NYSNA v. HHC, 51 OCB 20 (BCB 1993) [Decision No. B-20-93 (IP)]

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

- between -

New York State Nurses Association,

Petitioner,

Decision No. B-20-93
Docket No. BCB-1491-92

- and -

New York City Health and Hospitals
Corporation,

Respondent.
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DECISION AND ORDER

A verified improper practice petition was filed by the New York State Nurses Association ("the Union") on April 20, 1992. The Union alleged that the New York City Health and Hospitals Corporation ("HHC") committed an improper practice by interfering with, restraining or coercing employees represented by the Union in the exercise of their rights granted by the New York City Collective Bargaining Law ("NYCCBL") in violation of §12-306a(1); discriminating against nurses at Goldwater Hospital for exercising their rights under the NYCCBL in violation of §12 306a(3); and refusing to bargain collectively in good faith about a unilateral change in disciplinary procedures used by HHC in violation of §12-306a(4) of the NYCCBL.[1]

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[1]Section 12-306 of the NYCCBL provides, in relevant part:

a. **Improper public employer practices.** It shall be an improper practice for a public employer or its agents:

(continued...)

(... continued)
(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter; ...
(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;

HHC and the Union were parties to a collective bargaining agreement whose term extended from December 1, 1987 to December 31, 1990 and three Memoranda of Agreement between the parties which extended from January 1, 1991 to June 30, 1992. The collective bargaining agreement contains a grievance procedure under Article VI which covers claims of wrongful disciplinary action taken against an employee.[2]

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(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.

Section 12-305 of the NYCCBL provides, in relevant part:

Public employees shall have the right to self - organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities ... A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

[2] Article VI of the collective bargaining agreement, entitled "Grievance Procedure," provides, in relevant part:

Section 1.
DEFINITION: The term "Grievance" shall mean: ...

D. A claimed wrongful disciplinary action taken against -an employee.

Section 9.
(... continued)

Grievances relating to a claimed wrongful disciplinary action taken against an employee shall be subject to and governed by the following special procedure: ....

Step I. Following the service of written charges upon an employee, with a copy to be sent to the Association's New York City office, a conference shall be held with respect to such charges by a person who is designated by the agency head to review such charges. The employee may be represented at such conference by a representative of the Association. The person designated by the agency head to review the charges shall take any steps necessary to a proper disposition of the charges and shall issue a decision in writing by the end of the fifth (5th) day following the date of the conference.

Step II. If the employee is dissatisfied with the decision in Step

On May 29, 1992, HHC filed a verified answer which also requested dismissal of the petition as a matter of law or requiring the union to amend its petition to comply with the requirements of Rule 7.5 of the Revised Consolidated Rules of the Office of Collective Bargaining.

At a pre-hearing conference held on November 4, 1992, the Union was directed to submit a reply with facts substantiating the allegations made in the petition. HHC requested, and was granted, permission to submit a sur-reply. The Union submitted a reply on November 13, 1992, which supplied additional facts

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I above, she/he may appeal such decision. The appeal must be within five (5) working days of the receipt of such decision. Such appeal shall be treated as a grievance appeal beginning with Step II of the Grievance Procedure set forth herein.

Step IV. An appeal from an unsatisfactory determination at Step III may be brought solely by the Association to the Office of Collective Bargaining for impartial arbitration within fifteen (15) working days of receipt of the Step III determination.

concerning its allegations. HHC submitted a sur-reply on December 3, 1992.

A hearing was held before a Trial Examiner designated by the Office of Collective Bargaining on January 22, 1993. The parties submitted post-hearing briefs on April 1, 1993.

BACKGROUND

HHC actively recruits nurses from the Philippines and is their sponsoring employer. Samuel Lehrfeld, Executive Director of Goldwater Memorial Hospital ("the hospital"), traveled to the Philippines to recruit nurses (tr. 66-67) and the hospital does the paperwork for the visas. (tr. 66) Some of the nurses are resident aliens holding green cards. (tr. 57) Some hold H-1 visas, which are temporary work permits. (tr. 27) An employee holding an H-1 visa must be sponsored by a specific employer in order to reside in the United States. (tr. 28) When HHC terminates a nurse who holds an H-1 visa, it must report the termination to the Immigration Service (tr. 28) and the individual may be deported. (tr. 28)

Ellen Friedman, a Union representative, testified that at a meeting she attended on January 10, 1992, Lehrfeld stated that "he came in on January I and found that the nursing staff ... was depleted, and he said he was going to take action ... it was going to be a bloodbath ... because the nurses were not there to staff the hospital." (tr. 25-26) Gloria Phipps, a grievance

representative, also testified that Lehrfeld made statements to this effect to her. (tr. 62) In January, the hospital charged 26 nurses with being absent without authorized leave (AWOL). (tr. 28) The hospital's usual complement of nurses is approximately 200. (tr. 87)

On February 5 and 11, March 11, May 26, and June 3, 1992, the hospital held Step 1A disciplinary hearings.[3] Each of the nurses charged with misconduct was a citizen of the Philippines, had traveled to the Philippines on authorized leave, and had failed to return on time. The length of time AWOL ranged from several days to several months. (Ex. R-1)

The hospital scheduled three to six nurses to appear on each hearing date, (tr. 32) and Friedman testified that it is unusual to schedule that many hearings on the same day. Each nurse was represented by the Union at each hearing. If the nurses requested time to submit documentation, Friedman and Cohen both testified, they were allowed to do so. (tr. 52, 80)

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[3] We are unclear as to how the term "Step IA hearings" arose. In reading the contract, we see that Step IA concerns grievances alleging a "claimed wrongful disciplinary action taken against an employee." This type of hearing would be held if the disciplined nurses had taken their complaints regarding the penalties imposed in their cases through the grievance and arbitration procedure. Instead, with the Union's advice And assistance, they waived their rights and stipulated to monetary fines. Since the Union has brought this claim before the Board as an improper practice, rather than as a request for arbitration, however, we only note for the record that the term "Step IA hearing" is used by the parties to denote a hearing for misconduct.

Under Rule 7:5 of the HHC Rules and Regulations,[4] the

[4] Section 7:5, "Discipline," of the HHC Rules and Regulations provides:

1. Eligibility for Hearing...

A person described in paragraphs i, ii, or iii of this section shall not be removed or otherwise subjected to disciplinary penalty except for incompetency or misconduct shown after hearing upon stated charged....

iii. a person holding a position in the non-competitive class other than a position designated as confidential, who since his/her last entry into service has completed at least five (5) years of continuous service in the non-competitive class position.

In addition, the HHC Notice of Hearing and Charges provides:

If [the employee is] a permanent ... employee, and NOT entitled to a Rule 7:5 hearing, the ... conference will be a Step 1A Disciplinary Conference, as provided by [the] collective bargaining agreement. Following such Step 1A Disciplinary Conference, a written decision will be issued.

If [the employee is) satisfied with the decision, [the employee] may choose to accept such decision. If [the employee is] not satisfied with the decision, [the employee) may elect to proceed in accordance with the Grievance Procedure set forth in [the] collective bargaining agreement.

If [the employee is] a:
Permanent employee ... who has five (5) years or more of continuous uninterrupted service in such position ... the above mentioned informal Conference will be held as provided in [the) collective bargaining agreement. Following such Informal Conference, a written recommendation will be issued. The following disciplinary measures may be recommended; termination from employment; suspension without pay for a period not to exceed two (2) months; demotion to a lower Civil Service title and grade; a fine not to exceed $100; or a written reprimand. Following receipt of the recommendation, you may elect, within five (5) days of receipt, to:

a. accept the Informal Conference recommendation; or

b. proceed with an appeal pursuant to the contractual Grievance Procedure; or

(continued...)

4 (... continued)

hospital may issue a disciplinary recommendation concerning employees with more than five years of service. These employees may either seek a different determination from the Civil Service Personnel Review Board or follow the grievance procedure set forth in the collective bargaining agreement. Employees with less than five years of service receive a final determination from the hospital at Step 1A, which may be appealed through the collectively bargained grievance procedure. (tr. 42)

Nine of the 26 nurses had more than five years of service and had resident alien status. The remaining 17 nurses had been employed by HHC for less than five years and held H-1 visas. Jeffrey Cohen, Director of Labor Relations at the hospital, testified that he was unaware of the nurses' visa status when he issued his decisions (tr. 83), and that he made his determinations "primarily [on) the length of time that the nurse was AWOL and ... the mitigating factors that explained the reason why the nurse was AWOL." (tr. 90) On direct examination, Cohen stated that he was not aware of the nurses' visa status until November 1992. (tr, 89) On cross-examination he testified that it was possible that Phipps had raised the issue of the nurses'

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c. exercise your right for a hearing in accordance with Rule 7:5 of the Health and Hospitals Corporation's Personnel Rules and Regulations.

status after the hearings, but before the penalties were negotiated. (tr. 97)

The hospital held its first hearing on February 5th. Friedman testified that she and Phipps spoke to Cohen in the absence of the nurses. She stated that Cohen indicated that all the nurses would be terminated, that she and Phipps asked whether the hospital would consider a lesser penalty and that Cohen suggested $1,000 fines. (tr. 36-37) Cohen testified that he never stated, during the hearings, that he had decided to terminate the nurses. (tr. 80) Friedman also stated that, at that time, she was unaware that nurses holding H-1 visas could be deported if they were terminated. (tr. 39-40)

The decisions resulting from the February 5th hearing were published on February 7th. (tr. 64) Phipps held a conference that afternoon with Lehrfeld, Cohen and Mr. Garrison, the Associate Executive Director. (tr. 66-67) Phipps testified that she and Lehrfeld discussed the effect that termination would have on the legal status of the H-1 visa holders. (tr. 66) According to Phipps, Lehrfeld told her that he would "agree to a settlement that we could work out." (tr. 65) According to Cohen, Lehrfeld then directed him to "do something less than termination." (tr. 84)

The following week, Cohen and other members of the hospital administration met with Phipps to offer terms of a settlement, which were termination or payment of a $1,000 fine.

(tr. 67-68, 85) Phipps reported the offer to the terminated nurses and explained to them that the hospital's position was "[e]ither you lose your job or accept the $1,000 fine." (tr. 69)

The penalty imposed on the nine nurses whose cases were heard on February 5th and 11th was termination by the close of business on the days the decisions were issued. All of these nurses were sponsored by HHC on H-1 visas. Seven of the nine nurses signed a stipulation of settlement in which they agreed to pay a $1,000 fine and waive any right to appeal. Two nurses did not sign a stipulation of settlement; one was terminated and the other was exonerated upon reconsideration of the nurse's excuse for absence. (Ex. J-2)

In subsequent hearings, the offers varied according to the nurse's length of service and extenuating circumstances. (tr. 81-82) Three nurses were terminated, one stipulated to a $500 penalty and waiver of appeal, three were reprimanded, and five were not disciplined. In addition, five nurses stipulated to settlements of $500 or $1,000 fines and waivers of appeal before Step 1A decisions were issued.[5] (Ex. J-2))

Both Friedman and Cohen testified that the maximum fine allowed by HHC regulations is $100. (tr. 56, 85) The maximum allowable suspension is 60 days. (tr. 85) Although the Union requested that the nurses be given suspensions of varying length rather than fined (tr. 55-56), Cohen testified that he felt that

[5] Four of these nurses held H-1 visas.

fines were more appropriate. He stated:

> it made absolutely no sense to suspend the nurses...who had been AWOL, because to me that only exacerbates the problem. The reason why we had the hearings is the nurses, by not appearing as expected, had an immediate impact on patient care. To then suspend the nurse would only cause a continuation of problems regarding the delivery of patient care. Taking suspension out of the equation ... it only left me ... with a financial penalty, $100 ... which is just not a viable penalty for the infraction. (tr. 85-86)

Although he originally expected to fine each nurse in one payment, he eventually agreed with Friedman and Phipps to take $100 out of each nurse's paycheck each pay period until the fine was paid. (tr. 56, 72, 88) Cohen also testified that he never threatened to institute deportation proceedings against the nurses if they did not settle the grievances. (tr. 102)

HHC introduced into evidence a number of documents showing that other nurses had been charged with being AWOL in March and April of 1992. The penalties in these cases were suspensions of varying length (tr. 92-93, Ex. R-1). No testimony was elicited by either party as to the residency status of the nurses in these cases.

HHC also elicited testimony from Cohen that the nurses in question were all AWOL during the 1991-92 Christmas and New Year's Eve vacations. (tr. 93) Cohen testified further that no nurses were AWOL during the 1992-93 Christmas and New Year's Eve season. (tr. 94).

POSITIONS OF THE PARTIES

Union's Position

In its post-hearing brief, the Union states that "[t]he January 22, 1993 hearing before the Trial Examiner developed one issue, [w]hether [HHC] violated the Act when it gave the H-1 visa nurses this choice:

> (1) Accept the discipline prescribed by the Hospital and sign a stipulation waiving all appeal rights, including the right to arbitrate the merits of the discipline;
>
> -or-
>
> (2) Be terminated by the Hospital, in which case the nurses would be deported back to the Philippines because they would have lost their sponsoring employer, which is the predicate for the H-1 visa and their right to remain in the United States. This option, for all intents and purposes was meaningless, as subsequent arbitration of the terminations, with the usual delays involved, would have been an exercise in futility, as each nurse would be back in the Philippines at the time that each arbitration would occur."

The Union argues that "HHC's actions essentially deprived these twenty-six immigrant nurses of their right to representation ... including the right of each nurse ... to have each disciplinary action reviewed by an impartial arbitrator." The Union appears to argue that the nurses were not deprived of their rights of appeal, but that these rights were illusory. Because appeals generally take months to resolve, the Union maintains, a terminated nurse with an H-1 visa could be deported before the arbitration hearing.

In its opening statement, the Union argued that "if the discipline the hospital had determined to be appropriate [$1,000 and waiver of appeal] was not accepted and the stipulation drafted by the hospital was not signed, the nurses would have been terminated and therefore deported." (tr. 20) The Union explained that arbitration of the termination decision would have been a "worthless remedy" because any H-1 visa holder faces deportation if no longer employed by the sponsor. (tr. 20)

The Union also asserts that HHC failed to bargain collectively, in good faith, concerning discipline of these nurses. It cites one decision of the New York State Public Employment Relations Board ("PERB")[6] and four private sector cases to articulate the standard of what constitutes "good faith bargaining."[7]

The Union notes that the standard set forth in each of the cited cases requires that the employer approach the negotiating table with a "sincere desire to reach agreement" or "a bona fide intention to meet and negotiate." By effectively depriving the H-1 visa nurses of their arbitration rights [i.e. settle or be terminated and face deportation], the Union contends, HHC failed to adjust these nurses' grievances in a manner consistent with

[6] Southampton Police Benevolent Association and Town of Southampton, 2 PERB ¶ 3011 (1969).

[7] NLRB v Highland Park Manuf. Co., 110 F.2d 632 (4th Cir. 1940); Yellow Cab 02, Co. v. Taxi-Cab Drivers Local Union No. 889, 3 CCH Lab Cas 11 60, 109 (D.C.W.D. Okla. 1940); General Electric Co., 150 NLRB 192 (1964); and Hughes Tool Co., 56 NLRB 981 (1944).

"good faith" and a "sincere desire to reach an agreement." The Union argues that "[t]he Hospital's conduct deprived the nurses of their contractual rights, and effectively took away their right of representation by the [Union]. This is not the 'good faith' that the [NYCCBL] contemplates."

The Union "believe[s] that [HHC] had an obligation to sit down and discuss the discipline that was imposed on these nurses in some good faith effort and not force the nurses and the [Union) to accept an impossible situation." (tr. 21)

HHC's Position

HHC argues that the Union has "failed to sustain its burden of proof that the HHC or Goldwater violated any subdivision of §12-306(a) [of the NYCCBL]." It asserts that, to prevail on an improper practice claim, the Union has the burden of proving that negotiating penalties in a disciplinary action is within the scope of collective bargaining. It maintains that the Union must show that the employer refused to bargain in good faith on matters within the scope of bargaining, or that the hospital interfered with, restrained or coerced public employees in the exercise of their rights granted in §12-305.

HHC states that Cohen conducted the twenty-six Step 1A hearings in a fair manner, and that each nurse was informed of the period for which he or she was charged with being AWOL. It contends that "[i]n each case the nurse was given the opportunity

to explain the reason for his or her absence and to present documentation to support it. In each case, where requested, Cohen gave the nurse the opportunity to obtain the documentation and to submit it at a later date."

HHC asserts that "[t]he final decision [of the Step 1A hearings] was based upon the length of AWOL, the mitigating circumstances, and any other reasons for not being able to return to duty on time." HHC contends that Cohen made his determinations solely upon the facts presented to him, and was unaware of the nurses' visa status prior to the hearings. "Neither Mr. Cohen nor Goldwater have any responsibility concerning the residency status of its employees, other than that their hiring practice must be in accordance with the law.... Mr. Cohen ... has no role in deportation of nurses. That is the responsibility of the federal government."

HHC asserts that it has an "absolute right to take disciplinary action" against its employees, derived from § 12-307b of the NYCCBL.[8] If an employee or the Union is not

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[8]Section 12-307b of the NYCCBL provides, in relevant part:

> It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees, take disciplinary action . . . take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization. . . . Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that

(continued...)

satisfied with the disciplinary action, "they may exercise their rights under the [collective bargaining agreement]. This right was not denied the [Union]." It argues further that imposing disciplinary action is a management right which is outside the scope of bargaining. Therefore, HHC contends, it was under no obligation to negotiate the penalties imposed after an employee had been found guilty.

HHC also asserts that it made an effort to compromise with the nurses by offering a fine in lieu of termination. It maintains that this effort proves that the Hospital was willing to go beyond what the statute or the collective bargaining agreement require.

Finally, HHC asserts that "in making a decision of termination following a Step 1A determination, there was no interference with, restraint or coercion of any public employee in the exercise of their rights granted in 112-305 of the NYCCBL.

DISCUSSION

The Union claims that HHC violated 112-306a(3) of the NYCCBL by discriminating against nurses at the hospital for exercising their rights under the NYCCBL. When a public employer is accused

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8(... continued)
decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

of discriminating against an employee because of union activity, the petitioner has the burden of proving that the employer's act was improperly motivated.[9] Thus, the Union must prove that termination of the nurses in question was improperly motivated by discrimination based on retaliation for union activity.

In cases involving a claim of improperly motivated management action, the Board has applied the test set forth by PERB in City of Salamanca, 18 PERB ¶3012 (1985). The Salamanca test requires that the petitioner initially prove 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 proven these two elements, the burden shifts to the employer to rebut the presumption of discrimination by proving that its actions were properly motivated for a legitimate purpose that did not violate the NYCCBL.[10]

In the instant case, the facts as alleged by the Union do not show that action taken by HHC was motivated by union activity, nor has the Union offered any facts to prove that HHC knew of any employee's union activity. Therefore, under the Salamanca test, this improper practice charge must fail.

[9] Decision Nos. B-21-91; B-59-91; B-21-91; B-4-91; B-50-90.

[10] See also, Decision Nos. B-21-92, B-59-91, B-21-91, B-4-91, B-50-90.

The Union claims that HHC violated 112-306a(4) of the NYCCBL "by refusing to bargain collectively in good faith about discipline the Hospitals were planning to impose on certain nurses who are working in the Hospitals on visas." While the right to take disciplinary action against its employees is specifically reserved to management under 612-307(b) of the NYCCBL, procedures to review and appeal disciplinary actions relate to working conditions and are a mandatory subject of bargaining.[11] A claim that the parties have agreed to a particular disciplinary review procedure, and that the employer has unilaterally changed that procedure, is an arguable claim of improper practice under NYCCBL §12-306a(4).[12]

Here, however, we do not find that HHC refused to bargain in good faith with the Union concerning disciplinary procedures. We find, instead, that the Union was dissatisfied with the offers of settlement proposed by the hospital. The Union appears to believe that the hospital's unwillingness to negotiate alternative penalties is a failure to bargain in good faith. HHC's right to discipline, however, is only limited by the collective bargaining agreement. The Union has not presented us with evidence that the collective bargaining agreement obligates the hospital to negotiate disciplinary penalties.

[11] See Decision Nos. B-6-82; B-3-73.

[12] Decision No. B-6-82.

As set forth in the HHC Rules and Regulations, nurses are entitled to Step 1A hearings at which they may be represented by the Union. The nurses are also entitled to appeal their decisions to Step II and Step III of the grievance procedure. Following an unsatisfactory determination at Step III, the Union may bring the grievance to the Office of Collective Bargaining for impartial arbitration. The Union argues that because H-1 visa holders were subject to immediate deportation, the right of appeal was illusory. The fact remains, however, that each nurse could have appealed the initial decision to Step II and Step III.

HHC has not deprived any nurse of his or her right to appeal the final Step 1A decision. In fact, under the terms of the collective bargaining agreement, each of the nurses had the right to appeal the Step 1A decision within five days of its issuance. A determination must then be issued in writing within ten working days of the date on which the appeal was filed. Similarly, under Step III an appeal must be taken within ten days, and a determination must be issued following the appeal within ten days of the filing date. If the grievance is denied at Step III, the Union may then take the grievance to arbitration.

The grievance procedures set forth in the collective bargaining agreement were not changed or avoided by HHC. Nurses who were terminated and who held an H-1 visa had, in theory, the same rights as any other nurse with less than five years of service as to the appeal of a disciplinary determination.

Although nurses with more than five years of experience at the hospital had greater rights under Rule 7:5 of the HHC Personnel Rules and Regulations, this disparity is not the result of improper labor practices committed by HHC.

HHC correctly states that it "has no role in deportation," which is "the responsibility of the federal government," and cannot be held responsible for the effects of federal law on employment decisions. The issue here, however, is whether HHC used its knowledge of the nurses' residency status to coerce them into settling on its own terms, thereby depriving them of rights under the NYCCBL.

We do not credit Cohen's assertion that he did not know of the nurses' residency status until November 1992. Because the hospital recruited nurses from the Philippines, it seems likely that its Executive Director and Director of Labor Relations would know that the recruits it sponsored who had less than five years' service with HHC would be holders of H-1 visas. Even if that were not the case, however, Lehrfeld discussed the H-1 visas with Phipps on February.7th and directed Cohen to negotiate settlements shortly thereafter. Both Friedman and Phipps recall discussing the H-1 visas with Cohen at some point during the negotiations, and Cohen himself admitted, under cross-examination, that he may have done so. It may be that the hospital saw, in this situation, a means by which it could enforce discipline and discourage the late return of nurses from

their Christmas and New Year's Eve vacations. This alone, however, does not necessarily prove that the nurses were deprived of their rights by the hospital's actions.

Any holder of an H-1 visa who was terminated faced the possibility of deportation. The record does not indicate whether the federal authorities would have acted to deport these nurses during the pendancy of their contractual appeals, or how long the deportation process would have taken once it had commenced. We cannot say with any certainty whether it is true that the nurses holding H-1 visas would have been deported before their appeals could be heard. If we assume that the affected nurses also did not know the answer to this question, then they had to consider whether acceding to the penalty imposed by the hospital would be more beneficial. Whether this was due to actions taken by the hospital, or by a combination of circumstances unique to some of the nurses, is the issue.

We find that it was the situation of the H-1 visa holders, rather than actions taken by HHC, which inhibited their ability to move their grievances through the grievance procedure to the ultimate step of binding arbitration. Although the hospital's actions may have induced the nurses to waive their contractual rights, it was the considered decision of the nurses, taken with union counsel, that this was the best result they could achieve in their particular situation. It was the residency status of

the nurses, rather than any action of the hospital, which put them in that position.

The Union did not sustain its burden of persuasion that HHC interfered with rights granted under the NYCCBL. Without such proof, the Union's allegations that nurses' rights were violated do not allege facts sufficient to constitute an improper practice within the meaning of §12-306a of the NYCCBL. Accordingly, the instant improper practice petition is dismissed.

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 improper practice petition filed by the New York State Nurses Association be, and the same hereby is, dismissed.

Dated: New York, New York
May 26, 1993

MALCOLM D. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

CAROLINE GENTILE
MEMBER

DEAN SILVERBERG
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