

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration
between

PERB Case Nos.
IA 201-009; M201-001

CITY OF NEW ROCHELLE,
Public Employer,
and

JS Case No. 2923

POLICE ASSOCIATION OF NEW ROCHELLE,
Employee Representative,

**OPINION
AND
AWARD**

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED**

Re: Impasse commencing January 1, 2002.
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OCT 28 2002

Before the Public Arbitration Panel:

JOHN E. SANDS, Public Member and Chair
EDWARD W. GUZDEK, Association-Appointed Arbitrator
VINCENT TOOMEY, City-Appointed Arbitrator

CONCILIATION

OPINION OF THE CHAIR

I. Background.

On September 4, 2001, Richard A. Curreri, Director of Conciliation of New York Public Employment Relations Board, ("PERB"), confirmed the parties' designation of me as Public Member and Chair of the arbitration panel in this case to conduct hearings and make a just and reasonable determination pursuant to New York State Civil Service Law ("CSL"), Section 209.4. In that same letter he also confirmed the parties' designations of Vincent Toomey as City-appointed arbitrator and Edward W. Guzdek as PBA-appointed arbitrator.

Pursuant to our statutory authority, we conducted a mediation session and hearings in New Rochelle, New York on November 17, 2001, March 26, April 2, and April 3, 2002. Public Employee Organization Panel Member Edward Guzdek was unable to attend the April 2, 2002 and April 3, 2002 hearing dates. The parties waived all objections to his absence on those dates and agreed that, in Mr. Guzdek's absence, a court reporter would transcribe all testimony on April 3, 2002. (A transcript was in fact made of that hearing.) Both parties appeared by counsel and had full opportunity to adduce evidence, to cross examine each other's witnesses, and to make argument in support of their respective positions. Each has submitted a post-hearing brief, and neither has raised any objection to the fairness of this proceeding.

Those hearings produced a record that includes the testimony of witnesses, a 272-page transcript for April 3, 2002, six Joint Exhibits, 80 PBA Exhibits, and 77 County Exhibits, all comprising thousands of pages of documents. We have reviewed that record carefully and have considered the parties' proofs in light of these factors that CSL Section 209.4(c) mandates control our determination:

(V) [T]he public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such 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 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.

The Public Employer is the City of New Rochelle. The Employee Representative is the Police Association of New Rochelle ("PANR"). The bargaining unit comprises all Police Officers employed by the City below the rank of Sergeant. The unsettled issues subject to determination in this proceeding appear in the parties' final proposals, in evidence as Joint Exhibits 1 and 2:

II. Parties' Contract Proposals.

A. PANR Contract Proposals.

1. Increase the salary schedule at Article V, Section 1 and 2 by five (5%) percent in each year of a two (2) year contract.
2. Add a new section to Article 7 to provide for a sick-leave buyout where, upon retirement, employees receive one-third (1/3) of their accumulated sick leave days.
3. Increase the welfare fund contribution at Article 8, Section 8 by \$250.00 in each of two (2) years.
4. Add a new Section at Article 10 providing for payment of an annual stipend in the sum of \$250.00 for those employees who are fluent in a second language.
5. Increase the amount of longevity at each step by the sum of \$200.00 except for the 17-year step. At the 17-year step increase the longevity payment by the sum of \$700.00, effective January 1, 2001.
6. Amend Article V, Section 3 to provide for one (1) grade of detective. Compensation to be based on a salary differential consisting of ten (10%) above that salary of a top grade patrol officer.
- ~~7. Add a new section to Article VI, which provides that all compensatory time shall be earned at overtime rates. The employee may choose to receive compensatory time or cash payment for overtime hours. Members shall submit a written request to the Office of the Police Commissioner forty-eight (48) hours in advance for use of compensatory time. Use of compensatory time shall be denied only if it "unduly disrupts" operation of the Police Department as such term has been construed in accordance with the Fair Labor Standards Act. Members shall not use compensatory time on July 4, Labor Day, Election Day or Christmas. (STRICKEN BY PERB DECISION.)~~

8. At Article VI, Section 3 and 4, increase “2-2/3” hours to “4” hours.
9. Members who are held over from one tour to the next tour beyond fifteen (15) minutes shall receive a minimum of one (1) hour of pay at overtime rates.
10. Make Article VII, Section 9 gender neutral such that it is available to all members.
11. At Article VII, Section 4, increase the number of personal leave days from 3 to 5.
12. Eliminate the one (1) chart day per year members are required to work as set forth at Article IV, Section 1.
13. Amend the language at Article II, Section 7 to provide that the PBA President, at his option, may be assigned to the 8:00 a.m. to 4:00 p.m. tour of duty. Add that the tour of duty to be worked by the PBA President shall be limited to four (4) hours per scheduled day of work.
14. Add New Article - Night Differential
 - a. Employees who work the 12:00 midnight to 8:00 a.m. tour of duty shall receive an additional five (5%) percent in salary.
 - b. Employees who begin their tour of duty between 4:00 p.m. and 8:00 p.m. shall receive an additional two and one-half (2½%) percent in salary.
15. Amend Article VII, Section 7 to include a member’s aunt, uncle and spouse’s grandparents.
16. Amend the language at Article X, Section 4 to provide that the mileage allowance shall be the prevailing rate established by the Internal Revenue Service (currently \$.32 per mile anytime an employee’s required to use his/her personal vehicle for travel outside the City of New Rochelle.

- 17. Increase the uniform allowance at Article X, Section 2 by \$75.00 each year of the contract.
- 18. Increase the amount at Article IX, Section 5 to \$2,500.00.
- 19. Amend the vacation schedule at Article VIII, Section 2 as follows

1 st year	- 10 duty tours
2 nd year	- 12 duty tours
3 rd year	- 14 duty tours
5 th year through 12 th year	- 15 duty tours
12 th year through 17 th year	-25 duty tours
After 17 th year	- 25 duty tours
- ~~20. Add a new provision establishing a minimum staffing for all three patrol tour to ten (10) Police Officers and two (2) sergeants, excluding specialized units (e.g. K-9, Detectives, etc.) (STRICKEN BY PERB DECISION.)~~
- 21. Add a new provision at Article VI, Section 8 that Detectives shall also be compensated for overtime for hours spent on any continuing investigation, which would include the booking/processing of prisoners.
- 22. Amend the language at Article VII, Section 3 to provide that “in the final year during which retirement of an employee is scheduled he/she shall receive special vacation leave pay based on the following schedule. . . .”
- 23. Establish a new provision, which provides for the appointment of an independent hearing officer, mutually selected by the City and Police Association in disciplinary and GML Section 207-c cases.
- 24. Amend Article X, Section 11 to provide for full tuition reimbursement from the City for any and all courses (not just those credited toward a degree in Criminal Justice or Public Administration). Approval by the Police Commissioner must be

granted if the college courses are taken at an accredited college or university.

[Joint Exhibit 1.]

B. City of New Rochelle Proposals.

1. Amend Article II, Section 8, Leaves to Attend Union Conventions or Functions, to provide that any leave taken be fully reimbursable to the City.
2. Revise Article IV, Work Week, to provide for a 38.3 hour work week.
3. Amend Article VI, Overtime, to provide that a Police Officer shall be paid at the applicable overtime rate after completing 40 work hours in a calendar week.
4. Amend Article VII, Section 4, Personal Leave, to entitle each employee in the bargaining unit to one day of personal leave per annum.
5. Add the following paragraph to Article IX, Section 1, Health Insurance:

“An employee must notify the Personnel Department of any change in marital/legal dependant status for health insurance purposes. Such notification must be made within 15 calendar days of said change. In an employee fails to notify the Personnel Department of any change in marital/legal dependent status that results in health insurance cost to the City beyond that required by the member and/or legal dependents, the employee shall reimburse the full amount of such additional cost to the City from the paycheck(s) received following the discovery of such additional cost. The deductions from an employee’s paycheck shall not exceed 10% of the employee’s gross pay in any pay period except in cases where the employee is expected to leave the City’s employ while indebted to the City for health insurance costs.”

6. Replace the existing language of Article IX, Section 2, Health Insurance Retirees Coverage, with the following provision:

“Retirees Coverage. The Employer agrees to pay the following percentage cost of the State Empire Plan or comparable plan for Members who retire:

Individual Coverage: 82%

Dependent Coverage: 35%

7. Delete Article X, Section 2, Uniform and Cleaning Allowance.
8. Delete Article X, Section 5, Personal Items (Compensation for Loss).
9. Delete Article X, Section 6, Polygraph. (withdrawn)
10. Amend the first sentence of the last paragraph of Article XI, Section 7, Binding Arbitration, to read as follows:

“Expenses for the arbitrator’s services and the proceedings shall be borne by the party who position was not sustained.”

[Joint Exhibit 2.]

III. Parties’ Positions on Their Proposals.

PANR Proposals.

Focusing on the statutory criterion of comparability, the Association urges us to broaden the scope of the comparable universe beyond the traditional tri-city comparison of New Rochelle, White Plains and Mount Vernon, to include the communities within a 10-mile radius of New Rochelle. Those new

comparables would include: Yonkers, Mount Vernon, Rye, White Plains, Harrison, Eastchester, Mamaroneck, Greenburgh, Mount Pleasant and North Castle. PANR uses median home sale prices and amount of retail space to demonstrate comparability. Thus, it argues, New Rochelle, with a median home sale price of \$378,000 and 1.7 million square feet of retail space is more comparable to Greenburgh, Mount Pleasant and Eastchester, than to Mount Vernon which a median home sale price of \$220,000 and only 75,000 square feet of retail space. PANR argues these statistics establish Mount Vernon as a poor community and, therefore, not comparable to New Rochelle.

The second criterion the Association addresses is the City's ability to pay. Based upon the testimony of finance expert Edward Fennell, it contends the City has the financial ability to fund the increases it seeks. According to the Association, the City consistently overestimates its expenditures, which results in later cost savings. PANR points to New Rochelle's's 2001 and 2002 budgets, in which \$8,115,154 and \$8,007,929 were allocated for Police salaries for 147 and 142 positions, respectively. In 2001, however, only 136 police officers were on the payroll, and, 2002, only 129. Mr. Fennel testified this constituted a \$700,000 cost savings, which could fund a 9% increase in salary. Similarly, PANR claims

New Rochelle's budget surplus, which is currently estimated at \$350,000 is another source of funding.

While PANR acknowledges the relative flatness of sales tax receipts and the meager amount of State aid the City receive, it notes the City has already funded 3.5% increases for five of its municipal bargaining units. New Rochelle clearly has budgeted for that pattern. PANR argues that each 1% increase will cost the City only \$90,000 and, therefore, that amounts above the pattern could be funded easily from the sources it has identified.

PANR supports its proposals with the following additional evidence and arguments:

1. Wages.

The most significant portion of the Police Association's proposals, wages, involves a number of factors, including salaries in "comparable" jurisdictions and the City's ability to pay. As noted previously, PANR urges us to expand the scope of the traditional comparable universe beyond the traditional comparators of White Plains and Mount Vernon. Using that larger universe, the Association argues it ranks 8th among these communities in salary. In 2000, top-grade New Rochelle police officers earned a base salary of \$57,251 compared to Greenburgh police officers, who earned \$65,017 in base salary.

PANR contends it also lags behind even its traditional counterparts, White Plains and Mount Vernon, when longevity pay and deductions for health insurance premiums are factored into total income. It notes insurance payments are phased out for officers in White Plains after five years.

Finally, the Association opposes the City's arguments that any increases awarded should be offset with givebacks. The City's three-year agreement with the Police Superior Officers' Association ("SOA") provides salary increases in the amounts of 3% for the first two years and 3.5% for the final year. Those parties agreed, however, to reduce first-year Sergeants' salary by 8.5% and used the savings to increase top-grade pay for all bargaining unit ranks by 0.5% in the contract's first two years, thereby providing a 3.5% increase in all three contract years. The Association argues the 8.5% salary reduction for first-year Sergeants is not an SOA giveback because it has no impact on SOA members. Rather, PANR members who are promoted to Sergeant in the future will alone bear the cost of this reduction. Moreover, PANR calls this cost savings "smoke and mirrors" because no one has been promoted to sergeant in three years.

Based upon this analysis, the Association asserts that its request for a 5% salary increase in each contract year is reasonable.

2. Sick Leave Buyout.

PANR requests payment to its members upon their retirement in the amount of one-third of their accumulated sick leave. No evidence was presented on this issue, and the City opposes the increase as an unnecessary expense.

3. Welfare Fund Contributions.

The Association seeks to increase the City's welfare fund contribution per member by \$250 per year in each year of the Agreement. Contributions are currently \$550. PANR presented no evidence on this issue, and the City opposes the requested increases based upon their cost and because they exceed the SOA's agreed increase.

4. Second Language Stipend.

The Association seeks a \$250 stipend for those members who are fluent in a second language. The White Plains police negotiated a similar benefit, pursuant to which they receive a stipend of 5% of base salary. The Association claims Westchester County's growing Hispanic population supports the need for this benefit. It contends this demand of \$250 per year is modest compared to the White Plains benefit.

The City opposes the demand and argues the Association has failed to demonstrate a need for it.

5. Longevity.

As of 2000, police officers and detectives receive longevity payments in addition to their base salary at the rate of \$700 after five (5) years, \$900 after 10 years, \$1,100 after 15 years and \$1,800 after 17 years. The Association seeks to increase these amounts by \$400 at years 5 and 10, \$200 at year 15 and \$700 after 17 years. According to the Association, such increases are justified by comparing overall salaries of its officers to those of other communities within a 10-mile radius.

The City opposes this demand as excessive. It notes New Rochelle police officers' longevity pay significantly exceeds that received by Mount Vernon police officers (who receive \$350, \$500 and \$1000 in longevity after 5, 10 and 15 years of service, respectively) and is only somewhat below White Plains (who receive \$1,131, \$1,697 and \$2,263 after 5, 10 and 15 years, respectively). It argues any increase we award should be granted only in conjunction with PANR givebacks.

6. Detective Stipends and Grades.

Currently the City has three grades of Detective. In 2000, a 3rd Grade Detective received a stipend of \$2,813; 2nd Grade Detectives received \$3,040, and 1st Grade Detectives received \$3,296. The Union seeks to collapse the three grades into one and to provide Detectives with a stipend of 7.5% above the top

grade base salary of police officers.

The Association argues that, except for Mount Vernon, New Rochelle is the only Police Department in the County to receive a flat rate for Detective pay. It points out that New Rochelle Detectives receive \$11,000 less per year than their counterparts in Greenburgh.

The City opposes both demands. With respect to the Detective grades, it argues the grades are like step increases received by police officers. Time on the job contributes to increased skills and, therefore, increased payments based on years of experience are appropriate.

As to the amount of the stipend, the City argues the current stipend is appropriate and comparable to Mount Vernon and White Plains. Detectives already receive a stipend of between 4.9% and 5.75% above the pay of a top grade police officer to compensate them for performing their Detective duties. The City compares Mount Vernon, which has two categories of Detective, who receive a stipend of \$1,000 or \$1,650, based on their dates of hire. The current stipend for a 3rd Grade Detective in New Rochelle at the top pay step is approximately \$2,160. White Plains has three Detective grades, receiving differentials of 4.0%, 4.5% and 5.0% above the top patrol salary, as opposed to 4.9%, 5.3% and 5.75% in New Rochelle. PANR, argues the City, has not shown that Detectives' working

conditions have changed, that the overtime restrictions on Detectives are in any way burdensome, or that the current stipend does not provide adequate compensation for any additional responsibilities of the Detective position. The City contends that any increase awarded must be limited to the amount necessary to maintain the 4.9%, 5.3% and 5.75% differentials received by Detectives under the expired agreement.

7. Recall/Court Recall.

Article VI, Sections 3 and 4 of the current agreement require recall pay at time and one-half to be paid to any member recalled to duty outside his or her regular tour for a minimum of two and two-thirds hours. The Union seeks recall payments for a minimum of four hours at time and one half. No evidence was presented on this subject, and the City opposes any increase in this benefit on the grounds that it is pay for time not worked.

8. Hold Over Pay.

The Association seeks one hour of payment at the rate of time and one-half for its members who are held over their tour beyond fifteen minutes. No evidence was presented regarding this issue.

9. Maternity Leave.

Currently, Article VII, Section 9 provides four days' paid maternity

leave at the birth of a child. The Association seeks extension of this leave to fathers. It did not present evidence to support this demand, however, and the City opposes it as potentially discriminatory. Because men are not incapacitated by childbirth, the City argues it would extend a greater benefit to men than women.

10. Personal Days.

The Association proposes increasing the number of personal days from three to five. No evidence was presented on this issue. The City opposes this demand and argues the number of days officers already receive is excessive because they work fewer tours of duty than their counterparts in White Plains and Mount Vernon.

11. Chart Days.

Chart days are used to balance and complete tour schedules for police officers' 4/72 duty chart. The Association proposes eliminating the one additional chart day police officers are required to work each year pursuant to Article IV, Section 1. No evidence was presented on this subject. The City opposes the change because this chart day is needed to balance the chart.

12. PANR President's Tour of Duty.

The Union proposes changing Article II, Section 7 so that the PANR President may, at his option, be assigned to the 8:00 a.m. to 4:00 p.m. tour. The

Union also proposes that the PANR President be scheduled to do no more than four hours' work per day. No evidence was presented by the Association regarding this demand.

The City opposes the Association's request as unjustified. It argues the PANR President must be available for consultation if a problem arises. According to Commissioner Carroll, the Department has accommodated the PANR President's choice of tour. The City further argues that no evidence suggests the PANR President has been prevented from attending to his union duties and, therefore, that no justification exists to reduce his work hours.

13. **Night Differential.**

The Association seeks night shift differential of five percent (5%) for employees on the 12:00 midnight to 8:00 a.m. tour of duty and two and one-half percent (2½%) pay differential for employees working the 4:00 p.m. to 12:00 midnight tour. It notes the SOA agreement contains a \$20 differential for the night shift supervisor. The City argues the night supervisor pay contained in the SOA agreement is not comparable to this unit because it extends to only one supervisor rather than to a whole tour. Further, the City asserts that Mount Vernon and White Plains' night shift differentials are also not comparable here because those cities have rotating shifts as opposed to the steady tours that New

Rochelle's police officers work. No evidence suggests that New Rochelle's Police Department has difficulty filling these shifts and, therefore, argues the City, no incentive to work these shifts is necessary.

14. Compassionate Leave.

The Association seeks to add members' aunts, uncles and spouse's grandparents to those relationships recognized under the compassion leave section. There was no evidence presented on this demand, and the City opposes it as costly and difficult to monitor.

15. Mileage Allowance.

The Association seeks to increase the mileage allowance for a police officer subpoenaed to testify outside New Rochelle and required to use his or her own car from \$.25 per mile to \$.32 and to expand the allowance's applicability to any occasion of required travel. It argues that numerous occasions occur where officers are required to use their vehicles to travel outside New Rochelle. The Association justifies its demand by pointing to a similar provision negotiated in White Plains.

The City opposes this demand as unreasonable. It argues police officers already profit from the current mileage allowance and notes SOA members receive only \$0.15 per mile.

16. Uniform Allowance.

As of 2000, the uniform allowance is \$650 per year. Officer Poggioli testified that the current allowance is insufficient to cover the cost of maintaining his uniform and that all PANR members suffer the same predicament. The Association claims increases of \$75 for each year of the contract are warranted.

The City opposes this demand altogether and seeks the benefit's elimination. New Rochelle's allowance exceeds that of White Plains and Mount Vernon Police Officers, who receive allowances of \$350 and \$500 respectively. The City notes the allowance has been increased by \$25.00 in each of the years between 1997 and 2000 and contends those annual increases have outstripped the pace of any increases in cleaning costs over the same period.

17. Funeral Expenses.

The Association requests increasing payments for funeral expenses from \$1,000 to \$2,500. No evidence was presented to support this proposal.

18. Vacations.

Currently, police officers receive the following paid vacation leave:

1 st year:	8 tours
2 nd year:	9 tours
3 rd through 5 th years:	10 tours
6 th through 12 years:	15 tours
After 12 years:	20 tours

The Union proposes increasing vacation to the following levels:

1 st year:	10 tours
2 nd year:	12 tours
3 rd - 4 th years:	14 tours
5 th -12 th years:	15 tours
12 th - 17 th years:	20 tours
After 17 years:	25 tours

No evidence was presented to support this proposal, and the City opposes any increase, claiming the City’s police officers already work fewer tours per year than their counterparts in Mount Vernon and White Plains.

19. Special Severance Vacation Leave Pay.

PANR has proposed amending Article VII, Section 3 to provide, “In the final year during which retirement of an employee is scheduled he/she shall receive special vacation leave pay based on the following schedule. . . .” The existing language provides that such benefits may be granted upon the recommendation of the Police Commissioner and approval of the City Manager. The Association seeks to make these benefits mandatory.

The Association did not present any evidence on this issue, and the City opposes this demand, arguing that no evidence suggests these benefits have ever been unreasonably denied.

20. GML 207-c Disciplinary Investigations.

PANR proposes to have disciplinary and General Municipal Law Section 207-c determinations made by a hearing officer mutually selected by the City and the Association. No evidence was presented on this subject, and the City vehemently opposes any change.

21. Tuition Reimbursement.

Currently, Article X, Section 11(13) of the parties' Agreement provides, "Courses for which tuition reimbursement is sought must be credited toward undergraduate or graduate degrees in criminal justice or public administration and must be approved in advance by the Police Commissioner."

The Association seeks to expand this benefit to include courses in any subject matter, to eliminate the Police Commissioner's prior approval, and to require full reimbursement for all courses taken.

The Association claims the change would benefit the Department because a better-educated police force is a better police force. Secondly, it argues the pending appeal of the 1997 Civil Service Rule requirement for officers to have a minimum number of college credits also justifies its demand.

The City opposes this demand as unjustified. It notes the parties have consistently agreed to increase the tuition reimbursement pool and argues that no one has ever been denied permission to take a course.

B. City of New Rochelle Proposals.

The City's case focuses on two major issues: ability to pay and comparability. It argues that the City faces severe fiscal constraints which make it impossible to meet the Association's demands and that this unit already compares favorably with comparable police departments and with other City employees in terms of wages, hours and other terms and conditions of employment. The City accordingly argues that the statutory criteria require us to reject the Association's demands and adopt the City's proposals.

The City cites severe limitations on its three major sources of revenue: property taxes, sales taxes and State aid. The City is prohibited from increasing property taxes more than the amount of the Consumer Price Index for the New York Metropolitan Region for the preceding year. See 1993 N.Y. Laws Ch. 265, § 22. The New York State Legislature imposed that cap in exchange for the City's right to increase its sales tax rate by 1%. New Rochelle is the only city in New York State with such a property tax cap. The City's attempts to have the property tax cap removed have not been successful.

During the years 2000, 2001 and 2002, the City increased property taxes by the maximum amounts permitted pursuant to the property tax cap in the amounts of 1.6%, 2.0% and 3.1%, respectively. Despite having increased

property taxes by the full 3.1% that the City could legally raise property taxes in 2002, its projected revenues from property taxes for 2002 are nearly \$1 million less than its property tax revenues in 1993 because of the tax cap and consistent decreases in the taxable assessed value of property in the City over the past decade.

In 2001, the City received \$300,000 less in sales revenue than it anticipated. Current projections call for these revenues to remain flat. Although the City has attempted to bring several larger retailers to the area, it does not anticipate any major increases in sales receipts. As a result, the City argues it cannot fund increases at the levels requested by the Association.

Nor can the City rely upon State aid as a significant source of revenue. In 2001 and 2002, New Rochelle received a mere \$465,000 in State aid, compared to \$46,950,000 for Yonkers, \$1,019,000 for White Plains and \$720,000 for Mount Vernon. Although the City has hired a lobbyist to assist it in securing more aid in the future, there is no guarantee that these efforts will result in any significant change in the State aid formula.

Expenditures are quickly outstripping revenues. Since 1998, the City has balanced its budgets with surplus funds from earlier in the decade. To show the pace of these invasions of accumulated surpluses, the City notes that, in 2000,

the year-end fund contained \$7.1 million, of which \$6 million was used to balance the 2001 budget, leaving only \$1.1 million for 2001. Currently, only \$350,000 is left for 2002, with deficits projected for the future. The City argues that these figures clearly contradict the Association's claims that surpluses due to conservative budgetary estimates can fund the increases sought.

Focusing next on comparability, the City maintains that no basis exists to expand the universe beyond the tri-city comparison of New Rochelle, White Plains and Mount Vernon, which has historically been used. It cites a 25-year bargaining history that includes fact-finding and interest arbitration awards upholding this comparison. It argues a review of the population of the three cities at the beginning of each decade since 1970 shows that their populations have grown and decreased in tandem. By contrast, Yonkers' population continues to be approximately three times larger than New Rochelle, Mount Vernon and White Plains', while Peekskill and Rye's populations have consistently been approximately one-third of the three-cities'. The relative police force sizes have also not changed significantly in the past decades. In 1980-1981 there were 186 police officers in New Rochelle, 176 in Mount Vernon, and 196 in White Plains. Yonkers had 450; Rye, 35, and Peekskill, 40. In 2002, the police forces in New Rochelle, Mount Vernon and White Plains have remained stable at approximately

182, 186 and 202, respectively. Meanwhile Yonkers' police force has grown to 620 officers, and Rye's and Peekskill's police forces have remained small at 41 and 57, respectively.

The City maintains, however, the most relevant comparison is to other employees of the City of New Rochelle, especially the Police Superior Officers and Firefighters. It cites Arbitrator Josef Sirefman's decision recognizing a "tandem relationship between the Police and Firefighters in the City." It argues that the City's employees are all affected by its current fiscal condition, whereas, even within the three-city comparison, White Plains receives greater supplemental State aid and has a greater number of large retailers and other businesses to generate tax revenues.

The City further argues its internal comparison is most appropriate because New Rochelle is the only city with a cap on its property taxes. That fact distinguishes it even from Mount Vernon and White Plains because New Rochelle cannot simply raise property taxes as a means of increasing revenues to pay for salaries or other expenses.

The City argues that its own proposals are reasonable in light of its fiscal circumstances and justified when compared to comparable workforces.

1. Retiree Health.

Unlike health insurance premiums for active employees, the City pays 100% of retiree premiums. Costs for retiree healthcare have increased at an astronomical rate of 61% since 1997. Other New Rochelle retirees pay for a percentage of their premiums, and thus, the City argues, Association retirees should pay 18% for an individual and 65% for dependents to be consistent with other civilian agreements. Significantly, the City did not impose that burden on SOA retirees.

2. Leaves to Attend Union Conventions.

The City proposes to make time off for union business be unpaid leave. It presented no evidence on this issue.

3. Workweek.

The City seeks to increase the average workweek by 2.7 hours from 35.5 hours to 38.3 hours to lower overtime costs and increase productivity. The City argues New Rochelle officers already work fewer hours than their counterparts in Mount Vernon and White Plains. Within New Rochelle, Firefighters work a 39.2-hour-week; and Community Service Officers, 40 hours per week.

4. Overtime.

The City proposes amending Article VI to provide overtime over 40 hours per week rather than after an eight hour tour. The City argues the civilian workforce earns overtime at this rate.

5. Personal Leave.

The City proposes decreasing personal days from three to one. It presented no evidence on this issue

6. Health Insurance.

The City seeks to ensure police officers to notify the City of changes in their marital status or legal dependent status so that the City can provide the member with the proper health insurance coverage. This proposal would require the police officer to reimburse the City if he or she fails to notify the City within fifteen days of the change and thereby causes the city to incur increased costs. The City argues this is a no-cost item and therefore reasonable. This item too does not appear in the SOA agreement.

7. Uniform Allowance.

The City counters the Association's demand for an increase in this allowance by proposing the elimination the uniform allowance because it is a costly benefit. As already stated, the Association seeks an increase of \$75.00 per each year of the Agreement.

8. Personal Items.

The City seeks to eliminate reimbursement for personal items stolen or damaged on the job. They argue police officers should not bring such items with them to work. No evidence was provided on this issue.

9. Binding Arbitration.

Currently, the City and Association share arbitration expenses equally. To discourage frivolous claims, the City argues these costs should be borne by the party whose position is not sustained. A similar provision appears in the Firefighters agreement, and the City maintains this is a reasonable proposal.

IV. DECISION.

On the entire record before me, including my assessments of witnesses' credibility and the probative value of evidence, I have determined that the relevant statutory criteria require the Public Arbitration Panel to issue an Award requiring the following changes:

1. Annual Salaries:

Annual Salaries for all steps of Police Officers and Detectives shall be increased as follows:

Effective 1/1/2001	3.5%
Effective 1/1/2002	3.5%

2. Longevity:

Annual Longevity pay shall be modified as follows:

- (a) Effective 1/1/2001, longevity payments after 17 years of service shall be increased by \$150.
- (b) Effective 1/1/2002, longevity payments after 17 years of service shall be increased by an additional \$150.

3. Welfare Fund:

Contributions shall be increased by \$50 per year per member, effective 1/1/2001 and increased by an additional \$50, effective 1/1/2002.

4. Uniform and Cleaning Allowance:

Cleaning allowance shall be increased by twenty-five (\$25.00) dollars in each year of the Award.

I reach those conclusions for the following reasons, having given due consideration to the Taylor Law criteria in CSL Section 209.4

The “comparability” criterion:

“a. comparison of 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. . . .”

Over the past twenty-five years, arbitration awards and the parties’ practice have established that the police jurisdictions most relevant and comparable to New Rochelle are the cities of White Plains and Mount Vernon.

Establishing this comparable universe in 1975, Public Arbitration Panel Chair

Jonas Silver concluded:

New Rochelle, White Plains and Mount Vernon have approximately the same size police force and comparable populations. They are also closely situated geographically. Their police activities take in similar types of problems characteristic of an urban-suburban mix, and their fiscal problems bear earmarks of the current dilemma of the cities.

[City Exhibit 512, p. 4 of the exhibit.]

Notwithstanding that history, the Association urges this panel to expand the tri-city comparison to include all communities within a ten-mile radius of New Rochelle. I find, however, that there simply is no basis in the record so to displace the traditional comparables. The communities the Association cites are dissimilar in population, size of police force, and other demographic factors that are important in establishing comparability. My analysis of comparables accordingly focuses on those police jurisdictions that have historically driven these parties' bargaining and arbitration outcomes, principally White Plains and Mount Vernon and, of course, the Superior Officers within New Rochelle.

To keep New Rochelle within the appropriate range of comparables, without putting it beyond White Plains (which has historically had salaries slightly above those of New Rochelle), I have determined the appropriate wage increases for the two-year period of this Award to be 3.5% for each year. These increases

mirror those provided in the SOA agreement and are consistent with the level of increases received by police officers in White Plains and Mount Vernon

Comparability data also support the increases we will award in Longevity, Welfare Fund payments, and Uniform and Cleaning Allowances, although not at the levels PANR seeks. These increases keep Association members' compensation levels similar to those of its closest comparables and are also consistent with the SOA agreement. Comparability data support as well our rejection of the Association's demands for increases in personal days, reduction of chart days, recall pay, night shift differential and hold over pay.

The “public interest/ability to pay” criterion:

“b. the interests and welfare of the public and the financial ability of the public employer to pay. . . .”

The City argues ability to pay is the primary factor this panel should consider in determining its Award. It is clear from the record that New Rochelle indeed faces difficult economic circumstances. Over the past year it has reduced its budget and faces severe restrictions in its ability to increase revenues.

New Rochelle has a unique cap on its ability to raise property taxes, and, even though it has, in recent years, raised property taxes to their fullest extent under the cap, 2001 property tax revenues are less than those received in 1993.

We cannot, however, as the Association would have us do, punish the City for its past decisions not to raise taxes to the full extent possible during the 1990s when substantial surpluses existed. That was then; this is now.

Likewise, the \$465,000 in State aid received by New Rochelle in 2001 and 2002 is paltry compared to the sums the State has provided to Westchester County's three other large cities. While the City has hired a lobbyist to address this inequity, that action cannot guarantee useful changes in the foreseeable future.

The City cannot, however, credibly claim its predicted flat sales tax revenue prohibits its funding increases at the level provided its other municipal bargaining units. While sales tax receipts are projected to be flat for the next few years, the City knew that fact when it acted to establish the 3.5% pattern it agreed to with the SOA and its other municipal bargaining units. The City's financial position has not changed so dramatically as to require breaking that pattern by awarding increases below those received by its other bargaining units. While we acknowledge that the Firefighters' interest arbitration is still pending, our award

will do nothing to disturb the pattern set by the City in 2001.¹ We will address the issue of “givebacks” in our discussion of CSL Section 209.4's fourth criterion.

The “comparison of peculiarities” criterion:

“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”

This criterion has very much to do with the uniqueness of police service. Other jobs simply do not involve the same combination of potentially lethal hazards, emotional stress, physical, mental, and educational qualifications, job training, and skills. Police officers routinely face risks of death and serious injury and must daily make instantaneous judgments involving life and death consequences. Accordingly, as we have found, by far the most relevant comparisons are to other police and not to non-police employees of this or any other employer. Accordingly, the City’s effort to compare police officers to its non-police employees is not compelling.

The “past collective agreements” criterion:

¹I understand that, following the close of the record in this case, the Firefighters’ interest arbitration award issued and required retirees in that unit to pay a portion of their health insurance premiums. That fact, however, is both beyond the record in this case and inconsistent with what the City and SOA agreed to in that most comparable unit. Nothing forecloses these parties’ revisiting that issue in future negotiations.

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.

The parties have a well-established history of collectively bargained contracts and interest arbitration awards that establish certain principles from which they may not lightly depart. Foremost is the principle of pattern bargaining. New Rochelle has traditionally settled with its municipal bargaining units in accordance with a set pattern of increases. This has been especially true between the SOA and the Police Association, where the contracts have maintained consistent terms and conditions of employment.

The 3.5% wage increases we have awarded for each contract year maintains this important pattern. In so finding, we reject the City's contention that these increases should only be granted if the Association provides "valuable givebacks" like the SOA did to fund these increases. The City's assertion is not persuasive that SOA funded its increases by reducing first-year Sergeants' rate of pay by 8.5% . In fact, current SOA members will not suffer the impact of that "giveback." Rather, only current PANR members who will be promoted to Sergeant will lose 8.5% of their first year's salary as Sergeant, an amount that will also be reflected in their overtime pay. The City's position would have been more

persuasive had SOA split that giveback between first year Sergeants and first-year Lieutenants. That way current SOA members would have given something back that PANR members would arguably have had to match to meet CSL Section 209.4's comparability criterion.

The SOA pattern also supports the identical increases we have provided in longevity pay, welfare fund payments, and the uniform and cleaning allowance. Since the SOA agreement did not contain any changes in retiree healthcare contributions, personal days, or the arbitration clause, we find no reason to adopt these City proposals.

With respect to the parties' remaining demands, there is insufficient evidence in the record to justify any change of the status quo.

By reason of the foregoing, we issue the following

AWARD

1. Annual Salaries:

Annual Salaries for all steps of Police Officers and Detectives' salary chart shall be increased as follows:

Effective 1/1/2001	3.5%
Effective 1/1/2002	3.5%

2. Longevity:

Annual Longevity pay shall be modified as follows:

Effective 1/1/2001, longevity payments after 17 years of service shall be increased by \$150.

Effective 1/1/2002, longevity payments after 17 years of service shall be increased by an additional \$150.

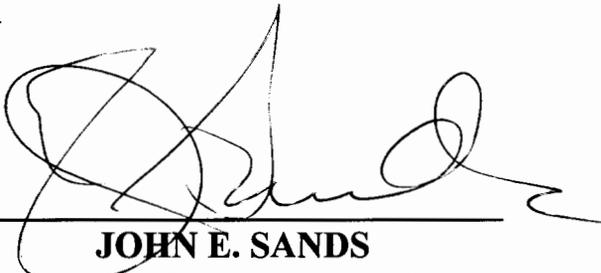
3. Welfare Fund:

Contributions shall be increased by \$50 per year per member, effective 1/1/2001 and increased by an additional \$50, effective 1/1/2002.

4. Uniform and Cleaning Allowance:

Cleaning allowance shall be increased by twenty-five (\$25.00) dollars in each year of the Award.

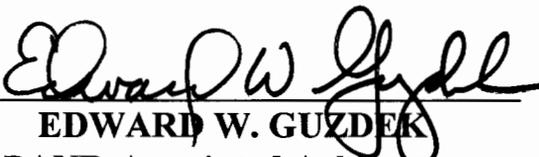
Dated: October 16, 2002
West Orange, New Jersey



JOHN E. SANDS
Public Member and Panel Chair

I concur with / ~~dissent from~~ the above Award.

Dated: October ²¹, 2002
New Rochelle, New York



EDWARD W. GUZDEK
PANR-Appointed Arbitrator

I concur with / ~~dissent from~~ the above Award.

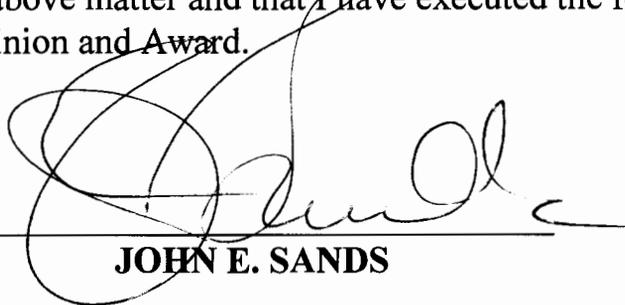
Dated: October 9, 2002
New Rochelle, New York



VINCENT TOOMEY
City-Appointed Arbitrator

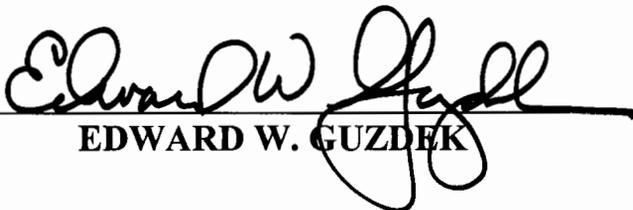
AFFIRMATIONS

Pursuant to CPLR 7507, I hereby affirm that I am the Impartial Arbitrator in the above matter and that I have executed the foregoing as and for my Opinion and Award.



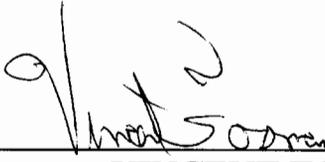
JOHN E. SANDS

Pursuant to CPLR 7507, I hereby affirm that I am the Association-Appointed Arbitrator in the above matter and that I have executed the foregoing Award.



EDWARD W. GUZDEK

Pursuant to CPLR 7507, I hereby affirm that I am the City-Appointed Arbitrator in the above matter and that I have executed the foregoing Award.



VINCENT TOOMEY