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COMM. DIV.

: In the Matter of the Compulsory :
: Interest Arbitration :
:

- between -

RENSSELAER POLICE BENEVOLENT
ASSOCIATION

- and -

CITY OF RENSSELAER

: OPINION AND AWARD

: of

: PUBLIC ARBITRATION
: PANEL

BEFORE:

George S. Roukis
Chairman and Impartial Member

John Galligan
City of Rensselaer Panel Member

Paul Bailey
Rensselaer P.B.A. Member

APPEARANCES:

For the Rensselaer Police Benevolent Association

Joseph Sanchez, 3rd Vice President, Police Conference
of New York, Inc.
Richard Van Vorst, President, Rensselaer Police
Benevolent Association
Wayne Peplowski, Negotiator, Rensselaer Police
Benevolent Association
Edward Fennell, Fiscal Consultant, Police Benevolent
Association

For the City of Rensselaer

Robert D. Wilcox, Corporation Counsel, City of Rensselaer
William S. Sillery, Commissioner, Taxation and Assessment
John J. Dwyer, City Treasurer
William J. Reilly, City Accountant

Pursuant to the statutory provisions applicable to Compulsory Interest Arbitration under Section 209.4 of the New York State Civil Service Law as amended, the undersigned Public Arbitration Panel was appointed on July 26, 1982 to hear and decide the contract negotiations dispute between the City of Rensselaer Police Benevolent Association and the City of Rensselaer, hereinafter referred to as the Association and the City respectively.¹ Accordingly, a hearing was held on October 15, 1982 at the City Common Council Chambers located at 505 Broadway, Rensselaer, New York at which time the parties were afforded ample opportunity to present testimony and evidence germane to their positions. In addition, the parties submitted summary briefs at the behest of the Panel on November 12, 1982. The Panel met on December 9, 1982 to review its finding of the arbitration record and its Award is predicated upon this careful assessment.

¹These provisions are verbatimly referenced hereinafter. "Statutory provisions applicable to Compulsory Interest Arbitration Pursuant to Civil Service Law, Section 209.4 (As Amended July 1, 1977)

(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

(Footnote 1 continued)

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 the 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.

BACKGROUND

Prior to the beginning of the hearing on October 15, 1982, the parties met without the Panel to reduce the number of unresolved impasse issues still pending at that time. The parties were successful in this endeavor and narrowed the negotiating agenda to the five (5) Association proposals set forth hereinafter:

"1. CLOTHING AND EQUIPMENT MAINTENANCE ALLOWANCE

- (a) Effective August 1, 1981, all permanent members of the Department covered by this Agreement shall be entitled to an annual clothing allowance of Three Hundred seventy-Five Dollars (\$375.00) payable during the first pay period of December of each year.
- (b) Effective August 1, 1982, all permanent members of the Department covered by this Agreement shall be entitled to an annual clothing allowance of Five Hundred Dollars (\$500.00) payable during the first pay period of December of each year.

2. ANNUAL COMPENSATION

Approximately a twelve (12%) percent increase.

- (a) Each member covered by this Agreement shall be paid the following salaries based upon years of service with the Police Department in accordance with the following schedules:

Start or First Year	\$12,942.00	\$14,495.00
Second Year	14,107.00	15,495.00
Third Year	15,046.00	16,851.00
Fourth Year	15,984.00	17,902.00
Fifth Year	16,695	18,699.00

- 3. Effective August 1, 1981, Identification Officers and Detectives are to be compensated at the level of pay commensurate with years of service on the Department with an additional Nine Hundred Dollars (\$900.00) per year for the advanced rank or specialized duties.
- 4. Effective August 1, 1981, Sergeants and Provisional Sergeants will receive an additional Sixteen Hundred Dollars (\$1600.00) per year over top Patrolman salary.

5. In addition to salaries paid pursuant to Article 4 of this Agreement, effective August 1, 1981, members of the bargaining unit shall receive longevity payments as follows:

- | | |
|--|--------------------|
| 1. After five (5) years of service | \$200.00 per annum |
| 2. After ten (10) years of service | 200.00 per annum |
| 3. After fifteen (15) years of service | 200.00 per annum |
| 4. After twenty (20) years of service | 200.00 per annum |

Maximum to be paid to any individual of the Department in longevity payments shall be \$800.00 per annum."

The parties entered into a Memorandum of Settlement on the issues not submitted to arbitration and the Panel takes judicial notice of this settlement. It is incorporated as part of this Award.² In addition, the parties had reached agreement on numerous terms and conditions of employment before the unresolved issues were submitted to arbitration and these agreed-upon items are also reproduced herein as "Appendix B".

OCTOBER 15, 1982 MEMORANDUM OF SETTLEMENT

ARTICLE II - MEDICAL AND LIFE INSURANCE

- (a) Withdrawn by the PBA
- (b) The City will increase Life, Accident, Death and Dismemberment from \$10,000 to \$15,000 providing Present New York State Health Insurance Plan permits such an increase.

ARTICLE VI - RELEASE FROM DUTY

- (b) Withdrawn by the PBA and the City.
Present language to remain as is in contract.

ARTICLE X - VACATIONS

Revised schedule for vacation entitlements are as follows:

Completion of one through 3rd year of permanent service receive 2 weeks vacation; Four through tenth year of service receive three weeks vacation; From eleven through nineteenth year of service receive four weeks vacation; At twenty and over

²The parties had requested the Panel to incorporate the October 15, 1982 Memorandum of Settlement and Appendix B as part of this Award.

years of service receive five weeks of vacation.

ARTICLE XI - HOLIDAYS

- (b) Holiday pay will be paid as follows:
In May of each year a lump sum payment equal to nine paid holidays shall be paid to each employee. The remaining two holidays' pay for each employee will be paid on the first pay day following the eleventh holiday of each year.

ARTICLE XII - AGREED RETRO-ACTIVE TIME

- sub. (a) The City Fiscal year begins August 1 and ends July 31 of each year. If an employee's employment commences on or after August 1st and prior to February 1st of the fiscal year then ensuing, said employee's year of service shall be deemed to have commenced as of August 1st. If an employee's employment commences on or after February 1st of the ensuing fiscal year, his first year of service shall be deemed to commence on the next succeeding August 1st. Should it become necessary to establish seniority for any purpose as a result of this provision, the date of appointment shall control and as the employees appointed on the same date, a coin toss shall be utilized to establish same.
- sub. (b) Provisions for Kevin Van Dyke and Edward Farrell to be grandfathered so as to bring them into second year pay as of August 1, 1981.

ARTICLE XV - OVERTIME PAYMENT

Withdrawn by both the PBA and the City.
Present language to remain as is in contract.

ARTICLE XVII - GRIEVANCE PROCEDURES

- sub.4(c) A maximum of two (2) hours with pay shall be granted to any employee for the preparation of his grievance, sid time not being chargeable to any of the employee's accrued leave.

ARTICLE XX - TOURS OF DUTY

- sub. (b) Withdrawn by the city.

ARTICLE XXII - PAID LEAVES

- sub. (a) Withdrawn by the city.
Presently covered under Past Practice provisions.

ARTICLE XXIII - COMPENSATION OUT-OF-WORK

Withdrawn by the PBA
Present language to remain as is in contract.

ARTICLE XXIV - SICK LEAVE

- sub. (a) Past Practice provisions will continue with the exception of the following:
- (1) When a period of continuous sick leave occurs having a duration in excess of three (3) working days the employee shall present to the Chief a physician's certificate, obtained by the employee at his own expense, substantiating the need for taking of said leave.
Should said sick leave continue for period in excess of five (5) consecutive work days, the employee shall present a physician's certificate obtained by the employee at his own expense, substantiating the need for taking of such sick leave, upon request of the Chief.
 - (2) To be entitled to sick leave, employees must notify the Chief or his designee at least three hours prior to the commencement of the scheduled start of work, in cases of emergency.
 - (3) Violations of section (1) and (2) of Article XXIV sub. (a) shall be grounds for a disciplinary action.

ARTICLE XXVIII - RIGHTS OF EMPLOYEES

- sub. (b) In all cases, in the interest of maintaining the usually high moral of the force, the department shall afford an opportunity for a member of the force, if he so requests, to consult counsel and/or his association representative before being questioned concerning a violation of the rules and regulations. A representative of the association may be present during the interrogation of a member of the force.
- sub. (c) All questioning of an employee shall be conducted in a reasonable manner free from any threats, promises and intimidation.

NOTE: Those issues which were resolved prior to the petition for arbitration which appear in Joint Exhibit #6, although not part of this memorandum are to be included in the award.

Signed by

Joseph Sanchez
PCNY Representative

Robert Wilcox
Corporation Counsel

Richard Van Vorst
PBA President

Thomas E. Henry III
Mayor

TERMS AND CONDITIONS OF EMPLOYMENT MUTUALLY AGREED TO BY THE
PARTIES BEFORE THE PETITION FOR ARBITRATION WAS FILED
APPENDIX B - ATTACHED TO THE CITY'S JUNE 11, 1982 RESPONSE TO
THE ASSOCIATION'S PETITION FOR COMPULSORY INTEREST ARBITRATION

ARTICLE 1. Collective Bargaining

Collective bargaining with respect to rates of pay, hours of work or other conditions of employment shall be conducted by the duly authorized bargaining agent of each of the parties. Unless otherwise designated, the Board of Public Safety and the President of the Rensselaer Police Association, his designee or designees, shall be the respective bargaining agents for each of the parties

AGREED TO BY BOTH SIDES

ARTICLE 2. Medical and Life Insurance

c) Any member of the department shall have the option to purchase said coverage, at no cost to the city, if for any reason he decides to leave the Department.

ARTICLE 2 SECTION C AGREED TO BY BOTH SIDES

ARTICLE 3. Clothing and Equipment Maintenance Allowance

b) When a member has completed two full years of full-time service without a permanent appointment, he shall be entitled to and receive a clothing allowance the same as permanent members. The employer shall pro-rate this amount if they have knowledge of retirement or departure of such member.

c) In the event part of an officers uniform is torn or destroyed in the line of duty, and upon approval of the chief the damaged or destroyed article will be repaired or replaced immediately by the city. Should any officer be subsequently reimbursed for such loss, either voluntarily or through a court order, said officer shall immediately notify the chief and make arrangements to pay same to the city Treasurer.

ARTICLE 3 SECTIONS B AND C AGREED TO BY BOTH PARTIES

ARTICLE 5

a) This agreement shall be binding upon the parties and their successors as permitted by law.

AGREED TO BY BOTH SIDES

ARTICLE 6. Release from duty

a) Whenever a member of the Police Department, as a part of his duties shall be required to appear before any Grand Jury, court of administrative agency, he shall be released from duty for the time required for such appearance and the time during which he is so engaged including the time determined by the chief, necessary for travel to and from his duty station to the place of said hearing shall be considered a time of assignment and performance of his regular duty.

AGREED TO BY BOTH SIDES

ARTICLE 7

a) In the event any provision of this agreement shall be at any time declared invalid by Legislative Act or any court of competent jurisdiction, or through governmental regulation or decree, such decision shall not invalidate the entire agreement, it being the express intent of the parties hereto that all other provisions not declared invalid shall remain in full effect.

b) In the event that any provision of this agreement shall be at any time declared invalid as aforesaid, upon the demand of either party, the parties will meet to negotiate a valid contract clause on the same matter.

AGREED TO BY BOTH PARTIES

ARTICLE 9.

a) All departmental members while rendering authorized aid to another community are fully covered by Worker's Compensation and liability insurance as provided by state law. Further, since all police officers are presumed to be subject to duty twenty-four hours per day, any action taken by a member of the force on his off-time, which would have been authorized action if taken by an officer on active duty if then present or available, shall be considered police action and the member shall be considered police action and the member shall have all the rights and benefits concerning such action if he were then on active duty.

b) The city shall be liable for, and shall assume the liability to the extent it shall save harmless, any duly appointed police officer of the municipality for any negligent act or tort, provided such police officer at the time of the negligent act or tort complained of, was acting in the performance of his duties and within the scope of his employment.

AGREED TO BY BOTH PARTIES

ARTICLE 10. Vacations

b) Each employee may take up to five (5) days of his vacation allotment as individual days provided at least two (2) weeks advance notice is given to the chief and said request is approved by the chief. No more than one officer from any shift may be off on individual days at the same time. The granting of individual days vacation usage will be at the discretion of the chief and based on manpower requirements.

c) Vacation Seniority: Vacations for members will be spread out over the calendar year. Departmental Seniority will be the criteria for selection of vacation periods. No more than one (1) officer from any given shift may be on vacation at the same time. The option to split vacation allotment into single weeks is authorized. Seniority will be based on the date of appointment from a certified Civil Service list.

B AND C AGREED TO BY BOTH SIDES

ARTICLE 11. Holidays

a) All members shall be entitled to be compensated, whether on or off duty for eleven (11) holidays or days celebrated as such. Such holidays shall be:

- | | |
|--------------------------|----------------------|
| 1. New Years Day | 7. Labor Day |
| 2. Lincoln's Birthday | 8. Columbus Day |
| 3. Washington's Birthday | 9. Veteran's Day |
| 4. Easter Sunday | 10. Thanksgiving Day |
| 5. Memorial Day | 11. Christmas Day |
| 6. Independence Day | |

AGREED TO BY BOTH SIDES

ARTICLE 13. Professional Training and Improvement Courses

a) The Board of Public Safety and the Association are in agreement that it is in the best interest of the administration of the department that as many members as possible participate in professional, educational and training courses whenever the same are available. In order to facilitate the availability of such courses to the personnel of the department, the following are hereby adopted:

1. The department shall post on bulletin boards, located at police headquarters, announcements of all courses to be given which are either compulsory for a segment of the staff, are prerequisites to promotion or improved assignments, or any be optional for the purpose of improving the professional standing of the officer or the department. All eligible staff members shall have the opportunity to bid for the prerequisite and optional courses. In the event that there are more bids than openings available, the chief, in the exercise of his management

discretion, shall decide which member(s) shall attend such courses.

2. Compulsory Courses: The chief of police and the Board of Public Safety shall arrange all compulsory courses and training programs in such a manner so that any police officer required to complete such a course or participate in such training program shall be able to do so during his regular scheduled tour of duty.

3. Optional Courses: Any police officer attending an optional educational course related to the furtherance of his proficiency as a police officer shall upon successful completion thereof and presentation of evidence of such successful completion be reimbursed by the city for the cost of tuition and other expenses advanced by him in the taking of such course, provided that he had prior approval by the Board of Public Safety and the Chief of Police.

4. Prerequisite and Special Courses: Whenever a prerequisite or special course is announced by an educational institute which will result in the improvement of the professional capacity of a police officer, the chief of police will arrange to permit as many of the personnel as are interested in attending such course, and are eligible to do so, keeping in mind that if only a limited number can attend the chief, shall decide which member(s) shall attend such course.

AGREED TO BY BOTH SIDES

ARTICLE 14. Death Benefits

The employer shall, pursuant to Chapter 882 of the Laws of the State of New York for the year 1958 (General Municipal Law, Section 208, subd. 6) entitled "Policeman Death Benefits for Beneficiaries", shall pay all of the benefits provided for therein to deceased Policeman's Beneficiaries for death resulting to any member of the department incurred in the performance of duty as a member of such department upon filing by the proper person of an application theretofore within the time specified for such benefits.

AGREED TO BY BOTH SIDES

ARTICLE 16. Job Seniority

Seniority will be based on date of employment for members, which date shall be date of appointment from a certified competitive Civil Service List.

AGREED TO BY BOTH SIDES

ARTICLE 17. Grievance Procedure

Preamble: It is the purpose of this procedure to secure at the lowest possible administrative level, equitable solutions to grievances through procedures under which parties may present grievances.

Section 1. Definitions

- a) Employee - Any person covered by this agreement.
- b) Employer - City of Rensselaer and its representatives
- c) Association - Union - Rensselaer Police Association (RPA) and its representatives.
- d) Grievances - Any violation, misrepresentation, or improper application of this agreement or of any laws, rules, procedures, regulations, or matters affecting employees health or safety, physical facilities, materials or equipment furnished to the employees or supervision of the employees, or any other matter in which the employee has been dealt with unfairly.
- e) Superior - The employee in the next level of authority above the employee in the department wherein the grievance exists and who normally assign and supervises the employees work.
- f) Days - Shall mean working days.

Section 2. Rights of Parties

- a) Rights of Grievant
 1. The Grievant may select the unit president or his designee and/or an RPA staff representative to assist him in the processing and/or preparing of grievances, except that no representative may be present from an employee organization other than RPA.
 2. The grievant shall have access to all written statements, records and materials relating to the grievance which are to be introduced and/or part of the personnel file.
- b) Rights of Association
 1. The Association shall receive a copy of any written grievance, including supporting materials attached hereto and submitted herewith, and of any decision rendered pursuant to this procedure.
 2. The Association shall receive a copy of any written briefs to support or refute the allegations of any party in a grievance.
- c) Mutual Rights
 1. In the event of the unexcused failure on the part of the aggrieved party to be timely, the grievance shall be deemed to be withdrawn. If the employer or his representative fail to make a decision within the required time period, the grievance shall be deemed to be resolved in favor of the aggrieved.

Section 3. Presentation

- a) Step One - Immediate Superior
 1. An employee who claims to have a grievance shall present his grievance to his superior in writing within twenty (20) days of its occurrence or of when the employee becomes aware of it.
 2. The immediate superior shall meet with the parties to resolve the grievance within three (3) days. After the meeting, he shall render a decision within two (2) days.
- b) Step Two - The Mayor
 1. The aggrieved party, if not satisfied with the decision at step one, may, within five (5) days request in writing a conference with the Mayor. The conference shall be held within five (5) days after it is requested and a decision shall be made within five (5) days thereafter, copies of the decision to the aggrieved party and his representative.
- c) Step Three - Binding Arbitration
 1. In a case of a grievance concerning the interpretation of this agreement or alleged breaches thereof, the RPA may substitute itself, within ten (10) days of receipt of the Step Two decision to request a hearing before the Grievance Appeals Board. The employee or his representative shall give notice of this intention to the Mayor. The Mayor and RPA shall each select a representative to the board. The two representatives shall mutually agree to select a local resident of the City of Rensselaer to serve as chairperson of the Grievance Appeal Board. In the event no agreement can be reached on the selection of the chairperson, the parties shall then utilize the services of the American Arbitration Association for such selection.
 2. The majority decision of the Board will be final and binding upon both parties to this agreement, subject to appeal in accordance with the terms of Article 75 of the CPLR.
 3. The fees and expenses of the arbitration shall be borne equally by the parties.
 4. The board shall hold a hearing within twenty (20) days after it has been selected and shall render a decision within twenty (20) days after the hearing has been concluded.

Section 4. General Considerations

- a) All grievance discussions, meetings, conferences and hearings shall be conducted as much as possible during the normal working day.
- b) The time limits at any step may be extended by written consent of the parties.

- d) Verbatim minutes shall be taken at all hearings, copies of said minutes furnished to all parties, cost of such minutes to be borne equally by the parties.

WITH THE EXCEPTION OF SECTION 4 SUBDIVISION C, ARTICLE 17 HAS BEEN AGREED UPON BY BOTH SIDES

ARTICLE 18. Dues Check-Off

- a) The employer agrees to deduct from the wages of any employee who is a member of the Association all membership dues as provided in a written authorization executed by the employees.
- b) Such deductions will be authorized, levied and certified in accordance with the Constitution and By-Laws of the Association. Each employee and the Association hereby authorizes the City to rely upon and to honor certifications by the Treasurer of the Association and the legality of adopting action specifying such amounts of Association dues.
- c) Employees who are, or become members of the Association and who execute dues deductions authorizations may terminate such authorizations upon thirty (30) days written notice to the City and the Association.

AGREED TO BY BOTH SIDES

ARTICLE 19. Retirement

- a) Retirement will remain as provided under Section 384 which provides retirement after twenty-five (25) years of service.

AGREED TO BY BOTH SIDES

ARTICLE 20. Tours of Duty

- a) Members of the department shall be assigned tours of duty as follows:

First Tour	12 midnight to 8:00 AM
Second Tour	8:00 AM to 4:00 PM
Third Tour	4:00 PM to 12 midnight

ARTICLE 21. Seniority

- a) Seniority shall be determined by the employees length of service as a Police Officer in the Department. In determining the order of seniority between the members who join the department or are promoted on the same date, seniority will be determined amongst them by the order of their Civil Service mark. In the event of equal marks, seniority will be determined by chance.

- b) In the event an employee is not available to sign the Civil Service book on the date of his appointment or promotion due to a duty-connected disability or illness, his position shall be preserved for all purposes.
- c) Time spent in the armed forces or military leave of absence and other authorized leaves not to exceed one year, and time lost because of duty connected disability or illness shall be included as service in the department.
- d) The choice of vacations shall be by seniority consistent with the efficient operation of the department.
- e) In the event it becomes necessary to reduce the Police Force departmental seniority shall govern lay-offs and recalls, and the employee lowest on the seniority list shall be first laid off and the last to be recalled.

ARTICLE 28. Rights of Employees

- a) Every employee shall have the right to examine his personnel record in its entirety from time to time, upon giving his superior officer sufficient notice in advance of his desire to do so. If the employee decides that there is material in his record which has been improperly placed therein, or which is of an unjustifiable, derogatory nature, he may file a grievance in relation thereto as provided in Article 17 of this agreement.

PART A AGREED TO BY BOTH SIDES

ARTICLE 29. Compensatory Time

- a) Any member of the department may choose to receive equivalent time off for any or all overtime worked. Accepting time off for working overtime shall forfeit his payment for working said overtime.
- b) Depending on manpower needs of the department, the granting or denial of time off shall be at the discretion of the chief.

AGREED TO BOTH SIDES

ASSOCIATION'S POSITION

The Association argues that its proposals are justified since an analysis of police salary and benefit structure in jurisdictions such as Troy, Colonie, Rotterdam, Schenectady, Albany, Glenville, Cohoes and New York State indicate that it is well below the mean of these areas. It asserts that the City is financially capable of providing the requested increases, since it had budgeted for police salaries \$510,099.00 for fiscal year 1982-1983, which amounted to \$52,534.43 or 11.5% over the 1981-1982 actual expenses recorded. Its fiscal expert testified that the City could underwrite a settlement but he recognized that the City was nearing its tax limit. His assessment of the City's tax limit for 1982-1983 showed that the City was 94.9% of its tax limit, but he pointedly noted that the General Fund which would have reported a surplus of \$953,029 as of July 31, 1982 had loaned its surplus funds to the Water Fund. He indicated that the City had exhausted 41.6% of its debt limit and could issue budget notes during a fiscal year for which an insufficient or no provision was made in the annual budget and identified several sources of additional financing.³

The Association's past president and negotiator testified

³These sources are:

1. Explicit salary appropriation
2. Undesignated contingent funds
3. Undesignated surplus funds
4. Short term borrowing
5. Unanticipated/unbudgeted revenues
6. Unencumbered funds in other expense accounts
7. Raising water user fee

that the standards established by the Municipal Training Council were the same as those for the jurisdictions heretofore cited and thus demonstrated proficiency comparability.

The Association asserted that the projected loss in assessed valuation resulting from the pending tax certiorari proceedings are indeterminate since the City and the affected firms will have to argue the technical merits of the claims on an individualized basis.

It avers that its proposals are not unreasonable, out of line with comparable jurisdictions or beyond the City's fiscal ability and thus justifiable when considered against the relevant statutory settlement criteria.

CITY'S POSITION

The City contends that it cannot provide a salary increase because of its current fiscal condition. It argues that the New York State Board of Equalization and Assessment's tax assessment of some seventeen (17) corporate properties indicates that they were over assessed and avers that the aggregate assessment loss will total approximately \$19,801,331.00, which means a prospective dollar loss in tax revenues of \$337,612.70. (See City Exhibit #3 for the precise listings) In addition, it asserts that the City faces potential back payment liabilities for overtax collections. The City Commissioner of Taxation and Assessment testified that there were fourteen (14) certiorari proceedings pending against the City since 1980 based

upon the State Board's 1980 assessment and predicted that the City's tax loss would be significant and retroactive, if the corporate claimants prevail in the tax certiorari proceedings.⁴ The City further asserted that it will lose \$65,998.70 in property tax revenues previously collected from the Amtrak rail corporation, since Public Law 97-102 bars such tax payments. (See City Exhibit #4 - Letters from Amtrak to the City and the City's tax bill indicating the aforementioned property tax amount) In toto, the City argues that it stands to lose approximately \$403,608.78 in tax payments and asserts that it cannot raise taxes since it is at 94.9% of its tax limit.⁵

Correlatively, the City argues that the jurisdictions cited by the Association as comparable localities are larger populated areas possessing greater full valuation taxables and thus, incomparable with Rensselaer. It asserts that the City of Johnson, among others such as Hudson Falls, Johnstown, Scotia, East Greenwich and Watervliet are more comparable measures. (See City Exhibits #1 and 2) It notes that the Consumer Price Index had risen 5.0% for the year ending August, 1982 for the New York - Northeastern New Jersey Region and 2.8% for Buffalo, New York which it contends is more reflective of the

⁴The Commissioner of Taxation and Assessment testified that every claim dated back to 1980 when the State Board of Equalization and Assessment identified the over assessed corporate properties. He informed the Panel that he became Commissioner on August 2, 1982 and realized the potential tax losses after reviewing the tax rolls. He formerly served in this official capacity from March, 1957 through April, 1967.

⁵The present tax rate is \$17.05 per thousand dollars of assessment. The City contends that the impact of the tax losses will necessitate a \$3.46 tax increase per thousand dollars of assessment.

economic milieu in the Albany - Schenectady - Troy - Rensselaer area. The City Treasurer testified that the Water Fund Department owed the City \$1,220,000, but he doubted whether this money would be paid back to the General Fund. He said that the City had raised the water rate from \$1.90 per 1,000 gallons to \$2.10 per 1,000 gallons effective during the period from June, 1982 through January, 1983 and the rate will increase to \$2.15 per 1,000 gallons on January, 1983. He acknowledged that the Water Fund Department's operating deficit for fiscal year 1982 finished at \$37,962.00 and indicated that the Water Fund's revenue - expenditure relationship was improving.

The City argues that its agreement with the Association on the items previously referenced herein demonstrates that it provided the Association with reasonable benefit and working condition improvements and thus justifies the maintenance of the status quo vis salaries.⁶

⁶This position was articulated in the City's summary brief.

ARBITRATION PANEL'S OPINION

In considering this dispute, the Panel is mindful that the statutory settlement criteria set forth in Section 209.4 of the Civil Service Law provides the parametrical framework for the fashioning of this Award. We are satisfied that the record provided us with comprehensive and detailed information relative to the application of the pertinent statutory criteria and our findings herein are based upon this record.

Negotiations for a successor agreement to the 1979-1981 contract began in January of 1981 when the Association presented its proposals for a two year agreement (August 1, 1981 through July 31, 1983). The parties were unable to resolve their differences and a State Mediator from the New York State Public Employment Relations Board was appointed to assist them. Despite several meetings and agreement on the items listed in Joint Exhibit #5 Appendix B, referenced in this Award, the parties were unable to reach a total agreement. The City proposed a final offer on May 21, 1982, which provided in part for a 7% salary increase, effective August 1, 1981, and an 8% salary increase, effective August 1, 1982. It also proposed a salary re-opener for the last year of a three year agreement. For the first two years of the proposed agreement, the across the board percentage increases offered were similar to the increases the City negotiated to finality with its Firefighters and Department of Public Works employees. Thus at present, the employees covered by the aforementioned agreements enjoy

salary increases for the 1981-1983 period. The parties, unfortunately, were unable to conclude an agreement based upon the City's last final offer and the Association filed a petition on May 27, 1982 with the New York State Public Employment Relations Board for the appointment of a Compulsory Interest Arbitration Panel. The City responded to this petition on June 11, 1982 (See Joint Exhibit #5). Prior to the filing of these petitions, there is no indication that the City asserted that it was unable to finance a salary increase because of the tax certiorari proceedings. The newly hired Commissioner of Taxation and Assessment reviewed the tax rolls and realized the impact of the pending tax certiorari proceedings. In addition, the Amtrak Corporation's letter of August 30, 1982 returning the tax bills to the City portended a \$65,988.78 tax loss (See City Exhibit #4).

While the Panel recognizes the reality of the prospective tax losses, estimated to total \$403,608.78 if we include the Amtrak loss, the final resolution of the corporate tax claims is still to be determined. To be sure, the Panel recognizes the reality of these claims and the probability of future tax losses, but it also recognizes the possibility that the projected tax losses could be lower. The City's financial condition is not good by objective fiscal standards and its capacity to raise taxes is indeed limited. It is presently at 94.9% of its tax limit. A significant part of the City's fiscal problem is the Water Fund Department's continual reliance on the General Fund to support its operations. Presently, The Water Fund Department

owes the City \$1,220,000.00, but it is doubtful whether it will be paid back. The City reported \$953,029.39 surplus funds in the General Fund for the fiscal year ending July 31, 1982 but this money has been provided to the Water Fund Department. The recent increases in the water tax rate is improving the Water Fund's operating deficits and hopefully, overtime should reduce the Water Fund's reliance on the General Fund. But the Water Fund is a burden that restricts the City's management of public services. The City needs to consider this matter carefully since it clearly affects municipal operations. It is a vital public policy matter but beyond the ken of this Panel's jurisdiction.

On the positive side, the Panel finds that the City budgeted \$52,534.43 for Police Department salary and wage increases for fiscal year 1982-1983, which represents an increase of 11.5% over the 1981-1982 actual expenses for this account. While part of this increase is earmarked for the addition of one budgeted position, it indicates that funds were allocated for salary purposes. The Association's exhibit #1, which is a review of the City's financial documents shows that \$11,556.00 was allocated to finance the additional patrolman's position and \$45,000.00 was allocated for "contingency".⁷ There were twenty five (25) persons on the Police Department's roster as of October 1, 1982. When this allocation is considered within the context of the

⁷The Panel must note that outside of the fiscal and monetary aggregates referenced in this Award, the complete budget for 1982-1983 was not submitted into the record.

City's labor agreement settlements with its other negotiating units, it is evident that the City was contemplating a salary increase for its police forces. This finding is buttressed by its last final offer on May 21, 1982.

As to the matter of comparability, which is a statutory settlement criterion binding upon this Panel, we have carefully examined the jurisdictions cited by the parties but we have not found any convincing relationship between the City and these other areas. The parties have cited different jurisdictions, but we have not historical showing that predecessor collective agreements were indexed to any specific jurisdiction or combination of jurisdictions. The Association's position that salary improvements should be equal to the mean of the Troy, Colonie, Rotterdam, Schenectady, Albany, Glenville, Cohoes and New York State Police settlements is without foundation or documented support. The same is true with respect to the jurisdictions cited by the City. In 1979, when a public arbitration panel crafted a settlement for the parties, the Panel in that dispute noted that it found Dunkirk, Elmira, Geneva, Hudson Kingston, Norwich, Troy, Utica, Binghamton, Ithaca, Johnstown and Lockport more comparable. We have not evidence that the City traditionally benchmarked its contract settlements with these jurisdictions or followed any discernible jurisdictional pattern. Moreover, we have no information regarding the mosaic of settlements for these contiguous areas. The Association's request for an effective twelve (12%) percent salary increase is excessive.

On the other hand, we can neither disregard the City's

1981-1983 settlements with its other negotiating units nor minimize the City's last final offer on May 21, 1982. The City had provided a seven (7) and eight (8) percent salary increase to employees in the Department of Public Works. It had provided a similar increase to the municipality's Firefighters.⁸ The negotiated salary increases were approximately the same as those offered to the Association on May 21, 1982 and reflect a visible City pattern. These sister settlements offer the most persuasive "comparable" for this dispute. Inasmuch as the Association is the last negotiating unit to consummate an agreement with the City, it would be patently unfair to compel the police to accept a non-salary increase for 1981-1983. This is particularly evident when we have to rank public services by need and indispensability. Admittedly, the other settlements were reached prior to the City's belated determination of its fiscal status, but the employees covered by these settlements are enjoying salary gains. It would be imprudent at this juncture to ask the Association to hold the line. The underlying structural problems are not the result of excessive police salary costs but the Water Fund loans and the probable tax loss resulting from the tax certiorari proceedings. The latter situation would not be problematic per se if it were not for the water fund loans. Perpetual restraints on the collective negotiating process is not the organizational corrective, since

⁸The Firefighters 1981-1983 Collective Agreement was submitted into evidence as City Exhibit #6. When the Panel met in executive session on December 9, 1982, it call the City to ascertain whether there were other settlements. It was at that time that we were apprised of the Department of Public Work's Settlement.

theoretically the City will not be able to finance future contracts, when the water fund loans are considered. Incessant status quo salary settlements will sap the morale of the public employees and impair the efficiency of needed government services.

From the record, this Panel is persuaded that a salary increase is justified, but it must be effectuated within the constraints of the City's fiscal profile. We believe that the salary increases provided to the other negotiating units establishes the basic settlement parameters for this dispute, but we further believe that the City's fiscal situation requires a balancing of the amount awarded. In view of this arbitral assessment, we find no justification at this time for increasing the clothing equipment allowance, increasing the sergeant and detective differentials or changing the methodology and amount of the longevity payments. The City's concessions on the other benefits items delineated in Appendix B and the October 15, 1982 Memorandum of Settlement offsets the present modifications of these benefits. Similarly, mindful of the other intra city city settlements, we believe that a modification of the salary increases granted would lessen the City's payout burden. Rather than award the same salary increase on an annualized basis, we have phased in the increases so as to save the City funds. Accordingly, beginning on August 1, 1981, each member of the Association's negotiating unit shall receive a four (4%) percent salary increase, which shall be further increased by three and one half (3½%) percent on February 1, 1982. On August 1, 1982, each member of the negotiating unit shall receive a three and

one half (3½%) percent salary increase which shall be further increased by four (4%) percent on February 1, 1983. The phased in increases will be computed on a compounded basis. The effective increase over the two year contract period (August 1, 1981 - July 31, 1983) will be fifteen (15%) percent which is the same percentage increase accorded the other intra city negotiating units. In the instant case, however, the total dollar paid out will be less than if the Association received an annualized seven (7) and eight (8) percent increase. Moreover, since the Association had not received any salary increase during the current contract period, the City will have accrued interest savings. Based upon the aforesaid compensatory formula, a first year and a fifth year police officer, for example, will receive the following increases:

First Year Police Officer

<u>August 1, 1980</u>	<u>August 1, 1981</u>	<u>February 1, 1982</u>
1979 \$11,556.00	\$11,987.04	\$12,406.59
1981		
Agree.		

<u>August 1, 1982</u>	<u>February 1, 1983</u>
\$12,840.82	\$13,354.45

Fifth Year Police Officer

<u>August 1, 1980</u>	<u>August 1, 1981</u>	<u>February 1, 1982</u>
1979 \$14,907.00	\$15,368.04	\$15,905.92
1981		
Agree.		

<u>August 1, 1982</u>	<u>February 1, 1983</u>
\$16,462.63	\$17,121.14

If the Panel applied the same percentage increases afforded the other City units and offered to the Association on May 21, 1982, a first year police officer would earn \$13,354.15 beginning August 1, 1982. A fifth year police officer would earn \$17,226.53. The total dollar savings implicit in our phased in approach is significant. It is a fair, equitable and responsible Award.

AWARD

1. Appendix B attached to the City's June 11, 1982 response to the Association's petition for Compulsory Interest Arbitration and the Memorandum of Settlement, dated, October 15, 1982 are incorporated in this Award. This was requested by the parties.

2. The City is directed to pay the following percentage salary increases on the dates cited hereinafter:

- August 1, 1981 Four (4%) percent for all members of the unit.
- February 1, 1982 Three and one half (3½%) percent for all members of the unit.
- August 1, 1982 Three and one half (3½%) percent for all members of the unit.
- February 1, 1983 Four (4%) percent for all members of the unit.

Respectfully submitted,

George S. Roukis

George S. Roukis, Chairman and Impartial Member

STATE OF NEW YORK)
 : SS.
COUNTY OF NASSAU)

On Dec 19, 1982, before me personally came and appeared George S. Roukis, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged that he executed the same.

MARIA E. ROUKIS
Notary Public, State of New York
No. 30-4672617
Qualified in Nassau County
Commission Expires March 30, 1984
Maria E. Roukis

I CONCUR ()
I DISSENT (X)

John H. Galligan

John Galligan, City of Rensselaer Panel Member

written dissent to follow

STATE OF NEW YORK)
 : SS.
COUNTY OF NASSAU)

On December 21, 1982, before me personally came and appeared John Galligan, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged that he executed the same.

NOTARY PUBLIC *Carol Bensley*
Residing in Renss. County
My Commission expires March 30, 1984
CAROL BENSLEY

I CONCUR (X)
I DISSENT ()

Paul Bailey

Paul Bailey, Rensselaer P.B.A. Panel Member

STATE OF NEW YORK)
 : SS.
COUNTY OF NASSAU)

On Dec. 19, 1982, before me personally came and appeared Paul Bailey, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged that he executed the same.

MARIA E. ROUKIS
Notary Public, State of New York
No. 30-4672617
Qualified in Nassau County
Commission Expires March 30, 1984

Maria E. Roukis

APR 21 1983
CONCILIATION

In the Matter of the Compulsory
Interest Arbitration

- between -

RENSSELAER POLICE BENEVOLENT
ASSOCIATION

DISSENT OF EMPLOYER
PANEL MEMBER

- and -

CITY OF RENSSELAER

Section 209 of the Civil Service Law sets forth mandatory standards for the consideration of a compulsory arbitration panel in its eventual resolution of an impasse in negotiations between a public employer and a police or a firefighter union. According to evidence introduced by the Rensselaer PBA in this arbitration, the City of Rensselaer in its 1981-82 fiscal year levied a real property tax which fell within 99.7% of the city's constitutional tax limit. According to the union, in the 1982-83 fiscal year the city taxed at 94.9% of its constitutional real property tax limit. Given the statutory compulsory arbitration standard addressing a public employer's ability to pay any increase in costs associated with the award of an arbitration panel, it would seem that the financial condition of the City of Rensselaer would flag the attention of most individuals serving on an arbitration panel. That has not happened in this case. In fact, the financial position of the city was worse than the above statistics would indicate, a fact of which this panel was aware at the time of its determination.

The City of Rensselaer and the PBA engaged in extensive negotiations for an agreement to succeed one which expired on July 31, 1981. The negotiations extended beyond the contractual expiration date. In January 1982, a new mayor was elected to office. Negotiations continued through the spring with the PBA eventually filing a petition for compulsory arbitration in late May. In May of 1982, the city apparently made an offer of a two year agreement with a wage increase of 7% in the first year and 8% in the second year. This offer was similar to settlements which had previously been agreed to with two other city employee unions. The offer was rejected by the PBA. It is my understanding that subsequent to the spring of 1982, Mayor Thomas Henry III, the chief negotiator for the city, became aware of circumstances which placed the City of Rensselaer in a worse financial condition than evidenced by the union exhibit. In the 1982-83 fiscal year, the city's fiscal plight left it with a residual tax levy of only \$77,828.

In a letter dated August 30, 1982, the City Treasurer was advised by Amtrak, the National Railroad Passenger Corporation, that it considered its railroad properties within the City of Rensselaer to be exempt from local taxation pursuant to a federal law. As a result, Amtrak returned its real property tax bill to the city. The real property tax which Amtrak refused to pay was nearly \$66,000. Regardless of whether Amtrak is correct in its interpretation of federal law, the City of Rensselaer will not realize nearly \$66,000 in tax revenues in its 1982-83 fiscal year. Lacking these revenues, it is apparent that the city will operate at a deficit in its 1982-83 fiscal year, assuming other projected revenues are received as estimated.

Further contributing to the bleak fiscal reality of the city was the tendency of tax certiorari proceedings by several major corporations in the city, not only for the 1982-83 fiscal year of the city, but for two prior fiscal years also. Unlike most tax certiorari claims, the outcome of which is indeed speculative, the claimants in the city are supported by the NYS Board of Equalization and Assessment, which has determined that the city has overassessed several properties in prior and current tax years. The result will be a reduction in property assessments for the claimants involved and may indeed lead to filing of other certiorari proceedings by other claimants. This situation differs from the Amtrak claim. Amtrak was a loss of tax revenues. The certiorari proceedings represent a retroactive and current loss of the dollar value of property assessed by the city and will result in 1) a reduction of tax revenues in prior, current, and future tax years; and 2) a downward revision of the city's constitutional taxing limit.

Given these two developments, it is clear that the City of Rensselaer has no taxing authority. In fact, the city will exceed its taxing authority once the certiorari proceedings are finalized.

Given what I understand to be the chronological sequence of events, the fact that the city negotiated pay increases with other unions and the fact that the city made a similar settlement offer to the police union is of no consequence in light of subsequent financial developments. Furthermore, the panel majority has persisted in considering a transfer of money from the city's General Fund to its water fund to be a loan. That conclusion is simply erroneous. There is no statutory prohibition upon such transfers, nor is there any statutory obligation requiring repayment. A municipality may fund its water department operations in several ways, one of which is through a self supporting water fund utilizing only user charges. Some municipalities fund the water department entirely from the General Fund. In the instance of the City of Rensselaer, the city has chosen to employ both methods. The fact that that has been done affords the union no advantage.

Notwithstanding that fact, had the city chosen to operate its water department solely from General Fund revenues, it would have at the time of its arbitration far exceeded its constitutional tax limit. It is evident to me that the ability of the real property taxpayer in Rensselaer to support additional tax levies is nonexistent.

Other factors cited by the panel majority are simply unpersuasive. I have no doubt that the city did budget a pay increase for its police officers in its 1982-83 fiscal year. However, the fiscal realities of December 1982 are simply overwhelming. While I would agree with the rationale of the majority for awarding contractual benefit increases similar to other unionized employees in a situation involving less glaring fiscal calamities, I cannot so agree in this instance.

For these reasons, I dissent from the award of the panel majority.



JOHN H. GALLIGAN
Employer Panel Member

April 20, 1983

