

SBA, Lieutenants' Benevolent Ass. v. City, NYPD, OLR, 47 OCB 9 (BCB 1991)
[Decision No. B-9-91]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Scope of
Bargaining Proceeding

-between-

DECISION NO. B-9-91

SERGEANT'S BENEVOLENT
ASSOCIATION, INC.,
Petitioner,

DOCKET NO. BCB-1351-90

-and-

CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY
OFFICE OF LABOR RELATIONS,
Respondents.

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In the Matter of the Scope of
Bargaining Proceeding

-between-

LIEUTENANT'S BENEVOLENT
ASSOCIATION,
Petitioner,

DOCKET NO. BCB-1356-91

-and-

CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY
OFFICE OF LABOR RELATIONS,
Respondents.

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INTERIM DECISION AND ORDER

On December 18, 1990, the Sergeant's Benevolent Association ("the SBA"),
filed a verified scope of bargaining petition against the City of New York,
the New York City Police Department, and the New York City Office of Labor
Relations ("the

City"), docketed as BCB-1351-90, alleging that the City has refused to negotiate over the impact of the Police Department's announced plan to implement solo supervisory patrols. The petition asks that the City be required to bargain over the impact on employees' safety that allegedly would occur upon implementation of solo patrols; that the City be required to bargain over the gainsharing and productivity that such patrols allegedly would produce; that certain related specified demands submitted to the City by the SBA be declared mandatory subjects of bargaining; and the City be restrained from implementing solo supervisory patrols until bargaining has been completed.

With the assent of the SBA, the City received permission from the Office of Collective Bargaining to extend its time to file an answer until January 11, 1991. On January 11, the City did not answer. Instead, it submitted a verified motion to dismiss the petition on the grounds that the claim is barred by the doctrine of res judicata, that it fails to state a claim upon which relief can be granted, and that this Board lacks jurisdiction to entertain the issues presented. A supporting affidavit, a supporting affirmation, and a supporting memorandum of law accompanied the City's motion.

On the same day that the City filed its motion seeking

dismissal of the SBA petition, the Lieutenant's Benevolent Association ("the LBA"), filed its own verified scope of bargaining petition against the City. The LBA petition, docketed as BCB-1356-91, similarly alleges that the City has refused to negotiate over the impact of the Police Department's reported plan to implement solo supervisory patrols, and requests similar relief.

With assent from the LBA, the City received permission from the Office of Collective Bargaining to extend its time to file an answer until January 28, 1991. On January 28, the City did not answer. Instead, it submitted a verified motion to dismiss the petition on the same grounds that it asserted when it moved to dismiss the SBA petition. Also accompanying the City's motion was a supporting affidavit, a supporting affirmation, and a supporting memorandum of law.

On February 1, 1991, the SBA filed an affirmation in opposition to the City's motion to dismiss the SBA scope of bargaining petition. On February 5, 1991, the LBA filed an affirmation in opposition to the City's motion to dismiss the LBA

petition. Both affirmations raised the same arguments and defenses.¹

BACKGROUND

On April 6, 1979, the Police Department issued Operations Order Number 40, a directive that would have caused Sergeants and Lieutenants in specified precincts under certain "triggering"

¹ On February 7, 1991, the City filed "Replies" to the answering affidavits filed by the SBA and the LBA opposing the City's motions to dismiss their scope of bargaining petitions. Both Unions have objected to the filing of these replies, contending that under the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), a moving party is not entitled to reply to an answering affidavit opposing a motion to dismiss.

Section 13.11 of the OCB Rules neither provides for nor authorizes the filing of responses to answering affidavits opposing motions. We pointed this out recently in another case where the City had made motions to dismiss a scope of bargaining and an improper practice petition (Decision No. B-6-91).

It is the policy of this Board not to encourage the filing of subsequent pleadings. We will not consider such submissions unless special circumstances warrant consideration of the material in question. In this case, no such special circumstances have been alleged or shown. Therefore, we will not allow the City's replies to the Unions' answering affidavits to become a part of record in either Docket Number BCB-1351-90 or Docket Number BCB-1356-91.

conditions to operate patrol vehicles by themselves. The SBA immediately filed an improper practice petition charging that the order would have a practical impact upon the safety of police sergeants, and asserting that the City was required to bargain over the alleviation of the practical impact. The LBA intervened on behalf of lieutenants on April 23, 1979, raising the same issues.

Following an evidentiary hearing, this Board, in Decision No. B-6-79 issued on May 24, 1979, held that the departmental order implementing solo supervisory patrols would have a practical impact upon safety of the sergeants and lieutenants. The decision was based upon three specific findings: (1) that the order did not take various tours and police activity levels into account; (2) that it did not provide for those occasions where supervisors would be unfamiliar with their precincts assignments because of redeployment; and (3) that it did not address the circumstance where a supervisor would have to cover more than one precinct and one of the precincts was in a non-solo patrol area. The decision ordered the parties to attempt to alleviate these specific safety impact items through prompt negotiations.

The Unions objected to the specific limitations that this Board placed on the scope of the safety impact negotiations, and they filed a court challenge that ultimately was unsuccessful. Meanwhile, however, during May and June of 1979, impact bargaining took place even though the litigation was pending. The negotiations did not produce an agreement, and mediation similarly was unsuccessful. On August 27, 1979 an impasse was declared and a three-member impasse panel was appointed to take evidence and to issue a report and make recommendations for alleviating the safety impact.

Following a lengthy hearing, the impasse panel, on October 3, 1980, issued its Report and Recommendations. The hearing had been concluded in January of 1980, but it was reopened to permit the presentation of additional evidence after a police officer assigned to a solo car was killed.

On November 13, 1980, the SBA filed a new petition with this Board requesting clarification of certain of the impasse panel's recommendations. The parties held settlement discussions during the next several months while the new petition was pending.

On April 15, 1981, the SBA and the City agreed to modify a number of the panel's recommendations (referred to hereinafter as the "modified panel provisions"). On May 6, 1981, the LBA agreed also to be bound by the modified panel provisions. The complete text of the provisions is appended to the end of this decision.² In summary, the provisions established the following controls and restrictions:

² See Appendix A, page 20, infra.

1. Trigger points contingent upon a certain number of two-officer radio cars first must be reached;
2. Radio and shotgun training must be provided and the equipment must be available;
3. Solo patrols first must be filled by volunteers;
4. Solo patrol supervisors may not be used as primary response units;
5. Supervisors unfamiliar with a precinct or area must be provided with a driver;
6. Supervisors who are covering more than one precinct must be provided with a driver;
7. Solo patrols may be suspended by the commanding officer if unusual conditions occur;
8. A joint Labor-Management Safety Committee is established and must meet at either parties' request to consider and recommend changes in the solo supervisory patrol program, including trigger numbers. The Department must provide the Union with relevant reports and statistical information as they become available.
9. Supervisors who volunteer for solo patrols receive certain retirement and assumption of risk indemnifications.

On June 15, 1981, the Department issued Operations Order Number 49, which follows the modified panel provisions and sets forth the conditions that must be met before supervisors can be assigned to solo patrols. The complete text of the order also is appended to the end of this decision.³ Although it has never been implemented, the order remains currently in effect. There is no record of any meetings of the Labor-Management Safety Committee.

By letter dated November 7, 1990, the Department informed the SBA that it intended to implement solo supervisory patrols in April of 1991. Both the SBA and the LBA met with the City on several occasions in this regard during November and December, but the discussions produced no results, other than agreement by the City to provide certain requested information. On December 4, 1990, the SBA and the LBA jointly presented the City with a list of

³ See Appendix B, page 24, infra.

thirteen "safety" demands for collective bargaining concerning solo supervisory patrols.

The Unions contend that circumstances concerning policing in New York City have changed since the modified panel provisions were agreed to in 1981. As a result, the City's current plan to implement solo supervisory patrols allegedly will have a negative impact on the safety of unit members. The Unions also claim that the plan will generate a cost savings, which they are entitled to share.

POSITIONS OF THE PARTIES

City's Position

The City acknowledges that this Board, in Decision No. B-6-79, previously has found that the implementation of solo supervisory patrols would create a practical impact on safety. It contends, however, that the safety impact of solo patrols has been alleviated by the Report and Recommendations of an impasse panel and by the parties' subsequent adoption of the modified panel provisions. Therefore, according to the City, since the issue already has been decided, and since the same parties already have remedied the same dispute, the doctrine of res judicata prevents the Unions from now relitigating the same claim.

Countering the Unions' changed circumstances argument, the City points out that the Labor-Management Safety Committees presently provides a mechanism that can alleviate the impact on safety that may have resulted from swings and changes in levels of crime and police activity in individual precincts. In its view, the committees' authority for evaluating and reviewing the trigger numbers associated with implementing solo supervisory patrols makes it the most appropriate and expeditious vehicle for dealing with safety impact. If the Unions are dissatisfied with the structure or the authority of the committees, the City contends, the committees' mandate should be changed at

the bargaining table, and not through a scope of bargaining proceeding.

The City maintains further that the safety impact of solo supervisory patrols has been mitigated by additional controls that are part of the modified panel provisions. These include availability of certain equipment and training, solo assignments that are dependant upon a supervisor's familiarity with a precinct, staffing first with volunteers, and the existence of a benefit protection clause.

With respect to the Unions' demand for productivity sharing, the City maintains that the Unions have a right to bargain over increased workloads only after management unilaterally has implemented a change pursuant to its statutory managerial authority. Once that has happened, according to the City, the Unions must then present factual evidence to substantiate their claims that unreasonable workloads have resulted. The City points out that the Department has not yet implemented solo supervisory patrols, and the Unions have not shown how their members' workloads will be unreasonably excessive or unduly burdensome once the solo patrols are put into effect. Therefore, the City argues, the gainsharing portion of the petition also must be dismissed because the Unions allegedly have failed to state a claim upon which relief may be granted.

The SBA's Position and the LBA's Position

The Unions reply that the doctrine of res judicata is inapposite because circumstances and factors have changed since this Board made its last safety impact ruling with respect to solo supervisory patrols more than ten years ago. The Unions underscore the fact that, since then, the solo supervisory patrols never were implemented. As a result, the trigger point review mechanism has not been activated, and the Department has not had the opportunity to monitor or keep records of the constantly changing impact of solo patrols, despite the modified panel provisions requiring that it do so.

The Unions contend that demographic changes in the City's criminal population, the mostly non-operational police call box network, and the crack cocaine epidemic, are but a few examples of the constantly changing circumstances that form the basis of their petitions. Thus, they argue that the data used by this Board in 1979, and by the impasse panel in 1980, are outdated and have no relevance to safety conditions as they exist today.

The Unions then point out that this Board has exclusive jurisdiction over claims of safety impact. They argue that the presence of contractual controls or earlier agreements to accept the modified panel provisions are irrelevant as to their present claims. In the Unions' view, changed circumstances require that a new round of impact bargaining must take place before the Department may institute the solo supervisory patrol program.

In addition, the Unions note that the City previously has agreed to recognize and negotiate over gainsharing or productivity when it agreed to pay Department of Sanitation employees a differential for reducing truck crews from three workers to two. The Unions anticipate that, similarly, when sergeants and lieutenants operate patrol vehicles by themselves, they will be performing substantial amounts of additional unremunerated work. The Unions assert that they must be given the opportunity to bargain for a share of the increased productivity that the solo supervisory patrols allegedly will generate.

DISCUSSION

It is well-settled that, when making a motion to dismiss a petition claiming a violation of the New York City Collective Bargaining Law ("NYCCBL"), the moving party concedes the truth of the facts alleged by the petitioner.⁴ More than that, the petition is entitled to every favorable

⁴ Decision Nos. B-7-89; B-38-87; B-36-87; B-7-86; B-12-85; B-20-83; B-17-83; and B-25-81.

inference, and it will be deemed to allege whatever may be implied from its statements by reasonable and fair intendment.⁵ In the instant proceeding, the City's motions to dismiss the SBA's and the LBA's scope of bargaining petitions are based upon the premises that the petitions are barred by the doctrine of res judicata, and that gainsharing demands made prior to implementation of solo supervisory patrols are premature.

In considering the City's motions, we must deem it to admit the Unions' allegations that circumstances concerning police safety have changed since 1980, and that the Department intends to implement solo supervisory patrols in order to realize gains in productivity. We must then decide whether the Unions would be entitled to relief under the NYCCBL if these allegations could be proven.

Changed Circumstances

We have said previously that changed circumstances may be sufficient to enable a union to avail itself of the practical impact procedures of the NYCCBL.⁶ In this case, the Unions contend that demographic changes, inoperative call boxes, and crack cocaine are recent developments that the 1980 impasse panel did not consider.

On the record before us at this preliminary stage of this proceeding, we are unable to determine whether these developments, if proven, could be shown to pose a level of danger to the safety and security of police supervisors assigned to solo patrols sufficient to support a safety impact finding. However, we are persuaded that the Unions' claims are based upon allegations of factual circumstances that are different from those which this Board considered in 1979, and that they have raised a substantial issue of safety

⁵ Decision Nos. B-51-90; B-32-90 and B-34-89.

⁶ Decision Nos. B-69-88 and B-43-86.

impact sufficient to withstand the City's motions to dismiss on the ground of res judicata, or on the ground that the petitions fail to state a claim upon which relief can be granted. On this basis we shall deny the City's motions.

At the same time, however, we note that the 1980 impasse panel, in its Report and Recommendations, took specific cognizance of the fact that policing circumstances in the City of New York undergo constant change:

We are concerned by the evidence that the crime levels in the precincts to which [solo patrols] are applicable vary from year to year and, in a number of instances, now are higher than in precincts where no [solo patrol] is permitted.

The panel addressed its concern by recommending the establishment of a joint Labor-Management Committee on Safety "to consider and recommend changes in [the solo supervisory patrol program], including trigger numbers." The modified panel provisions negotiated by the parties adopted this recommendation of the impasse panel.

This presents us with a serious dilemma. Although we are not willing summarily to dismiss the Unions' safety impact claims, we do not want to force the parties needlessly to replicate a complicated process that took two years to finish the last time it was undertaken. We are concerned that if this case goes forward in its present context, it might take a similar length of time to complete. What is more, in the end, it is not unlikely that the alleged dangers caused by changing circumstances again may be referred to joint safety committees similar to the ones already in existence for their evaluations. Of even greater concern is the possibility that, during this time, supervisors involuntarily may be exposed to the very dangers that their Unions are trying to protect them against. We do not want to create or contribute to this possibility, and we think that a better avenue already may exist.

Pursuant to the parties' modified panel provisions, Labor-Management Safety Committees for solo supervisory patrols exist presently -- contractually in the case of the SBA, and by stipulated agreement in the case of the LBA. We believe that the joint safety committees should be the

mechanism of first resort for two reasons: First and most important, they may prove themselves capable of remedying the alleged impact on supervisors' safety to the satisfaction of everyone, thus eliminating the need for a protracted scope of bargaining proceeding before this Board. Second, if the joint safety committees do not succeed in accomplishing their mission, an ultimate safety impact determination doubtless should address the failure of the safety committee mechanism.

Accordingly, we hold that the Unions' safety impact claims should be considered initially by the existing Labor-Management Safety Committees. In so ruling, we stress that this does not end the matter as far as the scope of bargaining petitions are concerned. We are denying the City's motions to dismiss, but we shall retain jurisdiction over the pending petitions, either until the Labor-Management Safety Committees have completed their work to the parties' satisfaction, or until one of the parties informs us that the joint safety committee mechanism has broken down and the possibility for resolution does not exist. In the latter event, we shall order the City to file its answers forthwith to this aspect of the Unions' scope of bargaining petitions.

Gainsharing and Productivity

Pursuant to Section 12-307b. of the NYCCBL (the statutory management rights clause) it is the City's management prerogative to maintain the efficiency of its operations, and to exercise complete control and discretion over its organization and the technology of performing its work, limited by the constraints that a resulting practical impact might impose. One of these constraints is an unreasonably excessive or unduly burdensome workload as a regular condition of employment.⁷

The City appears to view the Unions' demand for "gainsharing" as an element of their request to alleviate the practical impact on workload that

⁷ Decision Nos. B-66-88; B-37-82; B-27-80 and B-16-74.

may result from the implementation of solo supervisory patrols. In considering the City's motions to dismiss the gainsharing aspect of the scope of bargaining petitions in this context, we must assume that the Unions can prove that the implementation of solo supervisory patrols will increase supervisors' workload to an unreasonable or excessive level. Under these circumstances, we would have a basis for ordering alleviation of the practical impact, first by the Department unilaterally, and then by collective bargaining if unilateral action proved to be insufficient. Thus, the Unions' petitions do not fail to state a claim upon which relief may be granted under the NYCCBL, and we will deny the City's motions to dismiss this aspect of the Unions' petitions as well.

However, as in the changed circumstances aspect above, we also will delay ordering the City to file its answers regarding this claim, pending the results of the work of Labor-Management Safety Committees.

Similarly, we will delay ordering the City to file its answers regarding the bargaining demands presented to it jointly by the SBA and the LBA on December 4, 1990, until after the Labor-Management Safety Committees have completed their work. At that time, any of the demands that remain unresolved may be challenged by the City in its answers as being outside the scope of mandatory subjects of bargaining.

Finally, although the City views the Unions' gainsharing claims as demands for practical impact bargaining, it is unclear to us whether the Unions are seeking a productivity share by way of practical impact bargaining, or simply as one economic component of a more general wage proposal. We note that the parties' current collective bargaining agreements have expired, and that they presently are engaged in a new round of bargaining. To the extent that the Unions may be seeking to include projected productivity gains realized by the implementation of the solo supervisory patrol program within a more general negotiation of wages and wage comparability, the subject of

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gainsharing would be mandatorily bargainable.

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 City's motion to dismiss the scope of bargaining petition filed by the Sergeant's Benevolent Association, Inc., in docketed number BCB-1351-90, and the City's motion to dismiss the scope of bargaining petition filed by the Lieutenant's Benevolent Association, in docketed number BCB-1356-91 be, and the same hereby is, denied; and it is further

ORDERED, that the scope of bargaining petition filed by the Sergeant's Benevolent Association, Inc., in docketed number BCB-1351-90, and the scope of bargaining petition filed by the Lieutenant's Benevolent Association, in docketed number BCB-1356-91 be, and the same hereby is, held in abeyance until such time as the parties' Labor-Management Safety Committees have had the opportunity to consider and recommend changes in the solo supervisory patrol program; and it is further

ORDERED, that upon notification by any party that the Labor-Management Safety Committees have failed to resolve the alleged safety impact claims, the City hereby is ordered to file its answer to the scope of bargaining petition filed by the Sergeant's Benevolent Association, Inc., in docketed number BCB-1351-90, and its answer to the scope of bargaining petition filed by the Lieutenant's Benevolent Association, in docketed

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number BCB-1356-91, within five (5) days following receipt of such notification.

DATED: New York, N.Y.
February 21, 1991

MALCOLM D. MACDONALD
CHAIRMAN

DANIEL COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

JEROME E. JOSEPH
MEMBER

GEORGE B. DANIELS
MEMBER

ELSIE A. CRUM
MEMBER

Appendix A

MEMORANDUM OF AGREEMENT, ON THE SUBJECT OF RADIO
MOTOR PATROL, BETWEEN THE SERGEANTS' BENEVOLENT
ASSOCIATION AND THE CITY OF NEW YORK

In recognition of the findings and conclusions in the Report of the Impasse Panel, dated October 3, 1980, in BCB Case No. I-145-79, the Sergeants' Benevolent Association of the Police Department of the City of New York (the "SBA") and the City of New York (the "City") hereby mutually agree that the following safeguards and clarifications are necessary to alleviate the impact of solo supervisory patrol on the safety of Sergeants and that the following shall constitute the agreement of the parties:

1. Trigger Points. Solo supervisory patrols (whether voluntary or involuntary) shall not be assigned unless the "trigger point" of two-man RMPs for the precinct and tour shall have been met. The current trigger points shall be those now in effect under Operations Order 85. Such trigger points may be increased by the City, but shall not be decreased during the term of the contract except on mutual consent.

Only marked RMP cars made up of two uniformed Police Officers actively assigned to regular precinct patrol for the particular precinct and tour shall be counted towards reaching the trigger point number. Once the trigger points are reached at the beginning of the tour, a supervisor may be assigned to solo supervisory patrol only if a Police Officer is actually assigned to perform and will perform solo patrol in an RMP car at the commencement of that tour in that precinct pursuant to Operations Order 85 as now in effect, except on the second platoon. A supervisor may be assigned to solo supervisory patrol during the second platoon once the trigger point for the particular precinct has been reached at the beginning of the tour, even if there are no Police Officers assigned to solo patrol. If, at any time during a tour, however, the number of two-man RMP cars on active street patrol falls below the trigger point for the particular precinct and tour except as a result of meals and other temporary situations, solo supervisory patrol shall be immediately suspended for the remainder of the tour and the patrol supervisor shall be provided an operator before resuming supervisory patrol. Except on the second platoon, solo supervisory patrol shall be suspended if all RMP cars assigned to solo patrol by Police Officers in that precinct pursuant to Operations Order 85 as now in effect have been taken out of service during that tour.

The provisions of this paragraph are subject to paragraph 7 below.

2. Equipment and Training. The City shall supply and equip supervisors on solo patrol with operational portable radios, and shotguns, with adequate training in the use and care of that weapon. Adequate training shall be a condition precedent to assignment.

The training to be given to supervisors for solo supervisory patrol shall be the same as that received by Police Officers and shall include instructions that supervisors on solo supervisory patrol are to act prudently under all circumstances, are not expected to place themselves in peril or unnecessarily jeopardize their safety pending arrival of backup personnel and, if required by the circumstances on the scene at that time, shall await assistance without immediately taking action. Shotgun training will be given first to volunteers and then, only if staffing problems should develop, would other Sergeants be requested to go through this training. The Department will consult with the SBA on training procedures before their implementation. In addition, the Department will investigate and alleviate any problems of which they presently are or should become aware concerning defective radios or "dead" areas affecting supervisors on solo supervisory patrol.

3. Volunteers. All solo supervisory patrols shall first be filled on a volunteer basis, and involuntary assignments shall be made only if no volunteers are available. Volunteers shall be limited to those Sergeants who are assigned to supervise precinct patrol on each tour in each particular precinct.

4. Solo Response. Solo patrol supervisors shall not be dispatched or respond as primary response units, and shall not be dispatched or respond as back-up units except in emergencies when no other back-up RMP is available. In emergencies when no other back-up RMP unit is available, other RMP units on low-priority jobs will be dispatched before a solo supervisor is dispatched, and RMP units on meal or otherwise temporarily out of service shall be dispatched before a solo supervisor is dispatched if the RMP units can be called back into service expeditiously.

5. Familiarity With Precinct. A supervisor not familiar with the precinct or area which he is assigned to patrol shall be provided with an operator. Familiarity with the assigned precinct or area shall require the supervisor to have had a minimum of three (3) months served in the precinct and to have engaged in thirty (30) tours of supervisory patrol in the precinct in the twelve (12) month period preceding the assignment. Each "tour" to be counted for the purpose of familiarization with the precinct shall be at least four (4) hours in duration of supervisory patrol performed in an RMP car. The system for recording time on supervisory patrol tours will be developed by the Department in consultation with the SBA.

6. Multi-Precinct Supervisory Patrol. A supervisor assigned to patrol more than one precinct shall be provided with an operator.

7. Unusual Conditions. In the event of an unusual condition occurring, the Commanding Officer shall have authority to assign a Police Officer as operator of a supervisor's vehicle on a given tour. If such condition continues for more than one week, a report with recommendations shall be forwarded to the Chief of Patrol.

When solo RMP for Police Officers is suspended due to an unusual condition, the Commanding Officer shall automatically suspend solo supervisory patrol. In addition, Commanding Officers are reminded that the conditions affecting solo supervisory patrol are such that they have the authority to declare an unusual condition for the suspension of solo supervisory patrol without having to suspend solo patrol for Police Officers.

8. Joint Committee. The parties shall establish a joint Labor-Management Committee on Safety, consisting of equal representatives of the City and the SBA, to consider and recommend changes in the program of solo supervisory patrol, including trigger point numbers. That Committee shall meet at the request of the City or SBA, but not more frequently than every six months, except on mutual consent.

The Department will provide to the SBA all relevant reports and statistics compiled in the Department on the subject of solo RMP, as they become available, with the sole exception of high-level confidential analyses used for planning purposes.

9. Benefit Protection. Supervisors shall not be in any way penalized, deemed to have assumed the risk or denied retirement or other benefits by virtue of their having volunteered for or been assigned to solo supervisory patrol.

10. Operations Order and Written Agreement. Prior to the commencement of a program of solo supervisory patrol, the aforesaid provisions of this Memorandum of Agreement shall be incorporated by the Department into an Operations Order, subject to review by the SBA prior to its issuance. The aforesaid provisions of this Memorandum of Agreement shall be incorporated in the Collective Bargaining Agreement between the City and the SBA for the period July, 1, 1980 through June 30, 1982.

Execution of this Memorandum of Agreement shall be deemed to be an acceptance of the Report and Recommendations of the Impasse Panel in BCB Case No. I-145-79 and a withdrawal of the actions presently pending before the Board of Collective Bargaining in BCB-I-15-80 and BCB-465-80.

Appendix B

OPERATIONS ORDER NUMBER 49

1. Effective 0001 hours, June 15, 1981, solo supervisory patrol will be implemented for lieutenants and sergeants in 43 patrol precincts. Safety is of paramount importance in deploying solo supervisory patrol. Supervisors will not be assigned to solo patrol unless they have completed adequate training. The practice of assigning a uniformed member of the service to operate the radio motor patrol car assigned to patrol supervisors in the following commands is hereby modified subject to the following conditions.

2. The applicable commands are limited to the following precincts: 1, 5, 6, 7, 10, 13, 17, 19, CPP, 23, 45, 47, 50, 52, 60, 61, 62, 63, 66, 67, 68, 69, 70, 72, 76, 84, 94, 100, 101, 102, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 120, 122 and 123.

3. The Commanding Officer, Firearms and Tactics Section shall arrange attendance and scheduling of supervisory personnel for the training sessions in accordance with paragraph 4, step 4e.

4. The following provisions, designed to facilitate safe and efficient operations, shall be adhered to in implementing solo supervisory patrol:

a. No solo supervisory patrol shall be assigned unless the trigger number of two police officer RMPs for the precinct and tour pursuant to the "One Man Sector Plan" dated March 14, 1977 has been met. Only marked RMP cars staffed by two uniformed police officers actively assigned to patrol one or more sectors shall be counted toward reaching the trigger number.

b. Except on the second platoon, no supervisor shall be assigned to solo supervisory patrol unless at least one police officer is actually assigned and performing solo patrol at the commencement of that tour pursuant to the "One Man Sector Plan" dated March 14, 1977 as originally implemented by Operations Order 85, s. '77. A supervisor may be assigned to solo supervisory patrol during the second platoon once the trigger number for the particular precinct has been reached at the beginning of the tour, even if there are no police officers assigned to solo patrol.

c. If at any time during a tour the number of two police officer RMP cars on active street patrol falls below the trigger number for the particular precinct and tour, except as a result of meals or other temporary situations, solo supervisory patrol shall be immediately suspended for the remainder of the tour and the supervisor shall be

assigned an operator before resuming patrol.

d. Except on the second platoon, if all RMP cars assigned to solo patrol by police officers in that precinct pursuant to the "One Man Sector Plan" dated March 14, 1977 as implemented by O.O. 85, s. '77 are taken out of service during a tour, solo supervisory patrol shall be suspended.

e. No supervisor shall be assigned to solo supervisory patrol unless he is equipped with a working portable radio and a shotgun, and has received the adequate training pursuant to paragraph 3 above in the use and care of the shotgun and solo car tactics. Shotgun training will be given first to volunteers and then, only if staffing problems should develop, would other supervisors be required to be trained.

f. All solo supervisory patrols shall be filled first on a voluntary basis, from those supervisors regularly assigned to supervise precinct patrol in that precinct. If no volunteers are available, involuntary assignments shall be made from those supervisors who have been trained for solo supervisory patrol.

g. Solo patrol supervisors shall not be dispatched or respond as primary response units and shall not be dispatched as back-up units except in emergencies when no other back-up RMP unit is available.

h. In emergencies when no other back-up RMP unit is available, other RMP units on low priority jobs shall be dispatched before a solo supervisor is dispatched and RMP units on meal or otherwise temporarily out-of-service shall be dispatched before a solo supervisor is dispatched, if they can be called back into service expeditiously.

i. No supervisor shall be assigned to solo supervisory patrol unless he is familiar with the precinct or area and has been assigned to the precinct or area for a minimum of three (3) months in the precinct and has performed a minimum of thirty (30) tours of supervisory patrol in the precinct during the twelve (12) month period preceding the assignment. Each tour during the familiarization period must be at least four (4) hours in duration of supervisory patrol performed in an RMP car. Commanding Officers will ensure that each supervisor meets the minimum familiarization requirements, set forth above before assignment to solo supervisory patrol. For this purpose, each affected command will review appropriate department records documenting the date of assignment of each supervisor to the command, assignments to supervisory patrol during the twelve (12) month period preceding possible assignment to supervisory patrol, and the duration of each tour of duty on supervisory patrol. A report shall be prepared and forwarded to the Chief of Patrol in the format provided in Appendix A. Copies of this report will be maintained by the station house officer and roll call personnel for reference in making solo supervisory assignments.

Thereafter, when any currently or newly assigned supervisor becomes qualified to perform solo patrol, a follow-up report will be prepared and forwarded. No supervisor will be assigned to perform solo supervisory patrol until he meets the minimum familiarization requirements, and that information has been documented and reported.

j. No supervisor shall be assigned solo supervisory patrol when he is assigned to patrol more than one precinct.

k. In the event of an unusual condition, a Commanding Officer may suspend the provisions of this order and assign a police officer as operator of the supervisor's vehicle on a given tour. If such condition continues for more than a one week period, a report with recommendations will be forwarded to the Chief of Patrol.

l. When solo patrol for police officers is suspended due to an unusual condition, the Commanding Officer shall automatically suspend solo supervisory patrol. Commanding Officers are reminded that the conditions affecting solo supervisory patrol are such that they have the authority to declare an unusual condition for the suspension of solo supervisory patrol without having to suspend solo patrol for police officers.

5. The provisions of Interim Order 12, series 1980, regarding expansion of shotgun availability, remain in effect.

6. Any provision of the Department Manual or other department directive in conflict with this order is suspended.

- end of decision -

These provisions were incorporated verbatim into the SBA's 1980-1982 collective bargaining agreement. Since 1981, the SBA contract has been replaced by three successor agreements. The contractual language covering solo supervisory patrols has remained unchanged.

Although the modified panel provisions have not been incorporated into the LBA contract, on May 6, 1981, the LBA and the City agreed to the modified panel provisions by stipulation that reads as follows:

The [LBA] hereby accepts and agrees to be bound by the terms of the Memorandum of Agreement, On the Subject of Radio Motor Patrol, between the [SBA] and the City of New York, dated April 15, 1981 and further agrees that wherever the term Sergeant or Supervisors appears therein it is hereby deemed to include Lieutenants.

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