

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter of the interest arbitration between,  
  
THE TOWN OF NEW WINDSOR,  
Employer,  
  
-and-  
  
THE POLICE BENEVOLENT ASSOCIATION OF  
NEW WINDSOR,  
  
Union.

OPINION AND AWARD

PERB CASE NO.

IA97-043  
M97-327

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED

Before the following Public Arbitration Panel:

MAY 26 1999

Chairperson: Michael S. Lewandowski  
Chairman

**CONCILIATION**

Member: Anthony V. Solfaro  
Employee Organization Panel Member

Member: John F. O'Reilly, Esq.  
Public Employer Panel Member

Appearances:

For the Town: Doug E. Solomon, Esq.

For the PBA: John K. Grant, Esq.

On February 16, 1998, the Patrolmen's Benevolent Association of New Windsor ("PBA") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The Town of New Windsor ("Town") and the PBA had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement between the parties that

expired on December 31, 1996.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated June 1, 1998 from PERB. The panel met and conducted a hearing in the Town of New Windsor on September 18, 1998, October 13, 1998, November 23, 1998 and January 11, 1999. The panel met in executive session in New Windsor on April 6, 1999.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning police departments that they considered to be comparable to that of the Town. The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Fair Employment Act. The final disposition of the issues is the result of the deliberations of the panel and resulted in the majority of the panel supporting the award. The neutral chair and the Public Employer member of the panel voted in favor of the award. The Public Employee Organization panel member voted against the award.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

There was unanimous agreement that the duties performed and the responsibilities assumed by the members of the PBA are consistent with those performed by employees who hold the title of Police Officer and associated titles in the jurisdictions offered by the parties for consideration for comparison by the panel. For purposes of salary comparison, both parties proposed comparing the wages and benefits paid to full time police officers employed by towns in Orange County while the PBA petitioned the panel to pay closer attention to the wages and benefits offered to police in the Town of Newburgh and the Town of Woodbury.

COMPENSATION:

The panel concluded that the Town has the ability to pay the increases found appropriate here without the imposition of increased taxes on the Town's residents. Even if the most conservative budget data is accepted by the panel, the Town has an estimated fund balance of \$1,205,809. Evidence was presented to show that some of the fund balance is being held in reserve for possible expenditures but the balance is sufficient to fund the increases in compensation provided by this award. Testimony at the hearing from the Town's Comptroller showed that the Town has budgeted sufficient money to pay for the increases found appropriate here.

Having found that the Town has the ability to pay an increase, the panel then addressed the appropriateness of the amount of increase. The Town proposed no increase in wages for 1997 and a three percent (3%) wage increase effective January 1, 1998. The PBA proposed a 4.75 percent (4.75%) increase in each of the two years of the award.

After careful consideration of the positions of both parties and after careful review of the data presented, the majority of the panel concluded that because the members of the PBA currently receive compensation well above that received by

comparably employed police officers, the PBA's proposal must be rejected. The majority of the panel chose also to reject the Town's position on wages. Instead, based on the ability of the Town to pay an increase and recognizing that the data presented shows an inflation rate of approximately 2% per annum, the majority of the panel voted to award a 2% increase in the first year of the award and to accept the Town's proposal of a 3% increase in year two. These increases shall also apply to longevity increment rates. The awarded raises recognizes the fact that the PBA members currently are compensated well above their counter parts but because the raises meet or exceed inflation the PBA members do not see an erosion of earnings caused by inflation. The increases are well within the Town's ability to pay.

Further analysis of the comparability of wage data follows.

COMPARABILITY DATA:

The majority of the panel concluded that the data presented shows that the members of the PBA are currently compensated significantly higher than police officers in comparable departments.

TOWN POLICE FORCES IN ORANGE COUNTY

## TOP SALARY

| TOWN                      | 1996     | 1997     | 1998        |
|---------------------------|----------|----------|-------------|
| Town of Newburgh          | \$42,671 | \$44,714 | \$45,931.00 |
| Town of Woodbury          | \$40,772 | \$42,321 | \$44,041    |
| Town of Tuxedo            | \$38,522 | \$39,768 | \$40,868    |
| Town of Warwick           | \$38,314 | \$40,040 | \$42,037    |
| Town of Cornwall          | \$36,024 | \$37,825 | \$38,960    |
| Town of Chester           | \$32,000 | \$37,426 | \$38,785    |
| Town of Crawford          | \$32,365 | \$35,536 | \$36,749    |
| Town of Walkill           | \$36,057 | \$36,958 | \$37,697    |
| Town of Goshen            | \$33,750 | \$35,613 | \$36,681    |
| Town of Blooming Grove    | \$40,211 | pending  | pending     |
|                           |          |          |             |
| Average                   | \$37,069 | \$38,840 | \$40,186    |
|                           |          |          |             |
| Town of New Windsor*      | \$47,860 | \$47,860 | \$47,860    |
| Amount Above the Average* | \$10,791 | \$9,020  | \$7,674     |

\*Without the application of any salary increase for New Windsor.

The foregoing data shows that the members of the PBA, without any salary increases as applied by this award, currently enjoy the highest salaries of any Town police force in Orange County. Their salaries greatly exceed not only the average, but when compared to those Orange County Town police forces that have reached an agreement for 1998, the last year of this award, the PBA's salaries still exceed the next highest paid comparable force by \$1929.00 per annum in wages without the application of this award. After the application of salaries provided by this award New Windsor base salaries rise to \$50,282.00 in 1998 thus placing the New Windsor salaries \$10,096.00 above the average salaries paid by the other Towns. This data speaks clearly against providing the increases sought by the PBA.



award.

Once again, the data clearly shows that the salary proposal offered by the PBA should be rejected. The salary increases awarded here fit the data when considering inflation and the Town's ability to pay.

NIGHT SHIFT DIFFERENTIAL: Recognizing the comparable salary data detailed above, the majority of the panel found that PBA's proposal for payment of night shift differential could not be accepted. The panel however did find that given the testimony provided and data presented, providing a night shift differential to those employees who work on the midnight to 8:00 a.m. tour as a scheduled tour of duty (not on an overtime assignment) would provide compensation for such duty and may alleviate concerns the Town has for staffing of that tour. Based on the foregoing, the panel voted to provide a 50 cent (\$.50) per hour night shift differential payment for hours actually worked during the period midnight through 8:00 a.m. as the officer's regularly scheduled work tour. The night shift differential payment shall not be made for any other purpose (such as, for example, for purposes of hours worked on an overtime assignment that is not part of an officer's regularly scheduled work tour).

CLOTHING ALLOWANCE: Again considering the salary/compensation data referenced in detail above, the majority of the panel voted to reject the PBA's clothing allowance increase proposal and to accept the Town's clothing allowance proposal which increases, effective January 1, 1998, the clothing allowance paid to those members who receive \$500 per year to \$550 per year.

HEALTH INSURANCE AND SICK LEAVE CONVERSION: The majority of the panel viewed the PBA's proposal to require the Town to provide health insurance, paid for by the Town, to employees after retirement as an extremely costly proposal. Given the current health insurance rates (1999 family plan rates are at \$6,382.68) and recognizing that the rates continue to go up at a dramatic pace, the proposal calls for a huge financial burden to be accepted by the Town. The PBA's proposal includes an offer to limit the Town's exposure by making the benefit available only to those employees who, at time of retirement, surrender 185 days of leave as opposed to being paid for that leave. Examination of the offer reveals that even in the best case scenario, using today's rates, the Town would be relieved of paying a retiring Sergeant \$39,162.43 at retirement. Considering the health insurance premium rate (family coverage \$6,382.68 per year) the surrendered leave would only cover premiums for just over six years, even assuming a modest rate of annual increase in premium

cost of 4.2% per year. The panel simply saw this proposal as too expensive. The panel does however, recognize that health insurance for retirees is an issue that needs to be addressed. The PBA's proposal which includes a willingness to work with the Town to find ways to offset the cost of health insurance faced by its members, calls attention to the fact that there may be merit in the parties working together in future negotiations to address this issue and the panel encourages them to do so.

SICK LEAVE USE: The majority of the panel voted to reject the PBA's proposal to allow use of sick leave in minimum increments of one hour or any part there of. The panel deemed the application of such a change to be problematic from an administrative standpoint.

VACATION: The PBA proposed increasing vacation leave, effective January 1, 1997. The proposal calls for additional vacation days being added commencing with a members 21<sup>st</sup> year of service consistent with the schedule that follows.

|                                |         |
|--------------------------------|---------|
| Starting 21 <sup>st</sup> year | 21 days |
| Starting 22 <sup>nd</sup> year | 22 days |
| Starting 23 <sup>rd</sup> year | 23 days |
| Starting 24 <sup>th</sup> year | 24 days |
| Starting 25 <sup>th</sup> year | 25 days |

A review of the data provided reveals that although New Windsor officers accrue vacation at a greater rate in the early years of service than members of comparable Town police forces, New Windsor officers fall behind other officers as they reach 20+ years of service. The PBA proposal would bring the New Windsor officers in line with comparable employees and the panel voted to accept this proposal.

The majority of the panel also voted to remand the PBA's proposals regarding Staffed Police Oriented Education and Jury duty leave to the parties future negotiations. The majority of the panel found insufficient evidence of need to approve these proposals.

HEALTH INSURANCE PREMIUM CONTRIBUTION: The members of the PBA currently do not contribute towards the health insurance premiums paid by the Town. The Town proposed requiring PBA members to contribute 50% of the premium for dependant health insurance and 35% of the premium for individual coverage. The majority of the panel found that the data presented did not show a need for the current benefit to change. The Town's fiscal condition is such that there is not justification to impose a contribution.

PAYMENT FOR WAIVER OF HEALTH INSURANCE COVERAGE: Under the

terms of the expired Agreement, a PBA member who opts not to have the Town provide health insurance coverage receives a \$1000 bonus payment. The bonus payment is justified because the Town is relieved of providing health insurance and thus realizes a significant savings in premiums paid. The Town proposes modifying the benefit to make the bonus payment only if the member remains in the employ of the Police Department for at least 3 months following the termination of health insurance coverage paid for by the Town. The majority of the board found this proposal to be consistent with the intent of such a bonus payment and the proposal is accepted.

WORK SCHEDULE; The Town proposed additional authority to change the work schedule of members with 6 days notice, no increase in total annual tours of duty, unless necessary, in order to allow the Town the flexibility to maintain coverage on shifts that are short of coverage (generally the midnight shift). There was discussion as to the cause of the shortage of coverage but the majority of the panel found that the Town's proposal, if accepted, would represent a significant change in terms of PBA members' employment and thus deemed it appropriate to refer the matter to future negotiations between the parties. The majority of the panel voted to reject the Town's proposal regarding training time for the same reasons referenced in the

this section. There appears to be a legitimate set of concerns driving the Town to make this proposal but the panel feels that the parties need to first address these issues thoroughly in negotiations before it would be appropriate for this arbitration panel to impose a change.

DISCIPLINE: The Town proposes withholding payment of accumulated sick leave to any employee terminated as a result of disciplinary proceedings. The PBA opposes this proposal on the grounds that any employee so terminated has earned the credits and taking them away would be improper. The majority of the panel voted not to accept this proposal.

PAYCHECKS: The Town currently pays makes payments of certain entitlements such as Holiday pay via checks separate from the regular paychecks. The Town proposes eliminating all separate checks and making all compensation payments to employees via regular paychecks. The Town cites the administrative costs of producing separate paychecks when payments may be made with little additional cost via regular paychecks as the reason for the proposal. The majority of the panel voted to accept this proposal.

SUMMARY OF THE AWARD

By a majority of the vote, the panel makes the following award for the period January 1, 1997 to December 31, 1998.

1. Base wages and longevity increments shall be increased by two percent (2%), effective January 1, 1997.
2. Base wages and longevity increments shall be increased by 3 percent (3%), effective January 1, 1998.
3. Effective January 1, 1997, employees who actually work the midnight to 8:00 a.m. shift as a part of a regularly scheduled tour of duty shall receive a fifty cent (\$.50) per hour shift differential. This night shift differential shall not be made for any other purposes, such as for example, for hours worked as part of an overtime assignment that is not part of an officer's regularly scheduled work tour.
4. Effective January 1, 1998, the uniform clothing allowance for employees who receive \$500 per year shall be increased to \$550 per year.
5. Effective January 1, 1997, the rate of earned vacation shall be increased for all employees reaching their 21<sup>st</sup> year of service in accordance with the scheduled listed in the opinion portion of this award.
6. Effective January 1, 1997, bonus payments for employees electing not to receive health insurance coverage from the Town will only be payable if the employee remains in the employ of the Town Police Department for at least three (3) months after health insurance coverage terminates.
7. Effective January 1, 1997, although the inability to implement retroactively is recognized, the Town shall not be required to produce separate paychecks for payments such as Holiday pay.

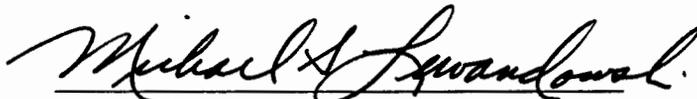


AFFIRMATION

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

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award. The award may also contain concurring or dissenting opinions from panel members. Any such concurring or dissenting opinions are attached and made part of this award.

Date: *MAY 25, 1999*

  
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MICHAEL S. LEWANDOWSKI

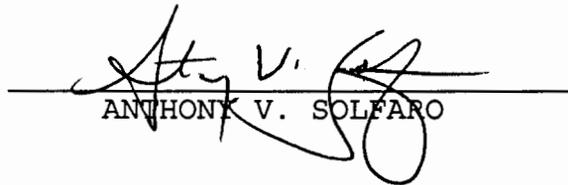
Concur.

Date: *MAY 11, 1999*

  
\_\_\_\_\_  
JOHN F. O'REILLY

Concur.

Date: *MAY 21, 1999*

  
\_\_\_\_\_  
ANTHONY V. SOLFARO

Dissent.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest  
Arbitration between

THE PATROLMEN'S BENEVOLENT  
ASSOCIATION OF NEW WINDSOR, INC.,

Petitioner,

- and -

THE TOWN OF NEW WINDSOR,

Respondent.

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Dissenting Opinion of  
Anthony V. Solfaro

Case No. IA97-043; M97-327

**DISSENTING OPINION**

I am compelled to dissent from this Award. I will set forth the reasons for this dissent specifically with regard to the rulings on salary, retirees' health insurance, and jury duty leave. Notwithstanding these specific subject matters, the reasons stated for the dissent herein can also be applied to several other provisions of the Award. I dissent because despite the language in the first paragraph of page 3 of the Award, the Chairman has not adequately considered the statutory criteria upon which an interest arbitration award must be based. Furthermore, application of the statutory criteria has been done in an inconsistent manner so that there is no logic or consistent rationale that can justify the terms of this Award. Indeed the terms of the Award seem to have determined the application of the statutory criteria rather than the statutory criteria determining the terms of the Award.

The criteria by which the interest arbitration panel must base its Award are set forth in Civil Service Law 209.4(c) v a-d. These criteria are:

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

The panel may also consider “any other relevant factors”. Civil Service Law 209.4(c) v. The relative weight to be given each of these factors is completely within the discretion and purview of the panel. Buffalo v. Rinaldo, 41 NY 2d 764, 1977. However, the panel is also charged with making a “just and reasonable determination of the matters in dispute”. To do this, it is incumbent upon the Chairman to explain the degree of weight to be given to each of the criteria and the reasons therefore. The majority must then apply that criteria as weighted in a consistent manner. To do otherwise will result in an Award that is neither just nor reasonable. That is the situation here.

It is clear that in regard to salary, the Chairman has given great weight to the first of the criteria, comparability, and given little or no weight to the other statutory criteria. This has been done without explanation. So heavily weighted toward the first criteria is the Award that I believe it constitutes an abuse of discretion. Aggravating this abuse, the Chairman has only considered one aspect of comparability, top step of base salary, while ignoring other aspects that provide a more complete and accurate portrait of comparability.

The Chairman relies exclusively upon a comparison of top step of base salaries for police officers in Orange County towns in deciding to award salary increases of 2% in 1997 and 3% in 1998. The other criteria of Civil Service Law 209.4(v) b that would justify higher increases in salary have been ignored. There is no dispute concerning ability to pay. The 2% and 3% are “well within the Town’s ability to pay” (p. 5 of Award). Thus, the ability of the Town to pay greater increases is acknowledged. The Award acknowledges that the duties and responsibilities

of New Windsor police officers are consistent with those performed by police officers in comparable jurisdictions. The parties' previously negotiated agreements are given no consideration.

Had Civil Service Law 209.4(c) v b been given more than lip service in the Award, the salary increases would have to be greater. The record is clear that the Town has a healthy unappropriated fund balance of \$1,705,000 in 1997, constituting 26.3% of the total budget. Sales tax revenues are steadily increasing while real property taxes for Town residents from 1995 through 1997 increased a total of only eight tenths of one percent. Assessed value is growing and the Town has allocated an additional \$500,000 for taxpayer relief in 1998-1999. The Town agreed to 5% raises for its employees represented by the CSEA and for unrepresented employees in 1997. The Town budgeted funds sufficient to increase police personnel base wages by 3% in 1997.

In light of these facts, particularly the budgeting of 3% for salary increases in 1997, the award of 2% and 3% on salaries is neither just nor reasonable. Unfortunately, the Chairman does not explain why the ability to pay criteria, often times the most critical in interest arbitration proceedings, receives so little weight relative to comparability. In fact, the reading of the Award indicates that ability to pay received virtually no consideration in determining the salary increases awarded in relation to the comparability criteria. The reason for this relative weighting is not offered.

No weight is given to the statutory criteria set forth in Civil Service Law 209.4(c) v d, the terms of previously negotiated collective agreements between the parties, to arrive at the award on salaries. To the extent that the members of the PBA are in a good position relative to police officers in comparable communities, it is the result of collective bargaining agreements negotiated between the parties in the past. The Chairman has disregarded the strong policy that favors collective bargaining and fails to respect the determinations by the parties with regard to the salary and benefits afforded to the Town of New Windsor police officers. If the Town of New Windsor PBA members are the highest paid police officers in Orange County, it is only because the Town agreed to make them so. If they have traditionally received salaries a certain percentage above the average of Orange County Town police departments, it is only because the Town agreed. The Chairman in this case has altered patterns and relationships established during years of collective bargaining without offering an explanation that would justify disregarding the criteria of Civil Service Law 209.4(c) v d.

However, perhaps even more disturbing than the Chairman's outsized emphasis on comparability at the expense of the other statutory criteria is the disregard of evidence critical to a just and reasonable determination of comparability. Town of New Windsor police officers reach their top salary after ten years of work, which is longer than that of any other Town in Orange County. Yet, the Chairman never even considers this fact in determining comparability. Town of New Windsor police officers receive no health insurance upon retirement or any employer contribution to provide this benefit. Members of the Town of New Windsor PBA are only one of three police departments in the Country not to receive this benefit to some degree. Since this benefit can have a current value in excess of \$6,000 per year for the remainder of an

officer's life from their date of retirement, New Windsor PBA members obviously suffer from a substantial disadvantage in this regard. Yet, these obvious deficiencies in critical benefits have been disregarded by the Chairman in the determination of comparability. Indeed, it would not be unreasonable to conclude that the higher base salaries of police officers in New Windsor is the quid pro quo for having to wait longer than other police officers to receive their top salary and are necessary to defray the substantial costs of providing health insurance for themselves and their families upon retirement. Yet, the Chairman seeks to bring the base salary of police officers more into line with comparable communities without taking any step toward doing the same with regard to years of service to reach top salary or health insurance upon retirement.

The application of the skewed and limited data cited to determine comparability was seriously flawed and a prime example is on page 6 of the Award where the Chairman incorporates a Table which is misleading. It is overly simplistic in that it attempts to draw a direct comparison between a 10 year New Windsor police officer and those with less than 10 years. It does not provide what all 10 year police officers earn, which would include longevity, night differential and/or other payments which affect the Average and Amount Above the Average within the Table. Some examples at 10 years are:

|                  | 1996   | 1997   | 1998   |
|------------------|--------|--------|--------|
| Town of Chester  | -----  | 40,285 | 41,695 |
| Town of Warwick  | 40,102 | 41,912 | 44,013 |
| Town of Woodbury | 42,811 | 44,881 | 46,830 |

Indeed, the only consistency in this Award is the inconsistent application of the statutory criteria. Health insurance upon retirement is the most glaring example. The record shows that all but three police departments in Orange County provide some degree of health insurance for

retired police officers. Eighteen (18) of the twenty-seven (27) municipalities with police departments within Orange County provide fully paid health insurance for their retired officers and their eligible dependents. Three others provide this benefit without cost to the retired unit member. However, in denying the PBA's proposal in this regard, not one word about comparable police departments is mentioned in the Award (see pages 10-11). The benefit is rejected solely upon the cost (ability to pay) to the employer despite the stated recognition that "...health insurance for retirees is an issue that needs to be addressed" (p. 11 of Award).

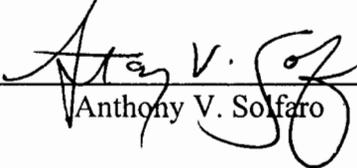
Therefore, when the amount to be awarded for salary increases was determined, comparability was the paramount factor with little regard given to ability to pay. When health insurance for retirees was considered, ability to pay was the paramount factor with no regard given to comparability. The grossly inconsistent application of the statutory criteria is manifestly unjust and unreasonable.

The same inconsistent application of the statutory criteria is seen with regard to the Award on the PBA's Jury Duty Leave proposal. In a one sentence ruling the Award states, "The majority of the panel found insufficient evidence of need to approve these proposals" (p. 12 of Award). Once again the comparability factor, so critical to the Chairman in determining salaries, becomes irrelevant.

The record shows that 14 of 27 municipalities in Orange County provide some contractual leave with pay without charge to accruals for police officers who must serve on jury duty. This is a remarkable number since jury duty leave has only recently begun to be negotiated

by police officers due to the statutory amendment that made them eligible for service on juries several years ago. Had the Chairman consistently applied the comparability criteria, the PBA proposal concerning jury duty leave would have been awarded. Indeed, the reason for denial of this proposal is impossible to determine since there is no evident application of the statutory criteria to this proposal.

No interest arbitration award that selectively culls limited data to determine the application of a statutory criteria such as comparability can ever be just and reasonable. An interest arbitration award that inconsistently applies the statutory criteria from proposal to proposal can never be just or reasonable. I therefore must respectfully dissent from this Award since I believe that the panel has failed to meet its statutory duty to make a just and reasonable determination of the matters in dispute.

 5/21/99  
Anthony V. Solfaro