

JUL 18 1984  
CONCILIATION

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In the Matter of the Arbitration

Between

CITY OF ALBANY

and

NEW YORK STATE INSPECTION, SECURITY AND  
LAW ENFORCEMENT EMPLOYEES, DISTRICT  
COUNCIL 82, AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,  
and the ALBANY, NEW YORK POLICE DEPART-  
MENT, LOCAL 2841, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO  
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AWARD

PERB Case Nos.  
IA82-42; M82-497

Pursuant to Section 209.4 of the New York Civil Service Law, Mr. Harold R. Newman, Chairman, New York State Public Employment Relations Board designated a Public Arbitration Panel for the purpose of making a just and reasonable determination of a dispute in the negotiations of the above parties for collective agreements between the City of Albany and the Albany Police Officers' Union, Local 2841, AFSCME, AFL-CIO and the City of Albany and the New York State Inspection, Security and Law Enforcement Employees, District Council 82, AFSCME, AFL-CIO <sup>1</sup>.

The Panel consisted of the following:

Vincent J. McArdle, Jr., Esq. - Employer  
Panel Member

Mr. Hollis V. Chase - Employee Organization  
Panel Member

Irving R. Markowitz, Public Panel Member  
and Chairman

Hearings were held concerning the issues on July 28, 1983, August 11, 1983, August 12, 1983, September 12, 1983, September 15, 1983, September 26, 1983, October 13, 1983, October 21, 1983 and November 18, 1983, at which times both sides presented their oral and written testimony and filed some 150 exhibits. Thereafter, counsel for the parties filed post-hearing briefs and reply briefs with the

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1) The issues in both cases are nearly identical and will be treated together and our Award and Determination will cover both units.

Panel. Following the receipt of the transcripts of hearings and the aforesaid briefs, the members of the Panel met in executive sessions on March 1, 1984 and March 26, 1984 to deliberate on their findings and conclusions concerning each of the issues before them.

W. Dennis Dugan, Esq., Assistant Corporation Counsel, appeared for the City and Richard R. Rowley, Esq., of Rowley, Forrest and O'Donnell, for the Unions.

#### DURATION OF AGREEMENT

The parties have agreed that the duration of the collective agreements to be determined by the Panel herein shall be two years, - that is, from January 1, 1983, the date following the expiration of their last contracts, to December 31, 1984.

#### THE ISSUES IN DISPUTE

For convenience, the issues will be divided into economic and non-economic areas <sup>2</sup>.

#### Non-Economic Items

1. Statement of Purpose
2. Employee Relations Transfers
3. Pay During Scheduled Delay
4. Polygraph
5. Court Time
6. Pay for Vacation upon Discharge
7. Indemnification
8. Light Duty
9. Zipper Clause

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2) It is recognized, of course, that there is no sharp line dividing these two areas and that at least some of them may be affected by mutual criteria in contract determination.

## Economic Items

1. Personal Leave
2. Clothing Allowance
3. Shift Differential
4. Dental Plan
5. Work Week
6. Longevity
7. Salaries

## STATUTORY REQUIREMENTS

Article 14, Section 209(4)(v) sets forth the mandatory criteria to be employed by the Panel in arriving at a just and reasonable determination of the matters in dispute. It states:

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

"a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

"b. the interests and welfare of the public and the financial ability of the public employer to pay;

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

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

## BACKGROUND

1. The City of Albany is the capital of New York State and some 150 miles north of New York City, 143 miles east of Syracuse, 225 miles east of Rochester and 290 miles east of Buffalo. It is immediately adjacent to the Town of Colonie, five miles east of Schenectady and six miles south of Troy.

The population figures of each of the upstate cities <sup>3</sup> or subdivisions that have been used by the parties or either of them, are as follows:

<u>City</u>	<u>Population</u>
Albany	101,727
Buffalo	357,870
Rochester	241,741
Syracuse	170,105
Utica	76,071
Niagara Falls	71,965
Binghamton	56,230
Colonie	74,539
Schenectady	67,972
Troy	56,638

2. As of March 1983, the number of sworn officers <sup>4</sup> in the Albany police force was 48 and the number of patrolmen and detectives was 288.

3. The Union herein was originally certified by PERB for a negotiating unit consisting of patrolmen and detectives <sup>5</sup>. The original terms and conditions of employment were determined in large part by an interest arbitration award in June 1976, upon which the parties finally executed an agreement on April 1, 1977, covering the period from June 1976 through June 1978. Thereafter, there was no negotiation for a successor agreement for a one year period from June 1978 to June 1979, for reasons that will later appear; the parties then executed an agreement for the period from June 24, 1979

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- 3) Both sides agreed that New York City and cities and subdivisions of Long Island and other "down state" counties are not suitable for purposes of comparison under the statute.
- 4) "Sworn officers" describe lieutenants and sergeants in the "police officer" unit as distinguished from the "police" unit consisting of patrolmen and detectives.
- 5) All detectives (except sergeants and lieutenants) are classified as patrolmen and receive the same general salaries as patrolmen.

through June 24, 1981, and a successor agreement, presently in effect, running from June 25, 1981 through December 31, 1982.

The first agreement covering the supervisory unit (lieutenants and sergeants) went into effect in June 1979 and remained effective until June 24, 1981; the next and presently effective agreement covered the period from June 25, 1981 through December 31, 1982.

4. According to testimony adduced by the Union<sup>6</sup>, Albany police are responsible for patrolling portions of at least three interstate highways, including the Thruway, that lie within its City limits and because of its status as the state capital, it has a daily traffic count of from 12,000 to 65,000 vehicles, all within the responsibility of the Albany police department.

#### ANALYSIS AND APPLICATION OF STATUTORY FACTORS

##### 1. Comparisons

As previously indicated, the statute states:

"a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities."

With respect to the above, the Panel believes (with the apparent concurrence of both parties, since little or no testimony on the matter was offered) that comparisons with "other employees generally in public and private employment" is irrelevant in its application to the issues herein. This element is more appropriate in the arbitral determination of a first contract where initial salaries and conditions of employment are imposed and where general

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6) The term "union" will hereinafter be used for convenience to denote both unions.

comparisons are necessarily considered. However, the parties herein have in their past contracts and through a previous arbitration award set these salaries and conditions of employment, presumably based in some part on general comparisons. In the absence of proof of substantial changes in conditions, not supplied herein, resort to general comparisons is inappropriate and irrelevant.

The problem in the instant case is the use of "comparable communities" in the analysis of comparisons of wages, hours and conditions of employment.

The Union asserts that the Panel should consider only Buffalo, Syracuse and Rochester as "outside" <sup>7</sup> comparable communities, whereas, the City urges that Utica, Niagara Falls and Binghamton should be included, as well, since the populations of these latter cities are closer to Albany than the former.

Theoretically, the best area of comparison is the geographical district that provides the market from which the majority of employees (patrolmen) are drawn. This area generally has certain common characteristics: (1) high probability of workers seeking employment within the district, (2) similar living costs and (3) similar transportation and other tangential costs.

Nonetheless and especially in the public sector, it is important as well to compare wages and conditions of employment with other employers of similar size and type whose employees (patrolmen) perform similar duties. The often encountered difficulty is to locate public employers that are geographically relevant and at the same time have employee forces of similar size and character and, if possible, whose fiscal situations are somewhat similar. Oftentimes, the other employers to be compared are selected because of their traditional use in collective negotiations or bargaining. Thus, in Buffalo negotiations, Rochester may be most relevant; in Rochester, Buffalo and Syracuse are significant; in Syracuse, Rochester and

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7) Those not within the cluster of communities either abutting on or close to Albany.

Albany are often used. Generally, in comparison surveys, the largest upstate cities - Buffalo, Rochester, Syracuse and Albany are used by each of them as bases for comparison of "outside" employers. This serves as a guide to a general wage level for public employers in the large upstate cities which, if used carefully, can provide a fairly suitable mechanism for wage determination. Cities such as Utica, Binghamton and Niagara Falls are somewhat less significant since they do not have similar conditions of employment nor similar fiscal patterns and their populations are less and of different character than the four larger upstate cities. Additionally, the nature of police services is more compatible among the four large upstate cities than the smaller ones.

## 2. Ability to pay and public interest

"The interests and welfare of the public  
and the financial ability of the public  
employer to pay"

Since the resources of cities are, for the most part, generated through taxes and fees paid by the public, the issue of "ability to pay" and its impact on the public interest must be carefully evaluated and, indeed, both sides have extensively treated it in their evidence and post-hearing briefs.

The Union has contended that the public interest is best served by a police force of quality and dedication to duty and thus only through proper terms and conditions of employment can the City attract and maintain police officers to better insure proper police protection. It argues that the record supports its proposals of a 9% annual increase and the requested supplemental benefits.

Both sides have acknowledged that for many years prior to the advent of the present administration in May of 1983<sup>8</sup>, Albany's fiscal policies and practices were imprudent and wasteful. City

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8) Although the present Mayor was officially sworn in in May 1983, he appeared to act as the functional chief officer of the City since June 1982, when the then Mayor became incapacitated from fulfilling the regular duties of his office.

funds in the millions of dollars were deposited in non-interest bearing accounts, large sums of money were spent for contracting outside services and materials without bidding, as required by law, far in excess of the going market rate for such services and materials and City monies borrowed for capital purposes were often used to finance operating and other deficits with the resulting necessity to obtain legislative relief from the State retroactively legalizing unlawful utilization of funds. Nonetheless, according to the Union, the City's financial position since 1983 is such that it can adequately afford the proposed increases in salaries and benefits as indicated below:

1) The present and developing fiscal health of the City is demonstrated by the steady increase of building permits from 1305 in 1975 to 3049 in 1982 and the acceleration in the number of such permits in the first eight months of 1983. To be sure, assessed value of real property nearly remained static because of prior City mismanagement. Nonetheless, the Union submits that the police force should not bear the burden of such gross mismanagement.

2) The substantial and increasing number of public employees in the Albany area reflects a stable and growing workforce and, in fact, unemployment in Albany is and has been less than in various other centers of the State.

3) The City is far below its constitutional tax limit and the budgeted levy for 1983 was 85.22% of maximum taxing power and for 1983, 63.06%.

4) Sales tax revenues have steadily increased since 1978, despite a national economic recession during most of said period so that for the fiscal year ending October 31, 1983, Albany tax revenues should be about \$8,245,000, some \$745,000 over budget.

5) The City's own budget experts acknowledge a budgetary surplus.

6) A cost analysis of expenses for the police force reveals that because of attrition of the force and unwillingness to replace retiring members of the force, the proposed salary costs would actually come below budget figures.

The City maintains:

1) Since 1978, despite serious inflation, Albany's tax base decreased some 4%. Thus, if the tax base had kept pace with inflation during this period, it would have increased by \$144 million, rather than decreased by \$12 million. Thus, in real dollars, the City's tax levy decreased in 1978 dollars by 20%.

2) Since 1978, government aid has decreased in 1978 dollars from \$11 million to \$7 million.

3) During this same period, sales tax revenues increased by only 8%.

4) 71% of the assessed valuation of real property in Albany is tax exempt. Thus, Albany has the highest tax rate of all large upstate cities and raises more tax dollars per resident than any other large upstate city.

5) Under the "Financial Tracking System" devised by the State Comptroller, which evaluates the financial condition of cities, there are significant regressing tendencies in Albany when compared with other upstate cities.

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The determination of ability to pay is complex enough in ordinary cases. Its complexity is compounded in this case because of the fiscal mismanagement of a prior administration. The record shows that the City is not in dire fiscal straits at the present time but needs more time to rid itself of some of the results of prior mismanagement and excess. Thus, we are of the opinion that although its present precarious financial condition may somewhat reduce wage and benefit increases that might be derived from other criteria, Albany still remains in a comfortable position to fund reasonable monetary increases to its police force.

### 3. Comparison with other trades

"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."

There is little question but that patrolmen and officers operate under greater hazards of employment than most other public or private employees, require greater physical qualifications and are fairly high in comparison with others in educational and mental qualifications and job skills.

As previously indicated, it does appear however, that the above set of criteria is uniquely applicable to determining wages and conditions of employment for initial contracts. Presumably, such determination, either by contract or arbitration, has fully considered and compared these criteria between Albany police and the City since the parties have had a collective relationship for some years. In any event, neither side produced any testimony concerning the criteria stated herein nor did they treat the matter in their post-hearing briefs.

#### 4. Past agreements and bargaining history

"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 hospital benefits, paid time off and job security."

While past wages, benefits and conditions of employment are especially important in initial contracts, they may be relevant to renewals as well and sometimes, as in the instant case, may be significant. Thus, interest arbitrators have held that it is "almost axiomatic that the existing conditions be perpetuated" and that there should be "persuasive reason" for the elimination of a clause which has been contained in previous agreements<sup>9</sup>.

Of special significance in this case is that the police received no increase in salary (or benefits) in 1978. It appears that this resulted from the failure of the Union to request modification of a contract that expired in December 1977. Under an automatic

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9) Luckenbach Steamship Co., 6 LA 98, 101; Minneapolis - Moline Power Implement Co., 2 LA 227, 230. See also Hurley Hospital, 56 LA 209, 212-215.

renewal clause, in the absence of a request for modification, salaries and benefits for 1978 were frozen at 1977 rates. However, it appeared that efforts were made in later negotiations to accommodate to this serious loss of salaries, during a highly inflationary period. Thus, the police received a 10% increase in June 1979, 10% in June 1980 and an additional 3% on the last day of the contract. Nonetheless, according to the Union, despite these increases, the absence of the 1978 increase placed the salaries of police substantially below those of Albany firemen, although for many years prior to 1978, both groups were roughly equal in salaries and benefits.

The City's argument that the 1978 situation was entirely the fault of the Union, for which the City should not be held to account, is misapplied in these proceedings. The Union already has endured its penalty in 1978. Our concern is the 1983 and 1984 contract and there is no question but that the past history of negotiations caused an erosion of police salaries that adversely affected their present salaries and their present relationship with firemen salaries.

### THE ISSUES, DISCUSSION

In the discussion of issues, we shall employ the statutory criteria, as they may apply, to each of the issues before us. Although these criteria appear to uniquely relate to economic items, they do have some application to non-economic items as well.

It should be noted that the parties have agreed to a two year contract retroactive to January 1, 1983.

#### I. Non-Economic Items

##### 1. Statement of Purpose

The City has proposed slight changes in language to the "Statement of Purpose" clause. These proposed modifications add nothing to the substance of the agreement and are of insignificant character. Since the parties have lived with the language of the existing clause, we find no compelling need for any change therein.

## Determination

We, therefore, Determine that the City's proposal for modification not be adopted herein.

### 2. Employee Relations Transfer

The City has proposed a new clause which seeks to allow the Chief to transfer an employee to a different job assignment and/or shift for "employee relations purposes", subject to a majority vote of a Joint Transfer Committee consisting of the Chief and two unit members. Such transferred employee will then not be eligible to bid on another vacancy for a period of one year, except by majority vote of the Committee. The transfer shall not be deemed disciplinary and all meetings of the Committee shall be confidential <sup>10</sup>.

The rationale for the proposal is to allow the Chief the discretionary right to transfer an employee "for the good of the service" to solve or avoid problems but not as a disciplinary measure.

## Discussion

The testimony shows that problems envisaged by this proposal have been successfully resolved over the past 7 years of their collective relationship through the usage of the Joint Labor Management Committee. Moreover, the original proposal is infected with a variety of questionable procedures, some of which would place the onus of the decision on fellow employees rather than the City or even the Union. The modification suffers from at least two substantial defects in that (1) it will erode the employee's right to exercise his present option for transfer and (2) more importantly, it will punish an employee who, assumingly is not guilty of any misconduct, by disallowing him to bid for a voluntary transfer on another vacancy for one year from the date of his compulsory transfer.

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10) In its brief, the City has modified this proposal to allow the Chief to make the transfer decision on the advice of the Committee and that such decision be subject to arbitration on the issue of arbitrariness or capriciousness.

Additionally, the proposal seeks to (1) change existing conditions with no compelling reason therefor, (2) no comparable language has been shown to exist elsewhere and finally (3) it is unwieldy and impracticable.

### Determination

We, therefore, Determine that the proposal be denied and not included in the new contract.

### 3. Pay During Schedule Delay (of Disciplinary Arbitration Proceedings)

The City has proposed changes in certain provisions of Article 4 which involve suspension with or without pay. The dispute essentially centers on the following provision of Article 4.1.5 which presently reads:

"An employee shall not be entitled to pay during any period in which the Union or employee is not ready to proceed, or the hearing is adjourned at the request of the Union or the employee, or the Union or employee obtains a stay of arbitration".

The City proposes to extend the section by adding language that would not entitle an employee to such pay .

"from the date first offered by the hearing officer or arbitrator for a hearing until the actual date of hearing, unless the delay in scheduling is caused by the City"

The proposal stems from an arbitration award on the present Article 4.1.5 The facts of that case, in brief, were as follows:

Disciplinary charges were brought against an officer and he was suspended without pay for 30 days, pursuant to contract, on January 15, 1982. The Union filed for arbitration on February 10, 1982 and the designated arbitrator offered March 19, 1982, April 7, 1982 and April 26, 1982 as hearing dates. However, the Union was "not available" for any of those dates and the hearing was finally

scheduled for May 17, 1982. (The case was never tried since the officer was sentenced to prison on May 6, 1982, as a result of criminal charges which also formed the basis of the disciplinary charges). Upon the City's refusal to pay the officer for the period from March 19, 1982 to May 6, 1982, the matter proceeded to arbitration. The arbitrator held for the Union on the ground that it was not at fault in the delay of the proceedings and was, in fact, ready to proceed on the first schedule day, even if not available on the first offered date. (The award was vacated by the Supreme Court).

Another case on a similar fact pattern where the Union was not available on seven separate dates offered by the arbitrator, resulted in a back pay award of \$1734.07. (This award was upheld by the Supreme Court).

The Union has objected to the proposal on the chief grounds that it punishes an employee who is not at fault in the premises but rather a prey of circumstances in that delays in arbitration hearings appear to be a general problem and are subject to scheduling difficulties of any or all of the involved parties.

#### Discussion

The issue poses a vexing problem that has faced a number of government branches in matters involving pay during suspension pending discharge for disciplinary infraction. Indeed, to resolve a similar problem concerning discharge of a tenured teacher under Section 3020-a of the Education Law, the State Education Department has developed a procedural rule whereby appointed members of the hearing panel are required, before acceptance, to agree to allow three consecutive days within a two week period, immediately following their tentative appointment, to hold hearings on the issue.

There appears to be compelling reasons to limit the costs of back pay, which often involve many thousands of dollars, caused by delays in arbitration or panel hearings while, at the same time, protect the affected employee against reasonable loss of pay intended by law or contract, especially when he or his union did not contribute to such delay.

It is difficult to fashion a clause that will cover every possible incident of delay; nonetheless, after considerable deliberation, the Panel has developed an implementary clause to be added to present Section 4.1.5, reading as follows:

"The demand for arbitration filed by the Union shall list two separate proposed dates for the arbitration hearing during a period from 14 calendar days to and including 35 calendar days from the date of filing its demand. Within 7 calendar days from the receipt of the demand, the City shall select one of the proposed dates.

"The Public Employment Relations Board, the contractual arbitration agency, shall select in rotating order from the mutually selected panel of arbitrators, the arbitrator whose place on the panel entitles him or her to hear the case. If he or she is not available on such date, PERB, with reasonable dispatch, shall canvass the remaining members of the panel in their regular rotation until one of the arbitrators is available on the date selected for the hearing. ~~If, after such canvass, none is available, then PERB is empowered to select any arbitrator on its own panel who is available to hear the case on the mutually agreed upon date.~~

3/ZRM

#### Determination

We Determine that the sum and substance of the above provision be incorporated in the new contract.

#### 4. Polygraph

The Union has proposed the inclusion of a clause that would disallow any polygraph test to be used by the City for any purpose, nor shall any employee be required to take such test or be disciplined for refusal to do so.

#### Discussion

A simple polygraph provision was, in fact, contained in the first contract between the parties; however, it was eliminated in

the next contract, effective June 25, 1979 and a "bill of rights" provision was agreed upon. A polygraph test was apparently never at issue between the parties and there appears to be no compelling necessity for its re-entry into a collective agreement. Moreover, comparisons with contracts of other communities used by the parties in the comparison model shows that an overwhelming majority of them do not contain such clause.

#### Determination

We, therefore, Determine that the proposed clause not be included in the new contract.

#### 5. Court Time

The City has proposed an addition to Section 11.2 of the contract, which presently provides a minimum amount of three hours of overtime (1 1/2 times regular) pay to any officer who, in connection with his duties is required to appear in court at any time other than his regularly scheduled work period. The City's proposal seeks to exclude the guaranteed minimum overtime pay from cases where an officer appears in court during his regular tour of duty and is required to appear immediately before or remain immediately after his tour of duty.

In support of its proposal, the City argues that providing a minimum of three hours of overtime pay actually results in a wind-fall for officers in that they receive a premium "bonus" for time not worked although they are not inconvenienced to any greater extent than if they had worked overtime as part of their regular duties.

The Union argues that the present provision is fair and equitable and is comparable to contract provisions in a number of other cities in the comparison model.

### Discussion

There should be an equitable balance struck between inconvenience to employees in working overtime and the questionable practice of paying employees, especially at premium rates, for time not worked. Thus, it cannot be gainsaid that employees both in the public and private sector may be entitled to and do receive overtime premium pay for work performed beyond their regular tour of duty (albeit, in some cases, especially in the public sector, they receive straight time for such work). However, a minimum guarantee of overtime, even when the employee does not perform any work during a part of that period, can only be supported when the inconvenience to the employee resulting from working overtime exceeds the economic needs of the employer to pay for only those services that are actually performed.

An employee who is required to attend court proceedings immediately before his regular shift starts is generally more inconvenienced than one who is required to work immediately after the end of his shift. Fairness and equity would thus compel the following addition to the present clause:

"When an employee appears in court or before any of the above agencies during his regularly scheduled tour of duty and is required to remain immediately thereafter, he shall be entitled to no minimum guarantee of overtime pay".

### Determination

We Determine that the sum and substance of the above addition to Section 11.2 be incorporated in the new contract.

### 5. Pay for Vacation upon Termination (Discharge)

The City has proposed a change in Section 13.4.1. Presently, the clause entitles any employee who is discharged, resigns, retired,

is laid off or dies, to be compensated for all accumulated vacation credits. Its proposal is to delete "discharge" from the clause.

### Discussion

In the present posture of the proposal, it would cause a forfeit of past accumulated vacation credit to an employee who is ultimately discharged. This is patently unfair and, indeed, is violative of labor arbitration principles. By definition, accrued vacations are, in effect, earnings for which payment is delayed. It would be improper to deny such past earnings to an employee, upon his discharge.

However, since vacations are deemed part of the earnings of an employee because of his work contribution, it would be unreasonable to have him accumulate vacation credits during a period of time when he is suspended and performs no work, especially when his suspension results from his own wrongdoing, provided, of course, his discharge is ultimately confirmed by arbitration or law.

### Determination

We, therefore, Determine that the following be added, in sum or substance, to the present provision:

"No employee shall accrue vacation credits during any period of disciplinary suspension upon charges which ultimately result in his discharge." 11

### 7. Indemnification

The existing contract requires the employer to indemnify bargaining unit employees for judgments against such employees based on actions "taken in the performance of his duties or within the

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11) At the hearing and in its post-hearing brief, the City has made a similar modified proposal.

scope of his employment". The article applies whether the employee is on or off duty, but shall not apply where the basis of the action is intentional misconduct or gross negligence. Article 21.2.1 requires the employer to provide counsel for the employee at the employee's option for the employee's defense where he is charged with a criminal offense arising out of actions taken in the performance of his duties or in the scope of his employment. If the employer declines to defend because it has determined that the acts were not in the performance of the employee's duties or within the scope of employment or constituted intentional misconduct or gross negligence, then the employee has the right to grieve. The employee is required to serve a notice of claim or summons upon the Corporation Counsel within five days after its receipt and is required to give full cooperation to the Corporation Counsel's office. Failure of the employee to give timely notice or full cooperation excuses the employer from its duty to defend or indemnify.

The contract between the City and the Union ,effective from June 25, 1979 to June 25, 1981, contained identical wording in Article 21 which commences at page 57 of that contract. The initial memorandum of understanding between the parties which remained in effect from June 25, 1976 through June 24, 1979 contained an indemnification provision in Article XIX, Section 3 which did not include the requirement of providing a defense in a criminal case arising out of actions taken in the performance of the employee's duties or in the scope of his employment, but except for that difference contained substantially the same substantive protections and duties as are found in the current contract, although the language is somewhat shorter and less explicit.

The City has proposed extensive language changes to Article 21, but with emphasis on Section 22.2.1 which, in substance, requires the City to provide counsel to an employee who is charged with a criminal offense arising out of actions taken in the performance of his duties or in the scope of his employment.

The City's proposal would limit the duty to pay such counsel fees only upon the acquittal of the employee or the dismissal of the

criminal charges against him. In support thereof, it submits that the modification is not only fair and reasonable but, in fact, has been part of legislation concerned with State employees. The City thus argues that the City's obligation should not extend beyond the State policy.

#### Discussion

We recognize that there are strong philosophical and social differences between the arguments of the City and Union, just as there has been in the State Legislature. Nonetheless, until the State Legislature or the Court of Appeals has determined that a City should not pay counsel fees unless criminal charges against an employee have been dismissed or the employee acquitted, we believe that the present section should not be disturbed. Different from other public employees, police officers are subjected to a variety of allegations of brutality or the use of undue force against which they are expected to defend themselves. To impose the substantial costs of legal defense upon a group of employees, who are less than affluent, might impede their ability to secure capable counsel to defend them. In our judgment, they should not be deprived of their present contractual right to have the City provide or pay counsel for their defense in such matters, whether or not they are ultimately acquitted.

#### Determination

We, therefore, Determine that the City's proposal not be included in the new contract.

#### 8. Light Duty

Article 22.2.1 presently provides that the City may place an employee with a partial permanent disability, which is non-service related, on work which he is able to perform, subject to the City's medical officer's approval, at the employee's option.

The City has proposed to modify the delineated portion above to read "at the employer's option". It supports its position by calling attention to Section 73 of the Civil Service Law which, it states, compels the City to pay such employee for work not performed for the first year of his disability if the employee opts not to accept an assignment of work which he presumably is physically able to perform. It further suggests that the parties intended to have the affected phrase read "at the employer's option" but the word employee's was inserted instead through typographical error.

The Union argues that the clause, while unique, has been contained in the first and all subsequent contracts between the parties and no proof of any typographical error has been adduced by the City. It further submits that other provisions of the contract protect the City from any false claims of disability by an employee.

#### Discussion

Although no adequate proof has been shown that a typographical error infected the present phrase at issue, it appears that the phrase does allow an employee to opt to refuse to work while being paid, even though he may be capable of performing certain "light duties".

We thus believe that the clause be modified to restore a suitable balance of the equities on both sides so that the determination of the employee's ability to perform may be based on more objective and scientific data.

#### Determination

We, therefore, Determine that the phrase "at the employee's option" at the end of Section 22.2.1 be deleted and that the following, in sum and substance, be substituted.

"and the employee's physician. If there is disagreement between the City's physician and employee's physician

concerning the physical ability of the employee to perform the work to which he is assigned under this section, either side may resort to the grievance and arbitration sections of the contract to obtain a resolution of the issue".

#### 9. Zipper Clause (Complete Agreement)

The City has proposed a number of additions and modifications in Article 27. Its reason, unsupported by evidence, appears to be that the present clause is not sufficiently complete.

#### Discussion

We disagree with the City's position. The present provision is one that is in general use and adequately covers the purposes of a "zipper" clause, whereas, the proposed provision appears to be an employer's "boiler plate" clause to cover any conceivable problem.

#### Determination

We, therefore, Determine that the City's proposed changes and additions not be included in the new contract.

#### II. Economic Items

In considering these items, we are mindful that supplemental benefits are part of a total cost package. Thus, while statutory criteria of comparisons, past history and the like are highly important in determining the acceptability of the proposed economic items, they must be weighed against the "ability to pay" criterion of the total economic package of salaries and benefits.

## 1. Personal Leave Days

The Union has proposed changes in Section 14.2.1 which would increase personal leave days from 2 to 3 in the patrol unit and from 2 to 4 in the supervisors unit. It points to the hardships that employees endure under the present provision, essentially because of contractual restrictions that allow the use of such leave days for only urgent personal business which cannot be attended to outside of the employee's work schedule; that at least 48 hours of advance notice must regularly be given except in emergencies; that the leave may be denied when the employee's absence would seriously impede the work of the unit; and that personal leave may not be taken in blocks of time for less than one full day.

The City argues that under present contractual conditions, employees not only have 2 days of regular personal leave, but are allowed 3 additional days of such leave in one year if they have no absence due to non-related illness or injury during that time.

### Discussion

Comparisons indicate that in the ten city sample adverted to by the parties or either of them, a majority of them grant 3 days of personal leave. Additionally, we believe that the record supports a determination that 3 days of personal leave are reasonable and adequate under the facts and circumstances herein.

### Determination

We, therefore, Determine that Section 14.2.1 be modified so as to provide three days of personal leave to both the members of the patrol unit and supervisors unit. (We note, in such connection, that the allowance of the additional personal day costs over 0.5% for each employee).

## 2. Clothing Allowance

The Union has proposed an increase in the clothing allowance for detectives from the current contractual sum of \$850.00 to \$1000.00 per annum. It also proposes that Juvenile Aid Bureau officers receive the same proposed allowance, although they currently have no clothing allowance at all.

The City appears to have made no objection to the increase in the allowance for detectives but resists any allowance for the Juvenile Aid Bureau officers.

### Discussion

The record does not support the proposed clothing allowance for Juvenile officers. These officers are issued uniforms by the Department, free of charge, which they may wear in connection with all their duties and tasks. To be sure, some of them wear plain clothes in some of their work, but this is a matter of their own individual option. The City should not be required to pay them an allowance in lieu of uniforms when their uniforms are issued to them gratis.

The proposal for detectives is reasonable when compared with other communities in the comparison model and as previously indicated, not (seriously) objected to by the City.

### Determination

We, therefore, Determine that the uniform allowance for detectives be increased to \$1000.00 but that the Juvenile Aid Bureau officers receive no such clothing allowance. (We note the increase in cost of some \$12,150.00 for this item).

## 3. Shift Differential

The current contract provides for no shift differential. The Union proposes a shift differential of \$400.00 per year for the

evening shifts commencing at 4:00 p.m. and \$500.00 per year for the night shift commencing at 12 midnight. It supports its position by not only demonstrating the difficulties and personal inconvenience suffered by patrolmen and officers who work on these off shifts but by reference to comparable data of other cities in the model, most of which have such shift differential, although in varying amounts and under different formulae.

#### Discussion

There is no question but that shift differential is widespread in the private sector and has been substantially adopted in the public sector. However, the costs of such benefit, if fully granted, would be between \$160,000 and \$225,000 for the two year period. The granting of this benefit, although supportable on a comparable basis with the "model" cities, would, in our judgment, impose a severe financial burden on the City and would, ultimately, reduce increases in salaries that would benefit all employees. For such reasons, we are constrained to deny this proposal.

#### Determination

We, therefore, determine that the proposal for shift differential not be included in the new contract.

### 3. Dental Plan - Section 19.1.1

The Union proposes to enlarge the hospital and medical insurance plan under this section to include a dental option. It supports this proposal by reference to such or similar plans existing in Buffalo, Rochester and Syracuse the three upstate cities with populations of more than 100,000 and which are generally subject to comparison with each other in salary and benefit evaluation, as well as two large communities - Schenectady and Colonie - in the

Capital District. It further submits that dental plans are a rapidly developing supplemental benefit in both the private and public sector and, indeed, that all State employees enjoy such benefit.

The City argues that although the communities submitted by the Union do have dental plans, others in the comparison model, including Utica, Niagara Falls and Binghamton, do not. Finally, it submits that the annual cost of such plan, in the amount of \$130,000 (or the equivalent of a 1.4% salary increase) is prohibitive because of the City's fiscal condition.

#### Discussion

Analysis of plans in the comparison model do, indeed, show that the police forces in areas deemed most comparable to Albany have dental plans and that such plans do enjoy much general favor in the public and private sector. However, we are of the belief that the present cost of instituting such plan would impact negatively on any reasonable salary increase that the panel may determine.

#### Determination

On the basis of the ability to pay criterion, we Determine that the proposal be denied and not be made a part of the new contract.

#### 5. Work Week - Section 10.1.2

At the present time, employees in the patrol division, constituting over one-half of the unit, work on a 5-on, 2-off, 5-on, 2-off, 4-on, 2-off, etc. schedule. The Union has proposed a new schedule for such employees which would be 5-on, 2-off, 4-on, 2-off, etc. It submits that the proposed schedule would afford to patrolmen 9 weekends off, instead of 7 under the present schedule, and further, would allow them 16 additional weekends when they would be off either Saturday or Sunday. It urges that the proposed schedule will help to ease the pressure on members of the patrol unit and build up their morale.

The City argues that the simple effect of the proposed plan is to decrease the work year of such patrolmen by 3.5 days - the Union states 2.81 days - and the cost would be \$135,000 in 1983 and \$147,000 in 1984 or equivalent to a 1.4% raise.

#### Discussion

We see no compelling reason for granting this proposal. Aside from its cost, it will have a negative impact on the public interest because of the reduction in service of patrolmen since it will result in some 3 fewer days of work per year for each patrolman working in this highly sensitive area.

#### Determination

We, thus, Determine that the proposal be denied.

#### 6. Longevity

Article 17.3.1 of the current contract provides the longevity scale as follows:

<u>Length of Service</u>	<u>Longevity Pay</u>
5 years	\$ 50.00
10 years	100.00
15 years	150.00
20 years	200.00
25 years (maximum)	250.00

The Union proposes:

<u>Length of Service</u>	<u>Longevity Pay</u>
5 years	\$100.00
10 years	250.00
15 years	450.00
20 years	700.00 (maximum)

The Union argues that the present longevity scale of the contract is substantially lower than the average of all upstate cities in the comparison model and that even the granting of its proposal would not bring it up to the average.

The City objects to such proposal generally on the basis of its impact on City funds.

#### Discussion

While we recognize an impact on the City's financial structure as a result of the granting of this proposal, we believe that the longevity pay provisions contained in the present contract are so far below comparable communities that they should be increased at this time. We, nonetheless, have considered its financial impact in connection with the denial of other benefits and in connection with proposed salary increases.

#### Determination

We Determine that the Union's proposal be granted and that the longevity pay provisions of Article 17.3.1 be modified so as to allow the following:

<u>Length of Service</u>	<u>Longevity Pay</u>
5 years	\$100.00
10 years	250.00
15 years	450.00
20 years	700.00 (maximum)

#### 7. Salaries

The Union seeks a salary increase of 9% in each of the two years of the agreement. The City has offered 5% for each of said years and also seeks a provision to the effect that the entry level salary be set at 80% of top grade, moving to 85% after one year, 90% after two years, 95% after three years and job rate after four years.

The Union supports its position by reference to (a) comparable salaries of police among the communities in the so-called labor market area or those geographically close to Albany, (b) comparable salaries of police among the other large upstate city

areas (Syracuse, Rochester and Buffalo) as well as the State Police, and (c) comparable salaries of police throughout the nation.

It also refers to the history of negotiations and salary determination of Albany police officers since 1977 and prior thereto to show lags in salary increases in past years that did not measure up to cost of living increases for such period nor to salary increases paid to comparable cities and communities. Finally, in such regard, it emphasizes that, whereas for many years up to 1978, the police and fire department employees' salaries were in "rough parity", the firemen's salaries are presently substantially higher than police salaries because of no salary increases to police in 1978, due to circumstances hereinbefore stated. It notes that it has considered total salary and benefit packages of Albany and the other comparable communities in the comparison model and emphasizes that the Albany benefit package (retirement, holiday, vacation, insurance and the like) is less than nearly all of the other communities.

It further states that the welfare and interest of the public will be disserved in the event that Albany police do not receive adequate salaries, comparable to communities in the Albany area. In such respect, it has referred to the unique position of Albany as the State Capital and the demand and need for services of thousands of people of diverse nationalities who daily enter the City on work, business or vacation.

Finally, it argues that the City is fully able to pay for the proposed salary increase. While it acknowledges the financial morass of the City up until 1982, it argues that since the advent of the new administration and its much improved fiscal policies, the City is enjoying a high level of prosperity. Thus, as previously indicated, it points to the growing number of building permits and the increase in tax revenues that will be generated therefrom, as well as its level of unemployment. Additionally, it points to the increases in sales tax revenues (substantially higher than anticipated and budgeted), in utilities' tax revenue (again, higher than budgeted) and that, in fact, the City will show a budget surplus for fiscal 1983.

The City argues that with a 6% increase in salaries (which it apparently is now ready to concede), Albany's salary rates would fall in the middle of the range of all cities in the comparison model <sup>12</sup> and that communities in the "middle range" actually fall in a cluster where they are but 2% apart.

It argues that since 1979 Albany police have actually exceeded cost of living increases by nearly 6 1/2%. It further maintains that the City's tax base for the past 5 years has actually decreased by 4%, whereas inflation increased 45%; during the same period (1978-1982), the City's real property tax levy decreased in constant 1978 dollars by 20%; government aid decreased in 1978 dollars from \$11 million to \$7 million; sales tax revenues in the same period rose a modest 8%; from 1978-1983, real property taxes increased by 40%. It further submits that because of Albany's peculiar status, 70% of its assessed valuation of real property is tax exempt, much higher than any community in the comparison model; its tax rates are presently highest among all in the comparison model; it raises more property tax dollars per person than any other city in the model and raises a greater portion of its total revenues from property taxes than any other city in the model but Colonie. Finally, the Financial Tracking System (FTS) devised by the State Comptroller presently reflects a somewhat healthier financial position for Albany than many of the other comparable cities.

#### Discussion

The analysis of comparable data is somewhat difficult because of the varied anniversary dates of the contracts in the model. Nonetheless, what does emerge from such analysis is that Albany police salaries in both 1983 and 1984 are and probably will be somewhat lower than most of the model's cities and more especially the large outside cities, as well as the local area communities, unless an increase close to that proposed by the Union is granted.

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12) As previously indicated, the City has expanded the Union's model to include Utica, Niagara Falls and Binghamton.

Nonetheless, as indicated, we are required to examine the fiscal health of the City and its financial ability to fund such an increase. In such regard, it appears that despite the present administration's efforts to lift Albany's tangled financial structure from the "mess" left by previous administrations, the picture still remains unsettled. It is apparent that the City requires more time to extricate itself from the financial morass caused by poor administration and budget practices of the past. To impose a settlement demanded by the Union would not only impede the City's attempts to get on its feet but may very well impel it to reduce its police force. In view of the fact that the number of police officers have already suffered reductions in the recent past, any further reduction in force may adversely affect the public welfare and interest. Thus, the City's limited ability to pay must temper the increases in salary that would otherwise result from the application of other statutory criteria.

The statutory factor of bargaining history has special relevance to the issue. As previously indicated, the police received no increases in 1978 due to the failure of their bargaining agent to notify the City of its desire to modify the then expiring contract. The City has argued that even though the automatic renewal resulted from the negligence of the bargaining agent, it nonetheless attempted to soften the economic blow to the police force by giving its employees larger increases in the ensuing 1979-81 contract. Despite this compensatory action, the traditional rough equivalence in pay between firemen and policemen has eroded and the police salaries are still nearly 2% behind firemen's salaries.

It does not appear fair and equitable to us to perpetuate an error by the police unit that occurred in 1978 and for which the police had already suffered a financial loss for that year. Despite the City's later effort to ameliorate such loss, the police salaries are still lagging behind the firemen's.

On the basis of the use of all of the statutory criteria above stated, we believe that annual increases of 7% for each of the two year contract period are fair and reasonable. Such increases

may or even will close the gap with other comparable cities and with firemen's salaries. Additionally with the proscription we have already placed on some excessive Union benefit proposals, such increases should not so endanger the City's fiscal structure to necessitate a reduction in force that might adversely affect the public welfare. Finally, the determined increase is within the range of patterns and trends of salary increases in the public sector and more especially, the uniformed services in upstate New York.

Both sides have indicated a willingness to reduce the relationship between entry level to job rate salaries so that Step 1 would be 85% of job rate, Step 2, 90% and Step 3, 95%. Since Albany's salaries at these levels are presently higher than others, the Panel agrees.

#### Determination

We, therefore, Determine that the job rate of each police officer be increased by 7% for the year 1983, retroactive from January 1, 1983, and an additional increase of 7% for the year 1984; however, Step 1 rate would be 85%, Step 2, 90% and Step 3, 95% of such newly determined job rates.

AWARD

The undersigned members of the Public Arbitration Panel, having been duly designated in accordance with Section 109.4 of the Civil Service Law of the State of New York and having heard and considered all matters presented for its determination, and made its determination thereon in accordance with Section 109.4(c)(111), Award as hereinbefore set forth. The Award and Determination herein are intended to and do cover the issues between the City and both the patrol and supervisors units.

Dated: April 30, 1984

\_\_\_\_\_  
Vincent J. McArdle, Jr.  
Employer Panel Member

*HOLLIS CHASE (S)*  
\_\_\_\_\_  
Hollis V. Chase  
Employee Organization Panel Member

*Irving R. Markowitz*  
\_\_\_\_\_  
Irving R. Markowitz  
Public Panel Member and Chairman

STATE OF NEW YORK )  
COUNTY OF ) ss  
CITY OF ALBANY )

On this \_\_\_\_\_ day of May, 1984, before me, the subscriber, personally appeared Vincent J. McArdle, Jr., to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

STATE OF NEW YORK )  
COUNTY OF ) ss  
CITY OF ALBANY )

On this *1<sup>st</sup>* day of May, 1984, before me, the subscriber, personally appeared Hollis V. Chase, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

*S/ Peter W. Hanner*  
*Albany County*  
*Comm exp 3/30/85*

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss  
CITY OF SYRACUSE )

On this *31<sup>st</sup>* day of May, 1984, before me, the subscriber, personally appeared Irving R. Markowitz, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

*S/ Carol O. Benedict*  
CAROL O. BENEDICT  
Notary Public in the State of N. Y.  
Appointed in Oneida County  
My commission expires Mar. 30, 1986

*above*

Note that the signatures herein of the Employer Panel Member and Employee Organization Panel Member do not indicate that they agree with the discussion portions of the aforesaid Determinations, which are a product solely of the Chairman, nor that they concur with all of the Determinations herein. Their concurrence or dissent will appear as follows:

The following represents our concurrence in or dissent from the Determinations of the Chairman of the within named Public Arbitration Panel. (C. for concurrence; D for dissent).

<u>Non-Economic</u>	<u>Mr. McArdle</u>	<u>Mr. Chase</u>
1. Statement of Purpose	<u>D</u>	<u>C</u>
2. Employee Relations Transfer	<u>D</u>	<u>C</u>
3. Pay During Scheduled Delay	<u>C</u>	<u>C</u>
4. Polygraph	<u>C</u>	<u>C</u>
5. Court Time	<u>C</u>	<u>C</u>
6. Pay For Vacation Upon Discharge	<u>C</u>	<u>C</u>
* <u>Economic</u>		
1. Personal Leave	<u>C</u>	<u>C</u>
2. Clothing Allowance	<u>C</u>	<u>C</u>
3. Shift Differential	<u>C</u>	<u>D</u>
4. Dental Plan	<u>C</u>	<u>D</u>
5. Work Week	<u>C</u>	<u>D</u>
6. Longevity	<u>C</u>	<u>C</u>
7. Salaries	<u>D</u>	<u>C</u>
* Non-Economic (Continued)		
7. Indemnification	<u>D</u>	
8. Light Duty	<u>C</u>	
9. Zipper Clause	<u>D</u>	

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In the Matter of the Arbitration :  
:   
Between :  
:   
CITY OF ALBANY : DISSENT  
:   
and : PERB Case Nos.  
: IA82-42; M82-497  
:   
NEW YORK STATE INSPECTION, SECURITY AND :  
LAW ENFORCEMENT EMPLOYEES, DISTRICT :  
COUNCIL 82, AMERICAN FEDERATION OF STATE, :  
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, :  
and the ALBANY, NEW YORK POLICE DEPART- :  
MENT, LOCAL 2841, AMERICAN FEDERATION OF :  
STATE COUNTY AND MUNICIPAL EMPLOYEES, :  
AFL-CIO :  
----- :

The undersigned is in agreement with the Chairman of this arbitration panel on most of the determinations made as part of the award. I must dissent, however, in several significant areas.

I am compelled in the first instance to respond to a series of gratuitous and inaccurate statements characterizing the fiscal policies and practices of "a prior administration". By weaving throughout the award his conclusion that the fiscal problems of Albany are the result of mismanagement and waste and that the City joins in this opinion the Chairman has written an award to which this member cannot, in good conscience, put his hand.

The message which Mayor Whalen has been sending to the Governor and the State Legislature is that the City's position as the State Capital places upon it a burden which has not been sufficiently recognized. Tax exempt properties, largely state owned, constitute more than 70% of the assessed value of real property in the City. The owners of approximately 28% of the real property pay 100% of the real property tax. A major

point of the union case involved the burden placed on the police force by the state presence. The same holds true for fire and sanitation services. If the Chairman means to intimate that a year or two of "good management" will cause these problems to disappear, he does a disservice to the present administration of Mayor Whalen and the 42 years of service of Mayor Corning.

The Chairman has determined that for the purpose of comparability, Buffalo, Rochester and Syracuse, two and three times the size of Albany and more, are better "models" than Binghamton, Utica and Niagara Falls--all much closer in size to Albany--because, in the course of their negotiations, Buffalo, Rochester and Syracuse like to compare themselves to Albany. Of course they do, Albany is much smaller.

He also concludes that the latter three cities "do not have similar conditions of employment nor similar fiscal patterns and their populations are less and of different character than the four larger upstate cities, and that "...the nature of police services is more compatible among the four larger upstate cities than the smaller ones". How? Why?

I can find no rationale on the record of this proceeding to explain why the population of Buffalo, at 357,870 with large percentages of blue collar and minorities, is more like Albany, with its high concentration of white collar workers, than is Niagara Falls, Utica or Binghamton. The same goes for the nature of police services.

The City of Albany faces the burden of an enormous debt service over the next five years. This award only serves to exacerbate the City's fiscal problems. The difference between 6% and 7% over two years will

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cost the City \$300,000 in salary alone but the real cost is higher because the new base is also applied to overtime, holiday pay and retirement. We can ill afford to treat some employees more generously than others because they have the option of arbitration. It was our hope that the Chairman could be convinced of this patent fact of life in Albany today. Having failed, the City will have to find other ways to pare the budget of the Police department, including the possibility of layoffs.

A final observation is in order regarding the interest arbitration process. It is my growing impression that the current procedure inhibits serious negotiations. Each party is reluctant to approach what they truly consider their bottom line due to the "cut the baby in half" theory of arbitration practiced almost universally in the profession. In the instant case each negotiation team agreed to present a 6%-6% proposal settlement to their principals. When this was rejected by the union membership, the union went to arbitration with the unreal 9%-9% numbers. The City retreated 1%, to 5%, and the baby was cut down the middle. Once the City came up to 6%, a figure other non-union employees had received at the start of the fiscal year, the police knew they probably couldn't do any worse.

The City cannot concur on a 7% annual award.

It should be noted that the union president was recently quoted in this local media as being upset with this panel member for taking too long in preparing my dissent and thus delaying settlement. This is the head of the union which needed six weeks to file its arbitration petition and then required nine hearing dates over five months, 80 percent of which time was

devoted to the union presentation which included more than 130 exhibits. Further delaying the panel's consideration of the case was the fact that the union was one month late in filing its brief. The panel then required a good deal of time to ingest the transcripts and exhibits and finally met in Syracuse where the Chairman, after a good discussion, advised the interest members of the gist of his proposed decision. The union member requested a second meeting, which delayed the decision a month. It should be further noted that the Chairman indicated on July 28, 1983 that these proceedings could be expedited through the presentation of briefs and replies as an alternative to a drawn out hearing process. The City did not object to this approach. The union, as is its right, insisted on hearings which extended through November. In short, the 1 1/2 years required to resolve this contract were almost completely attributable to the manner in which the union chose to conduct its case.

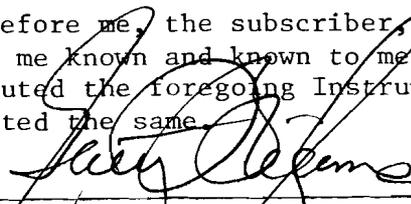
In signing the award I must reiterate that I in no way endorse the dicta of the Chairman.



VINCENT J. McARDLE, JR.

STATE OF NEW YORK)  
COUNTY OF ALBANY )SS.:  
CITY OF ALBANY )

On this 29th day of May, 1984, before me, the subscriber, personally appeared VINCENT J. McARDLE, JR. , to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.



Notary Public