FACT FINDING REPORT

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In the Collective Bargaining Impasse

- between -

THE BOARD OF HIGHER EDUCATION, by
OFFICE OF LABOR RELATIONS, CITY OF
NEW YORK,

I-52-69

Public Employer,

- and -

LOCAL 384, DISTRICT COUNCIL 37, AFL-CIO,

Public Employee
Organization.
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At a hearing held December 17, 1969, the parties submitted to the undersigned as a one-man impasse panel their impasse on the issue of employee eligibility for a six month service increase.

Local 384 is the bargaining representative of the administrative employees of the Board of Higher Education. On September 21, 1967 Local 384, and District Council 37, AFSCME, and the City concluded negotiation of a collective bargaining, agreement for a 2-1/2 year term beginning January 1, 1967 and terminating June 30, 1969. A "Tentative Agreement" was signed b the parties which was later fleshed out to a full contract except for one provision which is the subject of the present impasse.

The September 21, 1967 "Tentative Agreement" provision pertaining to the service increase states "City language on service." What was meant by this language was the subject of arbitration, O.C.B. Case No. A-53-69. The arbitrator there found that the parties had not had a meeting of the minds on this item during the negotiations for the contract) however the parties had prior to the arbitration agreed on all but one part of the issue of service increases. The sole part of the issue of service increases not, resolved by the parties and the arbitration was as to the eligibility of employees for the so called half year or six months service increase. The parties agree that employees working for a full year prior to the effective date Of the service increases are entitled to $180.00. The parties also agree that employees working six months in the year prior to the effective date of the service increases are entitled to $90.00. The parties were unable to agree as to when the six months service had to be performed.

The City maintained in the arbitration that the parties had agreed to incorporate what they called City Language which provided in effect that only employees who had worked the six months prior to the effective date of the service increase would be entitled to the $90.00 half year service payment. That, is, as the service increases are payable as of January 1, 1967, January 1, 1968 and

January 1, 1969, the employees would have had to perform service during the period July 1 through December 31 of the prior year. The City claimed this position because it was one that had uniform application throughout its contracts with the various employee organizations representing municipal employees. For the contract with the Local 384 to deviate from this uniform language would open a plethora of problems for such wording is found in contracts affecting hundreds of thousands of municipal employees.

Local 384's position was that there was in fact no agreement such as the City claimed but that rather employees who worked any six months in the year prior to the effective date of the service increase were to be entitled to the $90.00.

The arbitrator found for neither party on the ground that there was no meeting of the minds on this issue and the parties should go back to the bargaining table and resolve this issue themselves. The parties were unable to settle this issue and have submitted it to the undersigned for recommendations for resolution on the criteria of fairness and equity.

The parties have not changed their arguments from the arbitration except rather than propounding respective interpretations of what happened at the original bargaining sessions they now proffer their respective

versions of what should be the most equitable resolution of this controversy.

In short, Local 384 claims: There is no agreement as, to this issue therefore we ask that the contract should in effect provide employees working any six months in the year prior to the effective date of the service increase should receive the half year sum. The reason is that it is fair that employees working six months should get a half year service increase and it is irrelevant which six months they work.

The City's position is that it would be unfair to thousands of municipal employees working under the City's uniform language on this issue to permit a deviation with Local 384. The City claims that it gave up various items it had sought to get the desired service increase language and that the entire service increase provision was in substitution for a prior form of incremental payment which was unsatisfactory. Thus it would be unfair for there to be inclusion in the contract of less than the whole provision on service increases, for Local 384 accepted all of the City’s language on service except for the one issue here presented for resolution. It is somewhat ironic that the whole area of service increases has been removed from the most recent contract between the parties.

The undersigned must state that in his consideration of the issue herein presented he has considered not only the immediate effect of his recommendations on the parties here represented but also the secondary effects on the whole area of municipal labor relations. Recommendations for including in the contract of the provision sought by Local 384 could open a Pandora's Box of grievances from other groups of employees and lead to a deterioration in the situation of the labor relations between the City and other employee organizations and employees. It could be breed rancor and envy which would not be to the advantage of any of the parties. In sum, there are occasions when uniformity in the application of conditions of employment are highly desirable and this appears to be one of the occasions.

FACTS AND FINDINGS

1. The parties have been unable to agree as to which six months in a year period prior to the dates January 1, 1967, January 1, 1968 and January 1, 1969 an employee must have performed service to be eligible for the payment of the six months service payment $90.00.

2. The City of New York has uniformly in its collective bargaining agreements with public employee organizations language providing in effect that an employee must have performed service for the six month period immediately preceding the effective date of the six month service increase.

3. The inclusion in the collective bargaining agreement between the parties of a provision permitting service during any six month period during the year prior to the effective date of the service increase would be a deviation from city wide practice and would lead to major problems with other municipal employee organizations and employees.

4. Therefore, in order to resolve the collective bargaining impasse between the parties and to promote the desired end of improved public employer and public employee relations, the undersigned makes the following recommendations, on the basis of this fact-finding.

RECOMMENDATIONS

It is recommended that the provision in the collective bargaining agreement between the parties for the period January 1, 1967 and terminating June 30, 1969 provide in effect, that six months service increases should be paid to those employees who did not complete one year of service but who did complete six months of service in the appropriate class of positions for and during the following periods:

a) For the service increase payable on January 1, 1967 six months of service during the period July 1, 1966 through December 31, 1966;

b) For the service increase payable January 1, 1968, six months of service during the period July 1, 1967 through December 31, 1967;

c) For the service increase payable January 1, 1969, six months of service during the period July 1, 1968 through December 31, 1968.

Dated: New York, New York
January 30, 1970

Respectfully submitted,

JONAS AARONS