IA 96-044; 11196-341

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR
Interest Arbitration Panel

In the Matter of the Arbitration

-between-

The Patrolmen's Benevolent Association of the City of Beacon

-and-

The City of Beacon

OPINION AND AWARD
Case No. IA96-044

In accordance with Section 209.4 of the New York Civil Service Law of the State of New York, the Undersigned were designated as a Public Arbitration Panel to make a just and reasonable determination of the dispute that continues in the negotiations between the parties over a successor agreement to the agreement between the parties that expired on December 31, 1996. Although the parties had negotiated over a successor agreement, an impasse occurred and mediation proved to be unsuccessful. As a result, the Union filed a Petition for Compulsory Interest Arbitration, dated March 20, 1997. In accordance with the authority of the Public Employment Relations Board, Robert L. Douglas was designated as the Public Panel Member and Chairperson of the Panel; William M. Wallens was designated as the Public Employer Panel Member; and Anthony V. Solfaro was designated as the Employee Organization Panel Member.

Hearings were held before the Public Interest Arbitration Panel at the offices of the Employer on September 25, 1997 and

November 26, 1997 at which time the representatives of the parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The parties introduced evidence and argument concerning the applicable statutory provisions. The Arbitrator's Oath was waived. All witnesses were sworn. The parties filed post-hearing briefs. The Public Arbitration Panel thereafter met in Executive Session.

PERTINENT STATUTORY PROVISIONS

Civil Service Law, 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 wages, hours, and conditions 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 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.

BACKGROUND

The Employer, which became incorporated in 1913, is a public employer located in Dutchess County, approximately 60 miles north of the City of New York. (Employer Exhibit 5 at 5.) The Employer's jurisdiction covers approximately 5 square miles that contains a population of 13,234 people. The Union is an employee organization that represents a unit of approximately 36 police officers, sergeants, lieutenants and detectives employed by the Employer.

The Petition for Compulsory Interest Arbitration filed by the Union, the Response to Petition for Compulsory Interest Arbitration filed by the Employer, the exhibits submitted by the parties during the hearing, and the post-hearing briefs filed by the parties set forth in great detail the positions of the parties in the present proceeding. The Opinion and Award contains a summary of the positions of the parties, however, the official record of the proceeding includes all of the information provided by the parties.

CONTENTIONS OF THE UNION

The Union asserts that the Employer has one of the lowest tax rates among comparable municipalities in the State of New York. The Union maintains that the tax margin and constitutional

debt of the Employer reflect favorably on the Employer as does a substantial unappropriated fund surplus of $1,634,650. It is the position of the Union that a minimal increase would have a nominal effect on property taxes.

The Union objects to the Employer's effort during the interest arbitration proceeding to amend Proposal 11 of the Employer, which sought a 100% employee contribution to health insurance premiums, by substituting a different health plan for the current health plan. The Union considers such an effort by the Employer to submit a new demand to be contrary to the statutory requirements set forth in Section 205.5.

The Union notes that City Administrator Joseph Braun testified that funds exist to pay for the increases sought by the Union. The Union criticizes the Employer for failing to retain a contingency fund to pay for an Award in the present proceeding. The Union explains that the City Administrator acknowledged that the Employer could use interfund transfers as resources to pay for such an Award. The Union identified the Water Fund and sales tax revenue as other sources to pay for the costs of an Award.

The Union stresses that the members of the bargaining unit meet the statutory requirements of having the same hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training, and skills of police officers in the State of New York and compare directly with other police officers serving in the cities and towns in the Hudson Valley. Although no other city has the identical characteristics

of the City of Beacon, the Union urges that the other municipalities in Dutchess County and the surrounding area constitute appropriate entities for comparison. The Union mentions the City of Peekskill and the neighboring areas of Poughkeepsie and East Fishkill as appropriate entities for comparison. The Union faults the Employer for attempting to compare the City of Port Jervis, which is located in Orange County, to the City of Beacon. The Union highlights that the geographical location, the similarities of the population, the size of the department, the economic forces, the form of municipal government, the per capita income, the median family income, the household income, and the poverty level constitute appropriate factors for the Panel to consider and support the Union's position regarding the appropriate entities to compare to the City of Beacon.

The Union insists that the Employer has the ability to pay a wage increase of 5.5% in each year of the two years covered by the Award. The Union calculates that the first year of such an Award would cost $101,293 and each one percent increase would increase the general fund budget by .21%. The Union reasons that only a nominal impact would occur on property taxes and funding exists to pay for such increases. The Union comments that the prior interest arbitration award involving the parties involved a 3% increase in each of the two years covered by the Award and diminished the position of the bargaining unit members in comparison to other departments such as Peekskill, which had

received greater percentage increases of 4% and 5% and a subsequent increase in 1997 of 4.5%. The Union recounts that the Port Jervis police officers received a 5.5% increase in the 1995 and 1996 years and the City of Middletown received 5% split increases in 1997 and 1998.

The Union seeks an improvement in the sick leave incentive program by increasing the payment from $200 to $500 each year. The Union requests an increase in the clothing allowance of $50 per police officer.

According to the Union, the interests and welfare of the public and the financial ability of the public employer to pay for the costs of the Award favor the position of the Union. The Union reiterates that the Employer enjoys a healthy financial position. The Union criticizes the Employer for attempting to demonstrate that financial hardship exists so that the Employer can sustain its position in the present interest arbitration proceeding.

The Union adds that the Employer did not challenge the statutory requirement concerning the type of work that the police officers perform.

The Union evaluates the past collective bargaining agreements negotiated between the parties as consistent with the improvements sought by the Union. The Union deplores the effort by the Employer to change in interest arbitration many provisions in the collective bargaining agreement, such as leave accruals, schedule changes, and health insurance, that evolved during 25

years of collective bargaining between the parties. The Union pinpoints that interest arbitration should not enable a party to replace the collective bargaining process by obtaining in interest arbitration items that the parties would not obtain in negotiations. The Union continues that the Employer failed to submit a wage offer during the present proceeding and seeks substantial reductions in benefits previously provided to bargaining unit members.

The Union finds that the Employer possesses the funds for the wage increases and benefit improvements sought by the Union. The Union concludes that the Panel should grant the proposals submitted by the Union.

CONTENTIONS OF THE EMPLOYER

The Employer asserts that numerous financial difficulties confront the City of Beacon because the bonded debt doubled in 1996, the percentage of uncollected taxes significantly increased in 1997, the assessed valuation decreased by $2,000,000 in 1997, and the fund balance significantly decreased. The Employer maintains that the economic conditions preclude payment of a fair and equitable financial package unless significant reductions in the costs of health insurance occur and the Employer receives greater flexibility to manage the members of the bargaining unit in a more efficient manner. The Employer underscores that the cost of police salaries constitutes 32.78% of the entire municipal budget.

It is the position of the Employer that the appropriate

comparable jurisdictions are the City of Newburgh, the City of Poughkeepsie, the City of Kingston, the City of Port Jervis, and the City of Middletown. The Employer analyzes the comparable jurisdictions and finds that the salaries of the members of the bargaining unit exceeded the average salaries of the police officers in the comparable jurisdictions. The Employer reasons that the members of the bargaining unit receive sufficient compensation so that they could forego a wage increase in 1997 and still earn more than the police officers in the comparable jurisdictions. The Employer notes that the comparable jurisdictions identified by the Employer overlap with the comparable jurisdictions identified by the Union even though the City of Beacon has a smaller population and a smaller tax base than the other jurisdictions. The Employer disagrees with the Union that the jurisdictions of the Town of East Fishkill, the Town of Hyde Park, the Town of Poughkeepsie, and the City of Peekskill are comparable to the City of Beacon because the town form of government differs from the city form of government, because the City of Peekskill is located in the County of Westchester, and because the population, income, poverty levels, and other economic conditions of these jurisdictions differ in significant ways from the characteristics of the City of Beacon.

With respect to the first proposal of the Employer concerning a modification of Article II, Section B, the Employer requests greater flexibility to change the schedules of the members of the bargaining unit. Specifically, the Employer seeks

to reverse the effect of an arbitration award, which found that schedule changes to avoid paying overtime to members of the bargaining unit for training and/or competition did not meet the "unavoidable" requirement in Article II, Section B, which provides:

> It is recognized that some involuntary transfer of assignments and changes of individual work schedules may be unavoidable, but should be held to a minimum . . . .

The Employer therefore claims that the term "unavoidable" should be deleted from the provision.

With respect to the second proposal of the Employer, the Employer indicates that Article V, Section A, should be deleted. The Employer explains that this provision constitutes a past practices clause and limits the ability of the Employer to improve the efficiency of its operation.

The Employer recognizes that the Employer withdrew the third proposal in accordance with a finding by an administrative law judge determination that the matter was not a mandatory subject of bargaining.

With respect to the fourth proposal of the Employer, the Employer relates that Article VII, Section D provides for higher classification pay to a member of the bargaining unit after one day of such work. The Employer contends that a change to five days would save the Employer money. The Employer argues that the Employer should have greater discretion in assigning employees to a higher rank based on the ability of the individuals and the interest of the individuals in performing such work.

With respect to the fifth proposal of the Employer, the Employer regards Article IX as containing an excessively generous vacation benefit. The Employer continues that deleting Section F would preclude members of the Department from acquiring 30 days of vacation after 17 years of service and would thereby cap the vacation benefit at 25 days. The Employer comments that such a change would conform more closely with the employees in the Fire Department, who have a two-tier arrangement, and police officers in comparable departments. The Employer elaborates that the Chief should have greater discretion under Section J to grant or deny single vacation days.

With respect to the sixth proposal of the Employer, the Employer asks to change the holiday benefit by eliminating Section C and Section G of Article X. In doing so, the Employer questions the propriety of the members of the bargaining unit receiving additional half-days before Christmas and New Year's pursuant to an arbitration award that concerned the treatment of employees represented by the Civil Service Employees Association. The Employer adds that the members of the bargaining unit currently receive their birthday as a holiday and such a benefit constitutes an unnecessary additional holiday when compared to other jurisdictions and constitutes an inappropriate cost to the Employer.

With respect to the Employer's seventh proposal, the Employer insists that Article X should provide four personal leave days instead of the current five personal leave days. The

Employer observes that many members of the bargaining unit cash in their unused personal leave days, which illustrates that five personal leave days constitute an excessive and costly benefit. The Employer discloses that members of the bargaining unit sometimes use their personal leave days to extend other types of leave and that such an inappropriate practice should end.

With respect to the Employer's eighth proposal, the Employer reveals that Article XII, Section D, provides for bereavement leave in connection with the death of an aunt, uncle, niece, or nephew. The Employer supports bereavement leave for immediate family members, but considers an aunt, uncle, niece, or nephew to be too distant for such a benefit, which other comparable departments lack.

With respect to the Employer's ninth proposal, the Employer portrays Article XIII, Section B as providing for an excessively generous benefit for cashing in unused accumulated sick leave at the rate of 100% of the pay for a maximum of 180 days. The Employer suggests that employees hired after January 1, 1997 should not receive such a benefit and that employees hired before January 1, 1997 should receive a cash payment of 50% of the pay for a maximum of 180 days. The Employer stresses that such a change will generate savings to the Employer, which spent $18,436.96 in 1996 for this benefit. The Employer declares that a change should occur to Section D so that the Chief may require a sworn statement from a member of the bargaining unit to substantiate an illness and to Section F so that the failure of a

member of the bargaining unit to provide medical documentation concerning an injury or illness will cause the individual to lose one day of pay. The Employer finds that Section G, which provides a sick leave incentive to employees of a $200 stipend for using less than five sick days during a year, constitutes a too generous incentive and only should reward bargaining unit members who use no sick leave days during a year.

With respect to the Employer's tenth proposal, the Employer deplores the absence of a General Municipal Law Section 207-c procedure. The Employer emphasizes that such a procedure will reduce unnecessary litigation.

With respect to the Employer's eleventh proposal, the Employer acknowledges that the Employer modified its original proposal by seeking to change the current health insurance benefit by eliminating the existing indemnity plan (the Lawrence health plan) and by introducing a health maintenance organization arrangement (MVP 10+). The Employer deems such a change to be equitable, consistent with changes for the personnel represented by the Civil Service Employees Association and in the Fire Department, part of the discussions that existed with the Union in the earlier stages of this proceeding, and cost effective. The Employer highlights that health costs to the Employer have increased so that an increase in the co-pay from $8 to $20, an increase in the prescription co-pay to $4 for generic drugs, and an increase in the prescription co-pay to $15 for brand name drugs constitutes an appropriate change unless the health

maintenance organization replaces the indemnity plan. Consistent with a recent change in the collective bargaining agreement covering members of the Fire Department, the Employer continues that Section D should be changed to permit the Employer to change health insurance plans so long as the coverage remains comparable to the existing plan.

With respect to the twelfth proposal of the Employer, the Employer supports changing the overtime provision in Article XIX by clarifying the scope of the call-in provision in Section C so that previously scheduled staff meetings and other events do not create an entitlement for bargaining unit members to receive four hours of call-in pay. The Employer concludes that Section D warrants a change so that bargaining unit members, who currently receive double time when the Department orders them to work overtime, would no longer receive double time when working into a subsequent shift on an assigned holdover basis. Instead, the Employer declares that such assigned holdover shifts should not generate double time for forced overtime and should receive normal overtime at the holdover rate of time and one-half. The Employer elaborates that Section E permits bargaining unit members to accumulate compensatory time up to the Fair Labor Standards Act maximum of 480 hours. The Employer characterizes 480 hours as being too many hours and offers a maximum of 48 hours as being more suitable and as reducing the liability of the Employer when compensatory time payouts occur.

With respect to the thirteenth proposal of the Employer, the

Employer depicts Article XXII, Section A as being dated by requiring training to last at least four hours. In seeking to delete Section A, the Employer calculates that some training does not require four hours and the current provision therefore limits the flexibility of the Employer to provide training for appropriate periods of time.

With respect to the fourteenth proposal of the Employer, the Employer criticizes Section D of Article XXIII, which provides that disciplinary suspensions occur with full pay, as providing a disincentive for a suspended employee to resolve the matter. The Employer amplifies that a provision to permit the Employer to suspend an employee without pay for 30 days would accelerate the resolution of disciplinary charges.

With respect to the fifteenth proposal of the Employer, the Employer promotes a new provision for a Family and Medical Leave of Absence Policy. The Employer senses that such a policy would clarify the rights of employees and the Department regarding such leave.

With respect to the sixteenth proposal of the Employer, the Employer labels Article XXIV, which contains the grievance procedure, as dated by using the term "Mayor" where the term "City Administrator" should appear as a result of the enactment of the new City Charter. The Employer describes that the other bargaining units have changed their grievance procedures to codify the current structure whereby the City Administrator responds to grievances.

The Employer faults the Union for failing to justify its proposals. The Employer interprets the position of the Union to be that the members of the bargaining unit merely want every benefit that exists in any other collective bargaining agreement in any of the comparable departments referred to by the Union. The Employer cautions that the total package of benefits that currently exists in each comparable department constitutes a key benchmark as opposed to the attempt by the Union to combine the best benefits from each comparable department. The Employer cites the following departments as comparable: the City of Newburgh, the City of Poughkeepsie, the City of Kingston, the City of Port Jervis, and the City of Middletown. The Employer alleges that the members of the bargaining unit receive higher salaries and at least comparable benefits compared to the members of the other departments.

With respect to the first proposal of the Union, the Employer discredits the Union's effort to have 5.5% wage increases in each year as too lucrative and unwarranted. In the context of the Employer's preference for pattern bargaining, the Employer recounts that the other units that negotiate with the Employer changed their health insurance arrangement and enabled the Employer to apply the savings toward their wage increases of 3.0% for 1997 and 3.5% for 1998. The Employer submits that the pattern established with the other units should affect the present interest arbitration award.

With respect to the second proposal of the Union, the

Employer dismisses the Union's attempt to increase the longevity payment for each member by $100 in 1997 and by $100 in 1998. The Employer specifies that such a change would cost $3600 in 1997, which represents approximately one-quarter of one percent of the 1997 base pay and another $3600 in 1998, which then would represent approximately one-half of one percent of the 1998 base pay. The Employer perceives that such an increase lacks justification because the current arrangement conforms to the longevity levels that exist in the comparable jurisdictions.

With respect to the third proposal of the Union, the Employer contests the Union's attempt to increase the sick leave incentive from $200 per year for any member who uses less than five sick days in a year to $500. The Employer challenges the effectiveness of the incentive, which other jurisdictions and the firefighters lack, and requests that the provision be deleted from the collective bargaining agreement.

With respect to the fourth proposal of the Union, the Employer rejects the effort by the Union to amend Article XVI, which concerns hospitalization and the welfare fund, by having the Employer pay 100% of the cost of individual and family coverage for all employees and by improving certain co-payments. The Employer evaluates the Union's proposal as not feasible on economic grounds.

With respect to the fifth proposal of the Union, the Employer disputes the need for any adjustment in the clothing allowance. With respect to the sixth proposal of the Union, the

Employer denies that any reasons exist to warrant providing the bargaining unit members with an alternate disciplinary procedure. With request to the seventh proposal of the Union, the Employer mentions that no justification exists to create a bill of rights for members of the bargaining unit, who become subject to investigation for alleged disciplinary violations, because safeguards exist for members of the bargaining unit to use Section 75 of the Civil Service Law and to use the existing grievance procedure. With respect to the eighth proposal of the Union, the Employer reiterates that the Union withdraw the proposal, which concerned a new provision about jury duty.

The Employer summarizes that the members of the bargaining unit may receive a fair, equitable, and realistic package. The Employer confirms that such a package may occur only if the Employer achieves certain cost containment changes--particularly with a focus on health insurance.

OPINION

I. Introduction

The Public Arbitration Panel exists pursuant to a carefully crafted statutory scheme that reflects the policy of the State of New York to provide a mechanism to resolve certain impasses that arise during the collective bargaining process in public employment. The Panel is mindful of the important responsibility for the Panel to develop a just and reasonable determination of the matters in dispute. The Panel developed the determinations set forth below after carefully considering all of the relevant

statutory factors. In doing so, the Panel understands that the statute omits any language for the Panel to consider a particular factor to be controlling. As a result, the Panel evaluated all of the statutory factors to identify a just and reasonable determination of the matters in dispute.

In accordance with the statutory scheme that limits the duration of such an Award to two years, the Opinion and Award covers the period from January 1, 1997 to December 31, 1998.

II. General Observations

Section 209.4 of the Civil Service Law sets forth the relevant factors for the Panel to consider, in addition to any other relevant factors, in making a reasonable determination concerning the disputed issues. In reviewing the record developed by the parties, the Panel considered the following factors.

A. Comparative Data

A careful review of the record indicates that substantial evidence exists concerning the wages, hours, and conditions of employment of employees in other comparable police departments. Although the parties disagree about some of the specific departments that the Panel should treat as comparable departments, the Panel has considered with care the documentary evidence submitted by the parties concerning the jurisdictions of the Town of East Fishkill, the Town of Hyde Park, the City of Kingston, the City of Middletown, the City of Newburgh, the City of Peekskill, the City of Port Jervis, the City of Poughkeepsie,

and the Town of Poughkeepsie.

The Panel underscores that the statute does not require that the comparison involve similar employees in "identical" communities. On the contrary, the statute directs the Panel to consider the treatment of similar employees in "comparable" communities. The Panel considered the referenced departments with an awareness of the following demographic factors: the location of the entity, the form of government, the income levels of the residents, the number of housing units, the number of reported crimes, the property values in the jurisdiction, the size of the department, the size of the jurisdiction, the size of the population, the tax rates (to the extent the parties furnished such information), and other general socio-economic data. (Union Exhibit 12, Union Exhibit 13, Union Exhibit 14(a)-14(d), Union Exhibit 28, and Employer Exhibit 3, Employer Exhibit 4, and Employer Exhibit 5.) In addition, the Panel considered the detailed economic data provided by the Employer in connection with the August 27, 1997 report that relates to the issuance of certain bond anticipation notes. (Employer Exhibit 5.)

B. The Public Interest and the Employer's Financial Ability

A careful review of the record indicates that the interests and welfare of the public affected by the present proceeding include the need to have essential police services provided by competent personnel. The delivery of police services in an appropriate, efficient, and financially responsible manner requires--among other things--the presence of trained

professionals. To attract and to retain such individuals in a department of government that must have a reputation for integrity, the public interest requires that such personnel receive an appropriate level of compensation. As a result, the decision by the Employer to establish a police department and to continue operating a police department perforce necessitates just and reasonable wages, hours, and conditions of employment. The Panel has considered these factors in reaching a just and reasonable determination of the dispute.

In doing so, the Panel recognizes the need to consider the financial ability of the Employer to pay the costs that arise in connection with such wages, hours, and conditions of employment. The record indicates that the Employer confronts ongoing financial pressures to balance the costs of operating a municipality with the ability of the taxpayers to meet their financial obligations to local government while also preserving their financial ability to live within the jurisdiction of the Employer. At the same time, the Employer possesses the ability to generate revenue through the continuing exercise of the governmental power to levy taxes, through the receipt of revenue generated by local sales taxes, and through the receipt of certain state aid. In developing a just and reasonable determination of the matters in dispute, the Panel has considered these circumstances.

C. Comparison of Job Characteristics

A careful review of the record indicates that the

combination of the hazards of employment, physical qualifications, educational qualifications, mental qualifications, and job training and skills of police personnel require especially talented individuals when compared to the positions that exist in other trades or professions. Unlike many other positions that require either physical qualifications and skills or mental qualifications and skills, the members of the bargaining unit must possess all of these attributes to perform their police functions in a proper manner. In developing a just and reasonable determination of the matters in dispute, the Panel has considered these factors.

D. Past Negotiated Agreements Between the Parties

A careful review of the record indicates that the parties have negotiated collective bargaining agreements for many years. As a consequence, the substantive provisions of the expired collective bargaining agreement reflect the results of the history of the bilateral negotiations between the parties. An interest arbitration panel must consider the public policy that favors collective bargaining and therefore must act with prudence before disturbing the decisions that the parties have made over an extended period of time during the collective bargaining process to fix the compensation and fringe benefits for the members of the bargaining unit. Similarly, an interest arbitration panel must respect the determinations by the parties with respect to provisions that affect the terms and conditions of employment of the members of the bargaining unit.

III. The Union Proposals

Article VII of the collective bargaining agreement contains the following compensation schedule, which became effective on January 1, 1996:

Lieutenant	- starting salary	$48,719
	- after one year	$49,402
Sergeants	- starting salary	$45,974
	- after one year	$46,658
Detective Lieutenant		$50,776
Detective Sergeant		$48,139
Detective	- starting salary	$44.603
	- after one year	$45,287
Police Officers		
	- starting salary	$34,169
	- after one year	$38,970
	- after two years	$40,339
	- after three years	$41,712
	- after four years	$42,400
	- after five years	$43,086

The Union proposes a 5.5% increase in each of the two years to the base wages set forth in the compensation schedule. The Employer rejects the proposal as too costly. After carefully considering the factors discussed above and after carefully considering the economic impact of the determination of the Panel with respect to the other economic proposals in the present proceeding with a particular awareness of the disposition by the Panel of the ongoing dispute between the parties concerning hospitalization and the welfare fund as set forth below, the Panel awards a 2.10% increase to the compensation schedule in effect as of December 31, 1996 to be effective retroactively to January 1, 1997; a 1.25% increase to the compensation schedule in effect as of June 30, 1997 to be effective retroactively to July

1, 1997; and a 3.35% increase to the compensation schedule in effect as of December 31, 1997 to be effective retroactively to January 1, 1998. In reaching this conclusion the Panel notes that the split wage increases in the first year affords the Employer some monetary relief while also preserving the compensation of the members of the bargaining unit in the future. The Panel further notes that the size of the wage increase constitutes a just and reasonable increase in the context of the wage increases in comparable departments. The existing collective bargaining agreement shall be amended to reflect this Award.

Article VIII contains the following longevity provision:

Seven years of service	$500
Ten years of service	$1000
Fifteen years of service	$1500
Seventeen years of service	$2000

The Union seeks to improve the longevity provision in each year by $100. The Employer opposes any change. The Panel finds that the existing longevity schedule provides appropriate recognition for the years of service for the members of the bargaining unit. The Panel therefore finds that Article VIII shall remain unchanged. The Award shall so indicate.

Article XIII sets forth certain provisions concerning sick leave. The Union seeks to increase from $200 to $500 the amount that members of the bargaining unit receive for using less than five sick days each year. The Employer opposes the increase and seeks to reduce the five day provision. The Panel finds that Article XIII should remain unchanged. The Award shall so

indicate.

Article XVI sets forth a detailed provision for hospitalization and a welfare fund. The Union seeks certain improvements in the context of the existing arrangement. In an effort to reduce the costs of providing such benefits, the Employer proposes to change the existing arrangement from an indemnity structure to a health maintenance organization structure. Notwithstanding the Union's objection to the Employer's proposal as untimely, the Panel finds that the interests of the parties requires a discussion of this important matter. The Panel, however, also finds that too many uncertainties exist regarding the impact on the members of the bargaining unit of such a dramatic change to the existing arrangement. Although the Panel recognizes that health insurance costs have led to many changes in recent years in the delivery of health and welfare benefits, the Panel remains unpersuaded that interest arbitration constitutes the appropriate setting for such a wholesale change to an essential contractual provision that arose over an extended period of time in the context of direct negotiations between the parties. The Panel is mindful of the escalating costs of providing health insurance and has considered this relevant economic factor when addressing the other economic proposals in the present proceeding. The Award therefore shall provide that the existing provision in Article XVI concerning hospitalization and welfare fund shall remain unchanged. The Award shall so indicate.

Article XVIII provides an annual clothing allowance of $450 to each member of the Department. The Union seeks to increase the annual clothing allowance by $50. The Employer contends that no justification exists to increase the clothing allowance. The Panel finds that the record supports an adjustment of the clothing allowance to reflect increase costs since 1989, when the parties set the $450 level of the allowance. The Award therefore shall provide that the annual clothing allowance to each member shall increase by $50 to the amount of $500 retroactive to January 1, 1998.

Article XXIII addresses disciplinary action. The Union proposes to offer members of the bargaining unit a choice to have access to Section 75 and/or Section 76 of the Civil Service Law or a proposed Alternate Disciplinary Procedure. The Employer opposes any modification as being unnecessary. The parties should bear the responsibility to address this area of the contract. The Panel finds that Article XXIII shall remain unchanged. The Award shall so indicate.

Article XXV sets forth the duration of the collective bargaining agreement. The parties agree that the Award shall cover the period from January 1, 1997 to December 31, 1998. The Award shall so provide.

The Union seeks to add a new provision containing a bill of rights for members of the bargaining unit who become subject to an investigation. The Employer finds the proposal to be unnecessary because appropriate safeguards currently exist when

such investigations occur. The Panel finds that a new provision shall not be included in this Award. The Award shall so indicate. The Panel also notes that the parties have the right to negotiate about this proposal in the future.

The Union originally proposed to add a provision concerning jury duty. The proposal subsequently became withdrawn from the present proceeding. As a result, the Panel makes no finding concerning this item.

IV. The Employer Proposals

Article II contains a work schedule provision. Section B provides:

> B. It is recognized that some involuntary transfer of assignments and changes of individual work schedule may be unavoidable, but should be held to a minimum. Notice of any such involuntary transfer of assignment or change in an individual work schedule shall be given to the individual Employee at least thirty (30) days in advance of said transfer of assignment or change of work schedule; however, immediate transfer of assignment and changes of individual work schedule may be made during any reasonable "State of Emergency" declared by the Mayor of the City of Beacon.

As a result of a prior arbitration decision concerning this provision, the Employer seeks to change this provision to avoid incurring overtime costs in connection with training courses that members of the bargaining unit attend. The Union opposes this request. The Panel finds that the record substantiates that the periodic training of members of the Department constitutes an important aspect of maintaining a professional department and thereby benefits the individual officer, the Employer, and the

members of the public. The Award therefore shall provide that effective on August 1, 1998 the following new Section C shall be added to Article II:

> C. Notwithstanding Paragraph B above, for purposes of attending a formal training course or courses, the Chief may change the individual work schedule of the individual attending such training--to facilitate the individual to attend the training--with at least 30 days of advance notice.

Article V, Section A contains a past practices clause. The Employer seeks to delete this provision to improve the flexibility of the Employer to operate more efficiently. The Union opposes the change. The Panel finds that Article V, Section A shall remain unchanged. The Award shall so indicate.

Article VII, Section D addresses higher classification pay and higher classification assignments. The Employer seeks to reduce the costs that this provision generates and seeks to retain greater flexibility in selecting individuals to serve in higher classifications. The Union opposes this request. The Panel finds that Article VII, Section D shall remain unchanged. The Award shall so indicate.

Article IX contains provisions concerning vacations. The Employer argues that the level of vacation benefits should be reduced and that the Chief should obtain greater discretion to grant or deny requests for single vacation days. The Union opposes the changes. The Panel finds that Article IX shall remain unchanged. The Award shall so indicate.

Article X provides for certain holiday benefits. The

Employer seeks to eliminate Section C and Section G, which relate to newly designated holidays and the provision of compensatory time off for the birthday of each member of the bargaining unit. The Union opposes any change. The Panel finds that Article X, Section C and Section G shall remain unchanged. The Award shall so indicate.

Article XI contains the personal leave provisions. The Employer seeks to reduce the number of personal leave days from five to four and to limit the use of personal leave days. The Union opposes any changes. The Panel finds that Article XI shall remain unchanged. The Award shall so indicate.

Article XII provides for bereavement leave. The Employer requests that the scope of bereavement leave be narrowed to exclude certain relatives. The Union opposes any change. The Panel finds that Article XII shall remain unchanged. The Award shall so indicate.

Article XIII addresses sick leave. The Employer urges that the sick leave incentive should be reduced to save money for the Employer and that bargaining unit members should provide certain documentation in connection with the use of sick leave. The Union opposes any change. The Panel finds that Article XIII shall remain unchanged. The Award shall so indicate.

Article XIV contains a provision concerning injury leave. The Employer stresses the importance of adding a procedure and policy to administer the injury leave pursuant to Section 207-C of the New York State General Municipal Law. The parties did not

reach agreement to any changes to Article XIV. The Panel finds that the parties should address this matter in direct negotiations and urges the parties to do so. The Panel finds that Article XIV shall remain unchanged. The Award shall so indicate.

As previously discussed, the Panel has addressed the proposal by the Employer to change Article XVI.

Article XIX contains various provisions concerning overtime. The Employer seeks to modify the call-in provision, to reduce the rate of certain overtime work, and to reduce the amount of compensatory time that members of the bargaining unit may accumulate. The Union opposes any change. The Panel finds that Article XIX shall remain unchanged. The Award shall so indicate.

Article XXII contains a provision concerning training. The Employer proposes to modify this provision. As set forth above, the Panel has discussed this subject in the context of Article II, which relates to the work schedule. As a result, Article XXII shall remain unchanged. The Award shall so indicate.

Article XXIII provides for disciplinary action. The Employer supports a modification to enable suspensions to be imposed without pay for thirty days as an incentive to resolve matters expeditiously. The Union opposes any change. The Panel finds that Article XXIII shall remain unchanged. The Award shall so indicate.

The City proposes to add a new article concerning Family and Medical Leave of Absence Policy. The Union parties did not reach

agreement. The Panel finds that this subject warrants treatment in the collective bargaining agreement. The Panel urges the parties to address this issue during the upcoming negotiations for a collective bargaining agreement to be effective January 1, 1999. The Panel finds that a new article shall not be included in this Award. The Award shall so indicate.

Article XXIV contains the grievance procedure. The Employer seeks to conform the procedure to the structure of the Employer by replacing the term "Mayor" with the term "City Administrator" in the provisions that involve responses by the Employer to grievances filed by the Union. The Union opposes any change. The Panel finds that Article XXIV shall remain unchanged. because the current agreement permits the Mayor to designate the City Administrator to respond to grievances. The Award shall so indicate.

V. Additional Comments

The Public Employer Panel Member has elected to file a Dissenting Opinion as is his right to do.

The Dissent, however, misconstrues the Taylor Law. Interest arbitration under the Taylor Law exists as a last resort when the parties fail to reach an agreement through the collective bargaining process. The rendition of an interest arbitration award ends an impasse between parties for up to a two-year term and positions the parties to attempt during the next round of collective bargaining to reach a settlement on their own without the need for intervention by a third party. Interest arbitration

therefore does not exist as a substitute for the collective bargaining process to enable parties to achieve major changes in a longstanding relationship that the parties failed to reach on their own and that a party failed to justify pursuant to the statutory standards. To enable a party to do so would undermine the collective bargaining process on a permanent basis and would undermine direct negotiations as the preferred method of resolving disagreements pursuant to the Taylor Law.

The Dissent miscalculates the wage adjustment set forth in the Award. The split wage increase for the first year does not create a cost of 3.35% during the first year. On the contrary, the split wage increase has a first year cost of 2.72525%. The cost of the wage increase for the two years covered by the Award is 6.078308%, which represents a just and reasonable determination in accordance with the statutory standards and the record developed by the parties.

With respect to the statutory standards, the Dissent elevates in disproportionate importance the comparability standard while ignoring the standard concerning the agreements negotiated by the parties in the past. The Panel has a statutory responsibility to consider all of the statutory standards and other relevant factors. As a result, the comparison involving other jurisdictions must reflect the differences, if any, between the negotiated agreements between the Union and the Employer as compared and contrasted with the agreements that exist in the comparable jurisdictions. The Dissent again ignores this

important element in evaluating the record within the requirements of the statutory standards.

The Dissent adheres to this same faulty reasoning in criticizing the determination of the Panel with respect to the health insurance modifications sought by the Employer. The Employer sought to end a longstanding health insurance plan in face of strong opposition by the Union. As previously discussed, the Panel rejected such an extreme change at the present time. The Dissent's effort to portray the change as preordained due to the actions of two other bargaining units within the municipality misapplies the pattern bargaining concept. The actions of only two other units, without more, fail to meet the requirements of establishing a true pattern because the pattern setter normally constitutes the unit with the most bargaining power. The record fails to prove that the firefighters and the CSEA historically have fulfilled this role in this municipality. As a result, the record fails to warrant permitting the so-called tail of the other two units to wag the dog of the police union.

The Dissent's professed bewilderment about how to achieve an acceptable modification of health insurance is simple to answer: the collective bargaining process. The Employer has the ongoing option to revisit this issue during the next round of collective bargaining. After further negotiations occur, the parties may be able to reach an acceptable solution. As time passes and in the absence of a negotiated agreement between the parties, the Employer's position may become more persuasive that a

modification is just and reasonable. At the present time, however, the Employer is premature to expect to jettison a longstanding benefit through interest arbitration under the present circumstances.

In summary, an interest arbitration panel must not presume to have infinite wisdom that exceeds the judgment of successive negotiation teams representing both parties to a bargaining relationship over an extended period of time. The Taylor Law recognizes this important principle by requiring every panel to consider "the terms of collective bargaining agreements negotiated by the parties in the past . . . ." This Panel has done so in accordance with the statutory scheme of the Taylor Law and has made just and reasonable determinations of the issues submitted by the parties.

VI. Conclusion

The Public Arbitration Panel has considered the relevant statutory factors set forth in the Civil Service Law to develop a just and reasonable Award. In doing so, the Panel carefully evaluated and followed the relevant statutory factors with a sensitivity to the concerns of the members of the bargaining unit about their terms and conditions of employment; with a sensitivity to the concerns of the Employer to operate a municipality; and with a sensitivity to the taxpayers, who ultimately provide the economic wherewithal to fund a collective bargaining agreement. The Panel also recognizes that a collective bargaining agreement generates an overall economic

cost to the Employer and provides an overall economic value to the members of the bargaining unit. The Award therefore reflects the judgment of the Panel with respect to all of the provisions of the collective bargaining agreement taken as a whole.

The Public Arbitration Panel specifically rejects any proposal by either party that the Opinion and Award fails to address. All terms and conditions of employment set forth in the expired collective bargaining agreement that the Opinion and Award do not affect shall remain unchanged in the collective bargaining agreement. The Public Panel Member prepared this Opinion.

Accordingly, the Undersigned, duly designated as the Public Interest Arbitration Panel and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

1. Article VII, which concerns compensation, shall be modified to reflect a 2.10% increase to the compensation schedule in effect as of December 31, 1996 to be effective retroactively to January 1, 1997; a 1.25% increase to the compensation schedule in effect as of June 30, 1997 to be effective retroactively to July 1, 1997; and a 3.35% increase to the compensation schedule in effect as of December 31, 1997 to be effective retroactively to January 1, 1998.

Concur _____ Dissent _____

2. Article VIII, which concerns longevity, shall remain unchanged.

Concur _____ Dissent _____

3. With respect to the Union proposal concerning Article XVI, no change shall occur.

Concur _____ Dissent _____

4. With respect to the Employer proposal concerning Article XVI, no change shall occur.

Concur _____ Dissent _____

5. The annual clothing allowance for each member of the bargaining unit set forth in Article XVIII shall increase by $50 to the amount of $500, retroactive to January 1, 1998.

Concur _____ Dissent _____

6. Article XXIII, which concerns disciplinary action, shall remain unchanged.

Concur _____ Dissent _____

7. Article XXV shall be modified to reflect that the duration of collective bargaining agreement, as set pursuant to this Award, shall cover the period from January 1, 1997 to December 31, 1998.

Concur _____ Dissent _____

8. No new provision containing a bill of rights for members of the bargaining unit who become subject to an investigation shall be added to the collective bargaining agreement.

Concur _____ Dissent _____

9. Effective on the date of the rendition of the Award, the following new Section C shall be added to Article II:

> C. Notwithstanding Paragraph B above, for purposes of attending a formal training course or courses, the Chief may change the individual work schedule of the individual attending such training--to facilitate the individual to attend the training--with at least 30 days of advance notice.

Concur _____ Dissent _____

10. Article V, Section A, which contains a past practices clause, shall remain unchanged.

Concur _____ Dissent _____

11. Article VI, Section D, which addresses higher classification pay and higher classification assignments, shall remain unchanged.

Concur _____ Dissent _____

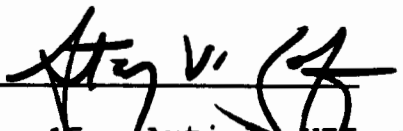
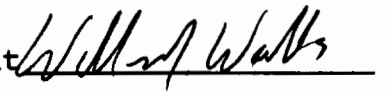
12. Article IX, which contains provisions concerning vacations, shall remain unchanged.

Concur _____ Dissent _____

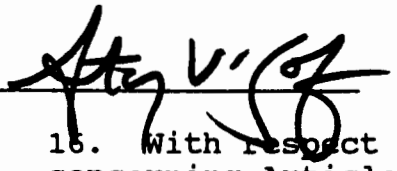
13. Article X, which provides for certain holiday benefits, shall remain unchanged.

Concur _____ Dissent _____

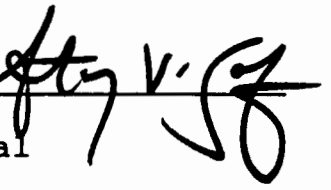
14. Article XI, which contains the personal leave provisions, shall remain unchanged.

Concur  Dissent 

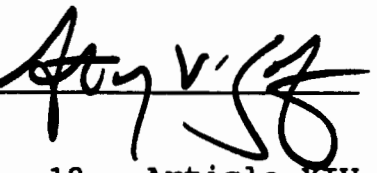
15. Article XII, which provides for bereavement leave, shall remain unchanged.

Concur  Dissent 

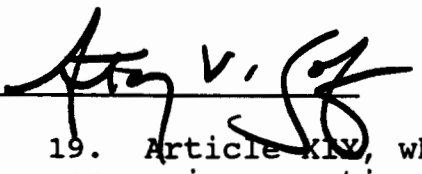
16. With respect to the Union proposal concerning Article XIII, no change shall occur.

Concur  Dissent 

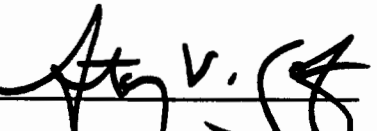
17. With respect to the Employer proposal concerning Article XIII, no change shall occur.

Concur  Dissent 

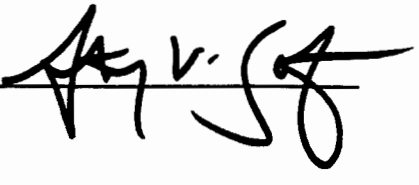
18. Article XIV, which contains a provision concerning injury leave, shall remain unchanged.

Concur  Dissent 

19. Article XIV, which contains provisions concerning overtime, shall remain unchanged.

Concur  Dissent 

20. Article XVII, which contains a provision concerning training, shall remain unchanged.

Concur  Dissent 

21. No new article concerning Family and Medical Leave of Absence Policy shall be added to the collective bargaining agreement.

Concur _____ Dissent _____

22. Article XXIV, which contains the grievance procedure, shall remain unchanged.

Concur _____ Dissent _____

_____
Robert L. Douglas
Public Panel Member

DATED: July 29, 1998
STATE of New York) ss:
COUNTY of NASSAU)

On this 29th day of July 1998, before me personally came and appeared Robert L. Douglas, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

_____
WALLACE J. CURTIS
Notary Public, State of New York
No. 41-5890887
Qualified in Queens County
Commission Expires June 30, 19 2000

_____
William M. Wallens
Public Employer Panel Member

DATED: July 30, 1998
STATE of New York) ss:
COUNTY of Albany)

On this 30th day of July 1998, before me personally came and appeared William M. Wallens, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Anthony V. Solfaro
Employee Organization Panel Member

DATED: July , 1998
STATE of New York) ss:
COUNTY of ORANGE)

On this 31st day of July 1998, before me personally came and appeared Anthony V. Solfaro, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Lorraine J. McGuinness

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 1999

DISSENTING OPINION
of
Public Employer Panel Member

The Opinion and Award the Arbitration Panel has failed to appropriately apply the standards as set forth in the Taylor Law. Rather than settle and resolve the dispute and the issues between the parties, the undersigned cannot help but believe that the Panel is actually contributing to prolonging the dispute. Other than awarding the Union a 3.35% wage increase in each of two years, the Panel has not resolved one issue, but for providing that the City may modify work schedules for the purposes of training. As will be discussed below, the Award in its totality is unjustified.

At the outset, it must be conceded by all members of the Panel that a comparability wage adjustment is not warranted. The wages, benefits and terms and conditions of employment of members of the PBA are more than comparable to the other jurisdictions considered and, in most cases, exceed the wages, benefits and terms and conditions of employment of those jurisdictions. That being said, what is the justification for awarding a salary adjustment that far exceeds the inflationary rate, which is less than 2% per annum?

It is most disconcerting that the Panel failed to award the health insurance modifications proposed by the City. The City proposed to modify the health insurance provision in the Collective Bargaining Agreement to provide that members of the PBA who are currently enrolled in the indemnity plan would enroll in an HMO. The City justified this proposal by establishing that the cost of the indemnity plan had escalated. The City also established that the City's two other unions, the firefighters and CSEA, had agreed to the modifications and received, as a wage adjustment, in 1996, the difference in cost between the indemnity plan and the HMO, as well as a 3% wage increase in 1997 and a 3.5% wage increase in 1998. Not only has the Panel continued the more expensive plan,

it has awarded the PBA 6.7% over the same two year period for which the employees who cooperated with the City by agreeing to the health insurance modifications received a 6.5% wage adjustment.

The Panel has failed to give appropriate weight to the basic principle of pattern bargaining, especially where a comparability analysis does not justify an equity adjustment. The rational for pattern bargaining is simple and logical. If the first unit agrees to an agreement with certain wage adjustments and modifications that are different from that which is agreed to or awarded to subsequent units, none of the bargaining units will want to the first to settle in subsequent negotiations because they will be concerned that they will receive lower salary increases than other bargaining units or make concessions that are not made by other bargaining units. This principle was recognized by Arbitrator Jeffrey Selchick, who stated in one of his recent arbitration awards that

> It is both good municipal management and a matter of equity to provide City employees with equal salary increases.

In the Matter of the Arbitration Between the City of Oneida and the Oneida Paid Firefighters Association, Local 2692 (PERB Case No. IA96-0156; M96-041).

In a Fact Finder's Report and Recommendation, Arbitrator David Stein stated

> Pattern bargaining is an entirely rational function of the collective bargaining process, since it promotes stability, fairness and discipline, controlling employee unrest due to perceptions of arbitrariness and discrimination, and provides predictability to employers in terms of economic and fiscal planning.
>
> In applying the principals of pattern bargaining to a particular dispute, the party or parties seeking to avoid the implications of the pattern settlement have the burden of presenting facts that mandate that the neutral or neutrals presiding over the impasse proceeding somehow fashion a result which departs

from the pattern ....

> A union should not be prejudiced by being the first to settle, only to find that subsequent settlements exceed the terms reached by it. Otherwise, a few unions would undertake the risk to settle first, and the negotiation process would become protracted and de-stabilizing, contrary to the stated purpose of Section 200 of the New York State Civil Service Law ...." (emphasis supplied)

In the Matter of Impasse Between Dutchess County and Dutchess County Sheriff's Department and Dutchess County Sheriff's Employees Association/CWA, Local 1105, AFL-CIO (PERB Case No. M95-286).

There is no justification for the PBA to receive a health plan that is different from that which was agreed to by the other municipal unions.

In rejecting the City's proposal for health insurance modifications, the Panel concludes that interest arbitration is not the "appropriate setting" for a change in the health insurance plan. Obviously, if the City could have negotiated the change, it would have. With the Union unwilling to agree to the health insurance modifications, the City had no alternative but to utilize the dispute resolution procedures of the Taylor Law and seek such modifications at interest arbitration. Contrary to the conclusion of the Panel, if interest arbitration does not constitute the appropriate setting, what alternative does an employer have? It has no alternative. It must seek such relief from the Panel. The undersigned would conclude that interest arbitration is not the appropriate setting to award a union a 6.7%, 2-year wage adjustment, when inflation has been well below 2% a year, and where the Panel has failed to award needed relief to the City in other areas which were justified.

Based upon the foregoing, the undersigned has no alternative but to respectfully dissent from the Opinion and Award herein.

Dated: July 27, 1998

William M. Wallens

State of New York :
: ss.:
County of Albany :

On this 27th day of July, 1998, before me personally came and appeared William M. Wallens, to me known to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Andrea Naseman