

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Public Arbitration :
- between - :
NIAGARA FALLS POLICE CLUB, INC., :
Union, :
- and - :
CITY OF NIAGARA FALLS, :
Public Employer. :
Pursuant to Section 209.4 of the :
New York Civil Service Law. :
PERB Case No. IA 86-38; M 86-475. :
-----X

610
NOV 21 1986
CONCILIATION
PANEL'S
DETERMINATION
AND
BASIS FOR
FINDINGS

APPEARANCES

For the Union:

Anthony J. De Marie, Esq.	Attorney
John G. Soltys	Chairman, Negotiating Committee
John C. Dougherty	Patrol Negotiator
William M. Thomson	Patrol Negotiator
Mark Pierce	Plain Clothes Negotiator
John Carriero	Plain Clothes Negotiator
Bruce D. Blake	Civil Negotiator

For the Public Employer:

Douglas Crowley, Esq.	Deputy Corporation Counsel
Lynn McDougal	Personnel Director

Before the Public Arbitration Panel:

Philip J. Ruffo, Esq.	Public Member and Chairman
David A. Fabrizio, Esq.	Public Employer Member
Charles Ansel	Employee Organization Member

SUMMARY OF THE AWARD

Set forth below is a summary of those matters which are deemed of major significance considered and determined by the Panel:

1. Ability To Pay:

The Panel concluded that the City of Niagara Falls does have the ability to pay the wage increases and benefits determined to be just and reasonable by the Panel.

2. Term of Contract: - Article 17.0

One (1) year from January 1, 1987 through December 31, 1987 in accordance with the desires of the parties. The Chairman of the Panel expressed reservations concerning the practical impact and wisdom that an annual collective bargaining agreement may have with respect to the bargaining process and its relationship to the City's fiscal and budgetary planning.

3. Salaries: Article 7.0

a) Base Pay: Section 7.1

An increase of \$2,000.00 in the base pay of all personnel in the bargaining unit, over and above the base pay in effect on December 31, 1986, effective January 1, 1987.

b) Detectives: Section 17.13.1

All members in the Criminal Investigation Division and the Criminal Investigation Unit shall receive a differential of 5% over and above the new base pay for Police Officers as established by this Award, effective January 1, 1987. The additional compensation of \$750.00 shall continue. Such differential shall not apply to Youth Aid Officer and Communications Relations Officer.

c) Extension of Pay:

1. Except as hereinafter noted, all other union demands for monetary benefits are not granted. In particular, the demand for extending paragraph 10.a., schedule 6, in the predecessor agreement to apply to all members of the bargaining unit is not granted and will remain "as is" in the successor agreement, effective January 1, 1987.

2. Further, the Union's demand for hazardous pay, depending on the number of patrol vehicles operating during a shift, is not granted.

d) Additional Compensation: Sections 7.13 and 7.13.1

The Union's demands for additional compensation for members of the Emergency Response Team (ERT), Bomb Disposal Squad and for Juvenile Aide Officers is not granted.

4. Uniform Allowance: Section 7.14

The Union's demand for an increase in the uniform allowance and for a uniform maintenance allowance is not granted.

5. Non-Service-Connected Disability: Section 10.7

Not granted; present sick leave provisions allowing use of credited sick leave days up to 180 days with pay is adequate. (Section 10.4 and 10.4.1).

6. Education Incentive Pay: (New)

Percentage differential pay, depending upon level of academic degree (Associate, Bachelor, Graduate) and books and tuition reimbursement, not granted. However, the Panel expressed the thought that there is general merit to a tuition reimbursement program, appropriate for favorable consideration for the 1988 negotiations.

7. Improved Retirement Incentive;

Not granted; existing provision adequate (10.5.10).

8. Indemnification:

The City's present commitment under Section 5.6 (Legal Service) of the predecessor agreement is to provide legal services to indemnify any Police Officer who is a

defendant in any "federal civil action" as a result of the performance of police duties. Section 5.6 is operative "as soon as such representational services and indemnification can be provided under appropriate enabling legislation or judicial ruling."

The Union's demand for legal service protection is granted to the extent that Section 50-j of the General Municipal Law shall be applicable in addition to indemnity coverage for claims against police officers based on Section 1983 et seq. of the United States Code. If Local legislation is required to implement the Panel's determination, the Panel strongly recommends its enactment.

9. Reservations Concerning the Applicability of The Award:

The City has challenged the application of Interest Arbitration to the civilian members of the bargaining unit which is pending before the New York State Public Employment Relations Board for determination. The parties have agreed that no determination of the Panel shall apply to the civilian members of the bargaining unit except the \$2,000.00 increase in base pay.

10. Carry-Over of Predecessor Agreement:

All provisions of the predecessor agreement, not otherwise addressed and disposed by this Award, shall auto-

matically be carried over and incorporated in the successor agreement, effective January 1, 1987.

I

Preliminary Statement

By a communication dated June 11, 1987, the New York State Public Employment Relations Board designated three persons ^{1/} constituting a Public Arbitration Panel pursuant to Section 209.4 of the New York Civil Service (Taylor) Law for the purpose of making a just and reasonable determination concerning the dispute between the parties in the above captioned proceeding as to the matters and issues hereinafter set forth and discussed.

In accordance with the above cited authority, hearings were held on September 8th and 9th, 1987, at the Convention Center, City of Niagara Falls, New York.

The parties agreed to dispense with a transcript.

-
1. The three persons so designated were Philip J. Ruffo, Esq., designated as Chairman of the Panel; David A. Fabrizio, as the Public Employer Member; and Andrew M. Viglucci, as the Employee Organization Member. At the request of the P.B.A., Mr. Viglucci was, prior to the commencement of the hearings, replaced by the Board with Charles Ansel as Employee Organization Member. (See PERB letter, August 31, 1987).

The record made of the hearings was extensive, consisting of the sworn testimony of several witnesses and documentary exhibits most of which were multi-paged. The parties appeared by counsel and were accorded the opportunity to give testimony under oath and to present evidence and exhibits relative to the issues in dispute and to cross-examine and present arguments in support of their respective positions.

All of the evidence having been received, the hearings were closed on September 9, 1987.

Thereafter, on September 10, 1987, the Panel met in Executive Session for the purpose of discussing and deliberating all of the issues in the record presented to the Panel for its determination. Subsequent thereto further phone discussions were held by the Panel members.

After due consideration and deliberation of all of the evidence in the entire record, including the testimony, documentary exhibits and the arguments presented, the Panel's determinations, as hereinafter set forth, are concurred in by the unanimous vote of all of the members thereof, except that the Public Employer member has dissented from the determination awarding a wage increase to the Detectives.

II

Statutory Criteria

Consistent with statutory requirements, the Panel adhered to the criteria set forth in Section 209.4(c)(v) of the Civil Service Law to make a just and reasonable determination of the matters in dispute, specifying 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 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 and 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.

III

The Parties - Their Bargaining Relationship

The City of Niagara Falls is, essentially, a city combining residential, industry and tourism as principal attributes. Its efforts, accordingly, have been and are directed to capital projects and expenditures to develop and enhance its industrial and tourist potential. The City's year round population for 1987 is estimated at 69,000. The City employes approximately 963 employees, the overwhelming number (approximately 908) being members of bargaining units represented by various unions, including the Union involved in this proceeding.

The Niagara Falls Police Club, Inc. (the Union herein) is the exclusive representative of a bargaining unit of approximately 149 members consisting of 121 Police Officers, 19 Detectives and 9 Civilians. The entire Police Department consists of approximately 176 members which, in addition to the members represented by the Union, include 6 Captains, 19 Lieutenants, 1 Inspector and 1 Superintendent. The Captains and Lieutenants are organized and represented by a separate Association which

negotiates a separate collective bargaining agreement.

The City's fiscal and budgetary years coincide on an annual basis commencing January 1 and ending December 31.

The bargaining relationship between the parties has been established through successive collective bargaining agreements, the most recent having expired on December 31, 1986.

The current dispute stems from an impasse in negotiations for a successor collective bargaining agreement effective January 1, 1987.

IV

The Issues at Impasse

The Issues which the parties submitted to the Panel for determination were:

1. The financial ability of the City of Niagara Falls to pay a wage increase or grant any other cost benefit beyond 4% for the year 1987.

Union Demands

2. Wages:

(a) Base Pay: An increase of \$3,000.00 in the Base Pay of each employee in the bargaining unit for 1987; (Section 7.1);

(b) Extension of Pay: Extending paragraph 10.a. of schedule 6 in the predecessor agreement so that the additional one hour pay for certain officers performing certain functions be applied to all bargaining unit members in the successor agreement;

(c) Differential Percentage Pay of 6% and 12% as hazardous pay depending on the number of patrol vehicles operating during a shift; (New)

(d) Additional Compensation: A sum equal to 5% of the base pay of Police Officers to be paid to members of the Criminal Investigation Division (CID), the Criminal Intelligence Unit (CIU), the Identification Unit (IU) and to Juvenile Aide Officers. (Section 7.13.1);

Additional pay in the sum of \$500.00 to be paid to members of the Emergency Response Team (ERT) and the Bomb Disposal Squad. (Section 7.13)

3. (a) Uniform Allowance: An increase from \$240.00 to \$500.00 for all uniformed personnel and from \$125.00 to \$250.00 for all non-uniformed personnel. (Section 7.14)

(b) Uniform Maintenance: (New) The sum of \$175.00 to all employees for cleaning, laundering and maintain-work clothing.

4. Humanitarian Clause: (New) Assigning an employee to a position with duties the employee can perform who becomes unable to perform regular duties because of a non-service connected injury or illness.

5. Education Incentive Pay: (New) Percentage pay differential depending on level of academic degree (Associate, Bachelor, Graduate) and, in addition, for the costs of books and tuition reimbursements.

6. Improved Retirement Incentive: (Section 8.2) The payment at premium rates to an employee who elects to work rather than take vacation and/or personal leave during the year prior to retirement not exceeding a total of 52 days; and the payment in cash at the rate of 50% of all or part of an employee's accumulated sick leave. The sums received are to be treated as wages for retirement purposes.

7. Indemnification: (Section 5.6) The City is to indemnify each Police Officer for tort claims against him within the provisions of Section 50-j of the General Municipal Law in addition to claims based on Section 1983 et seq of the United States Code. The demand for indemnification shall also include claims against the Police Officer for alleged punitive conduct.

N.B. The City has a petition pending before the

New York State Public Employment Relations Board challenging the application of this Interest Arbitration procedure to members of the bargaining unit who are civilians, i.e., who are neither peace officers nor sworn police officers.

City Demands

Attached to the City's Answer in response to the Union's Petition for Interest Arbitration, was a list of six demands or counter proposals which, in substance, included the following: 1 - An agreement for one year from January 1, 1987 through December 31, 1987; 2 - an "economic package" of 4% provided all Union demands are withdrawn; 3 - co-payment by employees for medical and dental coverage; 4 - vacation cash conversion; 5 - the annual inspection of police personnel at the direction of the Superintendent; 6 - the deletion of the "favorite nations" clause of the 911 agreement.

Except for the one year term of the agreement and its 4% counter proposal, the City's other four demands and counter proposals were not pressed at the hearing and are deemed withdrawn.

Major Terms and Conditions of Employment
In the Existing Collective Bargaining Agreement
(January 1, 1986 - December 31, 1986)

Working conditions of major importance now in effect under the collective bargaining agreement expiring December 31, 1986, setting forth the work schedule, annual maximum base pay at the third step, including longevity pay thereafter, and other employee benefits, are summarized as follows:

Work Schedule: 8 hour day, 40 hour (average) work week subject to a 4/2 work schedule as described in Schedule "6" of the agreement.

Pay Scale:

Normal Increment	\$21,751.60
After 5 year Longevity	22,009.00
After 10 year Longevity	22,244.30
After 15 year Longevity	22,518.60
After 20 year Longevity	22,790.30
After 25 year Longevity	23,064.60
After 30 year Longevity	23,340.20

Agency Shop: Procedure for Refund spelled out in agreement.

Legal Service: Provided by City to indemnify Police

Officer in any federal civil action. Availability is contingent on enabling legislation or judicial ruling.

Shift Differential: 20 cents per hour for afternoon shift; 30 cents per hour for night shift.

Overtime: Time and one-half the regular rate for all hours worked in excess of the normal work schedule.

Extra-Duty Assignments: Voluntary, based on Seniority.

Off-Duty Pay: For Court appearances and Mandatory Training attendance.

On-Call Compensation and Call-In Time: Straight time pay up to 20% of required on-call status.

Guaranteed minimum of four hours straight time pay for being called back to work after normal shift.

Acting Pay: Assignment to higher rank in acting capacity with pay commensurate with such higher rank.

Additional Compensation: \$425.25 additional pay per year to all Police Officers assigned to special duties described in contract.

\$750.00 per year to all members in the Criminal Investigation Division and Criminal Intelligence Unit. Such members are considered Detectives.

Uniform Allowance: \$240.00 per year to uniformed personnel; \$125.00 per year to Radio Dispatchers and Communications Technicians.

New York State Policemen's Retirement System: City contributes to such system.

Time Off With Pay:

- (a) Holidays - 12 guaranteed paid holidays.
- (b) Vacation - From 2 weeks after the first year of service to 6 weeks after 25 years of service; if hired after September 21, 1979 - from 2 weeks after the first year of service to 4 weeks after 10 years of service.
- (c) Sick Leave - 1 day per month with pay with right to accumulate up to 180 days. Sick leave days when taken are subject to verification and, if extended, a doctor's note may be required. Unused sick leave is payable in accordance with provisions of Local Ordinance. Sick leave is tied to a retirement incentive plan described in Schedule 5 of the agreement.
- (d) Personal Leave - 3 days per year. Advance notice required. Unused leave in excess of five days will be added to member's accumulated sick leave for retirement purposes.

(e) Bereavement Leave - Up to four working days, limited to immediate family members.

Service Connected Disability: Section 207-c of the General Municipal Law applies.

Insurance

(a) Hospitalization - Blue Cross-Blue Shield, including Major Medical, prescription drugs and dental plan provided at City's cost.

(b) Retirees - Limited benefits extended to retirees with 20 years of service.

Life Insurance - Face amount of policy equal to the lowest thousand dollar sum of the employee's salary.

Death Benefit - Payable to widows and orphans of deceased employees under provisions of Section 208-b of the General Municipal Law.

Uniforms and Equipment - Provided by City upon appointment.

Service-Connected Disability - Governed by Section 207-c of the General Municipal Law.

VI

Ability To Pay Issue

Litigated at length by the parties was the issue of the City's "Financial Ability to Pay", constituting a major point of contention stressed by both sides.

At the outset it should be noted that the statute is fundamentally designed to enable a Public Administration Panel to arrive at a just and reasonable determination of all issues in dispute between the parties after weighing and assessing all of the facts and circumstances guided by the statutory criteria as hereinabove set forth, including "the financial ability of the public employer to pay."

The City does not, as such, plead a financial inability to pay the members of its police force a wage increase of 4% provided all other Union demands are withdrawn from the bargaining table. In fact, for the year 1987, the City has successfully negotiated wage increases of 6% with all unions representing its "civilian" employees. Further, in three separate Interest Arbitration Awards, affecting the City's firefighters, the Police Superior Officers (Captains and Lieutenants) and the Fire Officers, the Public Arbitration Panels awarded wage increases to each group of employees as follows: To the Police Superior Officers - 4% and 6% for the years 1986

and 1987, respectively; to the Fire Officers - 4% for the year 1986 and on October 1, 1986, 6% for the remainder of 1986 and through 1987; and to the Firefighters - 5% and 5% for each of the years 1986 and 1987, respectively. The Firefighters and Police Superior Officers' Awards were dated in December, 1986, and the Fire Officers' Award was dated in April, 1987. Thus, all three Awards were made from five to nine months prior to the hearings in this proceeding and it is noted, in each of those cases the City's contentions concerning its financial ability to pay a wage increase followed, substantially, the same contentions as were made before this Panel in September, 1987. A reading and analysis of the recitations made by those Panels, and the conclusions arrived at regarding the City's financial ability to pay, establish that there is nothing more nor less valid, persuasive or convincing now as was then with respect to the City's financial ability to pay its Police Officers a just and reasonable wage increase. No change within the past ten months has been shown by the City in this proceeding that would in any manner demonstrate a worsening of the City's financial posture so as to have an impact on, or affect, the determination of this Panel with respect to the City's financial ability to pay its Police Officers a wage increase as herein determined to be just and reasonable.

The evidence adduced by the City shows, generally, that its economic base is still beset by an industrial sluggishness exacerbated by litigation claims against the City stemming from the Love Canal controversy. Further, there is the continued burden placed on the City to fund the operations of major economic projects such as its Convention Center and the reconstruction of its waste water treatment plant. Further, committed to encourage tourism as an important means to stimulate the City's economic viability, the City continues to invest substantial sums in the construction of recreational facilities. The City's population loss is also a factor affecting its general tax base as is the number of liquidations of a number of large corporate taxpayers.

On the other hand the evidence demonstrates that the City's resurgence to a state of economic and fiscal health and soundness is amply supported by pertinent positive indicators.

To help meet the financial burden imposed upon the City because of the Love Canal landfill project, the City has received federal and state aid so that virtually all monies expended for this remedial work has been, and will be, recoverable from State, Federal or other sources. As for Love Canal litigation claims filed against the City, most of the claims have been settled by the City's insurance carriers at no cost to the City and, significantly, the City's Corporation

Counsel has expressed the belief that the outcome of Love Canal actions will not have a material effect, if any, on the financial condition of the City.

As for the Convention Center project the State has provided the City with a \$3,000,000 annual subsidy to pay part of the operating costs, including the lease payments, since 1979; and that there is every expectation the City will continue to receive such aid. The City receives substantial financial assistance from the State. In its budget for the current 1987 fiscal year, approximately 16.5% of the City's operating revenues are estimated to be received in the form of State aid. The State budget, for the State's fiscal year which commenced April 1, 1987, will not materially affect such estimate.

The City's reconstruction of its waste water treatment plant is being substantially funded by the United States Environmental Protection Agency and the New York State Department of Environmental Conservation and, as of December 31, 1986, is 98% complete. The City is confident that it will continue to be reimbursed for the completion of this project.

Positive indicators evidencing the City's economic comeback and financial soundness are:

The dramatic dip in the City's unemployment rate

from 10.4% in 1985 to 6.4% in May, 1987.

There is \$1,837,361 remaining of the City's constitutional real property taxing margin.

For the first time in five years the City had a budgetary surplus in 1986 of \$676,606 and, according to the Acting City Controller, the City will complete the current fiscal year 1987 with a surplus no less than the 1986 surplus. According to Moody's Municipal Credit Report, dated August 27, 1987, the following note appears concerning the City's General Fund Financial Position: "City expects to end 1987 with \$1 - \$2 million surplus".

Noteworthy is the fact that no principal or interest on any City obligation is past due. There has never been a default in the payment of principal or interest on any bond or note indebtedness of the City.

Recently, the City issued bonds to refinance the 1982 bond issue to fund the construction of a City parking ramp and, in the process, was able to save the City approximately \$1 million dollars in interest costs since the interest rates on the refinanced bonds averaged between 7% and 8% - a drop from the 10% interest on the original issue.

Other savings of a substantial nature relate to the

tighter controls over overtime work accounting for approximately \$478,000 in reduced overtime for 1986; a reduction in Workers' Compensation costs, due to the City's safety program, from \$802,417 in 1985 to \$602,845 in 1987; and a steady reduction in the City's contribution rate to the Policemen's and Firemen's Retirement system from 36.8% in 1978 to an estimated 26.5% in 1987.

The City's concern over its marginal economic posture as well as its concern over capital expenditures, necessary to sustain its ageing infrastructure, are relevant factors which must be weighed by the Panel regarding the City's financial ability to pay its employees a wage increase. What the facts seem to indicate, however, is the existence of a financial difficulty to pay a wage increase rather than a financial inability. Considering the fact that the cost of running a city the size of Niagara Falls, with its tourist attraction, may run relatively high, including the cost of police protection, this is not too unusual in light of the contemporary scene of the rising costs of government - both operational and capital. However, as a practical matter, as well as maintaining fidelity to the applicable statutory criteria, it is also incumbent upon the Panel to balance the needs of the City's police force for an equitable wage increase with the City's financial ability to meet the cost of a fair and equitable wage increase and other benefits.

Accordingly, the City's fiscal facts of life have been considered and while its financial condition is, to some extent, experiencing some difficulty, its obligation to members of its police force, in terms of a cost factor, is no less than its obligation to pay the going rate for whatever resources it requires to sustain the City as a viable governmental entity.

In sum, the evidence, in its totality, establishes that the City does have the financial ability to pay the members of its police force a wage increase as herein determined, but that the Union's demands in their totality would, if granted, impose upon the City's taxpayers an inordinate burden at this time for fiscal 1987. In all other respects the record establishes that the City has, considering the financial problems encountered, managed its fiscal affairs in a prudent manner, turning deficits around into recent annual surplusses for the past two fiscal years, no indication that default is imminent or that there is any need of emergency measures or assistance to extricate it from financial distress. Very significantly, as a barometer of its financial soundness the refinanced paper (bonds) recently issued by the City for the construction of the parking ramp has found ready acceptance in the securities market at a lower interest rate than the original issue, indicating that its credit rating is

unimpaired. The bottom line is that the City of Niagara Falls is in complete control of the management and operations of its fiscal affairs.

The Panel's Determination:

Accordingly, based upon an analysis of the entire record, it is the:

JUST AND REASONABLE DETERMINATION of the Panel that the City of Niagara Falls does have the financial ability to pay the members of its police force, members of the bargaining unit, the wage increases as herein determined.

VII

The Term Of The Agreement

The Panel's authority to determine the period of a collective bargaining agreement is statutorily limited to two (2) years from the termination date of the predecessor bargaining agreement. (Civil Service Law, Section 209.4(vi)). In this case the predecessor agreement terminated December 31, 1986. The successor agreement will commence January 1, 1987 and terminate December 31, 1987 - approximately two months from the time this Award is made. According to the Union's Petition for Interest Arbitration, with respect to the instant

impasse, negotiations for a successor agreement, effective January 1, 1987, began in October, 1986. Thus, it is obvious that negotiations for a 1988 successor agreement will commence at about the same time this Award for the year 1987 will issue. To what extent such frequent bargaining encounters, and the annual return to the bargaining scrimmage line, serve to enhance the stability in a bargaining relationship should be carefully weighed by the parties. Certainly in terms of the need for sound fiscal and budgetary planning a multiple term agreement would seem advisable. However, the parties, determined on a one (1) year collective agreement, submitted data which, from an administrative and evidentiary aspect, limited the Panel to the determination of an Award for one year. Under the circumstances the Panel can only work with, and decide upon the basis of, the record made by the parties. Accordingly, the Panel DETERMINES that the successor collective bargaining agreement between the parties be for a term of one (1) year, commencing January 1, 1987, and ending December 31, 1987.

VIII

The Issues In Dispute

1. Wages

The Union's Position

(a) Base Pay - The Union demands an increase of \$3,000.00 in the base pay of each employee in the bargaining unit for 1987 over and above the base pay in effect on December 31, 1986. The Union's demand is based on the equitable need to "catch-up" in 1987 for the wage freeze in 1986 while all other uniform personnel (Police Superior Officers, Firefighters and Fire Officers), received wage increases, by reason of Interest Arbitration Awards, ranging from 4% to 5% in 1986; and from 5% to 6% in 1987. The Union also contends that a substantial aspect of its "catch-up" demand rests upon the wage increases given to police officers in other jurisdictions (containing populations of over 30,000 in upstate New York), resulting in the wages of the Niagara Falls police officer falling substantially behind the police officers of those other jurisdictions. Based upon the wage structures of the 9 jurisdictions submitted by the Union for comparable wage purposes, the average maximum base pay for police officers was \$25,776 in 1986 while that of the Niagara Falls police was \$21,752, or \$4,024 below the average. (See Table 18 of

the N.Y.S. Department of State Labor Agreements Data System (LADS) - Data from Police Contracts in jurisdictions located in Niagara and Erie Counties and in jurisdictions over 30,000 population in upstate New York - August 18, 1987). Those jurisdictions selected by the Union listing the 1986 Maximum Annual Base Pay are as follows: North Tonawanda - \$23,868; Rochester - \$28,310; Irondequot - \$31,072; Amherst \$25,933; Cheektowaga - \$27,966; Lockport - \$23,897; Lackawanna - \$23,087; Lancaster - \$26,097; and Niagara Falls - \$21,752. (All of the above jurisdictions are in Niagara or Erie Counties except for Rochester and Irondequot which are in Monroe County).

In further support of its wage demand, the Union presented the testimony of an expert witness attesting to the stress and hazards of the job and the concomitant impact upon the emotional structure of the police officer, and the intrusive effect upon the social and family life of police officers. The police officer's job requires constant alertness on the job, the readiness to cope with sudden emergencies, and a life-long commitment to the job since the community expects 24 hours of service from its police officers.

In addition, the Union points to five negotiated wage settlements between the City and its civilian employees for 1987 which, in each instance, was 6%. Since the job of a pol-

ice officer is unique and considerably more stressful and hazardous the wage increase for a Niagara City police officer should be higher.

The City's Position

The City's position is as follows: While it is true that the police officers received no wage increase for 1986 there was a change in their work schedule which reduced the number of work year hours from 2,080 to 1,944 - a reduction in 136 work hours or 17 days based on an 8 hour work day (136 hrs. ÷ by 8 hrs.). The result, in effect, was the equivalent of a wage increase since the police officers worked 136 less hours a year in 1986 though receiving the same pay. On an hourly wage rate basis the City computes the increase as equivalent to 4%. (The Union points out that the Police Superior Officers were awarded a 4% wage increase in 1986 for working under the same work schedule as the police officers. Therefore, the Union contends that the merits of its position are not diminished or affected).

The City also points out that police officers receive \$425, annually, as additional pay for extra duty assignments under the collective bargaining agreement. (Section 7.13 Additional Compensation).

Accordingly, because the City views the reduced work

schedule in 1986 as the equivalent of a wage increase in 1986 and the extra pay assignment as an addition to the base pay, the City is willing to offer a base pay increase of 4% for 1987 provided all other Union demands of a cost nature are withdrawn by the Union.

Utilizing the LADS table listing jurisdictions with populations of over 30,000, which includes Niagara and Erie Counties, the City selected 11 jurisdictions whose annual maximum base pay for police officers is as follows: Amherst - \$25,933; Binghamton - \$24,475; Buffalo - \$22,653; Cheektowaga - \$27,966; Elmira - \$21,998; Jamestown - \$22,138; Lancaster - \$26,097; North Tonawanda - \$23,868; Rome - \$23,522; Utica - \$20,375; and Niagara Falls - \$21,752. (Only 6 of the above 11 jurisdictions are either in Erie or Niagara County. Five are in other counties; Binghamton in Broome County; Elmira in Chemung County; Jamestown in Chautauqua County; and Rome and Utica in Oneida County). The ^{Average} wage for the 11 jurisdictions is \$23,707 - or \$1,955 above the 1986 wage for the Niagara Falls police officer.

The City points out that should the Panel award the Union the \$3,000.00 base pay increase it demands for 1987, the increase would represent 14% over the 1986 base pay - an increase totally out of context with the 6% wage increase received by all other City employees for 1987. (The civilian

employees received no wage increase for 1986). On the other hand, should the same 6% wage increase be granted to the police officers for 1987, the dollar increase would amount to \$23,057 ($21,752 \times .06$) which is only \$650 below the average wage for the police officers in the 11 jurisdictions which the City submits is applicable for wage comparison purposes. ($23,707 \text{ Avg. wage} - 23,057 = 650$). This, contends the City, would place the Niagara Falls police officers in 1987 not far behind the other police officers with further negotiations in the offing for 1988. This represents a significant effort on the City's part considering its present financial condition.

The Panel's Analysis

The Panel notes the vigorous presentation by the Union concerning the stressful and hazardous nature of the police officer's job. The evidence presented shows that the "burn-out" nature of the police officer's job is not mere puffing, but statistically established and, in the main, not effectively challenged. This, however, is a common denominator applicable not only to the Niagara Falls police officer but to police officers the nation over in varying degrees. Thus, while the stressful and hazardous nature of the police officer's job is a factor to be considered in assessing a proper wage, the weightier factor must, in the final analysis, center on wage

comparisons with other comparable or nearly comparable jurisdictions as offering a sounder and more probative basis upon which to make a determination concerning a just and reasonable wage increase.

The Panel notes that each submission by the parties of selected jurisdictions is obviously designed to support the conclusion deemed desirable by that side, i.e., a wage level that will demonstrate, in one instance, that the Niagara Falls police officer's annual wage lags substantially behind that of his colleagues and, in the other instance, that the Niagara Falls police officer's annual wage, though still behind in 1987, the City's effort to close the gap is consistent with its financial posture.

Of the 9 jurisdictions submitted by the Union, 7 are located in Niagara County and adjacent Erie County. The annual wage of one of those jurisdictions (Cheektowaga) is \$27,966 which is the highest and non-typical when compared to the wage levels of the other police officers in Niagara and Erie Counties.

Thus, the wage level variations among jurisdictions do not fall neatly packaged affording a readily adaptable premise which may be invoked to perfect the ideal comparison. The Panel is aware that there are problems, circumstances and

conditions which vary in each jurisdiction which may uniquely account for the wage scale as eventually fixed in each jurisdiction. Levels of affluence, population, industrial activity, unemployment and the management of fiscal affairs vary among jurisdictions having a direct impact on the wage levels of public employees. However, while different circumstances and conditions spawn different results, the aggregate picture may, nevertheless, be useful as a criterion helpful in arriving at a determination concerning the justness and fairness of the wage increase being considered. The Panel has taken this approach and, accordingly, has adopted the maximum annual base pay of the Niagara Falls police officer, compared to his counterpart in jurisdictions which are set forth in the table below, as a basis for comparability:

<u>Public Employer</u>	<u>County</u>	<u>Maximum Annual Base Pay</u>
Lancaster	Erie	\$26,097
Lockport	Niagara	23,897
Lackawanna	Erie	23,087
North Tonawanda	Niagara	23,868
Amherst	Erie	25,933
Buffalo	Erie	22,653
Niagara Falls	Niagara	21,751

(The total of all annual salaries is \$167,287 which,

divided by 7 results in \$23,898 which is \$2,146 over the Niagara police officer's 1986 base pay).

The Panel notes that the average percentage wage increase for the jurisdictions cited in the above table was approximately 6% in 1986 (See table 16, 1986, LADS). The Panel also notes that, for a broader region (upstate New York, excluding Nassau, Suffolk, Westchester and Rockland Counties and New York City), the 1986 negotiated wage increase for police officers was 6.03% and 6.46% as a result of Interest Arbitration Awards. (See 1986 Arbitrated Negotiated Wage Settlement Data - LADS, issued by NYS Public Employment Relations Board as of 3/2/87). Thus, if the base pay of the Niagara Falls police officers were to be increased by 6% for 1987 the dollar increase would be \$23,057 ($21,752 \times .06$) which is still \$841 below the average base pay for 1986. The principle of "Catch-up" where equitably established, as the evidence shows in this case, and where the financial ability of the public employer demonstrates, as the evidence in this case also shows, that it can comply, in part, to the "Catch-up" demand, it is then fair and just to accommodate that demand. It is, therefore, the judgment of the Panel that the Niagara Falls police officers are entitled to a base pay increase of \$2,000 for the year 1987 which would then place them only \$146 below the 1986 base pay average for

the police officers of the jurisdictions cited in the above table. (\$21,752 base pay + \$2,000 increase = \$23,752; \$23,898 average base pay - \$23,752 new base pay = \$146). It may be noted that a \$2,000 dollar increase in the base pay is approximately 9.59% - a figure intended to achieve the Union's demand for "Catch-up". (The increase granted herein is a dollar increase and not a percentage increase).

There is no magic formula for determining wage or salary levels in the public sector. Persons with equal intelligence and integrity might well differ as to the applicability or weight to be given to any one criterion. The Panel has taken all statutory criteria in consideration and has applied the evidence and factual data submitted by the parties to the statutory criteria and, based upon its analysis of all of the facts and circumstances, the entire record, the relative weight to its findings regarding the City's financial ability to pay, the interest and welfare of the public in maintaining an efficient and properly motivated police force, a comparison of the wage structures in comparable jurisdictions, the nature and scope of the police officer's job, the Panel has concluded as follows:

The Panel's Determination

It is the JUST AND REASONABLE DETERMINATION of the

Panel that the Police Officers of the City of Niagara Falls, members of the bargaining unit, be granted an increase in their base pay in the amount of \$2,000, effective January 1, 1987, and that such increase be paid expeditiously.

(b) Detective's Pay (Additional Compensation)(Sec. 7.13.1)

The Union's Position

The Union demands that Detectives, members of the Criminal Investigation Division (CID) and the Criminal Investigation Unit (CIU), be granted a 5% increase over and above the base pay of police officers as established by the Panel. The Union contends that the increase would restore the traditional differential between the police officers and the Detectives. The Union's demand includes the same increase for the Youth Aide Officer and the Communications Relations Officers who work in plain clothes as Detectives do. The Union points out that of all of the 18 jurisdictions in Niagara and Erie Counties, as reported in the LADS table, the Niagara Falls Detective is the lowest paid by several thousand dollars. Likewise, of the 20 jurisdictions with populations of over 30,000 in upstate New York, as reported in the LADS table, the Niagara Falls Detective is, again, the lowest paid Detective except in one instance (Utica - Oneida County). Further, the Union points out that the \$750 differential now paid to

Detectives, over the police officers' base pay, is more apparent than real. For example, the Detectives do not receive a clothing allowance of \$240 as police officers do; nor the additional pay (limited to 52 hours per year or one hour per week) under paragraph 10.a., Schedule 6, of the collective bargaining agreement, which, except for a few police officers, nets police officers an additional annual sum of \$560. The only police officers who do not receive this amount are the few (perhaps five) who work in the Record Room, the Service Unit, and the Personnel Room. Thus, from a practical aspect the \$750 differential is virtually offset and, in fact, exceeded if the uniform allowance for police officers is counted.

The City's Position

The City opposes the Union's demand, contending that the \$750 differential is an adequate margin between the police officers and the Detectives. The Detectives work in plain clothes and not in uniform and, therefore, do not need an allowance for a uniform. Further, considering the financial position of the City, an increase of 5% for detectives, over the base pay of police officers, would constitute a burdensome cost factor which the City can ill afford at this time.

The Panel's Analysis

There is merit to the Union's position. Utilizing

the same table for wage comparison purposes involving police officers, 6 jurisdictions report Detective wage scales as follows: Amherst - \$27,846; Lancaster - \$27,360; North Tonawanda - \$24,575; Lackawanna - \$23,842; Buffalo - \$23,679; and Niagara Falls - \$22,500. An analysis of the two LADS tables listing the Detectives' wage scales of the numerous jurisdictions in Niagara and Erie counties, and in the numerous jurisdictions in upstate New York with populations of over 30,000, reveal even wider disparities in the pay scales between the Niagara Falls Detectives and their colleagues in the other jurisdiction.

A significant and practical incentive, encouraging police officers to aspire to the Detective classification, is the higher wage scale. Detectives are, essentially, police officers, who by reason of dedication and proven ability are singled out, by the head of the Police Department, to handle the special assignment of solving a variety of crimes. Crime detection is their specialty. They work on their own, guided by their mental acuity and persistence, developing and following leads. Thus, the need to maintain an esprit de corps among a special group of police officers who are considered the elite in the profession requires commensurate recognition in the form of a competitive wage scale. The efficiency and effectiveness of the Detective corps is essential to the success of a Police Department.

The Panel's Determination

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that all members of the Criminal Investigation Division (CID) and the Criminal Investigation Unit (CIU) be granted a 5% wage increase over and above the new base pay of \$23,752, established herein for police officers, effective January 1, 1987 and, further, that the \$750, as and for additional compensation under Section 7.13.1 of the collective bargaining agreement continue in force in the successor agreement, effective January 1, 1987. The 5% wage increase shall not be granted to members working as Youth Aide Officer or Communications Relations Officer.

(c) Extension of Pay

The Union's Position

1. The Union demands that the provisions of paragraph 10.a., Schedule 6, of the predecessor agreement apply to all members of the bargaining unit. At the present time the particular paragraph is limited solely to officers of the Uniformed Patrol Division, Traffic Division and Street Crimes Unit who are actively working a 4/2 non-rotating shift schedule in the amount of two (2) hours pay at straight time, not to exceed fifty-two (52) hours per year - in effect one additional hour's pay per week.

2. The Union also demands that the base pay of police officers whose tours are carried out with less patrol cars than the number usually assigned translates into more confrontations with street crimes and, therefore, results in a concomitant hazard increase. The demand is for a 6% increase of base pay where a tour operates with fewer than 8 vehicles and 12% with fewer than 6 vehicles. Essentially, the demand is for hazardous pay.

The City's Position

The City objects to both demands on the grounds that the base pay for all police officers, fairly and reasonably, encompasses a full range of duties though, in some instances, as now provided, some differences are recognized and, accordingly, additional compensation is provided. However, the differences now provided are intended as a fixed measure of compensation and, other than the Union's demand, there is no acceptable ground to expand the present additional compensation.

As for hazardous pay, the City points out that the nature of a police officer's job entails hazards and the wage fixed traditionally encompasses that factor.

Further, to the extent that both demands constitute

an additional cost factor, the City points out that even the Union's expert witness, who testified on the City's ability to pay, testified that the City's financial condition is a factor which should not be ignored when considering wage increases for its employees.

The Panel's Analysis

The record falls short of providing an evidentiary foundation to warrant the conclusion that either demand may be granted.

To recognize a basis for hazardous pay, as such, would, logically, necessarily compel recognition of a reciprocal condition where some areas of the City are relatively safe as compared to other areas and, therefore, warrant the conclusion of non-hazardous pay where the area is relatively free of crime. Worse yet, the City's separate crime area statistics would then govern and control police officers' compensation resulting in a crazy quilt wage structure. That the assignment of less patrol cars than the usual number on a particular tour may result in a persistent increase in the police officer's workload is a different matter which may be addressed and projected in a different context and, possibly, result in more pay. But this is not the Union's demand which is for hazardous pay and not because of a persistent workload increase.

Further, the evidence indicates that to grant the Union's demands at this time would place an undue financial strain upon the City.

Finally, the base pay increase herein granted for the year 1987 adequately encompasses and provides a just and reasonable wage structure.

The Panel's Determination

Accordingly, it is the Panel's JUST AND REASONABLE DETERMINATION that the Union's demands, as hereinabove recited, be, and the same hereby, are DENIED.

- (d) Additional Compensation (Emergency Response Team (ERT), Bomb Disposal Squad and Juvenile Aide Officers) (Section 7.13)

Union's Position

The Union demands that members of the Emergency Response Team (ERT), Bomb Disposal Squad and Juvenile Aide Officer be paid the additional sum of \$500 per year. The Union contends that the personnel involved in the foregoing duties are specialists in their profession and, therefore, additional compensation should reflect that recognition.

The City's Position

The City does not deny that there is some equity in the Union's demands, but that in its present financial position

any additional forms of compensation would have a **decided** impact upon the City's total fiscal posture.

The Panel's Analysis

The Panel has considered the merits of the Union's demand and has concluded that the base pay increase herein granted to all police officers for the year 1987 adequately encompasses and provides a just and reasonable wage structure.

The Panel's Determination

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Union's demand be, and the same hereby, is DENIED.

2. Uniform Allowances (Section 7.14)

Union's Position

The Union demands an increase in the uniform allowance from \$240 to \$500, annually, for all uniformed personnel and an allowance of \$250, annually, for all non-uniformed personnel. In addition, the Union demands a uniform maintenance allowance for all employees to pay the costs of maintaining work clothing. In support of its demand the Union points to other jurisdictions in Niagara and Erie Counties, as reported in table 9 of the LADS table, which shows that 19 out of 25 jurisdictions reporting cash allowances for uniforms in 1986,

Niagara Falls paid the lowest, except for one jurisdiction (Orchard Park). (The same table shows that only 6 of the 25 jurisdictions pay a uniform allowance for Detectives).

The City's Position

The City opposes the Union's demand contending that \$240, annually, is a sufficient allowance for a uniform and that Detectives do not require an allowance since they do not wear uniforms and, further, the great majority of jurisdictions do not provide a uniform maintenance allowance to Detectives. Further, the City contends that the uniform allowance is a cost factor which the City would find it financially difficult to sustain for 1987, particularly in view of the base pay increase which, with other benefits, will represent a total economic package on a level consistent with the City's ability to fund the package.

The Panel's Analysis

Based on a comparable analysis of those jurisdictions paying a uniform allowance there is merit to the Union's demand. It is, however, noted that several of the jurisdictions that do pay for a uniform allowance include uniform maintenance in the same payment. Thus, though the uniform allowance is still higher than that paid by Niagara Falls, the disparity is not as great as the Union contends, though, again, Niagara Falls does not pay for uniform maintenance.

However, the significant point that should be realized at this time is that the financial posture of the City for 1987 indicates that its capacity to absorb a base increase in wages for the police officers and the Detective differential in addition to the other benefits of a monetary nature in the predecessor contract, which will be carried over intact into the 1987 successor agreement, is at a point which ought not to be stretched beyond the parameters of a fair and equitable total economic package. The parties are on the eve of negotiating an agreement for 1988 which, hopefully, will open new opportunities for the favorable consideration of an increase in uniform allowances and maintenance.

Panel's Determination

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Union's demand for an increase in the uniform allowance and for a maintenance allowance be, and the same hereby is, DENIED.

3. Non-Service Connected Disability (Section 10.7)

Characterized as "Humanitarian", the Union demands the same benefits for non-service connected disability as now provided for service-connected disability for police officers under section 207-c of the New York State General Municipal Law.

The City opposes the demand, pointing out that under Section 10.4.1 of the agreement members of the uniformed force, detectives included, may accumulate a maximum of 180 sick leave days with pay and that such leave may, under the sick leave provisions, be used for extended non-service connected disability.

The Panel has considered the Union's demand and has concluded that the present sick leave provisions, including the establishment of a sick leave bank which may be administered by "The Police Club" for the mutual benefit of its members, is an adequate plan to cover non-connected service disability. The experience does not indicate that any further protection is necessary at this time. The alternative that may be considered is a plan which would extend sick leave for a limited period should, by reason of an extended non-service connected illness or injury, all sick leave, credited to the individual employee, is exhausted. The foregoing is simply a suggestion - not a determination.

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Union's demand for non-service connected disability benefits be, and the same hereby is, DENIED.

4. Education Incentive Pay

The Union demands a percentage differential in pay of

2%, 4% and 6% of base salary depending on the level of a Baccalaureate degree (Associate, Bachelor, Graduate). In addition, the Union demands tuition reimbursement and the cost of books for those members who successfully pass courses in criminal justice and related fields, all with the City's consent.

The City opposes the demand, pointing out the high cost of education, considering the City's present financial resources, would be prohibitive. Conceding the desirability of a sophisticated police force, the demand should have limits consistent with pertinent guidelines such as, for example, eligibility, likelihood of successful completion, and a cap on costs.

The Panel has considered the divergent views of the parties and has concluded that while some form of an educational plan or policy for members of the police force has merit and would be of mutual benefit to the City and its police officers, the demand should be developed in more detail so that its merits may be favorably considered at the next round of negotiations for 1988.

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Union's demand for Education Incentive Pay be, and the same hereby is, DENIED.

5. Improved Retirement Incentive

The thrust of the Union's demand for an improved retirement incentive includes monetary inducements for early retirement. Those inducements would provide for the cash conversion of various credited accumulated leaves and paid out as regular salary which would then enhance the base for computing pension benefits. The Union's position is that early retirement would operate as a savings to the City in as much as the City could then hire younger police officers at the wage entry level instead of paying the higher wages due to veteran police officers.

The City resists the demand contending that the Union's objective is to build-up a higher salary base for pension purposes and, further, that there is a need for a balanced police force consisting of the experienced veteran and the younger police officer who can learn from the more experienced police officer. Experience shows that police efficiency suffers when experienced veteran police officers, spurned by the inducements of early retirement, retire in inordinate numbers leaving in their wake a younger and inexperienced police department.

The Panel has familiarized itself with section 10.5.10 of the existing agreement providing for a retirement incentive option based upon accumulated sick time and more particularly described in Schedule 5 attached to and made part of the agreement.

In the judgment of the Panel, Schedule 5 labelled "Retirement Incentive" is, in light of the present experience in the Niagara Falls Police Department, adequate affording optional retirement incentives to members of the uniformed force.

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Union's demand for an improved retirement incentive plan be, and the same hereby is, DENIED.

6. Indemnification

The Union demands that each police officer be indemnified for claims made against him based upon false arrest, false imprisonment, civil right violations and other torts within the provisions of section 50-j of the General Municipal Law and for claims based upon Section 1983 of the United States Code. In addition, the Union demands that a police officer be indemnified for claims made for punitive damages.

The contractual provision of the predecessor contract (Section 5.6) requires the City to provide legal services to indemnify any police officer who is a defendant in any federal civil action as a result of the performance of his police duties, as soon as such representational services and indemnification can be provided under appropriate enabling legislation or judicial ruling.

Both the Union and the City view the contractual provision as a benefit under section 50-j of the General Municipal Law, except that the Union believes that section 50-j does not cover claims rooted in section 1983 of the federal statute and the City's negotiator has reservations that the contractual provision for indemnity can be implemented without the enactment of local legislation. Otherwise the City has no objection to the Union's demand.

Under the circumstances it is the Panel's JUST AND REASONABLE DETERMINATION that the Union's demand be granted to the extent that indemnity under section 50-j of the General Municipal Law shall be applicable and that such indemnity be also applicable to claims made against a police officer based on section 1983 of the federal statute. If local legislation is required to implement the Panel's determination the Panel strongly recommends its enactment. In this connection the attention of the parties is invited to City of Newburgh, petitioner, and Harold R. Newman, et al, respondents, 19 PERB, paragraph 7004, page 7008 (1986). In the cited case the court affirmed PERB's determination that statutory provisions (Public Officers Law, Section 18.4 and General Municipal Law, Section 50-j), "do not preclude negotiations for other liability indemnification protections but merely prescribe minimum indemnification protections. Thus, the demand is merely one for legal insurance which is a form of compensation

that has been held to be a mandatory subject of negotiations." (18 PERB paragraph 3065, page 3134, 3136). That decision and others cited therein should be analyzed in terms of whether "legal insurance" may be agreed to by the Executive as a function of the Executive without Legislative approval as in the case of wages.

7. Reservations Concerning the Applicability of the Award

At the time of the hearings the City had challenged, by petition submitted to PERB, the Union's petition for the application of Interest Arbitration to the civilian members of the bargaining unit.

Subsequent to the close of the hearings the parties agreed that the Award made herein, solely with respect to an increase in the base pay for police officers for 1987, be applied to the civilian members of the bargaining unit. Therefore, the Award of an increase in the base pay of \$2,000 is granted to the civilian members of the bargaining unit. No determination of this Panel, other than the base pay increase in the stated amount, shall apply to the bargaining unit civilian members.

As To All Other Matters

As to all other matters in the predecessor collective

bargaining agreement terminating December 31, 1986, whether or not addressed, shall be carried over and incorporated into the successor agreement, effective January 1, 1987. In this respect the Panel has concluded that the base pay increase granted to the police officers and the civilians in the bargaining unit and the increase granted to the Detectives, and other benefits herein awarded, constitute a just and reasonable determination of all issues submitted to the Panel based upon all of the facts and circumstances, supported by a rational analysis of the evidence contained in the record. The wage increases and benefits herein awarded take into consideration the financial ability of the City of Niagara Falls to pay such wages and benefits as well as the financial limitations which preclude further benefits other than those herein awarded and carried over from the predecessor to the 1987 successor agreement. In this respect the Panel has considered the interests of the City and its taxpayers to maintain a well organized and properly motivated police force whose compensation meets the objective standards of fairness, equity and reasonableness.

Dated: October 15, 1987


Philip J. Ruffo,
Chairman, Public Member

STATE OF NEW YORK)
) SS:
COUNTY OF NIAGARA)

On this *23rd* day of October, 1987, before me personally appeared DAVID A. FABRIZIO, to me known and known to me to be the Public Employer Member described in and who executed the foregoing Award, and he duly acknowledged to me that he executed the same.

Margaret Mary McDonald

Notary

STATE OF NEW YORK)
) SS:
COUNTY OF NIAGARA)

On this *23rd* day of October, 1987, before me personally appeared CHARLES ANSEL, to me known and known to me to be the Employee Organization Member described in and who executed the foregoing Award, and he duly acknowledged to me that he executed the same.

Margaret Mary McDonald

Notary
*Certificate filed in Niagara County
My Commission Expires Feb. 1990*

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Public Arbitration

-between-

NIAGARA FALLS POLICE CLUB, INC.,

Union,

-and-

CITY OF NIAGARA FALLS,

Public Employer.

Pursuant to Section 209.4 of the
New York Civil Service Law.

PERB Case No. IA-86-38; M 86-475.

EMPLOYER MEMBER
DISSENTING OPINION

MS
RECEIVED

NOV 1986

CONCILIATION

APPEARANCES

For the Union:

Anthony J. De Marie, Esq.
John G. Soltys
John C. Dougherty
William M. Thomson
Mark Pierce
John Carriero
Bruce D. Blake

Attorney
Chairman, Negotiating Committee
Patrol Negotiator
Patrol Negotiator
Plain Clothes Negotiator
Plain Clothes Negotiator
Civil Negotiator

For the Public Employer:

Douglas Crowley, Esq.
Lynne McDougall

Deputy Corporation Counsel
Personnel Director

Before the Public Arbitration Panel:

Philip J. Ruffo, Esq.
David A. Fabrizio, Esq.
Charles Ansel

Public Member and Chairman
Public Employer Member
Employee Organization Member

DISSENTING OPINION
CITY OF NIAGARA FALLS, NEW YORK

The Public Employer Member disagrees with the Chairman, Public Member, of this panel with respect to his rationale and decision as it pertains to Detectives: Section 17.13.1, Criminal Investigation Division and Criminal Intelligence Unit.

The Union asked for a differential for Detectives in the amount of 5% above any wage increase granted. They used the arguments that the current \$750.00 was initially a 5% differential and that over the years it has eroded to approximately 3% differential, and as such, an increase should be granted which would equal 5% when added to the \$750.00 base figure.

The Employer Member, while he disagrees with this argument in principle, can understand the Union's position to increase this differential. However, the Public Member of this panel, for whatever reason, took it upon himself to grant an award which the Union did not ask for. More specifically, he chose to grant a 5% differential for detectives on their base salary; in addition he added the \$750.00 to the differential. This award alone amounts to 8.3% increase, which is higher than any LADS reported settlements.

The Public Members's actions in this award raises significant issues as to the role of Compulsory Interest Arbitration, wherein an arbitrator injects into an award what he thinks the Union should have asked for and did not. It certainly raises questions as to whether or not he even comprehended the issues before him in these proceedings.

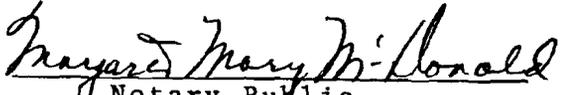
WHEREFORE, for all of the above mentioned reasons, this
Public Employer Member dissents with this award in its entirety.



DAVID A. FABRIZIO
Public Employer Member

SWORN to before me this

28th day of October, 1987.



Notary Public

Certificate filed in Niagara County
My commission expires February 1990