

OFFICE OF COLLECTIVE BARGAINING  
OF THE CITY OF NEW YORK

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In the Matter of the Impasse

UNIFORMED FIREFIGHTERS ASSOCIATION  
OF GREATER NEW YORK

-and-

THE CITY OF NEW YORK

(Re: Fire Marshals)

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Before the Impasse Panel

George Nicolau, Chairman  
Walter Gellhorn  
Benjamin H. Wolf

REPORT and  
RECOMMENDATIONS  
of the  
IMPASSE PANEL

APPEARANCES:

For the UFA:

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For the City of New York:

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(On the Brief)

This proceeding was initiated pursuant to Section 1173-7.0 c of the New York City Collective Bargaining Law, Chapter 54 of the Administrative Code, with the appointment of this Impasse Panel on July 11, 1986. The Panel held a total of seven hearings beginning on September 11 and continuing on October 3, 6, 10 and 23 and November 6 and 19, 1986. Thereafter, the Panel, acting pursuant to its statutory authority, attempted to mediate the differences between the Parties, meeting with them on five separate occasions ending on November 29. Subsequently and at their request, the Parties submitted post-hearing memoranda summarizing their respective positions and the Record was closed as of December 30, 1986.

#### The Background of the Impasse

The UFA is the certified collective bargaining representative for a unit that includes employees in the title of Firefighter and Fire Marshal. Since 1971, when the Fire Marshal title was added to the UFA certification, both titles have been included in overall UFA/City agreements. However, in the negotiations for a 1984-87 agreement the UFA sought a separate contract for Fire Marshals and the City's acquiescence in a number of demands

related solely to that classification, including a salary differential comparable to that received by Fire Lieutenants. (Lieutenants receive approximately 28% over the basic Fire-fighter's salary, while Fire Marshals receive a differential of 9.68%.)

The City rejected those demands and made demands of its own, basically insisting that the Marshals be included in a single agreement with the Firefighters, that they accept the compounded 6% three-year package negotiated by the Uniformed Forces Coalition, that they agree to increase the number of their appearances from the present 182 to 261 and eliminate all provisions (including extra payments) restricting management's ability to deploy and reschedule the Marshal workforce.

The Parties were unable to compose these differences and agreed to submit their dispute to this Panel for determination. At approximately the same time, the City, in a petition to the Board of Collective Bargaining, asserted that some of the UFA's demands for Marshals were not within the scope of mandatory collective bargaining and therefore not properly before the Panel. The Board rendered a decision on those assertions

(No. B-43-86) on September 25, 1986. Certain demands, which will be discussed herein, were held to be mandatory subjects; others were not. In addition, the Board ordered a safety and workload impact hearing on the City's non-bargainable decisions concerning motor vehicles, radios and levels of manning. At the conclusion of the mediation sessions herein (November 29), the Parties agreed not to await a hearing and determination on those matters and to sever them from this proceeding. Accordingly, they need no longer concern us.

As is apparent, the hearings and related sessions in this matter were somewhat prolonged. There were close to 1000 pages of testimony and 129 exhibits, some bulky indeed. We will not attempt to rehearse that testimony and documentary evidence in any detail. It is in the Record and the Parties are well aware of it. Similarly, there will be no attempt to trace the genesis and evolution of this conflict, for that too is firmly in the minds of the Parties, albeit from somewhat different perspectives. It is sufficient to say that the Panel has been attentive to the Record and has considered carefully the position the Parties have advanced in the various stages of the proceeding and in their closing memoranda. In formulating its recommendations, the Panel has weighed the evidence in the Record concerning

the relevant terms and conditions of employment of the Marshals and employees in comparable positions. it has also taken into account the overall compensation paid to the Marshals and the benefits received by them; changes in the cost of living; the interest and welfare of the public, and such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

### Discussion

Before detailing our recommendations, which we will discuss in logical groupings saving the most controversial for last, a word about Fire Marshals and their duties.

Until 1969, the position was a civilian title. In that year, it became a uniformed promotional position, one step above a Firefighter. As recently as 1977, there were less than 60 Marshals. At the moment, there are some 325. All, save five or six "grandfathered" civilians, are former Firefighters who have become Marshals as a result of successfully passing

promotional examinations and thereafter completing a rigorous eight-week training program.

Essentially, Marshals are investigators whose main functions are to probe and determine the cause and origin of fires and, if the fire is deemed incendiary, to identify and apprehend those responsible and facilitate their prosecution. Marshals can interrogate suspects and witnesses, serve subpoenas, administer oaths, take sworn testimony, obtain warrants, employ various investigative techniques, such as undercover operations and electronic surveillance, and, as individuals invested by law with police powers, can make arrests when they deem it necessary. In effect, they act as detectives, often arriving at fire scenes with or ahead of Firefighters and thereafter building cases for prosecution, whether involving willful false alarms by teenagers, the isolated setting of a fire, or well organized "arson-for-profit" conspiracies. They are, in fact, the primary investigators of all fires with only one exception. Fires resulting in fatalities, once a marshal determines those fires non-accident are turned over to the Police Department for the investigation of the homicide, but the trigger for that turnover is the Marshal's finding of an incendiary act. Until that time, the matter is the

Marshal's responsibility.

All of the Marshals work for the Bureau of Fire Investigation. Some are deployed at Headquarters in Brooklyn where they may be assigned to special squads such as the Major Case Squad, etc., others work from Base Locations in the Boroughs, still others are assigned to Red Cap, a locally-based rapid response and arson awareness program, while a small, but to be expanded, group works on a recently inaugurated program designed to curb arson among juveniles.

There is no question of the Marshal's dedication, the difficult and oft-times dangerous nature of their work and the immense pride they take in it. Those matters are not at issue. What is at issue are their contractual demands, those of the City and how this impasse is to be resolved.

#### UNION DEMAND NO. 4

In this demand, the Marshals, noting that the UFA contract contains a job description for Firefighter, asks that there also be a job description for Fire Marshal. The City resisted this proposal before the Board of Collective Bargaining, arguing that

job content was not negotiable. The Board agreed with that proposition, but found that the demand was not that the description be negotiated, but that the description as determined by the City be placed in the collective bargaining agreement. Accordingly, it held that the demand was properly before us.

#### Recommendation

Our recommendation is that a job description for Fire Marshal be included in the contract. However, it should be understood, consistent with the Board's decision, that the description is as determined by the City and that its inclusion in the contract does not limit the City's managerial rights under Section 1173-4.3b of the NYCCBL or its right to change the content of the classification at any time.

#### UNION DEMAND NO. 6(i)

Here the Marshals ask that the safety provisions of the contract contain a requirement that vehicles provided to them for use in the field meet New York State Motor Vehicle Bureau and OSHA standards and that there be annual inspections thereof to assure compliance.



Recommendation

This demand is basically comparable to Article XIII, Section 1 of the 1984-87 UFA/City agreement which presently applies to vehicles used by Firefighters. There is no sound reason why Marshals should be treated differently with respect to this obvious safety matter. Accordingly, we recommend its inclusion in the agreement.

The Marshals also ask in this safety area that a new provision of the 1984-87 UFA/City agreement be applicable to Marshals. That provision, Article XIII, Section 7, requires that medical experts meet to develop monitoring procedures for Firefighters exposed to hazardous materials. Because Marshals are exposed to the same materials, we recommend that the clause also be applicable to them.

UNION DEMAND NO. 8

In this demand, the Marshals ask that each Fire Marshal unit have its own quarters with individual lockers, shower and sanitation facilities and adequate facilities for the storage of equipment. They also seek a provision already achieved for the Firefighters; namely, that Marshals be moved to another

facility when it is anticipated that their usual facilities will be without heat, water, power or sanitation facilities for a tour or longer. (That proviso is in the 1984-87 UFA/City [Firefighters] contract; (City Exhibit 23, Article XIV, Section 21. The Marshals' request that it be applicable to their locations can be found in UFA Exhibit 41.)

Though the inadequate facilities portion of this demand is couched in general terms, the explanation and the testimony was limited to the facilities housing Task Force 2 in Queens. For the last two years that unit has been housed in a trailer at the intersection of Queens Boulevard and the Van Wyck Expressway. As described by Fire Marshal John Carney, the trailer is approximately 60 x 12 with four desks for some 19-23 men, 10" x 12" lockers that two men share, a chemical toilet and no running water or shower facilities. Carney stated that there was no place to store his equipment, that he had to keep everything in his car which he literally lived out of, that the desk space was impossible, that there was no place to clean up or change clothes and when he needed to shower upon returning from a fire he had to travel to the nearest firehouses, which were not that easy to reach. Carney testified that in contrast, other locations housing Marshals were adequate, both in terms of space and

sanitation facilities.

Recommendation

There are indications in the Record that the conditions for Task Force 2 have improved dramatically with the settlement of a pending grievance relocating the Task Force to quarters at Fort Totten. (The grievance settlement, entered into on October 22, 1986 and presaging changes on November 1 and December 1, is appended to the City's brief as Appendix A.) Nevertheless, the Marshals continue to press for a provision in the agreement so the problem won't arise in the future.

Even with a provision in the agreement, the "problem" may well arise again. At the least, however, the inclusion of certain standards in the contract will provide a fully appropriate vehicle for redress in the event it does. Accordingly, we recommend a clause similar to that contained in the present Firefighters agreement with the additional requirement that adequate desks and telephones, as well as locker space for the storage of equipment and clothing, be provided. Our recommendation includes the temporary relocation provision now in the UFA contract

UNION DEMAND NO. 13

The UFA agreement has long had a provision requiring the payment of travel time, sometimes called portal to portal pay, if an individual is required to report to a location other than his own and to be there at the normal start time of the tour. (The clause is Article XXV of the 1982-84 agreement.) In a 1985 decision, the impartial Chairman under the UFA/City agreement held that this provision did not apply to Marshals, either under the language of the clause, which spoke only of Firefighters not Marshals, or a past practice with respect to Marshals.

This demand asks, in effect, that this decision be overturned and that the clause be made applicable to the Marshal classification. The City concedes, that this benefit is received by the Firefighters and (with the exception of those in the Sanitation Department) all other members of the uniformed forces, but contends it is not the practice of the Department to assign Marshals so that they are required to report at another location at their normal start time and that a clause requiring payment for a circumstance not likely to arise is therefore unnecessary.

Recommendation

The Panel notes the Department's normal practice and is aware that the situation envisioned by the clause may not often occur. However, City representatives concede that Marshals are generally "flown within the tour," but that this is not always so. It is apparent then that there may be circumstances where Marshals would be affected by the absence of such a clause. While those circumstances may be few and far between, there is, in the Panel's view, no sound reason why they should be treated differently from Firefighters or those in the various police forces of the City when those circumstances do arise. Accordingly, we recommend that the portal to portal concept, as spelled out in Article XXV of the 1982-84 UFA/City agreement, be applicable to Fire Marshals.

UNION DEMAND NO. 9

In this demand, the Marshals seek a meal allowance of \$10.00 for a day tour and \$20.00 for a night tour.

The Marshals justify the differential on the ground that a night tour is 15k hours long encompassing two meal periods and seek to justify the concept on the ground that an allowance would

"compensate for the inconvenience" of not having a fixed meal period and having to eat while you can during required investigations, etc.

In opposing the demand, the City points out that the locations housing Marshals (with the exception of the Task Force 2 trailer) have kitchen facilities, that no other City employees, including those in the uniformed services, receive meal allowances, and that the meal time of the Marshals, unlike meal time for the civilian sector of the City's workforce, is paid time whether a meal is taken or not.

#### Recommendation

The Panel discerns no basis on which this demand can be recommended. Marshals, Firefighters, Police Officers and similar employees have paid meal time. The meals of all of them are subject to interruption or postponement, but none receive a meal allowance to compensate for those occurrences. In our view, there is no valid reason for breaking the pattern and treating Marshals in a fashion different from all the others.

UNION DEMAND NO. 14(i)

Marshals receive the same uniform allowance as Firefighters. (In the last year of the 1982-84 contract and the first year of the 1984-87 Firefighters contract, that allowance was \$505, with increases for the Firefighters in \$100 increments in the succeeding two years.) in this demand, the Marshals seek an unspecified increase over and above those amounts as a "uniform and equipment" allowance.

The Marshals note that, unlike Firefighters, they are required to wear coats and ties on duty, and that such apparel, though somewhat protected at fire scenes by turnout coats and boots, invariably gets dirty and smoky, thus requiring substantial dry cleaning expenses Firefighters never incur. The Marshals also note that they are required to carry firearms necessitating additional maintenance expenses not incurred by Firefighters. In this regard, Fire Marshal Zobel estimated his uniform and equipment start-up costs as \$1317 (UFA Exhibit 67), while Marshal Dunn placed his maintenance and replacement costs at \$993.68 (UFA Exhibit 68).

The City, in opposing a greater allowance for Marshals, points out that Marshals, unlike Firefighters, Police Officers

or Correctional Officers, are not required to maintain a uniform, but that they nevertheless receive the same allowance as the others. The City further notes that police detectives, who must maintain a uniform, normally work in coats and ties while carrying a weapon, just as the Marshals do, but receive a slightly lower allowance than all the others. In the City's view, therefore, there is no justification for a higher allowance payable solely to the Marshals.

#### Recommendation

The Panel agrees. This is another instance of a long existent pattern which, in our view, should not be disturbed absent extraordinary circumstances. While the conditions under which Marshals work will most probably result in higher dry cleaning bills than normally incurred by the ordinary citizen, the present allowance seems more than adequate compensation for that contingency. Moreover, there seems little justification for seeking to recoup the full start-up or replacement costs of clothing since civilian clothes, unlike uniforms, can be worn at any time. Additionally, the Panel notes that there are more than a few items listed in UFA Exhibit 67 that are not required by the Department and that their deletion from the exhibit would significantly reduce the figure set forth



therein. As with Demand No. 9, therefore, we see no reason to upset the existing pattern and relationship and do not recommend an increase in this allowance for Marshals. Rather, we recommend that they receive the same uniform allowance as received by the Firefighters in their 1984-87 contract.

UNION DEMAND NO. 16

The demand here is two-fold; that the birthday of Martin Luther King, Jr. be added as a 12th paid holiday and that work performed on all paid holidays be compensated at time and one-half in cash or compensatory time.

At the moment, those in the uniformed services receive pay for 11 holidays. If a uniformed employee actually works the holiday, he receives a day's pay in addition to the holiday pay. This demand would increase that additional pay to a day and one-half and add a 12th holiday.

The City opposes this demand on two basic grounds; cost and parity. It argues that there is no justification for a different holiday structure for Marshals and that its approval, like approval of the other economic demands, would do great harm to

the pattern of bargaining that now exists. The City recognizes that its civilian employees achieved Reverend King's birthday as a 12th holiday, but argues that the structure of holiday pay in those agreements, which do not involve 24-hour day, 7-day week operations, is quite different from that which prevails in the uniformed services and that the Civilian Coalition paid for that holiday out of their bargaining package while the Uniformed Coalition chose not to do so.

#### Recommendation

Again, the Panel must agree with the City. The only rationale the Marshals have put forward for this demand is that it would be good to have it. That is understandable, but hardly a reason why we should recommend it,, particularly when the others who bargained before the Marshals did not achieve what the Marshals seek. We recommend, therefore, that the Marshals receive the same number of holidays as that received by the Firefighters and the same pay when a holiday is actually worked.

#### UNION DEMAND NO. 17

In this demand, the Marshals ask that all work performed on the weekend (from 3 PM on Friday to 6 AM on Monday) be compensate

at time and one-half. The rationale is that the additional pay will compensate Marshals for being away from their families on weekends.

The City points out that in a continuous operation, such as police and fire service, everyone works the weekends at one time or another and that this demand is simply another means of seeking a raise for all Marshals. The City also argues that approval of such a demand would undermine pattern bargaining and make it impossible for sound bargaining to continue.

The Marshals, in reply, assert that Sanitation men receive weekend premium pay and that the pattern is therefore not uniform or immutable. In response, the City asserts that it is Sunday, not the entire weekend, that is not part of the Sanitation workers' regular schedule, but that this is not the case with police and fire, making the situations entirely different.

#### Recommendation

Again, we must agree with the City. Premium pay for weekend work is entirely foreign to public service continuous operations in New York. Approval of such a demand for a group of 300 while tens of thousands of comparable employees receive straight time

pay as part of their regular schedules is insupportable. Accordingly, we do not recommend its inclusion in the final agreement.

UNION DEMAND NO. 10(i)

According to the Marshals, it has long been the practice to provide an hour of paid travel time at overtime rates to those directed to work overtime in order to complete required administrative duties. This demand seeks to codify that practice.

Recommendation

The City, though uncharacteristically referring to the practice as a "boondoggle," does not seriously dispute its existence. Nor does it offer any rational arguments against its memorialization in the agreement. Accordingly, we recommend its inclusion.

UNION DEMAND NO. 12

Historically, those in the title of Fire Marshal have had a Union delegate for each Fire Marshal location. When Marshals were housed in four locations there were four such delegates. Now that there are six Marshal locations, there are six delegates.

The 1982-84 UFA/City contract provides that the Union may designate a delegate for "each company ... with 10 or more Firefighters," but that "present practices with respect to Fire Marshal delegates (one delegate for each location] shall continue."

A company usually consists of no more than 25 Firefighters. Generally speaking, therefore, a Firefighter delegate handles grievances and related matters for 25 individuals. The problem with respect to the Marshals, as described by them, is that a Marshal location can now encompass 50 to 60 men and with the advent of a planned reorganization may go as high as 75 or beyond, making adequate representation by one delegate impossible.

The demand seeks to insure one UFA delegate for every 25 Marshals at a location, thus tracking the Firefighter ratio. The expectation of the Marshals is that delegates in any particular location will be on different tours with different days off, thus effectively serving the men without necessarily adding to monthly meeting released time costs since the meeting will not occur at a time all delegates are working.

The City resists the demand on economic grounds. It contends that the Union can have as many delegates as it wishes and that the number of delegates per se is not the issue. What is at issue, the City maintains, is the number that will be released for the monthly delegate meetings. If that number increases, as it would under the Union's proposal, it constitutes an added cost, which, in the City's view, it should not be made to bear. In this regard, the City pointed out that in the last 14 years, it has not agreed to an increase in Union released time (though it appeared to be discussing full-time release) unless the Union funded that time in a day-for-day payback.

### Recommendation

In the Panel's estimation, the disparity in the representation ratios as between Firefighters and Fire Marshals is obvious and glaring. Given the planned reduction in the number of Fire Marshal locations that disparity will grow even greater if the present practice of allocating Marshal delegates on a location basis is maintained. That practice is at the core of the disparity and, in the Panel's view, contains an element of unfairness requiring correction. Whether the Fire Marshal locations are reduced to four or remain at six, a ratio of one delegate for every 25 or more Marshals at a location will increase the

number of Marshal delegates from the present six to twelve. Whether that will double the cost of monthly meeting released time, however, is quite problematical. Given the logical expectation that new Marshal delegates will be on different schedules than those presently serving, the chances are it will not do so by any means. Moreover, the issue here is one meeting a month, not full-time release or release during non-meeting days to handle grievances and other Union business. (That work is done on a Marshal's own time or at the end of the day.) As a consequence, the cost factor with which the City appears to be concerned is not all that significant.

Accordingly, we recommend that Marshals be permitted to increase the number of delegates representing them so as to approximate the delegate ratio Firefighters now have and that these delegates be entitled to released time on the same basis as the others.

UNION DEMAND NOS. 1 & 2

Through these two demands the Union seeks a separate contract solely for the Marshals. The City opposes. It asserts, essential

that the UFA holds a single certification covering both classifications, that since that certification was amended to include Marshals in 1970 both titles have been covered by a single contract and that the issue of separate contracts or separate certification these demands raise is not for this Panel, but for the Board of Certification.

#### Recommendation

While the Panel understands the rationale underlying these demands, it agrees with the City that it is not the appropriate entity to deal with them. Accordingly, we do not recommend a separate contract for the Marshals or take a position on the merits of the proposal. If the Marshals wish to pursue it further there are avenues open to them.

#### UNION DEMAND NOS. 3, 5 & 6 and CITY DEMAND NOS. 1, 2, 3, 4 & 5

We now come to the crux of this dispute. Union Demand 5 seeks a wage differential of approximately 28% over the base salary paid to First Grade Firefighters in the 1984-87 UFA/City agreement. That differential is what is paid to Fire Lieutenants and is in contrast to the 9.681 differential paid to Marshals



under the expired agreement. Union Demand 7 seeks the same spread in the City's Annuity Fund contributions.

City Demands 1 & 2 reject any increase in the differential and embody the economic elements of the Uniformed Forces Coalition settlement as a proposed package. Briefly, those elements are three compounded 6% wage increases effective 7/1/84, 7/1/85, and 7/1/86; Welfare Fund increases of \$100 and \$50 per year and a one-time payment of \$25 effective 7/1/i4, 7/1/85, and 7/1/96, respectively; a Civil Legal Representation Fund; uniform allowance increases of \$100 effective 7/1/85 and 7/1/8'6, and expanded health insurance contributions.\*

City Demand 5 would require 261 appearances (eight hours in length) rather than the 182 appearances of varying length (8 hours, 9 hours and 15h hours) the Marshals presently work. City Demand 4 would eliminate all provisions requiring additional payments, such as portal to portal pay, recall pay and overtime guarantees. Lastly, City Demand 3 would eliminate all restrictions, such

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\*The Marshals indicated in Union Exhibit 41 that they would accept part of the economic package (the Security Benefit Fund, The Legal Representation Fund and expanded health insurance contributions, all as embodied in the 1984-87 Firefighters' contract), but would reject the rest if not coupled with the differential they seek.

rescheduling restrictions, which impinge on the Department's ability to deploy its workforce, while Union Demand 3 would continue the present rescheduling restriction an regular day off court appearances and increase the minimum pay for permitted appearances to six hours of overtime rather than four.

The Union takes the position that the above-enumerated City demands are not properly-before the Panel because they were only presented in the Firefighter negotiations at a time when the Union was carefully pursuing a "separate negotiations" course on behalf of the Marshals. Thus, the Union contends, those demands were never "on the table" during pre-impasse Fire marshal negotiations. The City, obviously, disagrees with this analysis, but that quarrel need not detain us. The demands were very much on the table in this proceeding where they were the subject of intensive discussion. In the Panel's view, their consideration in this Report is therefore entirely appropriate.

As to both sets of proposals, it should be noted that the Panel has already rejected the City's demand to eliminate portal to portal pay and the Union's demand for a uniform allowance greater than that now received by the Firefighters. All else, however, remains open.

The Union's basic position with respect to its wage demand is the asserted inequity between the base salary of a Fire Lieutenant and a Fire marshal, while the City's essential response is that a change in the Fire Marshal's salary would seriously disrupt pattern bargaining.\* What the Union earnestly argues is that there has been a substantial change in Fire Marshal duties which, standing alone, fully justifies the increase it seeks. It contends that the job, though difficult when originally established as a uniformed title in 1969, was relatively unsophisticated at that time and continued to remain so when the original differential of \$900 was established with the first collective bargaining agreement in 1971. The Union maintains, however, that substantial changes have occurred in relatively recent days creating an inequity that did not then exist. Among the

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\*Both sides also sought to justify their respective positions by comparing the salaries of Firefighters, Fire Marshals and Fire Lieutenants in New York to those in "comparable communities." While such comparisons are generally appropriate for consideration by an Impasse Panel, the basic claim here, that of an intra-department inequity, has nothing to do with that kind of analysis. Moreover, the data presented on this aspect of the argument was rather soft; the Union's suffering from a paucity of job descriptions from which real comparisons could be made, while the City-offered job descriptions of Marshals (or similar titles) in other jurisdictions failed to include significant portions of the actual duties performed by Fire Marshals in New York. As a consequence, the Panel is of the opinion that in this case data concerning other communities is neither relevant nor helpful.

changes cited by the Union are the full-scale implementation of the Red Cap program beginning in 1981; the expansion of training from a three-week program in 1980 to an eight-week program today; the inclusion in that program of four full weeks devoted to criminal law and procedure; the 1983 change of Fire Marshal status from peace officers to officers with full police powers; the enactment of the Burns Reporting Law, which, as of November 1, 1985, added to the Marshals' arsenal of weapons in the fight against arson, but also added to their workload; and the increasingly sophisticated techniques of forensic examination and criminal investigation Marshals are now called upon to employ.

The Panel is impressed with that evidence. It demonstrates in our opinion, that the job has evolved over a short span of time into one more complex and demanding than it was. Moreover, as one compares the duties of a Firefighter and Marshal, it would appear that the changes in the duties of the latter are sufficient to call into question the differential that exists between the two salaries. This proposition might be less compelling if there were a solidly grounded rationale for the relationship in the first place, but if there was when the differential was originally established, it is now lost in the mists of history

All we can ascertain from this Record is that a differential of \$900 was chosen when the salary of a Firefighter was at \$9,000, that the flat figure of \$900 remained for some years though this brought the spread below 10% and that the differential now stands at 9.68%. We do not know how the differential was determined in the first instance; whether there was, in fact, a comparison of the jobs or the choosing of a figure based on different considerations. Therefore, there would appear to be no compelling need to continue this particular relationship for intra-departmental reasons.

Nor, it seems to us, are there external reasons for its continuation. 'The City strongly urges that a higher differential would seriously disrupt pattern bargaining and the web of salary relationships that now exists among the uniformed services. The Panel is fully aware of those relationships and the need to maintain them, but is of the opinion that a change in the differential if accompanied by other changes, would not disturb them. We say this for two reasons. First, this is not a case where one group is trying to leapfrog over another; we are dealing here with an intra-department inequity. Second, the City concedes that the salary of a Fire marshal is unlike any other and is thus not really a part of the web of relationships it seeks to preserve.

After detailing the relationships among the different ranks in each uniformed department and the strict, long-standing parity across departments (Police Officer- Firefighter, Police Sergeant Fire Lieutenant, etc.), Deputy Director of Labor Relations Hanley stated that there was no title comparable to that of Fire Marshal in the Police Department and that in his opinion the position of Fire Marshal was not comparable to any other position in the salary structure of the City of New York (Transcript of 11/6/86, pp. 56-57, 104). It would appear, therefore, that an improvement in the differential of the Marshals would not break parity, as that term is generally understood, and thus not change parity relationships or patterns.

The issue then, given the change and expansion of duties, is what the differential should be. The Marshals seek to equate their classification with that of Fire Lieutenant. While the Panel recognizes that the training program for Lieutenant is shorter by half and that Lieutenants are not expected to understand sophisticated investigative techniques or possess forensic examination skills, we cannot agree that the jobs should be equated. It is quite true, as the Marshals assert, that they sometimes "direct" others, such as Firefighters, in the course of their investigations, but Marshals are not supervisors of men

and women, while Lieutenants are. The fact that Captains may be ultimately responsible for a Company cannot obscure the fact that it is the Lieutenants who are the immediate supervisors, those who are in the front line. They lead their subordinates into a fire. They are responsible for their training, their safety and their well-being. In our view, a good part of the Lieutenant's differential is attributable to that critical supervisory role, a role Marshals simply do not exercise.

The Panel is also of the opinion that even though an improvement in the differential might be warranted, it should not be recommended unless the Marshals agree to certain changes in the way they perform their duties. Marshals are not Firefighters they are investigators. Yet they persist in working what is essentially a Firefighter's schedule; 8 hours, 9 hours and 15 ½ hours the latter overnight. Though this totals 2,088 hours, the same basic annual hours as other uniformed employees, it is only 183 appearances. That number of appearances cannot be changed unilaterally and the result of this appearance limitation and this schedule is that Marshals are not deployed when most needed. The City has demonstrated that the highest incidence of arson (fully 2/3's of all arsons) is in the late evening and early morning hours

while 2/3's of the Marshals work in the daytime. As the City strongly urges, this imbalance needs to be corrected. We do not recommend an 8hour, 261 appearance schedule. A change of that magnitude would seriously disrupt the way Marshals have structured their lives. It is nevertheless evident, needing no medical corroboration, that a 15h-hour tour is less productive than a tour of 10 or 11 hours and that this particular tour should be shortened. The Parties struggled with this entire question, quite conscientiously we might add, during the mediation phase of this proceeding, but were unable to agree on the number of appearances or the confirmation of the schedule. Our recommendation on this score, which is made below as part of a proposed package, attempts to take account of the concerns of both sides on this issue.

There are some other considerations on which an improvement in the differential should be conditioned. First, those chosen for assignments to Headquarters, the Borough Offices, the Chief's Squads and such special squads as the Major Case Squad and the Juvenile Fire Setters Program, etc. should work off the chart as they did in prior years, with 8, 8 ½ and/or 9 hour tours as scheduled by the Department.\* Second, it is our judgment that the

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\*It is our understanding, in this regard, that the means of choosing Marshals for such assignments--asking for volunteers first and taking into consideration such matters as seniority, sick leave usage and overall records--will be continued.



marshals, as investigators, should be subject to a change in their tour, but not their scheduled day off, without the Payment of overtime if that change is necessary because of a court appearance an appearance before a grand jury, or the need to confer with the staff of the District Attorney's office on a case. The Marshals complain that this would be disruptive of their "personal time" and is an unwarranted intrusion upon it. The answer is that personal time is already disrupted. This change is unlikely to lead to greater disruption, but will likely lead to less overtime. However, no other uniformed investigator is entitled to any overtime in the described circumstances. it is, therefore, difficult to justify a different rule for investigators with the title of Marshal.

There is one other matter. At the moment those in the Red Cap program respond to alarms in two-person cars. while they are sometimes the first to arrive at a fire scene or the site of a false alarm, they are often preceded by a number of Firefighters most, as one City official put it, with "axes in their hands." If not preceded by this contingent, Marshals are shortly joined by it. The City expressed the view that the use of one-Person Red Cap cars could increase efficiency as well as the coverage of this highly successful program without endangering the safety and

well-being of the Marshall. The Marshals resisted the suggestion, citing the possibility of danger. Given the described circumstances the Panel does not foresee the dangers the Marshals envision and therefore, as recited below, recommend that the Department be empowered to use such cars subject to the grievance and arbitration procedure.

#### Recommendation

As can be seen, this part of the case is not an easy matter. There are competing considerations and interests, aspects that go beyond the Marshals and long-time methods of operation not easily shed by them. It is important for the long-term, however, that Marshals, who consider themselves investigators, as of course they are, should be treated as such, and accept more of the responsibilities that profession entails. These considerations lead us to the conclusion that any improvement in the differential should be conditioned on the changes specified below, with the marshals given a choice--either (A) the Uniformed Forces Coalition package together with a prospective increase in the differential and the changes as specified or (B) the Uniformed Forces Coalition package standing alone. If the Union accepts (A), i.e., the combined package as proposed by the Panel, we then make no other

economic recommendation. If, however, the Union rejects the combined package, then our economic recommendation is (B), the Uniformed Forces Coalition Settlement as the City has offered in its Demands 1 & 2. Needless to say, this either/or recommendation on the economic issues stands apart from the recommendations made on pp. 7-24 herein, which should be considered by both Parties separately.

We therefore recommend:

1. The Uniformed Forces Coalition economic settlement together with a prospective increase in the differential (effective upon full acceptance of this Recommendation) from the present 9.681 to 14%;

2. A change in the chart, designed by the Department after having first consulted with the Union, (a) to increase the number of appearances to approximately 205, (b) to reduce the maximum hours to 11, and (c) to alter the ratio of daytime to nighttime deployment to meet Department needs, while (d) preserving, to the extent feasible, the swings and rotations the Marshals now have;

3. That those assigned to Headquarters, the Borough Office

the Chief's Squads and special squads, such as the Major Case Squad, the Welfare Fraud Squad, the Auto Squad, the Juvenile Fire Setters Program and the like, work off the chart on 8, 8 ½ and 9 hour tours as determined by the Department.

4. That the tours of Marshals, but not their scheduled days off, be subject to change without the payment of overtime if said change is necessary because of an appearance in court, including an appearance before a grand jury, or the need of the Marshal to confer with the staff of the District Attorney on a case.

5. That the Department be empowered to deploy one-person Red Cap cars in its reasonable discretion, subject to the grievance and arbitration procedure.

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As previously stated, it is our judgment that these changes in working conditions are entirely appropriate and, if accepted by the Marshals, fully justify the change in the differential they now receive. The increase is prospective, of course, because the

changes on which it is predicated can only be prospective. As to the amount of the increase, it will bring the Marshals to one-half of the Lieutenants' differential. This, in our view, properly recognizes the important supervisory role which Lieutenants perform, while not creating, as far as we can see, any additional frictions, either internally or externally.

To repeat, if the Marshals, through their Union, choose to forego the economic issues recommendation embodied in 1 through 5 immediately above, then our recommendation on this aspect of the case, which the Union or the City are free to accept or reject in accordance with appropriate OCB procedures, is the Uniformed Forces Coalition package as embodied in City Demands 1 & 2. Under this option, we would not recommend City Demands 3, 4 or 5 or Union Demand 3.

Again, we stress that the recommendations we have made on the basic economic issues and the procedures we have formulated to deal with them are not tied to our recommendations on Union Demands 1, 2, 4, 6(i), 8, 9, 10(i), 12, 13, 14(i), 16 or 17. As stated, the latter are to be considered separately and do not

depend on the choice the Union may make on the former.

Dated:     January 6, 1987  
          New York, NY

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George Nicolau, Chairman

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Walter Gellhorn, Member

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Benjamin H. Wolf, Member