



integral component of the present document. This Award was issued setting forth the basic provisions thereof in response to the Employer's pleading that avoidable retroactive vacation costs be averted. We rely upon the more detailed presentation in this present document more fully to clarify the intent of the Award.

The prior agreement between the parties expired on December 31, 1977. In the autumn of 1977, the parties commenced negotiation (in coalition with the Fire Fighters) which carried them through a slalom of proposals, counter-proposals, tentative and contingency agreements which, for one reason or another, failed to survive through ratification. Finally, on September 23, 1978, the parties apparently identified the points of impasse and determined they would be resolved through Interest Arbitration. Prior to this time, the Fire Fighters had reached accord with the Employer and were no longer functionally involved in a coalition.

As noted in the Award, the undersigned Panel was designated on November 13, 1978, and a hearing was held in the Council Chambers of the City Hall at Saratoga Springs, New York, on December 19, 1978, at which time both parties were afforded the opportunity fully to develop their respective positions, presenting such evidence and exhibits as they deemed appropriate. The hearing was adjourned until January 3, 1979, at which time the parties reconvened to complete their respective presentations.

The record was closed at the conclusion of the January 3, 1979, hearing. Since a stenographic record was taken, we rely upon the listing of appearances therein, rather than tabulating same in the present document.

The issues presented to the Panel for determination were:

- A. To fix the provisions of Article X, Section 3, Vacations.
- B. To specify modifications, if any, to be made in Appendix A, Salary Schedule.

The parties stipulated that they were otherwise in agreement on all other contractual terms as set forth in the draft agreement presented as Joint Exhibit V, consisting of a Labor Relations Agreement by and between the parties effective over the period from January 1, 1978, through December 31, 1979.

The vacation issue arose out of the Police Unit's realization that its vacation clause, which provided a "minimum of 21 consecutive days paid vacation each year," while semantically equivalent to the corresponding agreement in the Fire Fighters' agreement, did not, in fact, operate in precisely the same way. A clear understanding of the difference follows from an explanation of the respective work schedules of the Fire Fighters and Police-people set forth in Tables I and II. The Fire Fighters work essentially 24 hours on duty, followed by three days off, with periodic extra time off in the form of "Kelly" days, which are not shown in Table I. In addition, the Fire Fighters are permitted to commence vacation on a day when they would normally return to

TABLE I

FIRE FIGHTERS' VACATION CALENDAR

Typical Fire Fighters' Schedule Excluding "Kelly" Days

<u>Week</u>	<u>Sun.</u>	<u>Mon.</u>	<u>Tues.</u>	<u>Wed.</u>	<u>Thurs.</u>	<u>Fri.</u>	<u>Sat.</u>
1	0	0	0	W	0	0	0
2	W	0	0	0	W	0	0
3	0	W	0	0	0	W	0
4	0	0	W	0	0	0	W
5	0	0	0	W	0	0	0

0 = Day off

W = Work Day - Each work day is of 24-hour duration.

Last day worked was Wednesday, Week #1

First day of vacation was Sunday, Week #2

Last of 21 consecutive days of vacation was Saturday, Week #4

First day back at work after vacation was Wednesday, Week #5

Total days away from post between  
last day worked prior to vacation  
(Wed., Week #1) and first day worked  
following vacation (Wed., Week #5) - 27 consecutive calendar days

Total number of work days away  
from post on vacation - 6 @ 24 hours each

Equivalent 8-hour days away  
from post on vacation - 6 x 3 = 18 days

TABLE II

POLICE PERSON'S VACATION SCHEDULE

Typical Police Person's Schedule

<u>Week</u>	<u>Sun.</u>	<u>Mon.</u>	<u>Tues.</u>	<u>Wed.</u>	<u>Thurs.</u>	<u>Fri.</u>	<u>Sat.</u>
1	0	W	W	W	W	W	W
2	0	0	W	W	W	W	W
3	W	0	0	W	W	W	W
4	W	W	0	0	W	W	W
5	W	W	W	0	0	W	W
6	W	W	W	W	0	0	0
7	0	W	W	W	W	W	W

0 = Day off

W = Work Day - Each work day is of 8-hour duration.

Last day worked was Saturday, Week #1

First day of vacation was Sunday, Week #2

Last of 21 consecutive days of vacation was Saturday, Week #4

First day back to work after vacation was Monday, Week #5

Total days away from post between

last day worked prior to vacation

(Sat., Week #1) and first day

worked following vacation (Mon., Week #5) - 21 consecutive calendar days

Total number of 8-hour work days

away from post on vacation - 15 days

duty; thus, in the case of the hypothetical schedule in Table I, a Fire Fighter taking his 21-consecutive-calendar-day vacation would, in fact, be away from his post for 27 consecutive calendar days. In terms of work days away from the job, he would have missed six 24-hour work days, the equivalent of 18 eight-hour days.

A hypothetical Police-person's vacation schedule is set forth in Table II. The Police Department did not permit vacation to commence on the day when the Employee normally would have returned to work but, rather, required vacation to commence as shown in Table II. In this case, the individual began vacation on Sunday of week two, and had already depleted two days of vacation by Tuesday of week two, which really was the first day on which the Employee would have worked had he or she not been on vacation. Thus, in the case of the Police-person, a 21-consecutive-calendar-day vacation provided the individual with precisely 21 consecutive calendar days away from the job as opposed to 27 in the Fire Fighter example of Table I. Similarly, during this period, the Police-person would have been excused from reporting on 15 work days, as opposed to 18<sup>1/</sup> for the Fire Fighter in the example of Table I.

The Fire Fighters' vacation schedule had not been altered and the Police Unit was, in fact, seeking parity with a pre-existent Fire Fighter vacation benefit in terms of actual calendar days away from the work post. With respect to salaries, the Police were seeking a \$200 per annum increase to be applied uniformly to all

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<sup>1/</sup>Actual days are six (6) 24-hour days which are equivalent to eighteen (18) 8-hour days such as Police-people work.

positions in the salary schedule of Appendix A of the incomplete agreement. This adjustment would be consistent with that awarded the Fire Fighters which was, specifically, plus 4% January 1, 1978 - plus 4% additional effective July 1, 1978 - plus 6% January 1, 1979, with the percentages being applied sequentially on the closing 1977 salary schedule. To the values thus calculated, the parties would then add \$200.00 to obtain the finally-adopted salary schedule.<sup>1/</sup>

The Employer's position was to offer two options. The first was to obtain the existing vacation clause language, as well as the pre-existent method of scheduling, and add \$200.00 to the salary schedule. Under the City's proposal, however, the \$200.00 would have been added prior to calculating the second 4% and 6% increases, respectively, which would have provided the Police-people with a modestly higher increase than the Fire Fighters.

The second alternative offered by the Employer was to retain the pre-existent 15 days vacation after nine months of service, but to increase the 16 previously allowed for persons with more than ten years of service to 18 days. Pre-existing differentials in time off between Patrol-persons and Officers would have been perpetuated. However, under the second proposal, the additional money to be placed on the schedule would have been \$150.00 per annum, rather than \$200.00.

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<sup>1/</sup>Formulae are as follows:

Effective January 1, 1978	1977 salary X 1.04 + \$200.00
Effective July 1, 1978	1977 salary X 1.082 + \$200.00
Effective January 1, 1979	1977 salary X 1.1465 + \$200.00

II. OPINION OF PANEL

The supporting testimony and arguments of the parties are set forth with ample clarity and thoroughness in the record, and no useful purpose would be served by summarizing them here beyond alluding to certain aspects thereof which were of crucial concern to the Panel in its deliberations.

A. Vacation Schedule

There is explicit agreement in the positions of the parties that the resolution of the vacation issue hinges predominantly upon questions of equity and comparability. The Panel's task is to determine the standard against which comparable and equitable practice may be defined. The Employees have cited practices respecting other employees of the City of Saratoga Springs, in addition to the Fire Fighters, and have focused specifically upon Water Department employees who receive not less than 17 calendar days after nine months of service (Joint Exhibit 7); however, these calendar days were interpreted with respect to City Ordinance No. 547 as being synonymous with work days, said interpretation having been forthcoming from City Attorney Mullaney, effective October 1, 1977 (Joint Exhibit 8). If 17 work days are afforded the Employee, he or she will, of course, actually exempt from reporting for work duty for a period extending over 23 calendar days. However, we are, on balance, persuaded that Public Works employees are not Public Safety employees and that the differing nature of their jobs and the concomitant differences in labor agreements and other terms

and conditions of employment are such as to render Public Works Department practices less than substantially reliable as a standard of comparison in the instant dispute.

Practice respecting Fire Fighters who operate within the supervisory jurisdiction of the same Public Safety Department is a different matter. This is especially true where, as here, the Fire Fighters and Police Union were engaged in coalition bargaining with the Employer - and where their respective agreements have been equivalent in terms and conditions, except where they were differentiated by peculiar needs related to job characteristics. In this climate, the terms and conditions enjoyed by the Fire Fighters must be accorded substantial weight in formulating a policy for Police personnel. It seems rather clear that the parties themselves have been wedded to this philosophy in that parallel language was adopted in each of the agreements. Moreover, since the Fire and Police units were not engaged in coalition bargaining in those prior years, we infer the Employer was instrumental in promoting that concept with the Police Union in concurrence. It is, therefore, instructive to examine the concept in which the parties, at least implicitly, concurred. That concept, it seems to us, is that the individuals would receive a certain number of calendar days off the job with both work days and regularly-occurring days off occurring within the period being counted. Excluded from the count, in the case of Fire Fighters, were regularly-occurring days off contiguous to the commencement and conclusion of a vacation period. These were not considered part

of the vacation in the case of Fire Fighters. They are obviously not considered part of the vacation in the case of Public Works employees either for, in the words of the City Attorney, "any other interpretation would result in an employee being given vacation time when he is not required to work." (Joint Exhibit 8)

We reemphasize that obvious distinctions prevail between Public Safety employees in general, and Public Works employees, and we recognize that the rationale of the City Attorney's interpretation was, in no event, intended to be applicable to Public Safety employees or to their non-work days which occur internally in their vacation schedule. With respect to the issue at hand, all this reduces to the conclusion that Police personnel should be permitted to commence vacation on a work day. Thus, referring to Table II, a person entitled to 21 consecutive calendar days would be permitted to commence vacation on Monday of week one, and report back to work on Monday of week four. This would provide the person with 21 calendar days of vacation; however, since Monday of week one would ordinarily have been the day on which the individual returned to work from four consecutive days off, the total days away from the work post between the last day worked prior to vacation and the first day worked following the vacation would be 25. This would not be the same absolute number as for a Fire Fighter who, as shown in Table I, would be away from his post for 27 consecutive calendar days, but the difference incurred arises from inherent differences in the work schedules and jobs, rather than from inequitable treatment

involving the counting of preceding or successively scheduled days off contiguous to vacation as integral parts of the vacation. The Award contemplates the exclusion of this time from the vacation count in the case of Police personnel with this objective being achieved by permitting individuals to elect commencing vacations on a work day.

It is the intent and the objective of the Panel to afford the Employer the full exercise of its managerial prerogatives in limiting the cost of vacations by requiring that they be taken dispersed over the entire 12-month period. This has been the practice respecting Fire Fighters, and if the Employer, at its option, adopts a similar practice for Police personnel, we believe the cost of implementing this provision will be held to a minimum and may well entail no out-of-pocket expenses whatever.

Since this Award relates to an agreement retroactively effective to January 1, 1978, the vacation provisions thereof relate in part to a time period which has already passed. It is, therefore, impossible to provide this benefit retroactively, and the Panel has considered the propriety of awarding a compensating cash equivalent in lieu of the vacation days worked. In considering the history and vicissitudes of the bargaining process preceding agreement and ultimate resort to arbitration, we have concluded that retroactive payments would be inappropriate and we have, therefore, held that the remedy fashioned herein shall become applicable effective with the 1979 contract year.

The Award in this matter, as it relates to vacation schedules, references the Labor Relations Agreement by and between the parties for the period January 1, 1976, through December 31, 1977 (Joint Exhibit 4). For the purpose of clarifying the intent of the Award, we are setting forth herein the language of a revised Article X, Hours of Employment, Vacation, Sick-Leave, Leaves of Absence, etc. (Section 3, Vacation), as it should be incorporated in the uncompleted agreement (Joint Exhibit 5) in lieu of the language set forth therein.

ARTICLE X (Hours of Employment, Vacations, Sick-Leave, Leaves of Absence, etc.) - Section 3 (Vacation) of Joint Exhibit V, the agreement between the parties for the period January 1, 1978, to December 31, 1979, shall read as follows:

3. Vacations:

- (a) All permanent members of the Police Department shall be entitled to a vacation. Any recognized holiday as set forth in the agreement falling within such vacation period shall be added to the vacation period as long as the efficiency of the Department is not affected and this procedure does not cause a manpower shortage on any particular shift and/or platoon. If such holiday cannot be added to the employee's vacation schedule for the foregoing reason, he shall be allowed the time on some other day during the year.
- (b) All police officers shall be allowed a minimum of twenty-one (21) consecutive calendar days paid vacation in each year.
- (c) All non-commissioned and commissioned officers shall be allowed a minimum of twenty-four (24) consecutive calendar days paid vacation in each year.

- (d) Employees with more than ten (10) years of service shall be allowed one (1) additional work day of vacation.
- (e) Any member entitled to vacation benefits who shall resign or have his employment terminated without cause shall not forfeit his right to such vacation time and if the time may not be allotted in calendar days, he shall be paid the equivalent of that number of days based upon straight time pay schedule. Any member of the Department entitled to vacation benefits who may die prior to his receipt of said benefits for any year shall have an amount equivalent to his pay for those days paid to his next-of-kin or estate. Any member entitled to vacation benefits who may become ill or incapacitated prior to the taking of such vacation shall have the right to postpone the taking of such vacation until such time as he is physically capable of returning to active duty, or until the end of the current calendar year, whichever occurs earlier.
- (f) Vacations shall be scheduled within the unit or platoon by order of seniority within grade.

Any employee may commence his or her vacation on a scheduled work day.

Any employee shall be permitted to split his or her vacation into two or more periods, subject to the requirement that the first 21 consecutive calendar days be split into not more than two periods, neither of which may be of less than seven (7) consecutive calendar days duration.

#### B. Salaries

The salary position of the Employees is that their historic parity with the Fire Fighters be preserved. This objective is achieved if one adds \$200.00 to each of the salaries specified in the salary schedule appearing as Appendix A in Joint Exhibit 5.





In the Matter of Interest Arbitration between

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THE CITY OF SARATOGA SPRINGS, NEW YORK

and

SARATOGA SPRINGS POLICE PROTECTIVE  
AND BENEVOLENT ASSOCIATION  
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AWARD

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PERB Case IA-50; M77-783  
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On November 13, 1978, pursuant to New York Civil Service Law, Section 209.4, the undersigned were designated by the New York State Public Employment Relations Board to constitute a Public Arbitration Panel for the purpose of making a just and reasonable determination in the above-captioned matter.

Pursuant to the provisions of Section 209.4 of the Civil Service Law, the Panel has conducted hearings and considered all evidence, testimony and arguments of the parties, and awards as follows:

1. Respecting Article X (Hours of Employment, Vacations, Sick-Leave, Leaves of Absence, etc.), Section 3 (Vacation), Paragraph F:
  - a) Delete Paragraph F in its entirety and substitute the following.

F. Vacations shall be scheduled within the unit or platoon by order of seniority within grade.

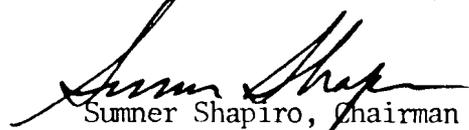
Any employee may commence his or her vacation on a scheduled work day.

Any employee shall be permitted to split his or her vacation into two or more periods, subject to the requirement that the first 21 consecutive calendar days be split into not more than two periods, neither of which may be of less than seven (7) consecutive calendar days duration.

- 2. Paragraph F, above, shall be implemented retroactively to January 1, 1979, with the Administration retaining the prerogative of scheduling vacations over the span of the entire calendar year.
- 3. The salary schedules appearing in Appendix A of Joint Exhibit 5 (Labor Relations Contract between the City of Saratoga Springs, New York, and the Saratoga Springs Police Protective and Benevolent Association for the period January 1, 1978, to December 31, 1979) shall be modified by adding to each salary shown therein two hundred dollars (\$200.00).

The above are inclusive of all impasse issues before the Panel.

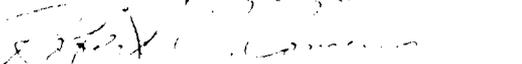
Respectfully submitted,

  
 Sumner Shapiro, Chairman  
 64 Darroch Road  
 Delmar, NY 12054

Date: Feb 26, 1979

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

On the 26<sup>th</sup> day of February, 1979  
 before me came Sumner Shapiro,  
 to me known to be the individual who  
 executed the foregoing instrument.

  
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 Notary Public

**ROBERT C. COMINS**  
 Notary Public, State of New York  
 No. 6773176  
 Qualified in Saratoga County  
 My Commission Expires March 30, 1980

*Frank N. Grasso*

Frank N. Grasso, Esq.  
Grasso & Grasso  
124 Clinton Street  
Schenectady, New York 12305

Date: 5/26/79

State of New York )  
                          ) ss.:  
County of ~~Saratoga~~ <sup>Schenectady</sup> )

On the 26th day of February, 1979,  
before me came Frank N. Grasso,  
to me known to be the individual who  
executed the foregoing instrument.

Richard C. Reardon  
Notary Public

*Roger Kiley*

Roger Kiley, Esq.  
Assistant City Attorney  
City Hall  
Saratoga Springs, New York 12866

Date 2/26/79

State of New York )  
                          ) ss.:  
County of Saratoga )

On the 26 day of February, 1979,  
before me came Roger Kiley,  
to me known to be the individual who  
executed the foregoing instrument.

Frank N. Grasso  
Notary Public