

Before Theodore W. Kheel, Esq.

Impasse Panel

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OFFICE OF COLLECTIVE BARGAINING  
IMPASSE PANEL

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In the Matter of the Impasse

between

SERGEANTS BENEVOLENT ASSOCIATION,  
LIEUTENANTS BENEVOLENT ASSOCIATION,  
DETECTIVES ENDOWMENT ASSOCIATION,  
of the New York City Police Department

I-41-69

and

THE CITY OF NEW YORK

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This case is an outgrowth of collective bargaining between the City of New York and the Sergeants Benevolent Association, the Lieutenants Benevolent Association, and the Detectives Endowment Association. These three employee groups represent the over 6,000 New York City Policemen in their respective ranks.\* When negotiations between the parties for a contract beginning October 1, 1968 failed to achieve an agreement, with their consent I was designated mediator by the Office of Collective Bargaining on April 30, 1969. When subsequent mediation efforts failed, the parties agreed that I should serve as a one man impasse panel to hear and determine the issues in dispute. Thereafter, on June 13, 1969, in accordance with local law, I was designated such an impasse panel by the Chairman of the Office of Collective Bargaining. On September 5, notice of this hearing was sent to the Patrolmens Benevolent Association because, as viewed by the City, the first issue herein relates to the current contract between the City and the PBA. The PBA declined however to participate in the Impasse Panel proceeding.

On Tuesday, October 21, I held a hearing on this matter. There the parties presented their arguments and submitted a very substantial amount of documentary evidence in

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\*There are approximately 1,000 lieutenants, 2,000 sergeants, and 3,000 detectives.

support of their positions. Based upon that hearing and a thorough review and analysis of the evidence submitted to me, my opinion and recommendations follow.

The two issues presented are:

1. - Whether, as the SBA and LBA assert, police sergeants and lieutenants are entitled to the same annual salaries as fire lieutenants and captains, respectively, or whether, as the City claims, the only appropriate relationship to be considered in establishing sergeants and lieutenants salaries, is that between sergeants and patrolmen? This is the "parity" issue.

2. - What are appropriate annual salaries and supplemental compensation, if any, for detectives?

#### The Parity Issue

Since 1898 the entry level police and fire ranks in New York City have received the same annual salaries. Prior to 1937 the firemen had a considerably longer work week but since then salary parity on an hourly basis has also existed.

However, the first and second promotional level police ranks, which are sergeant and lieutenant, respectively receive lower annual salaries than the counterpart fire ranks of lieutenant and captain and it is this claimed

inequity that the police sergeants and lieutenants now seek to remedy. Their position in this hearing is that they merit salary parity with their alleged fire counterparts. The City of New York opposes this demand.

Before turning to the evidence and arguments now advanced by the parties on this issue, a brief review of the history of this dispute and the developments which have preceded this hearing is in order.

A 1963 arbitration between the City and the fire officers fixed the maximum annual salaries of fire lieutenants and captains at 30 per cent and 50 per cent, respectively, above the maximum annual salary of the entry level fireman, rank. The award reset salary ratios which had existed back in 1939 but which had been gradually altered somewhat during the intervening years due to across the board salary increases granted between 1939 and 1954. Thus the salary ratios at maximum of firemen to fire lieutenants and captains were reestablished by this award as 3:3.9:4.5. Subsequently, in the same year the City reestablished the police maximum salary ratios which had existed up until 1939. These ratios at maximum of the patrolmen to the sergeants and lieutenants were set at 3:3.5:4., placing the sergeants' maximum annual salary at 16.67 per cent and the lieutenants' maximum salary at 33.33 per cent above the patrolmen's maximum annual salary.

The above fire ratios have been continued by the City in all subsequent agreements with the fire officers and they are presently in force for the contract period October 1, 1968 through December 31, 1970. The present agreement between the City and the fire officers was concluded in June, 1969 retroactive to October 1, 1968.

The police ratios, however, have undergone some change since 1963. This change took place for the contract period July 1, 1966 through September 30, 1968 as the result of a fact finding decision by a special board consisting of David L. Cole, Chairman, Dr. Buell G. Gallagher, and Judge Charles W. Froessel (the "Cole Board"). This fact finding placed the police sergeants and lieutenants who were seeking salary parity with fire lieutenants and captains against the City of New York and the Uniformed Fire Officers Association. The UFOA argued that the existing "differentials" between fire lieutenants and captains and police sergeants and lieutenants were justified. The City took the position that it was improper to establish salary levels by such horizontal comparison, that the only appropriate relationship was the vertical relationship between sergeants and patrolmen, and that any change in existing salary patterns within the uniformed forces would have a "falling domino effect that would increase the City's labor costs to an unconscionable degree." This hearing took place over eight days in the

fall of 1967. On January 24, 1968, the Cole Board narrowed the existing differentials between these police and fire ranks by .2.

On February 1, 1968 the police sergeants and lieutenants in pursuit of full parity proposed that a formal job evaluation of these police and fire ranks be conducted by an outside impartial agency. They offered to be bound by the results of such a survey, whether conducted alone or in connection with a fact finding proceeding. The City did not agree to this proposal. Subsequently, the City evidenced willingness to engage in a survey provided all police and fire ranks were included; however, others of the interested parties could not be persuaded to join.

On October 13, 1968 three panels consisting of Mr. Justice Arthur J. Goldberg, State Mediation Board Chairman Vincent D. McDonnell and a different third member on each panel issued their recommendations for resolving impasses in negotiations between the City and the entry level police, fire and sanitation ranks. The panels' recommendations were for a two-year contract period beginning October 1, 1968.

(On October 1, 1968, prior to issuing their report, Justice Goldberg and Mr. McDonnell had agreed to hear and determine the instant dispute but Justice Goldberg in a letter dated October 31, 1968 told counsel for these

police superiors that time had not permitted consideration of their case. See Exhibit 3.)

On October 23, 1968, at a negotiating session with the sergeants, lieutenants and detectives, the City took the position that the Goldberg - McDonnell report of October 13, 1968 had reestablished the salary ratios which had existed prior to July 1, 1966, when the Cole Board revised them upward. The City's position was that in recommending for the patrolmen "a 5% wage increase in the first year, plus restoration of the differential between patrolmen and sergeants that existed prior to July 1, 1966" (p. 9 of the Goldberg - McDonnell report), Messrs. Goldberg and McDonnell had thereby restored the ratios that existed before the Cole-Board's decision. The sergeants and lieutenants refused to accede to this interpretation, asserting that it violated the Cole Board's decision, that the Goldberg - McDonnell panel had not considered the superiors' salary relationships at all, and that the quoted language was simply a device to award patrolmen additional moneys without labeling them as a percentage increase.

In any event, the Goldberg - McDonnell salary recommendations were rejected by the patrolmen. It was not until January 29, 1969 that the City concluded an agreement with them. That agreement covered a contract



period from October 1, 1968 through December 31, 1970. The above quoted language from the Goldberg McDonnell report of October 13, 1968 was not incorporated in the agreement with the patrolmen. However, the following new language appeared:

"It is the intent of the City that the Mayor's Special Panel recommendations restoring the differential between Patrolmen and Sergeants that existed prior to July 1, 1966 should be carried forward in the event further changes occur in the salary relationship between Sergeants and Fire Lieutenants during the term of this agreement. Should such change occur, an equalizing adjustment to Patrolmen, maintaining the differential at a ratio of 3.0 to 3.5, shall be effective simultaneously with the date that any adjustment in Sergeants' salary is made effective."

At about the same time that the agreement with the patrolmen was concluded, the City\*was negotiating with the Uniformed Fire Officers Association and in June of 1969, concluded an agreement with that group which maintained the previously established 3:3.9:4.5 salary relations at maximum for firemen, lieutenants and fire captains.

During this entire period from October 1968 up through my designation as impasse panel, the positions of the parties to the instant dispute have remained unchanged. The police sergeants and lieutenants have demanded salary parity with their fire counterparts and

the City has argued for a rollback to the ratios which existed prior to the Cole Board's decision. This is the first issue I must decide.

The police sergeants and lieutenants argue that the Cole Board's decision not only moved them half-way toward parity with their fire counterparts but indicated that full parity should be achieved. They also stress that over and above the language of the Cole decision, the City's persistent refusal to conduct a formal job evaluation study, despite the sergeants' and lieutenants' offer to be bound by the results of such a survey, constitutes affirmative evidence of the merit of their parity demand. Furthermore, the police have introduced additional evidence by way of updated police and fire salary figures from other cities, fact finding decisions, and statements of other authorities, all of which, they urge, make their present case for parity considerably stronger than the case they submitted at the hearings two years ago before the Cole Board.

In summary, the police contend that the voluminous evidence which was presented to the Cole Board, coupled with the additional evidence which I have just mentioned, establishes their claim that police sergeants and lieutenants should receive at least the same pay as their fire counterparts.

The City, in opposing the police parity demand, relies primarily on the same positions which it took before the Cole Board. In essence, the City argues that horizontal comparisons between these police and fire ranks are not valid because the functions are so disparate. The City asserts that the only proper evaluation can be in vertical terms, that is, patrolman, sergeant, lieutenant. The City contends therefore that the Cole Board's conclusion was not a valid one. Further, the City argues that the historical salary relationships should not be dislocated here because such dislocation will plainly result in pressures for revision from the patrolmen.

I have reviewed and analyzed the lengthy transcript and the over 100 exhibits which were introduced before the Cole Board as well as the briefs submitted by the parties to that hearing. These documents constitute Exhibit 1 in this case, which exhibit was offered into evidence jointly by the City and the police. I have also carefully considered the other exhibits which have been introduced by the police in this hearing, including the updated 20 cities salary survey, and, of course, the Cole Board's opinion which is Exhibit 2 in this hearing. Based upon all the evidence, I conclude that some horizontal evaluation of the police and fire duties which the police here seek to make is a proper one. At the same

time, the persuasiveness of the City's arguments concerning the importance of vertical relationships cannot be ignored and must be given some consideration.

Having recognized the propriety of horizontal comparison, there remains to be decided only whether the police case for parity is any stronger now than it was two years ago when the Cole Board passed upon this issue. I conclude that it is. I base this conclusion on several grounds.

First, I am thoroughly persuaded by the totality of the proof that, as the Cole Board stated., "The supervisory functions and responsibilities of the police officer are certainly not of a lower order than those of the fire officer." Thus, the police sergeants and lieutenants at the maximum levels of their respective pay grades are certainly entitled to receive the same pay as their fire counterparts. This finding standing alone is a plainly sufficient one on which to base the salary recommendations which I intend to make in this report. However, there are certain other factors which I have also considered and which require comment.

The Cole Exhibit P-4 which, updated to January 1969, is Exhibit 9 in this case, is further support for holding that the present gap between these police and fire salaries, which gap is unique to New York City, should be

sharply reduced. The very substantial amount of evidence introduced at this hearing has established to my satisfaction that the functions of the police sergeants and lieutenants are every bit as important to the City and every bit as demanding as those of the fire lieutenants and captains. In this regard I find it significant that the Uniformed Fire Officers Association, although invited to participate in this hearing, has seen fit not to appear in opposition to this demand.

The need for improved police departments is an ever-growing one. Police work, particularly in the urban areas and more particularly in New York City, is plainly becoming more difficult daily. If the people of New York City are to receive the police services they deserve, these police superiors must be paid appropriate salaries. I believe that in this case the appropriate annual salaries for these ranks must approximate closely those paid to their fire counterparts, who also have a most demanding function in our City.

The City has argued strenuously that the historical salary relationships involved here should not be altered because such a dislocation may well cause problems with other employee groups.

As noted above, the agreement between the City and the PBA expresses the City's intent that "the Mayor's

Special Panel recommendations restoring the differential between Patrolmen and Sergeants that existed prior to July 1, 1966 should be carried forward in the event further changes occur in the salary relationship between Sergeants and Fire Lieutenants during the term of this agreement."

But Mr. McDonnell has stated specifically (Exhibit 14) that the report of the Mayor's Special Panel which recommended that the Patrolmen receive restoration of the differential between Patrolmen and Sergeants that existed prior to July 1, 1966" was not intended to affect, nor did it affect in any way, the negotiations between the police sergeants and lieutenants and the City of New York. To do so would, as a practical matter., foreclose any adjustments for the sergeants, lieutenants and detectives regardless of the merits of their case, before their case was heard or decided since any adjustment for them would in turn trigger a further adjustment for patrolmen and so on ad infinitum. It does not seem to me that the patrolmen or any other labor organization would want to negotiate in their contract directly or indirectly any limitations on the salaries of another group of employees. The City's expressed "intent" must be viewed in light of the entire record, especially the Goldberg - McDonnell proceedings

which are cited in the patrolmen's contract as the basis of the City's intent. The intent of that Special Panel is made clear by Mr. McDonnell's letter.

In deciding what the sergeants and lieutenants are entitled to receive on the basis of the merits of their claims before me, I am giving weight to all of the factors in the record including recognition that in order to be durable, changes of the type here involved must be orderly.

In light of these considerations I am recommending somewhat less than parity for those sergeants and lieutenants who are below the maximum pay levels in their grades. The salaries recommended for these pay grades are a substantial improvement upon the ratios fixed by the Cole Board and provide for meaningful per cent increases. The overall salary schedules constitute in my judgment an equitable and realistic answer.

On the basis of the entire record I am recommending the following salaries for sergeants and lieutenants, reflecting salary parity with their fire counterparts at the maximum pay level of each rank, i.e., a 3:3.9:4.5 ratio.

SALARY RECOMMENDATIONS

SERGEANTS

October 1, 1968 - September 30, 1969

Over 3 years	\$13,553
Over 2 years	13,090
Over 1 year	12,627
Under 1 year	12,164

October 1, 1969 - December 31, 1970

Over 3 years	\$14,235
Over 2 years	13,748
Over 1 year	13,261
Under 1 year	12,774

LIEUTENANTS

October 1, 1968 - September 30, 1969

Over 3 years	\$15,638
Over 2 years	15,169
Over 1 year	14,700
Under 1 year	14,231

October 1, 1969 - December 31, 1970

Over 3 years	\$16,425
Over 2 years	15,933
Over 1 year	15,441
Under 1 year	14,949

DETECTIVES' SALARIES

Section 434a-3.0 of the New York City Administrative Code relevantly provides that first grade detec-



tives shall receive the same annual salaries as police lieutenants and that second grade detectives shall receive the same annual salaries as police sergeants. Thus, the salary recommendations which I have made for police sergeants and lieutenants apply by law to the 287 first grade and 790 second grade detectives. There remain to be determined the appropriate salary schedules for the 1781 third grade detectives who make up the bulk of the detective division.

The third grade detectives seek a very substantial increase over their present pay scales for the contract period October 1, 1968 through December 31, 1970. Exhibit 16 sets forth the dollar amounts requested. In addition, all detectives seek overtime pay and certain supplemental allowances in compensation for what they contend are necessary out-of-pocket expenditures unique to the detectives job. These demands include compensation for overtime at the rate of time and a half for every hour over 40 per week that they work; payment at the rate of 120 per mile for use of their private cars in connection with their employment; and a reasonable allowance for payments to informers where such payments are supported by appropriate evidence.

In support of their salary demands, the detectives stress that they are literally handpicked from

among the ranks of patrolmen, that they operate with minimal supervision, that their workload has steadily escalated to the point where precinct detectives now have an average annual workload which exceeds 500 cases. Further, they make the point that all three grades of detectives are assigned interchangeably and perform identical duties. In addition, it is pointed out that the detective division, which constitutes less than 10% of the entire Police Department, accounts for a major share of the arrests and that they alone are charged with responsibility for investigating all serious crimes and apprehending those who commit them. In short, the detectives argue that their role in terms of pure law enforcement is far more strenuous, demanding and important than that of the uniformed force.

With respect to the supplemental demands, they point out that they regularly work a 50 to 60 hour week without any overtime compensation; that they regularly are required to use their cars on the job; that they receive no moneys for necessary payments to informers who are vital to effective crime detection; and that they do not even receive any supplemental allowances for the additional clothing and meals required in their work.

The City, on the other hand, takes the position

that an appropriate salary for third grade detectives would be one measured in a vertical relationship from patrolmen, applying the ratios which existed prior to July 1, 1966, the effective date of the Cole Board's decision. It opposes granting any supplemental demands. In support of its stand, the City argues that the additional moneys paid to first and second grade detectives are not relevant because those salaries have been fixed by local law and are, at least for the present, immutable. The City notes that all detectives hold the Civil Service title of patrolman and stresses that they are all volunteers. The City contends that the additional moneys which detectives receive above patrolmen's salaries are designed to compensate them and do, in fact, compensate them for any additional expenditures required in their work and that these salaries also are designed to take into consideration their overtime work.

From the evidence it is plain to me that the detective division has an immense law enforcement responsibility here in New York City. It is the detectives' exclusive burden to investigate all serious crimes and to apprehend those who commit them. The evidence introduced at this hearing has demonstrated the difficult nature of their work. Based upon this evidence I am persuaded that they deserve the substantial salary increase which I am

recommending. As previously noted, the statutory differentiation leaves me free to decide within the existing framework only the appropriate salaries for this contract period for third grade detectives. Accordingly, I do not believe it is feasible to grant the supplemental demands which they seek. In this regard the salaries recommended are designed to reflect consideration for the items included in the supplemental demands.

I have fixed the maximum pay level for third grade detectives at precisely halfway between the patrolman's maximum and the sergeant's maximum, thereby increasing third grade detectives' salaries by over 13% in the first year of the agreement and an additional slightly over 5% in the second year. The salaries at the pay levels below maximum have been raised in substantially similar per cents and provide for equal incremental increases. My recommendations follow:

THIRD GRADE DETECTIVES

October 1, 1968 - September 30, 1969

Over 3 years	\$11,989
Over 2 years	11,718
Over 1 year	11,447
Under 1 year	11,176

October 1, 1969 - December 31, 1970

Over 3 years	\$12,593
Over 2 years	12,308
Over 1 year	12,023
Under 1 year	11,738

Respectfully submitted,

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Theodore W. Kheel  
Special Impasse Panel

Dated: November 24, 1969