

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration	:	
between	:	
	:	
THE TOWN OF NEW HARTFORD,	:	
Public Employer,	:	OPINION
	:	
-and-	:	AND
	:	
NEW HARTFORD POLICE BENEVOLENT	:	AWARD
ASSOCIATION,	:	
Employee Organization.	:	
	:	
PERB Case No. IA95-033; M94-501	:	

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Rocco A. DePerno, Esq.
Employee Organization Panel Member

Marc H. Reitz, Esq.
Public Employer Panel Member

APPEARANCES:

For Town of New Hartford:

Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.
Henry F. Sobota, Esq., of Counsel

For New Hartford Police Benevolent Association:

DePerno, Khanzadian, McGrath & Lalonde
Ann McGrath, Esq., of Counsel

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, to make a just and reasonable determination of a dispute between the Town of New Hartford ("Town") and the New Hartford Police Benevolent Association ("PBA").

The Town of New Hartford is a municipality located in Oneida County, with a population of approximately 21,500. The PBA is the certified bargaining agent for all sworn personnel of the Police Department, exclusive of the Chief of Police. Currently, there are approximately 20 sworn personnel in the Police Department.

The terms of the last collective bargaining agreement between the parties were the result of an Interest Arbitration Award which covered the period commencing January 1, 1992 and ending December 31, 1994.¹

¹ The undersigned Panel Chairman also chaired the interest arbitration panel which issued the Interest Arbitration Award for January 1, 1992 through December 31, 1994.

Prior to the expiration of the 1992-94 Award, the parties began negotiations for a successor contract in late 1994, but such negotiations were unsuccessful, and in early 1995 the parties reached impasse. Subsequent mediation by a PERB Mediator resulted in a tentative agreement, which was later rejected by vote of the PBA membership. Thereafter, and on January 3, 1996, the PBA filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on January 17, 1996, and thereafter, on February 16, 1996 the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law.

Hearings were conducted before the undersigned Panel in New Hartford on April 17 and June 19, 1996. 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 undersigned Panel met in several Executive Sessions, and reviewed all data, evidence, argument and issues. 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 extended the jurisdiction of the Panel and requested that a four (4) year Award be issued. Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period January 1, 1995 through December 31, 1998.

In arriving at such determination, the Panel has considered the following factors, as specified 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

Notwithstanding the health care cost concerns raised by the Town, the paramount issue as articulated by the PBA is in gaining a significant increase in salary in order to provide New Hartford police with a comparable wage when examined against nearby similar police jurisdictions. The PBA is seeking across the board salary increases so that the New Hartford police are paid at a comparable wage when compared with similar police officers with the same or similar years of experience.

Specifically, the PBA is seeking an 8% salary increase for each year of the contract, or a 32% increase over the term provided by this Interest Arbitration Award. The PBA maintains that such proposed significant increases are required and justified based on comparable salaries received by police officers in similar jurisdictions. For the years 1995 and 1996, which are at issue in this Interest Arbitration, New Hartford police without college degrees are 9-10% behind their counterparts when salary is compared after 4 years on the job (see PBA Exhibit 5).

The PBA also seeks creation of a salary schedule with a progressive step system of increments, as currently, increases in an officer's salary are based not on experience or tenure, but on

attainment of a college degree. The result of the current system, which the PBA maintains is inequitable, is that a newly hired officer with a four year college degree will earn more than a non-college officer with twenty years of experience on the job.

The PBA has compared New Hartford police with police close in proximity, population and/or unit size. The jurisdictions cited by the PBA include two villages (Ilion and Herkimer), both in Herkimer County; two cities, one being directly adjacent to New Hartford (Utica), and the other located in an adjacent county (Oneida); three towns (DeWitt, Clay and Manlius), all in Onondaga County; and the Oneida County Sheriff's Department.

The PBA further argues that New Hartford police work harder and respond to more calls than most of the neighboring police jurisdictions. A Master Plan Police Services report (PBA Exhibit 63), commissioned by the Town in 1993, documented that the number of New Hartford officers per capita was 5 less than recommended, while that of officers per dwelling unit was 23 less than the number recommended. The Report further indicated that the Town had a ratio of 62.3 crimes per officer for 1992, compared to only 13.7 crimes per officer in the nearby city of Rome, and 27.8 crimes per officer in the adjacent city of Utica. Data presented indicates that in 1993 and 1994, calls for service for New Hartford police has been steadily increasing, with Part I crimes increasing at over 12% (see PBA Exhibit 65).

The Town maintains that the salary increases sought by the PBA are unreasonable and excessive due to: the current recession in the local economy, the generous salary increases which have been provided to police unit members in the past several years, the current and relatively low rate of inflation, the actual earnings of police unit members (taking paid overtime into account), what other Town employees have received in past years and for the current contract term, the Town's current budget difficulties, and the increased real property tax paid by Town residents. It is the position of the Town that New Hartford police are fairly compensated when viewed against other police within the Utica-Rome Metropolitan Statistical Area "MSA" (see Town Exhibits 2-10).

The Town offers a 3.5% salary increase for each year of the contract, but only if coupled with the 20% employee contribution towards health insurance premium costs.

The Town indicates that the economy of the Utica-Rome MSA has been impacted by plant closings, and the consequent elimination of thousands of jobs. The closing of Griffiss Air Force Base alone resulted in the loss of 6,500 jobs plus the ripple effect upon local merchants and the overall local economy. This base closing also resulted in the loss of population from Oneida County (see Town Exhibits 1 and 2). According to the Town, the resultant effect of such population loss has an impact

upon the Town's receipts from its share of the County sales and mortgage tax revenues and further limits the Town's ability to raise real property taxes. The Town also points out that the rate of inflation has steadily declined, and reached a 7 year low of 2.6% in 1994 and 2.8% in 1995 (Town Exhibit 7).

According to Town Comptroller Joseph Timpano, for 1996 the Town will receive state aid of only \$425,010 which represents a decrease of 10.4% from prior years (see Town Exhibit 3). This has resulted in a cut of over \$300,000 in the current budget (Town Exhibit 4). Real property taxes have increased by 21% from 1995 to 1996 (Town Exhibit 3), as have taxes for the New Hartford Central School District. The Town maintains that the burden upon taxpayers has increased every year since 1991.

In reaching the salary determinations herein, the Panel has considered the current state of the Utica-Rome MSA's economy, including the attendant loss of jobs from the realignment of nearby Griffiss Air Force Base, and the data on new industries and jobs which are being newly created. The Panel has also reviewed the Town's budget for 1995-964 (Town Exhibit 4). The Panel has also reviewed New Hartford's recent Official Statement for the issuance of \$1,832,00 in general obligation bonds (PBA Exhibit 70).

Additionally, the Panel has reviewed and considered the report (PBA Exhibit 69) prepared by PBA Financial Consultant Edward J. Fennell and his testimony before the Panel. That report indicated that the Town has an overall real property tax rate which is the lowest when compared with other Oneida County municipalities which operate full-time police departments. The total fund equity balance in the Town's General Fund was \$121,692 on December 31, 1995, all of which was unappropriated. Apparently, the Town has also budgeted some monies to fund whatever raises are provided to New Hartford police as a result of this Award.

The Panel has considered all of the 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.

Currently, the 1992-94 Agreement for New Hartford police unit members does not have a salary schedule, but merely states base salaries for Police Officer, Sergeant and Lieutenant. There is no differential in pay for experience--that is the base salary of a New Hartford police officer after one year is the same as that paid an officer with several years experience. The real salary distinction in the 1992-94 Agreement when compared with other police contracts is that New Hartford police unit members are paid a yearly educational stipend, added to base salary, for

possession of either an Associate's (\$300), Bachelor's (\$600) or Master's (\$900) Degree (see Article XXXVI, College Incentive). Therefore, unless a police officer obtains a degree during his first years on the New Hartford Police, he/she will not progress in salary, unless there are across the board wage increases through the collective bargaining process.

In determining the appropriate police comparables for New Hartford police, the Panel has reviewed the jurisdictions cited by both parties. Most notably, the PBA seeks to compare itself with police in neighboring Onondaga County while the Town seeks to compare New Hartford police with police in small villages and other communities in Oneida County. The Panel finds that excluding the City of Utica, all of the other comparables cited by both parties have police departments of the same or comparable size to the New Hartford police, although the City of Oneida comes closest (21 members of police department and population of 11,000). The City of Oneida is located nearby New Hartford in Madison County; has a police department of the same size as that of New Hartford; has a population smaller than New Hartford; is subject to the same economic situation as part of the Utica-Rome MSA; and is in the median of household income for comparable jurisdictions (see Town Exhibits 1 and 2). Although the Village of Herkimer also has a similar size police department (21 members) it has a much smaller population (8,000).

The Panel is of the view that the City of Oneida and the Village of Herkimer, although not exact to the Town of New Hartford in either size of population or extent of household income (see Town Exhibit 1), do provide an appropriate comparison for salaries and benefits.

Although a slightly larger department (32 members), the Town of DeWitt also provides an appropriate comparison for New Hartford police salaries. Like New Hartford, it is a suburban area lying outside a larger city (Syracuse), with a population only slightly larger (25,150) than that of New Hartford's (21,650). The household income is also relatively comparable [see Town Exhibit 1]. DeWitt and New Hartford are both "bedroom" communities, and both have the same or similar type of calls for police services.

Therefore, in determining the appropriate salaries to be provided to New Hartford police, the Panel has generally used the salaries of Oneida, Herkimer and DeWitt police officers as appropriate comparables.

Looking at these specific police departments as examples, the following emerges: As of the expiration of the 1992-94 Agreement on 12/31/94, the base salary for a New Hartford police officer was **\$30,602**. As explained above, there is no salary schedule or progression as an officer gains additional years of

experience. On 12/31/94, the base salary for an Oneida police officer, who has reached the top grade after 5 years, was \$32,614. A Herkimer officer earned less at \$27,019, while a DeWitt officer earned significantly more at \$37,700.

For 1995 an Oneida police officer earned \$33,918 and, in 1996 the Oneida police officer's salary is currently \$34,935. Effective January 1, 1997, an Oneida police officer at top grade will earn \$35,984 in base salary. DeWitt police are currently in Interest Arbitration for salaries for 1995 and 1996, but the current salary of \$37,700 still greatly exceeds that paid to New Hartford police officers.

As of the expiration of the 1992-94 Agreement on 12/31/94, the base salary for a New Hartford police officer with an Associate's Degree was **\$31,431**. The salary for an Oneida police officer with an Associate's Degree (base plus education stipend) on 12/31/94 was \$32,964. In 1995 that salary went to \$34,268 and, in 1996 the Oneida police officer with an Associate's Degree earns \$35,285. Effective January 1, 1997, an Oneida police officer with an Associate's Degree will earn \$36,334.

As of the expiration of the 1992-94 Agreement on 12/31/94, the base salary for a New Hartford police officer with a Bachelor's Degree was **\$32,265**. The salary for an Oneida police officer with a Bachelor's Degree (base plus education stipend) on

12/31/94 was \$33,214. In 1995 that salary went to \$34,518 and, in 1996 the Oneida police officer with a Bachelor's Degree earns \$35,535. Effective January 1, 1997, an Oneida police officer with a Bachelor's Degree will earn \$36,584.

Although the New Hartford police starting salary is comparable to other local police department starting salaries, it is clear that the top base salary for experienced New Hartford police officers requires adjustment. Further, the Penal finds that there is no reason not to implement a more typical salary schedule for New Hartford police, which will provide for a step increment system with a top salary after sufficient years on the job to reach journeyman level skills.

Accordingly, the Panel finds that effective January 1, 1997 there shall be a four (4) step salary schedule for New Hartford police. That salary schedule is attached to this Award as Appendix A.

While the Panel is aware that generally police in upstate New York for 1995 and 1996 are being awarded salary increases from 4-5% per year, the New Hartford police must receive a greater increase for two reasons. First, New Hartford salaries are low when compared with police in other jurisdictions, most notably Oneida and DeWitt.

Second, and of equal importance, as detailed *infra* in this Opinion and Award, the Panel is providing herein that New Hartford police shall begin in 1997 making a significant employee contribution to the cost of health insurance coverage. The Panel has calculated the resultant savings of such health insurance employee contribution to the Town, and the impact on police unit salaries, in determining the appropriate salary increases to be provided in 1997 and 1998. While the Panel recognizes that such salary increases for 1997 and 1998 are above the norm, even taking into account the current low salaries received by New Hartford police when viewed against comparable jurisdictions, such increases are directly related to the imposition of the significant health insurance contribution to be effective in 1997 and increased in 1998.

Therefore, after review of all data presented, the Panel finds that New Hartford police unit members shall receive salary increases as follows:

Effective January 1, 1995	4%
Effective January 1, 1996	4%
Effective January 1, 1997	10%
Effective January 1, 1998	6%

It is the view of the Panel that the salary increases awarded herein utilize the money previously budgeted, and that the more significant increase for 1997 is intended to be offset

with the savings garnered from the 12.5% health insurance contribution to be made by all members of the police unit. It is the considered opinion of the Panel that such increases as provided herein are within the ability of the Town to pay and will not require any additional tax levy or bond issuance to be met.

In creating a new salary schedule, it becomes necessary to set a salary for the rank of Sergeant. In order to create a base rate for the rank of Sergeant, without inclusion of an education stipend, the Panel has subtracted the base salary of a Patrolman from the base salary of a Lieutenant and divided by 2, with the result then added to the base salary of a Patrolman to create the new base salary for Sergeant. This new differential for the rank of Sergeant shall be effective on January 1, 1995, and shall be \$37,770 for 1995 and \$39,280 for 1996.

The Panel recognizes that there is a significant retroactive salary payment due members of the police unit as a result of this Award. However, the Panel further recognizes that the Town must do some calculations in order to process that retroactive payment (salary, overtime, education stipend, longevity payments and shift differential).

Accordingly, the Panel has been advised by Town officials that it will provide a partial payment of \$1,000.00 to all members of the police unit no later than December 20, 1996, with the balance of the retroactive payment to be processed as quickly as possible, but in no event shall be paid later than March 1, 1997. If the balance of the retroactive payment is not paid by March 1, 1997, interest shall accrue and shall be paid as well.

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 January 1, 1995, the base salary shall be increased by 4% for all members of the police unit.

2. Effective January 1, 1996, the base salary shall be increased by 4% for all members of the police unit.

3. The new differential for the rank of Sergeant, calculation of which is explained in detail *supra*, shall be effective on January 1, 1995. The salary for the rank of Sergeant, including increases provided herein, shall be \$37,770 effective January 1, 1995 and \$39,280 effective January 1, 1996. Thereafter, refer to salary schedule (Appendix A).

4. Effective January 1, 1997, the base salary shall be increased by 10% for all members of the police unit.

5. Effective January 1, 1997 there shall be a four (4) step salary schedule, and all members of the police unit shall be paid in accordance with such schedule, which is attached hereto as Appendix A.

6. Effective January 1, 1998, the base salary shall be increased by 6% for all members of the police unit.

7. A payment of \$1,000.00, representing a partial payment of retroactive monies due, shall be made to all members of the police unit no later than December 20, 1996, with the balance of the retroactive payment to be processed as quickly as possible, but in no event shall be paid later than March 1, 1997. If the balance of the retroactive payment is not paid by March 1, 1997, interest shall accrue and shall be paid as well.

COLLEGE INCENTIVEDiscussion on College Incentive

The 1992-94 Agreement contained a provision, Article XXXVI which provided for an additional stipend to be added to a police unit member's base salary, if he/she has an Associate's, Bachelor's or Master's Degree, as follow:

Associate's Degree	\$300.00 per year
Bachelor's Degree	\$600.00 per year
Master's Degree	\$900.00 per year

However, over several years, the method of computing the base salary plus the applicable education stipend has been to add the stipend into the base salary before calculating the across the board wage increase for the next year. The Panel does not agree that this is an appropriate method of calculation. Nonetheless, as of the expiration of the 1992-94 Agreement on 12/31/94, the following base salaries were in effect:

Patrolman (no degree)	\$30,602
Patrolman (Assoc deg)	\$31,431
Patrolman (Bach deg)	\$32,265
Sergeant (Assoc deg)	\$34,846
Lieutenant (Assoc deg)	\$42,861

The Panel is of the view that the educational stipends should be increased during the term of this Award as follows:

	<u>Eff 1/1/95</u>	<u>Eff 1/1/97</u>	<u>Eff 1/1/98</u>
Associates	\$500	\$1250	\$1300
Bachelors	\$1000	\$2450	\$2600
Masters	\$1500	\$3100	\$3200

For purposes of providing continuity with the past system of calculation of base salary plus education stipend, the Panel has continued the earlier method of calculation for 1995 and 1996, which results in the following salaries, which include the percentage increases and education stipend for such years:

	<u>Eff 1/1/95</u>	<u>Eff 1/1/96</u>
Patrolman (Assoc deg)	\$32,896	\$34,212
Patrolman (Bach deg)	\$33,972	\$35,330
Sergeant (Assoc deg)	\$38,840	\$40,393
Lieutenant (Assoc deg)	\$44,783	\$46,575

Commencing 1/1/97 the new salary schedule (attached herein as Appendix A) shall be placed into effect. The salary schedule indicates base salaries only; if an officer is eligible for a college incentive stipend, such amount shall be added to an officer's base salary as shown on the salary schedule.

HEALTH INSURANCE

Discussion on Health Insurance

At the heart of the instant dispute, affecting the appropriate salary increases to be provided to unit members, is the continuing problem with increasing health insurance costs. Under the current contractual commitment, the Town provides 100% of the premium cost of health insurance coverage for all members of the police unit, for both individual and family coverage.

Currently, health insurance, including dental, is provided through the Utica Blue Cross/Blue Shield plan. The current total cost for health insurance is \$175.59 per month (\$2,107.08 per year) for individual coverage, and \$439.61 per month (\$5,275.32 per year) for family coverage; plus an additional cost of \$22.05 per month (\$264.60 per year) for individual dental coverage, and \$67.32 per month (\$807.84 per year) for family dental coverage. In sum, the total cost paid by the Town for health insurance, including dental, is \$2,371.68 per year for those employees with individual coverage, and \$6,083.16 per year for those employees with family coverage.

As health insurance premium costs continue to escalate, the Town has proposed that all of its employees, including police, contribute towards the cost of such premiums. To that end, the

Town has proposed that members of the police unit contribute 20% of the premium cost.

The Town maintains that this contribution would help the Town pay for the ever increasing rise in health insurance costs and still be able to provide for fair and equitable salary increases for police unit members. The Town indicates that currently certain other Town employees are contributing, in varying amounts and formulas, towards the cost of health insurance. Negotiations are ongoing with other Town employees to provide for a similar health insurance contribution as proposed herein. The Town argues that the concept of police unit members paying for 20% of their health insurance is well justified, particularly since the wage increases previously received by police have exceeded the wage increases previously received by other Town employees since 1990 (see Town Exhibit 9).

In response, the PBA maintains that there should be no change in the current 100% premium payment for health insurance provided by the Town, and is opposed to any contribution by police unit members. The PBA indicates that the salaries received by New Hartford police are much lower than those in comparable and nearby jurisdictions, and that providing for a health insurance contribution is a further diminution of police salaries. The PBA indicates that the majority of other comparable police, with salaries in the range currently received

by New Hartford police, do not contribute towards health insurance costs. The PBA argues that the issue of contributions to health insurance costs must be viewed in the context of overall salaries received by New Hartford police.

There is no question that the Panel is concerned with the overall financial health of the Town. In that regard, the Panel takes notice of how the Town is attempting to manage health insurance costs in the other bargaining units. However, the focus of the Panel herein must be to continue to provide quality health insurance benefits for members of the police unit at a fiscally prudent and reasonable cost to both the Town and the members of the police unit. What will or will not be done in other Town bargaining units is merely collateral to the decisions which must be made herein by this Panel. More importantly, the Panel must consider other proper police comparables to determine a fair and equitable resolution to the health insurance issue for police in New Hartford.

In viewing the appropriate police comparables, it is apparent that all upstate New York municipalities continue to struggle to find ways to cope with increasing health insurance costs. In the 1996-97 Agreement with the City of Oneida, the PBA agreed that employees hired after January 1, 1994 shall contribute 20% of health insurance premiums, while those hired previous to that date shall contribute 12.5% of such premiums

(PBA Exhibit 59B). In the 1994-98 Agreement with the Village of Herkimer, the PBA agreed that employees hired after June 1, 1993 shall contribute 20% towards the cost of health insurance, reduced to 15% after the first five years of employment, while for those hired previous to that date the Village continues to pay 100% of health insurance costs (PBA Exhibit 56). In the 1996-99 Agreement with the Village of Ilion, the PBA agreed that employees hired after June 6, 1994 shall pay a weekly contribution of \$15.00 per week towards health insurance costs, while those hired previous to that date continue to have all health insurance costs paid by the Village (Town Exhibit 12). Police subject to the 1993-94 Agreement with the Town of DeWitt pay 15% if they elect individual coverage and 20% for family coverage, capped to maximum amounts (PBA Exhibit 55). In the 1994-96 Agreement with the Town of Manlius, the PBA agreed that employees and the Town shall equally split the cost of health insurance premium increases during the term of the contract (PBA Exhibit 58). In the 1994-96 Agreement with the Town of Clay, the PBA agreed that all members will pay 20% towards the cost of health insurance premiums (PBA Exhibit 54).

The Panel has carefully reviewed all of the data provided regarding both the increasing cost of health insurance and how other comparable police jurisdictions are currently handling such increases. What emerges is a clear trend in all comparable jurisdictions that police employees pay some contribution towards

their health insurance coverage. This is in recognition both of the ever increasing cost of health insurance and a prevailing view that employees who contribute to health insurance costs are more conservative and careful in their use of benefits, with the hope that such awareness will help to keep premium increases down.

Therefore, the Panel has determined that all New Hartford police shall, effective January 1, 1997, be required to contribute 12.5% towards the cost of the selected health insurance coverage (including dental and prescription coverage), be it individual or family. This contribution shall increase to 15% effective January 1, 1998.

Further, the Panel finds that the Town shall provide for a Flexible Benefit Plan pursuant to Section 125 of the Internal Revenue Code. All contributions made by New Hartford police for health insurance coverage shall be made and taken by the Town in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan, resulting in the employee being able to pay for his share of the health insurance costs with pre-tax dollars. As a result, the employee's net pay check will be reduced by a lesser amount than if the health insurance contribution was taken out of the employee's net pay.

Additionally, as health insurance costs continue to escalate, the Panel finds that the parties shall create a Joint Committee on Health Insurance, to be composed of four (4) members as follows: two (2) selected by the Town and two (2) selected by the PBA.

Commencing January 1, 1997, such Joint Committee shall begin the process of reviewing the current health insurance plan provided to police unit members and shall investigate other plans providing the same coverage in order to determine if costs can be reduced by changing to a different plan. Majority vote by the Joint Committee shall be required before any change in health insurance coverage shall be implemented. No change in health insurance coverage may occur without mutual consent of the Town and the PBA.

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 HEALTH INSURANCE

1. Article XXVIII, Hospitalization, and Article XXIX, Prescriptions, of the 1992-94 Agreement shall be modified and revised to provide that effective January 1, 1997 all members of the police unit shall contribute 12.5% of the cost of the health

insurance plan each is enrolled in, including dental and prescription coverage, and individual or family coverage.

Effective January 1, 1998, such employee contribution shall increase to 15% of the cost of the health insurance plan selected.

2. A new provision shall be added to the Agreement providing that effective January 1, 1997, a Joint Committee on Health Insurance shall be created, composed of four (4) members as follows: two (2) selected by the Town and two (2) selected by the PBA. The purpose of such Joint Committee is to review and investigate other plans providing the same coverage and to determine if costs can be reduced by changing plans.

Such Joint Committee shall review the current health insurance plan provided to police unit members and shall investigate other plans providing the same coverage in order to determine if costs can be reduced by changing to a different plan and shall issue a report on or about September 1, 1997.

Thereafter, the Joint Committee shall conduct an annual review to determine if any change(s) should be made to the existing health insurance coverage. Majority vote by the Joint Committee shall be required before any change in health insurance coverage shall be implemented. No change in health insurance coverage may occur without mutual consent of the Town and the PBA.

3. Effective January 1, 1997, the Town shall adopt and implement a Flexible Benefit Plan pursuant to Section 125 of the Internal Revenue Code. All contributions made by New Hartford police unit members for health insurance coverage shall be made and taken by the Town in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan.

OVERTIME

Discussion on Overtime

The 1992-94 Agreement provides in Article X, Overtime, that any work in excess of eight (8) hours on any one tour of duty shall be compensated at 1.5 times the employee's regular hourly rate. The parties desire to modify such language to reflect that the composition of the hourly rate is as defined by the Fair Labor Standards Act (FLSA). In the event longevity payments are included in the hourly rate, as part of an employee's regular weekly pay, the Town will no longer provide the longevity bonus presently paid at the close of the calendar year.

AWARD ON OVERTIME

Effective January 1, 1997, Article X shall be modified to reflect the fact that the regular hourly rate which is utilized to calculate earned overtime shall be as defined by the Fair Labor Standards Act (FLSA).

LONGEVITY PAYMENTSDiscussion on Longevity

Currently in the 1992-94 Agreement, Article XXXIV provides the following longevity payments:

After 5 years	\$500.00
After 10 years	\$1000.00
After 15 years	\$1500.00

The PBA has proposed that each of the above longevity steps be increased by \$100, \$200 and \$300 respectively, and further, that longevity payments begin after the third year with a payment of \$300. Additionally, the PBA is seeking to provide a new longevity step after 25 years of service at \$2500.00. The Town is opposed to any increase in longevity payments and is also opposed to the creation of any new longevity steps.

Upon review, the Panel is of the view that certain restructuring of the longevity step system is in order and would be in furtherance of the concept of providing career salary progression. Accordingly, effective January 1, 1995, Article XXXIV shall be amended to provide for the following longevity payments:

After 4 years	\$400.00
After 8 years	\$800.00
After 12 years	\$1200.00
After 16 years	\$1600.00
After 20 years	\$2000.00

However, the Panel does not intend that any officer should lose any longevity compensation as a result of changing from the prior longevity system. Therefore, officers currently on the payroll as of January 1, 1997 shall continue to receive longevity payments under the prior longevity schedule, if such would result in a greater longevity payment based on years of service.

AWARD ON LONGEVITY PAYMENTS

Effective January 1, 1995, Article XXXIV shall be amended to provide for the following longevity payments:

After 4 years	\$400.00
After 8 years	\$800.00
After 12 years	\$1200.00
After 16 years	\$1600.00
After 20 years	\$2000.00

In no event will any employee hired on or before January 1, 1997, lose any compensation as a result of changing from the prior longevity plan.

SHIFT DIFFERENTIAL

Discussion on Shift Differential

The 1992-94 Agreement provides in Article XXXV, Shift Differential that an hourly shift differential premium of \$6.00 and \$8.00 shall be paid to those members of the police unit who work the second shift (3:00 p.m. to 11:00 p.m.) and the third shift (11:00 p.m. to 7:00 a.m.) respectively.

The PBA proposes that the second shift differential be increased to \$8.00 effective January 1, 1995; to \$9.00 effective January 1, 1996; to \$10.00 effective January 1, 1997; and to \$11.00 effective January 1, 1998. The PBA further proposes that the third shift differential be increased to \$10.00 effective January 1, 1995; to \$11.00 effective January 1, 1996; to \$12.00 effective January 1, 1997; and to \$13.00 effective January 1, 1998. The Town maintains that the current shift differential paid is comparable to that paid by other similar police jurisdictions and opposes any increase in the shift differential.

The Panel finds that a modest increase in shift differential premiums is warranted when compared to that received by other comparable police departments.

AWARD ON SHIFT DIFFERENTIAL

The Panel awards that effective January 1, 1996, the shift differential for the second shift be increased to \$7.00 and the shift differential for the third shift be increased to \$9.00. Article XXXV, Shift Differential, of the Agreement shall be modified to reflect such increases.

INDEMNIFICATION

Discussion on Indemnification

The 1992-94 Agreement provides in Article XXVI that the Town shall provide police unit members with the benefits of Public Officers Law Section 18, and further that the Town agrees to be held liable for the costs incurred under said law.

The PBA proposes that such protection be expanded to provide that the Town shall defend and indemnify all police unit members sued for punitive damages arising out of on-duty incidents. The PBA seeks this broader protection for New Hartford police who may be faced with the threat of punitive damages assessed against them personally for actions taken while in the performance of police duties.

The Town opposes this proposal on the basis that no New Hartford police officer has either been sued or has been required to pay punitive damages in any case arising out of the proper performance of police duties. The Town further argues that New York State public policy prohibits the awarding of punitive damages against a municipality.

The Panel is of the view that in the current climate of increasing civil rights litigation against police officers who act in the performance of their police duties, it is not unusual

for a police officer to be sued and for punitive damages to be sought against such officer. Under the existing contract provisions, any award of punitive damages, even against a New Hartford police officer who acted in the performance of his duties, must be paid out of the officer's personal assets. This undue exposure to civil liability for municipal police officers has been addressed by the New York State Legislature by the adoption of Section 50-j of the General Municipal Law.

Section 50-j of the General Municipal Law provides, in relevant part, as follows:

6. a. In addition to the requirements of subdivision one of this section, upon discretionary adoption of a local law, ordinance, resolution, rule or regulation, any city, county, town, village, authority, or agency shall provide for the defense of any civil action or proceeding brought against a duly appointed police officer of such municipality, authority or agency and shall indemnify and save harmless such police officer from any judgment of a court of competent jurisdiction whenever such action, proceeding or judgment is for punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his duties and within the scope of his employment. Such municipality, authority or agency is hereby authorized and empowered to purchase insurance to cover the cost of such defense and indemnification.

b. The determination of whether any such police officer properly discharged his duties within the scope of his employment shall be made in a manner which shall be promulgated by the chief executive officer, and adopted by the governing board of such municipality, authority or agency.

While the Panel agrees with the Town that a police officer should not be protected from acts of wrongful misconduct, Section 50-j of the General Municipal Law clearly provides protection for an officer who acts in the "proper discharge of his duties" and "within the scope of his employment." The statute further provides that the determination as to whether the officer acted "within the scope of his employment" shall be made in accordance with procedures promulgated by the chief executive officer and governing board of the municipality.

The Panel notes that the demand for indemnification pursuant to Section 50-j of the General Municipal Law is a mandatory subject of bargaining under New York law [see City of Newburgh, 18 PERB 3065 aff'd sub nom. City of Newburgh v. Newman, 19 PERB 7005 (Sup. Ct. Co. Alb. 1986)]. Acceptance of the demand to include the provisions of Section 50-j of the General Municipal Law in a collective bargaining agreement requires the Town to adopt a resolution to such effect, as provided in paragraph 6(a) of such law.

It is therefore the view of the Panel that some additional protection is required for New Hartford police unit members. Accordingly, the Panel awards that language be added to Article XXXVI of the Agreement to provide that in the event an officer is sued for punitive damages, as such term is defined in General

Municipal Law Section 50-j², the Town shall, at its expense, provide legal counsel for such officer.

AWARD ON INDEMNIFICATION

Effective January 1, 1997, language shall be added to Article XXXVI of the Agreement to provide that in the event an officer is sued for punitive damages, as such term is defined in General Municipal Law Section 50-j, the Town shall, at its expense, provide legal counsel for such officer.

² "[A]ny action, proceeding or judgment...for punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his duties and within the scope of his employment."

TRAVEL AND MEAL ALLOWANCE

Discussion on Travel and Meal Allowance

Article XXXVII, Travel and Meal Allowance, of the 1992-94 Agreement provides that an employee utilizing his/her personal motor vehicle while attending training sessions and/or on Town business, shall be reimbursed at the rate of \$.23 per mile. The parties are in agreement that this rate should be the same as that set by the Internal Revenue Service as the business deduction rate for mileage.

AWARD ON TRAVEL AND MEAL ALLOWANCE

Effective January 1, 1997, the mileage reimbursement rate provided under Article XXXVII shall be the Internal Revenue Service business deduction rate for mileage. Article XXXVII shall be modified to reflect such change.

GRIEVANCE PROCEDURE

Discussion on Grievance Procedure

The 1992-94 Agreement provides in Article XL, Grievance Procedure, that Step 5 of said procedure shall be arbitration, with an arbitrator selected by the NYS Board of Mediation. 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 various panels to hear individual grievances.

AWARD ON GRIEVANCE PROCEDURE

Effective January 1, 1997, Article XL, Grievance Procedure, Step 5, shall be amended to provide the following:

Step 5: Arbitration

Should the Town Board's response not satisfactorily resolve the grievance, the Association (or where appropriate, the unit employee) shall then have ten (10) calendar days within which to request arbitration before the designated Contract Arbitrator, by filing a Demand for Arbitration upon the Town, with a copy mailed to the Contract Arbitrator. The Contract Arbitrator shall be mutually selected by the parties no later than March 1, 1997 and shall serve until replaced by mutual agreement of the parties.

All other references within Step 5 to "Staff Arbitrator" shall be amended to read "Contract Arbitrator".

CLEANING ALLOWANCE

Discussion on Cleaning Allowance

Article VIII, Cleaning Allowance, of the 1992-94 Agreement provides that each officer's uniforms shall be cleaned at the Town's expense, but also sets a maximum cost cap of \$3,000. Due to increased costs of cleaning said uniforms, the parties now agree to delete the cost cap.

AWARD ON CLEANING ALLOWANCE

Effective January 1, 1997, the maximum cost cap of \$3,000 contained in Article VIII, Cleaning Allowance, shall be deleted.

HOURS OF WORK

AWARD ON HOURS OF WORK

Article IX, Hours of Work, as contained in the 1992-94 Agreement, requires the Town to maintain three (3) shifts. Additionally, Section 971(a) of the Unconsolidated Laws of New York precludes the Town from assigning patrolmen to more than one tour of duty. However, pursuant to side letters dated June 24, 1994, the PBA indicated that it waived the "three shift" requirement of Article IX, and, that it waived the benefits of and compliance with, Section 971(a) of the Unconsolidated Laws.

The PBA wishes to continue such waivers and extends the side letters through the term of this Award.

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

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 directs the parties herein to revise the 1992-94 Agreement in accordance with the provisions of this Award, and, to prepare and execute a 1995-98 Agreement which reflects the provisions of this Award, to be completed no later than 4/1/97.

DURATION OF CONTRACT

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

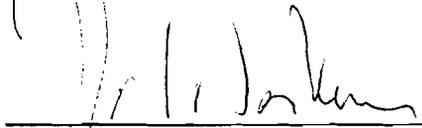
This Award therefore provides for an Agreement for the period commencing January 1, 1995 and ending December 31, 1998.



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

12/18/96
Date

Concur



ROCCO A. DEPERNO, ESQ.
Employee Organization Panel Member

12-18-96
Date

Concur

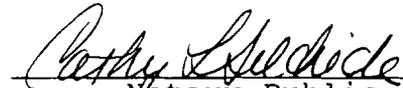


MARC H. REITZ, ESQ.
Public Employer Panel Member

12/18/96
Date

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

On this 18TH day of December, 1996, 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.

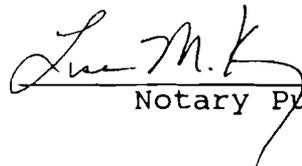

Notary Public

CATHY L. SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 1997

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

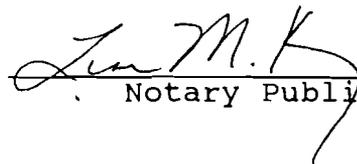
On this 18TH day of December, 1996, before me personally came and appeared Rocco A. DePerno, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

LISA M. KING
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4981643
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES MAY 13, 1997


Notary Public

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

On this 18TH day of December, 1996, before me personally came and appeared Marc H. Reitz, 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.


Notary Public

LISA M. KING
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4981643
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES MAY 13, 1997

APPENDIX A
SALARY SCHEDULE
Effective January 1, 1997

	<u>1995*</u>	<u>1996*</u>	<u>1997</u>	<u>1998</u>
Patrolman	31,826	33,099	36,409	38,594
			3 33,860	3 35,892
			2 31,312	2 33,190
			1 28,763	1 30,489
Sergeant	37,770	39,280	43,209	45,801
Lieutenant	43,713	45,462	50,008	53,008

* 1995 and 1996 salaries, included wage increases determined herein, are provided for reference only on this salary schedule.

COLLEGE INCENTIVE STIPENDS

	<u>Eff 1/1/97</u>	<u>Eff 1/1/98</u>
Associates	\$1250	\$1300
Bachelors	\$2450	\$2600
Masters	\$3100	\$3200