

OFFICE OF COLLECTIVE BARGAINING

x-----x

In the Matter of the Impasse

between

THE CITY OF NEW YORK  
and

Case No.  
I-57-70

LOCAL 1359, DISTRICT COUNCIL #37,  
AFSCME, AFL-CIO

Re: Director of Rent Research

x-----x

REPORT and RECOMMENDATIONS

of

IMPASSE PANEL

Benjamin H. Wolf  
Impasse Panel

On June 3, 1970, the Office of Collective Bargaining determined that an impasse existed in the collective bargaining between Local 1339, District Council No. 37, AFSCME, AFL-CIO, and the Office of Labor Relations of the City of Now York, and appointed the under-signed as an impasse panel to assist the parties in resolving the dispute.

A hearing was hold at the office of the OCB on June 16, 1970, at which the parties were given full opportunity to present testimony, evidence and argument -in support of their respective positions. The City was represented by Robert H. Pick, Assistant Director of Labor Relations. The Union was represented by Miss Henrietta Dabney.

This dispute concerns a single employee, the Director of Rent Research, Abraham Engel. It had previously also concerned the Assistant Director of Rent Research, but a settlement was reached and that title was withdrawn. The Director of Rent Research is the head of a department within the Office of Rent Control which is responsible for providing the data necessary for implementing the rent control law. The department at present consists of fourteen positions including that of the Director, an Assistant Director, three Senior Rent Research Associates, two Research Assistants, which titles at the present time are vacant and four other positions. Since the creation in November 1967 of the Housing and Development Administration, the work of the Rent Research-Department has become more complicated and demanding since in addition to its former work for the Office of Rent Control and the Department of Renting and Housing Maintenance, it must also service the Housing and Development Administration.

Although the Director of Rent Research is head of the department, the Director does not exercise the responsibility or judgment that would qualify his as a management person. In decision No. 59-69, the OCB concluded that the Director of Rent Research was a supervisory employee but not managerial-executive. It stated in its decision, "It is not his function and he does not, in fact, formulate policy or solutions to agency problems; he simply supplies data which higher authority employs in the policy and decision making processes". Thus, while

the job description indicates that Mr. Engel supervises his department and is responsible for some highly technical and skilled work, it is not of a policy-making level which would enable him to be classified, on the managerial pay plan schedule of the City. The position is classified in salary grade #32, the highest grade in the City classification system. It is the only grade which does not have a range, only the entrance salary being provided at \$13,100. In this position, there are no automatic increments leading to a maximum of the grade, although increments are given until \$16,000 is reached.

The Union first petitioned for certification as the bargaining representative of the Director of Rent Research and Assistant Director of Rent Research on April 5, 1968. It was not, however, until November 17, 1969, that the Union was certified as the bargaining representative, and negotiations for the two titles did not commence until December 1969. The Union contends that the delay between the filing of its petition and the ultimate certification was due to procedural delays over which it had no control. The Union alleges that Personnel Order No. 51, line 68, authorized the negotiation retroactive to July 1, 1968, of those titles for which proceedings for certification were then pending before the OCB. Hence, the Union contends that, morally, the rights of the Director of Rent Research go, back to January 1, 1968, the effective date for increases in other titles in the Rent Research Department with which this title was joined by the certification.

On the other hand, it is the position of the City that the effective date of this dispute is January 19 1970. It stated that Mr. Engel received a merit increase on December 16, 1968, which raised his salary from \$16,000 to \$17,000. The City also pointed out that January 1, 1979 was the effective date for the settlement of the Assistant Director, in which the Union concurred. It argued that it would be anomalous to have different effective dates for the two positions which were joined in the same certification. The City also contends that it has been its policy to wait at least one year after a merit increase before considering a further increase.

The Union contended that the increase given Mr. Engel was strictly a merit increase and should not be considered as having been given in lieu of collective bargaining. The City pointed out, however, that the only kind of increase that an incumbent in salary grade No. 32 can receive in a merit increase.

Since December 16, 1968, Mr. Engel has been paid an annual salary of \$17,000. The history of the position is as follows: On October 22, 1959, the position was classified at salary grade No. 29, and he was paid \$10,752. On May 1, 1969 he was reclassified to salary grade No. 31 and was paid ,at the rate of \$13,896. On July 1, 19669 he was reclassified to salary grade No. 32 at \$16,000.

The Union asserted that within the Department Mr. Engel has not received salary increases at all comparable to those of the employees he supervises. During the period from January 1, 1966, he received only \$1700 of which \$1,000 was the merit increase in 1968. In that period the Senior Rent Research Associates have received \$3000. The Rent Research Associates \$2,850, the Research Assistant \$2,500, and the Assistant Director (including the recent settlement) \$4,200. The total for the Assistant Director, however, includes \$750 which was given to her for promotion.

The Union contends that the Director of Research should properly be compared with the similar position in State service. These positions in 1962 were equal but in 1970 are \$5,662 apart, and the cumulative difference in salary between the two amounted to \$14,908.91 by April 1, 1969.

The Union also compared the Director of Rent Research with the Director of Research in the City Housing Authority, showing that the latter position which was \$746 lower in salary in April 1962 is now at \$22,662. In the Federal government, a similar position pays \$23,573. The Union argued that Mr. Engel's salary should have been increased on January 1, 1968 \$2,265, an additional similar amount on January 1, 1969, and \$1,132 on January 1, 1970, so that his salary would become \$22,662 which is the maximum for New York State counterpart.

The City argued that the Director of Rent Research had a relation to each of the subordinate positions in the department. This could be seen from a salary flow chart which showed that in 1962 the Assistant was at grade 14, the Associate at 18, the Senior Associate at 24, the Assistant Director at 26 and the Director at 31. At present, these positions are as follows: The Assistant is at \$8,100 to \$11,100; the Associate at \$9300 to \$12,800; the Senior Associate at \$11,700 to \$15,600, and the Assistant Director at \$13,200 to \$15,600. In light of this data, the City argued that the appropriate increase effective January 1, 1970, would be \$750 which would raise Mr. Engel's salary to \$17,750, from which he would be able to negotiate effective July 1, 1970.

The City attacked the comparison made with the Director of Research in the Housing Authority. In that department the Director supervises 14 professionals and 18 non-professionals. Moreover, that director is in the management pay plan indicating that he is a managerial executive. The City also pointed out that the head of the Office of Rent Control, which has approximately 900 employees, is a deputy commissioner who earns \$23,500. The number two man in the Administration is in the position of Counsel which, currently vacant, had been paying \$21,220 a year. The next in the chain of command is the Director of Field Operation, who is M-3 on the managerial payroll at \$20,400 a year. This position is held by Elihu Morson who is in charge of between 500 and 600 employees, half of whom are professionals. There are two other major divisions headed by directors, one is the Accounting Division headed by Mr. Glick who at M-2 is paid \$19,350, the second is the Rent Research division. The Accounting Division contains approximately 75 employees, a majority of whom are professionals. There are five managerial employees, four of whom, an District Directors, are M-1 with a salary range of \$15,700 to \$17,640 and one M-2 at \$17,900.

Under the Career and Salary Plan, salary grade No. 32 is the maximum that a non-managerial civil service employee could achieve. It starts at \$13,100 and is open-ended. There were automatic annual increments up to \$16,000 per year. Thereafter, any increment was at the request of the department and subject to Bureau of Budget approval.

## DISCUSSION

The problem of setting an appropriate salary for the Director of Rent Research is concerned with finding the proper criteria with which to compare it. It is in this area that the difference between the Union and the City are sharpest. The Union bases its case principally on a comparison with similar positions in the State and Federal jurisdictions and in the City Housing Authority. Thus, the Union draws its comparison from outside the salary structure of the City of New York. On the other hand, the City has argued that the salary structure of the City is controlling. While comparisons made with outside jobs are not inappropriate, they present difficulties in determining how comparable they are unless there is a careful analysis of the job duties. The positions with which the Union has compared the Director of Rent Research, appear to be con par able and indeed at one time not so long ago their salaries were equal. What is missing, however, is evidence of the direction of growth and development of these positions.

The evidence is clear that the position of Director of Rent Research is not a managerial or supervisory or executive position. This was the position taken by the Union and Mr. Engel in the representation proceeding before the OCB when the City was seeking to establish that the position should be classified as While the position is a highly qualified professional one, requiring use of judgment and decision-making on the part of the incumbent, it is not a position as that term has come to be known in City government. His position is clearly ahead of those in his department but subordinate to positions in the managerial class. His relative position has been recognized by his classification into civil service grade No. 32 which is the highest of the classified civil service, but he himself did not regard the position worthy of the management pay plan. At his present salary of \$17,000, Mr. Engel is \$1,000 above the point at which automatic increases in salary grade No. 32 and and not far below the City employees to whom he reports and who exercise supervision over his department and function. The proper position would be to place him between the subordinates whom he supervises and the superiors to whom he reports.

In view of the fact that the position next below him is now paying \$15,000 and that the Director of Field Operation is at \$21,220, it is my opinion that the appropriate salary for the Director of Rent Research should be \$18,000.

The next question to be decided is the date when his salary should become effective. I agree with the City's argument that it would be anomalous if we chose any date other than the one which the Union accepted when it agreed to the settlement on behalf of the Assistant Director, i.e., January 1, 1970. However, I recognize that Mr. Engel also has a claim that his representation proceeding was delayed without his fault. I recommend that he be paid the sum of \$500 in lieu of that claim.

Finally, the Union claims an increase of 285 for the welfare fund. The City has no objection to this claim.

#### RECOMMENDATION

1. That the salary of the Director of Rent Control be increased to \$18,000 effective January 1, 1970.
2. That the incumbent, Abraham Engel, be paid in lieu of claims for the period before January 1, 1970.
3. That the welfare fund contribution for the position be increased by \$85.

Dated: August 4, 1970

---

BENJAMIN H. WOLF  
Impasse Panel