OFFICE OF COLLECTIVE BARGAINING

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In the Matter of the Impasse

-between-

ORGANIZATION OF STAFF ANALYSTS,

-and-

CITY OF NEW YORK and NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

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REPORT
AND
RECOMMENDATIONS
Case No. I-233-95

Before: Alan R. Viani, Impasse Panel

Appearances:

For the Union:
Joan Stern Kiok, Esq.
Robert Croghan, Chairperson, Organization of Staff Analysts

For the City of New York and the Health and Hospitals Corporation:
Donald Savelson, Esq.
Eric D. Roth, Esq.
Caroline Sullivan, Esq.
Gayle A. Gavin, Esq.
James J. Moser, Esq.
James F. Hanley, Commissioner, Office of Labor Relations
Richard Yates, Assistant Commissioner, Office of Labor Relations
Stuart Klein, First Deputy Director, Office of Management and Budgets
Ellen B. Grossman, Esq.

The Organization of Staff Analysts ("OSA" or "the Union") initiated this Impasse proceeding, pursuant to the New York City Collective Bargaining Law ("NYCCBL"), when it and the City of New York ("the City") were unable to reach agreement on a contract covering the 1992-1995 period. in accordance with the rules of the Office of Collective Bargaining ("OCB"), OSA and the City designated the undersigned as an Impasse Panel ("the Panel") for a final and binding determination of the issues in dispute.

Two days of hearings were held: May 1 and 2, 1997. The first day was devoted to OSA's presentation of its case; the second to the City's presentation of its case. Each party was given an opportunity to present rebuttal testimony. 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 parties submitted post-hearing memoranda summarizing their respective positions and the record was closed on June 23, 1997.

BACKGROUND

This matter involves the following titles utilized by the New York City Health and Hospitals Corporation ("HHC"): Training and Development Associate (Levels A and B) ("Trainers"), Planner; Product Control & Scheduling (EMS Motor Transport) ("Planners"), and the Systems Analyst series (Assistant Systems Analyst, Systems Analyst, Senior Systems Analyst) ("Systems Analysts"). These titles were created in the early 1970s and classified as Group 11 titles.[1] A number of unions, including OSA and District Council 37 ("DC 37"), filed petitions to represent the Systems Analysts in 1979; petitions to represent the Planners and Trainers were filed in 1993. These petitions were originally contested by the City on the ground that the employees were managerial and/or confidential. However, in December of 1994 OSA, DC 37 and HHC signed a stipulation of settlement agreeing to divide the representation of the Systems Analysts between OSA and DC 37.

[1] The HHC law provides for two groups of employees: Group 11 employees who are non-civil service and managerial or confidential, and Group 12 employees who are covered by the civil service laws.

The Board of Certification, by Decision No. 12-94, allocated the Systems Analysts between the two units in accordance with the terms of the stipulation.[2] Subsequently, the City withdrew its objections to petitions to represent the Trainers and Planners and the Board of Certification, by Decision Nos. 2-95 and 3-95, amended OSA's certification to add these titles by accretion.

Between February and July of 1995 OSA and the City engaged in several negotiation sessions in an attempt to settle the terms of a 1992-1995 agreement covering the group of Systems Analysts accreted to its unit, the Trainers and the Planners. Concurrently, the City was negotiating with DC 37 over the terms of a 1992-1995 agreement covering the DC 37 represented Systems Analysts.

OSA and the City were unable to reach a settlement. in August of 1995, OSA filed a Request for Appointment of an Impasse Panel with the OCB. The City objected and the request was held in abeyance while the parties continued to negotiate. in August of 1996, OSA renewed its request and the City again objected. The Board of Collective Bargaining declared an Impasse on October 31, 1996.

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[2] The Systems Analysts certified to DC 37 were renamed and given new titles as follows: Assistant Systems Analyst (EDP), Systems Analyst (EDP), Senior Systems Analyst (EDP), Assistant Systems Analyst (Finance), Systems Analyst (Finance), and Senior Systems Analyst (Finance). The job specifications for these new titles are identical to the job specifications for the Systems Analysts certified to OSA.

Following the declaration of Impasse, DC 37 and the City settled. The terms of the settlement, which are contained in the Supplemental Agreement to the 1992-1995 Accounting and EDP Unit Agreement (City 1), include:

> 1) a wage increase of 7.16% retroactive to July 1, 1995 for employees on active status as of execution of the agreement,
> 2) a 15 year longevity payment of $800 retroactive to July 1, 1995, and
> 3) a $700 advancement increase.

The overall cost of these economic components is 7.880% of the payroll for the DC 37 represented Systems Analysts (Union 13).

After DC 37 settled, the City offered OSA the following terms:

> 1) a wage increase of 7.16% retroactive to July 1,1995,
> 2) a 15 year longevity payment of $700 retroactive to July 1, 1995,
> 3) a $700 advancement increase, and
> 4) coverage of the newly certified titles under the annual leave accrual schedule provided in the 1992-1995 OSA Agreement and grandfathering in of incumbent Systems Analysts at the annual leave schedule applicable to Group 11 employees.[3]

The cost of the economic components of this offer, i.e., other than the annual leave item, is 7.873% of OSA's payroll for the OSA represented Systems Analysts.

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[3] The City maintains that as Group 11 employees, the Systems Analyst, Planners and Trainers accrued 20 days of annual leave in each of the first four years of employment. By contrast, employees covered by the OSA Unit Agreement accrue 18 days in each of the first three years of employment and 19 in the fourth year. Under the Citywide Agreement, employees accrue 15 days per year over the first four years of employment. According to the City, the DC 37 Systems Analysts were not grandfathered in with the 20 days, but reverted to the Citywide schedule if they had not yet completed four years of service.

According to the City, its offer "conforms with" the terms of the DC 37 settlement; the cost is only .0007% below the cost of the DC 37 settlement.[4] OSA rejected the offer.

instead, OSA made the following demands, all of which have been rejected by the City:

> 1) a 7.16% wage increase - retroactive to December 13, 1994 for the Systems Analysts and February 9, 1995 for the Trainers and Planners,
> 2) a 15 year longevity payment of $700 and a 10 year longevity payment of $379 - retroactive to December 13, 1994 for the Systems Analysts and February 9, 1995 for the Trainers and Planners,
> 3) a $700 non-pensionable lump sum payment for Systems Analysts who were in active status on December 13, 1994 and continue to be employed as of the date of the execution of this contract and for Trainers and Planners who were in active status on February 9, 1995 and continue to be employed as of the date of the execution of this contract, and
> 4) a $25 per annum education fund payment - retroactive to December 13, 1994 for Systems Analysts and February 9, 1995 for Trainers and Planners.

The retroactive dates in OSA's demands correspond to the certification dates for each of the titles. With the exception of the retroactive dates, OSA's demands mirror the terms of the its 1992-1995 Unit Agreement and the Municipal Coalition Agreement ("MCA").[5]

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[4] As of February 7, 1997, the headcount for the OSA represented Systems Analysts, Trainers and Planners was approximately 206. However, the cost figures cited herein are based on a July 1, 1995 headcount of 272. The City asserts that the decline in headcount does not alter the cost figures because cost is computed as a percentage figure as well as a dollar figure. The City maintains that because the total payroll for the titles diminishes in an equal proportion with the decline in headcount, the percentage cost figure remains virtually unchanged.

[5] OSA's Unit Agreement provides for a $700 lump sum payment "pursuant to the terms of the 1993 MCA" and a general wage increase that is in accordance with the terms of the MCA. it also provides for a 15 year longevity payment of $700, a 10 year longevity payment of $379, and a $25 per annum education fund payment; these terms are not part of the MCA.

The cost of the OSA demands exceeds the cost of DC 37's settlement. The cost of OSA's demands for the period of time prior to July 1, 1995 is $432,179 (Union 14) or, according to the City, 4.410% of the payroll for the OSA represented titles. The annual cost of OSA's demands subsequent to July 1, 1995 is $848,263 (Union 14); if the terms of DC 37's settlement were applied to the OSA represented employees, the annual cost subsequent to July 1, 1995 would be $771,465 (Union 13), a difference of $76,798 per year.

POSITIONS OF THE PARTIES

OSA

OSA does not take issue with the City's position that, pursuant to the standards set forth in the NYCCBL, the pattern settlement must be adhered to by an Impasse panel. However, it disagrees with the City's argument that the DC 37 agreement constitutes the applicable pattern. According to OSA, the pattern to be followed is the OSA Unit Agreement, which incorporates the MCA; OSA maintains that its demands conform with this pattern.

OSA cites the following statement from Mark M. Grossman's 1995 Impasse ruling concerning the Licensed Practical Nurses as support for its position:

> it must be remembered that the pattern before the Panel in this case is particularly meaningful because it has not been established either by the City unilaterally or by the City bargaining with one or two other unions. All the city unions (with the exception of RNs), covering 320,000 employees, together with the City established the pattern for the relevant time period. The LPNs represent less than one half of one per cent of the total city workforce. Certainly, there is a substantial burden on the Union to show by compelling and convincing evidence that it should be able to disregard the dozens of other settlements and receive greater increases in compensation than 316,000 other City employees.

Noting that Grossman considered the size of the LPN unit to be significant, OSA argues that in this case the DC 37 represented Systems Analysts, which number only about 100 employees, make up less that .0656% of the City's workforce. Consequently, DC 37's settlement does not constitute the pattern. instead, OSA argues, the MCA, which covers more that 320,000 City employees, constitutes the pattern.

Furthermore, OSA argues, at the time that DC 37 settled with the City over the Systems Analysts, only one agreement was left to be negotiated in the 1992-1995 round of bargaining, i.e., the agreement between OSA and the City concerning the OSA represented Systems Analysts. OSA contends that under these circumstances, DC 37's settlement did not set a pattern for anything. Rather, OSA maintains, the DC 37 agreement constitutes a deviation from the pattern established by the MCA; it provides for wage increases and benefits that fall below the pattern.

As for the City's argument that the DC 37 agreement actually constitutes a sub-pattern within the MCA pattern, OSA maintains that this position is not supportable. OSA argues that the only agreement that the City can point to as following this sub-pattern is the DC 37 agreement and that one "quirky" agreement does not constitute a pattern. To the extent that the City argues that the sub-pattern was also accepted by the Deputy Wardens and the Senior Health Care Program Planner/Analysts ("HCPPAs"), OSA points out that these titles were certified during the 1995-2000 contractual period, not the 1992-1995 period.

Again citing the Grossman award, OSA argues that there is a presumption that the pattern ought to be extended to each union and, therefore, a heavy burden of proof on the City when it seeks to justify an exception to the pattern. OSA maintains that by seeking to apply the DC 37 settlement to the OSA represented employees, the City is requesting an exception to the MCA pattern. According to OSA, the City has not met its heavy burden of justifying such an exception.

OSA next argues that in considering comparability, as required by Section 12-311(c)(3)(b) of the NYCCBL, the Panel should look to OSA's bargaining unit rather than DC 37's bargaining unit. According to OSA, the Board of Certification held, in Decision Nos. 12-94, 2-95 and 3-93, that while the two specialty titles, Systems Analysts (finance) and Systems Analysts (EDP), share a community of interest with DC 37's accounting and data processing unit, the OSA represented Systems Analysts, Trainers and Planners share a community of interest with OSA's unit of analysts. Therefore, OSA maintains, the OSA represented Systems Analysts, Trainers and Planners are necessarily comparable to the employees in OSA's unit and should receive the same wage increase and benefits found in the OSA Unit Agreement and MCA.

OSA contends that, in evaluating its demands, the Panel should consider the fact that employees in the Systems Analyst, Planner and Trainer titles have not receive a wage increase since July 1, 1991.[6]

[6] As Group 11 employees, the Systems Analysts, Planners and Trainers received the July 1, 1991 managerial increase pursuant to Personnel Order HHC 092/8 (Union 6). They did not receive the next managerial increase, effective July 1, 1995 pursuant to HHC Personnel Order 095/48, because they were certified to OSA and DC 37 prior to that date.

OSA asserts that civilian employees covered by the 1992-1995 MCA, including other analysts represented by OSA, received a 2% increase effective July 1, 1993, a 2% increase effective July 1, 1994, and a 3% increase effective December 1, 1994.[7] Similarly, OSA asserts, the City's original jurisdiction employees ("OJs"), including the Campaign Finance Board Analysts who were accreted to OSA's unit in January of 1995, received the MCA increases.[8] OSA contends that given the retroactive dates set forth in its demands, the wage increases provided by the MCA exceed OSA's demands.

Moreover, OSA argues, the Panel should consider the lengthy delay between the dates that the representation petitions were filed and the dates of certification. OSA notes that in the case of the Systems Analysts the titles were not certified until 1994 notwithstanding the fact that the representation petitions were filed in 1979; in the case of the Trainers and Planners the petitions were filed in 1993 and the titles were not certified until 1995. According to OSA, the City deliberately prolonged the proceedings by objecting to the petitions on managerial/confidential grounds, stalling negotiations by refusing to offer anything greater than the wage increase given to the managerial employees and refusing to follow the pattern, and by objecting to the declaration of an Impasse. As a result of these delays, OSA argues, the wages and benefits of the titles involved in this matter have fallen far behind the wages and benefits of the other analysts in the unit.

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[7] OSA's original demands in this matter asked for these additional MCA increases. Later, OSA modified its demands to provide effective dates for increases and benefits that coincide with date of certification for the titles at issue.

[8] While OSA concedes that HHC does not utilize the OJ designation, it maintains that the titles involved in this proceeding "should be considered equivalent to OJs" since OJs are employees who are neither in the managerial pay plan nor represented by any union.

OSA contends that the City should not be allowed to profit from delays that it caused; to allow this would be to discourage unionization. in the past, OSA contends, where there had been lengthy delays between the filing of a petition and the date of certification, it had been the City's practice to grant wage increases and benefits retroactive to the July 1 or January 1 following the filing of the certification petition.[9]

Concerning the City's ability to pay, OSA points to the $800 million budget surplus for this fiscal year (Union 12). OSA argues that while the City may not want to spend the money on wage increases and benefits for the OSA represented employees, the Panel must look at what the City is able to pay rather than what it wishes to pay. Moreover, OSA contends, because the additional cost of OSA's demands over and above the cost of the DC 37 settlement is insignificant, it is well within the City's ability to pay. OSA notes that, as stated above, the additional cost amounts to $432,179 of "make-up money" covering the period between the date of certification and July 1, 1995 and $76,798 per annum going forward.

OSA argues that increases in the cost of living justify its demands. According to OSA, the cost of living in the New York area increased 11.8% in the period between July 1, 1991 (the date of the last increase) and July 1, 1995 (the effective date of the City's offer) (Union 11); this is substantially higher than the wage increase that it seeks.

[9] The City denies this claim and points out that the record does not support it.

Finally, OSA addresses the City's argument that the 10 year longevity payment negotiated for in the OSA Unit Agreement resulted from OSA's exhaustion of the equity funds on behalf of its preexisting membership. According to OSA, "equity demands that, regardless of any exhaustion of the equity fund, these employees be treated the same as other OSA represented employees pursuant to the MCA and OSA 1992-1995 agreements." Moreover, OSA argues, "it has never been a requirement that when a new group is accreted to a contract, that in order to play catch-up on wages and other benefits, they have to pay for it from an equity fund."

CITY

James F. Hanley, the Commissioner of Labor Relations, testified about the importance of adherence to the pattern as a means of insuring harmonious labor relations in the City. Hanley testified that without pattern bargaining, no union would be willing to settle first because they might be outdone by a subsequent settlement (Tr. 106-107).

The City argues that the DC 37 settlement established the pattern for the newly certified titles. This is so, the City argues, because the DC 37 represented Systems Analysts are comparable to, and share the greatest community of interest with, the OSA represented Systems Analysts. The City maintains that prior to certification the employees in the OSA represented titles worked side by side with employees in the DC 37 represented titles and shared identical wages and benefits. The City argues that certification did not change this; the employees continue to work side by side, they continue to perform the same work, and their job descriptions remain unchanged. According to the City, this obvious comparability or community of interest was not broken by the certifications.

As for OSA's assertion that the Board of Certification held that the OSA represented Systems Analysts share a community of interest with the other analysts it represents, the City contends that this is nothing more than a "semantics based" argument which ignores the reality of the situation. Furthermore, the City argues, besides the Board of Certification decisions, OSA has offered no evidence to demonstrate that the other analysts represented by OSA perform work similar to the work performed by the Systems Analysts.

The City acknowledges that the DC 37 settlement, and the conforming offer it made to OSA, provides for less than the MCA pattern. According to the City, the DC 37 agreement constitutes a reasonable and fair sub-pattern within the MCA pattern. The City notes that the titles involved in this matter were certified approximately 2 or 3 months prior to the expiration of the 1992-1995 contractual period and refers to these months as an "interregnum period". The City argues that to provide these titles with the full benefits of the MCA would be unfair to the already unionized employees who had to earn the benefits over a 39 month period; it would also be unfair for the City to incur the full cost of the 39 month MCA package compressed into the last few months of the period for the newly certified titles. For these reason, the City contends, the negotiations over this interregnum period were designed to "slot in these new titles at appropriate levels." To this end, the City offered a 7.16% wage increase retroactive to July 1, 1995 "which corresponded to the managerial increase and the going forward rates achieved by the unions over the course of the full 39 month 1992-1995 period." The City points out that this same offer was made to the ADWA for the Deputy Wardens and OSA for the HCPPAs, and was accepted.

The City next argues that "any attempt [by OSA] to justify its demands and proposed deviation from the [DC 37] pattern by pointing to the pre-existing benefits it obtained for its members under its 1992-1995 agreement is untenable because these terms cover only the OSA members in the unit prior to the certification of the Systems Analysts" and the Board of Collective Bargaining has held that where new titles are accreted to an existing unit, the provisions of the existing contract do not automatically extend to the added title. Moreover, the City argues, the Panel should be aware of the fact that the 10 year longevity payment in the OSA Unit Agreement resulted from "OSA's expenditure and exhaustion of equity funds under the MCA on behalf of its preexisting membership and exclusive of the newly certified titles." in expending these funds, the City argues, OSA chose not to purchase this benefit for the newly certified titles.

As for OSA's argument that the employees in newly accreted titles have not received an increase since 1991 and have fallen behind employees covered by the MCA and the OJs, the City points out that the same is true for the DC 37 represented employees. it argues that to grant the OSA represented employees more than the DC 37 represented employees received would disrupt the level playing field between the two groups. The City maintains that this would create the resentment that leads to the one-upmanship that the pattern was designed to prevent. The City contends that an award in excess of the DC 37 pattern would also severely harm DC 37's credibility in the eyes of its membership and would undermine the City's credibility with all of the unions.

Stuart Klein, the First Deputy Director at the Office of Management and Budgets, testified about the City's ability to pay. According to Klein, the City's ability to pay is linked to the pattern established by DC 37; the City budgeted funds for the eventual settlement with OSA based on the DC 37 settlement. Concerning the $800 million surplus, Klein stated that "all of this excess revenue will be used to prepay 1998 expenses during fiscal 97." This is so, Klein testified, because the City's current projections indicate a potential two billion dollar budgetary shortfall fall for fiscal year 1999. As for OSA's argument that the amount of money required to pay for its demands is insignificant, the City contends that this view is shortsighted. According to the City, a deviation from the pattern, however slight, will have spillover effects on future rounds of bargaining insofar as other unions will point to the deviation as a precedent to support further above the pattern settlements. According to Klein, an award of 1% above the City's pattern conforming offer in this case would result in cost of $160 million if applied to all municipal unions for fiscal year 1998. Finally, the City argues, if a break in the pattern is permitted merely because of an improved financial situation, other unions will be encouraged to hold out in settling for as long as possible in the hopes that the City's finances will turn around.

Finally, concerning OSA's cost of living arguments, the City contends that the NYCCBL requires only that the CPI be considered, not that wage increases be greater than the CPI. The City argues inflation has been low; since July of 1995 "the change in the CPI-U over each preceding 12 month period has ranged from 2.3% to 3.5%, averaging 2.89%" (City 2). The City further maintains that during the "gap period" between the December 1994 certification of the Systems Analysts and the July 1, 1995 retroactive date offered by the City, there was an increase in the cost of living of only 2.14% (City 2).

According to the City, this relatively small increase in the cost of living cannot justify breaking the pattern and imposing on the City a settlement that would cost an additional 4.41% of the payroll for the OSA represented employees in the gap period alone. in any event, the City contends, the 7.16% wage increase included in its offer compensates for and exceeds the rise in the cost of living for the gap period.

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:

(l) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the Impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(2) the overall compensation paid to the employees involved in the Impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays 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. The major issue in dispute is the compensation package for covered employees.

The core issue of this dispute is whether the wage increases (including longevity increases) for titles covered by this Report and Recommendations should follow to the settlement the City entered into with District Council 37 for similar titles or whether the OSA Unit Agreement which incorporates the terms of the MCA should be determinative of compensation package granted to these employees. Both parties accept the viability of the concept of pattern bargaining but disagree as to which version of the "pattern" should be applied. The essential elements of these respective "patterns" have been outlined in the background section of this Report and Recommendations.

In arriving at the Panel's determination the Panel has carefully considered the evidence and the arguments of the parties.

First, as to the issue of the City's ability to pay the increases proposed by the Union, the Panel is persuaded that the Union's proposals when viewed in isolation, even if granted in toto, would not have more than a negligible impact on the City's budget.

The difference between the position of the parties amounts to roughly $77,000 per year on an annual basis, excluding the dollar cost of the retroactive application of the wage increases and the $700 non pensionable cash payment proposed by the Union, and, in my estimation, could not seriously be considered as jeopardizing the balance of the City's budget. However, collective bargaining settlements in the City's labor relations arena are neither hidden nor without potential consequences. To paraphrase what this Panel stated in a previous Report and Recommendations for another group of employees, even with the small group of employees at issue here, there is always the possibility of spillover, whipsawing and one-upsmanship, all of which pose a potential threat to the equilibrium of the City's bargaining relationships and, ultimately, to the stability of the City's budget.

Although the City argued forcefully and at length for the need to preserve and protect pattern settlements, the core issue presented here is somewhat more complicated than a simple dispute over the City's insistence on the application of a pattern of settlement as opposed to a Union demand that a pattern be modified or broken. As previously indicated, the Union does not dispute the applicability of pattern bargaining, but contends that the City wrongfully seeks to apply a settlement to these employees that varies from the pattern applied to the bargaining unit to which these employees have been accreted as well as that contained in the MCA. The City concedes that the settlement it made with District Council 37 and other Unions, and the conforming offer it made to the OSA, provides for a compensation package that is less generous than the MCA pattern.

The City characterizes its offer to the Union as a "sub-pattern" within the context of the MCA agreement. Essentially, what the City has offered the Union is a settlement that grants the covered employees the same base percentage increases that other recognized employees received but defers the application of the increases, thereby significantly decreasing the value of the adjustments when compared with the MCA. The basic thrust of the City's argument in support of its proposal rests on the fact that District Council 37 and other Unions had previously agreed to settlements for newly recognized titles on the same terms offered to OSA. The City maintains that these prior settlements establish a pattern for newly recognized titles that should not be overturned absent compelling reasons. It argues that in arriving at these settlements with other Unions, the parties recognized that it would unfair to grant newly recognized titles the full value of the MCA while other employees had to "earn" the value of the settlement over 39 months. Moreover, it notes that these agreements were structured to slot newly recognized titles into existing agreements without creating resentment and upsetting established salary relationships among similar categories of employees. Moreover, the City argues that to deviate from these settlements would harm the credibility of District Council 37 in the eyes of its members and would undermine the City's credibility with all of the Unions.

OSA disputes these contentions and insists that the categories of employees at issue in this matter bear a close community of interest with titles within its bargaining unit rather than those represented by District Council 37. It maintains that any settlement recommendation that might deviate from the settlement concluded by District Council 37 would have little bearing on the titles represented by District Council 37.

Moreover, it argues that to deprive these employees of the full value of the underlying OSA agreement would only serve to exacerbate the already existing salary inequities between these employees and those in the underlying bargaining unit. Lastly, OSA attributes a long delay in achieving recognition of the disputed titles to stalling tactics on the part of the City. It argues that the City should not be rewarded for delays it caused in depriving these employees of prompt recognition.

With respect to the delay in granting recognition to the System Analyst categories, the Panel is not fully persuaded that the extraordinary length of time it took for these employees to gain collective bargaining rights can be laid exclusively at the feet of the City. It is not entirely clear why the process of reaching a determination of these employees' eligibility for collective bargaining went on over such a protracted period of time, but it is clear that both parties (the Unions and the City) played at least some part in the delay. Whatever the reason, the crucial point is the Board of Certification did not issue its determination until the latter part of 1994 and only after the two Unions resolved differences as to the appropriate bargaining units. Until late 1994, these employees were not eligible for collective bargaining. Given this history, a justification for granting the Union's wage demands has not been established, in the Panel's opinion, despite the long delays in the affected employees achieving collective bargaining rights.

The issues presented here do not lend themselves to easy answers. Each party to this proceeding has presented cogent and valid arguments in support of their positions.

The Panel's recommendation for settlement of this dispute is based primarily on the fact that two other Unions (District Council 37 and the ADWA) had previously agreed to settlements for newly certified titles that are consistent with the offer made to OSA for its newly certified employees. In both instances collective bargaining recognition came at a time which either fell at the end of the 1992-1995 round of bargaining (for the DC37 titles) or at the beginning of the 1995-2000 round of bargaining (for the Assistant Deputy Wardens). These two groups of employees gained recognition at a time very close to the transition between two major rounds of bargaining. In this context, it is clear that an alternative or transitional pattern evolved in order to provide some measure of equity for both newly certified groups of employees. The settlements for District Council 37 and the ADWA, admittedly not as generous as those granted to other employees, recognized the need to maintain an equitable wage balance between those employees fully covered by the MCA and those employees newly certified. Although OSA seeks to deviate from this alternate or transitional pattern for its newly recognized titles, the Panel believes that the alternate or transitional pattern must be upheld for precisely the same reasons that other Impasse panels have validated the concept of pattern bargaining. A modification of the alternative pattern would interject a measure of instability into the bargaining relationship between the City and other Unions and lead inevitably to whipsawing with a consequential negative impact on the City's budgetary stability. Salary distinctions within the unit not addressed by the alternative pattern, such as the 10 year longevity, can be addressed in the next round of bargaining by the use of equity funds.

With respect to the Union's argument concerning the increases in the cost of living, the Union has not presented any compelling argument that would warrant a deviation from the base percentage increases contained in the City's proposal. Albeit that the other employees covered by the MCA realized wage increases on earlier dates, the base increase proposed by the City match those granted to other employees and, in the Panel's estimation, more than account for the rise in the CPI over the period of the 1992-1995 MCA agreement.

Although the Panel does not find any justification for deviation from the last proposal of the City, the Panel notes that the City recognizes that its last proposal represents an amount that is .0007% less than that of the District Council 37 unit settlement. What this amount represents in dollar cost is not entirely clear. However, the Panel believes this amount will be able to fund a non-recurring one-time $25.00 contribution to the Union's education fund on behalf of each covered employee and still remain within the cost framework of the applicable pattern.

RECOMMENDATIONS

Pursuant to the discussion herein, the Panel makes the following recommendations for settlement of this dispute:

1. A wage increase of 7.16% retroactive to July 1, 1995.
2. A 15 year longevity payment of $700.00 retroactive to July 1, 1995.
3. A $700.00 advancement increase.
4. Coverage of the newly certified titles under the annual leave accrual schedule provided in the 1992-1995 OSA agreement and grandfathering in of incumbent Systems Analysts at the annual leave schedule applicable to group 11 employees.

5. A one time non-recurring $25.00 contribution to the Union's education fund effective July 1, 1995.

Dated: September 18, 1997
New York, NY

Alan R. Viani, Impasse Panel

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

Sworn and subscribed before me
this 18th day of September, 1997.

Notary Public

Wendy E. Patitucci
Notary Public State of N.Y.
Qualified in New York County
No. 31-4954224
Commission Exp August 7 19 99