

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration
between

THE CITY OF ROCHESTER,
Public Employer,

-and-

ROCHESTER POLICE LOCUST CLUB,
Employee Organization.

OPINION

AND

AWARD

PERB Case No. IA2006-009; M2005-254

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

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

John M. Girvin, Labor Relations Consultant
Employer Panel Member

APPEARANCES:

For City of Rochester:

Thomas S. Richards, Esq., Corporation Counsel
Yvette Chancellor Green, Esq., of Counsel

For Rochester Police Locust Club:

Trevett Cristo Salzer & Andolina, PC
Lawrence J. Andolina, Esq., of Counsel

BACKGROUND

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

The City of Rochester is a municipal corporation located in Monroe County on Lake Ontario. With a population of approximately 215,000 to 220,000 people, the City is third largest City in New York State. It encompasses over 36 square miles and is an educational, health and culture center. The City of Rochester borders Lake Ontario on the north, the Town of Brighton and Irondequoit on the east, and the Towns of Gates and Greece on the west. There is a separately elected School Board that governs the operations of the Rochester City School District, but that District is financially dependent on the City.

The Union is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants, and Captains that are employed by the City, exclusive of a maximum of four sworn employees assigned to and working in the office of the Chief of Police, the Chief’s Aide, the commanding officer of the Professional Standards Section, the commanding officer of the Research and Evaluation Section.

At present, pursuant to the City Budget, the Rochester Police Department ("Department") is comprised of an authorized strength of 741 sworn full-time positions, with an additional 173 civilians working in various bureaus of the Department.

The last collective bargaining agreement between the parties covered the period which commenced on July 1, 1997 and ended on June 30, 1999. Thereafter, the parties were subject to an Interest Arbitration Award for the period commencing July 1, 1999 and ending June 30, 2001 [*Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA99-021, Selchick, Panel Chair]. A second Interest Arbitration Award covers the period commencing July 1, 2001 and ending June 30, 2005 [*Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA201-028, Selchick, Panel Chair].

Before the expiration of the period covered by the second Award, the parties began negotiations for a new agreement on or about March 15, 2005 and subsequently declared Impasse on December 19, 2005. The parties then participated in two mediation sessions with PERB Mediator Charles Leonard. With mediation not successful, the Union, on or about June 9, 2006, filed a Petition for Interest Arbitration. The City filed its Response on or about June 26, 2006, along with an Improper Practice Charge (U-26870). On or about July 14, 2006, the Union also filed an Improper Practice Charge (U-26921). The parties were able to resolve most of the disputed issues set forth in the their two IP Charges; those remaining were submitted to an PERB ALR and were subsequently resolved.

The undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the Civil Service Law, for the purpose of making a just and reasonable determination of the dispute. The parties convened before the Panel on June 11, 12, and 13, 2007, to present their positions on their outstanding proposals. At these sessions, both parties were represented by counsel and by other representatives. The parties submitted numerous and extensive exhibits and documentation, and both parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by both parties. After significant discussion and deliberations at the Executive Sessions, and additional study and review by the Panel Chair thereafter, the Panel reached agreement on the terms of the Interest Arbitration Award. This Award consists of a number of compromises induced by the Panel Chair and reflects a complete package. Neither of the concurring Panel Members would accept each individual recommendation in isolation. Nevertheless, as only a simple majority is required on each item, the support at all times of at least the Panel Chairman and one other Panel Member results in this binding Award. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chairman and at least one other concurring Panel Member. At the request of the parties, a Summary of Award was issued on July 13, 2007, with the understanding that this Opinion would follow. This Opinion is set out herein, along with the Final Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

As reflected in the Summary of Award, the parties, with written authorization by duly designated representatives, extended the jurisdiction of the Panel and requested that a three (3) year Award be issued. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Contract for the period July 1, 2005 through June 30, 2008.

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

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with 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 or employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to make a proper determination of wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with “other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.”

The Rochester Police Department is located in Monroe County, and the City of Rochester is one of the four major cities in upstate New York. The Union, consistent with its position in the earlier Interest Arbitration proceedings before the Panel Chair, maintains generally that the Rochester Police should be compared with other Monroe County local Police Departments that are either contiguous or very close geographically to the City: specifically, Brighton, Greece, Irondequoit and Webster. Current salary and benefits information from these cited jurisdictions have been presented by the Union for the Panel’s review. Additionally, the Union presented economic information regarding police wages in various cities throughout the United States that were chosen primarily on the basis of population.

In essence, the Union maintains that the police in the surrounding towns are most comparable to the Rochester Police because the full-time Police Departments located in Monroe County, including the Rochester Police Department, receive the same initial training, have similar job requirements, similar duties, and generally

perform the same functions of road patrol and investigative work. According to the Union, it must also be kept in mind, that while inner core suburban crime statistics can resemble those of cities, there can be no dispute based on the record evidence that the Rochester Police handle more violent crimes on a regular basis than any of the suburban departments. These suburban department, the Union points out, are nevertheless better paid than the Rochester Police, and should be considered as comparables.

Moreover, the Union claims that the cities of Albany, Buffalo, and Syracuse are geographically distant, supporting the view that the best comparables are the surrounding Town Police Departments. The Union notes that the Rochester Police Department workforce is drawn from the Rochester metropolitan area. Rochester Police Officers, the Union observes, compete with other officers employed in Brighton, Greece, Irondequoit and Webster for housing and jobs, and are subject to the same cost of living expenses.

As it has in past Interest Arbitration proceedings presided over by the Panel Chair, the City maintains that if there are comparables to the Rochester Police Department, they are to be found in the other large cities in upstate New York: Albany, Buffalo, and Syracuse.

It is the City's position that these larger upstate New York cities have an environment that is closer to the City of Rochester than the suburban communities or cities cited by the Union that are sprinkled throughout the United States. The City

contends that members of the Rochester Police Department share little in common in terms of duties, tasks, and problems faced by police in suburban communities. Thus, the City maintains, it is particularly inappropriate to compare the Rochester salaries to those of suburban police, given the fact that the suburban police perform very different jobs under vastly different circumstances. The City also takes the position that the financial situation of the City of Rochester and the large upstate cities selected by the City as comparables differs in very significant ways from the financial situation enjoyed by what the City perceives to be growing suburban towns. Moreover, the City puts forth that the suburban towns not only enjoy an increasing residential tax base but are also not responsible for a city-wide school district as is the City of Rochester. The City essentially urges the Panel to adopt the reasoning employed in the last two Interest Arbitration Awards to find that the most appropriate comparables to the City are the upstate New York cities of Albany, Buffalo, and Syracuse.

Panel Determination

The Panel Chair has presided over three earlier Interest Arbitration proceedings between the parties where the issue of comparability has arisen. Thus, the Chair presided over an Interest Arbitration proceeding for an Award for the period 1993 to 1997, an Interest Arbitration proceeding for an Award for the period 1999-2001, and as noted earlier, an Interest Arbitration proceeding for an Award from 2001-2005. While precedent might not always be a useful tool of analysis in

Interest Arbitration proceedings, past Panel comments regarding comparability put the present question of comparability into context.

In the 1993 to 1997 Award, the Panel stated:

In determining the appropriate wage increases to be awarded herein, the Panel has sought to provide Rochester Police with salaries which properly maintain their relative standing when compared with other police in the major upstate New York cities, and to a lesser extent, with police in surrounding suburban communities. (1993-1997 Award, p. 11).

In the 1999-2001 Award, the Panel's determination on comparability included the following observation and findings:

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

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

...

While the Union requests a wage increase comparable to salaries of other Monroe County police, and commensurate with the responsibilities and risks assumed by unit members, the Panel, as previously indicated supra, finds that the most appropriate comparables to the City of Rochester are the upstate cities of Albany, Buffalo and Syracuse. Of those cities, based on population and size of the police department, the Panel finds that Rochester police salaries should continue in the existing position of being below Buffalo salaries, and above Albany and Syracuse salaries. This is in our view a realistic order of salaries, based on the terms and working conditions of the police in the comparable jurisdictions. (1999-2001 Award, p. 9; 21).

In the 2001-2005 Award, the Panel found:

The determination of this Panel that the major upstate cities are the primary comparables is based on the fact that the population, size of police departments, urban setting, school District responsibilities and overall similarities are greater with other upstate cities than with suburban police departments in Monroe County. (2001-2005 Award, 9-10).

Though not wed to the past if circumstances change, the Panel on this issue of comparability finds that there is no part of the record before it that shows any change of circumstances sufficient to warrant a different analysis of comparability. Hence, the Panel finds that the Rochester Police Department has as its primary comparables the police departments in the other major upstate New York cities of Albany, Buffalo, and Syracuse. In stating this conclusion, the Panel also however takes note of the fact that, in the words of the 1999-2001 Award, it will consider “to a lesser extent, those police departments in the surrounding Monroe County suburban communities.” Such has been the analysis for comparables employed herein.

SALARY AND DIFFERENTIAL

A good part of the parties' dispute concerns the appropriate salary increase to be awarded herein to unit members. The Union is seeking a six percent salary increase effective July 1, on each of the three years to be covered by this Award. At the expiration of the period covered by the last Interest Arbitration Award, June 30, 2005, the maximum base salary for a Rochester Police Officer was \$55,314.00, which is the figure that the Panel has used as the bench mark when comparing Rochester Police salaries to those of comparable jurisdictions.

Additionally, the Union seeks to add language to the differential part of the salaries schedule by adding differentials for the Investigative ranks and assignment. According to the Union, its proposal on differential seeks to address what the Union perceives to be a deficit because the contract does not take into account the greater duties and responsibilities placed upon the Investigator. The Union proffers that "salary compression" can become a concern as well as an unwillingness on the part of its members to take on the more demanding duties and responsibilities in certain positions without adequate compensation. In essence, the Union contends that its differential proposal insures that Investigators receive adequate compensation for greater responsibilities.

The Union also submits that its proposed salary increase must be considered reasonable in view of the demanding and dangerous nature of the work that members of the Rochester Police Department perform. The Union maintains that

no one can dispute the important services provided by Union members or that police work, particularly in an urban area, is extremely dangerous. In the Union's estimation, when the incident of crimes, particularly violent crimes, grows in a certain locality, the risks to a Police Officer of encountering a violent or dangerous situation increases. The salaries to be awarded by the Panel, according to the Union, must address this risk. The Union stresses the fact that the City can be characterized as "disproportionately violent." In all recognized categories, the Union asserts, the crime statistics for the City of Rochester are higher than the national average or for comparable cities. It points to the City's murder rate as being 25% higher than Buffalo, 50% higher than Syracuse, and approximately 400% higher than New York City. Again, the Union claims that the discrepancies it believes it has identified must be addressed in the salary portion of the Award.

The Union also urges the Panel to take into account its contention that increased salaries must be considered necessary to enable the Rochester Police Department to recruit quality Officers. The Union notes that the City is presently attempting to reduce violent crimes through increased police presence in the community, especially in high-crime areas. Extended shifts and overtime, the Union notes, are used in pursuit of this effort. The Union claims that the City, in effect, has stated its recognition that more Officers are needed on the street. The starting salary under the last year of the Agreement, the Union notes, was \$31, 676.00, translating to an hourly rate of \$15.23. The Step 2 increase after training only brings

the starting hourly salary to \$18.79; a low salary which the Union claims will hamper efforts by the City to recruit and fully staff the Department with quality Officers.

The City offers its analysis of population data to the Panel and urges the conclusion that it must be seen as a “City in distress” that is experiencing a population decline. Between 2000 and 2003, the City observes, its population declined by approximately 2.1%. In 2006, the City notes, median household income was \$27,407, with 30.1% of individuals and 24.3% of families falling below the poverty level. The housing stock in the City in 2006, the City further notes, had a vacancy of 20.3%.

The City asserts that when there is a municipal population decline there are a number of economic and social problems that attend the decline. In fact, according to the City, the actual cost of municipal services increases because of fixed obligations and the increased demand for services. The City observes that sales tax revenue has increased only slightly from fiscal year 2006-07 to fiscal year 2007-08. Its largest revenue source, the City observes, is property tax, which is the only revenue source it can control. Hence, the City puts forth that the only certain way to pay for increased employment costs beyond those projected in the City budget would be to raise property taxes. In this regard, the City notes that its taxpayers have already been obligated to shoulder a significant tax burden and have, in effect, reached an economic limit regarding ability to pay increased taxes. The public interest and welfare would not be well served, the City argues, if the City is required to impose more property taxes on its residents.

The City notes that it has proposed a 2.95% salary increase effective July 1, 2005 and another 2.75% increase effective July 1, 2006. The City urges the Panel to take into account the significant limitations on its ability to pay. Further, the salary increases it proposes, the City observes, will maintain parity in the wage scale with the Rochester Firefighters Union, which would be consistent with the “long history” of maintaining parity between these two public safety unions. The City claims that the salaries that are paid to the Union members compare favorably to those paid by the comparable municipalities of Buffalo, Syracuse, and Albany. The City relies on the language in the Award for the period 1999-2001 that, of these three cities, “based on population and size of the police department, the Panel finds that Rochester Police salaries should continue in the existing position of being below Buffalo salaries, and above Albany and Syracuse salaries.”

The City further observes that its proposed first year increase of 2.95% would result in a maximum Officer’s salary of \$56,946, and applying the proposed increase for the second year of 2.75%, would result in the maximum Officer’s salary of \$58,512. Such a salary would surpass the wage rate for Buffalo Officers, according to the City, given the maximum salary of \$57,978 for the same two year period. In addition, the City notes the maximum salary for Syracuse Officers effective July 1, 2005 was \$53,048 and the maximum salary of an Albany Officer, effective January 1, 2005, was \$51,488.

The City rejects any assertion that it has the ability to pay the larger increases that the Union has proposed. The City calculates that the Union's proposed 6% increase during the first year of the Contract period would amount to an additional \$2,941,062 in the wage scale and in the second year, the proposed 6% would amount to another \$3,117,526 to the wage scale. The maximum Officer's salary in the first year under the Union's proposal, the City observes, would be \$58,633, and in the second year, applying the Union's proposal, \$62,151. Such wages, the City puts forth, would significantly exceed the wages paid in comparable cities.

The City asks that the Panel also keep in mind that there are other economic benefits affected by any increase in wages. The Union's proposed 6% wage increase must also be understood as a consequential increase in the overtime pay rate, field training officer per diem, K-9 pay, holiday pay, and educational incentive.

According to the City, the Union's argument, which it has raised in past interest arbitration proceedings is to the effect that the City is not at its constitutional taxing limit and thus has the ability to pay large salaries must be rejected as "impractical and unreasonable." Rochester taxpayers have reached their economic limit, the City argues, and, in any event, the Fourth Department in *Matter of Prue and City of Syracuse*, 201 A.D.2d 894 (4th Dept. 1994), has rejected this argument.

Panel Determination

The Panel, confirming what has been written in prior Interest Arbitration Awards, acknowledges and clearly recognizes the important and extremely dangerous work that is performed by the members of the Union. The statistics on the violence in the City have not escaped the consideration of the Panel. The “hazardous nature of the job” identified by the Panel in the past, including the 2001-2005 Award, has only become more serious. Increasingly, in the past few years, police officers throughout the United States, and particularly in upstate New York, have been injured and killed in the performance of their duty. Unit members also continue, as set forth in the 2001-2005 Award, to address “increased demands for the now diverse volume of services performed by Rochester police officers.”

Having accepted the dangerous and important work performed by unit members, the Panel must also consider and balance the City’s ability to pay and the genuine constraints visited on the City concerning this statutory criterion. This need was identified in the 2001-2005 Award as follows:

But the hazards of the job of police officer must be balanced against the myriad needs of a large City serving so many diverse groups. It continues to be the view of this Panel that many factors must be considered under the Taylor Law to reach a just and reasonable determination of the proper compensation to be awarded to the Rochester police herein. The Panel reaffirms the statement made in the 93-97 Award:

“The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Rochester Police with a fair and

equitable wage for the important and in many cases, dangerous work which they perform.” [12]

In that regard, the Panel also must reaffirm the legitimate and laudable goal of the City to provide for the increased need for services in all facets of government while trying to maintain a balanced budget in a time of economic uncertainty. The Panel recognizes that in addition to providing for public safety, the City must allocate resources to maintain the infrastructure, roadways, buildings, provide sanitation services, and other necessary municipal services as well as to support and maintain a large city school District. (2001-2005 Award, p. 13).

Regarding the City’s ability to pay, the Panel, as noted in the 2001-2005 Award, should take into account “other benefits provided and the cost thereof must be considered as relevant factors.” (Id., p. 14). For the 2001-2005 Award, the Panel observed that it had not “made any changes in health insurance costs for Rochester police, although the City’s cost for health insurance continues to increase and represents a significant continuing financial obligation.” (Id.). In the instant case, as set forth in the Summary of Award, the City is achieving savings by the Panel’s Award herein in the area of health insurance. Moreover, the Panel notes that the wage award, as again set forth in the Summary, is in the range of the City’s proposed increase in wages. Thus, the Panel’s Award will not disregard the significant limitations on the City’s ability to pay.

Moreover, the Panel must take into account comparability along with the hazardous nature of police work when assessing the need for a fair and reasonable wage increase. The increases that will be awarded by the Panel keep the City

Police essentially in their rankings for compensated paid at the top base pay among the comparables in the large upstate New York cities.

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

The Panel also believes it appropriate to award additional compensation in the form of a differential for the Investigator position as requested by the Union. It is the Panel's finding that the differential is needed to address the greater responsibilities typically assigned to the Investigator. Moreover, the rationale based on appropriate 209.4 criteria in terms of the salary increase in this award also justifies the differential award.

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

AWARD OF SALARY

1. Effective July 1, 2005, and retroactive to that date, the base salary schedule shall be increased by 2%.
2. Effective January 1, 2006, and retroactive to that date, the base salary schedule shall be increased by 1%.

3. Effective July 1, 2006, and retroactive to that date, the base salary schedule shall be increased by 2%.

4. Effective January 1, 2007, and retroactive to that date, the base salary schedule shall be increased by 1%.

5. Effective July 1, 2007, and retroactive to that date, the base salary schedule shall be increased by 2%.

6. Effective January 1, 2008, the base salary schedule shall be increased by 2%.

AWARD OF DIFFERENTIAL

Amend Article 3, Section 2 to include the following new language:

Section 2: Differential

Effective July 1, 2007, the differentials between ranks and assignments shall be:

Between Police Officer (Bracket 90, Step 5) and Sergeant - 14.5%

Between Sergeant and Lieutenant - 13.08%

Between Lieutenant and Captain - 12.84%

NEW: The differential between Police Officer, Bracket 90, Step A and B (Investigator) shall be maintained at \$500 less than Police Sergeant, Bracket 92, Step 3 and 4, respectively.

HEALTH CARE

A second major point of contention in this proceeding is the City's health care proposals. According to the City, its need to contain costs in this area "is a high priority." Thus, the City notes its assessment that the cost of health insurance continues to drastically escalate. In this regard, the City observes that in fiscal year 2000-2001 the annual cost to the City for an Officer with Blue Million Family coverage was \$9,190.40, and, in fiscal year 2006-2007, the costs for this plan had risen to \$21,476.64.

The City notes that the significant premium increases have extended to the HMO's. Thus, the City observes that in fiscal year 2000-2001 the annual cost for an officer with Blue Choice Extended HMO family coverage was \$6,050.28 and that the annual cost for the Preferred Care Comprehensive was \$6,047.16. The City notes further that in fiscal year 2006-2007, the annual cost for the Blue Choice Extended Family coverage was \$13,333.44 and the annual cost for the Preferred Care Comprehensive was \$12,137.28.

The City contends that its proposals for health care reflect a series of related strategies to contain rising health care costs. Hence, the City notes its proposals to close enrollment in the higher cost plan, to increase employee contributions, to allow flexibility on the City's part to substitute plans that offer substantially similar coverage, to allow the City the option of self-insurance, and to offer cash incentives for Officers who accept health insurance through other sources.

The City identifies its proposal to close new enrollment for the Blue Million Indemnity Plan as significant because of the extremely high cost of enrollment in this plan. Regarding HMO's, the City contends that its ability to substitute plans will allow for more effective alternatives to curb rising health care costs. The same can be said, the City adds, for its proposal to self-insure. Moreover, the City claims that its proposal whereby a member of the Union married to another City employee or retiree will be eligible for only one health insurance contract will relieve the City any burden of duplicate coverage.

The City also claims that the employee and retiree contributions it seeks will obviously assist it in containing health care costs. It is the City's position that the proposal as applied to active members also serves the salutary purpose of providing an incentive for employees to make better and more responsible health care choices. Regarding retiree health insurance, the City also observes that its proposal would eliminate retiree eligibility if the retiree is eligible through another source, and employees hired after January 1, 2006, when they retire, will only be eligible under the City's proposal, for a single health insurance contract. According to the City, its proposal to offer a cash incentive for members who are eligible for and elect health insurance coverage from an alternative source not only reduces the amount of health care costs but also provides a benefit to the employee selecting the option.

The Union opposes the City's proposal to eliminate new enrollments in the Blue Million Plan. It notes that enrollment is already limited to members hired before

July 2000, which means that no new hires are eligible. Furthermore, the Union contends, it would not be fair to prevent those members now eligible from selecting Blue Million when they had every reason to believe that the option was open to them. Thus, the Union asserts that at the very least, members hired before July 1, 2000, should be given an opportunity to enroll in Blue Million before the option is eliminated.

As to the City's proposal to give it the right to substitute alternative plans, the Union states its objection because the City would essentially receive the authority to unilaterally change plans and thereby eliminate benefits for which the Union has bargained. The Union contends that the City's proposal to the extent it would only allow for the substitution of comparable plans cannot be considered sufficient because the standard allowing for substitution would be too vague. At a minimum, the Union argues, the City's proposal should only be awarded if there is a requirement added that substitutions be negotiated with the Union before any implementation thereof.

The Union also opposes the City's proposal to give it the right to self-insure for essentially the same reasons that it opposes the City's proposal to obtain the right to substitute alternative plans. As to the City's proposal concerning an increase of employee contributions, the Union claims that this proposal is simply another way of reducing "effective salary" and therefore the Union opposes any increase in contributions.

PANEL DETERMINATION

The City's proposals seek to amend Section 1(A) of Article 11 of the Agreement by closing new enrollment in the Blue Million Plan. The Panel, persuaded by the great expense of this plan, finds it appropriate, with a short window for members with 30 or more years of service to now enter the plan, to close new enrollment to the Blue Million Plan. It is very apparent to the Panel that the City has a compelling need to curb rising health insurance costs, and awarding this proposal will help accomplish that purpose. Additionally, the Panel finds that fiscal prudence requires that further limitations be placed on plan choices available to members hired on or after July 1, 2000, with greater limitations placed on alternatives for members hired on or after July 1, 2007. As to the choice limitations, the Panel finds that the plans that will be made available provide adequate levels of health care coverage.

Finally, as to Section 1 of Article 11, the Panel finds that the City's proposal that would allow it to replace existing health insurance plans should be awarded. The Panel agrees with the City that this option allows the City flexibility in seeking to obtain "substantially similar" health insurance at a lower cost. Needless to say, the City's need to contain rising health care costs can be advanced by this flexibility. In awarding the City this proposal, the Panel emphasizes that Officers should not be prejudiced by this flexibility since the Award will not detract from either the choices offered for health insurance or the level of health insurance, as seen in the

“substantially similar” criterion. The City is required to consult with the Union before making any changes, and, hopefully, the parties will be able to “partner” in this area. The Panel also finds that in the event the City seeks to replace any health insurance plan with one that is “substantially similar” the parties will utilize an expedited arbitration process. This should result in a speedy neutral resolution of any contentions by the Union that the City has acted outside the boundaries of the flexibility granted by the Panel. Any other disputes regarding health insurance shall be resolved through the existing Article 27 arbitration procedure.

The City also proposes increasing employee contributions to health insurance coverage. Currently, employees, effective May 11, 2000, contribute 7 1/2% of the cost of the premium for Blue Million, Blue Choice Expended, and Preferred Care Comprehensive Plans. Those enrolled in the HMO’s of Blue Choice Select or Preferred Care Community contribute 3 1/2% of the plan selected.

It is the Panel’s decision that an increase in contributions must be obtained by the City if the City is able to continue to shoulder the burden of increasing health care costs. The Panel observes that the Union’s argument against an increase in contribution, namely, that increases are “hits” against salary is one that is not lacking in logic. Nevertheless, the Panel observes that it has awarded increases in salaries, and emphasizes the significant need of the City to achieve some relief in this area. Accordingly, the Panel, effective July 23, 2007, will increase the 7 1/2% contribution to 9%, and the 3 1/2% contribution to 6%. The latter contribution will extend to Blue Choice Value and Preferred Care Opportunity.

The next area of the City's proposal concerns Article 11, Section 3, entitled "Alternative Plans." The Panel finds that there is no need to keep the current language and that the City's proposal granting a benefit to unit members who elect health insurance coverage from a source other than the City by providing compensation to the Officer, will assist the City in reducing health care costs and not penalize the unit member. The Panel thus finds that awarding this proposal will not be detrimental to the Union.

Finally, as to health insurance coverage for retirees, set forth in Section 9 of Article 11, and in keeping with the Panel's Award of increased contributions from active members, the Panel awards the City's proposal to the extent of increasing the contribution rate from 3 1/2% to 5% and keeping in place the guarantee that an employee who retires with 30 or more years of service is not required to pay for any health insurance premiums notwithstanding the plan and coverage selected. The justification for the Panel's decision is found in the Panel's overall rationale set forth in providing the City relief in this area of health care costs, and, specifically, for the increase in contributions from active members.

AWARD ON HEALTH INSURANCE

Article 11, Section 1 - Hospital and Surgical Health Benefits

A. Employees hired prior to July 1, 2000, may choose from the following plans:

1. The Blue Cross/ Blue Shield Plan plus the Blue Million Rider, the \$5 deductible Prescription Rider and the 80/20 X-Ray Blue Shield Rider. The City agrees to provide coverage comparable to the prior 120-day Maternity Services Rider and the Paid-In-Full Obstetrical Services Rider for members of the Unit. This benefit may be provided through a plan or 'plans other than Blue Cross and/or Blue Shield provided that the benefit remains substantially equivalent. However, as of the date of this Award, only those unit members who are already enrolled in the Blue Million Plan, as described above, will be eligible to continue coverage with the Blue Million Plan. In addition, unit members with 30 or more years of service by October 1, 2007, may elect to enroll in the Blue Million Plan during a special enrollment period that will take place prior to that date. As of October 1, 2007, the Blue Million Plan will thereafter be closed to new enrollees.

2. The Blue Choice Extended Plan
3. The Blue Choice Select Plan
4. The Preferred Care Comprehensive Plan
5. The Preferred Care Community Plan
6. Blue Choice Value
7. Preferred Care Opportunity

B. All members hired on or after July 1, 2000 but prior to July 1, 2007 shall have available to them either the Blue Choice Select, Preferred Care Community Plan, Blue Choice Value, or Preferred Care Opportunity.

C. All members hired on or after July 1, 2007, shall have available to them either the Blue Choice Value Plan or Preferred Care Opportunity.

D. It is expressly understood by the parties that a unit member married to another unit member shall be eligible for only one single health insurance contract in the event his or her spouse is covered by his or her own single health insurance contract, and further, that such member shall not be eligible for any separate health insurance coverage if his or her spouse is covered by a family health insurance contract, as provided for in this Section.

E. Except as provided in Article 11, Section 1 (A)(1), the employer has the right to replace any health insurance plan or rider that is offered to members of the unit with a plan or rider that, when considered as a whole, is substantially similar to the plan or rider being replaced. The Employer shall consult with the Union regarding the contemplated change(s) in plan or rider. If the Union disagrees with the City's determination that a proposed change in plan or rider is substantially similar, the Union may file a grievance pursuant to Article 27 of this Agreement, utilizing an expedited process as directed by the Contract Arbitrator. In the event the Union grieves, no change(s) shall occur until the Contract Arbitrator has rendered a final determination on the matter. The Union will not unnecessarily delay the expedited review process.

Article 11, Section 2 - Cost of Benefits to Employees

Effective July 23, 2007, employee contributions for those enrolled in the Blue Cross/Blue Shield Blue Million, Blue Choice Extended, or Preferred Care Comprehensive Plans shall be 9% (nine percent) of the cost of the plan selected. The employee contribution for those enrolled in the Blue Choice Select, the Preferred Care Community Plan, Blue Choice Value, or Preferred Care Opportunity shall be 6% (six percent) of the cost of the plan selected.

Article 11, Section 3 - Alternative Plans

Delete current language and replace all with new language as follows:

A. Unit members who accept health insurance coverage from a source other than the City of Rochester shall receive \$1,000 per annum, prorated by month, based on the City's fiscal year, payable by September 1st for the preceding fiscal year, if 1 through 49 unit members accept this option. If, however, 50 to 59 unit members accept this option by the conclusion of the fiscal year, the payment shall increase to \$1,500 per annum per unit member. If 60 or more unit members accept this option by the conclusion of the fiscal year, the payment shall increase to \$2,000 per annum per member.

B. Applications shall be made for the following fiscal year at the same time as "open enrollment" for health insurance.

C. Re-enrollment in City coverage is permitted during the year if a qualifying event occurs.

Article 11, Section 9 - Coverage for Retirees

B. Qualified employees, as defined in subdivision A. of this Section, who retire, shall retire with the plan they are enrolled in at the time of retirement and shall pay the contribution rate in effect for that specific plan and coverage selected. The exceptions are as follows: an employee who retires with more than 25 years of service shall pay at the rate of 5%; and an employee who retires with 30 or more years of service shall not be required to pay any health care insurance contributions, regardless of the plan and coverage selected.

PERFORMANCE ENHANCEMENT ALLOWANCE

The City notes that in the 2001-2005 Award, the Panel adopted a new provision in the Agreement that allowed the Chief of Police, at the Chief's discretion, to award a paid day off to any member of the Department who had gone above and beyond the call of duty or otherwise provided meritorious service. According to the City, the incentive has been utilized to recognize Officers for conduct falling within the scope of the incentive. Its current proposal, the City notes, presents "a more wide-ranging plan" that would allow for the payment of an allowance equal to 5% of an Officer's base pay, to be paid on a semi-annual basis, to 20 to 40 Officers and 10 to 20 Investigators and Sergeants. The allowance is to be awarded, under the proposal, by virtue of a criteria established by the Chief for exemplary performance during periods from January to June and July to December.

The City notes that the Mayor of the City has advocated for "performance-based" compensation, which goal, the City observes, will be advanced by the Panel's acceptance of its proposal. It is the City's position that the proposal constitutes a "win-win" for the parties.

Panel Determination

The Panel finds that this proposal is positive and in the best interests of both parties. Performance-based compensation might be objectionable if it could result in lower compensation than that otherwise provided for in the Agreement for Officers. Given the discretion afforded the Chief, such an approach could be a

reasonable concern to the Union. Here, however, the performance-based compensation works only on the “upside” and targets more than a handful of Officers in a very positive economic manner. Accordingly, the Panel agrees with the City that this proposal is a “win-win” proposal and hereby awards as indicated below.

AWARD OF PERFORMANCE ENHANCEMENT ALLOWANCE

Article 3, Section 11 - Performance Enhancement Allowance (NEW)

A. The City agrees to designate no fewer than 20 but no more than 40 unit members holding the rank of Police Officer, and no fewer than 10 but no more than 20 unit members holding either the assignment of Investigator or the rank of Sergeant, to qualify for a Performance Enhancement Allowance. This allowance shall be paid on a semi-annual basis, for performance observed during the periods of January-June and July-December, to those members as designated above who demonstrate exemplary performance as determined by the Chief of Police or his designee.

B. Areas to be considered in determining eligibility for the Performance Enhancement Allowance shall be established by the Chief of Police, or his designee, after consultation with the Union.

C. The allowance shall be 5% of the unit member's base salary earned in the designated performance period.

D. A Committee chosen solely by the Chief of Police shall recommend recipients utilizing the established criteria. The selection or non-selection of any particular unit member by the Chief or his designee, or by the Union as provided below, shall not be grievable under Article 27 of the Agreement by either party. In the event the City fails to meet and select at least the minimum number of eligible candidates within 45 days from the end of each performance period, the Union shall select 30 unit members (20 of Police Officer rank and 10 of Sergeant rank and/or Investigator assignment) who shall receive the allowance.

CLEAN-UP/HOUSEKEEPING ISSUES

A number of clean-up/housekeeping items have been proposed for the Panel's consideration. The Panel is amending Section 3 of Article 3 ("Salary Steps") so that pay steps will become effective at the beginning of the first full pay period after an Officer becomes eligible for the step increase. Section 4 of Article 10 ("Vacation Allowance") is amended, as is Section 5 of Article 15, to address accrual of vacation allowances and compensatory time. The aforementioned proposals that the Panel has awarded achieve certain efficiencies in administrative processing and the implementation of the affected provisions by, as the City has noted, "ensuring that the effective dates fall at the beginning of the pay period." The need for manual input and processing of payroll adjustments are thereby eliminated.

Section 2 of Article 17 ("Severance Pay") is amended by cleaning up the provision, and, in fact, granting a greater benefit to Officers so that the accrual of compensatory time to be paid out in severance pay is increased from 45 days to 51 days, which equalizes the amount of eligible days for Officers working a 5-2 schedule.

Section 1 (F) of Article 18 concerning the workweek has been deleted in its entirety because it is no longer needed.

Finally, Section 3 of Article 19 ("Posting of New Positions and Vacancies") has been changed by incorporating exceptions set forth in Article 2, Section 1, deleting references to the Office of the Chief of Police, and insuring that no Officer can be involuntarily transferred to any position save for those specified in Article 2, Section 1.

AWARD ON CLEAN-UP/HOUSEKEEPING

Article 3, Section 3 - Salary Steps

A.i. Police Officer --Bracket 90
HIRED BEFORE JULY 1, 1997

The steps shown below shall be reached at the following intervals:

Step 1: Start

Step 2: At the beginning of the first full pay period following successful completion of the formal recruit training and field officer training program, or at the beginning of the first full pay period after completing 8 months of service, whichever comes first.

Step 3: At the beginning of the first full pay period after reaching the first anniversary after completing the formal recruit training and field officer training program, or at the beginning of the first full pay period after completing 20 months of service, whichever comes first.

Step 4: At the beginning of the first full pay period after reaching the second anniversary after completing the formal recruit training and field officer training program, or at the beginning of the first full pay period after completing 32 months of service, whichever comes first.

Step A: Upon assignment as provided in Article 5, Section 3.

Step B: At the beginning of the first full pay period following completion of one full year of assignment at Step A, as provided in Article 5, Section 3.

A.ii. Police Officer--Bracket 90
HIRED ON OR AFTER JULY 1,1997

The steps shown below shall be reached at the following intervals:

Step 1: Start

Step 2: At the beginning of the first full pay period after successful completion of the formal recruit training and field officer training program, or at the beginning of the first full pay period after completing 8 months of service, whichever comes first.

Steps 3, 4, 5: At the beginning of the first full pay period commencing one year after reaching the prior step.

Step A: Upon assignment as provided in Article 5, Section 3.

Step B: At the beginning of the first full pay period after completion of one full year of assignment at Step A, as provided in Article 5, Section 3.

B. Notwithstanding subdivision A above, police officers who transfer to the Rochester Police Department from other jurisdictions or deputy sheriffs hired shall receive a starting salary at Step 2, at a minimum. Starting salaries for such personnel may exceed Step 2, under mitigating circumstances, after consultation with the Union.

C. Pay Steps - Officer Ranks

Rank	Bracket	Step 3
Detective C	91	Upon Appointment
Sergeant	92	Upon Civil Service Appointment
Detective B	92	Upon Appointment
Lieutenant	94	Upon Civil Service Appointment
Captain	95	Upon Civil Service Appointment

Rank	Bracket	Step 4
Detective C	91	Upon completion of 1 year of service at Step 3
Sergeant	92	At the beginning of the first full pay period after completion of 1 year of service at Step 3
Detective B	92	Upon completion of 1 year of service at Step 3
Lieutenant	94	At the beginning of the first full pay period after completion of 1 year of service at Step 3
Captain	95	At the beginning of the first full pay period after completion of 1 year of service at Step 3

Article 10, Section 4 - Vacation Allowance

The City will grant vacation based on the number of years of service completed at the beginning of the calendar year as follows: Number of years of service completed as of January 1 of the calendar year; and yearly vacation allowance:

Less than one yr. of service; 1 day per mo. (not to exceed 10 days)
 1 yr. through 3 complete years; 12 days
 4 yrs. through 8 complete years; 16 days
 9 yrs. through 14 complete years; 18 days
 5 yrs. through 19 complete years; 20 days
 20 and more complete years; 25 days.

Vacation allowance for a calendar year will be made available at the beginning of the first full pay period in that calendar year. The vacation allowance for a given calendar year can be used through the end of the pay period that precedes the first full pay period in the following calendar year. While newly hired members will accrue vacation allowance according to the schedule above, they will not be allowed to use vacation allowance during their periods of academy training or field training.

All vacation days are working days and do not include R days.

Article 15, Section 5 - Payment for Compensatory Time

C. Payments for compensatory time shall be paid only on or before October 1 each year, provided that the member has requested such payment on or before September 1 of that year. Payment will be based on compensatory time earned through the last full pay period in August of that year.

Article 17, Section 2 - Severance Pay

A. In the event that a member of the Unit retires, dies or otherwise terminates service with the City of Rochester, Severance Pay shall be paid for all unused vacation time, not to exceed forty (40) days, and all accrued overtime (compensatory time), not to exceed fifty-one (51) days.

Article 18, Section 1 - Work Week.

F. Paragraph deleted in entirety

Article 19, Section 3 - Posting of New Positions and Vacancies

F. New positions or vacancies which exist in the positions specified as exceptions in Article 2, Section 1 are not subject to this Section. No unit member may be involuntarily transferred to any position specified as an exception in Article 2, Section 1.

REMAINING ISSUES

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

Award On Remaining Issues

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

RETENTION OF JURISDICTION

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

DURATION OF CONTRACT

The Panel has been specifically authorized by the parties to exceed the two year maximum contract duration as provided by the Taylor Law in Section 209.4(c)(vi). This Award therefore provides an Agreement for the period commencing July 1, 2005 and ending June 30, 2008.

	_____ JEFFREY M. SELCHICK, ESQ. Public Panel Member and Chairman	_____ Date of Award
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[Concur]
[Dissent]

	_____ RONALD G. EVANGELISTA Employee Organization Panel Member	_____ Date
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[Concur]
[Dissent]

	_____ JOHN M. GIRVIN Employer Panel Member	_____ Date
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STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this day of March, 2008 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of March, 2008 before me personally came and appeared Ronald G. Evangelista, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of March, 2008 before me personally came and appeared John M. Girvin, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public