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In the Matter of the Impasse

-between-

THE PATROLMEN'S BENEVOLENT
ASSOCIATION,

CASE NO. I-203-91

Petitioner,

-and-

THE CITY OF NEW YORK,

Respondent.

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REPORT AND RECOMMENDATIONS OF THE IMPASSE PANEL

Before the Impasse Panel:

Arvid Anderson, Chairman
Sylvester Garrett, Member
Philip Ross, Member

Appearances:

For the Patrolmen's Benevolent Association:

Phil Caruso, President, Patrolmen's Benevolent Association
Lysaght, Lysaght & Kramer, P.C., Counsel
By: James J. Lysaght, Esq.
Richard Hartman, Labor Consultant

For the City of New York:

James Hanley, Commissioner, Office of Labor Relations
Skadden, Arps, Slate, Meagher & Flom, Special Counsel to the
Office of Labor Relations
By: Michael M. Connery, Esq.

BACKGROUND

The Patrolmen's Benevolent Association ("PBA" or "the Union") and the City of New York ("the City") submitted to the undersigned as an Impasse Panel ("Panel") for a report and recommendations for disposition of the issues which they have been unable to resolve in their negotiations for a contract to

succeed the one covering the period July 1, 1987 to June 30, 1990.

After numerous negotiation sessions, including more than 50 sessions aided by the mediation services of Alan R. Viani, Deputy Chairman for Disputes, Office of Collective Bargaining ("OCB"), the PBA concluded that negotiations had reached an impasse. Accordingly, on May 13, 1991, the PBA filed with the Board of Collective Bargaining ("the Board"), a Request for Appointment of an Impasse Panel, docketed as Case No. I-203-91.

On May 23, 1991, the Board determined that an impasse had been reached and authorized the appointment of an impasse panel to resolve the deadlock in accordance with the provisions of §12-311c of the NYCCBL. Following a selection process agreed upon by the parties and consistent with the Revised Consolidated Rules of the OCB, the Board designated Arvid Anderson, Sylvester Garrett and Philip Ross to serve as the Panel in this proceeding. Arvid Anderson was selected to serve as the Chairman of the Panel.

On July 1, 1991, the City filed a petition with the OCB requesting that the Board determine whether two demands of the PBA were within the scope of collective bargaining under §12-307 of the NYCCBL. The Board issued Decision No. B-42-91, in which it determined the negotiability of the two issues in dispute.¹

¹Pursuant to the Board's determination, the PBA submitted Demand 22.a, to the extent found bargainable, for consideration herein.

On July 29, 1991, the Panel held a pre-hearing conference with the parties, at which time the hearing schedule and several procedural matters were agreed upon. The parties submitted pre-hearing briefs setting forth their positions on each of the outstanding issues to the Panel and to each other on September 10, 1991. The hearing, which was stenographically reported and transcribed, was held on September 16, 17, 19, 20 and 23, 1991. The PBA presented its direct case on September 16 and 17, 1991. The City presented its direct case on September 19 and 20, 1991. Rebuttal testimony and argument was presented on September 20 and 23, 1991.

The parties were ably represented and afforded a full opportunity to present evidence and argument in support of their respective positions. In support of its position, the PBA called the following witnesses: Lawrence T. Hoover, Ph.D., Consultant, Justex Systems, Inc.; James Hughes, Consultant, Runzheimer International; Dr. Harvey Schlossberg, Clinical Psychologist; David Hickey, Administrator, PBA Health and Welfare Fund; former First Deputy Commissioner Patrick J. Murphy, New-York City Police Department ("NYPD"); former commissioner Patrick V. Murphy, NYPD; Neil L. Cohen, Managing Attorney, PBA; former First Deputy Mayor John Zuccotti; Deputy Inspector Thomas M. Skelly, Nassau County Porlice Department; James J. Lysaght, Chief Counsel, PBA; Inspector Philip J. Bowden, Commanding officer, NYPD Pension Section; Captain Donald Schroeder (Ret.), Consultant; Vice

President Allen Brawer, Consultant, Program Planners, Inc.; United States Senator Alfonse D'Amato; Jeremiah Riddle, Consultant, Deloitte & Touche; New York State Senator Frank Padavan; Joseph Metz, Consultant, Buck Consultants; and President Phil Caruso, PBA. PBA Labor Consultant Richard Hartman stipulated by agreement the testimony of the following witnesses who were unable to testify: PBA Trustee William Gamble; PBA Financial Secretary John Young; PBA Financial Secretary Bruce Robertson; PBA First Vice President Thomas Velotti; PBA Financial Secretary Leonard Webber; PBA Treasurer Louis Matarazzo; and PBA Trustee James Savage.

In support of its position, the city called the following witnesses: Mayor David N. Dinkins; Director Philip R. Michael, Office of Management and Budget; Deputy Director Michael Jacobson, Office of Management and Budget; Commissioner James Hanley, Office of Labor Relations; First Deputy Commissioner Donna Lynne, Office of Labor Relations; First Deputy Commissioner Raymond Kelly, NYPD; Chief Actuary Robert C. North, Jr.; and Inspector John Beirne, NYPD-Office of Labor Relations.

Approximately 50 exhibits were received in evidence, some of them voluminous. A transcript of approximately 1200 pages, was prepared. Post-hearing briefs were submitted on October 9, 1991.

STANDARDS

Pursuant to Section 12-311c(3)(b) of the NYCCBL, the Panel has considered and applied the following standards in reaching its decision on the issues submitted for our determination:

(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 and 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 and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

POSITIONS OF THE PARTIES

The positions of the parties on each of the demands will be addressed in related groupings, where appropriate:

PREAMBLE - PBA (Demand #1):

One year contract.

PREAMBLE - (City Demand #1):

Fifteen month contract term.

PBA's Position

The PBA submits that since it has consistently negotiated agreements which were multiples of 12 months, a one year contract would be the most appropriate length. However, it argued that if the Panel believes that a longer contract is warranted, the term ought not exceed a period of 15 months since the City has taken the position that there will no wage increases for any bargaining units commencing October 1, 1991 and for a period of 45 months thereafter.

City's Position

The City argues that the PBA settlement should have the same contract term (15 months) as that reached with the civilian unions because of the importance of maintaining the basic pattern achieved in the 1990-1991 round of bargaining.

SALARIES - Art. VI (PBA Demand #2):

- a. 30% increase commencing July 1, 1990.

SALARIES - Art, VI (City Demand #2):

Wage increases shall be provided to the extent that they are funded by productivity.

PBA's Position

In presenting its case on the issue of salaries, the PBA focused on evidence relating to the applicable statutory criteria, especially the criteria of comparability, compensation, the cost of living, the City's ability to pay, and other factors

customarily considered in the determination of wages, hours, fringe benefits and other working conditions.

The PBA submitted documentary evidence comparing the salaries for police officers in New York City with a number of communities in the metropolitan area and throughout the country. The Union argues that the salaries for police officers in New York City, which once ranked among the highest both in the metropolitan region and the nation, failed to keep pace with wage increases gained elsewhere over the past twenty years. Using a ten year police officer as a bench mark, the PBA submitted evidence to show that when differences in the cost of living are considered, the "direct compensation"² of a New York City police officer ranks last among comparable jurisdictions in the metropolitan region and next to last among comparable major cities across the country. Focusing on police officers employed by Nassau and Suffolk Counties and the New York/New Jersey Port Authority, the PBA claims that its members earn up to \$14,000 per year less in direct compensation, a gap which allegedly widens when the reduced work schedule in these jurisdictions is factored in.

This disparity in salary between New York City and its surrounding suburban jurisdictions, the PBA points out, will not enable the City to attract and retain the thousands of police

²The PBA includes, as elements of "direct compensation," the following: base salary, longevity increments, uniform allowance, night shift differential and holiday pay.

officers that it is mandated to do under the Safe Streets, Safe City program. The PBA also contends that New York City is unique in that, throughout the country, police officers in major cities generally receive the same or more compensation than police officers in surrounding suburban jurisdictions. A result of this disparity, the PBA claims, is an exodus of veteran police officers leaving the force in order to take advantage of, inter alia, the higher rates of compensation in these jurisdictions.

The PBA also submitted testimony and evidence to demonstrate a heightened level of stress inherent in police work, indicated by a disproportionate rate of stress-linked illnesses among police officers. The PBA claims that implementation of the Community Police Officer Program ("C-POP") in New York City will only exacerbate the stress associated with the job because it requires even closer interaction between the police and the public. Adequate compensation, the Union argues, is essential for the recruitment of individuals who will have professional career goals and who will be less subject to being compromised in their responsibilities.

On the City's ability to pay, the Union argued that the City is not experiencing a fiscal crisis as serious as that experienced in the mid-1970's. In any event, the PBA claims that funding for its demands in excess of the City's offer is available from the following sources: 1) funding surpluses from the Safe Streets, Safe City program; 2) elimination of

contractual restrictions on the Department's ability to reschedule police officers for up to 10 tours per year; 3) freezing the starting salaries of police officers hired in Fiscal Year 1992; and 4) elimination of night shift differential for new hirees while at the Police Academy and with pro-rated entitlements up to the status of First Grade police officers.

The PBA submits that the savings realized from these measures will be more than enough to fund a reasonable and equitable settlement, particularly if one considers costing assumptions that are based on reality. In this connection, the PBA argues that the City's costing assumptions are unfair, irrational and arbitrary in that they do not include new police officers that the City is mandated to hire under the Safe Streets, Safe City program. For example, the PEA points out that while the City admits that it will hire over 5,600 new police officers above attrition over the next four years, it refuses to include these hirings in its costing-out model for determining, inter alia, the savings to be realized through a step freeze.

Finally, the PBA maintains that it has been-placed at an unfair disadvantage by the City's insistence that the cost of any PBA settlement must be reproducible for the other uniformed forces (the Fire, Sanitation and Correction Departments) to preserve the parity relationship among these groups. The PBA claims that "replication"--a form of prospective "parity"--

should be rejected as a relevant consideration on the ground that it is both illegal and inequitable.

Furthermore, the PBA claims that the City has manipulated the actuarial assumptions in order to depress the savings credited to the PBA as a result of the change in the interest rate assumption for the police pension fund ("POLICE").³ The PBA argues that to correct the inequity, the City's proposed pension credit of 1.06% must be adjusted to 1.39%, which reflects: 1) the inclusion of additional personnel to be hired under the Safe Streets, Safe City program; 2) the inclusion of actuarially assumed future salary increases of 5.5%; 3) utilization of the same methodology for amortization of the unfunded liability of POLICE as was applied in the civilian pension funds; and 4) crediting the PBA for later contract start dates for superior officer members of POLICE.

City's Position

The City challenges PBA's ranking of the NYPD as among the last in compensation. The City submitted evidence to show that if all benefits that go into fielding an individual police officer are included, New York City pays its officers at or near

³POLICE is one of the five actuarially-funded New York City Retirement Systems, the others being FIRE, NYCERS, TRS and BERS.

the highest "total compensation,"⁴ both in the metropolitan region and nation-wide. In this regard, the City submits that the PBA attempts to minimize the value of the significant pension and health benefits that are enjoyed by active and retired members of the NYPD. Moreover, the City points out that the PBA asks the to Panel ignore the mandate of the NYCCBL, which requires that it consider the value of "overall compensation," which includes the cost of pension and health benefits.

In any event, the City claims that the PBA also attempts to artificially deflate the direct compensation paid to members of the NYPD in its comparability arguments, by using "the defunct and discredited Family Budget Index (updated by the Consumer Price Index ("CPI")) and the equally problematic Runzheimer methodology." In this regard, the City urges the Panel to accept the consumer price index for urban consumers in New York/Northeastern New Jersey ("CPI-U"), which, it claims, is typically used to measure the change in the cost of living in New York City. If the City's instant wage offer is implemented, it argues, approximately 87% of all current police officers in New York City will receive wage increases during their careers in excess of the CPI-U increases through the end of the proposed contract.

⁴The City includes, as elements of "total compensation," the following: base salary, longevity increments, night shift differential, holiday pay, uniform allowance, health and welfare benefits, pension, FICA and annuity contributions.

The City also challenges the PBA's comparability argument that focuses on the compensation paid to officers of the NYPD and their counterparts in Nassau and Suffolk Counties. The City claims that on the basis of "total compensation," the NYPD ranks either first or second at the various levels of seniority. Moreover, the City denies that the alleged disparity will result in a recruitment and retention "nightmare" for NYPD as the PBA contends, noting that the actual number of police officers leaving the NYPD for other jurisdictions is only a minute percentage of the force. The City also elicited testimony to show that NYPD does not have an attrition problem, that the applicants eligible for selection as police officers are better educated than in the past, and that the number of applicants far exceeds the demand.

Through testimony and evidence on ability to pay, the City maintains that its offer of a 5% wage increase is all that it could afford to pay and, furthermore, that an over-budget increase for the PBA would push the City over a fiscal precipice. Citing the decline in revenues from retail sales and decreasing property values, the inability to impose yet another tax increase and the lack of discretionary funds, the City submits that its finances are in a perilous state. The City also denies that the PBA has identified any realistic funding sources for the Union's excessive demands, claiming that adoption of the PBA's

suggestions would cause the City to lose the confidence of the financial community and the municipal bond rating agencies.

In support of its costing methodology, the City contends that both horizontal and vertical parity relationships among uniformed employees and their superior officers has been a reality in New York City since 1898. In order to maintain these relationships, the City submits, "the savings used by the parity-setting union to achieve wages and benefits above available funds must be available to other uniformed forces to avoid chaos." Therefore, the City urges the Panel to adopt its costing methodology (which does not include an estimated future credit for savings for new hires under the Safe Streets, Safe City program), so as to enable it to now provide equal wage and benefit increases among these groups, within the limits of funds now available. Furthermore, the City submits that the use of a common "snapshot" date for negotiations, which assumes a constant head count when costing out a contract, is essential for consistent and equitable treatment of all unions.

The City also maintains that while the civilian unions are not locked into the same parity relationship as the uniformed unions, the PBA settlement should be consistent with the pattern that was established in the 1990-1991 round of bargaining with the civilian unions. The City maintains that the necessity of pattern bargaining has been recognized by prior impasse panels and that it has proposed several ways in which the PBA can

achieve the same pattern of wage and benefit increases (i.e. 5%), at the same cost to the City as the civilian unions. In this connection, the City also urges the Panel to consider the fact that any uniformed settlement in excess of available funds will be viewed as a jumping off point for the civilian unions, whose new round of bargaining began this past October.

The City also elicited testimony and evidence to refute the PBA's argument for a change in the interest rate assumption for POLICE in order to yield more than a 1.06% wage increase for the PBA. The City submits that such a change is neither appropriate nor a matter of debate. The City alleges that while the PBA offers no cogent reason for its position, the Chief Actuary of the fund demonstrated, through clear and compelling testimony, that the actuarial methodology used to determine the savings made available to the PBA pursuant to the change in the interest rate assumption is specified in the Administrative Code. With specific reference to the PBA's claim that the methodology should have included credit for new hires mandated by the Safe Streets, Safe City program, the Chief Actuary testified that "actuaries value only the members in the plan at a particular date and do not take into account future entrants." In any event, the City submits, a change in the interest rate assumption for POLICE would require the approval of the Chief Actuary, the Board of Trustees of POLICE, and the State legislature.

LONGEVITY ADJUSTMENTS - Art, VIII (PBA Demand #3):

- a. Increased to \$2,000 after five years, \$4,000 after ten years, \$6,000 after fifteen years, \$8,000 after twenty years, and \$10,000 after twenty-five years and immediately pensionable upon entitlement.
- b. A member, who has served as a trainee in the New York City Police Department, shall receive creditable service toward longevity entitlements for such trainee service.
- d. A member, who has purchased creditable service for laid-off time, shall receive creditable service for longevity entitlements for such laid-off time so purchased.

PBA's Position

In addition to doubling the current longevity increments and adding an increment after 25 years of service, the PBA seeks to eliminate any restrictions on the pensionability of these increments. (Under the existing contract, longevity is not included in the calculation of final average salary for pension purposes for police officers who separate from service for any reason with less than 20 years of service, and the full longevity entitlement is not pensionable unless a police officer retires with 25 years of service.) The PBA contends that this restriction, which exists in no other jurisdiction in the country, only adds to the disparity in compensation levels between the NYPD and their counterparts in others jurisdictions in the metropolitan area.

The PBA also seeks to gain for its members who have service as a trainee in the NYPD - or who have suffered a break in service as a result of lay-offs, credit for such time for

purposes of entitlement to longevity increments. The PBA points out that inasmuch as the Legislature has allowed affected members to purchase back this time for purposes of earlier retirement and additional pension credits, equity dictates that this time be recognized for purposes of longevity pay as well.

City's Position

The City maintains that the cost of PBA Demand 3a. alone exceeds the amount of funds available to the City for the entire settlement. In any event, the City submits that a survey of the 20 largest national cities reveals that the total compensation provided police officers of the NYPD is the highest or second highest at four of the five surveyed levels of seniority, and third highest at the remaining seniority level.

SALARIES - Art. VI (PBA Demand #4):

Each member shall receive \$2,000 per year hazardous duty pay regardless of the member's assignment or responsibilities.

PBA's Position

The PBA presented testimony and evidence to demonstrate that a number of jurisdictions across the country provide up to \$5,000 in annual supplements for special assignments, e.g., emergency service work, helicopter duty, motorcycle assignments, and SWAT teams. Claiming that New York City is unique in that the every day patrol function is unusually dangerous, the PEA submits that

all police officers should be deemed to be on special assignment and, thus, entitled to hazardous duty pay.

City's Position

The City maintains that the total compensation currently received by police officers in New York City is commensurate with the duties and responsibilities of the position.

PAYMENT FOR HOLIDAY WORK - Art. IX (PBA Demand #5):

- a. Increased to 14 including Martin Luther King Day.
- b. If a member works on a holiday, he shall receive, in addition to his regular day's pay and annual holiday pay, an additional hour's pay for every hour so worked.

PBA's Position

The PBA claims that the current entitlement (11 days) is one of the lowest paid holiday entitlements to be found anywhere in the public sector, police and non-police agencies alike. The PBA also claims that it is not unusual to find that police officers in other jurisdictions receive, in addition to more paid holidays per year, an additional half or full day's pay for every holiday worked.

In further support of its proposal, the PBA points out that all civilian employees in the City were awarded a 12th holiday (Martin Luther King Day) in the 1987-1990 round of bargaining.

City's Position

The City states that in addition to an annual lump sum cash payment for 11 holidays per year, police officers receive a regular day's pay (double time) for every holiday worked.

NIGHT SHIFT DIFFERENTIAL - Art. XX (PBA Demand #6):

- a. To be increased to 15% of bass salary.

Methods of computation for night shift differential shall be changed so an to not reduce entitlement by members' average sick leave, vacation# etc.

- d. Night shift differential shall be pro-rated for retiring members not on a coded chart, for the period of their terminal leave and final vacation, on the basis of their earnings during the 12 months prior to their commencing terminal leave.
- g. All longevity shall be included in the computation of the night overtime rate.

NIGHT SHIFT DIFFERENTIAL - Art. XX (City Demand #17):

- a. Night shift differential shall only be computed for hours actually worked between 1800 and 0600 hours.
- b. Members of the Department being trained at the Police Academy shall not be entitled to night shift differential during their time in the Academy and during the time served an a trainee. The night shift differential amounts shall be reduced by fifty percent for the next four years of employment.

PBA's Position

In addition to an increase in night shift differential (currently 10%), the PBA seeks to change the method of computation of this benefit for the following reasons: 1) the exclusion of paid leave days from the calculation has the net effect of reducing the current entitlement to 8.3%; 2) members on

terminal leave who were not on the formularized method of payment of night shift differential just prior to retirement receive no night shift differential for two months and, thus, receive a reduced pension; and 3) the exclusion of full longevity increments from base salary for purposes of computing night shift differential further reduces th6 value of this benefit.

City's Position

The City argues that the PBA seeks to include in the computation of night shift differential credit for hours not actually worked by its members. The City also points out that in the 1987-1990 round of bargaining, the Union agreed to exclude increases in the longevity increments from the calculation of night shift differential.

With regard to its own demands on the subject, the City seeks to limit the payment of night shift differential to hours worked between 6:00 PM and 6:00 AM (rather than 4:00 PM and 6:00 AM), which would conform to the night shift hours of the majority of civilian employees in the city. in addition, the City seeks to reduce the amount of night shift differential paid to new members of the force, based on their limited utility as police officers while in training.

UNIFORM ALLOWANCE - Art. VII (PBA Demand #7):

- a. Uniform allowance shall be increased to \$1,500 per year.

- b. If a member separates from service prior to December 31 of any year, he shall receive a pro-rate portion of his uniform allowance for that fiscal year.

UNIFORM ALLOWANCE - Art. VII (City Demand #16):

Annual uniform allowance will be made in June. Fifty percent of each member's annual uniform allowance shall be allocated to an individual account at the Equipment Section. Said funds to be used for new uniform and equipment items which would be issued and directed by the member's commanding officer.

PBA's Position

The Union maintains that because a police officer must pay for the purchase, repair, maintenance, replacement and cleaning of all parts of his/her uniform and equipment, an increase in the annual uniform allowance (currently \$1000 per year) is justified. The PEA argues that most other jurisdictions supply and replace uniforms and equipment through a quartermaster system, as well as provide a uniform allowance to cover the cost of maintenance and cleaning. In addition, the PEA claims that the current uniform allowance does not cover the initial cost incurred by new members of the force.

The PBA also seeks to correct the inequity which results from the loss of the entire allowance if a police officer retires prior to December 31 of any fiscal year. The Union claims that most jurisdictions pro-rate the uniform allowance for any portion of the year worked prior to the member's separation from service.

City's Position

The City argues that the current benefit is one of the highest uniform allowances among comparable jurisdictions. In any event, it claims that a \$500 increase is unwarranted.

As for its own demands on the subject, the City seeks to change the timing and the method by which the allowance is paid, i.e., to establish a quartermaster system by depositing half of amount in an individual account for each officer.

ANNUITY FUND - Art. XXV (PBA Demand #8):

Contributions increased from \$1.00 per day to \$3.00 per day.

PBA's Position

The PBA maintains that the current contribution to the annuity fund, which has not changed since it was established in 1968, does not adequately serve the purpose for which the fund was set up, i.e., a benefit intended to assist a newly retired police officer in the early retirement years. The PBA argues that the maximum amount that any one police officer now has in the fund, approximately \$13,500, is virtually immaterial in terms of setting up an effective retirement program. Moreover, the PBA claims that other civil servants in New York City, e.g., superior officers in the NYPD, Housing Authority police detectives, Transit Authority police detectives and sanitation workers receive larger contributions to their annuity funds.

City's Position

The City maintains that the groups of City employees who have greater contributions to their annuity funds receive them because of parity relationships, i.e., the contribution for superior officers is in proportion to their salary levels. Otherwise, the City submits, sanitation workers is only other group to receive a greater benefit (\$2 a day). In this connection, the City points out that the increased contribution was negotiated in the 1987-1990 round of bargaining, and the sanitation workers chose to allocate money to fund the increase in such a manner so as to not add on to the total cost of the settlement.

HEALTH AND WELFARE FUND - Art. XIII (PBA Demand #11):

- a. Increase of employer contributions for Health and Welfare Funds to \$1js00 per year.
- d. The City shall provide contributions to the Health and Welfare Fund for the purpose of continuing to provide benefits for members who are suspended without pay.
- e. The City shall provide contributions to the Health and Welfare Fund for the purpose of continuing to provide benefits for the spouses and dependents of active members who suffer line of duty death on or after 7/1/90.
- g. The city shall provide an additional contribution to the active Health and Welfare Fund of \$500 per year for the purpose of line of duty drug claims.

HEALTH AND WELFARE FUND - CIVIL LEGAL REPRESENTATION FUND - Art. XIII (PBA Demand #36):

- a. Shall be increased by \$100 per member per year.

HEALTH AND WELFARE FUND - Art, XXI (City Demand #3):

- a. Administrative expenses incurred by the PBA Welfare Fund shall not exceed 7.5 percent of the annual contribution to the Fund.
- b. Welfare Fund reserves that exceed one year's contributions must be used to provide additional benefits.

PBA's Position

The PBA claims that the present annual contribution to the PBA Welfare Fund (\$825 per active and retired member), which is intended to provide a variety of supplemental benefits (e.g., prescription drugs, dental, optical and legal services and life insurance) is grossly inadequate. In support of its contention, the PBA elicited testimony to show that the separate welfare funds for active and retired members suffered losses in the 1990-991 fiscal year of \$1.8 million and \$800,000, respectively. These losses, the PBA submits, can be attributed to a 35% increase in costs for services and a substantial increase in the utilization and cost of prescription drugs. In this connection, the PBA contends that the Welfare Fund is incurring claims for therapeutic drugs prescribed to treat line-of-duty injuries or illnesses in an amount which averages \$500 per member per year, which, under law, is a cost that should be paid by the City.

Another significant drain on the Welfare Fund, the PBA claims, results from the cessation of contributions from the City for members who are suspended without pay or for the dependents of members who are killed in the line of duty. The PBA argues

that this inequity exists despite the fact that the Trustees of the fund determined that it was appropriate that welfare benefits be continued under these circumstances.

Finally, the PBA alleges that the cost for the Civil Legal Representation component of the Welfare Fund has increased dramatically, primarily as a result of the City's increased use of its statutory right to decline representation and indemnification of members of the force who are sued civilly for alleged improper actions taken in their official capacity. The PBA elicited testimony and evidence to demonstrate that while the annual contribution to the Welfare Fund for this purpose is only \$50 per officer, the actual legal indemnification cost per officer per year is \$190.

With regard to the City's demands on the subject, the PBA points out that 7.5% in administrative expenses is a valid figure when the income received by the Welfare Fund matches the cost of benefits provided. However, where benefits provided exceeded income to the Welfare Fund, as the PBA claims was the case in the 1990-1991 fiscal year, the cost of administering those benefits increased proportionately. As for the City's demand that Welfare Fund reserves in excess of one year's contributions be used to provide additional benefits, the PBA submits that while it does not disagree with the city in principle, the existing fund balances are at less than one year's contributions.

City's Position

The City submits that it too has experienced skyrocketing health care costs and that this increasingly heavy burden must be shared by its unions. Hence, the City argues, it should not be required to contribute additional funds for a specific benefit such as prescription drugs; rather, the PBA Welfare Fund should do what other union welfare funds have done in response to increasing costs (e.g., eliminate prescription drug coverage altogether or place an annual limit on the amount of reimbursement). Furthermore, while the City concedes that drug claims arising from an active member's line of duty injury should be absorbed by the medical department of the NYPD, it disputes the PBA's assertion that the Welfare Fund incurs a cost of \$500 per year per member for such claims.

The City maintains that the PBA overstates the expense of extending Welfare Fund coverage to members for whom the City does not contribute (i.e., police officers who have been suspended without pay), inasmuch as the Civil Service Law has been amended to limit such periods of suspension to 30 days. With regard to the dependents of police officers killed in the line of duty, the City points out that it does continue to provide them with basic hospitalization and medical insurance coverage.

As for its own demands on the subject, the City contends that a cap of 7.5% for administrative expenses is reasonable and will ensure efficient administration of the fund. The current

expense of 8.5%, the City submits, is excessive and should be reduced. With regard to Welfare Fund reserves in excess one year's contributions, the City claims that as of December 31, 1988, the fund's balance exceeded the City's contribution by 16%. The excess, it argues, should be used to provide additional benefits.

HEALTH AND HOSPITALIZATION BENEFITS - Art. XII
(PBA Demand #12):

- c. An active member on or after 7/1/90 who subsequently retires shall be fully covered for all medical costs incurred due to a line of duty injury.

PBA's Position

The PBA argues that unlike any other jurisdiction in New York State, its members who are forced to retire because of line of duty injuries or illnesses suffer an inequity because they are no longer covered under those sections of the Administrative Code that provide for the full payment of such medical expenses. As a result, the cost shifts to the PBA Welfare Fund and to the retiree, depending upon the type of health insurance coverage selected. In contrast, the Union argues, police officers who are injured in the line of duty elsewhere in the State are eligible for worker's compensation and continue to have full medical coverage after retirement.

City's Position

The City contends that 96.5% of all City employees, including retirees, have selected a health plan for which the City pays 100% of the premium. The city claims that there are no out-of-pocket expenses unless the retiree chooses a plan with riders and co-payments. Thus, the City submits that the PBA's demand is unjustified.

LINE-OF-DUTY DEATH BENEFIT - Art. XXIII (PBA Demand #13):

- b. A \$100,000 double indemnity life insurance policy shall be provided for any member who dies while on active service.

PBA's Position

The PBA contends that although the City provides life insurance for members who are killed in the line of duty, it should also provide a benefit to active members who die other than in the line of duty. In support of this demand, the PBA submits that there are a number of stress-related diseases associated with police work, which also shorten the lives of police officers. The PBA points out that in terms of the amount of life insurance paid for by the jurisdiction, New York City does not compare favorably with most other jurisdictions in the metropolitan region (e.g., Suffolk County, Yonkers and the New York/New Jersey Port Authority.)

City's Position

In response to this demand, the city claims that in addition to the various benefits paid to the beneficiary of a police officer who is killed in the line of duty, it also contributes to the PBA Welfare Fund. These funds, the City argues, are intended to provide the type of benefit, i.e., supplemental life insurance, that the PEA is seeking for its members.

RECALL -AFTER TOUR - Art. IV (PBA Demand-#14):

- c. Compensation for recall shall commence at the time of notification to the member.

- e. If a member is excused from duty loss than four hours before he must report back to duty, he shall receive overtime compensation for the first four hours of his/her next regularly scheduled tour of duty in addition to his/her regular pay.

PBA's Position

The PBA contends that the compensation paid its members in the event they are recalled to duty after completion of a regular tour lag far behind the benefits provided in other jurisdictions in the metropolitan area (e.g., Nassau and Suffolk Counties). Specifically, the PBA claims that in addition to the minimum in recall pay, these jurisdictions provide pay for travel time, a mileage allowance in both directions, worker's compensation coverage and auto liability insurance. At a minimum, the PBA seeks that recall pay commence at the moment the recalled officer is notified to report.

The PBA also seeks overtime pay for situations where an officer must report back to duty within four hours of the end of his/her previous tour, which most frequently occurs when an officer must appear in court following an arrest made during the midnight tour. The PBA claims that a serious inequity has arisen from the City's practice of excusing a police officer at 6:30 AM and directing that he/she report back to work at 8:00 AM without penalty. The PBA claims that other jurisdictions in the metropolitan area provide for an early excusal from the previous tour for similar situations.

City's Position

The City maintains that recall pay properly begins when the police officer reports for duty and starts working at his/her assignment. As for situations when less than four hours separate prior overtime service and the police officer's next tour, the City submits that the PBA's demand for overtime compensation in addition to regular pay results in two and a half times' pay for a regularly scheduled tour, which is unreasonable.

HOURS AND OVERTIME - Art. III (PBA Demand #15):

- b. Portal-to-portal pay, when eligible therefore# shall be paid at night rates.

PBA's Position

The PBA seeks to remedy an alleged inequitable practice that has developed whereby its members are paid portal-to-portal pay

(an overtime travel allowance when police officers are "flown" from one reporting location to another) at day rates, even when the "flying" occurs during night shift hours.

City's Position

The City submits that the current portal-to-portal pay, a premium paid for travel to a command other than the police regular command, is adequate compensation for the inconvenience.

LEAVES - Art. X (PBA Demand #16):

- a. Increased to five personal leave days annually.
- b. Members shall be entitled to an option of the cash equivalent for unused personal days at the end of each fiscal year.
- d. A member, who uses no non-line of duty sick leave in a fiscal year, shall be entitled to five days pay.
- g. If a member requests accrued lost [compensatory] time on two separate occasions between January 1st and December 31st and is denied the right to take it at the time he desires, he shall be paid in cash for such lost time at the overtime rate.

LEAVES - Art. X (PEA Demand #102):

An employee shall be entitled to the full personal leave day benefit for the upcoming fiscal year even if such employee has been working less than an entire fiscal year as of July 1st of that fiscal year.

PBA's Position

The PBA submits that New York City is the only jurisdiction in the State which affords its police officers a single personal

day, which is lost if not used within the year accrued. Oftentimes, the PBA asserts, a police officer is denied use of the day because of "exigencies of the service." Furthermore, the PBA claims that New York City is the only jurisdiction that requires a police officer to work a full fiscal year before he/she is entitled to the personal day. Most other jurisdictions, it argues, not only provide five personal days per year, but also allow the use of personal days in the first year of employment, provide that unused days be carried over or added to vacation entitlements, or otherwise compensate for them.

The PBA also seeks five days' incentive pay for police officers who use no non-line of duty sick leave in any fiscal year, a benefit similar to that provided in other jurisdictions in the State (e.g., Nassau County, Yonkers, Mount Vernon and White Plains). In contrast, the PBA points out that while some jurisdictions compensate its police officers for significant amounts of unused sick leave at termination (Nassau and Suffolk Counties), the police officer in New York City gets nothing for his dedication.

Finally, the PBA seeks the option of converting any unused compensatory time accrued in a calendar year to cash (at the overtime rate) in the event an officer's request for time off was denied on two separate occasions. Because of the heavy workload of its members, the PBA claims that the denial of a request for compensatory time off is a common occurrence. Moreover, the PBA

points out that the current benefit of adding unused compensatory time to terminal leave often must be waived by members who retire on disability, because three-quarters of a tax-free pension is better than 100% taxable income.

City's Position

The City claims that the number of discretionary days off currently enjoyed by police officers is considerable. Moreover, the City submits that an increase in the number of these days could result in a service reduction, which contravenes public policy. Granting a personal leave day to police officers who work less than a complete year, similarly, could result in a service reduction.

Regarding the PBA's demand for pay for unused sick leave, the city points out that unlimited sick leave is a benefit, not an entitlement, and should solely be limited to recovery from illness.

The City claims that the PBA's demand for the option to convert compensatory time, which is accrued at the rate of time-and-one-half, to cash at the overtime rate would result in the City paying a premium on a premium.

TERMINAL LEAVE - Art. X (PBA Demand #17):

- a. Shall be increased to five working days per year for every year of service or portion thereof and may be taken in either time or cash, at the employee's option, upon separation from service.

PBA's Position

The PBA claims that the current terminal leave benefit received by its members (3 leave days per year of service), falls far short of that received in other police jurisdictions in the metropolitan region. The PBA presented testimony and evidence to show that police officers in Nassau and Suffolk Counties that retire after 20 years of service could receive up to \$70,000 and \$52,000 in terminal leave, respectively. (These amounts also include pay for unused sick leave.) In the case of Nassau County, the PBA points out that a police officer receives five day's pay for every year of service, which translates to five month's pay after 20 years of service. In contrast, the actual benefit for PEA members is three days of terminal leave, which amounts to only two month's pay after 20 years of service.

City's Position

The City challenges the reasonableness of this demand, inasmuch as the PBA seeks an increase in the number of days of terminal leave regardless of the police officer's length of service. The city also points out that this demand would apply to officers who separate from service for reasons other than retirement.

VACATIONS - Art. XI (PBA Demand #18):

- a. Vacation shall be increased by 10 working days at all levels.
- e. If a member transfers from one uniformed title from another agency to the police department, his annual vacation entitlement, upon entrance to the police department, shall be based on his number of years of employment since appointment to the first uniformed title.
- f. A member shall receive his top vacation entitlement after 3 rather than 3 years of service.

LEAVES - Art. X (City Demand #19):

A member who is on sick leave shall not continue to accrue vacation days for the period of sick leave.

PBA's Position

The PBA points out that vacation benefits for police officers in other jurisdictions in the metropolitan area are superior to the NYPD's, in that they enjoy more days per year (30 days in Suffolk county), conversion of unused sick leave to vacation (Nassau Country), an extra day's pay if a holiday falls within a scheduled vacation period, reimbursement for any losses incurred as a result of having to cancel a vacation due to exigencies of the department, and the ability to carry over the full entitlement of accrued but unused vacation (Nassau and Suffolk Counties).

The PBA also seeks to correct the inequity of denying seniority for purposes of vacation entitlement to a member who transfers from one uniformed service to another, since that member does receive creditable service for all time served in the

other agency toward retirement, death benefits, increment steps and longevity.

The PBA also seeks reinstatement of the prior provision of 27 days of vacation after three years of service, which was in place until the 1987-1990 settlement. The PBA claims that this demand is justified because of the greater number total hours worked per year by officers of the NYPD, as compared to other jurisdictions. In this connection, the PBA points out that police officers in Nassau and Suffolk Counties, for example, work 232 hours less per year (the equivalent of 29 tours) than its members.

The PBA argues that granting the city's demand on this subject would place its members even further behind their counterparts in other jurisdictions in the metropolitan area as far as vacation accrual and entitlements are concerned. To eliminate the accrual of vacation during periods of sick leave, the PBA asserts, would further widen the disparity which presently exists and should be denied on this basis alone.

City's Position

The City submits that at present, police officers enjoy 20 days vacation for the first five years of employment, and 27 days thereafter. In addition, they enjoy one personal leave day, 18 chart days and unlimited sick leave. Besides the substantial economic impact of granting 10 more vacation days per year, the

City submits that this demand could result in service reductions, which contravenes Public policy. As for the PBA's demand to increase the annual vacation entitlement for police officers in their fourth and fifth years, the City points out that the PBA used this mechanism to help fund their 1987-1990 settlement, and now seeks to regain what it bargained away.

In response to the PEA's demand concerning police officers who transfer from other agencies into the NYPD, the City states that presently it is attempting to resolve a number of issues raised by this demand, insofar as it applies to recently-enacted lateral transfer legislation.

With regard to its demand on the subject, the City contends that police officers in New York City receive full pay for unlimited sick leave. As a result, even if an officer is on long-term sick leave, he/she still receives full annual leave allowance. This costly benefit, the City submits, should be eliminated.

GENERAL - Art. XVI (PBA Demand #19):

- a. A member shall be entitled to overtime pay in cash for any portion missed of a one hour guaranteed meal period.
- b. A member shall be entitled to an additional meal period upon performing 4 or more hours of overtime work.
- c. If a member performs 4 or more hours of overtime work, he shall be entitled to \$10 meal allowance.

PBA's Position

The PBA claims that its members are routinely denied their guaranteed one hour meal period without recourse, due to various exigencies of the department. The PBA seeks to cure this inequity by requiring some form of compensation for missed meal periods, as do other jurisdictions in the metropolitan area (e.g., Nassau and Suffolk Counties and the New York/New Jersey Port Authority).

The PBA submits that its demand for an additional meal period when a police officer is required to work four or more hours of overtime - or when he/she is called in for a regular tour of overtime and is required to work longer, is reasonable. In addition, the PBA seeks a \$10 meal allowance whenever a member is required to work four or more hours of overtime, to compensate for the inconvenience. Similar provisions, the PBA claims, are common in a number of other jurisdictions throughout the metropolitan area (e.g., Nassau and Suffolk Counties).

City's Position

The City submits that unlike all civilian employees, police officers are paid for the entire tour for which they are scheduled to work. That is, officers are paid for their meal period in recognition of the fact that it is not a "guaranteed" meal period. Therefore, the City argues, the PBA seeks the payment of a premium above and beyond the paid meal period.

With regard to PBA's demand for an additional meal period if a police officer works four or more hours of overtime, the City submits that police officers may request a meal period under such circumstances. As for the demand for a \$10 meal allowance, the City points out that police officers are receiving pay at time-and-one-half for the overtime and already receive additional meal periods an request.

HOURS AND OVERTIME - Art. III (PBA Demand #20):

- a. Thirty-five hour work week inclusive of meal period.
- b. No member shall be scheduled to work more than 228, eight hour, tours per year.

HOURS AND OVERTIME - Art. III (PBA Demand #21):

- b. If the department reschedules a member's tour of duty for any reason, the member shall be entitled to overtime compensation for any hours worked outside the member's regularly scheduled tours.

HOURS AND OVERTIME - Art. III (PBA Demand #121):

All employees shall work the same number of tours of duty regardless of their designation as patrol, clerical, etc.

HOURS AND OVERTIME - Art. III (City Demand #10):

Any contractual provision requiring the payment of overtime at the rate of time and one half in cash or in time at the members discretion shall not become effective until after forty (40) hours of actual work have boon performed with[in] in the workweek.

HOURS AND OVERTIME - Art. III (City Demand #13):

All Police Officers will be scheduled to work eight (8) hour fifteen (15) minute tours and 253 scheduled appearances per year.

PBA's Position

The PBA submits that in over 50 other jurisdictions in the metropolitan area, police officers work 232 eight hour tours for a total of 1,856 hours per year (averaging a 35 hour work week). In contrast, officers of the KYPD work a myriad of different tour configurations, all of which result in a total of 2,088 hours worked per year (averaging a 40 hour work week). In effect, the PBA claims, its members work the equivalent of 29 more tours per year than their counterparts. The PBA also argues that since compensation is necessarily based on the number of hours worked, this inequity translates to other jurisdictions being 12.5% ahead of New York City police officers on the basis of the work schedule alone. Therefore, the PBA seeks a work schedule for all members of the bargaining unit which is no greater than the average of a 35 hour work week, inclusive of the meal period.

The PBA also seeks to remedy the hardship that is created by different tour configurations dependent upon unit assignment, which results in various numbers of required annual appearances. The PBA claims that the rationale for having some units work fewer tours of longer duration (officers on patrol) and other units work more tours of shorter duration (administrative officers) is no longer valid since the duties and responsibilities of police officers in the KYPD have changed since the variations were implemented in 1978 and 1979. (E.g., members performing clerical duties are now assigned to patrol functions

at least one or two times a week.) Therefore, the PBA seeks that tours for all members be equalized to avoid the valid complaints of some members who are making more appearances than other members.

Finally on the issue of overtime, the PBA seeks to eliminate the various exceptions to the prohibition on rescheduling a member's tour unless overtime compensation is paid. The PBA claims that the contract prohibition, which went into effect in 1969, has been watered down to the point where there are more exceptions to the prohibition than the rule itself. The PBA notes that other jurisdictions in the metropolitan area, which copied this prohibition from the PBA's 1969 contract, still have the same protection without any exceptions. Although the PBA voices no objection to rescheduling for city-wide emergencies, when the entire chart is suspended for all members, it cannot accept the practice of day-to-day reschedulings which destroys the original purpose and intent of the clause. Therefore, the PBA seeks to reinstate the clause in its original form, which requires the payment of overtime compensation any time a member's tour of duty is rescheduled, without exception.

With respect to the City's demand that the entitlement to overtime not become effective until after 40 hours of actual work has been performed in a week work, the PBA claims that its members have enjoyed overtime for hours worked beyond eight in one day for over two decades. Moreover, the PBA submits, one

would be hard pressed to find any jurisdiction which does not provide overtime which is computed on a daily basis.

As for the City's demand that all police officers work 253 eight hour and fifteen minute tours annually, the PEA maintains that any increase in the number of tours will only exacerbate an already intolerable situation, since its members are already working 232 hours per year more than their counterparts in the metropolitan area. The PBA also claims that increased travel expenses, which would result from increasing the number of annual appearances, would further diminish the compensation paid its members.

City's Position

The City claims that the cost of the PBA's demands for a 35 hour work week and 228 hour eight hours tours per year is prohibitive and that the service reduction that could result contravenes public policy. The city also disputes the PBA's claim that different tour configurations are no longer relevant to the duties performed by the various units within the NYPD.

However, the City submits that its experience of trying many tour configurations reveals that the most efficient system of scheduling is the eight hour and fifteen minute tour. Tours of longer duration result in inefficient excessive overlap, with periods of time when there are a surplus of police officers on duty. Because its objective is to have three squads of officers

on the street in a 24 hour period, with minimal overlap for pre- and post-tour duties, the City contends that its demand to have all police officers work 253 eight hour and fifteen minute tours per year (a change which will not increase the total hours worked annually), is both necessary and reasonable. Additionally, the City contends that this demand has no economic value. Citing the bargaining history between the instant parties, the City claims that whenever duty charts were adjusted in the past, no "credit" or "charge" was given to either the PBA or the City.

With respect to its demand to change the method of computing overtime, the City submits that under the Fair Labor Standards Act, an employee is not entitled to overtime until he/she has worked 40 hours in one week. Under the present system, the City submits, a police officer could work two eight hour shifts and one twelve hour shift in one week (totaling only 28 hours) and be entitled to overtime for four hours on the twelve hour day.

DISCIPLINARY PROCEDURE - (PBA Demand #22):

- a. Any disciplinary action taken by the department may be grieved by the somber through the grievance procedure up to and including binding arbitration.

PBA's Position

The PBA alleged that the current disciplinary system is inherently unfair. The Union complains that under the present system, discipline is meted out by two administrative tribunals- the Police Department Trial Room and the City's Office of

Administrative Trials and Hearings ("OATH")--and that the Police Commissioner, as a general proposition, approves their findings of fact and recommended penalties. The PBA also points out that judicial review is virtually foreclosed by a court system which is loathe to intercede on behalf of the police officer. The PBA characterizes this system as tantamount to a "kangaroo court," and that the perception among New York City police officers is that persons subject to the process have no chance of winning. These conclusions, the PBA asserts, are entirely founded by the statistical evidence adduced at the hearing. A further consequence of this system, the PBA maintains, is the fact that police officers are discouraged from making arrests out of fear that an arrestee will make a complaint or allegation of misconduct against the officer.

The PBA proposes that the alleged injustices which flow from the present system be remedied through a disciplinary grievance procedure which includes binding arbitration. Such a system, the PBA submits, will avoid the political and other pressures inherent in the present disciplinary system, will be speedy and fair, and police officers will be assured that their split-second decisions will be fairly evaluated.

City's Position

At the outset, the City points out that the Board of Collective Bargaining, in Decision No. B-42-91, found the PBA's

demand bargainable, but only to the extent that it seeks arbitration after the Police Commissioner's decision. Thus, the City submits, the current investigatory and trial practices of the NYPD is not before this Panel.

On the issue of arbitral review of the Police Commissioner's decisions on disciplinary matters, the City argues strenuously that the public interest and welfare will not be served by such review.⁵ Because of the exceptionally coercive power of the police and the impact on civil liberties inherent in their work, the City contends that the public has a compelling interest in maintaining accountability for disciplinary determinations in the Commissioner.

The City also challenges the PBA's contention that the current system is unfair to police officers. The City submits that cases are investigated thoroughly; officers are represented by counsel at each step of the procedures; they have the right to be heard at the investigatory stage; they have the right to a hearing; and they are generally offered negotiated settlements prior to trial at reduced penalties. Moreover, the City argues that contrary to the PBA's assertions, the Police Commissioner does not "rubber stamp" OATH or Trial Room decisions, nor do the courts "rubber stamp" the Commissioner's determinations.

⁵The City states that it has filed an Article 78 appeal of Decision No. B-42-91, and that the presentation of its position on this issue is not intended to be, nor should it be so deemed, to constitute a waiver of any rights in connection with that appeal.

Finally, the City challenges the evidence offered by the PBA on this issue as anecdotal and not representative of the system. The City maintains that the public's interest in maintaining the current system far outweighs any interest that the PRA may have demonstrated in obtaining arbitral review of the Police Commissioner's decisions.

BENEFITS FOR RETIRED MEMBERS - (PBA Demand #23):

If an active member on or after July 1, 1990 subsequently retires and is called back to testify or otherwise assist in a case in which he was involved as an active member, he shall receive a day's pay at the present rate applicable to the rank he hold when he retired.

PBA's Position

The PBA claims that when a member is required to appear in court as an witness subsequent to his separation from service, he/she is paid nothing but a \$3 subpoena fee. In contrast, the PBA points out that other jurisdictions in the metropolitan area recognize the inequity and compensate the retiree at full salary.

City's Position

Retired police officers who return to testify as a witness, the City submits, fulfill both a sworn duty and a civic duty. The City argues that since all City officials are subject to being called to testify, police officers should not be paid to do so.

SALARIES - Art. VI (PBA Demand #26):

- b. A direct deposit option for members' pay checks shall be instituted.

PBA's Position

The PBA claims that there is no longer any excuse for the City's failure to implement a direct deposit option since a payroll system which facilitates this benefit is now in place. The PBA points out that most employers, in both the public and private sector, provide such an option.

City's Position

The City maintains that the various City agencies that are involved in the implementation of a direct deposit option are working to put such a system in place. However, it maintains that since this demand concerns a City-wide issue, if the benefit is to be provided at all, it will be implemented on a City-wide basis.

LEAVES - Art. X (PBA Demand #113):

If the Department requires an employer who is on sick leave, which shall include off-duty illnesses and on-duty injuries, to remain in his residence or place of confinement at any time, the employee shall be compensated at the overtime rate for all such periods of confinement.

PBA's Position

The Union argues that there is no legitimate reason for effectively imprisoning a member in his own home when he is absent due to illness or injury, and that this practice

constitutes nothing more than a punitive measure. The PBA claims that other jurisdictions throughout the metropolitan area have eliminated this practice and so too should the City.

City's Position

The City submits that requiring police officers to request permission to leave his/her residence from the Police Department doctor ensures that convalescence will not be delayed. In any event, the City points out that the PBA is seeking a premium for sick leave when its members are already entitled to unlimited sick leave.

GRIEVANCE AND ARBITRATION PROCEDURE - Art. XXII
(City Demand #5):

Grievances must be initiated within sixty (60) days.

UNION ACTIVITY - Art. XVII (City Demand #14):

Reduce the number of Police Officers an released time for union activities by 50% and limit the length of released time for union activity to time actually spent on such activity.

PBA's Position

The PBA argues that both of these demands are counterproductive and should be denied. As for City Demand 5, the PBA submits that allowing 120 days in which to initiate grievances leaves sufficient time for informal resolution of disputes. Inasmuch as some disputes require the attention of higher levels of command before informal adjustment is possible, the process may take the

entire 120 days. Shortening that time to 60 days will necessarily reduce the opportunity for informal resolution and, thus, increase the number of formal grievances filed.

Similarly, the PEA contends, the city's demand to reduce the number of police officers on release time will adversely impact on the informal resolution of grievances, as well as on a host of other activities they perform that are beneficial to the Department. The PBA also points out that the number of police officers on release time for union activity in New York City (approximately one for every 1,000 members) does not compare favorably with the norm in other jurisdictions in the metropolitan area (one for every 4-500 members).

City's Position

The City states that a shortened time period for initiating a grievance is necessary for the orderly administration of the contract. The City submits that 60 days is a reasonable amount of time for the investigation of a grievance and provides for the efficient disposition of these matters.

The City claims that with the advent of dues checkoff and agency shop fees, 20 police officers on full-time release with pay for union business is no longer necessary and that the present complement should be reduced by 50%.

PREAMBLE - City Demand #6):

The collective bargaining agreement shall express all agreements and understandings between the parties and no other agreement, understanding or practice shall be of any force or effect unless referenced therein.

PBA's Position

The Union maintains that it would be impracticable to require that all agreements and understandings of the parties, including, inter alia, the rules and regulations, Patrol Guide, Administrative Guide, Operations orders, Directives, and Memoranda of the Police Department, as well as a number of procedures which are of long-standing past practice, be reduced to one writing. Moreover, the PBA contends, because the City has failed to articulate a reasonable basis for this demand, it should be denied.

City's Position

The City maintains that this demand is necessary for purposes of finality, stability and efficient labor management relations in that it would eliminate any uncertainty as to what was agreed upon between the parties.

GENERAL - Art. XVI (City Demand #18):

Members who use Police Department facilities to park their private vehicles shall be charged a fee.

PBA's Position

The PBA contends that this demand will further aggravate the heavy burden placed on police officers who are not residents of New York City. In this connection, the PBA points out that non-resident police officers must, as a condition of employment, pay a resident rather than a non-resident City tax, even though a number of other employees, including Housing and Transit police, do not pay this tax. To now require these officers to pay for parking, the Union complains, further penalizes them for choosing to serve the City and is tantamount to a rebate in salary.

City's Position

The City asserts that police officers who park their private vehicles within Police Department facilities are receiving a benefit that is not available to either other City employees or members of the public. Moreover, the City points out that unlike other City employees, police officers are able to use mass transit free of charge.

DISCUSSION

We have set forth the positions of the parties on each issue submitted to show that all matters have been considered. However, for the most part we will discuss only the issues on which we have made an award.

At the outset, this Panel notes the long-standing relationship among the salaries of police officers, firefighters, sanitation workers and correction officers in New York City. We are also aware that the PBA settlement will be looked to as the basis for settlements with each of the City's other uniformed forces in the 1990-1991 round of bargaining. However, the long existing relationships among the salaries of these groups cannot rigidly be made a basis for imposing upon the PBA a wage settlement which is contingent on exact replicability of benefits and/or costs among these other groups. Rather, our determination herein must be grounded on the statutory criteria set forth in the New York City Collective Bargaining Law and consistent with the testimony and evidence adduced at the hearing in this matter.

We are also keenly aware that the standard of the interest and welfare of the public requires us to pay the closest attention to the acute fiscal problems of the City and the related question of its ability to pay. Thus, for example, a settlement based solely on comparability of wage rates alone, whether based on major cities or the nearby counties of Nassau and Suffolk, cannot be controlling because of the City's inability to pay the costs required to match such wage rate comparability. We add that when the issue of total earnings including pensions is considered, New York City ranks very high either regionally or nationally. We note, however, that almost one-half of the City's pension cost is attributable to unfunded

pension liabilities. These past liabilities are not a true measure of pension benefits. When the City's figures are adjusted to reflect normal pension costs-(per Buck Consultants),⁶ the ranking of New York City police officers falls in comparison to other jurisdictions.

The PBA devoted considerable time and effort to show that the base salary of New York City police officers at five years, which is \$38,914, is substantially below the average of \$47,295 for 100 police jurisdictions in the New York City metropolitan area.⁷ Similar charts and testimony by the PBA have underscored the relative decline in salary ranking for New York City police officers during the decade.

The City has provided substantial data to show that the total compensation paid to New York City police officers ranks among the very highest paid to police officers in any major city. The City's numbers in a survey of the 20 largest cities showed that as of June 30, 1990, the total compensation paid to New York City police officers was the highest or second highest at four of the five surveyed levels of seniority and third highest at the remaining seniority level. As discussed above, this ranking falls when normal pension costs are taken into account.

Total compensation, as mentioned earlier, is equal to the sum of base salary, longevity payments, night shift differential,

⁶PBA Exhibit No. 29.

⁷PBA's Post-Hearing Brief, at 22.

holiday pay, uniform allowance and the employer's cost of pensions including social security, annuity funds and health and welfare benefits.

The City's chart showing total compensation follows:⁸

COMPENSATION OF NEW YORK CITY
POLICE OFFICERS AS OF JUNE 30, 1990

LEVEL	<u>ENTRY</u>	<u>5 YEARS</u>	<u>10 YEARS</u>	<u>15 YEARS</u>	<u>20 YEARS</u>
BASE SALARY	\$25,977	\$38,914	\$38,914	\$38,914	\$38,914
LONGEVITY PAYMENT	0	1,000	2,000	3,000	4,000
NIGHT SHIFT DIFFERENTIAL	2,116	2,116	2,116	2,116	2,116
<u>HOLIDAY PAY</u>	<u>1,095</u>	<u>1,682</u>	<u>1,724</u>	<u>1,766</u>	<u>1,809</u>
TOTAL EARNINGS	\$29,188	\$43,712	\$44,754	\$45,796	\$46,839
UNIFORM ALLOWANCE	1,000	1,000	1,000	1,000	1,000
HEALTH & WELFARE	3,112	3,112	3,112	3,112	3,112
PENSION, FICA & ANNUITY	<u>11,947</u>	<u>17,762</u>	<u>18,180</u>	<u>18,597</u>	<u>31,803</u>
TOTAL FRINGE BENEFITS	\$16,059	\$21,874	\$22,292	\$22,709	\$35,915
TOTAL COMPENSATION	\$45,247	\$65,587	\$67,046	\$68,505	\$82,753

We are mindful that the period of this particular contract of fifteen months will have expired by the time this decision is rendered. We have declined to issue an award for a longer period because it would, in effect, be establishing a new round for all of the City's unions were we to issue an award beyond September 30, 1991.

⁸City Exhibit No. 7.

In assessing the positions of the parties we also are aware of the different methodologies used by the PEA and the City in assessing the costs for the various items in issue. For example, the PBA uses a net present value based upon a twenty year period as contrasted to an eleven year period assumed by the City. For the reasons which we will set forth, we do not believe it material in this proceeding to make a determination which is the correct method. Both could be. Whether we use the City's costs and savings or the PBA's costs and savings, with one notable exception relating to the issue of rescheduling, the value of this award to the police officers will be the same. This result is evident from a comparison of the costs and savings set forth below at p. 59. However, because of the City's acute fiscal problems, we will not award the full value of the savings to the PBA because to do so would immensely complicate the City's fiscal problem of replicating the costs and benefits for other uniformed groups.

WAGES

With respect to wages, the PBA has asked for a wage increase of 30%; but then in its post hearing brief has more realistically indicated that it is willing to consider a wage increase of 4% for fiscal year 1991 plus a 1% increase compounded in fiscal year 1992 for a fifteen month contract. The PBA asserted in its post hearing brief that along with such wage increases its costing methods would also justify the following: 1) a longevity increase

of \$1,000; 2) an annuity fund increase of \$1 per day; 3) an additional holiday; 4) an increase in the health and welfare fund of \$100; 5) a \$100 increase in the civil legal representation fund; and 6) a \$100 increase in the uniform allowance.

The PBA has also suggested in its post hearing brief that the following items would also yield substantial savings: 1) the freezing of the starting salary for fiscal year 1992; 2) the elimination of night shift differential for new hires while at the academy and then pro-rata entitlements until reaching the First Grade; and 3) eliminating the contractual prohibition from the City's rescheduling up to ten additional tours per year per member. In this connection, the PBA acknowledged that it used the City's assumption of a 5.01% cost for this calculation. We shall analyze these costs for those various items and compare them with the City's proposal.

The PBA has asserted that the relative decline in salary has reduced the ability of New York City to recruit and retain the ablest police candidates. The City denies that there is any shortage of qualified police recruits. The record indicates a slight increase in the number of New York City officers seeking to transfer to Nassau and Suffolk counties; but the rate of attrition is not significant. otherwise, it is unlikely that either the City or the PBA would be willing to freeze starting salaries.

The Panel accepts the City's proposal for wage increases effective 7/1/90 of 3.5% on each step of the salary schedule and an additional 1% compounded effective 7/1/91 on each step of the salary schedule, with the exception of those officers hired subsequent to 6/30/91. This will yield a City cost of 4.54%. The PBA's value is 4.54%. The amounts awarded are similar to the civilian settlement. However, this award will be enhanced by other benefits.

THE WELFARE FUND

The City has proposed and the PEA agrees that the welfare fund should be increased \$100 effective 7/1/90, which is the same increase applicable to all City employees. It is valued by the City at .30%. The PBA's value is .19%.

ANNUITY

The Panel accepts the City's proposal, Exhibit 15 A, for a Dollar A Day Annuity effective 7/1/91. The City values the cost at .34%. The PBA's value is .26%.

LONGEVITY

The Panel awards an increase of \$1,000 on each of the longevity steps effective 7/1/91, which the Panel determines the City's cost to be 1.45%. This figure is consistent with (by extrapolation) the \$400 increase in longevity proposed by the City in its revised Exhibit 15 C, which was valued at .58%. The PBA's value for the \$400 is .37%.

LEGAL REPRESENTATION FUND

The Panel awards a \$25 increase in the Civil Legal Representation Fund effective 7/1/90. The Panel determines this cost at .04%. This figure is consistent with data provided by the City. The PBA's value is .028%

HOLIDAY

The Panel has decided not to award an additional holiday not because the holiday cannot be justified in comparison with that available to other City employees, but out of consideration of total costs.

UNIFORM ALLOWANCE

The Panel has concluded that a further increase in the uniform allowance is not justified.

The savings to be realized are summarized as follows:

WAGE FREEZE

For police officers hired after 6/30/91, the Panel adopts the City's offer B and C of Exhibit 15 which freezes the first five steps of the salary schedule. The City's savings are .77%. The PBA's figure is 1.26%. However, the First Grade salary would increase by 3.5% and 1% compounded.

NIGHT SHIFT DIFFERENTIAL

For officers hired after 6/30/91, no Night Shift Differential would be paid while in the Academy. Thereafter, per Exhibit 15 C, 55% of the Night Shift Differential would be paid

to a similarly situated incumbent until the officer reaches First Grade after five years. The City values the savings at .56%. These combined savings according to the City's figures would equal 1.33%. The PBA would value this combined savings at 2.47%; 1.26% for the freeze and 1.21% for the Night Shift Differential.

PENSION SAVINGS

The City asserts that the minimum savings from the change in the actuarial assumption of interest for the pension fund is equal to 1.06%. The PBA believes the actual value to be 1.39%.

RESCHEDULING OF TOURS

With respect to the value of the rescheduling, we realize that the parties are in serious dispute with the City asserting that its value is only .46% and the Union asserting that the City's original estimate was 5.01%. However, the Panel is convinced that the opportunity to reschedule on 24 hours notice without overtime is a very valuable benefit. It was so testified to by former Deputy Commissioner Murphy, who had also testified in the Sergeant's Impasse Panel hearings. While the number of Sergeants and Lieutenants rescheduled has been less than forecast, it must be remembered that many more officers would be rescheduled than their superiors. Therefore, we have concluded that something approaching 25% of rescheduling opportunities should yield at least 1.22%, the figure used in the Sergeant's case. When the savings from the rescheduling of tours, which we believe to be conservative, are added to the other savings, they

total 3.61%. Those savings when added to the offset for the budgeted 1.5% wage increases, which equals 3.02%, totals 6.63%.

ESTIMATED COSTS, SAVINGS AND FUNDS AVAILABLE

To summarize the parties' respective estimates as to costs, savings and funds available:

	<u>COSTS</u>	
	City	PBA
Wages (3.5% effective 7/1/90)	3.5	3.5
(1.0% effective 7/1/91)	<u>1.0</u>	<u>1.0</u>
	4.5%	4.5%
Welfare Fund (\$100 effective 7/1/90)	.30	.19
Annuity (\$1 effective 7/1/91)	.34	.26
Longevity (\$1000 effective 7/1/91)	1.45	.925
Legal Fund (\$25 effective 7/1/90)	<u>.04</u>	<u>.028</u>
	6.63%	5.90%
 <u>Savings and Funds Available</u> 		
Wage Freeze-New Hires (effective 7/1/91)	.77	1.26
No NSD at Academy and 55% thereafter until First Grade (effective 7/1/91)	.56	1.21
Pensions	1.06	1.39
Wage Funding Available in Budget	3.02	3.02
Rescheduling	<u>.46</u>	<u>5.00</u>
	5.87	11.88
Savings Minus Rescheduling	5.41	6.88
Panel's Evaluation of Rescheduling	<u>1.22</u>	<u>1.22</u>
	6.63%	8.10%
Excess of Savings	0.00%	2.20%

The City's productivity savings and funds otherwise available and earmarked for these negotiations, coupled with the Panel's evaluation of rescheduling, equals the City's estimate of costs of 6.63%. The PEA's estimated savings plus the earmarked funds available, coupled with the Panel's evaluation of rescheduling, exceeds the PBA's estimate of costs by 2.20%.

Again, the range of differences in valuations is largely attributable to two main factors; the net present value based on 11 years in the city model versus the 20 year model by the PBA and the great differences in head count with the City using current numbers and the PBA assuming 5,000 plus officers as the result of rehiring and the Safe Streets, Safe City program.

DUTY SCHEDULE

The City has demanded that duty schedules be changed to eight (8) hour fifteen (15) minute tours with 253 scheduled appearances per year. While the change would not increase the annual total hours of work (2,088), it would require 10 more appearances. The Panel has rejected the City's request because this award requires the PBA to yield substantial productivity concessions.

PAYROLL PRACTICES

The Union has demanded that a direct deposit option for member's pay checks be instituted. The Panel endorses this option as long overdue. It notes that retirees now have such benefits. No persuasive reasons have been submitted by the City in objection to the institution of the direct deposit option. We further note that considerable time is now wasted every two weeks in the cashing of member's payroll checks. Certainly this waste can be minimized when the direct deposit option is exercised.

GRIEVANCES

The City has requested that grievances must be initiated within 60 days rather than the 120 days now in effect. The Panel partially endorses the City's request. We believe that 90 days is adequate time to investigate grievances and to initiate them. The PBA has not submitted any persuasive reasons why this provision should not go into effect. The provision shall be effective prospectively from the time of this award.

DISCIPLINARY SYSTEM

The PBA has demanded that any disciplinary action taken by the department may be grieved by the member through the grievance procedure up to and including binding arbitration. The Board of Collective Bargaining on September 11, 1991 ruled that the PBA's demand is a mandatory subject of bargaining insofar as it seeks to negotiate a disciplinary procedure which provides for arbitrable review of the Police Commissioner's determination after the departmental trial provided under Section 14-115 of the New York City Administrative Code. The Panel endorses the Board's findings and concurs with the majority opinion in Decision No. B-42-91. Several paragraphs of the majority opinion seem particularly pertinent here. They read:

"We note that it is not clear whether the PBA's demand seeks to have grievance arbitration take the place of a departmental trial or whether it seeks arbitral review of the Police Commissioner's determination after a departmental trial has been held. If the PBA intends the former, a grievance arbitration procedure instead of a departmental trial, the Commissioner would be prevented from making any determination since his determination is, pursuant to statute, made upon the record of the departmental trial.

Inasmuch as §14-115 of the Administrative Code grants the Police Commissioner the right to make a determination of the charges against police officers, a disciplinary procedure containing such a grievance arbitration procedure would "modify or repeal" the local law. Thus, in accordance with the terms of §76(4) of the Civil Service Law, we find that a demand requesting such a disciplinary procedure would be a permissive, rather than mandatory, subject of bargaining.

If, on the other hand, the PBA intended the latter, arbitral review of the Police Commissioner's determination after the departmental trial, we find that Demand 22.a is a mandatory subject of bargaining. The Police commissioner would still be able to determine the guilt or innocence of the police officer, and the appropriate penalty, if any, as provided under §14-115 of the Administrative Code. Once such a determination was made, however, the police officer would be given the right to appeal the Commissioner's determination to the courts or, alternatively, to arbitration.

In finding this demand a mandatory subject of bargaining, we note that while the Administrative Code confers upon the Police Commissioner the right to discipline police officers, once the right is exercised it is subject to review. The laws cited and relied upon by the City in support of its position do not guarantee the Police Commissioner the final word on decisions concerning police officer discipline. To the contrary, they provide for judicial review under Article 78 of the CPLR. To provide alternative methods of review and require police officers to make an election will not, we find, "modify or repeal" any general, local or special law or charter provision within the meaning of §76(4) of the Civil Service Law."⁹

As the Board of Collective Bargaining pointed out, it is a well established policy of the New York City Collective Bargaining Law to promote and encourage arbitration as a selected means for the adjudication and resolution of grievances. The Board also noted that there is no prohibition against arbitration in the City Charter or the Administrative Code. We believe that arbitrable review of the Police Commissioner's determination will

⁹Decision No. B-42-91, at 37-39.

go a long way to alleviate the PBA's concerns for a fair and just disposition of grievances. we note that a common feature of police collective bargaining agreements nationally is the inclusion of disciplinary arbitration procedures.

However, because the City raised the objection to the bargainability of the issue before the Board of Collective Bargaining, the parties have not fully explored the issue. Without the benefit of full bargaining between the parties in response to this demand--now that its status has been made clear in Decision No. B-42-91--it would be premature for this Panel to determine the issue at this time. Accordingly, the panel returns this issue to the parties for full collective bargaining consideration, subject to the right of either party to return to the Panel. This will afford the parties an opportunity to bargain over a provision allowing for arbitrable review of the Police Commissioner's determination after the departmental trial provided under Section 14-115 of the New York City Administrative Code. If the matter remains unresolved after a reasonable period of time, the Panel will reconvene at the request of either party to consider this issue.

OTHER DEMANDS

The Panel, without detailing all of the reasons, has rejected all other demands of the City and the PEA largely because of their cost to the City, the City's fiscal condition and the other productivity concessions required of the PBA.

CONCLUSION

In reaching our conclusion, we have borne clearly in mind that it is "[t]he City's position that any increase in wages and benefits for the PEA must have the same not cost to the City as the civilian settlements and, as such, must be limited to the funds available from the budgeted labor reserve, i.e., 1.5% from fiscal year 1991 and 1.5% compounded from fiscal year 1992, and from savings nas resulting from reductions in the City's pension contributions as a result of an increase in the pension plan interest rate assumption, which in the case of PBA is 1.06%, for a total of 4.08%. Any additional wage and benefit increase would have to be funded from savings generated by the PBA."¹⁰ The City repeated its concern in this brief by stating that the City's position was then as it remains today, that "if the PEA wishes to obtain a contract with benefits in excess of available funding, such benefits must be funded by the PBA."¹¹ As Mayor Dinkins testified, "[w]e have offered a wage increase the same that was offered in negotiations with other unions... The PBA has the opportunity to fund a further increase, as other unions have had the opportunity to do so, in exchange for providing real savings to the City." This Panel is persuaded that such funding has been provided or will be provided by the PBA as a result of the adoption of the Panel's award.

¹⁰City's Pre-Hearing Brief, at 6-7.

¹¹Id., at 14.

Therefore, for all the reasons set forth above it is our

A W A R D

That,

1. For officers hired prior to 7/1/91 effective 7/1/90, a 3.5% increase on each step of the salary schedule.
2. For officers hired prior to 7/1/91 effective 7/1/91, a 1% compounded salary increase on each step of the salary schedule.
3. Effective 7/1/91, an increase of \$1 per day in the Annuity program.
4. Effective 7/1/90, an increase of \$100 to the Active and Retiree Welfare Funds.
5. Effective 7/1/91, a \$1,000 increase on each of the four current longevity increments.
6. Effective 7/1/90, a \$25 increase in the Civil Legal Representation Fund.
7. For officers hired after 6/30/91, the first five steps of the salary schedule shall be frozen.
8. For officers hired after 6/30/91, no Night Shift Differential shall be paid while they are in the Academy. Thereafter, 55% of the Night Shift Differential shall be paid until the officer reaches First Grade after five years.

9. Effective with this award, the City shall have the right to reschedule up to ten (10) additional tours of duty per officer per year upon 24 hours notice without payment of premium.
10. Effective with this award, grievances must be initiated within ninety (90) days.
11. The City shall institute a direct deposit option for officers within a reasonable period of time.
12. The parties shall be afforded an opportunity to bargain over a provision allowing for arbitrable review of the Police commissioner's determination after the departmental trial provided under Section 14-115 of the New York City Administrative Code. The Panel, however, shall retain jurisdiction over this issue. If the matter remains unresolved after a reasonable period of time, the Panel will reconvene at the request of either party.
13. The agreement shall be effective from July 1, 1990 through September 30, 1991.

DATED: November 15, 1991