

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

JAN 15 1982

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CONCILIATION

In the Matter of the Arbitration between \*

THE CITY OF POUGHKEEPSIE \*

A W A R D

and \*

THE POUGHKEEPSIE PATROLMEN'S BENEVOLENT \*  
ASSOCIATION, INC. \*

PERB Case Number IA81-4; M80-651 \*

\* \* \* \* \*

1. Salaries - The salaries provided in Article XVI, REMUNERATION, of the Agreement, effective on December 31, 1980, shall be increased by 4% on January 1, 1981. Salaries in effect on June 30, 1981, shall be increased by 4% on July 1, 1981. Salaries in effect on December 31, 1981, shall be increased by 8% on January 1, 1982. These increases shall be implemented with retroactive effect as of January 1, 1981.

2. Schedule - The City's proposed change of the scheduling for work days is denied.

3. Longevity - The Association's proposed increase of the Longevity allowances (Article XVI, Sec. 9, Agreement) is denied.

4. Vacation - The Association's proposed increase of vacation time (Article XII) is granted to the extent that an officer shall be given an additional five days in his last year of employment, not before the 20th year, prior to his retirement - effective from January 1, 1982.

5. Sick Leave - The Association's proposed increase of sick leave (Article XV) is granted to the extent of providing for the earning of two days in November of each year, effective from January 1, 1982.

6. Clothing Allowance - The Association's proposed increase of the clothing allowance (Article XI) to \$400 per year is granted.

7. Retirement Plan - The City's proposed modification of the retirement plan is denied.

  
Milton Rubin, Public Panel Member and Chairman  
STATE OF New York

ss.:

COUNTY OF Westchester

On this            day of December, 1981, before me personally came and appeared        MILTON RUBIN        to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

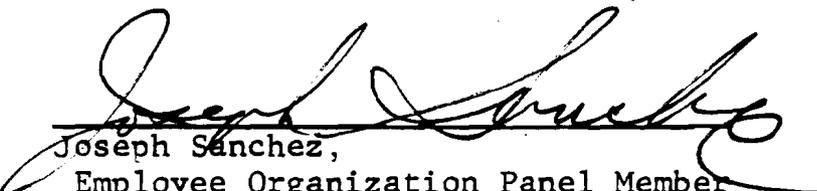
  
Thomas P. Halley, Esq.,  
Employer Panel Member  
Concur on Item 3  
Dissent on Items 1, 2, 4, 5, 6, 7

STATE OF New York  
COUNTY OF

On this 15th day of December, 1981, before me personally came and appeared Thomas P. Halley, Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

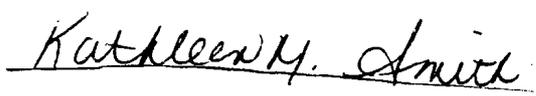
ELIZABETH BERTOLOZZI  
Notary Public, State of New York  
No. 4746779  
Qualified in Dutchess County,  
Term Expires March 30, 1982



  
Joseph Sanchez,  
Employee Organization Panel Member  
Concur on Items  
~~Dissent on Items~~

STATE OF NEW YORK  
COUNTY OF Albany

On this 10th day of December, 1981, before me personally came and appeared Joseph Sanchez to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



KATHLEEN M. SMITH  
Notary Public, State of New York  
Qualified in Rensselaer County  
Commission Expires March 30, 1982

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration between \*

THE CITY OF POUGHKEEPSIE \*

and \*

THE POUGHKEEPSIE PATROLMEN'S BENEVOLENT ASSOCIATION, INC. \*

PERB Case Number IA81-4; M80-651 \*

\* \* \* \* \*

O P I N I O N

and

A W A R D

This proceeding is held under the statutory provisions providing for compulsory interest arbitration pursuant to Civil Service Law, Section 209.4 (as amended July 1, 1977). Failing to conclude negotiations which began in August, 1980, for the renewal of the Collective Bargaining Agreement scheduled to expire on December 31, 1980, the parties submitted their unresolved issues to this Public Arbitration Panel for a final and binding determination. It should be noted at the outset of this Opinion that it is the Chairman's alone, and that it need not reflect in whole or in any part the opinions of the other members of the Panel.

I first received from PERB its notice dated July 27, 1981, of the designation of the Panel consisting of myself, Milton Rubin,

as the Public Panel Member and Chairman, Thomas P. Malley, Esq., Assistant Corporation Counsel as the Employer Panel Member, and Mr. Peter Reilly, President of the Police Conference of New York, Inc., as the Employee Organization Panel Member. Because Mr. Reilly was not readily available for the hearings and executive sessions the Panel would hold, the Association requested that he be replaced by Mr. Joseph Sanchez, Third Vice President of the Conference. This was done by PERB's notice in its letter of August 11, 1981.

The Panel met on August 31, 1981, with counsel for the parties and Mayor Thomas C. Aposporos of Poughkeepsie. Peter E. Bloom, Esq., of Bloom & Bloom, appeared for the Association; John M. Donoghue, Esq., of VanDeWater & VanDeWater, appeared for the City. In this meeting the parties reviewed the issues, the history of the negotiations, and the amount of time each expected to need to present its case.

Hearings were held in the offices of VanDeWater & VanDeWater, Poughkeepsie, on September 14 and October 20, 1981. Both parties were duly and ably represented by counsel, and were given the fullest opportunity to present evidence and argument. A record was made of the hearings. Post-hearing briefs were filed. On the conclusion of the second day of hearing, both parties expressed a strong interest in the Panel's early issuance of an award, and asked that the Panel meet for its deliberations soon after their early filing of briefs

without awaiting the delivery of the second day's transcript. In response to this mutual concern, the Panel met on November 5, 1981, having its members' notes of the two hearing days, the record for the first hearing day, and all of the submitted exhibits. The Panel reached a majority decision on each of the items submitted for determination. However, before the Opinion and Award could be issued, Mr. Halley requested that another meeting be held by the Panel. His letter of November 13, 1981, requesting this additional meeting, addressed to Messrs. Rubin and Sanchez, included the following:

Gentlemen:

Subsequent to our executive session on November 5, 1981, I reviewed the memorandums of law submitted in this case, the transcript of the hearings, and the exhibits. In my opinion, the findings which were determined in executive session appear to be inconsistent with the record. Therefore, I would respectfully request that a second executive session be scheduled, at your convenience, to reconsider some of the conclusions reached by the panel.

Please feel free to contact me at your convenience.

Very truly yours,  
(s) Thomas P. Halley  
Asst. Corporation Counsel

Mr. Sanchez vigorously objected to the holding of another meeting, with his letter of November 23, 1981, addressed to the Chairman, with copies to Halley and counsel:

Dear Mr. Rubin:

In response to a letter we received from Mr. Halley requesting a reopening of the Executive Session in the matter between the City and the PBA, I most strongly

object to such a reopening.

The history of the negotiations dating back to August 1980 has brought no relief to the employees and as a result, the BPA found it necessary to go before an arbitral panel seeking that relief. The Panel, at the conclusion of the Executive Session on November 5th, made its determination based on exhibits, testimony and data which both sides had presented. The record was more than clear, the issues were dealt with fairly and with full knowledge of its impact to both sides.

The City once again has demonstrated its willingness to prolong this matter. Their actions are obvious - to delay. This can only bring about additional hardship to the employees who have long been waiting for an increase in salaries, benefits and improved working conditions. To delay this any further would only add to an already existing burden in addition to the cost of such a session and loss of income (which purchases less each passing day) to the employees.

I respectfully request that you take note of my objections and finalize the Award which was so decided by the majority on the 5th of November.

Yours truly,  
(s) Joseph Sanchez  
3rd Vice President,  
Police Conference of New York,  
Inc.

The Panel's second meeting was held on November 27, 1981, in Mineola. The Panel considered again the items raised by Halley. The decisions were not changed. In this meeting, Sanchez moved that the City be assessed the cost of the second Panel meeting, and that it be assessed interest on the salary increases awarded by the Panel. I reserved decision.

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Typically, the negotiations began with the parties submitting many demands. When the Association filed its petition for arbitration with its many demands, the City responded with an Improper Practice Charge with PERB, contending that the "petition for arbitration includes matters that have been resolved by agreement during the course of negotiation and matters that are not the mandatory subject of negotiations" (Letter of July 2, 1981, Cantor to Kelly, PERB). The Association acknowledged in its letter of July 7, 1981 (Bloom to Kelly) that many of its demands were in fact resolved, and listed the remaining issues in its letter of August 11, 1981 (Bloom to Donoghue):

This is to confirm that the PBA will be presenting evidence on the following issues at the time of arbitration:

- Salary Increase
- Longevity Increase
- Improvement in Vacation Time
- Improvement in Sick Time
- Improvement in Clothing Allowance

In light of the foregoing, I assume that we can agree that said items are mandatorily negotiable and, therefore, there is now a basis for formally withdrawing the Improper Practice Charge heretofore filed with PERB by Mr. Cantor.

I would appreciate your delineating the precise items upon which the City will be presenting evidence at the time of the arbitration session.

The hearing began and continued to its conclusion without either party raising procedural questions. The City did not respond

to Mr. Bloom's request to delineate "the precise items" before the commencement of the hearing. It should be stressed that the offer of testimony and argument was made by the parties within the framework and standard of relevance promulgated by the enabling statute. Also, the Panel's deliberations were made with continuous reference to these standards, reaching final, just and reasonable determinations it deems to be in accordance with the prescriptions and criteria contained in the Civil Service Law, Section 209.4:

(iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties;

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following;

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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 interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

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

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

(vii) the determination of the public arbitration panel shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.

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The parties devoted a major portion of their presentations to analysis of the City's financial situation in order to measure its ability-to-pay position. The City, not without some justification, paints a dismal picture of its financial status. The City's

1981 Budget (City Ex. 1) is an "austerity budget" which reflects drastic cut-backs of personnel and service. The budget of \$19,544,800 includes only \$4,786,113 from "local taxpayers", with State and Federal revenue sharing presumably making up the bulk of the difference. The City stresses that it has managed to retain a degree of solvency by embarking upon severe cost-cutting measures. Salaries of officers and employees not covered by labor agreements have been increased minimally, to correct inequities which could not be gainsaid, or not at all. Over-age equipment is still being used without adequate plans for replacement. Job classifications and their budget lines have been eliminated; and the size of the labor force has been decreased by attrition and layoff. Increases in costs will have to be absorbed by yet additional layoffs. Layoffs have occurred in the Police Department as well. "Excessive increases in the police budget should not become a vehicle for the visitation of further misery on other personnel." (City Brief, p.3)

The City does not expect any marked improvement in the future. The assessed value of taxable property increased by only 3.4% in the last two years, without reason to expect as much as that rate of increase in the ensuing years. The recently passed Proposition 1 referendum limits the taxing power to 1½% of the property; the State law allows for a maximum of 2%. The City does not expect that the local restriction will be removed. Furthermore, the demographic

structure of the population does not allow for planned future imposition of increased taxes to enhance revenue. Taxpaying industry and other commercial tenants have left the city. Industry and shopping malls have located just outside the city, thereby pulling other revenue yielding sources away from Poughkeepsie. Yet, non-taxpaying properties such as schools, churches, other institutions and public facilities have stayed and require an increasing portion of the available services. The City submitted a number of exhibits and the testimony of Acting City Manager John St. Leger to detail and confirm its submitted data, projections and conclusions.

Though not contending that Poughkeepsie's financial position is so favorable as to deserve the envy of its neighbors and other cities in the State, the Association concludes from its analysis that the City has had budget surpluses with which its demands can be met. Primarily through the testimony of Mr. Edward Fennell, Municipal Finance Consultant, its expert witness on the analysis of the City's financial condition, the Association contends that the City can indeed pay for the demands. Association Exhibit No. 3, "A Review of the Financial Documents, City of Poughkeepsie", contains its analysis. This exhibit avers that the City's budget for 1981, as had been the case for 1978, 1979 and 1980, provided a surplus. The budget for 1981 is estimated to contain a surplus of \$1,400,000, derived from analysis of City Exhibit No. 4 ("City Manager's General Fund Analysis").

Listing the items; Unappropriated Surplus, Contingency Appropriation, Reserve Surplus and Small Cities Aid, Association Exhibit No. 3 finds an estimated surplus of as much as \$1,667,335. The Association finds in its analysis of the City's financial documents that there has been a "massive understatement" of interest and other earnings realized from investment, belated payment, and unreported unmatured earnings. "It is probable that the surplus of \$1,400,000 is a conservative estimate and may, in fact, be higher which would support the credibility and accuracy of the Union's position namely that surplus is continually built in the City's budget. Given the accuracy of the Union's position as presented in the Union's fiscal exhibit prepared by Mr. Fennell and the validation of his findings in City #4, the panel can come to no other conclusion than the City has the ability to pay the just demands of the PBA during the 1981 fiscal year." The Association does not foresee a lesser ability on the part of the City for 1982.

My study of the financial data, highlighted and summarized above, has yielded the conclusion that the Police should not be foreclosed from requesting and receiving a reasonable increase in salary, reflecting the standards of propriety prescribed by the Civil Service Law, Section 209.4. It was readily acknowledged by the City in the hearing that the provision of safety is a fixed and given factor which must be carried. As the cost of contracted services - such as

insurance, utilities and fuel - must be carried, even if by an increase in taxes, to assure a continuing viable community, so must personal service such as police protection. As the City's budget has had to accept the burden of increased costs, so must it recognize and provide for the continued payment of reasonably adequate salary and other compensation to assure a competent and effective police force.

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Term of the Agreement

The Panel decided that the Agreement should be for a period of two years, effective from January 1, 1981, through December 31, 1981. One year has already passed. With another year to go, the City and the PBA should have the time to be able to arrange for an easier negotiation of another agreement effective from January 1, 1983.

Salary Increase, Schedules

The Association proposes an increase of 12.5% for each year. The City did not make a counter proposal, but requested a change in the scheduling of the days worked by the police as a condition for the discussion of salary changes. The Association bases its claim primarily upon the rise in the cost of living index with the concomitant erosion of the purchasing power of its members, and upon comparison with salaries received by the police in comparable communities.

The Poughkeepsie patrolman starts at the annual rate of \$14,242.35, and reaches \$16,145.73 after five years. The adjoining police department in the Town of Poughkeepsie starts with \$16,550 (higher than the maximum which the Poughkeepsie patrolman can reach) and attains the maximum of \$20,251 in the fifth year. Other salary structures for many police departments were submitted. All communities were offered, with either the City or the Association noting comparabilities or dissimilarities to explain their acceptance or rejection of the offers. I am impressed, however, with this comparison with the adjoining Town of Poughkeepsie. On consideration of the concededly more difficult task the Poughkeepsie police have in the performance of their task than do the police in the Town of Poughkeepsie, it appears to me that the most comparable and persuasive comparison should be between these two adjoining departments.

Evidently, the City of Poughkeepsie salary rates had not kept up with the steadily increasing index of the cost of living. Though I am not advancing the principle here that earnings must be indexed, I am of the conviction that the consideration of whether earnings shall be adjusted should reflect sensitivity to the rising index of the cost of living since the last wage adjustment was made on July 1, 1980. The BLS Consumer Price Index for All Urban Consumers, for all cities, rose by 12.7% from 247.8 in July, 1980, to 279.3 in September, 1981 (the last available when the panel met). It is generally

conceded that the Index will continue to rise.

However, the City offered for consideration by the panel the issue of the scheduling of patrolmen's days of work. Section 971 provides that the tour of an officer shall not exceed eight consecutive hours in 24 consecutive hours, and shall not exceed 40 hours within any seven consecutive days. Presumably, this provision for five days of work in a seven-day week should yield a work year of 261 days (or 260 days) in a calendar year. However, the practice in the City and in other communities has developed to provide for a schedule of five days of work followed by three days (72 hours) off. The City proposes to recapture the five-two days schedule.

The City retained Mr. Christopher Peter Gershel, Chief of Police in Newburgh, to survey its Police Department with the view of evaluating its performance, and "in part in preparation for the arbitration as being conducted today". (Tr. 185) Gershel's report was submitted in evidence (City Ex. 13). The major portion of its evaluations, critiques and proposals were addressed to the management rather than to the performance of the police in their jobs. It observed that the five-and-three schedule was wasteful in the sense that it did not allow for the fullest exploitation of the year for which the police are paid. However, he also observed in his report that it was not likely that a return to the five-and-two day

schedule was feasible at this time. Calculating that the Poughkeepsie police worked only 228 days per year, he listed the following communities as obtaining 261 days per year on a five-and two-day schedule: Town of Poughkeepsie, Kingston, Port Jervis, Hudson, Middletown and Beacon. Gershel did not list his own City of Newburgh which works on a schedule which yields 243 days in the year.

The Association responded by explaining that not all of the officers are on this five-and-three day schedule. Of the 80 officers, six sergeants and 40 patrolmen work on the five-and-three day schedule which allows for a break of 72 hours after the fifth day. The remainder of the force, including the detectives and traffic officers, work a 260-day schedule. Furthermore, the officers on the five-and-three day schedule actually work 249 days in the year, in contrast to the 243 days worked in Gershel's own department in Newburgh. The Association thereupon made its own survey of the cities listed by Gershel and reported the following without any contravention from the city: the Town of Poughkeepsie with 244 days, Kingston with 260 days, Port Jervis with 255 days, Middletown with 250 days, and Beacon with 249 days. These departments do not follow the rigid schedule of five-and-two days proposed by the City.

I recognize that the City should seek to achieve the optimum efficiency in the management of its Police Department. Its seeking

outside assistance and guidance for the measurement of its operation and for its improvement is commendable. However, it does not appear that the state of the findings make any correction of the schedule of the individual patrolmen susceptible to determination by this panel. Gershel's calculations were apparently derived from a mathematical calculation of the number of worked days which must be realized from the five-and-three day schedule. He did not protest the report of the actual number of days worked. Furthermore, it was realized that only about half of the department worked that schedule, and that the other half worked the full 260 days. Additionally, it appears, as amply substantiated, that this practice of scheduling less than the full work year is not confined to the City of Poughkeepsie, and in fact prevails in other communities in the Hudson River valley, and even in Gershel's own police department in Newburgh. I am of the opinion that this subject of "correction" of the schedule requires more examination to determine whether the shortened schedule is a mere aberration from the norm or actually a reflection of conditions peculiar to police work.

The Panel does not recommend the modification sought by the City. I, as the Chairman alone, suggest that the City prepare itself for a continuing discussion of this subject with the view of reaching a conclusion in the ensuing negotiations for the January 1, 1983 Agreement.

On the matter of the requested salary increase, the item was, of course, the subject of the most intense discussion in the Panel's meetings. As the Chairman with the responsibility of achieving a majority decision, which is the obtaining of one of the two other members of the Panel to concur with me, I finally arrived at the figures of a 4% increase effective on January 1, 1981, another 4% increase on July 1, 1981, of the salaries in effect on June 30, 1981, and a final increase of 8% effective on January 1, 1982. This structure of a series of increases with the one required concurrence came closest to my own concept of a just and reasonable determination within the framework provided by statute. It is the apparent consensus of the parties that each percentage increase will require an outlay of approximately \$20,000. The increased cost of approximately \$160,000 per year should be within the capacity of the City's budget, as analyzed by either the City or the Association.

The provision for a Panel consisting of a representative of the City and the Association, with the third neutral Chairman, evidently provides for this type of collective decision-making reflecting the divergent and mutual considerations of the two parties. In this case, Employee Organization Panel Member Sanchez had to concur with the final determination for fear of my veering once again toward Employer Member Halley in my search for a majority decision. That neither Member expressed enthusiasm with the final determination, on

this and the other items, and the sum of the determinations, may be taken as an indication of the balance sought and achieved by this Panel.

Salaries shall be increased by 4% on January 1, 1980, 4% on July 1, 1980, and 8% on January 1, 1981. Other sources of compensation, such as the longevity factor, shall not be included in the base salary for the calculation of these increases.

#### Longevity

The Association requests the doubling of the amounts added as "Longevity Increases" to the salaries, which consists of \$250 per annum after the seventh year, \$500 per annum after the tenth year, and \$750 per annum after the fifteenth year. I have concluded that no change is warranted at this time. Since few officers presently employed are in the department for less than five years, an increase would be tantamount to another salary increase. Furthermore, it does not appear that the present provision departs from provisions for like payment in comparable communities to the extent requiring an upward corrective modification.

The Association's request for an increase of the Longevity schedule is denied.

### Vacation

The Agreement presently provides for 15 working days after one year, and 20 working days after five years of employment. The Association requests an "improvement" to three weeks (15 days) after one year, four weeks (20 days) after five years, and five weeks (25 days) after 10 years of employment.

Since 41 officers have been in the Department for 10 and more years, the granting of the requested addition would impose a heavy burden on the budget. Furthermore, it does not appear from a study of the submitted material reporting the conditions in the comparable communities that the City's vacation schedule is "out-of-line" to a marked extent. In fact, the City provides more vacation after the first year of service than do a number of other communities. I am persuaded, however, that officers with long service, and about to retire, should have additional time reflecting their seniority and their preparation for final separation. It is appropriate therefore to determine that a suitable modification of the vacation schedule should provide for a fifth week (five additional days) of vacation in the last year of service. In the City of Poughkeepsie, the last year of service prior to retirement is the twentieth year.

The vacation schedule shall be revised to provide for an additional week of vacation in the last year, not before the 20th

year, of service prior to retirement under the present retirement plan.

Sick Leave

The present SICK LEAVE, Article XV, provision in the Agreement provides for 13 days, as follows:

SECTION 1. Sick leave shall accumulate at the rate of one (1) day per month, except that, in December of each year, there shall be accumulated two (2) days, for up to and including one hundred eighty (180) days. Each member of the PBA will be entitled to one-half ( $\frac{1}{2}$ ) accumulated and unused sick leave: (a) upon retirement; (b) as a death benefit; (c) upon resignation after five (5) years of service; (d) upon dismissal subject to provisions of law. Such benefit is computed on the basis of the salary schedule in existence at the time of the occurrence of one of these events.

The Association requests that the year's sick leave be increased to 15 days. Upon discussion in the Panel, and upon comparison with the provisions in other comparable communities, it was decided by myself and the one concurrent to provide for two days in the month of November. In effect, the amount of sick leave which can be earned in the calendar day has been increased by one day to 14 days.

The Sick Leave provision shall be modified to provide for the earning of two days of leave for employment in November of the calendar year.

### Clothing Allowance

The Agreement presently provides for a clothing allowance of \$350 to "each member of the PBA" (Article XI) "after his first year". The Association requests an increase to \$400 per year. It is generally recognized that the cost of purchasing and maintaining uniforms has markedly increased. Also, other communities, though not all, have similarly recognized this change by increasing their clothing allowances. Apparently, the increase of \$50 is a reasonable recognition of the increase in the cost of replacing and maintaining uniform clothing.

The Association's request for an increase of the clothing allowance from \$350 per year to \$400 per year is granted.

### Retirement Plan

The City proposed at the conclusion of its brief, and incidentally in its discussions, that a modified retirement plan be adopted for new employees hired after the issuance of this award. It is my opinion that so serious a matter requires more study of actuarial data and other substantiable material for the Panel to make a responsible determination. Though requested by the Association to list the "precise" items it would submit to the Panel, the City did not do so until at the end of this proceeding by reference and in its brief without evidentiary substantiation. The City's

request is denied because the Panel does not have the evidence with which it can reach a decision accountable within the framework provided by the cited statute.

December 7, 1981

  
MILTON RUBIN, Chairman

NEW YORK STATE PUBLIC RELATIONS BOARD

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JAN 15 1982

CONCILIATION

OPINION

This opinion is the dissenting opinion of panel member Thomas P. Halley, and is intended to set forth in detail the objections to the award herein, and the basis for the same.

The meeting of the panel in Executive Session was held on November 5, 1981 in Poughkeepsie, NY. Certain findings and decisions were made. As stated in my letter of November 13, 1981, requesting an additional meeting of the panel, "the findings which were determined in Executive Session appear to be inconsistent with the record." Despite such objection, no change in the findings was made at said Executive Session, which was held on November 27, 1981, in Mineola, New York. It therefore remains my firm opinion that this award is without basis, is arbitrary, and is not in conformity with the statutory mandates set forth in the Civil Service Law, Section 209.4

I THE RECORD AND THE EVIDENCE

While the panel has authority to require the production of such additional evidence as it my desire from the parties, it failed in an important instance to require the same, choosing to rely, instead, upon data obtained by panel members in the course of the Executive Session. This data was then used as the basis for the panel's decision not to change the scheduling of work days, and is so incorporated in the Opinion and Award of the Chairman. An examination of City Exhibit #17 along with the transcript of the proceedings, indicates that while Mr. Gershel did concede that City of Newburgh police employees work 243 days per year, the Association responded to City #17 by stating simply that, by their computations, City of Poughkeepsie policemen worked not 228 days, but 249 days. They further responded that the Town of Poughkeepsie while correctly listed as working 261 days, had "17 comp days." It was not further explained by the Association how this compensatory time was scheduled or awarded. (The reference to the City of Port Jervis working 255 days was offered by the employee panel member only, in an unsworn statement.) At present, the record indicates an unclear response by the Association as to the work schedules of the City and Town of Poughkeepsie. The record is totally devoid of any sworn rebuttal

testimony with regard to the work schedules of the City of Kingston, City of Port Jervis, City of Middletown, and City of Beacon. The evidence offered by the employer is, as a matter of record, unrefuted. As such the reasoning and award of the panel is without an evidentiary basis.

With regard to the financial ability of the City to pay the increase in salary, the opinion and award contains a cursory summary of the positions of the City and the Association. The issue of the required applications of the estimated surplus was dealt with by City witnesses in detail. Nonetheless, the opinion and award in ignoring that testimony, does not set forth any specific funding source from which the projected increase is to be derived. It merely states "the conclusion that the police should not be foreclosed from requesting and receiving a reasonable increase in salary, reflecting the standards of propriety prescribed by the Civil Service Law, Section 209.4." However, no consideration of these standards is even briefly set forth. The City of Poughkeepsie cannot be expected to plan its estimated revenues and surpluses based upon the opinions of someone totally unconnected with municipal funding operations, using figures that person believes to be "probable." As was made clear in the course of the hearings, any estimated surplus must be applied to the 1982 budget in order to prevent a massive shortfall and fiscal bankruptcy. There is no reasonable basis demonstrated in the record for any conclusion that the City will have any net surplus whatsoever at the end of the 2 year period of this award, other than opinions of the witness Fennel, which opinions were addressed by the City's witnesses. The evidence supports overwhelmingly the conclusion that the City of Poughkeepsie does not have the funds available to pay out of the 1981-1982 budget the increase awarded herein. The City has already been required to eliminate numerous jobs, curtail garbage collection, shut down a branch of the library, close a swimming pool, and end holiday Civic programs. This was deemed necessary even before the award herein was made. If the City is further required to remove substantial funds from other budget lines, the physical plant of the City will deteriorate into a desperate condition of decay and disrepair involving streets, sewers, buildings, equipment and machinery. No other conclusion can rationally be reached when it is clear that the taxing authority of the City of Poughkeepsie is exhausted, and that the pay raise cannot be funded simply by increasing the subsequent years taxes. The opinion and the award become even more irrational when the conflicting positions are contracted. While concluding that the employees herein should receive a reasonable increase in salary, "reflecting the standards of propriety of the Civil Service Law," the panel cannot conclude that the employer should receive a reasonable increase in the amount of time worked by the employees. It is undisputed that the City Police Officers now work a five day shift followed by 72 hours off. All that the City had requested was that the police work five days on and two days off, the same as the vast majority of the working population. Even if we accept, for the purpose of argument, the Association's position that Policemen currently work 249 days per year, this

amount must be decreased by the 4 weeks vacation given to virtually every member of the department, the 12 paid holidays, the 3 days of personal leave per year, and the 13 days of sick leave accumulated each year. Despite those existing benefits, and despite the conceded bleak financial future for the City of Poughkeepsie, the panel finds that not only is an increase in salary reasonable but also an increase in vacation and sick leave. The City's request for a work schedule comparable to that of comparable communities, is denied, even though the opinion recognizes that the City "should seek to achieve the optimum efficiency in the management of its police department." It is stated in the opinion and award that the City is justified in painting a dismal picture of its financial status. Given that concession, it is wholly irrational to then decide that there should be an increase not only in salaries, but also in paid days off.

There is no rational basis in the record before the arbitration panel for concluding that the City has the ability to find the wage increase herein, retroactive to January 1, 1981. Any finding to the contrary must be based upon pure conjecture and speculation, and without regard for the demonstrated facts of the catastrophic fiscal crisis confronting the City of Poughkeepsie. The conclusion by the arbitrators that such funding does exist is clearly arbitrary and capricious.

## II THE STATUTORY STANDARDS

The discussion of the comparison of communities set forth in the award on Page 12 thereof, fails to follow the guidelines set forth by the Civil Service Law. "Comparable" communities are not used. The standard applied by the panel herein is that of an adjoining communities. The sole municipality considered in the opinion by the panel is the Town of Poughkeepsie, as evidenced in the discussion on page 12, beginning with the statement "I am impressed, however, with these comparisons with the adjoining Town of Poughkeepsie." It is stated that the City Police have a "conceivably more difficult task" than do police in the Town of Poughkeepsie. Such a statement is again totally without support in the record. The population of the Town of Poughkeepsie is substantially greater than that of the City. No evidence was presented as to the differences in per capita police coverage or manhours between the communities. Likewise, no comparison of crime rate or arrests in the City and Town was offered. The City of Poughkeepsie presented voluminous data regarding the population, work load, commercial development, economic growth, and prospects for increased tax revenues with regard to the City. The evidence of fiscal dissimilarity is clear and convincing. The use of the Town of Poughkeepsie as the sole comparison with the City of Poughkeepsie becomes baseless when it is considered that the economic wealth of the Town is substantially greater than that of the City, an issue on which the City presented extensive testimony and evidence (see City Exhibits #18 through 27). There is absolutely no mention in the opinion and award of a comparison of the wages, hours, and conditions of employment of other public employees in the City or in comparable communities. Despite the introduction of evidence on the part of the City

regarding the lack of salary increases for other municipal employees and administrators in the City, once again, the sole salary comparison was with police officers of the Town of Poughkeepsie, a comparison, which, as stated above, is without a rational or statutory basis.

Finally, it appears, in examining Pages 12 and 13 of the opinion, that a major factor in granting the increase herein was the rise in the consumer price index. This, again, is not a criterion set forth in the Civil Service Law as a standard for awarding the salary increases sought herein. It thus appears that the salary increase was based solely on an examination of the increase in the cost of living, and the police salary schedule of the adjoining but economically differentiated town.

A true comparison with salaries of police departments of adjoining communities is set forth in Point IV of the City Brief, and need not be repeated here. Suffice it to say that the salaries of the City of Poughkeepsie Police Department rank near the top when compared with those of comparable communities, even including the Town of Poughkeepsie. In the only two cities which have higher salaries than that of the City of Poughkeepsie, there is no 20 year retirement plan, a benefit which is extremely costly to the City, as demonstrated in City Exhibit #16. While, as stated, it is quite arbitrary to use only the Town of Poughkeepsie Police Department for purposes of comparison, this arbitrariness is greatly compounded when the panel refuses to compensate for the increase in salary by awarding, as requested by the City, work schedules and retirement plans which clearly are similar to those of comparable communities. Logically (and equitably), if the comparison is valid for one facet of the award, it must be valid for all, unless clearly demonstrated otherwise by the Association. The failure to give due consideration to the statutory standards is perhaps best indicated by the panel's failure to even consider the City's proposed modification of the retirement plan. At present, all police department employees are on a 20 year retirement plan. The cost to the City for this plan amounts to 41.9% of the salary of employees hired prior to July 1, 1973, and 28.9% of the salary of those hired thereafter. The proposal of the City of Poughkeepsie was to provide that all new employees, and only new employees, be put on a 25 year retirement plan. The percentage cost of this plan would be lowered to 28.8% for the pre-73 employees, and 18.9% for the post-73 employees. As the City demonstrated in its exhibit #16, a comparison of "comparable communities" discloses that a 25 year plan is not unusual. The City of Kingston, City of Hudson, the City of Middletown, and City of Beacon all provide for 25 year retirement plans for some of their policemen. Incidentally, as noted above, both the City of Middletown and City of Beacon have higher salary schedules than does the City of Poughkeepsie. Is it not logical, equitable, and rational to say that if the higher salary schedules of Beacon and Middletown are justification for increasing salaries in Poughkeepsie, should not their 25 year retirement plan also be applied to the City Police Department? The opposition of the Association to this point is inexplicable since the new 25 year plan would not affect a single current member of the police force.

The opinion and the award work only to the detriment of the City of Poughkeepsie. The panel determination grants an increase in salaries, and days off with pay. It refuses to grant an increase in manhours. It refuses to permit a decrease in future retirement cost. There is no examination of comparable communities. The basis for the award rests on two points--the salary schedule of the Town of Poughkeepsie, and the increase in the cost of living. The other points raised are deemed inconsequential or irrelevant.

For the reasons stated above, I respectfully dissent on items 1, 2, 4, 5, 6, and 7 of the award herein.

DATED: December 23, 1981  
Poughkeepsie, New York



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Thomas P. Halley, Esq.  
Employer Panel Member