

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

NEW YORK CITY HEALTH  
HOSPITALS CORPORATION

-and-

LOCAL 237, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

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DECISION NO. B-25-75

DOCKET NO. BCB-226-75

DECISION AND ORDER

The Union requests arbitration of its grievance that Frank Boddie, a Special Officer in the NYC Health and Hospital Corporation, was illegally discharged. The Union claims that the grievant's discharge was in violation of Article VI, Section 2 of the contract and seeks as a remedy reinstatement of the grievant. Article VI, Section 2 describes the five steps of the contractual grievance procedure.

The grievance stems from the employer's refusal to grant the grievant a leave of absence without pay. The failure of the Corporation to grant the leave resulted in the grievant's termination of employment because he was, therefore, away without leave and presumed to have resigned.

The City challenges the arbitrability of the grievance on two grounds:

1. The grievant and respondent Union waited almost seven months from the alleged improper denial of grievant's request for a leave of absence without pay before instituting a grievance (from on or about March 24, 1974 until on or about October 10, 1974).
2. The grievant resigned from his employment to accept employment elsewhere. A voluntary resignation by an employee is not arbitrable."

The City points out that the grievant, by his own admission, knew that his leave of absence was denied on or about March 24, 1974. The grievant, on or about February 21, 1974, had requested approval of leave to commence on March 3, 1974 and stated that he did " ... not know that my leave was not approved until three weeks thereafter ..."<sup>1</sup> The parties' contract permits a grievance to be filed not later than 120 days after the date on which the grievance arose. It is the City's position, therefore, that the grievance herein was "grossly untimely." The City also notes that the grievance was denied at Step JV of the procedure for this reason.

The City argues that upon information and belief, the grievant resigned his employment at Sydenham Hospital on or about March 3, 1974, in order to accept employment elsewhere. "He never reported to Sydenham Hospital thereafter and failed to notify the hospital as to his whereabouts or of his intentions of returning to work."

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Section 11:5 of the Health and Hospital Corporation's Personnel Rules and Regulations states:

"An employee who is absent for 20 consecutive scheduled work days without approved leave and without having notified the appropriate persons in the manner prescribed by the Appointing Officer shall be deemed to have resigned."

In light of this rule, the City claims that the grievant "actually and/or constructively resigned from his employment" in March 1974.

In its Answer, dated June 23, 1975, the Union disputes the City's claim that the grievant waited almost seven months before instituting a grievance. The Union maintains that "there was a continual effort to process the grievance which was denied by agents of the Hospital Corporation."<sup>2</sup> In support of its position, the Union submits a letter, dated July 31, 1974, from Mayor Abraham Beame to Mr. Boddie,<sup>3</sup> which, it is argued, indicates that the grievant tried to process a grievance and regain his job.

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The Step IV decision of OLR's Review Officer, John Romanow, indicates that the grievance was not filed at Step IV by the Union, but by a Legal Aid Attorney.

<sup>3</sup>The substance of the Mayor's letter is as follows:

"Dear Mr. Boddie,

Thank you for your recent letter.

I am referring it for action to the Health and Hospitals Corporation. They will be in direct contact with you as soon as possible.

The Union also denies that the grievant resigned to accept employment elsewhere: "To say that an employee who applies for a leave of absence and finds out three weeks later that the leave of absence is denied has voluntarily resigned, is a blatant distortion of the facts."

Finally, the Union argues that up until now the City had not raised the question of arbitrability, implying that the City should now be barred from doing so.

In its Reply to the Union's Answer, the City argues that the letter from Mayor Beame to the grievant is irrelevant to the instant matter because "it can in no fashion be considered the processing of a grievance by respondents, in an attempt to meet our challenge concerning the untimely filing of the grievance."

The City further alleges that the Union, in its Answer, in effect concedes that the issue herein is not an unlawful discharge, but rather the refusal of the Corporation to grant a requested leave of absence. The Answer admits, continues the City, that the grievant learned "... three weeks later that the leave of absence is denied .... 11 This admission, argues the City, supports its position that the filing of the grievance was untimely and that the matter being challenged is not a termination from service.

Discussion

It is well settled that questions of procedural arbitration, including the timeliness of filing of a grievance and the timeliness of a request for arbitration, are for the arbitrator. (See OLR v. Social Service Employees Union, Decision No. B-6-68; OLR v. Social Service Employees Union, Decision No. B-7-68; Health & Hospitals Corporation v. Local 1549, D.C. 37, Decision No. B-18-72.) In the instant case, the question of whether the grievant failed to follow the grievance procedure time table, and if so, whether such failure renders his grievance non-arbitrable on the merits is a matter to be determined by the arbitrator whose function it is to apply and interpret the contract.

Article VI, Section 1 of the contract defines a grievance as

- "(A) A dispute concerning the application or interpretation of the terms of this collective bargaining agreement;
- (B) A claimed violation, misinterpretation or misapplication of the rules or regulations, existing policy or orders applicable to the agency which employs the grievant affecting the terms and conditions of employment ... ;
- (E) A claimed wrongful disciplinary action against an employee."

The grievant's claim of illegal discharge comes within this definition. The City's assertion that the grievant voluntarily resigned from his job and that the HHC properly applied Section 11:5 of its Personnel Rules and Regulations calls

for a determination of the merits of the dispute and is, therefore, a question for the arbitrator.

DETERMINATION AND 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 Union's request for arbitration be, and the same hereby is, granted; and it is further

ORDERED, that the City's petition be, and the same hereby is, denied.

NEW YORK N.Y.

DATED: New York, N.Y.  
September 17, 1975

ARVID ANDERSON  
C h a i r m a n

WALTER L. EISENBERG  
M e m b e r

ERIC J. SCHMERTZ  
M e m b e r

EDWARD F. GRAY  
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JOSEPH J. SOLAR  
M e m b e r

N.B. Alternate City Member Roche dissents.