

New York City  
Office of Collective Bargaining

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In the Matter of the Impasse between

Queens Borough Public Library

Impasse Panel

-and-

Local 1321, District Council 37, AFSCME

Report and Recommendation

Case No.: I-127-76  
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Before: Lewis B. Kaden, Esq.

Appearance:

For the Library: Frances Milberg, Esq.,  
Associate General Counsel  
Office of Municipal Labor Relations

For the Union: Marcia Lamel,  
Assistant Director of Research and  
Negotiations  
Robert W. Schmidt, Local 1321 Delegate

A hearing was held on May 6, 1977 before the Impasse Panel designated by the Office of Collective Bargaining pursuant to the collective bargaining law of New York City. Both parties had a full opportunity to present testimony and exhibits in support of their respective positions.

Local 1321 of District Council 37 represents professional, clerical and blue-collar employees in the Queens Borough Library. Along with other local unions in District Council 37, the Library employees are covered by a city-wide contract negotiated with the City District Council 37 and a unit agreement covering matters applicable only to Local 1321. Article I of the unit agreement for the period September 1, 1973 to December 31, 1976 (Jt. Exh. 1) provides:

"Section 2. Collective Bargaining under this Agreement shall not include matters which are covered by the City-Wide contract."

This impasse arises not out of negotiations for a new unit contract, but as a result of an order issued by the New York Public Employment Relations' Board on December 5, 1975 in an unfair practice proceeding involving the library and Local 1321. PERB ordered the library to negotiate in good faith with Local 1321 on the matter of bonus holidays from 1974 and succeeding years. This order was the PERB remedy for the Library's unilateral withdrawal of one bonus day in 1974. Union Exh. 2.

The PERB decision establishes the background facts relevant to this impasse. For more than twenty years, the Library had granted two bonus holidays to be taken by employees during a period from late November through early January. Neither the contract for 1971-1973 (Jt. Exh. 2) nor the contract for 1973-1976 (Jt. Exh. 1) contain any reference to the bonus holidays. On November 7, 1974 the Library announced that it would grant one bonus day on December 24, 1974, but that economic restrictions made, it impossible grant the second bonus day as had been the prior practice. This refusal led to the unfair practice charge and the PERB order to negotiate over the bonus days. The parties did negotiate, but were unable to reach agreement and this impasse panel was designated to recommend terms of settlement. The sole issue before me involves the union's demand for two bonus days per year.

The record here and before PERB establishes that the Library had consistently until 1974 granted the bonus holidays. It is also clear that no proposal was put forward to eliminate the bonus days. The union did ask that the extra days be added to contractual leave in the 1971-1973 contract, but the issue was not pursued in the negotiations.

In fact, the Union now seeks restoration of the one floating bonus day lost in 1974, one-half day lost in 1975 when the Library granted one fall bonus day and closed for one-half of December 24 and one floating~ bonus day for 1976. The Union claims that 2 ½ days are owed if the past practice is recognized. In the negotiations over the issue in 1976, the City offered 1 ½ days if the Union relinquished its future claim to bonus holidays. Thus, the critical difference in this impasse proceeding comes down to one bonus day, the difference between the City's offer of 1 ½ days and the Union's demand for 2 ½ days, and the question of future claims.

For the future, the continuing disposition of bonus days is properly a subject for negotiations. The city-wide Contract expires June 30, 1978. In these negotiations, the parties will have an opportunity to weigh the bonus days against other considerations and resolve the matter for the period of the new contract.

For the past, the city argues that financial limitations preclude continuation of the past practice on bonus days. It points to the drastic cutbacks in Library staffing and services made necessary by the financial emergency. There is merit in these arguments; no one can deny the severe impact on the Library of the emergency, least of all the employers who have suffered so directly. But the precise difference between the parties does not involve the overall financial prospect of the City. Here, according to PERB, the City improperly withdrew a benefit established by past practice. While the Board could not restore the status quo, the fair and proper outcome of these negotiations is to redress the inequity for the limited time period involved pending full consideration of the issue in city-wide negotiations next year.

Accordingly, I submit the following recommendation to resolve the impasse:

1. For 1974, the employees should be given compensatory time credit for one bonus day.
2. For 1975, the employees should be given compensatory time credit for one-half of a bonus day.
3. For 1976, when or bonus day was granted, one additional bonus day should be granted and credited toward productivity - COLA.
4. In the future, bonus days should be a subject for city-wide negotiations only, and not a subject in unit negotiations.
5. Although 1977 is technically not at issue in this impasse, the city should give serious consideration to granting two bonus days this year since the city-wide agreement expires on June 30, 1978 and the parties will not have an opportunity to bargain on the issue before then. One of the two bonus days should be credited toward productivity - COLA.

Respectfully submitted,

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Lewis B. Kaden  
September 16, 1977