

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the :
Interest Arbitration :
 :
 - Between - : PERB Case No. IA-2014-009;
 : M2014-027
 :
 THE CITY OF NEW YORK :
 :
 "City" or "Employer" :
 :
 - and - :
 :
 THE PATROLMEN'S BENEVOLENT :
 ASSOCIATION OF THE CITY OF :
 NEW YORK, INC. :
 :
 "PBA" or "Union" :
 :
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APPEARANCES

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**BEFORE: HOWARD C. EDELMAN, NEUTRAL PANEL MEMBER
 JAY WAKS, PUBLIC EMPLOYEE PANEL MEMBER
 ROBERT LINN, PUBLIC EMPLOYER PANEL MEMBER**

BACKGROUND

The City of New York ("City") and the Patrolmen's Benevolent Association ("PBA") are signatories to a four year Collective Bargaining Agreement which expired on July 31, 2010. Negotiations and mediation efforts to produce a successor labor contract were unsuccessful. Consequently, and pursuant to Section 209.4 (c)(v) of the Civil Service Law of the State of New York ("Taylor Law"), the undersigned panel was constituted to hear and decide the matter. Absent agreement of the parties, we are precluded from issuing an Award for more than two years. Since none was forthcoming our determination covers the period August 1, 2010-July 31, 2012.

Hearings in this dispute were held before us on fourteen dates in the period March 2015 to June 2015. Thereafter the parties submitted briefs and reply briefs. In addition, the panel met in executive session on four occasions in October 2015. This Opinion and Award follows.

POSITIONS OF THE PARTIES

PBA

The PBA asserts, initially, that the 22,000 police officers in its unit excel at the most complex and challenging policing job in the United States. Witnesses for both parties, including Mayor de Blasio, recognize that their job has become more complicated and dangerous over the past decade, it observes.¹ Given this mutual understanding of the work police officers do in the face of extremely trying circumstances, the PBA insists that wage increases the panel orders must be market based and must far exceed the so-called pattern negotiated between the City and most of its uniformed service unions. This is so for the following reasons, according to the PBA.

First, the Taylor Law requires the panel to consider a "comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions...in comparable communities," the PBA notes.²

¹ PBA Exhibit 15-42.

² NY Civil Service Law §209.4(c)(v)(a).

In this context, it cites the testimony of Dr. Richard Hurd, Associate Dean and Professor of Labor Studies at Cornell ILR, that "New York City Police Officers are substantially underpaid relative to the labor market and it's not even close." (466).³ Support for this position is seen in the comparison between City police officers and those of surrounding communities, including jurisdictions that include the five boroughs, the PBA submits.

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³Numbers in parentheses () refer to pages in the transcript, unless otherwise indicated.

**Local Jurisdictions 2010 Police Officer Annual Hourly
Pay Basic Max 20-Year Average**

Jurisdiction	Basic	Rate Hour	20-Year Average	20-Year Average/Hour
Suffolk	\$108,608	\$66.75	\$120,126	\$73.82
Nassau	\$107,319	\$66.70	\$105,070	\$65.94
Westchester	\$91,554	\$52.23	\$99,757	\$57.24
Pt. Authority*	\$90,000	\$51.22	\$103,044	\$58.64
Jersey City	\$86,909	\$51.64	\$84,474	\$50.18
Newark	\$84,914	\$45.10	\$83,960	\$44.59
NYS Troopers	\$84,739	\$48.15	\$103,186	\$58.79
Elizabeth	\$83,015	\$44.44	\$86,158	\$46.14
Yonkers	\$82,741	\$49.60	\$90,319	\$54.15
MTA	\$80,780	\$42.88	\$85,030	\$45.13
NYC	\$76,488	\$40.58	\$82,129	\$43.58
Average Without NYC	\$90,058	\$51.90	\$96,112	\$55.46
NYC Below Average	\$13,570	\$11.32	\$13,983	\$11.88
Total Raise NYC Needs to Reach Average	17.7%	27.9%	17.0%	27.3%

*As of the prior contract period (2009); new salary scales pending agreement.

Thus, the PBA concludes, its members are short-changed anywhere from 17.0% to 27.3% depending on how wages are computed and anywhere from 19.9% to 31.4% if 2012 figures are utilized instead of the 2010 numbers listed above. Increases of this magnitude are consistent with the findings of the Goldberg panel

that NYC police officers wages should be among the highest in the nation, the PBA insists.⁴

Nor does the City's expansion of "wages" to "total direct compensation" warrant a different conclusion, the PBA posits. In citing the City's own exhibits (9 and 10), 2014 figures demonstrate that officers earn 18.5% less on a 20 year average and 28.9% less on a 20 year average per hour when compared to New York metropolitan area communities, the PBA notes. This is so even if only three "cherry-picked" jurisdictions are selected (MTA, Port Authority and New York State Troopers) and one per cent raises are assumed for 2013 and 2014. The 20 year direct compensation for New York City's finest would be only 82.4% of the average of these jurisdictions and far less when computed on an hourly basis. Similar results flow from the analyses conducted by the Citizens Budget Commission, whose President testified on behalf of the City, the PBA points out. In sum, it urges, all the evidence "leads to the same conclusion: NYC police officers are paid far less than the Port Authority police officers and are exceedingly behind

⁴ PBA Exhibit 15-14.

police officer pay in the other local jurisdictions (brief, p. 25)."

Moreover, the local jurisdictions listed in its charts are the most appropriate comparators, the PBA argues. Referring again to Professor Hurd's testimony, it insists that "common sense" dictates this view because:

- 1) the NYPD works side by side with other forces in the local market;
- 2) the NYPD works regularly day-to-day with police departments in the surrounding areas (426, 431).

Also, the PBA notes, Katharine Abraham, former Commissioner of the U.S. Bureau of Labor Statistics, opined that it is "pretty standard" to define a local labor market as "an economically integrated area," an approach similar to the way the Federal Office of Management and Budget defines a metropolitan statistical area (1344).

Other factors support this conclusion, according to the PBA. It is easier for a worker to find out about job options and conditions of employment in a local area, as opposed to a distant one; and there is a financial and psychic cost to relocation (436). According to Joseph Dunne, former First Deputy

Commissioner of the NYPD, when police officers look elsewhere, they are "staying in the region and are going to Nassau, Suffolk [and] small departments in New Jersey and Upstate...where police exams are given in the City or other NYS areas and only about six per cent of applicants took the test elsewhere." Finally, on this issue, the PBA refers to New York City Labor Commissioner Robert Linn's testimony [on behalf of the PBA] at the first PERB Interest Arbitration that New York City and surrounding communities are appropriate comparators pursuant to the Taylor Law criteria (1934).

Nor is there any justification for paying NYC officers less than their counterparts in these communities, as the PBA sees it. All witnesses who had knowledge of police work in those jurisdictions affirm the greater burden placed on members of this bargaining unit, it notes. Former Special Operations Divisions Commanding Officer William Morange indicated his unit would receive requests from the Port Authority police for assistance because the NYPD was more capable of addressing the problem (981), the PBA observes.

Even if the comparators utilized are the twenty largest cities in the United States, New York City officers still fare quite poorly, in the PBA's view. This is so because these jurisdictions enjoy substantially lower cost of living rates than does New York, according to the Union. According to the Union, national cities' data adjusted for inter-city of living differences using the BLS data from the CPI (Consumer Price Index) reveals the following:

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**National Cities 2012 Police Officer Annual and Hourly
Pay Basic Max and 20-Year Average Adjusted for Cost of
Living (BEA/BLS 2012)**

City	Base Wage	Wage per Hour	Base Wage (CPI Adjusted)	Wage Per Hour (CPI Adjusted)
Austin	\$134,121	\$73.45	\$121,017	\$66.28
Boston	\$79,648	\$44.40	\$99,667	\$53.87
Charlotte	\$94,496	\$50.32	\$90,936	\$48.42
Chicago	\$113,929	\$66.39	\$108,532	\$63.27
Columbus	\$111,462	\$62.58	\$113,163	\$63.52
Dallas	\$107,217	\$57.37	\$103,723	\$55.61
Detroit	\$72,809	\$40.16	\$72,792	\$40.15
El Paso	\$103,014	\$54.91	\$93,037	\$49.60
Fort Worth	\$112,342	\$59.88	\$105,816	\$56.39
Houston	\$85,760	\$45.28	\$92,134	\$48.89
Indianapolis	\$93,954	\$50.54	\$98,789	\$53.14
Jacksonville	\$95,669	\$54.73	\$91,573	\$52.39
Los Angeles	\$97,322	\$55.45	\$100,744	\$55.28
Memphis	\$78,251	\$37.12	\$87,974	\$41.73
Philadelphia	\$80,263	\$43.43	\$88,374	\$47.90
Phoenix	\$109,078	\$56.23	\$120,694	\$62.39
San Antonio	\$96,735	\$50.75	\$109,966	\$57.70
San Diego	\$86,691	\$48.16	\$97,182	\$54.00
San Francisco	\$127,848	\$67.43	\$140,952	\$74.36
San Jose	\$105,193	\$53.92	\$107,262	\$54.97
NYC	\$76,488	\$40.58	\$82,129	\$43.58
Average Without NYC	\$99,290	\$53.63	\$102,066	\$54.99
NYC Below Average	\$22,802	\$13.05	\$19,937	\$11.41
Total Needs to	29.8%	32.1%	24.3%	26.2%

This disparity is heightened when figures are updated to reflect 2012 compensation, the PBA notes. In fact, it alleges, wage increases since 1990 have outpaced NYC Officers' in every other major city, except Detroit, a far cry from the Goldberg standard. This time frame is significant, it insists, because beginning in the 1990's, police wages here began to fall substantially below those in local and national jurisdictions.

The PBA challenges the utilization of any cost of living measures but the BEA/BLS index which is included in its Exhibit 15-115 and 15-115A. Indeed, it suggests, all responsible economists and labor relations experts agree that New York is the most expensive city in the United States where prices can exceed national averages by anywhere from fifty to one hundred percent.⁵ The PBA maintains that these individuals, while producing results with slight variations, base their findings on economists who believe that real wages (adjusted for cost of living differences across jurisdictions) should apply, rather than nominal wages. Indeed, it argues, the most

⁵The PBA also cites findings by Arbitrators Schmertz and MacKenzie for this proposition. PBA Exhibits 15-7; 15-6.

experienced and well regarded expert is Dr. Abraham who concluded that the BEA/BLS data is far more reliable than any other measure.⁶

Acknowledging the City's reliance on ACS (American Community Survey) data, the PBA submits that the BEA/BLS housing figures are much more reliable because:

1. ACS dramatically and improperly lowers housing costs in NYC than does BLS data.
2. The CPI figures are subject to a much more rigorous, field-tested methodology than ACS which relies on written questionnaires.
3. The CPI does not include public housing units because those tenants do not pay market rent.

Other factors also support the PBA's view, it suggests:

1. Even though Professor Hurd's data included only the five boroughs, as opposed to larger MSA's (Metropolitan Statistical areas), the NYC data encompasses the places where police officers must live.⁷
2. Even if these other MSA's were considered, New York would still endure a high cost of living.

⁶ PBA Exhibit 15-115

⁷ Though PBA members may live in some New York State counties outside the City, the other MSA's include Connecticut or Pennsylvania where officers may not reside.

3. The City's claims that Drs. Hurd and Abraham and others concerning "free" health insurance and transportation for NYC police officers are either wrong, or misleading or woefully out of context.

Most important, the PBA argues, from a collective bargaining perspective, is that prior interest arbitration awards have adopted BLS data even though some of the same experts who testified in this proceeding appeared in other NYC-PBA cases. Thus, it concludes, when relevant cost of living measures are applied, officers here are grossly underpaid, whether or not comparators are nearby or similar jurisdictions, or national cities.

The PBA argues that the City's comparability data presentation should be rejected for several reasons.

First, it alleges, the City's figures are based on 2014 data. Since the Panel may not determine terms and conditions of employment beyond July 31, 2012, the comparisons advanced by the City are fatally flawed, it insists. Equally unpersuasive is 2010 and 2012 nominal wage data, the PBA argues, because these figures are not adjusted for cost of living differences.

As to fringe benefits, the PBA asks the panel to give them no consideration or, in the alternative, less weight than wage comparisons for the following reasons.

First, it notes, pension benefits are usually statutorily mandated and not subject to collective bargaining. Consequently, they should be excluded from any consideration in this dispute.

Second, the PBA asserts, there is no evidence fringe benefits are a material factor in police officers' employment decisions. Professor Hurd's testimony demonstrates that "a young recruit considering a career in policing...what they'd be interested in is...the first priority...pay...and the job, and then benefits might be considered as part of the package. (498)." Police witnesses support this view, it observes.⁸ Similar opinions were voiced by panel Chair Eric Schmertz, the PBA suggests, in the 2002 interest arbitration.⁹

Pension comparisons are also very unreliable even if they are entitled to any weight, according to PBA

⁸ See testimony of retired Chief Dunne (1011-12), retired First Deputy Police Commissioner John Timoney (689), Police Officer Ryan Scirillo (1142) and John Jay Professor Eugene O'Donnell (827-28).

⁹ PBA 15-7.

witness Brad Heinrichs, CEO of Foster and Foster who has analyzed some 900 pension plans across the country. He contends that any such comparison is "dangerous" and that, "You have to be an actuary to even attempt it (3012, 3062). City witnesses Michael Nadol, Christopher Erath and Robert Linn are not actuaries, the PBA points out. Indeed, it observes, former City Chief Actuary Robert North warned of conflating pension costs with pension benefits when he wrote that proposals for determining annual employer contributions "are not necessarily appropriate for determining the economic value of benefits, the value of benefit revisions or other purposes."¹⁰ In the PBA's words, then:

By admitting there is no connection between a given year's contribution and the value of benefits, the City has conceded that its entire analysis is fatally flawed in that fringe benefit costs are not a proxy for the value of those benefits (brief, p. 77).

Similarly, the PBA argues, annual pension costs include unfunded liabilities. Also required is that the actuary assess turnover rates, potential future salary increases, disability rates, mortality rates and retirement rates. In addition, the actuarial

¹⁰ PBA 15-264.

value of the asset of the fund must be determined in addition to other calculations (3017-3022). What this all means, the union submits, is that unfunded liabilities bear little relationship to benefits and, therefore, distort a comparability analysis. Indeed, it maintains, Commissioner Linn said as much in 1987, when he stated that inclusion of unfunded liabilities paid on behalf of retirees is fraught with "distortions" (PBA Exhibit 15-203).

In this context, the Union also argues that different actuarial assumptions vary across jurisdictions. For example, it notes that the City's Chief Actuary recently reduced the expected rate of return of the Police Pension Fund from 8% to 7% which increases the annual funding requirement by 14% of payroll or 482 million dollars (3029). In fact, some cities do not contribute the appropriate annual contribution to their police pension funds, the PBA observes (3027). Also, unlike New York, some cities cited by the City bargain annual rates of pension contributions. Furthermore, the PBA points to Nadol's recall that even where unfunded pension liabilities differ, cities pay down this obligation over a varying number of years (2258).

As if there were any doubt regarding the dubiousness of including pension costs when comparing jurisdictions, the PBA argues that the City's purported 2014 pension costs for police officers is vastly overstated. Noting that the Police Pension Fund include all NYPD ranks and that superiors earn more than rank and file officers, it argues that the inclusion of superiors' salaries grossly inflates the costs of the pension that the City is attributing to the PBA unit. This overstatement is compounded by the reduction in pension benefits for officers hired in 2009 and again after April 1, 2012, the PBA notes. Forty percent of them are in the new tiers while virtually none of the superiors are. Given this evidence, the PBA submits that the true pension cost is approximately 25% of wages rather than the City's estimate of 67 percent. Indeed, it suggests, the 25% figure does not reflect normalization, which is necessary to compare pension costs across jurisdictions. Moreover, it alleges, this figure will be further reduced to 16% as more post-April 2012 officers swell the ranks of the bargaining unit.

Equally misleading is the City's analysis of health benefits among comparable jurisdictions for

numerous reasons, according to the Union. It maintains there is no basis to include retiree health premiums as a component in per capita cost for employing police officers.

Also, the PBA argues, the City's eleven year costing model overstates the costs of its [PBA's] proposal. Similarly, the City has inflated its savings to claim pattern conformance, as the Union sees it.

In addition, the PBA suggests that the City spent less than six of nine local jurisdictions in 2014 to provide health benefits to active and retired police officers. Similarly, it argues, City witnesses have claimed, "There is no basis for an assumption that costs to the City are equal to the value of health insurance."¹¹ Other management witnesses have conceded that their analysis of health costs does not account for differences in:

- formularies and prescription drugs;
- employee deductibles;
- out-of-pocket retiree costs;
- regional differences in health care costs.

¹¹ PBA Exhibit 15-239.

Nor has the PBA ever endorsed the use of total cost across comparator jurisdictions, it insists. In this context, it cites Commissioner Linn's testimony regarding his role in the 2002 interest arbitration round. The PBA notes that its brief in that proceeding specifically rejected benefit comparisons among different geographical units because they had no "rational connection to the actual value to employees or to the setting of salary levels (emphasis in the original)."¹²

Also unsound are the City's attempts to establish that retirement benefits in NYC exceed those elsewhere, the PBA alleges. This is so, it stresses, because that analysis excludes local jurisdictions, details a single set of circumstances among many and fails to recognize that officers hired in Tiers 2 or 2R will have the same or lesser benefits than most of those hired elsewhere. Further, the PBA notes, the analysis excludes the many Officers who receive disability retirement benefits and makes no reference to survivor benefits or "drop" plans (2325).¹³

¹² PBA 15-202.

¹³ A drop plan permits an officer to receive his/her retirement benefit and to continue working without counting later service toward retirement.

Finally, on this issue, the PBA submits that the City did not normalize pension costs as a percentage of pay only. Such a process would appropriately remove the unfunded liability and other costs that move over time and would more accurately reflect the true value of retirement benefits to police officers, it urges. For these and related reasons the PBA asks the panel to give no weight to the City's data regarding comparative retirement benefits in different geographical areas.

Also incomplete is the City's net take home pay analysis, in the Union's view. That examination does not account for inter-city cost of living differences and deductions which reduce an officer's net pay, it alleges. Thus, the PBA indicates, state, local tax and FICA deductions are not included while at least seven of the City's comparators (six Texas municipalities and Jacksonville, FL) have no income tax.

In light of these factors the PBA concludes that its comparators are more relevant than the City's and that its analysis of all jurisdictions (regardless of which comparators are utilized) is entitled to far more weight than the City's.

The PBA then turns to "ability to pay," another Taylor Law criterion. It suggests that the City has substantial resources to fund a market based wage for its members. Citing the testimony of Jonathan Rosenberg, former Executive Director of Budget in the NYC Comptroller's office, it maintains:

- over eight billion dollars is available in fiscal year 2016 to grant market based wages;
- this figure results from
 - a) unplanned tax revenues.
 - b) overestimation of debt service.
 - c) overestimation of general reserve revenues.
 - d) implementation of PEGS (Program to Eliminate the GAP).
 - e) re-estimation of prior year expenses.
 - f) surplus funds in the Retiree Health Benefit Trust Fund (883-896).

Moreover, the trend is towards greater revenues and better overall economic performance, the Union argues. It notes that from May 2015 to August 2015¹⁴ revenue increased by \$814 million for FY 2015; and is expected to increase by \$191 million for FY 2016, \$422 million for FY 2017, \$425 million for 2018 and \$425 million for FY 2019.¹⁵ Indeed, Scott Stringer, City

¹⁴I permitted the PBA to update City budget projections to June 25, 2015, the last day of hearings.

¹⁵Changes since the May 2015 Financial Plan. PBA 15-276 [appended to brief].

Comptroller, has issued rosier predictions regarding the City's fiscal outlook.¹⁶

Moreover, the Union maintains that the City's strong economic performance is likely to continue into the foreseeable future. In this context, it refers to statements by Mayor de Blasio and Dean Fuleihan, OMB Director.¹⁷ These remarks and accompanying data portend increasing future revenue and billion dollar surpluses, the PBA suggests. Therefore, it concludes, rather than an "inability to pay," the City has an "unwillingness to pay." Indeed, it notes my comment in another New York metropolitan area interest arbitration proceeding that the "ability to pay does not turn on whether that amount is presently budgeted..."¹⁸ Consequently, the PBA asks me to reject what it regards as the City's specious claims of an inability to pay the desired increases.

Criterion 209.4(c)(v)(c) of the Taylor Law requires the panel to compare peculiarities of the jobs in question including "hazards of employment; physical qualifications, educational qualifications,

¹⁶ Comments on NYC's Fiscal Year Adopted Budget (July 30, 2015), PBA 15-277 [appended to brief].

¹⁷ Cite omitted.

¹⁸ Staten Island Rapid Transit Authority v. Local 1440, United Transportation Union TIA 2010-034; M2010-155.

mental qualifications and job training and skills." By any measure, these "peculiarities" require the panel to compare NYC's finest to other police officers, not civilian workers, sanitation workers, correction officers, firefighters, or to police superior officers, the PBA avers. Citing Arbitrator MacKenzie's holding that firefighters and correction officers and Arbitrator Schmertz's holding that a DC-37 settlement should not set "a special standard for determination of a police officer's pay,"¹⁹ the Union insists that only an "apples to apples" comparison is valid. Other arbitrators in New York State jurisdictions, including this Chair, have reached similar conclusions, the Union maintains.

To prove the uniqueness of police officer duties, the PBA claims that numerous experts in law enforcement have testified that its members have substantially different and more challenging police work than in other jurisdictions (614, 635). Highlighting these differences are, among others, the greater call volume in NYC than Miami and Philadelphia, the greater number of calls during evening and night hours, the difficulty of dealing

¹⁹ PBA Exhibits 15-6; 15-7.

with repeated domestic disputes, numerous drug, organized and street crime situations, and the special protection required for the United Nations ambassadors and the international sites.²⁰ Most compelling, in the PBA's view, is the recall of Detective Steven McDonald, whose life and that of his family was irrevocably altered when he was paralyzed from the neck down when a teenager who he was questioning shot him in the head (271).

By contrast, the Union asserts that no City witness made any case for comparing the job of an NYC police officer to any other City worker, uniformed or not. As such, it concludes, the overwhelming evidence leads to the conclusion that PBA members have a unique role within the City which sets them apart from other workers.

Furthermore, the PBA suggests, the responsibilities of NYC officers have increased substantially over the years as their ranks were trimmed. New York City is the number one terrorist target, when years ago such threats did not exist. Even arguably non-terrorist threats have increased, including chemical, biological, radiological, nuclear and hazardous material ones, it observes.

²⁰ Citations omitted.

Police officers now receive training in responding to active shooters as opposed to the past when they were required to respond to an emergency call. Other new training has occurred, including dealing with anti-opiate drug use, using electronic defibrillators and responding to persons with highly infectious diseases, the Union notes.

Apart from the increased duties cited above, other stressors make both the work and home life of a police officer more difficult, the Union insists. These include heightened public scrutiny, fear of being sued or called to account without a legitimate basis, all of which create a more difficult environment for a NYC officer. Yet, it maintains, these extra duties are being required despite inadequate staffing. As PBA President Patrick Lynch testified:

...[w]hen you don't have enough..boots on the ground, it makes it that much more difficult for police officers.

. . .

...if there's not enough staffing in the police precinct will the police department be able to effectively continue the renaissance of the City and keep a lid on..crime (147).

President Lynch's sentiments have been echoed by community leaders, including State Assemblyman David Weprin (2582) and Manhattan Borough President Gale Brewer (309), the PBA notes.

In sum, on this point, the PBA asserts that its members are in a crucial profession unlike any other; a profession which has become more difficult and complex and whose burdens fall singularly upon its officers. Thus, it asks the panel to award its wage proposal and thereby achieve the Goldberg standard of being among the highest paid officers in the nation.

The interests and welfare of the public also require that police officers here be among the highest paid in the nation, according to the PBA. As former Mayor Michael Bloomberg noted in the prior interest arbitration proceeding ... "[P]ublic safety is the foundation of our City's prosperity."²¹ High-ranking NYPD officials and members of past mayoral administrations have echoed this sentiment, the Union observes. Particularly telling, in its view, is a reduction in crime that "previously [was]

²¹ MacKenzie tr. 1053-54.

unimaginable."²² Indeed, as former Commissioner John Timoney recalled:

If you told me in 1989 what was about to happen [reduction in crime] in the next two and one-half decades, I would have committed you to Bellevue Hospital...(659).

In fact, the PBA contends the dramatic 73% decline since 1994 results from more committed police officers. While superior officers and new systems and techniques deserve some of the credit, it is the "boots on the ground" which are primarily responsible for making the City a much safer place (98). Without such efforts residents and businesses would have moved out and tourism would have declined, the Union argues.²³ Also, neighborhoods became safer and flourished as crime declined, resulting in a better quality of life and high real estate values, the Union contends.²⁴ A prominent example of this resurgence, according to John Dyson, is the lawlessness in Times Square which has been replaced by a thriving neighborhood and anchored by Disney Corp. investments in the area (1055-57).

²² Quoting Mayor de Blasio (PBA 15-5).

²³ 283, 1047.

²⁴ PBA 15-36; (1063).

The transformation of the City, fueled largely by a reduction in crime, has had a dramatic increase in City revenues, according to the PBA. Noting Mayor de Blasio's press release in March 2015, the PBA points to a \$3.7 billion increase in tax revenues. Fundamental fairness requires that police officers be amply rewarded for their role in improving the quality of life and economic vitality in the City, it concludes.

The PBA acknowledges the City's assertion that the pattern of settlements here requires the panel to award the same increases in this dispute. It asks the panel to reject this argument for several reasons.

First, it notes, the Taylor Law mandates a comparison between NYC officers' wages and those "performing similar services under similar working conditions in comparable communities." The phrase "comparable communities" means local jurisdictions both in and outside the City, the PBA argues, since beginning in 2000 dispute resolution mechanisms have come under the purview of the New York State PERB instead of the New York City Office of Collective Bargaining. Noting that unlike the Taylor Law, the NYCCBL refers to "other employees generally in public

or private employment in New York City or comparable communities, the PBA further argues that any recounting of the history of negotiations prior to 2000 is irrelevant. Thus, the PBA asserts, the Taylor Law requires comparisons with others in the police officer rank in local police jurisdictions, not with other City workers or police supervisors.

Also, the PBA maintains, the New Jersey cities it cites have similar demographics to New York; and Nassau and Suffolk combined have larger populations and police force sizes than many of the large national cities upon which the City relies.

The difference in language between the Taylor Law and the City's Collective Bargaining Law supports this view, the PBA submits. Specifically, it suggests, the Taylor's "comparable communities" delineation is far more expansive than the NYCCLB's reference to "other employees performing similar work and other employees generally in public or private employment in New York City or comparable communities."²⁵ Arbitrator Schmertz emphasized this difference when he wrote the following, the PBA notes:

²⁵ NYCCLB - Section 12-311c(3)(b)(i).

Under the New York City Collective Bargaining Law comparisons need only be made among employees in the City of New York. To do so would be in compliance with it because by its language it allows for comparison either with New York City employees or those in comparable communities. The Taylor Law does not provide for an "either-or" option. It requires comparison with employees in "comparable communities" and therefore, at least for this particular case, has a broader scope (emphasis in the original)."²⁶

Consequently, Arbitrator Schmertz rejected the City's claim that the DC-37 contract (non-uniformed personnel) should be applied to police officers, the Union observes. Additionally, the PBA cites the requirement in the Taylor Law that the panel consider hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training skills,²⁷ a requirement not found in the NYCCBL.

To highlight the importance of these distinctions, the PBA cites Mayor Rudolph Guiliani's letter urging a veto of the bill transferring jurisdiction to PERB.

This possibility [of garnering larger increases] has fueled the PBA's latest attempt to circumvent the realities of parity and pattern bargaining in New York City through amending the Civil Service Law

²⁶ PBA 15-7.

²⁷ Ibid

even though it is these two principles that have served to stabilize the collective bargaining process in New York City.²⁸

Arbitrator MacKenzie affirmed this view when, after every single other uniformed union had settled for the pattern, she opined "...strict adherence to the pattern urged by the City...would not result in a just and reasonable determination," the PBA indicates.

Furthermore, the PBA argues that the City's concept of a controlling pattern is self-serving, for it allows the employer to select a targeted union and then insist that all others conform to the terms of the ensuing agreement without regard to such Taylor Law criteria as comparable community pay scales for individuals performing similar work. In this context, it observes, not until March 23, 2015, long after interest arbitration was invoked here, did the City offer the so-called "uniform pattern (1984, 87)."

Given these circumstances, the PBA insists that adopting the City's pattern proposal would have a twofold deleterious effect by (a) permitting the City to avoid paying the market wages the Taylor Law demands and (b) permitting the City to manipulate it [pattern] for its [City's] own purposes as to length

²⁸ PBA Ex. 15-18.

and differential, if any, to be applied to police officers.

Equally unpersuasive in the PBA's view, is the City's claim that deviating from the pattern would wreak havoc on labor relations. Suggesting that the City has used this argument in the three prior interest arbitration rounds, the PBA cites the following data:

Round	City Claimed Union Sorting Pattern	Net Cost of Pattern	Net Cost of PBA Award	Percentage PBA Award above Pattern
Eischen	Uniformed Unions	10.03%	12.35%	23.13%
Schmertz	DC 37	4.17%(3 years)= 2.78%(2 years)	6.01%(2 years)	116%
MacKenzie	USA	6.24%	7.41%	18.75%

In these cases arbitrators awarded increases exceeding the City pattern by as little as 18.75% and as much as 118%, according to the PBA. Yet, it concludes, the labor relations' paradigm did not crumble; instead other unions bargained for additional (though not truly "catch up") items in subsequent rounds or re-opened their contracts to achieve parity at max pay by the end of the contract year, with police officers. In sum, the PBA suggests, "The panel should not be intimidated by the City's warnings." (brief, p. 170).

The PBA makes a series of non-base wage proposals, which, it contends, are necessary to help

provide officers market based compensation. They are summarized below.

1. a) Education Pay - differentials of 10% for an Associates Degree, 60 college credits or military service; 15% for a bachelor's degree or 120 credits; 20% for a Master's or post-Graduate degree.

b) Training and experience pay for officers who do not receive the differential in (a) of 10% upon completion of programs accepted by the Union and the NYPD.

Noting that better educated and trained officers contribute to better policing, the PBA asks the panel to adopt these proposals.²⁹

2. Terrorism Differential - 10% increase in recognition of the increased or enhanced workload, training and heightened risks resulting from terrorism threats and related incidents.

This proposal is justified since New York City and its officers are the number one target of terrorists and others seeking to inflict widespread harm here, the PBA avers, noting that other NYS and national jurisdictions grant a similar differential.

3. Patrol Assignment Differential Pay - A differential of 12% of base pay to Officers with eight or more years of service and who perform a patrol function.

Recognizing that patrol is the backbone of the job and the face and ears of the Department requires a corresponding differential, the PBA asserts.

²⁹ PBA 15-182; 15-108.

4. Vacations

- (a) Equalizing vacations for officers hired between July 1, 1998 and June 30, 2008 to pre-July 1, 1998 levels.
- (b) Permitting officers to donate part or all of his/her accumulated time exclusive of sick leave, to another officer in his/her command subject to the approval of their commanding officer.

Early years on the job tend to be most stressful for officers, according to the Union. Yet, it notes, pursuant to the MacKenzie Award those hired on or after July 1, 2008 had their vacation days halved, despite working side by side in the same difficult position as more senior bargaining unit members, the PBA points out. It also suggests that though some days were recaptured in later rounds, the days should be equalized with more senior officers.

5. Work Schedule

- (a) The adoption of a "modern" chart of ten or twelve hour tours or any combination thereof which would result in fewer appearances while maintaining the current 2088 hours.
- (b) The creation of a joint labor-management committee to devise the components of the "modern" chart.
- (c) Sharing the savings created by the new chart among all active police officers.

As the Union sees it, the ten hour chart would provide significant benefits and operational efficiencies to officers and the Department. For example, according to John Gerrish, former Commanding Officer of OMAP, it would better match resources with

operational needs; i.e., more cars could be deployed during peak crime hours (720-25).

Also, the Union argues, there would be fewer breaks since appearances would be reduced,³⁰ thereby increasing productivity. Moreover, it reasons, while the City did not offer evidence as to how the ten hour tour would result in greater costs, the Independent Budget Office estimated increased productivity of 5 to 10%. Finally, on this proposal, the PBA notes that a number of local and national jurisdictions have adopted the 10 or 12 hour tours.

6. Home Confinement While on Sick Leave

Making permanent the program adopted in 2008 which limits home confinement to an officer's regular tour makes sense, the PBA insists, since experience under the pilot program has been positive and improves officer morale.

7. Payment for Holiday Work

Seeking Martin Luther King as a paid holiday, the PBA argues for this proposal, which is in the Sanitation Agreement and recognizes the significance of this day in a multi-cultural work force and in the City.

8. Prohibition Against Self Help

The NYPD may not recoup any monetary overpayment unless:

- a) The officer is notified in a writing which includes a detailed analysis of the amount sought and the reasons therefore.
- b) The officer may respond to the notice within 30 days after receipt.

³⁰ The PBA does not seek an increase in the number or length of breaks in the ten hour tour.

- c) The Department shall reply within 30 days thereafter.
- d) If the Department still believes the recoupment is incorrect it may reduce the officer's pay accordingly so that no more than 10% of net pay, minus court ordered child support payments, is withheld in any single pay period.

This proposal is necessary, the PBA suggests, because in less than nine years the Department has had to recoup over \$12 million. In a number of cases, it asserts, no prior notice of withholding has been provided and in virtually no case was the overpayment due to police officer error.

9. Longevity Pay

- a) After 22 years of service an additional \$2,000, increased by gwi's (general wage increases) and which is pensionable.
- b) 15 year and 20 year longevity adjustments to be made pensionable upon completion of 20 years of service.

The PBA argues this proposal is justified because newer officers are in less beneficial retirement tiers. To retain their valued service and that of those hired prior to 2009, the PBA seeks its adoption.

10. Health and Welfare Fund

Effective August 1, 2010 an additional annual \$200 per active officer and retiree, which sum is increased by future general wage increases.

Increasing the current fund by \$200 will ensure its financial health, the PBA maintains.

11. Annuity

Convert the current \$522 annual payment to 2% of basic maximum salary.

Applying a percentage to the annuity, as opposed to a flat dollar amount, guarantees that this benefit does not decrease in value as time goes on, the PBA alleges.

12. Uniform Allowance - 2% of basic maximum salary.

The current allowance - \$1,000 - has not changed since 1989, the PBA notes. However, the costs of uniforms and required equipment has increased significantly since then. Accordingly, it asks that this proposal be awarded.

13. Sick Leave Incentive Program

The PBA makes the following proposal:
The Department shall adopt an annual program for limited use of non-line duty sick leave in accordance with the below listed chart, awarding to each police officer the amount indicated for using the corresponding number of sick days.

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

This proposal will increase morale and incentivize officers to report for duty rather than use their sick leave.

14. Seniority

Seniority shall be the primary factor in the selection of shifts, discretionary assignments, vacation picks and in the awarding of overtime.

Seniority is a common method in granting these types of benefits, the Union maintains. Moreover, such an objective system will increase the confidence Officers have when these assignments are awarded.

15. Job Related Parking Privileges

a) On-duty officers shall be provided with no cost, reasonably situated parking facilities.

or

b) Article XVI, Section 2 of the Collective Bargaining Agreement shall be subject to the grievance procedure set forth in Article XXI.

Either the City has to provide reasonably situated no cost parking or it has to be required to live up to its current agreement regarding parking, in the PBA's view.

16. Interest

Interest at the rate of 3% where the wages, longevity, etc. have been due and owing for 30 days or more and where each exceeds \$5 in value.

Such a result would expedite the collective bargaining process, as the PBA sees it.

Finally, with respect to all of its supplemental proposals, the PBA contends they are meritorious, as indicated above. Moreover, it alleges, the City has provided no rationale for their rejection: Accordingly, it seeks their adoption as presented.

City

The City contends a "just and reasonable" Award can only be achieved by adopting its proposal. Numerous officials, including Mayor de Blasio, testified that all municipal unions must be treated equitably, the City points out. "Pattern bargaining," it argues, "represents a recognition of the importance of all the people who work for the City of New York (2046). That recognition has resulted in civilian and uniform settlements for 83% of the work force, it observes. This is especially significant, it opines, given the recent firefighter settlement which continues wage parity with police officers begun in 1898.³¹

Breaking this pattern would wreak havoc on the entire system of labor relations in the City, it insists, by destroying a collaborative, respectful approach to collective bargaining. Noting that there are some 337,000 represented public employees in this jurisdiction, all of whom provide vital services to the citizenry, the City contends that all must be treated equitably.

³¹ That settlement has not been ratified.

Deviations from this form of treatment occurred in 2009, the City suggests, when the former administration abandoned its own pattern of 4% and 4% raises resulting in the cessation of meaningful collective bargaining with its unions (2889). Consequently, it notes, not a single contract was resolved when Mayor de Blasio took office on January 1, 2014. Only when internal equity was maintained were City unions re-acquainted with the principles laid out in the 1968 Goldberg report which issued separate reports for police, fire and sanitation workers, all recommending the same wage increases.³² Also, as Arbitrator Glushien opined in 1980, if one union

can break the pattern which has governed everyone else, it would be rewarded for its obduracy. And it would create a catastrophic potential.³³

Internal equity (the pattern) continued until 2000, though a uniform differential applied in 1980-82, 1982-84 and 1984-87 rounds of bargaining (1739-43). In fact, the City notes, the 1987-90 contract was settled first by the PBA, with others following suit (1746). Moreover, for 1990-91 an interest

³² PBA Exhibits 15-14.

³³ City of New York and Local 3, October 8, 1980.

arbitration panel imposed the civilian pattern upon police officers (1747).

The City acknowledges that the first arbitration panel under the Taylor Law ordered an Award which exceeded the pattern. However, it urges, the break occurred because the panel was constrained to issue a two year Award, while other unions had accepted the same raise over thirty months.³⁴ In the City's words, "...the ideal award would have resulted in complete equity between the PBA and the other uniformed unions." (brief, p. 18). Though the net cost exceeded the uniformed pattern, it maintained vertical parity with superior police officers and horizontal parity with other uniformed personnel, the City observes.

In the 2002-04 round the issue of parity among the uniformed ranks did not arise since only the DC 37 contract had been settled at the time, the City notes. As to the MacKenzie panel (2004-06 round), other settled unions had "reopeners" at the time that Award was issued. Therefore, the City suggests, the issue of internal equity was a non-factor since those unions could and did reopen their contracts after the PBA

³⁴City Exhibit 8.

Award was issued. Notably, the PBA did settle 2006-08 and 2008-10 contracts which were truly pattern conforming, the City claims (1757, 2879-80). In sum, it urges, internal equity among uniformed unions was maintained for 30 years preceding the 2000-02 round and thereafter. As the City sees it, then, for some 50 years not a single voluntary settlement or interest arbitration award endorsed or supported the notion that one uniformed union should get more than any other.

Furthermore, the City argues, its proposal in this dispute is consistent with internal equity. Faced with the absence of any settled contract, the City was nonetheless able to settle agreements which retained the 4% and 4% raises garnered in the 2008-10 round and provided for a payout of those increases over time so it could absorb their economic impact in a reasonable manner, it submits. By reaching this compromise, the UFT, whose contract had expired in 2009, recognized the necessity for internal equity, the City asserts. As a result of this agreement, which expires in 2018, other unions, uniformed and not, adopted conforming contracts, it posits, except that the uniformed personnel received a 1%

differential above the civilian package. Ultimately, it notes, 83% of the represented work force has agreed to this settlement.

To deviate from this pattern would do significant damage to labor relations generally and its relationship with the other uniformed personnel specifically, according to the City. Giving the PBA more would heighten acrimony between it and the other uniformed leaders and would render it unlikely that voluntary settlements could be achieved in the future, according to the City.

A review of the 2000-02, 2002-04 and 2004-06 rounds justifies a pattern conforming award here, as the City sees it, because:

1. In 2000-02, the internal equity was maintained but because the panel was restricted to a finding of two years instead of 30 months, the net cost exceeded what the other unions agreed. After contentious bargaining, those that had settled (SBA and DEA) ultimately accepted what they previously agreed to.
2. In 2002-04, the Schmertz panel awarded two 5% raises but severely reduced the starting step for new officers at a savings of 4.24 per cent. Consequently, superior officers did not benefit from this change.³⁵ Thus, a

³⁵ Superior officers promote through the ranks so a reduced entry level salary for PBA members does not affect them.

number extended their contracts, others modified their salary schedules, added work days and time to each day, etc.

3. In the 2004-06 round Sanitation settled first for raises of 6.24%. In 2007, while the PBA and the City engaged in negotiations and interest arbitration for the 2004-06 round, the UFA and other uniformed unions settled for 4% and 4% plus 1.47% of additional funding for the 2006-08 round and then 4 and 4% + 1.59% of additional funding for the 2008-10 round.

As a result of this round, non-PBA unions received raises consistent with the MacKenzie finding, with painful concessions, including compression of the differences in the police ranks, so much so that in some cases PBA members were making more than their superiors.

4. In the 2006-08 and 2008-10 rounds, the PBA accepted the patterns that had been previously established by the uniformed unions, via a 2006-10 Agreement.

What all this means, according to the City, is that bargaining among uniformed unions is inextricably intertwined. To restore a sense of confidence among these unions it is necessary for this panel to award pattern conforming wage and benefit increases for the 2010-12 round, the City insists. In its words:

It is a truism that pattern bargaining allows labor leaders in a multi-unit world the security to be able to step forward and reach an agreement without fear of being victimized because a later-settling union out did it. (Brief, p. 42).

A larger than pattern award would have other deleterious effects, the City suggests. It has great social and economic needs and constraints, including cleaning the streets, educating children, improving the infrastructure, caring for those unable to help themselves and improving the overall quality of life. To spend reserves on labor costs is to render these laudable goals nearly impossible, according to the Mayor (1412).

The City acknowledges it has undergone an economic recovery in the last four years. However, as Budget Director Dean Fuleihan noted:

Even if there is no recession over the next few years and we continue in this weak recovery, if we do not invest in the City, if we do not take urgent action to improve the situation of almost one in two citizens who are at or near poverty, we will have failed them and the City (2454).

In light of these factors, the City insists it cannot meet or come close to meeting the PBA's demands. Even the recovery is fraught with danger, given the low rate of growth in 2015, very poor growth in Japan and prognostications of a "sharper slowdown in China." (Dardia testimony, at 2553-54). Thus, it concludes, to accept the PBA's claim of continued economic growth

would be "sheer folly" (brief, p. 50), especially since NYC's tax revenues are particularly volatile.³⁶ The volatility of revenue projections is especially great here, the City suggests. This is so because our tax base is highly concentrated among few areas - notably Wall Street.³⁷ Similarly, it notes, the top 1% of residents pay approximately half of personal income taxes. Many of them earn Wall Street bonuses. Thus, the City reasons, a decline in the finance industry would have a huge impact on its revenue and reserves. Real estate revenues are similarly unpredictable, it insists. Overall, it argues, predictions by the PBA of continued economic growth are unfounded and without sound support. Indeed, if the 2001 recession were replicated, predictions of increased tax revenue would be astoundingly incorrect, it concludes. This precipitous revenue decline occurs in all recessions, the City posits,³⁸ a decline which the PBA has failed to predict in the past.³⁹

³⁶ See 2008 and 2009 projected growth rate of 2.20% and 2.70%, respectively when there was a contraction of .30% and 2.80%, respectively. City Exhibit 14.

³⁷ City Exhibit 15.

³⁸ City Exhibit 15.

³⁹ City Exhibit 15, 2538-39.

In sum, on this issue, the City asks the panel to be cognizant of a possible recession in the near term. To do otherwise would leave it with Hobson's choices of freezing hiring, eliminating social service contracts with outside vendors, headcount reductions through attrition and tax increases (2541-42).

It is true it has the power to tax, the City notes. However, it argues, the current tax burden is at a historically high level - 9.8%. Not since the 1970's fiscal crisis has the burden been so high. As such, it insists, when (not if) the next recession arrives, its ability to raise taxes will be severely restricted. Also of concern is dwindling Federal and State aid, down from a high of 38% of revenues in 1980 to less than 28% in 2013, the City notes (2462). Even less outside assistance will be available in the event of an economic turndown, it predicts.

Under these circumstances, the City contends its current financial plan is realistic by projecting gaps of \$1.572 billion in FY 2016, \$1.967 billion in FY 2018 and \$2.881 billion in FY 2018. When matched against the cost of the PBA's proposals which exceed \$5.3 billion and \$14,876 billion if applied to all

uniformed personnel, the absurdity of the PBA's position becomes clear, according to the City.

Furthermore, the City argues, its financial plan projects realistic gaps and assumes the application of the pattern to unsettled groups. Any deviation ordered by this panel, as the City sees it, would imperil that plan.

In addition, it has already made a considerable investment in upgrading the police, the City alleges, by adding:

- \$29 million for enhanced training;
- \$21 million for replacing all bullet proof vests over five years old;
- \$14 million for Operation Summer All Out initiative;
- \$9 million for body cameras;
- \$89 million for technology upgrades;
- \$140 million for the mobile device initiative;
- \$101 million for the upgrade in Housing Authority security;
- \$20 million for network upgrades;
- \$13 million for training;
- \$500 million in additional police capital improvements.

These expenditures demonstrate an ongoing commitment to improving the Department to the benefit of its members and the public whom they serve, the City submits.

Challenging the PBA's assumptions of growing surpluses, the City insists that they are necessary to balance subsequent years' shortfalls. In fact, it suggests, PBA witnesses conceded as much (Rosenberg testimony, 884-85). Prudence, then, requires it to maintain a meaningful surplus to balance future budgets, a requirement mandated by law, the City concludes.

The City also asks the panel to reject the PBA's arguments in favor of abandoning the uniformed pattern. For the Union to prevail, the City opines it [PBA] must establish unique and critical circumstances which would justify doing so.⁴⁰ No such factor exists here. Rather, the City argues, any disparity between New York Police Officers' compensation and those in nearby jurisdictions can be addressed in the normal course of bargaining. This is so, it stresses, because it expends over \$178,000 per year to compensate a police officer. A number of benefits

⁴⁰City Exhibit 9.

this sum funds could be diverted to direct compensation and could still provide PBA members with an excellent fringe benefit package.

This is why, the City alleges, the PBA attempts to exclude fringe benefits from any comparative analysis of relevant jurisdictions. Such an attempt is misguided and ignores economic realities today, it urges. Moreover, the Taylor Law requires the panel to consider the full compensation package received by officers, including "insurance and retirement benefits, medical and hospitalization benefits."⁴¹ According to the City, that package includes:

(adjusted to 2014 including the pattern)

health benefits - full individual and family coverage with no employee premium and superior benefits;

welfare fund - \$1,579 per employee;

retiree health plan - same as active employees until Medicare eligible: 100% reimbursement for Medicare Part B for retirees and dependents;

pension benefits - 50% of final average pay after 20 or 22 years of service depending on date of hire;

variable supplement fund - guaranteed benefit of \$12,000 per retiree;

⁴¹ NYS Civil Service Law Section 209(4)(c)(v)(d).

annuity - \$522 per officer per active year of service that provides a supplemental annuity or lump sum upon retirement;

social security - full coverage and payment of 6.2% of wages as the City's share;

transportation - free passage on subways, buses and Long Island Railroad and Metro North trains.⁴²

These benefits are very generous, the City insists. In some cases, they surpass comparable payments in all or nearly all other national cities. They total some \$94,000, in excess of direct compensation of \$83,976 (excluding overtime). These figures, it argues, represent the true cost of funding for police officers, as set forth in the Taylor Law. Citing the testimony of Stephen Berger, former Executive Vice-President of GE Capital, "Anyone who believes that total cost does not matter has never actually had to make a payroll (2427)." Even PBA witnesses acknowledge the necessity of including fringe benefits in employee costs, the City posits (528-533). Nor should the panel be persuaded by Professor Hurd's claim that prospective hires do not focus on benefits when choosing police jobs, in the City's view. This is so because of the Taylor Law's inclusion of fringe

⁴²City Exhibit 10.

benefits as part of overall compensation and Professor Hurd's acknowledgement in the UFT factfinding hearing that professionals look at retirement benefits and the like before accepting new jobs (501-03). Similarly, the City suggests, the Goldberg standard advanced by the PBA discussed fringe benefits at length (189). Thus, the City concludes, any meaningful comparison of relevant jurisdictions must include all forms of compensation, direct and indirect.

That analysis demonstrates that police officers are properly compensated, as the City sees it. It asserts that since 2000 its relative fringe benefit costs compared to national and local comparators has increased sixfold, from 16% above the national average to 110% above it; and from 6% above the local average to 38% above.

Equally baseless is the PBA's claim that pension contribution should not be considered in an examination of comparator benefits, as the City sees it. Pension contributions have remained high for many years.⁴³ Also, these rates ("CAFR rates") represent a real cost, however much they may vary, the City urges. In fact, they have averaged over 60% of wages for a

⁴³City Exhibit 8.

substantial period of time, it notes. Thus, and consistent with Taylor Law criteria, they must be given substantial weight in this proceeding, according to the City.

The wage and benefit cost structure must be compared against national cities, not local jurisdictions, in the City's view. This is so because, according to the City:

- only larger cities have similar demographics and fulfill similar human needs;
- "local markets" as championed by Professor Hurd, is not a phrase contained in the Taylor Law. "Comparable communities" i.e., national cities, is;
- most local jurisdictions have tiny police forces and few dense urban environments;
- the police officer per 1,000 citizens ratio here is approximately twice that in Nassau, Suffolk and Westchester Counties;⁴⁴
- These counties are far wealthier than NYC.⁴⁵

Nor do these other communities' pay set the market rate, for NYC police officers, according to the City. It has no trouble recruiting and keeping

⁴⁴ City Exhibit 10

⁴⁵ Ibid.

recruits because wages are higher elsewhere. Rather, any recruitment/retention problems result from the delay in processing applications and certifying individuals as fit for service, it alleges.

The City acknowledges that the Port Authority and MTA's overall compensation to police officers exceeds police officers' here. However, it argues, the Port Authority is "close to a for profit enterprise, the labor market has no bearing on wages there and it is highly politicized."⁴⁶

As to national comparators, the city notes it ranks third among cited cities and 149% above that average (excluding NYC) (1694-95), as reflected in this chart:

	A	B			A+B=C	B/A	
	20 Year Average Total Direct Comparison	Fringe Benefits			Total Benefit Costs	Total cost	Benefits as % of Direct Comp
		Health	Retiree Health	Pension & FICA			
National Average (w/o NY)	\$75,099	\$11,899	\$6,645	\$26,590	\$45,135	\$120,234	60.1%
New York City	\$63,976	\$14,718	\$16,742	\$63,254	\$94,714	\$178,680	112.8%
NYC as % of Avg	111.8%	124%	252%	236%	210%	148.6%	

Moreover, the City insists, its relative standing among national cities has improved over the last 15

⁴⁶ See testimony of former Port Authority Executive Director Stephen Berger (2049) and Stanley Brezenoff (2439-40).

year by increasing from 17% above the national average to 46% above for total compensation costs.⁴⁷

Even if only direct compensation is examined, the City compares favorably to national comparators, by being 13% above that average (as of July 31, 2010) and 14% (as of July 31, 2012) if the pattern is applied, according to the City. Similar results exist on a per hour basis, it suggests. These differences reach as high as 26% if social security is factored in,⁴⁸ it observes.

Also to be considered is the quality of the benefits offered, the City maintains. Its defined benefit pension plan is superior to virtually all other national comparators, including post April 2009 hires, it argues. Examples of the superior benefits, are, according to the City:

- one year Final Average Salary ("FAS");
- overtime included in FAS;
- smallest employee contributions, 0-3.55% while others range between 5 and 14%;
- no minimum age requirement for full pension;

⁴⁷ City Exhibit 20.

⁴⁸ New York City is only one of two national jurisdictions which participates in Social Security.

- VSF benefit of \$12,000 per year, far in excess of the only three cities which provide a supplemental payment.⁴⁹

Dr. Erath's illustration of an officer who joins the force at an early age and retires when first eligible for a full pension demonstrates the comparative value of these benefits, the City urges.⁵⁰

In this context, the City criticizes the testimony of PBA expert Brad Heinrichs that different plans contain different "assumptions," thereby rendering its [City's] analysis highly misleading. Rather, the City maintains, even if Heinrich's "normalization" process is utilized, its normal cost is 25% compared to the national average of 14.7%, or 75% higher. Also invalidating Heinrich's conclusions is his failure to take into account the present value of payments (3299). When that error is corrected, NYC's pensions are worth 151% of the national average, even if the rest of Heinrich's analysis is credited, the City alleges (3294-95).

For these reasons, the City concludes that its fringe benefit package, both as to cost to the employer and benefit to the employee, is richer than

⁴⁹ City Exhibit 12.

⁵⁰ Ibid.

the national cities' average. Also, it argues, even if local jurisdictions are considered, it fares well. Total compensation exceeds the local average by 6%, and health benefits exceed those in other locales, such as the MTA and the State of New York, it contends. Furthermore, the City claims, since 2002 NYC's standing among local jurisdictions has improved since overall compensation has risen 158% while the average rose 104%.⁵¹ Consequently, it concludes, the Taylor Law criteria mandate a ruling consistent with its proposal.

As to cost of living adjustments, the employer concedes that New York City can be an expensive place to live. However, it insists, a number of the components which make for a high CPI index here are inapplicable to police officers. This is so, it stresses, because members of the bargaining unit enjoy free public education, no health premiums for individuals and their families and free transportation on the MTA's mass transit and commuter rail systems (2333-42). As to housing, an admittedly high cost item in the City, the employer suggests that the PBA's index overstates its impact by not including diverse

⁵¹City Exhibit 20.

areas in the five boroughs, as well as the six outside counties in which officers may live.

Other factors render the PBA's CPI figures suspect as they apply to this dispute, according to the City. Characteristics of the local work force, climate, commuting patterns, amenities of the area and other criteria are also at work, it contends. Indeed, sound and unrebutted evidence suggests that other than BLS-CPI data should be used, it urges, including Federal Locality Pay (2106-07), BLS Occupational Pay Relatives and CPS Differentials (2109-13; 2317-18). These data reveal that national cities' wage levels were anywhere from 89.2% to 93.6% of New York's while, according to Professor Hurd, the cost of living in the comparator cities was 71.3% of New York's. Thus, it urges, one cannot simply adjust pay by CPI differentials, yet that is what he did. In fact, it insists, the great majority of employers who utilize some cost of living data in setting salaries do not rely upon BLS-CPI figures. In prior arbitration proceedings the PBA used similarly misleading indexes, the City suggests.

The PBA's cost of living adjustments are also flawed for the following reasons, the City maintains:

1. The Aten study relied upon by the PBA exaggerates differences between New York and other cities because it includes only the five boroughs here and metropolitan areas larger than the cities' borders elsewhere;
2. The BLS itself has cautioned against using local indices for comparative purposes (2325-28);
3. Individual components (e.g., medical, apparel, education, food and beverage, recreation) vary greatly;
4. Food prices are lower in New York and other large cities than Professor Hurd claimed;
5. Even Professor Abraham's normalization of health costs is flawed because the national average is still above the zero cost of premiums for police officers (3281).

Taking these factors into account means that a wage differential index is a more meaningful comparison of compensation, the City posits. Applying this index yields the following calculations, according to City experts.

**% by Which Overall City Compensation Exceeds
National Average**

Federal Locality Pay Index - 44%
BLS Occupational Pay Relations - 38%
CPS Differential Index - 42%⁵²

⁵² City Exhibit 10.

Other elements need be considered when comparing total compensation here to other locales, as the City sees it:

- a) far more opportunity to promote into the higher ranks here than elsewhere, even on a proportional basis;
- b) Raises in this unit have exceeded the increases in the CPI and the ECI ("Employment Cost Index");
- c) Its proposal, when combined with actual raises since 2000, exceed increases in the national and local CPIs.

For these reasons the City asks me to adopt its wage proposal as presented.

Concerning other PBA demands, the City seeks their rejection as follows:

- A. Work Schedules - increasing tour length and reducing the number of appearances deprives the Department of needed flexibility in deploying its force and increases overall costs by 17.48% (2820-23).

- B. Terrorism Workload and Safety Risk Premium

This proposal was rejected in the three previous interest arbitration proceedings and there is no new evidence to support it now.

- C. Longevity

The 2.09% cost of this proposal is not justified.

D. Annuity and Uniform Allowance

Converting flat dollar payments to percentages is costly and guarantees increases as wages go up. No other uniformed union has these stipends tied to wages.

E. Health and Welfare Fund

This is another economic demand which no other bargaining unit receives. Consequently, it is not justified.

F. Sick Leave Incentive Program

There is no evidence such a program would reduce sick leave usage and no other uniformed union enjoys this program.

G. Patrol Assignment Differential Pay

There is no evidence that current patrol levels are inadequate and this proposal is simply a hidden form of a pay increase. Thus, it should not be adopted.

H. Home Confinement on Sick Leave

This was instituted on a pilot program and the parties should be left to make it permanent if they wish.

I. Vacation and Payment for Holiday Work

These are too costly to be implemented.

J. Prohibition Against Self-Help

The current procedure gives Officers appropriate notice of impending recoupment of overpayment. There is no need to change it.

K. Seniority

This proposal increases overtime costs and impedes the Department from choosing the best suited individual for the assignment in question.

L. Parking Privileges

There is no evidence in the record to support this proposal.

Accordingly, the City asks the panel to adopt its wage proposal and reject the PBA's non-wage demands.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. There is no doubt New York City's "finest" are just that. Police must keep the peace by apprehending those wanted for the commission of crimes. They are also charged with preventing crime by being watchful and alert to situations which may produce criminal activity.

At the same time, the City's police officers are also under the watchful eyes of numerous entities. These include District Attorneys, Federal prosecutors, elected officials, the Civilian Complaint Review Board and others. Indeed, in an age of cell phones, virtually every act of commission and omission is subject to ongoing scrutiny. Police officers walk a

dangerous tightrope between protecting the public and being sensitive to ongoing oversight.

These comments should not be dismissed as empty rhetoric. I speak for the entire panel in appreciation of the demanding task facing PBA members.

This does not mean, however, that the panel is free to award raises sought by the PBA. As all are aware, we derive our jurisdiction and authority from the Taylor Law. Section 209.5(v) lists some of the criteria we must apply in reaching a "just and reasonable" result. They are:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the 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.

This section of the statute lists no other criteria but does permit the panel to consider other relevant factors. Thus, the list is not all-inclusive, but instructive.

Criterion (a) is perhaps the most heavily litigated of all four. It requires us to make a "comparison of the wages, hours and conditions of employment of other employees under similar working conditions...in comparable communities."

Much of the hearing testimony and evidence was devoted to this issue. The City asserted that the most comparable jurisdictions are within New York City, including but not limited to law enforcement groups within its confines. The Union countered by insisting that appropriate comparators are different agencies, some of whose law enforcement groups work side by side with New York City police officers and other locally based jurisdictions.

I have reviewed the record carefully on this issue. Based upon that review I find that New York City law enforcement groups are the most valid comparators for

the purpose of deciding what increases should be granted PBA members. This is so for a number of reasons.

First, obviously, these groups function within the same geographical jurisdiction. Police officers and other law enforcement groups here are assigned to identical localities. They face the same stresses, albeit on a supervisory level, as the individuals who work in their commands. Stated simply, there is no more "comparable" community than the City itself.

Also, there is the historical nexus between the PBA and other City law enforcement units to consider. Pattern bargaining among these groups has existed for a number of years. In those instances where the PBA attained more than other uniformed groups for the same time period, they have, through re-opener provisions, matched the PBA's. In other rounds, such as 2006-10, the PBA agreed to raises given the other uniformed unions, as well as other items not received by them, though the parties disagree as to whether these were funded by concessions. Stated simply then, regardless of who went first, the net costs of PBA agreements was the same as the net costs of other uniformed groups for similar periods of time.

Other factors point to the same results. The pattern of settlements reflects an internal equity among law enforcement groups. In the 2002-04 round the PBA achieved compensation improvements beyond what other groups achieved, though starting pay for new hires was substantially reduced. This occurred so that existing officers' raises could be increased. Superior unions could not lower their starting pay since their ranks were comprised of those promoted from the PBA's. Consequently, the superior officers gave up other economic items so as to mirror the wage increases achieved by the PBA.

What this all means is that there has existed a long term pattern of raises in PBA and non-PBA law enforcement groups within the City. That pattern should not be disturbed here, I find.

The PBA argued strenuously that the statutory change from OCB to PERB requires the panel to discount raises won by other City groups. I do not agree. It is true, of course, that the NYCCBL referred to comparisons between the unit at issue and other New York City groups. It is equally true that the Taylor Law, as a State statute, does not reference New York City bargaining units. However, that omission does

not mean any comparison to units within New York City is barred. Far from it. Just as, say, wage increases in the PBA unit in Nassau County may be analyzed in light of raises given superior officers there, so, too, may increases for the NYC PBA be viewed in the context of economic improvements awarded to superior officers here.

This is not to say that the NYC non-uniformed groups are an appropriate comparator to the police officers in the same jurisdiction. As noted above, Section 209(V)(c)(a) of the Taylor Law requires a comparison between the unit at issue with "other employees performing similar services or requiring similar skills under similar conditions...in comparable communities."

While DC 37 civilian personnel and teachers perform important duties, it cannot be said they perform in similar circumstances or must possess similar skills in similar circumstances. However, that surely cannot be said of other law enforcement groups. Sergeants, detectives, lieutenants and captains must possess the same skills as the men and women they supervise. They work in the same locales and are generally grouped in the same way (precincts,

units, etc.) as their subordinates. Even fire officers, who need not possess the identical skills as police officers, provide similar services. They are entrusted with protecting the safety of the public. They perform life saving functions⁵³ as do police Officers. They, too, are an appropriate comparator, I find. Thus, the record reveals that six law enforcement units within New York City have settled contracts for 2010-2012. All have settled for the same package: one percent in the first year of the contract and one percent in the second year of the contract.

The comparator analysis does not end there. While data for New York City law enforcement units is the most relevant, similar statistics for non-New York City units are also of value. Here, the parties vigorously disagreed as to which non-NYC units are most appropriate for analysis. The City contended that national cities should be utilized for this purpose. The PBA insisted on local jurisdictions in the metropolitan area.

⁵³ Since the Firefighters' tentative settlement has not been ratified as of this writing, they are not an appropriate comparator in this case.

I have also reviewed the record carefully on this issue. While local comparators are entitled to some weight, the more relevant communities are national cities, I find. This, too, is so for a number of reasons.

The Taylor Law requires a comparison of those with similar skills/services/working conditions in comparable communities. The statute does not limit "comparable communities" to New York State. It leaves arbitrators free to decide which communities are most similar to New York City.

Large national cities are most similar to New York City, I am convinced. They encompass a cross section of residents from the very poor to the very wealthy. More important, they provide a vast array of services such as education, sanitation, firefighting, special services, housing, welfare, libraries and other public necessities and amenities.

Smaller, generally wealthier jurisdictions do not provide a similar level of services. Generally, though not always, they ensure public safety but other services are provided by different governmental entities (2007).

This is not to say that local jurisdictions have no relevance here. Nassau and Westchester counties are contiguous counties. Many police officers live there as well as in Suffolk County, another high paying jurisdiction. Smaller towns and villages within these counties also pay their police officers wages well above New York City's. However, these communities, even the larger counties, do not provide the level of services New York City does. What really exists, then, is a paradox of sorts. Large cities, which make for difficult police work, tend to pay their Officers less than more affluent suburbs where law enforcement duties are arguably less onerous.

The reliance by the PBA on local jurisdictions is further diminished by recruiting history. It is one thing if New York City's police officers are flocking to the suburbs for higher pay. It is quite another if the outflow is minimal. The latter is the case here. From 2009 to 2014 fewer than 100 officers have left the City under these circumstances. Qualified applicants here exceed vacancies by the thousands. The process from initial interest in a post in the City to entrance into the Academy takes some three to four years.

That being said, the data among national cities places New York in a relatively favorable light. Of twenty major cities in the United States, New York ranks fifth in total direct costs. City Exhibit 20.

The PBA suggested that the trickle to other, higher paying jurisdictions results from the recession in which relatively few openings arose in the suburbs, the City's recoument of training costs from municipalities whose new hires were trained by New York and its [City's] practice of not divulging the personnel records of those leaving its employ to municipal agencies elsewhere. These arguments, though relevant, are outweighed by other factors.

Chair MacKenzie found national cities to be a more appropriate comparator than local suburbs. She wrote, "When factors such as diversity and density of populations and neighborhoods...are taken into account the demographics of large urban jurisdictions more closely approximate New York City than do suburban counties or communities."

Also, it is unlikely New York City will undergo a drain of qualified applicants or officers to suburban areas. As noted above, the outflow has been minimal. Nor is there any reasonable likelihood that lower

salaries here will result in a reduction in qualified applicants. Thus, what remains is the PBA's speculation that comparative wages impairs the City's ability to recruit and retain qualified officers. That speculation is not borne out by substantive evidence, I find.

The PBA contended that the comparative compensation figures offered by the City are fatally flawed because they do not reflect differences in the cost of living among national jurisdictions. There certainly is some merit to this contention. Whether BLS/CPI figures are utilized or allegedly more accurate measures such as the federal locality pay system, Mercer's Geographic Salary differential, BLS or Occupational Pay Relatives, there is no doubt New York City and its environs is an expensive locale in which to live. This is so even when public transportation and health premiums are excluded.⁵⁴

This factor, however, is minimized by two elements. The first is New York's fringe benefits outlay for police officers. Just as it costs more for the average worker to live in this area, it also costs more for the City to provide health and pension

⁵⁴ Police officers here do not pay for either item.

benefits to its officers. As City Exhibit 20, Page 3A demonstrates, as of the end of 2014, New York's direct compensation and fringe benefit cost, computed on a twenty year average was 189 per cent above the national cities cited. Thus, even if the PBA's cost of living data and testimony is credited,⁵⁵ the higher cost of living here is dwarfed by the 189 per cent figure.

The PBA contended that fringe benefit costs comparisons have no place in an interest arbitration proceeding. I respectfully disagree. Criterion (a), above, refers to wages, hours and conditions of work. The fringe benefits an employee receives are certainly a condition of his/her employment. Moreover, the Taylor Law specifically refers to "insurance and retirement benefits." Section 209.5(v)(d).

In addition, fringe benefits are generally accepted as valid in determining the worth of the overall economic package an employee receives. The Goldberg report lists "fringe benefits as one such factor." Professor Hurd referred to health insurance

⁵⁵ See accounts of Professors Richard Hurd and Kathleen Abraham, both respected economists.

and retirement benefits as a necessary component of employer provided benefits (530).

The Union also argued that retirement costs are extremely volatile and depend on elements unrelated to collective bargaining, such as assumption rates on investments. In this context, it asserted that New York City's retirement contribution rate will substantially decrease as new hires replace retirees, since the former are in Tier 2R which provides lesser benefits than those hired before April 1, 2012.

There is some merit to these assertions. Retirement contribution rates will certainly decline as time goes on. However, that does not substantially alter the conclusion reached above. For example, if retirement costs were reduced by, say, 25% from \$178,690 to approximately \$130,000, New York would still rank 3rd among the twenty national cities cited.

The Union also insisted that reference to 2014 data is improper because the term of this Award ends on July 31, 2012. While viewing conditions as they currently exist makes common sense, if the data were restricted to 2012 and earlier, New York would still have higher retirement contributions on a percentage basis since fewer Officers would be in Tier 2 or 2R as

of that date. Frankly, any way one looks at it, overall compensation, including health insurance and retirement benefits place PBA members near the top of the twenty national cities listed.

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20 Year Direct Compensation (7/31/2012)

National Jurisdictions - 20 Year Average Career Compensation Per Hour Worked
Data as of 7/31/2012

Jurisdiction	Base	Longevity	Shift Diff	Holiday Pay	Uniform Allow	Other	Total Direct Comp	Net Hours Worked per Year	Total Direct Comp per Hour Worked
Austin	\$73,654	\$950	\$1,800	\$307	\$0	\$1,798	\$78,508	1,816	\$43.24
Baltimore	\$58,612	\$0	\$401	\$322	\$0	\$389	\$59,725	1,927	\$31.06
Boston	\$62,230	\$501	\$3,631	\$4,148	\$800	\$3,570	\$74,879	1,825	\$41.07
Chicago	\$79,069	\$0	\$0	\$1,398	\$1,800	\$0	\$82,267	1,729	\$47.69
Columbus	\$66,420	\$756	\$851	\$2,807	\$903	\$0	\$71,737	1,892	\$38.03
Dallas	\$63,106	\$456	\$1,420	\$0	\$0	\$4,560	\$69,542	1,862	\$37.43
Detroit	\$45,154	\$0	\$309	\$217	\$1,100	\$0	\$46,780	1,854	\$25.23
El Paso	\$55,062	\$456	\$1,017	\$3,061	\$0	\$1,004	\$60,600	1,923	\$31.56
Fort Worth	\$66,415	\$456	\$950	\$2,190	\$325	\$945	\$71,281	1,923	\$37.15
Houston	\$51,550	\$494	\$776	\$786	\$2,000	\$7,969	\$63,575	1,943	\$32.88
Indianapolis	\$57,627	\$2,219	\$654	\$0	\$855	\$382	\$61,736	1,869	\$33.08
Jacksonville	\$53,961	\$450	\$1,012	\$886	\$0	\$1,511	\$57,820	1,747	\$33.17
Los Angeles	\$73,944	\$1,717	\$0	\$0	\$974	\$3,044	\$79,679	1,787	\$44.72
Memphis	\$49,470	\$383	\$300	\$1,984	\$356	\$2,258	\$54,752	2,008	\$27.30
Milwaukee	\$63,950	\$213	\$0	\$353	\$300	\$280	\$65,095	1,866	\$34.96
Philadelphia	\$59,073	\$2,359	\$2,897	\$2,835	\$1,000	\$0	\$68,165	1,922	\$35.51
Phoenix	\$68,688	\$728	\$828	\$2,906	\$1,150	\$7,044	\$81,344	1,928	\$42.21
San Antonio	\$57,647	\$2,935	\$2,100	\$2,913	\$936	\$4,118	\$70,648	1,852	\$38.21
San Diego	\$73,476	\$0	\$1,439	\$3,579	\$900	\$4,268	\$83,662	1,847	\$45.35
San Francisco	\$109,431	\$0	\$3,064	\$5,256	\$779	\$3,779	\$122,309	1,803	\$67.92
San Jose	\$91,908	\$0	\$0	\$0	\$675	\$5,440	\$98,023	1,946	\$50.47
Washington DC	\$65,523	\$635	\$1,000	\$2,045	\$900	\$0	\$70,102	1,891	\$37.16
Avg without NYC							\$72,374		\$38.88
New York	\$70,098	\$5,076	\$2,946	\$3,168	\$1,000	\$0	\$82,298	1,889	\$43.87
NYC as % of Avg							114%		113%
NYC Rank							4 of 23		6 of 23

"Other" includes additional premiums such as retention incentives, education incentives, training and certification pays, etc. See wage charts in Appendix for more detail.

It is also noteworthy that in addressing ability to pay (see discussion below), the PBA went well beyond 2012 to demonstrate the City can pay the raises it seeks. Indeed, were the City's fiscal condition frozen as of 2012 for analysis purposes, the PBA's economic projections would be far less sanguine.

Nor is the record much different if, as the PBA claimed, only local comparators should be analyzed. Again, as of July 31, 2014, New York places fourth out of ten local jurisdictions⁵⁶ on a twenty year average.

It is true, of course, that direct compensation to police officers here is 84% of the local average, which suggests that police officers deserve a 16 per cent raise to catch up to their local counterparts. This result though, is devoid of any inclusion of fringes which represent, though not on a one-for-one basis, significant economic benefits to police officers here. Nor can any cost of living adjustment be applied to this data since all or virtually all of the comparators fall within the same cost of living index for this area.

⁵⁶ Elizabeth, New Jersey, MTA, Nassau, MTA, NYS Trooper, Port Authority, Newark, Suffolk, Yonkers (City presentation, p. 25).

The PBA also cited the three prior interest arbitration awards which awarded it higher wages than what the City insisted was the pattern. The first, for the 2000-02 round was rendered by Arbitrator Dana Eischen; the second for 2002-04 by Arbitrator Eric Schmertz; the third for 2004-06 by Arbitrator Susan MacKenzie. All are well-respected labor relations neutrals. All wrote incisive, thoughtful Awards which are entitled to careful consideration here. However, they do not warrant a finding in this case which exceeds the established, uniformed pattern.

In the Eischen round, most of the uniformed groups had settled before his decision was rendered. The other groups agreed to two increases of five per cent each over a period of thirty months. Significantly, Arbitrator Eischen believed that his pattern should apply to the PBA. However, he was constrained to issue an Award no longer than two years.⁵⁷ As a result he awarded the same two five per cent raises, but over 24 months.

It is true, of course, that the net cost of this Award exceeded the uniformed pattern. However, it was

⁵⁷As noted above, unless the parties agree otherwise, an Interest Arbitration Award in New York State may not exceed two years.

rendered, as Arbitrator Eischen stated, "...fully consistent with...the recognized principles of parity-conformity and pattern - consistency which have characterized the collective bargaining relationship of the City of New York and its unions, including the PBA, for many decades." at p. 4.

The Schmertz finding was significant for the lack of a pattern. When it was rendered only DC 37 had settled. That agreement, obviously, included no law enforcement personnel or groups.

The Taylor Law requires a comparison of other units performing similar duties, with similar skills, etc. While the same jurisdiction - New York City - was involved, the work of DC 37 members was and is not similar to the work of police officers. As Arbitrator Schmertz put it, "The job of a police officer clearly includes greater hazards of employment, specific physical qualifications and specialized job training and skills" [than DC 37 employees], at p. 30. However, Arbitrator Schmertz also noted that the Eischen Award was essentially pattern conforming because it ordered offsets (notably the reduced starting wage) to the cost of the economic package he imposed.

There remains the MacKenzie Award to consider on this issue. Her determination exceeded the pattern previously negotiated by uniformed personnel, in part because a special adjustment was needed to increase starting salaries since the Schmertz decision had lowered it by some \$10,000, thereby making it more difficult to recruit qualified applicants. Nonetheless, as the PBA correctly noted, even when the increase in starting wages is discounted, Arbitrator MacKenzie's finding exceeded the uniformed pattern.

There is no way to reconcile the MacKenzie Award above the pattern with this one, which is pattern conforming. What can be said, however, is that this determination achieves the essential purpose of Arbitrator MacKenzie, though more slowly. She indicated that New York City's finest should be restored to the economic position where they once were, at or near the top of all cities nationwide. I agree with her view, and all the data cited above supports this goal, albeit more slowly than the PBA would like. However, the upward relative position of police officers must take into account the pattern bargaining that has occurred here for many years.

What this augurs for the future is not for me to say. Whether, as the City suggested, the PBA accepts the rest of the pattern settlements for a period extending beyond July 31, 2012 or whether the PBA seeks interest arbitration for 2012-2014 is clearly a choice it must make. Nonetheless, the record reveals that the settlements achieved by other uniformed personnel, including all superior police unions and the fire officers is consistent with and supported by Criterion (b) of Section 209(V)(c) of the Taylor Law.

In this context, the facts here reveal that NYPD officers' total compensation has improved over its national comparators since approximately 2002, when total compensation includes health and retirement benefits, which is required by the criteria set forth in the Taylor Law. Indeed, even among local comparators, NYC's ranking has remained consistent. Thus, I conclude, my determination is fully consistent with criterion 209(V)(c)(a) for the reasons indicated herein.

The remaining criteria do not mandate a different finding. Criterion(b) is "the interest and welfare of the public and the financial ability of the public employees to pay."

The interest and welfare of the public in this case require labor relations stability as well a trained police force that ensures the safety of the citizens of New York. As to the former, there is no doubt this result contributes substantially to labor relations stability. It maintains the concept of pattern bargaining, at least among uniformed personnel. It promotes an overall framework of settlement while, at the same time, allows for individual bargaining units to fashion agreements which meet their own needs. Nor does it reduce the ability of the police force to safeguard the public.

With respect to the ability of the public employer to pay, I agree with the PBA that the City can afford to pay reasonable increases. While prudent economic planning is necessary to avoid future downturns, the City's current fiscal condition is good. The evidence reveals that the adopted budget for fiscal year 2016 (PBA Exhibit 15-275) projects increases in revenue estimates for FY 2015, 2016, 2017 and 2018, totaling 2.27 billion dollars. Obviously estimates are subject to change and unforeseen circumstances could substantially reduce this figure. Nonetheless, it is clear the City conservatively plans

future revenue and there is no basis in this record to conclude these estimates will not be met.

This is not to say that the City has the ability to pay the market based wage increase sought by the PBA - approximately 17 per cent or some 5.3 billion dollars. Obviously, awarding increases of this magnitude would create enormous pressure on other uniformed unions to match these raises in the next round of bargaining.

On the other hand, every party to this proceeding would be shocked were the panel to award 17 per cent increases to the PBA. While I need not speculate as to what level of wage improvements above the pattern would be deemed fair by the Union, there is little doubt in my mind, given the extensive economic analysis offered by the PBA, that the City could fund them consistent with Criterion (b).

The City argued it has the right, indeed the obligation to set fiscal priorities consistent with its mission to improve the lives of all New Yorkers. It also suggested PBA projections of increased revenue have been grossly overstated in the past. Both observations have merit, but as I have indicated in other interest arbitrations, "ability to pay" should

not be confused with "desire to pay." Also, the revenue projections cited above come from the City, not PBA experts. Thus, I am convinced, Criterion (b) favors the Union, not the Employer.

Criterion (c) is usually given short shrift by interest arbitrators. It is difficult to find other trades or professions which have similar hazards of employment, physical qualifications, mental qualifications or job training and skills.⁵⁸ Stated simply, neither party has convinced me that this criterion favors its position.

Criterion (d) favors the City, I find. It specifies and includes, beyond salary, the fringe benefits of insurance and retirement, medical and hospitalization coverage and paid time off.

These benefits are generous for police officers. While they are comparable to those received by other New York City workers in general and law enforcement personnel specifically, they exceed those in other geographic areas and match up well against local comparators. Suffice it to say, there exists a generous non-wage, economic package for members of

⁵⁸ "Educational qualifications," also listed in this criteria may well be replicated in other trades and professions.

this bargaining unit, regardless of the comparators utilized, or even when they are viewed in isolation, without analysis of others' fringe benefits.

The Taylor Law criteria and the analyzed data leads to a single conclusion, I find. The pattern settlements for law enforcement units previously achieved should be applied here. They will improve the relative standing of New York City police Officers when viewed in light of national cities, the most logical comparator consistent with the Taylor Law's criteria. Accordingly, I direct that for the first contract year - 2010-2011 - a one per cent increase shall be granted. An additional one per cent increase shall be granted for the second year - 2011-2012.

It is also worth noting that these raises will result in retroactive pay of \$8,000 or more for each officer. Indeed, if the pattern is imposed or agreed to for the period August 1, 2012 - July 31, 2014, retroactive compensation over \$6,000 per employee will be paid, followed by additional payments thereafter. Thus, while the increases are modest, officers will receive substantial back pay.

How shall these increases be implemented? This matter is more complex than it initially appears. It

is true that the other uniformed unions settled for a raise of 11.69 per cent each, but over seven years. Only two of that seven applies here. Also, a terminal benefit was implemented, which costs anywhere from .59 per cent to .61 per cent for these groups. However, that benefit is not payable during the term covered by this Award.⁵⁹ Thus, while my finding is essentially pattern conforming, it cannot mirror the wages or benefits in the others.

Taking into account these factors leads to the following determination:

Effective August 1, 2010, wages shall be increased by one per cent.

Effective August 1, 2011, wages shall be increased by an additional one per cent.

These figures do not permit the addition of the \$1,000 bonus. As the others have done, that payment is subsumed within the rate increase. However, the savings which results from converting the lump sum to the rate (approximately .09 per cent) is recaptured below.⁶⁰

There remains the other items in dispute to consider.

⁵⁹ It is payable on February 1, 2015 to the other uniformed groups.

⁶⁰ See discussion of uniform increase.

Term of Award

There is no agreement for a term longer than the statutory duration which may not exceed two years. Accordingly, the term of the Award is August 1, 2010 through July 31, 2012.

Work Schedules

It would be improper to impose the ten hour tour, as requested by the PBA, without the mutual consent of the parties. This is so because this tour change would have major impact upon the operations of the Police Department. Thus, while I believe there may be substantial savings available under a ten hour tour system, I shall direct the parties only to convene a committee to study the issue within ninety days after the issuance of this Award. It shall make recommendations to the City and the PBA within one year after its creation.

Terrorism Workload and Safety Risk Premium

Unfortunately, these elements are part of a police officer's job. Also, this proposal has been rejected by three previous arbitrators. I find no new evidence to warrant its adoption now. The PBA's request is, therefore, denied.

Night Differential

The concept of night differential centers on the premise that officers' lives are disrupted when they work evenings or nights. It does not make labor relations sense to grant it for non-working time, such as sick, vacation or personal leave. Consequently, it must be rejected

Annuity

It is true that the annuity allowance has not been altered for many years. However, I am convinced, it should be increased when the overall settlements permit. That is not the case here. Also, the annuity grows over time as a result of prudent investing. Thus, this is not a static figure, though the amount contributed by the City is. Accordingly, the proposal is rejected

Uniform Allowance

This allowance has not been raised in many years. Obviously the cost of cleaning or replacing uniforms has increased over this period of time. Therefore, I shall direct that, effective August 1, 2011, the uniform allowance shall be raised to \$1050. This increase is paid for in large measure by the lack of the terminal benefit included in this Award.

Education Pay

The goal of compensating employees for increased education or training is laudable. However, I can find no way to provide a meaningful sum which is both pattern conforming and applicable to all bargaining unit members. Consequently, the PBA's proposal must be rejected.

Parking

The expired Collective Bargaining Agreement demonstrates the intent of the Department to provide parking to officers within the limited availability of space in the City. It makes sense for the PBA to have an avenue to discuss with the Employer the steps that have been effectuated to carry out this intent. Consequently, I shall direct no change in the provision related to parking except that the PBA shall have the right to utilize the grievance procedure to air complaints about inadequate parking short of proceeding to arbitration.

Patrol Assignment Differential Pay

Patrol assignments may well be more demanding than other kinds. However, it too, is "part of the job." This proposal is, therefore, rejected.

Home Confinement

The pilot program initiated in 2004 has, by all accounts, worked. Therefore, the program is to remain as written, but it shall be extended department-wide and shall no longer be considered a "pilot."

Sick Leave Home Confinement Elimination

Paragraph "a," "b," "c," and "d" of the side letter between James F. Hanley and Patrick J. Lynch concerning Patrol Guide Procedure 205-01 and 205-45 in regard to sick leave and home confinement shall become permanent and the following text from the side letter shall be incorporated into Section 1 of Article X - Leaves of the full-text collective bargaining agreement between the parties as new paragraphs "c," "d," and "e."

c. Eligible employees, who request sick leave for an injury or illness, shall no longer be subject to home visitation and confinement, outside the hours of the employee's regularly scheduled tour of duty, except where the convalescence for the injury or illness requires home confinement in the opinion of the Department's Medical Division, after consultation with the employee's personal physician.

d. The following employees are not eligible to participate in the program:

- 1) Any Employee who is designated as "chronic sick,"
- 2) Any Employee who is on modified assignment,
- 3) Any Employee who is on dismissal probation,
- 4) Any Employee who is on suspension.

e. 1) For purposes of this agreement the "designated absence rate" is the average lost days, including both line

of duty and non-line of duty sick leave, per member of service in the PBA bargaining unit for Fiscal Year 2007-2008, which equals 11.56 days per year.

2) The Department, on the first day of each month, will review Police Officer availability for the preceding 365 days. In the event that Police Officer average sick leave for the entire PBA bargaining unit exceeds the designated absence rate for the preceding 365 day period by more than 10%, the previous Patrol Guide home visitation and confinement policies will be placed into effect the following day. Such procedures will remain in effect for the remainder of the month. Provided however, the Police Commissioner in his own discretion may permit the new procedures to remain in effect.

3) The following month another review of sick leave usage for the preceding 365 days will occur. When a monthly review results in a return to a level at or below the "designated absence rate" plus 10% the Department will resume the new visitation and confinement procedures the following day (the second day of the month).

Vacation Selection

It makes sense to permit officers to select vacations by seniority. Also, this feature is consistent with current practice. Thus, I shall direct that police officers shall be permitted to select vacation based on their seniority (date of appointment to the NYPD) within their squad or

command, whichever is appropriate and subject to Operations Order No. 40 issued on October 16, 2014.

Vacation Donation

Donating vacation days is, as framed below, a non-cost item. Consequently, I find, police officers shall be permitted to donate vacation days to other members of the bargaining unit for medical or similar personal emergencies incurred by the recipient, provided:

1. There is no impact on the Final Average Salary of the donor or donee who retires;

and

2. Neither the donor or donee is in his/her final year of service with the NYPD;

and

3. Approval is granted by the commanding officer, which approval shall not be unreasonably denied.

Recoupment

The Department has a right to recoup overpayments. However, since they result from management errors, the recoupment must not unduly burden the officer and must give him/her a mechanism to question the amount sought. Accordingly, the following language shall be included in this Award:

When there is an overpayment to a police officer, the Police Department shall promptly notify the police officer, in writing. Such writing shall contain a detailed explanation of when the police officer received the alleged overpayment, the amount and calculation of the alleged overpayment, the amount that the Department believes the proper payment should have been, and the reasons why the Department believes the amount received was an overpayment and notify the police officer of his right to contest the overpayment within 15 days of receipt of that writing. The police officer shall have 15 days from receipt of such notice within which to contest that overpayment, and that objection shall be in writing.

If the police officer does not contest the overpayment in writing within 15 days from the receipt of the overpayment notice, the Department may commence recoupment the second pay period immediately following the 30th day after receipt by the police officer of the Police Department's initial written notification of overpayment.

If the police officer does contest the overpayment in writing within 15 days from receipt of the overpayment notice, and if the Department intends to proceed with any recoupment, the Department shall respond in writing within 15 days of receiving the written objection, explaining in detail why it disagrees with the police officer's stated objection the Department may then commence recoupment the second pay period immediately following the 30th day after receipt by the police officer of the Police Department's initial written notification of overpayment.

For this purpose, no more than 7.5% of the police officer's gross pay (minus court ordered child support payments) may be withheld from the police officer's regular

paycheck, per pay period, unless the police officer and the Department agree in writing to a different percentage or payment schedule.

If the Department has official notice of an officer's intention to leave the Department such that full recoupment may not be made pursuant to the 7.5% formula and subject to the above procedure, the Department may withhold pay from the officer's paycheck in equal amounts so that full recoupment is achieved by the time the officer leaves the Department.

Though all other proposals are rejected, failure to award any should not be construed as a determination that a specific item lacks merit or would not be appropriate in the future.

In sum, the Award set forth herein is consistent with the Taylor Law criteria analyzed above. While providing for modest wage increases, it improves officers' relative standing, taking into account appropriate comparators and the entire package of economic benefits granted police officers. It is so ordered.

AWARD

1. Term

The term of this Award is from August 1, 2010 through July 31, 2012.

2. Wages

Effective August 1, 2010, wages shall be increased by one per cent.

Effective August 1, 2011, wages shall be increased by an additional one per cent.

3. Parking

The current provisions of the Collective Bargaining Agreement shall remain in full force and effect except that the PBA shall have the right to avail itself of the grievance procedure, exclusive of the right to arbitration, with respect to claimed violations of this provision. This provision shall be implemented on January 1, 2016.

4. Home Confinement

The current procedures initiated in 2008 shall remain in full force and effect, except that the program shall no longer be deemed a "pilot" and all references in the procedure to "pilot" shall be deleted.

Sick Leave Home Confinement Elimination

Paragraph "a," "b," "c," and "d" of the side letter between James F. Hanley and Patrick J. Lynch concerning Patrol Guide Procedure 205-01 and 205-45 in regard to sick leave and home confinement shall become permanent and the following text from the side letter shall be incorporated into Section 1 of Article X - Leaves of the full-text collective bargaining agreement between the parties as new paragraphs "c," "d," and "e."

c. Eligible employees, who request sick leave for an injury or illness, shall no longer be subject to home visitation and confinement, outside the hours of the employee's regularly scheduled tour of duty, except where the convalescence for the injury or illness requires home confinement in the opinion of the Department's Medical Division, after consultation with the employee's personal physician.

d. The following employees are not eligible to participate in the program:

- 1) Any Employee who is designated as "chronic sick,"
- 2) Any Employee who is on modified assignment,
- 3) Any Employee who is on dismissal probation,
- 4) Any Employee who is on suspension.

e. 1) For purposes of this agreement the "designated absence rate" is the average lost days, including both line of duty and non-line of duty sick leave, per member of service in the PBA bargaining unit for Fiscal Year 2007-2008, which equals 11.56 days per year.

2) The Department, on the first day of each month, will review Police Officer availability for the preceding 365 days. In the event that Police Officer average sick leave for the

entire PBA bargaining unit exceeds the designated absence rate for the preceding 365 day period by more than 10%, the previous Patrol Guide homes visitation and confinement policies will be placed into effect the following day. Such procedures will remain in effect for the remainder of the month. Provided however, the Police Commissioner in his own discretion may permit the new procedures to remain in effect.

3) The following month another review of sick leave usage for the preceding 365 days will occur. When a monthly review results in a return to a level at or below the "designated absence rate" plus 10% the Department will resume the new visitation and confinement procedures the following day (the second day of the month).

5. **Recoupment**

The following language shall become effective on July 31, 2012, and shall be implemented on January 1, 2016:

When there is an overpayment to a police officer, the Police Department shall promptly notify the police officer, in writing. Such writing shall contain a detailed explanation of when the police officer received the alleged overpayment, the amount and calculation of the alleged overpayment, the amount that the Department believes the proper payment should have been, and the reasons why the Department believes the amount received was an overpayment and notify the police officer of his right to contest the overpayment within 15 days of receipt of that writing. The

police officer shall have 15 days from receipt of such notice within which to contest that overpayment, and that objection shall be in writing.

If the police officer does not contest the overpayment in writing within 15 days from the receipt of the overpayment notice, the Department may commence recoupment the second pay period immediately following the 30th day after receipt by the police officer of the Police Department's initial written notification of overpayment.

If the police officer does contest the overpayment in writing within 15 days from receipt of the overpayment notice, and if the Department intends to proceed with any recoupment, the Department shall respond in writing within 15 days of receiving the written objection, explaining in detail why it disagrees with the police officer's stated objection. The Department may then commence recoupment in the second pay period immediately following the 30th day after receipt by the police officer of the Police Department's initial written notification of overpayment.

For this purpose, no more than 7.5% of the police officer's gross pay (minus court ordered child support payments) may be withheld from the police officer's regular paycheck, per pay period, unless the police officer and the Department agree in writing to a different percentage or payment schedule.

If the Department has official notice of an officer's intention to leave the Department such that full recoupment may not be made pursuant to the 7.5% formula and subject to the above procedure, the Department may withhold pay from the officer's paycheck in equal amounts so that full recoupment is achieved by the time the officer leaves the Department.

6. Vacation Selection

Article XVI shall be amended as follows, effective July 31, 2012 and shall be implemented effective January 1, 2016.

Police officers shall be permitted to select vacation based on their seniority (date of appointment to the NYPD) within their squad or command, whichever is appropriate, and subject to Operations Order No. 40 issued on October 16, 2014.

7. Vacation Donation

Article XVI shall be amended as follows, effective July 31, 2012 and shall be implemented, effective January 1, 2016.

Police officers shall be permitted to donate vacation days to other members of the bargaining unit for medical or similar personal emergencies incurred by the recipient, provided:

1. There is no impact on the Final Average Salary of the donor or donee who retires;

and

2. Neither the donor or donee is in his/her final year of service with the NYPD;

and

3. Approval is granted by the commanding officer, which approval shall not be unreasonably denied.

8. **Ten Hour Tours**

A committee composed of an equal number of City and PBA representatives shall be created to study the possible implementation of a ten hour tour within ninety days of the issuance of this Award. This committee shall make recommendations to the City and PBA after a one year review of relevant information. This provision is effective on July 31, 2012, with an implementation date of March 15, 2016.

9. **Uniform Allowance**

Effective August 1, 2011, the uniform allowance shall be increased to \$1,050.

10. **Other proposals**

Other proposals whether or not addressed herein are rejected. Failure to award a proposal shall not be construed as a determination that a specific item lacks merit or would not be appropriate in the future.

NYC/PBA Interest Arbitration
IA-2014-009; M2014-027

DATED: November 13, 2015 Howard C. Edelman
HOWARD C. EDELMAN
NEUTRAL MEMBER

STATE OF NEW YORK)
) s.:
COUNTY OF NASSAU)

On this 13TH day of November 2015, before me personally came and appeared Howard C. Edelman to me known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

MARY HALBERSTADT
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01H6101788
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES NOVEMBER 17, 2016

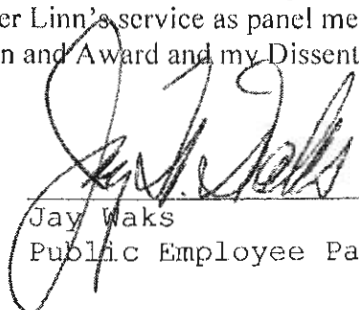
Mary Halberstadt
NOTARY PUBLIC

NYC/PBA Interest Arbitration
IA-2014-009; M2014-027

Concur _____


Subject to the PBA's reservation of and without prejudice to its objection to Howard
Dissent ~~Edelman's and Commissioner Linn's~~ service as panel members, I dissent from and
am not joining in the Opinion and Award and my Dissenting Opinion will follow.

DATE: November 13, 2015



Jay Waks
Public Employee Panel Member

On this 13TH day of NOVEMBER 2015, before me
personally came and appeared Jay Waks to me known to
me to be the individual described in and who executed
the foregoing instrument and he acknowledged to me
that he executed the same.



NOTARY PUBLIC

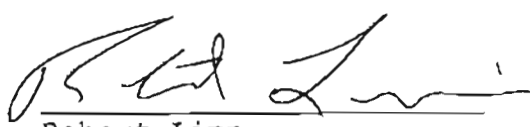
ALEXANDER DRUM
NOTARY PUBLIC, State of New York
No. 01DR6176937
Qualified in Kings County
Certificate Filed in New York County
Commission Expires Nov. 5, 2019

NYC/PBA Interest Arbitration
IA-2014-009; M2014-027

Concur ✓

Dissent _____

DATE: 11/13/15


Robert Linn
Public Employer Panel Member

On this 13th day of November 2015, before me personally came and appeared Robert Linn to me known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LESLIE J. MORSILLO
Notary Public, State of New York
No. 02MO6094801
Qualified in Kings County
My Commission Expires June 30, 2019


NOTARY PUBLIC