

N.Y.C. OFFICE OF COLLECTIVE BARGAINING

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In the Matter of the Impasse,

between

POLICE BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK,

DOCKET #I-225-96

"P.B.A."

- and -

CITY OF NEW YORK,

"CITY"

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BEFORE THE IMPASSE PANEL:

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For the P.B.A.

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I. INTRODUCTION

On March 27, 1997, the New York City Office of Collective Bargaining ("OCB") designated us as a three-member Impasse Panel ("Panel") to hear and decide a dispute arising between the Police Benevolent Association of the City of New York ("PBA") and the City of New York ("City"). The dispute arises out of the inability of the PBA and the City come to accord on the terms of a collective bargaining agreement to succeed the one which expired on March 31, 1995.

We held a pre-hearing organizational conference with the parties on April 7, 1997. Pre-hearing briefs were submitted on May 23, 1997. Following that, we conducted six hearings: on June 3, 8, 12, 13, 15 and 18, 1997. All of the hearings were transcribed. (The transcript consists of 1439 pages.)

The parties were afforded a full opportunity to present evidence and testimony in support of their respective positions. To wit:

The PBA presented 18 witnesses: Lewis Fudin, Pres. of the Association of the City of New York; Louis Mawavo, Pres. of the PBA; Police Officers Bruce A. Robertson, Scott Williamson and Joseph Bonavenrura, Robert Abrams, Esq., former Attorney General of New York State, Charles J. Hynes, District Attorney of Kings County; William L. Murphy, District Attorney of Richmond County, Prof. Lawrence Sherman, a Consultant; former Deputy Commissioner Jack Maple; Jack Bigel, Pres. of Program Planners, Inc., Richard A. Brown, District Attorney of Queens County, Prof. Mitchell Moss of New York University; George Roniger and Allen B. Brawer of Program Planners, Inc., Jonathan Schwartz, an actuary; James Savage, First V.P. of the P.B.A.:

former First Deputy Chief John Timoney; and Daniel Sencocoff, Sr. Manager of Deloitte & Touche.

The City presented 10 witnesses: Randy Mastro, Deputy Mayor; James F. Hanley, Commissioner, Office of Labor Relations; Patrick Kelleher, First Deputy Commissioner; Michael Farrell, Deputy Commissioner of Policy & Planning; Caroline Sullivan, Deputy Commissioner, Office of Labor Relations; Joseph Lhota, Director of Management and Budget; Eva Jacobs, a Consultant; David Flagg, of KPMG Pcat Marwick; Stuart Mein First Deputy Director, Office of Management and Budget, and Louis R. Anemone, Chief of Department.

The PBA introduced 82 exhibits. The City introduced 95 exhibits. The parties filed post-hearing briefs on July 15, 1997. Upon their receipt, the hearings were closed.

II. BACKGROUND

In order to place this impasse in proper perspective, it is useful to review some historical facts.

A. Impasse Panels

In 1975, an impasse arose between the City and the PEA. It centered upon the PBA's effort to achieve a salary level which would have broken the existing salary relationship between it and other uniformed forces in the City.¹

¹The City had reached accord with the Firefighters and Sanitation Workers for an eight percent raise in the 1974-75 fiscal year, and a seven percent raise in the 1975-76 fiscal year. The PBA sought a higher raise for the 1975-76 fiscal year.

The Impasse Panel rejected the PBA's attempt. In doing so, it relied heavily upon the City's history of pattern bargaining. It wrote:

...New York City employees exist in a complicated web of relationships... The tapestry of employment relationships has been created over the course of many years. Its pattern is the result of an interplay of unilateral decisions, political concessions and more recently bargaining agreements. The relationships among the many labor organizations are also reflected in this ancient and threadbare heirloom.

The number and variety of Job classifications and bargaining units in New York City creates a danger that an upwards adjustment in any one relationship will have unpredictable consequences among satellite and related job categories. This is not to say that preexisting structures are immutable. We mean only to assert that the public's interest in peaceful and orderly municipal employment relations argues against making changes in any one salary without proof of some marked changes in previous conditions. This proposition is in no sense influenced by the presence or absence of "me-too" clauses in recently concluded collective bargaining agreements, the realities of labor relations are little modified

by explicit contractual recognition that benefits won by one union are likely to shape the demands of others. (See City Exhibit A, pp. 14-15.)

Over the years since then, a number of other Impasse Panel decisions have been issued. At least 11 deal with impasses arising between the City and unions representing various uniformed groups. Not a single one of the Impasse Panels elected to allow the "pattern" which had been established in that "round" of negotiations to be broken. Nor have Impasse Panels created to resolve salary disputes between the City and non-uniformed employees elected to break "pattern." Each has affirmed the importance of "pattern" bargaining.

B. The 1978-80 Round

In the 1978-80 "round" of negotiations, a coalition of D.C. 37, the U.F.T., Local 237, I.B.T. and the U.S.A. negotiated a settlement first. The uniformed unions (the P.B.A., the T.P.B.A. and the U.F.A.) eventually negotiated the same settlement.

C. The 1980-82 Round

In the 1980-82 round, two coalition groups emerged: one of civilian unions, and one of uniformed unions. The civilian coalition negotiated two eight percent raises. The uniformed unions (including the PBA) succeeded in modifying that figure. Then negotiated raised of nine percent and eight percent. The latter was then adopted by all

uniformed groups. While this reflects a break in the pattern concept, the break was along uniformed/civilian lines. The civilian unions all received their pattern. The uniformed unions all received their pattern.

D. The 1982-84 Round

In the 1982-84 round three coalitions were formed: one for civilian municipal unions, one for uniformed forces; and one for uniformed superior officers. The Uniformed Forces Coalition established the pattern (eight percent, eight percent) for the Uniformed Superior Officers Coalition. The Municipal Coalition secured raises of eight percent and seven percent.

E. The 1984-87 Round

In the 1984-87 round of negotiations, the first union to settle with the City was D.C. 37. It gained three un-compounded wage increases.² The Uniformed Coalition (consisting of the PBA, the UFA, the HPBA and the UFOA) several months later also secured three un-compounded wage increases, and certain other gains (e.g., an increase in uniform allowance). All other uniformed unions not part of that coalition received no more than the Uniformed Coalition pattern. In 1985, the U.F.T. and the Board of

²An Impasse Panel granted Housing Authority employees in certain titles represented by Local 237, IBT two six percent wage increases on January 1, 1985 and January 1, 1986. It established a reopener for 1987. When the parties were unable to reach accord on the level of reopener, an Impasse Panel was formed. It issued an Award which returned employees to the pattern originally set by the D.C. 37 and adopted by other civilian unions.

Education/City were unable to negotiate a settlement. They agreed to a last offer binding arbitration ("LOBA"). The City/Board position - the civilian pattern - was accepted by the Panel.

F. The 1987-90 Round

The 1987-90 round of bargaining began with Local 237, I.B.T. and the City reaching an agreement. D.C. 37, the U.F.T. and a number of other civilian unions also settled. All civilian union settlements (with one exception) followed the same basic pattern set by the Local 237 accord.

The City reached an accord with the PBA in May 1988. The terms of the accord included three wage increases, increases in longevity pay, uniform allowance and payment to the Legal Representation Fund. The cost exceeded the City labor reserve, i.e., the amount budgeted. To "fund" the deal, the PBA agreed to certain concessions. These mainly affected employees to be hired after June 30, 1988 (the "unborn"). But the PBA also traded in its Variable Supplement. Fund ("VSF") for a guaranteed defined benefit. In doing so, it returned 15 percent of the Fund's corpus to the City. (The VSF provided a supplemental retirement benefit to uniformed retirees, funded by transfer of assets from the Police Pension Fund to the PSA and VSF.)

Thereafter, the T.P.B.A. and the H.P.B.A. accepted agreements that provided the same benefits to their members at the same cost to the City.

They were unable to "trade in" their respective VSFs, and so granted various other cost-saving concessions. In November 1988, the City signed a three-year agreement with the U.S.A. It conformed to the PBA pattern. The USA generated savings through concessions in order to secure the pattern. The UFA refused to accept the pattern. It went to impasse. The Impasse Panel concluded the UFA must adhere to a figure equal to the PBA pattern-setting accord. The Impasse Panel effectively affirmed the City's position. That is, "parity" meant parity of costs, not level of benefits. It stated:

Since the pattern for the uniformed forces unions has been set by the PBA settlement, we believe that the costs that should be considered are necessarily limited. (City Exhibit 13, p-66)

The Panel accepted the promise that parity "is essential to maintain sound labor relations with the uniformed forces in New York City." (Id, at p.67) It refused to disturb that relationship. And, it accepted the City's method of costing.³

The Panel offered the UFA a choice of two optional packages. Both recognized the need to fund parts of the package to conform to the pattern

³The Panel noted that all of the tentative agreements negotiated prior to the impasse had accepted the City's costing methodology. Also, "to ignore the variations in cost to the City of providing similar benefits to different bargaining units would be to reject the costing methodology adopted by the civilian unions [in the 1994-87 and 1987-90 rounds of bargaining]." Finally, it knew of "no better method" of costing. (Id, at p.72)

set by the PBA. Following the Panel's award, the UFOA agreed to a settlement with the same net cost as the PBA-UFA pattern. Other superior officer unions - the Detectives Endowment Association, the Sergeants' Benevolent Association and the Captains' Endowment Association - all went to impasse. In each case, the Impasse Panels awarded the basic pattern. Thereafter, the Transit and Housing Superior Officer unions reached agreement with the City on the pattern set for the Police, Sergeants, Detectives and Captains.

G. The 1990-91 Round

At the start of the 1990-91 round of bargaining, the City/Board of Education settled on a one-year agreement. Soon thereafter, the City reached agreement with nearly every other civilian union (including D.C. 37, Local 237, I.B.T. and the C.W.A.). Each accepted a 15-month contract which was limited to funds available (i.e., the City's "labor reserve") and savings generated from changes in pension interest rate assumptions.

The PBA declined to accept a pattern-conforming settlement. It went to impasse. The Impasse Panel awarded the same net cost basic pattern established by the civilian unions. The PBA was permitted to "fund" increases above the pattern, as other unions were allowed to do.

The UFA also realized impasse. An Impasse Panel was appointed. It issued an award which was consistent with the pattern established by the

PBA Impasse Panel award. (Set: City Exhibit H.)

Thereafter, the City reached agreements with the unsettled civilian unions. Those settlements conformed to the basic pattern established earlier. The funding for those settlements - as well as contracts later reached with various uniformed unions - was also limited to funds available from the City's labor reserve, plus savings generated from changes in pension interest rate assumptions.

H. The 1992-95 Round

In this round, the first settlement was reached by a coalition of civilian unions consisting of DC 37, AFSCME, Local 237, I.B.T., and 13 other unions. (The unions represented over 200,000 civilian employees.) The settlement was known as the Municipal Coalition Agreement ("MCA"). Its overall cost to the City was 8.25 percent, spread over a term of 39 months. A significant element was no wage increase for the first 18 months of the 39 months. Following that, wage increases of two percent, two percent, and three percent were to occur. In addition, a one-time payment of \$700 was granted to all employees. The Welfare Fund received a lump sum payment of \$125, followed by two \$100 rate increases. The wage increases were not applicable to employees in the rust year of service for those hired after the

An impasse was reached shortly thereafter between the UFT⁴ and the City/Board of Education. The City/Board offer consisted of the MCA pattern, with one exception: entry level salaries were not frozen. (At the time, a serious recruitment problem existed.) The N.Y. State Public Employment Relations Board ("PERB") appointed a fact-finding panel. It issued its recommendation on April 23, 1993. The Panel recommended terms consistent with the MCA pattern. In doing so, the Panel stated the MCA pattern loomed "large as to the controlling benchmark" in its deliberations. It added:

... it is important for the City's overall labor relations stability that [the MCA pattern] serve as a benchmark for other settling bargaining units... To recommend a settlement which ignores that threshold settlement, or which is demonstrably different from [it], threatens the stability which emanates from the Coalition or any other initial settlers achieving settlement in the knowledge

⁴The Licensed Practical Nurses employed by the City's Health and Hospitals Corporation refused to agree to a pattern based agreement. An Impasse Panel was formed. It refused to extend special treatment to the LPNs. It held that the Union (Local 721. S.E.W.) "has not presented a persuasive case that there exists compelling and convincing reasons for it to receive a wage settlement in excess of the other 316,000 city employees." (City Exhibit C, p.26)

that they will not be "upstaged" or undercut by a later, larger settlement. In the absence of such assurance of relatively comparable settlements within a round, it would be risky or self-defeating for any single Union or coalition to volunteer to settle first.

The Panel's recommendation was, under the Taylor Law, non-binding. Thus, the parties continued to negotiate. In the late summer of 1993, they agreed to a 48-1/2 month contract which conformed to the MCA package.⁵ (The extra nine and one-half months were costed by extrapolation of the 39-month pattern.)

The first of the uniformed unions to settle was the UFOA. It covered both the 1990-91 and 1992-95 rounds. In all key respects, it conformed to the MCA pattern - including the 18-month wage freeze at the corresponding period of time. The total cost of the UFOA package was consistent with the cost to the City of the 1990-91 round (3.87 percent) and the 1992-95 round (8.25 percent).

Thereafter, each of the other uniformed unions reached accords which were pattern based. Each reflected a 39 month term, an 18-month wage freeze and a net total cost to the City of 8.25 percent.

⁵Per the Panel's recommendation, the entry-level salary of teachers was not frozen. But the entry-level salary of non-teachers was.

I. The 1995-2000 Round

The First major settlement In the current round of negotiations was reached between the City and a coalition of 17 civilian unions representing nearly 150,000 employees on November 18, 1995. It reflects a 60-months term (April 1, 1995 through March 31, 2000). It contains a 24-month wage freeze. It contains a three percent increase effective April 1, 1997, a three percent increase on July 1, 1998 and a four and three-quarter percent increase un June 1, 1999. It includes two \$75 per year increase to the Welfare Fund (in the 36th dad 51st month), and the establishment of a lump sum annuity cash payment of \$2.00 per day during the 15th through the 26th month, payable in the 51st month. The net total cost to the City is 13.29 percent.

Shortly before the Municipal Coalition's Agreement was reached, the City and UFT reached a tentative settlement on a 59-month agreement. It was based on a net total cost to the City/Board of 13.07 percent.⁶ The membership of the UFT rejected the tentative settlement. The parties continued to negotiate. They reached an agreement, which was ratified, reflecting the basic Municipal Coalition pattern. It too contained a 24-month wage freeze. It reflected a net total cost of 13.29 percent. It had a 61-month term (October 16, 1995 to November 15, 2000). The extra term (two months longer than the initial UFT settlement, and one month longer than the Municipal Coalition) generated a "credit" which permitted extra benefits to

⁶Each additional month of an agreement is valued at a cost of 0.22 percent.

be purchased at the same net cost to the City.

In April 1997, a tentative settlement was reached between the City and the UFA. (It was the first uniformed union to come to terms.) It covered a term of 65 months: January 1, 1995 to May 31, 2000. It contained the 24-month wage freeze. It conformed to the same schedule (i.e., first day of the 25th, 40th and 51st month) of raises. It provided for raises on those dates of three percent, three percent and six percent. While the level of raises for the UFA is higher than for the Municipal Coalition, the total net cost to the City is still 13.29 percent. The increases were made available through credits generated (or "funded") by the five-month extension (five times 0.22 percent, or 1.1 percent), an increase in the pension interest rate assumption (from eight and one-half percent to eight and three-quarter percent) used for the Firefighters Pension Fund (generating 1.26 percent of savings) and a prescription drug credit.

J. The Current Dispute

The PBA's contract with the City expired on March 31, 1995.

The parties did not hold their first bargaining session until December 20, 1996.

At the December 20th meeting, the City proposed alternative economic packages to the PBA, both consistent with the Municipal Coalition pattern. A third and fourth option - also pattern based - were proposed on

January 7 and 15, 1997. The PBA Executive Board rejected the City's proposals on January 21, 1997.

The City then asked the Board of Collective Bargaining ("BCB") to declare an impasse. The PBA also filed such a request. On January 30, 1997, an impasse was formally declared by the BCB.

Bargaining between the parties resumed on March 11, 1997. Other sessions were held on March 19 and 31, on April 7, 10, 21, 24, and 30, and on May 12 and 19, 1997. The parties were unable to resolve their differences.

The Lieutenant's Benevolent Association ("LBA") reached a tentative settlement with the City on May 29, 1997. It, too, conformed to the basic pattern set by the Municipal Coalition.⁷ Hearings in this impasse proceeding began on June 3, 1997. On June 5, 1997, the UFA membership ratified the pattern-conforming accord reached on April 7, 1997.

III. THE PARTIES' PROPOSAL

A. The PBA Proposals

On June 18, 1997, the PBA presented a "revised demand." (It supplanted and modified a proposal submitted on June 15, 1997.)

It contained these elements:

⁷On July 3, 1997, the membership of LBA rejected the tentative settlement.

1. Term

A term of 64 months, running from April 1, 1995 through July 31, 2000.

2. General Wage Increases

Effective April 1, 1997	3.0 percent
Effective July 1, 1998:	3.0 percent
Effective July 1, 1999:	6.0 percent

(These take effect on the first day of the 25th, 40th, and 52nd months of the contract.) Each of the increases is to be compounded.

3. Welfare Fund Contributions

It seeks increases in the City's annual Welfare Fund contributions (for both active and retired employees), as follows:

Effective July 1, 1997:	\$125
Effective March 1, 1998:	\$75
Effective June 1, 1999	\$75
Effective July 1, 1999:	\$75

4. Longevity

It seeks increases in longevity payments as follows:

Effective July 1, 1997:	\$329 ⁸
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⁸The \$329 increase would be lowered to \$233 if we conclude the proper value for the increase of pension interest rate assumption (from 8.5 percent to 8.75 percent) is 1.54 percent, or to \$126, if we conclude the proper value is 1.32 percent. The City, as will be discussed below, values the increase at 1.15 percent.

Effective April 1, 2000: \$574

(Currently, employees with five years of service receive \$2,000 in longevity pay; those with 10 years of service receive \$3,000; those with 15 years of service receive \$4,000; and those with 20 years of service receive \$5,000.)

5. Step Increases

Effective June 1, 1999, it seeks an increase effective June 1, 1999 of \$1,266 for Police Officers at Steps 4C and 5C of the Salary Schedule.

6. Annuity

It seeks "lump sum" payments of \$123 on July 1, 1997, of \$263 on July 1, 1998 and \$1,431 on July 1, 1999. In addition, it seeks an increase in the contribution rate of \$387 each year starting on July 1, 1997.

7. MCMEA Payment

It seeks the same payment of 0.02 percent reflected in the Municipal Coalition Memorandum of Economic Agreement.

The PBA contends the net cost of its "core contract" proposal will adhere to the pattern: 13.29 percent: a gross cost of 15.87 percent reflecting credits of 1.7 percent (for the change in pension interest rate assumption) and 0.88 percent (for the four-month extension of the term of the contract).

In addition, the PBA seeks two "Productivity Payments" for all Police and staff between April 1, 1995 and April 1, 1996. The proposed payments

are \$1,375 payable on June 30, 1997, and \$1.375 payable on July 1, 1997. Police Officers hired between April 1, 1996 and April 1, 1997 would receive 50 percent of those figures. These Police Officers separated from the N.Y.P.D. between April 1, 1995 and June 30, 1997 would receive prorated amounts.

The PBA has one "non-economic" proposal. (All others were withdrawn). It provides that if a police officer gives up his/her meal break, the lost time - on a time for time basis - should be restored, subject to Departmental scheduling restraints, and exigencies of the service (TR 1219).

B. The City's Proposals

The City contends that any resolution of this dispute must conform to the basic pattern agreed to by all other unions which have settled to date in this round of negotiations. It submitted four proposals - which it designated "options." The first three were submitted on June 13, 1997. The fourth was submitted on June 18, 1997. The options, it insists, are not interchangeable. Each stands on its own.

Each of the options conforms to the pattern. Each has several elements in common. Each proposes a contract term of 62 months, from April 1, 1995 through May 31, 2000. Each proposes a wage freeze for the first 24 months of the 62 months (the "two zeros"). Each proposes general wage increases of 3.0 percent on April 1, 1997 (the start of the 25th month),

of 3.0 percent on July 1, 1997 (the start of the 40th month) and of 6.0 percent on June 1, 1999 (the start of the 51st month). Each proposes Welfare Fund rate increases.⁹ Each proposes increases (to be excluded from calculation of night shift differential) in Longevity Pay.¹⁰ Each calls for 0.02 percent to purchase additional benefits.¹¹ Each allows for a credit of 1.15 percent.¹² Each allows for a credit of 0.44 percent for extension of the term

⁹Options, One and Two call for rate increases of \$200 per year effective July 1, 1997, an additional \$75 per year effective March 1, 1998, and an additional \$75 per year effective June 1, 1999. Option Three calls for a \$200 per year rate increase on July 1, 1997, and an additional \$75 per year increase on June 1, 1999. Option Four calls for a \$128 per year rate increase effective June 1, 1999, and an additional \$147 per year increase on April 1, 2000.

¹⁰Option One calls for a \$265 increase on all steps effective July 1, 1997, followed by an additional \$215 increase on all steps effective April 1, 2000 - for a total of \$480 in all by that date. Option Two calls for a \$265 increase on all steps effective July 1, 1997, followed by additional increases of \$470 and \$215 on October 1, 1997 and April 1, 2000 - for a total of \$950 by the latter date. Option Three calls for a \$265 increase on all steps effective July 1, 1997, followed by additional increases of \$265 and \$215 on March 1, 1998 and April 1, 2000 for a total of \$745 by the latter date. Option Four calls for a \$690 increase on all steps effective July 1, 1997, followed by additional increases of \$140 and \$125 on March 1, 1998 and July 1, 1999 - for a total of \$955 by the latter date.

¹¹This is comparable to the Municipal Coalition's Economic Agreement which advanced the savings generated by a one-month term extension (0.22 percent) from the 60th month to the 51st month to purchase additional benefits.

¹²This reflects the City's calculation of the value of increasing the pension plan's interest rate assumption to 8.25 percent (from 8.5 percent), provided legislation to allow that is achieved.

two months beyond 60 months.¹³ Finally, each reflects a net cost to the City calculated to be 13.29 percent.

Only two of the City's proposals reflect "givebacks." Option Two seeks 10 additional scheduled appearances per year during the first five years of service for Police Officers hired on or after October 1, 1997. Option Three seeks to eliminate night shift differential for the first two years of service for those hired on or after September 1, 1997.

The City also presented one non-economic proposal.¹⁴ It seeks to reduce the number of hours (from 48) to four for a Police Officer to obtain counsel if he/she is a "witness to any matter that is being investigated or is the subject of an internal investigation that concerns a non-criminal matter (e.g., an investigation of an alleged violation of a Department policy or procedure)."

IV. POSITIONS OF THE PARTIES

A. The PBA's Arguments

The PBA raises six principal arguments.

First, Police Officers should be awarded a productivity payment

¹³Options One and Four have a 14.88 percent gross cost. Option Two has a 15.66 percent gross cost. Option Three has a 15.09 percent gross cost.

¹⁴A second such proposal dealing with continued welfare coverage of domestic partners has been accepted by the PBA. JR 939) All other non-economic proposals were withdrawn by the City (Id.)

predicated upon their increased effort, efficiency and effectiveness, coupled with the significant savings they have provided and continue to provide to the City. Police Officer% are no longer simply "reactive." They are proactive." They are working harder. They are working smarter. They are largely responsible for the sharp decline in the City's crime statistics.

The record, it adds, fully supports a finding that Police Officers are more "productive" by any definition of the word. They are entitled to be rewarded for that productivity. For their efforts have made New York City a safer city leading to huge revenue gains for the City from economic development and tourism. That does not include the substantial savings in overtime costs resulting from new work procedures (e.g., LAP).

There is, the PBA notes, precedent for productivity increases. It points to payments made to sanitation workers, without dire consequences, for their increased collection activities.

The PBA, in short, argues the \$2,750 productivity bonus LE seeks (payable in two separate fiscal years to minimize budget impact) is well deserved. Because it is so difficult to place a precise value on productivity relating to improved service levels, the PBA utilized an "independent but appropriate basis" for calculating the amount of the bonus payment, i.e., the amount by which a Police Officer's salary has fallen behind inflation since April 1, 1995.

Second, the PSA asserts the City's "pattern" (which it accepts) is not

a bar to awarding the PBA's economic proposal, including the proposed productivity bonus. The PBA stresses that its proposal calls for a net cost of 13.29 percent. It reaches that figure by incorporating three revenue sources: one, an "appropriate" credit for a change in the pension plan interest rate assumption; two, adding two additional months to the contract term, - and three, generating savings by deferring a wage increase one month into the next fiscal year. It argues its proposal, with these items, does not jeopardize the pattern. Nor, the PBA stresses, does its basic wage proposal disrupt parity between top-step Police Officers and Firefighters. Areas in which it seeks other changes - in bonus, longevity and annuity payments - do not affect parity.

Third, the PBA maintains the City has the ability to pay for its proposals, but is simply unwilling to do so. It has a budget surplus in excess of \$1 billion. There is, the PBA submits, a vast difference between an inability to pay and an unwillingness to pay. The City's labor reserve already includes funds for a 13.29 percent pattern settlement. The City has the means available to pay the \$2.750 productivity bonus. The City's repeated references to "out-year" budgetary gaps are unreliable. It is forever forecasting doom. Yet, in the past 17 years the City has ended each budget year with a surplus.

In short, the PBA claims the City's finances are healthy. It can easily afford the PBA's proposals.

Fourth, the PBA contends that, notwithstanding the pattern, payments to police in communities comprising the metropolitan area provide the appropriate basis of comparison to the compensation of its members. It insists there is no question but that New York City police officers are paid much less than their colleagues in other communities surrounding the City. Those surrounding communities, it argues, form the appropriate comparison base. The City's reliance upon distant large cities as a comparison base is inappropriate.

The PBA, in particular, points to Nassau and Suffolk Counties. Entry-level salaries are higher there, as are maximum salaries. Compounding such disparity is the fact Nassau and Suffolk County police officers work up to 10 percent fewer hours per year. Further compounding the disparity is the higher workload and stress in New York City.

The PBA dismisses the City's claim that other New York City municipal employees form an appropriate comparison base as "myopic." It concedes other large cities may have demographic and other similarities to New York City. But, it stresses, those cities do not represent relevant labor markets for the PBA's members. Nor would such a comparison take into account inter-regional differences in living costs.

Fifth, the PBA regards each of the City's four proposed options as unacceptable. For they either impose unnecessary givebacks or fail to recognize the availability of funding sources which would afford a reasonable

compensation package for PBA members.

No other Union in this round of negotiations had been forced to grant givebacks. The PBA should not be singled out. There is no support for doing so under the City's "pattern" approach.

The City, the PBA notes, allocates a "credit" of 1.15 percent for the pension fund interest rate assumption. That figure allegedly is artificially calculated and is much too low. Moreover, the City's proposals call for a term of 62 months. Yet, additional "credits" would be available if terms of 64 or 65 months are used. In addition, delays in certain payments to a subsequent fiscal year also generate savings which could be used to enhance the proposals. None of the City's proposals provide productivity payments to police officers despite the tangible economic gains to the City which resulted from their efforts. Finally, the PBA suggests, none of its funding methods "offend" the City's action of pattern bargaining.

Sixth, the P13A asks that its lone non-economic proposal be awarded and that of the City be rejected.

In sum, the PBA believes its "core contract" demands, as well as its productivity proposal, should be awarded by the Panel.

B. The City Arguments

The City raises seven principal arguments.

First, it insists our award must be consistent with the total net cost of

the civilian and uniformed settlements that constitute the pattern for this round of negotiations. It argues the record clearly establishes pattern bargaining has been the cornerstone of stable labor relations in the City's relationship with the various unions which represent its 330,000 employees. Parity and consistent costing methodology are essential elements of pattern bargaining. Deviations from an established pattern occurred only when unique and compelling recruitment or retention problems existed. No such problem exists, in the N.Y.P.D. today.

This Panel, it asserts, should do what other Impasse Panels have routinely and explicitly done: reject efforts to exceed an existing pattern.

In this round of negotiations, the pattern is clearly set. The PBA has in the past been greatly advantaged by then existing patterns. It should not object to one being imposed here. There certainly is no justification for departing from the existing pattern.

Second, the City contends its comparability analysis demonstrates N.Y.C. police officer' compensation is fair and adequate. The PBA's comparability arguments, on the other hand, fail to establish a compelling reason to justify a departure from this round of negotiations' pattern given the fact there is neither a recruitment, nor a retention problem in the N.Y.P.D.

Other City employees provide the most appropriate compensation comparison. This is all the more true since Police Officers already enjoy numerous benefits other City employees do not. In any event, the PBA's

"metropolitan area" comparison is inappropriate. N.Y.C. Police Officers should most appropriately be compared to those in other large cities. On the basis either of total compensation or total compensation per hour, N.Y.C. Police Officers rank no lower than second at the fifth, tenth, fifteenth and twentieth year of service among 20 of the country's largest cities.

Third, the City argues the interest and welfare of the public mandate an award which conforms with this round of bargaining's pattern and does not exceed budgeted funds.

The City stated it has made "meaningful progress" towards fiscal balance since 1994. But much remains to be done. Future budgetary gaps are predicted. They will be closed, but only through more difficult and more limited choices than those made in the past. The Fiscal Year 1997 budget "surplus" cannot be viewed in isolation. It is an anomaly resulting from highly volatile Wall Street profits. In any event, there is in actuality no "surplus" available. It has been allocated to prepay \$856 million of debt for Fiscal Year '98 and \$300 million of debt in Fiscal Year '99. The City Urges us to take the long view of its finances. not a short-sighted view.

The City notes that any award which breaches the current pattern will have a spillover effect upon other municipal unions. The result would be demands for reciprocity. it would, moreover, make it impossible for any union to agree to settle first in the future.

Fourth, the City maintains increases in the Consumer Price Index

(CPI") do not justify a wage increase greater than the City's offer. Police officers have received rises which exceed rises in the CPI for the New York, Northeastern Area.

Fifth, the PBA's request for a "credit" in excess of 1.15 percent for the pension plan interest rate assumption change should be rejected. The only statistically reliable figure is 1.15 percent. The PBA has presented no evidence of any probative value that any other figure - i.e., 1.39 percent, 1.5 percent, 1.57 percent, or 1.70 percent (all introduced as reliable at different times) - is realistic and actually sound.

Sixth, the City dismisses the PBA's "productivity payment" proposal out of hand, it views it as an attempt to avoid the 24 month wage freeze element of the pattern. If accepted, it would set a dangerous and destabilizing precedent.

Moreover, the City adds, the proposal has "nothing whatsoever to do with productivity." It is nothing more than an ill-disguised cost-of-living proposal.

Seventh, it asserts its proposals are fair, equitable and flexibly tailored to the legitimate needs of the PBA. The PBA's presentation and analysis of its proposals, on the other hand, are "so seriously flawed as to be disingenuous." (Id at p. 132)

As to the non-economic proposals, the City asks that they be awarded and the PBA's be denied.

For all of these reasons, the City asks us to issue an award adopting one of its four options.

V. THE NEW YORK CITY COLLECTIVE BARGAINING LAW

Section 12-311 C(3)(a) of the New York City Collective Bargaining Law requires us to "render a written report containing findings of fact, conclusions, and recommendations for terms of settlement" of this impasse.

Subsection C(3)(b) requires us, "wherever relevant" to consider the following standards in making our recommendations for settlement:

- (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wage, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work in New York City or comparable communities;
- (ii) 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;
- (iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;
- (iv) the interest and welfare of the public;
- (v) 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 proceedings.

VI. DISCUSSION

Our responsibility now is to weigh the record and to make a recommendation for a settlement of this dispute consistent with our obligation under the statute.

A. Basic Findings of Fact

1. The record establishes beyond any doubt that the history of collective bargaining between the City and its various unions, uniformed and civilian, has been dominated by the concept of pattern bargaining. As one Impasse Panel earlier wrote:

... The history of public sector collective bargaining in New York City clearly indicates a recognition by the City, the unions, and labor neutrals, of both the logic and necessity of pattern bargaining. It is essential to the public interest that the normal and customary consideration of pattern bargaining be the general rule applied to New York City collective bargaining.

Pattern bargaining well may have its short-comings. However, such bargaining is an approach to collective bargaining which has worked for over

two decades. Both parties have accepted the pattern, which is a sane and orderly approach to the problems inherent in dealing with multiple unions and a single employer. It has brought stability to labor relations in New York City. And it has been affirmed repeatedly by every Impasse Panel which has considered the matter. Moreover, dozens of voluntary settlements have been based upon the knowledge that pattern bargaining is a fact of life.

2. In the current (1995-2000) round of negotiations between the City and those unions which to date have reached settlement, a basic pattern has, been established. That pattern includes these four key elements:

- (a) a basic term of 60 months;
- (b) a wage freeze for the first 24 of 60 months;
- (c) wage increases on the first day of the 25th, 40th, and 51st months; and
- (d) a total net cost to the City of 13.29 percent.

3. A relationship between the salaries of Police Officers, and Firefighters at the basic maximum step has existed since January 1898. Salaries of the two units have been the same at that level. At no time in the past 99 years has it differed. This relationship is referred to as "parity." Parity, no less than pattern bargaining, has been a critical factor in the relationship between the City's two major uniformed forces. In fact, it has served as the benchmark for other uniformed groups as well. (i.e., Sanitation Workers and Correction Officers).

B. Conclusions

1. We conclude that our award must be completely consistent with the pattern established in the 1995-2000 round of negotiations. Stability in City labor relations requires that the PEA receive an award which does not deviate from that pattern. Any other result would destroy the "complicated web of relationships" which has characterized public sector collective bargaining in New York City. It would create chaos. Whipsawing efforts by every municipal union undoubtedly would follow. This would severely damage the City's financial stability. Significantly, a deviation from pattern would serve to discourage any union in the future from being the first to settle on terms with the City. Therefore, the interest and welfare of the public would be adversely affected by any other result.

The PBA is fully aware of the City's historical approach to dealing with its numerous unions. It necessarily understands the role pattern bargaining has played in shaping settlements in other rounds of negotiations. Its last economic proposal on the "core contract" embraced the importance of conforming to the pattern set earlier in this round of bargaining by the Municipal Coalition, the UFT and the UFA.

The PBA's proposal accepted the principle that there be no salary increase for the first 24 months of the new contract. The PBA

accepted the principle that there be general salary increases of three percent and three percent at the s= of the 25th and 40th month. The PBA accepted the principle of a third salary increase of six percent. (Its proposal delayed that increase to July 1, 1999, whereas the City's offer was effective June 1, 1999,) Most significantly, the PBA calculated the net cost of its "core contract" proposal to be 13.29 percent - the exact figure the City insists is the pattern agreed to by the Municipal Coalition, the UFT and the UFA.

We conclude that the PBA's offer - despite its "productivity payment" element (which will be discussed below) - reflects economic reality. Even more, it is an act of great political courage. The PBA leadership is to be commended for That.

2. We conclude the PBA's "productivity" proposal must be rejected. We find that it is not truly a "productivity" proposal at all. It is not based upon any guaranteed measure of increased output or value by police officers. (The PBA concedes as much.) Nor is it related to the efforts of individual police officers. And there is no evidence demonstrating specific and identifiable savings to the City. It represents an obvious effort to provide a premium to all police officers, not only to those who may have been truly more productive.

The PBA's proposal is clearly distinguishable from productivity grants given by other Impasse Panels or by settlement, (e.g., the 1990

Sanitation Productivity Program).

A close analysis shows the PBA's proposal is simply a cost-of-living proposal. It is based entirely upon the rise in the Consumer Price Index since April 1, 1995. The proposal calculates the "inflation" rate to be 6.24 percent and applies that figure to base wages. Thus, it generates a figure equal to \$2,759, rounded down to \$2,750. Dividing the payments in half - by an interval of one day, (i.e., June 30 and July 1, 1997) - does not truly serve to lower the cost significantly. It merely defers one-half (or \$1375) to the following fiscal year. For all of the \$2,750 would be paid under the PBA's proposal. The effect of granting the PBA "productivity" proposal would be to break the existing pattern. That cannot be permitted to occur for the reasons set forth above.

3. We conclude the PBA's request that salary levels of its members be compared primarily with those of nearby suburban communities must be rejected. The statutory standard set in Section 12-311 C 3 (b) (i) calls for a comparison to "other employees performing similar work in New York City or comparable communities."

We rule that the primary comparison base must be with salaries paid to other New York City employees responsible for public safety. That is, to Firefighters. We cannot ignore the parity relationship

which has existed between New York City Police Officers and Firefighters for nearly 100 years. The PBA's base salary increase proposal, on its face, recognized That. It proposed its members receive the same level of raises as Firefighters at the am times (save for the one month delay of the six percent raise). That proposal effectively mooted the need to consider whether nearby suburban communities or other large cities in the country should be considered "comparable communities." The PBA, by its proposal, has recognized NYC Firefighters to he the most relevant comparison point.

In any event, the disparity between the salaries of New York City police officers and those in the nearby suburbs or other major cities is not disparitive. We rule in this dispute that the pattern is controlling.

4. We believe that the interest and welfare of the public will only be served by a recommended award which conforms to the established pattern. Any deviation therefrom can lead to instability and dramatically escalated costs.

5. It is true, as the PB A contends, That the City in fiscal year 1997 will have a "surplus" of \$1 .2 billion. Whether a "surplus" exists is not relevant to our determination that the pattern is controlling.

6. We find that wage increases granted to police officers have far exceeded increases in the cost-of-living as measured by changes

in the Consumer Price Index for All Urban, Consumers in the New York/Northeastern New Jersey ("CPI-U") area. From July 1967 (when the New York City Collective Bargaining became effective) through March 31, 1995 (the end of the prior contract), cumulative wage increases ranged as high as 440.9 percent (at the 20-year level). (They are 407.5 percent, 418 percent and 429.8 percent at the five, 10 and 15 year levels.) For the same period, the cumulative rise in the CPI-U has been 366.4 percent.

Using a more recent time frame - starting June 30, 1980, the CPI-U rose 96 percent. But police salaries at the five, 10, 15 and 20 year levels rose by 135.8 percent, 129.6 percent, 134 percent and 137.1 percent.

If the current projections of the OMB are accurate, the CPI-U will rise 126.1 percent between June 30, 1980 and June 1, 1999. Police salaries, under the City's proposal, would continue to outstrip that level of increase at every career level. (At the 20 year level, the difference is 37.5 percent). CPI-U comparisons are plainly most valid when measured over extended periods of time.

7. A change in the Pension Plan interest rate assumption will all generate a savings to the City as the parties agree. The critical question here is at what level should that savings be measured.

The PBA has asserted, at various times, That several different

C. OUR RECOMMENDATION

Based on the evidence, our findings of fact, our conclusions and the statutory standards which must guide us, we award the following recommendation for settlement of this impasse:

City Option No. Four (City Exhibit 89) is to be adopted, with one modification: the term of the Agreement is to be extended to 64 months (April 1, 1995 through July 31, 2000). This two-month term extension yields a bargaining credit of 0.44 percent (or U.22 percent per month of extension). That credit shall be used to provide an additional equal dollar increase in Longevity Pay at all steps (5 years, 10 years, 15 years and 20 years) effective June 1, 2000. (The dollar amount is to be calculated using the City's standard costing methodology.)

In no event is the total net cost of the foregoing to exceed 13.29 percent.

STANLEY L. AIGES

MAURICE C. BENEWITZ

ARNOLD M. ZACK

September 8, 1997