HHC v. CIR, 17 OCB 6 (BCB 1976) [Decision No. B-6-76]

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

NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION,

DECISION NO. B-6-76

Petitioner,

DOCKET NO. BCB-257-76

-and-

THE COMMITTEE OF INTERNS
AND RESIDENTS,

Respondent.
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DECISION, DETERMINATION
AND ORDER

This matter arises out of the demand by the Committee of Interns and Residents ("the Union") for arbitration of an alleged violation of its collective bargaining agreement ("the contract"), with the New York City Health and Hospitals Corporation ("the Corporation"), relating to procedures followed in disciplinary proceedings against a number of the Union's members, all of whom are employed at Lincoln Hospital ("the Hospital"), which is a City facility under the jurisdiction of the Corporation and subject to the coverage of the contract between the Corporation and the Union. The disciplinary proceedings which thus constitute the focal point of this matter were brought by the Hospital in connection with certain alleged acts of the affected employees which acts are said to have occurred on March 27 and on August 1-11, 1975. Hearings conducted

by the Hospital commenced on April 5, 1976, and were closed on May 10, 1976. The Union filed its request for arbitration on April 22, 1976, alleging that the nature and conduct of the hearings were in violation of Article XV of the contract and thus subject to grievance and arbitration procedures provided in Article XIV of the contract.

On May 3, 1976, the Corporation filed a petition challenging the arbitrability of the grievance on the following four grounds:

> "1. The grievance is not arbitrable as it is 'medical in character' and thus subject to an entirely different grievance procedure pursuant to Article XIV of the contract. This applicable grievance procedure, hereinafter enumerated, does not provide for arbitration pursuant to the Rules of the Office of Collective Bargaining, at any step of that procedure.
>
> "2. Even assuming arguendo that the grievance was 'administrative in nature' and ultimately subject to arbitration, Respondent, contrary to its assertion in the request for arbitration, failed to fully process the instant grievance through all of the steps" prescribed by Article XIV, §3 of the contract.
>
> "3. The alleged failure to comply with a separate 'memorandum of understanding' dated December 30, 1975, which is the actual basis for Respondent's grievance, is under no circumstances arbitrable. Such 'memorandum' does not fall within any of the four areas of the definition of a 'grievance' set forth in Article XIV, §1 of the contract.

> "4. The Respondent failed to file an appropriate waiver required by §6.3 of Office of Collective Bargaining's Rules with its request for arbitration, in that such waiver was not executed by the 22 grievants in fact."

The Union contends that the matter is "administrative in character" because no medical competence or expertise is required to determine whether the contractual disciplinary procedure was adhered to or whether the charges concerning alleged demonstrations, unauthorized meetings, public statements to employees and visitors, and assaults are meritorious. Because of the nature of the dispute, the Union continues, the grievance procedure outlined in Article XIV, §3, of the contract is applicable,[1] the Union maintains, however, that in this instance, since the grievance concerns Corporation policy, adherence to the prescribed first step of the procedure, presentation of the grievance to the Executive Director of Lincoln Hospital, "would have been futile and irrelevant."

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[1] "Article 14, Section 3. If the grievance with the Executive Director is not resolved satisfactorily within fifteen days after its presentation, the House Staff Officer may appeal in writing to the President of the Corporation or his designated representative in the case of Corporation employees or to the appropriate agency head in the case of City employees. All decisions of the President or the appropriate City agency head respectively may be taken to impartial arbitration solely by the Committee pursuant to procedures established by the Board of Collective Bargaining.

In response to the Corporation's arguments concerning the agreement of December 30, 1975, the Union counters that "it was entered into by the parties to clarify their intent and explicate the applicable contract provision." Therefore the agreement is an integral part of the contract within the meaning of Article XIV, §1 (A) or (B)[2] and, accordingly, subject to the grievance procedure.

Finally, with respect to the waiver argument raised by the Corporation, the Union contends that no individual waivers are required either by the contract or by the rules of the OCB. The Union refers the Board to Article XIV, S1, of the contract which states:

> "A grievance may be brought by an individual house staff officer and the committee or by the committee alone."

The Union argues further that Board Decision No. B-28-75 holds that such issues as this are submissible to arbitration and not subject to examination as issues relating to arbitrability.

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[2] "Article XIV, Sl. The term 'grievance' shall mean (A) A dispute concerning the application or interpretation of the terms of this collective bargaining agreement: (B) A claimed violation, misinterpretation, or misapplication of the rules or regulations, existing policy or orders of the Corporation affecting the terms and conditions of employment and training program."

Discussion

The pleadings before us show that in connection with certain alleged events of March and August, 1975, the Hospital, on December 24, 1975, issued disciplinary charges to a number of Hospital employees. The Union promptly complained to the appropriate officials of the Hospital and of the Corporation that said action constituted a violation of Article XV, §2, of the contract between the Corporation and the Union, which reads as follows:

> "When disciplinary action against a House Staff Officer is contemplated either by a Chief of Service or Executive Director, written charges and proposed disciplinary action shall be presented to such House Staff Officer who shall be notified of his right to appear before the Chief of Service or Executive Director or a duly designated representative."

In response to that complaint, a meeting or meetings were scheduled, and held, involving representatives of the Union, the management of the Hospital and of the Corporation, and on December 30, 1975, an agreement, signed by representatives of the Union, the Hospital and the Corporation was entered into.

The agreement of December 30, 1975, reads as follows:

> 1. Process to be consolidated for all HSOs.
>
> "2. Art. XV, §2 step:
> a) Combined conference and informal hearing at which each side to present arguments and information by way of witnesses and/or documents.
>
> b) counsel for both sides to be present
>
> c) Executive Director to be available if necessary
> d) to be held 1/21/10AM and 1/22/10 AM at Lincoln H Surgery Conference Room
>
> "3. After §2 step, Executive Director or his designee shall issue either a notice of no charges, or a notice pursuant to Art. XV, S3, of written charges and contemplated disciplinary action. HSO shall have 10 days after receipt of this notice to present the matter to HS Affairs Committee, such notice to be sent to Chairman of HS Affairs Committee. If no such notice from HSO, charges and action shall become final.
>
> "4. Art. XV, §4 step:
> a) shall be a formal hearing
> b) Corporation shall have burden of proceeding first and shall have burden of proof
>
> c) testimony shall be under oath
>
> d) the Corporation will make persons under its control available as witnesses upon request, where possible
>
> e) the HS Affairs Committee shall render

a written decision

f) subject to further approval by both sides:

i) a transcript shall be made with the cost to be shared equally

ii) the HS Affairs Committee shall consist of 8 members, 3 of them to be HSOs, none of whom shall be under charges.

"New York City
12/30/75

s/ MURRAY A . GORDON
Attorney for HSOs

NYC Health & Hospitals Corp. by
s/ Myron Horwitz
s/ David Lew

LINCOLN HOSPITAL
s/ John Keough, Personnel Director

It is alleged by the Union that "it was acknowledged" (presumably by representatives of the Corporation and the Hospital), at the meeting of December 30, 1975, that the notices dated December 24, 1975, were not in compliance with the requirements of Article XV of the contract. This contention, and the presumption inferred therefrom and stated parenthetically above, are supported by the content of the agreement entered into at that meeting by the parties. On its face, that document has the effect not only of prescribing the steps and procedures to be followed by the parties thereafter in applying the terms

of Article XV of the contract to the contemplated disciplinary action, but also of retracing and correcting steps already taken by the Hospital in the matter. It should be noted that while the Corporation questions the legal status and effect of the agreement, an issue which we deal with below, it does not challenge the genuineness of the document itself which is submitted as Exhibit D of the Union's Answer herein. It is not apparent from the pleadings and other submissions before us whether or not the Union's response to the December 24, 1975 notices and the meetings which followed constituted a grievance and grievance process in the technical sense. But there can be no question that all of the essential elements thereof have been shown to have occurred, namely, an action by management, notice by the Union to the appropriate representatives of management that the action was allegedly in violation of a specific contract provision, a meeting or meetings between the parties at which the Union's complaint was discussed and a mutually satisfactory resolution was reached and reduced to a writing signed by the parties.

On February 13, 1976, written charges and proposed disciplinary action were formally presented to affected employees by the Hospital at a meeting with the Hospital's Labor Relations Officer. On February 26, 1976, written charges and proposed disciplinary action were republished and served on the affected employees. The Union appealed the proposed disciplinary action

to the House Staff Officers Committee of the Hospital pursuant to the procedures prescribed in the grievance and arbitration provisions of Article XIV of the contract between the Corporation and the Union.

On March 22, 1976, the Hospital promulgated guidelines for the disciplinary hearings.

On April 5, 1976, disciplinary hearings commenced following the guidelines promulgated on March 22, 1976, as modified in partial but not complete sustention of Union objections. The Union participated in the proceedings under protest.

On April 9, 1976, the Union, by a letter of that date addressed to the President of the Corporation, with copies to numerous officials of both the Corporation and the Hospital, including the Hospitals Executive Director and its Labor Relations Officer, protested against the implementation of the guidelines promulgated by the Hospital in the disciplinary hearings then in progress as violative both of the contract between the Corporation and the Union and of the agreement of December 30, 1975, between the Corporation, the Hospital and the Union resolving the Union's complaint of December 24, 1975.

On April 21, 1976, in response to the above-described letter of April 9, 1976, the Corporation rejected the Union's grievance on various procedural grounds in a letter signed by Myron Horwitz, Director of Labor Relations of the Corporation.

Article XIV of the contract between the parties, entitled "Grievance Procedure" reads as follows:

ARTICLE XIV
GRIEVANCE PROCEDURE

Section 1.

The term "grievance" shall mean

(A) A dispute concerning the application or interpretation of the terms of this collective bargaining agreement:

(B) A claimed violation, misinterpretation, or misapplication of the rules or regulations, existing policy or orders of the Corporation affecting the terms and conditions of employment and training program;

(C)A claimed assignment of Employees to duties substantially different from those stated in their job specifications; or

(D) A question regarding the non-renewal of the appointment of a House Staff Officer.

A grievance may be brought by an individual House Staff Officer and the Committee or by the Committee alone.

A House Staff Officer's grievance shall be presented in writing to the appropriate Chief of Service or his designated representative, if medical in character, or :o the Executive Director of the Hospital, or his designated representative, if administrative in character. The grievance must be presented no later than 90 days after the date on which the grievance occurred.

Section 2.

If the grievance with the Chief of Service, which is medical in character is not resolved satisfactorily within 15 days after its presentation, the House Staff Officer may appeal in writing to the House Staff Affairs Committee of the Medical Board for evaluation and determination. All decisions of the House Staff Affairs Committee may be reviewed by the Medical Board. The decision of the Medical Board in all such matters including any dispute as to the non-renewal of the appointment of a House Staff Officer shall be final.

Section 3.

If the grievance with the Executive Director is not resolved satisfactorily within 15 days after its presentation, the house Staff Officer may appeal in writing to the President of the Corporation or his designated representative in the case of Corporation employees or to the appropriate agency head in the case of City employees. All decisions of the President or the appropriate City agency head respectively may be taken to impartial arbitration solely by the Committee pursuant to procedures established by the Board of Collective Bargaining.

Section 4.

House Staff Officers may be assisted at all stages of the procedures herein set forth by representatives of the Committee.

Section, 5.

If House Staff Officers at any Corporation hospital are regularly or recurrently assigned duties appropriate to the titles of Laboratory Technicians, Word Clerks, or Messengers or are regularly, recurrently assigned to other duties not appropriate to their titles such assignments shall

We deal here, as a threshold issue, with the Corporation's second main point, set forth in Paragraph SEVENTH of its petition which alleges that, assuming "arguendo that this grievance is 'administrative in character,'" the Union has failed to present its grievance to the Executive Director of the Hospital, the prescribed first step in the grievance procedure and, having allegedly attempted improperly to commence with the second step of the procedure by its letter of April 9, 1976, to the President of the Corporation, cannot now go to the third step, arbitration. Such issues of compliance with the steps of a grievance procedure are generally viewed in private sector practice as issues of procedural arbitrability to be determined in arbitration rather than in proceedings testing substantive arbitrability.[3] Because of the unique umpireship status of this Board and the essentially "single-employer" collective bargaining relationship with which we deal we have not consistently followed that practice. Instead, and in order to promote the development of a single consistent body of precedent on the subject, to prevent the abuse of the process and to save the parties the expense of needless arbitration proceedings, we have undertaken the resolution of such issues as to

[3] John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964); In re Long Island Lumber Co., 15 N.Y. 2nd 380 (1965).

compliance with and proper utilization of the grievance and arbitration procedure in a number of cases.[4] Where-ever we have taken jurisdiction of such issues and have upheld objections to arbitrability based upon alleged failures of the grievant to adhere to prescribed grievance procedures, we have stated that the purpose of the multi-step grievance procedure is to promote the resolution of grievances at the earliest possible procedural steps within the labor-management structure and that where non-adherence to prescribed procedures deprives management of the opportunity to achieve that end, the interests of sound labor relations would not be served by permitting a grievance which is significantly defective procedurally to continue to arbitration. Such considerations do not support the management position in the instant matter, however. our rulings on this subject have not in the past been, and will not here be, based upon considerations of mere form or minor technicality. We find, regardless of whether the events and actions of the parties between December 24 and December 30, 1975, constituted, in every technical detail, a first step.

[4] See our decisions in City of New York-and-D.C.37, Decision No. B-20-74; D.C. 37-and- City of New York, Decision No. B-22-74; B-22-75. City of New York-and-UFOA, Decision

grievance, that every essential element of such a procedure was present including notice to and participation by appropriate officials not only of the Hospital but of the Corporation. We find that the employer was fully appraised, in timely fashion, of the Union's complaint against management action and, moreover, that the employer not only acknowledged the validity of the Union position but undertook to make amends in a form and to a degree which constituted full resolution of the issues presented. The Union's letter of April 9, 1976, is deemed to constitute a complaint to the President of the Corporation that management reneged on its December 30, 1975 agreement at the first step, resolving the grievance. We cannot see that this finding can be said in any way to deprive management of the opportunity to resolve this matter at a lower level of the existing labor-management procedure. Such opportunity was given; such resolution was achieved by explicit written agreement; and this matter is before us only because management has allegedly repudiated and abandoned that signed agreement. It would serve no useful purpose to send the Union back to the same series of officials, making complaints already made only so that different pieces of paper and other forms of address might be employed. Moreover, it would be grossly unjust and

entirely inconsistent with the interests of sound labor relations and the purposes of the New York City Collective Bargaining Law to hold that, having negotiated in good faith with the employer, having relied upon the employer's participation in actions resolving the underlying issue between them, the Union should now be penalized through denial of the right to impartial resolution of those issues on insubstantial grounds. Accordingly, we will reject the Corporation's contentions as set forth in Paragraph SEVENTH of the petition.

The Corporation's first and third contentions, set forth in paragraphs SIXTH and EIGHTH of the petition, respectively, are closely related and are dealt with here together. The first, which maintains that the grievance herein is "medical in character" and therefore not subject to arbitration, is based on a confusion of the subject matter of the contemplated disciplinary proceedings, i.e., the specific charges to be tried, and the procedures to be employed in examining that subject matter. The second, which maintains that the grievance is based in whole or in large part upon the agreement of December 30, 1975, is based upon the proposition that the agreement is not a part of the contract, that alleged violation of the December 1975 agreement is not mentioned in the list of arbitrable issues set forth in paragraph XIV of the contract which was entered into by the parties in June, 1975, and that the issue of alleged violation of the agreement is not covered by any agreement to arbitrate and is therefore not arbitrable.

Whether or not the charges against the affected employees are of such a nature as to warrant characterizing them as "medical in character" is an issue not before us and entirely immaterial to the issues with which we are called upon to deal. One of the issues presented here is whether the Corporation has violated its contract with the Union in the manner in which it has gone about processing the disciplinary charges against the affected employees. The basic substantive provisions of the contract at issue here are contained in Article XV of the contract entitled "Disciplinary Action," which reads as follows:

ARTICLE XV
DISCIPLINARY ACTION

Section 1.
Home Staff Officers shall have the right to a hearing before being subjected to disciplinary action except as hereinafter provided. There shall be no disciplinary action taken against a House Staff Officer except for cause. No House Staff Officer's pay check shall be withheld for disciplinary masons, without due process.

Section 2.
When disciplinary action against a House Staff Officer is contemplated either by a Chief of Service or Executive Director, written charges and proposed disciplinary action shall be presented to such House Staff Officer who shall be notified of his right to appear before the Chief of Service or Executive Director or a duly designated representative.

Section 3.
The written charges and proposed disciplinary action of the Chief of Service or the Executive Director shall become final unless presented to the House Staff Affairs Committee within ten (10) days after the House Staff Officer receives notice such charge and proposed action.

Section 4.
The House Staff Affairs Committee shall hear and evaluate all data related to the contemplated disciplinary action, and shall give the House Staff Officer a full and unimpaired right to present such evidence to that Committee as he may deem necessary. The House Staff Affairs Committee shall make an expeditious determination of all answers thus appealed to it.

Section 5.
Decisions of the House Staff Affairs Committee with respect to disciplinary action may be reviewed by the Medical Board at as next regular meeting. If a decision has been made to terminate the employment of a House Staff Officer, a 2/3 majority vote of the Medical Board shall be required to sustain the decision.

Section 6.
It is understood that a House Staff Officer may be reassigned from medical responsibilities without hearing where his continued presence is deemed to risk the successful operation of the Hospital. Fol-

lowing such reassignment by either the Chief of Service or the Executive Director of the hospital, the House Staff Officer shall have the right to dn immediate appeal to the House Staff Affairs Committee.
Section 7.
It is further understood that no salary may be withheld from any House Staff Officer prior to a determination of the House Staff Affairs Committee.
Section 8.
The procedure outlined in Sections 6 and 7 hereof shall be in lieu of suspension of a House Staff Officer from service prior to a hearing.
Section 9.
The Hospital will attempt 10 arrange the Schedules of House Staff Officers who are involved in disciplinary or grievance proceedings so as to permit reasonable time off.

When disciplinary action against affected employees was instituted herein by the Hospital on December 24, 1975, without notice of "proposed disciplinary action" or pre-charge conference, the Union complained to appropriate management officials alleging that the Hospital's action constituted a violation of Article XV, Section 2, of the contract. That complaint led to the execution of an agreement on December 30, 1975. The agreement was the result of negotiations involving representatives of the Union, the Corporation and the Hospital, and had as its subject matter provisions dealing with conditions of employment of Hospital employees represented by the Union. In short, the December 30, 1975 agreement dealing solely with the matter of "Disciplinary Action"- a subject which is also covered by Article XV of the contract between the parties - is itself a collective bargaining agreement.

The December 30, 1975 agreement consists of four numbered items, the last three of which refer to Article contract and to specific numbered sections thereof and in specific detail, the manner in which those sections of Article XV of the contract are to be applied to the disciplinary proceeding here involved. Thus, both in form and in the purpose which clearly motivated its execution, the agreement of December 30, 1975, is a quite typical example of a device commonly used in labor relations, a supplement to the contract between the parties intended and made to resolve a dispute as to the meaning and application of a term or terms of the contract arising during the I effective period of the contract and in the course of its administration. Such supplements are commonplace, as we have indicated, and are regularly deemed to constitute additions or amendments to the contracts which underlie them and to be fully integrated and incorporated therein.[5] Such is the status of the December 30, 1975 agreement; and we find that it is a supplement to and is effectively an extension and part of

[5] Previous Board decisions have recognized the existence and validity of various types of supplemental agreements. See, e.g., OLR v. UFOA, UFA, Decision No. B-17-71; City of New York-and-SSEU, Local 371, Decision No. B-4-72; City of New York-and PBA, Decision No. B-5-75. The Board's precedents are in accord with holdings of the courts: Guild of NY Nursing Homes, Inc. v. Byrne, 62 LRRM 2796 (NY Sup Ct., 1966); American Bosch Arma Corp., 56 LRRM 2941 (NY SUP CT., 1964).

Article XV of the contract. it follows that allegations of violation of that agreement are allegations of violation of Article XV of the contract, and are thus subject to the grievance and arbitration provisions of Article XIV of the contract.

Our finding on this point has nothing to do with the merits of the disciplinary charges against the affected employees; it nas no bearing upon the arbitrability of the final outcome of the disciplinary proceedings. Our finding relates solely to the fact that Article XV of the contract between the parties, as supplemented and/or amended by the agreement of December 30, 1975, makes specific provisions as to how disciplinary proceedings are to be conducted; that it is alleged by the Union that those provisions have been ignored and repudiated by the employer, in violation of Article XV of the contract; and that allegations of violation oi the contract are subject to arbitration under Article XIV, Section 1 (A).

Even if it were true, as the Corporation maintains, that the December 30, 1975 agreement does not constitute an integral part of the contract, the issue presented would be alleged violation of Article XV and the matter would be arbitrable. Both in the Statement of Grievance which forms part of its Request for Arbitration and in its Answer herein, the Union maintains that the Hospital's promulgation of disciplinary hearing guidelines on March 22, 1976, and the implementation of those guidelines in the subsequent hearings constituted a violation of Article XV of the contract. That

allegation alone would present an issue arbitrable under Section 1 (A) of Article XIV of the contract even if the December 30, 1975 agreement were deemed to constitute nothing more than evidence relevant to the meaning and application of Article XV in the instant disciplinary proceedings. Accordingly, we reject the arguments set forth in paragraphs SIXTH and EIGHTH of the Corporation's petition herein.

The precise nature of the Executive Officer's charges in this matter may or may not justify their being characterized as "medical in nature," but that is immaterial here. That this matter is subject to hearing by a House Staff Affairs Committee is equally irrelevant. The fact is that all disciplinary proceedings against House Staff Officers are conducted by such committees under the terms of Article XV of the contract. It is also the fact, however, that all disciplinary proceedings are subject to the same procedural guarantees under the terms of Article XV; nowhere in Article XV is the Corporation, the Hospital or any House Staff Affairs Committee vested with the power, unilaterally to suspend, change or excise those guarantees. And the alleged attempt to do so, although it may

appear to have certain medical, or, more precisely, surgical characteristics, is in fact a matter of contract administration. Accordingly, we reject the arguments set forth in paragraphs SIXTH and EIGHTH of the Corporation's petition and find that the alleged attempt by management unilaterally to deprive the Union of claimed substantive rights to certain procedural guarantees under Article XV Of the contract constitutes an arbitrable issue under Article XIV, Section 1 (A) of the contract.

The Corporation's fourth objection to arbitrability, set forth in paragraph NINTH of the petition relates to the fact that only the Union has filed a waiver pursuant to § 1173-8. 0 d of the New York City Collective Bargaining Law (NYCCBL). The petition erroneously traces the duty to file such waivers to Section 6.3 (b) of the Revised Consolidated Rules of the Office of Collective Bargaining which merely repeats the NYCCBL provision. The obligation is thus statutory in nature and has been held by us to constitute a condition precedent to invocation of the arbitration process. As a matter of interpretation and administration of the NYCCBL, moreover, questions as to proper compliance with the requirements of §1173-8.0 d are f this Board and not, as the Union argues, for an arbitrator

to determine.[6] In this respect, the Union has misread our Decision No. B-28-75 in Matter of NYC Health & Hospitals Corporation-and-Committee of Interns and Residents

In that case, we held that interpretation of the contract was required to determine whether the grievant had standing, under the contract, to invoke arbitration. Our decision in that case did not deal with the issue as to the waivers necessary to qualify a grievance for submission to arbitration. In our earlier decision, B-12-71, Matter of City of New York v. NYC Local 246, SEIU, we dealt at length with that issue, however, holding, inter alia, that in union grievances, the waiver of the union was all that was required. In the instant case, it is the Union which grieves. It claims certain substantive rights, under Article XV of the contract, to forms of procedure in representing its members in disciplinary proceedings and alleges that it has been denied those rights in this matter. The contract between herein, recognizes in Article XIV, Section I are cases in which action by the Union alone may be appropriate and expressly states that a grievance may be brought by an individual House Staff Officer and the Union or by the Union alone. In Section 3 of Article XIV, it is specifically provided that the Union may invoke arbitration pursuant to procedures established by the Board of Collec-

[6] See our decisions in City of New York -and- Local 246, SEIU, Dec. No. B-12-71; City of New York -and- SSEU, Loc. 371, Dec. No. B-4-72; City of New York -and- D.C. 37, Dec. No. B-12-72.

tive Bargaining. Those procedures, as outlined in Decision No. B-12-71, supra, include the invocation of arbitration in union grievances upon the sole waiver of the grieving union. In the instant matter, there are no individual grievants and the issue presented is one appropriate for grievance by the Union alone. We therefore find that the underlying grievance in this matter is a union grievance and that the waiver filed by the Union herein constitutes full compliance with the requirements of §1173-8.0 d of the NYCCBL. It follows, however, that the award in any arbitration which may occur as a result of this ruling will be binding upon all members of the Union including those who might have joined in the underlying grievance and in its arbitration. This result is based upon the fact that the Union acts as the agent of all union members in the arbitration of a union grievance; it is further dictated by the fact that any future attempt by an interested individual grievant or grievants to seek arbitration of this same grievance would be barred by the fact that the Union, a necessary party to any request for arbitration under the terms both of §1173-8.0 g of the NYCCBL and Article XIV, Section 3, of the contract, would be estopped from joining in any such request for arbitration by its waiver in the instant matter.

DETERMINATION AND ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is

DETERMINED, that the grievance presented herein arises out of an alleged failure to follow prescribed procedures in violation of specified sections of Article XV of the contract between the parties and a supplemental agreement entered into by the parties on December 30, 1975, relating to the terms of said Article XV and, as such, constitutes an arbitrable grievance under the terms of Article XIV, Section l(A) of the contract; and it is further

DETERMINED, that there has been shown to be no such failure of Union compliance with or resort to the provisions of said Article XIV for graduated grievance and arbitration procedures as to prejudice the rights of the Corporation; that all of the essential elements of the grievance procedure agreed upon by the parties have been complied with by the Union; and that further resort to the earlier levels of that procedure would serve no purpose supported by the New York City Collective Bargaining Law; and it is further

DETERMINED, that the grievance presented herein is a union grievance and that the waiver filed herein by the Union in support of its request for arbitration therefore constitutes full compliance with Section 1173-8.0 d of the New York City Collective Bargaining Law and the related Section 6.3 b of the Revised Consolidated Rules of the office of Collective Bargaining;

WHEREFORE IT IS ORDERED, that the petition of the New York City Health and Hospitals Corporation herein be and the same hereby is, dismissed, and it is further

ORDERED, that the Union's Request for Arbitration herein be and the same hereby is, granted.

DATED: New York, New York

JULY 6, 1976

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

HARRY VAN ARSDALE, JR.
M e m b e r

EDWARD F. GRAY
M e m b e r

EDWARD SILVER
M e m b e r

VINCENT McDONNELL
M e m b e r