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In the Matter of the Impasse

between

Case No: I-198-89A

THE SERGEANT'S BENEVOLENT ASSOCIATION, INC.

and

THE CITY OF NEW YORK  
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Before: Arvid Anderson Impasse Panel

APPEARANCES:

For the Sergeant's Benevolent Association, Inc.:

Solomon Richman Greenberg & Stein, P.C.  
By: Harry Greenberg, Esq.

For the City:

Saul G. Kramer, Esq., Special Counsel to the Office of  
Municipal Labor Relations  
Mark Z. Kramer, Esq., General Counsel Office of Municipal  
Labor Relations

CLARIFICATION OF IMPASSE PANEL AWARD

The undersigned Impasse Panel issued an award on  
January 8, 1990. Item 2 of that award provided the  
following longevity schedule:

After five years	\$1,000	(an increase of \$ 670)
After ten years	\$2,000	(an increase of \$1,550)
After fifteen years	\$3,000	(an increase of \$2,420)
After twenty years	\$4,000	(an increase of \$3,300)

However, the award did not specify an effective date for  
the longevity increases. On January 12th Harry Greenberg,  
Counsel for the SBA, wrote the undersigned with copies to  
the City requesting a clarification of the award. The  
City, by its acting Director of the Office of Municipal  
Labor Relations, James F. Hanley, wrote to the undersigned

on January 26th with a copy to the SBA stating that it agreed that a clarification was warranted with respect to the effective date of the longevity increases. The City, however, took the position that the effective date should be May 1, 1990. In addition, the City drew attention to three other areas that it stated needed clarification, as follows:

- "1. What is the appropriate salary stretch or pay plan for Special Assignment (SA) and Supervisor of Detective Squad Sergeants (SDS) promoted on or after July 1, 1990? The award does not indicate what new salary schedule, if any, will apply to these groups. In the circumstances, an appropriate stretch should be provided for these groups.
  
2. Your award specifies a new longevity schedule for Sergeants, providing for \$1,000 after 5 years, \$2,000 after 10 years, \$3,000 after 15 years and \$4,000 after 20 years. We are assuming that the Sergeants are subject to the same rules concerning longevity payments that have been applied to all of the other groups that have resolved their 1987-90 Agreements, including the UFA Impasse Award, with a new longevity schedule. This obviously has an impact on the costing.
  
3. Is the salary stretch schedule that is provided for in paragraph 3 of page 56 in effect for one year beyond the expiration date of the contract? If not, the numbers provided for in your opinion at p. 51 cannot be reconciled."

The City also requested that a hearing date be set to deal with the issues. The undersigned scheduled a hearing for January 30, 1990 which was held at the Office of Collective Bargaining at which time counsel for the

parties presented evidence and argument regarding their respective requests for clarification. At the hearing the City raised the possibility that it might not be able to legally extend the probationary period for educational purposes. A transcript was made of the proceeding and the undersigned, after having reviewed same, has prepared the following clarification of the Impasse Panel award of January 8, 1990.

#### EFFECTIVE DATE FOR LONGEVITY

The Panel finds that the effective date for the longevity increases should be July 1, 1989. The Panel agrees with the SBA's assertion that the record supports a July 1, 1989 date. The only issues with respect to longevity were the costs required to achieve a longevity increase beginning on July 1, 1989 and whether the SBA should follow the PBA pattern rather than the UFOA pattern.

This conclusion is supported by Union Exhibit 17, which is a copy of the City's offer of September 26, 1989 to the SBA. That exhibit contains a longevity schedule to be effective in FY 90 which commences on 7/1/89. Also, Union Exhibit 28, which is a summary of the SBA's statistical analysis, shows that longevity was to be effective on 7/1/89. The Panel's intention was to follow

the PBA pattern which used 7/1/89 as the effective date for longevity, as well as the PBA conditions for longevity. Also there is nothing in the record to support the City's present conclusion that a date of May 1, 1990 or any later date than 7/1/89 would be appropriate.

The City's offer of 9/26/89 also noted that the increases in longevity would not increase the night shift differential payments as has been past practice. The City's offer also stated that the 25 year pensionability rule would be tightened to prevent early payments that occurred under previous interpretations.

City Exhibit 7, which is a copy of the PBA longevity agreement, contains three conditions on longevity. One, that the current rules on pensionability shall remain in effect. Two, calculations of night shift differential payments shall be based upon the same factors, amounts and methodology as previously utilized. Three, ITHP and pension benefit calculations shall only include the amount of the annual longevity payment that is pensionable. Accordingly, the Panel adopts those conditions in addition to the July 1, 1989 effective date for the longevity increases.

The SBA called attention to a letter agreement between the PBA and the City which added certain time periods as credits for longevity. The City noted that independent costing was used in arriving at the letter agreement. Therefore, since such evidence was not

submitted before this Panel, no finding can be made as to its value.

SALARY STRETCH FOR SPECIAL ASSIGNMENTS (SA) OR AS SUPERVISOR OF DETECTIVE SQUAD SERGEANTS (SDS)

The City's letter of January 26 requesting clarification also requested the creation of a salary stretch for Special Assignments (SA) or Supervisor of Detective Squads (SDS) promoted on or after July 1, 1990. The City's letter of January 26 stated that the record does not now provide a basis for determining the appropriate salary stretch. The Union agreed and argued that the Panel has no authority to create a salary stretch. Furthermore, the SBA argues that it did not seek a salary stretch and that the PBA does not have a salary stretch for its Special Assignment officers. However, the fact was not a part of the record. The Panel notes that Union Exhibit 17, which is a copy of the City's offer of 9/26/89, does contain a salary stretch proposal for Special Assignments (SA) or Supervisor of Detective Squads (SDS), as follows:

"Beginning in FY 89, the following 6 step schedule will be created for new entrants to the title.

	<u>89</u>	<u>90</u>
6th	\$48,015	\$50,896
5th		51,023
4th		51,150
3rd		51,278
2nd		51,406
Basic		57,274

Sergeants detailed on Special Assignment or as Supervisor of Detective Squad will be eligible for the following longevities:

FY 87

350	5 Yrs	1,000
475	10 Yrs	2,000
625	15 Yrs	3,000
750	20 Yrs	4,000

The 10 year \$2,000 longevity is pensionable at 20 years; the 20 year \$4,000 longevity is pensionable at 25 years. (Note: Longevities do not receive collective bargaining increases. Increases in longevity will not increase night shift differential payments, as has been past practice. Also, the twenty-five year pensionability rule will be tightened to prevent early payments that occurred under previous interpretations.)"

As noted, the City's offer also provided for longevity increases for Special Assignment or Supervisor of Detective Squads effective beginning FY 90.

Thus, contrary to both the assertion of the City and of the SBA, the Panel finds that there is a sufficient record available, as presented at the original hearings, to provide a salary stretch for Special Assignments Sergeants or Sergeant Supervisors of Detective Squads and the Panel will so award. The Panel sees no basis for not adopting a stretch for the Special Assignment and Supervisors of Detective Squads while doing so for all the Sergeants. It is understood that Special Assignment or Supervisors of Detective Squads are paid on the Lieutenant's schedule.

SALARY STRETCH BEYOND THE EXPIRATION DATE OF THE CONTRACT

With respect to the City's request that the Panel

specify in its award that the salary stretch is to remain in effect for one year beyond the expiration date of the contract, the Panel finds that it does not have the authority to make an award effective beyond the expiration date of the agreement, which is October 31, 1990. See B-3-77 at p.20 where the BCB disallowed a Panel award beyond the contract expiration date. The Panel recognizes that the parties based some of their cost estimates on the assumptions that certain contract rates would remain in effect for one year beyond the contract expiration date. However, that is a matter of their current costing methods, just as they have projected costs based on an 11 year model in determining net present value; but it does not confer authority on the Panel to make an award effective beyond the expiration date of the agreement. That is a matter for future bargaining as of November 1, 1990. Nor is the Panel at this point going to extend the effective date for longevity as a means of effectuating further savings.

As for the City's request that the Panel should re-evaluate its cost estimates by approximately .18 in order to meet the clarifications requested by the City, the Panel makes the following comments. First of all the record is closed and the Panel is not going to re-evaluate

all of the costing evidence that was submitted. Moreover, the Panel notes that it's award gave an edge to the City of .0625. Furthermore, with the clarifications provided with respect to the Special Assignment or SDS Detectives, the City has realized a further cost benefit. Applying the City's figures to the salary stretch results in a savings of 2.69 when multiplied by 5.46%, the percent of SA or SDS in the unit, the result is .147. The Panel recognizes that there may be some duplication of its figures for the salary stretch for Sergeants. However, it is a guarantee that the stretch savings will be achieved with respect to the SA or SDS Sergeants.

#### PROBATIONARY PERIOD FOR EDUCATIONAL PURPOSES

The Panel recommends that the probationary period for educational purposes may be extended for one year to a maximum of three years. The City notes that it might not be able to comply with this portion of the award for legal reasons. The Panel recognizes that any portion of an Impasse Panel award which requires the enactment of a law cannot go into effect until such law is enacted. If such should prove to be the case with respect to the educational recommendation, the Panel recommends that the parties jointly sponsor the necessary legislation to implement that portion of the award.

Thus for the reasons stated above, the Panel makes the following Clarifications of it's Award:

1. The following longevity schedule shall apply effective July 1, 1989:



After five years	\$1,000	(an increase of \$ 670)
After ten years	\$2,000	(an increase of \$1,550)
After fifteen years	\$3,000	(an increase of \$2,420)
After twenty years	\$4,000	(an increase of \$3,300)

2. In addition hereto, the following additional conditions on pensionability shall apply:
  - a. The current rules on pensionability shall remain in effect.
  - b. Calculations of night shift differential payments shall be based upon the same factors, amounts and methodology as previously utilized.
  - c. ITH and pension benefit calculations shall only include the amount of the annual longevity payment that is pensionable.
  
3. That the appropriate salary stretch or pay plan for Special Assignment or Supervisor of Detective Squads promoted on or after July 1, 1990 shall be as follows:

The following 6 step schedule will be created for new entrants to the title.

	<u>7/1/90</u>
6th	\$50,896
5th	51,023
4th	51,150
3rd	51,278
2nd	51,406
Basic	57,274

4. That the longevity schedule for SA or SDS is as follows:

Sergeants detailed on Special Assignment or as