

New York State Public Employment Relations Board

APR 16 1998

STATE OF NEW YORK

In the Matter of Interest Arbitration between  
Cohoes Police Benevolent Association  
and  
City of Cohoes

IA-93-026

(M-93-238)

Before:

Michael Fonda, Public Employee Representative  
James W. Roemer, Jr., Public Employer Representative  
Professor Anthony R. Baldwin, Public Member

Appearances:

For the Association  
Brian J. O'Donnell, Esq.

For the City  
Elayne G. Gold, Esq.

Pursuant to Article 14, Sections 205.1, 205.3, 205.4 and 209.4.(c)(i)<sup>1</sup>,(ii)<sup>2</sup>, and (iii), of the New York Civil Service Law, there was an interest arbitration hearing on 4/11/94 at the Cohoes City Hall, Cohoes, New York. At the beginning of the hearing, the Cohoes Police Benevolent Association and the City of Cohoes agreed that they were at impasse on the following issues:

Term of Agreement

Compensation

Base Wage Rates

Cost of Living Adjustment

Clothing Allowance

Holiday Pay

Longevity Pay

Overtime (Wheel)

Police College Incentive Program

Shift Differential

Supervisor Differential

Health Insurance

Leaves

Bereavement Leave

Sick Leave

Medical Doctor's Note for Sick Leave Day(s) Taken

Before or After a Holiday or Regular Day Off

Unused Sick Leave Compensation

During the hearing, the Association (hereinafter the Union) and the City had fair and full opportunity to present opening and closing arguments, to present documents and to examine and cross examine witnesses. At the end of the hearing day, the parties agreed to submit closing briefs. They further agreed to discuss all open items in their

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<sup>1</sup>The Cohoes Police Benevolent Association petitioned the Public Employment Relations Board to refer the dispute to a public arbitration panel.

<sup>2</sup>The panel members were Michael Fonda, public employee organization member, James W. Roemer, Esq., public employer member, and Professor Anthony R. Baldwin, public member.

briefs whether or not they were addressed by testimony at the hearing. After the panel members received the parties' briefs, the panel had meetings in Albany, New York, on 5/25/94 and 5/27/94.

## BACKGROUND

Cohoes is the second largest city in Albany County. It is about 4 square miles in size, and there are 4 primary private employers within its borders.<sup>3</sup> Between 16, 825 and 17,500 reside in the city.<sup>4</sup> Union witness Michael Thulin (hereinafter Thulin), Administrative Law Officer for the Cohoes Police Department (hereinafter the Department) and a Cohoes police officer for 23 years, described the population as mostly blue collar and mostly residing on "the Hill", "the Island," or in proximity to the Cohoes business district.

There is a police force of 31 full-time officers and a Chief. The Chief is head of the Department. The City maintains twenty-four hour, seven days a week police coverage by assigning officers to three platoons. Each platoon covers one of three shifts. The shifts are 8-4, 4-12, and 12-8, and the Department assigns approximately 20 of the 31 officers to one of the three shifts. Others are either detectives, assigned to an administrative detail, or on leave.<sup>5</sup> Of the 31 police officers, 16 held the rank of sergeant or lieutenant at the time of the hearing.

The parties' most recent contract was a two-year agreement that expired on 12/31/92. Negotiations for their successor agreement stalled at impasse after 10 sessions. Since then and prior to their 4/4 hearing, there was a mediation session on 10/4/93. After the session, the mediator released the City and the Union to pursue interest arbitration. Subsequent to that release, the Union filed a petition for interest arbitration.

## DISCUSSION

### TERM OF AGREEMENT

The agreement will be a two-year agreement (January 1, 1993 to December 31, 1994).

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<sup>3</sup>The private employers are Mohawk Paper, Norflight Corp., a new strip shopping mall, and the Cohoes Manufacturing Company, according to Union witness Michael Thulin, a 23 year Cohoes police officer.

<sup>4</sup>The former figure is the Employer's estimate (See Employer Exhibit 20), and the latter figure is the estimate of Union witness Thulin.

<sup>5</sup>On the day of the hearing, 2 sergeants and 2 patrol officers were assigned to the Detective Bureau, and 1 lieutenant and 1 sergeant were out on long term leaves on account of illness and injury.

## COMPENSATION

### Base Wage Rate

At the hearing and in its brief, the Union cited its accommodation for the City to enable the City to reduce overtime and the absence of City accommodation on the Union health coverage for retirees as one of several bases for its proposed 6% wage increase in each year of an agreement. As further basis, it noted that the City pays its police officers less than in Albany, Beacon, Bethlehem, Colonie, Rotterdam, and Troy. According to the Union, other city employees received a lower wage increase, but other employees receive the same health care as officers do without cost.<sup>6</sup> Moreover, none of the other bargaining units made the same or similar concession on overtime.

For its part, the City does not contend that it can not pay a wage increase. It bases its 4.5% wage increase proposal on its analysis of wages for the cities of Amsterdam, Glens Falls, Watervliet, and Gloversville. It claims that its existing wage schedule was comparable with those four cities.

### Award

While bargaining history is relevant, Section 209.4.(c)(v)a.-d. sets out considerations that this panel must factor. In light of all those considerations, the wage increases shall be:

5.5%-Year 1, retroactive to January 1, 1993

5.0%-Year 2, retroactive to January 1, 1994

### Cost of Living Adjustment(COLA)

There has been a cost of living adjustment in the parties' agreements since 1983. The Union supports continuation of the clause as a modest protection against runaway inflation.

The City takes the position that the clause should not be part of a 1993-94 agreement.

### Award

The COLA clause shall not be part of the 1993-94 agreement.

### Clothing Allowance

The City does not dispute the existence of a clothing allowance in the next contract, but it notes two problems. Because most police officers elect to use just one of the approved vendors, payments to that vendor now exceed \$10,000.00. That amount is above what the City can pay any single without soliciting bids according to New York General Municipal Law. (Employer Exhibit 10)

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<sup>6</sup>Police officers pay a deductible before the City pays for medical care.

The City is concerned with annual clothing allowance overruns. Overruns cause the amount of clothing allowance to rise above the budgeted amount. Some police officers have not paid the City for their share of the overrun as well.

The Union acknowledges that there must be some language changes to reflect changes in the amount of the allowance. However, the Union proposes that the allowance process remain the same.

#### Award

There shall be a \$500.00 clothing allowance annually. If a police officer exceeds his or her annual allowance in any calendar year, that officer will pay for all excess over \$500.00.

A Labor-Management Committee will be formed to:

1. assist the City with establishing an employee notification and warning system that kicks in when an officer's clothing allowance expenditure reaches \$400.00;
2. assist police officers with information about the impact of Internal Revenue Service rules and regulations on the clothing allowance.

#### Holiday Pay

Pay at a time and a half rate for 13 holidays is proposed by the Union. It notes that other City bargaining units receive that rate from the City now.

The City notes that a police officer now receives straight pay or compensatory time for a holiday whether he or she works or not.

#### Award

Police officers who work Easter, Labor Day, Thanksgiving and Christmas shall receive time and a half if they actually work on any of those days. Holiday pay shall be received retroactively for the 4 holidays in 1993 and 1994.

#### Longevity Pay

The parties agree that there ought to be longevity pay. They differ only on the amount that police officers should receive by this agreement.

#### Award

Effective 1/1/93, Article IV, Section 16 of the 1991-1993 Agreement shall be modified as follows:

5 years	\$450.00
10 years	\$600.00
15 years	\$750.00

#### Overtime (The Wheel)

Lieutenants, sergeants, and patrol officers are deployed in the same three platoons. Their names are also on the same rotating overtime call up list (hereinafter the wheel). There have been occasions when, as a consequence of the platoon work schedule

(See Work Day, Work Week, infra), the Department had to assign the most senior patrol officer to perform supervisory duty for a shift. The assignment had to be made because there was no sergeant or lieutenant on duty, and no lieutenant or sergeant rotating to up on the wheel.

To assure the presence of a supervisor on all shifts, the City proposes that there be a separate overtime wheel for sergeants and lieutenants.

The Union proposes the status quo.

#### Award

Patrol Officers, sergeants, and lieutenants shall be on one overtime wheel. Sergeants and lieutenants, if they are called back to work overtime as police officers, shall continue to be assigned to work as police officers.

On the other hand, if:

- a) the Department lacks a supervisor for a shift, and;
- b) it determines that it needs a supervisor for that shift, then the City may skip the next available patrol officers to be called on the wheel in order to call up the next available sergeant or lieutenant in to work the shift as the shift supervisor.

If the City:

- a) attempts to call in a sergeant or lieutenant for shift supervisor duties, and;
- b) its call in effort produces no available sergeant or lieutenant, then the next available patrol officer shall be called in. In that case, the most senior patrol officer on the shift shall become the shift supervisor and the Department will place the name of the patrol officer called in at the end of the call up list.

#### Police College Incentive Program

By this incentive program, the City provides financial support for police officers who enroll and complete criminal justice courses at accredited colleges. When necessary, it permits time off to attend scheduled courses as well. Currently, there is no limit on the number of police officers that can participate in the program at one time.

The City proposes that there be a limitation placed on the number of participants. The proposal stems from its concern for a potential manpower shortage if too many police officers are in the program and attending courses at the same time.

The Union proposes that the program continue as it is currently structured and administered.

#### Award

The Police College Incentive Program shall remain as it is set in the 1990-92 Agreement.

**Shift Differential**

The parties agree that the current shift differentials (20 cents/hour for the afternoon shift and .30/hour for the night Shift) should be increased. The Union proposes 30 cents/hour and 45 cents/hour for the afternoon and night shifts. The City proposes 25 cents/hour and 35 cents/hour.

**Award**

Effective January 1, 1994, shift differential will be increased to the following rates:

Afternoon Shift	\$.25/hour
Night Shift	\$.40/hour

**Supervisor Differential**

The City and the Union each propose an increase in the Supervisor Differential. As with Shift Differential, they do not agree on the amount of the increase. Current differentials are \$100.00 for sergeants, \$200.00 for lieutenants, and \$300.00 for Captains. The Union proposes increases to \$750.00, \$1000.00, and \$1250.00 respectively. The City proposes increases to \$200.00, \$300.00 and \$400.00.

**Award**

Effective January 1, 1993, the Supervisor Differentials shall be:

\$300.00	Sergeants
\$400.00	Lieutenants
\$500.00	Captains

**Health Insurance**

**Major Medical Deductible**

A police officer currently contributes \$100.00/individual or \$200.00/family for major medical coverage. The City seeks to increase each officer's major medical deductible to \$150.00/individual or \$300.00/ family.

**Prescription Drugs**

For all prescription drugs, each officer now co-pays \$1.00. The City also wants a different formula for prescription drugs. According to its proposal, police officers would co-pay \$1.00 for generic drugs, and \$3.00 for brand name drugs.

The Union proposes the status quo for both major medical deductibles and the prescription drug plan.

**Award**

**Major Medical Deductible**

Effective 1/1/94, a police officer shall contribute \$150.00 for an individual deductible, with a maximum of \$300.00 for family deductible -- both on an annual basis.

**Prescription Drugs**

Co-pay for prescription drugs shall be \$3.00 for brand name drugs and \$1.00 for generic drugs unless there is no equivalent generic drug. In that case, co-pay for the

brand name drug shall be \$1.00.

The rebuttable presumption is that there is a generic drug for the brand name drug prescribed. The burden shall be on the police officer to establish that there is no generic drug for the brand name in order to rebut the presumption.

## LEAVES

### Bereavement Leave

The Union proposes that the days of bereavement leave increase from 4 to 5 and from 2 to 3, respectively. It also seeks to add grandparents, aunts and uncles to the list of relatives that enable a police officer to receive up to its proposed 5 bereavement leave day limit.

The City proposes the status quo.

### Award

Bereavement Leave shall remain the same as in the 1990-92 Agreement.

### Sick Leave

Medical Doctor's Note for Sick Leave Taken  
Before or After a Holiday or Regular Day Off

The City and the Union agree that a police officer ought to supply the City with a medical doctor's note if the officer calls in sick the day before or the day after a holiday. The City further proposes that an officer supply a medical doctor's note if he or she calls in sick the day before any day off.

The Union opposes a blanket requirement that a police officer supply such a note when he or she calls in sick the day before or after any day off.

### Award

1. A police officer can not charge sick leave before or after a holiday without a medical doctor's note. In the event that an officer:

- a) charges sick leave, and;
- b) does not produce a medical doctor's note, then he or she will lose a day's pay for each sick leave day so charged. The pay shall be deducted from the paycheck following the sick leave day(s) charged.

2. A police officer may charge up to 5 days off before or after a regular day off without a doctor's note. An officer must bring a medical doctor's note for each charge against sick leave before or after a regular day off after he or she charges 5 days off. If the officer does not bring the medical doctor's note, he or she will lose one(1) day of pay for each sick leave so charged. The pay shall be deducted from the paycheck following the sick leave day charged.

### Unused Sick Leave Compensation

By the 1990-92 Agreement, the City pays for unused sick leave according to an agreed table (See Joint Exhibit 2, Exhibit A, page 21). The Union proposes that the City pay all unused accrued sick leave above 1040 hours at 50%.

The City proposes the status quo.

### Award

The City will pay for unused sick leave according to the table in Joint Exhibit 2, Exhibit A, at page 21.

### Procedure for Administration of 207-c

Section 207-c of New York State General Municipal Law provides for benefits to police officers sustaining injury or illness in the performance of police duties. The City proposes to implement a policy and procedure for the administration of 207-c benefits.

The Union is not unalterably opposed to a procedure, but has concern about unreasonable limitations on a police officer's statutory right to receive 207-c benefits.

### Award

There shall be a procedure for the administration of Section 207-c of the General Municipal Law for the police officers of the City of Cohoes. (See Appendix A)

### WORK DAY, WORK WEEK

By the current City practice, there is one work schedule for patrol officers and another for sergeants and lieutenants. The City schedules each platoon so that there is a lieutenant, at least one sergeant, and patrol officers assigned to work. By the City's scheduling, patrol officers receive every third weekend off. On the other hand, sergeants and lieutenants receive every other weekend off.

According to the City, the two different weekend off schedules can lead to a platoon of patrol officers without a lieutenant or sergeant. The event can occur if there is only a sergeant or lieutenant assigned to the platoon and he or she takes leave that is not scheduled time off. Since under the 1990-92 Agreement the City could only call the next available police officer, it has been required to call in the next available police officer whether or not that officer was the needed lieutenant or sergeant.

The City proposes a new work schedule to address what it sees as a chronic potential for absence of a sergeant or lieutenant on a platoon. The new schedule assures at least two supervisors/shift

(See Joint Exhibit 1, Appendix A, paragraph 8; Joint Exhibit 2 at Exhibit A, page 14; Joint Exhibit 2 at Exhibit B).

The Union proposes that the City continue scheduling different weekends for lieutenants and sergeants on the one hand and patrol officers on the other. Currently, the City can upgrade a most senior platoon patrol officer if there is an absence of a

supervisor. According to the Union, just over 14.61% of the 1095 shifts were without supervisors in 1992, and 11.14% of the shifts were without supervisors in 1993. In addition, the extra weekends are an important incentive for a patrol officer to seek promotion to sergeant.

#### AWARD

The Work Day, Work Week schedule shall remain the same. The panel notes the concern of the City and it recommends that the schedule remain a matter of review and discussion between the parties. However, we also note that the City expressed concern and made its proposal before it received the flexibility to reach over the next patrol officers on the overtime wheel and call in a lieutenant or a sergeant when there is a platoon without a supervisor. By this award it now has that flexibility. Whenever there is a supervisorless platoon, it can go through the overtime wheel to get a supervisor. Given that flexibility, and given the decline in shifts without supervision noted by the Union, the panel concludes that the Work Day, Work Week will remain the same for the parties' 1993-94 contract.

#### WORKERS' COMPENSATION

As it stands, a police officer is eligible for worker's compensation benefits when he or she is injured in the line of duty. An injured officer receives 66% of his pay if he is approved to receive workers' compensation. Pursuant to New York State General Municipal Law 207-c, a police officer injured while engaged in the performance of duty can receive full pay.

The City expresses concern about circumstances where injury occurs in the line of duty, but does not occur while the officer is engaged in the performance of a duty. It proposes to pay a police officer who receives workers' compensation the same amount that the Workers' Compensation Board will reimburse the City, but not full pay according to 207-c in such a circumstance.

The Union opposes the City's proposal. Its research disclosed no cases with facts consistent with the City's concern. Case law sets the right of a Cohoes police officer injured in the line of duty to receive wages and medical services under Workers' Compensation Law and General Municipal Law 207-c.

#### Award

The City shall continue to review each claim for injury compensation on a case by case basis.

Signed:

Sworn to and subscribed before me  
this 3<sup>rd</sup> day of January, 1995

Pauline C. Quatta  
Notary Public - STATE OF NEW YORK  
RESIDING IN ALBANY COUNTY  
MY COMM. EXPIRES: 1-31-96

Michael Fonda  
Michael Fonda  
Public Employee Representative

Sworn to and subscribed before me  
this 21<sup>st</sup> day of December, 1994.

Andrea N. NASEMAN  
Notary Public **ANDREA S. NASEMAN**  
**Notary Public, State of New York**  
**No. 4773541**  
Qualified in **Albany County**  
Commission Expires 10/31/96

James W. Roemer, Jr., Esq.  
James W. Roemer, Jr., Esq.  
Public Employer Representative

Sworn to and subscribed before me  
this 22<sup>nd</sup> day of December, 1994.

Allen Kay Fair  
Notary Public  
My Commission Expires February 27, 1996

Anthony R. Baldwin  
Professor Anthony R. Baldwin  
Public Member

PROCEDURE FOR THE ADMINISTRATION OF SECTION 207-c OF THE GENERAL MUNICIPAL LAW FOR THE POLICE DEPARTMENT OF THE CITY OF COHOES

Section 1. INTENT

a. In order to insure that determinations arising by virtue of the administration of the provisions of Section 207-c of the General Municipal Law satisfy the interest of those potentially eligible for its benefit, the City of Cohoes, and the public, the following procedure shall be utilized to make determinations in regard to benefits and/or light duty assignments authorized by Section 207-c.

b. This procedure is intended to be a supplement to the express language of Section 207-c of the General Municipal Law and is not intended to reduce any benefits pursuant to Section 207-c of the General Municipal Law.

c. The term "police officer," as used herein, shall include all sworn members of the Police Department.

Section 2. NOTICE OF DISABILITY OR NEED FOR MEDICAL OR HOSPITAL TREATMENT

a. A police officer who claims a right to benefits under Section 207-c of the General Municipal Law, either because of a new illness or injury or the recurrence of a prior illness or injury, shall make written notice and application for those benefits within ten (10) days of when the police officer reasonably should have known that the illness or injury would give rise to the claim to the Chief on the form which is made a part of this procedure.

b. The police officer shall provide authorization for the City to obtain copies of his medical records from his treating physician or other health care provider and the City will provide the police officer, without cost, a copy of the records and reports produced by any physicians or other experts who examine the police officer on behalf of the City.

Section 3. STATUS PENDING DETERMINATION OF ELIGIBILITY FOR BENEFITS

a. The police officer shall be placed on sick leave pending determination of his eligibility for Section 207-c benefits. The determination shall be made within the time provided in Section 4 of this procedure. If the police officer has no available sick leave he may use vacation, personal leave, free leave days or compensatory time to remain on the payroll. In the event that a timely determination is not made, the police officer shall be continued in pay status until a determination is made. Time spent on the

payroll beyond the initial date for making a determination shall not be charged to the employee if it is determined that he is ineligible for the 207-c benefit.

b. In the event that it is determined that the police officer is entitled to Section 207-c benefits, the City shall credit back to him all leave which he expended prior to the determination.

c. In the event that it is determined that the police officer is not entitled to Section 207-c benefits, he will be permitted to use sick leave, vacation, personal leave, free leave days and compensatory time provided he remains medically unable to perform the duties of his position.

#### Section 4. BENEFIT DETERMINATIONS

a. The City shall promptly review a police officer's application for Section 207-c benefits and shall determine his eligibility within fifteen (15) working days after the Chief receives the application.

b. In determining the application the City may require a more detailed statement from the police officer than that contained on the application. The City may take statements from witnesses and may send the police officer to a physician or physicians of its choice for examination at the City's expense. The City shall be authorized to send the police officer to more than two physicians only upon the recommendation of a physician (not upon the opinion of a non-medical City employee).

c. The determination will be made in writing to the police officer, setting forth the basis for the determination. In the event that the application is denied, the City will simultaneously provide the police officer, without cost, a copy of all medical information produced or acquired by it, in any form, in connection with the police officer's application and determination for Section 207-c benefits. The City will continue to provide the officer with additional medical information subsequently produced or required.

#### Section 5. ASSIGNMENT TO LIGHT DUTY

As authorized by the provisions of Subdivision 3 of Section 207-c, the Department, acting through the Chief, or the Chief's designee, may assign a disabled police officer specified light duties, consistent with his/her status as a police officer. The Chief, or the Chief's designee, prior to making a light duty assignment, shall advise the police officer receiving benefits under Section 207-c that his/her ability to perform a light duty assignment is being reviewed. Such a police officer may submit to the Chief, or the Chief's designee, any document or other evidence in regard to the extent of his/her disability. The Chief, or the Chief's designee, may cause a medical examination or examinations of the police officer, to be made at the expense of the Employer. The physician selected shall be provided with the list of types of duties and activities

associated with a proposed light duty assignment and shall make an evaluation as to the ability of the disabled police officer to perform certain duties or activities, given the nature and extent of the disability. Upon review of the medical assessment of the police officer's ability to perform a proposed light duty assignment and other pertinent information, the Chief, or the Chief's designee, may make a light duty assignment consistent with medical opinion and such other information as he or she may possess. A police officer ordered to light duty shall either comply with the order or have the benefits of Section 207-c temporarily discontinued until a determination is made pursuant to Section 7 of this procedure with regard to the police officer's physical ability to perform the light duty assignment. It is understood that assignment to light duty is in the nature of a "make work" assignment and that a police officer so assigned does not have any entitlement to a continued light duty assignment for an indefinite duration of time.

#### Section 6. TERMINATION OF BENEFITS

a. Benefits provided by Section 207-c of the General Municipal Law shall terminate upon the employee being retired pursuant to a service retirement, an accidental disability retirement, or a performance of duty disability retirement, as set forth in the Retirement and Social Security Law.

b. The City will not discontinue Section 207-c benefits without the consent of the police officer unless the police officer's treating physician certifies that he is medically able to return to work. In the event that the City believes that the benefit should terminate and the police officer does not consent, or his physician does not certify that he is able to return to work, the City may utilize the provisions of Section 7 in order to receive a determination from the arbitrator regarding the police officer's continued eligibility for benefits.

#### Section 7. DISPUTE RESOLUTION PROCEDURE

In the event that the City denies an application for Section 207-c benefits, seeks to discontinue Section 207-c benefits, or there is a dispute about whether a police officer is capable of performing a specific light duty assignment, the matter will be submitted directly to arbitration pursuant to the rules of the Public Employment Relations Board. The arbitrators designated to hear these matters will be selected on a rotating basis from a panel consisting of Anthony Baldwin, Jeffrey Selchick and Paul Klein. The determination of the arbitrator shall be final and binding on the City and the police officer, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information. The parties will divide the cost of the arbitration equally.

## Section 8.

Consistent with Section 207-c, the City may file an application on the police officer's behalf for retirement under Sections 363 or 363-c of the New York State Retirement and Social Security Law. Any injured or sick police officer who shall refuse to permit a medical inspection in connection with such an application for accidental disability retirement or performance of duty disability retirement shall be deemed to have waived his rights under Section 207-c with respect to expenses for medical treatment or hospital care or salary or wages payable after such refusal.

## Section 9.

While on leave pursuant to Section 207-c, for a period of 90 days or less, a police officer shall continue to accrue all benefits provided by the Collective Bargaining Agreement. After 90 days in any calendar year or continuous period of time, the police officer receiving 207-c benefits shall be entitled to the payment of salary, longevity and health insurance.