HHC v. CIR, 15 OCB 28 (BCB 1975) [Decision No. B-28-75 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Petitioner,

DECISION NO. B-28-75

DOCKET NO. BCB-238-75

-and

COMMITTEE OF INTERNS AND RESIDENTS on behalf of JOINT HOUSE STAFF OF METROPOLITAN and FLOWER and FIFTH AVENUE HOSPITALS,

Respondent.

DECISION AND ORDER

The Committee of Interns and Residents on behalf of the Joint House Staff of Metropolitan and Flower and Fifth Avenue Hospital requests arbitration of the Joint House Staff's grievance that it is being denied representation on the Medical Board of Metropolitan Hospital in violation of Article XII, Section 1, of the collective bargaining agreement between the City, the New York City Health and Hospitals Corporation (the Corporation) and the Committee of Interns and Residents (the Committee). The Committee seeks, as remedy, an order directing the officers and directors of the Corporation and of Metropolitan Hospital to admit the duly elected representative of the House Staff, and his successors, to all meetings of the Medical Board, and to afford to such representatives all rights guaranteed House Staff Presidents by the collective bargaining agreement.

The contract between the parties, covering the period October 1, 1974 to September 30, 1976, provides in Article XII, Section 1:

> "Each Corporation Hospital Medical Board shall include in its regular voting membership two representatives of the House Staff of such Hospital, one of whom shall be the President of the House Staff, the other to be chosen by vote of the House Staff. The President of the House Staff shall also serve as a voting member of the Executive Committee of the Medical Board."

The Committee's demand for arbitration is based on Article XIV, Section 3, of the contract, which provides, inter alia, that decisions of the President of the Corporation may be taken to impartial arbitration solely by the Committee pursuant to procedures established by the Board of Collective Bargaining.

The Corporation, challenging the arbitrability of the grievance, argues that the grievance involves Dr. Steven Stowe, who was not at any material time herein employed by the Corporation, but rather was and is presently employed exclusively by Flower and Fifth Avenue Hospital. As Article 1, Sections 1 and 2 of the contract provide that the agreement is solely applicable to house staff officers who "are paid directly by the City or Corporation,

whichever the employer may be, and not through an intermediary," the Corporation maintains that Dr. Stowe is not an employee covered by the collective bargaining agreement.

The Corporation further contends that the grievant as named, the Committee of Interns and Residents on behalf of the Joint House Staff of Metropolitan and Flower and Fifth Avenue Hospital, is not an entity under the collective bargaining agreement or in fact. The Corporation notes that it has no combined house staff with any voluntary hospital, nor is there any provision for same under the terms of the collective bargaining agreement. Thus, as Article XIV, Section 1, provides, "A grievance may be brought by an individual house staff officer and the Committee, or by the Committee alone," the Corporation argues that the named grievant is not one who may file a grievance within the scope of the grievance procedure.

In its Answer, the Committee argues that Dr. Stowe is the legitimate representative of the combined house staffs, regardless whether he is paid by metropolitan or Flower and Fifth Avenue Hospitals. The Committee asserts that this is the issue for the arbitrator, rather than a question of arbitrability. In addition, the Committee maintains that the grievance is brought by the Committee, which is a proper party grievant.

Background

The grievance arose when Dr. Steven Stowe, President of the combined house staffs of Flower and Fifth Avenue Hospital, Metropolitan Hospital and Byrd S. Coler Hospital, was asked to leave the July 15, 1975, meeting of the Medical Board of Metropolitan Hospital by Dr. Phillip Henig, President of the Medical Board of the Metropolitan Hospital.

Apparently, this request was based on the belief that Dr. Stowe is not entitled to the representative status he claims. The Corporation alleges that Dr. Stowe is signatory to an individual contract with the New York Medical College as a first year Resident in Radiology. He is paid by and working at Flower and Fifth Avenue Hospital. if Dr. Stowe is not an employee covered by the contract (on the basis of Article I, Sections 1 and 2, noted above), then, the Corporation argues, "denial of recognition of the status [claimed] held by Dr. Stowe would extend to Article XII, Section 1, and other pertinent sections bestowing certain participatory status under the contract."

Discussion

In deciding issues of arbitrability, the Board has repeatedly held that the scope of its inquiry is limited to "ascertaining whether the parties are in anyway obligated

to arbitrate their controversies and, if so, whether the obligation is broad enough to cover the particular controversy presented."[1] Indeed, the Board has frequently cited the holding of Steelworkers v. Warrior and Gulf Navigation Co., 46 LRRM 2416 (1960), to the effect that where a labor contract contains provisions for arbitration of disputes, a presumption of arbitrability exists.[2]

Article XIV, Section 1 of the contract states:

> The term "grievance" shall mean
>
> (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 of the Corporation affecting the terms and conditions of employment and training program;
>
> (C) A claimed assignment of Employees to duties substantially different from those stated in their job specifications; or
>
> (D) A question regarding the non-renewal of the appointment of a House Staff Officer.
>
> A grievance may be brought by an individual House Staff Officer and the Committee, or by the Committee alone.

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[1] See City of New York v. Communications Workers of America, Decision No. B-8-74 and Board decisions cited herein.

[2] See e.g., NYC Housing Authority v. Superior officers Association NYC Housing Authority Police Union, Decision B-18-74.

As noted, Article XIV, Section 3, of the agreement provides for impartial arbitration of all decisions of the President of the Corporation solely at the request of the Committee.

The question is whether this particular controversy is covered by the parties agreement to arbitrate. Dr. Stowe's removal from a meeting of the Metropolitan Hospital Medical Board and his employment at all times material herein by Flower and Fifth Avenue Hospital is not contested. The dispute lies in the Corporation's contention that, on the basis of the latter fact, Dr. Stowe must be denied the representation status he claims under the contract, as Article I, Section 1, states that the agreement is solely applicable to employees who "are paid directly by the City or Corporation, whichever the employer may be, and not through an intermediary." A dispute concerning the legitimacy of the representational status claimed held by a non--employee, argues the Committee, is an issue for the arbitrator.

We agree with the Committee's contention. Simply stated, the Committee is claiming the Corporation has violated Article XII, Section 1, of the collective bargaining agreement. The Corporation takes the position that it has not. The ultimate resolution of this dispute calls for an interpretation of the terms "representative of the House Staff" and "President of the House Staff" and consideration

of whether the contract dictates that such positions are to be held only by persons who "are paid directly by the City or the Corporation, and not through an intermediary." Clearly, this is a dispute "concerning the application or interpretation of the terms of this collective bargaining agreement." (Article XIV, Section 1[A]). The parties have not been able to resolve the grievance; the contract mandates that such unresolved disputes be taken to impartial arbitration. (Article XIV, Section 3.)

Similarly, the Corporation's second argument challenge arbitrability, that "the named grievant is not one who may file a grievance within the scope of the grievance procedure" presents an issue which should be resolved by impartial arbitration since the status of a joint house staff as a "grievant" under the contract requires interpretation of Article XIV, Section 1 of the collective bargaining agreement. Moreover, whether the joint house staff is entitled to representation on the Medical Board of Metropolitan Hospital requires interpretation of the term House Staff as used in Article XII, Section 1 of the contract. As stated, such unresolved disputes may be taken by the Committee to impartial arbitration.

The Corporation's challenge to arbitrability can be dismissed on further grounds. Its petition alleges that

this dispute involves a non-employee. However, the contractual right to a voting membership on the Medical Board is not uniquely personal to the individual, rather it is a right possessed by a group of employees within the bargaining unit, i.e., employees of Metropolitan Hospital. It is the claimed right of this group of employees to have a representative of their choosing hold a voting membership on the Medical Board which the Committee seeks to enforce, not a right personal to Dr. Stowe. As the Corporation itself states, the grievance is brought by "the Committee of Interns and Residents on behalf of the Joint House Staff of Metropolitan and Flower and Fifth Avenue Hospitals." The Committee does not seek to arbitrate this grievance on behalf of Dr. Steven Stowe. The non-employee status of Dr. Stowe has no bearing on the issue of arbitrability of this dispute.

This is not to ignore the Corporation's objection to the organization chosen to represent this group of employees, the Joint House Staff of Metropolitan and Flower and Fifth Avenue Hospitals. In Tobacco Workers, v. Lorillard Corp., 78 LRRM 2273 (4th Cir. 1971), the Court answered a similar contention by stating:

> "Whether a group of employees who have an identical complaint must each file separate grievances or whether they can instead, in the interest of administrative convenience, choose a

> representative to file a single grievance for the entire group is clearly a question of grievance procedure which arises as a collateral issue to the substantive claim in the grievance and as such is a question to be decided by an arbitrator."

Similarly here, the issue as to whether the employees of Metropolitan Hospital can designate the Joint House Staff as their representative for the instant grievance is clearly a procedural question collateral to the substantive claim of the Committee. The Board has consistently held that questions of procedural arbitrability are for the arbitrator.[3]

Accordingly, we find that there exists a bona fide dispute which the parties have contractually agreed to have resolved by impartial arbitration.

0 R D E R

Pursuant to the power vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the petition filed herein by the New York City Health and Hospitals Corporation is, dismissed, and it is further

[3] See NYC Health and Hospitals Corp. and Local 1549, DC 37, Decision No. B-18-72, and the Board decisions cited herein.

ORDERED, that this proceeding be, and the same hereby is, referred to an arbitrator to be agreed upon by the parties or appointed pursuant to the Consolidated Rules of the office of Collective Bargaining.

DATED: New York, N.Y.
November 5, 1975

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER

THOMAS J. HERLIHY
MEMBER

EDWARD F. GRAY
MEMBER

N.B. Member Edward Silver did not participate