

## **I. OVERVIEW**

As part of its anti-corruption monitoring efforts, the Commission has met with several local District Attorneys' offices to discuss a broad range of corruption-related issues. One topic that was continuously raised by the local prosecutors during these meetings was the constant rotation of investigators into and out of the Internal Affairs Bureau ("IAB"). Uniformly, the District Attorneys expressed concern regarding IAB's inability to retain experienced investigators and the belief that the high turnover has had some negative impact on the quality of IAB investigations. They stated that the constant turnover has, at times, caused unnecessary delays while new investigators familiarized themselves with cases, and these investigators often lacked the investigative insight of more experienced personnel. In addition, because investigators and local prosecutors often need to work on cases together, the constant turnover of IAB personnel affected the continuity of investigations and subsequent prosecutions.

The concerns voiced by these prosecutors served to confirm the Commission's own observations. Over the past nine years, the Commission has reviewed hundreds of IAB investigations and has routinely observed cases being transferred as investigators rotate out of IAB. The Commission has also noted that these transfers cause delays and the other above related issues. Given the importance of its mission, it is imperative that IAB be staffed by the most experienced and qualified investigators possible so that investigations are resolved in an expeditious and appropriate manner.

Because the high rate of turnover can have a negative impact on both the quality and efficiency of IAB investigations, the Commission believes this issue should be addressed. We acknowledge, as do the local prosecutors, that other Bureaus in the Department also experience a high level of personnel turnover.

The Commission recognizes that IAB encounters a number of challenges in its efforts to recruit and retain personnel. Most notably, officers are reluctant to volunteer for this assignment due to the nature of the work and the stigma associated with investigating fellow officers. Equally significant is the economic impact an assignment to IAB has on the individual officer. Therefore, in order to address the high rate of turnover, it will be necessary for the Department to focus on alleviating the stigma associated with an assignment to IAB and increase the monetary and non-monetary benefits of this assignment.

## **II. RECRUITMENT**

Historically, a very limited number of officers have volunteered for IAB, partially because of the stigma attached to the assignment of investigating fellow officers. The internal policing roles that IAB personnel perform often result in the perception that these officers should not be trusted and are not part of the police brotherhood. This stigma, at times, has caused IAB personnel to be ostracized by fellow officers, which has affected their interaction and relationships with other members of the Department, both during

and after their assignment to IAB. Given the nature of police work and the need for officers to rely on each other for safety and assistance, this perception has been a cause for concern for many officers considering an assignment in IAB. Consequently, IAB has not always been able to recruit its choice of personnel.

In 1993, in recognition of the difficulties inherent in recruiting officers to IAB, the Department issued Interim Order 39 (“I.O. 39”). I.O. 39 provided that any supervisor with the rank of Lieutenant or Sergeant who sought an investigative position needed to be interviewed and approved by a panel which included senior members of IAB, the Detective Bureau, and the Organized Crime Control Bureau (“OCCB”). IAB was then permitted to select its candidates before any other Bureau.<sup>1</sup> The rationale behind this order was the belief that IAB should have access to the most skilled officers in the Department.

While I.O. 39 generally achieved positive results, drafting officers into a Bureau which they did not choose caused some personnel problems within IAB and other Department Bureaus. In addition to the traditional reluctance that many officers had about an assignment to IAB, many officers also believed that the mandated two-year term in this assignment took them off of their preferred career track for a significant period of time, thus damaging their advancement within the Department. Consequently, after the implementation of this policy, some supervisors became reluctant to apply for an investigative position due to the possibility that they would be assigned to IAB instead of receiving their preferred assignment. This resulted in a decrease in applicants to the promotion board and a shortage of supervisors in the other Bureaus. In recognition of this problem, the current administration slightly modified the selection process under I.O. 39. Presently, after an officer has been approved for a supervisory position by the Supervisory Assignment Board, he or she appears before the Supervisory Selection Board.<sup>2</sup> Each Chief selects interviewees on a rotating basis with IAB having the first choice in each round. Additionally, the Chief of IAB is the only Chief who is also allowed to draft qualified individuals from the Department’s Lieutenant’s promotion list into IAB.<sup>3</sup> All officers assigned to IAB as a result of this selection method are required to spend a minimum of 24 months in this assignment.

I.O. 39 has been a constructive and effective change in Department policy. This “drafting method” appears to have eliminated the problem of recruiting skilled officers into IAB, and IAB has benefited by gaining access to experienced candidates who would not voluntarily apply for an IAB assignment. Further, the policy of allowing the Chief of IAB to select officers rather than relying on volunteers has given the Department the ability to staff the Bureau with those candidates they deem to be most qualified.

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<sup>1</sup> IAB is staffed primarily by Sergeants and Lieutenants who perform the bulk of the investigative work.

<sup>2</sup> This Board is comprised of the Chief of IAB and the Chiefs of the Detective and OCCB Bureaus.

<sup>3</sup> Officers are required to take a promotional exam to become a Lieutenant. Candidates are then ranked for promotion based upon their test scores.

Typically, these are officers who have exemplary personnel records and excellent job skills.

This assignment system has also helped change the perception of members of the service towards IAB personnel. The recognition that most officers are drafted into the Bureau and did not volunteer for the assignment has diminished the stigma of working for IAB. This has lessened some of the historic concerns that officers have had about being assigned to IAB.

### **III. RETENTION**

While the Department has developed a sound strategy for staffing IAB with skilled officers and diminishing the IAB stigma, it has not resolved the adverse economic impact that this assignment can have on officers. The nature of IAB's work and the role of investigators within the Department prevent them from having the same overtime opportunities<sup>4</sup> that would be available if they were assigned to another Bureau. The lack of overtime opportunities is the primary reason that most investigators leave the Bureau after the mandated two years.

IAB lacks the same overtime opportunities for a number of reasons. First, IAB performs mainly investigative work as opposed to other Bureaus, such as OCCB, which execute a high volume of arrests. In arrest situations, officers can incur a significant amount of overtime when they process prisoners and later participate in legal proceedings. Second, officers in other Bureaus have numerous opportunities to volunteer for overtime on details that the Department performs.<sup>5</sup> IAB investigators typically do not participate in these details because it is problematic for investigators to work with officers that they may have to later investigate. In addition, given the ongoing nature of its anti-corruption role and the need for investigators to be available when incidents occur, IAB is unable to limit its operations when large details are required at specific events.<sup>6</sup>

While officers are not entitled to a specific amount of overtime per year, many officers rely on overtime pay to supplement their normal salary. The lack of overtime opportunities for an officer assigned to IAB can result in a monetary loss of up to

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<sup>4</sup> When an officer works overtime, he receives 1 ½ times his hourly pay in addition to his normal salary.

<sup>5</sup> Details are assignments specifically tailored to meet a certain need, such as extra security for a parade.

<sup>6</sup> For example, during the Republican National Convention, the Department required a large number of officers in Manhattan. Bureaus such as OCCB were able to curtail their narcotic enforcement activities and divert personnel to this detail which resulted in a significant amount of overtime pay for many officers. IAB does not have this level of flexibility in its operations. IAB investigators do receive some overtime opportunities at details when they monitor locations and officers. This type of assignment, however, only involves a limited number of officers and is restricted to those situations which lend themselves to monitoring.

\$15,000 dollars annually. In addition to the immediate economic effect, the loss of overtime pay can also negatively impact an officer's pension.<sup>7</sup> Consequently, for many officers, a long-term assignment to IAB is not economically desirable or feasible. This economic loss limits IAB's ability to retain investigators once their two-year term has ended.

It is clear that the Department is aware of this economic disparity and has considered a number of solutions. Unfortunately, the Department faces considerable obstacles in its efforts to achieve salary parity for IAB investigators. Most significant is the budgetary constraint imposed on the Department due to economic conditions in New York City. Over the last several years, the Department has been required to reduce its budget even as it has taken on additional security responsibilities. This has decreased the Department's ability, in general, to provide raises to members of the Department. Furthermore, while overtime pay is a significant supplemental source of revenue for many officers, the Department has to allocate this resource in a manner which best meets the needs of the Department. Therefore, the Department can not indiscriminately provide overtime opportunities for IAB personnel simply to provide them with additional income.

Police unions also limit the Department's ability to provide additional money to IAB investigators. The pay scale for officers is negotiated between the City and each police union and is set forth in contracts with the individual unions. In the past, the Department has experienced little assistance, and at times outright resistance from police unions when it has tried to give extra money to specific groups of officers rather than provide pay raises to all officers.

For example, in the late 1990's, the Department attempted to create a new title/position of patrol officer special assignment that would reward officers with exceptional patrol records with a different title and a salary increase. The Police Benevolent Association ("PBA"), the union which represents police officers, opposed this proposal because it believed that the creation of this position, with its attendant benefits, would divide the union membership. The PBA initiated a lawsuit to enjoin the Department from implementing this change. The Department met with similar resistance from the PBA when it sought a similar type of promotion for officers in the Emergency Services Unit. The situation was resolved only when the Department promoted these officers to Detective Specialist which placed them in another union, the Detectives Endowment Association ("DEA"), which was more receptive to this Department policy.

The Department has approached the Sergeants Benevolent Association and the Lieutenants Benevolent Association with a proposal that would give raises to a certain percentage of their members assigned to IAB in exchange for a longer term of service. While union officials were somewhat receptive to this proposal, to date, they have not approved this option. Consequently, it appears that if the Department were to attempt to rectify the pay disparity by providing raises or bonuses to IAB investigators, it would

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<sup>7</sup> An officer's pension is based on his last year's salary. Therefore, for officers approaching retirement, an assignment to IAB can have a significant long-term economic impact.

encounter resistance from police unions, and this issue would have to be resolved in contract negotiations with each union.

Despite the above obstacles, the current administration does attempt to reward IAB investigators by providing some additional benefits in exchange for their service. In recognition that officers drafted into IAB are not receiving their preferred assignment, IAB personnel are given consideration regarding their next assignment. If an officer completes his two-year assignment in IAB with positive evaluations, he can make a request regarding his next assignment and the Department, if possible, will honor this request. The assignment of his choice, however, is not guaranteed and is dependent upon the needs of the Department. This consideration in job assignments is a benefit that is unique to IAB. Additionally, under this administration, the Chief of IAB is now allotted the same percentage of special assignment promotions as other Bureaus, which has increased the number of IAB investigators receiving this promotion.<sup>8</sup> Investigators who receive special assignment money must make an additional two-year commitment to IAB. Finally, IAB investigators get extra training opportunities within the NYPD as well as with outside agencies, such as the FBI. In addition to helping officers hone their investigative skills, this training may also assist officers in obtaining specialized assignments or promotions within the Department.

#### **IV. RECOMMENDATIONS**

Department executives recognize the economic impact of an assignment to IAB and try to provide incentives to offset the monetary consequences despite its own budgetary and contractual constraints. The Commission, however, believes that additional progress needs to be made on this issue. The Department and police unions clearly need to engage in meaningful discussions on ways to provide additional monetary compensation to IAB investigators. Until the Department eliminates the economic penalties that IAB investigators incur upon their assignment to the Bureau, it is unlikely that they will be able to improve their ability to retain experienced investigators.

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<sup>8</sup> Special assignment money increases an officer's pay one level to the rank above him for the duration of his/her career.