HHC v. CIR, 31 OCB 22 (BCB 1983) [Decision No. B-22-83 (Arb)]

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

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

DECISION NO. B-22-83

DOCKET NO. BCB-653-83 (A-1687-83)

Petitioner,

-and-

COMMITTEE OF INTERNS AND RESIDENTS,

Respondent.
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DECISION AND ORDER

On June 6, 1983, the New York City Health and Hospitals Corporation (hereinafter "HHC") filed a petition challenging arbitrability of a grievance that is the subject of a request for arbitration filed by the Committee of Interns and Residents (hereinafter "the Union" or "CIR"). The Union filed an answer on June 23, 1983, to which the City replied on July 15, 1983.

Request for Arbitration

The request for arbitration states the grievance as follows:

> There is no on-call room for female radiology residents in King Pavilion at Harlem Hospital. This is not in accordance with the policy of the HHC at Harlem Hospital with regard to female residents generally. Furthermore, this

> matter is both grievable and arbitrable, but the HHC has wrongly refused to process the grievance beyond the first step.

In addition to alleging a violation of policy, the Union claims that HHC has also violated Article XIV of the 1980-1982 collective bargaining agreement between the parties (hereinafter "the Agreement") which, in Section l (B), defines the term "grievance" as:

> A claimed violation, misinterpretation, or misapplication of the rules or regulations, authorized existing policy or orders of the Corporation affecting the terms and conditions of employment and training program;

and which, in Section 2, Step II(a), states that:

> An appeal from an unsatisfactory determination at Step I, except for an appeal brought under Section 1 (D), shall be presented in writing to the Corporation's Director of Labor Relations. The appeal must be made within ten (10) working days of the receipt of the Step I determination. The Corporation's Director of Labor Relations or his designated representative, if any, may meet with the employee and/or the Committee for review of the grievance and shall in any event issue a determination in writing by the end of the tenth (10) work day following the date on which the appeal was filed.

As a remedy, the Union seeks "on call room for female radiology residents in King Pavilion, Harlem Hospital."

Position of the Parties

HHC's Position

HHC contends that the subject of on-call rooms is addressed in Article XI of the Agreement, which states:

> 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 argues that Article XI exempts all disputes related to on-call facilities from the contractual grievance-arbitration procedure. In support of this position, HHC cites our Decision No. B-25-82, a case in which CIR grieved HHC's alleged failure to upgrade on-call facilities.

HHC claims that the Agreement does not contain any provision granting female house staff officers on-call rooms in specific areas and maintains that no past practice creates any such right; it asserts that on-call room assignments at Harlem Hospital are made according to clinical specialty, not on the basis of gender.

HHC also denies having violated Article XIV, Section 2, Step II(a). It submits that the provision does not require that a grievance meeting be held once a written determination denying the grievance has issued.

CIR's Position

> The Union maintains that HHC's failure to assign female residents on-call rooms "in King Pavilion at Harlem Hospital, as distinct from the building across the street" (emphasis supplied), is in violation of established policy. CIR claims that "said policy is in recognition of the special safety needs of female residents after dark."

The Union argues that since the grievance relates to the assignment of current on-call rooms rather than the construction or upgrading of these facilities, neither Article XI nor our holding in Decision No. B-25-82 is applicable to the instant proceeding.

CIR contends that it has also specified a contractual violation herein by alleging that HHC "wrongfully refused to process the grievance beyond the first step" in accordance with the provisions of Article XIV.

Discussion

This Board has long held that in determining disputes concerning arbitrability, we must first decide whether the parties are in any way obligated to arbitrate their controversies.[1] It is clear that the parties in the instant matter have agreed to arbitrate grievances, as defined in Article XIV, Section l(B) of the Agreement. The question before us thus is whether the instant claim is within the range of matters which the parties, by contract, have agreed to submit to arbitration.

CIR contends that HHC's failure to assign female residents on-call rooms in King Pavilion violates "estab-

[1] Decision Nos. B-2-69, B-18-74, B-1-76, B-15-79, B-11-81, B-3-82, B-28-82.

ished HHC policy." Petitioner denies the existence of what it has characterized as a "past practice" of making on-call room assignments on the basis of gender.

The Agreement includes in the definition of the term "grievance" a "claimed violation" of "authorized existing policy." Petitioner's denial of the existence of any such policy is insufficient to defeat a request for arbitration. We have repeatedly held that the question of whether a policy is existent or effective is itself arbitrable.[2]

In City of New York and Local 420, District Council 37, the Union grieved that the employer violated existing policy by unilaterally removing parking privileges of non-professional employees. In our Decision No. B-5-69 in that matter we found the grievance arbitrable and said:

> The meaning of the term 'existing policy'
> as used in the contract; whether
> the provision of parking facilities
> for non-professional employees
> constitutes
> a 'policy' within the meaning of that
> term;
> and whether the employer has the right
> to
> modify or cancel an 'existing policy'
> are
> questions involving the application or
> interpretation of the collective
> bargaining
> agreement between the parties.

[2] Decision Nos. B-8-68, B-5-69, B-2-75 B-9-75.

The HHC's allegations regarding insufficiency of proof to support the Union's claim of existing policy must also be rejected. Regarding a similar assertion in **City of New York and D.C. 37**, in our Decision No. B-10-77 we said:

> There is no requirement, such as is claimed by the City, that a grievant must do any more than allege a contractual violation within the definition of a grievance agreed to by the parties and incorporated by them into their contract. No "proof" need be presented to this Board regarding the merits of the grievance; such proof is to be put before the arbitrator who must decide the grievance.[3]

The Union does not allege any violation of Article XI. HHC, however, contends that the provision of the Agreement, and our interpretation thereof in Decision No. B-25-82, bars arbitration of all grievances relating to on-call rooms. We are not so persuaded. Article XI deals with the upgrading of existing on-call rooms as distinguished from the assignment of these facilities. Our discussion in Decision No. B-25-82 does not go beyond the basic subject matter of the earlier dispute,, i.e., the upgrading of on-call facilities. Thus, Article XI and Decision No. B-25-82 are of limited scope.

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[3] See also Decision No. B-17-83.

They relate only to the subject of upgrading on-call rooms and not to the assignment of such facilities.

In its request for arbitration, CIR also alleges violations of Article XIV, Section (1)(B) and Section 2, Step II(a). Section (1)(B) deals with the definition of the term "grievance". As we have previously held, the alleged violation, misinterpretation or misapplication of the definitional section of a contract does not in and of itself furnish the basis for a grievance.[4] Section 2, Step II(a) concerns the processing of a grievance. CIR, however, has not alleged any procedural irregularities on the part of HHC. The Union may not equate the denial of a grievance at the lower levels of the grievance arbitration procedure with the misapplication of these same provisions.

Having determined that the claim alleged by the Union herein falls within the definition of a grievance contained in the collective bargaining agreement between the parties, we shall deny the petition contesting arbitrability and grant the request for arbitration.

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[4] Decision Nos. B-21-80, B-7-81, B-41-82.

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 HHC's petition challenging arbitrability be, and the same hereby is, denied; and it is further

ORDERED, that the Union's request for arbitration be, and the same hereby is, granted.

DATED: New York, N.Y.
August 24, 1983

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

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