

Office of Collective Bargaining
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In the Matter of the Impasse

between

THE CITY OF NEW YORK
HEALTH AND HOSPITALS CORPORATION

REPORT AND RECOMMENDATIONS
OF
IMPASSE PANEL

and

COMMITTEE OF INTERNS AND RESIDENTS

Re: I-120-75
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On April 28, 1975, the Office of Collective Bargaining designated the undersigned as the Impasse Panel to hear and make report and recommendations in the current dispute between the City of New York and the Committee of Interns and Residents (CIR). A hearing was held on June 11, 1975, at which the CIR was represented by Murray Gordon, its attorney, and Richard A. Knutson, its President, and the City was represented by Robert Pick, Office of Labor Relations, and Dr. Edmund Rothschild, Senior Vice President, Health and Hospitals Corporation.

The CIR impasse is over a contract affecting some 1400 interns, resident and other house staff officers employed by the Health and Hospitals Corporation. The Health and Hospitals Corporation is a quasi-public corporation, established in 1971 by State law, which administers the health care in 19 City hospitals and several others. This hospital complex is one of the largest in the United States caring for indigent and non-indigent patients. Last year it administered 1 million in-patient days and 4 million out-patient visits.

The CIR first requested the appointment of an impasse panel on November 11, 1974. What transpired thereafter is set forth in decision number B-4-75 of the Board of Collective Bargaining which was issued on February 14, 1975. Since the appointment of this impasse panel, the parties have amicably disposed of all issues between them except demand number 18, Freedom to Work (Moonlighting). The text of the demand is as follows:

18. Freedom to Work
Employment during off-duty hours shall be permitted where it does not substantially interfere with the performance of a house staff officer's required duties at the hospital.

Every staff officer employed by the Corporation is required to sign an individual house staff agreement which contains the following paragraph:

I agree not to engage in any pursuit other than the performance of such duties in the hospital as I may be assigned and not to practice my profession outside the hospital, except in emergencies when detailed by the hospital executive director.

The CIR objects to this requirement. It contends that moonlighting does not interfere with the professional obligations of the staff officers to the Corporation, nor does it impair their educational objectives. It maintains that moonlighting is not only an economic necessity for staff officers, but it fills a vital need for medical services in the community.

Richard A. Knutson, President of CIR, testified that moonlighting is extensively practiced. Most interns and residents are compelled to finance their way through medical school by borrowing and they must have the additional income derived through moonlighting to support

themselves, their wives and children.

Staff officers moonlight by working in the emergency room in their own or other hospitals, in clinics and in hospitals outside the City as house officers. They perform night calls, cover for other .doctors who are off-duty, work in private clinics, laboratories, and do record work.

THE POSITION OF THE CIR

Dr. Knutson was of the opinion that if moonlighting were abolished, it would force a basic change in the medical care available in the City. There would be no house visits. Some hospitals and jails would have no doctors. The flow of patients would be shifted to different hospitals. The effect would be a serious disruption in health care service.

Moonlighting is done mainly by older doctors, those in their post-graduate year three and later. Those at PGY I and 2 are usually not yet licensed. Moreover, these younger doctors frequently have the longest and least desirable work schedules for moonlighting. As time goes by, the more senior staff officers' time on duty is reduced and they are more available for moonlighting.

Dr. Knutson argued that moonlighting is compatible with the staff officers' training. Their work in emergency rooms afford opportunities for general practice and they are able to consult with more experienced doctors. Very frequently the moonlighting consists in working as an assistant to an old hand.

The CIR states that the Chiefs of Service who are in charge of residents and interne know of the moonlighting and some even encourage it. In fact, they are frequently the source of recruitment for

moonlighting.

The CIR argues in favor of its demand because the prohibition of moonlighting is a potential weapon which may be used by a Chief of Service against a staff officer. It cited two occasions during the past year in which staff officers were disciplined. One involved an official of the CIR who was warned to cut out most of his moonlighting or his residency would be ended. The CIR charged that no complaint was made about his performance as a staff officer.

The CIR states that it had the identical problem in its negotiations with the League of Voluntary Hospitals which represents the major hospitals in the private sector. The issue was settled on the following basis: The League agreed to take the clause prohibiting moonlighting out of the individual contracts and to make no reference to it in the collective bargaining agreement. The standing practice was continued and the house staff officers if disciplined for failure to perform satisfactorily for any reason would have recourse to the grievance procedure under the "for cause" provision. A clause concerning discipline for cause was inserted in the contract.

The Health and Hospitals Corporation and the CIR have already agreed to include a discipline for cause clause in the pending contract. The CIR argues that it would provide protection to the Corporation and the staff officer for any abuse of moonlighting.

The relationship between the City hospitals and those of the League is more than one of mere comparison. Under the system of affiliation, certain League Hospitals work very closely with City Hospitals and house staff officers rotate in training from City to League Hospitals. Bellevue Hospital, a City Hospital, rotates with New York Hospital, its affiliate, every month. A house officer may find himself on the City payroll one month and a voluntary hospital

payroll the next month. If the prohibition against moonlighting were permitted, the same moonlighting activity that would be legal at a voluntary hospital would be illegal at a City hospital.

The CIR is opposed to an arrangement under which moonlighting would be permitted only if approved by the Chief of Services. Such an arrangement might compel a Chief who would otherwise wink at the practice to refuse permission. He would tend to play safe by refusing permission if he had to declare himself.

The CIR stated that a resolution was adopted at the 1973 meeting of the delegates of the American Medical Association favorable to moonlighting. The resolution provides that the specifics of extra-mural activity be negotiated between the staff officers and their employers and states in part as follows:

Resolved, that as a basic human right, house staff may spend this time in any way they see fit insofar as primary institutional responsibilities and educational responsibilities are not compromised.

The CIR stated that contracts have been negotiated which permit moonlighting. Moonlighting is permitted under the rules of the Children's Hospital in Cincinnati and in the University of Michigan contract. Other employees who are engaged in vital emergency services, such as policemen and firemen, are increasingly permitted to engage in outside employment.

The CIR argues that when public employees are prohibited from striking they are entitled in an impasse proceeding to get that which they would have obtained through a strike. The CIR did strike the League of Voluntary Hospitals and obtained from it a satisfactory resolution of the moonlighting issue. The City should be compelled

to do likewise. The CIR argues, moreover, that if the League can live with the settlement of the moonlighting issue, the City can. It points out that although moonlighting is pervasive, only two cases arose in which there was any attempted discipline for moonlighting. Considering that some 1400 staff officers are employed, this is proof that moonlighting has not impaired the Work standards or educational obligations of staff officers. The CIR argues that there is no difference between moonlighting and any other activity which would impair the work performance or educational obligations of staff officers, yet there has been no practice to specifically prohibit such activities in the individual contract. The protection lies in the fact that the hospital can discipline a staff officer under the "for cause" clause if he fails to perform properly.

THE POSITION OF THEE CITY

The Health and Hospitals Corporation opposes moonlighting except when it is permitted by the Executive Director of the hospital. Dr. Edmund O. Rothschild, Senior Vice President for Quality Assurance of the Corporation, testified that the Corporation opposes it because of the obligations of the staff officers to perform certain work and to be trained. The complexities of modern medicine, he said, require an increased study beyond the regular hours. Post-graduate training should be a full-time experience under a training program. The Corporation feels that moonlighting is inconsistent with training as a matter of principle. He conceded that some Chiefs of Service feel that moonlighting is advantageous and some do not. This would depend on the Chief, the kind of program and the capacity of the staff officer. However, with some 224 programs now being followed, no policy is possible except to prohibit moonlighting unless under special emergency circumstances.

Dr. Rothschild did not deny that there is a wide spread condonation

of moonlighting, but he stated that the extent of moonlighting is not known. He felt that the great demand on the time and mind during PGY 1 and 2 require that moonlighting not be permitted. He conceded that some discussion was needed for PGY 3 and later years. The general approach should be to discourage or prohibit moonlighting. Where flexibility is possible, it should be determined by the Chiefs of Service;.

The Board of Directors of the Corporation has taken an official position. not to deviate from the current requirement that the staff officer sign a contract agreeing not to moonlight.

Dr. Rothschild disagreed with the CIR's demand in principle because it does not mention the house staff officers' educational requirements. If this were added to the demand he said that it would be more acceptable, provided however, that the Chief of Services made the decision as to when it would be permissible. He cited the following statement by the Association of American Medical Colleges:

Graduate medical education should be a full time educational experience. House officers should not be diverted from their primary responsibilities to their own education and to the patients charged to their care by the training institution by engaging in extra-mural activities. Therefore, as a matter of general principle, the Association of American Medical Colleges believes that moonlighting for house officers is inconsistent with the education objectives of house officer training and is therefore a practice to be discouraged.

Dr. Rothschild conceded that moonlighting was not the only thing that might interfere with work and training of a staff officer. If a staff officer engaged in excessive social activity or sport or indulged in drinking, these might also interfere. He admitted that he knew of no case of impairment of work or educational requirements

because of moonlighting, but he said he did not know the extent to which moonlighting was practiced. He thought that if moonlighting were to be approved, it would have to be with the permission of the Chief of Service. He would be willing to submit complaints about arbitrary withholding of permission by Chiefs to an appeal board if it were a medical board that would pass on the question. He conceded that Chiefs of Service were usually the majority on a medical board.

The City took the official position that it wanted the situation to remain as it is, but if it is changed, the change should be stated in the individual contract rather than in the collective bargaining agreement. Employment of any nature outside of that covered by the individual contract should not be permitted at the PGY 1 and 2 level. If it is permitted at PGY 3 and above it should be on prior request and approval by the responsible Chief of Service and Executive Director of the hospital, or in emergency, a delegate of the Executive Director of the hospital. Approval should be based on consideration of the following:

- A. The capacity of the individual to fulfill his work performance obligations and educational obligations, while at the same time pursuing additional work opportunities.
- B. The nature of the work opportunity, including its educational value.
- C. The needs of the community.
- D. The financial needs of the individual.

THE POSITION OF THE CIR ON REMEDY

The CIR objects to the City's proposal on remedy because the conditions for permission, if placed only in the individual contract, would not be subject to the grievance procedure. The only remedy

would be through the courts.

It objects to an absolute proscription of moonlighting at PGY 1 and 2 because most staff officers at that level do not present a real problem. Most PGY 1's do not have a license to practice, but some do and they have the same needs as any other staff officer to improve their economic position.

The CIR objects to prior approval being made necessary. It charges that some Executive Directors are known for their arbitrary attitudes. It feels that if Chiefs are required to grant permission they will refuse to do so.

The CIR believes that discipline for cause is the only reasonable restraint that should be placed on moonlighting.

DISCUSSION

The City asks the right to prohibit moonlighting because what a staff officer does on his free time may affect the performance of his duties and may determine how he profits from the training and education involved in his service.

The CIR does not question the possibility that a staff officer may so conduct himself during the time he is not at work that he may be unable to perform his required duties satisfactorily or benefit from the education prescribed for him. It does question whether a prohibition against moonlighting is the proper or necessary way to prevent outside employment from impinging upon the duties and obligations of staff officers.

The CIR points out that moonlighting is not the only extra-aural activity that may hurt a staff officer's performance. If he spends his free time drinking, using drugs, or socializing to excess

his performance may be affected but, the CIR points out, the Corporation does not demand the right to prohibit such activity. It depends on the good sense and maturity of the staff officer not to engage in such activities if they affect his performance at work. It expects that staff officers who have completed the rigorous demands of a medical school education will have the desire and the Judgment not to jeopardize their post graduate training by their extra-mural activity.

The same constraints which curb other extra-mural activity should operate to prevent excessive moonlighting unless moonlighting is so special a problem that it needs special handling. What is different about moonlighting compared with other activity is that it is work in medicine and therefore adds to the heavy schedule of time staff officers are expected to devote to their primary duties and educational obligations. It was, in fact, the long hours they worked which was the cause and principal issue in the CIR's strike against the League. It seems anomalous that the CIR should complain about excessive hours of staff work and then press for the right to add to those hours by moonlighting. The CIR argues that it is not anomalous. The desire to cut hours off staff work and to do moonlighting arises out of economic need. Many staff officers are married and have needs and expectations not satisfied by their earnings as staff officers. Many incurred large debts in financing their education and are impatient to begin reducing the debt.

As long as a second job does not affect the first, the right to take on a second job should not be a concern of the Corporation. The City's argument is that a second job must inevitably affect the primary one and therefore requires that the Corporation prohibit it in principle. The fact is that moonlighting except during PGY 1 and possibly PGY 2 does not necessarily hurt a staff officer's primary

performance. No one questions that staff officers have been moonlighting although the extent is not officially acknowledged. During PGY I staff officers apparently have- too heavy a load to moonlight. Only two cases of discipline because of moonlighting have occurred, one of which was said not to involve any impairment of the staff officer' s primary obligations. This experience leads to the conclusion that moonlighting may not appreciably hurt the performance of staff officers.

Since the extent of moonlighting is not known, the Corporation's interest do require that it have some recourse where moonlighting impinges upon or interferes with a staff officer's primary obligations. We do not believe that the "for cause" clause is sufficient protection for the Corporation. It should not have to wait until a staff officer gives cause for discipline before it should be able to forbid the moonlighting. We think the Chief of Service should be able to demand the end of the moonlighting if it appreciably impinges upon or interferes with a staff officer's primary obligations, even though it has not reached the point where it can be considered cause for discipline.

If a staff officer believes his Chief of Service has been unfair or unreasonable in asking the staff officer to cease moonlighting, the staff officer should have the right to appeal through the grievance machinery and we s hall so recommend.

Both sides acknowledge that during PGY 1 staff officers rarely if ever moonlight because of the heavy load they carry. The first year after graduation is hardly the time to experiment with extra-curricular activity. In our opinion, moonlighting should be prohibited for PGY 1. The case for prohibition for PGY 2 is less clear.

RECOMMENDATION

1. That moonlighting be prohibited during the house staff officer's first post-graduate year (PGY 1).

2. During PGY 2 and thereafter, moonlighting should be permitted if it does not impinge upon or interfere with the house staff officer's performance of his required duties at the hospital, or with his educational obligations.

3. If, in the opinion of a Chief of service, moonlighting has impinged upon or interfered with a house staff officer's primary obligations, the Chief of Service may demand that the moonlighting cease.

4. A house staff officer may appeal through the grievance procedure a chief of Service's demand that he cease moonlighting.

Dated, June 30, 1975

BENJAMIN H. WOLF, CHAIRMAN

MONROE BERKOWITZ, MEMBER

JONAS AARONS, MEMBER