HHC v. CIR, 29 OCB 25 (BCB 1982) [Decision No. B-25-82 (Arb)]

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

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Petitioner,

Decision No. B-25-82

-and-

Docket No. BCB-553-81
(A-1368-81)

COMMITTEE OF INTERNS AND RESIDENTS,

Respondent
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DECISION AND ORDER

On December 2, 1981, the Committee of Interns and Residents ("CIR") filed its request that a grievance alleging the failure to provide adequate on-call facilities be submitted to arbitration. The New York City Health and Hospitals Corporation ("HHC") opposed the request in a petition filed on December 14, 1981. On December 23, 1981, CIR filed its answer together with a supporting memorandum of law, in response to which HHC filed a reply on January 18, 1982.

POSITION OF THE PARTIES

HHC's Position

HHC maintains that Article XI of the 1976-80 CIR-HHC collective bargaining agreement ("Agreement"), violation of which is herein alleged, neither specifies the number of on-call rooms which shall be required, nor identifies the yardstick by which the adequacy of on-call facilities are to be evaluated. The City additionally contends that even were Article XI to contain such guidelines, the matter of its execution and

enforcement is not arbitrable. Article XI provides:

> The Corporation shall take reasonable steps to upgrade on-call facilities to the extent that such upgrading can be accomplished without new construction, major structural renovation, or other large costs. The Corporation's Vice-President for Corporate Affairs shall issue a memorandum, within thirty (30) days of the Financial Control Board's approval of this Contract, to the Hospital's Executive Directors directing the preparation of a proposal within ninety (90) days from the issuance of the memorandum. Such proposal shall be drafted in conjunction with the House Staff Affairs Committee in each Hospital, subject to the concurrence of the Hospital Executive Director and the availability of funds. The proposal shall recommend reasonable accommodations for on-call facilities for House Staff Officers which should be readily accessible, clean and secure; and set forth a projected time table for completion. Implementation of such proposal shall begin within sixty (60) days after the concurrence of the Hospital Executive Director. If the Executive Director does not concur with the proposal, the House Staff Affairs Committee may ask the Corporation's Vice-President for Professional Affairs to review the matter. The Corporation Vice-President for Professional Affairs shall respond within thirty (30) days and her/his response shall be final and binding and not subject to the contractual grievance procedure.
> [emphasis supplied]

HHC thus contends that CIR is attempting to circumvent this limited contractual bar to arbitration by alleging, in the alternative, that the unilateral steps undertaken by HHC with respect to on-call facilities constitutes a violation of past practice. This characterization, HHC argues, is an attempt by CIR to get to arbitration by the back door

HHC also alleges a failure on CIR's part to (1) furnish a precise statement of the nature of the controversy; (2) indicate whether or not the matter had been submitted to Step III, and if so, the disposition at that level; and (3) identify the relationship between the act complained of and the source of the alleged right.

CIR's Position

CIR alleges that not only has HHC failed to upgrade on-call facilities as required by Article XI of the Agreement but has, in fact, unilaterally reduced the number of on-call rooms available to members in violation of past practice, the grievability of which, it is argued, is assured by the Agreement at Article XIV.

Article XIV - Grievance Procedure

Section 1 .

The
term grievance" shall mean

(a)
A dispute concerning the application or
interpretation of the terms of this
collective bargaining agreement;

(b)
A claimed violation, misinterpretation,
or misapplication of the rules or regula-
tions, authorized existing policy or orders
of the Corporation affecting the terms and
conditions of employment and training
program;

(c)
A claimed regular or recurrent assignment
of employees to duties substantially dif-
ferent from those stated in their job
specifications;

(d)
question regarding the non-renewal of
the appointment of a House Staff Officer;
and

(e)
The provisions of this Article XIV shall
not apply to a grievance under Article VII
Sections 1 and 2.

With respect to HHC's challenge to arbitrability based on the manner in which the request was filed, CIR maintains that HHC's opposition, based as it is on formalistic grounds, undermines the firmly grounded policy favoring arbitration, and a grievance-arbitration provision in the Agreement, presumably entered into by the parties in good faith. CIR maintains that the fact that HHC was able to respond to the grievance at Step I and Step II undermines its assertion that the CIR fillings were so inadequate as to deny it the opportunity. In sum, CIR contends HHC was not disadvantaged by the claimed procedural irregularities.

DISCUSSION

While this Board finds that CIR, having alleged a failure to upgrade on call facilities, has established an arguable connection between the grievance and Article XI, the request for arbitration must, nevertheless, be denied. Article XI expressly excludes claims concerning on-call facilities from the grievance-arbitration procedure, and does so without qualification as to the source from which the right to improved facilities derives -- a contract provision or past practice. Hence, the debate between

the parties as to the meaning of "existing policy" as used in Article XIV is academic. The Board cannot accede to a demand for arbitration solely on the basis of the artful characterization of the grievance as a violation of one kind rather than another. Where, as here, the parties have voluntarily created an unambiguous exception to an otherwise broad arbitration provision, the Board will not disturb their agreement.

In light of the foregoing, we need not consider the challenge to arbitrability based on procedural irregularities, except to note that the concept is well established in modern civil practice that the actual communication of notice of transactions or occurrences at issue is the proper measure of the adequacy of a pleading. This is true a fortiori in administrative proceedings which are less constrained by the general rules of procedure and evidence.

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 petition of the Health and Hospitals Corporation contesting arbitrability be, and the same hereby is, granted; and it is further

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

DATED: New York, New York
June 17, 1982.

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

EDWARD J. CLEARY
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER