

the Rochester Police Locust Club, Inc.. Mr. Whelan acknowledged receipt of the letter on December 8, 1977, without proposing a date for negotiations. In its original notice, the Union had advised that it was its understanding and agreement that negotiations would commence not later than December 15, 1977.

Subsequently, on December 30, 1977, the Locust Club's Counsel again notified Mr. Whelan of its desire to meet, suggesting January 11, 1978, for a meeting to be devoted to developing and executing a memorandum outlining the negotiating rules to be followed. Mr. Whelan promptly responded and set the date of January 12, 1978, for a discussion of ground rules.

At the outset, the parties became enmeshed in difficulties relating to the development and implementation of ground rules for the 1978-79 negotiations. These difficulties were apparently carried over into the scheduling of actual meetings and exchanges of proposals. Ultimately, the parties met on March 22 and exchanged proposals, at which time the Employer advised that he would contact the Union about further meetings within approximately the subsequent two weeks.

On April 5, the Union Counsel advised Mr. Whelan that he had not responded on the basis of his commitment to set a session within two weeks of the March 22 date, and the Union proceeded unilaterally to set the date of April 10, 1978, and advised that it would be available and present for negotiations thereafter on every Monday.

The parties experienced some further difficulties thereafter which the Employer asserted were attributable to a combination of obligations to bargain with other unions as well, and the physical relocating of its offices. The historical record indicates the subsequent bargaining atmosphere deteriorated somewhat, though the parties ultimately arrived at a Memorandum of Agreement on a final exchange of proposals by April 26, 1978, the Agreement itself having been dated April 21, 1978.

Subsequently, questions arose as to the mandatory status of certain subjects of bargaining which culminated in a letter from the Labor Relations Division of the City of Rochester to the President of the Police Locust Club outlining the items which, in the Employer's view, constituted non-mandatory or prohibitive subjects of bargaining. This gave rise to further delays and ultimately, on October 24, 1978, the Union's Interest Arbitration petition was received by the New York State Public Employment Relations Board.

The present Panel was designated by the Chairman of the New York State Public Employment Relations Board on December 18, 1978.

The prior agreement was effective from July 1, 1976, to June 30, 1978. Efforts to negotiate a successor agreement culminated in impasse and, pursuant to the provisions of Article XIV of the Civil Service Law, Section 209 of the Public Employees Fair Employment Act, and Part 205, New York Code, Rules and Regulations, Title IV, Chapter 7, an Interest Arbitration Petition was submitted

on October 20, 1978. On December 18, 1978, the New York State Public Employment Relations Board designated a Public Arbitration Panel charged with making a just and reasonable determination of the dispute. The Public Arbitration Panel consisted of the following:

Public Panel Member and Chairman	Sumner Shapiro
Employer Panel Member	William L. Holcomb
Employee Organization Panel Member	Gary W. Van Son, Esq.

A hearing was conducted on February 2, 1979, at the City Hall in Rochester, New York, at which time the parties were afforded the opportunity of developing fully their respective positions through testimony, cross-examination, and the submission of other relevant evidence and documents. Post-hearing briefs, postmarked not later than February 16, 1979, were submitted by both parties.

Appearances were as follows:

For the Police People

Pat V. Dinolfo, Esq., Attorney for the Rochester Police Locust Club, Inc.

Mr. Jack Gerbino, President, Rochester Police Locust Club, Inc.

Mr. Robert J. Coin, Chairman, Rochester Police Locust Club, Inc.

Mr. Al Joseph, Negotiating Committee Member, Rochester Police Locust Club, Inc.

Mr. James Verna, Secretary, Rochester Police Locust Club, Inc.

For the Employer

Mr. Louis Paris, Director of Labor Relations, City of Rochester, New York

Gerald P. Cooper, Esq., Municipal Attorney, City of Rochester, New York

Mr. Bob Meyer, Budget Director, City
of Rochester, New York

Mr. Charles Richardson, Deputy Chief
of Police, Rochester Police Department

Mr. Delmar Leach, Deputy Chief of Police,
Rochester Police Department

Mr. Tom Hanney, Labor Relations Assistant,
City of Rochester, New York

David R. Miller, Esq., Municipal Attorney,
City of Rochester, New York

The positions of the parties are so consummately developed in the written record - constituted of their hearing and post-hearing briefs, and other exhibits - as to render superfluous more than summary treatment herein. The Panel has considered these data and weighed the positions of the parties against the standards of equity and ability to pay. The final Award reflects a balancing of the vested responsibilities of the Panel members emerging from their joint deliberations in executive session. In the summary following, we attempt briefly to set forth the thinking which governs determinations on an issue-by-issue basis. Though concurrence among all Panel members did not necessarily prevail on each issue taken as an entity, unanimous concurrence prevailed on the Award taken as a whole.

II. ISSUES AND EVALUATION OF THE PANEL

A. SALARY

The Union has petitioned for an across-the-board wage

increase in the amount of 10% in brackets 90 through 95 for the contract year commencing July 1, 1978, with an additional 10% increase similarly applied for the second contract year commencing July 1, 1979. The Employer has proposed a wage freeze at the levels prevailing in the expired agreement.

The rationale for the Union position is restoration of parity, utilizing historical and projected movements in the Consumer Price Index, considering also unrealized past earnings which resulted from percentage increases being applied during the life of, rather than at the commencement of, contract years. In further support of the propriety of this standard, the Police People have cited evidence of general prevalence of like standards among other regional police departments and in other area employment as evidenced by compensation levels in effect there. The Union has anticipated the Employer's "ability to pay" defense, particularly in light of the Waldert decision which has compelled the Employer to include within operating budget expenditures, subject to the 2% State Constitutional Tax Limitation, certain formerly excludable payroll costs. In this connection, the Union has enumerated certain savings and, in some cases, Employer-conceded unanticipated revenue items accruing beneficially. Additionally, it has developed a compilation of strategies which the Employer has devised to offset much of the impact of Waldert, and enumerated certain other economies or resources which it contends the Employer may at its initiative choose to exploit in order to meet its "just"

commitment to its Police People as embodied in the Union plea before this Arbitration Panel.

The Employer concedes it has implemented economics but, in fact, maintains that many, along with some "windfall" revenues are nonrecurrent in nature. Other sources of savings have been "wrung dry," and the fiscal plague of Waldert continues to cast a pall over the Budget Director's life and times. Other economies or additional revenue sources, the Employer notes, provide monies which may only be employed in the capital, rather than operating, budget - and, therefore, even if realized would not alleviate the burden imposed by increased salary obligations.

In the Panel's view, the salary issue represents a confrontation of rights. Basically, we conclude the Union position is fundamentally persuasive respecting tracking of the Consumer Price Index and extrapolating over the now dimly-illuminated year ahead. The numbers may require some refining, and we cannot accept in toto the notion that a given percentage movement in Consumer Price Index should be echoed by an equivalent movement in compensation levels. But, the trends - past and present - are clear and the immediately extrapolated direction, albeit not the precise slope of the trend, for the year ahead has begun to take shape. We cannot deny the painful facts of past and prevailing inflation, and must recognize that the best hope for present intensified efforts to manage prices hopefully will moderate what would otherwise be outrageous down to a level of more modest dimension.

The Employer's immediate past, existing, and likely future problems are also painfully clear. Just as there is hope that rising prices will be contained, there is also the hope and possibility that the Employer will arrange for sharing or assumption of some cost burdens through other auspices, and will enhance its ability to pay correspondingly. There is, in our view, little question that one of the fundamental obligations of a municipality is to provide for public safety, and the results of the survey summarizing citizens' preferences presented by the Locust Club is consistent with expectations. It is, in fact, this parameter which creates a special dilemma for the Employer as the desire - indeed, the commitment - to maintain public safety services at prevailing levels if at all possible is implicit in the Employer's position. It is also clear that the Employer, in the short run, can manage a modest increase out of fund balances, funds allocated to unfilled positions, and out of some unanticipated, and as yet uncommitted, additional revenues. Moreover, the Employer's options respecting staffing are conceded on all sides. We recognize the soundness of the Employer's concern about the impact of current adjustments on future obligations, and the concomitant desire to exercise constraint in face of a shrinking revenue base and other rising costs. However, in our view, the foresight of all parties to this proceeding is limited and, while we may speculate about the challenges one will face around the temporal corner, the fact remains that we must accept certain short-term risk and

reshape future tactics and strategy on an evolutionary basis. In the end, this Panel is charged with developing out of the balance of facts, projections, and conflicting standards of equity a simple set of numbers which, in its judgment, will provide a just determination of the salary issue consistent with the standards of excellence characterizing the Rochester Force.

In the first year of the contract, we have been guided by prevailing salaries among leaders in adjacent communities in Monroe County. These percentages were calculated based upon differences between closing 1978 salaries in Rochester and 1979 salary trends in the surrounding communities. While it is true, as the Employer contends, that Rochester Police personnel will receive in annual earnings in 1978-79, relative to the preceding year, nominally an additional 5% without considering any additional salary adjustments in 1978-79, it is equally true, as the Union implies, that this would not be the case if the entire 1978-79 adjustment had been forthcoming at the beginning of the 1978-79 year.^{1/} We perceive of this argument as having relevance fundamentally as it

^{1/} 1977-78 adjustments were made as follows: 4% July 1, 1977 - 4% January 1, 1978 - 4% April 1, 1978. Without compounding, this would have been the equivalent of a 7% increase at the inception of the year taken over the year. Its effect on the salary structure, however, with compounding, was to raise the salary level by nominally 12.5%. Thus, 1978-79 earnings would, without benefit of any additional increase, be 12.5% minus 7%, or approximately 5.5% higher than in the preceding year.

relates to the Employer's costs, though it does have something of a one-time impact on the Employees. The moot question relating to this impact is, of course, whether it should be viewed as a deprivation sustained by Police personnel in 1977-78, as the Union alleges, or as additional income in 1978-79 as the Employer contends. This is not crucial to the Panel's determination because of our reliance upon year-end salary levels in Rochester relative to prevailing levels among leaders in adjacent areas.

On the basis of our analysis, we conclude that salaries for the contract year 1978-79 should be adjusted by applying a 5.9% increase to all steps set forth in brackets 90 through 95, respectively.

For the year 1979-80, in consideration of certain fringes, ability to pay, compounding effects, and expectations for the economy as a whole, we have settled upon an increase of 6.4% to be applied to all steps in the salary structure for brackets 90 through 95, respectively.

The Panel has reviewed the allocations and evidence relating to the timing of negotiations and the difficulties relating thereto. While the 1978-79 adjustment is retroactive to July 1, 1978, it is our perception that some, at least symbolic, disincentive to procrastination, as well as some compensation for deprivation of the use of earned monies, is appropriate at this time. This is not based on an inference of venal intent, nor does it imply any historical deductions respecting the motivations of

either party. Rather, it is intended to convey and reinforce the view that all reasonable effort should be put forward to expedite negotiations and alleviate bargaining unit anxieties. In addressing ourselves to this concept, we have determined that the Employees shall receive, in addition, a one-time payment in the amount of seventy-five dollars (\$75.00) per person in addition to the retroactive pay settlement. Persons who have not been on the payroll for the full-time period involved should receive pro rata adjustments.

B. MERIT TESTING FOR INVESTIGATOR

The Employer is seeking a change in contract language which consists of the deletion of language relating to testing procedures for the appointment of Investigators. The Union seeks retention of the prior existing language.

The Employer's demand grows out of its perception of its obligations to comply with the determinations of the Monroe County Civil Service Commission within whose purview control resides. This situation is the result of a prior Interest Arbitration decision which altered the salary level and may have similarly altered assignments in the category to promotions. In approaching this issue from various vantage points, the Panel invariably was compelled to focus upon the question of the role and determinations of the Monroe County Civil Service Commission respecting this situation. The Panel has determined that the uncertainty attendant the possible

jurisdiction of the Commission in the Union's view, and the uncertainty of its position in any case, inhibits the Panel's authority effectively to exercise jurisdiction. We, therefore, direct retention of the present language, with the parties reserving their respective rights to negotiate without prejudice following a definitive determination by the Monroe County Civil Service Commission.

C. BLUE CROSS/BLUE SHIELD/BLUE MILLION PLAN

The Union has petitioned for retention of the present basic Blue Cross/Blue Shield Plan, with extended coverage being provided under a new program known as the "Blue Million Plan," which would be substituted for the present Prolonged Illness Plan. The Union asserts that this is a non-cost item relative to the cost which prevailed prior to May 1, 1978. The new proposal would cost approximately one dollar (\$1.00) more per month per individual, and approximately one dollar and forty cents (\$1.40) per month less per family policy. Moreover, the Union, in its brief, submits that "these prices will remain stable during the course of this collective bargaining agreement."

The Employer responds by comparing costs with those paid subsequent to May 1, 1978, which costs were more than 21% higher than those in effect on May 1, 1977. Relative to current costs, the City maintains the added total cost of providing the Blue Million Policy would still amount to approximately \$40,000 per annum.

At the outset, we must consider the magnitude of the

cost consequences at the present point in time. While we concur with the Employer's estimate of the additional cost involved, we also urge that this be appraised in the context of the wage and salary costs in toto. When this is done, we find the cost impact to amount to approximately one-quarter percent (0.25%), or just under 3 mils of payroll dollar. This refers only to the difference between present costs and the proposed policy incorporating the Blue Million feature. The cost of Health and Hospitalization Insurance per se is, of course, very substantial, and concomitantly very valuable. The payment of this benefit to members of the bargaining unit was in a qualitative way at least weighted into our deliberations when considering Consumer Price Index, changes, and other factors involved in the wage and salary determinations.

The Employer has, to the present, committed to provide a package in service, suffering the penalties or benefits arising correspondingly with cost rises or decreases. In the present proceeding, both parties have emphasized costs, though the Union has additionally dwelt upon the escalating cost of prolonged illness which could easily exceed the limits of payment provided under the present extended benefits rider.

The Panel concurs in the appropriateness of a dollar cost measure in treating with a Health and Hospitalization benefit because this is, after all, nothing more than a non-cash wage payment. Implicit also in the Union argument is the notion that it is reasonable and, indeed, at least desirable for the Employer to be knowledgeable at the outset of the contract period, of the cost which will be

entailed in providing the benefit. In this case, the Union asserts costs will not be increased during the life of the Agreement. In accommodating these views, we have concluded the following to be appropriate.

1. The new agreement should provide the continuance of the Blue Cross/Blue Shield coverage with the Blue Million Rider effective as soon as administrative details permit, following issuance of this Award.
2. The Employer's cost should be limited to a premium of \$31.10 per month for single coverage - and \$72.20 per month for family coverage, with any additional costs which may be incurred being recovered through payroll deduction. The parties are to develop the necessary forms legally to authorize such deductions, should they become required, on a standby basis.

D. DENTAL PLAN

The Union, by its own admission, has vacillated on its petition respecting improved dental care. It has finally determined that it is petitioning for the GHI (M-1) Plan. The Employer argues that the Union's vacillations have precluded evaluation of the program and that current Dental Plan should be continued.

Since dental coverage, like Health and Hospitalization Insurance, is a non-cash wage payment, the Panel was unable to debate the salary question without consideration of dental programs. In the end, we recognize substantial soundness in the Employer's objections, but judge that granting this benefit on a deferred basis

would allow the Employer to contain costs for the life of the agreement, at the conclusion of which this, like other matters, will be subject to review. More importantly, we have factored the value of this benefit into our thinking respecting second-year salaries.

We, therefore, award as follows:

Effective on an administratively convenient date in September, 1979, the contract shall provide the Employees with GHI (M-1) coverage, with 100% prosthetics (and orthodontics), subject to the proviso that the Employer shall not be required to contribute more than \$4.10 per month for individual policies - or \$17.31 per month for family coverage. As in the case of Health and Hospitalization Insurance, the parties shall institute a payroll deduction authorization form legally authorizing the withholding of individual contributions on a standby basis.

E. EDUCATIONAL BENEFITS and REIMBURSEMENTS

The expired agreement provides (in Article XIV, Section 2) for educational benefits. In substance, the Employer pays a premium, in the form of a salary benefit of 5% of base pay, to individuals obtaining or holding an Associate Degree in Police Science - and 6.5% of base pay for persons obtaining or holding a Baccalaureate Degree, or higher, in any subject. The City maintains this policy was adopted initially to encourage citizens to join the Police Force, noting that in 1968 only 20 persons took the Civil Service Exam. The need for this incentive, the Employer believes, has vanished since in 1978 over 2,000 persons took the

exam, and of the top-20-scoring candidates, 13 already had college degrees. In effect, these persons receive, upon coming onto the Force, immediate pay increases of 5% or 6.5% and, thus, as new recruits, would be enjoying higher salaries than some senior, experienced colleagues. The Employer argues that the cost of maintaining this benefit, which is based on percentage of salary, rather than a flat dollar allowance, rises in proportion to salary increases and that continuing to provide this benefit to all new recruits exacerbates its cost problems without yielding any additional benefits.

The Union argues that the City originally offered this benefit gratuitously in 1967 on the basis that well-educated officers were an asset to the City. In the Union's view, this is still the case.

A Citizens' Committee on Police Affairs, in its report to the Mayor of Rochester in 1977, lauded the program and encouraged its extension. Moreover, the Union notes, large percentages of people topping promotional lists are recipients of educational incentives.

If there is, in fact, a correlation between occupying a choice position on the promotional list and being the recipient of an educational incentive, we believe it is supportive of the conclusion that the promise of potential promotion will, in itself, serve as an incentive to undertake educational commitments. Moreover, while a Citizens' Committee in 1967 considered educational incentives

crucial to the intellectual upgrading of the Police Force, it seems reasonable to infer that they could not at that time clearly foresee the availability a decade later of college-trained people who would prize membership on the Rochester Police Force. Whether this is due to the effective representation of the Union, or a deterioration in other opportunities, or whether, in fact, the present situation will obtain a decade hence, is unproductively speculative. What is clear, at this moment in time, is that the Employer is wrestling with oppressive fiscal problems and is, to some extent, burdened with an added cost which is designed to overcome a non-existing disinterest in police work among promising, potential recruits. In the Panel's view, the agreement should be amended to eliminate the payment of educational incentives as provided under Article XIV, Section 2, to both new recruits and to all current non-recipients, with the exception of those members of the Force who are currently engaged in programs leading to eligibility, or who undertake such commitments prior to June 30, 1984.

A second aspect of the Employer's proposal relates to payment for courses under the provisions of Article XIV, Section 1. The disagreement between the parties, as it relates to this issue, is somewhat insubstantial. Basically, the Employer is objecting to reimbursement for courses which are unrelated to Police Science and takes issue with the payment of student fees, the purpose of which is to defray the cost of substantially recreational programs offered in the climate of an educational institution. One aspect of the

dispute on which sharp disagreement focuses is that of determining courses for which reimbursement will be offered. Under the City's proposal, the determination of whether a course is Police-employment related would be vested in the Chief of Police. The Union contends this would place the Chief in an untenable position.

We believe that public approval of the benefit provided under the payment for courses could be jeopardized by the practice of providing reimbursement for non-police-work-related courses. We see the adverse image created by such a situation as being more injurious than the relatively small cost involved in itself or the value to the individual. The obverse of this is that the availability of reimbursement for non-police-related courses is so infrequently utilized as to constitute a rather insignificant benefit to members of the bargaining unit as well. The Panel, therefore, holds that the term, "fees," in Article XIV, Section 1, should be struck, and that a provision be incorporated requiring that courses qualifying for reimbursement be police-work related.

We do, however, concur in the Union's view that determinations of eligibility for reimbursement should not depend upon arbitrary determinations by the Chief. In this connection, the parties should develop a policy and procedure for treating with such questions. We are, therefore, remanding this matter to the jurisdiction of the parties for that purpose. The Panel will retain jurisdiction to the extent required to treat with any unresolved differences.

F. WORK WEEK

The Union has proposed changing the present work week from the present five-on, two-off, four-on, two-off cycle to a simple four-on, two-off cycle. The Union notes that other organized Police Forces in Monroe County overwhelmingly work a four-on, two-off schedule. The Union views this as a proposal which could be granted without incurring any endangerment to public safety, basing this contention on an allegedly proved ability "infinitely to expand with its workload demands." Basically, the Union has traced calls per person, offenses dealt with per person, and felony arrests per person per year, from 1950 through 1977, a period during which the work schedule changed from six-one to six-two and, in turn, to the present five-two, four-two work schedule. These schedules, in stated order, represent 312 work days, 273 work days, and 252 work days per annum per person, respectively. Over this period, the calls for service per man per year have more than doubled. The offenses dealt with per man per year have increased five-fold, and felony arrests per man per year have increased about six-fold. Despite this, the calls per man per work day in other county police forces are generally higher, typically by about 20%, than they are in Rochester. The Union asserts that even after granting the proposed four-on, two-off schedule, the projected calls per man per work day in Rochester would be nominally 15% below the average experience in other county departments.

The Employer argues that even with existing staffing,

the Police Union has, during the life of the expired Agreement, raised the issue of manpower shortages and individual safety. The Employer further argues that adoption of a four-two work schedule would entail the hiring of more than 20 new officers to preserve the existing level of service, or a reduction in services, and the layoff of about 30 Police Officers. Moreover, the City notes that while the four-two cycle may, in fact, be the rule in Monroe County towns and villages, the fact remains that about 83% of the Police Officers employed in Monroe County are members of the Rochester City or County Sheriff forces, both of which work a five-two, four-two cycle.

The Panel is uncomfortable with certain aspects of the statistical presentations of both parties. With respect to the City's argument, it seems inconsistent to contend that one option would be to reduce Police services and implement departmental retrenchments to the extent of nearly 30 Police Officers, when, by the City's own calculations, it would be losing the equivalent services of only approximately 20 Officers. Moreover, if it were compelled to enlarge the force as a result of a scheduling change, presumably the new recruits would be at lower longevity step levels so that the cost of employment would be lower than the price paid for services lost through a curtailed schedule. With respect to the Union argument, it seems apparent on its face that there is an elastic limit beyond which workload demands may not be expanded and we intuitively eschew the assertion that the Department has

the "ability infinitely to expand" (page 186, Union brief). However, there is no desire here pedantically to dissect Union language, but rather to deal with philosophies and concepts - and here, too, we find an inconsistency. In addressing itself to the impact of the Waldert decision and the Employer's ability to pay (Union brief, page 30), the Union implicitly recognizes an option open to the Employer, stating that, while it opposes reductions in staffing levels, it recognizes that "...that is a matter for the City, not the Club to decide." Moreover, we think it is significant to give priority to the fact that the roughly 85% of County-wide Police jurisdictions, who enjoy the four-two cycle, employ among them fewer than 20% of the Police Officers in the County, with the other roughly 80% working a five-two, four-two schedule. Moreover, the Panel possesses neither the information nor the competence to assess workloads on a "calls-per-day-per-person basis." The character of the demands made upon the law enforcement person in the City may be typically different from that prevailing in suburban communities, and reliance on simple statistical summaries may prove very deceiving, indeed. On the other hand, we wish not to advance the conclusion that we have examined the virtues of the four-two cycle on its merits in exhaustive detail. Moreover, we cannot rely solely upon the numbers or statistics since with more than 50% of the County Police Officers belonging to the Rochester Department, the practice in effect there will ipso facto constitute prevailing County-wide

practice. Consequently, reliance upon the statistics alone would merely assure us that Rochester does what Rochester, in fact, does.

We are denying award of the four-two work schedule at this time based primarily upon economic considerations, most of which were alluded to during our discussion of the salary issue. We infer the first-year financial burdens imposed by our Award can be accommodated within certain surplusses, some of which will not be recurrent in subsequent years. The City, as the Union contends, appears blessed with ingenious, competent and adept managers. They bear the ultimate burden of allocating funds and adopting alternatives to make possible the implementation of the second-year Award within the bounds of a balanced budget. We must recognize that we are dealing with a complex and fragile economic structure, with precise forecasting, at this point, lying beyond the ken of either party or the Panel. In the face of such uncertainties, we are reluctant to deprive the Employer of a reserve option to which it might have to resort, namely, that of realigning its manpower to fit its resources. Any reductions in services rendered, or increases in individual productivity, which would follow on the heels of the adoption of a four-two cycle at this time, would diminish the degrees of freedom available to the Employer. No period is without its economic problems, but governments, and particularly municipal governments, currently are coping with an acute tax revolt syndrome. The opposing poles of obligations

to the citizenry at large and the aspirations of municipal employees present a serious challenge to those who must accommodate them. In these circumstances, it is prudent to proceed gingerly - and the Panel has adopted the strategy of catering first to less deferrable desires and needs. It is, as previously noted, from this posture, rather than an intrinsic merit appraisal, that we deny the petition for adoption of a four-two work schedule at this time.

G. Work Schedule - Split Shifts

The Club has proposed elimination of the split shift exception which applies to the Criminal Investigation and Plain Clothes detail. This demand relates to the practices sanctioned by Article XVIII, Section 2, Part B, of the expiring Agreement, which, in effect, exempts undercover and plain clothesmen from regular hour assignments, placing them on a flexible work schedule. Membership in this detail is on a voluntary basis. It is conceded by all that individuals so employed are, on occasion, required to work for a brief period in the morning, return home, and report back to work in the evening or at night. On other occasions, the Officer might not report at all in the morning but, rather, would work that night on what the Employer describes is a modified, flex-time schedule. The Union contends this practice is stressful for the individual and injurious to family life in general. The Employer notes that these "undercover" men work in this division

on a volunteer basis, and that the alleged stresses on rest, recreation and family life can be dealt with voluntarily by transferring out of the unit at any time. Moreover, the Employer contends there exists a long list of volunteers requesting this assignment.

The Panel recognizes that irregular hours involved in the Plain Clothes Division's work do necessarily extract a price from the individual. We are, however, constrained to recognize that this condition is known to the individual at the time he volunteers and, if a personal reevaluation is underway, there can be no reasonable expectation that it will not persist due to the special nature of the work performed. We are also impressed by the uncontroverted evidence to the effect that this condition has not been a source of grievance, nor identified as a problem, in labor/management meetings. In consideration or review of all the facts known to us, we concur with the Employer respecting this issue.

H. RETROACTIVITY and CONTINUATION

The Club has requested retroactivity on salaries effective July 1, 1978, a position with which this Panel has indicated its concurrence at an earlier juncture herein.

The Club has also petitioned for the award of a provision which would guarantee firstly that all provisions of the '78-'80 Agreement with which we are here concerned shall survive beyond

the expiration date of June 30, 1980, in the absence of a successor agreement, and that such a successor agreement, when negotiated, shall be retroactive to July 1, 1980. It is the Club's position that this will deter the Employer from procrastinating in negotiating a successor agreement and, failing this, will, in any event, assure the bargaining unit of continuation of the benefits awarded by this Panel, plus any enhancement to which the Club members may become entitled in a successor agreement.

The Employer argues against the Club's proposal on legal grounds, in essence noting that this would be violative of Section 209, Subsection 4, Paragraph C, of the Civil Service Law, Clause VI, which states:

"The determination of the Public Arbitration Panel shall be final and binding upon the parties for the period prescribed by the Panel but, in no event, shall such period exceed two years from the termination date of any previous collective bargaining agreement..."

The Employer additionally submits that the proposed continuation and retroactivity provisions following June 30, 1980, could well be in conflict in that the Employer would, on one hand, be obligated to maintain certain conditions which might be in conflict with conditions which it is required retroactively to provide.

We are not extremely diffident about devising language addressing the problem of conflicting requirements, and dissent from the Employer's view as it relates thereto. The matter of

the time limits over which the Panel's determinations may be deemed effective is a different matter, and we are here constrained to share the Employer's view. Indeed, to mandate retroactivity in a successor agreement would clearly constitute intrusion into a collective bargaining procedure which, at its inception, is reserved unto the parties themselves as a matter of law and public policy. Interest Arbitration may, at that point in time, exist in an entirely different form. In any event, the present Panel serves only on an ad hoc basis, and may not, in our view, extend its jurisdiction beyond the instant proceeding.

The Retroactivity Award of this Panel has been set forth in connection with the only issue to which it applies, namely, compensation. The duration of the Award is not a subject of controversy. Both parties are in agreement that it shall be for a two-year period commencing July 1, 1978, and terminating June 30, 1980.

III. AWARD

The Award in the matter of the impasse issues identified in the petitions of the parties is as follows:

A. ARTICLE III, POLICE SALARIES

Salaries of bargaining unit Employees shall be increased as follows:

- 1) Effective July 1, 1978, through and including June 30,

1979, the salary schedule for all steps in brackets 90 through 95 inclusive shall be increased by 5.9%. Additionally, all bargaining unit members shall receive a one-time payment of \$75.00, with the exception of those recruited subsequent to July 1, 1978, who shall receive a pro rata amount based on actual service up to the date of this Award.

- 2) Effective July 1, 1979, through and including June 30, 1980, the salary schedule shall, at all steps, in annual bracket 90 through 95, shall be increased by 6.4%.

B. ARTICLE V, MERIT TESTING FOR INVESTIGATOR

The contractual provisions of the expired Agreement relating to this issue shall be retained on the basis outlined in the Opinion section of this Award.

C. BLUE CROSS/BLUE SHIELD - BLUE MILLION EXTENDED COVERAGE

Effective with the issuance of this Award, plus a reasonable allowance for coping with administrative details, the Employees shall be provided with Blue Cross/Blue Shield and the Blue Million Extended Coverage Program, with a ceiling being imposed upon the Employer's contribution at an entry level of \$31.10 per month for a single policy - and \$72.22 per month for a family policy. Future premium increases which may occur are to be absorbed on a payroll deduction basis.

D. ARTICLE XI, DENTAL PLAN

Effective on an administratively-convenient date in September, 1979, the Dental Plan shall be GHI (M-1), with 100% prosthetics and orthodontics, with the Employer's contribution to be capped at \$4.10 per month for individual coverage and \$17.31 per month for family coverage, with any increases above this level to be absorbed on a payroll deduction basis as outlined in the Opinion section.

E. ARTICLE XIV, EDUCATIONAL BENEFITS

Persons entering the ranks of the Department subsequent to the issuance of this Award shall not be provided with educational incentives. Persons who are currently members of the Force, who have already entered into a program of study or who undertake such a program prior to June 30, 1984, shall be entitled to earned educational incentive compensation.

F. EDUCATIONAL INCENTIVE - COURSE REIMBURSEMENT

Effective with the first term of study following issuance of this Award, the contractual obligation to reimburse for fees shall be deleted. The Employer shall continue to provide reimbursement as outlined in Article XIV, Section 1, for tuitions and books involved in the pursuit of police-work-related courses. Pursuant to the procedure set forth in the Opinion, the parties shall negotiate procedure and policies to be employed to

determine eligibility for reimbursement on a course basis, with the present Panel retaining jurisdiction for the sole and limited purpose of resolving any surviving impasse relating thereto.

G. ARTICLE XVIII, WORK WEEK

The contract shall provide for continuing application of the five-two, four-two duty cycle.

H. ARTICLE XVIII, WORK SCHEDULE - SPLIT SHIFTS

The contractual terms and implied practices of the expired Agreement respecting split shifts shall be carried over into the successor Agreement.

I. ARTICLE XXXIV, CONTINUATION CLAUSE and RETROACTIVITY

The successor Agreement flowing from this Award shall be effective from July 1, 1978, through June 30, 1980. The Club's request for continuity and automatic retroactivity in the successor Agreement is denied.

The Award provisions immediately above are inclusive of all impasse items brought before the Panel for resolution.

Respectfully submitted,

Summer Shapiro
Summer Shapiro, Chairman
64 Darroch Road
Delmar, NY 12054

Date 4/18/79

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

On the 18th day of April, 1979,
before me came Summer Shapiro,
to me known to be the individual who
executed the foregoing instrument
and acknowledged that he executed same.

Robert C. Comins
Notary Public

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

(Concurring)

William L. Holcomb
William L. Holcomb
Employer-designated Panel Member
127 Deerpark Blvd.
Buffalo, NY 14217

Date 4/13/79

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

On the 13 day of April, 1979,
before me came _____,
to me known to be the individual who
executed the foregoing instrument
and acknowledged that he executed same.

John A. Ash
Notary Public

JOHN A. ASH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 19, 1980

(Concurring)

Gary W. Van Son
Gary W. VanSon, Esq.
Employee Organization-designated
Panel Member
450 Reynolds Arcade Bldg.
Rochester, NY 14614

Date 4/13/79

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

On the 13 day of April, 1979,
before me came Gary VanSon,
to me known to be the individual who
executed the foregoing instrument
and acknowledged that he executed same.

Barbara J. Walley
Notary Public

BARBARA J. WALLEY
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires March 30, 1980