NYSNA, 2 OCB 2d 32 (BCB 2009)

(Arb) (Docket No. BCB-2763-09) (A-13061-09).

***Summary of Decision*:** The New York City Health and Hospitals Corporation challenged the arbitrability of a grievance about nonpayment for overtime allegedly worked by six members of NYSNA from June 2007 to June 2008. The Union amended the Request for Arbitration twice, removing language which HHC had contended would not support arbitrable claims. Addressing HHC counsel's contention that at least the first amendment belatedly asserted claims, the Union asserts that HHC was on notice, from the outset of the grievance, of the nature of the claims. The Board finds the petition moot except as to contractual claims and finds that the Union has articulated sufficient, factual allegations supporting such claims to be heard by an arbitrator and refers to arbitration any question as to whether the claims articulated in the Request for Arbitration, as amended, were properly raised during the step grievance process. The Board also directs the parties to proceed to a determination on the merits of the claims should the arbitrator determine that the claims were timely raised. **(*Official decision follows.*)**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between-

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Petitioner,

-and-

THE NEW YORK STATE NURSES ASSOCIATION,

Respondent.

DECISION AND ORDER

On March 24, 2009, the New York State Nurses Association ("NYSNA" or "Union") filed a Request for Arbitration ("RFA") alleging that the New York City Health and Hospitals Corporation ("Corporation" or "HHC") had failed to pay seven of its members for overtime which they allegedly

worked between June 2007 and June 2008, asserting "abuse of managerial rights, disparate treatment with regard to overtime"; violations of the Citywide Agreement, Art. IV; "the Department of Labor Wage and Hour Division"; and the federal Fair Labor Standards Act, 29 U.S.C., ch. 8 ("FLSA"). (RFA, Pet. Ex. B) On May 4, 2009, the Corporation filed the instant petition challenging arbitrability, claiming that the members "are not employees covered" by the cited provision of the Citywide Agreement, and that "claims involving FLSA [ ] as well as claims of abuse of management rights and disparate treatment are beyond the scope of the" grievance process in the parties' collective bargaining agreement. (Pet., ¶ 7). The Union amended the RFA twice, removing the claims arising from non-contractual sources, and, after HHC objected to the assertion of claims arising out of a different article of the collective bargaining agreement and a side letter, stated its claim as asserting a "violation of the Collective Bargaining Agreement, including but not limited to, the Citywide Agreement, Article IV, Overtime." (Ans., Ex. E, F). As to the RFA in its current form, the Union asserts that HHC was on notice, from the outset of the grievance, of the nature of the claims. The Board finds that the Union has articulated sufficient, factual allegations supporting claims to be heard by an arbitrator and refers to arbitration any question as to whether the claims articulated in the instant RFA, subsequently amended, were properly raised during the step grievance process. We direct that, should the arbitrator determine that the claims were timely raised, the parties proceed to a determination in arbitration on the merits of the claims.

BACKGROUND

Seven Registered Nurses employed by HHC in the position of Staff Nurse in the behavioral health department at Kings County Hospital contend that, from June 2007 to June 2008, they worked

certain hours for which they were not paid. Specifically, they assert that, on dates specified in the pleadings, they worked through lunch and additional time at the end of their respective shifts because personnel were not present to relieve them from duty at those times. (Ans. Ex. D).

NYSNA filed a group grievance on behalf of these seven individuals on December 7, 2007, pursuant to the 2007-2010 HHC-NYSNA collective bargaining agreement ("Staff Nurses Agreement" or "unit agreement").[1] The Corporation asserted that the grievance was untimely as to claims for work performed before August 7, 2007.[2] The grievance was amended to assert claims on behalf of six Grievants, omitting one whose work was performed prior to the 120 days required for filing under the unit agreement. (Ans. Ex. D, p. 2.)

Nursing Representative Janice Kochevar, RN, submitted the grievance, describing the nature of the complaints as follows:

> Violation of the collective bargaining agreement including but not limited to abuse of managerial rights, disparate treatment with regard

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[1] Under Article VI, § 4, of the Staff Nurses agreement, group grievances may be filed as follows:

> Any grievance of a general nature affecting a large number of employees and which concerns the claimed misinterpretation, inequitable application, violation or failure to comply with the provisions of this agreement shall be filed at the option of the Association at Step III of the Grievance Procedure, without resort to previous steps, except that a grievance concerning employees of [HHC] shall be filed directly at Step II of the Grievance Procedure. Such "group" grievance must be filed no later than 120 days after the date on which the grievance arose, and all other procedural limits, including time limits, set forth in this Article shall apply. . . .

[2] HHC's Step II Review Officer cited § 2, rather than §4, of Article VI, of the Staff Nurses agreement, as the authority for her denial of claims alleged to have arisen prior to August 7, 2007. Section 2, pertaining to individual grievances, prescribes the same 120-day time period for filing a grievance.

> to the payment of overtime. The Citywide agreement, Article IV Overtime Section 4 part b; and the Department of Labor Wage and Hour Division; FSLA Section 7, timely payment of overtime; and violation of FSLA Section 11. Falsifying timesheets and making the timesheets unavailable for employees to review.

(Pet. Ex. B.) On June 4, 2008, the Step II Review Officer denied the grievance on several grounds. First, she contended that the overtime claimed by the Grievants had not been authorized as required by § 2(b) of Article IV of the Citywide Agreement.[3] Second, she contended that § 4(b) of Article

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[3] The Citywide Agreement, at Article IV, provides as follows:

> §1. For purposes of the overtime provisions of this Agreement, all time during which an employee is in full pay status, whether or not such time is actually worked, shall be counted in computing the number of hours worked during the week. However, where the Fair Labor Standards Act ("FLSA") provides for more beneficial compensation than the overtime provisions of this Agreement, such benefits shall be calculated on the basis of time actually worked.
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> § 2(a). "Authorized voluntary overtime" . . . shall be defined as overtime . . . for work authorized by the agency or that agency head's designee, which the employee is free to accept or decline.
>
> § 2(b). "Ordered involuntary overtime" . . . shall be defined as overtime . . . which the employee is directed in writing to work and which the employee is therefore required to work. Such overtime . . . may only be authorized by the agency head or a representative of the agency head who is delegated such authority in writing.
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> § 3(a). Ordered involuntary overtime which results in an employee working in excess of forty (40) hours in any calendar week shall be compensated in cash at time and one half (1-1/2 times).
>
> § 3(b). For those employees whose normal work week is less than forty (40) hours, any such ordered involuntary overtime worked between the maximum of that work week and forty (40) hours in any calendar week, shall be compensated in cash at straight time (1x)
> . . .

IV of the Citywide Agreement, cited in the grievance as a source of the right to grieve, pertains to employees covered by the FLSA, which governs minimum wage requirements and maximum limitations on working hours of specified worker-categories which the Review Officer contended does not include the grieving Registered Nurses. Finally, the Step II Review Officer found that claims of "abuse of managerial rights" as alleged in the grievance lay outside the scope of the contractual grievance review. Thus, she concluded that HHC had no obligation to make the overtime payments demanded by the Grievants. (Ans. Ex. A.) On July 2, 2008, the Union appealed the denial of the grievance to Step III. A Step III conference was held on January 27, 2009, and the grievance was denied on the same grounds, on February 18, 2009.

> § 4(a). Authorized voluntary overtime which results in any employee working in excess of employee's normal work week in any calendar week shall be compensated in time or at the rate of at the rate of [*sic*] straight time (1x).
>
> § 4(b). For employees covered by the provisions of the FLSA, voluntary overtime actually worked in excess of forty hours in a calendar week shall be compensated at the rate of time and one-half (1-1/2x) in time provided that the total unliquidated compensatory hours credited to an employee pursuant to this provisions may not exceed 240 hours. If an employee has reached the 240 hour maximum accrual for FLSA compensatory time, all subsequent overtime earned under this provision must be compensated in cash at time and one-half (1-1/2x).

This section of the Citywide Agreement also contains a preamble to this section, as follows:

> In the event of any inconsistency between this Article and standards imposed by Federal or State Law, the Federal or State Law shall take precedence unless such Federal or State Law authorizes such inconsistency.

(Ans. Ex. B.)

On March 26, 2009, the Union filed a Request for Arbitration describing the grievance to be arbitrated as follows:

> The behavior health nurses were not provided with relief for their meal periods and at the end of their work shift, thereby creating overtime for which they were not paid. Furthermore, it is believed that their timesheets, reflecting the overtime they applied for, had been altered so as to not reflect the overtime worked.

(Pet. Ex. B.) As the source of the alleged right to arbitrate, the RFA quoted *verbatim* from the grievance the claims asserted therein, including those alleging violations of FLSA, abuse of managerial rights and disparate treatment. The relief requested was to "[m]ake all affected registered nurses whole for any and all losses incurred. Pay registered nurses for their overtime worked," conduct an audit of "all Behavioral Health registered professional nurses' timesheets," cease and desist from refusing to pay, and levy sanctions against administrators who failed to authorize the pay.

On May 4, 2009, HHC filed the instant petition, disputing the arbitrability of the grievance on grounds, first, that alleged violations of the FLSA do not fall within the ambit of the grievance procedure provided for in the Citywide Agreement; second, that the Grievants at issue herein are exempt from the reach of the FLSA and, thus, not covered by Article IV, §4(b), of the Citywide Agreement which, HHC contends, applies only to employees covered by that statute; and finally, that allegations of abuse of managerial rights and of disparate treatment with regard to the payment of overtime also fail to come within the applicable definition of a contract grievance.

Disputing the Corporation's position, the Union nevertheless amended the Request for Arbitration, on June 2, 2009, to omit references to the FLSA, abuse of managerial rights, and disparate treatment with regard to payment of overtime as issues raised in the petition "distracting" from the "substance of the Grievance to be heard." (Ans. ¶ 40.) The Union stated the contract

provision, rule or regulation alleged to have been violated as:

> Violation of Collective Bargaining Agreement, including, but not limited to: Article III, Salaries, Side Letter of Agreement for Scheduling, and The Citywide Agreement, Article IV Overtime.[4]

(Ans. Ex. E). The Union asserts that, in discussions between counsel for the parties, HHC objected to the amendment's references to Article III and the Side Letter for Scheduling on grounds that those provisions were not previously cited. The Union maintains that its own counsel asserted, at that time, that "the provisions [cited in the amendment] were referenced as background to the Grievants' claim, which was and always had been that they worked without being appropriately paid pursuant to Citywide Agreement Article IV." (Ans. ¶ 41.)

In what the Union calls a further attempt to resolve HHC's concerns, NYSNA amended the Request for Arbitration a second time, on June 9, 2009, omitting the reference to "Article III, Salaries, and the Side Letter of Agreement for Scheduling," and articulating the nature of the alleged violation simply as follows:

> Violation of the Collective Bargaining Agreement, including, but not limited to The Citywide Agreement, Article IV, Overtime."

(Ans., Ex. F.) The Union asserts that, in discussions between counsel for the parties, counsel for HHC stated that the Corporation would not challenge the arbitrability of the second amended Request for Arbitration but that it would not withdraw the instant petition challenging the initial Request for Arbitration. No petition challenging the Second Amended RFA has been filed by HHC.

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[4] The reference appears to be to the Staff Nurses unit agreement, which, at Article III, specifies minimum and maximum salaries, general increases, education differentials and other salary adjustments for employees in titles including, but not limited to, Staff Nurse, which is the relevant title herein. The Side Letter of Agreement for Scheduling appears to refer to an agreement between the parties herein, dated June 27, 2008, effective December 1, 2007, to January 20, 2010, concerning alternative work schedules of NYSNA members in HHC facilities.

POSITIONS OF THE PARTIES

HHC's Position

HHC urges the Board to deny the RFA. First, HHC contends that Grievants, as Registered Nurses, are exempt from FLSA coverage and, by extension, they are not entitled to payment of overtime for hours worked in excess of the hours specified in contractual language. Thus, the Union has failed to articulate a reasonable relationship between the subject of the matter sought to be grieved, namely, overtime payments, and Article IV of the Citywide Agreement, the section pertaining to overtime. Additionally, HHC argues that it was not on notice from the outset that the Union was grieving on the basis of the totality of Article IV of the Citywide Agreement rather than on the basis of § 4(b) of Article IV of the Citywide, alone. Thus, HHC urges the Board to reject any such belatedly asserted claims. Moreover, the instant petition has not been mooted by the Union's amendments of the RFA.[5]

Second, HHC contends that no reasonable relationship has been articulated between the Staff Nurses unit agreement and the FLSA. Moreover, HHC contends, claims arising under the FLSA are not arbitrable under the parties agreement to arbitrate claims of alleged violation, misinterpretation and/or misapplication of the applicable collective bargaining agreements.

Finally, HHC contends that no reasonable relationship has been articulated between either

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[5] HHC asserts, in pertinent part:

> [I]n its Answer, NYSNA alleges that the Grievance asserts a violation of Article IV of the Citywide Agreement. Said claim is consistent with the language of the Second Amended RFA. Therefore, by its own Answer, NYSNA has defeated this defense.

(Rep. ¶ 37.)

collective bargaining agreement and the allegations, in either the initial Request for Arbitration or the subsequently second-amended Request, of abuse of managerial rights and disparate treatment in the payment of overtime. Thus, the Corporation contends no nexus has been established which would warrant sending the grievance to arbitration.

The Corporation urges that the instant petition be granted and that the RFA be denied.

Union's Position

The Union argues that the instant petition is moot, given the fact that the RFA no longer references legal authority which the Corporation argued would not support the instant grievance. Moreover, the Union contends that the Corporation has been on notice of the nature of the grievance since the initial phases of the grievance process. In fact, HHC's Step II and Step III Review Officers analyzed the overtime aspect of the group grievance – in fact, analyzed "each Grievant's claim for overtime" – and, thus, the Corporation cannot be heard to complain that the subsequent amendments of the RFA have left it without notice of the nature of the claim. Finally, the Union defends against the challenge by arguing that it was induced by HHC to believe that the grievance would be considered on its merits under Article IV of the Citywide Agreement, the provisions relating to overtime pay, and that, due to the passage of time while pursuing the instant grievance, the Union is now without a remedy should it file any new grievance over this matter. The Union urges that HHC be equitably estopped from asserting any claim that the instant grievance is not arbitrable at this time.

As to whether the Grievants herein are covered by or exempt from FLSA coverage, the Union contends that the question is irrelevant to the arbitrability issue, particularly because the second amended RFA omitted any references to the FLSA and to Article IV, § 4(b), of the Citywide

Agreement pertaining to overtime payment. However, since HHC continues to argue that issue, the Union responds that the factual question of FLSA coverage was not litigated at the lower steps of the grievance process and should not be part of the question of whether the overtime issue is arbitrable.

The Union denies the Corporation's contention that the Grievants belong to a class of employees who are not entitled to pursue overtime claims under the Citywide Agreement and the unit agreement. The Union argues that whether employees, including Registered Nurses as those herein, are exempt from the reach of the FLSA depends not only on their title and/or professional duties but also on whether they are employed on a salaried basis, which, in turn, is dependent not only upon whether they are paid a salary, *i.e.*, a predetermined amount of compensation each pay period on a weekly or less frequent basis, but also on whether the employer has an actual practice of making improper deductions from the employee's salary, such as for the operating requirements of the business.

Moreover, the Union references the preamble to Article IV of the Citywide Agreement which speaks to "any inconsistency between this Article and the standards imposed by Federal or State Law," and the Union argues that this contractual language contemplates that asserted violations of the FLSA in connection with claims for overtime do fall within the definition of a "grievance" as a dispute concerning the application or interpretation of terms of that Agreement. The Union argues that references in the original RFA to disparate treatment and abuse of managerial rights also fall within the definition of a contractual grievance because such claims assert that provisions of the Agreement and the exercise of employer rights have been misapplied under the Agreement.

The Union urges that the grievance be heard at arbitration.

DISCUSSION

This case poses the question of the effect a previously filed petition challenging arbitrability has on the amended RFA which seeks to cure the defects upon which the petition is based. In deciding the instant case, which is a question of first impression before this Board, we are guided by the public policy set forth in the NYCCBL, the understanding of amendment of pleadings generally under the law of this State, and our own prior decisions in analogous circumstances.

We have often reaffirmed that:

> It has long been the stated policy of the NYCCBL to favor and encourage arbitration to resolve grievances. Therefore, the presumption is that disputes are arbitrable, and that doubtful issues of arbitrability are resolved in favor of arbitration. However, the Board cannot create a duty to arbitrate where none exists, nor can we enlarge a duty to arbitrate beyond the scope established by the parties.

Local 924, DC 37, 1 OCB2d 3, at 7 (BCB 2008); *see also NYSNA*, 2 OCB2d 6, at 7 (BCB 2009); *SBA*, 79 OCB 15, at 5 (BCB 2007); *CWA, Local 1180*, 1 OCB 8, at 6 (BCB 1968).[6] Accordingly, we have not dismissed requests for arbitration because of technical omissions when a petitioner's ability to respond to the request or prepare for arbitration was not impaired. *See Local 420, District Council 37*, 69 OCB 9 (BCB 2002); *see*, also, *City of New York v. MacDonald*, 223 A.D.2d 485 (1st Dep't 1996), *aff'g Comm. Workers of America*, 51 OCB 27 (BCB 1993).

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[6] Section 12-302 of the NYCCBL provides:

> Statement of policy. It is hereby declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations, and final, impartial arbitration of grievances between municipal agencies and certified employee organizations.

We have repeatedly avoided, in consonance with the public policy undergirding the NYCCBL, technical readings of pleadings in the context of an arbitration, allowing claims to go to arbitration as long as the employer had been provided with adequate notice and an opportunity to respond. In conformity with that public policy and consistent with our past holdings, we find that, as long as the RFA provided adequate notice of the claims which are to be sent to arbitration, amending an RFA to withdraw claims objected to as outside of the scope of arbitration is not inherently improper or violative of the NYCCBL. Thus, we find that the Union effectively withdrew the claims arising under the FLSA and asserting disparate treatment and "abuse of managerial rights," which form the basis of HHC's second challenge to abitrability, and that those claims are no longer encompassed within the current version of the RFA.

Our holding is, notably, consistent with the treatment of amended pleadings before the courts of this State. It is hornbook law that an amended pleading supersedes the original pleading, replacing the original such that only the amended version is properly before the tribunal. *See, e.g., Global Reinsurance Corp. v. Equitas, Ltd.*, 24 Misc.3d 264, 269 (Sup. Ct. N.Y. Co. 2009) (following *Dragon Inv. Co. II, LLC v. Shanahan*, 49 A.D.3d 403, 405 (1st Dept. 2008); *Hayes v. Utica Mut. Ins. Co.*, 16 A.D.2d 732 (4th Dept. 1962)). As is the case under New York State Civil Practice Law and Rules, so, too, we find here that the claims withdrawn in the amended RFAs are no longer before us, and that the petition challenging arbitrability is moot as to such withdrawn claims.

Accordingly, the petition challenging arbitrability is, to the extent it is based on the withdrawn claims, rendered moot. *See, e.g.*, *Civil Serv. Tech. Guild, L. 375 v. City of New York*; 58 A.D.3d 581 (1st Dept. 2009) (Article 78 challenge to Board decision denying temporary injunctive relief rendered moot by unappealed dismissal of underlying improper practice petition); *compare*

Matter of Patrolmen's Benev. Assn., 27 A.D.3d 381 (1st Dept. 2006) ("live controversy" continued to exist, and thus improper practice claim not moot, when employer had provided information requested by certified bargaining agent of employees to organization of which certified bargaining agent was a member, but did not have control). *See generally*,*OSA*,1 OCB2d 45, at 12 (BCB 2008) ("a claim is only moot when "a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy") (quoting *Matter of Dreikausen v. Zoning Bd. of Appeals of the City of Long Beach,* 98 N.Y.2d 165, 172 (2002)); *see also DC 37, Local 1457*, 1 OCB2d 32, at 24-25; *PBA*, 23 OCB 79, at 2 (BCB 1979) (an "improper practice charge is moot when a change in circumstances eliminates the underlying controversy"). Here, the withdrawal of the claims asserted to be outside of the scope of arbitration renders any determination as to the arbitrability of those claims effectively moot. *See New Markets Partners, LLC v. Oppenheim, __ F. Supp. 2d __*, 2009 WL 2251311 (S.D.N.Y. July 28, 2009) at * 13; *Staff v. Pall Corp*., 233 F. Supp. 2d 516, 523 (S.D.N.Y. 2002).

However, this does not end our inquiry. We apply the petition challenging arbitrability to those claims as to which it has not been rendered academic, as would be the case when a motion to dismiss is responded to by an amended complaint. *See, e.g., Livadiotakis v. Tzitzkalakis*, 302 A.D.2d 369, 370 (2d Dept. 2003); *Parklex Assocs. ex rel. Holtkamp v. Parklex Assocs*., 15 Misc.3d 1125A, 841 N.Y.S.2d 220 (Sup. Ct. Kings Co.); *Sage Realty Corp. v Proskauer Rose*, 251 A.D.2d 35, 38 (1st Dept. 1998)

In the instant case, the sole ground upon which arbitrability is challenged which may be applied to the second amended RFA is the contention that the Union's grievance alleging HHC's failure to pay the Grievants for overtime they allegedly worked is not reasonably related to "the

Collective Bargaining Agreement, including, but not limited to The Citywide Agreement, Article IV, Overtime," and/or the unit agreements. We find that it is so related.

This Board has exclusive power under § 12-309(a)(3) of the NYCCBL "to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure established pursuant to section 12-312 of this chapter."[7] *See NYSNA*, 69 OCB 21 (BCB 2002). To determine arbitrability, we employ a two pronged test: (1) whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions, and, if so (2) whether "the obligation is broad enough in its scope to include the particular controversy presented." *NYSNA*, 2 OCB2d 6, at 7, quoting *Soc. Serv. Empl. Union*, 3 OCB 2, at 2 (BCB 1969). *See Matter of Acting Superintendent of Schools of Liverpool Central School District (United Liverpool Faculty Ass'n)*, 42 N.Y.2d 509, 513, 399 N.Y.S.2d 189, 192 (1977); *Matter of Board of Education (Watertown Education Ass'n)*, 93 N.Y.2d 132, 137-138, 143, 688 N.Y.S.2d 463, 467, 471 (1999).

We find the Corporation's contention that the Grievants' claims are not founded in the collective bargaining agreement to be unpersuasive. In denying the Corporation's contention that the Grievants belong to a class of employees not entitled to pursue overtime claims under either the Citywide Agreement or the unit agreement, the Union references the preamble to Article IV of the Citywide Agreement which speaks to the resolution of "any inconsistency between this Article and the standards imposed by Federal or State Law," arguably contemplating that asserted violations of the FLSA in connection with claims for overtime do fall within the Citywide contractual definition

[7] NYCCBL § 12-312 sets forth the parties' rights and responsibilities in arbitrations and the Board's role in administering an arbitration panel.

of a "grievance" as a dispute concerning the application or interpretation of terms of that Agreement. We find the Union's contention sufficient to support an arguable relationship between the claims sought at arbitration and Article IV of the Citywide Agreement which is denominated "Overtime."

We also find that the Union has articulated a nexus between the claimed nonpayment of overtime and the provision of the Staff Nurses unit agreement pertaining to salaries. So, whether the Union means to refer to the unit agreement when it states "[v]iolation of the Collective Bargaining Agreement," by describing the nature of the claim as:

> Violation of the Collective Bargaining Agreement, including, but not limited to The Citywide Agreement, Article IV, Overtime

or the Union means to refer, albeit redundantly, to the Citywide Agreement, we find that the nature of the claims relate to nonpayment of overtime allegedly worked. The Corporation does not dispute that the nature of the claims relate to nonpayment of overtime. In fact, the decisions of the Step II and Step III Review Officers clearly acknowledge this point. Each of those decisions specifically refer to the nature of the claims as questions about payment for overtime which the Grievants contend they worked. HHC cannot be heard to argue that the Corporation was not on notice of the nature of the grievance from the outset.

Adhering to our statute's mandate to favor and encourage arbitration, we refer to an arbitrator any question as to whether the claims articulated in the instant Request for Arbitration, subsequently amended, were properly raised during the step grievance process. *NYSNA*, 69 OCB 21, at 12 (BCB 2002). Should the arbitrator determine that any such claims were timely raised, we direct the parties to submit themselves forthwith to arbitration on the merits of the claims.

For these reasons, the instant petition challenging arbitrability is denied, and the Request for

Arbitration, docketed as A-13061-09, is granted.

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 New York City Health and Hospitals Corporation, docketed as No. BCB-2763-09, hereby is denied; and it is further

ORDERED, that the Request for Arbitration filed by the New York State Nurses Association, docketed as A-13061-09, hereby is granted.

Dated: New York, New York
September 24, 2009

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

GABRIELLE SEMEL
MEMBER