HHC v. CIR (Rudolfo Guzman), 43 OCB 2 (BCB 1989) [Decision No. B-2-89 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Petitioner,

DECISION NO. B-2-89
DOCKET NO. BCB-1085-88 (A-2866-88)

-and

COMMITTEE OF INTERNS AND RESIDENTS (RUDOLFO GUZMAN),

Respondent.

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DECISION AND ORDER

The New York City Health and Hospitals Corporation ("HHC") on September 2, 1988, filed a petition challenging the arbitrability of a grievance commenced by the Committee of Interns and Residents ("CIR") on behalf of Rudolfo Guzman, M.D. ("grievant"). The CIR filed its answer to the petition on November 21, 1988. HHC filed its reply on December 12, 1988 in which it, in part, objected to the CIR's failure to verify its answers. Subsequently, on December 23, 1988, the CIR filed a verification with its answer.

Background

Grievant was a house staff officer ("HSO") employed as a "PGY 1 Resident" at Woodhull Medical and Mental Health Center ("the Hospital.") By letter dated December 10, 1987, Sundaram Ruju, M.D., Acting Director of Medicine at the Hospital, informed grievant that his yearly contract would not be renewed.

As a result, on February 16, 1988, the CIR filed a grievance pursuant to Step 1 of the grievance procedure[1] which the Hospital subsequently denied. The CIR appealed the Hospital's decision to the House Staff Affairs Committee in accordance with Step II (b)

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[1] The pertinent collective bargaining agreement is the October 1, 1984 to September 30, 1987 agreement between the parties ("Agreement.") Article XIV, §1 of the Agreement defines a grievance, in relevant part, as:

> (A) [a] dispute concerning the application or interpretation of the terms of this collective bargaining agreement;
>
> (D) [a] question regarding the nonrenewal of the appointment of an HSO;

Step I of the grievance procedure is set forth in Article XIV, §2 of the Agreement which provides the following:

> Step I. The Employee and/or the Committee shall present the grievance in writing to the Chief of Service or to the Executive Director or the Director's designee no later than ninety (90) days after the date on which the grievance arose, and in grievances brought under Section 1 (D) the grievance shall be presented no later than ninety (90) days after the date on which written notice was received. The individuals to whom the grievance was presented shall take any steps necessary to a proper disposition of the grievance and shall reply in writing by the end of the tenth (10) work day following the date of submission, except for grievances brought under Section 1 (D) where the reply shall be in writing by the end of the fifth (5) working day following the date of submission.

of the grievance procedure[2]. On March 31, 1988, the House Staff Affairs Committee reversed Dr. Ruju and voted to renew grievant's contract.

The HHC sought a review of the House Staff Affairs Committee determination before the Medical Board pursuant to Step II (b) of the grievance procedure. The minutes of the meeting of the Medical Board states that there was a "lengthy discussion" with respect to the decision not to renew grievant's contract. The Medical Board affirmed Dr. Rajuls December 10, 1987 decision and

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[2]Step II of Article XIV provides the following:

(a) 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.

(b) An appeal from an unsatisfactory determination at Step I in regard to a grievance brought under Section 1 (D) must be brought within fifteen (15) days of receipt of the Step I determination to the House Staff Affairs Committee of the Medical Board for evaluation and determination. All decisions of the House Staff Affairs Committee may be reviewed by the Medical Board. The decision of the Medical Board in all such matters shall be final.

upheld his non-renewal of grievant's contract.

After receiving the Medical Board's decision, the CIR filed a second grievance alleging that the HHC had violated Article XIV, Step II (b) and Article XIV, §6 of the Agreement[3] by failing to notify grievant and the CIR that the Medical Review Board would be conducting a hearing with respect to its Step II (b) review of the House Staff Affairs Committee determination and by not permitting grievant or the CIR to attend the hearing. The CIR asked that the Medical Board's decision be vacated and that it reconvene with "proper notice" to grievant and the CIR. It is this grievance which is the object of the HHC's instant petition.

In response, by letter dated April 27, 1988, the HHC denied the CIR's Step I grievance. On April 27, 1988, the CIR filed a grievance under Step II of the grievance procedure. The HHC issued a decision June 13, 1988, in which it found that the "due process right[s]" of grievant were not violated; the Medical Review Board did. not conduct a hearing because one was not required pursuant to the Agreement.

The CIR filed a request for arbitration on August 15, 1988,

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[3]Article XIV, §6 of the Agreement provides that:

> (t]he Employer shall notify the Committee in writing of all grievances filed by HSOs, all grievance hearings, and all determinations. The Committee shall have the right to have a representative present at any grievance hearing and shall be given forty-eight (48) hours' notice of all grievance hearings

alleging that grievant had been "terminated in absentia without CIR present at the hearing" in violation of Article XIV, §2 Step II (b) and Article XIV, §6 of the Agreement. For relief, it asks that HHC reinstate grievant and make him whole for any losses suffered.

Parties' Positions

HHC

As its first challenge to arbitrability, the HHC argues that because Article XIV, Step II (b) provides that "[t]he decision of the Medical Board [in appeals brought from the House Staff Affairs committee] shall be final," there is no "jurisdiction to proceed on this matter" before this Board. It asks that we dismiss the CIR's request for arbitration for lack of jurisdiction.

HHC relies on our determination in Decision No. B-10-79. HHC argues that because the parties to the Agreement used the word "final," they intended that the Medical Board's review be the definitive adjudication on questions of contract renewal. Thus, the underlying grievance is not arbitrable.

HHC also contends that there is no nexus between the CIR's allegations and Article XIV, §6 of the Agreement. It does not deny that notice was not given to the CIR nor does it deny that a the CIR was not given an opportunity to have a representative

present at the Medical Board review. It argues that the procedure for appeals of non-renewal of HSO contracts is limited to the terms of Article XIV, Step II (b) which provides only for a "review," not a "grievance hearing" which it argues is the sole object of the procedures prescribed by Article XIV, §6. HHC notes that reviews conducted under Step II (b) have in the past been "paper reviews" rather than hearings. By characterizing the proceeding before the Medical Board as a hearing and asking that the requirements of Article XIV, §6 be imposed on a review conducted pursuant to Step II (b), the HHC contends that the CIR is attempting to rewrite the collective bargaining agreement.

CIR

The CIR claims that the issue presented for arbitration is not whether the Medical Board's decision is final but whether the Medical Board complied with the Agreement's procedures. In its answer, the CIR says that it seeks an interpretation of the term "review" as it is used in the Agreement. If the arbitrator determines that the parties intended to conduct a "hearing" with the attendant procedures provided in Article XIV, §6, he may, according to the CIR, vacate the Medical Board's decision or order it to hold a hearing according to the required procedure.

With respect to its claim under Article XIV, §6, the CIR argues that the question of whether that section applies to a

"review" is a question of contract interpretation for an arbitrator to determine. Moreover, it argues that the Medical Board did, in fact, conduct a hearing, and therefore, the requirements of Article XIV, §6, i.e. that the CIR be given notice and have the opportunity to be present at the hearing, attached.

Discussion

HHC requests, as a preliminary matter, that we dismiss the CIR's request for arbitration for "lack of jurisdiction." We are expressly empowered by New York City Collective Bargaining Law, §12-309 (3) "to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure(s]" in those employment relationships over which we have jurisdiction. We note that it is HHC which has brought the matter before this Board through its petition challenging arbitrability of the CIR's grievance. The issue of whether a grievance is arbitrable is properly before this Board. A union must, nonetheless, in response to a challenge to arbitrability of its grievance, establish that there is a duty to arbitrate and, that there is a prima facie relationship between the act complained of and the source of the alleged right, redress of which is sought through arbitration[4].

The HHC argues that Decision No. B-10-79 bars the

[4]Decision Nos. B-61-88; B-13-85; B-6-85.

arbitration of a determination by management which is deemed final under a collective bargaining agreement. Indeed, we have consistently held that the use of the word "final" in this context conclusively indicates that parties have agreed not to submit determinations so designated to arbitration. [5] The CIR, however, does not seek a review of the merits of the Medical Board's decision. In the instant case, the CIR argues that the term "review" in Article XIV, Step II (b) of the Agreement requires that the Medical Board conduct a hearing with notice to the CIR and that the CIR be given an opportunity to have a representative present as mandated by Article XIV, §6. The CIR alleges that the Hospital, in fact, conducted a hearing, but failed to comply with Article XIV, §6 thereby violating the Agreement. Thus, the CIR claims that there is a nexus between its claims and Article XIV, §2 Step II (b) and Article XIV, §6 of the Agreement.

HHC argues that if the parties had intended that the Medical Board conduct a hearing, then that term would have been used in lieu of the word review. Rather than a hearing, the parties contemplated, as the Medical Board has used in the past, an ex parte "paper review." Thus, HHC argues that there is no nexus between the CIR's claims and Article XIV, §2 Step II (b) and sArticle XIV, §6.

[5]Decision Nos. B-47-88; B-24-86; B-19-81.

As the HHC notes, the terms "hearing" or "grievance hearing" do not appear in Article XIV, §2 Step II (b). Nonetheless, the House Staff Affairs Committee, which the Agreement authorizes to conduct an "evaluation and determination," conducted a "meeting" on March 31, 1988, according to minutes prepared by the House Staff Affairs Committee appended to the petition filed herein, that was:

> held as a hearing which is step 2 of the grievance procedure allowed to housestaff when their contracts are not renewed. The grievance procedure is described in the hospital contract with CIR. . .

Notice was given to grievant and the CIR, and grievant was afforded the opportunity to have a CIR representative present at the "hearing." The conduct of the House Staff Affairs Committee's "evaluation and determination" lends credence to the contention that the parties may provide for a "hearing," even when that term is not specifically used in the Agreement.

We have, in the past, held that the question of whether management complied with procedures in making a decision which is insulated from arbitration is arbitrable. [6] The arbitrator, in those cases, was not empowered to upset the substantive result of the final managerial action but was authorized to rule on whether the parties complied with the contractually agreed upon

[6]Decision Nos. B-47-88; B-31-82.

procedures.[7]

In the instant matter, the arbitrator is being asked to determine whether the term "review" encompasses a procedure which management is bound to follow in making a final determination which is otherwise protected from arbitral challenge. We find that the question of what "review" means under the Agreement is a question of contract interpretation. Questions of contract interpretation are for an arbitrator and not for this Board to determine.[8] Furthermore, the issue of whether the procedure provided by Article XIV, §6 attaches to a "review" is also a question of contract interpretation.

The CIR has established an adequate nexus between its claim that the Agreement requires that the Medical Board follow a procedure in its Step II "review" of House Staff Affairs Committee determinations and Article XIV, Step II (b) of the Agreement. It has also established an adequate nexus between HHC's failure to. provide notice and an opportunity to the CIR to attend a Step II "review" and Article XIV, §6 of the Agreement. The arbitrator is not being asked to consider nor could the arbitrator consider the propriety of the Medical Board's determination with respect to the renewal of grievant's contract; the collective bargaining agreement renders that determination

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[7]Decision No. B-47-88

[8]Decision Nos. B-65-88; B-7-77.

inviolable. The arbitrator, however, is directed to determine the nature of the "review" contemplated by the parties in Step II (b) of the Agreement, as well as whether the process provided by Article XIV, §6 applies to such a review. Accordingly, we deny HHC's petition and grant the CIR's request for arbitration.

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 the petition filed by the New York City Health sand Hospitals Corporation be, and the same hereby is denied; and

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

Dated: New York, New York
January 26, 1989

MALCOIM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD SILVER
MEMBER

DEAN L. SILVERBERG
MEMBER