

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of the Impasse

between

City of White Plains

and

PBA of the City of White Plains

CASE NO.: IA 85-25; M 85-141
-----X

FEB 24 1987

CONCILIATION

: FINAL AND BINDING OPINION AND AWARD
: OF TRIPARTITE PUBLIC ARBITRATION
: PANEL PURSUANT TO SECTION 209.4
: OF THE CIVIL SERVICE LAW

The Panel

PUBLIC PANEL MEMBER AND CHAIRMAN:

Theodore H. Lang, Professor Emeritus
Baruch College
795 Addison Street
Woodmere, NY 11598

EMPLOYER PANEL MEMBER:

Bertrand B. Pogrebin, Esq.
Rains and Pogrebin, P.C.
210 Old Country Road
Mineola, NY 11501

EMPLOYEE ORGANIZATION PANEL MEMBER:

John P. Henry
Director of Labor Relations
Tri-County Federation of Police, Inc.
5 Skyline Drive
Hawthorne, NY 10532

APPEARANCES:

For the PBA:

Schlachter and Mauro, Esqs.
By: Reginald A. Mauro, Esq.

and

Michael Katras, President of PBA

For the City:

Rains and Pogrebin, P.C.
By: Bruce R. Millman, Esq. and
Richard Zuckerman, Esq.

The New York State Public Employment Relations Board (herein "PERB"), on or about April 23, 1986, invoked the provisions of the Civil Service Law, Section 209.4 and designated the Undersigned as the Public Arbitration Panel for the purposes of making a just and reasonable determination of this dispute. This "Opinion and Award" was prepared by the Public Panel Member and Chairman of the Panel, Dr. Theodore H. Lang.

HISTORY OF THE IMPASSE

This impasse exists between the City of White Plains (herein, "the City") and the PBA of the City (herein "PBA"), as bargaining agent for the Police collective bargaining unit. The prior two-year contract expired on June 30, 1985, without an agreement having been reached on a new contract.

At the initial collective bargaining meeting on March 7, 1985, the parties agreed to negotiations for a new agreement on a package basis and met numerous times during 1985 in an unsuccessful effort to formulate a new contract. Impasse was declared, and PERB initially appointed Louis W. Smith as mediator pursuant to Civil Service Law §209(4)(a) (PERB Case No. M85-141). Mediation was not successful. On November 8, 1985, the PBA petitioned PERB to refer the dispute to a public arbitration panel. On December 2, 1985, the City filed an Answer and simultaneously filed an improper practice charge with PERB objecting to the arbitrability of one of the PBA's demands (Jt. Exs. 3, 5). This charge, along with another filed by the City alleging violations of Civil Service Law §§209-a.2(a) and (b), was settled.

On or about April 23 1986, the undersigned Public Arbitration Panel was named by PERB. Hearings were held on June 25, July 30, and August 28, 1986 at which the City and the PBA had ample and full opportunity to submit exhibits, examine and cross-examine witnesses, and make oral argument. On June 25, the first hearing date, the parties voluntarily waived their right to a transcript and agreed that the record of the Public Arbitration Panel Hearings shall consist of the exhibits, testimony of witnesses, briefs and reply briefs submitted by the parties to the Public Arbitration Panel. The parties availed themselves of the opportunity to submit post-hearing briefs and reply briefs, which process was completed by November 7, 1986. There were seven joint exhibits, 33 PBA exhibits, and 70 City exhibits. The PBA presented testimony by Edward Fennell, Consultant on Government Finances, and James Behrman, Police Officer. The City presented testimony by Kevin Fish, City Budget Director, Dorothy Erard, City Commissioner of Finance, Patrick J. Gleason, Chief of Police, and John M. Dolce, Commissioner of Public Safety.

The Panel met in private sessions on December 11 and December 17, 1986.

The PBA listed 17 proposals in its petition for compulsory interest arbitration. One, dealing with a proposal that police uniforms must be readily distinguishable from those of other City employees, was the basis of an I.P. charge by the City, which was not disposed of by PERB before the hearings and which was, therefore, not considered by the Panel.

Another proposal, relating to the Longevity Schedule, was not pursued by the PBA at the hearing. At the hearing the City reduced the number of its proposals to 18.

In regard to all items, the Panel has considered seriously the statutory provisions applicable to compulsory interest arbitrations pursuant to §209.4 of the Civil Service Law, which provides in part:

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 issues will be treated and awards made in sections below:

(1) Length of Agreement (PBA Proposal NO. 1)

The Association proposes that the term of the new agreement be from July 1, 1985 through June 30, 1987. The City is amenable to this proposal. It is, therefore, AWARDED (AWARD NO. 1) that the duration of the new agreement be for two years from July 1, 1985 through June 30, 1987.

(2) Salary Increase (PBA No. 2)

Section 4A of the expired Agreement is as follows:

The annual wage of employees shall be according to years of service, rank and/or assignment according to the following schedule on the dates indicated:

	7/1/83	1/1/84	7/1/84
Police officers			
Starting Salary	\$16, 130	\$16,750	\$17,923
After One (1) Year of Service	\$19,786	\$20,547	\$21,985
After Two (2) Years of Service	\$22,234	\$23,089	\$24,705
After Three (3) Years of Service	\$24,680	\$25,629	\$27,423
Sergeant-15% above top Police Officer Salary	\$28,382	\$29,473	\$31,536
Lieutenant-15% above Sergeant	\$32,639	\$33,894	\$36,266
Captain-15% above Lieutenant	\$37,535	\$38,978	\$41,706

The PBA proposes:

"The annual salary of all police officers shall be increased by 10% each year of the Agreement."

In support of its proposal the PBA makes the following points:

0 "In 1984 the City of White Plains was compensated at a rate that was 5.3% higher than the rate enjoyed by the top paid police officer in the City of Mount Vernon.

① "In order for the City of White Plains to maintain the 1984 differential, it would be necessary for the police officers salary in the City of White Plains to be raised to the sum of \$30,105 or a 9.7% raise for the year 1985 and \$31,962 (or an additional 6% raise) for 1986."

① "In order to be merely maintained with the current spread or differential with the City of New Rochelle, it would be necessary for police officers to receive a 6% raise in each of 2 years."

① In each of the municipalities employing both police and firefighters, namely the Village of Scarsdale, Town of Eastchester, City of New Rochelle, City of Mount Vernon and Village of Pelham "...it is clear that the police officers have historically enjoyed a higher salary than the fire officers." Thus, police of New Rochelle and Mount Vernon receive 1.2% and 1.8%, respectively more than firefighters in these cities.

① Negotiated "downstate" increases averaged 7.04% and arbitrated ones 6.43%.

① Increases of 9.2% and 6.5% for 1985 and 1986, respectively would be required to bring police up to the average salaries of Westchester police departments. Increases of 12.4% and 6.7% in 1985 and 1986, respectively would be required to bring our police to the average salaries of the police in police departments bordering the City.

① The City is in good financial health and has the ability to pay the proposed increase.

The City "...offers the PBA a thirteen percent (13%) increase over a two year period as follows: 3% effective July 1, 1985; 5% effective January 1, 1986; 5% effective July 1, 1986; all increases non-compounded."

The City makes the following points in support of its position.

① There has been a tandem relationship between police and fire salaries in the City since 1982 and this year firefighters received a 13% increase over a two year agreement.

0 "This Panel must reject the PBA's efforts to obtain by arbitration that which it was unable to obtain through collective bargainings."

0 "The PBA's base salary demands are simply excessive whether one examines them on their face, compares them to the cost of living, looks to the private sector, considers settlements with other City bargaining units or looks at settlements in communities throughout the County which have been submitted in evidence." The PBA proposal is ludicrous in the face of the low C.P.I. and low increases nationwide.

0 The City has given 6.5% increase per year to firefighters and teamster units in recent negotiations.

DISCUSSION

There are a number of difficulties in regard to comparabilities used in determination of what would be an appropriate increase for this collective bargaining unit. The Law requires comparisons with other police collective bargaining units and with other employees generally in public and private employment in comparable communities. This requires both comparisons external to the City and comparisons within the City.

In regard to comparisons external to the City, a decision has to be made concerning which are the most comparable communities. In this Case, historically, over a period of over ten years, eight neutral arbitrators and fact-finders adjudicating cases of police in White Plains, New Rochelle, and Mount Vernon have found these three cities to be the most important basis comparison, hereafter "the three-city comparison." Five neutrals have made the same comparisons of these three cities for firefighters. None to our knowledge has found any other external comparison, for example to towns and villages, to be of greater significance than the

three-city comparison. The Chairman of this Arbitration Panel believes comparison to other communities than the three cities is acceptable in evidence, and must be reviewed and given some consideration. But he agrees with the earlier neutrals that the most significant comparison, in terms of similarity of services, similarity of community conditions and required skills, and the legal and financial constraints on the employer, is the three-city comparison, which must, therefore, be given the greatest importance.

In regard to these three cities, there is a complicating element in that Mount Vernon and New Rochelle contracts run for the calendar years, whereas White Plains contracts run for fiscal years starting July 1st. Therefore, one can observe that with new increases effective July 1st, White Plains police receive higher wages for six months than New Rochelle or Mount Vernon police; however, with these new increases effective on January 1st, the New Rochelle and Mount Vernon police will be paid more than the White Plains police. A second complication is recency of negotiations. Thus, Mount Vernon in January 1985 was in the third year of a liberal contract designed to catch up to the other two cities with back-loaded split rate increases in 1985 which impact both the 1985 and 1986 wages. Generally, more recently negotiated contracts have greater relevancy to current negotiations interest arbitrations.

The Panel finds both the position of the City, which would give the police less take home pay during the two-year period, and the position

of the Association, which seeks a 10% increase each year to be unreasonable and extreme. The Panel finds further:

1. White Plains is in good financial condition and well able to pay for wage and other increased benefits herein.

2. External comparisons are mixed. All Westchester cities average increases of 6.63% and 6.77% in 1985 and 1986, respectively, based on the incomplete data in the Record. All towns in Westchester gave average increases of 6.5% and 7.1% in 1985 and 1986 respectively.

3. The increases granted in the three-city comparison are the following:

	<u>Jan. 1985</u>	<u>July 1985</u>	<u>Jan. 1986</u>	<u>July 1986</u>	<u>Jan. 1987</u>
Mount Vernon	*5.4%	*3.5%	6.5%	-	6%
New Rochelle	6%	-	6%	-	6%

4. The increases granted by the City to fire-fighters and other City employees were 6.5% on July 1, 1985 and 6.5% on July 1, 1986.

Noting that the latest agreements in Mount Vernon police and New Rochelle police were 6.5% and less, and noting further that towns and villages are slightly higher than 6.5% each year in percentages granted; and, finally, noting the increases within the City, the Panel AWARDS (Award No. 2) that the wages of this unit be increased 6.5% effective July 1, 1985 and 6.5% effective July 1, 1986.

* 3rd year of an old contract for period from January 1, 1983 to December 31, 1985.

(3) Night Differential (PBA No. 3)

Section 4E of the expired Agreement reads as follows:

G. Effective July 1, 1980, police officers regularly assigned to work the 12:00 a.m. to 8:00 a.m. tour of duty as part of their rotation of hours shall receive a differential computed as follows: five (5%) percent of the employee's annual rate, times one-third (1/3), times eleven-twelfths (11/12). The pro rata portion of this amount shall be included in each paycheck. This payment will continue while the police officers are assigned to a squad or division which is regularly scheduled to work the 12:00 a.m. to 8:00 a.m. tours. The department reserves the right to reassign the officers to other assignments in the discretion of the Commissioner or a designated representative.

The PBA proposes:

Night Differential: Those members assigned to duty between the hours of 4:00 p.m. and 12 midnight,] or the (sic) any portion of their tour of duty falls between these hours, shall be entitled to an additional 5% above their normal rate during such assignment.

Those members assigned to duty between the hours of 12 midnight and 8:00 a.m., or the (sic) any portion of their tour of duty falls between those hours, shall be entitled to an additional 10% above their normal rate during the period of differential entitlement shall be compensated at time and one half their normal rate including differential entitlement.

The City opposes this proposal pointing out that few police departments pay such differentials, that the PBA comparable communities, newly suggested by the PBA, namely Elmsford, Pelham, and Tuckahoe pay no night differential, nor does Mount Vernon and that this City's present night differential is greater than that of New Rochelle. The City further states:

It is not surprising that only five of Westchester's police departments pay a night differential, in whatever form. Rotating tours and night work are intrinsic to a

police officer's job. Because this has been a fundamental characteristic of police work, police salaries have traditionally been higher than salaries of other public employees. This higher rate of compensation takes into account the elements of police work such as rotating tours and night work which distinguish it from other kinds of employment. Thus, a "premium" for these factors is already reflected in the substantial base salaries of police officers in White Plains, not to mention the current 5% differential paid to the 62% of the force who currently regularly work ABC tours. (Jt. Ex. 1, p. 4; U. Ex. 21, p. 12.)

The Panel sees no data justifying this proposal. It is AWARDED (Award No. 3) that this proposal be dropped.

(4) Paid Holidays (PBA No. 4)

Section 10 of the expired Agreement reads as follows:

A. The City shall pay for twelve (12) days in lieu of holidays; six (6) holidays paid the first week in December and six (6) the first week in June.

The PBA proposes:

Paid Holidays: Members shall receive cash payment for 14 paid holidays, worked or not. Those members who work on New Years Day, Easter Sunday, Thanksgiving Day, Christmas Eve Day, and or Christmas Day shall be paid one and one half times normal entitlement for working on those designated holidays shall be entitled to two two times normal entitlement for overtime worked on the designated holiday(s).

The City opposes this proposal.

The comparative data within the three-city comparison indicates that the three now have virtually identical paid holiday policies, although some Westchester towns and villages are more generous. On the basis of

the three-city comparison, there is no justification for a change of policy. It is AWARDED (Award No. 4) that this proposal be dropped.

(5) Overtime (PBA No. 5)

The PBA seeks a new clause as follows:

Overtime, except in emergencies, shall be equally distributed within rank and assignment.

This would also mean that overtime would be distributed within the Division (e.g., Patrol or Detective).

The City opposes this proposal pointing out that overtime has traditionally been distributed on a voluntary basis and at the Chief's discretion, and states further:

The PBA has advanced no legitimate rationale for this unduly restrictive demand. It has not pointed to any abuse of discretion by the Chief, and points only to the fact that sergeants replace other sergeants for overtime purposes.

Chief Gleason testified clearly and simply on both direct and cross-examination that this demand would not be "administratively wise." He stated that it would be too restrictive in terms of the departmental flexibility necessary to assign police officers overtime when and where they are needed.

The City presents further argument in its Brief (pp. 70-72).

The Panel finds that the data provided by the PBA does not deal with the narrow issue in its proposal. There is presented no comparative data justifying this new clause. This City's argument is also persuasive.

The Panel AWARDS (Award No. 5) that this proposal be dropped.

(6) Duty Apparel Maintenance (PBA Proposal No. 6)

Section 13 of the expired Agreement (pp. 11, 12) provides that the City furnish free of charge to the officer the initial uniform for hire and replacements as needed for good grooming, and thereafter pay \$160 and \$175 per year to officers and detective supervisors, respectively. The City also provides gun, holster, nightstick, whistle, ammunition, and handcuffs.

The PBA proposes:

The City shall, by separate check on September 1 of each year, pay each member \$350 to offset part of the cost of cleaning and maintenance of duty apparel.

The City shall pay the full cost of leather goods and required equipment for new hires and pay the full cost of replacement for all members as replacement is needed or required.

The leather goods sought by the PBA are handcuff holder, nightstick holster, Sam Brown belt, ammo carrier, and handgun case. In support of this proposal the PBA points to Mount Vernon and New Rochelle allowances of \$350 for maintenance and states in its Brief (p. 13):

It is clear that the police officers employed in the City of White Plains work under the most diminished allowance for duty apparel and maintenance of that apparel.

The City maintains that:

The City's current initial uniform provision and replacement policy are more generous than those in most other Westchester Police Departments (see U. Ex. 18, pp. 1-4), and since the PBA cannot justify the 100 percent or more increase per officer demanded, this proposal should be rejected.

A comparison of Mount Vernon, New Rochelle and White Plains' uniform provisions shows that White Plains is the only one of those three comparable municipalities which provides uniforms and replacements as needed without cost to the employee (C. Ex. 50).

Finally, no comparative data justifies the proposal for additional leather goods.

The Panel finds that the essential comparison made by the PBA is flawed in that neither of the two other cities provides uniforms and replacements free to the men. The larger allowance in these two cities are both for purchase and maintenance of uniforms. Without knowing the price of uniforms and the frequency of replacements, the Panel cannot compare these cities. However, many villages and towns supply the uniforms and pay higher maintenance allowances. This, therefore, becomes the best relevant comparison since the three-city comparison in this matter is invalid. The existing allowances are and have been since expiration of the old Agreement on June 30, 1985 unreasonably low.

Accordingly, the Panel AWARDS (Award No. 6) increases of \$50 in this allowance for both officers and detective supervisors, effective July 1, 1985. All other aspects of this proposal are denied.

(7) Personal Leave (PBA Proposal No. 7)

Section 12E of the expired Agreement reads as follows:

Every member of the bargaining unit is to receive three (3) personal leave days per year without the necessity of a reason therefor, with the understanding that no more than one employee be off per tour, and that five (5) days advance notice be given of the date requested except in an emergency. There shall be no accumulation of the personal leave days.

New employees shall receive personal days at the rate of one (1) day for each four (4) months of service for the balance of the contract year in which they were hired.

The PBA proposes:

Personal Leave: Members shall be entitled to 5 personal leave days per year. Unused personal leave days shall be paid, by separate check, in a lump sum on July 15 following the fiscal year of entitlement. The rate of pay shall be the rate of pay in effect for the members on June 30 of the year of entitlement.

The City opposes this demand.

The comparative data within the three-city comparison indicates that the policies are virtually identical, although towns and villages are more liberal. However, on the basis of the three-city comparison, there is no justification for a change of policy. Therefore, it is AWARDED (Award No. 7) that this proposal be dropped.

(8) Vacation (PBA Proposal No. 8)

Section 9 of the expired Agreement fixes the vacation allowances at 28, 29, and 30 calendar days depending upon years of service.

The PBA proposes:

Vacation: The present vacation schedule shall be amended to provide for a "working" day vacation. Members shall select vacations in a manner that starts vacation after the members normal off-duty days.

stating:

It is clear that the City of White Plains is the only city that computes its vacation on a calendar day basis,

other than the City of Mount Vernon. In this regard, it should be remembered that when computed on a calendar day basis, the employee receives an actual reduction in vacation by the computation of his vacation at times that include the employee's normal off duty time. The comparative analysis attached to PBA 20 shows that with regard to all municipalities within the County of Westchester, the City of White Plains ranks at the lowest.

The three-city comparative data indicates New Rochelle police end up with slightly more vacation because of their (230.5 plus 2) workload, which tends to increase their vacation, while giving the same number of work days off. Mount Vernon and White Plains give 30 calendar days off. Furthermore, depending upon when the vacation is started, some police officers may receive one work day off less than others. To solve this inequity, the Panel AWARDS (Award No. 8) that the expired Agreement be amended with a footnote that 30 calendar days of vacation be interpreted to give 22 tours off, 29 calendar days be interpreted to give 21 tours off, and 28 calendar days be interpreted to give 20 tours off.

Work Chart (PBA Proposal No. 9)

At present police have a work chart yielding 248.9 working days per year. The PBA proposes:

Work Week/Work Year: All members of the bargaining unit shall work a rotating schedule which reflects 230.5 scheduled work days per year prior to deduction of any authorized leave time.

The PBA states that Mount Vernon has a 243.3 work chart, and New Rochelle a 232.5 work chart. Further the PBA points to 11 villages and three towns with fewer work days than White Plains. The PBA indicated at the hearing that it seeks a 243.3 work chart at this time.

The City opposes any change in work chart pointing to the financial cost to the City by the proposed change, the fact that the Mount Vernon change of work chart recently negotiated is a one-year experiment with a continuation solely at the City's discretion, the fact that of the "three-cities" only White Plains pays a night differential and a much higher longevity increase, and that Mount Vernon has had its chart for nearly 15 years without causing a reduction in work chart at White Plains.

DISCUSSION

The work chart is a major term and condition of employment, and the City is unpersuasive in its suggestion that this area not be a proper domain for an interest arbitration. Nevertheless, we will recommend no change in work chart at this time for the following reasons:

1. The Mount Vernon work chart of 243.3 (which is a change from 248.9) is temporary, may be unilaterally reversed by the City, and is not in the contract between the parties. This Panel cannot consider a temporary Mount Vernon change as a valid "term and condition of employment." The parties in Mount Vernon have agreed that this temporary chart is not protected by the Taylor Law. When this "temporary chart", not a bona-fide term and condition of employment, becomes a part of the Mount Vernon contract, then the 243.3 chart will have to be considered in the three-city comparison.

2. The 5% night differential and the large longevity differential in White Plains, not heretofore considered in connection with the wage package, tend to offset the more generous work chart of New Rochelle.

3. There is not a preponderance or prevalence of more liberal work charts in the towns and villages of Westchester County.

Therefore, it is AWARDED (Award No. 9) that there be no change in work chart.

(10) Labor-Management Committee (PBA Proposal No. 10)

The PBA proposes a completely new clause, as follows:

The establishment of a labor-management committee consisting of three members from the Employer and three members of the Association and that the committee meet at least monthly to discuss scheduled problems.

The PBA presents no comparative data nor persuasive argument to support this proposal.

The City opposes this program strongly on the grounds that comparative data does not support it, and further states in its Brief (pp. 82, 83):

The absurdity of the PBA's statement that it perceives a breakdown in communications between it and the City and that such a committee would be a "good way" to restore a "reasonable relationship" between the parties was made clear by the testimony of City Public Safety Commissioner John Dolce. The Commissioner testified without contradiction that in his twenty-one years as Deputy Commissioner and Commissioner, no PBA official had ever said that the Commissioner denied access to PBA members who wished to discuss any official business. Further, the Commissioner added that he has and would continue to make the time to discuss any problems which arose and that he had never received a complaint to the contrary. This unimpeached testimony renders the PBA's demand "totally unnecessary" (testimony of Commissioner Dolce).

The Panel sees no comparative data justifying this proposal. Although periodic meetings may have a salutary effect, it is for the parties to define their consultative arrangements. Nor is the Panel persuaded that present informal arrangements are not functioning effectively.

Accordingly, it is AWARDED (Award No. 10) that this proposal be denied.

(11) Grievance Procedure (PBA No. 11)

The expired Agreement provides in Section 16 (pp. 15 and 16, in part:

C. The written report of the Arbitrator shall contain a statement of the Arbitrator's finding of fact, conclusions and advisory recommendations. The Arbitrator shall send a copy of its written report to each employee involved, the Association, the Chief of the bureau involved, to the Personnel Director and to the Mayor.

D. The issuance of the report by the Arbitrator shall constitute the final step in the grievance procedure contained in this Agreement and shall be binding unless the issue might seriously affect the public.

The PBA proposes:

The present wording of the grievance procedure shall be amended to provide that the decision of the Arbitrator is final and binding on the parties.

In support of its position the PBA states (Brief at p. 15):

The limitation currently present on the arbitrator's authority holds a potential for an arbitrary denial of the contractual clause. In opposition to the PBA's position, the City argued that the clause protects the City from an improper arbitration award. It is respectfully submitted to this panel that if an arbitrator were to improperly rule, adequate remedies exist at law but the presence of the clause would shift the burden of challenge from the City to the PBA. That is, if the City felt that an award was improper, the Commissioner could disregard the award and it would be the obligation of the PBA to challenge. On the other hand, if the clause is eliminated, the burden shifts to the City and requires the City to commence litigation to set aside the award. It is respectfully submitted that this burden of proof is essential.

The PBA also points to a general pattern of binding arbitration in Westchester cities, towns, and villages.

The City argues that over a period of 20 years, the City has never set aside an arbitrator's award. The City further states (Brief, pp. 84, 85):

In the absence of evidence that the City has used, let alone abused, this clause, it should be maintained. The Commissioner of Public Safety is vested by the City Charter with the ultimate responsibility to protect the public. This obligation extends to protecting the health, welfare and safety of the public from a code enforcement standpoint and from every other point of view. Since the Commissioner, and by extension the City, is accountable to the public for its health, welfare and safety, they must have the ultimate authority to act as needed in any particular situation to protect that public trust. That is the very nature of the police power of the state or municipality. For this reason, similar language can be found in the City's fire fighter contract (see C. Ex's. 4, 8). Since there is no reason to delete this singular exception from the contract, the PBA's demand should be rejected.

The Panel finds that the comparative data supports the PBA's position overwhelmingly. Further, the City has provided no experience to justify an arbitration clause at variance with that of almost all Westchester police departments. Finally, the PBA's argument concerning burden of proof is persuasive. Accordingly, it is AWARDED (Award No. 11) that the words "advisory recommendations" be deleted from Section 16, §6 ¶3C. (p. 18) and the words "binding award" be substituted and that ¶3D be deleted.

(12) PBA President (PBA No. 12)

Section 15 (p. 13) of the expired Agreement provides for release time for PBA business, as follows:

The PBA shall be permitted up to a maximum of fifteen (15) working days off in each calendar year for the purpose of attending PBA meetings and/or conventions. Said days shall be allocated to employees of the Police Depart-

ment for PBA activities in the discretion of the President of the PBA. Said released time shall not be taken in units of less than one full working day. The PBA must give the Commissioner or a designated representative a minimum of two weeks written notice that it intends to schedule released time day(s). No more than three (3) employees shall be permitted to take said released time in any single working day.

Any member of the PBA contract negotiation team or member of the PBA Grievance Board shall not be required to make up time if the member is excused by the Chief of Police from a tour of duty or any part thereof to attend bargaining or grievance hearing sessions. No more than three (3) members of said team or Board shall attend any single session or hearing.

The PBA proposes:

The PBA President shall work a steady 8:00 a.m. to 4:00 p.m. tour of duty and during such tours of duty be free to conduct PBA business and matters. In the case of an emergency the PBA President may be removed from such steady 8:00 a.m. to 4:00 p.m. tours of duty.

In support of its position, the PBA states (Brief, p. 16):

The panel's attention is submitted to PBA Exhibit 23. Once again limiting our attention to the cities of New Rochelle, Mount Vernon and White Plains, it is clear that White Plains has the only non-defined release time provision and that all municipalities throughout the County of Westchester enjoy a greater benefit than that enjoyed in the City of White Plains.

The City opposes this proposal citing that the evidence and the comparability do not support the PBA's argument, and states further:

No allegation was made that there were any duties or activities of the PBA president which cannot be accomplished within the leave time now provided. Nor was there any evidence to suggest that any PBA president has ever felt the need to request additional time off to perform his union duties. To the contrary, the PBA's own evidence indicates that the PBA

receives a much more generous amount of release time to conduct its affairs than do many of its colleagues in the County (see U. Ex. 23). In fact, there is no release time in allegedly comparable Tuckahoe, and the Pelham PBA is limited to only three (3) day per year (id. at 1).

There is absolutely no reason why the PBA President should enjoy any special privileges from the City, especially a much desired steady day tour.

The Panel finds that neither the PBA's argument nor the comparative data are persuasive towards making a change. Accordingly, it is AWARDED (Award No. 12) that this proposal be dropped.

(13) Sick Leave (PBA No. 13)

Section 12 of the expired Agreement contains the following two paragraphs relating to sick leave.

A. Sick leave and leave of absence shall be governed by the currently existing rules and regulations of the Police Department and as they may be presently incorporated in the City's ordinances.

B. Effective July 1, 1983, members shall accumulate bonus days for unused sick leave. Such bonus days shall be paid to said member upon termination, or to members' estate or beneficiary as the case may be, at the rate of pay in effect on the date of termination according to the following schedule:

Sick days use in year	Days due per member
0	1 (one)
1	2/3 (two-thirds)
2	1/3 (one-third)

Presently, sick leave is governed by the Police Department's rules and regulations and is unlimited subject to the discretion of the Commissioner of Public Safety (Jt. Ex. 1, Section 12, Paragraph A, p. 9; C. Ex. 69). The PBA proposal is, "The present sick leave shall be amended to provide for unlimited sick leave." The PBA cites its Exhibit No. 24. The

PBA also claims that in three cases the Commissioner abused his discretion by placing certain named officers on vacations for all or part of the time absent allegedly due to illness or injury.

The City responds that the present policy is already unlimited sick leave subject to the discretion of the Commissioner, and that:

The PBA did not introduce any evidence as to the alleged abuse of the Commissioner's discretion in the case of the other two individuals whose sick leave was changed to vacation leave. Nor was the PBA able to substantiate its allegation of other similar instances of abuse during the past two years.

Where an employee's injury or illness is not substantiated, the Department can and should use the tack of saying that his injury is non-compensable. In other cases, employees have been carried for very lengthy periods of time.

The PBA seeks what it already has by policy and practice, namely unlimited sick leave. In fact, the parties are agreed that the letter of August 18, 1983 (Jt. Ex. 1A) is part of the Agreement. Where sick leave is unlimited it is usually in the discretion of Management. If a Commissioner exercises discretion to refuse sick leave, the matter can be submitted to arbitration. The basis of the Commissioner's discretion is set forth in the letter of August 18, 1983, cited above. The PBA has not questioned the principles therein but merely the Commissioner's discretion. In further issue is whether the Commissioner has the authority to place officers on vacation involuntarily. This was not clearly litigated before the Panel, and the Panel will not consider whether the Commissioner has that authority.

The Panel AWARDS (Award No. 13) that the above cited letter of August 18, 1983, which appears herein as Appendix A, be incorporated as a footnote to Section 12A.

(14) Welfare Fund (PBA No. 14)

Section 8D of the expired Agreement reads as follows:

Effective July 1, 1983, the City shall contribute the amount of \$350.00 per employee per year to a welfare fund administered by the PBA. Such payment shall be in lieu of prior payments to the PBA Dental Plan and the annual unallocated fringe benefit payment. Effective July 1, 1984, the City's contribution shall be increased to \$375.00 per employee per year. The City's annual contribution shall be paid monthly to "The White Plains PBA Dental and Welfare Fund" at the rate of one-twelfth (1/12) of the annual contribution per employee on the payroll in the first pay period of each month and shall be paid by the City prior to the next pay period of that month.

The present allowance of \$375 is all used for dental insurance, and the PBA is desirous of obtaining optical and life insurance. At present, officers make direct premium payments to the Fund through payroll deductions for life and optical coverage on a voluntary basis.

The PBA proposes:

The present contract shall be amended to provide the City's contribution to the Welfare Fund to be \$450 effective July 1, 1985 and \$500 effective July 1, 1986.

The PBA presents a chart comparing the City to other cities, towns, and villages in Westchester County, which indicates that a number have both dental and life insurance.

The City opposes this increase stating (Brief, p. 92):

The PBA's own evidence shows that White Plains is one of only sixteen municipalities in Westchester which contributes to a PBA administered welfare fund (see U. Ex. 13, p. 4). The City's present contribution rate exceeds those of the majority of those municipalities (*id.* at pp. 1-3). Moreover, the increases sought by the PBA would exceed that paid in all but four of those municipalities (*id.*). Furthermore, unlike White PLains, several of those jurisdictions pay lower rates for single employees (*id.*).

In addition, the City's police and fire employees have enjoyed equal welfare fund benefits dating back to at least 1974. The fire fighters received no increase in contributions to their welfare fund for their new contract (C. Exs. 6, 8) and the CSEA deducted the cost of increased welfare from their wage increase (testimony of Bruce R. Millman; see also, C. Ex. 10). Moreover, this demand is not without significant added cost to the City.

The Panel has reviewed the evidence and finds that the City has benefits substantially equal to or better than Mount Vernon and New Rochelle, the most appropriate comparisons. Therefore, the Panel AWARDS (Award No. 14) that this proposal be dropped.

(15) Retirement Incentive (PBA No. 15).

The PBA proposes a new benefit patterned verbatim after the New Rochelle Article VII, Section 8 as amended to adapt the dates to the proposed new contract term. In essence, this would add a retirement incentive whereby employees, in their final year of entitlement, would be entitled to receive an additional payment computed at 20% of annual salary. The City vigorously opposes this new benefit citing its cost of over \$482,000 and that the proposal is "...incorrect, unnecessary and perhaps even unconstitutional gift of public funds," and that the comparative data does not support this proposal.

The Panel notes that the only municipality with this benefit is New Rochelle. The benefit is not supported by the comparative data. The Panel AWARDS (Award No. 15) that this proposal be dropped.

(16) Amendment of Section 4C (City Proposal No. 1)

Section 4C of the expired Agreement reads as follows in relevant part:

Police Officers assigned to plainclothes (street crime, burglary, youth, warrants) shall receive an annual stipend payable in quarterly payments. The officer must work six (6) weeks in the quarter to be eligible for the quarterly pay.

The City proposes two housekeeping changes in this paragraph. First, it proposes replacing "burglary" with "burglary unit," in order to properly reflect the appropriate designation of the plainclothes assignment. Second, the City proposes amending the above-quoted language to reflect the long-standing practice that once an officer has worked the requisite six weeks in a quarter to become eligible for quarterly pay, the officer's stipend for time served in the assignment is pro-rated. The City also proposes a similar amendment to provide for prorating of detective differentials in Section 4, ¶7.

The City alleges that these are simple housekeeping changes consistent with longstanding practice. The PBA does not controvert these statements. Accordingly, it is AWARDED (Award No. 16) that this proposal of the City substituting "burglary unit" for "burglary" in Section 4 C. and providing for prorating in Sections 4C and 4D be awarded and incorporated into the new Agreement.

(17) Deletion of Section 5 (City Proposal No. 2)

Section 5 of the expired Agreement provides:

The present rules and regulations of the Police Department, the ordinances of the City, and applicable statutes of the State of New York as they now exist shall govern the number of hours per day which employees shall be required to work and the number of hours per week they shall be required to work.

The City maintains that Section 5 is redundant since it is already covered in Section 3. The PBA resists this proposal stating that more is involved.

Arguendo, even if redundant, Section 5 has caused no problem made known to the Panel. Accordingly, it is AWARDED (Award No. 17) that this proposal be denied.

(18) Overtime (City Proposal No. 3)

Paragraphs A and C of Section 6 of the expired contract provide that:

A. All police officers, Sergeants, Lieutenants and Captains, but excluding detectives, shall receive time and one-half in cash payment for all overtime ordered or scheduled by the Commissioner or his authorized representative.

C. Detectives shall continue to receive compensatory time for all overtime at straight time rates, within the discretion of the Chief of Police and schedule needs permit as in the past (sic).

The City seeks to insert "Plain Clothes Officers and Plain Clothes Supervisors" after "excluding Detectives" in Paragraph A as well as after "Detectives" in Paragraph C. In support of this proposal the City states:

These changes would contractualize the twenty-plus year practice whereby plain clothes officers and plain clothes supervisors, like detectives, earn compensatory time (rather than cash payment) for all overtime, at straight time rates, within the Chief's discretion and as scheduling needs permit (testimony of Chief Gleason). Since the practice is that these employees do not receive cash payments for overtime, and since the PBA has not grieved this practice, and it has been uniformly applied and understood for these many years (id.), the proposal should be awarded.

The PBA does not controvert the City's position. Accordingly, it is AWARDED (Award No. 18) that the words "Plain Clothes Officers and Plain Clothes Supervisors" be inserted after the word "Detectives" in Sections 6A and 6C.

(19) Recall and Court Time (City Proposals Nos. 4 and 8)

The City proposes that court time not be considered recall time, which requires a minimum of four hours of pay at time and one half. The City claims that:

The City has a rule that employees who are required to make court appearances do not receive overtime, but rather are rescheduled so that their tour of duty coincides with their court appearance (testimony of Chief Gleason).

The PBA objects to this proposal as a reduction in terms and conditions of employment. Inasmuch as no comparative data was presented to support this proposal, it is AWARDED (Award No. 19) that this proposal be denied.

(20) Affixing of Vacation Schedules to Contract (City Proposal No. 5)

The City proposes that:

Should not be affixed to the contract. The Chief should have the authority to reschedule vacations on as needed basis. The Department's history proves that we do not reschedule vacations in an unreasonable manner.

The PBA opposes this proposal. The City does not support this proposal in the Record. It is AWARDED (Award No. 19) that the proposal be denied.

(21) Sick Leave and Leave of Absence (City Proposal No. 6)

Pursuant to Section 12, Paragraph B of the expired collective bargaining agreement, a unit member may earn "bonus days" for unused sick leave. Such days are paid to the employee "upon termination, or to members' estate or beneficiary as the case may be...." (Jt. Ex. 1, p. 10). The City proposes that this paragraph be modified by replacing the phrase "termination" with the word "retirement." In support of this proposal the City states:

The fairness and reasonableness of the City's proposal is self-evident. Bonus days are an incentive and a reward for non-use of sick leave by an employee. An employee who is terminated by the Department should not be rewarded for his or her improper behavior in any way, let alone through financial reward. Limiting the payout for bonus days to employees who retire from the Department serves to encourage employees to remain with the force, minimize their use of sick leave, and provides them with an added financial bonus upon their retirement, while eliminating the inherently unfair aspect of the provision as it presently exists.

The PBA resists this proposal as a diminution of their benefits.

As there are no comparative data to justify this change, it is AWARDED (Award No. 21) that it be denied.

(22) Clothing Allowance of Detective Supervisors (City Proposal No. 7)

The City proposes, as a simple housekeeping matter,

Deleting the second sentence of Section 4, Paragraph D of the expired agreement and inserting the phrase "in lieu of Detective Differential" after the phrase "Detective Supervisors shall receive a clothing allowance" in Section 13, Paragraph C (see Jt. Ex. 1, pp. 4, 12).

and states in support:

The above-referenced sentence of Section 4(D) is presently duplicative of and cross-referenced to Section 13 (C). The proposed modification of Section 13(C) would ensure that the parties' explicit intent behind establishing the detective clothing allowance, as stated in Section 4(D), is not lost in the course of making the housekeeping change. Since there is absolutely no constructive purpose served by maintaining this pair of identical contractual provisions, the City's proposal to combine them is reasonable and should be awarded.

The PBA expressed opposition to this proposal alleging it is more than a housekeeping proposal. The Record does not contain sufficient evidence to justify a change. Accordingly, it is AWARDED (Award No. 22) that this proposal be denied.

(23) Personal Property (City Proposal No. 9)

Under the expired agreement (Section 17), the City is required to replace an employee's personal property which is damaged while in the line of duty and not through the negligence of the police officer, without limit on the City's financial liability. The City urges a cap of \$50 on such payments and cites comparative data in Mount Vernon and New Rochelle. The PBA resists this proposal pointing out that it applies only to personal property damaged in the course of duty and not through the negligence of the police officer and that the City has not demonstrated any abuse of

this Section nor any need for the change.

The City has demonstrated no practical need for this change. Accordingly, it is AWARDED (Award No. 23) that this proposal be denied.

(23) List of New Employees (City Proposal No. 10)

The City proposes that Section 20 of the expired collective bargaining agreement be amended to state that the list of new employees shall be furnished upon request (see Jt. Ex. 1, p. 19; Jt. Ex. 3, p. 3). Although Section 20 requires the City to supply a monthly list of new employees hired, Chief Gleason testified that the City has not done so in the approximately twenty years since he joined the Department. He added that the PBA has never filed a grievance on this issue. The PBA has not controverted this testimony. Accordingly, it is AWARDED (Award No. 23) that this proposal is approved.

(24) Accident Reports (City Proposal No. 11)

The City proposes that Section 21 of the expired collective bargaining agreement be amended to state that copies of accident reports will be furnished to the PBA upon request. Although the City has been obligated by contract to provide to the PBA two (2) copies of all accident reports filed with the Department, the City has never done so and the PBA has never grieved the City's noncompliance with Section 21's mandates (testimony of Chief Gleason). Instead, the parties have lived pursuant to a tacit understanding that the City will provide the PBA with a copy of an accident report upon request (id.). For these reasons, the City submits

that its proposal will simply conform the contract to practice and should be awarded.

The PBA has not controverted this testimony. Accordingly, it is AWARDED (Award No. 24) that this proposal be approved.

(25) Education (City Proposal No. 12)

Section 22 of the expired Agreement reads as follows:

Reimbursement to members of the Police Department for approved courses relating to police science shall be made so long as they receive a "C" or better grade, limited to \$1,500.00 for the police out of which an amount of \$150.00 be subtracted each year from the \$1,500.00 allowance for the police education tuition fund in order for policemen to purchase textbooks for the courses in which they are enrolled. Such textbooks would remain the property of the City and upon completion of the courses, such books would be returned in the hopes of the formation of a White Plains Police Department Library. If all of these funds are not used, the City will pay for a second course for a member of the force as long as he satisfactorily completes the course and received the "C" or better grade referred to above.

The City maintains that although the expired contract limited the courses for which an employee could be reimbursed to "approved courses relating to police science...", employees have submitted reimbursement slips for courses such as music which are not prerequisites or even relevant to any degree relating to police science (testimony of Commissioner Dolce). The PBA opposes this change as a diminution of their present working conditions.

The Panel finds the proposed restriction denying reimbursement to all "electives" much too tight and not supported by comparative data.

The restriction to "approved courses relating to police science" appears reasonable and adequate to the Commissioners's purposes. It is AWARDED (Award No. 25) that this proposal be denied.

(26) Exchange of Duty (City Proposal No. 13)

Pursuant to Section 24 of the expired collective bargaining agreement, exchanges of duty must be submitted at least forty-eight (48) hours in advance (Jt. Ex. 1, p. 21). The City proposes to restore this notice period to five (5) days as it existed in the prior contracts (Jt. Ex. 3, p. 3). In support of its position the City argues that the present two days notice is insufficient and practical difficulties have arisen. The PBA resists this proposal alleging that there should be no problem since the men cover the post by exchanges.

The Panel finds the Record insufficient to justify a change in this provision, which was set in prior negotiations. It fails to see any problem resulting from joint requests, which of necessity fill the slot. Accordingly, it is AWARDED (Award No. 26) that this item be denied.

(27) Section 25 on Notification (City Proposal No. 14)

Section 25 of the expired Agreement reads as follows:

Members of the department will notify the department when they are out of town on vacation or when the department is on alert or an emergency exists.

The City states:

This housekeeping proposal seeks to clarify the intent behind the ambiguous language of Section 25 of the expired collective bargaining agreement.

The PBA opposes this proposal, asserting that the clause serves its function in its present wording.

The Panel finds insufficient justification for making any change, and AWARDS (Award No. 27) that this proposal be denied.

(28) Probationary Periods (City Proposals Nos. 15 and 16)

The City proposes an increase of probationary period for police officer appointees from fifteen months to 18 months, the imposition of a six month probationary period for police supervisors above the rank of Sergeant, and an increase in probationary period for Sergeants from three months to six months. The City states that these proposals are needed to properly evaluate employees in all the ranks, that present periods are too short, and that a probationary period is important for supervisors where none exists. The PBA opposes these proposals as unnecessary.

It is noted that no comparative data was presented in support of these proposals. It is AWARDED (Award No. 28) that they be denied.

(29) Recovery of Wages (City Proposal No. 17)

Section 33 (4) of the expired Agreement reads as follows:

It is understood and agreed that the City shall receive sick pay reimbursement, sick pay or loss of wages reimbursement, to the extent that the City employee has recovered in an action whereby said employee has been paid or compensated for loss of wages or sick pay reimbursement. In the event of vehicular accidents while off duty, the City shall advance sick pay to the officer involved pending no-fault payments, which shall be paid over to the City.

The City proposes to amend Section 33 (4) of the expired collective bargaining agreement to provide that the City shall be reimbursed by an employee for any recovery, including workers' compensation payments, received by the employee up to the extent of the wages paid out by the City while the officer is out on leave. The PBA opposes this change. Apparently, the City seeks this amendment to overturn a contract arbitrator's award which it considers unjust and a misapplication of the above-cited clause. There may well be merit in the City's position. However, there is an insufficient basis in the Record to change a negotiated contract clause. Accordingly, it is AWARDED (Award No. 29) that this proposal be denied.

(30) Holidays mandated by New York Law (City Proposal No. 18)

Section 10 (B) of the expired Agreement reads as follows:

In addition, any additional holidays mandated by the Laws of the State of New York shall be paid in addition to the contractual twelve (12) paid holidays. Employees shall receive payment for the additional holidays with the cash payment for holidays in which the additional holiday falls.

The City proposes deletion of this clause, stating that its deletion is justified by comparative data and that:

This provision serves only to provide employees with the unjustifiable windfall of an extra day's pay for a holiday or holidays outside of the collective bargaining process.

The PBA opposes this charge as a lessening of its benefits.

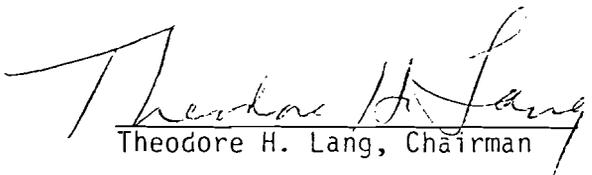
The Panel notes that in regard to days worked, White Plains has a significantly longer work year than Mount Vernon and than the temporary

work year in New Rochelle. Reduction of time off in White Plains is not indicated as justified on an overall comparative basis. Accordingly, it is AWARDED (Award No. 30) that this proposal be denied.

CONCLUDING REMARKS

It is most unfortunate that the history of this Case has resulted in an Award which is retroactive for most of its term. The fixing of salaries and terms and conditions for the police collective bargaining unit in the City of White Plains for the period from July 1, 1985 to June 30, 1987 is long overdue. The period of contract and the changes in salaries and terms and conditions of employment are hereby fixed in this Opinion and Award pursuant to Article 14, §209.4 of the Civil Service Law. All provisions in the expressed Agreement, not changed herein, are continued unchanged in the new Agreement. Police protection is a most essential government function, and speedy implementation of this Award is in the best interests of the parties and the people of the City of White Plains.

Respectfully submitted,

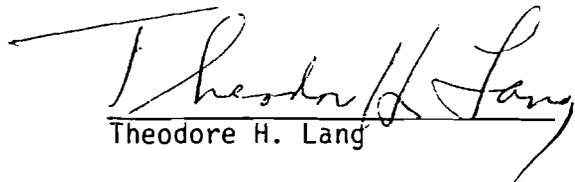

Theodore H. Lang, Chairman

STATE OF NEW YORK:

SS:

COUNTY OF NEW YORK:

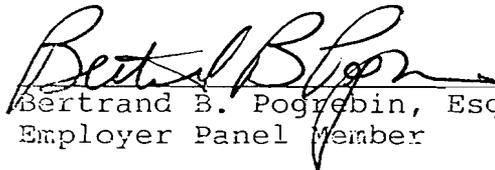
I hereby affirm pursuant to CPLR §7507 that I am the individual described in and who executed this instrument which is my Award.


Theodore H. Lang

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

On this 12th day of January, 1987, before me personally came and appeared Bertrand B. Pogrebin, Esq. to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same, and further states:

I concur with the decision in all respects except disagree and dissent from the award of \$50.00 clothing allowance increase, because it represents an insupportable grant of "something" for the PBA for taking part in the arbitration. There was absolutely no evidence of need, nothing cited as to costs or comparative costs presented by the PBA in asking for more in this area. Further, I note with dismay the neutral panelists' blithe statement to the effect that the decision of Mount Vernon regarding its schedule will have to be considered by White Plains. The concept of "comparability" in interest arbitration is more than a mechanical computation of the terms and conditions of comparable communities. The comparison is to be tempered with reason, considerations of the community at issue and its bargaining history, its operational needs and overall terms and conditions of employment. To imply, as does the neutral panelist a woodenly mechanical process is to deny to the parties the right to bargain their own agreement and more importantly the right of the City to decide on basic delivery of services.


Bertrand B. Pogrebin, Esq.
Employer Panel Member

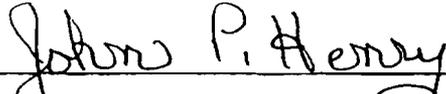

RICHARD ZUCKERMAN
NOTARY PUBLIC, State of New York
No. 01ZU4732207, Nassau County
Commission Expires 12/31/88

City of White Plains and the P.B.A. of the City of White Plains

The Employee Organization Panel Member's vote on each of the Panel's Awards is as follows:

P.B.A. Proposal No. 1; Award No. 1 - affirmative
P.B.A. Proposal No. 2; Award No. 2 - dissent
P.B.A. Proposal No. 3; Award No. 3 - dissent
P.B.A. Proposal No. 4; Award No. 4 - dissent
P.B.A. Proposal No. 5; Award No. 5 - dissent
P.B.A. Proposal No. 6; Award No. 6 - affirmative
P.B.A. Proposal No. 7; Award No. 7 - dissent
P.B.A. Proposal No. 8; Award No. 8 - dissent
P.B.A. Proposal No. 9; Award No. 9 - dissent
P.B.A. Proposal No. 10; Award No.10 - dissent
P.B.A. Proposal No. 11; Award No.11 - affirmative
P.B.A. Proposal No. 12; Award No.12 - dissent
P.B.A. Proposal No. 13; Award No.13 - dissent
P.B.A. Proposal No. 14; Award No.14 - dissent
P.B.A. Proposal No. 15; Award No.15 - dissent
City Proposal No. 1; Award No.16 - dissent
City Proposal No. 2; Award No.17 - affirmative
City Proposal No. 3; Award No.18 - dissent
City Proposal No.4 & 8; Award No.19 - affirmative
City Proposal No. 5; Award No.19 - affirmative
City Proposal No. 6; Award No.21 - affirmative
City Proposal No. 7; Award No.22 - affirmative
City Proposal No. 9; Award No.23 - affirmative
City Proposal No. 10; Award No.23 - dissent
City Proposal No. 11; Award No.24 - dissent
City Proposal No. 12; Award No.25 - affirmative
City Proposal No. 13; Award No.26 - affirmative
City Proposal No. 14; Award No.27 - affirmative
City Proposal No. 15 & 16; Award No.28 - affirmative
City Proposal No. 17; Award No.29 - affirmative
City Proposal No. 18; Award No.30 - affirmative


DANIEL BRACCIO
Notary Public, State of New York
No. 60-0380510
Qualified in Westchester County,
Term Expires March 30, 1987


Employee Organization Panel Member

Dissenting Opinion

City of White Plains and the P.B.A. of the City of White Plains

P.E.R.B. Case No: IA 85- 25: M 85-141

By: John P. Henry
Employee Organization Panel Member

The City in their presentation to the Panel made the focus of their arguments in two basic areas.

One of the City's positions was that the Police Officers in the City of White Plains are only comparable to the Police Officers in the Cities of New Rochelle and Mt. Vernon. This was based on the fact that in the past P.E.R.B. Fact-Finders and Arbitration Panels had used New Rochelle and Mt. Vernon as comparables for White Plains.

The P.B.A., through the testimony and exhibits of Edward Fennell, a municipal finance expert, demonstrated that over the past several years the City of White Plains, at present and for the foreseeable future, is by far more financially sound than either the City of New Rochelle and Mt. Vernon. The City never controverted Mr. Fennell's findings. The City did agree that in the past Mt. Vernon and New Rochelle were used as comparables for the City of White Plains, but did not provide data to prove their position that Mt. Vernon and New Rochelle should be continued as comparable in 1985.

The P.B.A. on the other hand provided the data to prove that Mt. Vernon and New Rochelle were no longer comparable through the evidence and testimony of their financial expert. In addition the P.B.A. presented evidence that the Police Officers of the City of White Plains were more comparable to the Police Officers in selected Villages of Westchester County. These Villages were selected on a logical basis on information obtained from the Westchester County Department of Planning:

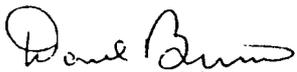
1. Close geographical proximity to the City of White Plains.
2. The median and family incomes in households were comparable to White Plains.
4. The ratio of Police Officer per housing unit was comparable.
5. The fiscal year of the municipality was comparable (the fiscal year of the selected Villages starts June 1, the fiscal year of White Plains starts on July 1.) Conversely the fiscal year for both New Rochelle and Mt. Vernon starts on January 1.

The majority of the Panel in determining their Award in this instant matter chose to use the Cities of Mt. Vernon and New Rochelle as comparables. This Panel member must take strong exception to that decision.

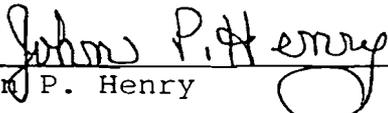
The City argued, at the hearings, in their brief and at Executive Sessions of the Panel, that all other City bargaining units, including the Firefighters, had settled their contracts for a salary increase of 6.5% effective July 1, 1985, with an additional 6.5% increase in salary effective July 1, 1986, with no other changes in their contracts; the P.B.A. was only being greedy in not settling for the same. The City argued further that in the past there had been a "tandum relationship" between the City's Police and Fire Department salary and if the "tandum relationship" was broken by the Police it would result in dissatisfaction in the Firefighters bargaining. The City further argued that the other City bargaining units would be dissatisfied if the Police received more than 6.4% per year. To this Panel member the City's "tandum relationship" argument is an insistence on "parity" (which has been found by P.E.R.B. to be not a proper subject of collective bargaining under the Taylor Law.) The "tandum relationship" argument of the City should not have been entertained by the Arbitration Panel.

As for the City's position that all the other City bargaining units had settled for the fiscal years July 1, 1985 to June 30, 1987 and the P.B.A. bargaining unit should have also settled for the same; this position is ludicrous. Under the Taylor Law each bargaining unit has the right to pursue the terms and conditions of employment separately through collective bargaining. Each unit's bargaining committee has a mandate from their members to pursue certain issues, those issues vary from one bargaining unit to another. To say that the P.B.A. has no right to pursue their issues to Interest Arbitration because other City bargaining units have settled on what the City offered is wholly without merit. Following the logic of the five bargaining units in the City then there is no further need to negotiate with any of the other bargaining units.

In conclusion, I, as the Employee Organization Panel Member believe very strongly that the Interest Arbitration Panel is entrusted with a great responsibility, that they are mandated by Section 209.4 of the Civil Service Law to evaluate the evidence and testimony presented to them within the parameters set forth in that law on a case by case basis, fully realizing that over a period of time municipalities change and therefore each Interest Arbitration is on a different set of circumstances as established to the Panel by evidence and testimony presented by the parties to the Interest Arbitration. The Award of the Panel should be based solely on the conditions that exist at the time of the Award.


DANIEL BRACCIO
Notary Public, State of New York
No. 60-0330510
Qualified in Westchester County
Term Expires March 30, 1987

2/2/87


John P. Henry
Employee Organization Panel Member