

OFFICE OF COLLECTIVE BARGAINING  
Case No. I-134-77

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In the Matter of the Bargaining Impasse

-between-  
District 1199

RECOMMENDATIONS  
(Pharmacist  
Titles)

-and-

The City of New York and the New York  
City Health and Hospitals Corporation

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Appearances:

For the Union:

Harry Weinstock, Esq., Attorney; Sipser, Weinstock,  
Harper, Dorn & Leibowitz  
Philip Kamenkowitz, Executive Vice-President

For the Employer:

Robert H. Pick, . Esq., Attorney, Office of Municipal  
Labor Relations  
John Freyaldenhoven, Esq., Attorney, New York City  
Health and Hospitals Corporation

Before:

Prof. Waltdr L. Eisenberv, Arbitrator

\* \* \* \* \*

THE ISSUES

District 1199, National Union of Hospital and Health  
Care Employees (hereinafter "Union") and The City of New  
York and the New York City Health and Hospitals Corporation

(hereinafter "Employer" or "City") submitted to the Under-signed, as a duly designated one-member Impasse Panel under the New York City Collective Bargaining Law for Recommendations, certain issues unresolved and at impasse in their contract negotiations for an agreement to follow the one that covered the period July 1, 1975 to June 30, 1976.

A hearing on the issues was held on November 2, 1977 at the Office of Collective Bargaining in New York City. The parties were ably represented, and were afforded full opportunity to introduce evidence, examine and cross-examine witnesses, and present argument on the issue. A verbatim transcript of the proceedings was made.

The Impasse Panel reminded the parties of the provisions of law and OCB procedures applicable to impasse proceedings and the obligations to be borne by the parties in making their respective presentations on the issues at impasse.

The Union presented as "the principal issue" at impasse the matter of continuation of the 10% reduction in the minimum of the salary range for employees hired as of October 1, 1976 and thereafter. The City concurs that the reduced minimum rate for new hires, to June 30, 1978 the proposed end of the new contract, is an issue at impasse.

The Union also referred at the impasse hearing to two other issues: the matter of "equalization" of pay rates for

Pharmacists working in the same title and the matter of lesser vacation benefits, 3 weeks instead of 4 weeks, for employees hired on October 1, 1976 and thereafter. The City pointed out that these two issues were not the subject of mediation prior to the impasse stage, and indicated it would not object to the Union making a presentation on the "equalization" issue but that the City would make a presentation opposing this Union proposal on the merits. As to the reduced vacation benefit for new hires, the City maintains that this is a matter covered by the City-wide negotiations and Agreement, is not a mandatory subject of bargaining between the City and the Pharmacists, and is not properly before the Impasse Panel.

1. CUT IN SALARY MINIMUM FOR NEW HIRES

The Union urged on various grounds that the Impasse Panel reject the proposed continuation of the lower (10% less) salary minimum for new Pharmacists hired from October' 1, 1976. Among the Union's principal arguments were the following, in briefest outline: the City's hospitals need new Pharmacists and will have greater difficulty than ever hiring these if the entrance minimums are to continue to be 10% lower than they were before October 1, 1976; there has been and continues to be an "unconscionable gap" between the pay and fringe benefits of City Pharmacists and those employed in voluntary hospitals and in drug stores in the

New York City area, and this gap will widen to the further disadvantage of City Pharmacists when the Union's drug store contract opens up on April 1, 1978 and when the Union's voluntary hospital contract opens up on July 1, 1978; there are already two pay-levels for City Pharmacists--those who came in before July 1, 1973 get one rate and those who came in after July 1, 1973 get 5% less but they do the very same work; under the City's proposal Pharmacists hired after October 1, 1976 will be paid at a third level, "10% less" but actually 15% below those hired prior to July 1, 1973--making three pay levels for pharmacists doing the same work, viz., \$17,030 per year, \$16,190 and \$14,571; City Pharmacists have had substantial additional and new duties and responsibilities imposed upon them by a set of new general standards for hospital pharmacists that involve complex new routines and procedures; the City has lost 61 Pharmacists and has replaced only 19, putting a greater burden on the remaining Pharmacists; the \$70,000 reportedly saved by the City between October 1, 1976 and October 31, 1977 by hiring 28 new Pharmacists at 10% below the old minimum rates is too small an amount for the City to save if it means risking the health of patients for whom the Pharmacists provide essential services; continuation of the reduced hiring minimum will only add to the Pharmacists' work burdens and will make it difficult to compete for Phar-

macists who are capable of performing the new and sophisticated duties entailed in hospital pharmacy work; and setting lower minimum hiring rates is a way of setting subnormal pay levels and destroying the pay structure for unionized Pharmacists.

Among the Employer's principal arguments on this issue are the following, in equally brief outline: the City's financial crisis has resulted in a number of necessary restraints and cuts in pay and benefits, these being imposed on all City employees not only the Pharmacists; to obtain federal support the City and the unions of City employees were obligated to conclude contracts on a no-added-cost basis, with reductions in some areas which included the 10% lower hiring minimum; the Emergency Financial Act of 1975, the decisions of the Emergency Financial Control Board, certain Administrative Orders of the Mayor, the City-wide Agreement for July 1, 1976-June 30, 1978, and the "Hilton Agreement" of June 30, 1976 have had the purpose of cutting down contract costs through restraint, or the adoption of increased productivity programs, and the facilitation of the resumption of Cost-of-Living-Adjustments (COLA); the City has not singled out the Pharmacists for unusual treatment--basically all employees have been subject to the same bargaining problems and policies; the Employer-hired 28 Pharmacists in the year since October

1, 1976 at the 10% lower hiring minimum for a total saving of \$70,000; if the Union had been willing, the \$70,000 saving could have come from a cut in some other Pharmacist benefit to replace the cut from--the generally adopted lower hiring minimum; the City has not been shown that it would not be able to hire Pharmacists at the new lower minimum; hospital patient health is as essential to the City as implementation of its financial plan, and while \$70,000 is not a large amount the principle of uniformity of employee treatment is at stake; as of October 31, 1977 there were 31 City and union contracts containing the 10% lower minimum rates, including 1199 for its Dietitian contract; the Union's contracts with drug stores and voluntary hospitals are not uniformly better than the City Pharmacist contract--drug store Pharmacists work 40 hours and City Pharmacists 35 hours, drug store pension costs are 10% less costly than City pension costs, and drug store vacations are only 2 weeks; voluntary hospitals have 35 hours a week and 4 week vacations but City pension costs are 10% higher; under the 1976 Hilton Agreement the Unions with City employees agreed to a give-back of \$24,000,000 for 1976-77 and another \$24,000,000 for 1977-78, with \$14,000,000 each year coming from "civilian" employee payroll costs; District 1199 was one of the unions bound by the Hilton Agreement; and the essence of the City's problem is that it can

not-pay its bills.

On this issue, the Union is caught in a bind which is not of its own or the City's making. The City, its employees, its Unions, and, indeed, all of its residents are the unfortunate victims of the confluence of a series of complex short-term and long-term economic, social and political forces which do not originate in New York City. These forces have combined to hold the City in a financial crush without any indication as to when and how it can be relaxed. One manifestation of that crush has turned out to be the need to cut City labor costs in various ways but avoiding, wherever possible, pay cuts for present employees. The 10% lower pay minimum is one such measure, adopted by the City only under the direst of circumstances. While the Impasse Panel does not minimize the possible adverse long-term effect on Pharmacist pay structure of a cut in the minimum hiring rate, the short-term fiscal need of the City is the more immediate concern which prompted the City and its major Unions to hold down the cost of new hires by applying a lower hiring minimum. Such manpower or pay problems as may subsequently arise from this crisis-dictated measure will have to be faced and dealt with when they arise. The Impasse Panel can find no valid basis upon which to reject the continuation of the lower hiring minimum in the circumstances here involved. The only possibility for ending

the use of that minimum at the present time would have involved yielding such part of some other benefit as would save the same amount of dollars as the lower pay minimum would save. However, the Pharmacists' Union was evidently in no position to consider supplanting the lower pay minimum with some other sacrifice. The "Hilton Agreement" of 1976, the policy for hiring at 10% below minimum adopted in 1976, and Administrative Order No. 40 (October 27, 1977)-- together with the significant number of contracts which already contain the lower hiring minimum--combine to provide a formidable counterpoise against the Union's understandable objections to the lower hiring minimum. The Impasse Panel concludes that it is at this time in the best interests of all concerned that the 10% lowest pay minimum adopted by the City as of October 1, 1976 be continued. Accordingly, the Undersigned will recommend that the parties incorporate the 10% lower minimum for new hires in their Agreement, for the contract period ending June 30, 1978.

## 2. "EQUALIZATION" OF PAY RATES

This Union proposal was an issue in both the preceding and the current contract negotiations between the parties. The Union made a cogent case for its demand in the preceding year's negotiations, but then as now the City's finances were a key stumbling block to City adoption or Impasse Panel recommendation of such a change. Briefly, the Union



maintains that the 5% pay, gap which has existed between Pharmacists hired before and Pharmacists hired after July 1, 1973 is illogical for the reason that the Pharmacists involved do exactly the same work, and that this if inequity should be eliminated.

The City opposes "equalization" of pay essentially on the grounds that it is intended to provide another way of obtaining a pay increase for some Pharmacists, and that no such increase is justified at this time.

Given the straitened circumstances which have led to the various pay restraints imposed upon City and Union contract bargaining, there is no firmer basis for effecting pay equalization under today's circumstances than there was in last year's bargaining. In fact, the grounds for not doing so today are even more persuasive than were last year's grounds. It is the kind of proposal which could be appropriately addressed at a time when there is flexibility in both the Union's and the Employer's bargaining positions and needs and when there are funds available for possible alternative uses in shaping a contract settlement package. This is clearly not such a time. Under the prevailing circumstances, the Impasse Panel finds no persuasive grounds for recommending pay equalization at this time.

### 3. REDUCED VACATION BENEFIT

This issue involves the Union's objection to reducing

the vacation benefit for new hires (i.e. those hired after October 1, 1976) by one week, making it three weeks. It is an issue which the City urges should not be before the Impasse Panel because time-and-leave matters are a subject for City-wide bargaining.

The Impasse Panel will not consider the issue until such time as the Office of Collective Bargaining rules that it is properly before the Panel for a recommendation. Should the Union believe that the issue is a matter on which it is authorized to bargain, it may refer the issue by means of an appropriate filing to the Office of Collective Bargaining (OCB) for a determination on this point. If such a determination is sought by the Union and the matter is found by the OCB to be bargainable as between the City and the Union here involved, the parties will be afforded such opportunity as they may require to argue the issue on the merits before the Undersigned.

#### RECOMMENDATIONS

The Undersigned, constituting the duly authorized Impasse Panel to whom was submitted the matter in controversy (OCB Case No. 1-134-77) between the parties above-named, and having heard testimony, received evidence and heard argument bearing on the controversy, makes the following RECOMMENDATIONS:

1. Lower Hiring Minimum: - The parties should continue, and should incorporate in their Agreement for the period ending June 30, 1978 a provision embodying the practice of paying new employees hired in Pharmacist titles after October 1, 1976 at the minimum of the established salary range, less 10%.
2. "Equalization" of Pay Rates - The Union's proposal to equalize the pay rates of Pharmacists hired before and Pharmacists hired after July 1, 1973 should not be made a part of this Agreement.
3. Reduced vacation Benefit - This issue will not be considered by the Panel, pending a ruling by the OCB that the issue is properly before the Impasse-Panel. Should the Union seek and should there be an OCB ruling that this issue is bargainable as between the City and this Union, the parties will be afforded such opportunity as they may require to argue the issue on the merits before the Undersigned.

Walter L. Eisenberg  
Impasse Panel

Dated:

New York, New York  
December 23, 1977

State of New York )  
                                  ss:  
County of Kings )

On this 23<sup>rd</sup> day of December, 1977 before me personally appeared WALTER L. EISENBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

BEATRICE EISENBERG  
NOTARY PUBLIC