

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration
 ' between

THE CITY OF ROCHESTER
 Public Employer,

 -and-

ROCHESTER POLICE LOCUST CLUB,
 Employee Organization.

PERB Case No. IA201-028; M201-104

OPINION

AND

AWARD

SEP 27 2002

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

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

 Daniel C. Wissman, Labor Relations Consultant
 Employer Panel Member

APPEARANCES:

For City of Rochester:
 Linda S. Kingsley, Esq., Corporation Counsel
 Yvette Chancellor Green, Esq., of Counsel

For Rochester Police Locust Club:
 Trevett Lenweaver & Salzer
 Lawrence J. Andolina, Esq., of Counsel

BACKGROUND

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

The City of Rochester is a municipal corporation located in Monroe County on Lake Ontario, and is currently the third largest city in New York State, with a population of approximately 220,000 people. The City encompasses over 36 square miles and serves a 6 county region as an educational, health and cultural center. It borders Lake Ontario on the north, the Towns of Brighton and Irondequoit on the east and the Towns of Gates and Greece on the west. Although a separately elected School Board governs the operations of the City School District, the District is financially dependent on the City.

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

At the present time, the Rochester Police Department ("Department") is comprised of an authorized strength of 708 sworn full-time positions, with an additional 172 civilians working in various bureaus of the Department.

The last collective bargaining agreement between the parties covered the period which commenced on July 1, 1997 and ended on June 30, 1999. Thereafter, the parties were subject to an Interest Arbitration Award for the period commencing July 1, 1999 and ending June 30, 2001 [*Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA99-021, Selchick, Panel Chair, Opinion and Award dated 11/14/00]. Prior to the expiration of the period covered by said Award, the parties began negotiations for a successor contract, but such negotiations were unsuccessful. Thereafter, acting pursuant to the rules of procedure of PERB, the Union declared impasse on June 27, 2001, and pursuant to the PERB impasse procedure, a PERB appointed Mediator met with the parties on August 28, 2001. Mediation was unsuccessful, and on November 21, 2001, the Union filed a Petition for Interest Arbitration (Joint Exhibit 1) pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on November 28, 2001 (Joint Exhibit 2), and thereafter, on December 13, 2001 the undersigned Public Arbitration Panel (Joint Exhibit 3) was designated by PERB, pursuant to Section 209.4 of the NYS Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

After Pre-Hearing Review, hearings were conducted before the undersigned Panel in the City of Rochester on April 23 and 24, and May 28, 29 and 30, 2002. At all hearings, both

parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, including briefs, and both parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, argument and issues submitted by both parties. After significant discussion and deliberations at the Executive Sessions, held from June 25 through June 27, 2002, and additional study and review by the Panel Chair thereafter, on August 1, 2002, the Panel reached agreement on the terms of this Interest Arbitration Award. This Award consists of many compromises induced by the Panel Chair and represents a complete package. Neither of the concurring Panel Members would accept each individual recommendation in isolation, however, as only a simple majority is required on each item, the support of all items by at least the Panel Chairman and one other Panel Member results in this binding Award. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chairman and at least one other concurring Panel Member.

At the request of all parties, a Summary of Award was issued on August 1, 2002, with the understanding that the Opinion would follow. That Opinion is set out herein, along with the Final Award.

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

After the issuance of the Summary of Award, during an additional Executive Session held on September 18, 2002 to review and agree upon the language to be contained in this Opinion and Award, the parties, with written authorization by duly designated representatives, extended the jurisdiction of the Panel and requested that a four (4) year Award be issued. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period July 1, 2001 through June 30, 2005.

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

a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

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

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

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

COMPARABILITY

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

The Rochester Police Department is located in Monroe County, and is one of the four major cities in upstate New York. As it did in previous Interest Arbitration proceedings before this Panel Chairman,¹ the Union generally maintains that Rochester police should be compared with other Monroe County local police departments which either are contiguous or very close to the City; specifically, Brighton, Greece, Irondequoit and Webster. The Union has presented current salary and benefit information from the cited jurisdictions, for review by the Panel. Additionally, in an attempt to provide a national perspective, the Union has submitted economic information relative to police wages in selected cities throughout the United States, chosen primarily on the basis of population.

The Union argues that police in the surrounding towns are most comparable to the Rochester Police in that all are full-time police departments located in Monroe County and that all officers receive the same initial training, have similar job requirements, similar duties

¹ See *Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA99-021, Selchick, Panel Chair, Opinion and Award dated 11/14/00 [99-01 Award], and *Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA94-011, Selchick, Panel Chair, Award dated 6/27/95 [93-97 Award].

and generally perform the same functions of road patrol and investigative work. While inner core suburbs crime statistics may resemble those of cities, there is no dispute that Rochester police handle more violent crime on a regular basis than any of the suburban departments. The Union argues that it cannot be ignored that they are better paid than Rochester Police and they should be considered as comparables.

Additionally, the Union argues that Albany, Buffalo and Syracuse are geographically distant and the best comparables remain the surrounding Town police departments, as the Rochester Police Department workforce must be drawn from the Rochester metropolitan area. Rochester Police Officers compete with other officers employed in Brighton, Greece, Irondequoit and Webster for housing and jobs, and are subject to the same cost of living expenses.

As it has in past Interest Arbitrations determined by this same composite Panel, the City maintains that if there are any comparables to the Rochester Police Department, they are those of the other large cities in upstate New York--Albany, Buffalo and Syracuse.

The appropriate comparables, argues the City, are those larger upstate New York cities, which have an environment more akin to the City of Rochester than that of the suburban communities or other United States cities cited by the Union. The City argues that members of the Rochester police department have little in common with the duties, tasks and problems faced by police in suburban communities, and it is simply not appropriate to compare Rochester salaries with those of suburban police who perform a very different job

under very different daily circumstances. Further, the financial situation of Rochester and the other large upstate cities differs significantly from the financial situation enjoyed by growing suburban towns. In addition to an ever increasing residential tax base, suburban towns are not responsible for a City-wide school district, as is the City of Rochester.

The City maintains that due to financial structure, population and size of the police departments, the Panel should adopt the reasoning of the 99-01 Interest Arbitration Panel² and find that the most appropriate comparables to the City of Rochester are the upstate New York cities of Albany, Buffalo and Syracuse.

Panel Determination

The Panel has taken this opportunity to again review the issue of comparability for Rochester Police. While the Panel does note that salaries paid to police in other cities throughout the United States are of interest generally and provides the Panel with a broad framework and range of police salaries, such cities are not found to be appropriate comparables to the Rochester Police. As previously indicated in the 93-97 and 99-01 Awards, the Panel again finds that the appropriate comparable police departments to Rochester are those of the larger upstate cities of Albany, Syracuse and Buffalo, and to a lesser extent, police departments in surrounding Monroe County suburban communities.³

² *Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA99-021, Selchick, Panel Chair, Opinion and Award dated 11/14/00 at 21.

³ Towns of Brighton, Greece, Irondequoit and Webster.

The Panel finds no basis to change the most recent Panel determination on comparability, as stated in the 99-01 Award:

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

Accordingly, the Panel finds that the appropriate comparables to Rochester are the upstate cities of Albany, Buffalo and Syracuse, and to a lesser extent, those police departments in the surrounding Monroe County suburban communities.” [page 9]

And

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

The same Panel determined in the 93-97 Award that:

“In determining the appropriate wage increases to be awarded herein, the Panel has sought to provide Rochester Police with salaries which properly maintain their relative standing when compared with other police in the major upstate New York cities, and to a lesser extent, with police in surrounding suburban communities.” [page 11]

The determination of this Panel that the major upstate cities are the primary comparables is based on the fact that the population, size of police departments, urban setting, school district responsibilities and overall similarities are greater with other upstate cities than with suburban police departments in Monroe County.

SALARY

As in almost every interest arbitration, the appropriate salary increase is at the heart of the dispute. The Union is seeking a 6% salary increase effective July 1, 2001 and a 6% salary increase effective July 1, 2002. Since January 1, 2001, the top base pay for a Rochester Police Officer is \$49,146, which is the figure⁴ that the Panel has used as the benchmark herein when comparing Rochester police salaries with those of police in comparable jurisdictions.

The Union argues that when compared with the earlier cited police departments within Monroe County, a Rochester Police Officer at the top base pay of \$49,146 is the lowest paid within Monroe County in 2001 and 2002. The Union indicates that the low salary ranking of Rochester police must be viewed in the context of the fact that the City of Rochester has the highest rate of violent crimes per officer within Monroe County and a higher crime rate than the other major cities in upstate New York of Albany, Buffalo and Syracuse (see Union Exhibit 7). The Union further indicates that the Rochester police have a longer workweek than police in neighboring jurisdictions, with a much lower hourly rate of pay for Rochester police. These neighboring jurisdictions have lower crime rates, less work hours, and a less stressful environment, but still pay their police at a higher wage rate than that paid to a Rochester Police Officer.

⁴ It must be noted that this is base salary and does not include the additions of roll-call pay, longevity, educational stipend, shift differential or other additions to base pay.

As he has done in past proceedings, Rochester Mayor William Johnson, Jr., appeared before the Panel to explain the wage offer of the City. Mayor Johnson indicated that during his term⁵ the City has maintained a firm commitment to improve the quality and support of police services, and hired 34 police officers. Construction was recently completed for a new Public Safety Building, and an emphasis has been placed on increased training opportunities for all members of the Department. The Mayor reaffirmed that the City has great respect for members of the Rochester Police Department but must respond to the current economic challenges faced by the City. Within such financial constraints, the City has offered the police reasonable salary increases of 3% fully retroactive for each year of this Award.

The City argues that a 3% increase each year is reasonable and fair, and that the Panel must take note that salaries paid to Rochester Police Officers have out-paced inflation, as measured by the Consumer Price Index-urban spenders, and the CPI-U for the 12 months preceding this arbitration is 2.41% (see City Exhibit 19). The City cites declining revenues and static levels of State aid as limiting its ability to provide the increases sought by the Union herein. Further, and quite importantly under the criteria specified in Section 209.4 of the Civil Service Law, the City contends that the salaries paid to Rochester police are in fact currently quite competitive and compare favorably to those paid by the comparable cities of Albany, Buffalo and Syracuse (City Exhibit 20). If in fact the City's salary offer is awarded, Rochester police will retain the relative salary rank, of being second only to Buffalo, when compared with the upstate cities.

⁵ William Johnson, Jr., assumed the office of Mayor of the City of Rochester on January 1, 1994 and is currently serving his third term.

Panel Determination

As indicated supra, as of January 1, 2001, the top base pay for a Rochester Police Officer is \$49,146. Comparing the base pay of the upstate cities, the Panel notes that at the same point in time with appropriate comparable increases, the base pay for an Albany police officer was \$44,875 and the base pay for a Syracuse police officer was \$44,401. As of July 1, 1999 the top base pay of a Buffalo police officer was \$48,849.⁶

Accepting the City's offer of a 3% salary increase for each of the two years covered by this Award, the top base pay of a Rochester Police Officer will be \$50,620 effective July 1, 2001 and \$52,139 effective July 1, 2002. Therefore, awarding the City's salary proposal will result in the Rochester top base pay being \$52,139 on the date of this Award. Even assuming reasonable increases awarded to Buffalo police in the pending arbitration, the top base pay of a Rochester Police Officer at \$52,139, when viewed in the context of all other compensation and benefits provided, represents a fair and equitable wage at this time.

The Panel acknowledges the important and dangerous work performed by the Rochester police. The Panel also notes that in the current environment there will be increased demands on the members of the Rochester police; in fact, we have seen evidence of that already. The hazardous nature of the job has been once again been forcefully

⁶ Subsequent salary increases for Buffalo police are currently the subject of a pending Interest Arbitration proceeding. The Panel notes that the City of Buffalo has proposed no salary increase due to the City's current financial situation.

reaffirmed. The possibility of sacrifice made real. Accompanied by increased demands for the now diverse volume of services performed by Rochester police officers.

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

“The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Rochester Police with a fair and equitable wage for the important and in many cases, dangerous work which they perform.” [page 12].

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

In any determination of the appropriate salary increase to be awarded, other benefits provided and the cost thereof must be considered as relevant factors. Specifically, in awarding the salary increases proposed by the City, the Panel notes that it has not made any change in health insurance costs for Rochester police, although the City’s cost for health insurance continues to increase and represents a significant continuing financial obligation.

Finally, the Panel notes that the Rochester Firefighters Union and the City, as part of a 4 year contract settlement for 1999-03 (City Exhibit 40) did settle upon salary increases of 3% for 2001-02 and for 2002-03. While the City contends that in light of increasing financial difficulties it would have been justified in decreasing the salary offer for Rochester Police, it has not done so, in light of the salary increases provided to Rochester Firefighters and the City's interest in maintaining parity in the wage schedules.

Further, during the course of the Executive Sessions, and pursuant to the express authority provided by the parties, the Panel determined that a four (4) year Award would provide labor stability and would allow the City a longer period to plan and properly budget for salary increases and other economic benefits. Accordingly, the Panel has agreed to extend the City's salary offer for all years of a four (4) year Award.

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

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

AWARD ON SALARY

1. Effective July 1, 2001, and retroactive to that date, the base salary schedule shall be increased by 3%.
2. Effective July 1, 2002, and retroactive to that date, the base salary schedule shall be increased by 3%.
3. Effective July 1, 2003, the base salary schedule shall be increased by 3%.
4. Effective July 1, 2004, the base salary schedule shall be increased by 3%.

ABILITY TO PAY

As clearly required by the provisions of Section 209.4 of the Civil Service Law, the Panel has carefully considered the financial ability of the City to pay the increases and benefits provided by this Award.

While the City does agree that it has the ability to pay for the increases and benefits provided herein, it strongly maintains that it does not have the ability to pay for more. The City points out that general salary increases also impact other economic benefits provided by the Agreement such as the overtime pay rate, the Field Training Officer per diem, K-9 stipend, holiday pay and educational incentive.⁷ The City presented extensive documentation relating to its current financial situation, including the budgets for 2001-02 (City Exhibit 1) and 2002-03 (City Exhibit 39). The City also presented the Comprehensive Annual Financial Report for the fiscal year ended June 30, 2001 (City Exhibit 34) as well as a recent Official Statement for the sale of City bonds (City Exhibit 14). In addition to the general economic and financial overview provided by Mayor Johnson, the City provided a detailed review of revenues and expenditures, as well as specific explanation of budgeting considerations. Richard Hannon, Assistant to the Mayor, testified regarding the specific analysis made by City personnel to determine its ability to pay increases for Rochester Police. A review of the City's General and Contingency Funds was provided. Mr. Hannon indicated that the City has budgeted for the proposed increases in spite of increased spending, no increase in State aid, and decreased revenue sources.

⁷ Not an all-inclusive list; offered as examples only.

Although it has accepted the overall package provided by this Interest Arbitration Award, the Union maintains that the City clearly has the financial ability to pay for greater salary increases, and that the City overstates its claimed financial situation. The Union asserts that the Rochester metropolitan area remains a high-tech, manufacturing and export-intensive center and is globally recognized for its highly skilled work force and dominance in imaging, photograph, optics, tooling and machinery, pharmaceuticals and printing. Employment remains strong (see Union Exhibit 4). State aid has not decreased, despite the resultant costs of the 911 tragedy. Overall, the economic outlook for New York State and Rochester remains strong, with Rochester being in the best of financial shape when compared to the other major upstate cities (see Union Exhibit 2).

Kevin Decker, an economic consultant with extensive experience in the public sector,⁸ testified on behalf of the Union regarding the City's overall financial condition. After review of all relevant financial documents, in his financial report (Union Exhibit 12), Mr. Decker indicated that the City was in sound financial shape and maintained large fund balances in several funds. Of particular note was the Contingency Fund, which had been budgeted for 2.1 million for the 2001-02 fiscal year and 7.6 million for the 2002-03 fiscal year. Additionally, the City had significant savings from the actual cost of retirement contributions versus what it had budgeted. Viewed in overall context, Mr. Decker maintained that the City has the ability to pay the increases sought by Rochester Police.

⁸ Mr. Decker's resume (Union Exhibit 11) details his experience in public sector finance.

Panel Determination

Notwithstanding the fact that the Panel Chair spent considerable time reviewing the current financial testimony and documentation regarding the City's finances, and considered the analysis of both the City's and the Union's financial experts, a full discussion of the City's financial situation is not warranted herein due to overall agreement on this Award. While the financial ability of the City to pay and the resources which should be expended on the Rochester Police remained the primary and ever-present issue over which the Panel argued, it was concluded that the City has the ability to pay the increases and other benefits provided by this Award.

Accordingly, in accordance with Section 209.4 of the Civil Service Law, the Panel finds that the City has the financial ability to pay for the increases and benefits provided by this Award.

CLOTHING ALLOWANCE

Currently, Article 12, Section 1 of the 1999-01 Agreement provides that those officers ordered to work in civilian clothing shall be paid an annual \$500 clothing allowance. No other clothing allowance is provided.

A grievance had been filed in December 2000 regarding the Department's determination to stop paying the \$500 clothing allowance to certain officers who had been receiving it because they reported in civilian clothing, but had been doing so at their own initiative. These officers had not been ordered to report in civilian clothing. The Contract Arbitrator⁹ determined that these officers who had been allowed to wear civilian clothing without being ordered to do so would continue to receive the annual clothing allowance. The Contract Arbitrator further held that for all future assignments, the express contract language would be enforced and in order to receive the clothing allowance, the officer must have been ordered to work in civilian clothing [Contract Gr. 01-300, Award dated 4/6/01]. This Award prompted proposals from both parties in this Interest Arbitration proceeding.

The Union proposed that all Investigators and other members who wear civilian clothing to work be entitled to receive the clothing allowance, clearly removing any restrictions on who would qualify to receive the allowance. This would allow members who currently receive the allowance to continue to do so even if they had not been ordered to report in regular clothes, and wore them for their own convenience.

⁹ The Panel Chair is privileged to serve the parties as Contract Arbitrator.

The Union further proposed that this clothing allowance for wearing civilian clothes be increased to \$1000 per year. Additionally, the Union sought a new benefit of a \$500 annual uniform accessory allowance for all members, to cover the cost of necessary but non-issued items and equipment, such as boots or shoes, gloves, sweaters, other cold weather gear, flashlights and other police equipment items.

The City proposed that the \$500 annual clothing allowance continue without increase but that it be strictly limited to only those officers who are ordered to wear civilian clothes. The City argues that an officer who wears civilian clothes for his/her personal convenience, and is not ordered to do so, should not be entitled to the annual clothing allowance. The City should not be required to subsidize the wardrobe of an officer who chooses, but is not required, to wear civilian clothes.

Panel Determination

The Panel finds merit in both the Union and the City proposals. First, the Panel accepts the City proposal that in order to be entitled to receive the clothing allowance for wearing civilian clothes, the member must be directed, in writing, to do so. Effective 7/1/02, a member will only be entitled to this \$500 clothing allowance if he/she is directed, in writing, to wear civilian clothing to work. New language has been agreed upon which fully replaces the existing Article 12, Section 1 of the Agreement and provides for a new paragraph A of such section, which language is set out in the Award *infra*.

The Panel also found merit in the Union's proposal to provide an annual \$500 uniform accessory allowance to all members. There is no question that many clothing and equipment items, while not provided by the Department, are necessary for the safety and comfort of members, particularly in severe weather situations. The Panel notes that Rochester Police do not receive a dry cleaning or other uniform allowance. Further, there is support for a uniform accessory allowance in the comparables, many of which provide a similar type benefit.

Therefore, the Panel awards a new benefit of a \$500 annual uniform accessory allowance, which shall be retroactive to 7/1/01 and shall be included in the retroactive salary payment to be made as a result of this Interest Arbitration Award. Thereafter, as part of the parties' continuing interest in providing for an efficient and cost-saving program, the parties will meet, discuss and agree upon a voucher vendor system to be implemented by December 2002 and used to provide the uniform accessory allowance benefit.

PANEL AWARD

Article 12, Section 1 of the 1999-01 Agreement is replaced by the following:¹⁰

Section 1: Clothing Allowance and Payments

A. Effective 7/1/02, all designated Investigators and all other members who are directed, in writing, to work in civilian clothing shall be paid an annual \$500 clothing allowance, this allowance to be figured on a per diem basis. Payment shall be made in the last payroll period of June and December of each year to all members who were directed, in writing, to work in civilian clothing during any part of the preceding six (6) months.

B. Effective 7/1/01, all members on the payroll on December 1 of each year shall receive an annual uniform accessory allowance of \$500 to be paid in the first payroll period of December of each year. The parties shall discuss and agree upon implementation of a vendor voucher system to provide for the \$500 uniform accessory allowance effective December 2002. If the parties are unable to reach agreement, the matter shall be brought to the Contract Arbitrator for resolution. The Contract Arbitrator may implement a vendor voucher system, or in the event that he finds that such a system cannot be implemented, he may direct payment of the \$500 uniform accessory allowance in December 2002. The parties and the Contract Arbitrator shall then accomplish implementation of the vendor voucher system as soon as possible thereafter.

¹⁰ Italics signifies contract language.

EDUCATIONAL BENEFITS

Currently, Article 14 of the 1999-01 Agreement provides for many educational benefits and incentives, including that the City pays the full cost of education leading to an Associate's, Bachelor's or Master's Degree in Police Science or Criminal Justice. Article 14 also provides in Section 4 for the City to pay a proportional payment of the costs of education resulting in a Baccalaureate Degree in other disciplines. Approval for such benefit is in accordance with existing City Administrative Regulations.

The Union proposes that the City pay the full cost of education for any degree, regardless of whether or not it is in Police Science or Criminal Justice. The City is generally opposed to the proposal in that its implementation of such a new benefit is expensive and is not warranted at this time.

Panel Determination

The Panel recognizes that value of additional education for members of the Rochester Police but is constrained by the City's economic situation regarding additional educational benefits to be provided during the term of this Award. However, the Panel does further recognize that while the City currently pays 50% of the costs in obtaining a Bachelor's Degree in any discipline,¹¹ there is no similar benefit for a member who desires to obtain a Master's Degree. While there is no specified subject area which must be pursued to qualify for this benefit, the program must be work related, as determined by the Chief, subject to arbitral review.

¹¹ In accordance with existing City Administrative Regulations as provided in Article 14, Section 4 of the Agreement.

AWARD

Effective on the Date of Award, Article 14, Section 4 shall be amended to include a new paragraph, which reads as follows:

Additionally, the City will pay 50% of the direct educational costs incurred in obtaining a Master's Degree in any subject area deemed to be work related, as determined by the Chief, subject to review pursuant to Article 27 of this Agreement.

COMPRESSED WORK SCHEDULES

Currently, as provided in Article 18 Section 1 of the 1999-01 Agreement, Rochester Police work an 8.25 hour work day on either a 5-2 or a 4-2 non-rotating schedule.

The Union is interested in considering other options, including the 10.25 hour day with a 4-4, 4-3 schedule. The Union indicates that many other police departments, including several of the comparables, have gone to the 10 hour work day with great success. Recognizing the complexities of converting to a new work day and work week, the Union has proposed that the implementation of a 10.25 hour day on a 4-4, 4-3 work schedule be the subjected of discussion for a Joint Committee. With the Joint Committee reporting on the issue by October 2003, the parties will have sufficient time to study and consider specific proposals in advance of the next round of collective bargaining.

The City is willing to study and discuss various compressed work schedules and not just the 10.25 hour day with the 4-4, 4-3 schedule. The City believes that the Joint Committee is a viable concept and should not be limited in its research, study and discussion of various compressed work schedules.

Panel Determination

The Panel notes that several comparable police departments have piloted and adopted various compressed work schedules, including the 10 hour day and the 12 hour day schedules. This is a subject worthy of further research, study and discussion by the parties and a Joint Committee report will be an aid to the parties in future collective bargaining.

AWARD

Effective on the Date of Award, Article 18, Section 1 of the 1999-01 Agreement shall be amended to include a new paragraph as follows:

F. The parties agree to establish a Joint Committee to study and discuss the implementation of a "compressed work schedule" including but not limited to schedules such as a 4-4, 4-3 schedule that consists of members working a 10.25 hour work day. This Joint Committee shall consist of equal representation of Union and City members and shall issue a report no later than 10/1/03.

TRADING TIME

Currently, the parties employ a extra contractual system known as “PW/PH” in order to allow a member to switch his/her regular days off with other work days. There is a pending grievance on the use of this procedure, and the Union continues to maintain that this procedure is in conflict with the provisions of Article 15, Section 1, which requires the payment of overtime for working on a regular day off.

The Union proposes that Rochester Police be allowed to “trade time” with each other on a voluntary basis pursuant to a new procedure. After two members have agreed upon a “trade” and have obtained approval from their respective supervisors, they may in effect “trade” days off for work days.

The City has raised concerns over such a trading system as presented by the Union, most dealing with administrative details and consequences of a member failing to report for a “traded” work day. The City is willing to work with the modified system which is the result of discussions by the Panel.

Panel Determination

This Panel has long sought an alternative to the current system of “PW/PH” to allow members to resolve personal conflicts in their assigned schedules. The Panel notes that many comparable police departments employ a similar system of “swapping” or “trading time” and a similar system is currently utilized by the Rochester Firefighters (see City Exhibit 40). The Panel has adopted a procedure which addresses the concerns of all parties.

It is specifically noted by the Panel that any changing of a member's "R" day or days as a result of trading time pursuant to this new Section shall not result in the payment of overtime to either involved member.

AWARD

Effective on the Date of Award, Article 15 of the 1999-01 Agreement shall be amended to include a new Section entitled "Trading Time" as follows:

Members shall be allowed to "trade time" with another member of the same rank, in the same section and same assignment, under the following conditions:

- 1. The trading of time must be completely voluntary between the members, free from reprisals or sanctions by supervision.*
- 2. The reason for the trading of time must be attributed to the member's desire or need to attend to personal matters.*
- 3. Requests for trading time shall be in writing, on a form designed by the Department, which is signed by both members involved in the trade, and submitted to both member's supervisors for approval and signature. Requests shall be promptly acted upon by the supervisor. A copy of the supervisor's response will be forwarded to the Union and to the Office of the Chief.*
- 4. All traded time must be "repaid" before the end of the following payroll period.*
- 5. The member who does not report as agreed shall be held responsible for his/her absence.*

6. *Trade time worked for others is not counted as time worked for the purpose of computing pay or overtime.*
7. *Approval may be denied at the discretion of the Department if the trading time or any consequent activities negatively impact the operations of the Section or Department. Approval of any such request shall not be withheld on an unreasonable or arbitrary basis.*
8. *Any changing of a member's "R" day(s) as a result of trading time pursuant to this Section shall not result in the payment of overtime under Article 15 to either involved member.*

COMPENSATORY TIME

Currently, members of the Rochester Police earn compensatory time but there is no set procedure as to how such time will be scheduled and utilized. Both the Union and the City have offered proposals creating a procedure for use of compensatory time.

Panel Determination

The Panel recognizes a need to create a contractual procedure governing requests for use of compensatory time. Such a contractual procedure will result in consistent application throughout the various sections and assignments within the Department. The approval of use of compensatory time, when the member gives the Department adequate notice, is addressed in the new procedure. Requests for use of compensatory time made with less than adequate notice (less than 7 days), shall continue to be addressed in accordance with current Department practice. Individual requests denied in accordance with current Department practice shall not be grievable.

After significant study and discussion, the Panel has agreed upon a contractual procedure which will fulfill the needs and concerns of both parties.

AWARD

Effective on the Date of Award, Article 15 of the 1999-01 Agreement shall be amended to include a new Section entitled “Compensatory Time Procedures” as follows:

- A. *The use of all compensatory time off, except as provided in paragraph E herein, shall be preceded by a member’s written request submitted to the member’s supervisor. Requests shall be submitted a minimum of seven (7) days in advance. The supervisor must respond in writing within forty-eight (48) hours of receipt of the request. The supervisor shall approve the request unless approval would unreasonably interfere with the ability to provide police services. Payment of overtime shall not be the sole factor for denial of the initial request for compensatory time but may be a factor for denial of subsequent requests within the same platoon or section. If the request is not granted, then the supervisor shall articulate the reason(s) for the denial.*
- B. *Requests shall be considered according to the order in which they were received, considering the earliest request first.*
- C. *In the event that two or more members submit a request on the same day, for the same period, then the member who is more senior shall have his request considered first.*
- D. *Upon approval or denial, the Union and the Office of the Chief shall be sent a copy of the request form.*
- E. *Requests for use of compensatory time made with less than seven (7) days advance notice are not covered by this Section and shall continue to be addressed in accordance with current Department practice.*

**NEW ASSIGNMENT ROTATION
FOR SERGEANTS AND LIEUTENANTS**

When a member is promoted to Sergeant and/or Lieutenant and receives a new assignment, or when any Sergeant or Lieutenant accepts a new assignment in a Section, they are permanently assigned to a specific platoon at that Section. The City proposes that in such instances, if so determined by the Section Commander, the newly assigned Sergeant or Lieutenant may be assigned to rotate through the various platoons of the Section. Police Chief Robert J. Duffy testified that upon assignment to a new Section, it is important for the supervisor to understand the overall work of the Section, and to get a full sense of the community and neighborhood and its leaders. Chief Duffy indicated that allowing Sergeants and Lieutenants to rotate through the various platoons of the Section would provide the supervisor with a more complete understanding of the work of the Section and the problems faced. The rotation would also allow the supervisor to meet and interact with other supervisors in the Section, as well as the Commanding Officer.

The Union is opposed to this proposal as it would inconvenience a newly assigned Sergeant or Lieutenant who already may be making adjustments to his/her life as a result of the new assignment.

Panel Determination

The Panel has considered the testimony of Chief Duffy and agrees that a rotation of the newly assigned Sergeant or Lieutenant through all platoons would be an effective way of providing the newly assigned supervisor with a proper orientation to the Section.

The Panel will leave the determination to the Commanding Officer's discretion as to whether or not the Sergeant or Lieutenant should rotate through any or all of the platoons of the Section. It may be that the supervisor has recent prior experience within the Section which would obviate the need for a orientation rotation. Further, the Panel limits the rotation to the first 30 days of the new assignment, and the newly assigned member shall be advised of the rotation schedule upon arrival at the new assignment. Finally, this rotation schedule for newly assigned Sergeants and Lieutenants shall not be utilized to avoid the payment of overtime.

AWARD

Effective on the Date of Award, Article 18, Section 3 of the 1999-01 Agreement shall be amended to include a new paragraph as follows:

Sergeants and Lieutenants newly assigned to a Patrol Section may, at the discretion of the Commanding Officer, rotate through any and all platoons for four (4) consecutive work days on each platoon, during the first thirty (30) days of the new assignment. All newly assigned Sergeants and Lieutenants shall be advised of such rotation schedule upon arrival at the new assignment. Such rotation schedule shall not be utilized to avoid the payment of overtime.

SCHOOL RESOURCE OFFICERS

School Resource Officers (SRO's) are assigned to public schools within a Section and are considered to be members of the Section. Some background regarding the intent of the proposals regarding SRO's must be provided.

During the term of the 1999-01 Agreement a grievance was filed regarding the calculation method of determining the number of officers who may be on furlough (vacation) during any particular time period. Article 10, Section 1 of the Agreement provides that procedures implementing vacation benefits will be covered by the furlough General Order (currently number 230). General Order #230 provides for the maximum number of officers who may be allowed on furlough at any one time, with the calculation based on the number of officers assigned by platoon within a Section. The grievance arose when the Department interpreted General Order #230 so as to exclude SRO's from the number of officers assigned to the Section for the purpose of determining how many officers could be on vacation at any one time.

The Contract Arbitrator sustained the grievance and held that SRO's must be included in counting the number of officers assigned to a Section, and therefore more officers in that Section could be on vacation at any one time. The Contract Arbitrator further held that SRO's were not entitled to select their periods of vacation separately from the other officers in the Section [see Contract Gr. 01-305, Award dated 5/19/01].

The above Award prompted an issue subsequently brought to the Contract Arbitrator by the Department. Since SRO's were included in the count of staff to determine how many officers in the Section might be allowed on vacation at any one time, could SRO's be assigned, within the purview of the Agreement, to fill in for patrol uniformed officers who are on furlough? After considering the arguments of both parties, the Contract Arbitrator held:

"It would be an inconsistent interpretation of the Agreement and General Order #230 to allow SROs and CPOs to be counted to determine how many uniformed police officers are allowed on furlough at any one time but not to count them in terms of being available to provide coverage for uniformed police officers absent due to furlough.

Accordingly, SROs and CPOs may be assigned within their Section, and within their assigned hours, to provide coverage for other uniformed police officers who are absent on furlough." [Contract Grievance GR01-305, Award dated 4/18/02]

This Award had further implications for SRO's as well. SRO's are assigned to schools, which have set vacation periods throughout the year when the school is in fact closed. When an SRO takes a vacation outside of the school calendar, another, less familiar officer must be assigned to the school. Further, SRO's could often be assigned to replace uniformed officers within the Section. Additionally, most SRO's found themselves limited in their selection of prime vacation weeks.

In an effort to resolve some of these issues, the City made several proposals relating to SRO's. The City proposes that SRO's work a schedule which conforms to the needs of the school to which they are assigned. This includes the daily schedule of the school consisting of when students arrive and when students leave. This proposal also limits the

selection of vacation for SRO's to periods when the school to which the SRO is assigned is on vacation and closed. This will be accomplished by a change in General Order 230.

The Union seeks to preserve the counting of SRO's in the total number of officers in a Section so as to allow for the maximum number of officers to be on vacation at any one time. The Union further seeks to allow SRO's to select vacation separately from other officers in the Section.

Panel Determination

The Panel is in agreement with the City that an SRO should work a schedule which conforms to the daily schedule of the school to which he/she is assigned. In order to provide the full range of police service to the school, the SRO should be present at school during all hours when school is in session. Accordingly, when school opens, the SRO should be present at his/her assignment.

Further, the Panel is well aware of the grievance history relating to SRO's and vacation calculation and selection. The Panel is in agreement with the Union that SRO's shall be counted in each Patrol Section in order to determine the number of officers eligible for vacation at any one time. Additionally, SRO's should select their vacation periods separately from the other officers in the Section and should be limited to vacation periods when the school to which the SRO is assigned is not in session. Special requests for approval to take vacation when school is in session may be addressed and determined by the Commanding Officer of the Patrol Division.

AWARD

Effective on the Date of Award, Article 18, Section 3 of the 1999-01 Agreement shall be amended to include a new paragraph as follows:

School Resource Officers (SRO's) shall work the hours which conform to the daily school schedule to which they are assigned.

Effective on the Date of Award, General Order 230 shall be amended to include the following:

Police Officers serving in the position of School Resource Officer (SRO) in each patrol section shall be counted in the total number of officers to determine the number of officers eligible for vacation at any one time.

Notwithstanding the above, SRO's shall select separately from the other officers in that Section for individual vacation periods. Except as provided herein, SRO's shall be restricted in selection of vacations to periods when the school to which each is assigned is not in session. An SRO may request, in writing, to take a vacation during a period when school is in session; such request to be forwarded to the Commanding Officer, Patrol Division, for approval or denial.

DISTRIBUTION OF OVERTIME

Currently, there is a overtime procedure regarding “Special Events” but there is no overtime procedure regarding the assignment of other scheduled overtime. Notwithstanding best efforts, at times scheduled overtime has been distributed somewhat unevenly, creating a perception that some members have been excluded from overtime assignments. A recent “Anti-Crime Initiative” by the Department in the summer and fall of 2001 resulted in the assignment of large amounts of scheduled overtime to members, and the Union contends that the amount of overtime offered to individual officers varied greatly. As a result, the Union filed an Improper Practice Charge with the NYS Public Employment Relations Board contesting the Department’s distribution of overtime for this initiative.

In an attempt to avoid such issues in the future, the Union proposes that a scheduled overtime procedure be adopted which would provide a manner and method for selection for scheduled overtime assignments. While maintaining that overtime has been and continues to be distributed fairly, the City is not opposed to a contractual provision in this area, but has raised specific concerns regarding the details of the Union proposal, which have been addressed by the Panel.

Panel Determination

The Panel finds that a contractual provision confirming that scheduled overtime shall be distributed fairly is appropriate. Such provision will provide a contractual mechanism to resolve disputes over the distribution of overtime, and should avoid any need to seek resolution outside of the contractual process of any disputes.

AWARD

Effective on the Date of Award, a new Section shall be added to Article 15, to read as follows:

Section 9: Distribution of Overtime

Notwithstanding the provisions of General Order 265 pertaining to Special Events, the parties agree that distribution of scheduled overtime within various sections or units shall not be arbitrary or capricious. Members shall not be deprived of scheduled overtime for disciplinary or punitive reasons or because of exercising their option of working for compensatory time or cash.

If distribution of overtime is grieved and appealed to arbitration, the Contract Arbitrator shall make his decision based upon fairness to the employees, the practical application of the scheduled overtime, seniority, and the ability and need of the Department to fulfill its mission.

CAPTAINS TRANSFER

Appendix 2 of the 1999-01 Agreement consists of a Memorandum of Agreement which provided *inter alia* for an arrangement for Rochester Police to work off-duty, in uniform, at Frontier Field events¹². As part of this Memorandum of Agreement, for so long as members of the Rochester Police worked on an off-duty basis at Frontier Field, certain modifications to the Agreement were in effect. Specifically for purposes of discussion herein, during the life of the Memorandum of Agreement, and while Rochester police worked off-duty at Frontier Field, Article 19, Section 2 was amended to include the following paragraph E:

The Chief of Police shall have the right to transfer any Captain at the Chief's discretion. Such transfers shall not result in the obligation to pay overtime for changes in work hours or schedules that occur as a result of the transfer. Such transfers shall be grievable only to the extent that they are arbitrary and capricious and unrelated to the operations of the Department.

Subsequent to the expiration of the 1999-01 Agreement, the Department was advised that the management of Frontier Field had discontinued employment of Rochester Police at Frontier Field. Pursuant to Appendix 2, II (V) the entire Memorandum of Agreement was made null and void. As a result of the termination of the Memorandum of Agreement, the above-cited paragraph E was no longer part of the parties' Agreement. Accordingly, the Chief lost the right to transfer Captains outside of the involuntary transfer provision contained in Article 19, Section 2(A) of the Agreement. As a result, transfer of a Captain

¹² Actually the Memorandum of Agreement also covers approved High Falls events, which fact is not relevant for the discussion herein.

became subject to the same provision which governs the involuntary transfer of any member of the unit.

As a response to the termination of the Memorandum of Agreement, and the elimination of Article 19, Section 2 (E), the City has proposed that such paragraph be made a permanent part of the Agreement. Chief Duffy testified that it was imperative that he have the ability to transfer Captains at his discretion. Although use of this transfer provision was used sparingly during the term of the Memorandum of Agreement, the Chief indicated that it had the operational benefit of allowing him to place Captains, who are basically managers, in assignments where their individual skills and abilities could be maximized.

The Union is strongly opposed to any provision allowing the Chief to transfer Captains outside of the involuntary transfer provision contained in Article 19, Section 2(A) of the Agreement. The Union argues that as members of the bargaining unit, Captains are entitled to the same protection against involuntary transfer as all other members of the Rochester Police.

Panel Determination

The Panel recognizes the high level supervisory role which Captains have in the Rochester Police organization and operation. Captains are Commanding Officers of Sections or serve in other high level assignments, and as such, are responsible for implementing and carrying out the mission of the Department, as determined by the Chief. It is the view of the Panel that if a Captain is not accomplishing the mission of the Department where the Section is not operating on an acceptable level, or the assignment is not being accomplished, the Chief must have the ability to remove that Captain from the Section or other assignment.

AWARD

Effective on the Date of Award, a new paragraph E shall be added to Article 19, Section 2, to read as follows:

The Chief shall have the right to transfer any Captain for programmatic reasons. Such transfer shall not result in the obligation to pay overtime for changes in work hours or schedules that occur as a result of the transfer. Such transfer shall be grievable only by the Captain individually and shall be heard by the Contract Arbitrator within 60 days of the date the grievance is filed.

CHIEF'S AWARD DAY

The City has proposed a new contract provision that will allow the Chief, at his discretion, to award a paid day off to any member of the Rochester Police who has gone above and beyond the call of duty and/or has provided meritorious service which is worthy of special recognition. The Union is not opposed to this new provision.

Panel Determination

The Panel is of the view that a Chief's Award Day may serve as an incentive for outstanding performance. Most importantly, such an Award Day will allow the Chief the ability to recognize superior performance and offer a tangible benefit for such service.

AWARD

Effective on the Date of Award, a new provision shall be added to the Agreement to read as follows:

The Chief, at his discretion, may award a paid day off to any member who has exhibited conduct above and beyond the call of duty and/or has provided meritorious service.

RELEASE TIME FOR UNION BUSINESS

Pursuant to Article 26, Section 2 of the 1999-01 Agreement, the Union President¹³ is on full release time with full pay during his term of office. This is referred to in the Agreement as “full detached duty” and allows the Union President to perform the myriad duties of his office, including but not limited to preparation and participation in collective bargaining, representation of Union members, investigation and presentation of grievances, attendance at Labor-Management meetings, attendance at Union meetings, and other duties and responsibilities necessary to conduct official Union business on behalf of the members of the Rochester Police bargaining unit.

During the term of the 1999-01 Agreement, some dispute arose between the parties as to whether the Union President would be allowed to work scheduled voluntary overtime assignments. The Department took the position that as the Union President is on “full detached duty” he cannot be allowed to work in an overtime capacity, fearing a conflict with the role of Union President versus that of an assigned officer. The Department also has indicated that it is difficult to calculate overtime hours for the Union President since he does not work a structured or supervised work week.

The Union proposes that the Union President be allowed to work scheduled voluntary overtime as well as any Special Events detail. In that regard, the Union agrees that while on

¹³ The official name of the Union is the Rochester Police Locust Club and at times, is referred to in the Agreement as the “Club” but for purposes of this proceeding is referred to as the “Union.”

an overtime assignment, the Union President must perform police duties at the direction of competent authorities and will respond to the appropriate police command structure.

The City is opposed to allowing the Union President to work scheduled voluntary overtime since it is difficult to account for his regular work hours. As the Union President enjoys considerable latitude in scheduling of his work week, which is irregular, it is difficult to determine when overtime hours would be applicable. Additionally, the City believes that the Union President working in an overtime assignment would result in potential conflicts between his duties as Union President and his ability to perform as a rank and file member of the Rochester Police Department.

Panel Determination

The Panel finds that although the Union President is on “full detached duty” and is responsible for planning and working his own weekly schedule, he does perform a full time assignment. There is no real impediment to him serving on scheduled voluntary overtime assignments as long as he does not allow any conflict to develop between his assignment as a member of the Rochester Police and his duties and responsibilities as the Union President. The Panel notes that the Union President of the Buffalo PBA, which is an appropriate comparable, is allowed to and often works scheduled overtime assignments. The Panel has revised the contractual language contained in Article 26, Section 2 to resolve past disputes and to allow the Union President to work scheduled voluntary overtime assignments. When working such overtime, the Union President will not conduct Union business and will report and respond to competent police command authority, unless relieved to respond to emergent Union duties.

AWARD

Effective on the Date of Award, Article 26, Section 2 of the 1999-01 Agreement shall be amended to read as follows:

Section 2: Release Time for Club President

- A. *The City agrees to place the President of the Rochester Police Locust Club on full, detached duty with full pay and all benefits commensurate with his rank and assignment. The President shall not be assigned any regular police duties unless an emergency is declared. He shall be eligible to participate in any scheduled, voluntary overtime program and any Special Events detail, at which time he shall be subject to all Rules, Regulations and General Orders of the Department. While on release time, the President shall perform the duties related to representation of members of the Union and consistent with the duties and responsibilities of the Union President.*
- B. *The member released from duty pursuant to this Section shall not suffer any loss of salary or benefits.*
- C. *The President is designated to be on full, detached release duty. He may work irregular hours and have an irregular work schedule. For the purpose of determining his pay, he shall be considered to be assigned to a 2nd Platoon position with a 5-2 work schedule with Saturday and Sunday as his regular "R" days. It is also understood that he may change his regular days off, but if he does so to perform the duties related to Union President, he will not be paid overtime for working a scheduled "R" day. However, the President shall receive overtime pursuant to the provisions of this Agreement if he performs police duties at the direction of a competent police authority. When working such overtime, the Union President will not conduct Union business and will report and respond to competent police command authority, unless relieved to respond to emergent Union duties.*

EXECUTIVE OFFICER RELEASE TIME

Since 1988, a Memorandum of Agreement had been in effect between the parties which placed the Union's Executive Vice President on full release time to perform Union duties. This Memorandum of Agreement provided such release time only for the particular named individual, Dane Brown, who served as Executive Vice President since 1988. During the term of the 1999-01 Agreement, Mr. Brown retired from police service and the Union was without a full time released Executive Vice President.

The Union proposes that full release time be granted for an elected officer of the Union, designated by the Union President. The Union argues that an additional released time officer is essential to the full and fair representation of Union members, due to the ever increasing workload of the Union. Specifically, in addition to the duties regularly performed by the President and discussed *supra*, the Union provides various administrative services for all of the membership, represents members at investigatory interviews, and must prepare on a regular basis for the ongoing Triage grievance process. The Union maintains that like the Rochester Police Department, the Union is a 24/7/365 full service organization, responding to emergencies and critical incidents affecting any of the 700 members of the unit.

The City is opposed to granting release time to an additional Union officer besides the Union President as it is a cost item. The City would be obligated to pay the full wages and benefits of the released officer without the benefit of obtaining any police service from him. The City maintains that the Union already has sufficient release time to perform its duties.

Panel Determination

The Panel recognizes the value to both parties of having an additional elected officer on full release time to perform necessary Union representation and other duties. The importance of Union officials responding to critical incidents, the increasing number of issues faced by both parties and the continuing nature of investigative interviews warrants an additional full release time Union officer. The Panel also notes that the Buffalo Police Department, a close comparable to Rochester, has 3.5 full time Union officials on release time, in addition to hundreds of additional hours of release time for other representatives on an as needed basis (see City Exhibit 33).

AWARD

Effective on the Date of Award, Article 26 of the 1999-01 Agreement shall be amended to include a new section to read as follows:

Section 9: Executive Officer Release Time

- A. *The City agrees to place one member, who shall be an elected officer of the Union and so designated by the Union President, on full, detached duty with full pay and all benefits commensurate with his rank and assignment. This member shall not be assigned any regular police duties unless an emergency is declared. He shall be eligible to participate in any scheduled voluntary overtime program and any Special Events detail at which time he shall be subject to all Rules, Regulations and General Orders of the Department. While on full release time, this member shall perform the*

duties related to his elected Union office and other general Union duties as assigned by the Union President.

- B. The Union President shall determine which elected officer of the Union shall be designated for full release pursuant to this Section and shall notify the Chief of Police of such designation at least thirty (30) days prior to the commencement of the release time. Any member placed on full release time pursuant to this Section shall not suffer any loss of salary or benefits.*
- C. Although the member designated to be on full, detached release duty may work irregular hours and have an irregular work schedule at the member's discretion, for the purpose of determining his pay, he shall be considered to be assigned to a 2nd Platoon position with a 5-2 work schedule with Saturday and Sunday as his regular "R" days. It is also understood that this member may change his regular days off, but if he does so to perform the duties related to his Union office, he will not be paid overtime for working a scheduled "R" day. However, this member will be eligible for overtime pursuant to the provisions of this Agreement if he performs police duties on a regular "R" day at the direction of a competent police authority. When working such overtime, this member will not conduct Union business and will report and respond to competent police command authority, unless relieved to respond to emergent Union duties.*

RELEASE TIME FOR CLUB BUSINESS

Article 26, Section 1 of the 1999-01 Agreement provides that one member of the unit may be placed on release time, up to a maximum of 1300 hours per contract year, for the purpose of conducting official Union business. However, since the implementation of the Memorandum of Agreement dated 11/29/88 which placed Executive Vice President Dane Brown on full release time, the 1300 hours of release time was reduced to 750 hours per contract year for as long as Mr. Brown was on full release time. This 750 hours has been utilized by Union Executive Board members to engage in collective negotiations, represent members and otherwise generally conduct Union business. When Mr. Brown retired, and there was no longer any Union official besides the Union President on full release, the 1300 hours of release time provided in Article 26, Section 1 was once again effective.

Panel Determination

The Panel has found *supra* that an elected official of the Union shall be placed on full release time to conduct official Union business. As a result, there is a basis to provide for a reduction of the 1300 hours of release time provided by Section 1. Based on the current workload of the Union and the ever increasing complexity of Union representation, the Panel finds that 1000 hours of release time is appropriate.

AWARD

Effective 7/1/02, Article 26, Section 1 of the 1999-01 Agreement shall be amended to reflect 1000 hours of Union release time per contract year.

PENSIONS

Article 3, Section 5 of the 1999-01 Agreement provides the available pension plans of the NYS Policemen's and Firemen's Pension System which are available to Rochester Police.

The City has proposed that language be added to Section 5 (e) to clarify that the provision therein "Section 302-D One Year final average pay base for pension" applies only to Tier 1 members.

Panel Determination

The Panel notes from a review of past agreements that when the current language of Section 5(e) was placed in the Agreement, Section 302-D of the NYS Retirement and Social Security Law applied only to Tier 1 members. In 1999, such law was amended to allow participation by other than Tier 1 members if the employer specifically opted-in and elected this option for its employees. As the City herein did not opt-in and elect this option for other than Tier 1 employees, the language requires clarification.

AWARD

Effective on the Date of Award, Article 3, Section 5(e) of the 1999-01 Agreement shall be amended to read as follows:

(e) Section 302-D One year final average pay base for pension for Tier 1 members.

CANINE (K-9) COMPENSATION

Article 3, Section 10 of the 1999-01 Agreement provides that all unit members assigned a K-9 receive additional compensation of thirty (30) minutes per day at the straight time rate, for every day the member is responsible for the K-9.

The City is proposing that the payment for K-9 officers be changed to twenty (20) minutes per day at the overtime rate. As a result of this change, the actual compensation paid to the K-9 officer does not change but this change eliminates an unintended Fair Labor Standard Act (FLSA) consequence. For police, FLSA allows for periods in excess of 40 hours before overtime is applicable, based on the establishment of the payroll or work period. Under the current language, the compensation for care of the K-9 may result in unearned overtime being due to the K-9 officer. This was not the intent of the original language.

The Union has no objection to this clarification.

Panel Determination

The Panel accepts the change proposed by the City.

AWARD

Effective 7/1/02, Article 3, Section 10 shall be amended to read as follows:

All unit members assigned a K-9 shall receive additional compensation of twenty (20) minutes per day at the overtime rate for every day the unit member is responsible for the K-9.

TRAINING TIME

Currently, pursuant to an Award by the Contract Arbitrator (Contract GR-5198, Award dated 4/18//96), the longstanding practice of the temporary assignment of member to the Professional Development Section (PDS) for training or to serve as a trainer was confirmed. This resulted in the member changing his "R" days to assume the work schedule of the training assignment. Specifically, the Contract Arbitrator held:

"Therefore, it is the finding of the Arbitrator that no violation of the Agreement occurs when officers are temporarily assigned to PDS to participate in training or to serve as trainers and instructors, and are required to switch their regular scheduled "R" days to conform to the training schedule. This is not an overtime situation.

However, the above ruling does not apply to in-service training situations. In such instances, the practice has been, and shall continue to be, that a member assigned to in-service training on his/her regular scheduled "R" day is entitled to overtime compensation for work performed on an "R" day, in accordance with the provisions of Article 15, Section 1(A) of the Agreement." (Award, p.2).

The City proposes to codify in the Agreement this longstanding practice as confirmed by the above-cited arbitration Award. The Union has no objection to this proposal.

Panel Determination

The Panel accepts the proposal of the City.

AWARD

Effective on the Date of Award, Article 15, Section 3 of the 1999-01 Agreement shall be amended to include a new paragraph to read as follows:

All members who are assigned to training as trainees or trainers shall assume the "R" day schedule of the training assignment without the payment of overtime.

WORK SCHEDULE FOR VACANT NON-PATROL POSITIONS

In the 99-01 Award, the Panel found as follows:

Effective 7/1/00, any vacant non-patrol position or assignment may be changed from a 5-2 or 4-2 schedule and may be changed to any existing platoon upon the posting of the vacant non-patrol position or assignment. (99-01 Award, p.53)

Unintentionally, the 1999-01 Agreement did not reflect the above-cited Award of the 99-01 Interest Arbitration Panel.

Panel Determination

The Panel finds that this inadvertent error should be corrected.

AWARD

Effective 7/1/01, Article 18, Section 1 shall be amended to include the following new paragraph:

Any vacant non-patrol position or assignment may be changed from a 5-2 or 4-2 schedule and may be changed to any existing platoon upon the posting of the vacant non-patrol position or assignment.

REMAINING ISSUES

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

AWARD

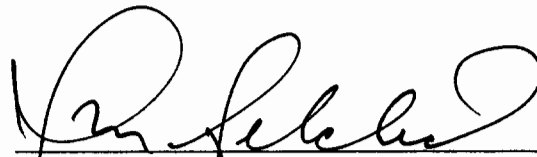
Except for those proposals and/or items previously agreed upon by the parties herein, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

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


DURATION OF CONTRACT

The Panel has been specifically authorized by the parties to exceed the two year maximum contract duration as provided by the Taylor Law in Section 209.4(c)(vi). This Award therefore provides an Agreement for the period commencing July 1, 2001 and ending June 30, 2005.



JEFFREY M. BELCHICK, ESQ.
Public Panel Member and Chairman

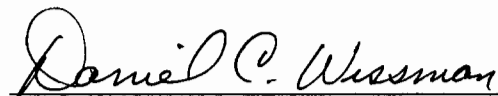
9-26-02
Date
of Award



RONALD G. EVANGELISTA
Employee Organization Panel Member

9-24-02
Date

[Concur]
[Dissent]



DANIEL C. WISSMAN
Employer Panel Member

9/24/02
Date

[Concur]
[Dissent]

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this ²⁶ day of September 2002, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Cathy L. Selchick

Notary Public

CATHY L. SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 2005

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On this ²⁷ day of September 2002, before me personally came and appeared Ronald G. Evangelista, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

MAURA C. SMITH
Notary Public, State of New York
No. 5014650
Qualified in Monroe County
Commission Expires July 6, 2003

Maura C. Smith

Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On this ²⁷ day of September 2002, before me personally came and appeared Daniel C. Wissman, to me known and known to me to be the individual described in the foregoing Instrument, and ^(he) she acknowledged to me that ^(he) she executed the same.

MAURA C. SMITH
Notary Public, State of New York
No. 5014650
Qualified in Monroe County
Commission Expires July 6, 2003

Maura C. Smith

Notary Public