OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

Petitioner.

- and -

THE COMMITTEE OF INTERNS AND RESIDENTS,

Respondent.

- x

DECISION NO. B-10-81

DOCKET NO. BCB-480-81

DECISION AND ORDER

Procedural Background

On February 25, 1981, the City of New York filed a scope of bargain petition in which it alleged that a dispute had arisen between the Committee of Interns and Residents (hereinafter "CIR") and itself concerning whether CIR's bargaining demand No. 9, relating to patient care and staffing, was within the scope of collective bargaining pursuant to NYCCBL §1173-4.3. The City contends that the determination of the standard of patient care, and the level of staffing necessary to meet such standards are matters of managerial prerogative and are not mandatory subjects of bargaining.

Simultaneous with the filing of its scope of bargaining petition, the City submitted a request for the appointment

of an impasse panel, pursuant to NYCCBL §1173-7.0(c), to resolve an impasse in negotiations between the CIR and the City with respect to certain open Union demands other than those encompassed within the scope of bargaining petition.

Subsequently, in a letter from Robert W. Linn, dated March 10, 1981, it was stated that tentative agreement had been reached on many of the demands attached to the City's earlier submissions, but that:

> "...it is not clear (to the City) whether the CIR seeks to submit any demands, other than its 'patient care' demands to an Impasse Panel for resolution. To the extent that the CIR chooses to submit to the Impasse Panel demands beyond those items tentatively agreed upon by the parties, the City intends to file an Amended Scope of Bargaining Petition at that time, if it deems it appropriate."

At a conference held on March 16, 1981 before Jonas Aarons, the impasse panel designated by the Office of Collective Bargaining, the CIR acknowledged that its demands pending before the impasse panel, other than demand No. 4, should be withdrawn from consideration by the panel because the parties were close to agreement thereon. It maintained, however, that demand No. 4, concerning hours and staffing, should be submitted to the impasse panel. The City responded that while it concedes that certain aspects of demand No. 4 are mandatory subjects cf bargaining, it contends that other aspects are non-mandatory subjects. The City indicated that

it intended to amend its scope of bargaining petition herein to include those aspects of demand No. 4. Thereafter, on March 18, 1981, the City filed an additional scope of bargaining petition directed toward aspects of demand No. 4.

The CIR filed an answer to the original scope of bargaining petition on March 9, 1981. An affidavit by Dr. Jonathan House, CIR's President, and a memorandum of law in support of CIR's answer, were submitted on March 11, 1981. While agreeing that a dispute has arisen between the parties as to whether CIR's "patient care" demands are mandatory subjects of bargaining, CIR denies that this dispute is focused on its demand No. 9, as set forth in the scope of bargaining petition. The CIR alleges that demand No. 9 is not a final demand, but is illustrative of the broader concept of CIR's "patient care" demands, which relate to levels of staffing and equipment. It is as to this category of demands that the dispute has arisen, asserts the CIR.

The City filed a reply memorandum of law on March 16, 1981, which appears to address CIR's "patient care" demands in general, rather than just demand No. 9.

In view of the above, some uncertainty exists as to exactly what demands have been placed before this Board for determination of whether they are within the scope of bar-

gaining. Thus, in order to expedite the resolution of the dispute in this matter, the Board will frame the issues for the parties, based upon the pleadings and memoranda received herein.

Nature of the Demands

The City's original scope of bargaining petition alleges that the matters in dispute involve:

> "enforceable patient care (staffing) provisions in the contract, and attached demand."

The demand attached to the petition and referred to above provides:

> "9. PATIENT CARE:
>
> (a) HHC and the City shall hire and maintain enough staff at all positions to meet JCAH accreditation requirements.
>
> (b) Specific patient care improvements shall be negotiated on a hospital-by-hospital basis. CIR shall submit specific proposals under separate cover.
>
> (c) Toxicology labs shall be available 24 hours a day, seven days a week.
>
> (d) Medical record and x-ray file rooms shall be open and staffed with at least one clerk 24 hours a day, seven days a week.
>
> (e) There shall be access to medical libraries 24 hours a day, seven days a week.
>
> (f) Library materials shall be kept current for all specialties."

The CIR, through its memorandum of law and the affidavit of its President, Jonathan House, has indicated that the above demand is only one formulation of its "patient care" demands. The essence of these "Patient care" demands is an insistence upon some explicit and enforceable standard of minimum staffing[1] and equipment levels. The CIR has alleged its willingness to negotiate the substance of this demand in any of several forms.

However, it appears from the City's papers that it objects to the bargainability of standards of staffing and equipment, regardless of the form of the CIR's demand. Thus, the dispute between the parties is not limited to the text of CIR's demand No. 9, but encompasses the whole concept of bargaining on enforceable standards of minimum staffing and equipment. The parties having thoroughly argued the merits of this broader issue, it is in the best interests of the parties and in furtherance of sound labor relations for the Board to resolve this issue at this time, rather than restricting our determination to the provisions of demand No. 9, alone.

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[1]CIR's reference to levels of staffing is directed toward levels in titles other than interns and residents. CIR alleges that it is concerned with the levels of staffing of nurses, therapists, technicians, messengers, clerks, pharmacists, and others, as they affect or impact upon working conditions of interns and residents.

In addition to the "patient care" demands, there is a dispute as to the bargainability of aspects of CIR's demand No. 4, now pending before the impasse panel. This demand provides as follows:

"4. HOURS AND STAFFING:

(a) No House Staff Officers shall be required to perform on call duty more frequently than one night in four. No on call shift may exceed 48 hours. Being "on call" shall be defined to include House Staff Officers who are permitted to leave the hospital but who must remain within a certain distance or traveling time of the hospital.

(b) There shall be no increase in existing schedules based upon those schedules in effect for the period from July 1, 1979 to June 30, 1980. Existing contract language shall , not be construed to permit increases in on call duty.

(c) on call schedules during one part of a month or a rotation may not be increased to force a House Staff Officer to "make up" on call duty not taken due to the House Staff Officer's exercising a contractual right to take time off for vacation, sick leave, examinations, conference time or any other contractually guaranteed time off during some other part of the month or rotation.

(d) No House Staff Officer shall be assigned to perform duties appropriate to other job titles including but not limited to nurses, clinician titles not covered by the CIR bargaining unit, laboratory technicians, nurses aides, messengers, patient escorts, x-ray technicians, clerks, pharmacists, or any other ancillary, managerial or supervisory personnel. Such assignments shall be defined

> as both direct orders from superiors and indirect coercion caused by the failure of the City and/or the HHC to provide adequate personnel to meet patient care requirements. All such assignments shall be subject to existing grievance and arbitration procedures.
>
> (e) No Emergency Room shift shall exceed twelve (12) hours. House Staff officers assigned to Emergency Rooms must receive at least two consecutive days off in every seven day week."

We shall also determine whether this demand is within the scope of bargaining.

Discussion

"Patient Care" Demands

The CIR's demand No. 9, on its face, deals with matters which we find to be within the City's statutory management right, pursuant to NYCCBL §1173-4.3(b) to:

> "...determine the standards of services to be offered ... ;'determine the methods, means and personnel by which government operations are to be conducted; ... and exercise complete control and discretion over its organization and the technology of performing its work."

Clearly, the determination of the level of staff to be hired, the standard of patient care to be provided, the hours that hospital units shall be open, and the currentness of library materials, are all, on their face matters of management prerogative. As such, they are not mandatory subjects of

collective bargaining, and thus, demand No. 9, in its entirety, is not within the scope of bargaining.

However, CIR's "patient care" demand is not limited to the provisions of demand No. 9. The CIR has offered demand No. 9 and various other formulations relating to enforceable standards of minimum staffing and equipment, as an attempt to remedy, through negotiations, certain situations which it sees as directly involving or impacting upon the working conditions of members of its bargaining unit. Under the circumstances of the present case, the Board will rule upon the bargainability of each of the concerns specified by CIR as contributing to and justifying its "patient care" demands, in order to contribute to a prompt resolution of this dispute by defining for the parties the extent of their obligation and/or right to bargain on these matters. However, we emphasize that in ruling on the bargainability of these concerns, the Board in no way detracts from its finding, with respect to demand No. 9, that the determination of the level of staff and equipment and the standard of patient care to be provided are strictly matters of management prerogative.

The concerns expressed by CIR as involving or impacting upon working conditions, and the Board's findings as to the bargainability of each concern, are as follows:

1. Out-of-Title Work. It is alleged that due to a shortage of non-bargaining unit staff, members of CIR's unit (hereinafter referred to as "house staff") are required to perform out-of-title work which should properly be performed by other titles, such as nurses, lab technicians, messengers, clerks, therapists, and pharmacists.

Although the issue of performance of out-of-title work is covered by statute (Civil Service Law §61(2)), it is also an issue involving working conditions, and agreement on a contractual prohibition of such work is not inconsistent with the statute, but rather is contemplated by the law (see Civil Service Law §100(1)(d); NYCCBL §1173-3.0(0)(3)). Therefore, we hold that this issue is within the scope of mandatory bargaining. However, in requiring bargaining on this issue, we wish to make clear that the City may not be required to hire additional non-bargaining unit staff as the means of avoiding out-of-title work. Level of staffing remains a management prerogative.

Additionally, it is necessary to observe that the CIR, as the certified collective bargaining representative of individuals employed as interns and/or residents, possesses no legal right under the NYCCBL to bargain on behalf of employees in other titles, such as nurses, lab technicians, messengers, clerks, therapists and pharmacists, who serve in other bargaining units. To the extent that

CIR's demands are concerned with the levels of staffing among these non-bargaining unit employees, they interfere with the exclusive bargaining rights of other certified collective bargaining representatives, and, therefore, constitute prohibited subjects of bargaining.

2. Excessive Hours of Work. It is alleged that because of the shortage of non-bargaining unit staff, and the resulting performance of out-of-title work by house staff in addition to their own duties, such house staff are required to work excessively long hours, as much as 80 to 100 hours per week,

The Board has long held that the total number of hours in a work day and in a work week is a mandatory subject of bargaining.[2] Therefore, we find that the issue of the house staff's maximum hours of work is within the scope of mandatory bargaining. Again, the Board notes that the City may not be required to agree to hire additional non-bargaining unit staff as the means of limiting the maximum hours of interns and residents. It is within the City's prerogative to determine levels of staffing.

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[2]Decision Nos. B-5-75; B-10-75; B-23-75; B-24-75; B-2-77; B-7-77.

3. Diminution of Training. The CIR alleges that because of the unique status of interns and residents, their on-the-job training as doctors is an element of both their compensation and their working conditions. It is alleged that the shortage of non-bargaining unit staff, as well as equipment, has resulted in a diminution in the quantity and quality of the training received by the house staff, thereby affecting their compensation and working conditions.

The Board of Certification has recognized that:

> "The focus of [interns' and residents'] employment and bargaining relationship is on the training and experience derived from the work they perform." Decision No. 31-73.

Nevertheless, the Board of Collective Bargaining has previously held that demands for training during work time are permissive, and not mandatory, subjects of bargaining.[3] We find in the present case that the unique circumstances surrounding the employment of interns and residents are not sufficient justification to find bargainable the training component of such employment.

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[3]Decision Nos. B-8-68; B-2-73.

We recognize that training is not merely incidental to that employment - it is a major accompaniment of it. We find that interns and residents benefit in two distinctly different ways from their employment: they receive wages and they receive training. The fact that the training is of major significance to the interns and residents does not render it bargainable under the provisions of the NYCCBL. The status of interns and residents is in many ways unique in the field of labor relations. Interns and residents are employees; however, they are also students in training for a career, usually outside employment by the City. To deal with the unique dual character of their employment and training, new concepts must be developed which recognize that to the extent that house staff officers are employees, they may bargain as employees, but that as students they have no right to bargain over curriculum under the NYCCBL. This is particulary true in respect to the demands presented here, since bargaining on these matters would interfere with the exercise of management prerogatives in the operation of the hospital service. We find, therefore, that as essential as training is to the intern and the resident, it does not fall within the statutory term “wages, hours

and working conditions."[4] Thus, we hold that this issue is not within the scope of mandatory collective bargaining.

Practical Impact

The CIR argues not only that the subjects of out-of-title work, hours of work, and training quality (as a part of renumeration) are mandatory subjects of bargaining, but that because some of the inadequacies in these areas -- excessive hours of work, pressure on unit members to perform out-of-title duties of nurses, technicians, messengers, etc., and diminution of quality of training -- are the results of management decisions on staffing and equipment, there is a practical impact which requires bargaining on these subjects. At least as to the first of two of these

[4] The Michigan Supreme Court, in Regents of the Univ. of Michigan v. MERC, et al, 495 GERR, 3-19-73 at Section E, held that interns and residents are public employees even though "the scope of bargaining ... may be limited if the subject matter falls clearly within the educational sphere." The court stated:

> "Some conditions of employment may not be subject to collective bargaining because those particular facets of employment would interfere with the autonomy of the regents.... For example, interns could not negotiate working in the pathology department because they found such work distasteful. If the administrators of medical schools felt that a certain number of hours devoted to pathology was necessary to the education of the intern, our court would not interfere since this does fall within the autonomy of the regents ... Numerous other issues may arise ... and they will have to be decided on a case-by-case basis."

subjects, out-of-title work and hours of work, there is a duty to bargain based simply on the fact that they are mandatory subjects of bargaining. There is no need to inquire, therefore, as to the merits of CIR's claims of practical impact.

With regard to CIR's allegations of practical impact on training, we have indicated that the training component of the relationship between house staff employers and the HHC is a matter outside the employment relationship as defined by the NYCCBL and therefore not within our jurisdiction. The principle - enunciated in Section 1173-4.3 b of the NYCCBL - that the practical impact of management exercise of the prerogative to act unilaterally in certain matters may give rise to a duty to bargain on measures for the alleviation of such impact is applicable only to practical impacts upon conditions of employment. Since training of the sort involved here is not a condition of employment within the meaning of the NYCCBL, it follows that the adverse affects, if any, of management decisions of HHC upon the training provided to Interns and Residents, are not the type of adverse affects, or practical impacts, dealt with in Section 1173-.3b and therefore are not subject to the jurisdiction of this Board.

Assuming, arguendo, that there is merit to these aspects of the CIR position, the matters should be sub-

mitted to the appropriate bodies and agencies rather than being forced into the collective bargaining matrix for adjudication by a labor relations agency. We are neither authorized nor equipped to determine whether or not a hospital conforms to minimum legal standards in its operations, or to prescribe appropriate levels of education and training for professional licensing, or to decide whether or not a patient's death was wrongfully caused. That there are standards, guidelines and laws governing all of these matters and limiting management in the operation of its enterprise does not, in the slightest degree, increase or decrease the scope of its duty to bargain collectively with its employees; nor does it confer upon this Board powers, authority or jurisdiction it would not otherwise have.

The rule is well settled, both in the private and public sectors, and statutorily dictated by NYCCBL Section 1173-4.3, That the employer's duty to bargain is confined to matters of wages, hours and conditions of employment and does not, extend to matters relating to the operation of its enterprise except for the alleviation of the practical impact of such operations upon conditions of employment. A public employer is not required to negotiate with its employees as to the level or quality of service to be provided to the public. <u>See</u> <u>Matter of West Irondequoit</u>

Teachers Association v. Helsby, 35 N.Y. 2d 46 (1974), aff’g 4 PERB ¶3070 (1971).

Other "Patient Care" Demands

1. Loss of Accreditation. The CIR alleges that the City's hospitals risk loss of accreditation, because of a failure to comply with the minimum service level requirements established by the American Medical Association ("AMA") and the Joint Commission on Accreditation of Hospitals ("JCAH"). The CIR argues that if the hospitals lose their accreditation, house staff will be deprived of a full year's credit for work performed, for purposes of certification by Specialty Boards. Furthermore, CIR alleges that loss of accreditation will cause house staff to lose promotions and wage increases under the collective bargaining agreement, which are contingent on completion of a year of training in an accredited program.

These arguments by CIR are based upon speculation that the City's hospitals will lose their accreditation. No evidence has been submitted that there is a probability of this happening. Additionally, these arguments depend upon action by a third party, the accrediting body, over whom neither the City nor this Board has any control.

Moreover, the Board notes that the State Hospital Code requires that every hospital provide:

> "...a continuing in-service training program to improve patient care and employee efficiency" [State Hospital Code §720.6(a)), and wherever "patient care is provided by interns, residents, (or] fellows ... such are shall be in accordance with the provisions of a training program approved by and/or in conformity with ... (1) The Council on medical Education of the American Medical Association, residency training programs of the respective specialty boards." [id., §711.9(b)].

Thus, CIR's demands would require bargaining on a matter in which the City has a statutory obligation. The State Hospital Code mandates adherence to these training and patient care standards. And, the standards referred to in the Code describe in detail every aspect of a house staff officer's experience and every aspect of the management of the hospital where the house staff officers is employed. Bargaining on the issue of conformity to these standards would involve a potential inquiry into and involvement in all aspects of the functioning of the City's hospitals, including patient care, the functioning of services such as laboratories and hospital kitchens, the method of keeping patient records, and the level of experience attained by the senior physicians at each hospital. Further, the CIR's demand for inclusion in the contract of standards such as those imposed by the JCAH would render arbitrable a claim

that a hospital training program was not in compliance with any one of the hundreds of provisions set forth in those standards.

Manifestly, a large part of these standards for accreditation deal directly and in the most detailed way with the rights reserved to management in NYCCBL §1173-4.3(b). It is clear that implementation of these standards requires a determination of:

> "...the standards of services to be offered ... the standards of selection for employment ... the efficiency of governmental operations ... the methods, means and personnel by which government operations are to be conducted ... the content of job classifications ... [and] the technology of performing its work." NYCCBL §1173-4.3(b)

The fact that adherence to certain of these standards may be monitored by the JCAH or the State, pursuant to the Hospital Code, for purposes of continued accreditation, does not make these standards bargainable, grievable or enforceable by the CIR through the collective bargaining process.

For these reasons, the Board finds that CIR's argument in this area raises neither an issue of working conditions nor of practical impact, and thus is not within the scope of bargaining.

2. Violation of Principles of Professional Conduct. The CIR alleges that the inadequate level of support staff and equipment renders the house staff unable to adequately

treat patients, and forces them to violate routinely the standards of patient care set forth in the Principles of Professional Conduct. The CIR states that violation of these Principles,

> “...can lead to discipline including loss of license to practice medicine.”

As with the claim relating to loss of accreditation, this argument is speculative and is dependent upon action by an independent third party. The Board recognizes that difficult problems may arise in conflicts between standards of service determined as a matter of management prerogative and standards mandated as a matter of professional ethics. However, there appears to be no basis for finding that such conflicts must be or appropriately can be resolved through collective bargaining. Therefore, we find that this issue is not within the scope of bargaining.

3. Opportunity for Professional Advancement. The CIR contends that the absence of sufficient support staff and equipment decreases the value of the house staff's training, which hampers their professional advancement. It is alleged that potential employers and fellowship pro grams "discount" training programs in the City's hospitals, thereby placing house staff in a comparatively poor competitive position when applying for employment or a fellowship.

It can hardly be argued that a third party's less than favorable view of City employment constitutes a matter of working conditions or practical impact. The City has no obligation under the NYCCBL to provide employment (or training) which will be attractive to other employers or to fellowship programs. The Board finds that this issue is not within the scope of bargaining.

Hours and Staffing Demands
(Demand No. 4)

The provisions of the subdivisions of this demand, and the Board's ruling as to each, are as follows:

Demand No. 4(a):

> "No House Staff officer shall be required to perform on call duty more frequently than one night in four. No on call shift may exceed 48 hours. Being "on call" shall he defined to include House Staff Officers who are permitted to leave the hospital but who must remain within a certain distance or traveling time of the hospital."

To the extent that this demand involves a limit on hours worked per "on call" shift, it is clearly a mandatory subject of bargaining. The Board has long held that the length of the work day (and the work week) is mandatorily bargainable.[5]

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[5]Decision Nos. B-5-75; B-10-75; B-23-75; B-24-75; B--77; B-7-77.

To the extent that this demand seeks to limit the number of "on call" shifts, its bargainability is more complex to determine. The number of nights an intern or resident is required to be "on call" is determined by the results of bargaining on the hours and number of appearances required of an individual,[6] and by management decisions relating to the level of staffing required to provide the level of service which the City wishes to maintain.[7] Thus, the process by which the amount of time off between "on call" shifts is determined, is a combination of bargaining on mandatory subjects and of management decisions.[8] Therefore, the Board holds that the issue of the time off between lion call" shifts is mandatorily bargainable, but only to the extent that it does not impinge upon the City's right to, determine the level of staffing required to be on duty at any given time.

Demand No. 4(b):

> "There shall be no increase in existing schedules based upon those schedules in effect for the period from July 1, 1979 to June 30, 1980. Existing contract language shall not be construed to permit increases in on call duty."

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[6]Id.

[7]Decision Nos. B-4-69; B-6-74.

[8]See Decision No. B-24-75.

To the extent that this demand seeks to place a maximum limit on the hours of work, or the number of appearances per week or year, it is mandatorily bargainable, for the reasons stated above. Also, to the extent that it seeks to place a particular construction or interpretation on existing contract language, it is a proper subject of bargaining.

However, to the extent that this demand attempts to limit the City's right to schedule "on call" duty, it is an infringement on management's right to determine the level of staffing required at any given time, and to this extent, the Board finds that it is not a mandatory subject of bargaining.

Demand No. 4(c):

> “On call schedules during one part of a month or a rotation may not be increased to force a House Staff Officer to "make up " on call duty not taken due to the House Staff Officer's exercising a contractual right to take time off for vacation, sick leave, examinations, conference time or any other contractually guaranteed time off during some other part of the month or rotation.”

To the extent that this demand involves vacation, sick leave, and other contractually-guaranteed time off, it is clearly a mandatory subject of bargaining.[9] However, the demand appears to be an attempt to restrict the City’s management right to schedule "on call" duty. The CIR has a

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[9] Decision No. B-3-75.

legitimate right to bargain concerning maximum hours of work per day, per week, and per year; number of appearances per year; and time off for vacation, sick leave, or other purposes. But, once agreement is reached on these provisions, it is the City's management prerogative to determine the level of staffing to be provided, by means of work schedules, within the limitations of the agreement on hours and leave benefits. Thus, with respect to demand (c), it is within the right of management to reschedule shifts, such as "on call" duty, provided that such rescheduling does not violate contractual provisions relating to number of days of leave, or maximum hours of work. We hold that to the extent that this demand seeks to interfere with the City's right to determine such work schedules, subject to the above proviso, it is not a mandatory subject of bargaining.

Demand No. 4 (d):

> "No House Staff Officer shall be assigned to perform duties appropriate to other job titles including but not limited to nurses, clinician titles not covered by the CIR bargaining unit, laboratory technicians, nurses aides, messengers, patient escorts, x-ray technicians, clerks, pharmacists, or any other ancillary, managerial or supervisory personnel. Such assignments shall be defined as both direct orders from superiors and indirect coercion caused by the failure of the City and/or the HHC to provide adequate personnel to meet patient care requirements. All such assignments shall be subject to existing grievance and arbitration procedures."

As the City concedes, to the extent that this demand relates to the performance of out-of-title work, it is a mandatory subject of negotiations. The City objects, however, to the bargainability of what it sees as CIR's attempt, through the second sentence of the above demand, to include in the contractual out-of-title work provision a definition of what constitutes an"assignment" to perform out-of-title work. The City argues that,

> "The definition of assignment is a threshold question which the collective bargaining agreement permits an arbitrator to decide."

But, the City also concedes that bargaining on the modification of existing contract language relating to out-of-title work is mandatorily bargainable.

We hold that the subject of this demand, including its definition of the term "assignment", is a mandatory subject of bargaining. The fact that the present contract contains no definition of this term has no bearing on its negotiability.

However, the City further contends that this demand attempts to define what is appropriate for a job title, which is an infringement upon the City's statutory management prerogative to determine the content of job specifications. The Board finds that to the extent that this demand

seeks to do this, it is not a mandatory suhject of bargaining. The CIR has a right to bargain concerning assignment to work outside the scope of the job specifications (established by the City) for employees in its bargaining unit. However, it does not have the right to bargain over a prohibition of work which might be "appropriate" for performance by other job titles. When the City establishes the job specifications for a title, it determines what work is "appropriate" for that title. Once the City has established that job specification, however, the union may properly seek, through bargaining, to require the City not to assign work outside the scope of that specification.

We note that pursuant to the provisions of Civil Service Law §61(2), not every instance of the performance of out-of-title work is to be prohibited. The law recognizes that,

> “...during the continuance of a temporary emergency situation,...”

an employee may be assigned to perform out-of-title work. In contrast, the CIR alleges that house staff officers are required, either by direct order or by circumstances, to work out-of-title on a regular and continuing basis. The CIR contends that the level of staffing in non-bargaining unit positions in the hospitals is so low that house staff

officers must regularly perform the work of nurses, lab technicians, messengers, and others in order to provide essential services required by patients. We observe that while it is within the City's prerogative to determine levels of staffing, and to call upon employees to perform out-of-title work in temporary emergency situations, the City possesses no right to require employees to work out-of-title on a regular basis under circumstances which could be forseen when management's decisions on staffing were made.[10]

Therefore, to the extent that CIR's demand attempts to place an enforceable limit on assignment to perform out-of-title work in circumstances other than the unexpected, temporary emergencies contemplated by the law, we hold that it is a mandatory subject of bargaining.

Demand No. 4(e):

> "No Emergency Room shift shall exceed twelve (12) hours. House Staff officers assigned to Emergency Rooms must receive at least two consecutive days off in every seven day week."

This demand appears to deal exclusively with maximum hours of work per shift, and number of appearances (and thus, maximum hours of work) per week. For the reasons stated in connection with subdivision (a) of this demand, supra, and based upon the cases cited therein, the Board finds this demand to he a mandatory subject of bargaining.

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[10] Matter of Roxenzweig (Nadel), N.Y.L.J. 2/24/81, p.6 (Sup. Ct., N.Y. County).

DETERMINATION AND ORDER

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

DETERMINED, that the following demands made by or issues raised by the Committee of Interns and Residents are mandatory subjects of bargaining:

Performance of out-of-title work;

Excessive hours of work;

Demand No. 4(a), only to the extent indicated in this decision;

Demand No. 4(b), only to the extent indicated in this decision;

Demand No. 4(d), only to the extent indicated in this decision;

Demand No. 4 (e);

and it is further

DETERMINED, that the following demands made by or issues raised by the Committee of Interns and Residents are not mandatory subjects of bargaining:

Diminution of training;

Risk of loss of accreditation;

Violation of Principles of Professional Conduct;

Opportunity for professional advancement;

Demand No. 4(c), only to the extent indicated in this decision;

Demand No. 9(Patient Care).

DATED: New York, N.Y.
March 24, 1981

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

MARK CHERNOFF
MEMBER

EDWARD J. CLEARY
MEMBER