

by these parties to collectively bargained settlements. The limitation on awarding a contract term in excess of two years, the fact that the contract term at issue expired almost two years ago and the requirement of concurrence by another Panel Member further restrict the flexibility of this Panel to render an award that may best incorporate the parties' respective interests. These restrictions are matters of public policy to be addressed in political and legislative forums.

This Panel's charge is to render a just and reasonable determination on the issues presented, guided by the statutory criteria. These criteria include: comparison of wages and working conditions with other employees performing similar services or requiring similar skills under similar working conditions and other employees generally in public and private employment in comparable communities; the interests and welfare of the public and ability to pay; peculiarities of police work, including hazards, physical qualifications, educational qualifications, mental qualifications, job training and skills; and, the terms of the parties' prior collective bargaining agreements.¹

The Taylor Law standards are similar to the standards under the New York City Collective Bargaining Law ("City Law") that previously governed resolution of interest disputes between the parties. Both statutes include a standard of comparisons of wages and working conditions of employees performing similar services. The Taylor Law does not, however, include the City Law's requirement of a comparison to "other employees in New York City." Nevertheless, in considering the terms of the parties' past agreements that reflect parity and pattern relationships among bargaining units in the City, the Panel necessarily takes these relationships into account.

¹ New York State Civil Service Law Section 209.4.c, applicable to compulsory interest arbitration provides in relevant part:

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

WAGE INCREASE

PBA PROPOSAL

The PBA proposes a two-year contract term with a minimum wage increase of 34.17%.

The PBA takes the position that under the Taylor Law standards, an award must be based on "appropriate market-based increases" and use of comparability "benchmarks," not on the "lock step pattern" relationships with different City bargaining units. In many rounds of bargaining since 1980 there has been a difference between uniformed and civilian bargaining groups, and in some bargaining rounds a difference among uniformed groups as well.

According to the PBA, a substantial increase in compensation, well above the pattern set and followed by other City bargaining units during the contract term at issue, is warranted and necessary in light of the relative and substantial decline in New York City police officer pay in comparison to police officer pay in other jurisdictions. The 10 local jurisdictions identified in the July 2005 interest arbitration proceeding between the parties are the most appropriate comparators. A 34.17% increase over a two-year term would merely raise compensation of the NYPD police officers to the average compensation in the local jurisdictions by the end of the contract term.

The PBA urges that the City's claim of potential "chaos" in City bargaining and finances as a result of a higher award in this proceeding is without foundation. The City has the ability to pay the PBA proposal and it is a question of unwillingness, not inability to pay. The City finds funding for other priorities such as substantial increases in capital spending. The PBA also urges that the consistently low wages of New York City police officers has resulted in a decline in Departmental morale and an increasing inability by the Department to recruit and retain qualified, let alone the best, officers.

NEW YORK CITY PROPOSAL

The City proposes a wage increase not to exceed a net cost to the City of 6.24%, 3% effective the first day of the 24-month contract term and 3.1% effective the first day of the 13th month of the contract term.

According to the City, under the Taylor Law standards, an award must preserve long-established parity relationships among the uniformed forces—some dating back to the late 19th century—and be consistent with the uniformed pattern for the 2004-2006 round of bargaining. It views pattern bargaining and parity relationships as "well-established historical fact," repeatedly recognized and enforced by impasse panels and interest arbitration panels. Conformance of this Panel, the City urges, is "essential" to the preservation of order and economic stability of the City and to the preservation of stable labor relations in contrast to the parity wars during the late 1960s and early 1970s.

The City emphasizes that since the issuance of the most recent PBA interest arbitration award, all other uniformed force settlements (13 of 14) have adhered to pattern and parity principles for the 2006-2008 round, and 10 of 14 for the 2008-2010 round. These settlements reaffirm recognition of long-standing relationships while at the same time permit flexibility in

fashioning unit-specific enhancements through funding mechanisms and cost-savings measures such as reduction in vacation days, different uses of rescheduling days or joint support for legislation.

The City urges that there is no other community comparable to New York City in terms of size, diversity of population and budgetary demands. The only truly appropriate comparison is with other City employees. If any comparison with other jurisdictions is deemed necessary, overall compensation comparisons with other large cities in the United States as opposed to small urban or suburban jurisdictions is more appropriate, and New York City ranks favorably in such comparisons. A meaningful comparison of compensation levels also includes the other benefits on which the City spends 60% above total direct compensation. Inclusion of cost of living differences in cost comparisons is not appropriate and can result in "seriously distorted and misleading" comparisons.

In the City's view, there is no recruitment crisis, no retention crisis and no other "unique, extraordinary, compelling and critical circumstance" that would justify a break with the pattern. Crime levels have continued to decline during the relevant time period, and there is no threat to public safety. Other advantages of NYPD police officer employment include training and the prestige and recognition of the NYPD as the premier police department in the country. Extensive career paths, including post-retirement opportunities and opportunities for promotion, are available to New York City police officers that are not available to officers in other jurisdictions.

Additionally, the City's ability to pay is restricted by its legally-mandated balanced budget, and the growth of non-discretionary expenses such as pension, health insurance and debt service payments that are continuing to increase. The recent downturn in the economy, increasing projected budget gaps in the upcoming years and the current direction to all City agencies to reduce budgets have a significant, adverse impact on the City's ability to pay any above-pattern increase.

FINDINGS ON WAGE INCREASE

Comparability

Wage or compensation comparisons between New York City and other jurisdictions must take into account the fact that no other jurisdiction, nationally or locally, is a "perfect twin" or comes close to New York City in the size of its police officer workforce. At the end of 2006 there were approximately 23,269 police officers in New York City, but only an estimated 9,500 in Los Angeles. Locally, there are fewer than 2,000 police officers in Suffolk County and in Nassau County, fewer than 1,200 at the Port Authority of New York/New Jersey ("Port Authority"), approximately 500 at the Metropolitan Transit Authority ("MTA") and approximately 400 in Yonkers.

When factors such as diversity and density of populations and neighborhoods, the volume of commercial as well as residential activity and the need for extensive social services are taken into account, the demographics of large urban jurisdictions more closely approximate New York City than do suburban counties or communities. Historically New York City police officer wages were "in general and in the aggregate superior to those prevailing in other major cities," as

recognized by a 1975 impasse panel in a prior dispute between the parties. In more recent years the relative standing of New York City police officer wages has substantially declined.

Variations in the selection of factors in comparisons of "total compensation," such as hours worked, shift differentials, education premiums, termination pay, pay for unused sick leave and vacation days or incentives to stay beyond 20 years, can have a significant impact on any "apples-to-apples" comparison, rendering a comparison of wage rates more appropriate. A comparison of police officer maximum wage rates and 20-year average wage rates as of July 31, 2004 and as of July 31, 2006 for selected national cities where demographics more closely approximate those of New York City demonstrates that New York ranks behind such cities as San Jose, San Francisco, Los Angeles, Chicago, Washington, D.C. and San Diego. In a comparison of police officer maximum wage rates and 20-year average wage rates as of July 31, 2004 and July 31, 2006 for selected local jurisdictions, New York ranks behind Suffolk County, Nassau County, the Port Authority, Yonkers, the MTA and New York State Troopers.

Even using the comparisons of total direct compensation presented by the City's expert, New York City does not rank at the top as in the past. When direct compensation levels in the first year of service as of July 31, 2004 are compared, New York City ranks 19 out of the 20 national jurisdictions. New York City's ranking in comparisons of direct compensation does improve after five years of service, after 20 years of service and when other benefits such as pension and health insurance are added to base pay. City experts did not, however, take into account any differences in the cost of living among the national comparators, although a 2007 Mercer report cited New York City as the most expensive city in the country. Variations in cost of living can have a significant impact on wage or compensation comparisons.

Prior Agreements

Maintenance of the parity relationship of police officers to firefighters dating to the late nineteenth century and other long-standing parity relationships among ranks in the NYPD and with other uniformed forces has been an on-going objective of the City to foster financial stability and consistency in its labor relations. That objective must be given due consideration. Since at least 1975, all City civilian and uniformed bargaining units have at times conformed to a settlement pattern based on net cost to the City, but different patterns were negotiated or awarded for civilian employees and for uniformed forces from 1980-1989, 2000-2004 and 2004-2006. The interest arbitration award for the 2000-2002 contract term for these parties was not strictly pattern-conforming on a net cost basis but on the basis of "equal pay for equal work." Following the issuance of that award, the City settled with most of the other uniformed force units in a manner consistent with its terms. But with two units, the DEA and the SBA, the City elected a non-pattern-conforming settlement. It is instructive to recall that pattern bargaining in the 1970s occurred when not only New York City police officer salaries were ranked at the top nationally, but salaries of other New York City uniformed forces, including firefighters and sanitation workers, were ranked at the top as well.

Peculiarities of Police Work

Police officer duties are distinct not only from those of "civilian" employees, but also from those of other uniformed forces such as firefighters and correction officers whose positions similarly involve substantial physical risk. Unlike firefighters and correction officers, as Former

NYPD Assistant Chief and Commanding Officer of the Borough of Manhattan South Bruce Smolka testified, the most basic police duties are not "regimented." Police officer street patrols do not involve any routine and are generally carried out without supervision. Former corrections officer and current police officer Jason Caputo testified, "When I walked into jail [as a corrections officer], you pretty much know where you were going, where the lockup was, where the hospital was, where the cafeteria was." By contrast, as a police officer, "You don't know when you walk into a three-family home who is where, how many people are in the house, you can't rely on their information: 'Are you alone?' 'Is somebody else here?' So it's – every day is different and you never know."

Police officers now provide the front-line defense in homeland security, serving as the "first preventers" and not just "first responders," as former NYPD Commanding Officer of the Office of Labor Relations and Commander of the Academy James McCabe and former New York City Police Commissioner and current LAPD Chief of Police William Bratton indicated in testimony. In a June 7, 2006 New York Times article on NYPD anti-terrorism activities, Mayor Bloomberg noted that "while technology is important, it's really shoe leather that counts."

Police officers are also required to employ problem-solving and dispute resolution skills under the CompStat and Community Policing paradigms. At any time police officers may be called upon to intervene in domestic violence or other personal circumstances. Police officer activities are increasingly subject to outside scrutiny, and officers must have a basic understanding of the law applicable to the circumstances they face, as noted by former Boston Police Commissioner and Massachusetts Secretary of Public Safety Kathleen O'Toole in testimony. The education requirements of the NYPD are higher than for other uniformed officers in the City. As Chief of Personnel Rafael Pineiro noted, "the Correction Department doesn't have 60 college credits. The Fire Department doesn't have 60 college credits. You are eliminating a whole bunch of people that can't have this job."

Ability to Pay/ Interest and Welfare of the Public

The City has projected out-year budget gaps since 1982, and each year the budget gap has been closed. As City Budget Director Mark Page testified, these conservative revenue projections have permitted the City to achieve and maintain a level of fiscal well-being. This does not mean the City has unlimited resources to fund substantial increases in wages or other benefits. The fiscal constraints under which the City operates are significant. Fixed expenses such as debt service costs and pension and health-care expenses account for approximately 33% of the City's operating budget and continue to increase. For example, the cost to New York City to fund its employee pension systems rose by \$4.5 billion from fiscal year 2004 to fiscal year 2008. If the pension funds fail to achieve an 8% return, the City is required to make up the shortfall. The City must also assume responsibility for covering certain increased costs of health insurance benefits to employees and retirees as a matter of law.

There is a concern over the potential for declining revenues, and the Mayor has recently directed all City departments to reduce spending by \$500 million for FY 2008 and another \$1 billion for FY 2009. The estimated net cost to the City for each 1% increase in PBA wages is approximately \$24 million, and reopener provisions in agreements with other bargaining units could result in additional costs.

There is little, if any, dispute that the low entry-level ("Academy") rate of New York City police officers has adversely impacted recruitment, although the parties disagree whether the Academy rate is the sole factor. Even though NYPD head count has remained stable since 2004 (23,712 at the end of December 2003; 22,504 at the end of 2004; 22,430 at the end of 2005; and 23,269 at the end of 2006), recruitment efforts are not yielding the results of the past, and there are clear indications that retention is an issue as well. NYPD Recruitment Section memorandum "Assessment of Recruitment Efforts and Results for Fiscal Year 2005 and 2006" reports a 40% decrease in the number of applicants and a 30% decrease by in the number of test takers. The Academy dropout rate has increased from approximately 3.6% in 1982-1996, to 13.1% in 1997-2005 and to 19.9% in 2006-January 2007. The dropout rate as a percentage of the starting class has also increased from 10.9% in January 2005 to 13.1% in July 2005, 16.3% in January 2006, 20.3% in July 2006 and 22.9% in January 2007. Of 898 exit interviews of superior officers and police officers available from 2005 and 2006, 574 officers who resigned stated they were leaving for another police department, and 70% went to a police department in the New York metropolitan area.

New York State Senator Eric Adams, who retired as a captain after 22 years of service with the NYPD and now represents Senatorial District 20 in Brooklyn, noted in testimony an increasing difficulty in persuading young people who have an interest in law enforcement to work for the NYPD because it is "on the bottom in salary," even though it is "top in professionalism." Director of the Crown Heights Youth Collective Richard Green, who for many years has worked closely with local precincts and encouraged neighborhood youth to join the NYPD, similarly testified to the difficulties in encouraging NYPD recruitment in light of the low salary rates as compared to police officers in other jurisdictions. There is also a concern that the recent and successful efforts of the NYPD to diversify its workforce may be undermined by ongoing wage disparities.

As Mayor Bloomberg noted when referring to the disparity between salaries of New York State judges and federal judges, "in order to attract the best and the brightest, we need to pay a salary that is competitive...who knows how many excellent candidates may have not applied because the salary isn't competitive?"

CONCLUSIONS ON WAGE INCREASE

In weighing the evidence in light of all the statutory criteria, the Panel Chair concludes that the wage package to be awarded must take into account the critical and compelling circumstance of the decline in police officer applicants and the increase in Academy dropouts. It is also in the public interest that wage increases, at a minimum, do not further disadvantage New York City police officers as against police officers in comparable national and local jurisdictions, and that wage increases continue the appropriately incremental process of returning the salary levels of New York City police officers to a position commensurate with the status of the NYPD as the premier police force in the nation. Strict adherence to the pattern urged by the City would not meet these objectives and would not result in a just and reasonable determination.

At the time the interest arbitration award for the 2002-2004 contract term was rendered in July 2005, a time of increasing revenues in the City, a 5% increase in each of four years (the two years covered by the 2002-2004 contract award and the two years covered by this Award) was viewed as appropriate to start the process of reducing wage discrepancies between New York City police officers and police officers in comparable jurisdictions. Given the current economic climate and the need to address the entry-level salary rate, a just and reasonable determination includes a 4.5% wage increase in the first year and a 5% wage increase in the second year of the contract term at issue, together with the elimination of the Academy rate. It is appropriate and within the authority of the Panel to fashion an award that achieves these goals in part through productivity and cost-saving measures.²

OTHER PROPOSALS

As a result of the focus on wages by the parties in this proceeding and the demonstration of a compelling need to address wage disparities at this time, all other proposals presented to the Public Arbitration Panel at the hearing and in argument set forth in pre-hearing, post-hearing and reply briefs are referred back to the parties. None is awarded at this time. Failure to award any of the following proposals should not be construed as a determination by the Panel Chair that a specific proposal lacks merit or would not be appropriate for consideration in the future. Consistent with the statutory mandates, the Panel Chair addresses each proposal on an individual basis.

² The net cost to the City of the salary increases awarded here closely approximates the net cost to the City of the salary increases awarded for the 2002-2004 contract term, including a 4.5% base salary increase effective the first day of the contract term and a further increase of 5%, compounded, effective the first day of the second year of the contract term, and a new base annual salary rate of police officers in the Police Academy at the same base annual salary rate of Sixth Grade police officers (a net cost to the City of 0.5%). The above-budget cost to the City in the award for the 2002-2004 contract term was funded substantially by cost-savings and productivity measures, including the creation of a new hire salary schedule, loss of a personal leave day and an increase in reschedule tours. The above-budget cost to the City of the Award here is funded in part by productivity and cost-saving measures proposed on the record and adopted by other uniformed force bargaining units in their settlements. These measures include the elimination of 10 annual vacation days only for police officers during their first 5 years of service, an increase of 5 reschedule tours for all police officers, the application of the Detective Rules to reschedule tours for all police officers on six named holidays, and the scheduling of one of the Range Days for each police officer on a vacation day, all to be implemented as set forth in the Award.

EDUCATION AND TRAINING INCENTIVE PAY

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. Each police officer who possesses the following degrees or experience will receive the corresponding premium paid on an annual basis:
 - Associate's Degree or 60 college credits or military service of two years: 10% of salary and longevity
 - Bachelor's Degree or 120 Credits: 15% of salary and longevity
 - Master's or other Post-Graduate Degree: 20% of salary and longevity
- ii. Police officers who do not hold one of the above degrees shall receive Training and Experience pay, based on successfully completing a program jointly agreed to by the Union and the Employer, in the amount of 10% of salary and longevity paid on an annual basis.

Like teachers, police officers should be compensated for job-related education. An educated police force performs better on the job given that police work now requires a higher level of analysis, organizational and communication skills and cultural awareness and sensitivity. All are enhanced by a college education. The nationwide trend is to compensate for educational attainment and continuing education, as demonstrated by educational premiums offered to police officers in 15 out of 20 national cities at an average maximum level pay of \$4,342. Education pay is consistent with fundamental principles governing the labor market and public policy, and it aids in staffing and will stem the exodus of veteran police officers. It is also fair.

CITY POSITION: Additional pay is not warranted for educational qualifications (60 college credits or 2 years of military service) already needed to become a police officer. The PBA's similar proposal during the 1997 interest arbitration, shortly after the 60-college credit requirement was implemented, was rejected at that time. There is no demonstrated need as incoming recruits are the best educated. In the last Academy class, 43% of recruits had an associate degree or higher and 24% had a bachelors degree or higher. The Department is losing officers at a rate of less than 1% per year, and a substantial portion of the voluntary attrition consists of Academy dropouts who have not received extensive training.

FINDINGS AND CONCLUSIONS

The PBA proposal is not awarded at this time. Educational qualifications of police officers are significantly higher than those of other uniformed services. Police officers need 60 credits and a 2.0 GPA, while firefighters only need 15 credits, 6 months' full-time work experience and no minimum GPA. Corrections officers only need 39 credits and no minimum GPA. Sanitation workers only need a high school degree or GED. The percentage of NYPD recruits with BAs is also growing. Other jurisdictions have recognized the value of education in meeting the challenges of urban police work as reflected by the fact that 15 of the 20 national comparators include some form of additional compensation for education.

Educational premiums in other jurisdictions, however, take different forms and are funded through different mechanisms such as the Quinn bill passed by the Massachusetts State

legislature and substitution of an educational premium for longevity. The proposal also represents a potentially significant cost to the City. Given the focus on increases in wages at this time, the proposal is referred to the parties for consideration.

TERRORISM WORKLOAD AND SAFETY RISK PREMIUM

PBA PROPOSAL: The PBA proposes a new contract provision:

In recognition of the increased workload and enhanced safety risks resulting from terrorism threats and incidents within New York City, each police officer shall receive a premium equal to 10% of salary and longevity, which premium shall increase at the same percentage as all future wage increases.

The events of September 11 changed police officers' roles, increasing workload and safety risks as the first preventers of terrorism and counterterrorism and first responders to any future attack, in addition to the traditional roles of crime control, order, maintenance, and service. Police officers now receive extensive terrorism training and are provided with protective equipment. The New York State Troopers, SUNY, NY EnCon, San Francisco, and San Jose compensate their police officers for terrorism training and risks. Police officers are also suffering ill health as a result of the September 11 attacks.

CITY POSITION: No evidence supports that the workload of police officers has increased as a result of "terrorism-related" responsibilities or that counter-terrorism programs have "materially changed" police officer work. The premium the PBA is seeking would be paid to all officers irrespective of assignment, and there has been no change in circumstances since the 2004 bargaining round when this proposal was first and unsuccessfully presented. Counter-terrorism training took the place of other training or regular job duties during compensated time. Terrorism-related duties are not unique to police officers and equally affect sergeants, detectives, lieutenants, captains and firefighters. The UFA settled for this round and the next and sought, but did not receive, special compensation.

FINDINGS AND CONCLUSIONS

The PBA proposal on terrorism workload and safety risk premium is not awarded. Changes in duties resulting from counter-terrorism activities may warrant a premium or adjustment, as other jurisdictions have negotiated, but this proposal represents a potentially significant cost increase not appropriate in the context of this Award.

Health-related problems that may have resulted from September 11-related service is an issue in which both parties and the public have an interest, but the extent of health-related problems was not addressed on the record.

DEFIBRILLATOR PAY

PBA PROPOSAL: The PBA proposes a premium payment of 3% of basic maximum salary and longevity, to be increased by the same percent as future salary increases for each police officer trained to use a defibrillator. Police officers have been trained to use defibrillators since 1999, and this training is valuable to New York City because police officers are first

responders. The assumption of this duty is in addition to general first aid responsibilities already in place. Firefighters receive a similar payment, ranging from \$2,200 to \$2,455, and total compensation should be considered to achieve parity with firefighters.

CITY POSITION: The comparison to firefighter training is not apt because under the Certified First Responder-Defibrillator (CFR-D) program in the Fire Department, all participating firefighters must be CFR-D certified and recertified every three years. Newly hired firefighters must be certified as a condition of their employment and the initial certification program is a 72-hour training course. If firefighters are not trained, the FDNY provides training at the employee's expense. Firefighters receive CFR-D differential pay only for tours when assigned to a particular type of apparatus in a particular company that is "on line" for CFR-D responses, or for specific CFR-D responses. Unlike the firefighters' CFR-D training program, the NYPD defibrillator program is relatively uncomplicated and use of defibrillators by police officers is limited. Other City employees, for example, in the Departments of Marine and Aviation, are trained to use the same equipment and do not receive any additional compensation.

FINDINGS AND CONCLUSIONS

The PBA proposal on defibrillator pay is not awarded. The record establishes a clear distinction between defibrillator training for police officers and the CFR-D certification training for firefighters. Firefighters only receive premiums for assigned tours or for specific responses.

LONGEVITY, ANNUITY AND UNIFORM ALLOWANCE

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. Longevity shall be converted to a percentage of current basic salary and shall increase in the same percentage as all future wage increases, including increases in the current round.
- ii. The adjustment for longevity after the 5th, 10th, 15th and 20th years of service shall be computed as salary for pension purposes.
- iii. The annuity payment will be converted to 2% of basic maximum salary, and will increase in the same percentage as all future wage increases, including increases in the current round.
- iv. Uniform allowance shall be converted into 2% of basic maximum salary and will increase in the same percentage as all future wage increases, including increases in the current round.

When computed from basic maximum salary instead of base salary, the current longevity and annuity payments and the uniform allowance do not increase when general wages increase. Longevity is calculated as a percentage of base salary in other national and local jurisdictions including San Francisco, Washington, D.C., San Antonio, Detroit, Elizabeth, Jersey City, Newark, Yonkers and the Port Authority.

NYC POSITION: The cost to convert longevity payments, annuity payments, and the uniform allowance to a percentage of base salary that would increase by the same percentage as all future wage increases is substantial. No other uniformed union in the City receives these payments on the basis of a percentage of base salary.

FINDINGS AND CONCLUSIONS

The PBA proposals on longevity and annuity payments and uniform allowance are not awarded. The proposals represent a potentially significant cost increase and are without adequate support on the record.

GAIN SHARING

PBA PROPOSAL: The PBA proposes a new contract provision:

At the end of each contract year, all unit members shall share in the savings realized by the City as a result of the reduction in headcount of police officers as measured from the headcount on August 1, 1999. The City shall share the savings equally with the PBA, and the aggregate saving shall be divided equally among all current police officers who were employed during the contract period.

Police officers continue to perform their work at an exceptional level with reduced headcount and increased responsibilities. The City has realized gains from reduced headcounts and all PBA active unit members should receive an equal share in the difference between the salaries of the headcount at the end of the contract period and the headcount on August 1, 1999, which the PBA calculates as an approximately \$263 million savings.

NYC POSITION: Crime rates have declined for a number of years and any drop in the crime rate is likely attributable to factors other than increased productivity. All other City agency employees are performing well with fewer personnel, and awarding an above-pattern increase on the productivity argument is unprecedented.

The PBA presented the same proposal unsuccessfully in 1997, 2002 and 2004, and there has been no change in circumstances since 2004 that would warrant a different approach. In any event, actual productivity has decreased because the headcount has increased. Increased 311 call volume does not translate into higher police officer productivity and is unlikely to lead to an officer dispatch unless the call is transferred to 911. Similarly, multiple 311 calls involve the same situation and do not translate into the dispatch of multiple officers. "Quality of life" summonses have also decreased.

FINDINGS AND CONCLUSIONS

The PBA proposal on gain sharing is not awarded. Headcount fluctuates for numerous reasons, and there is insufficient evidence to demonstrate that any realized "gains," such as reduced crime rates, are the result of productivity increases as opposed to other factors such as administrative decisions on force deployment.

PREMIUM FOR LACK OF NEGOTIABLE DISCIPLINARY PROCEDURAL PROTECTIONS

PBA PROPOSAL: The PBA proposes a premium payment of 10% of basic max, and of overtime and night shift differentials, to compensate police officers for two types of harm: loss of the negotiated disciplinary procedures and implementation of discipline-related programs that would not exist under collective bargaining. The imposed disciplinary system distinguishes police officers from all civilian and other uniformed workers in New York City and from police officers in many other jurisdictions around New York State. A police officer's job is more difficult with the new disciplinary plan, and operational efficiencies are enhanced as a result. The inability to bargain for disciplinary procedures, the consequences of that inability and the loss of previously negotiated procedures entitles police officers to the payment.

CITY POSITION: The New York City Charter grants the New York City Police Commissioner exclusive authority over police officer discipline, and that authority is not subject to collective bargaining. See *City of New York v. MacDonald*, 201 A.D.2d 258 (1st Dep't 1994); *Patrolmen's Benevolent Association v. Public Employment Relations Board*, 6 N.Y.3d 563 (2006). The other four uniformed bargaining units are treated in the same manner and do not receive any such premium payment.

FINDINGS AND CONCLUSIONS

The PBA proposal for a premium for lack of a negotiated disciplinary procedure is not awarded. There is an insufficient demonstration on the record of the impact of the current disciplinary system on police officers.

WORK SCHEDULE - LENGTHENING OF TOURS AND DECREASING NUMBER OF APPEARANCES

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. NYPD will adopt a modern chart for police officers, implementing duty schedules that replicate or are similar to those in other jurisdictions that will require either 10 hour or 12 hour tours, plus or minus increments of less than an hour (i.e., a 12 hour, 15 minute tour, a 10 hour, 30 minute tour), and fewer appearances.
- ii. A Joint Labor-Management Committee shall be convened upon the resolution of all other wage and benefit issues to work out expeditiously the details of this modern work chart. The first issue to be resolved by the Committee is the savings generated by the respective charts.
- iii. Savings realized from the new patrol chart shall be shared equally among all police officers who were active during the contract period.

Changing tour schedules to a "modern chart" with fewer appearances and more hours of work in a given day is a national trend. The proposal would not change the number of hours a police officer works in a year (2088), but the new configuration would increase operational efficiencies

and result in savings from the length of the tour and elimination of a daily one-hour meal period, two daily 20-minute personals and 20 minutes for daily roll call and wash up. It would also reduce commuting consistent with the Mayor's initiatives to reduce petroleum emissions and ever rising costs of traveling. The LBA has negotiated such a tour, with either 10-hour tours (with 209 scheduled appearances per officer per year) or 12-hour tours (with 179 scheduled appearances per officer per year). The changes would also result in reduced overtime and officer fatigue.

CITY POSITION: The current work schedule – 8-hour, 35-minute tour, with 243 scheduled appearances per officer per year – has been in effect for 30 years, and longer tours would reduce operational flexibility. The 10-hour tours would mean 34 fewer appearances per officer, per year and a decrease of 782,000 work days per year for the force. A change to 10-hour tours could increase overtime costs because the same events (i.e., arrests, operational needs) that happen at the end of all tours would occur at the end of the lengthened tours as well, and fewer police officers would be working (34 additional days off per officer, per year). Court appearances and other planned and unplanned special events would be more likely to fall on days off.

The NYC/LBA pilot-program experimented with 12-hour tours and found that costs increased. While the City paid the cost of the program during the 6-month pilot-period, the LBA agreed to pay the cost if 12-hour tours continued. Shorter tours have worked well, as evidenced by the reduction in crime levels below those of cities with longer schedules. Longer hours would lead to increased fatigue and impair performance.

FINDINGS AND CONCLUSIONS

The PBA proposal on the lengthening of tours and decreasing the number of appearances is not awarded. There is an insufficient demonstration of the potential impact or need for the proposed change.

NIGHT SHIFT DIFFERENTIAL

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. The default 10% night shift differential shall not be diminished, whether by a police officer's average sickly, vacation, court time, training, *et al.*
- ii. Eliminate Article 19, Section C of the PBA collective bargaining agreement.

Police officers in other jurisdictions receive percentages for night shift differentials, and the benefit would assist in correcting the total compensation inequity. The City mischaracterizes the scope of the current night shift differential given that Academy recruits do not receive any night shift differential, and the differential would be further diminished by vacations and other forms of leave.

CITY POSITION: There is insufficient evidence to support the proposal. The PBA has offered no rationale for such a fundamental change in a previously negotiated benefit. It is purely another means for getting more money.

FINDINGS AND CONCLUSIONS

The PBA proposal on night shift differential is not awarded at this time. The record does not reflect any demonstrated need for the proposal, and it represents a potentially significant cost to the City.

HEALTH AND WELFARE FUND

PBA PROPOSAL: The PBA proposes a new contract provision:

Effective August 1, 2004 and for each year thereafter, the City shall contribute an additional \$200 per annum for each active member.

The PBA has not received an increase to its health and welfare fund since 2004, whereas other City unions have received one-time cash infusions or rate increases of \$100-\$300.

CITY POSITION: Every other bargaining unit that wanted an increase to the health and welfare fund paid for it through productivity enhancements or internal savings.

FINDINGS AND CONCLUSIONS

The PBA's proposal on additional contributions to the health and welfare fund is not awarded. Current health and welfare benefits are substantial.

TIME VALUE OF DELAYED COMPENSATION

PBA PROPOSAL: The PBA proposes a new contract provision:

In recognition of the fact that the time value of a contract settlement delayed is less than if it was arrived on time, in addition to wage and benefit increase pursuant to a negotiated collective bargaining agreement or the award of an arbitrator pursuant to §209(4)(c)(v) of the Taylor Law, the City shall be obligated to pay an amount reflecting the time value of money held by the City due to any delay in payment of salary increases from the date of expiration of the prior contract to the date of actual payment. This amount shall be calculated by applying a 9% annual interest rate to the retroactive amounts owed to each police officer for each pay period from the date of expiration of the prior contract to the date of actual payment.

Irrespective of which party has been responsible for the delay in reaching successor agreements since 1980, the City has gained in the delays by not having to pay monies owed and the membership of the PBA has been harmed. The proposed 9% annual interest addresses this "structural problem" and is the CPLR rate on contract claims. It would serve as an incentive to the City not to "drag its feet" in negotiations.

CITY POSITION: While the PBA contends that the cause of the bargaining delay is irrelevant, the City tried to negotiate with the PBA in an effort to correct the harm caused by the prior award. The PBA's engaging in "frivolous" litigation over the PERB list caused the delay.

FINDINGS AND CONCLUSIONS

The PBA's proposal on payment for the time value of deferred compensation is not awarded. There is an insufficient demonstration on the record to support this proposal.

SICK LEAVE INCENTIVE

PBA PROPOSAL: The PBA proposes a new contract provision:

Adopt an annual program for limited use of non-line-of-duty sick leave in accordance with below listed chart.

<u>Utilization (Days)</u>	<u>Payout</u>
4	\$100
3	\$200
2	\$400
1	\$800
0	\$1600

The PBA estimates that the City loses over 209,000 police officer workdays to sick leave, and an incentive program would produce increased coverage and productivity. Changing from a punitive approach to an incentive would also increase morale. Similar programs have been adopted in other jurisdictions such as Boston, Indianapolis and Suffolk County.

CITY POSITION: Police officers receive unlimited sick leave for all illnesses or injuries, line-of-duty and non-line of duty. PBA's proposal would encourage police officers to use up to 4 sick days when they might not have used any. No other uniformed union receives incentive pay not to take sick leave.

FINDINGS AND CONCLUSIONS

The PBA proposal for a sick leave incentive is not awarded. The record does not sufficiently demonstrate the likelihood of increased productivity or the experience of jurisdictions with sick leave incentive programs.

HOME CONFINEMENT

PBA PROPOSAL: The PBA proposes a new contract term:

A police officer's period of home confinement while on sick leave shall be limited to the hours of his or her regularly scheduled tours of duty.

Among other public sector employees, confinement is limited to those hours that the employee would be required to work. Police officers are now required to receive permission to leave the

residence and generally avoid doing so, and are harassed if they do leave. Such policies do not exist in the private sector and are not in place for other units, such as firefighters. It is unprofessional.

CITY POSITION: The PBA offered no evidence that other public sector employees are only confined during regularly scheduled work hours or that the two purposes of the program, full recovery and minimization of abuse, would be served by the proposal.

FINDINGS AND CONCLUSIONS

The PBA proposal for a limitation on home confinement during sick leave is not awarded. While no evidence of abuse of sick leave by police officers was presented by the City and the current NYPD approach appears peculiar and may have an adverse impact on morale, there is insufficient evidence on the record to support the proposed change.

CONTRACT MAINTENANCE/WRITTEN COLLECTIVE BARGAINING AGREEMENT

PBA PROPOSAL: The PBA proposes a new contract provision:

Reduce to writing and incorporate into the successor written collective bargaining agreement terms and conditions of employment not presently embodied in the existing collective bargaining agreement, as amended by the September 4, 2002 arbitration award and the June 27, 2005 arbitration award, including: work schedules; provisions for meals; personals; and, procedure for vacation selection.

Incorporating work schedules, provisions for meals, personal breaks and procedures for vacation selection in written form as in other collective bargaining agreements would "enable police officers to know and understand their rights so they can enforce them."

CITY POSITION: There would be a prolonged process to determine what constitutes "terms and conditions of employment" not at present embodied in the parties' agreement. The parties, not an interest arbitration panel, should determine whether a party has become legally obligated to adhere to a practice in the future on a case-by-case basis.

FINDINGS AND CONCLUSIONS

The PBA proposal for incorporation of certain terms and conditions into the written collective bargaining agreement is not awarded. The record proof is insufficient to support the proposed change.

SAFETY AND HEALTH MAINTENANCE

PBA PROPOSAL: The PBA proposes a new contract term:

The employer shall provide health and safety standards for the protection of employees' well-being, commensurate with those presently in effect in the private

sector, and shall provide and maintain safe and healthful working conditions in Department facilities and shall initiate and maintain safe operating practices.

The PBA seeks to incorporate OSHA standards as applied to New York State and local governments through PESH to address "deplorable" conditions in certain police precincts and to provide a venue for addressing safe working environment complaints that is not burdensome and protracted.

CITY POSITION: Health and safety standards are already in place under the PESH Act and there would be disputes over the meaning of "commensurate with those presently in effect in the private sector." The PBA can pursue violations of the PESH Act and regulations with the State Department of Labor. The availability of different problems could lead to forum shopping and inconsistent results.

FINDINGS AND CONCLUSIONS

The PBA proposal for incorporation of OSHA standards into the parties' contract is not awarded. There is an insufficient demonstration of the inadequacy of available forums for the redress of health and safety complaints.

VESTS

PBA PROPOSAL: The PBA proposes a new contract term:

The employer shall issue new bullet-resistant vest to every police officer reflecting the current state of technology no less than once every five years from the date that police officer's current vest was issued, but no later than the expiration date of the warranty for the vest.

Vests are available today to provide "expanded body coverage" that might avoid tragedies such as the death of Police Officer Dillon Stewart, who was killed when a bullet struck an area of his body that was not covered. The Department's alternative of using the date beyond which the manufacturer refuses to stand by its product is not reasonable.

CITY POSITION: The City has already taken the initiative to protect its police officers through its Vest Upgrade Program, started in August 2006 and scheduled to be complete by April 2008.

The proposed five-year replacement framework is not based on empirical data or evidence. By analogy, a warranty expiring on a car means that the manufacturer is no longer responsible for the product, but it does not indicate that it is not fit for use.

The City already provides 22,000 Monarch Summit Maximum Coverage vests, threat level IIIa. The City monitors the performance of vests, conducts annual vest inspection and tracks vests in use through the Intranet Vest Inspection Database. If any lot of vests is deemed unserviceable, the Vest Inspection Database identifies the officers who have those vests, and those vests are replaced. The Vest Inspection Database also contains a Vest Serviceability Guide that gives instructions on how to properly inspect, care for and maintain vests, and the City

conducts annual training on the proper care and maintenance of ballistic armor, including vests. The City tests all new vests through the U.S. Department of Justice's National Institute of Justice and conducts random sampling prior to the warranty expiration. If one vest fails, the whole lot is discarded.

FINDINGS AND CONCLUSIONS

The PBA proposal on upgrading vests is not awarded. The program initiated by the City in 2006 is comprehensive, is at or near completion and appears to address the need for improvement in expanded body coverage.

DATED: May 22, 2008

Susan T. Mackenzie
Public Panel Chair