OFFICE OF COLLECTIVE BARGAINING
---------- x
In the Matter of the Impasse

-between-

CITY EMPLOYEES UNION, LOCAL 237,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS Case No. I-188-86

-and-

NEW YORK CITY HOUSING AUTHORITY
---------- x

Before the Impasse Panel:

Paul Yager, Chairman
Carol Wittenberg
Jesse Simons

Appearances:

For the City Employees Union, Local 237, I.B.T.:

Barry Feinstein, President, Local 237
Kenneth K. Fisher, Esq., Counsel
Jack Bigel, President, Program Planners, Inc., Consultant
Allen Brawer, Program Planners, Inc., Consultant
Burt Lazarin, Program Planners, Inc., Consultant

For the New York City Housing Authority and the City of New York:

Saul G. Kramer, Esq., Special Counsel to the New York City Housing Authority
Manuel Quintana, Esq., General Counsel, New York City Housing Authority
Joseph Shuldiner, General Manager, New York City Housing Authority
Harvey Bugner, Director of Personnel, New York City Housing Authority
John Reilly, Assistant Director of Personnel, New York City Housing Authority
Robert W. Linn, Esq., Director, Office of Municipal Labor Relations
Frances Milberg, Esq., General Counsel, Office of Municipal Labor Relations

BACKGROUND

City Employees Union Local 237, International Brotherhood of Teamsters ("Union" or "Local 237") and the New York City Housing Authority ("Authority") submitted to the undersigned as an Impasse Panel ("Panel") for report and recommendations the issue of the amount of the wage increase, if any, for 1987 - the third and final year of their January 1, 1985-December 31, 1987 agreement.

The Authority is a public benefit corporation created by the New York State legislature. Under the enabling statute, the Mayor of the City of New York is vested with the authority to appoint the Authority's three member Board of Directors which in turn appoints the General Manager.

The Authority operates and maintains 307 housing projects containing approximately 173,000 apartments. It houses over 500,000 legal, and an estimated 100,000 additional illegal, tenants. The Authority employs approximately 13,783 employees. In total, Local 237 represents 8,258 Authority employees; 6,515 in "unique" titles and 1,743 in non-unique skilled trades titles.

On September 17, 1986, pursuant to the wage reopener provision of the Eisenberg, Wagner, Barnes interest arbitration award ("EWB Award") issued on April 9, 1985 and the related wage reopener clause of the current agreement be-

tween the parties, the Union initiated negotiations by serving written notice on the Authority. Meetings were conducted by the parties on October 15 and 29, 1986. The Union presented a demand for a six percent (6%) wage increase.

By letter dated October 31, 1986, Joseph Shuldiner, General Manager of the Authority, transmitted to the Office of Collective Bargaining the Authority's Request for the Appointment of an Impasse Panel on the issue of the "third year wage increase under the 1985-87 agreement." The Authority also requested that the Board of Collective Bargaining ("BCB" or "the Board") "...appoint a mediator as soon as possible."

Board Chairman Arvid Anderson responded to the Authority's request by letter dated November 7, 1986. Chairman Anderson stated that since the request for a finding of impasse was not' made jointly by the Authority and Union, he had designated Alan R. Viani, Deputy Chairman for Disputes, veto investigate the current status of the negotiations ... and recommend...whether conditions (were] appropriate for the creation of an Impasse Panel."

On December 8, 1986, the Authority submitted to the Union a formal proposal in which it stated the following two part counter offer:

1. Wage Increase for Third Year of 1985-1987 Agreement 3% effective April 1, 1987.

2. Any additional wage increase would have to be funded from among the following:

   a. Freeze the minimum salary for entry level title, thereby creating a new minimum and a 4-step pay plan.

   b. Upon promotion, future increments shall be paid on the anniversary date of the employee's actual promotion.

   c. Eliminate meal allowances for employees who receive paid overtime.

   d. Eliminate premium pay for Saturday and Sunday work when part of a regularly scheduled work week.

   e. The vacation schedule for new hires on or after January 1, 1987 shall be reduced as follows:

lst year	10	days
2nd year	7	days
3rd year	7	days
4th year	5	days

The Union rejected the Authority's proposal upon its presentation.

On December 10, 1986, Chairman Anderson wrote to the parties and advised them that based upon the reports of Mr. Viani, his own meetings with the parties and the Union's rejection of the Authority's counter offer, he had determined that-they were at an impasse in negotiations. Accordingly, Chairman Anderson informed the parties that he would recommend that the Board so find.

By letter dated December 15? 1986, the Union stated its objections to Chairman Anderson's recommendation. The

Union maintained that the Authority "has refused to conduct meaningful negotiations," and that "(none of the Authority's alternative demands provide a meaningful basis of negotiations." it characterized the Authority's counter offer as an attempt "to alter terms ... agreed upon in the negotiations for the very contract of which the third year wage rate has been reopened...," and demanded that "the Authority be directed to withdraw such improper demands." In addition, the Union requested "an opportunity to make a presentation to the Board prior to its determination of this proceeding....”

Chairman Anderson responded to the Union's latter request by letter dated December 16, 1986. He advised the parties that oral argument would be heard by the Board on December 19, 1986, at which time each party would have thirty (30) minutes to present its case.

At the time appointed for oral argument, the Union, which was to argue first, announced that it would rest on its December 15, 1986 written submission together with a supplementary document which was then submitted to the Board. Thereafter, the Union withdrew from the hearing; the proceeding went forward ex parte in order to afford the Authority an opportunity to be heard. A stenographic record and transcript of the entire hearing was maintained.

At the hearing, the Authority informed the Board that it would continue its December 8, 1986 counter offer of a

three percent (3%) wage increase effective April 1, 1987 but that it would withdraw item 2 and instead submit a new item 2 as follows:

> (2) any proposal above the 3% effective April 1, 1987 referred to in number 1 above will be funded through savings agreed to by the parties.

The Authority conveyed this proposal, together with its offer "to resume negotiations, immediately, including over the weekend, but not later than Monday morning," December 22, 1986, to the Union. Upon receipt of the Authority's letter, on December 19, 1986, the Union advised the Board that the Authority's new proposal was unacceptable. The Union confirmed this by letter dated December 19, 1986 to Chairman Anderson.

On December 22, 1986, the Board issued Decision No. B-50-86 wherein it determined that

> "As to the sole question with which we are authorized and required to deal - whether impasse has been reached in the negotiations between Local 237 and the Housing Authority over the amount of a wage increase for 1987 - we find that it has. We will therefore proceed immediately to the appointment of an impasse panel in accordance with Part 5 of the Rules of the office of Collective Bargaining,"

The parties, through the Office of Collective Bargaining, jointly selected Paul Yager, Carol Wittenberg and Jesse Simons as the three-member Impasse Panel. Mr. Yager was designated to serve as Chairman of the Panel. The Panel

held a prehearing conference with the parties on January 12, 1987 at which time the hearing schedule and several procedural matters were agreed upon.

Hearings were held on January 20, 21, 22, 23 and 26, 1987. The hearings were stenographically reported and transcribed. The Union presented its case on January 20 and 21, 1987. The Authority/City* presented its case on January 22 and 23, 1987. Each party was given an opportunity to present rebuttal testimony and argument on January 26, 1987.

The parties were ably represented, and were afforded a full opportunity to present evidence and arguments in support of their respective positions. Local 237 presented the sworn testimony of five witnesses; and the Authority/City presented the sworn testimony of three witnesses. In addition to post-hearing briefs, each party filed voluminous exhibits which the Panel carefully considered in reaching its decision.

*Because the Authority was assisted in the presentation of its case by the New York City Office Of Municipal Labor Relations ("OMLR") and because the Union in its Brief used this nomenclature, therefore all reference hereafter will be to the "Authority/City".

STANDARDS

In determining an appropriate increase, we have considered and applied the standards as defined in the New York City Collective Bargaining Law ("NYCCBL"). Under Section 1173-7.Oc (3)(b), Impasse Panels, we are required to review the following factors in determining settlement terms:

> (1) comparison of the wages, hours, fringe benefits conditions and characteristics of employment of the public employees involved in the arbitration proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work, and other employees generally in public or private employment in New York City or comparable communities;
>
> (2) the overall compensation paid to the employees involved in the arbitration proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;
>
> (3) changes in the average consumer prices for goods and, services, commonly known as the cost of living;
>
> (4) the interest and welfare of the public;
>
> (5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in interest panel proceedings.

POSITIONS OF THE PARTIES

UNION'S POSITION - IN GENERAL

The union asserted that the preponderance of the evidence and testimony must lead the Panel to conclude that a compounded wage increase of at least six percent (6%) should be awarded.

AUTHORITY/CITY'S POSITION - IN GENERAL

The Authority/City asserted that there is no basis for this Panel to award a wage increase of more than three percent (3%) effective April 1, 1987. The Authority/City argued that this wage increase is supported under all of the statutory criteria that govern this proceeding, as well as the overriding need to maintain the concept-of pattern bargaining.

UNION's POSITION - COMPARABILITY

The Union maintained that the issue herein is not one of linkage or pattern bargaining, as argued by the Authority/City, but rather one of comparability in terms of wage rates, job titles, scope of work and work environment. The Union claimed that it is relevant to consider other NYC municipal employee settlements only in terms of comparability, with all public sector settlements. The Union argued and presented evidence which showed that contract settlements in New York State for 1986 and 1987 averaged 5.79% in the first year and 5.77% over the length of the agreement.

Local government settlements in New York State averaged 6.08% in the first year and 6.17% over the length of the agreement. Nationally, according to the Union, state and local government settlements in 1986 averaged 5.7% in the first year of the agreement.

The Union and the Authority/City agreed that it is appropriate to compare Local 237 employees to employees covered by the Local 32B/J residential building agreement. They disagreed, however, on the appropriate basis for comparison. The Union maintained that the respective wage rates of Local 237 and Local 32B/J employees, not their total compensation, is the proper basis for comparison because the only issue before this Panel is the wage rate increase for 1987. The Union contended that the wage rate of a Housing Authority Caretaker is substantially less than that of a "Class A Handyperson" and a "Class A all other personnel."

The Union asserted that if total compensation is assessed accurately, Local 237 employees would lag behind Local 32B/J employees even if a six percent (6%) wage increase for 1987 were granted by this Panel. The Union claimed that the Authority/City's analysis of the total compensation received by Local 32B/J employees is incorrect in several respects. First, the Union noted that the Authority/City's analysis used the 1986 Local 32J/B salary

rate, $19,581 or $19,822, rather than $20,918, which is the 1987 rate. The Union also pointed out that the pension cost used in the Authority/City's analysis is inflated. Finally, the Union noted that the Authority/City failed to include gratuities received by Local 32B/J employees in its analysis. It is the position of the Union that, pursuant to the NYCCBL Section 1173-7.0c(b)(2), such characteristics of employment must be considered. Moreover, according to the Union, the work of a Housing Authority employee is far more strenuous and difficult than that of a comparable Local 32B/J employee.

The Union also claimed that the Authority/City's data on the twenty largest public housing authorities in the nation is misleading. The Union asserted that the Authority/City's data does not take account of the difference in the cost of living in various regions of the United States; or the fact that the New York City Housing Authority far exceeds all other public housing authorities in terms of the number of buildings, acreage, number of tenants and the number of employees. The Union contended that once the data is adjusted for inter-regional differences, the annual wage rate of Local 237 represented employees ranked sixteenth out of twenty.

AUTHORITY/CITY'S POSITION - COMPARABILITY

The Authority/City contended that the greatest comparability exists between Housing Authority employees and other City workers. The Authority/City maintained that there is a substantial community of interest between the two groups.

Both groups are covered under the NYCCBL. There is overlapping union representation for Authority and City employees. Both groups operate under the rules and regulations of the New York City Department of Personnel. Both are covered under the same health insurance and retirement programs.

The Authority/City offered a comparison of Authority employees with specific City titles. The Caretaker title was compared with Institutional Aide and Custodial Assistant to show that, while at the minimum, the two municipal titles earn more than Caretakers, at maximum, the salary of a Caretaker is greater. Moreover, virtually no Institutional Aide or Custodial Assistant has reached the maximum salary, whereas Caretakers reach the maximum after three years of service.

The Authority/City compared Housing Assistants with the titles of Real Property Manager and Eligibility Specialist III. Resident Building Superintendents were compared with the titles Supervisor of Building Maintenance and Supervisor of Building Custodians. As in the other

comparisons, the entry salary for Authority titles is below that of the City titles, but after three years of service, Authority employees earn more. Additionally, virtually none of the employees in City titles of Real Property Manager and Eligibility Specialist is at the maximum salary, and virtually all employees in the titles of Supervisor of Building Maintenance and Supervisor of Building Custodians is at the entry salary level.

In its comparison of Authority employees with those employed by other public housing authorities in the country, the Authority/City contended that its employees compare favorably. The Authority/City asserted that the 12.36% awarded by the EWB Panel represented the largest increase of any public housing authority.

The Authority/City presented an analysis of employee compensation among twenty public housing agencies at four stages of employment: at entry; after three, ten and fifteen years' service; and compared salary, total compensation, and cost per hour worked at each level. The City maintained that the Authority compares favorably with the twenty other public housing agencies cited on all three financial measures. The Authority/City claimed that on the basis of its comparison, the Authority does not rank below sixth in any comparison and ranks first in some.

The Authority/City contended that a thorough analysis

and comparison of the compensation of private sector building employees reveals that Caretakers earn significantly more than their counterparts represented by Local 32B/J. The Authority/City maintained that it is appropriate to compare Caretakers employed in residential buildings with "others" under the Local 32B/J agreement. The Authority/City used a figure of total compensation per hour worked in its analysis between the two groups. According to the Authority/City, this analysis, after three years' service, shows that Caretakers earn more than comparable private sector building employees.

The Authority/City's analysis includes health, welfare and pension benefits in its total compensation package and adjusts for hours actually worked. The Authority/City analysis excluded gratuities on the basis that there is no evidence that all Local 32B/J represented residential employees receive gratuities, and that, in any event, gratuities are not an employer cost which can be included in the wage rate.

UNION'S POSITION COST OF LIVING

It is the Union's view that a wage increase in excess of six percent (6%) for 1987 is justified based on losses in real wages experienced by Local 237 employees from 1975-

1987 and projected increases in the cost of living for 1987.

The Union noted that the NYC Office of Management and Budget ("OMB") and the United States Department of Housing and Urban Development ("HUD") have estimated that the rate of inflation in the New York City area in 1987 will be 4.6% and 5.14%, respectively. The Union asserted that using OMB's projected rate of inflation, a six percent 6%) wage increase would yield a small increase in real spendable wages in 1987, ranging from $5.94 a week for Caretakers to $20.37 a week for Assistant Housing Managers. A wage increase of three percent (3%) effective April 1, 1987, the Union contended, would actually reduce the real spendable wage income of employees in this bargaining unit. The Union claimed that the Authority/City "did not provide an economic or fiscal rationale for that and, in fact, stipulated that it had sufficient means to pay a 6% wage increase."

The Union noted that the Authority/City rejected both the OMB and HUD projections in favor of an estimated three percent (3%) increase in the rate of inflation. According to the Union, however, "[n]o proof concerning the local economy was offered to substantiate this estimate or a rationale offered as to why the Housing Authority refuses to accept its own (or the City's) projections." Moreover, the Union claimed that "the Authority will use the HUD esti-

mate for all purposes other than this wage rate determination."

The Union further argued that using the Authority/ City's projected rate of inflation for 1987, an 8.1% wage increase on a weighted average basis would be required to make whole employees covered by this proceeding due to the "scourge" of inflation from 1975 to the present. The Union submitted that losses to inflation should be measured from 1975. In support of its position, the Union noted that the EWB Award expressly recognized 1975, the year the fiscal crisis began, as the appropriate period from which to measure losses to inflation suffered by Local 237 employees. The Union presented evidence which showed that from 1975 to 1986, Local 237 employees lost between $11,839 (Caretaker) to $31,089 (Assistant Housing Manager) due to inflation. The Union contended that this loss exists despite the fact that from 1982-1984 negotiated wage increase for all City unions exceeded inflation.

The Union disputed vigorously the Authority/City's contention that losses to inflation should be measured from January 1, 1974, the date the three-step pay plan was implemented; and that increment increases resulting therefrom should be included in the wage settlement calculation. The Union pointed out that in 1985, during the prior arbitration proceeding, the Authority/City stated that "when we take a look at the increment schedule we do not...calcu-

late that increase as part of the six percent...." The Union maintained that the Authority/City offered no evidence or testimony to refute, revise or modify its previous testimony. Indeed, the Union asserted, if increment increases were included in wage settlement calculations, then wage increases approaching 50% were granted to the uniformed forces and teachers in the last round of bargaining. Moreover, the Union maintained that the three-step pay plan saves the Authority money in the long run. The Union presented evidence which showed that the three-step pay plan results in a savings to the Authority of $16,876 per employee over a four year period.

AUTHORITY/CITY'S POSITION - COST OF LIVING

The Authority/City maintained that cost of living considerations standing alone support its offer of a three percent (3%) wage increase for the third and final year of this agreement. The Authority/City argued that its offer is generous given the 12.36% awarded by the EWB Panel for 1985 and 1986, which far exceeded the increase in the consumer price index ("CPI") for the same two year period. The Authority/City submitted that the "consensus forecast for 1987 among experts" is that the cost of living will increase 3.4%. The Authority/City noted, however, that even assuming a 4.6% increase as projected by OMB, the percentage

wage rate increase for the three years of this agreement will exceed the increase in the cost of living over the same period of time.

The Authority/City claimed that for virtually every measuring period that can be examined, the wages of employees in this bargaining unit were "unmistakably" ahead of the CPI. In support of its position, the Authority/City presented evidence which showed that in the period 1983-1986 Caretakers' wages rose 29.2% and the CPI rose 16.4%; in the period 1981-1986 wages rose 50.7% and the CPI rose 32.7%; in the period 1980-1986 wages rose 58.3% and the CPI rose 47.2%; in the period 1979-1986 wages rose 68.1% and the CPI rose 62.8%. The Union, according to the Authority/City, attempted to avoid the above evidence by "isolating and, then, concentrating upon the 1976-1986 period."

The Authority/City disputed the Union's contention that 1976-1986 is the appropriate measuring period because it ignores the impact of the three-step pay plan. The Authority/City claimed that the three-step pay plan, which was implemented on January 1, 1974 and phased in during the period January 1, 1974 through December 31, 1976, resulted in a 40% increase for Local 237 employees over the three year period. The Authority/City contended that periodic wage increases together with the impact of the three-step pay plan has kept the wages of all members of

this bargaining unit well ahead of the cost of living, even during the fiscal crisis. The Authority/City argued and presented evidence which showed that even if the period 1976-1986 were the appropriate measuring period, and the impact of the three-step pay plan is excluded from consideration, the real salary of Local 237 employees was minimally affected by inflation.

Finally, the Authority/City noted that the Union agreed to the repayment of money deferred during the fiscal crisis on the same terms and conditions agreed to between municipal unions and the City, to the extent applicable. That agreement states that payments of such amounts shall "settle and extinguish all claims" by or on behalf of the unions or any employee in the title in the bargaining unit certified to represent them. The Authority/City argued that this provision, voids and undercuts the Union's claims for repayment of monies deferred.

UNION'S POSITION - ABILITY TO PAY

The Union observed that unlike the prior arbitration wherein the Authority claimed that if it paid wage increases over four percent (4%) a year it would become a "troubled" housing authority, in this arbitration proceeding ability to pay is not the primary issue. The Union noted that the Authority/City conceded that it has sufficient funds to pay a six percent (6%) compounded wage in-

crease for 1987, although it does have some concern about its long term financial condition.

The Union examined the Authority's budget projections for 1986 and 1987, and pointed out that the amount actually spent by the Authority in the first six months is a small proportion of the amount budgeted for the year. The Union asserted that when the Authority does not spend budgeted funds it flows back to the reserves; and therefore, reserves will escalate to levels well beyond that which was projected.

Finally, the Union acknowledged the Authority/City's contention that efforts have been made by the Reagan Administration to reduce federal funding for public housing authorities. The Union claimed, however, that there is no reason to believe that efforts now being made by the President will succeed where they have failed in the past since there now exists a more favorable atmosphere in Congress toward public housing.

AUTHORITY/CITY'S POSITION - ABILITY TO PAY

Although the Authority/City did not make a "technical inability to pay argument," it asserted that it is faced with serious on-going structural problems that have eroded, and will continue to erode, its federal program operating reserve balance.

The Authority/City claimed that its federal program (which accounts for approximately 87% of the Authority's total operation) is facing severe structural problems caused primarily by the fact that its operating expenditures exceed its receipts. As a result, the Authority/City maintained it has been forced to spend reserves to maintain its operation. In support of its position, the Authority/City presented evidence which showed that in 1984 the federal program operating reserves were $209 million, in 1987 the projected federal program operating reserves are $137 million. According to the Authority/City, a six percent (6%) wage increase for 1987 will further exacerbate the Authority's financial difficulties.

In the Authority/City's view, the prospect of increased federal funding for the Authority does not look promising. The Authority/City argued that it is doubtful the Authority will receive additional money over the short term to compensate for shortfalls in its operating expenses. Therefore, the Authority/City contended that it is in the long-term interest and welfare of the tenants, employees and the public that a further deterioration of the Authority's financial resources be limited. The Authority/City maintained that the public interest will best be served by the adoption of its proposal of three percent (3%) for wages rather than a six percent (6%) compounded increase

and, thus, avoid a concomitant increase in the reduction of the Authority's reserves.

UNION'S POSITION - PRODUCTIVITY

The Union argued and presented evidence which showed that the workload of employees in the bargaining unit has increased substantially. The Union noted that while the number of tenants has increased significantly, an estimated 16%, only 283 employees were added to the bargaining unit within the last two years. The Union maintained that maintenance complaints increased 31% in 1986, over the target of 11.5%, even though the time span to respond to complaints was reduced from 4.2 days to 3.8 days. The Union pointed out that the number of complaints in all categories is higher than expected, despite the fact that statistics show that the Authority is meeting or exceeding the performance targets it set in those areas.

In the Union's view, the Authority/City introduced no evidence or testimony concerning the productivity of the workforce. The Union submitted that the Authority/City's statement that productivity is complex and that reasonable people can differ as to whether it has occurred is insufficient to refute its contention that Local 237 employees have demonstrated substantial improvements in productivity and should be compensated for those improvements.

AUTHORITY/CITY'S POSITION - PRODUCTIVITY

The Authority/City asserted that productivity is difficult to measure. It claimed that the Union presented no evidence to establish a material increase in the workload of Local 237 employees, such as retention or recruitment problems which generally occur when the employees' workload exceeds that which fairly may be expected. The Authority/City maintained that the Union's "bald assertion" that there are now more illegal tenants residing in Authority projects does not by itself constitute proof of an increase in workload.

The Authority/City further noted that the Mayor's Management Report illustrates that in many City agencies there has been a substantial increase in the workload of municipal employees. The Authority/City contended, however, that not all changes in workload necessitate a revision in wages.

UNION'S POSITION - "LINKAGES" or PATTERN BARGAINING

The Union contended that there is no clear pattern of settlements for the 1984-1987 period. The Union asserted that the overwhelming number of wage settlements exceeded the MCEA package. In support of its position, the Union cited the UFT, UCEA, TWU and nurses agreements.

The Union argued that there is a clear pattern in the increase awarded during the third-year of all City agree-

ments. All employees, civilian and uniformed, received a six percent (6%) increase during the third and final year of their contract. The Union bases its request for a compounded six percent (6%) increase an this third-year pattern.

The Union claimed that 1987 should be viewed as the last year of a three-year agreement. The Union claimed that there is no evidence that the EWB Award established a pattern for either the MCEA or UCEA settlement. Similarly, the Union argued that there is no reason to assume that the 1987 increase will serve as a "bellwether" for future settlements.

AUTHORITY/CITY'S POSITION - "LINKAGES" or PATTERN BARGAINING

At the threshold, the Authority/City contended that the Panel must uphold the continuance of pattern bargaining in making its award. In the Authority/City's view, maintenance of the pattern is the only way to avoid the leapfrogging and whipsawing that preceded the fiscal crisis.

The Authority/City asserted that the Panel should be governed by the MCEA settlement of 17.77% over three years in determining an appropriate increase for 1987. The Authority/City argued that to award more than the cumulative MCEA package might affect the next round of bargaining with its municipal unions. The Authority/City expressed deep concern that the Panel's award will determine

the future of pattern bargaining in City municipal negotiators.

The Authority/City asserted that pattern bargaining is in the public interest because it provides stability to labor relations in the City. In support of its position, the Authority/City pointed to the decision of the Garrett Panel which recognized the importance of maintaining the pattern in its award. Like the Garrett Panel, the Authority/City noted that the pattern need not be so rigid as to not allow for consideration of the special needs of specific groups.

The Authority/City claimed, however, that the Union has failed to establish any special needs or inequities within this bargaining unit that require variation from the MCEA pattern. The Authority/City is convinced of the need to maintain equivalency with other municipal employees, particularly those Authority employees who work side-by-side with those represented by Local 237.

UNION'S POSITION - RES JUDICATA

The Union contended that the Authority/City is attempting to reverse the effect of the EWB Panel Award by retroactively applying the civilian municipal pattern to this bargaining unit. In response, the Union asserted that the opinion and award of the EWB Panel should be conclusive,

and that the Authority/City should be barred from "relitigating" the legal or factual issues determined by the prior panel under the doctrine or res judicata.

Specifically, the Union maintained that such issues as linkage, the base year in measuring changes in the CPI, and whether the three-step pay plan should be considered a wage increase were decided by the prior panel. According to the Union, the issues in this impasse are identical with those decided in the prior proceeding. Moreover, the Authority/City was represented in both proceedings and had a full and fair opportunity to present and argue its case before the EWB Panel. Therefore, this Panel is barred from altering the findings upon which the EWB Panel made its award.

AUTHORITY/CITY'S POSITION - RES JUDICATA

The Authority/City argued that the Panel is not bound by the EWB rationale, and that its Recommendations are not to be confined to the evidence presented to that Panel. Rather, the Authority/City urged that this Panel decide on the basis of the record before it which it asserted contains considerable evidence not presented to the EWB Panel, some of which concern events which occurred after its Award was issued. This Panel's role and authority is not circumscribed by "what has come before."

O P I N I O N

In view of the fact that the Panel was charged with the responsibility for recommending a wage for the third-year of the three-year contract between Local 237 and the Authority, it seems fitting that this Panel state its views on the bargaining context of the instant impasse.

In 1985, though formally constituted union coalitions may have appeared in a state of dissolution, circumstances required its resuscitation. While the future of either formal coalitions of their functional equivalents are uncertain, there is little question but that pattern bargaining will continue to play a significant role in City bargaining.

In the past the impelling logic of such a union bargaining format and the critical element determining it has been that a single employer negotiates agreements covering employees in some 70 bargaining units, thereby establishing basic terms and condition of employment -- i.e., wages, hours, welfare benefits, holidays, vacations, etc., for

employees numbering a little under 300,000 in over 4,000 job titles, who perform a large array of duties.

As a practical matter, and in the interest of fairness, the level of compensation of some must be logically and reasonably related to that of others. Thus, as is the case of employers with employees numbering in the hundreds of thousands, there is required a hierarchical system of compensation in which each title, to the maximum degree possible, is compensated in accordance with relative skills, education, stress and responsibility. Thus, compensation for each title is logically synchronized with all other titles. Such a system pre-existed municipal collective bargaining under the statute, existed before and during the fiscal crisis, and exists now. To one extent or another, this hierarchy reflects a rational relationship as among and between the rates of compensation and benefits of the hundreds of thousands of City employees. it has been, and will be the cardinal structural element underlying the bargaining process, with or without coalitions.

The need to preserve the basic elements of such an orderly calculus of employee compensation in the course of bargaining is not the exclusive role of either the employer or the municipal employee unions. Both, for somewhat different reasons, are committed to the preservation of this basic structure with its manifold interconnections, but each

goes about it differently.

At times the City, because of budgeting constraints or in its zeal for preserving the essential rationality of the interrelationships among employees compensation, may excessively press for unjustifiable conformity with linkages or patterns. Each union in its aim to improve the life and standards of its members by obtaining "more" -- in the one word definition of the purpose of unions by Samuel Gompers -- continually seeks wage increases and other improvements. At times unions, in their zealous pursuit of these objectives, press for improvements which, if achieved, would place great strains on the existing synchronized system of compensation and established patterns.

The instant impasse is the outcome of the clash between the Authority/City view that the increase of six percent (6%) compounded for 1987 sought by Local 237 is not merited, that it would exceed the three year MCEA-City pattern and might impact on the upcoming June 1987 negotiations between the City and the bulk of the municipal unions by establishing a bargaining base from which the City's unions, either singly or in (formal or in-fact) coalitions would bargain; and, the Union's view that the compounded six percent (6%) wage increase for 1987 is warranted on the merits, and that it would not impact on the June 1987 negotiations, because the increase sought is for the last year of the three-year award

and thus is part of the prior negotiations, which resulted in a pattern of approximately six percent for the third year ending in June 1987.

The Panel will deal subsequently with the arguments of the parties as to the merits of their respective positions. But before doing so logic requires that the Panel state that it adopts both the Authority/City view that the Panel's wage recommendation for January 1 to December 31, 1987 must be crafted in the light of the three-year MCEA-City pattern and the possible prospective impact it might have on the June 1987 City-wide negotiations, and Local 237's view that the Panel's recommendation should be crafted in the light of the fact that it is merely the tail-end of the negotiations of 1985.

The Panel stresses that it views the instant dispute as being a part of the previous negotiations. Additionally, because of our concern that linkages and relationships among settlements be maintained, our recommendation will give expression to the concept that the third year increase not have a prospective disruptive impact on future City-wide bargaining.

To accomplish its task, the Panel established a basic arithmetic structure within which to fit its specific recommendations, and they follow hereafter.

Both parties stated that the entire financial package

for the City-MCEA negotiations for the three-year period June 30, 1985 to June 30, 1987 was 17.77%. This does not represent, however, the entire value of the settlement. The direct wage increase for the MCEA package over three years has a value of 16%. The longevity increment is valued at 1.2%, equity at .51%; and floor at .06% for a total of 17.77%. When this number is adjusted for the vacation stretch, valued at .80% the resulting three-year package is seen to be 16.97%. (This is a reduction in labor costs to the City which brings the value of the MCEA settlement to 16.97%). Most of this is wage related. Some is not.

The EWB panel award resulted in a wage increase in 1985 and 1986, valued at 12.36%. The Local 237 - Housing Authority bargaining, preceding the establishment of the EWB Panel, resulted in benefits, most were not wage related, but some were, with a value of .48%. Adding 12.36% to .48% produces 12.84%.

By recommending a delayed three percent (3%) increase for 1987 (i.e., compounded, with a third year value of 2.53%), as urged by the Authority/City, the Panel would unfairly deprive the-6,515 Housing Authority employees of the three-year increase negotiated in the last round of City-wide negotiations and simultaneously would retroactively go counter to the pattern set by those negotiations. The result of adding 3% to 12.84% produces 15.84%. Subtracting 15.84% from 16.97% produces 1.13%.

Thus Local 237 employees would over three years receive 1.13% less than most municipal employees and the City-wide patterns would be disrupted. Therefore, the Panel will not adopt the Authority/City proposal.

By recommending a six percent (6%) increase compounded (i.e., 6.74%), as the Union has urged, the Panel would produce a result of 19.58% (i.e., 12.84% added to 6.74%). This would exceed the 16.97% increase for three years by 2.61%, thus disrupting the pattern established by the 1985 City-MCEA negotiations, without a showing of compelling, unique and critical factors, which underlay the Nurses settlement and the Teachers LOBA Award and which justified deviations from the 1985 pattern. Therefore, the Panel will not adopt the position urged by the Union.

The Panel adopts as its basic guideline regarding linkage and pattern bargaining, the views of the Garrett Panel in the matter of the Board of Education-City-UFT dispute (LOBA) as set forth on Pages 31, 32, 33 of its Report, and it is quoted as follows:

> "The MCEA settlement also provides a significant reference. While we agree with the Union that there is no absolute pattern to be followed, and that the settlement of a single agreement cannot require all other negotiations to follow the same path, nonetheless we are bound under the Memorandum of Agreement to consider the wages and settlements received by other public and private sector employees in New

> York City or comparable communities. Clearly, the recent MCEA settlement package must receive significant weight....
>
> In short, we are persuaded that under present conditions, stable labor relations warrant the continuation of some sensible relationship among settlements with the different labor organizations negotiate with the City.
>
> Obviously, our conclusion here is not intended to suggest that there is no legal or ethical obligation to treat each negotiation as a separate undertaking. We accept the Union's assertion that applicable legal precedent requires such a posture. In no way should our Award be perceived as embracing any other principle.
>
> Each labor organization and each negotiation has its own issues and problems which need to be addressed. Often these concerns may require deviation from the general pattern. On the other hand, we are persuaded that the relationship or linkage between the major municipal unions is an important factor which cannot be ignored or minimized. The Union has long been compared to and has in fact been a participant in the municipal coalition. This relationship surely represents one of the important factors normally and customarily considered in the determination of wages, hours, fringe benefits ... and is an important component in considering the interest and welfare of the public." (Under scoring supplied).

The Panel's recommendation will be grounded on and consistent with the wise counsel contained in the above. Our approach will assure that the three year MCEA-City-wide pattern is maintained, that the employees represented by

Local 237 will receive a percentage wage rate increase similar to that negotiated City-wide, while simultaneously assuring that a bargaining unit of some 6,515, by an accident of calendar, neither vitiates nor predetermines the setting of a bargaining pattern by substantially larger bargaining units.

Having expressed our adherence to the views of the Garrett Panel on linkage and pattern bargaining, our views of the specific role both play in the instant matter, follow hereafter.

The Panel sees the current wage determination as the finale of the 1984-1987 round of bargaining. We are persuaded that this final year increase should not undermine existing patterns or the prospect of pattern bargaining in the future. In a word, we are convinced that our recommendation should be designed as to: first assure continuation of the established pattern of bargaining, and second, preserve wage relationships among City settlements. We believe both should govern the third-year increase for Local 237.

The Union contends that the critical issue before the Panel is not linkage, or the continuance of pattern bargaining, but comparability. In its argument, the Union asserts that the most direct comparability is with private sector building employees performing the same or similar jobs.

The Panel finds the issues of linkage and comparabil-

ity to be closely related. Our comparability analysis has focused not only on the job duties and scope of work, but on the compensation system, personnel structure, fringe benefit package and related issues. It is on the basis of this broader analysis that the Panel determines that Authority employees should, in the first analysis, be compared with other civilian municipal employees with whom they share the greatest community of interest.

Authority employees, like other municipal employees, operate under the rules and regulations of the New York City Department of Personnel. Both group s are eligible for membership in the identical Retirement System and insurance program. indeed, when the MCEA negotiated for City-wide improvements in the health and welfare program, Authority employees enjoyed the same benefits. Both groups are covered by the New York City Collective Bargaining Law. Further, there is overlapping union representation for City and Authority employees. Finally, the remaining 7,268 Authority employees, represented by other unions, received the same wage increases as their City counterparts.

We are not persuaded by the Union's argument that the Panel is bound by the legal and factual findings of the EWB Panel. Specifically, the Union argues that under the doctrine of res judicata, this Panel is barred from "relitigating"issues determined by a prior impasse panel. First,

the issue of pattern bargaining, which this Panel finds critical to its determination, did not exist at the time the EWB Award was issued and was not, therefore, then considered. Second, under the procedures of the NYCCBL governing the operation of impasse panels, we are required to consider certain factors in determining settlement terms. In our view, these factors must be based upon the testimony and documentary evidence that forms the record of this hearing.

A review of all relevant civilian municipal settlements reveals that the pattern for the third year of City agreements is a non-compounded increase of six percent. In the Panel's view, this is critical in determining both the equities and outer limits of the wage increase for 1987.

The Panel thus rejects the Union's proposal for a six percent (6%) compounded increase in 1987. We find no justification for the Union's claim to better treatment than most other municipal employees, including other Housing Authority employees with whom they work.

The Panel also rejects the Union's claim that it deserves to be treated similarly to those in the uniformed forces, whose settlement package it seeks. The most comparable comparison is with other City civilian employees, particularly those subject to the MCEA settlement package

who received six percent non-compounded increases in the third year of their contracts.

Nor has a strong case been made by the Union to deviate from the civilian settlement as a result of compelling circumstances. There is no evidence of serious structural problems requiring redress. Nor is there any evidence that the Authority has experienced problems in the recruitment or retention of employees which might warrant a deviation from the pattern, as was the case with teachers and nurses.

The Panel notes that there exists an unexplained discrepancy between the Authority/City offer of a three percent (3%) delayed increase for 1987, (i.e., cash value of 2.53%) and its strenuous arguments favoring linkage and pattern bargaining. A three percent (3%) delayed increase for the third year for Local 237 employees would result in a 15.84% increase over three years (the latter value obtained by adding 12.36%, .48%* and 3%), rather than the 16.97% three-year pattern established in bargaining between the City and MCEA, a shortfall of 1.13%. Linkage and fairness impel the Panel to, therefore, reject the Authority/City's proposed three percent (3%) delayed increase for 1987.

*Benefits obtained by Local 237 before creation of the EWB Panel.

The very same reasons which impel the Panel to reject the wage proposals of both parties are the grounds for the Panel's conclusion and recommendation that the employees represented by Local 237 in this proceeding, in the first instance receive a 4.13% increase. of their wage rates in effect on December 31, 1984, said increase to be effective January 1, 1987. Such increase will result in these employees obtaining an economic package over three years which is not more than and is in accord with increases obtained by all other non-uniform city employees (16.97%).

As noted previously, Local 237 employees, before the creation of the EWB Panel, obtained in bargaining benefits valued at .48%. Adding .48% to the 12.36% awarded by the EWB Panel produces a 12.84% increase for 1985 and 1986. Adding a 4.13% increase in wage rates to the 12.84% produces an overall increase for three years of 16.97%.

However, the Panel is also persuaded that the increase should generally conform to the third-year of the civilian municipal pattern in the following way: The third-year should provide an amount of money to employees which is the monetary equivalent of the third-year civilian pattern while simultaneously maintaining the relationship between Authority employees and other civilian municipal employees' wage rate at the end of the third-year.

Of concern to the Panel are the 7,268 other Authority employees who work side by side with those represented by Local 237. Thus, the Panel has further crafted its recommendation so as to preserve the relationship among wage rates within the Authority as a whole, and as between these Local 237 employees and most other municipal civilian employees by adding to the above 4.13% increase in wage rates, an additional recommendation of a single lump-sum payment equal to 1.87% of each employee's annual salary as of December 31, 1984, which amount is to be paid not later than July 1, 1987.

Eligibility for the lump sum will be conditioned on the employee being on the payroll both on December 31, 1986 and the date of this recommendation.

The Panel's award is designed to have the following effect: First, it provides in the third-year for these employees an increase equal to that received by all other civilian municipal employees during the third and final year of their agreement. Second, by incorporating the 4.13% non-compounded increase into the wage rate, the Panel has avoided introducing disparities in the job rate increases among civilian employees at the conclusion of the contract. The "going-out" three-year overall increase for this unit is comparable to that received under the MCEA settlement. While the Panel has been unable to com-

pute the exact percentage value to be assigned this 1.87% lump sum payment, we are satisfied that unit employees have achieved improvements over three years comparable to that of the MCEA-City-wide settlement.

In making its award, the Panel has considered the Union's claim that it deserves salary parity with private sector building employees represented by Local 32B/J. We have compared both the salaries and total compensation of Caretakers and "Others" under the residential building contract. We believe that the third year increase and resulting salary, compares favorably to comparable titles represented by Local 32B/J.*

We have also considered the salary and benefit package of Housing Authority employees in other large cities and find that Authority employees' total compensation generally compares favorably with that of other public housing authorities.

Turning to the issue of whether a catch-up increase is warranted in the third-year, the parties disagree sharply as to how Housing Authority employees have fared over the

*The Panel finds no plausible basis for comparison with Transit Autliority employees. Nor is there any history of linkage between the two groups. We have not, therefore, considered the salaries or third-year wage increases accorded Porter/Car Cleaners in determining an appropriate wage increase for 1987.

past 10 to 15 years. The Union contends that, using 1975 as the base year, Authority employees' wages have not kept up with inflation. The Union asserts further that the employees it represents have not fully recovered from the ravages of the fiscal crisis and the deferral of wage increases.

The Authority/City contends that when 1973 is used as the base year, Authority employees have more than kept up with inflation. The Authority/City notes that from 1974-1976, Authority employees benefitted from a 40% increase as a result of the negotiation of a three-step pay plan in which employees reached their maximum salary after three years.

Undisputed is the Authority/City claim that Union employees received all deferred wages in settlement of any and all claims arising during the City's fiscal crisis. Finally, the Authority/City persuasively asserts that Authority employees suffered less than other municipal employees by not experiencing layoffs during the fiscal crisis.

The Panel finds no basis for a catch-up increase as a result of lasses due either to inflation or the fiscal crisis in the 19701s. There is no convincing evidence that these employees suffered more during the fiscal crisis than other City employees. moreover, these employees have fared well over the past two years in view of the low rate

of inflation. The increases received in 1985 and 1986, coupled with the third-year increase awarded herein, are expected to meet projected increases in the CPI over the three-year period.

While the Authority/City has not made a claim of technical inability to pay, it contends that there are serious structural problems that will continue to cause reductions in the Authority's operating reserve. The Authority/City claims that its fiscal problems call for a moderate increase.

The Panel has considered the current financial condition of the Housing Authority, along with evidence of problems in other large cities, in making its determination for 1987. The Panel is satisfied that its Recommendation is in keeping with the Housing Authority's fiscal condition, and serves the interests of the public as well.

In terms of the public interest, the Panel believes that the third-year increase fairly compensates a productive and highly-valued workforce, and that it reflects well on a union that has worked closely and cooperatively with the Authority to advance the commitment of government -- federal, state and city -- to public housing.

While the Panel has not specifically awarded an increase for productivity, we find some merit in the Union's general contention that there exists an increased workload

on employees, generated by the estimated 100,000 illegal tenants living in public housing projects run by the Authority. We also see merit in the Union's argument that employees whose workload has increased significantly should be compensated therefor. However, there was not submitted to the Panel that quantum of proof customarily proffered to demonstrate actual workload increases affecting particular classes of employees. Therefore, we are of the view that the issue of productivity is best left to joint study and discussion between the parties.

Recommendation

Having weighed and considered all the testimony, evidence and argument, both written and oral, and having applied all the statutory criteria, the Panel recommends to the parties the following:

1) Employees of this bargaining unit to receive 4.13% increase of their respective wage rates in effect on December 31, 1984, said increase to be effective January 1, 1987.

2) Employees on the payroll both on December 31, 1986 and the date of this recommendation to receive a single lump sum cash payment equal to 1.87% of their respective annual wage rates in effect on December 31, 1984, which amount is to be paid not later than July 1, 1987.

DATED: New York, N.Y.
March 20, 1987

Paul Yager, Chairman

Carol Wittenberg

Jesse Simons

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

On the 20th day of March, 1987 before me personally came and appeared PAUL YAGER, Arbitrator to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Loren A. Krause

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

On the 20th day of March, 1987 before me personally came and appeared JESSE SIMONS, Arbitrator to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Loren A. Krause

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

On the 20th day of March, 1987 before me personally came and appeared CAROL WITTENBERG, Arbitrator to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

Loren A. Krause