DC 37, L. 1549, 6 OCB2d 7 (BCB 2013)

(Arb) (Docket No. BCB-3062-12) (A-14241-12, A-14242-12, A-14243-12, A-14244-12, A-14245-12, A-14259-12, A-14260-12, A-14261-12)

Summary of Decision: HHC challenged the arbitrability of related group grievances alleging that HHC violated the terms of the contract by: (1) failing to include in the bargaining unit persons working in titles listed in the union recognition and unit designation clause; (2) assigning bargaining unit work to non-bargaining unit staffing agency personnel; and (3) failing to post notices of vacancies for titles covered by the contract when it retained the services of staffing agency personnel. HHC argued that the grievances are not arbitrable because there is no nexus between the claims and the cited contractual provisions. The Board found that there is no nexus between the contract and HHC's failure to include staffing agency personnel performing clerical duties in the bargaining unit. However, the Board found that there is a nexus between the contract and HHC's alleged assignment of staffing agency personnel to perform bargaining unit work and HHC's alleged failure to post notices of vacancies for titles covered by the contract. Accordingly, HHC's petition was granted, in part, and denied, in part. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration

-between-

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Petitioner,

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO, LOCAL 1549,

Respondent.

DECISION AND ORDER

On December 14, 2012, the New York City Health and Hospitals Corporation ("HHC") filed a petition challenging the arbitrability of eight related group grievances filed by District Council 37, AFSCME, AFL-CIO, on behalf of its affiliated Local 1549 ("Union"). In its requests

for arbitration, the Union claims that HHC violated the terms of the 2008-2010 Clerical Agreement ("Agreement") by: (1) failing to include in the bargaining unit persons working in titles listed in the union recognition and unit designation clause; (2) assigning bargaining unit work to non-bargaining unit staffing agency personnel; and (3) failing to post notices of vacancies for titles covered by the Agreement when it retained the services of staffing agency personnel. HHC argues that the grievances are not arbitrable because there is no nexus between the Union's claims and the cited contractual provisions. This Board finds that there is no nexus between the Union's claim that HHC failed to include staffing agency personnel performing clerical duties in the bargaining unit and Article I, § 1, of the Agreement. However, this Board finds that there is a nexus between the Union's claim that HHC assigned non-bargaining unit staffing agency personnel to perform the work of bargaining unit employees and Article VI, § 15 of the Agreement. This Board also finds that there is a nexus between the Union's claim that HHC failed to post notices of vacancies for titles covered by the Agreement when it retained the services of staffing agency personnel and Article XIX of the Agreement. Accordingly, HHC's petition challenging arbitrability is granted, in part, and denied, in part.

BACKGROUND

The Union represents several thousand bargaining unit members who work for the City of New York and its associated boards, authorities and corporations, including approximately 3,700 Clerical Associates at HHC. HHC and the Union are parties to the Agreement, which remains in full force and effect pursuant to the *status quo* provision of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL").

Article VI of the Agreement sets forth the parties' grievance procedure and § 1 thereof

defines the types of grievances that are subject to arbitration, including:

> a. A dispute concerning the application or interpretation of the terms of this Agreement; [and]
>
> c. A claimed assignment of employees to duties substantially different from those stated in their job specifications[.]

(Ans., Ex. C) Article VI, § 15, of the Agreement further provides that:

> Notwithstanding any other provision of this Agreement, the parties agree that Section 1(c) of this Article VI shall be available to any employee who claims to be aggrieved by an alleged assignment of any City employee, whether within or without the collective bargaining unit defined in Article I, Section 1 of this Agreement, to clerical duties which are stated in the aggrieved employee's job specifications ***but are substantially different from the duties stated in the job specifications for the title held by such other City employee***. . . .

(Ans., Ex. C) (emphasis in original)

HHC has a contract with the Broadlane Group, a company specializing in medical staffing, to provide HHC with personnel with experience in certain areas, including clerical and administrative duties.[1] The instant dispute concerns HHC's practice of using these staffing agency personnel, hereinafter referred to as temporary workers, to perform the work of bargaining unit members. HHC alleges that it uses Broadlane employees to augment staffing levels during emergency situations or when a facility cannot obtain budgetary approval to post a vacancy but must maintain staffing levels due to operational need. However, the Union contends that some of these temporary workers have been employed at HHC facilities for as long as ten, fifteen, or twenty years. HHC denies that temporary workers have been employed for these lengths of time, but maintains that some of them have worked on a non-continuous basis for extended periods.

It is undisputed that the temporary workers at issue perform the same duties as Clerical

[1] According to HHC, since entering into the staffing services contract with Broadlane, another company, MedAssets, acquired Broadlane and assumed its contracts.

Associates, such as registering patients in emergency rooms, filing, and answering telephones. The Union alleges that the temporary workers work side-by-side with Clerical Associates in various offices within HHC facilities and that many of them "are issued titles, identification cards and job descriptions which are virtually identical to those held by [the Union's] members." (Ans. ¶ 31) For example, the Union contends that, at one HHC facility, approximately ten temporary workers work alongside sixty bargaining unit members.

According to the Union, these temporary workers not only perform the same work as Clerical Associates, but have virtually identical terms and conditions of employment. For example, the Union alleges that they share the same shifts and generally report to the same supervisors as Clerical Associates. HHC generally denies these allegations, but admits that some temporary workers may report to the same supervisor to whom Clerical Associates report. Further, it is undisputed that the temporary workers have no discretion with regard to their daily work assignments, work hours, lunch times, or other break times. However, HHC denies the Union's claim that unit supervisors assign work to the temporary workers and schedule their breaks and lunch periods along with those for Clerical Associates. The Union also alleges that the temporary workers use the same method of time keeping as Clerical Associates. HHC admits that some temporary workers complete HHC timesheets. Nevertheless, HHC asserts that all of the temporary workers are paid by the Broadlane Group.

It is undisputed that the temporary workers are not classified into any certified positions in the HHC plan of titles, and, therefore, do not have HHC position descriptions.[2] However, as

[2] HHC explains that it maintains its own Office of Classification and Certification, which is separate from the Department of Citywide Administrative Services ("DCAS"). Accordingly, HHC asserts that the Office of Classification and Certification promulgates position descriptions ("HHC position descriptions") that are analogous to DCAS job specifications and are relied upon in both out-of-title and reverse out-of-title arbitration proceedings.

stated above, the Union alleges that many of the temporary workers are issued job descriptions that are "virtually identical to those held by" Clerical Associates. (Ans. ¶ 31) The Union alleges, and HHC denies, that the temporary workers are referred to as holding the same titles as bargaining unit members, namely Clerical Associates.

On March 1, 2012, HHC hired additional temporary workers to fill positions performing bargaining unit members' work. No vacancy notices were posted prior to the hiring; however, HHC avers that no authorized vacancies existed at the time that it hired these temporary workers. The Union alleges that HHC's continuing action of assigning bargaining unit work to temporary workers violates the Agreement. In addition to the reverse out-of-title provision cited above, the Union alleges violations of Article I and Article XIX of the Agreement. Article I of the Agreement is entitled "Union Recognition and Unit Designation" and provides, in pertinent part:

> The Employer recognizes the Union as the sole and exclusive collective bargaining representative for the bargaining unit set forth below, consisting of employees of the Employer, wherever employed, whether full-time, part-time per annum, hourly or per diem, in the below listed title(s), and in any successor title(s) that may be certified by the Board of Certification of the Office of Collective Bargaining to be part of the unit herein for which the Union is the exclusive collective bargaining representative . . . .

(Ans., Ex. B) Article XIX of the Agreement is entitled "Posting of Vacancies" and provides that:

> The Employer agrees that when vacancies in the titles covered by this Agreement in Mayoral agencies and the Health and Hospitals Corporation are authorized to be filled, and the agency with vacancies decides to fill them, a notice of such vacancies shall be posted in all relevant areas by the agency involved at least four (4) days prior to filling, except when such vacancy is to be filled on an emergency basis.

(Ans., Ex. D)

Between March 9, 2012, and April 4, 2012, the Union filed eight grievances at Step II of the parties' grievance procedure. Each respective grievance was filed on behalf of bargaining

unit members working at the following HHC facilities: Kings County Hospital Center; Woodhull Medical and Mental Health Center; Lincoln Medical and Mental Health Center; Metropolitan Hospital Center; Bellevue Hospital Center; Elmhurst Hospital Center; Queens Hospital Center; and Coler-Coldwater Specialty Hospital and Nursing Facility. The grievances allege identical violations of the Agreement. In decision letters dated April 26, 2012, and May 11, 2012, all of the Step II grievances were denied without hearings. Between April 6, 2012, and May 4, 2012, the Union appealed each of the grievances to Step III of the parties' grievance procedure. Step III conferences for each of the grievances were held on June 7, 2012, or July 19, 2012, and all of the Step III grievances were denied on either June 18, 2012, or July 23, 2012.

Between July 10, 2012, and July 31, 2012, the Union filed eight requests for arbitration, one for each of the above-mentioned HHC facilities. On September 14, 2012, the Union requested to consolidate the eight requests for arbitration. On September 25, 2012, HHC consented to the Union's request to consolidate the requests for arbitration because the underlying grievances concern "substantially similar disputes, cite[] identical contractual provisions, and request[] identical remedies." (Pet. ¶ 6)

The Union states that the grievance to be arbitrated is:

> Whether the employer, Health and Hospitals Corporation, violated the Collective Bargaining Agreement by: 1) Failing to include employees in titles listed in the Union recognition clause in the bargaining unit; 2) Assigning non-bargaining unit "temporary" employees to perform bargaining unit work; and 3) Failing to post vacancies in titles covered in Article I and filling them with "temporary" employees?

(Pet., Ex. 1) As relief, the Union seeks the following remedy:

> Cease and desist the assignment of all bargaining related duties to non-bargaining unit employees; reassignment of all bargaining unit duties from non-Local 1549 bargaining unit members to bargaining unit members; replace "temporary" employees doing bargaining

> unit work with bargaining unit members; inclusion of "temporary" employees in the bargaining unit; post all future vacancies[;] and any other remedy necessary and proper to make the grievants whole.

(*Id*.)

POSITIONS OF THE PARTIES

HHC's Position

HHC argues that the petition should be dismissed in its entirety because the Union has failed to establish a nexus between the subject matter of the grievance and a contractual provision that would give rise to the obligation to arbitrate. First, HHC maintains that there is no nexus between the grievance and Article I, § 1, of the Agreement because the union recognition and unit designation clause is silent with respect to temporary workers or staffing agency employees. Indeed, it specifically refers to titles certified by the Board of Certification. The temporary workers are not working in titles certified by the Board of Certification and do not have HHC title codes or HHC position descriptions. While the temporary workers may perform the same duties as Clerical Associates, the cited contractual language does not define the unit by duties, but rather by certified titles only. Moreover, HHC argues that a union recognition and unit designation clause does not create a right to exclusive work jurisdiction. Although the Union contends that the existence of Article VI, § 15, of the Agreement has the effect of expanding the scope of Article I, § 1, of the Agreement, HHC asserts that there is no legal basis for this novel theory.[3]

Second, HHC argues that there is no nexus between the grievance and Article VI, § 15, of the Agreement, the reverse out-of-title provision. According to HHC, the existence of two job specifications—one for the aggrieved bargaining unit members and one for the non-unit members

[3] HHC also alleges that the Union does not have standing to represent the temporary workers because it is undisputed that they are not members of the bargaining unit.

alleged to be performing the bargaining unit members' duties—is a prerequisite of the two-pronged analysis for reverse out-of-title claims. HHC alleges that, because the temporary workers do not have job specifications or HHC position descriptions, an arbitrator could not find that they were assigned duties substantially different from those set forth in their non-existent job specifications.

HHC maintains that *DC 37, L. 1549*, 63 OCB 18 (BCB 1999), is not controlling because HHC has advanced a different argument than the one made by the petitioner in that matter. *DC 37, L. 1549* also involved a challenge to the arbitrability of a reverse out-of-title grievance involving staffing agency employees assigned to perform clerical duties. Like the petitioner in *DC 37, L. 1549*, HHC maintains that the temporary workers are not HHC employees. However, HHC argues that, here, it is not necessary to determine whether the term "City employee" encompasses the temporary workers because the plain language of the reverse out-of-title provision requires that the non-unit workers have job specifications. Since the temporary workers do not have job specifications or HHC position descriptions, an arbitrator could not find a violation of this provision. HHC contends that, if the Union desires the right to enjoin non-unit workers who do not possess HHC position descriptions from performing clerical tasks, the Union should seek to amend Article VI, § 15, of the Agreement through collective bargaining.

Third, HHC argues that there is no nexus between the grievance and Article XIX of the Agreement because the plain language requires that the employer post notices only when vacancies in titles covered by the Agreement are authorized to be filled. According to HHC, the record is devoid of any facts or allegations that there have been any approved vacancies in clerical positions. The Union merely assumes that the use of temporary workers implies the existence of authorized vacancies. However, HHC maintains that temporary workers are used when clerical

vacancies have not been approved.[4] Therefore, the Union cannot establish the requisite nexus.

Union's Position

The Union argues that the petition should be denied in its entirety and that the Board should issue an order directing this matter to proceed to arbitration. First, the Union contends that the Board has held that parties may agree to reserve certain work to a particular bargaining unit. Accordingly, the Union explains that the Board has held that a union recognition and unit designation clause does not grant an exclusive right to perform certain work unless that right is limited by the parties in their collective bargaining agreement. The Union argues that there is a nexus between Article I, § 1, of the Agreement—the union recognition and unit designation clause—and the exclusive right to the work performed by bargaining unit members because the Agreement includes a clause permitting reverse out-of-title claims. The Union alleges that this provision expressly limits HHC's right to assign bargaining unit work to non-bargaining unit employees and is sufficiently broad to encompass the Union's claim that temporary workers are improperly being assigned the duties of Clerical Associates.

Second, the Union argues that there is a nexus between the subject of the grievance and Article VI, § 15, of the Agreement because the Union alleges that HHC has assigned the temporary workers to perform bargaining unit work and this contractual provision permits the filing of reverse out-of-title claims. The Union argues that the issue of whether this provision applies to temporary workers is not a statutory issue for the Board because the Board has already determined that the question of whether temporary workers are "City employees" is a contractual issue for an arbitrator to resolve. For example, in *DC 37, L. 1549*, 63 OCB 18, the Board concluded that the

[4] HHC explains that public sector employers often have a need for additional staffing but do not have authorization to post a vacancy in a classified title. HHC explains that it is in this context that it needs to retain the services of staffing agency employees.

requisite nexus existed because there was an issue as to whether the contractual term "City employees" contemplates temporary workers. To the extent that HHC argues that the temporary workers are not HHC employees, the Board has held that the labels "independent contractor" and "temporary worker" are not determinative of whether a worker is a "City employee," or, in this matter, an HHC employee. The Union argues that HHC has treated the temporary workers as HHC employees and similarly to how it treats the Clerical Associates whose job duties they have been assigned. The Union maintains that it is irrelevant whether the workers at issue hold "title codes" or "corporate position descriptions" because they perform the same duties and share virtually identical conditions of employment as bargaining unit members. (Ans. ¶ 31)

Lastly, the Union argues that there is a nexus between the subject of the grievance and the Agreement because HHC's hiring of temporary workers without posting prior notices of vacancies directly relates to Article XIX of the Agreement. The Union explains that its claim is neither vague nor conclusory because HHC hired temporary workers as recently as one month prior to the filing of the grievances and did not post any vacancy notices. According to the Union, the issue of whether there were "approved" vacancies in clerical positions is irrelevant to the instant matter. The Union contends that, if HHC has vacancies for duties performed by bargaining unit members, the Agreement contemplates that such vacancies will be posted in accordance with Article XIX of the Agreement. According to the Union, the inclusion of Article XIX in the Agreement evidences a clear intent by the parties to arbitrate disputes concerning the interpretation of this provision.

DISCUSSION

The NYCCBL provides that it is "the policy of the city to favor and encourage . . . final, impartial arbitration of grievances between municipal agencies and certified employee

organizations." NYCCBL § 12-302; *see also ADW/DWA*, 4 OCB2d 21, at 10 (BCB 2011); *NYSNA*, 69 OCB 21, at 6 (BCB 2002). To carry out this policy, the "Board is charged with the task of making threshold determinations of substantive arbitrability." *ADW/DWA*, 4 OCB2d 21, at 10 (quoting *DEA*, 57 OCB 4, at 9-10 (BCB 1996)); *see also* NYCCBL § 12-309(a)(3). The Board's function "is confined to determining whether the grievance is one which, on its face, is governed by the contract." *UFOA*, 15 OCB 2, at 7 (BCB 1975); *see also ADW/DWA*, 4 OCB2d 21, at 10; *Local 300, SEIU*, 55 OCB 6, at 9 (BCB 1995). The "presumption is that disputes are arbitrable, and that doubtful issues of arbitrability are resolved in favor of arbitration." *CEA*, 3 OCB2d 3, at 12 (BCB 2010) (citations omitted). The Board, however, cannot create a duty to arbitrate if none exists or enlarge a duty to arbitrate beyond the scope established by the parties. *See CCA*, 3 OCB2d 43, at 8 (BCB 2010); *SSEU, L. 371*, 69 OCB 34, at 4 (BCB 2002).

To determine whether a grievance is arbitrable, the Board employs a two-prong test, which considers:

> (1) whether the parties are in any way obligated to arbitrate a controversy, absent court-enunciated public policy, statutory, or constitutional restrictions, and, if so (2) whether the obligation is broad enough in its scope to include the particular controversy presented. In other words, whether there is a nexus, that is, a reasonable relationship between the subject matter of the dispute and the general subject matter of the Agreement.

UFOA, 4 OCB2d 5, at 8-9 (BCB 2011) (citations and internal quotation marks omitted); *see also SSEU*, 3 OCB 2, at 2 (BCB 1969). This inquiry does not require a final determination of the rights of the parties because the Board lacks jurisdiction to enforce contractual rights. *See* CSL § 205(5)(d); *NYSNA*, 3 OCB2d 55, at 7-8 (BCB 2010) (citations omitted); *NYSNA*, 69 OCB 21, at 7-9. Accordingly, the Board generally will not inquire into the merits of the dispute. *See DC 37*, 27 OCB 9, at 5 (BCB 1981).

When a public employer challenges the arbitrability of a grievance based on a lack of nexus, "[t]he burden is on the Union to establish an arguable relationship between the [the public employer's] acts and the contract provisions it claims have been breached." *Local 371, SSEU,* 65 OCB 39, at 8 (BCB 2000) (citations omitted)*; see also DC 37*, 61 OCB 50, at 7 (BCB 1998); *Local 371*, 17 OCB 1, at 11 (BCB 1976). If the Union establishes an arguable relationship, "the conflict between the parties' interpretations presents a substantive question of interpretation for an arbitrator to decide." *Local 3, IBEW*, 45 OCB 49, at 11 (BCB 1990) (citations omitted); *see also PBA*, 3 OCB2d 1, at 11 (BCB 2010).

Here, it is undisputed that the parties have agreed to submit certain disputes to arbitration. The Agreement contains a grievance procedure, which provides for final and binding arbitration of specified matters, including disputes concerning the application or interpretation of the Agreement's terms and claimed assignments of any "City employee[s] . . . to clerical duties which are stated in the aggrieved [Clerical Associates'] job specifications but are substantially different from the duties stated in the job specifications for the title held by such other City employee[s]." (Ans., Ex. C) The issue that the Union seeks to arbitrate is whether HHC violated the terms of the Agreement when it failed to include temporary workers in the bargaining unit, assigned temporary workers to perform the work of Clerical Associates, and failed to post notices of vacancies for Clerical Associate positions when it retained the services of temporary workers. In order for the Union's grievances to be arbitrable, this Board must find a reasonable relationship between the Union's claims and the cited contractual provisions. For the reasons set forth below, we find that the requisite nexus has been established with respect to two of the Union's three claims.

First, we find that there is no nexus between Article I, § 1, of the Agreement and the

Union's claim that HHC violated this provision by failing to include the temporary workers in the bargaining unit. Article I, § 1, of the Agreement provides that HHC recognizes the Union as the sole and exclusive collective bargaining representative for a list of titles that were certified by the Board of Certification to comprise the bargaining unit. It is undisputed that the temporary workers are not working in certified titles. Because Article I, § 1, of the Agreement requires that bargaining unit members work in titles certified by the Board of Certification, there is no reasonable relationship between this provision and the Union's claim. Although the Union contends that the temporary workers have been assigned to perform duties that are more appropriately performed by its members, we have long held that union recognition and unit designation clauses cannot "be construed as grants of exclusive work jurisdiction." *NYSNA*, 71 OCB 23, at 15 (BCB 2003); *see also UPOA*, 49 OCB 10, at 11 (BCB 1992).

Notwithstanding the above, we find that there is a nexus between Article VI, § 15, of the Agreement and the Union's claim that HHC violated this provision when it assigned temporary workers to perform the bargaining unit work of employees in the Clerical Associate title. Article VI, § 15, of the Agreement provides a basis for employees to file reverse out-of-title grievances. It allows the filing of a grievance on behalf of "any employee who claims to be aggrieved by an alleged assignment of any City employee, whether within or without the collective bargaining unit defined in Article I, Section 1 of this Agreement, to clerical duties which are stated in the aggrieved employee's job specifications ***but are substantially different from the duties stated in the job specifications for the title held by such other City employee***. . . ." (Pet., Ex. C) (emphasis in original) We find that this language is broad enough to encompass a reverse out-of-title claim concerning the temporary workers at the eight HHC facilities. *Compare with UPOA*, 49 OCB 10, at 9-11 (BCB 1992) (finding that a reverse out-of-title claim did not fall within the parties'

agreement to arbitrate).

HHC contends that there is no nexus between the Union's claim and Article VI, § 15, of the Agreement because the plain language of this provision requires, as a prerequisite to the reverse out-of-title claim, that the non-bargaining unit workers have job specifications.[5] According to HHC, by the plain terms of Article VI, § 15, of the Agreement, there can never be a finding of a violation of this provision in the absence of a job specification. HHC alleges that, because the temporary workers at issue do not have job specifications or HHC position descriptions, a determination cannot be made as to whether the clerical duties assigned them are substantially different from the duties stated in their non-existent job specification. We need not reach the merits of this contention, however, because the Union has alleged that many of the temporary workers were issued "job descriptions." (Ans. ¶ 31) To the extent that HHC also argues that the temporary workers are not "City employees" within the meaning of Article VI, § 15, of the Agreement, such an issue is for an arbitrator to resolve. *See DC 37, L. 1549*, 63 OCB 18 (finding a nexus between a reverse out-of-title claim and an earlier iteration of the Agreement because there was a dispute as to whether the term "City employees" contemplates temporary workers). Therefore, the Union's reverse out-of-title claim raises issues of fact that must be resolved in order to determine whether the clerical duties assigned to the temporary workers violate Article VI, § 15, of the Agreement. Accordingly, we find that there is a reasonable relationship between Article VI, § 15, of the Agreement and the Union's reverse out-of-title claim.

We also find that there is a nexus between Article XIX of the Agreement and the Union's claim that HHC filled vacancies for Clerical Associate positions with temporary workers without

[5] As we explained above, HHC promulgates position descriptions that are analogous to DCAS job specifications. HHC does not dispute that the contractual term "job specifications" encompasses HHC position descriptions, as it alleges that HHC position descriptions "are relied upon in . . . reverse out-of-title arbitrations . . . ." (Pet. ¶ 44, n. 3)

posting notices of the vacancies. The Union alleges that HHC did not post any notices prior to hiring temporary workers to perform the work of Clerical Associates. It is for an arbitrator to determine whether the positions that allegedly were filled constituted vacancies that required the posting of notices pursuant to Article XIX of the Agreement.

Consequently, for the reasons stated above, HHC's petition challenging arbitrability is granted, in part, and denied, in part.

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 challenging arbitrability filed by the New York City Health and Hospitals Corporation, docketed as BCB-3062-12, is hereby granted as to the allegation that the New York City Health and Hospitals Corporation violated Article I, § 1, of the 2008-2010 Clerical Agreement by failing to include certain temporary workers performing clerical duties in the bargaining unit; and it is further

ORDERED, that the petition challenging arbitrability is hereby denied as to the allegation that the New York City Health and Hospitals Corporation violated Article VI, § 15, of the 2008-2010 Clerical Agreement by assigning non-bargaining unit temporary workers to perform the work of employees in the Clerical Associate title; and it is hereby

ORDERED, that the petition challenging arbitrability is hereby denied as to the allegation that the New York City Health and Hospitals Corporation violated Article XIX of the 2008-2010 Clerical Agreement by failing to post notices of vacancies for the Clerical Associate title when it retained the services of non-bargaining unit temporary workers; and it is further

ORDERED, that the requests for arbitration filed by District Council 37, AFSCME, AFL-CIO, Local 1549, docketed as A-14241-12, A-14242-12, A-14243-12, A-14244-12, A-14245-12, A-14259-12, A-14260-12 and A-14261-12, are hereby granted to determine whether the New York City Health and Hospitals Corporation violated Article VI, § 15, and Article XIX of the 2008-2010 Clerical Agreement by assigning non-bargaining unit temporary workers to perform the work of employees in the Clerical Associate title and by failing to post notices of vacancies for the Clerical Associate title when it retained the services of non-bargaining unit

temporary workers.

Dated: March 6, 2013
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
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