

OFFICE OF COLLECTIVE BARGAINING

----- x
In the Matter of the Impasse Between

POLICE BENEVOLENT ASSOCIATION OF
THE DISTRICT ATTORNEYS' OFFICES,
CITY OF NEW YORK, INC.,

REPORT AND
RECOMMENDATIONS
OF IMPASSE PANEL

- and -

THE CITY OF NEW YORK
----- x

INDEX NO.
I-126-76

The Police Benevolent Association of the District Attorneys' Offices, City of New York, Inc., hereinafter referred to as the Union, is the exclusive collective bargaining representative of all Detective Investigators, Rackets Investigators, Senior Detective Investigators, Senior Rackets Investigators, Supervising Rackets Investigators, County Detectives, and Chief County Detectives employed in the County District Attorneys' Offices in the City of New York in connection with the investigation of criminal cases for the purpose of prosecution.

The Union and the City of New York, hereinafter called the City, began negotiations on October 14, 1975, regarding (1) a wage increase pursuant to a provision for a wage reopener, effective January 1, 1974,* in the agreement between the City and the employees'

*Negotiations with respect to the wage reopener were delayed by a change in the Union's collective bargaining representative.

prior collective bargaining representative which subsequently expired on December 31, 1974, and (2) a subsequent collective bargaining agreement. The negotiations ended in impasse on December 22, 1975, after five bargaining sessions. The Union filed a request for appointment of an impasse panel on December 23, 1975, and the parties met twice for mediation with Mr. Thomas Laura of the Office of Collective Bargaining, the first meeting being held on January 16, 1976. Mr. Laura's proposal, covering both the January 1, 1976, reopener and the new agreement to be effective January 1, 1975, was rejected by a majority of the Union's membership. The matter proceeded to the designation of the undersigned as a one-man impasse panel on May 19, 1976.

Hearings were held before the panel on August 4, 5, and 6 and September 7 and 10, 1976, at 250 Broadway, New York City. There the parties had full opportunity present arguments, testimony, and other evidence and to examine and cross-examine witnesses. Witnesses testified under oath, and the proceedings were stenographically reported and transcribed. Briefs were subsequently filed by both parties.

Appearances for the Union consisted of:

Joseph Tarantola, Detective Investigator, President of the Union
Robert F. Emerick, Rackets Investigator, New York County Delegate for
the Union
William Chapman, Senior Detective Investigator, Trustee in Local 5 of
the Union
Donald Sabo, Rackets Investigator

Armando Del Giorno, Detective Investigator
Donald J. Bedford, Chief Rackets Investigator, Kings County District
Attorney's Office
Robert Jameson, Senior Detective Investigator, Suffolk County
Anthony J. Schembri, Rackets Investigator and Director of Training,
Kings County District Attorney's Office
Michael Berne, Assistant District Attorney and Director of Training,
Queens County District Attorney's Office
Vincente White, Senior Rackets Investigator, Bureau of Consumer Frauds
and Economic Crimes, Kings County District Attorney's Office
Robert M. Saltzstein, Esq., Counsel

Appearances for the City consisted of:

Eugene J. Keilin, Counsel to Deputy Mayor for Finance, New York City
Robert J. Guertin, Research Analyst, Research & Operations Division,
Office of Labor Relations, New York City
Thomas Flanagan, Supervising Fire Marshal, New York City Fire
Department
Barry Smiley, Deputy Assistant Personnel Director for Personnel
Relations, Department of Personnel, New York City
Harry Karetzky, Chief of Research & Operations, Office of Labor
Relations, New York City
John Pribetich, Lieutenant, New York City Police Department
Adam Blumenstein, Esq., Counsel

The Union's position on the issues still open at the time of the

appointment of the impasse panel (joint Ex. #3) was:

1. Increase pursuant to wage reopener for the period from January 1, 1974, through December 31, 1974.

2. Increase and three-step pay plan for maximum salary after three years.

3. Starting salary as of January 1, 1975, for Detective Investigator and Rackets Investigator of \$16,500 to \$21, 000 after three years.

4. Starting salary as of January 1, 1975, for Senior Detective Investigator and Senior Rackets Investigator of \$19,500 to \$25,000 after three years.

5. Starting salary as of January 1, 1975, for Supervising Rackets Investigator of \$22, 000 to \$28, 000 after three years.

6. Longevity increments of \$250 after five years and each succeeding five years.

7. Term of contract: January 1, 1975, to June 30, 1977.

8. \$300 annual uniform allowance.

9. Tuition reimbursement of 50%.

The City took the position that it was willing to grant increases up to the limit of the guidelines promulgated by the Emergency Financial Control Board (hereinafter EFCB) pursuant to the Financial Emergency Act (hereinafter FEA), but that those guidelines were mandatory and could not be exceeded as a matter of law. The guidelines would allow an 8% increase for the one-year reopener period, a 6% increase for the year beginning

January 1, 1975, a 3% increase for the year beginning January 1, 1976 (but deferred under a wage deferral agreement between the parties), and a standard cost-of-living adjustment (COLA) effective April 1, 1976.

The threshold issues therefore facing this panel are:

1. Are the EFCB's guidelines mandatory in nature?

2. If the guidelines are not mandatory with respect to this case, what shall be the wage increases to be recommended for the unit employees for the reopener period and for the subsequent new agreement?

Positions of the Parties

A. The City

The City's primary argument is that the EFCB's guidelines are mandatory and binding upon this panel. The FEA, approved September 9, 1975, stated in establishing the EFCB: "All contracts entered into by the city or any covered organization must be consistent with the provisions of this act and must comply with the requirements of the financial plan as approved by the [Emergency Financial Control Board]." (City Ex. #7) The EFCB was granted power to enforce its review of the City's contracts by disapproval of contracts which exceeded the City's financial plan. (Id.)

The City's emergency financial plan was modified twice after its adoption. The second modification, approved by the EFCB on January 23, 1976, included new collective bargaining guidelines for new

agreements with specified groups of employees, including the Detective Investigators unit (City Ex. #14). The guidelines for a 2 1/2-year agreement, effective January 1, 1974, allowed:

- 8% in the first year (here, the January 1, 1974, wage reopener)
- 6% plus cost-of-living adjustment the second year
- 3% for the covered first six months of the third year (here, deferred under the wage deferral agreement between the parties)

The City buttresses its argument that these guidelines are mandatory by reference to a case decided in August, 1976, by the Board of Collective Bargaining of New York City: In the Matter of the Impasse Between Local No. 3, IBEW, and the City of New York (Decision No. B-8-76). In IBEW, the Board found that an impasse panel's recommended wage increases for Fire Alarm Dispatchers slightly exceeded the EFCB's guidelines. The decision stated, "It is the Board's view that all impasse panels are and have been bound by the emergency fiscal legislation since the inception of these laws in September, 1975 (at page 6) and ordered that to the extent the recommended increases exceeded the guidelines, they must be reduced to conform thereto (at page 9). The basis for the Board's finding of the guidelines' mandatory nature was Section 1173-7.0(c)(3)(b) of the New York City Collective Bargaining Law (hereinafter NYCCBL), which provides five criteria for impasse panels to consider in making recommendations; the Board specifically relied on criterion No. 4:

(b) An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

(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 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.

(Joint Ex. #6)

The City's alternative position is that even if the guidelines are found not mandatory, the panel's consideration of criterion No. 4 above would mandate adherence to the guidelines. In support of this contention, the City introduced exhaustive evidence relating to the inception of the City's financial emergency in late 1974, the seriousness of the emergency, and the possible consequences if the City's financial

recovery plans were not adhered to. Despite severe cutbacks in expenditures, including substantial layoffs of employees (City Ex. #2) and a wage freeze applying to all unions which did not agree to a voluntary "deferral " of July 1, 1975, increases (Local Law No. 43, effective August 11, 1975; City Ex. #4), the City's financial position continued to be precarious. The Emergency Moratorium Act, effective November 14, 1975, under which the City delayed payment of some \$1 billion to holders of City obligations (City Ex. #8), has since been found unconstitutional by the New York Court of Appeals (___N.Y. ___, N. Y. L. J., 11/2 3/76, p. 5, col. 1). The City emphasizes that its financial position is by no means secure at this time.

The City notes that the Union does not seek parity, or even "'comparability, " with any other group of employees. In fact, two previous impasse panels found that the unit in question was not entitled to parity with New York City Police Department detectives (In the Matter of the Impasse Between the International Brotherhood of Teamsters, Local 237, and the City of New York, OCB Case No. I-98-73 (Daniel House, Fact Finding Panel), and In the Matter of City Employees Union Local 237, International Brotherhood of Teamsters, and the City of New York and Related Public Employees, OCB Case No. I-76-71 (John M. Malkin, Chairman, Impasse Panel)). The Union itself stated during the hearings in this case. "We are not seeking comparability with anyone employed in the New York City Police Department" (T.995).*

*References to the transcript are cited as "T" followed by the page number.

Nevertheless, the Union did present considerable evidence as to the job content and salaries of several other groups of employees, both within and without New York City. The Union argued that these jobs should be considered by the panel as a "benchmark" rather than in a strict comparability context. The City therefore contended that all the other Job titles cited by the Union were so different from those of the unit before the panel that no comparison was fruitful. For example, the City met the Union's comparison of some aspects of the Detective Investigators' job with those of New York City Patrolmen and Detectives by stating that

Though all DIs are "police officers" as that term is defined in the New York State Criminal Procedure Law (City #22),* they are not policemen as that term is commonly understood,** and they perform none of the patrol duties of New York City policemen (T.480:17-481:2; cf. City #40).

(City's brief at 11-12)

The City argued specifically, with regard to each of the job titles with which the Union sought to compare its members, that such comparisons were misleading because of the different duties, different work weeks, and in some cases different geographical areas involved. For instance, virtually all employees in such other job titles work a

*NYSCPL § 1.20(34)(g), effective September 1, 1971, provides: "34. 'Police Officer.' The following persons are police officers: . . . (g) An investigator employed in the office of a district attorney.

**Compare, NYSCPL § 1.20 (34) (d).

40-hour week, while the employees in the Detective Investigator unit work a 35-hour week. (City's brief at 41-50)

Finally, the City met the Union's claim that its members' job duties have changed substantially since 1974 by arguing that although some of the methods the investigators use in performing their jobs have changed, the essential -nature of the jobs has remained the same. The New York City Personnel Department's official description of the job of Rackets Investigator (Union Ex. #8), which the City stipulated was identical to the job of Detective Investigator except that the former is a noncompetitive position (T. 178), has not changed substantially as of June, 1976 (Union Ex. #8), from the previous job description (City Ex. #1) (T. 25 6-62). The qualification requirements did change, in that a baccalaureate degree from an accredited college may now be substituted for the combination of a high-school diploma or equivalent plus two years' experience in police enforcement or investigative work. Both the prior description and the June 1976 description give, as an additional alternative, any satisfactory equivalent combination of education, experience, and training (see T. 262-67). The City contends that the addition of an alternative means of meeting the requirements does not upgrade the job. Additionally, although Chief Donald Bedford, the Union's witness, testified that he had deliberately recruited more highly qualified applicants since .1974 (T.284, 326), the City notes that it is not Chief Bedford's recruitment policies but the Personnel Department's description which controls the

official duties and requirements of the job.

Although the Union presented evidence in support of its contention that the job content has changed despite the official description, the City argues that this is not so, since the work is still comprehended generally within the official job description and since the fact that employees may not have been working up to the full job description previously does not mean that they are misclassified when they do (T. 594). Both the current and the prior job descriptions for Rackets Investigator consist of relatively general phrases such as "Investigates complaints, " and illustrative examples of typical tasks range from the very general (e.g., "Investigates a variety of complaints") to the more specific (e.g., "installs and operates wiretapping equipment"). In both cases, the general statement of duties concludes with the catchall statement that the employee performs "related work." Under cross-examination, Chief Bedford attempted to show that the investigators now do some work which is not "related" to the official description, e.g., extradition custody work (T. 295), but it seems clear to this panel that "related work." is a sufficiently comprehensive term to include virtually all the present duties performed by the unit's employees.

In addition, the City responds to the Union's contention of increased job duties by noting that if the employees find that they are doing work which is beyond their classification, their proper remedy is to make a formal "out of title" complaint. (City's brief at 59 n.2.) The

testimony of Chief Bedford on cross-examination established that there apparently were no formal out-of-title complaints, though there were oral complaints, a lawsuit, and written complaints of some kind which remain unresolved (T. 317-24).

B. The Union

The Union contends initially that the guidelines promulgated by the EFCB are not mandatory in nature but are only guidelines. The Union points out that the Financial Emergency Act itself, §3(3), specifically states: "Nothing contained in this act shall be construed to impair the right of employees to organize or to bargain collectively." In the Union's view, if the EFCB guidelines are construed as mandatory, collective bargaining would be impaired and the decisions of impasse panels would be "an empty exercise in futility." (Union's brief at 44) The Union also notes that while Chapter 870 of the Act amends numerous City laws, the City's Collective Bargaining Law (NYCCBL) is not among those named, and that therefore the legislature could not have intended to abrogate employees' rights to bargain for and win increases without statutory limitation.

Although a contrary finding was reached in the IBEW case, discussed supra, the Union argues that that case was incorrectly decided, in that it relied on only one of the five criteria applicable to the resolution of collective bargaining disputes, i.e., criterion no. 4, "Interest and welfare of the public. " It is the Union's view that all the criteria must be read together in a spirit of accommodation, leading to a consideration

of all the factors on a case-by-case basis rather than an application of the guidelines as a "rote formula" (Union's brief at 46-47).

In addition to the discussion in its brief, the Union submitted a memorandum of law on this subject in response to the City's letter to this panel dated August 20, 1976. The City's letter urged the panel to take arbitral notice of, inter alia, "[t3he binding effect of the FEA and the EFCB guidelines upon this impasse proceeding and upon [the panel's] recommendations. " The panel, while taking arbitral notice of the City's financial situation and the existence of the FEA, the EFCB, and the guidelines, reserved judgment on the City's request to take such notice of any "binding effect" those guidelines might have on its recommendations. (Letter from impasse panel chairman to Adam Blumenstein, Esq., dated August 25, 1976.)

The Union also points out that the IBEW case was not appealed to the courts, and therefore the courts have not yet passed on the question of the guidelines' mandatory or non-mandatory nature. 'Although appeal from the recommendations of an impasse panel is initially to the Board of Collective Bargaining, which rendered the IBEW decision, the Union states that it does not consider the Board's decision the last word. (T. 962-63)

The second stage of the Union's argument consists of the dual assertions that substantial increases are needed, and that such increases are deserved. To support its "need" argument, the Union presented evidence that the unit employees have received no increases since January

1, 1973, at which time the unit employees' minimum and maximum salaries stood at the following figures:

	<u>Minimum</u>	<u>Maximum</u>
County Detective	\$ 7,700	\$11,390
Detective Investigator		
Rackets Investigator		
Chief County Detective*	\$10,000	\$14,050
Senior Detective Investigator		
Senior Rackets Investigator	\$11,500	\$15,750
Supervising Rackets Investigator	\$12,150	\$16,275

(Collective Bargaining Agreement between the City of New York and Local 237, International Brotherhood of Teamsters, the predecessor collective bargaining representative for this unit. This agreement contains the January 1, 1974, wage reopener clause.)

With regard to the maximum salaries above, however the City's own witness, Barry Smiley, Deputy Assistant Personnel Director for Personnel Relations for the City, testified that as increases are given, because of the method of increasing minimum and maximum salaries accordingly, the maximum salary becomes increasingly unrealistic. As Smiley put it, "The maximums are not real. Every one, because the pattern doesn't follow." (T.950) In fact, there are no Detective Investigators in the City who are currently earning the maximum salary, as the City stipulated (T-41). The City also stipulated that the highest rate presently earned by any Detective Investigator or Rackets Investigator is \$13,940 (one person); one is earning \$13,640; one is earning \$13,190 (T. 41-42; see also Joint

*There are no employees in this title at present (T-40).

Exhibit #4, salary scatter).

Among the witnesses for the Union was William Chapman, a Senior Detective Investigator in the Kings County District Attorney's office, who testified that his current salary was \$12, 700 (T. 95). He also stated that he was a student at Brooklyn Law School and that certain restrictions on part-time employment "severely limited" his ability to earn extra income, so that he found it difficult to continue his schooling (T. 95-98). The Union also introduced the testimony of Armando Del Giorno, a Detective Investigator in the Kings County District Attorney's Office, that he still earned the minimum salary of \$10, 000 after two years in that job, had s even dependents, had a part-time job which was not steady, and qualified for food stamps, supplementary welfare, and federally subsidized housing (T. 150-56).

The Union introduced statistical evidence that the real earnings (based on the Bureau of Labor Statistics' calculation of a 1967 dollar as being worth \$1. 00) of the unit's employees have declined substantially from 1973 through 1975. The Union also submitted a bar graph showing that since 1973, the salaries of Detective Investigators and Rackets Investigators have remained static while the Consumer Price Index rose steadily.

Besides its "real wages" testimony, the Union introduced detailed and extensive testimony and other evidence to show that the unit employees deserved a substantial increase because the nature of their jobs has changed substantially in recent years. As previously noted, Chief

Donald Bedford testified that he began to undertake an unofficial reorganization of the job's requirements, duties, and training programs, beginning in 1974. Chief Bedford testified that when he became Chief Rackets Investigator in the Kings County District Attorney's Office in early 1974, the job of the Detective Investigators and Rackets Investigators was similar to that of a "court attache" (T. 173-74) and most of the persons in those job titles were political appointees who did essentially "gofer" work (T. 289). Chief Bedford and the office administration and management, after consultation, began a program of recruiting employees from colleges, as well as instituting a study to reevaluate the job (T. 178, 181). A new test for the positions of Detective Investigator and Senior Detective Investigator was prepared as a result of the study, but the test was never held.(T. 184-87).

In addition to new recruitment policies and the incomplete job reevaluation, all the District Attorneys' Offices instituted continuing .educational programs whereby the investigators were taught specialized skills related to their jobs. These programs included such subjects as "the law of search and seizure, Constitutional Law, Criminal Law, Forensic Science, interviewing techniques, victimology, hostage negotiation, first aid for victims, bomb disposal, polygraph analysis, microanalysis, voiceprints, electronic eavesdropping and firearms training. " (Union's brief at 28-29.) The Queens County District Attorney's Office began a two-year course in similar subjects, which had been half completed at the time of the hearings (Union Ex. #14; T. 500-17). In addition, some, though

not all, of the unit employees were sent to outside schools and training programs (T. 346-49). A list of sixteen such courses appears in the Union's brief at 29-30. Some of the courses carry college credit; accreditation was awaited for the Queens two-year course (T. 530-31).

Assistant District Attorney and Director of Training for the Queens District Attorney's Office, Michael Berne, testified that some of the specialized skills learned in the Queens course had since become part of the investigators' jobs, such as the development of informants (T.51-s-16), the use of expert witnesses (T.517), and the use of sophisticated electronic equipment of various types (T.517-30). Mr. Berne's testimony was paralleled by that of Anthony Schembri, a Rackets Investigator and Director of Training in the Kings County District Attorney's Office, who stated that the same changes had occurred there (T.455-56).

In addition to the increased skills utilized in the investigators' jobs, the Union emphasized the increasingly dangerous nature of the work, which it contended was a result of the investigators' spending more time in the field and less in the office. Since 1971, the investigators have been classified as police officers under the New York State Criminal Procedure Law (T. 126, 291; see page 9 supra). At least in Kings County, according to Chief Bedford's testimony, all the investigators are now required to carry firearms (T.292). Testimony was introduced that although no investigators had been killed in the line of duty (T. 614-15), the job involves an increased amount of such duties as making arrests during night hours (T. 604), performing undercover functions (T. 172, 303),

performing extraditions (T.295), keeping custody of material witnesses (T. 204), and doing stakeouts (T. 367-69). Testimony and evidence were introduced regarding a shootout in Inglewood, California, involving two investigators who were the objects of an unsuccessful robbery attempt while they were in Inglewood to perform an extradition. Another Detective Investigator was involved in a shootout in Queens (T. 614).

The nature of the investigations undertaken by the unit employees, according to the Union, has changed as well. They presently perform "virgin investigatory work," i.e., make investigations of criminal activities for the purpose of future prosecution even where no complaint has been filed by an individual (T.-484). This is a type of investigation not performed by members of the New York City Police Department (T. 483-84), and, in fact, the Police Lieutenant who appeared as a witness for the City, John Pribetich, had never heard of it (T. 1090-9 1). An example of the more demanding type of investigation now being performed by the unit employees, according to the Union, was the Bishop LeGrande case (e.g., T. 137-38), in the course of which Rackets Investigator Donald Sabo had been involved in finding human remains and other evidence. Further, as discussed earlier, the investigations currently being performed by the unit employees may involve the use of sophisticated electronic and other equipment, whereas previously they did not. (See, e.g., the testimony of Vincente White, Senior Rackets Investigator in Kings County District Attorney's Office, at T. 651-52.)

Finally, the Union introduced evidence as to the salaries of

other persons most of whose jobs involve investigatory work: the Uniformed Firefighters (particularly Fire Marshals), Patrolmen, Triborough Bridge & Tunnel Authority officers, and Deputy Sheriffs in New York City; and Detective Investigators in Suffolk and Nassau Counties.

Fire Marshals, whose job duties involve investigation of fires to determine possible arson (T-219), earned \$19,863 -per year in 1975 (Union's brief at 39). Suffolk County Detective Investigators earned \$12,319 in 1973, when the New York City unit before us received its last increase, and by 1975 were earning \$13,807. (Union's brief at 17.) Furthermore, City witness Police Lieutenant John Pribetich testified on cross-examination that there existed persons in the Organized Crime Control Bureau of the Police Department who have the title Detective Investigator and who earn the pay of Third Grade Detectives, which is approximately \$18-19,000 per year (T. 1060, 1063-65). These individuals are appointed by the Police Commissioner at his discretion (T. 1083) without having completed the standard "career path" for achieving Third Grade Detective rank (T. 1065).

The Union does not contend that any of these jobs about which the Union introduced evidence is strictly comparable to those of the unit employees. Some, such as that of Fire Marshal, require considerably more experience and specialized skill, as a rule. There are distinctions resulting from the difference in geography, as well as a difference in

work week, between the Suffolk County investigators and those in New York City. However, the Union does not demand strict comparability with these job titles but only their use as a guidepost or "benchmark.

Discussion

The threshold question to be considered by this panel is, of course, whether the EFCB's guidelines are binding on it in this case as a matter of law. If they are, the decision as to recommendations is a simple one, since the City has expressed its willingness to grant increases up to the maximum allowed under the guidelines.

The IBEW case clearly holds that, under the fact pattern presented there, the guidelines are controlling. It is irrelevant for our purposes, of course, whether the Union is prepared to carry the instant case to an appeal, for this panel's recommendations are reviewable by Board of Collective Bargaining and we are bound by the decisions of Board until and unless they are overturned by a higher authority.

However, in the instant case there are additional facts which distinguish it from those before the Board in IBEW. No issue was raised there, so far as the record discloses, of increased job requirements and duties. Here, on the other hand, the Union has made out a convincing case for the proposition that although the basic purpose of the investigators' jobs has not changed (i.e., they still perform investigations and gather evidence in order to aid the District Attorneys in the prosecution of crimes), the manner in which they perform these functions has undergone substantial

change.

The change is partially a result of the new demands of the job and partially a result of the new training programs which give the investigators the necessary skills and knowledge to meet those demands. The fact that these changes may be the result of decisions made at the level of the individual District Attorneys' offices, rather than at the level of the City's Department of Personnel, is not a persuasive reason to deny these employees just compensation for the work they in fact do. For one thing, the administrators at the District Attorney's Office's level could reasonably be expected to have a better understanding of the skills and training required for their investigators to be of maximum usefulness to them. In addition, the fact that subsequent to the Kings County job restructuring, the Personnel Department was prepared to reevaluate the job and rewrite the examination for it is persuasive evidence that the City itself recognized the necessity of this process' being initiated at the local level.

This panel has consistently stated that if the facts before it mandate a finding that the employees are inadequately compensated for their services, it is our duty to remedy the situation despite the City's financial situation. We now find that to be the case. In fact, the five criteria which we must consider pursuant to the NYCCBL, supra page 7, mandate this finding. Not only does the first criterion go directly to the question of the investigators' undercompensation as compared with the compensation of similar employees both in and outside New York City, but

it is our belief that the fourth criterion, "Interest and welfare of the public, "is best served not by forcing the City's employees to subsidize its financial difficulties but by balancing the competing \needs involved. The City's interests and those of the public affirmatively require a fair wage for its public servants.

Let us reemphasize that our determination that, in this case, we are not bound by the guidelines of the EFCB is based on the fact that, as We have noted, the instant case is clearly distinguishable from IBEW. There is no question but that if the only issue before the panel were an adjustment to bring real wages into line with money wages for the unit employees, the panel would have no choice but to be bound by the EFCB's determination, which requires substantial wage sacrifices of municipal employees whose job functions have not changed. In fact, our recommendations have been considerably tempered by a realization of this factor.

The facts in the instant case, however, prove to the satisfaction, of the panel that irrespective of the continuity of the official Personnel Department job specifications for the investigators' jobs, the qualifications and functions of these jobs have, indeed, changed materially since 1974.

No other job cited by the Union within New York City is entirely comparable to the current duties of unit employees. By the same token, unit employees, to a greater or lesser degree, perform functions common to one or more of the cited jobs: Fire Marshals, Patrolmen, Triborough Bridge & Tunnel Authority officers, and Deputy Sheriffs. A common thread

runs through these jobs despite the fact that lines of promotion may vary, tours of duty may vary, hours of work may vary, and educational and other requirements for the job may vary.

Even if one puts the best possible light on the City's argument for denying the Union's request for substantial wage increases, there can be no justification for the \$2,000 differential between the 1975 starting rate for Deputy Sheriffs and the projected minimum rate for Detective Investigators pursuant to the EFCB guidelines. The reference to Deputy Sheriffs is deliberate. This benchmark job is selected because, while the total job duties of the Detective Investigators somewhat resemble those of the Deputy Sheriffs, yet on the record before us it seems clear that, on the whole, the Detective Investigator's job entails more hazardous duties and demands more specialized skills. Such a situation can only be remedied by degrees over time, and fact-finding proceedings, like their counterpart, arbitration, are by nature conservative; but a beginning must be made.

The wage questions submitted to the panel must be considered in terms of their separate parts. The 1974 wage dispute involved a reopener under a predecessor contract. Wage reopeners traditionally do not lend themselves to a revision of the wage scale; they typically accept the basic wage pattern as a given and simply follow it in making an adjustment. The 1975 wage issue, however, involves the negotiation of terms and conditions of a new agreement.

The panel therefore recommends that the EFCB guidelines for 1974 be applied to the 1974 wage reopener and that, accordingly, unit member wages be increased by 8% across the board, effective January 1, 1974, the same amount to be applied to both minimum and maximum rates for all classifications.

It is recommended that, effective January 1, 1975, there be established the following minimum and maximum annual rates of pay for the several classifications as follows:

	Minimum	Maximum
County Detective	\$10,000	\$14,000
Detective Investigator		
Rackets Investigator		
Chief County Detective	\$13,500	\$17,500
Senior Detective Investigator		
Senior Rackets Investigator	\$15,000	\$19,000
Supervising Rackets Investigator	\$17,000	\$21,000

Thus, retroactive to January 1, 1975, Detective Investigators who were earning \$10,000 per annum in 1973 shall receive no less than \$13,500. The salaries of Detective Investigators now earning in excess of \$10,000 shall be increased in such a manner that their new rate will place them in the same relative position they held when the range was from \$10,000 to \$14,050. All other job classifications shall be similarly adjusted in salary.

It is further recommended that the new proposed rate ranges provide for automatic adjustments from minimum to maximum in three

equal annual steps. Thus, a Detective Investigator whose new minimum rate will become \$13,500 effective January 1, 1975, shall be increased to \$14,833 on January 1, 1976, to \$16,166 on January 1, 1977, and to the maximum salary of \$17,500 on January 1, 1978.

On January 1, 1976, the foregoing wage reclassifications recommended for unit employees will reflect a greater degree of wage equality relative to comparable jobs in the City. It is recommended, therefore, that other than the automatic in-grade adjustments referred to above, further increases shall be limited by the guidelines promulgated by the EFCB concerning municipal wage adjustments for 1976. This adjustment shall consist of a 3% increase, deferred for one year, as recommended by the guidelines, and applied to both minimum and maximum rates, plus the standard cost-of-living adjustment, effective in the final year of the agreement as the guidelines recommend.

The term of the agreement shall run from January 1, 1975, until December 31, 1976.

Allan Weisenfeld
Impasse Panel Chairman

Dated: February 18, 1977