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CONCILIATION

In the Matter of the Arbitration :
 Between :
 CITY OF CANANDAIGUA :
 and :
 CANANDAIGUA POLICE BENEVOLENT ASSN. :

AWARD

PERB Case No:
IA82-6; M81-554

In accordance with the provisions of Section 209.4 of the Civil Service Law, the Public Employment Relations Board, on July 2, 1982, designated the following individuals to serve as a Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute between the above parties over the terms and conditions of employment of certain police officers in the unit represented by the Association herein (or its successor) for a period beginning January 1, 1982, following the expiration of the last previous collective agreement on December 31, 1980.

The panel consisted of the following:

- Peter Spinelli, Esq., Employer Panel Member
- Michael Casson, Employee Organization Panel Member
- Irving R. Markowitz, Public Panel Member and Chairman

Pursuant thereto, the panel held hearings on October 28, 1982, in the City of Canandaigua, at which time the parties, through their respective counsel, presented written and oral statements and arguments, and adduced oral and written testimony with respect thereto, relating to their positions on the various issues of the dispute. Thereafter, on October 29, 1982, the panel members convened in executive session to deliberate on their findings.

Carl R. Krause, Esq. of Harris, Beach, Wilcox, Rubin and Levey, appeared for the Employer ("City") and Carmin R. Putrino, Esq. of Lipsitz, Green, Fahringer, Schuller & James for the Employee Organization ("Association").

BACKGROUND

1. The Association (affiliated with the Communications Workers of America, Local 1170), is the recognized exclusive bargaining agent for all persons employed as police officers by the City. Prior to 1981, persons employed as police officers by the City were represented in the identical bargaining unit by the Canandaigua Police Benevolent Association, formerly known as the Thomas P. Kinsella Police Club. In 1981, the Association voted to affiliate with the Communications Workers of America, Local 1170.

Until 1979, the bargaining unit consisted of persons employed in the titles of police officer, as well as those employed in titles of sergeant and lieutenant by the Canandaigua Police Department. In 1980, persons employed in the rank of sergeant and lieutenant were recognized as a part of a separate bargaining unit, negotiating their own collective agreement, independently. The last collective agreement, covering January 1, 1980 through December 31, 1981, was applicable exclusively to persons employed in the job title of police officer.

All of the previous collective agreements were the subject of negotiations and agreement by the parties. The instant proceeding is the first interest arbitration required to resolve collective negotiations.

2. The bargaining unit consists of 19 persons classified as police officers, positions in the competitive class of the classified service of the City. Of the 19 police officers, 16 act as uniform police officers performing primarily patrol duty. Two of the non-uniform police officers act as young adult officers or juvenile officers. The third non-uniform officer acts as an investigator.

In addition to the foregoing functions, 5 police officers have been designated and assigned additional tasks other than those provided in the civil service job specification for police officer. 3 police officers are assigned on a rotation basis to act as evidence technicians. They are responsible for investigating the scene of a crime and collecting and evaluating evidence.

Another police officer is assigned to act as range officer. His function is to manage the police firing range and administer programs geared toward qualifying and requalifying police officers in the use of firearms. He is required to maintain records of performance as well as train and assist police officers on the range.

A third police officer is assigned to act as a traffic officer. His function is to coordinate various traffic safety programs and traffic enforcement programs. This officer designates particular areas for enforcement procedures and makes the necessary scheduling arrangements to conduct those procedures. He is also responsible for traffic safety education programs and the personnel involved in those programs.

All uniform police officers in the bargaining unit and persons in the department in other bargaining units or supervisory positions are scheduled to work 37 1/2 hours per week. Persons employed as investigators or young adult officers are scheduled to work 40 hours per week without any additional compensation. The police officer assigned to act as a traffic officer is provided compensatory time for time spent in the traffic officer function.

The police officers assigned the additional duties of evidence technician, range officer or traffic officer are primarily assigned to perform the duties of a police officer on patrol. Until expiration of the most recent collective agreement, persons assigned as youth officers and investigators were assigned to those tasks full time. Since the expiration of the last collective agreement, youth officers and investigators have been assigned to perform uniform patrol duties as well, at various times this year.

Police officers on patrol work rotating shifts scheduled as follows: 4 am to 12 noon, 12 noon to 8 pm and 8 pm to 4 am. During the 4 am to noon shift, 2 police officers are on road patrol. Each officer rides in a separate patrol car. The third officer scheduled for that shift is usually in the office

dispatching, taking and typing complaints, logging tickets, and checking persons being held in the lockup. Police headquarters contains a five cell facility for the temporary detention of persons arrested until transfer to County jail facilities.

During the noon to 8 pm shift, one patrolman is assigned to the office performing the duties described above. 3 police officers are assigned on patrol duties, one of which may involve foot patrol.

During the 8 pm to 4 am shift, one police officer is usually assigned to the office performing the duties described above. 4 police officers are assigned on patrol, including one on mandated foot patrol.

Assignments for each shift are made on a daily basis by the sergeant in charge of that squad. Frequently, the sergeant may assign himself to duties in the office, thereby freeing the police officer from office duties for patrol duties. The uniform police officers are scheduled on a rotation basis. They are scheduled to work four consecutive days followed by two consecutive days off. Non-uniform police officers are scheduled to work 9 am to 5 pm or 4 pm to midnight. They work five consecutive days and are off two consecutive days. In addition to that schedule, 2 of the non-uniform officers (the young adult officers) are scheduled to be on call for 8 hours between midnight and 8 am.

Of the 19 police officers in the bargaining unit, 5 have at least 10 years of service with the department. An additional 5 have at least 5 years of service with the department. Under the current wage schedule, 10 police officers in the unit receive the top incremental step of \$15,954. per year. Of the remaining 9, 5 are at the third step receiving \$14,476. and 4 are at the second step receiving \$14,150.

3. In 1975, the parties negotiated a collective agreement for the calendar years 1976 and 1977. For 1976, the bargaining unit received a 3.6 to 11% salary increase. The parties provided for a wage re-opener for the second year of the contract. In 1976, the parties negotiated a 5.5% salary increase for the calendar year 1977. Under the terms of the 1976-77 collective

agreement, police officers appointed to act as police investigator, young adult officer, or administrative sergeant, received an additional \$1,100, \$800, and \$300, respectively.

In 1978, the parties negotiated a collective agreement for the calendar years 1978-79. In that collective agreement, the parties reduced by half, the increment steps between the starting and top rate for police officer. As a result, in the first year, the collective agreement resulted in salary increases of 5.5% and 5.9% increase in the second year. This collective agreement also provided that police officers appointed as police detective, young adult officer and administrative sergeant would receive an additional annual compensation of \$1,100, \$800 and \$300, respectively.

In 1979, the parties negotiated their most recent collective agreement. As indicated above, this was the first collective agreement covering the bargaining unit consisting exclusively of police officers.

In negotiating the most recent collective agreement, the Association obtained provision for the optional 20 Year Retirement Plan, as provided for police officers under Sec. 384-d of the Retirement and Social Security Law. However, the Association gave up one personal leave day (leaving only three personal leave days), effective January 1, 1981, and one paid holiday, if scheduled to work on that day; additionally, it gave up paid health insurance coverage for persons who retire prior to age 65, with accumulated sick leave. The most recent collective agreement produced a 5.5% salary increase for 1980 and a 3% salary increase for 1981.

THE ISSUES.

As appears in the pleadings ¹, the proposals of the parties remaining at issue ² are as follows:

- 1) Petition for Compulsory Arbitration filed by the Association and Response thereto filed by the City.
- 2) During the course of negotiations prior to the within proceedings, some issues had been adjusted between the parties.

Association

<u>Issue</u>	<u>Reference to Expired Contract</u>
1. Agency Shop	Article I
2. Wage Increase	Article III
3. Night Differential	Article III
4. Incentive for Education	Article III (Sec. 6)
5. Adjustment for Special Function	Article III (Sec. 7)
6. Hours of Work and Overtime	Article V
7. Vacation Selection	Article VII
8. Sick Leave Adjustment	Article VIII
9. Dental Plan	Article X
10. Grievance Procedure	Article XI
11. Binding Arbitration	Article XII
12. Scope, Compliance and Serviceability	Article XVI
13. Special Equipment	
14. Leave for Association Officers and Members and Bulletin Boards	Article XIII
15. Clothing Allowance	Article XV
16. Employee Protection (Insurance)	Article XVI (Sec. 1)
17. Reduction In Force	Article XVI (Sec. 2)
18. Check Off Boxes	Article XVI (Sec. 3)

City

<u>Issue</u>	<u>Reference to Expired Contract</u>
A. Recognition	Article I
B. Management Rights	Article III
C. Association Activities	Article IX
D. Sick Leave	Article IX
E. Personal Leave	Article X

F. Medical and Life Insurance	Article XI
G. Grievance Procedure	Article XII
H. Scope, Compliance and Serviceability	Article XVI
I. Duration	Article XVII

In the treatment of the above issues in the following sections and pages of this award, we will set forth (a) status under the current contract, (b) a summary of the proponent's position, (c) a summary of the respondent's answer and (d) the panel's award or determination with reasons therefor. Whenever possible, we will endeavor to match the proposals of each of the parties concerning modification of the present language of the articles and sections of the current contract. Additionally, we will place the issues in the two major groups of non-economic and economic.

Although the parties, at the outset of the proceedings were at issue concerning the duration of the contract in dispute, both sides orally agreed to a two year contract running from January 1, 1982 to December 31, 1983, and we shall so award.

Our deliberations require the aid of statutory criteria that govern these proceedings. While in most cases, these criteria are more suitable for the determination of so-called economic issues, at least some of them, as well, may have application to non-economic items.

In such respect, Section 209.4 of the Civil Service Law (as amended July 1, 1977), in pertinent part, reads:

"(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 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 ISSUES, POSITIONS OF THE PARTIES,
FINDINGS AND AWARDS

Non-Economic

A. Agency Shop

(a) There is no agency shop provision in the current contract.

(b) The Association seeks an "agency" fee arrangement in the amount equal to the periodic dues of its members. Its principal supporting arguments are (1) the arrangement is fair to all unit employees who are entitled to the collective bargaining services of the Association and, therefore, should bear an equal burden of the costs therefor and (2) the contract between the City and another employee organization (Firefighters) contains such clause.

(c) The City objects on the grounds that (1) there is no need therefor, since all unit members are dues paying Association members and (2) it undermines the principles of freedom of choice envisioned in a municipal environment.

(d) The panel rejects the proposal and awards that it should not be included in the projected collective agreement. There has been no showing that the clause is a general condition of employment among bargaining units and, more especially, police units in the state, and, further, that there is no present need for its inclusion in the projected agreement.

B. Maintenance of Benefits

(a) There is presently no maintenance of benefits clause in the collective agreement.

(b) The Association proposes a provision, the effect of which is to preserve and continue pre-existing rights or privileges not specifically stated in the proposed agreement for its duration.

(c) The City objects.

(d) The Panel rejects the proposal and awards that it not be included in the new contract. Although it is true that similar provisions have found their place in many public sector contracts, especially in the early period of the existence of the Taylor Law, it has caused numerous problems and resulted in many grievances. The parties hereto have had a collective relationship since at least 1975 and it would be expected that all disputable past benefits have been negotiated. We see no present need nor advantage to the inclusion of the proposed clause.

C. Management Rights

(a) The present contract contains a general management rights provision.

(b) The City has proposed the addition of certain specific rights of management beyond the general rights stated in the present contract, generally, in areas that exclusively reside in management. However, it also proposes a management right to sub-contract.

(c) The Association has objected to the proposal in its entirety, and most especially to the sub-contracting proposal, arguing that the present general clause provides to management all of its legitimate rights.

(d) The Panel finds that the proposals (a,b,c,d,e,f) are properly regular functions of management but that the sub-contracting provision may have serious effects on the security of employment of unit members. It, therefore, awards that sections a,b,c,d,e and f of the proposal be included in the proposed contract

but that section(g), dealing with sub-contracting or contracting out, be excluded therefrom.

D. General Conditions

(a) This article presently contains a variety of general rules concerning the parties' responsibilities to each other and under the law.

(b) The City has proposed an additional clause pertaining to the "law governing this agreement".

(c) The Association objects.

(d) While the panel questions the necessity for the added provision (4), it believes that the parties would be properly served by changing the last word thereof "act" to "agreement". We, therefore, award that, with such modification of the word "act" to "agreement", the clause be included in the proposed contract.

E. Grievance Procedure

(a) The current contract contains a step grievance procedure with time limitations between each step.

(b) The Association proposes a definition of or a modification of the present definition of a grievance to add, inter alia, an employee's complaint of unjust or unfair treatment to the current language. It further proposes changes to allow disciplinary arbitration in lieu of Section 75 proceedings under the Civil Service Law and, finally, a modification of the time limitations for filing grievances.

(c) The City objects to the proposals, arguing that the current agreement is fair and reasonable.

(d) While the definition of a grievance may be inartfully drawn in the current agreement, it adequately reflects the nature of general grievances and, therefore, need not be re-drawn. We, therefore, award that the grievance definition in the current agreement not be modified.

The issue of substitution of arbitration for Section 75 proceedings in disciplinary matters is a delicate matter for,

while it has been accepted in some public collective bargaining relationships, it has not been in others. Although arbitration on this issue does not appear undesirable, it is questionable that it should be adopted without the willing acceptance of both parties. It would thus appear to this panel that, since no proof has been submitted that any Section 75 proceeding in this unit has yet been brought, the issue await further collective bargaining negotiations. We, therefore, award that the proposal not be included in the contract.

Concerning the time limitations to bring grievances, we are of the opinion that the time limit to initiate a written grievance be a period of ten calendar days from the date of occurrence or date when the grievant knew or should have had reasonable knowledge thereof, and we so award.

F. Arbitration

(a) The current contract contains no arbitration provision, but the ultimate grievance step is decision by the City Manager.

(b) The Association proposes a binding arbitration clause under the rules and selection procedure of the New York State Public Employment Relations Board, with the parties to split the arbitration fees and expenses. It submits that without binding arbitration its rights and those of its unit members cannot be fairly and impartially adjudicated.

(c) The City objects on the grounds that there is no compelling necessity for other adoption of the proposal.

(d) The panel believes that binding arbitration is a necessary factor in impartially determining the contractual rights of the parties in collective bargaining and is universally recognized as such. It, therefore, awards the inclusion of a traditional binding arbitration provision for contractual disputes under the auspices of the New York State Public Employment Relations Board, with arbitrator's costs to be divided between the parties.

However, the panel rejects the extension of a binding arbitration provision which would include disciplinary proceedings.

As previously indicated, the arbitration of disciplinary issues in lieu of Article 75 proceedings is not so widespread among political subdivisions and municipalities of the State that its adoption in this case should be forthcoming without a showing of a pressing present need therefor, which is absent herein.

G. Leave for Union Officials

(a) The current agreement provides that two representatives of the PBA are allowed time off without loss of pay to attend state-wide conventions and meetings of the Police Conference.

(b) The Association seeks to extend the provisions to allow such representatives to attend Association meetings and meetings of CWA (to which the Association is presently affiliated), without loss of pay. It further proposes that all unit members, including those on duty, be permitted to attend local monthly meetings, subject to call by the City.

(c) The City objects on the grounds that the proposals would have a serious adverse effect on the efficiency of the operations of its small police unit.

(d) The panel is of the opinion that the present provisions concerning union officers paid leave to attend conferences is adequate. However, for the short period until the end of the proposed contract, it believes that an additional provision be inserted in the new contract that will allow the Association President and its Chief Steward a maximum of four days each to attend meetings of CWA, without pay, and it so awards.

Additionally, it awards that during any monthly meeting of the Association, a minimum of two uniformed patrolmen shall remain on patrol to provide adequate protection to the City and its citizens.

H. Security of Employment

(a) There is no such provision in the current collective bargaining agreement.

(b) The Association proposes a clause, the effect of which is to insure employment to all present police officers of the unit, except through normal attrition. In support of its proposal, it submits that (1) it is contained in the collective bargaining agreement between the City and its firefighters association and (2) it will insure to present employees the security of their desperately needed employment.

(c) The City objects.

(d) The panel finds no present pressing need for the proposal and awards that it be rejected. This provision is rarely found in public employment contracts and in the cases where it is included, it generally is a trade-off for little or no increases in salary or other substantial concessions.

I. Payroll Deductions

(a) There appears to be no payroll deductions at employee or Association option in the present contract.

(b) The Association proposes at least two payroll deductions for purposes selected by it, subject to individual authorization.

(c) The City objects.

(d) The panel awards that a provision be added in the new contract requiring the deduction of the regular dues of the Association from the pay of each unit member, who authorizes same in writing.

J. Equipment Committee

(a) No provision for such purposes appears in the current agreement.

(b) The Association proposes the formation of a committee, consisting of two unit members and the Chief of Police, to determine the specific items necessary to a police officer for the proper performance of his duties.

(c) The City objects.

(d) The panel finds two problems with the proposal, i.e., the makeup of the proposed committee and its authority to

make binding decisions. We, therefore, award the insertion of a provision in the proposed contract that will require the formation of an equipment committee, made up of two members of the City and two of the Association that would be authorized to examine the equipment needs of unit members and make recommendations concerning them to the City, which shall have the authority to make determinations thereon.

Economic Issues

K. Shift Differential

(a) The current contract provides that employees working between the hours of 4 pm and 8 am receive an additional 5% night differential in pay.

(b) The Association proposes that it be increased to 8% because of (1) increased hazards during the night period and (2) no increase in the 5% differential during four successive contract periods.

(c) The City objects on the basis that the present clause provides adequate compensation for night work and is equal to or greater than appears in most public sector police contracts.

(d) The panel rejects the proposal and so awards. The present differential is equal to or greater than that contained in most police contracts in the State and is adequate compensation in the unit under existing conditions.

L. Education Compensation

There is provision in the current contract for reimbursement by the City of costs and tuition for unit members who take courses in police service.

(b) The Association proposes the inclusion of an additional incentive provision which would pay those with an Associate Degree in Police Service an additional payment of \$200 annually and those with a Bachelor's Degree, \$300.

(c) The City objects.

(d) The panel is of the opinion that the payment of cost and tuition for education is adequate under present circumstances and awards that the proposal be rejected.

M. Out of Title Compensation

(a) There is provision in the current contract for extra compensation for police officers who act as temporary police sergeants.

(b) The Association proposes a provision in the ensuing contract that would entitle officers who perform the duties of evidence technician, range officer and traffic officer, additional compensation of \$300. per year.

(c) The City rejects the proposal.

(d) The panel awards that the proposal be disallowed. This small police department contemplates that police officers perform a wide range of duties as part of their regular job and there presently appears to be no cogent reason for special compensation therefor.

N. Non-Uniform Officer Compensation

(a) There is no provision for extra compensation for these officers in the present contract.

(b) The Association proposes that these officers who work 40 hours per week or 2 1/2 hours more than uniformed officers, be compensated for the extra hours so worked, which would amount to some \$1,100. per officer. It submits that this proposal is fair and equitable.

(c) The City rejects the proposal on the grounds that these officers enjoy certain benefits and conditions of employment, such as holidays off as they occur, no on-call procedure and the like.

(d) The panel awards that the schedule of the non-uniform officers be modified as of January 1, 1983, so that their hours of work do not exceed 37 1/2 hours per week on a five-two

schedule. We are of the opinion that, although the present practice of 40 hours per week has existed for a long number of years, it should be so modified in the interest of fairness and equity.

O. On-Call pay

(a) There is no provision in the current agreement for on-call pay, as such (although compensation is provided for call-in pay).

(b) The Association proposes payment for those officers who are required to be on-call, at the rate of two hours of pay for every 24 hours of scheduled on-call duty.

(c) The City rejects the proposal.

(d) The panel is of the opinion that there is no present basis for the proposal and awards that it be rejected. The officers are not required to remain in their homes or even in the City on their off hours. As with most para-military units, they are expected, if available, to report for duty in emergencies or special situations.

P. Vacation Scheduling

The parties have agreed, at the hearing herein, to a procedure of vacation selection and scheduling, as follows:

"Vacation selection shall be done annually by weeks. In the Patrol Division only the following rules will apply:

"First Sergeants will select their desired weeks of vacation by seniority from among the 52 weeks in the year, no more than one Sergeant off per week.

"Second Patrolmen will select their desired weeks by seniority from among the 52 weeks in the year and all weeks not previously selected by Sergeants. No more than one Patrolman shall be off per week, except two may be off when the second selection invades a week not previously selected by a Sergeant."

The panel awards that the above agreement, being fair and reasonable, shall be included in the proposed agreement.

Q. Medical Insurance - Blue Cross/Blue Shield

(a) There is a provision in the current agreement for Blue Cross/Blue Shield coverage.

(b) Both sides have made proposals for modification and additions to the present provision.

(c) The Association proposes the addition of a non-deductible prescription drug rider and dental insurance.

(d) The City rejects this proposal but counter-offers a Blue Million proposal which would eliminate the present plan's \$15,000. lifetime limitation on prolonged illness protection and broaden the coverage contained in the present plan, and will, as well, include a deductible prescription rider.

(e) The panel awards that the City's proposal be adopted and included in the proposed contract and that the Association's proposal be rejected. We recognize that insurance plans differ in their benefits' coverage, some of which may be more palatable than others, and that the unit members, through their employee organization, have a right to negotiate on any proposed plan to obtain benefits which they feel are optimal for them. Nonetheless, the City's Blue Million Plan is not only a popular benefit program but apparently will cover a vast majority, if not all, of the employees in the City. Benefits of this type are often packaged on a city or county wide basis and provide uniformity to all employees and some savings to the City. Since the cost of both proposals will be the same, - actually the City's proposal may be more expensive -, we believe that the City's proposal should be adopted because of its uniformity of coverage.

R. Sick Leave

(a) The current contract contains provisions allowing employees to accumulate one day of sick leave per month of employment, with no limit, and a further provision granting employees with five years of service additional sick leave at half pay after the exhaustion of their accrued sick leave, but only on the approval of the City.

(b) The Association proposes the following modifications:

1. Full compensation for work related injuries after all sick leave benefits are exhausted until an employee is on disability.
2. Compensation at the rate of one-half of salary for non-work related injuries or illness, after exhaustion of sick leave and until disability.
3. Upon retirement, employees receive one hour's pay for each day of unused sick leave.

(c) The City rejects the proposal.

(d) The panel awards that the proposed contract contain a provision that will entitle employees, upon their retirement, to receive a lump sum payment of \$7.00 per day of their unused sick leave not to exceed 150 days. It rejects the other proposals made by the Association. While the proposals have salutary features, their costs might impose on the City a continuing financial burden that could not be fairly accommodated.

S. Personal Leave

(a) The current contract provides for 3 personal leave days.

(b) The City proposes to eliminate one of these days so that each employee will receive 2 such days.

(c) The Association objects.

(d) The panel awards that the proposal be rejected.

The current contract had reduced the personal leave provision from 4 to 3 days and there is no proper basis for further reduction.

T. Salaries

(a) As in nearly all interest arbitration cases, the salary issue is, by far, the most critical.

The pay schedule in the current contract is on an incremental basis with 5 steps, including the starting step and the final step. The steps and rates are as follows:

Starting Rate	\$12,014
After 1 year	14,150
After 2 years	14,476
After 4 years	15,128
After 6 years	15,954

Of the 19 police officers in the unit, 10 are at the top step, 5 at the third step and 4 at the second step.

Prior to the hearing herein, the Association's position on salary increases was 10 1/2% general increase for 1982 on the basis of a one year contract commencing January 1, 1982; the City's position was 6 1/2% for the year 1982 and an additional 6 1/2% for 1983 on the basis of a two year contract commencing January 1, 1982.

(b) The Association supports its position as follows:

The City is located some 25 miles from Rochester, New York, and is closely affected by the high living costs in that city. During the last six years, the top incremental salary has increased a total of about \$3,500. However, during the same period the Consumer's Price Index (CPI) for the closest reported community to the City has been substantially higher. Thus, in 1976, a police officer at top step earned \$12,452, or a real value (based on 1967 CPI figures) of \$7,240; in 1978, he earned \$13,860, with a real value of \$6,438; in 1979 he earned \$15,490, with a real value of \$6,577, and presently (1980), he earned \$15,954, with a real value of \$6,009. Against the CPI intermediate family budget figures, a top step officer in 1976 earned about 75% of budget; in 1980, 66% and in 1981, 60%.

Between 1977 and 1981, the CPI family budget increased 62% and CPI increased 65%. During that period, the following salary increases have been given to City police officers:

1977 - 5 1/2%
 1978 - 5 1/2%
 1979 - 5.9%
 1980 - 5.5%
 1981 - 3%

Moreover, during the same period private sector employees received salary increases averaging about 17 1/2%.

Police officers in neighboring communities of similar type and size earned between \$16,338 and \$20,710 at top step in 1981 and some additionally received longevity increments.

Finally, the City has not claimed a financial inability to pay the reasonable increase proposed by the Association.

(c) The City maintains that although it does not claim an inability to pay, as that term is used in interest arbitration proceedings, its financial position is not much different than other distressed cities and worsened by a declining population, an increased percentage of elderly citizens, many of whom subsist on fixed incomes, and an erosion of Federal and State aid. Nonetheless, it has maintained fair and reasonable salaries for its police officers, as evidenced by the large number of its present force that in 1981 have transferred to it from other police departments.

It further submits that its offer of 6.5% in salary increases reflects an actual increase of nearly 9% when incremental step increases are factored in.

Additionally, it argues that the Association's allegations of low percentage increases in 1979 and 1980 have failed to mention that the Association negotiated a 20 year retirement plan at substantial and continuing cost to the City. Despite Association's allegations, the salaries paid by the City to its police officers are higher than those existing in many police departments of similar type and size in the State.

Finally, it submits that while its offer herein translates to 8.9%, it has provided to other units of public employees in the City only an 8% general increase.

(d) On the basis of a two year contract, commencing retroactively from January 1, 1982, the panel awards the following:

8 1/2% general increase for the first
year (1/1/82 - 12/31/82)

8% general increase for the second year
(1/1/83 - 12/31/83)

We deem the above increases fair and reasonable under statutory criteria. Although the City did not allege an inability to pay, we believe that the "ability to pay" statutory standard should be construed so that an inability to pay will reduce an otherwise justified increase under other statutory factors, but that an ability to pay should not enhance an otherwise justified increase under other statutory factors.

We have considered and compared the salaries paid to the unit employees herein with others performing similar services with similar skills and generally conclude that the present salaries of unit employees are lower than those generally existing among police officers in other cities throughout the State and surely less than salaries received in the private sector by employees of similar skills. Moreover, it has been demonstrated that the present salaries of unit employees are somewhat below reasonable living standards for such employees and, indeed, because of inflationary pressures, such salaries reflect a continuous erosion of purchasing power over the past 6 years.

We are especially concerned with the generally low salary increases paid to unit employees as reflected in the terms of previous agreements. We thus note that from 1977 through 1981, the annual general increases have averaged less than 5%, against average annual increases in the public and private sector of nearly twice that percentage figure. We recognize that the increases of 1980 and 1981 (5.5% and 3%, respectively) should be balanced against the 20 year retirement plan negotiated during that period. Nonetheless, it has resulted in salaries that, in fairness and equity, should be properly adjusted at this time. Our award has attempted to accomplish that result.

The panel further awards that the projected collective agreement shall commence as of January 1, 1982 and expire on December 31, 1983; that the general increases provided herein shall be retroactive from January 1, 1982 and all retroactive payments shall be made in a lump sum to each unit employee entitled thereto within 15 calendar days from the receipt of this award;

and, further awards that all other changes, modifications or additions to the current agreement become effective as of January 1, 1983.

The panel further awards that all issues settled previous to these proceedings and not contained in this award shall be included in the proposed contract.

The panel further awards that it will continue its jurisdiction of the matters herein for a period of 30 calendar days from the receipt of this award by the parties hereto, for the sole purpose of entertaining a petition or request by either side concerning problems of contract language and construction but for no other purpose.

Dated: December 22, 1982

/s/ Peter Spinelli
Peter Spinelli
Employer Panel Member
(concurring) (dissenting)

Michael C. Casson
Michael Casson
Employee Organization
Panel Member
(concurring) (dissenting)

/s/ Irving R. Markowitz
Irving R. Markowitz
Public Panel Member and
Chairman

State of New York)
County of Monroe) ss
CITY OF Rochester)

On this ^{January} 4 day of December, 1982, before me, the subscriber, personally appeared Peter Spinelli, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

KARLA R. CROSSY (S)
Notary Public
3/31/83

State of New York)
County of) ss:
City of Canandaigua)

On this day of December, 1982, before me, the subscriber, personally appeared Michael Casson, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

State of New York)
County of onondaga) ss:
City of Syracuse)

January 1983

On this *14th* day of ~~December~~, 1982, before me, the subscriber, personally appeared Irving R. Markowitz, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

Carol O. Benedict

CAROL O. BENEDICT
Notary Public in the State of N. Y.
Appointed in Onondaga County
My commission expires Mar. 30, 1984

Concurring comments of Peter Spinelli:

I concur in the award without modification and do so in large part because the parties have been without a contract for over one year. However, I must point out that the wage increase awarded: 8.5% for 1982 and 8% for 1983 -- is higher than warranted in light of both the poor economy and ^{the} fact that cost of living figures are now below 5%. While this concern does not cause me to dissent from the award, I urge that the parties be aware of this matter in negotiating a successor agreement after the expiration of the award on December 31, 1983.

Dated: January 4, 1983

Peter J. Spinelli

Peter J. Spinelli

