

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between
BUFFALO POLICE BENEVOLENT ASSOCIATION, INC.

AND

THE CITY OF BUFFALO, NEW YORK

PERB Case No. IA91-010; M91-041

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

The Public Arbitration Panel members are:

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AND CHAIRMAN:

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Pursuant to the provisions of Civil Service Law, Section 209.4, Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board, designated the undersigned on August 21, 1991, as the Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute between the City of Buffalo ("City") and the Buffalo Police Benevolent Association, Inc. ("PBA" or "Association").

The City of Buffalo is located in Erie County, on the shore of Lake Erie. It has a population of approximately 324,000, the second largest city in the state of New York. It is also the county seat and the major metropolitan area within the county. The Buffalo Police Benevolent Association, Inc. represents a bargaining unit consisting of all sworn police officers employed by the City police department except the Commissioner and the three deputy commissioners. Total number of sworn police officers in the bargaining unit is approximately 998. Of this number, 754 are police officers, 67 detectives, 16 assistant dispatchers, 3 police photographers, 20 detective sergeants, 104 police lieutenants, 23 police captains, 6 police inspectors, 5 directors or chiefs (police training, administrative services, homicide, detectives), and one polygraph examiner.

The prior Collective Bargaining Agreement between the parties covered the period from July 1, 1986, until June 30, 1988. Negotiations in 1988 for a successor agreement were unsuccessful, and impasse was declared. After

mediative efforts failed, the PBA filed a petition for compulsory interest arbitration. An arbitration panel was designated, with John Sands, Esq., as chairman. The arbitration panel issued its award on September 5, 1989, covering the period from July 1, 1988 through June 30, 1990.

The parties began negotiations anew for a successor agreement in early 1990, with a combined total of fifty-nine Proposals submitted by both parties. On April 10, 1991, the PBA filed a declaration of impasse with the State of New York Public Employment Relations Board. A mediator's efforts were unsuccessful, and the PBA filed a petition for compulsory interest arbitration. The Chairperson of the Public Employment Relations Board designated the above-named arbitration panel to resolve the dispute. Hearings were held in Buffalo, New York on Wednesday, November 20, 1991, Thursday, November 21, 1991, Friday, November 22, 1991, and Saturday, November 23, 1991, at which time both parties were provided opportunity to introduce evidence, present testimony, summon witnesses, cross-examine witnesses, and otherwise support their respective positions on the outstanding issues. The parties filed post-hearing briefs and reply briefs.

At the hearing the parties agreed to submit approximately eight issues each for evaluation and decision by the arbitration panel. Those issues are: Shifts; Vacations; Sick Leave (Confinement); Sick Leave Incentive; Sick Leave Abuse; Discipline and Discharge; Overtime; Seniority; Uniform Allowance;

One-Man Patrols; Health Insurance Coverage; Maintenance of Benefits Article; Dental Insurance; Reporting Time; Longevity; Educational Incentive.

All issues and their attendant support submitted by each party were carefully considered, as well as the responses by the opposing party.

The Public Arbitration Panel met in executive session on April 30, 1992, 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. Those issues presented by the parties which are not specifically dealt with in detail in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion.

In arriving at the determination contained herein, the Public Arbitration Panel has considered the following statutory guidelines with which it was charged by Section 209.4:

- (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.

TERM OF AWARD

Both parties are in agreement that because of the date of this Award and pursuant to the provisions of Civil Service Law Section 209.4(vi), the Public Arbitration Panel is limited to a maximum of a two-year Award, the term of this Award shall be from July 1, 1990 through June 30, 1992.

SALARY

Average annual salaries, exclusive of longevity but including step increment, of police officers for the City of Buffalo currently in effect are:

Police Officers	\$29,755
Ranks Above Police Officers	\$34,958
Average For Unit	\$31,033

When longevity payment are included, the average annual base pay, including longevity is:

Police Officers	\$30,182
Ranks Above Police Officers	\$35,846
Average For Unit	\$31,573

In addition to the salaries above, provision is made for payment of reporting time, night shift differential, court time, holiday pay and uniforms.

Position of the Police Benevolent Association

The PBA seeks a salary increase of twelve (12%) effective July 1, 1990, and a twelve (12%) salary increase effective July 1, 1991. The City makes no salary proposal. The Association supports its proposed salary increases on the bases of comparable salaries received by other police officers in similar jurisdictions, the hazardousness nature of the work performed by police officers, and the pattern of salary increases received in the past in comparison with

police units in other cities and in other employee units employed by the City of Buffalo.

The PBA maintains that the proper comparables are those used by compulsory interest arbitration panels in previous years, specifically, the Sands panel. Those jurisdictions used by the Sands panel for comparison of salaries and other benefits are the counties of Nassau and Suffolk, the cities of New York, Syracuse, Rochester, and Yonkers, and the towns of Amherst, Cheektowaga and Tonawanda.

A comparison of the Sands panel nine-unit average salaries with Buffalo police salaries reveals that Buffalo police salaries are substantially lower. Salaries for Buffalo police officers are \$10,331 lower than the average of those of Suffolk County, Nassau County, New York City, Syracuse, Rochester and Yonkers, which is equal to a 33.6 percent difference. Comparing Buffalo's salaries with those of the towns of Amherst, Cheektowaga and Tonawanda, a deficit of \$3,923 is experienced, resulting in Buffalo police officers salaries being approximately 12.8 percent less than the average of those towns.

The PBA argues that, "...a Buffalo police officer is seriously underpaid whether compared on a thirty-three municipality basis, using the comparables found appropriate by the Sands panel, or using even more limited comparables [the Cities of Rochester and Syracuse and the largest suburban towns of Amherst, Cheektowaga and Tonawanda]. This is true whether a comparison is made on the basis of total annual earnings or total cumulative career earnings.

When the thirty-three municipality comparables are used, the disparity, on average exceeds twelve (12%) percent. When the Sands panel comparables are used, the disparity exceeds, on average, twenty-four (24%) percent. When a more limited five municipality comparison is done, the disparity exceeds eleven and one-half (11.5) percent" [PBA Post-Hearing Memorandum, pp. 26-27]. The PBA asserts that its proposed increase in salary is not only equitable, but fully justified as well.

Position of the City of Buffalo

The City of Buffalo contends that the comparables used by the PBA in its argument for salary increases are inappropriate. Stating that its use of the criteria of geographical proximity, population and union representation, its selection of comparable units are (a) Erie County cities and towns of Buffalo, Amherst, Cheektowaga, Depew, East Aurora, Town of Hamburg, Town of Lancaster, Village of Lancaster, City of Tonawanda, Town of Tonawanda, and West Seneca; (b) Niagara County cities of Lockport, Niagara Falls, North Tonawanda; and, (c) other large cities in Western New York of Rochester and Syracuse.

The City resists a salary increase on the grounds that the City is simply unable to pay. According to the City, "Buffalo is currently struggling for economic survival" [City Post-Hearing Brief, p. 8]. The City of Buffalo is heavily dependent on state aid. Over one-half of the City's budget was State funded

in 1991. The proportion of State aid fell in recent years, and the decrease has created a shortfall of over \$13 million, which the City has made up by increasing the property tax by 9.5%, deleting 117 funded jobs, elimination of 59 positions in the police department, and increased the use of the attrition factor from 3.0% to 3.5% on all jobs for all departments in the City. Even with these measures, the City comptroller projected an \$11.7 million budget imbalance by the end of the 1991-92 fiscal year.

If the budget deficit grows, it would create additional fiscal and financial problems including higher costs incurred in issuing long-term debt and other financial obligations.

In addition to the loss in state aid, adverse economic conditions which the national economy has experienced has fallen particularly hard on the City of Buffalo. Unemployment applications filed in Erie County have reached 6.9%, coupled with an additional net loss of 9,100 jobs. The number of bankruptcies were at a record high in recent years, with 4,000 in 1990, and 4,409 in 1991.

Discussion on Salary

The issue of appropriate comparable police departments must be addressed first. Both parties use some of the same cities and towns for comparison purposes, but their general concepts differ. The PBA chose the units used by the Sands panel, which includes New York City, and two counties (Suffolk and Nassau) and one city (Yonkers) in the Greater New York Metropoli-

tan Area. Apparently, the Sands panel selected on the basis of size of departments. The City, on the other hand, chose cities, towns and other political subdivisions in the Buffalo area, including Erie and Niagara Counties, as well as the upstate New York larger cities of Rochester and Syracuse.

A selection of units for wage and salary comparisons must be based on meaningful criteria. In the instant case, police departments of other jurisdictions must be comparable in significant ways to the Buffalo police department. Most labor economists and other labor practitioners would agree that one critical criterion of comparability is geographical proximity, that is, the relevant labor market area for the occupational group under consideration. If two police departments, for example, draw their personnel from the same competitive locality, the criterion of geographical proximity is satisfied. However, geographical proximity is not the only relevant criterion. If, within a particular geographic area, a large city does not compete with a much smaller political subdivision for personnel, geographical proximity is irrelevant. The labor market area for the two units are separate and distinct. In like manner, two large city police forces may be comparable even if they are relatively distant from each other if size of city, price levels, size of police force, and other factors are relatively equal.

Considering the criteria of similar labor market area, similar size and function of police force, and other economic factors, it is possible to conclude that jurisdictions such as New York City, Yonkers, Suffolk and Nassau Counties

are not appropriate for comparisons with Buffalo. New York City and its police force, obviously, is substantially larger than Buffalo, and some of its problems are of a substantially different nature. In addition to size, the New York Greater Metropolitan Area, including Yonkers, Nassau and Suffolk Counties, has a significantly different set of economic conditions. Prices and the Consumer Price Index are substantially higher, salaries in general are substantially higher, and police officer salaries in particular are substantially higher. The area's population is more than half the population of the entire state. Therefore, conditions in that area are so substantially different that a comparison with Buffalo is meaningless.

Syracuse and Rochester are two larger cities in the State, and are outside the New York Metropolitan Area. Their police forces and populations, although not equal in size to those of Buffalo, are sufficiently large to permit credible comparisons.

On the other hand, certain proximate jurisdictions cited by the City are so small and do not derive their employees from the same labor pool as does Buffalo that they cannot be reasonably considered comparable. Examples of such jurisdictions are East Aurora with a 14-person police force, Lancaster Village with a total of 15 in the police department, the City of Tonawanda with a total of 31 persons in the police department.

Considering the criteria of competitive labor market area, population of jurisdiction, size of police force, and other economic factors, an appropriate

grouping of jurisdiction for comparison with Buffalo would be larger jurisdictions within the Buffalo area and larger cities outside the Buffalo area, but also outside the Metropolitan New York City Area. That grouping would be the towns of Amherst, Cheektowaga and Tonawanda, as well as the cities of Syracuse and Rochester.

All the evidence affirms that salaries of Buffalo police officers lag behind those of comparable police forces. The City denies the assertion of the PBA, stating that, "the PBA's members have fared well in terms of wages and benefits. A comparison of these wages and benefits to those in Buffalo's market basket area reveals that Buffalo's officers lead the average salaries in every category" [City Post-Hearing Reply Brief, p. 1]. The City's conclusion rests on the use of a grouping which contains some inappropriate jurisdictions. Removing those inappropriate jurisdictions results in data which show that Buffalo police officers are in an inferior position relative to comparable jurisdictions.

The City asserts that even if a difference exists, the City's finances are such that it just cannot afford to increase salaries at this time.

The response of the PBA to the City's position is that the City has taken the same position "in every past interest arbitration proceeding since the present mayor has been mayor" [PBA Post-Hearing Reply Brief, p. 7]. When the City and PBA went through an interest arbitration with the Drotning panel, the City

claimed that it could not pay salary increases, yet the Drotning panel awarded 7.7% and 6.8% salary increases which the City absorbed without incurring budget deficits or incurring significant tax increases. Between 1977 and 1989, the City property tax levy increased only 11.3%. There were no real property tax increases in 1989 and 1990.

The City claimed inability to pay when its representatives testified before the Sands panel. For 1989-90, both police and fire were awarded twenty percent salary increases which the City not only paid but the City ended the fiscal year of 1989-90 with a \$10.8 million surplus.

The City's witness, Thomas F. Keenan, City Budget Director, testified that the City was not "crying wolf" this time, that the fiscal problems it faces are real. "...a number of events that have occurred over the last several months make some of the doom and doom news....reality as opposed to conjecture...the Comptroller...reported a deficit for the City's general fund for the first time in over fourteen years...the state government has indeed cut the amount of general purpose revenue..." [Transcript, p. 357-58].

There is no doubt that the City of Buffalo is experiencing a difficult financial period. A combination of reduced revenues from the state, the current recession, and rising material, insurance and other costs have contributed to budget difficulties. These difficulties require a tempering of salary increases for police officers, but for competitive and other purposes, a salary increase is

appropriate. To deny a salary increase for police officers would be inequitable because City firefighters recently received salary increases, as well as police officers in other jurisdictions. Were this panel to award no salary increase, police officers in the City would be seriously underpaid compared to other units, creating not only a decrease in morale and possibly productivity, but the City could lose a substantial number of highly effective police officers who would seek employment elsewhere. In addition, recruiting would be more difficult, creating still greater personnel problems.

It is the opinion of the Public Arbitration Panel that the salary Award herein is a fair and equitable salary increase.

Based upon the evidence and arguments presented by the respective parties, the Public Arbitration Panel **AWARDS** salary increases as follows:

Effective July 1, 1990, salary shall be increased by four (4%) percent.

Effective January 1, 1991, salary shall be increased by four (4%) percent.

Effective July 1, 1991, salary shall be increased by four (4%) percent.

EDUCATION INCENTIVE

The Association proposes an education incentive for police officers. Its specific proposal is:

All bargaining unit members shall receive, as additional compensation, an education incentive based on the following percentages of the members top base salary

DEGREE/CREDIT HOURS	(IN PERCENT)
Associate’s Degree (AAS)	2.0
Bachelor’s Degree (BA or BS).....	4.0
Bachelor’s Degree - Relevant Field	6.0
Master’s or Professional Degree (MA, MS, JD).....	8.0

Position of the Police Benevolent Association

The Association argues that a highly educated police officer is essential in today’s society. The responsibilities of a police officer are so varied that education is a must. The PBA asserts that if a police officer has a college education (s)he will develop an ability to rely on his or her own judgment, use discretion properly, and apply policing to a variety of crisis situations. College educated police will ~~bring~~^{bring} new ideas, an environment for change, and a more sensitive approach to their duties. An education incentive has the added value of attracting more qualified personnel to police work.

Many cities, towns and villages have realized the advantage of education and have enacted education incentives. Some of those jurisdictions are the City of Rochester, the City of North Tonawanda, the City of Lockport, the Village of East Aurora, the Town of Amherst, and the Town of Cheektowaga.

Finally, the PBA argues that the Salary Review Commission sponsored by the City of Buffalo Common Council recommended a salary education incentive in 1988, as well the International Chiefs of Police Report commissioned by the City of Buffalo in 1990.

Position of the City of Buffalo

The City states that, "while the desire of a police officer to improve himself is commendable, the City is regrettably not in the position to pay a stipend for such" [City Post-Hearing Reply Brief, p. 23]. The City believes that the PBA proposal is excessive relative to other units. The Common Council's Report provided for a maximum stipend of \$300.00 for an Associate's Degree, and \$600.00 for a Bachelor's Degree. The City's resources simply do not permit such a drastic increase sought by the PBA.

Discussion on Educational Incentive

The arguments presented by the Association are well thought through and valid. This Public Arbitration Panel embraces the concept of an education incentive. However, the City is currently experiencing financial difficulties, and adding the percentage increases to salary proposed by the PBA for education incentive, in addition to the salary awarded above would place too great a burden on the City at the present time. We recommend that the City and the PBA negotiate an education incentive with a modest stipend initially. This

would accomplish the goal of alerting police officers to the City's acknowledgment of the value of education for police officers, and at the same time fit within the financial constraints experienced by the City.

The Public Arbitration Panel, while embracing the concept of an education incentive, and recommending that the two parties negotiate such a clause, makes no **AWARD** on this issue.

HEALTH INSURANCE

The PBA had proposed, and the City had tentatively agreed, that for health care coverage, Rider 14 of the Blue Cross and Blue Shield program, be replaced with Rider 21. Although City representatives tentatively agreed to the proposal, the Public Arbitration Panel, in its deliberations on the issue, concluded that Rider 14, while less expensive to the City than Rider 21, actually provided greater coverage for the expressed needs of the PBA. Therefore, we make the following **AWARD**:

The current Rider 14 is to remain as part of the health insurance coverage, and Rider 21 is rescinded.

SICK LEAVE (CONFINEMENT)

The City proposes a confinement policy. Presently, no confinement policy exists. The City's proposed clause is as follows:

- (a) Unless otherwise authorized by the Commissioner, or his designated representative, a member of the Department on sick leave will not leave his residence or place of confinement except for:
 - (1) obtaining professional medical treatment;
 - (2) performing exercise prescribed in writing by his physician which is part of his recovery treatment, a copy of which must be submitted to his Commanding Officer prior to commencing such exercise.
- (b) Permission to leave the residence for reasons other than cited above must be documented, in writing, by the employee's commanding officer.

Position of the City of Buffalo

The City argues that there has been an increase in the use of both sick leave and IOD (Injured on duty) time since 1982. The confinement policy would not harm anyone. Those officers who are truly sick would normally be at home during their shift at any rate. Individuals who are injured and who are able to get out and about can seek permission to do so. The policy would permit the Department to monitor sick leave usage with periodic phone calls or visits.

Other departments in the area have a confinement policy, notably Amherst, the Town of Lancaster, the City of North Tonawanda, and the Town of Tonawanda.

Position of the Police Benevolent Association

The Association objects to the City's inclusion of IOD time for confinement, stating that the City's proposal submitted for interest arbitration excluded IOD time. The PBA argues that officers who report off sick not only see the Department surgeon weekly, but I.A.D. weekly. Those officers are subject to periodic phone calls or visits. If an officer abuses his sick leave privileges, he is subject to formal disciplinary charges. There has not been a single established case of abuse; therefore, there is no reason to disturb the established practice.

Discussion on Confinement Policy

Although this Public Arbitration Panel does not believe that excessive sick leave abuse occurs among officers of the Department, a confinement policy limited to an individual's tour of duty will discourage any person from an attempt in the future to abuse it. The confinement policy does not affect those officers who do not take sick leave, nor does it affect those officers who are ill and confined to their homes or hospitals. A person with the flu or other illness would not feel like going out of his home. The person whom the policy would effect is an individual who has an arm or a leg in a cast, or have some other off-duty injury or illness which prevents him or her from performing his or her duties as a police officer, but who has some ambulatory capacity. But, the City

argues that a person in that situation could get permission to leave his or her home.

This Public Arbitration Panel believes that the City's proposal does no harm to police officers who are ill, and may discourage potential sick leave abuse. This Public Arbitration Panel agrees with the PBA that the issue presented before it excluded IOD (injured on duty) personnel, and the City's proposal presented above reflects that. Therefore we make the following

AWARD:

A new clause shall be added to the Agreement which specifies a confinement policy as stated above as the City's proposal.

DISCIPLINE AND DISCHARGE

Article XII of the Agreement contains definitions and procedures concerning disciplinary action. Section 12.2 (D) currently is the following:

The impartial hearing officer so selected and so designated shall be vested with all the powers of the Commissioner of Police and shall make a record of such conference. His findings and recommendations shall then be referred to the Commissioner of Police for review and decision.

The PBA proposes deleting the last sentence of that paragraph and substituting it with the following sentence:

The hearing officer, mutually selected by the parties, shall have authority to render final and binding determination.

Position of the Police Benevolent Association

The Association states that under the present Agreement, the hearing officer may only make findings and recommendations which are referred to the Commissioner of Police for review and decision. It states: "While the mutually appointed hearing officer is empowered to determine whether the City has met its burden of proof, the Commissioner of Police, who initially authorizes the service of charges, is the ultimate determinator" [PBA Post-Hearing Brief, p. 57]. The PBA further states: "As is evident from Joint Exhibit No. 2, the Commissioner frequently does not follow the recommended penalty" [PBA Post-Hearing Brief, p. 57]. The PBA charges that the Commissioner has found guilt even after the hearing officer recommended dismissal of charges. Of twenty disciplinary cases, the Commissioner followed the hearing officer's recommendation less than fifty-percent of the time. The PBA further asserts that there are a number of instances in which an officer has plead guilty and sustained a pre-stated lesser penalty because he or she felt that there would not be a fair review following a formal hearing.

The PBA states: "The substitution of a neutral arbitrator empowered to render final and binding determination for a hearing officer will better protect each officer's due process rights" [PBA Post-Hearing Brief, p. 58].

Position of the City of Buffalo

The City opposes the Association's proposal. It asks the Public Arbitration Panel to take judicial note that due process requires only that an individual be apprised of the charges and be given an opportunity to respond. The current section of the Agreement far exceeds those minimal rights.

Discussion on Discipline and Discharge

When a person is charged with actions that will result in discipline or discharge, that individual must have the right of due process, that is (s)he must be apprised of the charges, and must receive a full and fair hearing. If found guilty, the severity of the penalty must be consonant with the infraction.

At some point in the past, the City and the PBA negotiated the present discipline and discharge section of the Agreement. It is noted that similar language is included in the Agreements of other bargaining units within the City. None of the eight bargaining units in the City have Agreements which contain a binding arbitration clause.

Although the City is consistent in its discipline and discharge clause among the various bargaining units, the high incidence of changes in the hearing officers' recommended penalty is cause for concern. Also cause for concern to the extent that it occurs, is the fact that individuals plead guilty to charges of which they are innocent out of fear of more substantial penalty.

The Public Arbitration Panel does not wish to decrease the role of the Commissioner of Police in this process, nor does it wish to completely alter the general thrust of Article 12.2. The Award below, while adding one layer to the process, thus making it somewhat cumbersome, is intended to permit the process to continue as before, while at the same time provide an avenue of appeal for any police officer who believes that an increase in penalty recommended by the hearing officer is unjustified.

The Public Arbitration Panel makes the following **AWARD**

Add the following to Section 12.2 (D):

If the Union disagrees with the decision of the Commissioner of Police to change the decision recommended by the Hearing Officer, it may seek review of such change in decision by an arbitrator mutually selected by the parties through the American Arbitration Association within seven (7) calendar days after service of the Commissioner's decision. It is understood that such arbitrator shall not be authorized to conduct a rehearing of the matter, but only to review the record of the proceeding to determine whether the change in decision by the Commissioner was supported by substantial evidence in the record. If the arbitrator so determines, he shall have the authority to award an appropriate remedy which shall be final and binding upon the parties and the police officer involved. It is further understood that the cost of such arbitration shall be shared equally between the parties.

MAINTENANCE OF BENEFITS

The current Agreement contains the following maintenance of benefits clause:

All conditions or provisions beneficial to employees now in effect which are not specifically provided for in this Agreement or which have not been replaced by provisions of this Agreement shall remain in effect for the duration of this Agreement, unless mutually agreed otherwise between the City and the Union.

The City seeks to remove this clause from the Agreement.

Position of the City of Buffalo

The City states that, "[G]iven the current fiscal plight the City now faces, it cannot afford to play games with a catch-all clause such as that above. The City must know what its potential liability is under this clause." The City is willing to incorporate specific conditions or practices relating to terms and conditions of employment into the contract, but those conditions must be clearly identified by the PBA.

Position of the Police Benevolent Association

The Association argues that the City has presented no facts to support its proposal. Although the City pleads ignorance as to the meaning of the

Article, the meaning is well understood because it has been in a series of Agreements between the City and the PBA.

Discussion on Maintenance of Benefits Clause

If this Public Arbitration Panel were to award the City's proposal, it would in fact potentially eliminate some terms and conditions of employment enjoyed by the bargaining unit that are established practices which are have not been reduced to writing in the Agreement. It may be argued that all recognized terms and conditions of employment should be identified and placed in an agreement, that was not the charge placed before this Public Arbitration Panel. Therefore, we decline to award the City's proposal.

SHIFTS

Section 2.2 of the Agreement provides for three shifts of fixed time:

7:30 a.m to 3:30 p.m.

3:30 p.m. to 11:30 p.m.

11:30 p.m. to 7:30 a.m.

The current policy is for a 5-2 "double back" shift. Under this arrangement, there is a 42-day cycle, within which police officers work 26 days.

The City seeks to alter the shift system to provide for a straight 5-2, eight-hour shift schedule, with a fourth "power shift."

Position of the City of Buffalo

The City seeks the shift change because it has a lower "relief factor," and is more efficient because it permits 71.4% of the manpower to be scheduled at any one time, compared with the present 66.7%.

Buffalo is the only Department within the comparables that has a double-back shift.

With the double-back shift, one-third of available manpower is scheduled off each weekend, and 68.7 officers report off on average each day. Given this, approximately 249 officers are off each day of every weekend, leaving too few officers available to respond to calls.

Officers work both second and third shift on a rotational basis on the double-back shift. This is harmful to both officers and citizens because the schedule is inflexible. Staffing is distributed fairly evenly by time of day and day of week. The most obvious discrepancy, according to the City, is on the second and third shifts on Saturdays, and the third shift on Sundays. More officers are needed on those shifts than the present system provides.

In addition, with the rotational shifts, the constant change in work hours is destructive to sleep patterns.

Position of the Police Benevolent Association

The Association states that the City does not propose a particular schedule whether it be a 5-2, 4-4, 4-3, 4-2, or other possible schedule. Nor does the City propose any definitive set or set starting and quitting times. The City's proposal does propose an increase in work hours since employees now work eight hours inclusive of lunch, whereas under the City's proposal they would work an eight-hour day exclusive of lunch.

The PBA argues that other than the assertion that a straight 5-2 schedule would result in better deployment, the City has presented no evidence justifying a change in the schedule. "Given the absence of specifics as to what is encompassed within the City's proposal as well as failure to present compelling

data supporting the straight 5-2 schedule....there is insufficient evidence in the record to change the existing provisions" [PBA Post-Hearing Brief, pp. 62-63].

Discussion on Shifts

The report, *Policing Buffalo in the Nineties*, submitted by the International Association of Police Chiefs [City Exhibit No. 12], recommends that the present double-back shift scheduling be eliminated in order to increase the efficiency of operations, provide greater service to the residents of Buffalo, and increase productivity in general.

This Public Arbitration Panel believes that a change in shift schedule will provide for greater flexibility and efficiency of operations, and it endorses a movement away from the 5-2 double back shift system with rotating shifts. However, the Panel is not convinced that the straight 5-2 is the best alternative. At the same time it is not convinced that the straight 5-2 shift system is not the most efficient pattern. The Public Arbitration Panel has not been provided with sufficient information to make that judgment, although with the limited information it has, it appears that the straight 5-2 shift system would be appropriate for this City of Buffalo Police Department.

Because of the relative inefficiency of the modified 5-2 shift system (the double back system), this Public Arbitration Panel makes the following **AWARD**:

The parties are directed to negotiate a change from the modified 5-2 double back shift to either a straight 5-2-8 hour shift or some other more efficient pattern mutually acceptable to the parties. If negotiations do not result in agreement after a period of six months after issuance of this Award, the unresolved issues may be submitted to arbitration by either party using the procedures of the American Arbitration Association.

ONE MAN PATROLS

The City of Buffalo uses two-man vehicles for police patrol service. The City seeks to establish a combination of one/two person vehicles, and makes the following proposal:

- (A) A committee of equal City/PBA membership be formed to study and discuss such matters as:
 - (i) safety
 - (ii) bargaining unit impact
 - (iii) recommended implementation of the combined one/two man patrol
- (B) The Committee makes effective recommendations to the Commissioner of Police.
- (C) The Commissioner will give the PBA and the Committee at least six (6) months notice prior to his intent to implement the one man/two man vehicle system.
- (D) Unresolved matters involving safety and/or bargaining unit impact, as they affect terms and conditions of employment as defined by the Taylor Law, may be submitted to interest arbitration by either the City or the PBA prior to the Commissioner's implementation.

Position of the City of Buffalo

Buffalo remains one of a group of major cities that maintains almost exclusive reliance on two-man cars. This system has led to "stacking" of calls wherein dispatchers give several calls to one unit. Officers may not be able to respond to all the calls because of the lack of time.

The fiscal state of the City of Buffalo demands a more efficient use of services, and a well-planned use of one/two man vehicles will "enhance the efficient and effective use of police services" [City Post-Hearing Brief, p. 28].

Position of the Police Benevolent Association

The PBA avers that the City's proposal is unclear. It states that it is clear that the City wishes to ultimately establish a combination of one/two man vehicles, "...it is unclear whether...the City is asking that this panel approve a concept, a procedure, or an implementation" [PBA Post-Hearing Brief, p. 70]. The PBA believes that the issue should be deferred to the next round of negotiations.

Discussion on One Man Patrols

The report submitted by the International Association of Chiefs of Police recommends one/two person patrols. The arguments by the City regarding the efficiency, flexibility, and cost-saving aspects of a change to a combination of one-person/two-person patrol vehicles is impressive. This Public Arbitration Panel heartily endorses the concept of one/two person patrol vehicles so long as officer safety concerns are met. However, it cannot award the City's proposal as it is written because of the immense problems of implementation. The City's proposal would permit the implementation of the system within six

months, and any and all problems flowing from that implementation be resolved as they arise.

As tempting and reasonably rational as that proposal sounds, it carries with it severe limitations. For example, the City, in arguing for the proposal states: "Operating a one-man/two-man patrol system will require the Department to have a superior dispatch discipline, unfailing back-up procedures, stronger field supervision, better equipment, and officers better trained in police field procedures. Properly done, a complete move to a one-person/two-person patrol system could take three (3) to five (5) years to accomplish" [City Post-Hearing Brief, p. 29].

The Association informs the Panel that Jerome Needle's letter of July 22, 1991, cautioned that the one-man/two-man patrol system "must be done with total regard for officer safety...Conversion must be part of a package of changes, all put in place prior to actual implementation" [PBA Post-Hearing Brief, p. 70]. The report then goes on to state that the new CAD system is critical, dispatchers must be trained, better vehicles must be purchased, body armor, batons, support training, and other items must be provided.

It is clear that the implementation of one-person patrols must be preceded by careful planning, the acquisition of certain types of equipment, and proper training of particular personnel. The actual implementation will have some substantial impact on terms and conditions of employment, and such impact should be anticipated as thoroughly as possible.

The issues and problems in implementing the plan are so complex that the concept of a committee suggested by the City is an excellent suggestion. But, because those issues and problems are so complex, it is not possible for this Public Arbitration Panel to endorse the City's proposal to provide the Commissioner with the ability to implement the procedure at his will.

The Public Arbitration Panel endorses the concept of one-person/two-person patrol vehicles, and makes the following **AWARD**:

A Committee of equal City of Buffalo/Police Benevolent Association membership is to be formed to study and discuss such matters as safety, bargaining unit impact, and other items regarding a shift to one-person/two-person patrol vehicles. The total number of members is to be mutually determined by the City and the PBA.

The Committee shall make effective recommendations to the Commissioner of Police.

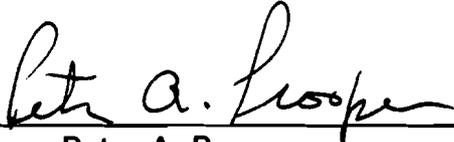
The City and the PBA shall negotiate a timetable for the implementation of one-person/two-person patrols.

OTHER ISSUES

The City of Buffalo withdrew its proposal regarding Union Release Time. Other issues presented to the Public Arbitration Panel which were examined, evaluated and rejected are the following: Reporting Time (PBA); Vacations (PBA); Sick Leave Incentive (PBA); Uniform Allowance (PBA); Dental Coverage (PBA); Longevity (PBA); Sick Leave Abuse (City); Overtime (City); Seniority (City); Reporting Time (City); Health Insurance (City). All other provisions and

language contained in the Agreement are hereby continued, except as specifically modified in this Award.

Respectfully submitted,



Peter A. Prosper
Public Panel Member and Chairman

Date: *JUNE 29, 1992*

I (concur) (do not concur) with the Above Award

Date:

Joseph L. Randazzo, Esq..
Employer Panel Member

RPM *RPM.*
I (concur) ~~(do not concur)~~ with the Above Award

Date: *June 25, 1992* 
Robert P. Meegan, Jr.
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF) SS:

On this _____ day of _____, 1992, before me personally came and appeared JOSEPH L. RANDAZZO, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

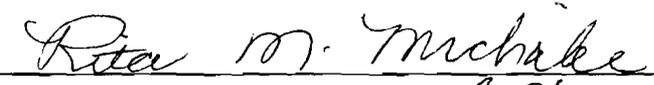
STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On this 25th day of June, 1992, before me personally came and appeared ROBERT P. MEEGAN, JR., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


JOSEPH L. RANDAZZO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Nov. 21, 1992

STATE OF NEW YORK)
COUNTY OF Saratoga) SS:

On this 29th day of June, 1992, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Com. expires June 30, 1994
RITA M. MICHALEK
Notary Public, State of New York
Saratoga County
Commission Expires June 30, 1994
ID # 7926990