no nexus exists, and that part of the grievance must be denied.

However, an employer's managerial prerogative may "be circumscribed by the rights granted employees in a collective bargaining agreement [and] limitations on managerial rights, . . . once agreed to and reduced to a term of a collective bargaining agreement, are binding and enforceable for the duration of that agreement." *Sergeants Benevolent Ass'n*, Decision No. B-23-92 at 14; *see also District Council 37, Local 1549*, Decision No. B-50-98 ("It is clear that management can limit the exercise of its [management] rights by contract. Whether and to what extent it did so . . . are questions to be resolved by the arbitrator"). In Article XVIII of the Agreement, the City has bargained such a limitation of its managerial prerogative to assign and restrict overtime tours. NYPD must exercise its managerial prerogatives, such as the assignment of overtime, in a manner that does not discriminate against an employee for engaging in protected Union activity.

Before this Board determines the substantive arbitrability of the instant grievance we must first determine whether Grievant's invocation of a right enumerated in the Agreement, electing to receive all overtime compensation in the form of cash rather than compensatory time, constitutes protected Union activity. In several cases, the Board has found that an individual acting solely on his or her own behalf was not engaged in protected activity. *See Vazquez*, Decision No. B-36-2005 at 12; *see also Procida*, Decision No. B-2-87 at 11-12 (petitioner's complaints about an employer's

conduct were personal in nature because his letters advancing the complaints spoke only of his work assignments and the agency's failure to promote him). However, in the instant matter, the Union asserts that Grievant who asserted an individual claim that relates to a right founded in the Agreement is engaged in protected activity. The question is a novel one for this Board, and the New York Public Employment Relations Board ("PERB") only has dealt with this question once in an a decision issued by a PERB Administrative Law Judge. So, we look to the National Labor Relations Board ("NLRB"), which has addressed this subject extensively, for guidance on this matter.

The Supreme Court, in *NLRB v. City Disposal Systems, Inc.,* 465 U.S. 822, 831-832 (1984), upheld NLRB's long-standing doctrine, first enunciated in *Interboro Contractors, Inc.,* 157 NLRB 1295, 1301-1302, *aff'd NLRB v. Interboro Contractors, Inc.*, 388 F.2d 495, 501 (2d Cir. 1967), that individual employees who attempt to enforce the provisions of a collective bargaining agreement are engaged in protected activity. In the *City Disposal Systems, Inc.* case, a garbage truck driver was discharged when he refused to drive a truck that he honestly and reasonably believed to be unsafe because of faulty brakes, and the parties' collective bargaining agreement provided that employees were not obligated to drive unsafe trucks. The Court held that this employee's refusal to drive the potentially unsafe truck constituted protected activity, and endorsed NLRB's *Interboro* doctrine, which, recognizes that an employee's honest and reasonable invocation of a collectively-bargained right constitutes concerted activity. *NLRB v. City Disposal Systems, Inc.,* 465 U.S. 822 at 837.

The Court reasoned that it would not make sense for a union to negotiate a collective bargaining agreement if individual employees could not invoke the rights thereby created against their employer. *Id.*, 465 U.S. 822 at 832. It further explained that

> when an employee invokes a right grounded in the collective-bargaining agreement,

> he does not stand alone. Instead, he brings to bear on his employer the power and resolve of all his fellow employees . . . [and] was in effect reminding his employer that he and his fellow employees, at the time their collective-bargaining agreement was signed, had extracted a promise from City Disposal that they would not be asked to drive unsafe trucks.

Id. The Court further reasoned that a single employee can engage in concerted activity, such as joining and/or assisting labor organizations. Since individual actions are protected, the invocation of a collectively bargained-for right by an individual employee is also afforded such protection.

The holdings in the *Interboro Contractors, Inc.* and the *City Disposal Systems, Inc.* cases provide support for a conclusion that we now apply in our forum, that an individual can be engaged in protected Union activity if the individual asserts a right founded in the parties' collective bargaining agreement. The Court and the NLRB held that the invocation of a contractual right is protected because it is concerted activity protected under § 7 of the National Labor Relations Act. Even though the NYCCBL proscribes adverse employment actions taken against employees for Union activity and not "concerted" activity, this Board nevertheless finds that invocation of a collectively bargained-for right falls within the scope of Union activity. Therefore, in adopting the *Interboro* doctrine, we similarly find that Grievant's election to be paid in cash for overtime tours worked rather than in compensatory time, constitutes an honest and reasonable invocation of a collectively-bargained right, and, therefore, falls under the auspice of protected Union activity.

In reaching this conclusion, we note that a PERB Administrative Law Judge similarly concluded that an employee who invokes a right set forth in the collective bargaining agreement is engaged in concerted, protected activity. In *New York City Transit Authority*, 20 PERB ¶ 4575 (1987), an employee was disciplined for handing out flyers detailing the facts involved in his suspension. The PERB Administrative Law Judge held that this employee was engaged in protected

activity because, by protesting against his discipline, he was attempting to enforce the "just cause" discipline provision in the parties' collective bargaining agreement on his behalf, as well as on the behalf of his fellow employees. *See New York City Transit Authority*, 20 PERB ¶ 4575 at 4693 (1987).

Returning to the issue of substantive arbitrability, we now must determine whether the subject matter of the instant grievance is reasonably related to the contractual provisions cited therein. We have held that a grievance alleging discrimination or retaliation for engaging in union activity is arbitrable when the parties' collective bargaining agreement contains a provision prohibiting discriminatory or retaliatory acts taken against employees for engaging in union activity because a nexus exists between the subject matter of the grievance and the contract itself. *See Local 30, Int'l Union of Operating Engineers*, Decision No. B-7-2006. In that case, the grievant alleged that he had been disciplined for filing previous grievances and that the parties' collective bargaining agreement contained a provision that stated "the employer agrees not to discriminate in any way against any employee for union activity." *Id.* at 9. The Board held that filing grievances is union activity, and there is a reasonable relationship between filing the grievance claiming he was disciplined for engaging in union activity and that particular contract provision. *See id.* at 14; *see also Patrolmen's Benevolent Ass'n*, Decision No. B-15-98 at 6.

Here, Grievant, by exercising his right under Article III § 1(a) of the Agreement to receive payment for overtime worked exclusively in cash, rather then in compensatory time, engaged in protected Union activity. According to the Union, Grievant's scheduled overtime tours were rescinded and he was prevented from receiving any new overtime tours because of Grievant's invocation of this contractual right. Furthermore, Article XVIII of the Agreement clearly states that

discrimination against employees for engaging in Union activity is prohibited. Therefore, since Article XXI states that a claimed violation of a provision of the Agreement is arbitrable, and there is a reasonable relationship between the subject matter of the instant grievance and the Agreement, we find that the instant matter is arbitrable. *See Local 30, Int'l Union of Operating Engineers*, Decision No. B-7-2006 at 14.

To the extent that the City attempts to litigate the underlying merits of this grievance before this Board, "it is well settled that the Board in deciding questions of arbitrability will not inquire into the merits of a dispute." *Soc. Serv. Employees Union, Local 371*, Decision No. B-31-82 at 13; *see also Correction Officers Benevolent Ass'n*, Decision No. B-42-2002 at 7. As such, we need not examine the City's proffered legitimate business reason concerning its motivation for rescinding and denying Grievant overtime tours.

We also find unpersuasive the City's argument that the Union's failure to file an improper practice is dispositive. Grievant, under the terms of Article XVIII of the Agreement, has an independent contractual right to proceed through the grievance procedure regarding claims of discriminatory acts against employees for engaging in Union activity. Grievant is not prevented from exercising those rights by the existence of other, independent means of advancing his claim. We, therefore, find the instant matter raised herein to be arbitrable and deny the instant 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 filed by the City of New York and the New York City Police Department, docketed as BCB-2592-07, and the same hereby is, dismissed; and it is further

ORDERED, that the request for arbitration filed by Patrolmen's Benevolent Association, on behalf of Michael Barulich, docketed as A-12157-07, and the same hereby is granted.

Dated: May 3, 2007
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

I concur. CHARLES G. MOERDLER
MEMBER