

CITY OF NEW YORK
OFFICE OF COLLECTIVE BARGAINING

In the Matter of the Impasse

- between -

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

-and-

THZ CITY OF NEW YORK

Impasse Panel Report and Recommendations
Case I-154-85
Before: MARK M. GROSSMAN, ESQ

Appearances:

For the Union - Vincent D. McDonnell. Esq.
Rogers & Wells

For the Employer - Marc Z. Kramer
Associate General Counsel, OMLR

BACKGROUND

On December 16, 1985, the Office of Collective Bargaining designated the undersigned as a one-man Impasse Panel (arbitrator) to hear and make a report and recommendations in the contract dispute between the City of New York (the "City") and the Police Benevolent Association of the District Attorneys Offices of the City of New York (the "PSADAO").

A hearing was conducted on February 3, 1986 at the Office of Collective Bargaining. At that time both City and the PBADAO were given a full opportunity to present evidence and argument on the unresolved issues in their negotiations for a collective bargaining agreement to cover the three year term from July 1, 1984 through June 30, 1987.

The parties recently were involved in an extensive series of hearings which provided the basis of their prior contract (July 1, 1982 - June 30, 1984) and, because the parties desired to expedite this proceeding, they agreed to submit to this Impasse Panel the entire record in the prior matter (1-171-83). The record includes 611 pages of transcript recorded during five days of hearings between December 14, 1983 and January 30, 1984, many City and PBADAO exhibits, the parties' briefs and the impasse panel report in this case.

It was understood that this Impasse Panel is to make a do nova review of the record submitted to it and, thus, make independent findings. The findings and determinations of the Impasse panel award in 1-171-83 are not a binding Precedent in this case. The purpose of the submission of the record of case 1-171-83 was solely to avoid having to have many more hearings covering the same testimony that was recently given and subjected to cross-examination.

The bargaining unit represented by the PUDAO consists of seven titles.

These titles with the approximate number of incumbent as of September 30, 1984 are:

County Detective - 1
Detective Investigator - 10
Rackets Investigator - 68
Chief County- Detective - 0
Senior Detective Investigator - 3
Senior Rackets Investigator - 25
Supervising Rackets Investigator - 22

For purposes of this report and recommendation, the group of employees included in the bargaining unit shall collectively be referred to as "Investigators".

The PBADAO originally submitted to the Office of Collective Bargaining 12 Issues to be resolved by this Impasse Panel. By petition to the Office of Collective Bargaining, the City objected to the submission of Item 8 through 12 on the basis that they are not within the mandatory scope of bargaining for this bargaining unit. (After further discussion by the parties, the Union withdrew item 11.)

On January 30, 1966, the Office of Collective Bargaining informed the PBADAO that the New York City Collective Bargaining Law requires an impasse panel to confine its report and recommendation to matters that are within the scope of bargaining and that this Impasse Panel would proceed with its consideration of wage and other uncontested demands but would have to withhold its decision on contested demands pending a submission of appropriate papers to the Board of Collective Bargaining so it may resolve the bargainability issues. Therefore, the items before this panel at this time are as follows:

- 1 salary
- 2 stop plan
- 3 promotion increase
- A unlimited sick leave
- 5 equipment allowance
- 6 longevity
- 7 annuity fund
- 6 health benefit fund

BARGAINING STRUCTURE

The Investigators are employees of the New York City District Attorneys. Pursuant to appropriate designation, the City Of New York (the "City") negotiates on behalf of the District Attorneys. City employees are generally divided into three distinct groupings: Uniformed Forces employees; Career and Salary Plan employees; and prevailing rate employees (known as 220 employees). The 220 employees are building trades employees. These employees are covered by unique statutory provisions and are not considered relevant to this proceeding by either of the parties.

The determination of whether particular titles are in the Uniformed Force category or the Career and Salary Plan was made many years ago (prior to the advent of collective bargaining) by the City agency. Prior to the advent of collective bargaining, all the titles in the Career and Salary Plan were covered by the time and leave rules of the Career and Salary Plan and those titles had identical time and leave benefits. The titles in the PBADAO bargaining unit are all Career and Salary titles.

Pursuant to Section 1173-4.3 of the New York City Collective Bargaining Law, the City bargains with the unions representing employees in the Career and Salary Plan on two different tiers. Wages and certain other economic benefits are bargained directly with the certified union (Car through a coalition of such certified unions) and matters covered by the Career and Salary Plan, such as overtime and time and leave rules are bargained with a union designated by the Board of Certification of the Office of Collective Bargaining as representing more than fifty per cent of all such employees. The law contains an important exception. It provides that a certified employee organization has the right to bargain for a variation of any city-wide policy or term of any agreement where considerations special and unique to a particular collective bargaining unit are involved. The PBADAO

specifically points to this exception to permit it to bargain variations of the City-Wide Contract covering Career and Salary Plan employees.

Certified unions representing titles classified as the Uniformed Forces bargain with the City (either individually or in a coalition) for wages and other terms and conditions of employment.

Since its grave financial difficulties in the mid 1970's, the City and the unions representing a majority of its employees have entered into coalition bargaining whereby separate patterns have been set covering Career and Salary Plan employees (this is known as the Municipal Coalition or the Civilian Coalition) and Uniformed Forces employees (the Uniformed Forces Coalition). No union is forced to be part of a coalition. Any union which so chooses may individually negotiate directly with the City for the employees it represents. Thus, unions representing Career and Salary Plan employees may negotiate directly with the City for wages and certain other economic benefits; however, they cannot negotiate time and leave benefits which are only negotiated by the designated City-Wide Union.

BARGAINING UNIT HISTORY

The PBADAO has chosen to negotiate directly with the City and not participate as part of the Coalition of union representing Career and Salary Plan employees. Over the past ten or so years, the City and the PBADAO (and its predecessor) have had a major difference of opinion over whether the Investigators should be treated similar to employees in the Uniformed Forces Coalition or the Career and Salary Plan Coalition. As a result of this dispute, the City and the union representing the Investigators have frequently been unable to reach a negotiated settlement but were only able to agree on a contract after engaging in impasse proceedings.

The Investigators were first certified as a collective bargaining unit in

August 1970 to a labor organization other than PBADAO. The first two wage round of bargaining were conducted by this other labor organization. In instances an impasse arose and the dispute was submitted to a Impasse panel.

On July 15, 1971 a three mats impasse panel (the Malkin panel) issued an Impasse report and recommendations which set the wages and other benefits from July 19, 1968 through December 31, 1971. The Malkin Panel concluded:

The effect of the Union's request for parity of each title in the unit with positions in the Now York City Police Department represents a proposal for such staggering increases as to just about constitute a request for an all-inclusive job reclassification. It is the conclusion of the panel that certain aspects of the work of the son (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 such 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. exposures 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 one man impasse panel's report covered the period from January 1972 through December 1974 (a wage reopener was recommended for January 1974). This panel stated that its "conclusion on the question of parity is no different from that of the Malkin panel...." It went an to observe:

The Malkin panel not only rejected the parity demand of the parity but also recommended that these employees be covered by the fringe benefits, including pensions, provided in the City-Wide Agreement thus it is apparent that the wage rates and contract settlements for employees covered by the City-Wide Agreement are criteria to be seriously considered in deciding this case.

After this Impasse panel report, the PBADAO became the certified representative of the Investigators, it was also unable to achieve a

collective bargaining agreement through direct negotiations with the City. A one man impasse panel in case 1-126-76 concluded that the Union had established that:

...although the basic purpose of the Investigators' jobs has not changed (i.e., they still perform investigations and gather evidence in order to aid the District Attorneys in the prosecution of crimes), the manner in which they perform these functions has undergone substantial change. The change is partially a result of the new demands of the job and partially a result of the now training programs which gave the Investigators the necessary skills and knowledge to meet those demands.

The panel recommended substantial wage increases for unit employees. It particularly made reference to the comparison' between Investigator and Deputy Sheriffs. The panel concluded that there was no justification for the \$2,000 differential between the titles especially given the fact that the Investigators' job entails more hazardous duties and more specialized skills. It made recommendations covering the January 1974 wage reopener and for a successor contract covering January 1975 through June 1977.

The panel's recommendations in cast 1-126-76 were ultimately found to be inconsistent with the guidelines promulgated by the Emergency Financial Control Board (the "EMB"). (The PBADAO stresses that the logic and findings of the panel were not overturned just the specific cost of the recommendations because of the City's fiscal situation at the time the recommendations were made.)

After the panel's report was declared to be inconsistent with the EFCBg the parties entered into further negotiations. They agreed to an application of the Municipal Coalition Economic Agreement.

The next round of bargaining covered the period 1976-78. No City unions received "vale increases" at this time, although cost of living increases were granted wherever the cost was recouped through productivity increases. In

addition, the City was able to get significant give-backs at the bargaining table. The Investigators received no salary increase and, because it was subject to the City-Wide Agreement, its give-backs were provided by the reduction of benefits in that Agreement. Uniformed Force Unions, not being covered by the City-Wide Agreement, had give-backs negotiated on a unit by unit basis.

For the period 1978-80, the City and the PBADAO reached an agreement based upon the pattern set by the Municipal Coalition Economic Agreement.

Again in the subsequent negotiations, the City and the PBADAO were able to reach a settlement through direct negotiations. The result was a contract covering 1980-1982 in which the Investigators received the across-the-board wage increases similar to the Uniformed Forces Coalition and other benefits consistent with settlement for civilian employees. Aside from the across-the-board wages, the civilian settlement was considered better than the Uniformed Forces Settlement.

Following this negotiated contract, the parties once again were unable to reach an agreement and their contract for the period July 1982- June 1984 was based upon another one man impasse panel report and recommendations (the "Crowley Report"). The entire record of this proceeding was placed before this Impasse Panel.

The Crowley Report concluded that the Investigators should receive the same increase as provided. In the Municipal Employees Coalition Agreement, Additionally, it was recommended that the Investigators be assigned to work an additional five hours a week (resulting in a 40 hour workweek) and receive a 14% wage increase generated by the extra hours of work. The PBADAO position before the Crowley Panel was that Investigators should be equated to the Detectives, Third Grade of the New York City Police Department. Crowley Impasse Panel concluded:

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 the New York County Rackets and Fraud investigations are assigned to Detectives and not to investigators as a rule, Admittedly the Investigators do conduct criminal investigations, deal with Consumer Protection complaints, handle line ups, conduct background investigations, and 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.

CITY/UNIONS PATTERN THIS ROUND

The City has concluded collective bargaining agreements with the two coalition groups for the period July 1984 through June 1987. The Municipal Coalition Economic Settlement was 5% on July 1, 1984, 5% on July 1, 1985 (uncompounded), and 6% on July 1, 1986 (uncompounded-on the June 30, 1984 rate). Additionally there were increases by the City in welfare fund contributions, health care contributions, and longevity. An additional holiday, Martin Luther King Day, was agreed to as well as a reduction in vacation for new hires. The settlement also included an equity fund with a limited amount of money to be used for individual bargaining units (which are part of the Municipal Coalition) that can establish an inequity in their wages.

The Uniformed Forces Coalition settlement provided for a 6% increase for each of the three years (compounded) and increases in welfare and health funds similar to the Municipal Coalition settlement. There was neither an additional holiday nor a reduction in the vacation benefit for new hires. Additionally, the settlement provided for increased uniform allowance and a

legal defense fund.

The only exceptions to the Municipal Coalition Pattern for Career and Salary Plan employees were two large bargaining units, one covering teachers and the other covering nurses, in both cases, the City agreed to increase the minimums (entry levels). The City Director of Labor Relations, Robert Linn, testified that there was little or no impact in either settlement on incumbents. Additionally, he pointed out that the City had a serious recruitment and retention problem in the hospitals because of intense competition from the voluntary hospitals. He also noted the Teachers' increase was in recognition of the national focus on upgrading the profession.

PBADA0 POSITION

The PBADA0 argues that its members are Police Officers and have a community of interest with other police officers and other uniform forces personnel. It seeks to have established a proper salary relationship including a "step plan" and unlimited sick leave.

It maintains the main difference between a police function and a civilian function is the hazardous nature of the police duties and involvement with criminal activities. It asks that the Investigators be given the same sort of sick leave benefits that NYPD Police Officers and Detectives receive, namely, unlimited sick leave if they are shot in the line of duty (including activities such as arresting a criminal who may be armed and dangerous). Other than the Uniformed Police Force and Detectives, no one other than Investigators are involved in the arrest and custody of dangerous criminals. Only Police Officers do this kind of work, not Auditors, Accountants, etc. The City seems to argue that the Investigators are somewhat different from other Police Officers because they do not wear uniforms. The reason they do not wear uniforms is that they perform dangerous undercover work. The

Detectives who work with them are not in uniform and they are still considered Police Officers.

The minimum requirement for the Investigator position is two years of full-time, paid experience as a Police Officer or Deputy Sheriff. This clearly indicates the close relationship between the Investigator and Police Officer positions.

The PUDAO asserts that because the City has only presented testimony concerning the duties performed by Investigators in the Manhattan District Attorney's Office, the position of the PBADAO at the other offices is uncontroverted.

When comparing the duties of the Investigators to other City employees, the Investigators have most similarities with NYPD Police Officers and Detectives. The Investigators and the Detectives have very similar duties. There is basically no job duty performed by the Detectives which is not also performed by the Investigators. They are even assigned at times to work as a team on the same assignments. The Impasse panel report of 1977 held that there had been a substantial change in the manner that Investigators perform their job which resulted in a great wage inequity. Since that report, there has been no diminution in the duties and responsibilities of the Investigators. Nor at any time during the hearings did the City contend there was any reduction of duties,

There are only Investigators in the bargaining unit. When contrasted with the 200,000 City employees, it should be clear that there will be no major impact on the City in terms of precedent.

Investigators are the only Police Officers in the Carter and Salary Plan. The City asserts that Aqueduct Police also are Police Officers who are in the Career and Salary Plan. The PBADAO seriously doubts the accuracy of this assertion.

A group that has some similarities to Investigators are the Deputy Sheriffs. Deputy Sheriffs are Peace Officers in the Carter and Salary Plan, however, the City has continually given them the Uniform Forces Coalition Settlement.

Police Officers have substantially more important and more extensive duties than do Peace Officers. Police Officers are on duty 24 hours a day, are armed, have responsibilities in unlimited geographical areas in the State, and are involved in both civil and criminal pursuits in investigations and arrests. In addition the Investigators now participate in a very extensive training program and are covered by the bullet proof vest law.

In addition to having a separate bargaining certification entitling it to negotiate directly with the City for wages, the PBADAO has a right to negotiate for a variation of the City-wide Agreement. The Investigators have special considerations that are in line with the other City Police Officers and not civilian employees. In this regard, the hazardous nature of the work is particularly applicable.

CITY POSITION

The City argues that the Impasse Panel must recommend wage and fringe benefit, increases which are consistent with the economic terms of the 1984-87 Municipal Coalition Economic Agreement. PBADAO witnesses testified that their job duties had not changed since the Crowley Impasse Panel Recommendations. The arguments regarding Section 209g of the General Municipal Law and the comparison to Deputy Sheriffs were all made to the Crowley Impasse Panel and nothing has been presented in this area that was not considered by that Impasse Panel. That Panel recommended that the investigators receive the MCEA settlement and there is no basis for the Impasse Panel to hold any different.

The Directors of Personnel of the Manhattan and Queens Countries' District Attorneys' Offices testified that there were no recruitment or retention problems with regard to investigators.

The City presented a chart tracking the percentage increases for the investigators contrasted with the Municipal Coalition Economic Settlements and the Uniformed Forces Coalition Economic Settlements from 1979 to 1984. The chart showed that the Investigators received a 54 percent wage increase for that period while the MCEA settlements represented a 41 percent increase and the UCEA settlements a 45 percent increase. (This Impasse Panel notes that the chart did not reflect the 14 percent increase in the work day which resulted from the Crowley recommendations.)

The City argues that the PBADAO has not shown that the Investigators should have parity with Police Officers. Nor have they demonstrated such gross inequities between the wages of members of its unit and employees in comparable titles as to require a departure from the increase provided to the civilian titles by the 1982-84 NCEA. The City presented testimony to establish that its ability to pay the PBADAO demands would be seriously compromised by the potential effect of a larger-than-normal settlement (above the pattern).

The basis that the PBADAO attempts to justify each and every one of its demands is that the NYPD Police Officers already have the benefit. The Investigators are Career and Salary Plan employees. They are covered by the bargaining for time and leave rules for Career and Salary Plan employees and receive all the benefits provided for in those settlements. All the same arguments which the PBADAO now presents to this Impasse Panel were presented to Dean Crowley less than two years ago. Nothing new has happened to justify a different conclusion now being reached by this Impasse Panel.

ANALYSIS AND OPINION

In all four of the prior Impasse proceedings between the City and the unions representing the Investigators, the unions have sought a very substantial wage increase on the basis that the Investigators should be paid comparable to NYPD Detectives. The PBADAO does not make the same claim in this proceeding. It claims that the Investigators are entitled to the pattern established in the Uniformed Forces Coalition because 1) the real community of interest of the Investigators is with the employees in the Uniformed Forces Coalition and not with employees in the Career and Salary Plan; and 2) the Investigators should be equated with Deputy Sheriffs. The PBADAO is not really trying to break a pattern. It is trying to establish which pattern (the Uniformed Forces Coalition or the Municipal Coalition/Career and Salary Plan Pattern) ought to apply.

It is much easier to make a distinction between the Investigators and the WD Detectives than it is to make a determination of whether the other Investigators have more of a community of interest with the NYPD Police Officer/Deputy Sheriffs than Career and Salary Plan employees. The manner and length of time required before one can become a NYPD Detective, as well as the difference in assignments, distinguish the Detectives from the Investigators. While the PBADAO presented a number of witnesses who testified that Investigators perform all the same duties as Detectives, this testimony goes more to the range of assignments than a day to day comparison. It appears that many administrative duties are generally assigned to the Investigators.

The difference in the parties' positions in the last impasse process was great because of the difference between the NYPD Detectives' salary and the Investigators' salary. The dollar value between the City's and the PBADAO's position and wages in this proceeding is not great. The City argues strenuously that the Municipal Coalition Settlement ought to be the basis for

the economic package for the Investigators. It asserts that its fiscal situation is fragile and that it is imperative that the pattern be maintained even for smaller collective bargaining units. The City cites a prior Impasse Panel in Case No. 1-142-79 dealing with an attempt by another union to break the pattern:

The short of the matter is that to reward the (titles involved) here is likely to have a domino effect in the future, endangering the financial stability of the City.

To the extent that the Investigators are asking for a de facto

reclassification to become members of the Uniformed Forces, they are not asking for a determination that they should receive an economic settlement constituting more than other employees. They are asking for the same settlement that many other employees received. The amount of additional money which would be generated from a recommendation that the Uniformed Forces Coalition Settlement be the basis of the Investigators' contract rather than the Municipal Coalition Settlement is quite small and when applied to the limited number of employees in this unit is certainly minimal.

The City arguments relating to ability to pay suggest that a wage settlement beyond the pattern can generate similar exceptions which will become the rule and cause spiraling increased costs. The fact is that the PBDAO is asking for a reclassification based upon a determination on the merits of comparing its duties to those employees in the uniform forces. They certainly have a right to ask for such a reclassification and have it considered on the merits. The City's ability to pay argument seems weak because there does not appear to be any other unions that have as strong an argument as the PBDAO. So there seems little reason for concern that this case could set a precedent for Carter and Salary Plan employees to break their pattern. Additionally, the City has voluntarily given to the Deputy Sheriffs, the same thing that the Investigators are now seeking. Where the City has

treated One small group in the Career and Salary Plan as having a relationship to the Uniformed Forces, it is hard to see why this Impasse Panel consider, in the facts of this case, ability to pay as an impediment to relating the Investigators to the Uniformed Forces Settlement.

The Career and Salary Plan titles are obviously a sort of a miscellaneous grouping. Titles not set up to be in the Uniformed Forces (or the Prevailing Rates) are in the Career and Salary Plan. Neither side has presented any material to show what criteria was initially to place titles in one category or another. This Impasse Panel has no authority to reclassify the investigators. However, it is aware that a do facto reclassification will occur if it recommends the wage settlement be the same as the pattern of the Uniformed Forces Coalition.

The City presented evidence regarding a number of titles it considered related to the Investigators. These titles and their agencies are: Fraud Investigator, Finance; Special Investigator and Confidential Investigator, Investigation; Investigator, Senior Investigator, and Supervising Investigator, various Agencies; Probation Officer, Senior Probation Officer, and Supervising Probation Officer, Probation; Special Officer, Senior Special Officer and Supervising Special Officer, Human Resources Administration; Special Officer, Health and Hospitals Corporation; Traffic Enforcement Agent, Associate Traffic, Enforcement Agent I, II and III, Transportation; Sanitation Enforcement Agent, Associate Sanitation Enforcement Agent, Sanitation; and, Special Officer Aqueduct Patrol and Associate Special Officer Aqueduct Patrol Department of Environmental Protection.

The employees in these titles have some relation to both Investigators and NYPD Police Officers to the extent they carry guns, wear uniforms, have Police Officer or Peace Officer status, enforce laws maintain order and Investigate civil and criminal violations,

most of the employees in the titles just cited are categorized as Peace Officers. The uncontroverted evidence presented in this case is that only the Special Officer and Associate Special Officer Aqueduct Patrol have the status of Police Officers. (In its brief, the PBADAO raised doubts for the first time concerning these titles Police Officer status.) The Special Officer and Associate Special Officer Aqueduct Patrol are the only employees in the titles presented for comparison that carry a Sun. Employees in a number of these titles wear uniforms.

The record in this case clearly establishes that the Investigators are involved with criminal investigations. As such, they obviously have some community of interest with the NYPD Police Officers. The real issue is whether their community of interest is so great as to justify their settlement reflecting the Uniformed force Settlement rather than the Municipal Coalition settlement.

The fact that the Investigators do not wear a uniform is, of course, not determinative. The determination must be based upon the similarity in duties, hazards, etc. Something so superficial as wearing a uniform ought not determine in which group a title should be placed. In fact, there are uniformed employees and nonuniformed employees in both the Uniformed Forces and the Carter and Salary Plan classifications. There is nothing in this record to suggest that the mere fact that the word "Uniformed" is used in the title of the Uniformed Forces classification makes wearing a uniform a condition precedent to being classified as a Uniformed Forces title.

An obvious question is what consideration should be given to the fact that the Investigators have Police Officer status in determining which pattern settlement should be applied to them. If one were initially making up classifications at this time it would be reasonable to consider Police Officer status as a strong indication of a community of interest between Investigators

and other Police Officers. The assumption would be that the titles were given police Officer status for similar reasons based upon similar evaluations of the various titles. While the Police Officer status was not initially given to the Investigator, the record is clear that there has been a change in their duties which occurred quite a few years ago. The Police Officer status is not incompatible with their present duties. But, this status was not obtained by an analysis of their duties. The PBDAO admits that it proposed and lobbied the State legislature in order to receive the status. It would appear that the determination of whether the Investigators have more in common interest with the Uniformed Forces or the Carter and Salary Plan titles is to be made on the basis of a comparison of the duties the Investigators perform with the employees in both classifications.

Based upon the evidence before this Impasse Panel, it would appear that the Investigators are most akin to the NYPD Police Officers than any other title in the Career and Salary Plan. This includes the Deputy Sheriffs. Of course, if the Investigators were treated as in the Uniformed Forces, there would be another Carter and Salary Plan title which would claim the distinction of being most like the Uniformed Force titles.

Because of some similarities with NYPD Police Officers and the fact that Deputy Sheriffs (who are in the Career and Salary Plan) are given the wage settlement of the Uniformed Forces, it is not unreasonable for the Investigators to make wage comparisons with those titles.

Despite the size of the record in the cases there is insufficient basis to judge what constitutes a typical workday for Investigators. As previously mentioned, evidence presented to this Impasse Panel dealt with the range of duties an Investigator might perform rather than his typical workday. The burden of establishing that the Job duties of the Investigators is so much more like that of titles in the Uniformed Forces than the Career and Salary

Plan titles is clearly an the PBADAO. In order to maintain stable and orderly labor relations, titles should not be easily taken out of one group and placed in another for comparison purposes.

The fact is that the Police Officers and Deputy Sheriffs are paid a very similar base salary to the Investigators (as of the end of the last contract round). There was only a \$335 difference between base rates.

Given the facts that 1) the PBADAO has the burden of establishing its were appropriate relationship to the Uniformed Forces; 2) the salary of the Investigators is presently similar to that of the Police Officers and Deputy Sheriffs; and 3) the settlements for the Uniformed Forces and the Municipal Coalition were not very different, this Impasse Panel finds no significant inequity were the Investigators to receive the same settlement enjoyed by other Career and Salary Plan titles.

In support of this conclusions it is noted that three of the four prior Impasse Panels (including the most recent) have concluded that the Investigators ought to remain with Carter and Salary Plan titles for comparison purposes. Many of the duties the Investigators perform have no unique relationship to NYPD Police Officer duties. Examples of some of these duties are dealing with consumer protection complaints, handling; line ups, conducting background investigations, providing security in the office.

Should in the future there become a significant difference between the salaries, of the Investigators, on the one hand, and those of the NYPD Police Officers and Deputy Sheriffs, on the other hand, this Panel is aware that there is a process within the Municipal Coalition Settlement where the PBADAO may raise issues of inequity. If for any reason, this process is not a viable one in regard to having the claim heard, they can always resort to impasse proceedings.

While it is recommended that all the issues be resolved on the basis of

the Municipal Coalition Settlement, this Panel will take some additional comments in regard to two issues. The PSADAO argued tenaciously that it be granted unlimited sick leave. Its arguments in support of its position all related to the use of on-the-job injury leave. However, the demand it put forward is clearly much broader. It deals with sickness, disability and non-work related injury-leave. An argument might be made that an employee that has to arrest a murder suspect should be given greater injury leave coverage than others. However, this Panel does not believe it has a sense of how often hazardous situations arise, what is the injury rate among investigators, and how these items compare to other employees. In any event, there is no clear justification for an all inclusive unlimited sick leave provision.

Lastly attention is turned to the PBADAO's position that it receive an automatic step increase rather than the present merit increase at the discretion of the District Attorneys. Recent experience has shown that merit increases have been an effective method for dispersing salary increases to a majority of the Investigators. Because the merits increase have less limitations than the automatic steps, this system should be retained. If the recent experience with merit increase does not continue in a beneficial manner to the Investigators, there will be time in the future to reexamine this issue.

RECOMMENDATIONS

The Impasse Panel recommends that the City/PBADAO contract covering the period July 1, 1984 to June 30, 1987 be patterned after the Municipal Coalition Settlement in all respects.

Dated: June 28, 1986

Mark M. Grossman, Esq.