

OFFICE OF COLLECTIVE BARGAINING  
OF THE CITY OF NEW YORK

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In the Matter of the Impasse

Between

THE CITY OF NEW YORK

- and -

LOCAL 768, DISTRICT COUNCIL 37,  
AFSCME, AFL-CIO

REPORT AND  
RECOMMENDATIONS OF  
THE IMPASSE PANEL

Case No. I-104-73

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The proceeding was initiated pursuant to Section 1173-7.0 c of the New York City Collective Bargaining Law, Chapter 54 of the Administrative Code. Hearings were held on January 8, 1974 and January 17, 1974 at which times the parties appeared and were given full opportunity to be heard to present all relevant evidence and proof and to examine and cross-examine witnesses. The collective bargaining agreement between the parties expired on June 30, 1972. Despite extended negotiations the parties were unable to reach agreement on a number of proposals. Accordingly, they requested that an impasse panel be appointed pursuant to the New York City Collective Bargaining Law. The undersigned was thereafter designated as an impasse panel of one.

The last prior agreement between the parties became effective July 1, 1970. Up to that time, four titles were in the public health sanitarian bargaining unit. Subsequent to the completion of the 1970 negotiations, two additional titles were added to the unit, namely, Public Health Sanitarian Trainee and Environmental Health Technician. The other four titles in the bargaining unit were Public Health Sanitarian, Senior Public

Health Sanitarian, Supervising Public Health Sanitarian, and Principal Public Health Sanitarian.

The title of Public Health Sanitarian Trainee was established in 1964 by Personnel Order 9/69. The Public Health Sanitarian Trainee rates effective January 1, 1969, was established at \$7,00. District Council 37 filed for certification on April 19, 1971, and was duly certified as the bargaining agent on September 27, 1971. The forthcoming agreement will be the first, for this title subsequent to the certification.

The Environmental Health Technician title was established on September 30, 1970. District Council 37 filed for certification on April 17, 1972. Action on the application for certification was delayed pending consideration of the appropriate unit in which to place the title. District Council 37 was ultimately certified on February 28, 1973. It may be stated, parenthetically, that although the date of certification came subsequent to what will be the commencement of the current contract term, namely, July 1, 1972, nevertheless, the certification recognized the validity of the application made by District Council 37 on April

17, 1972 and becomes retroactive to that date for purposes of collective bargaining.

The Union demands which were submitted to the impasse panel were seven in number. The first proposal dealt with the length of contract which the Union demanded be for three years to run from July 1, 1972 to June 30, 1975. There was no disagreement on this proposal and the contract term will be recommended for the three year period sought.

The second proposal listed by the Union was that relating to the salary increases demanded for the different occupational titles. The third related to the proposed minimum or hiring rate for each of the titles represented. Insofar as the maximum of the range in each title is concerned, the Union demanded, that the top of the range under the existing contract be increased by the full amount of the general salary increase in each title.

The Union proposed that the advancement increase from Public Health Sanitarian to Senior Public Health Sanitarian be established at \$1,000; that from Senior Public Health Sanitarian to Supervising Public Health Sanitarian be fixed at \$1,500; and that from

Supervising Public Health Sanitarian to Principal Public Health Sanitarian at \$2,000.

A further demand on which the parties were unable to agree was that tuition reimbursement of \$250.00 a year be granted for satisfactory completion of courses approved by the Department in environmental health and related subjects.

The final demand which appears to be one on which the parties had devoted little discussion during the active negotiations, is that standard District Council 37 provisions on Union recognition, dues check-off grievance procedure (including use of grievance procedure in cases of disciplinary action), etc. shall apply.

#### DISCUSSION

It appears that for many years there had taken place what has been referred to as "pattern bargaining" for employees in New York City inspection services. Included among the titles that have been affected by the so-called pattern bargaining, have been such diverse occupations as Housing Inspectors, Air Pollution

Inspectors, Traffic Control Inspectors Fire Prevention Inspectors, Institutional Services Inspectors, Low Pressure Boiler Inspectors. Electrical Inspectors, Elevator Inspectors, Construction Inspectors, Sanitarians and others. The biggest proportion of all of the employees in the inspection services are those in building and construction inspection represented by the Allied Building Inspectors Union. That organization has represented about 48% of the total in the inspection services. District Council 37 is next with a representation of some 29.9% of the employees. The remainder are divided among a number of other unions.

It has been the practice for the City to negotiate salaries and other conditions of employment with the ABIU and to then employ as the pattern to bas followed, with as few deviations as possible, the agreement arrived at with ABIU in the case of the titles it represented by other unions. Negotiations with District Council 37 for the titles, it represented were deferred until agreement had been reached with the AM. The pattern on salary increases and rate ranges established by agreement with the ABIU

was one which the City thereafter refused to depart from in its negotiations with District Council 37.

District Council 37 urges, in this proceeding, that there is no valid reason why, it should be compelled to adhere to the terms of the ABIU settlement. It offered the testimony of Dr. George J. Kupchik, presently Professor and Program Director of Environmental Health Science at the Institute of Health Sciences at Hunter College, City University of New York, and formerly Executive Director of the American Public Health Association, Assistant Commissioner of the Department of Sanitation, and Assistant Director of the Bureau of Sanitary Engineering of the New York City Health Department. In his strongly expressed judgment the position of Sanitarian should be recognized at a high professional level and that "we must regard the sanitarian as a highly responsible scientist and administrator and educator of the public." Supporting evidence was offered by the Union outlining the detailed responsibilities and functions of the sanitarians.

The evidence presented indicates that, regardless of how

fully one should accept the evaluation rendered by Dr. Kypchik, there is a substantial divergence between the nature of the sanitarian's duties and responsibilities and those of many of the inspectors in the mechanical trades and building and construction titles. It is the conclusion of the undersigned that, while due weight should be given to the salaries and conditions prevailing among other inspection titles to the extent that the positions are similar, and the salaries and working conditions not only of these titles but of other employees in public or private employment, nonetheless there is no warrant for any mechanical or involuntary application of a pattern established through negotiations with a union that is not the certified bargaining agent for the employees for whom the City must separately negotiate with District Council 37. This would be in derogation of the certified bargaining agent's rights to bargain independently on behalf of the employees it represents. It is concluded, therefore, that in arriving at recommendations concerning salary increases, minimum and maximum rates of pay and other conditions of employment, controlling weight cannot be given to what was negotiated between the City and the ABIU for inspectors in the building and construction inspection groups.



One of the principal points, of contortion between the parties is the insistence by the City that in fixing, the of the maximum rate range, contract maximum salaries be kept at a point below the actual total pay to be received by employees as a result of salary increases to be granted. The City wants it provided that in the case of any salary increase granted under the contract, which would have the effect of bringing the earnings of an employee above the maximums of the range it seeks to establish for that class of positions, the surplus amount over and above the established maximum due such an employee would be provided in the form of a pro-rated lump sum was earned. This would exclude the lump sum payment part of the employee's earnings from being taken into consideration for purposes of computing pension, etc,

The Union vigorously opposes this approach. There was an insufficient showing by the City as to why any amounts actually received by employees as a recognized part of their earnings should not be within the established rate range. The undersigned, therefore, is recommending that the lump sum approach not be

mandated, over this Union's objection, into the current agreement.

We will summarize, in conclusion to be stated in this report, the recommendations lie will summarize, in the conclusions to be stated in this report, the recommendations made as to the amount of the across-the-board increase for each job title and the minimum and maximum rates for the title.

It may be pointed out that the undersigned sees no difficulty with making appropriate recommendations for increases to be granted to the environmental health technician effective as of July 1, 1972 despite the certification of District Council 37 on February 28, 1973. As previously stated, the certification retroactively recognizes the appropriate collective bargaining function of the Union for this group of employees as of the date it filed for certification on April 17, 1972.

It may also be pointed out that this juncture the Public Health Sanitarian Trainee has received no increase since the Trainee rate, effective January 1969, became \$7,000. on January 1, 1969.

positions in other titles in health services, tuition reimbursement is being granted. Under all the circumstances, it will be recommended that since the modest tuition reimbursement in the sum of \$250 sought by the Union is consistent with what is being allowed elsewhere in the health services field it should be granted to the sanitarians. In consideration of the total costs of the increases granted, however, it is recommended that the tuition reimbursement allowance not go into effect until July 1, 1974.

RECOMMENDATION

1. The contract shall be for a period of three years form July 1, 1972 to June 30, 1975.
2. The advancement increases presently provided should not be distributed; namely, the increase from Public Health Sanitarian to Senior Public Health Sanitarian shall remain at \$600; from Senior Public Health Sanitarian at \$675, and from Supervising Public Health Sanitarian to Principal Public Health Sanitarian at \$750.
3. No portion of the salary increases granted shall be

paid by way of lump sum payments above the maximum of the range fixed for the title.

4. Tuition reimbursement in the sum of \$250 a year should be granted effectively July 1, 1974.

5. Insofar as the demand by the Union on adoption of standard District Council 37 provisions on such matters as Union recognition, dues checkoff, grievance procedure, etc., it is concerned, it does not appear that there had been any fundamental differences voiced between the parties on these subjects when the negotiations were concluded and when the impasse on a number of substantive problems was reached. It is recommended that these clauses be left to the parties to work out in framing their contract language in the expectation that no major difficulty will arise in arriving at agreement. Should this unforeseen contingency occur it may require re-submission to the impasse panel for ultimate adjudication. The record, however, contains no data as to positions taken or differences, if any, upon which to arrive at any present recommendations on the subjects covered.

6. It is recommended that the salary increases to incumbents and the minimum and maximum of the ranges be as follows:

Environmental Health Technician

	7/1/72	711/73	7/1/74
Increase	\$ 625	\$ 625	\$ 625
Minimum	7,450	8,850	8,650
Maximum	8,550	8,175	8,800

Public Health Sanitarian Trainee

	7/1/72	711/73	7/1/74
Flat Rate	8,000	8,700	9,400

Public Health Sanitarian

	7/1/72	711/73	7/1/74
Increase	\$ 975	\$ 975	\$ 975
Minimum	10,000	10,500	11,000
Maximum	13,275	14,250	15,225

Senior Public Health Sanitarian

	7/1/72	711/73	7/1/74
Increase	\$ 1,075	\$ 1,075	\$ 1,075
Minimum	11,250	11,750	12,250
Maximum	15,625	16,700	17,775

Supervising Public Health Sanitarian

	7/1/72	711/73	7/1/74
Increase	\$ 1,125	\$ 1,125	\$ 1,125
Minimum	12,650	13,200	13,750
Maximum	17,025	18,150	19,275

Principal Public Health Sanitarian

	7/1/72	7/1/73	7/1/74
Increase	\$ 1,175	\$ 1,175	\$ 1,175
Minimum	14,050	14,650	15,250
Maximum	18,175	19,350	20,525

JAMES V. ALTIERI

Dated: New York, New York  
April 15, 1974