



BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board ("PERB"), to make a just and reasonable determination of a dispute between the City of Rochester ("City") and the Rochester Police Locust Club ("Union").

The City of Rochester is a municipal corporation located in Monroe County on Lake Ontario, and is currently the third largest city in New York State. The City encompasses over 36 square miles and serves a 6 county region as an educational, health and cultural center. Although a separately elected School Board governs the operations of the City School District, the District is financially dependent on the City.

The Union is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants and Captains employed by the City, exclusive of four sworn employees assigned to the Chief of Police, and exclusive of the Chief of Police and all Deputy Chiefs. At the present time, the Rochester Police Department ("Department") is comprised of an authorized strength of 674 sworn full-time positions, with an additional 85 civilians working in the Administration and Support Bureau of the Department.

The last collective bargaining agreement between the parties covered the period which commenced on July 1, 1991 and ended on June 30, 1993. Prior to the expiration of the 1991-93 Agreement, the parties began negotiations for a successor contract, the parties reached a tentative agreement subject to ratification by the Union membership. A ratification vote was held, resulting in the tentative agreement being rejected by the Union membership. Thereafter, acting pursuant to the rules of procedure of PERB, the Union requested that the impasse be referred to Interest Arbitration. On July 15, 1994, the Union filed a Petition for Interest Arbitration (Joint Exhibit 1) pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on August 1, 1994 (Joint Exhibit 2), and thereafter, on September 7, 1994 the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the NYS Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were conducted before the undersigned Panel in the City of Rochester on December 12 and 14, 1994 and on February 14 and 15, 1995. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions.

After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the Panel fully reviewed all data, evidence, argument and issues submitted by both parties. After significant discussion and deliberations at the Executive Sessions, the Panel members reached unanimous agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

The parties, by written authorization by duly designated representatives, extended the jurisdiction of the Panel and requested that a four (4) year Award be issued. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period July 1, 1993 through June 30, 1997.

This Award consists of many compromises induced by the Panel Chairman and represents a complete package. Neither of the concurring Panel Members would accept each individual recommendation in isolation, however, as only a simple majority is required on each item, the support of all items by at least the Panel Chairman and one other Panel Member results in this binding Award. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chairman and one other concurring Panel Member.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

- 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.

**SALARY**Discussion on Salary

At the center of the instant dispute is the question of the appropriate salary increase to be provided to members of the unit for almost two (2) full retroactive years (93-94 and 94-95) and for the two (2) prospective years of 1995-96 and 1996-97. While both parties have attempted to resolve the instant dispute by modifying their original salary proposals, the parties still have been unable to reach agreement on the appropriate salary increase to be provided to Rochester Police. While the Union requests a wage increase comparable to salaries of other Monroe County police, and commensurate with the responsibilities and risks assumed by unit members, the City must balance the safety needs of the community with the realities of budgeting in the public sector during a time of decreasing State aid and loss of additional revenues due to a failing economy. Under the expired Agreement, the top base pay for a Rochester Police Officer is \$39,157, which is the figure that shall be used as the benchmark herein when comparing Rochester police salaries with those of police in comparable jurisdictions.

The Union maintains that Rochester police should be compared with other police departments in Monroe County; specifically, Brighton, Brockport, Gates, Greece, Irondequoit, Webster and with the Monroe County Sheriff's Department. The Union has presented current collective bargaining agreements from all of the cited jurisdictions, for review by the Panel (see Union Exhibits 1-8).

When compared with the above cited Monroe County police agencies, a Rochester Police Officer at the top base pay of \$39,157 is the lowest paid within Monroe County for 1993-94 (see Union Exhibits 20 and 21).

The Union indicates that the low salary ranking of Rochester police must be viewed in the context of the fact that the City of Rochester has the highest rate of violent crimes per officer within Monroe County (Union Exhibit 19) and a higher crime rate than the other major cities in upstate New York of Albany, Syracuse and Buffalo (Union Exhibit 18). The Union makes particular note of the fact that deputies of the Monroe County Sheriff's Department earn more than a Rochester Police Officer.

The Union further indicates that the Rochester police have a longer workweek than police in neighboring jurisdictions, with a much lower hourly rate of pay for Rochester police (Union Exhibit 24). These neighboring jurisdictions have lower crime rates (see Union Exhibit 16), less work hours, and a less stressful environment, but still pay their police higher than what is paid a Rochester Police Officer.

The City maintains that if there are any comparables to Rochester police, it must be that of the other large cities in upstate New York--Albany, Syracuse and Buffalo. When compared with such cities, which have an environment more akin to the City of Rochester than that of the suburban communities cited by the Union, members of the Rochester police are simply not that far

behind in terms of salary, and are second only to Buffalo police by a very small amount of money (see City Brief Appendix, Tab B). The City argues that members of the Rochester police department have little in common with the duties, tasks and problems faced by police in suburban communities, and it is simply not appropriate to compare Rochester salaries with those of suburban police who perform a very different job under very different daily circumstances.

The City indicates that at the time of the election of Mayor William Johnson in November 1993, the City faced a budget gap of over 15 million dollars. In order to close that gap, most City agencies, with the exception of the Police and Fire Departments, accepted deep and far reaching budget cuts. Additional revenue was generated due to tax increases of 7.5%. Nonetheless, the City maintains that it cannot afford more than modest increases for Rochester Police, without returning to a deficit budget.

In reaching the conclusions herein, the Panel has reviewed all relevant financial data of the City, including the Statement accompanying the issuance of General Obligations Bonds in the amount of \$63,577,000 in February of 1994 (Union Exhibit 9), an Independent Audit of City Finances for year ended June 30, 1994 (Union Exhibit 10), and the 1994-95 City Budget (Union Exhibit 13). The Panel has also reviewed and considered the constitutional debt limits and margins, based on statistics compiled by the NYS Office of the State Comptroller as of

November 1993 (Union Exhibit 11), the use of sales tax revenue by the City, including its share of the Monroe County Sales Tax (see Union Exhibit 12), the total tax levy for both the City and the City School District, and the tax margin for fiscal years ended 1993, 1994 and 1995 (Union Exhibits 14A, 14B and 14C), as well as the City's General Fund Revenues and Expenditures for 1992, 1993 and 1994 (Union Exhibit 15A).

The Panel notes that the General Fund of the City is the single largest operating fund directly administered by City officials and the City Council, with the exclusion of funds designated for the City School District. For the past three fiscal years, the City has maintained a fund balance that has ranged from a low of \$7,905,000 on June 30, 1993 to a high of \$10,394,000 on June 30, 1992. As of June 30, 1994, the close of the last fiscal year, the fund balance was \$9,655,000 (see Union Exhibits 9 and 15A). In the Official Statement issued upon the sale of General Obligation Bonds by the City in February 1994, it was stated:

"The 1993-94 budgets, adopted June 5, 1993, appropriated \$592,399,590, an increase of 2.7% from 1992-93. At the time the budgets were adopted, agreements provided for general wage and salary increases had not been executed with all bargaining units. However, the cost of all pending agreements will be accommodated within 1993-94 appropriations." [Official Statement upon the issuance of \$63,577,000 in General Obligation Serial Bonds-1994, Series A and \$6,524,000 in General Obligation Serial Bonds-1994, Series B (Taxable); dated February 11, 1994]

With respect to fiscal year 1994-95, the General Fund Account contains an appropriation of \$6,000,000 to provide wage adjustments (1994-95 City Budget; Union Exhibit 13). Also in the current fiscal year, the City has a taxing margin of \$64,598,00, having utilized 57.95% of their constitutional limit. That margin has grown from \$50,978,000 in the prior fiscal year (see Union Exhibits 14A and 14C, based on City tax margin statements). Also relevant is the fact that as of January 31, 1994, the City had total debt of \$315,000,000 with \$222,000,000 chargeable to their debt limit of \$721,000,000. This chargeable debt constituted 30.79 of the total limit (Official Statement upon issuance of General Obligation Bonds; Union Exhibit 9).

It is the analysis of this Panel that based on the fact that the costs of the wage increases and other monetary awards herein for fiscal year 1993-94 were included in the appropriations for that fiscal year and that the costs of this Award for 1994-95 can be funded out of the contingency appropriation of \$6,000,000 in the current budget, no additional taxes shall be required to fund this Award. As to the monetary impact of the Award for 1995-96 and 1996-97, it is clear that such appropriation can be funded from future budgets, and do not represent either an unfair or unreasonable burden upon the taxpayers of the City of Rochester. Therefore, it is the clear finding of this Panel that based upon all the financial data submitted and reviewed herein, the City will have the ability to pay the wage increases and other monetary increases provided herein.

In determining the appropriate wage increases to be awarded herein, the Panel has sought to provide Rochester Police with salaries which properly maintain their relative standing when compared with other police in the major upstate New York cities, and to a lesser extent, with police in surrounding suburban communities. The Panel has also considered past raises received by Rochester Police under prior collective bargaining agreements (Joint Exhibits 5 and 6) and the rate of inflation during such period and during the period covered retroactively by the term of this Award (see City Appendix, Tab b). Finally, the Panel has, in determining the appropriate salary increases to be awarded herein, also considered the financial aspects and impact of the many other provisions and substantive work changes contained in this Award. The Panel has carefully considered all of the financial data and arguments presented by both parties, and has applied such data to the criteria mandated by statute as specified in Section 209.4 of the Civil Service Law.

It is the view of this panel that there are many factors that must be considered under the Taylor Law to reach a just and reasonable determination of the proper compensation to be awarded to the Rochester police herein. The issue of the City's ability to pay and potential budgeting and tax revenue issues are important factors that must be given paramount attention, but such must also be viewed against the obvious importance of maintaining an acceptable level of police services which are necessary to protect the citizens and visitors of Rochester.

The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Rochester Police with a fair and equitable wage for the important and in many cases, dangerous work which they perform.

However, it is apparent that the entry level salary for Rochester Police continues to be acceptable, based on number of applicants seeking employment as police officers, and when compared with the starting salaries of other comparable police departments in major cities in upstate New York and in the surrounding Rochester area. The Panel has therefore, excluded entry level salaries from any of the salary increases awarded herein, and has frozen the entry level salary for a Rochester police officer at \$26,000 for the term of this Award, which ends on June 30, 1997. Simply stated, this determination provides that all individuals who join the Rochester Police Department on or after the date of this Award shall start at the entry level salary of \$26,000. Progression beyond Step 1 of the salary schedule shall be in accordance with Article 3, Section 3(A) as provided in the 1991-93 Agreement, and as increased by the provisions of this Award.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY

1. Effective July 1, 1993, and retroactive to that date, the base salary schedule, with the exception of the entry level salary, shall be increased by 2.5%.

2. Effective July 1, 1994, and retroactive to that date, the base salary schedule, with the exception of the entry level salary, shall be increased by 3%.

3. Effective July 1, 1995, the base salary schedule, with the exception of the entry level salary, shall be increased by 1%.

4. Effective July 1, 1996, the base salary schedule, with the exception of the entry level salary, shall be increased by 2.5%.

5. The retroactive salary increases provided herein, the July 1, 1995 salary increase, as well as the other financial aspects of this Award which are effective on July 1, 1995, shall be paid to employees no later than the third payroll period beginning after July 1, 1995.

**ROLL CALL PAY**Discussion on Roll Call Pay

Under the expired 1991-93 Agreement, patrol officers are required under Article 15, Section 1 (B) to attend Roll Call for 15 minutes prior to the scheduled start of their shift. In addition to determining that all officers have reported for duty as required, the Department utilizes such time to inform and update officers as to recent criminal activities, special circumstances, Department directives, and other communications relevant to the operation of the Department. Rochester Police are not compensated for this 15 minute period.

The Union proposes that Rochester Police be paid premium pay at the rate of time and one-half for all Roll Call time prior to the member's regular starting time. The Union cites the Fair Labor Standards Act which treats pre-shift reporting time as working time [29 C.F.R. Section 553.221(b)]. The City indicates that if Rochester Police were paid time and one-half for Roll Call time as requested by the Union, it would amount to an additional 62.42 hours per year. The City also argues that under Section 207(k) of the Fair Labor Standards Act police personnel may work as many as 43 hour per week at straight time hourly rates. The City indicates that if paid at the straight time rate, Roll Call pay would amount to over a 3% increase in annual pay and must be viewed as such.

The Panel notes that patrol officers of the Rochester Police are presently working 8.25 hours for each tour of duty, but are paid for only 8 hours. A review of available data indicates that Albany police officers also report for Roll Call 15 minutes prior to the start of their shift and receive an additional \$200 per year as compensation for Roll Call. The Syracuse Police Department considers Roll Call as part of an officer's shift, and therefore, it is compensated time, albeit at the straight time rate [see City Exhibit 3(h)]. A review of the current collective bargaining agreement for Buffalo Police indicates that Roll Call time is compensated at time and one-half (see Article 2.4 of 1990-92 Buffalo Agreement).

It is the finding of the Panel that members of the Rochester Police should be compensated for time spent in Roll Call, but such compensation must properly be set at straight time, and not at time and one-half. Further, all members of the Rochester Police shall effective July 1, 1995, report to their scheduled shift 15 minutes prior to starting time, to receive updates, review reports and receive other necessary Departmental communications. This additional time worked shall be paid at straight time under Section 7(k) of the Fair Labor Standards Act. Additionally, Article 15, Section 1(A) of the 1991-93 Agreement shall be amended to reflect the fact that members of the Rochester Police will, effective July 1, 1995, work an 8.25 hour tour of duty.

AWARD ON ROLL CALL PAY

1. Effective July 1, 1995, all members of the Rochester Police Department shall report for duty 15 minutes prior to their scheduled shift starting time. Such time shall be compensated at the straight time rate in accordance with Section 7(k) of the Fair Labor Standards Act, and shall be added to a member's base pay and paid as such.

2. To accomplish the above, Article 15, Section 1(A) of the 1991-93 Agreement shall be amended to reflect that members shall now work an 8.25 hour tour of duty. Those members who do not currently stand Roll Call shall, effective July 1, 1995, report to duty 15 minutes prior to the start of their scheduled shift starting time to receive updates, review reports and obtain other necessary Departmental communications.

3. Further, Article 15, Section 1(B) of the 1991-93 Agreement shall be amended to reflect that members shall either attend Roll Call or be present for assigned duties as directed, during the 15 minutes immediately preceding their scheduled daily tour.

## **EDUCATIONAL INCENTIVE**

### Discussion on Educational Incentive

Under Article 14, Section 2 of the 1991-93 Agreement, police officers who entered the Rochester Police Department before April 18, 1979 and who had matriculated in a police science or criminal justice program prior to June 30, 1984, were eligible for an educational incentive of either 5% of base pay for an Associate's Degree or 6.5% of base pay for a Bachelor's Degree. This educational incentive program was eliminated during collective bargaining in 1979; so that presently only officers who joined the Rochester Police Department prior to 1979 can receive the stipend for a college degree.

The Union seeks to reinstate an educational incentive for those officers with college degrees, in order to create an incentive for officers to seek higher education and to further maintain high levels of competency within the Department. The Union particularly points out that the current problems in recruiting qualified minority candidates, which resulted in a federal lawsuit against the City, may be alleviated by the educational incentive which should help to attract college educated minority recruits (see Union Exhibit 41). By providing a financial stipend for those officers who receive college degrees, the Union believes that initial interest from minority applicants to become police officers will increase, and attrition among minority recruits will decrease.

The City indicates that the increased annual cost to the City of such an educational incentive stipend will be in excess of \$600,000 (see City Appendix, Tab D). The City also argues that it is unnecessary, in that an increasing number of applicants for police officer do have college degrees, and there is no evidence to conclude that a financial incentive is required to attract such applicants.

The Panel is of the view that in the increasingly complex field of law enforcement, it will serve to the advantage of the City to have college educated officers serving in patrol posts and eventually, in command positions. In a report prepared by the City and accepted by Federal District Judge Telesca in the case regarding attrition of minority recruits, the importance of college educated police officers was confirmed (see Union Exhibit 41).

It is the view of this Panel that there can be no question that a higher percentage of college educated police officers in the City will serve the public well, in application of increasingly complex laws and criminal procedures, in the solving of crimes using state of the art scientific methods, and in an overall understanding of the problems of cities and the forces which result in criminal activity.

Therefore, the Panel finds that a new educational incentive is awarded effective July 1, 1995, providing for an educational incentive of 2% of an officer's base pay to all recruits and officers who hold or attain an Associate's Degree in Police Science or Criminal Justice, and 4% of an officer's base pay to all recruits and officers who hold or attain of a Bachelor's Degree in any subject. This educational incentive does not apply to those officers hired prior to April 18, 1979, who shall continue to receive an educational incentive pursuant to Article 14, Section 2(A) of the 1991-93 Agreement.

AWARD ON EDUCATIONAL INCENTIVE

Article 14, Section 2 shall now read as follows:

**Section 2: Educational Incentives**

A) The City agrees to provide an educational salary benefit of 5% of the officer's base pay to qualified police personnel and employed recruits starting on the next full payroll period following their successful completion of the receipt of an Associate's Degree in Police Science or Criminal Justice, or 6.5% of the member's base pay upon receipt of a Bachelor's Degree or a higher degree in any subject. This paragraph applies only to those employees who entered the Police Department prior to April 18, 1979 and who matriculated into such educational programs prior to June 30, 1984.

B) Effective July 1, 1995 for those members who do not receive an educational incentive pursuant to paragraph A above, the City agrees to provide an educational salary benefit of 2% of the officer's base pay to qualified police personnel and employed recruits starting on the next full payroll period who hold or attain an Associate's Degree in Police Science or Criminal Justice, or an educational salary benefit of 4% of the officer's base pay to those officers who hold or attain a Bachelor's Degree in any subject. The educational incentive stipend provided herein shall be added to a member's base pay and paid as such.

## WORK SCHEDULE

### Discussion on Work Schedule

Article 18 of the 1991-93 Agreement contains provisions which specify the Work Week as well as Work Hours for members of the Rochester Police Department. Both parties herein seek significant changes in Article 18, in order to provide Rochester Police with a work week which is comparable to other upstate New York police departments and to allow the City to have increased flexibility in the deployment of certain police personnel as needed, without incurring overtime costs.

Specifically, the Union proposes a change in the current work schedule for members who currently work a 5-2, 4-2, 4-2 work schedule (also known as a work wheel), as provided in Article 18, Section 1(A) of the 1991-93 Agreement. Except for those members currently working a 5-2 schedule, the Union seeks a 4-2 work schedule, without rotating shifts. The Union argues that the increased stress inherent in policing in the 90's requires a change in work schedule. A 4-2 schedule will serve to partially alleviate such increased tensions and stress under which an urban police officer must exist. Such tension and stress take their toll on police officers, who have a very high incidence of alcohol and substance abuse and addiction, family problems including separation and divorce, and suicide due to increased frustrations and severe depression. Recognition of such problems must result in a more realistic and humanistic 4-2 work schedule.

It is clear that every other police department in Monroe County now works a 4-2 work schedule (see Union Exhibits 1-8). At the present time, a Rochester Police Officer works an average of 6 more days per year and approximately 100 more hours per year than police in the surrounding Rochester area (Union Exhibits 42 and 43). The City indicates that the reduction in work time which would result from the implementation of a 4-2 work schedule constitutes a 2.5% per hour wage increase. Further, the City indicates that it requires some lead time to determine which positions should be on the non-rotating 4-2 work schedule and which positions should be on a 5-2 work schedule.

In an attempt to allow for less restrictions on its ability to deploy police personnel as needed, the City seeks to simplify the existing language contained in Article 18, Section 3 of the 1991-93 Agreement pertaining to Work Hours. Critical to the City's ability to properly function is the elimination of any schedule limitations on Captains, and Section and/or Unit Commanders. The City also seeks the flexibility to allow an employee changed upon individual request for good cause, if it does not impair operational needs. Finally, the City requires the ability to transfer an employee under Article 19 without incurring overtime expense as a result of the changed hours occasioned by the transfer.

The Panel has carefully considered the issues regarding changes in the Work Week and Work Hours, as currently provided in Article 18 of the 1991-93 Agreement, and has determined that dramatic and significant change is necessary in order to insure the efficient and effective deployment of Rochester police personnel under increasingly difficult operational conditions which exist in all urban centers, including the City of Rochester. The Panel further recognizes that the current Work Week schedule does not compare with that provided to other police personnel in either Monroe County police departments or in other major upstate New York cities.

In changing the work schedule to a 4-2 work schedule, the Panel notes that it becomes necessary to increase compensatory hours for those members who will continue to work a 5-2 schedule, based on their specific assignment, and that the calculation rate specified in Article 17, Section 1 of the 1991-93 Agreement, which rate is used to compute an hourly overtime rate, must be re-calculated based both on the change to a 4-2 schedule and as a result of the addition of Roll Call Pay to all members. Prior to the implementation of the 4-2 schedule on January 1, 1996, the Chief of Police and the Union President shall meet to discuss and agree as to which non-patrol positions will remain on the 5-2 schedule and which will move to the new 4-2 schedule. The Contract Arbitrator will assist in such discussions, and will resolve any disputes between the parties concerning the movement of a limited number of non-patrol positions prior to the January 1, 1996 implementation of the 4-2 schedule.

The Panel awards such changes with clear recognition of the financial impact of all such changes, both in the increased cost of implementing a 4-2 work week schedule and the savings which will result from allowing the City increased flexibility in changing hours when necessary. Additionally, the Panel agrees with the City that it must have less restrictions in scheduling and utilizing Captains, Section or Unit Commanders, in order to provide more efficient and effective command supervision. All modifications made herein to Article 18 have been taken into account as part of the overall compensation package awarded herein.

AWARD ON WORK SCHEDULE

1. Article 18, Section 1 of the 1991-93 Agreement is amended to read as follows:

**Section 1: Work Week**

- A. Except as provided in subdivision B, effective with work cycles beginning on and after 1/1/96, all members working assignments on a 5-2, 4-2, 4-2 work wheel will work a 4-2 non-rotating schedule. Until work cycles ending on and after 1/1/96, members will continue to work a 5-2, 4-2, 4-2 work wheel.
- B. Notwithstanding any provision of this Section, members working assignments on a 5-2 work schedule will continue to work a 5-2 work schedule.
- C. Members may be assigned to a work schedule that consists of five (5) days of duty followed by two (2) consecutive days off provided that the consecutive days off are either Friday-Saturday, Saturday-Sunday, or Sunday-Monday. All shifts shall be on a non-rotating basis, commonly referred to as a 5-2 schedule.

- D. Effective 1/1/96, all members working a 5-2 schedule shall receive 136 hours per year, pro rata, in compensatory time, added to compensatory time banks quarterly, for working the 5-2 schedule.
  - E. Effective 7/1/95, all members shall work an 8.25 hour tour which includes a 15 minute pre-shift Roll Call or other duties as assigned for officers not assigned to patrol.
2. Article 18, Section 2 of the 1991-93 Agreement continues unchanged.
3. Effective 1/1/96, Article 15, Section 4 of the 1991-93 Agreement shall be revised to change the reference from 360 hours of compensatory time to 416 hours of compensatory time, for those members working the 5-2 schedule.
4. Effective 1/1/96, Article 15, Section 5 of the 1991-93 Agreement shall be revised to change the compensatory time cap from 360 hours to 416 hours of compensatory time, for those members working the 5-2 schedule.

5. Effective July 1, 1995, Article 18, Section 3 of the 1991-93 Agreement is amended to read as follows:

**Section 3: Work Hours**

- A. All employees shall be scheduled to work a regular tour of duty which shall have a regular starting time and regular quitting time. Except as otherwise provided in this Section, all hours worked outside the regular tour of duty shall be compensated for pursuant to Article 15 of this Agreement.
- B. The Employer may change the regular starting and quitting time of a position due to deployment needs, as follows:
  - 1. The change in starting and quitting times does not exceed two (2) hours.
  - 2. The change shall be effective for a period not to exceed eight (8) consecutive workdays.
  - 3. Written notice is provided to affected employees and the Union at least forty-eight (48) hours in advance.
- C. The Tactical Unit, the Special Criminal Investigation Section, and all Fourth Platoons, shall be exempt from A and B above, with reasonable advance notice, when there is a demonstrated need to re-deploy manpower.
- D. Captains and Section or Unit Commanders may have their starting and quitting times changed upon reasonable advance notice, or at their individual request, subject to supervisory approval, without incurring any overtime compensation unless they work more than 41.25 hours in a work week.
- E. Temporary assignments to the Professional Development Section shall be exempt from the provisions of subdivision B above, except that written notice to the affected employee and the Union shall be given forty-eight (48) hours in advance.
- F. An employee may request in writing, for good cause, to temporarily change his/her regular starting and quitting time with the approval of the Chief or his designee, and with the consent of the Union President. Such consent shall not be unreasonably withheld and/or delayed.
- G. The provisions of Article 15 do not apply when the City acts in accordance with subdivisions B, C, D, E and F above and Article 19 and Article 20, Section 2(B) of this Agreement.

**CALCULATION RATE**

Discussion on Calculation Rate

By the changes made herein concerning the 4-2 Work Schedule and providing for payment for the 15 minutes for Roll Call prior to the start of a member's shift, it is necessary to change the calculation rate provided in Article 17, Section 1 of the 1991-93 Agreement.

AWARD ON CALCULATION RATE

1. Effective January 1, 1996, Article 17, Section 1 shall be amended to read as follows:

**Section 1: Calculation Rate**

The hourly rate of pay shall be determined by dividing the annual rate of pay (including educational incentive, if applicable, and roll call pay) by 2007.

The biweekly rate of pay shall be determined by dividing the annual rate of pay (including educational incentive, if applicable, and roll call pay) by 26.

## HEALTH INSURANCE

### Discussion on Health Insurance

At the present time, members of the Rochester Police Department contribute 5% toward the cost of medical coverage for themselves and their families, as provided in Article 11, Section 2 of the 1991-93 Agreement. Presently, the annual medical cost for a Rochester Police Officer with Blue Million single coverage is \$2,711; of which the officer pays \$136 and the City pays \$2,575 (see City Appendix, Tab G). For Blue Million family coverage the annual cost is \$5,725; of which the officer pays \$286 and the City pays \$5,439. The City seeks to increase the officer's share to 20% of the cost of the health insurance, and claims that the 20% employee contribution would be more in line with that made by other City employees, depending upon their individual date of hire.

The Panel agrees that the costs of health insurance continue to rise at a high rate. In determining the appropriate increase in the employee contribution for Rochester Police, the Panel has considered what other police officers are paying in the Monroe County area and in the other major upstate New York cities. The Panel finds that a modest increase in the employee contribution for health insurance is warranted.

AWARD ON HEALTH INSURANCE

1. Effective July 1, 1995, Article 11, Section 2 of the 1991-93 Agreement shall be amended to read as follows:

**Section 2: Cost of Benefits to Employees**

Effective July 1, 1995, employee contributions from all members shall be seven and one-half percent (7.5%) of the cost of the coverage as provided in Section 1.

## **WEAPONS**

### Discussion on Weapons

Currently, Rochester Police Officers purchase their own on-duty weapons, pursuant to Article 12, Section 6 of the 1991-93 Agreement. The Union now seeks to have the City purchase the appropriate on-duty weapon for all members. The City has no objection to doing so on a prospective basis, as long as it is clearly provided that the weapon is City property. The Panel finds that most, if not all, comparable police departments provide members with an appropriate on-duty weapon. The Panel awards that retroactive to July 1, 1993, the City will provide the on-duty weapon for all members. Those members who purchased a weapon for on-duty use on or after July 1, 1993 shall be reimbursed by the City for the actual cost of the weapon. The Panel believes that the number of such employees is minimal.

### AWARD ON WEAPONS

Effective July 1, 1993, Article 12, Section 6(A) shall be amended to read as follows:

#### **Section 6: Weapons and Equipment**

- A. Effective 7/1/93, the City will provide each member with the authorized on-duty weapon. Weapons so purchased by the City shall remain the property of the City. Those members who purchased a weapon for on-duty use on or after July 1, 1993 shall be reimbursed by the City for the actual cost of the weapon.

## **FIELD TRAINING OFFICERS**

### Discussion on Field Training Officers & Coordinators

Rochester Police Officers who are assigned as Field Training Officers or Coordinators presently receive a per diem stipend of 5% of their base salary for each day in which they perform the duties of a Field Training Officer or Coordinator including training periods and when they are assigned a probationary officer for on-the-job training. Such stipend is provided pursuant to Article 3, Section 7 of the 1991-93 Agreement. The Union seeks to increase this stipend to one hour per day at time and one-half. This represents an 18.5% increase in this pay supplement at a cost to the City of approximately \$173,500.

The Panel finds that a modest increase in the stipend paid to Field Training Officers and Coordinators is appropriate and necessary to insure an adequate number of officers who are available to perform these important assignments.

### AWARD ON FIELD TRAINING OFFICERS & COORDINATORS

Effective July 1, 1995, the per diem stipend for those officers assigned as Field Training Officers or Coordinators shall be increased to 7.5% of their base salary for each day in which they perform the duties of a Field Training Officer or Coordinator.

**SHIFT ADJUSTMENT**

Discussion on Shift Adjustment

Currently, officers assigned to the First Platoon receive a \$.50 per hour shift differential, and officers assigned to the Third and Fourth Platoons receive a \$.35 per hour shift differential. The Union seeks to increase the shift differential for all of the above mentioned shifts to \$.75 per hour. The City is willing to increase the shift differential to \$.60 per hour. Based on our review of the Albany, Syracuse and Buffalo police agreements, and those of police departments within Monroe County, it is the finding of the Panel that a \$.60 per hour shift differential is fair and comparable.

AWARD ON SHIFT ADJUSTMENT

Effective July 1, 1995, the shift adjustment provided in Article 3, Section 6 of the 1991-93 Agreement shall be increased to \$.60 per hour for members assigned to patrol platoons 1, 3 or 4 or their equivalent.

**TRANSFERS**Discussion on Transfers

Presently, involuntary transfers of police personnel are covered under Article 19 of the 1991-93 Agreement. That provision provides, among other items, that involuntary transfers may be made by the Chief under mitigating circumstances; yet the term "mitigating circumstances" is not defined in the Agreement.

The City claims that it has been severely hampered in its ability to properly deploy and reassign both command and police personnel, due to the interpretation and implementation of this Article. Specifically, the City argues that the provision has prevented the Chief from having the authority to manage the Department in the most efficient manner, and has prevented command personnel from deploying police personnel flexibly. The City claims that the current provision inhibits transfers necessary for operating needs and prevents the assignment of command personnel based on the best person for the job. The City further indicates that some special assignments cannot be made under the current provision, which provides for transfers only when mitigating circumstances are present, which does not allow for transfers for positive, pro-active purposes. The City argues that if the Rochester Police Department is to operate efficiently and effectively, the Chief must have the ability to manage, transfer, deploy and assign police personnel, based on the operating needs of the Department. The City requests significant changes in the transfer provision.

The Panel accepts the City's claim that it cannot accomplish necessary changes to improve the efficiency and overall operation of the Department within the constraints of the current language contained in Article 19 of the 1991-93 Agreement. Such provision no longer serves either parties interest, in that it fails to recognize and take into account the intricacies of policing in the current legal climate. Nor does the existing Article 19 language allow the Chief and his command personnel to consider and respond to societal concerns which impact upon the efficient operation of a modern and progressive urban police department. Command personnel must be allowed to deploy the work force to meet changing conditions and needs, as the situation requires.

As the current transfer provision does not serve the needs of policing as we enter the 21st century, the Panel recognizes that change must occur to allow the Chief and other management personnel the necessary flexibility to best serve the needs, interests and safety of the citizens of Rochester. To accomplish this goal, the Panel herein awards new transfer language, which balances the rights of members of the unit with the needs of the City in providing the best and most efficient police service possible to visitors and citizens of Rochester.

AWARD ON TRANSFERS

Effective July 1, 1995, Article 19 shall be amended to read as follows:

**Article 19 Transfers**

**Section 1: Definitions**

**A. Transfers**

1. A transfer shall be defined as the change of assignment from one section to another section, or from one division to another division. Changes of assignment made within the Criminal Investigation Division or the Special Criminal Investigation Section will not be considered transfers.
2. A permanent change in platoon assignment shall be considered a transfer when it exceeds 60 days in duration.

B. A temporary assignment shall not be for more than 60 days in duration at which time it shall become a change of assignment subject to this Article.

C. Temporary transfers to limited duty assignments due to disabilities may be extended for the duration of the disability. Such reassignments shall not result in eligibility for overtime payment in accordance with Article 18, Section 3(A) of this Agreement.

**Section 2: Involuntary Transfers**

A. The Chief of Police, or his designee, shall maintain the right to transfer employees when necessary to meet legitimate operating needs of the Department. Transfers shall not be made for punitive reasons except when done as a result of discipline in accordance with Article 20, Section 2(B) of this Agreement.

B. An employee subject to a transfer under paragraph A above, upon written request given to the Section Commander within five (5) days of the notice of transfer, shall receive within five (5) days of such request a written statement as to the specific reason for such transfer. This statement shall be binding on the City.

- C. All transfers made under this section shall be subject to grievance and arbitration pursuant to Article 27 of this Agreement, and any grievance alleging a transfer made in violation of this section may be filed directly at Step C of the grievance procedure within five (5) days of receipt of the written statement provided pursuant to paragraph (B) above, and if not resolved and appealed to arbitration, may be the subject of expedited arbitration before the contract Arbitrator, upon demand by either party.
- D. In any arbitration proceeding alleging a transfer made in violation of this section, the City shall go forward and show legitimate operating needs for the transfer.

Section 3: Posting of New Positions and Vacancies

- A. Unless a transfer is made for a specifically identified operating need under Section 2, paragraph A above, or as provided in paragraph F below, whenever the City desires to permanently fill a new position or vacancy within the bargaining unit, notice will be made by teletype and/or Daily Bulletin, and posted to inform members for a period of ten (10) calendar days.
- B. All announcements of new positions or vacancies will specify the qualifications and criteria established for the position or vacancy by the Chief of Police or his designee.
- C. Members may apply for consideration for a new position or vacancy posted under this Section. Requests will be considered Department wide.
- D. No new position or vacancy may be filled during the ten (10) day posting period except on an acting basis when necessary as a result of emergency or to replace a transferred or promoted member. Members who submit requests after the ten (10) day posting period will not be considered.
- E. New positions or vacancies shall be filled as provided in Section 4 of this Article. Nothing in this Section shall be construed as requiring the filling of new positions or vacancies.
- F. New positions or vacancies which exist in the Office of the Chief of Police are not subject to this Section.

Section 4: Selection to new positions or vacancies

- A. The establishment of qualification and criteria for new positions or vacancies shall be solely the responsibility of the Chief of Police or his designee.
- B. Unless the new position or vacancy is filled by a transfer made pursuant to Section 2 of this Article, or pursuant to Section 3(F) of this Article, new positions or vacancies posted pursuant to Section 3 of this Article shall be filled by a member who has applied for such new position or vacancy, and who meets the qualifications and criteria established for such new position or vacancy. In determining who shall be selected for a new position or vacancy, the Chief of Police, or his designee shall select the most senior candidate, if all other factors relative to the candidate's ability to perform the duties of the position are equal.
- C. Any candidate not selected shall be entitled to a written statement as to the reasons for non-selection, upon written request to the command responsible for the final selection.
- D. Selections made under this section shall be subject to the grievance and arbitration procedure contained in Article 27 of this Agreement, upon a grievance filed by a candidate who was not selected in favor of a less senior candidate. In any arbitration proceeding alleging a violation of this Section, the burden of proof shall be upon the City to establish that all other factors were not equal when selecting the less senior candidate.

Section 5: Maintenance of Seniority

When a member is reassigned or transferred pursuant to this Article there shall be no loss of seniority.

## **DISCIPLINE**

### Discussion on Discipline

Currently, members facing Departmental disciplinary charges have a right to a hearing pursuant to Section 75 of the Civil Service Law, before a Hearing Board comprised of 3 members selected by the Appointing Authority; one of the members may be a civilian. The Hearing Board may make a recommendation which is submitted to the Chief, who then makes a final disposition of the discipline.

The Union seeks to amend Article 20 to allow a member charged with discipline to have the case heard by an independent arbitrator, mutually selected pursuant to the rules of PERB, with the arbitrator having the authority to make a final and binding decision on the disciplinary charges. The City is opposed to binding arbitration of police disciplinary matters and maintains that as a matter of public accountability, it is the Appointing Authority which must take full responsibility for the discipline of Rochester Police Officers.

The Panel has carefully considered this issue and notes that almost all other Monroe County police departments provide for either independent arbitration or a Section 75 hearing with an independent and neutral hearing officer selected by the Appointing Authority. The other major upstate New York cities also provide for either arbitration or a neutral Section 75 hearing officer for disciplinary matters. Regardless of the result, the current procedure utilized by the Rochester Police Department promotes a perception that a charged member is not receiving a neutral due process hearing.

While there is no evidence that the current process has produced an unfair or unjust result in prior disciplinary cases, the Panel is of the view that members of the Rochester Police Department are entitled to a due process hearing before an independent hearing officer. The ultimate responsibility for determining the appropriate penalty for misconduct or incompetence must remain however with the Appointing Authority. The Panel believes that the Section 75 process under the Civil Service Law allows for the City to maintain overall accountability, while the use of an independent hearing officer under Section 75 allows for a fair and impartial hearing.

The Panel also finds that while Command Discipline is provided for pursuant to Article 20, Section 2(B) of the 1991-93 Agreement, the discipline which may be imposed does not include transfer from assignment, which may often be the most effective and logical penalty under certain circumstances. Accordingly, the Panel adds transfer as one of the penalties which may be imposed under Command Discipline as provided in Article 20, Section 2(B) of the Agreement.

Finally, the 1991-93 Agreement contains in Appendix 1 Discipline Guidelines and Classification of Penalties. By virtue of the language contained therein, such Guidelines expired on June 30, 1993. The Panel finds that such Guidelines should be continued in the new contract without sunset.

AWARD ON DISCIPLINE

1. Effective July 1, 1995, Article 20 of the 1991-93 Agreement shall be amended to provide as follows:

**New Article 20, Section 15.2:**

Effective July 1, 1995, a member charged with misconduct and/or incompetence may elect to have his/her hearing held before a single Hearing Officer pursuant to Section 75 of the Civil Service Law. Such Hearing Officer shall be a professional neutral, selected by the Appointing Authority from a list of such neutrals maintained by the American Arbitration Association regional office in Syracuse, New York. The costs and expenses of such neutral Hearing Officer shall be paid by the City, and the Hearing Officer shall conduct a hearing pursuant to Section 75 of the Civil Service Law and shall forward his/her Findings and Recommendations to the Appointing Authority for decision in accordance with the provisions of Section 75.

2. Effective July 1, 1995, Article 20, Section 2(B) shall be amended to provide transfer as a disciplinary penalty which may be imposed through command discipline.

3. The Discipline Guidelines and Classification of Penalties contained in Appendix 1 of the 1991-93 Agreement shall be continued without sunset.

**CONTRACT ADMINISTRATION & ARBITRATION**

Discussion on Contract Administration & Arbitration

Under Article 27 of the 1991-93 Agreement, contract grievances may be appealed to arbitration before an arbitrator mutually selected from a panel of arbitrators maintained by PERB. Both parties herein have indicated that for purposes of expediency, consistency and reduced costs, they desire to have a permanent Contract Arbitrator to resolve all grievances, in lieu of ad hoc arbitrators selected from PERB panels to hear individual grievances. The parties have also indicated that they desire to create an expedited arbitration procedure to be utilized by the Contract Arbitrator, in order to speed up the current process and hear and resolve pending grievances without costly delay.

AWARD ON CONTRACT ADMINISTRATION & ARBITRATION

Effective July 1, 1995, Article 27, Section 4(A) of the 1991-93 Agreement shall be deleted and replaced with the following:

**Section 4: Arbitration**

A. An arbitration proceeding shall be conducted before the Permanent Contract Arbitrator, who shall be mutually selected by the parties no later than August 1, 1995, and shall serve until replaced by mutual agreement of the parties. The Permanent Contract Arbitrator shall have full authority pursuant to the provisions contained in this Section to resolve all pending grievances and future grievances brought by either party. Additionally, the Permanent Contract Arbitrator shall develop, in consultation with the parties herein, an expedited arbitration procedure to resolve all pending and future grievances in an efficient, timely and cost effective manner. Such expedited arbitration procedure shall become an Appendix to the parties Agreement.

**REMAINING ISSUES**

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Except for those proposals and/or items previously agreed upon by the parties herein, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

**RETENTION OF JURISDICTION**

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

**REVISION OF CONTRACT**

The Panel recommends that the parties herein revise the 1991-93 Agreement in accordance with the provisions of this Award, and prepare and execute a document which reflects the provisions of this Award, to be completed no later than 7/1/95.

**DURATION OF CONTRACT**

The Panel has been specifically authorized by the parties to exceed the two year maximum contract duration as provided by the Taylor Law in Section 209.4(c)(vi).

This Award therefore provides for an Agreement for the period commencing July 1, 1993 and ending June 30, 1997.

  
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JEFFREY M. SELCHICK, ESQ.  
Public Panel Member and Chairman

6/22/95  
Date

  
\_\_\_\_\_  
RONALD G. EVANGELISTA  
Employee Organization Panel Member

6-21-95  
Date

  
\_\_\_\_\_  
M. RENEE BAKER  
Employer Panel Member

6-25-95  
Date

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss.:

On this 27<sup>th</sup> day of June, 1995, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Cathy L. Selchick  
Notary Public

CATHY L. SELCHICK  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 4830518  
QUALIFIED IN ALBANY COUNTY  
COMMISSION EXPIRES NOVEMBER 30 1995

STATE OF NEW YORK )  
COUNTY OF Monroe ) ss.:

On this 21<sup>st</sup> day of June, 1995, before me personally came and appeared Ronald G. Evangelista, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

MAURA C. SMITH  
Notary Public, State of New York  
No. 8014880  
Qualified in Monroe County  
Commission Expires July 6, 1995

Maura C Smith  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On this 26<sup>th</sup> day of June, 1995, before me personally came and appeared M. Renee Baker, to me known and known to me to be the individual described in the foregoing Instrument, and she acknowledged to me that she executed the same.

Marcia Lippa  
Notary Public

MARCIA LIPPA  
COMMISSIONER OF DEEDS  
City of Rochester, NY  
Commission expires 9/1/96