L.371, SSEU v. HHC, 39 OCB 15 (BCB 1987) [Decision No. B-15-87 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the matter of the Improper
Practice Proceeding

-between-

SOCIAL SERVICE EMPLOYEES UNION,
LOCAL 371,

DECISION NO. B-15-87

Petitioner,

DOCKET NO. BCB-933-87

-and-

NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION,

Respondent.
- - - - - - - - - - - - - - - - - - X

DECISION AND ORDER

This proceeding was commenced on January 23, 1987, by the filing of a verified improper practice petition by Social Service Employees Union, Local 371 (herein "petitioner" or "Local 371") against the New York City Health and Hospitals Corporation (herein "HHC" or "City"). On March 20, 1987, the City responded by filing a verified motion to dismiss, together with an affirmation in support of its motion.

The City's motion was served upon Local 371 by mail. Thus, under Sections 13.5, 13.6, and 13.11 of the Revised Consolidated Rules of the Office of Collective Bargaining (herein "OCB Rules"), any answering affidavit or request for extension of time to file an answering affidavit was

on March 26, 1987. No request for extension having been filed, on April 27, 1987, Local 371's attorney informed the trial examiner, by telephone, that he wished to submit a response to the City's motion, but had not done so because he was moving his office. The Union's attorney was informed that a request for permission to file answering papers would be considered if such papers, together with a statement of circumstances which might justify waiver of the rules in this instance, were filed by April 28, 1987. On April 28, 1987, Local 371 submitted an affirmation in opposition to the City's motion. The cover letter states that "prior and ongoing trial commitments have made it impossible to submit this affirmation sooner." In view of the Union's failure even to request an extension of time, we find the reasons given insufficient to justify waiver of the rules in this instance. Accordingly, we reject the Union's affirmation.

The Petition

The petition alleges that HHC is wrongfully assigning the duties of Supervising Hospital Care Investigators employed at Woodhull and Kings County Hospitals, who are members of a collective bargaining unit represented by Local 371, to employees outside the collective bargaining unit.

The petitioner alleges that these assignments are being made to avoid dealing with petitioner, and that the result is to undermine the petitioner's status as collective bargaining representative and to deprive unit employees of "the right to be assigned to said duties." Thus, concludes the petitioner, HHC is violating Section 1173-4.2a(l) of the New York City Collective Bargaining Law (herein NYCCBL).[1]

The City's Position

The City moves to dismiss on two grounds:

1) The above charge does not conform to the requirements of Section 7.5 of the OCB Rules[2] in that it merely

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[1]This section provides, in relevant part, that:

> It shall be an improper practice for a public employer or 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]Section 7.5 provides that an improper practice petition shall contain:

> a) The name and address of the petitioner;
> b) The name and address of the other party (respondent);
> c) A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective

(continued...)

alleges conclusions unsupported by relevant and material dates and facts.

2) The allegations of the petition, even if true, do not make out a violation of Section 1173-4.2a of the NYCCBL, particularly in the light of the City's statutory right, pursuant to Section 1173-4.3(b) of the NYCCBL, "to direct its employees, determine the methods, means and personnel by which government operations are to be conducted and to exercise complete control and discretion over its organization."

DISCUSSION

It is well settled that on a motion to dismiss, the facts alleged by the petitioner must be deemed to be true. Thus, for the purpose of making our determination herein, we assume that HHC has assigned some duties of unit employees to nonunit employees. The-only question to be decided by the Board here is whether, on its face, this

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(...continued)

agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;

d) Such additional matters as may be relevant and material.

petition states a cause of action under the NYCCBL. We conclude that it does not.

The City contends that it has taken no action incompatible with Section 1173-4.3b of the NYCCBL which reserves to the City certain management prerogatives concerning which it may act unilaterally.[3] This section specifically grants to the City the right "to determine the content of job classifications" and "to determine the methods, means and personnel by which government operations are to be conducted." This Board has repeatedly construed Section 1173-4.3b to guarantee to the City the unilateral right to assign duties to both unit and nonunit employees, unless this right has been limited by the parties themselves in their collective bargaining agreement.[4] It is not al-

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[3]This section states, in relevant part:

> It is the right of the City, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; 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; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

[4]Decision No. B-6-87, and cases cited therein.

leged that there is any contractual limitation in the instant case. We have also held that the unilateral assignment of certain unit duties to nonunit employees falls within management's prerogatives.[5] Thus, we conclude that decisions with respect to assignment of duties appear to fall within the realm reserved to the City by Section 1173-4.3(b) of the NYCCBL.

Moreover, the statements that HHC's assignment of duties was intended to, and did, interfere with the Union's status as collective bargaining representative and with employees' rights are merely conclusory allegations. Local 371 has alleged no facts which, if proven to be true, would warrant a finding that these assignments have interfered with either Local 371's ability to function as the collective bargaining representative of unit employees or with rights of employees recognized by Section 1173-4.1 of the NYCCBL. Nor does the Union allege any facts which support its conclusion that HHC's action was based upon motives prohibited by NYCCBL Section 1173-4.2(a). Thus, the Union has failed to state a prima facie claim of improper practice under NYCCBL Section 1173-4.2a(l).[6] Accordinqly, the City's motion to dismiss is granted.

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[5]Decision Nos. B-33-80; B-26-80.

[6]See, e.g., Decision Nos. B-7-86; B-12-85; B-30-81. In the light of our finding above, we find it unnecessary to address the City's argument based on OCB Rule 7.5.

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 motion to dismiss filed by the City in Docket No. BCB-933-87 be, and the same hereby is, granted.

DATED: New York, N.Y.
April 30, 1987

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