OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- - - - - - - - - - - - - - - - - - x
In the Matter of the Improper
Practice Proceeding

-between-

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1180,

DECISION NO. B-58-87

Petitioner,

DOCKET NO. BCB-927-86

-and-

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION,

Respondent.
- - - - - - - - - - - - - - - - - - x

DECISION AND INTERIM ORDER

On December 11, 1986, the Communications Workers of America ("the Union") filed an improper practice petition on behalf of Cynthia Peele against the New York City Human Resources Administration ("HRA"). The City, through its office of Municipal Labor Relations ("OMLR"), filed its answer on January 21, 1987, to which the union replied on February 20, 1987. Hearings were held on April 2, May 13, and June 30, 1987. The Union and the City filed post-hearing memoranda of law on October 5 and October 6, 1987, respectively.[1]

---

[1]Attached to the City's memorandum was a copy of the
(continued...)

Background

Ms. Peele has been employed by HRA for twenty years, gradually working her way up the promotional ladder to her current position as a Principal Administrative Assistant III ("PAA III"). Since 1977, she has worked in the Medical Assistant Program ("MAP") of the Hospital Eligibility Division ("HED"), which is responsible for determining Medicaid eligibility for hospitalized patients. Since 1980, James Collins, the Director of HED, has been Ms. Peele's immediate supervisor. Ms. Peele received evaluating for 1977-1978, 1978-1979, and 1985-1986, all of which rated her performance from satisfactory to outstanding.

(...continued)
Report and Recommendation of the hearing officer in the disciplinary case against Ms. Peele. The Union objected to the submission of this decision by letter dated October 16, 1987, to which the City responded on October 20, 1987. We agree with the Union that the City could not properly make the decision a part of the record in this case by attaching it to its memorandum. The appropriate means for the City to seek admission of the decision into evidence would have been to file a motion to reopen the record, with its supporting reasons therefore. However, even overlooking this procedural irregularity and admitting the decision into evidence at this point would not change the outcome of our determination, since the hearing officer's assessment of the disciplinary charges has little bearing on the issue herein I i.e., whether HRA had a retaliatory motive in instituting the charge.

In March 1985, Mr. Collins decided to reorganize HED. Prior to the reorganization, Ms. Peele was responsible for four "regular" units, which follow standard procedures for determining eligibility, and one "specialized" unit, which utilizes different procedures based on special federal and state guidelines. Under the proposed reorganization plan, Ms. Peele was to be assigned four regular units and four specialized units, with the number of people under her supervision increasing from forty to fifty-four. After a meeting on March 11, 1985 at which Ms. Peele voiced her concerns, Mr. Collins modified the plan to remove one of the specialized units from Ms. Peele's responsibility. As a result, Ms. Peele was assigned four regular units and three specialized units.

Nevertheless, Ms. Peele filed a grievance in March, 1985, alleging that the reorganization plan added a disproportionate share of the problematic, specialized units to her area of responsibility. HRA denied the grievance on the basis that the reassignment of units-was a management prerogative, and Ms. Peele never pursued the qrievance beyond Step II. Ms. Peele, however, remained dissatisfied with the conditions she perceived to exist in HED. On February 28, 1986, Ms. Peele wrote Joel Leichter, the Labor Relations Liaison for MAP to request a meeting

with him, along with Mr. Collins and a Union representative. Ms. Peele indicated that she wished to address unfair work assignments, the assignment of out-of-title job functions, and the lack of adequate support staff to fulfill job functions. Mr. Collins told Mr. Leichter's office that "these issues had been gone over and over with Ms. Peele and that he saw no further need to hold another meeting with her to go over the same issues." Accordingly, the meeting requested by Ms. Peele never took place.

On July 7, 1986, Ms. Peele filed a Step I grievance complaining of the following actions:

> 1. Job harassment by virtue of unfair, untenable out-of-title job assignments with functions from PAA I through Deputy Director's job responsibilities being assigned to me;
>
> 2. Failure to provide administrative guidance;
>
> 3. Lack of proper and sufficient staffing to execute work assigned;
>
> 4. Unfair, unequal work distribution of PAA III.

Ms. Peele and a Union representative then attempted to meet with Mr. Collins on July 11, 1986. Mr. Collins declined to meet with them at that time.

No further action on Ms. Peele's Step I grievance was immediately taken. However, on September 22, 1986, Ms. Peele received a performance evaluation from Mr.

Collins which, although rating her work as "satisfactory", contained a number of negative comments. The day after receiving this evaluation, Ms. Peele filed a Step II grievance reiterating her Step I complaints, but adding that retaliatory actions had been taken with respect to her prior grievance and that unrealistic deadlines had been imposed upon her.

On September 25, 1986, the Deputy Director of HRA's office of Labor Relations ("OLR") wrote to Mr. Leichter indicating that OLR had received Ms. Peele's Step II grievance, but had no record of the underlying Step I grievance and Mr. Leichter's response thereto. Shortly thereafter, Ms. Peele received a memorandum from Mr. Leichter dated October 2, 1986 indicating that disciplinary charges were pending against her and that the issues raised in her grievance would be dealt with at the time of the disciplinary hearing.

On October 10, 1986, Ms. Peele was served with a notice of the charges and specifications in the disciplinary matter, alleging that she was insubordinate in failing to comply with the direct orders of her supervisor in June and July, 1986, by (1) neglecting to timely process the "DiGiovanni" case, (2) neglecting to meet the deadline imposed in the "Strachan" case, (3) refusing to sign a memorandum to the Financial Analysis Section

certifying medical eligibility, and (4) refusing to complete four assignments during the week of July 11, 1986.

On October 27, 1986, OLR issued a Step II determination "administratively closing" Ms. Peele's grievance and cancelling the Step II hearing that had been scheduled for October 21, 1986 since "the issues raised by the grievant can more properly and without unnecessary duplication" be discussed at the disciplinary hearing.

OMLR issued a Step III decision On December 3, 1986 without holding a conference, finding that Ms. Peele's complaints regarding job harassment and unfair workload did not constitute a grievance within the contractual definition and that the complaints regarding retaliation could not appropriately be raised in that forum. OMLR accordingly dismissed the grievance, and the Union did not file a request for arbitration.

The Union thereupon filed the instant improper proceeding charging that HRA has violated (1) Sections 1173-4.2a(l) and (4) of the New York City Collective Bargaining Law ("NYCCBL") by refusing to process Ms. Peele's grievance, and (2) Sections 1173-4.2a(l) and (3) by bringing disciplinary charges against Ms. Peele in retaliation for filing a grievance against the agency.

Positions of the Parties

City's Position

The City alleges that the disciplinary charges brought against Ms. Peele resulted from her various acts of insubordination, rather than from any retaliatory motivation on the part of Mr. Collins. The first such act involved the "DiGiovanni" case, about which a state senator had written to the Administrator of HRA requesting a speedy disposition of eligibility. DiGiovanni was an out-of-pocket" reimbursement case, meaning that the original determination of ineligibility was overturned after a hearing and that the agency was ordered to reimburse the patient for his out-of-pocket expenses. According to the City, Mr. Collins gave the assignment on June 11, 1986 to Ms. Peele for processing by her unit. Ms. Peele's unit, however, failed to complete the assignment until July 16, 1986, even though the case allegedly required only that two simple forms be completed.

The next instance, the City claims, concerned "Strachan", another out-of-pocket reimbursement case. In giving this case to Ms. Peele on June 30, 1986, Mr. Collins imposed a deadline of July 7, 1986 for its completion. Contrary to her testimony, Mr. Collins allegedly gave

Ms. Peele sufficient guidance to process the case and, in fact, met with her on two occasions to discuss the matter. Ms. Peele's unit, however, did not complete the case until July 11, 1986.

The final instance of insubordination, according to the City, concerned the processing of "over two-year 220" cases. These cases involve billing forms, i.e., "220's," that are over two years old and are submitted by the hospitals to Medicaid for payment. The cases are the result of a hearing and normally involve large amounts of money, which must be paid manually rather than by computer. On July 7, 1986, Mr. Collins informed Ms. Peele that, after her unit had processed a 220 case, she must sign a covering memorandum certifying Medicaid eligibility upon forwarding the case to the Financial Analysis Unit. The City alleges that Ms. Peele flatly refused this assignment, declaring that she lacked the authority to sign the memorandum on the basis that it would require her to certify payment as well as eligibility. Even after Mr. Collins verified the appropriateness of the assignment with Mr. Leichter in MAP's Personnel Unit, Ms. Peele refused the assignment.

Shortly after Ms. Peele left his office on July 7, Mr. Collins claims that he drafted a memorandum to Joyce

Rushing-Reid, the Director of Personnel/Administrative Services. The memorandum reads as follows:

> Among Ms. Peele's duties as Section Manager over 7 units, she has oversight of the Hospital Adjustment Unit which processes HED's Fair Hearings compliance actions. In a meeting last month with Financial Analysis and Medical Payments staff, it was agreed that HED would submit a covering memo certifying MA eligibility for the over 2 year claims being submitted for payment thru Medical Payments.
>
> To implement that decision, I drafted the attached form memo and procedure, then called Ms. Peele in this afternoon about 2:45 P.M. to discuss it (and other assignments).
>
> At the time she read the memo and stated she was not accepting this duty; that it was my responsibility as Director and not hers; that my trying to give her this job was harassment on my part.
>
> After consultation with Mr. Leichter, I called her in again at 3:34 P.M., with Ms. Williams my Executive Assistant present. I advised her I still believed it was an appropriate assignment. She again refused to accept the assignment and memorandum, repeating her statement that I was giving her a managerial task. I advised her again that I considered the assignment to be proper for a PAA III and stated explicitly that I was directing her to accept this assignment. She again refused and told us that if it had to be taken to C.O. it was okay with her.
>
> Subsequently at 4: 30 P.M. she handed in the attached grievance. I consider these actions most unprofessional in a PAA III, who should be assisting not hindering managers in the performing of their duties, and therefore request insubordinate charges be instituted.

Mr. Collins testified that while this memorandum was being typed, Ms. Peele submitted her Step I grievance. He claims that he then amended the memorandum to add the last paragraph concerning Ms. Peele's grievance.

Mr. Collins further testified that he drafted a memorandum dated July 11, 1986 to Ms. Peele detailing what he termed her "unsatisfactory job performance" on the Strachan and DiGiovanni cases. Although he indicated that the matters detailed in the memorandum would be taken into account in her performance evaluation rating her for the year ending August 31 1986, Mr. Collins did not mention that he had requested that disciplinary charges for insubordination be instituted against Ms. Peele. During a meeting on July 11, 1986 about the Strachan and DiGiovanni cases, Ms. Peele refused to accept the memorandum from Mr. Collins. When she returned a few minutes later with a union representative, Mr. Collins declined to meet with them at that time, but again attempted, unsuccessfully, to give the memorandum to Ms. Peele.

The City argues that Ms. Peele's clear insubordination left Mr. Collins with no choice but to initiate disciplinary action, since she not only failed to meet deadlines but she adamantly refused to sign the covering

memorandum in the "over two-year 220" cases. Ms. Peele's argument that she lacked the authority to certify payment in such cases is groundless, in the City's view, since the memorandum simply required her to state that the unit had "established Medicaid eligibility for the period of hospitalization for which [the named Hospital] is requesting payment via the attached W220B(S)." The City further notes that the Union's own witness, the MAP building steward, testified that it is her practice to advise an employee not to refuse an assignment.

The City also denies that Mr. Collins requested disciplinary charges in retaliation for Ms. Peele's grievance. The City first points out that Ms. Peele had filed grievances in the past without any action being taken by Mr. Collins. In addition, the City claims that the request for charges had already been submitted for typing by the time r1s. Peele filed her grievance. Finally, the City alleges that the request for charges had a rational basis in view of Ms. Peele's clear insubordination. The City thus concludes that Mr. Collins' actions were properly motivated by the managerial right to maintain a certain level of efficiency.

As for the allegation that HRA committed an improper practice by failing to process Ms. Peele's qrievance,

the City argues that the Union at all times had the right under the parties' agreement to proceed to the next step of the grievance procedure. According to the City, this negotiated right "constitutes the employee's remedy for dealing with an unresponsive employer." HRA, the City claims, was simply following agency practice by holding the disciplinary hearing and allowing the employee to raise his grievance in that forum.[2] The City pointed to the testimony of Michael Davies, Chief Civilian Negotiator for OMLR, that in his twenty years of experience, an employee's failure to take his grievance to next step has never served as the basis for an improper practice charge against the City. The City thus argues that, although its practice may lead to delays in scheduling a grievance hearing, HRA is not guilty of a refusal to bargain in good faith.

[2]The City also claims that, although HRA informed Ms. Peele that her grievance would be heard at the Section 75 hearing, it did so only after Ms. Peele cancelled her scheduled Step II hearing. Since the exhibits clearly show that Mr. Leichter advised Ms. Peele on October 2, 1986 that the grievance would be considered at the disciplinary hearing and Ms. Peele did not request until October 17, 1987 that the Step II hearing be rescheduled due to a prior medical appointment, we will not further address this argument.

Union's Position

According to the Union, Ms. Peele's problems began when Mr. Collins reorganized HED in March 1985. Even after voicing her concerns and filing a grievance about the reorganization plan, Ms. Peele was assigned three specialized units, in addition to her four regular units. Traditionally, each PAA III or social worker was assigned only one specialized unit, which allegedly involve more complex procedures.

The Union claims that Ms. Peele met with Mr. Collins periodically between March 1985 and July 1986 to discuss her workload problems and staffing needs. Since these matters remained unsolved, Ms. Peele requested a meeting in February 1986 with Mr. Leichter and Mr. Collins. Her request was not granted.

Ms. Peele further testified that Mr. Collins removed one specialized unit from her responsibility after she had resolved the problems existing in the unit and assigned her another specialized unit with longstanding difficulties, i.e., the Hospital Adjustment Unit. Within the next few months, two "out-of-pocket reimbursement" cases were assigned to Ms. Peele, which allegedly involved new procedures and had created confusion in the different divisions. Thus, Ms. Peele said that she felt compelled

to file a grievance on July 7, 1986 concerning the allegedly unfair distribution of work and the lack of administrative guidance and sufficient staffing.

Mr. Collins' testimony that he had already drafted a request for disciplinary charges when Ms. Peele submitted her July 7th grievance is not worthy of credence, in the Union's view. The Union argues that Mr. Collins' claimed amendment of the last paragraph of the request to reflect the filing of the grievance was unnecessary, since there was no reason to mention Ms. Peele's grievance at all. Furthermore, the Union submits that the reference to "these actions" in the last paragraph can only refer to Ms. Peele's refusal to accept the covering memorandum assignment and her filing of the grievance, since the letter mentions no other actions. Thus, the Union concludes that Mr. Collins requested the institution of disciplinary charges in retaliation for the filing of the grievance.

As for her allegedly unsatisfactory work performance, Ms. Peele testified that DiGiovanni was the first out-of-pocket reimbursement case received by the Hospital Adjustment Unit and involved new procedures. At a meeting on May 7, 1986, Mr. Collins informed Ms. Peele that he would retain the case until the applicant had submitted

all necessary bills for reimbursement. On approximately June 30th, Mr. Collins returned the case to Ms. Peele for processing, without assigning a deadline for its completion. Ms. Peele testified that the case was completed by "either the end of July or August."[3]

Similarly, Ms. Peele feels that Mr. Collins' complaints regarding the Strachan case were unwarranted. Mr. Collins assigned the case to Ms. Peele on June 30, 1986 and told her that it was a priority matter which must be completed by July 7, 1986. Ms. Peele responded that the deadline was unrealistic in view of the intervening July 4th weekend and the different procedural format that Mr. Collins had assigned to be used in the case. The unit completed the case on July 11, 1986.

In addition, the Union argues that there is no merit in HRA's charges relating to Ms. Peele's alleged refusal to sign a covering memorandum in the "over two-year 220" cases. After reviewing the memorandum, Ms. Peele felt that she would be certifying payment as well as eligibility by signing it. In addition, Ms. Peele felt that the assignment would require her to review the file prior

[3]Mr. Collins testified that he returned the case to Ms. Peele on June 11, 1986, and that it was completed on July 16, 1986.

to signing the memorandum, which is generally a responsibility of an employee at the PAA II level. The Union further argues that the memorandum was subsequently changed to add a separate provision that clearly designated the responsibility for reviewing payment to a different MAP section.

Finally, the Union building steward and the staff representative both testified that misconduct charges generally have not involved the type of issues involved here, but rather such matters as time and leave infractions or violations of agency policy. The staff representative further testified that the employee is generally informed within forty-eight hours of the infraction that charges will be issued and is served with the written charges within thirty days.

Discussion

a. Retaliation Claim

The Union claims that HRA violated Sections 1173-4.2a(1) and (3) by instituting disciplinary charges against Ms. Peele in retaliation for filing a grievance. Sections 1173-4.2a(1) and (3) provide that it shall be an improper practice for an employer:

> (1) to interfere with, restrain or coerce public employees in the exercise of their

> rights granted in Section 1173-4.1[4] of this chapter;
>
> (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, any public employee organization....

Where violations of Section 1172-4.2a(l) and (3) have been alleged, this Board has applied the test set forth by the Public Employment Relations Board ("PERB") in City of Salamanca, 18 PERB ¶3012 (1985). Thus, in cases involving a claim of discrimination, the petitioner is required to make a prima facie showing that (1) the employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity, and (2) the employee's union activity was a motivating factor in the employer's decision. once the petitioner has carried this burden, then the burden of persuasion shifts to the employer to show that the same action would have taken place even in the absence of the protected conduct.[5]

---

[4]Section 1173-4.1 grants employees the right:

> to self-organization, to form, join or assist public employee organization, to bargain collectively through certified employee organizations of their own choosing and... to refrain from any or all of such activities.

[5]Decision No. B-51-87.

Applying this test to the instant matter, we conclude that HRA has violated Sections 1173-4.2(a)(1) and (3) of the NYCCBL. The Union has established to our satisfaction that Mr. Collins was aware of Ms. Peele's grievance at the time that he requested the institution of disciplinary charges. We discredit Mr. Collins' testimony that his request for disciplinary charges already had been drafted and was being typed at the time that Ms. Peele filed her July 7th grievance, and that he simply amended his request to add the information about the grievance. Moreover, as the Union points out, Mr. Collins, absent a retaliatory motive, need not have mentioned the grievance at all, since it could not lawfully have provided support for the request for discipline.

Certain other circumstances also cast doubt on the motives of Mr. Collins and HRA in instituting the charges. Ms. Peele is an employee with twenty years of service who has never before received disciplinary charges or warnings, from either Mr. Collins or any previous supervisor. Furthermore, the disciplinary charges allegedly first requested on July 7, 1986 were not served on Ms. Peele until October 10, 1986. Thus, the charges were pressed forward only after Ms. Peele had pursued

her grievance to Step II on September 23, 1986 and Mr. Leichter had received an inquiry dated September 25, 1986 from the Office of Labor Relations about the absence of a Step I response. Ms. Peele was then informed for the first time on October 2, 1986 that disciplinary charges would be issued against her for the events that had transpired in July. Yet, Ms. Peele had received on September 22, 1986 an evaluation which rated her overall performance "satisfactory" and which failed to mention that disciplinary charges were pending.

We also note that Mr. Collins had exhibited a prior unwillingness to deal with Ms. Peele's complaints. With respect to Ms. Peele's request in February 1986 for a meeting with Mr. Leichter and Mr. Collins, the City's witness testified that Mr. Collins saw "no further need to hold another meetina with her." Likewise, when Ms. Peele and a union representative attempted to meet with Mr. Collins on July 11, 1986 concerning his complaints earlier that day about her performance, he refused to do so at that time.

Thus, having determined that the Union has met its prima facie burden of establishing that the employer's agent knew of Ms. Peele's protected activity and that such activity was a motivating factor in the institution

of disciplinary charges, we turn to the issue of the City's burden of showing that it would have taken the same action in the absence of Ms. Peele's conduct. We observe that Mr. Collins' original request for charges only mentioned Ms. Peele's "insubordination" in failing to sign the covering memorandum on the over-two-year 220 cases. The notice of charges, however, added Ms. Peele's performance on the Strachan and DiGiovanni cases as a basis for discipline. The addition of these charges, in our view, only underscores the weakness of the original request for discipline. In any event, it is questionable whether any of the alleged instances of misconduct were of a nature considered by the employer in other cases to warrant the serious measure of instituting formal disciplinary action. Although Ms. Peele did refuse to sign the covering memorandum, the City presented no evidence to show that similarly situated employees had been issued disciplinary charges in the past.[6] Furthermore, the fact that the covering

[6]See Champion Parts Rebuilders v. NLRB, 717 F. 2d 845 (3rd Cir. 1983) (NLRB properly found that the employer unlawfully discharged an employee for filing grievances, rather than for a time and leave violation, as the employer asserted; the employer failed to meet its burden of establishing that the employee would have been discharged even in the absence of her protected activities, since it presented no probative evidence that similarly situated employees had been discharged in the past.)

memorandum was subsequently modified to provide for a separate sign-off by another MAP section after a review of the billing forms for payment, tends to support Ms. Peele's contention that it was inappropriate for a person in her position to sign the memorandum.

As for the DiGiovanni case, we are not persuaded that Ms. Peele's performance was so unsatisfactory as to fall into that category of performance as to which the employer, in other similar cases, has issued formal disciplinary charges. Although he complained that Ms. Peele's unit required five weeks to process the case, Mr. Collins had imposed no deadline for the completion of the case. Moreover, the City presented no evidence to establish that this five-week period was unreasonable in comparison either to the past performance of Ms. Peele or to that of the other units in HED.

Likewise, we do not believe that Ms. Peele's performance on the Strachan case would have resulted in the employer's filing of disciplinary charges in the absence of her protected activities. Ms. Collins' deadline of July 7, 1986 for completing a case he first assigned on June 30 appears unreasonable in view of the intervening July 4th weekend, the new procedures involved in the case, and the lack of any evidence to show that such a

deadline was realistic or typical for the units under Mr. Collins' control.

We thus conclude that the HRA has failed to meet its burden of showing that Ms. Peele would have been issued disciplinary charges even in the absence of the filing of her grievance. Accordingly, we find that HRA has violated Sections 1173-4.2a(l) and (3) of the NYCCBL.

b. Alleged Refusal to Process Grievance

The Union also alleges that HRA violated Sections 1173-4.2a(l) and (4) by refusing to process Ms. Peele's grievance. Section 1173-4.2a(4)[7] provides that it shall be an improper practice for an employer "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."

The collective bargaining agreement of the parties herein provides for a three-step grievance procedure prior to arbitration, as detailed in Article VI thereof. As the Union points out, HRA flatly declined to address the merits of the petitioner's grievance at any step of the grievance procedure. Rather, Ms. Peele, without being granted a meeting to discuss her grievance, received a Step I "response" dated October 2, 1986 noti-

[7]Section 1173-4.2a(l) is quoted supra at 16-17.

fying her that the issues she had raised in her grievance would be considered at her disciplinary hearing. Ms. Peele then received a Step II "determination" dated October 27, 1986, which cancelled the previously scheduled Step II hearing and again advised her that she could raise the issues in her grievance at the disciplinary hearing. The Step III decision simply found that "[n]one of the written complaints referred to in the Step I submission constitute a grievance within the contractual definition of that term."

The record thus establishes that the City issued a "response" at each step of the grievance procedure, but failed to consider or discuss the merits of the issues raised in the grievance. The record establishes further that Ms. Peele and the Union, dissatisfied with the City's responses at Steps I and II, exercised their contractual right to move the grievance to the next Step of the procedures. Following receipt of the Step III decision, the Union could have submitted the dispute to arbitration under the parties' agreement, but did not do so.

We recognize that a refusal to process grievances which is of such magnitude as to constitute not merely a violation of a collective bargaining agreement, but also a repudiation of it, would present the basis for a

finding of improper practice.[8] In this regard, we have stated our belief that a systematic and flagrant violation of an agreement's grievance procedure might justify our assertion of improper practice jurisdiction.[9]

However, we do not find that the record establishes the basis for such a ruling in this case. If the nature of the City's responses to the grievance, and its refusal to schedule a hearing thereon, are violative of the mandates of the contractual grievance procedure, then the Union has recourse through its ability, under the contract, to submit the unresolved dispute to arbitration. Pursuant to the limitation contained in Section 205.5(d) of the Taylor Law,[10] which is applicable to this Board pursuant to Section 212 of that Law, we are without jurisdiction to consider claims of contract

---

[8]Addison Central School District v. Addison Teachers' Association, 17 PERB ¶3076 (1984), aff'g 17 PERB c,¶4566.

[9]Decision No. B-8-85 at p. 13.

[10]Section 205.5(d) provides that:

> "the board shall not have authority to enforce an agreement between an employer and an employee organization over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice."

violation which do not otherwise independently constitute improper practices. We do not find a sufficient basis to conclude that the City's alleged violation of the contractual grievance procedure was so flagrant and systematic as to constitute a repudiation of the agreement, and, therefore, we will dismiss so much of the Union's improper practice charge as relates thereto.

c. Remedy

Having found that the City violated Sections 1173-4.2a(l) and (3) of the NYCCBL, the question of remedy remains open. Since neither party has at any time in this proceeding addressed the issue of the appropriate remedy, we will grant the parties twenty days to file written statements presenting their positions on this matter before issuing our final order.

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 improper practice petition herein be, and the same hereby is, granted, to the extent indicated in the decision herein; and it is further

ORDERED, that the parties file written statements presenting their positions on the issue of the appropriate remedy within twenty days of the date of this order.

DATED: New York, N.Y.
December 22, 1987

ARVID ANDERSON
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

JEROME E. JOSEPH
MEMBER

PATRICK F. X. MULHEARN
MEMBER

DEAN L. SILVERBERG
MEMBER