

OFFICE OF COLLECTIVE BARGAINING

In the Matter of the Impasse

- between -

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
o/b/o LOCAL 768,

-and -

SUPPLEMENTAL
REPORT AND
RECOMMENDATIONS

Case No. I-255-08
(Creative Arts Therapist)

THE CITY of NEW YORK and the NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION,

Before: Gayle A. Gavin, Chair, Impasse Panel
Mary L. Crangle, Member
Richard C. Gwin, Member

Appearances:

For the Union:

Jesse Gribben, Esq., Assistant General Counsel

For the City:

Victor Levy, Esq., Deputy General Counsel

Simon V. Kapochunas, Esq., Assistant General Counsel

Jeff J. Smodish, Esq., Assistant General Counsel

The above Impasse Panel was designated pursuant to the New York City Collective Bargaining Law (“NYCCBL”), and Office of Collective Bargaining (“OCB”) Rules, to hear and make a report and recommendations in a dispute between District Council 37, AFSCME, AFL-CIO, o/b/o Local 768 (“Union” or “DC 37”) and the City of New York and the New York City Health and Hospitals Corporation (“HHC”). Thereafter, in late March, 2011, the Impasse Panel issued its Report (“Report”) recommending that “Employees holding the Creative Arts Therapist position shall

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receive the annual 15-year City-service Longevity Increment as provided in Article III, Section 10 of the collective bargaining agreement between District 37 and HHC. Payments shall be retroactive to 2007, as applicable”.

On April 22, 2011, District 37 appealed this Impasse Report and Recommendation. By Decision dated June 1, 2011, the Office of Collective Bargaining, Board of Collective Bargaining (“Board”) issued a written decision on the Union’s appeal. See *DC 37, 4 OCB 29 (BCB 2011)*. In this decision, the Board remanded the Report to the Panel “for a further explanation of its conclusion that ATGs (other than the agreed-upon 15–year Service Longevity Increment) would not be awarded”, and affirmed the remainder of the Report. The following constitutes the Panel’s Supplemental Report in Case No. I-255-08 and shall be part of the original Report and Recommendation transmitted March 24, 2011.

As discussed more fully in our Report and Recommendations previously issued in this matter, this dispute was submitted to the Impasse Panel because the parties could not reach agreement on which, if any, longevity differentials and/or recurring increment payments, referred to by the parties as additions-to-gross (“ATGs”) should be extended to employees holding the title of Creative Arts Therapist. The Creative Arts Therapist title was established by HHC in June, 2006, and the title was accreted to the existing bargaining unit represented by District 37 in December, 2006. The titles of Rehabilitation Counselor and Activity Therapist were already included in that bargaining unit at that time. The collective bargaining agreement (“Agreement”) then in effect, in Article III, Section 10, provided for a longevity increment of \$800 per annum for employees with 15 years or more of “City” service in pay status (except those eligible for a longevity

differential pursuant to Section 12). Section 12 of Article III includes a number of different longevity schedules for various titles, including a longevity schedule for “Therapists and Related Titles” which includes Rehabilitation Counselor and Senior Rehabilitation Counselor, and a different longevity schedule for “Recreation and Puppetry Titles” which includes Activity Therapist. Section 18 of Article III provides for a recurring increment payment (“RIP”) for full-time employees covered by the Agreement.

We now address the Board’s remand directing this Panel to more fully explain the rationale and basis for our conclusion that ATGs (other than the agreed –upon 15- year Service Longevity Increment) would not be awarded.

At the outset, the Panel wishes to note that while it carefully considered each party’s respective position as to whether the Union must fund additions to gross for newly accreted titles, we proceeded to evaluate this case on its merits, with a clear recognition that each case is fact specific. It is for the Panel to exercise its authority to accept or reject the positions of the parties and, independently, to assess record evidence while applying the statutory criteria. In making its determination, the Panel undertook a detailed analysis of the record, applying the relevant statutory criteria as set forth in Section 12-311(c) (3)(b) of the New York City Collective Bargaining Law before arriving at its findings and conclusions in this matter.

Section 12-311 (c) (3)(b) states, in pertinent part:

an Impasse panel:

... shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

- (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;
- (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 of 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.

On the record in its entirety, and after applying the relevant statutory criteria, this Panel concluded that we would not recommend that the ATGs sought by the Union be awarded.


First of all, we carefully considered the Union's position that CATs were automatically entitled to receive the ATGs at issue, i.e. the recurring increment payment, and the longevity differential attributable to Rehabilitation Counselors, but rejected it. We found that the CAT title was not a successor to the unit titles who were receiving those benefits under the Agreement. Furthermore, we found that the CAT title was not automatically entitled to recurring increment payments, notwithstanding the language of the parties' Agreement, because it was a newly accreted title. We note that our findings and conclusions in this regard were upheld by the Board.

Having found an insufficient basis to automatically extend the sought after ATGs, i.e., the contractual longevity differential and recurring increment payment, to the CAT title, this Panel then considered the Union's position in light of the criteria mandated by the New York City Collective Bargaining Law.. The Panel compared the wages, benefits, and overall compensation of the CATS to other unit titles, and considered their common and distinctive characteristics of employment. Based on the evidence before us, and weighing the equities, we could find no basis to award the additional compensation sought.

The Panel concluded that there was no basis to award the longevity differential applicable to the Rehabilitation Counselor title series, as sought by the Union, when a substantial number of CATs had never held that title. Furthermore, the parties' Agreement recognizes that not all unit employees will receive a longevity differential based on a particular title since there is specific language in Article II, Section 10, granting the 15 year City service longevity only to those unit employees who are not eligible for longevity pursuant to the schedules set forth in Article III, Section 12. In comparing the salaries of the CATs to those of the Rehabilitation Counselors as well as the Activity Therapists, the fact that the minimum-maximum salary schedule applicable to CATS is much higher than the salary schedule applicable to either the Rehabilitation Counselor title series or that of the Activity Therapist title series resonated strongly with the Panel. Therefore, after considering all these factors, the Panel concluded that the CAT salary structure when combined with the 15 year City service longevity payment constituted reasonable, comparable, compensation for employees in that title, recognizing the duties and responsibilities of the position in comparison to those of other similarly

situated unit titles. After considering both the equities and the cost of funding such benefits, the Panel concluded that to award CATS the Rehabilitation Counselor longevity and/or the recurring increment payment benefit of the Agreement in light of the higher CAT salary schedule would be unwarranted at this time. Moreover, to do so would not be in the best interest and welfare of the public. While the Panel is mindful that CATS do not receive the same recurring increment payments as other unit employees, we find that their overall compensation continues to compare favorably with other similarly situated employees. Based on these considerations, the Panel reached its conclusion not to award the ATGS sought by the Union (other than the agreed-upon 15-year City service longevity increment).

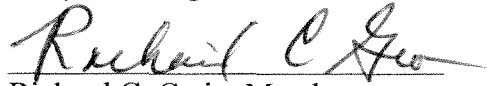
Impasse Panel



Gayle A. Gavin, Chair




Mary L. Crangle, Member



Richard C. Gwin, Member

Dated: *Sept. 19, 2011*

We, the undersigned, do hereby each affirm that we are the individual who executed this Report and Recommendations.



Gayle A. Gavin, Chair

Mary L. Crangle

Mary L. Crangle, Member

Richard C. Gwin

Richard C. Gwin, Member

Dated: Sept. 19, 2011