CIR v. City & HHC, 49 OCB 11 (BCB 1992) [Decision No. B-11-92 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

COMMITTEE OF INTERNS AND RESIDENTS

Petitioner,

-and-

THE CITY OF NEW YORK and NEW YORK
CITY HEALTH AND HOSPITALS CORP.,

Respondents.
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DECISION NO. B-11-92

DOCKET NO. BCB-1383-91

INTERIM DECISION AND ORDER

On April 30, 1991, the Committee of Interns and Residents ("CIR" or "the Union") filed a verified improper practice petition against the New York City Health and Hospitals Corporation ("HHC") and the New York City Office of Labor Relations ("the City") (together "Respondents") alleging that HHC violated Section 12-306a(4) of the New York City Collective Bargaining Law ("NYCCBL")[1] by unilaterally imposing a parking fee on CIR members employed by Bronx Municipal Hospital Corporation

[1] 1 Section 12-306a(4) of the NYCCBL provides:
a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

* * *

(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.

("BMHC"). The petition asks that the Board order BMHC to eliminate the parking fee, reimburse CIR members for parking fees paid to HHC, and negotiate in good faith with CIR regarding the parking fee.

The City submitted a verified motion to dismiss the petition, with a supporting affidavit, on July 26, 1991. CIR filed a motion in opposition to the City's motion to dismiss, with a supporting memorandum of law, on November 26, 1991.

BACKGROUND

HHC and CIR are parties to a Collective Bargaining Agreement ("contract") covering the period from October 1, 1987 to September 30, 1990. Although the contract expired on September 30, 1990, the parties are bound by its terms while negotiations for a successor contract continue. CIR is the sole bargaining representative for City employees in the titles of Intern, Resident, Dental Intern, Dental Resident and Junior Psychiatrist.

CIR members employed by BMHC enjoyed the benefit of free parking in the hospital's parking lot during the term of the last contract and all prior contracts between the parties. On January 1, 1991, while negotiations between HHC and CIR for a successor contract were in progress, HHC imposed a parking fee on all BMHC employees using the hospital's parking facility. The elimination of free parking was not included in HHC's bargaining proposals, nor was the issue otherwise raised by HHC during the current negotiations.

POSITIONS OF THE PARTIES

The City's Position

The City contends that the Union lacks standing to present a claim of a violation of Section 12-306a(4) of the NYCCBL because it is not the designated bargaining representative for subjects that must be bargained on a departmental basis, such as parking at the BMHC facility. The City alleges that the department is comprised of all employees working at the BMHC facility.

The City relies on Board Decision No. B-17-75 to support its claim that parking is an issue which must be bargained at the departmental level rather than the unit level because it affects all of the employees at the BMHC facility in a similar fashion. The City acknowledges that special circumstances may justify unit bargaining on parking, such as when employment requires the use of an automobile. However, the City asserts that no special circumstances exist in this case to warrant unit bargaining.

The City further contends that the Union has failed to state a claim for which relief may be granted because HHC owes CIR no duty to bargain in good faith on the issue of parking. The City asserts that the language of the NYCCBL clearly states that the employer's duty to bargain in good faith is owed only to the employee representative certified or designated by the Board to negotiate on the subject in question. The City claims that since CIR is not the employee organization designated by the Board to bargain with HHC on departmental issues, HHC owes it no duty to

bargain on the issue of parking.

The Union's Position

The Union contends that, as the sole collective bargaining representative for its members, it has standing to challenge HHC's unilateral imposition of a parking fee on its members employed by BMHC. The Union claims that parking is a term and condition of employment and thus a mandatory subject of collective bargaining. The Union cites State of New York and CSEA[2] to support its claim that HHC had a duty to bargain in good faith before imposing a parking fee when it had previously provided free parking for employees working at the BMHC facility.

The Union contends that parking is not a benefit requiring uniformity for all employees in a department. The Union maintains that, because of the nature of their employment, its members enjoy benefits that are not granted to any other category of BMHC employees. Free parking, the Union claims, is just one of the many benefits granted to its members that must be bargained for on the unit level.

The Union asserts that it has the right to bargain for parking on a unit basis because the impact of the new parking fee affects its members in a way that is different from other BMHC employees. The Union claims that its members must use automobiles in order to respond promptly to emergency calls and

[2] 6 PERB 3005 (1973).

to leave the hospital several times daily to work at other facilities in the course of their residency training programs. It argues, further, that because its members keep irregular hours and spend extended periods of time away from the hospital, their employment obligations may be distinguished from those of other BMHC employees who require automobiles only to drive to and from work every day. Thus, the Union argues, even if parking were a departmental issue, special circumstances warrant bargaining on a unit level. The Union asserts that its members' employment duties require the use of an automobile, and that, following Decision No. B-11-68, it has standing to represent its members on a unit basis in contesting HHC's unilateral imposition of a parking fee. In addition, the Union claims that free parking was a major inducement to its members to select the BMHC residency program.

DISCUSSION

The City's motion to dismiss in the instant case is based upon its arguments that the Union lacks standing to bring the claim and has failed to state a claim upon which relief may be granted.

CIR is the sole bargaining representative for City employees in the titles of Intern, Resident, Dental Intern, Dental Resident and Junior Psychiatrist. Although the contract between the parties expired on September 30, 1990, they are bound by its

terms throughout the course of negotiations for a successor contract. Thus, the Union had the right and the duty to bargain with HHC and was exercising that right at the time the parking fee was imposed. The Union does not claim a right or duty to bargain on behalf of the entire department on the issue of the parking fee; rather, the Union claims that the unique nature of its members' employment entitles it to bargain on this issue for its employees only.

The City' s reliance on Decision No. B-17-75 to support its claim that parking must be bargained for at the departmental level is misplaced. In that case, we held not that the imposition of parking fees may be bargained only at the departmental level, but that a Union demand to establish a joint Union-management committee to review and discuss parking fees for CUNY employees should be bargained at the departmental level. Moreover, in the instant case the City has not demonstrated that parking is a matter which must be uniform for all employees in the department at BMHC. When making a motion to dismiss an improper practice petition, the moving party concedes the truth of the facts alleged by the petitioner.[3] In addition, the petition is entitled to every favorable inference and will be taken to allege whatever may be implied from its statements by

[3] Decision Nos. B-32-90; B-34-89; B-7-89; B-38-87; B-36-87; B-7-86; B-12-85; B-20-83; B-17-83; B-25-81.

reasonable and fair intendment.[4]s

Section 12-307a(2) of the NYCCBL[5] provides that unit bargaining on a departmental issue is appropriate when "considerations special and unique to a particular... collective bargaining unit are involved." In Decision No. B-11-68, we addressed the issue of whether free parking was negotiable on a unit level when the Union requested in collective bargaining that free parking facilities be provided for "employees assigned to car territories." We held that because the Union's request directly concerned employees whose employment duties required the use of an automobile, unit bargaining on the issue of free parking facilities was appropriate. The Union here has shown that its member's employment duties arguably require the use of an automobile and that the employment obligations of CIR members at BMHC arguably differ from those of other employees in the department in a way that constitutes special and unique

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[4] Decision Nos. B-32-90; B-34-89; see also, Westhill Exports, Ltd. v. Pope, 12 N.Y.2d 491, 496; 240 N.Y.S.2d 961, 964 (1963); Foley v. D'Agostino, 21 A.D.2d 60, 248 N.Y.S.2d 121, 127 (lst Dept., 1964).

[5] Section 12-307(a) (2) of the NYCCBL provides, in relevant part:

(2) ... nothing contained herein shall be construed to deny to a public employer or certified employee organization the right to bargain for a variation or a particular application of any citywide policy or any term of any agreement executed pursuant to this paragraph where considerations special and unique to a particular department, class of employees, or collective bargaining unit are involved.

circumstances existing within the scope of its members' employment.[6]

In State of New York and CSEA, the New York State Public Employment Relations Board held that free parking is a term and condition of employment, and as such is a mandatory subject of bargaining. We acknowledged that holding in Decision No. B-17-75. Failure to bargain on a mandatory subject of bargaining constitutes a violation of Section 12-306a(4) of the NYCCBL, and the Union has alleged such a violation.

We find that the Union has stated a valid cause of action for which relief may be granted and that, as the sole bargaining representative for its members employed by BMHC, the Union has standing to bring this improper practice petition against HHC. Accordingly, the instant motion to dismiss the Union 's improper practice petition is dismissed.

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[6] See, note 2, supra.

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 motion to dismiss the improper practice petition, filed by the City of New York on behalf of New York City Health and Hospitals Corporations be, and the same hereby is, denied, and it is further,

ORDERED, that the city shall serve and file an answer to the petition within ten days of receipt of a copy of this Interim Decision and Order.

Dated: New York, New York
March 26, 1992

MALCOLM D. MACDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

JEROME E. JOSEPH
MEMBER

GEORGE B. DANIELS