

LEEBA, 8 OCB2d 6 (BCB 2015)

(Impasse Appeal) (Docket Nos. BCB- 3001-12 & BCB-3002-12 (I-2-09))

Summary of Decision: A Board of Collective Bargaining decision which affirmed an Amended Report and Recommendation of an Impasse Panel was remanded by the Court (Hon. Joan Madden) to allow the parties to have input as to the term of the award. The Board reviewed the parties' submissions and concluded that the 53-month award, originally recommended by the Impasse Panel and affirmed by the Board, was the appropriate term for the Agreement between the parties. (*Official decision follows.*)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of the Impasse

-between-

**LAW ENFORCEMENT EMPLOYEES
BENEVOLENT ASSOCIATION,
*Petitioner,***

-and-

**THE CITY OF NEW YORK,
*Respondent.***

DECISION AND ORDER

This decision is issued pursuant to a remand by Supreme Court, New York County¹ ("Court") to allow the City of New York ("City") and the Law Enforcement Employees Benevolent Association ("LEEBA" or "Union") to have input as to the duration of an impasse arbitration award setting the terms of their collective bargaining agreement. The procedural history of this matter is set forth below.

¹ See *Matter of City v. Law Enforcement Empls. Benev. Assn.*, Index No. 154223/2012 (Sup. Ct. N.Y. Co. July 23, 2013) ("Decision"). After the issuance of the Court's decision, as discussed herein, this matter was held in abeyance at the parties' request.

In *Law Enforcement Employees Benevolent Association*, 5 OCB2d 18 (BCB 2012) (“*LEEBA 1*”) and *Law Enforcement Employees Benevolent Association*, 5 OCB2d 29 (BCB 2012) (“*LEEBA 2*”) the Board reviewed a Report and Recommendation (“Award”), and an Amended Report and Recommendation (“Amended Award”), issued by an Impasse Panel (“Panel”) regarding the terms and conditions of employment between LEEBA and the City. In *LEEBA 1*, this Board remanded the matter to the Panel to reconsider its conclusions without reference to the “Smith Report” which had not been part of the record.² In *LEEBA 2*, the Board affirmed the Panel’s Amended Award, which reached the same conclusions as it had in its first Report. The Panel explicitly noted that it had relied solely on the record evidence in rendering its Amended Award.

The Amended Award concluded that the appropriate term of the Agreement was from October 20, 2005 through March 31, 2010, that wage increases be granted to unit members consistent with the uniform pattern, and that contributions be made to the welfare fund during the term. Among other benefits, the Panel also awarded effective March 31, 2010, increases in uniform allowance and night shift differential, modification to the Injury on Duty leave policy, and establishment of a legal defense fund.

The Panel found, as argued by the Union, that the appropriate wage pattern applicable to the Union was the uniform pattern. It rejected, however, the Union’s contention that it be brought up to parity immediately with the wages and benefits received by the NYPD. As relevant to a determination herein, and as affirmed by the Court, the Panel, in its Amended Report dated June 30, 2012, stated:

² The Smith Report was prepared by a consultant hired by the City which reviewed the security of the City’s water and wastewater system.

Accordingly, this Panel finds, contrary to the City's position, that "there has been a change in circumstances to such degree and magnitude as to justify" the departure from the status quo placement of the EPOs in the civilian pattern of bargaining. (City's Post-Hearing Brief at 46) Instead, this Panel finds that the totality of the circumstances, discussed above, establish a sufficiently compelling basis to change the status quo.

These circumstances are unique to the EPOs and have no bearing on other bargaining units employed by the City. The changes detailed above that this unit has experienced over more than a decade are substantial. It would be somewhat circular in reasoning to assert that the fact that the EPOs have spent the last six of those years trying to correct their status would somehow preclude them from a correction at this point in time.

This Panel finds unequivocally that, given the EPOs' specifically delineated duties required to perform their mission, legal authority to enforce state laws, official deployments by the City, and actual day-to-day tasks and efforts that are known to the City, accepted by the City and have never been objected to by the City, the EPOs are absolutely police officers involved in law enforcement. They, therefore, are entitled to wages, benefits and terms and conditions of employment commensurate with other municipal uniformed services.

This Panel, therefore, finds that the EPOs as police officers should be awarded a uniformed services pattern of settlement and will recommend terms that will start the process toward the goal of bringing them closer to parity in pay and benefits with uniformed services employees.

Although this Panel has the authority to recommend wages and benefits to these employees to provide them with full pay and benefit parity with police officers, and finds that there are sufficient grounds under the NYCCBL standards for doing so, it nonetheless will refrain from doing so because of the extraordinary costs that the City would incur and in recognition of the fact that the current police officers pay and benefits did not occur overnight, but are a product of years of negotiations and impasse panel awards. This Panel does recommend, however, that the parties work together toward the goal of achieving relative parity in the future and that they take progressive steps toward that goal.

Amended Award at 19-20.

The Amended Award granted wage increases during its term as follows: effective October 20, 2005, a wage increase of 5%; effective April 1, 2006, an additional wage increase of 4%; effective April 1, 2007, an additional wage increase of 4%; effective April 1, 2008, an

additional wage increase of 4%; and effective April 1, 2009 and through March 31, 2010, an additional wage increase of 4%. The Amended Award also increased the uniform allowance and night differential, modified the Injury on Duty Leave provisions and permitted the establishment of a legal defense fund effective March 31, 2010. Increases to the Welfare fund were effective April 1, 2010.

The Panel noted that the difference between the civilian pattern and the uniform pattern over the five year award amounted to less than one percent each year, and concluded its Amended Award would have a negligible effect on the City budget. The Panel quoted the testimony of Mark Page, the City's former Director of the Office of Management and Budget (OMB), who, commenting on the impact of an award for a unit of only approximately 175 members, stated as follows:

Clearly with a group of employees as small as this one and a budget as large as the city's budget, the issue is not really for this group ... it's really a question of if this group is treated in a particular way, what sort of ramifications will that have in terms of the city's collective bargaining settlements with much larger portions of its workforce.

Amended Award at 20.

The Panel made a specific award concerning the term of the new agreement. The Panel stated:

The term of the Agreement shall run from October 20, 2005 through March 31, 2010. The first effective date marks the date at which LEEBA gained recognition as the Union representing EPOs. The end date is aimed at serving a dual purpose. First, to maintain the new agreements in the same time frame as the prior contracts (that is, renewing each April 1), which has administrative benefits while maintaining continuity of terms and conditions of employment; second, to foster sound labor relations, it makes eminent sense to bring the collective bargaining agreement for this unit of employees into the same time frame as their New York City municipal counterparts, all of who have agreements that expire in 2010. This Panel recognizes that it is too far past 2008 to recommend an agreement that would end in 2008 and trigger, almost immediately, another round of bargaining. This recommended time frame will bring greater efficiency to the labor relations processes between the parties.

Amended Award at 21-22.

The City subsequently petitioned, pursuant to Articles 75 and 78 of the Civil Practice Law and Rules (“CPLR”), to vacate both *LEEBA 1* and *LEEBA 2*.³ LEEBA filed a cross-petition seeking to modify *LEEBA 1*. The City argued in both petitions that it was denied due process by the award of the 53-month contract because it did not have notice that the Panel would consider a term longer than that proposed by the City and not objected to by LEEBA; the decision violated the NYCCBL because the Board’s powers are limited to matters in dispute, and there was no dispute about the length on the contract; there was no record evidence regarding a 53-month contract and the decision was based upon matters outside of the record; the Board did not have authority to remand the matter to the Panel; and the remand, even if such authority existed, was impermissibly tainted with error. (Decision at 12-13, summarizing the City’s position). In its cross-petition, LEEBA asserted in effect that the Impasse Panel and this Board failed to compare the “wages, hours, fringe benefits, conditions and characteristics of employment of its members with members of the NYPD, as required by the NYCCBL.” (Decision at 24)

In a decision dated July 23, 2013, the Honorable Joan A. Madden concluded that “there was certainly adequate evidence in the record to justify the Board’s affirmance of the determination of the Impasse Panel, and the reference to the Smith Report by the Impasse Panel did not sufficiently taint the integrity of the proceeding so as to warrant vacating the arbitration award.” (Decision at 21) The Court also rejected LEEBA’s contentions, concluding that there was no basis to disturb the Board’s affirmance of the terms of the Amended Award. It accepted, however, a portion of the City’s contention regarding the duration of the award. It stated that “[A]lthough this court agrees with the BCB that the duration of the contract was a matter that

³ The City filed two petitions. The first Petition sought to vacate the Report, and the second Petition sought to vacate the Amended Report.

was a proper subject of collective bargaining and in the purview of the Impasse Panel, the court is inclined to agree with the City that it was improper for the Impasse Panel to consider the duration of the contract without notifying the parties.” (Decision at 23) It summarized its conclusions as follows:

In summary, the one aspect of the arbitration award which cannot stand concerns the duration of the contract. However, a remand of the matter to the BCB for reconsideration of that issue based upon the appropriate input of the parties does not require the invalidation of all aspects of the award. Rather, the court affirms the award except to the extent of the determination of the duration of the contract and vacates the award to that extent.

(Decision at 25) No appeal has been taken from the Court’s decision.⁴

Pursuant to the remand, the Board by letter dated August 7, 2013, offered the parties the opportunity to have input on the issue of duration of the contract. The City submitted a letter stating that it proposed a 30-month term, and that it wished to submit testimony requiring a hearing. The Union stated that the term awarded by the Panel was acceptable. At a conference held in this matter on November 6, 2013, the City further specified that the additional evidence it wished to submit was testimony given on June 12, 2013 from Mayor Bloomberg, the Director of OMB, Michael Dardia, Deputy Director of OMB, and the Commissioner of Labor, given during the fact finding proceeding between it and the United Federation of Teachers in the most recent round of negotiations (“Transcript”). LEEBA’s position was that the City’s proposed submission evidence is irrelevant, and that the record is complete. As agreed by the parties, the City’s evidence was submitted in lieu of a hearing, and both parties submitted arguments in support of their respective positions.

⁴ The Court’s records, as posted on its electronic filing system, reflect the “unfiled judgment” as “entered” on July 29, 2013, but as officially “filed” as of October 7, 2013.

At the request of the parties and subsequent to the receipt of the additional evidence and argument, this matter was held in abeyance pending negotiations. The parties met and entered into a Memorandum of Economic Agreement (MOA) dated February 13, 2014, covering the period of October 20, 2005 through April 19, 2008. By letter dated November 7, 2014, LEEBA requested that the Board issue its decision pursuant to Judge Madden's remand since negotiations had not resolved the terms of the Amended Award from April 20, 2009 until March 31, 2010. Thereafter, the parties were advised that the MOA was accepted into evidence, that the Board was not considering a term longer than March 31, 2010, and they were offered the opportunity to submit additional arguments. Neither party objected to the MOA being admitted into evidence and no additional submissions were received.

EVIDENCE SUBMITTED PURSUANT TO THE REMAND⁵

The City offered evidence to demonstrate that it had tremendous fiscal and economic challenges to contend with in the aftermath of the economic crisis in 2008 and onwards.⁶ Also submitted were Agreements entered into by the City that, during this same period, it entered into 12 separate Agreements with Unions, most of which continued until 2010. The City's submission is discussed in more detail below.

The Mayor testified that the City was forced to take extraordinary measures in the aftermath of the recession which began in 2008. Those measures included the decision to eliminate funding for salary increases for the collective bargaining agreement between the City and the UFT. He testified that the City's finances were badly damaged between fiscal years 2008 and 2010. Economically sensitive tax collections, such as sales, business and income taxes,

⁵ The City's position set forth below reflects its argument and is not a finding by the Board.

⁶ The Board notes that the City submitted testimony representing only a portion of the testimony taken in the UFT proceeding and does not include the UFT's presentation.

decreased by 5 billion dollars, a drop of more than 18%. In response to the economic downturn, the City also raised taxes, and reduced expenses through the implementation of 12 consecutive programs to eliminate the gap (PEGS), in which City agencies cut expenses. The City also depleted 10 billion dollars of its surplus reserve, and spent billions of dollars originally intended to cover future retiree health benefits costs. A fair summary of the Mayor's testimony during the UFT proceeding, as it related to that collective bargaining dispute, is that any recommendation that included a monetary award of retroactivity would not be considered reasonable under the then current fiscal circumstances due to the fact that this would amount to a sum of over 3 billion dollars. (Transcript at 706-10, 714-6 and City Ex. 1)

He also testified that the City in 2008 honored its agreement in principle with certain smaller units by entering into agreements consistent with the existing wage pattern, thereby settling contracts with those units during this time period. In this regard, the City entered into several Memoranda of Agreement with a number of Unions that represent relatively smaller units. The record indicates that from September to November 2008, the City entered into 12 agreements with mostly smaller bargaining units with which the City has collective bargaining agreements.⁷ While the exact terms of the agreements differ, as relevant here, generally they provided 4% raises effective on different dates in both 2008 and 2009. (Transcript at 735, 739)

⁷ These documents were introduced into evidence during Labor Commissioner Hanley's testimony. We take note that the City also entered into an agreement with DC 37, the largest civilian union, on October 20, 2008 which conformed to the wage pattern. (*See* 6 below). The length of the agreements and wage increases agreed to by the City are as follows:

1) Local 237, September 13, 2008 through September 25, 2010; wages- 4% increase effective October 10, 2008, and 4% effective October 10, 2009;

2) United Probation Officers Association, December 15, 2007 through December 27, 2009; wages- 4% increase effective January 11, 2008, and 4% effective January 11, 2009;

The Deputy Director of OMB is responsible for economic and tax revenue forecasts, economic analysis, and oversight of NYC's housing and economic development policies. In general, he testified concerning the difficulties in forecasting revenues for the City. He testified that the City has a very complicated tax base, and that the City cannot easily predict the amount of revenue it will realize in the future. The City's approach is quantitative, using multiple sources of data and NYC-specific factors. The sources of revenue are volatile, and the actions of a small

3) Allied Buildings Inspectors Local 211, I.U.O.E., December 3, 2007 through December 15, 2009; wages- 4% increase effective December 3, 2007, and 4% effective December 3, 2008;

4) District Council 37/Locals 2507 and 3621, July 1, 2006 through September 5, 2010; wages 4% increase effective on each of the following dates: July 1, 2006, July 1, 2007, August 24, 2008, August 24, 2009;

5) Doctors Council, March 15, 2008 through March 27, 2010; wages increases – 4% increase effective on March 15, 2008, and 4% effective and March 15, 2009;

6) DC 37 Memorandum of Economic Agreement, 24 month term from the date of termination of the applicable existing separate unit agreement; wage increase 4% on the first day of the applicable Successor Separate Unit Agreement, and 4% on the first day of the thirteenth month of the applicable general Successor Separate Unit Agreement;

7) Local 300, February 23, 2009 through February 22, 2011; general wage increase of 4% effective March 22, 2009, and 4% effective March 22, 2010;

8) Local 246, August 7, 2008 to August 6, 2010; wage increase – 4% effective August 7, 2008 and, 4% effective August 7, 2009;

9) CWA Local 1180, October 6, 2008 through October 5, 2010; general wage increase of 4% effective October 6, 2008, and 4% effective October 6, 2009;

10) OSA, August 25, 2008 through August 24, 2010; general wage increase of 4% effective August 25, 2008, and 4% effective August 25, 2009;

11) MEBA, November 7, 2008 to November 6, 2010; wage increase of 4% effective November 7, 2008, and 4% effective November 7, 2009;

12) Fire Alarm Dispatchers Benevolent Association, September 13, 2006 through May 14, 2010, general wage increases as follows - 2% effective October 13, 2006, 4% effective April 13, 2007, 4% effective May 15, 2008, and 4% effective May 15, 2008.

number of taxpayers can have disproportionate effects on tax revenue. Thus, even though the City uses several forecasting packages, the information it relies upon may require revision at a later date. (Transcript at 746, and City Ex. 3 and 4)

The Deputy Director testified that the City is required to have a balanced budget each year based upon Generally Accepted Accounting Principles (GAAP) and is required to have and maintain a 4-year financial plan. Under GAAP, the budget must be balanced at the end of the year based on actual expenses and revenue. According to his testimony, expenses such as retroactive wage increases must be paid for in the year they are agreed to and not when paid.⁸

He further explained that since fiscal year 2009, the City has used prior year surplus funds to maintain a balanced budget and to avoid making further tax increases or spending cuts. Further, in order to maintain a balanced budget since 2008, the City began to withdraw funds from the retiree health benefits trust. He further asserted that the City faces multi-billion dollar budget gaps in upcoming years. For example, at the time he testified, the City was facing a budget gap of \$2.2 billion in fiscal year 2015. (Transcript at 789, 794, 805, and City Ex. 5)

POSITIONS OF THE PARTIES

The City

The City proposes a 30-month award, covering the period October 20, 2005 through April 19, 2008, with no fourth and fifth years of the contract and no general wage increase for those years. The other benefits recommended by the Panel should be rejected. According to the

⁸ The OMB Director further testified that the City had budgeted for a 4% wage increase for the UFT, for example, but due to the City's financial condition and the condition of the general economy, the money was taken out of the budget.

City, the testimony and evidence it submitted demonstrates the City's current financial condition, the tremendous fiscal and economic challenges that it had to contend with in 2008 and thereafter, and the relationship between the City's response to those challenges and its labor policy for the years in question and for retroactive settlements generally. Specifically, in response to current economic conditions, the City eliminated the monies budgeted for labor costs for all remaining unsettled contracts for the 2008-10 round of bargaining. This assisted in allowing the City, as required by law, to balance its budget. It urges that the Panel's failure to notify the parties that it may award a duration including the 2008-10 round of bargaining resulted in an award fundamentally at odds with the City's labor policy.

The Union

The Union proposes no change in the duration of the award as made by the Panel, and asserts that the City's evidence is irrelevant to duration, and that the Board should therefore award the 53-month durational term.

DISCUSSION

Having reviewed the parties' submissions and arguments, the Board concludes that the 53-month contract term set forth in the Amended Award is consistent with the criteria set forth in the NYCCBL and is appropriate here.

As stated in the Amended Award, the Union and City had been without an Agreement since October 20, 2005, the date that the Union was certified as the collective bargaining representative.⁹ Prior to entering into the MOA, the parties were involved in several proceedings before this Board. These proceedings resulted in decisions issued by the Board to determine

⁹ Given that this is the date that the Union acquired the status as collective bargaining representative, it is the appropriate date upon which the Agreement should commence.

issues such as which demands could be properly submitted to the Impasse Panel that arose during the course of negotiations.¹⁰ Both the Union and the City then participated in hearings before the Panel itself spanning the period of October 20, 2010 until May 12, 2011. Thereafter, as stated above, this Board issued two separate decisions reviewing awards issued by the Panel. This procedural history demonstrates a long and protracted struggle between the parties in an attempt to arrive at a collective bargaining agreement. During this same period of time, the City engaged in two separate rounds of bargaining with the various unions representing both small and large units of employees.

Despite this lengthy and contentious negotiating history, in early 2014, the parties mutually agreed upon terms of a three year MOA commencing on October 20, 2005. However, based on their inability to reach terms effective after April 19, 2008, the Union requested that the Board rule on the issue remanded by the Court, specifically the duration of the Amended Award. We do not find, and the parties do not contend, that the propriety of the length of the Amended Award is affected by the parties' recent MOA. Accordingly, we direct our attention to the term of the Amended Award, and the evidence submitted and arguments raised by the City.

We find that an Agreement of 53-months, ending on March 31, 2010, is one of appropriate length and is the appropriate date for the contract to expire. As indicated by the term of the agreements submitted into evidence subsequent to the remand, the City entered into 12 separate agreements with Unions during the period of September to November 2008, all of which extended to 2010. Like the bargaining unit in this matter, these were mostly smaller units consisting of a limited number of employees. At the time the City entered into these other agreements the impending financial crisis had arrived and its impact could be predicted to

¹⁰ *LEEBA*, 79 OCB 18 (2007); *LEEBA*, 2 OCB2d 29 (BCB 2009); *LEEBA*, 2 OCB2d 43 (BCB 2009); *LEEBA*, 3 OCB2d 29 (2010).

continue. Notwithstanding this financial predicament, the City entered into these collective bargaining agreements and completed that round of bargaining with all those unions. The City's relationship with this Union should also be afforded the same level of stability and consistency by allowing this Union to enjoy the same terms and conditions of employment as those obtained by smaller units in that round of bargaining.

Further, March 31, 2010 is an appropriate date upon which the Agreement should expire since it is roughly consistent with the ending dates of the other contracts entered into by the City, and puts the parties' contractual relationship on the same footing as the other smaller units with which the City voluntarily entered into agreements generally covering this same period of time. In this regard, we believe that the purposes of maintaining labor harmony and stable labor relations are best served by applying the established bargaining patterns applicable during the period of October 2005 until March 31, 2010, a period of 53 months, to this bargaining unit. This enables the parties to enter into further agreements which are contemporaneous with agreements that other unions entered into with the City. Consistent with the Panel's Amended Award, we find that the 53 month duration avoids the potential for further labor strife in attempts to reach an Agreement covering a period of time which has already expired. Enabling the parties to avoid the possibility of further retrospective bargaining, impasse proceedings, and litigation creates a more productive labor relationship and leads to a more efficient use of resources for all involved.

Further, we do not find that the City's arguments in support of a 30-month term without the additional benefits awarded at the end of the term to be persuasive. The additional evidence submitted by the City demonstrates that for similarly sized units, the City entered into Agreements which generally correspond to the time frame sought by the Union in this matter.

Some of the Agreements extend beyond March 31, 2010 and some are shorter by a number of months. As indicated in the hearing before the Panel, the amount of the wages awarded to this Union would not have a significant effect on the City's financial condition. The concern noted, however, was the potential ramifications which such an award may have on other units. As the record now indicates, and in light of the fact that the other aspects of the Amended Award were affirmed by the Court, a 53-month duration will not have a significant impact since the City has already entered into agreements with the other similar units for the time period in issue.¹¹ While we are mindful of the seriousness of the City's financial condition in 2008 through 2010, as demonstrated in its submissions and of its expressed change in labor policy, the City voluntarily entered into pattern-conforming agreements while fully aware of its financial condition. We accordingly discern no reason why this Union should be treated differently for this applicable time period.

We disagree with the City's concurring opinion in which it maintains that the Board must direct the parties to bargain concerning the configuration of the wage increases and other benefits for the remaining 23 months of the Amended Award. As stated earlier, the Court's decision, from which no appeal was taken, affirmed all the terms of the Amended Award and only remanded to the Board the narrow issue of duration the award. Therefore, this Board is without authority to order further bargaining on terms set forth in the duration of the Amended Award.

Therefore, we find that the term of the Agreement between the City and LEEBA should be for the period of October 20, 2005 through March 31, 2010.

¹¹ In its decision, the Court affirmed the determination that the uniform pattern was appropriately applied to this unit. The OMB Director's concern in this regard has therefore has been addressed and disposed of by the Court's opinion.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, and the remand to allow the parties input as to the term of their Agreement, and having reviewed such evidence, it is hereby

ORDERED, that the term of the Agreement between the parties run from October 20, 2005 through March 31, 2010; and it is further

ORDERED, that the Amended Report and Recommendation of the Impasse Panel a copy of which is attached hereto and made a part hereof, as consistent with this decision, be and the same hereby is, affirmed.

Dated: February 2, 2015
New York, New York

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

I concur. See attached.

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER B. PEPPER
MEMBER

Concurring Opinion of Pamela Silverblatt

To the extent that the majority holds that 53 months would have been an appropriate contract term following the issuance of the Amended Award, I concur. As evidenced by the February 13, 2014 Memorandum of Agreement, however, the parties voluntarily agreed on economic and non-economic terms encompassing what would have been the first 30 months -- the majority -- of the 53 month contract. By its terms, the MOA advanced the dates of the uniform allowance, the night shift differential and the welfare fund increases from the dates in the Amended Award. Given the extent to which the MOA has modified the terms of the Amended Award, I believe the sole issue the Board can decide is the length of the contract. The Board cannot leave the parties with the implication that any of the original terms (*e.g.*, wage increases) of the Amended Award are still controlling. In negotiating a voluntary settlement that *de facto* modified the original Amended Award, the parties cannot now put the genie back in the bottle. Neither the parties nor the Board can now pick and choose individual elements to enforce from a binding award away from which the parties voluntarily negotiated. Consistent with the parties' handling of the first 30 months, they must now be directed to negotiate on the economic and non-economic configuration for the remaining 23 months. To bind them to the terms of a 53 month Award which, as written, is no longer relevant does not serve the bargaining process.

To the extent the majority believes that a 4% wage increase effective 4/1/08 and an additional 4% wage increase effective 4/1/09, as reflected in the Amended Award, are appropriate premised on the parties having been without a contract since 10/20/05 and several smaller units having settled on a similar configuration between September and November 2008, it should be noted that the former condition no longer exists and the latter condition is countervailed by events occurring in the last year. In the past year, the period during which the parties bargained the

MOA and agreed to commence bargaining subsequent to the MOA, the City reached settlements with units covering more than 150,000 employees for the same round of bargaining at issue here on a very different application of the two 4% wage increases.

Despite the existence of the binding Amended Award the parties decided to negotiate a contract that encompasses the first 30 months of the term of the Award. Therefore, it is only reasonable that they should return to the bargaining table to bargain a contract covering the remaining 23 months of the Award. The parties in the MOA committed themselves to the bargaining process (see MOA paragraph 9); they should be held to exhaust that process. For the foregoing reasons, I would urge that sound labor relations between the City and the municipal unions is best served by awarding these parties a contract term of the remaining 23 months and directing that they bargain on the configuration of the wage increases and other benefits to be contained within the 23 month term.

Dated: February 2, 2015
New York, New York

PAMELA S. SILVERBLATT
MEMBER