

State of New York
Public Employment Relations Board
Case No. IA88-45; M88-415, 416 & 417

In the Matter of the Arbitration

between

City of Albany

and

Albany Police Officers Union, Local 2841

AWARD OF THE
ARBITRATION PANEL

In accordance with the provisions of Section 209.4 of the New York Civil Service Law the parties hereto submitted some sixty issues to the undersigned arbitration panel for its determination. Hearings on these issues were held on November 8, 1989, December 4, 5, 11, 20, 21, 1989, and January 3, 30 and 31, 1990. At these hearings both sides were represented and given full opportunity to present oral and documentary evidence. By March 16, 1990 both parties had submitted briefs.

On April 9 and July 2, 1990 the arbitration panel deliberated in executive session. This Award is based upon these deliberations, as well as upon the respective beliefs of the individual panel members.

The panel has attempted to take a balanced approach, realizing that not all proposals can be granted at the same time. More important, however, was the fact that the panel used specific criteria in reaching its conclusions. Some of these criteria were afforded great weight and others lesser weight. Where applicable the panel has given great weight to comparative data. The Award, therefore, attempts to reflect settlements in communities similar to the City of Albany. The panel has used the cities of Schenectady, Troy, Buffalo, Syracuse and Rochester as the cities most comparable to Albany. It has given somewhat

less weight to the suburban community of Colonie than to the aforementioned five cities. It has given minimal weight to the cities of Niagara Falls and Binghamton.

The panel would have given considerable weight to the ability of the City to pay. However, the City stipulated that "it has the ability to pay fair and equitable wages and benefits for ... fiscal years 1989 and 1990."

Some weight has been given to the issues of attracting and maintaining a high quality police force. In addition some weight has been given to the history of bargaining between the parties as well as the problems created by increases in the cost of living. In addition the panel has considered the interests and welfare of the public, the hazards of employment, physical, educational and mental qualifications, job training and skills.

It should be noted that Section 209.4 (v) provides that the panel shall consider "relevant factors" in addition to those set forth above. The most salient of those relied upon by the Chairman was the expertise of his co-panelists, especially as that expertise was manifested in the aforementioned executive sessions.

The panel has concluded that when the Albany police contracts are viewed as a whole, there are some clauses which exceed comparative norms and others which grant less than such norms. By and large, the panel believes that a balance has already been struck and that no radical changes need be made at this time. It further believes that this Award reflects whatever changes are needed to keep the wages, hours and working conditions of the Albany police roughly on par with comparable cities.

It should be noted that this award covers three bargaining units. With the exceptions noted below, the panel has treated the parties proposals in accordance with paragraph 12 of the Union's Second Amended Petition for interest arbitration.

Paragraph 12 reads as follows:

12. Annexed hereto and incorporated herein as Exhibit "A" is a composite statement of the terms and conditions of employment which were raised during negotiations, including a complete copy of the January 1, 1986 through December 31, 1988 Patrol Unit Collective Bargaining Agreement and the respective parties' proposals for modification. Where the parties are in agreement with respect to any given provision, the provision is annotated as "AGREED". Where no agreement has been reached, each party's proposal is provided. With the exception of those items in Exhibits "B" and "C", the provisions and proposals of the Patrol Unit Collective Bargaining Agreement are also applicable to the Lieutenants and Sergeants Unit Collective Bargaining Agreement and the Captains and Inspectors Unit Collective Bargaining Agreement.

The above referenced exception includes items 5, 7 and 8 which are The above referenced e granted only with regard to the Patrol Unit. Item 28 is granted only for the Patrol Union and the Lieutenants and Sergeants Unit.

PROPOSALS RELATING TO THE PATROLMAN'S UNIT

1. Article 2.8.2

The current Article provides that the President of Local 2841 shall have the option of being assigned a Monday through Friday day shift, which option may be exercised twice

during the term of the contract. The Union has proposed that its President be given released time with full pay and benefits to conduct Union business when needed.

While the panel is cognizant of the fact that a similar benefit exists in Schenectady and Colonie, it does not believe that such a benefit is generally found in police contracts in other cities comparable to Albany. While it is clear that the current Union President spends a great deal of his own time conducting Union business, this is a choice which many leaders in all fields have been forced to make. The panel does not believe that at this time the City should pay the cost of the Union's leadership. Accordingly it orders that the proposal be rejected.

2. Article 2.8.3

The Union has proposed a new clause reading:

Members of the Executive Board of the Local Union shall be allowed a maximum of six (6) hours per month to attend Executive Board meetings of the Local Union. A list of members of the Local Union Executive Board shall be sent to the Chief of Police, such list to be updated as changes occur.

Again the panel is cognizant of the fact that similar clauses occur in several comparable cities. Nonetheless the panel does not believe that Union business should be financed by the City unless the labor relationship is such that *both* parties perceive the benefits of such cooperation. Here the City is unwilling to pay the cost of Union leadership. The panel, therefore, sees no reason for which such cost should be imposed. Accordingly, the proposal is rejected.

3. Article 2.9.3

The current Article states "Employees acting on behalf of the Union shall suffer no loss of time or pay should such (Labor/Management committee) meetings fall within their regular working hours." The Union seeks to add language reading: "All time an employee

spends at such meetings which are outside of such employees work hours shall be considered as time worked.”

The panel is again aware that many benefits flow to both parties from a cooperative relationship and that such cooperation may sometimes be facilitated by the employer funding certain aspects of Union business. The panel, however, believes that such funding should occur voluntarily rather than by imposition. For this reason the proposal is denied.

4. Article 3.3.1

This clause states in pertinent part “The time limits set forth in Articles 3 and 4 are of the essence.” The City wishes to add the words “and condition precedent to arbitration.”

The panel is not persuaded that the current contract is in need of modification. What the City seeks is a method of permitting a court to stay arbitration on the grounds that a grievance was not timely filed. The parties, however, have already agreed to arbitrate their contractual differences. The panel sees no reason why the mutually selected arbitrator cannot determine whether the time limits of Articles 3 and 4 have been followed and, if not, what the impact of untimeliness shall be.

5. Article 8.2.1

This Article states, in pertinent part, that the probationary period shall be thirty-six weeks. The City seeks to extend this period to fifty-two weeks. In addition it seeks to add the following sentence at the end of the clause: “Nothing herein contained shall limit the Employer’s unfettered right to terminate a probationary employee without recourse.”

The panel believes that the fifty-two week probationary period conforms with the Civil Service Law and further believes that the Union is in essential agreement that the probationary period may reasonably be lengthened. The panel, therefore, grants the City’s request to increase this period to fifty-two weeks.

The panel does not, however, believe that the clause needs further modification. There has been no evidence that the current disciplinary system for probationers is not working or workable. Even the City's brief fails to treat the subject of its need for an "unfettered right" to terminate probationers. For these reasons the panel denies the City's request for any change in this clause beyond the change in the length of the probationary term.

6. Article 9.1.2

This Article currently requires the City to post notices of permanent openings for a period of fifteen days. The City seeks to amend the Article by adding a sentence reading "Where circumstances necessitate a shorter period, the posting may be reduced appropriately by the Department."

Both parties have agreed that there are times when circumstances necessitate a shorter posting period. They have further agreed that under such circumstances the City has met with the Union and requested permission for a shorter posting period. In its brief the City cites the fact that the Union has never withheld permission for a shorter period as one of the reasons that this proposal should be granted. Thus the City argues that the proposal would simply incorporate current practice into the contract.

The panel finds that there is no need to change the current contract language. It is clear that the parties have cooperated in this area and that no current problem exists. The City's concern that a change in labor relations may change the Union's cooperative attitude may be valid, but it is no more valid than the possibility that such a change might cause the City to unilaterally shorten posting periods unnecessarily if it were granted that right. For these reasons the panel denies the City's proposal.

7. Article 9.2.1

This Article currently says “Temporary job openings are defined as job openings that periodically occur in any job classification or assignment only because of illness, vacation, leaves of absence and suspensions.” The City wishes to add “and/or special assignments in the Chief’s discretion.”

The panel believes that the City is correct in wishing to expand the definition of “temporary job openings”. It has made a persuasive case that there are some instances when there is a temporary assignment which is best done by an officer with special skills or training. The panel believes that the Chief should be able to use his or her discretion in determining when such personnel are temporarily needed. The panel does not believe that the Union has provided any evidence to substantiate its claim that the granting of the City’s proposal will resurrect the “Red Apple Club”. For these reasons the panel grants the City’s proposal.

8. Article 9.2.2

This Article currently requires the posting of temporary job openings which are expected to last more than ninety days. At present the bidding period is ten days and the selection must be made within five days of the close of the bidding period. Those openings of less than ninety days duration are offered to employees in order of seniority.

The City has proposed that after the first sentence of the Article the following sentence be added: “Any assignments less than 90 days shall be filled at the discretion of the Chief and shall not be subject to the job bidding or job posting requirements, nor governed by seniority.” The City has also proposed to “change 10 to 5 and 5 to 2 in (the) bidding period.”

The panel believes that short term temporary assignments may reasonably be filled at the discretion of the Chief without the re-creation of the Red Apple Club and without

making substantial inroads into the seniority system. The panel, however, does not believe that ninety days is sufficiently short. The panel, therefore, grants the City's proposal in modified form. The sentence proposed by the City shall be incorporated into the contract using thirty days rather than the ninety days proposed by the City. The number 90 in the ninth line of the current Article shall also be changed to 30. Posting time shall be changed to 8 days rather than the City's proposed 5. Selection shall be made within 2 days as requested by the City.

9. Article 9.4.1

This Article deals with out-of-title work. When the City needs to fill a temporary vacancy in a higher title with an employee from a lower title, it requires the City to fill the vacancy on the basis of seniority and to pay the employee the higher rate. The parties have agreed to add the proviso "provided the employee is able to perform the required work." The Union seeks an additional sentence reading: "The Employer will fill a temporary vacancy in the higher title if the temporary vacancy is expected to last more than one (1) week."

The panel has determined that this proposal should be denied. It believes that the City, not the Union, should determine when vacancies must be filled.

10. Article 11.1.3

The current Article states: "Any employee required to work four (4) hours of overtime following his regular full day shall be given a meal allowance of six dollars and fifty cents (\$6.50)." The Union seeks to increase this figure to \$8.00.

The panel believes that some increase should be made in this allowance because the cost of meals has increased since \$6.50 was inserted into the contract. It is not clear, however, that it takes \$8.00 to purchase an adequate meal. The panel, therefore, orders that the meal allowance be increased to \$7.00.

11. Article 11.5.1

The contract currently requires that preplanned overtime and special off-duty details be distributed by seniority. The City has proposed that the following sentence be inserted into the Article: "Any overtime that is either of an emergency nature in the chief's discretion or not preplanned need not be distributed on the basis of rank seniority but rather based on the needs of the department without regard to seniority." The panel has determined that the City has not demonstrated that the current contract is unworkable and, therefore, denies the City's proposal.

12. Article 11.6.1

The current contract states that preplanned and non-emergency overtime is voluntary. The City seeks to add language reading "unless the overtime is deemed mandatory by the Chief because of the nature of the work involved. In other cases if needed overtime cannot be filled voluntarily, it shall be assigned in inverse order of seniority."

The panel believes that there are occasions where overtime needs to be performed even when there is neither preplanning nor an emergency. The panel, therefore, grants a modified version of the City's proposal and orders that the following sentences be added to 11.6.1: "However, in some preplanned or non-emergency situations the Chief may deem overtime mandatory because of the nature of the work involved. In those situations, if there are no volunteers, the overtime shall be assigned in inverse order of seniority."

13. Article 12.1.1 & 12.1.4

The Union seeks to add to its contract Martin Luther King as a twelfth holiday. The panel is aware that most other comparable police departments grant at least 12 holidays.

However it must be noted that given the nature of police work, holidays are essentially a form of salary payment rather than a mechanism for time off. The standard number of holidays given to City employees in Albany is eleven. This fact coupled with the salary increase discussed below, has caused the panel to determine that no change in the number of holidays should be given at this time.

14. Article 12.1.2

The current Article provides for the payment of holiday pay for employees whose work schedules fall on holidays if they work their last scheduled day before the holiday and their first scheduled day after the holiday. One exception to this rule occurs when an employee is off because of a doctor certified illness, in which case the employee gets paid for the holiday. The City has proposed that the doctor certified illness be deleted.

The panel has rejected the City's proposal. It believes that the proposal would result in unequal treatment for employees who became ill when scheduled work fell on a holiday as opposed to employees whose illness occurred on a non-holiday.

15. Article 12.1.3

The current contract requires that employees be paid for eleven holidays regardless of whether they use sick time on the day of the holiday. The City has proposed to delete "sick time" from this clause.

This proposal is the concomitant of the City's proposal regarding Article 12.1.2 and is denied for the same reason.

The current Article also provides in pertinent part that "An employee continuously absent because of illness or injury for more than one (1) calendar year shall not receive holiday pay for that portion of any year in which he is continuously absent, and which exceeds the first calendar year of illness." The Union seeks to delete this sentence.

As is indicated the panel has determined that the current language is workable. Employees who are ill or injured receive holiday pay for one year. The panel believes that this is a reasonable state of affairs and, therefore, denies the Union's proposal.

(Due to typographical error there is no 16)

17. Article 13.1.2 & 13.1.3

The Union seeks to increase the number of vacation days granted to employees. The City has proposed to increase the years of service needed before the present number of days of annual vacation is increased. The panel believes that the current contract is not out of line with the appropriate area of comparison. It, therefore, orders that the current contract remain as it is.

18. Article 13.4.1

The current Article states "An employee who is discharged, resigns, retires, is laid off prior to taking his vacation, shall be compensated for his accumulated vacation credits." The City has proposed to add after this sentence the words "minus any leave credits lost as a result of a disciplinary penalty."

The panel has determined that the current language is workable and not out of line with other comparable contracts. Accordingly this proposal is denied.

19. Article 14.1.1

The City has proposed to reduce to ten from fifteen the maximum number of bereavement days per year an officer would be entitled to without special dispensation from the Chief. The panel has determined that the current language is workable and not out of line with other comparable contracts. Accordingly this proposal is denied.

20. Article 14.1.3

The City has proposed to delete the current clause which states "An employee shall be granted up to a maximum of fifteen (15) work days in any one (1) calendar year for illness in the employee's immediate family. For special circumstances, the Chief may expand this time limit." The panel has determined that the current language is workable and has not overburdened the City. The proposal is, therefore, denied.

21. Article 14.2.1

The current Article provides that all employees will receive three days of personal leave after one year of service. The City has proposed that these figures be changed to two days after five years of service. The Union has proposed that it be increased to five days. The panel believes that the current language is workable and not out of line with other comparable contracts. Accordingly both proposals are denied.

22. Article 15.1.1

The current Article provides for a maximum of one year of paid sick leave for employees contracting non-job-related illness or injury which prevents them from performing their duties. The City seeks to reduce this benefit to twelve days for all officers hired after January 1, 1989.

After the panel approved the City's proposal to modify the sick leave policy, further discussions were held between the two non-neutral arbitrators and the following provision for catastrophic coverage was agreed upon under a new clause enumerated 15.1.4.

All full time permanent employees hired after June 1, 1990 shall be paid for absence due to personal illness up to a maximum of 15 days per calendar year earned on a pro-rated basis of 1.25 days per month. All unused sick leave shall be carried over into the next year. Any employee covered by this section who shall suffer a catastrophic - or long term - illness or injury before he or she has accumulated sufficient leave credits, may borrow against future anticipated sick leave credits to a maximum of 75 days in the first year of employment, 60 days in the second year,

45 days in the third year, 30 days in the fourth year and 15 days in the fifth year, which time shall not be cumulative.

23. Article 15.1.3

The Current Article provides that probationary employees shall accumulate one and one-half sick leave days for each month worked for at least fifty percent of their scheduled shifts. The City has proposed to substitute "one-half for one and one-half."

The panel believes that it has granted the City sufficient relief with its addition of Article 15.1.4 as set forth above. It, therefore, orders that there be no modification of 15.1.3.

24. Article 15.3.1

The current Article provides that the City shall request a physician's certificate from an employee who has been absent for four or more consecutive work days. The City has proposed to reduce the number of days to three. The panel believes that the current language is workable and does not unduly burden the City. Accordingly the City's proposal is denied.

25. Article 15.4

The City has proposed that this Article be deleted because it simply restates what is already required by statute. The panel does not agree that such redundancy is sufficient reason to delete a contractual clause. The current language is workable and does not unduly burden the City. Moreover it protects the bargaining unit against possible alterations in the statute. For these reasons the City's proposal is denied.

26. Article 17.1.1

The Union seeks a wage increase of \$1000.00 for Sergeants, Lieutenants and Captains plus an increase for all employees of fifteen percent for 1989 and ten percent for

1990. The City has offered six percent for each of the two years. After carefully analyzing the arguments and evidence presented by the parties and using the criteria set forth in the opening remarks of this Award, the panel has determined that the salaries shall be increased in the following manner. As of January 1, 1989 the salaries of members of all three units shall be increased by 5% across the board; as of July 1, 1989 the salaries of members of all three units shall be increased by 3% across the board; as of January 1, 1990 the salaries of members of all three units shall be increased by 4% across the board; as of July 1, 1990 the salaries of members of all three units shall be increased by 4% across the board.

27. Article 17.1.2

The current clause provides that detectives shall receive an annual clothing allowance of \$1300.00. The Union seeks to increase this to \$3000.

The panel notes that the detective clothing allowance was increased in both 1987 and 1988. It sees no need to increase it again at this point in time. Accordingly this proposal is denied.

It should further be noted that the Union has proposed that "Any Sergeant or Lieutenant assigned to the Juvenile Unit will become Detectives effective 1/1/89 and will receive the above clothing allowance." It has also proposed that "the Captain of the Juvenile Unit will become a Detective Captain effective 1/1/89 and will receive the clothing allowance."

Article 18.2.1 already grants the aforementioned employees a \$3.00 per day clothing allowance. This fact, plus the fact that the panel believes that it is the City which should determine who are detectives rather than the type of clothing they wear, has caused the panel to deny the proposal. The panel notes in passing that its determination shall have no effect upon any currently pending grievance.

28. Article 17.3.1

The Union has proposed that longevity payments be increased by \$100.00 after five years of service, by \$150.00 after ten years, by \$250.00 after fifteen years, and by \$400.00 after twenty years. The Union has further proposed that the following sentence in Article 17 be removed:

Longevity shall be paid on a weekly basis but it shall not become part of the base salary for the purpose of computing future raises, overtime, holiday pay, comp time and other premium pay allowances.

The Union believes that some of the above language is illegal.

The panel has determined that longevity should be increased by \$100.00 in each year of the Agreement in each length of service category. The panel denies the Union's request to remove the aforementioned sentence in Article 17. If any part of it is illegal the Union should pursue its remedies before a more appropriate forum than an interest arbitration panel.

29. Article 17.3.2

The Union has proposed a new clause which is a shift differential of \$12.00 per week for the 4:00 pm to 12:00 am shift and \$15.00 per week for the 12:00 am to 8:00 am shift. The panel agrees that these shifts are more onerous than the regular day shift. However, the panel believes that the parties have already created an equitable solution to the problem by allowing senior officers to have first choice at shift preferences. Thus the "payoff" comes not in money but rather is one of the rewards of seniority. Simply put the panel feels there is no need to compensate employees on undesirable shifts, because the seniority system compensates them by eventually allowing them to avoid such shifts altogether. For this reason the proposal is denied.

30. Article 17.3.3

The Union has proposed a new clause reading “Employees will be paid 1 1/2 times his (sic) regular rate of pay for the 15 minute pre-roll-call briefing.” The Union’s brief indicates that it has revised its estimate of briefing time to ten minutes.

The panel spent a substantial amount of time dealing with this proposal. In many ways it was the most difficult of all the issues presented. On the one hand the current practice is to require employees to render services for which they are not paid. It would appear that there is something inherently wrong with this approach. On the other hand, from the evidence presented it appears that briefing time is generally not considered a compensable activity in most of the comparable cities. In other words it would seem that in police work there is a tradition of not directly compensating employees for briefing time but rather subsuming compensation for this time under the salary structure as a whole.

It should be noted that if payment for briefing time represented a small fraction of the eight per cent raise imposed by this panel above, the panel might well have come to a different conclusion on compensation for briefing time. The cost of this proposal, however, amounts to nearly three per cent in additional monies. The panel does not believe that the resultant eleven per cent raise in the first year of the contract is justifiable. The Union’s proposal is, therefore, denied.

31. Article 17.3.4

The Union has proposed a new clause in the contract which would provide for educational incentive pay. This pay would be tied to the number of college credit hours that an employee has earned. It would range from \$50.00 per year for 1-29 credits to \$550.00 per year for 175 or more credits. The panel has determined that there is no present need for such incentives and that such incentives do not seem to be the norm in the comparable cities. The proposal is, therefore, denied.

32. Article 17.3.5

The Union has proposed a new clause reading:

Officers who are assigned to train recruits will be compensated \$10.00 per day for every day they do the training. Procedures for the selection of training officers will be jointly developed by the parties through their Labor Management Committees and seniority will be a factor in such procedures.

The panel has determined that there is no present need for such payments and that such payments do not seem to be the norm in comparable cities. The proposal is, therefore, denied.

33. Article 18.1.2

The Union has proposed adding "Shoes" and "Leather Goods" to the list of items that "Each officer shall be issued upon appointment ...". The panel has determined that it is not appropriate to add shoes because presumptively all city employees are required to wear shoes. These are not supplied by the employer. Leather goods which are specifically required for police work, however, should be supplied by the City. For this reason the panel has determined that the City shall issue a belt, a cuff holder, a nightstick holder, a flashlight holder and a holster for those employees who wear uniforms in their regular course of duty. These items are to be incorporated into the contractual list of items to be issued.

34. Article 18.2.1

The Union has proposed increasing the daily clothing maintenance allowance for plain clothes officers from \$3.00 to \$5.00. The panel has determined that \$15.00 per week is sufficient to maintain plain clothes. The proposal is, accordingly, denied.

35. Article 18.2.2

The Union seeks to add a clause reading: "The Employer shall provide for the cleaning of uniforms for all employees assigned to wear them." The panel has determined that the City cannot reasonably be expected to administer a cleaning service for its employees. It feels that the City's time and money will be better spent in other ways. For these reasons the Union's proposal is denied.

36. Article 19.1.1

Both parties have made proposals regarding Hospitalization and Medical Benefits. The panel has determined that neither side has demonstrated a need to change the status quo. Both proposals are, therefore, denied.

37. Article 19.1.3

The Union has proposed that the City provide a complete dental and optical plan under Blue Cross and Blue Shield with the City paying the entire cost. The panel denies this proposal because no other bargaining in the City enjoys either of these benefits.

38. Article 19.1.4

The Union has proposed that "The City will provide up to \$25,000.00 for the start up of an Employees Assistance Program. Specific language to be worked out." The panel supports the idea of an Employee Assistance Program. Such a program, however, should not be confined to the Police Department, but rather is most efficiently accomplished on a City-wide basis. The panel, therefore, denies this proposal but suggests that the issue should continue to be explored in terms of a City-wide program.

39. Article 20.1.1

The Union has proposed that “The City will provide the final year average option for the 25 year (Retirement) plan at no cost to the employee.” It has further proposed that the “City will provide 384E of the Retirement and Social Security Law which provides for 1/60’s after 20 years of service at no cost to the employee. This shall be effective 1/1/89.”

The panel has determined that both proposals should be denied. The Retirement provision was enriched by 384d in the last round of negotiation. Moreover, the panel has determined that as of 1/1/90 the Union proposal to delete #1 and #2 of Appendix A shall be granted.

40. Article 21.2.1

The current Article provides in pertinent part that the City need not defend employees against whom suit is brought if such employees were not acting in the performance of their duties or within the scope of their employment or were engaging in intentional misconduct or gross negligence. The current Article further provides that if the City determines that it need not defend an employee, the employee may grieve the decision and that the City shall continue the defense while the grievance is pending. The City has proposed to add the following language to this clause:

Under these latter circumstances, the Employer is not responsible for counsel fees incurred by the employee. Moreover if the employee does not wish to utilize the services of counsel provided by the Employer, the employee may at his own expense obtain his own counsel to defend matters covered under 21.1.1.

The panel has carefully analyzed the Union’s argument regarding the possibility of employees’ desires to retain private counsel because they fear a conflict of interest on the part of the counsel provided by the City. Nonetheless, the panel believes that the City cannot reasonably be expected to do more than provide an employee with the counsel that the City chooses. To require the City to do more would permit employees to hire attorneys

that might be far more expensive than those that the City would provide. At some point employees must decide whether to accept the defense provided by the contract or expend their own funds to augment that defense.

For the above reasons the panel has determined the second sentence of the City's proposal shall be added to the contract with the deletion of the word "Moreover". The new language will, therefore, read: "If the employee does not wish to utilize the services of counsel provided by the Employer, the employee may at his own expense obtain his own counsel to defend matters covered under 21.1.1." The panel does not grant the first sentence because it believes that employees should be granted the benefit of counsel until such time that a final determination is made that they are not contractually entitled to such benefit.

41. Article 21.2.5

The Union has proposed a new Article reading:

The City will provide legal counsel for any employee sued in a civil action arising out of any incident which occurred in the course of his employment, and hold him harmless from any financial loss whatsoever arising from said suit, including but not limited to, punitive damages, pursuant to and as provided for in Section 50-j of the General Municipal Law as presently existing.

The panel believes that employees acting within the scope of their authority should be saved harmless from the imposition of punitive damages, especially in light of the fact that such damages may not be imposed upon the City. Moreover the panel is impressed with the fact that some of the comparable cities have similar or identical clauses in their contracts. Last, the panel feels that by granting this proposal it balances whatever problems may be caused by the granting of the City's proposal regarding Article 21.2.1.

42. Article 21.2.6

Since the Union has stated that if Article 21.2.5 were granted this proposal would be "unnecessary", the proposal is denied.

43. Article 22.7.1

The Union seeks to add language reading: “The Employer shall reimburse an employee for up to six credit hours per semester upon the employee showing that he has successfully completed the course taken.” Currently there is a policy of reimbursing employees for up to three credits per semester for courses approved by the Department. The panel does not believe there is a strong need to increase the number of reimbursable credit hours. Neither does it believe that the City should have no input into what courses it is paying for. For these reasons the Union’s proposal is denied.

44. Article 22.8.1

The Union seeks to add language reading: “Employees may work security during their off duty hours.” The panel believes that when police officers work in security positions in their off hours they increase the risk of encountering a felony during this period of time. Both parties agree that the City could incur liability whenever officers act within the scope of their employment regardless of whether they are on or off duty. This is compounded by the fact that fatigue may impair judgment during the period when officers are working an extra job which involves a higher risk of encountering law breaking than non-security work. For these reasons the proposal is denied.

45. Article 24.1

The City has proposed the substitution of a somewhat stronger Management Rights clause for the one now in effect. The panel has determined that the current clause is workable and does not unduly burden the City. Accordingly this proposal is denied.

46. Appendix A

The panel’s determination on this issue is set forth in item 39 above.

PROPOSALS RELATING TO THE SERGEANTS AND LIEUTENANTS UNIT

47. Article 2.9.3

This proposal is identical to item 3 *supra* and is denied for the same reasons.

48. Article 9.1.1

The current Article requires that vacancies be posted for fourteen calendar days. The City has proposed that the following sentence be added: "Where circumstances necessitate a shorter period, the posting may be reduced appropriately by the Department." The Union has proposed to change 14 calendar days to 15 work days. It has further proposed to delete the current language reading: "Where circumstances necessitate a shorter period, the posting may be shortened to no less than five (5) calendar days."

The panel has determined that the current language should remain unchanged and that the parties will best be served if they resolve this issue in a side letter.

49. Article 9.1.2

This Article implements Article 9.1.1. The City has proposed the addition of the following language:

"There are certain other temporary or special job assignments and openings of less than 30 days duration however, that are not subject to the posting provisions, nor governed by seniority. These temporary assignments are those designated by the Chief as necessary in order to help achieve the mission of government."

The Union has proposed to change 15 calendar days to 15 work days and to delete the current language reading: "or if circumstances so necessitate, within the shorter period provided for in 9.1.1."

As is indicated above this Article implements Article 9.1.1. As is further indicated the panel has determined that current language should remain unchanged and that the parties interests will best be served if they resolve this issue through a side letter.

50. Article 13.1.1

This proposal is similar to item 16 above and is denied for the same reasons.

PROPOSALS RELATING TO THE CAPTAINS UNIT

51. Article 10.1.2

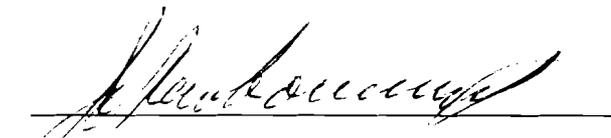
The current Article states; “Captains shall work weekends on a rotating basis so that there shall be one (1) duty captain to insure weekend supervision.” The Union has proposed to amend this clause to read: “A Captain will be on call on the weekends on a rotating basis.”

The panel has determined that the current language is workable. It believes that it is the City which must determine the amount and rank of supervision needed at any particular time. The City’s testimony indicated that it believed that the physical presence of a Captain is needed on weekends. The panel accepts this conclusion and, therefore, denies the proposal.

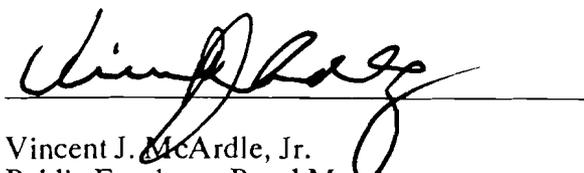
52. Article 10.1.3

This proposal is a concomitant to the Union’s proposed change in article 10.1.2. It is denied for the same reason.

July 2, 1990



James R. Markowitz
Public Panel Member and Chairman



Vincent J. McArdle, Jr.
Public Employer Panel Member
Dissenting to Item 26



Richard J. Bischert
Employee Organization Panel Member
Dissenting to Items 22, 30 and 40