OFFICE OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK

---X

In the Matter of the Impasse

between

DOCTORS COUNCIL

- and-

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

REPORT AND RECOMMENDATIONS OF IMPASSE PANEL

Case No. I-135-77

---X

Before the Impasse Panel

Daniel G. Collins, Chairman

Appearances

For Doctors Council:

Gordon & Shechtman, P.C.
by Ronald H. Shechtman, Esq.

For the City of New York and New York City Health and Hospitals Corporation:

Robert Pick, Esq., Assistant Director
New York City Office of Municipal Labor Relations

Frances Milberg, Esq., Assistant General Counsel
New York City Office of Municipal Labor Relations

The proceeding was initiated pursuant to Section 1173-7.0c of the New York City Collective Bargaining Law, Chapter 54 of the Administrative Code. The undersigned was designated, at

the joint request of the parties as a one-member Impasse Panel. The Panel held hearings on November 18 and December 7, 1977, and a stenographic transcript of the hearing was made.

In formulating its recommendations, the Impasse Panel has weighed carefully the evidence in the record and the arguments made at the hearings in the light of the criteria, to the extent relevant, set forth in Section 1173-7.0.c(3)(b) of the Collective Bargaining Law.

THE BACKGROUND OF THE IMPASSE

Doctors Council (the "Council") is the certified representative of certain professional and medical titles employed by the City of New York (the "City") and the New York City Health and Hospitals Corporation (the "Hospitals Corporation"). The prior Contract between the parties expired on December 31, 1975.

The only issue in dispute which is before this Panel is the procedure to be-followed in the event of layoff or recall of members of the bargaining unit other than members governed by Civil Service Law or Regulations which would be determinative of that issue, and other than members who are per session (including hourly) employees.

* The City takes the position that certain of the Council's proposals are nonmandatory subjects of bargaining. Since the Panel is not empowered under law to address such matters at this stage of the proceeding, they are not referred to herein.

The Council represents approximately 2500 doctors employed by the City and the Hospitals Corporation, of whom more than 1700 are in titles defined as per session for purposes of this proceeding. Approximately 600 are employed in per annum titles; approximately 250 in City Mayoral agencies and 350 in the Hospitals Corporation. Only per annum titles are involved in this proceeding and, of those, only titles which are not in the competitive civil service. Since many of the per annum. Mayoral agency titles and some Hospitals Corporation titles are governed by Civil Service Law or Regulation which would be determinative of questions concerning retention and recall, this proceeding is concerned primarily with full-time doctors in per annum titles employed by the Hospitals Corporation. In fact, the titles principally concerned art those of Attending Physician and Physician. Evidence introduced at the hearing indicated that there are approximately 218 full-time per annum Attending Physicians and 429 full-time per annum. employed by the Hospitals Corporation, and that of 31 Corporation facilities, only 11 employ full-time per annum. Attending Physicians and only 10 full-time per annum, Physicians.

Beginning in the summer of 1975, as a result of the Municipal fiscal crisis, there were layoffs of doctors in

some titles represented by the Council. Testimony in the record indicates that some of those layoffs were not made in reverse order of seniority, and that some such doctors-approximately one-third of the number that had been laid-off--were not placed on preferred lists. In addition, there have been new hires while such doctors have been on layoff.

The Council's final proposal is as follows:

JOB SECURITY PROVISIONS

1. The following provisions shall pertain solely to non-competitive employees covered hereunder.

A. Except for those employees of the Health and Hospitals Corporation ("HHC"), provisions pertaining to the abolition of positions, reductions in staff, demotions and preferred lists set forth in the City-wide agreement shall be applicable as if fully herein set forth.

B. (1) With respect to all those employees of the Health and Hospitals Corporation, Section 7.6 of the Health and Hospitals Corporation Personnel Rules and Regulations (hereinafter "§ 7.6") shall be applicable with respect to the abolition of positions, reductions in staff, demotions and preferred lists, except as hereinafter set forth:

(a) In the case of incumbents in the title of Attending Physician I, II and III, seniority as applied pursuant to § 7.6 shall be defined according to approved specialties, which for the purposes hereof shall be determined by the departmental assignment of the individual doctor.

(b) Any variation in the determination of one's special~y, as set forth at pB(1)9a) hereof, whereby a doctor's specialty is not defined by his departmental assignment and he is rendering essential services to the employer in a subspecialty or inter-departmental capacity not otherwise available, the provisions of this Article may be waived upon

such request from the Executive Director of an affected Corporation facility to the HHC Senior Vice President, Quality Assurance, for recommendation to the Executive Vice President of the HHC. Notice of the same, including reasons for such action shall be provided to the Union as soon as practicable and subject to the concurrence of the Union. In the event there is no agreement the matter shall be submitted to arbitration.

(c) In the event a subspecialist is laid off or demoted hereunder and such subspecialist has been functioning programically in such subspecialty in his employment with the HHC, he/she may elect reappointment to the first available position according to his/her seniority in such specialty (department) and/or subspecialty.

C. The foregoing provisions of this Article shall apply to all per-annum employees, irrespective of the work week to which they are assigned.

Section 7.6 of the Hospitals Corporation's Personnel Rules and Regulations, which is referred to in the aforesaid proposal, provides in part as follows:

Section 7.6 Abolition of Position, Reduction in Staff, Demotion and Preferred Lists

7:6:1 If budgetary restrictions, consolidations or abolition of functions or other curtailment of Activities result in the abolition of positions or reductions of rank or salary grade of positions, the suspension or demotion among the incumbents holding the same or similar position shall be made in inverse order of their original appointment to the Corporation on a permanent basis, subject to the provisions of Rule 8. The exception shall be those employees who, automatically and without break in service were transferred to the Corporation July 1, 1970 from employment with the City of New York under the Act, in which case the date of original appointment on a permanent basis shall be the date of original appointment on a permanent basis in the classified service of the City.

The date of original appointment shall be the first date of permanent appointment followed by continuous service on a permanent basis up to the time of the abolition or reduction of positions. For these purposes, continuous service shall include service in competitive, non-competitive, exempt, managerial or labor class titles.

An employee who had resigned and who was reinstated or reappointed in the classified service within one year thereafter shall for the purpose of this rule be deemed to have continuous service.

A period of employment on a temporary or provisional basis, or in the unclassified service, immediately preceded by permanent service in the classified service shall not constitute an interruption of continuous service for the purposes of this rule; nor shall a period of an authorized leave of absence without pay or any period during which an employee is suspended from his position pursuant to this rule constitute an interruption of continuous service for the purposes of this rule.

7:6:2 Layoff or demotion shall be made from among employees holding the same or similar positions in the Corporation except that the Senior Vice President may by-rule designate individual hospitals and other administrative units of the Corporation as separate units for layoff or demotion under this rule. In such case layoff or demotion shall be made from among incumbents holding the same or similar position in each such unit.

7:6:3 Employees in affected titles in the layoff unit shall be laid off or demoted in the following order: All employees in provisional status in the same or similar titles. Among them, layoff or demotion may be made in any order regardless of date of appointment or status as a blind employee, disabled veteran or veteran, thereafter.

All employees in probationary status in the same or similar titles. Among them, layoff shall be in inverse order to date of original appointment, except as modified in Section 7:6:4 with respect to blind employees, disabled veterans and veterans, thereafter.

All employees in permanent status in the same or similar titles. Among them, layoff shall be in inverse order to date of original appointment, except as modified in Section 7:6:4 with respect to blind employees, disabled veterans and veterans.

7:6:9 In the event of layoff or demotion for reasons listed in Section 7:6:1 the Appointing Officer shall furnish the Senior Vice President a statement showing the name, title or position, date of appointment and date of an reason for suspension or demotion of the affected employees. The names of such employees shall be placed on a preferred list by the Senior Vice President-together with others who have been suspended or demoted from this same or similar jurisdictional class of positions. He shall certify such list for filling vacancies in the same jurisdictional class; first, in the same or similar position; second, in any position in a lower grade in the line of promotion; and third, in any comparable position.

Such a preferred list shall be used for filling subsequent vacancies in any such position before any other list, including a promotion eligible list, is certified until the preferred list is exhausted. Persons on the list shall be called for reinstatement in the order of their original date of appointment and upon the occurrence of a vacancy in an appropriate position shall be certified in the following order: (1) persons suspended or demoted in the Corporation except that where a separate unit for suspension or demotion has been designated and the vacancy occurs therein the names of those suspended or demoted in such unit (2) all other persons on such list.

The eligibility for reinstatement of a person on such a preferred list shall not continue for a period longer than four years from the date of separation or demotion.

As noted above, the Council's proposal insofar as it relates to per session employees, is not before this Panel.

The City's final position is that it would agree to exert its "best efforts" to place a senior laid-off employee in any City or Hospitals Corporation vacancy, but it could not agree to any automatic application of seniority.

Discussion

The Council argues strenuously that senior doctors, who have rendered long professional service to the City and/or the Hospitals Corporation, often under difficult working conditions, are entitled to the maximum. job security that can be made available to them, i.e., that they be the longest retained and if laid off, the first recalled. The City and the Hospitals Corporation do not dispute that this is a desirable policy to the extent it can be implemented without injury to high quality medical care, but they see serious adverse implications for such care if any rigid seniority system were to be adopted.

Actually, the Council's last proposal moves a good distance toward satisfying at least some of the City and Corporation's concerns by taking into account not only approved specialties, but also subspecialties and and other essential capacities. These provisions appear reasonably to meet the needs described in detail by Dr. Martin Paris, the Hospitals Corporation's Vice President for Medical and Professional Affairs.

The most difficult question for resolution here is what would be the impact of the Council's proposal on teaching institutions, such as the Bellevue and Kings County Hospital Centers. Dr. Paris testified at length on this subject, as did Dr. Edmund 0. Rothschild, the Hospitals Corporation's Chief Medical Officer, Operations. Their testimony indicated that it would be unrealistic and unwise for the Hospitals Corporation to take a laid off doctor,, who had been practicing for many years in a community hospital or neighborhood family care center, and place him or her, even in that doctor's own specialty, in one of the academic departments of, for example, the Bellevue or Kings County Centers. Drs. Paris and Rothschild stressed that not only is the problem one of maintaining high quality care measured by up-to-date advances in academic medicine, but also that the academic reputation of such departments is a key factor in attracting the best qualified interns and residents.

The Chairman has no doubt that Drs. Paris and Rothschild make an important point which must be taken into account in framing recommendations here. To that end, the Chairman will recommend that the Council's proposal be accepted with the following proviso:

> Notwithstanding anything in this proposal, should a vacancy arise in a position which presently carries or requires an academic appointment, the Corporation will be obligated only to give first consideration to persons on the preferred list in the specialty involved, but in the event no person is recalled to fill such vacancy the persons on the preferred list shall retain their eligibility for other vacancies which do not so require or carry academic appointments.

> The eligibility for recall of a person on the preferred list shall not continue for a period longer than four years from the date of separation.

There is, of course, the possibility that the Corporation may wish to create new positions carrying or requiring an academic appointment. The foregoing recommendation by the Chairman does not cover that situation. However, the parties will soon commence negotiations for a successor contract to that here issue. The Chairman Will recommend that in such negotiations, to the extent appropriate, the parties address that question.

The Chairman will also recommend, by analogy to the present city-wide Contract and Civil Service Law, that the aforesaid preference lists have a maximum effective duration of four years.

Recommendations

The Impasse Panel recommends as follows:

1. That the parties accept the Council's final proposal with respect to Job Security, as set forth in this Report, with the following provisos:

> Notwithstanding anything in this proposal, should a vacancy arise in a position which presently carries or requires an academic appointment, the Corporation will be obligated only to give first consideration to persons on the preferred list in the specialty involved, but in the event no person is recalled to fill such vacancy the persons on the preferred list shall retain their eligibility for other vacancies which do not so require or carry academic appointments.
>
> The eligibility for recall of a person on the preferred list shall not continue for a period longer than four years from the date of separation.

2. That the parties in their forthcoming negotiations for a successor contract address, to the extent appropriate the question--not covered by the foregoing recommendation of the treatment for recall purposes of positions that the Corporation may in the future create carrying or requiring an academic appointment.

Dated: February 10, 1978

DANIEL G. COLLINS, CHAIRMAN

I f

1,