

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE NO. IA 86-25; M86-246

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In the Matter of the Interest Arbitration

between

The City of Buffalo

and

The Buffalo Police Benevolent Association,
Inc.

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DETERMINATION OF PUBLIC ARBITRATION PANEL

Before: Edward Levin, Public Panel Member and Chairperson; Richard Planavsky, Employer Panel Member; Robert J. Penders, Employee Organization Panel Member

Appearances: For the City of Buffalo: Flora Miller Sliwa, Attorney-at-Law, Assistant Corporation Counsel, and Thomas P. Amodeo, Attorney-at-Law, Assistant Corporation Counsel

For the Buffalo Police Benevolent Association, Inc., Dixon, De Marie, Schoenborn, P.C., By Anthony J. De Marie, Esq.

On January 13, 1987, the New York State Public Employment Relations Board (PERB) determined that a dispute existed in negotiations between the City of Buffalo (City) and the Buffalo Police Benevolent Association (PBA). Under the authority vested in the New York State Public Employment Relations Board under Section 209.4 of the New York Civil Service Law the above named Public Arbitration Panel was designated for the purpose of making a just and reasonable determination of this dispute.

INTRODUCTION

The City of Buffalo is the second largest city in New York State with a population of approximately 339,000. The City bargains with eight Unions, the largest of which is the PBA with a membership of approximately

1,000 police officers. The previous collective bargaining agreement between the City and PBA expired on June 30, 1986 and the parties have been without an agreement since that time. Although certain issues have been resolved by the parties, others have not been agreed upon and are now before the Panel for resolution.

Hearings were held on May 7, and 8, 1987, and July 8, 1987 in Buffalo, NY at which time the parties were afforded an opportunity to present testimony, documentary evidence and oral argument concerning their respective positions on the remaining unresolved issues. After the hearing was closed on August 8, 1987, the parties submitted Post-Hearing Briefs. An executive session of the Panel was held on October 9, 1987 in Buffalo at which time the outstanding unresolved issues were discussed and the following Report and Determination reflects the deliberation of the Panel. The Panel took into consideration the Statutory provisions and rules of procedure applicable to this arbitration process, with particular attention to Section 209.4 (v) which requires:

(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 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.

AGREED UPON ISSUES

The following are the issues that have been agreed to by the parties and the terms of those agreements:

1. INCREMENTAL STEPS

Amend Article 2.7 C to read as follows: "All employees appointed to the position of Police Officer on or after July 1, 1980 shall have a starting salary and four incremental steps. The incremental steps shall be obtained on the employee's anniversary date of hire, which date shall be adjusted for any leaves of absence, suspensions without pay, or absences without leave. An employee will reach the maximum salary in four years from the (revised) date of hire."

Delete Article 2.7 B.

2. HOLIDAYS

Washington's Birthday and Lincoln's Birthday shall be combined into a single President's Day, to be celebrated on Washington's Birthday. Dr. Martin Luther King Day shall be established as the twelfth holiday and shall be celebrated on the third Monday in January.

3. PERSONAL LEAVE

Add the following to Article 6: "An employee's personal leave date shall be affected by all leaves of absence, suspensions without pay, or

absences without leave. For example, an employee's date of hire is October 1, 1982. If that same employee received a six month leave of absence, the employee's personal leave date would be adjusted according to the length of the leave, and the revised personal leave date would be April 1, 1983."

4. MEDICAL AND DENTAL INSURANCE

Add the following to Article 21: "Each employee must notify the Division of Labor Relations of any changes in marital and/or dependent status within ten days of the effective date of the change."

5. PRINTING OF THE AGREEMENT

Delete the last sentence of Article 25 and replace with the following: "Printing shall be performed in-house."

6. MEDICAL AND DENTAL INSURANCE

Add the following to Article 21: "The Union agrees the City may seek bids for alternative dental and/or medical and hospital insurance coverage, or provide coverage by self-insurance, for its employees and/or retirees. All bid specifications or the terms of self-insurance will be submitted to the Union for its approval prior to publication, and such approval will not be unreasonably withheld. After approval and upon receipt of the bids the City may elect alternate insurance coverage. Such alternate coverage will pay the full cost of all treatment, services, or other benefits as are now enjoyed under the present plan, and it will not add to the employee's costs for insurance benefits.

It is the intent of the City to provide benefits that are equivalent to, or better than, those currently in effect. Therefore, disputes

concerning the level of benefits shall be resolved through the grievance arbitration procedure. Pending receipt of the arbitration award, benefits will remain unchanged."

7. OVERTIME

In the event the Commissioner of Police determines overtime is required, the opportunity to work overtime shall be offered as follows:

A. The senior off-duty Police Officer assigned to the platoon/unit in which the manpower shortage occurs, shall be offered the opportunity to work overtime. If that off-duty Police Officer declines to accept the overtime the opportunity to work the overtime shall be given to the next most senior off-duty Police Officer within the platoon/unit based on seniority.

B. In the event no Police Officer, who is assigned to the platoon/unit in which the manpower shortage occurs, accepts the overtime, then the opportunity to work overtime shall be offered to the most senior off-duty Police Officer assigned to the precinct/bureau in which the manpower shortage occurs, and said opportunity shall likewise pass through the precinct/bureau based on seniority.

C. If no Police Officer who is assigned to the platoon/unit--precinct/bureau in which the manpower shortage occurs accepts the overtime, then the most junior Police Officer assigned to that precinct/bureau will be assigned to fill the vacancy. In instances of emergency, and upon approval of the commanding officer, the junior officer may obtain a replacement to fill the vacancy.

D. In case of emergency, where a command officer cannot readily contact Police Officers pursuant to this section, then the command officer

may retain Police Officers from the platoon which is then on duty, based on seniority as contained herein.

E. Police Officers assigned steady days off (WV) shall be assigned to platoon WV section, and shall be offered the opportunity to work overtime when that platoon section is on WV.

F. The Police Officer whose absence created the manpower shortage shall not be considered to fill the vacancy, except those on regularly scheduled annual vacations of one or more weeks. Those Police Officers on single AV days are ineligible for overtime except in emergencies.

G. For purposes of overtime, seniority shall be based upon the length of a Police Officer's service in that rank, beginning with the date of appointment to that rank.

H. Personnel on military leave, bereavement leave, leave of absence, sick leave or maternity leave will not be considered for overtime work.

I. When there is a requirement to replace an absent detective or detective sergeant, the most senior officer, of the rank to be replaced, and in that assignment, shall be given the first opportunity to work overtime. Said opportunity shall likewise pass through the assignment based on seniority. If the overtime is not accepted pursuant to this section, the least senior officer within the assignment shall fill the vacancy.

In the event department-wide general detective duty is required, selection shall be made from the general roster of detectives beginning with the most senior detective and progressing down the senior list of such officers. The least senior detective shall fill the vacancy in those instances where overtime is declined pursuant to this section.

J. In the event of the necessity to replace an absent lieutenant,

the most senior lieutenant within the assignment concerned shall be given the first opportunity to work overtime. Said opportunity shall likewise pass through the assignment based on seniority. If the overtime is not accepted pursuant to this section, the least senior officer within the assignment shall fill the vacancy.

K. An employee receiving "Preferred Overtime" shall not be considered for an overtime tour of duty until all other preceding procedures have been exhausted.

L. In the event of the necessity to replace a captain or inspector, the most senior officer, of the rank to be filled, shall be given the first opportunity to work overtime, and said opportunity shall likewise pass through the applicable rank based on seniority. If the overtime is not accepted pursuant to this section, the least senior officer within the applicable rank shall fill the vacancy.

8. PREFERRED OVERTIME

Add the following to the Preferred Overtime provision:

"An employee may apply for Preferred Overtime six months prior to the employee's requested retirement date."

9. GRIEVANCE PROCEDURE

In Article 11.2 add the following: "The Union shall provide to the Division of Labor Relations a copy of each grievance filed at each step, at the time of submission, in accordance with this Article. However, failure to do so will not constitute a waiver of the right to proceed further."

In Article 11.1, Step 3, delete "and the Division of Labor Relations".

10. CHANGE OF ADDRESS

In Article 2.2 E add a new paragraph to read as follows: "All notices of change of address and/or telephone numbers to the Commissioner of Police shall be filed within ten days of the effective day of change."

11. AWOL

Add the following last sentence to Article 8.4: "The above shall also apply to a member who fails to return from an authorized leave of absence without pay within 5 days subsequent to the expiration of the leave of absence without pay."

12. PAYMENT IN LIEU OF

In Article 21.1 (B) delete "December 15", "June 15", and "without withholding or deductions."

13. DURATION

In Article 26 replace "1984" with "1986" and "1986" with "1988".

In the second paragraph replace "1985" with "1987".

14. BLUE CROSS AND BLUE SHIELD

In Article 21.1 (c), delete the phrase "the period of July 1, 1984 through and including June 30, 1986," and replace with the following: "life of this agreement."

UNRESOLVED ISSUES

The City and PBA submitted lengthy testimony and documentation concerning their respective positions which were carefully weighed by the

Panel in reaching its determination on the outstanding unresolved issues.

The following proposals represent the remaining outstanding issues on the bargaining table:

1. Salary
2. Night Shift Differential
3. Holidays
4. Vacations
5. Sick Leave Benefits
6. Personal Leave
7. Career Retirement Plan
8. Temporary Assignment
9. Longevity Pay
- Ø. Medical and Dental Insurance
11. Employee Notification

POSITION OF THE PARTIES ON THE UNRESOLVED ISSUES

PANEL DISCUSSION AND AWARD

1. SALARIES

PBA Proposal:

An increase of \$1,700 for 1986 (retroactive) bringing senior police officer salaries to \$22,785 and \$1,800 increase for 1987 (retroactive) bringing senior police salaries up to \$24,585.

Also proposed by the PBA is reducing the present five step salary schedule to four steps with a 25% difference between the starting step and the final increment. These increments are to be added at each year of service.

The PBA has also requested that the fixed percentages between ranks be revised as follows:

<u>RANK</u>	<u>PRESENT DIFFERENCE</u>	<u>REQUESTED</u>
<u>DIFFERENCE</u>		
Detective	4.5%	5%
Dispatcher	8.1%	8.5%
Detective-Sergeant	9.3%	0%
Lieutenant	16.8%	20%
Asst. Chief of Detectives	25%	25%
Captain	33.3%	40%
Inspector	47.3	60%

City Response:

The City proposes salary increases of 4% in the first year and 5% the second year of the agreement.

In addition they propose the amend Article 2.7A to read as follows:

"All employees appointed to the position of Police Lieutenant, Police Captain, Police Inspector, Detective, or Detective Sergeant shall have a starting salary and four incremental steps. All appointments shall be made at step one and subsequent increment steps shall be obtained on the employee's anniversary date of appointment to the present position, which date shall be adjusted for any leaves of absence or suspensions without pay, or absences without leave. An employee will reach the maximum salary in four years from the (revised) date of appointment.

PANEL AWARD

The City gave extensive testimony and evidence on its ability to pay, and compared itself favorably in terms of salaries and benefits relative

to other municipalities that were better off.

The Union contested the City's statistics and conclusions with its own analysis of these questions and concluded that the City is doing well economically, that PBA salaries and benefits are far below comparable police jurisdictions and that the City is able to pay their demands. They concluded that the present salary position of Buffalo police officers, compared to police officers in other municipalities, justifies their current salary proposal.

After reviewing the parties' expositions on the salary question, the Panel concludes that while the City is not in the best of economic conditions its position is improving and there exists a capacity for a salary increase beyond its proposal.

The Panel also recognizes some validity in the Police's argument regarding salaries paid in other comparable police departments.

Based on this evaluation the Panel believes salary adjustments are justified and awards the following:

- a) Retroactive to July 1, 1986, each employee shall receive a salary increase of \$100.
- b) Retroactive to July 1, 1986, each employee shall receive a salary increase of four (4) percent; and each employee holding the rank of Police Officer shall receive an additional salary increase of \$100.
- c) Retroactive to January 1, 1987, each employee shall receive a one (1) percent salary increase.
- d) Retroactive to July 1, 1987, each employee shall receive a five (5) percent salary increase and each employee holding the rank of Police Officer shall receive an additional salary increase of \$100.

- e) Effective January 1, 1988, each employee shall receive a one (1) percent salary increase.

2. NIGHT SHIFT DIFFERENTIAL

PBA Proposal:

The PBA requests an increase of \$.10 per hour for those who work the afternoon and night shifts.

City Response:

The City does not believe this proposal has merit.

PANEL AWARD

The Panel has found no justification in the evidence to warrant any change in night differential in the context.

3. HOLIDAYS

PBA Proposal:

At the present time there are twelve paid holidays. The PBA is proposing that this be increased to 14. The PBA requests that each employee be paid the value of the 14 holidays in a lump sum.

The PBA also asks that if a special holiday is declared by the Chief Executive Officer of the United States, New York State, the County of Erie, or the City of Buffalo, for other employees of the City, police employees should also be covered.

City Response:

The City opposes the PBA proposal and states that the present 12 recognized and observed holidays as it now appears in the contract is

adequate and the manner of payment by inclusion in police officers gross pay is already recognized in the contract and is currently being done.

PANEL AWARD

Beginning in December of 1987, and in recognition of the police officers' work schedule, each employee shall receive on or before December 15 of each year, a lump sum payment which is equal to for[✓] hours pay at the straight time rate of pay for each of the above-referenced holidays.

It is recognized by the Panel that the twelve (12) holidays presently in the contract have been included in the salary schedule as a result of previous contractual agreements and that the Salary Schedule already includes the value of the twelve (12) paid holidays at the rate of time and one half.

4. VACATIONS

PBA Proposal:

At the present time police officers receive one week vacation at the end of the first and second year of employment and two weeks after the third year of employment.

The PBA requests that all annual vacations be increased to two weeks to comply with existing statute.

City Response:

The City believes that this proposal is without merit and if the Union believes the present vacation arrangement violates statute they should bring the matter to court.

PANEL AWARD

The Panel sees no justification for granting this proposal.

5. SICK LEAVE

Union Proposal:

At the present time, police officers are granted six months, non-cumulative, leave of absence for illness. If the illness is work related, it is not charged against sick leave.

Officers hired after July 1, 1984 do not receive the six months sick leave but are credited with an accumulated sick day for each month of employment to a maximum of 300 days. Absence due to illness is charged against this accumulated time for each work day of absence and upon death or retirement up to 180 unused sick days are "bought back" by the City at 33 1/3% of the value of the accumulated time.

The PBA proposes to revamp the current system which would provide a method of accumulating sick leave based on employment with a charge against accumulated leave for each absence; a redemption of unused leave upon death or retirement and a sick bank to provide for catastrophic illness with strict controls to avoid abuse.

Each police officer should be credited with twelve sick days for each month of service before July 1, 1986 up to 324 days (which would require 27 years of service). After July 1, 1986 each police officer would accumulate 1 1/2 days each month of employment.

In the event of a non-employment related illness or disability, a day of accumulated sick leave would be deducted for each day of absence from work.

Officers who wish to participate in the sick leave bank would be required to put two accumulated sick leave days from their accumulated sick leave into the sick bank. An officer to participate has thirty days from the time such officer becomes eligible. Eligible officers who wish to

subsequently participate in the pool must elect to do so between January 1 and January 30 of each year and must contribute the same number of days to the sick bank as would have been required when first eligible for the sick bank. The plan would require the City to add one sick day to the bank for each employee who joins but will not contribute thereafter. Each officer would be required to contribute another day to the bank each year. The City will not contribute additional days except for new officers who join that year.

The leave would be greatly limited in its use and requests must be approved by both the PBA and the City. If they do not agree a third person would be selected using the same procedure by which an arbitrator is selected and the three would constitute a sick bank committee. The decision of this sick bank committee would be final and binding.

If the sick bank for some reason is discontinued, days contributed by employees are to be evenly distributed among the current members of the sick bank. Unused sick days would be "bought back" upon death or retirement as is now the practice for employees hired after July 1, 1984, at $\frac{1}{3}$ the value of the accumulated days.

Employees will be allowed to convert accumulated sick leave days to be paid the last year of employment.

City Position:

The Proposal lacks merit and should not be granted.

PANEL AWARD

After examining this proposal and the rationale put forth for its acceptance the panel finds no justification for this proposal and awards no change in this area.

6. PERSONAL LEAVE

PBA Proposal:

Police Officers are currently provided 7 personal leave days per year. Officers appointed after July 1, 1980 are granted only two personal leave days during their first year of employment and four days during the second year.

The PBA requests that employees be granted four personal leave days during the first year of employment and seven personal leave days each year thereafter.

City Response:

In Article 6, delete the sentence of the first paragraph and replace with the following: "An employee requesting personal leave shall do so in writing at least 48 hours in advance to his commanding officer. Personal leave shall be denied if the commanding officer deems that granting such a request will seriously hamper or impede the operation of his command. In the event of a personal emergency, which makes the giving of a written notice impossible, the employee must otherwise notify his commanding officer prior to the start of his shift. Said emergency personal leave day may be granted provided sufficient documentation of the emergency is produced upon request.

Personal leave may not be taken in units of less than one working day."

A portion of the present language governing the use of personal leave would be as follows:

"This personal leave may be used at the employee's discretion provided that he gives at least forty-eight (48) hours notice, in writing, to his

superior, except where an emergency situation makes the giving of notice impossible and, provided further, that his absence will not seriously hamper or impede the necessary work of his department. Such personal leave may not be taken in units of less than one-half (1/2) of a working day."

PANEL AWARD

After taking into consideration the positions and arguments of the parties the Panel awards as follows on this issue:

In Article 6 delete the second sentence of the first paragraph and replace with the following: "An employee requesting personal leave shall do so in writing at least 48 hours in advance to his commanding officer. Personal leave shall be denied if the commanding officer deems that granting such a request will seriously hamper or impede the operation of his command. In the event of a personal emergency, which makes the giving of a written notice impossible, the employee must otherwise notify his commanding officer prior to the start of his shift. Said emergency personal leave day may be granted provided sufficient documentation of the emergency is produced upon request.

7. CAREER RETIREMENT

PBA Proposal:

The PBA asks that when officers elect to participate in a cheaper retirement plan resulting in savings to the City, 40% of the savings should be passed on to the employee.

City Response:

The City states that the current percentage (33%) now received by officers is equivalent to that paid to fire fighters and sees no

justification to increase that amount.

PANEL AWARD

The Panel finds no justification to award any change in this area.

8. TEMPORARY ASSIGNMENT

PBA Proposal:

The PBA notes that when there is no patrol lieutenant working, the senior patrol officer on that shift is designated acting lieutenant and should be paid the higher rate of that position for at least four hours, and the briefing time for that shift.

City Response:

The City finds not justification to support this proposal.

PANEL AWARD

The Panel finds no justification for awarding this proposal.

9. LONGEVITY PAY

PBA Proposal:

Presently, officers receive the following longevity pay:

<u>SERVICE</u>	<u>AMOUNT</u>
After 5 years	\$100
After 10 years	200
After 15 years	300
After 20 years	400
After 25 years	600

The PBA has requested longevity pay as follows:

<u>SERVICE</u>	<u>AMOUNT</u>
After 5 years	\$200
After 10 years	450
After 15 years	700
After 20 years	950
After 25 years	1200

City Response:

The City points out that the City's fire fighters have an identical longevity schedule to the present PBA longevity schedule. It is the City's position that any increases in longevity pay should be funded by comparable redirection of salary increases.

PANEL AWARD

The Panel finds there is justification for the modification of the Longevity Pay provision of the agreement and finds the following changes would make the current contract more equitable as compared with other jurisdictions. The Panel also believes that this change would not be beyond the City's current ability to pay.

The following schedule shall take effect July 1, 1986:

<u>Years</u>	<u>Amount</u>
5	\$ 200
10	400
15	600
20	800
25	1,200

The following schedule shall take effect July 1, 1987:

<u>Years</u>	<u>Amount</u>
5	\$ 200
10	450
15	700
20	950
25	1,200

10. MEDICAL AND DENTAL INSURANCE

City Proposal:

The City's proposal is as follows:

Add the following to Article 21.1: "All employees having family coverage shall have deducted from each biweekly paycheck the sum of \$25, which sum shall represent the employee's contribution toward medical insurance coverage.

All employees having single medical insurance shall have deducted from each biweekly paycheck the sum of \$10, which sum shall represent the employee's contribution toward medical insurance coverage.

This contribution shall be in addition to any partial premium paid by an employee as a result of enrollment in an HMO."

Add the following to Article 21.1: "All employees having dental insurance coverage shall have deducted from each biweekly paycheck the sum of \$5, which sum shall represent the employee's contribution toward dental insurance coverage."

PBA Response:

The PBA finds no basis for this demand and believes it should be denied.

PANEL AWARD

The Panel finds merit in some of the City's proposal in this area and awards as follows:

Effective January 1, 1988, the City will not provide dental, medical or hospital insurance coverage, regardless of the type of plan, for any employee or retiree whose spouse has comparable or superior coverage as the result of employment in, or retirement from, City service as defined in Article 1.5. Said employee or retiree, however, shall receive \$600 per year, (\$50 per credited month) payable on or before December 30 or each year as payment in lieu thereof.

11. EMPLOYEE NOTIFICATION

City Proposal:

Add the following to 2.2, Hours of Work: "Except as otherwise

provided, each employee is required to report all unscheduled absences from work to a telephone number designated by the Police Department no later than the beginning of the employee's regularly assigned starting time. An employee failing to report an absence shall be deemed to be absent without leave. An employee who reports for work within one hour of the regularly assigned starting time shall not be considered absent without leave. Such employee shall be considered tardy.

Unreported absences and tardiness may result in disciplinary action."

PBA Response:

Proposal should be denied.

PANEL AWARD

The Panel finds justification for the modification of 2.2 Hours of Work as follows:

Add the following to 2.2, Hours of Work: "Except as otherwise provided, each employee is required to report all unscheduled absences from work to a telephone number designated by the Police Department no later than the beginning of the employee's regularly assigned starting time. An employee failing to report an absence shall be deemed to be absent without leave. An employee who reports for work within one hour of the regularly assigned starting time shall not be considered absent without leave. Such employee shall be considered tardy.

Unreported absences and tardiness may result in disciplinary action."

REMAINING ISSUES

Those items submitted by the parties as Items Agreed Upon are hereby incorporated into this Award. All issues and/or proposals not contained in

this document are deemed to be rejected and without merit.

The Panel believes that the awards contained herein constitute a fair and equitable settlement of the impasse between the City and PBA in accordance with the requirements contained in Section 209.4 of the New Civil Service Law.

Edward Levin
Edward Levin

Edward Levin, Chairman
Arbitration Panel

Date: 9/14/87

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On this ¹⁴th day of October, 1987, before me, the subscriber, a Notary Public of New York, personally came and appeared EDWARD LEVIN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

Mary Lee Walley
Notary Public of New York
My Commission Expires _____

MARY LEE WALLEY
Notary Public, State of New York
No. 487079
Qualified in New York County
Commission Expires Nov. 21, 1987

Richard Planavsky
Richard Planavsky
City Panel Member

Concur() Dissent() Date 10/15/87

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On this ^{15th} day of October, 1987, before me, the subscriber, a Notary Public of New York, personally came and appeared RICHARD PLANAVSKY to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

Caroline A. Scirri
Notary Public of New York
My Commission Expires _____

CAROLINE A. SCIRRI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 30, 1987

Robert J. Penders
Robert Penders
Union Panel Member

Concur() Dissent() Date 10/15/87

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On this ^{15th} day of October, 1987, before me, the subscriber, a Notary Public of New York, personally came and appeared ROBERT PENDERS to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

Caroline A. Scirri
Notary Public of New York
My Commission Expires _____

CAROLINE A. SCIRRI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 30, 1987