

In the Matter of Arbitration

between

City of Batavia

and

Batavia Police Benevolent Association

Opinion

and

Award

(Case No. IA 81-33)

APR 23 1982

~~CONCILIATION~~

Having determined that a dispute continues to exist in the negotiations between the City of Batavia (hereafter "City") and the Batavia Police Benevolent Association (hereafter "PBA" or "Union"), the New York State Public Employment Relations Board, pursuant to its authority under Section 209.4 of the New York Civil Service Law, designated on January 12, 1982, a three-member Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The Panel consists of employer member Ira M. Gates, employee organization member Edward R. Doody, and public member and chairman Howard G. Foster. A hearing on the matter was held on April 1, 1982. Representing the City was Richard A. King, Assistant to the City Administrator. Representing the PBA was Nicholas J. Sargent, Attorney. Upon submission of post-hearing briefs by both sides, the record was closed.

#### Background

The PBA represents 22 members of this bargaining unit, consisting of 18 police officers, three investigators, and one youth officer. Sergeants and Lieutenants of the police force comprise a separate bargaining unit. The most recent collective bargaining agreement between the parties covered a two-year period ending on December 31, 1981.

The PBA's petition for compulsory interest arbitration enumerated nine unresolved issues. The last of these is currently the subject of a PERB proceeding on its arbitrability and is hence not addressed in this award. The City's response to the petition enumerated nine additional issues, two of which were resolved at the hearing. There are thus fifteen proposals, eight advanced by the Union and seven by the City, to be determined in this Arbitration.

### PBA Proposals

#### Salary

The PBA proposes for 1982 an across-the-board increase equal to the percentage increase in the Buffalo-area Consumer Price Index (CPI) between October 1980 and October 1981. That increase was in fact about 9.6 percent. For 1983, the PBA proposes an increase equal to the percentage increase in the Buffalo-area CPI between October 1981 and October 1982. The City offers a salary increase of 7 percent in each of the two years.

The Union argues that the statutory criteria that must guide the Panel's deliberations strongly support a finding that the Union's proposals constitute, in the words of the statute, "a just and reasonable determination of the matters in dispute." Its position may be summarized as follows:

1. Comparisons with municipalities in the Western New York area make it clear that police salaries and benefits in Batavia lag far behind. "Manifestly, salary and fringe benefit comparisons should be with surrounding communities which have similar working conditions and require similar qualifications and skills." (Brief, p. 9.) The PBA identifies 16 municipalities that it regards as comparable, all of which pay higher salaries than Batavia. The annual differentials range from \$897 to \$6,615. In many cases, moreover, these municipalities also pay higher longevity supplements, shift differentials, and

uniform allowances. Thus the Union's proposals are fully justified as a form of "catch-up,"

2. In addition, police salaries in Batavia lag behind those of firefighters in Batavia. Firefighters are scheduled to receive a 9 percent increase in 1982. Even if the police were to receive an equivalent percentage, they would still be more than \$1,000 behind their colleagues in the fire department. While the City may argue that the differential is attributable to the fact that 20-year retirement is available for police and not firefighters, it must be noted that 20-year retirement is typical for police officers. Other municipalities that offer 20-year retirement to their police still pay much higher salaries.

3. Police salaries in Batavia have not kept up with the cost of living. Over the past three years, Batavia police officers have suffered a 2 percent decline in real wages. Cost of living has been explicitly sanctioned by the Court of Appeals as a relevant factor in salary determinations.

4. Productivity of Batavia police has been rising in recent years. Workload has been increasing even while the size of the police force has been declining.

5. The Union's proposal is also justified by the unusual stress and hazard of police work.

6. The Union's proposal is not constrained by the City's ability to pay. In the first place, ability to pay is only one of several criteria enumerated in the statute. The City's financial condition "must be weighed together with all other criteria relevant to the Panel's decision including, among others, wage comparability," (Brief, p. 7) and "the financial burdens of the City should not be borne solely by the members of its police force." (Brief, p. 6.)

In any case, the City has not demonstrated an inability to pay. Its 1982 budget includes a surplus (or "appropriated fund balance") of over \$870,000. Moreover, the City "has substantial tax-levying powers available to it that it is not using" (Brief, p. 33), as evidenced by testimony adduced at the hearing that Batavia has the lowest tax rate of any city in the State. Thus:

Any claim by Batavia of its difficulty in meeting the rising cost of a payroll is not the same as an inability to meet the payroll....Ability is concomitant with power to raise revenue while difficulty indicates the existence of fiscal problems which may be overcome by the exercise of the power to raise revenue. (Brief, p. 34.)

Unlike some other municipalities, Batavia does have the flexibility to meet rising payrolls by raising property taxes. Its claim of an inability to pay is in actuality nothing more than an unwillingness to pay.

For the foregoing reasons, the Union's position should be sustained in its entirety.

The City argues that its salary proposal is just and reasonable. Its position may be summarized as follows:

1. Police salaries in Batavia are already competitive. The City has identified eleven municipalities in upstate New York that it contends are comparable to Batavia in terms of population, department size, and geographic location (the last defined as being outside of major metropolitan areas). Batavia's salaries rank third in this group and exceed the group average by about two percent. Further, in 1980 and 1981 Batavia police received salary increases well in excess of the average negotiated and arbitrated settlement in the State.

2. The Union's arguments on cost of living ignore the fact that the CPI is an imperfect measure of living costs. The index is inflated by costs associated with housing and medical care, costs that PBA members do not, by and large,

bear. When the appropriate adjustments to the CPI are made, it can be seen that PBA members have in recent years more than kept up with the cost of living.

3. The City's financial position is precarious. There has been a marked decline in sales tax revenue, thus placing increased pressure on the property tax, which has risen dramatically in recent years. There have also been declines in state and federal aid. These increased burdens, moreover, have had to be shouldered by a dwindling population and a declining industrial base. There has been a permanent loss of nearly 3,000 jobs in the area, resulting in an unemployment rate for Genesee County that is the highest in Western New York. "As industries close or contract a greater share of the property tax is put on the residential property owner." (Brief p. 2.) These factors were recently recognized by a fact-finder in the City's recent negotiations with its DPW workers, who recommended a 7 percent increase.

The Union's analysis of the City's financial condition is flawed. Contrary to the Union's assertion, the tax rate did not decline after 1976, but remained stable at about \$3.00 per thousand (with 100 percent valuation). It has since risen to \$3.46 in 1982. The Union's argument about the fund balance ignores the fact that a fund balance is necessary to provide working capital at the beginning of a fiscal year. Further, without the fund balance, the tax rate for 1982 would be almost double what it is. As for the Union's argument that Batavia has the lowest tax rate in the State:

its accuracy cannot be affirmed or denied by the City. The point to be made is that the police in this city have received a competitive salary and fringe benefits at the same time the taxpayers have enjoyed a low tax rate. Accomplished primarily through outstanding financial management, the situation is a positive one for both taxpayers and the PBA. It would be inappropriate to penalize local taxpayers for the sound management practices which have created the current situation.

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For the foregoing reasons, the City's position should be sustained by the Panel.

#### Discussion and Award

For the reasons to be explained below, the Panel hereby awards as follows:

1. The 1981 salary schedule shall be increased by nine (9) percent, effective January 1, 1982.
2. The 1982 salary schedule shall be increased by six (6) percent, effective January 1, 1983.

The Panel's award for 1982 is based on several findings and conclusions relating to the statutory criteria. In brief, we find that a nine percent increase is justified by comparisons with other jurisdictions and by past trends in the cost of living, and that such an increase is not significantly constrained by considerations of ability to pay:

The affirmative basis for the Panel's award is threefold. First, we believe that, to the extent possible, it is desirable to protect the incomes of employees against the erosion of real income through inflation. While the applicable rate of inflation may vary with the specific base period used, we find the Union's suggestion of October to October to be as reasonable as any other. In this case the inflation rate is 9.6 percent. (Here we must also note that the City's "adjustment" of the CPI is, to say the least, dubious. The CPI is an index of change. Even if it overstates living costs, it does so at both ends of the period in question. The only way the CPI can be said to misrepresent cost increases is if the weight of a given component changes during the period. It is highly doubtful that removing housing and medical costs from the index altogether would result in an "adjustment" of anywhere near the magnitude suggested by the City.)

Second, the evidence submitted to the Panel (City Ex. 9-d) shows average negotiated increases in New York cities for 1982 to be 8.5 percent. We regard negotiated settlements as the appropriate standard because they reflect consensual agreements as to "just and reasonable" increases. Arbitrated awards, by their nature, tend to occur in places where unusual circumstances prevent agreement at the bargaining table. Since we are unable to discern unusual circumstances in this case, we rely more heavily on negotiated settlements.

Finally, we are mindful of the traditional parity between police officers and firefighters. Firefighters in Batavia received a 9 percent increase for 1982. Absent compelling reasons to treat police officers differently, we feel that the pattern established by the firefighters should carry considerable weight.

Taking these factors into account--the 9.6 percent inflation rate, the 8.6 percent average settlement, and the 9.0 percent given to firefighters, we believe that there is a strong prima facie case for a 9.0 percent award for police officers under the statutory criteria. It remains to consider whether any of the arguments advanced by the parties effectively rebuts this case.

Both parties purport to find support for their positions in comparisons with other municipalities. This apparent anomaly obviously stems from the fact that the parties use different municipalities for their comparisons. (Indeed, there is not a single overlap.) The Panel believes that while certain legitimate questions can be raised about the City's selection of jurisdictions, the comparisons offered by the Union are even more dubious.

The Union suggests that "considerations of location, size, labor market parameters, work load, and population density should determine the pertinent

sphere of comparability." (Brief, p. 8.) We have no quarrel with this formulation. Yet the Union's selections for comparison seem to be based almost entirely on location (if that term is defined as proximity to Batavia); their similarity to Batavia in terms of size, population density, and many "labor market parameters" is not readily apparent. Batavia is a small city (about 16,000 population) surrounded by countryside. With the arguable exception of Lockport, the Union's exemplars consist of much larger cities (Buffalo, Rochester, Niagara Falls), smaller cities contiguous to the larger cities (Lackawanna, Tonawanda, North Tonawanda), and suburban townships (Amherst, Brighton, Cheektowaga, Gates, et al.). All the exemplars, unlike Batavia, are in Erie, Niagara, and Monroe Counties, and are part of what the federal government calls standard metropolitan statistical areas. Even by the standard of location, it is noteworthy that the Union's list contains no representation from such other contiguous counties as Orleans, Wyoming, and Livingston, counties whose character is more similar to Genesee County's than that of Erie and Monroe.

The principal questions that can be raised about the City's comparisons are that some of them are rather far from Batavia (Corning, Glens Falls, Ogdensburg, Oneonta), and others (Evans, Kenmore) are in metropolitan areas. On the other hand, many of the City's exemplars are indeed like Batavia in the sense of being small cities in predominantly rural counties in Western New York (Canandaigua, Dunkirk, Fredonia, Geneva, Olean). In terms of location, moreover, these municipalities are about the same distance from one of the two major metropolitan areas in Western New York as in Batavia.

The upshot of all this is that, by the very standards advanced by the Union, the "pertinent sphere of comparability" advanced by the City is, on the whole, more appropriate than the one urged by the Union. And when one

examines the salaries and benefits paid to police officers in these jurisdictions, the compensation package in Batavia is competitive, varying from the others by no more than five percent (and in most cases higher). We conclude, therefore, that the criterion of comparability does not dictate either an unusually large or an unusually small determination by this Panel. In particular, we cannot endorse the Union's argument that a major "catch-up" is in order.

Neither is the case for a 9 percent award effectively rebutted by the Union's argument regarding the hazardous and stressful nature of police work, or by the City's allusion to the DPW fact-finding recommendation. On the latter point, the Union persuasively argues that comparisons with non-public safety employees is inapposite, not least because of the explicit statutory reference to "employees performing similar services or requiring similar skills under similar working conditions." As for the nature of the work, this standard becomes relevant only to the extent that the work has changed over time. In other words, unless it can be shown that current salaries do not already reflect these factors, or that the factors have worsened over time, there is no basis for awarding a percentage increase different from that suggested by other criteria. In this case, the requisite showing has not been made.

The final criterion to be addressed is ability to pay. It must be noted at the outset that ability to pay is essentially a constraining criterion. In other words, an award suggested by other criteria should not be increased because of the mere fact that the employer has the money. On the other hand, a panel cannot responsibly order an employer to pay money it simply does not have, or cannot raise, even if a higher payment is warranted by other criteria.

The task here, then, is to ascertain whether the indicated 9 percent award is beyond the City's ability to pay.

In this regard, we find considerable merit in the Union's analysis. While there can be little doubt that Batavia has been hard hit by the current recession, the fact remains that ability to pay for a municipality is nothing more than a measure of its capacity to levy taxes. To make a persuasive case that it lacks ability to pay, a public employer must show that it is already tapping its taxable resources to an appreciable extent. The best measure of this effort is the real value tax rate, which by the City's own figures (Brief, pp. 5, 6) rose by less than 16 percent in the six years ending in 1982 (from \$2.99 in 1976 to \$3.46 in 1982). To be sure, the City is to be congratulated for its fiscal management, and it is true, as the City argues, that "it would be inappropriate to penalize local taxpayers for sound management practices." But paying a just and reasonable salary increase to police officers hardly constitutes penalizing local taxpayers. In short, even if Batavia's tax rate is not, as the Union asserts, the lowest in the State, it is, as the City concedes, on the low side, and it is most difficult for a municipality with a low tax rate persuasively to argue an inability to pay an increase that comports with other statutory criteria.

In sum, the 9 percent award for 1982 is suggested affirmatively by several relevant factors, and the Panel finds no negative arguments sufficiently persuasive to depart from it. At the same time, we find the record to warrant the 9 percent as a total money package, since awarding additional benefits or stipends would not be materially different from awarding a higher salary increase. Accordingly, although we are persuaded that several of the other economic proposals of the Union are meritorious, we will defer their implementation until 1983.

In determining the 6 percent award for 1983, the Panel has adopted much the same reasoning as for 1982. In this case, however, the cost-of-living criterion assumes even greater weight. Unlike 1982, there is no comparison to be made with the firefighters, since their 1983 salary has not yet been established. Similarly, there is little basis for estimating salary settlements and/or awards for other police forces. Indeed, the most reliable determinant of average salary increases over time is typically the cost of living itself.

It is by now clear that the rate of increase of the CPI will be appreciably smaller in 1982 than it was in 1981. If we use the October-to-October period suggested by the Union, a significant portion of the year has already passed. Between October 1981 and February 1982, the Buffalo-area CPI declined by more than 1.2 percent. And although the Buffalo-area figure for March 1982 is not available, the national CPI declined by 0.3 percent. (The Buffalo area, moreover, has in recent years had lower price increase than the national average.) Thus with nearly half the year gone, the CPI in the area has fallen by more than 1.5 percent with no signs of a significant reversal of the trend in the near future.

This factor leads the Panel to conclude that a just and reasonable award for 1983 should be lower than that for 1982. The 6 percent award will almost certainly exceed the increase in the CPI for 1982, given what we already know. At the same time, salaries typically tend to be much less volatile than the CPI, rising more slowly when inflation is high and more rapidly when inflation is lower, as shown in the table below:

<u>Year</u>	<u>CPI (over previous year)</u>	<u>Bargained Wage Adjustments (over previous year)</u>
1972	3.3%	6.6%
1973	6.2	7.0
1974	11.0	9.4
1975	9.0	8.7
1976	5.8	8.1
1977	6.5	8.0
1978	7.6	8.2
1979	11.5	9.1
1980	13.5	9.9
1981	8.9	9.1

Source: Monthly Labor Review, August 1977 (table 36) and March 1982 (tables 25 & 36).

In short, the 1983 award should allow unit members to recapture much or all of the real income lost to inflation in recent years. Members will also benefit to varying degrees from the additional economic improvements provided in this award, to which we now turn.

#### Inter-Department Training

The PBA proposes that members be compensated at the rate of time and one-half for attending inter-department training, including the firing range. At present, members receive compensatory time at straight time for inter-department training, excluding the firing range. The PBA's proposal would allow members to be compensated in time or money, at their discretion. The PBA argues that since inter-department training and firing range training are mandatory, they are equivalent to overtime work and hence should receive the standard overtime premium. It also notes that "because of the few hours involved the economic impact of this proposal is slight." The City, for its part, argues that no other comparable jurisdiction pays time and one-half for training activities.

The Panel recognizes that there is some merit in the Union's formulation. At the same time, however, we note that the proposal would afford members the equivalent of about 18 hours pay (12 hours for the firing range and 6 additional hours for inter-department training) or nearly one percent of annual salary. It is the Panel's judgment that this additional pay would be more appropriately granted in other forms. Hence, award: the proposal is rejected.

### Vacations

The PBA proposes an increase in vacation allowance. The City is willing to grant a smaller increase in one of two forms. The formulations are as follows:

	Weeks Vacation			
	<u>Current</u>	<u>PBA</u>	<u>City I</u>	<u>City II</u>
after 1 year	2	2	2	2
after 5 years	3	3	3	-
after 7 years	-	-	-	3
after 10 years	-	4	-	-
after 13 years	-	-	-	4
after 15 years	4	5	4	-
after 18 years	-	-	-	5
after 20 years	-	-	5	-

The PBA argues that the vacation schedule has not changed since 1967, and that many other jurisdictions have more generous vacation schedules than does Batavia, including several cited by the City for comparison purposes. The City agrees that a maximum of five weeks vacation is the prevailing practice, but it argues that the average length of time needed to reach the maximum is 18 years.

The Panel notes that under the PBA's proposal nine members of the bargaining unit would receive an extra full week of vacation by 1983. While there is some question as to the actual monetary cost of additional vacation time (since

a vacation would require a fill-in only if another member of the platoon is also absent), it cannot be argued that the benefit is costless, although the cost may take the form of lost service rather than direct dollar outlay. These costs would also tend to be centered in the first platoon where the most senior members are. For these reasons the panel determines that a modification of the PBA's proposal is in order and awards as follows:

	<u>Weeks Vacation</u>
after 1 year	2
after 5 years	3
after 12 years	4
after 18 years	5

This schedule shall be implemented in 1983.

#### Shift Differential

The PBA proposes that the current differential of 15 cents per hour paid to members of the second and third platoons be raised to 20 cents. The City argues that this issue is one of basic earnings and that many jurisdictions pay no differential.

The Panel appreciates that this issue cannot be separated from that of base salary, and in determining our award on salary we have taken the differential (which is equivalent to a 0.3 percent average increase) into account. Taking the proposal on its own, however, we are persuaded of its merits. We are especially moved by the facts that (1) the differential has not changed for 15 years, and (2) shift work is obviously seen as undesirable, since officers with sufficient seniority unvariably opt for the day shift. This latter point is strong evidence that the current differential is not adequate to compensate for the relative undesirability of shift work. Award: The shift differential shall be increased to twenty cents, effective January 1, 1983.

Longevity Pay

The current Agreement grants longevity pay as follows:

after 5 years	\$100
after 10 years	200
after 15 years	300
after 20 years	400

The PBA proposes that each of these amounts be increased by \$100. The City argues that this is the equivalent of a 52 percent increase in longevity pay and thus excessive given the City's financial position.

Again, the Panel appreciates that this issue must be evaluated in conjunction with other economic improvements, and we have done so. Nevertheless, we note that the longevity schedule has not changed in 15 years and that many other jurisdictions pay considerably more than Batavia (including several cited by City for comparison purposes). We also observe that despite the 52 percent figure cited by the City, the total cost of the proposal is about \$1600, or about .4 percent of unit payroll. Award: All longevity payments shall be increased by \$100, effective January 1, 1983.

Education Incentive

The PBA proposes the institution of an education incentive under which members would receive an additional \$250 for a certificate and \$500 for an Associate's or Bachelor's degree. It points out that a number of police departments in Western New York have such a program. The City argues that a minority of departments it regards as comparable to Batavia provide a salary incentive. More typical, the City contends, is the practice now followed by Batavia of paying the tuition cost for job-related study.

While the Panel does not dispute the value of a salary-based education incentive, it feels that the dollars involved would be better used for benefits

(such as those granted elsewhere in this award) that can be applied more broadly to the bargaining unit as a whole. Hence, award: the proposal is rejected.

#### Unused Sick Leave at Retirement

The current agreement provides for a payment to a member of \$5.00 for each unused sick day on the occasion of his retirement (or to his estate in the event of his death). The PBA proposes to increase this payment to a full day's pay for each unused sick day. The Union points out that the current benefit has not changed since 1977, and it argues that other jurisdictions have more generous plans. The City contends that no comparable department pays a benefit in the amount proposed by the Union, and in any event sick leave is intended as insurance against loss of pay due to illness.

The Panel sees merit in the City's argument. Paying for all unused sick time in cash at the time of retirement essentially renders sick leave equivalent to vacations or holidays, a status that is fundamentally at variance with the purpose of the sick leave benefit. The cost of the benefit is dramatically increased if it is changed from a contingent payment, under the assumption that only some fraction of it will actually be used, to a payment that will eventually have to be made whether or not the member is ever sick. Hence, award: the proposal is rejected.

#### Maintenance Allowance

The PBA proposes that members be paid \$125 per year for the maintenance and repair of uniforms. It cites several jurisdictions that currently provide a maintenance allowance. The City notes that only half of its comparable jurisdictions pay a maintenance allowance, and that the benefit is not justified now given the City's financial position.

The Panel finds this proposal to be a reasonable one. Members are required to have special clothing on their jobs, clothing that cannot readily be cleaned at home. Even by the City's reckoning, this is by no means an unusual benefit for police officers. Further, the Panel has taken the City's financial position into account in determining an overall economic package and finds that the cost of such a benefit (about 0.6 percent of unit payroll) in the context of the other awards is not beyond the City's means. The Panel regards \$100 annually as a fair amount for cleaning and maintenance. Award: a uniform maintenance allowance of \$100 per year shall be established, effective January 1, 1983.

### City Proposals

#### Seniority in Temporary Appointments

The current agreement provides that "a temporary appointment to a higher paying position or special assignment shall be based on skill and ability. Where skill and ability are equal, seniority shall govern." The City proposes to eliminate all reference to seniority.

The City has offered no compelling reason for this proposal. The current language already places primary weight on skill and ability, and it is not at all clear why seniority is not an appropriate or reasonable "tie-breaker." Further, the City has offered no showing that the current language is onerous or that it has resulted in questionable promotions or special assignments.

Award: The proposal is rejected.

#### Negotiations on New Positions

The current agreement provides that wage rates for new job classifications shall be subject to negotiation with the PBA. The City proposes that this provision be eliminated, arguing that "negotiations will not necessarily produce a pay rate which will prove to be competitive."

The Panel finds it difficult to see the PBA resisting proposed pay rates that will attract and retain qualified personnel. More important, however, the Panel believes that since the PBA represents all members of the bargaining unit, it cannot properly be deprived of its right and responsibility to negotiate all terms and conditions of employment, including those of members placed in new classifications. Award: the proposal is rejected.

#### Sick Leave Accumulation

The City proposes that sick leave be accumulated only in accordance with days actually worked. It argues that "the use of sick leave is tied directly to the actual work schedule and so should the accumulation of sick leave." It notes that at least two other police contracts have provisions similar to the one proposed here.

The Panel finds the basis for this proposal unconvincing. It has the effect of penalizing a police officer for taking time off to which he is contractually entitled and for which he is paid. The rationale for paid time off is to treat the time as though the employee was at work. It is a benefit that represents a form of compensation in lieu of wages. This benefit is obviously reduced if the paid time off is treated differently from work time. The Panel could appreciate the logic of a proposal that tied sick leave accumulation to paid time rather than simply chronological time, but that is not the proposal before us. Hence, award: the proposal is rejected.

#### Medical Insurance

The City proposes that PBA members pay a portion of medical insurance costs. The City argues that the cost of this benefit has been rising at a dramatic rate and that it will be used more judiciously if members assume a portion of its cost.

The Panel is unpersuaded of the merit of this proposal. The City has offered no evidence that the utilization of medical insurance is related to the proportion of its cost borne by the employee. This is a major benefit for the PBA, and reducing it would require a stronger justification than the City has offered. Award: the proposal is rejected.

#### Service Charge for Dues Deduction

The City proposes that it be allowed to deduct \$3.77 biweekly as reimbursement for the cost of checking off PBA dues. The Panel believes that since the City has to make several other deductions from an employee's paycheck, the added cost of the dues checkoff is trivial. Further, the City benefits from the checkoff by avoiding disruptions that would otherwise be engendered by dues collections from individuals. Award: the proposal is rejected.

#### End-Run Language

This term describes a proposal under which the cost of any new or improved benefit mandated by law during the term of the Agreement would be offset by reducing other benefits provided in the Agreement. The City would determine the amount of the offset, and its determination would be found.

While the Panel understands the motive behind this proposal, it feels that the relationship between legally mandated benefits and contractually mandated benefits is best addressed at the bargaining table. Further, we believe that to endorse this proposal would be tantamount to usurping the prerogatives of the state legislature. If the legislature, in its wisdom, decides to grant police officers a benefit, it would be inappropriate for the Panel to undermine this decision by allowing an equivalent benefit to be eliminated. Award: the proposal is rejected.

No-Strike Clause

The current Agreement contains a fairly standard no-strike clause. The City proposes an expanded clause that would subject the PBA to damages and would hold the City harmless in any action brought against the City in the event of a strike.

It is the Panel's judgment that the proposed language is neither necessary nor desirable. Strikes by police officers are prohibited by law, and the law exacts stringent penalties for its violation. Further, holding the City harmless in all cases precludes consideration of any role the City might have played in a job action. Finally, if the concern here is with protection of the public, as the City suggests, then it seems to us more appropriate to pursue that protection through the appropriate legislative and judicial channels rather than through a collective bargaining agreement that deals fundamentally with conditions of employment. Award: the proposal is rejected.

Buffalo, New York  
May 3, 1982

  
Howard G. Foster  
Public Member and Chairman

State of New York  
County of Erie

On this \_\_\_\_\_ day of May, 1982, before me personally came and appeared Howard G. Foster, 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.

NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN NIAGARA COUNTY  
My Commission Expires March 30, 19\_\_\_\_

BRUCER TEHAN  
Council President

LOUIS D. CANALE  
President Pro Tem

IRA M. GATES  
City Administrator

REBECCA J. TIEDE  
Clerk-Treasurer

GEORGE E. SCHAEFER, JR.  
City Attorney

# CITY OF BATAVIA



COUNCILMEN AT LARGE  
BRUCER TEHAN  
LEE F. ALLYN  
JAMES F. DeLONG

COUNCILMEN  
CATHERINE K. ROTH  
LOUIS D. CANALE  
BERNARD W. ASHER  
D. HOWARD COHEN  
RICHARD E. O'DONNELL  
J. ROBERT BUCKLEY

Batavia, New York 14020

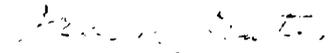
May 13, 1982

Mr. Howard G. Foster, Professor  
State University of New York at Buffalo  
School of Management  
Dept. of Organization and Human Resources  
319 Crosby Hall  
Buffalo, New York 14214

Dear Mr. Foster:

I reluctantly agree to the award dated May 3, 1982 in the interest arbitration between the City of Batavia and the Batavia Police Benevolent Association. My reluctance was based on the fact that it was the best of several options offered to the city.

Sincerely yours,

  
Ira M. Gates  
City Administrator

IMG:ble

Sworn to before me this  
13th day of May, 1982

  
Notary Public

**BRENDA L. EMENS**  
Notary Public, State of New York  
Qualified in Genesee County  
My Commission Expires March 30, 19 1983



Robert R. Currier  
President

Greg Q. Steele  
Treasurer



Box 299  
Batavia, N.Y. 14020

Ned L. Murray  
Vice President

Roger L. Richardson  
Secretary



May 18, 1982

Dr. Howard G. Foster  
School of Management  
Crosby Hall  
Buffalo, New York 14214

Dr. Foster:

As representative for the Batavia Police Benevolent Association in the matter of arbitration between the City of Batavia and Police, I dissent against the award issued May 3rd, 1982, case number IA 81-33.

Respectfully;

*Edward R. Doody*  
Edward R. Doody

State of New York  
County of Genesee

On this 18th day of May, 1982, before me personally came and appeared Edward R. Doody, 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.

*Brenda L. Emens*

**BRENDA L. EMENS**  
Notary Public, State of New York  
Qualified in Genesee County  
My Commission Expires March 30, 19 83