

DC 37, 4 OCB2d 53 (BCB 2011)

(Docket No. BCB-2979-11).

Summary of Decision: The Union appealed the Report and Recommendation of an Impasse Panel regarding a dispute with the City over compensation for a change in duties and responsibilities arising from the implementation of the Unified Call Taking System as well as the establishment of a uniform requirement for Police Communications Technicians and Senior Police Communications Technicians. The Union argued that the Panel erred by failing to compare the compensation of the affected employees to similarly situated employees, failing to properly weigh the new duties, and concluding that \$500.00 and \$100.00 are an appropriate salary increase and uniform allowance, respectively. The City argued that the Panel considered the statutory criteria, properly declined to consider comparisons to employees in other jurisdictions, and gave proper weight to comparisons to the compensation and duties of Fire Alarm Dispatchers, in determining an appropriate level of compensation for the new duties and for a uniform allowance. The Board found that the Panel considered the relevant evidence, that its analysis complies with the NYCCBL's statutory criteria and was rational, and the Board affirmed the Report. (*Official decision follows.*)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of Impasse

-between-

DISTRICT COUNCIL 37, AFSCME, LOCAL 1549,

Petitioner,

-and-

THE CITY OF NEW YORK, AND THE NEW YORK CITY POLICE DEPARTMENT

Respondents.

DECISION AND ORDER

On September 9, 2011, District Council 37, AFSCME, Local 1549 ("Union") appealed the Report and Recommendation ("Report") of a three-member Impasse Panel ("Panel")

regarding a dispute with the City of New York (“City”) and the New York City Police Department (“NYPD”) over a change in duties and responsibilities arising from the implementation of the Unified Call Taking System (“UCT”) as well as the establishment of a uniform requirement for Police Communications Technicians (“PCTs”) and Senior Police Communications Technicians (“SPCTs”). The impasse proceeding is docketed as Case No. I-1-09. On appeal, the Union argues that the Impasse Panel erred by failing to compare the benefits and conditions of employment of the affected employees to similarly situated employees pursuant to § 12-311(3)(b)(i) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) (“NYCCBL”), failing to properly weigh the new duties, and concluding that \$500.00 and \$100.00 are an appropriate salary increase and uniform allowance, respectively. The City contends that the Panel properly considered and applied the statutory criteria and reasonably considered and rejected the Union’s comparability arguments in determining that the change in the duties of the affected employees, although not insignificant, warranted only a “modest” wage increase; and that the Panel’s finding as to the appropriate uniform maintenance allowance is supported by the fact that the allowance for the title to which the Union compared the PCTs and SPCTs includes the maintenance of equipment (handcuffs and a case) not possessed by PCTs and SPCTs. The Board finds that the Panel’s analysis complies with the statutory criteria set forth in the NYCCBL and affirms the Report.

BACKGROUND

The Union and the City are parties to a collective bargaining agreement covering clerical employees throughout various City agencies. Approximately 1,200 PCTs and SPCTs are among

the members represented by the Union. PCTs answer 911 emergency calls and elicit information necessary for determining the nature of the emergency, while SPCTs supervise this process.

By letter dated April 14, 2009, the Union requested bargaining over changes arising from the NYPD's effort to consolidate all emergency communications operations, which the Union alleged resulted in a practical impact. First, the Union contended that the NYPD's implementation of the UCT, which shifted the task of processing fire-calls from Fire Alarm Dispatchers ("FADs") to PCTs increased the duties and responsibilities of PCTs and SPCTs.¹ Specifically, this change required PCTs to learn 17 new codes, adhere to a 40 character input limitation, and receive additional training. Second, the Union noted that the consolidation established a uniform requirement for PCTs and SPCTs. The City suspended implementation of this requirement until a later date, which has not yet transpired.

In response to the Union's bargaining request, the parties met on May 8, June 8, and June 29, 2009. At the bargaining table, the Union proposed a "reasonable" or "substantial" salary increase for the additional handling of the fire-calls by PCTs. The City countered that any increase should take the form of an assignment differential that was connected to the implementation of the UCT. Initially, the City offered a \$500.00 salary differential for the newly assigned call duties and a \$75.00 uniform maintenance allowance, with the PCTs and SPCTs incurring the initial uniform purchase cost. No agreement was reached.

On July 24, 2009, the Union filed a Request for Appointment of Impasse Panel with the New York City Office of Collective Bargaining. On November 24, 2009, the Board of Collective Bargaining declared that the parties were at impasse. The Panel held three days of

¹ Prior to the UCT, PCTs would conference in a FAD on fire-calls and the FAD would elicit the critical information from the caller.

hearings. At the hearing, the City proposed a \$200.00 salary differential for PCTs and SPCTs conditional on the City's return to the original UCT procedure, and a \$100.00 annual uniform allowance.²

On July 19, 2011, the Impasse Panel issued its Report and Recommendation. The Report recommends, in relevant part: “[a]s a result of the changes to PCTs’ and SPCTs’ duties and responsibilities, associated with the implementation of the UCT, the PCTs and SPCTs should receive a \$500.00 wage increase.” (Report at 24-25). The Report further provides: “[a]t such time as the City actually requires PCTs and SPCTs to wear uniforms, it should provide them, at no cost to the then current employees. Then starting in the following year, there should be an annual maintenance uniform allowance of \$100.00.” (*Id.*)

In reaching this conclusion, the Panel indicated as a “preliminary matter” that the issues before the Panel “are not part of a contract renewal” and that the Panel’s review is “limited to the impact of changes in regard to the PCTs’ and SPCTs’ duties, and the requirement to wear uniforms.” (*Id.* at 19). The Report states: “It is not within our jurisdiction to determine the adequacy of the PCTs and SPCTs current salary as compensation for the duties as they existed prior to the implementation of the UCT.” (*Id.*) Thus, the Panel found “no probative value in the comparison of PCTs and SPCTs with employees in other jurisdictions performing similar work,” where “none of the evidence submitted . . . related to the additional duties that resulted from the implementation of the UCT.” (*Id.*) However, the Panel noted the relevancy of the compensation

² In November 2009, the City modified the UCT so that the PCT would conference in a FAD on fire-calls. The Union maintains that the modification did not change PCT’s duties related to fire calls under the UCT.

and duties of FAD's in calculating the value of the additional duties performed by PCTs and SPCTs. (*Id.*, at 19-20.)

Upon review of the evidence, the Panel determined that “[a]lthough the PCTs and SPCTs always answered some fire-related calls, there has been a change in the duties performed related to those calls” as a result of the implementation of the UCT. (Report, at 20). The Panel termed the change “not substantial” because only 2-3% of calls handled by PCTs and SPCTs are fire-related. In response to the Union’s argument that PCTs and SPCTs should receive a salary commensurate with that of FADs, the Panel noted that PCTs and SPCTs have assumed “only a portion of the duties performed by the FADs,” which “represents a negligible amount of the PCTs’ and SPCTs’ worktime.” (*Id.* at 21). Unlike PCTs and SPCTs, the Panel noted that FADs rotate through five different assignments and handle all types of alarms, with UCT calls being only one type. Thus, the Panel awarded what it characterized as a “modest” \$500.00 annual salary increase to PCTs and SPCTs for the additional duties, retroactive to the date in 2008 when the UCT was first implemented. In awarding this sum, the Panel acknowledged that a 1991 Consent Decree recognized that the jobs performed by PCTs, SPCTs, and FADs were similar and should be compensated accordingly, but reiterated that the instant review is restricted to remedying solely the question of an increase in compensation attributable to the change in duties of PCTs and SPCTs.

With respect to the uniform requirement, the Panel awarded a \$100.00 annual uniform maintenance allowance. Although the Union argued that \$209.00 would be reasonable because Police Department Attendants whom the Union represents receive that allowance, the Panel noted that the Union failed to show “comparability between the Attendants’ and the PCTs’

uniform elements.” (*Id.* at 24). The Panel “note[d] that PCTs and SPCTs are not required . . . to wear sweaters, jackets, raincoats or gloves. Nor are they required to travel outside the call centers.” (*Id.*) The Panel concluded that the Union’s evidence does not demonstrate that the amount offered by the City, \$100.00, is insufficient.

On August 19, 2011, pursuant to NYCCBL § 12-311(3)(c)(e), the Union rejected the recommendation set forth in the Report. On September 9, 2011, the Union filed the instant appeal in accordance with NYCCBL § 12-311(4)(a) and the Rules of the City of New York, Title 61, § 1-05(m)(2).

POSITIONS OF THE PARTIES

Union’s Position

The Union asserts that modification is warranted because the Panel erred on several grounds. First, the Union argues that the Panel failed to compare the benefits and conditions of employment of PCTs and SPCTs to similarly situated employees in other jurisdictions as required pursuant to the NYCCBL. Although the Union demonstrated that PCTs and SPCTs are underpaid when compared to similarly situated employees, the Panel improperly found “no probative value in the comparison of PCTs and SPCTs with employees in other jurisdictions performing similar work.” (Pet. ¶ 11 (quoting Report, at 19)). The Panel should have relied on the salaries of similarly situated employees to determine a reasonable increase. Likewise, the Union asserts that the Panel failed to properly consider the salary of FADs. Although the Union concedes that the Panel recognized that compensation of FADs was relevant and that the 1991 Consent Decree recognized that the jobs were similar and should be compensated accordingly,

the Union argues that the Panel failed to consider the growing wage disparity between FADs and PCTs or the longstanding battle of the underpaid PCTs and SPCTs to achieve pay parity with FADs. Further, the Union contends that the Panel's attempt to distinguish FADs from PCTs should have led the Panel to the opposite conclusion: "PCTs have the far more demanding and difficult assignment." (Union Memo at 31). In support the Union argues that the Panel's comparison of duties between PCTs and FADs failed to recognize that fire-calls are only one type of call that PCTs handle, and that a single PCT handles an entire call, while five FADs collectively process each fire-call.

Second, the Union contests that the Panel failed to give proper weight to the additional duties and responsibilities assumed by PCTs and SPCTs as a result of the UCT's implementation. The Panel erred by qualifying the additional responsibility as impacting only 2-3% of emergency calls and affecting a negligible amount of PCT's and SPCT's work time. In reaching this conclusion, the Panel failed to consider the public safety import and the additional knowledge required to perform this duty. The Union argues that emergency response titles are compensated based on what they are trained to handle, not the amount of time spent performing the duty. Further, the Union argues that the Panel failed to weigh a Deputy Inspector's testimony that fire-calls require more concentration, the PCTs' testimony regarding the added stress of the new duty, the SPCT's opinion of the change, or the conclusion of a report prepared by an independent body that the change was major.³

³ The Union submitted to the Panel a report prepared by the "Hewlett Packard UCT team," allegedly with the cooperation of the NYPD. The City characterizes this document as a "draft version" of an "internal document" prepared before UCT was implemented. The Panel's Report states that the "Union offered no witness to authenticate the HP Report (indeed, Commissioner Hanley denied ever having seen it)." Report, at 7.

Last, the Union asserts that the Panel failed to award a reasonable remedy. Specifically, the Panel erred by determining that a \$500.00 wage increase is appropriate compensation for newly assigned fire-call duties that are critical to public safety. Indeed, the Panel found a “small, but not insignificant change.” (Report at 21). However, the Panel awarded a mere \$.27/hour increase: this increase is insignificant and contrary to the Panel’s finding. Where, as here, PCTs are already underpaid, the small increase is unreasonable. Further, the Panel failed to provide any analysis as to how or why this amount, the City’s initial offer, was selected. Likewise, the Union claims that \$100.00 is not an appropriate uniform maintenance allowance. Contrary to the Panel’s assertion, the Union provided evidence that comparable titles with substantially similar uniforms, namely Police Attendants, receive a \$209.00 uniform allowance. The Union argues that the Police Attendant uniform is “almost identical to the proposed PCT uniform” and that neither title is required to wear the sweaters, jackets, raincoats or gloves referred to by the Panel. (Union Memo, at 34). Despite this, the Panel awarded a \$100.00 allowance without explaining any basis for this conclusion.

Accordingly, the Union requests that the Board order modification of the Report to increase both the salary adjustment and the uniform maintenance allowance.

City’s Position

The City contends that none of the grounds asserted by the Union constitute a valid basis for overturning or otherwise modifying the Panel’s Report. In essence, the Union’s appeal asks the Board to re-adjudicate the merits and substitute its own judgment for that of the Panel. For the Board to do so would be inconsistent with the NYCCBL and the Board’s own prior decisions. Accordingly, the appeal should be dismissed.

The Union's claim that the Panel failed to consider the Union's salary comparison to other employees in the City, and specifically to employees in the FAD title, is without merit. The Report shows that the Panel did consider this claim, but found that with respect to the limited issue before the Panel, such comparison was not relevant except to the extent it demonstrated what additional compensation PCTs and SPCTs should receive on account of additional duties assigned as a result of implementation of UCT. Specifically, the Panel found that the evidence showed that PCTs are not doing the same work as FADs, but have undertaken "only a portion" of the duties performed by FADs, representing "a negligible amount" of the PCTs' and SPCTs' work time; and that FADs perform many other duties that are not performed by PCTs and SPCTs. The record supports the Panel's conclusion that, based on these findings, the change in PCTs' and SPCTs' duties was "not a dramatic one" and warranted only "a modest wage increase." Notably, in bargaining and before the Panel, the Union never specified an amount that it believed would be "reasonable."

The City asserts that the Union's argument regarding a "salary disparity" between PCTs and FADs is not a ground for disturbing the Report. The City notes that compensation levels for the two groups were equalized by a 1991 Consent Decree after accounting for the titles' different workweeks and adjusting for the PCT radio dispatch bonus. Subsequent deviations from those levels are the result of the choices made by the two unions representing the titles at the bargaining table within the parameters of the "pattern" that applied to both groups in any round of bargaining.

The City argues that the Panel properly rejected the Union's evidence of salaries paid to similar employees in other jurisdictions. The Panel correctly stated that the issue before it was

“not part of a contract renewal,” and that “We accept, as a given, the present compensation, and only are to determine whether the additional duties warrant a salary increase.” The Union, itself, in its Request for Appointment of an Impasse Panel, characterized the issue as “compensation for newly assigned fire emergency call duties.” The Panel observed that:

none of the evidence submitted, comparing PCTs and SPCTs with employees in other jurisdictions, related to the additional duties that resulted from the implementation of the UCT.

(Report at 19). Therefore, the Panel properly found that evidence of the salaries paid to employees performing similar work in other jurisdictions had “no probative value.”

Moreover, NYCCBL § 12-311(c)(3)(b) requires an impasse panel to consider each of the statutory criteria, including comparability, only “wherever relevant.” To the extent that comparisons to employees in other jurisdictions were not relevant to the issue of compensation for newly-assigned duties, the Panel properly declined to consider them.

The City contends that the Union’s claim that the Panel failed to give proper weight to the additional duties and responsibilities assumed by PCTs and SPCTs is without merit. The Report demonstrates that the Panel considered all of the Union’s evidence on this subject, which was recited in the Panel’s summary of the parties’ positions. The Panel then either implicitly rejected the import of the evidence by disregarding it in its opinion, or by addressing the evidence and arguments and declining to rely on them in its determination.

Finally, the City submits that the Union’s argument that the Panel erred in awarding a \$100 annual uniform maintenance allowance is incorrect. This argument is based on the claim that the uniform worn by Police Attendants, who receive a higher allowance, is “almost identical” to that prescribed for PCTs and SPCTs. However, the City asserts, the evidence shows

that Police Attendants also are required to maintain – and replace, if lost or damaged – NYPD regulation handcuffs and a handcuff case. PCTs and SPCTs are not required to carry and maintain these items. This represents a material difference between the uniform requirements for the titles, thereby negating the Union’s comparability claim on the uniform maintenance allowance issue.

For these reasons, the City asks that the Union’s appeal of the Panel’s Report be dismissed in its entirety.

DISCUSSION

Pursuant to NYCCBL § 12-311(c)(4)(b), where the Report and Recommendation of an impasse panel is appealed to this Board, our review shall be based upon the record and evidence made and produced before the impasse panel, shall include an examination of whether the panel’s recommendations take into account the standards for determination of wages, hours and working conditions prescribed by NYCCBL § 12-311(c)(3)(b), and shall include consideration of issues, if any, of conformity of the recommendation with any law or regulation properly governing the conduct of collective bargaining between the City and its employees. *DC 37*, 4 OCB2d 29, at 8 (BCB 2011); *UFA*, 51 OCB 19, at 10 (BCB 1993).

NYCCBL §12-311(c)(3)(b) sets forth the factors that an Impasse Panel shall consider, and provides that an Impasse Panel:

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

- (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits,

conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(iv) the interest and welfare of the public;

(v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

“[N]o fixed value or weight, [however] is prescribed for any of these criteria to be applied equally in all cases.” *DC 37*, 4 OCB 29, at 9; *UFA*, 51 OCB 19, at 11; *CSBA*, 11 OCB 4, at 7-8 (BCB 1973). Further, an impasse panel “is free to apply the criteria as circumstances require to the exigencies of each particular case.” *PBA*, 17 OCB 12, at 6 (BCB 1976).

The Board’s function in this proceeding is limited to deciding “whether the parties have been afforded a fair hearing and whether the record provides substantial support for the result reached by the impasse panel.” *Id.* The Board’s review shall not substitute its own judgment in determining the facts or adjudicating the merits for that of the impasse panel. *See DC 37*, 4 OCB 29, at 9-10; *UFA*, 51 OCB 23, at 15 (BCB 1993); *UFA*, 37 OCB 11, at 6 (BCB 1986); *UFA*, 51 OCB 19, at 11; *Podiatry Soc. of NYS*, 9 OCB 23, at 8 (BCB 1972); *see also Caso v. Coffey*, 41 N.Y.2d 153, 158 (1976) (“[I]t need only appear from the decision of the arbitrators that the criteria specified in the statute were ‘considered’ in good faith and that the resulting award has a

‘plausible basis.’”) (citation omitted). Thus, an Impasse Report and Recommendation shall be upheld “unless it can be shown that the Report and Recommendations were not based on objective and impartial consideration of the entire record, and unless clear evidence is presented on appeal either that the proceedings have been tainted by fraud or bias or that the Report and Recommendations are patently inconsistent with the evidence or that on its face it is flawed by material and essential errors of fact and/or law.” *UFA*, 51 OCB 23 at 15-16 (quoting *Podiatry Soc. of NYS*, 9 OCB 23, at 8 (BCB 1972)).

In the present case, the Union does not contend that it was not given a fair hearing, nor does it allege that there was any fraud or bias in the proceedings before the Panel. The Union does assert that the Panel erred in several respects in reaching the conclusions set forth in its Report. For the reasons set forth below, we find that no basis exists under the NYCCBL to disturb the Panel’s Report, and we deny the appeal.

In considering the grounds alleged by the Union, it is crucial to bear in mind the scope of the issue placed before the Panel for determination. The Union’s Request for Appointment of an Impasse Panel states the issue as “compensation for newly assigned fire emergency call duties.” The duties referenced in the Request are those new duties for PCTs and SPCTs that resulted from the implementation of the UCT system. This issue arose during the term of an existing collective bargaining agreement, so the Panel properly observed that the issues before the Panel “are not part of a contract renewal.” Rather, based upon the Request for Appointment of an Impasse Panel, the Panel appropriately described the issue before it as “limited to the impact of changes in regard to the PCTs’ and SPCTs’ duties, and the requirement to wear uniforms.” (Report at 19).

Salary Adjustment Issue

Much of the basis for the Union's objection to the Report concerns its view that the Panel failed to recognize that PCTs and SPCTs are underpaid when compared to FADs and similarly situated employees in other jurisdictions. Without expressing any opinion on the existence of that alleged disparity, the Panel stated:

We accept, as a given, the present compensation, and only are to determine whether the additional duties warrant a salary increase. It is not within our jurisdiction to determine the adequacy of the PCTs and SPCTs current salary as compensation for the duties as they existed prior to the implementation of the UCT.

(Id.) We agree with the Panel's assessment of its jurisdiction. It was not within the Panel's jurisdiction in this impasse proceeding to consider, let alone remedy, any existing inequity in the salary structure. Accordingly, the Report cannot be faulted for not remedying that alleged disparity.

For this reason, the Union's claim that the Panel should have relied on the salaries of similarly situated employees in other jurisdictions to determine a reasonable increase is without merit. The Panel's finding that, as none of the evidence comparing PCTs and SPCTs with employees in other jurisdictions related to the additional duties that resulted from the implementation of the UCT, such comparisons were of "no probative value," was reasonable under the circumstances of this case.

Similarly, the Union's claim that the Panel failed to consider the growing wage disparity between FADs and PCTs or the longstanding battle of the underpaid PCTs and SPCTs to achieve pay parity with FADs does not provide a basis to overturn the Report. Clearly, the Panel considered the salary – and duties – of FADs. The Report states:

We do, however, find that, to some extent, the compensation and duties of the FADs is relevant in this case. Certainly, to the extent that the Union can connect the FADs' compensation to the issue of the value of the additional duties of PCTs and SPCTs, the information is relevant.

(Report at 19-20). However, after considering the record evidence, the Panel found that the evidence showed that PCTs are not performing the same job as FADs, but have undertaken "only a portion" of the duties performed by FADs, representing "a negligible amount" of the PCTs' and SPCTs' work time; and that FADs perform many other duties that are not performed by PCTs and SPCTs.⁴ The Panel found that handling these calls require PCTs and SPCTs to learn 17 new codes, and to learn to limit their input messages to 40 characters as required by the Fire Department's dispatch system. The Panel determined that "there has been a small, but not insignificant, change in PCT and SPCT duties which warrants a commensurate salary increase." (Report at 21). The Panel awarded the PCTs and SPCTs an annual increase of \$500 for these duties.

We cannot say that the Panel failed to consider the Union's evidence and arguments on this issue. The Report indicates the exact opposite – that the Panel based its determination upon its consideration of this evidence. While the Union may disagree with the Panel's assessment of the substantiality of the change in duties and its evaluation of the appropriate level of compensation for those duties, there is no basis for this Board to find that the Panel's conclusions are contrary to the evidence or irrational. The Union's contention that the Panel did not give "proper" weight to the change in duties or award "reasonable" compensation as a "remedy" for those duties is unavailing. The Report's analysis of these matters reflects the Panel's judgment

⁴ The Panel found that the evidence showed that about 2-3% of the emergency calls handled by PCTs and SPCTs involve fires or fire-related incidents.

on these issues. As we have long held, it is not the role of this Board to substitute its judgment for that of the Panel or to consider the evidence *de novo*. See *DC 37*, 4 OCB 29, at 9-10; *UFA*, 51 OCB 23, at 15; *UFA*, 37 OCB 11, at 6.

Finally, as noted above, the question of the equity of any salary disparity between the PCT and FAD titles that may have existed before the implementation of UCT was not before the Panel and properly could not have provided any basis for its determination of appropriate compensation for the newly assigned UCT duties.

Uniform Maintenance Allowance Issue

We find that the Union's claim that the \$100 uniform maintenance allowance awarded by the Panel is inadequate lacks merit. The Panel considered the Union's argument – that an award of \$209 would have been more appropriate because that is what is paid to Police Attendants represented by the Union – but ultimately was not persuaded by the Union's evidence. The Panel was not convinced that the uniform items to be maintained were comparable between the titles. The Panel stated that the Union argued for the amount of the Police Attendant's allowance to be awarded, "without showing comparability between the Attendants' and the PCTs' uniform elements." The Panel concluded that the Union's evidence did not show that the amount proposed by the City, \$100,

although less than half of what the Union proposes, is insufficient for reasonable care and replacement of the proposed PCT/SPCT uniform components.

(Report at 24.)

To the extent the Report can be read as suggesting that there are differences between the uniform requirements of the Police Attendant and PCT/SPCT titles based the use of sweaters,

jackets, raincoats, and gloves (Report at 24), it may have been in error, as the parties do not appear to contend in this appeal that *either* title requires those items of uniformed apparel. However, the City observes that the undisputed evidence, although not mentioned in the Report, showed that Police Attendants are also required to maintain – and replace, if lost or damaged – NYPD regulation handcuffs and a handcuff case. (Ans. ¶ 96.) PCTs and SPCTs are not required to carry and maintain these items. These additional items mark a difference between the uniform requirements for the titles, supporting the Panel’s concern over the comparability of the two titles’ uniforms.

The Report demonstrates that the Panel considered the Union’s argument for a higher maintenance allowance and rejected it as unwarranted. The Panel did adopt the Union’s related demand that the City bear the full cost of providing initial uniforms. As to the Panel’s judgment on the maintenance allowance issue, we find that the Union was not prejudiced by the Report’s reference to sweaters, etc., any more than the City was prejudiced by the failure to reference the handcuffs and case. In any event, the Panel’s determination was informed by its concern over an insufficient showing that the two titles’ uniform requirements were identical, a concern that may have been well founded, given the record before the Panel; and its belief that the amount awarded was sufficient. We cannot and will not substitute our own judgment for that of the impasse panel in determining the facts and adjudicating the merits of this claim. *See UFA*, 37 OCB 11, at 6.

In summary, we find that as to all issues covered by its Report, the Panel fully and fairly considered the facts in the record, the arguments advanced by the parties and properly applied

the statutory standards and criteria set forth in NYCCBL §12-311(c)(3)(b). Accordingly, we shall affirm the Report in its entirety.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the appeal of the District Council 37, AFSCME, Local 1549 be, and the same hereby is, denied in all respects; and it is further

ORDERED, that the Report and Recommendation of the Impasse Panel, a copy of which is annexed hereto and made a part hereof, be, in all respects, and the same hereby is, affirmed.

Dated: October 6, 2011
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

I dissent in a separate opinion

CHARLES G. MOERDLER
MEMBER

I dissent

PETER PEPPER
MEMBER

DISSENTING OPINION OF CHARLES G. MOERDLER

I dissent. The Impasse Panel failed fully and fairly to consider the evidentiary record; its determination is not only internally inconsistent but plainly erroneous and contrary to the evidence (e.g., the record makes clear that PCT's now have a far more demanding and difficult task than FAD's and though the 1991 Consent Decree mandates equalization the Impasse Panel chose not even to provide therefore). The Impasse Panel determination lacks a rational or factually founded basis. The Panel Determination cannot stand and, respectfully, the majority errs in affirming it.

CHARLES G. MOERDLER