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In the Matter of the Impasse

OPINION

between

AND

THE CITY OF NEW YORK  
DEPARTMENT OF SANITATION

RECOMMENDATIONS

and

Re: Office of Collective Bargaining  
Case No. I-157-80

THE UNIFORMED SANITATIONMEN'S  
ASSOCIATION, LOCAL 831, I.B.T.

Question In Re Two-Man Operation  
of Side Loading Collection Vehicles

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Before - Matthew A. Kelly  
Impasse Panel

Appearances

For the City:

Bruce McIver	Director, Office of Municipal Labor Relations
Robert Linn, Esq.	General Counsel and Deputy Director, OMLR
Norman Steisel	Commissioner, Department of Sanitation
Frank Sisto	1st Deputy Commissioner, Department of Sanitation
Michael Smith	Deputy Director, Office of Management & Budget
Howard Green	Assistant Director, OMB

For the Uniformed Sanitationmen's Association:

Jack Bigel	Consultant to the Association and President, Program Planners, Inc.
Charles C. Moerdler, Esq.	Attorney for the Association
Edward Ostrowski	President, Local 831
Louis Partenza	President, Sanitation Officers Association, Local 444
Peter Scarlatos	Vice President, Local 831
Anthony Gajda	Vice President, Program Planners, Inc.
Allen Brawer	program Planners, Inc.

### Procedure

A hearing in the above matter was held on November 28, 1980 at the Board of Estimate Chamber, City Hall, N.Y.C., N.Y. before the undersigned who was designated to serve as a one-member impasse panel pursuant to the provisions of Chapter 54, New York City Charter and the procedures of the Office of Collective Bargaining, Consolidated Rules (1972). A record and transcript of the hearing was taken. At this hearing both parties were given full opportunity to present their evidence, testimony, and argument. In the interest of expediting the proceedings and the recommendation, the parties waived their right to file written briefs and the record and hearing, subject to receipt of the transcript, were closed at the conclusion of oral summation that same day.

### Submission

The issue before the Impasse Panel as jointly stipulated by the parties is as follows:

"Under what terms and conditions may the City operate sanitation collection vehicles operated by two men?"

### Pertinent Provisions

New York City Collective Bargaining Law (as amended 1972) Revised Consolidated Rules of the Office of Collective Bargaining Section 1173-4.3b:

"It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its

employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining."

Section 1173-7.0c (3) (b):

"(b) An Impasse Panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

(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, 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."

Section 23.3 of Laws of 1978, Chapter 201, State of New York:

"Section 23

3(a) Notwithstanding any provision of the New York City Collective Bargaining Law, codified as chapter fifty-four of the New York City administrative code, or any general or special law to the contrary, any report or recommendation of any impasse panel constituted pursuant to such chapters which provides for an increase in wages or fringe benefits of any employee of the city or covered organization, in addition to considering any standard or factor required to be considered by applicable law, including the standards enumerated in Section 1173-7.0(c)(3)(b) of such charter, shall also take into consideration and accord substantial weight to the financial ability of the city and or covered organization to pay the cost of such increase in wages or fringe benefits."

Contract between the Uniformed Sanitationmen's Association, Local 831 I.B.T. and the City of New York, Department of Sanitation, 1978-1980.

"Article VII - Labor-Management Committee Section 1:

The Employer and the Union, having recognized that cooperation between management and employees is indispensable to the accomplishment of sound and harmonious labor relations, shall jointly maintain and support a labor-management committee.

Section 2:

The labor-management committee shall consider and recommend to the agency head changes in the working conditions of the employees within the agency who are covered by this Agreement. Matters subject to the Grievance Procedure shall not be appropriate items for consideration by the labor-management committee."

OPINION

It is not necessary to set forth in detail the background facts leading to the instant dispute as they are well-known to the parties, were clearly articulated at the impasse hearing and duly recorded in some 211 pages of transcript and, except for evaluation, are largely not in dispute. Suffice it to state by way of summary and convenience of reference that the question at issue pertains to the operation of sanitation collection vehicles and the terms and conditions under which such vehicles may be operated by two men; that sanitation collection vehicles being utilized by the City presently, and for some 30 or more years in the past, are operated by three men and are rear loaded; and that the City is procuring initially some 250 side loading sanitation collection vehicles of which 220 are Maxon Eagle manufactured and 30 are Crane Carrier manufactured --- in all major respects, the two types of side loading sanitation collection vehicles are virtually identical.

It is to be noted, too, that the City has acquiesced in these proceedings without prejudice to its Managerial Rights as explicitly set forth in the previously cited Section 1173-4.3b, New York City Collective Bargaining Law (as Amended 1972), Revised Consolidated Rules of the Office of Collective Bargaining. As expressed in the Opening Statement at the Impasse proceedings by Robert Linn, General Counsel and Deputy Director of the Office of Municipal Labor Relations:

"...it is the City's position that the issue of the implementation of these trucks is not a mandatory subject of bargaining. Never-

theless, the City has not pursued the right to go to the Office of Collective Bargaining to pursue this theory, but this proceeding, I would like to have noted on the record, is without prejudice to the City's right to argue that this is a management right that could be implemented without bargaining. But, nevertheless, we have agreed to submit the issue to impasse because the trucks are ready to use. We have requested an expedited impasse to deal with the matter and we feel that it is appropriate in this situation to submit the matter to you for quick and peaceful resolution. But it is the City's position that the trucks should be implemented on a one-to-one replacement basis... with the two-man trucks replacing the three-man trucks without any payment of a differential."

#### Re the Question of Two-Man Crews

Fundamentally, the basic question at issue in Impasse is a two-fold one, namely: 1) whether sanitation collection vehicles are to be operated by two men; and 2) if so, what are the conditions for such operation. With respect to the initial question of crew size, the evidence is conclusive that although one-man crews have been utilized in some instances, in other areas two men and not three men are more generally the norm that is followed in the operation of side loading sanitation collection vehicles.

No mechanized equipment has been devised to wholly eliminate the hazard and risks of sanitation collection and loading work. But, significantly, it would appear that two men can operate the side loading collection vehicle more safely and with less hazard and risk of injury than is prevalent for three men in the operation of the traditional rear load truck. Among the safety features of the side load truck as cited by the Department's representatives are the following:

Side loading virtually eliminates the hazard of being injured, crippled or even killed as has not infrequently been the case over the past 30 years or so when loaders at the rear of the truck have been run into by an on-coming vehicle especially at night and during wet, icy and stormy conditions.

The two sided driving controls which are a feature of the side load truck add to its safety; operators need not step out into the traffic as is done on rear loading vehicles but will step out on the curb side of the street at all times. Also, the danger of having to go to the rear of the truck in dumping is eliminated on the side loaders since the operator at the front of the cab operates the tailgate and it unlocks and locks automatically.

The packing mode is safer since the operator faces the side of the packer blade and unlike the conventional rear load trucks the risk of getting fingers, or a hand, or an arm caught with the blade coming down on metal is eliminated.

The visibility on the side loading trucks is much better; the hood is eliminated and this enables the driver to see a person, a dog, or most any visible object one foot in front of the truck whereas on a rear loader the driver can't see anyone in front of the-truck for six feet.

The cab and step down on the side loaders is 18" as compared with that of from 35" to 44" on the rear loading trucks and this makes stepping down less hazardous in wintry and icy conditions.

The side loader, as with rear loading trucks, is equipped with safety controls so that if something goes wrong, by pulling a lever or a button the safety switch disengages the truck. The added safety feature with the side loader, however, is the fact that at all times the loader is in full view of the operator.

The side loader has a crusher panel control which keeps pushing large objects down and lessens the hazard of men being injured and cut from flying debris as not infrequently has happened with the conventional rear loading trucks.

The noise factor on the side loading trucks is much less than that of the conventional rear loading trucks. In addition to being a most welcome feature for the public generally, this has a safety aspect in that operators and loaders when necessary can call to one another and be heard more easily.

The City also contends that the work load of the two men will not be increased "appreciably". The Union, on the other hand, points out that the work load of the men on the side loader will be increased significantly and while the men may walk less, they will load more. A study of the evidence leads to the conclusion that, while work loads will be increased, it would appear that the two men working the side loading trucks will not be unduly burdened. In fact, it is the City's intention initially to utilize the side loaders in 7 of its 59 sanitation districts. These are low density type areas; specifically, Staten Island Districts 1, 2 and 3 and Queens Districts 6, 7, 11 and 13. The tonnage required per man per day in these 7 Districts compares favorably with that required of men on side loading trucks in other cities and on comparability alone it is concluded that the City is not unduly burdening the men by its two-man crew complement on the side loading trucks.



Re the Question of the Payment of a Differential

The only remaining question, then, is whether the two men are to be paid a differential for such work. As noted earlier, it is the City's position that "the trucks should be implemented on a one-to-one replacement basis ... with the two man trucks replacing the three-man trucks without any differential." The Union, on the other hand, argues that while they "are not Luddites" and do not oppose technological change --- the Union's representative pointed out that they have cooperated with the Department in the past "to make productivity gains meaningful and possible" --- the men nonetheless are entitled to their just due and should be compensated and paid a differential for their extra effort, added responsibilities and improved productivity. And in this connection, the Union presented figures to the effect that the City would save \$13,000 per man operating the side loading trucks; that they "expected a fifty-fifty split ... a differential of \$6,500" per annum per man working on the side loaders; and that the differential is to be treated as base wages in the computation of all employee benefits including pensions.

Whatever the merits of these arguments in the extreme, they are made moot in the instant case by comparison with other cities operating side loading sanitation vehicles. As set forth in earlier references to statutory and regulatory provisions pertinent to these proceedings, comparability is a key criterion among those promulgated for the guidance of an impasse panel. And here I find controlling the fact that in the Exhibit submitted into evidence

on the Utilization of Side Loading Sanitation Vehicles the cities operating such equipment have without exception provided a salary differential -to the Driver/Loaders of the side loader when reducing crew size. None, however, provide a differential of the magnitude proposed by the Union in these proceedings and ranged between a high of 24% and a low of 5 per cent. A collection shift differential of \$11 per shift per individual (or \$2,871 per annum in the event a sanitationman were to work full-time performing such collection functions for 261 shifts) is consistent with work load requirement and what is provided -by way of salary differential elsewhere, and it is recommended. The differential is to be paid on those shifts a sanitationman actually performs collection functions on a collection vehicle manned by two men. There will not, then, be payments for days not worked such as holidays, annual leave, sick and terminal leave. With respect to pensionability, earnings from the foregoing collection shift differential shall not be subject to pension calculations for the first two years a sanitationman performs collection functions on a two-man collection vehicle. Thereafter, any such collection shift differential earned in the previous year shall be pensionable and shall be treated, for pension purposes, in the same manner as night shift differential, except for the above-mentioned waiting period. For the period through June 30, 1982, the expiration date of the current contract, the collection shift differential shall be included in the rate for all other purposes except for the calculation of the July 1, 1981 general wage increase.

Basic, if not paramount, for the consideration. of impasse panels is the previously cited, regulatory prerequisite "that impasse panels shall also take into consideration and accord substantial weight to the financial ability of the city and/or covered organization to pay the cost of such increases in wages or fringe benefits." The City's fiscal plight and its less than affluent state is well known and need not be reiterated here. Suffice it to state that the City's general financial state is not deemed controlling here since the evidence is clear that the savings generated by the operation of the two-man side loading trucks will exceed the increased cost of the collection shift differential. Such savings, however, could not materialize if the City were not able to replace the three-man loaders on a one-for-one replacement basis with two-man side loaders.' Accordingly, it is held that the collection shift differential is to be provided with the understanding that there will be a one-for-one replacement of the three-man sanitation trucks with the two-man trucks. Thus, in order to qualify for the collection shift differential, the two-man sanitation trucks will replace the current three-man trucks on existing routes on a one-for-one replacement basis. These provisions shall be applied to any sanitation collection vehicle manned by two men.

#### Tripartite Dispute Resolution Panel

In order to provide an equitable procedure for an expeditious adjudication of any dispute which might arise out of the two-man sanitation collection vehicle program, it is recommended that a

tripartite-dispute resolution panel be established --- one person to be designated by the City, one person to be designated by the Uniformed Sanitationmen's Association, and one person to be mutually agreed upon as the impartial chairman. The dispute resolution panel will have the authority to hear and decide any and all disputes, arising out of the implementation of the two-man sanitation collection vehicle program.

Finally, the Impasse Panel strongly urges the prompt activation and a continued functioning of the joint six-member Labor-Management Committee which, as noted earlier, is provided for in Article VII of the Collective Bargaining Agreement between the parties. In this provision, the parties recognize "that cooperation between management and employees is indispensable to the accomplishment of sound and harmonious labor relations" and that "the labor-management committee shall consider and recommend to the agency head changes in the working conditions of the employees within the agency who are covered by this Agreement." That the joint labor-management committee is intended to deal with subject matters of such mutual interest as technological changes, improved methods of operation and efficiency, productivity gains and cost savings, improvement in service to the public, and the like is evidenced by the fact that it is clearly stated in Article VII that matters subject to the Grievance Procedure shall not be appropriate items for consideration by the joint labor-management committee. In fact, appropriately, pledges to this end were manifested by the parties during the hearings in the instant case. The Union's representative on several

occasions cited instances of cooperative efforts in effectuating technological changes and improvements in efficiency over the years. In his closing remarks the Union's representative stated that "there must be productivity programs established on an agency-wide basis ... we believe that the program ... ought to go ahead immediately." City representatives, too, expressed confidence in the accomplishments of joint labor-management programs and, indeed, in their opening statement in these proceedings stated "that there is no question on this side of the table that the work force has given much towards the City ... no one entering a proceeding such as this should ever forget that history because that is where we start from in dealing with issues of productivity and issues of budget balancing."

The problems of the City and the City's labor unions are momentous, staggeringly complex and, seemingly, never ending. Joint labor-management efforts between the City and the City's unions in meeting these problems in recent years and at present have been outstanding in their innovativeness and noteworthy in their accomplishment. The well-being of the City and the City's workers depend on these joint efforts being relentlessly pursued and enduring. Among the unions in Mayoralty agencies, the Uniformed Sanitationmen's Association has played a prominent role in these cooperative efforts and the Joint Labor-Management Committee provided for in Article VII of their collective bargaining agreement is the contractual authorization and practical means for furthering such ends internally on an agency-wide basis.

Recommendation

I, the undersigned, to whom was submitted a certain issue between the parties hereto, having duly heard the proofs and allegations and after due consideration, do hereby recommend as follows:

1. That as has generally been the case where side loading sanitation-vehicles have been utilized in other cities, a differential shall be provided for sanitationmen when reducing crew size;
2. That a collection shift differential of \$11 per shift per individual (or \$2,871 per annum in the event a sanitationman were to work full-time performing such collection functions for 261 shifts) be established;
3. That the collection shift differential be paid on those shifts a sanitationman actually performs collection functions on a collection vehicle manned by two men which excludes payment for such days not worked as holidays, annual leave, sick and terminal leave;
4. That collection shift differentials not be calculated for pension during the first two years a sanitationman performs collection functions on a two-man collection vehicle but that, thereafter, except for this waiting period, any such collection shift differential earned in the previous year shall be pensionable and shall be treated for pension purposes in the same manner as night shift differentials;
5. That from the date of acceptance of these recommendations through to June 30, 1982, the expiration date of the current contract, the collection shift differential shall be included in the rate for all other purposes except for the calculation of the July 1, 1981 general wage increase;

6. That the collection shift differential is to be provided with the understanding that there will be a one-for-one replacement of the three-man sanitation trucks with the two-man trucks and that in order to qualify for the collection shift differential, the two-man sanitation trucks will replace the current three-man trucks on existing routes on a one-for-one replacement basis. These provisions shall be applied to any sanitation collection vehicle operated by two men;
7. That a Tripartite Dispute Resolution Panel or one person designated by the City, one person designated by the Uniformed Sanitationmen's Association, and one person mutually agreed upon as the impartial chairman be established to hear and decide any and all disputes arising out of the implementation of the two-man sanitation collection vehicle program; and
8. That, finally, the parties are strongly urged to promptly activate the joint six-member Labor-Management Committee as provided for in Article VII of their Collective Bargaining Agreement to deal with subject matters of such mutual interest agency-wide as technological changes, improved methods of operation and efficiency, productivity gains and cost savings, improvement in service to the public, and the like.

Signed this 10th day  
of December, 1980

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MATTHEW A. KELLY  
Impasse Panel