OFFICE OF COLLECTIVE BARGAINING
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In the Matter of the Impasse

-between-

LOCAL 621, S.E.I.U.

Petitioner,

REPORT AND RECOMMENDATIONS

-and-

CASE NO. I-212-92

CITY OF NEW YORK,

Respondent.
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Before: Alan R. Viani, Impasse Panel

Appearances:

For the Union:
Kenneth E. Gordon, Esq.
Steven J. Saltiel, Esq.
Vincent Autorino, President, L. 621
Hugh A. Armstrong, Supervisor of Ironwork, L. 621
Peter A. Sole, Supervisor of Ironwork, L. 621
Jonathan Schwartz, Consulting Actuary, Jardine Consultants

For the City of New York:
William Herrmann III, Esq.
Theresa M. Sullivan, Esq.
James F. Hanley, First Deputy Commissioner, Office of Labor Relations
Michael McDonald, Assistant Commissioner, Office of Labor Relations
Jane Roeder, Assistant Commissioner, Office of Labor Relations
Bernard Rosen, First Deputy Director, New York City Office of Management & Budget
Maurice Hogan, Director of Administration, Department of Sanitation

Local 621, S.E.I.U., AFL-CIO ("Local 621" or "the Union") initiated this impasse proceeding pursuant to the New York City Collective Bargaining Law, when it and the City of New York ("the City") were unable to reach agreement on a contract to replace the

one which expired on June 30, 1990. In accordance with the rules of the Office of Collective Bargaining (11OCB11), Local 621 and the City designated the undersigned as an Impasse Panel ("the Panel") for a final and binding determination of the issues in dispute.

Three days of hearings were held: January 7, 12 and 14, 1994. The first day was devoted to Local 621's presentation of its case; the second, for the most part, to the City's presentation of its case. Each party was given an opportunity to present rebuttal testimony on the third day. The hearings were stenographically reported and transcribed. The parties were ably represented and were afforded a full opportunity to present evidence and arguments in support of their respective positions. Local 621 presented the sworn testimony of four witnesses; the City presented the sworn testimony of five witnesses. In addition to three Joint exhibits, the parties filed a total of 51 exhibits, 25 by Local 621, 26 by the City. The parties submitted post-hearing memoranda summarizing their respective positions and the record was closed on March 4, 1994.

BACKGROUND

Local 621 is the certified collective bargaining representative for a bargaining unit comprised of three titles: Supervisor of Mechanics (Mechanical Equipment) (“SMME”), Supervisor of Iron Work (“SOIW”) and Deputy Director of Motor Equipment Maintenance (Sanitation) ("Deputy Director") . As of January 1994, the active members of the unit consisted of approximately 195

employees in the title of SMME, six employees in the title of SOIW and six employees in the title of Deputy Director. (Tr.38) While the SOIW and Deputy Director titles are used only in the Department of Sanitation ("DOS"), the SMME title is utilized by ten City agencies, the New York City Health and Hospitals Corporation and the Board of Education.

Commencing in the spring of 1992, the parties engaged in numerous negotiation and mediation sessions in an attempt to settle the terms of a successor agreement. On December 21, 1992, Local 621 filed a Request for Appointment of an Impasse Panel, identifying the following issues for impasse resolution:

1. Salary, night-shift differential and welfare fund contributions for all employees in the title of SOIW.

2. Minimum hours-required for call-in pay.

3. Full-time release for one union officer.

4. Department-wide overtime.

Local 621 appended the following "Note" to its Request:

> The parties also are in substantial disagreement with respect to numerous items relating to the title of [SMME]. Since this ... title is covered by Labor Law §220, most of the disagreements relating to this title cannot be resolved through Impasse procedures.
>
> The City has refused to bargain for the applicable period (July 1, 1990-September 30, 1991) for employees holding the title of [Deputy Director]. Local 621 is therefore filing an improper practice petition. Since there has been no bargaining with respect to the Deputy Director title, it is inappropriate to seek impasse with respect to such title at this time. Local 621 expressly reserves the right to proceed to impasse with respect to the Deputy Director title at an appropriate time. (Joint 1)

On March 19, 1993, the City filed a scope of bargaining petition with the OCB requesting that the Board of Collective Bargaining ("Board") determine whether Local 621's demands for, inter alia, a minimum of four hours of call-in pay, full-time release for one union officer and equal distribution of overtime are mandatory subjects of bargaining. On September 22, 1993, the Board issued Decision No. B-34-93, in which it found that Local 621's demands for procedures by which overtime is to be assigned and for paid release time are mandatory subjects of bargaining. As for the Union's demand for minimum call-in pay, which is a mandatory subject of bargaining, the Board held that an impasse panel lacks jurisdiction to consider that subject for SMMEs, who are prevailing rate employees covered by §220 of the Labor Law.[1] The Board further held that for non-prevailing rate employees, i.e., SOIWs and Deputy Directors, call-in pay is a city-wide matter and, thus, cannot be bargained for at the unit level. (Joint 2)

On January 14, 1994, all issues concerning the title of Deputy Director were settled and memorialized in a Memorandum of Understanding. (Joint 3) According to the parties, the overtime distribution demand also was settled. (Tr.269-271) Thus, only two issues remain for resolution by this Panel:

1. Compensation for SOIWs.
2. Full-time paid release for one union officer.

[1]Under §220 of the Labor Law, wages and supplements for prevailing rate employees are determined by the New York City Comptroller.

POSITIONS OF THE PARTIES

LOCAL 621

1. Compensation for SOIWs

Local 621 maintains that the SOIW title was established to assure that certain metal work shops in DOS's Bureau of Motor Equipment (11BME11) and Bureau of Building Maintenance ("BBM") will be supervised by individuals possessing a technical background sufficient to supervise the work of teams of Blacksmiths/Welders and Boilermakers/Welders.[2] The Union points out that in a Blacksmith/Welder or Boilermaker/Welder team, the Blacksmith or the Boilermaker is the lead title (Tr.63); in both instances, the Welder is utilized as a "tool of the trade." (Tr.46,64) The Union further points out that the SOIW primarily gives direction to the Blacksmith or the Boilermaker member of the team who, in turn, gives direction to the Welder. (Tr.46,48,122,125)

The Union argues that because SOIWs provide direction and technical supervision to Blacksmiths and Boilermakers, it is appropriate to look to their salary in determining an appropriate supervisory differential. According to Peter Sole, an SOIW, the duties performed by SOIWs are identical to that of employees in the titles of Supervisor Blacksmith and Supervisor Boilermaker. In support of this statement, Sole testified that when he was promoted from SOIW to the Director of the Facilities Maintenance

[2]Hugh Armstrong, an SOIW in the BME testified that the SOIW title was also created to provide promotional opportunities for Welders. (Tr. 59) He further stated that Welders are not eligible for promotion to Supervisor Blacksmith or Supervisor Boilermaker; nor to any of the supervisory titles certified to Local 621 prior to the creation of the SOIW title. (Tr.59-60)

Unit, he was replaced by an employee in the civil service title of Supervisor Boilermaker. (Tr.115)

In support of its argument that SOIWs should enjoy parity with the Supervisor Blacksmith and Supervisor Boilermaker titles, Local 621 points to the history of the SOIW title. The SOIW was created in 1983, and certified to Local 621 in 1987. The Union submits that prior to the 1987-90 agreement, which was the first contract negotiated by Local 621 covering the SOIW title, the annual salary was $44,478. The Union further submits that this salary was 16.9% higher than the rate for Blacksmith, 10.0% higher than the rate for Boilermaker, 11.4% higher than the rate for Supervisor Blacksmith, and 2.8% higher than the rate for Supervisor Boilermaker (Union "21"). Local 621 maintains that the Department of Personnel set the SOIW salary rate well above the rate of pay for Blacksmith and Boilermaker for a reason, i.e., to establish an appropriate supervisory differential. (Tr.168)

According to Local 621, during the 1987-90 round of bargaining, the Union representing Blacksmiths and Boilermakers settled on a contract which gave them a raise of 42.79%, putting SOIWs in the "absurd" position of earning less than the titles they supervised. According to Vincent Autorino, President of Local 621, during negotiations for the 1987-90 period, the Union demanded that SOIWs receive the same rate of pay as Supervisor Blacksmith and Supervisor Boilermaker. With the help of a mediator, a settlement to correct this inequity was achieved, pursuant to which the SOIW rate was raised approximately 2.5% above the rate for Blacksmith

and Boilermaker. This "adjustment," the Union argues, represented only a partial resolution of the problem. According to Autorino, settlement of the 1987-90 contract was reached only six months short of its expiration date. He stated that the Union was reassured by the fact that it would soon be back at the bargaining table to continue the process of seeking a proper rate for the SOIW title. (Tr.262-263) In this connection, Jonathan Schwartz, Consulting Actuary for the Union testified that supervisory differentials are almost always well in excess of 10% (Union “18"). (Tr.88-89)

Local 621 maintains that it is not seeking to break the pattern in this round of bargaining. According to the Union, the parties differ only with respect to the appropriate starting point in the salary of SOIWs. Local 621 argues that the appropriate rate of pay for the SOIW title is the rate that is paid to employees in titles that perform duties identical to that of SOIWs, namely, Supervisor Blacksmith and Supervisor Boilermaker. once parity is achieved with these titles, the Union agrees to accept the pattern increases.

Local 621 rejects the City's contention that the Union's acceptance of the adjustment during the 1987-90 round constitutes implicit acknowledgment that the current 2.5% supervisory differential is appropriate. According to the Union, there was no understanding that by entering into the 1987-90 agreement, that the Union was waiving its right to seek an appropriate rate for SOIWs in the future. Moreover, the Union argues, the City's own

comparability survey supports a further adjustment in the rate of pay for SOIWs. The Union alleges that the survey results indicate that a 14.3% supervisory differential is closer to the norm than the City's proposed 2.5% (Union “24").

Local 621 asserts that the City's arguments do not warrant rejection of the Union's demand. Addressing the City's insistence on adherence to the 1990-91 and 1991-94 patterns first, the Union claims that pattern bargaining should not be a bar to the establishment of an appropriate rate for SOIWs. In support of its position, the Union points out that the pattern did not bar a warranted rate adjustment for Metal Work Mechanics in the 1990-91 round of bargaining. According to the Union, the need for an adjustment arose when the salary rate for Welders surpassed the salary rate for Metal Work Mechanics. In that instance, the Union submits, the City recognized the need to exceed the pattern in order to establish a proper rate. In further support of its position, the union alleges that the pattern also was exceeded in a recent agreement reached between the City and New York State Nurses Association (“NYSNA”), for employees in the title Staff Nurse.

Local 621 distinguishes this case from an instance where an impasse panel recommended that the pattern be adhered to. In the impasse between Local 237, International Brotherhood of Teamsters and New York City Housing Authority, Case No. I-216-93, dated September 23, 1993 ("Teamsters"), the Union claims that the factors considered persuasive by that panel are not present here. The

Union points out that in Teamsters, the panel noted that it had before it "vastly different impressions of the Authority's ability to pay" and that the Authority had "virtually no control over its sources of revenue." Id. at 38. The panel also reasoned that an award exceeding the pattern for a unit of 9,547 employees would "seriously undermine morale of the City workforce." Id., at 39. Here, the Union alleges, the City's own witness on its fiscal situation, Bernard Rosen, acknowledged during cross-examination that the Union's wage proposal for the six SOIWs would have no impact on City's budget. (Tr.222-223) It is also unlikely, the Union argues, that providing six employees with an appropriate adjustment in salary would undermine the morale of the rest of the City's employees.

The Union argues next that the fiscal crisis and the projected budget shortfall does not serve to bar the adjustment it seeks for SOIWS. In this connection, Schwartz testified that the demand would only cost $60,000 per year (above the City's proposal). According to the Union, based on the City's budget of approximately $30 billion, the sought-after adjustment represents only two ten-thousandths of one percent (Union “18"). (Tr.91)

In summary, Local 621 demands that effective July 1, 1990, the salary paid to employees in the SOIW title be adjusted to $69,259 p4~r year. According to the Union, this rate includes normalizing the SOIW salary to that of Supervisor Blacksmith plus the coalition increase of 3.5%. Once parity is achieved, the Union

agrees to accept the 1990-91 and 1991-94 pattern increases, as follows:

(i) Effective July 1, 1991, employees in the title of SOIW should receive a wage increase of it.

(ii) Effective April 1, 1993, employees in the title of SOIW should receive a wage increase of 2%.

(iii) Effective April 1, 1994, employees in the title of SOIW should receive a wage increase of 2%.

(iv) Effective September 1, 1994, employees in the title of SOIW should receive a wage increase of 3%.

2. Full-time Release for One Union Officer

Local 621 argues that this demand is a no-cost item, i.e., that it is only seeking to memorialize what has existed de facto for the last ten years. In support of its position, the Union presented the testimony of President Autorino, who has served in that capacity since 1982. Autorino testified that as Union President, he attends all collective bargaining sessions; attends all Section 220 hearings; attends Citywide negotiations; investigates and processes all grievances through all steps including arbitration; attends all improper practice and certification hearings held at the OCB; attends all proceedings in the Department of Personnel which concern Local 621; attends all disciplinary hearings and conferences; conducts membership meetings; confers with members, department heads and agency heads; attends labor-management committee meetings; and attends Municipal Labor Committee meetings. (Tr.38-40)

According to Autorino, performing these duties is more than a full-time job. Autorino further asserts that because he has chosen to perform these functions exclusively, the present arrangement actually saves the City money. In this connection, Autorino doubts that a successor could perform the same functions within a 40 hour work week. (Tr.42) Autorino also maintains that because he is able to conduct most of the Union's business himself, there is no need to disrupt the work of other shops by releasing other supervisors. (Tr.41,261)

In further support of its demand, Local 621 points out that Executive Order No. 75, as amended, provides that union representatives are entitled to paid release time for certain union business, including but not limited to grievances, labor-management committees, collective bargaining. and other negotiations, OCB proceedings, Department of Personnel proceedings, and disciplinary proceedings. (Union “15") Autorino maintains that, from a practical standpoint, it is more beneficial to the City to have one person on paid full-time release rather than splitting it up among several different supervisors. (Tr.261) The Union argues that the present arrangement is necessary, efficient and saves the City money.

Local 621 disputes the City's analysis of the cost of this demand, as well as its argument that only SOIWs should bear the cost of the proposal. Local 621 points out that the City's analysis is inaccurate in that it assumes Tier 1 rather than Tier 4 pension costs and non-existent overtime costs. The Union further

The City maintains that the above-described offer is consistent with the pattern increases that have been found acceptable by all other civilian employee unions as well as one of the City I s uniformed forces unions covering the same period of time. In this regard, the City points out that in each of those settlements, the pattern was not applied mindlessly. The City presented evidence and testimony regarding the 1990-91 and the 1991-94 settlements covering the City's civilian employees, uniformed forces and teachers. According to the City, although the package was tailored in each case to accommodate the needs of the particular bargaining unit, the overall cost always remained consistent with the pattern that had been established. First Deputy Commissioner of Labor Relations James F. Hanley testified that the challenge is to engage in creativity within the parameters of the pattern, "to address certain specific needs, wants, desires, in terms of moving the package around and in terms of funding, additional sources of funding and in terms of productivity, things of that nature." (Tr.135)

Hanley testified on the importance of adherence to the pattern as a means of insuring harmonious labor relations in the City. Hanley argued that a break in the pattern not only would breed dissension among the unions, concern that the pattern may not be adhered to would discourage settlement altogether in that no union would wish to take the chance that they might be outdone by a

subsequent settlement. (Tr.133) Hanley maintained that having a pattern helps the overall process and is a necessary component of sound labor relations.

Hanley further argued that "pattern bargaining" is "extraordinarily important" to the interest and welfare of the public, because the ability to create a budget within which the City can determine the extent of services it might offer is enhanced by the ability to rely on an established pattern and the reliability that that pattern will not be altered. Without stability in assessing labor costs, Hanley argued, the ability to accurately budget city services is quite limited given the proportion of the budget which consists of labor costs. In this connection, Hanley testified that the City was experiencing a $2.3 billion shortfall for the 1995 fiscal year, which is the budget that the City is currently constructing. (Tr.135)

The City maintains that the Union has failed to demonstrate why the 1990-91 and 1991-94 patterns should not apply to this bargaining unit. In this connection, Michael McDonald, Assistant Commissioner, Office of Labor Relations testified that the Union negotiated a salary increase for the SOIW title, which had been certified to Local 621 in 1987, commensurate with the pattern that had been established for the 1987-90 round of bargaining. By way of explanation, McDonald pointed out that during that round of bargaining, consideration was given to the fact that SOIWs supervised titles which were earning more than SOIWs. According to McDonald, there was a construction boom in the 1987-90 round,

during which the salaries for skilled construction trades went through the roof. Because the salaries for prevailing rate employees under Section 220 of the Labor Law are driven by the prevailing rates of compensation for comparable titles in the private sector, the rates of pay for Blacksmith and Boilermaker increased by what is referred to as the Trump Factor, and surpassed the salary rate for SOIW. (Tr. 168) McDonald testified that to accommodate the need to maintain a differential between the supervisory title and the titles it supervises, with the assistance of a mediator the parties were able to reach agreement on an "earlier salary adjustment" to create a 2.5% supervisory differential,[3] onto which the 1987-90 pattern was applied (City “R”). (Tr.170, 179) McDonald notes that according to the Union's proposal, it is seeking another salary adjustment in an amount of 15.43% before application of the 1990-91 pattern settlement. Referring to City “P”, McDonald points out that the 2.5% supervisory differential which Local 621 agreed was adequate for the 1987-90 round of bargaining, "would be blown wide open to create a differential in excess of 14%” if the Union's proposal was adopted. (Tr.180) Moreover, the city argues, since the Union which represents Blacksmiths and Boilermakers has already accepted a wage settlement consistent with the pattern for the 1990-91 and 1991-94 periods, the current 2.5% differential will be maintained

[3]According to McDonald, an adjustment of 16.65% was necessary to create an appropriate supervisory differential between SOIW and Blacksmith/Boilermaker.

by an increase for SOIWs which is consistent with the pattern settlement (City "P").

McDonald further testified that according to a nationwide survey of SOIWs or comparable titles, New York City pays its SOIWs more than any other jurisdiction in the country. (Tr.184) According to the survey (City "L"), New York City is second in "total compensation" (which includes fringe benefits) only to the NY/NJ Port Authority ("PA"), because the PA has an unlimited sick leave benefit. Otherwise, the City argues, the SOIW salary is the highest throughout the metropolitan region as well as the nation. The City also points out that the SOIW salary referenced in the survey did not include any wage increases for the 1990-94 period.

Maurice Hogan, Director of Administration for Personnel and Budget for BME, testified that there is no justification for basing the salary of the SOIW title solely on the salaries of prevailing rate employees, inasmuch as SOIWs supervise not only Blacksmiths and Boilermakers, but also Welders and Metal Work Mechanics. (Tr.162) According to the City, the Union only chose those titles as a basis for comparison because their salaries are greater than the other titles supervised by the SOIW title. Moreover, the City argues, by seeking wages comparable with prevailing rate employees, Local 621 is in actuality seeking to bypass the statutory requirements imposed on an impasse panel under the NYCCBL by, in essence, seeking the establishment of wages consistent with Section 220 of the Labor Law.

Bernard Rosen, First Deputy Director, New York City Office of Management & Budget testified on the City's ability to pay. Rosen explained that because the City must issue three-year financial plans beyond the current year, it is now working on the budgets for 1995, 196, 197 and 198. (Tr.209) Rosen explained that according to the plan put out in November 1993, the gap between the City's revenues and expenditures will increase from $1.7 billion in fiscal year ("FY") 195, to $2.5 billion in FY 196, and to $2.7 billion in FY '97.[4] (City "A")

Rosen explained further that the City really has discretion over only 31% of its budget,[5] and that those agencies have already been hit very hard. (Tr.214) Rosen testified that, in addition, the public assistance case load has been climbing; expenses for the Board of Education in addition to te Stavisky-Goodman mandates are exploding as enrollment continues to increase; the recovery from the recession remains subdued; property values have fallen and delinquency rates have increased; that the City has lost 358,000 jobs since 1989; the unemployment rate in the City is higher than the national rate; and the City's nondiscretionary expenditures alone outstrip the growth in tax revenues. (Tr.212-218)

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[4]Rosen explained that the plan put out in November 1993 did not account for larger than expected vacancy rates for commercial properties, increasing the projected gap for FY '95 alone from $1.7 to $2.3 billion. (Tr. 218)

[5]According to City "A", the City allocates 14% of the budget for "Core Service" agencies such as Fire, Sanitation, DEP, DOT and Health. All other City agencies (but not including criminal justice agencies), such as Parks, Youth Services, Mayor's office and Finance, are allocated 17% of the budget.

Rosen also testified that inasmuch as City tax revenues as a percentage of personal income is already at 9.5%, any further increase in taxes would suppress economic growth in the City. (Tr.219) In this connection, Rosen pointed out that the per capita tax burden in New York City is considerably larger than other cities with a population of 500,000 or more. (Tr.220)

Finally, on pattern bargaining, Rosen stated that the City relies on the concept in budgeting its labor costs. Rosen warned that any deviation from the pattern disrupts the certainty by which the City can predict its labor costs and, in turn, will reduce services which the City might otherwise be able to provide.

In summary, the City contends that there are no factors by which the Union will be able to demonstrate that the pattern should not apply to SOIWs. The City argues that if you measure the situation against any of the applicable criteria, clearly no compelling reason exists. The City claims that this unit's total compensation compares favorably with that of employees performing comparable work in comparable jurisdictions; that the recruitment or retention of SOIWs is not a factor in these negotiations;[6] that there are no serious structural problems requiring redress;[7] that

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[6]In rebuttal, the City presented the testimony of Jane Roeder, Assistant Commissioner of the Office of Labor Relations and City negotiator for its contract with the NYSNA. According to Roeder, the City agreed to include a parity provision because of severe problems with the recruitment and retention of Registered Nurses by City hospitals.

[7]In this regard, the City contends that the salary adjustment it agreed to give SOIWs in 1987 already addressed the structural problem of a supervised title overtaking a

(continued...)

the City's budget shortfall impacts on its ability to pay; and, moreover, that the interest and welfare of the public will be served by maintaining the pattern and the bargaining relationships that are integral to the smooth operation of the City. In short, the City argues that there is not a single argument that presents a compelling reason to deviate from the pattern. On the other hand, the City submits, even a deviation involving six employees, given the severe economic climate which currently exists in New York City, is imprudent and reckless.

2. Full-time Release for One Union Officer

The City does not oppose the full time release of one employee, provided that the cost of such release is funded by the union. The City submits, however, that because the Panel's authority to fund such release cannot extend to Section 220 titles, it does not appear that sufficient funding is available. In this connection, the City insists that the entire cost of the Union's demand be borne by that part of the package covering the six SOIWs. According to the City, the cost of one full time release is $81,317

(... continued)
supervisor's salary.

In response to the Union's claim that the adjustment given to Metal Work Mechanics in the 1990-91 period represented a break in the pattern, the City argued that the adjustment was granted because the salary of Welders had overtaken the salary of Metal Work Mechanics. Thus, the City argued, the adjustment granted Metal Work Mechanics was no more a break in pattern bargaining than the adjustment granted SOIWs in 1987 had been.

per year, which constitutes 12-33% of the SOIW settlement (City "T").

In response to the Union's argument that the Panel should not be restricted to SOIWs for such funding, the City points out that with the exception of the six Deputy Directors, all of Local 621's remaining members are prevailing rate employees under Section 220 of the Labor Law. Given the restriction on funding, the City argues that the Union's demand is cost prohibitive and should be denied.

STANDARDS

Under Section 12-311c(3) (b) of the New York City Collective Bargaining Law (“NYCCBL”), an impasse panel:

> ... shall consider wherever relevant the following standards in making its recommendations for terms of settlement:
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> (1) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;
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> (2) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all-other benefits received;
>
> (3) changes in the average consumer prices for goods and services, commonly known as the cost of living;
>
> (4) the interest and welfare of the public;

(5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

OPINION

This Report and Recommendations is grounded on the statutory criteria set forth in the New York City Collective Bargaining Law and is consistent with the testimony and evidence adduced at the hearing in this matter. Only two issues have been presented for resolution by this Panel:

1. Compensation for SOIWs

The first is whether the SOIWs covered by the contract at issue should be required to adhere to the patterns established by the 15-month 1990-91 settlement with District Council 37 and Local 237 of the Teamsters and the 39-month 1991-94 Municipal Coalition Agreement ("MCA"). The essential elements of those settlements are as follows:

A term of 15 months, with a 3.5% increase effective July 1, 1990, and a 1% compounded increase effective July 1, 1991, for a total of 5.02 in wage increases; an additional term of 39 months with a 2% increase effective April 1, 1993, a 2% compounded increase effective April 1, 1994, and a 3% compounded increase effective September 1, 1994, for a total of 7.61% in wage increases; an improvement in welfare fund contributions, adding 0.94% to the package; leave restoration, adding 0.18 to the package; a lump sum payment of $700, adding 0.24% to the package;

an equity fund to address circumstances unique to a particular bargaining unit, adding 0.40% to the package; and additions-to-gross to cover increases in certain differentials, adding 0.11% to the package. As set-offs, the 39-month pattern settlement calls for a one year freeze on the minimums f or new hires, yielding a savings of 0.28%; and the enrollment of new hires into the New York City Deferred Compensation Plan, yielding a savings of 0.02%. For additional savings to the City, the Coalition of Municipal Unions ("Coalition") agreed to waive its right to its share of excess money that was left in the Stabilization Fund, which had been established under earlier contracts. Other components of the settlement includes the establishment of a Pension Legislation Committee and a Gainsharing Committee. The total cost of the 54-month package is 13.27%.

The major issue in dispute can be summed up as follows: In the City's view, adherence to the pattern settlement is critically important both to maintenance of labor relations stability and the City's fiscal stability. In Local 621's view, it is not seeking a departure f rom the pattern settlement. Rather, the Union accepts application of the pattern settlement -- but not for establishing an appropriate starting salary for SOIWs. The Union argues that an adjustment to the SOIW salary rate is warranted by the evidence and that the City has the ability to fund that adjustment.

I have studied the evidence and considered the parties arguments in this case very carefully. I note that considerable attention was paid to bargaining history for this particular title.

The Union has made a cogent argument that the duties and responsibilities of SOIWs are at least comparable to that of Supervisor Blacksmith. SOIWs are responsible for the supervision of teams of workers consisting of Blacksmiths and Welders as well as teams of workers consisting of Boilermakers and Welders. Although SOIWs also supervise other categories of employees, such as Metal Work Mechanics, I am persuaded by the testimony of Armstrong and Sole, as well as the position description for SOIW, that these employees were intended, primarily, to supervise members of the skilled trades. I believe that it is for this reason that the City, at the time the position was established, keyed the rate of SOIW at a salary level which exceeded that of Supervisor Blacksmith and Supervisor Boilermaker. The so-called "Trump Factor," which dramatically raised salaries for the prevailing rate titles of Blacksmith and Boilermaker (and consequently the salaries of Supervisor Blacksmith and Supervisor Boilermaker) threw the established salary relationships into a cocked hat, so to speak, just at a time when the City's financial condition had begun to deteriorate precipitously.

The City, in an attempt to gain tighter control on its labor costs, relied heavily on the discipline imposed by pattern bargaining for those categories of employees whose salaries are not established under the requirements of Section 220 of the New York State Labor Law. Although the City did make an adjustment in the pattern for SOIWs in the prior round of bargaining, it did so only because subordinate employees (Blacksmiths and Boilermakers)

were being paid a higher salary rate than that of SOIWs. Thus, the City was compelled to act. The testimony of Commissioner Hanley makes it abundantly clear that in the current round of bargaining, the City feels neither free nor compelled to exceed the pattern settlement for SOIWs. Absent a strong and compelling City interest for varying it, any deviation from the pattern, in the City's opinion, would pose a threat to its continued viability. I recognize, however, that this concern does not speak to the merits of the Union's comparability claim but, rather, addresses only the City's view of its fiscal reality.

I am persuaded by the evidence that, in accordance with standard (1) of Section 12-311c(3) (b) of the NYCCBL, the Union has met its burden for establishing that wage comparability should exist between that of SOIWs and that of. Supervisor Blacksmith. In addition to its comparability argument, the Union also contends that the wage differential between the journeymen titles and SOIW is totally inadequate to address the added supervisory responsibilities which must be assumed by an SOIW upon promotion. It maintains that the evidence clearly demonstrates that promotional differentials for other occupational groupings in the City, particularly among craft titles, reward promotees to a far greater degree than is currently provided to SOIWs. Addressing this matter by establishing a rational differential between the journeymen titles and SOIW is, in the Union's opinion, further justification for adjusting the salary of SOIW upward to establish a rational salary schedule.

I note that application of the pattern settlements to the current base will result in approximately a 2.5% differential between the salary for SOIWs and the salaries of Blacksmith and Boilermaker, titles that SOIWs directly supervise. While this will reestablish the supervisory differential that was negotiated in the last round of bargaining, the evidence presented in this case reveals that 2.5% falls far short of supervisory differentials found in the City for other supervisory positions.

I am not persuaded by the City's argument that the Union's prior acceptance of a salary adjustment for SOIW establishing the 2.5% supervisory differential evidences acknowledgment on the their part that 2.5% is an appropriate differential. The Union claims that the adjustment accepted in the last round was simply a partial resolution of the problem, and that it settled with every intention of returning to the bargaining table in six months to seek a further adjustment. Given the evidence which reflects supervisory differentials in excess of that provided SOIWs, I am convinced that this was the case. This fact is a further justification for favorable consideration of the Union's demand for a restructuring of the salary rate for SOIWs.

Given the sound arguments that the Union has made in this proceeding, I would not as a matter of course agree that slavish adherence to a pattern settlement must pose an inflexible bar to consideration of a meritorious claim. However, I take note that the "equity fund" of 0.40%, an integral part of the pattern settlement, was included for the purpose of redressing the kind of

salary discrepancy at issue in this matter. The Union chose not to apply any of the equity fund allocated to the entire bargaining unit to the salaries of the six employees at issue in this matter. Had it done so, it might well have made substantial progress in addressing the discrepancy which exists between the salary of SOIW and that of Supervisor Blacksmith. This fact, to a large degree, vitiates the Union's demand that the City provide an additional amount of money over and above the cost of the pattern settlement to remedy the inequity I have found to exist.

In addition, the City has indicated that the pattern settlement represents the limit of its ability to pay. Given the extraordinary proportions of the City's current fiscal situation, demonstrated by staff reductions in core services, the layoff of employees which already have been effectuated and the real threat of further layoffs, I am convinced that an award rendered greater than the pattern settlement at this time, even with meritorious reasons to justify a deviation, might seriously disrupt the delicate fiscal balance that the City has, so far, been able to achieve.

The Union's wage proposals in this matter when viewed in isolation, even if granted in toto, would not have more than a negligible impact on the City's budget and could not seriously be considered as jeopardizing its balance. However, any deviation from the pattern settlement at this particular point in time could provide the rationale and justification for other, and as yet unsettled bargaining units, to demand increases in excess of the

pattern settlement. Collective bargaining settlements in the City's labor relations arena are neither secret nor without potential consequences during times of great fiscal stringency. Even with a small group of employees as are at issue here, the potential for whipsawing and spill-over present the greatest threat to the balance and stability of the City's budget.

Special pleadings, during times of fiscal constraint, must be wholly justified by the record and any variance from the pattern granted only under unique and compelling circumstances, e.g., a clear demonstration that the City's ability to recruit and retain employees is severely impaired. To do otherwise, would provide the seeds for labor unrest by seriously disrupting the sensitive nature of bargaining relationships which exist in the City and, by consequence, the City’s budget.

Upon consideration of all the facts and circumstances presented in this case, I conclude that strict adherence to the pattern settlement is essential to the maintenance of stable labor relations in New York City at this point in time. In better economic times, I do not believe this dispute would have reached an impasse and, in all likelihood, would have been settled. For the aforementioned reasons, however, now is not the appropriate time to grant an adjustment that would achieve the justifiable goal of wage comparability with Supervisor Blacksmith.

Nevertheless, because the facts of this case compel some movement toward establishing an appropriate rate for SOIWs, I will recommend that a number of the economic elements of the pattern

settlement be rolled into the base rate of the SOIWs to supplement the percentage increases allocated for wage adjustments under the pattern settlement. These items are as follows:

1. 0.40% which is available for "equity adjustments";

2. 0.28% savings attributable to a freeze of the minimum;

3. 0.11% for "additions to gross";

4. 0.24% conversion of the $700 lump sum adjustment to rate;

5. 0.02% deferred compensation credit.

In addition, I will also recommend that the 3.5% increase due on July 1, 1990 under the 15-month pattern settlement be paid effective July 1, 1991, and that the cash savings accrued by virtue of lagging this increase be converted to a rate adjustment consistent with the net present value methodology presently in use by the City. I will also recommend the balance of the pattern settlement, including the improvements in welfare fund contributions, leave restoration for new hires, Pension Legislation and Gainsharing Committees.

2. Full-time Release for One Union Officer

On the question of the full-time paid release for one union officer, I find that the record supports the Union's claim that this item should not be chargeable to the six SOIWs or to the bargaining unit as a whole. Rather, from the undisputed testimony of President Autorino, it is clear that the activities that occupy virtually all of his time are of the type permitted by Executive Order No. 75, as amended. The City does not dispute that President

Autorino has, in reality, been on full-time union release for the last 10 years. The arrangement that was made between Local 621 and DOS management, i.e., the assignment of Autorino to a position without any supervisory responsibilities. The evidence establishes to my satisfaction that the City was aware of and tacitly approved the extent of Autorino's paid release time activities. This is an arrangement that the City has recognized as beneficial for over ten years and is one that has furthered sound labor relations between the parties. Because the President of Local 621 has been on full-time release for many years, the evidence does not support the City's contention that this demand involves additional cost. To the contrary, there is no additional cost whatsoever associated with the Union's proposal.

Accordingly, I accept Local 621's proposal for the full-time paid release of one Union officer, for the fulfillment of the responsibilities that are set forth in Section 2 of Executive Order No. 75, as amended.

Therefore, for all the reasons set forth above, I

A W A R D

(1) Term: The parties' new Agreement shall be for a term of 54 months and shall cover the period July 1, 1990 through December 31, 1994.

(2) General Wage Increases:

(a) i. Effective July 1, 1990, SOIWs shall receive a general increase of 3.5 percent, which shall be paid effective July 1, 1991. The cash savings accrued by "lagging" the July 1, 1990 increase shall be converted to a percentage

value and rolled into the salary rate of SOIWs.[8]

ii. Effective July 1, 1991, SOIWs shall receive an additional general increase of 1 percent.

iii. Effective April 1, 1993, SOIWs shall receive an additional general increase of 2 percent.

iv. Effective April 1, 1994, SOIWs shall receive an additional general increase of 2 percent.

v. Effective September 1, 1994, SOIWs shall receive an additional general increase of 3 percent.

(b) In addition to the wage increases above, the following economic items shall be folded into the base rate of SOIWs on the same effective dates as is provided in the pattern settlement:

i. 0.40% which is available for "equity adjustments";

ii. 0.28% savings attributable to a freeze of the minimum;

iii. 0.11% for "additions to gross";

iv. 0.24% conversion of the $700 lump sum adjustment to rate;

v. 0.02% deferred compensation credit;

vi. 0.40+% (estimated value of lagging the July 1, 1990 increase).

(3) Union Officer: There shall be full-time paid release for one Union officer.

(4) Welfare fund improvements, leave restoration, Pension Legislation and Gainsharing Committees consistent with the 15-month and 39-month pattern settlements.

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[8]I estimate this construction would yield a net present value increase of slightly in excess of 0.40%.

(5) I will retain jurisdiction in this matter solely for the purpose of resolving any dispute which may arise concerning the effective dates of the applicability of the economic items being folded into the base rate and for resolving any disagreement with respect to the value of these items.

Dated: July 21, 1994
New York, New York

Alan R. Viani

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

Sworn to and subscribed
before me this 21st day
of July, 1994

NOTARY PUBLIC

Wendy E. Patitucci
Notary Public State of N.Y.
Qualified in New York County
No. 31-4954224
Commission Exp. August 7, 1995