HHC v. CIR, 19 OCB 6 (BCB 1977) [Decision No. B-6-77 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

THE NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, DECISION NO. B-6-77

Petitioner DOCKET NO. BCB-270-77
-and- A-643-77

THE COMMITTEE OF INTERNS AND
RESIDENTS

Respondent
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DETERMINATION AND ORDER

The Committee of Interns and Residents (CIR) filed a request for arbitration on March 28, 1977, concerning the withholding of house staff officers' paychecks at Bellevue Hospital Center. The Union contends that the hospital's position on this matter constitutes a violation of Sections 1 and 7 of Article XV of the parties' collective bargaining agreement which provides as follows:

Article XV
Disciplinary Action

Section 1.

"House Staff Officers shall have the right to a hearing before being subjected to disciplinary action except as hereinafter provided. There shall be no disciplinary action taken against a House Staff Officer except for cause. No House Staff Officer's pay check shall be withheld for disciplinary reasons, without due process.

Section 7.

"It is further understood that no salary may be withheld from any House Staff Officer prior to a determination of the House Staff

Affairs Committee."

On April 7, 1977, the New York City Health and Hospitals Corporation (HHC) filed a petition challenging arbitrability alleging that the dispute is medical in character and thus subject to a grievance procedure which does not provide for

arbitration, that the action complained of is not controlled by the contract provision claimed to have been violated, and that the requested remedy of legal fees and costs is not provided for by the contract or by the Consolidated Rules of the Office of Collective Bargaining, and therefore is not an arbitrable remedy.

The grievance herein is directed against a resolution of the Medical Board of Bellevue Hospital Center passed on January 12, 1977. The resolution states:

> "Any Resident who is remiss in completing the medical records for which he/she is responsible (remiss being defined as having an accumulation of ten or more incomplete charts for over 30 days) will not have access to his/her paycheck until Administration is notified, in writing, by the Chief of Service that the medical records have been completed or an acceptable plan has been agreed upon."

The HHC contends that although CIR's grievance is "couched in language attempting to hide its medical nature, (it) basically involves a procedure for the completion of medical records." The contents of these records may involve medical procedures and terminology "foreign to the layman" and for this reason, HHC concludes, the dispute is subject to the special grievance procedure established in the parties' contract for matters medical in nature.

In support of the above-stated argument, HHC submitted as an exhibit with its petition a letter, dated March 7, 1977, from Joseph Ransohoff, M.D., President, Bellevue Hospital Center Medical Board, to CIR Executive Director Edward T. Gluckman, M.D. Referring to the January 12th resolution noted previously, Dr. Ransohoff's letter stated:

> "Since this is a Medical Board policy and has the support of each Chief of Service of the hospital the issue of incomplete medical charts is a medical as well as an administrative problem."

Dr. Ransohoff's March 7th letter also addressed the CIR's contention that the withholding of paychecks constitutes a disciplinary matter.

> "House staff officers' paychecks are not being withheld for disciplinary reasons without due process, since the requirement of the house officer to receive his pay check is simply to present his Chief of Service with a satisfactory plan for completion of his medical records obligations. On presentation to the Administration of the Director's signature to the attached form letter, the house officer's check is immediately dispensed to him. The offices of Chiefs of Service of all Services are conveniently available within Bellevue Hospital Center and easily reachable by the house officers concerned."

In response, the CIR argues that the instant grievance does not question the medical necessity for the completion of medical charts nor does it involve the "complex medical procedures and medical terminology "used therein The purpose of the bifurcated

grievance procedure, CIR contends, is to insure that where medical expertise is relevant to the resolution of a house staff grievance, appropriate machinery exist so that the necessary medical input is available. However, CIR continues, no specialized medical competence is required in the instant case for resolution of the underlying grievance.

> "Medical knowledge and skill is irrelevant to a determination whether adequate procedural safeguards were employed prior to withholding of employee paychecks. That kind of determination, essentially one of contract interpretation in a jurisprudential framework, is rather, peculiarly within the competence of an arbitrator."

Concerning the origin of the disputed policy, CIR contends that involvement by a hospital medical board is not determinative of a grievance's medical or administrative character.

> "Any other view would permit the Corporation to characterize as medical clearly administrative grievances relating, for example, to unilateral changes of vacation entitlement or salary scale, if implemented upon recommendation of a hospital Medical Board. That clearly was not what the parties intended. It would be inequitable and an egregious violation of the parties' intent to allow the Corporation to insulate administrative actions of its Executive Directors from the scrutiny of an arbitrator, mutually bargained for in contract negotiations, by bootstrapping such action with supportive Medical Board resolutions."

## DISCUSSION

It is difficult to view the withholding of an employee's paycheck for failure to perform required duties as anything other than a disciplinary action. Examination of the parties'

collective bargaining agreement indicates that the withholding of salary as a disciplinary measure was contemplated and specifically provided for in Article XV. Article XV establishes procedures designed to provide employees with due process safeguards in the event that such a penalty is sought by their superiors. We do not believe that it is a mere coincidence that the only references to the possibility of withholding an employee's pay are made in the article of the contract entitled "Disciplinary Action.

There is ample evidence in the record that the alleged failure of house staff officers to complete medical charts is not a problem peculiar to Bellevue Hospital Center. The CIR has demonstrated through exhibits that this problem has been treated as a disciplinary matter at both Kings County and Sydenham Hospitals, which facilities are also under the auspices of the HHC. It is not clear why the HHC has taken this apparent inconsistent position with respect to the situation at Bellevue, but it is readily perceivable that the problem is not one whose solution requires the degree of medical competence necessary to remove it from the "administrative" grievance procedure which culminates in arbitration. At issue herein is not the necessity for or contents of medical charts but rather the method to be used by the HHC to enforce its requirement that such charts be timely completed.

The second substantive argument raised by the HHC is very closely related to its first ground for challenging the arbitration request and concerns the section of the contract claimed to have been violated by Bellevue. It is the HHC's contention that the dispute, being medical in nature, is not within "the meaning of disciplinary action, and on its face not subject to be deemed a violation of Article XV, Section 1 of the contract."

In addition to the above discussion concerning the nature of the grievance herein,this Board has previously ruled that a contention that the contract provision cited by the party seeking arbitration was not intended to deal with the claimed grievance goes to the merits of the matter and therefore is an argument appropriate for presentation to an arbitrator rather than the forum dealing with questions of arbitrability (see Board Decisions Nos. B-4-72 and B-8-74). The interpretation of contract terms and the determination of their applicability in a given case are functions reserved to an arbitrator.

The final challenge to arbitrability concerns a portion of the remedy sought herein by the CIR. HHC contends that a request for legal fees and costs is not provided for under the contract or the Consolidated Rules of the Office of Collective Bargaining, and therefore is not an arbitrable remedy.

CIR responds that the remedy fashioned by an arbitrator unless specifically prohibited by the parties' contract, is subject only to the arbitrator's informed discretion. In support of its position, CIR cites a case in which it and the HHC were involved, where an arbitrator's award of interest at the rate of 6% per annum on moneys due employees was upheld by the New York Supreme Court (Committee of Interns and Residents v. New York City Health and Hospitals Corporation, Sup. Ct. N.Y. County, N.Y. Law Journal, 8/6/76). Reference is also made to the United States Supreme Court decision in United Steelworkers v. Enterprise Wheel and Car Corporation, 363 U.S. 593, (1960), wherein the Court at 597 stated:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency."

A reading of the parties' contract reveals no limitation whatever on the power of an arbitration to fashion an appropriate remedy. In such cases, we have ruled that the authority of an arbitrator under the OCB's Consolidated Rules is virtuallv plenary and that the propriety of a desired remedy is a matter for the arbitrator and not for this Board to decide (see Board Decisions Nos. B-9-71, B-5-74, and B-1-75).

0 R D E R

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 Health and Hospitals' petition challenging arbitrability be, and 'the same hereby is, denied; and it is further

ORDERED, that the Committee of Interns and Residents' request for arbitration be, and the same hereby is, granted.

DATED: New York, N.Y.
June 22, 1977

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
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