

consistent with the statutory provisions and procedural rules applicable to the Interest Arbitration process.

The designated Panel was constituted as follows:

Sumner Shapiro	Chairperson
Steven Forrest, Esq.	Employer Appointee
James Young, Esq.	Employee Appointee

A formal arbitration hearing was held May 19, 1984, at which time the parties were afforded full opportunity to present evidence and arguments in support of their respective positions. Post hearing briefs, due by June 25, 1984, were timely filed. The Panel's task was immensely aided by the particularly articulate and cogent presentations of both advocates and their associates, and same is gratefully acknowledged herewith.

Appearances were as follows:

For the Union	John B. Schamel, Labor Relations Consultant Box 163, Chemung, NY 14825
	Edward J. Fennel, Municipal Finance Consultant 44 No. Reservoir Street, Cohoes, NY 12047
	Thomas Stein, Member PBA Negotiating Committee
	Thomas Ryan, Member PBA Negotiating Committee
	Charles Paterson, Member PBA Negotiating Committee
	James Mindin, Member PBA Negotiating Committee
	Michael Ross, Member PBA Negotiating Committee
For the Employer	James L. Burke, Esq., 315 Lake Street, Elmira, NY 14901
	Lawrence E. Kay, City Chamberlain Elmira, NY
	Bernard P. DeMember, Personnel Director City of Elmira, NY

The Panel has determined that no useful purpose would be served by inclusion of a summary and review of the parties' respective positions which were most articulately introduced into the record by the parties themselves. The Panel has determined that it will only briefly summarize the underlying rationale for its own decisions, noting that they, in some cases, reflect compromises and accommodations to disparate views. The Panel has specifically considered comparisons of wages, hours, and employment conditions of the employees relative to wages, hours, and conditions provided other employees engaged in the delivery of similar services, or involved in the application of similar skills under comparable working conditions. Additionally, it has similarly considered the proposals of the bargaining unit at hand relative to those prevailing in both public and private employment in comparable communities. The Panel has integrated into its evaluation consideration of the interests and welfare of the public and the Public Employer's ability to pay. The Panel has weighed the evidence submitted, treating with relative hazards, physical qualifications, educational demands, mental qualifications, and job training and skills. Further, it has considered the terms of predecessor collective agreements between the parties, and the history of compensation and benefits provided therein.

II. OPINION

1) Personal Leave

The Association has requested two additional personal days

on the basis that it will allow Employees to enjoy up to several days off for family functions during the summer and at the time of traditional holidays. The Employer had offered one additional day to be deducted from sick leave when taken. The Panel views favorably the rationale that lower seniority Employees wishing to spend a limited number of weekend days or traditional holidays with their families should be permitted to do so. Accordingly, it awards the two additional personal leave days, subject to the following conditions:

- a) Only Employees whose days off schedule does not encompass at least one weekend day shall be entitled to the benefit.
- b) Both days, if taken, shall be charged to sick leave.
- c) The Employees shall be entitled to earn back these days in subsequent years of service (see Retirement Benefit, below).
- d) The scheduling of these days shall be subject to all the administrative controls currently applicable to personal leave.

This provision shall become effective with the second year of the Agreement.

2) Retirement Benefits (Terminal Leave)

Employees are presently prohibited from accruing additional sick leave days after completion of 26 years of service. The Agreement provides the Employer with appropriate means for policing the use of sick leave to prevent abuses. The Panel concurs in the view that it is inequitable to penalize a person who falls victim to a major illness by denying that individual an opportunity to replenish depleted sick

days out of his or her individual accumulation once his or her 26th year of service is completed. Consequently, the Panel will award the right to accrue sick leave at the rate of 12 days per year throughout one's tenure, subject to preservation of the existing administrative controls.

3) Voluntary Termination Benefits (Terminal Leave)

Up to the present, an Employee has been entitled to lump-sum retirement pay for unused sick leave up to a maximum of 175 days at 60% of the individual's wage rate at that time. The Union proposes to maintain the maximum entitlement at 175 days, but wishes to introduce a sliding scale of payment ranging from 75% of current pay for 25-year retirees to 70% for 28-year retirees - to 65% for 31-year - and 60% for 35-year retirees. The Union's stated rationale is that this would encourage early retirement, contributing to staffing improvements in the Police Department. The Employer pleads that it would be an expensive benefit and, in its view, unproductive.

The Panel concurs with the Employer in the view that it is the Employer's sole and exclusive prerogative to determine the type of turnover characteristics it wishes to encourage, and this demand will be denied.

4) Equipment and Maintenance Allowance

The Employees have requested an annual cash payment for uniform maintenance. The Employer vigorously opposes this proposal on several specific grounds. First, it argues that the brown uniforms

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which were prone to soiling have been replaced by new issue traditional blues. Secondly, it argues that where uniforms are not issued, as in the case of Detectives, it already provides a \$300.00 equipment and maintenance allowance. It opposes implementation of any kind of lump sum payment as it believes control over the allocation of such funds to the intended end use is impaired, and argues that a Quartermaster System under which specific expenditures would be reimbursed up to some limit provides more effective control. Moreover, and basically, the Employer reiterates its view that cleaning and maintenance of apparel is a normal personal burden of employees and that the proposal should be denied in its entirety.

The Panel eschews this latter contention as it relates to Police personnel who, in the course of their normal duties, frequently soil or damage wearing apparel which must be cleaned and repaired if they are to maintain appropriate appearances. In consideration of this and the practice in other jurisdictions, the Panel will award a \$250.00 per year clothing and uniform maintenance allowance for uniformed personnel. However, the award will not stipulate a lump sum payment but, out of deference to the City's views and its managerial prerogative, will provide that payment shall be made in such increments and at such intervals as the Employer determines within each calendar year to persons on the payroll as of January 1 of that calendar year. The preexisting arrangements for issuance and acquisition of apparel items, including employee personal responsibilities, are to continue unmodified.

5) Longevity for Officers

The Employer has clearly stated its own philosophical agreement with the virtues of retention of experienced personnel, and it believes it has already provided such incentives for officers by setting up the pay system in which the differentials between and among ranks are such as to provide a continuing incentive to serve in advance. The Employer believes the officers receive recognition and reward through both higher salaries and the prestige and associated privileges which inhere in their positions.

The Panel recognizes individuals in the officer grades do, indeed, enjoy premium salaries relative to subordinates, but views these differentials largely as compensation for assuming and bearing increasingly more demanding responsibilities as one ascends the hierarchy of positions. It acknowledges also that the prestige and privileges associated with these positions of especially high responsibility constitute an element of psychic income but, in consideration of all relevant facts, believes some form of explicitly defined monetary reward is warranted in recognition of lengthy service. After consideration of all relevant factors, the Panel will award \$200.00 per annum longevity increments to be paid at the conclusion of 15 years of departmental service - and, again, after completion of 20 years of departmental service, respectively, to Sergeants, Captains and Deputy Chiefs. The implementation of this provision is to be deferred to the second year of the Agreement.

6) Wages

We have cautiously and extensively weighed the positions of

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the parties anent the wage issue. Both parties occupy persuasive positions in that the Employer's ability to pay is severely limited and the Employee's demands relative to a number of legitimate standards of appraisal are not unreasonable. We infer that the historical relationship between Public Safety Employees within the City of Elmira is a persuasive guide and we have attempted essentially to restore the long standing historical relationship cited by the Employer. Accordingly, we will award a direct wage increase of 7.1% effective January 1, 1984, and an additional 7.1% effective January 1, 1985. Additionally, we have reviewed the matter of past health insurance changes in negotiations. While we are unpersuaded by Employee allegations of calculated bad faith bargaining, we do recognize the avant-garde burden shouldered by the Police and, in recognition thereof and further in consideration of the lengthy period involved in concluding this matter, award a one-time lump-sum payment in the amount of \$150.00 payable in the first pay period following December 1, 1984. Eligibility for said payment shall be limited to persons who were members of the bargaining unit on January 1, 1983.

The demand for shift differentials was found unmeritorious and will be denied.

7) Retirees - Health Insurance

The parties have stipulated to agreement to pay one-half the health insurance premium requirement for retirees who retire after January 1, 1984, and who have at least 20 years of service and are receiving pensions from the State Retirement Fund, or a Pension

Disability Benefit from the Social Security System. This benefit is payable for up to 36 months following retirement. This agreement shall be embodied in our Award.

8) Grievance and Arbitration Procedure

The parties have stipulated to agreement on certain changes in Article 39, Grievance and Arbitration Procedure. The terms of this agreement appear as Appendix A hereto and shall be embodied in our Award.

III. AWARD

The undersigned, pursuant to their designation as an Arbitration Panel by the Public Employment Relations Board in the matter hereinbefore described, award as follows:

1. Personal Leave

The Employees shall be awarded two additional personal leave days chargeable to sick leave, subject to the caveats set forth in the Opinion section, above. This benefit shall become effective with the second year of the Agreement.

2. Retirement Benefits (Terminal Leave)

Employees shall be permitted to accrue unused sick leave days to a maximum of twelve (12) days per year throughout their tenure, subject to preservation of existing administrative controls.

3. Voluntary Termination Benefits (Terminal Leave)

The Employee demand for changes in the rate of pay to be

employed to calculate compensation for residual sick leave accumulation of up to 175 days is denied.

4. Equipment and Maintenance Allowance

The Panel awards employees two hundred fifty dollars (\$250) per year to uniformed persons on the payroll on January 1 of that calendar year to be paid at such times and in such increments as the Employer elects within the year.

5. Longevity for Officers

The Panel awards Sergeants, Lieutenants, Captains, and the Deputy Chief, respectively, longevity increments of two hundred dollars (\$200) per annum to be added to their respective salaries upon the conclusion of their fifteen (15th) and twentieth (20th) years of departmental service.

6. Wages

A. The Panel awards a salary increase of seven and one-tenth percent (7.1%) based on the salary schedule in the expiring Agreement. This increase shall become effective as of January 1, 1984.

B. The Panel awards a second salary increase of seven and one-tenth percent (7.1%) based on the preceding year's (1984) schedule effective January 1, 1985.

C. The Panel awards each Employee on the payroll on January 1, 1983, a one-time, lump-sum payment of one hundred fifty dollars (\$150), payable in the first pay period following December 1, 1984.

CONCURRING:

Steven Forrest
Steven Forrest, Esq.
Employer Panel Member

STATE OF NEW YORK)
) s.s.:
COUNTY OF CHEMUNG)

Sworn to before me this 6th day
of ~~October~~ ^{November}, 1984.

Barbara A. Dunn
Notary Public

BARBARA A. DUNN, Notary Public
New York State, Chemung Co. 6123685
Commission Expires March 30, 1986

CONCURRING:

James F. Young
James Young, Esq.
Employee Panel Member

STATE OF NEW YORK)
) s.s.:
COUNTY OF CHEMUNG)

Sworn to before this 12 day
of ~~October~~ ^{November}, 1984.

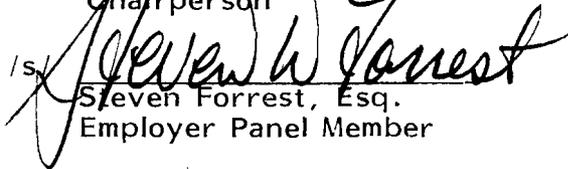
Joseph M. Antonino
Notary Public

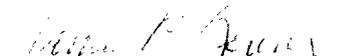
JOSEPH M. ANTONINO
Notary Public
New York State
No. 4519382
Expires March 30, 1985

(39) GRIEVANCE AND ARBITRATION PROCEDURE

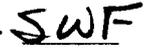
"Grievance" shall mean any claimed violation, misinterpretation or inequitable application of the collective bargaining agreement between the parties; or of the existing laws, rules, procedures, regulations, administrative orders or work rules of the City of Elmira or a department thereof that relate to or involve employee health or safety, physical facilities, materials or equipment furnished to employees or supervision of employees.

/s/ 
Sumner Shapiro
Chairperson

/s/ 
Steven Forrest, Esq.
Employer Panel Member

/s/ 
James Young, Esq.
Employee Panel Member

initial: Sumner Shapiro 

Steven Forrest, Esq.  SWF

James Young, Esq. 

ORDINANCE

Appendix A

An Ordinance Establishing Grievance Procedure for the Employees of the City of Elmira.

By Councilman D'Ambrosio:

BE IT ORDAINED by the Council of the City of Elmira, duly convened in regular session this 23rd day of September, 1963, that the following grievance procedure is hereby established for employees of the City of Elmira.

1. Definitions

As used herein the following terms shall have the following meanings:

- a. "Employee" shall mean any person directly employed and compensated by the City of Elmira, except persons employed in the legislative or judicial branch thereof.
- b. "Grievance" shall mean any claimed violation, misinterpretation or inequitable application of the collective bargaining agreement between the parties; or of the existing laws, rules, procedures, regulations, administrative orders or work rules of the City of Elmira or a department thereof that relate to or involve employee health or safety, physical facilities, materials or equipment furnished to employees or supervision of employees.
- c. "Department" shall mean any office, department, board, commission, or other agency of the government of the City of Elmira.
- d. "Days" shall mean all days other than Saturdays, Sundays and legal holidays. Saturdays, Sundays and legal holidays shall be excluded in computing the number of days within which action must be taken or notice given within the terms of this ordinance.
- e. "Immediate Supervisor" shall mean the employee or officer on the next higher level of authority above the employee in the department wherein the grievance exists and who normally assigns and supervises the employee's work and approves his time record or evaluates his work performance.

2. Declaration of Basic Principle

Every employee of this City shall have the right to present his grievance in accordance with the procedures provided herein, free from interference, coercion, restraint, discrimination, or reprisal, and shall have the right to be represented by a person of his own choosing at all stages of the grievance procedure.

3. Initial Presentation

- a. An employee who claims to have a grievance shall present his grievance to his immediate supervisor, orally, within two days after the grievance occurs.

Appendix A

- b. The immediate supervisor shall discuss the grievance with the employee, shall make such investigation as he deems appropriate and shall consult with his supervisors to such extent as he deems appropriate, all on an informal basis.
- c. Within three days after presentation of the grievance to him, the immediate supervisor shall make his decision and communicate the same to the employee presenting the grievance, and to the employee's representative, if any.

4. Second Stage

- a. If an employee presenting a grievance be not satisfied with the decision made by his immediate supervisor, he may, within five days thereafter, request a review and determination of his grievance by the department head. Such a request shall be in writing and shall contain a statement to the specific nature of the grievance and the facts relating to it. Such request shall be served upon both the department head and the immediate supervisor to whom the grievance was originally presented. Thereupon, and within two days after receiving such request, the immediate supervisor shall submit to the department head a written statement of his information concerning the specific nature of the grievance and the facts relating to it.
- b. The department head, or his nominee, may, and at the request of the employee shall, hold a hearing within five days after receiving the written request and statement from the employee. The employee, and his representative, if any, may appear at the hearing and present oral statements or arguments.
- c. Within five days after the close of the hearing, or within eight days after the grievance has been submitted to him if there be no hearing, the department head, or his nominee, shall make his decision and communicate the same to the employee presenting the grievance, and to the employee's representative, if any.

5. Appeals to City Manager

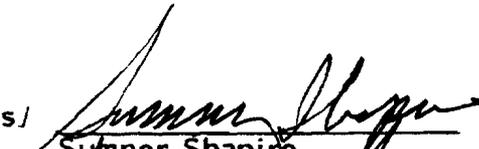
- a. An employee or the Association may appeal the decision of the department head, or nominee of the department head, within fifteen days after notice of such decision. The appeal shall be taken by submitting to the City Manager a written statement signed by the employee taking the appeal addressed to the City Manager:
 - 1. The name, residence address and department head of employment of the employee presenting the grievance.
 - 2. The name, residence address and department of employment of each other employee or official involved in the grievance.
 - 3. The name and address of the employee's representative, if any, and his department of employment if he be a fellow employee.
 - 4. A concise statement of the nature of the grievance, the facts relating to it, and the proceedings and decisions on the grievance

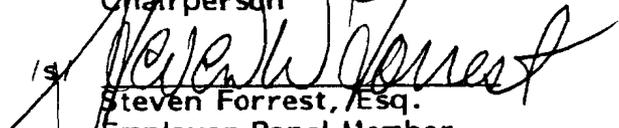
Appendix A

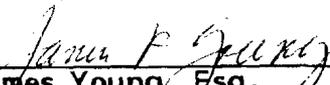
up to the time of the appeal.

5. A request for a review of the decision of the department head or his nominee.
 - b. The City Manager or his designee may request the department head to submit a written statement of facts, including a summary of the record of the hearing, if there was a hearing, and the original or a true copy of any other record or document used by the department head or his nominee in making his decision. Such written statement shall be submitted within three days after request by the City Manager or his designee.
 - c. The City Manager or his designee shall hold a hearing within ten days after receiving the written request for review. It shall give at least three days notice of the time and place of such hearing to the employee, the employee's representative, if any, the Association and the department head or his nominee, all of whom shall be entitled to be present at the hearing.
 - d. The hearing on the appeal will be held in private.
 - e. New evidence, testimony or argument, as well as any documents, exhibits or other information submitted to the department head or his nominee at the hearing held by him may be introduced at the hearing by the employee, by the department head, or his nominee, or upon the request of the City Manager, or his designee.
 - f. The hearing may be adjourned from time to time by the City Manager or his designee if in his judgment such adjournment is necessary in order to obtain material evidence. The total of all such adjournments, however, shall not exceed ten days, except that adjournments consented to by both the employee and the department head shall not be counted in determining the total days of adjournments as herein limited.
 - g. The City Manager or his designee shall not be bound by formal rules of evidence.
 - h. A written summary shall be kept of each hearing held by the City Manager or his designee.
 - i. The City Manager or his designee shall make his report in writing within five days after the close of the hearing. He shall immediately file his report and written summary of the proceedings with the employee, the employee's representative, if any, the Association, the department head, and the local Civil Service Commission if appropriate. The report shall include a statement of the City Manager's or his designee's findings of fact, conclusions and decision.
6. Arbitration
 - a. If the Association is dissatisfied with the second stage decision, they may submit the grievance to single person arbitration by filing a demand with the City within fifteen (15) work days from receipt of the second stage decision.

- b. The employee or the Association shall, within the same time period file a request with the American Arbitration Association requesting a panel for the selection of an arbitrator in accordance with its rules.
- c. The arbitration shall thenceforth be pursued in accordance with the rules of the American Arbitration Association.
- d. The decision of the arbitrator shall be final and binding upon all parties. However, the arbitrator shall not have authority to vary the terms of the collective bargaining agreement between the parties.
- e. All costs related to the arbitration process shall be equally shared by the Association and the City.

1s/ 
Sumner Shapiro
Chairperson

1s/ 
Steven Forrest, Esq.
Employer Panel Member

1s/ 
James Young, Esq.
Employee Panel Member