OFFICE OF COLLECTIVE BARGAINING

In the Matter of

City Employees Union, Local 237,
International Brotherhood of
Teamsters

I-8-68

-and-

DETERMINATION

New York City Office of Labor Relations
on behalf of the City of New York

This proceeding is between City Employees Union, Local 237, International Brotherhood of Teamsters, hereafter referred to as the Union and New York City Office of Labor Relations on behalf of the City of New York, hereinafter referred to as the City. It was initiated by letter dated April 25, 1968 from the Union to the Office of Collective Bargaining which reads in pertinent part:

> Local 237, Teamsters respectfully requests the services of your office in a dispute between this union and the City of New York regarding the heavy-duty (C, D & E) Laborer's rate of pay.
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> It is this union's contention that the original agreement arrived at between the parties was not based on all the facts that have since become known to Local 237. The City's position is simply that an agreement has been reached and they are not willing to reopen discussions of any of the issues concerning rates of pay for Laborers.

As a Public Member of the Office of Collective Bargaining I was requested to conduct an investigation of the facts and make a determination. At my request representatives of the Union and City appeared at a hearing on April 29, 1968, at which time all concerned were afforded full opportunity to present their respective positions.

The Union charges that the City mislead it regarding the private prevailing rate for heavy duty laborers. It asserts that the City based its negotiations on the lesser rate of $5.05 an hour when a higher rate of $5.20 an hour also obtained; and that the Union learned of the latter rate only after negotiations were concluded. For that reason the Union seeks rescission of its present agreement with the City on the wage rate and other terms and conditions for Laborers C, D and E.

The wage scale for the Laborers involved in this proceeding is subject to the provisions of Section 220 of the Labor Law, commonly referred to as the Prevailing Rate Law. The rates of pay and conditions of employment which are to compare with those received by similar employees in private industry are determined by order of the Comptroller, following hearings, or where possible by a consent agreement negotiated by the City, the Union and the employees involved. Historically, including the most recently reached agreement, the latter procedure was successfully followed. By practice, for a number of years, the City and the Union agreed that the prevailing rate in private industry was as set forth in the collective bargaining agreements of Locals 1010 and 731. Until the most recent negotiations the pay rates in the contracts of both these locals were identical. Also by practice, and in part at least because the fringe benefits and continuity of employment with the City have been more favorable than those in the private sector, the parties have not adopted the full private prevailing rate but rather negotiated a percentage thereof, as the wage scale for the City employed Laborers. In prior years 90% of this private prevailing rate was agreed to as the wage rate for Laborers C and D, with five cents an hour additional for Laborers E. In the most recent negotiations between

the City and the Union, the 90% formula was again agreed to (after the Union demanded 100% and the City offered 83%), plus some improvements in fringes for the subject employees, especially regarding weekend work and pensions. The 90% formula is not now in dispute.

What is in dispute, however, is whether the "minds of the parties met" on the private prevailing rate, to which the undisputed 90% formula would apply. The centers on the fact that in 1967 the private industry contract rates of Local 1010 and 731 were no longer the same. Local 1010 chose to apply some of its wage increases to fringe benefits, so that its direct wage rate was $5.05. Local 731 took all or most in direct wages, which pegged its rate at $5.20. The City, in its negotiations with the Union, used the $5.05 figure as the prevailing rate, and there is no dispute that the Union had full knowledge that it was dealing with that rate. The negotiations produced an agreement on the rate for Laborers C and D at 90% thereof, with five cents additional for Laborers E, plus the improved fringe conditions.

I do not find, as the Union claims, that the City mislead or improperly induced the Union into believing that $5.05 was the single and sole prevailing rate in private industry or that that rate obtained in both the Local 1010 and 731 contracts.

The Union, just as well as the City, had access to the contracts of both locals, which previously had been used as the standard for negotiations of a City laborers rate. If the City knew of the discrepancy between the two, the Union could have known of it as well, just as readily and on its own initiative. The record contains no evidence that the City concealed the fact that the rates of the two locals were no longer identical, and despite a bare allegation by the Union, vigorously denied by the City, there is no evidence that the

City stated that the rates in both contracts were the same, at $5.05. I am satisfied that he discussion between the parties included no reference either to the similarity or the difference between the current private industry contracts of Locals 1010 and 731, but dealt only with the private pay rate of $5.05 which the City deemed more appropriate and comparable to the work performed by City Laborers.

Indeed, in arms length, negotiations between the City and the Union, it is for each to maintain its own research and its own reliance on the information obtained. So long as the City did not erroneously inform the Union or willfully conceal vital information accessible to it alone, or act to deceive the Union, I see no legal necessity for the City to have made overt reference to the difference in the two private contracts. In my view, provided its purpose in using the $5.05 figure was a reasonable and good faith attempt to comply with Section 220 of the Labor Law, the City had the right I to assume that its knowledge of a higher rate in the Local 731 contract was also known to the Union. And further, if the Union considered the higher rate to be more applicable to the negotiations, it was reasonable for the City to believe and expect the Union had the burden to introduce that point.

The question then is, whether the City's bargaining position based on the $5.05 rate rather than $5.20, was reasonable and in good faith. If so, a charge that the City took unfair advantage of the Union would per force fail.

I am persuaded by the facts before me that the City met this test of propriety. Its selection of the $5.05 rate, I am satisfied, was based on its belief that that rate best reflected the purpose of Section 220 of the Labor Law. It will be remembered that the parties were not negotiating wages alone, but other terms and conditions of employment as well. A total package was to be arrived at. The facts indicate that the City weighed the value of its fringe benefits for the subject

employees, both in effect and as improved (particularly weekend work and pensions) and concluded that the situation in private industry between Local 1010 and its employees, where that Local had decided to improve its fringe benefits at the expense of direct wages was more comparable to the negotiations with the Union. Without judging the accuracy of the City's calculations, I can understand and find justification in its judgment that the overall contract package obtained by Local 1010 squared more with the employment conditions of the City Laborers than that of Local 731. Indeed, significantly the record indicates that for just this reason the during City stated to the Union during negotiations that its point of reference was the rate paid "private highway laborers". And as both parties knew, highway laborers fall within the jurisdiction of Local 1010. The Local 731 contract covers excavation personnel. Hence, I do not find an absence of good faith in the City's use of the $5.05 rate.

So in short, if the Union believes its negotiations with the City on the basis of a private industry prevailing rate of $5.05 was premised in error, it was an error unilateral to the Union. It was neither induced nor taken advantage of by the City, and for it the Union cannot avoid sole responsibility.

Accordingly, it is my determination that the agreement reached between the City and the Union, on a wage rate of 90% of $5.05 an hour for Laborers C and D with five cents an hour additional for Laborers E plus the undisputed fringe benefits, is binding on both sides and is upheld. The Union's request for rescission is denied.

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Eric J. Schmertz
Member

Dated: New York, New York
May 3, 1968