OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of Impasse

-between-

DETECTIVE INVESTIGATORS ASSOCIATION OF THE DISTRICT ATTORNEY'S OFFICE OF THE CITY OF NEW YORK, INC.,

Case: I-246-06

Petitioner,

-against-

THE CITY OF NEW YORK,

Respondent.

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REPORT AND RECOMMENDATIONS

Before:
Gayle A. Gavin, Arbitrator

Appearances:

For Detective Investigators Association:

Greenberg, Burzichelli, Greenberg, P.C.
By: Harry Greenberg, Esq.
Robert Burzichelli, Esq.
Seth Greenberg, Esq.

For City of New York:

Proskauer, Rose, LLP
By: M. David Zurndorfer, Esq.
Neil Abramson, Esq.
Daniel Altchek, Esq.

The Detective Investigators Association of The District Attorney's Office of the City of New York, Inc. (hereinafter, "the DIA") is the exclusive bargaining agent for all investigator titles within the five District Attorney (DA) Offices within New York City and the Office of the Manhattan Special Narcotics Procesutor. Pursuant to Section 12-303(g)(2) of the NYCCBL, the DAs, their employers, are not part of the mayoralty but rather are defined as separate "Public Employers" pursuant to the provisions of the New York City Collective Bargaining Law (also referred to as "NYCCBL"). For many years, the City by designation has bargained for purposes of collective bargaining on behalf of the DAs. In this capacity the City and the DIA (and their predecessor unions) have been in a collective bargaining relationship for decades. The most recent collective bargaining agreement between the parties covered the period between May 1, 2000 through April 12, 2003, the terms of which remain in full force and effect.

Negotiations for a successor agreement began in the fall of 2004 and continued without success until in or about February 2006. On February 27, 2006 the Union filed a Request for the Appointment of Impasse Panel. The Board of Collective Bargaining advised the parties it declared an impasse by letter dated July 7, 2006. Thereafter, the Office of Collective Bargaining appointed the undersigned as a one-person impasse panel in accordance with Section 310 (c) of the New York City Collective Bargaining Law to issue a report and recommendation for the settlement of the Agreement.

The City also filed a Scope of Bargaining Petition to have certain demands of the DIA be declared outside the scope of bargaining. The Board of Collective Bargaining issued a decision and declared certain demands to be outside the scope of bargaining. OCB Decision No. B-13-2007. Those demands are not before this panel. The demands that are before this panel will be discussed *infra*.

A prehearing conference was held on October 18, 2006. Pre-hearing briefs were submitted on April 5, 2007. Following that, hearings were conducted on April 11, 12, 13, 16, 17 and 19, 2007 at the Office of Collective Bargaining. All of the hearings were transcribed. Post hearing briefs were to be submitted by June 15, 2007. Mutual extensions were requested and the parties filed post-hearing briefs on September 9, 2007. The Union addressed in its brief a recent amendment of the Taylor Law that had been enacted subsequent to the hearings and which impacted the majority of the titles in the unit. The Panel requested the parties submit information regarding the amendment to the statute and also provided the City the opportunity to respond to the Union's argument. The City's response was received on November 10, 2007. At the close of the hearing the parties represented to agree where possible to the costings for each demand at issue and submit them to the Panel. While the Panel was given assurances that such costing would be forthcoming, ultimately the parties did not submit agreed-to costings. Submissions were received on costings without unanimity. The final submission was received by the Panel on December 21, 2007, whereby the record was closed.

During the proceeding, both parties were represented and were afforded full opportunity to present oral and written evidence, cross-examine witnesses, provide argument and otherwise support their respective positions. The evidence adduced and the positions and arguments have been carefully considered in issuance of this Report and Recommendation.

Bargaining Unit

The Detective Investigator Association of the District Attorney's Office of the City of New York represents a bargaining unit comprised of approximately 293 employees who work in the District Attorneys' Offices in the City of New York and the Office of the Special Narcotics Prosecutor. The Racket series titles are

all non-competitive while the Detetctive Investigator series titles are in the competitive class.They are all considered Career and Salary titles. The Union is comprised of the following titles and number of employees in each title:

Rackets Investigator - 90

Senior Rackets Investigator - 135

Supervisor Rackets Investigator - 53

County Detective -10

Detective Investigator – 0

Senior Detective Investigator - 5

All of the titles except for County Detective are considered Investigators of the District Attorneys' Offices. The County Detective title is used by the Manhattan District Attorney's Office and those individuals perform security work.

City Bargaining Structure

The Detective Investigators[1] are part of a large and complex municipal work force that contains approximately 150 collective bargaining units. To a large extent, the City's current bargaining structure has grown from the frame-work of the designations created by the municipal civil service commission. Traditionally, employees have been grouped into one of three categories. They are: 1) employees of the uniformed services; 2) employees covered under the Career and Salary Plan; and 3) employees whose wages and supplements are set under Section 220 of the New York State Labor Law (these employees are not at issue in this case and are not relevant to the resolution of this dispute by the parties).

According to Department of Citywide Administration and Services (DCAS) Commissioner, Martha Hirst, the legislative policy of the City has historically been to standardize, where possible, matters involving pay, and time and leave for

[1] Hereinafter, where the term "Detective Investigator" or "Investigator" is used, unless specifically delineated otherwise, it refers collectively to all represented titles except County Detectives.

positions when their working conditions are similar. The Board of Estimate passed a Career and Salary Plan in the 1950s standardizing both salaries and the rules regulating time and leave (Time and Leave Rules). The City then grouped employees into occupational or service categories. Career and Salary regulations applied to all positions in the competitive, non-competitve and labor classes of employees, except those employees whose positions were paid in accordance with the prevaling wage under Section 220 of the NYS Labor Law or those employees in positions within the uniformed services.

In 1967, the State reorganized what was termed the "County Offices", (which included the District Attorneys offices) and legislatively transferred responsibiity for the titles in those offices to the City's Municipal Civil Service Commission. The Detective Investigator titles were transferred to the City without any jurisdictional or title change. The City then passed a resolution classifying them as Rule 11 employees (Career and Salary Plan). As the needs of the DA's offices changed, the City increased the number of non-competitive titles in their title series. According to the Commissioner of DCAS, the transferred positions were deliberately classified as Rule 11 titles because of the working conditions of the Detective Investigators. The Commissioner stated that the DA Investigator titles were found to be more akin to Career and Salary Plan employees because of their work schedules and the salary ranges employed. They worked a normal workday and were not required to have round the clock coverage like those in the uniformed services. She also cited the salary ranges offered in the Career and Salary Plan versus the step pay plans in the uniformed forces as being a factor. She testified that the salary ranges offered the DAs flexibility in attracting new employees of differing experience levels because they could pay more than the stated minimum. The Commissioner further explained that Rule 10 titles are made up of the titles in the four uniform services and certain other miscellaneous titles that don't lend themselves to Rule 11 groupings. Unless there is a clear basis for deviating from the general rules

governing these classifications, a title classified in the Career and Salary would remain as such.

These groupings are reflected in the New York City Collective Bargaining Law. With respect to Career and Salary Plan employees, the NYCCBL divides City bargaining into two tiers. First, wages and certain economic benefits are bargained directly with the certified union (or through a coalition of such unions) and matters covered by the Career and Salary Plan are bargained with the union designated by the Board of Certification of the Office of Collective Bargaining as representing more than 50 per cent of all such employees. NYCCBL, Section 12-307(a)(2). Unions representing employees in the uniformed services bargain with the City directly for wages and other terms and conditions, including rules regarding time and leave. NYCCBL, Section 12-307(a)(4).

During the City's fiscal crisis in the mid 1970's, the City and the Unions representing a majority of its employees entered into coalition bargaining whereby separate patterns were set covering the "Civilian Coalition" and the "Uniform Coalition". In some rounds of bargaining, the patterns were different, in others they were basically the same. No union is forced to be part of any coalition for bargaining and, in recent years, there has been a lack of a "Uniformed" or "Civilian" coalition. However, since such time separate patterns for civilian and uniformed employees have continued to be negotiated in most rounds and applied to the specific units. Undisputedly, pattern bargaining has been a fixture in the City labor relations landscape.

Unit History

In 1971, Section 120 of the New York State Criminal Procedure Law was amended to include Detective Investigators under the definition of "police officer." The New York City Administrative Code was amended in 1986 to confer upon these Investigators all the powers and duties of police officers in the state.

Since 1989, the DIA has bargained directly with the City over all terms and conditions of employment, pursuant to Section 12-307(a)(4) of the NYCCBL. The NYCCBL was amended in that year to include police officers as defined under Section 120 of the Criminal Procedure Law in such section. The Investigators are so defined. The DIA asserts that the increased complexity of the duties its members perform, coupled with the statutory changes affecting the unit since the last impasse award in 1986, require the City to provide its members with increases equal to what the parties refer to as the "Uniform Pattern".

In fact, the DIA, or its predecessors, has continually been at odds with the City over compensation since the DIA titles were first certified for purposes of collective bargaining. In the early 1970s, the Detective Investigator titles were represented by Local 237 of the International Brotherhood of Teamsters. The parties were unsuccessful in reaching agreement on their first contract and the matter was sent to an impasse proceeding for the period covering 1968 through 1971. In that proceeding, chaired by Arbitrator Malkin ("hereinafter, the Malkin Panel"), the Union argued that the duties performed by the Detective Investigators should be equated with those of the Detectives in the New York City Police Department and Detective Investigators in Nassau and Suffolk Counties. Specifically, they sought a pay rate equal to that of a New York City Detective 1st grade.

At that time, the unit consisted of 100 employees, 52 of whom held the Detective Investigator title. The panel concluded that, although certain duties between the NYPD Detectives and the Detective Investigators were similar, there were also differences between some of the duties and responsibilitites between the titles, as well as job qualifications and the risks and exposures of the jobs. They rejected the Union's salary demands as too high and found the increases requested to be "too staggering" to justify what they termed would almost be a "reclassification" of the positions. The panel granted increases in accordance

with the City's proposal, which was expressed in real dollar terms rather than as a percentage increase.

The parties again reached an impasse in the next round of bargaining covering the period, 1972-1974. The panel, chaired by Daniel House (House Panel), considered the Union's arguments that the titles should be placed on "a par" with police titles. The House Panel accepted the parties' use of the record from the prior impasse proceeding and found no evidence of a substantial change from the circumstances found by the Malkin Panel. The House Panel recommended wage increases consistent with the civilian unions.

In the next round of bargaining, 1974-1976, the parties again failed to reach a mutual settlement. The case was heard by a one person impasse panel comprised of Arbitrator Weisenfeld (Weisenfeld Panel). By then, New York City was in the midst of the fiscal crisis and was operating under the Financial Emergency Act (FEA). Again the Union contended its members were entitled to a substantial wage increase. It argued that its members' jobs had become increasingly more demanding and that the State's classification of them as Police Officers in 1971 constituted official recognition of this increased responsibility because Investigators were now required to carry firearms and as police officers, considered to be on continuous duty.

The Weisenfeld Panel found that the DA's Offices had substantially reorganized the duties and functions of the Detective Investigators. What had previously been what the Panel termed a "politicial gofer" job was now an investigatory law enforcement position.The Weisenfeld Panel concluded that there were meaningful changes in the manner in which the Detective Investigators performed their jobs and that these changes compelled the Panel to recommend substantial wage increases for the titles. However, the Board of Collective Bargaining rejected the wage recommendations of the Panel and found the increases recommended by the Panel violated the Fiscal Emergency

Act that it found controlling in this matter. As a result, the parties went back to the negotiating table and agreed upon a settlement consistent with the terms the City was offering the other civilian unions.

The 1976-78 round of bargaining involved no wage increases. Rather, the City unions received only cost of living increases and the unions were also required to provide "give-backs". The civilian unions provided their give-backs through a reduction in benefits in the City-Wide Agreement. The uniformed forces, on the other hand, negotiated give-backs on a unit basis. The Detective Investigators were part of the Citywide Agreement give-backs during the round.

The Detective Investigators then came to be represented by the PBADAO. In the 1978-80 round, they reached an agreement with the City based upon the pattern set by the Municipal Coalition Economic Agreement. The parties were also able to reach agreement covering the 1980-82 period.

The parties could not reach a voluntary settlement for the period of 1982-84 and, therefore went to impasse. The Panel, headed by Arbitrator Joseph Crowley (hereinafter, the "Crowley Panel") recommended a settlement based upon the Municipal Employees Coalition Agreement. An important element of the Report included the recommendation to increase the work week of the Detective Investigators from 35 hours to 40 hours per week. This change in hours generated a 14% wage increase for the additional productivity. The Panel specifically determined that despite some similarities in duties the Investigators were not performing Detective duties and declined to find that the unit salaries should be equated with NYPD Detectives Third Grade.

In the next round of negotiations, 1984-1987, the parties were, again, unable to reach an agreement. The parties agreed to submit the transcript of the prior proceeding to the one person impasse panel comprised of Arbitrator Mark Grossman (hereinafter referred to as the "Grossman Panel"). This time the

Union argued that it should get the uniform pattern because its real "community of interest" was with the employees in the uniformed forces not the Career and Salary Plan employees. The Panel rejected the Union's arguments and awarded the civilian pattern. In doing so, the Panel specifically considered the fact that the Investigators had attained statutory police officer status but failed to find it dispositive. The Panel indicated it did not have a sufficient record to determine the typical daily duties of the Investigators. The Panel nonetheless noted that titles should not be easily taken out of one group and put in another for comparison purposes. In considering the matter the Panel thought the Union was really asking for a *de facto* reclassification for these titles and the Panel did not have the authority to reclassify the titles.

The 1987-1990 round of bargaining again there were two separate patterns, one for civilian employees and one for employees of the uniformed services. A voluntary settlement between the City and the Union was reached whereby the Union received the civilain settlement.

In 1989, the NYCCBL was amended to include the Detective Investigators under Section 12-307(a)(4) of the New York City Collective Bargaining Law. As a result, in subsequent negotiations, the Detective Investigators bargained with the City directly over all terms and conditions of their employment.

The 1990 -2000 rounds of bargaining resulted in a single pattern for both the civilian and uniform forces. The parties were able to reach voluntary settlements.

During the 2000-2003 round of bargaining, the DIA again sought increases consistent with the uniform pattern set by the PBA. The parties were able to reach an agreement where the Union obtained wage increases consistent with the PBA increases of 5% and 5%, but at a final cost consistent with the civilian pattern.

Current Round

Health Benefits:

The current round of bargaining began in the fall of 2002 with the commencement of negotiations by the Municipal Labor Coalition (MLC) for a new health benefits agreement. The parties came to an agreement that helped maintain the City's PICA program and certain other enhancements in exchange for increased co-pays, deductible and other modifications. The parties reached agreement in December 2003 and the Agreement was executed in January 2004.

Civilian Pattern:

The Civilian round of negotiations for 2002-2005 round of bargaining began in the fall of 2003. On April 20, 2004 the City reached a settlement with DC 37. This settlement set the pattern for the civilian unions. The Agreement provided:

- A $1,000.00 pensionable lump sum payment upon ratification;
- A 3% general wage increase effective on the first day of the 13th month of the contract;
- A 2% general wage increase (compounded) effective on the first day of the 25th month of the contract –1% of which was funded by the productivity improvements and the other 1% funded by internal agency efficiencies;
- An additional 1% increase in the 25th month of the contract if productivity improvements to fund the increase are agreed upon;
- An additional .11% to increase "additions to gross" by the general wage increase.

The DC 37 Agreement had an overall cost to the City of 4.17% over 36 months. Since the DC37 Agreement, most every civilian unit covering 279,024 employees has reached an agreement with the City that was consistent with those same terms.

Following that Agreement, a new pattern for the next 12 months was established by the Agreement reached between the United Federation of Teachers and the City on October 3, 2005. The Agreement was reached after a Fact Finding proceeding under Section 209(3) of the Taylor Law. The parties negotiated a four year agreement that had a net cost of 3.15% for the last year of the agreement. Effectively, the last year of the Agreement then set the civilian pattern for the next 12 months.

Subsequently, in July 2006, DC 37 reached a successor agreement with the City which contained the 3.15% pattern conforming increase for the first year. The next 18 months were then set by DC 37's new Agreement which contained a 2% general wage increase on the first day and a 4% general wage increase on the first day of the seventh month, plus .11% additions to gross funding for a total cost of 6.19%.

Uniform Pattern:

The Uniform Pattern for the 2002-2004 round of bargaining was established by the interest arbitration award involving the PBA issued in June 2005 by a PERB appointed impasse panel chaired by Eric Schmertz. The Schmertz award covered only two years (the maximum duration allowed under the applicable provision of the Taylor Law) and provided two 5% annual wage increases offset by a 4.24% of productivity and other internal savings. The net cost of the agreement was 6.01% which was the pattern for the first two years of the round.

The City and the Uniformed Firefighters Association (UFA) reached agreement on October 25, 2005. This agreement had a term of 50 months, running from June 1, 2002 through July 31, 2006. The first two years of the Agreement contained the 5% annual wage increases contained in the PBA award, which were offset by 4.24% in productivity savings. To generate savings the contract was extended two months. The next wage increase occurred on the first day of the 27th month of the contract. That wage increase was 3% and the next, coming one year later, was 3.15%. Thus, the next two years portion set the pattern and had a net cost of 6.24%.

At this time, all other uniform unions have settled their contracts for the first two years of the round in accordance with the pattern set by the PBA Award and all uniform unions other than the PBA have settled their agreement for the next two years in conformance with the pattern set by the UFA.[2]

DIA Bargaining:

The DIA's expired agreement ran from May 1, 2000 thorugh April 12, 2003. The City offered the DIA the civilian pattern. The DIA, on the other hand, contended that it should receive the uniformed pattern settlement, including two 5% annual wage increases with the 4.24% in offsetting savings. The demands of each party are discussed later in the Award.

Positions of the Parties:

DIA's Position

The DIA seeks application of the uniform pattern as the basis for its contract. It argues that its members are legally considered police officers, legislatively included with the uniform forces for bargaining purposes and their duties are most closely comparable to the NYPD Detectives. The Union contends that since the last interest arbitration in 1986, there have been important changes

[2] The PBA and the City are currently in impasse proceedings under 209(3) under the Taylor Law.

in both the law and the scope of their duties that warrant the application of the uniform pattern. Since the Grossman Report was issued in 1986, they emphasize that the City's Administrative Code has been amended to confer Police Officer status on Investigators of the District Attorneys' Offices. Most importantly, they argue, the 1989 amendment to the NYCCBL provided a "reclassification" of the unit to the uniformed forces for bargaining purposes and, thus, they should be included in the uniform pattern. They also argue that Governor Spitzer recently signed legislation providing the DIA the right to binding interest arbitration under Section 209(3) of the Taylor Law based upon their law enforcement status, demonstrating that Detective Investigators have an even greater community of interest with the uniform forces.[3]

The DIA contends that the legislative changes since the Grossman Report compel a different status upon them. Specifically, they argue that the 1989 amendment to the NYCCBL, which changed their level of bargaining, reclassified them as uniform forces employees for purposes of collective bargaining. They argue the legislature intended the amendment to compel the City to provide the Union with the same benefits as those received by the police unions. They cite a letter from bill's sponsor Assemblyman Brennan to then Governor Cuomo, which states:

> This legislation will allow the small number of police officers (about 165) to participate in collective bargaining to obtain benefits that are shared by the other police officers. These benefits include unlimited sick time for line of duty injury or illness, equipment allowance, pension benefits, annual leave provisions, overtime and holiday pay.

The DIA contends that this legislative history shows a desire by the legislature to accomplish the "de facto reclassification" referenced in the Grossman Report.

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[3] The County Detective title is not included in this legislative change or any of the legal changes cited by the Union.

Governor Spitzer's enactment of binding impasse arbitration cements this status, the DIA argues. They note that Governor Spitzer supported the change because the Detective Investigators are law enforcement and all other Detective Investigators in the state have binding arbitration pursuant to the Taylor Law.

The DIA ties these legal changes to the increased functions of the Detective Investigators over the years and argues that they compel a finding that the unit must be awarded the uniform pattern. They contend that the Grossman Panel declined to give the Detective Investigators wage increases consistent with the uniform pattern in 1986 because there was "an insufficient basis to judge what constitutes a typical workday for investigators." The Union argues that the record now demonstrates that the daily range of duties for Investigators in all the DAs offices (including Special Narcotics) include undercover work and other law enforcement duties such as homicide, drug trafficking, organized crime, narcotics and white collar crime investigations which make them equivalent to NYPD Detectives. The Union offered evidence that they claim demonstrated Detective Investigators in all the District Attorney's Offices are performing Detective duties on a daily basis. They also provided statements from the District Attorneys who are their employers indicating that the Detective Investigators are "not different than their colleagues in police departments across New York." The DIA argues that their witnesses demonstrate that the duties the Investigators perform are the same as NYPD Detectives. Not only did high ranking officials testify in this regard but letters from the various District Attorneys supportive of legislative efforts on behalf of the Investigators demonstrate the breadth and scope of their law enforcement activities.

These witnesses, representatives from various DAs Offices and the Office of the Manhattan Special Narcotics Prosecutor, testified to the changes that occurred since the 1980s regarding the duties of the Investigators. They testified that the Investigators took over much of the work formerly performed by the NYPD Detectives. Each explained the enhanced responsibilities and more

sophisticated duties performed by the Investigators since such time. Investigators, according to the witnesses, work closely with other law enforcement agencies and are involved with all types of investigations from narcotics, long-term wiretaps to international drug smuggling. They locate witnesses, execute warrants, wiretaps, make street arrests, conduct drug seizures, carry guns and wear bullet proof vests. These duties were all akin to the duties performed by NYPD Detectives.

The Union argues that the increased job responsibilities of the Investigators is highlighted by the changes in the ratio of NYPD Detectives deployed in the District Attorney's Offices versus the DIA Investigators. They note that much of the work formerly performed by NYPD Detectives assigned to various DA offices is now conducted by Investigators and the number of NYPD Detectives assigned to the DA offices has decreased. For example, in the Bronx, there are only 10 NYPD Detectives compared to 43 Investigators. This ratio is the reverse of what existed in the 1980s. Likewise, the same changes have taken place in all the other DA Offices.

The Union contends that the current level of training and qualifications of Investigators also compel a finding that they are most comparable to NYPD Detectives. They argue that the job specifications for the current titles are outdated and urge this panel to consider the job announcements published by the DA offices in making its determination as to the job duties and qualifications for these positions. The various job announcements require applicants to have experience in one or more areas including: organized crime, narcotics, trafficking, gun trafficking, money laundering, violent crime, special victims. Further, the announcements require a minimum of 3-10 years of experience in law enforcement, current or renewable police officer certification, and that candidates must pass a background investigation and be certifiable as a police officer in New York State.

The DIA avers that the training received by the Investigators is comparable to NYPD Detectives. They note that many Investigators have prior NYPD experience and have had extensive training in the police academy. New hires also attend either the Rockland or Westchester County Police Academy and NYPD programs such as the undercover school, CIC and a multitude of other investigative courses.

The Union also argues that the City's inclusion of the Deputy Sheriffs in the uniform settlement indicates that the City's arguments regarding placement in the Career and Salary Plan is not dispositive. They contend the duties of an Investigator are greater and more similar to NYPD Detectives than are the Deputy Sheriffs and, therefore, to continue such a disparity is arbitrary and capricious.

As to comparability, the DIA contends that Investigators are not compensated on the same level as other comparable titles within the City nor within comparable communitites. The Union argues that the disparity in compensation under the civilian and uniform patterns has only grown larger since the Grossman Award. The Union performed a comparability analysis of Police Officer, Deputy Sheriff and Senior Rackets Investigator. It chose to use the Senior Rackets Investigator title for analysis because it had the most incumbents in the bargaining unit. In this comparison the actual cash difference between a Senior Rackets Investigator and the increases received by the PBA pattern between 1987 and 2001 reveals a discrepancy of $13,513 when viewed from the midpoint annual wage schedule.[4] From 2003-2007 that discrepancy grows to $16,033. When comparing the Senior Rackets Investigators to the NYPD Police and Deputy Sheriffs over this period as measured by the Senior Rackets Investigator median reveals the disparity resulting from the two patterns:

[4] The Senior Rackets Investigator title was the title utilized in all their analyses.

Year	Police/Dep.Sh.	DI/unif.patt.	DI/civilian pattern
	$54,048	$57,139	$57,139
1	$56,750	$59,996	$57,139
4(2007)	$63,309	$66,930	$61,921

When a comparison between the three titles as measured by the minimum for the Senior Rackets Investigator title for the same period again demonstrates the difference in the two patterns:

Year	Police/Dep.Sh.	DI/unif.patt.	DI/civilian patt.
	$54,048	$46,555	$46,555
1	$56,750	$48,882	$46,555
4(2007)	$63,309	$54,532	$50,451

The Union further disputed the City's position that the pensions of retired NYPD Detectives somehow should be considered in the comparability equation regarding the Investigators. The Union maintains that such an argument is specious at best. As to bonuses and merit pay the Union contains that they are discretionary with the DAs and are seldom awarded.

Finally, when Investigators are compared to Investigators employed by Westchester County and Suffolk County, the New York City Investigators are paid significantly less. The Union also points out that Investigators in both jurisdictions are treated the same as police in terms of collective bargaining settlements.

City Position:

The City argues that the Union has failed to demonstrate any compelling reason to grant the DIA the uniform pattern. They maintain that pattern bargaining has developed into the framework governing all labor relations in the City and has been upheld as such in every impasse proceeding to which the City has been a party. Pattern bargaining has been recognized as a tried and true

way to achieve fair and stable labor relations within the City. It enables unions to reach settlements with the City without the fear of the "whipsawing and leap frogging" that could result if unions were not certain that others would not obtain better settlements if they waited for other unions to settle first.

The City argues that placement of the DIA in the uniform settlement at this date would, in fact, be a break in the pattern and, ultimately, erode the stability of collective bargaining within the City. Only 15 of the City's 150 bargaining units historically received the uniform pattern and that grouping has not changed in all the years that separate patterns have existed. Of the unions that have historically received the uniform pattern, only the Deputy Sheriffs are not part of the Police, Fire, Correction or Sanitation Services. The Deputy Sheriffs are given the uniform settlement, according to the City, because of a historical parity issue and not because the Deputy Sheriffs are part of the uniformed forces. According to the City, the Deputy Sheriffs operated the civil jails until the 1970s. They performed the same duties Correction Officers did in the criminal jails up until that time. The Deputy Sheriffs, therefore, had a parity relationship with Correction Officers which the City contends could only be maintained by applying the uniform pattern to them in bargaining. Although Deputy Sheriffs stopped performing these duties in the 1970s, the City contends it continues to maintain this historical parity relationship, which is consistent with its policy not to change such relationships once set. They note that the DIA has, for over 35 years, sought salaries or increases on the same level as the NYPD titles and those demands have been consistently denied.[5] Such a change would result in many unions claiming to be like uniform employees. The City maintains this argument is not speculative. They point to the 11,000 employees affected by enactment of Local Laws 18,19 and 256. These Local amended the NYCCBL to include over 11,000 new employees in various bargaining units in the section enabling them

[5] The City notes that the Weisenfeld Panel did award increases greater than the civilian pattern but points out that the recommendation was rejected by the Office of Collective Bargaining for being in violation of the FEA. The parties later reached a settlement consistent with the increases provided to the civilian unions.

to bargain individually for all terms and conditions. They argue that giving the Detective Investigators the uniform pattern based upon their inclusion in Section 12-307(a)(4) would create crippling new expenses to the City's budget because all these other titles would demand and expect the same treatment.

The original placement of the Investigator titles of the District Attorney's Offices within the Career and Salary Plan was appropriate, according to the City. It reflected an assessment that the titles were more akin to those in the Career and Salary Plan rather than the uniform services. Original placement of the group was based on their salary range structure and the working conditions, specifically, their standard workday schedule versus the continuous coverage required for the uniform services. The City notes that only police who are in the New York City Police Department are recognized as uniform service employees and that is by design. The two groups, civilian and uniform services, were delineated for bargaining purposes in the New York City Collective Bargaining Law. Pattern bargaining and the concepts of the two patterns developed over time based upon the fiscal circumstances of the City and the structure of their bargaining units. Therefore, the City argues, changing the pattern that this unit has historically received would disrupt this long and rich history and destabilize all labor relations within the City.

Additionally, the City denies that any of the statutory changes the Union cites compels a different outcome in this proceeding. They argue that the 1989 amendment to the NYCCBL was achieved through lobbying and not an examination of the duties of the job. More importantly, they contend that the change in the law is no guarantee of a bargaining outcome. It only provides a change as to the level of bargaining and takes the DIA out of the requirement to have matters such as time and leave bargained for them on the Citywide level by the union holding the bargaining certificate for the the majority of City employees. The City bargains with the DIA in accordance with the law, but there is no

compelling reason to change the pattern they have been given for the last 30 years.

Likewise the City argues the enactment of Chapter 190 of the Laws of 2007 is not relevant to this proceeding. The Legislation merely gives the Union the right to seek binding interest arbitration under the Public Employment Relations Board in the event of a bargaining impasse in the future. According to the bill's sponsor it serves to harmonize the treatment of all Detective Investigator bargaining units with respect to impasse resolution procedures.

The City disputes that there has been any significant change in the duties of Investigators which would change their status to uniform employees. They note that the job descriptions have not changed and that prior arbitration panels have always noted some overlap in duties with NYPD Police Officers or NYPD Detectives. However, they contend there are many distinguishing factors between them, such as the competitive status of Police Officers and the training and qualifications needed to become a Detective. They argue that there are "vast differences" between the process for becoming a career Investigator in one of the District Attorney's Offices and the process for becoming an NYPD Detective. They contend that for both the Detective Investigator and the Rackets Investigator titles a candidate only needs a bachelors degree or high school diploma (or equivalent) plus two years of investigative experience. They then receive training at police academies outside New York City, that are not comparable, they say, to the NYPD's Police Academy.

Such training, they argue, does not compare to the rigorous training for becoming an NYPD Detective. NYPD Detectives must first become Police Officers, which requires a score of 70 or higher on a written civil service examination to even be considered. Those who score 70 or higher receive placement on the list. The Department then conducts a lengthy investigation of the applicant, which includes a background investigation, and medical and psychological examinations. Applicants must also have 60 college credits or 2

years of military service. Training in the Police Academy takes 6 months. Officers are then assigned to a two year probationary period. They then receive more formal training. According to the City, one of the major tracks to becoming a Detective within the NYPD is through a formal career program. The program provides a process for a Police Officer to become a Detective by demonstrating the abiity to perform detective work in an investigative assignment for a substantial period of time. It typically takes 5 years to accrue enough points to become a Detective. Once assigned, it takes a Detective 18 months to receive the designation.

The City, moreover, maintains that the duties themselves are not relevant to this panel's determination because they are seeking the uniform wage settlement and not a parity relationship. In sum, the City contends that the duties are not really an issue but rather whether they warrant a change from the established relationships that make up the pattern groupings.

The City further maintains that the Investigators, contrary to the Union's contention, are well compensated and favorably compensated when compared to similarly situated employees. Supportive of this the City notes that there is nothing in the record to suggest there is a recruitment or retention problem. Examination of the average total wages for the three Rackets Investigator titles that comprise 95% of the unit also demonstrates that they are well compensated as revealed in the following:

Title	Min. Salary	Max. Salary	Average Total Wages
Racket Inv.	$38,170	$55,742	$53,371
Sr. Rac. Inv.	$43,443	$62,098	$63,714
Sup. Rac. Inv.	$45,732	$64,047	$78,253

In 2006, examination of regular gross pay levels including longevity, differentials and merit pay revealed that 31% of the Senior Rackets Investigators and 49% of the Supervisor Racket Investigators received pay that exceeded the contractual maximum salary level.

The City also points out that for the bargaining unit members who are retired from the NYPD their income is further supplemented by generous pension and VSF payments. Additionally when the median salaries for Racket series titles are compared to Deputy Sheriff, Police Officer and NYPD Detective 3rd Grade they again compare favorably as demonstarted:

	Median Salaries
Rackets Investigator	$46,589
Sr. Rackets Investigator	$57,139
Sup. Rackets Investigator	$64,047
Deputy Sheriff	$54,048
Police Officer	$54,048
NYPD Det. 3rd Grade	$61,670

The Senior Rackets Investigator, the title with the most incumbents, exceeds the Police Officer and Deputy Sheriff salaries. The Supervising Rackets Investigator title exceeds the NYPD Detective 3rd Grade. Thus, there is no compelling wage issue the Union can claim, according to the City. They also receive annual leave of 15 days in the first year increasing to 27 days after 14 years; medical coverage for the Investigator and his/her family, including prescription drugs, vision and dental, all without employee premium contributions; retirement after 20 years with a 50% pension benefit and no age requirement; and lifetime retiree health benefits for the employee and their dependents without premium contributions.

Also of great significance, the City argues, is the fact that many Investigators are hired into senior or supervisory level positions at rates that far exceed the entry level rate found in the parties' contract. Forty per-cent of the unit are employed directly into a supervisory position, a circumstance unique to these titles. In addition Investigators receive merit increases and bonuses. Again the City maintains, this is unique among the represented titles within the City.

Finally the City claims that when the Investigators are compared to other City titles that perform investigative and/or law enforcement duties they receive greater salaries at every level. While the Union attempted to argue a comparison with Westchester and Suffolk Counties was warranted, the City contends that the job requirement in those counties are more stringent as indicated by the job specifications in evidence and there is nothing in the record to support that they are comparable communities as required by the New York City Collective Bargaining Law.

ANALYSIS AND OPINION

The central issue to be decided in this proceeding is whether the civilian or uniform pattern should be awarded to the DIA unit for the 2003-2006 round of bargaining.[6] The DIA argues that substantial changes in both the legal framework surrounding the unit and the nature and scope of the duties its members perform since the last impasse proceeding in 1986, in essence, reclassifies them for bargaining purposes as "Uniform" employees, and, therefore they must receive the uniform settlement. The City, on the other hand, argues that the DIA's placement within the Career and Salary titles that receive the civilian pattern has long been established and should not be disturbed. They argue that none of the circumstances the Union claims support changing that longstanding relationship. To do so they argue would, in fact, be breaking the pattern. Such a break, they argue, would so disrupt the long established bargaining relationships within the City's workforce that it would undermine the entire structure of pattern bargaining and, ultimately, destroy the stability and fairness that pattern bargaining has created over the last three decades of municipal labor relations.

[6] The DIA has requested a four year agreement while the City has requested a three year agreement. The decision is included *infra*.

This panel was appointed under the authority of the New York City Collective Bargaining Law which prescribes that:

(b) An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of 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 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;

(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 panel proceedings.

This Panel has carefully considered the above statutory criteria in fashioning its Report and Recommendations.

The parties agree that pattern bargaining is the cornerstone of the municipal labor relations framework and should be applied to this Panel's determination of the parties' contract. They differ in their interpretation of how the pattern must be applied. This Panel agrees with prior impasse panels that the role of the panel is not to discount the values which the parties themselves have validated over the years by their own actions at the bargaining table. As Arbitrator Eischen stated in the 2002 PBA Impasse Award:

> [t]he arbitrator must respect historical relationships that have been validated over the years. For arbitrators to reject such mutually acceptable historical standards and impose their own value judgments divorced from the realities of the bargaining relationship would be a clear invitation to the parties to seek more in arbitration than they could obtain in negotiations with knowledgeable negotiators.

Pattern bargaining has historically been defined as the general equivalence of net costs between bargaining units. This construct has long been established as a cornerstone of New York City labor relations.

> "Over the years, the City and the individual unions or union coalitions representing City employees, as well as every impartial arbitration tribunal called upon for dispute intervention in the public interest, have accepted pattern-conformity as a primary benchmark, unless a particular case presented "unique, extraordinary, compelling and critical" circumstances that could not be addressed without stretching the parameters of the pattern.
>
> "The Unions representing New York City employees . . . traditionally have participated in pattern bargaining not necessarily because it always favors their positions but because they seem to recognize that not only is it necessary but it usually best serves the interests of the unions and the employees they represent, as well as the public and the City. The pattern principle allows labor leaders to agree to fair and reasonable settlements, with a level of comfort that they will not later be embarrassed or outdone by a richer settlement achieved by one of the dozens of other municipal unions. (Eischen, 2002)

In this way, the City's reliance upon pattern bargaining has been widely recognized as a bar against the "whipsawing and leapfrogging" that would presumably occur if different net settlements could be achieved by the City's approximately 150 bargaining units. Impartials and the unions themselves have recognized that without pattern bargaining the parties would lack the incentive to come to the bargaining table and settle their agreements voluntarily because they would be in fear of another union obtaining a better settlement later in the bargaining round. Bargaining in such an environment would be extraordinarily difficult.

In considering how the "pattern" fits within the statutory criteria enumerated in the NYCCBL, prior impasse panels have recognized that the "interest and welfare of the public" criteria includes the City's ability to pay and has found that pattern bargaining has been a meaningful mechanism for the City to contain labor costs and maintain a stable labor relations environment. As the Aiges Panel concluded in 1996 in an impasse proceeding involving the PBA:

> [T]he history of the public sector collective bargaining in New York City clearly indicates recognition by the City, the unions and the 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.

While the pattern, as it is understood today, is not codified under the NYCCBL or any other statute, it appears to have grown out of the history of grouping titles into Career and Salary Plan and uniform services statuses and the working conditions attributed to each group. Of course, these groupings were originally reflected in the NYCCBL, which led to the bargaining history that has developed. The need to maintain a stable labor environment to encourage settlement and contain costs were the primary drivers in this history. Prior precedent mandates great caution in making any changes to the "complex web of relationships" of the various titles and bargaining units within the City. The City points out that only 15 bargaining units have ever been granted the uniform pattern and no unit has ever been added to or subtracted from them. The only exception to these groupings has been the Deputy Sheriffs. The City Commissioner of Labor Relations testified, and it was uncontested in the record, that their inclusion with the uniform services titles was predicated on a parity relationship with the Correction Officers that covered a period in excess of 50 years. Because of this parity relationship they have always been a part of the uniform pattern. However, there is nothing in the record to suggest that the DIAs had or claimed to have a parity relationship with any other title.

The DIA and its predecessor unions have a long bargaining history with the City, which includes resorting to impasse proceedings on several occasions, the last time being in 1986. The current point of contention between the parties – which pattern should apply – has, in essence, been the major bone of contention between the parties for the entire history of the bargaining unit. In every negotiation in which there have been separate civilian and uniform patterns, whether it has led to a mutual settlement or an arbitrated one, the parties have disagreed on the level of compensation the DIA members should receive relative to the uniform pattern. Thus, there is a considerable bargaining history and a prior record of impasse awards to serve as reference tools for this Panel.

In this regard the parties' last impasse proceeding was before the Grossman Panel. The Union argued it deserved the uniform pattern because its real community of interest was with the uniform forces and not the Career and Salary Plan employees. The City maintained that the Union was seeking to break the pattern. In rejecting that contention, the Grossman Panel stated that the demand for the uniform pattern was not an attempt by the union to break the pattern, but rather a determination of which pattern was more appropriate. While the Union was not challenging the basic construct of the uniform or civilian pattern in terms of the net cost, it was challenging its status as to which pattern should apply.

Similarly in this proceeding the Union again is not challenging the basic construct of pattern bargaining but rather seeks a determination as to which pattern should apply. According to the Union, since the Grossman Award the legislative developments and the changes in the scope and nature of their duties mandate that the Investigators be given the uniform pattern. The City maintains that the DIA is making the same arguments the Union has always made and that nothing has changed over those two decades. They argue that the Union has always been a part of the civilian pattern and there is no reason to break the

pattern by awarding them the uniform pattern. The labor relations framework, placing them in the civilian pattern, was established over three decades ago and has remained unchanged ever since. Finally, they maintain that to award the DIA the uniform pattern will destabilze City labor relations.

There is no argument that the DIA has historically been grouped with the civilian pattern since its inclusion in City bargaining, a span of close to forty years. Four impasse panels all arrived at the same result. In each instance, while the Union was consistent in claiming its alignment to be with the uniform pattern, it varied in its comparison to either Police Officers, Detetctives, Deputy Sheriffs or to having a community of interest with the uniformed forces. In each proceeding there was the claim that the duties had changed dramatically - becoming more dangerous, using more sophisicated equipment, performing "virgin" investigations, to mention but a few. Yet in each proceeding the outcome was the same – the panel found them to be more appropriately included with the civilian titles than with the uniform forces. In each instance there was an acknowledgement by the panel that there were similarities between the unit and the title to which they sought comparison. However, the outcome never changed. The same is reflected in the bargaining history of DIA, and its predecessor unions, spanning a period from 1968 to 2003, including the last round prior to the current round under consideration by the Panel. In each round that there were two different patterns and the parties reached a voluntary settlement, the civilian pattern was the benchmark for settlement. In the round following the Grossman Panel the voluntary settlement was the civilian pattern. In the 2000-2003 round, the round prior to this round of bargaining and well after the amendment to the NYCCBL that gave the Investigators the right to bargain directly with the City over terms and conditions of their employment, the parties again reached a voluntary settlement premised on the civilian pattern.

In considering the Union's arguments that recent legal developments create a different classification for bargaining purposes for the Investigators, this

Panel is constrained to reject such argument. In fact, the New York State Court of Appeals has specifically held that placement in Section 12-307(a)(4) cannot mandate any particular bargaining outcome when it upheld Local Laws 18 and 19. The Court held:

> It has been held and the parties here do not dispute, that the Taylor Law prohibits local legislative bodies from usurping the executive's prerogative to agree with the unions on terms and conditions of employment. (Matter of Doyle v. City of Troy, 51 A.D.2nd 845 (3d Dep't 1976)). But these local laws [i.e. Local Laws 18 and 19] do not violate that prohibition. They do not dictate the substantive terms of an agreement; they prescribe (as to certain issues) the procedure by which agreements may be reached – bargaining with the unions representing dispatchers and EMTs, rather than bargaining with unions representing a majority of employees subject to the citywide Career and Salary Plan.
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> (Mayor of the City of New York v. Council of the City of New York, No. 69, 2007 NY Slip Op 5132, *4, 2007 N.Y. LEXIS 1564 (June 12, 2007)).

The 1989 amendment to Section 12-307(a)(4) placed the Union in a direct bargaining relationship with the City over all terms and conditions of employment. Arguably the original placement of the units into these categories reflected the "legislative" policy, cited by the DCAS Commisioner, of the City's desire to make uniform certain terms and conditions of employment (like Time and Leave Regulations) for certain groups of employees based upon their particular circumstances – i.e. working standard or continuous shifts. That would, of course, explain why the Time and Leave rules for the civilian titles should be uniform and were required to be bargained by one union. The new level of bargaining clearly provides the Union a better platform to achieve different treatment, but it does not guarantee it. They are still classified as Rule 11 employees in the Career and Salary Plan. Furthermore the Commissioner for DCAS testified that "no case has ever been made to DCAS that the nature of employment in those titles is so fundamentally different from that of other Career and Salary Plan positions as to warrant removal of those titles from the Plan." Certainly the DAs as the employers of the Investigators could have sought

removal of them if the DAs felt it was warranted. Yet, this record is devoid of any evidence that any DAs Office sought to have them reclassified.

Likewise, the recent passage of the amendment of the Taylor Law to provide binding arbitration to Investigator titles within the DA's Offices cannot compel a finding they are entitled to the uniform pattern. Like the amendment to 12-307(a)(4) of the NYCCBL, the most recent Taylor Law amendment provides merely a procedural rather than a substantive change. As Governor Spitzer noted in his approval memorandum, the Bill granted the right to binding arbitration like other Detective Investigators and other law enforcement officers through out the state. Nothing more and nothing less. Nothing in the Bill suggests that it mandated any particular bargaining outcome.

Having rejected the DIA's argument that legislative changes mandate that its members be awarded the uniform pattern, this Panel turns to the Union's argument that they are legally recognized police officers who are most similar to NYPD Detectives. With that in mind the DIA claims that their duties are identical to those performed by the NYPD Detectives. They claim that the distinctions that existed when the Grossman Panel issued its Report and Recommendations do not exist in the present. In that vein the Investigators claim that the requirements to become Investigators have dramatically changed as has the training, making them comparable to the Detectives in the NYPD.

The record established that since the 1980s the ratio of NYPD Detectives to Investigators has reversed itself. Where in the 1980s there were more NYPD Detectives in the DAs Offices, a snapshot of the present makeup demonstrates that there are significantly more Investigators than NYPD Detectives. The Union argues that this demonstrates that the Investigators are doing the duties that the NYPD Detectives had been performing. This Panel notes that there is no question the Investigators are now the main investigative component in the DAs Offices. As to whether their duties have changed drastically since the Grossman

Panel award is not as apparent. Is it that their duties have changed or is it merely that the Investigators are doing more of the duties that they had been performing over a span of time predating the Grossman Panel award. To answer those questions the Panel went back to prior impasse panel awards. In so doing this Panel is struck by the similarity in terms used to describe the changes in duties attributed to this same Investigator title. As far back as the Malkin Panel award, by which time the Investigators were already classified as police officers pursuant to State law, there was a recognition that there was overlap and even similarity of duties. In certain aspects the duties were the same between the NYPD Detectives and the Investigators, according to that panel. However the dissimilarities overshadowed and distinguished the two titles. In 1976, the Union again contended that their duties had changed. They were then developing informants, using expert witnesses, using sophisticated electronic equipment. They further claimed that the job was more dangerous in that they were making nighttime arrests, performing undercover functions, doing stakeouts and performing extraditions. According to the Union, they were performing "virgin investigatory work" and more demanding investigations.They also maintained that they employed new recruitment policies to elevate the candidate pool. Those duties and enhancements were all described in the Weisenfeld Report and Recommendations, issued in 1977, over thirty years ago. Included in the accompanying submissions to the Governor's Bill Jacket for the 1989 amendment to the NYCCBL was a recital of typical duties performed by Investigators at that time. The list included executes search warrants; participates in stationary and moving surveillances and stakeouts; installs and maintains electronic devices and other technical aids to obtain evidence; wears concealed recording devices; and travels out of state and country to locate and secure witnesses and to transport prisoners to local jurisdictions, to cite but a few of the duties. Again that was 18 years ago. Those duties were recited decades ago and, yet, the testimony presented in this proceeding is similar, in reflecting the claimed change as to the duties the Investigators were performing. The only conclusion that this Panel can draw is that while the Investigators are indeed

performing much more of the work that had been previously handled by the NYPD Detectives, the essential nature of their job has remained substantially the same.

While the Investigators share a similarity in duties with the Detectives and clearly have for decades, there remains much that distinguishes them. First of all they are employees, not of the City, but of the District Attorneys for the five boroughs together with the Office of the Manhattan Special Narcotics Prosecutor. The DAs, as their employers, have exercised considerable discretion in what titles were used, the starting title of new employees, the starting salary of new employees, and the awarding of bonuses and merit increases. All these measures are unique to these titles and cannot be compared to any position within the uniform services.

As to the use of titles, back in the 1970s the DAs used the Detective Investigator and Senior Detective Investigator titles. Both titles were competitive titles requiring a passing score on a civil service examination. Over the years the DAs requested that DCAS, or its predecessor agencies, allow them to use titles in the Racket Investigator series, non-competitive titles requiring no civil service examination unlike the requisite for becoming a police officer. This obviously afforded the DAs more discretion and control over their hires. The DAs have exercised this discretion as the record demonstrates. There are now no Detective Investigators in any of the DAs Offices and only 5 Senior Detective Investigators work in Richmond County. In contrast there are 90 Rackets Investigators, 135 Senior Rackets Investigators and 53 Supervisor Rackets Investigators – all non-competitive positions.

As to the particular titles and salaries the DAs hire candidates into, the record established that the DAs regularly hire candidates into the supervisory positions and at above the minimum rates. The Investigator titles as Career and Salary Plan titles have salary ranges encompassing a range between a minimum

and a maximum. Yet in point of fact 40% of the bargaining unit are hired directly into supervisory titles at salaries above the minimum rate. The City provided evidence of 5 recently hired Senior Rackets Investigators, all former NYPD Detectives, who were all hired well above the minimum salary rate for the title. The amounts exceeded the new hire rate for these individuals from $6557 to $13557. When the breakdown between the titles was examined by the Panel, 193 of the 293 incumbents are in supervisory titles, that is 66% of the entire unit. Importantly it was uncontraverted that this practice clearly does not exist within the uniform services nor is it replicated anywhere else within City employment.

Additionally, the Investigators are the only titles that receive bonuses and merit pay increases[7]. The record reflected that bonuses ranged from $1000 to as much as $8555 in 2006. It further reflected that merit increases ranging from $1000 to $3000. Again this is unprecedented and is not replicated in any of the uniform services titles or any other represented title within City employment.

As to the qualifications for these positions, the Union argued that the job specifications that the City entered into the record are outdated and are not reflective of the augmented requirements. In support of its position the Union submitted a handful of job announcements that they contend reflect these enhanced qualifications. The last modifications to any of the job specifications occurred over twenty years ago. The Union argued that the City has not conducted any desk audits or further analysis of the titles since then. However if there were such changes as the Union has contended over the past twenty years that are not reflected in the job specifications, this Panel must state the obvious. The DAs are their employers not the City. Yet there is absolutely nothing in the record to support or even suggest that any of the DAs ever sought to have the

[7] The Union submitted excerpts from the 2002-2005 PBA contract regarding the right to pay performance compensation. However, there is nothing in the record to establish, or even suggest, that right was ever effectuated.

DCAS reevaluate the job specifications because the duties and/or qualifications had changed to such a degree that the job specifications needed to be modified.

Additionally, after examining the job postings that were entered in the record it is difficult to draw any conclusions other than that there is no uniformity as to what experience is required. While one posting for the Special Prosecutor's Office seeking Investigators required a high school diploma and 10 years of progressive responsible police enforcement or criminal investigative experience, another posting for Richmond County, in seeking Senior Detective Investigators, required 3 or more years of full time "police enforcement or investigative work." A posting for a Senior Rackets Investigator for the Bronx DAs Office, required 3 years of full time paid experience as a sworn police officer in New York State. An announcement for the Manhattan DAs Office required a bachelar's degree and 2 years of law enforcement experience. The postings for the Senior Rackets Investigators, the title with the most incumbents, are actually akin to the existing requirements listed in the job specification for such title. What can be said in a general sense is that the postings demonstrate the wide discretion exercised by the DAs in hiring its staff. However, the postings that were submitted preclude the Panel from concluding that the job requirements have been enhanced in any consistent sense, certainly not to the extent that they are comparable to a NYPD Detective 3rd Grade.

Certain high ranking officials from the DAs Offices - Andrew Rosenweig formerly the Chief Investigator of the Manhattan's DAs Office, John Freck, a Senior Investigator in the same office, Lawrence Festa, Deputy Chief Investigator in the Queens DAs Office and Joseph Ponzi, the Chief Investigator for King's County DAs Office – all testified to the training provided. What became clear is that there are two tracks within the DAs Offices. Experienced Investigators, many of whom are former NYPD Detectives, are hired into the Senior and Supervising Rackets Investigator's titles. Because they are seasoned professionals they do not require the same training as career Investigators. New candidates who are

hired with little experience are subject to various amounts of training. They are sent to a Police Academy and attend various courses. In the Manhattan DAs Office these new recruits are partnered with a senior investigator. The Office had monthly in-house training sessions for them on various topics and also sent them "from time to time" to the criminal investigation course and other courses at NYPD. In the Queens DAs Office, Deputy Chief Investigator Festa testified that the new Investigators initially train at Rockland County Police Academy and then take other courses such as the CIC course at the NYPD. He testified that "When the homicide course comes up, I try to grab a seat or two with the homicide course." In Brooklyn Chief Investigator Ponzi testified that the entry level Investigators are sent to Rockland Police Academy and are then assigned to the Trial Division where they work directly with an Assistant District Attorney. He indicated they remain there for from 3-5 years where they work on preparation and enhancement of cases, duties that would be considered routine investigative work.

The record established that the qualifications and career path for Detectives in the NYPD are so markedly different that the two groups are not comparable. To become a NYPD Detective one must first become a Police Officer, a competitive title. To qualify a candidate must have 60 college credits or 2 years of military experience. Then he/she must pass a competitive civil service examination and undergo an extensive background investigation together with a medical and physical examinations. If successful the individual undergoes six month of extensive training at the New York City Police Academy, at least 2 years on patrol and typically 5 years of service to obtain the necessary points to be considered for a Detective Assignment under the Career Program. The designation does not become permanently effective for 18 months. While there are Police Officers who are designated as Detectives outside of the Career Path Program with less tenure than the Career Path Program requires, the lion's share of those who make Detective go through the Career Program. Additionally examination of the average number of years of experience as a Police Officer

prior to becoming a Detective (including Detectives Specialists) between the years, 2000-2006, was 9.60 years. This structured process to become a NYPD Detective is very different than the requirements and training required to be an Investigator in the DAs Offices where there is no clear uniformity in training or experience required. It simply does not lend itself to comparison.

As to a comparison of compensation with similar titles, the record demonstrates that the Investigators are paid favorably relative to both the Police/Deputy Sheriffs titles, titles to which the Union claims comparison, and also to the other investigative titles in the Career and Salary Plan, to which the City cites as comparable.

When comparing the Senior Rackets Investigator title to the Police Officer/Deputy Sheriff titles by applying the two different patterns for the 2003-2007 period, the Union argues that they fall significantly behind at the minimum rate for the Senior Rackets Investigator title.

Year	Police	Unif. Force Pattern	Civilian Pattern
	$54,048	$46,555	$46,555
1	$56,750	$48,882	$46,555
4	$63,309	$54,532	$50,451

This comparison of the minimum rates is not a true reflection of the hiring and salary practices of the DAs because the record established was that the DAs regularly exercise discretion in hiring well above the minimum. Those numbers also do not take into account the additional compensation the Investigators receive in the form of bonuses and merit increases that the DAs award.

Therefore the comparison of the medians is more persausive. Based on the contractual rates in effect at the end of the expired contract, the median salaries for the Rackets Investigator titles when compared to the Deputy Sheriff, Police Officer and NYPD Detective 3rd Grade are consistent with or exceed their counterparts.

Rackets Investigator	$46,589
Senior Rackets Investigator	$57,139
Supervising Rackets Investigator	$64,047

Deputy Sheriff/Police Officer	$54,048
NYPD Detective 3rd Grade	$61,670

While the Rackets Investigator title appears to lag below, it fails to take into account that the qualifications are significantly different. Additionally in certain of the DAs Offices there effectively is a two track system whereby the entry Investigators perform duties of a more routine nature than the experienced Investigators. Finally it must be mentioned that 66% of the unit are in the Senior and Supervising Rackets Investigator titles. Their median salaries compare favorably to such other titles. Again bonuses may not be reflected in these numbers. Importantly, the Panel heard no evidence that there is a recruitment or retention problem, the existence of which is often a sign that the salary is problematic.

When the DIA Investigator titles are compared to other City investigative titles, they prove to be paid significantly higher compensation:

	Hiring rate Minimum	Incumbent Minimum Eff. 4/1/01	Maximum
Rackets Investigator	$38,170	$40,903	$55,742
Sr. Rackets Investigator	$43,443	$46,555	$62,098
Sup. Rackets Investigator	$45,732	$49,005	$64,047
Fraud Investigator -Finance/DSS Level I	$29,895	$32,036	$47,711

Level II	$36,813	$39,447	$54,044
Investigator	$29,895	$32,036	$44,481--
-other agencies			
Environmental			
-Police Officer	- 6 step pay plan Level I		$28,058
	Start/26 weeks		$32,187
	Step 6		$42,587

The Union also argued that the unit should be compared to the Investigators in Suffolk and Westchester DAs Offices. However, the record does not sufficiently establish that they are comparable communities as required under the NYCCBL, the threshold for comparison purposes.

Finally of consideration is the County Detective title. The inclusion of the County Detective title within the Unit is troubling and cannot be ignored. This position is not included in any of the statutory provisions cited by the DIAs (including the NYCCBL 12-307(a)(4)) that the Union argues confer uniform status upon them. An examination of the duties for the County Detective title fails to show any comparability with any NYPD or uniform services titles. What this creates is, for lack of a better phrase, a "split" unit with titles that have police officer status and a title without such status within the same unit. While the group is small in number, the Union has failed to provide any precedent for application of the uniform pattern to what, at best, can only be termed a "split" bargaining unit.

As to the City's ability to pay, obviously a unit this size, as even the City's Budget Director conceded, would have less impact on the City's budget. However, having determined that the appropriate pattern is the civilian one for the reasons set forth above and in view of the fact that there is no argument over its ability to pay the civilian pattern, the Panel does not need to rule on the contentions of the City in this regard.

Consideration of the statutory criteria as applied to the evidence presented together with the reasons recited herein requires the Panel to apply the civilian pattern to the DIA today. The Investigators of today perform a vital function in the criminal justice system. This decision does not reflect differently or in any way diminish their valued contributions.

Therefore, based on the voluminous record this Panel recommends the following:

1. That the duration of the contract be for a three year period. While the Union sought a four year one, this Panel does not want to impose a contract of longer duration. This will enable the parties more latitude in fashioning future contracts.
2. That the civilain pattern shall apply.

As to the individual demands, the parties focused almost entirely on whether the DIA should receive the civilian or the uniform pattern. Because their emphasis was almost entirely on which pattern, there was no agreement on costing for individual demands. Acceptance or rejection of many of these demands have certain costs or savings associated with them. That being the case, actual terms are left to the parties after ironing out whatever differences may exist regarding the costings. Application of the civilian pattern has a net cost to the City of 4.17% over 36 months.

The Panel recommends the following as to demands that are non-economic:

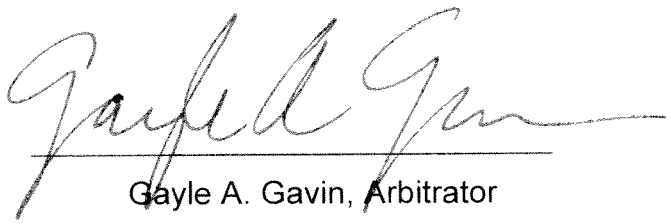
a. Private Hospital Accommodations – DIA Proposal No. 4
   - No evidence was submitted to demonstrate the need and significance of the demand. The Panel therefore rejects this demand.
b. Deletion of all reference to "Terms and conditions of the Alternate Career and Salary Plan" – DIA Proposal No. 7
   - They are still Career and Salary Plan employees. Their classification as such must be addressed in another forum. Therefore, references in the Agreement should not be disturbed.
c. Time and Leave Review – DIA Proposal No. 9
   - No evidence was submitted to establish the need for additional review. Presently members are provided with a summary on their

bi-weekly paycheck. There was nothing provided to suggest the need for additional, more in depth review. The Panel rejects this demand.

d. Disciplinary Procedures – DIA Proposal No. 10

This demand pertains only to members in the title of Detective Investigator and County Investigator, comprising 10 incumbents. It would give employees in these titles the option of binding arbitration. This would create a system available to a very small segment of the unit. The wisdom of a two-tier system is questionable. Therefore the Panel rejects this demand.

Dated: February 11, 2008



Gayle A. Gavin, Arbitrator

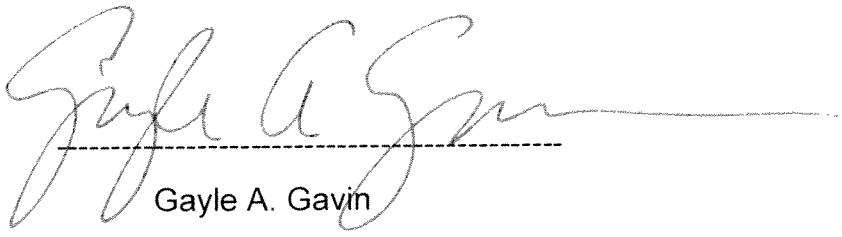
Affirmation

CITY OF NEW YORK)

County of NEW YORK)

I, Gayle A. Gavin, affirm that I am the individual described in and who executed the foregoing instrument, which is my Report and Recommendations.

Dated: February 13, 2008



Gayle A. Gavin