OFFICE OF COLLECTIVE BARGAINING

In the Matter of an Impasse
in the Negotiations for a 1980-82
City-Wide Agreement
between
NEW YORK CITY OFFICE OF MUNICIPAL
LABOR RELATIONS

and

DISTRICT COUNCIL 37,
AFSCME (AFL-CIO)

Report and Recommendations
of Impasse Panel
to
Board of Collective Bargaining

(I-161-81)

The undersigned, by letter dated July 15, 1981, was designated as a "one-man impasse panel" by the Chairman of the Board of Collective Bargaining, Honorable Arvid Anderson. The letter stated that the designation was at the Joint request of the parties to hear and make report and recommendations in the current contract dispute." The action taken and the designation made were based upon the provisions of Section 1173-4.3 and Section 1173-7.0-Subdivision C of Chapter 54, Administrative Code of New York City Collective Bargaining Law. This Report contains the recommendations of the Impasse Panel (of which the writer is the sole member) to the Board of Collective Bargaining for the resolution of the impasse in negotiations on the issues discussed below.

Formal hearings were held on August 18, September 9 and September 21, 1981. The Union was represented by Alan Viani, Director of Research and Negotiations; the City, by Robert W. Linn and Frances Milberg, Legal Counsel to the Office of

Municipal Labor Relations. A reporter's transcript of the proceedings was made as required by law.

There had been protracted negotiations between the parties commencing February 16, 1980[1] in respect to uniform and City-wide terms and conditions appropriate for inclusion in a collective bargaining agreement[2] intended as a successor to that covering the period July 1, 1978 to June 3, 1980. All issues arising in the negotiations have been resolved excepting five issues, dealt with in this Report, as to which bargaining has gone to impasse. On July 15, 1981 representatives of the parties signed a stipulation and agreement, setting forth these issues and a joint request for the appointment of an Impasse Panel.[3] These issues will be identified and discussed, and my recommendations thereon will be set forth below, seriatim.

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[1]It is represented that the Union had some 226 demands for contract changes and the City, 12 or 13 "with many subsections to them.

[2]The Agreement under negotiations will cover all classes and grades of employees covered by the prior agreement and employees subsequently covered for which the Union is the certified employee organization for uniform conditions as set forth in Section 1173-4.3 of the New York City Collective Bargaining Law.

[3]The Union and the City have agreed to allow without prejudice the submission of the issues set forth in paragraph “3" of the stipulation directly to the Impasse Panel without raising any three old procedural objections thereto, including inter alia, the scope of bargaining and the possible "economic" nature of the demands.

The entering into of this Stipulation of Settlement and the waiver of threshold or procedural issues as stated in the above paragraph, it was agreed, shall not constitute a precedent for the determination of any other dispute between the City of New York and the Unions representing municipal employees. Furthermore, that Stipulation, it is understood, would not be offered in evidence for any purpose or for any administrative, judicial or other proceeding except for the purpose of enforcing the obligations contained herein.

Issue No. 1: Car Allowance

The prior agreement had provided, effective January 1, 1980, that the "compensation rate" for authorized use of private autos by employees shall be $.18 per mile with a minimum guarantee of 30 miles per day.

Union Demand No. 98 asked that Article 8 Section 2(c) be amended to raise the rate to $.50 per mile.

The Stipulation (Joint Exhibit No. 1) provided:

> "On June 25, 1981, the parties narrowed the issue. The City offered 20¢ effective January 1, 1981 and 23¢ effective January 1, 1982. The Union demanded 21¢ the first year and 24¢ the second year."

Considerable testimony was taken in respect to both of these positions and has been carefully considered. In my judgment there would be little utility and profit in detailing or expatiating upon it here. To do so would unduly enlarge and delay the rendition of my Report. In view of the increased cost of car operation and based upon the record as made, I hereby

Recommend that the parties agree that in the Agreement under discussion, it be provided that, effective July 1, 1980, the allowance for use of authorized private vehicles for travel on official business be $.21 per mile; and, effective July 1, 1981, that it be $.23 per mile.

Issue No. 2: Political Check Off

Union Demand No. 226 (according to the Stipulation) was,

> "Each certified Union shall have the exclusive right to the check off on behalf of each member of contributions to be used for the support of candidates for federal office. Any member may consent in writing to authorization of the deduction of such contributions from the member's wages and to the designation of the Union's separate Fund for such purpose as the recipient thereof. Such consent shall be in proper form acceptable to the Employer and the Union, and shall bear the signature of the member." (Emphasis supplied.)

The City strongly resists this demand.

The Union represents that its objective is based on the Federal Election Campaign Act of 1973[4] (Joint Exhibit No. 10) which sets forth what contributions for federal election campaigns are or are not lawful thereunder; and that the legality of the contributions to a fund by checkoff, as contemplated, was not an issue raised in negotiations. (No legal obstacles to the design and proposal were raised by the City at the hearings.)

A proposal with a similar objective was presented to the City Council in 1980[5] but was vetoed by the Mayor. The

[4] 2 U S C 431-456.

[5] Introductory Number 782-A.

veto was not overridden by the City Council. The Mayor expressed the three following objections to adoption of the proposal in his letter to the City Clerk dated November 6, 1980: 1) The check-off attempts to substitute the legislative process for that of collective bargaining; 2) it "would be harmful to the city's interests in Washington" when matters affecting New York City come before members of the House and Senate whose opponents is have been supported, by political institutions, by the Fund; and 3) there is reason for concern about whether this kind of payroll deduction "can ever be truly voluntary for the employees asked to contribute."

Bruce C. McIver, Director of the Office of Municipal Labor Relations presented a Statement (City Exhibit No. 7) strongly supporting the position taken and the points made by the Mayor. He advanced three additional points against the proposal: 1) It would result in "individuals monetarily supporting candidates which are chosen for support by the union, impairing the individual's right of free choice." 2) The City's payroll system "should not be muddled by the sidelight of collecting political contributions"; and 3) the program would impose an additional onerous administrative burden of effort, tire and cost on the City.

The Union has shown that there are a number of States, Counties and Cities which conduct a check-off for political contributions.[6]

Discussion: Clearly, checking off political contributions of its employees is not a part of the constitutional or legislative mission and responsibility of the City. However, the City has employees; and in its collective bargaining relationship with them it cannot ignore their civil and electoral activities, obligations and rights.

The check-off of political contributions of employees under Federal government law and surveillance is now widespread in the private sector of our industrial economy. Presumably this was done to afford employees (and the Unions representing them) a parity of opportunity to engage in the Federal electoral process with that enjoyed by private sector employers and employees. Despite such equality of opportunity provided by law, the record in this case instructs that in the 1978 elections the political action committees of the business (employer)

[6]The States listed are Hawaii, Illinois, Indiana, Maryland, Minnesota, Rhode Island and Wisconsin. The Counties listed are Cuyahoga (Ohio), Los Angeles, Multnomah (Oregon), Prince Georges (Maryland) and Pueblo (Colorado). The Cities listed are Albuquerque Baltimore (Housing Authority), Detroit, New Haven, Philadelphia, Portland, Toledo. Some of the arrangements seem to have been made as a result of collective bargaining; some not. Whether the arrangements are identical with those sought by the Union here is not known; but, the fact that the general principle of political check-off has been recognized elsewhere for public sector employees seems to be established.

community contributed more than twice the amount of money to Federal election campaigns than had similar Union committees.

No persuasive reason is discerned to deny to public sector employees the political contribution activity which private sector employees enjoy-so long as the contributions are given under the conditions prescribed by Federal law and that there is strict adherence to those conditions. Manifestly, full voluntarism must be assured. Although the Federal statute cited does affirmatively encourage the setting up of campaign funds to be used to finance campaigns for Federal office, it does make it national policy to permit the establishment of such funds under the safeguards and limitations prescribed. It is understood that it is contemplated that District 37 will only be a conduit of the checked-off political contributions to its parent Union (AFSCME, AFL-CIO) which will establish the Fund and be responsible for compliance with Federal law for withdrawals and expenditures therefrom. It is also understood that there would be agreement between the parties in this proceeding as to the forms to be used and the administrative procedures to be followed to ensure that the full measure of voluntarism of contributing employees contemplated by the statute will be respected and achieved.

That the process of check-off of political contributions under the program desired by the Union imposes some financial

burden on the City for which reimbursement is appropriate, is obvious. The weight and extent of that burden is unknown at this time.

Recommendation: The Union's demand for the check-off of political contributions under the terms prescribed by Federal law should be granted and affirmed. the parties should meet and agree upon a draft provision in respect to that check-off to be incorporated in the new contract; also, upon the forms and procedures to be followed and the appropriate remuneration to be made to the City for administering the check-off. If it should ensue that agreement on such matters cannot be achieved, it is recommended that the parties agree to submit their dispute on this issue to the undersigned for arbitration and final and binding award.

Issue No. 3: Shortened Summer Workdays

City Demand No. l(e) in the negotiations called for an amendment to Article V Section 18 and Article VI Section 9 of the prior Agreement. The Stipulation recites that:

> "On June 25, 1981 the City clarified its position that it was seeking to abolish shortened workday schedules and heat days in lieu thereof for employees who work outdoors or are 'field personnel.'"

On this, as on other issues, a considerable amount of testimony was taken and extensive argument was presented. Under

the provisions of Article V Section 18 dealing with "shortened workday schedules or heat days" there have been a variety of administrative practices among the several agencies and within agencies relating to the relief of employees. Many of the practices were historical or traditional and did not serve the principle of uniformity, In some cases, some groups or classes of employees who worked under conditions which seemed to necessitate shortened workday schedules may not have enjoyed such schedules. In other cases, groups or classes of workers whom the City claims to have worked under conditions not calling for shortened workday schedules, enjoyed such schedules.

Considering, the number of agencies involved, the number of employees affected and the wide variety of conditions and circumstances under which they work, it is manifestly impossible to establish a rule that will achieve ideal equity for every employee, Whatever is required should represent a balance between the objective of uniformity and a sensitive recognition of the fact that some groups and classes of employees, more than others, work in oppressive conditions in the heat of the summer. It is recognized that any such rule will not be perfect in practice and application and the benefits of the schedule may not be afforded to some individual employees who on particular occasions might feel they are entitled to them. In the rule set forth in the Recommendation

it is believed that the largest and broadest extent of justice is achieved consistent with the right and duty of the City to have a full work-day for which wage compensation is made.

Recommendation: Article V Section 18 shall be amended by provisions such as the following:

a) Shortened work-days (and heat, days in lieu thereof) shall not be available to those who work in air-conditioned facilities (as currently provided) nor for "outdoor and field personnel" which term includes (but is not limited to) law enforcement personnel, Traffic Enforcement Agents Traffic Device Maintainers, Motor Vehicle Operators, Inspectors, Engineers, Assessors, Appraisers, Investigators, Quality Control Specialists and Public Health Nurses; Provided, however, that "outdoor and field personnel" who, in the past, had been entitled to shortened work-day schedules but are not so entitled hereunder, and who return to an office location at the end of the work-day shall be entitled to the same summer schedules enjoyed by office personnel at such location on such day; and Provide further; that Homemakers (and employees in equivalent titles)who are assigned to work in clients' homes which are not air-conditioned and who are otherwise entitled to receive shortened work-day schedules and heat days in lieu thereof shall continue to be so entitled.

Issue No. 4: Lateness

The lateness policy of the City grew like Topsy. There is a wide variation of usages among agencies in respect to the manner in which tardiness is treated. The Human Resources Administration, for example, and several other agencies recognize a five minute grace period for late reporting for work. Other agencies have no such grace period.[7] It is recognized that in some agencies and some jobs there is relatively little damage inflicted by a short delay in reporting for work due to contingencies beyond the ability of the employee to control; and in other agencies, considering their respective missions and methods of operation, such delays not only impair, materially, the efficiency of operations but, also, impose a substantial financial burden on the City. In some situations,, where an employee reports late it becomes necessary to hold over an employee who worked the previous shift who will be compensated at premium rates of pay.

It should be obvious that in the interest of a fair and just administration of the City-wide Agreement, the principle of uniformity, to the extent possible, should govern. Both the Union and the City agree on this. They disagree as to how this goal can be achieved with fairness.

[7]Some employees in some agencies are entitled to 480 minutes of lateness each year; others are not.

The City's basic position, that it is entitled to a full scheduled work-day for a full day's pay, is too obviously correct to be debatable. However, it is commonly known that there are circumstances that should excuse occasional tardiness. The mass transportation system in the City is subject to delays of various duration in delivering riders to their destinations, many of which cannot be foreseen or anticipated. Occasionally, personal problems that could not have been previsioned or expected to occur prevent an employee, normally regular in at tendance, from reporting on time. I speak here, not of chronic lateness but of occasional "no-fault" lateness. Of course, one who is frequently late a short period of time has an obligation to anticipate his/her regular mass transit delays by leaving home at an earlier hour. Similarly, employees who are frequently late because of home problems are obligated to take appropriate steps to avoid tardiness. The point is that although the City, indubitably, has a right to have the employee report at the scheduled time for the scheduled tour of duty or shift, inevitably there will be some tardiness that should be regarded as condonable, forgivable and excusable because it was beyond the ability of the employee to control.

In my experience, the designing of a lateness policy which, while fair and just to employees takes into account the right of the employer to a full day's work for a full day's pay is one of the most difficult and intractable problems in

labor relations, both in the private and public sectors. There exists a congeries of programs for dealing with late-reporting in employment in both the private and public sectors; and it is my judgment that none of them are wholly satisfactory. Those prescribing fixed rules frequently result in unfairness and injustice; those relying wholly on the discretion and judgment of supervisors frequently do not achieve the desired uniformity in their application. The problem is exacerbated when there are as many agencies and employees as are involved in this case.

My best judgment, based on my own decades of experience dealing with the lateness problem suggests the following propositions and guidelines:

1. Every employee is obligated to report for work as scheduled.

2. (a) The City's lateness policy shall include a five-minute grace period in reporting for work for all employees covered by the Agreement except those described in "(b)", below. When an employee's lateness extends beyond the five-minute grace period, the full period of time between the scheduled reporting time and the actual reporting time shall be charged against such employee.[8]

[8]Thus, by way of illustration, an employee whose starting time is 9:00 a.m., who reports for work at 9:05 a.m. would not be "late"; but such an employee with such a starting time who reports for work at 9:06 a.m. would be charged with six minutes of lateness.

(b) The following are not entitled to the five-minute grace period described in "(a)" above:
i. Emergency personnel, including, but not limited to, Fire Alarm Dispatchers, Police Communication Technicians, Ambulance Corpsmen and Paramedics. The City shall furnish to the Union a full list of such positions.

ii. Employees whose positions require, in the event of late reporting for work, that another employee be held over from a previous shift or be called in to substitute for the late employee, at premium rates of pay.

3. Lateness (beyond the five-minute grace period) is classified as "excused" or "not excused." An "excused" lateness shall not be charged against the employee. Lateness, found by the Agency head (or the individual designated by the Agency head) to have been caused by transportation circumstances beyond the ability of the tardy employee to control, shall be regarded as "excused." Such findings shall be reasonably made; and the tardy employee may be required to furnish proof of the cause of the lateness satisfactory to the Agency head. A request for refusal shall not be unreasonably

denied. A refusal to excuse a lateness may be appealed to the Director of OMLR whose decision shall be final.

4. Deduction for unexcused lateness shall be made on a minute for minute basis from any compensatory time balances, credited to an employee; and then, if there are no such credited time balances, from the employee's annual leave balances

5. The City reserves the right and power appropriately and for just cause to discipline or to discharge an employee for excessive lateness.

6. Contractual provisions or agency policies in respect of lateness, grace or excusal periods or lateness penalties inconsistent with the policies recommended shall be deemed to have been superseded by the policy recommended here and of no effect; Provided, however, that those employees presently enjoying a 480 minute excusal policy shall be credited, effective May 1, 1981, with a "one time" excusal bank of 480 minutes. Lateness in excess of the five-minute grace period, in accordance with current policy, shall be charged to such bank until the 480 minutes, so credited, will have been exhausted. In no case shall such bank extend beyond April 1, 1982.

7. The record of this proceeding contains insufficient facts as to the appropriateness of the application of

the five-minute grace period to civilian employees of the Police and Fire Departments to justify a determination thereon. Me parties shall meet, without delay, and seek agreement as to their inclusion or exclusion from such grace period. Jurisdiction of the Impasse Panel is reserved to issue a Supplementary Report and Recommendations on such subject matter should the parties fail to achieve agreement. Pending such agreement by the parties or the issuance of a Supplementary Report and Recommendations the current lateness policy of the Police and Fire Departments shall be applied.

8. The City should periodically review the operation of its, lateness policy with a view to ensuring its application with as much uniformity as is possible.

Issue No. 5: Overtime Cap

The Stipulation of the Parties provides that on June 25, 1981 the Union's Demand No. 16 affecting Article IV, Section 7,a and b had been modified

> "to increase the $22,500 to $25,920 and thereafter to the M-1 minimum or the average amount of managerial increases, whichever is greater."

Also;

> "The City demanded a corresponding change in the language of subsection c."

A. Article IV, Section 7 a and b fix an "over-time cap" for overtime compensated in cash at $22.,500. Subsection a provides that when an employee's annual gross salary as defined therein is not in excess of the "cap," cash payment of compensation shall be made as prescribed in Article VII; and Subsection b provides that when that annual gross salary is in excess of the 11cap" "compensatory time at the rate of straight time shall be credited for authorized overtime."

Evidently the point in the City's wage structure at which the "cap" had been fixed, in the past, although expressed in terms of dollars, was meant to accord different treatment, for overtime purposes, to employees exceeding the minimum of the Managerial Pay Plan and those below that minimum. The annual gross compensation of covered and managerial employees has changed over the years, but not always at the same time nor

in the same amounts. The purpose of the demand is to adjust the "cap" for overtime purposes to current pay levels. This adjustment is overdue.

On the basis of the presentations made in the record of this case, I make the following

Recommendation: (as to Article IV Section 7 a and b) (1) Effective July 1, 1980, the "cap" for eligibility for cash compensation for overtime of $22,500 shall be $25,920.

(2) Effective July 1, 1981, the "cap" for overtime purposes shall be at the minimum salary rate of level M I of the Pay Plan for Managerial Employees or that rate plus the average amount of general salary adjustments authorized for employees in the Pay Plan for Managerial Employees, whichever is greater. (It is understood that this formula will result in an overtime "cap" effective July 1, 1981 of $27,994.) Thereafter the overtime “cap” shall be adjusted by the average amount of the general salary adjustments authorized for employees in the Pay Plan for Managerial Employees. However, in no case shall the cap be less than the minimum salary rate of Level 1 of the Pay Plan for Managerial Employees.

B. Subsection c of Section Article IV provide's that employees with an annual gross salary in excess of $22,500 (the stated "overtime cap" shall submit periodic time reports at intervals of not less than one week "but shall not be required to follow time clock or sign-in procedures." It is represented that those employees who receive an annual gross salary less than the currently applicable "cap" are required to comply with the time clock or sign-in procedures prescribed by the agencies in w1hich they perform services. The Union, apparently, desires to retain the current "cap" stated in Subsection c ($22,500) for the purposes of recording reporting-in and reporting-out procedures. However, the time clock and sign-in procedures, manifestly, are related to and, indeed, are an integral-part of the overtime provisions of the Agreement. If the "cap" is moved to a higher level for the purposes of entitlement to cash compensation for overtime as recommended here, it appears to be logical and reasonable to provide that the administrative measures for recording attendance should be geared and related to the overtime "cap."

Accordingly, I make the following

Recommendation: (as to Article IV, Section 7 c)
(1) The demand that the "cap" referred to therein remain at the level of $22,500, be denied.

(2) Subsection c shall be amended to provide therein, that the "cap" shall be in the same amount and effective on the same dates, as provided above in my recommendation for Article IV, Section 7 a and b.

Respectfully submitted,

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Peter Seitz, Impasse Panelist

Dated:
New York, New York
October 15, 1981

(2) Subsection c shall be amended to provide, therein, that the "cap" shall be the same amounts, effective on the same dates, as provided above in my recommendation for Article IV, Section 7 a and b.

Respectively submitted,

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Peter Seitz, Impasse Panelist

Dated:
New York, New York
October 15, 1981

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

On this 15th day of October, 1981, before me personally appeared PETER SEITZ, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

IRENE BUGA
Notary Public