

Office of Collective Bargaining

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In the Matter of the Impasse

between

AMENDED

THE CITY OF NEW YORK

REPORT & RECOMMENDATION

and

OF

LOCAL 372, DISTRICT COUNCIL 37, AFSCME

IMPASSE PANEL

Re: Case No. I-149-79  
School Crossing Guards

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On October 9, 1979, I issued my report and recommendations with regard to the impasse between the City of New York and Local 372, District Council 37, AFSCME, concerning School Crossing Guards. On October 22, 1979, I was duly informed that the Union had accepted the report and recommendations. However, on November 9, 1979, the City notified me and the Union that it was still in the process of reviewing the report and recommendations and that it might seek clarification of certain aspects of the report. Accordingly, the City requested an extension of time until November 29, 1979, in which to submit a request for clarification. It also requested that I retain jurisdiction in the matter,

On November 13, 1979, no objection having been raised by the Union, the extension was granted.

By letter dated November 30, 1979, the City requested that the hearing be reopened to present evidence on issues which had not been resolved. By letter dated December 3, 1979, the City stated that recommendation No. 9 needed clarification. The City wished to know whether in setting the limits of the buy-out at 15 to 19 hours per week it was my intention that the cost associated with the buy-out would cover those employees working between 15 hours to 19 hours and 59 minutes per week or those employees working between 15 hours and 19 hours per week. The City stated that if the former was intended it appeared that the associated cost did not fully fund the parameters of this benefit and it wished to present evidence on this point.

Accordingly, a hearing was held on December 6<sup>th</sup>, 1979, for the purpose of hearing in greater detail the reasons the City wished to reopen the proceeding and to give the Union the opportunity to respond thereto.

At the hearing, the City stated that the population of the bargaining unit and the cost of the buy-out provisions based on them sharply in error in that the numbers which had been given to me came from a survey made in 1978 while the 1979 population survey was considerably different. If health insurance and welfare benefits were to be applicable to the present population, the cost would be over \$1 million more than that which I had been led to believe. The new survey showed those not covered by health insurance for each person for a full year was said to be about \$450, making a total of about \$800,000. Subtracting those who already receive health insurance the additional cost would be \$651,600, more than twice larger than the \$306,000 I had estimated.

Moreover the buy-out of the welfare provision which was based upon about 1,300 employees was also found to affect 1,624 employees and would cost about \$400,000 as against \$270,000 on which I had based my recommendation. The City urged that if the welfare recommendation was to be retained, there should be some limit on eligibility to reduce the cost.

Finally, the City requested a change with respect to Demand No. 4. I had recommended that a post and pick system be instituted on a borough-wide basis. The City asked that this be changed to a neighborhood basis because that was the concept which had generally been used in the past.

The Union strenuously objected to the reopening because it had already accepted the report and recommendation. It also complained

that the City was making general statements without showing the statistical evidence to back them up.

Because time was of the essence and I was unable to meet with the parties on December 7<sup>th</sup>, due to prior commitments which could not be changed, I directed the City to provide the Union and me with the detailed evidence which supported its application and that it did so before the end of the day on December 7<sup>th</sup>. That direction has been complied with.

I hereby grant the request to reopen the hearing and to consider the City's evidence. I do so because the application in part is based on a mistake of the facts on which I calculated the cost of the buy-outs I had recommended in my earlier report. It should be stressed that the application does not seek to change the overall monetary value of the recommendation as originally made but to correct the computations upon which the buy-outs were made. The cost of the buy-outs originally recommended were computed by multiplying the population by the cost of the benefit provided and deducting that amount from the wage rate that had already been determined. If those figures were in error it would mean that the mathematical computations which I had made were also in error and should be corrected.

I have examined the data submitted by the City and have discussed them with representatives of the Union. I find that the claims made by the City are substantially correct and that my original recommendations must be amended if the total cost of the package to the City is to remain that which I had originally anticipated.

Accordingly, I make the following amendments to my report and recommendation. Where the recommendations are not hereby amended, they are to remain as originally stated in my report and recommendation of October 9, 1979

DEMAND NO. 4 The change requested by the City is denied. The argument used by the City to request the change is not based upon a mistake of fact but on the City's disagreement with the recommendation. It is merely an effort to induce me to change

my recommendation because it is not to the City's liking.

DEMAND NO. 9 The recommendation is amended to read as follows:

Health insurance shall be provided for those employees who regularly work 20 hours or more per week and shall not be paid during summer recess,

DEMAND No. 19 The recommendation is amended to read as follows:

The City shall make contributions to the DC 37's welfare fund on behalf of all guards who regularly work 15 hours or more per week on a continuous basis and have been so employed continuously for 90 days prior to the commencement of the obligation of the City to make its contributions provided, however, that the summer recess, authorized leaves of absence or time on a recall list shall not be considered a break of service.

DEMAND NO. 2 Because of the reduction of the extent to which health insurance is provided, some money is available that was not used in the amended buy-outs I have recommended. Since the buy-outs reduced the hourly rates of the employees, that money should be returned to the hourly rates. Accordingly I issue the following recommendation:

After one year of service as of October 1, 1979, the rate shall be increased from \$3.20 to \$3.30.

Respectfully submitted,

Benjamin H. Wolf  
Impasse Panelist

December 12th, 1979

Office of Collective Bargaining  
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In the Matter of the Arbitration

between

THE CITY OF NEW YORK

REPORT & RECOMMENDATION

and

OF

LOCAL 372, DISTRICT COUNCIL 378 AFSCME

IMPASSE PANELIST

Re: Case No. 1-149-79  
School Crossing Guards  
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APPEARANCES:

For the City: Bruce McIver, Director, OMLR  
Carmen Suardy, Attorney

For the Union: Alan Viani, Director of Research & Negotiations  
Edward Glenn, Assistant Director, Research Negotiation

On September 5, 1979, the Office of Collective bargaining confirmed my designation as a one-man impasse panel to hear and make report and recommendations in the first contract dispute between the City of New York and Local 372, District Council 37, AFSCME, concerning school crossing guards.

Hearings were held on September 12th and 17th, 1979, at which the parties were given full opportunity to present evidence and argument on the unresolved issues in their negotiation of a collective bargaining agreement to be effective July 1, 1978, for a period of 2 years.

On November 29, 1978, the Board of Certification of OCB certified DC 37 as the exclusive representative of all school crossing guards employed by the City of New York. By that action the OCB ended the previous certification of the School Crossing Guard Association of the City of New York. As the previous bargaining representative, the Association had entered into a contract with the City for the

period July 1, 1972 to June 30, 1975, concerning the term and conditions affecting the employment of school crossing guards. That contract was, not renewed because-all school crossing guards were laid off in 1975,

Three years later at the beginning of the school year in 1978, school crossing guards were again hired by the City of New York, many of those laid off in 1975 but on term and conditions different from those in 1975. Under the previous contract, guards had a salary step progression which ranged from \$2.80 per hour at appointment to \$3.75 after 4 years of service. Many of the guards worked more than 20 hours per week and were therefore entitled to fringe benefits that other city employees received. When they were rehired in 1978, they were treated as new employees at the single starting rate of \$2.80 an hour. Many of them found that they were no longer employed at 20 hours per week and therefore were not eligible for fringe benefits.

The City's justification for these terms and conditions was that former employees had no legal rights to the provisions of the old contract because of the lapse of 3 years or more in their employment. Moreover, in the interim, New York City had faced a critical financial problem which the unions dealing with the City, including DC 37, recognized as urgent. Those unions entered into a pact with the City called the Coalition Economic Agreement (CEA) which provided improved benefits for city employees but, more importantly for the school crossing guards, prohibited any union or the City from granting benefits exceeding the limits established by CEA. Accordingly, the City made its offer in compliance with the restraints imposed upon it by CEA.

The Union considers the City's proposal unconscionable and, in effect, demands that the guards receive the benefits they were getting in 1975 brought up to date as though they had worked in the interim.

In their negotiations the Union and the City tempered their original positions and have moved closer to one another but not close enough to bridge the gap between them. The solution which I propose below attempts to do justice to the guards because of their prior service to the City and yet stay within the limits of the City's financial condition and the CEA. Of necessity, such an approach must be a compromise, less than the Union and the guards have demanded but more than the City offered. The details regarding each demand in issue and the recommended solution will be discussed below:

DEMAND #2

Effective on the indicated dates the following salary rates shall be established:

	<u>9/1/78</u>	<u>9/1/79</u>
Appointment Rate	\$4.00/hour	\$4.25/hour
After two years of service	\$4.25/hour	\$4.50/hour
After three years of service	\$4.50/hour	\$4.75/hour
After four years of service	\$5.00/hour	\$5.25/hour

The Union, on or about 5/31/79 reduced the above stated salary rate demands as follows:

	<u>9/1/78</u>	<u>9/1/79</u>
Appointment Rate	\$3.90/hour	\$4.15/hour
After two years of service	\$4.10/hour	\$4.35/hour
After three years of service	\$4.35/hour	\$4.60/hour
After four years of service	\$4.75/hour	\$5.00/hour

The City's final position was application of the Coalition Economic Agreement which would result in the following rates:

<u>7/1/78</u>	<u>10/1/78</u>	<u>7/1/79</u>	<u>10/1/79</u>
\$2.80/hour	\$3.01/hour	\$3.22/hour	\$3.43/hour

I propose that the starting rate be established where it left off in 1957 at \$2.80 per hour but that a step progression system formerly applicable to employees be reestablished. The justification for this proposal is that the former school crossing guards should not be treated as new inexperienced employees. However, the CEA did not consider their problem. They had already been laid off before the CEA was negotiated. Although DC 37 is a party to the CEA and is bound by its terms, DC 37 did not represent the school crossing guards when CEA was negotiated because there were none. Thus, since 1975, there was no bargaining over the rates that guards would be hired at or would have been receiving had there been such employees. The CEA, which both the City and the Union acknowledge applies to the guards, places restraints on increases that can be given to City employees it covers but not on the rates former employees can be hired at. It would manifestly be unfair to saddle the guards with equal to or less than the rates which were suspended in 1975. For one thing, the value of the dollar has changed since 1975. What is needed is the establishment of appropriate rates upon which the improvements permitted by the CEA can be superimposed. Thus, I propose recognition of the prior service of the guards at rates 6% above where they were in 1975, since other City employees received such increases effective July 1st, 1975. Once the rates are established for July 1, 1978,, the increases recommended for October 1, 1978, July 1, 1979, and October 1, 1979, are in accordance with the CEA. Further, the employees are to receive the benefit of the application of the Non-Pensionable Cash Payment provisions which is also a part of the CEA.



It should be noted, however, that the proposed rates are reduced on October 1, 1979. That is so because the CEA requires that any increases in fringe benefits must be paid for out of the total package. As will be seen below, the reduction in rates represents the cost of "buying out" the benefits granted as to demands 6, 8, 9 and 19. The proposal is to make these benefits effective the first day of school, September 10, 1979.

RECOMMENDATION

Reinstitute a step plan effective July 1, 1978,, with the following rates:

	<u>7/1/78</u>	<u>10/1/78</u>	<u>7/1/79</u>	<u>10/1/79</u>
Appointment Rate	\$2.80	\$3.01	\$3.22	\$3.10
After 1 year of service *	2.97	3.18	3.39	3.20
After 2 years of service *	3.39	3.60	3.81	3.40
After 3 years of service *	3.87	4.08	4.29	3.80

DEMAND #4

Each School Crossing Guard shall be guaranteed a minimum of 20 hours of employment per week.

The Union's final position on this demand was that each School Crossing Guard be guaranteed 20 hours of work per week after having worked one complete school term.

The City's final position was that the above-stated demand was within the purview of the City's managerial rights under the New York City Collective Bargaining Law, and therefore not a mandatory subject of Bargaining. The number of hours worked by these hourly employees is based upon the operational needs of the Department, and a guarantee of twenty hours of employment per week for each Crossing Guard would require a total restructuring of the Program.

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\* Includes prior service

This demand has an its basis the fact that part-time employees who work fewer than 20 hours per week if they are covered by the City-Wide Contract are not entitled to any benefits thereunder.

The Union complains that many of the old employees returning to work found that they no longer work 20 hours per week and consequently would not be entitled to receive any of the benefits under the City-Wide Contract if the title were covered by the City-Wide.

To guarantee 20 hours a week for all guards would be extremely costly. Moreover, the City argued that the amount of time a guard is needed should be determined by the circumstances at the crossing to be guarded and that this was a managerial right to be determined by the Police Department in each precinct.

My recommendation is to establish a post and pick system on a Police Department borough-wide basis so that present employees can choose a post with more hours of work if they wish. I propose that the employees be chosen according to seniority. Only qualified employees will participate since a prerequisite for making a pick is that the guard be presently employed and, therefore, qualified. This proposal does not interfere with Management's reserved rights and operational needs since management will still make the determination of what posts are available and how many hours a guard is needed. I propose that any complaints the Union or the guards may have with respect to the location of posts and the length of time they are to be guarded should be appropriate for labor-management discussion.

RECOMMENDATION:

A post and pick system shall be instituted on a Police Department borough-wide basis of all vacancies to give current employees the opportunity to improve their hours of work. Applicants shall be picked

on the basis of seniority. The subject of hours of manning needed for school crossing posts shall be an appropriate labor-management subject.

DEMAND #6

All employees shall accrue one day of sick leave per month. Such time shall be cumulative and shall be placed in "Sick Leave Bank" for each employee.

The Union's final position regarding this demand was nine (9) days of cumulative sick leave per school year.

The City's final offer to the Union was eight (8) days of cumulative sick leave per school year. It was the City's position that the cost of nine days of sick leave per school year for the contract period approximately \$424,000, was excessive.

Whether or not employees covered by the City-Wide get sick leave, depends upon whether they work 20 hours or more per week under that Contract which gives employees one hour of sick leave for every 20 hours worked. It would be equitable to apply this formula to those who worked fewer than 20 hours provided the cost thereof is borne by the Union as a "buy-out" within the economic total permitted by the CEA. An appropriate time to start this benefit would be the beginning of the school year, September 10th, 1979, and to charge the buy-out to the October 1, 1979, increase. The cost of this buy-out I estimate at \$228,000,

RECOMMENDATION:

All employees accrue 1 hour of sick leave for each 20 hours actually worked, effective September 10, 1979, the first day of 1979 school year.

DEMAND #7

All employees shall be entitled to full pay during school closings for holiday-periods, emergencies and religious holidays.

The Union's final position was ten (10) paid holidays per school year.

The City's position was that no paid holidays were justified since historically the City does not pay hourly employees for time not actually worked on a holiday. Furthermore, it was the City's position that the cost of this demand, approximately \$235,000, was excessive.

Since the recommendations I have been making have been an attempt to obtain in part what the guards would otherwise have been entitled, this demand must be denied. To grant this demand would be to give the guards what other City employees do not get. Hourly employees in other positions are not paid for time unless actually worked on holiday. It would therefore be inappropriate to grant this demand for the guards.

RECOMMENDATION

Denied.

DEMAND #8

School Crossing Guards shall be entitled to the same vacation provisions as is currently in effect for School Aides.

The Union's final position regarding this demand was nine (9) to eleven (11) days of paid annual leave based upon the Board of Education's schedule of school closings for Easter and Christmas.

The City's final offer was seven (7) days of paid cumulative annual leave. It was the City's position that the cost of nine (9) to eleven (11) days of paid annual leave was excessive.

The ratio provided by the City-Wide Contract is one hour of annual leave for every 11 hours worked. This is an important benefit for employees and should be included in the package but if this were included the CEA would require that it be paid for out of the whole financial package. If this demand were granted from September 10th, 1979, which is the start of the school year, it would cost approximately \$37,000, which should be deducted from the increases scheduled for October 1, 1979.

RECOMMENDATION:

That all guards accrue one hour of annual leave for each 11 hours actually worked to a maximum accrual of 210 hours, effective the first day of the 1979 school year.

DEMAND #9

All School Crossing Guards shall be covered by the Basic Health Insurance Plan of the City.

The Union's final demand was for health insurance coverage for all employees in the bargaining unit regardless of the number of hours worked.

The City offered health insurance coverage for those employees who worked twenty hours or more. The City's position was based on the fact that a Board of Estimate Resolution requires that an employee work twenty hours or more per week for entitlement to health insurance coverage.

The difficulty with funding health insurance is that it costs the same for a full-time employee as for a part-time employee. Those guards working at least 20 hours per week already receive such coverage. Therefore the Union's demand is really aimed at those guards working less than 20 hours per week. The premium is the same for each, hence the fewer hours an employee works, the more expensive it is per hour of work. Nevertheless, for many of the guards, this benefit would represent the only opportunity to obtain such coverage. A line must

be drawn at some point to balance the number of hours and the cost. I propose that the line be drawn at 15 hours per week and that the Union buy this additional coverage out of the total economic package. From the statistics submitted to me, the cost of this buy-out would be approximately \$306,000.

RECOMMENDATION:

If the Union so desires, it may buy out health insurance coverage for those employees working 15 hours to 19 hours per week.

DEMAND #10

A uniform allowance of \$100/annum shall be granted to all employees. In addition, a committee of Union management representatives shall decide upon a standard uniform to be worn by all guards.

The Union's final demand was a seventy-five dollar (\$75.00) per annum uniform allowance for all employees in the bargaining unit.

The City's offer was \$42.70, the actual cost of the items comprising the uniform.

I see no reason why more than the actual cost of the items comprising the uniform should be allowed. However, an increase should be allowed for the 1979-80 contract year because of an anticipated increase in the prices.

RECOMMENDATION:

A uniform allowance of \$42.70 effective October 1, 1978, and \$45 per annum effective October 1, 1979, for those employees required to wear a uniform which is not supplied by the Employer.

DEMAND #12

The Transit Authority shall grant public transportation passes to all School Crossing Guards.

The Union's final position regarding this demand was a firm written commitment from the Transit Authority that all Crossing Guards in uniform be allowed to ride surface transportation free of charge.

The City's final offer was to submit a written request to the Transit Authority that it extend this benefit to those Crossing Guards in uniform traveling to and from work.

The Transit Authority is an autonomous body over which the City has no authority to require that crossing guards in uniform be permitted to ride free of charge. Hence, the best this panelist could recommend would be that the Union accept the City's offer.

RECOMMENDATION

That the City's offer to submit a written request to the Transit Authority that it extend this benefit to those school crossing guards in uniform traveling to and from work shall be dispositive of this demand.

DEMAND #19

The City will contribute to the Health & Security Fund of District Council 37 on behalf of all guards. Such contribution shall be \$200 per annum.

The Union's final position was as stated in the above demand.

There has traditionally been a cutoff of 20 hours or more for welfare coverage for City employees. The City's position is based on this cutoff as City employees have been required to work at least twenty hours per week to be entitled to welfare fund coverage.

There are 1,351 guards for whom contributions are not made by the City as they work less than 20 hours. This benefit may be granted but must be bought out of the total economic package. The cost will be \$200 x 1,351 or \$270,200.

RECOMMENDATION:

That the City make contributions to the DC 37 Welfare Fund on behalf of all guards at the rate of \$200 per annum effective the first day of the 1979 school year.

DEMAND #21

All City-Wide Contract clauses shall be applicable, including but not limited to:

Occupational Safety, etc.

The Union's final position was as stated in the above demand.

The City's final position was that Crossing Guards, being hourly employees, are excluded from coverage under the City-Wide Agreement.

The 3 year lay-off of crossing guards does not call for the extension of the City-Wide Contract to them. Even if they had been employed during the layoff period, they would not now be covered under the City-Wide Contract. Additionally, Article 1, Section 4, of the 1978-80 City-Wide Contract precludes coverage of employees in strictly part-time titles,

RECOMMENDATION:

The City-Wide Contract should not be extended to provide coverage of its provisions to these employees.

DEMAND #23

All Sick Leave balances previously in the "Bank" of current employees shall be restored to their Sick Leave Bank.



The Union's final position in " stated in the above demand.

The City's position was that because all Crossing Guards were terminated in 1975, they are not entitled to restoration of prior Sick Leave balances pursuant to Civil Service Law.

This demand is denied because no employees in such circumstances are entitled to prior sick leave balances pursuant to Civil Service Law.

RECOMMENDATION:

Former employees are not entitled to any restoration of prior sick leave balances.

It should be noted that recommendations for Demands 6, 8, 9 and 19 are all based upon the Union's acceptance of the proposed buy-outs as discussed earlier.

October 9th 1979

Benjamin H. Wolf  
Impasse Panelist

School Crossing Guards Impasse  
City Exhibit No. 17

Approximately 2250 employees worked a total of 1,528,868 hours during the 1978-79 year consisting 39 weeks.

Approximately 60%(1351) of the employees work between 5 to 19 hours per week for a total of 811,164 hours per year.

Approximately 40%(899) of the employees work between 20 and 25 hours per week for a total of 717,704 hours per year,

Approximately 32%(721) of the employees work 20 hours per week for a total of 562,380 hours per year; and approximately 8%(178) of the employees work-21 to 25 hours per week for a total of 155,324 hours per year,

During Fiscal Year 1978-79, the cost to the City of the 1,528,868 hours worked by the School Crossing Guards, at a rate of \$2.80 per hour was approximately \$4.3 million.

School Crossing Guards impasse

City Exhibit No. 19

A. The Union's salary demands would result in increased cost during fiscal year 1978-79 of \$.89 per hour or \$1,360.693 per year, even if all employees are paid at the 9/1/78 appointment rate of \$3.90 per hour demanded by the Union. During FY 1979-80, the 9/1/79 appointment rate of \$4.15 per hour would result in at least a \$.72 per hour or \$1,100,785 per year. Therefore, the Union's current salary demands exceed the Coalition Economic Agreement during the 1978-80 Contract period by \$2,461,478, with the definite potential for future liability resulting from a graduated wage scale based on length of service of the employees.

B. The Union's demand for a guaranteed 20 hour work week would result in an increase of at least 20% (319,592 hours) for a cost of \$961,972 per year. This assumes that the hours in excess of 20 per week currently worked by some employees could be redistributed to employees working less than 20 hours per week at a City proposed 10/1/78 salary rate of \$3.01 per hour without fringe benefits.

C. One day of Sick Leave for the entire Unit Agreement is 7,840 hours, which would cost the City \$23,599 in FY 1978-79 and, \$26,891 in FY 1979-80, for a total cost of \$454,410 during the 1978-80 Contract period.

D. At the same daily rates as enumerated in C above, the total cost to the City would be \$235,990 in FY 1978-79 and \$268,910 in FY 1979-80, for a contract-period cost of \$504,900. All other New York City hourly paid employees receive no pay if hours are not actually worked on a holiday.

E. These are employees of the City of New York employed by the Police Department, not the Board of Education, which is the employer of School Aides. The cost of the two(2) to four(4) additional days would be from \$47,198 to \$94,396 in FY 1978-79 and \$53,782 to \$107,564 in FY 1979-80, for a total additional cost of \$100,980 to \$201,960 for the 1978-80 Contract period.

F. The yearly cost of basic Health Insurance coverage to the City is \$600 per employee; and the cost of Welfare Fund contribution for part-time employees is \$200 per employee. These two items would cost the City \$800 per employee per year for the 1351 employees scheduled to work less than 20 hours per week. Total FY cost is \$1,080,800; and \$2,161,600 for the 1978-80 Contract period.