

State of New York  
Public Employment Relations Board

Opinion and Award

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In the Matter of the Interest Arbitration between

Buffalo Police Benevolent Association  
Petitioner

PERB Case No.  
IA 201-003; M 200-238

-and-

City of Buffalo, New York  
Respondent

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
100 N. STATE ST., 10TH FLOOR  
ALBANY, NY 12243-1500  
TEL: 518/474-2300 FAX: 518/474-2301

SEP 09 2002

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Before: The Public Arbitration Panel  
Sumner Shapiro, Public Member and Chairperson  
Edward G. Piwowarczyk, Esq. Public Employer Member  
Robert P. Meegan, Jr., Employee Organization Member

CONCILIATION

**I. INTRODUCTION**

This document constitutes the Opinion and Award of a Public Arbitration Panel designated by the New York State Public Employment Relations Board (PERB), pursuant to Civil Service Law Section 209.41 on July 17, 2001. The petitioner is the Buffalo Police Benevolent Association, hereinafter referred to variously as "the PBA", "the Employees", "the Union", "the Officers" or "the Petitioner". The respondent is the City of Buffalo, New York, hereinafter referred to variously as "the Employer", "the City", "Buffalo", or "the Respondent." The PBA and the City were parties to a Collective Bargaining Agreement (CBA) the term of which expired on June 30, 2000. The parties entered into negotiations for a successor agreement on October 23, 2000 and following a number of unfruitful negotiating sessions, filed a joint Declaration of Impasse. On December 6, 2000, PERB designated a mediator who conducted an unfruitful mediation session between the parties on January 12, 2001. The parties determined that further mediation sessions were unlikely to be productive and the PBA petitioned for Compulsory Interest Arbitration on April 6, 2001. On July 17, 2001, PERB, over the signature of Richard A. Curreri, Director of Conciliation designated the Public Arbitration Panel in this matter. The panel's jurisdiction is for two contract years; namely, July 1, 2000 through June 30, 2001 which is referred to hereinafter as "Year 1" or "the first year" and July 1, 2001 through June 30, 2002 which is referred to hereinafter as

“Year 2” or “the second year”. As the Award in this matter will issue after the close of the second year there is need to refer to the next succeeding year even though that year falls beyond the panel’s purview and the scope of the record before it. When such reference is made, that succeeding year is referred to as “Year 3” or “the third year”.

Civil Service Law, Section 209.4 (v) directs the panel as follows:

(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 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 interest and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades of professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The panel conducted hearings at the Hyatt Regency Hotel in Buffalo, New York on November 7 and 8, 2001, November 8, 2001, December 4, 2001, February 12 and 13, 2002, and March 19, 2002 at which time the parties were afforded unfettered opportunity to present testimonial and documentary evidence, to examine and cross-examine witness, and to offer arguments in support of their respective positions. At the close of the hearing the parties opted to exchange and file post hearing briefs on or before May 6, 2002 which day was subsequently briefly extended by mutual

consent, whereupon the briefs were timely filed. The Panel met in executive session at the Radisson Suite Hotel Buffalo on July 25, 2002.

Appearances were as follows:

For the PBA

James W. Schwan, Esq. Schwan, Sammarco & Sammarco Buffalo, New York	PBA Counsel
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Edward Fennel Wynantskill, New York	Finance Consultant
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John Juskiewicz Police Officer, Buffalo Police Department	PBA Witness
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William Misztal Inspector, Buffalo Police Department	PBA Witness
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Raymond Fields Patrol Officer, Buffalo Police Department	PBA Witness
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Randie Joseph Lieutenant, Buffalo Police Department	PBA Witness
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For the City

Sean P. Beiter, Esq Jaekle, Fleischman & Mugel, LLP Buffalo, New York	Employer Counsel
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Anthony Masiello Mayor, City of Buffalo, New York	City Witness
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James Milroy Director of Budget and Management City of Buffalo, New York	City Witness
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Ann Forti-Sciarrino  
City Accountant and  
Deputy Comptroller, City of Buffalo

City Witness

Kathleen O'Hara  
Commissioner of Human Resources  
City of Buffalo

City Witness

Susan Wheatley  
Assistant Corporation Counsel  
City of Buffalo

City Witness

Matthew Van Vessem  
Assistant Corporation Counsel  
City of Buffalo

City Witness

Rocco Diina  
Police Commissioner  
City of Buffalo

City Witness

The parties jointly submitted 20 Exhibits and in conjunction with the testimony of witnesses the PBA submitted 13, and the City submitted 15 Exhibits. All were admitted without objection and as they are thoroughly identified in the transcripts, we omit a redundant listing here.

## **II. Background**

In its petition for Compulsory Interest Arbitration the PBA presented 23 proposals, the first and probably most significant one of which (PBA Proposal 1) was a proposal for salary increases of not less than 6 percent to be increased if the CPI plus 2 percent exceeded 6 percent in a particular year. The proposed salary adjustment formula was the same for both the first and second year. A number of other proposals were very significant and along with the Salary issue are discussed subsequently herein. The City, in its response to the petition, dated May 22, 2001, stipulated that it did not agree to any of the PBA proposals, and was in turn proposing 14 modifications. With respect to the PBA's Salaries and Hours of Work proposal it counter proposed (City Proposal 5) wage increases of 2.5 percent in each of the two years. Subsequently, on October 4, 2001, the City filed an amended response modifying its Proposal No. 5 now proposing that no wage increase be forthcoming in either of the two years.

PBA Proposal 5 wherein the Union sought to amend Article XI, Settlement of Disputes, Section 11.1 was subsequently held to be a nonmandatory subject.

Both parties here involved are experienced in pursuing their options through Compulsory Interest Arbitration. Their last written and negotiated CBA terminated on June 30 1988 and since then six successor agreements have been implemented -- two through Memoranda of Agreement and four through Arbitration. Historically, the PBA's central thesis was that its members were being denied benefits and rewards being received by fellow officers in comparable jurisdictions which represent the true and fair market value of Buffalo PBA members' services. The City, though challenging the reliability of some Union statistics, has consistently emphasized its precarious fiscal position constraining its ability to pay. In the present matter, these same aspirations and arguments continued to prevail and this document preliminarily focuses on the, salary and health insurance issues. We summarize findings and rationale relating to the other issues with special emphasis on those of greater significance in a subsequent section.

### **III. Positions of the Parties**

#### **A. PBA Position on Salary and Health Related Insurance Issues**

The Union asserts the established comparable jurisdictions relied upon in past compulsory interest arbitrations are three contiguous towns namely; Amherst, Cheektowaga, and Tonawanda. All three are not only contiguous to Buffalo but also constitute the three largest towns in Erie County. The Employees offer a comparison on a "monetary" basis; i.e., a basis which includes longevity pay, shift differentials, sick incentives, holiday pay, shooting incentives and the like on both an annual compensation and per hour rate basis. They assert Buffalo officers, on an annual monetary basis, fall short of the average of the comparable communities by 9.7 percent, 9.3 percent, and 9 percent, at the 5, 10, and 15 year longevity levels. On an hourly basis they claim these differentials drop to 8.1 percent, 5.7 percent, and 6.6 percent, respectively, at the same longevity levels. The Union further emphasizes that these comparisons exclude uniform allowances wherein the \$100 per year compensation paid its members fall short of the average comparable communities by nominally \$1000 per annum. Additionally, the PBA asserts, since their members are paid less than their colleagues in the contiguous comparable communities they also receive

relatively inferior retirement benefits. Moreover, it asserts the disadvantageous Buffalo position is exacerbated for its Tier II employees (employees hired after July 1, 1973) as Buffalo does not provide the one year final average salary option for its retirees as do both Cheektowaga and Tonawanda. The one year final average option would effect raises in Buffalo retirement pensions by 8 percent.

The Employee's seek (PBA Proposal 1) an across the board increase equivalent to the increase in a previous year's Consumer Price Index (CPI) all urban consumers series plus 2 percent or a total of 6 percent, whichever is higher in each of the two years. With the benefit of hindsight, the proposed across the board increase is 6 percent in each of the two years.

The PBA is seeking two significant improvements in Health Insurance. The first relates to officers who retired since July 1, 1986 with 20 or more years of Buffalo department service or those who have taken disability retirement resulting from line of duty injuries. These retirees receive paid health/hospitalization insurance but do not receive major medical coverage and the drug rider entitling them to prescription drugs with a \$5 generic and \$10 brand name co-pay obligation. PBA Proposal 14, calls for the City to provide paid major medical coverage and all existing riders upon retirement. The Union seeks to justify this proposal on the basis that it is provided in comparable employment in the Towns of Amherst, Cheektowaga and Tonawanda.

The second health/hospitalization related proposal (PBA Proposal 15) is for the City to upgrade its present GHI Spectrum t Plan dental coverage to GHI Preferred Plus dental coverage. It bases this proposal on a claim that there are less than 30 participating dentists providing service under the Spectrum Plan when there are in excess of 300 dentists accepting patients covered by the GHI Preferred dental coverage. As GHI Spectrum is being phased out in favor of its Preferred Plus program, the Union pleads the replacement is necessary

The Union challenges the validity of the Employer's claim that it is burdened by a severe inability to pay which absolutely supports a determination that no wage increase should be forthcoming in either the first or second year. The PBA asserts that Buffalo entered the first year of our concern in very sound fiscal condition. Its unreserved general fund balance as of June 30, 2000 was nominally \$15.5 million which represented an improvement of nominally \$1.4 million over the fund balance at the conclusion of the

preceding year on June 30, 1999. In that preceding year the Union notes that its members received a base pay increase of 3 percent and significant improvements in longevity pay. The base pay increase induced a further cost increase in certain pay benefits like holiday pay, overtime pay, and court pay among others. The City, it contends, was not only able to absorb the incurred increased costs in the 1999 -- 2000 contract year, but in addition accumulated a nominal \$1.4 million fund balance increase. Moreover, during that year, the Buffalo Board of Education revenues exceeded expenditures by nominally \$8.85 million and its accrued surplus surpassed the City's. Finally, as of June 30, 2000, the Union notes no principal or interest on City indebtedness was past due, and that since then none has become past due and Buffalo has never defaulted on the payment of principal or interest on any indebtedness.

Buffalo, the Union urges, was clearly on fiscally sound ground as of June 30, 2000 with its combined General fund and Board of Education funds and working capital having improved in each of the preceding five fiscal years ending June 30, 2000. Specifically, it offers that on June 30, 1996 assets exceeded liabilities by 15.2 percent whereas on June 30, 2000 the excess had risen to 37 percent.

The Union contends the Employer habitually understates expected revenues and overstates expected expenses creating phantom projected deficits when in reality, substantial surpluses evolved. For the first year of our jurisdiction, July 1, 2000 through June 30, 2001, the PBA reports that the City had projected ending with a nominal \$3 million surplus whereas, in fact, it ended the year with an undesignated fund balance of nominally \$9.7 million or approximately \$7 million more than it had conservatively estimated. In that year the City expenditures fell nominally \$8.9 million under budget while its revenues fell short by only \$2.7 million creating a budgetary surplus of nominally \$6.3 million. The PBA contends the City had set aside in the first year budget, funding to provide a 3 percent across the board increase to the PBA and that in keeping with generally accepted accounting practices, that funding is treated as already expended in the financial statements and that there is therefore no justification for withholding payment of the fully funded 3 percent across the board increase, and urges the panel to award same.

The Union focuses on the cash flow aspect of the City's position. It notes that at the commencement of the second year, the City was in possession of nominally \$109 million in cash coming from the proceeds of a \$120 million

RAN issue, state and federal aid, sales tax receipts, real property tax receipts, and other receipts balance against nominally \$130 million in cash disbursements. In the Union view, Buffalo should have had enough cash to last for several months, yet, by October, it was claiming it would run out of money by the end of November, 2001. This, the Union notes, did not occur and it cites the City's demeanor as yet another example of the City promoting an unwarranted image of poverty when negotiations are pending or in progress.

Buffalo, the Union asserts, in the fiscal year ending June 30, 2001 realized accumulated fund balances for both the City and School District exceeding expectations. The initial projected budget deficit for the second year was, the Union acknowledges, \$31 million. However it notes that a \$5 million reduction was obtained through reductions in retirement system costs and further reductions were accomplished by spending freezes, layoffs of seasonal and temporary workers, the closing of fire companies on a rotating basis, and avoidance of overtime and similar action. By the time of the last hearing in the present procedure, the Union emphasizes, the deficit had been reduced to \$4.3 million. Thus in a span of five months, the Employer had reduced its projected deficit from \$31 million to less than \$5 million. The PBA urges that the projected deficit has already taken into account across the board salary increases for bargaining units that have not settled. These monies have been set aside as though they had already been spent and they include at least a 2.5 percent across the board increase according to the testimony of the City's Budget Director and possibly 3 percent in the testimony of the PBA's financial expert. Hence, an Award providing for a minimum of a 2.5 percent and possibly as much as a 3 percent across the board increase in each of two years will, it is urged, not adversely affect the residual projected deficit.

The Union further proposes that projected budget shortfalls are not unknown in Buffalo. In 1994, it attributes to the current mayor a warning of a \$31 million deficit only to have the fiscal year end with a nominal \$6.25 million surplus. In a fiscal years ending June 30, 1996, 1997, 1998, 2000 and 2001 there were similar budgetary surpluses though in the fiscal year ending June 30, 1999 there was a small operating deficit. The Union sees no reason to expect that the City will not end the second fiscal year in the black. It notes that in the first year the City Tax levying margin was nominally \$20 million but that in each year since the fiscal year ending June 30 1997, the homestead tax rate has decreased and is now less than it was in 1997. The PBA further contends the City, in the past year, made a \$22 million one-time



contribution to settle litigation involving the Board of Education. It will not be required to make such extraordinary one-time payments in the second fiscal year and it cites a pronouncement by the Commissioner of Police that the department is expected to complete the fiscal year \$4 million under budget. A further source of potential revenue, according to the Union, lies in the retirement and recruitment programs. As officers retire they are not being replaced and their duties are being assumed by the remaining complement. This imposes additional work burdens on the remaining officers and leaves undisbursed, money which would have been expended as salaries had the retired officers remained on active-duty, providing at once justification for improved compensation and the means with which to pay for same.

The Union supports its optimistic forecast for closing the second year budget gap and generating an actual surplus in the course of the fiscal year by asserting that the central business district vacancy rate has been relatively stable since 1991 with incremental vacancy rate improvement since 1994. It quotes extensively from the Official Bond Statement dated February 26, 2001 which enumerates various projects, some of which have been completed and others of which are underway or in prospect painting a picture of a burgeoning urban renaissance and its implicit salutary impact on Buffalo's tax base.

#### B. City Position on Salary and Health Related Issues

The City in reviewing its budgeting procedures relating to salaries informs that though it had proposed a 2 1/2 percent wage increase for both year one and year two that it actually set aside money to fund an award or negotiated raises in the range of 3 percent for the first year and 2.5 percent for the second year. It notes, however, that the City was prepared to settle for these amounts on the basis of two assumptions; namely, (1) that sufficient State Aid would be forthcoming and (2) that Buffalo would obtain adequate health insurance concessions in return. The City offers that in the wake of the disaster of September 11, 2001, its State Aid anticipations were drastically altered and it found itself confronting a multi-million dollar revenue shortfall prompting the submission of the Amended Response to the Petition for Compulsory Interest Arbitration in which it withdrew its salary proposal and substituted a proposal for zero percent increase in each and other two years.

The Employer asserts the PBA refuses to acknowledge the seriousness of the City's financial position in both its cash flow and total revenue

considerations. It refuses to acknowledge that the budgeted 3 and 2.5 percent increases were effectively nullified when the State was unable to provide the \$31 million aid increase. So far as Buffalo is concerned, the money to pay these increases never actually existed within its resources and now, never will. The Employer believes that the 3 percent increase for the first year standing alone would cost the City nominally \$1.7 million for the first year and another nominally \$1.75 million in the second year and the City does not have that money and is not in any position to obtain it. An Award of 3 percent for the first year and 2.5 percent for the second, each effective at the commencement of the contract year, would cost the City nominally \$5.9 million when it is already facing a \$9 million budget gap. The City urges that it is unable to respond positively to the PBA wage proposal as is absolutely unable to fund it as it (1) cannot obtain more State Aid, (2) is extremely unlikely that it could borrow the required funds, (3) cannot raise taxes to fund the proposal without severely jeopardizing the City's bond rating, and (4) is facing a negative cash position in the second year, rendering it unable to finance any portion of the proposal out of savings of reserves. The only option open to the City for funding the proposal would be to lay off personnel, most likely public safety personnel, which Buffalo proposes would be contrary to the interest and welfare of the public, a factor which must be considered as it is expressly recognized by the statute.

The City urges the Panel to discount testimony by the Union's financial expert that \$3.2 million of undesignated reserves was available presumably for funding any awarded salary increase in the June 30, 2000 financial audit. It notes that the City, in addressing its year two and year three problems, was already planning to utilize available fund balances to close the gap between expenditures and revenues. It calls attention to City Exhibit 10 which was placed in evidence on February 12, 2002 consisting of a financial statement for the City as of June 20, 2001 which showed an undesignated unreserved fund balance of \$9.7 million. The Employer offers that those dollars are not available for funding increases as \$2.7 million has been allocated to gap closure in the second year, and the remaining \$7 million has been allocated to the third year. All that money therefore, has been targeted and spent and is no longer available for funding PBA salary demands. Buffalo, it is argued, clearly lacks the financial ability to pay for any increases in either of the two years within the purview of the panel's deliberations.

In addressing the specifics of the PBA comparisons, Buffalo notes that the contiguous towns have already settled their 2000-2001 CBAs in which they

awarded wage increases of approximately 4 percent per annum (Amherst), 3 percent per annum (Cheektowaga) and approximately 2.5 percent per annum (Tonawanda), and that the Buffalo PBA members do not lag far behind. The City bases its comparison on the current wage of top step police officers which shows a lag of only about 1 percent behind Amherst, and nominally 5.3 percent behind Cheektowaga. However it emphasizes, that "similar public employees working under similar conditions" is only one factor and that the panel must in addition consider whether the City of Buffalo with its budgetary and cash flow problems, its credit rating, its shrinking tax margin, its declining population, its lower per capita income, its declining property values, and its work rules is comparable to the more affluent communities cited by the PBA.

In fact, the City pleads; there is no "comparable" for it in the second year. No other municipality has the severe problem of being at its practical maximum with respect to property tax revenues. Moreover Buffalo has no reason to forecast a sharp rise in sales tax revenue and the prospect for State Aid is for it to be flat at best. It reports that it has no reserves and it is unlikely that it would be able to borrow money and further, predicts it will run out of cash in June. The comparable contiguous communities relied upon by the PBA, it is argued, are not constrained by the same financial limitations and they can afford increases which are beyond Buffalo's reach. They employ far fewer police officers and are not, according to the City, bumping up against a constitutional tax limit nor are they faced with bond ratings which are in jeopardy. Comparisons with these communities, Buffalo asserts, is truly unfair.

The City urges that the PBA calculation of total compensation for police officers in the comparable communities may be afflicted with computational problems. Moreover it challenges the validity of the assumptions supporting these calculations such as, for example, the subtraction of the cost of health insurance contributions for Buffalo but not for Amherst and Cheektowaga. The City urges that the PBA comparisons are totally selective and should not be considered in evaluating the parties' positions.

Finally, with respect to the salary issue, Buffalo argues that there is no statutory requirement or suggestion that its officers must be paid wages exceeding or equal to those in Amherst, Cheektowaga and Tonawanda. The small margins by which PBA members fall short of their colleagues in these contiguous communities is putatively, not of such magnitude as to outweigh the statutory admonition to accord weight to "ability to pay" concerns. The

City offers that the time to argue for lockstep compatibility will come when the City has recovered financially and is on a sound basis. Future panels can implement the appropriate corrections if and when that happens, but the City urges that the current panel must avoid relying upon comparable practice to award benefits which the City, in its present strained condition, is unable to fund.

The City's first health related proposal (City Proposal 17) grows out of a change in the prescription drug coverage benefits provided by the City's Health Maintenance Organization providers. Prior to the change, scheduled to take effect on July 1, 2002, individuals being served by the Independent Health provider paid a \$7 dollar per prescription co-payment but, after the change, became obligated to pay a \$7/\$15/\$30 co-payment for generic, brand name, and non-formulary prescriptions respectively. Those covered by the Univera Healthcare paid a \$5 co-payment per prescription and the new three-tier prescription rider will assess a \$5/\$15/\$35 per prescription co-payment for generic, brand name, and non-formulary prescriptions, respectively. The City relates that it was informed it could no longer obtain a "single tier" prescription rider and it pleads that as a result it is no longer able to continue the prior benefits of the "single tier" rider. The Employer urges the Panel to recognize that this change is occurring or occurred outside of its control and that it does not accrue to the Employer's advantage in any respect. It seeks a determination from the panel that its continuing obligation is only to provide a prescription drug benefit as offered by the providers. Buffalo seeks a CBA provision insulating it from liability for increased prescription drug co-payments arising out of the implementation of three tier co-payment plans by the providers. The City does not provide an estimate of the increased costs which will arise as a result of the three-tier implementation, but does indicate that it considers the significance of their being insulated from absorbing same to be of a very high order.

A second City health-care related proposal (City Proposal No. 12) would affect employees hired prior to July 1, 2000 who currently pay twenty-five percent of the difference in cost between the second lowest cost HMO and either of the two more expensive plans; namely, Blue Cross and Blue Shield or Community Blue for single coverage, and 15 percent of the difference for family coverage. Employees hired after July 1, 2000 who elect the more expensive coverage, pay 100 percent of the difference and the City proposes that this requirement be extended to all employees irrespective of the date of hire. The Employer advises that this change would reduce its very high health care premium costs by approximately \$410,000 per annum. It advises

that only 249 out of 862 bargaining unit members currently subscribe to one of the more expensive coverages. Most of the savings would come from increased contributions by the 179 members who subscribe to traditional Blue Cross and Blue Shield coverage. Their individual annual contributions would rise to nominally \$1650 for single coverage, and \$2800 for family coverage which the Employer concedes is a substantial burden, the imposition of which is designed to create a significant disincentive to select high-cost coverage.

A third City health-care related proposal (City Proposal No. 13) relates to new hires who currently make no out-of-pocket contribution if they select either of the two lowest price HMO options. The City proposes that new employees henceforth be required to contribute 25 percent of the cost of single coverage, and 15 percent of the cost of family coverage of the lowest price option. Buffalo states the intent of this proposal is to "institutionalize the notion of health insurance cost savings going forward with new employees." Additionally, the Employer believes implementation will strongly encourage employees to select the least expensive coverage. At the present cost level and assuming an average of 20 new employees per year, the City calculates this change would save \$14,500 per annum and would grow in successive years to rise to possibly 0.13 percent of wages at the end of five years. The City describes this as a minor concession, and urges implementation proposing that even small incremental savings may not be overlooked in view of its severe fiscal problems.

A fourth City health-care related proposal (City Proposal No. 14) relates to retirees. At present retirees continue to receive HMO coverage without making contributions and in this proposal Buffalo seeks to assess them for coverage on the same basis as new employees, as outlined in the discussion of City Proposal No. 13, supra. Buffalo believes the implementation of this amendment to the CBA would provide savings of about \$14,500 per year at the inception with the possibility that it might increase if there were a number early retirements.

#### **IV. Opinion on Salary and Health-Related Issues**

The salient consideration in evaluating the Salary and Health related proposals is the question of ability to pay. We believe the Union correctly asserts that Buffalo's financial position as of June 30, 2000 did not preclude the possible adoption of improvements in wages and other terms of employment. The City itself proposed across-the-board salary increases of

2.5 percent in each of the two years. Subsequently, it budgeted for a 3 percent and 2.5 percent sequence, albeit with the hope and expectation of achieving some reduction in health insurance premiums. However, Buffalo suffered a severe reversal of fortune following the historic disaster of September 11, 2001 which led to a traumatic reduction of \$31 million in expected State Aid. This adversely affected both gross revenues and cash flow. The Union understates the magnitude of the "gap" yet to be closed at the time of the last hearing, placing it at \$5 million whereas the Budget Director's undisputed testimony placed it at \$9 million (the earlier reported sum of \$7 million plus an additional \$2 million in indebtedness incurred by an unusually severe snowfall). Moreover, undisputed testimony supports the conclusion that the \$22 million Board of Education appropriation was not siphoned out of the City's regular revenue stream and therefore, we should not expect a like sum to become available on an undesignated basis in succeeding years because that expenditure was a one-time event.

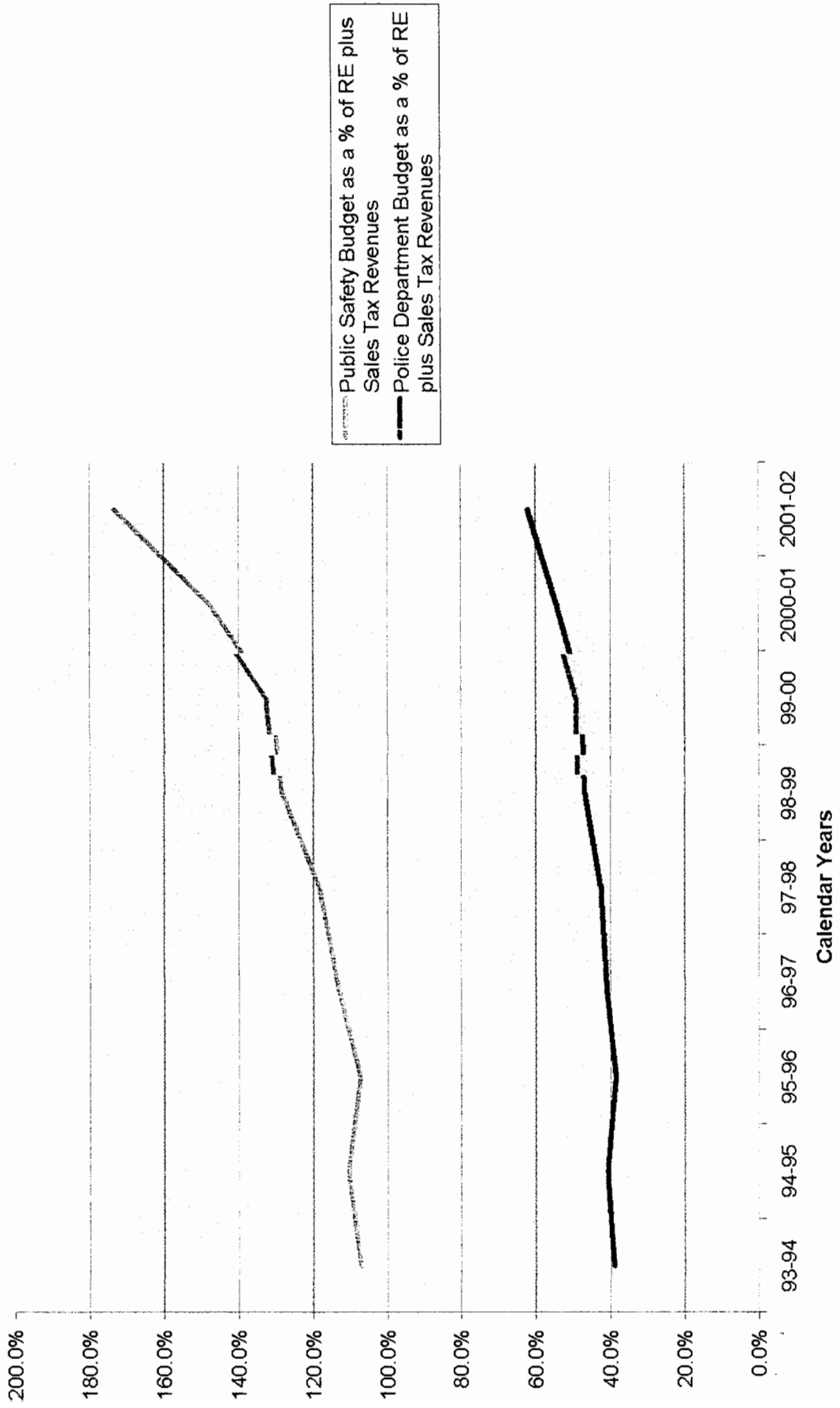
Cash flow is concerned with the rate of inflow of incoming dollars which is characterized by crests and troughs. When the aggregate inflow at any point in the budget year is not equal to or in excess of the aggregate payments of its obligations, the City is compelled to borrow funds to tide it over by issuing Revenue Anticipation Notes (RANS) or Tax Anticipation Notes (TANS) which indirectly affect its ability to pay by siphoning funds from its revenue stream to finance underwriting and interest charges. The PBA, in its arguments, suggests that the prevalence of an adequate cash flow evidences an ability to pay. In reality, it is more precisely related to how well income and expenditures are coordinated time wise. The true measure of ability to pay is the ratio of the magnitudes of available income to necessary expenditures. Excesses of income over expenses generate surpluses which appear in the fund balance, and the PBA cites the accrual of a \$1.4 million fund balance in the 1999/2000 budget year which grew to \$9.7 million in the 2000/2001 budget year as persuasive proof of improved fiscal stamina and positively enhanced ability to pay. The Budget Director confirmed that he has consistently striven to increase the fund balance in an effort to provide a margin of reserve to cope with contingencies and reduce dependency upon borrowing to meet cash flow shortfalls. We support the City's assertion that undesignated fund balances are not necessarily available to fund employee benefits. These monies may be required to achieve a balanced budget in the next succeeding year without raising the tax levy. However, even the fund balance is carried forward and regenerated, perhaps with some augmentation, in the succeeding year it continues to contribute to the Employer's ability to pay by reducing underwriting and interest expenses

which might otherwise be incurred. For cities as for individuals, a lender's position is preferable to a borrower's. We are unable to support the implied thesis that an employer's ability to pay has not reached its limit so long as any positive fund balance is being maintained. We take further exception to the Union assertion that the Employer's past claims of inability to pay were without merit as it was able to absorb costs generated by substantial past salary and fringe benefit improvements without adverse effect as in our finding, there has been a significant cumulative effect. This is illustrated graphically in Panel Chart I (page 16) which plots Buffalo expenditures for public safety functions as a percent of its total revenues from real estate and sales taxes. The chart indicates the percentage for the Police Department to have been relatively stable into the 1997/98 budget year after which it began rising at first somewhat modestly and then, rather sharply from 1999/00, the year cited by the PBA as the one in which it received a 3 percent base salary increase and "significant improvement" in longevity pay which was allegedly readily absorbed. The fact is that the Police Department operating costs have risen to now consume nominally 62 percent of the City's total real estate and sales tax revenues. Public Safety costs have risen to level 111 percent of that revenue level. This means that Buffalo, within its present tax structure constraints, would fall short of funds with which to sustain its Public Safety functions if it allocated every penny of tax revenues to Public Safety.

While the foregoing indicates the severity of the City's financial plight, one should not erroneously infer that this unhappy circumstance arises because the PBA has enjoyed lavish increases. That would be far from the truth as the fact is that the total compensation package of Buffalo officers continues

### Panel Chart I

#### Buffalo Expenditures for Public Safety as a % of Revenues





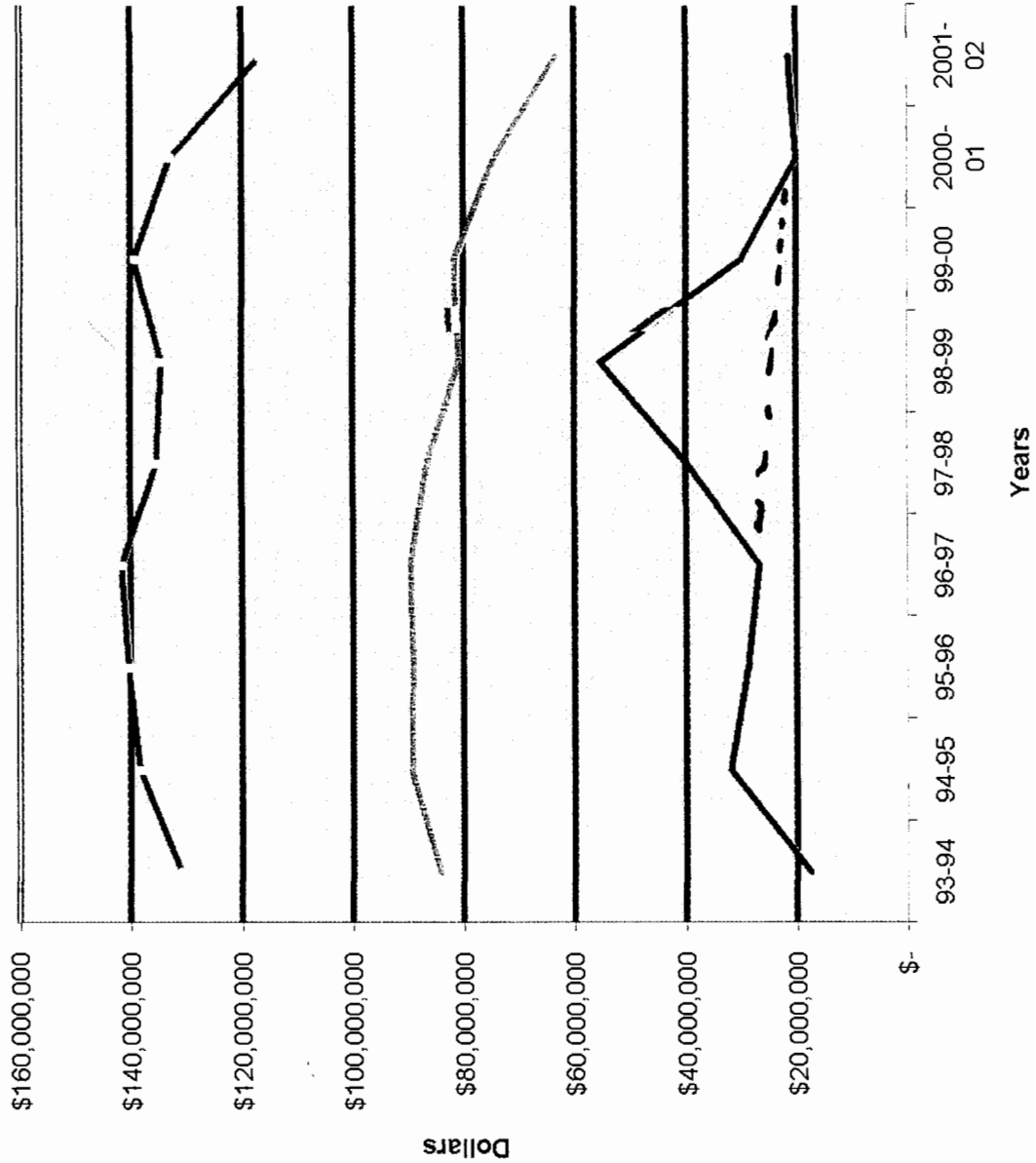
to lag behind those of similarly employed colleagues as it appears to have done historically. Panel Chart II (page 18) plots Buffalo Tax Revenues and Margin levels since 1993. For the recent period in which the sharp increases occurred in Chart I, we find sharp declines in the City's share of the real estate tax levy as well as in its Real Estate Tax plus the Sales Tax revenue. The sharp rise shown in the tax margin plot is misleading as it arises out of a faulty formula issued by New York State in the 98/99 budget year which was corrected the next year. Were it not for this error the plot would have followed approximately the dotted line between 1996 and 2000.

The most basic and vital employer responsibility is to provide effective Public Safety services. If those services falter, a city will decline and ultimately cease functioning. A city may offer good schools and recreational facilities, but if the public cannot access and enjoy them in safety, they are of little value. The Budget Director in his testimony outlined his "gap closing" procedure in which the Public Safety functions are the last to be exposed to the cost shaving scalpel and it is clear that the magnitude of State Aid circumscribes the City's options. The Mayor's testimony emphasized the City's dependency upon State Aid observing that without it, the City would be experiencing insurmountable difficulties. The record supports that assertion as between 1993/94 and 2000/01, State Aid virtually doubled reaching a level of nominally \$123.5 million. In most of that period, the property tax levy hovered around \$150 million per annum, but by the year 2000/01 the full value average dropped and the City was compelled to reduce the rate in order to retain the tax margin. It was compelled to repeat this procedure for the year 2001/02. The City continues to be faced with declining fortunes and though everyone concerned undoubtedly hopes the Union's optimistic forecast materializes and enriches the City's coffers, one may not consider that prospect has augmented Buffalo's ability to pay until it is actually realized. Buffalo budget development is a high wire act executed while hovering over insolvency and grasping state aid as a balancing pole. The Mayor testified to his frequent and continuing pilgrimages to Albany to solicit State Aid and it does appear that duty will continue to be a prominent presence in his job description.

We do not concur in the Union view that available money has been concealed in the past and that the practice continues at this time. The Employer may have engaged in a bit of hyperbole, but it is clear that Buffalo has not accumulated obscene fund balances and there has been no suggestion

# Panel Chart II

## Buffalo Tax Revenue and Margin History



the City has frivolously appropriated funds to other projects which more responsibly should have been devoted to Public Safety.

The City had reserved funding of \$1.7 million to support a 3 percent increase in the first year, and \$3.28 million to fund the carry forward of the 3 percent plus an additional 2.5 percent increase in year two. These monies were in the budget data presented to the panel when the Financial Statement as of June 30, 2001 (City Exhibit 10) was introduced, showing an undesignated, unreserved fund of \$9.7 million. \$2.7 million of that amount had already been allocated to the second-year in the process of "gap" closing for that year. The remaining \$7 million was allocated to the third year, a year which lies beyond the jurisdiction of this panel. While City Exhibit 7, which is in evidence, does discuss the third fiscal year, its inclusion in the document is not the equivalent of a budget presentation which has been subjected to adversarial examination and debate. The allocation of \$7 million into the third year may well have been prudent and executed without intent to conceal but the fact of its transfer beyond the term of the Panel's jurisdiction nonetheless here presents an impediment as the implementation of our Award will necessarily occur during the third year. By way of illustration, we refer to the \$31 million loss of State Aid in the second-year. \$19 million of that sum was attributed to a loss of "spin-up", a term which refers to the practice of permitting a municipality to book an allocation forthcoming in the next fiscal year in the immediately preceding fiscal year. At some point in history, Buffalo was first authorized to do this and in that year \$19 million was booked twice. If no further action were taken, \$19 million would not have been forthcoming in the next year with payment on schedule being reinstated in the third or next occurring year. However, that did not occur, presumably because the City could not do without the \$19 million in the second-year, as another "spin-up" was authorized. That procedure continued sequentially until the cutback was implemented in the 2001/02 budget year. The Mayor, under cross-examination, was asked whether the 2001/02 withholding represented a permanent revocation of the benefit or merely an action which would synchronize payments with the budget year in which they actually become due. The witness responded that he was not certain about whether the payments would be restored on a timely basis or were being permanently withdrawn and further opined that he thought the latter likely to be the case. Clearly, the restoration or non-restoration of the former "spin-up" may be very significant but since it would presumably occur during the third year, this Panel would be unaware of it and both unable and unauthorized to factor it into its thinking.

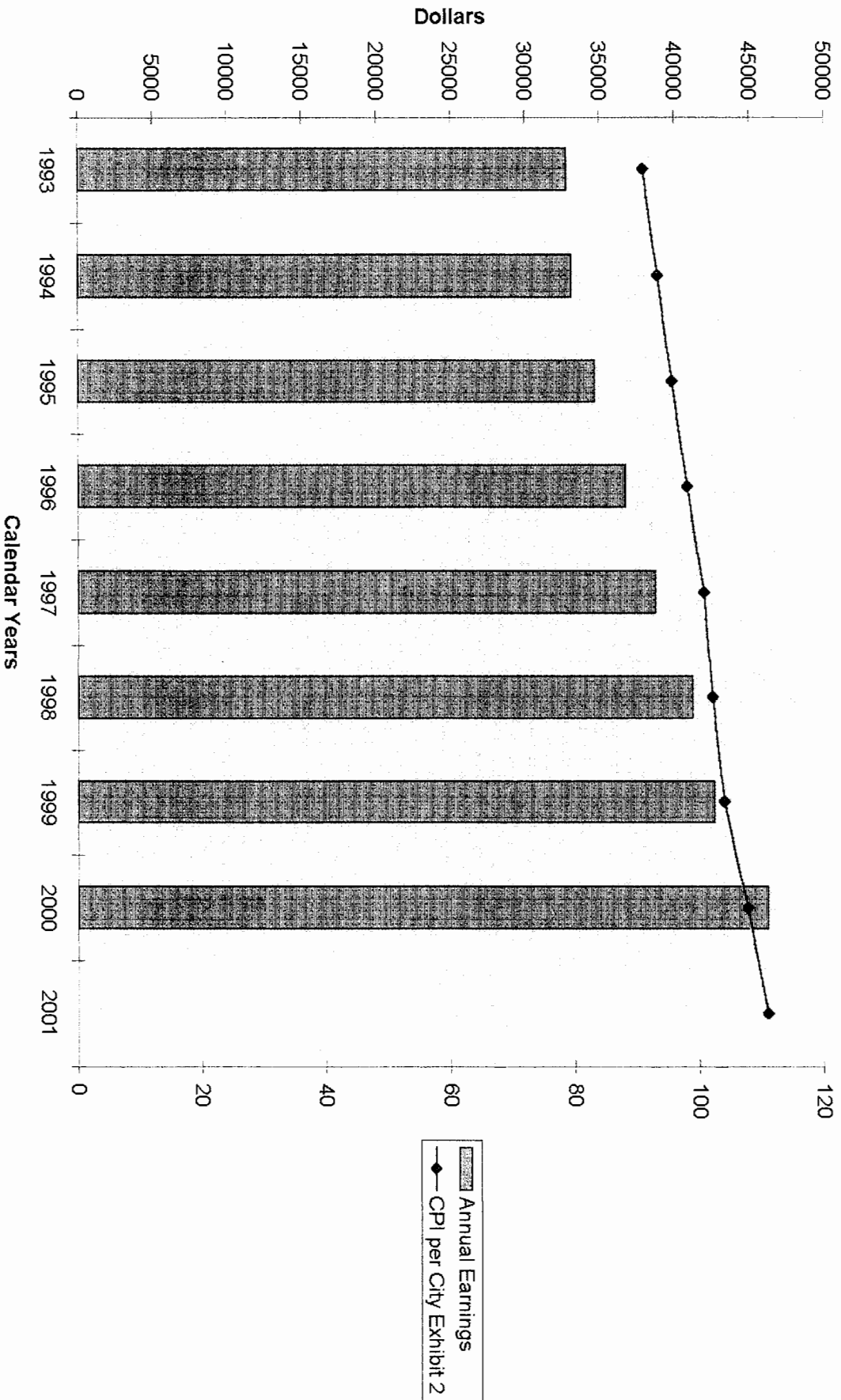
As we comprehend it, the statutory requirement to weigh-in "ability to pay" does not imply a binary choice between "pay" and "no pay". We perceive we are obligated to limit the magnitude of costs to maintain them within the Employer's reasonable reach whereas comparability, standing alone, would justify greater payments. This could of course lead to awarding a zero increase but that is clearly only one option in the matter at hand. We have considered that option but sought to identify other possibly more equitable solutions consistent with respecting the fiscal straitjacket encasing the City.

We are directed to consider among others, prevailing working conditions and earnings in private employment in comparable communities. Panel Chart III (page 21) plots the relationship between Erie County private sector annual earnings and the CPI U for Erie County per City Exhibit 2. This indicates that the earnings of private sector employees have not only kept pace with the CPI, but actually rose at a slightly higher rate in the last several years. Again relying upon City Exhibit 2, and viewing the first and second years retrospectively, we find CPI increases of 3.6 and 3.1 percent respectively. We note also that the average wage increase of the contiguous Towns for the first year was nominally 3.2 percent but there are no data in the record relating to the second-year. Panel Chart III includes all the private sector and all the Erie County communities, some of which are affluent. Buffalo regrettably, is not among them, and it is a harsh economic reality that employees share in the poverty of their employer. The PBA members have lagged behind similarly employed colleagues in more affluent communities, and it is surely not realistic to expect that those differentials can be narrowed in a period when the jurisdiction is withstanding a \$31 million reduction in State Aid. The significance of this reduction becomes sharply defined when one considers that the scheduled State Aid equaled more than twice the City's revenue from the property tax levy. We have sought to devise a proposal which will only minimize any broadening of the compensation differentials without exceeding Buffalo's ability to pay.

We have established that the City continues to hold in reserve sufficient funds to support a 2.5 percent increase in the second-year but has not reserved any money to fund an increase in the first year. We conclude an equitable resolution of the salary aspect can be reached by awarding a 2 1/4 percent increase in each of the two years.

# Panel Chart III

## Erie County Private Sector Earnings v CPI



Accordingly, our award will provide as follows:

- 1. Effective July 1, 2000, all salaries shall be increased by two and one quarter (2 ¼%) percent.**
- 2. Effective July 1, 2001, all salaries shall be increased by two and one quarter (2 ¼%) percent**
- 3. The following chart (page 23) shall be appended to the Agreement:**

**SALARIES EFFECTIVE 07-01-2000 & 07-01-2001**

<b>RANK</b>	<b>2.25% 07/01/2000</b>	<b>HOUR RATE 07/01/2000</b>	<b>2.25% 07/01/2001</b>	<b>HOUR RATE 7/01/2001</b>
<b>POLICE OFFICER STEP 1</b>	\$36,944	\$18.97	\$37,775	\$19.39
<b>POLICE OFFICER STEP 2</b>	\$40,190	\$20.63	\$41,094	\$21.10
<b>POLICE OFFICER STEP 3</b>	\$43,442	\$22.30	\$44,419	\$22.80
<b>POLICE OFFICER STEP 4</b>	\$46,691	\$23.97	\$47,742	\$24.51
<b>POLICE OFFICER STEP 5</b>	\$49,948	\$25.64	\$51,072	\$26.22
<b>DETECTIVE</b>	\$51,774	\$26.58	\$52,939	\$27.18
<b>ASSIST. RADIO DISPATCHER &amp; POLICE PHOTOGRAPHER</b>	\$53,550	\$27.49	\$54,755	\$28.11
<b>DETECTIVE SERGEANT</b>	\$54,152	\$27.80	\$55,370	\$28.42
<b>POLICE LIEUTENANT &amp; POLYGRAPH EXAMINER</b>	\$57,833	\$29.69	\$59,134	\$30.36
<b>ASSIST. CHIEF OF DETECTIVES CHIEF OF ADMIN. SERV. &amp; POLICE INSTRUCTOR</b>	\$61,914	\$31.78	\$63,307	\$32.50
<b>CHIEF OF HOMICIDE &amp; POLICE CAPTAIN</b>	\$66,259	\$34.01	\$67,750	\$34.78
<b>CHIEF OF DETECTIVE &amp; POLICE INSPECTORS</b>	\$72,911	\$37.43	\$74,551	\$38.27

Our focus at this juncture is on the funding of the 2 1/4 percent awarded for the first year. Each 1 percent of salary aggregates to \$571,000 per annum. Hence, the cost of financing a 2 1/4 percent increase will equal nominally \$1,285,000 for a each of the two years. It may be necessary to fund this increase through staff reduction to effect an offsetting saving. Utilizing the

Budget Director's figure, of \$60,000 per year per position, this would lead to a reduction of 21 positions. Thus, the choice we perceive is between retaining a force of nominally 815 officers who are likely to respond to a zero salary adjustment with diminished morale and esprit de corps, and retaining a force of nominally 790 officers whose resentment against a compulsion to work harder may be mollified by the knowledge that the employer has, under extremely difficult circumstances, attempted, with less than complete success, to maintain their compensation status vis-à-vis colleagues in the region at large. We recognize that this poses a dilemma. Neither choice is a happy one and reasonable people may readily differ in identifying the less desirable option. We believe a lay-off, should it be required, though not always desirable, is the preferable course of action at this point in this situation. Beyond helping to maintain morale, it encourages the parties to innovate and devise productivity improvements. The increases enjoyed in private employment in Erie County (Panel Chart III) undoubtedly reflected the impact of productivity improvements. Employees should be aware that productivity improvements in their employment situations may help to support wage and salary improvements. We acknowledge the limitations of this option, as severe staffing reductions are prone to create demands for more overtime and therefore become counterproductive.

We face a second problem in adopting this remedy is that staff adjustments may not be retroactively applied, and the two-year term of this panel's jurisdiction has already expired. As noted earlier, the retroactive first-year salary amounting to nominally \$2.57 million will need to be paid in the third year in addition to the monies reserved to pay a 2.5 percent second-year increase. We are not privy to the resources which may be available in the third year and we acknowledge that if the cost is to be offset solely through staff reductions, it may be necessary to borrow. Such action would be in lieu of seeking sharper staff reductions in an effort to recoup funds required to discharge an obligation incurred over a two-year period in a shorter period of time.

The PBA proposes (**PBA Proposal 14**) that the City commence providing fully paid major medical coverage and all existing riders upon retirement. We deny that proposal as, at best, only a very small margin of ability to pay is available, and it should be allocated to higher priority proposals.



The second health-related PBA proposal (**PBA Proposal 15**) is for the upgrade of the GHI Spectrum One Plan to the GHI Preferred Plan. We support this proposal with an effective implementation date of June 29, 2002. The cost of this upgrade is just shy of \$300,000 per annum and is therefore the equivalent of nominally 1/2 percent of salary. The City has prepared for a 2 1/2 percent increase in the second-year and as we have awarded 2 1/4 percent, there exists a residual 1/4 percent which may be employed to defray half the cost of the dental program upgrade. There is, of course, no retroactive cost associated with this benefit as it functionally takes effect with the inception of the third year. The Award will provide for the inclusion of the following in a successor CBA:

Article XXI, Section 21.3 Dental Insurance

Amend paragraph one to read as follows:

**Effective June 30, 2002, the City shall provide, at no cost to the employee, GHI preferred Dental Coverage.**

The City's first health-related proposal (**City Proposal 17**) is to be insulated from responsibility or liability to absorb costs arising as a result of the implementation of the "three-tier" prescription drug rider by the HMO providers. The purpose of co-payments is to sensitize consumers to the cost of services and products thereby to encourage prudent purchasing where possible. It is therefore appropriate to burden consumers with increased co-pay charges. We therefore support the City's petition and the Award will provide for the inclusion of the following in the successor CBA: Article XXI Section 21.1

Add fourth paragraph in blue book (7/1/86-6/30/88) CBA to read:

**Effective June 30, 2002, changes in the co-pay prescription drug requirement arising out of implementation of the three-tier prescription co-pay provisions by the HMO (Health Maintenance Organization) health care providers shall be the responsibility of the individual subscriber.**

There is a second outstanding issue relating to the co-payment change which is limited to coverage provided by the Univera HMO plan which scheduled its adoption of the three-tier arrangement on July 1, 2001. This change precipitated a grievance against the City by the PBA which is currently awaiting resolution in arbitration. This award will provide for the withdrawal of that demand for arbitration and ceding adjudicative responsibility to this panel as a matter of retained jurisdiction.

**The PBA shall withdraw its demand for arbitration concerned with possible co-payment responsibilities of subscribers to the Univera HMO plan for the period commencing July 1, 2001 to June 30, 2002 with adjudicatory authority over that matter being ceded to this Panel as a matter of retained jurisdiction.**

Article XIX, Section 19.1 – Uniform, Equipment, and Maintenance Allowance

#### **19.1 Allowance**

**Effective July 1, 2001, the City shall pay an annual uniform allowance of One Hundred and Fifty (\$150) Dollars. Such payment shall be made on or before September 30<sup>th</sup> of each year.**

Buffalo's second health-care related proposal (**City Proposal 12**) is to require all employees subscribing to the more expensive options to pay 100 percent of the difference between the cost of that option and the second lowest cost plan. This would affect employees hired prior to July 1, 2000 who are now contributing only 25 and 15 percent for individual and family coverage, respectively. The added charge would be the equivalent of a 3 to 4 percent pay cut an affected employees. We believe that would be inequitable and the proposal is denied.

The City's third health-care related proposal (**City Proposal 13**) is for newly hired people, who currently make no out-of-pocket contribution if they opt for coverage under the two lowest price HMO plans, be required to contribute 25 percent of the cost of single coverage and 15 percent of the cost of family coverage of the lowest price option. We support the City to the extent of implementing this requirement for the first four years of

employment after which the benefit will be provided on the same basis as for people employed prior to the implementation of this new provision. Accordingly, our Award will provide for the inclusion of the following in the successor agreement:

Article XXI- Section 21.1

Add the following provision

**All employees hired on or after June 30, 2002, shall pay twenty-five (25%) percent of the monthly premium for the "core coverage" for individuals and fifteen (15%) percent of the monthly premium for the "core coverage" for family coverage. "Core coverage" is understood to consist of the least expensive Medical Insurance Option available at the time of hire. If a new hire elects enrollment in one of the more expensive plans, he/she will contribute in addition to the foregoing, one hundred (100%) percent of the difference between the cost of the selected plan and the cost of "core coverage".**

**Upon completion of four (4) years of service, with anniversary dates being calculated on the same basis as for longevity entitlements, an employee's coverage shall become the same as for employees hired prior to June 30, 2002.**

The City's fourth health-care related proposal (**City Proposal 14**) would require new retirees who heretofore continued to receive HMO coverage without making contributions to commence doing so on the same basis as new employees. We believe the proposal violates at least an implied social contract between the retiree and the City under the terms of which the retiree rendered service with the reasonable expectation that he/she would be provided fully paid HMO coverage in retirement. We therefore deny the proposal.

## **V. Other Proposals Included in Award**

### ***Funeral Related Expenses (PBA Proposal 9)***

The Union has petitioned for a provision which would obligate the Employer provide as much as \$15,000 to be used for funeral-related expenses incurred in connection with the interment of an officer killed in the line of duty. In such tragic circumstances the parties are partners in grief and we think it appropriate that their partnership extend to funding a tribute. This panel provides for the establishment of a jointly-funded reserve of \$25,000 to be funded by equal contributions by the Employer and the Union. Accordingly, the successor Agreement shall be amended to include the following:

#### Article XXXI- Funeral Expense Fund

**The City and the PBA shall establish a Funeral Expense Fund of twenty-five thousand dollars (\$25,000) to be used to defray funeral expenses and directly related costs which may be incurred in the interment or in paying respect to an officer killed in the line of duty. The City and the PBA shall contribute to the Fund with payments of twelfth thousand five hundred dollars (\$12,500) each which Fund shall be administered by the PBA. The money shall be maintained in a separate interest-bearing account with the Police Credit Union. The PBA shall promptly advise the City of any withdrawal from the fund and shall provide accounting upon request. Expended funds shall be replenished by the City and the PBA with equal contributions by each, within thirty (30) calendar days following disbursement. Any dispute regarding the Fund shall be submitted to expedited arbitration.**

### ***Longevity Allowances (PBA Proposal 8)***

PBA proposes an officer become entitled to a pro rata share of his/her longevity allowance in his/her final year of service where employment terminates before the individual's anniversary date. We conclude the proposal

is supportable only as it relates to severance occasioned by retirement. This does not impose a cost burden on the City as an individual delaying until his/her anniversary date would collect the full increment. More significantly however, a retiring senior officer who may be drawing over \$2,000 per annum in longevity allowance will be replaced by a new recruit who at that moment will not have qualified for a longevity allowance. The granting of this proposal should in fact provide Buffalo with a small annual saving and the successor Agreement shall be amended to include the following:

Article XXIII (E)- Longevity

**Effective July 1, 2001, an Employee who is retiring on an effective date prior to his/her anniversary date, shall receive longevity pay pro rated on a monthly basis to be calculated by multiplying one twelfth (1/12 th) of the full annual entitlement by the number of fully completed months of service commencing with his/her anniversary date and concluding with the effective date of retirement.**

***Uniform Maintenance (PBA Proposal 11)***

The expired Agreement provides for the payment of \$100 per annum to be used for the care and cleaning of uniforms. PBA pleads that this allowance is grossly inadequate, having become effective in September 1989. The PBA proposes an increase to \$675 per annum and seeks to justify its proposal on the basis of comparable practice in other jurisdictions. The City contends this money is intended only for washing and cleaning of the Officer's uniform and that it is therefore, entirely reasonable. The City asserts the PBA Proposal would add about \$565,000 to its annual cost which is the nominal equivalent of 1 percent of wages. A panel majority does not subscribe to the notion that an allowance established in 1989 continues to be "entirely reasonable" but neither can we subscribe to the Union proposal which is clearly much too costly. We have settled on a nominal adjustment of \$50 raising the allowance to \$150 per annum effective July 1, 2001. This will add a modest \$40,000 per annum to be accommodated in a budget of over \$70 million. Accordingly, the successor Agreement shall be modified to state as follows:

Article XIX, Section 19.1-Uniform, Equipment, and Maintenance Allowance

19.1 Allowance

**Effective July 1, 2001, the City shall pay an annual uniform allowance of One Hundred and Fifty (\$150) Dollars. Such payments shall be made on or before September 30th of each year.**

***Paychecks (PBA Proposal 12)***

The Union proposes that each officer's paycheck be placed in a sealed envelope prior to distribution in order to prevent disclosure of confidential information to anyone viewing the table on which the checks are deposited for pick-up.. The City maintains the PBA has not shown a true need for this change which would require the City to either purchase new equipment or hire an additional employee to perform the function, neither of which it can afford. The panel concurs in the assertion that an officer is entitled to confidentiality and that personal information appearing on the deduction stub may breach that entitlement. We have further determined that the stub may be folded over and stapled concealing the personal information while leaving the payee's identification fully visible. The successor Agreement will therefore provide for the delivery of paychecks with the stub folded and stapled or otherwise secured. Accordingly, the successor Agreement shall incorporate the following:

Article II, Section 2.1 (G)

**Pay checks shall be delivered with the flap folded and stapled to conceal the amount of the check and deductions and the nature thereof.**

***Detailing (PBA Proposal 18)***

Detailing in the present context refers to the practice of assigning an officer outside of his patrol district.. While some detailing has long been

permissible, Buffalo sought to broaden the number of permissible conditions for resorting to detailing. The Union opposed any extension of the Employer's options, contending it would be used to make long-term assignments and implement wholesale transfers instead of maintaining staffing levels. This issue was addressed in very substantial detail in an Award by a Compulsory Interest Arbitration panel (PERB Case No IA 96-035; M 96-297) chaired by Robert Rabin which is referred to as the Rabin Award. This Award denied the City the absolute right to detail officers between Districts, but it did extend the City's options in recognition of the need for greater flexibility in the deployment of its personnel. The Award delineates specific guidelines for detailing officers of any rank between Districts. The Award further specifies that the language provided is to constitute a provisional solution under which the City's utilization would be monitored and provide a basis for proposed future changes admonishing any future interest arbitration panel to "consider the parties' experience with this language."

The PBA claims the City has abused the provision and has been found to have done so in a grievance arbitration before Arbitrator Pohl. It advises that more than 5,000 grievances have been filed and it petitions the present panel to rescind the Rabin provisional award. The City argues that the Rabin Panel's determination evolved after extensive argument in the hearing process and later in executive session. It argues that it was well understood that the City's effort was aimed at improving its ability to allocate manpower and reduce overtime expenses. It further charges that the PBA has consistently opposed expanding the detailing rights in an effort to increase overtime opportunities and of course, attendant costs. The City acknowledges that 1,561 grievances have been filed but asserts that the primary dispute is over the purpose of the detailing and argues that the filing of grievances is not, in and of itself, evidence of abuse. It argues that the one case brought before an arbitrator led to a ruling in the City's favor and pleads that if the City were to lose or be curtailed in its ability to deploy manpower, most likely, shortages in certain districts would need to be filled on an overtime basis or be neglected. Buffalo argues that it cannot afford more overtime and it should not be expected to neglect its responsibilities.

The single arbitration decision to which both parties refer appears in the record as PBA Exhibit 9. In it arbitrator Pohl did deny the grievance on the basis that there was insufficient evidence from which to conclude the City violated either the CBA and/or the Rabin Interest Arbitration Award. The

fundamental difficulty, as we perceive it, is that the Rabin Award has not been tested in arbitration despite the fact that more than 1500 grievances await adjudication. This problem arises because the parties' arbitration process has broken down. This panel is not empowered to address the problem but it is obvious that it is sorely in need of attention. Other issues before us were denied basically because the proposals relating thereto presumed an access to a working arbitration process. It is important for the parties to establish a resurrected effective and efficient arbitration process. In dealing with the detailing problem we do not find sufficient support for revocation of the Rabin provisional language. Arbitral resolutions of but a few of the 1500 grievances should, we believe, flesh out the skeletal provisions of the provisional language. We therefore urge the parties to re-establish a working arbitration system and hold that the Rabin provisional language should be extended in full force and effect in the successor Agreement.

**The Rabin Panel Award respecting Detailing shall be preserved on the existing provisional basis in the successor Agreement.**

***Overtime Procedures (City Proposal 16)***

Under the expired Agreement overtime must be offered to Captains or Inspectors on a seniority basis. The Employer contends this limits effective supervision as for example where there may have been a homicide requiring the call-in of a Captain and the City would be required to call-in the most senior Captain rather than the homicide Captain. Similarly, if there is a special situation in a particular district and the overtime involvement of the Inspector is required, the City cannot call-in the Inspector from that district unless he/she coincidentally happens to be the most senior Inspector. Rather, the City is required to offer the overtime to the senior Inspector from another District in the City who will not subsequently be involved with the problem.

The Union protests, stating that it has gone to arbitration several times to enforce the relevant provision in the expired Agreement and claims that Buffalo has yet to pay the grievant, a command officer, pursuant to the last award. The Union charges the City Proposal would serve to give the Commissioner of Police total discretion in awarding overtime. It insists the provision which the City proposes to change has been in the CBA since at least July 1, 1986 and it ensures that senior officers, if available, are given the first opportunity to work available overtime -- a fair and workable



procedure. The more important assurance, it elaborates, is that it thwarts Commissioners from rewarding friends to the detriment of others.

We find the City's logic to be compelling. Relying upon seniority as a sole and absolute standard for assigning senior officers; namely, Captains and Inspectors who are the department's functional chiefs, without regard to specialties and regular assignments indisputably impedes efficient operation and we support the City's proposal in principle. Accordingly, the successor Agreement shall include the following:

Article II, Section 2.6 (1)

**In the event the Commissioner of Police determines overtime is required for the Chief of Detectives, Professional Standards Division Inspector, Professional Standards Division Captain, Major Cases Unit Captain, or Narcotic Captain in their respective assignments, the available overtime shall be first offered to said individual. Said individual(s) shall not be eligible for any other rank overtime unless all other eligible individuals have declined the opportunity to work that overtime.**

**Except as provided above, in the event of the necessity to replace a Captain or Inspector, the most senior officer, of the rank to be filled within the assignment, shall be given the first opportunity to work overtime, and said opportunity shall likewise pass through the applicable rank based on seniority. If the overtime is not accepted pursuant to this Section, the least senior officer within the applicable rank shall fill the vacancy.**

*The terms "in their respective assignments" and "within the assignment" are intended to lead to the distribution of overtime consistent with the following illustrative and non exclusive examples:*

*When an overtime need arises related to a homicide, it should be assigned to the Major Crimes Unit Captain; if related to a narcotics operation, the narcotics Captain should be assigned ; if the assignment is*

*in "C" District, it should be filled by the Inspector in "C" District; if a meeting is called with citizens of "A" District to address concerns about a crime wave there, the "A" District Inspector should be assigned. If "B" District is building a new headquarters, the "B" District Inspector should be assigned overtime required to attend a meeting relating thereto.*

## **VI. Disposition of Other Proposals before the Panel**

### ***Death Benefit (PBA Proposal 2)***

The PBA proposes a substantial increase in the \$25,000 double indemnity life insurance coverage Award by a prior panel (Cugali) in the event of a Line of Duty death..

We find the provision in the expired Agreement to be reasonably comparable to prevailing practice elsewhere. We decline to support this proposal which would unnecessarily add to the Employer's cost burden. The proposal is denied

### ***Shift Differential (PBA Proposal 3)***

The PBA proposes that the present night shift differential of 15 cents per hour be increased to 5 percent of the hourly rate. It argues that the present allowance has been in effect since 1986, and is clearly deficient. The City responds that the Union Proposal would add \$725,000 per annum to its costs.

We find more generous shift differentials to be in effect elsewhere but in a period of austerity, we do not view this as a high priority item and are not disposed to add to the Employer's cost burden. The proposal is denied.

### ***Vacations (PBA Proposal 4)***

The PBA proposes an increase in vacation time, and further that employees be permitted to take vacation in half-day units. It argues that Buffalo officers currently receive substantially fewer vacation days than do counterparts in Amherst and Cheektowaga. The City responds that Buffalo officers work a ten-hour day on a 4-on/3-off/4-on/4-off cycle under which they may already take three scheduled off-days plus 4 vacation days plus 4 scheduled off-days, thereby enjoying 11 sequential days off the job, while drawing down only four vacation days.

We find that other jurisdictions do provide longer vacation time. But we also find that Buffalo while lagging behind Rochester in early years,

compares favorably in later years. In comparison with Syracuse, Buffalo lags for the first 10 years, but surpasses thereafter. Moreover we find merit in the City's point that the ten-hour shifts and cycles results in an officer working approximately 195 days per year and receiving 170 days off from work, whereas people working traditional eight-hour five-day weeks work 260 days per year and receive only 105 days off. We are persuaded that Buffalo officers enjoy a distinct advantage in that they receive 65 more days off per year than people working a more conventional eight-hour five-day week. In light of that consideration and the City's limited financial resources, we conclude this proposal should be denied.

***Settlement of Disputes (PBA Proposal 5)***

The City urges that the Panel is barred from considering this proposal pursuant to PERB Order 089.

The Panel concurs and as noted earlier declines to consider this proposal.

***Group Life Insurance (PBA Proposal 6)***

This proposal differs from PBA Proposal 2, supra, in that it relates to any death but PBA relies upon the same arguments employed in the earlier proposal.

The panel denies this proposal on the same basis as in a case of PBA Proposal 2.

***Vacation Increments (PBA Proposal 7)***

The PBA proposes that an officer be permitted to take vacation days in five hour increments and further that officers be provided the option of converting unused vacation time and personal leave time to sick leave accumulation.

We deny the latter two on the basis that they were not discussed or debated in the hearing process, and we deny the former on the basis that we have already found the vacation provision not to be inadequate.

***Education Stipend (PBA Proposal 10)***

The PBA proposes extensive improvements in educational allowances on the basis of comparable practice. The City argues that this would add nominally \$556,000 to its educational stipend costs, nearly doubling the present expenditure.

The Panel, while believing education monies to be well spent, agrees that it cannot support an increase in this item at a time of austerity and the proposal is denied

***Holidays (PBA Proposal 13, City Proposal 6)***

The PBA proposes increasing the 60 hours of holiday pay provided under the expired Agreement to 120 hours per annum on the basis of comparability with comparable communities. This benefit was achieved in the Rabin Award which added 12 hours of holiday pay to prior practice. The City proposes revocation of the Rabin toward and reverting to pay straight time for the designated holidays for employees on active-duty on the payroll at the time of the specified holiday while excluding entitlements by persons on leave of absence, suspension, or administrative leave. Buffalo estimates it would save \$270,000 per annum through adoption of its proposal. In proposing revocation of the Rabin panel's modification, the City is in effect proposing a wage cut. The Union, on the other hand, in seeking additional hours, is seeking an added wage increase.

We have earlier addressed and exhausted the wage topic and at this juncture deny both parties' proposals.

***Defense of Criminal Charges (PBA Proposal 16)***

The PBA proposes the addition of a provision under which an officer accused of engaging in criminal conduct that allegedly occurred in the course of performance of his/her duties and where thereafter the charges are favorably disposed of, shall be entitled to reimbursement for attorney fees, disbursements and other litigation expenses. The City opposes the proposal stating that could be very costly and that it would impede the City's own investigatory procedures which would generally be involved in reaching a decision to seek indictments.

The Panel was initially, favorably disposed toward this proposal but, in executive session, concluded the matter was more complicated than initially understood. Furthermore, it presented potential administrative problems for which solutions were not readily apparent. This proposal is denied.

***Sick Leave Sell Back (PBA Proposal 17)***

The PBA seeks to increase the number of unused sick leave days which an officer may sell back upon retirement. It bases this proposal on cited prevailing comparable practice. The City opposes the proposal which, if

adopted, would allegedly more than triple the existing cost of sick leave buyback.

The Panel views sick leave arrangements to be insurance policies which ensure employees against salaried losses for a specified total number of days when they are unable to work due to illness. The Employer is a self insurer and like any insurer, it does not anticipate that every covered individual will make a claim, let alone a maximum claim. Buyback practices have evolved out of a desire to dissuade workers from abusing their entitlements and, regrettably, they have grown into a common practice. But that does not alter the fact that a sick day entitlement is not the equivalent of a vacation day entitlement. Especially in the present circumstances where we have bumped up against the limits of ability to pay, this proposal must be denied.

***Disability Retirement (PBA Proposal 19)***

The PBA is seeking for all officers granted accidental retirement pursuant to the Social Security provisions as a result of disability incurred in the performance of duty, continued supplemental payment by the City to maintain income at full salary and benefits until such time as he/she reaches mandatory service retirement age. This is a benefit enjoyed by Buffalo Fire Fighters and the Union argues that its members should be entitled to the same benefits as other public safety employees. The City reiterates that it cannot afford to pay individuals who are not working when it is struggling to pay current offices who are working their salaries and benefits. It further urges that the State Retirement and Social Security programs provide for accidental retirement, and that the City contributes significant sums to the State Pension Fund to finance those protections.

The Panel views it as not entirely fair and probably unfair, to deny a police officer a benefit which the City provides and presumably recognizes to be justified, to firefighters. However, upon determining the potential cost of this benefit, we were dissuaded from a more thorough review of the merits as we concluded the likely costs are substantial and irrespective of merit, place the provision out of reach at this time.

***Work Schedules (PBA Proposal 20)***

The PBA is seeking a changed work schedule through the implementation of a 4-on/4-off/ 10 hour schedule. It argues that the City is refusing to increase pay and is proposing give-backs and that the officers therefore, should not have to continue to work the current schedule. The adoption of the proposed schedule would reduce annual work hours but, the Union contends, it would

have very little impact on the patrol district. The City disagrees that this would have very little impact, claiming that the adoption of the proposed schedule would reduce the schedule workdays to about half of the days in a year. The employer contends the new schedule would add over \$104,000 worth of lost time to the department's burden and would be the equivalent of a losing 55 full-time officers.

The Panel first holds that the Union's fundamental rationale is flawed as the officers are in fact receiving some added benefits and have been spared proposed give-backs. Secondly while there may be some unproductive redundancy arising in the existing scheduling arrangement, the answer in our view is to find productive uses for that time. This proposal is denied.

***Conferences (PBA Proposal 21)***

The PBA states it here seeks to formalize an understanding it is supposed to have in effect insofar as notification provisions are concerned. The term "conferences" refers to supervisory discussions perhaps bordering on discipline and the Union asserts it should be notified within 24 hours if an officer has been "conferenced" along with details about what transpired.

The City asserts a conference is not considered to be disciplinary action and there is no compelling need for the Union to know of any conference within 24 hours. Moreover, the Employer maintains, there is no compelling reason for notifying the Union since there is no impediment to the affected officer doing so if he wishes to invoke Union involvement. In fact, the Employer claims, there may be instances where the member chooses not to share this information with the Union.

The panel finds the City's argument that the affected officer is free to communicate information to his Union most persuasive, and the proposal is denied.

***Indemnification (PBA Proposal 23)***

This proposal is similar to PBA Proposal 16, Defense of Criminal Charges, but it here seeks reimbursement of PBA incurred costs. Proposal 16 has been denied and the present matter is disposed of similarly.

***Messages (PBA Proposal 24)***

This proposal is for a provision barring the Department from internally publicizing pending disciplinary actions or circulating information on actions taken against an officer except on a "need to know basis". The City

maintains the officer is already protected by New York State Civil Rights Law section 50-(a), and that the City is legally bound to comply with that section.

In reviewing this matter, we conclude the parties do not truly disagree. We therefore take no action on this proposal

### ***Salaries and Hours of Work (City Proposal 1)***

The City proposes to change work schedules of the shifts of each of 3 separate groups; namely, (1) Captains and Inspectors, (2) Detectives, and (3) Personnel assigned to headquarters. In each case it seeks to convert from the 10 hour 4-3/4-4 schedule which requires 1946.6 work hours per year over 195 days to an 8-hour work day on a 5-2/5-2/4-3 schedule which would also constitute 1946.6 work hours per year but spread over 243 rather than 195 days. In each case, the Employer argues that the affected employees are assigned to duties which regularly require them to interact with other agencies or community groups working the more typical five-day 8-hour schedules. The fact that they are on duty when they are unable to contact and work with these other persons because they are on duty at times which do not coordinate with the conventional workdays, is said to create delays and inefficiencies. The police personnel cannot effectively be deployed when their contacts are unavailable.

We are firmly inclined to support the City's proposal in that we view the implementation of enhanced productivity to be vital to the long-term interests of both parties. We have proposed adoption of the City's proposal, contingent upon the payment of a salary differential to compensate the affected employees for reporting to work on approximately 48 more days per year than was required when working the 10 hour schedule. We had proposed a 5 percent differential which the Employer rejected advising that it views any requirement for a differential to be unacceptable, but contends the schedules should be interchangeable without further salary considerations because both require the same number of work hours (1946.6) per year. Yet, the City in its opposition to PBA Proposal 4, Vacations, offered a most persuasive argument in asserting that the 10 hour schedule is a very valuable benefit as people working that schedule are required to report on only 195 days per year as opposed to 243 days as do people working a normal 8 hour five-day schedule. Buffalo emphasized that 10 hour people can readily and repeatedly enjoy 13 sequential days off duty while having only 40 hours charged against their vacation entitlements.

However, in promoting its Proposal 1, the City denies that days work per year should be the standard and proposes that the more rational standard should be hours worked. This is a complete reversal of its prior persuasively argued rationale and we are constrained to conclude that a petition to switch personnel from the 10 hour schedule to a five-day 8 hour schedule without providing some differential in recognition of the diminished benefit must be denied.

### ***Salaries and Hours of Work (City Proposal 2)***

The City is seeking contractual license to adjust manpower levels four times per year where it is currently restricted to making such adjustments only once per year. The City asserts it should be able to adjust manpower levels to account for seasonal demand like increased waterfront activity in summer as well as to make adjustments for retirements or illnesses or injuries impacting a particular district or shift. The City emphasizes that it proposes preserving existing procedures such as the Transfer Policy and Procedures which takes seniority into account as it is seeking only a reasonable application of its right to manage the workforce. The Union responds that the existing policy has been in effect since 1990, and provides for transfers to vacant positions. The PBA contends the City is not only proposing that bidding continue to be based on transfers to available shifts, but further proposes that for other than the officers assigned to patrol, assignment should be based on seniority, supervisory, operational and career development factors as determined by the Commissioner. It contends that for this latter group, seniority is not even a determining factor but one of at least four factors, including the non-specific supervisory, operational and career development factors. In effect, the Union asserts that the City's is proposing to replace a seniority system which has been in place since 1967 with reliance upon the Commissioner who can then exercise preference and place friendly individuals into desirable positions and preferred shifts. It further protests that the City is seeking to empower the Commissioner to adjust manpower levels on all shifts and within all departmental units. The Commissioner, it argues, already is endowed with contractual power to adjust manpower levels more frequently due to do exigent circumstances. It charges that the City is now seeking latitude within which the Commissioner may adjust manpower and shifts to avoid overtime or other contractually required compensation such as court time pay.

The panel supports the Union position respecting this proposal. It does appear that the Commissioner is already empowered to adjust manpower levels to address exigent conditions and it does appear that the additional



criteria which the City seeks to employ in determining qualification are subjective and very difficult to define on a reliable basis. City Proposal 2 is therefore denied

***Court Time (City Proposal 4)***

The City seeks to impose a minimum guarantee of two hours per appearance instead of the four hours provided in the expired Agreement. It estimates this change would reduce the City's Court Time expense by nearly half. That expense amounted to more than \$3.2 million in the 2000/01 fiscal year. The City is proposing a minimum pay of two hours with the officer being paid for the actual time spent in court if it exceeds two hours. What is being eliminated, in the City's view, is the pay that officers receive for not being in court as when an officer appears for 30 minutes and continues to receive pay for the next 3 1/2 hours after which he or she has left court. The Union responds that Buffalo's allowances are already substandard and that there is no justification for the City Proposal.

We find Buffalo's Court Time payments to be below those of the contiguous Towns as well as those of some cities though both Rochester and Syracuse have three-hour minimums. On balance, we conclude the Buffalo allowance in the expired Agreement is not unreasonable in the context of comparable practice and other elements of its compensation structure. Consequently City Proposal 4 is denied.

***Perfect Attendance Incentive (City Proposal 7)***

The Employer pays a perfect attendance incentive of eight hours pay for each two-month period of perfect attendance commencing with July 1 of each contract year. The City now proposes to pay based on each three-month period of perfect attendance. Buffalo asserts it is seeking to protect itself from paying an employee who is suspended, the eight hours pay for the three-month period during which the suspension occurred. It justifies its proposal on the basis that a person who has been suspended has made him/herself unavailable for work due to misconduct and that individual therefore, should not be awarded a bonus for perfect attendance.

Contrary to the City's claim that its objective is to avoid rewarding employees who may have been suspended, it clearly is also seeking to extend the prior qualifying period of two months to three months. The City has presented no evidence of failure of the existing system and we therefore deny this proposal.

***Disciplinary Action (City Proposal 8)***

The City is seeking to modify Article XII, Discipline and Discharge, section 12.1 which permits removal transfer or disciplinary penalties only where competency or misconduct, or the commission of a felony or crime involving moral turpitude is involved and then, only after a hearing upon stated charges. The permissible disciplinary action under the expired agreement is a reprimand, a monetary fine not to exceed \$100, suspension not to exceed 60 days, demotion in grade or title, or dismissal from service. The proposed revision would permit disciplinary action upon a showing of misconduct essentially based upon due process and just cause. It would also add disciplinary options, including transfer and/or changing shifts and probation. The PBA argues that the current procedure has been in effect with only one modification since the first negotiated CBA, and that the Employer continues to enjoy substantial disciplinary power pursuant to Section 75 of Civil Service Law. The Union further asserts the clause in the expired agreement has served to with only a minor change for 35 years, having been modified only once by the Prosper Panel Award which granted the Union a right to appeal a decision by the Commissioner to change a Hearing Officer's finding by proceeding to arbitration within seven calendar days.

The Panel concludes the Employer has established a need for more flexibility but also believes that an Interest Arbitration Panel is held to making minimal modifications. We therefore decline to disestablish the Hearing Officer arrangement and substitute empowering the Commissioner to act under a "just cause" standard, subject to review in arbitration. We believe this matter is deserving of more thorough study, and that it is likely the disciplinary options should be extended. However, the workability of proposed or available alternatives depends upon having in place, an efficient functioning arbitration mechanism. As noted earlier herein, there prevails a glaring absence of such a vehicle in this jurisdiction, and we are therefore constrained to deny City Proposal 8.

***Disciplinary Action (City Proposal 9)***

This City proposal is concerned with procedures for imposing and appealing disciplinary actions. The City pleads that the current system simply takes too long, and by way of illustration cites the March 2, 2000 arrest of four narcotics officers by the FBI for a variety of different charges which led to their suspension. The trial concluded two years later during which time the City was compelled to suspend the officers with pay. During that period one of the arrested officers retired, and one was acquitted in federal court but

remained suspended and is awaiting departmental charges. The remaining two were terminated pursuant to their felony convictions. The two terminated officers were suspended for over two years during which period they received full pay. The City cites another case in which charges punishable by discharge were levied on an officer in 1996 and did not come to hearing until December 2000. After the expiration of his brief initial suspension, the officer was placed back on street patrol while awaiting hearing. Thus, except for the brief suspension period, he was working for four years between charges and the disposition thereof. Buffalo maintains the existing system inefficiently selects a Hearing Officer and preserves the least desirable parts of both, the Civil Service Law, Section 75 and voluntary arbitration. Buffalo proposes that these impediments should be removed by the adoption of a "just cause" system wherein recognized vehicles such as PERB panels, AAA panels, or FMCS panels are employed expeditiously to reach just conclusions. The Union relies upon its response to City Proposal 8 supra.

The Panel too references its response to City Proposal 8 and denies City Proposal 9.

***Union Release Time (City Proposal 10)***

The City is proposing to henceforth allow full-time detached duty for the Union president and the first vice president, and to limit all other paid release time for union representatives to a maximum of 1948 hours per year. It argues that under the expired agreement the City is compelled to appropriate the equivalent of nominally three full-time employees to investigate and process grievances, attend meetings, and perform other union business. It pleads that the City can no longer afford to retain officers who are not working, claiming that the cost of paid Union time-off has been escalating. The Union cites the Rabin Award which denied a prior City Proposal and pronounced the provision in the expired agreement sound, workable and free of abuse. The Union maintains the City has advanced no reason for disturbing the Rabin Award.

We are in substantial agreement with the Union position respecting City Proposal 10, and therefore deny same.

***Printing of Contract (City Proposal 15)***

The Commissioner testified that an updated agreement would facilitate the functioning of all concerned and Buffalo proposes that the parties agree to cooperate in compiling and printing a Contract/Agreement which

incorporates all the provisions of the CBA up to and including the settlement of the current negotiation. The City further proposes that the cost of printing be divided equally between the City and the Union. They further propose a meeting procedure which must culminate in a mutually acceptable written document within three months. The City seeks to specify that any unresolved differences about contract language shall be immediately submitted to an arbitrator after the expiration of the three-month period. The Union offers that ten years ago the parties undertook to compile and print an up-to-date Agreement and that the effort disintegrated, allegedly because the City was deleting provisions, moving provisions from one article to another and redacting language. It agrees there is merit in having a comprehensive documented agreement, but believes the City on its own initiative should draft the document and present it to the Union for review and approval. The PBA rejects the proposal for submitting matters to an arbitrator, arguing that it is not an arbitrator's function to craft language which may change intents, and asserts that differences about contract language are for the parties to resolve but adds, that it does not foresee a likelihood of language issues arising given the past memoranda and panel awards.

The writer, having wrestled these many weeks with numerous documents in repeated efforts to determine the substance of the expired Agreement and various memoranda and arbitration awards, is acutely aware of the impediments which should be removed by the drafting of a coherent Agreement. We believe it is incumbent upon the City to compose and submit a copy to the Union for discussion, if necessary, and approval. We view the submission of the issue before this Panel as being at least untimely in the absence of such a recent prior effort. It appears that much initial progress could be made by merely assembling a compendium of changed and new provisions which have appeared in Memoranda of Agreement and/or Compulsory Interest Arbitration Awards since the last printing.

## **VII. Award**

The undersigned, constituting the duly designated Compulsory Interest Arbitration Panel, with two members concurring and one dissenting, find and award as follows:

A. Salaries

- 1. Effective July 1, 2000, all salaries shall be increased by two and one quarter (2 ¼%) percent.**
  
- 2. Effective July 1, 2001, all salaries shall be increased by two and one quarter (2 ¼%) percent**
  
- 3. The following chart (page 23 and page 46) shall be appended to the Agreement:**

**SALARIES EFFECTIVE 07-01-2000 & 07-01-2001**

<b>RANK</b>	<b>2.25% 07/01/2000</b>	<b>HOUR RATE 07/01/2000</b>	<b>2.25% 07/01/2001</b>	<b>HOUR RATE 7/01/2001</b>
<b>POLICE OFFICER STEP 1</b>	\$36,944	\$18.97	\$37,775	\$19.39
<b>POLICE OFFICER STEP 2</b>	\$40,190	\$20.63	\$41,094	\$21.10
<b>POLICE OFFICER STEP 3</b>	\$43,442	\$22.30	\$44,419	\$22.80
<b>POLICE OFFICER STEP 4</b>	\$46,691	\$23.97	\$47,742	\$24.51
<b>POLICE OFFICER STEP 5</b>	\$49,948	\$25.64	\$51,072	\$26.22
<b>DETECTIVE</b>	\$51,774	\$26.58	\$52,939	\$27.18
<b>ASSIST. RADIO DISPATCHER &amp; POLICE PHOTOGRAPHER</b>	\$53,550	\$27.49	\$54,755	\$28.11
<b>DETECTIVE SERGEANT</b>	\$54,152	\$27.80	\$55,370	\$28.42
<b>POLICE LIEUTENANT &amp; POLYGRAPH EXAMINER</b>	\$57,833	\$29.69	\$59,134	\$30.36
<b>ASSIST. CHIEF OF DETECTIVES CHIEF OF ADMIN. SERV. &amp; POLICE INSTRUCTOR</b>	\$61,914	\$31.78	\$63,307	\$32.50
<b>CHIEF OF HOMICIDE &amp; POLICE CAPTAIN</b>	\$66,259	\$34.01	\$67,750	\$34.78
<b>CHIEF OF DETECTIVE &amp; POLICE INSPECTORS</b>	\$72,911	\$37.43	\$74,551	\$38.27

B. Dental Insurance

Article XXI, Section 21.3 Dental Insurance

Amend paragraph one to read as follows:

**Effective June 30, 2002, the City shall provide, at no cost to the employee, GHI preferred Dental Coverage.**

C. Prescription Drug Co-pay

Add fourth paragraph in blue book (7/1/86-6/30/88) CBA to read:

**Effective June 30, 2002, changes in the co-pay prescription drug requirement arising out of implementation of the three-tier prescription co-pay provisions by the HMO (Health Maintenance Organization) health care providers shall be the responsibility of the individual subscriber.**

D. Arbitration Demand Relating to Univera Three-Tier Prescription Drugs

**The PBA shall withdraw its demand for arbitration concerned with possible co-payment responsibilities of subscribers to the Univera HMO plan for the period commencing July 1, 2001 to June 30, 2002 with adjudicatory authority over that matter being ceded to this Panel as a matter of retained jurisdiction. Retention shall be for one calendar year following the date of this Award and if the matter is not resolved or submitted in that period of time, it shall be considered to have been abandoned.**

## E. Health Insurance

### Article XXI- Section 21.1

Add the following provision:

**All employees hired on or after June 30, 2002, shall pay twenty-five (25%) percent of the monthly premium for the "core coverage" for individuals and fifteen (15%) percent of the monthly premium for the "core coverage" for family coverage. "Core coverage" is understood to consist of the least expensive Medical Insurance Option available at the time of hire. If a new hire elects enrollment in one of the more expensive plans, he/she will contribute in addition to the foregoing, one hundred (100%) percent of the difference between the cost of the selected plan and the cost of "core coverage".**

**Upon completion of four (4) years of service, with anniversary dates being calculated on the same basis as for longevity entitlements, an employee's coverage shall become the same as for employees hired prior to June 30, 2002.**

## F. Funeral Expense Fund

### Article XXXI- Funeral Expense Fund

**The City and the PBA shall establish a Funeral Expense Fund of twenty-five thousand dollars (\$25,000) to be used to defray funeral expenses and directly related costs which may be incurred in the interment or in paying respect to an officer killed in the line of duty. The City and the PBA shall contribute to the Fund with payments of twelfth thousand five**



**hundred dollars (\$12,500) each which Fund shall be administered by the PBA. The money shall be maintained in a separate interest-bearing account with the Police Credit Union. The PBA shall promptly advise the City of any withdrawal from the fund and shall provide accounting upon request. Expended funds shall be replenished by the City and the PBA with equal contributions by each, within thirty (30) calendar days following disbursement. Any dispute regarding the Fund shall be submitted to expedited arbitration.**

#### G. Longevity Allowance

##### Article XXIII (E)- Longevity

**Effective July 1, 2001, an Employee who is retiring on an effective date prior to his/her anniversary date, shall receive longevity pay pro rated on a monthly basis to be calculated by multiplying one twelfth (1/12 th) of the full annual entitlement by the number of fully completed months of service commencing with his/her anniversary date and concluding with the effective date of retirement.**

#### H. Uniform Maintenance

##### Article XIX, Section 19.1-Uniform, Equipment, and Maintenance Allowance

##### 19.1 Allowance

**Effective July 1, 2001, the City shall pay an annual uniform allowance of One Hundred and Fifty (\$150) Dollars. Such payments shall be made on or before September 30th of each year.**

I. Paychecks

Article II, Section 2.1 (G)

**Pay checks shall be delivered with the flap folded and stapled to conceal the amount of the check and deductions and the nature thereof.**

J. Detailing

**The Rabin Panel Award respecting Detailing shall be preserved on the existing provisional basis in the successor Agreement.**

K. Overtime Procedures- Captains and Inspectors

Article II, Section 2.6 (I)

**In the event the Commissioner of Police determines overtime is required for the Chief of Detectives, Professional Standards Division Inspector, Professional Standards Division Captain, Major Cases Unit Captain, or Narcotic Captain in their respective assignments, the available overtime shall be first offered to said individual. Said individual(s) shall not be eligible for any other rank overtime unless all other eligible individuals have declined the opportunity to work that overtime.**

**Except as provided above, in the event of the necessity to replace a Captain or Inspector, the most senior officer, of the rank to be filled within the assignment, shall be given the first opportunity to work overtime, and said opportunity shall likewise pass through the applicable rank based on seniority. If the overtime is not accepted pursuant to this Section, the least senior officer within the applicable rank shall fill the vacancy.**

**The following ancillary explanation of the intent of the above language shall be included in the agreement as a**

footnote or appended and referenced in the body of the document.

*The terms "in their respective assignments" and "within the assignment" are intended to lead to the distribution of overtime consistent with the following illustrative and non exclusive examples:*

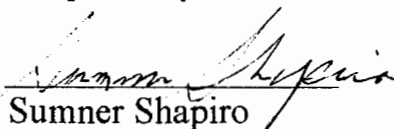
*When an overtime need arises related to a homicide, it should be assigned to the Major Crimes Unit Captain; if related to a narcotics operation, the narcotics Captain should be assigned ; if the assignment is in "C" District, it should be filled by the Inspector in "C" District; if a meeting is called with citizens of "A" District to address concerns about a crime wave there, the "A" District Inspector should be assigned. If "B" District is building a new headquarters, the "B" District Inspector should be assigned overtime required to attend a meeting relating thereto.*

This Panel has considered and addressed every proposal placed before it by the parties. Any which are not included in the Award were denied or determined to be improperly before us for reasons enumerated in the Opinion section of this document.

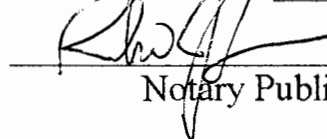
Delmar, New York  
September 5, 2002

State of New York)  
)  
County of Albany)

Respectfully submitted

  
Sumner Shapiro  
Chairperson

Sworn to me this 5 day of September, 2002

  
Notary Public

RICHARD J. SCHAEFER  
Notary Public, State of New York  
No. 01SC5065321  
Qualified in Albany County **2006**  
Commission Expires Sept. 03, \_\_\_\_\_

State of New York  
Public Employment Relations Board

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In the Matter of the Interest Arbitration between

Buffalo Police Benevolent Association  
Petitioner

-and-

City of Buffalo, New York  
Respondent

PERB Case No.  
IA 201-003; M 200-238

COMMUNICATIONS SECTION  
PERB

SEP 09 2002

■ -----  
Errata

CONFIDENTIAL

Page 2 , last paragraph,  
line 2

“November 7 and 8, 2001 and ....” Should read “November 7, 2001....”

Line 4 “... prevent...” should read “...present...”

Line 5 “...witness,...” should read “...witnesses...”

Page 3 – “Fennel” should read “Fennell”

Page 5, last paragraph

Line 4 from bottom “...its members fall ....” should read “...its members falls...”

Page 6 second paragraph

Line 1 “...Employee’s..” should read “...Employees...”

Page 14, last paragraph

Line 3 from bottom “...even the fund balance...” should read “...even if the fund balance...”

Page 24, second paragraph

Line 1 “remedy is that...” should read “remedy in that ....”

Page 34, second paragraph

Line 2 “(Cugali)” should read “(Cugalj)”

*Robert P. Meegan Jr.*

Robert P. Meegan Jr.  
PBA Designated Panel Member  
Concurring *in Award*

State of New York)

County of Erie )

Sworn to me this 5<sup>th</sup> day of September, 2002

*[Signature]*  
Notary Public

State of New York)

County of Erie )

Edward G. Piwowarczyk, Esq.  
City Designated Panel Member  
Dissenting

Sworn to me this \_\_\_\_\_ day of September, 2002

\_\_\_\_\_  
Notary Public

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

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**In the Matter of the Interest Arbitration  
Between the**

**BUFFALO POLICE BENEVOLENT ASSOCIATION,**

**Petitioner,**

**- and -**

**CITY OF BUFFALO, NEW YORK,**

**Respondent.**

**DISSENT**

**PERB Case Nos.  
M200-238; IA201-003**

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

SEP 1 1992

**CONCURRENCE**

The Award issued by the majority of this Panel is totally irrational, is violative of public policy, and exceeds or totally ignores the mandate given to this Panel by the Public Employees' Fair Employment Act. This Award is insulting to the citizens and taxpayers of the City of Buffalo, to the City employees that have been laid off and may be laid off, to the citizens living near Fire Companies that have been closed or may need to be closed, and to the citizens who may be required to wait longer for police response: in essence, this majority of this Panel has determined that wage increases and improved dental insurance are more important than you are. In essence, the majority of this Panel is thumbing its nose at financial analysts and bond rating agencies, oblivious to the significant impact that this Award may have. In fact, the actions of the majority of this Panel should have the effect of totally undermining the credibility of Compulsory Interest Arbitration as a means for resolving contract impasses in the State of New York.

Section 209(4)(c)(v)(b) provides that a Compulsory Interest Arbitration Panel must consider "ability to pay" in arriving at a just and reasonable award:

The public arbitration panel shall make a just and reasonable determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

**(b) the interests and welfare of the public and the financial ability of the public employer to pay;**

(emphasis added). Apparently, this provision of the Statute has no meaning as far as the majority of this Panel is concerned.

**IF EVER**, there was a compelling argument that the financial ability of the employer to pay justified awarding no economic increase to the bargaining unit, this was it. While the majority of the Panel pays lip service to the ability to pay factor, its actions betray its words. The Panel was presented with testimony and exhibits that clearly demonstrated that the City did not have sufficient reserves or new revenue sources available to fund an economic increase, and the only way the City could pay for additional economic increases was through additional cuts in service and personnel layoffs. Despite the record before it, the Majority has determined that the City should provide a 2.25% increase to PBA members effective July 1, 2000 and a 2.25% to PBA members effective July 1, 2001, at a cost of over \$3.8 to the City in addition to providing improvements in dental coverage that will cost the City an additional \$300,000 each year. The Majority explains that the City can afford these additional costs by laying off twenty-one (21) police officers and further observing that it may be necessary for the City to borrow to fund the Award. Clearly, in arriving upon the terms of its Award, the Panel Majority must have totally disregarded and ignored section 209(4)(c)(v)(b) of the Civil Service Law, because this Award is not in the public interest nor does it consider the financial ability of the public employer to pay. I respectfully urge the City to challenge this Award in Court. Moreover, I call this Award to the attention of the Governor and the State Legislature as Exhibit A as to why Compulsory Interest

Arbitration is not an appropriate dispute resolution mechanism and is not fair to Public Employers in this State.

This Panel may issue an Award for a two (2) year period covering July 1, 2000 to June 30, 2002. There can be no question that in the second year of the period to be covered by this Award, following the tragic events of September 11, 2002 and the severe impact of the attack on New York State finances, the City suffered a financial disaster: a \$31 million budget gap, a multi-million dollar cash flow problem, an inability to obtain additional State or Federal aid, layoffs, an inability to borrow additional revenues, and the likelihood of a downgrade in its credit rating.

During the course of the hearing in this matter, the City placed considerable emphasis on its ability to pay for any economic increases. The City has presented testimony from its Mayor, Budget Director, and City Accountant in addition to various documents and exhibits in order to provide this Panel with an accurate assessment of the City's financial position. In summary:

1. Due to the unavailability of increased State Aid following September 11, 2001, the City was forced to close a \$31 million budget gap in fiscal year 2001-02. In order to close this gap, the City did not reserve any money to fund an increase in police or fire salaries (or any other unsettled contracts) for that year.
2. In order to adopt a balanced budget for fiscal year 2001-02, the City did not reserve any money to fund an increase in police or fire (or any other unsettled contracts) effective any time in fiscal year 2001-2 or 2002-03. The City was required to lay off over thirty (30) police officers, and to raise property taxes by 4.1% in order to adopt a balanced budget for fiscal year 2002-03.
3. It is extremely unlikely that the City will obtain any additional aid from the county, State or Federal Government.
4. In order to balance the adopted budget for fiscal year 2002-03, the City raised the property taxes approximately 4.1%, leaving the City with an available taxing margin of only \$15 million. This low margin is a significant concern to Bond Rating agencies:



“We are certainly aware of Buffalo’s limited taxing margin”, said Robyn Kapiloff, an analyst for Moody’s Investors’ Service.<sup>1/</sup>

City Commissioner of Administration and Finance, Eva M. Hassett noted that “You don’t get much tighter” when commenting on the margin, explaining that the motivation for keeping a cushion is found on Wall Street where investors want to know that if necessary, the City could raise property taxes to pay off its debt.<sup>2/</sup> Eating further into the margin would ultimately lead to a downgrade in the City’s credit ratings and cost the City millions in interest payments.<sup>3/</sup> Commissioner Hassett explained:

They look at our ability to pay back debt. They would be very, very concerned if we didn’t have that \$15 million margin.<sup>4/</sup>

5. The City’s Bond Rating is in jeopardy. A down-grade in bond rating could prevent the City from entering the short term debt market and effectively result in bankruptcy for the City.
6. In order to balance the fiscal year 2002-03 and previous year budgets, the City has made significant cuts in other City services.
7. The City and the Board of Education face significant cash flow problems as a result of various funding and reimbursement issues.

The Majority notes the City’s financial position in its Opinion; however, the Majority goes on to award wage increases of 2.25% and 2.25%, and a significant upgrade in dental insurance benefits that will cost the City at least \$300,000 each year. At the same time, the Majority of the Panel has rejected the City’s Health Insurance Proposal that could save the City over \$400,000 by moving employees with more expensive coverage (Traditional Blue Cross and

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<sup>1/</sup> P. Fairbanks, “City is between a rock and a hard place”, THE BUFFALO NEWS (May 2, 2002) (**EXHIBIT B** to the City’s Post Hearing Brief)

<sup>2/</sup> Id.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

Blue Shield and Univera) to less expensive coverage (Community Blue and Independent Health). The Award is neither just nor reasonable. The Award totally ignores the financial ability of the Public Employer to pay and completely ignores the public interest. The Majority has failed to carry out its statutory responsibility to consider these factors and have rendered an award that should be found to be totally irrational and in violation of public policy. The Majority has decided that the wage increases and improvement in dental benefits for PBA members justify laying off additional police officers. These increases may also require the City to close a fire company, and may result in a downgrade in the City's bond rating, and may even preclude the City from entering into the short term debt market. Apparently, the Panel Majority has found that it must be in the public interest to place the City on the brink of bankruptcy. The impact of this Award becomes even worse if it is assumed that a Fire Panel will follow the terms of this Award. The impact upon the City's financial status will almost necessarily result in the need for further cuts in services and further layoffs. That is what the majority of this Panel has awarded. That is why I must dissent.

The two and one-quarter percent (2.25%) increase effective July 1, 2000 would cost the City \$1.28 million for 2000-2001 backpay and another \$1.28 million in 2001-2002. The 2.25% increase effective July 1, 2001 on top of the two and one-quarter percent (2.25%) effective July 1, 2000, would cost the City another \$1.28 million. The City does not have that money. That is what is set forth in the record before this Panel. The Majority recognizes that the City does not have this money, and its response is to lay off employees and borrow money until there is enough money to fund these increases.

Further evidence of the irrationality of the Majority can be seen in their Award concerning health and dental insurance. The Majority has rejected City Proposal No. 12, which

would require employees to pay the full cost of the difference if they select either of the two (2) most expensive health insurance plans. This proposal would save the City \$410,000. It would only affect 249 PBA members: 613 would not be affected. Of those 249 members, the 70 with Univera coverage would either be required to change to Community Blue (“CB”) or Independent Health (“IH”) coverage or pay up to \$618.24 per year for that coverage. The 179 bargaining unit members with Blue Cross and Blue Shield would either need to change to CB or IH or pay up to \$2,811.12 per year. That \$410,000 is extremely important in light of the City’s financial position. Wouldn’t such a savings, which would have a limited effect on the bargaining unit, be appropriate in this time of austerity? Utilizing the rationale of the Majority, this proposal would avert the layoff of six (6) police officers. How is that not in the public interest?

The rejection of this proposal by the Majority is especially difficult to understand in light of the inclusion of Union Proposal No. 15 (GHI Preferred Dental Insurance) in the Award. While the current PBA dental plan may not be available going forward, that does not justify the imposition of almost \$400,000 in additional costs to the City. The City does not have money reserved or available to pay for this improvement in benefits. There is no reason why PBA members, and not the City, cannot pay for the increased cost of this improvement in their benefits. Apparently, improved dental benefits justifies additional layoffs (utilizing the methodology of the Majority, the City must lay off at least six (6) officers to pay for this benefit.), or further cuts in City services. To six (6) low seniority police officers the Panel Majority saying: “ Well, the good news is that you have improved dental benefits; the bad news is that the City must lay you off to pay for them”. How can that be in the public interest?

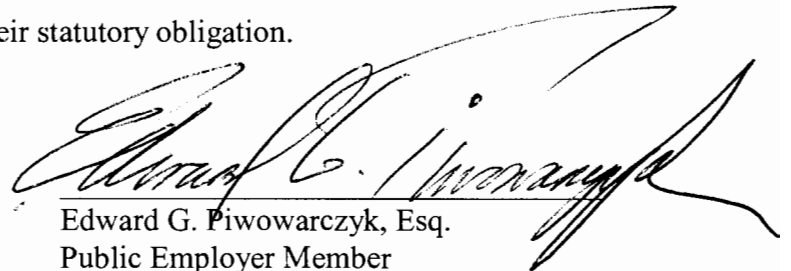
The City cannot agree that the Panel is justified in requiring the City to pay pro-rata longevity, to provide for funeral expenses, an increase in uniform allowance and requiring the City to put paychecks in envelopes.

The Panel Majority has adopted the factor of “ability to pay” in such a manner as to render it meaningless. Under this rationale, a municipality may have no funds reserved, no capacity to raise revenue, and no capacity to borrow, but as long as it can lay off employees, it has an ability to pay. That cannot be the meaning that the Legislature intended when it adopted section 209(4)(c)(v)(b) of the Civil Service Law.

This Panel had an obligation to arrive at a just and reasonable award. This Panel had an obligation to consider the financial ability of the City to pay, and this Panel had an obligation to consider the interests and welfare of the public. While noting that the City’s most basic and vital responsibility is to provide effective public safety services, this Panel found it in the public interest to call for twenty-one (21) police lay offs in order to fund police raises. The actions of the Panel Majority are not rational and are not in the public interest.


For all of the foregoing reasons, I must strongly dissent from this Award. As a long time member of the public sector labor and employment bar in this State, I am deeply disappointed by the actions of the Panel Majority in this matter. This Panel had a statutory obligation to consider the financial ability of the public employer to pay and to consider the interests and welfare of the public, the City provided a compelling record supporting its proposal for no economic increases during the term of this Award, and the Panel Majority failed to fulfill its statutory duty. The impact of this Award now falls upon the employees that may not be recalled or who may be laid off, the citizens living near the fire companies that may be closed, the residents living in the area where more City services will be cut. The Panel Majority has done a tremendous disservice to

the City, this community, the residents, and the taxpayers. Moreover, the Panel Majority has done a tremendous injustice to the Taylor Law Impasse Resolution procedures and the Compulsory Interest Arbitration Process. The Governor and the State Legislature must see now that the system is broken, that it does not work, and that legislative action must be taken immediately. This Award should have the effect of undermining public confidence in the compulsory interest arbitration provision of the Taylor Law: it is totally irrational, it is bad public policy, and the Panel Majority did not satisfy their statutory obligation.



Edward G. Piwowarczyk, Esq.  
Public Employer Member  
For the City of Buffalo

Sworn to before me this  
9<sup>th</sup> day of September, 2002.

  
Notary Public

666298.1      **SUSAN ABADIR**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 04/21/20 06