

OFFICE OF COLLECTIVE BARGAINING

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In the Matter of the Impasse

-between-

THE CITY OF NEW YORK

-and-

LOCAL 3, IBEW, AFL-CIO

REPORT  
AND  
RECOMMENDATIONS

Case No. I-142-79

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Appearances:

For the City of New York

Robert W. Linn, Esq.  
General Counsel  
Office of Municipal Labor Relations

For Local 3:

Menagh, Trainor & Rothfeld, by  
Norman Rothfeld, Esq.

Before:

Morris P. Glushien,  
Impasse Panel

## REPORT AND RECOMMENDATIONS

In 1979 the Office of Collective Bargaining designated the undersigned as a one-man impasse panel to hear and make a report and recommendations in the contract dispute between the City of New York (the "City") and Local 3, IBEW, AFL-CIO ("Local 3").

Hearings were conducted on April 5, 1979; October 17, 1979; February 13, 1980; March 11, 1980; March 21, 1980; April 24, 1980; and May 16, 1980. Local 3 and the City were given full opportunity during the hearings to present evidence and argument on the unresolved issues in their negotiations of a collective bargaining agreement to be effective July 1, 1978 for a period of two years. Subsequently both Local 3 and the City presented comprehensive and competent briefs which have been carefully considered.

The case involves the Electrical Inspectors, Senior Electrical Inspectors, and Supervising Electrical Inspectors employed by the City and represented by Local 3. There is a question whether Principal Electrical Inspectors are also involved in the case (because the

parties may agree that they are managerial employees and thus outside the contract); but if this does not happen and they are within the contract, the same recommendations I make as to the other groups shall be deemed applicable to the Principal Electrical Inspectors too.

Let me also say preliminarily that, to avoid prolixity, whenever I refer to electrical inspectors, the term shall be deemed to embrace the higher groups as well, except only when the context precludes this construction.

Coming now to the issues I am asked to determine, they are two in number:

1. What salary increases should the Impasse Panel recommend to be paid to each of the groups for the 1978-1980 contract?
2. Should the electrical inspectors receive payment now of the deferred monies under the Americana Agreement?

I shall consider each of these issues in turn. But I believe it would be helpful if, before doing so, I briefly capsule certain facts regarding the City's financial history during the past five years.

Beginning in the spring of 1975, as everyone knows and as the evidence herein demonstrates, the City faced a

financial crisis of enormous proportions, finding itself on the brink of bankruptcy on a number of occasions. This has been averted up to the present time by various emergency steps taken by the state and federal governments, by large-scale lay-offs of employees, and by the commendable cooperation of the many unions with which the City maintains collective relationships. Among other things, the New York State Legislature created the Municipal Assistance Corporation to perform certain protective functions over the City's financial affairs. It also enacted the Financial Emergency Act for the City of New York, declaring a state of financial emergency and granting the Emergency Financial Control Board powers of review and oversight. The City was required to prepare a financial plan and begin to balance its budget.

One of the other steps taken in 1975 to stave off bankruptcy links directly to an issue in this case ("2". above) regarding "deferred monies under the Americana Agreement." What happened was this: the City met with all the principal unions at the Americana Hotel and they entered into an agreement in July 1975 for the deferred payment of certain wage increases due or becoming due to employees. The deferred amounts were to be paid on June 30, 1978, provided, however, that specified financial

conditions pertaining to the City were realized, one being, that "the market for the sale of obligations of the City of New York is such that the City will be able to sell its obligations under the market terms and conditions then prevailing."

One of the signatories to the Americana Agreement, (sometimes also referred to as the Wage Deferral Agreement) was Local 3.

It should be noted too that the Americana Agreement also provided in an article entitled "Resolution of Disputes":

"The parties agree that a dispute concerning the application or interpretation of the terms of this Agreement, or any dispute arising out of actions taken under this Agreement, shall initially be presented to the Step immediately preceding the final step of the Dispute Resolution Provisions of the underlying contract. A standing panel consisting of the impartial members of the Board of Collective Bargaining will be used for purposes of final step arbitration of disputes."

So much, at the moment, for the Americana Agreement of 1975. In the spring of 1976 the City faced another severe cash flow problem that could only be averted by federal loans. One element in persuading the federal

government to grant those loans was entry by the City and the unions in the so-called Hilton Agreement of June 30, 1976. Essentially, the Hilton Agreement provided for a "no increase" wage freeze in the various collective agreements for the 1976-1978 period. Local 3 was one of the signatories to this Agreement.

By 1978 the City had by no means achieved financial recovery. On June 2, 1978, the State amended the Financial Emergency Act in various respects, the statute making a finding that "a state of financial emergency continues to exist within the City," and that the City "has been unable to retain access to the public credit markets."\*

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\* It might be remarked parenthetically that, according to the New York Times of October 1, 1980 (page B3), City officials are now considering an effort to sell a small amount of its bonds in public credit markets in the near future -- this at a time, it should be noted, which is beyond the two-year contract period (ending June 30, 1980) with which this Impasse proceeding is concerned. Even so, Felix G. Rohatyn, Chairman of the Municipal Assistance Corporation, is quoted as warning that such an attempt at this time could hurt the City's fiscal recovery, and could further delay a full return of the City to public credit markets. He additionally stated that the "high interest rates and the publicity relating to the sale of a security which is viewed as below investment grade would, in my judgment, more than offset the symbolic value of a relatively small sale of city bonds."

Thus the City, when the 1976-1978 collective agreements had expired and it was necessary to negotiate new agreements for the period 1978-1980, was still in desperate financial condition. It was essential to receive further federal government support, and as one of the conditions, the federal government was insistent that the new collective agreements should give only minimal wage increases. This was accomplished, as we shall see in a moment, through the Coalition Economic Agreement of June 20, 1978; and thereafter. Congress on August 8, 1978, enacted the New York City Loan Guarantee Act of 1978, enabling the City financially to survive.

The Coalition Economic Agreement provided in essence for 4% wage increases (or \$400 whichever was greater) for each of the two years of the Agreement which ran from July 1, 1978 to June 30, 1980, plus improvements in some respects of the cost-of-living adjustments (COLA) that were contained in earlier collective agreements. It also granted a non-pensionable total cash payment that could not exceed \$1,000 but might be less depending on certain circumstances.

The coalition Economic Agreement was negotiated with the City by a coalition consisting of the major

civilian unions with which the City dealt, namely District Council 37, Teamsters Local 237, the Teachers, the Nurses, and also some of the uniformed forces. The original coalition, however, did not embrace the PBA, the firemen, or the correction officers, who all made hugely larger wage demands; but subsequently every one of these groups entered into collective agreements with the City conforming to the Coalition Economic Agreement.

Altogether about 250,000 employees were thus covered by the economic terms above described, and as a result, as I have already indicated, the loan guarantees needed for survival were given by the federal government.

There was one union, and one union only, which did not join in what all the other unions representing some quarter-million employees had accepted. The lone exception was Local 3 representing the electrical inspectors, a comparatively tiny group of approximately 125 employees. Instead of going along with the wage increases that everyone else had accepted, Local 3 instituted this Impasse proceeding which is thus now before me as the Impasse Panel.

And so, with all this as background and setting, we are brought to issue "1", the appropriate wage increase



for each of the groups of electrical inspectors for the 1978-1980 contract.\* Additional facts will be stated in discussing this issue.

The New York City Collective Bargaining Law, Section 1173.7.0, at c.(3)(b), lists a set. of standards, wherever relevant, to be considered by the Impasse Panel in making its recommendations:

(1) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other. employees generally in public or private employment in New York city or comparable communities;

(2) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and Premium pay, vacations, holidays and other excused time, insurance,

\* It is somewhat ironic that we are considering a contract whose expiration date, June 30, 1980, has already come and gone. Most of the long delay in concluding the Impasse proceeding was caused by circumstances unrelated to the Panel, but the most recent delay (following the submission of briefs near the end of June 1980) was because of serious illness in the Panel's family. The Panel apologizes to the parties for the tardiness of this report and recommendations.

pensions, medical and hospitalization benefits, food and Apparel furnished, and all other benefits received;

(3) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(4) the interest and welfare of the public;

(5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

The New York Stat e 1978 Financial Emergency Act amendment contains an additional standard which I consider important. It provides that an Impasse Panel:

"shall also take into consideration and accord substantial weight to the financial ability of the city \* \* \* to pay the cost of such increase in wages or fringe benefits."

And it provides further that this means:.

"without requiring an increase in the level of city taxes existing at the time of the commencement of the proceeding."

At this point I set forth what seems to me a critical set of facts. This is the bargaining history of the electrical inspectors in comparison to a large number of

other inspectorial titles. Included in the comparison are the following kinds of inspectors:\*

1. Boiler inspector
2. Construction inspector
3. Elevator inspector
4. Heating and ventilation inspector
5. Hoists and rigging inspector
6. Housing inspector
7. Plastering inspector
8. Plumbing inspector
9. Steel construction inspector
10. Air pollution inspector
11. Painting inspector
12. Pipelaying inspector
13. Traffic control inspector
14. Senior water use inspector.
15. Waterfront construction inspector
16. Blasting inspector
17. Demolition inspector
18. Fire prevention inspector
19. Senior transportation inspector
20. Dockmaster
21. Building rehabilitation specialist
22. Senior inspector of low pressure boilers
23. Environ compliance inspector

Including the electrical inspectors, there are thus 24 kinds of inspectorial titles. What the bargaining history demonstrates is that, from 1967 onward, each of these 24 groups in their successive contracts with the City agreed, gradually at first, to more or less the same wage

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\* The same kind of listings appears in the record with respect to Senior Electrical Inspectors and Principal Electrical Inspectors, but the comparison groups there are lesser in number.

structure as the others in the group of 24 -- the City attempting by collective bargaining to standardize the wages for them all. This led, by the 1971 contracts, to almost identical wages for all these groups. Finally by 1974\*, again in 1975, and once more in the 1976-1978 agreements (the last agreements prior to this Impasse), absolute sameness was Attained for all 24 groups, including of course the electrical inspectors. To sum it up, throughout the 1970s (and to some extent even earlier), substantial parity and ultimately absolute wage parity prevailed among the 24 inspectorial groups, one of them being the electrical inspectors. By free collective bargaining the electrical inspectors through Local 3 had agreed to parity with the others.\*\*

\* In 1974 there was a trivial difference in the "maximum" range for one group, the Fire Prevention inspectors. Even this slight difference vanished in the 1975 and the 1976-1978 agreements.

\*\* Interesting in this connection is a memorandum of instructions written to his negotiators in March 1976 by the City's then Director of Labor Relations. He observed that in "the last round of negotiations [which it should be noted took place prior to the financial crisis] for various inspector titles and levels the salary ranges were made uniform regardless of the union which represented these inspector titles.

"The same policy of identical salary ranges will continue for inspector titles effective July 1, 1975 to June 30, 1976."

And it is exactly this parity which the electrical inspectors, in this Impasse proceeding, are attempting to destroy. Indeed, the increases they are asking, compared to what the other 23 groups accepted through the Coalition Economic Agreement, are so enormous as to make a mockery of the prior long-continued parity. They are also totally at odds with the federal wage guidelines intended to combat inflation.

It is true as the City's brief concedes that the Coalition Economic Agreement was a "harsh" one for the City's workers -- a harshness dictated by the City's near bankruptcy and the need to obtain federal help. Thus the two-year provision for the inspectorial groups I have mentioned changed the salary range of \$11,800-\$14,800 under the contract expiring June 30, 1978 to \$13,221-\$16,466 under the Coalition Economic Agreement.\* Even with improved COLA and with the non-pensionable cash payment I have mentioned, the average inspector (even if near the top of the grade) would be earning not too much more at the end

\* The salary ranges for "senior", "supervising", and "principal" were of course higher at the start, and were increased comparably.

of the Agreement than at the start the total two-year gain amounting to something like \$2,000, if that. This can hardly be called generous, but it is what the other 23 inspectorial groups, cooperating to save the City, accepted.

The wage demands of the electrical inspectors, in contrast, can only be described as astronomical. They are seeking wage increases which, for the title of Electrical Inspector would amount to nearly \$7,000 during the two-year period, and would be only slightly lesser in dollar amount for the "senior", "supervising", and "principal" titles. In percentage terms, the two-year increase would amount to over 45% for the Electrical Inspectors. For the higher electrical inspector titles, the percentage would be somewhat lower but each would still be over 30%.

Let us for the moment put aside the problem of the City's financial straitjacket and also the compelling factor of historical parity with the other inspectorial titles. Even then, what is the justification that Local 3 advances for asking such huge wage increases?

One claim which indeed is true is that electrical inspectors (and the other inspectorial titles too) are not

highly paid employees., considering their skills and the high rate of inflation now prevailing in our economy. Even so, looking at a group of nearly 20 large cities, the evidence shows that the wages of City electrical inspectors are about midway in this group of representative cities.\*

Local 3 also contends that electrical inspectors are paid lower wages than Consolidated Edison Company employees doing the very same work. Even if true, I would not deem it compelling since (a) a comparison with employees in private employment is only one of the many elements to be considered; and (b) a wealthy public utility like Consolidated Edison (which can also obtain rate increases if the regulatory body approves) is much more able than the financially strapped City to bear the cost of substantial wage increases. Beyond that, the evidence shows that the

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\* Besides New York City, the others are Chicago, Cleveland, Baltimore, Dallas, Detroit, Houston, Indianapolis, Memphis, Milwaukee, Newark, Philadelphia, San Francisco, Washington, Boston, New Orleans, San Antonio, Phoenix, and Los Angeles. Local 3 contends that the comparison should be made only with five of those cities, all over one-million population and all or almost all of them paying more than New York City (Chicago, Philadelphia, Los Angeles, Detroit, and Houston), but I reject the view that a "million" population means that the others should be ignored.

two sets of employees are not doing identical work; 40% of the Consolidated Edison employee's workday is spent on non-inspection duties.

Local 3 also asserts that, because of the low wages, the City is unable to hire the number of electrical inspectors it needs; that the number of inspectors and inspections is therefore inadequate, laying the City open to jury verdicts if a fire with death or harm results; and also that additional "inspection" fees emanating from the ability to hire more inspectors at higher wages will offset in part the cost of large wage increases. The difficulty with this argument is two-fold. First, it appears from the record that the City, distributing its meager resources as it deems best, has declined to hire even those electrical inspector applicants who have applied for the jobs at the existing supposedly low and inadequate salaries. Second, the construct regarding threatened jury verdicts is entirely speculative; and in any event the judgment regarding how many electrical inspectors the City needs or can afford is a purely managerial decision outside the province of Local or this Impasse Panel.

Nor is it pertinent, contrary to the Local 3 position, that some electrical inspectors have chosen to move.



from that position into another Civil Service title, Electrician, that has different (and perhaps more onerous) duties and pays higher wages.\*

Having examined these contentions of Local 3 and found them wanting, I return to the considerations I deem compelling -- the acceptance of the admittedly meager increase of the Coalition Economic Agreement by all others of the quarter-million City employees; and the history of parity with the 23 other inspectorial groups among these quarter-million who accepted. It seems to me evident that the electrical inspectors, although of course entitled to no lesser provisions, have no justified claim to better treatment.

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\* Essentially the same may be said about a job shift in one or two cases from electrical inspector to the higher-paying title of Assistant Supervisor of Electrical Installations. The job specifications are different for the two titles; and even if, as was testified, the electrical inspector had previously been doing the higher-ranking work, this is simply an instance of out-of-title work which should be grieved as such and has no bearing on the present Impasse proceeding.

Furthermore, if Local 3 can break the pattern which has governed everyone else, it would be rewarded for its obduracy. And it would create a catastrophic potential. Other unions, despite the City's continuing fiscal difficulties, would be encouraged to hold back from a common bargaining approach in the expectation that, by being dissidents from the generally agreed-upon settlement, they would obtain a substantially better deal. This can hardly be said to comport with the interest and welfare of the public.

The short of the matter is that to reward the electrical inspectors here is likely to have a domino effect in the future, endangering the financial stability of the City.\*

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That this is not altogether theoretical is evidenced among other things by the fact that one of the inspectorial unions, which had accepted the Coalition Economic terms long ago, did not have its members ratify that bargain until recently -- the delay obviously caused by the hope that the report and recommendations herein would be favorable to the electrical inspectors, in which event the other union too would not ratify and would reject the Coalition Agreement, and then seek to match what it hoped would be the more favorable terms awarded in the electrical inspector situation here.

Nor is it meaningful that the electrical inspectors, taken alone, are a small group so that the City could no doubt pay these few workers large increases without endangering its solvency. The critical fact is that the other inspectorial titles which have had parity up to now would want the same treatment -- and more important, as I have already indicated, it would endanger the whole course of future bargaining with unions generally,\*on which the City's solvency depends. The City's "financial ability to pay," a statutory criterion I must consider (supra, p. 9) would be seriously imperilled.

I conclude, for the reasons stated, that the terms of the Coalition Economic Agreement shall apply to the Electrical Inspectors, the Senior Electrical Inspectors, the Supervising Electrical Inspectors, and also (if they are covered by the collective agreement) the Principal Electrical Inspectors for the two-year contract-term from July 1, 1978 to June 30, 1980. My recommendations below dispose of issue "1" in this fashion.

This brings me to issue "2", the demand by Local 3 that the deferred monies under the Americana Agreement be paid to the electrical inspectors now. I reject this demand for two separate reasons.

1. The Americana Agreement provided for payment of the deferred monies on June 30, 1978, conditioned, however, on the realization of certain financial goals by the City (supra, pp. 3-4). The Agreement further provided for arbitration of disputed questions thereunder by the impartial members of the Board of Collective Bargaining.

Under the Coalition Economic Agreement, the signatories thereto (which of course did not include Local 3) agreed that the City financial goals triggering the payment had not been attained, but they disagreed whether this wiped out the obligation to pay altogether (as the City maintained) or whether the payment was to be made at such later time, if any, as the goals were attained (as the Coalition maintained). The dispute was submitted to the three impartial members abovementioned as an arbitration/ impasse panel, and they handed down a lengthy and well-reasoned decision dated July 20, 1978, holding that the obligation continued and that payment of the deferred monies should be made when and if the goals were attained but not earlier than July 1, 1982.

Since Local 3 was not a party to that case, it is not bound by that determination, no matter how persuasively reasoned it is.

I hold, however, that since the City in the instant Impasse proceeding disputes any possible claim by Local 3 that the financial goals set forth in the Americana Agreement as a condition of payment have been met,\* this matter must be submitted\*for arbitration to the three impartial members of the Board of Collective Bargaining, as provided in the Americana Agreement (supra, p. 4), and is not a matter which is open to me for adjudication.

2. If Local 3 is contending that I, as an Impasse Panel, should recommend that its 1978-1986 contract contain a new provision (regardless of the original Americana provision) requiring the deferred monies to be paid now, I decline to do so. I see no reason why this group of employees should receive such monies now, when the other quarter-million City employees will have to wait at least until 1982, and even then will not get the monies unless and until the specified financial goals are met.

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\* It is not clear to me whether Local 3 does or does not contend that the goals have been met.

I will recommend, however, that the Local 3 contract contain a provision respecting the deferred monies that embodies the same terms as are contained in the aforementioned decision dated July 20, 1978.\*

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\* Local 3 placed great stress during the hearing upon a certain decision by Judge Nolan in the Small Claims Court granting the deferred money to a court clerk who sued for it in a lawsuit. I see no pertinence in that decision to the problem before me. In any event, that decision was completely overturned by the Appellate Term on May 1, 1980. It held that any claim to the deferred monies must be arbitrated before the three-person tribunal set forth in the Americana Agreement.

RECOMMENDATIONS

1. I recommend that the 1978-1980 contract between Local 3, IBEW, AFL-CIO, and the City, shall contain the same economic provisions as are contained in the Coalition Economic Agreement.

2. Assuming, which is debatable, that I (rather than the tribunal specified in the Americana Agreement) have jurisdiction over the matter, I recommend that the contract provide that the same terms apply to the deferred monies under the Americana Agreement as are contained in the aforementioned decision dated July 20, 1978.

Dated: New York, New York  
October 8, 1980

Morris P. Glusfilen  
Impasse Panel

STATE OF NEW YORK  
SS.:  
COUNTY OF NEW YORK

On this 8th day of October, 1980, before me personally came and appeared MORRIS P. GLUSHIEN, to me known and known to me to be the individual described herein and who executed the Award herein, and he duly acknowledged to me that he executed the same.

DAVID M. EISENBERG  
Notary Public