

OFFICE OF COLLECTIVE BARGAINING  
THE CITY OF NEW YORK  
IMPASSE PANEL

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IN THE MATTER OF THE IMPASSE

-between-

THE PATROLMEN'S BENEVOLENT ASSOCIATION

IMPASSE PANEL  
REPORT &  
RECOMMENDATIONS

-and-

THE CITY OF NEW YORK

RE: I-130-77  
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APPEARANCES

For the Patrolmen's Benevolent Association:

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, ESQS.

By: STUART LINNICK, ESQ.  
GEORGE R. FEARON, ESQ.

For the City of New York:

HERMAN E. COOPER, ESQ., Special Counsel  
ALAN FRIESS, ESQ.  
ROBERT H. PICK, ESQ.

Before:

EDWARD LEVIN, IMPASSE PANEL

BACKGROUND

The prior contract period between the PBA and the  
City expired June 30, 1976 and there was no written contract

for the period July 1, 1974 through June 30, 1976. Instead, the terms governing the period were, in part, the recommendations contained in the Impasse Panel Report of April 20, 1975, which were later confirmed by the New York County Supreme Court. These recommendations modified the earlier written contract, which expired June 30, 1973, and which was extended for one year. The parties commenced negotiations in June, 1976 and numerous bargaining sessions were held at which the issues herein recommended as well as others were discussed.

On June 30, 1976 the PBA, as well as other City unions, agreed to abide by the terms and conditions of an agreement which has come to be known as the "Hilton Agreement." This agreement was sought by the City as the basis for obtaining federal funds to alleviate its grave financial difficulties. It provides, among other things, for a freeze on wage or fringe increases to City employees for the period ending June 20, 1978. Its terms specifically provide for the PBA to contribute its share of two annual \$24,000,000 "give backs" to satisfy an overall City budget requirement.

Of interest are the events prior to March,, 1977 during which the parties had achieved two tentative agreements. In addition, Dean Michael Sovern of the Columbia University Law School, serving as mediator, issued a "package" of recommendations on the issues. Both the tentative agreements and Dean Sovern's recommendations were either rejected or not passed upon by the delegate assembly of the PBA.

On March 29, 1977, the undersigned was designated as a one person impasse panel by the Office of Collective Bargaining pursuant to Section 1173-7.9(c)(2) of the New York City Collective Bargaining Law (Administrative Code Chapter 4; Local Law 53-1967 as amended by Local Laws 1 and 2 of 1972) to immediately, hold hearings . . . and take whatever action is considered necessary to resolve the impasse" between the Patrolmen's Benevolent Association (PBA) and the City of New York (The City), and to "render a written report containing findings of facts, conclusions and recommendations for terms of settlement."  
[NYCCBL 7-0(c)(3)(a)]\*

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On April 8, 1977 after several formal hearings and many days of mediation the undersigned issued an Interim Report and Recommendations providing for immediate payment of "old" COLA effective July 1, 1976 as well as certain deferrals in accordance with the Hilton Agreement. The Interim Report, by thus disposing of these more difficult and pressing issues, has had a salutary effect and opened the way for productive mediation sessions as well as the further hearings concerning

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the remaining issues. Witnesses were sworn and a transcript was taken of the formal hearings. Voluminous other material including awards, briefs, transcripts of prior proceedings and other written documents were presented to the Panel by the parties. In addition, the Panel greatly benefitted from the information generated by the informal mediation sessions as well as from the formal proceedings.

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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.

## THE SALARY ISSUE

The Coulson Panel Award of April 30, 1975 (Docket No. I 115-74) rejected the PBA's attempt to achieve a salary level which would have had the effect of breaking the existing salary relationship between it and other uniformed forces in the City. Accordingly, and in line with other collective bargaining agreements for the period 1974-1976, the PBA received an 8% increase for the first year of that period and a 6% increase for the second year.

Subsequently, all other City unions, with the exception of the PBA, became a party to a deferral agreement which provided for deferral of the 1975 salary increases for a period of one year. The deferral also provided for the giving up of a work rule which, in the case of all other uniformed police unions represented the elimination of one "blood day". The PBA was not a party to the standard deferral agreement, and established in litigation, through the Court of Appeals, that it was not subject to the terms thereof. However, the panel notes that the failure of the PBA to defer has created an anomaly that has generated considerable discord and controversy in this impasse as well as in the overall municipal labor relations in the City of New York.

The City contends that this panel should recommend a deferral of the 6% increase for 1976-1977. Such a recommendation, it notes, would be consistent both with the tentative agreements already reached between the City and the PBA and with the Sovern Recommendations. To do otherwise, it argues, would create an imbalance in the total financial structure under which the City has been operating during its fiscal crisis and would represent a departure from the recommendations of the Coulson Panel.

In opposition to a deferral of the 6% increase for 1976-1977, the PBA contends that the Coulson Panel Award did not represent a recommendation for a rigid salary relationship among the uniformed forces. It merely declined to recommend the salary level urged by the PBA. Thus, the PBA argues, no reliance may be placed upon the Coulson Award for purposes of the City's proposals on these issues.

The PBA contends that whatever imbalance the City perceives is the result of the City's own refusal to execute a collective agreement incorporating the Coulson Panel recommendations. This refusal necessitated a judicial confirmation of the award and a determination that the PBA was not obligated to defer the 6% increase for 1975-1976.

The PBA further contended that a deferral of the 6% increase for 1976-1977 would be contrary to prevailing status quo requirements since it would represent, in effect, a salary reduction. In this connection the PBA filed a law suit in New York Supreme Court in April 1977 for continuation of the

6% salary increase recommended in the Coulson award. The PBA urges that, in the light of this current litigation concerning the 6%, the Panel defer its recommendations on this issue.

While the above recitation of positions considerably abbreviates the arguments advanced by the parties, the Panel has carefully considered the arguments and it is the Panel's conclusion that the adverse consequences of not recommending a deferral of the 6% increase for 1976-1977 would outweigh the arguments advanced by the PBA. Moreover, the Panel takes notice of previous recommendations as well as the tentative agreements reached by the parties in the past.

Insofar as the Coulson award is concerned,, the panel does not believe that it is necessary to determine precisely what was recommended therein. It is instructive in its effect but does not dispose of the precise issue herein, particularly since questions of deferrals were not a consideration at the time the Coulson award was conceived.

As for the PBA's contention that any imbalance is of the City's own making, that does not answer the problem of comparability. The reality of the imbalance and the financial situation remain in conflict with the statutory criteria of comparability.

The PBA argues that applicable status quo requirements in New York City mandate the continuity of the 6% increase until such time as the parties reach an agreement to the contrary or an

impasse panel recommends otherwise. It contends, therefore, that police officers should have been receiving the 6% salary increase since July 1, 1976 and the City is being rewarded for its delay in not having implemented it. The City, on the other hand, contests the applicability of such status quo requirements in this matter. For the reasons set forth below, the Panel does not believe that status quo requirements create an irreconcilable conflict with the Panel's mandate to fashion salary recommendations in this matter. Had the Panel issued its recommendation prior to July 1, 1976, status quo could not have been raised as an issue. Under such conditions, the right of the Panel to make recommendations effective July 1, 1976 is clear. Since the Panel's mandate is to fashion recommendations commencing July 1, 1976, the Panel is not precluded from exercising its legitimate responsibility to so rule simply because it is considering the issues at a time after July 1, 1976.

Finally, the Panel has considered the PBA's contention that the Panel itself defer consideration of this issue in the light of its current litigation. The difficulty with this position is that it leaves the salary issue in limbo with possible adverse and unintended consequences for all concerned. First, the Panel would, in its opinion, be remiss in not taking into consideration the possible result of the litigations. If the PBA were to be successful in this litigation, it was made clear by the City that the PBA would exhaust its right of appeal. The time involved in the appeals process would probably result in a final determination until sometime in 1978 or later. In the interim, there would be no increases for police officers.

This would be most disruptive to the City and financially disadvantageous to police officers.

This disadvantage in not receiving a 6% increase commencing July 1, 1977 (as I am recommending herein) would be compounded even more if the PBA were not to prevail in the litigations. Thus, the Panel declines to defer making a recommendation, but instead will, as specified herein, recommend the implementation of the 6% increase commencing July 1, 1977.

Therefore, the Panel recommends that payment of the 6% salary increase pursuant to the award by the Coulson Impasse Panel (Docket No. 1-116-74) as confirmed in a Supreme Court Judgment, shall be deferred for the period July 1, 1976 through June 30, 1977. Such deferral shall be subject to each and every term and condition of the deferral agreements covering the period 1975-1976 as executed by the other municipal labor unions. It is understood that effective July 1, 1977 the afore-said deferred 6% salary increase shall be included in the salary of police officers as expeditiously as possible. In addition, it is recommended that one "blood" day shall be eliminated as a benefit effective July 1, 1976.

FRINGE BENEFIT COST REDUCTION CREDITED TO NEW COLA

The City has sought the right to initiate a payroll lag of one week for all police officers as well as elimination of City depository check cashing accounts. In addition, the City has sought that optional work during vacations be at the discretion of the Police Department. Each of these matters was a part of previous tentative agreements and savings therefrom were to be credited either to the PBA's portion of the \$24,000,000 shortfall or to new COLA. The PBA disputes the relevancy and weight to be accorded the prior tentative agreements referred to by the City. The PBA's position is that the City has not demonstrated the need sufficiently to impose these burdens on police officers, particularly when viewed in conjunction with other changes the City seeks to impose.

In the light of the acceptance of the payroll lag and elimination of check cashing depositories by the majority of City unions, and after considering the arguments of the parties and the totality of recommendations in this report, the Impasse Panel finds as follows:

(a) The City shall have the right to initiate a payroll lag of one week for all employees covered by this agreement in accordance with a schedule to be determined by the City.

(b) The City may eliminate its depository check cashing accounts.

(c) optional work during vacations shall be at the discretion of the Police Department. However, no police officer will be discriminated against in the application of this provision because the officer is in the last year of service.

The savings generated by these provisions shall be credited towards the PBA's share of the \$24,000,000 per annum fringe benefit "give-back". Any overage resulting from this recommendation shall be applied to the "new" COLA as outlined by the Hilton Agreement.



## DUTY CHARTS

The PBA has urged a modification of the existing twenty-squad duty charts. These modifications were proposed because the PBA claims that the existing duty schedule places undue stress on the police officers and creates hardships for them not only on patrol but during their off days. They complain that the fifty-six-hour swings are insufficient to allow them adequate rest between tours and that they have the effect of depriving them of real time off. Therefore, the PBA urges that the impact of the existing duty schedules upon family life is particularly destructive. Testimony from family members has been heard by the Panel in support of such position. Accordingly, the PBA urges that the number of fifty-six-hour swings be reduced to three per year and that all other swings be designed so as to be in excess of fifty-six hours. In addition, under the PBA proposal there would be a total of twenty minutes per tour for training and five minutes pre-tour unsupervised time for dressing and five minutes post-tour time for preparation of reports. The PBA also suggested that those full days set aside each year for area training be eliminated and that the time saved be allocated to training in each tour.

The City presented the Panel with the Glushien Panel Report & Recommendations issued August 10, 1976 which examined the issue of duty charts. This decision represented many months of hearings. It is the Glushien Panel decision that the PBA

seeks to modify. The City pointed out that the decision concerning training time was a matter strictly within the managerial responsibility of the Police Department. While the daily training that had been in effect prior to the Glushien Report was useful, in the face of the a-rave financial situation, it is a practice that the City cannot afford to continue. The City also maintained that the twenty-minute daily training periods recommended by the PBA were not the proper method for the type of training done in the four-day training periods currently utilized by the Police Department.

This Impasse Panel examined the voluminous transcripts of the Glushien hearings and studied the documents and evidence presented by both sides to this Panel. Although the testimony and evidence shed some light on the experience of the parties with respect to the present chart, this Panel can see no compelling reason to modify the Glushien award. Accordingly, the Panel recommends that the existing terms and conditions embodied in the Glushien award (1-124-75) regarding this issue remain in full force and effect.

The Panel suggests that the parties continue to study the police officers' and department's experience under the present chart so that the difficulties referred to at these hearings can be satisfactorily ameliorated for their mutual benefit.

## ONE-MAN RADIO PATROL CARS

The present manning of radio motor patrol cars in New York City requires assignment of two police officers to each car. The City has presented a plan to the PBA and to the Panel which provides that in approximately 40 of 73 precincts some cars would be operated by one police officer<sup>3</sup> thus freeing other police officers for additional one-man cars or other duties. This plan was discussed with the PBA and formally rejected. The issue presented to this Panel, in line with the Board of Collective Bargaining decision B-5-75, is not one of a working condition but solely and only the safety impact, if any, of the specific plan presented by the City.

The plan provides that in those precincts in which one-man cars will be operated, one-man cars will not be implemented without first utilizing the scheduled two-man car patrols. The plan also provides a limited utilization of one-man cars. They can only be dispatched to certain types of police incidents that can be safely handled by one police officer. If circumstances require that a one-man car be dispatched to incidents other than intended in the plan, an additional unit or units will be dispatched simultaneously. This plan also provides for training of all members of the force who may be connected with the one-man car operation including communications personnel.

The PBA opposed any form of one-man patrol cars on the ground that it would increase the hazards to police officers. It contended that the safety advantages provided by partners through formal training and experience would be sacrificed in a wide variety of situations not excluding the safe operation of the vehicle itself.

The PBA also disputed the City's contention that the incidents to which one-man cars would be dispatched can be depended upon to be safe. The PBA contended that frequently the incidents were not of the same character as initially reported, and that radio calls, seemingly of a less dangerous nature, can turn out to be more hazardous than contemplated, especially when considering the random nature of urban crimes.

The plan, as presented, is predicated upon the admonition to individual police officers not to expose themselves to particular hazards or to take risks inconsistent with the directives related to the one-man car operation. These directives, the PBA argues, tend to be unrealistic, and may merely result in inefficient and ineffective police action.

Whatever the merits of this PBA argument may be, the question of effective and efficient action is not before the Panel and is indeed barred from consideration by BCB decision B-5-75.

The Panel recognizes that police work may be dangerous and is inherently associated with a risk factor. The Panel is also aware that there presently exist other forms of one-man duty such as foot patrol, scooters and motorcycles. It does not appear to the Panel that the risk feature involved in this one-man car plan would be greater than other forms of one-person duty. Indeed, it might be safer under certain circumstances than other forms of one-person duty since the police officer would have the benefit of a vehicle shielding him from the elements and certainly would be less prone to vehicular accidents associated with scooters and motorcycles. The use of one-man cars is not a unique practice and many other cities are engaged in this manning procedure. Therefore, the Panel finds no safety impact in the implementation of the City's plan.

## MEAL ASSIGNMENT

The PBA has pointed out to the Panel that on occasion there is an inequitable and arbitrary assignment of meals by Police Commanders. The PBA has called the Panel's attention to situations in which police officers who arrive on duty at 8:00 a.m. in the morning of a scheduled 8:00 to 4:00 p.m. tour of duty are assigned a meal period upon arrival or as late as 3:00 p.m. The PBA argues that at times this practice interrupts the police officer's normal living schedule and imposes an unusual and burdensome working condition. Accordingly, the PBA has demanded that there be no assignment of police officers to meal periods during the first or last two hours of their regularly scheduled tours.

The City contends that mandating such a policy for the Police Department, would require excusal of 25% of the total working force from the middle four hours of each tour. The City contends that to do this would be operationally dangerous and impractical for the Police Department.

After consideration of this issue, the Panel recommends that police officers not be assigned meals as a matter of practice during the first 1-1/2 hours of their tours. In cases of emergency this practice may be altered.

## DELEGATE EXCUSALS

During the hearings and mediation sessions both sides extensively discussed the question of paid delegate excusal time. Based on the record and the mediation discussions, the Panel recommends that paid excusal time shall be restricted as follows: delegates performing a tour of duty during the second platoon shall be excused to attend the monthly delegate meetings and those delegates performing a tour of duty during the third platoon shall be excused until 6:00 P.M. to attend the monthly delegates meetings. There will be no excusal of those members performing duty on the first platoon.

In reaching this conclusion, the Panel is persuaded by the showing made by the City with respect to the far more limited practices applicable to all of the other municipal unions in this City. Nothing in this recommendation is intended to effect, in any way, the policy with regard to delegates attending the annual PBA convention.

## EXPEDITED GROUP GRIEVANCE PROCEDURE

The PBA has demanded a modification in the existing grievance procedure by eliminating the fourth step or by combining the third and fourth steps to provide a more streamlined grievance procedure.

The PBA has indicated to the Panel that a mechanism is needed by which grievances can be resolved on an expedited basis when an issue is one that affects substantial numbers of police officers. The proposed modification of the existing procedures would allow, when warranted, for an expedited formal grievance processing procedure.

The Impasse Panel recommends the compression of the present grievance procedures for grievances which affect substantial numbers of police officers by the elimination of the fourth step. The Impasse Panel further recommends that a request by the PBA for an expedited third step meeting on these group grievances be convened within five days of filing. A decision is to be issued within five working days thereafter.



## NO-FAULT AUTO CLAIMS DISPUTE

The City has demanded that, where there is a recovery under the "no-fault" insurance laws for medical expenses and loss of earnings by a police officer and where such recovery is from the City of New York as a self-insurer, such police officers shall transfer the recovered salary claim to avoid an inequity of double compensation when the police officer has already received sick leave pay.

The PBA argues in opposition that the appropriate forum in which to effect a change in the current practices regarding the payment of benefits under the "no-fault" law is the legislature of the State of New York. The PBA further argues that the City's proposal will effect a reduction in health and welfare benefits under the collective bargaining agreement and that in view of pending legislation, it would be inappropriate to effect a reduction of such benefits.

The Impasse Panel finds that this matter is best resolved through the legislative process and recommends that this issue await such resolution. Accordingly, the Panel rejects the City's demand.

PORTAL TO PORTAL

During the course of negotiations the Impasse Panel determined that there was a consensus by the parties regarding this issue. The following is the Impasse Panel's recommendation reflecting such consensus:

(1) All claims for payment of compensatory time off which is earned as provided in Article XXIII of the contract on April 1, 1977 or thereafter must be submitted to the appropriate payroll personnel by the applicant within 180 days from the date payment is earned for payment in cash. All applications submitted after 180 days up to 365 days from the date payment is earned will be granted the appropriate compensatory time off only for claims under Article XXIII.

(2) If a request for payment is timely submitted and rejected by the Police Department, the grievant shall have 120 days from the date of receipt of a written rejection notice to file a grievance pursuant to Article XXIV.

(3) The above clarification shall apply only to Article XXIII claims earned on April 1, 1977 or thereafter.

(4) This clarification applies to a grievance brought under this collective bargaining contract only. It has no applicability to any other legal remedy which an individual may have.

## OTHER ISSUES

The following issues have been reviewed and were the subject of extensive study in the Sovern recommendations. The Impasse Panel finds that the parties are in substantial agreement on these issues and that no detailed exposition is necessary. Therefore, the following items are herein recommended.

1. The City and the PBA will use their best efforts to effect free transportation on buses and subways for police officers.

2. The City shall continue to apply for CETA or other Federal funding to hire additional police officers.

3. Interest on wage increases shall accrue at the rate of three percent (3%) per annum from one hundred-twenty (120) days after execution of this agreement or one hundred-twenty (120) days after the effective date of the increase, whichever is later, to the date of actual payment. Interest on longevity and step-up increments, differentials, holiday and overtime pay shall accrue at the rate of three percent (3%) per annum from one hundred-twenty (120) days following its earning or one hundred-twenty (120) days after the execution of this agreement, whichever is later, to the date of actual payment. Interest accrued pursuant to this paragraph shall be payable only if the amount of interest due to an individual employee exceeds five dollars (\$5.00).

4. A laid-off employee who is returned to service in the employee's former title or in a comparable title from a preferred list shall receive the basic salary rate that would have been received by the employee had the employee never been laid off, but not to exceed the basic rate of entitlement on a date two years from the effective date of lay-off.

5. Where an employee is suspended without pay for disciplinary reasons and is subsequently restored to full pay status as of the effective date of the suspension, the employee shall receive full Annuity Fund, Health and Welfare Fund and Health and Hospitalization Benefits coverage paid by the City for the period of the suspension.

6. Individual employee grievants shall be granted leave with pay for such time as is necessary to testify at arbitration hearings. Leave with pay shall be granted to three (j) employees who are named grievants in a group arbitration proceeding for such time as is necessary for them to testify at their group arbitration hearings. Leave with pay for such time as is necessary to testify at their hearings shall be granted to employees who, after final adjudication of proceedings under Section 210, paragraph 2h of the Civil Service Law, are determined to have not been in violation of Section 210.

7. Where an employee has an entitlement to accrued annual leave and/or compensatory time, and the City's fiscal condition requires employees who are terminated, laid off or who choose to retire in lieu of layoff be removed from the payroll on or before a specific date or where an employee reaches the mandatory retirement age, the employer shall provide a monetary value of accumulated and unused annual leave and/or compensatory time allowances standing to this credit in a lump sum. Such payments shall be in accordance with the provisions of Executive Order 30, dated June 24, 1975.

Where an employee has an entitlement to terminal leave and the City's fiscal situation requires that employees who are terminated, laid off or retire be removed from the payroll on or before a specific date or where an employee reaches the mandatory retirement age: the employer shall provide a monetary lump sum payment for terminal leave in accordance with the provisions of Executive Order 31, dated June 24, 1975.

8. When a layoff occurs, the City shall provide to the PBA a list of employees who are on a preferred list with the original date of appointment utilized for the purpose of such layoff.

9. Thirty days prior notification shall be provided in the event of proposed further layoffs and shall be discussed in an attempt to avoid such layoffs, pursuant to Hilton Interim Agreement of June 30, 1976.

10. As soon as the City deems practicable but in no event later than July 1, 1978, retirees shall have the option of changing their previous choice of Health plans. This option shall: (a) be a one-time choice; (b) be exercised only after one year of retirement; (c) be exercised at any time without regard to contract periods; (d) be changed to a new plan, which will be effective the first day of the month three months after the month in which the application has been received by the New York City Health Insurance

Program.

11. The final paycheck of any police officer who retires during any deferral period will be subject to an offset equal to the pro rata balance of the increase which is deferred for that period.

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## DURATION

The Panel recommends that a new formal two-year contract for the period 7/1/76 to 6/30/78 be executed embodying the provisions of these Recommendations, the Interim Report and Recommendations dated April 8, 1977, and the continuing provisions of the agreements under which the City and the PBA have been operating. The Panel recommends that there be no increases or adjustments to salaries or wages other than as provided for in the Hilton Agreement dated June 30, 1976. The Recommendations herein are subject to applicable law. SL

All of the items and demands for which this Panel has not expressed a recommendation are deemed withdrawn and nothing herein contained shall affect any of the parties' rights in respect thereof.

This Report and Recommendations represents the culmination of long hours of hearings and mediation efforts. It represents the hard work and intelligence of dedicated representatives of the City and the PBA. This document also reflects the best efforts of the Panel to measure the issues against the legislatively mandated criteria for impasse deliberations.

It is the belief of this Panel that the "package" contained herein represents a fair and equitable settlement of the issues at impasse and will finally lay this dispute to rest.  
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Edward Levin  
Impasse Panel

STATE OF NEW YORK  
  :    SS.  
COUNTY OF NEW YORK )

On the 10th day of June, 1977, before me came EDWARD LEVIN, to me known and known to me to be the individual described in and who executed t e foregoing instrument, and acknowledged to me that he exec:u ed the same.

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New York State  
County of New York  
Certificate of the State  
Commission expires July 1, 1977