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In the Matter of the Arbitration :  
 Between :  
 TOWN OF CLAY : PERB Case Nos. IA85-5;  
 and : M84-496  
 CLAY PBA :

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On July 30, 1985, the Public Employment Relations Board of the State of New York designated a Public Arbitration Panel to hear and thereafter make a just and reasonable determination of the issues between the parties resulting from their impasse in negotiations for a collective agreement to succeed their last agreement which had expired on December 31, 1984.

The Panel consisted of the following:

- Mr. Patrick M. DiDomenico  
Employer Appointed Panel Member
- Raymond Kruse, Esq.  
Union Appointed Panel Member
- Irving R. Markowitz  
Chairman of the Panel

A hearing was held before the Panel on September 18, 1985, at which time both sides presented their written and oral testimony; thereafter, their respective representatives filed post-hearing briefs and reply briefs with the members of the Panel. Mr. William Pfohl appeared for the PBA and Mr. Dennis E. Jones for the Town of Clay.

Following receipt of the briefs filed by the parties, the Panel convened in executive session on November 25, 1985, to deliberate on their findings.

BACKGROUND

1. The Town of Clay (herein referred to as Town) serves a geographical area of some 50 square miles with a population of approximately 56,000 inhabitants. For the past

decade, it has achieved continuous and substantial growth in its population and the necessary buildings, housing and roads to serve its people.

2. The police force is represented by the Clay Police Benevolent Association (referred to herein as the PBA) and consists of 18 full time and 11 part time police officers. In addition to the Chief and the Captain, there are one lieutenant, 4 sergeants and 12 patrolmen. Only the full time lieutenant, sergeants and patrolmen are members of the unit. The police force covers the Town on a round-the-clock, 24 hours a day, 7 days a week basis, although the Onondaga Sheriff's Department provides the Town with four patrol vehicles and the State Police has a substation a mile from the Town limits.

The Town is located in Onondaga County, which also contains, aside from its Sheriff's patrol, six village, five Town (including Clay) and one City police forces.

3. The last collective agreement between the parties ran from January 1, 1982 to December 31, 1984. Prior to impasse, the parties were in negotiations since August 1984 and in mediation on three occasions in February, March and April of 1985.

#### THE ISSUES AND PROCEDURE

The pending matters in dispute are substantial in number and, aside from salaries, cover a wide variety of terms and conditions of employment. While it is tempting for a Panel to avoid those issues - essentially non-monetary and that apparently are not readily subject to the criteria stated in the Taylor Law - the statute appears to require that the Panel hear and determine all matters presented to it (unless the two non-public members agree to refer certain issues back to the parties for further negotiations, which has not been done in the instant case).<sup>1</sup>

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1) Section 209 Public Employees' Fair Employment Act, subdivision 4-6-iii and iv.

Thus, each of the issues presented to the Panel will be treated as required and will set forth the following: (a) background and/or current contract conditions or requirements; (b) PBA's proposal and position; (c) Town's position and (d) Panel's determinations and basis therefor.

1. Salaries (Article V, Section 1)

a. The present salaries of patrolmen run from a starting annual rate of \$14,100 with annual increments up to a maximum of \$20,700 after four years of employment. The annual rate for sergeant is \$22,619 and lieutenant, \$24,234.

b. The PBA proposes to increase such salaries by 9% (final proposal). It supports its position by showing comparisons with other political subdivisions in New York State, the hardships endured by Clay police officers because of the weather conditions, the arduous tasks of patrolling a large and well populated area with few police officers and the problems of family support with claimed inadequate salaries.

c. The Town proposes a modest salary increase of no more than 5% on the basis that such increase will bring police officers of the Town to a higher level of salaries than most of its surrounding political subdivisions. Additionally, it submits that the average salary increase of police officers in the surrounding area for 1985 is some 5.5%. Moreover, it submits that the police officers in the Town enjoy supplemental benefits, including a newly established 384F retirement plan, equal to or better than their fellow officers in surrounding communities.

d. The Panel has determined and will so award that a fair and reasonable increase in salary is six and one-half (6 1/2%) percent for the calendar year 1985 and six (6%) percent for the calendar year 1986, for all full time patrolmen, sergeants and lieutenants. Essentially, our determination is based on comparative salaries of police officers in the adjacent or nearby towns and villages of the Town. In such respect, we are of the opinion that

under accepted principles of wage and salary determination, comparisons are best made with those organizations of similar size and type in areas served by the same labor market. Thus, although it may be true that political subdivisions in other areas of the State pay higher (or, indeed, lower) salaries, such areas may be covered by labor market conditions different from those of the Town. The increases provided herein will generally maintain and even improve the salary position that Clay policemen enjoy over their fellows in the same areas, even though, in itself, the salary increases may appear to be no more than modest; nonetheless, the awarded increases reflect a higher rate than shown by the comparable cost of living index.

2. Longevity (Article 5, Section 2)

a. The present contract provides for longevity pay of \$175.00 after five years of consecutive service and an additional increment of \$175.00 for each succeeding five year period.

b. PBA proposes to increase the longevity stipends to \$475.00 on the basis that such increases are necessary to meet the growing family expenses of senior officers and that they reflect what other communities in the State deem adequate to meet such needs.

c. The Town objects to the proposal or any attempt to increase such longevity payments on the grounds of general increase in costs and comparison with other communities in the area.

d. The Panel does not believe that the proposed or any increases are proper and will so award. The longevity provisions presently enjoyed by Clay police officers are generally better than those enjoyed by officers in neighboring communities and appear to be reasonably adequate on their face.

3. Night Shift Differential (Article 5, Section 3)

a. Currently, each unit member receives an additional 15 cents per hour for working the night shifts (2nd and 3rd shifts).

b. PBA proposes to increase the present amount to a sum equal to 10% of an employee's hourly rate for all work performed from 3:00 p.m. to 7:00 a.m. It submits that the present rate is much lower than adequate and the proposed rate is reflective of the onerous conditions imposed on police officers during the affected "night" period.

c. The Town objects on the grounds that all officers at the time of employment are aware of rotating and changing shift schedules of the Town and have accepted such conditions; additionally, it claims that such benefits are denied by the vast majority of the neighboring communities.

d. The Panel is of the opinion that the proposal should be denied and will so award. Since the small police force works on rotating shifts, the proposal is nothing more than a back door attempt to increase the salary levels of all officers. There is no justifiable basis for increasing the amount of the shift differential presently provided.

#### 4. Week-End Differential (New Section)

a. No present provision.

b. The PBA proposes that each officer receive a stipend of \$10.00 for each shift more than half of which is worked Saturday or Sunday.

c. The Town objects.

d. The Panel rejects the proposal on grounds similar to those given to the proposal immediately preceding and will so award.

#### 5. Uniform Allowance (Article 6)

a. The Town currently furnishes, without cost to officers, a complete uniform to each unit uniformed employee and free changes or modifications thereto. It further provides an annual uniform maintenance allowance of \$400.00 to both uniformed and plain clothes officers, upon their presenting of vouchers by said officers.

b. PBA proposes an increase to \$750.00 for uniform maintenance and replacement plus free cleaning of such uniforms. The allowance shall be paid in a single annual payment without presentation of vouchers. In such respect, it submits that the present allowance is inadequate to suitably maintain uniforms or clothing for the types of service performed and the public image or appearance that is desirable.

c. The Town objects to any increase in such allowance on the grounds that it is presently adequate and compares favorably with those provided by neighboring communities. It further insists that the present voucher system provides better control over its disbursements for such purpose.

d. The Panel is of the opinion that the present allowance is not unreasonable and compares favorably with those established in other communities and, further, that the voucher system is proper for any public employer. However, we are of the opinion that a clause should be inserted in the contract providing that the Town pay for the replacement of uniforms that are destroyed or damaged in the line of duty. We shall, therefore, award the denial of the proposal with the stated exception.

#### 6. Personal and Bereavement Leave

a. Presently, each unit employee is entitled to 16 hours (2 days) of personal leave after one year of service, on advanced written notification and authorization of the Commissioner, depending on manpower requirements.

b. PAB proposes 32 hours of leave with some limitation on management discretion on 48 hours notice; requests therefor are not to be unreasonably withheld and approval is to be based on certain factors. It supports its position by comparison with other police forces in the State.

c. The Town objects both to the increase in personal leave time and changes in the request and approval procedures. It argues that the present leave provisions are adequate in time allowance and generally comparable with other agencies and, further,

that the flexibility presently contractually allowed has effectively served both the Town and the unit employees.

d. The Panel perceives no cogent reason for changes in the request and approval procedures. The fulfillment of manning requirements are essential to the operation of any police force and there has been no showing that the present procedure has imposed any hardship on police officers. In connection with the proposal to increase the amount of personal leave time, while we believe that there might be some basis for increasing it by another 8 hours, we note that the Panel will substantially increase the time off by its award in connection with a change in work schedules.<sup>2</sup>

The Panel thus will award that the PBA's proposal on Personal Leave be denied.

Nonetheless, the two panel members representing the public employer and the employees' organization have agreed that the bereavement provision of Article 7 be expanded to include one day of bereavement leave without loss of pay or benefits for the death of present grandparents and present parents-in-law, effective January 1, 1986. The Panel will so award.

#### 6. Holidays (Article 7)

a. Presently, employees receive 11 paid holidays per year, payable in one lump sum in the first pay period of December, calculated at regular hourly rates.

b. PBA proposes increasing the number of holidays to 13 per year and if an officer works on a stated holiday, he shall receive one and one-half times regular pay. In support of its position, it urges that other communities, including some neighboring political subdivisions, provide more holidays to their police officers than presently enjoyed by Town police officers and, further, that police work is arduous and its scheduling

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2) See treatment under Work Schedule, later in this award.

provides little opportunity to the officers for proper family relationships.

c. The Town argues that the present number of holidays is equal to the average of the agencies in the surrounding areas and, further, that the present method of pay is employed by all other agencies but one in the area.

d. The Panel is of the opinion that the number of holidays presently enjoyed by unit members is reasonable and comparable with neighboring communities. Moreover, the practice of paying same in one lump sum is practical and is employed by nearly all of the police agencies in the surrounding area. (We point, again, to the increase of days off we will award under the Work Schedule provision). We thus will award that the proposal be denied.

#### 7. Sick Leave (Article 7)

a. Presently, unit employees accumulate sick leave rights at the rate of one (1) day per month of employment up to a maximum of 90 days.

b. PBA proposes an accumulation of 1.5 days per month with no limit on accumulation. It supports its position by comparison with other communities in New York State, as well as some neighboring communities.

c. The Town objects on the basis that its sick leave program is equal to or better than most neighboring communities.

d. The Panel is of the opinion that the present sick leave provisions generally are comparable with others in the community and are fair and reasonable in the premises. It will therefore reject the proposal.

#### 8. Sick Leave Buy Back (New)

a. There is presently no buy back clause in the contract.

b. PBA proposes payment of accumulated sick leave upon termination of employment (except discharge for cause). In

such respect, it argues the fairness of the proposal as well as its use as an incentive to discourage absences for mild or non-disabling illness.

c. The Town objects on the grounds that the proposed clause is not found in 80% of the contracts in the area.

d. The Panel is of the opinion that although there may be some merit in fact of the proposal, it is presently not contained in a vast majority of the contracts in the area. It will thus deny the proposal.

9. Vacation (Article 7)

a. The present contract provides for vacation entitlements as follows:

7 days after 6 months of service  
14 days after one year of service  
21 days after 15 years of service

b. PBA proposes an increase of 6 days for each year between the first and fourteenth year and four days for each year after the fifteenth year of service. In connection therewith, it submits that the arduous tasks performed by police officers, as well as their onerous schedules, deserve substantial vacation leaves to allow them sufficient opportunities for rest and relaxation and more time to be with their families. Additionally, it submits that the Town's vacation entitlements are much less than those provided by other agencies in the State and, indeed, in the surrounding areas.

c. The Town objects to any increase in vacation entitlement maintaining that the current vacation schedule compares favorably with those of other agencies in the area.

d. We are of the opinion that while the Town's vacation schedule is comparable in some respects with schedules in surrounding areas, it is not so concerning the groups of employees whose longevity is around 15 years. The Panel will, therefore, award that the schedule be modified to provide 28 consecutive days of vacation entitlement to those officers who have completed 15 years of service.

10. Overtime Compensation (Article 8)

a. The current collective agreement provides overtime rates at time and one-half for hours worked in excess of 8 hours in any 24 hour period and in excess of 48 hours in any work week. Additionally, it provides for minimum call-in pay for 2 hours at overtime rates and 2 hours for off duty time spent in court at overtime rates.

b. PBA proposes overtime rates be paid after 40 hours per week and an increase to 4 hours of overtime pay for call in and court time. It supports its proposal by emphasizing that private sector employees receive overtime pay after 40 hours per week and that many public employees enjoy the same benefits. Additionally, it maintains that its call-in and court time proposals are contained in a number of police contracts.

c. The Town is ready to provide overtime rates after 43 hours of work per week on the basis of its interpretation of the Supreme Court decision in Matter of Garcia and in order to insure management of flexibility. It objects, however, to the increases in call-in and court time, contending that the contract's present provisions in that respect are equal to or better than nearly all police contracts in the area.

d. The Panel is of the opinion that the clause should be modified so as to require overtime payment after 43 hours of work per week on the basis of fairness as well as the Town's position, and will so award. However, it believes that the present provisions regarding call-in and court time are fair and adequate and equal to or better than those provided by agencies in the surrounding areas.

11. Safety (New Article)

a. No "safety" provisions are contained in the present contract.

b. There appears to be four (4) separate proposals made by PBA, as follows:

1. In the event officers are employed on any shift for which less than four (4) police officers are scheduled to work, each officer working such shift shall receive a safety stipend of seventy-five dollars (\$75.00).

2. In the event fifty (50) rounds of ammunition are not supplied without cost to a police officer in any given month, such officer shall receive a one dollar (\$1.00) safety stipend for each round less than fifty (50) with which he is supplied.

3. In the event a police officer is required to perform his duties in a marked vehicle with more than 100,000 miles on the odometer, such police officer shall receive a safety stipend of one cent (1) per hour for each mile above 100,000 on the odometer. Such reading shall be taken at the end of the shift in which the officer was required to use such vehicle.

4. If an officer is required to perform duty in a marked vehicle not equipped with air conditioning, he shall receive a safety stipend in the amount of \$3.00 per hour for each hour in which he is required to serve in such vehicle.

As to the first proposal, it contends that the Town's police force is so small and its patrol area so large and well populated that it imposes a hardship on the patrol officers.

As to the second proposal, it contends that 50 rounds of ammunition is reasonable and necessary for efficient target practice.

As to the third proposal, it contends that police officers cannot safely and expeditiously carry out their road duties with old and overused vehicles.

As to the fourth proposal, it contends that lack of air conditioning in his vehicle hampers the road patrolman's ability to operate his vehicle safely, especially because of the extent of his patrol.

c. The Town opposes all four proposals on the grounds that no other agreements have impact provisions for manning levels, ammunition or vehicle mileage and only two contracts have provisions

covering air conditioned vehicles. It further contends that the Town maintains its 8 vehicles in proper running order and repair and only one road patrol car has been in operation for over 100,000 miles. Additionally, it submits that only one vehicle lacks air conditioning.

d. The Panel is of the opinion that the proposals herein should be denied for a number of reasons, chiefly because some of them relate not to safety but to comfort; others appear to invade the area of management responsibility, and all four proposals are not generally contained in other contracts. The Panel will, therefore, award that the proposals be denied.

#### Work Schedule (New Article)

a. The current collective agreement is silent on this subject <sup>3</sup>; however, the work schedule currently in practice is a 5/2, 4/2 cycle, e.g. five work days, two off days, four work days, two off days, with a "give back" of four days per year. Such schedule will normally allow 102 days off, less 4 "give back" days or a net of 108.

b. PBA proposes a 4/2 schedule which would provide 122 days off. In support of its proposal, it points to the recognized strains and stresses that underline a police officer's job and the fact that the nature of the job prevents normal contact with his family. Thus, it urges that a schedule should be developed that would more realistically meet the officer's needs and provide more days off and more weekends so that he can have sufficient opportunities for sound family relations.

c. The Town objects to the proposal. It submits that the 4/2 schedule proposed by PBA would increase the number of days off per year by 10 and require an increase in the force. It further submits that the presently practiced schedule is

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3) However, Article 3 - Management Rights - provides that the Commissioner of Public Safety---shall have the sole and exclusive right to determine the hours of work and work schedule.

consistent with the vast majority of police agencies in the area. Finally, it states that it desires no fixed schedule in the contract but wishes to maintain the managerial discretion to change the schedule to meet problems as they arise.

d. The Panel is of the belief that the PBA, on behalf of its concerned members, is entitled to have a work schedule contained in the collective agreement. This is an important condition of employment and should not be subject to change or modification at the unilateral discretion of the Town. Moreover, we believe that the "give back" days constitute an erosion of a fair schedule and should not be continued. We shall, therefore, award that a provision shall be included in the contract which would provide for a 5/2, 4/2 schedule beginning on January 1, 1986, with no "give back" days. While we cannot make the provision retroactive, we will award a lump sum payment reflecting two days of regular salary be paid to each road patrol officer who was required to and did perform services on the "off days" during 1985.

JAN 05 1985

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In the Matter of the Arbitration	:	
Between	:	AWARD
TOWN OF CLAY	:	
and	:	PERB Case Nos IA85-5; M84-496
CLAY PBA	:	

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The Public Arbitration Panel awards as follows:

1. The parties shall enter into a collective agreement effective from January 1, 1985 through December 31, 1986, subject to the following modifications, amendments and additions to their current collective agreement which has expired on December 31, 1984, to wit:

a) Article 5(1) shall be amended to provide a six and one-half (6 1/2%) percent increase to each of the cells or sums stated in said section for the first year - January 1, 1985 through December 31, 1985 - of the new contract and an additional six (6%) percent of the 1985 salaries for the second year - January 1, 1986 through December 31, 1986 - of the new contract. Retroactive payment of the increase in salaries shall be made on or before the first pay period after receipt of this award.

b) Article 6(2) - Uniform Allowance - shall be amended by adding a provision that the Town of Clay replace or repair the uniforms of unit employees damaged or destroyed while said employees acted in line of duty or, in the alternative, compensate said employees for such damages.

c) Article 7(1-c) - Vacations - shall be amended so as to provide twenty-eight (28) working days of paid vacation in place and stead of the current twenty-one (21), commencing on January 1, 1986, the second year of the collective agreement.

d) Article 7(1) - Bereavement - shall be modified to additionally include one (1) day of bereavement leave without loss of pay or other benefits for the death of a present grandparent

or present parent-in-law, effective on January 1, 1986, the second year of the collective agreement.

e) Work Schedule - A new provision shall be added to the current collective agreement, providing that road patrol officers shall have a working schedule commonly known as a 5/2, 4/2 schedule - that is, a cycle of five days on, two days off and four days on, two days off, with no "give back" of days by the patrol officers,- that is, that the Town of Clay or its designee shall not require such officers to work on any "off days" without overtime compensation, pursuant to the terms of the collective agreement. The aforesaid schedule shall become effective on January 1, 1986. However, each patrol officer who, in the calendar year 1985, did perform duties during his "off days" shall be paid a lump sum equivalent to two (2) days of pay at his regular rate for 1985, on or before the first pay period following receipt of this award.

f) Section 1-b of Article 8 shall be modified so as to substitute the figure of forty-three (43) hours in place and stead of the figure forty-eight (48) hours in the current contract.

2. Except for the modifications and amendments hereinabove awarded (including those of Article 19 concerning the duration of the new collective agreement, the provisions and language of the present collective agreement shall remain unchanged.

3. The Panel will retain jurisdiction of the case for 45 calendar days following the date of this Award for the purpose of resolving any dispute concerning the changed language required pursuant to this award.

Dated: December 30, 1985

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Raymond D. Kruse  
Employee Organization Panel Member

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Patrick DiDomenico  
Employer Panel Member

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Irving R. Markowitz  
Chairman of the Panel