

The open issues identified in the petition, admitted and supplemented in the response, are as follows:

1. Salaries
2. Retirement plan
3. Amendment of language that holds harmless any officer for any incident arising from employment

The named documents indicated that agreement has been reached by the parties on the following items:

1. The term of the contract shall be for a duration of one year.
2. The clothing allowance shall be increased \$25.00.
3. Overtime work shall be compensated at the rate of time and one-half.
4. Tours of duty shall be changed as agreed.
5. All other terms of the expired contract shall be continued except as amended herein or in negotiations.

A hearing in this matter was held in the PERB offices, Albany, New York, on Thursday, October 13, 1977, by the designated Panel. Both parties had a full opportunity to be heard and to present evidence, testimony and argument in support of their respective contentions. Except for an attorney, whose oath was waived, all witnesses were sworn. A record of the hearing was made and the transcript (T) received October 31, 1977.

Executive sessions of the Panel were held on Wednesday, November 9, and Tuesday, November 15, 1977. By a majority vote of the Panel a determination was made with respect to the issues pre-

sented for resolution and the Chairman was authorized to draft this document.

UNION'S POSITION

For the convenience of witnesses it was agreed that the issue of retirement should be taken up first and the save harmless clause second rather than in the order of appearing above.

1. RETIREMENT

The Association submitted a summary of New York State Municipalities that have 25-year retirement (Sec. 384) and/or 20-year retirement plans, (Sec. 384-d) taken from printout sheets from the New York State Policemen's and Firemen's Retirement System for the period July 8, 1977. The printout sheets were available at the hearing.

The summary showed the number and type of governmental agencies or municipalities having the various plans as follows:

	<u>20-Year Plan</u>	<u>25-Year Plan</u>	<u>20 & 25 year Plans</u>
Cities	1	20	36
Towns	6	12	36
Villages	16	54	60
Counties			3

In addition, the New York State Police, and the Police Departments of New York City, New York City Transit, New York City Housing and the Port Authority of New York and New Jersey were said to have both 20 and 25-year retirement plans.

John McManaman, a Service Officer of the Police and Firemen Retirement System, appeared under subpoena as the Association's first witness. The witness explained the System's billing practice called for a billing, for example, in May, 1977 for the fiscal year ending March 31, 1976 (T. 27). It is about thirteen months after the period it covers. There is also an earlier billing based on an estimate, which is usually higher than the final billing.

The rates under Sec. 375-g are 19.4% of payroll for those who joined before July 1, 1973 and 11.2% for those joining after that date (T. 28). Section 384 retirement comparable rates are 21.4% and 14.8% (T. 31).

By law, the witness testified, municipalities must make a payment within the fiscal year of adoption of a plan (T. 32) so that the City would have to pay an estimated amount of \$8,173 before July 31, 1978, but the actual bill on the new plan would come in 1980 if it is adopted after April 1, 1978 (T. 34).

The witness testified that present law permits adoption of Sec. 384 through June 30, 1978 (T. 37).

2. SAVE HARMLESS CLAUSE (Art. 9)

The City had proposed changing the second paragraph of Article 9 to read as follows:

"In the event that an officer is faced with a civil action or suit arising out of the performance of his duties and within the scope of his authority, the City will provide legal counsel for the defense of said action or suit" etc. (T. 54)

Arthur J. Harvey, Esq. appeared as a witness for the Association and testified that the language of Article 9 was intended to be in accordance with Section 50*j of the General Municipal Law (Un. Ex. 3) (T. 55).

The witness further testified that the law directs the same thing whether it is in Article 9 or by reference to the General Municipal Law (T. 56).

The Association stated it had no objection to the use of the language of Section 50*j but saw no need for the change (T. 62) and the matter must be left to the Panel to decide (T. 83).

3. SALARIES

The Association cited the criteria set forth in CSI, Sec. 209.4 (T. 88) pointing out hazards of employment, physical qualifications, etc. are listed in addition to "ability to pay". It was contended that police in Rensselaer or State Troopers or police in any city all face hazards of employment because they are armed; wear a uniform and shield, are symbols of authority and are often resented for that reason (T. 87).

The laws of the State of New York require that all such employees meet minimum standards of weight, height, sight, hearing and education, and the law is the same for police agencies throughout the State (T. 87).

The Association proposed, with respect to salaries, the following:

Starting or 1st year	\$10,500
2nd and 3rd year	11,500
4th year	13,600

Detectives and Sergeants without permanent rank are to receive \$750 in place of the present \$500. Those with permanent rank to be increased from the current \$750 to \$1,200 (T. 88).

Introduced as Union Exhibit 4 was the U.S. Department of Labor, Bureau of Labor Statistics, cost of living index for August, 1977, and the Association pointed out that it showed a twelve-month increase of 6.6% (T. 89).

The Association submitted a news item relating to the Governor's explanation for the resignation of top level officials which also quoted the State Department of Labor as showing that the average manufacturing and production worker in the State earns \$220 a week or roughly \$11,500 a year (Un. Ex. 5) (T. 90).

As its Exhibit 6 the Association submitted a news item dated October 1 which it said appeared in the New York Times. It stated

that Federal employees had been granted slightly above a 7% salary increase.

An informational release of the U.S. Supreme Court relating to a speech by the Chief Justice, dated September 23, 1977 was introduced as Exhibit 7. The Association pointed especially to the statement that "Our society asks a great deal of its law enforcement officers. We expect that they will not only enforce the law, but wear the hat of the curbside psychiatrist, the social worker, legal adviser, minister and sometimes doctor. Few, if any officials in our society are given the breadth of discretion and heavy responsibility that our police are asked to carry on matters affecting the daily lives of 220 million Americans." (T. 98)

Exhibit 8, Chapter 444 of the Laws of New York, was introduced in evidence to show the increases in salaries for State employees, effective April 1, 1977 and 1978. Attention was called to the fourth year Trooper's salary of \$15,095 in 1977 and \$15,910 in 1978. Also mentioned was Paragraph 11 which provides \$432 to the same level troopers for pre-shift preparation and briefing time, bringing those troopers' income to "almost \$16,000" (T. 100)

A PERB study, "First 1977 Report of Salaries for Police Personnel in NYS" was submitted as Exhibit 9. Attention was called to

the salaries and other benefits, such as longevity and 25-year retirement in a number of cities, towns and villages, including Cohoes, Watervliet and Glenville (T. 100-104).

Exhibit 10 is a similar PERB study of police salaries dated September, 1977. Among the municipalities mentioned were Glens Falls, Gloversville, Mechanicville, Schenectady, etc. and also the prevalence of longevity and 20 and 25-year retirement plans (T. 107-110).

The Association presented as Exhibit 11 a copy of the contract between the City of Troy and Troy PBA that expired December 31, 1976. It provides for 20 and 25-year retirement plans, salaries after two years of service of \$12,123, and longevity payments that amount to \$613.80 (T. 111).

The Association contended that the current City budget (Jt. Ex. 2) provides sufficient moneys to grant police the increase and retirement plans sought (T. 114).

Items of the budget particularly mentioned were A 3120-1 (police salaries) providing \$17,500 for "Contingency-Non Negotiated Contract" and A 1990, a "Contingent Fund" of \$3,000. The total could provide 7.4% salary increase without additional taxes (T. 113). Item A 5110 "Capital Improvements" shows \$5,000 more than the previous year and Item 2610 "Fines and Forfeited Bail" has been adjusted downward from the actual, the Association said (T. 114).

Additional arguments were made on the issues which the petition and the City's response showed had been settled in negotiations, but which the City now states should be considered only as part of a total package (T. 115-117).

Through cross-examination of the City's witness the Association brought out that there are 28 employees provided for in the budget while the roster shows only 25 policemen presently employed (T. 138). It was also suggested that the vacation budget item of \$12,000, representing three men for that purpose, may or may not be used (T. 139-140).

An effort was made to establish that a large portion of a check in the approximate amount of \$109,000 for back taxes from the railroad was a windfall (T. 145).

CITY'S POSITION

The City objected to much of the evidence submitted by the Association, particularly with respect to compensation paid police in other municipalities. The objections were based on grounds that no proper foundation had been laid to indicate that the communities cited are comparable to the City of Rensselaer (e.g. T 105).

As its only witness the City called John J. Dwyer, City Treasurer for twenty years, who stated that he had been a member of the City team which had attempted to negotiate the renewal agreement

with the police (T. 118). The team had offered the following:

1st year	\$ 9,100
2nd & 3rd years	9,950
4th year	10,550
5th year	11,150
6th year	11,850

The City had two detectives who were offered \$500 and four Sergeants \$750 over the sixth year salary (T. 119). In addition the clothing allowance would be increased by \$25.

The witness testified that the starting salary had been kept at the level of the previous contract because there were a large number of applicants who took the last test and the City felt that a man should serve a kind of probationary period before receiving an increase (T. 121-122).

It was testified that the percentage increase without increments would amount to 4.8% and with the increments would be 6.36% (T. 123).

The witness testified that the Firemen's Association had been granted a raise of 6.66% (T. 124) and the blue collar workers represented by CSEA 5.99%. Other employees received increases of 3.82% (T. 126).

Mr. Dwyer testified that the budgeted police salary contingency item of \$17,500 included \$4,000 to cover the increments provided for in the expired contract (T. 127).

It was contended by the witness that the \$5,000 increase in the fund for capital improvements referred to by the Association was for street repairs, sewers, etc. (T. 128).

It was testified that the \$8,000 figure for fines and bail forfeitures is an accurate figure and a part of it goes to the State (T. 128-129).

The total assessed value of the City was put at \$18,260,642 (T. 130).

Concerning its ability to pay, it was testified that the City had already lost one manufacturer and that General Aniline Corporation had recently stated it might sell its plant (T. 130). The latter property represents an assessed value of \$2,340,000 and a tax payment of \$181,542.

The City witness suggested Hudson, Johnstown and Gloversville as cities comparable to Rensselaer, or at least they were used by the negotiating team for that purpose.

Concerning the check for back taxes received from the railroad, the witness stated \$29,000 belonged to the county, and the City has not yet decided to accept the check as a compromise of the total amount actually due (T. 144-145). In addition, it was contended, the non-payment of taxes by the railroad had created deficits in past years that had caused the City to borrow money to make up the difference (T. 147).

It was brought out that deficits had occurred last year and in Fiscal Year 1975-76 for a total of about \$100,000 (T. 158).

The City proposal for a language change was cited above. The City argued that it cannot legally provide defense to police under any and all circumstances (T. 55, 58 and 64). It was also stated that the City would be willing to accept Municipal Law Article 50-j in lieu of the language it had proposed (T. 63).

DISCUSSION AND FINDINGS

The open issues will be taken up in their original sequence as listed in the introductory portion of this document.

1. SALARIES

The parties are in disagreement as to what communities are comparable to Rensselaer to meet one of the mandated criteria to be considered (CSL, Sec. 209.4 (v) a).

In effect the Association contended that police work is very much the same wherever it is performed. Police are exposed to the same hazards and must measure up to the same physical, mental and educational requirements anywhere in the State. There was no challenge to comparisons made with regard to matters that are peculiar to police work (Sec. 209.4 (v) c), but the City did object to the use of municipalities that may have a different economic status, such as Westchester County cities (T. 106) in making comparisons.

The City contended that assessed value, full value and ability to pay are important for the purpose of comparisons (T. 41) and that the area should be considered (T. 90 and 165). In selecting cities it considered comparable, however, it went out of the immediate area to Hudson, Johnstown and Gloversville but failed to identify the bases for comparability. East Greenbush was also mentioned.

In view of the evidence and the positions of the parties the Panel concluded it would be fair and reasonable to focus on small area cities, and, as requested by the City (T. 168), to develop data that would show reasonable comparability. In doing this we have not excluded from consideration the PERB studies and other evidence submitted by the parties.

In bringing the comparisons back to the Capital District, we have not given great weight to communities that obviously present a different environment. The larger central cities of Albany, Schenectady and Troy have problems peculiar to themselves. Each has higher educational institutions, large police forces, heavily concentrated traffic and problem areas. Towns and villages also were not given great weight. Some of them have populations with higher median incomes, some rely heavily on State and County police to provide protection, and in some, traffic control is hardly a problem.

For these and other reasons we have focused on several small, non-central Capital District area cities. They all have a mix of retail and manufacturing enterprises which tend to generate police work over a fair range from traffic control to felonies and help to provide the revenues for essential police services. These cities are Cohoes, Watervliet and Mechanicville. They represent a small sample but in our opinion they are fairly comparable to Rensselaer in significant ways.

Really up-to-date data are not readily available so we have relied on the periodically published New York State Department of Commerce "Business Fact Book" which provides a profile of business, industry, people, jobs and housing in the Capital District area communities. Some of the significant data taken from this source are as follows:

	<u>Rensselaer</u>	<u>Cohoes</u>	<u>Wⁱvliet</u>	<u>Mechⁱville</u>
Popula- tion (1970)	10,136	18,653	9,232	6,247
Median Age	29.8	32.8	35.9	32.1
% in Labor Force (1970)	58.8	60.2	59.2	54.9
Median Family Income (1969)	\$9,935	\$9,207	\$9,534	\$9,637
R.E. Taxes Per M true val. (1974)	\$48.08	\$49.40	\$35.05	\$47.60
Total Mfr. Payroll (ooo) (1972)	\$25,400	\$16,400	\$44,000	\$9,800
Retail Trade (ooo) (1972)	\$19,842	\$22,992	\$18,108	\$23,557

No two cities are identical and no set of statistics have gained acceptance as establishing strict comparability. Among the cities used in our sample, Rensselaer is slightly below the average in population; has the lowest median age (sometimes held to be a factor in creating police problems); is in the middle in percentage of population in the work force. Three of the cities are fairly close in real estate taxes; and the indicators of manufacturing and retail trade show a significant mix.

A comparison of police salaries and some important fringe benefits in the same cities shows the following:

	<u>Rensselaer</u>	<u>Cohoes</u>	<u>W^lvliet</u>	<u>Mech^tville</u>
Entry level	\$ 9,100	\$ 9,929	\$10,171	\$10,441
Top of Scale	11,300	11,067	12,331	12,243
Years to top	6	3	6	3
Sgts.	+750	\$11,765	\$13,246	\$12,743
Longevity	0	\$150 (X 4)	\$100 (X 3)	\$250 (X 4)
Clothing Allowance	\$225	Initial + \$150 draw	Initial + \$125	\$200
Overtime	1¼	1½	1½	1½
Holidays	11	12	12	11
Retirement	Age 55	20 & 25 yrs.	25 yrs.	25 yrs.

Salary information was taken from 1977 PERB studies. Except for Rensselaer all are for the calendar year 1977. Rensselaer

salaries are from the contract which expired July 31, 1977. Fringe benefits were reported in a 1976 PERB study.

The comparative data on compensation speak for themselves. Rensselaer is quite low with its \$9,100 starting salary, but the City argues it has been able to recruit at that level and would retain that figure. The budget for ~~fiscal~~ ^{shows 10 men} year 1978/or about 40% of the force at the first year salary level.

A high turn-over rate suggests a failure to attract young men seriously interested in police work as a career. With high unemployment it is possible police jobs are being used as temporary refuge until other jobs more attractive come along. A large percentage of inexperienced police in the force can hardly be found to be in the best interest and welfare of the public.

At first glance it would appear that Rensselaer compares favorably with Cohoes at the top level of the pay scale. However, the Cohoes police reach \$11,067 at the end of three years at which time Rensselaer police receive \$10,200. In addition, Cohoes grants a longevity increase at five, ten, fifteen and twenty years, so that a policeman there receives \$11,217 in his sixth year and his counterpart in Rensselaer is at \$10,700; only in his seventh year does he go to \$11,300.

The differences in salaries paid at the various years of

service levels are much greater in Watervliet and Mechanicville.

Concerning the criteria of ability to pay, the City did not explicitly plead inability to provide a fair and reasonable salary increase. It pointed to actual and potential losses in the tax base with the closing of one plant and the possible sale of another.

It also cited budgetary deficits in past years and the impact of the Penn Central Railroad bankruptcy, but the record reveals no explicit contention that it is in difficulty.

Whether or not funds can be found within the framework of the budget may be of interest, but in and of itself a budget is not of critical evidential value in resolving the question of ability to pay. Even though it may not have in the labelled items funds equal to whatever economic increases may be awarded, it cannot be accepted as a final bar to a fair and reasonable settlement.

The Association here seeks salary increases far greater than those necessary to offset the inflationary index. For the most part its argument may be viewed as an effort to catch up with salaries throughout the State. Combining that demand with a demand for an improved retirement plan that will cause an outlay in 1978 of some \$8,000, it is fair to say that the impact on the taxpayer would be considerable.

Taking into consideration all of the above, it is the Panel's

opinion that a fair and reasonable increase should recognize the rise in the cost of living. This will be done by applying 6.6% to the base or entry level to bring it to \$9,700 in the award. The increments previously used by the parties will be retained, but the time required to reach the top will be shortened by eliminating the present stand-still years (third and sixth) and the seventh. This will result in a pay schedule, using the format of the previous contract, as follows:

Start or 1st year permanent	\$ 9,700
Second year	10,300
Third year	10,800
Fourth year	11,300
Fifth year	11,800

It will further provide that after 10 years of service a longevity payment of \$200 will be added. Not only are longevity payments generally granted throughout the State, but they also appear in all the area cities used for comparison. Speaking generally, they vary in amounts and incidence. In deciding on a single payment of \$200, consideration was given to the impact of the total economic package that has been found necessary to bring Rensselaer police compensation, including fringe benefits, into a reasonable relationship with comparable communities and wage settlements generally.

The Association also sought to have the differential for

Detectives and Sergeants without permanent rank increased to \$750 in place of the current \$500 and for those with permanent rank to \$1,200. We find no evidence to support an increase of such magnitude and our own study of comparable area cities fails to justify a change in the present differential.

2. RETIREMENT PLAN

The present plan covering the police of Rensselaer provides for retirement at age 55, referred to as Section 375-g of the applicable State law (T. 17). The Association here seeks a change to a plan that makes the member eligible to retire upon completion of 25 years or more of credited service with an allowance of one-half of final average salary. It is referred to as Section 384.

In support of its position the Association submitted a list of more than 240 cities, towns and villages in the State that have adopted 20 or 25 year plans.

The City argued that such a change represents an additional cost that has not been provided for in the budget and that the City by implication cannot afford it.

The cost of the proposed retirement plan, Section 384, represents for the year 1978 an estimated increase of 2% for employees hired before July 1, 1973 and 3.6% for those hired after that date (T. 44).

The evidence in favor of the 25-year plan is impressive and our study of small area cities shows Cohoes has the 20 and 25-year plans while Watervliet and Mechanicville have the 25-year plan. Apparently a very large number of municipalities recognize the force of the argument that police work can be best performed by those who are young and physically able. The safety of the individual and the interests of the public are better served, particularly in emergencies, by that type of person.

For these reasons the Panel will award a change to the 25-year retirement plan effective June 1, 1978.

3. SAVE HARMLESS CLAUSE

Article 9 of the expired contract contains language that the City believes obligates it to provide counsel and hold harmless a police officer under circumstances that exceed the legal limits imposed on municipalities (T. 69).

The Association's witness testified that Article 50-j of the General Municipal Law covers the situation as far as the legal obligation of the City is concerned (T. 64).

While it may be a redundancy to repeat in a contract something that is required by law, the Panel will substitute the language of Article 50-j, paragraph one, for the second paragraph of Article 9 of the contract in order to avoid misunderstanding as to the City's obligations in the described situations.

A W A R D

After full and careful consideration of the evidence, the Public Arbitration Panel, having been duly designated by the New York State Public Employment Relations Board, by a majority vote of its members, awards as follows:

The contract between the parties which expired July 31, 1977 shall be renewed with the following amendments:

1. The new contract shall be for a period of one year from August 1, 1977.
2. Salaries and other changes where applicable shall be made retroactively effective as of August 1, 1977.
3. The "Annual Compensation" article of the contract shall be changed to provide as follows:

Start or 1st year permanent	\$ 9,700
Second year	10,300
Third year	10,800
Fourth year	11,300
Fifth year and up	11,800

A longevity payment of \$200 will be added to the annual salaries of those who have completed ten years of service with the Department.

The differential for Identification Officers, Detectives and Sergeants shall remain as provided in the expired contract.

4. Effective June 1, 1978 the retirement plan will be changed to Section 384, providing retirement after 25 years of service.

5. The second paragraph of present Article 9 shall be deleted and the following language added:

"The City shall be liable for, and shall assume the liability to the extent that it shall save harmless, any duly appointed police officer of the municipality for any negligent act or tort, provided such police officer, at the time of the negligent act or tort complained of, was acting in the performance of his duties and within the scope of his employment."

6. Present Article 3 shall be amended to provide a clothing allowance of \$250 payable the first pay period of December.
7. Present Article 15 shall be amended to provide that each member of the Department shall be compensated at the rate of time and one-half ($1\frac{1}{2}$) for all hours worked over eight hours in a day.
8. A new provision shall be added to provide as follows:

"Tours of Duty - Members of the Department shall be assigned tours of duty as follows:

"First Tour	12 midnight - 8:00 a.m.
Second Tour	8:00 a.m. - 4:00 p.m.
Third Tour	4:00 p.m. - 12 midnight"

If not already implemented the new schedule for tours of duty shall be put in effect two weeks from date of this award.


William A. Hazell, Chairman and
Public Member


William J. Courlis
Employee Organization Member

Philip R. Murray, Esq.
Employer Member

STATE OF FLORIDA)
COUNTY OF BREVARD) ss.:

On this 3rd day of January, 1978, before me personally appeared WILLIAM A. HAZELL, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Lea S. Stokely

Notary Public, State of Florida at Large
My Commission Expires Aug. 2, 1980
Bonded By American Fire & Casualty Company

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this 22 day of December, 1977, before me personally appeared WILLIAM J. COURLIS, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Virginia Fucetta

VIRGINIA FUCETTA
Notary Public, State of New York
Residing in Albany County
Commission Expires March 30, 1979

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this 29th day of December, 1977, before me personally appeared PHILIP R. MURRAY, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Thomas A. Bresler

Notary Public
My comm expires 2/21/79