

OFFICE OF COLLECTIVE BARGAINING

In the matter between *

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DISTRICT COUNCIL 37, AFSCME, AFL-CIO, *

LOCAL 1549 *

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-and- *

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THE CITY OF NEW YORK *

THE NYC POLICE DEPARTMENT *

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OCB Case No.# I-1-09

RE: Police Communications Technicians and Supervising Police
Communications Technicians

Before: Impasse Panel of
Mark M. Grossman, Chair,
Gayle A. Gavin, Member
Earl R. Pfeffer, Member

Appearances:

For the Union: Jesse Gribben
Assistant General Counsel

For the City: Proskauer Rose LLP,
by: Neil H. Abramson, Esq. &
Daniel Altchek, Esq.

The above Impasse Panel was designated, pursuant to the New York City Collective Bargaining Law ("NYCCBL") and Office of Collective Bargaining ("OCB") Rules, to hear and make a report and recommendations

in a dispute between District Council 37, AFSCME, AFL-CIO, Local 1549 (“Union” or “DC 37”) and the City of New York and the New York City Police Department (“City”). By letter dated April 14, 2009, the Union requested bargaining over what it termed as certain changes being made to the duties and responsibilities of the Police Communications Technicians (“PCTs”) and the Senior Police Communications Technicians (“SPCTs”) as well as the establishment of a uniform requirement for these titles. They claimed there was a “practical impact” as a result of the changes implemented by the City. The parties met on May 8, June 8, and June 29, 2009. During said meetings, the Union proposed a salary increase for the handling of the fire calls by the PCTs under the implementation of the Unified Call Taking System (“UCT”). The City countered that any increase would have to be in the form of an assignment differential that was connected to the implementation of UCT. Additionally, the City estimated that the cost of the uniforms was \$185.00, and approximately \$75.00 for annual maintenance. As to the uniforms, the City maintained that the PCTs and SPCTs would have to purchase their own. No agreement was reached on either issue.

On July 24, 2009 the Union filed a Request for Appointment of Impasse Panel with OCB, claiming it was at an impasse over issues involving the move of the PCTs and SPCTs to 11 Metrotech in Brooklyn and their duties as a result of the City’s implementation of the UCT. After mediation proved unsuccessful, the Board of Collective Bargaining (“BCB”) declared an impasse by letter dated November 24, 2009.

A hearing in this matter was conducted by this Panel on July 26, 27, and 28, 2010, at the OCB. The parties examined and cross-examined witnesses, introduced exhibits, and argued their positions. Both parties filed post-hearing briefs.

BACKGROUND

The Union and the City of New York are parties to a collective bargaining agreement covering clerical employees throughout the city agencies. Included in the bargaining unit represented by the Union are approximately 1200 PCTs and SPCTs, all employed by the New York City Police Department. This case only concerns a change in certain duties and

responsibilities of the PCTs and SPCTs and the requirement that they wear uniforms to their offices.

The City decided to consolidate all emergency communications operations into a single location, 11 Metrotech in Brooklyn, NY. PCTs in the main are divided into call-takers and radio dispatchers. As part of the consolidation the City informed the Union that the PCTs and SPCTs would be required, for the first time, to wear a uniform starting December 1, 2009.

The PCTs, serving as call-takers, are responsible for fielding 911 calls and obtaining necessary information from the callers. This information is entered into the NYPD Sprint telecommunication system. Other PCTs, serving as radio dispatchers, in turn analyze that information in order to determine how to appropriately dispatch police personnel and continue to oversee the dispatched police units via radio or telephone communication. SPCTs are responsible for supervising the call-takers and radio dispatchers.

At some point subsequent to the September 11, 2001 terrorist attack, the City began an initiative to determine how the City's emergency response systems could be improved. It was referred to as the City's Emergency Communications Transformation Project ("ECTP"). The established purpose of the project was to "centralize and integrate the call taking and dispatch operations among the NYPD, FDNY and EMS." One component of the ECTP was the implementation of the City's UCT, established to reduce call-handling time for fire calls and to enable first responders to get to an emergency more quickly.

Before the UCT was put in place, when a call came in the PCT would elicit information from the caller and enter it into the NYPD's Sprint telecommunication system. If the call was a fire call, the PCT would conference-in a Fire Alarm Dispatcher ("FAD"), also referred to as an Alarm Receipt Dispatcher ("ARD"), from the FDNY. The FAD would collect the necessary information and enter such information into the FDNY's Starfire telecommunication system. This information would be received by a FDNY Decision Dispatcher who would then dispatch the requisite fire apparatus to the fire site. The PCT in turn would decide whether the information should be released to a police dispatcher who would determine whether police units should be deployed.

With the UCT, one aspect was to link the NYPD Sprint system directly to the FDNY Starfire system. To accomplish this integration, the PCTs had to learn an expanded and more specific list of seventeen additional fire codes to enable the information from the NYPD system to be able to be read automatically by the FDNY Starfire system. Such information then would be released to the FDNY Decision Dispatcher, eliminating the need for the added layer of the ARD being conferenced-in prior to the information going to the Decision Dispatcher. Prior to the UCT actually being instituted, the PCTs were given the new codes and lists were posted at each station for reference. Additionally, the PCTs were provided a one-day training program and a half hour refresher in preparation for the actual implementation of the system. Another facet of the training reflected the need for the PCTs to detail critical information from the caller in the first 40-character entry into the Sprint system as the Starfire system could only capture the first 40 characters of information. In May 2009, the UCT was implemented.

From May until November 2009, the UCT was operational. However, due to complaints regarding the PCTs handling of fire calls, whether real or imagined, certain modifications resulted in November 2009. At this time, after the information was released to the Starfire system, a borough-specific ARD was conferenced-in by the PCT to whom the PCT or the caller repeated the information. This was done to make sure of the accuracy of the address information. As the ARD patched in was specific to the borough concerned, the ARD would be more apt to pick up on any mistakes or inconsistencies. Further, if the PCT was unable to reach an ARD, a SPCT would review the information the PCT had elicited from the caller before it was transmitted.

An additional component of the ECTP and in conjunction with the consolidation of operations at 11 Metrotech Center, the City decided to require PCTs and SPCTs to wear uniforms. The uniform requirement consisted of two pairs of pants, two long-sleeve shirts, two short-sleeve shirts and a belt, all of which would be the responsibility of the PCT or SPCT to purchase. By letter dated September 21, 2009, the City advised the Union of this requirement. However, the City suspended this requirement until further notice on October 26, 2009.

UNION POSITION

The Union contends the City's adoption of the UCT has shifted responsibility for handling and processing fire calls, and the "highly specialized skill set" required for performing that work, from FADs to PCTs. According to the Union, the addition of this "tremendous responsibility" to complement the PCTs' "already stressful, demanding and vital functions" as 911 Operators, warrants "a significant increase in compensation." The Union insists the City's initial offer of a \$500 annual assignment differential made in the bargaining prior to an impasse being declared is woefully inadequate, and it rejects out of hand the City's reduced offer of \$200, presented for the first time in the course of this proceeding.

As for the uniform requirement, for now put on hold by the City, the Union argues the initial purchase, if borne by the employees, "would amount to nothing less than a one-time deduction in salary." As such, it demands the City absorb the full cost of purchasing the uniforms and provide, as well, an annual uniform allowance of \$209, an amount it deems fair, based on a review of other civilian employee contracts.

As a threshold matter, the Union argues that the City has waived its right to assert there was no "practical impact" on PCTs and SPCTs, and therefore no duty to bargain over additional compensation for duties changed or added as a consequence of its implementation of the UCT. The Union points out that the City, in May and June 2009, bargained with the Union over the fire calls assignment, failed to object to the Union's request for the appointment of an impasse panel, and did not file a scope of bargaining petition seeking to exclude from the panel's consideration the Union's demand PCTs and SPCTs be compensated for additional fire emergency call duties.

Moreover, the Union argues, the question of fire call compensation is, at the very least, a lawful subject of bargaining which the City voluntarily discussed with the Union and which has now reached an impasse panel without objection. The Union contends the City, therefore, is now precluded from asking the Panel to determine whether a "practical impact" resulted from the changes in assignment resulting from the implementation of the UCT. It insists that "there is only one issue for this panel to decide with

regards to the newly assigned fire calls; how much they are worth.”

According to the Union, the new responsibilities borne by PCTs and SPCTs in connection with the implementation of the UCT are a major change in their duties and, as such, warrant a reasonable salary increase. The Union argues that the PCTs did not simply experience a change in procedure, as argued by the City, but rather have been newly burdened with fire emergency responsibilities critical to public safety. The Union contends that prior to the UCT, it was the ARD who was charged with collecting from the 911 caller the critical and relevant information necessary to make important fire dispatch determinations, but under UCT, those duties and responsibilities have shifted to the PCT.

The Union insists this is no small matter, as the PCTs and SPCTs have been required to learn and memorize seventeen new fire codes. Further, the Union argues, this was not a mere rote endeavor, as the PCTs and SPCTs have received extensive training on how to utilize those codes, in particular how to follow a 40-character input limitation which allows the Fire Department’s StarFire system to record the information. Thus, the Union adds that the mere fact emergency fire calls may represent only two to three percent (2-3%) of the total volume of 911 calls handled and processed by PCTs, is misleading. The Union claims “[t]he critical issue here is the training, knowledge, preparation and ability to handle these fire calls, these life and death situations, when they occur, versus the total number or percentage of fire calls.” The Union highlights the conclusion stated the New York City Council’s Joint Committee Report: “[e]mergency calls related to fires and fire operations require a highly specialized skill set. . .”

The end result, according to the Union, is a new category of responsibility which adds “a new level of stress to the job, a stress and pressure that cannot be measured in how many new codes we need to know or how many fire calls we handle.” The added stress extends to the SPCTs, the Union argues, citing the testimony of SPCT Cynthia Hill, who explained, “as a supervisor, I feel that the FD calls were a major change to 9-1-1.” The testimony of Hill, and of PCTs Pamela Rodriguez and Gail Williams, regarding the significant pressure and added stress which resulted from the addition of fire calls to the PCTs emergency call-taking responsibilities, draws additional support from an independent report prepared by the

Hewlett Packard Company, Union Exhibit 11, on the impact upon the Police Department of the UCT implementation (“HP Report”). The Union observes that the HP Report, which states its “factual content” was reviewed and approved by the Police Department, concludes that PCTs underwent a “major change” from having “little Fire call processing responsibility” pre-UCT to bearing “[r]esponsibilities and complexities of completely handling the Fire calls.”

Although the Union offered no witness to authenticate the HP Report (indeed, Commissioner Handley denied ever having seen it), it nevertheless argues that the Report’s findings are credible. The Union observes the City produced no witness or evidence to dispute the Report’s authenticity or the independence of the persons who prepared it; further, the factual assertions contained in the Report are consistent with hearing testimony about the UCT procedures and history. Of critical note, the Union adds, is the fact the Report confirms the Union’s “central claim; the addition of Fire calls is a major change to the PCT job function.”

Thus, the Union argues, there is firm record support for its proposal that this Panel grant a reasonable salary increase as compensation for the fire call responsibilities newly assigned to PCTs and SPCTs. According to the Union, the hearing record demonstrates the new duties represent “a major change to the PCT job function,” and as such, an assignment differential is not an appropriate manner of compensation. Unlike a salary differential which, the Union contends, is most appropriately awarded to a sub-group of employees within a title who are assigned to a discrete task or function, a salary increase is warranted when an entire class of employees is assigned a new array of job duties and responsibilities. Moreover, the Union adds, the Meridian and/or TDD duties, and the 6/WYRES and DARP responsibilities for which PCTs receive, respectively, differentials of \$720.00 and \$1,161.00, “in no way compare to the complexities and responsibilities involved in handling fire calls.” Moreover, the Union argues, those differentials were carved out of the overall economic package long after the duties were established and performed by PCTs, and their value was never specifically addressed in bargaining. In contrast, the Union argues, the City here, by initially offering a \$500 and now a \$200 differential, has minimally valued the fire-call work as a unique assignment properly addressed outside

pattern bargaining.

According to the Union, however, a differential is not the proper approach for paying employees who have assumed a new and critical class of duties. Thus, it argues, the best indicators of the value of the newly assigned fire-call duties are the salary ranges paid to employees in other jurisdictions who perform the same or similar duties. Analyzing the pay of similarly titled employees in Boston, Chicago, Los Angeles, Miami, San Francisco, Washington, DC and Seattle, as well as in nearby Westchester and Nassau Counties, the Union submits that "PCTs, on average, earn between \$5.00 and \$6.00 an hour less than employees who do the same or similar work in other major U.S. cities and two neighboring counties." Under a similar analysis, the Union contends SPCTs "earn anywhere from \$3.79 to \$6.18 less than their counterparts in the cities and counties used in the Union's comparison." According to the Union, the isolated instances in which the comparable employees perform different functions or have received 2010 increases, does not impeach the force of its data. So, too, the Union's failure to include the PCTs' dispatch bonus in its calculation does not change the analysis. It points out that thirty-six percent (36%) of all PCTs receive no dispatch bonus at all, and those who do get a boost of approximately \$1.86 or \$1.19 per hour, depending on the headcount used, figures which do not undercut the Union's argument the City's 911 call-takers are underpaid. Indeed, the Union observes, the HP Report notes that "[t]he PCT salary is approximately \$4,000.00 below the national average."

Further, the Union argues, PCTs and SPCTs are underpaid when compared with Fire Alarm Dispatchers. It points out that FADs, by their fifth (5th) year of employment, earn \$3.25 per hour more than PCTs. It asserts this pay inequality under varying analyses results in a salary difference between the two titles ranging from twenty to twenty-nine percent (20-29%). It argues that the City's characterization of this disparity as "illusory" is misleading.

The Union acknowledges that the 1991 Consent Decree concerning multiple wage, sex and race discrimination claims by PCTs and SPCTs against the City, Joint Exhibit 4, resolved issues of pay disparity between PCTs/SPCTs and employees in the FAD and SFAD titles. It vigorously disputes, however, the City's claim the rising disparity in pay between the

Police Department and Fire Department call-takers in the decades since the settlement may fully be attributed to choices made by the respective unions on how to allocate available pattern funds in subsequent rounds of bargaining. Rather, the Union argues, it is more a matter of scale, as the Fire Alarm Dispatchers Benevolent Association (“FADBA”), which represents approximately 200 Fire Department employees in the FAD and SFAD titles, has far more choice and opportunity to achieve increases in base pay than does a Union which must negotiate a contract like the Clerical Agreement, Joint Exhibit 1, which covers approximately 20,000 employees in eighty-nine (89) titles in numerous City Agencies and Departments.

Moreover, the Union adds, City Exhibit 11, which compares the salaries of the PCTs with the FADs is misleading, as it assumes a maximum Dispatch Bonus of \$4,298.37. The Union again points out that thirty-six percent (36%) of PCTs receive no such bonus, and when this is accounted for, even by averaging among PCTs the total amount of bonus monies paid out, the PCT base salary is \$10,954.72 less than FAD pay, which amounts to a twenty-four percent (24%) difference. The Union argues, “[a]s such, the disparity in pay between PCTs and FADs is anything but illusory.”

In sum, with respect to the UCT, the Union contends “it is not an exaggeration to state that PCTs, in assuming fire calls, are performing two jobs in one. That is why parity between PCTs and FADs is simply a starting point. The Unified Call Taker is a PCT and FAD rolled into one.”

The Union further asserts that the November 2009 “slight modification” of requiring the PCT on a fire call to conference-in an ARD after interviewing the caller and releasing the codes to the StarFire system, did not result in any significant change to the PCTs’ duties and responsibilities for fire calls. In fact, as testified to by PCT Rodriguez, the time PCTs have spent on fire calls has actually increased since the November 2009 modification.

As such, the Union argues, the Panel must reject the City’s contention that the PCTs duties and responsibilities, having been devalued by the changes, is no longer even worth the \$500 differential it offered in negotiations. The Union therefore argues that the City has “absolutely no principled basis for declining to offer the same differential under the

modification,” and any increase in salary awarded by the Panel must be retroactive to May 4, 2009, the initial date the UCT was implemented.

In connection with the uniform issue, the Union disputes the City’s claim it is properly insisting PCTs and SPCTs pay for the initial uniform cost, since that is an outlay required of all other Police employees. The Union argues that the uniform purchase obligation for those other titles “is known, understood and accepted” by those employees before they commence employment. It contends forcing incumbent PCTs and SPCTs to assume responsibility for the initial purchase of their uniforms is unjustified. According to the Union, “forcing incumbent PCTs and SPCTs to assume this initial cost would amount to nothing less than a one-time deduction in salary.”

The Union also contends the \$100 annual uniform maintenance allowance proposed by the City is insufficient. It points out \$100 is an amount lower than the allowance offered every other NYPD title, and lower than every DC37-represented group required to wear a uniform. The Union observes that Police Attendants, a civilian title represented by DC37, receive a \$209 annual uniform allowance for maintenance of uniforms substantially similar to the outfits proposed for PCTs and SPCTs. It argues the PCTs and SPCTs should be afforded similar treatment.

CITY POSITION

The City counters there exists no proper grounds under the UCT, at least in its current form, to award any additional compensation to PCTs or SPCTs. Simply stated, the City contends there has been no “practical impact” upon the workloads of PCTs and SPCTs which creates an obligation on the part of the City to pay PCTs and/or the SPCTs more money. The City offers, however, that if the UCT procedures return to the system in place prior to November 2009, under which PCTs released fire-call information to the StarFire System and to a Fire Department Decision Dispatcher, without the involvement of an ARD, a \$200 conditional differential will be appropriate.

With respect to the uniform requirement, now on hold, the City argues that all police employees who are required to wear uniforms are responsible

for their initial purchase, and there is no reason for this group to enjoy better treatment. The City adds that the \$100 annual uniform maintenance allowance it has proposed is more than sufficient to cover care and replacement costs of the two (2) pairs of pants, four (4) shirts and single belt which make up the PCT and SPCT outfits.

The City stresses the creation and implementation of the UCT was a managerial decision about which it had no obligation to bargain. Accordingly, it argues, the wisdom and rationality of the UCT is irrelevant and outside this Panel's purview. The only questions properly before the panel, therefore, are whether the UCT had a "practical impact" on the PCTs' and SPCTs' workload, and if so, how much additional compensation should the City be required to pay them as a result.

The City stresses that the implementation of the UCT merely changed the way the 911 call-takers perform certain duties, and had no impact on workload. According to the City, the Union's evidence, including its attempts to liken the duties of PCTs and SPCTs to FADs and to emergency call-takers in other cities, does not compel a different analysis. This is not an interest arbitration, it argues, and there consequently is no proper basis to conduct "a full-blown review" of the salaries received by allegedly comparable employees.

Rather, according to the City, the only proper inquiry is whether its implementation of the UCT has resulted in an "unreasonably excessive or unduly burdensome" workload. The City emphasizes that a practical impact is not shown merely by evidence of "some" increase in workload. Citing the Board's decision in NYSNA v. City of New York, 71 OCB 23 (BCB 2003)(Decision No. B-23-2003) at 12, it contends that a mere enumeration of additional duties does not demonstrate a practical impact. Something more, but not present here, is required, the City argues, such as, for example, an imposition of mandatory overtime when new duties could not be completed in the employees' regular hours. See, e.g., Ass't Deputy Wardens/Deputy Wardens Ass'n v. City of New York and Dep't of Corrections, 69 OCB 16 (BCB 2002)(Decision No. B-16-2002). Thus, the City claims that the Union "bears a heavy burden of persuasion" to show "practical impact," UFA v. City of New York, 43 OCB 70 (BCB 1989)(Decision No. B-70-89), and until and unless the Union meets that

burden, the question of compensation simply does not arise.

That is so, the City argues, even though it previously met and conferred with the Union concerning the UCT's implementation, and even proposed some amount of additional compensation. The City asserts that its willingness to discuss with the Union various economic proposals which might have settled the Union's claim that the UCT imposed "an unreasonably excessive and unduly burdensome" workload did not amount to a concession of "practical impact," as the Union argues. So, too, the City claims its decision against initiating a formal BCB scope proceeding does not preclude this panel from adhering "to the rationale underlying the very high threshold for what constitutes a 'practical impact.'"

Indeed, the City argues, under the BCB's "practical impact" standard, the Union must meet certain evidentiary burdens, and here it has "utterly failed" to demonstrate any increase in the call-takers' workload, or a workload change which is "unreasonably excessive or unduly burdensome." It is true, the City acknowledges, that UCT has somewhat enlarged the PCTs' role in fire calls. However, it observes, the fielding of fire calls has been part of the NYPD call-takers' job duties since the beginning of the 911 system more than forty (40) years ago. It contends UCT neither increased the number of calls, nor did it change the PCTs' hours or require more overtime. In fact, the City observes, the PCTs' and SPCTs' duties all still fall squarely within their job specifications.

Rather, the City points out, in a mere two to three percent (2-3%) of the emergency calls PCTs handle – in other words, for the small subset of emergency 911 calls which concern fires or fire-related incidents – the E911 call-takers now are required to complete the questioning of the caller (rather than simply turning it over to an FAD) and then release the elicited information to the Fire Department's StarFire System utilizing seventeen new subcodes, while confining their CAD entries to forty (40) characters. The City, accordingly, stresses that 97% to 98% of the work performed by PCTs and SPCTs remains wholly unaffected by UCT. So, too, it argues, record evidence demonstrates that implementation of the UCT has caused no increase in command disciplines.

Moreover, the City argues, it is not without precedent that it has

changed emergency call-takers' duties without incurring an obligation to increase compensation. According to the City, in the mid-1990s FADs were assigned new duties related to the Fire Department's implementation of its CPR/Certified First Responder-Defibrillator program without receiving any additional pay. This was so, even though the FADs had to learn a new set of codes and new procedures for sending fire units to medical emergencies. So, too, and unlike the PCTs and SPCTs here, the FADs were assigned an entirely new category of dispatching duties. Indeed, the City points out, the FADs and SFADs received no differential, nor any additional salary, even though more than forty percent (40%) of all the runs they dispatched under the new procedures concerned EMS incidents.

The City, nevertheless, allows that a \$200 differential, contingent upon the elimination of the ARDs participation in fire calls, is an appropriate award in this case. According to the City, the \$200 payment is more appropriate than its pre-arbitration offer of \$500, which was made when there was no Fire Department FAD assigned to assist PCTs on fire calls. The City asserts that the \$200 differential fairly accounts for any perception the UCT gives additional responsibility to PCTs and SPCTs without conceding there has been any increase in workload. The City stresses the fact it earlier made an offer of \$500 in order "to achieve a speedy resolution and circumvent a full-blown dispute." It insists its unsuccessful attempt to resolve this dispute does not bind it to an excessive and inappropriate obligation.

The City maintains that the payment of a differential, should the conditions for the entitlement be restored, is more appropriate than an increase in base salary, the resolution proposed by the Union. It describes as "flawed" the Union's argument a differential is appropriate only in order to compensate a subset of employees who perform a unique task. According to the City, "the objectively limited impact that UCT has had on the actual day-to-day work performed by SPCTs and PCTs" makes a differential "clearly more appropriate than a general wage increase that would be subject to future wage increases." The City points out that most PCTs perform some degree of dispatch duty on a regular basis, and the compensation for said work is a differential.

According to the City, moreover, the Union's argument the

differential the City offered is not commensurate with the importance of the PCTs' fire call duties misses the mark. The size of differentials in this and other City contracts is a reflection of value judgments made in bargaining rather than a calculation of the intrinsic worth of any particular job duty. Thus, the City argues the difference between the salaries of PCTs and FADs is a product of the respective unions' bargaining choices and their different hourly work schedules, rather than favorable treatment of the Fire Department's call-takers. According to the City, therefore, the Union's evidence of a salary disparity between PCTs/SPCTs and FADs/SFADs should receive no weight.

The City offers data to show that following the 1991 Consent Decree, under which maximum base salaries of PCTs and FADs were effectively equalized, any subsequent disparity must be attributed directly to discretionary funds each of the City unions was free to allocate without constraint among their represented titles.

Also flawed, the City argues, is the Union's assertion the PCTs perform duties and responsibilities substantially similar to those performed by FADs and by higher-paid employees in other jurisdictions. According to the City, FADs are not a comparable group of employees because they perform a host of functions which are not performed by PCTs. These include receiving and processing private company alarms, radio alarms and voice alarms. For each, FADs rotate through five (5) different positions: Alarm Receipt Dispatcher, Decision Dispatcher, Voice alarm Dispatcher, Radio Dispatcher and SEP Operator. Through these multiple functions, and the use of the StarFire system and various pieces of equipment, the FADs also serve as the primary answering point for borough in-house administrative phone lines and interact directly with fire companies using these lines.

Thus, for all calls other than 911 calls, the ARD interrogates the caller, evaluates the information, determines whether an emergency response is required and, if so, transmits the alarm through StarFire to the Decision Dispatcher, who evaluates the information and makes the unit assignments. If the dispatch is not acknowledged or a unit is not available, FADs occupying the positions of Voice Alarm Dispatcher and Radio Dispatcher follow procedures to ensure appropriate response. The SEP Operator

updates StarFire to show the status of the assigned units. In short, the City argues, the PCTs and FADs do not perform the “exact same duties,” as alleged by the Union.

Further, according to the City, the Union’s contention the UCT caused a transfer of FAD work to PCTs is baseless. The City observes that FADs, following modifications to the UCT in November 2009, participate in every 911 fire call, as they did before the UCT. Although they no longer conduct the primary questioning of the callers, they remain responsible for verifying the accuracy of the location information taken by the PCTs, and they are required to input that and other information about each reported fire into StarFire. According to the City, the FADs are all still “actively engaged” in emergency fire-call taking. Indeed, the City argues, for some calls the FADs, as Decision Dispatchers, have expanded review responsibilities.

The City submits, further, that the comparisons made by the Union to emergency call-takers in other jurisdictions are not properly before the panel, and do not, in any case, support the Union’s position. The City asserts there is no fair basis for this Panel to consider comparative salary data, since this is not an interest arbitration over a successor contract, and the record, therefore, does not contain sufficient information to allow proper consideration of the factors appropriate for such a review. Moreover, the City argues, “the Union’s ‘analysis’ is so replete with methodological and factual errors that it permits no conclusion whatsoever.”

According to the City, five (5) of the nine (9) jurisdictions the Union offers for comparison are inappropriate because the employees who supposedly receive compensation larger than the PCTs have responsibilities and perform functions that are not part of the PCTs’ duties. In addition, the City points out, although dispatching titles in other jurisdictions are among those offered by the Union for comparison with the PCTs, the Union’s analysis does not factor in the dispatching bonuses received by the majority of PCTs. The City adds that the Union also omitted longevity data and ignored the fact that the employees in four (4) of the jurisdictions proposed for comparison have received 2010 salary increases, which PCTs and SPCTs have not. These flaws are “fatal” to the Union’s comparative analysis, the City argues.

The HP Report, according to the City, does not compel a different conclusion. Although the document does contain allegations of salary disparity between PCTs and emergency call-takers in other jurisdictions, the instant record is devoid of evidence concerning who prepared the Report, what procedures they followed, and their sources of information. The only conclusion this record supports, according to the City, is that the HP Report is simply a “draft version” of an internal document. The City contends it is not up to date, and in fact, was created before the UCT was implemented. Moreover, it offers comparisons between the City and numerous small municipalities which obviously are not apt. It is not even apparent from the Report whether the supposedly comparable titles even share with PCTs the thirty-five (35) hour work week.

With respect to the Uniform Allowance, the City, as noted above, proposed a \$100 annual payment to cover the costs of cleaning, care and replacement of the wash-and-wear items the PCTs and SPCTs will be required to wear. According to the City, the two (2) pairs of pants, two (2) long sleeve shirts and two (2) short sleeve shirts, all wash-and-wear items, are inexpensive and easily maintained. It points out the uniforms are expected only to be worn indoors during work hours.

The City disputes the Union’s claim the purchase price of the uniform elements, estimated to be \$180, should not fairly be charged to employees who never previously have been required to wear a uniform. It points out that all other NYPD employees are responsible for their initial uniform purchases. So, too, the City contends the annual allowance it proposes is not low. It asserts the Union’s reliance on evidence of higher uniform maintenance benefits enjoyed by other NYPD titles, including some civilian titles, ignores the fact those employees are required to wear such additional clothing elements as coats, jackets, rain gear, boots, sweaters, an assortment of hats, dress uniforms and gloves.

In addition, in many cases, according to the City, the size of the subsidy is a reflection of bargaining choices, as many groups have supplemented their uniform benefit by applying discretionary money, or making concessions. The City argues that those “bargaining choices preclude any meaningful comparison of the allowance proposed by the City to this Union, for the initial implementation of a uniform requirement, and

the allowance that other unions have negotiated over the years.”

OPINION

The Impasse Panel has carefully considered the documentary evidence submitted, the testimony elicited, and the arguments proffered by both parties in support of their respective positions in this proceeding. The Impasse Panel has likewise considered, and applied, the relevant statutory criteria in arriving at its findings and recommendations.

There are two issues before the Panel:

Issue #1 – Should there be an increase in compensation as a result of the changes in duties and responsibilities of PCTs and SPCTs? If so, how much should the increase be?

Issue #2 – Are the PCTs and SPCTs entitled to any form of compensation as a result of the requirement (currently suspended) to wear a uniform to work?

Prior to discussion of our recommendations, and the reasons for those recommendations, some preliminary matters need to be addressed. The first preliminary matter is whether the Panel is to determine if a “practical impact” resulted from the changes implemented by the City. It is the existence of a “practical impact” that gives rise to the obligation to engage in mid-term bargaining.

The issues in these proceedings were first raised by the Union, in a letter dated April 14, 2009. It requested that the City bargain with the Union over a “practical impact” that had occurred as a result of certain changes in the duties and responsibilities of PCTs and SPCTs, as well as over the uniform requirement. The City and the Union did engage in collective bargaining over these issues. When the parties were unable to reach an agreement resolving their differences, the Union filed a Request for Appointment of an Impasse Panel with the OCB. The OCB assigned a mediator to assist the parties in resolving their impasse. When the mediation efforts were unsuccessful, this Impasse Panel was appointed by the OCB.

During the proceedings before this Panel, the City, for the first time, asserted that the implementation of the UCT had not resulted in a “practical

impact,” within the meaning of the NYCCBL. The City also requested that the Panel determine that there had been no “practical impact,” from the UCT, that warranted any increase in compensation. The City asserted that the evidence before the Panel demonstrated that there had been no increase in workload, let alone an unreasonably excessive, or unduly burdensome, workload, as required by the NYCCBL for a determination that a “practical impact” resulted.

The Union has asserted that the BCB has exclusive jurisdiction to hear and resolve scope of bargaining issues, including determination of whether a “practical impact” has arisen, and that this panel has no jurisdiction to decide such matters. The Union maintains that the City waived its right to raise the issue of whether a “practical impact” had arisen by failing to file a scope of bargaining positions with the BCB prior to the appointment of the impasse panel.

The Panel agrees with the Union’s position regarding its jurisdiction to determine whether or not a “practical impact” had arisen. In Section 12.-311(f)(2), the NYCCBL provides that “questions, issues or disputes as to arbitrability or the scope of collective bargaining shall be determined by the board of collective bargaining only.” Under the statute, the City had the right to object to the appointment of an impasse panel on the basis that no “practical impact” resulted from the changes implemented by the City when it initiated the UCT. However, that objection had to be raised, to the BCB, prior to the appointment of the impasse panel. According to the statute, “only” the BCB has the authority to determine whether or not a “practical impact” resulted.

In this case, the City never petitioned the BCB to make a determination regarding whether the changes implemented by the City resulted in a “practical impact.” The Union filed for a declaration of impasse, mediation was conducted by an official of the OCB, and the parties were given the opportunity to select the panel members. All of this occurred without any suggestion that the City believed that no “practical impact” had resulted.

The NYCCBL authorizes the BCB to be the sole entity to make determinations of the scope of collective bargaining issues. The NYCCBL

considers the BCB to be the experts on the interpretation of the statute. Clearly, a single authority rendering statutory interpretations is preferred, rather than a system in which each impasse panel has the authority to determine what issues could be raised before it. If each panel made their own decision, conflicting interpretations might be issued by different impasse panels. For the sake of stable and constructive labor relations, it is preferable that one entity render statutory interpretations. In conclusion, the Panel declines the City's request that we determine that there has been no "practical impact," because we do not believe we have any authority to decide that issue.

A second preliminary matter before the panel is the relevance of comparisons of salaries and benefits between PCTs and SPCTs and similar workers in other jurisdictions. The Union has spent considerable time and effort to present, to the panel, its view of the inadequacy of the present salary structure of the PCTs and SPCTs. In particular, the Union, through various exhibits and testimony, has presented its view that the PCTs and SPCTs are not appropriately compensated for the performance of their duties when compared with employees, in other jurisdictions, performing similar work. The City argues that the comparison of employees in other jurisdictions is not properly before the Panel and, in any event, does not support the Union's position.

The issues before the Panel are not part of a contract renewal. They are limited to the impact of changes in regard to the PCTs' and SPCTs' duties, and the requirement to wear uniforms. 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. Therefore, the Panel sees no probative value in the comparison of PCTs and SPCTs with employees in other jurisdictions performing similar work. We note 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.

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.

Issue #1 – Should there be an increase in compensation as a result of the changes in duties and responsibilities of PCTs and SPCTs? If so, how much should the increase be?

The Union argues that the implementation of the UCT resulted in a major change in the PCT and SPCT job duties and, as a consequence, a reasonable salary increase is warranted. The City maintains that there has been no significant increase in the duties of the PCTs and SPCTs. Nevertheless, the City urges the Panel to award the \$200 conditional differential and have it become effective if and when the City modifies the UCT to go back to the manner in which it was first implemented, without input from the FADs.

The record demonstrates some increase in the number of duties performed by the PCTs and SPCTs as a result of the implementation of the UCT. They had to continue performing the duties they had been performing, and also perform additional duties related to fire alarm dispatching. Although the PCTs and SPCTs always answered some fire-related calls, there has been a change in the duties performed related to those calls. The Union asserts that this change warrants a significant increase in compensation. The Panel does not agree.

In terms of the quantity of time that the PCTs and SPCTs spend performing duties related to fire alarm dispatching, the change is not substantial, for only 2-3% of the emergency calls PCTs and SPCTs handle concern fires or fire-related incidents. On the other hand, in order to process the fire-related calls, the PCTs and SPCTs have to learn seventeen new codes, and are limited to a 40-character input to record the information because that is how the Fire Department's StarFire system works. Regardless of how few fire-related calls actually come in, the PCTs and SPCTs have to have the training, knowledge, and ability to be able to handle the fire calls. The Panel agrees with the Union that learning these codes and being able to transmit, with a limited input, does represent a change in PCTs' and SPCTs' duties. Indeed, using this knowledge only occasionally

may make it more difficult to be ready at all times, to respond at a moment's notice, than using this knowledge regularly would. In short, the Panel concludes that there has been a small, but not insignificant, change in PCT and SPCT duties which warrants a commensurate salary increase

The Panel also concludes that a salary increase, as opposed to a differential, is an appropriate method of acknowledging the change in the PCTs' and SPCTs' duties and responsibilities. Most significantly, the PCTs and SPCTs are required continually to be able to perform the new duties. Although the PCTs and SPCTs handled fire-related calls in the past, the duties have been expanded with regard to those calls. The fact that a PCT now conferences-in an ARD to assist, with identification of the address involved, does lessen the training, knowledge or expertise required of the PCT. However, the PCTs are still required to obtain all the information, and input it, that they were responsible for prior to the modification in the PCT procedure. A salary increase is more appropriate than a differential.

Attention is now turned to the amount of the salary increase we deem appropriate. The Union argued that a "reasonable" salary increase is justified, because the PCTs and SPCTs are now performing the exact same duties as the FADs. It contended that even though such is the case, there is a wide discrepancy in their salaries. The City countered by arguing that this is not the proper forum to argue about pay disparities. Additionally, the City disputed the Union's claim, and maintained that the PCTs, SPCTs, and FADs do not perform the exact same duties, and further contends that there was a difference in salary as a result of their distinct bargaining history.

The Union argues that PCTs and SPCTs are now performing their duties as well as the duties of the FADs. Therefore, the starting point for determining fair compensation for the PCTs and SPCTs should be the salary of the FADs. However, the PCTs and SPCTs are not performing both jobs. The PCTs and SPCTs have undertaken only a portion of the duties performed by the FADs. As previously noted, this represents a negligible amount of the PCTs' and SPCTs' work time. The FADs perform many other duties that are not performed by the PCTs and SPCTs.

The record in this case simply does not support the Union's contention that PCTs and SPCTs perform the exact same work as FADs, as

well as their own work. FADs handle all types of alarms, with UCT calls being but one type. Additionally, there are five different assignments that FADs rotate through: Alarm Receipt Dispatcher, Decision Dispatcher, Voice Alarm Dispatcher, Radio Dispatcher, and Status Entry Panel ("SEP") Operator. Each assignment plays a distinct, and critical, role in the FDNY's receipt and handling of various fire alarms, and emergencies necessitating a response from the FDNY.

As previously stated, the charge of this Panel is to determine what additional compensation, if any, the PCTs and SPCTs should receive as a result of their increased duties. This does not necessitate an analysis of the current compensation of PCTs, SPCTs, and FADs. We do note that the 1991 Consent Decree recognized that the jobs were basically similar, and should be compensated accordingly. The Union asserts that there is a discrepancy now, even after making accommodations for the fact that the FADs work more hours per week. The City asserts that similar contract settlements were obtained by both unions involved and any difference is the result of the respective choices by the unions. It is not necessary for the Panel to resolve this dispute in order to make its recommendations in this case and, accordingly, the Panel will not comment further on this dispute.

The Panel concludes that there has been an increase in the duties and responsibilities of the PCTs and SPCTs as a result of the implementation of the UCT. While the change in actual duties is not great, there is a change in the training, skills, and the required preparedness. Given the fact that PCTs, SPCTs, and FADs have already been performing generally at the same level, the change simply is not a dramatic one. We believe an increase in compensation is due the PCTs and SPCTs in the form of a modest wage increase. Therefore, we recommend that the PCTs and SPCTs receive a \$500 wage increase, effective in 2008, when the UCT was first implemented.

Issue #2 – Uniform Requirement

The City's uniform proposal presents two (2) components for this Panel's review and recommendations. The first involves the initial cost of purchasing the required uniform elements. The second involves an annual payment to each PCT and SPCT to cover reasonable costs for the uniform's

care and replacement.

As to the initial purchase price of the uniform elements, which the City estimates will be \$180, the City has made no offer. It asserts that all police employees who are required to wear a uniform are personally responsible for the initial purchase. That claim has not been refuted. Indeed, the hearing record demonstrates that no group of Police employees receives a benefit to cover, in whole or in part, the initial purchase of their required uniforms.

The Union, however, contends that the initial uniform obligation for PCTs and SPCTs arises under distinctly different circumstances, and should not be equated with a requirement imposed on new employees in other Police divisions. New employees apply for and accept their positions in the Department with the knowledge and understanding that they will bear the initial burden of purchasing their uniforms. The Union argues that for employees who never previously had to wear a uniform, a requirement that they each bear the initial cost of the uniforms they are newly mandated to wear, represents a pay reduction. We agree.

In fact, there is no record evidence that any group of Police employees, when first required as incumbents to switch to uniforms, was required to cover the initial purchase price out of personal funds. The City argues, without dispute, that uniform differentials historically have been paid for with discretionary funds. Thus, the City observes that when Elevator Operators and Watchpersons employed by the Health and Hospitals Corporation received, for the first time, a uniform allowance, the benefit came from monies available within the pattern. With respect to the latter group, however, the City acknowledges it did not determine if the negotiated payment corresponded to an initial requirement to wear uniforms, as is the case here, or if a group of employees who had previously been required to wear and pay for uniforms determined to apply monies available in the pattern settlement to offset their existing uniform costs.

This Panel finds that distinction to be an important one. The two groups of employees are situated differently. One seeks, through the pattern, to offset an existing personal cost associated with employment; the other is being required to personally absorb the cost of a new, work-related expense.

The PCTs and SPCTs fall into the latter group. This Panel recommends, therefore, that for the incumbent employees only, the City pay for the initial purchase of the uniform elements. Future hires, we find, may be required to purchase their initial uniforms, until and unless the parties establish, through collective negotiations, a benefit to cover, in whole or in part, that expense.

With respect to the uniform maintenance allowance, the parties do not disagree that a benefit payable by the City is appropriate. The City offers that \$100 per annum is a reasonable and sufficient amount to cover the upkeep and replacement of the simple and relatively inexpensive components of the proposed uniform. The Union argues that the City's offer is too low, and that \$209 annually is what is reasonable and necessary.

Based upon our careful consideration of the record evidence and appropriate factors, we recommend the adoption of the \$100 annual allowance proposed by the City. The Union argues that \$209 is more appropriate because that is what is paid to Police Department Attendants, without showing comparability between the Attendants' and the PCTs' uniform elements. The Panel notes that PCTs and SPCTs are not required, as part of their uniforms, to wear sweaters, jackets, raincoats or gloves. Nor are they required to travel outside the call centers. In short, the Union's evidence does not demonstrate that the amount offered by the City, although less than half of what the Union proposes, is insufficient for reasonable care and replacement of the proposed PCT/SPCT uniform components.

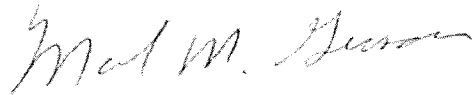
Obviously, the recommendations as to uniforms are only to take effect in the event that the City actually requires the PCTs and SPCTs to wear a uniform. There is no basis to provide any reimbursement, or compensation, while the requirement that uniforms be worn is held in abeyance.

RECOMMENDATIONS

1. As a result of the changes in the PCTs' and SPCTs' duties and responsibilities, associated with the implementation of the UCT, the PCTs and SPCTs should receive a \$500 wage increase. This salary increase should be effective in 2008 when the UCT was first implemented.

2. At such time as the City actually requires the 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.

Dated: July 19, 2011



Mark M. Grossman, Chair,



Gayle A. Gavin, Member




Earl R. Pfeffer, Member

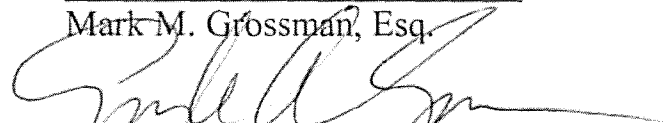
AFFIRMATION

We, Mark M. Grossman, Gayle A. Gavin, and Earl R. Pfeffer, being fully aware of the penalties for perjury, affirm that the above document is my Opinion and Recommendations, and that we are the Arbitrators who executed the same.

Dated: July 19, 2011



Mark M. Grossman, Esq.



Gayle A. Gavin, Member



Earl R. Pfeffer, Member