

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Petitioners,

-and-

Decision No. B-6-82  
Docket No. BCB-550-81

THE NEW YORK CITY HEALTH AND HOSPI-  
TALS CORPORATION,

Respondents

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INTERIM DECISION AND ORDER

A verified improper practice petition was filed by District Council 37, AFSCME, AFL-CIO (hereinafter "D.C. 37") on December 3, 1981, in which it is alleged that the New York City Health and Hospitals Corporation (hereinafter "HHC") committed an improper practice by unilaterally altering terms and conditions of an alleged agreement relating to the submission of certain disciplinary matters to review by HHC's Personnel Review Board. D.C. 37 alleges that this unilateral action by HHC constitutes a failure to bargain in good faith on a mandatory subject of bargaining, in violation of §1173-4.2(a)(4) of the New York City Collective Bargaining Law (hereinafter "NYCCBL").

HHC has not answered the petition, but, instead, by motion and affidavit dated December 14, 1981, has moved this Board for an order staying the improper practice proceeding on the ground that there is pending in the

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New York State Supreme Court a declaratory judgment action, the determination of which would be dispositive of the issues raised in the improper practice petition. An answer in opposition to the City's motion for a stay was filed by D.C. 37 on December 21, 1981. Additional written argument regarding this motion was submitted to this Board by the attorneys for HHC and D.C. 37 on December 28, 1981 and January 8, 1982, respectively.

Additionally, a motion to intervene in this proceeding was filed by the New York State Nurses Association (hereinafter "NYSNA") on December 22, 1981. Intervention was sought by NYSNA on the ground that employees which it represents are directly affected by decisions of the Personnel Review Board, and will be affected by the determination of the Board of Collective Bargaining in this matter. HHC and D.C. 37 were served with copies of the motion to intervene and have not expressed any opposition to the motion.

#### DECISION

We have reviewed the complaint in the case of Brezenoff v. Personnel Review Board, submitted by HHC in support of its motion for a stay. It is clear that the issues in that court proceeding involve an interpretation

of provisions of the Civil Service Law and Unconsolidated Law, provisions which are beyond the scope of this Board's power to consider. However, we believe that a judicial determination of the Personnel Review Board's jurisdiction under these statutes need not be dispositive of the very different issue pending before this Board, i.e., whether HHC has failed to bargain in good faith over a unilateral change in the terms and conditions of an alleged agreement concerning disciplinary procedures for certain employees. This issue clearly arises under NYCCBL §1173-4.2(a)(4), and thus is within our statutory jurisdiction.

While the right to take disciplinary action against its employees is a right specifically reserved to management under the NYCCBL, we have long held that the subject of procedures to review and appeal disciplinary actions relates to working conditions and is a mandatory subject of bargaining.<sup>1</sup> A claim that the parties have agreed to a particular disciplinary review procedure, and that the employer has unilaterally changed that procedure, states a prima facie improper practice under NYCCBL §1173-4.2(a)(4), at least sufficient to require that the employer answer the charging party's allegations.

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<sup>1</sup> Decision No. B-3-73.

Moreover, we note that the alleged existence of an agreement concerning the jurisdiction of the Personnel Review Board is not mentioned in the City's complaint in the court action.

For these reasons, we will deny HHC's motion for a stay, and order that it file an answer to the petition within ten days after receipt of this decision.

No opposition having been raised to NYSNA's motion to intervene, and it appearing to our satisfaction that members of its bargaining unit may be affected by the dispute herein, we will grant the motion to intervene.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that HHC's motion for a stay of proceedings be, and the same hereby is, denied; and it is further

ORDERED, that HHC shall serve and file its verified answer to the petition herein within ten days of receipt of this decision; and it is further

ORDERED, that NYSNA's motion to intervene be, and the same hereby is, granted.

DATED: New York, N.Y.  
January 29, 1982

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

MILTON FRIEDMAN  
MEMBER

CAROLYN GENTILE  
MEMBER

MARK CHERNOFF  
MEMBER

(I DISSENT) FRANKLIN J. HAVELICK  
MEMBER