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-2-81

-and-

DOCKET NO. BCB-437A-80

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondent.

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DECISION AND ORDER

On July 15, 1980, the New York State Nurses Association (hereinafter the Association) filed a verified improper practice petition which it later amended by filing, on August 5, 1980, a "First Amended Verified Improper Practice Petition." The Association charges that:

> On or about April 15, 1980, and continuing to date, New York City Health and Hospitals Corporation, through its agents, has refused to bargain with New York State Nurses Association concerning (1) changes in the duties, responsibilities, job descriptions and employment conditions of registered professional nurses employed as nurse epidemiolo- at Bronx Municipal Hospital Center and (2) creation of A.C.E. Nurse position at Bronx Municipal Hospital Center incorporating duties and responsibilities performed by registered professional nurses represented by Association, in violation of New York City Collective Bargaining Law section 1173-4.2-a(4).

As remedy, the Association requests that the Board of Collective Bargaining (hereinafter the Board) order the New York City Health and Hospitals Corporation (hereinafter HHC) to "cease and desist from all of the charged

activities and to bargain in good faith with Association as exclusive collective bargaining representative of Corporation's registered professional nurses."

HHC, appearing by the City of New York, Office of Municipal Labor Relations (hereinafter OMLR), filed a verified answer on July 21, 1980 to the Association's original petition and filed another verified answer on August 22, 1980 to the Association's amended petition. In its answers, OMLR denies the allegations made in the improper practice charge. In addition, OMLR affirmatively alleges that the petition complains of a reorganization of two of HHC's operations, a change in the content of a job classification and the creation of a new managerial position. all matters, according to OMLR, that are within HHC's management rights stated in the New York City Collective Bargaining Law (NYCCBL) section 1173-4.3b and therefore not mandatorily bargainable.

OMLR maintains that Nurse Epidemiologist is an office title of registered nurse's who hold the civil service title Nurse Supervisor and who were assigned to the Infection Control Committee at Bronx Municipal Hospital. At the beginning of the year, OMLR contends, the Infection Control Committee was reorganized and the positions held by the registered nurses became "Coordinator of Hospital Asepsis and Infection Control," a title described as

managerial. OMLR alleges that the registered nurses were given a choice either to accept a promotion to the new Coordinator of Hospital Asepsis and Infection Control title or to remain in their civil service title Nurse Supervisor. OMLR states that all of the registered nurses chose to retain their civil service title-and that they were transferred to other parts of the hospital which required employees to perform the functions of a nurse supervisor.

OMLR also contends that the change in job description to which the Association refers concerns only a change in the "functional in-house job descriptions." OMLR asserts that there has been no change in the official job specifications of titles Nurse Supervisor and Coordinator of Hospital Asepsis and Infection Control.

OMLR argues that the reorganization of the Infection Control Committee and the changes in the in-house job descriptions fall under HHC's rights, pursuant to NYCCBL section 1173-4.3,b, "to determine the methods, means and personnel by which government operations are to be conducted; determine the content of all job classifications ...and exercise complete control and discretion over its organization and the technology of performing its work."

With regard to the charge concerning creation of the A.C.E. nurse position at Bronx Municipal Hospital Center,

OMLR states that, during June 1980, HHC reorganized the "5 East Intensive Care Unit-Cardiac Care Unit of Bronx Municipal Hospital." OMLR maintains that in connection with this reorganization a new position, Coordinating Manager of Patient/Medical Support Systems, was created and that this is a managerial title. OMLR represents that the in-house title for the position is "A.C. E. nurse (Administrator - Coordinator -Educator)." OMLR explains that approximately twelve registered nurses, some of whom had been in the bargaining unit represented by the Association, were promoted into the new position. All the positions vacated by these registered nurses, OMLR continues, have been filled with other bargaining unit members.

OMLR argues that both the reorganization of the cardiac care unit and the creation of a new managerial position are within HHC's management rights stated in NYCCBL section 1173-4.3b, which are quoted above.

OMLR's concludes that because all the actions that the Association complains of are within the statutory management rights of HHC, there is no duty on HHC to bargain on any of the actions mentioned in the improper practice petition. For this reason, OMLR alleges that no improper practice has been committed and requests that the Board dismiss the Association's petition.

The Association has declined to reply to OMLR's answer to the improper practice petition.

DISCUSSION

The improper practice petition alleges that HHC took certain actions in violation of NYCCBL section 1173-4.2a(4), which provides:

> a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:
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> (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

The Board has dealt with issues concerning creation of new titles, establishment of job specifications for new titles and reorganization of a public employer's operations in a number of cases. The Board has held that direction of employees and assignment of personnel including assignment to a higher title, is a management right.[1] The Board has stated that a public employer is free to create titles and promulgate appropriate job specifications for the performance of new functions.[2] The Board also has held, in a number of cases involving delivery of service and use of civilians to perform duties formerly performed by police officers, that a public employer may decide unilaterally how government functions are to be organized and to whom duties

[1]Board Decisions Nos. B-7-69, B-2-73, B-16-74, B-18-74, B-3-75, B-5-75.

[2]Board Decision No. B-4-79.

are to be assigned.[3] In Matter of Patrolmen's Benevolent Association and Robert J. McGuire, Police Commissioner[4] the Board stated that "the determination of which personnel should perform supervisory duties, and what the qualifications for such supervisory duties should be, is clearly a management right."

The Board has based its decisions in these matters on the statutory management rights clause, NYCCBL section 1173-4.3b, which, in pertinent part, provides that it is the right of the City, or any other public employer, to "determine the standards of selection for employment; direct its employees; ... maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; ... and exercise complete control and discretion over its organizations and the technology of performing its work." OMLR has explained that the actions of HHC, about which the Association complains, consist of a reorganization of two units of Bronx Municipal Hospital, creation of two new titles, allegedly managerial and not included in collective bargaining, to work in the new units, reassignment of registered nurses who did not want to work in the new positions to other parts of the hospital where they were needed to perform the duties of

[3]Board Decisions Nos. B-5-80, B-8-80, B-14-80 and B-26-80.

[4]Board Decision No. B-27-80.

their title, and placement of other members of the bargaining unit represented by the Association in vacancies created by the promotion of registered nurses to the new positions. None of these allegations have been refuted by the Association. Clearly, all of the described actions of HHC are within the purview of managerial rights set forth in the NYCCBL and in Board interpretations of the statute.

Because these matters are management rights, HHC may act unilaterally to reorganize the units, to create and establish new positions, to reassign its employees and to fill vacancies created by promotions. HHC may bargain voluntarily on these decisions; however, there is no mandatory duty on HHC to bargain on the subjects.[5] Absent a statutory duty to bargain on the decisions on which the Association bases its improper practice charge, HHC has not violated NYCCBL section 1173-4.2a(4) and the improper practice charge, in our opinion, should be dismissed.

It should be noted that, with regard to an exercise of its management rights, a public employer may be obligated to bargain on the practical impact that its decision has on employees.[6] The Board has defined practical impact as an unreasonably excessive or unduly burdensome workload as a regular condition of employment resulting from the managerial decision.[7] The Board has also found that there is

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[5]Board Decisions Nos. B-9-68, B-11-68, B-1-74, B- 7-74, B-13-74, B-18-75, B-21-75, and B-41-80.

[6]NYCCBL §1173-4.3b.

[7]Board Decisions Nos. B-9-68, B-18-75, B-21-75, B-23-75, B-2-76.

a per se practical impact on employees scheduled to be laid off when management decides to lay off employees[8] and that threats to employee safety resulting from a managerial decision constitute practical impact.[9] In the instant matter, however, there are no allegations of practical impact resulting from the decisions of HHC nor are there any indications in the pleadings of the parties that there may be a practical impact on employees resulting from the exercise of management rights. Indeed, it appears that HHC sought to alleviate whatever effects its managerial actions may have had on registered nurses. It is not controverted that registered nurses in the reorganized units could either accept promotions to the new titles or remain in their present title and be reassigned elsewhere in the hospital; that approximately twelve nurses did accept a promotion to one of the new titles; and that vacancies created by the promotions were filled by other nurses. There is no suggestion in this matter that any nurses were or will be laid off or that employee safety is threatened as a result of HHC's decisions.

We note that the instant matter is similar in certain respects to the circumstances of a case considered by the

[8]Board Decisions Nos. B-3-75, B-18-75, B-21-75.

[9]Board Decisions Nos. B-5-75 and B-6-75.

the Board in 1979. In Matter of Local 1407, District Council 37, AFSCME, AFL-CIO and The New York City Health and Hospitals Corporation,[10] the Board stated:

> It is obvious that the promotion of an employee from a unit title to a-non-unit title - whether or not it is a newly created title - will remove the employee from the unit, deprive the union of dues check-off as to that employee, and may prevent the union from representing the employee for any purpose. Depending upon the circumstances, a promotion may place the employee in another existing bargaining unit represented by the same union or a different union; it may place him in a title which has already been found managerial and thus permanently remove him from collective bargaining; or it may place him in a title where, as here, there has been no determination by the Board of Certification as to bargaining status and thus remove him from collective bargaining at least until such a determination is made. In none of these circumstances is promotion an improper practice.

The Board dismissed the Union's improper practice petition but without prejudice to the filing by the Union of a petition to represent the employees Promoted to the non-unit title or to the filing by-the public employer of a petition or affirmative claim that the employees are managerial or confidential.

Therefore, for the reasons stated above, we dismiss the improper practice petition herein without prejudice

[10]Decision No. B-4-79.

to a filing by the Association with the Board of Certification of a petition to represent employees in the newly created positions or to HHC's right to claim that the employees are managerial or confidential and therefore excluded from collective bargaining.

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 the improper practice petition filed by the New York State Nurses Association be, and the same hereby is, dismissed.

DATED: New York, New York
January 6, 1981

ARVID ANDERSON
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