

**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Interest Arbitration  
between  
CITY OF MOUNT VERNON  
and  
POLICE ASSOCIATION OF THE CITY OF  
MOUNT VERNON, INC.

**CHAIRMAN'S  
OPINION  
and  
AWARD**  
  
**PERB Case No.  
IA98-004;M97-357**

**Before:** Public Arbitration Panel  
Richard P. Bunyan, Public Employee Panel Member  
Terence M. O'Neil, Public Employer Panel Member  
Randall M. Kelly, Public Panel Member and Chairperson

**Appearances:**

**For the Association:**

Joseph P. Baumgartner, Esq.  
Joseph J. Antonaccio  
Joseph L. Rizzo  
Nick Boncardo  
Davy Rhodes

Attorney  
President, PBA  
PBA Representative  
Treasurer, PBA  
President Elect, PBA

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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**CONCILIATION**

**For the City:**

Sharon N. Berlin, Esq.  
Frederick Watts  
Maureen Walker  
Michael Mosca  
Pat Sorensen  
Bob Thompson

Attorney  
Deputy Police Commissioner  
City Comptroller  
Chief of Police  
Chief Accountant  
Chief Accountant

**INTRODUCTION**

Pursuant to §209 of the New York State Civil Service Law (the "Taylor Law" or the "Act") and in accordance with the Rules and Regulations of the New York State Public Employment Relations Board, this interest arbitration proceeding was conducted for the purpose of making a just and reasonable determination on the matters in dispute between the City of Mount Vernon (the "City") and the Police Association of the City of Mount Vernon, Inc. (the "PBA"). Hearings in the above matter were held on October 7 and December 1, 1998 at City Hall, Mount Vernon, before the undersigned who were selected to serve as a Public Arbitration Panel pursuant to the provisions of the Taylor Law. At the

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hearings, both parties were given full opportunity to present their evidence, testimony and argument. Given the involvement of the advocate panel members in the prior negotiations, neither party filed post hearing briefs and the record and hearing were declared closed upon close of oral argument on December 1, 1998. The Panel subsequently met in Executive Session on December 22, 1998, February 21, June 17, June 25 and July 3, 1999, during which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the Award that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. Those issues presented by the parties that are not specifically addressed in this Award were also carefully considered by the Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

### STATUTORY STANDARDS

In arriving at this Award the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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 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.

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(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

#### BACKGROUND AND CIRCUMSTANCES OF THE IMPASSE

The City of Mount Vernon is a residential suburb of New York City located in southern Westchester County with a population of approximately 67,000. It covers an area of approximately 4.24 square miles.

In addition to the PBA, the City also negotiates with four other bargaining units -- the Firefighters, the Deputy Chiefs, the CSEA and Local 456 of the Teamsters.

The City has a full-time police department consisting of a Police Commissioner, 2 Deputy Commissioners, and a Chief of Police. The bargaining unit consists of approximately 175 members.

The parties engaged in collective bargaining for a successor agreement to an Interest Arbitration Award (Jt. Exh. 4) whose terms were incorporated into a Collective Bargaining Agreement format covering the period from January 1, 1996 to December 31, 1997 (Jt. Exh. 3). Collective negotiations did not result in a new Agreement and impasse was declared. The Association filed a Petition for Interest Arbitration on April 9, 1998 (Jt. Exh. 1). The City then filed its response (Jt. Exh. 2).

#### ISSUES OUTSTANDING

In their Interest Arbitration Petition the PBA submitted the following issues to the panel:

- |                 |  |
|-----------------|--|
| 1) Article III  | Wages - Stipends - Longevity                                     |
| 2) Article IV   | Overtime   |
| 3) Article VI   | Uniform Clothing Allowance                                       |
| 4) Article VII  | Leaves of Absence (Personal, Vacation, Terminal, and Sick leave) |
| 5) Article VIII | Health Insurance   |
| 6) Article XI   | Meal Periods   |
| 7) Article XII  | Grievance Machinery  |
| 8) New Article  | Past Practice  |
| 9) New Article  | Air Conditioned Vehicles   |
| 10) New Article | Shift Differential   |
| 11) New Article | Minimum Man Power  |
| 12) New Article | Promotional Examinations   |

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surpluses to curry favor with the tax payers by reducing taxes in an attempt to circumvent an accurate analysis of the City's ability to pay.

In addition, the PBA contends that the City's percentage of taxes collected (93.6%) compares favorably with the City of Yonkers (93.4%) and matches exactly the average for upstate New York Cities (Assn. Exh. 10). Also, the Association notes, that although Mount Vernon's percentage of taxes collected has declined between years 1991 through 1995 (2.5%), this compares favorably with New Rochelle (3.0%) for the same years and White Plains (4.4%) for prior years.

Similar comparisons were introduced into the record with respect to detective differential (Assn. Exh. 25), longevity payments (Assn. Exhs. 19 and 20), clothing allowance (Assn. Exh. 21), night shift differential (Assn. Exh. 27) personal leave (Assn. Exh. 22), sick leave (Assn. Exh. 23), retiree health insurance (Assn. Exh. 24), and police work chart (Assn. Exh. 28). The record is abundantly clear that overall compensation for Police Officers in Mount Vernon is less than that of officers in New Rochelle and White Plains, the appropriate comparables.

As to the intrinsic worth of its members, the PBA presented strong evidence that its members are among the most heavily used police in New York State (Assn. Exhs. 5-7).

**City Position:**

The City argues that over the years they have paid police officers a salary that exceeds the rate of inflation and that economic relief is needed. While acknowledging historical comparability to White Plains and New Rochelle, they note that they have fallen behind these two cities with respect to taxes collected, external aid, and new economic growth.

The City presented substantial evidence that it suffers in any comparison of wealth to White Plains, New Rochelle and Westchester County as a whole. For example, it presented evidence that its residents are the poorest in the County and 25% below the wealth level of White Plains and New Rochelle (City Exh. 9 and 18). It has the highest percentage of residents living below the poverty level in the County (City Exh. 6A). And, at a time when the population of Westchester County as a whole has increased by 1.1%, the City has lost 1.1% of its population (City Exh. 11).

By one of the other common measures of wealth, the average home in Mount Vernon is \$186,000, while the average home in White Plains is \$260,000 and in New Rochelle, \$284,500 (City Exh. 10).

Comptroller Maureen Walker testified that the City has not met its projected revenues for 1998. According to the projected budget, the City should have collected \$8,857,000 in sales tax, but as of November, it was actually projected to collect only

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\$8,617,000, a shortfall of \$232,000. This is due in part to a 93% property tax collection rate (the same rate for the last four years). The City has undertaken efforts to improve collection of the \$5 million outstanding since 1992, including aggressive notification and foreclosures. She conceded that the City has "made no great effort to foreclose" properties, starting the process on 12 to 15 properties only during the month prior to the last hearing date.

Another factor cited by Walker are continuing tax certioraris and expensive claims that had to be settled (City Exhs. 52 and 53). Finally, sales tax revenues are down. The City projected \$8.8 million in 1998 (17% of the budget), but only collected \$8.6 million.

She continued that some departments were already over budget, for example, outside labor counsel (for EEO matters) and police overtime, which only exacerbates the condition (City Exh. 51).

According to Walker, the only possible source to make up the shortfall is the Fund Balance. However, the City has had to use \$1.7 million of the Fund Balance in 1998 and has already budgeted \$1.5 million to balance the 1999 budget (City Exh. 58). The City used another unexpended \$550,000 in 1998 to lower the property tax increase (City Exh. 58)--an increase that was 4.7% even with this infusion of money and would have been 10% without it. The budget itself is projected to increase 4.79% (City Exh. 58). This leaves only \$2.2 million of the original \$5.9 million in the Fund Balance.

Comptroller Walker also testified that the Police Commissioner and the Assistant Commissioners received a 2% increase (over the 1995 levels) in June 1997; 2% in December, 1997 and 3% in June, 1998, less than the increases accorded Police Officers during that time period (City Exh. 58). The City also argues that while its police may be comparatively low paid, so are its other unionized employees and its elected and appointed officials (City Exhs. 19 and 22).

In sum, the City proposes a two-year salary freeze. It argues that it cannot afford a large wage settlement and there are serious deficiencies in the City in both tax delinquencies and anticipated tax revenues. That the City negotiates with other units further mandates restricting contract costs for the Police Association. Directly related to the salary issue is the City's demand for health care containment. The City proposal is that its police officers contribute 20% toward their health insurance. The City offer evidence that police in New Rochelle (post 1/1/83 hires pay 18%) and in White Plains (post 1/1990 hires pay 25% for 5 years) contribute towards their health insurance (City Exh. 61). The City argues that to fund any salary increases they must obtain relief in the health care area.

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**Discussion:**

It is now well established that the comparable Westchester County police department contracts are the cities of White Plains and New Rochelle. Arbitrator Joan Parker, in her 1993 Interest Arbitration Award between these same parties:

For purposes of Section 209.4. of the Civil Service Law, it is appropriate to make comparisons among Mount Vernon, New Rochelle, and White Plains. Certainly these cities have more in common with each other than they do with the small, affluent suburban communities that comprise most of Westchester County. In fact all three cities are quite similar with respect to size, number of police officers, police department budget and salaries. For this reason, the Chairperson has relied heavily on Mount Vernon's standing relative to New Rochelle and White Plains in fashioning her award regarding salary increases (See Award of Dr. Joan Parker, PERB Case No: IA 92-002., p. 23, dated May 10, 1993; Jt. Exh. 5).

Arbitrator Joel M. Douglas adopted Parker's reasoning in his 1997 Interest Arbitration Award for these parties (Jt. Exh. 4). The parties agree that these are the comparable communities. This Panel will similarly "rely heavily on Mount Vernon's standing relative to New Rochelle and White Plains in fashioning [their] award regarding salary increases" and other economic matters.

Testimony from Lt. Joseph Hunce and evidence presented by the PBA was received concerning "badge drain" (Assn. Exhs. 8-14). This refers to a phenomenon whereby many Mount Vernon Police Officers leave their job after only a few years with the Department in order to secure another, usually higher paying, police officer position elsewhere in the region. Arbitrator Parker noted this "badge drain" problem in her 1993 Award and awarded a special "leather and gun allowance" of two percent over the life of the contract. While the turnover associated with "badge drain" continues, as Arbitrator Douglas noted, it appears that the rate of turnover has diminished over the last several years.

The position of the City concerning "badge drain" is that it is a fact of life that cannot be prevented and if individual officers leave the Department for other positions they cannot prevent it (City Exh. 48). Indeed the City suggested that officers who remain in Mount Vernon have a stronger commitment to the community and that their work and dedication are acknowledged. While no specific monies were awarded to minimize "badge drain", the Panel considered this issue in making its determinations.

In addition to its own internal documents and the testimony of Comptroller Maureen Walker, the City heavily relied on the latest Moody's Investor Service Municipal Credit Research Report dated December 2, 1998 which downgraded the rating for the City's

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General Obligation Bonds from Aa1 to A2 (City Exh. 6B). In comparison, White Plains' bonds are rated Aa1 and New Rochelle's are rated A1 (City Exh. 6B). The Moody's Report relied on and summarizes much of the same evidence offered to this panel (City Exhs. 1-8). According to Moody's:

Moody's Investors Service has assigned an A2 rating to the City of Mount Vernon, New York's Series 1998 General Obligation Bonds. The rating reflects the city's strained financial condition due to poor property tax collections, weakening tax base with below average wealth levels, and modest levels of rapidly amortizing debt.

#### POOR TAX COLLECTIONS STRAIN BOTH CITY AND SCHOOL DISTRICT FINANCES.

Moody's expects the city's already strained financial condition to persist given poor property tax collections. The city faces financial pressure due to its inability to collect a substantial portion of its property tax levy owed from its Municipal Housing Authority since 1987. As a result, the city maintains a receivable totaling over \$4.6 million at the end of fiscal 1997. In addition, the city collects property taxes for the school district and is required, by law, to provide 100% of the district levy annually. As of April 1996, the city owed the school district approximately \$1.7 million in back taxes and interest accrued since 1987, due, in large part, to the city's inability to collect from the housing authority. The school district filed suit against the city in 1996 and, following a settlement in 1997, the city paid the school district approximately \$1.15 million in back taxes. While city officials have considered a number of remedies, including purchasing the housing authority and creating a low-income cooperative, Moody's remains skeptical that the city will be able to recover taxes owed from the housing authority.

#### LIMITED ECONOMY WITH BELOW AVERAGE WEALTH LEVELS

Moody's expects the city's limited economy to continue to decline given ongoing tax certiorari claims and a decreasing population. Largely the result of tax appeals, the city has experienced declines in assessed valuation averaging 2% annually since 1995. In addition, the city's population has declined from 1990 levels to the current 65,862. Finally, the city's median family income and per capita income of \$41,120 and \$15,835, respectively, fall below the downstate New York averages of \$58,302 and \$21,903 and the city's full value per capita is an average of \$34,381.

#### MODEST DEBT BURDEN

Moody's anticipates that the city's already modest debt

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burden will remain manageable given rapid repayment of principal and minimal future borrowing plans. At 2.1%, the city's direct debt burden is well below average with a rapid repayment schedule retiring nearly 78% of principal within ten years. The current offering finances payment of the city's portion of a settlement in a wrongful death judgment, the purchase of various pieces of equipment, and refunds of two outstanding bond anticipation notes. The city has no current plans to issue additional long term debt.

Not everything in Mount Vernon is doom and gloom, however. The PBA offered evidence of some renewed economic activity in the City. For example, three companies are building new headquarters in Mount Vernon to expand and relocate in Mount Vernon (Homarus, Inc., a wholesale and retail seafood distributor; Munrod Custom Upholsters, moving from Pelham; and DIMAR Contracting, moving from Tuckahoe). A retail food company is moving into the former Roy Rogers site and the City is negotiating with Consumer Promotions International to move into the long vacant former Commercial Decal building, which the City owns. In November, 1997, CVS Pharmacy opened a shopping center in the former Postal Service Distribution Center and a Shoprite Center opened in January, 1998. The Metropolitan Transportation Authority has approved a \$7.4 million reconstruction of the Mount Vernon East railroad transportation center. Finally, there are published reports that the Chinese will build a \$50 million Sino-American Friendship Plaza Hotel over the Metro-North railroad tracks (Assn. Exh. 31).

In the short run, however, the testimony of Comptroller Walker and the Moody's Report are convincing that the City does not have the immediate financial wherewithal to afford the 9% salary increases being requested by the PBA. On the other hand, the City does have the financial ability to pay for a fair and equitable salary, especially in relation to the percentage increases negotiated in the other collective bargaining units in the City and the percentage increases negotiated in New Rochelle and White Plains (Assn. Exh. 16).

It was stipulated that the City negotiated staggered 3% wage increases for 1998 and 1999 with its Fire Fighters Union (City Exh. 69), with CSEA (City Exh. 63), the Deputy Chiefs (City Exh. 60) and IBT, Local 456 (City Exh. 65), all as part of five year settlements expiring December 31, 2000.

And, like it or not, the several entities involved in collective bargaining with the City of Mount Vernon (including the PBA) have engaged in pattern bargaining over at least the last seven years (City Exh. 22). In some rounds, the PBA leads--in other rounds it follows. The pattern has been maintained from at least 1990 to date except when one of the unions agreed to significant cost savings in other areas (for example, in 1995 and 1996 when the Teamsters agreed to reduce the number of sick days for new hires). Even Parker's 2% "leather and gun allowance" was passed on to other units.

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Each party here argues that the pattern should be broken--in its favor. The City argues that its financial condition has substantially worsened since it agreed to the three year contracts with the other unions. For example, it has had lower revenues due to declining property tax collections, lower sales tax collections and lower State aid than anticipated. It has had to pay out two substantial civil judgments, both originating out of police department personnel actions (City Exh. 70).

The PBA argues that it deserves more than the pattern due to the fact that its members have been doing substantially more work than in the past with fewer members (Assn. Exh. 7), in part because the Department continues to suffer from "badge drain", resulting in understaffing; and the fact that its members are substantially behind White Plains and New Rochelle in terms of total compensation.

Pattern bargaining within a public employer organization can be a useful guideline for interest arbitration (See, e.g., United States Postal Service, 83 LA 1120 (Chairman Martin M. Volz, 1985)). In some significant respects, it allows the parties to set a base line for the arbitration panel. In other words, it tells the arbitration panel that a certain percentage increase or benefit or term of employment is both acceptable and affordable to the public employer and, in the absence of different conditions, should probably be followed.

Reference to pattern bargaining also fits with the statutory criteria. Thus, the pattern is evidence of the interests and welfare of the public and the employer's ability to pay. It continues the parities established by the parties giving effect to the comparison between the peculiarities of the trades and professions within the public employer and it gives meaning to the terms of prior collective bargaining agreements between the parties. All of these are statutory criteria.

In this particular instance, when each party is strenuously arguing that the pattern should not be applied to this employee group, and the conflicting evidence is balanced, application of the pattern allows the panel to "make a just and reasonable determination of the matters in dispute".

And, in this instance, the application of the 3% pattern is in line with settlements in comparable communities. Thus, the police contract in New Rochelle provides for a 3% salary increase in both 1998 and 1999 (as part of a three year agreement) (Assn. Exh. 16). The police contract in White Plains (the result of an Interest Arbitration Award (Assn. Exh. 36)) provides for a retroactive 2% increase on July 1, 1997 and a 2% increase and a \$2100 bonus on January 1, 1999 (Assn. Exh. 16). While 3% each year here will not allow the Mount Vernon police to catch up with their counterparts, it will not put them anymore significantly behind.

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As Interest Arbitrator Douglas wrote when he awarded split 2% and 4% increases:

The salary adjustments reflected herein will enable unit members to keep pace with the adjustments received in other communities, while at the same time enable the City to continue to rebuild its financial base without seriously jeopardizing its financial future.

With this determination, the parties are encouraged to undertake negotiations for a new contract when the PBA will be in a position to set the pattern for a longterm agreement when, hopefully, some of the optimistic projections will come to fruition and the PBA can share in the City's better position.

### **Sergeant's and Lieutenant's Differential**

As noted, the PBA is also seeking to amend the existing pay scale to increase the Sergeant's, Lieutenant's and Captain's differential from 18% to 20% above First Grade Patrolman, Sergeant and Lieutenant respectively.

As part of the settlement of the Fire Fighters contract, the City agreed to a 1/2% increase in the Lieutenant's differential over the Firefighter's rate, going from 18.5% to 19% (City Exh. 35). Based in part on this, the PBA lowered its request to 1% for Sergeants, Lieutenants and Captains in light of the additional work they are performing and general understaffing in the Department. The City insisted that there should be no increase in the differential since the increase was part of a three year settlement and its financial position has worsened. In addition, and most relevant to the City, the City obtained a lower starting rate for firefighters and lower increments for the first four years of a firefighter's employment when it agreed to the 18.5% differential two contracts ago.

In line with the above reasoning concerning pattern bargaining, it is the conclusion of this Panel that the Sergeant's differential should be increased to 18.5% above the Police Officer's rate.

### **Other Compensation Issues**

With respect to the other compensation items demanded by the PBA and the City (for example, a demand that employees pay 20% toward their health insurance), the parties will be back in negotiations in the immediate future and that many of these items can, at that time, be bargained. For the Panel to make determinations on these items is unwarranted at this time. Similarly, the City demand for employee contribution to health insurance is a matter better handled by the parties themselves in future negotiations.

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Based upon the evidence and arguments presented the Public Arbitration Panel awards as follows:

- Effective July 1, 1998, the Wages listed in Article III with the Leather and Gun Allowance shall be increased by three percent (3%).
- Effective April 1, 1999, the Wages listed in Article III with the Leather and Gun Allowance shall be increased by three percent (3%).
- The parties should incorporate the Leather and Gun allowance into one rate.

The Sergeant's differential shall be increased to 18.5% above the Police Officer's rate.

#### TERMINAL LEAVE

The City has raised the issue of adding a provision to the contract to revise Article VII(D), Terminal Leave to read:

A thirty (30) day terminal leave of absence shall be granted to members of the unit immediately preceding their retirement, provided they have a minimum of fifteen (15) years of active service in the City.

In order to be eligible for the terminal leave payment, the Officer must submit an irrevocable notice of resignation for purposes of retirement with the actual date of retirement to the City ninety (90) days prior to the effective date of retirement. This may be waived at the discretion of the Commissioner.

Provided an irrevocable notice of resignation for purposes of retirement with the actual date of retirement is given by October 1 of the calendar year prior to retirement, members of the unit shall be entitled to a lump sum payment for all accrued time and terminal leave due as of the date of retirement. Failure to provide such notice will result in the forfeiture of eligibility for such entitlements (Jt. Exh. 2).

According to the City, this revision is necessary due to a continuing problem raised by the fact that certain officers have put in their notice of retirement "year after year" on December 31 and then decide not to retire (City Exhs. 71 and 72). This makes it impossible for the City to plan and make intelligent hiring decisions. It leads to unnecessary and expensive overtime. The City proposal would give these officers a lump sum payment and allow the City to plan better.

The PBA resists this proposal, in large part, because of its concern for protection of officers taking disability retirement,

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the timing of which is totally up to the vagaries of State administration.

The City's concerns appear well founded (City Exh. 71) and its intent appears honorable. The PBA's concern can be addressed by adding to the last sentence of the second paragraph the following language; "Such notice shall be waived in cases of disability retirement."

In addition, the forfeiture requested by the City is more than it needs to deal with the problem described. Accordingly, the last sentence of the proposal shall be amended to read, "Failure to provide such notice will result in the officer taking such time as he or she has taken in the past." With these amendments, the provision is adopted.

### RANDOM DRUG TESTING

The City has also made a proposal for Random Drug Testing of non-probationary police officers (the City already has random drug testing for probationary officers and reasonable suspicion testing for regular police officers).

It is clear that this is a mandatory subject for bargaining for police officers and that, in general, it serves a useful purpose. At the same time, it represents a potential invasion of privacy and raises constitutional issues. As such, this is an issue best dealt with by the parties directly.

Therefore, it is the direction of this Panel that the issue of Random Drug Testing be referred to the parties for further negotiations. As with the Fire Fighters and Deputy Chiefs, if the parties cannot come to a mutual agreement over the issue, it shall be referred to last best offer arbitration. The Fire Fighters agreement contains the following language:

B. The parties shall negotiate the procedures for reasonable suspicion and random drug testing. If the parties are unable to reach an agreement by December 1, 1997, the issue shall be submitted to arbitration under the provisions of the grievance procedure herein, provided however, it shall be submitted directly to arbitration and shall be on a last best offer basis and the decision of the arbitrator shall be binding. The intent of the parties is that the procedures shall be implemented by January 1, 1998.

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It is the determination of this Panel that this language should be adopted with new dates, i.e., December 1, 1999 and January 1, 2000, ~~delete~~ the reference to "reasonable suspicion" testing deleted since this is already in place, and a sentence be added to the beginning of the section to reflect that which is already in place, "The City already has random drug testing for probationary officers and reasonable suspicion testing for regular police officers."

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**DETECTIVE WORKCHART**

Finally, the City has proposed a new Detective's Workchart. Chief Mosca testified that currently, Detectives work as follows:

1 shift            8 a.m. - 5 p.m. (24 hours off)  
1 shift            5 p.m. - 1 a.m. (16 hours off)  
1 shift            5 p.m. - 8 a.m. (72 hours off)  
Return at 8 a.m.

According to Chief Mosca, this made it difficult for Detectives in the General Investigation Squad to follow up on their investigations since oftentimes they are not working during normal working hours.

The City is proposing a minor adjustment to the schedule to the following:

1 shift            8 a.m. - 4 p.m.  
1 shift            2 p.m. - 11 p.m.  
1 shift            5 p.m. - 8 a.m.  
72 hours off and return at 8 a.m. (Jt. Exh. 8).

This would allow Detectives more time during normal business hours to follow up on their investigations with little change to the Detectives (City Exh. 48).

There is little reason not to make this change to the Detective Workchart and this proposal is to be adopted.

**ARBITRATION**

The PBA is requesting that the existing advisory arbitration provision be changed to binding arbitration. As a matter of labor relations, the Panel Chairman would like to see the parties commit to binding arbitration. At the same time, I see the reason that the City wants to keep advisory arbitration. Indeed, in the early days of the Taylor Law, no public employer was initially willing to agree to binding arbitration.

The City asserts that it needs the protection of advisory arbitration to protect the public against unreasonable arbitration awards and allow it to govern as it is mandated. At the same time, the City points out that it has accepted all prior arbitration awards even those relatively few cases that have been adverse to its public interests. At least five prior interest arbitrators have addressed the issue and continued advisory arbitration.

The PBA points out that this is not an economic item for the City and its cries of poverty cannot shield it. In terms of comparability, no other police department in Westchester County still has advisory arbitration, including White Plains and New Rochelle.

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Professor Matthew A. Kelly defined and described Advisory Arbitration in his 1987 book, Labor and Industrial Relations: Terms, Laws, Court Decisions, and Arbitration Standards (Johns Hopkins University Press, 1987) 3, as follows:

A procedure almost exclusively in the public sector. In fact, the term is incongruous to traditionalists and to labor and management generally in the private sector, where arbitration is intended and expected to provide finality in the settlement of a dispute. However, at the outset of collective bargaining in the public sector, when managerial rights were intertwined with the doctrine of sovereignty of the state, there were many questions as to an arbitrator's legal authority to "bind the state." In any event, whenever public sector unions were unsuccessful in attaining "final and binding" arbitration at the bargaining table, they settled for advisory arbitration as "the next best thing to it." In advisory arbitration the parties are not bound by the arbitrator's award, and this award is not enforceable in the courts. Use of advisory arbitration is currently on the decline, although it still persists, especially in certain sections of the country and predominantly in negotiations of teacher contracts, in which the boards of education insist on retaining final authority in adjudging whether an arbitrator's award is consistent with policies.

Obviously, the City believes that this provision has value (albeit non-monetary) to it and, in the absence of some offset, is reluctant to agree to a change. At one point, I believed that the Panel should force the City to agree to binding arbitration and I still believe that binding arbitration is proper for the City and the Association. Indeed, that belief and whether this was the appropriate time to require the City to accept binding arbitration is the principle cause for the long delay in issuing this Award and I apologize to the parties for that.

However, in the long run, my belief in collective bargaining overrode my belief in the necessity to force the City to accept binding arbitration and I will not so order at this time. It is my hope that the City will seriously consider the Association's demand for binding arbitration in the next round of negotiations and the parties will work out a suitable system for themselves. If not, I would urge the next Interest Arbitrator (if there is one) to grant the Association's demand. Accordingly, it is the judgement of this Panel to not change the existing provision for advisory arbitration at this time.

#### Other Issues

There were other <sup>ISSUES</sup> to which there appeared little, if any, differences between the parties. I therefore award that the City's "Housekeeping" proposals 1 a-b, and 2 (Dues Checkoff) be awarded. Other issues not addressed by this Panel are not adopted.

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(PROPOSAL)

6. The City's "Housekeeping" proposals (Item 1 a-b) and Dues Checkoff (Item 2) are awarded. All other proposals are denied.

PBA CONCURS \_\_\_\_\_

PBA DISSENTS RFB

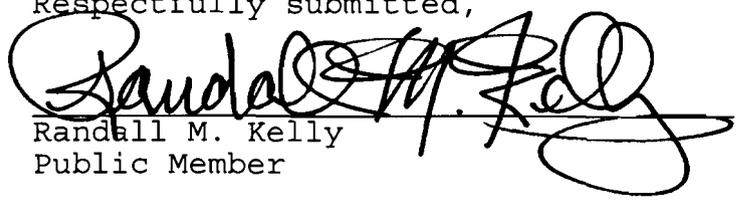
CITY CONCURS TMO

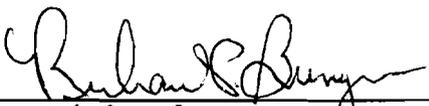
CITY DISSENTS \_\_\_\_\_

RFB  
TMO

September ~~15~~, 1999  
22

Respectfully submitted,

  
Randall M. Kelly  
Public Member

  
Richard P. Bunyan  
Public Employee Panel Member

  
Terence M. O'Neil  
Public Employer Panel Member

TMO  
RFB