

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

NEW YORK STATE NURSES ASSOCIATION,

Petitioner,

DECISION NO. B-17-81

DOCKET NO. BCB-457-80

-and-

COMMITTEE OF INTERNS AND RESIDENTS
OF THE CITY OF NEW YORK,

Respondent.

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DECISION AND INTERIM ORDER

The New York State Nurses Association (hereinafter "NYSNA") filed a verified improper practice petition with the Office of Collective Bargaining on October 14, 1980, in which it charged the Committee of Interns and Residents (hereinafter "CIR") with committing an improper public employee organization practice, in violation of §1173-4.2 of the New York City Collective Bargaining Law (hereinafter "INYCCBL"), by allegedly interfering with, restraining, and coercing registered professional nurses represented by NYSNA in the exercise of rights granted in NYCCBL §1173-4.1, and by allegedly interfering with NYSNA's status as exclusive collective bargaining representative of the nurses.

The CIR filed a verified answer on October 23, 1980, and a motion to dismiss on October 24, 1980. The NYSNA submitted a verified pleading in reply to CIR's answer and in opposition to the motion to dismiss on November 12, 1980.

The CIR submitted a letter in response to NYSNA's reply on November 19, 1980.

By direction of the Board, the Trial Examiner wrote to the parties on November 25, 1980, and requested that briefs be submitted concerning certain issues raised in the motion to dismiss. Briefs were thereafter filed by NYSNA on January 5, 1981 and CIR on January 6, 1981. The CIR filed an additional letter in response to NYSNA's brief on January 7, 1981.

Background of the Dispute

The NYSNA states that on October 10, 1980, during negotiations between the City and NYSNA for a new collective bargaining agreement, certain nurses employed by the City engaged in a strike. The NYSNA alleges that commencing on October 10, 1980, and continuing during the period of the strike, CIR established and supported a "Nurses Communication Center" and "Help Committee" to encourage registered nurses represented by NYSNA to engage in the strike against their employer, the New York City Health and Hospitals Corporation. It is alleged that the "Nurses Communication Center" and "Help Committee" were located in CIR's offices at 386 Park Avenue South, New York City, that they used a telephone located in CIR's office, and that they

listed the number of that telephone on literature which they distributed.

The NYSNA contends that it attempted to cause the striking nurses to return to work, but that this attempt was frustrated by the actions of the "Nurses Communication Center" and "Help Committee" in issuing leaflets, fliers, and CIR picket signs to nurses, encouraging them to remain on strike. The NYSNA claims that the text of at least one of the fliers issued by the "Nurses Communication Center" and the "Help Committee" establishes that it was the purpose of these entities to directly affect the on-going collective bargaining process between NYSNA and the City, and particularly the impasse proceeding in which the parties were engaged, pursuant to NYCCBL §1173-7.0(c). The NYSNA submits that these facts constitute interference by CIR with NYSNA's status as "... the exclusive bargaining representative of the public employees in the appropriate bargaining unit", under NYCCBL §1173-4.1, and are a deliberate attempt to undermine that status and to interfere with the collective bargaining between the City and NYSNA. The NYSNA thus concludes that CIR's actions constitute an improper practice, in violation of NYCCBL §1173-4.2(b)(1).

Positions of the Parties

CIR's Position

In its motion to dismiss, CIR argues that even if it had established the "Nurses Communication Center" and "Help Committee" as alleged by NYSNA (facts which CIR denies), the actions complained of constitute, at most, advocacy of a particular course of action by the nurses or support of such action. The CIR asserts that the actions complained of are protected by the First Amendment's guarantee of freedom of speech, and therefore cannot constitute improper practices. It is contended by CIR that the NYCCBL offers no protection against an outside body, whether or not an employee organization, communicating with or supporting a group of union dissidents. The CIR alleges that such communication, even if deemed to be interference with NYSNA's representational rights, is protected by the First Amendment.

The CIR further claims that NYSNA's petition seeks to place the Board in the midst of a controversy over "who did what" in the course of causing or prolonging a strike. The CIR notes that this Board, unlike the Public Employment Relation's Board ("PERB"), does not have jurisdiction to enforce the Taylor Law's prohibition against strikes.¹

¹ Civil Service Law §210.

The CIR submits that, pursuant to the legislative scheme, the Board should not entertain this case which involves matters pertaining to a strike by public employees.

Finally, CIR alleges that the actions complained of by NYSNA, even if they actually occurred, had no impact upon NYSNA's ability to represent unit members in collective bargaining and did not affect NYSNA's status as exclusive collective bargaining representative.

For all of the above reasons, CIR moves that the improper practice petition be dismissed.

NYSNA's Position

The NYSNA alleges that the text of one of the fliers distributed by the CIR - established "Nurses Communication Center" and "Help Committee" clearly shows that it was CIR's purpose, through these entities, to directly affect the on-going collective bargaining between the City and NYSNA. The flier referred to by NYSNA is entitled "Some Straight Answers to Nurses' Questions", and it purports to answer questions concerning the creation and functioning of an impasse panel. the relationship between striking and participating in binding impasse arbitration. and the legality of striking. The NYSNA notes that it was engaged with the City in an impasse proceeding under NYCCBL §1173-7.0(c) at the time that CIR's actions were taken,

and that NYSNA was attempting to get the striking nurses to return to their jobs during the pendency of the impasse proceeding. It contends that certain of the statements in this flier bear upon the impasse proceeding and constitute interference with NYSNA's rights as exclusive collective bargaining representative of the nurses.

The flier in question states, in pertinent part:

"Are binding arbitration and striking mutually exclusive?

No. Binding arbitration is one way to solve an impasse -- The City appoints a 'neutral' panel to write the contract when the Union and the Employer cannot agree. A strike is another way to solve an impasse -- the members of the Union pressure the Employer to agree to their demands. The Employer is free to change its mind and agree to the members' demands at any time.

What if the Employer doesn't give-in?

Even if the Employer does not agree, the strike alerts the panel to the seriousness of the members' problems with their Employer. The panel knows that it will have to write a contract that meets these problems in order to solve the labor dispute. The strike also can convince the Director to speed up the process.

Is striking during binding arbitrations illegal?

Strikes by public employees during binding arbitration are no more illegal than strikes at any other time.

THE UNION'S DECISION TO GO TO THE
IMPASSE PANEL MAKES IT MORE IMPORT-
ANT THAT WE GIVE A STRONG UNIFIED
ANSWER TO THE QUESTION 'WHAT DO
NURSES WANT?'

STAY ON STRIKE!"

The NYSNA asserts that this flier, by encouraging the nurses to remain on strike in order to "... pressure the Employer to agree to (the nurses'] demands ...", to "... alert the [impasse] panel to the seriousness of the members' problems with their Employer," and to "... convince the Director to speed up the [impasse] process," constitutes a clear, deliberate interference with NYSNA's exclusive right to bargain collectively with the City on behalf of the nurses. The NYSNA points out that it was itself, not CIR, which was involved in the impasse proceeding with the City, and it argues that "... it simply was none of CIR's business..." to encourage the nurses to strike in order to pressure the Employer, alert the impasse panel, or convince the Director to speed up the impasse process.

The NYSNA further alleges that CIR's claimed reliance upon the First Amendment "... is nothing but a smoke-screen to obfuscate ..." the issue of its interference with NYSNA's exclusive bargaining rights. The NYSNA argues that the court decisions cited by CIR in support of its First Amendment claim are inapposite to the facts and issues

present in the instant matter, and do not provide any protection for acts which would otherwise constitute improper practices under the NYCCBL.

Based upon these reasons, NYSNA opposes CIR's motion to dismiss.

DISCUSSION

The CIR's motion places at issue the complex matter of the relationship between the free speech provisions of the First Amendment and the provisions of the public sector labor statutes, the NYCCBL and the Taylor Law. The CIR appears to contend that the constitutional guarantee of freedom of speech overrides any limitation on speech or communication which may be found in the labor statutes.

We find that the facts alleged in this case are so intertwined with the legal issues presented that we are unable to determine CIR's motion prior to the holding of an evidentiary hearing. Specifically, only upon review of the record of a hearing will we be able to ascertain whether the acts alleged to have been committed by CIR, if proven, would also be shown to constitute actual interference with NYSNA's exclusive bargaining rights. If such interference did not occur, then the First Amendment issue need not be reached. Therefore, we will hold CIR's motion in abeyance pending completion of the hearing which we will direct to

be held before a Trial Examiner designated by the Office of Collective Bargaining. Additionally, in view of the novel questions of law raised in this proceeding concerning the constitutional and legal implications of a possible finding that CIR's alleged actions, if proven, constitute an improper practice under the NYCCBL, the Board wishes to invite the City of New York and the Municipal Labor Committee to submit briefs amicus curiae on these questions. We believe that receipt of such briefs would be helpful to our final determination of this matter. Accordingly, we would welcome submission of such briefs following the conclusion of the hearing to be held and prior to our final consideration of this matter. The City and the Municipal Labor Committee will be informed by the OCB as to any schedule to be established for the filing of briefs.

O 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 a hearing be held, before a Trial Examiner designated by the office of Collective Bargaining, on the merits of the improper practice petition herein; and it is further

ORDERED, that the Committee of Interns and Residents' motion to dismiss be held in abeyance pending completion of

the hearing in this matter; and it is further

ORDERED, that copies of this decision be forwarded to the City of New York and the Municipal Labor Committee for their information.

DATED: New York, N.Y.
July 7, 1981

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

JOHN D. FERICK
MEMBER

EDWARD SILVER
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER