

NEW YORK CITY



POLICE DEPARTMENT

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ARBITRATION DECISION

An unfavorable ruling was delivered by Arbiter John Sands, Esq. in the L.B.A./N.Y.C. Arbitration Case # 13084-09. This arbitration addressed two groups of grievants. The first group was those adversely affected Lieutenants promoted between November 2003 and October 2006 to Lieutenants Special Assignment/Commander of Detective Squad. The second group was those promoted between November 2006 and August 2008 to Lieutenants S.A./C.D.S. It is the L.B.A.'s position that the City of N.Y. by and through the NYPD did violate the Contract-Article VI Salary Schedule, and the Police Department's long-standing written policy concerning assignment of salary steps following promotions in that it failed to advance the aforementioned two groups of Lieutenants to salary steps which provided base salary raises following promotions above the top base pay for a Lieutenant for the years 2007 – 2009.

Following the L.B.A. reopener settlement in July 2008, a salary compression existed when reopener monies were added to top steps of salary schedules and not to the lower steps. This was done to maintain parity between comparable positions. "This issue arose because of the retroactive impact of the parties' reopener negotiations, which resulted in a compression of the salary schedules for the two ranks so that the base pay for top step Lieutenants, which grievants had been, was higher than the lower salary steps the grievants were promoted into as Lieutenants S.A./C.D.S.."

John Sands acknowledged the L.B.A. examples documenting the Department's long-standing "policy" that officers advancing to higher ranks earn more base pay than had they not accepted promotion. Even the testimony of Deputy Commissioner Beirne stating his memos were in no way improper was entered on the record. Sands however, embraced Commissioner Hanley's response: "that Agencies have no authority to interpret City contracts or, aside from limited 'de minimis' situations that do not come to OLR's attention, to administer pay steps to place employees at some step other than the hiring rate of the minimum...." Sands also directs, "that whatever past practice may exist is superseded by the clear and unambiguous contract language requiring payment of the agreed salary rates....The parties' contract is silent on the Department's authority to determine the salary step at which to place newly hired and promoted employees." Sands ruled that the City did not violate any contract provision.

Similar to the Grossman arbitration decision, Sands noted that the L.B.A. has no contractual right to grieve a violation of City “policy.” He defines a grievance as:

1) a claimed violation, misinterpretation or inequitable application of the provisions of the contract

2) a claimed violation, misinterpretation or misapplication of the rules, regulations or procedures of the Police Department affecting terms and conditions of employment...

Sands indicates: “the definition does not include a ‘policy’ that the Police Department has not issued as a formal rule, regulation or procedure. The memoranda L.B.A. cites as evidence of the policy at issue are not formal rules, regulations or procedures of the Department and accordingly do not come within my authority as arbitrator to enforce as a contractual mandate.”

I am very disappointed with Arbiter Sand’s Opinion and Award being entirely in favor of the City. I feel he yielded to the difficult economic times of today as well as to the possible impact on the other uniformed unions. I feel his decision is weak and much of it mirrors the Grossman ruling which he even referenced. He fully understood the L.B.A. position yet ruled against us.

John Sands concludes his findings with the following “...In addition, nothing in the record supports a finding of bad faith or unfair dealing. True, the impact of the agreed salary compression makes no sense; as a general human resources principle, employees whose exemplary service merited promotion should not be compensated less well than if they had not been promoted. But this is a contract case, and arbitrators do not sit to enforce general principles of human resources or to dispense their own brand of industrial justice.”

Thomas R. Sullivan
President