

U. S. PUBLIC EMPLOYMENT
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CONCILIATION

In the Matter of Compulsory
Interest Arbitration

between

City of Buffalo, New York

and

Police Benevolent Association

U. S. PUBLIC EMPLOYMENT
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RESEARCH

Case Number: IA 156

Arbitration Panel: John E. Drotning, Chairman
Richard Planavsky
Nicholas J. Sargent

I) Hearings

Hearings were held before the public arbitration panel in accordance with section 209.4 of the Civil Service Law (as amended July 1, 1977) on May 28, June 19, 20, and 30, 1980 in the State Office (Donovan) Building in Buffalo, New York.

Appearing for the Police Benevolent Association were: Mr. Anthony DeJames; Mr. Larry Baehre; Mr. John Lydon; Inspector Philip Francis; and, Mr. Edward Fennell. Appearing for the City of Buffalo were: Mr. Joseph Carney; Paul Figueroa, Esq.; Mr. Michael Rehak; Mr. Salvatore Morreale; and, Commissioner Cunningham.

The parties were given full opportunity to question one another and to submit written evidence and documentation in support of their respective positions.

Transcripts of the four hearings were taken. Post hearing briefs were filed by August 5, 1980.

II) Positions of the Parties

A) Police Benevolent Association

The Association petitioned for Compulsory Interest Arbitration because no agreement was reached on the following demands of the PBA.

Proposal #1

Salary Increment Plus "COLA" Adjustment:

Effective July 1, 1980, the City shall pay to all employees represented by the Union a salary increase of fifteen percent (15%). In addition, all employees covered by this Agreement shall receive a quarterly cost-of-living allowance ("COLA") as set forth below.

The amount of COLA adjustment shall be determined on the basis of the percentage rise in the Consumer Price Index (Buffalo area). The first quarter COLA adjustment shall be paid October 1, 1980, using the Index base of 1967 = 100.

Proposal #2

Longevity Payments:

An employee shall be entitled to a longevity payment of \$300.00 upon completion of five (5) years' service and \$50.00 additional for every year of completed service thereafter up to a maximum of \$1,300.00.

<u>Years of Service</u>	<u>Payment</u>
Five	\$ 300.00
Six	350.00
Seven	400.00
Eight	450.00
:	:
:	:
Twenty-five	1,300.00

Proposal #3Reporting Time:

An employee shall be entitled to the 30-minute daily reporting time at time and one-half (1 1/2) when he is unable to report to duty as the result of an injury that occurred during the scope of his employment.

Proposal #4Overtime:

All work performed in excess of forty (40) hours per week or eight (8) hours per day shall be paid at one and one-half (1 1/2) times an employee's basic hourly rate inclusive of shift differential or other compensation to which the employee is entitled.

Proposal #5Night Shift Differential

There shall be a 10% night shift differential applicable to all employees assigned to rotating tours of duty for all work actually performed between the hours of 4:00 p.m. and 8:00 a.m. provided that at least four (4) hours are actually worked after 4:00 p.m. and before 8:00 a.m.

Proposal #6Uniform Allowance

The City shall pay an annual uniform allowance of \$500.00 in two equal payments of \$250.00 each. Such payments will be made on or before September 15 and May 15 respectively.

Proposal #7Dental Plan

The City shall provide all employees covered by this Agreement full dental coverage inclusive of prosthetics and orthodontics coverage.

Proposal #8

Blue Cross - Blue Shield

The City shall provide all employees covered by this Agreement, in addition to the current health insurance benefits, the Two Hundred Fifty Thousand (\$250,000.00) dollars Major Medical Rider (\$50.00 deductible) together with all Blue Cross-Blue Shield Riders that are currently paid for by the employees. In addition, all of the foregoing riders shall include coverage for dependent children to age 23 (Rider 8 Blue Cross - Blue Shield).

Proposal #9

Additional Vacation Entitlement

Each employee shall receive one (1) additional vacation day for each year employed by the City after 15 years up to a maximum of seven (7) weeks vacation.

Proposal #10

Sick Leave Incentive

Any employee who reports sick (excluding duty-related) on five or less hours of duty during the calendar year shall receive five (5) days' pay at the employee's daily rate of pay.

Proposal #11

Non-Cancellation of Personal Leave

The Department shall not deny personal leave days except for public emergencies as declared by the Mayor and the actual full mobilization of the Department.

Proposal #12

Seniority as the Basis for Transfers, Assignments, Etc.

The Department recognizes seniority in filling vacancies, transfers, assignments, details, etc. and shall appoint that qualified employee who has the greatest seniority in the grade eligible for such appointment.

Proposal #13Personnel File

An employee, at his request, shall be permitted to examine his entire personnel file, medical file, or any other file maintained on him. An employee shall be entitled to have copies made of everything inside any of the files maintained on him, so as to preclude insertion of material in the folder which the employee has not been given the opportunity to review. Any derogatory or inaccurate information in the employee's file, where no disciplinary action was taken after an investigation, shall be expunged and destroyed in the presence of the member.

Proposal #14Re-Imbursement of Legal Fees and Court Costs

If an employee is named as a defendant in a civil action, or is charged or indicted in a criminal proceeding, as a result of activities pursued by the employee in the discharge of his duties, whether on or off duty, the City shall pay all legal fees and court costs incurred by the employee in his defense of said actions and proceedings immediately upon receipt of the employee's demand. Any disputes arising under this section shall be submitted to the grievance and arbitration procedure of this contract.

Proposal #15

The City shall indemnify all employees acting within the scope of authority and in the proper performance of their duties, protecting them from legal actions against them which shall include, but not be limited to, civil suits, false arrest suits, detention or imprisonment, malicious prosecution, libel, slander, defamation or violation of right of privacy, wrongful entry or eviction or other invasion of right of private occupancy, and invasion of civil rights, and which shall cover both compensatory and punitive damages on both the state and federal level.

B) City of Buffalo

The City of Buffalo also placed certain proposals on the table which were not resolved in the bargaining process. These are as follows:

Proposal B-1

Salaries

The City of Buffalo agrees to increase PBA salaries by 3% in 1980, 2% in 1980 and 3% in 1982.

Proposal B-2

In 2.3, add a new paragraph to read: "Reporting time shall be accumulated over a year's time and paid in a lump sum in the month of June".

Proposal B-3

In 2.7(b), delete present language and add the following: "The rank of Police Officer shall have a starting salary and four incremental steps. The incremental steps shall be obtained on the member's anniversary date of hire. A member will reach the maximum salary in four years from his date of hire."

Proposal B-4

In Article II, add a new section to read: "Effective July 1, 1980, preferential rates of pay for employees formerly holding Desk Lieutenant rank shall be abolished. These employees shall receive the normal compensation paid to Police Officers."

Proposal B-5

Delete entire Article VI, and replace with the following: "All permanent employees shall be entitled to five personal leave days with pay each fiscal year.

Personal leave entitlement shall be at the rate of

.416 of a day earned for each month of active service within a fiscal year, and shall be noncumulative beyond said year. Such personal leave may be taken in advance for the total number of anticipated months in active service during said fiscal year. Months in active service shall be defined as a month in which an employee is compensated for ten days or more. Employees who receive excess personal leave entitlement shall repay such excess hours taken in money or time as determined by the Commissioner.

Personal leave may be used at the employee's discretion, provided that he gives at least forty-eight hours' notice, in writing, to his superior, except where an emergency situation makes the giving of notice impossible, and, provided further, that his absence will not seriously hamper or impede the necessary work of either his department or unit. Personal leave shall be taken in whole working days only.

In cases of emergency which makes the giving of notice impossible, the employee, upon return to work, shall provide his superior with an explanation of the emergency, and the superior shall have the right to determine the cause as unacceptable for use of personal leave."

Proposal B-6

In Article VII, add the following phrase to the end of the first sentence: "up to and including the day of burial".

Proposal B-7

In 8.2, add a new paragraph to read: "The City will grant a leave of absence without pay to an employee elected as President of the Buffalo Police Benevolent Association. Such leave shall be for the President's term(s) of office. An employee elected as President shall be required to apply for such leave of absence."

Proposal B-8

In Article XVII, between "assignment" and "he shall", add "for more than two consecutive days".

Proposal B-9

In Article XIX, delete sections (a) and (b), and replace with the following: "A total annual uniform allowance of \$300 (\$25 per credited month) shall be paid by the City based on actual months of service in a benefit period prior to payment. Payment periods will be on or about September 15 and May 15 respectively of each calendar year. The employee shall be responsible for the purchase, maintenance, and replacement of all items of clothing.

Actual months of service for the purpose of this Article shall be defined as a calendar month in which an employee is compensated for all but two working days in that month. Time compensated for under provisions of Section 207-c of the General Municipal Law shall not be counted as eligible days for uniform allowance. Only those employees required to wear a uniform as part of their normal daily duties shall receive the uniform allowance."

Proposal B-10

In 21.1, delete the phrase "continue full payment of", and replace with the following: "provide".

Add a new paragraph to read: "The City contribution rate for family policy shall have a ceiling of \$846 per year, and for a single policy, a ceiling of \$332. Increases in future premiums over those stated above will be absolved by the employee on a payroll-deduction basis."

In 21.2, add a new paragraph to read: "The City contribution rate for dental premiums shall have a ceiling of \$13.28 per month. Increases in future premiums over \$13.26 per month will be absolved by the employee on a payroll-deduction basis."

Proposal B-11

In Article XXIV, delete section (c), and replace with the following: "Longevity payments shall be paid in 26.1 installments included in the biweekly paychecks, commencing with the pay period in which an employee's anniversary date of hire occurs."

Proposal B-12

A new article to read: "Effective July 1, 1980, Inspectors shall be assigned Police Department vehicles for Police Department official business only. Use for any other reason shall be prohibited."

III) Arguments and Testimony of the Parties

The arguments of each will be organized in accordance with Section 209.4 of the Civil Service Law as amended July 1, 1977. First, let us look at the ability to pay arguments, the criterion outlined by Section 209.4(V) (b).

A) ABILITY TO PAY - Section 209.4(V) (b)

1) Police Benevolent Association

Mr. Edward Fennell, a consultant for the PBA, analyzed the financial situation of the City of Buffalo. In short, the PBA asserts that Buffalo cannot successfully argue that it is financially unable to meet the demands of the PBA. City administrators, argues the PBA, have managed so well since the financial crisis of 1974-76, that Buffalo's gross bonded debt has decreased by nearly \$80 Million. The PBA notes that the City has had annual surpluses since 1976.

More specifically, the PBA points out that as of May 10, 1979, the Tax Levying Limitation in Buffalo was \$ 69.5 Million and the Debt Contracting Limitation was \$312.6 Million. As of May 1980, the Tax Levying Limitation increased by about \$ 4.9 Million and the Debt Contracting Limitation grew by \$ 21.1 Million (see pages 2 and 3 of PBA Exhibit A). The PBA went on to estimate that the maximum tax revenue in fiscal 1979-80 was \$ 93.2 Million compared to an actual tax levy of \$82.1

million leaving the City with a tax levying margin of about \$ 11.1 million (see page 4 of PBA Exhibit A).

In similar fashion, the PBA states that in fiscal 1979-80, Buffalo could have incurred debt in the amount of \$312.6 million but, in fact, its actual net debt was \$81.9 million, leaving a borrowing capacity of about \$231.0 million (see page 2 of PBA Exhibit A).

Thus, the PBA concludes that the City now has some room to maneuver - a situation which did not exist in the year immediately following the financial crisis of 1974-76.

The PBA cited statistics which showed that Buffalo had reduced its Gross Bonded Debt from about \$187 million in 1974 to \$108 million in 1980. This latter figure, it notes, is only \$4 million higher than the Gross Bonded Debt in 1970 (see page 8 of PBA Exhibit A). Thus, asserts the PBA, the reduction in Gross Bonded Debt since 1974 means that principal and interest payments on this debt are significantly less now than in prior years. The PBA also stated that as of March 31, 1980, there were tax and revenue obligations of \$ 45 million and this, combined with the Gross Bonded Debt, meant a total debt (excluding lease obligations) of \$ 153.8 million (see page 9 of PBA Exhibit A). The PBA notes that the short term debt involves interest, but not principal costs, since these short term instruments are a wash and are primarily used for cash flow problems. Thus, according to

the PBA, Buffalo now has the lowest Gross Bonded Debt since 1970 and its short term debt is \$35 million less than it was in 1975.

The PBA also analysed Buffalo's annual financial statements of revenue and expenditure. It claims that as of September 11, 1979, Buffalo's deficit was \$13.7 million (see page 10 and 11 of PBA Exhibit A), a decrease of \$372,000 from 1978. Moreover, it asserts that the unreserved deficit has decreased from \$34.4 million in 1975 to about \$15.0 million in 1979 (see pages 10 and 11 of PBA Exhibit A). In addition, the PBA goes on to point out that revenues have exceeded expenses since 1976 and that this amount has ranged between \$14.4 million surplus in 1977 to a low of \$.372 million in 1979. It also estimates that the surplus as of June 30, 1980 could be as large as \$9.0 million. If the \$9.0 million figure were realized, the City could then reduce its accumulated deficit in half.

The PBA also considered revenue and expenditure items between 1978-79 and 1980-81. It claims that revenues and expenses will increase about 11% between these periods. It goes on to point out that a 1% in the PBA payroll is about \$225,000 which involves a .0012 % increase in the total estimated expenses.

In its post hearing brief on ability to pay issue, the PBA notes the difficulties inherent in understanding municipal finances and budgeting. It presents textbook quotes explaining the practical necessity for public officials to include in

municipal budgets "soft" appropriations and over appropriations and to make use of mechanisms for transferring funds. It then shows how the financial workings in the City of Buffalo conform to these general expectations. Its brief summarized Dr. Heim's testimony regarding retirement appropriations and the PBA's brief noted "this item as one example of 'soft' appropriations".

The brief also analyzed surplus figures for 1979-80. It found Actual Revenues for State Aid and Sales Tax items to be \$ 4.8 million less than anticipated but the Interest Earned revenue item to be \$ 4.0 million more than budgeted. These provided a net revenue figure (budgeted - actual) of -\$0.8 million. The expenditure items show the actual expenditures were between \$ 5.3 million to \$ 7.3 million less than what had been appropriated for the deficit reduction and for other departments plus a \$ 2.5 million Retirement Savings item. These data summed up to mean, claims the PBA, that the City's fiscal 1979-80 year ended with a surplus of \$ 7.0 million to \$ 9.0 million.

In addition to "soft appropriations", the PBA claims that budget expenditure figures are overestimated to allow the mayor and Council to review and revise these budgetary estimates during the year. It claims that Dr. Heim's testimony during the oral presentations and cross examination clearly shows that "his track record in using overestimations to control policy is amply evident".

The PBA discusses the role of State Aid. It says that because of Buffalo's economic condition, that the State Aid per capita works out to be higher than for other cities (except for New York City). This State Aid formula for municipalities is a function of population, full property valuation, and personal income date. The PBA is of the opinion that since the purpose of State Aid is to equalize or at least minimize the differences in the ability of municipalities to maintain municipal services and to pay for them, that Buffalo's per capita state aid of \$217.67 "demonstrates the value of State Aid formula in enhancing Buffalo's ability to pay."

The PBA notes that in fiscal 1979-80, when the City ended with a budgetary surplus of between \$ 7.0 million to \$ 9.0 million, State Aid amounted to \$54.1 million. The accrued deficit was planned to be reduced by \$ 2.3 million in that fiscal year, but according to the PBA, it could be further reduced by an additional \$ 4.7 to \$ 6.7 million because of the budgetary surplus. It contends that the State might be of the opinion that Buffalo received more State Aid than it needed and, in view of this, that the City administrators are doing more budget "charading" than might normally be expected.

The PBA's brief also pointed out the relationship between State Aid and the taxing limitations. It posits that Buffalo's tax margin is greater than that of other municipalities because of the infusion of State Aid which recognizes the tax burden

and personal income level of the residents of Buffalo. The PBA notes that the tax limit for Buffalo for 1979-80 was \$69.5 million and for 1980-81, \$ 74.4 million. The \$69.5 million limit was not reached in 1979-80 by a margin of \$11.1 million. The PBA further estimated that a \$1.0 million increase in taxes would require an increase in the tax levy per \$1000 assessed value to be \$.9988 and this would cover a 1.5% raise.

Furthermore, the PBA pointed out that State Aid decisions for the City's fiscal year are not made until towards the end of the fiscal year (Spring). This means, according to the PBA, that the City's budget estimates are often not realistic and that there has got to be a good deal of negotiating between city officials and the state legislative and executive branches during the year.

The negotiable nature of State Aid plus the timing of State Aid decisions, according to the PBA, makes any "inability to pay" statements which the City makes on the basis of State Aid factors to be only suppositions, full of uncertainties, and not useful in determining actual or real ability to pay for the purposes of wage negotiations with the PBA or as a guide for the Arbitration panel.

The PBA, thus, contends that State Aid enhances Buffalo's ability to pay and compensates for Buffalo's comparative economic weaknesses. That the amount in the budget is uncertain should not inhibit the panel's report.

2) City of Buffalo

The City opens its brief by asserting that Buffalo was "the ninth neediest city in the nation" in 1978 and the nation's most distressed in 1975. These findings, asserts the City, allow the implication that Buffalo is one of the poorest municipalities in New York State. Moreover, goes on the City's brief, Buffalo's per capita income was lower than "large portions of Mississippi - the poorest state in the country." At the same time, Buffalo claims that its tax rate is the fifth (5th) highest amount 90 American cities. This means that Buffalo's per capita expenditures for police protection were above average for all cities examined by both the PBA and the City. The City's brief goes on to note that Buffalo police salaries are high relative to the incomes of City residents.

The City's brief reiterated the oral testimony to the effect that Buffalo has suffered from a chronic fiscal problem since the early 1970's and it has reduced the City payroll by about 32% since 1970. Moreover, the inadequate income of Buffalo has forced it to fall behind in capital construction needs.

The financial outlook for Buffalo, asserts the City's brief, is bleak into 1980 and 1981. Buffalo is beginning the current fiscal year with a deficit as a result of a bookkeeping entry which classifies State Aid intended for this year as income in the past fiscal year and last year's surplus cannot

be used for salaries, but must be applied to the existing deficit. Moreover, the City notes that the current tax rate is unrealistic and this coupled with a loss in population will further reduce Federal, State, and County aid.

Buffalo has, points out the brief, had deficits in 6 of the last 10 years and the surplus in two of three years was ephemeral since the School system carried deficits.

The City summarized its economic ability to pay as follows:

A. General Conclusion

1. The City of Buffalo depends upon a deteriorating local economy for its ability to finance governmental operations, including its ability to pay wage increases to its police. By any responsible measure of the situation, the economy of the City of Buffalo is in decline. Population is dropping; employment is off; real income is off; and all the measures normally used to judge the capacity of a municipality and of its taxpayers are in decline.

2. With respect to its finances, the City is increasingly dependent upon the State for assistance. It has not repaid a substantial deficit accumulated over the decade. It must exercise fiscal restraint to demonstrate to the State the necessity and prudence of continuing State fiscal support. And it must demonstrate to the bond market its intention of protecting those individuals and institutions who loan money to Buffalo.

3. Buffalo police are not disadvantaged economically by their current pay levels. Relative to the cost-of-living, relative to the income of city taxpayers, and relative to comparable police units in the local area, State and nation, they are reasonably and appropriately paid.

B. Economic Factors

1. Population: The City of Buffalo is continuing the population decline which began in 1950. Since that date city residents have declined to below 400,000, a drop greater than 33%. Projections by the NYS Dept. of Commerce foresee continued decline for the decade of the 80's.

The fall in population speaks to the economic viability of the city, not only in the numbers of persons who have left Buffalo, but importantly, in the substitution of poverty level population for the upper-middle and middle classes of the city who have gone to the suburbs and elsewhere.

2. Employment: Employment in the City of Buffalo is continuing a 20 year decline which has seen a 25% drop in the non-agricultural sector. The Buffalo Area, comprising Erie and Niagara counties, has stable employment, but this is due to employment gains outside the city which has offset the latter's loss of jobs.

3. Income: The average income of City of Buffalo residents is below that of the Buffalo SMSA (Erie, Niagara, Chautauqua and Cattaraugus counties), below the state of New York, and below the average for the U.S. The situation has not changed since 1969. Whether measured by family income, per capita money income (spendable income), or per capita personal income, the City of Buffalo shows a high concentration of poverty. In 1975, the median family in the City received \$12,600 as compared to \$14,300 in the SMSA and \$15,288 for the State as a whole. The gap in personal income between Buffalo City and the SMSA widened in 1971 and 1972 and has continued ever since. By all measures of income, Buffalo is a depressed area.

4. Business Activity: Since 1970, business activity in Buffalo has slipped below every major area of New York State except Utica-Rome. The Business Activity Index prepared by the N.Y.S. Department of Commerce is a comprehensive indicator of manufacturing, retail, wholesale, transportation, utility and financial activity. Thus the City, indeed the entire Buffalo area, has slipped on a broad front. The pronounced decline of the 1975 recession worsened the City's relative position, and it continues to fall behind the rest of the State.

5. Retail Sales: Retail sales are not only an indicator of economic activity, but are also a direct component of the fiscal base of the city government through the sales tax. Comparing the index of retail sales for NYS with that of the City of Buffalo, growth statewide is far in excess of the city, the gap widening during the recession of 1975. Removing the inflationary component shows an absolute decline in retail sales in the City of Buffalo over the entire decade of the 70's. This demonstrates not only the economic deterioration of the city, but more directly, a direct deterioration of its tax base.

6. Construction: In the City of Buffalo, residential construction has been virtually at a standstill since the early 1970's. Non-residential construction is a more volatile indicator, showing peaks and troughs in alternate years depending on the existence of a large-scale project. The general downtrend in Buffalo is inescapable. (It is only fair to note that construction throughout the state, indeed through the country, had diminished in recent years, but the long trend of decline in Buffalo underscores the City's economic decay). When construction is taken in concert with population, employment, income and sales, the only plausible conclusion on the Buffalo economy is that it is not healthy, continues its decline in spite of efforts to improve it, and shows a reduction in the ability of city taxpayers to support municipal operations.

C. Fiscal Factors

1. Dependence on the State: The City of Buffalo increasingly depends upon State Aid to balance its budget. A special municipal overburden program and advances in other aid enabled Buffalo to bridge a serious fiscal crisis in the mid 1970's. The continuation of substantial aid is necessary for the City and requires both extensive lobbying in Albany and continued evidence that the city budget, including payroll, is held to the smallest reasonable and necessary level.

2. Real Property Taxes: Locally raised revenues continue to be dominated by the property tax even while real property values in the city are declining.

The full value of City property is distorted by a change in the State's calculation of the City's equalization rate. In order to allow the City to exceed what

were its constitutional taxing limits, the State recalculated the value of property, permitting higher taxes by increasing full value.

Buffalo residents face unduly high property taxes. Several points should be noted in support of that conclusion:

- a. The underlying value of Buffalo property has not increased in recent years. The apparent rise is due solely to a change in the State's computational practice.
- b. Revaluation to 100% (under court mandate) would increase residential property taxes by 23% in contrast with decreases for other major classes of property.
- c. The constitutional tax limit is not a recommended tax level, but a maximum, above which the framers saw substantial fiscal danger.
- d. In comparison with residential property in other parts of the state, Buffalo is a high taxing area. (Note that market ratios for residential property, not equalization rates, must be used for proper comparison.)

B) COMPARABILITY arguments - Section 209.4(V)(a)

1) Police Benevolent Association

The PBA argues, in a general sense, that comparable governmental units should be those that are similar in size, work load, and population density to Buffalo. Thus, it sets forth the comparable areas as:

Nassau County
Suffolk County
New York City
Syracuse City
Rochester City
Yonkers City
Niagara Falls City
Lackawanna City
Amherst Town
Tonawanda Town

The PBA also advances the argument that small towns like Orchard Park and West Seneca are inappropriate comparison just as are cities outside New York State.

The PBA makes the following statements with respect to the comparison list:

1. Buffalo Police earn the lowest longevity stipend (see Page 16 of PBA's brief).
2. Buffalo pays its Police at or near the bottom area in the comparison list (see PBA brief, page 17).
3. Buffalo Police get no night shift differential. The same is true of Cheektowaga, Lackawanna, and Amherst (see PBA Brief, page 18).
4. The PBA's Total Compensation Table (see PBA brief, page 19) shows Buffalo at the bottom of the comparison list.

These facts, asserts the PBA, should force the conclusion that the PBA demands should be met. The PBA goes on to note that inability to pay must be distinguished from resolvable fiscal problems.

The PBA also notes that the 61% differential between the pay of Buffalo and New York City Police cannot be justified by the higher cost of living in New York City (see PBA brief, page 21). Moreover, Buffalo cannot justify paying its Police Officers 38% less than Rochester and 19% less than Syracuse. These latter two areas are comparable to Buffalo in tax rates and per capita income (see PBA Brief, pages 21 - 24).

The PBA goes on to note that Buffalo police accepted 4% in 1978 and 4% in 1979 because of the City's financial plight. This problem, argues the PBA, has been substantially resolved in 1980, and the City can no longer cry poverty.

The PBA recognizes that ability to pay is a relevant factor, but it advances the argument that the Panel must balance the statutory criteria (see PBA Brief, pages 25 and 26). The PBA argues that the City's "7 and 6" offers to other municipal employees is not a maximum and it asserts that a higher settlement with the Police will not bankrupt the City (PBA brief, page 26). The PBA also notes that many of the City employees have not settled. Moreover, the PBA notes that the Firefighters rejected the City's "7 and 6" offer.

The PBA goes on to note that the City's effort to impose

a "7 and 6" settlement on all employees is not compatible with the spirit and intent of the Civil Service Law, Section 209.4(V) (a), says the PBA, dictates comparison of police with police, not with municipal white or blue collar workers (see PBA Brief, page 29).

The PBA also discussed the impact of inflation and it noted that the CPI has more than doubled since 1970. It generated data which showed the income in 1980 necessary to maintain one's 1970 standard of living. It argued that the increase in the CPI has cut the real income of Buffalo Police Officers.

2) City of Buffalo

The City presented exhibits labelled 1 - 14 which show salary and related data for the list of areas generated by the PBA and these data are shown in the Table on page 24. In addition, the City introduced a survey done by the City of Philadelphia which illustrated uniform allowance and health insurance benefits for twenty-nine (29) U.S. cities with populations of at least 450,000 persons.

The City also submitted data showing salary increases for selected City bargaining units (see City Exhibit #16) over the period 1970-1979. In addition, the City introduced the

CITY EMPLOYEES 1-19 + BUFFALO

AREA	STEP #1 SALARY	YRS TO MAX	EFF Date	PERIOD TIME	LEAVE TIME	LONGEVITY	HOURS	OUTR TIME	DEB DAYS	MAX SAL.
SUFFOLK CITY	17168	4	7/1/80	NO	T 1/2	500 - 6 yrs 700 - 10 yrs 900 - 15 yrs	12 @ T 1/2	-	5	24681
CHESTER	14354	3	7/1/80	NO	ST MIN-3	150 - 6 yrs 275 - 12 "	13 @ ST		5	18764
YONKERS	13798	3	7/1/80	5 1/2 hrs @ S.T.	T 1/2 MIN-3	370 - 8 yrs 470 - 12 "	11 @ S.T.	YES	4 2 hours over	19000
NIMARA FALLS	15767	2	7/1/80	15 min	1150 RSP	Yes -	12 @ S.T.		3	18229
New York City	15247	3	10/1/79	15 min	T 1/2	110 - 5 yrs 100 - 10 "	11 DAYS ADDED TO BASE	YES	1	19341
ROCHESTER	16324	2 1/2	7/1/80	NO	ST MIN-3	500 @ 3 yrs UP TO 1150			4	19010
AMHERST	13653	3	4/1/80	2 1/2 hrs WK	ST MIN-4	250 - 5 yrs 350 - 7 yrs 450 - 10 "	13 CAN SELL BUT IF WEEK RELIEF HOL PAY 1ST	NO	6	18155
TONAWANDA CITY	13157	3	4/1/80	NO	ST MIN-4	275 - 5 yrs 475 - 10 "	13		3	16219
WEST SENECGA	15545	2	4/1/80	NO	ST MIN-4	200 - 5 yrs 250 - 8 "	12		4	17675
TONAWANDA TOWN	13664	3	4/1/80	1/2 HR	T 1/2 MIN-4	300 - 5 yrs 500 - 7 yrs	13 FLOREA T 1/2		6	17749
NASSAU COUNTY		3 or 4	4/1/79	NO	NO	600 - 6 yrs 900 - 10 "	12 plus pay if WEEK	YES @ T 1/2	5	22600
SYRACUSE		5	4/1/80	NO	ST 20 1/2	200 - 10 yrs 200 - 5 yrs	10	COMP THREE	1	17738
LACONIA	15276	3	4/1/80	NO	COMP TIME	150 - 10 yrs 250 - 15 "	13 1/2		6	18158
BUFFALO	12768	2	4/1/77	15 min @ T 1/2	ST MIN-4	100 - 5 yrs 110 - 10 yrs 300 - 15 yrs 700 - 20 yrs 600 - 25 yrs	12 @ T 1/2		7	16252

most recent agreements between the City and the Crossing Guards (see City Exhibit #17); The Pipe Caulkers and Repairmen's Local No. 18029 (see City Exhibit #18); AFSCME, Local 650 (see City Exhibit #19); Operating Engineers, Local 71 (see City Exhibit #20). The City emphasized that these unions settled with the City for a 7% increase effective 7/1/80 and a 6% increase effective 7/21/81.

The City also presented information with respect to the economic viability of Buffalo. It argued that Buffalo was a depressed area and supported its contentions with exhibits identified as City Exhibit #22 and #23.

The City argued that Buffalo Police Officers' salaries have kept pace with the CPI between 1967 and 1980 as noted by City Exhibit #24. The City also presented data on Buffalo price indices, wage settlements in general, and their relation to CPI changes. In addition, it noted that the cost of Buffalo's police payroll was 10th out of 21 American cities of comparable size and 10th out of 14 geographically proximate areas.

C) COMPARATIVE PECULIARITIES - Section 209.4(V)(c)

1) PBA

The PBA argued that its productivity has increased dramatically over the past ten years; namely, crime has risen and the size of the bargaining unit has fallen. The shortfall of manpower, argues the PBA, increases the dangers of police work and it documents its claim in pages 43 -47 of its brief. It also presented the following table which, in the PBA's view, illustrates the uniqueness of a police officer's job.

<u>Police</u>	<u>Other Employees</u>
1. Have powers/authority	No special power/authority
2. Carry gun on/off duty	Not required
3. Semi-military status	Civilian status
4. On duty when off duty	Off duty when off duty
5. Approval required for 2nd job	No approval required
6. Restricted from certain types of jobs and hours	No restriction
7. Subject to Rules, Regulations, Orders, Procedures and a host of other laws, decisions	Subject to minimal job regulations
8. Election laws restrict political activity	No restriction
9. Subject to recall at any time	Rarely subject to recall
10. Often appears in court on days off, etc.	Rarely called back on day off
11. Work shift rotation	Mostly days - no rotation
12. Works weekends, holidays, 3 shifts	Generally off on week-ends, holidays
13. Injuries on duty - common	Less likely to be injured on duty
14. Work in all weather and disasters	Less likely to work in bad weather
15. Bad act of a member reflects on all	No reflection on others
16. Suicide rate highest due to job stress	Less pressure, less frustration less suicide
17. Divorce rate high	Less divorce
18. Must wear uniform	No uniform
19. No Workman's Compensation for loss of sight, hearing limbs, etc.	Workman's Compensation
20. Job hazardous, risks great	Generally less hazardous

2) City

The City's brief did not focus on the peculiarities of police work, but confined itself to the financial plight of the City and the claim that the "7 and 6" settlements with other municipal unions was a fair offer.

IV) Discussion and Award

The task of the Compulsory Interest Arbitration Panel is to rule on the unresolved issues. The Panel's decisions bind the parties and the Panel members are fully aware of this awesome responsibility and are cognizant of the consequences of ill considered recommendations. Thus, it is appropriate to make some prefatory comments before turning to the recommendations.

Buffalo is presently and has been a relatively poor municipality. Moreover, there is no indication that this state of affairs will change in the near future. From the late 1950's to the middle 1960's, Buffalo experienced net out-migration of people in the prime working ages. This reflected the diminution of the importance of private sector activity in the Buffalo area and is illustrated by the fact that Buffalo no longer is the home office of any major corporation.

On the positive side of the ledger is the fact that the current Administration as attested to by both parties, has done an extremely creditable job of managing Buffalo's financial affairs and resolving the financial crisis of 1973-1975. However, these successful efforts have not turned Buffalo into a municipality that can be relatively unconcerned about its ability to pay.

However, given this comment, it is important to note

that Buffalo residents must be prepared to support the uniformed services as well as other municipal employees. A fair and equitable wage increase for Buffalo's police cannot be continually denied on the grounds of inability to pay. At the same time, this Panel cannot eliminate the comparative inequities between Buffalo Police and officers of other comparable communities. The City Administration has attempted to reduce this gap by its final "7 & 6" offer.

It is also important to note that the Panel cannot be proxies for municipal financial officers. It is not the Panel's task to audit the city finances in order to identify funds as a result of line item over and under budgeting. Budgets change over time and efforts to identify actual versus budgeted dollars do not create new money. The Panel listened carefully to a good deal of oral testimony and this in conjunction with the post hearing briefs is the basis for the following recommendations.

1) Salary

The arguments of each party were considered in light of Section 209.4(V) (a), (b), and (c). Moreover the constraints of Section 209.4(V) (d) were also incorporated into the Panel's Award.

Let us first note that budgets are not written in stone; they are estimates and subject to continuous revisions. The

PBA presented a straight forward analysis at the outset of the Hearing. This was followed by a post hearing statement which focused more on budget quirks. That is, the latter document dealt with over-estimations and transfers and was more difficult to follow than the earlier presentation. What is clear is that budgeting is an awfully complex process and the arguments and counter-arguments by the parties make it difficult for the Panel to accurately assess "the City's ability to pay". However, the PBA analysis raised questions about the possible re-allocation of funds.

In addition, the PBA also discussed the State limitations on tax levys and debt. However, these are not goals to shoot for but rather state created measures to protect the citizens from present or future irresponsible and/or politically motivated financial management as well as to be indicators of declining economic health of a municipality.

It is true that Buffalo has leeway to levy more taxes and to contract more debt. However, assessed valuation is declining and full valuation is rising only because of changes in state authorized equalization ratios and increased tax levied on the basis of \$1000 assessed value becomes more and more burdensome for homeowners.

The upshot of the respective arguments is that the PBA's arguments on ability to pay are somewhat more persuasive than the City's position that it is in a financial bind, but the ability to pay criterion is one that cannot be measured precisely.

The PBA also argued that its contract ought to be distinguished from that of other bargaining units largely because of the inherent dangers involved in police work. This is true and the ever increasing crime statistics lend some credence to this argument.

Perhaps the most telling of all the arguments is the one dealing with comparability. A beginning officer's salary in Buffalo is presently \$12,768 and it rises to \$16,252 (includes 12 holidays) after two years. This is \$1423 or about 8 per cent less than West Seneca; \$1903 or a little over 10% less than Amherst; about the same as Tonawanda City; and about \$1497 or 8% less than the Town of Tonawanda. Moreover, it is well below a patrolman's maximum salary in Rochester and Syracuse.

On the plus side is the fact that Buffalo police receive reporting time and they have a longevity schedule which is roughly equivalent to that of police officers in geographically proximate areas.

It must be clear that the relatively low maximum and starting salary for Buffalo Police Officers cannot be corrected by this award since the amount of the adjustment would bankrupt the City. However, the difference should not be allowed to increase and the gap narrowed to some extent.

One other useful piece of information is a series of recent settlements between municipalities and their local PBA bargaining agent as reported in the PERB Bulletin, August 1980, Vol. 11, No. 3. These are as follows:

Recent Settlements for PBA

Municipality	Entry	# Steps to Max.	Max.	% Increase	
				79-80	80-81
Dewitt (Onondaga)	15,115	5	17,367	7	7
Ramapo (Rockland)	13,075	5	21,880	6½	6
Riverhead (Suffolk)		5	21,477	7	7
Newburgh	12,070	6	15,265	4	4
Cheektowaga				7	7½
Orangetown (Rockland)				6	6

All things considered, it is the judgement of the Panel that the Salary be as follows:

The base salary (patrolman) shall be increased 7.7 per cent, effective July 1, 1980 and increased by 6.8 per cent effective July 1, 1981.

John E. Drotning
 John E. Drotning
 7/12/80

 Nicholas J. Sargent

Richard Planavsky
 Richard Planavsky
 7/12/80

The rest of the Panel recommendations will be made without discussion, but all economic issues were considered in light of each parties' arguments.

2) Blue Cross - Blue Shield

It is recommended that this clause remain unchanged from the 1978-80 contract.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

3) Dental Insurance

The Dental Insurance will remain as it is in the 1978-80 contract.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

4) Vacations

The vacation clause shall remain as it is in the 1978-80 contract.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

5) Sick Leave

The sick leave provision shall remain as it is in the 1978-80 contract.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

6) Reporting Time

It is recommended that patrolmen injured in the line of duty continue to receive 30 minutes of reporting time per day.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

7) Non-cancellation of Leave

The non-cancellation of personal leave clause shall remain as it is in the 1978-80 contract.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

8) Seniority Clause

The seniority clause shall remain
as it is in the 1978-80 contract.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

9) Personnel File

The personnel file clause will remain
as it is in the 1978-80 contract.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

10) Civil Indemnification

It is recommended that the language
proposed by the City with respect to
Civil Indemnification be incorporated
into the new Agreement.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

11) Starting Step

It is recommended that the rank of
Police Officer shall have a starting
salary and four incremental steps. The

incremental steps shall be observed on the Officer's date of hire. A member will reach the maximum salary four years from his date of hire.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

12) Personal Leave

It is recommended that personal leave be as follows:

- 2 days after one year of service
- 4 days after two years of service
- 7 days after three years of service

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

13) Overtime

It is recommended that overtime be as follows:

All work performed in excess of forty (40) hours in five (5) days or eight (8) hours per day shall be paid at one and one half (1½) times an employee's basic hourly rate inclusive of shift differential or other compensation to which the employee is entitled.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

14) Desk Lieutenants

It is recommended that as of July 1, 1980, preferential rates of pay for employees formerly holding Desk Lieutenant rank be abolished. These employees shall receive the normal compensation paid to Police Officers.

John E. Drotning

Nicholas J. Sargent

Richard Planavsky

9/12/80

9/12/80

15) Automobiles

It is recommended that effective July 1, 1980, Inspectors shall be assigned Police Department vehicles for Police Department Official Business only.

John E. Drotning

Nicholas J. Sargent

Richard Planavsky

9/12/80

9/12/80

16) Other City Demands

It is recommended that the City withdraw items: B-1, B-2, B-5 in part, B-6, B-7, B-8, B-9, B-10 and B-11.

John E. Drotning

Nicholas J. Sargent

Richard Planavsky

9/12/80

9/12/80

17) PBA President Leave of Absence

It is recommended that this demand
by the City be denied.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

18) Cost of Living Allowance

It is recommended that this PBA
demand be denied.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

19) Longevity

It is recommended that longevity
remain as it is in the 1978-80 contract.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

20) Night Shift Differential

It is recommended that this demand
be denied.

John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
9/12/80

21) Uniform Allowance

It is recommended that the uniform allowance provision remain as it is in the 1978-80 Contract.

John E. Drotning
John E. Drotning
9/12/80

Nicholas J. Sargent

Richard Planavsky
Richard Planavsky
9/12/80

This report is respectfully submitted.

John E. Drotning 9/12/80
John E. Drotning

Nicholas J. Sargent

Richard Planavsky 9/12/80
Richard Planavsky

U. S. PUBLIC EMPLOYMENT
RELATIONS
RECEIVED
NOV 4 1981

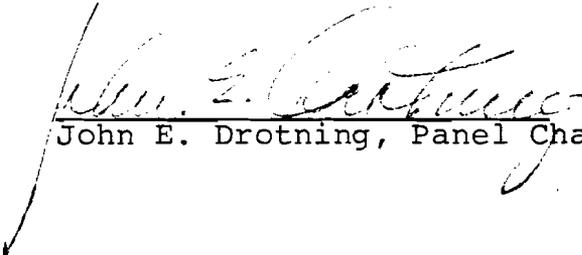
RECONCILIATION

Bases for
Interest Arbitration Award
of 9/12/80

City of Buffalo

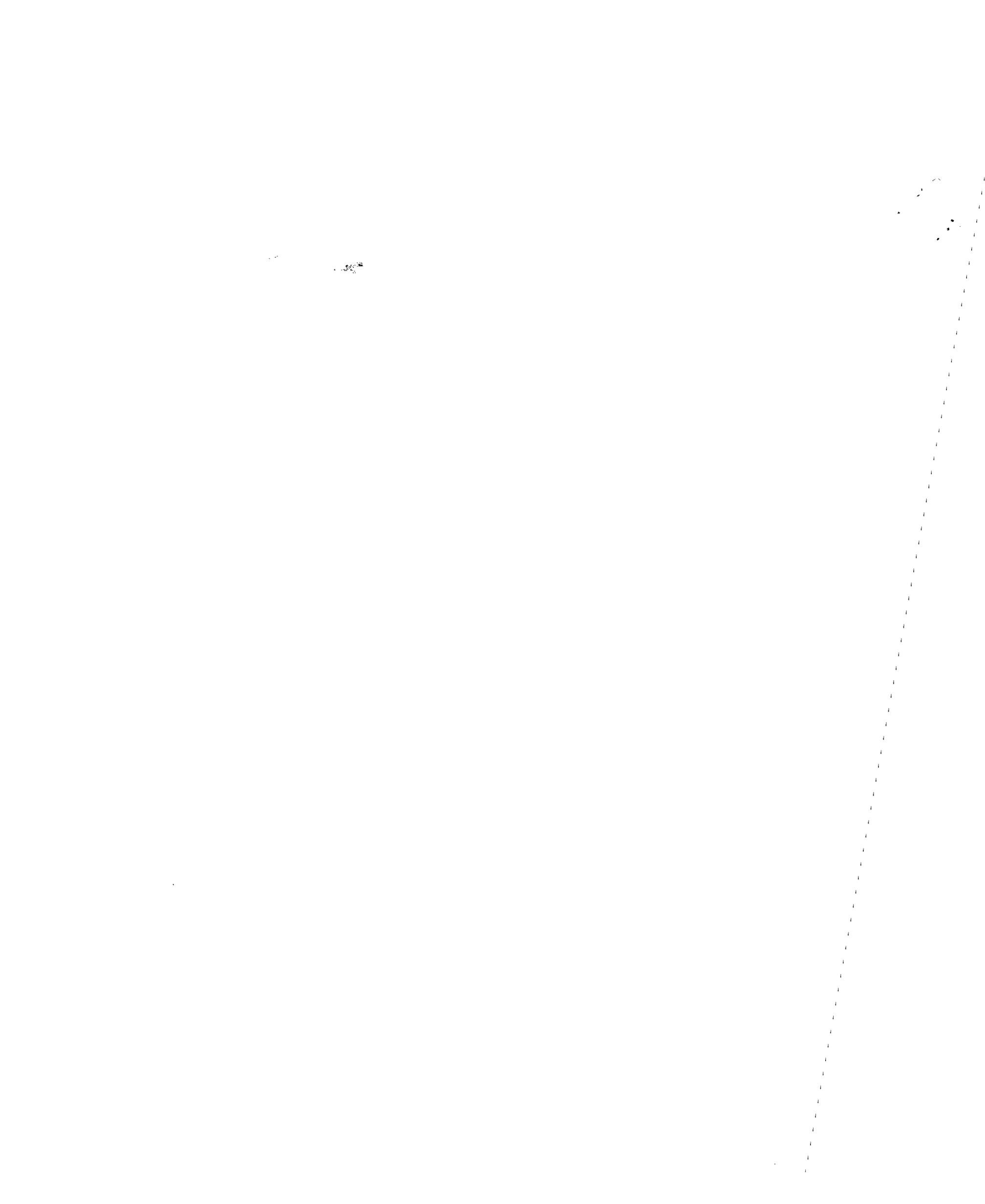
and

Buffalo Police Benevolent Association


John E. Drotning, Panel Chairman

Richard Planavsky, Panel Member

Nicholas J. Sargent, Panel Member



In accordance with the order of the Appellate Division in the matter of Buffalo Police Benevolent Association vs. City of Buffalo the Public Arbitration Panel in PERB case IA-156:M79-518 states the following in order that it may "specify the bases for its findings" in said PERB case.

The Panel examined all 27 contract proposals submitted by the petitioner and respondent for determination. The examination and subsequent specification of the bases for the findings of the Panel were done in accordance with the provisions of the Taylor Law which provides in part that "the Public Arbitration Panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination the Panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b) The interest and welfare of the public and the financial ability of the public employer to pay.

c) Comparison of peculiarities in regard to other trades or professions, including specifically:

- 1) hazards of employment
- 2) physical qualifications
- 3) educational qualifications
- 4) mental qualifications
- 5) job training and skills

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

THE FOLLOWING IS INTENDED TO SUPPLEMENT THE INFORMATION PROVIDED WITH THE AWARD OF SEPTEMBER 12, 1980 AS DIRECTED BY THE COURT.

CITY PROPOSAL NO. 1

SALARIES

The City of Buffalo agrees to increase PBA salaries by 3% on July 1, 1980, and 2% on July 1, 1981.

UNION PROPOSAL NO. 1

SALARY INCREMENT PLUS "COLA" ADJUSTMENT

Effective July 1, 1980 the City shall pay to all employees represented by the Union a salary increase of 15%. In addition, all employees covered by this agreement shall receive a quarterly cost of living allowance (COLA) as set forth below.

The amount of COLA adjustment shall be determined on the basis of the percentage rise in the Consumer Price Index (Buffalo area). The first quarter COLA adjustment shall be paid October 1, 1980 using the Index base of 1967=100.

Note:

City Proposal No. 1 and Union Proposal No. 1 both concern salary increases and shall be considered together. The discussion of proposals City No. 1 and Union No. 1 also includes consideration of the length and duration of the agreement.

1) AWARD OF THE PANEL

The base salary (patrolman) shall be increased 7.7% effective July 1, 1980 and increased by 6.8% effective July 1, 1981.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

City Exhibits Nos. 1 through 14 show the salaries of police officers in fourteen communities of New York State. City Exhibit Nos. 17 through 20 show memoranda of agreement with four City unions, voluntarily negotiated, which provide for a 7% salary increase in fiscal 1980-81 and 6% salary increase in fiscal 1981-82. No provisions for a COLA adjustment are provided in these agreements. In addition, Joint Exhibits 2 and 3 show a voluntarily negotiated agreement between the City and the Firefighters Union which provide for similar 7% and 6% increases. The latter was rejected in a vote by the Union. City Exhibit 16 indicates PBA and other City union salary increases since 1970.

City Exhibit 25, Table 6, shows work force reductions in the City of Buffalo since 1970. The City contended that the Police Department has received preferential treatment in these reductions, i.e., has been cut back less than other City departments. The Union countered that some of the other departments cut contained many patronage workers not vital to the performance of City functions.

Table 1 in the PBA brief indicates a number of municipalities and police officer salary amounts. An analysis of the Table indicates that (1) Effective dates are not shown, (2) A salary additive known as reporting time, which is received by Buffalo police, is not included, (3) A salary increase for Buffalo police for fiscal 1980-81 is not included.

In City Exhibit 25, Table 5, entitled "Workload and Safety Statistics - Staff Employed per 1000 Residents for Major Services in New York State's 4 Middle Sized Cities", the City pointed out that Buffalo had 3.6 Police Department personnel for every 1,000 of population, while four other similar-sized cities in New York had less: Rochester, 3.0; Syracuse, 3.0; Yonkers, 3.0.

The Union questioned the percentage of staff used in the comparison that were sworn staff.

In City Exhibit 25, Table 7, the City contends that Buffalo ranked near the top in a comparison of fourteen New York communities in which police salaries are compared to average family income in the communities which employ them. Union Exhibits 30, 35-38, 41-43, 45 and 46 indicate that on the average, the Buffalo police officer works about the same number of hours per week as do police officers in the other New York communities in the Exhibits. Similarly, insofar as Union Exhibits 30, 35-38, 41-43, 45 and 46 gave indications of the conditions of employment of police officers in other communities as compared to Buffalo, Buffalo is comparable in many respects to other communities in the Exhibits.

The PBA pointed out the uniqueness of the police officer's job in comparison with other employees on pages 43 through 47 of its brief. The City conceded that police officers sometimes work under "very adverse conditions", but the City pointed out that it has no trouble recruiting for police officer positions.

The City pointed out in testimony that the 1980-81 City budget provided funding for salary increases of approximately 7%. The City provided a great deal of testimony on its point that the future fiscal outlook for the City is clouded by the prospect of rising expenditure needs and decline, stagnation, or uncertainty in some key revenue areas. The City pointed out that in the 1981-82 fiscal year, revenues of the City will adversely be affected by the result of the 1980 census. This census is expected to produce a decreased population for Buffalo in the area of 20% to 25%. This reduction in population would affect City revenues in the following areas: federal revenue sharing, state revenue sharing, Erie County sales tax.

In City Exhibit 25, Table 9, the City outlined "Buffalo's Inability to Trim Other Areas of its 1980-81 Budget to Finance Additional Benefits for its Employee Unions". The City's argument with respect to this Table is that, "In light of these facts and prior year's experience, including our inability to meet budgeted surplus goals in two of the last four years, the Arbitration Panel is strongly urged to reject any arguments that a 'few hundred thousand' in unbudgeted union benefits can be absorbed without seriously affecting the Budget." The Union demand of a 15 percent plus cost-of-living salary increase, according to the City's post-hearing brief, "amounts to a cost of over \$8 million".

Joint Exhibit 1 is the bargaining agreement between the parties for the period July 1, 1978 through June 30, 1980, a contract which was voluntarily signed by the parties. Exhibit 31 shows an Arbitration Award which modified the prior agreement between the parties and resulted in a contract for the period 1976 through 1978. City Exhibit 16 shows salary increases provided to the PBA in past collective agreements and arbitration awards between the parties.

B) ANALYSIS OF THE PANEL

City Exhibits 1 through 14 and Table 1 in the PBA brief were examined by the Panel in order to determine what salary additives such as reporting time were or were not included in the information provided, what the effective dates were for salaries provided, and how Buffalo police salaries would compare if raised by 7.7% on July 1, 1980 and 6.8% on July 1, 1981. If the 1980 salaries of the municipalities were ranked in order of amount, and if these amounts included the salary additive of reporting time received, if any, Buffalo police (including a 7.7% raise) would rank approximately in the middle or lower-to-middle of the survey, depending upon whether the municipalities

shown by the City or the PBA respectively were used.

The Panel found no significant reason to conclude that, in general, the conditions of employment of police officers in the City of Buffalo are significantly different from the conditions of employment of police officers in other comparable communities in New York State. The salaries of Buffalo police officers are comparable to the salaries of police officers in other New York municipalities when analyzed relative to the average salaries of the families in the municipalities which provide these police officer salaries.

A look at City Exhibit 16 indicates that generally, PBA salary increases have been relatively consistent with increases provided other City unions in the last ten years. Four other City unions have already agreed, voluntarily, to raises of 7% and 6% for fiscal 1980-82, with no provisions for COLA adjustments. While all departments in the City were reduced an average of 32 percent in staff from the period 1970 through 1979, the Police Department was reduced only 20 percent.

The Panel takes notice of the fact that the police officer's job is unique in many ways, but finds important the City's statement that it has no difficulty in finding candidates for police positions.

The City 1980-81 budget provides for salary increases for employees in the neighborhood of 7%. The Panel has awarded 7.7% for 1980-81 for employees represented by the PBA, and this amount exceeds somewhat the upper limit of what the City has said it can afford. However, the Panel has awarded certain City proposals that would save the City modest amounts of money and makes the award affordable to the City. The Panel believes that to exceed the 7.7% that it has awarded and bring Buffalo police officers salaries into line with the salaries of the highest paid police officers in New York State listed in the PBA brief would severely deplete or bankrupt the City budget. The Union's

demand of a 15 percent plus cost-of-living salary increase would most certainly severely deplete the City's budget. Other vital services would have to be cut or eliminated to provide for the PBA's desired salary increase. The latter is clearly not in the interest and welfare of the public, and the City cannot be placed into such a situation by the Panel.

The PBA argument that there are certain funds over-budgeted in the 1980-81 budget, and that this amount that is over-budgeted can be used to increase police officers salaries is not accepted by this Panel. While some budgeted amounts may be in excess of actual expenditure needs in the 1980-81 budget, other budgeted amounts may be less than true expenditure needs. Therefore, the Panel does not see the PBA argument in this matter as valid for providing additional funding for police officers salaries.

The Panel notes that if a one-year award is made, the parties would have to begin almost immediately, negotiations for a successor agreement, and the instabilities brought about by a period of negotiation would again affect the parties. The award is for a two-year agreement. The salary award in the second year is justified in the record. Although the City has a relatively bleak economic outlook for future years, including 1981-82, the City has seen fit to voluntarily negotiate agreements that provide a 6% salary increase for five other City unions for fiscal 1981-82. Once again, the Panel's award exceeds 6% for the PBA, but again, cost-savings provided by the Panel award of certain City proposals will make the award of a salary increase of 6.8% affordable to the City.

It should be noted that the award of the Panel provides a salary increase of 7.7% for fiscal 1980-81 and 6.8% for fiscal 1981-82 for all members of the bargaining unit, except as modified by the new five-step salary schedule awarded by the Panel, which is included.

The Panel took notice of prior collective agreements between the parties and noted that the agreement negotiated for the period just prior to that under consideration was a voluntary agreement. The Panel attempted in its award to be consistent with previous agreements between the parties.

The previous voluntary agreement between the parties will remain in effect except as modified by the Panel in the areas outlined in the Panel's award.

UNION PROPOSAL NO. 2

LONGEVITY PAYMENTS

An employee shall be entitled to a longevity payment of Three Hundred (\$300.) Dollars upon completion of five (5) years' service and Fifty (\$50.) Dollars additional for every year of completed service thereafter up to a maximum of One Thousand Three Hundred (\$1,300.) Dollars.

<u>YEARS OF SERVICE</u>	<u>PAYMENTS</u>
5	\$ 300.00
6	\$ 350.00
7	\$ 400.00
8	\$ 450.00
:	:
:	:
25	\$1300.00

1) AWARD OF THE PANEL

Longevity Payments

It is recommended that longevity remain as it is the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

City Exhibits 1 through 14 show that most municipalities pay police officers higher longevity after 25 years than does Buffalo. However, of the 14 municipalities in City's Exhibits 1 through 14, the majority are within a range of plus or minus Two Hundred (\$200.) Dollars per year of Buffalo. Of the four bargaining agreements signed by the City with its unions for fiscal

1980-82 none contained increases in longevity.

PBA Exhibit 53 indicates those employees represented by the bargaining unit and the number of years of service that they have. Using these figures and the proposed amounts of increase provided for various lengths of service in the PBA proposal, the Panel calculates that this proposal would cost the City an additional Six Hundred Thirteen Thousand Nine Hundred Fifty (\$613,950.) Dollars per year, or over One Million Two Hundred Twenty Seven Thousand Nine Hundred (\$1,227,900.) Dollars over the contract period.

B) ANALYSIS OF THE PANEL

The Panel notes that other bargaining agreements signed with City unions did not provide for increases in longevity and also that the longevity amounts provided for members of the bargaining unit by the City are within a reasonable range of those amounts provided by municipalities shown in City Exhibits 1 through 14. This, when considered with the additional costs of this proposal, caused the Panel to deny this proposal.

UNION PROPOSAL NO. 3

REPORTING TIME

An employee shall be entitled to the thirty (30) minute daily reporting time at time and one half when he is unable to report to duty as the result of an injury that occurred during the scope of his employment.

1) AWARD OF THE PANEL

Reporting time

It is recommended that patrolmen injured in the line of duty continue to receive thirty (30) minutes of reporting time per day.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

City survey Exhibits 1 through 14 indicate that a majority of the surveyed municipalities do not receive reporting time, much less reporting time for those not reporting to work due to injury. The number of employees provided reporting time under this proposal is small as shown in Union Exhibit 54. The City would not have great difficulty in paying the cost of this proposal. The PBA pointed out the potential hazards involved in police work. Reporting time is paid in the prior agreement exclusively to those who report for duty.

B) ANALYSIS OF THE PANEL

The Panel notes that there would be a relatively small cost in awarding this proposal. The Panel was persuaded by the testimony to believe that employees injured in the line of duty should not lose this significant part of their regular salary as a result of lost time due to their injury. Therefore, this proposal was approved.

UNION PROPOSAL NO. 4

OVERTIME

All work performed in excess of forty (40) hours per week or eight (8) hours per day shall be paid at one and one half times an employee's basic hourly rate inclusive of shift differential or other compensation to which the employee is entitled.

1) AWARD OF THE PANEL

Overtime

It is recommended that overtime be as follows: all work performed in excess of forty (40) hours in five (5) days or eight (8) hours per day shall be paid at one and one half times an employee's basic hourly rate inclusive of shift differential or other compensation to which an employee is entitled.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The Police Benevolent Association is the only City union to receive overtime paid at straight time. Union Exhibit 51 refers to 1979-80 overtime. If this overtime were paid at time and one half these costs would be increased 50%. In past agreements between the parties police officers did not receive overtime paid at time and one half.

B) ANALYSIS OF THE PANEL

It was indicated by the Union that overtime work is now being refused in a large measure by employees in the bargaining unit. An award of time and one half for overtime will provide an additional incentive for employees to work overtime. The cost of providing time and one half for overtime would be significant. However, this would be minimized by certain savings realized through approval of certain other City proposals in this award and the rejection

of some of the Union proposals. Therefore, the Union proposal as clarified by the testimony in the record that employees receive a rate of time and one half for the time worked in excess of a regular work shift is reasonable and approved by this Panel.

UNION PROPOSAL NO. 5

NIGHT SHIFT DIFFERENTIAL

There shall be a 10% night shift differential applicable to all employees assigned to rotating tours of duty for all work actually performed between the hours of 4:00 PM and 8:00 AM provided that at least four (4) hours are actually worked after 4:00 PM and before 8:00 AM.

1) AWARD OF THE PANEL

Night Shift Differential

It is recommended that this demand be denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

PBA Exhibit 52 indicates that 306 officers would be eligible for night shift differential. The Panel calculated that 10% of a police officer's pay is presently about One Thousand Six Hundred Dollars (\$1,600). This One Thousand Six Hundred Dollars (\$1,600) times 306 officers would equal an amount just under Five Hundred Thousand (\$500,000) Dollars. Of course, this amount would be increased by the award of this Panel. The PBA did not conclusively prove that an incentive was needed to get men to work the second and third shifts. PBA witness DeJames was asked by a member of the Panel whether or not it was true that a member of the PBA negotiating team had indicated in negotiations, leading up to these hearings, that in fact there "were men wanting to get on the night shift presently that couldn't get on". Witness DeJames' answer to this question was "it may have been". Further, PBA witness Baehre indicated it "doesn't make any difference if there's a line-up of men that want to". The PBA indicated that a night shift differential was warranted because of the

hazards of working nights, disruption of family life and the inconvenience of working the night shifts.

B) ANALYSIS OF THE PANEL

The Panel notes the high cost of implementing this PBA proposal. Further, the Panel believes, from the testimony of witnesses, that night shift differential is presently not needed as an incentive for officers to want to work the night shift. Therefore, the Panel denied this proposal.

UNION PROPOSAL NO. 6

UNIFORM ALLOWANCE

The City shall pay an annual uniform allowance of Five Hundred (\$500.) Dollars in two equal payments of Two Hundred Fifty (\$250.) Dollars each. Such payments will be made on or before September 15 and May 15 respectively.

1) AWARD OF THE PANEL

Uniform Allowance

It is recommended that the uniform allowance provision remain as it is in the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The testimony presented in support of this proposal indicates that the PBA is requesting a Five Hundred (\$500.) Dollar per year uniform allowance, or Two Hundred (\$200.) Dollars more per year per man above the current allocation of Three Hundred (\$300.) Dollars per year. The Panel notes that such a proposal, if adopted, would translate into a 67% increase above the current uniform allocation. The testimony also indicates that the PBA received a 20% increase, or Fifty (\$50.) Dollar per year increase in uniform allowance in the last round of negotiations. It is also noted by the Panel that some members in the bargaining unit that do receive uniform allowance do not wear uniforms, but still receive the uniform allowance. An examination of PBA Exhibits 30, 35-38, 41-43, 45 and 46 shows that Buffalo, at its current Three Hundred (\$300.) Dollar uniform allowance, is relatively consistent with the amounts provided police officers in the municipalities surveyed. City Exhibit 15, the City of Philadelphia survey, notes that Buffalo, at its current uniform allowance ranks

fourth highest in replacing allowance in those cities that do provide a uniform allowance. The record also indicates that there are provisions to replace uniforms that are damaged in the course of duty above and beyond the Three Hundred (\$300.) Dollars per year by filing a claim with the City of Buffalo Common Council.

B) ANALYSIS OF THE PANEL

The Panel concurs with testimony given that recognizes the special nature of police work and agrees that a uniform allowance, that has been provided in the past, is reflective of that special work. However, the proposal of the PBA to increase by 67% the uniform allowance is clearly cost prohibitive and notes that a cost of approximately Two Hundred Ten Thousand (\$210,000.) Dollars per year would be imposed on the City if this request were granted over one year of the contract.

The Panel notes that the uniform allowance was recently increased by 20% and this coupled with the increased cost to the City of increasing this benefit prompted the Panel to deny this proposal.

UNION PROPOSAL NO. 7

DENTAL PLAN

The City shall provide all employees covered by this agreement full dental coverage inclusive of prosthetics and orthodontics coverage.

1) AWARD OF THE PANEL

Dental Insurance

The Dental Insurance will remain as it is in the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The testimony indicates that the PBA is asking for an increased benefit dental plan which would cost Twenty Six Dollars and Two Cents (\$26.02) per month per employee compared with the current cost of Thirteen Dollars and Twenty Eight Cents (\$13.28) per month per employee or an increase of 95.9%. The testimony also indicates that another City union voluntarily accepted a Fifty Cent (\$.50) per month increase in coverage to cover overhead and increased cost of materials and not increased benefits. This Fifty Cent (\$.50) per month per employee increase translates into an additional expense to the City of Six Dollars (\$6.) per year per employee. The PBA proposal, if accepted would increase the cost to the City by One Hundred Fifty Two Dollars and Eighty Eight Cents (\$152.88) per year per employee. The panel also notes in the testimony that no increase was granted the Firefighters Union in the Memorandum in joint Exhibits 2 and 3. In examining PBA Exhibits 30, 35, 36 and 46 it is noted that other police unions in these exhibits do not receive a dental plan at all .

B) ANALYSIS OF THE PANEL

If this PBA proposal were adopted, it would reflect an increase in cost to the City of Buffalo of approximately One Hundred Fifty Eight Thousand (\$158,000.) Dollars per year if every union member were covered. Based on the evidence the Panel believes the City would be hard pressed to pay such an increase in cost when considered in conjunction with other benefits that the Union is being awarded by the panel, and therefore the request of the PBA in this proposal is denied.

UNION PROPOSAL NO. 8

BLUE CROSS - BLUE SHIELD

The City shall provide all employees covered by this agreement, in addition to the current health insurance benefits, the Two Hundred Fifty Thousand (\$250,000.) Dollar Major Medical Rider (Fifty \$50.00 Dollar deductible) together with all Blue Cross/Blue Shield Riders that are currently paid for by the employees. In addition, all of the foregoing riders shall include coverage for dependent children to age 23 (Rider 8, Blue Cross-Blue Shield).

1) AWARD OF THE PANEL

Blue Cross - Blue Shield

It is recommended that this clause remain unchanged from the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The Panel notes that the testimony of the parties contains important information on this Union proposal. A Union witness testified that the current Blue Cross/Blue Shield coverage provided PBA members was the best coverage that was available. In addition, the testimony indicates that in previous contracts the PBA elected to receive an increase in their uniform allowance and not accept increased Blue Cross/Blue Shield coverage, while the City Firefighters Union elected to drop their demand for increased uniform allowance in favor of an increase in their Blue Cross/Blue Shield coverage. City Exhibit 15 indicates that a majority of the cities surveyed require that employees contribute to their Blue Cross/Blue Shield family coverage plan as do City of Buffalo policemen.

B) ANALYSIS OF THE PANEL

In reviewing the exhibits and testimony given by both parties, the Panel concluded that the present Blue Cross/Blue Shield coverage provided for City of Buffalo police officers is very good coverage and no compelling evidence was given that would demonstrate a need to change the coverage that is currently provided. It is also the opinion of the Panel that no compelling evidence was given to demonstrate the need to change the current practice of having police officers contribute a nominal payment to their Blue Cross/Blue Shield plan. It is the opinion of the Panel that the current Blue Cross/Blue Shield coverage and payment plan provided for police officers be continued and that the proposal of the PBA be denied.

UNION PROPOSAL NO. 9

ADDITIONAL VACATION ENTITLEMENT

Each employee shall receive one (1) additional vacation day for each year employed by the City after fifteen (15) years up to a maximum of seven (7) weeks vacation.

1) AWARD OF THE PANEL

Vacations

The vacation clause shall remain as it is in the 1978-80 contract.

2) BASIS FOR THE AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

An analysis of Union Exhibits Nos. 30, 35-38, 41-43, 45 and 46 indicates that for employees with over fifteen (15) years of service, municipalities comparable to Buffalo provide an average of approximately five (5) weeks of vacation. Buffalo police officers receive a maximum of five (5) weeks of vacation after fifteen (15) years of service. The PBA proposal would provide seven (7) weeks of vacation after twenty-five (25) years of service, and this is far in excess of that provided by the comparable municipalities in the said PBA Exhibits. There are 634 personnel, as indicated in PBA Exhibit 53, with more than fifteen (15) years of service. Therefore, the PBA proposal would affect almost 60% of the employees represented by the Union. The City would continue to give police officers five (5) weeks of vacation after fifteen (15) years as per the previous agreement if this PBA proposal is denied by the Panel. In addition to five (5) weeks of vacation, members of the bargaining unit also receive seven (7) personal leave days per year, for a total after fifteen (15) years of service, of thirty-two (32) paid days off per year.

B) ANALYSIS OF THE PANEL

The amount of paid time off received by members of the bargaining unit compares favorably to the amount of paid time off provided to employees in other municipalities.

Approval of this proposal by the Panel would adversely affect the City's already serious manpower shortage problems. Also, overtime costs could go up as a result of increasing vacations for employees. The Panel has awarded time and one-half for overtime. If the Panel also granted this PBA proposal, overtime costs would increase even more.

For the reasons cited above, the Panel denied this PBA proposal.

UNION PROPOSAL NO. 10

SICK LEAVE INCENTIVE

Any employee who reports sick (excluding duty-related) on five (5) or less tours of duty during the calendar year shall receive five (5) days' pay at the employee's daily rate of pay.

1) AWARD OF THE PANEL

Sick Leave

The sick leave provision shall remain as it is in the 1978-80 contract.

2) BASIS FOR THE AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The Panel surveyed Union Exhibits Nos. 30, 35-38, 41-43, 45 and 46 to see what provisions other municipalities had for a sick leave incentive. It was found that a vast majority of these municipalities do not have a sick leave incentive program in the bargaining agreement.

The maximum amount the City could be required to pay under this proposal would be five (5) days' pay times 1,067 employees in the bargaining unit (Union Exhibit 53), or 5,335 days' pay. If 5,335 is divided by 261 working days per year per employee, the maximum cost of this proposal is found to be in the neighborhood of the cost of hiring twenty (20) additional police officers.

Members of the bargaining unit currently are eligible for up to six (6) months of sick leave per year. The Union wants to provide an incentive for employees not to use sick time. The Union claimed that it had the "best sick record in the City".

B) ANALYSIS OF THE PANEL

The Panel notes that the provisions contained in this proposal

are not a common one in comparison to other municipalities, and further, that the implementation of this proposal could have a high cost to the City, especially in view of the generally good record of the Union in taking sick leave. Because of the above reasons, and because the Panel concludes no incentive here is needed, this proposal is denied.

UNION PROPOSAL NO. 11

NON-CANCELLATION OF PERSONAL LEAVE

The Department shall not deny personal leave days except for public emergencies as declared by the Mayor and the actual full mobilization of the Department.

1) AWARD OF THE PANEL

Non-Cancellation of Personal Leave

The Non-Cancellation of Personal Leave clause shall remain as it is in the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

A survey of PBA Exhibits 30, 35-38, 41-43, 45 and 46 indicates that the current restrictions applied to the granting of personal leave in the bargaining agreement between the parties for the period 1978-80 are not unreasonable when compared to similar such provisions in contracts of other municipalities. It is the City's responsibility to see to it that adequate numbers of police officers are on duty at any given time. The nature of the police service is such that, the City must always provide adequate police service to the public.

The prior agreement provided that personal leave required advance departmental approval before it could be taken.

The Union indicated that granting of the Union's time and one half for overtime proposal would "cure this problem" of manpower shortages and help to mitigate the problem of cancellation of personal leave.

B) ANALYSIS OF THE PANEL

Granting unlimited use of personal leave would seriously restrict the

City's ability to insure that adequate numbers of police officers are on duty at all times.

The Union indicated that granting of the Union's time and one half for overtime proposal would "cure this problem" of manpower shortages and help to mitigate the problem of cancellation of personal leave. The Panel is granting the Union proposal of time and one half for overtime.

For the above reasons, the Panel is denying Union Proposal II.

UNION PROPOSAL NO. 12

SENIORITY AS THE BASIS FOR TRANSFERS, ASSIGNMENTS, ETC.

The Department recognizes seniority in filling vacancies, transfers, assignments, details, etc. and shall appoint that qualified employee who has the greatest seniority in the grade eligible for such appointment.

1) AWARD OF THE PANEL

Seniority Clause

The Seniority clause shall remain as it is in the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

An analysis of seniority in the ten bargaining agreements in Union Exhibits 30, 35-38, 41-43, 45 and 46 shows a wide variety of language relating to seniority and makes it difficult to generalize comparisons of seniority provisions among these communities.

The Commissioner of Police in his testimony noted a number of reasons why "it just wouldn't work" in reference to the effects of the implementation of Union Proposal 12. Union witness DeJames indicated "There are some areas that I could see where this could be a drawback" also referring to the possible effects of the implementation of Union Proposal 12. The Commissioner of Police further testified that applying seniority in the manner prescribed by the Union proposal would be "opening a door that might lead to a tragic situation".

B) ANALYSIS OF THE PANEL

The testimony of the Commissioner of Police and the president of

the Union lead this Panel to the conclusion that this Union proposal would not work effectively and could cause serious problems if incorporated into the 1980-82 contract. The proposal is denied.

UNION PROPOSAL NO. 13

PERSONNEL FILE

An employee, at his request, shall be permitted to examine his entire personnel file, medical file, or any other file maintained on him. An employee shall be entitled to have copies made of everything inside any of the files maintained on him so as to preclude insertion of material in the folder which the employee has not been given the opportunity to review. Any derogatory or inaccurate information in the employee's file, where no disciplinary action was taken after an investigation, shall be expunged and destroyed in the presence of the member.

1) AWARD OF THE PANEL

Personnel File

The Personnel File clause will remain as it is in the 1978-80 contract.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

A review of Union Exhibits numbers 30, 35-38, 41-43, 45 and 46 indicates that there is a wide variety of language in the contracts of the various municipalities with their police employees in connection with the rights of employees to examine their personnel files.

The Police Commissioner of the City testified that it would be illegal to open up the files of the Police Commissioner's Investigative Unit (PCIU) for any use other than the use of the PCIU. PBA witness DeJames indicated in a comment to the Commissioner's testimony that "there is a question of law involved". The City noted that currently police personnel are

allowed to examine their personnel and medical files with the exception of PCIU files.

B) ANALYSIS OF THE PANEL

The PBA currently wants the contractual right to look at any file maintained on an individual in the bargaining unit. The City maintained, and this Panel agrees, that such a sweeping contractual provision could be illegal because it would include the PCIU files. The City does allow the members of the Union to look at other personnel and medical files.

Because of the above reasons, the intent of the Panel in its award is that no further language is required in the 1980-82 contract between the parties with respect to this proposal beyond any that might be contained or implied in the 1978-80 agreement, and therefore this proposal was denied.

UNION PROPOSAL NO. 14

REIMBURSEMENT OF LEGAL FEES AND COURT COSTS

If an employee is named as a defendant in a civil action, or is charged or indicted in a criminal proceeding, as a result of activities pursued by the employee in the discharge of his duties, whether on or off duty, the City shall pay all legal fees and court costs incurred by the employee in his defense of said actions and proceedings, immediately upon receipt of the employee's demand. Any disputes arising under this section shall be submitted to the grievance and arbitration procedure of this contract.

1) AWARD OF THE PANEL

Civil Indemnification

It is recommended that the language proposed by the City with respect to Civil Indemnification be incorporated into the new agreement.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

Other municipalities provide for certain protection of their police officers through various types of lawsuit defense as indicated in Union Exhibits Nos. 30, 35-38, 41-43, 45 and 46. The City has found it in the public interest to defend police officers in the case of civil actions. Certain police officers have had civil and criminal charges brought against them for actions taken while in the performance of their duty.

B) ANALYSIS OF THE PANEL

The Panel has examined the types of protection provided by other municipalities for their police officers and notes that the City has in the past defended police officers in the case of civil actions. The Panel believes that in the light of past experience, that police officers should be afforded

protection in the case of civil actions brought against them. It has come to the attention of the panel that General Municipal Law Section 50-k provides for protection in the case of civil actions against employees of the City of New York. The Panel believes that the protection afforded in this provision of Section 50-k should also be extended through the bargaining agreement between the parties to the employees of the City of Buffalo and includes such protection in its award.

UNION PROPOSAL NO. 15

The City shall indemnify all employees acting within the scope of authority and in the proper performance of their duties, protecting them from legal actions against them which shall include, but not be limited to civil suits, false arrest suits, detention or imprisonment, malicious prosecution, libel, slander, defamation or violation of right of privacy, wrongful entry or eviction or other invasion of right of private occupancy, and invasion of civil rights, and which shall cover both compensatory and punitive damages on both the state and federal level.

1) AWARD OF THE PANEL

Civil Indemnification

It is recommended that the language proposed by the City with respect to Civil Indemnification be incorporated into the new agreement.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

Certain other municipalities provide for various types of indemnification of employees in legal actions brought against them for actions taken while acting within the scope of their duties, as noted in PBA Exhibit Nos. 30, 35-38, 41-43, 45 and 46. If the City is required to indemnify its police officers, the expense to the City to pay such damages must be considered because, as noted by the Union in testimony, "no insurance policy could cover punitive damages". There were no provisions in the prior agreement which relate to indemnification of police employees. The Union pointed out instances where police officers were sued for actions taken while in the performance of their duties.

B) ANALYSIS OF THE PANEL

The Panel believes that the nature of police work and the fact that some other municipalities provide various types of indemnification are good reasons why Buffalo police should also have some type of indemnification language in their contract despite the possible costs to the City.

As provided in the Panel's award in Union Proposal No. 14, the Panel once again states that it recommends for inclusion into the bargaining agreement for 1980-82 the language provided in Section 50-k of the General Municipal Law, which provides protection against civil actions for employees of the City of New York, and such protection shall be extended through the bargaining agreement for police employees of the City of Buffalo.

CITY PROPOSAL NO. 2

In 2.3, add a new paragraph to read: "Reporting time shall be accumulated over a year's time and paid in a lump sum in the month of June."

1) AWARD OF THE PANEL

This proposal is denied.

2) BASIS FOR THE AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

Only one municipality of those cited in City Exhibits 1-14 pays lump sum reporting time. This proposal, if adopted, would provide a cost-saving to the City. The City did not specify what amount would be saved. In the prior agreement, 1978-80, reporting time was paid biweekly.

B) ANALYSIS OF THE PANEL

The savings to the City are unclear, and only one other municipality was shown to use this method. Therefore, the Panel sees no significant reason to change the current practice of paying reporting time biweekly.

CITY PROPOSAL NO. 3

In 2.7(b), delete present language and add the following: "The rank of police officer shall have a starting salary and four (4) incremental steps. The incremental steps shall be obtained on the member's anniversary date of hire. A member will reach the maximum salary in four (4) years from his date of hire."

1) AWARD OF THE PANEL

Starting Step

It is recommended that the rank of police officer shall have a starting salary and four (4) incremental steps. The incremental steps shall be observed on the officer's date of hire. A member will reach the maximum salary four (4) years from his date of hire.

<u>OLD</u>	<u>NEW</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>
I	I	12,768	12,768	13,636
	II		13,951	14,899
II	III	14,510	15,135	16,164
	IV		16,319	17,428
III	V	16,252	17,503	18,693

2) BASIS FOR THE AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The Municipal Yearbook, City Exhibit 21, shows an average of the cities listed of four (4) years to the maximum salary. A survey of incremental steps indicated in PBA Exhibit Nos. 30, 35-38, 41-43, 45 and 46 of police contracts of other municipalities of New York indicates that only one (1) has a starting salary and two (2) steps, and the remainder have anywhere from four (4) to six (6) steps. The City indicated that it calculated the cost of other

memoranda of agreement signed with City unions for the contract period 1980-82 as a "net" figure, or net after give-backs. For example, in the Memorandum of Agreement signed with City Firefighters, "they were giving us back roughly Two Hundred Thousand Dollars (\$200,000) in things that cost us money in the past contract". Further, the Firefighters Memorandum contained no 7% increase for new employees. This Firefighter Memorandum of Agreement for the contract period 1980-82 shows that the Firefighters negotiating team accepted a schedule which included a starting step and four (4) incremental steps.

B) ANALYSIS OF THE PANEL

The PBA offered no significant argument against this proposal. The comparability data shows that the City proposal is a reasonable one. The first step for 1980-81 maintains the first step of the 1979-80 salary schedule, and the fifth step for 1980-81 is the top, or third step, of the 1979-80 schedule increased by 7.7%. The third step for 1980-81 is the average of the first and fifth steps for 1980-81, and the second and fourth steps are the average of the first and third, and third and fifth steps respectively for 1980-81. The salaries shown for 1981-82 are the salaries in the new five (5) step schedule increased in each step by 6.8%. This new schedule will represent a "give-back" to the City which can be applied to salary and/or benefit increases in other areas.

CITY PROPOSAL NO. 4

In Article II, add a new section to read: "Effective July 1, 1980, preferential rates of pay for employees formerly holding Desk Lieutenant rank shall be abolished. These employees shall receive the normal compensation paid to Police Officers."

1) AWARD OF THE PANEL

Desk Lieutenants

It is recommended that as of July 1, 1980, preferential rates of pay for employees formerly holding Desk Lieutenant rank be abolished. These employees shall receive the normal compensation paid to Police Officers.

2) BASIS FOR THE AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

A survey of PBA Exhibits Nos. 30, 35-38, 41-43, 45 and 46 generally supports the idea that it is not a common practice to pay a preferential rate to a sub-group of a group of employees that have the same job description. The former Desk Lieutenants are now police officers, but receive a preferential rate of pay that is greater than the pay of the police officer rank. About 74.7% of the Union are the rank of police officer (see Joint Exhibits 2 and 3). This 74.7% of the total of 1,067 police officers (PBA Exhibit 53) is about 797 employees who hold the rank of police officer. Of this group of about 797 police officers, there are approximately 38 in the sub-group of former Desk Lieutenants, or about 5% of the total group that receive a preferential rate of pay. There is no significant evidence in the record to indicate that the 5% who are former Desk Lieutenants perform any other duties than those performed by the approximately 95% of the police officer group who receive less pay. Savings of

approximately Twenty Seven Thousand Dollars (\$27,000) to the City would be achieved through the awarding of this proposal by the Panel. There is no provision in the 1978-80 agreement that provides for preferential rate of pay for former Desk Lieutenants.

B) ANALYSIS OF THE PANEL

The Panel notes that the Union made no significant argument against the City proposal. The Panel considered this along with the evidence in the record that former Desk Lieutenants are now police officers and that the City could realize a savings if this proposal were awarded, and concluded that this proposal should be adopted.

CITY PROPOSAL NO. 5

Delete entire Article VI and replace with the following: "All permanent employees shall be entitled to five (5) personal leave days with pay each fiscal year.

Personal leave entitlement shall be at the rate of .416 of a day earned for each month of active service within a fiscal year and shall be noncumulative beyond said year. Such personal leave may be taken in advance for the total number of anticipated months in active service during said fiscal year. Months in active service shall be defined as a month in which an employee is compensated for ten (10) days or more. Employees who receive excess personal leave entitlement shall repay such excess hours taken in money or time as determined by the Commissioner.

Personal leave may be used at the employee's discretion, provided that he gives at least forty-eight (48) hours' notice, in writing, to his superior, except where an emergency situation makes the giving of notice impossible, and, provided further, that his absence will not seriously hamper or impede the necessary work of either his department or unit. Personal leave shall be taken in whole working days only.

In cases of emergency which makes the giving of notice impossible, the employee, upon return to work, shall provide his superior with an explanation of the emergency, and the superior shall have the right to determine the cause as unacceptable for use of personal leave."

1) AWARD OF THE PANEL

Personal Leave

It is recommended that personal leave be as follows:

- a) Two (2) days after one (1) year of service
- b) Four (4) days after two (2) years of service

c) Seven (7) days after three (3) years of service

2) BASIS FOR THE AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

Memoranda of agreement with Locals 71, 650, and 18029 with the City for the period 1980-82 include a provision whereby new employees represented by the unions would receive personal leave at the following rate:

- a) Two (2) days after one (1) year of service
- b) Four (4) days after two (2) years of service
- c) Six (6) days after three (3) years of service.

Most of the municipalities surveyed in City Exhibits Nos. 1-14 provide less personal leave for employees than does Buffalo. Provisions for the prorating of personal leave are not included in most of the contracts shown in PBA Exhibit Nos. 30, 35-38, 41-43, 45 and 46. The Union indicated that manpower shortages were causing the City to deny personal leave requests made by the Union. All employees currently receive seven (7) personal leave days per year according to the 1978-80 bargaining agreement. Injuries and sick leave were cited as two reasons why personal leave requests might be denied.

B) ANALYSIS OF THE PANEL

The Panel notes that Buffalo grants a relatively high number of personal leave days in relation to other municipalities and that manpower shortages are making it difficult to provide the current number of personal leave days provided in the 1978-80 agreement. The Panel notes that three (3) other City unions have previously agreed voluntarily to a personal leave schedule which would have the effect of reducing the total number of personal leave days given without reducing personal leave days received by those employees having over three (3) years of service. This is a rational compromise between the City and the Union positions and so a schedule as noted is awarded by the Panel.

The Panel sees no compelling evidence to incorporate into its award any aspect of the prorating of personal leave request of the City (fraction of a day earned for each month of service) and denies this part of the City's proposal.

CITY PROPOSAL NO. 6

In Article VII, add the following phrase to the end of the first sentence:
"up to and including the day of burial".

1) AWARD OF THE PANEL

This proposal is denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

A survey of PBA Exhibits Nos. 30, 35-38, 41-43, 45 and 46 indicates that the current amount of bereavement leave received by employees represented by the Union is not unreasonable in comparison with the amount granted by those municipalities listed. The City did not indicate any significant savings would be accrued as a result of adopting this proposal. The 1978-80 contract between the parties called for five (5) days of bereavement leave without reference to less than five (5) days if burial occurred prior to five (5) days after the day of death.

B) ANALYSIS OF THE PANEL

The Panel sees no good reason to change the existing language in the 1978-80 agreement for adoption into the successor agreement. Therefore, this proposal is denied.

CITY PROPOSAL NO. 7

In 8.2, add a new paragraph to read: "The City will grant a leave of absence without pay to an employee elected as President of the Buffalo Police Benevolent Association. Such leave shall be for the President's term(s) of office. An employee elected as President shall be required to apply for such leave of absence."

1) AWARD OF THE PANEL

PBA President Leave of Absence

It is recommended that this demand by the City be denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

A survey of Union Exhibits Nos. 30, 35-38, 41-43, 45 and 46 indicates varying types of paid detached duty for union presidents. Some union presidents in this survey receive full-time detached duty while others receive something less than full-time. In general, there is no clear pattern seen in a survey of these contracts of other municipalities in the State. The Firefighters Memorandum of Agreement for the period 1980-82 would allow full-time paid detached duty for the Union President if such were allowed by the courts. The City contended that "tax dollars should not be used to support Union activities". The 1978-80 agreement between the parties does not specifically provide for full-time paid detached duty for the Union President, although that is the current practice.

B) ANALYSIS OF THE PANEL

The City was satisfied to leave this issue to be resolved by the courts in the agreement that it negotiated for the period 1980-82 with the

Firefighters Union. In light of the current practice, and because the Panel sees no compelling reason in favor, the Panel concluded that this City proposal should be denied.

CITY PROPOSAL NO. 8

In Article XVII between "assignment" and "he shall", add "for more than two (2) consecutive days".

1) AWARD OF THE PANEL

This proposal is denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

City Exhibit 18 shows a Memorandum of Agreement for the period 1980-82 between the City and Local 18029 that provides for acting time pay after five (5) consecutive days of service acting in the higher title. A survey of City Exhibits Nos. 1-14 indicates that a majority of the municipalities surveyed pay acting time after one (1) day or less that an employee has worked in a higher title. The City submitted budgeted figures for acting time, but the savings that could be realized if the City's proposal were adopted were not specified. The 1978-80 agreement between the parties provides for acting time to be paid from the first day.

B) ANALYSIS OF THE PANEL

The savings to be realized by the City through the adoption of this proposal are unclear. This, considered together with the survey results that a majority of other cities pay acting time in a similar manner to Buffalo, lead the Panel to conclude that this proposal should be denied.

CITY PROPOSAL NO. 9

In Article XIX, delete Sections (a) and (b), and replace with the following: "A total annual uniform allowance of Three Hundred Dollars (\$300), (Twenty-five Dollars [\$25] per credited month), shall be paid by the City based on actual months of service in a benefit period prior to payment. Payment periods will be on or about September 15 and May 15 respectively of each calendar year. The employee shall be responsible for the purchase, maintenance and replacement of all items of clothing.

Actual months of service for the purpose of this Article shall be defined as a calendar month in which an employee is compensated for all but two (2) working days in that month. Time compensated for under provisions of Section 207(c) of the General Municipal Law shall not be counted as eligible days for uniform allowance. Only those employees required to wear a uniform as part of their normal daily duties shall receive the uniform allowance."

1) AWARD OF THE PANEL

This proposal is denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

City Exhibit 15 indicates the amount of uniform allowance provided, but not the method of payment. A Check of Union Exhibits Nos. 30, 35-38, 41-43, 45 and 46 indicates that uniform allowance is not commonly paid in the manner proposed by the City. The City did not specify any savings that could be gained through adoption of this proposal. The contract provision providing uniform allowance in the 1978-80 agreement between the parties provides Three Hundred Dollars (\$300) in two (2) payments on September 15 and May 15.

B) ANALYSIS OF THE PANEL

There was no compelling evidence submitted by the City to warrant adoption of City Proposal No. 9. Therefore, this proposal was denied.

CITY PROPOSAL NO. 10

In 21.1 delete the phrase "continue full payment of", and replace with the following: "provide".

Add a new paragraph to read: "The City contribution rate for family policy shall have a ceiling of Eight Hundred Forty Six (\$846.) Dollars per year, and for a single policy, a ceiling of Three Hundred Thirty Two (\$332.) Dollars. Increases in future premiums over those stated above will be absorbed by the employee on a payroll-deduction basis."

In 21.2 add a new paragraph to read: "The City contribution rate for dental premiums shall have a ceiling of Thirteen Dollars Twenty Eight Cents (\$13.28) per month. Increases in future premiums over Thirteen Dollars Twenty Eight Cents (\$13.28) per month will be absorbed by the employee on a payroll-deduction basis."

1) AWARD OF THE PANEL

This proposal is denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

In the Philadelphia survey (City Exhibit 15) a majority of the cities pay 100% health-medical insurance for single employees, but a majority do not pay 100% for employees with families. Various memoranda negotiated with City unions for fiscal 1980-82 do not indicate that the City implemented a similar proposal with these unions. No projection was made on possible savings through implementation of this proposal. The 1978-80 contract between the parties has the City paying 100% of health insurance costs.

B) ANALYSIS OF THE PANEL

The City apparently has reached previous agreements with other City unions that do not contain this proposal. The panel finds no convincing reason to approve the proposal, and therefore it is denied.

CITY PROPOSAL NO. 11

In Article XXIV, delete Section (c), and replace with the following:
"Longevity payments shall be paid in 26.1 installments included in the bi-weekly paychecks, commencing with the pay period in which an employee's anniversary date of hire occurs."

1) AWARD OF THE PANEL

This proposal is denied.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

City Exhibit 18 shows an agreement with City Local 18029 that would pay longevity in 26.1 installments. The City made no effective argument that adoption of this proposal would be a significant economy move. The City proposed the language in the 1978-80 agreement between the parties, which was adopted by the parties. This language provided the lump sum payment in that previous agreement.

B) ANALYSIS OF THE PANEL

This language was changed to its present form at the City's request in the contract period immediately preceding the one in consideration. Therefore, this proposal was denied.

CITY PROPOSAL NO. 12

A new article to read: "Effective July 1, 1980, Inspectors shall be assigned Police Department vehicles for Police Department official business only. Use for any other reason shall be prohibited."

1) AWARD OF THE PANEL

Automobiles

It is recommended that effective July 1, 1980 Inspectors shall be assigned Police Department vehicles for Police Department official business only.

2) BASIS FOR AWARD

A) TESTIMONY, EXHIBITS AND ARGUMENTS OF THE PARTIES

The City pointed out that the previous practice of providing vehicles on a twenty-four (24) hour basis for employees holding the rank of Inspector was no longer needed. Previously, Inspectors "worked steady days" and "were on call", and therefore warranted the use of cars on a twenty-four (24) hour basis. In January, 1979 the Commissioner of Police established a new policy whereby Inspectors worked all three (3) shifts, and there is now no need to call in off-duty Inspectors. Therefore, the City contended that Inspectors no longer needed vehicles assigned to them on a twenty-four (24) hour basis. Further, the City stated that vehicles that would be freed up as a result of adoption of the City proposal could be used to increase the number of official vehicles that would be available for officers who are on duty. The PBA offered no convincing argument against the City proposal.

B) ANALYSIS OF THE PANEL

The City provided convincing argument in support of its proposal that Inspectors be assigned vehicles for Police Department official business only. The PBA offered no convincing arguments in rebuttal, and so, the Panel approved this City proposal.