McAllan v. HHC; EMS, 47 OCB 33 (BCB 1991) [Decision No. B-33-91 (IP)]

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

RICHARD J. McALLAN DECISION NO. B-33-91

Petitioner, DOCKET NO. BCB-1345-90

-and-

EMERGENCY MEDICAL SERVICE, a
Division of NEW YORK CITY HEALTH
AND HOSPITALS CORPORATION,

Respondent.
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INTERIM DECISION AND ORDER

On December 10, 1990, Mr. Richard J. McAllan ("petitioner") filed, pro se, a verified improper practice petition against the Emergency Medical Service ("EMS"), a Division of the New York

City Health and Hospitals Corporation ("HHC" or "respondent"), alleging that the respondent has violated Section 12-306a[1] of the New York City Collective Bargaining Law ("NYCCBL").

In a letter to the Deputy Director and General Counsel of the Office of Collective Bargaining ("OCB"), dated December 19, 1990, counsel for HHC sought an extension of time to respond to the petition. HHC also requested that a conference be held for the purpose of addressing several questions "concerning the contents as well as the format of the petition."[2] In light of the format and complexity of the petition, the respondent's request was granted and a conference was scheduled.

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[1] Section 12-306a of the NYCCBL provides:

> **Improper public employer practices**. It shall be an improper practice for a public employer or its agents:
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> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
>
> (2) to dominate or interfere with the formation or administration of any public employee organization;
>
> (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;
>
> (4) 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.

[2] The petition, as filed on December 10, 1990, was comprised of 48 lengthy paragraphs under subheadings labeled as follows: Charges, Background Facts, Facts, Procedural Due Process Violations, Retaliation, Damages, Relief Sought. The petition also referred to 21 exhibits of varying length.

The Trial Examiner assigned to this matter presided over a conference held on January 10, 1991, at which the petitioner, Labor Relations Counsel for HHC and a member of her staff were in attendance. The primary objection voiced by HHC at this meeting was that the petition, as drawn, was unwieldy and unamenable to a responsive pleading. After a lengthy discussion, the petitioner agreed to amend the petition by identifying those aspects of it which would be considered as background material only. It was further agreed that HHC would "respond" to the petition, as amended, on or before February 11, 1991.[3]

On February 11, 1991, HHC filed a notice of motion to dismiss the improper practice petition and an affirmation in support of its motion.

After two requests for an extension of time were granted, on March 27, 1991 the petitioner filed a notice of cross motion to dismiss, a motion for summary judgment and an affidavit in support of the motion for summary judgment.

On April 1, 1991, HHC filed an affirmation in response to the petitioner's cross motion to dismiss and motion for summary judgment.

Factual Background

The relevant background facts, as alleged by the petition, as amended, are as follows:

The petitioner has been employed by the respondent since 1973, and currently holds the title Emergency Medical Services Specialist II

[3] The nature of HHC's response is one of the matters at issue in this Interim Decision and Order and will be discussed infra.

("paramedic"). Petitioner claims to have graduated from the first class of EMS paramedics in 1974, and to have the highest seniority of all paramedics in EMS, systemwide.

On October 12, 1986, petitioner suffered a line of duty injury ("LODI"). As a result of his injuries, petitioner maintains that he has been unable to perform as a full field duty paramedic since 1986.

Between June 1987 and May 1990, petitioner held office as the President of "The EMTs and Paramedics of Local 2507" ("Local 2507"), an affiliate of District Council 37, AFSCME, AFL-CIO ("DC 37"). When he took office in June 1987, petitioner claims that his status was changed from worker's compensation to "modified (or light) duty" and was granted a full-time leave of absence with pay for the term of his union presidency.[4] Petitioner cites several examples of his "efforts," as President of Local 2507, "to energetically protect and/or advance members' economic benefits, on the job health and safety provisions, and civil service protections under the NYCCBL and other applicable laws."[5] According to petitioner, when his full-time leave

[4] Administrative notice is taken of Executive Order No. 75 (as amended), dated March 22, 1973 ("E.O. 75"), which is incorporated by reference into the 1987-90 collective bargaining agreement between the parties. E.O. 75 provides, inter alia, that employees who are elected or appointed to an official position in the union may be assigned on a full-or-part-time basis with pay or granted leave without pay. The Order also provides that such assignment or leave shall be cancelled immediately upon termination of the employee's official union status.

[5] The following is a much abbreviated and concise summary of petitioner's alleged "efforts" on behalf of Local 2507: 1) litigation challenging the location of various EMS facilities; 2) public support of a "fired whistle-blower"; 3) public exposure

(continued...)

ended in early May 1990, he requested and received five weeks of annual leave. Petitioner states that he could not return to full field duty status because of his 1986 LODI and, instead, "returned to worker's compensation status [on] June 11, 1990 [see petition, as amended, at ¶11]." Petitioner maintains, however, that he utilized accumulated sick and annual leave balances until August 4, 1990, in order to remain on EMS payroll.

During this period of time, Petitioner claims that he was entitled to and did apply for various in-title jobs which would not require heavy lifting, pursuant to Article IX, Section 9 of the 1985-87 Citywide Agreement between the City of New York and District Council 37, AFSCME, AFL-CIO ("Citywide Agreement").[6] Petitioner describes two in-title positions for which he claims to have applied: 1) a position in EMS Telemetry Control at Maspeth Headquarters; and 2) a cardiac arrest survival study known as Pre-Hospital Arrest Survival Evaluation ("PHASE"). Petitioner submits that on July 30, 1990, he was selected for assignment to PHASE by the doctors who were

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[5](...continued)
of "imminently hazardous and unsafe conditions" in the work place; 4) OSHA complaints; 5) public criticism of new EMS policy concerning ambulance response time. (See petition, as amended, at ¶¶28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39 and Exhibits "P", "Q", "R", "S", "T", "U".)

[6] Article IX, Section 9 of the Citywide Agreement provides, in relevant part:

> Any employee who is required to take a medical examination to determine if the employee is physically capable of performing the employee's full duties, and who is found not to be so capable, shall, as far as practicable, be assigned to in-title and related duties in the same title during the period of the employee's disability....

conducting the study. Petitioner's selection was approved by EMS Operations Order No. 90-139, dated July 31, 1990, in which he and five other selected employees were temporarily reassigned to Telemetry in conjunction with the PHASE study, effective August 6, 1990.[7]

On August 6, 1990, petitioner reported to Telemetry to begin training for the PHASE assignment. Upon his arrival, petitioner states that he was directed to report to EMS Employee Health Services ("EHS") the following morning for a physical examina-tion. On August 7, 1990, petitioner was returned to modified duty status effective that date, by an EHS physician. Also on that day, petitioner states that he was directed by his supervisor to report to EMS administration on August 8, 1990.

On August 8, 1990, petitioner met with Angelo Pisani, EMS Deputy Director of Operations. At this meeting, Pisani allegedly informed petitioner that he would be reassigned out of PHASE and reassigned to the Manhattan Borough Command offices ("Station #15") because petitioner had been "seriously insubordinate for failing to report to [his] field assignment [on June 11, 1990] [see petition, as amended, at ¶14]." Petitioner also claims that:

> Pisani went on to tell me that because I was former President of the Local that the EMS administra-tion didn't want it to look like EMS was out to "get me." Consequently, EMS would not charge me with this alleged offense but, instead, issue a warning notice to me.

Later that day, petitioner claims to have been directed by his immediate supervisor Robert A. McCracken, EMS Manhattan Borough Commander, to request a transfer to EMS Telemetry Control (an assignment unrelated to the PHASE study)

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[7] The PHASE study was a temporary assignment and had a projected completion date of March 1991.

and to prepare an application for available "Modified Duty" assignments. Also on that day, the employer issued EMS Operations Order No. 90-153, which stated that "[t]he following transfer requests have been honored [emphasis added]," indicating that petitioner's transfer from the PHASE study to Station #15 was effective August 9, 1990. On August 20, 1990, petitioner wrote to Pisani to dispute the charge that he had been absent without leave on June 11, 1990.[8] Petitioner also claimed that his removal from the PHASE study constituted a disciplinary transfer which, he alleged, violated both the Citywide Agreement and the 1987-90 collective bargaining agreement between the City of New York and DC 37 covering paramedics ("Unit Agreement").[9] Petitioner further contends that even though his transfer was punitive, the employer did not afford him a hearing, as required by the HHC Personnel Rules and Regulations.[10] Finally, petitioner alleged that the employer's actions

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[8] In support of petitioner's claim that the employer was aware of his inability to perform full field duties, petitioner submits a letter addressed to Ms. Peg Quinn, EMS Assistant Director of Personnel, dated July 11, 1990. This letter makes reference to earlier conversations petitioner had with her concerning his "medical status and planned return to duty."

[9] Petitioner cites EMS Operating Guide Procedure #104-6 entitled: "Member Request For Reassignment," effective May 4, 1989. This procedure provides, in relevant part:

> C. Reassignments are not to be used for punitive purposes unless it is the result of a disciplinary hearing.

[10] Petitioner cites HHC Personnel Rules and Regulations, at Section 7:5:1, which provides:

> Eligibility for Hearing
> A person described in paragraphs (i) [permanent competitive employee], (ii) [honorably discharged veteran], or (iii) [non-competitive employee with five

(continued...)

constituted retaliation on account of his union activity, a violation of Section 12-306a of the NYCCBL.

On August 28, 1990, petitioner received an Internal Memorandum from McCracken, which changed petitioner's status from modified duty to worker's compensation, effective August 29, 1990. This memorandum provides, in relevant part, as follows:

> You were working in Telemetry Control [PHASE] effective August 6, 1990, thereafter you were assigned to Manhattan Borough Command [Station #15].
>
> On the afternoon of August 8, 1990 you reported for duty at the Manhattan Borough Command and informed me that on August 7, 1990 you were seen in EHS with a referral for modified duty, and were recommended for modified assignment. Since you stated you could not perform ambulance duties because of reoccurring injury from an old compensation claim, it was requested that you provide updated medical lines, which you did on August 8, 1990. Since that date, you were carried on full pay status which is being modified to indicate that you will be absent due to a claim of reoccurrence of an injury. You are directed to submit a Leave of Absence on a HHC 996 (pink) to this command, and you will be placed on [Worker's] Compensation Leave of absence with pay, charged to sick leave.
>
> You were informed on August 17, 1990, that a modified position has not been provided within the Manhattan Borough Command, therefore I can not accommodate your request. You should contact the Director of Human Resources to determine if there is a modified position available elsewhere in the Service.
>
> Your request for modified assignment was forwarded through the chain of command as outlined in O.G.P. #104-7, on August 17, 1990, in conformance with existing procedures.
>
> You are not to report for duty within the Manhattan Borough Command, effective August 29, 1990, your payroll status will be

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[10](...continued)
years of continuous service] of this section shall not be removed or otherwise subjected to disciplinary penalty except for incompetency or misconduct shown after hearing on stated charges.

> carried as [Worker's] Compensation Leave. You should complete any [worker's] compensation claim you have and forward it through channels.

Petitioner denies that he claimed a new LODI injury or reinjury; alleges that his removal from full pay to worker's compensation status was unprecedented; and, as a result, complains that he was wrongfully forced to exhaust accumulated leave balances in order to receive his base salary. Petitioner also claims that his reassignment to Manhattan Borough Command on August 8th violated EMS Operating Guide Procedure #104-6, Section A(2), inasmuch as he was directed to "request" a transfer into a non-funded position.[11]

On September 7, 1990, Thomas Matteo, EMS Deputy Executive Director, responded to petitioner's August 20th letter to Pisani,[12] as follows:

> Let me take this opportunity to clarify some points raised in your letter of August 20, 1990.
>
> You were given clear and specific orders to report to Station #15 [on June 11, 1990]. Any conversations with personnel staff at Headquarters does not relieve you of your responsibility to report.
>
> I am sure you can appreciate the problems EMS would experience if everyone refused to follow orders. Failure to comply with a direct order is considered insubordination, a serious offense. Normally such an offense would and should result in charges being preferred. However, it was decided to counsel you. Hardly a vindictive act.

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[11] See note 9, supra, at 7, which also provides at Section A(2):

> "Requests for reassignment shall be based on [the] existence of a funded vacant position in the requested area."

[12] See background, supra, at 7-8.

> As you know, EMS does not have a modified duty policy. We are working with Local 2507 and DC 37 to develop a fair and consistent policy. In the mean time members requesting such assignments are put on a waiting list. Many of these members are without benefits. (It is my understanding that you are not on this list.)
>
> Your assignment to PHASE Project was in error. All other members of the project are full duty paramedics. I am sure you can understand that if a modified assignment were to be made, it should come from the existing list.

Petitioner alleges that this letter demonstrates collusion among Matteo, Pisani and other members of EMS administration (e.g., EMS Executive Director Thomas Doyle), for the purpose of "committing improprieties toward the petitioner [see petition, as amended, at ¶16]." In support of this allegation, petitioner claims that a modified duty policy does exist in the EMS Operating Guide; that EMS actually sought out available modified duty paramedics for assignment to the PHASE study;[13] and that petitioner's name

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[13] In support of this claim, petitioner submits a memorandum addressed to him from Elizabeth Casci, Executive Board Member of Local 2507, dated September 21, 1990. This memorandum, in relevant part, provides

> In June of this year I began working with EMS management on a committee to establish a more definitive policy for members requiring Modified Duty Assignment. While working on this project, it had come to my attention that [the PHASE study] was about to be initiated utilizing EMS paramedics. The day before the last day interviews for the positions were to end, I ran into Mr. Robert Tucker, [who] was responsible for coordinating these interviews ... I asked Mr. Tucker if paramedics requiring Modified Duty Assignment could apply for the position. Mr. Tucker had stated that it would be fine, but the interview process would be the same for Modified Duty Assignment candidates (which seemed fair to me). I immediately went downstairs ... to see the modified duty waiting list. At that time, there were no paramedics on the list who needed placement ... I was not aware you required modified duty or

(continued...)

should have appeared on the modified duty list dated August 28, 1991, which reflects all outstanding requests for reassignment systemwide, because he had applied for same on August 8th.

In addition to his request for a transfer to EMS Telemetry Control on August 8th, petitioner also claims to have applied for an available position in EMS Public Affairs, for two available positions as Manhattan Borough Run-down Coordinator, and for an available position as Citywide Paramedic Coordinator. Petitioner alleges that "none of these [latter] requests were honored by the Doyle administration [see petition, as amended, at ¶17]."

According to petitioner, he had to remain on worker's compensation status until "a later separate application to EMS Telemetry Control was recently approved [see petition, as amended, at ¶19]." Petitioner has worked at that location since November 27, 1990. The instant petition was filed on December 10, 1990.

Procedural Background

As previously set forth, on December 19, 1990, counsel for HHC requested that a conference be held because "the Petition as originally drafted and served was so amorphous and rambling as to be unamenable to a responsive pleading of any kind."

At the conference held on January 10, 1991, petitioner agreed to amend and/or entirely delete 29 of the 48 paragraphs set forth in the original

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[13](...continued)
that you had applied for the position. It came to my attention when you contacted me about your sudden removal from [PHASE] ....

petition, so long as the excised matter remained in the record as background material. Later that day, the Trial Examiner wrote to the parties, to wit:

> Pursuant to the informal conference held earlier today, the attached is a summary of amendments to the original improper practice petition that was filed in this matter. It was agreed that although HHC will submit an answer to the petition only as amended, the original petition will remain in the record as background material [emphasis added].
>
> This will also confirm that HHC's request for an extension of time to serve and file its answer to the amended petition, on or before February 11, 1991, has been granted [emphasis added].

On January 14, 1991, counsel for HHC submitted a redacted version of the petition, which reflected the agreed upon changes "for the convenience of all concerned." In its cover letter, HHC stated: "We will utilize this version in drafting our response unless we hear from you, in writing, to the contrary [emphasis added]."

On February 11, 1991, instead of an answer, HHC served and filed a notice of motion to dismiss and an affirmation in support of its motion. HHC seeks dismissal on the ground that the petition "fails to state an improper practice under the NYCCBL." On March 27, 1991, petitioner served and filed a notice of cross motion to dismiss, a motion for summary judgment and an affidavit in support of his motion for summary judgment. Alleging bad faith on the part of the respondent, petitioner seeks an Order from the Board of Collective Bargaining ("Board") dismissing HHC's motion as both untimely and waived, and "an Order precluding the answer HHC duly committed themselves to provide." Petitioner also moved for summary judgment on the ground that HHC has defaulted by failing to provide a substantive response to the facts alleged in the improper practice petition, as amended.

On April 1, 1991, HHC served and filed an affirmation in response to petitioner's cross motion to dismiss and motion for summary judgment. Therein, counsel for HHC affirms:

> At no time prior to, during, or after the meeting did [HHC] represent that an Answer would be filed. Rather, we at all times discussed service of a "response" or a "responsive pleading."

Positions of the Parties

Respondent's Position

In its motion to dismiss, HHC contends that petitioner brought this petition in his role "as an activist," based on his "apparent belief that any action taken by Respondent which does not conform with his belief of how [EMS] should be operated is an improper practice." Respondent submits that the instant action as well as all the prior claims referred to by the petitioner in his pleadings,[14] are grounded on his perception of operational problems at EMS and are unrelated to his status as either ex-President of Local 2507 or as a member of a union. Petitioner's difference of opinion about the way EMS should implement policy and conduct its operations, HHC asserts, does not constitute a cognizable claim of improper practice under Section 12-306a of the NYCCBL.

HHC further asserts that "[t]he only claim in the lengthy petition wherein there is any possible claim connected with his union activity is his claimed reassignment from the PHASE program." In this regard, however, respondent contends that petitioner has neither alleged nor presented any

[14] See note 5, supra, at 4.

evidence "to connect his alleged claim to any of the four bases for an improper practice delineated in the NYCCBL."

Finally, HHC argues that at no time did it forfeit its statutory right to challenge the legal sufficiency of the petition. Moreover, respondent argues, since the petitioner did not refute (in his cross motion) any of the issues raised in its motion to dismiss, they should be deemed admitted.

Therefore, respondent seeks dismissal of the petition in its entirety. In the alternative, HHC submits, should the Board find that petitioner's allegation concerning his alleged removal from the PHASE study constitutes a prima facie cause of action, respondent seeks dismissal of the remainder of the petition and a reasonable period of time, thereafter, to submit an answer.

Petitioner's Position

Petitioner maintains that he has alleged facts which, inter alia, demonstrate that his removal from the PHASE study violated his contractual due process rights, and provide a basis upon which to conclude that EMS administration is waging a "continuing campaign of retaliation and harassment" against him. Petitioner submits that this conclusion is supported by the fact that HHC chose to violate its prior agreement to answer the petition, as amended, on or before February 11, 1991. Instead, petitioner asserts, HHC filed this "bogus motion ... in [a] brazen effort to avoid admitting the truth of [his] allegations."

Petitioner now seeks an Order from the Board declaring respondent's motion to dismiss a nullity under the doctrines of waiver and estoppel and also on the ground of untimeliness. Petitioner maintains that he relied, in

good faith, on the representation made by HHC at the January 10th conference, that in exchange for his agreement to redact the pleadings (to his detriment), a substantive answer to the petition, as amended, would be forthcoming. Instead, petitioner argues, respondent filed a motion to dismiss "as if no such conference ever occurred." The petitioner maintains that HHC, by its full participation in the conference and, further, by inducing him to amend the pleadings, knowingly waived its right to file a motion to dismiss or, in the alternative, should be estopped from seeking such relief from the Board.

Petitioner also contends that the instant motion is untimely inasmuch as he agreed only to HHC's request for an extension of time to submit an answer to the petition.

Finally, in addition to the dismissal of HHC's motion, petitioner asks that HHC be precluded from submitting an answer at this late date. Petitioner argues that the respondent, by its own actions, is now in default and must be deemed to have admitted the allegations of the petition. Therefore, petitioner argues, the Board should make a finding based on the existing record and grant his motion for summary judgment.

Discussion

It is well-settled that, when making a motion to dismiss, the moving party concedes the truth of the facts as alleged by the petitioner.[15] In relation to such a motion, the petitioner is entitled to every favorable

[15] See Decision No. B-67-90 and the cases cited therein.

inference that could be drawn from those assumed facts.[16] Thus, the only question to be decided by this Board is whether taking the facts as alleged in the petition, a cause of action has been stated.

In the instant matter, it is clear from the factual background and the positions of the parties, that the petition, as amended, states a cause of action under the NYCCBL. There is no dispute that an alleged punitive transfer, if motivated by reasons prohibited by the NYCCBL, may constitute a violation of Section 12-306a of the NYCCBL.[17] Significantly in this regard, we note that HHC, in the alternative, seeks dismissal of all claims save the allegation concerning petitioner's alleged removal from the PHASE study.

It is equally clear, however, given the vitriolic nature of the petition, even as amended at HHC's behest, that respondent now seeks further limitation of the scope of matters subject to our investigation in the event we find, upon joinder of issue, that there are disputed issues of fact which warrant further inquiry.

It is apparent that petitioner is, indeed, an "activist" as that term is currently defined.[18] Throughout the latter years of his employment with the HHC, petitioner has expressed criticism of EMS policies and operations through

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[16] See Decision Nos. B-9-91; B-67-90; B-51-90; B-32-90; B-26-90; B-34-89.

[17] See Decision Nos. B-1-91; B-50-90.

[18] Webster's New World Dictionary of American English (3rd ed. 1988), defines the following terms:

"Activist" is defined as one who practices activism.

"Activism" is defined as "the doctrine or policy of taking positive, direct action to achieve an end, especially a political or social end."

the initiation of several court actions, administrative proceedings before this Board and other agencies, and the airing of his critical views of EMS administration in the newsmedia and other forums.

We make no judgment on the merits of the positions of either of the parties. However, the pleadings and conduct of both parties to this matter compel comment and warrant a reminder that abuse of the processes of this Board will not be tolerated.

Section 12-302 of the NYCCBL provides that it is

> ... declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations, and final, impartial arbitration of grievances between municipal agencies and certified employee organizations.

Our statutory mandate is to provide a forum for the speedy resolution of labor-management disputes between the City of New York and related public employers and their public employees. We will neither encourage nor condone any actions which frustrate this goal through the utilization of unnecessary motion practice.

In the instant matter, it was clear at the outset that the petition, as originally filed, inappropriately attempted to revive and incorporate matters which either were heard or were pending in other forums, raised issues which were properly subjects of collective bargaining, alleged violations of law beyond the jurisdiction of this Board, referred disparagingly to various members of EMS administration, was replete with hearsay, hyperbole and gratuitous narrative, and was not presented in a conventional format. In

recognition of the above, the Deputy Director and General Counsel of the OCB granted HHC's request for a conference, stating:

> Since you have questions concerning the petition which will be discussed and, I hope, resolved at the conference, it will not make sense to require that the respondent's answer be filed prior to the date of the conference.

In consideration of the objectives of this Board, as well as in recognition of HHC's concerns, the Trial Examiner who presided over the conference encouraged the petitioner to amend his pleadings in order to avoid the otherwise inevitable response from HHC, i.e., either a motion to dismiss or a motion to strike. After more than three hours of discussion and negotiation, the parties emerged from the conference with a significantly redacted petition and with what the Trial Examiner and the petitioner understood to be an agreement that the petition, as amended, was answerable. Support for this understanding is reflected not only in the Trial Examiner's January 10th letter to the parties,[19] but also by the fact that the Trial Examiner granted HHC's request for a one-month extension of time to submit its response. The Trial Examiner would not have granted such a lengthy period of time if she had understood the request to be for time to submit a motion to dismiss rather than an answer.

Instead of filing an answer, however, HHC filed a motion to dismiss, as though neither the conference nor the amendment of the petition had occurred.[20] The delay in addressing the merits of the petitioner's claims

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[19] See procedural background, supra, at 12-13.

[20] However, we note for the record that HHC responded to the Trial Examiner's January 10th letter by providing a redacted version of the original petition and stating: "We will utilize (continued...)

engendered by HHC's use of this procedural device was compounded by the petitioner's filing of a cross-motion to dismiss and motion for summary judgment.[21]

In short, the parties have seen fit to bring all the contentiousness which seemingly has characterized their relation-ship into the proceedings before this Board. In this we may also have erred by indulging their litigious conduct to a degree which in retrospect appears to have been excessive. This Interim Decision and Order will therefore serve not only to dispose of the motions before us but to apprise the parties of the fact that further needless delays in the processing of this matter will not be tolerated. Although motion practice has its proper place in proceedings before this Board, we will not countenance such devices when they appear to undermine the statutory mandate of the NYCCBL.

Therefore, and in view of the above, we shall place the parties in the same position they were after the conference held on January 10, 1991, nunc pro tunc, and order the respondent to file an answer to the petition, as amended. Given the passage of time and, consequently, respondent's ample opportunity to investigate the facts surrounding petitioner's alleged removal from the PHASE study and its aftermath, we direct that respondent serve and file an answer to the petition, as amended, within five (5) days of its receipt of this Interim Decision and Order.

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[20](...continued)
this version in drafting our response...[emphasis added]." See procedural background, supra, at 13.

[21] We note that petitioner, although not an attorney, appears to be well-versed in motion practice.

Accordingly, HHC's motion to dismiss, petitioner's cross-motion to dismiss and petitioner's motion for summary judgment are denied.

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 to dismiss the petition be, and the same hereby is, denied; and it is further

ORDERED, that petitioner's cross motion to dismiss and motion for summary judgement hereby are, denied; and it is further

ORDERED, that HHC serve and file an answer to the petition, as amended, within five (5) days after receipt of this Interim Decision and Order.

DATED: New York, New York
June 5, 1991

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

THOMAS J. GIBLIN
MEMBER

DEAN L. SILVERBERG
MEMBER

GEORGE B. DANIELS
MEMBER