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In the Matter of the Impasse Proceeding

between

THE PATROLMEN'S BENEVOLENT ASSOCIATION

- and -

Case No. I-124-75

THE CITY OF NEW YORK

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PRELIMINARY STATEMENT

This brief supports the City's proposal for a change in the duty charts of NYC police officers.* The purpose of the change is to maximize utilization of present manpower by increasing street tours without increasing costs.

* Duty charts reduce to diagram form the working schedules of police officers for the calendar year. Most police officers work in a rotating, three-platoon (shift) basis providing around-the-clock coverage. The charts show the number, frequency and sequence of various platoon assignments; the number of tours of duty in a set (number of consecutive days worked in a given platoon); the duration, frequency and sequence of swing periods (off-duty periods between sets); and the scheduled days on and off, including weekends, but excluding individual variables such as vacations and personal leave.

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The City's Proposal

The City proposes to integrate the essential functions now performed in the daily one-half hour of pre-and-post tour time into an eight-hour day in order to obtain eighteen more street appearances annually from the present patrol force.

The Issue

What emerges from nineteen days of hearings, memorialized in 2447 pages of transcript and 50 exhibits, is a single question: shall the public need for increased patrol coverage prevail over the personal convenience of privileged PBA members? At issue is the Police Commissioner's ability to expand police street services in the face of an acute fiscal crisis which has sharply curtailed available patrol forces. The overriding consideration must be what best serves the public interest.

The people of the City of New York are entitled to police service as adequate as circumstances permit. The citizenry has a right to the protection of life and property, and to the 24-hour emergency services provided by the Police Department. Since July of 1975 the City has cut back the police force by some 5,000 officers. Street coverage has been curtailed. Further reductions are publicly projected. A change in the work schedules of police officers is necessary to enlarge street patrol without additional cost. How better can the public interest be served?

The PBA's Position

The PBA resists any change in the duty chart, but not by any relevant or competent arguments within the legal framework of this dispute. A similar chart was borne by police officers with relative equanimity in the years before 1973. This belies PBA's contrived argument that the City's proposal would cause personal burdens outweighing the public interest. The evidence presented by the PEA amounts to nothing more than gross magnifications of petty discomforts which do not add up to even a shadow of hardship, hazard, or unfairness.

Personal inconvenience constitutes inadequate grounds for overriding the public interest. The PBA therefore focused on the feasibility of police performance under an eight-hour day, 261 appearance schedule, cavalierly ignoring the fact that feasibility of the proposed chart change is a judgment solely for the Police Commissioner under applicable statutes and case law.

These counterfeit arguments did not acquire relevant substance by being querulously reiterated in the dubious "testimony" of PBA witnesses committed to self-serving declarations without any evidenced concern for the public. None of this inflated, time consuming and patience-taxing display of trivia even approaches pertinency to the issues. However, it served the PBA Objective of delay to unnecessarily prolong enjoyment of a system outdated by circumstances as well as experience.

Consequences of the PBA's Position

Should PEA somehow prevail, the Police Commissioner's ability to achieve essential street coverage under an austerity budget would be severely inhibited. Unless the Police Commissioner can deploy his forces as proposed, the citizenry will be deprived solely to satisfy the callous interests of the PBA and its members. Street coverage to match the proposed utilization of the current force would require 1448 more police officers. Obviously the City, in its current fiscal plight, cannot spend the \$36,000,000 it would cost to hire this number of officers. This street coverage can only be realized by better use of the available force.

The City asks to manage its reduced police force more effectively by restructuring police officers' duty time. The PBA has responded with a dazzling exhibition of vacuous rhetoric, pallid presumptions, verbal pyrotechnics, and dilatory gymnastics, all designed to befuddle the issues so as to cloak in obscurity the lack of merit in its case. Their purpose was to induce the Panel to make unwarranted and unauthorized intrusion upon the Police Commissioner's statutory responsibility to provide the best possible police services within a severely limited budget. The totality of the record supports a finding by the Impasse Panel for the City and its people.

I. BARGAINING ISSUES

The issue here is much simpler than made to appear by PBA counsel's adroit and skillful excursion into extended obfuscation. The PBA has tried to induce this Impasse Panel to select duty Charts for the Police officers of New York City. Even though repeatedly cautioned against it by the Panel, PBA had indulged in proscribed testimony and argument on the desirability of specific charts. (T. 2308).^{*} No specific chart is or can be at issue in this case.

A duty chart per se is not a mandatory subject of bargaining. The only elements of a duty chart over which the PBA and the City must bargain have been clearly set forth by the Board of Collective Bargaining (BCB),^{**} confirmed by Justice Helman^{***} and the New York State Public Employment Relations Board (^{****}PERB), in a determination which is binding upon the Panel. What is at issue is not the "24-squad" chart or the "18-squad" chart or any other chart. The bargaining issues are limited to:

^{*}Transcript references will be cited as "T." followed by the page number.

^{**}In the Matter of the City of New York and Patrolmen's Benevolent Association of the City of New York, Board of Collective Bargaining, Decision No. B-24-75.

^{***}In the Matter of Patrolmen's Benevolent Association of The City of New York, Inc., v. Board of Collective Bargaining of the City of New York, Supreme Court, New York County, New York Law Journal, January 2, 1976, at p. 6.

^{****}U-1723, supra.

- the total number of hours worked per day (tour);
- the total number of tours worked per week (set);
- the number of appearances in a year as well as the length of "swings," a subject the Board found "quasi"-bargainable.

The City proposes that police officers work some basic chart which reflects:

- 8 hour days;
- 261 appearances per year;
- sets of no less than 3 nor more than 6 tours;
- swings of no less than 48 nor more than 80 hours.(T. 550).

These proposals by the City cover all matters found to be mandatory subjects of bargaining by BCB in B-24-75. PEA counsel boldly announced in his opening remarks that: "[PBA] has always felt, it feels today, and will insist upon that feeling being honored in law, that all aspects of duty charts are bargainable, are negotiable, and it has always been prepared to negotiate and bargain on it in conformance with the statute." (T. 60). In keeping with this groundless posturing, PBA repeatedly introduced "evidence" on such non-issues as training, the proportion of manpower assigned to the various platoons, availability of emergency coverage, briefing of relief officers, and reporting requirements, which are not mandatory subjects of bargaining and which are reserved to the Police Commissioner's discretion infra, P. 9)

To provide a basis for this "evidence" PBA's case was constructed to imply that the issue of "practical impact" was before the Panel. The PBA could rely only on implication because this is not the proper forum for determination of practical impact. Only a finding of practical impact by BCB will transmute a permissive subject into a mandatory one. Before an impasse panel may take cognizance of "practical impact," there must be a determination by BCB that such an impact exists.* The PBA has addressed itself to an inappropriate forum, complaining of an injury which does not exist and may never materialize.

*BCB, citing its interest in fostering consistency in scope of bargaining determinations, has reserved decisions on practical impact to itself:

The parties have proceeded in this action on the assumption that an impasse panel will have the authority to, and will, decide whether there has been a practical impact upon the employees. However, the determination of whether or not a practical impact exists, if the parties do not agree, is a question of fact to be determined by this Board.

In the Matter of the City of New York (Fire Department) and Uniformed Firefighters Association of Greater New York, Local 94, I.A.F.F., AFL-CIO, Board of Collective Bargaining, Decision No. B-9-68, at p. 4.

Given the procedures established by BCB, the PBA is not only in the wrong forum but is several steps ahead of itself:

If a union alleges practical impact and the Board determines that practical impact exists, the City is given an opportunity to eliminate the impact; if the Board finds that an impact still remains, the City shall then bargain with the union over the means to be used and the steps to be taken to relieve the impact.

In the Matter of District No. 1 - Pacific Coast District Marine Engineers Beneficial Association and the City of New York, Board of Collective Bargaining, Decision No. B-16-74, at pp. 8-9.

On the final day of hearings, the PBA, caught in its own web of tactical inflexibility, was still trying to avoid the real issue by directing testimony to a matter outside the scope of this Panel's authority: the desirability of particular duty charts. (T. 2319). The City relies upon the Panel to cut through the maze of PBA testimony to the core of bargaining issues: the workday, workweek, appearances, and swings. That portion of the record which is relevant to these subjects does not justify retention of the 24-squad chart.

II. THE POLICE COMMISSIONER'S AUTHORITY

The Police Commissioner has exclusive authority over the day-to-day administration of police service and over those aspects of duty charts not found to be mandatorily bargainable by BCB.

The Police Commissioner alone is empowered to decide what duties shall be performed in a police officer's day, when and how performed, and the time allotted for each. He "shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department".* He concomitantly has management rights under Section 1173-4.3(b)

*N.Y.C. Charter

§434. Commissioner; powers and duties -

- a. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department.
- b. The commissioner shall be chief executive officer of the police force. He shall be chargeable with and responsible for the execution of all laws and the rules and regulations of the department. (Derived from former 434.)

of the New York City Collective Bargaining Law (NYCCBL).^{*} As noted above, only BCB is empowered to qualify this authority by a finding of practical impact.

Section 971 of the Unconsolidated Laws establishes the police Commissioner is responsibility for promulgating duty aborts. BCB has found "that the Police Department is 'explicitly and definitely' prohibited by §971 from agreeing to any provision that would hinder the Commissioner's duty

*NYCCBL

§1173-4.3(b)

It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

***\to distribute the available police force according to the relative need for its services'".* At this time, the most pressing need is patrol.

***Unconsolidated Laws

§971. In the city of New York, the police commissioner shall promulgate duty charts for members of the police force which distribute the available manpower according to the relative need for its services. This need shall be measured by the incidence of police hazard and criminal activity or other similar factor or factors. No member of the force shall be assigned to perform a tour of duty in excess of eight consecutive hours excepting only that in the event of strikes, riots, conflagrations or occasions when large crowds shall assemble, or other emergency, or on a day on which an election authorized by law shall be held, or for the purpose of changing tours of duty so many members may be continued on duty for such hours as may be necessary. No member shall be assigned to an average of more than forty hours of duty during any seven consecutive day period except in an emergency or as permitted in this subdivision for the purpose of changing tours of duty or as otherwise provided by law.

(Laws 1969, chapter 177, effective March 30, 1969)

*B-24-75, supra, at p. 14.

Faced with a contraction in the patrol force and with increasing demands for police service, the Police Commissioner, in order to meet this statutory mandate, is impelled to reduce or eliminate non-patrol duties. By the proposed change, the half-hour in the officer's workday which is not street time would be recouped, increasing the number of tours to be worked per year and thus the number of police officers on patrol.

The Panel does not lack guidance from BCB as to the proper application in this case of the relevant statutes. In a similar case involving the Lieutenants, BCB held that the City has "reserved authority" to determine "whether work time is to be used to perform any of the functions referred to as pre-tour and/or post-tour activities," and to determine "how much of the scheduled work time shall be devoted to any such pre-or-post-tour duties as the Department may require". They noted that an assertion of the right to bargain over these matters "would be beyond the limits of mandatory bargaining, and constitute an invasion of the City's management prerogative to determine the level and quality of service to be delivered to its citizens, and the methods, means and personnel by which government operations are to be conducted."*

*In the Matter of Lieutenants' Benevolent Association and The City of New York, Board of Collective Bargaining, Decision No. B-10-75, at pp. 8-9.

III. THE STANDARDS OF THE NYCCBL

The standards for impasse panel decisions are specified in Section 1173-7.0 (c) (3) (b) of the NYCCBL:

(1) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and of the other employees generally in public or private employment in New York city or comparable communities;

(2) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(3) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(4) the interest and welfare of the public;

(5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

Conspicuously absent is the standard the PBA would like this Panel to adopt: the "feasibility" of the management position. The PBA wants this Panel to decide whether the Police Department can function on an eight-hour day. The Panel would exceed its authority were it to consider what tasks it believes necessary to proper police service, or when or how those tasks should or can be performed (supra, p. 9). The issues before the Panel -- length of the workday, the number of appearances, length of the workweek and "swings" -- must be evaluated solely by the standards of the NYCCBL. The PBA has not justified retention of the 24-squad chart under these standards.

The Comparability Standard

Appearances

No police officers in comparable communities across the United States make as few appearances per year as NYC police officers.* In all comparable communities police officers work an eight-hour day and are scheduled to appear 2600, 261, or 262 days per year.**

Police officers make fewer appearances only in Nassau and Suffolk counties. It is understandable that many, if not most, police officers would prefer fewer appearances and longer swings. Many NYC officers who live in Nassau are well aware of the "advantages" of the Nassau chart, introduced by the PBA as relevant to NYC work schedules.*** There is no basis for comparison between Nassau and New York City other than the specious ground of geographic proximity. The working environments of Nassau and New York City are so essentially disparate that a comparison can yield no comfort to the PBA position. Significantly, there have been no layoffs of police officers in Nassau County. Nassau is not faced with the extreme

*City Exhibit #2, "Scheduled Tours per Year". (City Exhibit #6 lists the names and titles of the individuals from whom the information in City Exhibits #2 and #3 was obtained.)

**City Exhibit #3, "Paid Tour Of Duty for Patrolmen," and City Exhibit #2, supra.

***PBA Exhibit #25, "Nassau Chart."

pressures of fiscal distress, diminished manpower and the high crime rate which New York require additional appearances to provide more adequate street coverage.*

Well aware of their highly favored status, knowing they could not prevail under the appropriate application of this standard,** PBA argued their personal preference and complained the personal costs of appearing 18 more times per year.

*We ask the Panel to take administrative notice of the following Uniform Crime Report figures:

	<u>NYC</u>	<u>Nassau</u>
	(rate per thousand population)	
murder	.21	.01
rape	.49	.02
robbery	10.54	.48
aggravated assault	5.51	.18
burglary	22.42	5.01
larceny/theft	23.92	16.90
motor vehicle theft	<u>10.54</u>	<u>2.61</u>
	73.62	25.22

The Nassau figures were obtained from the Nassau Police Department Statistical Unit, Police Officer Pollenchak. The NYC figures were obtained from the NYC Police Department Office of Program and Policies.

**The Panel will note that in the Parity Case the PBA stipulated to the superiority of NYC police officers' working conditions. PBA Exhibit #27, "Excerpts from Transcript in Parity Case," at p. 2047.

The Panel is asked by PBA to weigh in its decision increased cleaning bills, commutation and meal costs.* Although an "expert" witness for the PBA tried to prove that these "added costs" would disproportionately affect a police officer's income, his testimony was less than convincing, since he failed to establish that police officers do not clean their clothes or eat lunch unless they are working. (T. 2094).

Such inconveniences and "costs" might be cognizable by the Panel if the City were asking these officers to assume a unique burden, but the City asks no more of its police officers than every other comparable city in the United States.

Swings

Under the current appearance schedule, PBA members regularly enjoy the long "weekends" which are rare and special occasions to civilian employees.** The City proposes a range for "swings" of no less than 48 nor more than 80 hours. This range will provide the flexibility necessary for the Police Commissioner to fulfill his statutory mandate to construct duty charts meeting the public need for police service. The sample 18-squad chart introduced by the City*** and thoroughly explicated by both City and PBA witnesses demonstrates one possible arrangement of sets and swings: regular 56 hour swings. The PEA wants longer swings.

*PBA Exhibit #23E, "Economic Evaluation of Chart Proposals."

**PBA Exhibit #22A, "Comparison of Off Hours, 24 and 18 Squad Charts," demonstrates that more than 87% of a police officer's "weekends" are 72 hours or more, compared to the 64 hour civilian weekend.

***City Exhibit #7.

Under B-24-75, swings are bargainable to the extent that they result from bargaining on hours and number of appearances, but not to the extent that they result from management decisions relating to manning, starting times and platoons.* BCB recognized that a duty chart is a "closed system": a change in one element of the chart will affect its other elements. There is a limited amount of "play" in a duty chart. Since a chart is basically a mathematical construct, it is of course possible to produce a chart with 261 appearances containing 96 hour swings. Because the system is closed, however, such a chart would have longer sets of tours as a concomitant of the longer swings.**

* The process by which swings (time off between tours) are fixed is a combination of bargaining on mandatory items and of managerial decisions. The average duration of a swing is determined by the results of bargaining on the hours and number of appearances required of an individual and by management decisions relating to manning, starting times and platoons. Thus, while the issue of time off between tours is bargainable, the negotiability of many details of this issue is limited by the above noted factors.
B-24-75, supra, at p. 19.

See also In the Matter of Buffalo Patrolmen's Benevolent Association and City of Buffalo, 9 PERB 3024, where PERB said in response to a demand for long weekends:

This is a mandatory subject of negotiation. It involves hours of work. We note, however, that it is a management prerogative for the City to determine how many policemen it requires on duty any particular shift. The negotiations over this demand must, therefore, be restricted to the rotation of policemen in a manner that will provide the City with the number of policemen it requires at all times. (at p. 3040).

**Lt. Reilly's testimony demonstrates that the price of longer weekends (swings) is a longer workweek (set of tours). (T. 2267).

As one of PBA's own exhibits demonstrates, if a chart has shorter swings they will occur more frequently. The Panel will note from the first line of PBA Exhibit #22A that the 24-squad chart yields 49 swings while the 18-squad chart yields 61. The PBA witness testifying on this exhibit neglected to Point out to the Panel that under the 18-squad chart there would be 21 occasions during the work year when a police officer would only be required to work a three-day week. The shortest workweek in the 24-squad chart is five tours.

Although shorter (and more frequent?) swings are alleged to adversely affect family life (T. 1551) and "productivity" (T. 1557) the PBA failed to substantiate these vaporous claims.

Mr. Cooper: I just have a final question: Would you say that under the 24-squad duty chart there was less family trouble than you had under the 20-squad duty chart, matrimonial trouble?

Sgt. Boyle: I don't know the figures. I would say that the 24-squad chart would lend to a better family life.

Q. Does it or doesn't it?

A. I'm sorry, I don't have figures.

Q. You don't know?

Mr. Goldstein: Let the witness answer.

Mr. Cooper: You don't know?

A. I don't know. (T. 1638).

Rotation is fact of life for police officers. Prior to 1973, under the 20-squad chart, police officers worked rotating shifts with 56-hour swings. (T. 1588). The City asks no more now than it has traditionally asked of its Police officers. Police officers will lose their luxurious swings but will be more than adequately compensated, as demonstrated by the sample chart, by numerous short workweeks.

General Working Conditions

Other aspects of police work schedules across the country further demonstrate the highly preferential treatment enjoyed by NYC police officers - No other officers (including those in Nassau and Suffolk), enjoy as much paid time in the workday for non-patrol activities.* In New York City this paid non-patrol time consists of one hour for lunch, twenty minutes pre-tour, ten minutes post-tour, and two-twenty-minute personal breaks, totaling two hours and ten minutes per day during which the officer is paid but not on patrol.

A glaring example of the comparative luxury of the NYC officers' work schedule is the meal hour. In New York an officer is paid for a one-hour lunch break during which his radio car is out of service. There is no other major city where police officers are entitled to one hour for meals. Only Los Angeles, San Francisco, Suffolk, and Port Authority Police get as much as forty-five minutes (and receive no additional break time). In

*City Exhibit #3, supra.

Detroit a police officer takes his meal for thirty minutes while on call without pay. In "model" Nassau County, the police officer is on call during mealtime and receives no other breaks during his tour.

This is not a case in which a group of exploited municipal employees are asked to bear an inordinate burden in contrast to others in like situations. NYC civilian employees work the 18 additional days per year, most without the police officers' generous compensation and other benefits. The PBA has advanced no reason why they should be so highly favored over officers in other major cities and other New York City employees.

The Overall Compensation Standard

Although this is not a wage case, the totality of favorable conditions enjoyed by NYC police officers is relevant to whether work under the proposed chart change can reasonably be required for the compensation enjoyed.

First-grade officers, with the 8% increase for 1974-1975, currently earn \$18,175 per annum (including base pay, longevity, holiday, and night-shift differential pay, but excluding overtime and payment of the litigated 6% increase for 1975-1976).^{*} The total cost to the City of each police officer amounts to \$25,453 per annum.

^{*}See City Exhibit #12, "Answering Brief of the City of New York" (Parity Case), pp. 16-19. City Exhibit #11 "Excerpts from the Parity Case," details the overall compensation of NYC police officers.

The police officer is not poorly paid by any relevant standard prevailing in this or any other labor market, public or private. Police officers receive a good uniform allowance, comprehensive health and hospitalization protection, and a liberal welfare fund that gives them supplemental health benefits beyond those already provided by the basic health and hospitalization plan.

Police officers in New York City enjoy not one but three retirement plans. The special annuity plan and social security benefits are not received by police officers in any other major U.S. city. NYC police officers also benefit from a retirement plan providing, among other things, half-pay retirement after 20 years of service with no limiting age requirement, based on the last year's total compensation, including overtime. They enjoy numerous paid leave benefits including up to 27 days of vacation, one personal leave day, a liberal terminal leave benefit, military leave, bereavement leave, 2 days for blood donation and, finally, unlimited sick leave and unlimited injury leave (even if not service related).

On the basis of these data, it is evident that police officers are more than generously compensated for every hour they work.

The Public Interest Standard

The public has the right to the best police service which the City can provide. The Panel must consider the interests of the public within the context of the fiscal crisis.* The City introduced into evidence the New York State Financial Emergency Act for the City of New York,** which amply reflects obvious peril to the City and dictates Draconian measures for fiscal survival. We ask the Panel to take administrative notice of the passage of the Stavisky Bill by the New York State Legislature.

*The Panel's attention is called to a recent memorandum of the Office of Collective Bargaining (OCB):

Impasse panels which function in municipal contract disputes pursuant to the New York City Collective Bargaining Law are required by §1173-7.0c of the law, to apply certain enumerated criteria in formulating their recommendations for settlement of disputes; among these are criterion No. 4: "the interest and welfare of the public." It is the view of this agency that the Financial Emergency act is a law addressed to the interest and welfare of the public and, as such, is applicable to the actions of impasse panels pursuant to the mandate of criterion No. 4. It follows that in any statutory review proceeding before the Board of Collective Bargaining, pursuant to §1173-7.0c(4) of the NYCCBL, the same would be true. We believe, moreover, that in any proceeding in the courts arising out of an impasse panel's recommendations, the applicability of the Financial Emergency Act would be recognized by the courts.

Memorandum of the Impartial Members of the Board of Collective Bargaining in Response to Proposed Amendments to the New York City Collective Bargaining Law Recommended by the Office of Labor Relations to the City Administration for Enactment by the City Counsel, May 12, 1976, at pp. 8-9.

**City Exhibit #5.

If this legislation is upheld by the courts, it will further reduce the Police Department budget for fiscal 1977 by \$39,500,000.*

The City's financial crisis has already caused the elimination of some 5000 police jobs. At least an additional 1575 police personnel will be lost in fiscal 1977, primarily through attrition. This bleak prospect underscores the importance of not hobbling the police Commissioner's ability to meet service demands by rescheduling the use of manpower. The public has a right to the restoration, in so far as possible, of lost police service at no additional cost.

The PBA does not deny the existence of the fiscal crisis, but does deny that it motivates the City's proposal to change duty charts. The PBA has been anxious in other forums at other times to persuade the public that the loss of 5000 police officers since July of 1975 has been calamitous, yet they make the hollow argument to this Panel that this same reduction in manpower cannot serve as a reasonable ground for the City to convert non-patrol working time to patrol time. The PBA asks the Panel to believe that the fiscal crisis is irrelevant to the City's position in this proceeding and that the chart change is proposed solely to punish PEA for its position in the wage parity case. PBA counsel told the Panel: "... the City's sole motive or prime motive for securing and pressing so-called duty chart changes is to punish PBA for exercising its right to secure appropriate salaries." (T. 939). This is absurd on its face and reveals the poverty of the PBA stance against the change.

*The New York Times, April 15, 1976, p. 1.

This is a scheduling case. The Appellate Division has recognized the relevancy of fiscal considerations in management decisions on scheduling. In a case involving the recovery of unpaid days off formerly granted to court personnel, the Court said:

Finally, appellants [State Administrative Judge] are charged with the demanding task and responsibility of operating the State's court system. Flexible and economical distribution of manpower is of paramount importance. This is particularly true in view of the present fiscal plight of New York City. To effectively operate the courts, appellants must retain control over the assignment of court terms and personnel to cope with changing circumstances.*

Unable to argue that increased street coverage is not in the public interest, the PBA tried to establish that the public benefit of the proposed changes would be de minimus. The increase in street coverage projected by the City is disputed by the PBA. Regardless of which figures are accepted by the Panel from the plethora submitted, there can be no doubt that the patrol time to be gained by the chart change is substantial.

The City initially presented evidence that the chart change would net a 7% increase in street coverage. (T. 208).** The PBA attempted to whittle away the 7% with a futile barrage of figures and graphic representations.***

*In re: Assoc. of Surrogates and Sup. Ct. Reporters within the City of New York v. Bartlett, et al. 48 A.D. 2d 117, 1975.

**See also City Exhibit #1, "Comparison of Union and City Proposal Viz-a-viz the Present 24 Squad Chart."

***See, for example, PEA Exhibit #14, "PBA on Cit's [sic] '7%' Increased Street Time," and PBA Exhibit #22 C, "Patrol Coverage Comparison 24 and 18 Squad Charts."

The PEA argued that the City's projected increase in street coverage would be eaten away by increased sick time;* (on the theory that if police officers are required to work an additional eighteen days the sick rate will increase?); increased court time;** (on the theory that arrests are not a valuable police function?); increased training time;*** and decreased emergency availability.**** Try as they might, PBA managed to show only that street coverage would increase by 3.5%,***** or 5.17%.*****

The City maintains that the equivalent of 1448 additional police officers will be gained by requiring the current force to work eighteen additional days per year.***** Whatever monetary value is placed on the increased street coverage, it is substantial.*****

*PBA Exhibit #23B and C, "Evaluation of Chart Proposals: Working Hours," and "Street Hours."

**PBA Exhibit #22C, supra.

***Ibid. See also PBA Exhibit #23E, supra.

****PBA Exhibit #19, "PBA Comparison Street Time" and PBA Exhibit #23E, supra.

*****PBA Exhibit #22C, supra.

*****PBA Exhibit #14, supra.

*****City Exhibit #1, supra.

*****The City placed this value at \$36,000,000 (ibid), the PBA at \$12,000,000. PBA Exhibit #14, supra.

An example of the PBA's impoverished efforts to minimize the public benefit of the duty chart change is their contention that the split platoon system will somehow result in a significant decrease in street coverage.* In the split platoon system, some officers in the shift are ordered out earlier than others to overlap coverage at the change of tour. Significantly, this system already operates effectively in a number of precincts. (T. 549).**

The PBA's position defies logic. They appear deeply concerned about the police coverage of Mr. Glushien's house during the change of tours, but do not demonstrate even a modicum of concern for its coverage the remaining twenty-three hours of the day. The PBA would have us believe that there is no temporary reduction of coverage at tour change under the present chart.***

*PBA Exhibit #18, "Street Coverage."

**Although starting and ending times are not bargainable under B-10-75, Inspector Murphy directed testimony to the PBA's concern about predictability of scheduling under a split platoon system. He explained that no more than three starting times are contemplated for each platoon and that early and late cars can be split by sector to give officers with steady sector assignments a steady early or late starting time. (T. 795).

***Police Officer Rindos testified that the 24-squad chart provides "100% coverage on the street at all times" (T. 1857) by virtue of "butted relief" (T. 1856), and produced PBA Exhibit #18, supra, which purports to demonstrate that there is no "half-coverage" under the 24-squad chart.

Two of their own witnesses testified otherwise.* In any case, there is an established mechanism for providing temporary coverage by crossing over sector lines when necessary. (T. 1623). The PBA has not ventured to suggest that for some perverse or sinister reason the Department will or must abandon this long-standing policy of providing temporary coverage.

*Mr. Cooper: While you are being relieved, who is on patrol?

P.O. Hennessey: Nobody. (T. 1925).

* * *

Mr. Cooper: What happens now?

Sgt. Boyle: You are relieved prior to the completion of the tour.

Q. So you have 20 minutes, in your experience, during which the beat is not covered; is that correct?

A. Presently, yes. (T. 1624).

IV. THE PBA'S CASE

PBA counsel helpfully explained that "three years ago, the police officers exchanged the working burden of an additional half-hour a day of work, day in and day out throughout the year, on a straight time, non-overtime basis," (T. 119), for eighteen more days off. The City now offers to relieve police officers of this working burden in exchange for return of the same eighteen days.

While the definition of necessary tasks and the allocation of time for those tasks is a matter for the Police Commissioner, we cannot resist defusing the PBA's argument that the half-hour of nonpatrol time in the 24-squad chart is somehow indispensable. The half-hour before and after patrol for which police officers are paid is part "phantom time", which should be eliminated, and part administrative tasks performable within an eight-hour tour.

The PBA resists an eight-hour day solely because eighteen more appearances per year would be required for its members. The PBA's concern is not the length of the workday, but how many days per year they are required to work. Since 261 appearances per year cannot be considered excessive, the PBA avoids this bargainable issue and centers on the "necessity" of the half-hour. The PBA leaned on current pre- and post-tour activities for support. These activities were claimed to be

multifarious, complex, and time-consuming.*

Uniform Change and Wash-Up

The PBA stands to lose the luxury of paid unsupervised time presently devoted to clothes and revolver change: five minutes pre-tour and that portion of the ten minutes post-tour which is actually used for clothes change and wash-up. That this paid time was once bargained over and granted does not bar the City from taking another position in these

*The PBA introduced on this point the entire Patrol Guide, the body of Department regulations governing members of the service, apparently as part of their announced effort to instruct the Panel about what police officers do. (T. 2418). If the PBA is asking the Panel to believe that every officer has to perform each of these tasks regularly and to the letter (as they apparently expected the Panel to believe that each member of a patrol team must turn in a radio - T. 1545 - and an MT-10 report - T. 1248) the Panel may well wonder why they are not asking for a twelve-hour workday.

proceedings.* Paid uniform/revolver change and wash-up time serves only the officer's personal convenience. It is not done to meet any Department requirement. The testimony of PBA's witnesses leads to no other conclusion.**

*City Employees Union, Local 237, I.B.T. and The New York City Housing Authority, Board of Collective Bargaining, Decision No. B-6-74.

**This subject was covered thoroughly in the cross-examination of Sgt. Boyle.

Mr. Cooper: Does the Police Department require you to live in any particular area, whether it's New York City, New Jersey, Nassau or Connecticut?

Sgt. Boyle: Well, we are restricted to New York.

Q. New York State?

A. New York State, yes.

Q. And you have a choice, do you not, as to whether you live in New York City, Brooklyn, Bronx, Staten Island or out in Nassau?

A. I have that choice.

Q. And the choice is exercised by the other Police Officers in terms of your own convenience and needs; is that correct?

A. Correct.

Q. So that the fact that you live in Nassau does not represent a response to anything that the City has asked you to do?

A. That's right.

Q. And the further away you live from your precinct, the longer you have to travel; is that correct?

A. That's correct.

**Continuation Q. And the more expensive it may be in terms of transportation; is that correct?

A. Right.

Q. But the choice is made by the Patrol Officer.

A. It is.

Q. Now, isn't it a fact that if you traveled -- if you live in New York City and if you traveled by public transport, that you could travel in your uniform from home?

A. Well, you can travel in civilian clothes, you can travel in uniform.

Q. That's right. And the fact that you travel in civilian clothes is a choice made by the Patrol officer; isn't that so?

A. That's right.

Q. Nobody tells him -- there is no regulation which says that you must wear a uniform or not wear a uniform?

A. That's right.

Q. And the only occasion when you can't wear a uniform is if you are coming by private transport; is that correct?

A. I believe there is something to that effect, yes.

Q. So, again, whether or not a Patrol Officer comes to work in his uniform or out of his uniform is a matter of personal choice?

A. Right.

Q. And it's a choice which reflects serving his own convenience?

A. Right.

**Continuation Q. And if he comes in his own uniform, he doesn't have to change his uniform, does he?

A. That's right.

Q. So that the change of uniform, into uniform, has to do with satisfying his needs --

A. Right.

Q. -- or desires.

Now, similarly, when he carries his service revolver, is there any requirement that the service revolver be left at the police precinct?

A. No, there is no requirement.

Q. And when he changes to a lighter weapon to leave, it's again to serve his own personal need and desire, isn't that so?

A. Yes.

Q. So that the time he takes to make these various changes and meet these needs meets his various purposes; is that correct?

A. Yes.

Q. Now, in terms of travel cost: Is there anything preventing a Police Officer from traveling on the Long Island Rail Road in his uniform?

A. There is nothing to prevent him from doing it, no.

Q. And if he doesn't travel in his uniform, he is serving his own purpose; is that correct?

A. Yes.

Q. No public service represented by his choice.

A. Right. (T. 1590).

There are Department regulations which prohibit certain conduct in uniform. These include traveling by private transportation, and drinking.* Living in areas where public transportation may not be convenient or having a drink after work is obviously an exercise of the officer's own personal choice. The City should not be required to compensate officers for time devoted to activities which are purely for their own convenience.

"Mini-lessons".

Ten minutes of the daily paid non-patrol time is used under the 24-squad chart for rollcall training, or "mini-lessons". These mini-lessons were introduced in 1972 as a discretionary act on the part of the Police Commissioner. (T. 1615). At the time, the idea of effective daily training

*PBA Exhibit #26, Patrol Guide 104.

on matters germane to the patrol officer was promising and played some role in the institution of the 24-squad chart. (T. 1299). However, training is not a mandatory subject of bargaining* and may be changed in accordance with the Department's judgment without leave of the PBA.

*BCB has found that:

. . . demands for training during work time . . . are matters which infringe upon management's prerogative under §1173-7.0(b) and are, therefore, permissive subjects of bargaining.

In the Matter of New York State Nurses Association and the City of New York and New York City Health and Hospitals Corporation, Board of Collective Bargaining, Decision No. B-2-73, at p. 15.

See also B-7-72:

The City has the management right to determine the quantity and quality of the services to be delivered to the public, and, therefore, also the quantity and quality of the training required to achieve that service. Whether the training is on employee time or released time, and whether or not the City explicitly states during negotiations that it considers a subject a voluntary one, cannot alter the nature of the subject matter if, as a matter of law, it is an exercise of a management prerogative.

In the Matter of Communications Workers of America, AFL-CIO, and The City of New York, Board of Collective Bargaining, Decision No. B-7-72, at p. 6.

The Police Commissioner's decision to end the mini-lessons is a reasonable exercise of his prerogative. The mini-lessons have proven superfluous, redundant, and ineffective,* and to be a luxury the City can no longer afford.** The Department will continue to provide the level of training necessary in the judgment of the Police Commissioner for officers to perform their jobs safely and effectively. It is the Police Commissioner's judgment that the training hoped to be accomplished in mini-lessons is now better included in another context. (T. 721).

Other Tasks

The proposed eight-hour day would encompass such duties as the Police Commissioner might deem essential, such as roll-call, inspection, briefing, submission of reports and like functions. The time allocated to each function is a matter of management prerogative so long as it is not so burdensome,

*The Panel will recall that P.O. Hennessy, under prolonged questioning by counsel and the Panel was unable to recall anything he had learned in- mini-lessons over the past month (T. 1919). See also the testimony of Inspector Murphy that the mini-lesson format does not lend itself to effective training. (T. 833).

**The Panel will note that 2800 Sergeants now receive ten additional days off for the preparation of mini-lessons. (T. 175 and T. 1646) The elimination of mini-lessons will free the Sergeants to perform functions deemed more essential by the Police Commissioner.

onerous or hazardous in practice as to support a finding by BCB, not this Panel, of practical impact, requiring the parties to bargain. The Panel should not be confused by PBA's speculative anticipation and predictions which are based on self-serving and imprecise calculations from instant "experts" like P.O. Rindos and those other experts whose opinions rested on his convenient conclusions. (T. 2113).

In the Police Commissioner's judgment,

- a. pre-tour rollcall training should be eliminated and necessary training accomplished by some other means, such as intensification of the four days of unit training now received by police officers each year;
- b. rollcall and briefing should be accomplished within the tour, taking 5-10 minutes as needed;
- c. the paid uniform change and wash-up time now provided for the convenience of officers should be discontinued;
- d. any other duties now performed pre- and post-tour should be performed within the tour or eliminated.

The PBA disputes this judgment, and locked into its judgmental posture, ignores the fact that the Police Commissioner has the power and the right to make any administrative changes necessary to enable police officers to perform their jobs. It will remain the Department's responsibility to fit necessary

CONCLUSION

The City demonstrated that by the five standards for impasse panel decisions it should prevail. Unable to meet the same statutory burden, the PBA resorted to rhetoric, not only superfluous, tireless and oft-times tiresome, but which cast little illumination on the matters at issue.

Whether an eight-hour day will promote better police service, and whether the tasks necessary for police service can be performed within an eight-hour day is not before the Panel. Nor does the PBA's claim of adverse "practical impact" belong before this Panel, since that subject is exclusively within the province of BCB.

The City submits that since the discretion vested in the Impasse Panel by the NYCCBL is limited to bargainable issues, the Panel cannot concern itself with the contents of the contested half-hour. Its decision should be to grant or deny in whole the City's proposal on the length of the workday. The number of appearances and the configuration of workdays and days-off flow from this basic decision.

The public interest requires a finding for the City.

Respectfully submitted,

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