NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
DEC 23 1993

CONCILIATION

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between the **NIAGARA FALLS POLICE CLUB, INC.** "Club", -and the- **CITY OF NIAGARA FALLS, NEW YORK** "Public Employer"	**O P I N I O N A N D A W A R D** PERB Case Nos. IA92-039 M92-056

INTRODUCTION

This present matter before the Panel is an Interest Arbitration between the Niagara Falls Police Club, Inc. and the City of Niagara Falls, New York. This procedure was invoked pursuant to the provisions of New York Civil Service Law, Section 209.4, and Part 205 of the Rules of Procedure of the New York State Public Employment Relations Board (hereinafter referred to as "PERB"). At issue are the terms of a new collective bargaining agreement. Negotiations for a new agreement began in the fall of 1991. Negotiation sessions were held on October 25, November 8, November 11 and December 12, 1991. An impasse was declared and the New York State Public Employment Relations Board appointed a mediator on May 21, 1992. The mediator conducted mediation sessions on June 3, July 1, and July 30, 1992. A tentative agreement was reached which was not approved by both parties. The

last meeting between the parties attempting to resolve the dispute was held on December 7, 1992.

Subsequently, a Petition for Compulsory Interest Arbitration was filed by the Niagara Falls Police Club. That petition was received by PERB on January 25, 1993. The City filed a "Respondent's Answer" which was received by PERB on February 8, 1993.

The parties were operating under a collective bargaining agreement for the years 1989-1991 which had technically expired on December 31, 1991. In response to the Club's Petition, PERB on April 19, 1993 designated a Public Arbitration Panel for the purpose of making a "just and reasonable determination" consistent with the statutory provisions and procedural rules applicable to the Interest Arbitration process.

The designated Panel was constituted as follows:

Douglas J. Bantle, Esq.	Chairperson and Public Panel Member
Thomas C. Lizardo	Public Employer Panel Member
William M. Thomson	Employee Organization Panel Member

The arbitration hearing was held on September 29, 1993 in a conference room of the City of Niagara Falls Conference Center in Niagara Falls, New York. The parties were offered full opportunity to present evidence and argument and to examine and cross-examine witnesses.

Appearances for the parties follow:

For the Club:

Anthony J. DeMarie, Esq., Attorney
Edward Fennell, Municipal Finance Consultant
Joseph Cowell, Member of the Negotiations Committee
Kevin J. Kohnke, Member of the Negotiations Committee
John C. Olander, Member of the Negotiations Committee
Joseph Paul, Member of the Negotiations Committee

For the City:

Richard J. Rotella, Esq., Assistant Corporation Counsel
Patrick Brown, City Controller
Lynne McDougall, Director of Personnel
Thomas C. Zwelling, Superintendent of Police

There were no limitations put on the parties at the hearing in respect to the number of items put before the Arbitration Panel. Both parties presented comprehensive briefs and completed their testimony on September 29, 1993. At the conclusion of the hearing, it was agreed that the parties would submit some additional information to each other and the Panel. The additional information was to be provided to the Panel members in time for them to read the materials before its deliberations on November 22, 1993. The last of the requested factual information was received on October 25, 1993.

On November 22, 1993, an Executive Session of the Panel was held at the City of Niagara Falls Convention Center. During that meeting the Panel considered each issue and made some preliminary determinations on the open issues. At the end of the meeting, it was decided that the Chairperson would draft a document for the other Panel members signatures.

On November 24, 1993, the Chairperson and Mr. Lizardo had a

telephone conversation about whether it was possible for the other two Panel members to write a dissent on particular issues. The Chairperson indicated that would be appropriate and that we would label Mr. Lizardo's dissent or dissents as "Appendix A" of this document. Mr. Thomson was informed of that agreement by a telephone call from Mr. Lizardo.

Under the statute the Panel is empowered to make a "just and reasonable determination of the matters in dispute." In making the following determinations the Panel, as well as the parties, took into consideration the following statutory criteria as required by Section 209 of Article 14 of the Civil Service Law.

> Section 209.4(v) states, "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 the 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."

Section 209.4(vi) states, "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."

OPINION AND AWARD

As in all cases of this type, the Panel and its individual members have spent a great deal of time in examining the evidence that was presented to it. In the executive session all the items presented to us were discussed. This Opinion will briefly summarize the positions of the parties on the issues. After each parties contentions are summarized there will be a decision based upon a majority of the Panel. On different issues the majority has been formed by different Panel members. In the final summary section of the Award those members forming the majority on each item is clearly delineated.

CONTENTIONS OF THE CITY ON SALARY

The first and foremost issue in this case was the proper salary levels for the members of the bargaining unit. The City's Counsel at the hearing and in his brief took no position on what an appropriate settlement should be for this unit.[1] The City did

[1] It should be noted that the City's "Respondent's Answer" referenced above took the position that there should be no wage

present to the Panel the salary settlements of other employees in the City in terms of raises in 1992 and 1993. In its brief, it also presented what it believed to be comparable cities and wages for police officers for the Panel to use in its deliberations. Counsel took the position that the police officers were "way ahead" of comparable officers in the comparable cities. He presents a table in his brief which addresses "Entry Level Salaries" demonstrating that the Niagara Falls officers are 18% to 48% ahead of the comparable officers in its comparable communities.

The majority of its presentation concerned the economic health of the City which it argued should be controlling in the decision made by the Panel. Its position is that the City is in a deficit position and thus has severe limits on what it can pay to this unit. It argues that a significant portion of the City's population, approximately 43%, is over the age of 65 or under the age of 18 and the unemployment rate is approximately 15.4%. In addition, both State aid and general fund balance trends are "in significant negative position."

CONTENTIONS OF THE CLUB ON SALARY

The Club presented several lines of argument on salary during the hearing. It asks that the Panel grant it a 7.5% increase effective January 1, 1992 and another 7.5% increase effective

---

increase from January 1, 1992 to December 31, 1992. It must also be recognized that at that point the City was taking the position that any contract should only be for one year. That position did change at the hearing. It stipulated the agreement should cover the two year period.

January 1, 1993. On page 9 of its brief it presents a list of the communities it believes are comparables. It takes the position that the requested 7.5% increases would not raise the Niagara Falls police officers salary levels to those of the other listed communities. Such increases would still leave these officers 12.8% behind the average of the comparable communities in 1992 and 4.4% in 1993.

Edward Fennell, a municipal finance consultant, addressed the issue of ability to pay for the Union. He testified that he had been involved in an examination of the City's finances for a number of years and that the City always had taken the position that it was in "hard times". Nonetheless, he pointed out that fair and just settlements were reached with its employees. In his testimony, Fennell then went on to show that the City was at 30.6% of its taxing limit in fiscal 1993 (See Page 6 of Exhibit "E"). He contends that it is clear from an examination of the City's Balance Sheet of December 31, 1992 that there were sufficient moneys available to pay the Union's requested increases in salary. As the term is generally used in labor relations, the City had the "ability to pay". In support of this argument, he notes that the City has several contingency funds totalling $1,650,033 in the 1993 budget. Even looking at these conservatively, taking into account things like vacation conversion adjustments, there is still at least $928,000. Fennell did concede that because of change in the way the County distributes sales taxes, the City has been adversely impacted. On page 15 of his report, Exhibit "E", he presented

figures on the financial impact of the Union's requests. His position is "We are not looking at numbers that materially damage the City's financial position and the City does have the ability to raise taxes. So there is no reason that it can't pay fair and equitable wages."

OPINION AND AWARD ON THE SALARY ISSUE

In this case, the salary issue is the most important issue to both parties. As stated above, the Club has put its major emphasis on the fact that when compared to other comparable area police units, the Club members usually fall far below their counterparts. The City, at the hearing, obviously disagreed using its own set of comparability figures. One of the problems faced by the Panel at the hearing was that the data being presented by the two sides was not compatible. Both sides were presenting data based upon different longevity, in other words, officers with differing lengths of service. An inquiry by the Chairperson brought forth the fact that the greatest number of officers in the unit were at the five year longevity. Therefore, the Panel asked the parties to submit additional data for their comparable cities showing what officers with five year longevity would receive under their respective contracts.[2] That information was provided.

The comparable communities presented by the City were Ithaca,

---

[2] It should be noted that the City presented some salary data at the hearing which came from a source other than the actual collective bargaining agreements. The Panel asked both parties to provide the 5 year data from collective bargaining agreements applicable to the years 1991, 1992, and 1993.

Buffalo, Schenectady, North Tonawanda, Lockport, Utica, and the Niagara County Sheriffs Department. The Club argued that the proper comparables were Amherst, Cheektowaga, Lockport, North Tonawanda, West Seneca, and Tonawanda.

After some discussion the Panel eliminated some of the communities from its considerations. Briefly, Buffalo was too large. Amherst is known as a wealthy community. Ithaca, Utica, and Schenectady were considered to be too far away for a valid "market basket" analysis. The Niagara County Sheriffs Department was eliminated because deputy sheriffs are not entitled to binding interest arbitration. Tonawanda was eliminated because there was no data available for 1993. Thus, we were left with Cheektowaga, Lockport, North Tonawanda and West Seneca. Our best information indicated that the parties in the past had used West Seneca and Cheektowaga as two of the most valid comparisons.[3] It is also apparent that even the City, in the past, has rejected comparisons out of the Erie and Niagara County areas.

Using the data submitted by the parties, calculations were done by the Panel members to find out how far from the average a Niagara Falls police officer with five years longevity was from his counterparts in 1991 and 1993. Those same calculations were also done with the addition of the City of Utica simply because using

---

[3] It is certainly clear from the prior Interest Arbitration Award between the parties, PERB IA-90-03, that the parties mutually agreed the following communities were indeed the ones that should be compared. They were Amherst, Buffalo, Cheektowaga, Lockport, North Tonawanda, West Seneca, the Town of Tonawanda, and the City of Tonawanda. (See the fourth page of the Panel's Award).

that city benefited the City's position as those officers salaries are low. Both sets of calculations revealed that the Niagara Falls police officers were significantly behind their counterparts in 1991, 1992, and 1993.

The Chairperson took the position, given the argued financial status of the City, it would be inappropriate at this time for the officers to improve their financial status vis-à-vis their comparables. However, he also believed it inappropriate for them to fall much further behind their colleagues for the given period. The police officers of the City of Niagara Falls do the same kind of work that their comparables do in the other locations. They are not performing the same type of work as other City employees. They are also entitled under the law of the State of New York to binding interest arbitration which other City employees are not, except for the firefighting units. The ramifications of that will be discussed below.

There is no question that the statute requires the Panel to look at "the interests and welfare of the public and the financial ability of the public employer to pay". However, as in the case of most governmental expenditures there are at least two interests of the public. On one hand, the taxpayers always want to pay less taxes. Nonetheless, on the other hand they continually want the government to provide them more and more government services. As an example, one of the problems in the Niagara Falls case is that the representatives of the public have in the past decided to spend large amounts of money on what one might consider "non-traditional"

items such as the Convention Center and subsidized parking. Those expenditures are now being brought forth as reasons the City can not afford to pay its police personnel a reasonable and proper wage.

It is evident to even casual observers that we have been in a recession which finally appears to be ending, even though it be so slowly. The cost-of-living increase for both 1991 and 1992 was about 3% each year.[4] One of the things that observers of labor relations' settlements know is that public employees tend to receive lower increases than private sector employees during "good" times and then obtain more favorable increases during the bad ones. This always creates political problems for the public sector employers as the public does not give them appropriate credit for "holding down" increases during the "good" times while it never fails to chastise them severely for "giving away the store" during the "poor" economic times.

As stated above, the police and fire units in Niagara Falls are entitled to statutorily provided binding interest arbitration. I will not reiterate the lengthy history of why these personnel are entitled to the benefits of this law. However, some of the reasons for such a law ought to be apparent to the reasonable person. One of the reasons the law was passed was to allow employees to get reasonable increases even when faced with local officials who were

---

[4] These are the two years that are important when one is attempting to determine what the officers should have been paid effective January 1, 1992 and again on January 1, 1993.

unwilling to give wage increases for a whole host of reasons. Again, I will not take the time to go into the myriad of reasons that governmental units might choose not to give employees reasonable increases. Nonetheless, it is obvious that the problem was severe enough that the State legislature was convinced that such a statute was needed. In the instant case, it is significant to note that when the City gave other employees no increase in 1992 it gave the firefighters and the "fire brass" a retirement benefit worth 3.77% of payroll. Those same groups are currently in interest arbitration over their potential 1993 wage increases.

Nonetheless, the City simply takes the position that its financial position does not warrant or allow raises over a two year period. However, a majority of the Panel believes that the only conclusion one can come to, when examining the relevant data, is that the City of Niagara Falls police officers are generally "at the bottom of the pile" when compared to valid generally recognized labor relations comparables in other departments, given their years of service.

The Chairperson believes that the "best" comparables are really the ones that the parties have honed in on and used during past negotiations. That appears to be the communities West Seneca and Cheektowaga. The average salary for those two units, for a five year longevity employee, in December of 1991 was $36,244.50. The Falls police officer would be $4,319.50 behind the average, at $31,925. By 1993, that gap has grown to $7,455.00. If one calculates the average salary for the four Erie and Niagara County

comparable units for the year ending December 31, 1991, one will find that the City of Niagara Falls police officer was $3,421.25 behind the average. If one adds Utica as a comparable city, the result is that Fall's officers are $2,387.00 behind the average of the other units for the comparable positions.

Using the data provided it is evident that the salaries of officers in the regional comparison went up almost 9% over the last two years and those salaries were already considerably ahead of the comparable police officers in the City. If one "dials in" the Utica figure, there still was a 8.3% increase from what officers in the other jurisdictions received on December 31, 1991 compared to what they will be receiving on December 31, 1993. The City of Niagara Falls police officers, when one adds Utica to the comparison, were $2387 behind the average on December 31, 1991. If one wants them to remain behind the Erie and Niagara County units, the same dollar amount at the end of 1993, they would need a **9.76%** increase. The Chairperson believes that these units are the most valid comparability communities presented by the two parties in the data for this case. However, even if one puts in the City of Utica, and again attempts to keep the Falls officers at the same dollar amount at the end of 1993, they would need a 8.95% increase.

What the record shows us is that the City offered the unit members a zero percent (0%) increase. It should be obvious from the calculations above that to give the police officers even a 3% increase for each year would severely hurt their current financial status, to say nothing of the effect of such a raise on their

future earnings.

The majority of the Panel, after considering an offset for the financial health of the City, believes that a **4.5%** increase, effective January 1, 1992 and a **4.25%** increase, effective January 1, 1993 is appropriate given the totality of the evidence presented to the Panel. That amount will still leave the Niagara Falls police officers about three-fourths of one percent behind the comparable officers in Cheektowaga, Lockport, North Tonawanda and West Seneca, than he or she was in December of 1991.

Such increases even though they look significant do not improve the officer's standard of living when compared to 1991. Essentially what they are doing is allowing him or her to have basically the same purchasing power as they did in 1991. One must also remember that the officers have not had the use of these additional funds during the two years in question. Thus, they had to live through two years on the same actual dollars earned in 1991. No interest or other compensation has been granted in order to help them make up for the inflationary losses they will already have suffered once they get the money. Please remember that the City had the use of the moneys which could have been used for salary increases for the two years. The majority of the Panel is also not awarding the easily justified other three-quarters of one percent mentioned above. That, along with the potential interest that the City could have earned on these moneys for two years is an

offset for the City's current financial health.[5] **In conclusion, our award on the salary issue is that all base salaries should be increased by 4.5%, effective January 1, 1992 and an additional 4.25%, effective January 1, 1993.**

The majority of the Panel believes that it has taken into consideration all of the statutory criteria in arriving at the financial decision presented above.[6] We believe that the monetary award takes into account the interests of the public in several ways. First and foremost, it takes the position of keeping the members of this unit the lowest of the chosen and previously used comparable communities in Erie and Niagara counties. The "new" salary schedule merely keeps them about the same distance behind other units they were at the end of the last bargained contract.

Nonetheless, these raises are significant. That is for a couple of reasons. One of them is that other police units, in spite of the recession, still kept getting increases. Another is

---

[5] It should be noted that Mr. Lizardo pointed out that the City Council failed to approve budget items for "employee adjustments" for both the 1992 and 1994 budgets. Thus, technically the City could not earn interest during the times where there were no funds. That may be technically correct but one certainly has to wonder whether the entity, the City, has acted responsibly in not funding such budget items. Certainly, it is aware of its responsibility under the Taylor Law to bargain with its employees in "good faith" and it also must know that interest arbitration is available to its uniformed employees.

[6] In examining the relationship of the statutory criteria, one should look closely at the case City of Buffalo v. Rinaldo, 41 N.Y.2d 764, 396 N.Y.S.2d 152, 10 PERB ¶ 7014 (1977). That case specifically addressed the relationship of the "ability to pay" criteria vis-à-vis the other criteria. The City of Buffalo was in very bad financial health at the time of that interest arbitration. Nonetheless, the Court of Appeals upheld its salary award.

that the disparity between this unit and the others, which existed already in December of 1991, just kept rising. As Chairperson of the Panel, I am sure that many of the City officials, as well as some of the City's residents, will not be pleased with this Award. Most people do not want to pay more taxes. However, those same people continually demand more governmental services. This fact is easily seen in the lengthy and intense debates last summer in the United States Congress regarding attempted cuts in the Federal budget. The bottom line in this case is that if the people of the City of Niagara Falls want professional police services they are going to have to pay for them. The Panel, from the numbers put before them, very easily could have justified giving the bargaining unit members even higher increases. In choosing arguably appropriate comparables and then with only dealing with the deviation from the average of those comparables, the Chairperson of the Panel clearly had in mind and took into account the financial position of the City. He was aware that the Award could not reflect "business as usual" granting employees raises which would improve their real wages and close the remaining gap with these employees and other police officers in Erie and Niagara County communities.[7] Quite simply, when the Panel is making its decision it must take into account all of the statutory criteria and balance the interests of all involved.

---

[7] In its brief, the City provided a chart showing that these employees received raises of 9.5% in 1987, 9.6% in 1988, 5.5% in 1989, 7.0% in 1990 and 6.5% in 1991. Obviously, the Panel's Award is significantly below those levels.

OTHER OPEN ISSUES

The Club, in its petition also sought changes on sixteen (16) other areas. They are 1) Court Pay, 2) Sick Leave, 3) Street Crimes Unit, 4) Shift Bids, 5) Non-Competitive Job Classifications, 6) Vacations, 7) Duty Disability, 8) Residency, 9) Time-Off, 10) Club Office, 11) Unused Sick Leave, 12) Uniform Maintenance, 13) Shooting Incentive Pay, 14) Vacations, 15) Accumulation of Vacation, and 16) Personal Leave.

A majority of the Panel did not agree to any changes in these areas except for points 2 and 6. There was a stipulation at the hearing between the parties that they were in agreement in regard to Section 9.01 Sick Leave. There was also an agreement regarding the Vacation section, Section 9.02. The Club's proposal was acceptable to the City with two conditions. There must be one (1) week's advance notice given by the officer and manning levels are not to be interfered with in accomplishing this goal.

Even though a number of the Club's proposals may be justified from a needs analysis, the Chairperson joined with the City's Panel member to form a majority because he is particularly concerned about the potential increased costs for items 2, 11, 12, 13, 14, 15, and 16. Several of the Club's proposals modify existing benefits or attempt to close the gaps between benefits for those officers hired after 1979 with those hired before that time. In addition, several of the Club's monetary proposals involve new items. Point #12 is a proposal for a uniform maintenance allowance which would give an officer $250 per year for the purpose of

maintaining his or her uniforms. Such a maintenance allowance is not unusual in contracts for police officers. However, the Chairperson notes, from the Club's chart in its brief, that the officers already receive $500 to purchase uniforms. Quite simply, a majority of the Panel believe this additional expenditure is not appropriate given the salary award and the financial situation of the City. The same rationale applies to Point #13, the Shooting Incentive Pay. This type of pay, even though becoming more common in contracts year to year, is still not widely found. Simply, it is another way to put money in an officer's pocket and as Chairperson, I believe we have done that sufficiently in the salary award.

I do not dismiss the Club's proposals as being frivolous. However, the proposals either deal with increased moneys or with taking away what are traditionally called "management prerogatives". On some of the items addressing the latter, it was apparent at the hearing that the Club was not currently having a problem with the particular area but wanted language in the contract in case there were problems in the future. This simply is not a compelling enough rationale to bring about a change in the status quo. As Chairperson, given the economic times we are in, I believe that moneys awarded in an arbitration award should be given as salary. It is often convenient to give moneys in other places making it look to the public as if less is being given than really is, if one looks at a total award. There is nothing hidden in this Award.

Neither the Club's member of the Panel nor the City's member is satisfied with the Chairperson's determinations in this total Award, particularly in the area of the Salary Award. The Club's member is convinced that the Club's members should have been granted significantly more no matter which area comparables were looked at in making the determination. It is his view that too much attention was paid by the Chairperson to the "ability to pay" arguments of the City. On the other side, the City's member is convinced that the Chairperson paid too little attention to the financial plight of the City when arriving at what comparables should be used. He argues that to have an accurate comparability one must use communities that have financial problems close to the degree exhibited in Niagara Falls. This is an interesting concept but one that has not been widely articulated nor accepted by interest arbitrators. One of the key problems of doing so is determining what "distressed" financial situations truly are comparable.

As usual, the bottom line is that neither party will be happy with the outcome of this Award. The way for both parties to remedy that situation is to actively pursue a "win-win" bargaining strategy in the next round of bargaining. Those who have taught labor relations courses for a long time as well as practitioners in the labor relations community know that the best agreements are those reached between the parties. No outsider can ever learn the intricate details which are needed to make the best decisions in collective bargaining. Anything the parties can do to reduce the

involvement of third parties will in all probability enhance their final work product. Nevertheless, if they can not or will not solve their problems in the regular bargaining process, there will be more intervention in the future. Whether that intervention is required or not is basically up to the parties.

The one item that should be addressed before closing is the Residency Requirement, Point #8. It is the opinion of a majority of the Panel that this issue is a decision much better left to negotiations. Therefore, the Chairperson and the City's member join on this item.

SUMMARY

It should be obvious from the comments above that the Club's representative on the Panel is unhappy with significant parts of this Award. Nevertheless, to have a valid award on any given issue two (2) members must sign to form a majority. From our earlier conversations, it is also obvious that the City's member of the Panel is unwilling to sign as a majority member any of the financial findings of the Panel. He believes that the Salary Award, in particular, is excessive given the current financial health of the City. For more information on his rationale, please see the attached "Appendix A".

Therefore, the financial portions of this Award are based upon a majority formed by the Public Panel Member and the Employee Organization Panel Member. Following is the Award of the Panel. In the summary, I will note which Panel member joins with the Public Member to form the majority.

AWARD ON "SALARY"

1. Retroactively Effective- 1) a **4.5%** increase on the base salary amount of each officer as of December 31, 1991, effective January 1, 1992.

2. That base salary amount is then to be increased by **4.25%** percent, effective January 1, 1993.

AWARD ON "COURT PAY" - SECTION 6.07

1. There will be no change in the current payment schedules.

AWARD ON "SICK LEAVE" - SECTION 9.01

1. This issue was agreed to by the parties at the hearing.

AWARD ON "STREET CRIMES UNIT" - SECTION 5.03

1. There will be no changes in the contract language with respect to this item.

AWARD ON "SHIFT BIDS" - SECTION 5.02

1. There will be no changes in the contract language with respect to this item.

AWARD ON "NON-COMPETITIVE JOB CLASSIFICATIONS" SECTION 5.13 (NEW)

1. There will be no changes in the contract language with respect to this item.

AWARD ON "VACATIONS" - SECTION 9.02

1. This issue was agreed to by the parties at the hearing subject to the two limitations found on page 17 of this Award.

AWARD ON "DUTY DISABILITY" - SECTION 5.09

1. There will be no changes in the contract language with respect to this item.

AWARD ON "RESIDENCY" - SECTION 4.07

1. There will be no changes in the contract language with respect to this item.

AWARD ON "TIME OFF" - SECTION 5.08

1. There will be no changes in the contract language with respect to this item.

AWARD ON "OFFICE" - SECTION 3.08 (NEW)

1. There will be no changes in the contract language with respect to this item.

AWARD ON "UNUSED SICK LEAVE" - SECTION 9.07

1. There will be no changes in the contract language with respect to this item.

AWARD ON "UNIFORM MAINTENANCE"
SECTION 11.04 (NEW)

1. There will be no changes in the contract language with respect to this item.

AWARD ON "SHOOTING INCENTIVE PAY"
SECTION 6.07 (NEW)

1. There will be no changes in the contract language with respect to this item.

AWARD ON "VACATIONS" - SECTION 9.02

1. There will be no changes in the contract with respect to this item other than those previously listed above.

AWARD ON "ACCUMULATION OF VACATION" - SECTION 9.03

1. There will be no changes in the contract language with respect to this item.

AWARD ON "PERSONAL LEAVE" - SECTION 9.09

1. There will be no changes in the contract language with respect to this item.

SUMMARY OF THE AWARD

This section is to make the readers clear on what parts of the Award the different members have joined with the Public Panel Member in forming a majority. The sections are

listed below:

1-SALARY. Public Panel Member Bantle joins with Employee Organization Member Thomson. Public Employer Panel Member Lizardo dissents.

2-COURT PAY. Public Panel Member Bantle joins with Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

3-SICK LEAVE. The Panel is unanimous on this issue as it was agreed to by the parties at the hearing.

4-STREET CRIMES UNIT. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

5-SHIFT BIDS. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

6-NON-COMPETITIVE JOB CLASSIFICATIONS. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

7-VACATIONS. The Panel is unanimous on this issue as it was agreed to by the parties at the hearing. (See Page 17 of this Award).

8-DUTY DISABILITY. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

9-RESIDENCY. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

10-TIME OFF. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

11-OFFICE. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

12-UNUSED SICK LEAVE. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson

dissents.

13-UNIFORM MAINTENANCE. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

14-SHOOTING INCENTIVE PAY. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

15-VACATIONS. Note: This "vacation" section addresses the equalization of benefits for officers hired after 1979. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

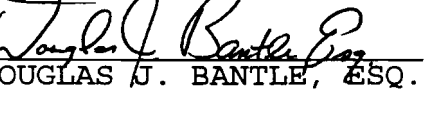
16-ACCUMULATION OF VACATION. Public Panel Member Bantle joins with Public Employer Panel Member Lizardo. Employee Organization Member Thomson dissents.

17-DURATION OF CONTRACT. All Panel Members are unanimous on this issue. This Award, along with any other agreements reached by the parties and the unchanged portions of the Collective Bargaining Agreement in effect on December 31, 1991 shall be in effect from January 1, 1992 to December 31, 1993.

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules a majority of us affirm the foregoing as our Interest Arbitration Award in the above matter and that at least a majority of us has concurred in each item of this Award.

December 15, 1993
Mendon, New York 14506



DOUGLAS J. BANTLE, ESQ.

PUBLIC MEMBER OF THE PANEL

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

I, DOUGLAS J. BANTLE, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who

executed this instrument.

December 15, 1993

Douglas J. Barth, Esq.

Thomas C. Lizardo
Thomas C. Lizardo
EMPLOYER PANEL MEMBER

Dissenting in part

STATE OF NEW YORK)
) SS.:
COUNTY OF Niagara

Sworn to me before me this 17th day of December, 1993.

Nancy Pack
Notary Public

NANCY PACK Reg. No. 4681220
Notary Public, State of New York
Appointed in Niagara County
My Commission Expires March 30, 19 94

William M. Thomson
William M. Thomson
EMPLOYEE PANEL MEMBER

STATE OF NEW YORK)
) SS.:
COUNTY OF Niagara

Sworn to me before me this 17th day of December, 1993.

Nancy Pack
Notary Public

NANCY PACK Reg. No. 4681220
Notary Public, State of New York
Appointed in Niagara County
My Commission Expires March 30, 19 94

FOLLOWING THIS PAGE PLEASE FIND APPENDIX "A"

APPENDIX A

MINORITY REPORT ON SALARY AWARD BY ARBITRATION PANEL MAJORITY VOTE
BY DISSENTING PANEL MEMBER THOMAS C. LIZARDO

I must dissent from the award of the arbitration panel majority relative to salaries, based upon the reasons stated herein.

Two of the central issues in arbitration are first, comparability and second, the ability of the City to pay. On both of these issues the panel majority has acted irresponsibly.

The City has clearly demonstrated financial and economic conditions unlike other Cities. The City went three years without financial reports (as required by state law), from 1989 through 1991. When all was said and done and the reports complete, a substantial deficit loomed large. In fact the expert brought in by the Club stated that he had never seen anything like it in his experience and hoped he would never see anything like it again. Furthermore, the City, with double digit unemployment, an aging tax base, a high percentage of land off of the tax rolls, and significant committments to subsidize parking ramps, a convention center and other non-traditional expenditures, is unable to compete with other Cities.

All of these things must be considered in deciding comparables. If it is the position of the majority that these items have been taken into account in the award, then there is obviously some systemic problem with the whole idea of interest arbitration awards as currently construed. New York is dying on the vine and taxpayers can no longer afford these awards, as they further provide incentive to move businesses, the taxpayers who pay these awards, out of state. Is interest arbitration unduly contributing to this? How can decisions of this nature be made by individuals without any mandate from the people or any particular management expertise? The answer to these questions seem obvious in this context.

The Club suggests that the City "can always raise taxes" to meet the demands of labor. The issue, however, is not whether the City has room against its constitutional tax limit, rather it is whether or not the residents of the City have "an ability to pay." In the current context, they quite simply do not, for the reasons mentioned above. Furthermore, since the award is for a period of 1992 and 1993 it is impossible for the City to retroactively raise said taxes, in fact at this late date it is impossible for the City to responsibly cut from other areas of its budget to find the money for the 1993 award. Furthermore, to continue to insist upon tax increases against an overly burdened tax base results in "killing the goose that lays the golden egg." If Niagara Falls keeps chasing away its homeowners and businesses it will become impossible to pay any salaries for law enforcement. How does this serve the public interest?

It should also be noted on the issue of the ability to pay that the

City Council stripped all funds for employee adjustments from the 1992 budget and has again choosen this course for 1994.

The City Administration has demonstrated strong efforts to maintain and expand police services by increasing the number of officers on the streets. With this award, it would seem that the City would have to re-evaluate this committment as a necessity of fiscally responsible action. If the costs per man are going to continually rise at this rate one option left to the public employer is to reduce the number of employees so that the multiplier might be applied to a number which will more adequately represent the fiscal realities.

The current Administration has maintained that it is in the public interest to have more, not less, police on the street where possible, however the City Council has once again cut in the area of police personnel in it's 1994 budget.

Further reducing manning levels is still not as responsible as restraining costs per man, but may be necessary in the current context due to the fact that this award increases costs per man. With hundreds lining up to take police and fire tests can it truly be stated that these individuals are underpaid?

Once again, I must dissent from the panel's salary award on economic grounds because a) no City comparable to Niagara Falls could pay police so much (in fact, the City of Utica, which was used as a comparable, has about the same sized police force, the same sized population and a HIGHER per capita income than Niagara Falls, but pays its Police LESS than the award in question) and b) the City's financial and economic realities do not permit it to pay this amount of money at this time.

It has been suggested that arbitration is "a hammer best avoided" but how can you encourage avoidance when it leads to exhorbitant awards such as this?

As an example to show how exhorbitant the award is consider this, in 1992, with the adjustments to be made some officers (those with no supervisory duties) will have earned, when overtime is accounted for, more than the City Administrator.

Thomas C. Lizardo

Thomas C. Lizardo