

**STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD**

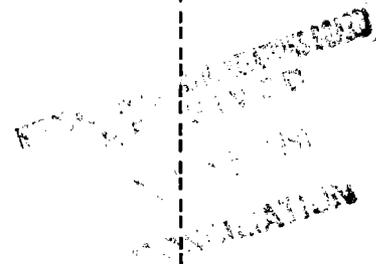
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In The Matter of The Interest Arbitration Between

JOHNSTOWN, NEW YORK POLICE BENEVOLENT ASSOCIATION

AND

THE CITY OF JOHNSTOWN, NEW YORK

PERB Case No. IA90-015; M89-459  
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**FINAL AND BINDING OPINION AND AWARD OF TRIPARTITE ARBITRATION PANEL**

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRMAN:

Peter A. Prosper  
Union College  
Department of Economics  
Schenectady, New York 12308

PUBLIC EMPLOYER PANEL MEMBER:

James W. Roemer, Jr., Esq.  
Roemer and Featherstonhaugh, P.C.  
Capital Center, 99 Pine Street  
Albany, New York 12207

EMPLOYEE ORGANIZATION PANEL MEMBER:

Russell Barter  
President, Johnstown PBA  
P.O. Box 471  
Johnstown, NY 12095

APPEARANCES:

For the Police Benevolent Association

Richard T. Aulisi, Esq.

For the City of Johnstown

William M. Wallens, Esq.  
Elayne G. Gold, Esq.

Pursuant to the provisions of Civil Service Law, Section 209.4, Harold R. Newman, Chairman of the New York State Public Employment Relations Board, designated the undersigned on January 30, 1991, as the Public Arbitration Panel. The Panel was charged by Section 209.4 to consider the following statutory guidelines:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors the following:
  - a. comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
  - b. the interests and welfare of the public and the financial ability of the public employer to pay;
  - c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
  - d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.
- (vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the

date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

### **BACKGROUND**

The City of Johnstown (hereinafter called the "City") is located in Fulton County, and has a population of approximately 9,400. The Johnstown Police Benevolent Association (hereinafter called the "Association") represents a bargaining unit consisting of twenty-one full-time officers, excluding the Chief, Lieutenant, and any temporary, seasonal or civilian employees. The composition of the force is sixteen Police Officers, three police sergeants, one Investigator and one Juvenile Officer. The City and the Association entered into negotiations for a successor agreement to their Collective Bargaining Agreement that was in effect from January 1, 1987, through December 31, 1989. Negotiation sessions continued into 1990, including March 8, and March 19, 1990, with no resolution of their differences. Consequently, impasse was declared. Members of the Police Benevolent Association continued to work under the terms of the expired agreement, which remains in full force and effect pending ratification of a successor agreement. The Public Employment Relations Board assigned Supervising Mediator Ben Falcigno to assist the parties in seeking agreement on outstanding issues. When the mediator's efforts were unsuccessful, the City of Johnstown filed a petition for interest arbitration on October 19, 1990. The Association filed its response on January 25, 1991, whereupon the Chairman of the Public Employment Relations

Board appointed the Public Member and Chairman of the Interest Arbitration Panel. The Association designated Russell Barter, President of the Johnstown Police Benevolent Association as its panel member; the City designated James W. Roemer, Jr., Esquire, as its panel member. Hearings were held on April 15, 1991, and continued on May 24, 1991, at which each party was represented by counsel in making its presentation to the Panel. The City was represented by William Wallens, Esq. and Elayne Gold, Esq.; The Association was represented by Richard Aulisi, Esq. The parties were afforded full opportunity to present evidence, witnesses and argument in support of their respective contentions on the outstanding issues. The City presented testimony from James Cook, Chief of Police; Frank S. Kovarik, City Chamberlain and Budget Director; Cheryl Akers, City Assessor; Marilyn Muzzi, City Clerk. The Association presented testimony from Robert N. Wilson, Police Officer; Ed Fennell, Government Finance Consultant. The parties submitted three joint exhibits, the City submitted 25 exhibits, and the Association submitted 21. The parties filed post-hearing briefs, which were received by August 26, 1991. The Panel met in executive session on September 4, 1991, and deliberated on each of the outstanding issues, carefully and fully considering all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the AWARD, which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. It addresses each of the issues on which the parties have been unable to reach

agreement. For each issue, the discussion below presents the positions of the parties and the panel's analysis and conclusion.

Although several issues in negotiations were withdrawn by each party at the beginning of the hearing, the following issues were placed before the Panel for evaluation and determination: Salaries; Longevity; Retirement Bonus; Sick Leave; Sick Leave Buyout; Sick Leave Definition; Clothing/Cleaning Allowance; Education; Out-of-Title Pay; Deletion of Reference to General Municipal Law in Section 8 Relating to Mileage Reimbursement; Elimination of Compensatory Time Off For Holiday Work; Minimum Time For Punchout or Call Back; Health Insurance.

### **SALARY**

The salary schedule for the expired Agreement provides the following salaries:

<b>Title</b>	<b>Salary</b>
<b>Patrolman - Minimum</b>	<b>\$18,017</b>
<b>Maximum</b>	<b>\$23,163</b>
<b>Sergeant</b>	<b>\$25,480</b>
<b>Senior Investigator</b>	<b>\$24,785</b>
<b>Juvenile Officer</b>	<b>\$24,322</b>

The salaries of Sergeant, Senior Investigator and Juvenile Officer are based as percentages over the salary of a third year Patrolman, viz., Sergeant is paid ten (10%) per cent over third year patrolman, Senior Investigator is paid seven (7%) over third year patrolman, and Juvenile Officer is paid five (5%) percent over third year patrolman. Police officers may receive somewhat more than the scheduled salary because of course credits and other factors. Current officers' salaries range from \$21,662 to a maximum of \$26,194.

#### Salary Proposals of the Parties.

The Association proposes that Exhibit "A" of the expired Agreement be amended as follows: Sergeant to be paid \$500.00 less than lieutenant; third year police officer 5% less than a sergeant; senior investigator 4% over third year patrolman; juvenile officer 3% over third year patrolman; second and third shift: 10% night bonus.

The City presented no formal proposal for a salary increase.

#### Position of the Parties

The Association supports its salary proposal by stating that the City of Johnstown has the financial resources to provide the wage and benefit package requested by the Association. The proposal is intended to bring the Association and its members' salary and benefits into parity with comparable police agencies.

The Association seeks no increases that the City has not already awarded to other departments and employees.

Because of the great disparity among salaries paid to Lieutenants, Sergeants and Patrolmen, the Association proposes a salary plan that would bring that salary structure into greater parity. A comparison of the salary difference between Patrolman and the highest ranking officer among comparable police forces shows that Patrolmen of the City of Johnstown Police Benevolent Association rank seventh out of eight (comparable jurisdictions include Amsterdam, Glens Falls, Glenville, Herkimer, Saratoga, Schenectady and Scotia).

Although the proposal requires a substantial percentage salary increase, it is necessary to bring the members of the City of Johnstown Police Benevolent Association into a more realistic relationship among ranks.

The Association points out that there has been an increase in the patrol area of the by 0.6 square miles, making the same number of officers patrol a larger area. Although the increase is modest, the duties of police officers have increased substantially in the recent past. A police officer's job is unique and carries with it a continuous threat of danger. The work day of police officers differs substantially from that of other City employees as well, and the salary of police officers must be viewed in that light.

Even though the City is not in the best financial shape, it will most likely balance its budget this year. The City has not reached its taxing limit, and may use that avenue to make up increases in City expenses and costs. The Association

estimates that an eight percent increase in either wages or benefits, in addition to the monies already allocated to the Police Department for increases in each of the two contract years in dispute (1990 and 1991), the increase in taxes would be negligible. A fact finder recommended an eight percent increase in salaries for Johnstown School District teachers, knowing the financial condition of the City and of the area.

The City may have had cuts in State aid and other financial difficulties, but members of the City of Johnstown Police Benevolent Association should not be required to subsidize the City's budget by taking nominal increases in wages and benefits, or cuts in other areas such as health insurance.

In its recent contract with the Fire Fighters, the City has incurred costs for its wage and benefit package well in excess of that which they claim they can afford for the police.

The Association suggests that an additional source of monies for payment of its proposals are those generated directly as a result of the Police Department. Those monies include \$11,986 from the DWI Program, \$12,902 from Parking Violation Fines, and \$54,898 from City Court, totalling nearly \$80,000.

The Association seeks a fair and equitable settlement of the items set forth. Its requests are not excessive when compared to the wages and benefits provided to police departments in the general area and of comparable size to that of the Johnstown Police Department. The City of Johnstown has the financial ability to

incur the cost of the Association's proposed wage and benefit package without adversely affecting the City budget or the taxpayers of the City of Johnstown.

The City opposes the salary and benefit package forwarded by the Association.

The City has seen limited new residential and commercial growth during the past three years. Only about eight new businesses have opened, and fewer than twenty-five new homes have been built during that time.

The City received State Aid per capita of roughly \$941,000 in 1988, in 1989, it received about \$916,500, and for 1990, it received about \$863,000 (following a loss of \$40,602 in planned unit credit Retirement System amounts). The actions of the State Legislature and Governor make it difficult to project funding levels for 1991. An estimate of proposed State Revenue Sharing [City Exhibit No. 15] shows that the City of Johnstown may lose a combined total of \$388,500 in revenue sharing for the years 1990-91 and 1991-92.

With the loss in State Aid and other financial constraints placed on the City (for example, landfill closure litigation, borrowing, and others), the City experienced a negative Fund Balance of \$449,742 in 1989, and a deficit of \$227,431 in 1990.

A comparison with other jurisdictions comparable to that of the City of Johnstown demonstrates that the City is solidly in the middle of the pay and benefit scales, and its last salary increase granted to police officers was in line with

the increases received by those other units. The City offers the following as comparable jurisdictions: City of Amsterdam, Village of Herkimer, City of Oneida, City of Rensselaer, Saratoga County Sheriffs, Fulton County Sheriffs, City of Little Falls, City of Gloversville, and the City of Ilion.

Discussion

The two parties differ on choice of police department units for comparison of salary and other benefits, as illustrated here:

City of Johnstown	Johnstown PBA
City of Amsterdam	City of Schenectady
Village of Herkimer	Village of Scotia
City of Oneida	City of Amsterdam
City of Rensselaer	City of Saratoga Springs
Saratoga County Sheriffs	Village of Herkimer
Montgomery County Sheriffs	Town of Glenville
Fulton County Sheriffs	City Glens Falls
City of Little Falls	
City of Gloversville	
Village of Ilion	

The only commonly selected units for comparison are the City of Amsterdam and the Village of Herkimer. The Association states that it selected its comparison units on the basis of "those communities in the immediate surrounding area of the City of Johnstown, each of which reflect generally comparable financial conditions and certainly each of which would make the same basic claim to difficult financial times" [Association's Brief, p3]. The City states that it made its selection of comparable jurisdictions on the basis of similar "economic and other terms and conditions of employment" [City Brief, p.9].

Not only are the units for comparison different, the parties measure different aspects of salaries. The City uses two measures for comparison: Salary Level Rank and Percentage Wage Increase in 1989-90 and 1990-91. The Association, on the other hand, uses both Salary Level Rank and the Percentage Difference Between Ranks.

The Association argues that of the seven comparable jurisdictions, only the Village of Herkimer pays its patrolmen less than does the City of Johnstown, and that difference is only \$44.00 per year. The Association stresses that "in no other department is there such a vast difference in salary between patrolmen and the highest ranking officer as there is in the City of Johnstown" [Association Brief, p.4].

The City, in stressing both the level of salaries and recent salary increases, states that Patrolmen (at maximum salary range) in the City of Johnstown are the fifth highest paid of all those units with which it is being compared. The same

ranking holds for the position of Sergeant. An Investigator for the City of Johnstown receives the third highest salary of Investigators in the reference group.

The City has, in its reference group, three Sheriffs Departments: Saratoga County, Montgomery County and Fulton County. It argues that these are police units in the immediate area that are comparable in size, economic conditions, and other factors, and therefore, should be included in any comparison.

The Association argues that Sheriffs Departments should not be included in a comparison group. "It is respectfully submitted that by virtue of the unique political relationship between counties and sheriff's departments and by virtue of the nature of the employment relationship between counties and sheriff's departments and by virtue of the nature of the employment relationship between deputy sheriffs and their employers, these are not proper comparables to be considered in a proceeding such as this" [Association Brief, p.3].

In reaching the Award for Salaries below, the following factors were taken into account: (1) Comparisons (2) Financial condition of the City (3) Special Considerations.

In examining the various units offered for salary comparison purposes by both the City and the Association, it is noted that substantial differences exist between the City of Johnstown and many of them. For example, of those jurisdictions selected by the City, the population of the City of Johnstown is 9,360; the population of Gloversville is 17,836; the population of Montgomery County

is 51,981; and the Population of Saratoga County is 181,276. Obviously, the size of the police force and their territories must differ among and between them.

The Association chose, among others, the City of Schenectady and the Town of Glenville. The population of each of those political entities is substantially greater than that of the City of Johnstown.

Notwithstanding the above points, the salary levels of members of the police departments of each of the jurisdictions was noted, and salaries in the City of Johnstown were compared and ranked.

There is no question that the City of Johnstown has had financial difficulties. All are well aware of the State of New York's fiscal crisis and the impact it has had on localities. The City of Johnstown has encountered deficits in several years. *Moody's Municipal Credit Report*, November 16, 1990 [City Exhibit No. 16] states, for the City of Johnstown, New York:

Financial operations, supported by a highly cyclical and vulnerable economic base, have deteriorated in recent years and resulted in fund deficits in three out of the last five years necessitating large tax rate increases on an already static tax base...The city's economic dependence on the vulnerable and diminishing leather-tanning, glove-manufacturing and textile industries is reflected in below average socioeconomic indices. County unemployment rates are consistently above state and national levels...Trends in per capita income growth lag both the county and the state and indicate that the city is becoming increasingly poorer...A declining population and a stagnant tax base further characterize this older, fully developed community.

The Association's expert financial witness, Mr. Ed Fennel, testified that the City of Johnstown has financial problems that can be mitigated by conservative budgeting.

Although the Association acknowledges that the City has financial difficulties, it believes that members of the Association should not subsidize the City by receiving a lower salary than is deserved.

The current fiscal plight of the City, brought on by changing economic times (decline of leather-tanning, glove-making, etc.), the fiscal crisis of the State of New York, and general economic conditions (recession), require the City to plan more carefully all areas of its budget, not just personnel. Although it is agreed that personnel employed by the City must not be asked to absorb undue losses in real income, so too must they share in the belt-tightening process.

The Association argues that personnel in comparable police agencies receive salaries higher than those of police in Johnstown, and in many instances they are correct. However, because of the difficult current economic situation, this is an inappropriate time to attempt to catch up, that is, to improve the salary rankings *vis-à-vis* comparable agencies.

The rise in the Consumer Price Index, a rough measure of the cost of living, rose by an average of 4.85 percent on an annual basis for the years, 1990 and 1991 (to August).

Taking into account all the above factors, arguments and considerations, the following Salary adjustment is **AWARDED**

**All bargaining unit employees (Patrolmen, Sergeants, Investigators, Juvenile Officers) shall receive a five (5.0%) percent increase in salary for the calendar year 1990.**

**All bargaining unit employees (Patrolmen, Sergeants, Investigators, Juvenile Officers) shall receive a five (5.0%) percent increase in salary for the calendar year 1991.**

**LONGEVITY**

The expired Agreement provides for longevity increments as follows:

Members are entitled to annual longevity increments. In addition to the salaries set forth in the annexed Exhibit "A", yearly longevity increments will be paid to covered employees for continuous service beginning January 1, 1987 as follows:

<u>CONTINUOUS YEARS SERVICE</u>	<u>5 YRS.</u>	<u>10 YRS.</u>	<u>15 YRS.</u>	<u>20 YRS.</u>
Total (a) 1987	300.00	400.00	500.00	600.00
(b) 1988	350.00	450.00	550.00	650.00
(c) 1989	400.00	500.00	600.00	700.00
Payable	Annually	Annually	Annually	Annually

Longevity Proposals of the Parties

The Association proposes to change the above section to the following:

Members are entitled to annual longevity increments totalling one half percent or

.005 for each year of service beginning third year of patrolman, third year base pay.

The City has no proposal regarding longevity payments.

The Association argues that the City of Johnstown Fire Fighters received an increase in longevity payment, and so too should the members of the Association. Longevity is payment for long-term loyal service, and should be awarded to show the City's appreciation for that service.

#### Discussion

In their negotiations with the City, the Fire Fighters received a \$100.00 increase in longevity payment, bringing that payment up to exact equality with that of members of the Association. The Association argues that since the Fire Fighters received an increase, a like increase is warranted for members of the Association.

Other than an increase in total salary for all unit employees after their third year of employment with the City, the Association has not presented any sound argument for its proposal. Therefore, the Association's proposal on longevity payment is **DENIED**. There shall be no change in the section on longevity payment.

**RETIREMENT BONUS**

The expired Agreement states that, "Upon retirement, each member shall qualify for a one-time retirement benefit of \$1,000.00"

**Retirement Bonus Proposals of the Parties**

The Association proposes a change in the clause to provide a retirement payment of \$4,000.00 for twenty (20) years of service, plus an additional \$200.00 for each additional year of service thereafter.

The City proposes to modify the clause to grant a one-time retirement bonus of \$1,000.00 if the employee retires between his twentieth and twenty-first year of service.

**Position of the Parties**

The Association argues once again that long-time service to the City should be rewarded. The retirement bonus of \$4,000.00 will provide incentive and some financial ability for members to retire after twenty years.

The City argues that the purpose of a retirement bonus is to encourage persons to retire. The current wording does nothing to provide incentive to retire after twenty years, and the City's proposal provides that encouragement: Retire after twenty years and receive a bonus; delay retirement and receive nothing.

Discussion

Currently, all Association members who retire with twenty or more years of service receive a retirement bonus of \$1,000.00. The Association's proposal would simply increase that amount four times. In addition, the bonus would increase yearly after twenty years, providing some incentive to remain on the job. The City wants a bonus that would encourage unit members to retire after twenty years.

It would be inappropriate to remove a bonus already in place without a good rationale for doing so. At the same time, the concept of encouraging unit members to retire after twenty years and providing some financial ability to do so is appealing.

Therefore, the following AWARD is made:

**Section 7 of the Agreement shall read: For those members retiring after twenty years, if the Officer notifies the City at least six months in advance, a special longevity increment of \$2,500.00 shall be paid. If a member retires after his twenty-first year, (s)he shall receive a special longevity increment of \$1,000.00. Current members who have more than twenty years service will receive the \$2,500.00 special longevity payment if they retire within one year of the implementation of this AWARD upon six months' notification prior to retirement.**

### **SICK LEAVE AND SICK LEAVE ACCRUALS**

The expired Agreement contains the following, in part:

Each officer or employee shall be allowed sick leave credits at the rate of one working day each month. Unused sick leave shall not be accumulated to an employee beyond a maximum of one hundred seventy-five (175) working days.

....

(d) Termination of Employment. Upon retirement, the City shall pay to those officers who have accumulated 140 days of unused sick leave, a sum of money equal to 10% of their final annual salary; upon retirement, the City shall pay to those officers who have accumulated at least 120 days but less than 140 days of unused sick leave, a sum of money equal to 6% of their final annual salary; and upon retirement, the City shall pay to those officers who have accumulated at least 80 days but less than 120 days of unused sick leave, a sum of money equal to 3% of their final annual salary.

#### Proposals of the Parties

The Association proposes that the number of sick leave credits be at the rate of two working days per month. It also proposes that, "Upon retirement, the City shall pay all officers full pay for all unused accumulated sick leave."

#### Position of the Parties

The Association argues that the City of Johnstown ranks last of all comparable jurisdictions in the number of sick days available to officers. The City of Schenectady permits an unlimited number of sick leave days. Other jurisdictions permit from two per month (Amsterdam) to fifteen or eighteen per year (Glens Falls, Glenville, Herkimer, Saratoga and Scotia).

The City opposes the Association's proposal because of its increased costs, doubling the number of sick leave days. In addition, the City states that there is no accurate way to measure the impact of the buy-out at retirement because it depends upon rank and then-current rate of pay.

### Discussion

Of the jurisdictions that the City forwarded as comparable in economic and other conditions, only Saratoga County, Fulton County and the City of Little Falls provide twelve sick leave days per year. All others provide more. The City of Amsterdam, 24 per year; the Village of Herkimer, 18 per year; the City of Rensselaer, Unlimited; the City of Gloversville, 15 per year; and, the Village of Ilion, 18 per year.

Most jurisdictions restrict the number of and/or the rate of pay of accumulated days of sick leave days payable upon retirement. If a jurisdiction compensates at full pay, it compensates only a portion of earned days. Most jurisdictions limit both the daily rate of pay and the number of days to be compensated.

Considering all factors, arguments and exhibits, the following AWARD is made:

**The first sentence of Article 13 shall be: Each officer or employee shall be allowed fifteen (15) sick leave credits per year.**

**There shall be no other changes in the Article.**

#### **DEFINITION OF "SICK"**

There is no section defining the word "sick" in the Agreement.

#### Proposals of the Parties

The City proposes the following definition of the word "sick":

Each officer or employee contracting or incurring any non-service connected sickness or disability that renders such employee or officer unable to perform his duties, shall receive sick leave with pay to the extent that such employee has accumulated such sick leave.

The Association has no proposal.

#### Position of the Parties

The City states that its proposal provides language to merely provide a guide post, a standard for maintaining low sick leave use. Sick leave should be

used only for sickness, and not for other reasons. The proposed clause will formalize that.

The Association has no position on the proposal.

Discussion

The proposed language apparently does not create any particular problem with either the accumulation of, or use of, sick leave. The Association has not presented any reasons why it should not be included in the Agreement.

Therefore, the following is **AWARDED**:

Section 13 of the Agreement shall be amended to include the following paragraph:

**Each officer or employee contracting or incurring any non-service connected sickness or disability which renders such employee or officer unable to perform his or her duties, shall receive sick leave with pay to the extent that such employee has accumulated such sick leave.**

**CLOTHING/CLEANING ALLOWANCE**

The expired Agreement contains the following clause:

The City will provide all necessary uniforms and clothing for all officers of the Department and will replace all clothing that is no

longer serviceable. The minimum issue of uniforms and clothing and/or replacements shall be determined by a consensus of the Chief of Police, President of the P.B.A., Chairman of Public Safety Committee of the City Council, and all uniforms, clothing, and equipment so issued shall remain the property of the City and shall only be worn by the police officers while engaged in their official duties.

#### Proposals of the Parties

The Association proposes to amend the clause to include a cleaning allowance as well. It proposes that a cleaning allowance of \$500.00 be granted to each officer per year (to be initiated by \$250.00 on January 1, 1990, and \$250.00 on July 1, 1990).

The City has no cleaning allowance proposal.

#### Positions of the Parties

The Association states that the City of Johnstown ranks last in providing a cleaning allowance for police officers.

The City opposes the allowance, stating that it would result in an increase in total annual expenditures of \$11,00.00.

#### Discussion

It is true that other jurisdictions provide a clothing allowance to uniformed employees. However, most of those jurisdictions do not provide uniforms. Therefore, the monies received are to be used to replace worn or otherwise

unusable clothing. Many of those jurisdictions do not differentiate between cleaning and replacement.

Therefore, the proposal of the Association is DENIED.

### EDUCATION

The expired Agreement contains the following clause:

(a) The City will pay full tuition costs for any courses, less the amount of any tuition scholarships, award or grant received for police officers who maintain a "B" average or better whether or not the courses taken are job related.

(b) Commencing January 1988 the City will pay to each Police Officer possessing a 2 year College degree a sum equal to 1% of his annual salary and shall pay to each Police Officer possessing a 4 year College degree a sum equal to 2% of his annual salary, said sums to be paid annually at the 1st pay period in March.

#### Proposals of the Parties

The City proposes the following changes to (a) above:

From the first sentence of (a) eliminate the words, "whether or not the courses taken are job related." Add: The course taken need not be directly job related to the Police Officer's job, but must, however, be of such a nature as to benefit job performance, administrative ability and/or human relations skills.

Add paragraph: (c) Any Police Officer wishing to participate in this tuition reimbursement benefit must receive Department approval in advance of beginning the course work.

The Association proposes to add the following to (b) above:

A Police Officer with licensed New York State Department of Health emergency medical technician card or one year criminal justice certificate shall receive 2% of his base annual salary.

A Police Officer with a two-year degree or 60 hours of criminal justice credits shall receive 4% of his annual base salary. A Police Officer with a four-year degree or 120 hours of criminal justice credits shall receive 6% of his base salary.

The Association also wishes to change the required "B" average to one of "C+".

#### Position of the Parties

The City states that the present language is overly broad and permits tuition reimbursement for any college work of any kind. The City believes that college courses somehow related to the job is rational and fair.

The Association states that several Police Officers are EMT's and perform valuable functions for the citizens of the City, and therefore, should be compensated for it. The increase in percentage payment simply reflects the increasing value of education.

#### Discussion

The City believes that courses for which it reimburses tuition should somehow be related to on-the-job performance. Such a position is tenable. Many municipalities, other political subdivisions and private companies require that reimbursable courses be at least loosely job related. There does not appear to be

any major problem with that concept in the City of Johnstown. To require advance approval of such courses will eliminate any question regarding the City's perception of their job-relatedness.

The Association's position that the academic average be changed from "B" to "C+" is reasonable. Most colleges have changed from a five-point grading system (A, B, C, D, F) to a thirteen-point grading system (A, A-, B+, B, B-, etc.). The proposal of the Association simply reflects that change.

The Association's proposal to increase the percentage of most degrees and certificates is an added cost that would increase some officers' annual pay while maintaining others. The total cost to the City of all proposals and Awards is reflected in the Award of each. It is concluded that the monies that this proposal would cost are more appropriately applied elsewhere.

Therefore, the following AWARD is made:

**Article 21, EDUCATION, Paragraph (a) shall be:**

**The City will pay full tuition costs for any courses, less the amount of any tuition scholarships, award or grant received for police officers who maintain a "C+" average or better. The course taken need not be directly related to the Police Officer's job but must, however, be of such a nature as to benefit job performance, administrative ability and/or human relations skills.**

**Paragraph (b) remains as written.**

**ADD Paragraph: (c) Any Police Officer wishing to participate in this tuition reimbursement benefit must receive Department approval in advance of beginning the course work.**

## OUT-OF-TITLE PAY

The expired Agreement does not contain an out-of-title pay clause.

### Proposals of the Parties

The Association proposes a new section as follows:

A Police Officer who is to perform duties of a higher grade or rank shall be paid at the wage scale of the higher grade or rank for every day so employed.

The City has no proposal.

### Position of the Parties

The Association contends that in 1989, over 370 shifts were not covered by supervisors (Sergeants and above). In 1990, about 309 shifts were not covered by supervisors.

If Patrolmen are being required to perform the duties of supervisors, they should be paid for such work.

The City responded that the Association offered no testimony as to whether this issue is a true, recurring problem. In addition, it is the employer's prerogative which and how many officers of various ranks to have on duty.

### Discussion

Many employers, whether in the private or public sectors, local, regional or national, provide for payment to employees for out-of-title work. Some of the

agreements that the City submitted for comparable jurisdictions contain out-of-title work clauses. If an employee is assigned to work at some title above his own, he should be compensated at that higher rate. However, it should be the employer who makes the determination, not the employee. The employer can assign a person to out-of-title work, but the employee cannot just decide that he performing out-of-title work and demand payment. The Award below protects all parties concerning out-of-title work.

Therefore, the following **AWARDED** is made:

**The Agreement shall contain the following clause:**

**A Police Officer who is specifically temporarily assigned by his supervisor to perform duties of a higher grade and rank shall be paid at the wage scale of the higher grade and rank only if the major portion of the Officer's work in the higher grade and rank is work performed only by a person in such higher grade and rank.**

#### **MILEAGE REIMBURSEMENT**

The expired Agreement contains the following clause:

The City shall pay mileage when covered employees are required to attend mandates schools or professional proficiency courses when sponsored by the State of New York in accordance with the General Municipal Law.

Proposals of the Parties

The City proposes to remove reference to General Municipal Law.

The Association has no proposal on this section.

Position of the Parties

The City argues that mileage rates have never been set by General Municipal Law, but by the Legislative Body. The purpose of the proposal is to bring the Agreement into line with long-standing practice.

The Association apparently has no response to the proposal.

Discussion

Because the City does not intend to change its practice regarding mileage reimbursement, but states that the intent of the proposal is merely to make the Agreement reflect past and current proper procedure.

Therefore, the following **AWARD** is made:

**The clause shall be amended to the following:**

**The City shall pay mileage when covered employees are required to attend mandated schools or professional proficiency courses when sponsored by the State of New York.**

## HOLIDAYS

The expired Agreement contains the following clause, in part:

All covered employees of the Police Department shall receive the following twelve (12) holidays as illustrated below. Those employees who work any of the said holidays shall receive double pay for that holiday worked, or shall receive straight pay for any holiday worked and shall be entitled to one day compensatory time off. Those employees not scheduled to work on any of the said holidays shall receive either one day's compensatory time off or shall receive one days pay at straight pay.

### Proposals of the Parties

The City proposes that references to compensatory time off be eliminated from the clause.

The Association has no proposal on this section.

### Position of the Parties

The City argues that the use of compensatory time directly affects the amount of overtime utilized, increasing costs to the City. The City does not wish to avoid payment to employees for holiday work, but wishes to pay in income rather than in days off.

The Association presents no substantial specific opposition to the City's proposal.

Discussion

There are substantial advantages to the City if compensatory time off were eliminated. It would reduce overtime costs, primarily, but would have other ameliorating effects also. Elimination of compensatory time off would make schedules easier to construct, creating a more consistent shift force. For the employee, the money received rather than compensatory time off for holiday work, if invested, would provide substantially greater benefit at retirement than the "banked" days.

The one major drawback of eliminating compensatory time off is that it has been a benefit of Association members for some time. The Award below should provide relief for all parties.

Therefore, the following AWARD is made:

**The appropriate part of the Holiday clause shall be amended as follows:**

**All covered employees of the Police Department shall receive the following twelve (12) holidays as illustrated below. Those employees who work any of the said holidays shall receive double pay for that holiday worked. Those employees not scheduled to work on any of the said holidays shall receive one days' pay at straight pay for those holidays or compensatory time off as provided for below. If an employee wishes compensatory time off for working the holiday, or in lieu of holiday pay if not scheduled to work that holiday, (s)he shall make such request in writing to the Chief of Police who, in his sole discretion, shall either grant or reject the request. If such request is granted, the employee who works the holiday shall receive one days' pay at straight time and one days' compensatory time off.**

## **OVERTIME**

The relevant part of the overtime clause is:

In the event of a punch out on the monitor or a call back of any officer from off-duty status, or should an officer be retained on duty, the officer will be compensated at a rate of 1½ times the regular rate of pay for a minimum of four (4) hours for each such call back that does not exceed four (4) hours or more.

### Proposals of the Parties

The City proposes that the minimum time paid for be two hours rather than four hours.

The Association has no proposal on this section.

### Position of the Parties

The City argues that two hours' pay is sufficient for persons who work a few minutes on callback or punch-out. Four hours' pay is excessive under the circumstances.

The Association opposes the proposal, stating that there just is no justification for elimination of the four hour minimum.

### Discussion

The City apparently would save a bit of money by the adoption of this proposal, but not much. The monetary savings are small compared with the

disruption in employee relations it would cause. The City has presented no strong reason its proposal should be adopted.

Therefore, the proposal of the City is DENIED.

### **HEALTH INSURANCE**

The expired Agreement contains the following health insurance clause:

The City will maintain coverage following retirement of members. The City will continue to provide the full cost of all medical, surgical and major medical for all covered members and their families. The insurance plan shall be the same as currently serving other city personnel, and there will be no reductions in any benefits currently provided the P.B.A. by there [sic] former "State Plan". Further the City will provide full optical coverage beginning the contract year 1985 and thereafter and full dental coverage beginning in 1986 and thereafter for all covered members and their families. Any additional expense caused to a member or his family as a result of the change from the "State Plan" to the "Local Plan" will be borne by the City.

#### Proposals of the Parties

The City originally placed the following emendation of the health insurance clause before this panel:

The City will continue to provide health insurance for all covered members and their families. Covered members shall contribute 25% of the cost of such health insurance. The insurance plan shall be the same or substantially the same as that currently provided.

Providing, however, that nothing contained herein shall prevent the City on thirty (30) days notice to the PBA from switching health insurance carriers or becoming self-insured providing that the City maintains substantially similar benefits.

As the hearing commenced, and discussion occurred among the various representatives of both parties, the City amended its proposal to encompass the following items.

1. Persons employed on or after the date of this Award shall pay ten (10%) percent of the health insurance premium.
2. Current employees are to pay all deductibles under the current health insurance plan, which is Care Plus of Blue Shield.
3. The current MVP-3 Plan shall be changed to MVP-10.
4. The City's premium payment to the MVP-10 plan will in no event exceed the City's payment under the Blue Shield Plan.

The Association has no proposal.

#### Positions of the Parties

The City asserts that health insurance costs are spiraling, creating great hardship on funds of the City. It must find ways to contain costs.

Effective April 1, 1990, the City changed its Blue Shield health insurance plan. Prior to that time the City provided Blue Shield enrollees with the Par Plus program. Under this program the major medical deductible was \$50.00 for individual coverage and \$150.00 for family coverage. There was no hospital deductible component. In April of 1990, with the switch, the major medical

deductible rose to \$100.00 for individual coverage and \$300.00 for family coverage. In addition, there was a hospital deductible of \$240.00 per person up to three people. No changes in benefits resulted.

By converting to the higher deductibles, the City saved money in the sense that the premiums did not rise as fast as they would have if the change had not been made.

With the MVP-3 plan, premiums rose from \$179.85 per month for family coverage in 1987 to \$406.10 for the same coverage in 1991. A move to MVP-10 would reduce the burden substantially. For example, the premium for family coverage for MVP-3, as stated, is \$406.10; the premium for family coverage for MVP-10 is \$296.11.

Under the proposed new Blue Shield plan, employees would be subject to the larger major medical deductible only if the employee uses the health insurance. The employee would also pay the \$240.00 hospital deductible only if the employee had to go to the hospital. Currently, employees use the hospital emergency room instead of a personal physician. With the new plan, those employees would only go to the hospital in case of an emergency.

Under the MVP-10 plan, employees would be paying an added \$7.00 per doctor's visit, plus the \$240.00 hospital deductible.

The Association opposes any change in the medical clause of the Agreement, arguing that the City's proposal is a benefit reduction and in essence, a

salary reduction. Paying more for hospital and doctor's costs takes money out of the employees' paychecks.

### Discussion

Spiraling health care costs are not news. Health care costs have risen substantially in the past several years. It is not uncommon to read of another crisis in health care costs daily in our newspapers, or to see a special segment on television news programs of the crisis. Health care costs have been rising substantially higher than other costs, and spectacularly higher than the Consumer Price Index. It is not unusual for a business to have its health insurance premium rise in one year by thirty-five or forty percent. Governments, businesses, civic groups, research organizations, all have been studying health care costs, and are attempting to devise ways of controlling those costs. Some members of Congress are supporting national health insurance legislation. Governor Cuomo suggests that the State of New York may pick up Medicare costs by the year 2000. The problem of health care costs is with us, and is getting more severe as time passes.

Several of the ways that groups have attempted to contain rapidly rising health insurance premiums are to establish higher deductibles, larger co-payments, limiting certain procedures, and having employees share in the premium payments. Many other methods of cost containment are being devised, studied and implemented. The position taken by the City is not an unusual one.

The City made the above proposal to its Fire Fighters, which was accepted by them, and is now part of their current Collective Bargaining Agreement.

It is recognized that the proposal of the City has an impact on the incomes of employees, and that they are being asked to share in the problems faced by the City. Yet, if nothing is done to contain health care costs, the City will be unable to provide those benefits.

Many, if not most municipalities, counties and other political subdivisions in the immediate area have instituted plans to contain health care costs. Most of those plans include higher deductibles, institution of co-pay requirements, and the contribution of employees to health insurance premiums.

The final item concerning the health benefits clause is the first sentence regarding retirees. The City proposes to exclude that sentence from the Agreement, stating that because retirees are not part of the bargaining unit, that sentence is a non-mandatory subject for negotiation.

The City is correct in its position. The Panel makes no determination regarding that sentence--either that it remains in the Agreement or that it is removed from the Agreement.

Therefore, the following AWARD is made:

**The following relevant parts of the HEALTH BENEFITS clause shall be amended to be:**

**Effective December 31, 1991, the City shall provide to all employees in the bargaining unit as of the date of this Award, the Blue Shield Health Plan known as "Care Plus." The City will reimburse to employees on the payroll as of the date of this Award, the second half (\$121.00 - \$240.00) of the hospitalization deductible up to a maximum of three per family. The City will continue to provide optical and dental coverage with Blue Shield Plan Riders "B" and "D". Effective December 31, 1991, the Prescription Drug program shall be modified to provide for a \$3.00 employee co-pay per prescription.**

**Employees electing coverage pursuant to the available HMO plan will be provided with MVP-10 effective December 31, 1991. The prescription drug plan shall continue with a \$3.00 co-pay. The City shall reimburse to employees on the payroll as of the date of this Award the second half (\$121.00 - \$240.00) of the hospitalization deductible up to a maximum of three per family. The City will pay the full premium for employees selecting the HMO option unless the HMO premium exceeds the basic plan premium by more than 5% (after adjusting for no vision plan for HMO) in which event the employee shall reimburse the City for all amounts of premiums in excess of 105% of the basic plan premiums.**

**Employees hired after the date of this Award will contribute ten (10%) of the premium cost for all health benefits (basic health coverage, HMO option, prescription drug coverage, dental coverage and vision coverage) which contribution shall be deducted from the employee's paycheck each pay period on a pro-rated basis.**

The above constitute all the items placed before this Panel for evaluation and AWARD.

Respectfully submitted,

Date: 10-10-91 Peter A. Prosper  
Peter A. Prosper  
Public Panel Member and Chairman

Concur James W. Roemer, Jr.

Dissent \_\_\_\_\_

Date: 10-7-91 James W. Roemer, Jr.  
James W. Roemer, Jr., Esq.  
Employer Panel Member

Concur \_\_\_\_\_

Dissent Russell W. Barter

Date: 10-7-91 Russell W. Barter  
Russell Barter  
Employee Organization Panel Member

AFFIRMATION

STATE OF NEW YORK )

COUNTY OF SCHENECTADY ) SS:

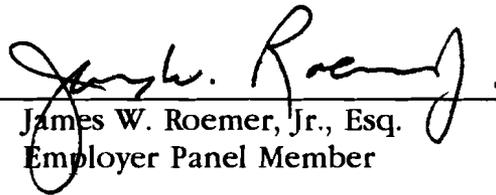
We, Peter A. Prosper, James W. Roemer, Esq., and Russell Barter, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our AWARD.

Date: 10-10-91



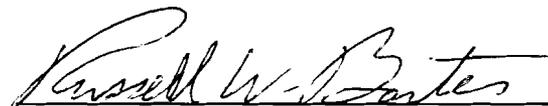
Peter A. Prosper  
Public Panel Member and Chairman

Date: 10-7-91



James W. Roemer, Jr., Esq.  
Employer Panel Member

Date: 10-7-91



Russell Barter  
Employee Organization Panel Member