

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Voluntary Interest Arbitration
PERB Case No. IA2010-001
M2009-200

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In the Matter of the Interest Arbitration

-between-

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED

MTAPDCOMMANDING OFFICERS ASSOCIATION
"Pctitioner or COA"

JUL 12 2011

-and-

METROPOLITAN TRANSIT AUTHORITY
"Respondent or MTA"

CONCILIATION

X-----X

BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
RICHARD CAIRNS, ESQ., RESPONDENT MEMBER
THOMAS DUNN, PETITIONER MEMBER

APPEARANCES:

FOR THE PETITIONER:

POKLEMB & HOBBS, LLC by JOHN J. POKLEMB, ESQ.

FOR THE RESPONDENT:

PROSKAUER ROSE LLP by NEIL H. ABRAMSON & DANIEL DALTCHEK, ESQS.

BACKGROUND

Prior to June 9, 2009, the MTA commanding officers were not represented by a labor organization. By action of ALJ Philip Maier on June 9, 2009, the COA was certified as the bargaining agent for those members of the MTAPD holding the titles of Captain, Captain Commander, Deputy Inspector, Inspector and Assistant Deputy Chief. The MTA and the COA engaged in seven negotiating sessions, three meetings and seven mediation sessions with a PERB

mediator. These efforts were successful to the extent that many of the work rule issues were resolved. Thus, an MOA was executed on March 31, 2010 (JX1 & 2).

There were two significant conditions attached to the MOA. First, there were seven unresolved issues outstanding and second, upon the resolution of the outstanding issues, the totality of the issues were to be retroactive to June 9, 2009. The issues that had not been resolved were: wage increases, longevity payments, annuity fund, line of duty death benefits, the layoff process, released time for COA officials and the term of the collective bargaining agreement.

Consequently, and pursuant to §209.4 of the New York State Civil Service Law (*The Taylor Law*), Interest Arbitration procedures were invoked. In that connection, Petitioner (COA) filed a Petition for Voluntary Interest Arbitration with Public Employment Relations Board (PERB) on April 8, 2010 (JX1). The MTA responded to the petition on April 21, 2010 (JX2).

On June 4, 2010, PERB appointed me as the neutral member of the arbitration panel designated to hear and finally decide all relevant issues (JX3). The COA designated Thomas Dunn as its panelist and the District named Richard Cairns, Esq. to be its panelist. A pre-hearing conference was held on September 13, 2010. Hearings on this matter were held on December 17, 21, 2010 and January 21, 2011. In addition, the Panel met in executive session on May 4, 16, 2011.

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The COA argued as follows:

The MTAPD Commanding Officers Association (COA) was originally established as the Superior Officers Association on July 2, 1996, as a fraternal organization for the department's

the MTA Police Department, employees representing MTA police command staff had been meeting with the MTA labor officials in an attempt to correct the wage and benefit disparity for captains and above. As a result of this disparity, just prior to 2003, two command staff members (captains) reduced themselves to lieutenant in order to attain better pay and benefits.

In December 2003, Thomas Lawless (retired NYPD) was appointed Chief of the MTA Police Department. Chief Lawless not only recognized the pay and benefit discrepancies between represented members (police officer to lieutenant) and command staff (captain to one-star chief), he identified the problem of multiple rates of pay within the same ranks of command staff.

Chief Lawless worked with the MTA in an attempt to correct the command staff salary and benefit problem. Unfortunately, he was only successful in initiating a correction to command staff salaries by creating two new ranks, captain commander and deputy inspector.

In an effort to get qualified candidates to accept the promotion to command staff positions in 2004, Chief Lawless made it clear to all candidates that he was continuing to work with the MTA to fix the benefit and pay disparity between the represented ranks (officer through lieutenant) and command staff (captain to one-star chief).

From this point forward, rates of pay for each rank were established so that personnel in the same rank would be earning equal salary regardless of dates of promotion. Tragically for all, Chief Lawless fell ill and was unable to accomplish his goal of correcting the overall salary and benefit package for command staff.

The salary and benefit disparity between command staff and PBA members (Police Officers up to Lieutenant) was severely compounded by a January 2005 arbitration decision by John E. Sands (see Exhibit 7). By this decision, police officers through lieutenant (PBA ranks) were awarded significant salary increases. In response to this the MTA, in September of 2005,

made a correction of 8.75% to police command staff salaries only (see Exhibit 2). The 8.75% as in addition to the standard MTA 3% raise received by command staff earlier in the year along with other non-police employees.

The correction was based on the difference between MTA (civilian) management annual raises and what was granted to PBA members over the same period (see Table I). This resulted in a salary correction for MTA police command staff only - and no MTA managers received the salary correction. So, due to the PBA arbitration award by Sands in early 2005, the MTA increased police command staff salaries by over 11.75% while non-police MTA managers received a salary increase of 3%. This action by the MTA clearly illustrates that at that time, the MTA recognized the significance of patterning police command staff salary raises with that of other MTA police employees (PBA).

Although the MTA corrected the salaries (flat salaries) of command staff in 2005, they ignored the disparity in overall compensation between command staff and those represented by the PBA. PBA represented employees received and still receive longevity, annuity and other compensation benefits (which are not part of this arbitration) while command staff do not.

After the salary correction of 8.75% in September of 2005, the percentage difference (considering flat salary only - without factoring lieutenant benefits such as annuity, longevity, etc.) from lieutenant to captain was 23.82%. This differential between the ranks of lieutenant to captain is consistent with that of the New York City Police Department (NYPD) which is 25.20% (see Exhibit 36).

It is no coincidence that the percentage difference between lieutenant and captain in the MTA PD was changed at that time (2005) to be almost identical to that between lieutenant and captain of the NYPD (23.82% vs. 25.20%). After all, during the MTA PBA arbitration under

Sands (2005), it was the MTA that argued for PBA comparability with NYPD (see Exhibit 7, pp.29-30). It is also revealing that a comparison of the percentage difference of the ranks of police officer up to captain between the MTAPD and the NYPD were almost identical (see Exhibit 36 and below).

Following the MTA's 8.75% adjustment of command staff salaries in September of 2005 the percentages between all ranks within the MTAPD (see Table II) were as follows:

Police Officer to Sergeant - 24.21% (equal benefits)

Sergeant to Lieutenant - 13.69% (equal benefits)

Lieutenant to Captain - 23.82% (Lt. Sgt. & PO benefits superior to Capt.)

Captain to Captain Commander - 4.66%

Captain Commander to Deputy Inspector - 0.57%

Deputy Inspector to Inspector - 1.33%

Inspector to Assistant Deputy Chief - 1.31%

Going forward from the 2005 MTA command staff salary correction, command staff not only continued to suffer in overall compensation by not receiving longevity and annuity (and other benefits not part of this arbitration), but command staff flat salary has suffered in that employees of the rank from police officer to lieutenant have received wage increase percentages superior to command staff.

Over the years, this difference in annual raise percentages factored with overall compensation resulted in command staff earning less than the ranks they supervise (see Table IV) and has now created a condition similar to what caused the MTA to make the correction to command staff salaries in 2005.

Notably, the actual average salary for lieutenant (including overtime) was \$149,737 for

2008 and \$ 146,870 in 2009 (Exhibit 35). Salaries will undoubtedly be higher for 2010 due to the PBA raise of 4% that went into effect on 10/15/10.

An additional disparity that was not addressed in 2005 and exists to date is the percentage between ranks from captain commander up to assistant deputy chief. This is outlined in Table II above and Exhibit 36 as follows:

Inspector Kevin King testified that appointment to the rank of captain and above is a promotion and should be treated as such by the MTA. NYPD employees of similar ranks to the TAPD operate with 5.26% to 5.34% differential between such ranks.

King also testified that even in the MTA corporate world (of which the MTA has argued the police command staff belong) a promotion constitutes a pay raise of a minimum of 5 percent. This fact was undisputed by the MTA during arbitration.

Command staff met repeatedly for years with the MTA in an attempt to correct the above disparities and other benefit issues with no success. The MTA argued (and continues to insist) that police command staff are no different than other (civilian) MTA managers.

Then in 2008 the MTA hired an independent outside consultant (Prescient Security) to conduct an assessment of the MTA Police Department.

Prescient issued its findings in a printed report (Exhibit 13) to the MTA in August 2008. Page 7 of this report reveals "A very specific issue has arisen concerning the compensation package of the MTA managers, which the MTA has insisted be in line with that of other MTA managers, even though the unionized police lieutenants will reportedly be making more in total compensation than the captains to whom they report by 2010."

Not only has the MTA ignored the pleas of command staff, it has ignored the finding and recommendation of its own consultant.

Finally, after years of exhaustive efforts by command staff to convince the MTA to address the disparities within the police department; the MTA left command staff with no other option but to establish a labor organization and seek relief under PERB. Beginning in April of 2009, the MTA and the COA participated in 7 negotiation sessions.

In presenting the Metropolitan Transportation Authority (MTA) case at arbitration, Mr. Neil Abramson indicated that the MTA refuses to consider matters that pre-date the certification of the bargaining unit. He cited no authority in support of this position.

The significant disparity in compensation and benefits between PBA titles and COA titles did not suddenly manifest itself on or after the date in which the COA was certified by PERB. It is no surprise the MTA would prefer to ignore and erase the facts necessary to comprehend this disparity; facts which are the center of the COA case regarding overall compensation. To ignore the facts which detail the current disparity would be to ignore the disparity.

As this is the COA's first contract, it is essential to consider the background and circumstances that is a subject of this dispute. The COA asserts that such historical matters of fact are highly relevant and useful for making a determination to resolve issues related to a first contract. The COA further asserts that it is not unusual for a first contract to reflect a correction or adjustment to account for pre-existing disparities and then follow established pattern in order to maintain parity moving forward. This is not unlike what had occurred with the Scheinman award where the LIRR Police broke away from the civilian rail road pattern and established conditions of employment that "resemble a real police contract" for the LIRR Police (Exhibit 6).

Additionally, the history and background as related by the testimony and exhibits of the COA during arbitration remains entirely undisputed by the MTA.

Careful evaluation will prove that the COA has not engaged in the strategy of making

inflated demands (Exhibit 34) with an eye toward "splitting the baby" but that it has presented practical and reasonable demands with the intention of fair resolution. In opposing the COA demands as a whole, the MTA argues that the COA is seeking "an exponential leap in compensation over a two year period" (12/17/10, p.100).

The fact is that for years the MTA refused to take action to correct the overall compensation disparity for police command staff. The responsibility for the current "exponential" disparity in compensation within the MTA Police Department clearly does not rest with the COA. The MTA alone is responsible for creating the condition where the overall compensation of a lieutenant is greater than that of captain.

1. Salary Issues

There are two simple but critical issues in regard to correcting the salary of COA ranks. The first relates to the fact that PBA ranks have received yearly raise percentages and salary adjustments superior to that of command staff dating back to the September 2005 MTA correction to command staff salaries; and the second relates to the disproportionate salary differential or percentage between the ranks from captain commander and above.

To rectify these salary issues, COA ranks require salary rate adjustments and increases identical to the PBA commencing from the expiration of the September 2005 MTA correction plus a correction in the percentages between the ranks from captain commander and above.

The salary demand involves the following three parts in succession:

1. Correct captain and captain commander wages by 2.15% plus a \$936 lump.
2. Correct the pay increments from the rank of captain commander and above by instituting a

minimum of 5% between such ranks.

3. Institute 4% yearly raises commencing 6/9/09.

The demand for basic salary corrections by the COA is consistent with and primarily no different than what the MTA did in 2005 when it corrected command staff salaries to keep pace with those of the PBA.

The demand for raises is identical to the PBA and is also consistent with the NYPDCEA pattern of 4% each year from 2008 through 2011 (Exhibit 10). The correction for the period between 2005 and 2009 and the 4% raises each year thereafter is essential to maintain parity with lesser ranks with the department and is equivalent to what has been granted to comparable police agencies in the region serviced by the MTA Police (including NYPD).

The correction between the ranks of captain commander to assistant deputy chief also rings MTA command staff salaries to a level consistent with the salary structure of comparable police agencies in the region serviced by the MTA Police and it is consistent with the MTA corporate practice in which a promotion constitutes a 'a raise of a minimum of 5%.

2. Longevity

Longevity is a fundamental police compensation package that factors into overall compensation and it is part of the compensation package received by comparable police agencies in the region serviced by the MTA Police including the NYPD.

As the Panel noted in Interest Arbitration between the State of New York and New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO (Security Supervisors Unit - PERB Case No. IA2005-001) (Exhibit 48):

"Upon review, the Panel finds longevity payments are an integral part of compensation for police

and corrections supervisors. Finally, the panel finds that it is fair and reasonable for these unit members to receive a 25 year longevity in view of the fact that subordinate employees to these unit members receive a 25 year longevity" (Exhibit 48, p. 59).

Police departments within the region provide longevity to their police officers and command staff. NYPD CEA members receive the identical longevity schedule as the lower ranks they supervise and effective 5/1/11 they will receive a \$1,500 increase as follows:

The COA demand for longevity is identical to what is currently received by MTA police employees of lesser ranks than command staff. It should be noted that the COA does not seek the higher longevity benefits received by the NYPD CEA or of other comparable police agencies in the region serviced by the MTA Police.

The COA demands that the MTA implement longevity pay increments identical to the PBA entitlement including increases articulated in the Memorandum of Agreement between the MTA and the PBA dated January 2008 (see Exhibit 11).

3. Annuity

Annuity is also a fundamental police compensation package that factors into overall compensation and it is part of the compensation package received by comparable police agencies in the region serviced by the MTA Police including the NYPD. The annuity fund payment is an integral part of the MTA PBA compensation package. The Scheinman arbitration award gave the MTA PBA a compensation package that mirrored that of the NYPD.

The COA demand for annuity is identical to what is currently received by MTA police employees of lesser ranks than command staff. It should be noted that the COA does not seek the higher annuity benefits received by the NYPD and other comparable police agencies in the region

serviced by the MTA Police.

4. Line of Duty Death Benefit

The MTA COA award should include a specific line of duty death benefit for its members that is identical to the MTA PBA and NYPD CEA benefit as follows:

In the event that a COA member dies because of a line-of-duty injury received during the actual and proper performance of Police service relating to the alleged or actual commission of an unlawful act, or directly resulting from a characteristic hazard of Police Duty, through no fault of the police officer's own, a payment of \$25,000.00 shall be made in addition to any other payment which may be made as a result of such death. Such payment shall be made to the beneficiary designated under the Retirement System for the ordinary death benefit or, if no beneficiary is so designated, to the estate of the deceased.

5. Layoff Process

The COA has demanded a layoff process that is fair, reasonable and free of distortion and influence by politics, bias, discrimination, retaliation, personal feelings or opinion.

This COA demand involves 4 concise sections for a fair layoff process that is modeled after civil service law. The sections include provisions related to notice, seniority, bumping and retreating and reinstatement.

In presenting its case against the COA layoff process demand, the only opposition articulated by the MTA was related to the seniority provision. Additionally, this is the only demand in which the MTA offered no cost estimates and that is because there is no cost associated with this demand.

The MTA's position in regard to the seniority provision of the command staff layoff process is of immense concern to the COA.

MTA Chief of Department Michael Coan testified and argued for autonomy and discretion in making layoff decisions. Coan related, "It would hurt us operationally if we are required to do

layoffs by seniority or that would deprive the department of the most capable and competent command staff officers" (testimony 12/21/10, p.65).

The fact is Chief Michael Coan came to the MTAPD after retiring from the NYPD as a command staff member and it is a fact that the contract provision on layoffs for NYPD CEA members is based on seniority (Exhibit 10).

Unlike what has been discussed recently in the media regarding seniority related to teacher layoffs, COA members have been promoted through the ranks precisely due to the fact they are the most capable and competent candidates.

As paramilitary organizations, officers are promoted through the ranks in police departments by a defined process in order to identify and select the most capable and qualified individuals. Officers of higher rank have worked, and are capable and qualified, to perform the duties and responsibilities of all equal and subordinate ranks.

While the testimony of Chief Coan may seem somewhat reasonable from a management perspective, the COA is acutely aware that not granting the seniority provision in the layoff process will be devastating to the COA. The MTA will no doubt use a layoff provision without the protection of seniority as a means of controlling the members and activities of this new labor organization. A seniority based layoff provision would serve as a check and balance against abuse by the MTA.

The COA argues and cautions that it is a dangerous and unnecessary risk to trust the subjective judgment of MTA management over the standard, proven and objective measure of seniority for determining such a critical, life changing, career ending event. Seniority has always served as a factor in the layoff process for uniformed services and especially the police profession. One main reason for this is that it is the most fair and reasonable means to select employees when

a layoff is necessary. The COA requests that the award include a layoff process that is fair, reasonable and free as follows:

Where layoffs are scheduled the following procedure shall be used:

Section 1

Notice shall be provided for the COA not less than thirty (30) days before the effective dates of such projected layoffs.

Within such thirty (30) day period designated representatives of the Authority will meet and confer with the designated representatives of the COA with the objective of considering feasible alternatives to all or part of such scheduled layoffs, including but not limited to (a) the transfer of employees with retraining, if necessary, (b) the use of Federal and State funds whenever possible to retain or re-employ employees scheduled for layoff, (c) a reduction in the amount of work contracted to independent contractors and (d) encouragement of early retirement and the expediting of the processing of retirement applications.

Section 2

When a layoff occurs, the Department will provide the COA with a list of employees who are on a preferred list with the original date of appointment utilized for the purpose of such layoff.

Section 3

"Bumping" and "Retreating" - COA members will have an opportunity to displace other less senior employees in the layoff unit through either bumping or retreat. Exactly what may occur in the case of bumping varies with each situation, but generally, the COA member will displace the least senior employee in the next existing lower occupied title in direct line of promotion. If no lower level occupied positions in direct line of promotion exist in the layoff unit, COA members will have retreat rights. Retreat means that the employee, provided he/she has greater seniority standing, may displace the least senior individual in any layoff unit who occupies the last lower level title that the COA member held on a permanent basis.

Section 4

Preferred lists - Laid off and demoted COA members are certified to fill positions from a preferred list. On any particular preferred list certification, employees are ranked according to their preferred list adjusted seniority. Preferred List Reinstatements - The MTA must either reinstate the number one COA member eligible and willing to accept appointment or leave the position vacant. There is no probationary period upon reinstatement from a preferred list. Preferred list eligibles are considered permanent employees for purposes of qualifying for promotion examinations. Reinstated preferred list eligibles shall receive the basic salary rate that would have been received by the employee had the employee never been demoted or laid off, up to a maximum of two (2) years of general salary increases.

6. COA Union Activity Including Release Time for Union Officials

Currently under the MTA PBA contract (Exhibit 11), there are four union officers who are on full release time (4 x 2088 hrs/yr = 8352 hours) plus an additional bank of 4,300 hours which may be accessed by the PBA President to release from duty other union officials. The total PBA release time therefore is 12,652 hours annually paid for entirely by the MTA. MTA PBA officials also receive a wage stipend from the MTA. The MTA PBA first gained this benefit as a result of the Scheinman arbitration decision (Exhibit 6) when he established an agreement that "will resemble a real police contract."

The COA union activity demand includes 3 sections summarized as follows:

1. Recognition, quarterly meetings, and no discrimination
2. Paid annual release time
3. Involuntary transfer

In presenting its case against the COA union activity demand, the only opposition articulated by the MTA was related to the amount of union release time contained in section 2 of the demand — 5 000 hours annually.

This COA demand in regard to release time was derived by evaluating the current MTA PBA release time entitlement of **12,652 hours annually in addition to the wage stipend** provided to MTA PBA officials.

The COA has previously argued that it may be small in comparison to the PBA, the demands of union business are no different. The COA related in its document titled "**MTA Case for Arbitration**" that it appears employees of command staff rank are more frequently involved in complaints than those of the PBA due to the span of control.

The MTA seized on this issue and the Chief testified that he did a study of complaints and

found there were no EEO complaints in 2009 and 4 in 2010 (testimony, p.61-62). The COA offered the complaint issue as just one example that requires union attention. There are many matters that have required and will require the attention of COA representatives such as negotiation, discipline, payroll discrepancies, scheduling, vacation coverage, and administration of agreements just to list a few. And it is a fact that the MTA has already forced COA union representatives involved in negotiations to use accrued personal vacation time for union business. This was done at a time when the very issue of release time was being negotiated.

The fact is that, regardless of size, the COA needs a reasonable amount of time to adequately fulfill its responsibilities. The COA has found that the time and effort necessary to address the representative needs of command staff to be far more time consuming than initially anticipated.

The COA requests that an award include a COA activity clause as follows:

Section 1

The COA Executive Board shall be recognized as representatives of the COA within their respective territories and commands and will be excused from scheduled tours of duty on the day that they are required to attend quarterly COA meetings. The COA will supply the Authority with their schedule of quarterly meetings.

The COA will provide the Authority with a list of those attending each such meeting, which shall be the basis for their payment. In accord with applicable law, there shall be no discrimination by the Authority against any COA member because of lawful COA activity.

Section 2

There shall be an Annual Release Time Bank of five-thousand (5,000) hours paid for by the MTA which may be accessed by the President of the COA to release from duty COA officials for the conduct of union business.

Section 3

The Authority will not involuntarily transfer Executive Board Officers (as those terms are understood as of this date), during their term of office except for good cause shown after a due

process hearing. Provided, however, that nothing herein diminishes the Authority's right to discipline, including suspension or termination, such officer pursuant to Article 7 of the Collective Bargaining Agreement.

This award would be consistent with the MTA practice of granting paid release time or other unionized workers within the MTA. Employer paid release time for union business is also consistent with comparable police agency organizations throughout the region serviced by the MTA Police including the NYPD CEA.

7. Term of Collective Bargaining Agreement

The COA has demanded a three year term starting on 6/9/09 and expiring on 6/9/12 with salary corrections and raises as demanded plus 4% for the last year (6/9/11 — 6/9/12). The memorandum of agreement between the MTA and COA that was signed by both parties on March 31, 2010 (Exhibit 3) is effective retroactively from June 9, 2009 (date of COA certification by PERB) once the outstanding demands which are part of this arbitration are resolved.

The current MTA PBA contract (5yr. contract) expires on 10/14/11 with raises of 4% in 2009 and 4% in 2010. The NYPD CEA contract (Exhibit 10) expires on 3/31/12 with raises of 4% in 2009, 4% in 2010 and 4% in 2011.

The recent (2009) MTA TWU award (Exhibit 24) covers a three year term of 4% in 2009, 4% on 2010 and 3% in 2011.

In support of a three year term, the "MTA 2010 Adopted Budget February Financial Plan 2010-2013" (Exhibit 18) reveals the following:

"Based on bargaining pattern percentage inflators established by the TWU labor contract, MTA Police represented wage increases result in unfavorable changes from the November Plan of \$0.045 million, \$0.619 million, and \$2.700 million in 2011, 2012, and 2013, respectively" (p. VI-101)."

Clearly, the MTA has adjusted its budget to take into consideration the 3 year term granted to the TWU and the MTA PBA. Additionally, the MTA 2010 November Financial Plan 2011-2014; Volume 1, (Exhibit 52) appears to support a longer term by forecasting a budget surplus of \$3 million in 2010 and \$8 million in 2011.

The pattern established by both MTA units is yearly raises of 4% with contracts expiring one year after the final raise. At a minimum, the COA contract should coincide with the MTA PBA contract calendar year expiration - a two year term starting on 6/9/09 and expiring on 6/9/11. The term may be extended to conform to the NYPD CEA contract. A three year term starting on 6/9/09 and expiring on 6/9/12.

A three year term would be more sensible at this time since a two year term would expire directly following any decision under this arbitration and a three year term or greater is authorized under Civil Service Law section 209(5).

A fair employment contract for COA members will allow the MTAPD to continue to attract well qualified police officers into the command staff ranks from subordinate ranks. This will support and maintain a professional police department which protects the largest transportation network in the country and which ranks among the largest one hundred police departments in the United States.

Analysis under the Taylor Law

Pursuant to section 209.5 (d) of the Civil Service Law, there are six factors to be considered when making a determination for matters in dispute: comparability, overall compensation, ability to pay, cost of living, interest and welfare of the public, and other factors.

1. Comparability

COA members are sworn police officers in the State of New York pursuant to the New

York State Criminal Procedure Law Article 1.20 section 34 sub (e) (Exhibit 5). It has been well established in interest arbitrations awards written by Arbitrators Scheinman, Sands and Riegel (Exhibits 6, 7, & 8) that there are no employees outside of law enforcement whose work compares with that of a police officer. The qualifications to become a police officer are very high and include educational, physical, psychological, background scrutiny, job training and skills inherent to police work. The peculiarities of law enforcement cannot be found in other trades and professions. While addressing comparability, (Suffolk County PERB Case #1A2007-021; M2007-203)

Arbitrator Arthur A Riegel (**Exhibit 8, p.83**) also found: "There is significant arbitral support for viewing the police pattern as being the one that is most comparable to the PBA." Indeed, the Taylor Law expressly stresses that the most significant comparison for a police officer unit is to police officers in similar jurisdictions. See, State of New York and Police Association of New York State Troopers, PERB 1A95-034 at 75, 77-78 (1997).

In the interest arbitration between the Long Island Railroad (LIRR) and the Long Island Railroad Police Benevolent Associations (PBA) (**Exhibit 6**) Arbitrator Martin F. Scheinman moved the LIRR PBA employees away from the standard railroad pattern and into the police package pattern.

Second, given this conclusion, in determining the appropriate employees for comparing wages and working conditions he placed the greater emphasis on other police officers rather than the other employees employed by the Company. Of course, this is not a novel idea. It is customary in police cases involving municipal and county police to place greater emphasis on their colleagues in relevant jurisdictions as opposed to the terms and conditions enjoyed by civilian employees in the same jurisdiction" [emphasis added] (Opinion, pp.15-16).

On page 17, Arbitrator Scheinman further indicated that "Fourth, this Award will, subsequent to the pattern period, begin a fundamental alteration in the conditions of employment of police officers. Their agreement will resemble a real police contract".

The two major police departments in New York City and comparable communities, which directly engage in transportation policing, are the Port Authority Police Department and the New York City Police Department. The Port Authority Police Department (PAPD) is similar to the MTAPD in that it is established under an Authority and operates in two states. Currently, the PAPD command staff is not represented and does not function under a formal agreement.

The New York City Police Department currently provides police services to a MTA subsidiary, New York City Transit Authority. The command staff structure and ranks of the MTAPD are most comparable to the New York City Police Department. The MTAPD and the New York City Police Department interact daily as equal partners in protecting MTA facilities and passengers within New York City. MTAPD officers are trained at the New York City Police Academy and COA members are required to participate in the NYPD Executive Development Programs for their police command staff. The NYPD command staff ranks of captain, deputy inspector, inspector and deputy chief (1 Star) are represented by the NYPD Captains Endowment Association (CEA). The NYPD CEA is currently operating under a contract (**Exhibit 10**) that expires on 3/31/2012.

The MTAPD currently has another established police union within its ranks. The MTAPD Patrolmen's Benevolent Association (PBA) is comprised of two bargaining units, one for police officers and detectives and another for sergeants and lieutenants. Both units receive identical benefit packages and historically have received identical wage percentage increases. Both units have up-to-date contracts (**Exhibit 11**), which expire on 10/14/2011.

A highly significant argument and finding regarding MTA police comparability occurred during recent (2005 decision) arbitration between the MTA and the MTA PBA (**Exhibit 7**). Upon designation as impartial arbitrator by the American Arbitration Association, John E. Sands (Opinion, p. 2) indicated: "The parties accepted the intention I expressed to consider the criteria of New York State Civil Service Law Section 209.5(d) in deciding the issues presented." In his decision, Sands relates the following regarding comparability:

"With respect to Section 209.5(d)'s comparability and overall compensation criteria, MTA argues that New York City's Police Department ("NYPD") is the only appropriate comparator to the MTAPD for operational, personal, and historical reasons."

Historically, NYCTA's Transit Police force, which had wage parity with NYPD, was merged into NYPD in 1995. As noted above, the Scheinman Award moved LIRR's former police away from the rail unions's pattern and phased in parity with Transit Police, who in turn had parity with NYPD. Finally, argues MTA, New York City is the only community to which Section 209.5(d) (i)'s comparability criterion expressly refers...(Opinion, pp. 29-30).

As stated above, the MTA Police pattern comparability issue has already been addressed Arbitrators Scheinman and Sands. The MTA is now bound by these statements in this proceeding.

During this case in arbitration between the COA and the MTA, the MTA has presented no argument on comparability except to make reference to MTA civilian managerial employees and to selectively and inadequately compare (internally) the MTA PBA to the MTA COA and for only a two year period from 2009 to 2010.

Civilian Managerial Employees -In the past, the MTA has repeatedly argued that MTA Police command staff are no different than MTA civilian managerial employees. During this arbitration, the issue of MTAPD comparability with MTA civilian managerial employees was referenced by the MTA claim of "...potentially destabilizing effects that could flow from granting

the COA what they want..." and by the MTA claim that if the COA obtains what it is asking for, other non-represented [MTA] managerial employees would seek to be organized and that "The MTA would be forced to confront a slew of new bargaining challenges" (12/17/10, pp.105-106).

First, the COA argues that its ranks should not be denied fair wages and benefits comparable to what is received by the subordinate ranks they supervise simply because of some MTA fear of potentially being forced to deal with any new labor organization. That is an entirely hypothetical and separate matter.

Second, the COA argues that the MTA ignores the fact that when it corrected MTA police command staff salaries alone by 8.75% more than MTA civilian managerial employees in 2005, there was no protest or rush for any form of parity by MTA civilian managers with respect to the MTA Police command staff wage correction.

And finally, the COA relates again that it has been well established in interest arbitrations at there are no employees outside of law enforcement whose work compares with that of a police officer, that "the peculiarities of law enforcement cannot be found in other trades and professions, that the units in the police pattern were comparable to each other because of their close community of interest" and that there is "a string of interest arbitration awards that continued to support the premise that the units in the police pattern were comparable to each other or purposes of considering their wages, hours and conditions of employment" (**Exhibits 6, 7 & 8**).

So the MTA's concern for dealing with any potentially new labor organization of its civilian managerial employees should be tempered by the fact that previous interest arbitrations have established that such civilian employees are in fact different and cannot be compared to that of police employees.

The MTA's attempt at internal comparison of the PBA and COA was deficient in that a

complete and honest comparison of all PBA and COA work rules benefits and wages would be devastating to the MTA's case in opposition to the COA and would illustrate to even a greater degree (than what has already been presented by the COA) precisely why the COA was forced to seek arbitration for relief.

Not only was the MTA's internal comparison selective and incomplete, Mr. Abramson even went as far as to claim COA members receive "certain advantageous terms and conditions" that PBA titles do not receive (statement, 12/17/10, pp.100-101). In his opening statement Mr. Abramson promised that Chief Coan would later testify about such advantageous terms and conditions. Abramson then indicated that one such item was a car for commutation along with gasoline and an EZ-Pass to pay for tolls (p.101).

In his testimony Chief Coan offered that "The command staff officer is provided with a car that the MTA pays for, which is to be used for work purposes only to commute to and from work. They are reimbursed for gas and tolls" (12/21/10, p.61). Coan further testified that the "total cost averages to approximately \$2,223 per month" and that "command staff is also provided cell phones free of charge, also for work purposes" (p.61). Contrary to the promise by Mr. Abramson, Coan offered no other examples of apparent "advantageous terms and conditions" received by the COA which are not received by the PBA.

When questioned by COA attorney John Poklemba as to the purpose of having police cars assigned to command staff Chief Coan answered "Efficiency, in order to respond to emergencies at various hours" (p. 66). Coan also agreed that it would be fair to refer to the vehicles as "response vehicles" (p.67). So in reality, vehicles are actually provided for the benefit of the MTA and not for the benefit of COA members.

The point here is that the MTA failed in its promise to illustrate in any way that COA

members receive "certain advantageous terms and conditions" that PBA titles do not. The claim by the MTA that COA members receive "certain advantageous terms and conditions" should be viewed for what it was, clearly a strategy in an attempt to deflect attention from the true disparity between the COA and PBA.

In representing COA demands as a percentage of the one percent figure of \$38,430, the MTA attempts to compare the COA with what the MTA claims the PBA received for the same two year period (2009 -2010). The MTA related that COA demands are 35.11% and claims that the PBA calculates at either 9.5% or 9.75% (both numbers were offered by the MTA in testimony — p.114 & 119).

While the COA does not dispute the MTA costing of COA demands, the COA entirely disputes and rejects the MTA claim of PBA percentages (9.5% and/or 9.75%) used in its comparison. Not only has the MTA supplied nothing in any way to support the figures it claims for the PBA, such reasoning would be comparing apples to oranges due to the issue of gross historical disparities within the MTAPD; disparities that were knowingly created by the MTA itself!

Since this is the COA's first contract, it should not be compared selectively and partially to the PBA's last contract without consideration of the gross disparity that exists within the MTAPD and which is the real subject of this arbitration.

And what is the point of the MTA discussion on "givebacks" to help fund a contract? The fact is, (and the MTA is acutely aware) that the COA has nothing to giveback that wouldn't cause the disparity to be even greater between its ranks and the ranks of the PBA. In reality, at this point the COA has nothing to give!

It is once again worth noting that any "exponential" disparity between MTAPD employees

is due to the MTA repeated refusal to take action to correct the overall compensation for police command staff, thereby allowing the condition to compound and progressively worsen to the point it is at today. This first COA contract will require a correction of this gross disparity in order to move forward in parity with the PBA and in comparison to appropriate police agencies.

COA Comparability Position

While the COA has made reference to other departments (including the Port Authority Police Department) for comparative purposes, it claims direct external comparability with NYPD and internal comparability with the MTA PBA. The COA further declares that comparability with NYPD is not only supported by the decisions of past LIRR Police and MTA Police arbitrations but by the MTA's own position and argument in the most recent Sands arbitration, by the undisputed testimony of Chief John Agostino and by the failure of the MTA to challenge or dispute in any way, the COA claim of comparability with the NYPD in this arbitration.

2. Overall Compensation

Upon promotion to captain, COA members suffer a significant loss of police benefits from that was earned as lieutenants. Even with the implementation of the pending Memorandum of Agreement between the COA and the MTA, members promoted from lieutenant to captain will still suffer the loss of the following:

Longevity

Annuity

Full Health Coverage

Vacation Allotment

Paid Uniform Allowance (pensionable)

Dependent Transportation Pass

Enhanced Work Schedule

Overtime Pay

Meal Allowance Compensation

In addition to loss of benefits which directly factor into overall compensation, the salaries of COA members have not kept pace with MTAPBA members. MTAPBA represented ranks were granted higher raise percentages than police command staff. Over the years, this difference in annual raise percentages coupled with the loss of other benefits associated with overall compensation resulted in police command staff earning less than they ranks they supervise.

3. Ability to Pay

The MTA's total cost calculation of COA demands which includes the loaded fringe is approximately \$1.3 million for a two year contract. Using MTA cost figures, the COA demand of 5,000 hours of union release time accounts for \$461,900 of the total cost of its demands.

A reasonable adjustment of union release time from the COA's original demand would bring the total cost of COA demands to the neighborhood of \$1 million. To summarize the COA case as laid out in the arbitration hearing on December 17, 2010, while it faces continuing budget pressures, the MTA has sufficient latitude in its \$12 billion operating budget to meet the very modest cost of the collective bargaining contract sought by the COA. After all, the MTA has managed its way through over \$800 million in downward revisions in dedicated tax revenues and state budget reductions over the past 16 months.

MTA funding options include but are not limited to budget surpluses, general reserve funds GASB contributions suspension of nonessential capitol programs, savings from reduced outside contracts and savings from reduced overtime.

Budget Surpluses -At the time of arbitration testimony, MTA budget documents indicate that the MTA did forecast a \$3 million surplus in 2010 and an \$8 million surplus for 2011. In presenting the MTA's case against the COA in this arbitration, the MTA's Budget Director, Doug Johnson did confirm this fact during his testimony on 12/21/10. And when responding to questions by COA Attorney John Poklemba regarding MTA budget surpluses, Director Johnson related, "**My point on that is, \$8 million on a \$12 billion budget is absolutely miniscule**" (12/21/10, p.31). The MTA admits that with respect to ability to pay, the entire cost of the COA's demands is more than miniscule.

General Reserve Fund -Director Johnson testified that "The [MTA] General Reserve [Fund] is roughly at a 1 percent cushion to account for any eventuality that might happen...It doesn't fall into a specific expense category, it's a very modest 1 percent cushion for us [MTA] to account for anything that might happen" (pp.31-32).

GASB Contributions -The MTA also has discretion regarding whether and how much to set aside for future retirement health benefits through what is called by the MTA its "GASB fund." In its 2011 budget, the MTA has \$47 million set aside to add to its GASB fund, and the MTA 2011-2014 financial plan calls for GASB payments of \$60 million in 2012, \$63 million in 2013, and \$66 million in 2014.

GASB is a disclosure requirement only; it does not require that employers set aside funds for such future liabilities. New York State does not contribute to a GASB fund for its employees. New York City has such a fund but it has been drawing down contributions made in earlier years to help balance its budget. In the City's fiscal year 2010, the City used \$82 million from its GASB fund to pay current retiree health benefits; in 2011, the City is similarly withdrawing \$395 million, and in fiscal year 2012, the City plans to withdraw \$672 million to pay current retiree health

benefits.

Meeting the extremely modest overall cost of a collective bargaining settlement is exactly the sort of expense that is made in drawing down the general reserve. In 2010, the MTA used \$65 million of the general reserve to make its GASB contribution that year. As noted earlier, the MTA had initially budgeted the GASB contribution, then eliminated the discretionary payment in its July 2010 plan in order to balance its budget prospectively by year-end, then restored the payment later in the year with funds from the general reserve. In his testimony, Johnson stated, "Technically, we don't have to fund GASB" (12/21/10, p. 39).

Capitol Programs - In his recent Opinion and Award in the TWU-MTA arbitration, Arbitrator John E. Zuccotti noted the financial latitude available to MTA management, even in a climate of significant budget challenges, in meeting the cost of a collective bargaining settlement (Exhibit 24). Among the factors Arbitrator Zuccotti noted was the \$75 million in general reserves the MTA held in its 2009 budget.

Savings From Reduced Outside Contracts - NYS comptroller DiNapoli conducted an audit in September of 2009 that found MTA private consultant contracts increased from \$315 million in 2006 to \$881 million in 2008)(Exhibit 26). DiNapoli's auditors found that the MTA contracted for some services that would appear to be within their in-house capabilities. The audit recommended that the MTA look at the potential for cost savings by eliminating contracts for outside services.

Savings From Reduced Overtime -Within the MTAPD budget, approximately \$9.5 million dollars is allocated for discretionary overtime (**Exhibit 20**). A small reduction in MTAPD discretionary overtime and/or a reduction in the MTA \$500 million annual overall overtime expenditures would easily pay for the COA corrections without impacting safe and efficient operations.

Updated Ability to Pay Information — While it is too early to tell what the final outcome of the state budget will be for MTA finances, there are growing signs of economic improvement that could provide additional resources for the MTA budget. The improved national economic outlook in recent months should augur well for MTA

The MTA corporate surcharge tax is the 2nd largest MTA dedicated tax after the Payroll Mobility Tax—it is larger than either Petroleum Business Taxes or the MTA portion of the sales tax. The MTA projects over \$900 million in corporate surcharge tax collections in 2011. If collections from this source are 10 percent greater than currently forecast by the MTA, the MTA would see a \$90 million benefit in 2011.

Manhattan real estate transaction in January that gave a huge boost to the MTA's real estate tax collections for this year. Even though the MTA's 2011 budget projected an increase in real estate tax collections over 2010, including a 38 percent increase in Urban Taxes in 2011, collections in January and February of this year are running one-third, or \$26.7 million, over the MTA forecast.

In summary, there is no question that there are intense budget pressures affecting the MTA in the current economic climate. Still, even within these extremely tight overall budget constraints, MTA management exercises sufficient discretion regarding many budget and management choices that could free up the resources necessary to fund a correction in the disparity within the MTA Police Department.

MTA's claim of inability to pay reflects an unwillingness to pay, an unwillingness to tap available reserve sources and a decision to focus spending elsewhere. Considering the infinitesimal nature of the MTACOA's demands, an award of the total correction sought by the

MTACOA will leave no negative impact upon the MTA's financial ability to pay, or upon present transit fares or upon the continued provision of services to the public.

4. Cost of Living

Given the forecasted increases in the cost of living, the proposed wage increases sought by the COA will barely allow employees to maintain their standards of living.

5. Interest and Welfare of the Public

Inferior wage and reduced benefits for MTAPD command staff in comparison to the police personnel they supervise and to other professional police departments within the region clearly do not serve the best interests of the public. A fair wage and benefit package fosters high morale of police command staff and results in the maintenance of high quality service to employees and passengers of the MTA and to the general public.

A fair employment package for COA members will allow the MTAPD to continue to attract well qualified police officers into the command staff ranks from subordinate ranks. This will support and maintain a professional police department which protects the largest transportation network in the country and which "would certainly rank among the largest 100 police departments in the United States" (Prescient, p. 7). In today's climate of terrorist activity associated with transit environments, the interest and welfare of the public is far better served by attracting the best qualified personnel into the command staff ranks.

6. Other Factors

As noted by Arbitrator Zuccotti under this criteria (TWU impasse award; PERB Case TIA2008-021/022)(p. 17): "...the Panel takes note that the pattern established for union-represented employees of New York City includes 4 percent wages increases per year, compounded."

In support of the pattern raises, Mayor Bloomberg's Press Secretary Stu Loeser, in a Daily News article dated July 11, 2009 (**Exhibit 33**) stressed that "the salaries of some unionized civil servants are higher than those of their supervisors, discouraging desire for career advancement. A unionized [NYPD] police deputy chief - one star- makes \$180,749, while a managerial assistant chief - two star - makes \$166,106", Loeser said.

CONCLUSION

COA members play a critical part in providing police services while protecting the nation's largest commuter rail operation. To attract the best and brightest into the COA ranks, the MTA must provide a fair police salary and benefit package as noted and recommended by the private consultant Prescient Security.

The significant disparity in compensation and benefits between PBA titles and COA titles did not suddenly manifest itself on or after the date in which the COA was certified by PERB. It is no surprise the MTA would prefer to ignore and erase the facts necessary to comprehend this disparity; facts which are the center of the COA case regarding overall compensation.

Any "exponential" disparity between MTAPD employees is due to the MTA repeated refusal to take action to correct the overall compensation for police command staff, thereby allowing the condition to compound and progressively worsen to the point it is at today. This first COA contract will require a correction of this gross disparity in order to move forward in parity with the PBA and in comparison to appropriate police agencies.

There can be no realistic question that all Civil Service Law factors, including the public's interest and welfare, are best served by awarding to the MTA's dedicated, demonstrably productive, long-suffering and thus-far patient Commanding Police Officers the market-level adjustments and competitive salaries that are long overdue. Nor can there be any serious dissent

from the fact that the MTA has the ability in its vast budget to pay the relatively insignificant price to restore stability and equity to the salaries of its Commanding Police Officers by making these small but critical adjustment

CONTENTIONS OF THE MTA

The MTA argued as follows:

It is clear that the parties have fundamentally different conceptions of the purpose of this proceeding. The COA evidently believes that the Panel's role is to redress the perceived inequities of the past, to return to the years preceding the COA's certification during which, according to the Union, command staff officers occasionally received less favorable treatment than their subordinates in the PBA bargaining unit. And, as the COA's argument goes, the Panel should "correct" those inequities by granting, in one fell swoop, all of the principal terms contained in the PBA contract – the entire longevity schedule, the full annuity fund contribution, and 5,000 hours of paid release time for union business – to the COA, in its very first contract, in addition to "corrective" wage increases of as much as 15% *on top of* the annual 4% across-the-board increases that it seeks.

This position is completely divorced from reality. It is divorced from the realities of labor relations, and it is divorced from the realities of the economic and fiscal context in which the MTA is operating. The COA is asking the Panel to endorse the notion that a group of management employees, who are not alleged to have experienced any change in their job duties or responsibilities, may knowingly forego certain employment terms and conditions by seeking and accepting a promotion to a superior rank, and then subsequently form a union and attempt to "win back" the very terms that they chose to relinquish upon promotion. *That*, in sum and substance, is the essence of the COA's case.

The MTA, in contrast, asks the Panel to make a just and reasonable determination that is based on an application of the Taylor Law criteria to the record evidence, one which properly

takes into account the realities of labor relations at the MTA and the MTA's severe fiscal distress. Such an award would be based on the following unrebutted facts:

- COA members already do, in fact, receive an attractive package of wages, benefits, and other terms and conditions of employment such as take-home cars and commutation expense reimbursement worth more than \$2,500 annually for each officer;
- The existing compensation of COA members relative to their counterparts at the NYPD is in fact comparable, notwithstanding the COA's flawed analysis;
- The MTA has recently gone through a period of extraordinary fiscal turmoil, involving thousands of job eliminations, service reductions, fare and toll increases, and other epic efforts to comply with its legal obligation to balance its budget every year;
- Prior to the COA's certification on June 9, 2009, MTA command staff officers had always been treated in the same manner as their fellow non-represented management employees across the MTA, and those co-workers had their wages frozen in 2009 and 2010 as part of the MTA's attempt to ameliorate its sinking financial condition;
- The MTA has instituted a "Net Zero" initiative under which there will be no new wage increases for represented employees unless those increases are funded through productivity improvements or work rule changes that generate tangible savings;
- The credible inflation estimates presented by the COA are all very low for the years at issue here.

A determination that is based on these facts will reject the enormous compensation increases that the COA demands. It will reject the absurd request for 5,000 hours of paid release time for union business for a bargaining unit of 20 management employees who have not received any formal discipline in the last two and half years. It will also reject the COA's proposal to require layoffs in seniority order, which will unduly interfere with the Chief's discretion to decide, in the event of job eliminations, which officers should be retained in order to best serve the public.

In short, the COA has offered no credible justification for the radically new treatment that it asks the Panel to provide. Nor can it, because its demands are incompatible with basic

principles of sound labor relations. The COA seeks an award with a net cost of 35.11%. That is nearly four times the net cost of the portion of the PBA contract for the comparable period of time – a contract that was reached well before the economic and financial calamity of the recent past. An award that even remotely adopts the COA's position is virtually certain to generate serious negative consequences for the MTA. Contrary to the COA's oft-repeated defense that this small bargaining unit will not cost the MTA very much, the likelihood is that awarding any of its demands in this period of fiscal austerity will prompt some, if not all, of the tens of thousands of other MTA employees to demand equal treatment for themselves.

This case, involving a new bargaining unit comprised of managers, is the rare impasse proceeding where there is no historical settlement pattern covering the employees in question. But that does not mean there is no guidance to be drawn from the past in fashioning an award. These are the same managerial employees who would have been covered by the MTA-wide wage freeze for all non-represented and management employees but for their decision to organize. That decision is not a legitimate basis for treating them differently from their similarly situated co-workers. At most, the COA members' new status as represented employees warrants an award that adheres to the principles of the Net Zero initiative that applies to all open labor negotiations at the MTA.

As the record evidence establishes, this case does not arise in a vacuum. Although this is a new bargaining unit seeking its first contract and therefore there is no historically applicable settlement pattern, the Panel does not write on a blank slate when considering the terms and conditions of employment for COA members. These are long-time MTA employees who have always performed managerial functions – and continue to do so.

It is also crucial to recognize the fiscal context in which the COA makes those demands. That context indisputably is one of extreme financial distress at the MTA. The record evidence, undisputed in all material respects, leaves no doubt about the MTA's highly precarious budgetary balance and the painful steps that have been required to achieve it. Of particular relevance here, those budget-balancing measures include a two-year wage freeze for management and non-represented employees, as well as an initiative covering represented employees – called the Net Zero Labor initiative – that permits no new wage costs over a two-year period unless they are funded by offsetting productivity improvements or other tangible savings measures.

In light of the governing statutory criteria, and in particular considerations of what the COA members already receive in compensation and other terms and conditions (CSL § 209(5) (d) (ii)), and what the MTA is contending with financially (CSL § 209(5) (d) (iii)), the only rational conclusion is that a just and reasonable award is one that does not materially change the treatment of these employees. As an equitable matter, there is no justification for allowing these employees to escape the management wage freeze merely because they are now represented, nor would it be fair to treat these employees better than their (newly-) fellow represented colleagues by affording them anything more than they would receive under the Net Zero initiative.

Any evaluation of the parties' respective positions must begin with the overall compensation COA members already receive, as one of the statutory criteria that the Panel must consider is "the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel

furnished and all other benefits received.” CSL § 209(5) (d) (ii). The evidence demonstrates, without contradiction, COA members receive an attractive package of wages and benefits, as well as other favorable terms and conditions of employment. This includes many terms and conditions that are rarely seen in the private sector (e.g., a defined benefit pension after 20 years of service) and in several respects are superior to what other management employees receive at the MTA and its agencies.

Base Salaries: COA members currently receive base salaries that substantially exceed those of their subordinates within the MTA Police Department:

Assistant Deputy Chief	\$141,983
Inspector	\$140,147
Deputy Inspector	\$138,310
Captain/District Commander	\$137,530
Captain	\$131,408
Lieutenant (PBA)	\$109,924
Sergeant (PBA)	\$96,250
Police Officer (PBA)	\$77,673

(COA Exs. 9, 36)

Notably, officers receive these base salaries immediately upon entry into the rank; that is, there are no step increments that they must advance through before receiving the maximum salary level for the rank. As discussed below, this is unusual for police departments and constitutes a meaningful economic benefit for COA members.

In addition to base salary, members of the COA also receive the following compensation

components and other economic benefits:

Cars: As Chief Coan testified, the MTA provides all COA members with a car to be used for commutation and work purposes only, at no expense to the officer. The officers are fully reimbursed for gas and tolls

Pensions: COA members are eligible to participate in the MTA 20-Year Police Retirement Program. In addition, under the Program officers who are permanently disabled in the line of duty may receive a $\frac{3}{4}$ disability pension.

Sick Leave: Consistent with MTA all-agency policy for management and non-represented employees, COA members receive 12 sick leave days per year which may also be used for family member and domestic partner medical care. (See COA Ex. 3 at Article 14, Appendix A) Unused sick leave days may be carried over with unlimited accumulation. After 10 years of service, officers may cash-out unused accumulated sick leave upon separation up to a maximum of 120 days of pay

Vacation and Personal Leave: Consistent with MTA all-agency policy for management and non-represented employees, COA members with 8-14 years of service receive 24 vacation days and 3 personal leave days, while those with 15 or more years of service receive 25 vacation days and 3 personal leave days. (See COA Ex. 3 at Article 14, Appendix A) They may carry over unused days up to a limit of 48 total days for those with 8-14 years of service and 52 total days for those with 15 or more years of service. Officers also may cash-out unused vacation and personal leave days up to those limits upon separation.

Compensatory Time: COA members receive 1.5 hours of compensatory time off for all time worked in excess of 40 hours per week or 8 hours per day. (See COA Ex. 3 at Article 8) COA members may carry over 100 hours of unused compensatory time yearly. Upon voluntary separation from employment, officers receive the cash value of up to 100 hours of unused compensatory time at their current rate of pay.

Work Schedule: COA members have a non-rotating one-platoon work schedule of 8 hour tours on 5 consecutive days with 2 consecutive weekend rest days. (See COA Ex. 3 at Article 10) Starting Friday night, there is one command staff officer responsible for covering each of the three Regions (Northern, Eastern, and Southern) that comprise the territory covered by the MTAPD, which means that he or she is available to be called in for a major incident. If the officer is called in, he or she receives straight time pay for that duty. Apart from that potential duty for the covering officer or other emergency circumstances, COA members do not work on weekends. (12/21 Tr. 60-61)

Tuition Reimbursement: The MTA reimburses officers for up to \$4,000 in tuition expenses per year. ((See COA Ex. 3 at Article 19, Section 12)

Night Shift Differential: COA members receive a 10% cash differential for all hours actually worked between 4:00 p.m. and 8:00 a.m. (*See (See COA Ex. 3 at Article 20)*)

Uniform Allowance: The MTA provides COA members with uniforms each year with a value of up to \$1,000 (*See (See COA Ex. 3 at Article 12; 12/17 Tr. 16)*)

Holidays: Consistent with MTA all-agency policy for management and non-represented employees, COA members receive 12 paid holidays off per year. (*See COA Ex. 3 at Article 14, Appendix A; 12/17 Tr. 16)*)

Medical Coverage: Consistent with MTA all-agency policy for management and non-represented employees, COA members may elect coverage under the Empire Plan (Blue Cross and United Healthcare) or a Health Maintenance Organization. If the officer elects Empire Plan coverage, he or she contributes 10% of the premium cost for single coverage and 25% of the premium cost for family coverage. (*See COA Ex. 3 at Article 13, Appendix B; COA Ex. 12)*)

Dental Coverage: Consistent with MTA all-agency policy for management and non-represented employees, COA members receive dental insurance with premiums fully paid by the MTA. (*See COA Ex. 3 at Article 13, Appendix B)*)

Vision Care: Consistent with MTA all-agency policy for management and non-represented employees, COA members may participate in the MTA's vision care plan with premiums fully paid by the MTA. (*See COA Ex. 3 at Article 13, Appendix B)*)

Retiree Health Insurance: COA members receive basic health, hospitalization, dental and vision care benefits upon retirement at the same level provided to active employees. (*See COA Ex. 3 at Article 13(d)*)

Deferred Compensation: Consistent with MTA all-agency policy for management and non-represented employees, COA members can elect to participate in the MTA's 401(k) and 457 plans. (*See COA Ex. 3 at Article 13(b), Appendix B)*)

Flex/Medical Spending Accounts: Consistent with MTA all-agency policy for management and non-represented employees, COA members can elect to participate in Medical Spending and/or Dependent Care Accounts as well as a Flexible Spending Plan. (*See COA Ex. 3 at Article 13(b), Appendix B)*)

Life Insurance: Consistent with MTA all-agency policy for management and non-represented employees, COA members receive basic life insurance coverage equal to 2 times the officer's annual base salary with premiums fully paid by the MTA. Supplemental and higher levels of coverage are also available at the officer's expense. (*See COA Ex. 3 at Appendix B)*)

Accidental Death and Dismemberment Insurance: Consistent with MTA all-

agency policy for management and non-represented employees, COA members

receive coverage equal to 2 times the officer's annual base salary in the event of loss of life, and coverage for loss of vision or dismemberment due to an accident. Premiums are fully paid by the MTA. (See COA Ex. 3 at Appendix B)

Business Travel Accident Insurance: Consistent with MTA all-agency policy for management and non-represented employees, COA members receive coverage equal to 4 times the officer's annual base salary in the event of loss of life, and coverage for loss of vision or dismemberment due to an accident. Premiums are fully paid by the MTA. (See COA Ex. 3 at Appendix B)

Short-Term Disability and Long-Term Disability Benefits: Consistent with MTA all-agency policy for management and non-represented employees, COA members receive short- and long-term disability benefits. As for the former, COA members may receive full pay for up to 26 weeks in the event of a prolonged serious illness after exhausting sick leave balance and all but two weeks of accumulated vacation/personal/compensatory time. As for the latter, in the event of a catastrophic illness or injury, officers generally may receive 60% of their monthly base salary after 26 weeks. Premiums for this coverage are fully paid by the MTA. (See COA Ex. 3 at Article 13(c), Appendix B)

The COA nevertheless complains that command staff officers have received less favorable compensation increases relative to their subordinates going back as far as 2003, and it cites the loss of certain terms upon promotion out of the PBA unit as its justification for seeking those terms here. (COA "Case for Arbitration" at 7; 12/17 Tr. 27-28)

As an initial matter, as noted at the hearing, any purported inequity that occurred prior to the commencement of the bargaining relationship between these parties is irrelevant here. The Panel's jurisdiction commences with the COA's certification on June 9, 2009, and this proceeding is not the forum to revisit decisions and events that occurred several years before the certification date.

Moreover, the fact that it is undisputed that every single member of the COA chose to seek and accept promotion – and every single one of them did so before the COA was certified – further undermines the COA's contention of unfair treatment of command staff officers.

Furthermore, as Chief Coan testified, in the two-and-half years since he was appointed

Chief of the MTA Police Department, no command staff officer has requested a demotion to Lieutenant. (12/21 Tr. 61) Regardless of the COA's rhetoric in this proceeding, the actions of the COA members themselves in seeking and accepting promotion dispel any contention that the terms and conditions for these positions are somehow inadequate.

The other compelling consideration in this case, in addition to the attractive compensation package that COA members already receive, is the MTA's financial condition, as the Taylor Law requires the Panel to consider "the impact of [its] award on the financial ability of the public employer to pay, on the present fares and on the continued provision of services to the public [.]" CSL § 209(5) (d) (iii). There is no dispute that the MTA has suffered through a period of extraordinary fiscal distress in recent years. The COA's own witness acknowledged the "very intense pressures" and "extremely tight budget constraints" (12/17 Tr. 86) affecting the MTA in this forbidding economic and fiscal climate.

An understanding of the MTA's finances begins with the statutory requirement that the MTA must operate on a self-sustaining cash basis. Pub. Auth. L. §1266. This means that the MTA must pay for operating expenses, debt service costs, and the maintenance and repairs of the transportation system out of existing revenue and other income, and there must be a positive cash balance at the end of the year. (12/21 Tr. 6, 12/17 Tr. 92; MTA Ex. 1 at 2) It also means that, as a matter of law, the MTA may not have a current year budget that is in deficit, as stated James Parrott, the COA's witness. (12/17 Tr. 92-94)

In order to fulfill its "self-sustaining basis" statutory mandate, the MTA must engage in a continual multi-year financial planning process. (12/21 Tr. 6-7) Absent long-term financial

planning, the obligation to operate on a self-sustaining basis would make it impossible to ensure

in any given year that the transportation system can be operated in an efficient manner without service cuts or layoffs and that the obligations to bondholders, employees and vendors can be met in a timely fashion.

The MTA's troubles began to emerge in the Fall of 2008, when the weakening economy affected the MTA through declining real estate tax revenues (ordinarily a dedicated tax providing the MTA with significant revenues), lower revenues from State taxes, lower ridership numbers resulting in decreased fare and toll revenue, and an increase in pension costs caused by significantly reduced rates of return for pension fund investments. (12/21 Tr. 8-9; MTA Ex. 1 at 4) To address these worrying trends, the MTA included in the November 2008 Financial Plan a 23% fare and toll yield increase effective June 2009, as well as \$400 million in savings from dramatic service reductions and other non-service expense reductions. (12/21 Tr. 9; MTA Ex. 1 at 4) The February 2009 Adopted Budget, which was balanced – as it had to be, by law – only through these significant deficit reduction measures, was colloquially referred to as the “doomsday budget.”

Even after that, however, the MTA's fiscal outlook continued to worsen and the MTA sought, and received, help from the State in the form of a financial assistance package – popularly known as the “Ravitch Rescue Plan” – which was enacted by the Legislature in order to provide additional revenue sources for the MTA. (12/21 Tr. 9-10; MTA Ex. 1 at 5) Based on the anticipated assistance, the MTA Board responded by replacing the 23% fare and toll yield increase with a more modest 10% increase and also by rescinding the portions of the \$400 million in expense reductions that directly impacted service levels, although it did maintain \$200 million in internal expense reductions. (12/21 Tr. 10-11; MTA Ex. 1 at 5)

The ensuing July and November Financial Plans reflected these actions and presented a balanced budget for 2010. (12/21 Tr. 11; MTA Ex. 1 at 6) As the year progressed, however, there were several significant unfavorable developments. First, in August 2009, the Zuccotti Panel issued an interest arbitration award covering New York City Transit employees represented by TWU Local 100 which provided for wage increases and other costs well in excess of the amounts budgeted for represented employees for 2009-11. (*Id.*; MTA Ex. 1 at 7) Even though the MTA was challenging the award in court, the MTA also budgeted an \$85 million short-term reserve as a precautionary measure to fund such unanticipated expenses. (12/21 Tr. 11-12) Second, just after Thanksgiving 2009, the State reduced its aid to the MTA by \$143 million as part of its own Deficit Reduction Program and it also reduced its estimate of PMT receipts for 2009 by \$229 million. (12/21 Tr. 12)

The MTA was required to address these unexpected changes in extremely short order and submit a final proposed budget to the MTA Board in December. It did so.

Despite these actions, the MTA's financial condition continued to deteriorate. In January 2010, not long after the Board adopted the final 2010 budget in December 2009, the MTA learned from the State that PMT receipts for 2010 would be almost \$400 million lower than anticipated in the Financial Plan (and were forecast to be more than \$200 million lower in both 2011 and 2012 as well). (12/21 Tr. 13-14; MTA Ex. 1 at 8) It also became apparent that real estate tax revenues were coming in far lower than forecast – \$112 million lower in 2010 and over \$100 million lower in both 2011 and 2012 – and other dedicated taxes (MMTOA and PBT) would come in \$65 million lower than anticipated for 2010 as well. (12/21 Tr. 14-15; MTA Ex.

1 at 8)

Overall, in the course of just a few months – between November 2009 and July 2010, with most of the damage coming in the first three months of that stretch – the MTA was confronted with downward revenue adjustments that resulted in a \$900 million shortfall for the 2009-10 period from the level anticipated in the State financial assistance package (*i.e.*, the Ravitch Plan). (12/21 Tr. 14-15)

In the February 2010 Financial Plan, which contained the Adopted Budget for that year, the MTA took certain actions to begin to address the newly-reduced revenue projections. (MTA Ex. 1 at 10) Even more dramatic actions were implemented in the July 2010 Financial Plan to come up with immediate savings that were necessary to meet the self-sustaining statutory mandate.

The July Financial Plan also included certain “below-the-line” savings initiatives (*i.e.*, measures that required Board approval), two of which have particular relevance here. (12/21 Tr. 19; MTA Ex. 1 at 10) One was a wage freeze for all non-represented personnel across the MTA. The MTA had already implemented a wage freeze for all management and non-represented personnel in 2009 and in the July Plan the MTA extended the freeze for 2010. (12/21 Tr. 20-21) The savings from this action (*i.e.*, the 2010 freeze alone) was calculated as \$12 million in 2010, \$13 million in 2011, \$14 million in each of 2012 and 2013, and \$15 million in 2014. (MTA Ex. 1 at 10) The assumption in the July Plan, which was incorporated into subsequent Financial Plans, was that the wage freeze would cover the COA-represented employees, who had been non-represented until June 9, 2009. (12/21 Tr. 24, 27-28)

The other important below-the-line item in the July 2010 Plan was the “Net Zero Labor Initiative.” Given that wage and benefit costs represent two-thirds of the MTA’s operating

expenses, and that the represented workforce generates most of that expense, the MTA recognized that it could not achieve significant long-term savings without addressing this huge portion of its expenses. (*Id.*; MTA Ex. 1 at 11) The concept behind the initiative was that in the current economic environment, the MTA cannot afford to grant new raises without offsetting savings to pay for them.

Under the initiative, wage costs will be held flat for two consecutive years following the expiration of each bargaining unit's existing collective bargaining agreement (or following the end of the period covered by an interest arbitration award, as the case may be), and thereafter wage increases would equal CPI. (*Id.*; MTA Ex. 1 at 11)) During the two "net zero" years, employees could receive wage increases through collectively-bargained productivity improvements or work rule changes provided that the savings offset the cost of the increases. (*Id.*) The projected savings from the Net Zero initiative would grow from \$10 million in 2010 to \$32 million in 2011, to \$112 million in 2012, \$199 million in 2013, and \$220 million in 2014. (MTA Ex. 1 at 10) In other words, this initiative is expected to yield major savings.

As a result of all of these actions, the November 2010 Financial Plan projected very narrowly balanced budgets for 2010 and 2011 (with a 7.5% fare and toll yield increase closing the 2011 gap) followed by a \$207 million *deficit* in 2012, a barely positive balance in 2013 (again supported by another 7.5% fare/toll yield increase), and a \$440 million *deficit* in 2014. (12/21 Tr. 24) Thus, even after all of the budget cutting and savings programs, there remain substantial deficits to address in the near-term.

Moreover, as Mr. Johnson explained, there are several real risks to the Plan that cast

doubt on even these precarious projections. (12/21 Tr. 25) The risks include economic

uncertainty resulting from the tenuous recovery to date and the MTA's limited financial reserves, and the State's own financial crisis which suggests that the MTA may not receive all of the resources that the State collects on its behalf. (12/21 Tr. 25; MTA Ex. 1 at 13)) Other risks include future labor settlements (and interest arbitration awards), as well as rapidly escalating spending on retiree healthcare (11% per year), pensions (19% per year), and current employee healthcare costs (10% per year). (MTA Ex. 1 at 13)

In short, the MTA is currently in the throes of a severe fiscal crisis that by now has persisted for a number of years. To contend with an ongoing stream of revenue shortfalls, it has been forced to implement reductions in expenses, reductions in service levels, reductions in headcount, and increases in fares and tolls. It has eliminated hundreds of programs and projects, and it has renegotiated contracts with suppliers and vendors. It has imposed a wage freeze on all management and non-represented personnel MTA-wide and it is now seeking a two-year period of zero wage costs from all represented employees.

The COA does not dispute any of the forgoing. Indeed, as noted above, its own witness – Mr. Parrott – conceded that the MTA is operating in extremely difficult financial circumstances. Instead, the COA argues that the cost of its demands is small enough, relative to the size of the MTA budget that the Panel should award them notwithstanding the MTA's problems, and it claimed to identify a number of purported funding sources for its desired award. However, as Budget Director Johnson testified, the COA's arguments are meritless.

First, the COA asserts that an award could be funded by increased overtime efficiency across the MTA. (12/17 Tr. 81, 86) However, the MTA already is projecting a 13% reduction in

overtime for 2011 from the February 2010 Plan level, amounting to a pure annualized savings of

\$62 million. (12/21 Tr. 37-38; MTA Ex. 1 at 14) More importantly, the MTA expects to realize these savings *after* having eliminated 3,500 positions. (12/21 Tr. 37-38; MTA Ex. 1 at 14)

Second, the COA suggests that the MTA may have money remaining in the labor reserve established in the November 2009 Financial Plan that could fund the cost of its desired award. (12/17 Tr. 83, 87; MTA Ex. 1 at 14) However, as Mr. Johnson testified, that reserve (set up in response to labor subsidy risks) was completely absorbed in December 2009 by the cost of the TWU interest arbitration award. (12/21 Tr. 38) There simply is no additional money in any labor reserve.

Third, the COA argues that its demands can be funded by the \$100 million general reserve included in the MTA's budget. (12/17 Tr. 87) As Mr. Johnson testified, however, the general reserve is not an actual fund with money to disburse. (12/21 Tr. 32-33) Rather, it is an accounting device which is included in the annual budget as a roughly 1% cushion to account for any eventuality that might occur during the course of the year, such as revenues coming in lower than projected. (12/21 Tr. 31; MTA Ex. 1 at 14) The reserve is reduced and eventually eliminated by year-end, having been allocated to address unanticipated expenses or revenue shortfalls. (12/21 Tr. 32) This \$100 million, plus the typical year-end cash balance of less than \$10 million, constitutes an extremely small operating margin for a \$12 billion budget. (12/21 Tr. 38-39) Indeed, as Mr. Johnson noted, in 2009 the MTA was compelled to take out a revenue anticipation note – essentially borrowing money from the next year for the current years – to meet its cash flow needs. (12/21 Tr. 39) That necessity alone demonstrates precisely how imprudent it would be to use the already strained general reserve to fund an additional

unbudgeted expense such as the COA's desired wage and benefit increases.

Fourth, continuing with the notion of unwise financial machinations that the COA asks the Panel to endorse, the COA contends that a portion of the MTA's "voluntary" contributions to fund the cost of other post-employment benefits ("OPEB") that it provides to retirees (*i.e.*, retiree health and welfare benefits) could be diverted to pay for its desired award. (12/17 Tr. 87) The OPEB fund was established by the MTA in accordance with the recommendations of GASB 45, the accounting standard which requires governments to disclose their unfunded OPEB liabilities in a manner similar to the reporting of unfunded pension obligations, and which also advises them to prefund these already large and growing OPEB liabilities. (12/21 Tr. 39; MTA Ex. 1 at 15) While it is true that the MTA has no legal obligation to fund its GASB account, that is beside the point. The MTA has an unfunded OPEB liability of approximately \$13 billion and is required to report this liability in its audited financial statements. (12/21 Tr. 40) The purpose of the MTA's GASB fund was to prevent this liability from continuing to grow out of control causing enormous future expenditures. (12/21 Tr. 41)

This is a step that many municipalities and other government employers, including the City of New York, have begun taking. (12/21 Tr. 40) If the MTA were required to make contributions to fund this \$13 billion liability in the same manner as it must fund pensions – *i.e.*, based on the actual true cost – the MTA would have to pay approximately \$1.4 billion per year into the GASB account. (*Id.*) Instead, the MTA only spends approximately \$400 million per year to fund current retiree health and welfare costs of approximately \$400 million per year. (*Id.*) These contributions are "a drop in the bucket" and the MTA recently needed to borrow money from its GASB account due to its fiscal distress. (12/21 Tr. 41) Credit rating agencies are

beginning to take OPEB liabilities into account when issuing their ratings on issuer debt and this could affect the MTA's borrowing costs in the future. (MTA Ex. 1 at 15) To better address its OPEB liability, the MTA intends to fund an irrevocable trust which would allow for better rates of return resulting in more favorable actuarial assumptions in the future that ultimately will lower the outstanding liability and reduce these costs. (12/21 Tr. 40-41) In reality, what the COA mischaracterizes as a "choice" is really no choice at all; either the MTA begins to confront its enormous OPEB liability now, or it will likely face devastating consequences later.

Fifth, the COA cited the Zuccotti panel's award for the TWU as support for the notion that the MTA can afford its demands. (12/17 Tr. 84-85) That argument disregards several critical distinctions between the circumstances before the Zuccotti panel and the instant case, however. As an initial matter, the Zuccotti panel's pronouncements regarding the MTA's ability to pay for its award were predicated on an award with a net cost of 11.77%, not the patently unreasonable 35.11% cost of the COA's demands here. (COA Ex. 24 at 10) Moreover, the Zuccotti award was issued in August 2009, well before the calamitous period in late 2009 and early 2010 when it became evident that the MTA would have a *\$900 million revenue shortfall* from what was projected in May 2009 when the State financial assistance package was enacted. In addition, the Zuccotti award itself imposed an unbudgeted increase of the MTA's labor costs of several hundred million dollars, thereby contributing to the dramatically altered fiscal condition in which the MTA now finds itself.

Sixth and finally, the COA's overarching argument is that the cost of its demands is relatively insignificant compared to the MTA's large budget. That claim also fails when considered in the proper context. The cost of the COA's demands – approximately \$1.46 million

over the 2009-11 period – would amount to a roughly \$73,000 increase in per employee costs (when applied across the 20-member COA bargaining unit). In contrast, the two-year management wage freeze generated approximately \$27 million in savings per year which roughly amounts to only \$4,000 in savings per employee. (12/21 Tr. 42; MTA Ex. 1 at 16) At a time when management and non-represented employees endured two years of wage freezes to generate \$4,000 in per employee savings for the MTA, there is no justification for the COA's request to move in the exact opposite direction by awarding increases whose cost would be orders of magnitude larger than those per employee savings.

The COA contends that the Panel need not concern itself with the MTA's financial condition because the cost of its demands is really insignificant given the small size of the bargaining unit. (12/17 Tr. 33) That contention is wholly misguided when dealing with a heavily unionized employer like the MTA, which negotiates with scores of bargaining units covering tens of thousands of employees. It is a basic tenet of public sector collective bargaining that in such a labor relations environment the nominal dollar cost of a settlement is essentially irrelevant. What is relevant is the relative percentage cost of the settlement (or award), and how that settlement (or award) is viewed and interpreted by other employees and bargaining units, which qualify as factors that are "are normally and customarily considered . . . in collective negotiations or impasse panel proceedings," and therefore necessary and proper matters for the Panel to consider, as the Taylor Law provides. CSL § 209(5) (d) (v) (i).

In this case, the cost of the COA's desired award is undisputed. The COA's desired wage increases alone have a going out cost of 17.16%. (MTA Ex. 3) These include a so-called "correction" that would immediately increase base salary levels by as much as 15% – even before

applying the proposed annual 4% increases:

Rank	Current Base Salary	“Corrected” Base Salary	Percentage Increase
Captain	\$131,408	135,103	2.81%
Captain Commander	\$137,530	\$141,353	2.78%
Deputy Inspector	\$138,310	\$148,420	7.31%
Inspector	\$140,147	\$155,841	11.20%
Assistant Deputy Chief	\$141,983	\$163,633	15.25%

(Based on COA Ex. 19)

In other words, in addition to the compounded 4% annual increases that the COA is seeking, individual officers would see their base salaries rise by the amounts in the table above.

The total going out cost of the COA’s demands is 35.11%, and that is based on the COA’s proposal for a two-year award. Using the alternative three-year award (with three 4% annual increases) mentioned by the COA – but notably without any attempt to explain or justify awarding a third 4% increase – that going out cost rises to just under 40%. (MTA Ex. 3)

Such an award would stand for a most undesirable principle and establish a disturbing precedent. It would mean that a group of employees can achieve a fundamental change in their terms and conditions of employment even though there has been no change in the work that they perform, simply by obtaining representation for purposes of collective bargaining.

Undisputedly, this is a small group of employees. But there are thousands of non-represented employees across the MTA family of agencies. All of them have worked through

two years of frozen wage and benefit levels. Just like the management of the Police Department, all non-represented employees were asked to contribute to the MTA's efforts to restore balance to a rapidly deteriorating budget condition by continuing to work hard for the same compensation, even as their represented subordinates received legally unavoidable wage and benefit increases.

The consequences of the COA's desired outcome would not only be confined to the non-represented employees at the MTA. The represented workforce would also inevitably compare the result obtained by the COA to the terms of their current or expired collective bargaining agreements.

These consequences can be avoided if the Panel issues an award that affords the COA the same treatment as their non-represented management counterparts at the MTA and its agencies – *i.e.*, that does not make the act of organizing a basis for treating a group of employees any different than they had been treated beforehand. Such an award would consist of the two-year wage freeze implemented for all management and non-represented employees in 2009 and 2010. But if the COA must receive the same treatment as their now-fellow represented co-workers at the MTA, then at the very least the Panel should incorporate the terms of the Net Zero initiative in its award. That means that any wage or benefit increase must be internally funded by productivity improvements or other changes that generate real quantifiable savings

Finally, whether the Panel imposes the wage freeze or applies the Net Zero initiative, it is imperative that the duration of the award does not exceed two years. There is absolutely no evidentiary basis whatsoever for granting the COA's proposed three-year award with a 4% increase in the third year. The COA cites the CEA contract covering NYPD command staff

officers which provides for a 4% increase in 2011, but it fails to note that there were specific factual differences in that situation as compared to this one. Thus, to grant the COA a three-year award with a wage increase in the third year would turn this new bargaining unit's first contract into the *pattern-setter* for the 2011 contract year at the MTA, and outcome that would have no basis in logic or precedent.

As to the COA's compensation demands, under section 209(5)(d)(i) of the Taylor Law, the Panel is required to take into consideration, among the other statutory criteria,

[C]omparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities[.]

The COA claims that the enormous compensation increases it is seeking are justified by comparisons to police officers employed by other departments, and by internal comparisons to the officers of the MTAPD who are represented by the MTA PBA. As discussed below, however, the evidence demonstrates that the COA is not supported by either comparison.

According to the COA, the NYPD is the most comparable police department, and that the Port Authority Police Department is the second-most comparable police department, for compensation comparison purposes. (12/17 Tr. 25, 27; COA "Case for Arbitration" at 7) The COA claims that these comparisons reveal compensation disparities that justify its exceedingly costly demands. The support for this claim, however, consists of evidence offered by the COA that is permeated with flaws, both conceptual and methodological.

With respect to the NYPD comparison, the COA makes several errors that distort the

analysis and undermine its claims. First, as discussed above, the COA does not base its salary comparisons on a single point in time, precluding any meaningful comparison of salary levels. (12/17 Tr. 61) As the COA has noted, the last general wage increase for MTA command staff was in 2008, and it is asking the arbitrator to award wage increases for the years 2009 and 2010. Yet the comparative data it presented at the hearing is based on NYPD salaries that include annual increases in 2009 and 2010, which results in a meaningless comparison of NYPD base salaries as of April 2010 to MTA base salaries as of 2008. (See COA Ex. 9)

After adjusting the NYPD salaries to correct that error, it is evident that the COA has significantly overstated the disparity and in fact MTA salaries are *higher* at the Captain, Captain Commander, and Deputy Inspector ranks:

Rank	NYPD as of 12/31/08	MTA
Captain/Captain Commander	\$130,312	\$131,408/ \$137,530
Deputy Inspector	\$137,172	\$138,310
Inspector	\$144,437	\$140,147
Deputy Chief/Assistant Deputy Chief	\$152,145	\$141,983

(COA Exs. 9, 10 at 4-5)

Second, the COA simply disregards the fact that there is a multi-step salary schedule for each of the NYPD titles. As evidenced by the collective bargaining agreement covering the NYPD titles included in the COA's comparisons (between the City of New York and the Captains Endowment Association), an officer promoted at the NYPD must advance through a number of annual step increments before reaching the top step (also known as base maximum) salary for his or her rank. (See COA Ex. 10 at 4-5) In contrast, for MTA command staff titles, there is only one salary level for each rank which the newly promoted officer receives immediately upon his or her promotion. The COA's omission of this critical difference results in

a failure to account for the fact that NYPD officers in comparable ranks receive substantially lower base salaries for several years – and accumulate substantially less earnings – relative to their MTA counterparts:

Rank	NYPD*	MTA	Extra MTA Pay
Captain/Captain	1 st step \$102,215	\$131,408	\$29,193
	2 nd step \$104,792	\$131,408	\$26,616
	3 rd step \$107,578	\$131,408	\$23,830
	4 th step \$130,312	\$131,408	<u>\$1,096</u>
			\$80,735
Captain/Captain Commander	1 st step \$102,215	\$137,530	\$35,315
	2 nd step \$104,792	\$137,530	\$32,738
	3 rd step \$107,578	\$137,530	\$29,952
	4 th step \$130,312	\$137,530	<u>\$7,218</u>
			\$105,223
Deputy Inspector	1 st step \$114,169	\$138,310	\$24,141
	2 nd step \$121,833	\$138,310	\$16,477
	3 rd step \$129,501	\$138,310	\$8,809
	4 th step \$137,172	\$138,310	<u>\$1,138</u>
			\$50,565
Inspector	1 st step \$120,049	\$140,147	\$20,098
	2 nd step \$128,177	\$140,147	\$11,970
	3 rd step \$136,311	\$140,147	\$3,836
	4 th step \$144,437	\$140,147	<u>(\$4,290)</u>
			\$31,614
Deputy Chief/Assistant Deputy Chief	1 st step \$126,287	\$141,983	\$15,696
	2 nd step \$134,906	\$141,983	\$7,077
	3 rd step \$143,524	\$141,983	(\$1,541)
	4 th step \$152,145	\$141,983	<u>(\$10,162)</u>
			\$11,070

* As of 12/31/08. See COA Ex. 10 at 4-5.

Third, the other compensation elements included in the COA's comparison table contain several flaws:

- The COA presents only the highest longevity payment, received after 20 years of service, which assumes – without any evidentiary basis – that this is reflective of the typical officer in those ranks. (COA Exs. 9, 10 at 10) To assume, as the COA does, that every member receives the highest payment possible may not present a realistic picture of police officer compensation at the NYPD, especially if the officers in the lower command staff ranks at the NYPD have less than 20 years of service (as seems likely);
- The COA's comparison table uses the longevity schedule in effect as of May 1, 2011, rather than the schedule in effect on the appropriate comparison date (*i.e.*, prior to 2009), which is \$1,500 lower at each step (COA Ex. 10 at 9-10);
- While the COA includes the \$1,000 uniform allowance received by NYPD officers, it does not account for the fact that the MTA provides COA members each year with uniforms worth up to \$1,000. (*See* COA Ex. 3 at Article 12) Although not a direct cash payment, this benefit indisputably relieves the COA officers of a cash expenditure that they would otherwise make and clearly has an economic value that should not simply be omitted from a compensation comparison;

Fourth, the "Adjusted Salary" column in the COA's comparison chart presents figures that have no meaningful analytical value because they incorporate all of the foregoing errors (*i.e.*, the 2009 and 2010 annual increases, the failure to account for the NYPD's salary steps, the use of a 2011 longevity schedule). (*See* COA Ex. 9) In addition, the COA erroneously treats the NYPD's contributions to the annuity fund and savings incentive plan as direct cash

compensation

to the officers. (12/17 Tr. 62) Those contributions should not be treated as “salary” components any more than the MTA’s pension fund contributions should be included as part of an “adjusted salary” for COA members.

With respect to the COA’s purported second-most appropriate comparator – the Port Authority Police Department – there is no record evidence supporting the COA’s contentions. The COA failed to establish the accuracy and reliability of the data relating to the PAPD, and accordingly the Panel ruled that it would not be admitted in evidence. (1/20 Tr. 21-22) While the Panel did admit printouts from the “SeeThroughNY” website which purported to show the actual compensation received by particular PAPD officers (COA Ex. 47), that document does not validate the data contained in the comparison table. Accordingly, there is no evidentiary support for the COA’s comparability claims regarding the PAPD and those claims must be disregarded.

However, even assuming, *arguendo*, that the COA’s data are accurate and reliable, it is still not possible to draw any meaningful conclusions from the COA’s comparison. First, according to the COA, there are only three PAPD titles that are purportedly comparable to the command staff titles at the MTA (Captain, Inspector, Assistant Chief), which has five such titles above Lieutenant and through one-star Chief (Captain, Captain Commander, Deputy Inspector, Inspector, Assistant Deputy Chief). (See COA Ex. 9) The COA failed to offer any explanation or provide any evidence suggesting how the positions at the two agencies compare in terms of job duties and responsibilities.

Second, as with the NYPD data, here too the COA used base salary rates that are inflated by a 4% wage increase in 2009. (*Id.*)

Third, as it did with the NYPD, the COA showed only the top longevity payment in its comparison table, and according to the COA an officer needs 29 years of service to receive that level of longevity payment. (COA Ex. 47) Absent any evidence demonstrating the frequency or likelihood that this level of longevity is achieved within these ranks at the PAPD, there is no basis for drawing any meaningful conclusions from the data.

Fourth, according to the COA, the PAPD allows these officers to cash out up to 18 unused vacation days per year. (See COA Ex. 9) The COA apparently included that amount – the maximum possible vacation cash-out – in its “adjusted salary” figure for the PAPD titles. However, there is no record evidence supporting the assumption that these PAPD officers typically do not use 18 of their 28 annual vacation days.

The COA also includes the Nassau County and Suffolk County Police Departments in its comparison table. However, the COA did not attempt to establish a basis of comparability between these two agencies and the MTAPD. In fact, nowhere in the record does the COA even assert that NCPD and SCPD are comparable to the MTA Police Department, let alone submit evidence that would support such an assertion. As noted above, the Taylor Law does not permit the Panel to take into consideration *any* comparisons presented to it; rather, the statute makes clear that only those comparisons involving “employees performing similar work . . . in New York City or comparable communities” are relevant to the Panel’s determination. CSL § 209(5) (d) (i). Accordingly, given the absence of any rationale for their inclusion in the COA’s comparison table – besides the fact that they appear to be high-paying police departments – there is no basis for taking into consideration NCPD and SCPD when evaluating the COA’s demands.

In any event, a cursory review of the COA’s data and the relevant contracts and interest

arbitration awards demonstrates that here too the COA's comparisons contain several errors:

- The NCPD salaries include 3.45% wage increases for 2009, 2010, and 2011 – *i.e.*, they have been inflated by three years' worth of wage increases beyond the proper comparison year of 2008. (*See* COA Exs. 9, 41 (Scheinman Award for Jan. 1, 2008 to Dec. 31, 2013) at 63)
- The NCPD ranks include "Detective Captain" which does not appear to correspond to any of the MTA command staff titles. (COA Ex. 41)
- The NCPD titles have a multi-year salary step schedule with the top salary level (which the COA included in its chart) obtained after 6 years in the rank. (*Id.*) As with its NYPD data, the COA's failure to account for those lower steps distorts the comparison, as demonstrated by the following example:

Rank	NCPD*	MTA	Extra MTA Pay
Captain/Captain Commander	1 st step \$121,052	\$137,530	\$16,478
	2 nd step \$125,773	\$137,530	\$11,757
	3 rd step \$130,678	\$137,530	\$6,852
	4 th step \$134,051	\$137,530	\$3,479
	5 th step \$139,278	\$137,530	(\$1,748)
	6 th step \$139,278	\$137,530	(\$1,748)
	7 th step \$144,710	\$137,530	<u>(\$7,180)</u>
			\$27,890

*As of 12/31/08

- The SCPD salaries include 3.5% wage increases in January 2009 and January 2010. (COA Exs. 9, 43)
- The SCPD again uses what appears to be the maximum longevity amount in its table, which is reached after 20 years of service. (*Id.*)

According to the applicable collective bargaining agreement, the “Assignment Pay” included in the COA’s chart is available only to those officers in certain specialized units

- (Emergency Service Unit, Aviation, Marine Bureau Dive Team, Firearms Training, and Crime Scene Unit). (COA Exs. 43 at 38) Evidently, most officers are not eligible for this differential and it should not be included in a chart purporting to compare regular compensation elements across departments.

In sum, the COA’s comparability arguments simply do not support the tremendous compensation increases that it seeks here. Many of the disparities that the COA purports to demonstrate are illusory or rest upon flawed premises and erroneous data. Indeed, by failing to account for the NYPD’s salary steps, the COA overlooks the thousands of dollars in additional earnings that COA members receive, which in many cases will more than make up for any lack of longevity payments or an annuity fund contribution.

The COA claims that adoption of its proposed wage increases is warranted by alleged distortions among the vertical parity relationships – *i.e.*, the base salary ratios – between the ranks within the MTAPD. (12/17 Tr. 27; COA “Case for Arbitration” at 7-8, 16-17) The COA effectively makes two vertical parity arguments: (i) that the differential between the Lieutenant and Captain salaries has diminished substantially over time and needs to be restored to a particular prior level (COA “Case for Arbitration” at 3; COA Ex. 36); and (ii) that compared to similar ranks at other police departments, the differentials between each of the MTA’s command staff titles are disproportionately small. Both arguments are meritless. (COA Ex. 36)

With respect to the ratio between base salaries for Lieutenants and Captains, the COA cites the 23.82% differential that supposedly existed in September 2005 following a salary

increase granted to command staff officers, and it complains that the current differential of 11.16% represents an undue diminution of the differential between the ranks. (*Id.*) This argument, however, rests on the same error that permeates the COA's comparison tables: it is based on a salary rate for Lieutenants that is inflated by two 4% annual increases (for 2009 and 2010) which are then compared to 2008 salary levels for the COA-represented titles. (*See, e.g.,* COA Exs. 9, 36) Using 2008 salary levels in this analysis for all titles, the differential between Lieutenants and Captains is actually 19.54% – a far smaller and essentially insignificant diminution from the September 2005 differential.

Moreover, contrary to the COA's assertion that the vertical differentials within the MTAPD are "disproportional" relative to other police departments, a comparison of the MTA's Lieutenant/Captain differential to that of the COA's chosen counterparts demonstrates that this is not the case:

Department	Lieutenant/Captain Differential
NYPD	25.20%
MTAPD	19.54%
PAPD	9.82%
NCPD	8.21%
SCPD	3.90%

(COA Ex. 9)

Thus, when the correct salary rates are used, it becomes clear that the MTAPD has one of the largest Lieutenant/Captain base salary differentials among the police departments selected by the COA for comparative purposes.

With respect to the vertical differentials between the command staff titles that the COA represents, again the COA's analysis rests on several flawed premises. The COA asks the Panel

to award its proposed “correction,” consisting of a 2.15% general wage increase *plus* an additional \$936 increase *plus* additional unspecified increases that collectively would result in a 5% differential between the base salaries of each command staff rank, because the current vertical differentials are “disproportioned compared to other professional police departments in the region.” (COA “Case for Arbitration” at 17; COA Ex. 34) The first problem with this argument is that the current differentials among the command staff titles are exactly the same as the differentials that existed in September 2005 – yet the COA holds up the Lieutenant/Captain differential that existed at that time as the proper differential that the Panel should restore. (See COA “Case for Arbitration” at 3; COA Ex. 36) The COA offers no explanation why one differential that happened to be in place in September 2005 should be treated as a benchmark while other differentials that also were in place at that time now must be “corrected.” There is no way to reconcile these inconsistent positions and that alone undermines the COA’s argument.

The second problem with the COA’s demand is that the other police departments selected by the COA have a fewer command staff ranks, precluding any meaningful comparison of vertical differentials. The MTA Police Department has five ranks above Lieutenant and below Assistant (two-star) Chief, while the NYPD, Nassau County, and Suffolk County each have four ranks within that range, and the PAPD has only three. Obviously, when there are fewer ranks within a given salary range, it is easier to have larger differentials between those ranks. Moreover, with fewer ranks, there are fewer promotional opportunities and this detracts from the value of any differential between the ranks. In any event, an equally if not more relevant consideration is the overall differential between the top and bottom of the salary range at issue – *i.e.*, the differential between the salaries of one star Chiefs and Lieutenants – which illustrates the

potential salary growth that may be attained from promotion to the command staff ranks.

	NYPD	MTA	NCPD	SCPD	PAPD
Differential between Lieutenant and one star Chief	46.18%	29.16%	22.99%	20.31%	19.33%

(Based on COA Ex. 36)

Thus, other than the NYPD, the MTAPD has the largest differential between Lieutenant and one star Chief salaries. One star Chiefs at the MTA receive salaries that are more favorable compared to Lieutenant salaries, on a relative basis, than at any of the COA's chosen comparators except the NYPD. Notwithstanding the COA's effort to paint the small differentials between its ranks as an injustice, there is in fact nothing inequitable about it whatsoever.

The COA also claims that its demands are warranted by the notion of equal treatment for the COA and its subordinate officers who are represented by the PBA. However, the unrefuted evidence demonstrates that the COA is seeking far more in this award than the PBA received in its contract for the corresponding period of time.

The current PBA contract, which was agreed to in January 2008, actually has a duration of 62 months, covering the period August 15, 2006 through October 14, 2011. (See COA Ex. 11) In the last two years of that period – which began October 15, 2009 and runs through the end date – the contract provides for certain wage and benefit enhancements that have a cost associated with them, as well as certain offsetting savings items. As testified by Sherilyn Dandridge, MTA Labor Economist who participated in the COA negotiations on the MTA's behalf, the net cost of the PBA contract was consistent with the pattern for the uniformed services of the City of New

York and the City uniformed pattern for the two-year round of bargaining corresponding to the last two years of the PBA contract is 9.75%.

Within the 2009-11 portion of the PBA contract, the contract provides for annual 4% increases on October 15, 2009 and October 15, 2010. (MTA Ex. 4) It also provides for increases to the longevity schedule, effective October 15, 2010, of \$600 for the two lowest steps and \$1,600 for the three higher steps, and an increase also effective October 15, 2010 to the MTA's annuity fund contributions of \$261 for incumbents only. To generate offsetting savings, the contract provides for the elimination of annuity fund contributions for new hires, as well as changes to the sick leave and training policies and the withdrawal of a grievance over the Detective schedule. (*Id.*; 12/21 Tr. 113-14)

There is no dispute that the COA is *not* asking the arbitrator to issue an award consistent with the net cost of the PBA contract for the corresponding two-year period. That is, the COA is not asking for the same net wage and benefit *increase* that the PBA's contract provides. Rather, the COA is seeking *parity* with the PBA with respect to various economic terms notwithstanding the fact that those terms were secured by the PBA over a period of time spanning numerous rounds of collective bargaining. The following table, which was introduced in evidence as MTA Exhibit 4 at the hearing, illustrates the difference between what the PBA received under its contract for the 2009-11 period and what the COA is asking for:

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	<p>10/15/09 4%</p> <p>10/15/10 4%</p>	<p>6/9/09 "Correction" of 2.15% increase, <i>plus</i> \$936 increase, <i>plus</i> additional increases to create 5% differentials between ranks, <i>plus</i> 4%</p> <p>6/9/10 4%</p>																														
	<p>Effective 10/15/10, each step <i>increases</i> as follows:</p> <table> <tr><td>5 years</td><td>\$600</td></tr> <tr><td>10 years</td><td>\$600</td></tr> <tr><td>15 years</td><td>\$1,600</td></tr> <tr><td>20 years</td><td>\$1,600</td></tr> <tr><td>25 years</td><td>\$1,600</td></tr> </table>	5 years	\$600	10 years	\$600	15 years	\$1,600	20 years	\$1,600	25 years	\$1,600	<p>Effective 6/9/09, adoption of the following schedule:</p> <table> <tr><td>5 years</td><td>\$3,710</td></tr> <tr><td>10 years</td><td>\$4,710</td></tr> <tr><td>15 years</td><td>\$5,710</td></tr> <tr><td>20 years</td><td>\$6,710</td></tr> <tr><td>25 years</td><td>\$7,710</td></tr> </table> <p>Effective 6/9/10, steps modified per PBA's 10/15/10 increases, with new schedule as follows:</p> <table> <tr><td>5 years</td><td>\$4,310</td></tr> <tr><td>10 years</td><td>\$5,310</td></tr> <tr><td>15 years</td><td>\$7,310</td></tr> <tr><td>20 years</td><td>\$8,310</td></tr> <tr><td>25 years</td><td>\$9,310</td></tr> </table>	5 years	\$3,710	10 years	\$4,710	15 years	\$5,710	20 years	\$6,710	25 years	\$7,710	5 years	\$4,310	10 years	\$5,310	15 years	\$7,310	20 years	\$8,310	25 years	\$9,310
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15 years	\$7,310																															
20 years	\$8,310																															
25 years	\$9,310																															
	<p>Annuity fund contributions <i>eliminated</i> for post-ratification new hires</p> <p>For incumbents, <i>increase</i> of \$261 per year effective 10/15/10</p>	<p>Effective 6/9/09, annual annuity fund contribution of \$1,000 for all unit members</p> <p>Effective 6/9/10, annual annuity fund contribution <i>increase</i> of \$261</p>																														

	Not addressed in this MOU Prior contract provides for \$25,000 payment to beneficiary or estate of deceased in the event of death because of a line-of-duty injury (see PBA agreement for actual language)	Estimated equivalent of PBA coverage would require \$94 monthly premium for entire unit
	Not addressed in this MOU Prior contract provides for 12,652 hours release bank for unit of 654 = approximately 19 hours per PBA member	5,000 hours for unit of 20 = approximately 250 hours per unit member
	Employees absent for sick leave, except absences sustained in the course of employment, shall not be permitted to work overtime during their next scheduled relief days	
	MTA permitted to short swing an employee for training up to 5 times per year, in addition to the 10 tour changes already permitted	
	PBA withdrew grievance over Detective schedule and acknowledged that Detectives are not subject to the annual chart and are subject to chart changes on 2 weeks notice	

(MTA Ex. 4)

As the table makes clear, the COA is asking the Panel to award far more than what the PBA received in its contract for the comparable period of time. With respect to longevity payments, annuity fund contributions, and the line of duty death benefit, the COA is asking for immediate parity with the PBA – *i.e.*, to receive the same payment, contribution value, and

benefit coverage applicable to PBA members during this period, rather than just the increases to those payments provided by the last PBA MOU. (COA Ex. 34) As for the release time demand, the COA is actually asking for a greater benefit on a proportional basis than what the PBA receives under its contract. With respect to base salaries, the COA is seeking the same annual increases that the PBA contract provides for but only after their current salaries are first adjusted by enormous increases – which it characterizes as a “correction.”

In total, the record evidence establishes that the PBA’s demands would impose a cost that far exceeds the 9.75% cost of the PBA contract for the comparable period of time:

Wage Increases (2 years) including “correction”	17.16%
Longevity	5.03%
Annuity	0.86%
Release Time	12.02%
LOD Death Benefit	0.04%
GOING OUT COST OF COA DEMANDS	35.11%

APPROXIMATE COST OF PBA CONTRACT FOR 2009-11 PERIOD 9.75%

(MTA Ex. 3; 12/21 Tr. 109-110)

There is no principle of labor relations – and the COA certainly did not identify one at the hearing – which supports the notion that newly-organized managerial employees should receive in its first contract, in one fell swoop, *all* of the terms that their subordinates have acquired over the course of decades of collective bargaining. If the COA were to receive an award that

effectively adopts the economic components of the PBA contract in its entirety, as noted above that award would have a net cost that far exceeds the net cost of the PBA contract for the comparable period of time. In that circumstance, the PBA would inevitably return to the table in the next round of bargaining and, relying upon basic principles of pattern bargaining, demand that it, too, should receive the same value from its contract for this period that the COA just obtained through arbitration. If that argument found sympathy from an impasse panel, the MTA's expense burden would be ratcheted up that much more, giving rise to potentially more me-too demands from the various other unions across the MTA. The public's interest in sound and stable labor relations would be undermined, contrary to the Taylor Law's command that the Panel safeguard the "interest and welfare of the public." CSL § 209(5) (d) (v).

In short, the COA's position finds no support from comparisons with the PBA. There is no rationale for granting across-the-board parity on all major economic terms in a single round of bargaining as the COA requests, and the cost and likely consequences of such an award should preclude that outcome.

The COA asks the Panel to award an incredible 5,000 hours of annual paid release time for conducting union business. The cost of this demand – 12.02%, based on the cost of the lost work-hours that would result – is by itself sufficient grounds for denying it. (*See* MTA Ex. 3; 12/21 Tr. 108-109, 112) But apart from its cost, the demand should be denied because the COA failed to present any evidence whatsoever supporting its claim that such a huge amount of paid release time is necessary; indeed, the notion defies all reason. Moreover, as Chief Coan testified, granting this request would create significant operational problems for the Department.

As a justification for its demand, the COA offered vague assertions about command staff

officers “being more frequently involved in complaints” by virtue of their higher rank than their subordinates and that its leadership has found “union business to be more time consuming than anticipated.” (12/17 Tr. 47-49; COA “Case for Arbitration” at 21) The COA failed to provide any evidence whatsoever in support of this assertion.

Moreover, as Chief Coan testified, there are also significant operational implications to the COA’s release time demand. (12/21 Tr. 62-63) There are only 20 COA members available to fill the command staff assignments that the Department requires. (12/21 Tr. 63) Of all the Districts, there are only two – Grand Central Terminal and Penn Station – where there are two command staff officers assigned. (*Id.*) These are both very large, very important locations which require additional command staff-level supervision. (*Id.*) Every other District has one command staff officer in charge, and the other command staff officers serve as bureau chiefs and in other managerial roles. With only 20 command staff officers in the Department, there would be major operational problems if it were required to lose that many hours of service. (*Id.*)

The operational harm that this demand would generate, its cost, and the COA’s total failure to demonstrate a fact-based need for paid release time, all compel its denial.

Currently, the Chief of the Department has the discretion to decide who among the unit should be laid off in the event that job eliminations are necessary. The COA wants to eliminate that discretion and require that layoffs be based solely on seniority, regardless of the operational impact of preventing the Chief from deciding who is best suited for the remaining positions and functions. (COA “Case for Arbitration” at 20-21; 12/17 Tr. 46-47)

There is no justification for imposing such operationally-unsound restrictions, especially at a time when the MTA must do more with less, as Chief Coan testified based on his extensive

experience in police management in the MTA and elsewhere.

Based on that experience, Chief Coan testified that officers are not completely interchangeable at the command staff level. (12/21 Tr. 64) The MTA's command staff officers fill very different roles. (*Id.*) Some are District commanders while others are in charge of specialized bureaus or perform administrative functions. (*Id.*) The particular duties and responsibilities in each of these roles can vary. (*Id.*) As is the case with most organizations, at the MTA Police Department certain individuals are better suited for some roles than others. (*Id.*) As a result, if the Department were required to eliminate one or more positions and layoff employees, it is critical that the Chief retains the discretion to determine which job eliminations would have the least negative operational impact possible. (*Id.*) It is equally critical that the Chief have the ability to ensure that the remaining positions are filled by the people best suited for them. In other words, the Department must be able to hold onto those officers who will enable it to function optimally even if they are not the most senior officers. It would be operationally detrimental – and, as a consequence, the public that it serves will not be best served – if the Department were required to do layoffs by seniority when that could deprive it of its most capable and competent command staff officers. (12/21 Tr. 64-65)

The Metropolitan Transportation Authority respectfully requests that the Panel issue an award that adopts its proposal and that denies the COA's proposals in their entirety.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

- (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse

proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(iii) the impact of the panel's award on the financial ability of the public employer to pay, on the present fares and on the continued provision of services to the public;

(iv) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(v) the interest and welfare of the public; and

(vi) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits and other working conditions in collective negotiations or impasse panel proceedings.

Before turning to the criteria per se, I must point out that the COA became the bargaining agent for the commanding officers in June 2009. Efforts to negotiate the first CBA between the MTA and COA were partially successful. An MOA was executed on March 31, 2010 in which a variety of issues were resolved. However, seven matters remained unresolved and became the subjects of the impasse that led to this proceeding.

This introduction is needed in order to posit that, due to the absence of prior bargaining between these parties under the Taylor Law, there is an absence of case/arbitral law related to bargaining between them. The absence of such a record affects the forthcoming analysis of the criteria set forth in CSL §209. With this explanation and the statutory criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion, Criterion (i).

There are no prior interest arbitration awards concerning these parties. Thus, there are no established comparators to the COA. The COA referenced a 1988 interest arbitration award by Arbitrator Scheinman in connection with the proceeding involving the LIRR and its police unit (Petitioner Exhibit [PX]6). It cited this award for the purpose of demonstrating that Arbitrator Scheinman held that the appropriate comparators for the LIRR police unit were other police units. I add that Arbitrator Scheinman found the NYC Transit Police to be particularly comparable. In addition to considering the NYCT police department to be comparable to the COA, it cited the PAPD as being a second appropriate comparator. At its core, both of these units have major responsibilities related to the transportation of large numbers of members of the public.

I concur with the conclusion that police units dealing with mass transit are most comparable to the COA. Reliance on the award written by Arbitrator Scheinman is valid to the extent that he was writing about the LIRR police, a bargaining unit representing police officers. However, I reject the premise that the COA, a unit comprised of members of the command staff, can and should be compared to bargaining units of police officers patrolling sites at which mass transit is provided. The functions and duties of members of the COA are vastly different from those of members of the MTA PBA, the NYC transit police and the PAPD. Thus, the primary

comparator for the COA must be a unit of commanding officers.

That being said, the MTA PBA, the NYC transit police and the PAPD are not the primary comparators for the COA. The only bargaining unit that is truly comparable to the COA is the Captains Endowment Association (CEA) of NYCT.

The CEA represents command officers ranging from Captain to Deputy Chief (1 star).

The range of titles in the COA is similar but not identical to that of the CEA.

The PAPD does not have a bargaining unit of command staff. Thus, it is not comparable to the COA. Furthermore, even if the PAPD were to be considered significant in this proceeding, there is no reliable record evidence of the terms and conditions of employment of the PAPD.

Finally, the MTA PBA is comprised of members who are subordinates of the COA. Thus, given that they are employed by the same employer, the PBA cannot be ignored. However, it is not nearly as relevant a comparator as is the CEA.

Criterion (ii) notes that I review the terms and conditions of employment of COA members. As will be noted below I have made an in-depth study of the compensation factors noted in the unresolved proposals. The parties provided me with a wealth of data which I used to assess the current economic conditions of the COA members while considering the MTA's ability to pay for the COA proposals.

As to Criterion (iii), the issue of the MTA's ability to pay based upon current fares and levels of service requires a different kind of analysis. It would be a denial of the obvious to assert that these are ordinary times and that to argue that the employer's *ability to pay* can be measured in terms of timeframes that are not nearly as distressed as these times.

It goes without saying that the economic climate of the country, the northeast and New

York State has gone through a period of downturns that has not been experienced since the Great Depression of the 1930's. It has been well documented that unemployment hit 10% and is still about 9% nationally. That statistic varies from area to area but suffice it to say that unemployment remains a stubbornly high number in a broad cross-section of regions.

The unemployment problems stem from the contractions in the public and private sector. A rising number of businesses going into bankruptcy is an additional factor to be considered. One of the primary effects of the broader implications of the unemployment cycle is a significant reduction in tax revenues. This reduction is significant to an agency such as the MTA which is subsidized by New York State.

Another factor to be considered is the smaller returns that State agencies are accruing on investments. The significant declines in the financial markets reduced the agencies' earnings while not reducing their liabilities. In short, the decline in the markets has added to the unfunded liabilities of an agency like the MTA. This has a direct impact on the funding required in the area of pensions.

The MTA argument included the premise that, as a matter of law, the MTA must operate on a self-sustaining cash basis. This assertion was uncontested. The MTA indicated that the current fiscal crisis has required it to take extraordinary measures in order to meet this requirement. It stressed that, despite the steps taken, the MTA's financial condition continued to worsen. It pointed to actions taken in February and July 2010 in an effort to effect economies.

It maintained that the cost of wages and benefits comprises the largest portion of the MTA budget. It insisted that non-represented personnel have been required to accept a wage freeze. It added that the COA is expected to do the same and that all unionized employees will

be required to do the same upon the expiration of their current agreements.

It emphasized that any improvements in wages and benefits would need to be offset by productivity improvements or work rule changes. It posited that such an approach would be consistent with the MTA *Net Zero Initiative*.

The COA argued that the MTA has the ability to pay for its monetary proposals. It noted the presence of budget surpluses of \$8 million and \$11 million in 2010 and 2011. It observed that, based on recent budget data, the MTA is projecting a \$2.8 million cash balance at the end of 2011.

It stated that funds in the General Reserve Fund are available to fund the CBA. It added that the MTA could use part of the money set aside for GASB contributions. It cited comments of Arbitrator Zuccotti relative to the option for the MTA to better manage its capital program and in so doing identify funds to pay for the COA demands.

The COA maintained that savings could be found if the MTA reduced the use of outside contracts. It added that a reduction in the use of overtime would provide the savings needed to fund the COA contract demands.

The COA stressed that the cost of its demands is about \$1 million. It pointed out that this sum represents a miniscule fraction of the MTA's \$12 billion budget. It insisted that these demands can be easily funded.

I have considered the arguments of the parties and recognize that these are unprecedented times. The overall economy is has been in seriously depressed state since late in 2008. There have been economists who have opined that conditions are improving and others who have suggested that the economic problems have remained intractable. The fact is that there are

significant factors that have not yet shown substantial improvement. Among those factors are unemployment and tax revenues. These matters cannot be ignored.

However, that being said, it must be concluded that the MTA does have the ability to pay for reasonable improvements in the terms and conditions of employment of the members of the COA. I must add that ordinarily these improvements must be in the context of concessions that offset at least part of the improvements. However, given that this is the first award involving the MTA and the COA, it is difficult to identify actual concessions that can be made as an offset against improvements. This is a significant factor for me to consider when setting forth the actual improvements to be awarded to COA members.

In sum, in terms of the third criterion of the Taylor Law, I conclude that the MTA has the *ability to pay* for appropriate and reasonable improvements in the unresolved terms and conditions of employment of the members of the COA.

I have given a great deal of consideration to Criterion (iv). This criterion involves an analysis of changes in the cost of living.

There is little or no evidence in the record to show that there have been significant increases in the overall cost of living. However, while the cost of living has not increased appreciably, tax and interest revenue has decreased. This analysis must be part and parcel of the discussion concerning the MTA's ability to pay.

Criterion (v) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well paid and well supervised

corps of police officers that operates safely and efficiently. It is also clear that a police force with a group of commanding officers that has good morale is essential.

In this case the COA is comprised of the command staff that supervises and directs the MTA PBA. Positive morale on the part of COA members results in higher productivity and a flow of high quality candidates for the positions available.

Criterion (vi) requires a consideration of other relevant factors. Among such factors is a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. These conditions need to be reviewed relative to the terms and conditions of employment of members of the COA.

It is clear that police personnel are faced with serious and unique hazards. Police personnel, in general, and, in this case, commanding officers, risk death and serious injuries. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Thus, this criterion is satisfied when the maintenance of public safety and the inherent risk of being a law enforcement official are given appropriate weight in determining the wages, hours, fringe benefits and other working conditions of COA as compared with other similarly situated members of other police departments.

This statutory criterion also requires a consideration of past collective bargaining agreements between the parties with respect to compensation and fringe benefits. This is the first CBA negotiated by the COA. Thus, there are no prior CBA's. There may be contracts between other parties that should be considered. However, for this round of bargaining, there are no prior

contracts between these parties to be considered.

Having discussed the relevant statutory criteria, I now turn to the parties' specific unresolved bargaining proposals.

TERM OF THE AWARD

The length of this award is the first issue to consider. The parties disagreed over the period to be covered by this award. Ordinarily under the Taylor Law, absent agreement of the parties to authorize awards in excess of two years, interest arbitration awards are limited to two years. However, the parties agreed that, as it relates to the MTA, the panel can issue an award for more than two years.

I recognize that this award will be the basis for the first CBA between the MTA and the COA. There is no expired contract between these parties. In consideration of this fact and of the difficult economic climate, I have determined that the period covered by this award will be two years.

I am mindful of the expiration date of the current MTA PBA collective bargaining agreement, October 14, 2011. To the extent that the PBA wages and terms and conditions of employment cannot be ignored here, it would be appropriate for the bargaining involving the PBA and COA to take place at times under similar economic conditions. It is clear that the current bargaining by the COA has taken place under much more adverse conditions than was the case five or more years ago when the PBA bargaining took place.

Making the COA award co-terminus with the PBA contract will make the bargaining for both successor agreements more meaningful. With that in mind, the period covered by this award will be two years, June 9, 2009- June 8, 2011.

WAGES

The parties had significant differences over the matter of wage increases. I will begin with a brief outline of the parties' proposals relative to improvements in the wage scale.

The COA recalled that its members received 8.75% salary adjustments in September 2005. It posited that the MTA did so in order to maintain parity between the unrepresented command staff and the MTA PBA. It added that the increases received by the PBA since then have been greater than those given to the commanding officers. Thus, it proposed a 2.15% salary adjustment, a \$936 lump sum payment and 4% increases as of June 9, 2009 and June 9, 2010.

The MTA proposed a two year wage freeze. It posited that other non-represented management groups had received such a wage freeze and that this award should provide for such a wage freeze for the COA.

The MTA added that, should a wage increase be awarded, it should be done in the context of its *Net Zero* initiative. This would require that the wage increases be offset by concessions or increased productivity. Therefore, in the view of the MTA, there should be a zero sum once the increases are balanced by the offsets.

I have previously concluded that the most comparable bargaining unit for the COA is the NYPD CEA. A review of their salary scheduled indicates that it received 4% increases for each of 2008, 2009, 2010 and 2011.

I have also indicated that the MTA PBA cannot be ignored. It received 4% increases for 2007, 2008, 2009 and 2010. It also got an additional \$936 payment for 2008.

The COA argued that it received 3% increases for 2006, 2007 and 2008. It added that it

did not get the \$936 awarded to the PBA in 2008.

I need to address the matter of the COA's assertion of past inequities perpetrated by the MTA against it. The record is clear that the commanding officers were not represented by a union until March 2009.

The COA's arguments indicate that this proceeding should make them whole for various differences in treatment received by them as compared to the PBA. Its emphasis on this premise is misplaced.

The action taken by the command staff to unionize is the remedy it sought for past treatment that it considered to be unacceptable. It is inappropriate to seek the benefits in the COA's first round of bargaining that were the subject of bargaining by other units over a period of many years.

Bargaining requires *give and take*. One cannot look at wage increases in prior years in a vacuum. There had to have been tradeoffs in the negotiations. Moreover, the history of bargaining in prior rounds may have implications for the current round.

There is no bargaining history prior to this round between the MTA and COA. The COA cannot expect to be granted bargained for benefits of other units without having bargained for and made concessions to get them.

The Taylor Law standards of comparability and ability to pay are very much present oriented. It is proper to view the negotiated settlements or interest arbitration awards of comparable units in the current round of bargaining as a source of guidance for the instant impasse. However, this process is not designed to remedy perceived injustices from a time prior to the time when the COA became the certified representative of the commanding officers.

Additionally, there are specific factors to be considered when comparing appropriate units with the same round of bargaining. The timing of awards or negotiated settlements can be a significant issue.

For example, in this round of bargaining, the PBA award and the CEA negotiated agreement came early in 2008. It is obvious that the bargaining in those instances came before January 2008.

It is hardly a secret that the ability to pay of employers has been substantially weakened since the beginning of 2008. Do the awards and/or negotiated agreements related to 2009 and 2010 offer guidance here? The answer is yes. Are they dispositive in this case? The answer is no.

Even within the context of awards and agreements of comparable bargaining units for this round of bargaining, there are elements to be considered which are significant. One such element is the economic climate at the time of the bargaining involving the comparables.

The MOA between the MTA and the MTA PBA was executed in January 2008. It covered wage increases in 2006-10. The CEA contract covers the period 2003-12. It was also executed in January 2008.

Two comments are required. First, the PBA and the CEA may have gotten 4% increases. There were also concessions and pre-existing contract terms that need to be recognized. In this case, in that the COA recently became the bargaining agent for the command staff, there was no predecessor agreement. In addition there is nothing in the record to suggest that, other than the MTA's seeking a wage freeze or a *NetZero* agreement, concessions were part of the negotiations

I have previously concluded that the best comparator for the COA is the CEA. Certain

facts need to be stated. The COA compared the salaries of employees in titles comparable to those in CEA. Drawing such comparisons is regularly done. However, in this case, the COA compared the salaries of its members as of December 31, 2008 with the salaries of CEA members in April 2010. Thus, the COA was comparing its salaries prior to the onset of bargaining with those of the CEA subsequent to two 4% increases. This is comparing *apples with oranges*. The more revealing comparison is the salaries of members of the COA and CEA on the same date, December 31, 2008.

The record indicates that in three titles, Captain/Captain, Captain/Commander, and Deputy Inspector, the members of COA actually had higher salaries than their counterparts in CEA. In two titles, Inspector and Deputy Chief/ Assistant Deputy Chief, the reverse was true. In this respect, the COA's argument concerning the great disparity between the salaries in the two units is weakened.

A second factor that needs to be noted is the glaring difference in the salary schedules of the two units as of December 31, 2008. The CEA has a four step salary schedule as compared to a one step salary schedule for the COA. Thus, COA members get top salary as soon as they are promoted while it takes CEA members four years to do so.

An analysis of this significant difference requires a calculation of the aggregate base salaries of the titles referred to above over the four years it takes for CEA members to reach top salary. It may be true that, as of December 31, 2008, the COA salaries in three titles ranged from about \$1,000 to about \$7,000 more than the comparable salaries for CEA members but the total difference over a four year period for the titles in question ranges from approximately \$50,000 to \$105,000. This is because the COA members go to top salary on the day of promotion while

their CEA counterparts take four years to get there.

Furthermore, there are two titles where CEA members at top salary earn more after four years than do the COA employees in similar titles. That being said, CEA Inspectors after four years earn about \$4,000 more than COA Inspectors but in the aggregate COA Inspectors earn more than \$30,000 more than do CEA Inspectors.

Additionally, in the Deputy Chief title, CEA personnel in the fourth and final year of the schedule make about \$10,000 more than do COA Deputy Chiefs. Yet, over the four year period, COA Deputy Chiefs make about \$11,000 more than CEA Deputy Chiefs.

The issue of the top salary upon promotion cannot be overstated. I have calculated the total earnings of individuals in comparable ranks over the six year period in which it takes a CEA member to reach top salary plus two years of 4% increases and COA members with a continuing top salary for four years plus an increase of 2.15 % +\$936 in the first year of this award and a 3% increase in the second year of the award. Over those six years the COA Captains earn about \$80,000 more than do their counterparts in the CEA.

When comparing COA Captains with CEA Captain Commanders over that same period of time, I find that the COA Captains earn more than \$116,000 more than the CEA people. The same analysis results in a finding that COA Deputy Inspectors earn about \$48,000 more than individuals holding the same rank in the CEA.

COA Inspectors earn about \$24,000 more than CEA Inspectors over the six years in question. The only title in which CEA personnel earn more over the six years under analysis is Deputy Chief or Assistant Deputy Chief depending on which group is being described. In that case, the CEA officers earn about a total of \$15,000 more than those in the COA.

These data make certain things clear. Except at the level of Deputy Chief, under the analysis I have done, the COA aggregate salaries over a six year period are substantially higher than their most significant comparator. It is true that the top salary in two CEA ranks is higher than the comparable COA rank. However, in one of those ranks, Inspector, the COA aggregate salary is significantly higher.

I must also stress that these facts become ever so much more important when one considers the economy at this time as compared to when the CEA contract was negotiated. In short, there can be no question that these times are incomparably more difficult than when the bargaining for the CEA contract was done.

Under these facts set forth above, a reliance of a specific salary at a given point in time can distort the larger picture. In this case, one cannot compare salaries at two different points in time. It is also misleading to disregard the effect of a four step salary schedule as compared to a single step schedule. What is in common is the title. It is highly relevant when one set of officers takes four years to reach top salary and the other one does so immediately. Just as one cannot compare the salaries of one group of commanding officers after getting 4% raises in years that are the subject of this proceeding with the petitioners in this case who are seeking wage increases for the two years under review, one cannot ignore the earnings accrued over the four years it took for the CEA personnel to get the top salary for a particular title. I must compare *apples with apples* and the picture painted by doing such an analysis is very different from simply listing the top salaries of individuals holding particular titles.

Finally, there was at least one side agreement between the NYPD and the CEA requiring additional days and hours of service. Therefore, while the CEA received 4% per annum

increases, they also agreed to work additional hours and days. Working additional time has not been part of the discussions in this case.

In this context, the PBA MOA has several itemized concessions in it. These items must be considered in the context of the wage increase. Furthermore, this issue highlights the matter of the COA seeking benefits that other units may have gotten through bargaining over the years. The benefits in the agreements may be the subjects of current argument while the concessions given to achieve them may not be.

Second and perhaps more important, the bargaining for these agreements began long before the financial collapse in 2008. The MTA's ability to pay was far better than it is at this time. Thus, if 4% increases were affordable as far back as four years ago, they may not be feasible in this economic climate.

As part of its demands the COA requested a salary increase of 2.15% + \$936. I conclude that the \$936 demand was for each of 20 unit members. The cost of \$936 per member is \$18,720 or, based on a \$38,430 *one percent number*, an additional .5%. Thus the actual cost of the 2.15% + \$936 (per member cost) is 2.65%. The CEA also proposed 4% across the board increases as well a 5% increase at the Captain's level.

In the aggregate, the COA proposal comes to an increase of more than 7% in the first year and at least 4% in the second. That is far in excess of the MTA's ability to pay. This is even greater than the awards issued in 2008 but negotiated earlier.

In the context of the complete award, the COA will receive wage increases of 3% in the first year of this award. This will satisfy the COA need to maintain parity with the PBA. The COA is also awarded a 3% increase in the second year of the award.

In terms of the cost of such an increase, the parties agreed that the 1% number in this case is \$38,430. Therefore, the total un compounded cost of the wage increase in the first year of this award will be \$ 115,290 and the cost of the 3% increase in the second year of this award is also \$115,290. The total un compounded cost is \$230,580. This number does not take into account corresponding increases in FICA and the like.

The COA argued that such a cost is a miniscule fraction of the total MTA budget. That may be but one cannot compare percentage increases on the one hand and total cost on the other.

Smaller bargaining units cannot be either disadvantaged or advantaged because of their size. In this regard, since smaller units may have less influence, they frequently fare more poorly because of their size. Reliance on percentages is more likely to result in equitable treatment.

In short, the issue of equity notwithstanding, each set of negotiations must be considered on its own merits in the context of the Taylor Law standards.

The final portion of this section of the award concerns the date on which the increases become effective. They are retroactive to June 9, 2009.

The combination of the analysis set forth above, the bargaining history of the CEA and PBA and the extraordinarily challenging financial climate leads me to conclude that the wage increases set forth above are appropriate.

LONGEVITY

A second important *money* issue to be resolved relates to longevity payments. It should be pointed out that COA members currently do not receive longevity payments. As noted above, the best comparator in this case is the CEA.

The COA asserted that members of the CEA receive longevity payments of \$8,745. The

MTA pointed out that this statistic reflects the longevity payments received by CEA members after 20 years of service and sets forth those payments as of May 2011 rather than the period prior to 2009.

A review of the CEA collective bargaining agreement covering 2003-2012 reveals that the CEA longevity payments are graduated in five year increments. As was true of the data presented by COA with respect to wages, the information presented reflected the longevity payments (\$8745) are those in effect as of May 2011 and not as of the date when COA sought the awarding of longevity payments. Additionally, the COA presentation contained only the CEA longevity payments made after 20 years of service. In fact there are longevity payments after five, ten, fifteen and twenty years of service with the payments for fewer than 20 years of service being smaller than those received after 20 years of service.

I reviewed the 2003-12 CEA collective bargaining agreement and found that the longevity payments received by CEA members in 2008 were awarded in 2003 and were given once every five years after an employee had completed five years of service.

The CBA suggests that CEA members had been receiving longevity payments prior to 2003. Thus, there was a history of bargaining over longevity payments that led to the payments set for 2003 and then again in 2011.

As has been noted before, there is no such history here. This round of bargaining is the first one for the COA.

To the extent that comparable bargaining units receive longevity payments, the COA is awarded such payments. However, they are awarded in the context of the limited resources that the MTA has available and given that this matter has never been negotiated before. Moreover, as

I have previously stated, the COA cannot achieve parity with comparators who have negotiated longevity increases over an extended period of time and, as a consequence of bargaining, needed to make concessions in order to gain benefits.

Finally, in the presence of an existing schedule of longevity payments, the analysis relative to longevity payments concerns the amount or rate of increase of such payments. That same approach must be used here with the understanding that the increase is over an absence of any longevity payments.

That being said, longevity payments will be made on the June 9 of the year after the employee has completed his/her fifth, tenth, fifteenth and twentieth years of service. This approach is similar to the one reflected in the CEA contract. The amount awarded at each interval is as follows: After the fifth year- \$750; the tenth year-\$1,000; the fifteenth year- \$1,250; the twentieth year- \$1,500. This element of the award is effective as of June 9, 2010, the first day of the second year of this award.

The membership of the COA is such that there is one member with five years of service, three with ten years, nine with fifteen years of service, and six with twenty or twenty five years of service. The cost of this benefit for one year is \$24,000 or .62% of the 1% number.

ANNUITY FUND

The COA demanded a \$1,000 annual contribution to the 401K accounts of each member. It further requested that this amount be increased to \$1,261 as of June 29, 2010. Its request was to have the same annuity fund as the one currently enjoyed by the PBA.

The MTA observed that annuity fund contributions for PBA members hired after the ratification date of the agreement had been eliminated. It added that the incumbents received an

increase of \$261 in the annuity fund contribution on October 15, 2010.

The record indicates that the CEA has an annuity fund as part of its contract. However, the fact that the MTA has discontinued contributing to an annuity fund for the MTA PBA must be given great weight. Moreover, the increase of the total cost of this contract that would be attributable to inception of an annuity would be inappropriate in this economic climate.

The record suggests that 401K plans are available to COA members but are non-contributory by the MTA. In the absence of an extant annuity fund to which the MTA contributes and the discontinuance of the contributory annuity fund for new PBA hires, this demand is denied.

LINE OF DUTY DEATH BENEFIT

The COA demanded a death in the line of duty benefit similar to that received by the PBA and CEA. The MTA estimated the cost of this benefit to be under \$100 per month for the entire unit.

COA members are law enforcement personnel who face dangerous situations. As police officers, they are placed in life threatening predicaments and their families should be protected in the unfortunate event that they expire as a result of an injury sustained in the performance of their duties.

The cost of this benefit is minimal (.04%). This benefit must be awarded prospectively since the insurance policy required to provide the benefit does not exist. With the awarding of this demand, the MTA will make the necessary arrangements in order to provide for the \$25,000 death in the line of duty benefit. This benefit is awarded as of June 8, 2011.

LAYOFF PROCESS

Simply put, the issue here relates to the manner in which layoffs are done. The COA argued that layoffs, where necessary, should be done in reverse seniority order. The MTA asserted that layoffs should be at the discretion of the Chief.

The underlying theory of the MTA is that the Chief knows the needs of the department and can determine the skill set needed by commanding officers if the department is to function properly. I have great respect for the Chief, however, a unit of 20 people is very different from one with a much larger number of employees. Larger groups tend to be more specialized in the work they do while there is a greater degree of overlapping assignments in smaller ones.

I understand the Chief's need to have commanding officers in place who can fulfill the needed duties. However, I am persuaded that there is sufficient talent and experience within the corps of commanding officers that the department will not suffer as a result of layoffs being based on seniority.

I hasten to add that the layoff provisions applicable to the CEA are based on seniority. I have identified the CEA as the best comparator for the COA and find no basis for establishing a layoff provision for the COA that differs from that of the CEA. Thus, the COA demand to have layoffs, when needed, done in reverse seniority order is awarded.

It is clear that there is no cost specifically attached to this matter. Therefore, it will not appear as a cost item. This provision is awarded as of June 8, 2011.

RELEASE TIME

The COA initially demanded release time for union activities in the amount of 5,000 hours per annum. It based the demand on the fact that the PBA gets 12,652 hours of release

time.

The COA subsequently calculated that there are 650 members of the PBA and that the per member time allocation is 19.5 hours. With this recognition it concluded that an allocation of 19.5 hours for 20 members is 390 hours. The COA then reduced its release time demand from 5,000 to 392 hours. The COA calculated the cost of 392 hours of release time as \$36,213 or .94%.

The COA indicated that the release time is needed for matters such as negotiations, union management, EEO complaints and the like. With that being said, there is no record of the number of hours devoted to negotiations. There were no grievances filed previously because there was no CBA. Chief Coan testified that there have been no disciplinary hearings held in more than 2½ years. He added that there were no EEO complaints in 2009 and four of them in 2010 (according to Chief Coan one of the complaints involved the entire department).

The role of the COA in the EEO complaints is not clear. The number of hours invested in these matters is equally unclear.

This is the first round of bargaining in which the COA has been involved. The fact that other units get release time may be true but there needs to be some rational basis for the demand. The record created at the hearing provides little or no evidence that can be the basis for the determination of the appropriate number of hours of release time.

The COA wisely reduced the demand for release time hours from 5,000 to 392. That was based on the number of release time hours per PBA member. However, what remains missing is the justification for 392 hours of release time for a 20 person unit.

Under the circumstances, I have no way of deciding if 392 hours are needed. There is no

way of knowing if the COA expends more than 392 hours on union business. Is the correct number fewer than 392? It would behoove the COA to assemble data in support of a proposal of this type.

Such an award involves the allocation of money at a time when money is in short supply. In the absence of relevant information, I have no choice but to deny the demand. As a consequence I need not comment on the MTA's position relative to the appropriateness of an award in this area.

CONCLUSION

These are exceedingly difficult economic times. This award is reflective of the need to balance the needs of employees who render valuable and quality service against the financial pressures experienced by a public agency that is dependent upon public funds. The aggregate uncompounded cost of this award is slightly above 3.3% per year of the award. Such a cost without offsetting concessions is fair and appropriate. Thus, based on the above, I make the following

AWARD

1. **TERM-** This Award shall cover the period June 9, 2009 through June 8, 2011.
2. **SALARY-** Amend the base salary such that the salary schedules in effect on June 8, 2008 will be increased by the following percentages:
 - As of June 9, 2009- 3%
 - As of June 9, 2010- 3%
3. **LONGEVITY PAYMENTS-** Effective June 9, 2010, establish a schedule of longevity payments as follows:
 - After the fifth year of service- \$750
 - After the tenth year of service- \$1,000
 - After the fifteenth year of service- \$1,250
 - After the twentieth year of service- \$1,500

4. ANNUITY FUND- The COA demand is denied.

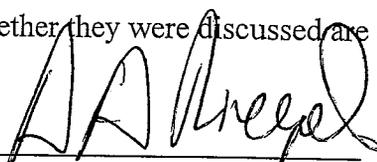
5. LINE OF DUTY DEATH BENEFIT- Effective June 8, 2011, the MTA shall establish a \$25,000 benefit for members of the COA who die from an injury sustained in the performance of their duties.

6. LAYOFF PROCESS- Effective June 8, 2011, layoffs will be effected in reverse seniority order.

7. RELEASE TIME FOR UNION ACTIVITIES- The COA demand is denied.

8. All other proposals of the parties irrespective of whether they were discussed are denied.

Dated: June 28, 2011
Hewlett Harbor, NY

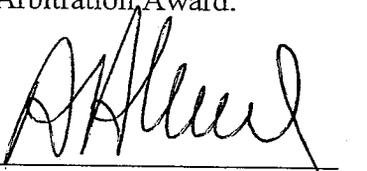


ARTHUR A. RIEGEL
PANEL CHAIR

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual describe in and who executed the foregoing instrument which is my Opinion and Interest Arbitration Award.



ARTHUR A. RIEGEL, ESQ

EMPLOYER PANELIST

I, Richard Cairns, Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|--|---|--|
| 1. Term- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 2. Salary Increase- | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |
| 3. Longevity Payments - | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |
| 4. Annuity fund- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 5. Line of duty death benefit- | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |
| 6. Layoff process- | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |
| 7. Release time for union activities - | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 8. All other proposals- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |

DATE:

June 28, 2011

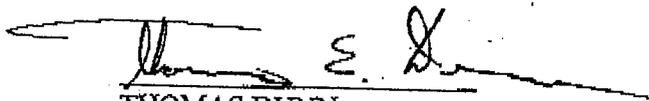
Richard J. Cairns
RICHARD CAIRNS

EMPLOYEE PANELIST

I, Thomas Dunn, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|---------------------------------------|---|--|
| 1. Term- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 2. Salary Increase- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 3. Longevity Payments- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 4. Annuity fund- | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |
| 5. Line of duty death benefit- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 6. Layoff process- | <input checked="" type="radio"/> Concur | <input type="radio"/> Dissent |
| 7. Release time for union activities- | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |
| 8. All other proposals- | <input type="radio"/> Concur | <input checked="" type="radio"/> Dissent |

DATE:


THOMAS DUNN