

OFFICE OF COLLECTIVE BARGAINING

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In the Matter of the Impasses

-between-

Docket Nos. I-131-77
I-132-77

THE CITY OF NEW YORK

AND

LIEUTENANTS BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK

REPORT
RECOMMENDATIONS OF
IMPASSE
PANEL

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PANEL

Morris P. Glushien

Appearances:

For the City of New York:

Herman E. Cooper, Esq.
Frances Milberg, Esq.
Mr. Robert H. Pick

For the Lieutenants Benevolent Association:

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Malcolm A. Goldstein, Esq.
Mr. James Gebhardt

Dated: June 19, 1978

REPORT

The proceeding herein began on November 15, 1977, when the undersigned was designated by the Office of Collective Bargaining as a one-member Impasse Panel to hear and make a report and recommendations in the dispute between the Lieutenants Benevolent Association of the City of New York ("LBA") and The City of New York ("City"). Hearings were conducted on January 5, March 8, and March 15, 1978. The parties were represented by counsel; a full record was made; and subsequently both sides submitted comprehensive and helpful briefs.

This proceeding is unusual in that it involves two successive contracts, one for the period July 1, 1974 - June 30, 1976, the other for the period July 1, 1976 - June 30, 1978. The principal issue, however, is the same for both contracts, namely, the determination of appropriate duty charts for the Lieutenants of the City Police Department.

The first contract, for 1974-1976, was executed by the City and the LBA with the following explicit reservation:

"ARTICLE XXVII OPEN ITEM

"The subject of employee duty charts shall remain an open item subject to submission to an Impasse Panel and to arbitration, if not otherwise mutually resolved."

Up to this time, this open item" remains unresolved and is one of the matters to be determined in this proceeding.

The 1976-1978 contract is in a somewhat different posture, although the essence of the controversy is the same. No contract has been executed for that period because there are several open items in addition to duty charts. At the hearing before me, both parties were confident that once the duty chart dispute was resolved, the other matters would quickly be disposed of through negotiations, and they asked me to limit this report and recommendations at this time to the duty chart issue alone. I am doing so, as requested, but with a reservation of jurisdiction to determine whatever disputes, if any, remain at the conclusion of the further negotiations.

I turn now to the duty chart issue. And to view it in context, some facts must be recited

regarding the duty charts of those levels subordinate to lieutenants, namely, police officers and sergeants.

In the years preceding 1972, all levels of police personnel worked duty charts with an official eight hour tour, making 261 (in some cases 258) appearances, per year. In 1972, however, changes in duty charts were made both as to police officers and sergeants. The City and the PBA entered into a contract for police officers under which they worked an 8 hour 30 minute tour, with 243 appearances per year. The Sergeants Benevolent Association achieved a contract with the City under which its members worked an 8 hour 50 minute tour, with 233 appearances per year. But the eight hour duty chart for lieutenants remained unchanged.

This was so even though in many cases lieutenants supervised sergeants and police officers and acted upon the realization that, to achieve proper and efficient police operation, they must come in early and be on hand when their subordinates arrived. By so doing, of course, they were contributing as "free time" what was in reality working time and part of a

long working day. Along with this, the number of their appearances, significantly exceeding those of their subordinates, remained unchanged.

Not surprisingly the lieutenants were unhappy with this disparity. In their 1974 contract proposals they demanded duty charts "to incorporate adequate time allowances for such pre-tour and post-tour activities as are necessary for the proper performance of the duties of a superior officer." The City did not grant this demand, and ultimately a contract was signed, as already stated, with this matter left as an "open item" to be submitted to an Impasse Panel if not otherwise mutually resolved (supra, , p. 2)

The LBA did not pursue the issue to impasse proceedings at this stage because the City had had second thoughts about the duty charts and the reduced appearances it had granted to police officers and to sergeants, and made efforts to revise and recapture some of what it had allowed them. The lieutenants were aware that what their small group could hope to achieve depended upon the outcome with respect to

these two more sizeable groups, and so they allowed the matter meanwhile to rest. At the same time, in order to protect their rights further, they reasserted the demand for improved duty charts and reduced appearances in the 1976-1978 contract negotiations.

This brings me to the revisions which subsequently occurred in the duty charts and annual appearances of police officers and of sergeants.

First as to police officers. Without going into details, it suffices for the instant case to say that as a result of impasse proceedings between the City and PBA (ending in the so-called Glushien report and recommendations dated August 10, 1976), and of certain supplementary recommendations made by Dean Sovern (dated October 21, 1976), the duty chart for police officers was changed, in essence, to an 8 hour 15 minute tour, with 253 appearances per year.* Thus the prior 8 hour 30 minute tours were reduced by 15 minutes, with a corresponding increase in the number of annual appearances.

* There are some variations based on police officers working several 10 hour 15 minute tours, but the details are not important here.

A similar 15 minute reduction took place with respect to sergeants (Along with increased appearances), though this change came about through agreement of the parties rather than through impasse proceedings. The 8 hour 50 minute tour was diminished to an 8 hour 35 minute tour, with 245 appearances. Some sergeants, depending on their duties, worked still shorter tours some 8 hour 30 minutes, some 8 hour 15 minutes, the annual appearances varying in proportion.

What I consider to be critical for my purposes with respect both to police officers and sergeants is that no one in these ranks, regardless of the nature of the duties performed, works a tour shorter than 8 hour 15 minutes. Translated into appearances, no one in these ranks appears more often than 253-times per year.

This is the setting against which I must consider the plight of the lieutenants and the duty charts they are seeking. What they requested during the course of the hearing was a chart like that of the sergeants -- tours of 8 hour 35 minutes, a hour 30

minutes, and 8 hour 15 minutes, varying with the duties performed by the particular lieutenant.

Before considering the merits of this demand, it is necessary to set forth the City's principal defense that the City's fiscal plight and the emergency fiscal legislation addressed to that problem, together with the so-called Hilton Agreement, forbid any relief to the lieutenants.

We are all knowledgeable about the near-bankruptcy which overtook the City in 1975, and the emergency legislation which was enacted to stave it off, including the creation of the Emergency Financial Control Board. Along With this, the labor organizations representing City employees (including the LBA) entered into a Memorandum of Interim Understanding dated June 30, 1976 (the Hilton Agreement) whereby they agreed that their 1976-1978 contracts must be "consistent with the general wage and salary policies of the Emergency Financial Control Board" which preclude any net increase to the City in its costs of compensating employees. And I am aware also of the decisions of the Board of Collective Bargaining which

enjoin impasse panels to abide carefully by these restrictions.

As I have indicated, the City contests the lieutenants demand not fundamentally on the equities which it does not seriously question, but rather on the ground that the Hilton Agreement and the existing financial emergency preclude any relief. It has offered in evidence computations purporting to show that if the tours of lieutenants were increased in length to reflect the sergeants duty chart with annual appearances reduced accordingly, the cost to the City, were it to hire new lieutenants to replace the lost appearances, would be in the neighborhood of \$1,300,000 a year. Likewise, if the tours of all lieutenants were uniformly increased to an 8 hour 15 minute stint (as exists for police officers), with 253 appearances per year, the cost to the City, assuming new lieutenants were hired to make up the lost appearances, would be approximately 3/4 million dollars a year. It is upon this basis, and essentially this alone, that the City asks me to deny all relief to the Lieutenants.

There are two reasons as will be seen, either of which I deem independently sufficient, which persuade me that I can and, should reject the City's position and lead me to recommend some (though not all) of what the lieutenants are seeking. I shall come to them in a moment',

Before doing so, however, let me state what I consider to be the appropriate disposition of the dispute based on the equities involved, the public interest, and the need for a team concept of police operations with proper supervision. I believe that the sergeants chart, which the lieutenants seek, is not the proper model to follow here. It seems to me rather that a chart akin to that of the police officers, with everyone working an 8 hour 15 minute tour, is the correct guide. The corollary to a tour of this length is that there will be 253 appearances per year.

That this is fair and equitable is reinforced by an important consideration which has not yet been mentioned. The record shows that the LBA and the City, in their negotiations, themselves reached tentative agreement on two separate occasions that 8 hours and 15 minutes, with 253 appearances,

was appropriate for lieutenants. Yet for reasons which the record does not reveal, the tentative agreement on both occasions failed to achieve consummation, and the dispute there upon continued to the present impasse. These views of the negotiators, harmonizing with my own, lend strength to the validity of the recommendations made in this report.

I return now to the two bases, each sufficient by itself, on which I conclude that relief to the lieutenants is not precluded by the Hilton Agreement and the City's financial stringencies which bar increased costs under the 1976-1978 agreements.

1. It will be remembered that one of the contracts in this impasse proceeding is the 1974-1976 agreement with its "open item" regarding duty charts. The Panel finds and recommends that, as to this contract (as well as, the successor agreement discussed below), the equitable and proper duty chart for lieutenants is one calling for tours of 8 hours 15 minutes, with 253 appearances per year. The reasons for this conclusion have already been stated.

The inclusion of this provision in the 1974-1976 agreement would of course apply to a date preceding the Hilton Agreement and the financial crisis from which it sprang. It is thus outside the strictures of the Hilton, Agreement which forbids cost increases in the 1976-1978 agreements. once made part of the earlier 1974-1976 agreement, the duty chart continues onward to the present time (until and unless changed by mutual agreement or by impasse proceedings). Hence this finding as to the 1974-197 6 agreement, standing alone, constitutes an independent base for the recommendations the Panel makes in this report.

The Panel does wish to make clear, however, that it awards no back pay or compensatory time or other retroactive make-up; and that the recommendation, while addressed to the 1974-1976 agreement, shall in operation be simply prospective.

2. Even were this impasse proceeding limited to the 1976-1978 agreement, so that the cost factor under the Hilton Agreement became germane, the result would not differ. This is so because I conclude from the record that implementation of the

recommendations would bring no true or meaningful increase in costs to the City.

The evidence establishes that it has been the practice of the Police Department, when a lieutenant is unavailable, to have his work performed by a sergeant or sometimes a police officer.

This has come about because of a drastic change in the absolute number of lieutenants in the Police Department and in their proportion to sergeants. Between July 1971 and July 1977, the number of lieutenants fell from 1110 to 801, while the number of sergeants increased from 2115 to 2480. Stated another way, the ratio of sergeants to lieutenants, which was less than twice as many in 1971, became more than three times as many in 1977. And the actual number of lieutenants, compared to the quota for lieutenants suffered a similar decline. In 1971 the percentage of actual to quota was 114%; by 1977, it was only 77%. From these figures, it is hardly surprising that, in practice, when a lieutenant is unavailable to fill a slot, he is usually replaced by a sergeant.

This has a distinct bearing on the cost problem before us. I have previously recited the City's estimate that the installation of an 8 hour 15 minute tour for lieutenants, with 253 appearances per year, would cost the City about 3/4 million dollars a year (supra, p. 8). But this estimate, it will be recalled, is bottomed on the assumption that new lieutenants will be hired to fill the lost appearances. If, however, as appears clearly to be the case, the Police Department does not in actuality hire new lieutenants, and instead uses sergeants already on the payroll to perform the duties of un-available lieutenants, the cost assumptions collapse. We are left with cost figures built on an empty premise, calculations which are entirely hypothetical and supposititious. It is fair, in this setting, to say that even if the Hilton Agreement be considered applicable, it is not violated here because the duty charts recommended by the Panel will bring no genuine increase in costs.

In sum, since the Panel finds that 8 hour 15 minute duty charts with 253 annual appearances are needed to remedy a long standing inequity, and

since there will be no true or meaningful increase in costs, the Panel makes such recommendation.

Here again, as we have discussed in another connection, the recommended duty chart shall operate prospectively only, with no make-up for the past.

Just one more thing remains to be said. In the (unlikely) event that, after receiving these recommendations, the parties are unable to adjust through negotiations whatever other differences remain, the Panel reserves jurisdiction to resolve the disputes.

The Panel's recommendations follow.

RECOMMENDATIONS

Upon the entire record before the Impasse Panel and careful study of the briefs and arguments of the parties, and finding that the Lieutenants in the New York City Police Department have been suffering undeniably from a long-standing inequity;

And finding further that the impasse with respect to the 1974-1976 agreement precedes the so-called Hilton Agreement, so that the Panel's Recommendations are unaffected by the Hilton Agreement;

And finding further that in any event there will be no true or meaningful increase in costs to the City upon implementation of the Panel's Recommendations;

The Panel recommends as follows:

1. Each Lieutenant's daily working time shall be 8 hours and 15 minutes.

2. Each Lieutenant shall work 2,088 hours, amounting to 253 appearances per year.

The Panel reserves jurisdiction to resolve such other disputes, if any, under the 1976-1978 agreement, that the parties are unable to resolve after receiving the Recommendations herein.

The undersigned Impasse Panel makes these Recommendations this 19th day of June, 1978.

Morris P. Glushien
Impasse Panel