

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration :
Between : OPINION AND AWARD
: OF
CITY OF WATERVLIET : PUBLIC
-and- : ARBITRATION
WATERVLIET POLICE BENEVOLENT ASSOCIATION : PANEL
Case No. IA 82-18; M81-577 :
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NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
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CONCILIATION

APPEARANCES:

For the City - Thomas Breslin, Esq.
Corporation Counsel

For the PBA - Joseph Touhey, 1st Vice President
Police Conference of New York, Inc.

Pursuant to Civil Service Law, Section 209.4, governing compulsory interest arbitration of disputes involving police officers, hearings were held in the above matter by the duly designated Public Arbitration Panel. Copious exhibits and extensive presentations were entered into the record at the hearings on November 18 and 19, 1982, and on January 26, 1983.

The parties' exhibits and arguments have received the Panel's attention, and careful scrutiny during the three days of hearing and the two days when the Panel met in executive session.

The Panel has taken into thorough consideration statutory procedures and criteria in the Civil Service Law, Article 14, Section 209.4. The Law, also identified in this connection as the Public Employees Fair Employment Act, and commonly referred to as the Taylor Law, states in 209.4, paragraph (v):

the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

BACKGROUND

At issue is the successor contract for the Agreement last negotiated on October 23, 1980, which was effective commencing January 1, 1980 and ending December 31, 1981. The

bargaining-unit consists of some 25 police officers, comprising the City's entire police force.

When PERB received the PBA's petition for establishment of a Public Arbitration Panel, all of PBA's 21 contract-proposals had been rejected by the City. The City had six contract-proposals of its own.

In the course of the arbitration proceedings, the parties withdrew some proposals and altered others. With respect to several issues, the Panel's good offices were utilized to develop contract language acceptable to both sides, in words and substance.

For services in the foregoing, the Public Panel Member and Chairman expresses appreciation to Michael E. Gilchrist, Employer Panel Member, and to Gene Roemer, Employee Organization Panel Member. Their expertise and good-will produced solutions for several items which the parties had long been unable to settle. The Panel Members' efforts are in the best spirit of the Taylor Law, fulfilling the legislators' expectations of contributions arising from labor-management participation in tri-partite public arbitration panels.

SALARIES

Existing salaries, which became effective January 1, 1981 are as follows:

Contract Salary Schedule

Starting base salary	\$13,892
1 year - less than 2 years tenure	\$14,642
2 years - less than 4 years tenure	\$15,348
4 years - less than 6 years tenure	\$16,052
6 years and over	\$16,756
Sergeant	\$18,398
Lieutenant	\$18,737
Assistant Chief	\$19,655

Salary Proposals

The PBA proposed a 12½% salary increase effective January 1, 1982, and another 12½% effective January 1, 1983.

The City, at the outset of arbitration, proposed a one-year contract, with a 4.8% increase for the year 1982. On the last hearing-day the City proposed a 4.8% increase additionally for the year 1983, referring to a two-year contract as "realistic":

MR. BRESLIN: I think I'd have my head buried in the sand if I believed that this Panel is going to award a one-year contract. And I am making a realistic contract. We

are now into the calendar year of 1983 and I am trying to make a realistic comment.

(Transcript, p.66)

The PBA's Position

Watervliet police salaries are lower than for police in nearby communities, the PBA contended. It put into the record, as PBA Exhibits, PBA collective-bargaining contracts in six nearby and reportedly comparable communities: Bethlehem, Cohoes, Colonie, Glenville, Rotterdam and Troy.

The PBA maintained that its salary proposals are within the City's financial capacity. Its analysis on this subject was contained in "A Review of the Financial Documents of the City of Watervliet." The document was prepared for the PBA by Edward J. Fennell, Municipal Finance Consultant, as PBA Exhibit 3. Mr. Fennell testified on the opening day of the arbitration hearing; he was cross-examined by the City's Counsel, and also answered questions from Panel members.

PBA Exhibit 3 listed the following as "documents reviewed": TAX MARGIN STATEMENT - 1979, 1980, 1981 and 1982; ANNUAL REPORT - 1978, 1979 and 1981; AUDITS OF THE STATE COMPTROLLER - 81M-445 (1/1/78 - 12/31/80), 79M-38 (1/1/75 - 12/31/77); BUDGET FOR 1982 (General Fund); OVERALL REAL PROPERTY TAX RATE (N.Y.S.) - 1980; N.Y.S. COMPTROLLER'S REPORT ON MUNICIPALITIES - 1973-1979; LOCAL GOVERNMENT HANDBOOK, NYS DEPARTMENT OF STATE.

"Findings" in PBA Exhibit 3 were, in summary form:

1. The City has 51.1% of its taxing ability remaining, far more than other area cities.
2. Watervliet had the lowest overall property tax (1980) of all area cities.
3. The City has exhausted only 16.6% of its debt limit.
4. The General Fund has an adjusted surplus of \$524,099 which was not appropriated in the 1982 Budget.
5. The City has a Contingency Fund of \$122,342 for wage settlements amounting to 9% of all 1982 salary accounts.
6. Sales tax, utility tax, interest earnings and recreation charges are estimated to be \$62,778 less in 1982 than 1981. Should 1982 revenues in these categories equal 1981 receipts, there exists the prospect of \$62,778 of surplus revenues.
7. State Aid is understated by \$141,809.

The City's Position

The City contended that police salaries in Watervliet compare favorably with police salaries in communities within a 25-mile radius. Sixteen communities (including the six cited by the PBA) were listed in comparisons offered by the City in various exhibits: Albany, Bethlehem, Cohoes, Colonie, East Greenbush, Glenville, Guilderland, Mechanicville, Niskayuna, Rensselaer, Rotterdam, Saratoga Springs, Schenectady, Scotia, South Glens Falls, Troy.

The City's reasons for choosing these 16 communities as the comparison-group were stated thusly:

...because they are in the immediate area, they are communities that face the same problems. They are geographically contiguous communities. They are communities we are all aware of.

There are many policy agencies that we share problems with and work back and forth with. We are not seeking to compare Watervliet with the City of Jamestown or with Binghamton or Long Island City. We are comparing it with Albany, Rotterdam, Niskayuna, Saratoga Springs, Scotia, Troy, Cohoes, Bethlehem, Schenectady, Glenville, Colonie, East Greenbush, Rensselaer, Mechanicville and South Glens Falls. They are communities that are in this immediate area. They are communities that are similar to our community and that face similar problems. I think clearly that the Legislature meant exactly what it said in setting forth in Subdivision A, under 209, 4, d, V(a) that this Panel is charged with finding a basis for comparability upon which to make a finding of fact in terms of the wage issue.

I submit we have presented comparable communities to this Panel.

(Transcript, pp.37-38)

The City asserted that:

- Watervliet's 1981 starting base salary of \$13,892 ranked third highest, compared with 15 of the 16 communities. (Information was reportedly not available for Guilderland; salaries for the other 15 communities were listed in City Exhibit 11.)
- Watervliet's 1981 top salary of \$16,756 ranked "above the middle" (T., p.39) with seven communities having higher salaries, and nine communities having lower salaries. (City Exhibit 12)

- If Watervliet's 1981 starting salary were increased 4.8% to \$14,558 for 1982, only three communities would be above Watervliet in 1982 salary levels, and 12 communities would be below Watervliet. (1982 information was reportedly not available for Troy, which reportedly was "in arbitration." 1982 salaries for the other 15 communities were listed in City Exhibit 13.)
- If Watervliet's 1981 top salary were increased 4.8% to \$17,560 for 1982, only six communities would be above Watervliet in 1982 salary levels, and nine communities would be below Watervliet. (1982 information was not available for Troy, as previously noted. 1982 salaries for the other 15 communities were listed in City Exhibit 14.)
- If Watervliet's top salary were increased another 4.8% to \$18,403 for 1983, it would be below 1983 salary levels in two communities but above 1983 salary levels in three other communities. (1983 settlements for the 11 other communities were reportedly "still pending." 1983 salaries for five communities were listed in City Exhibit 19.)

According to the City, its 4.8% salary-increase offer represents "the limit" of the City's ability to pay. It noted that the City also must pay increased medical insurance and retirement costs along with salary increases; "so the cost to the City even with a 4.8 percent pay raise, is clearly much more significant than the 4.8." (T., p.65)

The City presented four exhibits (Tables 15-18) comparing Watervliet with the 16 communities cited for salary comparisons, and testified that:

- In terms of full value tax and property, Watervliet ranks 14th. (T., p.56)
- In calendar year 1982 the City's revenues increased between 5% and 5.1%. An increase "in the same vein" is projected for 1983, but "we may be a little optimistic when we do that." (T., p.61)

- "...our ability to pay is severely limited by factors which we have absolutely not one bit of control over." (T.,p.61)

Apropos of other criteria in the Taylor Law, the City referred to "a comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with...other employees generally in public and private employment in comparable communities." (T., p.70)

The City asserted that:

- "...there are huge layoffs at many large corporations within the surrounding area, that there have been significant businesses...closing within the last year, all within a couple of miles of the City. There have been wage provisions...where there have been some...givebacks, as well as very, very small increases...there have been companies that have been cutting back salaries, and employees giving up salary increases to continue their employment." (T., pp.70, 73-74)
- City Exhibit 20, lists "findings" by Nicholas J. Ostapkovich, Clerk for Watervliet Board of Assessors, on layoffs in seven companies, shutdowns in seven companies, wage provisions in eight companies. All companies cited were reportedly "within a five- or ten-mile radius of the City." (T.,p.71) The information was compiled at the request of Mr. Breslin.

Sources were local newspaper reports and telephone inquiries to personnel departments in various establishments.

The City also provided information on 1982 and 1983 salary settlements with the City's other bargaining units, and increases granted to City employees who are not in bargaining units:

- The Civil Service Employees Association represents some 23 employees. Its contract terminated December 1981. As of

January 26, 1983 a successor contract had not been signed. In late 1982, the City brought the salary issue for this unit to legislative hearing and imposed a 5.5% increase, retroactive to the beginning of 1982. Negotiations for 1983 were reportedly "about to begin" (as of January 26, 1983). (T., pp.80-82)

- UFFA represents some 31 employees in the Fire Department. Reportedly both parties have agreed to a two-year contract: 6.75% effective January 1, 1982, and 6.3% effective January 1, 1983. The reported contract had not been signed as of January 26, 1983.

Mr. Breslin stated that: "Part of the contract is...a mutual effort to seek ways to reduce by one-half, up to one-half, the costs of fire prevention in the City..." Asked whether the cited "agreement" was more specific than "to seek ways", Mr. Breslin replied: "They have agreed publicly to join us in an effort to be agreed upon by the parties and we didn't want to foreclose any option when we made the agreement." (T., pp. 82-86)

- With respect to City personnel who are not in bargaining units, 5.5% increases were effective January 1, 1982 for the Mayor and two Councilmen. Increases of 5.5% were also effective throughout 1982 for the General Manager, Secretary to General Manager, Secretary to Mayor, Corporation Counsel, Deputy Corporation Counsel, City Clerk, Director of Finance, Computer Operator, Recreation Director, and Clerk to the Assessor.

For 1983, five of the ten employees listed above received another 5.5%: General Manager, Secretary to General Manager, Secretary to Mayor, Director of Finance, Clerk to Assessor. A new job title, Deputy to the General Manager, also received 5.5%.

There were five other employees whose 1983 increases exceeded 5.5%:

Deputy Corporation Counsel	22%
City Clerk	17.6%
Corporation Counsel	14.4%
Computer Operator	13.7%
Recreation Director	10%

(T., pp.86-96; City Exhibit 22)

DISCUSSION

Introduction

Analysis of the salary issue which follows, and the Award on general salary increases which derives from it, constitute the Opinion and Award of the Panel majority. The majority, with respect to the general salary increase, consists of the Public Panel Member & Chairman and the Employee Organization Panel Member, with the Employer Panel Member dissenting from the Award.

It is not unusual or sinister to have a majority-minority split in a tri-partite panel. Tri-partite panels commonly do not reach unanimous opinions in every single issue brought before them.

As it happens, this particular Panel was unanimous on some issues (namely, the ones whose resolution was fashioned with the Panel's assistance as noted earlier on page 3). On other issues the majority was formed by the neutral Chairman and the Employer Panel Member. Only on the subject of a general salary increase was the majority formed by the neutral Chairman and the Employee Organization Panel Member.

But whether concurring or dissenting, each Panel member participated in the discussions and exchange of views at the Panel's executive sessions. This happened especially with

respect to the salary issue, which was the major matter before the Panel, both in terms of the parties' priorities and in the greater intricacy of salary-structure questions compared with most other questions on the Panel's agenda.

Ability to Pay

"The interests and welfare of the public and the financial ability of the public employer to pay" are stated in the Taylor Law among the factors for the Panel to consider in making "its just and reasonable determination."

Based on all the evidence in the record, the Panel majority has not been persuaded by the City's assertion that 4.8% represents the absolute limit of the City's financial ability to support a contract settlement with the PBA.

The City's representations and its exhibits do not establish that a general increase of more than 4.8% for the City's 25-member police force would be beyond the City's ability to pay. Considering that the City had already offered and established salary increases of more than 4.8% for all other City employees, it is not reasonable or logical or convincing for the City to insist that 4.8% is the absolute limit for police officers.

The Panel recognizes that the City does not enjoy abundant revenues and flourishing finances. Nor has the City escaped the financial problems which are widespread throughout

New York State and very common in the smaller communities upstate.

In rejecting the City's argument that 4.8% for police is the absolute limit of the City's ability to pay, the Panel majority has not gone to the extreme of asserting that the City's ability to pay is unlimited. Rather, the Panel majority has found that the City's financial capacities permit it to provide the salary increase which the Panel majority finds "just and reasonable" in accordance with the listed statutory criteria and "other relevant factors." (Quoted phrases are from relevant portions of the Taylor Law, set forth earlier at page 2.)

Criteria in Salary Determinations

There is nothing unreasonable in the City's contention that comparisons should be made with a larger group of communities than the six offered by the PBA. At the same time, the City has not established that its suggested 16-communities grouping is the strictly definitive group for salary comparisons. There is no documentation for the City's comments that comparisons with still other communities would be contrary to the statute and totally without merit.

After all, this is not a situation where salary settlements for Watervliet police traditionally have been determined within the context of this particular group of 16 communities.

Nor has there been a practice in the past of following a "pattern" derived from salary changes in the 16-communities group or in any other group of communities.

Both sides undoubtedly are fully aware that salary changes for Watervliet police have not occurred over the years in accordance with an invariant formula. Nor have salary changes for Watervliet police been geared to any mutually-recognized precise relationship with other communities or particular factors, such as census population or per capita income or full valuation taxable.

Undoubtedly what happens in Watervliet negotiations and salary settlements is what happens all over the United States, in larger as well as smaller communities, in public employment as well as private-sector employment. Employee organizations ordinarily seek greater salary increases for their members than they expect to receive. Employers usually offer lesser salary increases than they expect to grant.

Whatever salary increases are finally agreed upon encompass an amalgam of multitudinous elements: general economic climate, the employer's economic status and prospects, the employee-organization's relative collective-bargaining strength, any particular essentiality of the labor force, past bargaining history, state of the labor market, competitive conditions, cost of living, etc. Notwithstanding all the

diverse elements which figure, consciously or unconsciously, in the ultimate salary-bargain, certain clearly relevant factors are usually considered by employee-organizations and employers. One such factor is salary levels for comparable work in nearby or related locations.

When a salary impasse is reached and resolution is referred to an outside panel, the panel's salary determination may be governed by factors similar to those observed by the parties. But additionally, as is the case here, the panel may be charged by statute, regulations or contract with considering particular criteria. The criteria stated in the Taylor Law have been quoted earlier on page 2.

Fully stated as the criteria are, it is obvious that they do not constitute a precise formula. Rather, they are a list of sound criteria "in addition to any other relevant factors" which the Public Arbitration Panel must take into consideration.

And the Panel has given full consideration to the statute's listing. The fact that its determination on the salary issue is not unanimous obviously indicates no more than that just and reasonable men and women may differ on what is "a just and reasonable determination of the matters in dispute."

The Panel Chairman and the Employee Organization Panel Member are not persuaded by the City's argument that the Panel's salary determination must be strictly limited to the City's offer. Nor is the Panel majority convinced that the 16-communities salary-rankings set forth by the City provide an objective and reasonable justification for the City's 4.8% offer.

Finally, the Panel majority does not subscribe to the City's assertion that the Taylor Law criteria mandate the Panel to apply just those criteria selected by the City, in just the manner presented by the City, and with just the 4.8% result sought by the City.

It is rare for one side, whether it be management or labor, to be altogether right, and for the other to be altogether wrong. In any event, the City has failed to establish that the rarity has occurred in this proceeding.

If the situation were reversed, and the PBA were insisting that the Panel would violate its legislative mandate unless it awarded a 12½% salary increase on the grounds set forth by the PBA, what would the City's reaction be? Judging from the tone of the proceedings throughout this arbitration, the City would undoubtedly be the first to argue that the Panel was not being even-handed, just, or reasonable, if it swallowed whole the PBA's arguments. By the same token, the City should

recognize that the Panel would not be even-handed, just, or reasonable, if it embraced completely the City's arguments which are in fact not unassailable.

Salary Rankings, Vis-a-Vis Police in Other Communities

Comparisons presented to the Panel by each side are in terms of both starting salaries and top salaries.

The Panel majority considers that top salaries provide more compelling comparison for the following reasons:

- Salary comparisons very frequently give more weight to top salaries than to starting ones, since the latter constitute long-term salary rather than short-lived starting and intermediate salary-steps.
- No member of the City's police force presently receives the starting salary. While the latter is important for recruiting purposes and will undoubtedly be used in the future, it presently has no impact, and does not figure in calculations of salary-settlement costs.
- The present salary distribution (as stated by Mr. Touhey at the November 1982 hearing and unchallenged by the City) has twelve police officers at top salary, with service of more than six years. Six other police officers are at steps below top salary, not yet having completed six years' service. Some eight sergeants, higher-ranking police officers, receive salaries higher than patrolmen's top salaries and do not have multiple salary steps. (See page 4 here for the complete salary structure, quoted from the Agreement.)

In support of its proposal for a 4.8% salary increase for 1982, the City submits that this will maintain Watervliet's salary rank vis-a-vis the 16-communities group:

- In 1981, Watervliet's top base-salary of \$16,756 ranked eighth-highest out of 17. (See Appendix Table 1, page 17,

"Top Base-Salary for Patrolmen: Watervliet in 1981, Compared with the 16-Communities Group.")

- In 1982, if Watervliet's top base-salary were increased 4.8% to \$17,560, it would rank seventh-highest out of 16. (See Appendix Table 3, page 41, "Top Base-Salary for Patrolmen: The City's Proposal for 1982, Compared with 16-Communities Group.")
- In 1981, Watervliet's starting salary of \$13,892 ranked third-highest out of 16. (See Appendix Table 2, page 40, "Starting Salary for Patrolmen: Watervliet in 1981, Compared with 16-Communities Group.")
- In 1982, if Watervliet's starting salary were increased 4.8% to \$14,558, it would rank fourth-highest out of 16. (See Appendix Table 4, page 42, "Starting Salary for Patrolmen: The City's Proposal for 1982, Compared with 16-Communities Group.")

The City's 4.8% salary offer would not provide a just and reasonable salary determination, as claimed by the City. Instead, it would produce a shortfall in the very ranking the City seeks to maintain:

- With a 4.8% increase, Watervliet's top base-salary in 1982 would be \$966 below the next higher-ranking salary in the 16-communities group. (See Appendix Table 3.)
- But in 1981 Watervliet's top base-salary was only \$266 below the next higher-ranking salary in the 16-communities group. (See Appendix Table 1.)
- Similar deterioration would result with respect to the next lower-ranking salary. For a 4.8% increase would put Watervliet's 1982 top salary \$417 above the next lower-ranking salary in the 16-communities group. (See Appendix Table 3.) But in 1981 Watervliet's top salary was \$956 above the next lower-ranking salary. (See Appendix Table 2.)

There is a basic fallacy in the City's approach to salary-rank. The City looks merely at numerical or seriatim ranking; it disregards entirely the extent of salary-difference embodied in the rankings. This simplistic arithmetic produces shortfall consequences which adversely affect the rankings urged by the City.

A statement of the full parameters, arithmetically, should make clear that the City's choice of a 4.8% increase is only one of many possibilities on the rank-spectrum. The City could retain in 1982 its 1981 numerical rank not merely by its proposed increase of 4.8% (\$804) but by an increase as low as 2.3% (\$388) or as high as 10.6% (\$1769). Details are in the table on page 20, "Rank-Spectrum: 1982 Top Base-Salary in 16-Communities Group."

RANK-SPECTRUM:
1982 TOP BASE-SALARY IN 16-COMMUNITIES GROUP

<u>Community</u>	<u>Ranking</u>	<u>1982 Salary</u>		
Bethlehem	6	\$18,526		
Glenville	8	\$17,143		
<i>Watervliet</i> <i>City's proposal</i>	7		<u>Range for</u> <u>7th-highest</u> <u>Rank</u>	<u>Increase</u>
			<i>Lowest</i>	\$ 388 2.3%
			<i>Highest</i>	\$1769 10.6%
			<i>City's proposal</i>	\$ 804 4.8%

SOURCE: Calculated by the Panel Chairman, utilizing data in Appendix Table 3.

Where is the "just and reasonable" point on the spectrum? Clearly there is no intrinsic reasonableness in the City's 4.8% offer, in view of the fact that the same result (namely the maintenance of Watervliet's 7th-highest rank in top base-salary within the comparison group), could be produced with lower or higher increases.

The logical method for utilization of rankings is to calculate complementary dollar-amounts within the context of salary-level changes. For example, if salaries in the comparison-group had generally risen by about 8%, an increase of about 8%

would maintain Watervliet's numerical rank at the same relative level within the 16-communities group.

What was, in fact, the overall salary-level change? For the most part, top base-salaries in the 16-communities group rose by 8% or more from 1981 to 1982. Increases for each of the 15 communities (Troy's 1982 increase not having been agreed-upon yet) are shown in Appendix Table 5, page 43, and summarized here:

- Increases ranged from a low of 4.8% (Scotia) to a high of 12.3% (Cohoes).
- Increases were less than 8% in five communities: Rotterdam, Albany, Mechanicville, Saratoga Springs, Scotia.
- Increases were 8% or more in ten communities: Schenectady, Niskayuna, Colonie, Bethlehem, Glenville, Rensselaer, Guilderland, East Greenbush, South Glens Falls.

Thus, if reliance were placed on the numerical-rank comparison, which is the City's avowed position, a just and reasonable salary-increase for Watervliet would have to be around 8%.

The Panel would be justified in retaining Watervliet's salary-rank by awarding an 8% increase, if only because the City itself insists on maintenance of Watervliet's numerical-rank of the 7th-highest in the 16-communities group.

More significantly, rank-retention with an 8% salary increase has a sensible basis. Rank-retention on a 4.8% basis

is not logically valid; it would result in unwarranted short-falls in Watervliet's salary-rank.

There are other sound reasons for the Panel to award a 1982 salary increase at a level which would not diminish Watervliet's relative salary-rank.

This is not a situation where Watervliet ranks around the middle in the comparison-group with respect to top base-salary, and at the same time has soared ahead in other features of overall compensation. But this has not occurred. Watervliet, along with some other communities within the 16-communities group, does not have fringe benefits as favorable as still other communities in the comparison-group.

Obviously differences among communities exist with respect to salary progression, longevity pay, retirement benefits, etc., just as communities differ in salary levels. But insofar as Watervliet does not "lead the pack" in fringe benefits, there could be no justification for reducing its salary-rank relative to other communities.

For example, Watervliet's top base-salary is achieved after six years. The next-higher ranking community (Bethlehem) achieves top base-salary after five years, one year sooner than Watervliet. The next-lower ranking community (Glenville) achieves the top after four years, two years sooner than Watervliet's. (See Appendix Table 3, page 41.) The figures are not cited

for invidious comparison, but only to make clear that in terms of overall compensation there could be no justification for awarding Watervliet less than the comparison-group's predominant 8% increase.

1982 Salary Increases for Police, New York State: PERB Data

The range of 1982 increases for the 16-communities group is consistent with increases for police in New York State, in 160 negotiated and arbitrated collective-bargaining contracts. The salary information is reported by PERB's Research Division. (The information is reproduced as Appendix Table 6, page 44, "Patrolmen Salary Increases in Top Step in 1982, for Negotiated and Arbitrated Contracts, New York State, Analyzed by PERB through April 1, 1982.")

It was made available to the parties and the Panel Members by the Public Panel Chairman, preceding the January arbitration hearing. Her letter of December 17, 1982, which confirmed January 26, 1983 as the date for another hearing solely on the salary issue, stated:

For your information, copies are enclosed of materials on police arbitration awards and negotiated settlements, as recorded by PERB's Research Department. These were made available subsequent to our November 19th hearing: (1) Patrolmen Salary Increases Top Step in 1982, for Negotiated and Arbitrated Contracts, New York State, Analyzed by PERB through April 1, 1982 (prepared by PERB Research 4/7/82);

(2)*Patrolmen Salary Increases on Top Step in 1983, for Negotiated and Arbitrated Contracts, New York State, Analyzed by PERB through April 1, 1982 (prepared by PERB Research 4/14/82); (3) Summary List of Police Arbitration Awards, April 5, 1982-December 1, 1982; (prepared by PERB Research 12/1/82, and revised 12/3/82); (4) Negotiated Police Salary Increases for Years Ending in 1982-85, Received between April 5, 1982-November 30, 1982 (prepared by PERB Research 11/30/82); (5) Police Salary Increases for Years Ending 1982; 4/5/82; (6) Police Salary Increases for Years Ending 1983; 4/12/82.

*Two enclosures are provided: Enclosure 2-A is unweighted and 2-B is weighted.

(The complete letter was put into the arbitration record as City Exhibit 9.)

The reason for providing the materials was explained by the Chairman at the January hearing:

On January 24th, responding to your questions of January 20th, the reference is to Mr. Breslin's letter to the Chairman, which she made available to PBA in her joint letter to both sides on January 24; the City entered the letter as City Exhibit 8. I explained that the salary material makes available to both parties, and both Panel members, materials that the City obtained for itself following the Panel's executive session in December. The basis for me making that statement was simply that Mr. Gilchrist had mentioned in a telephone conversation with me, subsequent to our executive session, that he had stopped by at PERB, which he is perfectly free to do, as is anyone else, and had picked up a set of these materials. It seemed to me back in December that since the City had it, there was no reason for the PBA not to have it. That is why I provided it simultaneously to the PBA and to the City, so that the Panel could be sure that everybody had the same materials.

...
At the appropriate time, either or both of you may argue, as you see fit or not, with reference to these various materials. But it seems to me that the salary information on 1982-1983 salary increases for patrolmen in 1982 and 1983, both negotiated and by arbitration, clearly falls within the rubric of such other factors which are normally or traditionally taken into consideration in the determination of wages.

(Transcript, pp.13-14 and 16)

Salary information reported by PERB, and reproduced in Appendix Table 6, page 44, shows, with respect to top base-salaries:

- The weighted average increase in 1982 compared with 1981 was 8.7% (\$1923) for 160 agreements covering 13,584 police officers.
- Arbitrated agreements constituted 23 out of the 160-agreement total, affecting 2,414 police officers out of the 13,584-officer-total. The weighted average increase for arbitrated agreements was 8.1% (\$1,528).
- Negotiated agreements predominated. They numbered 137 of the 160-agreement total, affecting 11,170 officers of the 13,584-officer total. The weighted average increase for negotiated agreements was 8.8% (\$2,000).

It is clear from the evidence that the 1982 salary increases of predominantly 8% or more in the 16-communities group are not restricted to this geographical area. Throughout New York State, 1982 increases were at similar levels.

Wage Provisions and Employment Changes in
Selected Establishments within a 10-Mile Radius of Watervliet

Reference was made earlier here at page 9 to City Exhibit 20, which contains some information on layoffs in seven companies, shutdowns in seven companies, wage provisions in eight companies. The apparent intent was to demonstrate that the Watervliet-area labor market is depressed, that salary give-backs are occurring, and that 1982 wage increases are low.

City Exhibit 20 does not purport to be an accurate and comprehensive survey which could be relied on for definitive conclusions. Mr. Breslin, at whose request the exhibit was prepared, acknowledged that "it is a smattering of information" (Transcript, p.72).

City Exhibit 20 consists of the following:

- A list of seven private-sector businesses which ceased operating in 1982, as reported in The Times Union: Cluett & Peabody, Denby's, Korvette's, Mohasco, Montco Manufacturing, Montgomery Ward, Tobin Packing.
- A list of layoffs in seven companies and in the construction industry, as reported in four instances by The Times Union, and in four instances by company personnel offices: Adirondack Steel Castings, Al Tech Specialty Steel, Bendix Corporation, Covert Manufacturing Company, Ford Motor Company, General Electric Company, Norton Company, Local 190 of the Construction & General Laborers Union in Albany.
- Wage provisions are listed for the seven companies above, plus Watervliet Arsenal. Increases reportedly were granted in 1982 in only three of the companies: General Electric (7%), Norton Company (7.5% for blue-collar workers), Watervliet Arsenal (4.69% for blue-collar workers, 4% for white-collar workers).

City Exhibit 20 does not add particular insight to generally-known information on the state of the economy, in Watervliet and elsewhere. In this connection the Public Panel Chairman observed:

...even if you /Mr. Breslin/ didn't come in with this /City Exhibit 20/ I would take it as a matter of general information that we all unfortunately know that the country is in the middle of a recession or worse, and that I take judicial notice that it has occurred in this area.

(Transcript, p.72)

Presumably City Exhibit 20 is offered for a "dampening effect" on salary expectations of Watervliet police. Obviously the City itself does not consider that wage provisions in the eight miscellaneous establishments cited in City Exhibit 20 are dispositive of the level of increases just and reasonable for police or other City employees. The City itself has offered 4.8% for the police salary-increase. It has granted still-larger increases to all other City employees, including 1983 increases as high as 22% for Deputy Corporation Counsel.

Salary Increases for the City's Employees, Other Than Police

Salary increases granted or offered to two other bargaining units, and to City personnel not in bargaining units, are reported earlier here at pages 9-10: in 1982, 5.5% for the CSEA unit, 6.75% for the Fire Department, and 5.5% for non-bargaining-unit personnel.

Obviously there could be sound and compelling reasons for varying increases. The Mayor, the firemen, the police, the Corporation Counsel, etc. do not necessarily have to receive identical increases. Presumably each employee or classification-group is treated in accordance with any special circumstances applicable to them. And the result may well be that some groups or individuals receive higher or lower salary increases than others. The City's "ability to pay" presumably figures in all salary-changes.

The City has not established that its police force should be restricted to a 1982 salary-increase lesser than granted or offered to all other City employees.

Arguments made by the City in support of its 4.8% proposal for police surely apply as well to other City employees:

- the City's allegedly limited "ability to pay."
- the additional costs over and above the base-salary increase, arising from impact on other compensation, such as pensions and vacations.
- the allegedly depressed state of the local area.
- the asserted unwillingness of Watervliet residents to approve increases for City employees more favorable than taxpayers' allegedly straitened circumstances.

If there were any validity to the City's arguments, they would have to apply to all City employees. For none of the arguments relate uniquely to police.

Moreover, in many communities there is widespread recognition of special reasons for granting larger salary increases to police officers than to other city employees. Reasons most frequently stated derive from the unique nature of police work, notably the hazards inherent in police work, and the urgent essentiality of police services to the community.

The City has not presented probative evidence to convince the Panel majority that it would be just and reasonable to restrict police officers to a 1982 salary increase in a lesser amount than the City has granted or offered to all other City employees. Nor has the City claimed or established that salary increases granted or offered to other City employees constitute a binding pattern for police salary-increases.

In light of all the evidence, and in accord with criteria mandated in the Taylor Law, the Panel majority concludes that 8% is a just and reasonable determination for police officers' 1982 salary increase.

Police Salary Changes: 1983

Both the PBA and the City have proposed that the salary increase for the second contract year be the same as for the first contract year.

With respect to other City employees, the City has offered Fire Department employees a 6.3% increase in 1983. The City has also granted 1983 increases of 5.5% for five non-bargaining-unit employees, and 10%-22% for five others.

As for the 16-communities group, only four had concluded 1983 settlements as of January 1983. These are reported in Appendix Table 7, for which the source is City Exhibit 19.

Compared with 1982, the percent increases in 1983 were:

Colonie	10.5%
Guilderland	9.7%
Cohoes	9.0%
Glenville	8.5%

In light of all the evidence, the Panel majority has concluded that a just and reasonable determination for police officers' 1983 salary increase is 4% as of January 1, 1983, and a further increase of 4% on July 1, 1983.

RETIREMENT

Article II, Section 19, Retirement, presently provides for the "Retirement Plan administered by the New York State Police and Firemen Retirement System described as the non-contributory one-half pay after twenty-five (25) years pursuant to the provisions of Section 384 of the Retirement and Social

Security Law (and Section 375-C therefor) and other appropriate statutes in such cases made and provided for." Further, the coverage includes the "Guaranteed Death Benefit (Section 360-B) of the New York State Retirement and Social Security Law."

The PBA seeks the 20-year retirement provided in Section 384-d of the Retirement and Social Security Law. PBA also proposes that the "one-year final average" be the basis for calculating retirement allowances.

The City rejects both proposals. On August 12, 1982, prior to the arbitration, the City filed an improper practice charge with PERB, claiming that the PBA had violated the Taylor Law by submitting to compulsory interest arbitration a demand which allegedly is a prohibited subject of negotiations.

The improper-practice charge was dismissed on November 1, 1982 by Kenneth J. Toomey, PERB Hearing Officer. He concluded:

The City has pointed to, and my research reveals, no case which establishes either that the ADEA /Age Discrimination in Employment Act, a federal law/ is applicable to state and local government employees or, if so applicable, that the plan contravenes its provisions. Since the resolution of such issues is more appropriate for the courts than for PERB, and as PERB precedent clearly establishes that the plan is mandatorily negotiable, the charge must be, and hereby is, dismissed.

The City filed exceptions to the Hearing Officer's decision. The City's Memorandum to PERB states the following exceptions:

That the demand for a twenty year retirement plan as provided in Section 384-d of the Retirement & Social Security Law is in conflict with the Federal Age Discrimination In Employment Act. Such Act by its terms is made applicable to State and Local governments and its provisions prohibit the retirement plan provided in Section 384-d of the Retirement & Social Security Law.

(Quoted from City Exhibit 5, the complete copy of the City's undated Memorandum.)

Since PERB has not yet ruled on the City's appeal, the Panel is precluded at this time from any award on the retirement proposals, pursuant to PERB's Rules of Procedure. Part 205.6 (c) therein provides as follows:

(c) The public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge, until final determination thereof by the Board or withdrawal of the charge; the panel may make an award on other issues.

ARTICLES II, III, IV

Both sides presented differing proposals on various aspects of overtime pay and meal allowances in required court appearances, weapons inspection, uniform issue, locker space, clothing allowance, release time for Association representatives, seminars, medical certifications.

Acceptable formulations were developed with the assistance of the Employer Panel Member and Employee Organization Panel Member. The Panel Chairman has acknowledged their good offices on page 3 earlier here.

Both the PBA and the City have accepted the formulations on various items which had earlier been at impasse. Thus, the Panel unanimously awards accordingly in Items 5-12 of its Award, on pages 35-37.

OTHER ITEMS

The PBA proposed liberalization of various provisions of the Agreement: (1) intermediate increments; (2) increased longevity pay; (3) increased personal leave; (4) establishment of dental insurance.

In support of its proposals, the PBA referred to provisions applicable in some other communities as more advantageous than Watervliet's arrangements.

The City contended that Watervliet's present provisions on the cited subjects do not compare unfavorably with provisions in the 16-communities group. Citing its Exhibit 3, the City maintained that the proposed liberalizations would be out of line with predominant practice in the comparison group.

On the basis of all the evidence, the Panel Chairman concludes that compelling reasons have not been established for the proposed improvements in benefits at this time.

The Employer Panel Member concludes that the proposed improvements are altogether unwarranted, and not at all justified in view of provisions within the 16-communities group.

The Employer Organization Panel Member concludes that the proposed improvements are warranted, and that liberalization in benefits need not necessarily await liberalization throughout the 16-communities group.

The Panel Chairman and the Employer Panel Member constitute the Panel majority in denying these PBA proposals. The Employee Organization Panel Member dissents.

CONCLUSION

The undersigned, having been duly designated, herewith make the following

AWARD

1. Any item not specifically awarded hereinafter has been denied. Except as modified by this Award, the terms of the expired Agreement shall continue in force.
2. With respect to the PBA's proposed changes in Article II, Section 19, Retirement, the Panel reserves jurisdiction without awarding at this time, pursuant to PERB's Rules of Procedure.

3. The new Agreement shall be effective for a period of two years, commencing January 1, 1982 and ending at midnight December 31, 1983.

4. The new salary structure shall be:

	<u>1/1/82</u>	<u>1/1/83</u>	<u>7/1/83</u>
Starting Base Salary	\$15,003	\$15,603	\$16,227
1 yr.-less than 2 yrs. tenure	\$15,813	\$16,446	\$17,104
2 yrs.-less than 4 yrs. tenure	\$16,576	\$17,239	\$17,929
4 yrs.-less than 6 yrs. tenure	\$17,336	\$18,029	\$18,750
6 yrs. and over	\$18,096	\$18,820	\$19,573
Sergeant	\$19,870	\$20,665	\$21,492
Lieutenant	\$20,236	\$21,045	\$21,887
Assistant Chief	\$21,227	\$22,076	\$22,959

In accordance with the foregoing salary structure, all employees in the bargaining unit shall receive an 8% increase as of January 1, 1982, an additional 4% increase as of January 1, 1983, and a further increase of 4% on July 1, 1983.

5. Article II, Section 5, Overtime Pay, shall include in the first paragraph, which deals with required appearances in courts and the like, the requirement for minimum payment of two hours overtime in such appearances.

The final paragraph, providing up to a maximum of \$3.00 for meals "while on said recall or overtime," shall be deleted.

6. Article II, Section 20, Clothing Allowance and Uniform and Equipment Issue, shall include the following new paragraph in Part d:

Upon execution of the Agreement, a qualified expert shall be selected who is acceptable to both the City and the PBA. A member of the PBA or other City employee is not precluded from selection. All weapons shall be inspected by the jointly-designated expert, who shall make a determination of their serviceability. Weapons shall be inspected thereafter at least once a year.

7. Article II, Section 20, shall include the following new paragraph, following the itemization of Standard Uniform Issue:

When used leather items are issued to police officers, all items will be in a reconditioned status at time of issuance.

8. Article II shall include the following, as a new Section 21:

21. LOCKER SPACE. A full-size locker will be provided for each member of the bargaining unit.

9. With respect to other aspects of Article II, Section 20, Clothing Allowance (Parts a and b), these shall be items for the parties' continuing discussion in connection with the successor Agreement.
10. Article III, Association Representatives: Release Time, shall be revised to provide the following:

The release time allowed in Section 1 for members of the committee negotiating

APPENDIX TABLE 1

TOP BASE-SALARY FOR PATROLMEN:
WATERVLIET IN 1981,
COMPARED WITH 16-COMMUNITIES GROUP

<u>Community</u>	<u>1981 Salary</u>	<u>Number of Years To Reach Top Salary</u>	<u>Ranking, From Highest To Lowest</u>
Schenectady	\$18,581	After 5 years	1
Rotterdam	18,260	N.A.	2
Niskayuna	18,100	After 4 years	3
Albany	17,736	After 4 years	4
Troy	17,482	After 3½ years	5
Colonie	17,000	After 4 years	6
Bethlehem	16,982	After 5 years	7
Watervliet	16,756	After 6 years	8
Glenville	15,800	After 4 years	9
Mechanicville	15,602	After 3 years	10
Saratoga Springs	15,405	After 4 years	11
Scotia	15,096	N.A.	12
Guilderland	14,963	After 5 years	13
Renssalaer	14,907	After 5 years	14
East Greenbush	14,600	After 7 years	15
Cohoes	14,371	After 3 years	16
South Glens Falls	12,705	After 10 years	17

SOURCE: 1981 salaries were reported by the City in its Exhibit 12, based on LADS reports as of January 1983.

"Number of years to reach top salary" were compiled by the Panel Chairman from PBA contracts for six communities as put into evidence by the PBA, and supplemented by LADS reports on 1981 salary steps which were included in City Exhibit 3.

APPENDIX TABLE 2

STARTING BASE-SALARY FOR PATROLMEN:
WATERVLIET IN 1981,
COMPARED WITH 16-COMMUNITIES GROUP

<u>Community</u>	<u>1981 Salary</u>	<u>Ranking, From Highest To Lowest</u>
Albany	\$16,531	1
Rotterdam	16,008	2
Watervliet	13,892	3
Niskayuna	13,863	4
Saratoga Springs	13,121	5
Scotia	13,096	6
Troy	12,982	7
Cohoes	12,894	8
Bethlehem	12,851	9
Schenectady	12,720	10
Glenville	12,250	11
Colonie	12,000	12
East Greenbush	11,800	13
Rensselaer	11,556	14
Mechanicville	11,067	15
South Glens Falls	10,725	16
Guilderland	N.A.	N.A.

SOURCE: 1981 salaries were reported by the City in its Exhibit 11, based on LADS reports as of January 1983.

APPENDIX TABLE 3

TOP BASE-SALARY FOR PATROLMEN:
THE CITY'S PROPOSAL FOR 1982,
COMPARED WITH 16-COMMUNITIES GROUP

<u>Community</u>	<u>1982 Salary</u>	<u>Number of Years To Reach Top Salary</u>	<u>Ranking, From Highest To Lowest</u>
Schenectady	\$20,253	After 5 years	1
Niskayuna	19,548	After 4 years	2
Rotterdam	19,538	N.A.	3
Colonie	19,000	After 4 years	4
Albany	18,999	After 4 years	5
Bethlehem	18,526	After 5 years	6
<i>Watervliet:</i>			
<i>City's proposal</i>	17,560	After 6 years	7
Glenville	17,143	After 4 years	8
Mechanicville	16,694	After 3 years	9
Rensselaer	16,608	After 5 years	10
Saratoga Springs	16,545	After 4 years	11
Guilderland	16,160	After 5 years	12
Cohoes	16,141	After 3 years	13
Scotia	15,821	N.A.	14
East Greenbush	15,800	After 7 years	15
South Glens Falls	13,796	After 10 years	16
Troy	N.A.	After 3½ years	N.A.

SOURCE: 1982 salaries were reported by the City in its Exhibit 14, based on LADS reports as of January 1983.

"Number of years to reach top salary" were compiled by the Panel Chairman from PBA contracts for six communities as put into evidence by the PBA, and supplemented by LADS reports on 1981 police salaries which were included in City Exhibit 3.

APPENDIX TABLE 4

STARTING BASE-SALARY FOR PATROLMEN:
THE CITY'S PROPOSAL FOR 1982,
COMPARED WITH 16-COMMUNITIES GROUP

<u>Community</u>	<u>1982 Salary</u>	<u>Ranking, From Highest To Lowest</u>
Albany	\$17,708	1
Rotterdam	17,128	2
Niskayuna	14,972	3
<i>Watervliet: City's Proposal</i>	<i>14,558</i>	4
Cohoes	14,482	5
Saratoga Springs	14,092	6
Schenectady	13,865	7
Bethlehem	13,494	8
Glenville	13,291	9
Scotia	13,000	10
East Greenbush	13,000	11
Colonie	12,700	12
Rensselaer	12,439	13
South Glens Falls	11,796	14
Mechanicville	11,067	15
Guilderland	10,368	16
Troy	N.A.	N.A.

SOURCE: 1982 salaries were reported by the City in its Exhibit 13, based on LADS reports as of January 1983.

APPENDIX TABLE 5

PERCENTAGE INCREASE
FROM 1981 TO 1982
IN TOP BASE-SALARY FOR PATROLMEN,
COMPARED WITH 16-COMMUNITIES GROUP

<u>Community</u>	<u>Percent Increase From 1981 To 1982</u>
Schenectady	9.0%
Niskayuna	8.0%
Rotterdam	7.0%
Colonie	11.8%
Albany	7.1%
Bethlehem	9.1%
Glenville	8.5%
Mechanicville	7.0%
Rensselaer	11.4%
Saratoga Springs	7.4%
Guilderland	8.0%
Cohoes	12.3%
Scotia	4.8%
East Greenbush	8.2%
South Glens Falls	8.6%
Troy	N.A.

SOURCE: Calculated by the Public Panel
Chairman from top base-salaries reported
in Appendix Tables 1 and 3.

APPENDIX TABLE 6

PATROLMEN SALARY INCREASES ON TOP STEP IN 1982^{/a}

FOR NEGOTIATED AND ARBITRATED CONTRACTS^{/b}

NEW YORK STATE

ANALYZED BY PERB THROUGH APRIL 1, 1982

	No. of Agreements	No. in Department	Weighted Average		
			Top Step ^{/c}	Increase over 1981 Amount	%
TOTAL	160	13,584	\$23,821	\$1,923	8.7
Arbitrated	23	2,414	20,094	1,528	8.1
Cities	8	2,034	19,665	1,465	7.9
Towns	7	271	23,470	1,947	9.1
Villages	8	109	19,693	1,637	9.0
Negotiated	137	11,170	24,627	2,009	8.8
Cities	28	2,538	19,236	1,464	8.3
Towns	31	1,224	22,114	1,755	8.6
Villages	75	1,380	26,627	1,662	8.3
Counties	2	5,985	28,090	2,368	9.2
Other	1	43	28,371	2,462	9.5

^{/a} Fiscal years ended in 1982.

^{/b} Excludes New York State and New York City police forces.

^{/c} Salary after consecutive increments are received, generally 3-5 years.

Prepared by PERB Research 4/7/82.

APPENDIX TABLE 7

TOP BASE-SALARY FOR PATROLMEN:
THE CITY'S PROPOSAL FOR 1983,
COMPARED WITH 16-COMMUNITIES GROUP

<u>Community*</u>	<u>1983 Salary</u>	<u>Percent Increase: 1983 Compared with 1982</u>
Colonie	\$21,000	10.5%
Glenville	18,600	8.5%
<i>Watervliet City's proposal:</i>	<i>18,403</i>	<i>4.8%</i>
Guilderland	17,722	9.7%
Cohoes	17,594	9.0%

*In all other communities the 1983 settlements reportedly are pending.

SOURCE: 1983 salaries were reported by the City in its Exhibit 19, based on LADS reports as of January 1983. Percent increases were calculated by the Panel Chairman, using 1982 salaries reported in City Exhibit 14.

