

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

NEVILLE FORDE,

Petitioner,

DECISION NO. B-20-81

DOCKET NO. BCB-498-81

-and-

THE NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION,

Respondent.

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DECISION AND ORDER

This proceeding was commenced on April 6, 1981, by the filing of a verified improper practice petition by Mr. Neville Forde (hereinafter "Petitioner"). Petitioner alleges that the New York City Health and Hospitals Corporation (hereinafter "HHC") committed improper practices in connection with two suspensions of Mr. Forde from his job as a Nurse's Aide at the Queens Hospital Center (hereinafter the "Hospital"). The petition charges Mr. Gerald Taylor, Assistant to the Executive Director, and Mrs. Merle Griffith, Supervisor,¹ of "victimizing" the Petitioner by undesirable time schedules and of improperly suspending him without pay on June 5, 1980, and on March 24, 1981. HHC filed its answer on June 15, 1981, in which it denied the material allegations of the petition, denied that facts constituting an improper practice had been

¹ Petitioner characterizes Mrs. Griffith as a "supervisor" HHC classifies her as a "senior employee."

alleged, and requested that the petition be dismissed. In his reply of June 17, 1981, Petitioner characterizes the statements in the answer as either misleading or untrue.

BACKGROUND

Petitioner's complaints begin in August 1979, at which time he was involuntarily transferred in his capacity as a Nurse's Aide from A.D.N. Surgery to the Transport Team. Petitioner states that according to the job description for Nurse's Aide, he was to work under the supervision of either Registered Nurse or a Licensed Practical Nurse, yet no person in either title supervised the Transport Team.

In March 1980, Petitioner wrote a letter to his union, Local 420, Hospital Employees, District Council 37, AFSCME, AFL-CIO, in which he accused Taylor and Griffith of practicing favoritism in the department and of engaging in a series of "spiteful" acts against him, as exemplified by incidents concerning unfavorable scheduling.

Petitioner claims that as a result of filing this "grievance" he was suspended from the Hospital by Assistant to the Executive Director Taylor on June 5, 1980. Petitioner states that Taylor failed to give any reason for the suspension but believes that it occurred because he told Taylor that he would not be able to be in the office to answer the telephones

while at the same time collecting empty stretchers from the wards.

According to interoffice memoranda written by Taylor and dated June 5 and 6, 1980 relating to the June 5th incident, Forde could not be found at his assigned post on the afternoon in question nor was he answering the telephones or his page while on duty. Taylor tracked down Forde and told him that the telephone must be answered and he must respond to his pages. Forde refused. Taylor told Forde that he was giving him a direct order, which, if not followed, would result in suspension. Forde challenged Taylor's authority to suspend him. Taylor told Forde that he was suspended. Forde again challenged Taylor's authority. Assistant Director Bryant was among those summoned and informed Forde that Taylor did have the authority to suspend Forde for refusing a direct order. A security officer then escorted Forde off the premises.

According to the answer submitted by counsel for HHC, Forde was actually relieved from duty (not suspended) for the remainder of the June 5th tour. A two day suspension was recommended, however, as a result of a disciplinary hearing. The hearing dealt with charges of insubordination, disappearance from work area and violation of leave regulations. Forde participated in the hearing as did representatives from Local 420 and District Council 37. Petitioner presently claims

however, that he was not given an opportunity to present all of his defenses to the charges at the hearing and that the Labor Relations Officer distorted the facts.

HHC counsel states that the two day suspension was never implemented; Petitioner differs and claims that it was implemented.

Petitioner further claims that he was again illegally suspended on March 24, 1981. According to the Petitioner, he overheard Griffith and Taylor discussing another employee's return to work. Petitioner interrupted and said, "I hope you insist on documented proof of absence, just as you do in all cases of absence in excess of two days when it applies to me". Griffith then told Forde that he was again suspended. Shortly thereafter, Griffith sent Petitioner and another employee to the Emergency Room to transport a patient. Forde questioned Griffith as to why she was sending two people for the patient when the usual procedure was to send only one person. Griffith responded that Forde should either carry out the order or go home. After some discussion, Forde did go for the patient, alone. When he returned, Griffith told Forde that he was being suspended until a hearing could be arranged.

According to interoffice memoranda dated March 24 and 27, 1981 written by Griffith and Taylor, respectively, Petitioner was suspended for the remainder of the March 24th tour

after refusing to follow an order given to him by Griffith. Forde refused to go to the Emergency Room to transport a patient until Griffith had Taylor instruct Forde to do so. When Forde returned, he cursed at Griffith and threatened her with bodily harm. Forde did not report for duty nor did he call in on March 26 and 27, 1981, his next two scheduled work days.

A disciplinary hearing was scheduled for April 14, 1981. Petitioner did not attend. Petitioner claims that he did not receive notification until April 15, 1981. The hearing was rescheduled for May 5, 1981. Again, Petitioner did not attend, claiming that he was told by Taylor that the May 5th hearing had been postponed.

A hearing was held in absentia on May 5, 1981. The charges dealt with insubordination and absence without official leave. The hearing was attended by representatives from Local 420 and District Council 37. As a result of the hearing, Petitioner's employment with the Hospital was terminated effective May 22, 1981.

Discussion

At the outset, we note that Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining prescribes a four month statute of limitations for the com-

mencement of improper practice proceedings.² An analogous rule is set forth in Section 204.1(a)(1) of the Rules and Regulations of the Public Employment Relations Board.³ Thus, the Petitioner's allegations herein concerning his suspension of June 5, 1980 and related events are time-barred and will be considered in the context of background information rather than as a specific violation of the New York City Collective Bargaining Law.

Regarding the suspension of March 24, 1981, we conclude that Mr. Forde has failed to establish a prima facie case of improper practice against HHC. Petitioner incorrectly claims that Rule 7.4 has been breached by HHC; it must be

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Section 7.4 of the Revised Consolidated Rules provides as follows:

Improper Practices. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order.

³ PERB Rule 204.1(a)(1) provides:

(a) Filing of Charge.

(1) An original and four copies of a charge that any public employer organization or its agents, has engaged in or is engaging in an improper practice may be filed with the Director within four months thereof by one or more public employees or any employee organization acting in their behalf, or by a public employer.

assumed that Petitioner intended to cite Section 1173-4.2(a) of the NYCCBL.⁴ However, whatever the possible merits of Mr. Forde's complaints as to the Hospital's actions, they do not constitute a basis for a finding of improper practice.

Petitioner maintains that the allegedly "vindictive" conduct taken against him by the Hospital emanates from the fact that in June, 1980 he wrote to Local 420 and complained about the conduct of his supervisor. However, Petitioner has failed to allege any facts showing a casual link between the receipt of his letter by Local 420 and the actions of the Hospital. The record in this regard is confined to conclusory allegations based upon Petitioner's speculations and suspicions and is devoid of any probative evidence to show that the disciplinary action taken against Petitioner was in retaliation for his having complained to his union or to

⁴ NYCCBL §1173-4.2(a) provides:

a. Improper public employer practices. It shall be an improper practice for a public employer of its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in Section 1173-4.1 of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

(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.

establish that the Hospital was even aware of the correspondence in question or of previous and subsequent correspondence between Forde and his union representatives. In the absence of any evidence that would indicate that the suspension of March 24, 1981 came within the purview of any of the prohibited actions enumerated in Section 1173-4.2(a), HHC cannot be held to be guilty of an improper practice in this matter. Therefore, we find that no violation of the NYCCBL has been stated and we shall dismiss the petition.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining Law, it is hereby

ORDERED, that the petition filed herein by Neville Forde, seeking a finding of an improper practice on the part of the New York City Health and Hospitals Corporation, be, and the same hereby is, dismissed.

DATED: New York, N.Y.
September 9, 1981

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