The New York City
Manager
NYC MEA

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Inequities mar MEA's salary hike success

The success of the MEA's campaign for a timely raise in 1999 and a greater than six percent salary increase for managers was diminished in mayoral agencies by instances of arbitrary and capricious execution of the mayor's personnel order raising salaries effective July 1st. Executive director Ed Perlmutter wrote to mayor Giuliani on October 29th informing him of the inequities and requesting a 4.75 percent increase for all managers.

The personnel order allowed agencies to award increases of 6.35 percent, 4.75 percent or nothing without specific criteria for determining who would receive the differing amounts. Agencies were not even required to use the managerial performance evaluations (although some did) from the program the mayor adopted in 1995. The only limitations on the agencies were that the increase had to be based on "merit and performance" and were subject to a review by a city hall committee. The MEA has found evidence that implementation of the personnel order was significantly inconsistent with the "merit and performance" requirement, which led to the October 29th letter. The raises were reflected in the October 1st paychecks.

The Health and Hospitals Corporation did not opt to copy the mayor's format for granting salary increases and, in effect, gave all employees deemed eligible for a raise a five percent increase effective July 1st. Most members in the HHC contacted by the MEA office expressed disappointment that the amount of the raise was not higher, but they preferred the uniform amount.

The New York City Housing Authority and the Board of Education followed the mayor's model with the three amounts and the July 1st effective date.

In the October 29th letter Mr. Perlmutter wrote, "The MEA has found that some managers were initially informed by their supervisors that they would receive an increase of 6.35 percent or 4.75 percent and were subsequently informed that the increase was rescinded. Because the order provided no written criteria for merit and performance, there is no way for these employees to understand why their supervisors' recommendations were overruled or

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Dworkin slate unopposed for third term

President William Dworkin, third from left, and his running mates were unopposed for office at the September 29th membership meeting. In accordance with the MEA Constitution, they were declared elected by Georgia Williams, the chair of the nominating committee. The other officers are, from the left, executive vice president James Durrah, secretary Joe Ramaglia and treasurer Roy Durig. Mr. Durig succeeds Lou Sommo, who chose not to run for reelection. The others are two year term incumbents. Two year terms begin January 1st.

Holiday Party

(And General Membership Meeting)

Monday, December 13

Antun's Catering Hall
96-43 Springfield Boulevard
Queens Village

Meeting at 6:15 p.m. ✻ Party at 7:00 p.m.
International Smorgasbord ✻ Open Bar
Installation of Officers

If you did not RSVP to the mailing, please call the office, (212) 964-0035, so the party planners can include you. Travel directions are available from the office.

Eleven students get college help from the MEA

Proud MEA members Mark Levy (l) and Yim and Jannie Yee (r), parents of scholarship winners Matt and Joanne, with president William Dworkin

Three students listed in *Who's Who in American High Schools,* a published poet, a musician and band leader, and one of United States Senator Frank Lautenberg's interns were among the 11 students who won the first ten scholarships awarded by the MEA to children of its members (one scholarship was divided between two sisters). One of the three students listed in *Who's Who* scored an astounding 780 out of a possible 800 on her verbal SAT and had a high school grade point average over 99!

Among the scholars is a future mathematician, two aspiring doctors, a woman who wants to "improve international relations and public health" and a high school senior class president. One of the awardees was personally recommended by her college president, another toured several European cities with her high school chorus while a third was the editor of her school's yearbook. One is on his college's Dean's list. These young people are well rounded: many played on varsity teams—some winning awards for athletics—and/or were peer tutors or volunteers at community service agencies.

President William Dworkin said, "I am amazed at how accomplished the children of our members are and I wish we could have given scholarships to all who applied. MEA members can be proud that we are helping to send through college some of the smartest and nicest young people I've encountered."

The scholarship winners (their member parent, his or her agency and the child's college) are as follows: Brooke Durrah (James, Dept. of Health, Clark-Atlanta U.); Scott Justin Fox (Stephen, HRA, U. of Florida); Brian Hosey (Peter, EMS, Syracuse U.); Sheila Isanaka (Ram, Dept. of Design and Construction, Johns Hopkins U.); Nerrissa (Iona College) and Adhalia (Manhattanville College) Lalchandani (Anand, Dept. of Transportation); Matt Levy (Mark, Dept. of Citywide Administrative Services, Emerson College); Shmuel Mintz (Herbert, Dept. of Buildings, Brooklyn College); Lisa Ross (Richard, Dept. of Mental Health, Hofstra U.); Rochelle Sinclair (Yvonne, Dept. of Health, NYU) and Joanne Yee (Yim, HHC, NYU).

A committee, chaired by John Boden of the Department of Environmental Protection, developed the scholarship benefit as well as the pension counseling benefit, established the criteria for rating the applications and decided which applicants would get the scholarships. The other committee members are Roy Durig, Frederick Ewald, Ronald Wilkerson and Georgia Williams.

The criteria used for making the awards were SAT scores, grade point average, length of the parent's membership in the MEA and an essay by the student. The committee did not know the identities of the candidates they were evaluating as the information given to the members had names and other identifiable information blacked out.

Each scholarship is $500 for the academic year and is funded from part of the $2 per paycheck dues increase that was effective in June of 1998. Applications for the scholarships are mailed to members during the summer. Children of members who are enrolled in an accredited college or university are eligible. ■

Early retirement incentive available to hospital corporation managers

The Health and Hospitals Corporation is allowing managers to participate in the early retirement incentive program which it adopted for corporation employees on October 8th.

The last time the HHC offered an early retirement incentive was in 1998 and managers were excluded. The MEA has been campaigning ever since for the right to the same opportunity if early retirement were again offered to other staff members. The issue was raised in formal correspondence on July 22nd.

The incentive for eligible employees is an additional month of service credit for every year, up to 36, that the employee has worked. Applications must be filed during December and the employee must retire by the end of the year. The HHC is the only city entity to allow its employees to participate in an early retirement incentive program this year. ■

Suit for overtime pay lost; appeal planned

Federal Judge Loretta A. Preska has sided with the city and dismissed the MEA supported lawsuit, *Yourman v. Dinkins*, in a ruling dated October 7th. This is a complete reversal of fortune in a case that began April 1, 1991, when the MEA supported a suit filed on behalf of 400 managers claiming that the Fair Labor Standards Act required that managers be paid for overtime worked. The decision will be appealed.

Judge Preska found the city liable in July 1993, and she ordered payment of $13.2 million to the plaintiffs and $500,000 for attorneys' fees in July 1995. On May 30, 1996, the Second Circuit Court of Appeals denied the city's appeal.

In most cases this would have been the end of the story. However the United States Supreme Court decided to resolve conflicts among different district courts rulings on a technical matter—the interpretation of the salary basis test which is used to determine if an employee is covered under FLSA. As a result, the Supreme Court agreed to hear and decide *Auer v. Robbins*, a case involving St. Louis police sergeants.

In February 1997, the Supreme Court unanimously ruled against the plaintiffs in *Auer* and interpreted the requirements for meeting the salary basis test differently from the majority of lower courts. The *Yourman* case, which the city had appealed to the Supreme Court, had been remanded to Judge Preska for consideration in light of *Auer*.

Following *Auer*, most courts began interpreting the salary basis test very narrowly and Judge Preska's ruling is consistent with this trend. She accepted new defenses from defendants that were not raised at the first hearings, the most important of which was that each city agency stands alone. The court rejected arguments advanced by Joan Stern Kiok and Robert Felix, the attorneys for the plaintiffs, that the city had to be taken as a whole in determining its policies and practices. As a result, instead of counting up all the impermissible deductions in all agencies, 148, the court looked at each agency separately, finding one to four deductions in some agencies and none in others. This, Judge Preska ruled, was too insignificant to find a practice within the meaning of *Auer*.

Explaining the decision to appeal, Ms. Kiok said, "The judge's refusal to consider New York City as one entity for purposes of determining a disciplinary practice is of questionable validity as is her counting of ten paycheck deductions as only one and her refusal to look at any disciplinaries prior to April 2, 1989.

"Although I do not want to be unrealistically optimistic, the decision is vulnerable and we have a reasonable chance of overturning it." ■

Salary hike success undercut by inequities

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what they would have to do to qualify for the raises. Despite the positive recommendations of their immediate supervisors, some managers were told that they would receive a zero since their salaries were already high enough. Others were told that they were going to receive a zero because their agency had to have some zeros."

President William Dworkin stated, "The MEA is deeply distressed and disappointed with the lack of fairness and the presence of procedural inequities in the implementation of the executive order. I am particularly dismayed about the members who received no increases."

The MEA has requested a list of all managers affected by the personnel order, broken down by agency, indicating what raise each received. The MEA will analyze the information for evidence of quotas, which city hall emphatically denies exist. A senior official declared, "There were no quotas for the numbers of employees selected for the three salary options available to agency heads and there were no dollar limits imposed on the agency budgets beyond that the raises be self-funded by the agency." The MEA also will be looking for major variations between agencies.

The MEA did secure a gain as the personnel order increased the minimums of the various levels in the managerial pay plan by 6.35 percent. For years the city has not increased the minimums when pay increases were granted to incumbents, relegating many newly appointed managers to the lowest possible salaries. Another senior official familiar with the issue said, "The MEA deserves credit for pointing out the problem of lower paid managers and for raising the need to increase the minimums."

Stephen Ferrer, chairman of the managerial inequities committee, was asked by Mr. Dworkin to develop a position on the entire issue of the performance evaluations and to recommend whether the MEA should continue to support such a program. "It is obvious that we must oppose this kind of salary increase in the future," Mr. Dworkin explained, "The performance evaluation would seem an ideal way of measuring merit and performance. If it is not going to be used, we may need to consider withholding our cooperation."

In the spring, the MEA had called for a uniform 6.75 percent increase for all managers rated satisfactory or better retroactive to June 1st, the same effective date as the 4.75 percent increase received by members of DC 37 and many other unions. The 6.35 percent figure was calculated by the administration as being equal to the highest increase negotiated in any union contract for a raise effective in 1999. ■

NYCHA policy allows pay for ill managers

Meeting with NYCHA chair John Martinez, 3rd from left, are executive director Ed Perlmutter, chapter director Lou Brietbach and assistant director Simon Driver

A salary continuation program to enable catastrophically sick managers to remain on payroll, posting of vacancies and salary increases were the topics discussed by the MEA with John Martinez, the new chairman of the New York City Housing Authority at a July 19 meeting.

Mr. Martinez indicated that he was favorably disposed to helping ill managers maintain their incomes after they have exhausted their sick leave balances. A letter received at the MEA office outlining the authority's policy indicated that the authority's personnel board can provide "a paid leave grant of up to six months in any one-year period...The grant may be unrestricted or all or part may be chargeable against future earned annual leave."

Chapter director Lou Breitbach reminded Mr. Martinez of previous administrations' commitments to posting managerial vacancies and pointed to a newspaper ad for a director position. Mr. Martinez said that he had already instructed his staff to post future vacancies and the written policy requiring this posting was received by the MEA. However, although the policy details "the regular mechanisms used to fill vacancies," such as posting, the policy statement continues by stating, "the authority also follows other procedures to fill vacancies when warranted," including "administrative reassignments."

Ed Perlmutter, MEA executive director, said, "We are pleased that Mr. Martinez responded to our concerns in writing as he said he would. However, we want to make certain that the exceptions allowed by the posting policy are rarely used and do not become the common rule. Our initial reading of the pay policy for seriously ill managers is that it will be helpful."

At the time of the meeting, the mayor had not yet granted the latest salary increase and there was a discussion of a pay adjustment for housing authority managers. The chairman indicated that he was considering bonus pay for managers with outstanding performances, but the idea was not developed enough for discussion. When the mayor's personnel order was issued, the MEA pressed for across-the-board raises, but the authority chose to duplicate the method used in the mayoral agencies. The MEA has requested a report listing the raise given to each manager to ascertain the fairness of the allocation of the increase. ■

Pension benefit proving popular

Thirty seven members have taken advantage of the MEA's new pension counseling benefit since it began in June. The benefit provides each member with $50 for a session with Robert Ziskind, pension columnist for *The Chief-Leader*, or with in-house expert Robert Hershkowitz. The benefit is funded from dues and was planned right after the membership approved a $2 per paycheck dues increase.....

A member can use this benefit only once and must be planning to retire six to twelve months following the counseling session. The session usually lasts 60 to 90 minutes.

Mr. Ziskind charges $200 for pension counseling but he gives a $50 discount to MEA members. With this benefit, the out of pocket cost to the member for consulting Mr. Ziskind is $100 because the MEA pays him the remaining $50 directly. Mr. Hershkowitz' $50 fee is paid directly by the MEA and there is no out of pocket cost to the member.

Those wishing to schedule a counseling session with Mr. Hershkowitz can call the MEA office at (212) 964-0035. Sessions are scheduled after 5:30 p.m., Monday through Friday. Sessions with Mr. Ziskind are scheduled by calling him at (718) 474-2947. When a time and date have been established, the member must call the MEA office with the information.

The pension counseling benefit was developed by a committee chaired by John Boden of the Department of Environmental Protection. The other committee members are Roy Durig, Frederick Ewald, Ronald Wilkerson and Georgia Williams. The committee is studying a survey of those members who have already been counseled to evaluate if and how the benefit can be improved. ■

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