



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

GENERAL INVESTMENT
MUTUAL ASSISTANCE CORPORATION

JUL 28 '78

B-185522
CG8-257

JUL 26 1978

BBA	_____	
HAD	_____	
LSD	_____	A.M.
MFP	_____	
PCC	_____	
LAH	_____	P.M.
EJK	_____	
WJL	_____	
FCR	_____	MAIL
LWS	_____	
MCS	_____	
BJW	_____	HAND

The Honorable Harry F. Byrd, Jr.
United States Senate

Dear Senator Byrd:

In your letter dated May 9, 1978, you requested that we analyze the budgetary impact of the settlement of New York City's recent negotiations with its labor unions.

On June 7 we furnished you a preliminary response which projected a settlement with all unions, following the pattern of the transit workers contract which had been negotiated in April. After the preparation of our letter, a coalition of municipal unions, representing the majority of city workers, negotiated their own contract.

Although the labor picture is still unsettled, in that the negotiated contracts have not yet been ratified by the unions' memberships and other unions are still negotiating, we nevertheless want to respond to your letter at this time. We believe the contract negotiated by the coalition will undoubtedly form the pattern for all other settlements. Further, we wish to bring to your attention two matters which concern us and which have not been given widespread attention. These involve the budgetary impact of these contracts in future periods and the restoration of give-backs previously won by the city.

TERMS OF AGREEMENT

On June 5, 1978, a tentative agreement was reached between the city and a coalition of municipal unions representing most of the city's work force, except for police and firefighters. This contract was subsequently reduced to writing on June 20. The agreement covers the city's 1979 and 1980 fiscal years (July 1, 1978 - June 30, 1980).

Its major terms are as follows:

- A 4-percent wage increase (minimum \$400) will be effective beginning October 1, 1978, and another 4-percent increase (minimum \$400) will be effective October 1, 1979.
- Cost of living increase I (COLA I) is to continue to be paid to workers in their paychecks and included in their base salary for

GCD-78-98
(01739)

fringe benefit and pension computation purposes. All workers will be paid COLA I at a rate of \$441 per annum. (While most workers were paid COLA I at this rate in the prior contract, some received it in somewhat higher or lower amounts). COLA I will also be included in employee's base salaries for the computation of the second 4-percent wage increase.

—Cost of living increase II (COLA II), paid in the previous contract in lump sum amounts, adjusted for the consumer price index, will be discontinued. Its effective rate at the end of the prior contract was \$882 per annum. Replacing it will be a cash payment of \$750 per annum, paid in the paychecks of employees at a rate of \$28.76 biweekly. These amounts will not be included in base pay for pension purposes. While COLA II was to be offset by savings or revenues generated through worker productivity, the cash payment will be paid without consideration of productivity.

—The requirement for documenting offsetting productivity savings for COLA II in the prior contract will be waived for the final payment due under that program (\$567 per employee).

—No additional reductions in fringe benefits (or givebacks) will take place.

City officials estimate the cost of the contract over the 2-year period as applied to all municipal workers will be \$1.088 billion.

About \$868 million of this amount represents added budget costs to the city which will have to be met by its own tax levy funds. The balance represents amounts chargeable to Federal and State reimbursable programs as well as additional pension costs the city will incur by virtue of this settlement. Our analysis of the city's estimates shows them to be reasonable. Enclosure I shows the city's estimate of cost by contract provision.

In addition to these costs, an arbitration board has recently decided that the city is also liable for approximately another \$200 million representing deferred wages to its employees. However, this will only be payable if certain conditions related to the city's fiscal stability are met. Further, the board ruled that these amounts will not have to be paid until after June 30, 1982.

Furthermore, the city may incur added costs if those unions not accepting the coalition agreement (police and firefighters) receive a larger settlement. In that case, uniformed employees presently covered by the coalition agreement could "reopen" their contract and demand greater benefits as well. Approximately 15,000 workers have the right to exercise this "me too" clause. On July 19, 1978, a settlement was reached between the police and the city which is reportedly consistent with the coalition agreement. We have not yet reviewed this contract.

B-185522
CG8-257

FUNDING OF CONTRACT SETTLEMENT

The city's fiscal year 1979 executive budget indicates that \$617 million is available for labor settlements and other contingencies. The sources for that funding are as follows:

	<u>(millions)</u>
Amount already included in 4-year plan	\$138
Contribution by N.Y. State	100
Overestimate of pension cost included in 4-year plan	71
"Surplus" in current year's budget--1978	170
Additional revenues and underspending--- 1979-80	<u>138</u>
Total	\$617 ===

Now that a settlement has been reached which will result in total budgetary demands on the city of \$868 million, the city has indicated that the added cost of \$251 million will be funded as follows:

	<u>(millions)</u>
Additional "surplus" expected in 1978	\$ 46
Additional State aid	60
Additional savings and city actions--1979-80	<u>145</u>
Total	\$251 ===

Although we have not examined this incremental funding for the wage settlement, we are concerned by the uncertainty of some elements in the original \$617 million funding. In our letter to you of June 7, 1978, we discussed these uncertainties and stated that we believe it is unwise to rely upon some of these uncertain sources to fund a wage settlement.

Use of the 1978 surplus as funding source
is not in accordance with
generally accepted accounting principles

You specifically asked that we look into the city's plan to utilize its 1978 "surplus" to fund this 1979-80 labor settlement and for our opinion as to whether this funding technique was in accordance with generally accepted accounting principles. 1/

The importance of your question, of course, lies in the fact that the city is functioning under strict annual financial plans, and so, charging the cost of this labor settlement totally to 1979 and 1980 would increase the deficit in those years and require the city to make offsetting budget cuts. On the other hand, if the city charged approximately \$220 million in expenses to 1978, that would substantially ease the budgetary pressures in 1979 and 1980 and obviate the need to make budget cuts to pay for this wage settlement.

In our opinion, the city's accounting treatment of the transaction is not in accordance with generally accepted accounting principles. The facts of the situation, as we see them, are as follows. In early April 1978, city officials indicated that they intended to use their 1978 underspending or surplus to provide some of the funding necessary to pay for the wage settlement which was being negotiated. At the time, however, it was not clear just what the surplus would be used for. The city's Deputy Mayor for Finance, had at one point, suggested the surplus might be used to pay for deferred cost of living adjustments. Subsequently, other city officials suggested the surplus might be used to pay for bonuses. During the course of all these discussions this issue had become a public one and was being explored in the local press in articles like "NYC AND UNIONS STUDY USING 78 SURPLUS". 2/

In addition to these discussions about what the so-called surplus would be used for, there were also discussions about how to arrange to use it. From an accounting standpoint this presented a problem. Some city officials initially suggested bringing forward the surplus into 1979 and using it as a revenue in that year. This idea was quickly rejected by the Special Deputy State Comptroller for New York City as not being in accordance with

1/ This surplus exists only under special accounting criteria in State law. According to generally accepted accounting principles, no surplus exists; in fact, a deficit resulted from 1978 operations and a very large cumulative deficit exists from previous years.

2/ New York Times, May 9, 1978.

generally accepted accounting principles. His conclusion was based on the fact that there was no true surplus, but one existed only after certain adjustments permitted by State law. In addition, the city has a large cumulative deficit so that, under generally accepted accounting principles, there were no available funds to bring forward to 1979. We believe the Special Deputy Comptroller's conclusions are sound.

Ultimately, this matter was resolved when the city and the unions agreed that of the \$1,500 cash payment (\$750 x 2 years) \$937.50 would be considered to have been earned in 1978 and charged to that year. Subsequently, this amount was charged to \$1,000. If the payment was considered earned by the employees in 1978, the accounting problem would be solved since the payment could then be properly accounted for as a 1978 expense.

City officials conferred with their certified public accountants and prepared a representation letter which stated that \$1,000 of the \$1,500 in cash payments had been earned by the employees in 1978 and that it was the city's intention to expense the payments against fiscal year 1978. The CPAs stated that, based on the city's representations as to when the payments were earned, the proposed accounting in their opinion would be in accordance with generally accepted accounting principles.

Our view of this transaction differs from that of the city and its CPAs. As set forth in a statement of the Accounting Principles Board, a basic feature of financial accounting is that it emphasizes the economic substance of events rather than their form. In this case, the parties publicly stated on several occasions their intention was to utilize the 1978 surplus thereby easing 1979 and 1980 budgetary pressures. They stated that they would do so by some appropriate accounting technique which they had not yet decided upon.

Therefore we believe the use of the surplus and the relief of budgetary pressure in 1979 and 1980 was the objective of the parties and that is the substance of the transaction. In our opinion, this cannot be overlooked in assessing the propriety of the accounting involved. Looking toward the substance of the transaction then, we can see no justification for charging it as a 1978 expense.

Beyond the question of substance over form, there is, in our opinion, another flaw in the justification for charging this as a 1978 expense. The agreement requires that for employees to be paid the full \$1,000 payment they must continue to work for the city during 1979 and part of 1980. This requirement clearly suggests that the employees have not earned the \$1,000 payment for services rendered in 1978, and therefore that expense should not be charged to 1978.

In arriving at our assessment of this transaction we were guided in part by some particularly germane comments made some years ago in an accounting research study. ^{1/} While the study does not have the force of accounting principles it is nevertheless part of the accounting profession's body of knowledge. The authors said in part:

"Unless accountants are forearmed, they could slip into acceptance of accounting 'principles' which are not independent expressions of the results of accounting considerations but instead simply validate the policies established in the field of collective bargaining."

On July 17, 1978, we provided this section of the letter to the city for its review and comment. A copy of its comments is included as Enclosure III.

The city strongly disagrees with our opinion that its accounting for the costs of the labor settlement is not in accordance with generally accepted accounting principles. The city contends that budgetary relief for fiscal year 1979 and 1980 was only one of the effects of the settlement and not a primary objective as we contend.

The city's comments contain information which supports its accounting treatment of the labor settlement. According to the city, at meetings in early April, representatives of the Mayor's office expressed the city's intent to share part of the estimated statutory surplus with its employees, because the surplus was partially derived from increased employee productivity. The city states it was advised by its independent auditors that if payment to employees was earned and related to services provided in fiscal year 1978, the cost of that payment should be charged to 1978. The city maintains that since this was its intent, negotiating this concept with the unions was the problem it faced and not accounting for the transaction.

We recognize that payment for services rendered in a given fiscal year is an appropriate expense of that year. We nonetheless continue to believe that the size of the labor settlement coupled with the financial difficulties faced by the city and its need to ease budgetary pressures in fiscal years 1979 and 1980 were the motivating forces in arriving at the terms of the labor settlement. While relieving an immediate fiscal problem, this strategy

^{1/} Accounting Research Study 3 "A Tentative Set of Broad Accounting Principles For Business Enterprises", by Robert T. Sprouse, Ph. D., and Maurice Moonitz, Ph. D., CPA.

B-185522
CG8-257

compounds the financial pressures the city faces in the years beyond this contract. As a result, we feel strongly that charging part of the wage settlement to fiscal year 1978, a year in which the city anticipates a deficit under generally accepted accounting principles, not a surplus, obscures the impact of the settlement and will distort the results of the city's financial operations in fiscal year 1979 and 1980.

The overriding consideration from an accounting point of view is that under the terms of the labor agreement there is no liability for fiscal year 1978. The \$1,000 payment is, in effect, for services to be rendered in fiscal year 1979 and part of fiscal year 1980, subject to the condition that the employee worked in fiscal year 1978. This amount was not earned in fiscal year 1978, because employees who do not work in fiscal years 1979 and 1980 are not entitled to the payment.

BUDGETARY IMPACT OF CONTRACT IN FUTURE PERIODS

Generally speaking, this labor settlement has been presented as a conservative one. There is one aspect of it, however, which has not been widely discussed and which may not ultimately prove to be so conservative.

This contract may have a significant budgetary impact on the city after June 1980 since the salary levels on which wage increases will be applied will be sharply higher at the end of the period than they were at the beginning of this contract (see Enclosure II). This difference between the so called "going-in" and "going-out" rates is significant when viewed in terms of the next labor negotiation. For example, in this contract the employees won two increases of 4 percent each and these were viewed as moderate. At the end of the contract period, however, the full 8 percent will be in effect, and combined with the \$750 annual cash payment provided for in the contract, this will give the employees a "going-out" rate which may be as high as 16 percent more than the "going-in" rate for the average employee (\$15,500 per year). This increased rate will most likely become the base for the next negotiation and should have a budgetary impact not readily apparent when one examines the modest 4 percent increase in the contract at hand.

We discussed this with city officials who said there is no reason to assume that the \$750 annual cash payment in this contract will be included in the going-out rates on which future increases will be based. They maintain this will be a matter for negotiation. In fact, they do not assume the payment itself will be continued beyond 1980. Therefore, the financial plan for 1981 and 1982 makes no provision for paying the approximately \$160 million this payment would cost in each of these 2 years.

B-185522
CG8-257

Union representatives, on the other hand, tell us their position will likely be that these amounts will be part of the base at which new negotiations will begin.

In our opinion, it is unrealistic to think otherwise.

RESTORATION OF GIVEBACKS PREVIOUSLY
WON BY THE CITY

One other aspect of this contract which has not been widely discussed, but which may nevertheless be significant, relates to the question of givebacks previously won by the city.

Early in the fiscal crisis the city negotiated a \$24 million annual reduction in fringe benefits with its unions. This was part of the general austerity program in the city and was one of the city's budget cutting actions. Under this program the starting salaries of certain new employees were cut back 10 percent; vacation allowances for new employees were reduced from 20 to 15 days; check cashing privileges were cancelled; and other fringes were either cut back or cancelled.

Going into this current negotiation, city officials had announced that they were demanding further reductions in employee fringe benefits, or givebacks, ranging from \$70 to \$100 million. As the negotiations progressed, however, the city softened its position on this matter and ultimately achieved no givebacks. Beyond that, the city also conceded to return some of the givebacks previously negotiated.

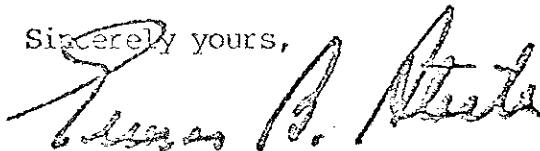
The 10 percent starting salary reductions and the vacation reductions were given back to the unions. We have not estimated the cost of the fringes returned, but city officials agree that the major concessions previously won from the unions have been returned.

As arranged with your office, we are sending copies of this report to the Chairman of the Senate Committee on Banking, Housing and Urban Affairs and the Chairman of the House Subcommittee on Economic Stabilization, Committee on Banking, Finance and Urban Affairs. Copies will also be available to other interested parties who request them.

B-185522
GG8-257

We would be happy to meet with you or any of your staff members to discuss these issues further.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas B. Steyer". The signature is written in dark ink and is positioned to the right of the typed name. To the right of the signature, there are three horizontal lines, possibly indicating a stamp or a mark on the original document.

Comptroller General
of the United States

ENCLOSURE I

COST OF SETTLEMENT BETWEEN
NEW YORK AND ITS
MUNICIPAL UNIONS

	<u>FY</u> <u>1979</u>	<u>FY</u> <u>1980</u>	<u>TOTAL</u>
	----- Millions -----		
Wage increase:			
4% or \$400 effective 10/1/78	\$121	\$158	\$279
4% or \$400 effective 10/1/79		126	126
\$750 annual cash payment	171	164	335
Equalizing COLA I at \$441 per annum for all employees	<u> </u>	<u>10</u>	<u>10</u>
Cost of wage settlement	292	458	750
Unbudgeted increments and COLA costs	<u>46</u>	<u>72</u>	<u>118</u>
Total City costs	338	530	868
Accrued pension cost	28	54	82
Costs chargeable to State and Federal programs	<u>53</u>	<u>84</u>	<u>137</u>
Total cost of contract settlement -all funds	<u>\$419</u>	<u>\$669</u>	<u>\$1,088</u>

"GOING OUT" COMPUTATION
INCLUDING THE \$750,000 CASH PAYMENT

Selected base salaries of NYC employees at the end of the current two year wage pact	\$7,500	\$10,000	\$15,500	\$17,000	\$20,000	\$25,000
Add: Increases to base salary as a result of the new pact						
4% Wage increase - FY 1979	400	400	620	680	800	1,000
COLA I	441	441	441	441	441	441
4% Wage increase - FY 1980	400	434	662	725	850	1,058
Cash payment to employees	750	750	750	750	750	750
Total "Going out" rate	<u>9,491</u>	<u>12,025</u>	<u>17,973</u>	<u>19,596</u>	<u>22,841</u>	<u>28,249</u>
Less: Beginning base salary	7,500	10,000	15,500	17,000	20,000	25,000
Total increase to base salary as a result of the new two year pact	<u>1,991</u>	<u>2,025</u>	<u>2,473</u>	<u>2,596</u>	<u>2,841</u>	<u>3,249</u>
Percentage increase to base salary	<u>26.5%</u>	<u>20.3%</u>	<u>16.0%</u>	<u>15.3%</u>	<u>14.2%</u>	<u>13.0%</u>

"GOING OUT" RATE COMPUTATION
 EXCLUDING THE \$750.00 CASH PAYMENT

Selected base salaries of NYC employees at the end of the current two year wage pact	\$7,500	\$10,000	\$15,500	\$17,000	\$20,000	\$25,000
Add: Increases to base salary as a result of the new pact						
4% Wage increase - FY 1979	400	400	620	680	800	1,000
COLA I	441	441	441	441	441	441
4% Wage increase - FY 1980	400	434	662	725	850	1,058
Total "Going Out" rate	<u>8,741</u>	<u>11,275</u>	<u>17,223</u>	<u>18,846</u>	<u>22,091</u>	<u>27,499</u>
Less: Beginning base salary	7,500	10,000	15,500	17,000	20,000	25,000
Total increase to base salary as a result of the new two year pact	<u>\$1,241</u>	<u>\$1,275</u>	<u>\$1,723</u>	<u>\$1,846</u>	<u>\$2,091</u>	<u>\$2,499</u>
Percentage increase to base salary	<u>16.5%</u>	<u>12.8%</u>	<u>11.1%</u>	<u>10.9%</u>	<u>10.5%</u>	<u>10.0%</u>



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PHILIP L. TOIA
DEPUTY MAYOR FOR FINANCE

July 21, 1978

Mr. Edward Hefferon
U.S. General Accounting Office
26 Federal Plaza
New York, NY 10007

Dear Mr. Hefferon:

We are responding to the draft of your comments to Senator Byrd relating to "the use of the FY 1978 surplus as a funding source" in the City's labor settlement. We appreciate the opportunity to respond as it is a matter of great concern and importance to the City.

The City strongly disagrees with the opinion that the City's accounting for the costs of the labor settlement is not in accordance with generally accepted accounting principles (GAAP). The key issue raised by the General Accounting Office ("GAO") is that the primary objective of the City and the coalition unions was to provide budget relief in FY 1979 and FY 1980. It is the City's position that this was only one of the effects of the settlement. The City believes that the economic substance of the City's labor settlement is properly accounted for and specifically that the \$1,000 non-pensionable cash payment ("cash payment") is a proper FY 1978 charge. This accounting is based upon appropriate facts and evidence to support the City's position.

Shortly after the conclusion of the labor negotiations with the Transit Workers, City officials met with representatives of the Emergency Financial Control Board, the Office of the Special Deputy Comptroller, the City's independent auditors, Peat, Marwick, Mitchell & Co., and others to discuss the City's pending coalition union labor negotiations. At these meetings in early April representatives of the Mayor's Office stated that, as part of the labor negotiations, the City intended to share part of its estimated statutory surplus in FY 1978 with its employees because the estimated statutory

surplus was partially derived from employee actions in providing service levels at reduced costs. The City asked its independent auditors what the proper accounting treatment would be and they responded that, if a payment to employees was earned and related to services provided in FY 1978, the cost of that payment should be charged to FY 1978. This was indeed the City's intention and therefore the accounting was not considered to be a problem early on in these discussions. Rather the problem was negotiating this concept with the unions as well as meeting other requirements of law.

The GAO claims that "some City officials" inquired about bringing forward the surplus into FY 1979 at one of these meetings. This concept was rejected not only by the Special Deputy Comptroller but also at the same time by representatives of the Mayor's Office, the City Comptroller's Office and by Peat, Marwick, Mitchell & Company. During all these meetings, in the labor negotiations, and in public statements, the City consistently indicated that it was committed to budgeting and accounting for its operations in accordance with GAAP.

The City further articulated its negotiating position and intentions in the Mayor's Budget Message, dated April 26, 1978. In keeping with the policy for full and complete disclosure, funds were shown as reserved in FY 1978 as part of the costs of the labor settlement. This presentation reaffirmed the City's position that certain costs associated with a labor settlement would be earned and chargeable in FY 1978.

The Coalition Economic Agreement was executed on June 20, 1978 and under its terms, the City and the coalition unions agreed that "a cash payment shall be earned and paid to qualifying employees for services rendered during the City's fiscal years ending June 30, 1978, ..." (emphasis added). This contract language represented an important gain for the City because it indicated that the coalition unions accepted the concept of a payment to employees for their services in a preceding year dependent upon the results of operations for that year. The payment did not become part of the employees' wage base nor was it included in determining an employee's pension.

Perhaps the only section of the contract referred to by the GAO as support for its opinion relates to the condition that employees who leave the employ of the City before they have received their full cash payment will not receive the unpaid amount. This singular reference ignores several additional important contract provisions, however.

Mr. Edward Hefferon
Page three
July 21, 1978

For example, the agreement provides that employees entering City service in FY 1979 were not entitled to any portion of the FY 1978 cash payment. It should also be emphasized that salary levels of new employees have not been increased to compensate for this cash payment.

In addition, not all FY 1978 employees received the entire amount of the cash payment. The agreement clearly stipulated that the amount of the cash payment would be prorated for the length of service an employee worked in FY 1978. For instance, an employee who has been employed only for one quarter of FY 1978 would only earn and, therefore, could not receive more than one-quarter of the cash payment. Thus, the amount of the employee's cash payment is directly related to the amount of service provided to the City in FY 1978.

The agreement further provides that the cash payments be paid over a period of months and not paid as a lump sum as of June 30, 1978, for example. This provision was made as a matter of sound fiscal management to reduce the cash needs of the City during a time when the City was seeking financing assistance in both the private and public sectors. Obviously, the effect of this agreement is to limit the overall economic cost of the settlement in each of the contract years as well as for future years. This was done to establish the principle that the cash payment is only available to the extent that it is earned within a particular fiscal year and to the extent that funds are available. The City has thus incorporated into its labor contract a fiscally responsible method of compensating its employees.

These conditions and terms of the Coalition Economic Agreement are not unlike those of compensation plans of private industry. For instance, under the concept of profit sharing plans, the profit of an enterprise, which is usually determined after the year is completed, is shared with the employees. Payment of the determined amount is usually made in the following year to employees for their service in the preceding year. The amount paid to the employees is treated as a charge to the period in which earned, i.e., in the year to which services are related. This is the same accounting treatment the City proposes to follow. Many major publicly-owned corporations use this accounting treatment and such treatment has been accepted by the Securities and Exchange Commission as well as by the public accounting profession.

Mr. Edward Hefferon
Page four
July 21, 1978

The GAO implies that, regardless of the form of the labor agreement, all costs should be charged to FY 1979 and FY 1980. However, there is no legal or accounting basis of which the City is aware that would require that all the costs of this labor agreement be charged to FY 1979 and FY 1980 irrespective of the terms of the agreement. In addition, the GAO has not specified an alternative accounting nor the basis for its application. If cash basis expenditure accounting for this payment were proposed, for instance, this would represent a return to some of the City's past practices which have been severely criticized in the SEC report, among others, and which the City would strongly resist.

We believe that we have responded to the issues raised in the opinion expressed in your letter. During the discussions prior to and during the labor negotiations, the City Comptroller, the Special Deputy State Comptroller, Peat, Marwick, Mitchell & Company, the Emergency Financial Control Board and others were aware of the issues and the accounting principles involved. They have not taken exception to the City's accounting for the costs of the labor settlement. The City reaffirms its position that its accounting for the costs of the Coalition Economic Agreement properly reflects the economic substance of the results of its labor negotiations.

Very truly yours,



Philip L. Toia
Deputy Mayor for Finance

cc: Martin Ives
Robert Happ



DEPARTMENT OF PERSONNEL
220 CHURCH STREET, NEW YORK, N. Y. 10013

THOMAS F. ROCHE
City Personnel Director

Telephone: 566 - 8707

Proposed Personnel Order No. 78/9

January 13, 1978

TO: Edward L. Koch, Mayor
FROM: Thomas F. Roche
City Personnel Director

Approved by Mayor

SUBJECT: Proposals for a New Pay Plan for Management Employees and Changes in Fringe Benefits Affecting Management Employees.

Pursuant to the powers vested in me in Section 813 (10) of the New York City Charter, there is herewith presented for your consideration a proposal for a new Pay Plan and fringe benefits plan for Management employees.

Various studies have been done on the City's middle management. A recent report of the task force on New York City's Management Compensation to the Mayor's Management Advisory Board and the Economic Development Counsel recommended salary increases for employees who are currently covered by the Management and Executive Pay Plans as well as a new pay structure and method for determining the amounts of increases to be given to each manager. The new City Charter also mandates the development of the Management Service and one of the intents of the Charter is that Management employees be adequately compensated.

In its preliminary recommendations, the State Charter Revision Commission for the City of New York cited the poor condition of middle management in line agencies. They said "There are many able and dedicated managers in public service, but, in general, the City's middle management cadre is widely acknowledged to be widely unmotivated, ignored and ill-equipped". They went on to say that "Most middle managers in the City have nothing going for them - not even pay. They receive little training, they have no sense of being part of management, and they receive little recognition. Large numbers of supervisors and middle managers identify with the rank and file - not top management - because they feel ignored by the City administration".

Managerial employees form the backbone of City government. They are the ones that are immediately beneath the elected and appointed layer of government and their major role is transmitting the policies of elected and appointed officials into action. Without

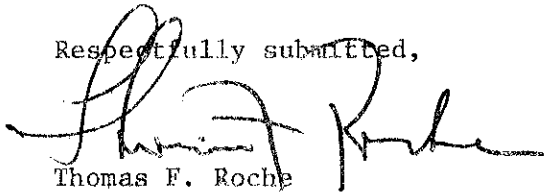
their active support the City faces enormous difficulty in making those changes which are necessary for the City to survive.

In order to take positive steps in developing a cadre of middle managers who identify with top management rather than their subordinates, we feel it is necessary for such managers to have their own fringe benefits, separate and apart from those of their subordinates. For these reasons we are also submitting proposals for changes in the fringe benefits structure.

These proposals are designed to give managers greater flexibility and increased responsibility for their hours of work and leave allowances. They have the concurrence of the Director of the Office of Management and Budget and the Director of the Office of Municipal Labor Relations.

It is recommended that you approve these proposals by the adoption of the attached Orders.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Thomas F. Roche', written in dark ink.

Thomas F. Roche
City Personnel Director



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PERSONNEL ORDER NO. 78/9

JANUARY 13, 1978

TO THE HEADS OF ALL AFFECTED CITY DEPARTMENTS AND AGENCIES

Subject: Establishment of a Pay Plan, Regulations Governing Work Schedules of Management Employees and Leave Regulations for Management Employees

WHEREAS, the Managerial Pay Plan was established by Personnel Order No. 16/69 dated February 26, 1969; and

WHEREAS, the Executive Pay Plan was established by Personnel Order No. 25/70 dated April 2, 1970; and

WHEREAS, recent reports have indicated that these plans are no longer sufficient to meet the needs of the City; and

WHEREAS, it is imperative that management employees be treated as managers; and

WHEREAS, previous regulations governing overtime for employees covered by the Managerial or Executive Pay Plans did not provide for responsibility, or commensurate flexibility, appropriate to management employees; and

WHEREAS, the City Charter requires the establishment of a management service; and

WHEREAS, the Mayor's Management Advisory Board and the Economic Development Council have suggested approval of the recommendations contained in the report of the Task Force on New York City's Management Compensation;

NOW, THEREFORE, by virtue of the powers vested in me, there is hereby established a new Pay Plan for Management Employees, new Regulations Governing Work Schedules of Management Employees and new Leave Regulations for Management Employees. The terms and conditions of the Pay Plan and the regulations shall be as follows effective January 1, 1978:

PAY PLAN FOR MANAGEMENT EMPLOYEES

I. PAY PLAN

The schedule for the Pay Plan for Management Employees shall be as follows, effective January 1, 1978:

<u>Assignment Level</u>	<u>Minimum</u>	<u>Maximum</u>
I	24,000	30,000
II	26,500	32,600
III	29,500	35,700
IV	33,000	39,300
V	36,500	42,700
VI	40,000	46,000

<u>Assignment Level</u>	<u>Flat Rate</u>
VII	46,500
VIII	50,000
IX	54,000
X	57,500

II. APPLICABILITY

The Pay Plan for Management Employees shall apply to all employees presently covered by the current Managerial and Executive Pay Plans. In addition, the Mayor may designate other high level positions for which this pay plan shall be made applicable, providing such positions have been declared ineligible for collective bargaining.

III. IMPLEMENTATION

1. The assignment level of each employee shall be that corresponding to the employee's current grade in the Managerial or Executive pay plans.
2. Employees at levels VII through X shall be paid the new salaries of their respective assignment levels under the Pay Plan for Management Employees.

3. For management employees at assignment levels I through VI, a salary increase budget of 8 percent of the new assignment level midpoint salaries shall be established in each department and agency.
4. Adjustments for levels VII through X are not to be included in the salary increase budget.
5. This budget shall be used by agency and department heads for making salary adjustments in accordance with the following priorities:

First priority - Management employees whose salaries fall below the new minimum for their assignment level shall be given increases so that their salaries are at least at the minimum of the assignment level.

Second priority - Remaining funds not used for first priority adjustments are to be used to provide further salary adjustments for employees.

- a) There shall be an overall adjustment limit of 12% for any one employee.
- b). The salary of any employee may not exceed the new maximum of the assignment level.
- c) Until such time as a formal procedure for managerial performance evaluation is implemented under the management service, agency heads will be required to submit justification to the City Personnel Director for all second priority salary adjustments. Nothing contained herein shall be construed as mandating any second priority salary adjustment for employees whose performance is deemed by agency heads not to warrant an increase.
- d) The budget established by this section is intended only for use in making salary adjustments for management employees. Allocation of management positions and changes in assignment levels shall be made in accordance with the same procedures that exist for the Executive and Managerial Pay Plans.

NOTE: All 1st and 2nd priority adjustments must be made within the agency's 8 percent salary increase budget.

IV. ENTRY INTO THE PAY PLAN AND CHANGES IN ASSIGNMENT LEVEL

1. Entrance Into Management Pay Plan From Sub-Managerial:

Employees who are promoted from sub-managerial positions to positions covered by this pay plan shall receive a salary increase of \$1,000 or the minimum of the new grade, whichever is greater. Those sub-managerial employees whose salaries are above the minimum of the new managerial grade level assigned should receive an increase of \$1,000. They may also receive a further adjustment, the total not to exceed 12 percent of their final non-managerial salary. Under no circumstances can an employee's salary exceed the maximum of the grade level assigned.

2. Adjustment of Salary Upon Assignment of Management Employees to Higher Assignment Levels:

For levels I through VI, employees who move to higher assignment levels shall receive an assignment increase of at least one half of the difference between the minimums of the old level and the new level, or shall receive the minimum of the new level, whichever is greater. The maximum assignment increase shall be 12% of the old salary, except where advancement to the minimum of the new level would exceed 12 percent.

3. Reduction in Assignment Level:

Employees whose assignment levels are reduced shall be paid salaries commensurate with their new assignments.

V. MAINTENANCE OF THE PAY PLAN

This pay plan is to be considered the first phase of a restructuring of the compensation plan for New York City's managers.

As a second phase, all management positions are to be reviewed and evaluated. The results will then be used as the basis for a possible restructuring of the pay plan if such a restructuring is required.

There shall be a review of the City's compensation program for its' managers at least every other year with resultant adjustments to be made not more than once each year.

VI. NEW STANDARDS

A. Outside Earned Income

Management Employees will not be permitted to expend time or otherwise engage in any private employment, profession, business or other activity from which compensation, direct or indirect, is derived except upon a specific determination by the Department of Investigation and the Board of Ethics that such activity will not interfere or conflict with the proper and effective discharge of their official duties.

B. Outside Fiduciary Positions

Management employees will not be permitted to serve as Directors or Officers of any corporation or institution except upon a specific determination by the Department of Investigation and the Board of Ethics that such activity will not interfere or conflict with the proper and effective discharge of their official duties.

C. Political Party Positions

Management employees will not be permitted to serve as officers of any political party or political organization, or serve as members of any political party committee including political party district leader (however designated). This prohibition is not intended to deter political activity but only to bar official partisan responsibility.

D. Management employees currently in City service and who do not meet the above standards shall be given six months from the date of this order to complete any actions necessary in order to conform to the standards.

REGULATIONS GOVERNING WORK SCHEDULES OF MANAGEMENT EMPLOYEES

1. APPLICABILITY

1.0 This order shall apply to all employees and officials whose salaries are determined under the Managerial Pay Plan and/or the Executive Pay Plan or any pay plan which supersedes or replaces these pay plans. It shall supersede Section 2 of Personnel Order No. 24/77.

2. HOURS OF WORK

2.0 Management employees shall work whatever hours and days as are reasonably required to carry out their responsibilities. The regular work week shall be not less than 35 hours. Work schedules shall be consistent with the needs of the agency, and the manager shall be accountable to the agency head with respect to the schedule maintained and the hours and days worked.

In establishing reasonable hours for a particular day on which the manager is working, account may be taken of unusually long hours worked in a previous period.

The manager shall maintain such records and authorizations as shall be prescribed by the agency head in accordance with procedures established by the Department of Personnel.

3. RECORD KEEPING

3.0 Employees covered by this order shall be required to keep weekly time records.

3.1 Authorization for work schedules must be in writing and signed by the agency head or his or her designee.

4. OVERTIME

4.0 There shall be no credit for time worked beyond the regular work week by persons covered hereby or who are otherwise in the management service of the City.

5. CHANGES IN STATUS

5.0 On assignment, reassignment, appointment or promotion from a sub-managerial position not subject to these regulations to a position subject to these regulations, any overtime credits which had been earned prior to such assignment, reassignment, appointment or promotion shall be placed in a non-managerial overtime bank. Such overtime bank may be used by the employee as compensatory time in accordance with the provisions governing use of overtime credits contained in Personnel Order No. 24/77. However, any payment for unused overtime credits in the employee's sub-managerial overtime bank upon separation or termination shall be made at the rate of pay the employee was receiving prior to assignment, reassignment, appointment or promotion to a position subject to these regulations or the minimum rate of the employee's former sub-managerial title at the time of the separation from service, whichever is greater.

Upon termination or separation, lump-sum payments for such time and at the rate of pay indicated above, shall be in accordance with and subject to any limitations contained in Personnel Order 78/3.

6. INTERPRETATION

6.0 The City Personnel Director is authorized to interpret these regulations upon request of an agency head or interested employee.

LEAVE REGULATIONS FOR MANAGEMENT EMPLOYEES

1. APPLICABILITY

1.0 These regulations shall apply to all employees and officials whose salaries are determined under the Pay Plan for Management Employees. In addition, the Mayor may designate other high level positions for which these regulations shall be applicable, provided such positions have been declared ineligible for collective bargaining.

2. DEFINITIONS

2.0 "Continuous Service" - For the purposes of these leave regulations continuous service shall be defined as unbroken service except:

- (1) where a break in service is 31 calendar days or less, or
- (2) where a former employee returns within one year to permanent service in a competitive class position either by appointment under the reinstatement rules of the Personnel Director and/or Civil Service Commission or by appointment from an open-competitive list.

Time spent on a preferred list shall be deemed continuous service, and leave without pay shall not be considered a break in service. However, time in non-pay status shall not be counted as part of the years of service in determining annual leave accrual rate.

3. ANNUAL LEAVE ALLOWANCE

3.0 A combined vacation, personal business and religious holiday leave allowance shall be established which shall be known as "annual leave allowance."

3.1 Annual leave allowance shall be credited to managerial employees who work a regularly scheduled workweek as follows:

<u>Years of Continuous Service</u>	<u>Monthly Accrual Rate</u>	<u>Annual Leave Allowance*</u>
At the beginning of the 15th year	2¼ days	27 workdays (five weeks and two days)
At the beginning of the 8th year	2 days plus one additional day at the end of the calendar year	25 workdays (five weeks)
Prior to the beginning of the 8th year	1 2/3 days	20 workdays (four weeks)
For new employees until June 30, 1978	1¼ days	15 workdays (three weeks)

*After one full year at the monthly accrual rate.

- 3.2 For the earning of annual leave credits, the time recorded on the payroll at the full rate of pay, and the first six months of absence while receiving Workmen's Compensation payments shall be considered as time "served" by the employee.

In the calculation of annual leave credits, a full month's credit shall be given to an employee who has been in full pay status for at least 15 calendar days during that month, provided however, that (a) where an employee has been absent without pay for an accumulated total of more than 30 calendar days in the vacation year, the employee shall lose the annual leave credits earnable in one month for each 30 days of such accumulated absence even though in full pay status for at least 15 calendar days in each month during this period; and (b) if an employee loses annual leave credits under this rule for several months in the vacation year because the employee has been in full pay status for fewer than 15 days in each month, but accumulates during said months a total of 30 or more calendar days in full pay status, such employee shall be credited with annual leave credits earnable in one month for each 30 days of such full pay status.

- 3.3 a. The maximum accumulation of annual leave credit which can be carried over from one calendar year to the next shall be the amount that an employee can accrue in the two-year period prior to the end of the calendar year. Preceding the end of the calendar year it shall be the employee's responsibility to request permission to use annual leave in order to stay below the maximum accumulation permitted. Any leave which exceeds the maximum accumulated limits established by this section shall be forfeited except under the conditions described below in part b. of this section.
- b. In the event that the Mayor, an elected official of any department, or any agency head orders in writing that an employee forego the requested use of annual leave, that portion thereof shall be carried over though the same exceeds the limits fixed in 3.3 a. above. However, in no case may the accumulation exceed three years accumulation.
- 3.4 The minimum unit of charge against annual leave allowance shall be one-half day.
- 3.5 Earned Annual Leave allowance shall be taken by the employees at the time convenient to the department. In exceptional and unusual circumstances, an agency head may permit use of annual leave allowances before it is earned, not exceeding two weeks.
- 3.6 Penalties for unexcused tardiness may be imposed by the head of each agency in conformance with established rules of the agency. As a minimum, however, all unexcused tardiness both in the morning and upon return from lunch shall be charged to the annual leave allowance.

4.0 SICK LEAVE ALLOWANCE

4.0 Sick leave allowance of one day per month of service shall be credited to permanent employees, provisional employees and temporary employees who work a regularly scheduled workweek and shall be used only for personal illness of the employee.

4.1 The number of sick leave allowance days permitted shall be unlimited.

4.2 Sick leave may be granted in the discretion of the agency head and proof of disability must be provided by the employee satisfactory to the agency head for all illness of more than three consecutive workdays.

4.3 The normal unit of charge against sick leave allowance shall be one-half day, but sick leave approved by the agency head may be used in units of one hour. Credits cannot be earned for the period an employee is on leave of absence without pay. For the earning of sick leave credits, the time recorded on the payroll at the full rate of pay, and the first six months of absence while receiving Workmen's Compensation payments shall be considered as time "served" by the employee.

In the calculation of sick leave credits, a full month's credit shall be given to an employee who has been in full pay status for at least 15 calendar days during that month, provided, however, that (a) where an employee has been absent without pay for an accumulated total of more than 30 calendar days in the vacation year, he or she shall lose the sick leave credits earnable in one month for each 30 days of such accumulated absence even though in full pay status for at least 15 calendar days in each month during this period, and (b) if an employee loses sick leave credits under this rule for several months in the vacation year because he or she has been in full pay status for fewer than 15 days in each month, but accumulates during said months a total of 30 or more calendar days in full pay status, the employee shall be credited with the sick leave credits earnable in one month for each 30 days of such full pay status.

4.4 In the discretion of the agency head, employees, except provisional and temporary employees, who have exhausted all earned sick leave and annual leave balances due to personal illness may be permitted to use unearned sick leave allowance up to the amount earnable in one year of service, chargeable against future earned sick leave.

- 4.5 In the discretion of the agency head, permanent employees may also be granted sick leave with pay for three months after ten years of City service, after all credits have been used. In special instances, sick leave with pay may be further extended, with the approval of the agency head. The agency head shall be guided in this matter by the nature and extent of illness and the length and character of service.
- 4.6 Where an employee is hospitalized on annual leave, the period of such verified hospitalization shall be charged to sick leave and not to annual leave. Where an employee is seriously disabled but not hospitalized while on annual leave and providing the employee submits proof of such disability satisfactory to the agency head, such leave time may be charged to sick leave and not to annual leave at the employee's option.

5. LUMP SUM PAYMENT ON SEPARATION

- 5.0 Upon termination or separation from employment, an employee covered by these regulations shall be given a lump sum payment for unused accrued annual leave. Such lump sum payment shall be for a maximum of 2 year accrual of such leave except as otherwise permitted in the vested benefits section of these regulations, and shall not be creditable for purposes of computing compensation on retirement.
- 5.1 Upon termination or separation from employment, an employee covered by these regulations shall not be entitled to any lump sum or other payment on account of sick leave except as permitted in the vested benefits section of these regulations.
- 5.2 Payments made under this section for unused annual leave shall be made at the rate of pay at the time in which such annual leave was earned. In using annual leave, that which is earned last shall be used first either as time or as pay.

6. OTHER AUTHORIZED ABSENCES WITH PAY

6.0 Absence of permanent employees, provisional employees and temporary employees for the reasons indicated below, shall be excusable in the discretion of the agency head without charge to leave balances, upon submittal of evidence satisfactory to the agency head:

- a. Absence not to exceed four workdays in the case of death in the immediate family. Immediate family shall be defined for this purpose as spouse; natural, foster or step-parent, child, brother or sister; father-in-law; mother-in-law; or any relative residing in the household. When a death in an employee's immediate family occurs while the employee is on annual leave, such time as is excusable under this section shall not be charged to leave balances.

6.0 a. INTERPRETATIONS

- A. Holidays or scheduled workdays off are not counted in calculating the allowance for death in the immediate family. On the other hand, if the maximum allowance of four workdays is not needed, no balance remains to the employee's credit.
 - B. For purposes of this section, time may be granted in the event of the death of a relative-in-law who resides in the household of the employee.
 - C. The four days should immediately follow the death.
 - D. If two deaths occur within the four-day absence, the new four-day absence will run concurrently with the first.
- b. For Jury Duty. Leave for jury duty shall be granted to the employee provided that the employee remits to the City an amount equal to the amount received for such jury duty, less any amount received as reimbursement for travel expenses; provided, however, that in no case may the employee be required to remit to the City an amount in excess of the amount of the employee's salary for the period of such leave with pay.

6.0 b. INTERPRETATIONS

- A. This allowance includes time required when an employee is called for examination as to qualifications for jury duty.
- B. This subsection applies to jury duty in Federal, State, County courts and other jurisdictions as well as in City courts.
- C. If an employee is called for jury duty while on vacation, the employee may keep the jury duty check but may not have such vacation extended by the amount of vacation time spent on jury duty.

D. If jury duty occurs on regular day off, the employees may keep the jury pay for that day. If an employee is scheduled to work on a day when not serving jury duty, then the employee must work. If an employee is scheduled to work other than 9-5 on a day when serving on jury duty, then the employee does not have to work.

6.0 c. For Court Attendance Under Subpoena or Court Order. Leave to attend court shall be granted when neither the employee nor anyone related to the employee has a personal interest in the case, and where said attendance at court is not related to any other employment of the employee.

6.0 c. INTERPRETATIONS

A. An employee who is subpoenaed by any government agency or legislative body empowered to conduct investigations, and whose attendance is not related to a complaint or action in which the employee or anyone related to the employee has a personal interest, may be granted time under this subsection.

B. An employee who is a complaining witness in behalf of the State on a criminal case may be granted leave under this section.

6.0 d. Absence required because of Health Department ruling with respect to quarantine.

6.0 e. For attendance at New York City Civil Service examination, or for official investigation interview or appointment interview in relation to the resulting eligible list.

6.0 e. INTERPRETATION

A. Teacher examinations, official investigation interviews or appointment interviews given by the New York City Board of Education are included among the examinations and interviews for which absence may be granted without charge to leave balances.

6.0 f. For attendance of delegates and alternates at State or National conventions of veterans' organizations and volunteer firemen's organizations.

6.0 f. INTERPRETATION

A. Agencies may not grant time without charge to leave balances for attendance at conventions of veterans' auxiliary organizations.

6.1 Agency heads shall grant any leave of absence with pay required by law.

7. LEAVES OF ABSENCE WITHOUT PAY

- 7.0 a. A combined confinement and infant care leave of absence shall be granted to any permanent employee (male or female) who becomes the parent of an infant child, up to three years of age, either by birth or by adoption, for a period of up to 36 months. In the case of a pregnant employee, such leave shall commence upon request and reasonable notification by the employee of the intent to take such leave. For other employees such leave shall commence immediately preceding the birth or adoption or upon request and reasonable notification.
- b. The provisions of Section 7.0 a. above shall be applied to non-permanent employees. During the period of such leave, the agency head may terminate such non-permanent employment because of business necessity or by the operation of law.
- c. A permanent employee who is on leave of absence from a permanent position and has a non-permanent appointment to another position shall be granted concurrent leaves of absence from both positions pursuant to Sections 7.0 a. and 7.0 b. The leave from the non-permanent position may be terminated as provided in 7.0 b. without affecting the leave from the permanent position.
- d. Where a pregnant employee has an accrued sick leave and/or annual leave balance, she shall be continued in pay status for a period of time equal to her accrued sick leave balance plus her accrued annual leave balance. Such time in pay status is included in and, therefore, deducted from the 36-month confinement and infant care leave.
- e. Leave without pay under Section 7.0 is separate from leave under Section 7.1. Grants of leave under Section 7.0 should not be counted in calculating the maximum amount of leave permissible, in the discretion of the agency head, under Section 7.1.

7.0 INTERPRETATIONS

- A. Sick leave taken during pregnancy, prior to the granting of the combined confinement and infant care leave, must be used in accordance with the provisions of Section 4.2.
- B. At the request of the employee, an agency head may, in his or her discretion, allow return from confinement and child care leave before the full leave time has elapsed.
- C. Section 7.0 d. permits the use of only that amount of accrued annual leave and accrued sick leave due the employee at the commencement of the confinement and infant care leave. Upon return from the leave of absence, the employee shall be credited with the annual leave time and sick leave time earned while on the paid annual leave and sick leave portion of the leave.

- D. Leave under this section must be used in one continuous absence.
- E. Employees granted leave under this Section or Section 7.1 should be required to give at least six weeks notification to their agencies of their intent to return from such leave on the scheduled date or to request a further extension of such leave.

7.1 Leaves of absence without pay for reasons not covered in the foregoing rules may be granted to permanent employees by the agency head not to exceed one year. Extension of such leave may be granted by an agency head not to exceed an additional period of one year. Further extensions may be granted by an elected official, in an agency headed by such official, or by the City Personnel Director for agencies headed by appointed officials.

7.1 INTERPRETATIONS

- A. Leave without pay under this section is separate from leave under Section 7.0. Grants of confinement and infant care leave made under Section 7.0 should not be counted in calculating the maximum amount of leave permissible under Section 7.1.
- B. The two-year limit on leave without pay does not apply to an employee who leaves an open-competitive position under these regulations to take an exempt or non-competitive position.
- C. A request for approval of extension of leave of absence without pay must be executed in duplicate on Form DP-2011 by the agency head and submitted, at least 30 days prior to the expiration date of the present leave of absence, to the New York City Department of Personnel, Deputy Personnel Director, 220 Church Street, New York, New York 10013.

7.2 Agencies shall grant any leave of absence without pay, such as military leave, required by law.

8. ABSENCE DUE TO INJURY INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES

- 8.0 a. An employee physically disabled in the performance of official duties who has accrued sick and/or annual leave or has been advanced credits in accordance with these regulations may elect one of the following, in addition to the benefits to which the employee is entitled under the Workmen's Compensation Law, such election to be made within the first seven calendar days of absence by the employee or someone on his or her behalf:
 - 1. To receive the difference between the amount of his or her weekly salary and the compensation rate, provided that:
 - (a) the injured employee or any authorized person acting on behalf of such employee makes the request in writing, and

- (b) the injured employee or any authorized person acting on behalf of such employee agrees that a pro-rated charge be made against the sick leave and/or annual leave balances equal to the number of working days of absence less the number of working days represented by the Workmen's Compensation payments, and
 - (c) the injured employee has the necessary accrued sick leave and/or annual leave balance or has been advanced credits in accordance with these regulations against which the supplementary pay can be charged, and
 - (d) the injured employee was not guilty of willful gross disobedience of safety rules or willful failure to use a safety device, or was not under the influence of alcohol or narcotics at the time of injury, or did not willfully intend to bring about injury or death upon himself or herself or another, and
 - (e) the injured employee undergoes such medical examinations as are requested by the Workmen's Compensation Section of the Law Department and the employing agency, and when found fit for duty by said physicians, returns to employment.
2. To receive Workmen's Compensation benefits in their entirety with no charge against sick leave and/or annual leave.
- b. During the period when an injured employee is receiving Workmen's Compensation and the differential to bring the employee to full pay, the employee will be carried on full-pay status and this time shall be counted for retirement benefits.

8.0 INTERPRETATIONS

- A. Agencies should use election forms (DP-2002), which are obtainable from the Stock Section (Room 433) of the Department of Personnel.
- B. The election of an option, as provided for in this section, should be made within the first seven consecutive calendar days following absence, in order that an employee, who so elects, is assured of receiving full pay during the period of Workmen's Compensation coverage. The agency head's authority to grant leave with full pay, without charge to leave balances pursuant to Section 8.1, does not extend beyond the first seven consecutive calendar days following absence.
- C. Where an employee has been absent for an initial period of less than a week and an extended subsequent absence may possibly result from the same disability or condition, the employee must elect a rate of charge (on Form DP-2002) within seven calendar days of the first day of absence in order to receive full pay, even though the employee has already returned to work.

- D. An employee who fails to elect a rate of charge within the prescribed period shall be deemed to have selected Option 2 and will receive the benefits of Workmen's Compensation only.
 - E. Provisional and temporary incumbents of Rule XI (Career and Salary Plan) positions, and permanent employees reclassified from Career and Salary Plan titles to Rule X titles pursuant to Resolution No. 63-130 adopted December 30, 1963 by the City Civil Service Commission, are also covered under the Workmen's Compensation Law.
- 8.1 The agency head is empowered to grant a leave of absence with pay for the first week's absence of an employee covered by Workmen's Compensation who is physically disabled in the performance of official duties.
- 8.2 a. Upon the determination of a head of an agency that an employee has been physically disabled because of an assault arising out of and in the course of employment, the agency head will grant the injured employee a leave of absence with pay not to exceed eighteen months. No such leave with pay shall be granted unless the Workmen's Compensation Section of the Law Department advises the agency head in writing that the employee's injury has been accepted by the Division as compensable under the Workmen's Compensation Law, or, if such injury is not accepted by the Division as compensable under such law, unless the Workmen's Compensation Board determines that such injury is compensable under such law. An employee who is granted a leave of absence with pay pursuant to this Section, shall receive the difference between the employee's weekly salary and the compensation rate without charge against annual leave or sick leave. The employee shall, as a condition of receiving benefits under this Section, execute an assignment of the proceeds of any judgment or settlement in any third-party action arising from such injury, in the amount of the pay and medical disbursements received pursuant to this Section, but NOT to exceed the amount of such proceeds. Such assignment shall be in the form prescribed by the Corporation Counsel. The injured employee shall undergo such medical examinations as are requested by the Workmen's Compensation Section of the Law Department and the employing agency, and when found fit for duty by the Workmen's Compensation Board shall return to employment. Benefits provided under this section shall be in addition to, but not concurrent with, benefits provided under Sections 8.0 and 8.1 of these regulations.
- 8.2 b. For employees who do not come under the provisions of Section 8.2 a. of these regulations but who are injured in the course of employment, upon the determination of an agency head that an employee has been physically disabled because of an injury arising out of and in the course of employment, through no fault of the employee, the agency head will grant the injured employee an extended sick leave with pay not to exceed three months after all the employee's sick leave and annual leave balances have been exhausted. This additional leave must be taken immediately following the exhaustion of such balances.

No such leave with pay shall be granted unless the Workmen's Compensation Section of the Law Department advises the agency head in writing that the employee's injury has been accepted by the Division as compensable under the Workmen's Compensation Law, or if such injury is not accepted by the Section as compensable under such law, unless the Workmen's Compensation Board determines that such injury is compensable under such law. An employee who is granted extended sick leave with pay pursuant to this section, shall receive the difference between the employee's weekly salary and the compensation rate for the period of time granted. The employee shall, as a condition of receiving benefits under this section, execute an assignment of the proceeds of any judgment or settlement in any third-party action arising from such injury, in the amount of the pay and medical disbursements received pursuant to this section, but not to exceed the amount of such proceeds. Such assignment shall be in the form prescribed by the Corporation Counsel. The injured employee shall undergo such medical examinations as are requested by the Workmen's Compensation Division of the Law Department and the employing agency, and when found fit for duty by the Workmen's Compensation Board shall return to employment. Benefits provided under this section shall be in addition to but not concurrent with benefits provided under Sections 8.0 and 8.1 of these regulations. The benefits provided by this section shall not be provided or continued beyond the date on which disability retirement benefits become effective.

8.2 INTERPRETATION

- A. An "assignment" Form (DP-2010 obtainable from the Department of Personnel Stock Section, Room 433) must be executed in duplicate by the injured employee and submitted to the employing agency. The employing agency shall forward the duplicate copy to the Workmen's Compensation Section of the Law Department, and retain the original.

9. MISCELLANEOUS PROVISIONS

9.0 The regular holidays* with pay shall be:

New Year's Day	Columbus Day
Lincoln's Birthday	Election Day
Washington's Birthday	Veterans Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day
Labor Day	

Where a holiday falls on a Saturday or Sunday, employees shall be granted time off with pay on either the preceding Friday or the succeeding Monday, at the discretion of the Mayor.

*Holidays are to be considered seven-hour days.

- 9.1 Weekly time sheets shall be maintained by the employee showing the actual hours worked by each employee. These records shall be forwarded to the Personnel Office of the agency who shall be responsible for maintaining annual time scores.
- 9.2 Upon transfer of a permanent employee from one agency covered by these regulations to another agency so covered, or appointment of any employee to another agency so covered from an eligible list promulgated by the City Civil Service Commission and/or the Personnel Director immediately following continuous City service, all leave balances shall be transferred with the employee.
- 9.3 Upon reinstatement of an employee to a permanent position, unused sick leave and vacation balances at the time of resignation or layoff, shall be restored to the employee's credit.
- 9.4 The agency head is authorized to establish rules relating to leave not inconsistent with these regulations, to meet the specific needs of the agency.
- 9.5 The City Personnel Director is authorized to interpret these regulations upon request of an agency head or an interested employee or group of employees.
- 9.6 In an emergency, the City Personnel Director and the Director of the Office of Management and Budget shall be jointly empowered to make pro tempore rulings modifying or suspending the provisions of these regulations subject to submission to the Mayor for approval within 60 days.

10. VESTED BENEFITS

All annual leave, sick leave, and compensatory time balances to the credit of an employee covered by the Managerial or Executive Pay Plan as of the day preceding the effective date of this order shall remain to the employee's credit. Such balances may be used either in accordance with these leave regulations or in accordance with the regulations in effect on the day preceding the effective date of this order.

Agency heads should encourage employees to liquidate annual leave and compensatory time balances to the extent that the demands of the operation of the agency will permit.

11. CHANGES IN STATUS

11.0 Leave balances of sub managerial employees who are promoted, appointed, assigned or reassigned to positions covered by these regulations shall be treated in the following manner:

- a. Annual leave shall remain to the employee's credit and shall be governed by the provisions of these regulations.
- b. Sick leave shall be placed in a frozen Submanagerial Sick Leave Bank and shall be used for computation of Lump Sum Payment in lieu of terminal leave upon separation in accordance with the following conditions:
 - (1) The employee must have more than 10 years of continuous service.
 - (2) Such leave shall be paid for at the rate of pay the employee was earning prior to appointment, promotion, assignment or reassignment to a position covered by these regulations or the minimum rate of pay of the title held by the employee immediately prior to appointment, promotion, assignment or reassignment to a position covered by these regulations, whichever is greater.
 - (3) Employees in the title from which the employee was promoted, appointed, assigned or reassigned still receive terminal leave based on sick leave at the time of separation or termination.

The City Personnel Director and all other officers or agencies of the City having any jurisdiction over the matters provided in this Order are hereby requested, pursuant to the powers vested in them, to take the steps necessary to effectuate the provisions of this Order.

Edward I. Koch, Mayor



THE CITY OF NEW YORK
OFFICE OF THE MAYOR ✓
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 49

JANUARY 7, 1976

CONTROL OF OVERTIME AND PART-TIME HOURS

WHEREAS, the City of New York is currently in a fiscal crisis which mandates economies in every area of governmental operations and expenditures; and

WHEREAS, the payment of overtime to employees is an expenditure which must be curtailed in order to achieve necessary economies; and

WHEREAS, the amount of compensation for overtime received by many City employees in the year prior to retirement is included in the computation of their pension benefits; and

WHEREAS, situations could arise in which inordinate amounts of overtime paid to employees in their final year of service totally disproportionate to that received in prior years, would result in severely inflated pension costs to the City of New York; and

WHEREAS, part-time employees who are eligible to receive pension benefits upon retirement from service could, by working an inordinate number of hours immediately prior to retirement, seriously inflate pension costs for the City of New York; and

WHEREAS, it is necessary and desirable to control any abuses which might arise in these areas.

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered as follows:

Section 1. Each agency head shall be directly responsible for assuring that the allocation of overtime is controlled in such a manner as to achieve the most economy and eliminate the possibility of abuse.

Section 2. Authorizations to work overtime compensable in cash shall be evenly distributed within each agency among all those employees who can be called upon to perform the overtime work required. No authorization shall be granted to an employee to work overtime compensable in cash in excess of 5% of the base salary received by the employee during the preceding 12 month period unless such authorization is signed by the agency head or deputy to whom the agency head has granted authorization power.

Section 3. Monthly reports shall be filed by each agency head with the Office of Management and Budget, detailing the distribution of authorized overtime each month by individual employee name, social security number, title, date of birth, length of service, current base salary and amount of overtime compensation received during the preceding 12 calendar months grouped by bureau, institution or program within the agency. Such reports shall also set forth any and all special circumstances which made it necessary to authorize cash overtime during the month to any employee in excess of the 5% limitation imposed by this Order. Requests for approval of Certificates

of the Mayor submitted to the Office of Management and Budget, covering the payment of overtime will not be approved unless all the overtime for which payment is requested has been previously reported in these monthly reports. All such reports shall be received by the Office of Management and Budget no later than the 15th day of each succeeding month.

Section 4. Each employee who is working for the City of New York in more than one position in the same or different agencies must reapply for a Certification of Compatability of Dual Employment in accordance with Personnel Policy and Procedure Bulletin No. 6-70 of March 13, 1970, within 60 days of the date of this Order.

Section 5. A part-time employee shall not receive compensation from the City of New York in excess of 1000 hours during any 12 month period unless authorized in writing by the head of an agency by which he or she is employed.

Section 6. Each agency head shall file monthly reports with the Office of Management and Budget, detailing the number of hours worked by each part-time employee of the agency and the rate of hourly compensation received by such employee; a cumulative total of the hours and rates received by each part-time employee for the preceding 12 month period; and an indication of what other City agencies, if any, employ each part-time employee. This report shall also set forth any and all special circumstances which made it necessary to authorize any part-time employee to work in excess of the 1000 hour limitation imposed by this Order. These reports

shall be received by the Office of Management and Budget no later than the 15th day of each succeeding month.

Section 7. Each agency shall maintain its records regarding overtime and part-time hours and compensation in good order and shall be subject to periodic audits by the Office of Management and Budget.

Section 8. All non-mayoral governmental agencies are urged to take necessary steps to reduce payments for overtime and to insure that the allocation of overtime is controlled in such a manner, so as to achieve the most economy and eliminate the possibility of abuse. Non-mayoral agencies are also urged to take necessary steps to insure that part-time employees do not work an excessive amount of hours and that abuses in this area are eliminated.

Section 9. This Order shall take effect immediately.

Abraham D. Beame
M A Y O R

NOTES

- 6101 Comptroller - Indicates some 15,000 may not be required in Central Payroll and EDP.
- 6101 Dept. of Social Services - D.M. for \$579,000 being prepared for submission for O.T. worked during July - Dec. 1975.
- 6101 & 6102- Correction - Expended O.T. monies are through 10/31/75 not 11/30/75.
- 6101 Probation - Modifications pending for O.T. worked in period to 11/30/75 are pending.
- 6101 Criminal Court figures are T.L. only.
- 6101 Supreme Courts - generally 6 months behind in submitting D.M.'s for O.T. worked.
- 6101 E.P.A. - D.M.'s being processed for O.T. worked in period through 11/30/75: \$400,000.
- 6102 T.A. Police - note modified condition reduces budget as adopted amount by \$2 million.

FORMAT:

1. Introduction
2. Debt Service Fund
3. Budget Procedures
4. Independent Third Party
5. ~~Control Mechanisms~~ *AUDITING & REPORTING*
6. Covered Organizations
7. Funding of Current Operating "Capital Expenses"
8. Miscellaneous Items

Each category should be set up as follows:

Introduction

Legislative Change

~~Reason~~

~~Observations~~

Custom Components

Introduction

The City of New York has determined that it is appropriate at this time to provide for the opportunity to issue general obligation bonds of The City with proper contractual safeguards designed to restore confidence in the ability of The City to meet on a timely basis debt service thereon while at the same time preventing a situation of undue burden on the taxpayers of The City, continuing to render services and to eliminate the need for the continued existence of the Emergency Control Board. In order to accomplish the foregoing, State legislation enacted pursuant to Section 12 of Article VIII of the New York Constitution together with a home rule message is required. Such legislation should be treated as comprehensive in scope and designed in order that there be a public retail sale of such bonds. Such legislation will provide by law the continuation of the acts taken to date in order that The City can properly be credited in the financial community. The following are categories to which legislation should be addressed:

1. Establishment of Debt Service Fund.

Introduction: The City currently pays employees twice a month whereas principal on bonds comes due once a year and interest comes due twice a year. The establishment of a debt service fund and the deposit therein of certain moneys on a monthly basis is necessary in order that investors understand that debt service is put on a par with other expenses of The City.

Legislative Change: The City would be required to establish a debt service fund into which it will be required to deposit certain real estate tax receipts. The formula for determining the amount for deposit will be determined as follows:

$$\frac{\text{Total appropriation for debt service}}{\text{Total appropriation for City ad valorem real property tax levy less reserve for uncollected tax}} = \text{debt service percentage}$$

All real property tax receipts should be collected in the manner as presently collected but in the account of the individual third party who will deposit into the Debt Service Fund the portion of each such payment equal to the debt service percentage. The remainder of each real estate tax will be limited to the City for regular disbursements.

In addition, in the event that during the year the City issues any obligations which require payment of principal or interest during the year and which was not in the original debt service computation than the percentage is increased.

The Debt Service Fund affects the segregation of real estate taxes sufficient to pay debt service during the year on bonds of the City and may not be used for any other purpose. However, in the event that the City should seek protection of the bankruptcy court, it is not an event for which the bondholders have a priority over other creditors of the City.

It should be particularly noted that the debt service to be deposited in the Debt Service Fund relate to all bonds of the City including all currently outstanding bonds.

BUDGET PROCEDURES

Introduction

The Legislation contemplates the establishment of certain budgetary guidelines and formulae designed to assure that The City budgets will be realistic and balanced. These formulae will impose a ^{ceiling} ~~ruling~~ on revenue estimate and a floor for expense estimates. If The City wishes to depart from these formulae, it must file a certificate of justification with a third party. If the third party finds the City's justification to be unreasonable, The City cannot depart from the formulae in adopting and administering its budget.

The legislation will also mandate a "reserve fund" to be funded from future expense budget appropriations. This fund will be used to cover revenue shortfalls and overruns in uncontrollable expenses, provided that the balance of the fund is restored through a budgetary appropriation in the next year.

Legislative Change

A. Revenue Estimate

The City could not exceed the following guidelines on revenue estimates without filing a certificate of justification with a third party:

1. Real Estate - Tax levy less reserve for uncollected taxes. Reserve for uncollected taxes must be greater than or equal to the tax levy multiplied by prior year delinquency rate.

2. Existing General Fund ^{Revenues} ~~Taxes~~ by Major Tax Source (Sales, Corporate income, Personnel income, stock transfer, commercial rent, all other) - the lesser of:
 - a. current fiscal year projection multiplied by average growth rate over the last three years; or
 - b. prior fiscal year actual multiplied by growth rate squared.
3. Existing reimburseable aid by program - the amount appropriated for the program multiplied by a reimbursement rate. The reimbursement rate shall not exceed the percentage of expenses reimbursed under this program in the ^{Prior} ~~Last~~ year.
4. Block Aid Grants (not driven by expenditures, for example, revenue sharing) - amount collected in cash in the current year, if all payments have been received at the time of budget adoption, or in the prior year.
5. New aid programs - either:
 - a. signoff or dollar amount by the donar government, or
 - b. program appropriation multiplied by the reimbursement rate, provided the donor government has approved the reimbursement rate.
6. New taxes or change in tax structure - will require filing of a certificate of justification.

B. Expenditures

The City must file a certificate of justification with a third party if it appropriates less than the following amounts:

1. Personnel service - 97% of current annualized payrolls.
2. Pensions - the amount certified by the City's actuary.
3. Other fringe benefits - the greater of
 - a. current year's projected
 - b. prior year's actual
4. Debt service - the amount required to meet all interest and amortization on existing debt outstanding plus:
 - a. short-term interest on seasonal borrowings no less than the larger of:
 - i. current year's projected
 - ii. prior year's actual
 - b. interest on bonds to be issued no less than interest on bonds issued during the current fiscal year paid in the current fiscal year.
5. Public assistance - current caseload times the prior year's average cost per case.
6. Medicaid - the greater of:
 - a. current year's projection
 - b. prior year's actual
7. All other - the greater of:
 - a. current year's projection
 - b. prior year's actual

11600000
48000000

Jan 1984
458-8194

C. Reserve Fund

1. Appropriations - The City would be mandated to appropriate 1% of all revenues excluding reimburseable aid to a reserve fund. Such appropriation shall continue until the balance in the fund exceeds 5% of all revenues excluding reimburseable aid. Such appropriations shall be paid to a third party who administers the fund.

2. Borrowing From the Fund - The third party shall be directed to use the cash in the fund to purchase revenue anticipation notes and tax anticipation notes from The City provided that all such debt matures on or before June 30 of the fiscal year and at the close of the fiscal year no portion of the fund is invested in City securities.

3. Withdrawals From the Fund - The City may withdraw cash from the fund and appropriate such in its budget only in the following cases:

- a. revenue shortfalls
- b. overruns in welfare, medicaid, debt service, and other expenses mandated by law.

4. Restoration - The next year's budget must contain an appropriation for any amount withdrawn from the fund in addition to the appropriation of 1% of revenues if required.

3

The legislative change would require The City to include in its budget revenues (other than the real estate tax) not in excess of the following:

(1) Miscellaneous revenues by categories such as sales tax, personal income tax, not in excess of the amount in each such category determined according to a formula.

(2) Operating surplus not in excess of the amount as of the end of the last audited year.

(3) State or Federal aid by major categories and programs, each such program being determined in accordance with a formula generally applicable to all such programs; however, further discussion may indicate that there should be a separate formula for programs for which The City expends and is then reimbursed for capital projects programs for programs such as aid to education and for specific project grant programs.

In general, it is anticipated that the legislation would provide that The City could reduce expenditures for discretionary programs by an amount of approximately 3% (\$120 Million) without regard to the formula. Any further reduction of a specific item would require the filing of a Justification Document with the independent third party. Consideration should be given as to whether or not the 3% reduction must be related to realistic cost savings such as attrition. The Justification Document to be filed would include actions taken which would form a basis for a reasonable expectation that such reductions and expenditures could be accomplished. For example,

7
if a program such as fire training was to be eliminated, then the personnel previously employed for such training would have to have been terminated.

With respect to revenues, the Act would preclude the inclusion of a new source of revenue unless the following conditions were met: The amount for revenues included in the budget were equal to the amount of a contingent reserve fund and a Justification Document setting forth the basis for assuming the new source in the budget which would be filed with the independent third party.

The difference between the total appropriations and the total estimated revenues would be the amount to be raised by the real estate taxes.

During the fiscal year, no emergency, supplemental or increased appropriations can be made except as a result of a transfer or a new source of revenue not anticipated at the time of the adoption of the budget. The transfer could only occur if The City determined that after such transfer the balance of the appropriation was sufficient to fully fund the program. The new source of revenue to be included would have to be pursuant to a program in effect and available for receipt in the year.

COVERED ORGANIZATIONS

Introduction

The Emergency Financial Control Board has the authority to control the budgets of covered organization such as the Health and Hospital Corporation and the Board of Education. When the Emergency Financial Control Board ceases to exist, it will be necessary to have some analogous mechanism to ensure that covered organizations do not overspend and thereby cause City deficits.

Legislative Change

Legislation should establish an official or board to succeed to the powers of the Emergency Financial Control Board over the covered organizations. The oversight body could consist of City officials or City and State officials.

It should be noted, however, that distinction should be examined between the different faces of covered organizations in that the City presently has varying degrees of review and fiscal responsibilities. In general, the budget in order to be perceived as realistic must be balanced in a manner designed to preclude the City from being faced in early spring with a substantial deficit in the covered organization operations and accordingly threatened with a shutdown of operations unless further appropriation be made by the City. It is not realistic to believe that the City can simply shutdown the schools and even if the hospital corporation fails, the indigence will probably go to volunteer hospitals with billings for such services to the City.

Friedgut

Union Note

New York City - Confidential

A. "New" Money Available (F78, F79, F80):	\$400-480 MM
B. Budgeted for Increases in F79 and F80:	<u>@ \$180 MM</u>
Sub-total (A+B)	\$580-660 MM
C. Budgeted for Increases in F78	<u>\$138 MM</u>
Total (A+B+C)	\$720-800 MM*

The \$138 million is owed to the City's employees, and presumably will be paid during the next few months. Approximately \$600 million is truly all that is available for any other increases between now and June 1980. This could fund a 6% increase starting late in calendar 1978 until June 1980. However, there would be no room left for any cost of living allowance, such as form more than one third of the TWU package. It is this differential which causes the present impasse between the City and the Union Coalition.

The only way to solve the impasse is to devise a new modus operandi. For example, the unions might get a straight 6% wage increase. However, instead of a cost of living allowance, they would get a good share (one half to two thirds) of any budgetary surplus which the City would realize after cranking the new wage settlement into the City's figures. In other words, if Bigel turns out to be right (whether for the right or the wrong reasons), and the City ends up \$150 million better in budget terms in fiscal 1979 and fiscal 1980, the unions could get a bonus of \$100 million in each of those two years. Under those circumstances, they would have done essentially as well as the transit workers.

The other one third of the budgetary surplus could be used for early redemption of Federally guaranteed City bonds. I discussed this entire plan with Roger Altman at lunch yesterday, and he thought it would be extremely helpful if this whole package could be put together. I think the true test of Bigel's statesmanship (and the Wriston-Bigel axis) would be if Bigel and his colleagues would buy this approach. I have tried it on his staff man, and have received an encouraging response, and perhaps we might try it on Bigel and see how he reacts.

*Bigel's Union aggregate about \$400 million additional, primarily because, like the City, he counts economies and other savings, but he makes no allowance for needs other than wages, which the City estimates at being close to \$300 million. The remaining \$100 million - plus difference is Bigel's "Cash Available FY 1977", which the unions feel is due them from the past, but which Peat Marwick says is not.