

Pursuant to the provisions of Section 209.4 of the Public Employees Fair Employment Act, the New York State Public Employment Relations Board, on September 26, 1978, designated the undersigned Public Arbitration Panel to make a just and reasonable termination of the matters in dispute.

Hearings were held in the City Court Room at Rensselaer City Hall on Friday, November 17, 1978, and Saturday, November 18, 1978, at which time the parties were afforded full opportunity to present arguments, exhibits, and testimony - and to cross-examine adversary witnesses fully to develop their respective positions. The record was closed at the conclusion of the November 18 hearing.

Appearances were as follows:

For the Rensselaer
Police Association

Brian J. O'Donnell, Esq., Attorney for
Rensselaer Police Association

Mr. Henry Sobota, Witness

Ms. Jean Rogers, Witness

Mr. Fernando J. Di Tullio, President of
Rensselaer Policemen's Association

Mr. Richard Buono, Vice President of
Rensselaer Policemen's Association

For the City of
Rensselaer

Richard F. Reilly, Esq., Corporation Counsel,
Attorney for the City of Rensselaer

Mr. John Dwyer, Treasurer, City of Rensselaer,
Member of Board of Public Safety

Mr. Harry Beaudin, City Clerk, City of
Rensselaer, Member of Board of Public Safety

Mr. James Stark, Chief, Rensselaer Police
Department

Mr. Joseph Mink, Mayor, City of Rensselaer

The issues before the Panel, having been enumerated in the petition and response of the respective parties, will not be restated here. However, at the outset of the hearing, the Union withdrew two of its eleven proposals, specifically, Nos. 7 and 11 of Schedule B appended to the Association petition. Proposal No. 7 consisted of a request for a change in Article XIX of the agreement which would have provided a 20-year retirement plan in place of the existing 25-year plan. Item No. 11 was a proposed new article which would have provided for minimum shift staffing for each tour of duty.

II. POSITIONS OF THE PARTIES

In its presentation, the Union grouped its proposals into three areas; namely, (1) the direct money package, (2) paid leave time, and (3) insurance benefits. That sequence was adhered to by the Employer in its response, and it is being adopted by the Panel as well. The respective salary positions of the parties at the point of impasse are set forth in Table I below.

TABLE I

SUMMARY OF SALARY POSITIONS

<u>Service Status</u>	<u>Effective 8/1/77 Through 7/31/78</u>	<u>UNION PROPOSAL, for 8/1/78 through 7/31/79</u>		<u>EMPLOYER PROPOSAL, for 8/1/78 through 7/31/79</u>	
		<u>Salary per Annum</u>	<u>% Increase over '77-'78</u>	<u>Salary per Annum</u>	<u>% Increase over '77-'78</u>
Start	\$ 9,700	\$ 9,700	-0-	\$10,000	3.09
Second Year	10,300	11,050	7.28	10,700	3.88
Third Year	10,800	12,050	11.57	11,300	4.63
Fourth Year	11,300	12,800	13.27	11,900	5.31
Fifth Year	11,800	13,550	14.83	12,400	5.08
Permanent Sgts.	Plus \$750	Plus \$1,500		No change	

In substance, the Union testimony and argument is to the effect that persons in substantially comparable employment in other jurisdictions within the region receive top step salaries averaging nominally \$14,000 per annum for patrolmen. The jurisdictions cited were as follows:

- Albany
- Bethlehem
- Cohoes
- Niskayuna
- Rotterdam
- Schenectady
- Troy
- Watervliet
- New York State Troopers
- Capitol Police

With the New York State Troopers and Capitol Police excluded, the average is nominally \$13,600 per year at the top step.

The Employer contends these communities are not comparable to Rensselaer in some cases respecting qualifications and requirements - and in others respecting ability to pay. The only other Rensselaer County community cited, the City notes, is Troy and that jurisdiction, it argues, consists of a much larger city than Rensselaer.

The Union has provided a series of exhibits outlining trends in compensation of its members relative to median U. S. males - the Consumer Price Index - the Rensselaer Chief of Police - and the Bureau of Labor Statistics, Urban Family Budgets. In brief and general summary, these show that top step Rensselaer Patrolmen earned about \$40.00 per week less than the median U. S. male in 1973 and as recently as 1975, and that that difference has widened to \$67.00 in 1978. Over the period from 1972 to 1978, the Chief of Police's compensation was increased by about 63%, while the top step Patrolman has received about a 39% increase. With respect to the Bureau of Labor Statistics' annual living cost for an urban family budget for the Fall of 1977, the Union shows only the third step Patrolman, and higher, met the minimum lower budget requirement, and that even a Sergeant fell far short of the intermediate budget level which, at that time, was \$17,498.00 (Sergeant's salary was \$12,550.00). A similar comparison made for August of 1978 shows essentially similar distributions of positions of Rensselaer personnel are slightly improved. With respect to the Consumer Price Index, the Union indicates a gross increase in

the Consumer Price Index (all cities 1967 = 100) of 57.4%.

During that period, the top level of Rensselaer Patrolmen received a salary increase of 38.8%, indicating a broadening disadvantageous disparity between Consumer Price Index and salary increases from the Patrolmen's point of view.

With respect to ability to pay, the Union asserts the City of Rensselaer has enjoyed a generally declining trend in overall tax rate per 1,000 of full valuation from 1972 through 1976. Despite a reversal in direction in 1977, the Union points out that the total overall full value tax for 1977 is only a modest \$1.02 higher than it was in 1972. This represents a 2.05% increase.

The Union further argues that the Employer has available a constitutional tax margin amounting to nominally \$190,000 for the fiscal year commencing August 1, 1978. While the margin for the fiscal year commencing August 1, 1977, was \$220,000, in each of the prior years it was about \$172,000 and \$186,000, respectively, and in the fiscal year commencing August 1, 1974, it was only \$121,000.

The Union maintains implementation of its total proposed salary and longevity pay schedule would raise costs in these categories from the 1977-78 level of essentially \$291,000 to a new level of \$320,000, or by a total of about \$30,000. This would represent an increase of 10.4%.

The Employer focuses attention on certain additional aspects of Union exhibits 5, b and c, which indicate that the City of Rensselaer in 1977 had the highest overall real property tax rate in Rensselaer County, with the possible exception of some parts of Troy (depending upon school district). A similar observation was noted for the years of 1976, 1975, 1974, 1973 and 1972.

The Employer relied fundamentally upon the testimony of Mayor Joseph Mink in responding to the Union's ability to pay assertions. Mayor Mink testified that he was in his fifth year of service as the City's Chief Executive, and that he had chaired the Negotiating Committee, and had, in fact, been involved in negotiations in five different years. He testified that he was intimately familiar with the financial condition of the City which he described as being "decent" at the moment. He did, however, note that the City had a water problem resulting from the fact that it purchases large amounts of water from the City of Troy at a current rate of some 14¢ per 1,000 gallons. The City of Troy has proposed to raise the rate to \$1.00 per 1,000 gallons upon the impending expiration of a 10-year contract. This would lead to a 500% to 600% increase in the water rates, and has resulted in a conflict between the cities of Rensselaer and Troy which will be resolved by arbitration. Mayor Mink estimated that the rate would probably go to about 55¢ per 1,000, resulting in a near doubling of water rates, or about a \$100 per year

additional charge to the average household.

Additionally, the City is faced with the problem of cleaning up the Hudson River which involves rerouting of sewers to eliminate direct dumping. The cost of this project is potentially sizable and there has been no present budget appropriation for a mandated 1978-79 Hudson River clean-up program. The Mayor testified that a new program is forthcoming, and that he does not yet know how much more stringent the regulations will be on the curtailments of pollutants. He noted also that certain of the insurance policies carried by the City had been canceled and that they were currently operating on a one-year extension at higher cost. Rensselaer, according to the Mayor, is the only city which does not receive community development funds at this time. It did, in past years, receive \$198,000, most of which was employed as an interest subsidy, about \$50,000 of which went for municipal improvements. These monies were obtained in 1977, but these community development funds did not again become available for 1978.

With respect to the Union's projected budget increase, the Mayor noted that the approximately \$30,000 increased cost estimate fell substantially short of the actual potential cost since social security, retirement, and certain other fringes would also rise.

Police salaries, per se, were claimed to compare most favorably with those paid other City employees. The Mayor noted

the City Clerk, who is an official of the Public Safety Committee, receives \$13,600 - and that, although this reflects an approximate 10% increase, it is less than the salary which would be received by a fifth-year Patrolman under the City's proposal if the Patrolmen's clothing allowances, longevity pay and the like are included.

The Mayor testified that the Corporation Counsel, with 11 years' service, was receiving \$11,500 per annum - while the Purchasing Agent, with an undetermined but assuredly lengthy service record, was receiving \$9,900. Moreover, the Public Works Commissioner, who supervises some 30 to 35 employees, is paid \$13,000 - and the City Treasurer, who holds a Bachelor's Degree in Accounting, among other strengths, is receiving \$13,800 per year. Consequently, relative to other positions on the City's payroll, the Employer believes its proposed compensation structure for the Police Department to be fully equitable. Putatively, where salary increases have exceeded those offered the Police, percentage-wise, it was because these positions had suffered from cumulative neglect to the point where glaring inequities had evolved.

Additional aspects of the Union proposal in the direct pay category call for an increase in overtime payments from the present rate of time-and-one-half to double-time - a minimum of four hours' pay for overtime for all scheduled court appearances - mandatory meetings of supervisors - and mandatory in-service schools. The Union concedes that all comparable jurisdictions pay overtime at the time-and-one-half rate, but maintains that

special consideration should be forthcoming in Rensselaer as an offset against relatively deficient provisions governing other aspects of the employment situation. The Employer maintains the present provisions are equitable and that it should not be burdened unnecessarily with higher costs.

With respect to longevity, the expired agreement provided for one longevity step of \$200 after ten years of service. The Union has proposed reducing the eligibility level for this step to commencement of the eighth year of service, and the addition of three additional steps of \$300, \$400 and \$500 to become effective at the 12th, 16th, and 19th years, respectively. The Union maintains these would be more consistent with prevailing practice in comparable jurisdictions, while the Employer maintains the cost would be prohibitive. In essence, the arguments and defenses relating to salary demand were applied to the longevity issue.

Shift Differential: The Union has demanded that personnel on the third tour, i.e., 4 p.m. to 12 midnight, be paid an additional \$0.35 per hour; that persons working on the first tour, 12 midnight to 8 a.m., be paid an additional \$0.50 per hour. In support of its position, it cites shift differential payments paid policemen in the City of Troy, the City of Watervliet, and on the Capitol Police Force. The City views this as a wage payment and relies upon the same defenses as were employed in treating with the wage question.

Out-of-Grade Pay: The Union has proposed that a Patrolman working in a supervisory capacity be compensated at the supervisory pay rate. The Employer's response is that no Patrolmen do, in fact, work in a supervisory capacity, but that where people fill higher classification jobs on an interim basis, they are compensated at whatever higher rate is approved by Civil Service. In further support of its position, the Union cites out-of-grade pay provisions in Police Contracts with the jurisdictions of Cohoes, Rotterdam, Schenectady, Troy and Watervliet, respectively.

For the reasons stated below, Union demands and Employer responses encompassed in the Paid Leave and Insurance categories, respectively, are not restated herein.

III. OPINION OF THE PANEL

In the Panel's view, the best interests of both parties and the community at large are served by focusing firstly on the most pressing and immediate needs of the Employees. The merit or demerit attaching to demands which fall in a secondary priority class becomes academic if the available resources are depleted in attempts to satisfy first order needs. In addition to the intensity of needs, we must consider also the cost structure upon which we shall be pyramiding further increases, and strive for a constructive balance between compensation improvements and the degree of stress which may safely be imposed upon the community's

budget at a single point in time. This philosophy underpins the compromise developed among the Panel members. The adjustments thus developed and awarded were all found to be included within the first category, i.e., the Direct Money Package proposals. We are, therefore, omitting from the positions of the parties and the opinion of the Panel a review of the items in the second and third categories. These were deemed to be of second-order importance and not amenable to change within the budgetary limits inferred to prevail at this time.

The Panel reviewed the matter of the appropriateness of the referenced jurisdictions upon which the Union has relied and, in not insubstantial measure, concurs with the Employer that the comparability of jurisdictions like Niskayuna, Rotterdam, Schenectady, New York State Troopers, and the Capitol Police with Rensselaer is questionable. As with any averaging process, a reduction in the number of observations included reduces the representativeness of an arithmetic mean. Consistent with the provisions of Article 14 of the Civil Service Law, Section 209.4 (v), paragraph A, we are mandated to consider any relevant factors, specifically including a comparison of wages with the wages of other employees performing similar services in comparable communities. "Comparable" is, of course, a relative term since no two communities are precisely comparable; however, in addressing ourselves to this mandate, we have considered a wider spectrum of practice.¹ The

¹Communities referenced for 1978 practice were Dunkirk, Elmira, Geneva, Hudson Kingston, Norwich, Troy, Utica, Binghamton, Ithaca, Johnstown, Lockport.

referenced communities were selected on the basis of geographic location and general economic character relative to Rensselaer. In general, the salary levels of these communities disclose a rather clear trend line for top-service-step level Police People. This trend line falls somewhat short of that prevailing in a cross-section of more economically robust communities. On the basis of these data, we have constructed a new salary schedule which, along with other pertinent data, has been set forth in Table II below.

TABLE II

SALARY AWARD AND ANALYSIS

RENSSELAER POLICE ASSOCIATION and CITY OF RENSSELAER, NEW YORK

<u>Service Category</u>	<u>Salary Effective 8/1/78 - \$/Annum</u>	<u>Differential above Preceding Service Cat.</u>		<u>% Increase '78 vs. '77</u>
		<u>Effective 8/1/77</u>	<u>Effective 8/1/78</u>	
Start	\$10,000			3.1
Second Year	10,900	\$600	\$900	5.8
Third Year	11,625	500	725	7.6
Fourth Year	12,350	500	725	9.3
Fifth Year	12,900	500	550	9.3

AVERAGE PERCENT INCREASE

<u>Percent</u>	<u>No. People</u>	<u>Extension</u>
3.1	3	9.3
5.8	3	17.4
7.6	4	30.4
9.3	1	9.3
9.3	7	65.1
	<u>18</u>	<u>131.5</u>

Average 131.5/18 = 7.3%

The weighted average increase of approximately 7.3% compares favorably with the general level of increases realized by upstate New York policemen in 1978.

We have, similarly, examined the differentials paid Sergeants in other jurisdictions and find a wide diversity of practice. However, it appears the most typical minimal practice is to provide a differential of about \$900 per year. This estimate compares rather favorably with the average of five of seven towns or cities in the Union's brief as well. We have, therefore, concluded that a Sergeant's differential of \$900 above the Patrolman's salary for the service category involved to be appropriate for Rensselaer at this time.

We have, similarly, examined longevity compensation practices in other jurisdictions, and judge that minimal reasonably comparable practice for similar communities would be approached by implementing the following schedule in Rensselaer:

After 8 years	\$200/annum
After 16 years	\$200/annum
After 23 years	\$100/annum
Maximum longevity payment to any individual	\$500/annum

With respect to call-back time, it is the Panel's judgment that minimum call-back of two hours at one-and-one-half times the regular hourly rate is appropriate for the new agreement.

The final area in which we deemed adjustments to be in order at this time relates to out-of-grade work. The Union, at the hearing, extensively developed its thesis that certain

Patrolmen have, in fact, been acting as Desk Sergeants. The Employer, relying upon the testimony of Chief Stark, strenuously disputed the Union conclusion. The Panel, at this juncture, reemphasizes that it is not empowered to make a determination as to the merits of the parties' respected positions on whether Desk Sergeant responsibilities are, or are not, being assumed by Patrolmen. We do, however, believe that, as a matter of principle and fundamentally sound employee relations practice, an Employee who, over a sustained period, does, in fact, assume the duties and responsibilities of a higher grade or rank is entitled also to be compensated at the agreed-upon rate for an individual discharging such duties and responsibilities on the same basis. We, therefore, hold the following clause should be incorporated in the new agreement in the case at hand.

"Compensation for Out-of-Grade Work:
A member of the department, who is temporarily assigned to perform duties of higher grade or rank shall be paid at the wage scale of the higher grade for every day so employed commencing with the first full day of such employment, provided, however, that this section shall not apply to any temporary assignment which is less than thirty (30) days in duration and is made for the purpose of replacing an officer absent because of sickness, injury, vacation, personal leave, or similar reasons."

The salary, Sergeant differentials, salary adjustments and longevity payments constitute the items which will have a direct meaningful impact on the Employer's budget as distinguished

from the relatively incidental impact of the call-back pay and out-of-grade work provisions. We estimate the direct cost of the first three items, i.e., the cost before considering the roll-up attributable to fringe programs to be nominally \$18,500 per annum. Moreover, even with a 40% fringe roll-up, the total annual cost increase would be under \$26,000. This must be viewed in the perspective of a Police Department Budget of about \$385,000, exclusive of certain fringes, as well as a constitutional tax margin of nominally \$190,000. We are not advancing a thesis that the tax margin is available for increases and should be expended. Margins flowing from prudent management properly accrue to the benefit of the community at large. Moreover, even where, as here, a margin prevails and unmet, reasonable employee needs are documented, one may not overlook the potential interests of other groups. However, even in this age of tax revolt and disenchantment with some government services, the fundamental responsibility of municipalities is clear to all. Water services, too, are clearly vital but these, as contrasted to public safety services, are the frequent subject of independent billing systems by authorities or quasi-independent municipal companies. It is, therefore, the Panel's considered judgment that the present award meets the criterion of consistency relative to the Employer's economic capabilities.

IV. AWARD

A. Salary

Effective August 1, 1978, the salary structure shall be as follows:

<u>Service Category</u>	<u>Annual Salary</u>
Start, or 1st year permanent	\$10,000
2nd year	10,900
3rd year	11,625
4th year	12,350
5th year and up	12,900
Additional pay for Identification Officers, Detectives, etc.	Continue to be based on length of service with the department, plus an additional \$500 for the advanced rank of specialized duties.
Sergeants with permanent rank	Receive an additional \$900 per annum

B. Longevity Increments

In addition to salaries paid pursuant to the provisions of Paragraph A, above, effective August 1, 1978, members of the bargaining unit shall receive longevity payments as follows:

After 8 years of service	\$200 per annum
After 16 years of service	\$200 per annum
After 23 years of service	\$100 per annum
Maximum to be paid any individual in longevity payments	\$500 per annum

(Concurring)

Philip R. Murray, Esq.
Philip R. Murray, Esq.
Employer Designee
74 State Street
Albany, NY 12207

2/17/79
Date

State of New York)
) ss.:
County of Albany)

On the 17 day of Feb, 1979,
before me came Philip R. Murray
to me known to be the individual who
executed the foregoing instrument and
acknowledged that he executed the same.

John M. Guel
Notary Public, State of N.Y.
My Commission Expires 3/31/81

(Concurring)

Al Sgaglione 3/1/79
Al Sgaglione, President Date
Police Conference of New York, Inc.
112 State Street
Albany, NY 12207

State of New York)
) ss.:
County of Albany)

On the 15th day of March, 1979,
before me came Al Sgaglione
to me known to be the individual who
executed the foregoing instrument and
acknowledged that he executed the same.

Virginia Fissette
Notary Public
State of New York

VIRGINIA FISSETTE
Notary Public, State of New York
01-1235475
Residing in Albany County
Commission Expires March 30, 1979

