

OFFICE OF COLLECTIVE BARGAINING

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In the Matter of the Impasse

between

THE CITY OF NEW YORK

-and-

CASE NO. I-168-83

MARINE ENGINEERS BENEVOLENT ASSOCIATION,  
DISTRICT 1, PACIFIC COAST DISTRICT.

MUNICIPAL LABOR

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APPEARANCES:

For the City:

Carmen, Suardy, Esq.

For the Union

Schulman & Abaranel, Esqs.

By James M, Altman, Esq.

REPORT AND RECOMMENDATIONS

OF

IMPASSE PANEL

The one-man Impasse Panel herein was designated to make recommendation to resolve the Impasse between the parties and to the terms of a collective agreement for the period commencing July 1, 1982. The original panelist was Peter Seitz, Esq, who held a hearing on September 21, 1983. Following the unexpected and regrettable death of Mr. Seitz, the undersigned was selected to replace him and the hearing was continued on December 7 and 13, 1983, January 10 and 24, February 2, 8 and 17, 1984.

Both parties were afforded full opportunity to, and did, present evidence and argument, and examine and cross-examine witnesses. The record consists of a stenographic transcript of 1,185 and 106 exhibits.<sup>1</sup>

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<sup>1</sup>. The transcript of the hearing on February 2, 1984, was incorrectly numbered. References thereto will be preceded by "2/8 Tr." The exhibits include 22 collective agreements, 19 Impasse Panel Reports, Awards and other determinations, and 26 financial analyses.

The parties submitted post-hearing briefs on April 4, and MEBA filed & reply brief on April 18, 1984. This general excellence of the briefs has been of great assistance in the consideration of the complicated issues presented herein.

#### BACKGROUND

A summary of the bargaining unit's collective bargaining history essential to an understanding of the positions of the parties. The bargaining unit consists of 91 Licensed Marine Officers who operate the City ferries. Their titles are: Captain, Assistant Captain, Chief Marine Engineer, Marine Engineer and Mate.

Collective bargaining for these titles dates back to 1955 when these marine employees were represented by Local 333, National Maritime Union.<sup>2</sup> Local 333 also represented the unlicensed ferryboat personnel, the crews of the City's sludgeboats, and the licensed officers on the City's fireboats. It also represented the crews of the private sector tugs, lighters, etc, (herein the "Harbor").

In or about 1956, as the result of a Joint request by the City and Local 333, the Saunders-Massimo Report was issued, which concluded that the working conditions and responsibilities of the City's marine employees were most comparable to the private sector Harbor employees. Thereafter, the City's marine employees received the same wage increases that were negotiated for the Harbor.

In 19679 MM succeeded Local 333 as representative of the fireboat officers and the fireboat officers.<sup>3</sup>

The 1967-1970 Harbor agreement provided for the reduction of the workweek from 40 to 30 hours, without a reduction in pay. The ferryboat contracts, followed the Harbor pattern, effective July 1, 1967. The

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<sup>2</sup>. Local 333 subsequently became affiliated with the I.L.A.

<sup>3</sup>. Local 333 continued to represent the unlicensed ferryboat and the sludgeboat crews. At some time not specified in the record, District Council 37, AFSCME, succeeded Local 333 as representative of the sludgeboat crews.

sludgeboat crew elected not to accept the 30 hour week and received an adjustment of wages equivalent to 23 per cent. The hourly rate of the ferryboat officers was increased by 33 1/3 per cent to reflect the reduction in hours.

The Staten Island Ferries operate 24 hours a day, 365 days a year. As six-hour shifts would have required four crews a day, the City sought, and the parties agreed on, a four-day work-week with three eight-hour shifts each day. As four 8-hour shifts amounted to 32 hours a week, the City agreed to pay "built-in" overtime for the extra two hours

The fireboat officers were equated to the Harbor until 1968. At that time, by agreement with PEBA, the fireboat officers (Pilot [Captain] , Chief Marine Engineer and Marine Engineer) were equated with this City's uniformed forces rather than the Harbor. Thereafter, they no longer received the same percentage raises as the Harbor, but received additional fringe benefits accorded to Fire Department employees.

The unsuccessful negotiations of the 1970-1973 and 1973-1976 contracts resulted in the appointment of Impasse Panels. In each instance, the Panel rejected MEBA's attempt to secure a wage increase greater than the Harbor's.

#### 1975 to date.

In 1973, as a result of the City's worsening financial condition, it entered into the "Americana" Agreement with the municipal unions. Under this agreement, contractual wage increases effective between June 30, 1975 and June 30, 1976, were deferred, to be repaid June 30, 1978. provided the City's budget for FY 1978 was balanced and the City was able to market its bonds under the market terms and conditions then prevailing. MEBA was a party to the agreement.

The City's financial condition continued to worsen and on September 9, 1975, the State Legislature enacted the New York City Financial Emergency Act, (FEA).<sup>4</sup> The FEA suspended increases in the wages "

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<sup>4</sup>. 4. Laws of 1975, Ch. 368.

or salaries of City employees and created the Emergency Financial Control Board (FCB). The Act further provided that the suspension of wage and salary increases would not apply if the employees agreed to defer salary or wage increases and the FCB found that the deferrals were an appropriate contribution to alleviation of the City's crisis. In May, 1976, the FCB adopted wage and salary policies which prohibited wage and salary, increases or increases in the cost of fringe benefits, unless he increases were funded by productivity savings, reductions in fringe benefits, other sayings, or other revenues approved by the FCB.

On June 30, 1976, the City, with bankruptcy facing it, laid off approximately 45,000 employees. That same day, it entered into the "Hilton" Agreement with a coalition of most municipal unions, which provided there should be 40 general salary increases in the 1976-1978 collective agreements, and in which the unions agreed to two annual "give-backs" of \$24 million. This agreement resulted from the United States Government's assistance that agreement be reached in principle that there would be no net increase in the City's cost of compensating its employees. Federal assistance would not be forthcoming in the absence of such agreement. MEBA, signed that agreement only as representative of the fireboat officers. However, its 1976-1978 contract for the ferryboat officers conformed to the term of the Hilton Agreement.

On June 5, 1978, a successor Coalition Agreement provided for cost-of-living adjustments (COLA), non-pensionable cash payments (NPCP) and general wage increases of 4% the first and second years of the unit contracts, with the first year's increase delayed three months. It barred any additional economic demands, but provided that variations could be made in the unit contracts if any did not increase costs. MEBA again was not a signatory to this coalition agreement, but abided by its terms.

In 1980, separate Coalition Agreements were executed by the uniformed forces unions and by the municipal (non-uniformed "civilian") unions. The civilian agreement (MCEA) provided for general increases of 8% in each of two years, a NPCP to be incorporated in the base rate at the end of the contract term, and increases in the City's contributions

to welfare funds. It barred additional economic demands but established a Salary Review Panel to make recommendations on the wages and salary rates of any title or occupational group for which there were both recruitment and retention problem. MEBA again, although not a signatory, conformed to the terms of this coalition agreement.

Or the years 1982-1984, there were three Coalition Agreements: (1) with unions representing civilian employees: (2) with unions representing lower ranks of uniformed employees: and (3) with unions of superior officers. All three contain certain economic provisions and bar any other. The MEA establishes a joint panel to adjust "specific and substantive inequities in the compensation of employees in the bargaining Unit."

### POSITION OF THE PARTIES

#### MEBA

MEBA asserts that by virtue of the sacrifices made by the licensed ferryboat officers during the period of the City's financial crisis, their purchasing power decreased by 27%, and the City saved over \$3 million. It contends that the financial crisis is ended, and that the ferryboat officers' salaries now should be restored to what they would have been had they received the Harbor rate of increases during the financial crisis.

The demands originally submitted by MEBA were:

"1 Annual Wages

Effective	<u>7/1/82</u>	<u>7/1/91</u>	<u>7/1/154</u>
Captain	\$37,000	\$39,961	\$43,158
Asst. Capt.	32,675	35,289	38,113
Mate 29.866	29,866	32,256	34,836
Chief Marine Eng.	35,832	38,699	41,795
Marine Engineer	33,370	36,039	38,923

(These rates reflect a 40.4% increase the first year and 8% increases the next two years)

- "2. DURATION Three year contract."
- "3. 11 Paid Holidays (an increase of three)
- "4. Premium pay for Saturday and Sunday.
- "5. All expenses and fees incurred in maintaining deck and engine licenses to be paid by the City.
- "6. Overtime to be paid in increments of one hour for the first hour and increments of a half-hour thereafter. (This demand was withdrawn in MEBA's brief.

- "7. Increase uniform allowance to \$300, per annum. (An increase of \$150.00)
- "8. All licensed officers shall bid for their jobs on steady shifts with regular assigned days off. If any changes in assigned schedules or vessels are made that exceed 30 days prior to the expiration of one year then the job shall be rebid immediately upon this charge. (This demand was withdrawn prior to the hearing.)
- "9. Only those officers holding permanent civil service positions shall be assigned to work overtime. (This demand was withdrawn prior to the hearing.)
- "10. All licensed officer wages shall be increased by 20% when assigned an Barberi Ferry Boat Class. There shall be no diminution of wages or benefits upon the introduction of any new class or size of vessels during the term of this contract. (The second sentence of this demand was withdrawn prior to the hearing.)
- "11. Longevity Pay.
- "12. Annuity Pay.
- "13. Night Shift Differential. 10% for all work between 4 P.M. and 8 A.M.
- "14. Implement Safety Board recommendations. (Withdrawn before hearing.)

At the hearing, MEBA added two more demands:

- "15. Payment of the salaries deferred in 1975 pursuant to the Americana, Agreement. (Adjusted during the Hearing,)
- "16. Increased payments to the welfare fund.

At this hearing, MEBA refined its demands into two packages, "Strict Harbor Demands" and "Modified Harbor Demands."

The Strict Harbor Package is based on the rationale that the ferryboat officers should be restored to parity with the Harbor employees, but should then receive "only the types of fringe benefits received before 1975." This package includes demands 1, 2, 7 and 16. MEBA computes the increased cost of this package to be \$2,620,721, over two years, and \$4,438,633, over three years.

Under the Modified Harbor Package, the ferryboat officers would receive only the percentage increases (8% a year) provided in the current Harbor contract, but would receive "the fringe benefits which private sector harbor employees receive but which they (the ferryboat officers) have not received in the past." This package calls for three 8% war increase and demands 4, 5, 7, and 16. MEBA computes the increased cost of this package at \$1,129,575. for two years, and \$2,121,014 for three years.

In its brief, MEBA has set forth a third package called "City Employee Package." This package is based on the rationale that if the ferryboat officers are to be compared to City employees rather than to Harbor employees, the comparison should be with the fireboat officers. In this package the contract would be for two years, with an 8% increase each year, and demands 3, 7, 10, 11, 12, 13 and 16. MEBA furnished no estimate of the increased cost of this package. On the basis of the cost to stated in various exhibits, it is estimated that the cost would approximate \$1,300,000. over two years.

#### THE CITY'S POSITION

The City denies it is able at this time to pay the increases and fringe benefits demanded by MEBA, and emphasizes the "tremendous impact" which acceptance of such demand would have on the other municipal unions, most of whose contracts expire June 30, 1984. It contends that pursuant to the statutory standard set forth in the New York City Collective Bargaining Law (NYCCBL) and the FEA, the panel's recommendations must be consistent with the economic terms of the MCEA, which are limited to salary increases of 8% on September 1, 1982 and 7% on July 1, 1983; increase in uniform allowances by the same percentage; and a \$75. increases in welfare fund contributions, provided specified conditions are met; and upgrading of health insurance coverage.

It asserts the ferryboat officers are not comparable to the Harbor employees because the latter do not transport passengers, and that there is reason to return to the Harbor pattern which has been "dead" for ten years. It argues that ferryboat officers are not

comparable to the fireboat officers, but should be compared with the City's civilian employees and that they are not entitled to the same full range of fringe benefits because their work week is shorter.

The City has two positions. If the MCEA terms are strictly applied, all additional economic demands, including the City's, are barred. The increased cost under this position would be \$617,905. If the MCEA terms are not strictly applied, the wage increase still should be limited to those provided in the MCEA, the City's nine demands should be granted, and MEBA's demands denied. The increased cost is estimated by the City at \$316,236.

The City's demands are:

- "1. Term two years effective 7/1/82 through 6/30/84.
- "2. Any benefit or working condition not specifically provided for in this agreement is hereby terminated except statutory rights.
- "3. Work performed on the 5th day which is also a paid holiday shall be compensated at time and one-half. This shall preclude any employee from claiming additional compensation or compensatory time off.
- "4. The number of paid holidays shall be four (4) and said holidays shall not be specified.
- "5. Overtime shall be paid after 32 hours of actual work. The work week shall consist of four 8 hour shifts and shall be paid on-the basis of straight time for all hours.
- "6. Article XIV, Section 6 (job bidding) shall be deleted.
- "7. Authorized overtime shall be worked on the basis of 15 minute segments.
- "8. Any licensed crewman who reports sick must present a medical Doctor's note upon return to work.
- "9. Article II (job security) shall be deleted from the contract.



## DISCUSSION

### The Applicable Standards.

Section 1173-7.0 c (3) (b) of the NYCCBL provides that Impasse Panel 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 or 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 considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

The Laws of 1978, Ch. 210, amended section 7 of the FEA to provide:

' 3 (a) Notwithstanding any provision of the New York City Collective Bargaining Law ... or any general or special law to the contrary, any report or recommendation of an impasse panel constituted pursuant to such chapter 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 standard enumerated in section 1173-7.0 (c) (3) (b) of such chapter, 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.

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"(h) For the purposes of this subdivision, financial to pay shall mean the financial ability of the city and or covered organization to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes existing at the time of the commencement of a proceeding under paragraph (a), (c) or (d) hereof.

"(1) The provisions of this subdivision shall terminate on December thirty-first, nineteen hundred eighty-two." <sup>5</sup>

Ability to Pay.

MEBA contends that the City's financial crisis is over and the City clearly is able to pay MEBA's economic demands. It cites the City Comptroller's Annual Report for FY 1983 which refers to "the City's return to fiscal normalcy" and states that for the third year in a row the City has realized an operating surplus; that the City's revenue anticipation notes now have been rated by Moody's and by Standard & Poor; and that \$452 million of long term City bonds were sold in FY 1983. MEBA also points to the salary increases granted to the City's elected officials and its managerial employees: the retraction of proposed increases in taxes; the phasing out of the City's personal income tax surcharge the Municipal Assistance Corporation's \$1 billion surplus and the City's agreement to repay the deferred salaries, payment of which was conditioned on a balanced budget and the City's ability to market its bonds.

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<sup>5</sup> .The first six months of the 1982-1984 contract here concerned come within the specified period.

The City contends it does not have the present ability to pay any of the Union's packages, and that the impact on other unions, of granting any of the packages, would endanger the City's future ability to pay those demands. It asserts that the surpluses cited by MEBA no longer are available, having been used to pay specific statutorily mandated items; that disposition of MAC'S surplus is controlled by an agreement worked out by the Governor, the Mayor and the MAC Board Chairman, under which most of the surplus must be used for capital expenditures. Only \$40 million a year is available for City operations, and that had been anticipated in the City's financial plan.

The City further asserts that although its budget plan for FY 1985 postulates only a 2% wage increase, the plan still requires reductions of \$160 million in expenditures which are hard to realize because "you can't scrape away any more fat where it doesn't exist." <sup>6</sup>

The contract terms here concerned are for the period commencing July 1, 1982. It would appear appropriate and proper, therefore, that the City's ability to pay be considered as of that date, rather than with the hindsight provided by the subsequent surpluses, bond sales, and other improvements in the City's condition. Nevertheless, under either view, the cost of payment of the economic demands of this small bargaining unit (91 employees), considered alone, was and is within the City's financial ability to pay. But financial ability to pay is a threshold question. A negative finding ordinarily forecloses any increase. An affirmative finding, however, does not establish

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<sup>6</sup>. City Labor Relations Director Linn testified that a 1% increase in FY 1985 would cost \$66.4 million, without the City's pension contribution which is not payable until the end of the year. In FY 1986, the cost, including the pension contribution, and another 1% wage increase, would approach \$170 million.

Linn further testified that coalition wage increases always have exceeded the percentage postulated in the City's fiscal plans.

entitlement to the increases sought. A further determination is necessary as to whether the increase is justified by comparison with the terms, conditions and characteristics of employment of other employees, both public and private; changes in the cost of living; and the interest and welfare of the public. The particular increases cannot be viewed in a vacuum. The effect on other bargaining units, and the public interest and welfare, cannot be ignored.

The Licensed Ferryboat of Officers and Detective Investigators are the only two bargaining units which have not accepted or conformed to the economic provisions of one of the three 1982-1984 Coalition Agreements.<sup>7</sup> To grant better economic terms to a non-signatory non-conforming union manifestly would undermine the coalitions whose cooperation has contributed, and still contributes, so substantially to the City's ascent from the financial abyss and its present improved financial condition.<sup>8</sup> Acceptance of MEBA's primary position of restoring the ferryboat officers to parity with the Harbor, which entails a 40.4% increase the first year, manifestly would have a tremendous impact on the imminent negotiation of 1984-1986 contracts with all the other municipal unions. It would open a hole in the dike through which a flood of increased economic demands would pour. Such a result would endanger the City's still precarious financial recovery and manifestly is not in the public interest.<sup>9</sup>

#### Comparability

It was stipulated by the parties that comparison with the terms and conditions of employment of other employees should be limited to other City employees and the private sector Harbor employees.

MEBA's basic contention is that the ferryboat officers should be compared with the Harbor employees, but that if they are to be compared with City employees, the comparison should be with the fireboat officers.

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<sup>7</sup>. An impasse panel also has been appointed for the Detective -Investigators.

<sup>8</sup>. The 1982-1984 coalition agreements provided for annual increases of 8%.

<sup>9</sup>. See, to similar effect, City Exh. 2, Impasse Panel Report of Morris Glushien, Esq. Case No. I-142-79.

The City asserts that Harbor employees are not comparable since they transport garbage and materials, not passengers, and that there is no valid reason to revert to a comparison with Harbor employees which has been "dead" for ten years.

The statement that ferries transport passengers, not garbage, is accurate, but not persuasive. Comparison with other marine employees, public or private, is as relevant as comparison with the City's land-locked white collar workers. Nor can a twenty year history of comparison with Harbor employees be disregarded.

On the other side of the ledger, the pattern of past comparison with the Harbor employees is based on a 25 year old report. It is not a commitment in perpetuity. MEBA itself sought, unsuccessfully, to break the pattern in 1970 and 1973.

Since 1975, due to the City's fiscal crisis, the Comparison has been with other City employees. Neither party has submitted any evidence as to current comparability with Harbor employees. The Financial Emergency Act 13 still in effect and collective agreements still are subject to Financial Control Board approval. Under such circumstances, the most comparable comparison continues to be with the other City employees.

The narrower question remains whether the City's civilian employees or the uniformed forces fireboat officers are most comparable.

Section 1173-4.3 a (4) of the NYCCBL refers to the uniformed forces as Consisting Of the police, fire, sanitation and corrections services. Each of these services negotiates and has its own, pension system. All other City employees' pensions, including the ferryboat officers, are negotiated by a single representative pursuant to section, 1173-4.3 a (5). The ferryboat officers' Welfare and Health Funds also are associated with those of the Citywide civilian unions.

Anthony DiMaggio, MEBA's Director of Inland & Harbor Contracts, testified that in the prior negotiations during the City's fiscal crisis, MEBA had sought the fringe benefits of civilian employees.

He testified: "We never asked for what the uniformed got." (Tr. 991. See also Tr. 970).

The most appropriate comparison, therefore, is with the City's civilian employees, which include other marine employees. It follows that the MEBA package to be considered is its "City Employee Package."

The 1982-1984 Municipal (Civilian) Coalition Economic Agreement, so far as here pertinent, provides in substances

1. A contract term of two years:
2. General wage increases of 8% and 7%, with the first year's Increase delayed two months:
3. The saw percentage increases to be applied to all "salary related" matters:
4. The wage increases are subject to modification in the unit negotiations, provided the revision does not increase cost:
5. A \$75. increase in the welfare Fund contribution;
6. Upgrading of Health Insurance Plans; <sup>10</sup>
7. Prohibition of additional economic demands, but section 9 provides a procedure for adjustment of union claims of "specific and substantive inequities in the compensation of employees" by an impartial joint panel. <sup>11</sup>

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<sup>10</sup> MEBA already has secured this benefit, and no issue is presented in this proceeding.

<sup>11</sup> The "Equity Panel's" decision provided adjustments of compensation in some 28 bargaining Units affecting 13,000 employees in over 300 titles. MEBA's brief also refers to 1982-1984 wage increases to Nurses of 8% and 8%. However, to compensate for the extra 1% the second year, the Nurses did, not receive certain fringe benefits. Subsequent to the hearing, MEBA submitted an Impasse Panel's recommendations of 1980-1982 increases exceeding those provided in the MCEA. As the Opinion was not submitted, it is not possible to ascertain the rationale of the increases. Record references to wage increases for certain prevailing rate employees are not deemed relevant since these are not the result of collective bargaining but are determinations by the City Comptroller pursuant to section 220 of the labor law, and the particular determinations cited are under reconsideration or on appeal.

### Contract Term.

MEBA's request for a three year contract is grounded on the Customary three year Harbor contracts, and the argument that with a two year term it would be necessary almost immediately to begin negotiation of the next contract term, which would start July 1, 1984.

The customary term of City contracts is two years. The contracts of the other civilian marine employees (sludgeboat crews and unlicensed ferryboat personnel) are for two years. The City argues, persuasively, that the simultaneous termination of all collective agreements enables it to prepare the financial plan required by the FEA. It also contends that to establish 1985 salary rates for ferryboat officers (the requested third year) necessarily would impact on, and create difficulties in, the imminent negotiations with the other municipal unions.

RECOMMENDATION: A TWO YEAR TERM, FROM JULY 1, 1982 TO JUNE 30, 1984

### Salaries.

In view of the conclusion that ferryboat officers should be compared with the City's civilian employees, MEBA's requested first year increase of 40.4%, to restore parity with the Harbor employees, is rejected. Concededly, the ferryboat officers have made great sacrifices during the fiscal crisis, but so have other City employees. A 40.4% increase would completely distort the existing salary ratios between the ferryboat officers and the sludgeboat crews, fireboat officers and the unlicensed ferryboat personnel. For example, although the ferry captain's salary has been below those of sludgeboat and fireboat captain, a 40.4% increase would catapult the ferryboat officers' salaries far over the others. It would result in the following 1982 salaries: Ferryboat Captain, \$36,955; Sludgeboat Captain, \$30,511; Fireboat Captain, \$30,235-31,546.<sup>12</sup> The increase moreover,

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<sup>12</sup> MEBA's Reply Brief erroneously states that "presumably" the reason ferry officers salaries are below the fireboat officers<sup>13</sup> because of the greater UCEA Increases. The coalition increases were the same for both uniformed and civilian employees until July 1, 1983 when the uniformed increase first exceeded the civilian, and then by only 1%. Sludgeboat officers' salary increases always have been pursuant to the civilian coalition rates.

is so far out of line with the 8% increases previously approved by FCB that approval does not seem even remotely possible.

RECOMMENDATION: SALARY INCREASES OF 8% EFFECTIVE SEPTEMBER 1, 1982 AND 7% EFFECTIVE JULY 1, 1983, SAID PERCENTAGE INCREASES TO BE APPLICABLE ALSO TO ALL "SALARY RELATED" MATTERS EXCEPT UNIFORM ALLOWANCES FOR WHICH PROVISION IS MADE HEREINAFTER.

MEBA's "City Employee" Demands.

MEBA's brief repeatedly asserts that during the crisis "ferryboat employees were treated like second-class City employees. They suffered the same low wage increases but did not get all the advantages of the City's better fringe benefits." Under its City Employees package, MEBA seeks to obtain those benefits,

In this connection, two additional factors must be considered.

1. Prior to the fiscal crisis, ferryboat and other city marine employees, by virtue of the Harbor pattern, received wage increases in excess of those generally received by other City employees. At the same time, those City fringe benefits which these employees did receive exceeded those of the Harbor employees.

2. Ferryboat employees work a four day, 32 hour week which includes two hours of "built-in" overtime. Sludgeboat and fireboat employees, and shore-based ferry employees, work a 40 hour week. Other City employees work 35, 37½ or 40 hour weeks. Employees who work 40 hour weeks work 2064 hours a year as against ferryboat crews' 1698 --a difference of 366 hours. The vast majority of City employees work a 35 hour week; 122 hours more than the ferry employees.<sup>13</sup>

When the ferryboat employees' hour were reduced from 40 to 32, there was no reduction in pay. This and the lesser hours worked were noted and acted upon by the 1970-1973 and 1973-1976 Impasse Panels.<sup>14</sup>

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<sup>13</sup> Since 1955, a ferry captain's salary has increased from \$6,590 for a 40 hour week to \$25,657 for a 32 hour week.

<sup>14</sup> Fringe benefit costs were 35% of salaries in 1981-1982 and 33% in 1982-1984. This includes social security and unemployment insurance taxes and workmen's compensation, which are not negotiated costs.



## Holidays

Although most City employees receive 11 paid holidays, ferryboat and sludgeboat crews, for many years, have received 8 paid holidays and 3 unpaid holidays. Employees who work on a paid holiday receive straight time (for the holiday) and time-and-a-half for working. Employees who work on an unpaid holiday should receive, under the contract terms, straight time plus compensatory time off. However, because the City is unable to schedule the compensatory time off, these employees have been paid time-and-a-half in lieu thereof. MEBA asserts that transforming these unpaid holidays into paid holidays therefore would not impose any additional cost on the City.

The City's opposition is predicated on the difference in hours worked; that acceptance of the demand "would forever prevent the City from cutting its costs by increasing the staff and giving the employees a day off at straight time: "and that the change is not necessary since the employees are actually getting the same compensation as for work on a paid holiday.

Similar requests by MEBA were denied by the prior Impasse Panels.

At present, during the City's continued precarious financial improvement, ferryboat officers' terms and conditions of employment are being compared with the City's civilian employees. Whether that comparison will endure when the crisis finally and conclusively ends, or will revert to the former comparison with Harbor employees, must await future developments. In the interim, in view of the difference in hours worked, the prior denials of this demand, and the fact that the ferryboat officers are suffering no loss in earnings, there is no need for change at this time.

RECOMMENDATION:      THE DEMAND BE DENIED.

## Uniform Allowances.

Directives issued by the Bureau of Ferries require ferryboat Captain, Assistant Captains and Mates to wear uniforms, the specifications for which are set forth in detail. The directives state that

failure to comply will result in immediate disciplinary action.

The specifications for the Captains' and Assistant Captains' uniforms include a double breasted Naval or Merchant Marine blue serge officer's uniform with a double row of brass buttons, gold braid stripes with a gold device anchor on each sleeve, a regulation officer's cap with white top, one-half inch gold chin strap, white shirt, black shoes, black tie and black or blue socks. Mates, instead of the double-breasted coat are to wear a black reefer, three quarter length, with brass buttons, etc.

The 1970-1973 Impasse Panel increased the uniform allowance from \$70. to \$85., acting that the cost had increased 20% since the last increase in 1967. The 1973-1976 Impasse Panel increased the allowance to \$150. on the basis of sharply increased costs.

MEBA seeks to increase the allowance by \$150. to \$300. It submitted evidence that the present cost of the uniform alone is \$357.50 for the Captain's uniform; \$340, for the Assistant Captain's uniform; and \$334.50 for the Mate's uniform.

Fireboat officers, Police and Firemen received a uniform allowance of \$425, in 1982 and \$464, in 1983, Sanitationmen received \$390.

The uniform allowance provided in the MCEA calls for a 8% increase in 1982 and 7% in 1983.

Although the uniform allowance is labeled "compensation", it more accurately might be termed reimbursement of City-mandated expenses. There has been no increase in the allowance since 1973, during which time the cost of living has increased 96.6%, and the cost of the required uniform have more than doubled. Under such circumstances, the 8% (\$12.) and 7% (\$11.34) increases provided in the MCEA clearly are insufficient and inequitable.

The Equity Panel created under section 9 of the 1982-1984 Municipal Coalition Economic Agreement has increased the uniform allowances of many civilian employees. It raised the uniform allowance of Traffic, Parkway and Sanitation Enforcement Agents to \$335, and

of Special Officers (Aqueduct Patrol \$318.

RECOMMENDATION: THE UNIFORM ALLOWANCE BE INCREASED TO \$300.00.

Barberi Class Boat Differential.

MEBA seeks a 20% differential for officers who operate the new Bazberi Class ferryboats, on the grounds that operation of these boats is more complicated and difficult, and their greater passenger-carrying capacity has enable the City to reduce the number of boats from five to four, despite a great increase in the number of passengers carried.

The City denies that operation at the Barberi boats is more difficult and asserts these boats require an additional mate and deckhand.

In the 1973-1976 negotiations the City had sought to delete a contract provision providing for the renegotiation of wages and working conditions if newly designed boats were put in services. The City petitioned the Board of Collective Bargaining (BCB) for a ruling that the section was not a mandatory subject of collective bargaining. The BCB bold it to be a mandatory subject "but only to the extent that It would obligate the City to bargain, on the wages, and working conditions of personnel whose job duties have been changed substantially as a result of their assignment to newly introduced equipment of new design." (BCB Dec. B-3-75, emphasis added.)

Although the Barberi boats have a different type of propulsion system, the evidence does not establish a substantial change in the job duties or responsibilities of those experienced ferry officers. It was testified only three days of training was necessary for officers assigned to Barberi class boats.

RECOMMENDATION: DEMAND BE DENIED.

Longevity Pay.

Annuity-Payments.

Night Shift Differential

MEBA justifies these demands on the basis that all three are received by the fireboat officers; that longevity pay is to compensate experienced ferryboat officers for longtime service to the City;

Annuity payments are designed to retain experienced employees, reward their loyalty, and provide for their retirement, Night Shift Differentials we to compensate for work at a time which is personally inconvenient, and which makes job tasks more difficult to perform.

The longevity payments sought by MEBA are \$320. after 5 Years, \$430. after 10 years, \$550. after 15 Years and \$660. after 20 years. These are the longevity payments to fireboat captains the second year of their 1982-1984 contract. They represent a \$200. increase over the first year. Fireboat Chief Marine Engineers and Marine Engineers receive lesser amounts. The fireboat contract also provides that the payments after the 5th and 10th years are not to be computed as salary for pension purposes until after 20 years of service, and the payments after 15 and 20 years; are not to be so computed until after 25 Years of service. No such limitations are included in the MEBA proposals herein.

The annuity payment sought is \$1. per officer per day to a maximum of 198 days (their scheduled work year). Fireboat officers receive \$1.00 a day per officer for 261 days (their work year).

The night shift differential sought is 13 of non-overtime work between 4:00 p.m. and 8:00 a.m., if at least one hour is worked.

In view of the comparability conclusion, above, comparison with the fireboat officers is not persuasive. Neither the unlicensed ferryboat employees nor the sludgeboat employees, the City's other civilian maritime employees, receive any of those benefits. Nor does it appear that any civilian employees receive annuity Payments.

Although some civilian employees receive longevity pay, and the Citywide contract provides for a nightshift differential, the record herein presents no basis for comparison. We know only that the ferryboat officers work a shorter week and that the unlicensed ferryboat personnel, and the sludgeboat, personnel, receive neither benefit -- a comparison which hardly supports the proposal.

RECOMMENDATION:     THESE DEMANDS BE DENIED.

## Welfare Fund Contributions

MEBA's 1980-1982 contract provided for City contributions to the MEBA City Employees' Beneficial Fund, effective July 1, 1981, of \$450. for each full time, per annum licensed officer. The 1982-1984 MCEA provides, so far as here pertinent:

### Section 5. Welfare Funds

a. (11) Effective the first day of the second year of the Separate Unit Agreements, each welfare Fund with reserves more than the contributions for the fiscal year ending June 30, 1982 shall have its contributions increased by an additional \$75 per full-time Employee per annum if such funds have presented a plan for providing additional benefits for that amount of \$75 and have so certified in writing to OMLR."

MEBA seeks continuation of the City's \$430. contribution plus the \$75. provided in the MCEA. It asserts that it has purchased additional benefits to be paid out of the \$75. and so notified the City.

The City contends that MEBA cover has submitted proof of compliance with the conditions set forth in section 5.

RECOMMENDATION: THE CITY SHALL CONTINUE TO CONTRIBUTE TO MEBA CITY EMPLOYEES" BENEFICIAL FUND THE SUM OF \$450. FOR EACH FULL-TIME PER ANNUM LICENSED OFFICER, PLUS \$75. PER FULL-TIME PER ANNUM LICENSED OFFICER IF SAID FUND SHALL PRESENT A PLAN PROVIDING ADDITIONAL BENEFITS FOR THAT AMOUNT AND SO CERTIFY IN WRITING TO OMLR.

### THE CITY'S DEMANDS

The City has taken two positions: (1) The terms of the MCEA should be strictly applied, in which case all additional economic demands, both the City's and MEBA's are foreclosed: (2) If the MCEA is not strictly applied, the wage increases of MCEA should be adhered to, the City's demand%, both economic and non-economic should be recommended, and MBA's demands should be rejected.

The City asserts that only Its demands numbers 3, 4, 5, and 7  
an economic.<sup>15</sup>

The recommendations made above an MBA's demands are a strict application of the MCEA. The only arguable deviation therefrom is the recommended increase in the uniform allowance. But section 9 of the MCEA expressly provides for the correction of inequities, and the Equity Review Board has increased the uniform allowances of comparable employees. MEBA is not a signatory to that Agreement, but if that Agreement is to be strictly applied, certainly the principle of equitable relief provided therein must also be applied.

RECOMMENDATION: THE CITY'S ECONOMIC DEMANDS NUMBERS 3, 4, 5 AND 7  
BE DENIED.

"Zipper" Clause.

The City seeks, to add the following provision to the contract:

"Any benefit or working condition not specifically provided for in this agreement is hereby terminated except statutory rights."

The stated purpose of the provision is to end costly practices not intended by the parties who negotiated the contract, and which came into existence, or were continued, without the knowledge or approval of the City's Director of Labor Relations, the only City representative authorized to negotiate and enter into contracts.

In Steelworkers v Warrior & Gulf Corp., 363 U.S. 5774, 581-583, the United States Supreme Court set forth the well established principle:

"...the industrial common law the practice of the industry Lad the shop is equally a part of the collective agreement although not expressed in it."

Past practices to be recognized must be unequivocal and must have existed for a reasonable length of time. If the City's

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<sup>15</sup> These demands are: #3-preclusion of duplicate compensation for overtime work on a paid holiday: #4-reduction in the number of paid holidays: #5-overtime pay for work over 32 hours a week; and #-7 overtime to be computed in 15 minute segments.

negotiating representative was not aware of existing past practices, which well may have been in existence for years, the fault cannot be attributed to MEBA.

As stated in F.C. Employees Union v Union Pacific R.R. (U.S.S.C.) 63 LM 248, is a collective agreement is a generalized code to govern. a myriad of cases which the draftsman cannot wholly anticipate." The proposed provision would eliminate all "industrial common law" and past practices, without specification. To place on MEA the burden of specifying all past practices is not reasonable. The City is free, in any contract negotiations, to seek to eliminate or change any specific past practices.

It is interesting to note that the only two examples of past practices cited by the City involve economic matters, precluded by the application of MCEA. The City may not achieve indirectly what it cannot achieve directly.

RECOMMENDATION:        THE DEMAND BE DENIED.

Elimination of Job Bidding.

The City proposes elimination of Article XIV, Section 6, of the last contract, which provided:

"Per annum Licensed Officers shall have the right to bid for jobs on the basis of seniority. Such bid will be permanent for one year.

" Changes may be made before the expiration at the year by actual consent of the Licensed Officers, subject to prior approval by the Employer. Such approval shall not be unreasonably withhold."

The City urges that the provision deprives it of necessary flexibility in assignments, particularly those to cover the scheduled job assignments of absentees and employees with prolonged illnesses.

The identical provision was contained in the 1970-1973 contract. In 1974, the City petitioned the BCB to declare the provision a non-mandatory subject of collective bargaining. The BCB hold that the provision did not infringe on either the Civil Service Law or management rights under NYCCBL Section 1173-4.3(b), and was a mandatory subject of collective bargaining (BCB Dec. B-3-75) The City then attempted

to amend the provision by insertion of a sentence requiring over-all Employer approval. The 1973-1976 Impasse Panel declined to recommend the change, stating that the existing language, as interpreted by the BCB afforded the parties a "practical solution." The same language has been included in all subsequent contracts.

The bidding schedules in evidence and the testimony indicate that the City's claim of inflexibility is overstated. Certain officers have no scheduled days, and are assigned to fill in for vacationing (and presumably absent or ill) officers. Other officers are scheduled to work three specified days of the week on particular assignments but on the fourth day are subject to assignment by personnel. Moreover, under the BCB's interpretation, unilateral assignments by the Employer are permissible in special circumstances.

RECOMMENDATION:            THE DEMAND BE DENIED.

Doctor's Certificate.

For many years the contracts have provided that a doctor's certificate shall not be required, for sick leave claims of two days or less, except in cases of chronic absenteeism. The City would require a doctor's certificate for every sick absence.

The language of the provision was promulgated by the 1970-1973 Impasse Panel. In the next round of negotiations, the City sought the same change it now seeks. The Impasse Panel found the City's preferred statistics inconclusive and advised the City to avail itself of the provision concerning chronic absenteeism.

The brief testimony herein as to increased use of sick leave is of little probative value, and there is no evidence of any attempt to use the chronic absentee provision. Nor was the provision changed in the City's 1982-1984 contract covering the unlicensed ferryboat employees.

RECOMMENDATION:            THE DEMAND BE DENIED

Elimination of Job Security Provision.

The job security provision in the last contract, and in all prior



contracts since 1973-1976, was drafted by the 1973-1976 Impasse Panel. It reads as follows:

"During the term of this Agreement, the Employer will attempt to retain all per annum employees who hold positions by permanent appointment. If curtailment because of a reduced number of runs becomes necessary, no curtailment shall become effective without prior discussion with the union."

In 1974, the City had petitioned the BCB for a declaration that the then existing job security provision Was not a mandatory subject of collective bargaining. The BCB, however, found that a management decision to lay off employees resulted, per se, in a practical impact upon the employees that " a Union's demand for notice and discussion of imminent layoffs prior to the implementation relates directly to the Union's statutory right to negotiate on questions of the impact of managerial decisions on employees' working conditions:" and that " a union demand in collective bargaining negotiations for a contract provision that provides for impact-related procedures, such an notice and discussion, ....is a mandatory subject." (BCB Dec. B-3-75)

The City seeks deletion of the provision as unnecessary because the NYCCBL and decisions of the BCB already cover the issue of layoffs. The City cites only a 1979 Impasse Panel Report recommending the deletion of two job security provisions as unnecessary (City-27, I-146-79, I-147-79).

That Impasse Panel recommendation is readily distinguished. First, the job security provisions therein went far beyond the limits of the BCB decision. They provided for an absolute prohibition of any layoff, demotion or reduction in salary rate of permanent, staff employees as the result of a pending Departmental reorganization. At the time of the Impasse Panel's recommendation, the reorganization had long since been completed, and the "assurances" of no loss of jobs or benefits had been honored.

Second, the two unions involved in that case both were locals affiliated with District Council 37, and covered try the Citywide contract negotiated by DC 37. The Citywide contract contained specific provisions covering job security. Hence, there was no necessity for substituting proper job security provisions in their contracts.

Here, the ferryboat officers an not covered by the Citywide contract or any other contract containing a job security provision. Job security is a mandatory subject of collective bargaining, and the provision drafted by a previous Impasse Panel clearly is within the limits of the BCB decision. The very saw provision is incorporated in the City's 1982-1984 contract with Local 333 covering the unlicenced ferryboat crows.

RECOMMENDATION:            THE DEMAND BE DENIED.

Payment of Deferred 1975 Salaries  
Upgrading of Health Insurance.

The parties have reached agreement on these matters and no issue as to them was presented herein.

Dated, May 3, 1984.

Philip Feldblum  
Impasse Panel

STATE OF NEW YORK:  
WESTCHESTER COUNTY: SS

On this 3<sup>rd</sup> day of May, 1984, before me Personally appeared Philip FELDBLUM, to so known and known to me to be the person described in and who executed the foregoing instrumkent, and he did duly acknowledge he executed the same.

Nancy B. Davis  
Notary Public

NANCY B. DAVIS  
Notary Public of New York  
No. 4732747  
Qualified in Westchester County,  
Commission Expires March 30, 1984