



the Civil Service Law, designated the above-listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

A hearing was held on October 14, 1993 in Amsterdam, New York, Panel discussions were held during the hearing to clarify the issues. At the hearing both parties were provided opportunity to introduce evidence, present testimony and to summon witnesses and engage in examination and cross-examination. The parties submitted briefs on December 6, 1993. Clarification of issues by way of additional information was sought by the Panel on January 14, 1994 and February 14, 1994. The record was closed on March 14, 1994.

On March 31, 1994 after phone consultations, the Panel met in executive session. A draft was circulated by the Chairperson and additional Panel discussions continued during the next month. On May 2, 1994, this Opinion and Award were issued.

## **THE STATUTORY STRUCTURE**

Subdivision 4 of Section 209 of the Civil Service Law was enacted to provide a means for resolving negotiation impasses between public employers in New York State and police and firefighters, as defined in the statute.

Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of

the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a petition requesting referral to a Panel contain:

(3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:

- (i) terms and conditions of employment that have been agreed upon;
- (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearing on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria which must be taken into consideration, when relevant:

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 qualification;
- (5) job training and skills.

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel. The maximum period is for two years.

## **BACKGROUND FACTS**

The Collective Bargaining Agreement between the parties extended from July 1, 1990 to June 30, 1992. The parties began negotiations for a successor agreement on September 25, 1992. The parties met again on October 9, 1992

and November 5, 1992 in an effort to reach an agreement. Bargaining was not successful and the parties filed a Declaration of Impasse and requested the appointment of a mediator. The mediation process failed to resolve the outstanding issues and a Petition for Compulsory Interest Arbitration was filed on June 14, 1993.

### ISSUES

In accordance with the provisions of Section 209.4 of the New York Civil Service Law, the parties hereto submitted the following issues to the undersigned arbitration panel:

- (1) Salary
- (2) Longevity Pay
- (3) Health Insurance
- (4) Personal Leave
- (5) Union Leave
- (6) Bereavement Leave
- (7) Child Leave
- (8) Holidays
- (9) Residency
- (10) Meal Allowance
- (11) On Call pay
- (12) Liability Insurance
- (13) Discipline and Disability Hearings

The Panel has carefully weighed the evidence and testimony submitted to it during the hearing and in post-hearing briefs in arriving at its determinations. The Panel has attempted to take a balanced approach to the proposals, one that

recognizes the fiscal limitations of the City of Amsterdam and the legitimate concerns of the members of the Amsterdam Police Benevolent Association. The Panel has applied the criteria set forth in the law in assessing the merits of the parties proposals. The Panel will make its award for a two-year Agreement.

## **DISCUSSION AND DETERMINATION OF THE ISSUES**

### **1. Salary**

The Association seeks an increase of eight percent (8.0%) for each year of the new Collective Bargaining Agreement. The Association argues increases of the size put forth in its proposal are necessary to maintain the competitive position of the City's police and address the increase in workload and stress resulting from the impact of ongoing reductions in the number of police officers in the City. The Association notes that there has been a reduction of seven officers in the past few years for various reasons and only one new officer hired in the same period.

The Association further contends the City's arguments on the ability to pay are not dispositive in this matter as the limitations cited by the City, including the 1% tax cap, are self-imposed and may not determine the outcome of these proceedings. Moreover, the recent settlement with the Amsterdam Firefighters Association clearly

demonstrates in a comparable unit that the City can make budget adjustments to accommodate a fair and equitable salary increase as it included increases of 6.5% for 1993-94 and 5.5% for 1994-95 and 1995-96. The Association further argues that comparable police units as set forth in Union Exhibits 2 through 8 have received wage increases in similar municipalities in excess of 5.0% and these facts evidence a need for a substantial wage increase if the City of Amsterdam is to remain competitive in the region.

The City has argued that an increase of the size proposed by the Association is not justified by the data nor can be supported by the taxpayers of the City. The City has proposed a salary increase of \$900 per employee as of July 1, 1993. The City contends a declining tax base which includes 42% senior citizens living on fixed incomes cannot support large salary increases. The City notes there are 500 homes currently for sale with few buyers. The City argues these statistics clearly indicate the City is not comparable to the municipalities presented by the Association in its case. This data also demonstrates that the City cannot afford to pay increases of 8.0% as sought by the Association.

**Determination:**

The Panel has reviewed the evidence submitted on the issues of

salary and the impact reductions in staff has had on workload. While the evidence on comparable municipalities as well as comparative bargaining units within the City including the Firefighters Association clearly indicates an increase of eight percent (8.0%) would not be reasonable, it certainly substantiates the need for an increase in excess of the City's proposed \$900 to ensure an equitable and competitive wage both within the City among competitive employees and in the region. Increases in comparable municipalities in Schenectady and other adjoining counties as evidenced in Union Exhibits 2 through 8 have ranged from 4.0% to over 6.0% and included monies for the impact of staff reductions in some instances. Many of these municipalities pay salaries higher than those found in Amsterdam. Settlements with the Amsterdam Firefighters Association have also included wage increases averaging five percent (5.0%) for the years under consideration in the instant case. After considering the limits of the City's ability to pay as evidenced in the budget and more recent settlements in the City as well as the comparables noted above, the panel would award the following wage increase:

July 1, 1992 wages of all police shall be increased five percent (5.0%).

July 1, 1993 wages of all police shall be increased five percent (5.0%).

The wage increases granted above include monies for the impact of the reductions in staff and its subsequent impact on workload as noted by the Association in its arguments.

**2. Longevity**

The City has sought elimination of the payment for longevity currently a part of the parties Collective Bargaining Agreement. The City argues longevity is but another form of payment of salary increase which it can ill afford given its current fiscal difficulties.

The Association initially sought improvements in longevity payment but amended its proposals at the hearing to eliminate this request. The Association is opposed to any change in the current longevity structure in the Collective Bargaining Agreement. The Association contends that longevity is a factor in determining salary in most comparable municipalities agreements with their police and should remain an element in the new Agreement between the City and its police.

**Determination:**

The Panel has reviewed the evidence submitted by the parties on longevity and has determined that no adjustments in the current longevity structure is warranted in the new Collective Bargaining Agreement. The current longevity payment is comparable to other

similar employees in comparable bargaining units in the region. Elimination of the longevity structures would effectively reduce benefits below other comparable police units in similar municipalities.

**3. Health Insurance**

The Association has proposed the City return to the health increases package in place prior to the new managed benefits plan introduced during the last Agreement under Article VII of the Contract. The Association also believes its members contribute sufficient monies to the premium costs of the existing plan and is opposed to any increase in contribution rates as proposed by the City in bargaining.

The City seeks to increase the current contribution by unit members from Three Dollars (\$3.00) to Ten Dollars (\$10.00) per week. The City argues the increasing cost of health insurance has placed an undue burden on the City's budget. These costs also cannot be borne by the taxpayers whose own increase has been strained by the economic difficulties of the region. The City believes Ten Dollars (\$10.00) per week would represent an equitable sharing of these health insurance premium costs.

**Determination:**

The Panel does not believe the evidence supports a change in the current structure of the health insurance plan or rate of contribution by the members of the Association at this time. While the managed benefits feature of the plan may cause some inconvenience and difficulties, it does not essentially reduce the level of benefits provided under the plan and it does realize savings which are important in an era of escalating costs. The current rate of contribution to premium costs by the Association member is competitive with that of other similar employees and while changes will occur in the contribution of firefighters in the City, they will not take place until July of 1994 which puts them beyond the duration of the agreement the Panel has statutory powers to address in the present case. Comparisons to similar employees in other municipalities also does not provide grounds for recommending a change in the current rate of contribution. For the reasons stated above, the Panel determines there shall be no changes in the current provisions for health insurance in Article XII in the new Collective Bargaining Agreement.

#### 4. Leaves

The City and the Association have both sought changes in the provision of the current Collective Bargaining Agreement governing Personal, Child, Bereavement and Union Leave. The Association has sought additional leave in most instances and the City has proposed limitations on such leave or its elimination.

The Association argues there is a need to expand leave in a number of these areas to ensure comparability with other municipalities. The Association also seeks additional payment for accumulated sick leave at retirement. The City contends the leave in a number of these categories must be further limited as there is already excessive leave provided in the Agreement which represent costs to the taxpayers for which no service is rendered.

#### **Determination:**

The Panel has reviewed the existing leave policies as well as the evidence on comparables and costs submitted by the parties and believes the interests of both parties as well as the community would be best served by maintaining the current provisions in the existing Collective Bargaining Agreement. The provisions for leave while not excessive are comparable to many similar

employees in both the City and other comparable municipalities in the state. The costs are also not an unreasonable burden on the City's budget. The Panel would therefore award no changes in the current provision for leave in the new two-year Collective Bargaining Agreement.

## 5. **Holidays**

The City has proposed elimination of one paid holiday per year citing costs and the existence of sufficient paid leave as support for its position. The City notes that paid leaves in various forms coupled with holidays provide the employee with as much as 25.0% of the total days in the year off with pay if all were taken under varying circumstances. The City asserts it cannot support such costs including 12 holidays given its fiscal condition.

The Association proposes the addition of a paid holiday for Martin Luther King Day. The Association argues the existing 12 holidays are not excessive nor overly burdensome to the City as the savings for reduction of a single holiday is but \$4000. The Association contends Martin Luther King Day is a standard holiday in many comparable municipalities and should be granted to the Amsterdam Police.

**Determination:**

The Panel has reviewed the evidence and arguments submitted on the issue of holidays and believes the existing provision granting 12 holidays is reasonable and appropriate at this time. A review of other comparable municipalities indicates 12 holidays is not an unusual number and does not represent an unreasonable cost to the City for benefits of this nature. For the reasons noted above, the Panel determines there shall be no changes in the current provisions for holidays in the new Collective Bargaining Agreement.

6. **Other Issues**

The City and the Association have also proposed changes or additions to the existing provisions of the Collective Bargaining Agreement in the areas of Residency, Meal Allowance, On Call Pay, Liability Insurance and Disciplinary and Disability hearing procedures. Given the protracted nature of the negotiations and the length of these proceedings lasting as they have well into the second year of a new agreement, the Panel believes these issues are best left to future negotiations. The Panel would therefore deny these proposals and awards no changes in these areas in the new Collective Bargaining Agreement.

