HHC v. NYSNA (Sylvia Knotos), 37 OCB 39 (BCB 1986) [Decision No. B-39-86 (Arb)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

DECISION B-39-86

Petitioner,

DOCKET NO. BCB-866-86 (A-2346-86)

-and-

THE NEW YORK STATE NURSES ASSOCIATION (Sylvia Kontos),

Respondent.

DECISION AND ORDER

On March 19, 1986, the New York State Nurses Association ("NYSNA") filed a request for arbitration of a grievance brought in connection with the reclassification of Sylvia Kontos ("respondent" or "grievant") from the title Supervisor of Nurses to that of Senior Medical Utilization Review Analyst. On April 11, 1986, the Health and Hospitals Corporation ("HHC" or "Corporation") filed a petition challenging arbitrability with the office of Collective Bargaining ("OCB"). The Association filed its answer on June 17, 1986, to which HHC replied on July 11, 1986.

Background

On August 17, 1981, Sylvia Kontos was hired on a part-time basis as a Supervisor of Nurses with a functional job description of Utilization Review Coordinator. Although she became a full-time employee on June 7, 1982, her duties remained essentially the same and included, among other things , the review of all admissions to determine eligibility for Medicare reimbursement. In or about February of 1985 in reviewing the staffing of the Utilization Review Department, it was determined that since Ms. Kontos was not in any way responsible or involved in patient care, it was "incorrect to include the informal Utilization Review Coordinator position with the covered titles [Supervisor of Nurses] in the Association's collective bargaining agreement." Accordingly, on March 29, 1985 her official title was changed from Supervisor of Nurses to Senior Medical Utilization Review Analyst. The request for arbitration filed by the Association charged that the change of title violates HHC rules relating to position classification, and the union recognition clause of the agreement.

Positions of the Parties

HHC's Position

For its first challenge to arbitrability, HHC claims that Article VI, Section l(B) of the contract expressly

excludes from the grievance arbitration procedure

> disputes involving the Rules and Regulations of the New York City Civil Service Commission or the Rules and Regulations of the Health and Hospitals Corporation with respect to those matters set forth in t he first paragraph of Section 7390-1 of the Unconsolidated Laws ...

Section 7390.1 of the Unconsolidated Laws of the City of New York addresses, among other matters, HHC rules and regulations concerning "policies, practices, procedures relating to position classification."

At Step III, the Association cited HHC Rules and Regulations 8:4:3 and 8:4:4 as the sections allegedly violated by the Corporation's decision to reclassify Ms. Kontos.

Section 8.4 Position Classification

8:4:1 Every position shall be assigned by the Appointing Officer to the appropriate title in the Plan of Titles. The assignment of a position to an existing title shall take into account that it is responsive to the same position description and measure of fitness.

8:4:2 When additional position(s) are established, a determination shall be made by the Appointing Officer as to which, if any existing title in the Plan of Titles is appropriate.

> 8:4:3 When a new position is established for which there is no appropriate title in the Plan of Titles the position shall by rule be described, classified and the new class of position made part of the Plan of Titles.
>
> 8:4:4 When the duties, requirements etc., of an existing position are to be modified in any significant way, a determination shall be made by the Vice President as to whether another existing class of position is appropriate or that a new class of position is required. The rights and status of any permanent incumbents of such positions shall not thereby be adversely affected or impaired.

Since, it is argued, Article VI, Section l(B) excludes from arbitration claimed violations of HHC rules relating to classification, as noted in Section 7390.1 of the Unconsolidated Laws, the request for arbitration should be denied.

As a further challenge to arbitrability, HHC maintains that the reclassification of an employee to a "more appropriate job classification," contrary to the assertions of the Union, is no manner violative of the union recognition clause of the contract. Section 1 of Article I merely provides that

> [t]he Employer recognizes the Association 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 Association is the exclusive collective bargaining representative.

The Employer, HHC claims, has not refused to recognize NYSNA as the sole and exclusive bargaining representative for the titles certified to the Association and covered by its collective bargaining agreement.

As to the allegations that it has violated either Article IV, the Welfare Fund provision of the agreement, or, Article III, Sections 1-13 relating to, among other things, salary schedules, experience and longevity differential, general wage increases, assignment differentials and uniform allowances, HHC maintains that

> [t]the actions of the employer do not involve an incorrect form of payment to an employee within a covered Association title. The Respondent was reclassified to another title outside the bargaining unit and paid an appropriate salary for the new title.

In conclusion, HHC claims that inasmuch as the Association has failed to establish a nexus between the facts alleged in its pleadings and any of the provisions of the collective bargaining agreement, the petition should be dismissed for lack of substantive arbitrability.

Union's Position

By way of background, the Association refers to Board of Certification Decision No. 30-82, dated July 13, 1982, which recognized NYSNA as the exclusive bargaining representative of New York City and HHC-employed registered professional nurses in the following titles:

> . . . all Staff Nurses, Nurse-Mid-Wives, Nurse Practitioners, Assistant Head Nurses, Head Nurses, and Super-visors of Nurses, employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification, sub-ject to existing contracts, if any.

It is the Association's position that Ms. Kontos was hired as a Utilization Review Coordinator and that, despite the change in title, she continues to perform duties and responsibilities which fall within the Utilization Review Coordinator and Supervisor of Nurses position descriptions. The Association claims that Ms. Kontos

is not presently, nor has she ever been, a Senior Medical Utilization Review Analyst. The Corporation cannot, therefore,

> claim that it has changed a person's title, where that person continues to do every aspect of her job, without alteration. Otherwise, carried to its absurd extreme, Corporation could unilaterally decide that all "nurses" are reclassified as something else, and therefore removed from the bargaining unit, without any change in duties and responsibilities.

The Association requests that the Board issue an order dismissing HHC's petition challenging arbitrability and directing the parties to submit their dispute to arbitration.

Discussion

Section 1173-2.0 of the New York City Collective Bargaining Law ("NYCCBL") states that

> [i]t is hereby declared to be the policy of the city to favor and encourage ... final impartial arbitration of grievances between municipal agencies and certified employee organizations.

In upholding this policy, this Board has nevertheless stressed that it cannot create a duty to arbitrate where none exists, or enlarge the obligation to submit disputes

to arbitration beyond the scope established by the parties in their contact.

> It is well settled that a [party] may be required to submit to arbitration only to the extent that [it] has previously consented and agreed to do so.[1]

Thus, in deciding issues of arbitrability, we must first ascertain whether the parties have agreed to resolve their disputes through arbitration and, if so, whether that obligation encompasses the controversy under Board consideration.

In the instant case, we find that Article VI, which defines a grievance and describes the mechanism by which grievances are resolved, contains exclusionary language to the effect that a claimed violation of HHC rules relating to matters set forth in Section 7390.1 of the Unconsolidated Laws, including position classification, "shall not be subject to the grievance procedure or arbitration." HHC Rules 8:4:3 and 8:4:4, cited by the Association at Step III as the rules allegedly violated by the reclassification of Ms. Kontos, fall squarely within that exclusion. Furthermore, inasmuch as the entitlements of an employee under a contract depend

[1] Board Decision No. B-12-77. See also B-15-82 and B-41-82.

on classification to a covered title, NYSNA cannot circumvent the exclusion by citing wage and benefits provisions of a contract no longer applicable to the reclassified employee.

The Association argues, alternatively, that the employee's actions herein violate the union recognition clause in that through reclassification HHC could conceivably remove all nurses from the bargaining unit. The Union has not, however, alleged that the Corporation is seeking to remove ail or most of the covered titles from the bargaining unit and that the act herein is not therefore a mere reclassification. This Board has repeatedly held that the party requesting arbitration must demonstrate a nexus between the offending employer action and the provision of the agreement alleged to have been violated. The Association, we believe, has not in this instance made the requisite connection between the act complained of and HHC's obligation to recognize the Association as the sole and exclusive collective bargaining representative for the bargaining unit consisting of, inter alia, employees in the title Supervisor of Nurses.

We should note that it is the view of this Board that the recognition clause is a general provision which

if not raised in conjunction with other provisions of an agreement must, at the least, be read in a manner consistent with other more specific provisions of the agreement. Indeed, well accepted rules of construction require that in the event of an inconsistency between a specific and a general provision of a contract, the specific provision should control. The rules applicable to the construction of contracts further require that a contract must be interpreted so as to give meaning to every provision, and that no provision should be left without force and effect.[2]

In the instant proceeding we find that Article VI, which specifically defines the scope and sets the limits of the contractual obligation to arbitrate disputes, is the controlling provision. Since the authority of the Board to find a matter arbitrable rests upon the contractual obligation incurred by the parties, and since we find that the parties have expressly limited that obligation in their contract, we grant the petition challenging arbitrability.

In making our determination, we have examined the provisions of the contract to the limited extent necessary

[2] Muzak Corporation v. Hotel Taft Corporation, 150 N.Y.S. 2d 171 (C.A.N.Y. 1956). See also 1 Restatement, Contracts §§235, 236.

for a threshold inquiry as to arbitrability. Thus, although we generally agree with the proposition that questions of contract interpretation are for the arbitrator, that proposition, taken to an extreme, would require that we

> send to arbitration disputes involving contract provisions containing language specifically barring such disputes from the grievance procedure, in order to afford the arbitrator the opportunity to interpret the meaning of the exclusionary language. This would not only be an abuse of the process but would necessitate that the parties incur the expense of needless arbitration proceedings.[3]

Based on the clear language contained in the collective bargaining agreement pursuant to which this grievance is brought, we cannot find that a duty to arbitrate this grievance exists. Nor can we find that an ambiguity exists which would itself create the need for arbitral resolution.

O R D E R

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

[3] Decision No. B-10-77. See also B-19-81.

ORDERED, that the petition of the Health and Hospitals Corporation herein be, and the same hereby is, granted; and it is further

ORDERED, that the New York State Nurse Association's request for arbitration be, and the same hereby is, denied.

DATED: New York, N.Y.
August 27, 1986

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

CAROLYN GENTILE
MEMBER

WILBUR DANIELS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER