

Doctors Ass., et. Al v. City, et. Al, 12 OCB 31 (BOC 1973) [Decision No. 31-73 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE DOCTORS ASSOCIATION
OF THE CITY OF NEW YORK

-and-

THE PUBLIC HEALTH PHYSICIANS
ASSOCIATION

-and-

DECISION NO. 31-73

THE COMMITTEE OF INTERNS
AND RESIDENTS

DOCKET NOS.

RU-282-71

RU-289-71

-and-

RU-22-72

THE UNIFORMED FIRE OFFICERS
ASSOCIATION

-and-

THE CAPTAINS ENDOWMENT
ASSOCIATION

-and-

THE PODIATRY SOCIETY OF
THE STATE OF NEW YORK

-and-

THE CITY OF NEW YORK
RELATED PUBLIC EMPLOYERS

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DECISION AND DIRECTION OF ELECTION

The Doctors' Association of the City of New York filed its petition in RU-282-71 to add various medical titles to Certificate 3 NYCDL No.11 as amended by Board of Certification Decisions 65-68 and 3-69.

The Public Health Physicians' Association filed its petition in RU-289-71 to add various medical titles to Certificate CWR 98/68.

Other interested public employee organizations filed motions to intervene and statements of position, and the Board ordered the cases consolidated for hearing.

Thereafter, the City of New York and Related Public Employers filed its petition alleging that a question concerning representation exists and that certain classes of employees constitute a unit appropriate for collective bargaining. The unit sought by the City comprises all the titles sought in RU-282 and RU-289, and other titles not petitioned for by any public employee organization.

Hearings were held before the late Richard Horrigan, Esq., Trial Examiner, on April 24, May 19, June 29 and October 18, 1972.

The Board of Certification heard oral argument on February 5, 1973.

Briefs were submitted by the Office of Labor Relations, the Health and Hospitals Corporation, the Committee of Interns and Residents, the Uniformed Fire Officers Association, the Public Health Physicians Association, the Podiatry Society and the Captain's Endowment Association.

The unit sought by the City includes all non-managerial medical and related titles employed in the Health services Administration, the New York City Health and Hospitals Corporation, the Police, Fire and Sanitation Departments, the Office of the Chief Medical Examiner of the City of New York, the Department of Social Services, and the Judicial Conference of the State of New York.

The parties stipulated that the following titles are managerial:

- Chief Medical Examiner of the City of New York
- Deputy Chief Medical Examiner (OCME)
- Director of Medical Services (Dept. of Welfare)
- Principal Dentist
- Director of Tuberculosis
- Director of Psychiatry (including specialties)
- Medical Consultant to the Comptroller
- Public Health Director (including specialties)

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Chiefs or Directors of Services of 10 services
in all of the hospitals:

Anaesthesiology, Internal Medicine, Pathology, Pediatrics, Psychiatry, Radiology, Obstetrics and Gynecology, Surgery, Dentistry and the service comprehended under Family Practice or Ambulatory Care, or Community Health or General Practice.

The parties further stipulated that they would submit a list of ten titles which were agreed to be managerial. However, no such list has been submitted to date.¹

The parties have stipulated that all other titles at issue are non-managerial and are not to be excluded by reasons of managerial status. In addition, certain titles are vacant and will therefore, not be considered in this decision.² The Board accepts the stipulations of the parties and concludes that there is no question of manageriality before it.

/ The Board will consider such a list when it is submitted by the parties.

/ Assistant Director of Psychiatry, Director of Pathology, Director of Physical Medicine, Director of Out-Patient Dept., Chief Medical Office (Dept. of Sanitation).

5.

The City contends that all of the following titles constitutes an appropriate unit for collective bargaining:

<u>Titles represented by the Doctors' Assoc.</u>	<u>Unit requested by Doctors' Assoc.</u>	<u>Unit requested by PHPA</u>
Clinician	X	
Dentist	X	
Senior Dentist	X	
Medical Specialist (incl. specialist	X	
Veterinarian	X	
Optometrist (Part Time)	X	
Medical Inspector (incl. specialties)	X	

Titels Represented by Pub. Health Phys. Assoc.

Public Health Physician	X
Senior Public Health Physician (including specialties)	X

Title represented by Podiatry Society

Podiatrist (Part Time)

Titles represented by

CIR

Interne
Resident
Dental Interne
Dental Resident
Junior Psychiatrist

Title Represented by

UFOA

Medical Officer [Fire Department]

Title Represented by

CEA

Surgeon [Police Dept.]

Unrepresented Titles

Junior Medical Examiner	X
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Medial Investigator	X
Psychiatrist	X
Anaesthesiologist	X
Asst. Anaesthesiologist	X
Asst. Pathologist	X
Asst. Psychiatrist	X

<u>Unrepresented Titles</u>	6. <u>Doctors' Assoc.</u>	<u>by PHPA</u>	Unit requested by	Unit requested
Physician	X			
Physiatrist	X			
Asst. Roentgenologist	X			
Neuropathologist	X			
Pathologist	X			
Radiation Therapist	X			
Roentgenologist	X			
Physician (Part Time Obsterical Instr.)	X			
Physician (Part Time Pediatric Instr.)	X			
Senior Medical Specialist (including specialties)	X			
Senior Anaesthesiologist	X			
Senior Pathologist	X			
Senior Psychiatrist	X			
Senior Radiation Therapist	X			
Senior Roentgenologist	X			
Senior Physician (Part Time Tuberculosis Instr.)	X			
Supervisor of Clinics (including specialties)	X			
Supervising Physician (including specialties)	X	X		
Principal Veterinarian	X	X		
Senior Clinician				
Asst. Medical Examiner (OCME)	X			
Assoc. Medical Examiner (OCME)	X			
Asst. Public Health Physician	X	X		
Health Officer in Training		X		
Public Health Officer Trainee		X		
Medical Officer (Dept. of Sanit.)	X			

and employees in restored Rule X titles serving in positions equated to the above titles.

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CONSOLIDATION OF UNITS

Our policy of consolidating and combining titles into City-wide units of occupationally related titles was enunciated in District Council 37, and the City of New York, Decision No.44-68, where we stated:

"In our opinion, such a policy, based upon mutuality of interest among occupationally related titles, the history of collective bargaining and other factors is essential to the effectuation of the purposes and policies of the statute and the proper functioning of the collective bargaining process, and should be applied wherever it is possible to do so without severe dislocations or inequities."

The City's petition herein urges the applicability of that policy and seeks to have the Board consolidate and combine medical and related titles.

The unions herein do not oppose, in principle, the Board's policy of consolidation. However, the Podiatry Society, the Committee of Interns and Residents, the Uniformed Fire Officers Association and the Captains Endowment Association argue for the exclusion of certain titles from the unit petitioned by the City.

PODIATRISTS

The Podiatry Society argues that podiatrists constitute a separate unit. The Society cites the history of collective bargaining for podiatrists as a separate unit and argues that neither of the petitioning unions herein has sought to

represent podiatrists and would, therefore, not adequately represent their interests in collective bargaining.

In a recent case before an impasse panel appointed by the Board of Collective Bargaining to resolve the contract dispute between the Podiatry Society and the City of New York, the podiatrists argued for parity with physicians and dentists employed by the City. (See City of New York and Podiatry Society of the State of New York, Decision No. BCBI-1-73). The Society pointed to similarities in the educational and licensing requirements for podiatrists and physicians. It cited the importance of the foot in the diagnosis and treatment of illness, and thereby sought to maximize the common elements in the practice of medicine, dentistry and podiatry. The record before the Board in its review of the findings of the impasse panel, upon petition of the Podiatry Society, showed that podiatry is one of the four health professions licensed by the State of New York. To qualify for the doctoral degree in podiatry, a candidate must pass examinations in anatomy, microbiology, chemistry, physiology, diagnosis, pathology, therapeutics, podiatric surgery and podiatric orthopedics. In the last five years, graduates of the New York College of Podiatric Medicine have held a baccalaureate degree and therefore have had college and professional training similar to that of physicians and dentists. Podiatrists are employed by the Health and Hospitals Corporation, the Health Services Administration

and the Department of Social Services where many of the other titles in the unit petitioned by the City are employed.

Traditionally, podiatrists have negotiated their salary increases after the conclusion of the negotiations with physicians, and they have received wage increases in proportion to those negotiated with physicians. Therefore, although the bargaining history shows that podiatrists have bargained separately in the past, the history also shows that the negotiations have been closely related to the physicians' negotiations and that the podiatrists have vigorously sought benefits on an equal basis with those received by physicians.

We find that podiatrists should be included in a unit with the other medical and related titles herein. The Board's policy favoring consolidation of small fragmented units into larger units of related titles with a community of interest is designed to foster efficient and viable bargaining relationships. We find that there is a sufficient community of interest between podiatrists and the other medical titles herein to enable a single bargaining representative to negotiate fairly and effectively for a unit composed of medical titles including podiatrists.

There is no evidence to support the Podiatry Society's contention that "if podiatrists are grouped with a large number of other medical practitioners, there would be little concern for our needs." A union certified by the Board as

the exclusive majority representative of an appropriate bargaining unit has a duty to represent all members of the bargaining unit. The Board has no reason to doubt that any union which is a party herein would fail to perform its duty of fair representation if it were certified to represent the podiatrists (Ford Motor Co. v. Huffman, 31 LRRM 2548; Vaca v. Sipes, 64 LRRM 2369.)

INTERNS RESIDENTS DENTAL INTERNS
DENTAL RESIDENTS AND JR. PSYCHIATRISTS

The Brief submitted by the City argues that interns and residents should be included in a unit with other medical and related titles because the duties, skills, responsibilities and interests of all of these employees are similar. The City argues that the relationship of interns and residents to the other titles at issue is precisely that required by the Board in determining the appropriateness of bargaining units.

The Committee of Interns and Residents opposes any change-in the separate unit placement of interns and residents. The CIR brief argues that because of their status as physicians still in training, interns and residents have different duties, skills, responsibilities and interests from the other medical titles petitioned for.

While it is true that interns, residents, dental interns, dental residents and junior psychiatrists have much in common

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with the other medical titles at issue herein, the evidence shows that interns and residents have unique and special interests which distinguish them from the large unit of medical and related titles in which the City argues they should be placed. In the medical profession, interns and most residents spend their time in a mixture of further training and medical service. The focus of their employment and bargaining relationship is on the training and experience derived from the work they perform. The length of their employment and the type of experience acquired are fixed according to requirements established by a board of the American Medical Association. The training program is designed by the medical board to enhance the young doctors's credentials in their chosen specialties and not to prepare them for entry into any of the titles included in the unit sought by the City. It is clear that while they are employed by the Health & Hospitals Corporation, interns and residents are not in a career position. Interns and residents are compensated at a relatively low rate commensurate with their status as students. They have no fixed schedule of work, and while they work long hours, they are not entitled to overtime. In recognition of the limited duration of their employment, and unlike the other titles petitioned herein, interns and residents are not members of any pension system. Thus there is a significant difference in the interests of interns and residents and the interests of the other titles herein.

On basis of the record we find that interns, residents, dental interns, dental residents and junior psychiatrists constitute an appropriate unit pursuant to §1173-5.0b(1) of the NYCCBL and Rule 2.10 of the Consolidated Rules of the Office of Collective Bargaining.

MEDICAL OFFICERS (FIRE DEPARTMENT),
SURGEONS (POLICE DEPARTMENT),
MEDICAL OFFICERS (DEPARTMENT OF SANITATION)

Medical Officers in the Fire Department and Surgeons in the Police Department are classified as members of the respective uniformed forces whose members they serve. The Uniformed Fire Officers Association is certified to represent all Fire Officers including Medical Officers, and the Captains Endowment Association is certified to represent Captains in the Police Department including Surgeons.

The City asserts that Medical Officers in the Fire Department, Surgeons in the Police Department and Medical Officers in the Department of Sanitation should be included in the unit with medical and related titles. The Uniformed Fire Officers Association and the Captains Endowment Association oppose the City's request. It is well settled that the Board will not find mixed units containing both members of a uniformed force and non-uniformed employees. Sanitation Medical Officers Association and the City of New York, Decision No.25-71; Uniformed Fire Officers

Association, Local 854, IAFF, AFL-CIO; Decision No.20-71. As the Board emphasized in the cited cases, the scope of bargaining for members of a uniformed force is governed by §1173-4.3a(4) while the scope of bargaining for non-uniformed employees is governed by §1173-4.3a(2),(3) and (5). Furthermore, with respect to-Surgeons in the Police Department, §1173-10.Ob of the NYCCBL prohibits the certification of an organization to represent members of the police force if such organization admits to membership employees other than members of the police force. Therefore, neither of the petitioner unions herein may represent Surgeons in the Police Department. We shall exclude Medical Officers in the Fire Department and Surgeons in the Police Department from the appropriate bargaining units herein.

Medical Officers in the Department of Sanitation are not classified as part of the Uniformed Sanitation Service, but are subject to the Career and Salary Plan. We find that these Medical Officers should be in a unit with other medical and related titles. See, Sanitation Medical Officers Association, supra.

THE APPROPRIATE UNIT

Upon the basis of the entire record, the briefs and the ogral argument, the Board finds that a unit consisting of the employees in the titles listed below is appropriate for collective bargaining:

Optometrist (Part Time), Podiatrist (Part Time), Veterinarian, Principal Veterinarian, Dentist, Senior Dentist, Medical Officer (Dept. of Sanitation), Health Officer in Training, Public Health Officer Trainee, Assistant Public Health Physician, Public Health Physician, Senior Public Health Physician (including specialties), Medical Inspector (including specialties), Medical Specialist (including specialties), Senior Medical Specialist (including specialties), Clinician Senior Clinician, Supervisor of Clinics (including specialties), Assistant Anaesthesiologist, Anaesthesiologist, Senior Anaesthesiologist, Neuropathologist, Assistant Pathologist, Pathologist, Senior Pathologist, Assistant Psychiatrist, Psychiatrist, Senior Psychiatrist, Psychiatrist, Radiation Therapist, Senior Radiation Therapist, Assistant Roentgenologist, Roentgenologist, Senior Roentgenologist, Physician, Physician (Part Time)(Obstetrical Instr.), Physician (Part Time)(Pediatric Instr.), Senior Physician (Part Time)(Tuberculosis Instr.), Supervising Physician (including specialties), Medical Investigator, Junior Medical Examiner (OCME), Assistant Medical Examiner (OCME), Assoc. Medical Examiner (OCME) and employees in restored Rule X titles who are serving in positions equated thereto.

The Doctors Association and the Public Health Physicians Association have formed a federation known as the Doctors' Council for the purpose of representing employees in medical and related titles. Therefore, the Doctors' Council shall appear on the ballot. The Podiatry Society of the State of New York may also appear on the ballot. However, since the Podiatry Society argued for a unit different from the one found appropriate herein, that organization may advise the Board in writing within ten days of receipt of this decision that it desires to have its name removed from the ballot.

ove found that a unit consisting of

Interns, Residents, Dental Interns, Dental Residents and Junior Psychiatrists is appropriate for collective bargaining.

The Committee of Interns and Residents is the certified representative of this unit under §1173-3.0(e)(3) of the NYCCBL and no other union seeks to represent these employees. Therefore, we shall not disturb that unit.

DIRECTION OF ELECTION

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

DIRECTED that, as part of the investigation authorized by the Board, an election by secret ballot shall be conducted under the supervision of the Board of Certification or its agents, at a time, place, and during hours to be fixed by the Board, among the employees in the unit found appropriate herein who were employed during the payroll period immediately preceding the date of this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of election), to determine whether they desire to be represented for the purposes of collective bargaining by the Doctors' Council or by the Podiatry Society of the State of New York or by neither; and it is further

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DIRECTED that the Podiatry Society of the State of New York may have its name removed from the ballot in the aforementioned election by filing with the Board, within ten (10) days after receipt of this Direction of Election, a written request that its name be removed from the ballot.

DATED: New York, N.Y.

March 28 , 1973

CHAIRMAN ARVID ANDERSON

WALTER L. EISENBERG

ERIC J. SCHMERTZ
MEMBER