

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between

CRYSTAL CITY POLICE BENEVOLENT ASSOCIATION  
OF CORNING, NEW YORK, INC.

AND

THE CITY OF CORNING, NEW YORK

PERB Case No. IA2003-029; M2003-097

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:

Paul S. Mayo, Labor Relations Consultant  
265 Beckwith Road  
Pine City, New York 14871

APPEARANCES: For the Crystal City Police Benevolent Association of Corning, Inc.

John C. Grant, Esq.  
1 Spring Square Business Park  
Newburgh, New York 12550

For the City of Corning

Davidson & O'Mara, P.C..  
243 Lake Street  
Elmira, New York 14901  
Ransom P. Reynolds, Jr., Esq.  
Of Counsel

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 March 8, 2004, as the Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute between the City of Corning ("City") and the Crystal City Police Benevolent Association of Corning ("Association" or "Union"). The prior Collective Bargaining Agreement between the parties covered the period from January 1, 2000 through December 31, 2002. Although the Agreement expired, it remains in full force and effect pending this Award.

The City of Corning is in Steuben County and has a population of 10,842. The City Police Department has 19 employees excluding the Chief. The Department operates twenty-four hours per day. Department employees work eight hours per day during a five-day work week among the three shifts.

The City has three other bargaining units consisting of the Firefighters, Civil Service Employees Association, Local 8702 and the Civil Service Employees Association Supervisory Unit, Local 8702-1.

The parties commenced negotiations for a successor agreement and met on several occasions, but were unable to reach agreement. The Association filed for Mediation and a mediator was appointed. Mediation was unsuccessful, and the Association filed a Petition for Compulsory Interest Arbitration on January 21, 2004. The City filed its amended response on March 31, 2004. Hearings were held in Corning, New York on July 16, and July 23, 2004, 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. The hearing had a transcribed record which was the official record of proceeding. The parties filed post hearing briefs which were received in a timely manner on or about October 1, 2004.

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 October 19, and November 17, 2004. 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 this 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 Association are as follows:**

### **ARTICLE 4 - LEAVES**

#### **4.1 Sick Leave:**

##### 4.1.1 Amend to read as follows:

Each employee shall be credited with eight (8) hours (1 work day) on the first (1<sup>st</sup>) calendar day of each month, without limitation to accumulation.

#### **4.2 Personal Leave:**

##### 4.2.1 Amend to read as follows:

Effective January 1<sup>st</sup> of each year, each employee shall be credited with thirty-two (32) hours (4 workdays) of personal leave and upon hire during that year. An employee who enters service during the year shall be credited with personal leave as follows:

Personal leave may be used in one (1) hour units or any multiple thereof.

All unused personal leave credits at the end of each contract year may be carried over and added with the personal leave credited on January 1<sup>st</sup> of each year as provided for herein.

Any unused personal leave credits shall be compensated for in the event of separation of an employee from the City.

#### **4.3 Vacations:**

##### 4.3.1 Add the following:

The Chief of Police shall establish the vacation schedule of the Department for each year, at which time the employees shall select vacation on the basis of seniority for the year in which it is to be taken. All employees shall select vacations in minimum blocks of one (1) workweek. In the event an employee does not select a continuous workweek, that employee shall not be entitled to seniority preference.

The Chief of Police or designee may grant vacation leave to be used in units of four (4) hours or multiples thereof, but shall not have preference to vacation blocks as set forth above and shall not be unreasonably denied.

In the event of separation of an employee from service, that employee or employee's beneficiary or estate, as the case may be, shall be compensated for by cash payment, of all unused vacation credits no later than the payroll following separation or death.

4.3.4 Amend to read as follows:

- A) Hired by February 1<sup>st</sup>, but less than one (1) year's service by June 1<sup>st</sup> = 40 hours (5 work days) per year
- B) Starting 2<sup>nd</sup> year of service through 4 years by June 1<sup>st</sup> = 80 hours (10 work days) per year
- C) Starting 5<sup>th</sup> year of service through 7 years by June 1<sup>st</sup> = 120 hours (15 work days) per year
- D) Starting 8<sup>th</sup> year of service through 10 years by June 1<sup>st</sup> = 160 hours (20 work days) per year
- E) Starting 11th year of service and above by June 1<sup>st</sup> = 200 hours (25 work days) per year

4.4 **Holidays:**

4.4.1 Insert "twelve (12)" where "eleven (11)" appears.

4.4.2 Insert "ninety-six (96)" where "eighty-eight (88)" appears and insert "twelve (12)" where "eleven (11)" appears.

4.4.4 Amend to read as follows:

The Holidays are as follows:

- |                          |                      |
|--------------------------|----------------------|
| 1. New Year's Day        | 7. Labor Day         |
| 2. Lincoln's Birthday    | 8. Columbus Day      |
| 3. Washington's Birthday | 9. Veterans' Day     |
| 4. Easter Sunday         | 10. Thanksgiving Day |
| 5. Memorial Day          | 11. Christmas Eve    |
| 6. Independence Day      | 12. Christmas Day    |

**ARTICLE 6 - SCHEDULING:**

Add new section as follows:

## 6.9 Switching and/or Swapping of Shifts:

Each employee shall be entitled to switch and/or swap their shift with another employee.

**ARTICLE 8-ACCOUTERMENTS:**

## 8.0.1 Amend to read as follows:

Each employee shall receive an annual uniform allowance as follows:

<u>1/1/03</u>	<u>1/1/04</u>
\$550.00	\$575.00

Each employee shall be paid the amounts as follows:

	<u>1/1/03</u>	<u>1/1/04</u>
January 1 <sup>st</sup>	\$137.50	\$143.75
April 1 <sup>st</sup>	\$137.50	\$143.75
July 1 <sup>st</sup>	\$137.50	\$143.75
October 1 <sup>st</sup>	<u>\$137.50</u>	<u>\$143.75</u>
Total:	\$550.00	\$575.00

The above payment(s) shall be subject to the appropriate withholding based on the employee's W-4 certificate on file with the City, unless the employee submits a voucher which substantiates that the payment has been made for uniform expenses.

## ARTICLE 11- COMPENSATION

11.0.1 **Rate of Pay** - Rename section title to "Base Wage" and amend as follows:

<u>Step</u>	<u>Title</u>	<u>1/1/03</u>	<u>1/1/04</u>
# 1	Starting Police Officer	\$31,062	\$32,460
# 2	Starting Second Year Police Officer	\$38,785	\$40,530
# 3	Officer Starting 3rd Year Police Officer	\$43,758	\$45,727
	Investigator( s) *	\$45,071	\$47,099
	Sergeant( s) * *	\$46,383	\$48,471
	Lieutenant( s) * * *	\$49,009	\$51,214
	Captain(s) ****	\$52,728	\$55,101

\* The Investigator(s) shall be paid a 3% differential over and above a Step 3 Starting 3<sup>rd</sup> Year Police Officer.

\*\* The Sergeant(s) shall be paid a 6% differential over and above a Step 3 Starting 3<sup>rd</sup> Year Police Officer.

\*\*\* The Lieutenant(s) shall be paid a 12% differential over and above a Step 3 Starting 3<sup>rd</sup> Year Police Officer.

\*\*\*\* The Captain(s) shall be paid a 20.5% differential over and above a Step 3 Starting 3<sup>rd</sup> Year Police Officer.

# The above was modified at the hearing by attorney John K. Grant for the PBA to reflect the existing schedule.

### 11.2 **Shift Differential**

11.2.1 Amend to read as follows:

All employees who work during the shifts of 2:00 p.m. to 10:00 p.m. and/or 10:00 p.m. to 6:00 a.m. shall be paid a differential as follows:

<u>1/1/03</u>	<u>1/1/04</u>
\$.90/hr	\$1.05/hr

The shift differential shall be paid when out on any paid leave, such as, but not limited to, vacation, sick leave, personal leave, line of duty injury or illness, etc.

### 11.3 **Overtime Pay**

#### 11.3.1 Amend to read as follows:

Work in excess of an employee's regularly scheduled eight (8) hour shift, or when not regularly scheduled to work or forty (40) hours in any workweek, shall be considered overtime. In these circumstances, overtime shall be paid at the rate of time and one-half (1.5X) that employee's applicable Base Wage, inclusive of longevity and degree payment, if applicable, to that employee. The employee shall have the option to be paid or elect compensatory time as set forth herein. An employee who accrues compensatory time in one (1) fiscal year has until the end of the following fiscal year to take his/her accumulation. In the event all of the accumulated compensatory time is not taken, it shall be paid at the employee's prevailing rate of pay, in the last pay period of that fiscal year. All paid leave, such as, but not limited to, vacation, sick leave, personal leave, etc. shall constitute time worked towards the calculation of overtime.

### 11.5 **Degree and Credit Hour Pay:**

#### 11.5.1 Amend to read as follows:

An employee shall receive the following amounts each year for:

1/1/03

BMP Certificate	\$300.00
2 year degree in Police Science or Criminal Justice	\$500.00
4 year degree in Police Science or Criminal Justice	\$800.00

The above amounts shall be included in the calculation of overtime.

### 11.6 **Longevity**

#### 11.6.1 Amend as follows:

All employees shall be paid longevity as follows:

1/1/03

<u>Year of Service</u>	<u>Amount</u>
Starting 8 <sup>th</sup> through 11 <sup>th</sup>	\$525.00
Starting 12 <sup>th</sup> through 15 <sup>th</sup>	\$575.00
Starting 16 <sup>th</sup> through 19 <sup>th</sup>	\$600.00
Starting 20 <sup>th</sup> and above	\$625.00

11.6.3 Amend to read as follows:

The above longevity amounts shall be included in the calculation of overtime.

11.9 **Investigator**

11.9.3 Insert "\$1,000.00" where "\$800.00" appears.

11.9.4 Amend to read as follows:

In recognition of the Investigator(s) work schedule which may be varied and his/her "on call" status, he/she shall be guaranteed and paid sixteen (16) hours of overtime per month.

11.9.5 Delete in its entirety.

**ARTICLE 18 - LIGHT DUTY**

18.3 **Other Conditions**

18.3.1 Delete "for the duration of this Agreement."

**ARTICLE 19 - CONCLUDING**

19.2 **Totality and Modification:**

19.2.1 Delete the 1st sentence.

19.3 **Duration**

19.3.1 Insert "2003" and "2004" where "2000" and "2002" appear respectively.

**PROPOSED NEW ARTICLE:**

**GENERAL MUNICIPAL LAW SECTION 207-C PROCEDURE**

**Section 1. Applicability**

Section 207-c of the General Municipal Law provides that any police officer of the Police Department of the City of Corning:

"who is injured in the performance of his duties or who is taken sick as a result of the performance of his duties so as to necessitate medical or other lawful or remedial treatment shall be paid by the municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased and, in addition, such municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness."

The following procedures shall regulate the application and benefit award process for 207-c benefits.

**Section 2. Definitions**

- a) **Employer:** The City of Corning
- b) **Chief:** The Chief of Police of the City of Corning
- c) **Claimant:** Any police officer of the City of Corning who is injured in the performance of his/her duties or who is taken sick as a result of the performance of his/her duties.
- d) **Claims Manager:** The individual designated by the Employer who is charged with the responsibility of administering the procedures herein which may include the Chief of Police.

**Section 3. Application for Benefits**

1. (a) An Claimant who is injured in the performance of his/her duties, or is taken sick as a result of the performance of his/her duties, shall file an application for benefits with the Claims Manager within ten (10) calendar days after the incident giving rise to the injury or sickness or within ten (10) calendar days after the Claimant should have become aware of the injury or illness. The application is attached hereto and made a part of this procedure. Upon good cause shown, an application for Section 207-c benefits may be entertained in the 'discretion of the Claims Manager, notwithstanding the failure to file the necessary application within the required ten (10) calendar days.
- (b) The Claimant shall be permitted to file documentation to supplement the original application for benefits under the following circumstances:
  - (i) After filing the application, but before the determination of the Claims Manager and
  - (ii) as set forth in Section 11 of this procedure.

- (c) All applications for Section 207-c benefits shall be in writing, using official application form(s), which shall include the following:
  - (i) the time, date and place where the injury or illness producing incident occurred;
  - (ii) a detailed statement of the particulars of the incident;
  - (iii) the nature and extent of the Claimant's injury or illness;
  - (iv) the Claimant's mailing address;
  - (v) the names of any potential witnesses; and
  - (vi) the name and address of all of the Claimant's treating physicians.
- (d) A copy of the Department line of duty incident report shall be attached to the application.
- 2. An application for Section 207-c benefits may be filed by either the Claimant or by some other person authorized on behalf of the Claimant where the Claimant's injury or illness prevents him/her from filing the Department line of duty incident report or Section 207-c benefits application.

#### **Section 4. Authority and Duties of Claims Manager**

- 1. The Claims Manager shall have the sole and exclusive authority to determine whether a Claimant is entitled to Section 207-c benefits. In making the determination, the Claims Manager shall examine the facts and circumstances giving rise to the application for such benefits.
- 2. The Claims Manager's authority shall include, but not be limited to, the following:
  - (a) employ experts and specialists to assist in the rendering of the determination of eligibility;
  - (b) require the production of any book, document or other record that pertains to the application, injury, or illness;
  - (c) require the Claimant to submit to one (1) or more medical examinations related to the illness or injury;
  - (d) require the Claimant to sign forms for the release of medical information that bears upon the application;

- (e) require the attendance of the Claimant and all other witnesses for testimony upon reasonable notice; and
  - (f) do all that is necessary or reasonable in the processing of said application.
3. A Claimant must cooperate with the Employer and provide all necessary information, reports and documentation.
  4. A determination of initial eligibility by the Claims Manager shall be made within a reasonable time, based upon the investigation, without holding a hearing.

The Claims Manager shall mail a written copy of his/her decision to the Claimant and the Chief within ten (10) calendar days of his/her determination. The written determination shall set forth the reasons for the Claims Manager's decision.

A written request for a hearing to appeal from an initial determination of the Claims Manager must be filed with the Claims Manager within ten (10) calendar days after mailing of the determination to Claimant. The Claims Manager shall arrange for a hearing to be held pursuant to Section 11 of this procedure.

#### **Section 5. Time Off Pending Initial Determination**

1. Pending the initial determination of benefit eligibility, any time off taken by the Claimant that he/she claims is the result of the injury or illness giving rise to the application, shall be charged to the Claimant's sick leave time. If the Claimant is granted Section 207-c benefits, the sick leave time used will not be applied to the Claimant's use of sick leave.

#### **Section 6. Medical Examinations and Treatment**

1. After the filing of an application, the Claims Manager may require a Claimant/Recipient to submit to such medical examinations as may be directed by the Claims Manager, including examinations necessary to render an initial or final determination of eligibility, to determine if the Claimant/Recipient is able to perform his/her regular duties or light duty assignments as set forth in Section 7 of this procedure, and/or examinations required to process an application for ordinary and accidental disability retirement. The Claims Manager may also require a Claimant/Recipient to submit to medical treatment. Such treatment may include, but is not limited to, medical and/or surgical techniques deemed necessary by the appointed physicians. Any Section 207-c recipient who refuses to accept such examination(s) and/or medical treatment shall be deemed to have waived his/her rights under Section 207-c after such refusal. The Claims Manager shall provide written notice to the Claimant/Recipient that his/her benefits are being terminated pursuant to Section 10 of this procedure, on the basis of the refusal. A Claimant/Recipient contesting the termination must make written request for a

hearing to appeal to the Claims Manager within ten (10) calendar days after mailing of the termination notice, and the Claims Manager shall arrange for a hearing pursuant to Section 11 of this procedure. The Claimant/Recipient shall cooperate in scheduling of the examination(s) and treatment, providing medical records relating to the injury or illness to the Employer's examiner, and in answering questions placed by the health care provider relating to the injury or illness. The Medical Release form is attached hereto and made a part of this procedure.

2. **Medical Reports.** All physicians, specialists and consultants treating a Claimant/Recipient of Section 207-c benefits shall be required to file a copy of any and all reports with the Claims Manager. The Claimant/Recipient shall execute all necessary releases and shall be responsible for the filing of said reports. The Claimant/Recipient shall receive a copy of the medical reports filed with the Claims Manager. The medical reports which are filed shall remain confidential and only released for purposes of administering the procedures herein, Workers' Compensation and applications made pursuant to the Retirement and Social Security Law.
3. **Payment for Medical and Related Services.** A Claimant approved to receive Section 207 -c benefits must notify the Claims Manager of expenses for medical services, hospitalization, or other treatment alleged to be related to the injury or illness giving rise to the claim. Unless in an emergency, notice shall be made prior to the incurring of the expense.
4. Any claim for surgical operations or physiotherapeutic procedures (i.e., chiropractic care or physical therapy) must be pre-approved by the Claims Manager, unless it was required in an emergency. Determinations of the Claims Manager under this paragraph shall be based upon medical documentation.
5. Bills for medical services, drugs, appliances or other supplies will require 'filing a copy of the medical bill and/or prescription by a doctor with the Claims Manager for the particular items billed, stating thereon that the items were incurred as a consequence of the injury or illness upon which claim for benefits is based. The Employer reserves the right to arrange for alternate methods for the Claimant to receive prescriptions, applications and supplies (For example: prescription drug card).

#### **Section 7. Light Duty Assignments**

1. Any recipient may be examined by a physician chosen by the Claims Manager to determine the recipient's ability to perform specified light duty. Any recipient deemed able to perform specified light duty by the Claims Manager, based upon medical documentation, may be directed by the Chief, in his/her sole discretion, to perform such light duty.
2. A recipient who disagrees with the order to report for light duty and has conflicting medical documentation that he/she is unable to undertake light duty shall submit the medical documentation to the Claims Manager within ten (10) calendar days of

mailing of the order to report for light duty. The Claims Manager shall review said medical documentation and within ten (10) calendar days of its receipt shall issue to the Chief and recipient a decision as to whether the order to return to light duty should be confirmed, modified or withdrawn. If the recipient is dissatisfied with the decision, he/she may request, in writing, a hearing to appeal from the decision within ten (10) calendar days after mailing of the decision. The Claims Manager shall arrange for a hearing to be held pursuant to Section 11 of this procedure.

3. Payment of full Section 207 -c benefits shall be continued with respect to a recipient who submits conflicting medical documentation with the order to report to light duty, until it is determined whether the recipient is capable of performing the light duty. Where a determination has been made by the Claims Manager that the recipient can report to and perform light duty and that individual fails or refuses to perform light duty that recipient's Section 207-c status shall be discontinued.

### **Section 8. Changes in Condition of Recipient**

1. Every Section 207-c recipient shall be required to notify the Claims Manager of any change in his/her condition which may enable the recipient to return to normal duties or be classified as eligible for light duty. This notice shall be made in writing within forty-eight (48) hours of any such change.

### **Section 9. Right of Perpetual Review and Examination**

1. The Claims Manager shall have the right to review the eligibility of every Section 207-c recipient throughout the period during which benefits are received. This right shall include, but shall not be limited to:
  - (a) requiring recipient to undergo medical examination(s) and treatment by physician(s) or medical provider(s) chosen by the Claims Manager;
  - (b) requiring recipient to apprise the Claims Manager as to his/her current condition; and
  - (c) requiring recipients or any other involved parties to provide any documentation, books or records that bear on the recipient's case.

### **Section 10. Termination of Benefits**

1. If, for any lawful reason, including, but not limited to, all those reasons specified in these procedures, the Claims Manager determines that a recipient is no longer or was never eligible for benefits, the Claims Manager shall notify the recipient in writing of the termination and reason for the termination. Notice of such termination, and the reasons therefore, shall be served by mail upon the recipient and the Chief. If the recipient requests a hearing pursuant to Section 11 of this procedure, pending a determination by the Claims Manager with respect to the recipient's eligibility, the recipient shall continue to receive Section 207-c benefits.

### **Section 11. Hearing Procedures**

1. Hearings requested under the provisions of this procedure shall be conducted by a neutral Hearing Officer. The following individuals shall serve as Hearing Officers:

\*\*\* TO BE MUTUALLY AGREED UPON \*\*\*

- (a) The above named Hearing Officers shall be used on a rotational basis. The hearing shall be conducted within sixty (60) calendar days of the request. In the event the Hearing Officer next on the rotation cannot conduct the hearing, the rotation of the list shall continue until a Hearing Officer is reached who can comply with this time limit. In the event none of the Hearing Officers are available within sixty (60) calendar days, the Hearing Officer who has the first available date will be assigned.
- (b) The review of the Hearing Officer shall be limited to the record before the Claims Manager in making the determination under review. No new evidence, in medical reports or otherwise shall be allowed to be presented by either party, except that testimony of the person(s) whose reports were reviewed by the Claims Manager shall be permitted.
- (c) After requesting a hearing, the Claimant/Recipient shall be permitted to submit additional information to the Claims Manager as long as 'said submission is made no later than thirty (30) calendar days prior to the date of the scheduled hearing. The Claims Manager shall review the documentation and inform the Claimant/Recipient in writing within seven (7) calendar days of the submission, as to whether the determination that is the subject of the hearing will be modified. So long as the Claimant/Recipient meets the time requirements in this provision, should the Claims Manager's determination remain unchanged, the record before the Hearing Officer may include the additional submission of Claimant/Recipient.
- (d) The scope of review of the Hearing Officer shall be whether the Claims Manager had a reasonable basis for his/her determination.
- (e) The Claimant may be represented by a designated representative and may subpoena witnesses. Each party shall be responsible for all fees and expenses incurred in their representation. The hearing shall have a transcribed record, which shall be the official record of the proceeding. The Employer shall provide a copy to the Claimant/Recipient or his/her designated representative and Hearing Officer upon receipt. The Hearing Officer shall render and submit to the City Manager, with a copy to the Claimant/Recipient's representative, written Findings and Recommendations within thirty (30) calendar days after the close of the hearing. The City Manager shall provide its written determination within ten (10) calendar days after receipt of the Findings and Recommendations. Any such determination of the City Manager shall be reviewable pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. The fees and expenses of the hearing, including transcript costs and fees of the Hearing Officer, shall be paid by the Employer.

2. In the event there is a sole medical dispute between the employee's doctor and the Employer's doctor as to whether the employee is or was disabled and unable to perform his/her regular duties, the parties agree to select a third (3rd) mutually designated physician whose medical opinion will be binding upon the parties as to disability. If the parties are unable to agree upon a third (3rd) neutral physician, he/she will be appointed from an appropriate board certified medical list by the parties. The fees and expenses of that physician shall be paid equally by the parties.

#### **Section 12. Coordination with Worker's Compensation Benefits**

1. Upon payment of Section 207-c benefits, any wage or salary benefits awarded by the Worker's Compensation Board shall be payable to the Employer for periods during which a Claimant received Section 207-c benefits. If the Claimant shall have received any Worker's Compensation benefits hereunder which were required to be paid to the Employer, the Claimant shall repay such benefits received to the Employer, or such amounts due may be offset from any Section 207-c benefits thereafter. Upon termination of Section 207-c benefits, any continuing Worker's Compensation benefits shall be payable to the Claimant. The parties shall not be bound by a determination of the Worker's Compensation Board.

#### **Section 13. Discontinuation of Salary and Wage Benefits Upon Disability Retirement**

1. Payment of Section 207-c benefits shall be discontinued with respect to any Claimant who is granted a disability retirement pension as provided by law.

#### **Section 14. General**

1. Any reference related to General Municipal Law Section 207-c benefits is informational only, and is not intended to reduce, add or enlarge the benefits or rights contained in the statute or any amendments made thereto, unless so specified. The intent is to read this procedure in conformity with General Municipal Law Section 207-c. The procedure is not intended to increase, diminish or impair the level of benefits and/or terms and conditions of employment currently received by General Municipal Law Section 207-c recipients pursuant to the statute, expressed provisions of the collective bargaining agreement or practice.
2. The only issues applicable to a Hearing Officer are determinations of initial eligibility, order(s) to return to light duty based on conflicting medical documentation or termination of Section 207-c benefits.
3. After returning to full duty from a Section 207-c injury or illness, a claim for benefits based on a recurrence of the injury or illness shall be treated as a new application for Section 207-c benefits.

**The Issues submitted by the City are as follows:**

**ARTICLE 4 - LEAVES**

**4.1 Sick Leave**

4.1.1 Sick leave is earned by members at a rate of one (1) day per month of service. Sick leave can accumulate to a maximum of 150 days.

4.1.2 Eliminate the section in its entirety.

4.1.6 Change section to read as follows:

At the time of retirement, a member with less than thirteen (13) years of service with the City as of July 1, 1997, can cash in seventy percent (70%) of their total accumulated sick leave at said member's current per diem salary. For any unit member with thirteen (13) or more years with the City as of July 1, 1977, or for those with more than twenty (20) years of service as of July 1, 1997, but who do not retire prior to December 31, 1999, such member can cash at the time of retirement eighty percent (80%) of their total accumulated sick leave at said member's current per diem salary.

Bargaining unit members hired after December 31, 1999 can cash in fifty percent (50%) of their total accumulated sick leave at said member's current per diem salary.

Bargaining unit members hired after January 1, 2001 shall not be allowed to cash in their total accumulated sick leave at the time of retirement.

Effective January 1, 1998, when a unit member reaches his or her twentieth (20<sup>th</sup>) year... [Rest of paragraph remains the same.]

**4.2 Personal Leave**

4.2.1 Modify As follows:

Each member shall be allowed one (1) personal leave day per year.

**4.4 Holidays**

4.4.1 Modify as follows:

Members shall be compensated for holidays only when working on the following days: New Year's Day; President' Day; Good Friday; Memorial Day; Independence

Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Easter; and Christmas Day

4.4.2 Eliminate this Section in its entirety.

4.4.3. Modify as follows:

Members shall work on holidays according to the natural rotation of their schedule. Members working holidays shall receive one and one-half times their per diem pay.

4.4.4 Eliminate this Section in its entirety.

4.4.5 Modify as follows:

Members requesting compensatory time off (overtime) will be granted the time off provided they give, at least, one (1) week's notice.

### **WORK YEAR**

6.1.1 Modify as follows:

No member is guaranteed a minimum of 2,080 earned hours per year.

### **TRAINING**

6.6.1 Modify as follows:

No member shall be required to work while attending training classes unless an emergency exists and the need for him/her to work when necessary as determined by the Chief.

6.6.3 Modify as follows:

In-service training is defined as training courses offered through the Police Department ("Department") which consists of five (5) consecutive hours or less in duration.

6.6.7 Modify as follows:

When, after the ordered unit member has been assigned to an in-service course and additional space is still available, the Department will select the additional unit member(s) who have signed up for the course. Said unit member(s) shall be paid at time and on-half. Selection shall be based upon the "Equitable distribution of training" standard.

6.6.8 Delete this Section in its entirety.

## 6.6.9 Modify as follows:

Unit members who signed up for an in-service course and were not required to attend and who were not selected in accordance with 6.65, and a vacancy occurs in the course, the Department will select the most senior unit member from those eligible and offer him/her the opportunity to attend. The Department shall continue to select unit members by this process until the course offering is full or until all eligible unit members have been contacted. Unit members attending shall be paid at time and one-half.

## 6.6.10 Modify as follows:

Instructors of in-service courses will be required to report to work to complete their regular work shift. If the instructor is teaching during their off-duty time, they shall be paid at time and one-half.

## 6.6.11 Modify as follows:

Instructors of non in-service courses who teach during their regular work shift and, the course is five (5) hours or less in duration, are required to report for duty to complete the balance of their regular work shift and shall be paid for the eight (8) hours

## 6.6.12 Modify as follows:

Instructors of courses that exceed five (5) hours but less than eight (8) hours, in addition of not be required to report for their regular work shift, shall be paid for eight (8) hours. For courses exceeding eight (8) hours, all time beyond the eight (8) hours shall be paid at time and one-half.

## 6.6.13 Modify as follows:

Instructors teaching a course of five (5) hours or less that overlaps their regular work shift, where such overlap occurs at the beginning of their shift, the instructor shall be paid at time and one half and shall be required to report for the balance of their regular shift. Where the overlap occurs at the end of their shift, the instructor shall be paid time and one half for all hours beyond their regular shift.

## 6.6.14 Modify as follows:

Instructors teaching during their regular day off shall be paid at time and one half. Instructors teaching prior to or after their regular shift shall be a paid in accordance with 6.6.10.

## 6.6.15 Modify as follows:

In cases where schools are four (4) or more days in duration, the Chief can change the affected unit member's days off by giving reasonable notice. In such circumstances over time is not applicable.

### **ACCOUTERMENTS**

8.0 Modify as follows:

Eliminate 8.0.1 in its entirety and replace it with the following 8.0.1:

8.0.1 The City shall contract for a uniform cleaning service to maintain Department issued uniforms.

### **PERSONAL PROPERTY**

8.2.1 Eliminate the section in its entirety.

### **RETIREE INSURANCE**

9.2.1 Modify as follows:

Any member who retires on or after January 1, 1998, but before January 1, 2000, and is eligible to continue in the health insurance plan pursuant to Section 9.24 below, shall be covered with the same health insurance plan as provided to active members and shall pay the same premium contribution as active members for the family plan or the individual plan. Any member who retires after January 1, 2000 but before January 1, 2003 and is eligible to continue in the health insurance plan pursuant to section 9.24 below, shall be covered with the same health insurance plan as provided to active members, and shall pay an employee contribution equal to one percent (1%) of his/her annual base salary at the time of retirement for family plan or one percent (1%) of his/her annual base salary at the time a retirement for single plan. After retirement the retiree may not change from individual to family coverage, but a retiree may change from family to individual coverage. Any member who retires on or after January 1, 2003 shall not be eligible to continue in the health insurance plan pursuant to Section 9.2.

### **HEALTH INSURANCE**

10.1.1 Modify as follows:

The Employer will provide unit members with the Blue Cross/Blue Shield PPO Option A Health Plan (BC/BS), with a Two-Hundred Fifty Dollar (\$250.00) individual deductible and Seven-Hundred Fifty Dollar (\$750.00) Family deductible, and College Age 25 Rider. The BC/BS plan shall also have a three-tiered prescription

drug formulary with co- pays of Five Dollars (\$5.00) Fifteen Dollars (\$15.00) and Thirty Dollars (\$30.00).

10.1.2 Modify as follows:

Effective January 1, 2003, each unit member having an individual BC/B S Health Insurance Plan or a family BC/BS Health Insurance Plan shall pay an employee contribution equal to Forty percent (40%) of the BC/BS premium.

10.1.4 Change the two dates of the year 2000 to the date 2004. The remainder of the Section remains the same.

**COMPENSATION**

11.0.1 **Rate of Pay**

Modify as follows:

The base salary for members shall be:

	<u>1/1/03</u>	<u>1/1/04</u>
Patrolman	\$29,724	\$30,021
Patrolman II	\$37,115	\$37,486
Patrolman III & Investigator	\$41,847	\$42,293
Sergeant	\$44,309	\$44,752
Lieutenant	\$46,744	\$47,211
Captain	\$50,491	\$50,996

11.2 **Shift Differential**

11.2.1 Eliminate this Section in its entirety.

11.3 **Overtime Pay**

11.3.1 Modify as follows:

Time worked in excess of eight (8) hours in a day or forty (40) hours in a week shall be compensated at time and one- half pay of the Employee's regular pay. Sick time, personal days, and vacation days can not be used as "time worked." Overtime accumulation shall not exceed forty (40) hours. Overtime on the books, i.e., up to July 1, 1987 can be used as the member wishes.

11.4 **Pay Days**

11.4.1 Each member shall be paid bi-weekly, with pay checks issued every other Thursday.

11.5 **Degree and Credit Hour Pay**

11.5.1 All members holding a two-year degree in Political Police Science or in Criminal Justice will receive \$350.00 per year in extra pay; those holding four-year degrees in the aforementioned disciplines will receive \$600.00 per year in extra pay. Degree and credit hour payments shall not be added to base salary before increases.

11.6 **Longevity**

11.6.1 Eliminate this Section in its entirety.

11.6.2 Eliminate this Section in its entirety.

11.7 **Out of Title**

11.7.1 Modify as follows:

When a Lieutenant and Sergeant are absent from shift supervision, the member assigned as the officer in charge of that shift shall receive pay at the level of the Sergeant for all days of such absence, and the member must serve on duty for the full shift. This provision is applicable even when the Chief is present in the Department.

11.8 **Off Duty Appearances**

11.8.1 Modify as follows:

Any required attendance outside regularly scheduled duty pertaining to police related work, the member shall be compensated at one and one-half pay for a minimum of one (1) hour, or for the actual time in excess of the one (1) hour. When officer's attendance is required outside regularly scheduled duty for police related work, there shall be no pyramiding of overtime for such work and no request for benefit time shall be permitted in order to obtain overtime pay under this Article for what otherwise would have been work toward the member's regular shift. If an officer's attendance is required outside regularly scheduled duty for police related work for separate assignments which are in different jurisdictions ( e.g., City Court/Grand Jury) these assignments are not considered pyramiding.

11.9 **Investigator**

11.9.2 Modify as follows:

The Investigator is on call when off duty, the City shall provide a pager or cellular phone.

## 11.9.3 Modify as follows:

The City will reimburse Investigator(s) up to \$800.00 annually for business attire upon the submission of a valid receipt to the Chief.

19.3 **Duration**

This agreement will commence January 1, 2003 and run through December 31, 2004.

**THE PARTIES' POSITIONS ON STATUTORY CRITERIA****WAGES PAID IN COMPARABLE JURISDICTIONS****Position of the Association**

The Association states that unlike many other communities in New York State, the market in Steuben County, in which the City of Corning is located, does not abound with nearby police groups for comparison. The Association argues that the universe must be expanded, and suggests that the Village of Bath and the City of Hornell, communities in close proximity to Corning and within Steuben County, are appropriate jurisdictions for comparison. The Association also argues that several neighboring communities in the counties of Broome, Chemung, Cortland, Ontario and Tompkins should be used in the comparison. Those communities are: City of Binghamton, City of Canadaigua, City of Cortland, City of Elmira, Village of Elmira Heights, Village of Endicott, City of Geneva, Village of Horseheads, City of Ithaca, Village of Johnson City and the Town of Vestal.

The Association states that a review of the profiles of these jurisdictions reveals many socio/economic similarities and a fairly homogeneous region in the southwestern portion of New York State. Steuben, Chemung, Ontario and Tompkins counties have populations of approximately 100,000 residents. The median the value of owner-occupied housing units in Steuben, Chemung, Broome and Cortland counties is approximately \$70,000, with Steuben at \$66,200. The median household income for 1999 for each County is approximately \$36,000, with only Ontario County higher, at \$44,000.

The Association provides thirteen municipalities which it believes are comparable and are a cross section of municipalities within these counties. The City of Corning falls well within the top half of municipalities from a financial perspective. For example, for the year 2004, per capita real property wealth ranged from \$17,478 to \$42,525, with eight of the municipalities exceeding \$30,000. The City of Corning was third-highest at \$39,186.

All thirteen comparables that the Association uses in its comparisons have full-time police forces. The ranges from as high as 144 police officers in the City of Binghamton to 12 in the Village of Horseheads.

The Association asks the Panel not to limit comparables to only the cities of Hornell, Elmira and Geneva, as the city has done because it skews the comparisons and provides a favorable perspective to the city's position. For example, Elmira has a population of over 30,000 as compared to 10,000 and Corning. Elmira, Hornell and Geneva's per capita real property wealth are \$17,478, \$18,357 and \$22,069 respectively, as compared to Corning's at \$39,186. Elmira's force has 85 sworn full-time officers as compared to Corning's force of 25.

According to the Association, the crime rate in 2001 in Corning was nearly twice as high, at 392 reported crimes, as compared to the city of Hornell at 200.

The Association argues that the collective bargaining agreements of other City employees have no relevance in this proceeding. Police officers are unquestionably unique, as are their working conditions. That hazards they face to their physical safety on a day-to-day, hour-to-hour and minute-to-minute basis are indisputable. Their terms and conditions of employment cannot be compared in any relevant or persuasive way with others who are in no way similarly situated. The Association argues that the City did not establish any pattern to justify comparing the PBA collective bargaining agreement to the other units' agreements.

### **Position of the City**

The City states that the most relevant comparison for comparable communities is the City of Hornell. It states that Hornell is virtually identical and population to the City of Corning, it is located within the same county as the City of Corning, it is the only other city within Steuben County and it is very close and proximity.

The City states that its payroll schedule is comparable with Hornell. The City compares pay rates for various categories off police officers with those of Hornell, and concludes that although there are some differences, overall the compensation for police between the two cities is comparable.

## **ABILITY TO PAY**

### **Position of the Association**

The Association states that the City made it clear that it was not even arguing inability to pay. It did not counter the PBA's economist and municipal finance expert Kevin Decker's testimony that the City is in excellent financial condition and has the ability to pay the wage and benefit package sought by the PBA. The City presented no testimony, no witness and no evidence that it could not pay the PBA's package in its totality. Rather, attorney Ransom Reynolds, the City's representative at the hearing, stated several times that the City was simply arguing what he coined "wisdom" to pay.

He stated, " with regard to ability to pay, it is not the position of the City of Corning that there is any legal constraint with regard to the ability to pay ...."

The Association points to various financial items that support its position that the City is able to pay the Association's proposed salary increases and other financial benefits. Property taxes, forming the single largest source of revenue for the City, have increased on an average of 3.7% since 1995. The City's tax base has been increasing moderately over the last three or four years. In terms of the property tax rate, the City has one of the lowest of the PBA's comparable communities, at \$8.30 assessed full value tax rate. Based upon combined local property, county and school taxes, the City remains at the lower end of the list of the PBA's comparables.

The Association states that there is no legal impediment to the City funding increases

through its budget surplus, by raising taxes, or increasing debt. The City's taxing limit is the second lowest in the list of comparables, which includes three comparables used by the City. Its debt margin at the end of fiscal 2003 was at 5% of its constitutional debt limit.

Several other observations were made by the Association, including the fact that the State division of budget noted that the City receives \$250,000 annually in supplemental municipal aid, in addition to the general purpose state aid in the amount of \$841,000.

The Association argues that against the backdrop of the financial health of the City, there is no question that the City has the resources available to fund the economic demands sought by the PBA, a fact not disputed by the City at the hearings. The City is simply unwilling to pay, a circumstance that has no relevance to this Panel's deliberations and Award.

### **Position of the City**

The City states that it concedes as a matter of law that it has the financial ability to pay increases in wage benefits but disputes the "wisdom" of doing so given other considerations, for example, the interest and welfare of the public. The City then combines a discussion of ability to pay and the interest and welfare of the public. The City states that Corning is essentially a one-employer town. The economic prospects for the City of Corning are quite concerning. Corning began its rapid descent in employment and business levels in 2001. The City is a landlocked community with no room for development, containing only 3.2 square miles, virtually all of which is developed. The downtown business district is very sensitive to competition and has limited ability to pay increases in taxes.

The City states that its outstanding debt has gone from \$8,640,000 in 1997 to \$19,885,000 in 2004. It states that borrowing is a way to offset tax increases and the City has limited ability to do this. In addition the City's fund balance fell from \$1,446,000 in 1997 to a projected \$741,551 in 2005. This represents a dramatic decrease in the ability to fund budgets out of the fund balance.

The City provides other statistics. It states that 40% of the City's population is classified as low to moderate income. The City's financial contribution to the New York State Pension Fund for

the police department has dramatically increased and is a projected \$225,146 for the fiscal year 2005.

The City asserts that it is clear that would be unwise for the city of Corning to pay any substantial increase in wage packages or health benefit package. While the City of Corning recognizes that it has the ability to pay because it could raise taxes to its constitutional tax limit, the unrefuted testimony in this record indicates that it would absolutely not be in the interest and welfare of the public to do so.

## **THE INTEREST AND WELFARE OF THE PUBLIC**

### **Position of the Association**

The Association asserts that it is beyond dispute that the public is best served by having a professional, well-trained, well-educated police department staffed with qualified and experienced police officers. This happens only when the wages and benefits of those police officers are at a level that is not only sufficient to attract them to City service, but sufficient to retain them for a career.

As the City is in a very sound financial condition, the interest and welfare of the public compel an Award at a level which will entice persons to become and remain members of the City's police department and one that will reflect the police officers relative status and position in the City and the surrounding law-enforcement community.

### **Position of the City**

As stated above, the City combined the ability to pay criterion with the interest and welfare of the public criterion. However, the City added a discussion of crime rates in a separate section.

The City states that its police department is compared with small villages and town police departments by the Association. Obviously, given the fact that these units are extremely small geographical areas there would be insignificant crime problems. The City of Corning's crime rates for the 2002 and 2003 calendar years is significantly down from 2000 and 2001. This, according to the City, supports the fact that there is no premium to be paid for this criterion. It states that the record

is virtually devoid of the type of analysis that one would expect a union to present if it were claiming that there were increases in the hazard of employment within the City of Corning vis-a-vis the prior contract years' change in physical qualifications, educational qualifications, mental qualifications or job-training and skills. Since the Union failed to present any evidence on this issue, it is respectfully submitted that the Panel cannot assess any premium for this criterion to the benefit of the Union but must assume that with regard to these issues the matter is status quo relative to the previous contract years.

### **PECULIARITIES OF THE POLICE PROFESSION**

#### **Position of the Association**

The Association states that the police profession is unique, and therefore no real comparison can be made with other trades or professions. No other is truly comparable. Appropriate weight must be given to the especially hazardous nature of a police officer's work and to the special qualifications, training and skills required off a police officer.

#### **Position of the City**

The City's comments are contained in the section above.

### **THE TERMS OF COLLECTIVE AGREEMENTS NEGOTIATED BETWEEN THE PARTIES IN THE PAST**

#### **Position of the Association**

The Association argues that the long list of financial benefits the City is seeking to take back have been negotiated over time and in many contracts between the parties. With no compelling reason in the record for removal of those jointly negotiated benefits, the City's demands should not be ordered by the Panel. For example, for the first time the PBA agreed to a health insurance contribution from all unit members. To now upwardly modified this contribution to anything above the current level is absurd and contrary to the record before the panel. The record dictates an Award

consistent with the demands submitted by the PBA in its petition.

### **Position of the City**

The City states that it submitted a historical comparison of the salary increases between the police department and the fire department and both CSEA unions covering 1997 through 2002. The purpose of this is to show that not only is the proposal of the employer consistent with the prior negotiated raises between the Union and the City of Corning but also consistent with all of the other unions in the City of Corning. It also shows that the City of Corning has consistently paid above the Consumer Price Index for the Northeast region with regard to these raises.

### **POSITION OF THE PARTIES ON THE OUTSTANDING ISSUES**

It must be noted that the parties presented testimony, argument and documentary evidence with respect to wages and health insurance and further developed them in their respective post-hearing briefs. However, no specific arguments were made on the other financial items proposed by the parties. The discussion below reflects that reality.

### **Duration of the Award**

The parties agree to a two (2) year Award which shall be effective January 1, 2003 through December 31, 2004.

Based on agreement by the parties, the Interest Arbitration Panel makes the following

**AWARD**

**The term of this Award shall be from January 1, 2003 through December 31, 2004.**

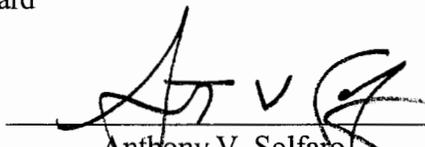
I concur (~~do not concur~~) with the above Award

Date: 3/18/05

  
\_\_\_\_\_  
Paul S. Mayo  
Employer Panel Member

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

Date: 3/25/05  
\_\_\_\_\_

  
\_\_\_\_\_  
Anthony V. Solfaro  
Employee Organization Panel Member

**WAGES**

The Association proposed a four and-a-half (4.5%) percent base wage increase each year for the two year Agreement. It also seeks to adjust the schedule for a new base level for Investigators, who are currently paid at the Patrolman III base, by paying the a three (3.0%) percent differential over and above Patrolman III base. The Association also seeks to provide a small increase in the existing differential for Sergeants, Lieutenants and Captains. The City proposes no change in wages from the 2002 levels for 2003 and a one (1%) percent increase for 2004.

Both parties presented documentary evidence and argument supporting their positions on the issue, bringing into evidence a comparison of wages and other benefits in other comparable jurisdictions, including those with similar skills, the employer's ability to pay, an analysis of wages and other benefits negotiated by the parties in the past. Special emphasis was placed on a comparison of wages of City of Corning police and police in other jurisdictions and the Employer's ability to pay.

Their main arguments were presented above in the sections on statutory criteria.

Based on an analysis of all testimony, exhibits and other documentary evidence, the Interest Arbitration Panel makes the following

**AWARD**

**The salary schedule shall reflect a two and-a-half (2.5%) percent retroactive increase on January 1, 2003.**

**The salary schedule shall reflect a two (2.0%) percent increase retroactive on January 1, 2004, and a one (1.0%) percent retroactive increase on July 1, 2004.**

**Salary Step Increments shall remain as currently provided.**

**Each employee shall receive a worksheet setting forth how and what calculation(s) represent.**

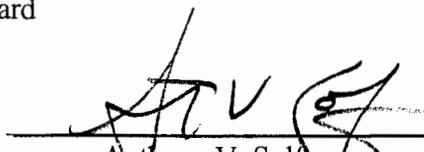
I concur (~~do not concur~~) with the above Award

Date: 3/18/05

  
\_\_\_\_\_  
Paul S. Mayo  
Employer Panel Member

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

Date: 3/25/05

  
\_\_\_\_\_  
Anthony V. Solfaro  
Employee Organization Panel Member

**LONGEVITY**

Based on an analysis of all testimony, exhibits and other documentary evidence, the Interest Arbitration Panel makes the following

**AWARD**

**On January 1, 2004, Longevity shall be increased as follows:**

<u>Year of Service</u>	<u>Longevity</u>
Starting 10 <sup>th</sup> through 14 <sup>th</sup>	\$525.00 (+25.00)
Starting 15 <sup>th</sup> through 19 <sup>th</sup>	\$550.00 (+25.00)
Starting 20 <sup>th</sup> and above	\$575.00 (+25.00)

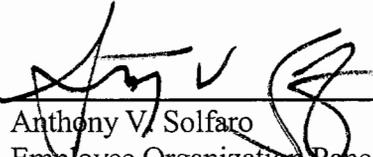
I concur (~~do not concur~~) with the above Award

Date: 3/18/05

  
 Paul S. Mayo  
 Employer Panel Member

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

Date: 3/23/05

  
 Anthony V. Solfaro  
 Employee Organization Panel Member

**SHIFT DIFFERENTIAL**

Based on an analysis of all testimony, exhibits and other documentary evidence, the Interest Arbitration Panel makes the following

**AWARD**

**All employees who work during the 10:00 p.m. to 6:00 a.m. shift shall be paid a differential as follows:**

January 1, 2003

January 1, 2004

**\$0.75 per hour**

**\$0.85 per hour**

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

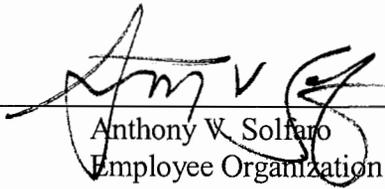
Date: 3/18/05



Paul S. Mayo  
Employer Panel Member

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

Date: 3/23/05



Anthony V. Solfaro  
Employee Organization Panel Member

## CLOTHING ALLOWANCE

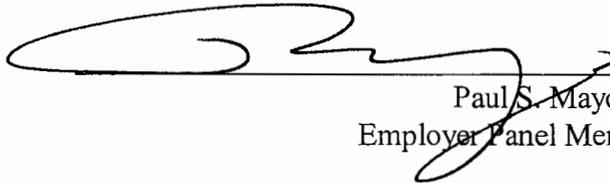
Based on an analysis of all testimony, exhibits and other documentary evidence, the Interest Arbitration Panel makes the following

### AWARD

**On January 1, 2003, each member shall receive an increase of twenty-five (\$25.00) dollars for clothing allowance.**

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

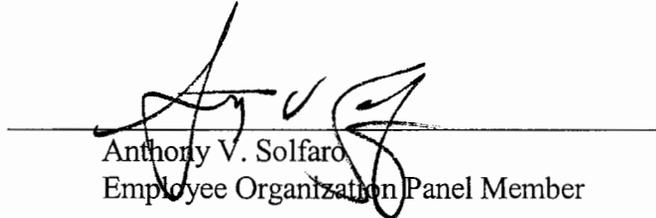
Date: 3/18/05



Paul S. Mayo  
Employer Panel Member

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

Date: 3/25/05



Anthony V. Solfaro  
Employee Organization Panel Member

## HEALTH INSURANCE

### Position of the City

The City seeks to change the Health Insurance Plan and to increase the contribution by members of the Police Department. The current health insurance plan is the Blue Cross/Blue Shied Health Plan, Seventy Day Hospital Service Plan, Comprehensive Benefits Plan. It is a traditional indemnity plan. The City proposes a Participating Provider Organization (PPO) Plan called Blue PPO. The City asserts that the plan or will afford members of the Police Department an exceptional

benefit using virtually pre-tax dollars. The City disputes the Association's claim that the proposed PPOBI plan as presented by the City involves substantial give backs in medical and health coverage. It states that coverages under the proposed plan are enhanced coverages vis-a-vis the existing plan. The current 70- Day Blue Plan is a straight indemnity medical plan which, according to the testimony of John Holleran, is an outdated plan. The proposed Plan, while not reducing medical benefits and in fact slightly increasing the same, is designed to give the employees an incentive to economically use the Plan. All other unions except the PBA have incorporated the PPO Option I in their contract.

The City states that the plan requires the cooperation of the employee in some respects and provides incentives to the employee before seeking medical attention to make sure they need the medical attention. Free visits to a doctor for unnecessary trips will be thought about more seriously if PPO-I is adopted. Utilization of generic brands or current medications that provide just as good a medical benefit as the new fancier ones in most instances will be utilized. Since each employee will have a monetary stake in what drug they use and how often they visit a doctor or an emergency room, they will utilize health care in a more common sense manner.

The City also proposes to change the employees' contribution from one (1.0%) percent of base wage to forty (40%) percent of the premium.

### **Position of the Association**

The Association states that the Panel should be aware that the City did not submit any evidence or testimony regarding its demand for Blue Cross/Blue Shield PPO Option A Health Plan as contained in City Exhibit 1. The health insurance plan change, as contained in the City's response, is not the plan submitted to this Panel as contained in City Exhibit 21 and in testimony by Mr. Holleran, for this panel's consideration for award. This Panel, therefore, has no legal basis or authority to award the City its demand for Option A, or to award a change in the health insurance plan as contained in City Exhibit 21 and testified to by Mr. Holleran. On that basis alone, without waiving any rights of the PBA, there is no need to address the merits of this portion of the City's demand.

However, notwithstanding the above, the Association disputes the City's assertion that the national trend is to change from staple medical indemnity coverage to one of managed care. This position primarily occurs in the private sector where almost exclusively all those employees are not unionized and do not bargain with their employers for such benefits as with unionized employees throughout New York State. The universal comparables used by the PBA provides virtually identical coverage as the police officers in Corning receive.

The Association also disputes the City's assertion that there is no change in benefits by changing plans and in fact, represents that there is an enhancement of some benefits. The Association also states that the City's claim that the change in plans will result and only minor cost shifting to employees is erroneous. A change as contained in the City's response is catastrophic.

Regarding the increase in premium contribution, the Association states that the parties negotiated that all employees would contribute 1% of base wage toward health insurance, and this was done in the just-expired collective bargaining agreement. It is clear, according to the Association, that the current health insurance contribution is already high, particularly when viewed in the context of its low wages.

### **Discussion**

Given the factors involved in a change in health insurance plans, and the relatively limited information given to this Panel, it is not possible to adequately assess the impact of a change in health insurance plans; nor is it possible to determine increased costs, if any to employees of a change.

In addition, as the City point out, the parties agreed to A review and develop alternatives for health and dental insurance coverages...and to explore the possibility of affiliating with a larger insurance pool..." This is contained in the Collective Bargaining Agreement, Section 10.1.4. It also states that the parties Acknowledge that current coverages need to be collectively discussed, alternatives developed..." This Panel is not aware of such discussions, although there may have been some. It is the judgment of this Panel that the parties need to further discuss such major changes in health insurance rather than have it imposed by an arbitration panel.

Regarding health insurance premiums, it is the judgment of this Panel that employees increase their health insurance contribution. The award below reflects that judgment.

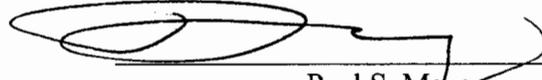
Based on an analysis of all testimony, exhibits and other documentary evidence, the Interest Arbitration Panel makes the following

### AWARD

**Effective December 31, 2004, each unit member having either an individual BC/BS Health Insurance Plan or a family BC/BS Health Insurance Plan shall pay an employee contribution equal to one and-a-half (1.5%) percent of their annual base salary to be prorated and deducted each pay period.**

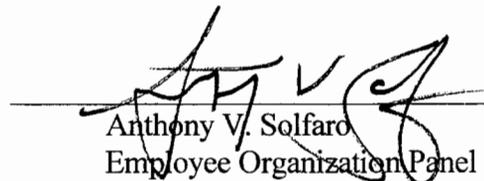
I (concur) (~~do not concur~~) with the above Award  
*with comments*

Date: 3/18/05

  
Paul S. Mayo  
Employer Panel Member

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

Date: 3/25/05

  
Anthony V. Solfaro  
Employee Organization Panel Member

### GENERAL MUNICIPAL LAW SECTION 207-c PROCEDURE

The Association proposes adding a new section to the Collective Bargaining Agreement, a procedure for providing remedy for a police officer who is taken sick or injured in the performance of his/her duties. Such a procedure is almost universal in police departments in New York State. The Panel is familiar with the procedure, and believes that it provides a neutral, independent method for

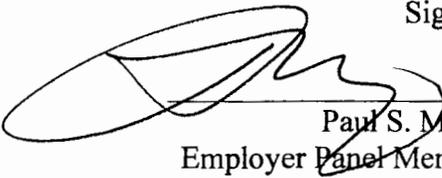
**STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of the Interest Arbitration Between )  
 )  
CRYSTAL CITY POLICE BENEVOLENT ASSOCIATION ) COMMENTS  
OF CORNING, NEW YORK, INC. ) ON  
 ) INSURANCE  
 ) AWARD  
AND ) BY  
 ) EMPLOYER PANEL  
THE CITY OF CORNING, NEW YORK ) MEMBER  
 )  
PERB Case No. IA2003-029; M2003-097 )  
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As the representative of the City of Corning in the above captioned Interest Arbitration, I am constrained to explain my concurring vote on the health insurance portion of the Award set forth on page 37.

It became patently obvious the finding of the Panel on the insurance issue was not going to be unanimous. First, with regard to the City's issue to increase the employees' share of the health insurance premiums, the Union's Representative made it clear he would not concur. Thus the "vote" was two to concur (Chairman and City's Representative) and one not to concur (Union's Representative). As the Award states, the employees' contribution has been increased from 1% to 1.5% of employee's base. Second, with regard to the City's other issue, to change the insurance plan to a PPO, the "vote" again was a two to one decision, with two not to concur (Chairman and Union's representative) and one to concur (City's Representative). As the Award *does not differentiate* between the two findings but only sets forth the finding on the increase in premium contribution, my vote not to concur would have resulted in two votes not concur (City's Representative for stated reason and Union's Representative for stated reason) and one concurring (Chairman). The affect of such a vote would have been a "no finding" and would result in no change on *any* aspect of the City's issues. Therefore, in order to achieve, at least, an increase in the employees' share of the cost of the insurance, I had to concur. Even though I firmly believe the City made its case on the need and benefit to changing to the PPO, the majority of the Panel did not and, I must abide by the majority vote on that aspect of the issue. I am sure the issue will arise anew in the next round of collective bargaining.

Date: 3/14/05

Signed:  
  
Paul S. Mayo,  
Employer Panel Member

assessing injury or illness incurred in the performance of duties, and providing a method through which both employer and employee resolve illness and injury on duty issues.

There are several areas of the proposed procedure that must be discussed between the City and the Association. This Panel urges the parties to meet and discuss this proposal to determine the possibility of its adoption in the next Collective Bargaining Agreement.

As stated above, 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 is made on those matters.

Respectfully submitted,

Date: 4/1/05



Peter A. Prosper  
Public Panel Member and Chair

STATE OF NEW YORK            )  
COUNTY OF ALBANY        ) SS:

On this 1 day of APRIL, 2005, 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.

**John E. HELLENBECK**  
Notary Public, State of New York  
Qualified in Albany County  
Reg. No. 01HA5013666  
Commission Expires 7-15-2005



STATE OF NEW YORK )  
COUNTY OF STEUBEN ) SS:

On this 18<sup>th</sup> day of March, 2005 before me personally came and appeared PAUL S. MAYO, 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.

*Linda G. Smith*

LINDA G. SMITH  
Notary Public, State of New York  
No. 01SM6050736  
Qualified in Chemung County  
Commission Expires November 13, 2006

STATE OF NEW YORK )  
COUNTY OF ORANSE ) SS:

On this 25<sup>th</sup> day of March, 2005 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.

*Nancy L. Marcojohn*

NANCY L. MARCOJOHN  
Notary Public, State of New York  
No. 4988931  
Qualified in Dutchess & Ulster Counties  
Commission Expires Nov 18, 2005