

CIR v. HHC, 15 OCB 4 (BCB 1975) [Decision No. B-4-75 (Scope)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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Committee of Interns and Residents'

Petitioner,

DECISION NO. B-4-75

-and-

DOCKET NO. BCB-199-74

The Health and Hospitals Corporation,  
Respondent.

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**APPEARANCES:**

Murray A. Gordon, P.C.  
by Marina Angel, Esq.  
for the Union

Scott Forman, Esq.  
Office of Labor Relations  
for the Corporation

**D E C I S I O N**

On November 11, 1974, the Committee of Interns and Residents, the certified representative of a unit consisting of employees in the titles of Intern, Resident, Dental Intern, Dental Resident and Junior Psychiatrist, requested the appointment of an impasse panel. By letter of November 20, 1974, the Health and Hospitals Corporation opposed the request on the ground that "negotiations have not yet been exhausted, that an impasse does not exist, and that consequently conditions are not appropriate to the creation of an impasse panel."

On November 12, 1974, the Committee of Interns and Residents filed its petition requesting the Board to determine whether certain items are matters for mandatory bargaining. The affidavits in support of the CIR petition allege that the Corporation has challenged the bargainability of certain of the Union's demands and that these demands are mandatorily bargainable under the statutory definition of scope of bargaining and under the practical impact provisions.

On December 5, 1974, the Health and Hospitals Corporation filed its Answer and Brief denying that the contested demands of the CIR are bargainable and further denying that any of these demands are bargainable pursuant to the practical impact provision of the NYCCBL.

The CIR brief in support of the Union's Petition was filed on January 6, 1975.

The demands of the CIR as to which the City contested bargainability are the following:

- No. 1, Hospital Conditions
- No. 2, Work Schedules
- No. 3, Educational Leave Time and Reimbursement
- No. 5, Employees' Security (except 1st sentence)
- No. 6, Recommendations
- No. 7, Split Residencies
- No. 8, House Staff Participation on Hospital Committees
- No. 9, House Staff Affairs Committee
- No. 10, Joint Patient Care Review Board
- No. 13 1f) and 13.8, Wages
- No. 14, Individual Contract (last sentence only)
- No. 16, Rotations
- No. 17, Contract Renewal
- No. 18, Freedom to Work
- No. 23, Parking
- No. 24, Communications
- No. 27, Security
- No. 28, Day Care Centers
- No. 29, Translators
- No. 30, Clinics
- No. 31, July 1<sup>st</sup> Admissions
- No. 33, House Staff Access to Hospital Facilities (third paragraph only)

Pursuant to the request of the parties, oral argument was held before the Board on February 3, 1975.

At the oral argument, the parties informed the Board that negotiations between the parties had resulted in an impasse on certain demands and that agreement had been reached to submit these demands to panel. The parties further informed the as a result of negotiations only two demands remained on which the Board would be asked to make a scope of bargaining determination.<sup>1</sup> These demands were No. 1, Hospital Conditions; and No. 18, Freedom to Work.

On February 6, 1975, counsel for the CIR informed the Board by letter that the CIR was revoking "any prior indication . . . that any of the issues of bargainability submitted pursuant to the petition have been withdrawn" and requesting that a decision issue "as promptly as possible, on all of the issues originally Submitted to the Board . . . . "

On February 11, 1975, Mr. John T. Burnell, Director of the Office of Labor Relations, wrote to the

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<sup>1</sup> The demands to be submitted to the panel were No. 2, work Schedules; No. 4, Leave Time; No. 13, Wages; and No. 22, Vacations.

Board, protesting that the letter of February 6, 1975, on behalf of the CIR constituted a disavowal of an agreement reached by the parties. Mr. Burnell urged the Board to deny the CIR attempt to reinstitute all of the bargainability questions raised by the Petition of the CIR; instead, he requested that the Board decide only those scope of bargaining issues argued at the oral argument of February 3, 1975 (No. 1, Hospital Conditions; and No. 18, Freedom to Work). In addition, the letter contended that the Corporation had never "officially" withdrawn its challenge to sections b and c of Demand No. 2, Work Schedules, and that the Board should decide the bargainability of Demand No. 2b and c.

By letter dated February 12, 1975, counsel for CIR reiterated its position that no final agreement had been reached by the parties, maintaining that this contention was supported by the fact, evidenced in communications from OLR as well as from the Union, that there, had been no meeting of the minds of the parties on item No. 2, Work Schedules. The letter urged that the Board proceed with the determination of all issues of bargainability.

Two letters from OLR, each dated February 13, 1975, were delivered by hand and received prior to the meeting of the Board on that date. The first, signed by Mr. John T. Burnell, Director, maintained that agreement had been reached by the parties and that the matter should not be subject to further consideration by the Board. The second letter from OLR, signed by Scott Forman, Assistant Counsel, restated the City's position as follows:

1. The City did not oppose Board consideration and determination of the issues presented in oral argument on February 3, 1975, with regard to Demands No. 1, Hospital Conditions and No. 18, Freedom to Work; nor did the City oppose the resolution by the Board of bargainability of Demand No. 2, Work Schedules, in connection with which the City waived any right to present oral argument.
2. The Union's request to reopen issues of bargainability of any other items should be denied.

3. Should the Board decide to permit the reopening of all issues of bargainability, no further determination of those issues should be made until the City was afforded the opportunity to argue orally with respect to those matters. In this connection, the City pointed out that the oral argument ordered in the Board's Notice of Oral Argument dated January 7, 1975, had been waived on February 3, 1975, on the understanding and belief that the parties had reached agreement on the matter in controversy.

In view of the complex and lengthy character of the negotiations between the parties, we believe that it will best serve the parties and the public interest to expedite the resolution of all outstanding issues as fully as possible. Accordingly, we issue this interim decision without extended discussion of the issues with which we deal, reserving for our final order a more complete review of the reasons for the determinations we make here.

**DETERMINATION**

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

DETERMINED, that an impasse has been reached in the negotiations between the parties and procedures pursuant to Section 1173-7.0c of the New York City Collective Bargaining Law are to be commenced concurrent with the issuance of this decision; and it is further

DETERMINED, that the following demands of the Committee of Interns and Residents are mandatory subjects of bargaining and may be submitted to the impasse panel:

Demand No. 2(a), Work Schedules,  
to the extent that the Demand requests  
maximum hours of work per day and per week;

Demand No. 18, Freedom to Work  
(Moonlighting); and it is further

DETERMINED, that the following demands of the Committee of Interns and Residents are permissive subjects of bargaining and may be submitted to the impasse panel only upon consent of the parties:



Demand No. 1, Hospital Conditions

Demand No. 2(b) and (c), Work Schedules; and it is further

ORDERED, that oral argument be held on February 24, 1975, at 2:00 P.M., at the Collective Bargaining Conference Center, 17th floor, 250 Broadway, New York, New York, with respect to the bargainability of the following demands of Interns and Residents:

- No. 3, Educational leave Time  
and Reimbursement
- No. 5, Employees' Security (except  
1st sentence)
- No. 6, Recommendations
- No. 7, Split Residencies
- No. 8, House Staff Participation  
on Hospital Committees
- No. 9, House Staff Affairs Committee
- No. 10, Joint Patient Care Review Board
- No. 13 1f and 13.8, Wages
- No. 14, Individual Contract
- No. 16, Rotations
- No. 17, Contract Renewal

- No. 23,     Parking
- No. 24,     Communications
- No. 27,     Security
- No. 28,     Day Care Centers
- No. 29,     Translators
- No. 30,     Clinics
- No. 31,     July 1st Admissions
- No. 33,     House Staff Access to  
             Hospital Facilities  
             (third paragraph only)

and it is further

ORDERED, that in addition to those items found to be bargainable herein, all items conceded by the parties to be bargainable as to which no agreement has been reached and such others as we may find to be bargainable following the oral argument ordered herein, may be submitted to the impasse panel.

DATED: New York, New York  
February 14, 1975

ARVID ANDERSON  
C h a i r m a n

ERIC J. SCHMERTZ  
M e m b e r

WALTER L. EISENBERG  
M e m b e r

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EDWARD F. GRAY  
M e m b e r

JOSEPH J. SOLAR  
M e m b e r

NOTE: Labor Member Gray and Alternate Labor Member Solar concur in the findings of this decision but dissent as to the findings with respect to items No. 1, Hospital Conditions and No. 2 (b) and (c), Work Schedules. City Member Silver did not participate in this decision.