

Office of Collection Bargaining

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In the Matter of the Impasse

between

DISTRICT COUNCIL 37 AFSCME (LOCAL 1549)

REPORT AND RECOMMENDATIONS

and

OF

IMPASSE PANEL

CITY OF NEW YORK

RE: I-143-79

Clerical Titles

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On June 5, 1979 the undersigned was designated as a one man impasse panel to hear and make report and recommendations in the current dispute between the City of New York and District Council 37 AFSCME.

A hearing was held on June 13, 1979, at which the parties were given full opportunity to present testimony and evidence in support of their respective positions. The union was represented by Robert Perez-Wilson, attorney, and by Mr. Bart Cohen, representative. The City was represented by Michael Hitsman, attorney, Frances Millberg, Associate General Counsel, and Michael G. Davies, Assistant Director of Municipal Labor Relations.

This impasse is over provisions of an agreement to succeed the Collective Bargaining Agreement which terminated June 30, 1978, particularly those provisions dealing with civilian clerical employees of the New York City Police Department. The bargaining unit in question is subject to the provisions of the City-wide Agreement between District Council 37 and the City of New York and to the Coalition Economic Agreement (CEA) between a coalition of unions and the City of New York.

These proceedings are also subject to the following stipulation entered into June 13, 1979, by the City of New York und District Council 37 on behalf of itself and Local 1549, which represents these employees:

WHEREAS, the collective bargaining negotiations between the City of New York and Local 1549, District Council 37, AFSCME (hereafter the "Union") have reached an Impasse,

WHEREAS, the parties hereto have jointly filed a Request for Appointment of an Impasse Panel;

WHEREAS, in an effort to effectuate an expedited resolution of the proceedings herein,

IT IS HEREBY STIPULATED AND AGREED, by the between the parties hereto as follows:

FIRST: The parties shall proceed directly to a hearing before the Impasse Panel on all the issues included in the Request for Appointment of an Impasse Panel submitted to the Board of Collective Bargaining without first submitting any of the demands to the Board of Collective Bargaining for preliminary determinations relating to the scope of bargaining.

SECOND: The Impasse Panel may issue recommendations oil all collective bargaining demands submitted to it by the parties notwithstanding the fact that certain issues relating to scope of bargaining, have been raised during the hearing.

THIRD: Each of the parties expressly reserves the right to have the Impasse Panel recommendations herein reviewed by tile Board of Collective Bargaining pursuant to 5.12 of the Revised Rules of the Office of Collective Bargaining.

FOURTH: The entering into of this stipulation and the procedure adopted herein whereby a preliminary scope determination is bypassed shall not constitute a precedent for the determination of any other dispute between the City of New York and the Union. Furthermore, this stipulation shall not be offered in evidence for any purpose or for any administrative, judicial or other proceeding other than for the purposes of enforcement.

Following are the demands as stated in the union's request for an impasse panel, a summary of the testimony, evidence and arguments of each side, and the recommendations of the impasse panel.

1. (Demand I. 4.a)

All Receptionists working at least five (5) hours per day shall be given one-half ($\frac{1}{2}$) hour break during the working hours.

There are forty-five part-time precinct receptionists who work from 12 to thirty hours per week who do not receive a formal break or meal period. Only nine of them work more than five hours a day, five days a week. According to the City, their hours are so arranged that they eat their meal at home either before or after duty. They are community people, who greet clients and refer them to appropriate city

agencies. Occasionally, they serve as translators and take care of lost children. Although they do not have any formal breaks they are permitted "personals" which are granted automatically whenever the receptionist telephones the central office to report her need.

The City objects to this demand because it is a question of time and leave regulations which are City-wide in nature and should be dealt with under the City-wide Agreement. The receptionists are part-time employees whose job duties are not dissimilar to other receptionists. No other collective bargaining agreement with the City provides for such a break for part-time employees. To grant such a break would impair operations and manning and would be economic in nature, barred by the CEA.

The union argued that these jobs are unique to the Police Department and are therefore not City-wide in nature. "Personals" are not a right since permission must be obtained. The demand does not violate the CLA because what is involved is de minimis.

I find that the duties of the receptionists are not substantially different from receptionists in other agencies and do not warrant special treatment on this ground. Whether personals are a matter of right or merely leave, they have never been denied to anyone and adequately serve the needs of the receptionists. A formal break would raise operation and manning problems for the agency and would, therefore, be economic in nature and contrary to the LEA.

Recommendation: Demand denied

2. (Demand I.8.)

Chapter officers and delegates shall be granted time off with pay, not charged to any leave time, to attend union conferences, conventions and general membership meetings.

This demand is based upon the released time granted to the police. The union wants whatever is in the police contract.

The City's position is that released time is unnecessary and inappropriate. Moreover, it is a city-wide problem which should

not be handled specially for any particular group. The City points out that with the agency shop, the union now has the money to pay for its delegates' absence from official duties.

I find that the question of released time for union officers to attend union conferences, conventions and general membership meetings, is a city-wide problem and should be handled on a city-wide basis. It would create problems if it were granted to one group and not to all others.

Recommendations: demand denied

3. (Demands II, 1,2)

The salary of a Senior Police Administrative Aide shall be brought up to the equivalent of the Administrative Assistant starting salary.

There shall be a change in the job specification for Senior Police Administrative Aide to agree with the increased salary and equivalent position.

At the hearing the union deleted the second paragraph of this demand.

The union contends that the Senior PAA does most of the work of an Administrative Assistant and in support of this contention submitted the job duties as set forth in a notice of examination for Senior Police Administrative Aide and the job specifications of the Administrative Assistant. It also submitted a history of the salary ranges of both jobs.

The City contends this demand, if granted, would constitute an economic improvement in violation of the CEA. It maintains that there never was a parity in salary between the jobs and that the job specifications show a lot of differences between them.

I find that this is essentially an economic demand for a raise. It asks, in effect, a reclassification which does not seem warranted at this time.

Recommendation: Demand denied

4. (Demand II. 3)

The Police Department shall forward its career ladder recommendations to the Department of Personnel immediately.

This demand deals with the fact that the Police Department has been studying the career ladder of its employees but it has not yet made a recommendation. While the employees represented by the union are interested in the recommendations and would be affected by them it does not seem appropriate for one city department to be ordered to supply recommendations to another especially as a matter of contract.

Recommendation that it would be good labor relations for the Police Department to get its career ladder recommendations to the Personnel Department within the next 60 days. It would certainly then be appropriate for the matter to be discussed at meetings of a labor-management committee.

5. (Demand II.4.a)

Amend Section II, Involuntary Transfer, new Section C - However in no case shall the involuntary transfer procedure be used against any employee as a penalty without the presentation of charges in accordance with established disciplinary procedures.

The reference, "Involuntary Transfer", refers to the Police Transfer Policy, Section II of which deals with the circumstances under which involuntary transfers will take place.

This proposal as written is a due process issue which is best addressed under the disciplinary procedures of the agreement and appropriate state law. It should be handled as a grievance rather than as a contract demand.

Recommendation: denied

6. (Demand II.4.b)

Section III Appellate Procedure.
Amend last sentence to read: "When the Personnel Officer is unable to resolve it he will refer such matters to the attention of the Office of Labor Policy for determination"

At the hearing, this demand was amended by substituting the "First Deputy Police Commissioner" for the "Office of Labor Policy". However, it makes no sense to go to a busy police commissioner when the Chief of Personnel is charged with the responsibility.

Recommendation: Denied

7. (Demand II.5.a)
All civilians hired, transferred, or promoted shall receive proper instructions on the job.
8. (Demand II.5.c)
Radio Dispatchers shall receive sufficient training before being put on radio.

These demands for training will be considered together. The union offered evidence that Senior PAA's received only three days of training at the Police Academy. However, Detective Joyce Hardwick testified that receptionists got four to six weeks training at the Police Academy. Lieut. Robert Alexander, who coordinates training programs at the Police Academy, testified that FAA's get four weeks training seven hours a day and take examinations before they are permitted to work on the job. There is also on-the-job training. Lieut. Raymoud Sherwood, Commanding Officer of Communication Training, described the training given to radio dispatchers who must have been a 911 operator for at least four to six months and who are given three weeks training at the Police Academy during which they must pass regular examination, they also work with another radio dispatcher before going out on their own. He also testified that 911 operators are given five weeks training, three weeks of which are at the Police Academy and two on the job with another operator. There is also a program for re-training.

The evidence indicates that there is sufficient training. While one can appreciate the concern expressed in the demand for adequate training, this is not a subject which should be part of the collective bargaining agreement. It is best left to a labor-management committee.

Recommendation: Denied

9. (Demand II.7.b)

At no time shall a Radio Dispatcher work for more than one hour without receiving an equal amount of time off from the Radio Dispatcher.

The evidence supports a finding that the Radio Dispatcher works a stressful job, full of tension. The radio dispatchers monitor consoles and tv screens showing incoming demands for police and other units. Their function is to make decisions on which jobs go to what personnel. Each monitors five precincts with ten cars as well as other units. They notify the Health and Hospital Corporation where ambulances are needed and the Fire Department about fire calls. They work eight hour shifts under tremendous pressure. They cannot leave their posts. If they make a mistake, they are criticized. The work is an exhausting emotional drain.

The current practice is that radio dispatchers work an hour on and a half hour off. This policy is applied provided there is sufficient personnel, there are no emergencies and the dispatchers are willing to forego their contractual one hour lunch period. Inasmuch as they work in teams of three, it is necessary for all to cooperate for the policy to be applied.

Although on occasion some of the dispatchers have worked an hour on and an hour off, this has occurred only where there has been an excess of personnel. Some units work 80 minutes on and 40 minutes off but this was said to have been a variation of the regular policy.

The City argued against an hour on and an hour off as unnecessary and too costly. The union offered no evidence that the current policy was inadequate other than to say that it was stressful, with which the City agrees.

The real question in this demand is whether the present policy should be made a contract requirement even if it is hedged with the provisos that it would apply only if the men voluntarily gave up their hour lunch and there were sufficient personnel and there was no emergency requiring greater coverage. The Police Department is reluctant to have this arrangement made a contract obligation. The union, on the other hand, states that there is no present obligation on the part of the Police Department which would guarantee that the policy would be continued. It fears the policy might be changed without warning and without recourse.

In my opinion, it would serve a useful purpose if the Police Department would acknowledge that its practice is to work the Radio Dispatchers an hour on and a half hour off. While it would not be a contract commitment, it would provide some assurance that the present policy will continue.

Recommendation that the Police Department acknowledge in writing that it is the present practice of the Police Department that Radio Dispatchers work one hour on and a half hour off when there are no emergencies and there is sufficient manpower provided the Radio Dispatchers are willing to forego their right to an hour lunch break.

10. (Demand II.11)

Notice of Union meetings shall be sent out on the Teletype or FATN.

The union makes this demand because the police unions have it. The evidence is that this is not a contract benefit for the police unions but an informal practice which is restricted to the teletype. The so-called "FATN" is used for official police business and cannot be used for this purpose.

The City stated that it had offered to send out notices for one meeting a month. The union said that it would be satisfied with receiving the same treatment as the police unions if it is provided for the two chapters which the DC 37 has in the Police Department.

Recommendation that each chapter of the union receive the a notification benefit as the Police Department affords the PBA, but not as a matter of contract right.

11. (Demand II.12).
Proper clerical supplies shall be distributed to civilians (ex. pens, headphones, etc.)

The union asserts that it frequently works without proper equipment and that employees are left with no other choice but to purchase their own.

While one can appreciate the frustration of employees who have to work without proper supplies and equipment, making it a contract requirement that the employer furnish supplies and equipment is not the appropriate solution. If the employer still fails to furnish supplies and equipment despite a contract requirement, what is left is merely a grievance against the employer. No employee should be required to furnish his own supplies or equipment. If the employee cannot perform his job without the supplies or equipment, the fault is not his but the employer's.

Recommendation: Demand denied

12. (Demand II.18. a-c,e,f)

The Police Department shall honor the seniority of the Police Administrative Personnel in title at all times.

- a. No vacancy in the Department or Command shall be filled by an incoming entrant into the title unless permanent members of the title are given first choice at the vacancy.
- b. Vacancy at job locations shall be filled according to seniority for specific jobs.
- c. Locations shall base assignments to tours and days off according to seniority and the member of said locations shall have choice of new picks once each year.

- d. All job assignments within all commands shall be assigned by seniority.
- e. Civilians should be allowed to pick steady tours where the personnel permits based on seniority.

In effect, the union demand is that seniority be the sole determinant for filling vacancies, location of assignments and steady tours.

The City argues that seniority in an emergency service function cannot be the sole factor in determining the filling of vacancies, assignments, etc. Performance, ability and the needs of the department must be taken into consideration.

Seniority should, of course, be a factor in making the determination wherever a choice among personnel is involved, but it should not be the sole determining factor.

Recommendation: Seniority shall be a factor to be weighed together with other factors usually considered in filling vacancies. making schedules and determining assignments.

- 13. (Demand II.21) Each civilian shall be given a copy of the Administrative Guide sections that pertain to civilian employees.

The relevant provisions comprise almost one third of the Administrative Guide which has over 200 pages. The City states that it would be impractical and costly to provide each civilian with a copy. Each civilian is informed of the salient aspects of the Administrative Guide while in training.

The City stated that it had offered to furnish two copies to the union and that when the union failed to pick them up, they were delivered to the union. The Administrative Guide is a big book. It would obviously be costly and unnecessary for each civilian employee to have a copy. It is sufficient that the union has a copy available for reference by any employee.

Recommendation: Demand denied

14. (Demand II. 31. a-c)

- a. Civilians shall be offered the option of working on a holiday.
- b. The City shall provide a printout of all monies to be paid civilians prior to said payday. (ex. night differential, overtime and holidays).
- c. Civilians shall be offered the option of performing overtime during emergency situations (ex. blackout, transit strike, snow storms, or other disasters).

The union states that the police receive all these demands and it asks equal treatment. The City states that unlike the police, civilians receive 11 paid holidays under the City-wide agreement. The right to work holidays is City-wide in nature and should be covered by the City-wide Agreement.

The City says it provides a breakdown of the monies paid and all deductions withheld on the employee's paycheck. Hence, this part of the demand is unnecessary.

Finally, the City asserts that the right to overtime is a management function and in the case of the Police Department is clearly a matter which should be left to management to decide.

I find that all these matters are City-wide in nature and should be left to City-wide bargaining.

Recommendation: Demand denied

Respectfully submitted.

Benjamin H. Wolf
Impasse Panel

June 27, 1979