

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

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In The Matter of The Interest Arbitration Between  
CITY OF KINGSTON PBA UNION, INC.

AND

THE CITY OF KINGSTON, NEW YORK  
PERB Case No. IA201-012; M201-058  
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FINAL AND BINDING  
OPINION AND AWARD  
OF TRIPARTITE  
ARBITRATION PANEL

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRPERSON:

Peter A. Prosper  
P. O. Box 520  
Guilderland, New York 12084

PUBLIC EMPLOYEE PANEL MEMBER:

Anthony V. Solfaro, President  
New York State Union of Police Associations, Inc.  
1 Spring Square Business Park  
Newburgh, New York 12550

PUBLIC EMPLOYER PANEL MEMBER:

James W. Roemer, Jr., Esq.  
Roemer Wallens & Mineaux, LLP  
13 Columbia Circle  
Albany, New York 122037

APPEARANCES: For the Kingston PBA Union, Inc.

John K. Grant, Esq.  
Labor Counsel  
1 Spring Square Business Park  
Newburgh, New York 12550

For the City of Kingston

Robert E. Smith Esq.  
Roemer Wallens & Mineaux, LLP  
13 Columbia Circle  
Albany, New York 12203

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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OCT 28 2002

CONCILIATION

Pursuant to the provisions of Civil Service Law, Section 209.4, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board, designated the undersigned on August 1, 2001, as the Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute between the City of Kingston ("City") and the Kingston PBA Union, Inc. ("Union"). The prior Collective Bargaining Agreement between the parties covered the period from January 1, 1998 through December 31, 2000.

The parties commenced negotiations for a successor agreement on November 22, 2000, and were unable to reach agreement, whereupon Anthony Zumbolo was appointed mediator and met with the parties on June 21, 2001. When mediation did not result in resolution of the parties' differences, a petition for Compulsory Interest Arbitration was filed by the Union on June 27, 2001. The City filed its response on July 12, 2001. A hearing was held in Kingston, New York on May 6, 2002, at which all parties were provided opportunity to introduce evidence, present testimony, summon witnesses, cross-examine witnesses, and otherwise support their respective positions on the outstanding issues.

At commencement of the hearing the parties stipulated that they agreed to proceed without a transcribed record, and that the notes of the Panel Chairman would be the official record along with all the exhibits and briefs submitted in this matter.

All issues which have attendant support submitted by each party were carefully considered, as well as the responses by the opposing party. The Public Arbitration Panel met in executive session on August 14, September 24, 2002 exchanged correspondence, conducted telephone conversations, and deliberated on each of the outstanding issues, carefully and fully considering all the data, exhibits, briefs and testimony of the sworn witnesses who appeared on

behalf of both parties. The results of those deliberations are contained in the OPINION AND AWARD, which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. Those issues presented by the parties that are not contained in this OPINION AND AWARD were also carefully considered by the Public Arbitration Panel, but are remanded back to the parties for further negotiation, and therefore no AWARD is made on those matters. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. The Public Arbitration Panel considered the impact of each item upon the whole, and made its judgment concerning the combination of items that would provide a just and reasonable result for all parties.

In arriving at the determination contained herein, the Public Arbitration Panel has considered the following statutory guidelines with which it was charged by Section 209.4:

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

### **THE ISSUES**

The Issues submitted by the Union are as follows:

1. **Duration** - 2 years (1/1/01-12/31/02)

2. **Shift Differential-**

"A" line (12:00 midnight to 8:00 a.m.) - 8%

"C" line (4:00 p.m. to 12:00 midnight) - 4%

The above differentials shall be paid to all employees when on any paid leave, such as but not limited to, vacation, sick leave, personal leave, GML 207-c performance of duty injury or illness, etc.

3. **Disciplinary Procedure -**

In the event demotion in rank and/or termination is sought by the City, the employee may choose either Section 75/76 of the CSL, or arbitration, which shall be final and binding on all parties. The selection of arbitration does not waive the employee's Section 75 rights, except appeal.

4. **Grievance Procedure -**

Grievance to be filed no later than 30 calendar days after occurrence to the Chief of Police. An appeal to the Mayor shall be filed no later than 10

calendar days after receipt of the Chief of Police's written determination. An appeal of the Mayor's written determination shall be filed no later than 10 calendar days to arbitration by the PBA.

5. **Education Incentive and Physical Fitness -**

Associate's Degree - 3% over Base Wage Bachelor's Degree - 5% over Base Wage

Master's Degree - 7% over Base Wage

Physical Fitness - Membership Payment - \$500.00 per year per employee

6. **Overtime -**

Paid in excess of scheduled workday, or when called in when not scheduled to work, or in excess of scheduled workweek.

Increase "two (2) hour" minimum to "four (4) hours" at overtime rate.

7. **Uniform Clothing Allowance -**

1/1/01  
+\$75.00

1/1/02  
+\$75.00

Include the complete list of initial uniforms and equipment to be purchased by unit members. Any additional uniforms and equipment required above the initial purchase shall be paid by the City at no cost to the employee.

8. **Health Insurance -**

Effective 1/1/01, the City shall provide fully paid health insurance on retirement for existing employees, and/or dependent coverage at no cost.

9. **Base Wage and Longevity-**

Base Wage

1/1/01

1/1/02

Police Officer(s)

4.75%

4.75%

Dispatcher(s) and Senior Typist	5.00%	5.00%
<u>Longevity</u>	<u>1/1/01</u>	<u>1/1/02</u>
7-9 years	\$ 525.00	\$ 625.00
10-12 years	\$1,050.00	\$1,250.00
13-15 years	\$1,575.00	\$1,875.00
16-17 years	\$2,100.00	\$2,500.00
18 years and above	\$2,625.00	\$3,125.00

#### 10. **Proposed New Article - Labor Management**

Authorized spokespersons for the City and Union shall meet at the request of either party, to discuss questions or differences of opinion concerning the administration of this contract or other terms and conditions of employment. The request shall be in writing, addressed to the Mayor or designated representative or Union President or designated representative, at their respective addresses, and shall contain a statement of the specific subject matter or matters to be reviewed.

The labor/management meeting shall be scheduled by mutual agreement before the time limit to file a grievance may be required, as set forth in Article XIV - Contract Administration. The parties may agree to extend the time limits in the event a grievance may be required, as contained within that Article, in order to resolve the subject matter as stated in the written request.

Any agreement or understanding reached between the parties shall be reduced to writing and signed by an authorized representative of each party and attached and made a part of this Agreement.

**11. Proposed New Article - Jury Duty Leave**

- A. Effective January 1, 2001, an employee who is noticed and required to appear for Jury Duty service shall be released with pay from their regularly scheduled tour of duty that calendar day without charge to any other paid leave (i.e., vacation, holiday, compensatory time and personal leave). This release shall not include a mutual tour of duty switch between employees.
- B. The employee shall provide a copy of the appearance notice upon receipt to the Chief of Police or designee.
- C. The employee shall use the night before "call in" system, if available. The employee shall notify the Chief of Police or designee on whether or not they have to appear for Jury Duty for the following day, or are selected for jury service. In the event the employee is not required to report for Jury Duty, he/she shall report to their regularly scheduled tour of duty.
- D. All fees paid to the employee for Jury Duty service, when released from their regularly scheduled tour of duty, shall be either endorsed over to or paid by the employee to the City.
- E. Reimbursement from the court, for mileage, tolls, parking and/or meals paid for while on Jury Duty service shall be retained by the employee.
- F. At the completion of Jury Duty service, the employee shall provide from the court, if made available, a record of attendance to the Chief of Police or designee.

**12. On-call/Stand-by Payment**

Effective January 1, 2001, all members of the Detective Bureau shall provide coverage during times when no Detective is regularly scheduled to work. That member shall be provided with a Department vehicle to take home, a pager and cell phone during on-call stand-by hours, at no cost to that member. The Detective Sergeant and Lieutenant shall be provided a take home vehicle at all times. The on-call stand-by unit member shall be called, at which time he/she shall determine whether or not it is required to respond to the Police Department or crime scene. In the event the on-call stand-by unit member responds, as set forth herein, that member shall be compensated portal-to-portal with a minimum of four (4) hours of

overtime and be covered during that travel by General Municipal Law Section 207-c. In recognition for being placed on on-call stand-by, each affected member of the Detective Bureau shall be compensated at the rate of one (1) hour of straight time for every four (4) hours, or any part thereof, while on-call stand-by.

13. **K-9 Compensation**

Incorporate existing understandings into the Agreement.

14. **Union Office Space**

The City shall provide the Union with office space as currently provided in the police department.

The City of Kingston's Proposals:

**City Proposal No. 1:**

Amend Article X, Section 1 to provide that all employees shall work 260 days per year on a 5/2 schedule.

**City Proposal No. 2:**

Seniority shall no longer be the sole criterion for the picking of a shift by supervisory personnel. The Chief of Police will assign supervisory personnel to the shifts using his best judgment as to which supervisor would be more appropriate for a particular shift. In the event that the Chief believes that more than one supervisor would be appropriate for a particular shift, then seniority will prevail.

**City Proposal No. 3**

Amend Article XXV, Section 1, to read as follows:

1. The City agrees, with the prior written approval of the Chief of the Department, which approval shall not unreasonably be denied, to reimburse each employee with over one (1) year service for college level courses taken at an accredited

college or university leading to any undergraduate degree in Criminal Justice or related field during the term of this agreement as follows:

- A. Fifty percent (50%) of the cost of tuition, mandatory registration fees, books and fees for laboratory materials which remain unpaid by the Law Enforcement Education Program, Law Enforcement Assistance Administration, Department of Justice, upon the presentation of paid receipts for same.
- B. Fifty percent (50%) of the cost of tuition, mandatory registration fees, books and fees for laboratory materials upon successful completion of such course or courses as evidenced by satisfactory proof of a grade of "B" or better.
- C. The maximum cost to the employer for this program will not exceed \$5,000.00 in any calendar year. Reimbursements will be pro-rated in December if requests exceed \$5,000.00.

**City Proposal No. 4**

Effective January 1, 2001, the GHI health plan will be modified from a \$3.00 co-pay to a \$10.00 co-pay.

## **POSITION OF THE PARTIES**

### **Duration of the Award**

The parties agree that the two (2) year Award shall be effective January 1, 2001 through December 31, 2002.

### **Health Insurance For Retirees**

There is currently no provision in the Collective Bargaining Agreement providing health insurance for PBA members upon retirement from service, but there is an existing practice whereby the City makes payment of one hundred (100%) percent of the cost of health insurance upon retirement for individual employees and an additional contribution of fifty (50%) percent of the difference between the individual and family plan for retirees seeking that coverage. The Union seeks at a minimum to codify the practice by incorporating it into the Award and contained in future collective bargaining agreements.

The Union argues that the practice is a major benefit for employees and is a cornerstone to the terms and conditions agreed to and contained in the collective bargaining agreements reached between the parties over the years and that the City acknowledges providing such retiree health insurance benefits. The Union asserts that there is no reason to exclude the practice from being formalized in this Award and placed into future collective bargaining agreements.

The City resists the Union's demand stating that it currently makes such health insurance payments to retirees and their dependents, but financial exigencies in the future may require

modification. The City also points out that this benefit is equal to or greater than benefits afforded to employees in comparable jurisdictions.

With the acknowledgement that it makes contributions to the health insurance premiums as set forth above for retirees and their dependents, and if in the future the City needs to adjust its payment for those health insurance premiums, it should do so by negotiating with the Union. Therefore, the Award will grant the Union's request to codify the existing practice.

### **Salary**

The Union seeks a four and three-quarters percent (4.75%) salary increase for each year of a two (2) year Award. It argues that its proposal is reasonable when viewed in context with comparable communities. It suggests the following communities as comparable, stating that they are within Ulster County and are comparable to Kingston in size of Police Department, population, proximity to Kingston and other economic and demographic factors. The comparable communities according to the Union are: Village of Ellenville, Town of Lloyd, Town of Marlborough, Town of New Paltz, Town of Rosendale, Town of Saugerties, Village of Saugerties, Town of Shawangunk, Town of Ulster and Town of Woodstock.

The City states that it chose the communities listed below on the basis of population, geographic location, income and poverty levels, bargaining unit size, and terms and conditions of employment. Its listing of jurisdictions are: City of Beacon, City of Cohoes, City of Hudson, City of Newburgh, City of Poughkeepsie, City of Rensselaer, City of Watervliet, and the Town of New Paltz and the Village of Monticello.

While the two (2) parties differ on their choice of comparable communities, this panel has taken into consideration all the relevant jurisdictions and has compared ~~relevant~~ population, economic, and other factors of the communities presented by both parties.

### **Ability to Pay**

The City argues that the ability to pay is based on the overall financial condition of the City during the period at issue. Although the City may have the constitutional ability to tax, this does not mean that taxpayers have the ability to assume that tax burden. Testimony by City witnesses indicated that residents are currently being taxed at sixty percent (60%) of the City's maximum taxing power. The City also states that municipal tax rates and tax levies have increased from 1998 through 2002. When a community continues to increase its tax rates it will eventually drive out residents and businesses, creating a cycle of tax base erosion.

The Union argues that the City has the financial ability to pay a fair and reasonable increase in salary and benefits to the members of the bargaining unit. It states that residential real property tax rates have been virtually unchanged in the City since 1996. It also states that sales tax revenues have increased each and every year, consistently exceeding projections. And, according to the Union, the City is receiving an increased share of the County sales tax revenues, effective March 2001. The County sales tax has increased from seven and three-quarters percent (7.75%) to eight percent (8.0%), providing an estimated \$829,213 increase in unanticipated revenues commencing October 2002. Finally, the Union points out that the City has only limited debt, exhausting only about thirty percent (30%) of its constitutional limit.

Although this panel is mindful of the burden imposed on City residents by tax rates, it believes that the Award herein will not create a tax increase for residents of the City. The City is in relatively sound financial condition, and can support the increases stated in this Award. Its tax

burden is somewhat lower than comparable communities and its debt burden is also lower. The Panel believes that the Award is fair and equitable to the City and its employees represented by the Union.

Therefore, after careful consideration of the testimony and submissions of both parties, the Panel makes the following:

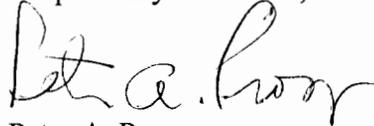
**AWARD**

1. The duration of this Award is for a two (2) year period of January 1, 2001 through December 31, 2002. The City shall implement the terms of this Award in the first (1<sup>st</sup>) full period following the issuance of this Award and pay retroactivity to any unit member who worked during the expired collective bargaining agreement within forty-five (45) calendar days of the issuance of this Award with a worksheet to any individual receiving retroactive money setting forth how the calculation(s) was made and what it represents.
  
2. Health Insurance for Retirees: Effective January 1, 2001, any member of the bargaining unit who retires with twenty (20) years or more of service with the City or is granted a disability retirement from a duty incurred injury and/or illness that occurs as an employee with the City shall be entitled to one hundred percent (100%) of the premium or cost of health insurance paid for by the City for individual coverage. In the event the employee elects dependent (family) coverage, the City shall, in addition, pay fifty percent (50%) of the difference between the individual and dependent (family) premium or cost (i.e., individual \$350.00/mo. and dependant (family) \$700.00/mo., the City would pay \$525/mo.). The health insurance coverage shall be the same plan(s) offered to bargaining unit employees and is subject to change through the collective bargaining process.
  
3. Wages: Amend Schedule "A" of the expired collective bargaining agreement with the following percentage increases:
 

<u>1/1/01</u>	<u>7/1/01</u>	<u>1/1/02</u>
(2%)	(1%)	(3%)
  
4. All other proposals submitted by both parties are remanded back to the parties.

The above constitute all the issues placed before this Interest Arbitration Panel for evaluation and decision.

Respectfully submitted,



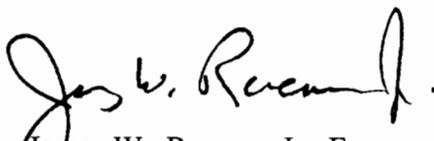
Peter A. Prosper  
Public Panel Member and Chair

Date:

10/16/02

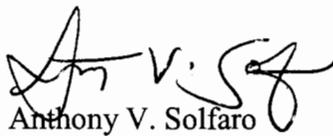
I (concur) (~~do not concur~~) with the above Award

Date: 10/16/02

  
James W. Roemer, Jr., Esq.  
Employer Panel Member

I (concur) (~~do not concur~~) with the above Award

Date: 10/18/02

  
Anthony V. Solfaro  
Employee Organization Panel Member

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS:

On this 16<sup>th</sup> day of October, 2002, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



ANDREA S. NASEMAN  
Notary Public, State of New York  
No. 4773541  
Qualified in Albany County  
Commission Expires 10/31/02

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS:

On this 16<sup>th</sup> day of October, 2002, before me personally came and appeared JAMES W. ROEMER, JR., Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*Andrea Roseman*

ANDREA S. MADEMAN  
Notary Public, State of New York  
No. 4773541  
Qualified in Albany County  
Commission Expires 1/31/02

STATE OF NEW YORK )  
COUNTY OF ORANGE ) SS:

On this 18<sup>th</sup> day of October, 2002, before me personally came and appeared ANTHONY V. SOLFARO, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*Ann M. Elliott*

ANN M. ELLIOTT  
Notary Public, State of New York  
Qualified in Orange County  
Reg. No. 01EL6031699  
Commission Expires October 12, 2005