

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

NEW YORK STATE NURSES ASSOCIATION

DECISION NO. B-3-81

-and-

DOCKET NO. BCBI-16-80
(I-154-80)

THE CITY OF NEW YORK and THE HEALTH
AND HOSPITALS CORPORATION OF THE
CITY OF NEW YORK

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DETERMINATION AND ORDER

Bargaining between New York State Nurses Association (SNA) and the City of New York and the Health and Hospitals Corporation of the City of New York (City) for a contract for the period July 1, 1980 to June 30, 1982 led to an impasse and thereafter to the appointment of Joseph F. Wildebush as a one-man impasse panel to consider and resolve the dispute between the negotiating parties.

Hearings were held in the matter on October 12, 1980 and Recommendations of the Impasse Panel issued on October 17, 1980 and a Report of the Impasse Panel, relating thereto, issued on October 24, 1980. Among other things, that Report provided for the creation of a tri-partite Salary Review Panel to give further study to certain of the economic issues before the Impasse Panel and to report its conclusions as to those issues to the Impasse Panel.

The Salary Review Panel, consisting of City representative Harry Karetzky, SNA representative Margaret Rooney and impartial member and Chairman Milton Rubin, held hearings in the matter on November 13, 1980. The majority recommendations of the Salary Review Panel was sent to the Impasse Panel on November 22, 1980; the minority report of panel member Rooney was issued on November 24, 1980.

Neither the majority nor minority reports of the Salary Review Panel nor the subsequent Supplementary Recommendations of the Impasse Panel dated December 4, 1980 based on the Salary Review Panel reports, included opinions detailing underlying rationale nor indicating the criteria upon which these various conclusions were based. In this, the Impasse Panel and its Salary Review Panel acted in accordance with the wish of the parties that the conclusions, i.e. the Recommendations of the Impasse Panel be issued as promptly as possible, with the explanatory Report to issue thereafter.

On January 12, 1981 the majority Opinion of the Salary Review Panel was issued. on January 23, 1980, the Impasse Panel issued the Final Opinion relating to its previously issued Recommendations.

On December 24, 1980, the SNA filed with this Board a petition for review of the Supplementary Recommendations

of the Impasse Panel dated December 4, 1980.

SNA was thereafter advised by letter of Board Chairman Arvid Anderson dated January 7, 1981 that its request for review was premature and must await issuance of the Impasse Panel's final Report.

On January 21, 1981 the SNA filed an amended petition for review of the Impasse Panel's Supplementary Recommendations. The majority Opinion of the Salary Review Panel and the Final Opinion of the Impasse Panel also having now been received, we may proceed to consideration of the substantive objections to the Panel Recommendations embodied in the petition of the SNA.

The first point raised in the petition is the claim that the Panel's grant of 8% rather than 10% wage increases effective July 1, 1980 and July 1, 1981 is inconsistent with the Panel's Recommendation that salary adjustments are necessary to make the City's salary structure for nurses competitive with comparable private sector systems in order to insure retention of professional nurses. The petition refers to evidence in the record before the Panel to support this allegation and purporting to show that the 8% increases provided for in the Recommendations do not, in fact, render the City system competitive with that of the private sector.

We perceive neither the inconsistency alleged by petitioner nor a basis for modifying the Recommendation

even if such "inconsistency" were shown to exist. The language of the Recommendations upon which petitioner relies in this connection is found on page 3 of the Recommendations of October 17, 1980 and reads as follows:

"The SNA made plausible arguments in defense of its proposals [for two 10% increases]. There is no question that adjustments are required to make the City's professional nurse salary structure competitive with the private sector in order to insure the retention of professional nurses. Nonetheless, the Impasse Panel had to take into consideration the applicable statute, the Municipal Coalition Economic Agreement, and the City's financial condition."

It is thus clear to us that while considering the argument - addressed as much to concern for the continued viability of a vital part of the City's health care delivery system as to the strictly practical and partisan interests of SNA members - in favor of larger increases aimed at retaining experienced and skilled personnel, the Panel quite properly stated that its conclusion must be based not solely on this but also on other, countervailing considerations. In this respect, the Panel demonstrates not only that its Recommendation of two 8% increases was based upon a balancing of several conflicting factors, but that the process was conducted with due regard for criteria which all Impasse Panels are statutorily mandated to consider. Accordingly we find the first numbered objection of the petition without merit.

The second numbered objection raised by the SNA petition herein, is addressed to the same language of the October 17, 1980 Recommendations of the Panel as is quoted at length, above, in the discussion of objection 1. That language is said to be "inconsistent" with the Panel's "suspension" of a parity provision relating City nurse salaries to those of private sector nurses. To describe more accurately the action of the Panel, it refused to revive and reinstate a parity provision which had been dropped in 1976. In the interest of total accuracy it may be added that petitioner also refers to "reinstatement" of the parity provision; the net effect of this point in the petition, however, is to suggest that the Panel's Recommendation took away a benefit currently enjoyed by petitioner. That, of course, was not the case.

As to the merits of the Panel's decision on this point, we find, again, that the Panel's action constituted a correct and reasonable exercise of its authority and duty to resolve issues between the parties on a basis of balancing various conflicting factors and with due regard for statutory criteria applicable to all Impasse Panel determinations. We find that the Panel's action in this regard was reasonable and proper and that the second numbered objection of the petition is thus without merit.

The third numbered objection of the petition is addressed to the Impasse Panels' Recommendation for amending practices with regard to establishing and paying experience differential rates. The petition concedes that the Panel took action on these matters but contends that it did not go far enough. There is no claim that the Panel acted on the basis of insufficient evidence or that it acted in disregard of the evidence before it. It is not alleged that the Panel's action ignored statutory criteria or that it was arbitrary, capricious or unreasonable. In fact the only issue raised by this section of the petition is one of judgment. The SNA has proposed another and, in its view, better, course that the Panel might have taken. It is probable of course, that the City could do likewise, arriving at a conclusion totally different from that of the SNA. Such exercises are not the function of this Board, however. As we have consistently held, the scope of review pursuant to Section 1173-7.0c(4) of the New York City Collective Bargaining Law is limited to the determination of questions of compliance with mandates of law and of due consideration of statutory criteria applicable to the determinations of Impasse Panels. Where the Recommendations of an Impasse Panel meet this test, the Board will not substitute its judgment for that of the Panel.

O R D E R

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

ORDERED, that the appeal of the New York State Nurses Association be, and the same hereby is, dismissed; and it is further

ORDERED, that the Report and Recommendations of the Impasse Panel, herein, consisting of the Impasse Panel's Recommendations, dated October 17, 1980, Report, dated October 24, 1980, Supplementary Recommendations dated December 4, 1980 and Final Report, dated January 23, 1981 be, and the same hereby are, affirmed.

DATED: New York, N.Y.
February 3, 1981

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

MARK CHERNOFF
MEMBER