

New York City
Office of Collective Bargaining
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In the Matter of the Fact Finding

between

Committee of Interns and
Residents of New York City

Report and
Recommendations of
the Impasse Panel

and

Case No. I-69-70

New York City Health and
Hospitals Corporation
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Before the Impasse Panel,
Dr. Emanuel Stein, Chairman
Daniel G. Collins
Eric J. Schmertz

Appearances

For Committee of Interns and
Residents of New York City

Murray A. Gordon, P.C., Attorney for the
Committee of Interns and Residents of New York City
by Murray A. Gordon, Esq.
Michael J. Horowitz, Esq. of Counsel

For New York City Health and Hospitals Corporation
Proskauer, Rose, Goetz &
Mendelsohn, Esqs., Special Counsel for
New York Health and Hospitals Corporation
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Robert H. Pick, Esq., Assistant
Director of Labor Relations of
the City of New York

The proceeding takes place pursuant to Section 1173.70C of the New York City Collective Bargaining Law, Chapter 54 of the Administrative Code. The Impasse Panel held a total of ten daily hearings between January 13 and March 23, 1971 and, in addition spent one full day observing the work of interns and residents at Kings' County Hospital. The testimony filled 1447 pages and 69 exhibits, many multiple, were received in evidence. Each party submitted a post-hearing brief and the Committee of Interns and Residents submitted a reply brief, the last being received on April 9, 1971. Thereafter the Impasse Panel met in executive session.

The Background of the Impasse

The Committee of Interns and Residents. of New York City (the "CIR") is the duly recognized bargaining representative for interns and residents (sometimes referred to collectively as "house staff officers") employed by the New York City Health and Hospitals Corporation (the "Corporation"). On September 30, 1970, the contract between the Corporation's predecessor, the City of New York and the CIR expired. Thereafter, negotiations for a new contract between the Corporation and the CIR reached an impasse.

There are a total of 1,112 house staff officers in the bargaining unit represented by the CIR, all but 67 of whom are

employed in one or another of five Corporation hospitals: Bellevue, Harlem, Bronx Municipal Hospital Center, Kings county and Metropolitan. The distribution of interns and residents by class of positions is as follows:

Intern, Dental Intern	220
1st year Resident and Dental Resident	258
2nd year Resident and Dental Resident; Junior Psychiatrist - 1st year Resident	276
3rd year Resident; Junior Psychiatrist - 2nd year Resident	205
4th year Resident; Junior Psychiatrist- 2nd year Resident	119
5th year Resident	24
6th year Resident	10

Interns and residents are employees of the Corporation. At the same time, their work is prescribed by and fulfills the requirements of professional training programs approved by the American Medical Association. Interns must be graduates of approved medical schools. Internship is not in New York, as in a number of states, a prerequisite to licensure for medical practice, and a large percentage of the Corporation's interns are so licensed. In any event the internship year generally is regarded as a desirable, if not essential, experience for a beginning physician. While advanced medical school students also receive clinical training, the internship is the medical graduate's first intensive exposure to clinical practice under conditions of professional and legal responsibility.

Completion of an internship is a prerequisite to acceptance in a residency program. The content and duration of such programs must be approved by the American Medical Association. Completion of a residency program ("Board eligibility") is a prerequisite for "Board certification" as a specialist in a particular branch of medicine. While such certification is not a legal or professional requirement for specialty practice, given the present policies of major hospitals on patient-admitting privileges for physicians, board eligibility or Board certification is as a practical matter necessary for such practice in most, if not all, urban areas.

Within the Corporation's hospitals, it appears to be structurally intended that interns work under the direct supervision of first-year residents. Residents are to be supervised by other residents in the year senior to them in their specialty, and there is a chief resident. Ultimate responsibility for patient care and for supervision of interns and residents in each specialty is vested in a chief of service and attending physicians, who normally hold professional rank in the voluntary hospitals and the major medical schools with which the Corporation's hospitals are affiliated or associated. In practice, however, because of the volume of work, the hours worked and especially in emergency wards, interns and residents often handle problems on their own initiative without prior consultation with a "supervisor," and not infrequently without any consultation at all.

Internship and residency programs are intensive educational experiences, in which the medical school graduate pro-

gresses first to proficiency in basic clinical techniques and skills and ultimately to a high level of competence in a specialized field. This training is accomplished primarily through work experience at every level, and substantially supplemented by participation in "grand rounds" and attendance at lectures conducted by more experienced physicians.

Internship and residency programs are extremely demanding both in terms of time and energy. Long hours with frequent nights on-call, often with few opportunities for rest, are the rule. This is in part due to the limited number of house staff officers which the Corporation can accommodate in approved internship and residency programs, in which each participant must be rotated through a large variety of clinical experiences. There is no question that house staff officers in the Corporation's hospitals provide a high level of medical care for patients and that patient care understandably takes precedence over all other of their activities. The patients whom the Corporation's hospitals serve are for the most part from the underprivileged sections of the City, and these hospitals are most often the sole providers of medical service for those communities. Both the quality of and the emphasis upon patient care do not, of course, minimize the role of the programs as training instrumentalities for the production of highly skilled specialists.

Not many years ago house staff officers were essentially regarded as trainees and paid a very small stipend. As late as 1961, interns in the City hospitals were paid \$2900 inclusive of living out allowance, and this figure had increased to

only \$5430 by 1967. However, the next year saw a substantial rise in house staff salaries, with the salary scale of \$5430 to \$7330 for intern to sixth year resident replaced by a scale of \$9000 to \$12,000. Under the most recent CIR contract, for the period October 1, 1969 to September 30, 1970, the following salary scale, inclusive of \$1500 annual living-out allowance, was in effect:

Intern, Dental Intern	\$10,300
1st year Resident and Dental Resident	11,000
2nd year Resident and Dental Resident	
Jr. Psychiatrist - 1st year Resident	11,500
3rd year Resident; Junior Psychiatrist - 2nd year Resident	12,000
4th year Resident; Junior Psychiatrist - 3rd year Resident	12,500
5th year Resident	13,000
6th year Resident	13,500
Chief Resident differential	500

The 1969-1970 contract between the CIR and the City, provided, as of January 1, 1970, an annual Welfare Fund contribution of \$125 per house staff officer. Interns and residents received three and four weeks' annual vacation, respectively, with the proviso that any vacation could be reduced by one week as required by the "needs of a given service," in which case the affected house staff officer received one additional week's salary. The City also provided fully paid health and hospital insurance and acted as malpractice indemnitor. There was no pension plan for house staff officers.

The CIR Proposals

The CIR contends that interns and residents, collectively, are fully qualified physicians; that they render vital medical

service to the hospitals; that that service is much greater than the training they receive from their work; and that they should be granted pay and other benefits accordingly as follows:

1. Effective October 1, 1970, a salary, inclusive of living out allowance, of \$15,000 for interns, and for residents a salary scale from \$17,500 to \$25,000 in five equal annual steps, with a differential of \$1500 for chief residents.

2. When any given residency requires a prerequisite residency in a different specialty, the residency year for salary purposes be calculated on the basis of cumulative tenure.

3. A \$250 annual Welfare Fund contribution per house staff officer.

4. Reimbursement for tuition upon satisfactory completion of courses, conferences or workshops approved by the appropriate medical boards of each hospital in cumulative sum not to exceed \$350 per annum for each house staff officer.

5. On-call rooms accommodating not more than two house staff officers, with hot water, shower and toilet facilities for each two rooms.

6. Reduction of vacation only in the event "unanticipated emergency" requires the house staff officer's presence, with vacation time worked at the requirement of the Corporation paid for at the same rate as that paid to per session physicians.

7. A salary increase, in the event the consumer price index for New York City at the end of any contract year exceeds the index at the end of the preceding contract year by more than three percent, of a percentage equal to the cost-of-living percentage increase above three percent. In its post-hearing brief

the CIR has modified this proposal to require only that its contract be reopenable for negotiation of a cost-of-living clause if the City or the Corporation should grant such a benefit to any other labor organization.

The Corporation's Responses

1. In its post-hearing brief, the Corporation has set forth a salary counterproposal which-would in three steps over a thirty-three month period beginning October 1, 1970, establish a salary scale from \$12,000 for interns to \$16,300, exclusive of chief residency differential, for 6th year residents. The Corporation proposes that for the period October 1, 1970 to September 30, 1971, interns be paid \$10,900 and 1st year residents \$11,600, with a differential of \$500 for each successive residency year, to a maximum of \$14,100 for 6th year residents; that for the period October 1, 1971 to September 30, 1972, interns be paid \$11,500 and 1st year residents \$12,200, with a differential of \$600 for each successive residency year to a maximum of \$15,200; and that for the period October 1, 1972 to June 30, 1973, interns be paid \$12,100 and 1st year residents \$12,800 with a differential of \$700 for each successive residency year to a maximum of \$16,300.

2. The Corporation has not stated a position on the treatment for salary purposes of years spent in a prerequisite residency.

3. The Corporation has proposed a \$25 per year increase in its Welfare Fund contribution, to a total of \$150, effective October 1, 1971.

4. The Corporation has rejected the CIR's proposal for tuition reimbursement.

5. The Corporation has rejected the CIR's proposal regarding on-call facilities insofar as it would require major renovation. The Corporation has proposed, within the limits of physical space and finances, to make reasonable efforts to upgrade on-call facilities and to give greater attention to the sufficiency of such facilities in any new construction.

6. The Corporation has rejected the CIR's proposal regarding vacations.

Discussion

A. Salaries

We believe that several basic conclusions must be drawn from the voluminous record in this proceeding: First, the interns and residents in the Corporation's hospitals are professional employees who, under taxing conditions, perform services essential to the life and health of millions of residents of the City including particularly those in underprivileged communities, and these facts must be accorded significant weight in setting their salary scale. Second, without in any way detracting from their professional status and service, interns are nevertheless beginning professionals undergoing their first intensive clinical experience, a part of which is recognized training, and there is a wide gap between their skill levels and responsibilities and those of the residents, particularly the senior and chief residents. Third, the

City is beset by an unprecedented financial crisis which is not of its making and which it does not have at present the economic or legal resources to resolve. This financial problem is equally relevant to every new contract settlement with every organization representing City or Corporation employees. Irrespective of the absolute dollar cost of any such settlement, which is a factor of the number of employees involved and the City's share of salary and other benefit costs, principles of fairness and practicability require that the financial plight of the City be taken into account in an even-handed manner. The financial crisis of the City is such that even the correction of demonstrated salary scale inequities may have to be postponed or at least minimized. Fourth, the cost-of-living in New York City, as measured by the Consumer Price Index, has increased appreciably since the last upward adjustment of house staff officers' salaries, and a new contract for house staff officers must at a minimum restore their real income position.

Taking into account all of the foregoing factors, we believe that the following is a fair and reasonable salary scale, inclusive of living out allowance, for house staff officers for the two year period beginning October 1, 1970:

	<u>Eff. Oct. 1, 1970</u>	<u>Eff. Oct. 1, 1971</u>
Intern, Dental Intern	\$11,300	\$12,300
1st year Resident and Dental Resident	12,300	13,300
2nd year Resident and Dental Resident; Junior Psychiatrist - 1st year Resident	13,000	14,000
3rd year Resident; Junior Psychiatrist - 2nd year Resident	13,700	14,700
4th year Resident; Junior Psychiatrist - 3rd year Resident	14,400	15,400

5th year Resident	15,100	16,100
6th year Resident	15,800	17,800
Chief Residency Differential	700	700

This salary scale would increase the intern's salary by \$1000 as of October 1, 1970 and another \$1000 as of October 1, 1971, and would, retroactive to October 1, 1970, increase the intern-to-first year resident differential from \$700 to \$1000 and increase the differentials for each other residency year and for chief residency from \$500 to \$700, except for the sixth year of residency where, because of demonstrated experience, skill and service, we feel there should be, in the second year of the contract, a substantial and further monetary differential totaling \$1700 over the fifth year resident. As of October 1, 1971, the resultant salary for the 6th year resident would be \$17,800 and if a chief resident, \$18,500.

For the intern, the recommended salary scale represents, on the present base, a 9.7 percent increase per year retroactive to October 1, 1970, and more than offsets the 7.4 percent rise in the consumer price index during the period of 1969-1970. Moreover, in establishing as a first step an \$11,300 salary for the intern for the period ending September 30, 1971, the recommended scale places the intern generally within the current salary range for comparable beginning professional employees in the City service. The recommended scale also places the current salary of the interns in the Corporation's hospitals above that in all but a few of the voluntary and public hospitals in the New York area that have been called to our attention and would as of October 1, 1971, be matched in only one such hospital. The recommended current salary for interns would also place their salary ahead of the scale in all but one other public or voluntary hospital in the United States that has been called to our attention. While

we wish that our recommended salary for interns in the Corporation's hospitals was exceeded by none, we cannot in good conscience, particularly in the face of the City's prevailing financial crisis, recommend a higher figure.

We believe that the recommended increases covering residents in the differential between internship and residency years, the differentials between residency years and the chief residency differential, are amply supported by the greatly increased skill and responsibility levels of physicians as they progress from medical school graduates to highly competent resident specialists. The Corporation itself has apparently recognized this in offering differential increases in its salary counterproposal. At the 6th year resident level we are, for example, recommending a salary that will be approximately 45 percent greater than the interns' salary as of October of this year, as compared to 31 percent under the most recent contract. Were it not for the present financial crisis we would be inclined to recommend even further improvements at the senior resident levels.

In making the foregoing salary comparisons we are aware of the CIR's objection to use of position titles without supporting evidence to show comparability of duties and working conditions. Normally this objection would be well taken, but it is not persuasive in this case, where the position titles are specifically descriptive of progress through internship and residency programs whose content is prescribed on a uniform, nationwide basis by the American Medical Association. We are also aware of the CIR's objection to comparisons with public or voluntary hospital salaries

established other than by collective bargaining. We are disposed to give greater weight to the results of collective negotiations but we cannot disregard other situations, particularly when they constitute a substantial segment of the whole picture. We note in connection, however, that the salary scales we recommend would for the current period as well as after October 1, of this year, exceed by a substantial degree the scale established pursuant to fact-finding at the Boston City Hospital and would exceed by an even greater degree that established at the Washington, D.C., General Hospital after a work stoppage. Only at Los Angeles County Hospital will collective negotiations have produced a higher scale, and for the reasons we have stated we do not believe that the Corporation and City can reasonably be expected to match the Los Angeles figures.

In making our salary recommendations we have given only small weight to the CIR's suggestion that salaries for house staff officers be set by reference to hours worked by interns and residents and hourly rate-of-pay comparisons with non-professional or part-time professional employees. As professionals in various fields, ourselves, we know that the long hours spent in pursuit of professional competence, particularly in the beginning years of practice, cannot realistically be a measure of professional compensation. We do not mean to suggest, though, that the Corporation has a license to require house staff officers to work or be unreasonably on-call for as many hours as it chooses. We understand that the hours worked by interns and residents reflect the substantive requirements

of their particular training programs and the implication of those requirements for the staffing of services. The matter of the per session physician's rate of pay in the Corporation's hospitals has also been stressed to us. However, per session physicians are only part-time employees and their service takes place entirely outside the context of the internship and residency programs. Moreover, if the per session rate were to be the measure of their salaries, house staff officers would, on a comparable work-time basis, have to be paid at the rate of approximately \$56,000 per annum. The CIR has not, however, in its contract proposals or arguments suggested anything like this level of compensation for house staff officers. Under the circumstances we do not believe that the per session rate is a determinative factor in the new salary scale for interns and residents.

We are similarly disinclined to give weight to any suggestion that house staff officers, for salary purposes, be treated akin to industrial apprentices with their compensation levels progressing toward the median salary level of attending physicians in the Corporation's hospitals. In fact, when this suggestion was presented directly to the CIR's very experienced expert witness, he responded negatively.

We believe that the approach we have taken is the sound one. We view house staff officers as valuable public servants who are entitled to a beginning professional salary scale that recognizes their varying levels of skill, experience and supervisory responsibility. In this connection, we can see no

justification, given the valuable and intensive services house staff officers perform, for any "discount" against their compensation to reflect educational costs of the training programs in which they participate. Nor do we believe that we can or should speculate on what would be the cost or other consequences of attempting to substitute for house staff officers some other system of hospital staffing.

If our salary recommendations are accepted, they will entail substantial retroactive salary adjustments. We would in any event wish such adjustments to be made as promptly as possible. Prompt payment of retroactive salary is particularly important in the case of the interns and residents, at least some of whom will complete their programs and leave the Corporation's service at the end of this academic year.

B. Calculation of Residency Years

We discern no justification, and none has been suggested to us, for not including, for salary purposes, time spent by a resident in another, prerequisite residency. Moreover, recognition of such cumulative service is apparently now the practice in at least some Corporation hospitals. Accordingly we recommend that the CIR's proposal on this point be accepted.

C. Welfare Contribution

The City has agreed in its City-wide contract with District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO, to increase its welfare contribution for the

great majority of its employees to \$175 per annum per employee effective January 1, 1971 and to \$250 effective January 1, 1972. No evidence or persuasive argument has been presented to us that the same benefits should not be accorded to house staff officers. Accordingly we recommend the Corporation's welfare fund contribution for each house staff officer be increased to \$175 per annum effective January 1, 1971 and to \$250 effective January 1, 1972.

D. Tuition Reimbursement

Reimbursement for tuition, to the extent that it is available for any City or Corporation employee, is provided as an incentive to improve work competence and advancement through education in the employee's field. This justification for tuition reimbursement hardly seems applicable to the house staff officer, who as a participant in an internship or residency program is engaged in a rigorous educational program leading to professional certification in the field of the house staff officer's interest and service. We recommend that the CIR's proposal for tuition reimbursement be rejected.

E. On-Call Facilities

The testimony concerning on-call facilities, as well as our own observations of such facilities at one Corporation hospital, convinces us that adequate sleeping quarters and related conveniences often are lacking. On the other hand, the CIR's proposal for limits on room occupancy and the number of

persons using other facilities obviously could not be implemented, in many hospitals. without dislocation of patients, new construction, or major structural renovation. Given the present financial plight of the City, major construction expenditures for this purpose cannot realistically be recommended. The corporation, though, has offered to give emphasis in future construction to on-call facilities, and to provide for reasonable refurbishing of existing facilities to the extent that major structural changes and/or large costs are not involved. We think that the Corporation's proposal represents the direction to be taken. Accordingly we recommend that the Corporation agree to take reasonable steps to up-grade on-call. facilities to the extent this may be accomplished without new construction, major structural renovation or other large costs. We also recommend that a joint Administration-CIR committee be established at each hospital concerned to develop proposals for implementation of the foregoing recommendations.

F. Vacations

Presently vacations may be reduced to the extent of one week to accommodate the "needs of a given service," with compensation, in addition to vacation pay, at the house staff officer's regular rate for any such vacation time worked. The CIR proposes to permit reduction only in the case; of "un-anticipatable emergency" and also to pay for vacation time worked at the per session rate. "Unanticipatable emergency," we understand, would not encompass the difficulty of providing va-

cation period coverage occasioned by the prescribed size of the normal house staff.

We cannot recommend either of these proposals. Given the fact of internship and residency programs, and the varying limitations that they impose on staffing of services, we do not believe it would be fair to the Corporation or the patients to require that a service be covered by part-time employees where the normal staffing pattern of interns and residents would not provide coverage during the vacation period. Moreover, the present vacation arrangements guarantee interns two weeks off and residents three weeks. We also agree with the Corporation that house staff officers should not be paid at the per session rate for work performed within the context of their particular internship and residency programs. Accordingly, we recommend that the CIR's proposals regarding vacations be rejected.

G. Cost of Living

No contract between the City or the Corporation and an employee organization currently contains a cost-of-living escalator. The CIR initially sought such a benefit, but has now modified its original proposal to permit contract reopening for negotiation of such a clause in the event any other employee organization is granted one.

We feel very strongly that sound labor relations are best served by contracts that establish definite terms and conditions of employment for their duration. And we believe that there has been ample demonstration both in the public and pri-

vate sectors of the undesirability of contract clauses that relate benefits for employees covered thereby to benefits that may subsequently be obtained by other groups of employees. We must, on the basis of our knowledge and in good conscience, recommend that the CIR's proposal on cost of living be rejected.

Dated: May 12, 1971

Emanuel Stein

Daniel G. Collins

Eric Schmertz

State of New York)
)SS:
County of New York)

On this twelfth day of May, 1971, before me personally came and appeared Emanuel Stein, Daniel G. Collins and Eric J. Schmertz, and to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.