OFFICE OF COLLECTIVE BARGAINING
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In the Matter of

THE CITY OF NEW YORK,

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1180,

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO, LOCAL 2627
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REPORT AND RECOMMENDATIONS

Docket Nos. I-144-79
I-151-79

APPEARANCES:

For the City of New York:

Michael R. Hitsman, Assistant Director
Office of Municipal Labor Relations
Elizabeth Grace, Assistant Director
Office of Municipal Labor Relations

For Communications Workers of America, Local 1180:

Neil D. Lipton, Esq.
Cohn, Glickstein, Lurie, Ostrin, Lubell & Lubell
Arthur Cheliotes, President, Local 1180

For District Council 37, AFSCi4E, AFL-CIO:

Al Viani, Director of Research and Negotiations
Edward Glenn, Assistant Director, Research and Negotiation

Before the Impasse Panel:

Morris P. Glushien

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In 1979 the Office of Collective Bargaining confirmed my designation in I-144-79 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 Communications Workers of America. Local 1180 ("CWA").

Hearings in 1-144-79 were held on September 10, 1979; September 24, 1979; September 28, 1979; October 8, 1979; October 23, 1979; October 24, 1979; October 30, 1979; November 13, 1979; November 28, 1979; November 29, 1979; December 19, 1979 and April 18, 1980 at which CWA and the City were given full opportunity 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.

In its "Request for Appointment of an Impasse Panel" ("Request") CWA set forth nine demands upon which it requested report and recommendation. Early in the hearings, with the assistance of the impasse panel as mediator, all but the following two demands were resolved by the parties:

> Demand 39. Differentials for all Administrative Assistants, Administrative*Associates and Senior Administrative Assistants working in Income Maintenance Centers; $500, $750, $1,000.
>
> Demand 44. When an employee is promoted to a higher level (within the Principal Administrative Associate title), he or she cannot be demoted to a lower level after having served six months in the higher level. This does not include disciplinary items.

Hearings on Demand 39 commenced on or about September 24, 1979. Demand 44 was held in abeyance pending the adjudication of a Scope of Bargaining petition,("scope petition") filed by the City regarding that demand. After approximately ten days of hearings on Demand 39, CWA withdrew it pursuant to a written stipulation of CWA and the City which was incorporated in and made part of the record herein. Thus, the sole unresolved demand remaining before the impasse panel is Demand 44.

BCB Decision

In its Request, CWA included Demand 44 as set forth above. After the scope petition was filed by the City with respect to it, CWA modified the demand to read as follows:

> Demand 44. An employee in the title Principal Administrative Associate or Stenographic Specialist who is assigned to a level II or III position or an employee in the title Computer Associate who is assigned to a level IT position

> shall after six months (or such other period as the Impasse Panel may determine to be appropriate), maintain the salary he or she was receiving at that level if thereafter he or she is reassigned to a lower level position in the same title. This shall not apply to disciplinary matters.

In Decision No. B-19-79 (Docket No. BCB-350-79), the Board determined that Demand 44, as modified, was a mandatory subject of bargaining and an appropriate subject for the impasse panel's consideration. A hearing on that demand as modified was held by the impasse panel April 18, 1980.

Consolidation of the Proceeding

On March 20, 1980, pursuant to a joint request of CWA, the City, and Local 2627, District Council 37, AFSCME ("D.C. 37"), the Office of Collective Bargaining consolidated the proceeding in 1-144-79 with 1-151-79. The latter proceeding arose out of the 1978-80 collective bargaining negotiations between the City and D.C. 37. In the D.C. 37 impasse the following demand was submitted to an impasse panel for report and recommendation (1-151-79):

> Demand 33. All employees in broadbanded titles who have satisfactorily performed Level II or Level III duties in their title for six months shall not have their salaries reduced subsequently.

The OCB also confirmed my designation as the one-man impasse panel in I-151-79.

At the first day of hearing in the consolidated proceeding D.C. 37 modified its demand to conform with CWA's modified Demand 44. In addition, D.C. 37 raised the following demands relating to its broadbanded titles in issue:

1. That the alleged performance of "out-of-level" work (i.e., work traditionally performed by an employee in a different level within the title) should be grievable.

2. That the City should rewrite the class or job specifications for the broadbanded titles so as to define more clearly the job responsibilities of the various levels.

CWA-also requested that-these two demands be included by the impasse panel in conjunction with its titles in issue.

Neither CWA nor D.C. 37 had raised either of the above-stated demands in their respective Requests. The City, however, waived its objection to having new matters raised at the hearing without prior submission to the Board of Collective Bargaining, and it was agreed by the parties that the impasse panel should consider the out-of-level question for all the titles in issue in the consolidated proceeding. The City objected to a report and recommendation on rewriting the job specifications alleging this was a managerial right pursuant to §1173-4.3b. of the NYCCBL. It did, however, agree to rewrite the job specifications for all o fthe titles in issue in the event the impasse panel recommended that out-of-level work should be grievable.

The Broadbanding

The demands in issue herein stem from the so-called vertical broadbanding/consolidation ("broadbanding") of certain titles certified to CWA and D.C. .37. In the broadbanding affecting CWA, the New York City Department of Personnel consolidated three civil service titles (Administrative Assistant, Administrative Associate and Senior Administrative Assistant) into a single civil service title, Principal Administrative Associate, with three assignment levels having salary rates equivalent to those of the predecessor titles. In addition, the former specialized titles of Administrative Assistant, (IBM) (EDP) and (UNIVAC) were consolidated into the new title Computer Associate (Technical Support) with two assignment, levels. The Department of Personnel also consolidated titles represented by D.C. 37 (Shorthand Reporter) and by CWA (Senior Shorthand Reporter), (Supervising Shorthand Reporter) into a single Civil Service Title, Stenographic Specialist with three assignment levels having salary rates equivalent to those of the predecessor titles, the consolidated title now being represented by CWA. Finally in another broadbanding the City's Department of Personnel broadbanded forty-five (45) Electronic Data Processing titles into thirteen (13) new titles represented by D.C. 37.'

All three broadbandings were implemented unilaterally by the City pursuant to Resolutions of the Personnel Director. In essence they provided as follows:

An employee whose title was broadbanded was given the option of either testing for the new title or remaining in the old one;

Assuming that the employee opted for the new title and passed the test, he/she was slotted into the assignment level commensurate with his/her former salary rate, e.g., a former Administrative Associate became a Level II and a former Senior Administrative Assistant became a Level III.

Once an employee had completed the above-described process, he/she could not be reduced below that level without the service of disciplinary charges pursuant to Civil Service Law. Such employee could, however, be raised in assignment level within the title by the employer without civil service testing, and thereafter could be reduced to his/her former level without disciplinary charges.

Positions of the Parties

At the hearing, it was the Unions' position that the broad banding of their respective titles has engendered the loss of long-established rights associated with the predecessor titles. These rights include, inter alia, no demotion in position or loss of pay after a fixed probationary period without formal disciplinary action and the ability to grieve the performance of duties substantially different than those set forth in the prior job specifications (i.e., out-of-title work). They argue that salary protection

and the right to grieve out-of-title work, both necessary restraints on potential management abuse, should be restored to employees in the levels of the broadbanded titles through the inclusion of appropriate clauses in their respective collective bargaining agreements.

The City, on the other hand, argued that the inclusion of the demands in issue would substantially impair the overall classification scheme of the broadbanding and improperly interfere with the City's legitimate exercise of a recognized managerial right set forth in the NYCCBL. In this regard, it asserts that the attachment of salary protection and the right to grieve out-of-title work to levels would have the effect of resurrecting the titles broadbanded and impair the valid actions of the Personnel. Director in modifying the title structure of the City of New York. It points out that the legality of the broadbanding, both with respect to unilateral implementation by the City and any diminution in civil service rights of employees formerly in the predecessor titles, had never been challenged by either CWA or D.C. 37 and that similar court challenges in other broadbanding had been dismissed by the courts.

Discussion

During the final day of hearing CWA, D.C. 37 and the City made one last attempt to negotiate final resolution of all remaining items without the need for report and recommendation

by the impasse panel. While the parties were unable entirely to bridge the gap between their respective positions, they did modify them as follows:

1. The City proposed salary protection in the manner provided for in Demand 44 after a period of seven and one-half (7-1/2) years. The Unions proposed that the period be one (1) year.

2. In the event the impasse panel recommended that out-of-level work, be grievable, the City would rewrite the job specifications for affected broadbanded titles to define more clearly the duties to be performed by employees in the titles.

The solution which I propose below is an attempt to bridge the remaining gap between the parties' respective positions, giving significant deference both to the City's need to maintain the integrity of the overall broadbanding scheme and the Unions' concern for retention of certain long-established protections. Though a compromise, my recommendations fall within the final proposals of the parties, as will be seen.

Demand 44

The broadbandings before me could be argued to have engendered a loss of benefit to an employee moving from a predecessor title into one of the levels of the new titles. In the past an employee, once promoted after civil service testing and

then serving the probationary period, could not thereafter be demoted without formal disciplinary charges; under the broad-banding this is no longer the case. While I accept the City's contention that the employee enjoys the advantage of being able to move through the levels to higher career status and better pay much more quickly and without the need for the aforementioned civil service testing, the fact remains that the employee the same (who no longer is subject to such testing) does not have t permanency in position or protection of salary he/she enjoyed previously.

On the other band, the broadbandings herein arguably represent legitimate managerial action by the employer to modify its classification scheme in order to meet the realities of a reduced work force caused by the City's financial stringencies and, at the same time, ameliorate many of the problems inherent in administering a large number of titles (i.e., excessive testing of employees for promotion, lack of flexibility in assignment, etc.).

The broadbandings in issue already have a degree of built-in protection for the employee. These include, inter alia, the right not to be reduced in either assignment level or salary rate below that level at which he/she entered the broadbanding, without the service of written disciplinary charges; the right not to be reduced below the lowest level of the title without the service of such charges; and the right to grieve the performance

of work outside the broadbanded title, pursuant to the applicable collective bargaining agreement. While I believe that these basic protections should be augmented by the recommendations set forth below, careful consideration has been given to the stated objective of the City in initiating the broadbandings in issue. In this regard, I do not believe that the proposed recommendations either substantially modify the broadbanding schemes or interfere with the City's exercise of its managerial prerogatives under the NYCCBL.

I propose that for a period of three years and three months after an employee has entered a particular level of a broadbanded title, he/she may be assigned at the discretion of the employer to a lower assignment level in the broadbanded title with a concomitant decrease in level of pay.* The employer's decision to reassign the employee during this period to the lower assignment level and accompanying level of pay shall be final and shall not be subject to the grievance and arbitration procedure set forth in the applicable collective bargaining agreements.

Upon successfully serving in a-level within a broadbanded title for a period of three years and three months, it is my view that a degree of salary protection should attach. Thus, I propose that while employees who have continuously served for three years and three months in an assignment level of the broadbanded title

* This would not apply, of course, to those rights guaranteed to employees who moved into levels of broadbanded titles equivalent to the antecedent positions, as heretofore set forth at pages 6 and 9 supra.

may still be reassigned to a lower assignment level, he/she shall continue to receive the preexisting salary and may not be reduced to the applicable salary rate for the reassigned lower assignment level unless the employee in his/her last performance evaluation, whether annual or special, is rated unsatisfactory. In addition, no special evaluation should be the basis for a reduced assignment unless made at least six months after the annual evaluation. Because an unsatisfactory performance evaluation could result in a substantial loss of pay to the employee, I also propose that a union claim that the evaluation upon which an employee is reduced is improper or incorrect should be subject to the grievance/ arbitration procedure of the parties' applicable collective bargaining agreement. The unions, however, shall have the burden of showing the arbitrator that the evaluation was improper or incorrect.

In addition, it follows that with respect to reductions made either prior to or after three years and three months service in the title, the salary rate for an employee reassigned to a lower assignment level in a broadbanded title shall be the rate such employee would have been receiving had the employee served continuously in the lower assignment level.

Out-of-Level Work

The remaining issue to be resolved is the question of out-of-level work. Currently, it is my understanding that only strictly out-of-title work, that is to say, work substantially

different for the title (regardless of level) is grievable under the collective bargaining agreements. In the City's view at least, duties performed by an employee above or below those duties equated to his/her assignment level within the title are not grievable.

From the' testimony and evidence presented at the hearing, it is apparent to me that out-of-level work should also be grievable under the applicable collective bargaining agreements. The right to perform duties within a particular job specification and concomitantly not to perform higher or lower duties than those for which an employee is compensated was a long-established one under the predecessor titles. Because the broadbandings combine several titles into one, strict construction of the contractual language by the City would appear to vitiate a protection previously negotiated for and enjoyed by employees in the predecessor titles. This should be corrected.

Along with this, it will of course be necessary for the City to rewrite the class or job specifications of the affected broadbanded titles to delineate more clearly the job responsibilities of the levels; and the City, as stated, has agreed to do so.

RECOMMENDATIONS

1. Employees who have served for three years and three months at an assignment level above the lowest assignment level of z broadbanded title may only be reduced in salary based upon their

last performance evaluation, whether annual or special, provided such overall performance evaluation rating is unsatisfactory. A special evaluation may not serve as the basis of a reduction to a lower pay level if made less than six months after an annual evaluation.

2. Where an employee's salary has been reduced pursuant to paragraph 1, the Union may claim that the evaluation upon which it is based is improper or incorrect and appeal such claim under the grievan ce procedure of the Agreement. The Union shall have the burden of'showing the arbitrator that the evaluation was improper or incorrect.

3. The salary rate of an employee reassigned to a lower assigrutient level in a broadbanded title whose salary rate is reduced shall receive the rate such employee would have been receiving had the employee served continuously in the lower assignment level.

4. The alleged performance of "out-of-level" duties will be grievable under Article VI, Section l(c) of the Principal Administrative Associate Agreement and Article VI, Section l(c) of the Accounting and Statistical Agreement.

Dated: New York, New York
June 24, 1980

Impasse Panel

MORRIS P. GLUSHIEN

STATE OF NEW YORK
:ss.:
COUNTY OF NEW YORK

On this 24th day of June, 1980 before me personally came and appeared Morris P. Glushien, known to me and to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.