HHC v. CIR, 63 OCB 40 (BCB 1999) [Decision No. B-40-99 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Arbitration	:	
	:	
-between-	:	
	:	
NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,	:	
	:	Decision No. B-40-1999
Petitioner,	:	Docket No. BCB-1972-98
	:	(A-7229-98)
-and-	:	
	:	
COMMITTEE OF INTERNS AND RESIDENTS,	:	
	:	
Respondent.	:	

DECISION AND ORDER

On April 9, 1998, the New York City Health and Hospitals Corporation (hereinafter referred to as "HHC"), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Committee of Interns and Residents ("CIR"). CIR filed an answer on April 27, 1998. The HHC submitted a reply on May 18, 1998. With the consent of HHC, CIR filed a sur-reply on June 19, 1998.

BACKGROUND

Petitioner and respondent were parties to a collective bargaining agreement for the period April 1, 1995 through March 31, 2000. On December 9, 1997, the CIR filed a Step II (a) grievance, alleging that HHC violated Article XIX, § 15 of the parties' contract by denying meals to House Staff Officers ("HSOs") on outside rotations and imposing a coupon system on the CIR bargaining unit. Article XIX, § 15 reads:

> The Corporation shall provide at no charge to House Staff Officers who are paid directly by the Corporation up to three meals per day (breakfast, lunch, and dinner) in the employee cafeteria while they are on duty at a Corporation facility. Facilities which currently have a more beneficial HSO meal practice than is set forth above, are encouraged to continue such practice.

On February 10, 1998, an informal conference was held, and on February 19, 1998 the grievance was denied regarding outside-HHC rotation meals. The Union filed a Request for Arbitration on March 25, 1998, alleging that "Kings County Hospital Center ("KCHC") has denied and continues to deny meals to residents when they are on duty, i.e., required to be at KCHC during an assigned rotation to another facility. KCHC residents have spent and continue to spend money on meals that should be provided without cost to residents." CIR alleged a violation of Article XIX, § 15 and sought arbitration pursuant to Article XIV of the agreement.[1] The Union seeks an order requiring KCHC to provide meals to residents when they are required to be at KCHC during an assigned rotation to another facility, an order that all residents be made whole or any other remedy deemed just and appropriate.

POSITIONS OF THE PARTIES

HHC's Position

HHC argues that the CIR has failed to show that a nexus exists between the complained of act and the applicable section of the parties' agreement. It argues that the contract specifically includes the right to meals at no charge to HSOs **only** while he/she is on duty at an HHC facility.

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[1] Article XIV, Section 1 of the parties' agreement states, in part:
The term "grievance" shall mean:
a. A dispute concerning the application or interpretation of the terms of this collective bargaining agreement;
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It contends that since the Request for Arbitration clearly evinces a desire for meals to be covered while HSOs are on "an assigned rotation to **another** facility," and Article XIX, § 15 specifically excludes meals at no charge to HSOs when they are not on duty at a HHC facility, the claim by CIR is not grievable.

HHC argues that the Board has held that although the policy of the New York City Collective Bargaining Law ("NYCCBL") is to promote and encourage arbitration, it cannot create a duty where none exists. It states that the Board has also held that where contract language is clear and unambiguous on its face, the Board will look no further into the intent of the parties or to other provisions of the policy at issue.[2] HHC states that Article XIX, § 15 is clear and unambiguous on its face, i.e., that meals at no charge to HSOs are available only when they are on duty at HHC facilities.

HHC contends that even if, assuming *arguendo*, on some days during rotation to non-HHC facilities, the HSOs are required to appear at KCHC to perform certain duties, they are not on HHC payroll during this period and therefore cannot receive from HHC any benefits under the contract.[3] It argues that the Board has held that an employer is not obligated to arbitrate the claims of a person who is not an employee at the time that the grievance allegedly arose and who is not covered by the contract under which the request for arbitration is made.[4]

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[2] HHC cites Decision No. B-68-89.

[3] In support of this position, the City cites the section of Article XIX, § 15 which reads, "The Corporation shall provide at no charge to House Staff Officers who are paid directly by the Corporation up to three meals per day . . ."

[4] CIR cites Decision No. B-4-75.

It also contends that the doctrine of standing to sue holds that a petitioner may only complain of the allegedly wrongful conduct if his or her legally protected interests have been violated.[5] HHC argues that respondent has failed to show any legally protected interests under any of the cited sections of the contract have been violated, therefore, the HSOs during rotation to non-HHC facilities lack standing. It further contends that CIR's claim that for the last four years, KCHC did not impose any restrictions on the HSOs meals is a new claim. By inserting a claim of a violation of an alleged past practice, HHC argues CIR is attempting to enlarge its grievance beyond the original claim.

CIR's Position

CIR contends that it does not seek the right of HSOs to obtain meals at non-HHC facilities or any other entity outside of an HHC facility. It argues that it seeks the right to meals for HSOs when they are on duty at an HHC facility, regardless of whether they may be on rotation at another facility. It contends that Article XIX, § 15 is not clear and unambiguous on its face and that the Request for Arbitration states quite clearly that although residents are sometimes on assigned rotation at another facility, they are typically required to be on duty at KCHC during that rotation. Thus, it argues, one can be on rotation during a particular month at a non-HHC facility but also be on duty at a HHC facility during other times that same month. Accordingly, CIR argues, there is a clear nexus between the complained of act - inappropriate denial of meals - and the applicable section of the agreement, which directly addresses the circumstances under which HSOs are entitled to meals. By asking the Board to agree with its position, HHC seeks to have the Board interpret the

[5] CIR cites Decision Nos. B-52-91 and B-28-94.

contract provision at issue, a function more appropriately left for the arbitral forum.[6] It also argues that for the four years preceding September 1997, the date when KCHC unilaterally changed its policy, KCHC had not imposed any restrictions upon the HSOs entitlement to meals when they were at an HHC facility.

In its sur-reply, CIR argues that HHC's contention that HSOs are not on HHC payroll during non-HHC facility rotation is false. CIR maintains that HSOs of KCHC remain on HHC payroll when they are assigned to a rotation away from KCHC and that one of HHC's own employees confirmed that to a CIR Organizer assigned to KCHC.

DISCUSSION

HHC contends that the HSOs lack standing to sue because they are not on HHC payroll during rotation to non-HHC facilities. The Union states that the HSOs are on the payroll, and one of HHC's own employees confirmed it. This disputed fact concerns a matter which is crucial to the outcome of the parties' dispute. As neither party submitted documents or other evidence supporting or refuting HHC's contentions, this Board finds that the Union is entitled to have an arbitrator make a determination on whether the HSOs are "paid directly by the Corporation" when they are on outside rotations. We direct the arbitrator to consider only that narrow question. If the arbitrator finds that the HSOs are paid directly by the Corporation when they are on outside rotations, the residents have standing, there clearly is a nexus to the contract and he or she may then go on to make a decision on the merits. If the arbitrator finds otherwise, the inquiry shall end there.

ORDER

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[6] CIR cites Decision No. B-30-89.

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 HHC be, and the same hereby is, denied; and it is further

ORDERED, that the request for arbitration filed by the CIR be, and the same hereby is granted.

Dated: September 28, 1999
New York, New York

STEVEN C. DeCOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

JEROME E. JOSEPH
MEMBER

ROBERT H. BOGUCKI
MEMBER

RICHARD A. WILSKER
MEMBER