

BACKGROUND

The Office of Collective Bargaining ("OCB") certified the Union to represent Administrative Managers ("AMs") (now numbering approximately one thousand (1000)), employed by the City of the New York and the New York City Housing Authority on April 8, 2009. After engaging in collective negotiations, the parties were at impasse with regard to one (1) issue, the appropriate minimum and maximum for the title. Pursuant to Section 12 of the New York City Collective Bargaining Law and the Rules of the OCB, I was appointed as the Impasse Panel to render a written report with findings of facts and conclusions for terms of settlement.

A hearing was held on April 13, 2016, at the Offices of the New York City Office of Labor Relations at 40 Rector Street, New York, New York. At that time, the parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Following this proceeding, the parties, as requested, submitted additional documentary evidence. Upon my receipt of same, I declared the record closed.

DISCUSSION AND FINDINGS

The Issues:

The incumbent minimum and maximum salary rates for the AM title in light of the fact that the minimum and maximum salary rates were not mutually agreed to by the parties in the bargaining process for their initial inclusion in this Agreement. The new hire rate for

this title shall also be determined using the same formula¹ the parties have used in the past as has been the parties' Agreement (Exhibit A, March 30, 2015 letter from the OCB).

Statutory Criteria

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

- (i) **Comparison of 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.**
- (ii) **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;**
- (iii) **Changes in the average consumer prices for goods and services, commonly known as cost of living;**
- (iv) **The interest and welfare of the public**
- (v) **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 proceedings.**

New York City Collective Bargaining Law Section 12-311(c)(3)(b).

¹ The parties have agreed that whatever the minimum salary I recommend the new hire rate for employees not previously employed by the City shall be fifteen (15%) percent lower than such salary.

Positions of the Parties

The Union argues application of the statutory criteria requires a minimum salary for AM-1 of eighty five thousand twenty four dollars (\$85,024.00) and AM-2 of eighty nine thousand seven hundred ninety one dollars (\$89,791.00) effective April 8, 2009. Including the collectively bargained increases would bring these amounts to ninety one thousand one hundred thirty seven dollars (\$91,137.00) and ninety six thousand two hundred forty seven dollars (\$96,247.00), respectively, by April 6, 2016. The Union raises several arguments in support of its position.

It asserts the long suppressed minimum of this title and the City imposed delays on representation justify the result it seeks in this proceeding. OCB certified the Union to represent AMs, on April 8, 2009, following a decades' long fight for equal pay and treatment, according to the Union. Prior to 1954, the AM duties were performed by a Clerk Grade 5 title, the highest title in the Clerical Group. The Union asserts the title was used to fill agency and division Chief Clerk positions as well as other high level positions such as Assistant Commissioner, Director of Procurement and Director of Personnel.

In 1954, the City divided the Clerk Grade 5 title into several promotional titles with AMs at the top. The new titles below AM were Administrative Assistant, Administrative Associate and Senior Administrative Manager. The Union insists after collective bargaining

was established in New York City in 1965, the City recognized the Union as representatives of all these titles, except AMs. AMs were placed into the Managerial Pay Plan. Although AMs continued to seek the right to representation in the 1970s, OCB classified these positions as managerial and determined they were not eligible for representation, according to the Union. (Union Exhibit D).

The Union stresses in addition to lack of representation, these titles were also treated unfairly by the City when it refused to hire permanent employees. When eventually ordered to do so, the Union claims the City merely reclassified the position to allow it to continue to hire employees on a provisional basis. According to the Union, in 1986 a New York State Court ordered the City to end this practice and conduct AM examinations, appoint qualified candidates from lists and terminate provisional appointments, ending the City's practice of recycling provisional appointments. (Union Exhibit F).

The Union notes during this time, the City "suppressed" the minimum salary for AMs. Thus, the salary did not keep pace with collective bargaining increases, other managerial increases or the cost of living. This resulted in a situation where some of the promotional titles to the AM position, (now referred to as Principal Administrative Associates ("PAA"), Levels I-III), made more than the AM position they were being promoted to, asserts the Union.

By the time the City implemented the 1986 Court decision requiring it to hire permanent employees in the AM titles, the minimum PAA III title was thirty thousand three hundred twenty one dollars (\$30,321.00) whereas the AM-1 minimum was twenty seven thousand seven hundred thirty four dollars (\$27,734.00), two thousand five hundred dollars (\$2,500.00) less, claims the Union. (Union Exhibits C, M). As a result, applicants would only receive the one thousand dollar (\$1,000.00) promotional minimum required by the Agreement. The Union asserts this was unjust. However, making matter worse, the Union urges, this suppressed minimum affected an unprecedented number of women and minority candidates who qualified for appointment. The Union maintains the application process following the Court decision requiring the City to hire permanent employees resulted in the largest number of women and minorities in the City's history to qualify for a management position. Yet, they were woefully underpaid because of the suppressed minimum.

In 1994, the Union filed a petition to represent the AMs. It asserts OCB held thirty eight (38) days of hearings where over three hundred (300) City employees testified. Due to scheduling back logs and delays caused by the City, OCB did not certify the Union to represent the AMs until April 8, 2009. Notwithstanding the fact an unprecedented number of women and minorities were grossly underpaid as compared to their Caucasian, male counterparts, the City continued to

delay bargaining, insists the Union. OCB granted the Union's Improper Practice Petition finding the City had breached its duty to bargain in good faith, while dismissing the City's Improper Practice charge against the Union. (Union Exhibits H, I).

Between November 27, 2013, and December 30, 2014, the parties were unsuccessful in negotiating the AM minimum/maximum dispute. Therefore, the Union filed a Request for Appointment of Impasse Panel, resulting in OCB declaring Impasse requiring the present proceeding. (Union Exhibit A).

In the meantime, the Union claims, as a result of the suppressed minimum and the changing demographics of the AM title, the Equal Employment Opportunity Commission ("EEOC") issued a Determination finding probable cause the City did discriminate with respect to gender and race and proposed an AM minimum of ninety two thousand one hundred seventeen dollars (\$92,117.00). (Union Exhibits K, R). The City refused the EEOC's offer of conciliation and the matters are still pending. The Union argues the race and gender discrimination and salary recommendation of the EEOC further supports its position.

The Union asserts each of the statutory criteria cited above demand adoption of its proposed minimum salary of eighty five thousand twenty four dollars (\$85,024.00) (as of April 8, 2009) in addition to collectively bargained increases which would bring this amount to ninety one thousand one hundred thirty seven dollars (\$91,137.00) by

April 6, 2016. The Union points to the overall compensation levels of AMs as well as comparisons to other similarly situated employees in the public and private sector. The Union's minimums track precisely what the AM minimum would be if the title had received the same collective bargaining increases the PAA title received since 1978. The Union further asserts its proposal is reasonable as it is far less than what the salary would be if the minimum had kept pace with the maximum. This would have increased the 2009 minimum to one hundred eight thousand nine hundred fifty eight dollars (\$108,958.00).

The Union insists an examination of comparable jobs also compels adoption of its proposal. The salary of the comparable New York State title of Senior Administrative Assistant Grade 23 is eighty five thousand six hundred thirty five dollars (\$85,635.00). Another comparable title, Administrative Services Manager, which is utilized in the private sector in New York City, earns eighty five thousand five hundred seventy three (\$85,573.00). (Union Exhibit P).

The Union further asserts the history of this struggle itself supports its position under the statutory criteria. The Union and association advocating for AMs pre-union certification have been challenging the inequality faced by AMs for over thirty (30) years. During this time, other titles, including the PAA titles that promote into AM, have received collective bargaining increases as well as assignment and experience differentials. The Union argues

notwithstanding the tremendous hurdles these AMs have to face and the broad scope of judgement and independent decision-making required of them, AMs still face the suppressed minimum. According to the Union, this is not in the public interest as it promotes poor morale and negative public opinion.

The Union also points to the cost of living in the New York City area as further support of its position, here. According to the Union, the Massachusetts Institute of Technology reports that in New York City the bare minimum living wage for a family of one (1) adult and one (1) child is fifty seven thousand eighty three dollars (\$57,083.00), almost four thousand dollars (\$4,000.00) higher than the AM starting salary of fifty three thousand three hundred seventy three dollars (\$53,373.00) (Union Exhibit S).

Finally, the Union contends the City has the ability to pay its proposal. It points to the New York City Independent Budget Office in support of this view which reported "Based on IBOs economic and tax revenue forecast our re-estimate of spending under the Mayor's 2017 preliminary budget and financial plan, New York City's fiscal outlook looks reasonably strong". (Union Exhibit T). The Union also cites the analysis conducted by Policy Research Group that finds the City had a budget surplus for FY 2015 of \$1.6 billion and over \$2 billion in reserves. In addition, it asserts the Mayor's preliminary financial plan projected a deficit lower than in twenty (20) years with \$1

billion more than predicted revenue in FY 2015; and expense and debt service savings of \$329 million in FY 2015 and \$143 million in FY 2016. (Union Exhibit U).

In all, the Union argues the statutory criteria compel adoption of its proposed minimum.

The City, on the other hand, insists it is already paying the appropriate salary for AM titles and urges I award no further increases above the previously agreed collective bargaining increases - certainly not the sixty (60%) percent increase it asserts the Union seeks. In particular, the City stresses the Union's position amounts to an unwarranted across-the-board increase above those collectively negotiated without regard to the substantial differences in duties and responsibilities of incumbent AMs.

The City asserts there are several flaws in the Union's position. As of January 31, 2015, there were over nine hundred sixty (960) incumbents in the AM represented titles. Of these, eight hundred seventy (870) were hired after Union certification. As a result, the City insists, these eight hundred seventy (870) AMs cannot possibly complain about mistreatment under the managerial pay plan because they never worked under it. These employees understood the pay situation with the title they were joining and received significant increases from the job they exited, insists the City.

The City further argues of the eight hundred sixty (870) newly hired AMs, approximately forty (40%) percent earn under sixty thousand dollars (\$60,000.00) and, thus, would receive the largest raises under the Union's proposed minimum. However, the City urges they do not perform supervisory or managerial duties, making such a large increase particularly unwarranted. In fact, the City notes, over fifty (50%) percent of the eight hundred seventy (870) new employees have no supervisory duties at all.

As for the ninety (90) employees hired before certification, the City asserts all received raises when becoming AMs. For the most part, they make significantly above the minimum, according to the City. The average salary of these ninety (90) AMs is eighty thousand eight hundred thirty one dollars (\$80,831.00), well above the minimum. The City asserts there is not a scintilla of evidence any of the nine hundred sixty (960) AMs are underpaid.

The City also insists there is no compression issue in reality. While it is true the PAA level III minimum is higher than the AM minimum, in reality the PAAs who became AMs received significant raises. Eighty (80%) percent of the employees earning the AM minimum came from PAA 1. On average, these employees received a twelve (12%) percent raise from their PAA I salary when promoted, which was eight (8%) percent higher on average than the AM minimum. Even PAA II's and PAA III's promoted to AM received an average raise of seven (7%)

percent. The City points to several individual examples to challenge the Union's position. For example, an Executive Assistant who received a sixteen (16%) percent raise when promoted to AM on March 7, 2011, would receive an additional sixty five (65%) percent raise if the Union's proposal is adopted, notes the City. Thirty (30%) percent of the AMs were promoted from non-PAA titles and have been in the title on average three (3) years. These employees are currently making twenty three (23%) percent more than they were earning just three (3) years ago.

The City argues the nine hundred sixty (960) AMs perform a wide-range of duties making an across-the-board increase unjustified. Some AMs perform duties with little or no supervisory responsibilities, others have major supervisory and management duties. For example, the titles cover timekeepers, contract reviewers and budget analyst, as well as DEP Director of Workforce Training and Planning, HRA Deputy Regional Managers and Budget Director. Compensation varies among these positions because their duties vary widely, according to the City. In addition, most of them are relatively new employees. The City urges both of these factors underscore the inappropriateness of awarding massive increases.

While the City urges there is no real compression issue, it insists the Union's proposal would create one as well as other inequities among titles. The City asserts numerous situations where

supervisors would make the same as their subordinates if the Union's proposal was adopted.

The City also argues the Union's proposal would also have additional repercussions throughout the City. The increases would result in many non-supervisory employees, such as time keepers or administrative assistants with only high school diplomas, making more than a fourth year police Sergeant or a Staff Nurse with a Masters' Degree; or a receptionist and payroll director at OATH making the same salary. The Union's proposal would create demands for additional increases from these other titles and provide a windfall to employees who are already well paid, according to the City.

The City insists applying the collective bargaining increases only, as it urges, is the only way to maintain the balance in compensation based on the wide range of duties and years of service. It argues the Union's proposed minimum would disrupt it. It would give ninety (90%) percent of the employees raises with a majority receiving tens of thousands of dollars in increases regardless of their duties or responsibilities, according to the City.

The City also claims no delay attributable to it has been proven or is relevant to this proceeding. According to the City, the Union did not seek bargaining for three (3) years after certification. When the parties did bargain, the Union insisted on a minimum salary of one hundred eight thousand nine hundred fifty eight dollars (\$108,958.00),

a one hundred four (104%) percent increase. The Union asserted that it would use all impasse tools at its disposal, mediation and then interest arbitration, to achieve its objective. As a result, the City asserts it cannot be held to blame for the length of time it has taken to reach this proceeding.

Likewise, the City argues the gender and race discrimination case before the EEOC is not relevant to this proceeding. First, the EEOC finding of probable cause was based upon an adverse inference it made as a result of the City declining to continue to provide responses to the EEOC's information requests. It was not, therefore, a determination on the merits, notes the City.

Second, the City asserts the EEOC completely ignored the relevant differences with the AM title, because it is using a statistical analysis that groups all the employees together. However, as indicated above, the City asserts there is wide variation in duties and responsibilities including a mix of front line employees, supervisors and managers. The EEOC's finding of probable cause is thus fatally flawed.

Third, the City asserts the EEOC matter is irrelevant to this proceeding. The Union has chosen to pursue those claims in Federal Court, urges the City.

Moreover, the City stresses the fact the titles received lower wage increases pre-unionization is irrelevant unless the duties of the

position changed, which they have not according to the City. The City cites several other former managerial titles that received no increases upon union certification, which it asserts supports its argument no additional raises are justified, here.

These titles, the City insists, received no increases beyond the pattern when certified are: (1) Administrative Test and Measurement Specialist, (2) Coordinating Manager (DOHMH), (3) Coordinating Manager (HHC); (4) Creative Arts Therapist, (5) Deputy Warden Level 2, (6) EMS Deputy Chief/EMS Division Commander, (7) General Superintendent, Levels II and III (DSNY); (8) NYCAPS Process Analyst, (9) Senior Management Consultant, (10) Senior Planning Scheduling Analyst, (11) Supervising Superintendent of Maintenance, (12) Supervising Systems Analyst, (13) Systems Project Leader. The City asserts one (1) exception, the Administrative Job Opportunity Specialist which received an increase post-certification, is inapposite to the present case. The City insists there a majority of the employees supervised other employees whereas in this case, a majority do not. It contends there is no historical precedent for the relief sought by the Union.

On the contrary, the City argues it is the Union's proposal that violates precedent and could establish a future poor precedent. The City asserts the raises demanded by the Union would cost over \$30 million dollars or an average of thirty six thousand seven hundred thirty seven dollars (\$36,737.00) per AM, an unreasonable sum. It urges

this would disrupt other collective bargaining relationships by causing other previously managerial titles to demand increases. It would also increase the expectations of future managerial titles receiving union certification. This is particularly true, notes the City, because the Union's argument rests on an attack on the Managerial Pay Plan itself, thereby having wide implications.

The City further alleges arbitration precedent for the proposition changes in the pattern, for even small units, can have ripple effects with financial impact. The City argues OCB has routinely held there is no guarantee a newly recognized unit is entitled to above pattern wage increases. Here, according to the City, the primary factors justifying further wage increase are absent.

As a result, the City urges that no adjustment be made to the minimum and maximum.

Findings and Conclusions

The issue presented is whether the minimum and maximum salary for the AM title should be adjusted in addition to receiving the collectively bargained increases. My authority to answer this question is derived from Section 12-311 of the New York City Collective Bargaining Law (quoted above), which sets forth the criteria I must apply in rendering a just and reasonable determination. Accordingly, and based solely upon these criteria, as well as the entire record

evidence and argument in this matter, I make the following findings and conclusions.

I am persuaded by the Union some upward adjustment in the minimum is warranted. The minimum for the AM title as of the date of Union certification, April 8, 2009, was fifty three thousand three hundred seventy-three dollars (\$53,373.00). As a result of collective bargaining increases, the minimum increases to fifty eight thousand nine hundred twenty nine dollars (\$58,929.00), as of April 6, 2017, the date of the last increase previously collectively bargained by the City and the Union.

I am persuaded by the Union there is inequity as a result of this low minimum salary. The Union presented a compelling case this salary creates a compression problem. In some cases, the AM minimum is less than the maximum of the title that promotes into it. In addition, I am persuaded by the Union a comparison of this minimum to other wages in the private and public sector (e.g., Administrative Services Manager) demonstrate AMs make significantly less. The Union has also demonstrated the cost-of-living statutory criterion requires some adjustment of the salary, as this salary has not kept pace with area cost-of-living. These are all strong factors favoring upward adjustment of the minimum.

While the statutory criteria require some adjustment to the minimum, it does not justify the magnitude of increase urged by the

Union. I agree with the City the compression issue does not affect a majority of the AMs, who did receive substantial raises when promoted. I also agree with the City the size of the Union's demanded increase would create an unjust windfall for many employees already fairly compensated. It would also result in situations where some AMs would make as much as their supervisors, or more than other managerial titles in the City, triggering additional requests for adjustments. While these are arguments to minimize the increase, they do not persuade me an increase is unwarranted.² A reasonable adjustment would increase the minimum for those at or close to the minimum without creating a windfall to those who received substantial raises when promoted.

I find based on the statutory criteria, and the record evidence, the minimum AM salary should be increased by five thousand dollars (\$5,000.00). This brings the salary of the AM minimum to sixty three thousand nine hundred twenty nine dollars (\$63,929.00), on April 6, 2017 (following application of the last collectively bargained increase). I find this amount addresses the inequity and compression problems raised by the Union without triggering the new ones the City identifies. Moreover, the amount selected only affects the employees whose salary is at the bottom end of the range. This addresses the need for competitive salaries with comparable positions without

² I also agree with the City the Union's race and gender discrimination matter is not before me. Therefore, my Opinion is reached without addressing those issues in any way.

providing a windfall to employees who received substantial increases above the minimum when hired.

The next question is the effective date of this increase. The Union urges that any increase be entirely retroactive to April 8, 2009, the date the Union was certified. The City urges the remedy be prospective, so as not to provide retroactive raises inconsistent with the City-wide pattern. I find based upon the record evidence in this case the adjustment should be prospective in nature. The appropriate date for the adjustment is April 6, 2017, following application of the final collectively bargained wage increase.

Notwithstanding the prospective nature of this remedy, I find based upon the statutory criteria that although full retroactivity in rate would be inequitable so, too, would eliminating any retroactive payment. Therefore, I also determine the City pay a total amount of one million dollars (\$1,000,000.00) divided amongst the AMs based upon their years of service at or below the minimum to compensate them for the prospective nature of the recommended remedy. In order to address the potential current or former AMs are inadvertently left out of the pool of eligible employees, I will set aside fifty thousand dollars (\$50,000.00) from the one million dollar (\$1,000,000.00) pool. Employees who do not receive but believe they are entitled to share in the retroactive payment awarded herein will have a period of six (6) months from the date of this ruling to make a claim. In the event the

full fifty thousand dollars (\$50,000.00) is not spent, I will determine how the remaining amount shall be disbursed in a future ruling.

The parties made various arguments about who should be eligible to receive the retroactive payment. I have fully evaluated their respective positions and they were critical to my determination. I find only employees currently in the AM title, or who have retired from City service from this title should be entitled to share in this amount. Former AMs who are in other titles in the City as of the date of this ruling are not eligible. This provides more of the total amount to be divided by those who are currently in the title, which I find takes precedence over those who have moved into different titles with different pay plans.

In addition, I find those that have been permanently assigned are entitled to share in a larger portion of the amount than provisional employees. Therefore, the nine hundred and fifty thousand dollar (\$950,000.00) amount awarded shall be divided into two (2) pools. The first pool shall consist of three hundred thirty-two thousand five hundred dollars (\$332,500.00) and shall be divided among all AMs at or below the minimum. The second pool shall consist of six hundred seventeen thousand and five hundred dollars (\$617,500.00) and shall be divided amongst only those AMs who were permanent at the time they earned at or below the minimum. As stated above, these amounts shall be apportioned based upon the employees' years of service at or below

the minimum and only employees currently in the AM title, or who retired from City service, shall be eligible to participate in either pool. Application of these criteria results in the payments for each eligible AM set forth in Attachment A, attached, hereto.


I now turn to the issue of the AM maximum salary and the AM-2s. The record evidence does not support a conclusion the AM maximum salary is unjustified. As a result, I recommend no additional adjustment be made to the AM maximum other than the collectively bargained increases. Likewise, the record evidence does not indicate AM-2s are in use currently. As a result, I make no determination with regard to AM-2s.

Finally, I recommend the parties meet and confer to discuss establishing a career ladder for AMs. As of April 6, 2017, the minimum salary will be sixty three thousand nine hundred twenty nine dollars (\$63,929.00) and the maximum one hundred fifty thousand three hundred seventy one dollars (\$150,371.00). The City retains wide discretion to determine the starting salary within this range. This discretion can be maintained while at the same time providing a predictable path for employees to advance in their careers. I recommend the parties meet to attempt to create such a system, forthwith.

CONCLUSIONS

1. The AM-1 minimum salary shall be increased by five thousand dollars (\$5,000.00) as of April 6, 2017, following application of the collectively bargained increase.
2. The total AM-1 Minimum Salary following the adjustment recommended in Paragraph 1, above, and the collectively bargained increases shall be sixty three thousand nine hundred twenty nine dollars (\$63,929.00).
3. The City shall pay the additional amounts to each employee as set forth on Attachment A.

July 18, 2016.

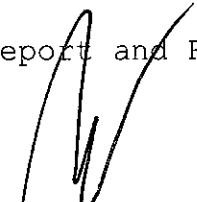


Martin F. Scheinman, Esq.
Arbitrator

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

I, MARTIN F. SCHEINMAN, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Report and Recommendation.

July 18, 2016.



Martin F. Scheinman, Esq.
Arbitrator