

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration :  
between :  
: :  
THE CITY OF RENSSELAER, :  
Public Employer, :  
: :  
-and- :  
: :  
RENSSELAER POLICE OFFICER'S UNION, :  
LOCAL 1571, COUNCIL 82, AFSCME, AFL-CIO, :  
Employee Organization. :  
: :  
PERB Case No. IA97-012; M96-397 :  
: :  
\_\_\_\_\_ :

**OPINION**

**AND**

**AWARD**

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
**RECEIVED**

JUL 10 1998

**CONCILIATION**

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

Elayne G. Gold, Esq., of Counsel  
Roemer, Wallens & Mineaux, LLP  
Public Employer Panel Member

Richard Stevens, Staff Representative  
Council 82, AFSCME, AFL-CIO  
Employee Organization Panel Member

APPEARANCES:

For City of Rensselaer:

Jeffrey S. Hartnett, Esq., of Counsel  
Roemer, Wallens & Mineaux, LLP

For Rensselaer Police Officer's Union  
Local 1571, Council 82, AFSCME, AFL-CIO:

Christopher H. Gardner, Esq., of Counsel  
Hite & Casey, PC

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 City of Rensselaer ("City") and the Rensselaer Police Officer's Union, Local 1571, Council 82, AFSCME, AFL-CIO ("Union").

The City of Rensselaer is located in Rensselaer County and has a population of approximately 8,255 people (City Exhibit 4).

The Union is the certified bargaining agent for all employees of the Police Department in the positions of Police Officer, Detective, Detective Sergeant and Sergeant. There are currently 25 sworn Department members in the bargaining unit.

The last collective bargaining agreement between the parties covered the period which commenced August 1, 1993 and ended July 31, 1996 (Joint Exhibit 1).

Prior to the expiration of the 1993-96 Agreement, the parties began negotiations for a successor contract, but such negotiations were unsuccessful, and thereafter, the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and thereafter the Union filed a Petition for Interest Arbitration, dated June 19, 1997, pursuant to Section 209.4 of the Civil Service Law (see Petition, Joint Exhibit 2).

The City filed a Response to said Petition on July 2, 1997 (see Response, Joint Exhibit 3), which Response included the City's proposals to be submitted to interest arbitration.

On August 19, 1997, the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law.

A hearing was conducted before the undersigned Panel in the City of Rensselaer on January 30, 1998. At the hearing, 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 and engaged in discussions in Executive Session on May 18, 1998, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Session, this Panel was able to reach 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.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period commencing August 1, 1996 and continuing through July 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

The paramount issue as articulated by the Union is the award of an appropriate wage increase so that Rensselaer police are no longer the lowest paid police when compared to police in similar cities. The Union is seeking an 10% salary increase for each year of the two years covered by this Award. The Union maintains that such proposed significant increases are required and justified based on comparable salaries received by police officers in similar cities. The Union argues that the 10% increases are warranted when Rensselaer police salaries are viewed against those in other comparable departments, and offers as examples the cities of Albany, Cohoes, Watervliet and the town of East Greenbush.

The Union indicates that currently, the top Police Officer salary in Rensselaer is \$33,337. If the Union's request for two 10% raises was granted, Rensselaer police would be earning slightly more than Watervliet police at the top step for Police Officer. Rensselaer police would still be behind Cohoes police. By granting the two requested 10% raises, Rensselaer police would move at least into the low end of the mainstream in terms of salaries for police in comparable communities.

The Union argues that Cohoes and Watervliet are proper comparables, as each are small cities located on the Hudson River

within close proximity to the City of Albany. Cohoes, Watervliet and Rensselaer are also similar in demographics. Each is a predominantly blue collar and working class community. All have similar crime statistics: Rensselaer has 572 calls per officer, Watervliet has 572 calls per officer, and Cohoes has 466 calls per officer. The City of Albany has 666 calls per officer (see Union Exhibit 12).

The Union also indicates that due to the low salaries which Rensselaer police earn, many officers over the years have left the Rensselaer Police Department to work for the City of Albany, the Town of East Greenbush, and other local police departments. As an example, the Union offered the testimony of Rensselaer Police Officer John Hourigan, who has served on the Rensselaer Police Department for approximately 2.5 years. He currently earns \$28,507, which is \$6,000 less than a comparable officer earns in East Greenbush and more than \$8,000 less than a comparable officer earns in Albany. Officer Hourigan is currently on the civil service list and is awaiting appointment as an Albany Police Officer. The Union points out that 10 police officers have left the Rensselaer Police Department since 1980, with 8 of those going to work for other local police departments. Additionally, the Union argues that in the long run, the low salaries of Rensselaer police end up costing the City more in terms of the cost of training a new officer and results in the loss of officers to other departments.

The Union argues that the City is able to provide the increases sought herein. The Union presented the testimony of Michael Messina, a Senior Labor Economist employed by AFSCME, who indicated that the City currently enjoys sound fiscal health. Messina testified that the unreserved fund balance at the end of fiscal year 1996-97 totaled \$1,301,639 or 21.8% of total fiscal year 1996-97 operating revenues. This is well above the recommended guidelines of 5% of total operating expenditures (see Union Exhibit 1). The fiscal year 1997-98 general fund budget includes a contingency allocation of \$140,000, while the 1996-97 general fund budget included a contingency projection of \$100,000, with no contingency expenses reported (Union Exhibit 1). Both remain sources of funding the salary increases sought by Rensselaer police. The Union maintains that the City has the ability to pay such increases.

In response, the City argues that two other bargaining units in the City, the unit represented by the Civil Service Employees Association (CSEA) and the unit represented by the Professional Firefighters-Fire Drivers Association, both agreed to a 3.5% wage increase for fiscal year 1996-97 (see City Exhibits 5 and 8). Additionally, CSEA agreed to a 3.5% wage increase for fiscal year 1997-98 (City Exhibit 8). The City argues that it is a well established principle that the City may engage in pattern bargaining and that it would be inequitable to treat any unit

differently from another City bargaining unit. The City maintains that the Award for Rensselaer police should consider strongly the wage increases agreed upon with the other City bargaining units.

Regarding the City's ability to pay, City Treasurer Margaret Bordeau testified that the City's assessed valuation has decreased in every year since fiscal year 1994-95 (City Exhibit 6 at p.8). Specifically, the City's assessed valuation decreased \$2,350,000 from fiscal year 1994-95 to fiscal year 1997-98 (City Exhibit 6 at p.8). Further, the City has an increased tax default rate in fiscal year 1996-97. Additionally, there are a significant number of pending tax certiorari petitions which could potentially result in the loss of \$375,000 in tax assessments in the 1998-99 tax year.

Treasurer Bordeau testified that the contingency fund was increased from the normal amount of \$100,000 to \$140,000 in 1997-98 to pay for the City's increased legal bills arising out of a challenge to the opening of a nearby dump in East Greenbush which will have an impact on traffic in the City. Bordeau maintains that the contingency fund is to be used for unanticipated and unforeseen expenses and not to finance wage increases for City employees. With regard to the Union's claim that the City has underestimated revenues, Bordeau testified that all such revenues will be spent in the current fiscal year.

The City maintains that when the salaries and benefits of Rensselaer police are compared with those in cities of a similar economic situation, the City's offer of a 3% salary increase for each of two years is just and reasonable. The City offers as appropriate comparable communities the cities of Hudson, Johnstown and Mechanicville, and the village of Catskill. The City has selected these communities based on population, geography, income and poverty levels, bargaining unit size and terms and conditions of employment (see City Exhibit 4, "Municipal Characteristics"). The City maintains that when Rensselaer police salaries are compared with those in these communities, it is apparent that Rensselaer salaries are higher. The City concludes that Rensselaer police officers are fairly paid and do not warrant the significant increases sought by the Union in this proceeding.

In reaching the salary determinations herein, the Panel has considered the current state of the Capital District area's economy, the current unemployment rate, as well as the current fund balance (City Exhibits 1, 2 and 6). The Panel has also considered and reviewed the testimony and financial report prepared by AFSCME Senior Labor Economist Messina, which indicated that the City currently has adequate fund balances to pay the raises and other benefits sought by the Union in this proceeding (Union Exhibits 1, 2 and 3). In that regard, the

Panel has also considered the testimony of City Treasurer Bordeau, and the adopted budget for 1997-98 (City Exhibit 3), as well as the City's current Moody's bond rating of Baa (City Exhibit 7).

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.

The Panel Chairman is of the view that the best comparables for Rensselaer police officers are the cities of Cohoes and Watervliet. Both cities are appropriate comparables based on geographic location, population, and the relative size of the police departments which serve them. Additionally, both cities were used as comparables in the 1991-93 Interest Arbitration Award [PERB Case No. IA91-042, Award dated 12/29/92, (Prosper, Penal Chairman)]. I agree with Panel Chairman Prosper, who stated therein:

"Considering the criteria of competitive labor market area, population, jurisdiction, size of police force and other economic factors, an appropriate grouping of jurisdictions would be the Cities of Cohoes and Watervliet, and similar small municipalities in the Albany-Schenectady-Troy greater metropolitan area." (Joint Exhibit 5 at p.12)

Although there may be other upstate police departments which would also serve as comparables, it is sufficient for purposes of this Award to utilize Cohoes and Watervliet as comparables.

As of the expiration of the current collective bargaining agreement on 7/31/96, the top base salary for a Rensselaer police officer, which is reached after 5 years of service is \$33,337. That is significantly below what the top base salary is for officers in Cohoes and Watervliet.

Therefore, after careful consideration and review of all the data and material presented herein, the Panel has concluded that salary increases to Rensselaer police officers are warranted, and that the City does have the ability to pay such modest increases. These salary increases are based on the comparison with other police jurisdictions and the City's financial ability to pay.

The Panel has therefore determined that Rensselaer police unit members shall receive a 3.5% raise effective 8/1/96, a 2% raise effective 8/1/97 and a 2% raise effective 2/1/98.

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 8/1/96, and fully retroactive to that date, the salary schedule for all unit members shall be increased by 3.5%

2. Effective 8/1/97, and fully retroactive to that date, the salary schedule for all unit members shall be increased by 2%

3. Effective 2/1/98, and fully retroactive to that date, the salary schedule for all unit members shall be increased by 2%

### **DETECTIVE DIFFERENTIAL**

#### Discussion on Detective Differential

The 1993-96 Agreement provides in Article 20.6 that Detectives currently receive a \$1300 annual stipend per year. The Union seeks an increase in the detective differential to \$2000 per year.

The City is opposed to any increase in the detective differential and contends that they are adequately compensated with the current annual stipend.

The Panel finds that an increase of \$200, effective 8/1/97 is warranted.

#### AWARD ON DETECTIVE DIFFERENTIAL

Effective 8/1/97, and fully retroactive to that date, the annual stipend for Detectives shall be \$1500 per year.

### **SERGEANT DIFFERENTIAL**

#### Discussion on Sergeant Differential

The 1993-96 Agreement provides in Article 20.7 that Sergeants currently receive a \$2100 annual stipend per year. The Union seeks an increase in the Sergeant differential to \$3000 per year.

The City is opposed to any increase in the sergeant differential and contends that they are adequately compensated with the current annual stipend.

The Panel finds that an increase of \$200, effective 8/1/97 is warranted.

#### AWARD ON SERGEANT DIFFERENTIAL

Effective 8/1/97, and fully retroactive to that date, the annual stipend for Sergeants shall be \$2300 per year.

### **RECALL PAY**

#### Discussion on Recall Pay

Pursuant to Article 13.2 of the 1993-96 Agreement, an employee recalled to work before or after having completed the regular tour of duty is guaranteed a minimum of two (2) hours call in pay at time and one-half the regular rate of pay.

The Union proposes that recall pay be increased from two (2) hours of overtime to four (4) hours of overtime. The Union argues that two (2) hours of overtime is insufficient compensation to a unit member for the inconvenience of disrupting his/her day off or leisure time. Nor is two (2) hours adequate when considering preparatory time, travel time and changing time.

The City is opposed to any increase in recall pay. The City indicates that the current procedure which provides two (2) hours of overtime when recalled to work is equitable and is consistent with what is paid City Fire Drivers (see City Exhibit 4 at p.23).

The Panel finds that both the cities of Cohoes and Watervliet pay three (3) hours of overtime in recall situations (see Union Exhibit 1 at p.7). Additionally, other towns and villages suggested as comparables by both parties generally provide three (3) hours of overtime for recall situations. The Panel finds that an increase to a minimum of three (3) hours at the overtime rate for recall situations is warranted.

AWARD ON RECALL PAY

Effective on the Date of this Award, the minimum recall pay provided under Article 13.2 of the Agreement shall be increased to three (3) hours at the overtime rate.

**K-9 DOG HANDLER STIPEND**

Discussion on K-9 Dog Handler Stipend

Currently, there is an officer designated as a K-9 Dog Handler. This assignment requires additional training time and also requires daily care and training of the dog. Testimony of Sgt. John Dunn, who is currently serving in this assignment, indicates that he spends about two (2) additional hours each day performing such tasks. While the K-9 Dog Handler is reimbursed for food and veterinary care, there is no stipend for the additional time spent in caring for and training with the dog.

The Union is seeking a stipend of eight (8) hours at the overtime rate biweekly for time spent in performing such duties, which also occur on the Dog Handler's days off and vacation time.

The City acknowledges the effort and sacrifice that the current Dog Handler puts forth in caring for the Police Department's canine, and is willing to provide fair compensation for such extra time spent in the performance of duties.

Upon review, the Panel finds that additional compensation is warranted for the Dog Handler. Accordingly, the Panel awards that effective 8/1/97, the Dog Handler shall be paid a stipend of \$1000 per year for the performance of the additional duties associated with care and training of the canine.

AWARD ON K-9 DOG HANDLER STIPEND

Effective 8/1/97, and fully retroactive to that date, the officer assigned as K-9 Dog Handler shall receive a stipend of \$1000 per year.

**UNIFORM ALLOWANCE**

Discussion on Uniform Allowance

Article 21.2 of the 1993-96 Agreement provides that all permanent full-time members of the Police Department currently receive a uniform allowance of \$700 per year.

The Union seeks an increase to \$900 per year based on the fact that this allowance is used to purchase all replacement uniform items and to cover the cost of cleaning as well.

The City is opposed to any increase in the uniform allowance and maintains that the current allowance is equitable when compared to what is provided in other police jurisdictions.

The Panel finds that a modest increase in uniform allowance is warranted and awards that effective 8/1/97, the uniform allowance shall be increased to \$900 per year.

AWARD ON UNIFORM ALLOWANCE

Accordingly, the Panel Awards that effective 8/1/97, and fully retroactive to that date, the uniform allowance shall be increased to \$900 per year.

**ARTICLE 13.5 OVERTIME**

Discussion on Article 13.5 Overtime

Article 13.5 of the 1993-96 Agreement provides that there is a limitation on the maximum number of officers per shift who can be on compensatory leave or vacation leave at the same time. This limitation is currently no more than three (3) officers.

The City proposes that this be changed to a limitation of the absence of one (1) officer per shift, and that a provision be added so that there can be no use of compensatory time if such use causes overtime. The City indicates that the current limitation of three (3) officers, plus additional officers who may be absent due to GML Section 207-c leave and/or sick leave, results in high overtime costs for the City (see City Exhibits 9 and 17).

The Union is opposed to any change in Article 13.5 regarding the limitation on the maximum number of officers per shift who can be on compensatory leave or vacation leave at the same time.

The Panel finds that the current overtime costs incurred by the City in complying with the provisions of Article 13.5 are indeed high. From 8/9/96 through 7/31/97, the City spent approximately \$135,000 on police overtime, which represents over 16% of the Police Department's total base payroll (see City Exhibit 9). This is excessive and requires modification from the current limitation.

Therefore, the Panel finds that effective 30 days from the Date of this Award, Article 13.5 shall be modified to provided that no more than two (2) officers per shift may be absent on compensatory leave and/or vacation leave at the same time.

AWARD ON ARTICLE 13.5 OVERTIME

The Panel Awards that effective 30 days from the Date of this Award, Article 13.5 shall be modified to provide that no more than two (2) officers per shift may be absent on compensatory leave and/or vacation leave at the same time.

**GML SECTION 207-c PROCEDURE**

Discussion on GML Section 207-c Procedure

The City seeks to implement a General Municipal Law Section 207-c procedure (see Joint Exhibit 2 for specific procedure). The City indicates that GML Section 207-c provides no procedure for the administration or termination of the statutory benefits provided. Without any such procedure, issues concerning the granting, denial or termination of benefits often results in expensive and time consuming court litigation.

The Union is opposed to a procedure being implemented by this Panel and would prefer the opportunity to negotiate one. The Union does not believe that all efforts to negotiate a GML Section 207-c procedure have been fully exhausted.

The Panel is in agreement that a GML 207-c procedure would benefit both parties. The Panel also finds that such a procedure would ideally be the subject of negotiations between the parties. Therefore, the Panel directs the parties to meet and negotiate an appropriate GML 207-c procedure. If the parties are unable to reach agreement on such a procedure within 90 days of the Date of this Award, the issue shall return to the Panel Chairman for final resolution.

AWARD ON GML SECTION 207-c PROCEDURE

The Panel directs the parties to meet and negotiate an appropriate GML 207-c procedure. If the parties are unable to reach agreement on such a procedure within 90 days of the Date of this Award, the issue shall return to the Panel Chairman for final resolution.

**RETENTION OF JURISDICTION**

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

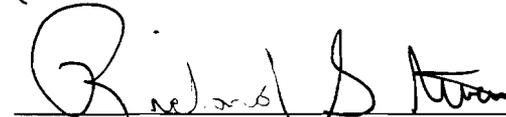
**DURATION OF CONTRACT**

This Interest Arbitration Award covers the period commencing 8/1/96 and continuing through 7/31/98, as provided by the Taylor Law in Section 209.4(c)(vi).

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

7/8/98  
Date  
of Award

~~(Concur)~~  
(Dissent)

  
\_\_\_\_\_  
RICHARD STEVENS  
Employee Organization Panel Member

7/2/98  
Date

~~(Concur)~~  
(Dissent)

  
\_\_\_\_\_  
ELAYNE G. GOLD, ESQ.  
Employer Panel Member

7/7/98  
Date

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

On this 8<sup>TH</sup> day of July 1998, 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 1999

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

On this 2<sup>nd</sup> day of July 1998, before me personally came and appeared Richard Stevens, 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.

ROBERT E. SMITH  
Notary Public, State of New York  
No. 02815084038  
Qualified in Saratoga County  
Commission Expires August 31 1999

*Robert E Smith*  
Notary Public

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

On this 7<sup>th</sup> day of July 1998, before me personally came and appeared Elayne G. Gold, Esq., 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.

*Andrea Naseman*  
Notary Public

ANDREA S. NASEMAN  
Notary Public, State of New York  
No. 4773541  
Qualified in Albany County  
Commission Expires 10/31/98