

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
CASE NO. IA84-13; M84-20

APR 1 1985

CONVOCATION

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IN THE MATTER OF COMPULSORY INTEREST  
ARBITRATION

- Between -

KINGSTON POLICE BENEVOLENT ASSOCIATION,  
Petitioner,

AWARD OF THE PUBLIC  
ARBITRATION PANEL

- and -

CITY OF KINGSTON

Respondent.

\_\_\_\_\_  
X

INTEREST ARBITRATION PANEL

Professor Robert T. Simmelkjaer, Esq., Chairman, Public Panel  
Member  
Hon. David H. Greenwald, Esq., Employer Panel Member  
Gary Longto, PBA, Employee Panel Member

APPEARANCES

FOR THE CITY OF KINGSTON

Andrew Gilday, Esq., Corporation Counsel  
James Ryan, Consultant  
Peter Mancuso, Mayor, City of Kingston

FOR THE POLICE BENEVOLENT ASSOCIATION

William P. Curran, J.D., Curran & Basch, P.C.  
Frederick Paresi, PBA, Witness  
Ralph Appo, PBA, Witness  
Ira Bell, PBA Witness  
Thomas J. Brown, Former Treasurer, City of Kingston, Witness  
James Brophy, PBA, Witness  
Michael Turck, PBA, Witness

BACKGROUND

The City of Kingston (hereinafter the "City") and the Police Benevolent Association of Kingston (hereinafter the "Association") began negotiations prior to the expiration of their current agreement which was in effect until December 31, 1984. These negotiations which commenced in October, 1983 were limited by reopener clauses which insofar as salaries were concerned read as follows:

XXVIII Salary Schedules

1. All salaries shall be as set forth in the annexed Schedule A made part hereof by this reference commencing January 1, 1983. Wage reopener shall be negotiated for salaries commencing January 1, 1984, and shall become Schedule B which will be annexed to and made part of this agreement.

In addition to a wage reopener, items opened for renegotiation under the renegotiation clauses in the agreement ending December 31, 1984 included: (a) supplementary days off; (b) vacation time; (c) clothing allowance; (d) longevity; (e) civil service status for the detective division and (f) inclement weather clause.

From October, 1983 through March 1984 the parties negotiated the reopener items, exchanging various proposals, but were unable to reach agreement. On April 10th, 1984, the parties jointly declared that an impasse existed. After an unsuccessful effort to mediate the dispute under the auspices of the Public Employment Relations Board, the Association petitioned PERB for compulsory Arbitration. In its petition the Association listed the following demands:

- (a) that personal leave days be supplemented by five (5) across the board and an increase to five (5) personal leave days to be reimbursed at the base rate of pay
- (b) an additional six (6) vacation days
- (c) fifteen percent (15%) across the board salary increase
- (d) additional two hundred dollar (\$200.00) clothing allowance
- (e) an increase to three hundred dollars (\$300.00) across the board at all steps as well as an additional step at nineteen (19) years, together with increments for dispatchers.
- (f) the civil service status for detectives were agreed upon as aforementioned
- (g) inclement weather clause, which shall provide that patrolmen shall not be required to walk a beat when the weather is below thirty-two degrees (32°F) or above eighty-five degrees (85°F), or in rain or snow.

In its answer to the Association's Petition for Compulsory Arbitration, the city alleged the following:

1. The City of Kingston admits those items set forth in those paragraphs marked or numbered "1" and "2" of the Petition seeking compulsory arbitration in this matter.
2. The City of Kingston denies that any of the terms and conditions of employment have been met or agreed upon between the parties.
3. That the dispatchers who are spoken of in paragraph "3.(ii) (e)" are not members of the bargaining unit, are not police officers and are not the subject of compulsory interest arbitration. The City of Kingston, therefore, objects to their inclusion within the subject matter to be arbitrated and demands that they be excluded from same.
4. That the City of Kingston concurs that once the matter of the dispatchers has been resolved excluding them from the compulsory interest arbitration procedure, that the matter is ready for compulsory arbitration.

Pursuant to the provisions of the Civil Service Law, Section 209.4, Harold R. Newman, the Chairman of the Public Employment Relations Board, designated the forementioned individuals on October 10, 1984 to serve as a Public Interest

Arbitration Panel in this proceeding. The Panel was charged by Section 209.4 to heed the following statutory guidelines:

- (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 the 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.

The City of Kingston maintains a fully paid police department. The current bargaining unit, according to the Association, consists of sixty-five (65) employees, including patrolmen, sergeants, lieutenants, dispatchers, and secretaries. The most recent agreement covering the period January 1, 1983 to December 31, 1984 includes all uniformed police and investigatory employees, except the Chief of Police and Deputy Chief of Police.

## PROCEDURE

The Panel conducted formal hearings on December 6th, 1984 and January 4th, 1985 at the Town of Ulster Town Hall and the Ulster County legislative chambers respectively. The Employer and Employee organizations were represented by counsel and afforded full opportunity during these hearings to present evidence, witnesses, and argument in support of their respective positions. All of the evidence submitted has been carefully considered in the preparation of this opinion and its accompanying award.

The Public Interest Arbitration accepted into evidence Memorandum of Law and exhibits from the parties. They included nine (9) PBA exhibits (with sub-sections) as well as extensive data on the History of the City of Kingston, Comparative Salaries of Police Departments Throughout the State of New York, Financial Capacity of the City of Kingston to Pay, Cost of Housing in the City of Kingston and Nature of Employment of the Police Personnel. The City submitted the Budget of Kingston for the fiscal year January 1, 1985 to December 31, 1985. The parties declined submission of post-hearing briefs. Although the hearing testimony was transcribed, for the instant matter the parties agreed to be bound by the notes taken by panel members and the exhibits accepted into evidence.

At the close of the hearings, the Panel met in executive session and deliberated on each of the outstanding issues, namely, the issues presented to it in the petition for

Compulsory Interest Arbitration filed by the Association. The results of these deliberations are contained in the accompanying Award issued by the Panel. The Chairman would like to commend Messrs. Greenwald and Longto for the diligent and conscientious manner in which they fulfilled their responsibilities.

In reaching our conclusions, the Panel has been bound by the standards enunciated in Section 209.4 (c)(v) of the Taylor Law with particular emphasis given to comparison of wages, hours, conditions of employment, ability to pay, overall costs, and the C.P.I.

Since the respective positions of the Town and Association focus upon economic issues, review of those arguments in accordance with the statutory criteria, prior to addressing specific items, should promote clarity and consistency in the subsequent analysis.

#### Ability to Pay

##### City Position

The City has alleged that its ability to pay the economic benefits demanded by the Association has been severely eroded by a series of financial factors that have accrued in recent years. The City's case concerning its ability to pay was presented through documentary evidence and reinforced by the testimony of James Ryan, consultant to the Mayor and Common Council. According to the City and its witness since 1971 net

City appropriations have increased 275.46% whereas during the same period the total assessed value of taxable real property in the City has increased only 8.86%. This increase in City appropriations has been attributed to three factors which are: (1) increased wages and benefits; (2) maintenance and repair of the City's existing physical plant and; (3) the reconstruction of the City's declining sewer system.

In addition to these factors which have presumably widened the gap between revenues and appropriations, the City cites other factors which further limit its ability to pay, including: (1) general cost of living increases; (2) no major anticipated increase in the tax base from commercial or industrial sources; and (3) reduced contributions from Federal and State governments as these entities attempt to reduce their own budget deficits.

Referring to its 1985 budget of \$6,676,183 and comparing it to the 1971 budget of \$1,545,465, the city calculates a net appropriations increase of 331.99% over this period which it maintains will "spell financial disaster" if current trends are allowed to continue.

Moreover, the City offers evidence that certain non-recurring and contingent financial obligations will adversely affect its ability to pay. In 1984, for example, judgments and claims awarded against the City totaled \$318,855--an amount which was \$238,855 more than the amount of \$80,000 set aside in the 1984 budget for this purpose. Notwithstanding the \$205,000

the City acknowledges was erroneously computed in the 1984 budget, the City further maintains that \$272,042 of the judgment and claims sum consisted of tax certiorari awards which have the dual effect of depleting current revenues while, at the same time, reducing the City's tax base for generating future revenues.

Another potentially serious financial setback for the City entails the loss of \$676,000 invested with RTD Securities Inc. which filed for bankruptcy. Also, in a separate transaction, the City has been named as a defendant in the Lion Capital Corp. bankruptcy case and may be obligated to return \$515,000 of City funds for redistribution in accordance with the bankruptcy laws.

In 1984, the City maintains that serious deterioration of its antiquated sewer system necessitated a \$490,000 repair program.

The City further maintains that the projected 3.5% to 4.0% increase in the 1985 cost of living will not be offset by comparable revenue increases. Witness Ryan also testified that new methods of insurance accounting could cost the City an additional \$163,000 in 1984 premiums although on cross-examination he conceded that the absence of a deductible in the new policy might save the City money in the long run.

With respect to Association arguments that the City's current Fund Balance is more than adequate to meet its economic demands, the City argues that the November 29, 1984 balance of

\$664,000 largely consists of delinquent tax payments which may never be realized and are subject to certiorari judgments. In addition, the City notes that \$200,000 of the "Fund Balance" has been applied for "specified use in the 1985 budget."

In summation, the City argues that the awarding of the Association's demands would have a substantial financial impact on the City. Considering the wage increases and related economic benefits, the City concludes that the PBA demands are excessive and unreasonable. Finally, the City provided Exhibit (C#2) analyzing the cost impact of each Association demand. The City estimated, for example, that the 15% wage increase demand of the Association would alone cost \$281,661 per annum.

#### Association Position

The Association takes issue with the City's assessment of its financial condition, finding in contrast several indices of sound fiscal prospects and a positive ability to pay. According to the Association, one measure of the City's ability to pay is its AA bond rating which indicates a strong capacity of the municipality to pay interest and principal. The City's rating which is superior to the County of Ulster's A-1 rating when coupled with its bonded indebtedness of less than 10% of its limit indicate financial stability in the Association's judgment.

Similarly, the City's 1984 constitutional tax margin of \$1,142,254 (Exhibit A) which is attributed to a significant

increase in assessed valuation of taxable real estate is cited by the Association as evidence of increasing ability to pay. The increase of full valuation from \$263,964,048 in 1983 to \$288,217,170 in 1984 (a net increase of \$24,253,122) is deemed evidence of economic growth.

Despite the City's recitation of financial problems purportedly diminishing its ability to pay, the Association finds countervailing evidence of financial solvency. According to the Association, the City has a history of conservative budgetary practices which deflate revenues and inflate liabilities, producing as a result "large end of year surpluses." In this connection, a city Alderman is quoted as "surprised that efforts to reduce the 1983 budget surplus to \$500,000 resulted instead in a \$746,031.75 unappropriated Fund Balance" (Exhibit #B). This surplus when added to the surpluses of the prior years resulted in a cumulative Fund Balance of \$1,526,031.75 as of December 31, 1983 (Exhibit B, p. 6).

In the Association's analysis, underestimating revenues is one means by which the City has accrued these surpluses. A tendency to underestimate revenues such as: county sales taxes, interest on investments, state mortgage tax and refuse and garbage collection fees are among the sources of these perennial surpluses. To illustrate the process, the Association cites two examples. First, the 1984 budget shows \$175,000 for interest and earnings whereas actual interest and

earnings in 1983 were \$228,919 and in 1982 were \$285,958. A second example offered is the sales and use tax which the City estimated would be \$2,350,000 in 1984--a \$7,000 increase over the amount received from Ulster County in 1983. Given optimistic predictions by county officials and reports indicating growth from 10% to 13.5% over comparable 1983 quarters, the Association estimates that actual sales tax receipts for 1984 should yield \$243,770 more than the City budgeted.

Referring to an editorial in the Ulster County Gazette, charging the City with "voodoo arithmetic," the Association provided additional examples of what it regards as dubious accounting practices. In Schedule A of Association Exhibit #C, the Association notes that the Common Council in calculating the amount to be raised via taxation should have added the amount for City appropriations (\$5,892,916) to the total for county charges (\$1,433,953) to arrive at a tax levy of \$7,326,869. The actual sum budgeted for this purpose of \$7,416,869 represents, in the Association's judgment, a \$90,000 overestimate in expenditures.

An equally deceptive practice identified by the Association involves double appropriations. The example, ultimately acknowledged by the City, entailed showing a social services appropriation of \$105,000 payable to the County of Ulster as a separate expenditure while this same amount was included in the \$12,918,134 listed as general government

expenses on Schedule A--thus creating a \$105,000 overestimate of expenditures.

Addressing the City's argument that much of the fund balance does not represent surplus available for meeting immediate expenditures, the Association contends that new charter provisions requiring delinquent taxpayers to pay their 1982 and 1983 tax sale certificate amounts should substantially enhance revenues in 1984. Therefore, tax revenues which under prior procedures were less reliable can be expected for meeting 1984 expenses. In addition, the City will apparently receive a \$44,000 "windfall" from a telephone company rebate.

The Association further argues that not only are revenues underestimated and expenditures overestimated, but certain funds are not listed in the 1984 budget. First, \$151,000 in Supplemental Municipal Aid from New York State received before March 30, 1984 when the budget was adopted is omitted. Second, \$10,916.99 listed on the 1984 tax roll is not included in the \$7,416,869 to be raised in taxation listed on Schedule A. Third, special revenue obtained from the Kingston consolidated schools and Ulster County for excess property taxes the City paid while Yosman Towers was in certiorari proceedings which will yield \$56,691.48 and \$14,775.67 respectively in 1984 is also omitted from the 1984 budget.

The Association acknowledges that the City will incur some financial loss from its unsecured investment of \$676,000 with a firm that went bankrupt, yet the Association contends that the overall fiscal condition of the City should effectively absorb

the impact. More important, from the Association's perspective, is the analysis of the City's budget which shows a total of \$2,250,171 available to underwrite the Association's wage demands which the City overestimated, underestimated, or omitted. As the Association, primarily through its witness Thomas Brown, concluded

"The City is definitely financially able to pay the just and reasonable increase sought by the Kingston Police Benevolent Association without negative impact on the welfare of the residents of Kingston."

#### Comparability

In support of its economic demands, the Association offered comparability data and testimony through witness Frederick Paresi. Association Exhibits #1A and #1B provide computer printouts with 1984 data on over one hundred police departments in the New York area. The reporting units are members of the Police Conference of New York. Among the categories for which data were derived were: (1) the total number of officers in these departments, (2) the government levels (i.e. village, county, town, city, state) and (3) the number of sergeants, lieutenants, captains, and detectives.

In addition, Association Exhibit #2, provided data from selected departments on two of the economic demands advanced by the Association. With respect to wage patterns, the following data was presented:

(11 Departments)		<u>Salary</u>			
<u>Police Depts. In Our Area</u>	<u>Starting</u>	<u>Top Salary</u>	<u>No. of Men</u>	<u>Population</u>	
1. Beacon	17,205	21,963	31	NF	
2. Poughkeepsie--City	19,226	21,795	74	32K	
3. Poughkeepsie--Town	19,483	25,654	60	47K	
4. Kingston	14,592	18,595	65	28K	
5. Liberty (Villages)	12,304	17,886	13	6.5K	
6. Ellenville (Villages)	10,000	15,500	11	4.5K	
7. Monticello (Sullivan)	15,682	20,727	35	7K	
8. Middletown	16,044	22,882	49	23K	
9. Newburgh--City	18,636	22,041	72	28K	
10. Newburgh--Town	13,985	17,686	25	27K	
11. Hudson	16,337	18,674	23	10K	

According to witness Paresi, analysis of data from eleven departments within a forty mile radius of Kingston indicate, inter alia, that starting salaries in the City of Kingston currently \$14,592 are \$1,180 below the average starting salaries and \$2,206 below the average when the villages of Liberty and Ellenville are excluded. In both starting and top salaries seven departments had higher wages than Kingston while only three (including Ellenville and Liberty) made less.

A comparison of twenty-six state-wide departments with 50-80 officers revealed even greater discrepancies in starting and top salaries.

The net cost of the Association's fifteen percent (15%) wage increase was analyzed in Exhibit #5a.\* The top salary of a patrolman were the Association's demands awarded would

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\*It should be noted that Exhibits 5a, 5b, and 5c were introduced during the testimony of witness James Brophy on January 4, 1985.

increase from \$18,595 to \$21,384 for a net increase of \$2,789. Under the Association's proposal, sergeants, lieutenants, and detectives with higher base salaries would receive larger wage increases while lower step officers even with step increments would obtain lower wage adjustments. The cost impact of the Association's fifteen percent demand was calculated as \$176,769.17 and including overtime \$190,712.57.

On the longevity issue, the Association utilized data from these twenty-six departments to support its position that the longevity steps of year seven, eleven, and fifteen be increased from \$250 to \$300 as well as the addition of a nineteenth year longevity step compensable at \$300. The benefits of the Association's longevity demands for each officer and net cost to the City (\$8,121.82) were documented in Exhibit #5b. For example, officers with fifteen years of service currently receiving \$750 per annum in addition to their base salaries would receive, if the Association's demands were awarded, \$900 per annum. Also, those officers with nineteen or more years of service currently receiving \$750 per annum would receive \$1,200.

On cross-examination, witness Paresi admitted that his analysis did not determine whether the eleven departments cited in Exhibit #2 included longevity payments. He further acknowledged that his analysis of those jurisdictions did not consider their financial ability (e.g. the existence of ratables). Various other issues were raised by the City focusing on the consistency and validity of Association

exhibits such as whether size of police department was the sole criterion used in preparing Exhibit #2.

### Clothing Allowance

Evidence supporting the Association's demand for a \$200.00 per employee increase in the clothing allowance was also introduced through witness Paresi, specifically Exhibit #3. According to the Association, the \$400.00 currently allocated by the City is insufficient to meet "the high cost of uniforms and the upkeep of said uniforms." From Some's Uniform Catalog the 1982/1983 prices of essential items in the police officers wardrobe were obtained. And from two local dry cleaners the cost of maintaining those items was estimated. Not including the initial purchase cost of clothing for new hires which was estimated at \$1,136, the annual cleaning costs were estimated at \$319.25 per annum. The Association contends that the proposed increase in the clothing allowance is justified by the data presented.

### Statistical Comparisons

Pursuant to Section 209.4(v)(c) wherein the public arbitration panel is obliged to consider "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," the Association compared 1983 police statistical data with 1984 data to argue that the workload has increased while the manpower of the department has decreased in the past decade by 15 men. The Association also points out that the 60 member force includes administrative personnel. Moreover, the data provided are complete through November, 1984, leaving one month unaccounted.

Utilizing Association Exhibit #4, Officer Ralph Appo testified that total incidents for 1983 were 16,462 as compared to 15,210 incidents through November 1984. The Association maintains that the 1,000 calls less in 1984 actually represents a large increase over 1983 because the new system omits numerous entries for vehicle and traffic summonses. Figures for such categories as total arrests, number of felony misdemeanor and violation arrests were below the 1983 total but the Association maintains that adding December numbers if past records are illustrative should result in an annual increase. The total number of alarms, 1,050 through January 1, 1984 should exceed the 1,079 number for 1983 if the average of 900 alarms per month are sustained. Detective division cases and responses to local bar incidents which already exceeded the 1983 comparisons were expected to increase significantly. The explanation for the apparent decline in warrants issued and handled was a new policy of having judges issue criminal summonses for minor violations. The increase in the number of sick leave days used by officers was attributed to the long term injuries of two officers. As further clarification of the

volume of police work, the Association observed that the 15,210 incidents requiring police action obscure the estimated 100,000 calls handled annually by dispatchers.

Pursuant to Section 209.4(v)(c), the Association provided documentary evidence identical to testimonial evidence comparing the peculiarities of the police occupation, with specific reference to (1) hazards of employment, (2) physical qualifications, (3) educational qualifications, (4) mental qualifications, and (5) job training and skills.

Officer Michael Turck read into the record an extensive review of the employment responsibilities of Kingston police officers. From Officer Turck's testimony it was determined that the Uniform Patrol Division is divided into three squads with the following tours of duty: 11:40 p.m. to 7:40 a.m.; 7:40 a.m. to 3:40 a.m.; 3:40 a.m. to 11:40 p.m. Approximately eleven patrolmen work on each shift supervised by a lieutenant and two sergeants supported by dispatchers and other non-uniform personnel. The patrol sectors are divided into three posts with the main business area comprising post one, smaller businesses and bars post two, and post three the high school, hospitals and several small businesses. Officers in Kingston, unlike other jurisdictions, do not work rotating shifts--a benefit obtained in prior negotiations.

Officer Turck described the police occupation as one requiring extensive training and evaluation, increasingly complex in terms of laws, rules and regulations, physically and mentally stressful, tedious in terms of reports and investiga-

tions, and fraught with unforeseen dangers. In no respects, in Officer Turck's judgement, is police work routine because a minor traffic infraction could lead to a serious confrontation. Society demands a great deal from its police officers expecting, on the one hand, good judgment and compassion in handling matters involving children and the elderly and, on the other hand, decisive effective responses to felony crimes. This range of behaviors, according to Turck produces unusual personal and family stress which takes its toll. To minimize officer frustration and maximize job satisfaction Turck recommends greater understanding by the public at large as well as rewards commensurate with the risks, extreme fluctuations, and stress associated with a 365 day per year job.

Finally, Officer Ira Bell testified on behalf of the Association regarding "Availability and Cost Analysis of Real Estate within the City of Kingston Limits"--a subject cognizable under the comparable working conditions criterion. Officer Bell testified that decent housing in the Kingston environs ranged from \$50,000 upward, citing a newspaper article which contended that the average price of a new house was \$100,000. Reviewing recent real estate listings of houses ranging from \$40,000 to \$98,000, the witness estimated that mortgage payments at current interest rates plus taxes would require \$850 to \$1,800 per month in disposable income--take home pay which far exceeds that of the Kingston police officer. According to Bell, of the 42 police officers who own their homes all acquired them after 10 years of service and 17 of

this group purchased outside city limits prior to the enactment of the residency law.

Bell found the rental market equally prohibitive, noting that most unfurnished one bedroom apartments start at \$300 per month with two bedrooms costing \$200 per month plus utilities.

In summary, Officer Bell supports the Association's wage demands as the primary means of enabling police officers to afford suitable housing in which to raise their families without working two jobs. He testified that his take home salary with two dependents was \$210 per week.

On cross-examination, Bell acknowledged that the newspaper article referred to the average house in the United States rather than Ulster County or the City of Kingston. He further testified that his Multiple Listing Survey of local real estate included 200 houses. The parties concluded with a colloquy over whether increases in property taxes were wholly or partially attributable to wage increases.

Mayor Peter Mancuso testified briefly regarding his preference in the method of selecting detectives. He declined to respond to a question concerning whether he had "any objections to detectives taking a Civil Service Examination."

The only remaining information utilized in the preparation of the instant arbitration award was C.P.I. information supplied by the City following the hearing and follow-up data on the contracts of the Monticello, City of Poughkeepsie, and City of Middleton police departments. The panel chairman requested the latter information during an executive session.

Panel member Longto confirmed that the salaries enumerated in Association exhibits for these departments constituted their 1984 salaries and were currently in effect.

With respect to the CPI data, to which the Association objected as being "illegal, unethical" and ultra vires, the panel Chairman concludes that the data constitutes uninterpreted public information available from the Bureau of Labor Statistics generally utilized in the Interest Arbitration proceedings. In the Chairman's view, such statistical data in no way prejudices the Association's position and is therefore ruled admissible.

#### Analysis/Discussion

##### 1. Issue: Wages

A majority of the Panel, including the Chairman and Public Member, following a careful review of the evidence, are persuaded that the wages currently paid to employees of the Kingston Police Department are significantly below average. The Panel Majority found Association Exhibit #2 particularly persuasive. This Exhibit with supporting testimony indicated that Kingston police officers have starting salaries which average \$1,180 less than comparable departments and \$2,206 less when the villages of Ellenville and Liberty are excluded. Similarly, top salaries for police officers in Kingston average \$1,714 and \$2,518 less than comparable departments. Also persuasive was the fact that when the two villages are

excluded, only one police department has a lower starting and top salary than Kingston.

Although precise comparisons were not possible, owing in part to the City's decision not to submit alternative comparability data, reasonable starting and top salaries for the Kingston police department when size of department and population are considered should probably fall between Middleton and the City of Poughkeepsie. Middleton has a population of 23K and a force of 49 persons and the City of Poughkeepsie has a population of 32K and a force of 74 persons. All things being equal, Kingston with a population of 26K and a force of 63 men should receive economic benefits approximating Middleton and approaching the City of Poughkeepsie. The City of Newburgh which on its face appears comparable apparently has unique local problems which distinguish it from Kingston. Of less significance were the twenty-six departments analyzed in Association Exhibit #2. Many of these departments were remote from Kingston, ranging from Long Island to Erie County, and without economic information establishing their similarity to Kingston were excludable on geographic grounds.

The City's case on the wage issue as well as other economic items focuses upon its alleged inability to pay. The City set forth a series of financial factors which it maintains effectively foreclose its ability to meet the Association wage demands. As a result, the City has responded to the Association's demand for a fifteen percent (15%) wage with a no increase counter-proposal.

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The City maintained that since 1971 net appropriations have increased 275.46% whereas the total assessed value of real property has increased only 8.86%. According to the City, the increase in net appropriations was attributable to wage increases, maintenance and repair costs, and reconstruction of the sewer system. In addition, factors further reducing the City's ability to pay were cited such as: cost of living increases, no major anticipated increases in the tax base, and reduced contributions from Federal and State governments.

The Panel Majority confronted with the city's data ponders whether tax rate increases have offset the slow growth in real estate assessed valuation and whether the market value of real estate in Kingston is a truer measure of property value. Another pertinent question is whether real estate assessed value has increased more substantially in comparable jurisdictions--especially those whose policemen receive higher compensation. The Panel Chairman recognizes that assessed valuations are often calculated significantly below market value for a variety of reasons (i.e. attract industry etc.). As compared to assessed valuation which actually declined from 1985 to 1984; full valuation of taxable real estate increased 44 million during the same period (Exhibit #A).

The City also advanced a series of additional financial problems which presumably inhibit its ability to pay. According to the City, its judgment and claims liabilities exceeded by \$80,000 the amount set aside in the budget for this purpose. Another problem entailed potential investment losses

involving two securities firms which filed for bankruptcy. Moreover, the City claims that unanticipated repairs on the sewer system totaling \$490,000, increased insurance premiums, and Department of Works expenses all impinge on its ability to provide wage increases for policemen. Finally, the City rejects the Association's argument that sizable annual surpluses in the Fund Balance are a source of revenue, arguing instead that these amounts (\$664,000 ending 12/31/84) consist largely of delinquent tax payments which may never be realized.

The Panel Majority finds the City's description of dire financial circumstances somewhat overdrawn. The City's position on its ability to pay would seem plausible were it facing imminent financial disaster; however, the facts do not support this view. On balance, the Panel found the analysis of Thomas J. Brown, former treasurer of the City of Kingston credible and substantiated.

In his testimony with supporting exhibits, Mr. Brown systematically reviewed the current and prior fiscal condition of the City as well as analyzed its budgetary practices. Referring to Exhibit A, he testified that Kingston is \$1,142,254 below its constitutional taxing capacity--funds the City could obtain and still have a zero tax margin. Mr. Ryan, on behalf of the City, suggested that once capital expenses in the current budget were subtracted the "true ceiling" was \$6,766,405 rather than \$7,035,170 leaving a \$873,489 tax margin. Nevertheless, the Panel Majority concludes that significant potential resources are available to the City.

In the Panel Majority's judgment, the Association succeeded in documenting potential sources of revenue which could be utilized to fund a equitable wage increase for the PBA. Most persuasive was evidence that the City, despite alleged financial difficulties, has been able to amass a sizable budget surplus in recent years. For the period ending 12/31/83, the City reported a budget surplus of \$746,031 despite efforts to reduce the surplus. For the period ending 12/31/84, the City amassed another \$750,000 budget surplus, \$200,000 of which it chose to appropriate in the 1985 budget during the Interest Arbitration Hearing--a development about which the Association has raised questions. Even if credence is accorded the arguments of the City to the effect that all of the Fund Balance, especially the portion representing delinquent taxes, is not immediately collectible, past practice indicates that a substantial portion will be available.

Association witness Mr. Brown was also convincing in his identification of other revenue sources. The City's under-estimation of sales tax revenue given county projections seems evident. A negligible increase of \$7,000 in 1984 when compared to estimates of ten to 13 percent growth appears to be overly conservative. Similarly, the City projection of interest earnings below the escalating 1982 and 1983 receipts also appears unwarranted. The Association was also persuasive in its identification of \$90,000 in over-expenditures derived from the addition of city appropriations and county charges.

A significant development in the course of the hearing was the City's admission that the Association had correctly identified a \$105,000 surplus in the budget generated by double counting a social services expenditure.

Without recounting every item identified by the Association, testimonial and documentary evidence, which was not effectively rebutted by the City, indicated that as much as \$2,250,171 might be available in the 1984 budget. These sources of revenue should more than offset the worst case financial scenario projected by the City which assumes delinquent payments at historical rates and a total loss of its securities investments--the latter deemed an unlikely event. Regarding related fiscal subjects, such as sewer repairs and certiorari claims, the Panel Majority maintains that solutions are available to the City including the provision of larger contingency budgets and long term planning. It is difficult for the Panel Majority to accept the City's assertion that repairs needed on a sewer system deteriorating since 1945 recently became a surprise. Association witness, Thomas Brown, was adjudged highly credible for two reasons: first, he had served as City Treasurer and was intimately conversant with city finances; and second, his testimony and documentation was reinforced by reference to actual city data.

While, on the one hand, it can be said that the Association has made a case for a reasonable and equitable wage increase, it cannot be said that a 15% wage increase is fair. No rationale reading of the statutory criteria could

countenance a wage increase of this magnitude. The City is correct when it maintains that a net economic award of \$320,000 would severely alter city finances and have spillover effects for other bargaining units. On the other hand, a wage increase comparable to that received by other police departments will not solve the patent inequities experienced by Kingston police officers. While the city of Kingston can be commended for its prudent budgetary practices, the police officers who perform a valuable service cannot continually provide subsidized city services.

Although the Panel Majority has decided not to award the Association or the city wage proposal, the instant award should improve the economic status of Kingston police officers and provide a wage pattern which locally comparable adjustments in future contracts can sustain. The Panel Majority also recognizes the one year reopener as the basis for its jurisdiction and the limitations this duration imposes on efforts to rectify past inequities particularly since previous contracts were mutually negotiated by the parties. Finally, the CPI information provided by the City was deemed useful by the Panel Majority in establishing a floor for the wage adjustment which in the instant case will recognize comparability and equity factors as well.

Award

Pursuant to the Collective Bargaining Agreement between the City of Kingston and the Kingston Police Benevolent Association for the period January 1, 1983 through December 31, 1984, specifically Article XXVIII, Salary Schedules, a wage reopener salary schedule shall become Schedule B annexed to the forementioned Agreement providing for the following wage adjustment:

- (1) A 9.5% wage increase across the board for all members of the Kingston PBA, excluding dispatchers.\* The parties shall generate a wage schedule consistent with this adjustment.
- (2) This wage increase is retroactively effective for the period January 1, 1984 through December 31, 1984.

This wage increase will raise the starting salaries of Kingston police officers from \$14,592 to \$15,978 and the salaries of top step police officers from \$18,595 to \$20,362. It should be noted that, although in the Panel Majority's opinion the foregoing wage award goes a long way toward placing Kingston police officers at salary levels comparable to similarly situated units reviewed in Exhibit #2, the relative ranking of Kingston officers on top salaries will remain unchanged. That is, seven police departments listed in Exhibit #2 will still have higher top salaries than Kingston's

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\*The dispatchers are not included in the instant award because the City has contested their inclusion and the Panel Chairman maintains that unit determination issues are properly within the jurisdiction of P.E.R.B. The Panel will retain jurisdiction over this matter in the event the parties following the intervention of P.E.R.B. are unable to resolve this issue.

officers. To reiterate, the Panel Majority recognizes that this award is limited to a one-year reopener and therefore has sought to ameliorate rather than rectify current wage inequities. Moreover, the Panel Majority is aware of ongoing negotiations between the parties for a successor agreement.

The Panel Majority calculates that the cost of the wage award based upon data supplied by the parties (Exhibit 5a-5d) will be \$120,784, including overtime compensation.

A related matter which has a cost impact is the increased contribution of the City to the retirement and social security benefits of the unit. The Panel Majority estimates the increased retirement contribution to be \$56,244 and the increased social security to be \$12,365.

VOTE: 2-1, Employer Member dissenting.

2. Issue: Longevity, Article XXXI

The Association has demanded an increase of \$50.00 in each of the three longevity steps currently available and the establishment of a nineteenth year step at \$300.00. The net effect of the Association's proposal would provide an additional \$150.00 for the majority of Kingston police officers while providing those with nineteen or more years of service an additional \$450.00. For the average employee an increase from \$750.00 to \$900.00 would constitute a twenty percent (20%) increase in longevity benefits and cost the City an additional \$8,121 per annum.

The comparability data provided by the Association (Exhibit #2) presents a mixed picture regarding the longevity issue. Notwithstanding wage differences, longevity benefits paid by the eleven comparable jurisdictions range from a maximum of \$1,410 to a low of zero (not found). In that range, Kingston would appear to be at the median, however, since salaries for these other departments have been documented as superior, a modest increase seems reasonable. A modest increase in longevity payments should improve Kingston police officers standing relative to the City of Poughkeepsie which provides \$750.00 after 15 years as does Kingston but leave Kingston considerably below Middletown which pays \$1,160 after 15 years.

A longevity increase approximating the wage increase seems reasonable to the Panel Majority.

#### AWARD

##### Article XXXI, Longevity.

1. Effective January 1, 1984 through December 31, 1984, all employees shall be paid longevity increments in addition to their regular salaries as follows:
  - a. After seven (7) years of service, the sum of Two Hundred and Seventy Five (\$275.00) dollars.
  - b. After eleven (11) years of service, the sum of Two Hundred and Seventy Five (\$275.00) dollars.
  - c. After fifteen (15) years of service, the sum of Two Hundred and Seventy Five (\$275.00) dollars.

2. The Association demand for a nineteenth year longevity payment at \$300.00 is DENIED.

The Panel Majority calculates the cost of the longevity award to be \$4,060.

VOTE: 2-1, Employer Member Dissenting

3. Issue: Clothing Allowance, Article, XXX

The Association has demanded a clothing allowance increase of \$200.00 from the current provision of \$400.00 per annum. The Association's demand constitutes a fifty percent increase in this benefit. While the Association provided data which indicates that the purchase and cleaning of uniforms has risen slightly since the 1982 increase from \$300.00 to \$400.00, the evidence did not establish substantial cost increases and certainly not fifty percent.

In executive session, the Panel reviewed the pattern of clothing allowance increases which have been as follows:

<u>Year</u>	<u>Clothing Allowance</u>
1978	\$200
1980	\$300
1982	\$400

Given the declining cost of living index and the pattern of prior increases, the Panel Majority Awards as follows:

AWARD

Article XXX, Clothing Allowance

1. Commencing January 1, 1984, the City shall provide to all employees covered by this agreement an annual clothing allowance not to exceed Four Hundred and Seventy Five (\$475) Dollars to be paid on Clothing Allowance Request Forms.

The Panel Majority calculates the cost of the clothing allowance award to be \$5,000.

VOTE: 2-1, Employer Member Dissenting

#### Other Items

Association demands not addressed in the instant Award are deemed DENIED. The following items included in the Declaration of Impasse are therefore DENIED:

- (a) A personal leave supplementation of five (5) days.
- (b) An additional six (6) vacation days.
- (f) Civil Service status for the detective division.
- (g) An inclement weather clause.

It should be noted that the Association did not present evidence regarding the above items which supports the conclusion that they were defacto withdrawn.

Except as modified or changed by this AWARD, the terms and conditions of the expired contract shall continue in full force and effect pending a successor agreement.

#### CONCLUSION

The Panel Majority maintains that the foregoing Award constitutes a fair and equitable application of the standards mandated by Section 209.4(c)(v) of the Taylor Law with particular emphasis given to comparison of wages, hours, and conditions of employment, ability to pay, overall costs, and the C.P.I. Other equally important criteria such as: the

public interest and the terms of prior collective bargaining agreements were also considered in the preparation of this Award.

The Panel Majority further maintains that the elements of the foregoing Award, totalling \$198,391.00, are reasonable and well within the ability of the City to pay. Hopefully, the framework provided by this Award will obviate the future utilization of Interest Arbitration Panels since it is generally agreed that the best settlements are those determined by the parties in face-to-face negotiations.

Finally, while a concerted effort was made by the Panel Chairman to obtain a unanimous Award, the absence of substantive counter-proposals by the City undoubtedly contributed to the Dissenting Opinion. The dissenting member also has articulated financial and economic grounds for his position.

Dated: February 28th, 1985

*David H. Greenwald*  
\_\_\_\_\_  
Hon. David H. Greenwald, Employer Member,  
Dissenting

*Gary Longto*  
\_\_\_\_\_  
Gary Longto, Employee Member, Concurring

*Robert T. Simmelkjaer*  
\_\_\_\_\_  
Robert T. Simmelkjaer, Chairman and Public  
Member, Concurring

*Sworn to before me  
23rd day of March 1985*  
JULIAN E. GILMAN  
NOTARY PUBLIC, STATE OF NEW YORK  
Resident of Westchester County  
My Commission Expires March 30, 1987

*Sworn to before me  
on the 23rd day of  
March 1985  
Mary H. Lewis*

MARY H. LEWIS  
Notary Public, State of New York  
No. 03-4638283  
Qualified in Bronx County  
Commission Expires 1986

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
CASE NO. 1A84-13; M84-20

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IN THE MATTER OF COMPULSARY INTEREST  
ARBITRATION

- Between -

KINGSTON POLICE BENEVOLENT ASSOCIATION,  
Petitioner,

DISSENTING OPINION OF  
DAVID H. GREENWALD,  
Employer Member.

- and -

CITY OF KINGSTON

Respondent..  
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I agree that the Petitioners (hereinafter called the "Association") are entitled to an award from the Respondent (hereinafter called the "City") increasing salaries and other benefits.

My problem is with the total amount of the awards contained in the majority award herein and the City's ability to pay.

The award of the majority herein is a 9.5% wage increase and other benefits retroactively effective for the period January 1, 1984 through December December 31, 1984 and maintains..." that the elements of the foregoing Award, totalling \$198,391.00, are reasonable and well within the ability of the City to pay"....

1984 is long since gone and the City will be paying the award from its 1985 funds and not 1984. This means that the City will in 1985 be paying \$198,391.00 due for 1984 and an additional \$198,391.00 due for 1985, even without a contract re-opener, making a total of \$396,782.00 payable out of its 1985 budget.

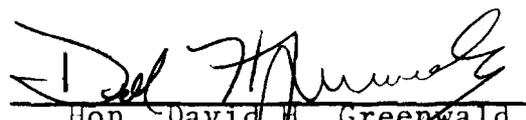
In effect the City is not paying a 9.5% increase but a 19% increase during 1985.

Insofar as the Bureau of Labor Statistics for the 1984 CPI for the New York City Area shows a net change of + 5.4% and the strong

probability is that inflation will not rise beyond the 1984 rate during 1985, the award to the "Association" of a 19% increase payable during 1985 for a total amount of \$396,782.00 is clearly inflationary.

For the "Association" members to receive an increase of 9.5% and for the "City" to pay a total increase amounting to \$198,391.00 out of its 1985 budget it would be necessary for all awards to be reduced by 50% from the amounts set forth in the Majority Award, and I would agree that an award so reduced would be reasonable and proper.

Dated: March 8th, 1985

  
\_\_\_\_\_  
Hon. David H. Greenwald,  
Employer Member,  
Dissenting Opinion