

OFFICE OF COLLECTIVE BARGAINING

In the Matter of the Dispute

-between-

THE CITY OF NEW YORK

I-32-69

-and-

LOCAL 983, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO

REPORT AND RECOMMENDATIONS

of

IMPASSE PANEL

Joseph Di Fede, Member
Benjamin C. Roberts, Member
Benjamin H. Wolf, Chairman

BACKGROUND

On April 31 1969, the office of Collective Bargaining, hereinafter referred to as OCB, designated the undersigned as an impasse panel to hear and attempt to help the parties resolve the dispute in their current negotiations. The parties are Local 983, District Council 37, AFSCME, AFL-CIO, hereinafter referred to as the Union and the City of Now York, hereinafter referred to as the City. The employees involved are approximately 2,100 motor vehicle operators employed in various departments throughout the City. The contract between the Union and the City expired on December 31, 1968, and the dispute is over the terms of a successor contract.

Hearings were held on April 29, May 7, May 19 and June 2, 1969. The first two hearings were hold before two members of the panel and the last two before the full panel. This arrangement was made with the agreement of the parties.

In November 1968, the Union submitted 29 proposals on which the parties negotiated. During these negotiations, some matters were settled on a tentative basis and some were withdrawn by the Union. The parties are at impasse over the remaining unsettled issues. These were listed in the Union's proposals as follows:

2. The minimum annual salaries shall bo as follows:

<u>1/1/69</u>	<u>1/1/70</u>
\$7,150	\$8,500

4. The City shall make a contribution to the Welfare Fund of \$200 per employee per annum.
6. The differential for heavy-duty and special equipment shall be paid for all front end loaders, all buses, all

trucks of 15,000 pounds gross weight, and there shall be a review of all vehicles used to determine any additional one to be included.

- 7a. All vehicles must be driven by motor Vehicle Operators.
8. All Motor Vehicle operators who are "grounded" for medical reasons shall be retained in their positions and shall perform duties within their title which they are physically capable of carrying out.
9. All differentials and overtime premium pay shall be paid by the second payroll date after having been earned.
13. There shall be a 10 per cent differential for the 400 p.m. to 12:00 p.m. and 12:00 p.m. to 8:00 a.m. shifts.
22. Motor Vehicle Operators shall be eligible to take promotion examinations for Foreman titles, Basin Machine Operator, Tractor Operator and Motor Grader Operator.
23. Each city agency employing Motor Vehicle Operators shall negotiate seniority provisions with the Union.
26. There shall be an agency shop provision for Motor Vehicle Operators.
29. Rotating Shift Differential.

The City's position is that the agreement tentatively reached on Issue No. 3, the salary issue, was contingent upon all remaining unsettled issues being withdrawn. Since the Union does not agree, the City stated that Issue No. 3 must be deemed open.

The Union than stated that if the City regarded the salary question as open every item on its list of proposals must be deemed open.

At the suggestion of the panel, it was agreed that inquiry into the issues would proceed as follows. The panel would first consider the open issues contingent upon the money settlement, i.e., the first set of proposals mentioned above. If the panel

found that the City's contingent agreement with the Union on wages was not dependent upon the withdrawal of the open issues, the panel's recommendations would be confined to those issues. If, however, the panel found that the City's offer was conditioned on the withdrawal of all open items and that the salary question must, therefore, be deemed open, the Panel would be obliged to make a recommendation with respect to all 29 issues.

During the course of the hearings, the City objected to consideration of certain items on the ground that they were not negotiable under the New York City Collective Bargaining Law. The Union contested the City's position on the ground that the objections to arbitrability were not raised in time. This dispute over arbitrability, being a threshold question, was submitted to the Board of Collective Bargaining which made the following decision:

...the Board of Collective Bargaining concludes and determines:

1. Union proposals 7a, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, and 27 are not within the scope of collective bargaining herein and are not matters properly before the impasse panel appointed herein; and

2. Union proposal 22 is within the scope of collective bargaining and properly before the impasse panel appointed herein, subject to the limitation contained in § 1173-7.0c(3)(b) and (c) of the New York City Collective Bargaining Law; and

3. Seniority is a subject within the scope of collective bargaining herein, and properly

before the impasse panel appointed herein,
but subject to negotiation by the New York
City Office of Labor Relations.

Thus, only the following proposals among the original open items are negotiable: Nos. 2, 4, 6, 22, 23, 26 and 29. Nos. 22 and 23 were held negotiable under certain conditions.

Previously Settled Issues

In considering its recommendations, the panel first had to decide whether all items tentatively or conditionally settled were to be deemed open. This depended on whether the City's wage offer was conditioned on all other open matters being withdrawn. The testimony as to whether this was so was in sharp conflict. However, the panel feels that even if it were to deem all settled issues open, it will not be able to recommend any changes in those items which can be more acceptable than the settlements the parties themselves reached in free collective bargaining even though the settlements were tentative or conditional. The panel therefore issues the following:

Recommendation: That all proposals tentatively or conditionally settled by the parties be accepted as originally agreed upon.

Previously Unsettled Issues

On the remaining issues held negotiable by the BCB, we make the following report and recommendations:

Proposal No. 2. As of December 31, 1968, the minimum salary was \$5,800 and the maximum \$7,590. Some employees are paid above

the maximum, ranging up to \$8,650, but they are a small minority. The parties consider the effective top of the range as \$7,590. At present, between the low of \$5800 and the high of \$8,650 there are 74 distinct salary levels.

The City made a wage offer which the Union in the main accepted. it was a commendable effort on both sides to reduce tho multiple, unstructured wage rates to a more orderly arrangement. They agreed on a rate range beginning January 1, 1969, from \$6,400 to \$8,100, and beginning January 1, 1970, from \$7,300 to \$8,500 with the employees grouped in five salary levels \$300 apart. One employee who is receiving \$8,650 was retained at that level as a red circle rate.

It is obvious that no recommendation of this panel could better serve the purposes of making an orderly rate range out of a hodge podge of wage rates which now exist than this agreed-upon salary plan of the parties. The Union wants to shift some of the cut-off points proposed by the City for each salary level. This will be discussed below on the main features of the plan the parties are agreed. The parties are not agreed on how this plan should be applied to new hires after January 1, 1969. Their most important dispute is this impasse on starting salaries. The Union asked that the entrance salary be the salary of the most recently hired incumbents who are presently receiving \$5,800, i.e., \$6,400 on January 1, 1969, and \$7,300 on January 1, 1970. The City proposed that the appointment rate on January 1, 1969, be \$6,000 and on January 1, 1970, \$6,200, with those

appointed in 1969 moving to \$6500 on January 1, 1970. The City argued that the Union proposal would require the City to hire new employees at the same rate paid to employees who will have had at least two years of service with the City. Moreover, the City stated that it has had no difficulty in recruiting at the entrance rates which it proposed.

The Union stated that the negotiation on the salary structure was intended to bring about a meaningful reduction in the range between the top and the bottom salaries and under the City's wage offer the spread which had been \$1,800 would be reduced to \$1,200. It argued that if the City's proposed appointment rates were to prevail, the spread would be increased from \$1,800 to \$2,300.

The Union stated that \$7,300 as a starting rate on January 1, 1970, would not be out of line.. Sanitation men received \$7,869 on January 1, 1969. Laborers in the A category are paid at the rate of \$3.86 per hour which would be \$7,720 for a 2,000-hour work year. Moreover, laborers have a single rate and not a rate range. B, C and D laborers get even more, up to \$9,100, as their entrance salary. The Union argued that an entrance salary of \$7,300 is comparable to rates paid other City employees.

At the present, the City and the Union have made large strides towards rationalizing the numerous salary levels into a system which has, in effect, a rate range for incumbents from \$7,300 to \$8,500 with separations of \$300 for each level.

In general, the separate wage levels reflect the length of time each motor vehicle operator has worked for the City. The separations are similar to increments and suggest that new employees should also be separated from the older employees by a similar spacing. We, therefore, make the following: Recommendation: That the entrance salary on January 1, 1969, be \$6,400, and on January 1, 1970, \$7,000, and on July 1, 1970, \$7,300. Those employees who are hired in 1969 should be increased to \$7,300 on January 1, 1970, as set forth in Schedule A attached hereto.

Proposal No. 3. Although in the main the Union accepted the City's proposal on salaries, it did not agree on where to cut the incumbents; for the year beginning January 1, 1969, into which salary bracket each would be slotted. All the changes in this area proposed by the Union would frontload the salary schedule and increase the cost to the City. The proposed salary schedule was designed to provide an increase comparable in cost with that which was granted to other employees of the City. As it was proposed by the City, the amount of money involved is somewhat more than that offered to other employees. If there were any further frontloading of the schedule, or rearrangement in the direction of the Union's proposals, it would increase the cost and make it higher than that upon which the City and the Union initially agreed. We, therefore, issue the following:

Recommendation: That the cut-offs for slotting the incumbents into the new salary levels be as set forth in Schedule A attached hereto.

Proposal No. 4. At present the City's contribution to the Union's Welfare Fund is \$110 per person per year. The Union claims that the City has agreed on \$125 starting January 1, 1969, in contracts with other employees. It pointed out that the police and firemen receive a contribution of \$185 per year and the sanitation man receive \$219. The Welfare Fund provides group health insurance, dental insurance and some supplemental hospitalization coverage and disability benefits and is a supplement to the City's basic health program.

The City's proposal was that the contribution be increased \$15 to bring it to \$125 on July 1, 1969. Upon learning that others were granted it on January 1, 1969, the City said it would amend its offer to that date.

Recommendation: Effective January 1, 1969, the welfare contribution of the City should be increased from \$110 to \$125 per annum.

Proposal No. 6. At present, the City pays a differential of \$2 per day to all motor vehicle operators who drive certain heavy duty and special equipment listed in Article X of the collective bargaining agreement. The agreement also provides that only one employee can receive the differential on each

shift, and that it is to be paid to the first employee who drives the vehicle during the shift.

The Union proposes that more equipment be added to the list entitled to the differential. The Union's position is that the differential should be paid for that equipment which is more onerous to drive than normal or more difficult to maneuver in city traffic or on which the prevailing rates on the outside are higher. Generally, those are pieces of equipment that a newcomer on the job without experience cannot drive. The men who operate these specialized pieces of equipment are generally required to have a specialized license, such as a No. 1 license which permits the driver to drive a tractor-trailer and all other equipment. With a No. 2 license, a driver can operate a more limited number of vehicles. with a No. 3 license, he can drive anything over 18,000 pounds not otherwise restricted. The Union asked that the following equipment be added:

1. Front-End Loader. At present, the Union contract provides for the differential to front-and loaders of two yards capacity only. The Union proposes that the differential go to all front-and loaders. Although most of the front and loaders used by the City are two yards or larger, there are some that are as small as a half yard. At one point, the City was willing to give the Union all front-end loaders in return for other concessions.

2. Buses. The present contract provides the differential for buses seating 25 or more. The Union now demands that it be given to all vehicles carrying 14 passengers or more. The City's objection is that some of the vehicles that the Union includes in this category are not in fact buses. The Union regards all equipment used to carry people as buses, including ambulances, patrol wagons and the like.

3. Cross-Walk Plow. This equipment is used to clear crosswalks of snow. It takes a certain amount of experience and skill to operate the equipment in a confined area while traffic is moving around the operator.

The City contended that they are simple to operate and required no training. The men who operate them were merely shown how to operate them and they were able to do so.

4. Power Rodder. This is a truck with rodding equipment attached which goes down a sewer to open any blockages that may exist. During the last negotiation the City would not apply the differential to this equipment because it was expected that motor vehicle operators would not be operating this vehicle.

5. Sanitizer and Scavenger. These vehicles weigh over 18,000 pounds and would be covered under that category.

6. Cletrac. This is a small bulldozer used to tow vehicles and equipment over sand or swampy areas. The Union said that

they require special training and are hazardous because they are operated on beaches where there may be people. The City said that the hazard is not different from that of other equipment which As operated near people and which would be dangerous if allowed to run wild. These vehicles are used only during the morning periods when beaches are not crowded.

7. Industrial Tractor. This is the usual standard farm tractor to which gangs of grass cutters are sometimes attached. The Union admitted that the tractor itself drives like any other vehicle but argued that it becomes more difficult when a gang mower is attached. The Union asked the differential regardless of what the tractor is driving.

8. Wengell wagon. This is also called a special events trailer. It is a large- size trailer which is used to house the marionette theater, the Shakespeare theater and various road shows of the Park Department. When driven in the private sector, this kind of vehicle requires a sign saying "Oversize Load" but City-drivers are not required to have such a sign.

9. Tree Trimmer. This is a replacement for former equipment called a "High Ranger" which was used to lift a climber and pruner into a tree. There was also formerly a chipper which chopped up pieces of debris into chips. These pieces of equipment are now combined in the tree trimmer. The City has no objection to this being included.

10. Salary Truck. This is equipment in which there is provision for a man to sit and operate a compressor which can shoot out various types of insect sprays. The City objected to the inclusion of this item because the motor vehicle operator does not operate the spray.

11. All Vehicles of 15,000 pounds and over. The Union conceded that it had agreed that the cut-off remain at 18,000 pounds but had reinstated its demand for 15,000 pounds because it considered this item open again as all other proposals were open.

12. The City stated that a number of abuses of the differential occurred when a vehicle which would normally be entitled to the differential was used for a purpose not consistent with its intended use. The Union recognized that the City's complaint had some merit and it proposed that where a vehicle does not leave the yard no differential be paid unless the intended purpose of the vehicle required its use within the yard. If a heavy duty vehicle is used outside the yard for an irregular purpose such as to pick up coffee or deliver mail, the Union argued that it was a matter entirely within management's discretion and should be controlled through supervision. The panel agrees that the use for such irregular purpose should be controlled through supervision.

Recommendation: We recommend that there be no change in the requirement that vehicles of 18,000 pounds maximum gross weight and above receive the differential. We recommend that all front-end loaders, cross-walk plows, tree-trimmers, wengell wagons and buses seating 14 or more be given the differential. However, it must be clearly understood that buses do not include patrol wagons or ambulances.

Language should be incorporated in the agreement to the following effect: The differential shall not be paid for driving heavy duty vehicles within the yard unless its special purpose is to be driven within the yard.

Proposal No. 22. Under present Civil Service Law, a departmental promotion list must be established and exhausted before a city-wide list can be used. The Union asked the impasse panel to recommend that the laws be changed so that there can be city-wide promotion lists rather than departmental promotion lists for some jobs and that this apply to the titles of Dispatcher, Garage Foreman, and other titles such as Bus Inspector. The Union also asked that the titles of Tractor Operator and Motor Grader Operator should be promotional opportunities for motor vehicle operators on a city-wide basis. The Union is concerned because many of the departments have no departmental lists which afford promotional opportunities to the motor vehicle operators in the department.

The Union also asked that city-wide lists be established to be used after the list of department eligibles has been exhausted. This change would make an important difference for employees in departments which now have no promotion opportunities. It would give them the opportunity of looking forward to promotion instead of regarding their jobs as a dead end.

The Union pointed out that the title of Tractor Operator is presently an open competitive examination. It feels it should be a promotional examination for motor vehicle operators. The Union has had some success on department levels in such departments as the Department of Hospitals where there are promotional opportunities from Motor Vehicle operator to Garage Foreman, Senior Garage Foreman and to Chief of Transportation. In the Parks, Public Works and Highway Departments, the Union has been able to establish promotional opportunities to Dispatcher and Garage Foreman. In the case of the Tractor Operator, the Union feels that a motor vehicle operator who has gained experience driving for the city should be given preference over outside recruits.

The City pointed out that under Section 1173-7.0 c(3)(b) and (c) of the New York City Collective Bargaining Law, any recommendation by the panel must be addressed solely to the Civil Service Commission and shall not recommend or direct that the City support such recommendation.

Recommendation: The panel recommends that the City Civil Service Commission consider the possibility of making city-wide lists open to all motor vehicle operators as supplements to departmental lists, to be used when the department list is exhausted. The panel also recommends that the Commission consider the possibility of making Bus Inspector a promotional title for Motor Vehicle Operators.

Proposal No. 23. The Union asks that each City agency employing motor vehicle operators negotiate seniority provisions with the Union. The BCB has held that seniority is a subject within the scope of collective bargaining and properly belongs before the impasse panel but is subject to negotiations conducted by the New York City Office of Labor Relations. The Union reported that it has seniority agreements in some departments, but that other departments have refused to negotiate on this subject.

Recommendation: We recommend that seniority be negotiated in each department upon demand but that the negotiations be conducted in the usual manner through the Office of Labor Relations. The negotiations shall be limited to seniority for purposes within the department and shall not deal with seniority rights which maybe extra-departmental or city-wide in scope.

Proposal No. 26. In this item the Union asks for an agency shop provision. The City has no objection to granting this provision whenever it is made legal and it is ready to negotiate

appropriate language with the Union.

Recommendation: We recommend that the parties negotiate the language for an agency shop provision to take the place if, as, and when an agency shop can lawfully be established.

Proposal No. 29. This demand has to do with the rotating shift differential. At present there is a \$1.00 shift differential for the 4:00 p.m. to 12 p.m. and 12:00 p.m. to 8:00 a.m., shifts. The Union proposed that the city-wide shift differential be paid for rotating shifts.

The city-wide contract for career and salary employees provides a 5% differential for all hours between 6:00 p.m. and 8:00 a.m. provided that more than one hour is worked during that period. It also provides that shift differentials shall be paid only for regular shifts and not for rotating shifts. The Union asks that the rotating shift receive the night shift differential. This item was originally the second sentence of the Proposal No. 13 which was declared by the BCB to be non-negotiable as a city-wide item. However, it is not clear that the present night shift differential must be abrogated by reason of the city-wide contract on night differentials. In-view of this uncertainty, it is our recommendation that

the night differential remain unchanged as it is now stated
in the contract.

Respectfully submitted:

Joseph Di Fede, Member

Benjamin C. Roberts, Member

Benjamin H. Wolf, Chairman

Dated: July 22, 1969

SCHEDULE A

	<u>1/1/69</u>	<u>1/1/70</u>	<u>7/1/70</u>
Appointment rate		\$7,000	\$7,300
Appointment rate	\$6,400	7,300	
<u>Present rates</u>			
<u>\$5,800 - \$5,999</u>		<u>7,300</u>	
\$5,800	6,400	7,300	
5,875 - 5,990	6,600	7,300	
<u>\$6,000 - \$6,299</u>		<u>7,600</u>	
6,000 - 6,025	6,800	7,600	
6,120 - 6,161	6,850	7,600	
6,265	6,950	7,600	
<u>\$6,300 - \$6,599</u>		<u>7,900</u>	
6,390	7,100	7,900	
6,401	7,150	7,900	
6,474 - 6,516	7,200	7,900	
6,590	7,300	7,900	
<u>\$6,660 - \$7,199</u>		<u>8,200</u>	
6,630	7,400	8,200	
6,758 - 6,840	7,450	8,200	
6,873 - 6,902	7,550	8,200	
6,965 - 7,090	7,600	8,200	
7,133 - 7,173	7,700	8,200	
<u>\$7,200 - OVER</u>		<u>8,500</u>	
7,230 - 7,273	7,850	8,500	
7,340 - 7,441	7,950	8,500	
7,463 - 7,537	8,000	8,500	
7,590 - 7,600	8,100	8,500	
7,720 - 7,840	8,200	8,500	
7,960	8,400	8,500	
8,008 - 8,490	8,500	8,500	
8,650	8,650	8,650	