

**The following is a letter from our attorney Harry Greenberg that further explains what has happened at our bargaining sessions and the need to file for impasse. - Pete**

April 17, 2006

Susan Panepento  
Deputy Chairperson  
Office of Collective Bargaining  
City of New York  
40 Rector Street, 7<sup>th</sup> floor  
New York, New York 10006

**Re: CCA Request For Appointment of Impasse Panel  
OCB No. I-247-06**

Dear Ms. Panepento:

I am in receipt of the City's letter, dated April 6, 2006, in which it stated objections to the above-referenced Request for Appointment of Impasse Panel. The purpose of this letter is to clarify several facts and to provide the most accurate information.

The City states, as an initial matter, that although the parties' collective bargaining agreement expired on May 31, 2003, the CCA did not begin to request a bargaining session until "almost two and a half years later." The City fails to mention that for a substantial portion of the period between May 31, 2003, and October 2005, it was engaged in back-to-back impasse proceedings with the United Federation of Teachers ("UFT") and the Police Benevolent Association. It was obvious to those in the New York City labor relations community that the City was devoting tremendous resources to those impasse hearings and that bargaining with a union the size of the CCA was not a priority at that time. Like many of the other City unions, the CCA patiently waited its turn. Furthermore, the CCA has never refused to attend negotiation session(s) with the City and bargain in good faith at any time.

When the CCA's turn finally arrived, it began negotiations with the intent on reaching a successor contract. However, it became clear session after session that the City was not moving with the usual speed the CCA has experienced in the past to resolve bargaining issues. The CCA began to believe the City was employing delay tactics. The City states that the first bargaining session was held on October 17, 2005. When added to the list of five bargaining sessions indicated in the CCA's Request for Appointment of Impasse Panel, there have been no less than

six bargaining sessions. Except for the initial bargaining session, the City set time limitations for each successive session and consistently stated that it would have to get back to the CCA with information. In some cases, the City took a month to respond, but even in those instances, the City's bargaining representatives failed to engage in more substantive discussions. The CCA can only suppose that the City was either unprepared or unwilling to engage in more substantive bargaining. To add insult to injury, even at the February 6, 2006, technical session, the City did not take the time to cost out various options that would have resulted in the parties getting closer to an agreement.

During at least the last three bargaining sessions, the CCA expressly offered that its members work extra minutes each tour as a means of achieving sufficient credit to result in two 5% raises in the first two years of a contract. This extra minutes proposal was the same or substantially similar to those agreed to by the City in agreements reached with the Doctors Council, the UFT, and the Detectives Endowment Association ("DEA"). The City refused to consider this proposal at the February 6<sup>th</sup> bargaining session.

At each of the three 2006 bargaining sessions, the CCA asked the City to consider other ways to fund the necessary credit to obtain the two 5% wage increases other than the institution of an overtime bank and/or modification of safety rules concerning staffing of posts. The CCA informed the City that proposals related to an overtime bank or modification of such safety rules would be rejected by the CCA membership and that placing a tentative contract before the membership which it would not ratify would be futile. The CCA also stated, in each of the bargaining sessions, its position that any further salary schedule modification (other than the modification made in the 1990s that helped fund an enhanced pension benefit) would be detrimental to the career path of a Department of Correction employee and that the amount of savings any such modification would create was too small.

At the last bargaining session, held on March 16, 2006, the City finally offered *de minimis* credit for additional minutes per tour. It was and continues to be the CCA's position that such credit is not commensurate with the credit received by the Doctors Council, UFT, and DEA. Furthermore, the information provided by the City, like all other information provided in previous sessions, was presented as tentative or draft and not a formal offer. In fact, no formal offer from the City has been received by the CCA to date.

It is significant to note that even if the CCA was to agree with each and every item presented on the City's draft savings sheet, it would not add up to the amount of credit necessary to reach a contract consistent with the other uniformed unions covering the first two years. In other words, even if the CCA were to agree to everything the City might potentially want, no deal would be reached. And the City was uninterested in any of the savings proposals presented by the CCA.

Like in all previous bargaining sessions, the City was still unprepared at the March 16<sup>th</sup> session to explain their proposals in great detail. And again the City stated that it had to get back to the CCA with updated costings. At least based on discussions that occurred on February 6, 2006, the City knew or should have known that the costings relied upon by the CCA were effective January 1, 2006, and needed updating. The City was not prepared with updated costings at the March 16, 2006, session.

The City's April 6<sup>th</sup> letter states that the City had requested to reschedule the March 16<sup>th</sup> meeting "as a key departmental person was unavailable." Please be informed that the March 16<sup>th</sup> bargaining session was offered and scheduled by the City well before the date itself. Inquiries as to why the "key departmental person" was unavailable may lead to the explanation that a retirement party was being held at the same time. If in fact the "key departmental person" attended the retirement party instead of the bargaining session when such was scheduled well in advance, it naturally begs the question as to how serious the City and the Department is to bargain or how serious the City and the Department were bargaining with a realistic goal of achieving a contract. When Meringolo became unavailable for the March 16<sup>th</sup> bargaining session, the CCA did not request the session be rescheduled.

The City asserts that the CCA "presented their written proposals for the first time at the parties' bargaining session on March 16, 2006." What the City fails to mention is that many of the CCA's proposals were presented verbally and discussed across the table in great detail. Proposals 1, 2, 8 and 11 were even discussed during more than one bargaining session. Further, when the City asked how the CCA was going to fund its own proposals, the CCA explained its proposal as to the funding mechanism.

#### An Impasse Panel Must be Appointed:

If the City and the CCA are ever truly going to reach a successor collective bargaining agreement, the CCA's request for appointment of impasse panel must be granted. After a preliminary negotiation session, the parties met on five other occasions, which includes a technical meeting. Only draft proposals continued to be presented by the City throughout all the sessions. The CCA verbally presented its proposals on multiple occasions during several negotiation sessions, described each in great detail, and even discussed its proposal to create savings and productivity. The City rejected all CCA proposals and made no movement on any of its draft proposals. Even at its last bargaining session, held on March 16, 2006, it was clear that the parties were "running in circles." And, as previously mentioned, even if the CCA agreed to every one of the draft proposals presented by the City, no agreement could be reached.

I would be remiss if I did not address the City's allegation that the CCA acted in bad faith and that the parties are not at impasse. If any party is guilty of failing to actively participate in deliberations so as to indicate an intent to find a basis for agreement, it is the City. It is well-settled that "an employer is obliged to make some reasonable effort in some direction to compose his differences with the union' if the statutory bargaining obligation is to have any significance at all." Deposit Central School District, 27 PERB ¶ 3020 (1994). While the CCA does not necessarily believe that the City has made the reasonable effort required, it believes that to delay bargaining the way the City has time and again done is not in the best interest of either party in their quest to achieve a contract.

The City states that it had insufficient time to review the CCA's written proposals, that they have never specifically rejected them, and were still in the process of analyzing the proposals. The CCA's written proposals are no different than the proposals presented verbally and the proposals discussed throughout the course of all bargaining sessions. The fact that the City has chosen not to officially reject the CCA's proposal is meaningless when their words and actions have

communicated a message that it is uninterested in pursuing any of the proposals. Finally, it appears that the City has been in the process of analyzing the proposals and “updating” costings since late October 2005. The City is simply unwilling to accept the CCA’s proposals and the parties have reached a point where further bargaining would prove meaningless. The City’s actions demonstrate that the parties are at impasse. See, Board of Education of the City School District of the City of New York, 34 PERB ¶ 3016 (2001) (where an impasse was found to exist after the parties met several times over the space of seven months and were unable to reach agreement).

For the reasons stated above and in the CCA’s Request for an Appointment of Impasse Panel, the CCA requests that negotiations be declared at impasse. The CCA would welcome the next step of the impasse proceedings, mediation, which the CCA hopes will begin as soon as possible and will result in a voluntary agreement.

Should you have any questions or need anything further, please do not hesitate to call.

Very truly yours,

Harry Greenberg

cc: Deborah Gaines - Office of Labor Relations