

OFFICE OV collective BARGAINING
CASE NUMBER 1-95-72

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In The Matter Of The Impasse between
DISTRICT COUNCIL 37, AFSCME, AFL-CIO
in re Lifeguards, Lifeguards detailed
as Lieutenants and Chief Lifeguards

REPORT OF
IMPASSE PANEL

-and-

I-95-72

CITY OF NEW YORK

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The undersigned was designated by the Office of Collective Bargaining on October 16, 1972 to hear and make Report and Recommendations on the impasse regarding Lifeguards, Lifeguards detailed as Lieutenants and Chief Lifeguards between District Council 37, AFSCME, AFL-CIO ("Union") and the City of New York ("City"). Hearings were held on December 7, 1972, February 2, 1973, February 28, 1973, April 12, 1973 and May 18, 1973 at which both parties were present and represented, and submitted arguments and evidence in support of their respective positions. Both parties submitted post-hearing briefs.

The contract under which the parties have operated expired on April 30, 1972 and the parties had had a number of negotiation sessions. There are approximately 700 members of the unit with the number fluctuating depending upon the situation at the beaches and pools of New York City..

At the outset of this matter there was presented to the Impasse Panel a number of issues upon which the

parties could not agree, however during the course of the hearings the City objected to some of these issues as not being susceptible to the impasse procedures because they were not mandatory subjects of bargaining and therefore could not be the subjects of the impasse procedures without the joint consent of the parties. The dispute as to these issues being susceptible to the impasse procedures was heard by OCB and by a decision dated February 21, 1973 some issues were removed from the impasse procedures. In addition, the Union withdrew some issues from the impasse procedures. There remained for the Impasse Panel to make Report and Recommendations the following issues:

1. Duration of the agreement;
2. Per them pay rates;
3. Whether the per them pay rates of lifeguards detailed as instructors at Municipal Training Schools should be the same as for Chief Lifeguard;
4. Whether the lifeguards should have a paid duty free one hour lunch period as part of their 8 hour day and two 40 minute rest periods;
5. Whether lifeguards should receive holiday pay;
6. Sick leave;
7. Increase in special life insurance;

8. Whether indoor lifeguards should be paid on an annual basis and receive the same fringe benefits as career ind salary employees;
9. Whether lifeguards, should have the right LO have arbitration upon disciplinary action against them; and
10. Seniority in reemployment.

After considering the evidence and arguments proffered by the parties and reading the record of the hearings and in consideration of the criteria set forth in the pertinent provisions of Chapter 54, New York City Charter and OCB's Consolidated Rules (1972) I make the report and recommendations hereinafter set forth on the various issues in dispute between the parties. The parties have evinced a strong interest in expediting the issuance of this Report and Recommendations and in light of this I have forborne detailed discussion of the arguments and evidence submitted by the parties.

Suffice it to say that all evidence and arguments submitted by the parties has been considered although perhaps not set forth or discussed herein.

ISSUE NUMBER

ONE

DURATION OF

AGREEMENT

It seems clear to the Impasse Panel that the agreement must be for a minimum of two years inasmuch as the first year has already expired and the parties are into the second year period since the expiration of the previous ,contract. I do not believe that it is possible for me on the basis of the evidence submitted by the parties to fashion a recommendation as to the provisions of anything more than a two year agreement. I am aware that the parties will shortly be entering into negotiations for next year, however much as I would like to assist in the relieving of the parties of the onerous task of working out an agreement for next year, I do' mot feel able to do so. I therefore make the recommendation that the contract between the parties cover the period May 1, 1972 through April 30, 1974.

ISSUE NUMBER

TWO

PER DIEM PAY

PATES

The present per them pay rate for the unit is as follows:

Lifeguard	\$21.00 per
day	
lifeguards after one	24.00 for
full season	
lifeguards after two	29.00 for
full seasons	

Lifeguard detailed as Lieutenant	34.00 per day
Chief Lifeguard	38.50

The Union has made a demand for a schedule effective May 1, 1972 providing for an increase of at least 9% in addition to the increments of the progression pattern.

The City has proposed a pay schedule providing for an increase similar to the one claimed to have been received at Jones Beach in 1972, that is a 4% increase with a doing away with the progression or incremental pattern. The City's argument in support of its proposal is that for some time the Union has claimed comparability with the pay schedule existing at Jones Beach and that this has been acknowledged in prior negotiations by the parties as well as prior impasse panels. For 1972 the schedules at Jones Beach provide for an increase of 4% plus a doing away with progressions and for 1973 a 5½% increase and that for consistency the Union should be prepared to expect the same treatment as that received by the lifeguards at Jones Beach. The Union claims in support of its demand that it is an increase consistent with increases received by other negotiation units among the City employees and is moderate and fair.

The Impasse Panel is not fully persuaded by the arguments of either party as to the merit of their positions. It may be so that Jones Beach has been the hallmark against which prior negotiations and impasse panels have determined pay rates of City lifeguards and certainly is relevant, however I do not believe such a guide should be the sole criterion for a determination of the pay rate for City lifeguards. On the other hand it is certainly true that increases obtained by other City employees are relevant, however they too should not be the sole criterion for a determination of pay rates for lifeguards. A much larger number of criteria are applicable in determining an appropriate rate for lifeguards, they are well known to the parties and are contained in OCB and City charter guidelines.

The incremental progression is worth about 4% depending upon the matrix of the employee group. The evidence presented shows that such progression patterns are not usual among similar type City employees and are of considerable value to the lifeguards and of correlatively high cost to the City. The per them pay rates recommended herein would provide for those employees working through the incremental steps higher increase than to those who have already gone through the steps but given the progression such is unavoidable. For those employees who have already gone through the progression the increase would be in the area of 5-12%. Given the matrix of employees, the bargaining history of these parties and the

circumstances attendant of this type of employment involved as well as all other standards used in such matters, the pay schedule recommended herein is believed fair and reasonable. The following per them pay schedule is recommended to the parties for the two years following May 1, 1972.

	<u>As of May 1, 1972</u>	<u>As of May 1, 1973</u>
Lifeguard	\$22.00	\$23.00
After 1 year	25.00	26.00
After 2 years	30.00	32.00
Lifeguard detailed as Lieutenant	36.00	38.00
Chief Lifeguard	40.60	43.00

The progressions should remain, I do not believe that any change in the progression either to enlarge or to compress has been substantiated by the evidence presented by the parties. Further regarding such a radical change I believe that such a change at this time should be accomplished by the negotiation of the parties rather than through the intervention of an Impasse Panel.

ISSUE NUMBER THREE

WHETHER LIFEGUARDS DETAILED AS INSTRUCTORS
AT MUNICIPAL TRAINING SCHOOLS SHOULD BE
PAID THE SAME AS CHIEF LIFEGUARDS

At present, apparently most of the lifeguards detailed as Instructors at municipal training schools are in fact Chief Lifeguards. However, there has been no persuasive showing to demonstrate that the duties of the Lifeguards detailed as Instructors at municipal training schools are such that might be substantially different from such duties as they might have to perform at other assignments or that the duties are such as to merit for all, regardless of rank, compensation equal to that of a Chief Lifeguard. I do not recommend such demand be included in the contract.

ISSUE NUMBER FOUR

DUTY FREE PAID ONE HOUR LUNCH PERIOD AND
TWO 40 MINUTE REST PERIODS

At present, lifeguards work an 8 hour day with two 20 minute rest periods. There is no provision for a duty free lunch period.

It appears from the evidence submitted that a duty free one hour lunch period is not a usual practice for

lifeguards or at least there was little evidence that such was a prevailing practice for lifeguards. Examination of working conditions for lifeguards throughout the United States shows that a duty free lunch period is not a prevailing practice. At Jones Beach for example a letter from the supervisor in charge thereof stated that there is a 30 minute wash up period but that is all.

Provision of a duty free lunch hour would be an item of considerable expense as would the provision of a doubling of the rest periods from 20 minutes to 40 minutes.

In light of the relevant evidence and circumstances I do not find the recommendation of such items justified at this time.

ISSUE NUMBER FIVE

HOLIDAY PAY

The Union seeks a day's pay plus one hundred percent of the daily rate for holidays provided they work the day before and after the holiday, if scheduled. In fact, this demand is really limited to few holidays for lifeguards generally only work during the summer season and the demand would therefore only relate to holidays falling within the summer season. However, this is a fringe benefit that is not ordinarily found among lifeguard units at least according to the evidence presented as to working conditions for life-

guards throughout the U.S. Jones Beach, for example, does not have any provision for holiday pay. The cost of this item would be considerable and in light of the relevant standards to be applied in consideration of whether a demand should be recommended I am not Persuaded that such should be affirmatively recommended therefore, I do not recommend such item.

ISSUE NUMBER SIX
SICK LEAVE

The Union has made a demand that for every thirty days worked lifeguards shall accrue one day of sick leave. All such sick leave shall accrue and at the option of the employee either be paid in cash or be accrued in a 'bank'.

This is a working condition that is not to be found in most areas where lifeguards are employed and could be a considerable cost item. In light of relevant criteria as to whether a demand should be recommended I am not persuaded that this demand is justified at this time.

ISSUE NUMBER SEVEN
SPECIAL LIFE INSURANCE

The Union has proposed that the special life insurance which is presently \$5,000.00 be increased to \$25,000.00. This benefit is payable only when the employee

is killed in the performance of his or her duties. The Union has also demanded that the benefit be payable not only to specified survivors but to a designated beneficiary or to his or her estate. The City has posited no objection to the matter demand but does object Lo an increase in the amount of the death benefit.

Although the benefit is relatively rare among other similar groups of employees still it has a certain amount of elemental fairness to it as recognized by the City in agreeing to the original amount in 1970. It would appear to the Impasse Panel that an increase in the amount of the death benefit would be reasonable and fair given the increases to be found in almost everything else in the economy. I therefore recommend that the special death benefit be increased to \$10,000.00 and that it be payable not only to specified survivors but to a designated beneficiary or to the employee's estate.

ISSUE NUMBER EIGHT

INDOOR LIFEGUARDS BE PAID ON AN ANNUAL BASIS
AND RECEIVE ALL FRINGE BENEFITS GIVEN TO
CAREER ANT SALARY EMPLOYEES

The Union has proposed that lifeguards working indoors have their salaries annualized and that they receive all the fringe benefits that career and salary employees receive, with the exception of pension benefits. It appears

that as a practice indoor lifeguards are presently receiving some of the benefits enjoyed by career and salary employees. The City concedes that the indoor lifeguards do enjoy some of the benefits enjoyed by career and salary employees but the City claims such benefits have been granted informally and without the authorization requisite for the continued enjoyment of such benefits. The Union desires that all. The benefits enjoyed by career and salary employees be extended to the indoor lifeguards with the exception of pension benefits which the Union has withdrawn as a demand. Indoor lifeguards receive the same stipends as outdoor lifeguards. They constitute a relatively small group of the lifeguard unit, about 25 or so out of some 700.

It appears manifest to the Impasse Panel that the indoor lifeguards should continue to enjoy those benefits that they have heretofore enjoyed and such should be insured by inclusion in the contract between the parties and I so recommend. As to the extension to indoor lifeguards of all fringe benefits enjoyed by career and salary employees I am not persuaded that such is appropriate at this time. Although It is so that indoor lifeguards work the year round still they are in a category different from career and salary employees. The basis for the benefits enjoyed by the career and salary employees has been the collective bargaining concerning them over many years. their salaries

have been determined as a correlative to the fringes they have been able to obtain. An extension of the fringes enjoyed by the career and salary employees to indoor lifeguards would radically change the structure of the compensation mosaic of such indoor lifeguards. I believe if such were to be changed at this time it should be as a result of the negotiation of the parties rather than via the recommendations of an Impasse Panel. I therefore do not make such a recommendation.

As to the annualization of the pay of indoor lifeguards based on the evidence presented, I see no reason at this time to make such a recommendation.

ISSUE NUMBER NINE

DISCIPLINARY ARBITRATION

The Union seeks to have incorporated the right for a lifeguard to be able to go to arbitration in disciplinary matters affecting him or her. The City argues that these are seasonal employees and that no City seasonal employees have a similar right.

The basis of the argument that seasonal employees should not have the right to go to arbitration in disciplinary matters would appear to be that such employees do not have the strong interest in their employment that a full year employee might have. This might be true in the case of

casual type seasonal employee but it appears to the Impasse Panel that employees who continue their employment over a period of years do have that type of connection with their employment that might call for the protection of an impartial third party determining whether they have been treated fairly or not in a disciplinary matter affecting their employment. Arbitration of disciplinary matters is a ubiquity in labor relations in the United States both in the public and private sector. Numerous contracts covering seasonal type employees outside of City employment offer such a contractual right albeit with a period of employment as a condition precedent to exercise of such right. Therefore I recommend that lifeguards having completed three years of consecutive employment with the City shall have the right to have binding arbitration of disciplinary matters affecting their employment.

ISSUE NUMBER TEN

SENIORITY IN REEMPLOYMENT

The practice that is presently in use in regard to reemployment is that no later than March 15th of each year, each lifeguard on the seniority list is written to and whether he or she is available for the next season. Each lifeguard must reply in writing prior to April 15th as to whether he or she wishes to be reemployed. The letter of March 15 from the agency asks when the lifeguard will be

available as there are several appointment dates. All of the replies for a given date are put in order of seniority and the appointments are made for that date in order of seniority. The Union is seeking to provide for a situation when a lifeguard may be unavailable for an earlier date but would be available for a later date, that such lifeguard be permitted to bump a junior man on the later date when the senior man becomes available.

It appears to the Impasse Panel such a situation might be difficult to administer administratively and could be unfair to a man who made himself available at an earlier date. It further seems that the probability of incidence where a senior lifeguard might be adversely affected by the working of the present system would not be often or at least not often enough to warrant a change that appears to offer consequent administrative problems and possible situations where a lifeguard who made himself available early in order to obtain employment might be prejudiced. On the basis of these circumstances I do not recommend this item be included in the contract.

Dated: New York, N.Y.
August 4, 1973

Respectfully submitted,

JONAS AARONS, IMPASSE PANEL