STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration between THE CITY OF ROCHESTER Public Employer, -and- ROCHESTER POLICE LOCUST CLUB, Employee Organization. PERB Case No. IA99-021; M99-118	**OPINION** **AND** **AWARD**

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

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

Ronald G. Evangelista, Locust Club President
Employee Organization Panel Member

Daniel C. Wissman, Manager of Labor Relations
Employer Panel Member

APPEARANCES:

For City of Rochester:
Linda S. Kingsley, Esq., Corporation Counsel
Yvette Chancellor Green, Esq., of Counsel

For Rochester Police Locust Club:
Trevett Lenweaver & Salzer
Lawrence J. Andolina, Esq., of Counsel

BACKGROUND

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

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

The Union is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants and Captains employed by the City, exclusive of four sworn employees assigned to the Chief of Police, the Chief's Aide, the Commanding Officer of the Professional Standards Section, the Commanding Officer of the Research and Evaluation Section, and exclusive of the Chief of Police and all Deputy Chiefs.

At the present time, the Rochester Police Department ("Department") is comprised of an authorized strength of 708 sworn full-time positions, with an additional 168 civilians working in various bureaus of the Department.

The last collective bargaining agreement between the parties covered the period which commenced on July 1, 1997 and ended on June 30, 1999. Prior to the expiration of the 1997-99 Agreement, the parties began negotiations for a successor contract, but such negotiations were unsuccessful. Thereafter, acting pursuant to the rules of procedure of PERB, impasse was declared and a PERB appointed Mediator met with the parties. Mediation was also unsuccessful, and on November 9, 1999, the Union filed a Petition for Interest Arbitration (Joint Exhibit 1) pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on November 29, 1999 (Joint Exhibit 2), and thereafter, on December 13, 1999 the undersigned Public Arbitration Panel (Joint Exhibit 3) was designated by PERB, pursuant to Section 209.4 of the NYS Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were conducted before the undersigned Panel in the City of Rochester on February 28 and 29, March 20 and 21 and April 12, 2000. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, including briefs, and both parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, argument and issues submitted by both parties. After significant discussion and deliberations at the Executive Sessions, held from May 2 through May 4, 2000, a majority of the Panel, consisting of the Panel Chairman and the Employee Organization Panel Member, reached agreement on the terms of this Interest Arbitration Award.[1] At the request of the Employee Organization Panel Member, a Summary of Award was issued on May 11, 2000, with the understanding that the Opinion would follow. That Opinion is set out herein, along with the 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.

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[1] Accordingly, all references to "the Panel" in this Award shall mean the Panel Chairman and the Employee Organization Panel Member.

Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period July 1, 1999 through June 30, 2001.

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

> a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
>
> b) the interests and welfare of the public and the financial ability of the public employer to pay;
>
> c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;
>
> d) the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "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."

The Rochester Police Department is located in Monroe County, and is one of the four major cities in upstate New York. As it did in a previous Interest Arbitration before this Panel Chairman,[2] the Union maintains that Rochester police should be compared with other Monroe County local police departments which either are contiguous or very close to the City; specifically, Brighton, Gates, Greece, Irondequoit and Webster. The Union has presented current collective bargaining agreements from all of the cited jurisdictions, for review by the Panel.

When compared with the above cited Monroe County police agencies, a Rochester Police Officer at the top base pay of $45,403 is the lowest paid within Monroe County for 1999. Brighton police received a 4% increase in 1999, bringing top base pay to $51,830; Greece police received a 4% increase in 1999, bringing top base pay to $52,712; Irondequoit police received a 3.75% increase in 1999,

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[2] See Matter of City of Rochester and Rochester Police Locust Club, PERB Case No. IA94-011, Award covering 7/1/93 through 6/30/97, Selchick, Panel Chair, Award dated 6/27/95.

bringing top base pay to $51,532 and Webster police also received a 4% increase in 1999, bringing top base pay to $50,874 (see Union Exhibits, collective bargaining agreements).

The Union indicates that the low salary ranking of Rochester police must be viewed in the context of the fact that the City of Rochester has the highest rate of violent crimes per officer within Monroe County (Union Exhibit 19) and a higher crime rate than the other major cities in upstate New York of Albany, Syracuse and Buffalo.

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

The City maintains that if there are any comparables to Rochester police, it must be that of the other large cities in upstate New York--Albany, Syracuse and Buffalo. When compared with such cities, which have an environment more akin to the City of Rochester than that of the suburban communities cited by the Union, members of the Rochester police are simply not that far behind in terms of salary, and are second only to Buffalo police by a very small amount of money (see Employer Exhibits 6,10 and 12). The City further argues that members of the Rochester police department have little in common with the duties, tasks and problems faced by

police in suburban communities, and it is simply not appropriate to compare Rochester salaries with those of suburban police who perform a very different job under very different daily circumstances.

Panel Determination

As previously indicated in the Award for the period 1993-97, the Panel finds that the appropriate comparable police departments to Rochester are those of the larger upstate cities of Albany, Syracuse and Buffalo, and to a lesser extent, police departments in surrounding Monroe County suburban communities.[3] The comparison of the major upstate cities as the primary comparables is based on the fact that the population, size of police departments, urban setting, school district responsibilities and overall similarities are greater with other upstate cities than with suburban police departments in Monroe County.

Rochester has a population of approximately 232,000 people with a police department of almost 675 sworn members. Buffalo is of course the largest of the upstate cities, with a population of approximately 328,000 and a police department of approximately 960 sworn members; Syracuse has a population of approximately 165,000 people with a police department of approximately 515 sworn members and Albany has a population of approximately 95,000 with a police department of approximately 335 sworn members.

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[3] Towns of Brighton, Irondequoit, Greece and Webster.

Cities have different problems and concerns than villages and towns, particularly in the range of services provided and the needs of the citizens so served. Yet, it must also be considered that Rochester police work and live in the same community as police in the surrounding suburban police departments, and often work together in providing police services.

Accordingly, the Panel finds that the appropriate comparables to Rochester are the upstate cities of Albany, Buffalo and Syracuse, and to a lesser extent, those police departments in the surrounding Monroe County suburban communities.

ABILITY TO PAY

Union Position

The Union maintains that the City clearly has the financial ability to pay for fair and equitable increases, which it has requested in the nature of a 6% salary increase for each of the two (2) years to be covered by this Interest Arbitration Award. The Union contends that the evidence presented at the arbitration clearly establishes that the City is in sound financial health and in fact has one of the more stable economies in upstate New York.

The Union asserts that the City itself has recognized that it enjoys an excellent financial situation, and in the City's Official Statement for Bond Anticipation Notes in March 1999, it indicated that:

> "Rochester has always been the 'economic jewel' of the state and has been able to maintain a strong economy, even though the major employers have gone through significant downsizing. Even with the Kodak announcement of downsizing, outsiders are amazed that Rochester is not a community in panic, that spending is still on the rise and that the unemployment rate is at 3.7% even after the downsizing of the past six years." (Employer Exhibit 34, page 12)

The Union argues that this clear ability to pay on the part of the City is further supported by the fact that the City has been able to accrue significant reserve funds. The combined reserves of the City General Fund and the City School District have grown by over $52 million over the past three years. The current combined balances are more than 1/3 of combined annual expenses, with a significant portion of the reserves unappropriated.

Kevin Decker, an economic consultant with extensive experience in the public sector,[4] testified on behalf of the Union regarding the City's overall financial condition. In his financial report (Union Exhibit 23) Mr. Decker details a sound financial situation for Rochester, based in part on the City's declining use of its taxing limit and moderate tax rate increases. In fact, property tax revenues accounted for only 16.3% of City revenues (down from 20.7% in 1995), which is low for upstate cities. That is due to the fact that a large portion of City revenue is generated from non-residents, through the sales tax, increased State aid and interfund revenues such as the water fund and other services.

After reviewing the current budget and the prior year budget, as well as required forms filed with the NYS Office of the State Comptroller, Mr. Decker found that recent tax increases have been modest and in line with the rate of inflation, and that the City has underbudgeted its success in tax collections. Over the past 8 years the City has collected over 92% of its tax levy, yet continues to budget only 80% in collections, resulting in a revenue surplus at the end of the budget year. The City also has great success in collecting over 50% of delinquent tax bills (see Union Exhibit 23.9). According to Mr. Decker, this underbudgeting of tax revenues alone will result in an extra 6 million dollars beyond what the City initially budgeted for 1999-00.

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[4] Mr. Decker's resume (Union Exhibit 22) details his extensive experience in public sector finance.

Further, Mr. Decker found that the City's share of sales tax revenues are increasing and have risen to 65 million in the last fiscal year (see Union Exhibit 23.11). These funds are used for general City purposes and the trend shows that sales tax revenues will increase for the next several years at the rate of 3% each year. The City has meanwhile, budgeted based on an increase of only 2% in sales tax revenues; a difference of 1% which is equal to approximately 1.5 million per year (see Union Exhibit 23.12).

According to the Union, the City has over 20 million in General Fund equity at the end of the 1999 fiscal year (see Union Exhibit 23.18). When all City operating funds are considered, the total fund balance at the end of fiscal year 1999 was 93.34 million or only 34.4% of expenditures. The Union also indicates that the City's General Obligation Bonds have been rated at "A1" by Moodys, which is the 5th best ranking out of a possible 21 rankings and rated at "AA" by Standard and Poors, which is the 3rd best ranking out of a possible 22 rankings. The Union also indicates that in addition to the underestimation of property tax revenues and sales tax revenues, the City has also bugeted other revenue items significantly lower than previous collections would suggest (see Payments in lieu of taxes, utilities gross receipts tax, mortgage tax and interest and earnings revenues).

In summary, the Union maintains that the City is in sound fiscal condition and clearly has the ability to pay the salary and other increases sought by the Union herein.

City Position

The City maintains that it is facing severe financial challenges for 2000-01 and beyond. The 1999-00 City Budget forecasted an 8.2 million General Fund deficit, growing to 39.4 million in 2004-05 (see Employer Exhibit 1; 1999-00 Budget). The City indicates that the key factors causing such deficit is the lack of anticipated State aid, increased retirement contribution costs, and increased health insurance costs.

The City argues that the largest source of revenue for the General Fund is the property tax, which has been steadily declining for the past 6 years (see Employer Exhibit 1 at p.1-29). From fiscal year 1998-99 to 1999-00 the assessed valuation for property tax levies has decreased by 20 million. Current reassessment of real property in the City indicates a 7.16% decline in homestead properties and a 1.01% decline in non-homestead properties (see Employer Exhibit 2). Legal appeals by taxpayers over assessments will very likely result in further reductions and additional declining revenues. While the Monroe County generally has prospered, it is the result of urban sprawl, which has resulted in loss of assessed value to the City. Yet the need for City services to its residents continues to increase. City residents have the lowest median income in Monroe County and a higher concentration of residents at or below the poverty level (see Employer Exhibit 5). In sum, the City indicates that it is has the poorest taxpayers in the County paying the highest taxes of all County property owners.

The City was anticipating State aid in the amount of 8.9 million for 1999-00 to close the deficit gap. While such aid was provided, it was a "one shot" revenue and there is no guarantee of future State aid in such amounts. The future State aid for the City is critical to avoiding further deficits.

The City is also laboring under increasing health insurance costs for City employees. Since 1997, the rate for the BC/BS Blue Million family plan offered to police bargaining unit members has increased by 40.7%; Blue Choice family has increased by 52.3%; and Preferred Care family has increased by 38.5% (see Employer Exhibit 8).

The City also indicates that sales tax revenues account for approximately 22% of the gross revenue of the City. While the formula employed for sales tax distribution with Monroe County has resulted in an annually increasing share of revenue to the City, that is no longer the case. The City is the recipient of 35.63% of the first three cents of all sales tax revenues, with a cap of 19.22% for the final penny for period covered by this Award. This results in the fact that the City can only realize an increase in sales tax revenue if there is growth in the base of taxable sales. And then such increased revenue is still limited by the sales tax revenue cap. With a flattened sales tax revenue stream, the City must look again to its property taxes for increased revenue.

As the City has previously indicated, property taxes for City residents are already among the highest in Monroe County. In order to close the budget gap, property taxes would have to be increased by 23.93% for homestead and 14.82% for non-homestead. The City maintains that such increases are simply not feasible.

Richard Hannon, City Budget Director, testified that even with State aid of 8.9 million as budgeted, the City is facing a deficit. The City has currently budgeted 3% in salary increases for each of the 2 years to be covered by this Award, which monies will be taken from the contingency fund. Mr. Hannon disputes the Union's claim that the City has underbudgeted revenues and indicates that property tax revenue is properly budgeted at 140 million and properly accounts for STAR revenues, although under a separate budget line (see Employer Exhibit 1, 1-19). The other items mentioned by the City as underbudgeted are monies all accounted for and planned for; specifically, payments in lieu of taxes, utilities gross receipts tax, mortgage tax and interest and earnings. While Mr. Hannon admitted that the City is conservative in projecting income, it must also consider that there is a declining value of City properties, which will seriously impact on property tax revenues. The City also budgets for an annual 3% increase in expenditures.

Finally, the City argues that it cannot create a sound budget that is continues to depend so heavily on State aid, which may or may not be appropriated in future years. The City strives to provide a balance between the needs of residents, the burdens of taxpayers and a fair employment package for City employees. The City maintains that raising the already high tax rate is unrealistic, and that the City must manage within existing revenues and simply cannot afford the financial package sought by the Union.

Panel Determination

First and foremost, the Panel is of the view that generally speaking, upstate New York is in the middle of sound economic times, and by all indicators, the economy will continue to be good in the next several years. It is not the "gloom and doom" as painted by the City. To the contrary, unemployment rates are lower than ever and the upstate region continues to have job growth.[5] Private sector jobs throughout New York State continue to grow, as the state hit a record for the 13th straight month, with a gain of over almost 160,000 jobs since June 1999.[6] By all accounts, the City of Rochester has a positive financial future: AP reported on

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[5] See Albany Times-Union, July 21, 2000, wherein Rochester unemployment rate is at 3.7% as of June 2000. In fact, this is the lowest reported unemployment rate in several years.

[6] NYS Department of Labor, Bureau of Labor Statistics, June 2000 data.

May 25, 2000 that Rochester moved ahead of Buffalo as the biggest job hub in upstate New York.[7] As indicated in the AP article:

> "Buffalo's employment count has stagnated in the last decade, growing by 8,400 jobs while Rochester's surged by some 45,000. In the last year, Rochester has picked up 7,500 extra jobs while Buffalo has added just 1,800, the [NYS] Labor Department said.
> * * *
> Most of the growth in Rochester has been in transportation and public utilities, wholesale/retail trade and service business. The only job decline in Rochester has been in manufacturing jobs."

Simply stated, the economic forecast for Rochester is good.

A good strong upstate economy and more jobs for the Rochester region translates directly into increased consumer spending and increased sales tax revenues for the City of Rochester. This is the case even noting the change in tax sharing formula. While the City has been conservative in anticipating sales tax revenue growth, all indicators are that growth will continue at the rate of increase in past years, or better. This will result in increased revenue to the City, most of which will be collected from non-residents of the City. With an ever decreasing reliance on property tax revenues (down to 16.3% in fiscal year ending 6/30/99 from 20.7% in 1995) the City will be in the enviable position of increasing revenues without increasing the tax burden on City residents.

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[7] As reported by Associate Press in Albany Times-Union, May 25, 2000.

In regard to property tax revenues, the Panel notes that the City has great success in collecting the tax levy and does tend to underbudget the amount it will collect (see Union Exhibit 23.4). The City has consistently collected over 92% of its tax levy but continues to anticipate only collecting 80% for budget purposes. Again, this is a conservative and commendable budgeting practice, but one which also leaves the City with additional revenues to fund the modest wage increases found herein. These same conservative practices will result in additional revenues in the areas of savings in retirement contributions, utilities gross receipts tax, mortgage tax and overall earnings and interest from current City financial investments.

In reaching the conclusions herein, the Panel has reviewed all relevant financial data of the City, including the Official Statement accompanying the issuance of Bond Anticipation Notes in the amount of $77,021,000 in March of 1999 (Employer Exhibit 34),which speaks of a strong economy and a solid high technology employment situation. The Panel has also reviewed the current budget for 1999-00 (Employer Exhibit 1), and has also reviewed and considered the constitutional debt limits and margins, based on statistics compiled by the NYS Office of the State Comptroller (Union Exhibit 23).

Additionally, the Panel has considered the sales tax revenue to be received by the City, the total tax levy for both the City and the City School District, the tax collection experience of the City, as well as the City's General Fund Revenues and Expenditures for 1993 through 1999 (Union Exhibit 23.15).

The Panel notes that the General Fund of the City is the single largest operating fund directly administered by City officials and the City Council, with the exclusion of funds designated for the City School District. For the past three fiscal years, the City has maintained a fund balance that has ranged from a low of $7,905,000 on June 30, 1993 to the current high of $20,259,292 on June 30, 1999 (see Union Exhibit 23.14; NYS Office of State Comptroller reports, and Employer Exhibit 1: 1999-00 City Budget). As of June 30, 1999, the close of the last fiscal year, the fund balance was $20,259,292 with an unreserved balance of $12,493,430 (ibid).

It is the analysis of this Panel that based on the fact that the costs of the wage increases and other monetary awards herein for fiscal year 1999-00 have been generally budgeted for and included in the appropriations for that fiscal year and that the costs of this Award for 1999-00 can be funded out of the existing budget appropriation, using contingency fund monies as necessary and appropriate. Therefore, it is the considered judgment of the Panel that no additional taxes shall be required to fund this Award.

Additionally, as will be discussed *infra* in this Opinion, there will be some savings generated during the current fiscal year due to changes in health insurance benefits to be provided to new police hires and due to other operational changes in the Police Department, which will reduce overtime costs.

As to the monetary impact of the Award for 2000-01, it is clear that such appropriation can be funded from future budgets, and do not represent either an unfair or unreasonable burden upon the taxpayers of the City of Rochester. Finally, the Panel notes that the State aid amount for 2000-01 is almost $9.5 million; a significant sum, which with proper budgeting, will ease the City's deficit. While this Award may require the City to make adjustments in expenditures, it is the view of the Panel that such balancing of necessities was contemplated when interest arbitration was approved by the NYS Legislature to insure protection of the general public safety and welfare. Therefore, it is the clear finding of this Panel that based upon all the financial data submitted and reviewed herein, the City will have the ability to pay the wage increases and other monetary increases provided herein.

SALARY

Discussion on Salary

The paramount issue as articulated by the Union is the award of an appropriate wage increase so that Rochester police may be fairly compensated when compared with police in other upstate cities and in the surrounding Monroe County area. The Union is seeking a 6% salary increase for each of the two years to be covered by this Award; that is retroactive to July 1, 1999 and retroactive to July 1, 2000. Currently, as of July 1, 1999, the top base pay for a Rochester Police Officer after 44 months of employment is $45,403, which is the figure that shall be used as the benchmark herein when comparing Rochester police salaries with those of police in comparable jurisdictions. While the Union requests a wage increase comparable to salaries of other Monroe County police, and commensurate with the responsibilities and risks assumed by unit members, the Panel, as previously indicated supra, finds that the most appropriate comparables to the City of Rochester are the upstate cities of Albany, Buffalo and Syracuse. Of those cities, based on population and size of the police department, the Panel finds that Rochester police salaries should continue in the existing position of being below Buffalo salaries, and above Albany and Syracuse salaries. This is in our view a realistic order of salaries, based on the terms and working conditions of the police in the comparable jurisdictions.

It is also relevant to note that police in the surrounding Monroe County suburban communities also enjoy significantly higher salaries than Rochester police. As of July 1, 1999, the top base pay for a Brighton police officer was $51,830; the top base pay for an Irondequoit police officer was $51,532; the top base pay for a Greece police officer was $52,191; and the top base pay for a Webster police officer was $50,874. As previously stated, towns do not have the financial commitments or resources which cities have, but the Panel does acknowledge that Rochester police are paid much less than Monroe County suburban police officers.

As articulated by City Mayor William Johnson, Jr., the City has great respect for members of the Rochester police and within the financial constraints, has offered the police reasonable salary increases of 3% fully retroactive for each year of this Award. The Panel recognizes the legitimate goal of the City to balance the safety needs of the community with the realities of budgeting in the public sector during a time of contingent State aid and the fear of a loss of additional revenues due to an economy which may not continue at the current pace. Nonetheless, as discussed supra, the Panel finds that under current circumstances, the City has the ability to pay slightly more in salary increases than offered by the City. Such increases will allow Rochester police members to maintain their relative standing with comparable police in other jurisdictions.

The Panel also notes that Rochester police continue to face increased demands for service, which directly relates to productivity and accompanying stress and hazards placed upon the individual police officer. Rochester has a higher crime rate than the upstate cities of Albany and Syracuse and only slightly trails Buffalo, although that difference must take into account the much larger population base served by Buffalo police.[8]

By all accounts, there is no dispute that Rochester police perform admirably under trying circumstances on a daily basis. Merit is beyond cavil; this is a quality police department which has adopted a pro-active as well as reactive approach to urban policing, while considering the particular needs of the diverse nature of the Rochester community. They are entitled to be compensated in a fair and equitable manner and to maintain their relative standing when measured against police in the comparable upstate cities.

To that end, the Panel has noted that as of July 1, 1999 the top base pay of a Buffalo police officer was $48,849.[9] That figure must be compared with the top base pay of a Rochester police officer of $45,403. The Panel finds that it is necessary to

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[8] Crime statistics show that in terms of violent crime, the cities of Buffalo and Rochester are close, when population difference is considered. Source *Crime Report: Crime in the Unite States* and NYS Division of Criminal Justice Services data.

[9] Buffalo police received a general salary increase of 3% effective July 1, 1999 (see Employer Exhibit 30). The parties are currently in negotiation for a successor agreement to commence July 1, 2000.

attempt to maintain the comparable with Buffalo and accordingly has granted Rochester police salary increases slightly more than those offered by the City. The Panel notes however that the split of the increases provided herein will result in a cost to the City in fiscal year 1999-00 that is only slightly higher than that which has been budgeted for and for which there are allocated funds. Further, the split nature of the salary increases will allow the City budget planners to make adjustments to the budget as necessary and will allow for anticipated revenues to arrive before the increases must be paid. In terms of cost, the Panel has attempted to provide an equitable salary increase within the financial constraints articulated by the City, and quite simply, not much greater than that which was offered by the City.

In making the salary determination herein, the Panel has carefully considered all of the financial data and arguments presented by both parties, and has applied such data to the criteria mandated by statute as specified in Section 209.4 of the Civil Service Law.

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

acceptable level of police services which are necessary to protect the citizens and visitors of Rochester. The Panel reaffirms the statement made in the prior Award:

> "The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Rochester Police with a fair and equitable wage for the important and in many cases, dangerous work which they perform." (See Interest Arbitration Award between *City of Rochester and Rochester Police Locust Club* for 1993-97, PERB Case IA94-011; Selchick, Chair; Award dated June 27, 1995).

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

AWARD ON SALARY

1. Effective July 1, 1999, and retroactive to that date, the base salary schedule shall be increased by 2%.

2. Effective January 1, 2000, and retroactive to that date, the base salary schedule shall be increased by 2%.

3. Effective July 1, 2000, and retroactive to that date, the base salary schedule shall be increased by 2%.

4. Effective January 1, 2001, and retroactive to that date, the base salary schedule shall be increased by 2%.

LONGEVITY PAY

Discussion on Longevity Pay

Currently, Article 3, Section 4 of the 1997-99 Agreement provides that Rochester Police receive longevity payments at the rate of $50 for each year of service beginning on the employee's third (3rd) anniversary, and increased by the amount of $50 per year for twenty-two (22) additional years, with a maximum of $1,150.00

The Union argues that longevity pay must be considered in terms of the overall compensation package provided to police, and that the current longevity pay schedule is too low when compared with that offered by other comparable jurisdictions. The Union seeks an increase to $100 for each year of service, to a maximum of $2300 except for patrol division members. For those officers who are assigned to the Patrol Division, the Union seeks an increase in longevity pay to $150 for each year of service, to a maximum of $3450. The Union contends that such increase will provide an added incentive for members assigned to the Patrol Division.

The City opposes any increase in longevity payments as being too costly and not warranted. The City maintains that while longevity payments for Rochester police are admittedly lower than those enjoyed by Albany, Buffalo and Syracuse police (Employer Exhibit 14), there are other areas, such as educational incentive, where Rochester police receive greater compensation than the comparables. The City argues that when the overall compensation package is viewed, Rochester police earn more than Albany and

Syracuse police and are only slightly behind Buffalo police (see Employer Exhibit 15).

Panel Determination

The Panel finds that the longevity payments provided to Rochester police is indeed low and when compared with that provided to Albany, Buffalo and Syracuse police, and when compared to police in the surrounding suburban departments. Such comparison results in the finding that an adjustment to longevity payments is warranted (See Employer Exhibit 14 and Union Exhibit 4).

Albany police receive longevity as follows:

After completion of	5 years	$1750
	10 years	$1950
	15 years	$2200
	20 years	$2500

Buffalo police receive $125 per year, commencing after the first year, with a maximum of $3125, payable upon reaching year 25.

Syracuse police receive longevity payments as follows:

After completion of	10 years	$500
	15 years	$700
	20 years	$900
	25 years	$1100
	30 years	$1300

It must be further noted that Brighton police receive $500 per year after 5 years of service increased by $125 per year in the 6th through 25th year of service. Irondequoit police receive 2% of their base pay after 4 years of service, increased by an additional .0025% annually for each year up to the 25th year of service. Greece police receive longevity pay of $50 per year commencing with the 4th year of service plus a retention incentive ranging from an additional $1000 per year plus 27 additional vacation days after 20 years of service to $6500 per year and 37 additional vacation days after 30 years of service. Webster police begin with a $300 longevity payment after 4 years of service, increased by $75 each year through the 20th year and then receive various amounts up to $2500 after completion of 25 years.

Upon review it is apparent that Rochester police have lagged behind in terms of longevity payments. While the Panel finds that a significant increase to longevity payments is warranted, the Panel does not accept the additional increase proposed by the Union for those officers assigned to the Patrol Division. The Panel finds that such a traditional matter of compensation as longevity should be provided to all members of the unit, regardless of assignment. The Panel finds equal value and contribution in all police assignments and is not prepared to provide an additional stipend to patrol officers at this time.

AWARD ON LONGEVITY PAYMENTS

Effective July 1, 2000, and retroactive to that date, longevity payments as provided in Article 3, Section 4 of the 1997-99 Agreement shall be increased at all steps from $50.00 for each year of service to $100.00 for each year of service, with a maximum payment of $2300.00.

PENSIONS

Discussion on Pensions

By Memorandum of Agreement between the parties, said Memorandum dated June 22, 1999 (Joint Exhibit 4), the parties provided *inter alia* as follows:

> "The subject of 384-e of the NYS Retirement and Social Security Law, if presented by either party to an arbitration panel as part of the impasse in negotiations for a successor to the 1997-99 collective bargaining agreement, will be determined by that panel."

As the Union raised the issue of the addition of a 384-e retirement benefit during the negotiations for the successor agreement, which negotiations resulted in impasse, and the convening of this Interest Arbitration Panel, this issue is properly before the undersigned Panel.

The Union has proposed that the City provide §384-e of the Retirement and Social Security Law to all Rochester police. This would affect only those officers hired after July 1, 1991, since those hired before said date have the benefit of §384-e now. This retirement option adds 1/60th% to the pension of an officer who stays beyond 20 years for each year of service after 20, in addition to the 50% provided after 20 years. Such benefit cannot exceed 75% of the final average salary for officers in Tier 1 and 66 2/3% of the final average salary for those in Tier 2.

The City is opposed to those proposal as it has a significant cost factor; anticipated at over $200,000 for the one year incremental cost if all eligible members move to the plan. While the current contribution cost is low due to the strength of the stock market, the City is concerned about future costs when required City contributions could rise.

Panel Determination

The Panel notes that Buffalo offers §384-e to all police officers. The Panel also notes that contributions to the Police and Fire Retirement System have been on a steady decline over the past several years. In actual monies, the pension costs of the City went from $9,356,061 in 1996 to $2,939,920 in 1998; a savings of over 75%. By any accounting, the avoidance of over 6 million in retirement contributions represents a significant windfall to the City and further belies the reason for the City's opposition to the addition of §384-e.

Further, the Panel is of the view that it is beneficial to the Police Department to provide motivation for experienced but still young officers to stay beyond 20 years. Officers with over 20 years on the job serve to provide a more experienced and mature voice and view to the work of the Department. In view of the significantly reduced costs, the benefit should be offered to eligible Rochester police.

AWARD ON PENSIONS

Section 384-e of the NYS Retirement and Social Security Law shall be added to Article 3, Section 5 of the 1997-99 Agreement, as one of the options available to Rochester police under the NYS Policemen's and Firemen's Pension System.

HEALTH INSURANCE

Discussion on Health Insurance

At the present time, all members of the Rochester Police Department contribute 7.5% toward the cost of medical coverage for themselves and their families, as provided in Article 11, Section 2 of the 1997-99 Agreement. The cost is based on the Blue Million plan. Presently, the annual medical cost for a Rochester Police Officer with Blue Million single coverage is $3,638; for Blue Million family coverage the annual cost is $7,652 (Employer Exhibit 21).

Although the base plan upon which the officer's 7.5% contribution is calculated is the Blue Million plan, the vast majority of Rochester police are enrolled in either the Blue Choice or Preferred Care HMO plans. Specifically, 46 officers are enrolled in the Blue Million plan, 376 officers are enrolled in the Blue Choice HMO, and 184 officers are enrolled in the Preferred Care HMO (see Employer Exhibit 21).

It is a well known fact in New York that health insurance coverage costs have increased at a significant rate over the past 10 years and all indications are that such trend will continue. Since 1997, the monthly rate for Blue Million family coverage has increased by 40.7% (Employer Exhibit 8). It is currently projected that as of July 1, 2000, such rates will increase 20.1% for Blue Million family coverage; 13.1% for Blue Choice family coverage; and

14.5% for Preferred Care family coverage (see Employer Exhibit 8).

In response to such rising costs, the City proposes that Rochester police increase their health insurance contribution to 15%, and that the base plan of Blue Million be discontinued, with the new base plans being Blue Choice Select and Preferred Care Community, both of which are lower cost plans. The City argues that on this issue, the proper comparables are not police in other jurisdictions, but rather other City employees, as health insurance coverage, rates and experience vary by community. In both the AFSCME units and the Firefighters unit, the parties have agreed that new hires would be offered Blue Choice Select or Preferred Care Community plans, with significant cost savings to the City (see Employer Exhibits 24 and 25).

Additional proposals by the City provide that police officers who are married to another City employee be eligible only for a single health insurance contract and thus prevent "double dipping"; and that those officers who retire after the Date of the Award be required to contribute 25% of the cost of health insurance coverage and that a police retiree will not be eligible for coverage if the retiree's spouse is enrolled in a health insurance plan provided and paid for by the City. Again the intent here on the part of the City is to eliminate the possibility of an employee reaping a double benefit at City expense.

The Union is opposed to all of the City's proposals on health insurance and has its own proposal to reduce contribution costs for retirees. Currently, retirees pay the same 7.5% contribution rate as active employees. The Union proposes that those who retire with more than 25 years of service shall pay 3.5% and those who retire with 30 or more years of service shall have no required contribution.

Panel Determination

Those with experience in labor relations understand that the issue of health insurance often results in emotional responses which become hardened into intransigent bargaining positions. There are also financial and substantive concerns which tend to test the best negotiators at the bargaining table. In the experience of this Panel, nowhere is this issue tougher than in bargaining for police contracts. And there are several good reasons for this.

First and foremost, police perform dangerous and hazardous work on a daily basis. They literally put their lives on the line. The sad fact is, police officers get killed on the job. And it has happened in upstate New York all too frequently. There are many reasons that people are drawn to police work, and one of them is to provide security and better than average benefits for themselves and their families. In other words, in return for their daily efforts to keep all of us safe and secure, they desire to be kept safe and secure by their employer.

Secondly, the health insurance package is viewed as a traditional and essential element of compensation for police; more so than for non-uniformed public sector employees. It is a part of the compensation provided for the dangerous and hazardous duties which they perform. Until quite recently, when health insurance rates began to increase at an alarming rate, police were provided with the highest level of benefit package available. Contribution rates for police are quite frequently significantly lower than the contribution rates paid by other municipal employees.

Looking at the relevant police comparables, the Panel notes that Albany police are provided the superior Empire Blue Cross Blue Shield plan. Those hired prior to January 1, 1986 are not required to make any contribution; those hired after such date contribute at the rates of 10% for single coverage and 25% for family coverage (see Employer Exhibit 29: 1998-01 Albany collective bargaining agreement).

Buffalo police are provided a superior Blue Cross Blue Shield plan at no cost to them, except for those officers hired after June 30, 2000, who receive at no cost a choice of two lesser cost plans. If a new Buffalo hire desires the higher cost plan, he/she may select such plan, but must pay a contribution which is calculated on the difference between the higher cost plan selected and the least costly lower cost plan (see Employer Exhibit 30; Buffalo Memorandum of Agreement 1998-00).

Syracuse police are provided a superior level self-insured City health plan, with those selecting single coverage paying a contribution rate of $10 per month and those selecting family coverage paying a contribution rate of $25 per month (see Employer Exhibit 28, Syracuse collective bargaining agreement 1998-99).

In the surrounding communities, the Panel notes that Brighton police are provided Blue Choice Select Extended or Preferred Care Community, with the full cost for individual or family coverage paid by the town. Irondequoit police are provided Blue Choice Extended and Blue Cross Select, with the full cost for individual or family coverage paid by the town. Greece police are provided the superior Blue Million plan, with the full cost paid for officers hired prior to 1990. Webster police are provided a variety of health plans, including the Blue Million plan, with officers paying 10% of the cost of the plan selected. (See Union Exhibits; collective bargaining agreements for applicable period).

This data confirms the view of this Panel that police have earned and are entitled to a better than average health insurance benefit package. By the nature of their daily duties, they are exposed to the elements, both natural and otherwise, which impacts upon their personal health and physical well being. It is important to note that police are "in action" and are subject to greater likelihood of physical injury. Police carry weapons and are often required to use physical force to subdue an offender.

The Panel must further note that it is clear that police officers are often prone to psychological injury as well; police work is generally regarded as being among the most stressful of occupations. Police often view tragedies beyond comprehension; loss of life of young and old innocent victims. This type of daily melodrama takes its psychological toll on police at all stages of their careers.

While the Panel agrees with the City that in the area of health insurance, the benefit package provided to other City employees is an important and relevant comparable, the specific benefit package provided to police, including contribution rates, may justifiably be slightly different than that provided to other City employees.

The Panel has carefully considered the health insurance proposals of both parties. A great deal of time was spent during the Executive Sessions on this subject and all aspects of the issue were closely examined. After significant argument, the Panel has determined that certain modifications to the health insurance package are warranted. Such modifications take into consideration the relevant comparables, the discussion set out *supra,* the expert opinions offered at the arbitration hearing.

This Panel notes that it was as a result of an Interest Arbitration Panel Award in 1995, upon which the Chairman and the Employee Organization Panel Member also served, that the

contribution rate for Rochester police was increased from the then required 5% to the current 7.5% contribution rate. This increase in 1995 was made in recognition of the higher cost to the City for health insurance coverage.[10] The Panel continues to recognize the increased financial burden placed on the City to provide a superior health insurance benefit package for all of its employees, and specifically, for the Rochester police.

In attempting to reduce that financial burden, the Panel finds that the benefits to be offered to newly hired police officers shall be the newer and more cost effective plans. Specifically, for all unit members hired on or after 7/1/00, the City provided health plans shall be either Blue Choice Select or Preferred Care Community plans. The difference in cost from the currently offered Blue Cross/Blue Million plan is significant, and this change will result in immediate as well as long term savings for the City.

As the cost of Blue Choice Select or Preferred Care Community is over $3000 less annually for family coverage than the cost of BC/BS Blue Million, which is currently provided, the Panel finds that newly hired police officer should not be required to pay the same contribution rate as current officers. The benefit level is lower as well and that has been considered by the Panel. Accordingly, those unit members hired on or after 7/1/00, shall be

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[10] see *Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA94-011, Award covering 7/1/93 through 6/30/97, Selchick, Panel Chair, Award dated 6/27/95.

provided with Blue Choice Select or Preferred Care Community as the health plans, and shall contribute 3.5% of the cost of the particular plan selected. These newly hired employees may not select any other plan offered by the City and are limited to selection between the Blue Choice Select or Preferred Care Community plans.

Current employees, hired before 7/1/00, may continue in the health plans previously available to them or they may chose to enroll in Blue Choice Select or Preferred Care Community. If they select Blue Choice Select or Preferred Care Community, those current members will enjoy a reduced contribution rate and will pay 3.5% of the cost of the particular plan selected. Current employees who elect to remain enrolled in the previously offered plans, shall pay 7.5% of the particular plan selected.[11]

As to health insurance coverage for those members who retired after 7/1/99, or will retire during the term of this Award, they shall retire with the plan they were enrolled in at the time of retirement, and except as provided *infra*, shall pay the contribution rate in effect for that specific plan and coverage selected. The exceptions are as follows: An employee who retires

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[11] By example, if a current member selects the Blue Choice or Preferred Care plan (not offered to employees hired post 7/1/00), the current member shall pay 7.5% of the cost of the specific plan (Blue Choice or Preferred Care) and coverage (single or family) selected.

with 25 or more years of service (retirement effective after 7/1/99) shall pay at the contribution rate of 3.5% of the cost of the particular plan and coverage selected, and an employee who retires with 30 or more years of service shall not be required to pay any health insurance contribution, regardless of the plan and coverage selected.

AWARD ON HEALTH INSURANCE

Article 11, Sections 1, 2, 3, 4 and 9 of the 1997-99 Agreement shall be modified to implement the following:

1. For all unit members hired on or after 7/1/00, the City provided health plans shall be either Blue Choice Select or Preferred Care Community plans. For employees enrolled in either plan, the employee contribution shall be 3.5% of the cost of the plan and coverage selected.
2. Current unit members may continue in plans previously available to them, and effective 5/11/00, shall pay a contribution rate of 7.5% of the specific plan and coverage selected.
3. Current unit members shall have the option of enrolling in Blue Choice Select or Preferred Care Community and shall pay a contribution rate of 3.5% of the plan (Blue Choice Select or Preferred Care Community) and coverage selected.

4. Current unit members who have retired after 7/1/99 or do retire during the term of this Award, shall retire with the plan they were enrolled in at the time of retirement, and except as provided *infra*, shall pay the contribution rate in effect for that specific plan and coverage selected. The exceptions are as follows: An employee who retires with 25 or more years of service (retirement effective after 7/1/99) shall pay at the contribution rate of 3.5% of the cost of the particular plan and coverage selected, and an employee who retires with 30 or more years of service shall not be required to pay any health insurance contribution, regardless of the plan and coverage selected.

CANINE (K-9) COMPENSATION

Discussion on K-9 Compensation

As a direct result of the Fair Labor Standard Act (FLSA), the City is required to provide a compensation arrangement for officers assigned a K-9 police dog. Police canine handlers, as they are known, care for the K-9 on a 24 hour 7 day a week basis, with the dog being housed at the member's residence.

The City has proposed that an officer assigned a K-9 be compensated one-half (1/2) hour each day at the minimum wage rate, for the home care and housing of the dog.

The Union argues that one-half hour per day is insufficient and does not recognize the time spent in caring for the dog after duty hours have been completed. Further, the Union proposes that the time compensated be paid at the overtime rate.

AWARD ON K-9 COMPENSATION

Effective 7/1/00, all unit members assigned a K-9 shall receive additional compensation of 30 minutes per day at the straight time rate for every day the unit member is responsible for the K-9.

PUBLIC SAFETY AIDES

Discussion on Public Safety Aides

A review of the history relating to Public Safety Aides is required in order to have a full understanding of the issue, and the Panel Determination made herein.

An agreement reached during the negotiations resulting in the 1997-99 Agreement provided for a Memorandum of Agreement to be entered into allowing for the use of non-bargaining unit positions, to be known as "Public Safety Aides" and limited the number of such positions to 40. This Memorandum of Agreement, dated 11/19/97, contained a sunset provision, providing that the agreement reached would expire on 6/30/99 (see 1997-99 Agreement, Appendix 3). An essential element of the Memorandum of Agreement provides, *inter alia*, that:

> "Public Safety Aides will not respond to any call for police service, but will be allowed to take reports in police facilities and NET offices on Tele Serve eligible calls as provided in G.O. 460, and quality of life complaints. They will not conduct investigations. They may issue parking tickets and order the towing of illegally parked vehicles." (1997-99 Agreement, Appendix 3, paragraph 1)

The Panel notes that the Public Safety Aides were created upon the initiative of the City, with the stated intent of using such Aides to allow police officers more time to engage in pro-active and other necessary police duties.

Thereafter, by Memorandum of Agreement dated 6/22/99, the parties agreed, *inter alia*, to maintain a specific number of bargaining unit positions (674) and to extend the 11/19/97 Memorandum of Agreement on Public Safety Aides to tentatively expire on 6/30/01. The 6/22/99 Memorandum of Agreement further provided that the terms of the original 11/19/97 Memorandum creating Public Safety Aides would be addressed by this Panel, with the parties' intent being to negotiate permanent contract status for the Public Safety Aides.

In fact, the City proposed herein that the terms of the 11/19/97 Memorandum of Agreement, as amended, become part of the parties' collective bargaining agreement, with certain modifications aimed at expanding the duties of the Public Safety Aides and providing the City with additional discretion in utilizing the Aides.

The Union is opposed to incorporating the 11/19/97 Memorandum of Agreement into the collective bargaining agreement and argued against any infringement of bargaining unit work.

Panel Determination

The Panel recognizes that the use of Public Safety Aides allows the City to have non-unit members perform essential public safety duties without utilizing a sworn police officer. While difficult to calculate, the Panel views the use of such Aides as a significant cost saving option for the City, as hundreds of "man hours" of sworn members are made available for exclusive police work. Such usage allows the City to either hire a lesser number of police officers, or to redirect police officer efforts in areas essential to City safety.

In consideration of the overall compensation package provided to Rochester police herein, and to allow future cost savings to the City, the Panel has determined that the City's proposal regarding Public Safety Aides shall be accepted.

Specifically, a new provision shall be added to the 1999-01 Agreement, entitled "Public Safety Aides or other non-unit employees" in recognition of the fact that the City may, at its discretion, change the name of Public Safety Aides to some other designation. This new provision shall be a permanent part of the contract and the tentative expiration date of 6/30/01 shall be deleted.

The new provision shall reflect the fact that the Panel has determined that Public Safety Aides may, in addition to the previously agreed upon tasks, respond to the new "311" program. The intent of this Panel is to allow Public Safety Aides to take reports of "non-priority 1" calls or calls for service which do not require the dispatch of a police officer to the scene.

The remaining provisions of the 11/19/97 Memorandum of Agreement shall be included in the newly created provision. Any disputes regarding the specific contract language to be placed in the 1999-01 Agreement shall be referred to the Panel Chairman, who expressly retains jurisdiction to resolve this, and other disputes arising under this Opinion and Award.

AWARD ON PUBLIC SAFETY AIDES AND OTHER NON-UNIT EMPLOYEES

Effective 7/1/00, a new contract provision, as detailed above, shall be added to the 1999-01 Agreement to reflect the inclusion of the 11/19/97 Memorandum of Agreement, as amended. The new provision shall be in accord with the Panel Determination *supra*. Any dispute over contract language for this provision shall be resolved by the Panel Chair, who retains jurisdiction.

CREATION OF A 5TH PLATOON

Discussion on Creation of a 5th Platoon

Currently, Rochester police operate on a 4 platoon shift schedule. The City seeks additional flexibility in starting and quitting times so that it may provide more effective police services without high overtime costs. The City also seeks to be able to increase police coverage during the hours of peak demand for City services, particularly from 10:00 a.m. to 6:00 p.m. (see Employer Exhibit 37).

The Union is opposed to any changes in Article 18 Work Hours and objects to allowing the City any further ability to change starting and quitting times.[12]

Panel Determination

The Panel recognizes the need of the City to provide more police services during peak hours. The Panel further recognizes the increasing overtime costs incurred by the City in providing such services. Therefore, in consideration of the compensation package provided herein, and in a further attempt to allow the City to realize savings in operational costs, the Panel determines that

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[12] Currently, under Article 18 Section 3(B) of the 1997-99 Agreement, the City may change the starting and quitting times by two (2) hours due to deployment needs.

a new shift--a 5th Platoon--may be created by the City to meet the need for additional police services during peak hours.

Such 5th Platoon, which may be created in each Patrol Section at any time after 7/1/00, may be utilized to respond to calls for service and may perform patrol functions. It is intended that the 5th Platoon be a "day shift" and shall commence no earlier than 8:00 a.m. and shall consist of the standard 8.25 hour work day.

AWARD ON CREATION OF THE 5TH PLATOON

Effective 7/1/00, the Department may create and institute a 5th Platoon schedule in each Patrol Section to respond to calls for service and to perform patrol functions. It is intended that the starting hour of such 5th Platoon shall commence no earlier than 8:00 a.m. and shall consist of the standard 8.25 hour work day on the 4 on 2 off schedule. The initial starting time of the 5th Platoon in each Patrol Section may be determined unilaterally by the City, subject to the 8:00 a.m. start time limitation. Thereafter, the work schedule and the work hours of the 5th Platoon in each Patrol Section shall be subject to the provisions contained in Article 18 of the Agreement.

LIEUTENANTS WORK SCHEDULE

Discussion on Lieutenants Work Schedule

Currently, the work hours and work schedule of Lieutenants are subject to provisions contained in Article 18 of the 1997-99 Agreement.

Article 18 Section 3(D) allows Captains and Section or Unit Commanders to have their starting and quitting times changed with reasonable advance notice, or to change starting and quitting times at their discretion. Arbitration awards have indicated which Section and Unit Commanders are allowed to "flex" their regular schedules.[13] Additionally, NET Lieutenants, pursuant to a Memorandum of Agreement dated 11/19/97 (1997-99 Agreement, Appendix 2) are also included under the "flex" provisions of Article 18 Section 3(D) of the Agreement. That Memorandum of Agreement was extended to be continued for the life of the successor agreement, as indicated in a Memorandum of Agreement dated 6/22/99.

The City now seeks to allow all Lieutenants to be subject to the "flex" provisions of Article 18 Section 3(D) and to allow Lieutenants to do so in order to perform the work of a subordinate supervisor. The City argues that Lieutenants are considered by the

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[13] See Award dated 2/26/96 in GR-6211 and Award dated 10/18/96 which further revised those eligible to flex under Article 18 Section 3(D) of the Agreement.

Department to be mid-level managers and have significant daily managerial responsibilities, including commanding a platoon in Patrol, serving as Commanding Officers in certain Sections, initiating policy changes, and serving as Acting Captains in the absence of a Captain. The City indicates that Lieutenants are clearly paid at salaries of mid-level managers and other City professional employees (see Employer Exhibits 26 and 27).

The Union is opposed to any change in Lieutenants schedules and to the concept of allowing them to substitute for absent subordinate officers without being paid overtime.

Panel Determination

The Panel is of the view that sufficient flexibility exists for the City to have certain Lieutenants "flex" their hours if warranted under the previous arbitration awards. Said Awards provide the criteria for a Lieutenant to be allowed schedule changes under Article 18 Section 3(D) of the Agreement. The City should utilize the existing procedure and criteria. Upon application by the Department, any Lieutenant position which functions as a Section or Unit Commander may be considered for flexible starting and quitting times pursuant to Article 18 Section 3 (D) of the Agreement. Determinations shall be made by the

Contract Arbitrator depending on the specific facts and circumstances of the position in accordance with prior arbitration awards.

The Panel specifically rejects the City's proposal to allow Lieutenants to fill in for absent supervisors (Sergeants) without being paid overtime, if applicable.

AWARD ON LIEUTENANTS WORK SCHEDULE

Upon application by the Department, any Lieutenant position which functions as a Section or Unit Commander may be considered for flexible starting and quitting times pursuant to Article 18 Section 3 (D) of the Agreement. Determinations shall be made by the Contract Arbitrator depending on the specific facts and circumstances of the position in accordance with prior arbitration awards.

WORK SCHEDULE FOR VACANT NON-PATROL POSITIONS

Discussion on Vacant Non-Patrol Positions

Currently, pursuant to Article 18 Section 1 of the 1997-99 Agreement, Rochester police work week schedules are based on a "work wheel" which provides for either a 5-2 or a 4-2 non-rotating schedule. Different positions are assigned either the 5-2 or the 4-2 work wheel depending on the location of the position and the nature of the assignment.

The City proposes that when a position becomes vacant, that the Department may change the work wheel with 30 days notice.

The Union is opposed to changing the existent 5-2 work wheel schedule for non-patrol positions.

AWARD ON VACANT NON-PATROL POSITIONS

Effective 7/1/00, any vacant non-patrol position or assignment may be changed from a 5-2 or 4-2 schedule and may be changed to any existing platoon upon the posting of the vacant non-patrol position or assignment.

PARKING

Discussion on Parking

Currently, Rochester police, with the exception of those assigned to Headquarters at the Public Safety Building, enjoy free parking at their reporting location. Those officers assigned to the Public Safety Building must apply for parking permits to park in the building and adjacent lots. Additionally, there is ongoing construction of a new Public Safety Building which will further complicate an already complicated parking situation.

The Union seeks free parking for all unit members. The City indicates that it simply cannot properly assess the parking situation at the present time.

Panel Determination

The Panel agrees with the City that the parking situation cannot be properly addressed at the present time. Accordingly, the Panel directs the parties to meet and negotiate the issue of parking for unit members, upon completion of the new Public Safety Building and during the term covered by this Award. If the parties are unable to reach agreement on such issue, it shall be referred to the Interest Arbitrator, who hereby retains jurisdiction to decide such issue.

AWARD ON PARKING

During the term of the 1999-01 Agreement, and upon completion of the new Public Safety Building, the parties shall meet and negotiate the issue of parking for unit members. If the parties are unable to reach agreement on such issue, it shall be referred to the Interest Arbitrator, who hereby retains jurisdiction to decide such issue.

PRIOR ARBITRATION AWARD LANGUAGE CLARIFICATIONS

Discussion on Prior Arbitration Awards

Since the execution of the 1993-95 Interest Arbitration Award, the parties have employed a Contract Arbitrator to determine and resolve all disputes arising under the terms of the Agreement.[14] Many of the arbitration awards issued by the Contract Arbitrator provide interpretation and application of provisions of the Agreement.

The Union proposes that the language of the Agreement be modified to more accurately reflect the interpretation and application determined by such arbitration awards. While the City is not generally opposed to the basic concept, it maintains that any modification of contract language based on arbitration awards should occur on a case-by-case basis.

Panel Determination

The Panel agrees that some modification of contract language based on prior arbitration awards would be useful and helpful to unit members utilizing and applying the terms of the Agreement on a daily basis. However the Panel further agrees with the City that such modification should occur on a case-by-case basis.

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[14] The Panel Chairman has been privileged to serve as Contract Arbitrator since July 1995.

AWARD ON PRIOR ARBITRATION AWARDS

During the term of the 1999-01 Agreement, the parties shall meet and negotiate as to language changes which should be made to the contract language to incorporate prior arbitration awards. If the parties are unable to reach agreement on such issue, it shall be referred to the Interest Arbitrator, who hereby retains jurisdiction to decide such issue.

REMAINING ISSUES

Discussion on Remaining Issues

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

AWARD ON REMAINING ISSUES

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

RETENTION OF JURISDICTION

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

REVISION OF CONTRACT

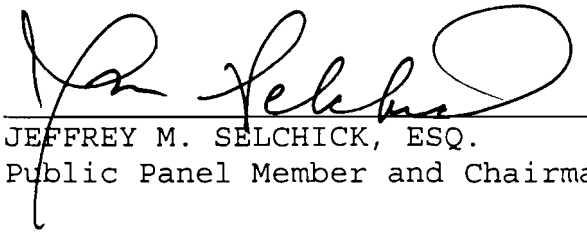
The Panel recommends that the parties herein revise the 1997-99 Agreement in accordance with the provisions of this Award, and prepare and execute a document which reflects the provisions of this Award.

DATE OF AWARD

For all purposes, the Date of the Award is May 11, 2000. As previously indicated, a Summary Award was issued on that date, with the understanding and consent of all parties that this Opinion and Award was to follow.

DURATION OF CONTRACT

Pursuant to the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award provides an Agreement for the period commencing July 1, 1999 and ending June 30, 2001.



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

11-14-00
Date

[Concur]
[Dissent]

RONALD G. EVANGELISTA
Employee Organization Panel Member

10-2-2000
Date

[Concur]
[Dissent]

DANIEL C. WISSMAN
Employer Panel Member

11-06-00
Date

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

On this 14th day of ~~October~~ NOVEMBER 2000, 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 01

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

On this 2nd day of October 2000, before me personally came and appeared Ronald G. Evangelista, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

MAURA C. SMITH
Notary Public, State of New York
No. 5014650
Qualified in Monroe County
Commission Expires July 6, 2001

Maura C. Smith
Notary Public

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

On this 6th day of ~~October~~ 2000, before me personally came and appeared Daniel C. Wissman, 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.

Geraldine Pizza
Notary Public

GERALDINE PIZZA
NOTARY PUBLIC STATE OF NEW YORK
MONROE COUNTY
COMMISSION EXPIRES 11/30/06

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration between THE CITY OF ROCHESTER, NEW YORK Public Employer, - and- ROCHESTER POLICE LOCUST CLUB, INC. Employee Organization PERB Case No. IA99-021; M99-118	DISSENTING OPINION

As the employer's representative on the panel, I respectfully dissent from the Opinion and Award of the majority. While there are elements of the Award that appear to benefit the employer's ability to manage a modern urban police department, the cost of the total award exceeds the employer's substantial offer and its ability to pay for this award.

The employer presented this panel with substantial evidence of the difficulty it faces meeting its requirement to provide services to its citizens of the City and the thousands of others who use its facilities and infrastructure on a daily basis. The significant decrease in assessed valuation, the low per-capita income compared with the rest of the County, the tax rate that is high compared to the suburban towns, the smaller per-capita state aid compared with the upstate cities, the one-time roll-up "increases" in State aid, and the capping of the share of the County sales tax are all factors that significantly impact the ability to pay for improved salary and benefits.

Contrary to the majority's opinion, the employer did not present a "gloom and doom" picture of the City's economics, but a realistic picture that included the measures it has taken to deal with the continuing revenue challenges. "Gloom and doom" would not have resulted in positive proposals for increase in the bargaining unit's salaries. The question of "ability to pay" is what limit exists beyond which the employer suffers substantial difficulty providing the services to its constituents. In this case, the award of the majority exceeds that limit.

The reliance of the majority on information of existing and projected economic well being fails consistently to differentiate the general economy of the country or the economy of the "Rochester region" from the conditions in the City of Rochester.

Additionally, the majority takes the erroneous view that the increase in wages and longevity, the improved retirement plan are already paid for by the City's conservative approach of budgeting for the cost of its proposals. This short sighted view fails to consider the impact of the additional costs and the compounding effects of the wage increases every six months on future budgets. The additional cost will have an impact either directly upon the police budgets or will force the employer to make difficult decisions regarding the reduction of other services to the citizenry.

In summary, "the interest and welfare of the public and the financial ability of the public employer to pay" were not adequately addressed by the majority.

Daniel C. Wissman

DANIEL C. WISSMAN
Public Employer Member

November 6, 2000
Date