

**CITY OF NEW YORK
OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
Case No. I-3-09**

In the Matter of the Impasse Proceeding

- between -

Communication Workers of America, Local 1180
Petitioner,

- and -

City of New York, Mayor's Office of Labor Relations
Respondent,

**IMPASSE PANEL
REPORT
AND
RECOMMENDATION**

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COLLECTIVE BARGAINING
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BEFORE: Alan R. Viani, Impasse Panel

APPEARANCES:

For the Communication Workers of America:
Mirkin and Gordon, P.C.

By: Joel Spivak, Esq., Of Counsel

Also Present: Arthur Cheliotis, President, Local 1180

For The City of New York:

Mayor's Office of Labor Relation, Mayra Bell Esq., General Counsel

By: Victor Levy, Esq., Deputy General Counsel

DATES OF HEARING:

September 27, 2010, October 1, 2010

On January 21, 2010, the undersigned was duly designated by the New York City Office of Collective Bargaining pursuant to the Rules of the New York City Collective Bargaining Law (hereinafter "NYCCBL") to serve as Impartial Chairman of an Impasse Panel to hear and decide terms and conditions of employment for the position of Administrative Job Opportunity Specialist, Levels I and II employed by the City of New York, Human Resources Administration

(hereinafter “City”) who are represented by Local 1180, Communication Workers of America (hereinafter “Union”).

In accordance with the Rules of the New York City Office of Collective Bargaining, the instant proceeding was conducted to resolve a collective bargaining impasse between the City and the Union concerning the establishment of minimum and maximum salary rates for Administrative Job Opportunity Specialists, Levels I and II and the dates that these minimum and maximum salaries should be effective. .

Hearings in this matter were held on September 27, 2010 and October 1, 2010 at the offices of the Office of Collective Bargaining, New York, NY. The parties had a full opportunity to examine and cross-examine witnesses, to submit documentation and make written argument in support of their respective positions. In the course of the hearing, the parties submitted 12 Joint Exhibit, 10 City Exhibits, and One Union Exhibit.

The parties elected to submit written pre-hearing briefs and written post-hearing argument, which were received on January 9, 2011 and, therefore, the record in this matter was closed on January 9, 2011.

The parties are advised that all matters of record, while not necessarily cited or referred to herein, have been considered in the formulation of this Report and Recommendation.

STANDARDS OF REVIEW REQUIRED BY LAW

The NYCCBL requires that in determining terms and conditions of employment an Impasse Panel shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

- (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York City or comparable communities;

- (ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;
- (iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;
- (iv) the interest and welfare of the public;
- (v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

BACKGROUND

The classification of Administrative Job Opportunity Specialist, Levels I and II was created on January 15, 2001 by amendment to the Classified Service of the City of New York by the City's Department of Citywide Administrative Services (Joint Exhibit D).¹

The genesis of these classifications (job titles) arose from a change in national policy under which an emphasis was placed on work requirements for public assistance recipients as a condition of receiving financial assistance. In exploring the history of the creation of these titles, the Office of Collective Bargaining (in its Decision No. 4-2005) (Joint Exhibit J) wrote a description of the history of these classifications as follows:²

“Until about 1998, HRA [New York City Human Resources Administration] administered government assistance programs through the Income Support Program ("IS Program"), which provided welfare [financial assistance] and food stamps at Income Support Centers ("IS Centers") throughout the City. Each IS Center contained approximately 100-150 employees. Employees in the title Eligibility Specialist Level III ("ES III") established initial eligibility for public assistance or verified continuing eligibility for welfare recipients. Principal

¹ On the same date the Department of Citywide Administrative Services also created the classifications of Job Opportunity Specialist and Associate Job Opportunity Specialist.

² Edited for brevity and clarity.

Administrative Associates Levels I, II, and III ("PAAs"), supervised groups of ES IIIs. An Administrative Manager Level I, or Deputy Director, supervised PAAs and was responsible for the daily running of the IS Center. An Administrative Manager Level II, or Center Director, was charged with the overall operation of the IS Center.

The Office of Employment Services ("OES"), another HRA program, assigned public assistance recipients to the Work Experience Program ("WEP") for job training and educational programs such as English as a second language classes and GED programs. OES was comprised of Begin Employment, Gain Independence Now offices ("BEGIN offices"), which dealt with employment issues for families receiving public assistance, and a Home Relief central office, that dealt with single adults who did not have families. The OES offices were staffed by Caseworkers ("CWs") who evaluated public assistance clients for employment capability and referred them to training or work programs. The CWs were supervised by Supervisors. Site Managers had overall responsibility for the OES offices.

In the 1990s, new federal welfare laws imposed a time limitation on welfare benefits and mandated certain work requirements as a condition for receiving benefits. In order to implement those changes, HRA decided to merge the IS Program and OES into one operation called the Family Independence Administration ("FIA"). FIA's primary goal is to assist public assistance recipients in gaining independence by helping them get paid work. FIA is comprised of Job Centers, each of which has approximately 100-150 employees. Initially, the ES IIIs and PAAs handled all eligibility issues in the Job Centers, and the CWs and Supervisors handled work and employment for applicants and recipients.

In early 2001, HRA created several new titles to work exclusively in the Job Centers handling both eligibility and employment issues for public assistance applicants and recipients. The ES IIIs and the CWs were given the choice of remaining in their title or of converting to the new title of Job Opportunity Specialist; employees from the PAA title and from the Supervisor title could convert to the new title Associate Job Opportunity Specialist ("AJOS"). The Deputy

Directors and Job Center Directors, many of whom were Administrative Managers, could choose to convert to the new title Administrative Job Opportunity Specialist Levels I and II, respectively.

As of April 2002, FIA had approximately 30 Job Centers, including Specialty Centers, in seven regions: Bronx, Brooklyn, Staten Island, Manhattan, Queens, Special Needs, and Housing & Homeless Services.

The Job Center Director is ultimately responsible for the Job Center, and is assisted by the Deputy Director who shares most of the Director's duties and undertakes them in the Director's absence. The Job Center Director reports to a Deputy Regional Manager or Regional Manager. The Regional Managers report to Assistant Deputy Commissioners, who in turn report to the Deputy Commissioner. The Deputy Commissioner reports to the Executive Deputy Commissioner who oversees all the Job Centers and the entire FIA Field Operations.

The general job description for Administrative Job Opportunity Specialist provides, in relevant part:

All personnel perform work managing the provision of temporary financial assistance and employment/work related services to persons in need, to promote individual and family self-sufficiency, in accordance with agency policies/procedures and federal/state regulations. Develops policies designed to aid program participants in reaching self-sufficiency and emphasizes Work First employment philosophy and programs; designs tracking and monitoring devices to ensure that all participants are moving towards self-sufficiency efficiently/effectively by utilizing employment and other related services....”

The Deputy Directors are in charge of the daily operations of the Job Center. In the Director's absence, they act as Directors. Among their duties, Deputy Directors assign or temporarily transfer employees within the center in conjunction with the Director; assess workflow; hold meetings with staff regarding performance; and initiate disciplinary proceedings in consultation with the Director. Deputy Directors oversee all the employment functions at the Job Center and the income support process. They supervise Associate Job Opportunity Specialists Level II who, in turn, oversee three or four Job Opportunity Specialists for a total of

25-30 employees. They act as liaison to HRA's central office on employment issues. On a daily basis, they field questions from employees managing cases.

Job Center Directors ultimately are responsible for the overall performance of the Job Center, and implement policy goals and procedures provided by the central office. Directors are responsible for dealing with community boards, elected officials and advocacy groups in their vicinity, and interacting with administrative bodies within HRA. They recommend employees for promotion and initiate disciplinary proceedings after consulting with the Office of Legal Affairs and the Personnel Office. They are the primary contact for information needed to respond to Step I grievances filed by employees in the Center. They attend labor-management meetings at HRA's central office. The Directors ordinarily attend managers' meetings with the Regional Managers, Assistant Deputy Commissioners, and the Executive Deputy Commissioner. At these meetings, they address what is expected of the Directors, security at the Job Centers, and issues affecting public assistance recipients.

On May 18, 2001, Local 1180 of the Communication Workers of America filed a petition with the NYC Office of Collective Bargaining ("OCB") to represent employees of these newly created classifications. The Union's petition was contested by the City on grounds that because of increased responsibilities, employees in these classifications should be considered managerial and/or confidential within the definitions of the law established by the OCB's Board of Certification and, therefore, ineligible for Union representation and collective bargaining rights.

Notwithstanding the City's position, on July 28, 2005, the Board of Certification of the OCB found most of the employees in these titles eligible for collective bargaining and Union representation (Joint Exhibit J). In its decision, the Board of Certification opined:

We find that employees in the title Admin. JOS Levels I and II, with certain exceptions, are not managerial and/or confidential employees because they are not significantly involved in policy-making and do not engage in budget formulation, labor relations, or collective bargaining on behalf of HRA. Further, they do not assist or act in a confidential capacity to managerial employees responsible for

labor relations or personnel functions. Therefore, employees in the title Admin. JOS Levels I and II who hold the positions Job Center Director, Deputy Director and Executive Assistant to a Regional Manager, are eligible for collective bargaining.

As part of its order, the Board of Certification amended the Union's Certification 41-73 and determined that employees in these titles should be "subject to existing contracts, if any."

Thereafter, the City and the Union entered into collective bargaining and arrived at an agreement for the period September 6, 2006 through October 5, 2008 which provided for wage increases, and other economic benefits, as well as non-economic terms and conditions of employment (Joint Exhibit C). However, the parties were unable arrive at agreement as to the appropriate minimum and maximum salaries for these titles and, instead, deferred a decision on this matter (TBD "To Be Decided").

The parties next negotiated a successor agreement to the 2006-2008 agreement for the period October 6, 2008 through October 5, 2010. Again, the parties agreed on wage increase and other economic terms and conditions of employment for these titles and, again, were unable to reach agreement on appropriate minimum and maximum salary rates for these positions (Joint Exhibit B). The agreement provided that the minimum and maximum rates for these titles were to be decided.

In the 2006 -2008 agreement, wage increases were provided on October 6, 2006 and April 6, 2007. In the 2008-2010 agreement, wage increases were provided on October 6, 2008, October 6, 2009.

Unable to reach agreement on the effective dates and amounts of any adjustment in minimum and maximum salary rates, on September 10, 2009 the Union initiated its request for the appointment of an Impasse Panel (Joint Exhibit A).

POSITION OF THE PARTIES³

The Union

The issue before the panel is the minimum/maximum salaries in the Civil Service title, Administrative Job Opportunity Specialist (“Administrative JOS”) Levels I and II employed by the New York City Human Resources Administration. These titles essentially comprise Directors and Deputy Directors of Job Centers which administer social welfare programs and employment services to eligible individuals and families.

The Administrative Job Opportunity Specialist title was created by combining the job duties of Administrative Managers and Administrative Directors of Social Services. This new classification became necessary when the job functions of income support and employment services were merged. Consequently, employees filling the new position required additional training that entailed higher job qualifications, greater autonomy, more presence in the community and working in the neighborhood to resolve issues according to Seth Diamond, Executive Deputy Commissioner for the Family Independence Administration, Human Resources Administration and Jacqueline Flaum, Assistant Deputy Commissioner (See CWA Local 1180, OCB Decision No. 4-2005, hearing on managerial/confidential status).

The Administrative JOS is in a direct line of promotion from the Associate JOS and JOS titles, which leads directly to the compensation issue, since the Associate JOS title has three assignment levels, with corresponding salary ranges. Currently the salary range of the Associate JOS overlaps that of the Admin. JOS, especially at Level III, to the extent that serious salary compression exists and the differences between supervisory and subordinate salaries do not adequately reflect a proper relationship Administrative JOS’s and subordinate titles.

There are approximately 25 Job Centers, including Specialty Centers, in seven regions: Bronx, Brooklyn, Staten Island, Manhattan, Queens, Special Needs and Housing & Homeless

³ Excerpted from the parties’ post-hearing briefs and edited for brevity, continuity, and attribution.

Services. FIA has about 56 employees who were Administrative JOS Levels I and II in the following positions: 42 Admin. JOSS Level I in the position Deputy Director, 24 Admin. JOS serving as Director. There are approximately 14 additional Admin. JOS Level I and II serving in other functioning titles.

The Job Center Director is ultimately responsible for the Job Center, and is assisted by the Deputy Director who shares most of the Director's duties and undertakes them in the Director's absence. The Job Center Director reports to a Deputy Regional Manager or Regional Manager. The Regional Managers report to Assistant Deputy Commissioners, who in turn report to the Deputy Commissioner.

The Deputy Director is in charge of the daily operations of the Job Center. In the Director's absence, they act as Director. Among other duties, a Deputy Director can assign or temporarily transfer employees within the center in conjunction with the Director; assess work flow; hold meetings with staff regarding performance; and initiate disciplinary proceedings in consultation with the Director.

Deputy Directors oversee all the employment functions at the Job Center and the income support process. They supervise Administrative Job Opportunity Specialist Level II who, in turn, oversee three or four groups for a total of 25-30 employees and acts as a liaison to HRA's central office on employment issues. On a daily basis, they field questions from employees managing cases.

They handle employment related complaints from sources outside the Job Center such as Legal Aid. They also address problems and complaints concerning private employment vendors used by HRA. As the overall supervisor of employees who provide day-care assistance for public assistance recipients, they deal with problems such as payments to day-care providers.

The Union argues that it is fundamental that (a) the current minimum of Admin. JOS salary artificially is depressed; and (b) the new minimum wage must reflect their increased work

and responsibility above the base established for them as Administrative Manager and substantially be higher than the AJOS they supervise.

The Union maintains that the minimum salary rates for Administrative JOS are artificially suppressed. It points out that the Pay Plan for Management Employees sets forth the minimum salary for Managers, although many were paid greater than the minimum based upon their experience and prior salary history, as a recruitment tool. Over the years, while the City raised maximum salaries in the Management Pay Plan, it left the minimum salaries unadjusted. This resulted in pay ranges which did not reflect the developing duties and responsibilities assigned to Administrative Managers.

In this case, most Administrative JOS were Administrative Managers. Thus, by arguing that the minimums should be based upon the Pay Plan minimum for Managers, the City is basing that argument on the suppressed minimum and not the true minimum salaries. In addition, from 2000 - 2005, initial new hires for the Administrative JOS title were hired at rates higher than the Management Pay Plan (Tr. 81-82, U.Ex. 1). However, after the Administrative JOS title was certified to Local 1180 for collective bargaining on May 10, 2005, new incumbents to that title were hired at salaries lower than the 2000-2005 new hires (U. Ex. 1). Compounding this injustice, there is no dispute that since 2000, no salary adjustments were made to the salaries of the newly appointed Administrative JOS (mostly Administrative Managers) despite their considerable additional work of managing and supervising both the income support function and employment services. Accordingly, because of all the foregoing, the minimum hire rates upon which the City purposes to calculate the increases artificially is low (Tr. 85-87).

The Union notes that the Union which represents subordinate categories of JOS has entered into an Impasse Agreement under which the following minimum salary adjustments were made for individuals appointed from former Principal Administrative Associate positions to the immediately subordinate title to Administrative JOS.

The following chart reflects these increases:

<u>Associate Job Opportunity Specialist</u>	<u>Hire</u>	<u>Minimum</u>	<u>Maximum</u>
Level I	\$40,435	\$46,500	\$63,989
Increase from prior PAA title	13%	14%	24%
Level II	\$47,391	\$54,500	\$71,120
Increase from prior PAA title	22%	22%	27%
Level III	\$52,229	\$60,063	\$76,773
Increase from prior PAA title	22.84%	22.84%	18.15%

The new salary rates for the Associate JOS title as set by the Impasse Agreement are 12.10% above the wage pattern increases for the predecessor titles. For example, where the PAA Level III minimum salary was \$48,896, the Associate JOS Level III minimum was set at \$60,063 for a difference of \$11,167 or 22.84%. Considering the 10.74% in salary increases for the PAA title from July 1, 2005, through April 6, 2007, leaves at 12.10% difference.

In addition to the foregoing, the minimum rate for the new title must take into consideration the integration of the duties of titles of Administrative Manager and Administrative Director of Social Services, the higher educational requirements and compounded responsibilities of the Administrative JOS title required by the integration of financial and employment functions. In addition, the Arbitrator must consider the substantial minimum wage precedent established in the City's Impasse Agreement with Local 371 for the subordinate titles Associate JOS Levels I, II, and III.

Considering salaries of current incumbents, CWA Local 1180 proposes applying this 12.10% to the current minimum based on the mode (the minimum salary most frequently paid for the title prior to certification to Local 1180) and median (the sum of all salaries prior to certification to Local 1180 divided by the number of employees) salaries for the Administrative JOS Level I and II salaries to establish a fair and equitable salary structure as follows (Tr. 87-92, 98-102):

Administrative Job Opportunity Specialist	Min Rate	Current	Proposed
	Level I	62,466	71,863
	Level II	73,312	84,309

Local 1180's proposed minimum salary rate increase is based upon the true current minimums and constitutes a fair and equitable minimum salary for Administrative JOS. The new minimums would be based upon the level of responsibility and difficulty of the Administrative JOS title. It also would take into account a salary relationship and differential that must exist between Administrative JOS and their Associate JOS subordinates, the additional qualifications and educational requirements of Administrative JOS, and their autonomy and work in community. It also would provide the required morale and motivation to advance to the Administrative JOS title.

The City

The City argues that it is critical to understand the sharply defined parameters of what this case is and is not about. The instant impasse hearing should not be a forum for providing all members of the bargaining unit with across-the-board wage increases. Despite the Union's contentions, the appropriateness of the compensation package received by Administrative Job Opportunity Specialists (hereinafter "Administrative JOS") is not at issue in this case. While there is no dispute that these employees perform important and valued work, wage increases according to the civilian pattern have been mutually agreed-upon through several rounds of contract negotiations. The only issue in the instant case is the appropriate minimum and maximum salary for the job title. The City submits that its proposed minimum and maximum salary is a fair and equitable proposal considering the salaries of other titles and the substance of the work performed.

Based on the testimony adduced at hearing, it is crystal clear that the primary functions of bargaining unit employees, Job Center Director and Job Center Deputy Director, have remained essentially the same since Job Centers were created in the Human Resources Administration in the late 1990s and certainly have not changed since unionization in 2005.

The first Job Centers were opened in the spring of 1998 (T 168-169). Job Centers were created to handle eligibility and employment functions in a single facility; the initial Job Centers were all located at the physical facilities which were formerly known as Income Support Centers (T 162). In 1998, Angela Johnson was assigned as a Job Center Deputy Director; her civil service title was Administrative Manager, Level M-1 (T 185). Beginning in 1998, Job Centers included both eligibility and employment staff and the Director and Deputy Director were responsible for supervising both eligibility and employment (T 187). Consistent with this principle, James Fields testified that as an Administrative Manager in 1999, he was overseeing employees who were performing both eligibility and employment work (T 50-51).

In 2001, the JOS title series was created, which meant that a single employee now performed both eligibility and employment functions. The lower-level employees who were moving into the JOS series had a far bigger adjustment with the title change, because they actually had to perform new functions, while the managers continued to supervise employment and eligibility as they had since 1998 (T 189). For that reason, the basic job of a Job Center Director and Deputy Director is essentially the same as it was in 1998 (T 167-168; 189). The creation of the JOS title series in 2001 and the certification of the Administrative JOS title in 2005 did not come with any change in the basic duties of Job Center Directors and Deputy Directors (T 182- 183).

The City submits that adoption of the Union's vastly inflated minimum salary proposal would provide bargaining unit employees with a substantial additional raise over and above the pattern. Indeed, an adjustment of the minimum salary according to the union proposal would result in 69 out of 71 bargaining unit members "going for a ride" and receiving an immediate

wage increase (See City Exhibit 10). On the other hand, the City's generous but reasonable offer would result in 48 out of 71 bargaining unit members receiving an immediate wage increase. *Id.* Despite the Union's best efforts, this impasse proceeding is not a case about wage increases; this is a case about finding an equitable minimum/maximum salary for this job title. It is essentially undisputed that Job Center Directors and Deputy Directors have overseen both eligibility and employment functions since the late 1990's when Job Centers were created; Union and City witnesses agreed on this point (T 50-51; 162-163; 182; 187). With this unrebutted evidence in the record, there must be no weight given to the Union's request for a wage increase for its members based upon its alleged "higher educational requirements and compounded responsibilities of the Administrative JOS title required by the integration of financial and employment functions." See CWA's Pre-Hearing Brief, at 7. In truth, any such integration occurred in 1998 and 1999; to the extent that a compensation adjustment was appropriate, it would have been done at that time, while the employees were managers. Any addition or change in duties subsequent to the creation of the title would be the subject of general wage bargaining between the parties and not bargaining on a minimum/maximum salary.

Throughout the City, the simple act of unionization has never resulted in an adjustment of any job title's minimum and maximum salary. Similarly, in the instant case, the simple act of unionization must not serve as a basis for a radical shift in the salary scale for this title. In the instant case, the City has offered a reasonable adjustment of the minimum and maximum salary for the sole purpose of avoiding compression with the salary of Associate Job Opportunity Specialists. Under the City's offer, the Administrative JOS Level I salary would be 6.7% higher than the minimum salary of Associate JOS, Level III, and the salary for Administrative JOS, Level II would be 7.8% higher than the minimum salary for Administrative JOS Level I (See City Exhibit 8). In response, the Union has essentially requested what amounts to an additional general wage increase for all unit members, which would constitute an increase in the minimum

salary for Administrative JOS Level I of 44% from the previous minimum salary, and an increase in the minimum salary for Administrative JOS Level II of 21% (See City Exhibit 5).

Finally, as discussed above, the only factor which justifies any change at all in minimum salary is the employer's need to avoid compression with the Associate JOS salary and the employer's need to incentivize employees to accept a promotion to Administrative JOS. Neither of these factors impute any sort of retroactive payment. Yet, the Union is requesting full retroactivity going back to the date the title was certified (July 28, 2005). Any retroactive adjustment of the minimum salary would create an unjustified windfall for employees, who have been in the job title since that time, particularly employees who have since left the title. It must be noted that the Union's minimum salary offer for Administrative JOS, Level I is 44.3% above the actual minimum salary in place at the time, and the Union's offer for Administrative JOS, Level II is 21.2% higher than the actual minimum salary in place at the time (See City Exhibit 5). As a result, any retroactive adjustment would potentially cause the employer to vastly adjust employees' salaries without plausible explanation, at a time when the City undergoing great fiscal and budgetary hardship. Therefore, any Impasse Award should establish the minimum and maximum salary as of the date of the Award, and deny the Union's misguided request for retroactive adjustment.

Additionally, the Union is alleging that under a so called "JOS pattern," Administrative JOS's are entitled to a 15% increase in their minimum incumbent salary and that increase should be applied to the "mode" salary — the salary the union claims is received by most Administrative JOS's (T 147); Union Exhibit 1. The Union's artificially calculated "JOS pattern" is 12.1 percent, and the Union argues that, given the higher level duties of the Administrative JOS's, they are entitled to an additional 3 percent above the "JOS pattern" (Tr, 147). The undisputed record at the hearing clearly established (1) that there is no such thing as a "JOS pattern" that is applicable to the Administrative JOS title; (2) the Union's methodology for calculating the average increase received by JOS's and Associate JOS's is flawed and grossly

overstates the actual salary increases received by JOS's and Associate JOS's and (3) the "mode" concept has never been the basis for negotiating a minimum incumbent salary by the City of New York with any municipal union and is not consistent with the manner in which a minimum salary has been or should be negotiated.

Moreover, OLR Commissioner James Hanley testified generally regarding the City's bargaining process with the various unions representing public employees. Commissioner Hanley testified that minimum and maximum salaries are not set through pattern bargaining, and that pattern bargaining applies only to the cost of a contract settlement (T 132). Commissioner Hanley also testified that in his 38 years of experience, the City has never used the "mode" as a basis or index for setting any type of salary (T 133-134).

For these reasons, the City urges that the Panel adopt an award which conforms to its reasonable offer, and reject the Union's contrary demand for a vastly inflated minimum and maximum salary.

DISCUSSION

In arriving at my determinations with respect to the demands of the parties I have attempted to arrive at a recommendation which addresses what I believe should be the sole consideration in this dispute, to wit, establishing an appropriate salary differential between the title of Administrative Job Opportunity Specialist and the subordinate title of Associate Job Opportunity Specialist.

Fundamentally, I agree with the position of the City that this panel's charge was not to recommend minimum salary rates based on purported increases in the duties and responsibilities of former Administrative Managers who became Administrative Job Opportunity Specialists. Essentially, the Union's proposal appears to be an attempt to bootstrap increases in minimum salary rates into an additional across-the-board wage increase over and above those negotiated by the parties, given that its proposals would raise the salary rates of virtually every individual

currently serving in the title. The parties had the opportunity to address the question of increased duties and responsibilities in their salary negotiations, and will be able to address this question in future negotiations.

Complicating arrival at a determination in this matter is the absence of any pattern of settlement that might provide some guidance to the panel. Commissioner Hanley testified that that minimum and maximum salaries are not set through pattern bargaining, and that pattern bargaining applies only to the cost of a contract settlement. However, the City argued that as a matter of consistent practice, when a title (or occupational group) is determined to be eligible for collective bargaining, that title (or occupational group) would not normally be granted an increase in minimum salary and the minimum salary rates are “simply the salaries of the lowest and highest salaried employee respectively.”

Notwithstanding this posture, unique to this dispute is that the title at issue here was not in existence for a significant period, that it was staffed with employees who moved from other titles, and did not have clearly defined minimum and maximum salary rates. Rather, the Administrative Job Opportunity Specialist position was a new title, created as an integral part of a new occupational group, which consolidated the functions of eligibility, employment, and social services in the Human Resources Administration. When the occupational group was created by the City’s Department of General Services the new titles were then populated by incumbents from a variety of different classifications, including employees from social service, eligibility, and administrative/clerical positions. The Administrative Job Opportunity Specialist position was primarily populated by individuals who had been serving in Administrative Manager positions.⁴

Almost immediately (less than four months after the creation of the new title) representation was sought by the Union. While the Administrative Job Opportunity Specialist was placed under the Managerial Pay Plan, subordinate titles were eligible for collective

⁴ Although some higher level social services employees were also placed in this new position.

bargaining. However, for all practical purposes, a minimum salary rate did not exist for the Administrative Job Opportunity Specialist position, except the generalized salary range (minimum and maximum) established under the managerial pay plan, but the vast majority of individuals who were placed in this new title were earning salaries substantially in excess of the minimum salary established under the Managerial Pay Plan.

Essentially, the salaries of these employees established an imprecise and somewhat amorphous *de facto* minimum salary rate, which has been referred to by the Union as the “mode” minimum salary rate. The Union seeks to build its minimum salary proposals on this so-called mode. While this methodology may not be wholly invalid, I believe that the most valid method of determining the minimum salary rates for the new position should be founded on the differential between the Associate Job Opportunity Specialist III position and the Administrative Job Opportunity Specialist position. I agree with the City in that purpose of establishing minimum salary rates is to avoid compression with lower categories of employees and to create a reasonable promotional incentive for employees in the subordinate title.

Ergo, the establishment of minimum salary rates for the AJOS position had to await the establishment of minimum and maximum rates for the Associate Job Opportunity Specialist. In a settlement with the Union that represents the Associate Job Opportunity Specialist's, a minimum salary rate for subordinate titles was established on February 1, 2007. Therefore, it would make practical and administrative sense for the minimum for the AJOS to be established on April 6, 2007, *i.e.*, the date of the second wage increase negotiated by the Union.

As to an appropriate differential, I note that the City's argument for its proposed minimum salary is based on what it termed “reasonable compensation for the work performed.” How it arrived at this characterization is explained in its post-hearing brief where it argued, “In examining other promotional series in the City, it is apparent that the highest salaried title generally falls within the range of the lower title.”

Nonetheless, I note that the promotional differentials established in its settlement with District Council 37 for the Job Opportunity Specialist and Associate Job Opportunity Specialists reveals salary and percentage differentials as follows as of February 1, 2007:

	<u>Minimum</u>	<u>Maximum</u>
Job Opportunity Specialist (Incumbent Rate)	\$38,000	\$55,384
Associate Job Opportunity Specialist I	\$46,500	\$63,989
Associate Job Opportunity Specialist II	\$54,500	\$71,120
Associate Job Opportunity Specialist III	\$60,063	\$76,773

The percentage differential established in the District Council 37 agreement between these titles and levels are as follows:

Between Job Opportunity Specialist and Associate Job Opportunity Specialist I – 22%

Between Associate Job Opportunity Specialist Level I and Level II – in excess of 17%

Between Associate Job Opportunity Specialist Level II and Level III – in excess of 9%

While I agree that no pattern exists for establishing minimum salary rates, if the rates and percentage differential established by the City and District Council 37 agreement are any indication, the City's proposal falls short of what I would consider an appropriate differential between the minimum of Associate Job Opportunity Specialist III and Administrative Job Opportunity Specialist I. Simply put, the City's proposed minimums are to some extent insufficient to avoid salary compression or provide sufficient salary incentive for promotion to Administrative Job Opportunity Specialist.

Accordingly, I find that a modest adjustment of the City's proposal is warranted and that the Union's proposal is well beyond the bounds of what would translate into a reasonable differential between the Associate Job Opportunity Specialist III and Administrative Job Opportunity Specialist I. I will also recommend that the hiring rate for the title be suspended until expiration of the current agreements in order to rationalize the minimum salaries for the

few, if any, Administrative Job Opportunity Specialists who may have been recruited from outside of the Human Resources Administration.


These recommendations will have a negligible impact on the City's budget in that this recommendation only affects 71 individuals.

Therefore, I recommend as follows:

RECOMMENDATION

- 1) Effective April 6, 2007, the minimum salary rate for Administrative Job Opportunity Specialist, Level I shall be established at \$65,469 or 9% above the minimum salary rate of Associate Job Opportunity Specialist Level III as of February 1, 2007. The maximum salary rate shall be set at \$83,683.
- 2) Effective April 6, 2007, the minimum salary rate for Administrative Job Opportunity Specialist, Level II shall be established at \$70,707 or 8% above the minimum salary rate for Administrative Job Opportunity Specialist Level I established in number 1 above. The maximum salary rate shall be set at \$90,378.
- 3) Thereafter, the minimum salary rates shall be increased by the percentage of the negotiated across the board wage increases on October 6, 2008 and October 6, 2009.
- 4) During the term of the agreements, the hiring rate shall be suspended and any employees earning less than the minimum salaries established by this recommendation shall have their salary rates adjusted to the recommended rates.

Dated: November 13, 2011



Alan R. Viani, Impasse Panel

AFFIRMATION

State of New York
County of Westchester) ss:

The undersigned, under penalty of perjury, affirms that he is the Impasse Panel in the within proceeding and signed same in accordance with the arbitration law of the State of New York.

Dated: November 13, 2011



Alan R. Viani

Alan R. Viani
Impartial Arbitrator and Mediator

November 13, 2011

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- and -

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Re: CWA Local 1180 and the City of New York, Impasse Case I-30-09

Dear Mr. Levy and Mr. Spivak:

Please find enclosed my Report and Recommendation in the above referenced matter. My billing will be sent under separate cover.

Very truly yours,


Alan R. Viani

cc: Susan Panepento, Deputy Chair, OCB