

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration)

- between -)

CITY OF ALBANY,)

Employer)

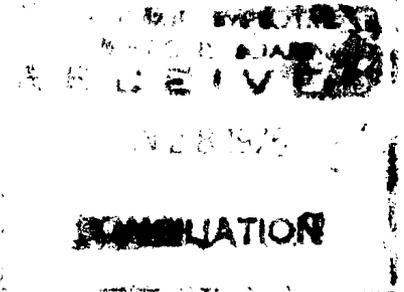
- and -)

ALBANY POLICE OFFICERS UNION, LOCAL 2841,)
COUNCIL 82, AFSCME, AFL-CIO,)

Union)

OPINION
AND
DETERMINATION

Case No. CA-0049; M74-723



BEFORE THE PUBLIC ARBITRATION PANEL:

Jonas Silver, Chairman

Carl F. Gray, Employee Organization Member

APPEARANCES:

For the Union

Sneeringer and Rowley, Esqs.

By: Richard R. Rowley, Esq.

Brian J. O'Donnell, Esq.

Pursuant to a petition filed on November 11, 1975 by the Albany Police Officers Union, Local 2841, Council 82, American Federation of State, County and Municipal Employees, the New York State Public Employment Relations Board, proceeding under Section 209.4 of the Civil Service Law, designated a Public Arbitration Panel on December 11, 1975, "for the purpose of making a just and reasonable determination of the matters in dispute." The City of Albany did not respond to the petition.

In accordance with the statutory provisions and the rules of procedure applicable to interest arbitration, the Panel held a hearing on January 22, March 18, 19,

and April 9, 1976, in the City of Albany. The City of Albany did not participate in these proceedings either by a designated Public Employer Member or by representation at the hearing though afforded full and continuous opportunity to do so. These circumstances left the Panel with no alternative but to adduce sworn testimony and receive documentary evidence from the Union uncontroverted by the City save in the limited manner referred to hereinafter.

A plethora of items in dispute generated a voluminous record, there having been no agreement between the Union and the City as to any of the recommendations of the Fact Finder, Professor John F. Sands, whose "Findings of Fact and Recommendations" were submitted on June 11, 1975. In addition to the items treated by the Fact Finder in his "Findings and Recommendations", a number of matters were there listed by him as having been agreed to by the parties during the course of "extensive negotiations," which items he recommended for inclusion in the written collective bargaining agreement. All items falling into the category of agreed provisions have been proved on the record in this proceeding by documentation and oral testimony and are enumerated hereinafter as agreements of the parties.

All "open" items, i. e., those continuing in dispute, are considered by the Panel in the light of the Union's proposals as they relate to the evidence in this proceeding and as those proposals and evidence are supported under the criteria contained in Section 209.4 (c) (v) by which the Panel is governed in its determination. Further, the Panel notes Section 20 .4 (c)(v) which states that the Panel "may, but shall not be bound to, adopt any recommendations made by the fact finder. . ."

The Union relied on the testimony of Albany police officers conversant with

the duties and responsibilities of members of the force, the organizational structure of the department, its practices and procedures, the working conditions, as well as the on-the-job relationships with other public safety forces in and about the Capital area. It also supplied testimony from economic and legal experts drawn from its staff and that of the parent body as to wage comparisons and other contract terms relating to police and other public employees including upstate municipal police departments where comparable in size and activity or in geographical proximity to the City. The Union further endeavored to support its proposals through extensive reference to public employee contracts in the foregoing areas as well as to statutory and regulatory provisions of State and local origin.

Considerable testimony was devoted by the Union to the City's ability to pay and its fiscal condition together with local and State authenticated documents pertinent to this phase of its presentation. In the same subject area the Panel ultimately accepted from the City and made a part of the record herein certain documents: copies of the budgets of the City of Albany for the fiscal years beginning in 1971-72 through 1975-76; annual reports of the Department of Assessment and Taxation for the years 1971-75; the 1973 Report of the Controller of the City; and an accompanying "Statement" of three pages together with a chart relative to police staffing in ratio to population on a New York State inter-city comparison with Albany.

The foregoing materials were deposited with the Panel by an employee of the Corporation Counsel of the City before the opening of the hearing on the last day -- April 9. The employee was advised by the Chairman that the Panel would not accept these materials unless made in the usual and regular manner upon the

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opening of the hearing. The employee nevertheless left the materials and departed. The Panel later reconsidered and admitted the materials noting, however, that no representative of the City was present to take the stand and be examined on the documents, the inferences to be drawn therefrom, or the allegations of the "Statement." By letter from the Executive Deputy Corporation Counsel, Vincent J. McArdle, Jr., addressed to the Panel Members and dated April 13, 1976, the City stated, in connection with these documents, that they "constitute the City of Albany's case herein. We urge that the Panel seriously consider the fiscal implications which increased mandated benefits would have on the fiscal viability of the City." Despite the rather unprecedented circumstances in which the documents and "Statement" became a part of the record herein, the Panel nevertheless addresses itself hereinafter to the position of the City relative to financial ability to pay.

On May 15, the Panel received the Union's brief which has been duly considered. By letter dated May 19, the Executive Deputy Corporation Counsel of the City, upon receiving a copy of the Union's brief, stated to the Panel that the Union had presented one set of proposals in the course of negotiations and another in arbitration and that as to the latter no impasse had been reached in prior negotiations with the City. The Union's proposals in arbitration, the City goes on to allege, are therefore not matters in dispute before the Panel under the statute.

In fact, however, as the Union states in its reply letter of May 28, no new or substantively different matters were presented in the course of the arbitration hearing. In fact, certain demands of the Union were withdrawn, others modified

by reduction including salary elements which appear in more than one place in the Union's petition. The statute does not require of the parties that they proceed in interest arbitration with the niceties of common law pleading. It contemplates that agreement may be arrived at by further negotiations even during the course of the hearing by providing in Section 209.4 (c) (iv) that "The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations." If, indeed, the City meant to imply in its letter that it would have bargained anew in the light of the Union's withdrawals, modifications and reductions, it could have done so as well as kept itself accurately informed only by having been in attendance at the hearing.

The Union was certified by the Public Employment Relations Board on September 27, 1974 and represents some 350 police officers excluding superiors. It has been in negotiations with the City for a first contract since late 1974 followed by the statutory impasse procedures beginning in early 1975. However, the Panel is governed as to the effective date of its determination by Section 209.4 (c) (vi) which states: "the determination of the public arbitration panel shall be final and binding. . . if there is no previous collective bargaining agreement. . . for a period not to exceed two years from the date of determination by the panel. . ."

All determinations of the Panel were decided by a majority vote of the Panel, i. e., the Chairman and the Employee Organization Member meeting in Executive Session. All matters denied by the Chairman were dissented to by the Employee Organization Member and therefore failed to obtain majority approval. The Article

and Section references employed in the Panel's determinations are to the Union's proposed agreement which is Union Exhibit 4 on the record. The Chairman's denials likewise are referenced to Union Exhibit 4.

1. Agreed Items

During the negotiations the City and the Union reached agreement on certain items of the proposed contract. These items are set forth below as established on the record herein by the testimony of Louis Renna, a member of the Union negotiating committee and as witnessed by the signature of Vincent J. McArdle, Jr., chief negotiator for the City, on the document (Union Exhibit 28) used by the parties in conducting their negotiations. As revised by the City and agreed to by the City and the Union, the final language is referenced below to Union Exhibit 4 herein and hereby made a part of the Panel's determination to be included in the contract:

Statement of Purpose; Article I, Recognition; Article II, Union Security, Section 1 - 6, Section 9, 10; Article III, Grievances and Arbitrations, Section 1 - 3, Section 4 (a), Section 5, Section 6, Step 1 - 3; Article IV, Discipline and Discharge, Section 5 - 6; Article V, Departmental Rules and Regulations, (a); Article VI, Seniority, Section 1, 2 (b), Section 3, Section 4; Article VII, Work Force Changes, Section 1 (a) - (e), Section 2 - 6, Section 7 (a), (b), (c) last sentence, Section 8 - 9; Article VIII, Hours of Work, Section 4 (a), (b); Article IX, Reporting Time, Section 1 - 3; 5 - 8; Article X, Holidays, Section 1 (b), (d), Section 2; Article XI, Vacations, Section 4 (c); Article XII, Paid Leaves, Section 1, 5; Article XIII, Sick Leave, Section 1 - 3; Article XIV, Unpaid Leaves of Absence, Section 1 - 6; Article XV, Salary and Classifications, Section 6; Article XXI, General Provisions, Section

1 - 4, 6 - 7, 11 - 12, 12; Article XXIII, Savings Clause; Article XXIV, Total Agreement; Article XXV, Statutory Provisions, Preservation of Benefits; Schedule B, first paragraph, subdivision 2, 4, 5.

2. Withdrawn Items

During the hearing the Union withdrew from this proceeding the following proposals in its Exhibit 4: Article II, Section 8 (b); Article VI, Section 2 (a); Article VII, Section 1 (f), Section 7 (c), first sentence; Article XI, Section 2 (b), Section 4 (a), Section 5; Article XII, Section 3; Article XIV, Section 7 (a) and (b); Article XV, Section 7 and 9; Article XVI; Article XXI, Section 5 and 10; Article XXV, Maintenance of Benefits.

3. Comparisons

Under Section 209.4 (c) (v) a, the Panel may take into consideration the wages, hours and conditions of employment of the employees involved in this proceeding compared with those of employees performing similar services or requiring similar skills under similar working conditions in comparable communities. Accordingly, employees of the police departments in the following communities are drawn upon in terms of comparisons of wages and working conditions with those of the police in Albany:

<u>Locality</u>	<u>Size of Police Force</u>
Albany	389
Schenectady	150
Troy	120
Colonie	63
Cohoes	35
Rotterdam	31
Bethlehem	24

All the foregoing communities are within the same labor market area and geographically contiguous with or nearby the City of Albany. Both the public employers and the public employees of these communities look to the economic and other values placed by each other as competitors for the labor of police officers in a market of the same range of employee mobility. Changes in wages and working conditions whether upward or downward in cost and benefit among their respective police forces have had and will continue to have impact between and among these communities all of which bargain with organized representatives of their police officers. Comparisons may therefore be drawn by the Panel where examination of these several communities reveals a prevalence or a pattern pertaining to a wage level or other condition of employment such that Albany is found to be above, at or below that measure of central tendency characteristic of the economic worth of the labor of police within the same market area.

The Panel also draws upon upstate cities having populations in excess of 100,000 with members of police departments performing public safety duties under urban conditions comparable to those of Albany for comparisons of wages and conditions of employment:

<u>City</u>	<u>Size of Police Force</u>
Buffalo	1467
Rochester	635
Syracuse	483

4. Other Factors

Under the criteria of Section 209.4 (c) (v), the Panel may consider in the determination of wages and other conditions of employment "any other relevant

circumstances," and under d, "such other factors which are normally or traditionally taken into consideration. . ." Police forces whose members work in part in assistance of or are assisted by the Albany police such as the Capital Police and the State Troopers, provide a frame of reference under these criteria because of a community of interest in each other's wages and conditions of employment stemming from a side by side work situs. Other "normal factors" considered by the Panel are those represented by the relation between changes in the cost of living and wage levels as well as the relation of standard family budgets to existing wage levels.

5. Discipline and Discharge

The Union seeks, in this proceeding, to provide expedited binding arbitration as an alternative to the existing procedures under Section 75 and Section 76 of the Civil Service Law. The Fact Finder recommended binding arbitration in disciplinary matters at the terminal step of the contract grievance procedure as an alternative procedure to the existing statutory provisions.

The record shows that the manner of processing and determining charges against police officers of the Albany Police Department exhibits substantial defects seriously impairing the right of an employee to a fair, impartial and speedy adjudication on the merits. Thus, there exists an impermissible commingling of the investigatory, prosecutory and adjudicatory functions in the hands of the Commissioner of Public Safety who consults with witnesses, confers with superior officers, and makes a detailed investigation of the case before issuing the charges and then himself sits as the hearing officer and makes the decision. The same Commissioner

at all stages of the proceeding confers with and is advised by the Corporation Counsel who handles the prosecution. Counsel for charged officers has been consistently unsuccessful since 1974 in obtaining details of the charges or specifications of the rules and regulations officers are charged with violating. There is no independent hearing officer ever employed. Long delays ensue before a decision is rendered. The conduct of disciplinary proceedings is not an academic matter -- since 1974 the number of such cases has increased dramatically and no officer has been exonerated in that time.

The record further shows that the use of a third party neutral in conjunction with Section 75 or by way of an election by the employee to pursue arbitration or Section 75, appears in several police agreements. Thus in Buffalo an outside arbitrator makes findings and recommendations as the hearing officer under Section 75 which go to the department head for decision and possible appeal under Section 76 and Article 78. In Schenectady an outside arbitrator may review the determination of the City Manager with power to modify or the employee may pursue Section 75. In Syracuse an employee may use Section 75 or binding arbitration. In Cohoes an employee may waive Section 75 and go to binding arbitration starting with the third stage of the grievance procedure. Under the agreement between the State of New York and Council 82 including the Capital Police, an employee has an exclusive right to expedited disciplinary arbitration.

In view of the foregoing procedural irregularities in the conduct of disciplinary matters in Albany, the Panel is of the view that another procedure must be made available which would safeguard employee rights to an impartial and expeditious

hearing and resolution of charges. It is apparent that several cities and other public employers of police have considered that Section 75, even where properly followed, does not provide for a resolution of disciplinary charges in a simple, prompt manner and have, therefore, agreed to the alternative of arbitration. Moreover, expedited arbitration of disciplinary matters has now become a tested, judicially approved procedure covering thousands of employees of the State of New York under collective agreements twice renewed.

Determination

The Panel determines as follows to be made part of the contract:

(1) "In the event of disciplinary charges an employee may elect whether to follow Section 75 and 76 of the Civil Service Law or, in lieu thereof, the procedures set forth hereunder."

(2) Incorporates as its determination Article IV, Section 1 (b), (c), (d), Section 2, Section 3, Section 4 (except that one year shall replace 30 days with no time limit on acts which would constitute a crime.)

6. Grievance Arbitration

The Union proposes a grievance procedure concerning terms and conditions of employment under which binding arbitration would be the terminal step. The Fact Finder recommended such procedure. Binding arbitration of contract grievances has by now become a common place provision of public employment contracts in this State. Sanctioned by judicial approval and public policy, it has also found acceptance in contracts covering police including Rochester, Buffalo, Syracuse, Schenectady, Troy, Cohoes, and the Capital Police. It has been awarded by the

Public Arbitration Panel in the Firefighters contract dispute with the City of Albany which award has been upheld by the Appellate Division.

Determination

The Panel determines as follows to be made part of the contract:

1. Awards binding arbitration of contract grievances.
2. Incorporates Article III, Section 4, Section 6, Step 4, Section 7.

7. Shifts

The Union proposes a number of changes in this area over existing conditions. The Fact Finder recommended no change.

(a) The Union would have a contract provision requiring permanent shifts in Division 1 and 2. The record shows a considerable variety of shift arrangements by hours and days worked by various Divisions and Units of the Department, i. e., permanent, rotating cycles, rotating "floating tours," split. While it is undoubtedly true, as testified by police officers of the City, that some changes in shifts are so frequent and so round the clock in their incidence of starting and quitting time as to have an adverse effect on family life and individual health, much of the hardship inheres in police work with its 24 hour continuous operation under differing manpower requirements.

In deference to the City's operating responsibilities, the Chairman declines to award these proposals as unduly restrictive of such responsibilities.

(b) The Union requests a provision which would require that work and shift schedules not be changed unless the Union has at least 14 days notice of such anticipated change with opportunity to discuss the matter with the Chief or his designee.

While the Chairman has rejected the demand of the Union fixing shifts, the Panel agrees that the opportunity of the Union to discuss anticipated shift changes well in advance of any effectuation, is an appropriate means of conveying the concerns of employees which might otherwise be overlooked by the Department.

Determination

The Panel determines as follows to be made part of the contract:

Incorporates Article VIII, Section 4 (c).

8. Hours

The Union seeks a basic 8 hour work day, 30 minutes for lunch, time and one-half outside the 8 hours. The Fact Finder made no change for want of sufficient evidence insofar as these demands were identically before him.

The record shows that police in some units are required to report in for briefing and roll call 20 minutes before starting time; that in some units the men are not released until 10 minutes after the end of the tour though, in some instances, they may be released ten minutes before the finishing hour; that the lunch period is 20 minutes though some eat on the run; and that the practice in two man and one man car patrols is not consistent in calling out of service for lunch.

The Panel finds no prevalence in the relevant nearby and upstate contracts for describing a work day as excluding pre-start, short periods where such is the practice in certain Divisions and Units of the department at present. Moreover, the City has already agreed to overtime payment provisions in Article IX which cover certain working conditions, among others, involving time in excess of the regular 8 hour tour.

Determination

The Panel determines as follows to be made part of the contract as Article VIII, Section 1, 2, 3 in their entirety:

1. "A regular work day for each police officer shall be a period of 8 consecutive hours including meal periods of 30 minutes. Employees may be required to work no more than 15 minutes before the beginning of their regular shift for roll call and briefing where such is currently the existing practice."

2. "All employees while on their meal period shall be required to call out of service during such period whether single or double units subject, however, to emergencies."

9. Holidays

(a) The Union seeks 11 paid holidays. The Fact Finder increased the number as to non-veterans from 8 to 9; veterans receive 2 additional holidays by law. The award of the Public Arbitration Panel now provides all Albany Firemen with 11 paid holidays. Such number is also found in Buffalo, Rochester, Schenectady, and Troy. Some of the nearby localities provide a greater number of paid holidays. The Union's proposal for 11 paid holidays for all is justified both on the basis of comparable communities and in the light of an equal number now applicable to the other public safety employees of the City.

Determination

The Panel determines as follows to be made part of the contract:

Incorporates Article X, Section 1 (a).

(b) The Union proposes that employees who work on the paid holidays

receive an additional 8 hours pay at time and one-half and that employees on vacation, sick leave, or their regularly scheduled day off, receive a day in lieu of the holiday which may fall within that time. Although on this record, unlike that of the Fact Finder, there appear certain localities that do pay overtime in addition to regular holiday pay for police who work on those days, the incidence is limited. Firemen in Albany are allowed holiday pay though the holidays may fall within vacation and sick leave which is not quite the same as the Union proposal calling for an in lieu of day. There is no sufficient evidence based on comparability to support the in lieu of day part of the proposal.

Determination

The Chairman denies Article X, (c) overtime and an in lieu of day.

The Panel determines as follows to be made part of the contract as Article X, Section 1 (c) in its entirety:

"Each employee shall, regardless of sick time or vacation period or regularly scheduled day off at the time of the holiday, be paid for the 11 holidays set forth in Article X, Section 1 (a)."

10. Vacations

(a) The Union would increase the vacation allowance from the current 21 days after completion of basic training to a maximum of 30 days after 15 years on a graduated scale. As the Union recognizes, the present allowance compares favorably with those of comparable communities.

Determination

The Panel determines as follows to be made part of the contract as Article XI, Section 1:

(a) "Each employee shall be granted a paid vacation of 21 work days upon completion of basic training and annually thereafter on his anniversary date which shall be taken in accordance with vacation schedules."

(b) Additional proposals are made by the Union which in part are consistent with contract provisions in comparable communities and accord with fair and reasonable application of vacation allowance where current Albany practices differ from division to division.

The Panel determines as follows to be made part of the contract:

As Article XI, Section 2: "Any employee shall be permitted to split his vacation into no more than 2 periods. Choice of vacations shall be by seniority within separate Divisions or Units. The foregoing shall not interfere with the efficient operation of the Department's functions. Vacation leave schedules shall be posted prior to April 1 of each year."

As Article XI, Section 3: "Vacation pay shall be the regular straight time rate of pay in effect for the employees regular position at the time he takes his vacation."

Incorporates Article XI, Section 4 (b).

11. Personal Leave

The Union seeks 5 personal leave days as a matter of right. The Fact Finder denied this request giving as reasons no showing of abuse by the Chief in considering personal leave and "the nature of the job mandates rotating shifts with work both during the day and evening," allowing for appointments during normal business hours. The existence of rotating shifts does not assure that an employee

will be able to attend to urgent personal business. Besides there are also fixed day shifts in some areas of the Department. Indeed, provisions for personal leave are found to be quite prevalent in police contracts not only in comparable localities or side by side jurisdictions but throughout the State as well. As to the latter see "Report on Fringe Benefits and Related Practices," PERB, 1975-76. As to the former such provisions are contained in the contracts of Schenectady, Cohoes, Troy, Capital Police, State Troopers, Syracuse, Rochester and Buffalo.

Determination

The Panel determines as follows to be made part of the contract:

As Article XII, Section 2 in its entirety: "All employees will become eligible for and receive 2 days of personal leave after one year of continuous service, and also the same allowance for each succeeding year of employment which leave shall be non-cumulative. The leave shall be used for urgent personal matters which cannot be attended to outside the employee's work schedule. The employee shall give at least 48 hours notice, in writing to his Superior, except where an emergency situation makes the giving of notice impossible. Such leave may be denied solely on the basis that the employee's absence will seriously hamper or impede the work of the Department."

12. Civil Service Examination

The Union proposes that employees be given paid time off to take civil service examinations given by the City of Albany only. Promotion to the position of police sergeant in the City of Albany requires that a candidate take and pass a civil service examination. This is the case with other positions within the City as well. Under

existing practice, there is no assurance that a patrolman will be allowed time off or that he will be compensated for the time to take the examination. It is in the interest of the Department and the City to facilitate an employee's efforts to qualify for other or better employment with the City for which exam taking he should not incur a financial loss.

Determination

The Panel determines as follows to be made part of the contract:

Incorporates Article XII, Section 4.

19. Paid Released Time for Negotiations, Grievance Handling, Representation

For the reasons given by the Fact Finder, the Panel is of the view that his Recommendations appropriately address themselves to this subject area. In addition the last Firemen's contract with the City and the Public Arbitration Panel in the Firemen's dispute with the City, covered affirmatively released time for negotiations by allowing for a 4 member union team. The entire negotiation and representation function of the Union is in furtherance of the public policy of the Taylor Act to encourage the effective resolution of contract negotiations and administration in which the City is equally an interested partner. Moreover, the continuous operation of police work makes adequate released time a particular necessity. Furthermore, comparable provisions are found in related police agreements as well as in the functionally overlapping police and trooper entities.

Determination

The Panel determines as follows to be made part of the contract:

As Article II, Section 7 and without Section 8 (c):

"Subject to the operating needs of the Department, the Union president and three other covered employees, to be designated by the president in writing to the Chief, shall be allowed released time with pay to participate in negotiations with the employer, investigation, adjustment and processing of employee grievances and other employee representation services involving labor-management relations.

An employee desiring released time pursuant to this section shall notify his superior officer of the need for released time, and the superior officer shall grant such request subject to the availability of adequate covering personnel."

14. Paid Released Time for Union Business Leave

The Union seeks released time for members of the Union to attend meetings of its affiliated organizations. The Fact Finder considered that this could conflict with State law as to affiliated organizations. If so, the provisions of related police contracts must be in a state of conflict for such leave is commonly found in those contracts as well as leave for local organizational meetings.

Determination

The Panel determines as follows to be made part of the contract:

As Article II, Section 8 (a): "To the extent permitted by law, a maximum of 3 Union delegates shall be granted released time with pay to attend one statewide Council 82 convention per year; one AFSCME convention every two years; and one State AFL-CIO convention per year."

15. General Provisions

The Union proposals with regard to Part-Time Work, Full Work Force and Equipment are precluded by statute or constitute areas inappropriate for contract inclusion as proposed.

Determination

The Chairman denies these proposals (Article XXI, Section 8, 9).

16. Schedule B

The Union proposes walkie-talkies on one unit cars and a ban on motorcycle patrols in weather 10^o or less. These subjects are inappropriate areas for contract inclusion as framed.

Determination

The Chairman denies these proposals (Schedule B, 3, 6).

17. Salary Pay Grades, Promotions, Demotion

The Union's proposals deal with the payment of salary increases upon promotion and demotion. They are not supported by the evidence as to related provisions in contracts of comparable localities from which they are generally absent.

Determination

The Chairman denies these proposals (Article XV, Section 2, 3, 4).

18. Detective Classification

The Union proposes a classification for Detective the appointment to which shall be considered a promotion rather than, as now, an assignment. It also proposes negotiations concerning standards for that position and consultation with the Union subject to grievance on new job classifications, their specifications and wage rate. These proposals are not supported by the evidence and are, in part, of dubious propriety as negotiable items.

Determination

The Chairman denies these proposals (Article XV, Section 5).

19. Uniforms and Equipment

The Union seeks a cash allowance for the purchase and maintenance of

uniforms; a cash allowance for the loss of personal property in the course of employment; and a voice in upgrading uniforms and equipment. It is currently the policy of the City to issue uniforms upon entry and as they wear in employment; other items such as leather goods are bought by the officers without reimbursement; personal property loss is not reimbursable. The comparability data discloses a wide variety of provisions in this area, some exhaustive of the subject, others limited to a statement of department policy and combinations of policy and supplements thereto. Those departments with cash allowances proceed along that line as the basic approach. Those without cash allowances provide contractual obligations suited to a departmental policy of furnishing most uniform and items of equipment. Few cover personal property losses.

Determination

The Panel denies Article XVII as proposed in its entirety. Instead the Panel determines as follows to be made part of the contract:

As Article XVII, in its entirety: "The City shall maintain its present policy with regard to the furnishing of uniforms, equipment and accessories and the maintenance and replacement thereof."

20. In Service Disability and Death Benefits

The Union would have the contract require that the City provide coverage under Section 208 (b) and (c) of General Municipal Law so that dependents of employees killed in the line of duty would be provided for. Assuming that the City does not already provide benefits of this type, there is no warrant for including in the contract a provision which would necessitate municipal legislation adopting the

permissive statutory coverage or the assurance thereof before any contractual obligation could ensue.

Determination

The Chairman denies Article XVIII in its entirety.

21. Hospitalization and Medical Benefits

The Union proposes that the existing coverage be maintained with the City paying the same percentage of any increased premium as it now pays.

Determination

The Panel determines as follows to be made part of the contract:

As Article XIX in its entirety: "The City shall maintain in effect the existing hospitalization and medical benefits program including the same percentage contribution toward any increased premium as it now pays."

22. Retirement Plan

The Union proposes a Section 384 (d) pension or, in the alternative, a Section 384 pension. The City now provides a Section 375 (g) pension. The Fact Finder recommended no change principally for reasons of additional cost to the City. His position has merit.

Determination

The Chairman denies Article XX in its entirety.

23. Salary and Longevity

The Union proposes a 12% increase at each step in 1976; a 12% increase at each step in 1977; a reduced number of steps (from after 5 years to reach top to after 4 years to reach top); a cost of living adjustment effective with each 6 months

during the life of a two year contract; and a longevity program of \$150 the first year and \$300 the second year starting at 10 years and increasing by like amounts at 5 year intervals to 30 years. The Union also seeks an additional \$1,000 per year for detectives.

The Union bases its claims principally on (1) comparable wage levels in nearby localities as well as in the cities of Syracuse, Rochester and Buffalo, the Capital Police and State Troopers; (2) the rise in the cost of living since the last wage increase in November 1973 and the need for catch-up (3) the absence of any longevity program in contrast to longevity in all comparable localities. The Union estimates the cost of its base salary demands exclusive of longevity as adding \$434,342 in 1976 and \$559,350 more in 1977. The standstill salary cost allocated by the City totalled \$3,890,178 in 1976 inclusive of detectives' allowance (\$23,320).

The Fact Finder recommended shortening the steps so that a patrolman would reach the top salary after 4 years of service but did not recommend longevity. He further recommended salary increases under a one year contract (1975-76) based on a cost of living adjustment ranging from an entry increase of \$745.66 to a top increase of \$806.21, which came to an average increase over the shortened steps of about 8% producing \$11,746.21 at the top and \$10,948.66 at the entry.

(a) Longevity: The Union points to the effect of the absence of longevity upon the long term salary earnings of the patrolman in Albany as compared with other localities. Thus at the end of 20 years, based upon current contracts, the patrolman in Albany will have earned \$24,139 less than his counterpart in Cohoes, the next lowest city, and \$111,818 less than his counterpart at the high of Rochester.

While a salary increase to overcome some of the unfavorable comparisons now evident on an inter-locality basis will improve the early career earnings of the Albany patrolman, the long term prospect still is for a sizeable gap absent a longevity program. But the fiscal problems of the City require that longevity not be undertaken as an added cost item on the contract at this time.

(b) Salary: Using the salary data relative to current levels at entry and maximum, Albany compares with localities in the area, police forces at a common work situs, and large upstate cities as follows:

	<u>Entry</u>	<u>Maximum</u>
<u>Albany</u>	<u>\$10,136</u>	<u>\$10,940</u>
Bethlehem	9,817	11,565
Schenectady*	12,114	13,572
Cohoes	9,367	10,441
Troy**	11,504	12,123
Colonie	8,795	13,315
Rotterdam	10,855	13,110
Capital	10,133	11,924
Troopers	11,940	14,320
Syracuse	12,614	14,097
Rochester	12,373	14,953
Buffalo	9,382	12,026

*Includes recent arbitration award

**Effective July 1, 1976

Of the 11 jurisdictions compared with Albany the entry rate is higher than in Albany in all but 5. The maximum rate exceeds that of Albany in all but one, Cohoes, and ranges from \$4,050 higher in Rochester to \$984 higher in the Capital Police. Moreover, all of the 11 jurisdictions but Colonie enable a patrolman to reach maximum after from 4 to 2 years rather than Albany's after 5 years.

It was not always thus. In 1970 when the top rate moved 7.4% from \$10,190 to \$10,940, Albany exceeded 4 other jurisdictions including Schenectady and Troy at the maximum while an additional 4 jurisdictions were less than \$1,000 higher than Albany. A similar tendency to stay closer in top wage rate to certain of the comparable jurisdictions was noticeable in earlier years. In 1971, for example, the top rate of \$9,351 exceeded that for Schenectady and Troy, and was close to the Capital Police (\$9,582) and Syracuse (\$9,380).

By the close of the year 1973, Albany police salaries had fallen relative to the movement of salaries not only in comparable jurisdictions but across the nation as well to the point where, of the 35 American cities with populations between 100,000 and 250,000, only 7 cities had a maximum salary below that of Albany. All but one of these cities are located in the South and none in the Northeast.

The substantial falling off in Albany salaries and relative position resulted from no increases having been budgeted for 1975 and 1976, while other localities moved upward. Thus in 1975 police in Rochester received 6% (at maximum), in Schenectady 13% (at maximum), in Buffalo (1974 - '75) 8.3%, in Colonie 8.5 - 10.2%, in Bethlehem 12%, State Troopers 6.5 - 7.7%, and Capital Police 6%. In 1976 police in Troy received 6.7% in January and 8% in July (at maximum), in Cohoes

6%, in Rotterdam 7%, and in Syracuse 8.5%. Viewing the State as a whole excluding New York City, patrolman salary increases at top step as reported by PERB among 6,000 affected by negotiated settlements, came to a weighted average increase of 10.5% in 1975 over 1974. Arbitrated results affecting 2,000, came to 8.7%.

A significant factor in the foregoing salary increases was the rise in the Consumer Price Index which, for Albany, is measured from November 1, 1973, the date of the last wage increase. At that time the U. S. Cities Average CPI stood at 137.6 and rose by April 1976 to 166.2 or an increase in excess of 22%. The gross Albany top salary of \$10,240 in November 1973 taken as 100 or buying a constant \$1.00 of goods and services for each \$1.00 in salary had, therefore, by April 1976 eroded in purchasing power to the point where the gross salary in November 1973 dollars fell to \$8,252.

A more precise analysis of the movement of the CPI is achieved by using the average of the 12 month changes in a calendar year. For calendar 1974 the U. S. Cities average advanced by 11.1% and the same Index for calendar 1975 rose by an additional 9.1%. For the first four months of 1976, the index advanced for that period on the average 8.8% over the Index for the 12 month average of calendar 1975. These first four months have seen a slowing down in the rate of inflation. Thus, the January through April 1976 percentage increases in the U. S. Cities Average CPI over the same months in 1975 showed a twelve month average of 6.3% compared with 6.1% in 1975. But expectations are that prices will rise at a faster pace for the rest of the year. By any reckoning the Albany police officer has seen his salary remain the same in the face of an advance in the cost of living

of at least 24% in the 30 months (November 1973 - April 1976) since his last wage increase.

The Consumer Price Index measures the relative price changes in goods and services comprising a wage earner-clerical family budget and indicates whether the dollar is buying more or less of those goods and services over a time compared with a base period. In a sense it says nothing about the absolute number of dollars it would take at any given time to purchase the goods and services that make up a budget for family expenditure. Such a measure is found in the Urban Family Budgets prepared by the Bureau of Labor Statistics illustrating the costs of three levels of budgets based on three different standards of living.

One of these, representing a modest but adequate level of living (medium budget) for a family of four with the husband as the sole breadwinner, showed the total annual budget costs for certain urban Northeast cities as of Autumn 1975. These ranged from a low of \$14,729 in Pittsburgh to a high of \$18,516 in Boston, with Buffalo at \$16,484.

Another in the same BLS study, i. e., a marginally acceptable but not poverty level, lower budget, showed an annual total cost ranging from a low of \$9,481 in Pittsburgh to a high of \$10,777 in Boston, with Buffalo at \$10,000.

The most that can be said of the current Albany police salaries which range from the entry of \$10,100 to the maximum of \$16,140, is that in the Fall of 1975 they fell within the marginally acceptable budget (\$10,281 in Buffalo by April 1976) and far short of the modest budget required to adequately sustain a family of 4. By all the foregoing measures of salary determination, i. e., the statutory criteria

of salary level and movement in comparable communities as well as "other factors normally and traditionally taken into consideration" such as changes in the cost of living and the level of family budgets, the police officers in Albany are shown to have fallen behind in rather pronounced fashion.

In its "Statement" to the Panel heretofore alluded to, the City refers to certain fiscal conditions which it represents as: a deficit of \$12,157,683 or almost one-third of the entire budget for the fiscal year beginning November 1, 1975 and over half of the \$21,220,737 to be raised by real estate taxes in the current year; inflationary costs operating generally and increased by the Firemen's Arbitration Award "which will add approximately \$1,000,000" to the deficit; the fact finder's recommendation for blue collar workers which adds "another \$1,000,000;" and the police demands which, if allowed, will add "\$2,000,000" in increased salaries. The deficit, it is further alleged, will then reach "nearly \$17,000,000", which will almost equal the City's entire real estate levy. The City further asserts that since 1971 it has increased its real estate tax rate from \$66.38 per thousand of assessed value to \$66.50 per thousand, "more than double;" that tax delinquency has increased; and that tax exempt property in Albany amounts to two-thirds of all the property in the City.

The request is made by the City that the Panel specifically detail the projected costs of any increased employee benefits which may be mandated and the source or sources of revenue available therefor. There is also reference made in the "Statement" to the size of the police force in Albany as being the largest in relation to population of the State's 10 largest cities to which size the City attributes the lowest crime rate in the State among the major cities.

The panel cannot assess the accuracy of the City's deficit figure, where it was derived from or how it came about. The same is true of the proffered cost of the President's Arbitration Award and of the fact finder's recommendation involving the blue collar employees. These and other significant areas of relevant exploration under the heading of ability to pay had no live input on the part of the City. Similarly, cost estimates of salary and other economic matters ordinarily are developed by the public employer with its special capacity to know the fiscal impact of any economic change in dollars and cents subject, of course, to open and critical scrutiny. The same is true of detailing of sources of revenue. Indeed, a trip through the state of the finances of a municipality for such discoveries, without attendant local guidance, must leave something to be desired by way of a definitive and probing analysis.

The Firemen's Arbitration Panel considered similar contentions presented by the City as to its fiscal plight though with the City's presence and, on balance, concluded that "priority must be given to improving the basic income of the Albany firefighters, with at least some inroad being made on the unfavorable salary differential that exists vis-a-vis firefighters in comparable communities." As heretofore noted this award was upheld by the Appellate Division. The Fact Finder herein also considered the City's ability to pay and stated, "I find that the City of Albany does have available to it numerous alternatives for financing such increases as it must ultimately implement."

The record in this proceeding discloses that in the current fiscal year Albany has a constitutional tax margin of \$3,806,651, higher than its margin for

all years since 1970 except for 1972. Between the years 1970 and 1974, Albany's constitutional debt margin more than doubled, i. e., from \$8,209,293 to \$16,871,684 and the total amount of debt both subject to the limit and not subject to the limit, has decreased. There is therefore latitude for Albany to raise taxes, should it choose to do so, without exceeding its constitutional debt margin.

The City compares the tax rate increase since 1971 by using assessed valuation to show a doubling since 1971. However, when the more meaningful full valuation is considered by applying the State's equalization rate to the locality from 1971 to 1975, the Albany tax rate is shown to have gone from \$27.25 to \$46.80 per \$1,000 of full valuation. Moreover, in 1975 Albany's full valuation rate decreased 21.26 below the rate for 1971 and was 11.26 below the full valuation rate for Schenectady and Buffalo.

It is true of course that the costs of the salary improvements in the bargaining units of other City employees are a potential fiscal liability. Meanwhile, however, they are postponed or postponable with unknown savings to the City in cost of money accruing therefrom. In the case of the police, resolution of economic improvements may not apply retroactively which affords additional savings to the City. Members of the bargaining unit will have no salary increase for the fiscal year beginning November 1, 1974 and again beginning November 1, 1975 until June 23, 1976, the date of the Panel's deliberations and the earliest possible effective date of any increase, or a gap of 20 months.

Ability to pay under the statutory criteria is not the controlling factor but is to be given such consideration as the Panel deems appropriate. The Panel believes

that the City's financial condition is not as unrelieved or unrelievable as the City would have it seem. Nevertheless the salary increase awarded herein is fiscally held to the minimum cost consistent with according to the police officers a reasonable adjustment in their wage scale which to be well seen those of relatable jurisdictions. The City's maintenance of a high ratio of police to population as a source of pride, there may also be seen, as this record shows, the City's official commendations awarded to the salary police on recent occasions for meritorious performance of duty. But police officers do not live on praise and fresh air alone. They, too, have individual and family needs which have remained unrelieved during a time of substantial inflationary depletion of their stationary salary dollar, never aggregating the total more than the marginally acceptable family budget level.

On the basis of wage comparability and cost of living adjustment and giving due consideration, under all the circumstances, to the financial ability of the City, the Panel concluded that an increase is effective June 23, 1976 to June 24, 1977 is warranted, to be applied at each step of the scale but reducing the time to reach maximum from 10 to 7 years in line with other jurisdictions. The top salary will therefore become \$47,815, and continue to be exceeded by 2 of the 11 comparable jurisdictions. The entry rate will become \$11,014, exceeded by 5 of the 11 jurisdictions. The Grievance's Arbitration award provided an 8% increase effective November 21, 1974 - October 31, 1975. The Panel estimates the cost of the first year adjustment herein at 8.2% or \$3,900,700 over the \$3,806,700 currently expended for 330 employees at various steps on the salary schedule excluding the detectives' allowance but including the reduced number of steps.

For June 1977 - June 1978 the Panel concludes that an increase of 10% is warranted effective June 25, 1977. The top salary will then become \$12,897 which is still exceeded by 6 of the 11 jurisdictions even currently in June 1976. The Firemen's Arbitration Panel awarded an "overall" for November 1, 1975 - October 31, 1976 in two 5.5% semi-annual installments. The second year increase for police, it is estimated, will require an additional \$48,847 or 12.1% over 1976-77 costs including the move on the steps for those not at maximum. The successive additional costs on base salary for the two years under the Panel's determination will therefore total \$71,254 rather than the \$3,000,000 feared by the City.

The demand for a built-in cost of living escalator has an element of merit in that it seeks to protect employees periodically during the life of this, an entirely prospective contract, against the inroads of inflation. However, this type of cost of living clause has not found favor in public employee contracts including police as distinguished from the year end stipulated measure of the CPI as a basis for a salary adjustment. In any case, the fiscal uncertainties of the City do not favor locking it into an unknown future cost of this potential.

The Panel is of the opinion that the allowance of approximately \$530 paid patrolmen assigned as detectives from which sum they must also purchase and maintain their clothing, replace damaged personal property and pay for informants, should be raised in response to increased costs generally since 1973. The new

amount shall be \$630 effective June 25, 1976 to detectives who currently number 44, an increased cost in the first year of \$4,400.

The Panel determines as follows to be made part of the contract:

(a) Effective June 25, 1976 and continuing for the term of the contract, the existing five years of service to reach the maximum rate for employees in the bargaining unit shall be reduced to four years of service and thereafter shall move yearly on the service steps accordingly, unless previously at the maximum step.

(b) Effective June 25, 1976 through June 25, 1977, each step on the existing schedule shall be increased by 5% and the existing after five years of service shall then become after four years of service or the next minimum step.

(c) Effective June 25, 1977 through June 24, 1978, each step on the 1976 - 77 schedule shall be further increased by 5%.

(d) Patrolmen assigned as detectives shall receive effective June 25, 1976, the sum of \$300 annually, payable on a weekly basis, and thereafter remain the same for the term of the contract.

The Chairman desires:

The institution of a longevity program over the life of the contract.

The incorporation during the term of the contract of an automatic cost of living escalator.

The Panel further determines as follows to be made part of the contract:

As articles IV, section 2 and Appendix A in their entirety

Employees shall be compensated in accordance with the Wage Schedule effective June 25, 1976 and June 25, 1977, attached to this agreement and marked Appendix B.

Appendix "A"

<u>Police Officer</u>	<u>Entry</u>	<u>After One Year's Service</u>	<u>After Two Year's Service</u>	<u>After Three Year's Service</u>	<u>After Four Year's Service</u>
Effective June 25, 1976 - June 24, 1977	\$11,014	\$11,174	\$11,334	\$11,494	\$11,815
Effective June 25, 1977 - June 24, 1978	\$12,115	\$12,291	\$12,467	\$12,643	\$12,997

Patrolman Assigned
As Detective

Effective June 25,
1976 - June 24,
1978

An allowance of \$690 per contract year payable weekly.

24. Termination and Modification

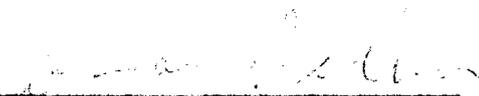
The Union seeks a two year term which it originally put as November 1, 1974 through October 31, 1976. However, under the constraint of section 201.1 (c) (vi), the contract period herein must necessarily run not to exceed two years from the date of the Panel's determination. At this late stage in rather protracted negotiation and impasse procedures, it would not serve the purposes of stability of bargaining relations which the Act endeavors to achieve, were the Panel to bring about a new round of negotiations too soon after the current round may have finally subsided. Hence the maximum allowable two year contract is appropriate.

Determination

The Panel determines as follows to be made part of the contract:

AS Article XXVI in its entirety: "This Agreement shall be effective

as of June 25, 1976 and shall remain in full force and effect until and including the 24th day of June 1978. It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing 100 days prior to the termination date that it desires to modify this agreement. In the event that such notice is given, negotiations shall begin not later than 100 days prior to the termination date."



Jonas Silver, Chairman
Public Arbitration Panel

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory)		
Interest Arbitration))	
- between -))	
CITY OF ALBANY,))	
Employer))	OPINION AND DETERMINATION
- and -))	Case No. CA-0049; M74-723
ALBANY POLICE OFFICERS))	
UNION, LOCAL 2841, COUNCIL))	
82, AFSCME, AFL-CIO,))	
Union))	

BEFORE THE PUBLIC ARBITRATION PANEL:

Jonas Silver, Chairman

Carl F. Gray, Employee Organization Member

The following represents my concurrence in and my dissent from the determination of the Chairman of the above named Public Arbitration Panel.

- CONCUR:
- 1 - Concur - Agreed Items
 - 5 - Concur - Discipline and Discharge
 - 6 - Concur - Grievance Arbitration
 - 7 - Concur - on 7B, dissent on 7
 - 8 - Concur - Hours
 - 9 - Concur - but dissent on the denial of Article X(c) overtime and in lieu day. Concur in new Article X(c).
 - 10 - Concur - Vacations
 - 11 - Concur - Personal leave
 - 12 - Concur - Civil Service Examinations
 - 13 - Concur - Paid Release Time

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitrator

- between -

CITY OF ALBANY,

OPINION
AND
DETERMINATION

Case No. 74-6649; M74-723

ALBANY POLICE OFFICERS UNION, LOCAL 1000,
COUNCIL 82, AFSCME, AFL-CIO,

The UNDERSIGNED MEMBERS OF THE PUBLIC ARBITRATION PANEL,
having been duly designated in accordance with Section 209.4 of the Civil Service Law
of the State of New York and having duly heard all matters presented for its determina-
tion and made its determinations thereon in accordance with Section 209.4 (c), (iii),
(iv), (v) and (vi), A.S.A.R.U. as hereinbefore set forth.


Jonas Silver, Chairman, Public Member


Carl F. Gray, Employee Organization member

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

On this 25th day of June 1976, before me personally came and appeared
Jonas Silver and Carl F. Gray, to me known and known to me to be the individuals
described herein and who executed the foregoing instrument and they acknowledged
to me that they executed the same.



STATE OF NEW YORK
NOTARY PUBLIC
JAMES J. ...
NASSAU COUNTY
COMMISSION EXPIRES March 31, 1977

- 14 - Concur - Paid Release Time
- 19 - Concur - Uniforms and Equipment
- 21 - Concur - Hospitalization and Medical Benefits
- 23 - Concur - on salary - dissent on Longevity
- 24 - Concur - Termination and Modification

DISSENT

- 15 - Dissent - General Provisions
- 16 - Dissent - Schedule B
- 17 - Dissent - Salary Pay Grades, Promotions,
Demotions
- 18 - Dissent - Detective Classification
- 20 - Dissent - In-service Disability and Death
Benefits
- 22 - Dissent - Retirement Plan



Carl P. Gray, Employee Member