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In the Matter of the Impasse

Between

The City of New York

Report and Recommendations
Of the Impasse Panel

And

Docket No. I-171-83

The Police Benevolent Association
of the District Attorney's Office
City of New York
.....

Appearances

For the City:

Helena E. Williams
Assistant General Counsel
Office of Municipal Labor Relations

For the Association:

Vincent D. McDonnell

Report and Recommendations

of

Impasse Panel

The undersigned Individual Impasse Panel was designated to hear, report and make recommendations to resolve the impasse between the above parties as to the terms of a collective bargaining agreement for a two year period commencing July 1, 1982.

On November 3, 1983, the City of New York (City) filed a petition with the Board of Collective Bargaining alleging that certain demands made by the Police Benevolent Association of the District Attorney's Office (Association) were not mandatory subjects of bargaining. The undersigned declined to receive any evidence with respect to the challenged demands pending a determination as to their bargainability.

Hearings as to those demands not in dispute were held on December 14 and 16, 1983, January 13, 26 and 30, 1984.

The agreement in issue covers the following titles: County Detective, Detective Investigator, Chief County Detective, Rackets Investigator, Senior Detective Investigator, Senior Racket Investigator and Supervising Rackets Investigators (hereafter referred to as "Investigators" unless otherwise described). The bargaining unit covers all investigators employed by the District Attorney in the Bronx, New York, Kings and Queens Counties and numbers about 140 persons.

Bargaining History

In 1970 the union representing the titles which are the subject of this proceeding sought for Detective Investigators and Racket Investigators wage parity with a Detective First Grade in the New York City Police Department, for Senior Investigators parity with a Lieutenant, Commander Detective Squad in the City Police Department and for Supervising Rackets Investigators wage parity with a Captain in the City Police Department.

An impasse was reached in these negotiations. The Impasse Panel (Case No. 1-76-71) in its Report and Recommendations (July 15, 1971) denied the claim for parity saying:

"The effect of the Union's request for parity for each title in the unit with positions in the New York City Police Department represents a proposal for such staggering increases 33 to just about constitute a request for all-inclusive job reclassification. It is the conclusion of the panel that certain aspects of the work of the men (and women) in the unit overlap with work performed by the Police Department Detectives, especially those assigned to the District Attorneys' offices, and are, in fact, similar and, in some cases, even much the same as some aspects of the work of Police Department Detectives and Detective Investigators employed by Suffolk and Nassau Counties. However, the dissimilarities of the job qualifications, duties, responsibilities and exposure are likewise apparent to the panel and it is the opinion of the panel that virtual reclassification, by way of granting the requested increases, would be unreasonable and unwarranted."

A. similar claim for parity with the City Police Department titles was made to another Impasse Panel (Case No. 1-98-73). The Impasse Panel in its Report and Recommendations (Sept. 5, 1973) adopted the reasoning of the prior panel and denied parity.

In a subsequent Impasse proceeding (Index I-126-76) the Union did not expressly seek comparability with anyone employed by the City Police Department but rather used titles and salaries in Police Department Deputy Sheriffs, New York City and Detective Investigators in Nassau and Suffolk Counties as bench marks or guidelines.

There the Panel noted that although the basic purpose of the investigator's jobs had not changed, the manner in which they perform these functions has undergone substantial change. The Panel therefore concluded that the unit employees were entitled to substantially improved salary schedule. The Report and Recommendations of the Panel (Feb. 18, 1977) were appealed by the City to the Board of Collective Bargaining. This agency directed that the Panel's recommendations be reduced to the extent necessary to bring them into conformity with the Guidelines promulgated by the Emergency Fiscal Control Board.

The City in 1980 entered into a two year agreement with municipal unions representing non-uniformed (Civilian) employees. The employees, the subject of this proceeding are deemed by the City to be civilian employees. This Coalition agreement, MCEA, provided in part for 8% each of the two years. The association herein received 9% and 8% over the two years which were the same increases that the uniformed coalition received. (Uniformed Coalition Police, Fire, Sanitation and Correction Departments).

In the negotiations for the Municipal Coalition Economic Agreement (MCEA) for the 1982-84 period, the agreement provided for an 8% increase effective September 1, 1982 and a 7% increase effective July 1, 1983. The agreement also established an Equity Panel to deal with inequities "of title and salaries throughout the City of New York." The funds available to deal with such inequities had been exhausted at the time of the hearings herein. The investigators in this proceeding did not make any application to the Equity Panel nor could they because the Association was not a signatory to the MCEA.

Position of the Parties

Demands Submitted by the Association

1. Wages

Detective Investigators
Racket Investigators

	<u>7/1/82</u>	<u>7/1/83 (8" Increase)</u>
Years in Title -1	\$27,778	\$30,000
1-2	28,181	30,435
2-3	28,183	30,869
3	28,983	31,301

Senior Detective Investigator
Senior Racket Investigator

Years in Title -1	\$31,212	\$33,708
1-2	31,664,	34,197
2-3	32,117	34,686
3	32,564	35,174

Supervising Racket Investigator

Years in Title -1	\$35,496	\$38,338
1-2	36,126	39,085
2-3	36,755	39,695
3	37,385	40,375

2. Longevity Pay - \$200 additional for every five years of service.
3. Holiday Pay - Continuation of present City Policy of 11 paid holidays.
4. Annuity Fund - Establishment of an Annuity Fund as follows:

Detective and Racket Investigators	\$1.15 per day - Max. \$299 per year
Senior Investigators	\$1.30 per day - Max. \$388 per year
Supervising Racket Investigator	\$1.30 per day - Max. \$390 per year.
5. Unlimited Sick Leave - Unlimited Sick Leave for all members.
6. Health and Welfare Fund - As of July 1, 1983 increase City Contributions \$75 from \$450 to \$525 per year (Active & Retired Members)
7. Health Insurance - As of July 1, 1981 - GHI and HIP/HMO program to Increase to 1980 rates.
8. Hospitalization Benefits - Suspended members will continue to receive full Health and Hospitalization coverage during the period of suspension.
9. Equipment Allowance - \$425 allowance for equipment and upkeep per year.
10. Deferral - Payment of deferred increase from 1976.
11. Part-Time Release - Part-Time Release of three Executive Board members in order to properly conduct Union business.
12. Grievance Procedure - Acceptance of a formal grievance procedure.
13. Retirement - City to support legislation for inclusion into a 25 year retirement system.
14. Health Benefits - Line of duty death benefit - same as all other Police Officers.
15. Non-Monetary Contract - Complete break from DC 37 City contract and establishment of our own non-monetary contract.

Three of the above demands, Numbers 3, 13 and 15 were withdrawn during the hearing on December 16, 1983. During the course of the hearings three additional demands were resolved, namely demands 7, 10 and 12. Demands 7 and 10 were resolved in accordance with the terms of the Coalition Agreement. As to Demand 12, relating to a grievance procedure, the parties herein agreed that the grievance procedure language set forth in Executive Order Number 83 would be incorporated into the parties Unit Agreement for the term July 1, 1982-June 30, 1984.

As to demands numbered 5, 8 and 14, the City challenged the bargainability of these demands by way of a Scope of Bargaining Petition. The parties agreed on June 8, 1984 that the petition before the Board of Collective Bargaining be withdrawn and that this impasse panel would not deal with demands 5, 8 and 14. The parties further agreed that the City would not raise any challenge as to the scope of bargaining of the subject of unlimited sick leave during the bargaining of a successor contract covering the period of July 1, 1984 forward.

Thus the demands remaining in issue in this proceeding are demands numbered 1, 2, 4, 6, 9 and 11.

Demand I - Wages

Association's Position

The wage demands of the Association as set forth supra are the same wage rates provided in the agreement between the City and the Detectives Endowment Association (1982-84) with respect to Detectives in the City Police Department. In substance the wage rate sought for Rackets Investigator and Detective Investigators is equated to the wage rate for Detectives, Third Grade (NYPD); for Senior Investigators the wage rate sought is equated to that of a Detective, Second Grade (NYPD) and for Supervising Rackets Investigator the wage rate sought is equated to that of Detective, First Grade (NYPD).

The position was affirmed during the hearing with the modifications that County Detective (there is one in Bronx County) wage rate be equated to that of Patrolman and the Chief County Detective be equated to Detective, Third Grade.

The Association's wage demand includes a step pay plan with automatic increases after the first, second and third years in service.

The job titles in this proceeding work a 35 hour week, while members of the City Police Department work a 40 hour week. The Association's position is that to achieve parity their members would go to a 40 hour week.

The Association in support of its wage demands relies in part upon the conclusion of the Impasse Panel in 1977 (Index 1426-76) that "the Union has made out a convincing case for the proposition that although the basic purpose of the investigator's job has not changed... the manner in which they perform these functions has undergone substantial change."

The Association points out that subsection 34(9) of Section 1.20 Criminal Procedure Law provides that an investigator employed in the office of a district attorney is a police officer.

In sum it is the Association's position that the Investigators herein perform the same functions and duties as City Detectives assigned to a district attorney's office and should therefore be paid the same wage rate.

City's Position

The City's position is that pursuant to the statutory standards provided in the New York City Collective Bargaining Law (NYCCBL) the recommendations of this Panel should be consistent with the economic terms of the MCEA which provides for a salary increase of 8% on September 1, 1982 and 7% on July 1, 1983.

The City maintains that the wage demands of the Association represents an increase of 68 percent to 81 percent on the minimums of each title.

The City argues that Investigators are not entitled to parity with the Detectives in the City Police Department in that the Investigators are not comparable with City Detectives or members of the Police Department generally. The training requirements for City policemen is more extensive in scope and time. The duties and responsibilities of City detectives are different from the Investigator.

DISCUSSION

Section 1173-7.0 c (3) (b) of the NYCCBL provides that an Impasse Panel 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 or 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 considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

The Laws of 1978, Ch. 210, amended section 7 of the FEA to provide:

"3(a) Notwithstanding any provision of the New York City Collective Bargaining Law... or any general or special law to the contrary, any report or recommendation of an impasse panel constituted pursuant to such chapter which provides for an increase in wages or fringe benefits of any employee of the city or covered organization, in addition to considering any standard or factor required to be considered by applicable law, including the standards enumerated in section 1173-7.0 (c) (3) (b) of such chapter, shall also take into consideration and accord substantial weight to the financial ability of the city and or covered organization to pay the cost of such increase in wages or fringe benefits.

* * *

"(h) For the purposes of this subdivision, financial ability to pay shall mean the financial ability of the city and or covered organization to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes existing at the time of the commencement of a proceeding under paragraph (a), (c) and (d) hereof.

"(i) The provisions of this subdivision shall terminate an December thirty-first, nineteen hundred eighty-two."

Ability to Pay

The Association takes the position that there is no issue in this proceeding as to the ability of the City to finance the demands of the Association. The Association points to the fact of a 500 million dollar surplus in fiscal year 1983 budget and the Municipal Assistance Corporation's (MAC) one billion dollar surplus. Finally, the Association argues that the City did not in the course of this 814 page record ever claim financial inability to meet the wage demands.

The City's witness, Robert Linn, Director of the Office of Municipal Labor Relations, testified, however, that 400 million dollars of the 1983 surplus was used to fund certain mandated areas such as caring for the homeless and special educational programs. The remaining 100 million dollars was rolled over in the 1984 budget in order to balance that budget. The MAC billion dollar surplus has set aside pursuant to an agreement with the Governor for various capital expenditures such as building rehabilitation, capital structures and the Convention Center, save for 40 million dollars annually which has been assumed in the City's financial plan.

The Association, of course, could argue that even though its wage demands would exceed one million dollars, the City with an 18 billion dollar budget could finance the increase. However, in pay, one should not limit the focus on a particular bargaining unit numbers about 140 out of some 250,000 employees of the City. Of necessity one must consider the needs, desires, and demands of the other 249,860 employees of the City. To limit ability to pay with respect to the demands of 140 employees out of 250,000 would not appear to be a proper application of the ability to pay criterion.

The City, as testified to by Mr. Linn, is concerned with the impact of any increase granted here beyond the increases provided in MECA on other unions in the forthcoming negotiations. It could have a serious and adverse effect on Coalition Bargaining which appears to have been a most significant factor in allowing the City to maintain solvency during the period of financial crisis. A factor which according to Mr. Linn must be maintained to insure continued solvency.

This is not to say that the City's financial inability has been so established as to preclude recognition of the demands sought by the union. Rather it is to say that the impact of the demands herein on other employee organizations does raise a serious question with respect to the City's financial ability to respond and may not therefore be in the public interest. Thus the question arises as to whether the needs of the bargaining unit herein are so compelling as to mitigate the adverse effect upon the City's financial situation. Or to put

it another-ways has the Association demonstrated such gross inequities that all would recognize that the needs of this unit were so sui generis that its application would be unwarranted elsewhere among City employees. This leads us then to the question of comparability.

Comparability

The Association in support of its wage demands relies primarily on its contention that the Investigators in the District Attorneys office perform the same duties as the Police Department Detectives assigned to the Detectives squad in a District Attorneys office and are, therefore, entitled to the same wage rate. The City contends that there is such disparities between the two groups in training requirements, in duties and responsibilities, in salary plans, in promotional procedures, and in merit increases that there is no basis to warrant a conclusion that the wage rates for both groups should be the same.

Initially we consider the title of County Detective, which the record reveals there is but one who is employed in the District Attorney's office in Bronx County. The Association seeks to have the salary of the County Detective equated to that of a Police Officer in the City Police Department. However the testimony concerning this position indicates that the County Detective supervises process servers and occupies a clerical position in the Homicide Bureau. The duties of a Police Officer include foot and radio car patrol, traffic control among other duties. It would not appear that the duties of the County Detective and a City Police Officer are in any way comparable.

We now consider the titles of Detective Investigators and Rackets Investigator's. First, it must be pointed out that Detective Investigators are Civil Service positions, appointments being made after a Civil Service examination and a physical examination. The total number of Detective Investigators in the unit is 12, something under 9% of the unit.

Rackets Investigators are non-competitive titles appointed without an examination. The number of Rackets Investigators is 75, more than one-half of the unit.

Training requirements for the Investigators are markedly different from City Police Officers. The latter must undergo twenty-three weeks of training at the Police Academy, which may not be waived, plus six months service in a Neighborhood Stabilization Unit - the former have a seven week training course at John Jay College, which may be waived if the investigator had prior law enforcement experience.

The nature of the duties and responsibilities of Investigators are not the same as those of City Police Detectives (Detectives) assigned to the District Attorney's squad.

Usually Investigators and Detectives do not operate as a team, having separate assignments. Chief Bedford of the Brooklyn District Attorney's office, testified that Racket Bureau investigations are done primarily by the Detectives. In the Bronx the Investigators conduct investigations for the Economic and Arson Unit and routinely serve warrants. In New York County Rackets and Fraud investigations are assigned to Detectives and not to Investigators as a rule.

Admittedly the Investigators do conduct criminal investigation, deal with Consumer Protection complaints, handle line ups, conduct background investigations, provide office security. However, it seems clear that they are not performing the same duties as Detectives. The record would warrant a conclusion that Investigators and Detectives are not used interchangeably.

Investigators are now performing tasks which were at one time in part performed by Detectives such as transporting prisoners, conducting line ups. The City's witness testified that this was part of the City's civilianization program.

The Senior Detective Investigator, of whom there are four in the unit, is required to pass a civil service examination to be promoted, while Senior Rackets Investigators and Supervisory Rackets Investigators (of whom there are respectively 22 and 19) are not required to take an examination to be promoted. It is to be noted that a detective in the Police Department does not achieve that position as the result of an examination. Rather a police officer is designated a detective at the discretion of the Police Commissioner. However, to achieve that designation usually requires seven years service. Usually a police officer must wait five years before he may elect to choose the investigatory career path. If accepted in such career path, the officer must serve a minimum of two years in the Organized Crime Control Bureau. All of this, however, does not inspire designation as a detective. The record does indicate that the appointment to the District Attorney's office squad is an achievement in the investigatory career path.

Further in the Police Department itself persons performing similar duties have different wage rates. For example, a white shield detective in the District Attorney's squad is not paid the same wage rate as a gold shield detective but is paid the police officer's wage rate.

Based on all of the above, I conclude that investigators in this unit have not established parity with members of the City Police Department.

Admittedly the investigators' duties and responsibilities are important functions in the Criminal Justice System and they render significant service in the performance of their duties. Also there are certain aspects of this unit's work that do overlap with the work performed by Police Department detectives and in some instances may be similar to work performed by Police Department detectives. But the dissimilarities noted above are such as to preclude the grant of parity.

On the issue of Comparability, the Association also submitted evidence as to salaries paid to investigators in the office of the District Attorneys in Westchester and Suffolk counties as of January 1, 1983. The salaries there, particularly Suffolk County are substantially higher than the salaries herein as of June 10, 1982. As noted in the record herein, the salaries of Suffolk County policemen are higher than those of New York City policemen, but the City has lacked the financial resources to achieve equality between the Suffolk and New York City police.

Nevertheless I do believe the recommendations to follow will provide an adjustment to reduce the differences in salaries between this unit and the suburban offices as well as the differences in salaries between this unit and the deputy sheriffs in New York City.

*While Detective Investigators and Senior Detective Investigators are required to pass a civil service examination to be appointed. There are no differences or distinctions in their duties from Rackets investigators and Senior Racket Investigators.

It is to be noted, however, that in the 1980-82 contract with this unit that the City granted the increases provided in the uniformed coalition rather than those provided in the civilian coalition. There was no explanation given as to the basis therefore, i.e., whether any departure from the City-wide agreement compensated for the additional one percent. For example in the 1982-84 contract term, nurses received an additional percent in the second year but in lieu of a fringe benefit provided in the contract. Thus I perceive no basis to depart from the increases provided in the City-wide agreement MECA.

However, the unit employees are presently working a 35 hour week. The City's witness Hanley stated that if the unit employees were on a 40 hour week. Thus with an 8% increase they would be entitled to an additional 14% increase effective September 1, 1982, a 7% increase effective July 1, 1983 plus the 14% increase for a 40 hour week, the salaries of the unit employees would be increased over 30%. The departure from the 15% provided in MECA to over the 30% discussed above would be justified on additional productivity.

Thus, the minimum salary for a Rackets Investigator would be increased from \$16,303 to about \$21,475 - an increase in excess of \$5,000.

Recommendation - Salary increase of 8% effective September 1, 1982 and 7% effective July 1, 1983. Further upon acceptance or adoption of the Recommendations, the work week of unit employees should be increased from 35 hours to 40 hours and upon the commencement of a 40 hour week, the salaries of unit employees shall be increased 14%. The meal period to be outside the 40 hour week.

Demand 2 - Longevity Pay

Association's Position

The Association asks that the employees receive an additional \$200 in salary for every five years of service. The Association in support of this demand cited the fact that such longevity payments are provided for in the agreements covering Detectives of the City Police Department and Deputy Sheriffs.

City's Position

The members of the unit receive merit increases which are not available to the two job titles cited by the Association and therefore longevity payments are not warranted.

Discussion

The vast majority of employees in the unit have received merit increases during 1982 and 1983 in amounts of \$500, \$750 or \$1,000. Therefore, it does not appear that there is a demonstrated need for longevity pay. In fact it would appear that these employees fare better in this regard than those cited by the Association.

Recommendation - The demand be denied.

Demand 4 - Annuity Fund

Association's Position

The Association asks for the establishment of an Annuity Fund consisting of a per diem payment ranging from \$1.15 per day to \$1.50 per day depending on job title. This demand was supported by a claim of parity with City Detectives.

City's Position

The City points out that no civilian employees have annuity funds.

Conclusion

This report has already dealt with the issue of parity and found the claim not justified.

Recommendation - The demand be denied.

Demand 6 - Health and Welfare Fund

Association's Position

As of July 1, 1983 the City contribution to the fund be increased by \$75, i.e., be increased from \$450 to \$525 per year.

City's Position

This increase was negotiated in the Coalition agreement.

Recommendation - The City contribution to the Health and Welfare Fund be increased by \$75 as of July 1, 1983.

Demand 9 - Equipment Allowance

Association's Position

Association asks that each member of the unit be given an equipment allowance of \$425 per year. The Association witness testified that members of the Police Department including Detectives receive a clothing and equipment allowance.

City's Position

No employee of the City receives an equipment allowance. Employees who are required to wear uniforms do receive a uniform allowance. City Detectives receive a uniform allowance because they are required at times to wear a uniform and are thus required to maintain a uniform.

Conclusion

As no City employee receives an equipment allowance, I find no basis to recommend one here.

Recommendation - The demand be denied.

Demand 11 - Part Time Release

Association's Position

The Association asks that the three members of the Association's Executive Board be released one day a week to conduct union business.

City is Position

The City has an established formula with respect to released time for union' officers. Basically it is one released full time for every 2000 employees. The City contends that in this unit the formula would provide released time of one day every month for one employee.

Conclusion

As it appears that the City's formula for released time is applied City-wide, it should be applied here.

Recommendation - One employee may be released with pay for union business one day per month.

Dated: June 18, 1984

Joseph R. Crowley
Impasse Panel

State of New York
County of New York

On this 19th day of June, 1984, before me personally appeared JOSEPH R. CROWLEY, to me known and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same.