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IN THE MATTER OF THE IMPASSE

-Between-

CITY OF NEW YORK

I-92-72

-and-

CIVIL SERVICE BAR ASSOCIATION  
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BEFORE:   ERIC SCHMERTZ, Chairman  
          EVA ROBINS, Member  
          GEORGE MARLIN, Member

On August 3, 1972, the above panel was named by joint request of the parties to resolve the impasse between them pursuant to Section 1173-7.0 of the New York City Collective Bargaining Law.

ISSUES PRESENTED

1. Term of Contract
2. Reclassification of Titles
3. Salaries

This Fact-Finding proceeding involves approximately 450 attorneys employed by the City in various departments and agencies. The Association represents employees with the titles of Attorney Trainee, Assistant Attorney, Attorney, Senior Attorney, and Supervising Attorney.

The previous agreement expired December 31, 1970, and the Panel is asked to make recommendations for a new agreement effective January 1, 1971.

The Association desired to present additional issues to the Panel. However, the City challenged the Panel's authority to hear and make recommendations on such issues because the issues were either City-wide in scope or non-mandatory subjects of bargaining. The Panel advised the Association that any issues other than those mutually agreed upon, would have to be submitted to the Board of Collective Bargaining to determine their bargainability.

The Association reserved its right to raise those issues held bargainable by the Board at a future date, and with this reservation, the parties agreed to proceed with the hearings on the three issues above.

1. TERM OF CONTRACT

The Association has proposed a contract term of twenty seven months for the period commencing January 1, 1971 and terminating March 31, 1973. The City has proposed a contract term of three years, from January 1, 1971 to December 31, 1973.

The Panel is of the opinion that a three year contract term is justified, based on the pattern of settlements for other Career and Salary Plan employees as well as a desire to encourage harmonious relations between the parties. It is now December 1972, and little purpose would be served by a contract that would expire in three months. Neither the public interest nor the interest of the parties would be served by a contract term of shorter duration.

2. RECLASSIFICATION OF TITLES

Under the existing statutes, this Panel is limited to making recommendations to the New York City Civil Service Commission concerning reclassification of titles.

Both parties have recommended a reduction in the number of the attorney titles. Presently there exists in addition to Attorney Trainee and the managerial attorney classifications, the following titles:

Assistant Attorney, Attorney, Senior Attorney and Supervising Attorney.

On the basis of the thorough presentation of both parties, the Panel is persuaded that some type of reclassification of titles is warranted.

In essence, both parties urge that there be a single title encompassing the duties of the current Assistant Attorney and Attorney titles, and likewise, a single title encompassing the duties of Senior Attorney and Supervising Attorney.

However the method chosen by the parties to effectuate this change differs.

The Association has proposed that in each instance, the lower title be eliminated, the incumbents in said titles be advanced to the higher level, so that all attorneys are paid at the higher level. The effect of this proposal is that the incumbents of the lower title would move to the higher level and newly hired attorneys would be hired at the minimum of the higher title.

The City proposes consolidation of heretofore separate classifications rather than the elimination of either lower title. The result of the consolidation would be a salary range spanning the minimum of the lower titles to the maximum of the higher titles.

The City proposes that incumbents of the lower titles receive a promotional increase as a result of the consolidation. Newly hired attorneys would be hired at the minimum of the range.

The Panel will recommend that the four titles be consolidated into two titles with certain salary adjustments to flow as a consequence of the consolidation. Clearly a consolidation of duties will allow more flexibility of assignment and maximize the performance of attorneys, and at the same time facilitate promotional opportunity.

The Panel's recommendation of the salary adjustment to flow as a consequence of the proposed consolidation is discussed in Section 3-salaries, - below.

### 3. SALARIES

It is undisputed that salary increases are warranted for the attorneys represented by the Civil Service Bar Association. Clearly the pre-1971 salary levels are far below the present salaries of attorneys of comparable competence and experience in the public and private sectors.

While it is true that the job opportunities for lawyers have narrowed in recent years and that recruitment may or may not be as significant a problem in the future, there has been a considerable turnover of attorneys employed by the City.

Both parties have expressed dissatisfaction with the present structure of salaries for attorneys. The City argues that there is no apparent structure within the present salary scale, with attorneys "haphazardly" located in the ranges.

The City has argued that its lump sum proposal is the only "practicable" way of creating a rational wage structure. It argues that its effects are "beneficial" and doesn't deny any monies to the attorneys.

The Association adamantly opposed the lump sum payments arguing the monies should be reflected in the rate, so as not to deprive attorneys of pension benefits as well as the going-out rate for the next round of collective bargaining.

The Panel notes that attorneys employed by the State and Federal governments did not receive uniform salary increases. The increase was not uniform because the increases were dependent upon the position of the attorneys in their respective increment structures. Those attorneys who did not receive increments received significantly smaller increases than those who received increments.

In order to establish the structure proposed by both parties, from different viewpoints, with the Association requesting Salaries and Structures of to State Pay Plan and the City advancing a structure with a limited number of rates, we propose to establish a structure by slotting employees at a fixed rate in the structure.

The Panel feels that this situation should be remedied to bring order to the salary scale. We agree that a rational salary structure is essential and that a finite number of rates should be recommended.

Additionally, the City's position that the Managerial Pay Plan should be considered for the purposes of establishing maximum salaries is valid. If the Panel were to do otherwise, it would create a disruptive effect on the established Career and Salary Plan for the entire program.

The Panel's recommendations will grant an equitable adjustment to this issue. It provides that every City Attorney shall receive the same amount of dollars during each contract year as other Attorneys in the same title.

The Association has ably demonstrated that the City's salary proposals are inconsistent with action the City has taken with regard to other Career and Salary Plan employees.

The City's proposal for the first year is consistent with the pattern of settlement alleged, but not for the second and third year increases because of concern for Pay Board guidelines. The Association has justified larger increases for the second and third years for two reasons: first, internal comparisons, i.e. negotiated increases for other Career and Salary Plan Employees, and second, external comparisons with other governmental jurisdictions.

INTERNAL COMPARISONS

First, and most important, other Career and Salary Plan employees received higher increases. The Accountants, Clerical Employees, Hospital Employees, Investigators, Public Health Nurses and Social Services Employees all received higher negotiated increases in the later year of their contracts than the City has offered the Attorneys in the second and third years.

The Panel feels that disparate treatment of the attorneys as compared with the other Career and Salary Plan Employees would have a deleterious effect on the labor policies of the City. Additionally, the Panel seeks to avoid any "whipsaw" effect engendered by disparate increases.

The Panel has made its recommendations notwithstanding the City's concern for Pay Board action. Our recommendation is properly in line with the pattern of negotiated settlements for the other Career and Salary Plan Employees.

EXTERNAL COMPARISONS

The Panel agrees that it is helpful to note comparisons with the State and Federal governments. The City's proposals for the second and third year are not comparable with the treatment of attorneys in other governmental jurisdictions.

During the hearings, the parties were agreed as to the appropriate equivalent State titles for comparison purposes except for the Supervising Attorney title. The City argued that the Panel must compare non-managerial titles. The Association's witnesses testified that individuals with the State Supervising Attorney title were upgraded into the managerial level.

In another proceeding, the Association established that the City Supervising Attorney was not a managerial title, thereby retaining the right to bargain for it. Accordingly, since there is no one in the State performing legal work at Grade 30, the comparison sought by the Association, the appropriate grade for comparison purposes is Grade 28.

The appropriate State equations for comparison purposes are:

<u>City Title</u>	<u>State Title</u>	
Assistant Attorney	Attorney	SG 19
Attorney	Senior Attorney	SG 24
Senior Attorney	Associate Attorney	SG 28
Supervising Attorney	Associate Attorney	SG 28

The parties also disputed the appropriate comparisons with the Federal government. The Association sought to link the Assistant Attorney with an entrance level of GS 11. The City sought an entrance level comparison of GS 9.

In 1971 State and Federal Attorneys received across-the-board increases of 6%. In 1972 the increases were 4% and 5.5% respectively. The Association correctly noted that some employees received increments as well. Neither the Federal nor State Attorneys received a uniform monetary increase. The monetary increase for the City Attorney will be uniform, and each Attorney will receive the full amount of the increase recommended.

The Panel has recommended an entrance salary which it believes is competitive with that of other Attorneys employed in the public sector.

Perforce, recommendations of increases in salary for incumbents, and a salary structure within which those increases are placed, must have some application to entrance salaries as well. Additionally, we find a change in entrance salary warranted in comparison to entrance salaries of other attorneys employed in the public sector. We do so within the format proposed by the City in its brief.

#### CONSEQUENCES OF THE PROPOSED CONSOLIDATION OF TITLES

The consolidation of titles recommended supra necessitate salary adjustments to flow as a consequence of the proposed consolidation.

The proposed consolidation of titles will increase the duties and responsibilities of the incumbents in the Assistant Attorney and Senior Attorney titles. Upon consolidation a promotional increase is warranted. We have recommended that this increase be granted according to the schedule set forth in the recommendation.

Similarly, incumbents in the titles of Attorney and Supervising Attorney will assume added responsibilities of instruction for a period of about one year. We have recommended that the Attorneys in these titles receive additional remuneration for that year according to the schedule set forth in our recommendation.

The Panel also recommends that a promotional guarantee be provided for in the proposed rate structure. If an Attorney is promoted from the consolidated Assistant, Attorney-Attorney title to the consolidated Senior Attorney-Supervising Attorney title, he shall be granted a promotional increase of \$1,100 plus whatever additional sums would be required to move him to the next highest rate in the structure in the consolidated Senior Attorney-Supervising Attorney title.

PRODUCTIVITY

Finally, with respect to the productivity language suggested, we recommend the adoption of the City's productivity proposal.

The Panel notes that the testimony of the Association is replete with the fact that they have been already meeting the standards of the productivity language which shall be recommended in the contract and should, therefore, be no additional burden to the Association to adopt the City's productivity language. Productivity bargaining is an essential element in collective negotiations of the City of New York, as well as an important criterion for Pay Board determinations.

RECOMMENDATIONS

1. The term of the agreement shall be for a period of three (3) years commencing January 1, 1971 and terminating December 31, 1973.

RECOMMENDATIONS TO THE NEW YORK CITY  
CIVIL SERVICE COMMISSION

2. The Panel recommends that the titles of Assistant Attorney and Attorney be consolidated into a single title encompassing the duties of the former titles. The Panel recommends the consolidation of the titles of Senior Attorney and Supervising Attorney in the same manner.

SALARIES

3. a) Salaries and Ranges  
The Panel has recommended the adoption of the format suggested by the City in its brief.

(1) Salary Increases

The salary increases recommended are as follows:

<u>Title</u>	<u>Effective Dates</u>		
	<u>1/1/71</u>	<u>1/1/72</u>	<u>1/1/73</u>
Assistant Attorney	\$1,200	\$1,200	\$1,300
Attorney	1,300	1,300	1,300
Senior Attorney	1,400	1,400	1,500
Supervising Attorney	1,500	1,500	1,500

The full amount of the increase will not necessarily be reflected in the rate of the individual attorney. The increase may in whole or part be reflected in the rate, with the balance in a lump sum cash payment dependent upon the position of the individual attorney in the rate structure (See part (b) below).

(2) Ranges

The new minimums and maximums recommended are as follows:

<u>ASSISTANT ATTORNEY</u>	<u>Effective</u>	<u>1/1/71</u>
\$12,000 - \$15,600	"	1/1/72
12,600 - 16,400	"	1/1/73*
13,200 - 17,100		

\*If the proposed consolidation takes place, the new range will be \$13,200 - \$19,800.



<u>ATTORNEY</u>	
\$14,200 - \$18,300	Effective 1/1//71
14,900 - 19,000	" 1/1/72
15,600 - 19,800	" 1/1/73*

\*The proposed consolidation will have no effect on the Attorney range effective 1/1/73.

<u>SENIOR ATTORNEY</u>	
\$16,650 - \$20,800	Effective 1/1/71
17,450 - 21,600	" 1/1/72
18,000 - 22,300	" 1/1/73*

\*If the proposed consolidation takes place, the new range will be \$18,000 - \$25,200.

<u>SUPERVISING ATTORNEY</u>	
\$19,000 - \$23,600	Effective 1/1/71
20,000 - 24,600	" 1/1/72
21,000 - 25,200	" 1/1/73*

\*The proposed consolidation will have no effect on the Supervising Attorney range effective 1/1/73.

b. Structure of the Increase

The structure of the increases is set forth in the Appendix annexed to the Panel's report. The range for each title has been divided into "subgroups". The individual's subgroup shall be determined by his rate and title as of December 31 in each year. The amount and form of the increase he shall receive is determined by moving laterally along the line for his subgroup. Under no circumstances can the rate payable exceed the fixed rate for the Particular subgroup. In the event that the increase recommended would result in a rate exceeding the fixed rate for the subgroup, the attorney shall receive the fixed rate for the subgroup and the balance of the scheduled increase in the form of a lump sum payment in cash.

The lump sum payment shall not be considered as Part of the rate for Pension Purposes and under no circumstances is it to be construed as a continuing obligation.

c. Increases for Attorneys hired at the minimum rate after December 31, 1970

The hiring or minimum rates for the respective titles are set forth in the annexed Appendix. Under no circumstances shall the increases recommended result in a rate exceeding the fixed rate established for the respective effective date. In the event that

the scheduled increase for Attorneys hired at the minimum rate results in a rate exceeding the fixed rate, the Attorney shall receive the fixed rate and the balance of the scheduled increase in the form of a lump sum payment in cash.

For example, the minimum rate for an Assistant Attorney, hired after January 1, 1972 but prior to December 31, 1972, is \$12,600. The scheduled increase effective January 1, 1973 is \$1,300. This individual will receive a \$900 increase to the fixed rate (to \$13,500) and \$400 in the form of a lump sum cash payment.

d. Salary Adjustments Due to Consolidation of Titles

The Panel has recommended that upon consolidation, attorneys in the titles of Assistant Attorney and Senior Attorney shall receive an increase of \$900 and \$1,100 respectively.

In the case of an Assistant Attorney hired at the minimum after January 1, 1973, he shall receive upon consolidation a rate increase of \$600 and a lump sum cash payment of \$300, for a total of \$900.

In the case of a Senior Attorney at the minimum rate after January 1, 1973, he shall receive an increase of \$600 to his rate and a lump sum cash payment of \$500, for a total of \$1,100.

Upon consolidation, incumbents in the title of Attorney and Supervising Attorney shall receive cash payments of \$900 and \$1,100 respectively, as compensation for instruction. for the upgraded attorneys in the consolidated titles.

The cash payments shall be paid in accordance with the following schedule:

ATTORNEYS

\$450 three months subsequent to the date on which the first Assistant Attorney is reclassified.

-and-

\$450 six months subsequent to the date on which the first six Assistant Attorneys are reclassified.

SUPERVISING ATTORNEYS

\$550 three months subsequent to the date on which the first Senior Attorney is reclassified.

-and-

\$550 six months subsequent to the date on which the first six Senior Attorneys are reclassified.

There is no dispute between the parties as to promotional guarantees for the period prior to consolidation. However, if an attorney is promoted from the consolidated Assistant Attorney-Attorney title to the consolidated Senior Attorney-Supervising Attorney title, he shall be granted a promotional increase of \$1,100 plus whatever additional sums will be required to move him to the next highest rate in the structure of the consolidated Senior Attorney-Supervising Attorney title.

e. Productivity Bargaining

The Panel recommends that the parties adopt the following contract language:

"Delivery of municipal services in the most efficient, effective and courteous manner is of paramount importance to the City and the Union. Such achievement is recognized to be a mutual obligation of both parties within their respective roles and responsibilities. To achieve and maintain a high level of effectiveness, the parties hereby agree to the following terms:

Section 1. - Performance Levels

a. The Union recognizes the City's right under the New York City Collective Bargaining Law to establish and/or revise performance standards or norms notwithstanding the existence of prior performance levels, norms or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, prepare work schedules and to measure the performance of each employee or group of employees. For the purpose of this Section, the Union may, under Section 1173-4.3b of the New York City Collective Bargaining Law, assert to the City and/or the Board of Collective Bargaining during the term of this agreement that the City's decisions on the foregoing matters have a practical impact on employees, within the meaning of the Board of Collective Bargaining's Decision No. B-9-68. The City will give the Union prior notice of the establishment and/or revision of performance standards or norms hereunder.

b. Employees who work at less than acceptable levels of performance may be subject to disciplinary measures in accordance with applicable law.

Section 2. - Supervisory Responsibility

The Union recognizes the City's right under the New York City Collective Bargaining Law to establish and/or revise standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees for employees in supervisory positions listed in Article III, Section 3 of this contract. For the purposes of this Section, the Union may, under Section 1173-4.3b of the New York City Collective Bargaining Law, assert to the City and/or the Board of Collective Bargaining during the term of this agreement that the City's decisions on the foregoing matters have a practical impact on employees, within the meaning of the Board of Collective Bargaining's Decision No. B-9-68. The City will give the Union prior notice of the establishment and/or revision of standards for supervisory responsibility hereunder. Employees who fail to meet such standards may be subject to disciplinary measures in accordance with applicable law."

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ERIC J. SCHMERTZ, Chairman

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EVA ROBINS, Member

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GEORGE MARLIN, Member

Dated: New York, New York  
December 11, 1972