

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between

NEWBURGH POLICE SUPERIOR OFFICERS ASSOCIATION

AND

THE CITY OF NEWBURGH, NEW YORK

PERB Case No. IA93-040; M93-339

FINAL AND BINDING

OPINION AND AWARD

OF TRIPARTITE

ARBITRATION PANEL

The Public Arbitration Panel members are:

**PUBLIC PANEL MEMBER
AND CHAIRMAN:**

Peter A. Prosper
Union College
Department of Economics
Schenectady, New York 12308

**PUBLIC EMPLOYEE
PANEL MEMBER**

Edward J. Fennell
Edward J. Fennell Associates
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**PUBLIC EMPLOYER
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STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

APR 15 1996

CONCILIATION

Pursuant to the provisions of Civil Service Law, Section 209.4, Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board, designated the undersigned on May 24, 1994, as the Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute between the City of Newburgh ("City") and the Newburgh Police Superior Officers Association ("Association"). The Newburgh Police Superior Officers Association represents a bargaining unit consisting of eighteen full-time superior officers employed by the City police department, which has included Captains, Lieutenants and Sergeants.

The prior Collective Bargaining Agreement between the parties covered the period from January 1, 1991 through December 31, 1992. Negotiations for a successor agreement were unsuccessful, and a petition for Compulsory Interest Arbitration was filed by the Association on January 31, 1994, and the City filed its response on February 16, 1994. Hearings were held in Newburgh, New York on September 27, and November 14, 1994, January 3, March 28, May 11, and June 19, 1995, at which all parties were provided opportunity to introduce evidence, present testimony, summon witnesses, cross-examine witnesses, and otherwise support their respective positions on the outstanding issues. The parties filed post-hearing briefs. At the hearing the parties submitted approximately thirty-seven issues, twenty-four by the City and thirteen by the Association. The Association and the City reduced their number of issues for the purposes of the Public Panel Arbitration Award, each side proposing five issues each. The remaining issues are: Salary, Salary Rank Differential, Longevity, Holiday Pay, Hospitalization, Injury Leave, Sick Leave Conversion

and Duration. The City and the Association had different proposals on several of the same

issues. All issues and their attendant support submitted by each party were carefully

considered, as well as the responses by the opposing party. The Public Arbitration Panel met

in executive session on October 2, and October 9, 1995, and deliberated on each of the

outstanding issues, carefully and fully considering all the data, exhibits and testimony received

from both parties. The results of those deliberations are contained in the AWARD, which

constitutes the Panel's best judgment as to a just and reasonable solution of the impasse.

Those issues presented by the parties that are not specifically dealt with in detail in this

AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their

entirety. For each issue, the discussion below presents the positions of the parties and the

Panel's analysis and conclusion. The AWARD below must be considered as a totality, rather

than issue by issue. The Public Arbitration Panel considered the impact of each item upon the

whole, and made its judgment concerning the combination of items that would provide a just

and reasonable result for all parties.

In arriving at the determination contained herein, the Public Arbitration Panel has

considered the following statutory guidelines with which it was charged by Section 209.4:

- (v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in

public and private employment in comparable communities.

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

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

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

(vi)

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

TERM OF AWARD

Both parties are in agreement that because of the date of this Award and pursuant to

the provisions of Civil Service Law Section 209.4(vi), the Public Arbitration Panel is limited

to a maximum of a two-year Award, the term of this Award shall be from January 1, 1993

through December 31, 1994.

The Association argues that Newburgh is a city in decay and is subject to a high violent crime rate. Because of the higher violent crime rate, as well as a lower rate of pay of

Position of the Newburgh Police Superior Officers' Association

The base annual salary for sergeants on December 31, 1992 was \$39,318.00, for Lieutenants was \$41,949.00, and for Captains was \$46,453.00. It is noted that Captains have been eliminated by the City. The Association seeks a six and-a-half (6.5%) percent increase in salary for the year 1993, and an additional six and-a-half (6.5%) percent increase in salary for the year 1994, as well as maintaining the same rank differential between patrol officers and superior officers that existed on December 31, 1991. The City opposes any salary increase or cash payment to the Superior Officers, and seeks a salary freeze for the two years. The City also seeks substantial revisions in the procedure under which superior officers may seek compensation for injury leave.

SALARY

All of the items presented by both parties for evaluation and decision are financial in nature. An evaluation of the financial submissions and arguments of both parties led the Panel to conclude that it would not be in the interest of any of the parties to make an Award on each of the separate financial items but will limit its Award to Salary and Salary Rank Differential. Notwithstanding that decision, the Panel has judiciously examined and evaluated all the transcripts and all exhibits presented by both parties.

INTRODUCTORY STATEMENT

lieutenants, further burdening them.

elimination of the captains, the duties they formerly performed have been distributed among percent by the City rearranging the platoon system in an effort to save money. With the and on duty in uniform around the clock. That number has been cut by approximately fifty According to Mr. Tomita, until 1993, there were always six to nine officers employed demanding than they were when Mr. Thomas was employed.

Kevin Decker, an economist on behalf of the Association, testified that members of the Association lag considerably behind officers of comparable rank in surrounding communities. He also underscored the importance of maintaining the economic relationship (salary differential) between patrol officers and those of the ranks of superior officers. Mr. Decker stated that the City has the ability to pay a reasonable increase in salary and benefits because the City is not levying property taxes at its constitutional tax limit, and that the City has actually cut the tax rate in half between 1989 and 1993 on a full value basis. He estimates that the cost of the Association's proposed salary increase would cost between \$45,000.00

its police force compared with neighboring communities, police officers are moving on to other municipalities seeking better salaries and a lower workload. According to witness Michael Thomas, a former Captain in the Newburgh Police Department, "They [Newburgh police officers] are going down to Westchester departments, making a lot more money, lot less stress, lot less workload than we throw at them here" [Transcript, p. 19]. The Association argues that a policeman in Newburgh faces great risk every day. Accordingly, there is a very high rate of disability retirement by the members of the Association. Theodore Tomita, the president of the Association, testified that conditions today are far more demanding than they were when Mr. Thomas was employed.

According to Mr. Tomita, until 1993, there were always six to nine officers employed and on duty in uniform around the clock. That number has been cut by approximately fifty percent by the City rearranging the platoon system in an effort to save money. With the elimination of the captains, the duties they formerly performed have been distributed among lieutenants, further burdening them.

and \$50,000.00, or seven tenths of one percent (0.7%) of the amount of property taxes collected in 1993.

The Association points out that while the City's major opposition to a salary increase is based on the issue of its alleged inability to pay, ability to pay is just one criterion among several to be weighed by the Arbitration Panel. Comparable salaries, and especially the importance of maintaining a financial differential between superior officers and patrol officers are also important considerations. It is common knowledge that in establishing salaries of superior officers, it is standard practice in nearly every municipality to refer to and maintain a reasonable rank differential between those ranks and the rank of patrolman. According to the Association, by 1992 the rank differential had fallen outside an accepted range previously established through bargaining.

The Association argues that the fiscal, economic and socio-economic difficulties identified by the City in their presentation are nothing new. The City Manager in his own testimony stated that the City has been in decline for forty or fifty years. Census data presented clearly demonstrates that among other Hudson Valley and Orange County cities, Newburgh has been the "poor sister" for at least twenty years.

The Association states that the City issued deficit financing bonds once before in 1986 and at that time had the less-than-investment-grade bond rating it currently has. Nevertheless, according to the Association, the City overcame its difficulties in the late 1980's while managing to increase salaries for non-bargaining unit City employees by over 54 percent, amounting to an average annual increase of 7.5%.

The City states that a review of demands and the record established after five days of hearings reveals that the central issue is money and the City's inability to pay increased salary and benefits to members of the Association. The City portrays a picture of a municipality in desperate financial condition, resulting from a systematic imbalance in its fiscal and economic condition beyond the City's ability to remedy in full at this time. The City has taken actions to rectify its fiscal disorder by stabilizing and reducing municipal expenditures, but the City cannot address revenue shortfalls in the short-run. The City points out that it is faced with deep-seated social, political and economic problems. The only significant revenue increases the City has been able to develop is deficit financing whereby the State legislature twice

Position of the City of Newburgh

Recent City fiscal documents show Newburgh has increased its property tax rate an average of 4.1 percent per annum between 1989 and 1995. Its utilization of its constitutional tax margin has dropped to sixty-three percent in 1995. The City's tax base erosion is the result of a mandated removal of telecommunications central office equipment, a mandate that affects all cities; otherwise, the Association argues, taxable assessments in the City have been stable. According to the Association, the City ended fiscal year 1994 with a general fund surplus of approximately \$500,000. Thus, the Association believed the City has the ability to pay the Association's proposed salary increase. When all criteria are considered, the proposal of the Association, in its view, is not only reasonable, it is equitable.

passed special legislation authorizing the City to borrow money to pay the costs of City government.

The City argues that it has been in a long period of decline. Long-established firms in the private sector such as IBM and NYNEX which provided employment and revenues to the City have reduced personnel or left the City altogether. Nevertheless, the City is required to maintain services and guarantee one hundred percent of the property tax collection of Orange County and the Newburgh City School District, precluding a reduction in costs commensurate with the reduction in revenues. The City has attempted to confront its fiscal problems by implementing a number of cost reductions such as elimination of positions in the police department, fire department, department of public works, recreation department and city hall itself. In its attempt to continue municipal services within limited financial resources, the City is attempting to stabilize employee salaries and benefits. The City notes that municipal employees have received an increase in salary or benefits since Harold Port was appointed as city manager in 1992. Where the City has discretion in the managerial and non-bargaining unit employees group, new employees have been and are now hired at salary levels below that of the employees they replace. The City maintains that efforts to balance the City's finances include adoption of cost-saving measures, such as those proposals presented by the City to the Arbitration Panel. Taking all factors into account, the City believes there is no basis for the salary and benefit increases demanded by the Association, and that any Award through the Arbitration Panel will be ruinous for the City. Even the Association in its rebuttal case presents additional support for the position that the City lacks the ability to pay increases in salaries to any employees.

The City points out that City Manager Port was appointed three years ago to get the City's financial house back in order. The City did not receive revenues at the level for which taxes were budgeted and the City was not able to add to the tax burden to meet its rising expenditures. Mr. Port adopted numerous changes in management and City expenditures to correct the practices and attitudes over the past twenty to thirty years which led to the condition of financial distress. The City budget eliminated a number of positions, including high level positions in the police, fire and finance departments. Notwithstanding the efforts of Mr. Port and the City Council, the City had to raise property taxes in 1994 and 1995 by almost five percent. The City ended the 1993 fiscal year with a fund deficit of \$338,617, even after borrowing \$2.4 million to close the deficit. The 1995 budget represents a decrease in expenditures of \$202,963. Mr. Port testified that the major component of the effort to

stable economy, below average wealth and income levels.

The City argues that its desperate financial position is overwhelming. The poverty conditions of the City are confirmed by the testimony of Robert McKenna, the City's Director of Housing and Community Research, and Robert Huxel, the City Assessor. Mr. McKenna stated that the City is one of sixty-five communities in the United States to be designated as a federal enterprise zone, a designation which is based on poverty levels in the community. Median family income in the City of Newburgh in 1970 was approximately 76% of median family income in Orange County, and had fallen in 1990 to approximately 59%. The number of families in poverty in the City in 1990 is about four times the percentage of its neighbors in Orange County. Compared to the County, the unemployment rate is twice as high in the City. Moody's Investor Service in April 1994 characterized the City as having limited but

stabilize expenditures was the sacrifice of all municipal employees in not receiving salary

increases from 1992 to date.

The City further points to an urban task force created by Orange County which issued

a report entitled, *Report on the Financial Condition of the Cities of Middletown, Newburgh*

and *Port Jervis* [City Exhibit No. 11], describes the poor financial and economic health of the

City and announces alternative courses to address the City's financial distress, including the

possibility of going bankrupt. The Report states that the residents of the City are faced with

an extremely high rate of property taxes. When calculated on an equalized basis, the tax rate

in the City is approximately fifty percent higher than the State-wide average and double the

equalized tax rate of the Town of Newburgh.

Both Mr. Porr and Salvatore Pennini, principal in Public Finance Associates, Inc., a

municipal finance expert on behalf of the City, testified that the City cannot afford to pay the

demands made by the Association. According to Mr. Porr, the City does not have within its

current budget the means to meet the Association's demands. If the demands of the

Association are applied to all other municipal employees subject to bargaining, the cost to the

City would be \$5.5 million and immediately force the City into deficit borrowing once again.

By contrast the City points out that the Association argues that factors other than

ability to pay should be examined in order to arrive at a fair determination for salaries. The

Association claims that the City overestimates the cost of the increased expenditures for its

members. In addition, the Association attempts to convince the Arbitration Panel that ability

to pay is a non-issue by claiming the Association's proposal will cost only \$45,000. This

claim is misleading according to the City. No information was offered on the full cost impact

The City reminds us that the Taylor Law envisions that all terms and conditions of employment in one jurisdiction will be compared with all of the terms and conditions of employment in other jurisdictions, and does not specify that certain terms of employment may be selected while other terms are excluded. However, according to the City, the Association argues that only salary and longevity payments should be used for purposes of comparison. By asserting that only certain items of compensation should be considered while others ignored, the Association paints a distorted picture of compensation received by its members. For example, the City points out that superior officers who work in the patrol and administrative divisions receive fourteen days of holiday pay added to their base salary whether or not the holiday is worked. Then, the Association attempts to compare salaries without guaranteed holiday pay to base pay of other jurisdictions, an inaccurate method of

The City also argues that members of the Association are among the highest compensated when compared to similar positions in other jurisdictions. Compensation is a general term that refers to all of the benefits of employment, including salary, health benefits, time off and certain cash payments. In the instant case compensation includes salary, longevity, clothing allowance, health and hospital insurance, life insurance, tuition reimbursement, vacation, holiday time and sick time, among others.

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Investor Service.

of the City described by the State Comptroller, the Orange County Task Force and Moody's argues that the Association asks the Arbitration Panel to disregard the proof of financial ruin of other municipal employee bargaining units and on non-represented employees. The City of the Association's proposals, even though it would have substantial impact on the three

comparison. By only setting forth the benefits of base salary without looking at the total compensation package, the Association disregards the reality that monetary payments and time off have value and must be measured in performing comparability analyses for purposes of this proceeding.

The City points out that police officers in other jurisdictions may receive higher salaries than police officers in the City, but they may also receive fewer benefits in areas such as holiday pay, vacation time and scheduled appearances. Salary alone does not determine the total amount of compensation received by superior officers. Actual compensation depends on the total compensation divided by the actual number of hours that an officer works in a year. The resulting figures for the City and comparable jurisdictions demonstrate that Newburgh sergeants, for example, receive a total compensation of \$48,836 per year, with the City of Peekskill sergeants receiving \$59,002, the high, and City of Kingston sergeants receiving \$40,266, the low of the fourteen jurisdiction comparison. Sergeants in the City ranked sixth in the comparison. It must be noted that the City of Peekskill is located in Westchester County, one of the wealthiest counties in the State of New York and in a different market than the City.

Similar comparisons can be made for lieutenants. According to the City, in calculating the hourly rate of compensation as described above, City lieutenants receive an hourly compensation of \$39.48, the highest among the cities of Middletown, Beacon, Kingston and Poughkeepsie, the Town of Poughkeepsie, the Town of East Fishkill, and the Village of Monticello.

The Public Arbitration Panel has examined and evaluated all documents, submissions and testimony of all parties and makes the recommendations below.

The major thrust of the Association's argument is that the working conditions of superior officers and indeed all members of the Newburgh Police Department have deteriorated in recent years. Not only has the incidence of violent crime increased along with

DISCUSSION

Therefore, the City argues, a comparison between the City of Newburgh and surrounding communities shows that compensation is comparable and competitive, while the City's ability to pay is substantially less than in such other jurisdictions.

The final point made by the City is that it is not necessary to maintain a salary differential between superior officers and patrol officers. The claims of rank differential is not supported by the record and, moreover, it does not overcome the overriding concerns of the interest and welfare of the public and the City's financial circumstances. The City argues that during a ten-year period police officer compensation increased exactly by the same percentage as did the compensation of sergeants as well as that of lieutenants. The identical rates of increase in compensation occurred notwithstanding the fact that sergeants and lieutenants received no increase in pay for 1993 and 1994, and the police officers received an increase during that period. Members of the Association received a far greater enhancement of employment terms when examined as a package than did the patrol officers. Further, the City asserts, the Association is not able to demonstrate any contractual basis for its claim for the maintenance of a salary differential between superior officers and patrol officers.

a general increase in crime, but the City's reduction in employment in the police and fire departments has increased substantially the workload of superior officers. The Association presents data for 1992 on crime [Union Exhibit No. 5] for jurisdictions in New York State demonstrating the increase in crime. The Association also presents data [Union Exhibit No. 8] comparing crime per 1,000 population as well as the number of full-time officers with jurisdictions within a 25 mile radius. Its results are that the City has 65.3 crimes per 1,000 population, the City of Beacon has 29.2 per 1,000 population, the Town of Carmel has 18.9 and the Town of Poughkeepsie has 47.1 crimes per 1,000 population.

There is no question that all police officers in the City, including superior officers, face danger every day they are on duty. Crime has increased, conditions in the City have deteriorated, and police have worked harder in recent years than in the past. Association President Theodore Tomita testified to the increased workload of superior officers [Transcript pps. 52-78], citing, among others, the increase in violent crimes. Michael Thomas, retired captain of the Newburgh police department, testified that the increase in the number of lower socio-economic persons in the City, as well as the increase in the number of illegal aliens, has created one of the "highest crime rates around..." [Transcript, p. 8].

There is no question concerning the deterioration of conditions in the City and their impact on law enforcement. Advocates for the City acknowledge the decline in conditions in the City. Robert McKenna testified that the City has the lowest median income in Orange County [Transcript, p. 641]. He testified that the City has at least one census tract with over 30 percent poverty rate, and the rest with at least a 20 percent poverty rate [Transcript, p. 641]. Harold Porr, City Manager, testified to the conditions within the City, citing, among

other items, that a substantial number of the City's population lives in poverty and has a very high rate of unemployment [Transcript, p. 567]. The Arbitration Panel, accompanied by advocates, toured the City, guided by Mr. Port [Transcript, pp. 405-440]. From the tour it was apparent that the general condition of the City has deteriorated substantially. Entire City blocks are uninhabited, buildings burned out. In general, the Arbitration Panel concludes that economic conditions in the City have deteriorated substantially in recent years, far beyond the scope of urban decay which is familiar for most small cities in New York State over the past twenty years. It also concludes that the workload of members of the City Police Department has increased in recent years, and has become more dangerous.

Having noted the working conditions of members of the police department, the Arbitration Panel, while sympathetic to the plight of members of the Association, has an obligation to evaluate all factors before making a determination on the issues presented. Workload is an important factor in any determination, but is only one of several factors. Most small cities in New York State have experienced an increased work load for their public safety employees in the past twenty years.

By far the most critical factor in evaluating the efficacy of each party's proposed changes in terms and conditions of employment is the City's financial condition. The Arbitration Panel concludes that the City is in dire financial straits beyond that of most small urban cities in New York State. The City would have substantial difficulty in meeting the increases in salary or cash payments for its employees on a scale the Association proposes. The City has presented numerous data, exhibits, written and oral evidence of the City's financial position. The City has demonstrated that its financial position is so alarmingly bad

that it is unable to increase salaries of its employees at all, and that a salary freeze for police department superior officers for the time interval in question is essential to avert financial

collapse.

City Manager Port detailed the financial status of the City, and testified to the historical events that brought the City to its present position. He also testified to the practices and procedures that he has undertaken to stabilize the City's financial condition. The testimony of Robert McKenna, Salvatore Pennini and Robert M. Huxel further detailed the financial condition of the City. Mr. Pennini presented substantial data [City Exhibit No. 21] on the City's financial condition [Transcript pp. 646-721]. He compared the City's financial condition with those of thirteen other municipalities in the area [City Exhibit No. 22]. His conclusion was that the City is in worse shape financially than any of the other municipalities. The Arbitration Panel believes that if the City does not address its financial problems in a serious and severe manner, there will be serious repercussions including the possibility of bankruptcy.

Several other factors influenced the Arbitration Panel's Award below. Moody's Investor Service described the City as having "limited but stable economy/below average wealth and income levels." It also noted the City's "history of weak financial operations, exacerbated in recent years by weak tax collections, a sluggish economy and a deteriorating economic base" [City Exhibit No. 7]. Its rating of the City's bonds is of substantial concern to the Arbitration Panel. On May 2, 1994, Moody's lowered Newburgh's credit rating from Ba1 to Ba [City Exhibit No. 7]. In doing so, Moody's stated: "Poor financial performance has led the city to issue deficit financing bonds for the second time since 1987. These

recurring financial problems coupled with a stagnant tax base and weak socio-economic characteristics, contribute to the city's rating revision. Officials have initiated a number of steps to address the city's problems. However, the results of these actions will not be achieved for some time. Future credit quality will hinge on management's ability to achieve consistently balanced operations and adequate fiscal reserves" [City Exhibit No. 7].

The Arbitration Panel notes that the New York State Comptroller's office found that the "financial condition of the city's general fund has deteriorated significantly in recent years as a result of structural imbalance between revenues and expenditures. This condition has been caused by continual operating deficits resulting from management's failure to budget appropriations within the limits of available funding. To help relieve its fiscal stress, the city has sought deficit financing approval from the State Legislature. This represents the second time in the last ten years that the city has sought financial relief from the State Legislature" [City Exhibit No. 10].

The Orange County Urban Task Force Report [City Exhibit No. 11], concludes that the City "suffers from chronic financial troubles which have been exacerbated in recent years by poor property tax collections, reductions in State aid and the repayment of prior years' deficits. The City has not been realistic in its budgeting of revenues and has had limited success in controlling expenditures."

The Arbitration Panel concludes that the City of Newburgh faces serious financial difficulties well-documented not only by testimony of persons selected by the City, but by independent evaluators such as Moody's Investor Service, State Comptroller Carl McCall and the Orange County Urban Task Force. The Association does not refute the seriousness of

the City's problems, but asserts that the City has the ability to pay its proposed increases, a position the Arbitration Panel believes is unconvincing. The Association asserts that because of the increased workload of the total police force, including superior officers, and because of the increased danger encountered on a daily basis, its members deserve some increase in compensation, a position of which the Arbitration Panel has taken due note and believes can be addressed in restoring the salary rank differential which has eroded since the end of 1992 in amount and the impasse for which this Arbitration Panel was convened. However, the Arbitration Panel believes that granting members of the Association retroactive salary increases for 1993 and 1994 would only jeopardize City management's determined good faith efforts and commitment to stabilize the City's financial and economic condition. The City must be given the opportunity to put itself back into a viable economic condition thereby creating an environment in which its employees can once again obtain salary and benefit increases when performance justifies such increases.

This Public Arbitration Panel has fully and completely considered all the evidence, arguments and other submissions of both parties and makes the following

AWARD

There shall be no salary increase for the period January 1, 1993 through December 31, 1993.

There shall be no salary increase for the period January 1, 1994 through December 30, 1994.

Effective December 30, 1994, the salary of sergeants shall be no less than \$1,580 greater than a patrolman 5th year, and such differential shall exclude holiday pay; and effective December 30, 1994, the salary of lieutenants shall be no less than \$1,760 greater than a detective 2nd year, and such differential shall exclude holiday pay.

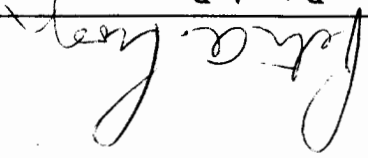
It is RECOMMENDED that from December 31, 1995 forward, taking into account the City of Newburgh's ability to pay, the rank differential between the two groups be maintained at a level of approximately twelve (12.0%) percent, base to base, excluding holiday pay, but not less than \$3,310.00 with respect to patrolman 5th year/sergeant group, and not less than \$3,690.00 with respect to the detective 2nd year/lieutenant group, unless for any year a rate differential of twelve (12.0%) percent is less than either of such amounts.

It is also RECOMMENDED that the City of Newburgh and the Newburgh Police Superior Officers Association revise and streamline injury leave procedures and awards under General Municipal Law Section 207-c.

It is also RECOMMENDED that Article XI, Section A.1, A.2 and A.3 of the most recently expired Collective Bargaining Agreement between the City of Newburgh and the Newburgh Police Superior Officers Association be deleted, and the procedure attached to the City's response to the Association's petition for compulsory interest arbitration, for which the Award of this Public Arbitration Panel applies, be added to replace the aforementioned deleted provisions.

All other provisions and language contained in the Agreement are hereby continued, except as specifically modified in this Award.

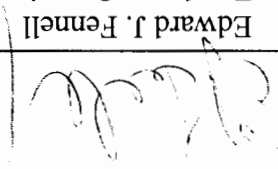
Respectfully submitted,


Peter A. Prosper
Public Panel Member and Chairman

Date:

Employee Organization Panel Member

Edward J. Fennell

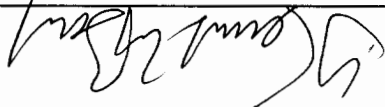


Date: 4-9-96

I (concur) (do not concur) with the Above Award

Employer Panel Member

Kenneth W. Bond, Esq.



Date:

I (concur) (do not concur) with the Above Award

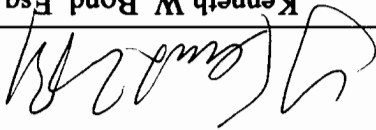
I concur with the award of the Public Arbitration Panel. However, I believe the third paragraph requires further delineation.

Because policemen in Newburgh are represented by two bargaining units, the PBA and the PSOA, when one unit's contract expires and is not renewed for several years, as is the case with the PSOA, the historical salary differential between members of the two units erodes. That is what happened in Newburgh. The PBA signed a new contract for 1993; PSOA members did not. Left in impasse for several years, PSOA members eventually would be paid less than PBA members.

Notwithstanding all the issues which arose in this proceeding, particularly the City of Newburgh's dire economic condition, no member of the panel believes that efficient and effective local government is served should a situation develop where supervisors are paid less than patrolmen. Therefore, the panel wanted to recognize the maintenance of rank differential. As a recommendation, the panel made a broad statement on maintaining an historic rank differential.

The language of the third paragraph in the award states, in part: "Effective December 30, 1994, the salary of sergeants shall be no less than \$1,580 greater than a patrolman 5th year, and such differential shall exclude holiday pay; and effective December 30, 1994, the salary of lieutenants shall be no less than \$1,760 greater than a detective 2nd year, and such differential shall exclude holiday pay." I meant that to mean a simple lump sum payment in recognition of rank differential, not an award of an ongoing annual sum to PSOA members. Such an action beyond the two year period during which the arbitration panel has jurisdiction, 1993 and 1994, would be unenforceable in my opinion. I do not consider it a *de facto* salary increase. Were it not for the fact that two unions represent policemen in Newburgh, rank differential as a monetary issue would not exist in this proceeding. Finally, I believe it was an error for the panel to exclude holiday pay in arriving at the amounts in the third paragraph. The historic rank differentials for PSOA members already include holiday pay.

Kenneth W. Bond, Esq.
Public Employer Panel Member



John H. Fennessy

On this 9th day of APRIL, 1996, before me personally came and appeared EDWARD J. FENNESSY, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

STATE OF NEW YORK
COUNTY OF ALBANY
)
(SS:

ALAN N. WANKAM
Notary Public, State of New York
No. 81-013122
Qualified in New York County
Commission Expires June 30, 1996
Sept. 96

John H. Fennessy

On this 4th day of APRIL, 1996, before me personally came and appeared KENNETH W. BOND, Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

STATE OF NEW YORK
COUNTY OF NEW YORK
)
(SS:

PAT M. MICHALES
Notary Public, State of New York
Qualified in Saratoga County
No. 782580
Commission Expires June 30, 1996

Pat M. Michales

On this 12th day of April, 1996, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

STATE OF NEW YORK
COUNTY OF
)
(SS: