

NYSNA, et. al v. L.2, HHC, et. al, 25 OCB 12 (BCB 1980) [Decision No. B-12-80]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

New York State Nurses Association,  
  
Petitioner,

Decision No. B-12-80

-and-

Docket No. BCB-363-79

New York City Health and Hospitals Corporation and Local 2, United Federation of Teachers, New York State United Teachers, American Federation of Teachers (AFL-CIO),

Respondents.

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In the Matter of

Local 2, United Federation of Teachers, New York State United Teachers, American Federation of Teachers (AFL-CIO),

Petitioner,

Docket No. BCB-373-79

-and-

New York City, New York City Health and Hospitals Corporation, and New York State Nurses Association,

Respondents.

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### DECISION AND ORDER

This matter comes before us on the basis of the issuance of the Intermediate Report of Trial Examiner Joseph R. Crowley herein and the Exceptions thereto filed by Local 2, United Federation of Teachers, New York State United Teachers, American Federation of Teachers, AFL-CIO (hereinafter "UFT"), the New York State Nurses Association (hereinafter "SNA"), and the City of New York and the New York City Health and Hospitals Corporation, appearing by the Office of municipal Labor Relations (hereinafter "HHC" or "the Corporation").

SNA is the certified bargaining representative of some 6,000 City employees in various nursing titles employed, for the most part, in the 17 hospitals operated by the Corporation. The contract between SNA and HHC will expire on June 30, 1980 and the open period for filing challenges to SNA's unit representative status was the month of January 1980 under Rule 2.7 of the Revised Consolidated Rules of the Office of Collective Bargaining. Two unions, UFT and Local 1199, League of Registered Nurses, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (hereinafter "Local 1199"), at some time prior to January 1980, commenced organizing drives amongst nurses with the intention of filing challenges during the January open period.

At least as early as October 1979 disputes had arisen amongst the parties relating to the organizational efforts of

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each of the three interested unions and the response of. HHC to those efforts. On November 21, 1979 HHC issued the so-called Koretsky memorandum setting forth guidelines as to the degree of access HHC would allow each of the unions. Shortly thereafter unions began filing improper practice charges against each other and against the HHC. In all, five such proceedings were commenced: two by SNA, (a) against HHC and UFT; and (b) against UFT; two by UFT, (a) against HHC and SNA; and (b) against SNA; and one by Local 1199 against HHC.

The cases were consolidated and hearings were held by Trial Examiner Joseph R. Crowley between December 28, 1979 and January 22, 1980.

Meanwhile, on the basis of a petition filed by UFT and an application to intervene filed by Local 1199, both in January 1980, the OCB had ordered that a representation election be held on May 21, 1980 to determine whether SNA, UFT or Local 1199 should be the bargaining representative for the nurses' unit.

The Intermediate Report issued on April 11, 1980; most of the charges were dismissed. It was found, however, that in permitting SNA to conduct organizational business under the guise of monthly contract administration meetings, HHC, which had been repeatedly advised by UFT and Local 1199 that such activities were occurring but had taken no action to correct the matter, was guilty of an improper practice in violation of

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section 1173-4.2(a)1 of the New York City Collective Bargaining Law (NYCCBL).

As remedy, the Intermediate Report recommended that HHC be ordered to cease and desist permitting access for organizational purposes to any union unless the same privilege was extended to all three interested unions.

Exceptions were filed by UFT, SNA and HHC. SNA filed new improper practice charges against HHC based upon an April 25, 1980 order issued by HHC, unilaterally terminating SNA's right to hold contractual access meetings for contract administration. UFT filed both an improper practice petition and a proposed order to show cause each of which alleges that the HHC has continued to deny UFT proper access and has persisted in discriminatorily permitting SNA to conduct organizational activities in hospital meeting rooms. These allegations cite specific instances throughout the period when Professor Crowley was considering the original group of improper practice charges and continuing to and including April 9, 1980; among the exhibits in support of these allegations are documents and minutes relating to a number of SNA meetings in several hospitals.

Attempts by OCB to achieve an informal resolution of this matter of equal access through agreement and compromise amongst the parties were fruitless.

A meeting of the BCB was convened on May 6, 1980 for the purposes of affording the parties opportunity to address the

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Board with respect to the issues before it and to express their views as to appropriate action or actions to be taken by the Board in the matter. Essentially each of the parties reiterated the respective contentions they have made throughout all of the proceedings herein both before and after issuance of the Intermediate Report. Nevertheless, it was the unanimous position and each of the unions and the OMLR stated separately and expressly that they wished to have the election held, as scheduled, on May 21, 1980.

Having heard the oral statements of the parties and having considered the written submissions and the Intermediate Report, we affirm the Intermediate Report and all of its proposed findings, for the reasons stated below; however, we amend the Recommended Order of the Trial Examiner, in view of the extraordinary circumstances of this case and in order to fashion a remedy more suited to accommodate the express requests of all of the parties that the Election in this matter go forward on May 21, 1980. To the same end and by reason of the brief time remaining before that date, we defer consideration of all charges filed herein subsequent to issuance of the Intermediate Report. It is our purpose to provide additional and equal opportunity to each of the unions during the time available to meet with the electorate in Corporation premises. It is our view, particularly in light of the Trial Examiner's findings of certain inequality of access and the continuing intense controversy on this point,

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that if the Election is not to be postponed, it must be insulated by a period in which opportunity for access will be available to each of the unions on a basis of full equality.<sup>1</sup> We will therefore order the Corporation to permit the unions to hold no more than two meetings on one day each, in suitable meeting rooms outside patient care areas, in each of the Corporation's institutions, arranged so as to provide access to employees over the three shifts, between the date of this decision and May 18, 1980, inclusive, in accordance with schedules to be agreed upon among the unions and the Corporation; and we delegate to Board Chairman Arvid Anderson authority in the name of the Board to resolve any disputes and controversies which may arise in this scheduling process. We will order, further, that no other meetings of any kind, except those permitted in public areas as provided in the Koretsky Memorandum of November 21, 1979 be held prior to May 22, 1980 and that any contract administration meetings in Corporation premises which SNA or Local 1199 may be entitled to hold pursuant to contract during this time period be scheduled or rescheduled to a date subsequent to the date of the Election herein.

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<sup>1</sup> In this connection we note that HHC has pledged to furnish to each of the unions no later than May 9, 1980 a complete listing of the names and addresses of employees eligible to vote in the May 21, 1980 Election. This pledge was given in response to union complaints that lists previously provided were incomplete.

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In ordering that access to Corporation premises be permitted we act in response to the extraordinary circumstances of this case, including the constraints of the limited time available, the threat to laboratory conditions presented by events to date, and the urgent requests of the parties, including the Corporation, that the Election not be postponed; in short our ruling, in this respect, is limited to the facts of this case and shall not be cited as a precedent or used in any other matter.

**ORDER**

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

ORDERED, that the Recommended Findings of Fact and Conclusions of Law set forth in the Intermediate Report of Trial Examiner Joseph R. Crowley dated April 11, 1980 be and the same hereby are affirmed; and it is further

ORDERED that the Recommended Decision set forth in the said Intermediate Report be amended to provide as follows:

The New York City Health and Hospitals Corporation shall permit the New York State Nurses Association; Local 2, United Federation of Teachers, New York State United Teachers, American Federation of Teachers, AFL-CIO; and the League of

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Registered Nurses, District 1199,  
National Union of Hospital and Health  
Care Employees, Retail, Wholesale and  
Department Store Union, AFL-CIO to hold  
no more than two meetings on one day  
each in suitable meeting rooms outside  
patient care areas in each of the  
Corporation's institutions, arranged so  
as to provide access to employees over  
the three shifts, between the date of  
this Order and May 18, 1980, inclusive,  
in accordance with schedules to be agreed  
upon among the said unions and the said  
Corporation, any disputes and controversies  
arising in the course of this scheduling  
process to be resolved at the direction  
of Arvid Anderson, Chairman of the Board of  
Collective Bargaining; no other meetings of  
any kind except those permitted in public  
areas as provided in Corporation memorandum  
dated November 21, 1979, in evidence herein  
and referred to as the Koretsky Memorandum,  
shall be held prior to May 22, 1980; and  
any contract administration meetings in  
Corporation premises which an incumbent union,



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party to this proceeding, may be  
entitled to hold pursuant to contract  
during the month of May, shall be  
scheduled or rescheduled to a date  
subsequent to May 21, 1980.

DATED: New York, N.Y.  
May 7, 1980

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

DANIEL COLLINS  
MEMBER

VIRGIL DAY  
MEMBER

EDWARD SILVER  
MEMBER

EDWARD CLEARY  
MEMBER

CAROLYN GENTILE  
MEMBER