

OFFICE OF COLLECTIVE BARGAINING

In the Matter of

CITY EMPLOYEES UNION LOCAL 237,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

-and-

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS

REPORT AND RECOMMENDATIONS

OF IMPASSE PANEL

Case No. I-76-71

City Employees Union, Local 237, International Brotherhood of Teamsters, hereinafter referred to as the Union, was certified on August 4, 1970 as the exclusive representative for purposes of collective bargaining, of all Detective Investigators, Senior Detective Investigators, Rackets Investigators, Senior Rackets Investigator, Supervising Rackets Investigators, County Detectives and Chief County Detectives employed in the County District Attorneys' offices in connection with the investigation and prosecution of criminal matters.

Negotiations between the parties for the terms of an initial collective agreement began on August 4, 1970 and, after a total of 6 negotiation meetings, culminated in an impasse on February 5, 1971 and a request for the appointment of an impasse panel was made jointly by the City and the Union.

On March 18, 1971, the Office of Collective Bargaining designated an impasse panel, composed of Lewis B. Kaden, Dr. Oscar A. Ornati and John M. Malkin, Chairman, to conduct hearings and make a report and recommendations in the dispute.

Hearings were held on May 11, 1971, May 12, 1971 and May 13, 1971 at 250 Broadway, New York City, at which time the parties were given full opportunity to present briefs, arguments, testimony and other evidence and to examine and cross-examine witnesses. Witnesses testified under oath and the proceedings were stenographically reported and transcribed.

Representing the City were Vincent Mase, Neil D. Lipton, Esq., and Michael C. Davies. Representing the Union were Director of Organization Bert Rose, Business Agent Max Weinberg, Detective Investigator R. Contratti, Detective Investigator H. S. Randolph, Senior Detective Investigator J. Mahoney, Detective Investigator W. R. Anderson, Packets Investigator R. S. Goldstein, Rackets Investigator Leonard T. Muscato, County Detective Michael Sullivan, County Detective Timothy Galvin and Rackets Investigator Anthony Schembri.

The testimony established that early in 1965 the City entered into an agreement for the titles of Detective Investigator, Senior Detective Investigator, Assistant Chief Detective Investigator and Chief Detective Investigator with the Detective Investigators Benevolent Association for the period from January 1, 1965 to December 31, 1967.

In December of 1968, both the Detective Investigators Benevolent Association and the Union filed Petitions for Certification with the OCB Board of Certification. On October 23, 1969 the OCB Board of Certification ordered a separate representative election for Detective Investigators, Rackets Investigators and County Detectives and a separate election for supervisory employees in the Detective Investigator, Rackets Investigator and County Detective series.

The election was held on December 16, 1969 and the majority of votes were received by the Detective Investigators Benevolent Association. The Union filed objections on the grounds that they had not been advised prior to the election that absentee ballots were permitted. The Union's petition was granted and a new election was ordered on March 23, 1970. The supervisory employees having voted against a separate bargaining unit, the OCB Board of Certification ordered a new election for a single unit consisting of Detectives Investigators, Rackets

Investigators, County Detectives, Senior Detective Investigators, Senior Rackets Investigators, Supervising Rackets Investigators and Chief County Detectives which was held on June 25, 1970. A majority of the ballots were for representation by the Union and, accordingly, on August 4, 1970 the Union was certified as the exclusive representative of the combined unit for purposes of collective bargaining.

The Union asked for salary adjustment's back to January 1, 1968, asserting that the members of the unit were neglected in the representation and collective bargaining activities of the City due to delay on the part of the City and procrastination by some of the District Attorneys as to whether they wanted to come under OCB. Although, at first, the City maintained that, it could not be required to bargain for periods prior to August 4, 1970, date of certification of the Union, it later waived any objection to possible recommendations of the impasse panel covering periods earlier than the date of certification of the Union without conceding that this type of retroactivity is a mandatory subject of bargaining,

The Union claimed that it has suffered from the fact that the unit of approximately 100 members is small compared to other much larger and more prominent employee groups in New York City and complained that there is a lack of understanding by the City's representatives of the nature of the duties and responsibilities of the positions of members of the unit. The Union equated the job duties and responsibilities of the basic or key position of Detective Investigator as on a par with the position of Detective in the New York City Police Department and Detective Investigator employed by nearby Suffolk and Nassau Counties and contended that Detective Investigators should receive the same pay and benefits as New York City Detectives First Grade.

The Union position as to job comparisons and the myriad assignments and functions of the Detective Investigators, who number 52 out of the total of 93 employees in the unit, can most easily be presented by setting forth the following portion of a brief filed by the Union during the hearings:

New York City Detective-Investigators are peace officers who passed a competitive examination to gain civil service status. (See Exhibit #1 Competitive Exam Notice)

New York City Detective-Investigators are the only civil service detectives in New York City. New York City Police Detectives are patrolmen provisionally assigned by the Police Department commissioner to the Detective Division. (See Exhibit #1A)

Detective-Investigators are assigned to various bureaus in the District Attorney's Office; i.e. Rackets Bureau, Supreme Court, Criminal Court, Grand Jury Bureau and Youth Bureau, and are responsible only to the District Attorney.

In the Rackets Bureau, Detective-Investigators conduct unusual investigations from inception; i.e. interviewing witnesses, determining if a crime was committed, preparing and testifying in the Grand Jury, Supreme Court and Criminal Court in hearings and trials, and locating, arresting and processing perpetrators.

(See Exhibit #2) Long Island Railroad Letter
(" " #2A) Police Department Arrest Cards.
(" " #3) " " Identification Sheet.
(" " #4A, 4B) Newspaper Clippings of Detective-Investigators.
(" " #4C) From the book "The Prosecutor" by James Mills re the Alice Crimmons Case.

In the Grand Jury, Detective-Investigators investigate all cases presented to the Grand Jury, in all crimes waived to the Grand Jury by the Criminal Court and Direct Submissions, the police officer reports to the Detective-Investigator in the Grand Jury and the Detective-Investigator goes over the alleged crime. The Detective-Investigator then advises the police officer what ingredients are missing for a correct presentation to the Grand Jury for an indictment or dismissal.

In the Supreme Court, the Detective-Investigator investigates further than required in a prima facie case for the Grand Jury. The police officer produced all facts in his possession to the Detective-Investigator for preparation for trial. All evidence for conviction or of the defendant is gathered by the Detective-Investigator; i.e. interviewing alibi witnesses, locating other witnesses, visiting the scene of the crime and all matters necessary for trial beyond arresting a perpetrator. The Detective-Investigator then aids and protects the Assistant District Attorney at the trial.

(See Exhibit #5) Detective-Investigator Waldon letter.
(" " #6) " " Van Ness letter.

The above also represents the duties of the Detective-Investigators in Criminal Courts and Youth Bureau.

The New York State legislature and Governor Rockefeller, in their wisdom, saw fit to make all investigators in the District Attorney's Offices police officers effective with the institution of the New Code of Criminal Procedure on September 1, 1971. All police officers are peace officers but not all peace officers are police.
(See Exhibit #7) From New Criminal Procedure Law.

For example, Deputy Sheriffs in New York City, all court attendants, court aids, clerks, correction officers, fire marshals in New York City, and probation officers are not police officers.

In addition to the physical risks involved in performance of a Detective-Investigator's duty as a law enforcement officer, the Detective-Investigator must possess a greater knowledge of the procedures involving the work of the various courts and continually take seminars to keep abreast of the changes in laws; i.e. the Mapp decision, the Escobedo decision, the Miranda decision and new rules relating to eavesdropping and wire tapping, just to name a few.

The New York State Identification and Intelligence System, other-wise known as NYSIS, recognized in its development plan that police detectives assigned to the District Attorney's Office and Detective-Investigators do the same highly specialized type of investigative work.
(See Exhibit #7A)

Because the Detective-Investigator is a county oriented law enforcement officer, he provides a vital function in today's atmosphere of community tension. The Detective-Investigator's knowledge of the county and his ability to work with various community organizations frequently places him in a position that is of an inestimable value in maintaining stability and tranquility in the community; i.e. the public's knowledge of the District Attorney's position to prove a person innocent, as well as guilty.
(See Exhibit #8,9)

COMPARISON OF QUALIFICATIONS OF DETECTIVE-INVESTIGATOR TO THE POLICE DEPARTMENT

NEW YORK CITY POLICE OFFICER

High School Graduate or Equivalency Diploma and pass the Civil Service Test.

DETECTIVE-INVESTIGATOR

High School Graduate or Equivalency Diploma, pass the Civil Service test, plus two years of investigative experience.

Therefore, it can logically follow that a patrolman reaches the experience level of a Detective-Investigator after two years of experience. However, while a patrolman is doing patrol work, traffic duty, etc., the

Detective-Investigator is performing the work of an experienced Detective. With reference to the scope of the Civil Service Examinations for Detective-Investigators, the Sergeant examination for the Suffolk Police Department, consisting of 75 questions, included 15 questions from the examination of the Detective-Investigator.

In view of the foregoing information and exhibits, there can be no doubt that New York City Detective-Investigator are:

1. Civil Service Peace officers and become Police Officers as of September 1, 1971.
2. Comparable to the most experienced Detective in the New York City Police Department.
3. Unique in their scope of duties that go beyond arresting suspects.

The comparison with New York City Police Department shows that the New York city Detective-Investigators are specialists with reference to knowledge of law, trial procedure and evidence necessary for conviction or exoneration.

Even comparing Yew York City Detective-Investigators to Detective-Investigators in surrounding counties is futile because of the work load surroundings counties carry.

Yet even the salaries of surrounding count Civil Service Detective-Investigators and appointed Detective-Investigators are greater than New York City Detective-Investigators.

For example:

Civil Service New York City Detective-Investigators, with 10 years' experience, earns, as of 1/1/71.....\$8,950.00

Civil Service Suffolk County Detective-Investigators, with 10 years' experience, earns, as of 1/5/71.....16,406.00

Appointed Nassau County Detective-Investigators, with 10 years' experience, earns as of 1/1/71.....14,759.00

The City of New York has beer, fortunate to have the services of New York City Detective-Investigator without having to bargain since 1/1/65. In the meantime, all other Civil Service groups have received tremendous increases in Day and fringe benefits. (See Exhibit #11 -Letter to Director of Budget).

The New York City Detective-Investigator have a long way to go to catch up with the cost of living, much less the raises given others.

The only other Civil Service Detective-Investigators in the nearby New York State area are the Detective-Investigators in Suffolk County. At the time of the last agreement on 1/1/65 between New York City Detective-Investigators and the City of New York, New York City Detective-Investigators' salary was \$7100.00 and Suffolk County Detective-Investigators' salary was \$6500.00. (See Exhibit #12 - History of a Det.-Inv. of Suffolk County entering service on 1/1/65).

If justice is to be done, New York City Detective-Investigators should receive the same pay and benefits as New York City Detective 1st Grade. In our opinion, Gov. Rockefeller mandates this quality by making N.Y.C. Detective-Investigators the only Civil Service Detectives in New York City.

A more succinct statement of the Union's position with regard to the scope of the Detective-Investigator position is presented in the following excerpt from the introduction to the Union's brief:

Detective-Investigators are Civil Service Employees, peace officers assigned to the District Attorney's Offices. Their duties vary, depending on their office assignments - investigative, enforcement, peace keeping, quasi-legal, preparation of cases. In sum, the Detective-Investigators must be able to do all that a uniformed officer can do, plus all that a detective can do, plus the para professional legal work required when he assists the District Attorneys in the preparation of cases. In short, he is a policeman, a detective and then some.

Illustration of the Union's position as to the job scope of the Rackets Investigators, second largest group in the unit, is contained in the following statement of the duties of the Rackets Investigators of the District Attorney's office in Kings County prepared by members of the Union's negotiating committee:

Investigative complaints received in the District Attorney's Office pertaining to criminal violations of law; investigate all information received or complaints and confidential sources to determine which illegal acts are being performed. To develop this information requires field investigations, contacting various law enforcement agencies, federal, state, and local, banks, brokerage offices, retail credit agencies, department stores, utility companies and any other necessary sources of information pertinent to compiling evidence in these investigations.

Consultation with Assistant District Attorney on information secured for presentation of the evidence to grand juries and courts. This requires the interrogation of complaints and witnesses that may have information and be able to assist in the conducting of these investigations.

Also contact private agencies when necessary; assist in maintaining electronic equipment used for evidence; monitoring and transcribing; wire tap information; inspect court records; contact probation and parole agencies for any information that they may have. In the conducting of these investigations, at the discretion of the chief investigator it may be necessary to travel to other states to secure evidence and information or work undercover in the securing of evidence for trial.

In the conducting of special types of investigations it may be required to subpoena and examine business and financial records and submit financial questionnaires and ascertain hidden assets not made known to the District Attorney.

Rackets investigators also investigate and probe matters regarding unethical practices of attorneys. They assist the assistant District Attorneys assigned in the action, investigations and preparation of trial and possible appeal of disciplinary proceedings. They also interview witnesses preparatory to their appearance before court.

During the hearings, the Union stressed that work of a detective nature was characteristic of the assignments of the unit members and the City took the position that work of a more or less routine investigatory nature comprised the largest part of the assignments.

The panel read with interest the newspaper clippings and testimonial letters introduced to establish the level of importance and the quality of the job duty performance of members of the unit. The testimony of District Attorney Thomas J. Mackell of Queens County as well as Assistant District Attorney of Kings County Edward M. Rappaport, Chief Assistant District Attorney of New York County Alfred J. Scotti, Deputy Inspector Richard DiRoma, Assistant Chief Inspector John Kinsella and Assistant Chief Detective Investigator John J. Miller supplied additional clarification of the job functions and general performance of the employees in the bargaining unit. The testimony of several members of the unit as to their assignments and personal qualifications was also helpful to the panel.

The present salaries and positions in the negotiating unit are as follows:

TITLE	SALARY	NUMBER OF EMPLOYEES IN SALARY STEPS
County Detectives	\$7,250	2
	7,490	2
average	7,370	4
Detective-Investigators	7,450	5
	7,750	12
	8,050	4
	8,350	2
	8,650	4
	8,950	21
	9,250	4
average	8,436	52
Rackets Investigators	9,000	3
	9,350	15
	10,100	1
	10,340	1
	10,460	1
	10,750	2
average	9,550	23
Senior Detective Investigators	9,300	3
	10,000	1
	10,350	5
average	9,961	9
Senior Rackets investigators	10,300	1
	11,690	1
	12,300	1
average	11,430	3
Supervising Rackets Investigators	12,375	1
	12,750	1
average	12,562	2

The final position of the City was an offer of an annual salary increase in the following amounts which included incremental changes:

Detective Inv.	effective January 1, 1969	\$700
	effective January 1, 1970	600
	effective January 1, 1971	600

Senior Detective Inv.	effective January 1, 1969	\$800
	effective January 1, 1970	700
	effective January 1, 1971	700
Rackets Inv.	effective January 1, 1971	600
Senior Rackets Inv.	effective January 1, 1971	700
Supervising Rackets Inv.	effective January 1, 1971	750
County Detective	effective January 1, 1969	550
	effective January 1, 1970	450
	effective January 1, 1971	450
Chief County Detective	effective January 1, 1969	700
	effective January 1, 1970	600
	effective January 1, 1971	600

The City pointed out that no offer of increase was made for Rackets Investigators, Senior Rackets investigators and Supervising Rackets Investigators 1969 and 1970 because they were not part of the negotiating unit until the Union was certified on August 4, 1970 and, therefore, had automatically received prior increases granted by the City to classifications not involved in collective bargaining.

The proposal of the Union for Detective Investigator (present average pay of \$8,436) was for wage and fringe benefit parity with Detective First Grade in the Police Department (present range of \$14,949 to \$16,425) effective January 1, 1968; for Senior Detective Investigator (present average pay of \$9,961) was for wage and fringe benefit parity with Detective First Grade in the Police Department (present range of \$14,949 to \$16,425) effective January 1, 1968; for Senior Rackets Investigator (present average pay of \$11,430) was for wage and fringe benefit parity with Lieutenant -- Commander Detective Squad in the Police Department (present range of

\$16,349 to \$18,381) effective January 1, 1968; for Supervising Rackets Investigator (present average pay of \$12,562) was for wage and fringe benefit parity with Captain (present range of \$18,053 to \$22,289) effective January 1, 1968; for County Detective (present average pay of \$7,370) was for wage and fringe benefit parity with Detective First Grade in the Police Department (present range of \$14,949 to \$16,425) effective July 1, 1966; and for Chief County Detective was for wage and fringe benefit parity with Lieutenant -- Commander Detective Squad (present range of \$16,349 to \$18,381) effective July 1, 1966.

The effect of the Union's request for parity of each title in the unit with positions in the New York City Police Department represents a proposal for such staggering increases as to just about constitute a request for an all-inclusive job reclassification. It is the conclusion of the panel that certain aspects of the work of the men (and women) in the unit overlap with work performed by the Police Department Detectives, especially those assigned to the District Attorneys' offices, and are, in fact, similar and, in some cases, even much the same as some aspects of the work of Police Department Detectives and Detective Investigators employed in Suffolk County and Nassau Counties. However, the dissimilarities of the job qualifications, duties, responsibilities and exposures are likewise apparent to the panel and it is the opinion of the panel that virtual reclassification, by way of granting the requested increases, would be unreasonable and unwarranted.

Stress was also placed by the Union on increased cost of living as one of several justifications for their monetary proposals.

As to change in the Consumer Price Index reported by the Bureau of Labor Statistics, it is noted that the increase of fifth-tenth of 1 per cent for the New York-Northeastern New Jersey area during the month of May 1971 (seven-tenths of 1

Per. cent after adjustment for seasonal influences) was the 49th consecutive monthly rise and that the rise of 5.9 per cent in the local area over the 12 months ending May 31, 1971 soars above the national average increase of per cent over the same period.

Products and services which cost \$100.00 in 1967, cost an average of \$125.20 in the New York-Northeastern New Jersey area as of May 31, 1971 while the national average was only \$120.80.

The recent cost of living figures support the Union's plea that the purchasing power of the current wages of members of the unit has ebbed to the extent that special consideration need be given to their economic plight.

RECOMMENDATIONS

The panel has carefully considered: all aspects of comparability including terms and conditions of employment of comparable and related employees of New York City and other public employers as well as salary increases in recent years to comparable and related types of employees of New York City and other public employers; reports of changes in the Consumer Price Index issued by the Bureau of Labor Statistics of the United State Department of Labor and other cost of living indices; the nature, high quality and importance of the work performance of members of the unit; the job qualifications and skills involved in the performance; and all other evidence presented. Accordingly, the panel recommends the granting for the following increases which are inclusive of increments received in the year and the following minimums and maximums:

DETECTIVE INVESTIGATORS

Effective July 1, 1968	\$ 500	(\$ 7,500 to \$ 9,750)
Effective July 1, 1969	\$ 900	(\$ 8,000 to \$ 10,650)
Effective July 1, 1970	\$ 800	(\$ 8,500 to \$ 11,550)
Effective July 1, 1971	\$ 800	(\$ 9,000 to \$ 12,250)

SENIOR DETECTIVE INVESTIGATORS

Effective July 1, 1968	\$ 600	(\$ 8,600 to \$ 11,950)
Effective July 1, 1969	\$ 1000	(\$ 9,100 to \$ 11,950)
Effective July 1, 1970	\$ 900	(\$ 9,700 to \$ 12,850)
Effective July 1, 1971	\$ 900	(\$ 10,800 to \$ 13,750)

RACKETS INVESTIGATORS

Effective July 1, 1970	\$ 800	(\$ 9,000 to \$ 11,550)
Effective JANUARY 1, 1971	\$ 400	(\$ 9,000 to \$ 11,950)

SENIOR RACKETS INVESTIGATORS

Effective July 1, 1970	\$ 900	(\$ 10,300 to \$ 13,200)
Effective July 1, 1971	\$ 450	(\$ 10,300 to \$ 13,650)

SUPERVISING RACKETS INVESTIGATORS

Effective July 1, 1970	\$ 950	(\$ 10,750 to \$ 13,700)
Effective July 1, 1971	\$ 475	(\$ 10,750 to \$ 14,175)

COUNTY DETECTIVES

Effective July 1, 1968	\$ 350	(\$ 6,250 to \$ 7,840)
Effective July 1, 1969	\$ 750	(\$ 6,500 to \$ 8,590)
Effective July 1, 1970	\$ 650	(\$ 6,800 to \$ 9,240)
Effective July 1, 1971	\$ 650	(\$ 7,100 to \$ 9,890)

CHIEF COUNTY DETECTIVES

Effective July 1, 1968	\$ 500	(\$ 8,100 to \$ 10,100)
Effective July 1, 1969	\$ 900	(\$ 8,500 to \$ 11,000)
Effective July 1, 1970	\$ 800	(\$ 9,000 to \$ 11,800)
Effective July 1, 1971	\$ 800	(\$ 9,000 to \$ 12,600)

After considering all aspects of the general question of fringe benefits including pension benefits and all evidence presented on the subject, the panel has determined that it would be fair and proper in this case and, accordingly, recommends that fringe benefits should be granted effective July 1, 1971 in accordance with the City-Wide Agreement, where applicable, and including those provisions by which the District Attorneys have elected to be bound.

It recommends that the City contribute \$175 effective July 1, 1971 and \$250 effective January 1, 1972 to the Welfare Fund providing the Union executes a waiver and elects to be covered by city-wide negotiations for all future Welfare Fund negotiations.

It is further recommended that term termination date of the following agreement be December 31, 1971.

DATED: July 15, 1971

JOHN M. MALKIN, Chairman

LEWIS B. KADEN, Panel Member
Concurring

OSCAR A. ORNATI, Panel Member
Concurring

