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In the Matter of the Impasse

Between
THE CITY OF NEW YORK;
THE JUDICIAL CONFERENCE

-and-

PROBATION AM PAROLE OFFICERS
ASSOCIATION
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REPORT

and

RECOMMENDATIONS

of the

IMPASSE PANEL

I-29-69

APPEARANCES:

For the City Office of Labor Relations:

Joseph A. Mazur, Esq., Associate Counsel
John Finneran, Esq., Assistant Director
John J. Roche, Director of Research
Sal Colangelo, Senior Personnel Examiner
Michael Davies, Administrative Assistant

For the Judicial Conference:

George Levine, Planning Officer
John Sheehan, Associate Personnel Analyst

For the Association:

Morris Weissberg, Esq., Attorney
Morris Frey, President
Gerald T. Morton, Vice-President
Philip Vota, Chairman, Grievance Committee
David Schwartz, Senior Executive Officer
Martin Tausner, Chief Research Consultant
Seymour Soyt, Chairman, Welfare Committee
Irving Harris, Executive Officer

The agreement between the Association on the one hand and the City of New York and the Judicial Conference on the other expired June 30, 1968. Neither direct negotiations between the parties nor the efforts of a mediator were successful in producing a new agreement. As a result the dispute was referred to an Impasse Panel, with none of the outstanding issues having been resolved.

There are about 700 in this bargaining unit. They occupy six titles: Trainee, Probation Officer, Probation Officer (Incumbent), Senior Probation Officer, Supervising Probation Officer and Principal Probation Officer. The only distinctions between Probation Officer and Probation Officer (incumbent), are that the latter works in Supreme Court and receives a considerably larger salary than his confrere who performs the same function in the lower courts.

NEGOTIABLE ISSUES

Forty proposals, in addition to those dealing directly with salaries, have been placed before the Panel by the Association. They include both economic matters such as holidays, overtime and sick leave, as well as such non-economic ones as union security and grievance procedure.

According to the City and Judicial Conference, only a few of the Association's demands may be negotiated. The Judicial

Conference has reserved to itself the authority to limit the areas in which it will negotiate, on the ground that the Constitution of the State of New York gave it unqualified and unrestricted administrative control over the unified court system. Its position, therefore, is that it is not subject to the Taylor Law.

Further, it was argued, the New York City Collective-Bargaining Law is applicable to non-mayoral agencies, according to Section 1173-4.0 b., "only to the extent to which the head of such agency or employer elects to make such provision applicable, in whole or in part." The City notes that the only matters which it and the Judicial Conference hold to be negotiable are salaries, including minimums and maximums, longevity increases, promotion guarantees, and welfare funds. No other issues are therefore negotiable, it was said.

The Association contended that virtually all of the issues raised by it are properly before the Impasse Panel. Both in oral argument in its brief, the Association maintained that the position taken by the City and the Judicial Conference at the hearing was not valid under existing law.

During the proceedings the Impasse Panel held that it would not rule on the issue until after the conclusion of the hearings and the receipt of briefs. Thus the hearings concerned those issues which both parties agreed were negotiable. The Panel declared that hearings would resume with respect to

any other matters which the Panel subsequently rules also were negotiable, but would be deemed concluded if the ruling of the Panel were to sustain the City's position.

ASSOCIATION POSITION

The present minimum salary for the Probation Officer title is \$7900. There is no formal maximum or progression system, since these employees are not in the City's Career and Salary Plan. However, the actual top salary for most Probation Officers is \$9,920, including a \$500 longevity factor for those with six years of service. (The longevity factor ranges from \$100 for employees with two years of service to \$500 for those with six years.) Probation Officers employed in the Supreme Court, entitled Probation Officer (Incumbent), earn \$2,000 or more above the salary of those who work in lower courts.

A two-year agreement was proposed by the Association. In its presentation it asked that effective July 1, 1968, the salary range for Probation Officer be \$9,500 to \$13,820, with annual increments of \$432 over a ten-year period. Effective July 1, 1969, it asked that the range be \$10,000 to \$15,000.

Under the Association's proposal, the employees in this classification could receive up to \$4,800 in salary increases over the two years. one effect of the Association's proposal would be to envelop the Supreme Court's Probation Officer in the general salary structure, and thus eliminate the differential

which now exists between that court and the lower courts.

In support of its salary proposal, the Association cites a variety of other jurisdictions. These include such California counties as San Francisco and Los Angeles, where the maximum salaries were \$700 or \$800 greater than New York City's present rate in 1968 by 1969 Los Angeles' maximum was \$1,300 higher than New York's and San Francisco's \$1,600 higher.

The Federal Government's rates were cited. They are several thousand dollars higher than the City's. In the Federal Service the probation and parole functions are combined, however.

Until 1967, Parole Officers in New York City were employed by the New York City Parole Commission. Salaries of Probation Officers and Parole Officers were then the same in 1967, the New York City Commission was abolished and its function and personnel transferred to the State. The April, 1969, minimum of State Parole Officer is more than \$2,000 greater than that of Probation Officer as of June 30, 1968. The Association contends that no disparity at all is warranted. The Association argues that not only historically, but because of the similarity of function and qualifications, both Probation Officer and Parole Officer should be at the same level.

Other justification advanced by the Association for its position includes the development in 1966 of an "illustrative pay plan" for the Judicial Conference's non-judicial employees

as well as the rapid increase in the Consumers' Price index. Some titles listed in the illustrative pay plan relatively have gone far ahead of the Probation Officer.

The Association also proposes increases upon promotion to a higher position ranging from \$500 to \$700, depending upon the title, or the minimum of the new title, whichever is greater. Welfare fund changes should be made on January 1, 1969 and January 1, 1970, according to the Association, to a total of \$200, although this demand was subsequently revised downward.

POSITION OF CITY AND JUDICIAL CONFERENCE

The City proposed that each minimum salary be increased by \$200 and that maximum salaries be established which would consist of the amounts now representing the generally highest salary plus whatever increases were recommended by the Panel. A three-year agreement was suggested. However, the City made no proposal at all on a general increase. Instead, the thrust of the City's position was that the Association had made completely unrealistic salary proposals.

In rebutting the Association's arguments, the City pointed out that the illustrative pay plan cited by the Association had never been implemented or effectuated anywhere in the State. It contended that jurisdictions in California not only were irrelevant to consideration of New York City's

salaries, but represented workweeks of 40 hours, and if those salaries were translated into a 35-hour week, they proved similar to the City's. It also was argued that Federal Government salaries were not relevant.

New York State Parole Officers were not comparable, it was said, because of their greater responsibilities. Their regular duties include the arrest of parole violators. In New York city, it was noted, the Average arrest record of State Parole Officers exceed even that of the Police Department. The logical comparisons, the City indicated, would be with New York State jurisdictions employing Probation Officers similar to the City's.

The City also proposed that longevity increases should be terminated and those which are now in effect be absorbed in the basic salary for each employee. Also, it was said, where employees are above the maximum of their rate ranges, as are the Supreme Court Probation Officers, these should be considered red-circle rates which would vanish as the incumbents leave their positions.

The City proposed that the Welfare Fund be increased to \$110 effective July 1, 1969, and to \$125 effective July 1, 1970. Promotional guarantees should be \$400 upon promotion to Senior Probation Officer, \$500, to Supervisory Probation Officer and \$600 to Principal, the City said.

DISCUSSION

1. Negotiable Issues -- Questions concerning the jurisdiction of an Impasse Panel cannot be resolved by the Panel. The Panel was empowered to make findings of fact and recommendations for the resolution of disputed substantive matters. It has no charter to define the scope of bargaining or to interpret applicable law, where the parties contest it. The Panel therefore makes recommendations only on those items jointly submitted to it by the parties and asserts jurisdiction over no others.

On June 26, the Association submitted to the Panel copies of a Judicial Conference Memorandum dated June 13, 1969, which in some respects modified a memorandum of a year earlier. However, the Panel does not find that document to be a ground for altering its finding with respect to its jurisdiction.

2. Salaries -- The Association acknowledged that it had selected for comparison purposes only those jurisdictions with higher salaries than New York, on the ground that the greatest city should meet the highest standards. Thus the Probation Officer even in a small California county, the New York State Parole officer and the Federal Probation officer, among others, were cited. Conversely, the City relied chiefly on comparisons with the salaries of all New York State's county probation officers, many of whom work in rural, sparsely populated

communities, far removed from city conditions. Neither approach is persuasive. Neither clearly demonstrates what should be an appropriate measuring rod for salary increases.

Aside from assertions about New York's greatness, the Association has not established that the City should meet or exceed the highest salary paid anywhere for probation officers, parole officers, or positions combining both functions. It has not, for example, successfully rebutted the City's contention that California is high-wage generally, and that the salaries cited are remuneration for a 40-hour week compared with the 35-hour week in the City.

The illustrative pay plan, developed for the Judicial Conference, which the Association stressed, apparently was no more than its title indicates. It was part of a study designed to restructure the Judicial Conference's salary system, but it was not an official determination of appropriate salaries. The occupants of any title which seemed to have been unfavorably slotted in the illustrative pay plan no doubt would forcefully argue its tentative nature and non-binding character.

Whether there is any genuine justification for equating the Probation Officer with the Federal Government's Probation Officer, who combines both probation and parole functions, has not been shown. Aside from the dual responsibility of the Federal position, the general equivalence, if any, between Federal and City salaries has not been shown.

No information was submitted on general state salary levels compared to the City's, leaving aside the question of comparability of State Parole and City Probation functions. The State Parole Officer's substantially higher salary was a key argument made by the Association. However, in terms of function, the apprehension and arrest records of the Parole Officer indicate a somewhat greater level of responsibility, although it is noteworthy that the requirements for the position are somewhat less than for the City's Probation Officer. While recognition must be given to the history of the two positions and the undeniable similarity of functions, it is not deemed controlling. That parity is required has not been shown. It does, however, demonstrate some justification for a meaningful increase in the Probation Officer's salary level and the Panel did give weight to the State Parole Officer in arriving at its salary recommendation.

The cost-of-living argument presented by the Association demonstrates that substantial salary increases are appropriate. The City did not challenge the Association's argument in this connection. The increase of the April, 1969, Consumers' Price Index for New York City over that of a year earlier was 6 1/2. Although there have recently been economic prognoses of a slowdown in the drastic upward movement of the index, the fact is that in recent months the rate of increase has been running higher than the cited 12-month change. Especially for the

July 1, 1969, and July 1, 1970, recommendations, cost of living was a prime factor in the Panel's evaluation.

There is sound reason for giving greatest weight to the salaries paid Probation Officers in the most closely comparable jurisdictions in New York State, whether a relatively large city like Buffalo, or an adjacent county like Nassau and Westchester. Erie County, which contains the City of Buffalo, is probably the only upstate county meriting such consideration. Since April, 1969, its minimum for Probation Officer has been \$700 greater than the June, 1968, salary of New York City Probation Officer. The contiguous counties of Nassau and Westchester also have relevant to New York City. Since January 1, 1969, their minimums have been almost \$700 and \$500 respectively greater than New York City's. The salaries of these three jurisdictions in New York State are from 6% to 9% greater at the minimum. At the maximum they range from Westchester's 5% greater to Nassau's 17% greater.

The following shows the existing rate ranges for each of the jurisdictions mentioned:

<u>Probation Officer</u>		
<u>Jurisdiction</u>	<u>Minimum</u>	<u>Maximum</u>
New York City, June, 1967	\$7,900	\$9,920
Erie, April, 1969	8,620	10,840
Nassau, January, 1969	8,567	11,647
Westchester, January, 1969	8,385	10,445

Having reviewed the testimony and exhibits concerning salaries, the Panel considers an appropriate increase effective July 1, 1968, to be an amount approximating 10% of the midpoint of each of the titles. One of the factors governing the Panel's conclusions on salary is its recommendation to discontinue longevity, and include the amounts presently received in the salary of the employee. Since this is a negative factor for employees of shorter service, the increases recommended, particularly for the first year, are designed to encompass that change. The recommendations for July 1, 1968, are \$900 for Probation Officer, \$950 for Senior Probation Officer, \$1,075 for Supervising Probation Officer and \$1,250 for Principal Probation Officer.

A year has already passed since the effective date of the new agreement. Therefore a three-year agreement is held to be appropriate. Additional increases of about 8%, effective July 1, 1969, and July 1, 1970, are recommended. These are not only appropriate in terms of comparisons, but are meritorious in view of past and prospective increases in the cost of living. The 8% calculations have been applied to the approximate midpoint of each title's range between minimum rate and prevalent top rate; in the case of Supreme Court Probation Officer, the basic Probation Officer increase is granted, since the former is considered a red-circle rate.

Such increases are fair and equitable to compensate for the decline in real salary. Lesser amounts would not accomplish

is purpose. In view of the prevailing pattern of wage adjustments throughout the area in both private and public sectors, larger increases than the approximately 26% increase recommended over three years are not appropriate.

The recommended minimum salary for each of the titles contains annual increases ranging from \$400 for Trainee to \$900 for Principal Probation Officer. The proposal of the City for a \$200 increase in minimums each year is not warranted. The only reason offered for this proposal was that the recent Welfare Department settlements achieved that result. But no evidence was introduced that the Welfare settlement should automatically be applied to Probation Officers. The background and considerations in the Welfare Department negotiations are unknown to the Panel.

In general, there should be some correspondence between the upward movements of salaries and minimums. Otherwise, a more and more distorted salary structure emerges, with unportable variances between newer and older employees, particularly where there are no automatic progressions.

The effect of the proposed general increase and the new minimum salary of Probation Officer compared with the other New York State counties previously cited, therefore, is as follows:

Probation Officer

<u>Jurisdiction</u>	<u>Effective Date</u>	<u>Minimum</u>	<u>Maximum</u>
New York City	July 1, 1967	\$7,900	\$9,920
	July 1, 1968	8,500	10,820
	July 1, 1969	9,100	11,545
	July 1, 1970	9,700	12,270
Erie	April, 1969	8,620	10,840
Nassau	January, 1969	8,567	11,647
Westchester	January, 1969	8,385	10,445

The July, 1968, New York salary at the "maximum" is fixed at about the same level as Erie's in April, 1969, and below the average of Nassau's and Westchester's January, 1969 salary. By any standards, including its earlier date, New York's first-year increase is justifiable, as are the succeeding years' increases of 8%. The other jurisdictions also will undoubtedly increase their salary levels in 1970 and 1971.

Applying the same approach to the Supervising Probation Officer, compared with the similar position in Nassau and Westchester (Erie does not have that position, according to City's Exhibit 11), the following would result:

Supervising Probation Officer

<u>Jurisdiction</u>	<u>Effective Date</u>	<u>Minimum</u>	<u>Maximum</u>
New York City	July 1, 1967	\$9,700	\$11,840
	July 1, 1968	10,450	12,915
	July 1, 1969	11,200	13,790
	July 1, 1970	11,950	14,665
Nassau	January, 1969	10,218	13,835
Westchester	January, 1969	11,030	14,630

The total change recommended in salaries and minimums over three years is shown in the following table:

Recommended Aggregate Increases
July 1, 1968 - June 30, 1971

<u>Title</u>	<u>Minimum Rates</u>	<u>General Increases</u>
Probation Officer	\$1,800	\$2,350
Senior Probation Officer	1,950	2,500
Supervising Probation Officer	2,250	2,825
Principal Probation Officer	2,700	3,250

Probation officers are no longer in the Career and Salary Plan. Under the circumstances, the City's proposal that maximum rates be established for each of the titles does not accomplish any purpose. Since there is no mechanism for progression from minimum to maximum and since employees receive salary changes only in the form of annual general increases, rather than through steps, the establishment of a formal "maximum" does not appear to be meaningful. Those employees below such a figure will continue to be below it, whereas those above it will continue to be above it. The latter is true whether the employee is a Probation Officer (Incumbent) working in the Supreme Court, or one who for any other reason exceeds the stipulated "maximum" salary.

The Panel sees no justification for keying the Probation Officer salary to that of the Probation officer (Incumbent),

as sought in effect the Association. The historical differential will, as the City argued, ultimately disappear. Meanwhile it is unsound to use the presence of a higher rate for a few to justify raising the level of all others. Whatever the reasons why the Supreme Court rate developed, it has not become the keystone for the salary levels of all other grades of Probation Officer.

3. Other Issues -- The City has asked that present longevity increases be discontinued, and it is recommended herein. The promotion differentials proposed by the parties are \$100 apart. Those sought by the Association appear to be reasonable for employees upon promotion to titles at the levels involved.

The only difference between the parties with respect to welfare is the effective date, with the City proposing annual increases one year and two years after, July 1, 1968. The Association's proposal that the increases be effective on January 1, 1969, and January 1, 1970, is reasonable, and is recommended.

RECOMMENDATIONS

1. The Welfare Fund shall be increased to \$110 effective January 1, 1969, and to \$125 effective January 1, 1970.

2. a) An employee promoted to the position of Senior Probation Officer shall receive an increase of \$500 per year or the minimum salary of Senior Probation Officer, whichever is greater.

b) An employee promoted to Supervising Probation Officer shall receive an increase of \$600 per year or the minimum salary of Supervising Probation Officer, whichever is greater.

c) An employee promoted to Principal Probation Officer shall receive an increase of \$700 per year or the minimum salary of Principal Probation Officer, whichever is greater.

3. Longevity increases shall not be continued, but presently paid amounts shall be incorporated in each individual's rate.

4. Recommended general increases and recommended minimum salaries are set forth in the attached Schedule A.

Milton Friedman, Chairman

Joseph DiFede

Jerome J. Lande

June 30, 1969

SCHEDULE A

RECOMMENDED MINIMUM RATES AND GENERAL INCREASES

<u>Title</u>	<u>Present Minimum</u>	<u>Recommended Minimum Rates</u>			<u>Recommended General Increases</u>		
		<u>7/1/68</u>	<u>7/1/69</u>	<u>7/1/70</u>	<u>7/1/68</u>	<u>7/1/69</u>	<u>7/1/70</u>
Trainee - 1st Year	\$6,400	\$6,800	\$7,200	\$7,600			
Trainee - 2nd Year	6,700	7,100	7,500	7,900			
Probation Officer	7,900	8,500	9,100	9,700	\$900	\$725	\$725
Probation Officer (Incumbent)					900	725	725
Senior Probation Officer	8,700	9,350	10,000	10,650	950	775	775
Supervising Probation Officer	9,700	10,450	11,200	11,950	1,075	875	875
Principal Probation Officer	11,000	11,900	12,800	13,700	1,250	1,000	1,000