

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

In the Matter of the Interest Arbitration
between

CITY OF TROY,

Public Employer,

-and-

TROY POLICE BENEVOLENT & PROTECTIVE ASSOCIATION,

Employee Organization.

PERB CASE NO. IA 82-8

01-513

AWARD
OF
PUBLIC
ARBITRATION
PANEL

Before the Public Arbitration Panel

FRANK N. GRASSO, Esq., PBA Member
ALSON SPAIN, Jr., City Member
STEVEN J. GOLDSMITH, Chairman

Appearances

For the PBA

GRASSO & GRASSO, Esqs.
by JANE K. FININ, Esq.

For the City

ROBERT E. GRAY, Esq.

PRELIMINARY STATEMENT

On August 23, 1982, pursuant to Section 209.4 of the Civil Service Law, Harold Newman, Chairman of the Public Employment Relations Board, designated us a Public Arbitration Panel "for the purpose of making a just and reasonable determination of this dispute."

Pursuant to the Law, and following mediation efforts by Prof. Norman Brand, and by this Panel, we conducted formal hearings on December 10, 14 and 20, 1982, and on January 5 and 14, 1983. Thereafter, the

Panel met a number of times in executive session. At the hearings, the parties presented witnesses, documentary evidence and arguments in support of their positions. Pre-hearing and post-hearing briefs, the last of which was received on February 17, 1983, were filed.

The following witnesses were called by the PBA: -

Charles W. deSeve, President, deSeve Economics Associates, Inc.*
Ptl. John F. Tedesco, Member of Negotiating Committee
Ptl. John Rogers, Member of Negotiating Committee
Prof. William E. Brown, Professor of Criminal Justice, SUNY,
Albany
Sgt. Patrick Valente, Member of Negotiating Committee
Ptl. James Kilgallen, President, Troy PBA, Member of Negotiating
Committee

The following witnesses were called by the City:

Mr. George O'Connor, Commissioner of Public Safety
Mr. Thomas S. Evans, Former Comptroller
Mr. Gerard A. Brehm, Budget Director

Troy is located, together with the other two major cities of Albany and Schenectady, and a number of other communities, in the so-called Capital District of the State. The Capital District covers Albany, Rensselaer, Saratoga and Schenectady Counties. Troy, according to the 1980 Census, has a population of 56,638.

The negotiating unit represented by the PBA includes "all police officers of the Police Bureau, excluding the Chief, Assistant Chief and Captain," and is constituted of approximately 77 patrolmen and 31 sergeants.

OPINION AND AWARD

The issues which the parties placed before the Panel for decision are:

- A. Term of Contract
- B. Vacation Leave
- C. Personal and Bereavement Leave
- D. Leaves of Absence for Association Representatives

* The titles of witnesses will not be repeated.

- E. Assignments and Transfers
- F. Health Insurance
- G. Shift Differential
- H. Uniform Allowance
- I. Salaries

The parties have resolved other issues between them, and except as to those issues and as to the changes awarded by the Panel, the terms of the parties' expired agreement shall continue in effect.

In making our determinations, the Civil Service Law requires us to consider, in addition to any "other relevant factors," the following standards:

- 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 the public and private employment in comparable communities;
- b. the interests and welfare of the public and 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.

Our conclusions and award as to the impasse issues, based in each instance on these standards, now follow:

A. Term of Contract (Article XXIX)

A 2 year agreement between the parties expired December 31, 1981.

The Union seeks an award for another 2 year contract. The City opposes this, arguing that no impasse currently exists as to the terms of employment for 1983. It "questions the right of the Panel to deny either party the right to negotiate" for 1983.

According to the record, the PBA's petition for this arbitration, (in Paragraph 8), places the "effective term of the contract" in issue. The City's response (in Paragraph 1), admits that the contract term is an issue. Also, on page 1 of its pre-hearing brief, and at page 2 of its post-hearing brief, the City concedes that "term of agreement" is in fact an "unresolved issue before the Arbitrators for determination."

Nonetheless, says the City, the parties have not bargained to impasse for 1983. It argues, moreover, that "no testimony nor documentary evidence was presented here, which would supply a basis for an economic finding," and that consequently, "no evidence sufficient to satisfy the statutory criteria is present in the record relative to 1983."

The Union, in turn, cites the testimony of Tedesco and Valente that the parties bargained to the point of impasse on a two year package, which included salary increases for both 1982 and 1983 and a change in the health insurance plan, as demanded by the City, in 1983. Although, after some negotiation, the Union rejected a two year offer by the City, Tedesco testified, it never rejected the concept of a two year contract. The PBA argues, in addition, that in June 1983 "the PBA will begin preparing for the 1984 negotiations, and without an award for 1983, there would be nothing on which to base the 1984 proposals."

Based largely on the petition for arbitration, and the City's response, and to a lesser extent on the testimony and arguments, we find that the parties are legally at impasse as to the term of their new

agreement. As to the City's contention that the parties must be given an opportunity to negotiate before Arbitrators step in, we agree. We are convinced, however, from the mediation efforts to which we have been privy, that the parties have had a full opportunity to negotiate for 1983.*

We also find that there is sufficient evidence before us to serve as a basis for a 1983 award.** We believe in particular that it would be in the interest of both parties, if terms and conditions for 1983 were laid to rest in this award. When our award issues, several months of 1983 will already have passed, and 1984 negotiations will not be far off. What is more, both parties will benefit from knowing where they stand for this year. The City, on its part, will be able to make financial plans otherwise not possible. And we note the testimony of PBA President Kilgallen, that working without a contract has caused morale problems among the officers. For these reasons, we AWARD that the new agreement shall begin January 1, 1982 and shall end December 31, 1983.

B. Vacation Leave (Article XVII)

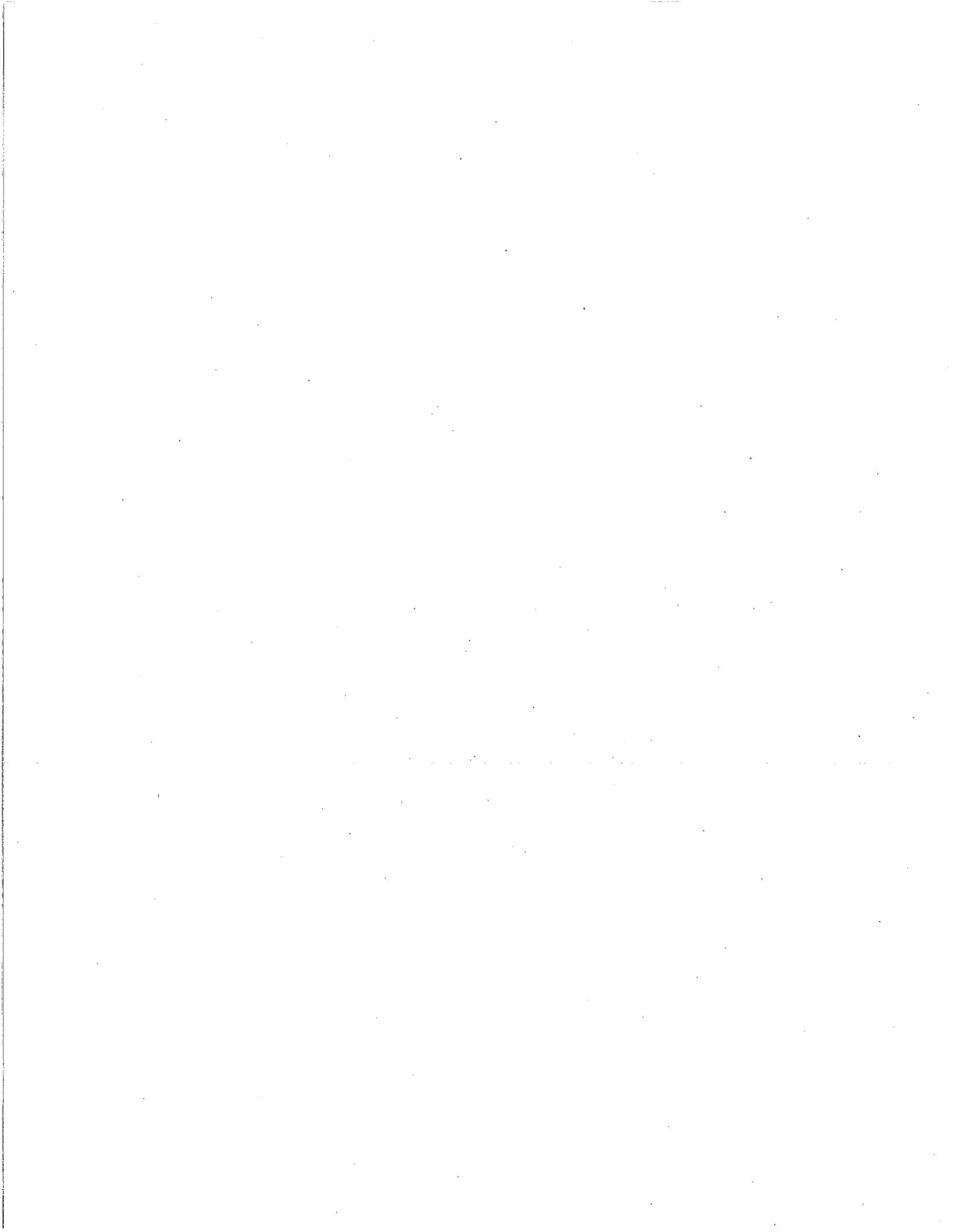
Vacation benefits currently enjoyed by Troy police officers and those demanded are as follows:

<u>Time Employed (Current)</u>	<u>Time Employed (Demand)</u>	<u>Vacation Lv. Earned</u>
1 to 12 months	1 to 12 months	1 cal. day per month
13 to 60 months	12 to 36 months	14 cal. days per yr.
61 to 120 months	37 to 84 months	21 cal. days per yr.
121 to 240 months	85 to 120 months	28 cal. days per yr.
	121 to 192 months	35 cal. days per yr.
241 to 300 months	193 to 252 months	42 cal. days per yr.
301 months or more	253 months or more	49 cal. days per yr.

The PBA also seeks an addition to the vacation clause, providing that "any employee may elect to continue to work in lieu of taking a vacation, in which event he shall be paid for his vacation time as well as for active working time."

*The PBA's statement that "no negotiations have commenced relative to 1983," was made prior to our mediation efforts.

**Compare City's pre-trial brief, footnote at page 6.



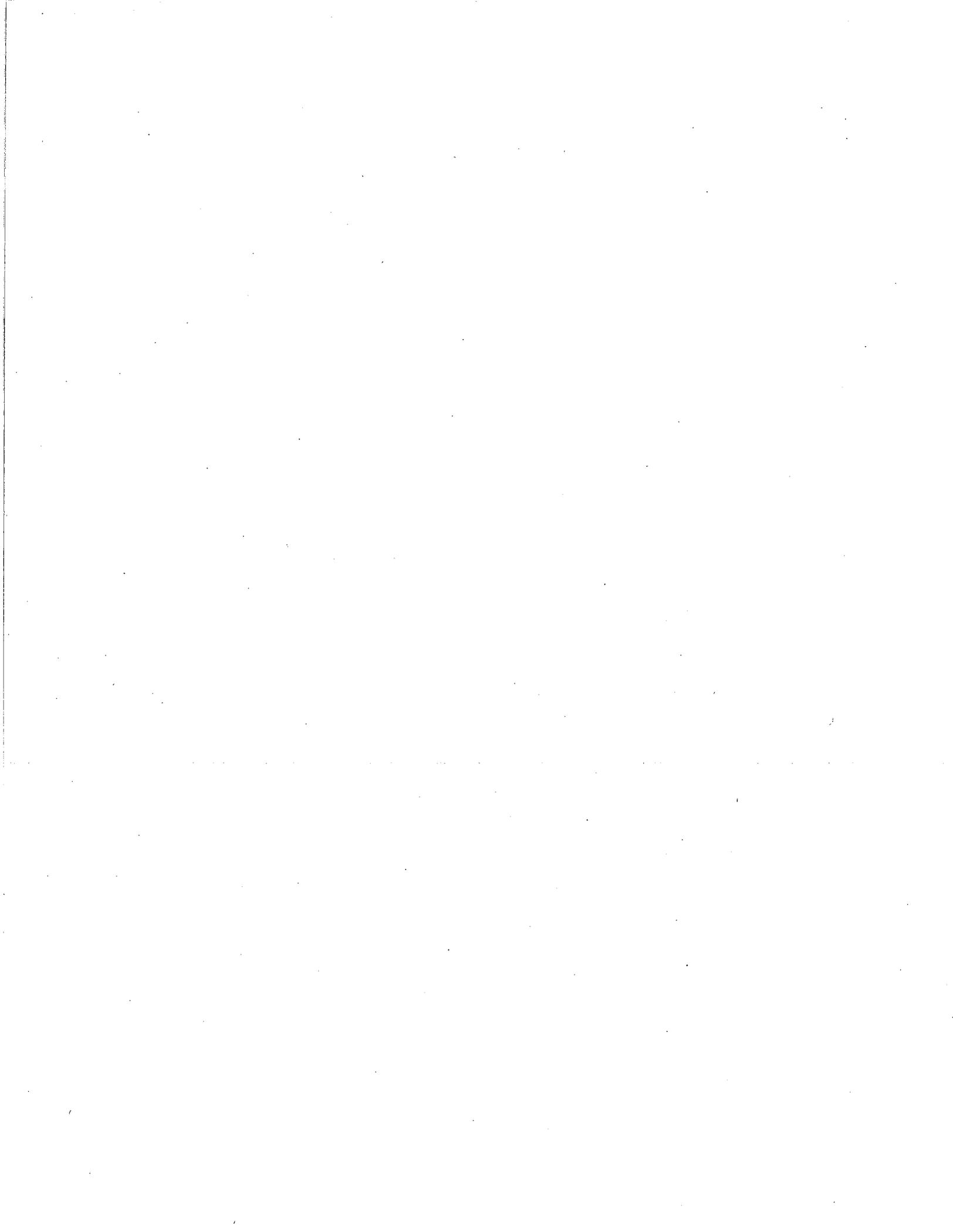
Union Exhibit C-13 and City Exhibit 17 address vacation days. The Union Exhibit compares vacation days provided in Troy with those in 18 other cities. It shows that Troy grants a total of 475 vacation days during 25 years of employment, as opposed to an average of 443 days granted over 25 years in all cities cited. It is noted, in particular, that Troy's sister Cities of Albany and Schenectady provide only 360 vacation days each during a 25 year career.

City Exhibit 17, comparing Troy to 45 selected cities, shows that 2, 3, 4 and 5 weeks of vacation are earned in Troy after roughly the same number of service years required elsewhere. A sixth week of vacation, earned in Troy after 20 years, was provided in only three other communities. As stated by the City's counsel, "no report is made as to the Troy vacation level of 7 weeks after 25 years, from which it may be concluded that few others, if any, have this level of benefit."

The Union contends that "the testimony of Dr. Brown concerning on-the-job stress, [testimony to be discussed in more detail below], supports the proposal for an increased number of days off per year." We are not convinced that the stress inherent in police work would be reduced by further increases in the vacation schedule, at least not during working time.

Based on the statistics provided, we also reject the Union's argument that "if the Union proposal were granted, inequities with the comparable communities would be corrected." Rather, the record supports the City's argument that, according to the Union's own figures, Troy "is considerably more generous over the years of employment, awarding 32 more work days of vacation than the average of all PBA selected comparables." For these reasons, no change will be ordered in the amount of vacation leave.

There is insufficient evidence in the record to support a conclusion



on the PBA's request for a provision permitting an officer to work in lieu of taking his vacation.

C. Personal and Bereavement Leave Article XXIII)

The expired contract provides for 3 days of paid personal leave per year. Personal leave may not be taken on consecutive days and is not cumulative. No reason for requesting personal leave need be given. The expired agreement also allows 5 calendar days of paid bereavement leave.

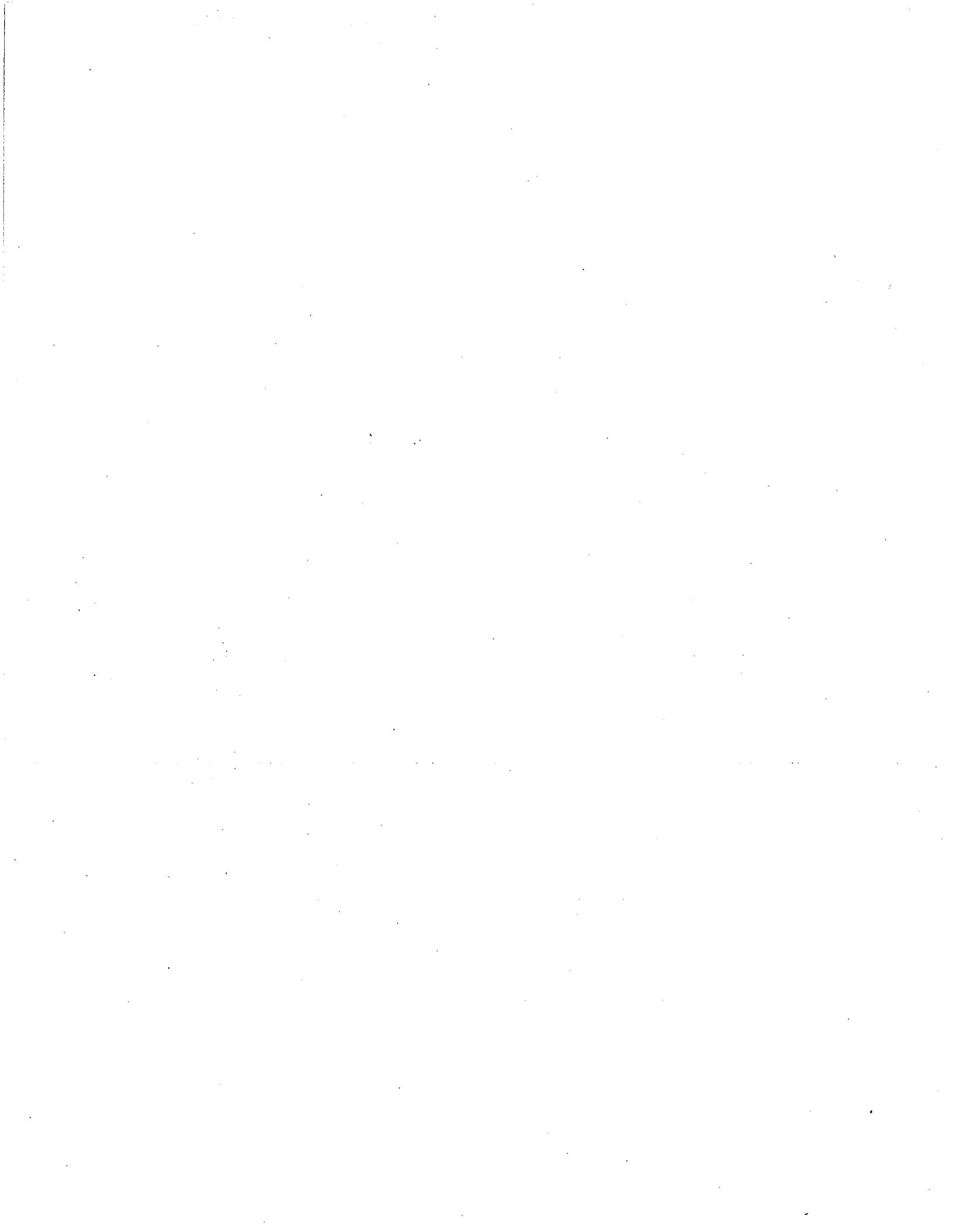
The PBA requests an increase to 5 personal days and to 6 days of bereavement leave. In its Exhibits C-12 and C-13, the PBA compares Troy's personal leave and bereavement leave benefits, respectively, with those in communities it deems comparable.

As the City correctly points out, however, the existing benefit in Troy approximates the average of 3.3 days granted in communities selected by the PBA in Union Exhibit C-12. "The local Cities average 2.9 days, and Statewide the average is 2.84 days," argues the City. We note, in particular, that Albany provides 2 personal leave days, and Schenectady three.

City Exhibit 21, showing the number of personal leave days in 38 municipalities, demonstrates as well that 3 days a year predominates Statewide. It shows that 32 departments have 3 or less personal days per year.

As for bereavement leave, Union's Exhibit C-12 shows that with 5 days of bereavement leave, Troy (together with 9 other cities) stands at or near the top, both locally and Statewide, in the amount of bereavement leave given.

Based on the facts shown, we find no justification for an increase in personal or bereavement leave.



D. Leaves of Absence for Association Representatives (Article XXIV)

The expired agreement provides, that "Association officers, representatives and delegates will be allowed all necessary released time with pay to attend Association and Executive Board meetings; participate in negotiations with the Employer, adjustment of grievances, arbitration hearings, and other functions relative to the operation of this Agreement." It also provides for paid leave to attend PBA conferences and conventions.

The PBA now seeks paid leave not only "to participate in negotiations," a benefit which it enjoys, but also "to prepare for" negotiations.

According to the record, PBA representatives were entitled, prior to 1977, to receive paid time off to prepare for negotiations. A 1977 arbitration award (Union Exhibit W), however, holds that despite "the existence of a contrary past practice," absent a specific grant in the contract, preparation activity need not be paid for. The Union "seeks here to regain a benefit which it once enjoyed but lost without negotiations." Kilgallen testified that this benefit exists in Schenectady, Utica, Amherst and 5 other police and fire contracts.

The City argues that this demand is an afterthought and that "nothing was put before the Arbitrators to indicate a (current) need or justification for "the proposal." It argues, moreover, that "this proposal is so open-ended it could cost the City the services of five policemen (if the number preparing for negotiations were limited to the 1 negotiating committee) or an indefinite number if all bargaining unit members were participating in "preparations;" and that "this proposal has been the subject of negotiations in each round of bargaining and prior interest arbitration without change."

We are unable to determine the scope and cost of this proposal. Also, its necessity, under actual working conditions and the parties' negotiating practice was not developed. We therefore make no award.

E. Assignments and Transfers (Article XXVII)

Article XXIV (3) provides that "all positions in the Bureau shall be open for reassignment on a semi-annual basis." Semi-annual bidding for desired positions, and assignment by seniority is then provided for.

The City proposes that an annual bid replace the present semi-annual procedure.

In its pre-hearing and post-hearing briefs, the City explains why this change would be to its benefit:

(a) It would better coordinate the annual vacation selections with work force assignments;

(b) It would increase members' opportunity to develop essential knowledge and skill in various jobs, while expanding the City's willingness to invest in special training for certain jobs;

(c) It would improve supervisors' opportunity to develop (relationships) with subordinates;

(d) The personal lives of members would be disrupted half as often;

(e) Vacancies, as they develop during the year, could still be filled after posting and with regard to seniority; and

(f) The change is mutually beneficial, and has no financial impact.

The Union asks that this demand be dismissed. It submits that "the PBA was prepared to rebut supportive evidence by the City," but that none was adduced. The City submits that testimony by O'Connor supports the change in the bidding cycle.

While the City's arguments are compelling, we find no testimony or documentary evidence to support them. At the December 20, 1982 hearing, we asked the PBA to withhold testimony on this issue until the City had presented its own supportive evidence. Such evidence was not presented, and the Union has therefore not had an opportunity, in the hearings, to cross-examine and address the issue. No award can therefore be made.

F. Health Insurance (Article XVIII)

Article XVIII, "Health Insurance," provides for coverage, at the Employer's expense, of full-time bargaining unit employees, and of certain retirees, under the "New York State Government Employee's Health Insurance Program." Either the so-called Statewide Plan or Group Health Insurance (GHI) are available at the option of the employee.

The City seeks to substitute a self-insured plan, administered by HASNY, for the existing coverage. It points out that the new (HASNY) plan has indeed been agreed to by and is in effect for "all of the other four unions in the City," and that the PBA's refusal to agree, as requested, to transfer its constituents to the HASNY plan has "unnecessarily cost the City \$50 per employee per month, or \$36,000 over the six month period ending in December 1982, without any additional benefits to uniformed personnel" (December 10, 1982 letter from City Manager, John P. Buckley, to Kilgallen, City Exhibit 29).

The Union argued at the first hearing that health insurance is not properly an issue before the Panel. And, indeed, neither the City's pre-hearing nor its post-hearing brief make mention of health insurance.

Moreover, the City's amended response to the petition for arbitration omits health insurance as an issue for arbitration.

Nonetheless, at the first hearing the Union offered to "stipulate, if we find the City has financial problems, that the Panel could award" the City's proposal to amend Article XVIII (A).

It is not controverted that the self-insured plan is "equivalent" to the Statewide or GHI coverage presently provided. Since, as will be detailed below, we do not find the City to be without financial problems, but more importantly because of the significant savings (detailed in City Exhibit 29) which will result, and because other "bargained" City em-

ployees are already under the HASNY plan, we AWARD that Article XVIII (A) be amended to permit the City to substitute the HASNY Plan, currently in effect for other City employees, for the present health insurance plan. In all other respects, Article XVIII shall remain the same.

G. Shift Differential (Article XXIX)

Under the expired contract, the City grants a differential of \$.05 per hour for work on the evening (4 p.m. to midnight) tour, and \$.10 per hour on the night (midnight to 8 a.m.) tour. The Union demand an increase to 5% and 10% of salary for the evening and night tours, respectively.

In its Exhibit K-9, the PBA showed that the City's non-uniformed employees, for example, water supply employees and radio operators receive shift differentials of \$.175 and \$.225 per hour on the evening and night shifts. In addition, Valenti testified that the shift differential has never been increased, and that "an improved differential would benefit the Department by encouraging more experienced members to work less desirable shifts, which are principally made up of younger, less experienced officers." Valenti also testified that greater risks attend the evening and even more so the night shift. No data was presented as to prevalence or amount of shift differentials elsewhere.

Neither the City's pre-hearing nor post-hearing briefs specifically address this issue. The City opposed the demand, however, as an economic item (Under Schedule A), in the nature of additional salary, and as therefore unjustified.

We accept the PBA's arguments, made above, and believe that a moderate increase in the shift differential is justified and will benefit both parties. We therefore AWARD that, effective April 1, 1983, the differential be increased to \$.125 for the evening tour and to \$.25 for the night tour.

H. Uniform Allowance (Article XX)

The present uniform allowance, unchanged since 1978, is \$225 per year. The PBA seeks a \$350 a year allowance for uniformed patrolmen, and an increase to \$500 per year for plainclothesmen.

Tedesco testified that the present allowance "is far below the cost to employees of nearly \$500 per year spent on replacement and maintenance." In Union Exhibit H, Tedesco calculated the annual cost to a uniformed patrolman for replacement of uniform components and for cleaning, at \$482.25. Cleaning was figured at \$5 per week, or \$260. Also included in the \$482.25, is \$50 for "miscellaneous expenses such as shoe polish, flashlight batteries, gun cleaning equipment, etc." For plainclothes officers, the cost was computed by Tedesco at \$811.00.

The City argued that it appears from the Union's testimony "that the average uniformed officer does not require (even) the existing \$225 for replacement of uniform items but rather only \$172.25 (\$482.25 less \$260 and \$50), and (citing City Exhibit 20), that the existing allowance compares favorably to other communities." Also, said the City, "of the 46 communities listed on City's Exhibit 20, only 7 make provision for cleaning. Moreover, says the City "the PBA offered no proof as to the level of this benefit in comparable communities." Finally, the City pointed out that the uniform allowance is given, as well, to employees working in street clothes, providing these officers with an extra benefit. For these reasons, says the City, the uniform allowance should remain unchanged.

City Exhibit 20 shows that of 32 departments granting an allowance for uniformed officers (others provide for replacement of uniforms as needed), the average annual stipend (unweighted) was \$282. From among 17 departments granting an allowance for plainclothes departments, the

average annual amount (unweighted) was \$380. Seven departments, in addition, grant a "uniform cleaning allowance," averaging \$143.

While an increase in the uniform allowance might otherwise be justified, given the City's finances and the other items awarded here, we will leave the present uniform allowance unchanged.

I. Salaries (Appendix A)

A top grade patrolman in Troy currently earns \$17,642, excluding longevity. The PBA demands an increase of 14% to \$20,279 for 1982, and an additional increase for 1983, sufficient to bring the top-grade patrolman's salary to \$21,660 as of January 1, 1983. The Union also requests increases in longevity pay as follows:

After 5 years, from \$229.02 to \$300.00
After 10 years, from \$408.04 to \$750.00
After 15 years, from \$587.06 to \$1,000.00
After 19 years, from \$766.08 to \$1,500.00
After 24 years, the sum of \$2,000 (new).

The City in turn, offers an across-the-board increase of \$750, or 4½%, for 1982. Since the City opposes an award for 1983, no further offer was made.

1. Arguments by the PBA

In supporting its demand, the Union placed heavy emphasis on restoration of a historical "parity" relationship which, it says, placed policemen's salaries between 7.7% and 10.2% above those of Troy Firefighters. The differential was justifiable because the policeman's job is more demanding than that of the firefighter, said the Union. The PBA maintains that over the years, "in order to maintain (its) relationship (with Firefighters) last established by a neutral, raises through 1983 of be-

tween 19.5% and 22.4% would have to be granted." Under the Brand award, Troy Firefighters' salaries went up 8.74% to \$18,442 for 1982, and (with an additional 6% raise) to \$19,549 for 1983. To regain a 10% differential over the Firefighters, the Union submits, it would have to receive \$21,504 effective January 1, 1983 (Union Exhibit K-2).

Alternatively, in making its salary demands, the PBA relies on increases in the CPI. It argues that according to the testimony of deSeve, an increase in salary and longevity of approximately 18% would be necessary to "maintain the average relationship a top grade officer's salary bore to the CPI" from 1976 through 1982 (Union Exhibits U and U-1).

Following a third line of argument, the PBA places emphasis on the unfavorable position of Troy police salaries vis-a-vis those in certain comparable communities, most notably Albany and Schenectady, and on a comparison between the City's offer and PERB reports of negotiated and arbitrated police salary increases in comparable cities and elsewhere in the State (Union Exhibits C-9 and 10).

Even "more important than the percentage increases shown on the PERB reports," says the Union, "are the actual salary figures which result when the PERB percentages for 1982 are applied to a 1981 top grade police officer's salary in Troy," The PERB statistics, the Union submits, "illustrate that Troy is 35% behind the Statewide average in 1982."

Additional arguments advanced by the Union are:

(a) The City has the ability to pay. The local economy and the City's fiscal position are stable (Union Exhibits A-4, A4R, A-5, A-6 and A-6R). The City continues to operate with a surplus (Union Exhibit B-4). "Between 1973 and 1982, per capita personal income increased by 121.5%, while the tax rates increased by (only) 70% (Union Exhibit B-7R). Collections of taxes are up (Union Exhibit B-10). The overall tax burden on the citizens

of Troy is "middle range when compared with similar municipalities" (Union Exhibits B-8 and B-9). For these reasons, the City "has the financial ability to provide increases in salaries and fringes without burdening the taxpayers."

(b) "A rise in productivity by Troy Police" justifies an even greater than average raise. Responsibility, as measured by a rise "in the number of calls to which Troy's Firefighters now respond, has increased," since Police are now required to respond as well to calls for emergency medical assistance (Union Exhibit G). At the same time, manpower has fallen (Union Exhibit E). Notably, "the same tasks performed by 85 men in 1981, were performed by 77 men in 1982 (Union Exhibit 1-7)."

(c) Finally, on the question of salaries, "Prof. William E. Brown testified as to the stress created within police officers by, among other things, undermanning. Important also was the witness' opinion that the job of the police officer must be professionalized. One method of professionalizing police, according to Brown, was to pay them salaries commensurate with those paid to professionals. Thus, this witness' testimony supports and justifies the proposals made by the PBA for salary and longevity increases."

2. Arguments by the City

The City argues that salaries should be increased, for 1982, by no more than 3.9%, the amount of increase in the CPI for 1982. Salaries of Troy Police and the CPI have been linked historically, says the City, and "absent any specific information which would compel the Panel to abandon the pattern of economic improvements based upon cost-of-living fluctuations, the Panel's task must be to identify that amount of increase which will shield the Troy police officers from the impact of inflation in a manner similar to that provided under past contracts," namely, 3.9%.

The City maintains, moreover, that the negotiated and "arbitrated" salary increases relied on by the PBA (Union Exhibit D), as well as the Brand award for Troy Firefighters, were founded on a predicted 1982 increase in the CPI of from 6.5% to between 8% and 9%. The predictions were-made between the end of 1981 and the first months of 1982.

Unlike Professor Brand and other negotiators and arbitrators, this Panel need not guess as to the 1982 CPI, says the City. "Rather, it can-- and must--operate from the precise knowledge of a certain past. The 1982 CPI rose by 3.9% and so, too, must the salaries of the police officers."

The City makes these additional arguments:

(a) The Union's arguments based on an alleged "surplus" for 1982, and on a productivity increase under the EMT/Paramedic Program, were disproven by the testimony of Thomas Evans, Troy's former Comptroller, and Commissioner O'Connor, respectively.

(b) The City's non-uniformed employees received a \$750 increase for 1982.

(c) From 46 cities in New York State, the 13 (plus Troy) chosen by department size and population, are truly comparable. From among these 14, "Troy falls almost precisely in the middle of the 'comparable' cities in terms of 1981 police salaries," yet its financial burdens (measured by "overall tax burden," percentage of tax exempt property, personal and family income, per capita resources and uncollected taxes) are among the heaviest of all comparable cities (City Exhibits 6, 7, 10 and 12). "Troy's total tax burden is the third highest in the State."

(d) Cutbacks in State and Federal aid further impede the City's ability to pay increases greater than those offered.

(e) Cost increases, including those for pensions (25 to 40% of earnings) and employee fringe benefits (approximate 60% of base salary), as

well as for power, light, gas, oil and telephone, "have exceeded the City's budget estimates for the past four years." "Some cost increases," says the Employer, "have been higher than the average rate of inflation, and "the City is limited in its ability to cut expenses to offset changes in revenues."

(f) The City incurred a general fund deficit in excess of \$600,000 for 1981. This is a "clear warning that expenses must be reduced."

(g) There was no productivity increase. In fact, "the police force is anywhere from 25 to 55 percent over-strength, and the workload as represented by major crimes reported, is about 50% below most other cities."

(h) Troy police salaries have outpaced inflation, having risen 73.4% since 1975, while the New York City area CPI rose only 56.4%, and the U.S. CPI only 69% (City Exhibits 15 and 16).

3. Comparability

Union Exhibits C-1 through C-8, comparing Troy police salaries to those in cities in its "population size class" and to those in the "Albany Area" show, as the Union contends, that Troy is "in range with comparable communities" in salaries paid. Actual 1982 salaries for a top-grade patrolman in some of these communities, as reported by PERB in June 1982, together with the percentage increases shown on Union Exhibit C-9 are:

	<u>1982 Salary</u>	<u>1982 % Incr.</u>	<u>1983 % Incr.</u>
Albany	\$ 18,999	5.6%	
Bethlehem	\$ 18,526	9.3%	
Cohoes	\$ 16,141	10.2%	11.1%
East Greenbush	\$ 15,800	8.2%	
Elmira	\$ 17,095	6.5%	
Guilderland	\$ 16,576	8%	7%
Jamestown	\$ 17,286	8%	
Niagara Falls	\$ 17,415	6%	
North Tonawanda	\$ 19,041	8%	
Rome	\$ 17,771	3.9%	
Rotterdam	\$ 19,538	7%	
Saratoga	\$ 16,545	7.4%	
Schenectady	\$ 20,253	9%	

Troy's 1981 salary, of course, is \$17,642, and Troy's pay is higher in 1981 than 1982 salaries in some municipalities relied on by the PBA. Also, notably, 1982 salaries in Albany and Schenectady, the other two central cities of the Capital District, and Troy's next door neighbors, are among the highest in this population.

Other percentage increases relied on by the PBA (Union Exhibit C-9), are:

<u>Municipality</u>	<u>1982 % Increase</u>	<u>1983 % Increase</u>
Colonie	8.3% - 8.8%	12.3% - 13.5%
Glenville	8.5%	8.5%
New Rochelle	8.0%	
Niskayuna	8.0%	
Poughkeepsie	10.1%	

PBA Exhibit D, a PERB report on "Patrolman Salary Increases on Top Step in 1982," negotiated and arbitrated through April 1, 1982, shows that in 160 agreements (23 arbitrated and 137 negotiated) covering 13,584 patrolmen, weighted average increases over 1981 salaries amounted to \$1,923 or 8.7%. The same PERB figures for 1983, but unweighted, show average increases in 52 agreements, covering 4581 patrolmen, at \$1,689 or 8.8% (Union Exhibit K-1). These statistics were prepared in mid-April 1982.

The City would discount both the Brand award and the PERB statistics since, it claims, these were all prepared in a "time of high CPI expectancy," while the "reality, a 3.9% rise in the CPI for 1982, is available to this Panel."

More precisely, the City points out that Brand predicted, at a time when he thought the CPI was increasing at 6.5% to 7.4%, a 6.5% to 7.5% increase for all of 1982, and that he based his award on that prediction, (together with a productivity increase valued at 1½%).

While the Brand Panel states that its award is based, in part, on a predicted rise in the CPI, a prediction now seen to be erroneous, there

is no evidence that the increases reported by PERB reflect an expected CPI increase. To the contrary, it must be assumed that some of the negotiators and interest arbitrators (depending on the date of the contract or award) were aware that the annual CPI had fallen, from about 11% in October 1981 to about 8% in January 1982 and then to about 6.5% in March 1982 (City Exhibit 16-B). The PERB percentage increase figures stand at over 8.5%. While these should be discounted because of a decreasing CPI, they are nonetheless relevant in applying the comparability standard in our award, and will be considered.

The City cites no salary increase figures, percentages or dollar amounts to detract from the PERB statistics presented by the PBA.

Even as to the Brand award, we note that the City, now armed with knowledge of a low and falling CPI, and in a position to "correct" the Brand Panel's faulty estimate, granted the Firefighters an additional 6% increase for 1983, bringing the total salary increase (1983 over 1981) to 15.25% (cumulatively), in effect "validating" the award as a base of comparison for this Panel.

We note that the City settled with the CSEA for 1982 by granting a \$750 raise. As noted in the Brand award, "this amounts to approximately seven percent."

The PBA, however, points to the 8.50% and 6% (15.25% cumulative) raises given the Firefighters for 1982 and 1983. It argues that Firefighter increases have greater relevance than those for non-uniformed personnel, because both police and fire are uniformed groups, protecting life and property, and because over the years, the services of Troy police officers have been recognized as more valuable than those of the Firefighters. We agree.

The record shows that police and fire salaries were equal in 1976

and 1977, that the police were placed ahead by \$1123 by the Randles arbitration award in 1978, by \$891 in negotiations in 1979, by \$829 in negotiations in 1980 and by \$900 in negotiations in 1981.

Thus, the City itself has placed a higher value on police than on fire services, and the expectancies of the police officers that the "disparity" relationship should be maintained, should surprise no one. While it is by no means controlling, we do not ignore the fact that the police officers regard their salaries and the City's salary offer against the background of prior settlements with the Firefighters.

4. Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay

The City argues that ability to pay must be measured by the income of citizens, and the value of taxable real estate. It maintains that it has the willingness, but that based on those factors it does not have the ability to fund increases greater than those offered. The parties' major arguments have been noted above.

In addition, O'Connor's testimony that while the average full valuation taxable property per police officer in the 14 cities relied on is \$3.4 or \$3.5 million, Troy's (the second lowest), is just over \$2 million (City Exhibit 10) is unrebutted. Schenectady's property per police officer is at \$3.8 million, and Albany's at \$2.25 million (City Exhibit 10). City Exhibit 12 shows that of the 14 cities, only Utica has a lower per capita income.

The tax burden, \$2000 in property taxes on an average one family dwelling (assessed value \$26,500), is high. City Exhibit 7 states that Troy's total tax burden, is third highest among all New York State cities with populations of over 25,000. City Exhibit 5, on the other hand, states that although "only a few years ago Troy had the unenviable position of being the second highest tax per capita City in New York State," as

of October 15, 1981, "of the 13 cities in the State of New York with populations over 50,000, Troy ranks last in the tax burden placed on our citizens." We cannot reconcile the two exhibits.

Forty-nine percent of Troy's property is tax exempt. Troy's tax rate represents 82% of the City's constitutional limit, but as deSeve points out, "at that limit, an additional \$2.5 million of revenue would be available in 1982."

With an average family income of \$15,662 in 1980, Troy ranked 11th in a group of the 21 largest cities, (excluding New York City), just at the middle. Average family income in Albany, 6th of 21, stood at \$17,637; Schenectady, 8th of 21, stood at \$17,117 (City Exhibit 6). Troy's per capita resources (per capita income and per capita property), but for Utica, are the lowest of 13 selected Cities (City Exhibits 11 and 12).

On the plus side, Troy's property tax rates are at or near average (Union Exhibit B-9) and these have remained stable since 1972 (Union Exhibit B-7). According to deSeve, the City has operated with positive fund balances during this period (Union Exhibit B-4).

As to a \$600,000 deficit in 1981, we note that 1982 was Troy's "peak payment year" on bonded obligations, and that thereafter "debt payments start to decrease approximately \$300,000 per year" (City Exhibit 5, p. 4). Also, the decision of whether to operate with a deficit or a surplus was not entirely outside the City's control.

Troy's total real and per capita personal income have increased at roughly the same rate as for other State communities (Union Exhibit A-3, A-4 and A-5). Local funding sources (including property tax, sales tax and water and sewer revenues) have remained stable (Union Exhibit B-1).

There is no evidence of either an erosion or a dramatic decrease in Troy's economic base, as through the exodus of business enterprises.

Also on the plus side, the City's expenses for health insurance for the police will be \$36,000 less, under the award, than anticipated.

What conclusion is to be drawn from all these statistics as to Troy's financial ability to pay?

First, we share the conclusion of City Manager Buckley that Troy's financial problems, while difficult, are not unique; that they are the same problems that have confronted the vast majority of American cities in the last few years. As stated by Mr. Buckley in submitting a proposed 1982 Budget:

Again we are faced with the overwhelming problem of trying to balance revenues and expenditures while still providing basic services to our citizens. Troy is not alone in this struggle. We share the same problem as do cities all over our State and our nation because cities are on the bottom rung of the governmental ladder.

We also concur in the City Manager's overall conclusion that

Troy's situation is not bleak when compared to the other 58 cities in the State. Only a few years ago Troy had the unenviable position of being the second highest tax per capita city in New York State. We have managed to raise our position to the middle of the 59 cities. A recent study by the Citizens Public Expenditure Survey, Inc. showed that of the 13 cities in the State of New York with populations over 50,000, Troy ranked 7th in the amount of dollars it spent per capita. This indicates that we were making progress in revitalizing our City. And the really good news in the same study shows that we have been able to do all this and still rank last on the tax burden that we have placed on our citizens. Couple these encouraging statistics with the fact that one of the most recent surveys in the Capital District shows that Troy's employment picture is the brightest of the three major cities in this area and we can proudly say that even in these difficult economic times Troy has again established itself as competitive leader in the northeast and provided jobs for its citizens.

Thus, while Troy's ability to pay clearly remains limited, and while the noted recovery is no signal for unreasonable expenditures, the City has failed to prove that it lacks the financial ability to fund salary increases greater than those offered.

5. Peculiarities of Police Work

Brown's testimony that police officers, facing violence, disaster, fire, wounds and crippling illness and death on a regular basis, work in a high stress occupation is not contested. Nor are his conclusions that the stress experienced leads to a high incidence of psychosomatic illness and an uncommonly high suicide rate. Union Exhibit I gives graphic proof of unpleasant tasks and working conditions.

Brown also stated that officers' fear of individual civil liability is widespread and increasing.

We have noted the evidence concerning the "high speed chase," Troy's minority population and poor working conditions. There was insufficient evidence on balance, however, that the stress and resulting problems experienced by Troy officers is higher than that in other departments, or substantially greater than may reasonably be expected in a police career.

There was insufficient evidence, on balance, of a substantial increase in work load or of a productivity increase by virtue of paramedic duties.

From the entire record we conclude that the "hazards of employment, physical qualifications and skills" of Troy police officers are substantial, and higher in many instances than those of non-uniformed employees. Thus, at the least, the lower raises given to these employees have far less relevance here than raises given to the Firefighters, whose work brings them up against some of the same "hazards of employment" and requires some of the same "skills" and stringent "physical and mental qualifications and training" required of the police. Thus, the peculiarities of employment point us, for guidance, to the raises given Troy's Firefighters and to officers in comparable cities.

6. Terms of Past Collective Bargaining Agreements

Salaries in past agreements have been average. There is no significant catch-up factor.

Nineteen eighty-one fringe benefits examined, including longevity (City Exhibit 17), were shown to be average or better than average; in the case of vacation pay, far better. There was no evidence, (except as to the clothing allowance, which has been raised) that Troy police lag behind other departments in fringes.

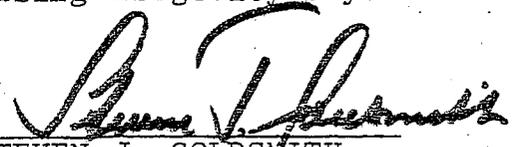
Conclusion on Salaries

Based on all the evidence received, particularly the PERB and PBA percentage increase statistics, salaries paid in Albany and Schenectady, the increases granted the Firefighters, the City's "realization" of \$36,000 in health insuring premiums during the second half of 1983, and Troy's financial situation, and based on the Standards of the Civil Service Law, we find that a salary increase of 7½% for 1982 and of an additional 6½% for 1983 are "just and reasonable."

In consideration of the City's financial limitations, these increases shall be paid as follows: 4% retroactive to January 1, 1982, an additional 3½% retroactive to July 1, 1982, an additional 3% retroactive to January 1, 1983, and 3½% effective July 1, 1983.

The Panel finds no justification for increasing longevity pay.

Dated: March 22, 1983


STEVEN J. GOLDSMITH

Dated: March 24, 1983

151 ALSON J. SPAIN, JR.
ALSON J. SPAIN, Jr.

Dated: March 24, 1983

151 FRANK N. GRASSO
FRANK N. GRASSO

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)ss:

On this 22nd day of March, 1983, before me personally came and appeared STEVEN J. GOLDSMITH to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Judith Goldsmith

JUDITH GOLDSMITH
Notary Public, State of New York
No. 46732 5
Qualified County
Term Expires su, 1988 1794

STATE OF NEW YORK)
COUNTY OF SCHENECTADY)ss:

On this 24th day of March, 1983, before me personally came and appeared ALSON J. SPAIN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

1s/LAURENCE T. PAHLKE

STATE OF NEW YORK)
COUNTY OF SCHOENEBROOK) ss:

On this 24th day of March, 1983, before me personally came and appeared FRANK N. GRASSO to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

ISI LAURENCE T. DAHLKE

RECEIVED

MAY 26 1983

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

CONCILIATION

In the Matter of the Interest Arbitration between
CITY OF TROY

Public Employer

-and-

TROY POLICE BENEVOLENT & PROTECTIVE ASSOCIATION

Employee Organization

PERB CASE NO. IA82-8

DISSENTING OPINION

The undersigned, as the PBA's member of the Public Arbitration Panel in the above-entitled, dissents, in part, from the award rendered by the majority of the Panel, as set forth below.

A. Term of the Contract

I concur with the majority Opinion and Award.

B. Vacation Leave

I concur in the Opinion and Award in so far as it denies any increase in the amount of vacation benefits at this time.

However, it was established that the Union's request for the right to work the vacation period was a benefit granted by the City to its Fire Fighters and therefore there is no justification for its denial here.

Therefore, I would award the right to work in lieu of taking a vacation as requested by the Union.

C. Personal and Bereavement Leave

I concur with the majority Opinion and Award.

D. Leaves of Absence for Association Representatives

I dissent with so much of the Opinion which states:

We are unable to determine the scope and cost of this proposal. Also, its necessity, under actual working conditions and the parties' negotiating practice was not developed. We therefore make no award.

Union Exhibit W - The Cullen Award - outlines the contentions of the parties and the historic enjoyment of the benefit sought as well as establishing its existence in other bargaining units.

The existence of the practice in other units was also bolstered by testimony of Officer Kilgallon.

Given the City's lack of minimum staffing standards and non-use of overtime no matter how small the number of officers available for patrol duty, persuades this panel member that there is no need for concern of a cost factor attributable to this previously enjoyed benefit lost through a technical interpretation.

I would therefore award the language change requested to allow released time with pay for preparation for contractually recognized activities..

E. Assignment and Transfers

I concur with the Opinion and Award.

F. Health Insurance

I dissent from the Opinion and Award.

The issue of Health Insurance was not properly

before the panel. There was no testimony or documentary evidence which can be referred to in the record from which the panel can draw any conclusions of the comparative equivalent between the plans.

During its proceedings, the panel, by judicial notice of the Court proceeding and improper practice charge related thereto, was cognizant of an attempt by the City to unilaterally impose the substitute health plan which was set aside by the Court and declared an improper practice by PERB.

The Union counsel offered to stipulate jurisdiction of the issue to the panel, but the City chose not to join in that stipulation and therefore there was no evidence offered.

Therefore, I would deny any change in the health plan on the lack of jurisdiction over the issue by the panel and the failure of any evidence upon which the panel could act.

G. Shift Differential

Having accepted the PBA's arguments as outlined in the majority award, the majority has failed to award an amount that will effectuate the benefits of a proper shift differential.

It would require an award in conformity with the amount requested and I would therefore award 5% for the 4 P.M. to Midnight tour and 10% for the Midnight to 8. A.M. tour.

The penurious amount awarded, which is concededly lower than the non-uniformed employees of the City can only contribute to the already low departmental morale.

H. Uniform Allowance

The evidence supports a need for an increased clothing allowance. There is nothing persuasive in the evidence

of the City's finances to justify the panel's denial of the requested increase, particularly in light of the lack of any increase since 1978.

Therefore, I would award \$350.00 per year cash allowance for uniformed patrolmen and \$500.00 per year cash allowance for plain clothsmen.

I. Salaries

The majority failed to consider the additional strain put on Troy's police by a 10% decrease in manpower. This drastic decrease took place over the course of one year. The uncontroverted testimony of witnesses for the PBA and the City was that the City does not maintain a minimum manpower level. Thus, fewer officers are covering the same territory with less back-up assistance. The City is exposing its remaining officers to greater risks than ever before. I strongly believe that because each officer is faced with greater danger he should be compensated accordingly, particularly because the City is saving the salaries of the ten men it chose not to replace. The increased stress and the increased productivity per man which results from the decrease in manpower, should be acknowledged and compensated.

The PBA's exhibits, the testimony of its economic expert, and particularly the PERB statistics, justified increases of at least 9% for each of two years. Money to pay such increase was available but a number of sources of funds and cost saving factors brought out by the PBA were not considered by the majority. The City gets reimbursement from the State for the salaries of three police officers. The City had 1.78 million dollars in its

general fund (left over from the close-out of its community development projects). The salaries of 10 officers were eliminated in one year. Important also is the fact that the award, on its face, admits to saving the City \$36,000.00 in health insurance premiums.

In any event, there is no basis for the finding that the City will only save \$36,000.00 by instituting the new health insurance plan. In his letter to the PBA (C-9), the City Manager estimated that the City would save \$50.00 per officer, per month. Based on that figure, the City would save \$97,200.00 during the term of the award. The City, in its pre-hearing brief, argued that the new plan would save \$3.00 per day, per man. Based on that claim, the City would save \$171,720.00 during the term of the award. The membership is entitled to a share of this savings.

I concur in that part of the majority award which adopts the City Manager's assertion that the City of Troy had managed to reduce the tax burden on its citizens to the lowest in a state-wide group of comparable cities and that:

...Troy's employment picture is the brightest of the three major cities in this area...
(W)e can proudly say that even in these difficult economic times Troy has again established itself as a competitive leader in the north east and provided jobs for its citizens.

With this in mind, I believe the City's police officers should be treated as the professionals they are expected to be.

The panel majority correctly concludes that the duties and working conditions of police officers drastically

sets them apart from comparison to any other type of employment and agrees that the historic recognition of the greater value of police services compared to fire services is well founded.

Yet, the majority makes an award for salaries that fails to implement that finding, and conversely awards an amount that is less than that granted to Fire Fighters; narrows the historic disparity; fails to acknowledge the value of the highest priority public service; and erodes every police officer's needed acknowledgment for performance of a currently thankless job, at a time of already existing low moral.

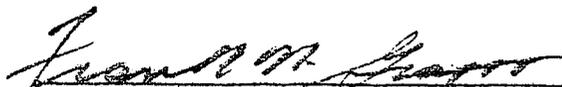
I would award a salary increase of 9% for 1982, and an additional 9% for 1983.

J. Longevity

Existing longevity payments do not offer proper reward or recognition for years of service on an officer reaching top grade, and Troy lags behind comparable modernized departments. I would award the following longevity.

After 5 years	\$ 300.00
After 10 years	\$ 600.00
After 15 years	\$ 900.00
After 19 years	\$1,200.00
After 24 years	\$1,500.00

Dated: May 24, 1983


Frank N. Grasso

STATE OF NEW YORK
COUNTY OF SCHENECTADY SS:

On this 24 day of May, 1983, before me, the subscriber, personally appeared FRANK N. GRASSO, to me personally known and known to me to be the same person described in and who executed the within Instrument and he acknowledged to me that he executed the same.

Laura A. Duse
Notary Public *Comm. Dec 82*

