OFFICE OF COLLECTIVE BARGAINING
Case No. I-176-84
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In the Matter of the Arbitration

-between-

City Employees Union Local 237, IBT

-and-

New York City Housing Authority

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AWARD
and
OPINION

(Re: Issues at Impasse)

Before the Arbitration Panel:

Walter L. Eisenberg, Chairman
Robert F. Wagner
Arthur H. Barnes

Appearances:

For the Union:

Harold L. Fisher, Esq., Counsel
Kenneth K. Fisher, Esq., Counsel
Barry Feinstein, Esq., President
Jack Bigel, Program Planners, Inc., Consultant
Carrol Haynes, Vice-President

For the Employer:

Allen G. Schwartz, Esq., Special Counsel
Charles Moxley, Esq., Special Counsel
John F. O'Reilly, Esq., Special Counsel
Joseph J. Christian, Authority Chairman
Blanca Cedeno, Authority Member and Vice-Chairwoman
Walter Fried, Authority Member
John Simon, General Manager

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THE ISSUES

The City Employees Union Local 237, I.B.T. ("Union" or "Local 237") and the New York City Housing Authority ("Employer" or "Authority") submitted to the Undersigned as an

Arbitration Panel ("Panel") for final and binding determination five issues which they have been unable to resolve in their negotiations for a contract to replace the one which was scheduled to expire on December 31, 1984. Up to the point at which the parties reached an impasse on these five issues they had successfully settled by mutual agreement many other issues under discussion in their negotiations. The five issues initially presented to the Panel for decision are: wage rate increase(s), non-compounding of wage increases, term of contract, non-application of elevator job picks to certain types of employee, and the payment of premium pay for overtime after 8 hours (Jt. Exs. 6 and 6A).

The Panel met with the parties in joint session on eleven days: December 18, 1984; January 8, 9, 22, 23, 24, 28, 29, 30, 31, 1985; and February 1, 1985. Three of those joint sessions were conferences on procedures, another three were hearings devoted to the Union's presentation of its case on the issues, the remaining five of those sessions were hearings devoted to the Authority's presentation of its case.

The parties were ably represented, and were afforded full opportunity to introduce evidence, examine and cross-examine witnesses, and present argument on the issues. The Authority presented the sworn testimony of eight witnesses, and the Union presented the sworn testimony of five witnesses. The parties filed a total of 162 Exhibits; 102 by the Authority, 50 by the

Union, and 10 jointly. By pre-arrangement with the Panel, the parties also filed substantial post-hearing briefs. In addition, the parties subsequently sent the Panel unsolicited information about contract settlements reached after their briefs were filed and about points of difference in wage survey methodology employed in federal and state publications. The Panel gave attention to such of this information as it received prior to the time the Panel made its decisions on the issues.

BACKGROUND

The Authority provides shelter for about 600,000 people, 80% of whom are in 275 of its own housing facilities and 20% of whom are in additional leased facilities. The Authority is one of 2,900 Housing Authorities, most of them quite small and relatively few of them quite large, in cities and communities all over the United States. This Authority has 13,507 employees, 6,232 of them in "unique" titles under the Local 237 contract and another 1,716 in skilled trades titles under the same contract, making a total of 7,980 employees covered by that contract.

The Authority-Teamster agreement for January 1, 1983-December 31, 1984 covers 35 job titles, 23 of which are "unique" titles with 22 of the 23 subject to annual pay rate ranges which constitute the so-called "3-step pay plan."

The wage rates of the employees in the 23 “unique" titles are the subject of this proceeding. The wage rates of employees in the "skilled trades" titles are determined under Section 220 of the State Labor Law. The "3-step pay plan" actually involves four pay levels for each job title to which it applies: an entry level "minimum" and three "steps" each of which is at a successively higher salary level than the preceding step.

Four titles have been the most frequently selected by the parties as representative of the 6,232 employees in the unique titles under Local 237's contract. These are Housing Caretaker (3,387 employees), Heating Plant Technician (613 employees) Housing Assistant (700 employees) and Assisting Housing Manager (132 employees). There were 4,832 employees in those four titles In December 1984, or about 78% of the employees in the unique titles. The four representative titles currently carry the following annual salary pay ranges, with four salary levels from minimum to maximum: Housing Caretaker, $13,391-17,150; Heating Plant Technician, $13,853-20,056; Housing Assistant, $16,444-23,482; and Assistant Housing Manager, $20,867-28,704.

The parties have each presented detailed information with reference to their perception of the standards set forth in Section 1173-7.0.c(3)(b) of Chapter 54 of the New York City Charter. Not unexpectedly, the parties differ significantly in their assessment of their respective positions when viewed

against the data each has selected for analysis assertedly with reference to the statutory criteria.

Among the comparative data presented to the Panel by the parties there is information about: pay provisions for service employees under contracts covering commercial and residential buildings in New York City, the decision issued by an arbitration panel in the United States Postal Service contract dispute with the clerks and carriers unions over the terms of a new nationwide contract, the terms of the contract settlement negotiated by the United Auto Workers with Ford and General Motors, the settlement negotiated by District 1199 and the League of Voluntary Hospitals and Homes, federal Bureau of Labor Statistics reports on contract settlements nationally and regionally, Bureau of National Affairs reports on contract settlements nationally and regionally, New York State Department of Labor reports on public sector and private sector contract settlements in New York, annual wage rates for selected job titles under contracts between the New York City Transit Authority and the Transport Workers Union, the negotiated settlement between the City and the Uniformed Firefighters Association (a settlement which has been rejected by the Union's delegates), the price outlook for the next two or three years, and the financial conditions of the City and of the Housing Authority, among

other data.

Essentially, the Union has sought to justify: a two-year contract, general wage rate increases of 9.0% per year, the continuation of compounding of the second-year wage increases, premium pay after 8 hours of work in a day on any of the weekdays Monday through Friday, and a further opportunity to resolve through direct negotiation with the Authority the parties' dispute over job picks for certain elevator employees.

Basically, the Authority has sought to justify: a three-year contract, general wage rate increases of 3.0% per year at first, and which it increased in this proceeding to 4.0% per year, the non-compounding of second and third-year wage increases, the rejection of the proposal for premium pay after hours in a day, and a further opportunity to resolve the dispute over job picks through direct negotiation with the Union.

On July 26, 1984, the New York City Housing Authority and Local 237 of the International Brotherhood of Teamsters commenced negotiations for a collective bargaining agreement to succeed the one due to expire on December 31, 1984. After several months of negotiations, involving seven general bargaining sessions and numerous bilateral committee meetings, the parties made some progress primarily in the area of fringe benefits. However, in early December the parties concluded that "further

negotiations involving the remaining basically money issues [would] not succeed and [that they were] clearly at impasse.

Thereafter, on December 6, 1984 Joseph Christian, Chairman of the New York City Housing Authority and Barry Feinstein, President of Local 237 wrote to the Chairman of the office of Collective Bargaining (OCB) requesting the appointment of a three-member impasse Panel pursuant to the NYCCBL and the OCB rules. Both parties stated that the impasse Panel's determination would be final and binding. The New York City Housing Authority designated Mayor Robert F. Wagner as their Panel member and Local 237 designated Arthur H. Barnes. The parties agreed that their designees would jointly select the third member to serve as the Impartial Chairman.

Mr. Barnes and Mayor Wagner informed the OCB on December 12, 1984 that they jointly selected Walter L. Eisenberg to serve as Chairman of the Panel. In a letter dated December 13, 1984, Thomas Laura, Deputy Chairman of the OCB confirmed the designation of Dr. Eisenberg, Mr. Barnes and Mayor Wagner as the three-member Impasse Panel "to hear and make a report and recommendations pursuant to the procedures of the NYCCBL, in the current contract dispute between the New York City Housing Authority and City Employees Union, Local 237, IBT." In a second letter, also dated December 13, 1984, Deputy Chairman Laura advised the members of the Panel that pursuant to the parties joint

request, their determination would be final and binding. Mr. Laura stated that §1173-7.0 of the NYCCBL grants the parties the right to submit all unresolved issues to impartial arbitration and that "the panel does have the authority to make a final and binding determination of the dispute."

POSITIONS OF THE PARTIES

1. TERM OF AGREEMENT

Union Position

The Union argued that the term of the agreement should be two years. The Union submitted evidence which showed that changes in the cost-of-living, as measured by the CPI, were difficult to predict. The Union maintained that since the Performance Funding System inflation factor is tied to changes in the cost-of-living, and the Authority does not know whether the cost of living will increase or decrease in 1986 and 1987, a two-year agreement would better enable the Authority to determine its income and expenses. The Union also argued that in recent years, including those of the fiscal crisis, collective bargaining agreements between the Authority and Local 237 were of two years' duration.

Authority Position

The Authority argued that the term of the agreement should be three years because a three-year agreement would facilitate its long-term financial planning. The Authority stated that, contrary to the Union's contention, the Department of Housing and Urban Development's budget proposal for a Performance Funding System inflation factor"for fiscal 1986 will be much smaller than the factor received by the Housing Authority in 1985.

2. WAGE RATE INCREASES

In presenting their respective positions on the wage rate issue, both parties properly focused on purported evidence and argument relating to the applicable statutory criteria, which includes comparability, overall compensation, changes in the cost of living, the employer's ability to pay, and the interest and welfare of the public.

Union Position

The Union compared the annual salary and percentage wage rate changes for titles covering employees under Local 237's contract to employees in the public and private sectors, and argued that in the period from 1976 to 1984 the cumulative wage rate increases of Local 237 employees were much lower than the cumulative wage rate increases for federal, New York State private and public sector employees, as well as for unionized employees and managerial employees in the private sector generally.

The Union also compared the maximum base salaries of Local 237 employees to those employees performing similar jobs in both the public and private sectors. The Union argued that New York City Transit Authority employees with comparable job duties were paid a higher salary than Housing Authority employees, Comparing the Transit Authority Forter-Car Cleaner to the Housing Authority Caretaker, the Union showed that the salary of the Porter-Car Cleaner is substantially higher than the salary of a Caretaker, and that the salary difference between the two titles had increased over the past ten year.

Data were also submitted comparing the percentage wage rate increases and average salary of employees covered under the Service Employees International Union, Local 32B and 32J Commercial Building Agreement to those of Authority employees. These data showed that the pay levels and percentage wage rate increases of Local 237 employees was lower than those under the Local 32B-32J Agreement. The Union observed that a comparison of the contract "minimum" wages of Authority Caretakers and Local 32B-32J apartment building Handypersons shows that the wage rates of these employees were not virtually the same, as contended by the Authority in its inappropriate comparison of the private sector minimum and the Authority maximum, but that the Local 32B-32J Handyperson's minimum rate was

about one-third higher than that of the Authority Caretaker in 1983 and 1984.

The Union also analyzed the economic effects of the recent arbitration award in the United States Postal Service and of the negotiated agreements between the United Auto Workers and General Motors and Ford, and contended that the Postal award and the auto agreements support their demand for substantial wage increases. According to the Union's analysis, the actual annual pay increases were significantly higher than the nominal percentages reported for the Postal award and for the auto settlement.

In addition, the Union observed that references to recent settlements in private sector industries and various local governments required recognition of the fact that many of these industries and local governments currently have been experiencing economic difficulties similar to those experienced by City government in New York in 1975.

The Union also argued that substantial wage increases would be required to compensate Local 237 employees for the economic losses they have suffered, and continue to suffer, as a result of the 1975-80 fiscal crisis. The Union presented its calculation of the cumulative loss in overall compensation due to the following giveback items: deferral of .3 formula Cost-of-Living Adjust-

ment ("COLA"), replacement of Cost-of-Living Adjustment II ("COLA II") by the Non-Pensionable Cash Payment ("NPCP"), delay in implementing COLA II, reduction in the Increased Take Home Pay ("ITHP"), and premium pay loss on COLA items. The Union's data indicated that not only did Housing Authority employees experience substantial economic losses, but that their losses were greater than those of civilian coalition employees, who, unlike the Authority's Local 237 employees, received COLA I payments for the period April 1, 1976 through December 31, 1978.

The Union contends that the standard of living enjoyed by this workforce prior to the fiscal crisis should be restored. Using 1975 as a base year, the Union submitted data which showed that the wages of Local 237 employees have failed to keep pace with increases in the New York-Metro CPI-U since that year. The Union acknowledged that in the past year the rate of increase in the CPI-U has slowed down, but it argued that even if the current trend in the local CPI continues, a 3.0% wage increase would result in a loss of spendable income, given the living costs projected for 1985 for employees earning the maximum base salary. The Union asserts that the difference in cost between their wage demand and the Housing Authority's wage offer is small in terms of the Authority's overall budget for

fiscal year 1985. The union contends that both the Housing Authority and the City have ample funds to pay for wage increases and that either source could be used for that purpose.

The Union identified several sources of funds in the Authority budget which it maintains could be used to pay for wage increases. First, the Union argued that the Authority regularly overestimates its operating expenses and underestimates its income when it formulates its budget. According to the Union's budget analysis, in 1983 the Authority spent 4.1% less than the amount budgeted for total routine operating expenses. In 1984 it spent 4.4% less than the budgeted amount. The Union argues that the trend will continue in 1985, thereby providing one of the sources of funds for wage increases. Second, the Union argued that the operating reserve fund has been used to pay for wage increases in the past and could be used for that purpose again. The Union observes that the Authority's current operating reserves are greater than that required by the federal Department of Housing and Urban Development; i.e., it is greater than 20% of the Authority's routine operating expenses. The Union also pointed out that the Authority has been able to increase its operating reserves in the past year or two, despite cuts in the federal budget. Third, the Union argued that the

Performance Funding System inflation factor, which is 4.32% for 1985, could be used to pay for wage increases.

The Union explained that its discussion of the City's as well as the Authority's ability to pay was essential to its view that the City could increase its subsidy to the Authority to fund wage increases, as the City has done in the past for Housing Authority police. The Union argues that the City has the funds to pay for wage increases, as evidenced by the fact that the City's actual income exceeds its expenses. In addition, the Union submitted data which showed that while the City's financial plan generally does not provide for the actual percentage wage rate increases of labor settlements, the budget, nevertheless, has always been in balance or at surplus and the City's budgetary surplus has in fact increased over the last four years.

Authority Position

The Authority submitted data comparing the wages, and in some cases the total actual compensation, of Local 237 employees to public and private sector employees performing assertedly similar jobs. The Authority also compared the maximum base salary and fringe benefits of New York City Housing Authority employees with those of employees in public housing authorities in a few other cities, and argued that in nearly every job title

its employees were paid higher maximum base salaries than those paid to public housing employees in five other cities. The Authority also maintained that the fringe benefits received by its employees were greater than or equivalent to the fringe benefits received by employees in those five other public housing authorities. Comparisons were also offered to New York City employees with assertedly similar minimum qualifications and/or job duties. The Authority argued that the salary ranges for Authority job titles covered by Local 237 were comparable to the salary ranges of employees outside the bargaining unit.

The Authority did not dispute the Union's contention that New York City Transit Authority employees were paid higher salaries than Local 237 employees, but it argued that total compensation, not merely wages, was the standard by which the employees should be compared. The Authority argued that when various elements of compensation (excluding pension benefits) other than base wages were included in the comparison, the compensation of Local 237 employees was similar to the compensation of Transit Authority employees.

The Authority also contended that Local 237 employees should not-be compared to employees covered under the Service Employees International Union, Local 32B and 321 Commercial Building

Agreement because the job duties of employees covered under that Agreement were not comparable to the job duties of Local 237 employees. The Authority maintained that the job duties of employees covered under Local 32B-32J Apartment Building Agreements were comparable to those of the Authority's employees in Local 237, and a wage comparison between them was diff icult because Apartment Building Agreements in the private sector use an assessed valuation formula which does not exist in the public sector.

The Authority also contended that wage increases in recent public and private sector settlements have been low. Data were presented which indicated that in the first six months of 1984 the average increase in State and local government settlements across the nation was 4.0% for wages and 4.4% for wages and benefits. The Authority argued, and its Exhibit showed, that for 1984-1985 public sector settlements with uniformed and non-uniformed employees in the top ten cities of the United States averaged between 3.0% and 4.0%;wage increases in excess of 4.0% for non-uniformed employees were generally preceded by a wage freeze.

The Authority did not dispute the Union's contention that recently concluded contracts in the private sector, such as

those for the United States Postal Service and for General Motors and Ford, provided actual annual pay increases which were higher than the general increase rates nominally reported. However, the Authority argued that the cost of these settlement was offset by concessions from the unions involved. According to the Authority the saving to the United States Postal Service from the stretch-out of steps and the lower starting salary for new employees was substantial. The Authority also maintained that the recent District 1199 settlement providing for two 5.0% wage increases in a two-year contract was funded, in part, by an agreement to implement cost-savings measures.

The Authority argued that while Local 237 employees did suffer economic losses as a result of the fiscal crisis, in some respects their losses were less severe than those of the municipal workforce. The Authority produced figures on employment to show that, unlike municipal employees, Local 237 employees were not laid off during the fiscal crisis. The Authority also observed that Local 237 employees continued to receive pay increments under the "three-step pay plan" which had been implemented in January 1974.

The Authority takes the position that the record of past wage increases of Housing Authority employees should be compared

to the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") rather than to the Consumer Price Index for all Urban Consumers ("CPI-U") because the CPI-W applies to blue-collar and clerical wage earners similar to Local 237 employees and the CPI-U includes professional workers, self-employed individuals and unemployed and retired people who are not comparable to Local 237 employees.

The Authority contended that the Union presented a misleading picture of the Authority's and City's ability to pay because the sources of funds identified by the Union were neither unavailable or insufficient to pay for 9.0% wage increases in each of two years. The Authority maintains that, contrary to the Union's contention, the current operating reserves amount to 20% of the routine operating expenses. According to the Authority, even though the reserve figure appeared to be higher than that which the Department of Housing and Urban Development requires, there were encumbrances on the budget which must be paid for out of that reserve. The Authority states that since 1981 the reserve has become more important because federal budget cuts during the Reagan Administration have eliminated or reduced the sources of Authority funds, making it necessary to use Authority reserves to pay for repairs and improvements.

The Authority did not dispute the Union's contention that the Performance Funding System inflation factor could be used to help pay for wage increases. Rather, it maintains that this factor would not cover the difference in cost between the Union's proposed wage increases and the wage increases the Authority says it can afford to pay. In its brief the Authority also points to the inclusion in the President's proposed budget of a 1.5% inflation factor for 1986, sharply reduced from the 4.32% inflation factor for 1985. The Authority states that, based on the Union's calculations, the difference between the Union's demand and the Authority's offer was $10.3 million in 1985 and $24.97 million in 1986. The Authority's data indicate that the Performance Funding System inflation factor for 1985 would provide only $10 million in increases for all personnel expenses and $7 million for increases in non-wage and non-utility expenses.

The Authority also argued that the City's ability to pay was irrelevant in determining the wage increases the Authority could afford to pay. The Authority states that no city has ever subsidized the federal housing program (which accounts for 87% of the New York City Housing Authority's operations), and contends that if City funds were used for that purpose,

the federal government's obligation for the operating subsidy would be reduced and the actual amount of money received by the Authority would remain the same.

Finally, the Authority maintained that if this Panel awarded wage increases that cost more than they could afford, services would be reduced and vacant jobs would be left unfilled. The Authority argues that this would have a negative impact on the interest and welfare of the public.

3. NON-COMPOUNDING OF WAGE INCREASES

Union Position

The Union argued that wage increases should continue to be compounded. Evidence was presented which showed that, historically, wage increases have been compounded in all of the collective bargaining agreements between the Authority and the Unions and between the City of New York and unions representing employees in the municipal workforce.

Authority Position

While the Authority did not address this issue at the hearing, it did acknowledge in its post-hearing brief that the practical effect of non-compounding of second and third-year increases is to produce smaller percentage increases when these are translated into compounded figures. Hence, the Authority's offer of "4-4-4" increases non-compounded in a three-year contract

would yield compounded increases of less than 4.0% in the second and third years.

4. OVERTIME AFTER 8 HOURS

Union Position

The Union presented data comparing the overtime practices of the Authority to other public housing authorities in cities in the New York area and in cities with a population of 250,000 or more people. The Union's data show that the majority of public housing authorities pay overtime at the rate of time and one-half after eight hours of work. Comparisons were also made with civilian and uniformed employees in City employment and with New York City Transit Authority employees and Local 32B and 32J employees who perform jobs similar to those of Authority employees, which showed that all of the other employees, except the City's civilian employees, receive overtime after eight hours of work in a day at the rate of time and one-half.

Authority Position

The Authority did not dispute the Union's analysis of overtime practices in other public housing authorities or in other public and private sector industries. Rather, the Authority argued that their current practice, overtime after forty hours of work at the rate of time and one-half, was adequate because a significant amount of weekend work is regularly scheduled.

The Authority noted that Local 237 employees already receive premium pay at the rate of time and one-half for Saturday work and at the rate of time and three-quarters for Sunday work. The Authority emphasized the point that the general policy in City agencies is to pay overtime at the rate of time and one-half after 40 hours of work.

5. JOB PICKS

Union and Authority Position

As indicated above, during the hearing the parties made no presentations on this issue and reported to the Panel their interest in further direct negotiations over the issue, and so they withdrew the issue from arbitration, requesting that the Panel retain jurisdiction over the issue should the parties fail to resolve the issue.

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OPINION

One of the key questions inherent in the positions of the parties on the wage issue, as well as on the issue of contract duration, is whether the factors that produced the settlements and the relationships in the years of fiscal crisis in City government are still applicable in form or extent today. The Panel does not believe they are. We discern no reason for continuing, by imposition, crisis-born linkages between Local 237 labor contracts in the Authority and Mayoral Agency contract

settlements. There has been no such linkage shown to have been in effect between Authority contracts and Mayoral agency con tracts before the City's fiscal crisis years of the mid-1970's. The Authority's settlements with Local 237 in the City's pre-crisis past appear to have reflected the Authority's independence as an agency of government and its unique principal reliance on federal funding of its operations. The bargaining coalitions that were formed during the City's fiscal crisis years represented a commendable joint response by the City and the Authority and the unions involved to the conditions that then prevailed. Even in those years no single coalition of the municipal unions proved appropriate. At the onset of the fiscal crisis the "uniformed" employees' unions already had a commonality of interest of fairly long standing, but the diverse "civilian" employees' unions suppressed their traditional inclinations to go it alone or to be guided by the interests of their particular memberships and they agreed to bargain as to a joint civilian coalition in order to produce a substantially similar bargaining result for all of the civilian employees involved. There is uncontradicted testimony in the record before us that Local 237 opted to join that broad civilian coalition in the crisis years even though the Housing Authority, a State agency and virtually independent of City government, was not facing the financial debacle that appeared

to lie ahead for the City government. As to the coalition settlements, these did not contain totals of absolutely identical economic elements, either within a coalition or as between the two coalitions.

The question now is whether the coalitions today have the capacity or the interest to function in the same manner as they did during the crisis years. Suppressed demands in the crisis years within individual unions have led in the past two rounds of bargaining in City government to strains on the ties that have held the coalitions together since the mid-1970s. Hard evidence to support doubts about continued viability of the coalitions is readily available. Representatives of the Uniformed Firefighters Association ("UFA") and the City recently negotiated a contract settlement (subject to ratification) quite apart from the other member-groups of the uniformed coalition, and we heard testimony that the tentative UFA settlement which reportedly provided pay increases of 6% each year in a three-year contract contained no "me-too" commitment related to future contract settlements with other unions. Following our hearings, the UFA delegates rejected the settlement and the City announced that it would seek "arbitration" of those contract issues, apparently in a proceeding separate from any other bargaining unit. The UFA now appears to have rejoined

the uniformed coalition. The Policemen's Benevolent Association ("PBA") has made public its opposition to the UFA settlement on grounds of claimed inadequacy for the police. Further, ongoing police negotiations in the Long Island counties may exert some influence on PBA views of an appropriate settlement for policemen in New York City. The participants in the civilian coalition have rejected a single impasse proceeding for all of its union groups, and steps are now being taken by the Office of Collective Bargaining to structure separate impasse ("arbitration") proceedings for the different bargaining units involved. Thus, the different City unions now appear to be doing in contract settlement efforts what they typically did in the City's pre-crisis years. They looked at what other unions negotiated with the City government or with nearby levels of government, and used the best of these settlements to rationalize their own proposals for economic improvements. The recent increase in teachers' minimum pay in New Jersey is another example of a development that may turn out to be a distinctive factor, unrelated to more general coalition considerations, in the legislative efforts and negotiations involving the United Federation of Teachers ("UFT"). District Council 37 appears to be seeking a contract settlement for the civilian employees which is not less than, and would even improve upon, the one the UFA--

a member of the uniformed coalition--negotiated, and which the UFA's delegates rejected. And Local 237 elected to resolve its differences with the Authority on substantial economic issues in an arbitration proceeding totally apart from the rest of the civilian coalition, a proceeding in which Local 237 has stressed the Authority's own fiscal status, the private sector and public sector contract settlements it regards as significant for Authority employees, and the benefits Authority employees in its bargaining unit "lost" in the crisis years.

Thus, the various City unions are now openly assessing what is happening in nearby settlements in City and other governmental bargaining in a parochial manner no different than they did before the two coalitions were formed. At this time, the coalitions are not evidently functioning as the full-fledged coalitions they once were. Certainly with reference to the civilian coalition, the respective self-interest of the different unions is again a key factor in their bargaining and this seems to have replaced the commonality of interest that became the touchstone for their bargaining decisions in the crisis years. The local crisis conditions which produced the bargaining coalitions have eased, and the gradual development of a favorable economic climate in our municipality and in the State has resulted in evidenced diminution of union interest in coalition bargaining. So that, a device which was important, convenient

and effective in reducing the complexity of bargaining in local government appears not to be functioning effectively at this time. Vestiges of the coalitions are still there, but the civilian coalition may have become, de facto, a thing of the past in City labor relations.

Does any of the foregoing support the speculative view that the arbitration decision in this case may serve as a basis for settlements in other City bargaining? Hardly. There are Exhibits and testimony in the record before us related to contract pay and benefits in the Transit Authority, another "independent" or non-Mayoral agency. In further support of our conclusion that treatment of the Local 237-Housing Authority contract as if it were still linked to a municipal bargaining coalition is no longer warranted, we note an interesting development in the Transit labor contract talks which began in the second week of February. Cryptic word appeared in the media that the Transit Authority's opening offer to the Transport Workers Union has been for a wage increase of "6% in a three-year contract." Negotiations or arbitration there will likely represent yet another example of an independent Authority and its Union currently going it alone in bargaining, without referehce to any coalition settlement standard and with reference

to considerations peculiar to that Authority and its employees.

Testimony by the City's Director of Labor Relations indicates that he is concerned about the claim of Local 237's President in a television interview that the wage settlement for the employees of the Authority would be precedent-setting for other contracts in the City, those involving Mayoral Agencies and other unions. That expression of City concern would deserve serious attention had there been no defections from the bargaining coalitions. However, the coalitions are no longer intact. Furthermore, the history of bargaining by our local agencies of government shows no evidence of uncritical acceptance by City representatives of claims by union bargainers about precedent-making settlements. Except in the City's years of fiscal crisis, City representatives have expected and demanded proof of the validity of any "linkage" claims made by a union at contract bargaining time. We fail to see why the resourceful and diligent bargainers now representing the City would expect or accept in post-crisis bargaining any lesser proof of claimed linkage to a contract involving the independent Housing Authority than City bargainers typically demanded of Union claimants in pre-crisis years. The City's negotiators are in no different position now than they were in pre-coalition years. The different City unions have often

sought to use one-another's completed settlements for their own benefit, and the City has often rejected contract demands for which there was no adequate justification. We have not been shown any evidence to support a finding that contract settlements by the Authority and Local 237 have at any time in the past served as a "bellwether" for settlements by other "civilian" unions or by "uniformed" unions. It continues to be within the province of the City's negotiators to require any union to prove a case for the adoption of a claimed bellwether settlement. The UFA settlement was probably meant to serve as a bellwether settlement, but even before its rejection within the Union it seemed unlikely that it would so serve. Significantly, the City had refused to offer the UFA settlement to the civilian coalition, confirming our view that the City has both a strong role and a choice in dealing with bellwether contentions.

In our review of the record at hand we considered carefully the various aspects of the four open issues before us, as argued by the parties. We considered such factors as general economic conditions, overall compensation, consumer price trends, comparable contract settlements, comparable wage and premium pay levels, the Authority's foreseeable ability to pay, the welfare of the housing public involved, and the prior contract history of the parties with reference to pay increases and contract duration.

As to the general economic climate currently, it is apparent that the national, the New York State, and the New York City economies are widely acknowledged to be good and improving. The national economy has currently been described as "robust" and "vigorous", following a period of more moderate economic growth in mid-1984. The favorable economic developments on the regional, State, and City levels have helped to produce announced budget surpluses for the State government and the City government. The economic condition of the Authority for 1985 is evidently also quite good. It is, therefore, a time when it would be reasonable to provide redress in some part, where justifiable, of the pay rate structure here involved for unrestored economic cutbacks and lags that were introduced during the years of municipal financial crisis. We do not believe that it is an appropriate function of this Panel to attempt to restore in any large measure previously reduced pay or benefits of the type here involved, even if such restoration were proven to be feasible. If public sector collective bargaining is to continue to merit public confidence, large-scale restoration of foregone improvements or cutbacks in pay structure and benefits is more fittingly a subject for the public Employer and the Union to address and to resolve by mutual agreement. Accordingly, we dropped from consideration early in our deliberations increases of the size sought by the Union, quite apart

from the various rationales advanced by the Union for those increases.

Our analysis of the record has also led us to conclude that future pay increases as large as those adopted by the parties for their 1981-82 Agreement are not warranted, nor are increases equal to those agreed to by the parties for the 1983-84 Agreement warranted for 1985-86. Given the point reached by the Union and the Authority in their direct bargaining over wages, the question before us is not whether any increases at all are warranted, but rather what increases at or between the levels proposed by the parties before and during this arbitration proceeding are justified. We believe there are grounds uniquely inherent in the Authority and Union situation for moderate 1985-86 wage rate increases over and above the 4.0% non- compounded pay increases the Authority claims are possible, for reasons we shall develop below.

1. TERM OF AGREEMENT

Except during the City's fiscal crisis years, the duration of the contracts between the Authority and Local 237 has not been similar to those of other unions with contracts covering employees in City departments. Indeed, the Chairman of this Panel was a member of an Arbitration Panel in February 1979 which issued an Award (HA Exs. 62 and 62A) extending to the Authority-Local 237 Agreement for 1979-80 COLA and NPCP provisions comparable to those in the two-year

Coalition Economic Agreement ("CEA") applicable to City employees covered by the two-year CEA. The four Authority-Local 237 contracts concluded since the onset of the City's crisis years were of two-year duration and they reflected Local 237's participation in the cooperative efforts of the Authority and the City and its unions to cope with the City's fiscal crisis, while the Authority-Local 237 contracts in the pre-crisis years since 1961 were mostly of three-year duration. So that, purely in terms of the history of contract duration--and without reference for the moment to the essential relationship between contract duration and contract pay (and benefits) adjustments--these parties are not strangers to three-year contracts. Indeed, they were negotiating three-year contracts when these were not characteristic of settlements between the City and its unions.

Despite the fact that relatively little time has passed since the expiration on December 21, 1984 of the parties' last contract, we believe that a three-year contract is warranted if the contract is to contain general wage increases higher than those of the Employer's 4-4-4 offer. Moreover, we believe that a three-year contract will presage a return to the stability that used to characterize the periods of the three-year contracts between the Authority and the Union before the City's fiscal crisis. We agree with the Authority that a three-year contract can better facilitate long-term planning than a two-

year contract. However, the Panel finds that the substantial uncertainties surrounding the outlook for the Authority's finances for 1987 and for the employees' real income situation (i.e., the extent to which nominal wages will be enhanced or eroded by price level changes) for 1985 and 1986, warrant a deferral of any wage determination for 1987 to a time almost two years from now when actual experience for 1985 and 1986 will put the parties themselves in a position to address the subject of wages in the light of then available hard economic data, rather than in terms of sheer speculation now about grounds for wage changes in 1987. We are convinced that it is in the best interest of all concerned to provide for a reopener solely for wages for 1987, thus affording the Union and the Authority the opportunity to consider the matter of wage changes, if any --up or down--in the light of more realistic, rather than entirely imagined, conditions for 1987.

2. WAGES

In our deliberations over appropriate wage rate increases for a two-year or three-year contract, as respectively sought by the parties, we rejected those increase alternatives which could be construed to be entirely foreign to the parties' own bargaining efforts. We undertook to perceive what wage rate increases the parties themselves could have and should have negotiated in the context of their current and reasonably foreseeable circumstances had they each been able to take

that one additional step toward each other from the point at which each had stopped in their face-to-face negotiations. It is our intention to award wage rate increases which are a reflection of that perception.

In view of the varied, cogent and conflicting arguments offered by the parties as to the elements to be considered for fair and justifiable wage increases for the Authority employees here involved, we gave special attention to the recent history of contract settlements between the parties in an effort to identify factors which represented the bases for those settlements. We note that the Union and the Authority negotiated, after the temporary deferral of a 5.4% wage rate increase for 1976, two-year contracts which provided for no wage rate increases in 1977-78, two 4.0% annual wage rate increases for 1979-80, two 8.0% annual wage rate increases for 1981-82, and 7.5% and 7.0% annual wage rate increases for 1983-84. In 1981-82, the nation's economy was in sharp recession and the local economy reflected similar economic malaise, yet the Authority-Union Agreement for that period provided for 8.0% annual wage rate increase in each of those two years. In 1983, the national economy began to show improvement, which continued in 1984, again with similar developments in the local economy. We regard the parties' adoption of the 7.5%-7.0% wage rate settlement for 1983-84 to be a significant point in the determination by an Arbitration Panel of wage

rate increases for the parties' contract beginning January 1, 1985. We have reasoned that if the Authority could afford to grant and the Union found acceptable the rate increases in the 1983-84 contract, the events and circumstances which have followed that settlement could possibly point the way to the appropriate level(s) of rate increases beginning January 1, 1985. Toward the end of 1984 and now in 1985 the national economy and the regional economy are showing strong evidence of robust expansion. If the current economic circumstances of the Authority and of the employees in the Union's bargaining unit were found to be no less favorable than they were when the parties adopted their 1983-84 settlement, then conceivably the wage rate increases for the coming contract period could approach those in the recently expired Agreement. If Authority or employee circumstances are now different, then the new rate increases would have to vary from those in the expired contract. Under such circumstances significantly smaller increases may or may not be reasonable, and larger increases may--in our view--not be a matter for an Arbitration Panel to award but would appropriately be a matter for the parties themselves to have negotiated. The Panel's view of its function in contract-making in the public sector is reinforced by a New York State report of the results of arbitrated and negotiated settlements for police and fire contracts in New York in 1984. It is highly significant that in 1984 the average increase in arbitrated police and fire settlements was 7.31% while the

average increase in negotiated settlements was 6.86%, a difference of only 0.45%. In 1983, the same general pattern of slightly higher arbitration awards over settlements was apparent, except that police arbitration awards averaged 0-13% below the 8.04% average increase for settlements. This experience confirms what well-informed observers of public sector interest arbitration have long found to be the case; that is, that impasse and interest arbitration panels are typically inclined toward moderation in pay settlements and that this is a reflection of their search for a result that the parties themselves might have achieved had they been able to bargain their contract dispute to a settlement without third-party intervention. Our search in the voluminous record before us for relevant factors which could indicate whether similar or some other wage rate increases are warranted for the contract period that lies ahead has led us to conclude that the current economic circumstances of the Authority do not enable it to carry a repetition of the wage rate increases it carried for 1983-84. Our evaluation of the myriad of pertinent statistical and related data in the Exhibits and testimony before us leads to the conclusion that the situations of the Employer and the employees involved are somewhat different from what they were when their 1983-84 contract was concluded. The Authority's anticipated absolute and relative operating subsidies, reserves, revenues, encumbrances and other-than-personal expense for 1985 has not

been shown to be significantly at variance with such Authority anticipations in the recent past, and most clearly not during the period of the Agreement which expired on December 31, 1984. While the Authority's economic outlook for 1986 is less clear, we are of the opinion that the Authority can pay a further general increase for 1986 over and above the 4.0% it has argued that it can afford to pay.

We are not persuaded that the two 9.0% rate increases sought by the Union are warranted under the circumstances involved. We are also not persuaded that either the two 8.0% rate increases the parties themselves agreed to for 1981-82 or that their 7.5% and 7.% rate increases for 1983-84 are valid precedents for this Panel under the present circumstances. We find that, in general, the economic situation of the employees involved is such as to warrant wage rate increases that are somewhat less than those in the expired Agreement. If anything, the local price indexes applicable to consumer purchasing show only a moderate rate of advance in the recent past with some possibility of a continued subdued level of increases in the next year or two. We also find that some part of the cost-reducing concessions made by the Union for the 1975-80 fiscal crisis years have already been offset by a negotiated repayment schedule for the crisis-period wage deferral and a negotiated "non-pensionable cash payment" ("NPCP") as a replacement of the COLA II. Further, the pay rate increases agreed to by the

Union and the Authority for 1982, 1983, and 1984 exceeded to some extent local CPI increases by an average of about 2.0% per year. However, certain of the crisis-period "losses" experienced by the employees have not been recovered by negotiation and/or State legislation. Thus, the erosion of nominal wage rates by the CPI in years when the increases in CPI outstripped wage increases, the substitution in COLA of a one-cent increase for every 0.4% change in CPI rather than every 0-3% change in CPI, the delay in COLA I implementation for the employees here involved beyond the date of implementation for City employees, the reduction in "increased-take-home-pay" ("ITHP"), and the reduction in pension benefits under the Tier III pension plan are cutbacks in pay and benefit structure which have not been restored in whole or in part, to-date, by bargaining between the Union and the Authority or by legislation.

The Union presented a series of Exhibits to support its contention that the employees involved are entitled to substantial pay increases to recoup "real" and unrecovered pay losses during the period 1975-84. The Exhibits detailed, for representative and more heavily populated Authority job titles, the salaries the Union believes are required for the various job titles to make up for unrecovered losses through foregone pay rate increases, employee budgetary needs excess CPI increases, and other "losses" in pay and related compensation. As convincing as such a demonstration of pay

losses may be, it is still only one of several key factors which are required to be taken into account in the decision-making process here involved. Among other key factors is the matter of the Authority's capacity to fund increases that can be shown to have validity on other grounds. The Authority's economic situation, certainly for 1985, is such as to warrant some additional improvement in the real wage structure applicable to the covered employees over and above the 4.0% which the Authority offers and which is not quite enough to prevent a further erosion of its employee's real wage rates, given the estimate of the Authority's own economist that the local CPI-W for 1985 would increase by 4.7%. It is our view that an appropriate general increase in rates for 1985 could exceed 6.0%. However, because the outlook for 1986 is less clear, it is our judgment that the 1985 increase should be held to 6.0%, and that any justifiable amount over 6.0% for 1985 should be deferred to 1986.

As to the overall levels of compensation and benefits applicable to employees under the Local 237 Agreement, we have found that generally, with the exception of the City's fiscal crisis years, these have been improved in significant respects in every mayoral administration from that of Mayor William O'Dwyer through that of Mayor Edward Koch. The same, of course, has been true for City employees in the mayoral agencies, as well as for Authority employees. The record before us does not show that the Authority employees here

involved are significantly better or worse off in terms of a total level of wages, working conditions, fringe benefits, and pensions than City employees doing what may be regarded as comparable types of work, even though there are differences in pay and types of benefit among conceivably comparable groups of City employees. The Authority's incorporation in its review of past advances in employee compensation of adjustments made under the "3-step pay plan" introduced into the parties' 1974-76 Agreement is interesting as an indication of an aspect of Authority payroll costs but it has little bearing on the question of whether any grounds exist for general increases in the pay rate structure involved. The adoption of pay rate ranges back in 1974 to rationalize a diverse set of pay rate patterns under which there were as many as seven different pay rates for the same job, meant that there would be an orderly progression from an entry rate to a maximum rate for each job title. This "3-step pay plan" was not unique to the Authority; it was put into wide use in the City's mayoral agencies. So that, .the adoption of the plan did not result in any distinct advantage in pay rate structure for Authority employees over City employees. The same can be said of promotional opportunities within the Authority. These have not been shown to be more favorable for the Authority employees here involved than for employees in City departments. Promotional advances are a matter of individual circumstances everywhere

in government; promotions are not guaranteed. Thus, such opportunity for promotion as may exist for the employees here involved has not been shown to be so unusual or so frequent or widespread as to warrant the inclusion of promotions as a factor in considering what several increase(s) in pay structure may be appropriate. Hence, we find no adequate basis on which to conclude that the employees here involved are not entitled to more than some minimal general pay increases because of a generally superior total level of employee compensation; such superiority was intimated by the Authority but its effort at proof did not sustain the intimation. Indeed, the Union went to great lengths to support its claim that the employees here involved fared more badly than City employees in mayoral and other agencies did during the fiscal years. Thus, we found no compelling rationale for or against any particular level of general pay rate increase in the parties' respective presentations on total levels of employee compensation.

As to "cost-of-living" or consumer price trend data as factors in wage determination, the parties differ in their reporting of past price experience by selecting different base years from which to record the extent of past price increases and they differ, too, in their choice of published indexes. They also offer significantly disparate projections of consumer prices in the years ahead, with the Authority placing some reliance on national consumer price index

data and implicit price deflators, as well as on Wharton Econometric and City Office of Management and Budget projections, and with the Union relying primarily on one local-area consumer price index and to some extent on published national projections. In the matter of past price experience, we find that the local indexes of consumer price changes are more relevant to the wage issue before us and that these reveal levels of advance of about the same order of magnitude for the years from 1974 to date. Thus, the approximate extent to which contractually stated (i.e., "nominal") wage rates have been eaten into by local price inflation in prior years can be discerned from either of the regional CPI indexes published by the federal Bureau of Labor Statistics.

Essentially, the Union's arguments with reference to pay rate increases related to the local Consumer Price Index ("CFI-U") amount to a proposal for increased pay based both on recorded past and projected future CPI-U increases. Except in the years of fiscal crisis in the City, the employees covered by the parties' Agreements received pay rate increases in excess of the advances of the local area CPI (either "U" or "W"). During the years of fiscal crisis those employees did find their pay rates eroded by CPI advances in excess of the pay rate increases in the contracts. In our view, Cost-of-Living Adjustments ("COLA"s) which are related to actually experienced CPI increases are a more rational and defensible means for restoring, maintaining, or increasing

real wage rates. On the other hand, the use of projected CPI increases for adjusting wage rates is a hazardous undertaking in a period when there are too many variables exogenous to the market economy, originating here and abroad and exerting random impacts on the domestic economy, to permit reliable prediction of national CPI or local changes. There is, then, a reasonable argument for consideration by an Arbitration Panel of pay rate adjustments which would restore some part of the nominal pay rates eroded by experienced CPI increases; that is, to bring "real" wage rates (i.e., wage rates adjusted for inflation) back, at least to some extent, to what they would have been had there been no severe price inflation since 1974. The Panel's reluctance to rest its decision on wage rates for the years ahead in part on specific CPI predictions is prompted by its unwillingness to engage in a guessing game that has become the subject of repeated and justified disparaging comment and embarrassment for economists. This reluctance is reinforced by the testimony at our hearings of two economists from academe, one appearing for the Union and the other for the Authority. They acknowledged that CPI forecasts by professional economists have tended to be significantly different from actual CPI figures for the period in the forecast. Significant discrepancies between fact and forecast have repeatedly occurred in recent years despite the fairly narrow clustering of the price forecasts made by widely quoted economists.

Despite their candid comments about the poor record of reliability of price forecasts by economists, each of the economists who testified in this proceeding ventured his own forecast for 1985-87, and we find it interesting that these forecasts were significantly at variance with one another. The Union's economist, testifying about the national CPI in the next three years, ventured the view that a readjustment downward in the value of the dollar would take place within that time with the result that inflation would increase within a range of 3% to 8%. He also stated his belief that if the value of the dollar dropped this year that inflation could reach 7.3% and possibly 12.3%, instead of the predicted 4-3% for 1985. The Authority's economist foresaw no sharp movement of the national CPI over the next two years. He said that while the CPI could move up or down in the next few years, a 7.0% rise in the CPI in 1985 was beyond what most forecasters would project. His own predictions were that the CFI would rise by 4.0-4.5% in 1985, by 3.5-5-0% in 1986, and by 4.0-5.5% in 1987. The City's Office of Management and Budget, using national Wharton School econometric projections, makes up a regional adaptation of those projections, and as of December 1984 predicted these regional inflation rates: 4.3% for 1985, 4.1% for 1986, 4.9% for 1987, and 4.7% for 1988. To underscore the fragility of such price forecasts, a comparison of the predictions made by Wharton and by OMB in April 1984,

only eight months earlier, shows that the December 1984 predictions were considerably lower for 1985-87 and slightly lower for 1988 than the April 1984 predictions: viz., inflation of 5.6% for 1985, 5.8% for 1986, 6.2% for 1987, and 5.7% for 1988. And, OMB accordingly reduced its 1985-88 regional price predictions in December 1984 from the higher regional levels it had forecast in April 1984. It is for these reasons, as well as the parties' disagreement over an applicable price index, that we are convinced that where there is no unavoidable necessity for making explicit price prediction a part of the basis for an economic decision, such a decision should rest on other and more credible considerations. We find no compelling reason, in the circumstances of this case, for an Arbitration Panel to include any seemingly precise estimate of future price increases in the basis for its wage rate decision. We believe that the forecasts before us are too slender and insubstantial a reed on which to rest a Panel decision on precise levels of wage rate increase. As if to confound those who have forecast low levels of inflation in the next one to three years, published reports beginning on February 26, 1985, of the sharp fluctuation in the value of the dollar in world currency markets, aided by the active intervention of the central banks of West European countries, has reminded us that there are market forces at work which are capable of provoking a return of price inflation in the United States. Whether the value of the dollar abroad will fall, or fluc-

tuate, or climb to ever higher levels is, at present, purely a matter of guesswork even for expert currency traders.

As to the diverse array of data on supposedly comparable contract settlements which were presented to us by the parties, we find many of these to be inapplicable to the Authority-Union Agreement here involved. For one thing, certain of the settlements have never been a basis for the general wage increases adopted by the parties in their past negotiations. For another, certain of the settlements involve employees and employers whose work is totally alien to that performed in the Authority. Further, the locations of some of the cited settlements are so far from New York or are so broadly national in scope as to defy any logical effort to discover an impact on the contract here involved. And, various of the settlements cited reflect public sector or private sector circumstances of deep economic distress. The Authority is not in such circumstances. Indeed, a number of the cited settlements involved more than one of the non-comparable factors cited above. We do not regard as apt for comparison with the Local 237-Authority Contract the contract settlement negotiated by the City with the UFA, because Local 237 and the Authority have never in the past made a contract settlement with reference to a UFA contract settlement, not even in the City's fiscal crisis years. Nor, do we regard the national contracts negotiated last year by the UAW with General Motors and Ford as in any way indicative of what is reasonable, fair, and feasible in the

Authority-Local 237 context. We note in passing that the Authority and the Union estimate the annual values of the stated increases in that three-year auto contract quite differently. The Authority estimated the GM settlement, reported to produce 2.25%, 2.25%, and 2.25% in annual pay increases, to yield "cash" increases of 5.9%, 5.1%, and 4-37%, for a cumulative total of 14.8%. The Union estimated the GM settlement to yield annual "cash" increases of 8.3%, 6.2%, and 4.7% for a cumulative total of 20.4%. The Union costed the Ford "cash" increases at 12.4%, 6.0%, and 4.5%, for a cumulative total of 24.5%.

The Kerr Panel in the Postal case cites the Postal Service assumption of cost-of-living increases over three years of 5.2%, 5.4%, and 5.5%, or a cumulative average of 5.66% per year. That Panel mentions other projections for the three years, averaging 4.63% per year, but opts for an average 5.5% per year inflation factor, close to the higher projection, on the grounds that a fall in the value of the dollar (said to be overvalued 33%) in foreign exchange markets could cause a substantial increase in the cost of living in the next three years. The 5-5% inflation factor was then reduced by that Panel by what a contract COLA already provides. The Kerr Panel also incorporated a 0-5% productivity factor in its wage decision, proceeding from a Congressional Budget Office estimate of national "trend productivity growth" for 1986-89 of 1.7%, to a 1.3-1.7% assumption for 1984-87 contract period, to a 1-5% midpoint assumption for the period,

and finally to an 0.5% productivity factor as a reflection of "moderate restraint". These adjustments led the Kerr Panel to award three "2.7%" annual pay rate increases. Both the Authority and Local 237 estimate the value of those 2.7% increases to be higher over three years than the mere sum of three 2-7%s. The Union finds a sum of 18.4% in wage increases and the Authority finds a sum of 15.5% gross or 12.% net after contract savings are taken into account.

The Authority also cites the contract understanding reached in August 1984 by District 1199 and the League of Voluntary Hospitals in New York City, an understanding which, at this writing, has yet to be implemented. Stated general pay increases of 5% as of August 29, 1984 and 5% as of July 1, 1985, compounded, are valued by the Authority at 4.2% and 5.25% a year respectively, for a net overall increase, including other changes and offsets, of 9.90% over the term of the contract. The Union has described the tentative 1199 settlement as not relevant to the negotiations or contract dispute between Local 237 and the Authority. Our review of the record indicates that we have been offered no plausible basis for comparing the work and pay rates of the hospital employees with those of Authority employees. No such comparison has ever in the past been the basis for an Authority-Local 237 contract settlement, and no reason has been advanced for doing so now. Moreover, the parlous economic condition of many hospitals and nursing homes in New York

City area has been the subject of repeated pleas for State relief by those institutions, pleas which have received mixed State responses over the years. The economic condition of the Housing Authority does not appear to parallel that of voluntary hospitals.

These details are recounted to illustrate the point that nominally stated pay rate increases may not reveal in full the general pay improvements that are intend ed to flow from a particular contract settlement, even in a settlement involving employees who work in every city and hamlet in the nation and who do not perform work that is comparable to that of Authority employees.

Contract settlements in industry generally in the United States are not a meaningful standard for Authority-Local 237 contract pay rate adjustments. The mix of industries, their geographic dispersion, and the lack of clear patterns of settlement either in the private sector or the public sector make broad coverages of settlement figures inapplicable to a single local public sector employer. For example, the Bureau of National Affairs reports that in 1984 total compensation costs for State and local governments across the country increased by 7.1% while these costs for-workers in the private sector went up only 4.9%. The disparity suggests that an average embracing all public sector and private sector employees, nationally or regionally, could only turn out to be a misleading guide for any one employer-and-union settlement. National figures on private

sector settlements are no particular guide either to appropriate general increases in the case before us. The regional and industry-to-industry disparities are noteworthy. While the average of the BLS Employment Cost Index for civilian workers in private industry nationally rose by 4.9% in 1984, the increases within the four regions of the country ranged from 4.1% in the West to 5.4% in the Northeast. Compensation in manufacturing increased by 4.4% and in construction only 1.3%, while in finance, insurance, and real estate compensation declined 0.9% in the same period. By comparison, the increases for State and local (public sector) workers averaged 7-1% for the nation as a whole in 1984, and for service workers in the private sector the average was 6.2%. In New York State, data submitted to the Panel for the first half of 1984 shows that the median first year increase in private sector settlements (weighted by the number of workers) was 5.7%, and in public sector settlements 6-6%. Most of these figures are significantly below the 7.0% increase in wage rates paid for 1984 to the employees in the Local 237 bargaining unit, and even more below the 1984 pay rate increases for the City's uniformed employees.

Since the hearings before us ended, additional contract settlements and negotiations have come to our attention. The Authority sent us a press report of a tentative contract settlement between New York State and a Union of 600 State Trooper supervisors, and a report of a contract settlement

covering 3,600 tugboat workers in Local 333 of the International Longshoremen's Association and employers operating out of New York. The Trooper Supervisors' settlement is said to provide for annual pay raises of “$4.0%, 5.0%, and 5.0%”, among other improvements, in a three-year contract. The Trooper Supervisors are one of a number of Trooper units in the Police Benevolent Association of the New York State Troopers whose contracts expire on March 31, 1985. The State settled a 3-year contract for over 17.5% in wages with the Civil Service Employees Association ("CSEA") to replace a previous three-year contract which featured annual general wage increases of more than 29%, and which expired on March 31, 1985. The tugboat settlement is described as holding wages constant in 1985, and providing for increases of "4 percent in the second and third years" of the contract, for a total of 12% in increases of wages and benefits.

We fail to see how a contract settlement for a small group of State supervisory police employees who do not work in the City and who do not do work comparable to that of the Authority employees here involved bears upon the question of appropriate wage rate increases in the case before us. We are likewise at a loss to see the relevance of the tugboat workers' settlement to the wage issue before us; the work is not at all comparable and the industry is reported to have “problems" and "the need for restraint by all"--apparently related to interport competition and the cost of services

for those who use tug and barge operators in the port of New York.

The Authority cites approvingly a recommendation made by the Citizens Budget Commission ("CBC") in July 1984 that municipal wage settlements should total 5% or less per annum for wages and fringes, and the Authority suggests that developments since the CBC recommendation make a 4% pay award by this Panel appropriate (Auth. Ex. 37). The Authority nas made no showing of relevance of that CBC recommendation to the Authority-Local 237 Agreement. For one thing, the CBC report containing that recommendation makes no mention of the Authority and gives no indication that any consideration of matters pertaining to Authority operations, or bargaining history, or pay structure entered into the CBC's "municipal" pay recommendation. For another thing, the CBC's pay recommendation is only part of its debatable point of view as to an appropriate agenda of policies for New York City government, with "municipal" employee pay policy only one item in that agenda. We see no plausible connection between that report and the wage issue before this Panel.

We have also seen recently published reports of the contract settlement between Nassau Local 830 of the CSEA and the Nassau County government and between Suffolk Local 852 of the CSEA and Smithtown. The Nassau contract runs for three years from January 1, 1985, applies to a wide variety of County departments and employees, and calls for numerous

contract revisions, including annual increases in the base annual salary of 6.0%, 6.0%, and 5.5%, compounded. This contract awaits ratification. The Smithtown settlement, which has been ratified, also applies to a broad variety of job titles and provides for annual pay increases of b.5% for 1985 and 7.0% for 1986, "plus increments", in a two-year contract.

From all of the foregoing it should be readily apparent that there are available to even the most casual reader of pay increase reports percentage amounts equal to almost any conception of "appropriate" wage rate increases for the bargaining unit here involved. Finding a preconceived settlement increase percentage is easy. However, without a stated and apt rationale for a comparison with another bargaining unit and for the use of any such percentage here, insufficiently supported recitations of settlement percentages adopted elsewhere are not at all helpful.

Settlement and pay level data for private sector building service employees in the New York City area provide a far more meaningful comparison for the purpose of this arbitration than almost any of the other such data cited by the Authority or the Union. Under the Local 32B-32J Commercial Building Agreement for January 1, 1984-December 31, 1986, the contract pay of service employees (excluding tenant gratuities) was scheduled to rise 6.6% as of January 1, 1985 and another 6.0% as of January 1, 1986. The Union cal-

culates the average annual contract pay for those building service employees at $19,304 for 1984, $20,578 for 1985, and $21,813 for 1986. Thus, in 1984 the Commercial Agreement pay level was more than $2,100 higher than the Authority's maximum Caretaker rate and almost $6,000 higher than the minimum Caretaker rate. The service employees in commercial buildings who clean and maintain offices and corridors do essentially the same kind of work as Caretakers in the interiors and on the outside of the Authority's residential buildings. From 1975 through 1984, the average percentage increases in contract pay under the Commercial Agreement were greater by almost one-fourth than the percentage pay increases received by Authority Caretakers. As to the Local 323-32J Apartment Building Agreement for the three-year period April 21, 1982-April 20, 1985, the closest estimates of pay rate levels under that Agreement are derived from the "Regular Hourly Rate" information provided in its table of "Minimum Wage Rates for Apartment Buildings (Excluding Superintendents)" for the year April 21, 1984-April 20, 1985. The intricate formula for computing pay rates for residential buildings under that Agreement makes it necessary to rely on the stated "minimum" rates for compari son with Caretaker pay rates. The annual pay of a Handyperson is computed by multiplying the hourly rate for each type of apartment building by the "standard" workweek stated in the Agreement, i.e., 40 hours. These computations show that a Handyperson in a Class A building has a "minimum" rate of $19,404 per annum, in a Class B building a

rate of $19,283 per annum, and in a Class C building a rate of $19,163 per annum. These "minimums" are from $2,013 (Class C) to $2,254 (Class A) higher than the Housing Caretaker maximum rate. Other employees (including Porters) under the Apartment Building Agreement are also paid "minimum" rates that are higher than the Caretaker maximums. So that "others" in a Class A building have a minimum per annum of $17,734, in a Class B building $17,613, and in a Class C building $17,493.

As for pay levels in other public Housing Authorities in fairly large cities, the Authority offered a random mix of comparative annual salaries for from two to six other cities for key Authority job titles in October 1984. For the Caretaker title the Authority reported annual pay rates for 4 other cities--Pittsburgh, Newark, Rochester, and Baltimore--all of them lower than New York. For other job titles the Authority obtained pay rates for 6 other cities. We were given no explanation for the provision of salary information for two cities for two titles, for three cities for another title, and for 4, 5, or 6 cities for other titles. The Union produced maximum annual base salary data for 22 Housing Authorities in fairly large cities in 1984 (including five of the cities reported by the Authority) which showed that Caretakers in six other cities were paid more than Caretakers in New York City. When the Union adjusted the Caretaker rates in other cities for differences in living cost levels among the cities, using BLS budget data, it showed

that the maximum base salaries in 12 other cities were worth more than the Caretaker maximum in New York. Patently, there is no basis for a finding that the New York City Housing Authority pays higher rates to its Caretakers or to its employees generally. But, there is a basis for a finding that any pay rate increase here found to be justified on other grounds will be lent support by the finding that there are other large Housing Authorities that pay their employees at higher rates than the Authority here before us.

Both the Union and the Authority have presented to us data related to Porter-Car Cleaners employed in the New York City Transit Authority, comparing the work and pay for that classification to Housing Caretaker, to different effect. The Union has also provided a detailed wage chronology for the period December 1, 1974-July 1, 1984 for six other job titles under the Transit Agreement. Under that Agreement the Porter-Car Cleaner title has an entry rate of $7.625 per hour, or $15,921 per annum, and a maximum rate of $10.165 per hour, or $21,225 per annum, reached after 31 months. The Housing Caretaker title has an entry pay rate of $13,391 per annum and a maximum rate of $17,150 per annum, reached after 3 years. Quite clearly, the pay levels for the compared job titles at Transit are much higher than those at Housing, $2,530 a year higher at entry level and $4,075 a year higher at maximum. The other conditions of employment include some differences and some similarities as between Housing and Transit, but on balance--especially after the difference in

pension benefits is accounted for--pay and pensions under the Transit contract are superior to those under the Housing contract, while other benefits under the Housing contract appear to be generally superior to those under the Transit contract. Here, again, there has been no history of any linkage between the pay or benefits of the Transit and Housing contracts, despite the fact that the work performed in given job titles in the two agencies may bear comparison.

In sum, we find that much of the settlement and pay level data the parties have presented to us in a wide variety of "comparative" public sector and private sector settings is either not pertinent to the work of the bargaining unit here involved, or is not relevant to the economic circumstances of this employer and this unionized group of employees, or does not reflect economic conditions pertinent to this Authority in this municipality, or relates to City or other contracts that have never before been linked to the Authority-Local 237 Agreement, or to past linkages with other City contracts that are of questionable comparative validity in the current municipal collective bargaining scene.

One of the noteworthy features in the record before us is the unstinting, even fulsome, praise expressed by representatives of the Authority, as well as by representatives of the Union, of the unwavering and long-standing cooperation received from the employees here involved in the provision of tenant services. The Authority is evidently aptly described as one of the best-run--if not the best-run--public Housing

Authority in the nation. And, the Union is given high praise for its strong support of measures to meet public housing needs in the City, in Albany, and in Washington. It is quite apparent that the welfare of the public served by the Authority, i.e., its tenants, has been well attended to by the employees involved. This is a factor which deserves to be reflected in the employees' wage rate structure, and we have given it weight alongside economic and other significant factors in setting the wage increases we shall approve for the new Agreement.

Finally, but by no means least in significance, we have the matter of Authority funding of such pay increases as may be warranted on other grounds. In our deliberations over the key issues before us--the parties' differences over wage rate increases and contract duration--we have been clearly mindful of the special factors which govern the operations of the Authority. Unlike the City or the State governments, the Authority has virtually no control over its sources of revenue. It relies for its income principally on operating subsidies from HUD, the State, and the City. The rents it receives from tenants increase, by law, by about 10% per year and these must be turned over to the federal government. The investment income it earns is limited by HUD; any excess must also be turned over to the federal government. Thus, the means by which the Authority can take steps to meet a rise in expense due to a wage increase are considerably fewer than those available to City or State governments.

Yet, the Authority has such means. It can draw upon its reserves, it can rely upon its experience that budgeted operating expense tends to be higher than actual operating expense and that budgeted revenue tends to be lower than actual revenue, it can reschedule improvements, it can stretch out its schedule of "encumbrances", it can seek to improve the efficiency of the provision of tenant services, and it can defer the filling of vacancies in non-essential jobs.

The Authorities and the Union have offered us vastly different impressions of the Authority's ability to pay general wage increases within the next contract term. As we analyze their respective positions on this crucial subject, we find that the Union has offered us a "best case" view and the Authority has offered us a "worst case" view of the Authority's ability to pay. Their estimates of what it would cost to fund each 1.0% of a pay increase for the employees here involved are quite close. We have relied on the testimony of the Authority's Controller for the basic figure used in our calculations of the costs of the increases we believe are justified. According to the Controller, a 1.0% pay increase in the first year of a new Local 237 Agreement would cost $1.697 million. Thus, the 4.0% offered by the Authority for the first year, i.e. , 1985, would cost $6.8 million. Authority testimony and Exhibits in the record before us show that the current "inflation factor" adopted by HUD was 4.32%, consisting of the weighted average of 4.6%

for wages and 3.9% for the "implicit price deflator", and this would produce $17.3 million for the Authority. The cost of the Authority's first-year offer amounts to less than 40% of the amount available from the HUD "inflation factor".

A 6.0% first-year pay rate increase to the employees involved would cost $10.2 million, $3.4 million more than the cost of the Authority's 4.0% offer and amounting to only 59%of the $17.3 million available from the "inflation factor" under the Performance Funding System ("PFS"). We note, too, that the Authority's proposed "4%-4%-4%" pay increases are smaller than the City OMB's CPI projections of 4.3%, 4.1%, and 4.9% for the three years involved. So that, the Authority's proposed pay increases would result in a net decrease in "real" wage rates should the OMB price forecasts prove to be accurate.

It is our judgment that the Authority can readily afford in 1985 the 6.0% general wage rate increase we believe is justified. Even if the HUD "inflation factor" allowance were not available for the federal budget year ending September 30, 1985, the Authority has an operating reserve estimated at $208.9 million as of December 31, 1984, from which part, or even all, of the $10.2 million needed for a 6.0% rate increase could be drawn. Incidentally, the differences in budget and contract years here involved produce no insurmountable problems of adjustment. (The contract year involved is the calendar year January 1-December 31,

the HTD and Authority budget year is January 1-December 31, the federal budget year is October 1-September 30, the State budget year is April 1-March 31, and the City budget year is July 1-June 30). Three months of the current federal budget year, viz., the final quarter of 1984, fell in the parties expired Agreement, and nine months of that budget year fall in the first nine months of the parties' new Agreement. Hence, the availability of Authority reserves and of the monies allocated to the Authority under HUD's PFS formula for the "inflation factor" in 1985 are matters already largely covered by the HUD budget for the fiscal year ending September 30, 1985.

As to the current operating reserve of $208.9 million, the Authority states that $37.2 million in utility overpayments and earned interest must be returned to HUD, leaving $171.7 million for ostensible Authority use, but it contends that $69.9 million in "non-routine encumbrances" will reduce the operating reserve to about $101.8 million, a figure below its required minimum reserve of $114 million (i.e., 20% of budgeted routine expense of $570 million for 1984). The "encumbrances" involved include "contracts awarded", "work requests encumbered", and "requisitions for purchases". Despite the Authority's allegation that $69.9 million of this reserve is "fully encumbered", we are not persuaded that all or most of these "encumbrances" need become realized expenditures in 1985 or in 1986. As we read the past record of the handling of non-routine encumbrances, the Authority's management of this kind of outlay has been charac-

terized by a great deal of flexibility. The Authority has neither a commitment nor any obligation to schedule outlays for the three types of encumbrances identified above in 1985. Such encumbrances have spent, and can normally spend, long periods of time in the work-performance and payment pipelines. We estimate the current reserves to be sufficient to cover not only the general increases we shall award but also a significant part of the scheduled "encumbrances". So that, we see the operating reserve as an appropriate, indeed traditional source of funding for general wage increases at least at the outset of the Authority's fulfillment of contractual wage rate increase obligations. It is our understanding, that in the past when an Authority budget turned out to be underfunded for any one year, operating reserves were applied to fill the gap until it was made up in a subsequent supplementary budget. Indeed, the fact that "existing reserve funds", as well as federal operating subsidies, have been used to fund increased contract wage costs has been explicitly recognized by the Financial Control Board (U. Ex. 40). In this connection we note in an Authority Exhibit that the Authority's actual operating expense in mid-1984 was about $28.3 million less than its budgeted expense to that date, and that the actual expense in mid-1983 was about $24.7 million less than budgeted expense. There appears to have been in 1983 and 1984 a cushion in actual versus budgeted operating expense which if built into subsequent budgeting can be applied to defray wage rate increases in 1985 and

1986. We note, too, the Union's unrefuted observation that in the past when actual inflation exceeded HUD's predicted "inflation factor", the short-fall was made up by the federal government .

As to other possible sources of the funding of Authority wage increases for 1985 and 1986, the Union points to a special Authority reserve for "future requirements" of $9.5 million, to a City reserve of $7 million, and a State reserve of $9 million. The Union also suggests a possible increase in the City subsidy (now 2.9% or $11.3 million) to the Authority, to a possible increase in the State subsidy (now 2.3% or $9.0 million). The Union contends that about $93 million over and above the $114 million "troubled Authority" reserve guideline is also available for covering wage increases during the term of the new contract. However, the Authority contends that $37.2 million for HUD and $69.9 million for encumbrances must come out of the operating reserve of $208.9 million, leaving only $101.8 million in the reserve, or $12 million less than the $114 million guideline. The Authority and the Union disagree over whether increases in the City subsidy decrease the HUD subsidy by the same amounts, and over whether the reserves the City and State maintain for the housing programs involved are largely committed and unavailable. We have found, as indicated above, that the Authority has overstated the extent to which encumbrances will require the use of reserves for 1985 or 1986, and so we conclude that the payment of wage increases in the amounts we find justified

can, if necessary, be funded out of the $58 million in operating reserves that represent the difference between the $114 million "minimum" guideline and the $171.7 million balance available after the payments to HUD that are said to be required are made. Should those payments to HUD be deferred, even more of the operating reserve would be available for increased wage costs, as well as non-routine encumbrances.

Evidently, there has been no prior occasion when the housing program reserves maintained by the City or the State have been applied to the costs of the Authority's wage settlements. While we make no finding that these City and State reserves can not be so applied, we are not prepared to suggest that they be so applied on this occasion. Even if there were a precedent for such use of these reserves, the indicated amounts that remain uncommitted in those City and State reserves are relatively small. As to any possible increase in City and State subsidies for the Authority, given the substantial budget surpluses currently reported for the City and State, we are not aware of any technical barrier to such subsidy increases for the Authority. We would recommend that the Authority explore that kind of possibility if it were to have a need to augment its funding' from more readily available means.

One other source of funding of increased contract costs may be feasible. A press report of a meeting on March 7, 1985

of the State's Financial Control Board attributed to the State Comptroller a characterization of the City's economy as the strongest it has been at any time in the last 25 years. His analysis, made with reference to the City's proposed financial plan, projected a budgetary surplus for the City Of $315 million for the fiscal year ending June 30, 1985, $75 million more than the Mayor's projected surplus. The State Comptroller also predicted that the City would have additional cash of $34 million to spend in the next fiscal year. The staff of the Financial Control Board forecast an even more optimistic financial outlook; it foresees a budget surplus of $384 million, $144 million more than the Mayor's forecast, and a cash surplus for next year of $176 million. Given these varying but uniformly optimistic estimates of the City's fiscal situation, it may well be possible for the City to grant to the Authority some relief from the payments made to the City in lieu of taxes ("PILOT"). According to the Authority's Consolidated Financial Statements (Jt. Ex. 8), the Authority made PILOT payments to the City in 1983 of $8.5 million and increased payments in 1984 of $10.3 million. And, these payments will rise further in 1985, because each year as tenant rents increase by about 10%, the Authority's PILOT payments to the City--which are based on tenant rents--increase correspondingly. Should the Authority need an additional source of funding to bridge the gap between its 4%-4%-4% wage offers and our 6%-6% wage award, it would not be inappropriate, in view of the City's

proclaimed fiscal health and outlook. for the Authority to seek a reduction, if not a moratorium, in its PILOT payments.

As for a second-year general wage increases we are convinced that an additional 6%, cumulative or compounded, is both justified and within the financial capability of the Authority. We compute the cost of a 6% second-year wage rate increase to be $10.8 million in new money, for a total of $21 million for the second year to cover the continued cost in the second year of the first year's 6% increase plus the new money needed for the second year's additional 6% increase. If a pension cost of $2.2 million in the second year is added, the cumulative or compounded cost is increased to $23.2 million.

A second-year wage rate increase of an additional 6% is justified in terms of: the unrecovered pay "losses" due to excess CPI increases, the unrecovered give-backs in pay rates and related compensation, the lag in pay and benefits of Authority employees behind municipal employees since 1974, the contract settlements and pay levels for private sector employees doing comparable work in commercial buildings and apartment buildings in New York City, the pay levels in public Housing Authorities in other sizeable cities in the United States, and the special history of Employer, Union, and employee cooperation involved.

Our review of all of the comparative data at hand led us to conclude that the pay rates of public sector housing employees are--in the absence of some current linkage or some

unbroken pattern of relationship with any other pay structure(s) or contract settlements--most aptly compared with pay rates for private sector employees doing comparable work in the New York City area. The Housing Caretaker title includes 3,387 employees, more than half of the employees covered by this proceeding. The rest of the covered employees are in 15 or more other job titles. Inasmuch as the parties' own uniform general increase proposals are indicative of a satisfactory interrelationship of pay rates among the jobs involved, we were constrained to conclude that the pay rates for other covered titles should be increased by the same percentages as that which we find justified for Caretakers. Hence, we looked to the private sector building service contracts for primary guidance as to a reasonable first-year general pay increase, as well as a reasonable second-year general pay increase.

In the private housing sector, the Local 32B-32J Commercial Building Agreement provided for a 6.6% pay increase as of January 1, 1986 and another 6.0% pay increase as of January 1, 1986. These increases raise the average annual pay (excluding gratuities) of service employees under that contract to $20,578 as of January 1, 1985, and to $21,813 as of January 1, 1986. A 6% general pay increase to Housing Caretakers as of January 1, 1985 would raise the pay maximum for the title to $18,179 a year, still leaving the Caretaker at a pay level almost $2,400 (at a minimum) below that of employees under the Local 32B-32J contract. And, as of

January 1, 1986, a further 6% increase to Caretakers would raise the pay maximum to $19,270 a year, leaving the Caretaker more than $2,500 (at a minimum) below the pay level under the Local 32B-32J commercial contract. Further, a 6% increase for 1985 and another 6% increase for 1986 will yield pay increases for Caretakers from 1975 through 1986 totaling 80.1%, compared to those for service employees under the Local 32B-32J contracts in that same period, totaling 84.6%; thus maintaining virtual parity in stated percentages of general pay rate increases for the 13-year period between the public sector and private sector units involved. The 6% annual pay increases for Caretakers would take them as of January 1, 1986 to about the level of the lowest (class C) pay rate applicable to Handypersons working in private apartment buildings as of April 21, 1984 ($19,163, excluding gratuities). The increases we shall award will appropriately raise Caretaker rates above the rate applicable to Porters (and others) as of April 21, 1984 under the private Apartment Building Agreement.

By way of further perspective, even as of January 1, 1986, maximum Caretaker pay will still be below the maximum Transit Authority pay level for Porter-Car Cleaner of $21,225 per year. It is also quite likely that pay increases in public Housing Authorities in other sizeable cities in 1985 and 1986 will still keep the New York City Housing Authority well within a group of city Authorities that pay higher rates than most others, and still not the highest-paying of such Author-

ities. The Union's pay survey of a sample of 22 Authorities in sizeable cities showed that in 1984 pay levels for Care taker were higher than in the City Authority in 27% of the sample, in absolute terms, and higher in 55% of the sample when local city pay rates were adjusted to eliminate dif ferences in levels of living costs among the cities.

We find, too, that the lag or loss in pay rate advances and other compensation since 1975 for the classifications of employees here involved was sufficiently large to warrant 2% more general increase than the 4% proposed by the Authority for 1986. Quite apart from excess inflationary erosions since 1975 (estimated by the Union at 80.5% and by the Authority at 74.94%), the "givebacks" under the Authority contracts in the period 1976-84 (such as, COLA II replacement by NPCP, reduction in ITHP, delay in implementation of COLA I, the deferral of the 0.3 COLA formula, and loss of premium pay on COLA items) resulted in losses estimated by the Union at $7,375 for Housing Caretakers, $7,794 for Heating Technicians, $8,280 for Housing Assistants, and $9,015 for Assistant Managers.

The 6% general wage increase we shall award for 1986 adds to the 4.0% offered by the Authority the 0.6% we deferred from the Local 32B-32J increase of 6.6% for 1985 by awarding only 6.0% to the covered Authority employees in 1985, and 1.4% as further partial makeup (over and above the Authority's 4.0% offer) for the losses and givebacks described above.

In its brief the Authority expressed serious concern over the federal budget proposed by the President for HUD for the fiscal year ending September 30, 1986. That proposal reportedly cuts the public housing subsidy by $127.9 million, to $1,010.6 million, for the fiscal year. The cutbacks are reported to include only $175 million for emergency rehabilitation and a FFS "inflation factor" of only 1.5%, consisting of no allowance for wage increases, in place of the PFS 4.32% "inflation factor" in the fiscal 1985 budget. So that, the Authority foresees a need to apply its operating reserves to the gaps in subsidy left by likely cuts in the HUD budget for 1986, rather than to wage increases. The Authority newly estimates that its 4%-4%-4% pay offer--which it originally stated it could afford--would now produce a cumulative deficit of over $3.8 million in 1987. Here, again, we believe that the Authority is offering us a 19 worst-case" view of the outlook for federal support for operations in existing public housing. While we claim no special access to information about the outcome of the ongoing budget discussions in Washington, we are inclined to the view that Congress will not adopt a public housing budget that will seriously jeopardize existing public housing. After all, the people who live in public housing typically have no other viable housing alternatives. Nor, do we believe that the President intends for the 1986 budget to signal federal abandonment of public housing. We do not see how Congress can avoid improving the seriously underfunded PFS formula for fis-

cal 1986. We find it difficult to believe that no modernization or Comprehensive Improvement Assistance Program ("CIAP") subsidy will be provided for fiscal 1986. We note, in passing, that this Authority has underspent its federal CIAP funds by substantial amounts in 1982 (only 62% spent), in 1983 (only 29%), and in 1984 (only 6%). In our judgment, if the outcome of the federal budget-making process were to be a freeze on HUD's subsidies of operating expense for its Authorities at the fiscal 1985 level, the operations of the New York City Housing Authority would not be seriously hurt.

We are advised that contract issues resolved by the parties themselves before they came to arbitration in this proceeding include cost-occasioning items, spread out over the years ahead. We are constrained to conclude that the parties were already aware of the values for such items when they pressed their respective 4%-4%-4% and 9%-9% pay proposals upon the Panel. The parties have not presented us with any jointly arrived-at estimate of costs of their agreed upon items, and so we have not factored those costs, whatever they may be, into our wage-rate cost calculations.

In sum, we read the record before us to warrant a finding that the Authority has in 1985 and can continue to have in 1986 the capacity to pay reasonable and moderate increases at the rate of 6% and 6% in the first and second years of a contract of three years' duration. Conservative management, resourceful application of existing operating reserves, and

possible recourse to City (and/or State) sources by the Authority should produce more than sufficient funds to cover the costs of the 6%-6% general increases we shall award. We compute the cost of the Authority's offer of 4%-4%-4% non-compounded to be $6.8 million in the first year, $15.1 million (including pension contributions) in the second year, and $23.4 million (including pension) in the third year. Thus, the total of 12% in general increases over the three years in the Authority's proposal would cost $23.4 million (including pension), and the total of 12% in general increases over two years in our award will cost $23.2 million (including pension).

3. COMPOUNDING OR NON-COMPOUNDING

The Authority's proposal to grant second and third-year pay rate increases on a "non-compounded" basis is novel in the history of pay rate increases under the parties' multi-year contracts. In the past, each year's new wage rate increase was computed on a cumulative basis, that is, on the wage rates in effect in the immediately preceding year. Under the non-compounding (or non-cumulative) proposal all three wage rate increases would be computed on the same wage rate base, that is the wage rates in effect as of December 31, 1984. A non-compounded second year (and third year) rate increase obviously amounts to less of an actual pay increase than a compounded (or cumulative) increase at the same percentage rate. For example, two annual increases of 6.0% com-

pounded produces a total of 12-36% in pay rate increases, while these same two percentage increases non-compounded produces a total of 12.0% in pay rate increases. If the intention is to produce a total of 12.0% in pay increases in two years, the annual compounded pay rate increases which would produce that result are 6.0% and 5.658%. Therefore, a second year increase of 6.0% non-compounded is the equivalent of a 5.658% increase compounded. So that, referring to a non-compounded second year increase as a 6.0% increase is an inflated statement of the rate increase actually paid the employee over his/her current-year pay rate.

It is our judgment that successive pay rate increases which have invariably in the past been stated in cumulative (or compounded) terms, that is each percentage increase being stated with reference to the pay rate in effect immediately prior to the date of the increase, are best understood by everyone in those cumulative terms. Our pay rate decision will reflect the cumulative effect. That is, the increases we award will be less than those we would have awarded had we adopted the non-compounding method for stating the percentage increases we believe to be justified.

4. OVERTIME AFTER 8 HOURS

The employees involved are now eligible for overtime premium pay for work after 40 hours and for work on Saturdays and Sundays as such. The Panel is persuaded that the Union's proposal for premium pay after 8 hours of work in a day is

justified on several grounds, none of which has been disputed by the Authority. The Union has shown that in 30 public housing Authorities in the States of New York, New Jersey, and Connecticut, 55% of them pay overtime at time and one-half after 8 hours of work and of those who do so over 75% pay for such overtime in cash, and the remaining 25% pay for such work either in cash or in a combination of cash and compensable time. The Authorities which pay for overtime after 8 hours include the cities of Trenton, New Haven, Buffalo, Albany, Rochester, Bridgeport, and Syracuse, among others.

The Union has also provided undisputed data which shows that in 25 larger cities around the nation, 57% of the Authorities pay overtime at time and one-half after 8 hours. These cities include Los Angeles, Boston, Chicago, Cleveland, San Francisco, Dallas, Miami, and New Orleans, among others.

Further, employees in the skilled trades who are covered by the Local 237 Agreement already receive premium pay after 8 hours of work. And, employees in the private sector who are covered by Local 32B-32J residential and commercial building agreements are paid time and one-half after 8 hours, in cash. Elsewhere in the City, the City's uniformed employees and the employees of the Transit Authority are also paid time and one-half after 8 hours of work.

We consider these factors to constitute ample justification for extending this practice to the employees here involved. Yet, because the parties have already agreed in direct negotiations to many changes in working conditions, some

of which are cost-occasioning and may cost a few hundred thousand dollars in 1985, the first year of the new Agreement, we believe that this change in premium pay should be deferred to 1986, the second year of the new Agreement. We also believe that to prevent possible abuse of this benefit an eligibility requirement for such premium pay is warranted. We shall therefore require that in 1986 an employee who has worked at least three shifts in any week Monday through Friday shall be eligible for time and one-half after 8 hours of work on any other shift in that same week. We shall further provide that in 1987 the eligibility requirement for such overtime pay shall be reduced to the working of at least two shifts in the same week in which overtime is performed on any other shift.

5. JOB PICKS

While the Panel heartily endorses the parties' joint decision during the arbitration hearings to retrieve this issue from impasse for possible settlement through further negotiation between them, we shall decline their request that this Panel retain jurisdiction over the issue with a view to making a further award should the parties fail to settle the issue. The Panel intends to make a complete and final determination of each of the four issues still at impasse, and to return the job picks issue to the parties for negotiation without prejudice to the right of either party to seek final and binding arbitration before

an Arbitrator (or before Arbitrators) specifically selected to hear and decide the issue should they be unable to settle it in direct negotiation.

The Panel's AWARD shall be consistent with the foregoing findings and conclusions. On balance, we are satisfied that our AWARD will prove to be consistent with general public sector experience throughout the State in the matter of the tendency to close correspondence between arbitrated contract awards and negotiated contract settlements.

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AWARD

The Undersigned, constituting the duly authorized Arbitration Panel to whom was voluntarily submitted the matter in controversy between the parties above-named, and having heard the allegations and received evidence and argument bearing on the controversy, make the following AWARD:

1. TERM OF AGREEMENT

(1) The parties' new Agreement shall be of three years' duration and shall cover the period January 1, 1985 through December 31, 1987. (Unanimous)

(2) The Union and the Authority shall each have the right to reopen the Agreement, upon written notice served by one upon the other, for negotiation only on the subject of wages for the third year of the Agreement. Such change(s) in wages, if any, as they may negotiate for the third year of the Agreement shall not be made effective prior to January 1, 1987. (Unanimous)

2. WAGES

(1) Effective January 1, 1985, the annual salary rates for the job titles covered by this proceeding shall be increased by 6.0% per annum over the rates in effect as of December 31, 1984 and the employees in those titles shall be paid the said 6.0% as a general per annum pay increase retroactive to January 1, 1985. (Unanimous)

(2) Effective January 1, 1986, the annual salary rates for the job titles covered by this proceeding shall be increased by an additional 6.0% per annum over the rates in effect as of December 31, 1985 and the employees in those titles shall be paid the said additional 6.0% as a general per annum pay increase effective

January 1, 1986. (Mr. Wagner dissenting; in favor of April 1, 1986 effective date.)

(3) Each of the parties shall have the right to reopen the Agreement only on the subject of change(s) in wages, if any, for the year beginning January 1, 1987, as provided in paragraph 1.(1), above. (Unanimous)

3. NON-COMPOUNDING

The proposal to state the wage increases in this Agreement in terms of non-compounded amounts is denied. The second-year wage increase provided in paragraph 2.(2), above,

shall be compounded; that is, it shall be computed as it has been in the past, viz., on the basis of the wage rates in effect on the day immediately prior to the effective date of the wage increase. (Unanimous on the compounding principle)

4. OVERTIME AFTER 8 HOURS

(1) Effective January 1, 1986, an employee who works more than 8 hours on any day, Monday through Friday, shall be paid time and one-half for all such hours in excess of 8, provided the employee works at least 3 other shifts in that same Monday-through-Friday period. (Unanimous)

(2) Effective January 1, 1987, an employee who works more than 8 hours on any day, Monday through Friday, shall be paid time and one-half for all such hours in excess of 8, provided the employee works at least two other shifts in that same Monday-through-Friday period. (Unanimous)

5. JOB PICKS FOR ELEVATOR MECHANICS AND SUPERVISOR ELEVATOR MECHANICS

This issue, which was removed from impasse during the arbitration hearings at this joint request of the parties, is returned to them for further negotiation, without prejudice to the right of either party to seek a final and binding ar-

bitration before an Arbitrator (or a panel of Arbitrators) specifically designated to rule on the issue should their efforts at resolution of the issue fail. In order that its AWARD shall be complete and final as to the four issues which remained at impasse, this Panel declines the parties' invitation to retain jurisdiction over the "job picks" issue which is not at impasse at this time. (Unanimous)

Walter L. Eisenberg
Chairman

Arthur H. Barnes
(Concurring)

Robert F. Wagner
(Dissenting only as to Par - 2. (2), above)

State of New York)
ss:
County of Kings)

I, WALTER L. EISENBERG, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Panel's AWARD.

April 9, 1985
Date

Walter L. Eisenberg
(Signature of Arbitrator)

State of New York
ss:
County of New York)

I, ARTHUR H. BARNES , do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Panel's AWARD.

April 9, 1985
Date

Arthur H. Barnes
(Signature of Arbitrator)

State of New York)
ss:
County of New York)

I, ROBERT F. WAGNER, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Panel's AWARD.

April 9, 1985
Date

Robert F. Wagner
(Signature of Arbitrator)