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In the Matter of the Impasse

-between-

CITY EMPLOYEES UNION LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

REPORT AND RECOMMENDATIONS

CASE NO. I-216-93

-and-

NEW YORK CITY HOUSING AUTHORITY.
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Before: Alan R. Viani, Impasse Panel

Appearances:

For the Union:

James Lysaght, Esq., Counsel
Carrol Haynes, President, Local 237
Jack Bigel, President, Program Planners, Inc., Consultant
Allen Brawer, Program Planners, Inc., Consultant
Burt Lazarin, Program Planners, Inc., Consultant

For the Housing Authority:

Michael M. Connery, Esq., Special Counsel to the New York City Housing Authority
Lisa K. Howlett, Esq., Special Counsel to the New York City Housing Authority
Sidney M. Nowell, Esq., Associate General Counsel, New York City Housing Authority
James F. Hanley, Commissioner, New York City Office of Labor Relations
Paul Graziano, Deputy General Manager, New York City Housing Authority
Thomas P. Moore, Deputy General Manager, New York City Housing Authority

BACKGROUND

City Employees Union Local 237, International Brotherhood of Teamsters (“Local 237" or “Union”) and the New York City Housing Authority (“NYCHA” or “Authority”) submitted to the undersigned

as an Impasse Panel ("Panel") for a final and binding determination of issues which they have been unable to resolve in their negotiations for a contract to replace the one which expired on December 31, 1991.

Local 237 is the certified collective bargaining representative for a bargaining unit covering 9,547 employees of the Authority. The employees provide a range of services from maintenance to skilled trades to housing supervision and management. Within the unit, 7,455 employees are in 23 job titles “unique” to the Authority and 2,092 employees are in 12 “non-unique” skilled trades titles. (NYCHA 7B) The skilled trades titles fall within the purview of the New York State Labor Law Section 220 and, thus, will be covered hereunder for all items except those specifically governed by the relevant Comptroller's Determination.

The Authority is a public benefit corporation created by the New York State legislature. The Authority, which operates and maintains approximately 180,000 dwelling units, is by far the largest public housing authority in the country (NYCHA 16 and Union 4, 5, 7 and 13), with Puerto Rico, which has 54,013 units, a distant second. (NYCHA 11) Among the 180,000 housing units in operation, 157,991 are Federally funded, 13,936 are State funded and 8,069 are City funded (Union 7). The Authority also operates an additional 59,906 units of Section 8 housing, which are in privately owned buildings that are occupied by people whose rents are subsidized. (Union 7, 13) The NYCHA provides shelter for

approximately 460,000 legal tenants, an estimated 125,000 illegal tenants, and an additional 114,000 tenants in Section 8 housing (Union 7).

The Authority employs more than 17,000 employees. Approximately 4,200 of them already are covered by the Municipal Coalition Agreement ("MCA") that was reached on January 11, 1993, between the City of New York ("City") and the Coalition of Municipal Unions ("Coalition"). The Coalition, formed during the Spring of 1992, consists of approximately 19 municipal labor unions. It was chaired by the leaders of two unions, District Council 37 and Local 237. The Municipal Coalition Agreement covers approximately 180,000 employees city-wide resulted in an overall net cost of 8.25% to the employer over a thirty-nine (39) month period. There is no dispute that this overall net cost represents the "pattern settlement" for the 1992-95 round of collective bargaining. Local 237 represents 4,571 employees in the mayoralty agencies that are already are covered by the Municipal Coalition Agreement.

Local 237 and the Authority commenced bargaining to replace the contract at issue in this proceeding on October 26, 1992. The parties reached a tentative settlement in May 1993. That agreement would have resulted in a net cost of 7.59% to the employer over thirty-six (36) months. The membership, however, rejected that settlement by a significant margin.

Soon thereafter it became apparent that the parties were at an impasse. In a petition dated July 12, 1993, the parties

submitted a joint request for the appointment of an impasse panel. On July 21, 1993, the parties jointly selected me as a one-member Impasse Panel. The Panel met with the parties on July 26, 1993, at which time the hearing schedule and several procedural matters were agreed upon. In a letter to the impasse panel dated August 12, 1993, the parties stipulated to the following:

* * *

2. The collective bargaining agreement for the 1992-95 round of bargaining between the City of New York and the Coalition of Municipal Unions, covering approximately 180,000 employees, resulted in an overall net cost of 8.25% to the employer over thirty-nine (39) months.

3. The settlement reached by the parties in May 1993, and rejected by Union members, would have resulted in a net cost of 7.59% to the employer over thirty-six (36) months which is equivalent to a net cost of 8.25% to the employer over thirty-nine (39) months.

4. In order to value a demand of either party in terms of a percentage increase, a baseline of one percent (1%) for Union members shall be $2,786,928 and represents the total cost of a one percent increase in wages, including pension costs, for Union members as of December 31, 1991.

5. The Union and the NYCHA jointly request that the following terms be incorporated into the final impasse award in this proceeding:

(a) Gainsharing: “Gainsharing” is defined as the sharing by labor and management of savings generated by significantly increased and measurable reforms or productivity initiatives while maintaining or increasing existing NYCHA service levels. The parties agree to establish a committee to develop a gainsharing program (the “Gainshare Committee”). The Gainshare Committee will establish milestones and monitor on a regular basis the progress of the gainsharing

programs developed and will continue to develop additional gainsharing initiatives for implementation. The parties shall agree to a plan for the apportionment of the savings generated by the gainsharing programs. Such savings shall be distributed once the program is implemented and the appropriate monitoring systems are in place. Gainsharing initiatives may require, but are not limited to, changes in the level, methods, means, personnel, organization, and technology of NYCHA services. Employee participation in developing gainsharing proposals will be encouraged.

(b) Transfer and Deployment of Employees: Transfer list procedure to quicken process and fill vacancies faster and more effectively.

(c) Pension Legislation: NYCHA and the Union will jointly support legislation to allow active Tier II, III, and IV employees covered by this award to purchase Tier I benefits at their expense through payroll deductions. Active employees enrolled in fractional plans will be allowed to enroll in the A plan on the same basis. This agreement is subject to the parties agreeing upon the costs of these benefit improvements, which will be so funded, and which will include any additional health insurance benefit costs which will be borne entirely by the participating employees without any cost [to] the NYCHA. The parties will participate in the Citywide Pension Labor-Management Committee which will determine the details of the proposed legislation and its attendant costs.

(d) Deferred Compensation: The parties agree to meet in the context of the Pension Labor-Management Committee established pursuant to the Section entitled “Pension Legislation” for the purpose of jointly supporting with the City of New York legislation to enroll in the New York City Deferred Compensation Plan, at the time of appointment, newly-hired employees who do not enroll in the retirement or pension system maintained by the City of New York. It is

further agreed that such employees will be provided with the option to withdraw from enrollment in the Deferred Compensation Plan.

In the event that legislation is necessary to effect this provision, the parties will mutually support any and all legislation necessary to enroll, at the time of appointment, newly-hired employees of the NYCHA in the New York City Deferred Compensation Plan.

6. The parties in this proceeding request that the impasse panel in this proceeding limit its final impasse award to the provisions set forth in paragraph 5 above and its determination of the term, economic components and the total cost of the economic agreement.

Finally, for purposes of expediting the process, Local 237 agreed to present a limited number of demands to the Panel. To this end, appended to the Union's pre-hearing brief was a list of “Revised Union Demands” which reads as follows:

1. There shall be a two year contract effective January 1, 1992 through December 31, 1993.

2. A fair and reasonable wage increase effective the first day of each year of the contract.

3. Increase in employer contributions for Health and Welfare Funds of $200 per year, effective January 1, 1992/January 1, 1993 into Local 237 welfare funds active/retired.

4. Increase in assignment differentials for all employees where applicable including increases in stipends for all skilled trade titles.

5. Increase in mileage allowance.

6. Increase in reimbursement for clothing, including shoes, for all employees where applicable, including increases in tool allowance for Roofers.

7. Lead time for all employees where applicable, including Foremen and Supervisors of Caretakers.

8. Increase in supper money for all employees where applicable. Titles not presently receiving supper money to be included when overtime is worked.

9. Increase in personal property loss for each incident for all employees where applicable.

10. Differential pay shall be increased in the following categories, as well as all others:

    a. All maintenance workers
    b. Caretakers
    c. Heating Plan Technicians
    d. Maintenance Workers - Refrigeration Assignments
    e. Maintenance Workers - Compactor Unit Repair Assignments
    f. Maintenance Workers - Heating Systems Unit Assignments
    g. Caretakers "X" - To-Plasterer Program Trainees
    h. Plasterer Trainer Assignments

11. Paid overtime for all Superintendents, Managers, and Supervisors - for all extra hours spent on the job.[1]

12. Increase in call out money for all employees where applicable.

13. Increase in bank drop money for all employees where applicable.

14. Transfer and deployment of employees policies to be adjusted for all employees where applicable.

15. Hearing Officer stipend increase.

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[1]Before the presentation of its case, the Union withdrew Demand No. 11 from consideration by the Panel in favor of submitting the issue of paid overtime for Superintendents, Managers and Supervisors to a Labor-Management Committee. The parties agreed that the Panel will retain jurisdiction over this issue “for the purpose of advice, fact-finding, mediation and so forth.”

16. Increase in certification money for Supervisor of Exterminators and EPA Certification for Exterminators.

17. Differential rate for holder of inspector's license for Elevator Mechanics.

18. Shift differential pay increase for all employees where applicable.

19. Legislation shall be supported allowing employees right to buy into Tier I benefits and, secondly, providing a deferred compensation plan for all members.

20. Labor-Management committees to be established in several areas including, but not limited to, uniforms, education and training, safety and health, reimbursement for tolls, manager and superintendent interests, current work schedules, and gain sharing (annual leave conversion to cash, boiler room potential savings, etc.).

Three days of hearings were held, August 16, 19 and 20, 1993. The first day was devoted to the Authority's presentation of its case; the second day to the Union'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. The Authority presented the sworn testimony of five witnesses; Local 237 presented the sworn testimony of five witnesses. In addition to pre-hearing briefs, the parties filed a total of 57 Exhibits: 27 by the Authority, 30 by the Union, which the Panel carefully considered in reaching its decision.

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;
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> (3) changes in the average consumer prices for goods and services, commonly known as the cost of living;
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> (4) the interest and welfare of the public;
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> (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.

POSITIONS OF THE PARTIES

Local 237

Local 237 asserts that the reason the Union and the Authority are at an impasse is that the membership, by an overwhelming majority, has refused to accept the premise that the pattern settlement is or should be the Authority's final position. The Union urges the Panel to reject the Authority's

argument that it is bound by the pattern, for the following reasons:

First, the Union claims that the historical relationship between Local 237 and the Authority has been one that is not in keeping with strict adherence to a pattern. The Union points out that even as late as the last round of bargaining, where the Citywide agreement provided for a 3.5% wage increase in the first month and a 1% increase in the 12th month of a 15 month contract, the Local 237/NYCHA agreement provided for a 4.5% wage increase all in the first month of the 1990-91 contract.[2] In further support of this argument, the Union submits that a comparison between the last three Local 237/NYCHA contracts and the last three DC 37/Citywide agreements shows that the Local 237 agreements generated $7,018 in new cash over 84 months while the DC 37 agreements generated only $6,867 over 90 months. (Union 18)

Second, the Union cites the Factfinding Report and Recommendations dated April 23, 1993, involving the Board of Education and the United Federation of Teachers (“UFT”), for the proposition that while initial settlements are taken into consideration, special circumstances call for creative solutions. For example, in response to evidence that the compensation of teachers in the New York City School System ranks "at some 23% below the average in the comparable neighboring communities," the Factfinders recommended a wage increase of 8.25% to reflect the

[2]The parties accepted the recommendation of Mediator Malcolm D. MacDonald, in an opinion dated March 15, 1991.

Municipal Coalition Agreement, an additional 0.25% to protect the first step of the teachers salary schedule, “plus an appropriate payment of additional funds as may be made available to the Board of Education from the State of New York." The Factfinders also recommended, in addition to the 8.5% plus wage increase, that elementary teachers receive a duty free preparation period and an increase in the employer's contribution to the UFT's Health and Welfare Fund of $125 per year per participant. The Factfinders found that even though:

> ... the Coalition Settlement looms large as the controlling benchmark in our considerations.... [t]his reasoning does not dictate that subsequent settlements must be in lock step with the first. Rather it suggests that if the reasonableness of the first settlement is demonstrated by the evidence, then subsequent settlements should conform to that standard, accepting any idiosyncratic requirements of the bargaining unit negotiations which follows [pp. 9-10].

Just as the circumstances justified a wage increase for the City's teachers that "will in the future enable it to compete more effectively with its nearby comparators," Local 237 argues that, here, there is ample evidence in the record to justify a wage increase that will meet the special needs of this bargaining unit. As sufficient justification, the Union points to disparities in wages and working conditions between Local 237 NYCHA employees and their counterparts in the public and private sectors.

On the question of wages, the Union compared the annual wages of a Local 237 Caretaker to the annual wages of a Porter/Car Cleaner in the New York City Transit Authority

("NYCTA"). Local 237 contended that while the duties are comparable, the salary of the NYCTA Porter/Car Cleaner in 1993 is 29.6% higher than that of the NYCHA Caretaker, and that the percentage difference has widened since 1991, when the disparity was 23.9%. (Union 25) In this connection, the Union disputes the findings of the Yager Panel in 1987,[3] in which it found "no plausible basis" for a comparison of NYCHA Caretakers with NYCTA Porter/Car Cleaners. The Union contends that employees in these two job titles, inter alia, perform similar work, possess the same job skills, are members of the same retirement system, utilize the services of the Civil Service commission. Given the comparability of the conditions and characteristics of their employment, the Union argues, there is no plausible basis for the fact that a NYCTA Porter/Car Cleaner earns $5-7,000 per year more than a NYCHA Caretaker.

The Union challenged as inappropriate the Authority's comparison of the Local 237/NYCHA title of Resident Building Superintendent (maximum salary of $49,875) with the Citywide title of Supervisor of Building Custodians (maximum salary of $44,291). The Union submits that a Resident Building Superintendent is in charge of all maintenance while a Supervisor of Building Custodians "oversees basically sweepers, etc." (NYCHA 12)

[3] In the Matter of the Impasse between Local 217 and NYCHA, Case No. 1-188-86, dated March 20, 1987, at p. 40.

The Union also challenged the Authority's comparability survey of the 20 largest housing authorities across the country. The Union points out that after adjustments for intraregional differences in the cost of living have been accounted for, the maximum salary for a Local 237 Resident Building Superintendent ranks last rather than first in total compensation.[4] Similarly, with respect to the salary of a Local 237 Caretaker after 15 years of service, the Union submits that accounting for intraregional differences in the cost of living drops New York City's ranking from second to eighteenth. (Union 30)

Turning to the private sector, the Union compared the salaries of employees covered under the Service Employees International Union, Local 32B-32J Residential Building Agreement to NYCHA employees. The data submitted by the Union demonstrates that the spendable income of the lowest paid Local 32B-32J employee is $413 per week,[5] compared with $357 per week for Local 237 NYCHA Caretakers. (Union 19F)

Of even greater significance, according to the Union, is the disparity in the work environment between the public and private sectors. On this issue, the Union presented the testimony of Mr. Aubrey Ferguson, who has been with the Authority since 1958. Mr. Ferguson testified that the work loads of a NYCHA Caretaker and

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[4]The Union's analysis of the data utilized the ACCRA (formerly the American Chamber of Commerce Researchers Association) Cost of Living Index.

[5]The Union includes $2,400 per year in taxable income from gratuities in this calculation.

his counterpart in Local 32B-32J are as different as night and day, and spoke of seven employees who recently retired from the Authority to take jobs in Local 32B-32J buildings. Mr. Ferguson further testified about an increasing population of illegal tenants in NYCHA developments, and the attendant increase in workload, e.g., hauling 16 bags of garbage instead of ten, and doubling the amount of time it takes to clean and polish an area. Finally, Mr. Ferguson spoke of the increased exposure of Authority tenants and employees to crime and violence. In this connection, Mr. Ferguson testified that shootings and encounters with drug dealers and pit bulls have become an every day occurrence at the NYCHA, and that the lack of security is a major issue in some NYCHA developments. In summary, Mr. Ferguson testified that the working environment in public and private housing defies comparison. It is the position of the Union that the pattern settlement fails to take these deplorable working conditions into consideration, much less compensate for them. (Union 20)

With respect to the Authority's ability to pay, the Union contends that it has identified three sources of funds to pay for wage and benefit increases over and above the 7.59% settlement that its members rejected. First, the Union argues that the federal Department of Housing and Urban Development ("HUD") Performance Funding System inflation factor could be used to pay for wage increases. In support of this argument, the Union cites

the March 15, 1991 Mediator's Recommendation of Malcolm D. MacDonald, who found that:

> The Housing Authority has demonstrated that 90% of the money [for the recommended settlement] will be derived from the annual inflation allowance granted by HUD to the HA, 60% of which is for increases in labor costs and 40% for increases in all other operating expenses.
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> * * *
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> It appears ... that the HA can also obtain adjustment in the 60%-40% formula mentioned above and that it has discretion to shift some of the funds from the general operating costs portion of the grant to augment the 60% allocated to increased labor costs.

In this connection, the Union points out that HUD has granted the Authority inflationary increases totaling 12.42% for 1992 and 1993. (Union 28)

The second source of funding identified by the Union is the increased productivity of NYCHA employees in this particular bargaining unit. The Union points out that according to the New York City Office of Operations there has been a 23.6% increase in the number of work tickets completed since 1987, which has not, to date, been compensated for. As additional productivity indicators, the Union points to data which show that the cost to manage each apartment has remained stable over the past seven years; that the number of days it takes to turn an apartment over to a new tenant in the NYCHA (11-1/2 days) is the lowest in the nation; that-the Authority has the lowest vacancy rate in the nation; that the rate of rent collected as a percentage of amount billed is, on average, 98%; that more than 700,000 people live in NYCHA developments; that the highest percentages of rentals in

public housing are in the City's poorest neighborhoods; and that there is a very low attrition rate among Local 237 NYCHA unique titles.

On the Authority's attempt to refute the Union's claims on the productivity of the workforce, the Union points out that "we have no way of measuring the productivity of Caretakers, except that (we should not) overlook Mr. Ferguson's testimony." The Union argues that even though the Authority points out that there has been an increase in headcount among Local 237 NYCHA employees, it fails to acknowledge the deterioration of the work environment. The Union asserts that "you have to look at productivity not only with a stop watch or with a thermometer. You have to understand that to maintain productivity in a deteriorating environment is a remarkable achievement." Given the severity of the working conditions of this workforce, the Union argues that any increase in productivity is commendable and should be compensated. (Union 9, 10, 11 & 12)

As the third source of funding, the Union points to the surplus in the Authority's operating reserves. Placing the Authority's own financial statements into evidence, the Union argues that by the end of 1992, the NYCHA had $6.7 million surplus in operating funds for all programs (federal, state and city); and that this same source shows a positive variance in operating reserves in an amount of $38.4 million after the first five months of 1993. The Union contends that "clearly, additional funds are available here." (Union 29)

In further support of its position on the Authority's ability to pay, the Union contends that the Panel should follow the example set by the 1991 Recommendation of Mediator Malcolm D. MacDonald, wherein he found that the Authority's federal funding not only enabled it to sustain wage increases, but also found that for every 1% increase in wages for Local 237 NYCHA unique titles, there was an indirect benefit to the Authority and the city, to wit: an infusion of federal funds into the local economy; an increase in city tax revenue; and an increase in rents payable to the Authority. The Union argues that as far as its financial posture is concerned, the Authority is in no weaker a position than it was in in 1991. Moreover, the Union contends, for every 1% increase in today's wages, these indirect benefits amount to an infusion of $2,786,929 in federal funds into the local economy; $49,024 in additional City tax revenue; and $122,560 in the form of additional rents. (Union 3 & 27)

In summary, the Union argues that because of a federal inflation factor of 12.42%, an increase in productivity of 23.6%, and operating reserves of $38.4 million, the Authority's ability to pay is a non-issue in this proceeding. In fact, the Union submits, the Authority is doing so well that in the May 1993 "Coordinated Review of the New York City Housing Authority," HUD's Regional Administrator remarked that “[g]enerally, HUD is favorably impressed with NYCHA's performance." The Union submits that HUD's biggest criticism of the Authority is its failure to make use of capitalization and modernization funds, and its use

of operating funds to pay for modernization expenses. In this connection, the Union cites a news article which claims that the Authority "is at risk of forfeiting an embarrassing $1.1 billion in federal modernization funds." The Union argues that the misuse of operating funds and the NYCHA's failure to requisition available HUD money makes the Authority's claim that a contract in excess of the pattern settlement would take funds otherwise dedicated to NYCHA operations a particularly "scurrilous" remark. (Union 13)

On the growth of inflation and changes in the Consumer Price Index (“CPI”), the Union contends that the Authority's claim that inflation isn't a factor in these negotiations is invalid. Using 1975 as a base year, the Union submitted data on the cumulative difference between the maximum annual base wage of various NYCHA employees and the base wage if it had risen equal to the rate of inflation through 1991 which shows that the loss in real wages ranges from $43,987 for the Assistant Housing Manager to $14,633 for the Caretaker. (Union 21 and 22) The Union further asserts that, according the US Department of Labor, the New York-Metro CPI has risen 5.3% since the expiration of the contract in December 1991. Finally, the Union points to data from the City's own Office of Management and Budget, which reports the actual rate of inflation for 1992 as 3.9%, and the projected rate of inflation for 1993 and 1994 as 3.7% and 3.6%, respectively. (Union 23 & 24)

The Union claims that the Authority presented a misleading picture of the effects of inflation on the wages of a Caretaker. The Union points out that the Authority's attempt to demonstrate that the salary of a Caretaker has kept pace with inflation includes the phase-in of the three-step pay plan in 1974-76. The inclusion of the step-ups, the Union argues, obscures the fact that there was a wage freeze in 1975. Adjusting the figures accordingly, the Union contends that the wages of a Caretaker have not kept pace with inflation from 1975 to 1991. (NYCHA 24)

Finally, Local 237 argues that its members are deserving of a fair and just contract in light of an admirable job done under extremely stressful conditions. Citing HUD's Coordinated Review of the NYCHA, the Union points out that the inspectors found the physical condition of NYCHA's buildings "generally good, with maintenance being prompt and effective." The Union also points to the fact that all other big cities look to NYCHA as the model in public housing. (Union 13 & 14) Local 237 insists that "ways be found in equity to meet the productivity of this work force, the dedication of this work force, the loyalty of this work force." In this connection, the Union points out that the opinions of prior panels have noted the contributions of this work force. For example, the Eisenberg Panel stated:

> It is quite apparent that the welfare of the public served by the Authority, i.e., its tenants, has been well attended to by the employees involved. This is a factor which deserves to be reflected in the employees' wage rate structure, and we have given it great weight alongside economic and other significant

> factors in setting the wage increases we shall approve for the new Agreement.[6] (Union 15)

The Union also points out that while the Yager Panel did not award an increase for productivity, the panel:

> ... found some merit in the Union's general contention that there exists an increased workload on employees, generated by an estimated 100,000 illegal tenants living in public housing projects run by the Authority. [It] also [saw] merit in the Union's argument that employees whose workload has increased significantly should be compensated therefor.[7] (Union 16)

The Union argues that its members have in no way wavered in their dedication to the job they do since these observations were made. According to testimony of Local 237 President Carrol Haynes, the NYCHA is well known for its dedicated and loyal workforce, and the exemplary manner in which it provides housing service for 470,000 legal tenants, plus an additional 125,000 illegal tenants. President Haynes notes that the size of this population is equivalent to the second largest city in New York State and the 20th largest city in the nation.

Pointing out that the pattern settlement was overwhelmingly rejected by a vote of 3,800 to 700, President Haynes submits that the Authority had better focus its attention on showing some appreciation for the workforce. According to Haynes, all Local 237 is looking for is a living wage, arguing that an average salary of $27,000 does not constitute a living wage. In sum,

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[6] In the Matter of the Arbitration between Local 237 and NYCHA, Case No. 1-176-84, dated April 9, 1985, at p. 58.

[7] In the Matter of the Impasse between Local 217 and NYCHA, Case No. 1-188-86, dated March 20, 1987, at p. 42.

Local 237 submits that "[t]here is no reason in law, logic or morality which would compel this Impasse Panel" to strictly adhere to pattern settlement.

New York City Housing Authority

The Authority contends that the issues in this matter are very straightforward. According to the NYCHA, there is no reason that the pattern set by the Municipal Coalition Agreement, which already applies to 4,200 of 17,000 NYCHA employees, should not apply to this bargaining unit. The Authority submits that the unit has virtually everything in common with other employees of the City employees, e.g., they are examined and processed by the New York City Department of Personnel ("DOP"), are bound by the same DOP rules and regulations, are subject to the same Financial Control Board regulations and audit procedures, enjoy the same health and retirement benefits. (NYCHA 6)

New York City Commissioner of Labor James F. Hanley testified on behalf of the Authority on the importance of adherence to the pattern. commissioner Hanley began by pointing out that Local 237 is among the 19 unions that signed on to the terms of the Municipal Coalition Agreement for the 4,571 Local 237 employees in the mayoralty that are covered by it. (NYCHA 2) He also points out that the pattern settlement covers approximately 4,200 NYCHA employees that are not members of Local 237.

As for the general acceptance of the pattern, Hanley submits that since settlement of the Municipal Coalition Agreement, other unions, both civilian and uniformed, have agreed to its overall terms. Hanley testified that, contrary to the Union's assertions, the terms of the pattern settlement was recommended by the Factfinding Panel in the impasse between the New York City Board of Education and the United Federation of Teachers ("UFT"),[8] with one exception. Hanley explained that since a freeze on the hiring rate, which was a component of the Municipal Coalition Agreement, would adversely impact the recruitment of new teachers, the Factfinding Panel did not include the freeze in its Report and Recommendations for a settlement.[9]

Commissioner Hanley asserts that the Factfinding Panel, in their Report and Recommendations, recognized the importance of the pattern settlement when it stated:

> To recommend a settlement which ignores that threshold settlement, or which is demonstrably different from that initial settlement, threatens the stability which emanates from the Coalition or any other initial settlers achieving settlement in the knowledge that they will not be "upstaged" or undercut by a later, larger settlement.
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> * * *
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> [T]o recommend a settlement that is inconsistent with such initial settlement would result in either, at the very least, a disgruntled initial group, or at worst, a reopening of the initial settlement which was

[8]Board of Education of the City School District of the City of New York and UFT Local 2, American Federation of Teachers, AFL-CIO, Case Nos. M92-257 through 269, dated April 23, 1993.

[9]Because this component generated a savings of 0.25%, the total cost of the package became 8.5% over 39 months.

> achieved with assurance that subsequent settlements would be consistent or comparable. That prospect would open the door to continued racheting of settlements up to the highest in any round with obvious instability and perpetual disruption to the whole labor relations scene in the City. [9-10]

Commissioner Hanley testified that a deviation from the pattern settlement would destroy the relationships that are integral to the smooth operation of the City. Hanley argued that having a pattern in place encourages unions to settle rather than delay reaching a settlement. Otherwise, he explained, unions would sit back and wait through other settlements in the hopes of getting a better deal. Because having a pattern helps the overall process, Hanley maintains, “pattern bargaining” is “extraordinarily important” to the interest and welfare of the public.

In an attempt to rebut the Union's contention that the tradition between Local 237 and the NYCHA has not been strict adherence to the pattern, the Authority submits data to show that since 1975 the cost of the settlements for Local 237 and the city's civilian employees have been identical. In fact, the Authority argues, there have been times when Local 237 sought to be covered by the pattern, citing, for example, Local 237's efforts to obtain a COLA for its members in 1977. In this connection, the NYCHA points to the transcript of a 1984 television interview with Local 237's former President, Barry Feinstein, during which he stated:

> [T]he reality is that [a] settlement [for the Teamsters] would be the pattern for all of the other

> employees in the city of New York. The housing authority workers are skilled and unskilled, blue collar and white collar, professionals, semi-professionals, and in that capacity the housing authority has been a part of the general scheme of negotiations during the fiscal crisis, and as a result they have done the same things that all of the other unions in the coalitions have done.
>
> For example, we deferred wages, and we took no cost contracts. We bid four percent wage increases when others did -- our money was used in our pension funds to buy MAC paper. We are specifically part of the Emergency Financial Control Board, now called the Financial Control Board legislation.
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> There is a total community of interest between the housing authority workers and general city employees, and in that capacity the decision that will come down for the housing workers will be used, I am sure, as the pattern for all of the others who will follow in the arbitrations or mediations. (NYCHA 5, at 2)

* * *

> During the ten years of the fiscal crisis, the pattern has been the same for all workers in the City, by and large, with nuances here and there. (NYCHA 5, at 6)

In this connection, Commissioner Hanley pointed out that the City is again "experiencing a terrible, horrible fiscal situation." Rather than impose unilateral cuts, Hanley explained, the City chose to bargain with its employees, which led to a practice since the 1990-91 round of bargaining of unions funding their own contracts. Depending upon the demographics and the particular needs of a bargaining unit, this practice led to different types of settlements. According to Hanley, even the Mediator's recommendation to settle the contract dispute between these parties in 1991 was consistent with the 1990-91 pattern settlement.[10] In this respect, Hanley pointed out that:

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[10]Seem, Local 237's position, supra, at 10.

> ... the contract was settled on a 4.5% rate increase, albeit for a twelve month period of time, as others settled for during that period, and ... the pattern for that round of bargaining for the civilians within the City, including large numbers of Local 237 employees as well, was also 4.5%. It was for fifteen months, but it was also 4.5%.

Thomas P. Moore, NYCHA Deputy General Manager for Finance, who testified on the Authority's ability to pay, presented data on its federal, state and city funded programs administered by the NYCHA. The federal, state and city programs, he explained, are subsidized at different rates, using different formulae, and the Authority must keep a separate set of books for each program. Moore pointed out that the regulations that govern the use of the funds for each program do not allow co-mingling; nor can one program's funds be used to pay for another program's expenses. Moore further explained that because of the current fiscal situation, state and city subsidies have been cut and, as a result, the level of service to the residents of the state and city programs have been reduced. (NYCHA 15) According to Moore, the current city subsidy provides funds to finance a settlement consistent with the Municipal Coalition Agreement. Moore testified that if the Panel renders an award requiring funds in excess of the pattern, the Authority will have to further reduce service to its tenants in the city and state programs.

Moore also testified that the Authority projects a combined deficit of $6,790,000 for all three programs in 1993, due to additional expenditures yet to be incurred in the latter part of the year. These expenses, Moore explained, include the

employment of an additional 180 maintenance workers who started in April/May 1993; payment for a number of delayed painting contracts, the execution of which were delayed into the latter part of the year; a delay in the replacement of refrigerators and stoves into the latter part of the year; and a significant amount of overtime payments. Moore points out that the Union's data on the state of the Authority's finances did not reflect these additional expenditures and/or delays in spending, which accounts for the surplus that was reported at the end of May 1993.

Although the Union points to the reserve fund as a source of funding, Moore testified that if the Authority's operating reserve drops below 20%, HUD will give the Authority a failing grade and it would then be in danger of being classified as a "troubled" Housing Authority.

Moore testified that modernization grants received from HUD can be used for federal programs only. In response to charges that the Authority has failed to requisition these funds, Moore testified that NYCHA has yet "to lose a dollar from any modernization monies that we have been given by HUD because of the lack of commitment or the lack of spending the money." Moore points to a newspaper interview with Authority Chairwoman Sally Hernandez-Pinero, which followed a report criticizing the Authority for allegedly failing to requisition $1.1 billion-for the renovation of low income housing. In that interview she said: "Not only are we on schedule with our spending, but we have completely overhauled our design and construction management

program to meet a flood of new money." (NYCHA 19 & 20) In response to the Union's criticism leveled of the Authority for using operating funds to pay for capital improvements, Moore explained that in order to pay vendors in a timely fashion, they are paid out of operating funds. This is done, he explained, because HUD takes three weeks to pay once the money is requisitioned. During that three-week period the Authority uses operating cash; otherwise, Moore testified, it is not an operating expense.

With regard to the Union's suggestion that the Authority tap into the "annual inflation allowance" from HUD, Moore maintains that this appellation is a misnomer inasmuch as these monies must "meet all of the Authority's increased expenses, not just what could be called inflationary expenses." For example, Moore explained, even though insurance, security, health and welfare costs all have increased at rates greater than the rate of inflation, the allowance is not adjusted to reflect increased costs above inflation. Contrary to the Union's claims on the subject, this allowance cannot be adjusted; nor can federal funds be used for state and city programs.

As for the Union's claim that the Authority would indirectly benefit from an increase in the wages of employees who live in Authority developments, Moore explained that the NYCHA does not realize any additional rental income. According to Moore,

> ... [t]he way the subsidy formula works, it takes an allowed expense level, computes the amount of increase that would come from that, and then deducts from that

> allowable expense level the rent that the Housing Authority collects, so if we increase the rent and then use that increased rent amount to deduct from the allowable expense formula, it means we get less subsidy, so where we might get it in one pocket, we would lose it in another ... The net result would be nothing.

In response to the Union's claim that an increase in productivity should be credited to this bargaining unit, Paul Graziano, NYCHA Deputy General Manager for Operations, presented data to demonstrate that any perceived increase in productivity since 1981 has been accompanied by a substantial growth in the workforce for both NYCHA unique (29.4%) and Section 220 (33.2%) employees, which far surpasses the growth in the number of dwelling units (5.8%). Graziano points out that the Union's data which purports to show a 23.6% increase in the average number of work tickets completed since 1987 fails to reflect the increase in the workforce and is, therefore, flawed. Adjusting the figures accordingly, Graziano asserts that the rate of completed maintenance work tickets per day has remained steady over the last six years.

In response to the Union's claim that an indicator of this bargaining unit's productivity is the fact that the cost of managing each NYCHA apartment has remained steady over time, the Authority introduced data to show that routine and non-routine costs actually have increased from 1987 to 1993 by 35%. According to the Authority, the Union's figures fail to account for the fact that HUD forgave the debt on certain developments in 1989, which greatly reduced the average cost of managing each

apartment. (NYCHA 21) Summing up his testimony on the productivity of this bargaining unit, Graziano does not dispute that the NYCHA workforce has been "consistently producing at a high level with no change over time, over the last several years." (NYCHA 16 & 17)

Commissioner Hanley presented data on the total compensation of certain Local 237 NYCHA unique titles, pointing out that employees in Local 237 unique titles receive pay increments under the "three-step pay plan", which guarantees that a Local 237 employee will be at maximum salary after three years on the job. All other employees, Hanley explained, have a salary range, and that movement within that range is accomplished by merit increases only. A comparison of Local 237 unique titles with their citywide counterparts was then offered. The Local 237 Caretaker title was compared with the citywide titles of Institutional Aide and Custodial Assistant to show that, while at the minimum, the two citywide titles earn more than Caretakers, at maximum, the salary of a Caretaker is greater. Hanley maintained that since 72% of all Caretakers are currently at maximum salary - as compared to fewer than 1% of their counterparts in citywide titles - clearly Local 237 employees fare much better under the pay plan. (NYCHA 12)

In a survey of the 30 largest public housing authorities in the country, the Authority submits that an analysis of employee compensation at entry, three years and fifteen years of service reveals that the salaries of NYCHA employees compare favorably at

all stages of employment. The Authority claims that on the basis of that comparison, NYCHA employees do not rank below seventh in any category, and ranks first, second or third in several categories. (NYCHA 9) The Authority disputes the Union's attempt to show that when you account for intraregional differences in the cost of living, the salary ranking of a NYCHA Residential Building Superintendent drops from first to last among the 20 largest public housing authorities. The Authority argues that the methodology used by the Union in its analysis on this subject has been rejected by several prior factfinding and impasse panels. Moreover, the Authority points out, the very organization which compiles the index used in the Union's analysis, ACCRA,[11] included a disclaimer as to its applicability under certain circumstances. (NYCHA 25)

In a comparison of Local 237 NYCHA employees with their counterparts in the private sector in New York City, the Authority submitted data which reveals that while the salary of NYCHA Caretakers lag behind Local 32B-32J at entry level, Caretakers earn significantly more than their private sector counterparts after 3 years of service, and far more after 15 years. In an analysis which applies the NYCHA offer to the Caretaker title, the Authority contends that the salary of NYCHA Caretakers continue to outpace the rate for their counterparts in Local 32B-32J. (NYCHA 27) The Authority points out that the

[11]See footnote 4, supra, at 13.

Union's comparability charts for Local 237 NYCHA employees and their counterparts in Local 32B-32J fail to factor in the value of health insurance, pension and leave benefits, which are far more generous in the Authority. (NYCHA 13)

With respect to the Union's attempt to compare NYCHA Caretakers and NYCTA Porters/Car Cleaners, the Authority refers to the 1987 award of the fact-finding panel (the "Yager" panel) between Local 237 and the Authority. On page 40 of that award, in a footnote, the Yager panel found:

> ... no plausible basis for comparison with Transit Authority 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.[12]

According to the Authority, the rejection of this argument by the Yager panel, as well as by prior panels, demonstrates that the titles are not comparable.

Turning to changes in the cost of living, the Authority maintains that a comparison of the cumulative wage increases of Caretakers measured against the cumulative change in the CPI from 1979 through 1991, demonstrates that the earnings of NYCHA Caretakers have outpaced the rise in the cost of living by 20 to 30%. According to the Authority, when the pattern settlement and the projected rates of inflation are included in the calculation for the period of January 1, 1974 through March 31, 1995, wages will have increased by 237% against an increase in the CPI of

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[12]See Union's position, supra, at 12.

226%. Clearly, the Authority argues, inflation is not a factor in this round of bargaining. (NYCHA 14)

Finally, the Authority offered evidence to demonstrate its sensitivity to the welfare and quality of life of its tenants and employees. In this connection, the Authority presented a document entitled "The Security Pact", which describes the establishment of a $139,000,000 program designed to address security issues in public housing. The Authority recognizes that security is a major issue but it contends that appropriate steps are underway to insure the safety of its residents and employees. In this connection, the Authority points out that the NYCHA was the first public housing authority in the nation to have its own police force, and that proportionately, the NYCHA has a much greater effort with 2,400 officers than other cities. (NYCHA 18)

In summary, the Authority contends that there are no factors by which the Union will be able to demonstrate that the pattern should not apply to this bargaining unit. The Authority argues that if you measure this Union's situation against any of the applicable criteria, clearly no compelling reason exists. The Authority claims that this unit's overall compensation, wages, hours and fringe benefits compare favorably with that of employees performing comparable work in the public and private sectors; that the attrition rate for Local 237 NYCHA unique titles is one of the lowest in the City; that the bargaining unit has not been hurt by a rise in the CPI; that the Authority projects a deficit for 1993 which will impact 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 Authority argues that there is not a single argument that presents a compelling reason to deviate from the pattern in place for so many individuals represented by the Union.

OPINION

In considering the various elements of this case, I have carefully considered the statutory criteria of the NYCCBL in arriving at my decision. It is clear that the parties have focused their attention on one central issue; that is, whether the NYCHA employees covered by the contract at issue should be required to adhere to the pattern established by the 1992-95 Municipal Coalition Agreement. The essential elements of that Agreement are as follows:

A term of 39 months, with a 2% increase effective on the first day of the 19th month, a 2% compounded increase effective on the first day of the 31st month, and a 3% compounded increase on the first day of the 36th month, for a total of 7.16% in rate or wage increases; an improvement in welfare fund contributions, adding 0.64% 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 settlement calls for a freeze on the minimums for 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 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 include the establishment of a Pension Legislation Committee and a Gainsharing Committee. The total cost of the package is 8.25%.

This impasse proceeding is the result of the clash between the Authority's view that adherence to the pattern is critically important to the maintenance of labor relations stability and the Union's view that a departure from the pattern settlement is warranted on the merits and that the Authority has the ability to fund a wage increase that is better than the pattern settlement.

Having studied the evidence and considered the parties' arguments in this case very carefully, I note that considerable attention was paid to the comparability of wages and working conditions of employees doing similar work in both the public and private sectors. For example, the Union presented data favorable to its position relating to the title Porter/Car Cleaner employed by the New York City Transit Authority, essentially comparing the wages of that title to the wages of the Local 237 NYCHA Caretaker. The Authority challenged the validity of that comparison, claiming that there is no "history of linkage"

between these two titles and pointed out that past impasse panels already have discredited the argument.

The statutory criteria set forth in the New York City Collective Bargaining Law do not require that there be a history of linkage of the pay and benefits between employees who perform similar work in both the private and public sectors in order for there to be a meaningful basis for comparison. However, because the comparability data offered here is conflicting and built upon a disputed index, I am reluctant to rest my decision on this data. In any event, because of other relevant considerations, I find the comparability standard to be of secondary significance in this matter. The critical question before this Panel is not linkage, nor comparability, but whether Housing Authority employees should conform to the pattern of settlement established for Mayoral agency employees. Statistics don't always tell the whole story. The function of an impasse panel is to obtain a full understanding of the respective positions of the parties and of all facts and circumstances that may have a bearing upon the controversy, and to formulate a solution to the problems constituting balanced and objective recommendations for the terms of settlement rooted in the statutory criteria of the law.

For purposes of this proceeding, I find most relevant the evidence which reflects the prevailing economic climate in the City and the pattern of settlement in the Mayoral agencies. The fact that Local 237 joined the civilian coalition during the crisis years and conformed its Housing Authority contracts to the

pattern set in the Mayoral agencies in the past belies any claim there are no crisis-born relationships between Local 237 labor contracts in the Authority and Mayoral agency contract settlements. The controlling issue in this proceeding is whether the factors that produced the coalition settlements and the relationships that developed in past years of fiscal crisis in City government are applicable today. The evidence demonstrates that they are. It is not in dispute that the City of New York is undergoing a wrenching fiscal crisis. The settlement relationships between Housing Authority employees and employees of Mayoral agencies have been dependent upon the general economic climate of the City, wherein bargaining coalitions would coalesce during times of fiscal instability and disperse during better economic times. For example, I take note of the impasse proceeding to settle the 1984-87 contract between these parties, where that panel found that because the economic climate was "good and improving" there was no reason to continue, by imposition, crisis-born linkages between Local 237 labor contracts in the Authority and Mayoral agency contract settlements, especially since there had been no such linkage shown to have been in effect between Authority contracts before the City's fiscal crisis years of the mid-1970's. Conversely, I note that the Factfinders in this year's contract dispute between the UFT and the Board of Education were persuaded that the current financial pressures cited by the Board of Education were consistent with the claims made by the City. There, the Panel

recommended the pattern settlement "as the controlling benchmark" in its considerations.

Moreover, I give considerable credence to the Authority's argument that a deviation from the pattern would seriously disrupt the web of salary relationships that now exists among the Coalition members. I am fully aware of those relationships and the need to maintain them. Pattern bargaining is a fact of life where an employer has multiple bargaining units, especially during tough economic times. It is one of the most important factors to be considered and its justification is found in the fact that it promotes labor harmony and peace. Given the current fiscal circumstances of the City and the Authority, and given that over 180,000 municipal employees, among them over 4,200 NYCHA employees, have already acceded to the 8.25% settlement in recognition that there was no more to be obtained, adherence to the 1992-95 pattern settlement is essential to stable labor relations in New York City at the present time.

The Union made many cogent arguments in its attempt to justify deviation from the pattern. The Union went to great lengths to support its claim that the employees in this bargaining unit were entitled to more than the pattern settlement, e.g., remaining a responsive and productive work force in a difficult, stressful and sometimes dangerous working environment. The character and quality of work is noteworthy, given the fact that the job of a NYCHA employee is much more difficult today than it was years ago. The Authority is aptly

described as one of the best run, if not the best run, public housing authority in the nation. It is quite apparent that the welfare of the public served by the Authority, i.e., its tenants, has been well attended to by the employees involved.

Even though the Authority is an independent agency, it is not entirely immune from the effects of a fiscal crisis in New York City. The Authority and the Union have presented me with vastly different impressions of the Authority's ability to pay. The Authority has indicated that the pattern settlement represents the limit of its ability to pay, and that state and City programs have already suffered service reductions. The Union maintains that it has identified three sources of income sufficient to pay for wage increases over and above the pattern settlement, for which funding has already been found.

In considering this issue, I have been mindful of the special factors which govern the operations of the Authority. Unlike the City and state governments, the Authority has virtually no control over its sources of revenue. It relies principally on operating subsidies from HUD, the state and the City. The data reveal that while these subsidies have increased, so have operating expenses. The data further reveal that while the federal subsidy for 1993 has increased at approximately the same rate as the increase in expenditures, the state and City subsidies have been reduced because of budgetary constraints and, as a result, the Authority has had to reduce expenditures and provide concomitantly lower levels of service to residents in the

state and City programs. Because the Authority is subject to regulations prohibiting the use of one program's funds to offset the expenses of another, and while it would appear that the Authority enjoys a reserve in funds, an increase in expenditures cannot be absorbed equally as well by each of the programs. The City has stated that it would not provide an additional subsidy above the pattern settlement, and an award greater than the pattern might result in even greater service reductions in state and City programs.

Additionally, an award rendered greater than the pattern, absent compelling reasons to justify a deviation, would seriously undermine morale of the City workforce and thereby provide the seeds for labor turmoil and unrest. The record herein does not support a deviation from the pattern settlement. 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 otherwise warrant deviation from the pattern. The evidence demonstrates that this Union has gained for its members wage increases over and above the increase in the CPI-U Index over time and my recommendations will not place these employees at a disadvantage vis a vis the Consumer Price Index. In any event, all other City employees' wage increases are reflective of the economic state of the City. Indeed, given that some 4,200 NYCHA employees already are covered by the Municipal Coalition Agreement, equity would require treating all Authority employees similarly.

As for the Union's contentions concerning deteriorating safety conditions, this is a compelling issue for many City employees. We note, however, that the Authority has developed a $139,000,000 program entitled "The Security Pact" which, although as yet not fully implemented, offers the potential for significantly improving safety conditions for both employees and residents.

In summary, this Panel is of the opinion that even though an argument for a variance from the strict adherence to a pattern might be entertained in better economic times, it should not be recommended at this time. I am convinced that my recommendation establishes a rational wage relationship between City employees and Housing Authority employees and will have the effect of promoting labor stability.

Therefore, for all the reasons set forth above, I award as follows:

A W A R D

(1) Term: The parties's new Agreement shall be for a term of 39 months and shall cover the period January 1, 1992 through March 31, 1995.

(2) General wage Increases:[13]

(a) i. Effective July 1, 1993, employees shall receive a general increase of 2 percent.

ii. Effective July 1, 1994, employees shall receive an additional general increase of 2 percent.

iii. Effective December 1, 1994, employees shall receive an additional general increase of 3 percent.

iv. Part-time per annum, per session, hourly paid and per diem employees (including seasonal appointees) and employees whose normal work year is less than a full calendar year shall receive the increases provided in 2(a)(i), 2(a)(ii) and 2(a)(iii) on the basis of computations heretofore utilized by the parties for all such employees.

(b) The increases provided for in 2(a) above shall be calculated as follows:

i. The general increase in 2(a)(i) shall be based upon the base rates (including salary or incremental salary schedules) of the applicable titles in effect on December 31, 1991.

ii. The general increase in 2(a)(ii) shall be based upon the base rates (including salary

[13]Commissioner Hanley testified that City policy has been to offer the coalition settlement to employees covered by Section 220 of the New York State Labor Law. Under the law I may not recommend wage and benefits terms for these employee. I assume that the NYCHA will continue it practice of offering the MCA settlement to its prevailing rate employees. In the event the employees decline to accept the proposal, they will be free to pursue their wage and benefit claims under the provisions of the Labor Law.

or incremental salary schedules) of the applicable titles in effect on June 30, 1994.

iii. The general increase in 2(a)(iii) shall be based upon the base rates (including salary or incremental salary schedules) of the applicable titles in effect on November 30, 1994.

iv. Notwithstanding the provisions set forth in 2(a)(i), 2(a)(ii) and 2(a)(iii), the appointment rate for any employee newly hired on or after July 1, 1993 shall be the minimum rate which was in effect on December 31, 1991. Upon completion of one year of service, an employee hired on or after July 1, 1993 shall be paid the indicated minimum for the applicable title in effect on the one year anniversary of such employee's original date of appointment to the title.

(c) i. The general increases provided for in this section 2 shall be applied to the base rates, incremental salary levels and the minimum and maximum rates (including levels) if any, fixed for the applicable titles, and to "additions to gross". "Additions to gross" shall be defined to include uniform allowances, equipment allowances, uniform maintenance allowances, assignment differentials, service increments, longevity increments, longevity differentials, advancement increases, assignment (level) increases, and experience, certification, educational, license, evening, or night shift differentials.

ii. Notwithstanding 2(c)(i) above, the total cost of the increase set forth in 2(c)(i) as it applies to "additions to gross" shall not exceed a cost of 0.11 percent of the December 31, 1991 payroll, including spinoffs and pensions.

(3) Lump Sum Payment:

(a) Employees who were in active pay status for the entire period from January 1, 1992 through January 1, 1993, shall receive a lump sum cash payment of $700.

(b) Employees who were in active status or inactive pay status for the entire period from January 1, 1992 through January 1, 1993, shall receive a pro-rata lump sun cash payment not to exceed $700 which shall be based upon the portion of the period January 1, 1992 through December 31, 1992, that they were in active pay status.

(c) Employees who were hired between January 2, 1992 and June 30, 1992, and who were in active pay status for at least six (6) months during the period January 1, 1992 through December 31, 1992 shall receive a lump sum cash payment of $350, provided they were in active or inactive pay status on January 1, 1993.

(d) "Inactive pay status" is defined for the purpose of this award to include the following employees:

i. those who are on a preferred or recall list; or

ii. those who are on an approved leave.

(e) For purposes of this award, an employee who was furloughed shall be deemed to have been in active pay status for the period of such furlough.

(f) Part-time per annum, per session, hourly paid and per diem employees (including seasonal appointees) and employees whose normal work year is less than a full calendar year shall receive a pro-rata portion of the lump sum cash payment set forth in 3(a), 3(b) or 3(c) on the basis of computations heretofore utilized by the parties for all such employees.

(g) The lump sum bonus provided pursuant to this award shall be pensionable. However, such lump sum bonus shall not become part of the employee's basic salary rate nor be added to the employee's basic salary for the calculation of any salary based benefits including the calculation of future collective bargaining increases.

(4) Welfare Fund Increases:

(a) Effective January 1, 1993, there shall be a one-time $125 lump sum cash payment for each full-time employee.

(b) Effective July 1, 1993, the contribution shall be increased by $100 per annum for each full-time employee.

(c) Effective July 1, 1994, the contribution shall be increased by $100 per annum for each full-time employee.

(d) The one-time lump sum payment and per annum contribution rate for eligible part-time per annum, hourly paid, per session and per diem (including seasonal appointees) employees and employees whose normal work year is less than a full calendar year shall be increased in the same proportion heretofore utilized by the parties for all such employees as the one-time lump sum payment and per annum contribution rates are increased in 4(a), 4(b) and 4(c) above for full-time employees.

(e) The one-time lump sum payment and per annum contribution rates for employees separated from service to a welfare fund which covers such employees shall be increased in the same manner as the one-time lump sum payment and per annum contribution rates for other employees are increased pursuant to 4(a), 4(b), 4(c) and 4(d) above.

(5) Equity Fund:

(a) The Union shall be entitled to make further economic demands for increased wages or fringe benefits based on specific compensation inequities of employees in the bargaining unit. Where there is agreement between the parties, the cost of such increased wages or fringe benefits shall be considered part of the cost of the determinations of the joint panel set forth below, which in the aggregate shall not exceed the cost or allocation as set forth in section 5(f) of this award.

(b) Within sixty days of issuance of this award, or such other date as may be mutually agreed to by the parties, the Union may request in writing to meet with the Authority to present its claim that there are specific compensation inequities of employees in the bargaining unit.

(c) If the Union and the Authority agree under 5(a) upon an adjustment to the compensation of any employee in the bargaining unit, such an agreement shall be submitted as a recommendation to a joint panel consisting of one person designated by the Authority and one person designated by the Union and myself, as the impartial Chairperson.

(d) If the Union and the Authority fail to agree upon an adjustment, the Union may present its claim to the above-referenced joint panel in writing by March 31, 1994, or such other date as may be mutually agreed to by the parties.

(e) Any determination of the joint panel to adjust the compensation of employees must be unanimous. The joint panel shall issue one report embodying all of its determinations. Such report shall be issued by September 1, 1994 or such other date agreed upon by the parties. The determination of the joint panel shall be final.

(f) In no event shall the total cost of the determinations of the joint panel exceed the cost of a 0.40 percent increase, including spinoffs and pensions, based upon the December 31, 1991 payroll. The allocation of these monies over the thirty-nine months of this contract shall be as follows: Effective January 1, 1993, a 0.10 percent increase including spinoffs and pensions, based upon the December 31, 1991 payroll; Effective October 1, 1993, an uncompounded 0.30 percent increase, including spinoffs and pensions, based upon the December 31, 1991 payroll.

(g) The term of this provision shall be from the effective date of the contract until the work of the joint panel is completed.

(6) The parties shall submit the issue of paid overtime for Superintendents, Managers and Supervisors to a Labor-Management Committee. The Impasse Panel will retain jurisdiction over this issue.

(7) Pursuant to the parties' stipulation dated August 12, 1993, the items set forth in paragraph 5 therein shall

be incorporated into this Award.[14] The Impasse Panel will retain jurisdiction over any dispute which may arise under the provisions of paragraph 5(a) of the stipulation.

Dated: September 23, 1993
New York, New York

Alan R. Viani

AFFIRMATION

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

The undersigned under penalty of perjury affirms that he is the Impasse Panel in the within proceeding and signed same in accordance with the law of the State of New York.

Alan R. Viani

[14]See, supra, at 4-5. In addition, at the close of the hearing in this matter, counsel for both parties asked the Impasse Panel to assume jurisdiction over a question concerning Worker's Compensation payments. Given that there was no evidentiary material submitted on this question during the course of the hearing and because my understanding of the matter is limited, this appears to be an issue appropriate for discussion under the aegis of the Gainshare Committee. The Impasse Panel will retain jurisdiction over this issue.