

In the Matter of the Interest Arbitration

Between

THE CITY OF AMSTERDAM

and

THE AMSTERDAM POLICE BENEVOLENT ASS'N

OPINION

AND

AWARD

08/26/91

Case Number: PERB IA90-030; M90-382

Public Arbitration Panel: Wade J. Newhouse, Public Panel Member and Chairman
William M. Wallens, Public Employer Panel Member
Edward W. Guzdek, Employee Organization Panel Member

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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Representatives:

For the Public Employer: Elayne G. Gold, Esq.
For the Employee Organization: Carol M. Dillon, Esq.

CONCILIATION

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I. INTRODUCTION.

On April 15, 1991, the New York State Public Employment Relations Board (hereafter referred to as PERB), having determined that a dispute continued to exist in negotiations between the City of Amsterdam (hereafter referred to as the City) and the Amsterdam Police Benevolent Association (hereafter referred to as the APBA), and acting under the authority vested in it under §209.4 of the Civil Service Law, designated the above listed Public Arbitration Panel "for the purpose of making a just and reasonable determination of the dispute."

A hearing was held on June 12, 1991, in the City Hall Chambers, Amsterdam, New York. At the hearing, both parties were provided opportunity to introduce evidence, present testimony and to summon witnesses and engage in their examination and cross-examination. At the conclusion of the hearing, it was agreed that counsel for the parties would meet on July 2, 1991, for the purpose of clarifying points of agreement and disagreement, and that post-hearing Briefs would be submitted, to be post-marked no later than July 16, 1991. The Briefs were received in a timely fashion.

On Wednesday, August 14, 1991, the Panel met in executive session, in a room in the Public Safety Building, in Amsterdam, New York. A draft of an Opinion and Award, prepared by the Chairman, was circulated prior to that meeting. On August 26, 1991, this Opinion and Award was issued.

II. THE STATUTORY STRUCTURE AND THE PROCESS.

It is useful to begin by sketching the statutory structure which governs this matter. Subdivision 4 of §209, of the Civil Service Law, was enacted to provide a means for resolving negotiations impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations, promulgated to implement Subdivision 4 of §209, requires that a petition requesting referral to a Panel contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon. * * *

The response to the petition must also "contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position." (Rules and Regulations, §205.5.)

If PERB refers the dispute to a Public Arbitration Panel, the Civil Service Law provides that the Panel shall hold hearings on "all matters related to the dispute" (§209.4(c)(iii)), and "all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel." (§209.4(c)(iv).)

The Panel is directed to "make a just and reasonable determination of the matters in dispute." (§209.4(c)(v).) More specifically, the statute spells out the following criteria which must be taken into consideration, when relevant:

1 In arriving at such determination, the panel shall specify the basis for its findings, taking
2 into consideration, in addition to any other relevant factors, the following:

- 3
4 a. comparison of the wages, hours and conditions of employment of the employees in-
5 volved in the arbitration proceeding
6
7 with the wages, hours, and conditions of employment of other employees performing
8 similar services or requiring similar skills under similar working conditions
9
10 and with other employees generally in public and private employment in comparable
11 communities;
- 12
13 b. the interests and welfare of the public
14
15 and the financial ability of the public employer to pay;
- 16
17 c. comparison of peculiarities in regard to other trades or professions, including specifical-
18 ly,
19
20 (1) hazards of employment;
21 (2) physical qualifications;
22 (3) educational qualifications;
23 (4) mental qualifications;
24 (5) job training and skills;
- 25
26 d. the terms of collective agreements negotiated between the parties in the past providing
27 for compensation and fringe benefits, including, but not limited to, the provisions for
28 salary, insurance and retirement benefits, medical and hospitalization benefits, paid
29 time off and job security.

30
31 The Panel's determination is "final and binding upon the parties for the period prescribed by the
32 panel". (§209.4(c)(vi).) The maximum period is for two years (from a point in time fixed by the statute),
33 and the determination "shall not be subject to the approval of any local legislative body or other municipal
34 authority". However, it is subject to judicial review "in the manner prescribed by law." (§209.4(c)(vii).)

35 36 37 **III. BACKGROUND OF THE DISPUTE AND IDENTIFICATION** 38 **OF THE ISSUES BEFORE THE PANEL.** 39

40 The City of Amsterdam is located in Montgomery County. It has a population of 21,872. (C-3.)¹
41 The Amsterdam Police Benevolent Association represented a bargaining unit consisting of officers below the
42 rank of Sergeant, i.e., patrol officers and investigators. At the present time, the unit includes 27 full-time
43 officers. (C-2; City Brief, page 3.) As the Brief for the APBA points out, before 1988 the APBA had
44 represented a unit consisting of all full-time officers (except the Chief of Police and Deputy Chief). In 1988,
45 the officers of the rank of Sergeant and above, split from the unit and the Amsterdam Superior Officers
46 Association, Inc. was recognized by the City Common Council as the bargaining agent for the unit consist-
47 ing of the 7 full time officers of the rank of Sergeant and above (excluding the Chief and Deputy Chief). In
48 January of 1990, the City entered into a Collective Bargaining Agreement with the Amsterdam Superior
49 Officers Association for the period commencing January 1, 1990 and terminating June 30, 1990. (See the
50

51
52
53 ¹ With respect to Exhibits submitted at the hearing: Joint Exhibits will be identified by "J-" (e.g., J-1); City Exhibits will
54 be identified by "C-" (e.g., C-1); and APBA Exhibits will be identified by "U-" (e.g., U-1).
55

1 APBA Brief, pages 2-3, and Exh. 4 to that Brief.) The City points out that there are 7 bargaining units in the
2 City, and that the City is currently in negotiations with representatives of four of them (including the unit
3 represented by the APBA). (City Brief, page 3.)
4

5 The City and the APBA were parties to a collective agreement effective for a period commencing
6 July 1, 1987 and terminating June 30, 1990 (Art. II; J-3).² Pursuant to Article XXII of that Agreement,
7 negotiations were to commence "by March 1st in the year of the termination of the contract or another
8 mutually agreeable date." The parties' descriptions of the process leading to impasse are significantly dif-
9 ferent.

10
11 In its Brief, the City described the negotiations which occurred before impasse, in the following
12 brief paragraph (Brief, page 1):
13

14 The parties began negotiations toward a successor agreement, meeting on several
15 occasions including August 1, August 13, August 20, September 5 and October 10, 1990.
16 During the course of negotiations, only non-economic issues were addressed. Following
17 the parties inability to reach settlement at the negotiation table, impasse was declared on
18 November 7, 1990. The mediator was unable to produce an amicable resolution of the
19 outstanding matters between the parties and on March 13, 1991, the City filed a Petition for
20 Interest Arbitration (J-1). On March 27, 1990, the Association filed its Response (J-2).
21
22

23 In its Brief, the APBA needed four pages to describe the process (pages 3-6), and its description
24 reflects a degree of frustration. It begins by noting that in February of 1990, the APBA president wrote to
25 the Mayor indicating the union was ready to begin negotiations for a successor. (See Article XXII of the
26 Agreement, quoted above.) The APBA states that the City asked for delay, while it retained a professional
27 negotiator for all 7 City units, which done in late April of 1990. The APBA states that the newly retained
28 negotiator contacted the APBA and indicated that a brief amount of time was needed for preparation. The
29 APBA states that in June of 1990, the APBA president wrote the City's negotiator and suggested a June date
30 to get negotiations started. But the first negotiations meeting was not held until August 1, 1990, "approx-
31 imately one month after the current agreement expired." At a later meeting in August, demands were ex-
32 changed and the meeting was adjourned. The APBA states that the next meeting was in September of 1990,
33 at which time the APBA's demands were discussed in detail, but the City's demands were "sketchy and
34 incomplete", and the City indicated that proposed language and more details would follow. The APBA
35 states that it asked for specifics at subsequent meetings, and did not receive the City's Health insurance
36 coverage proposal, in fact, until the Interest Arbitration hearing in June of 1991.
37

38 As quoted above, the City simply states that "only non-economic issues were addressed." The
39 APBA's description is more detailed (Brief, page 5):
40

41 During the first few meetings, and in the Fall, 1990, [the City's negotiator] continually
42 informed the APBA that he was able to discuss the only non-economic issues, as the
43 Common Council had given him no numbers to discuss regarding the economic issues.

44 As a meeting held on September 18, 1990, [the City's negotiator] informed the
45 APBA that the Common Council agreed to offer a zero (0%) percent raise, and to keep the
46 status quo on all other economic issues. He further indicated that the City would not move
47 from this position as they were financially unable to do so. At that time it was agreed that
48 the City and the APBA would file a joint declaration of impasse. * * *
49
50
51

52
53 2. For convenience, at time in this Opinion that agreement may be referred to as the "expired" agreement, or "expired"
54 contract, without intending to ignore the effect of §209-a.1(e) of the Taylor Law, concerning the maintenance of the status quo after
55 expiration of an agreement.
56

The APBA's description of the process is the reason, at least in part, that the APBA representative on the Panel insisted on a meeting for the executive session of the panel, rather than use of a conference call.

As the APBA observes, "Shortly prior to the arbitration hearing the majority of the non-economic issues were verbally agreed upon, and were therefore not presented to the arbitration panel." (Brief, page 7.) As noted above, counsel for the parties met on August 2, 1991 -- following the hearing --, and clarified the issues to be presented to the Panel. Those issues are clearly identified in the Briefs of the parties, and as the City observes: "All other items have either been agreed to by the parties or withdrawn from consideration." (Brief, page 11.) The issues which remain open, and which the parties addressed in their post-hearing Briefs are as follows:³

ISSUES	PROPOSED BY:
<u>Noneconomic Issues</u>	
[#1] Agency fee indemnification clause	City
[#2] Definition of grievance	City & APBA
[#3] Representation in at all stages of disciplinary proceedings	APBA
[#4] Scheduling of leave time	APBA
<u>Economic Issues</u>	
<u>Wages</u>	
[#5a] General wage increase	APBA
[#5b] Night differential	APBA
[#5c] Investigators' differential	APBA
[#5d] Method and time of payment	APBA
[#6] On-Call pay	APBA
<u>Health benefits</u>	
[#7] Health insurance	City & APBA
[#8a] Sick leave	City
[#8b] Unused sick leave at retirement	APBA
<u>Working expenses</u>	
[#9] Clothing allowance	APBA
[#10] Meal allowance	APBA
[#11] Travel expenses	APBA
[#12] Educational incentive	APBA
<u>Leave benefits (absence with pay)</u>	
[#13] Union leave time	APBA
[#14] Personal leave	APBA
[#15] Bereavement leave	APBA
[#16] Child care leave	APBA
[#17] Carry over of unused leave time	APBA
[#18] Holiday pay	APBA
[#19] Vacation	APBA

Each of the issues will be discussed separately, and at that point the scope of the issues and the respective positions of the parties will be set forth.

3. The City's submitted nine proposals during negotiations, numbering each of them in sequence. They were attached to the City's Petition for Impasse as Exhibit "A". (See J-1.) The initial proposals by the APBA were not numbered, but were packaged in a 42 page document, which was attached to the City Petition for Impasse as Exhibit "B". (See J-1.) There were more than 40 such APBA proposals, grouped in the following general categories: "rewrite"; "wages"; "attendance and leave"; "member benefits"; and "union benefits". The Exhibits to the APBA's Response to the Petition for Impasse (J-2), rearranged the issues as: "issues agreed upon during negotiations" (Exh. 1); "sections of the Agreement not sought to be altered by either party" (Exh. 2); and "proposed language not agreed upon between the parties" (Exh. 3).

While both parties, in their post-hearing Briefs, have continued to refer to the City proposals by their numbers, those numbers will not be used in this Opinion. The proposals submitted by both parties will be identified simply by the subject matter of the proposals, and renumbered in the sequence in which they will be discussed.

IV. REVIEW OF THE ISSUES SUBMITTED TO THE PANEL.⁴

A. NONECONOMIC ISSUES.

1. Agency Fee Indemnification Clause. [Issue #1]

a. The City proposal.

During negotiations the City submitted as its Proposal #9: "Article IV.B. Agency Fee Indemnification Clause (language to be submitted)." (City Petition, Exhibit A (J-1).) Article IV.B, of the current Agreement reads as follows:

B. Agency Fee

The City will deduct annually from the wages of unit members who have not signed up for PBA Dues Deductions an amount of money equivalent to the annual dues of the PBA. Such agency fee deductions will be administered in the same manner as the regular dues deductions.

The PBA agrees to establish such procedures for rebate as required by law.

At the Hearing, the City submitted the following as the language which it proposed to add to the above quoted provision (C-16):

APBA hereby agrees to indemnify the County and hold harmless the County regarding any claims and suits pertaining to agency shop deductions. This includes legal fees and other expenses and costs incurred in defending such claims and suits in any form, and any judgments or awards resulting therefrom.

The City did not submit a rationale in support of this proposal -- with its initial proposal, with its Petition for Impasse, or with its post-Hearing Brief.

b. The APBA response.

The APBA argues that such a provision is not necessary as a part of the contract. At the present time, all employees in the bargaining unit are, in fact, members of APBA, and in its bylaws the APBA has agreed to reimburse any employees who are not members for the wage deduction for the union dues. It adds that if the unlikely occurs, and a suit or claim is brought pertaining to agency shop deductions, "the City would undoubtedly bring or implead the APBA into the action." (Brief, pages 7-8.)

4. The APBA proposals and the APBA post-hearing Brief, more often than not, refer to "APBA members" when describing the proposals. Of course, the union must negotiate these benefits for all members of the bargaining unit. The fact that all members of the unit are currently APBA members may account for the phrasing used. In any case, we will assume that the APBA intends to refer to "unit members", in its proposals, and they will be interpreted as such.

1 **2. Definition of grievance. [Issue #2]**

2
3 **a. The proposals.**

4
5 At the present time, the Collective Agreement does not have an explicit definition of "grievance".
6 Article VI is titled "Grievance/Arbitration Procedure". The preamble to Article VI reads:
7

8 In the event of a dispute between the parties of this Agreement involving the inter-
9 pretation or application of any provision of this Agreement, either party shall have the right
10 to resolve the dispute in the following manner: * * *.

11
12 The City proposes to "Modify definition of grievance to provide as follows" (Petition, Exhibit A, (J-1) City
13 Proposal #4):
14

15 A grievance shall be a claimed violation of a specific provision of this Agreement.
16

17 The APBA proposes to modify Article VI as follows (Response to Petition, Exhibit #3 (J-2); Brief, page 8):
18

19 **1.1 DEFINITIONS**

20 For the purpose of this Agreement, all disputes shall be subject to the grievance
21 procedure as outlines below:
22

- 23 A. A dispute concerning the application and/or interpretation of this Agreement is subject
24 to all steps of the grievance procedure including arbitration, except those provisions
25 which are specifically excluded.
26
27 B. Any other dispute or grievance concerning a term or condition of employment which
28 may arise between the parties or which may arise out of an action within the scope of
29 authority of a department or agency head and which is on (sic) covered by this Agree-
30 ment shall be processed up to and including Step #3 of the grievance procedure, except
those issued for which there is a review procedure established by law.⁵

31
32 The definition in "B" is the proposed new language.
33
34

35 **b. Position of the City.**

36
37 In support of its proposal, and in opposition to the APBA proposal, the City offers this rationale
38 (Brief, pages 17-18):
39

40 It is the City's position that the use of the grievance procedure should be restricted
41 to disputes concerning the application and/or interpretation of the collective bargaining
42 agreement and not to any other items which an employee feels should be subject to a griev-
43 ance procedure.
44

45 **c. Position of the APBA.**

46
47 The APBA argues that "numerous reasons" support its proposal, as opposed to the City's proposal
48 which would be even more restrictive than the present provision, and asserts (Brief, pages 9):
49
50

51
52 ⁵ The APBA proposal attached to its Response (J-2), includes the following: "C. A claim of improper or unjust disci-
53 pline against any ABBA member shall be processed in accordance with the Discipline Article of this Agreement." This is not men-
54 tioned in the APBA's post-Hearing Brief, but in Exhibit #2 to the Response, the APBA indicates a Grievance Article had been agreed
55 to by the parties. And see footnote 5, on page 17, of the City post-hearing Brief.
56

1
2 **The APBA firmly believes that its members should have some input regarding the**
3 **terms and conditions of employment, and a part short of litigation, to redress wrongs**
4 **committed by the City or by the individual superior officers. This is especially important as**
5 **the Rules and Regulations presently in effect in the Amsterdam Police Department were**
6 **written by police management and the City; the APBA was not asked for their input, nor**
7 **were they allowed to given any input to the Rules and Regulations which the APBA**
8 **members are working under. In addition, the APBA has not been able to grieve those**
9 **actions of the City which the APBA believed had adversely affected the terms and condi-**
10 **tions of employment.**

11
12 The APBA seeks to reinforce its argument by reference to other Collective Bargaining Agreements (Brief,
13 pages 9-10):

14
15 The majority of the comparable presented to the Arbitration Panel by both the City
16 and the APBA have expanded definitions of grievances, to include the interpretation of
17 provisions of the contract, and other issues; See, Scotia (C-1,K); Gloversville (C-1,B);
18 Oneida (C-1,D); Iliion (C-1,E); Schenectady (U-5); other municipalities do not actually
19 define grievance, which leaves the definition wide open and easily subject to the interpreta-
20 tion that a grievance can be brought for a violation of the terms and conditions of employ-
21 ment.
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1 **3. Representation at all stages of disciplinary proceedings. [Issue #3]**

2
3 **a. The APBA proposal.**

4
5 The APBA has proposed (Brief, page 21) that "the Bill of Rights" should include the following
6 paragraph:⁶

7
8 An employee shall be entitled to APBA representation at each state of a disciplinary pro-
9 ceeding instituted pursuant to Article [] of this Agreement.

10
11 In support of this proposal, the APBA simply states that it "feels that this is necessary to safeguard its
12 member's rights, especially now that the City apparently refers all legal matters, including disciplinary
13 actions, to Roemer & Featherstonhaugh, P.C., the City's legal counsel." (Brief, page 22.)

14
15 **b. The City's response.**

16
17 The City opposes this proposal, based upon its reading of §75 of the Civil Service Law. The City
18 argues (Brief, page 17):

19
20 * * * [A]n employee is only entitled to representation when disciplinary proceedings have
21 begun pursuant to [§75 of the C.S.L.] During any preliminary stages, including investiga-
22 tions or transmittal of a Disciplinary Warning Notice pursuant to the APBA Rules and
23 Regulations, an employee is not entitled to union representation as discipline has not yet
24 begun. Section 75 * * * is clear as to when union representation and/or other representa-
25 tion kicks in and that is only after the Notice of Discipline has been served upon the em-
26 ployee.

27
28 At the executive session of the Panel, the City representative on the Panel objected to the inclusion
29 of the quotation from the APBA Brief (lines 11-13, above), on the grounds it had not been submitted at the
30 hearing as evidence, which would have been subject to cross-examination. The Chairman of the Panel
31 responded that this page simply set forth the ABPA proposal and the justification articulated in the APBA
32 Brief. He pointed out that the the determination on this issue was made without *any* reliance on any implica-
33 tion which might, or might not, be drawn from lines 12-13, above. As to whether that statement was actual-
34 ly made by the APBA witness at the hearing, the APBA representative on the Panel observed that neither
35 party has requested that a stenographic record be made. Since that executive session, the Chairman has
36 carefully reviewed his handwritten notes, taken at the hearing, and there is the notation with respect to this
37 proposal, that witness Stearns did state "why they wanted" this. Whether Stearns actually made the state-
38 ment in lines 12-13, above, is an open question; but, in any case, as noted that statement had absolutely no
39 influence on the determination.

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41
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47 6. The current Agreement does not contain a "Bill of Rights". The City notes that "When negotiations began, the Associa-
48 tion submitted several proposals to the City. However, the items have been narrowed to items which appear as part of the Response
49 (J-2). Exhibit 3 to the Response details items which have not been agreed upon prior to the Interest Arbitration. We will only ad-
50 dress those issues which are outstanding." Brief, footnote 5, page 17.

51 The confusion is in the fact that in Exhibit 3, to the Response, the proposal concerning a "Bill of Rights" is not included in
52 Exhibit 3, and in Exhibit 1 (matters agreed upon), the "Bill of Rights" provisions appears, including a §B, identical to the proposal
53 quoted in the text to this footnote. And the text of that "Bill of Rights" in Exhibit 1, is different from the "Bill of Rights" proposed
54 originally by the APBA. See page 5, of Exhibit B, to the Petition for Impasse (J-1).

55 Thus, when the APBA simply states in its Brief, page 21, that it proposes to include the proposed language into "the Bill of
56 Rights", this does not inform us of the extent to which some text of a "Bill of Rights" has been agreed to. In any case, the APBA is
57 clearly proposing the inclusion of this language in the Agreement, wherever it might be located.

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4. Scheduling of leave time. [Issue #4]

a. The APBA's proposal.

The APBA proposes to put the following provision in the Agreement (Response, Exhibit 3 (J-2), "Attendance and Leave" proposals):

It is understood and agreed that scheduling of all leave shall be mutually arranged between the Chief of Police or his designee and the individual APBA bargaining unit member.

The APBA offers this rationale (Brief, page 27):

Upon information and belief, this is the current procedure, and it has been working to the satisfaction of the APBA; the APBA does not believe that the City has proposed any change in the current procedure.

b. The City's response.

The City states (Brief, page 20) that "There is no cost associated with this proposal"; however it asserts that "scheduling needs, as it relates to staffing levels, is a non-mandatory subject of negotiations."

B. ECONOMIC ISSUES.**1. The APBA's wage proposals and the City's response.**

In the APBA Response (J-2; Exhibit 3, page 2), the union summarized its proposals with respect to wages.⁷ The separate demands will be described in the following sections. The APBA relies on "comparables" submitted by it, distinguishing the "comparables" submitted by the City; the increase in the workload and increasing complexity of the officers' jobs; disputes the City argument that it is unable to afford the costs of these proposals; and argues that, in any case, the city's ability to pay is not dispositive. These arguments with respect to costs, ability to pay, the nature of the job, and "comparables" cuts across all of the economic issues, and will be presented below, after summarizing the remaining economic issues.

a. General wage increase. [Issue #5a]

The APBA submits the following proposal for a general wage increase:

a general wage increase across the last base salary schedule of the contract which expired June 30, 1990, of eight percent (8%) for each year of the agreement.

b. Night differential. [Issue #5b]

The APBA submits the following proposal with respect to night differentials:

the current night differential of 2.5% over base salary for second shift and an increase in night differential for third shift from the current 2.5% to 7.5% over base salary.

c. Investigators' differential. [Issue #5c]

The APBA submits the following proposal with respect to investigators' differential:

an increase in wages for Investigators or Police Officers assigned to the Detective Bureau of eight percent (8%) over the salary for their current level as an officer assigned to Patrol Division.

d. Method and time of payment. [Issue #5d]

The APBA submits the following proposal with respect to the method and time of payment of wages for members of the unit:

[payment] by check no later than Friday of each week, unless Friday is a holiday, in which case payment will be made prior to the end of the current week. The pay period will cover Sunday through Saturday of each week, inclusive with the payroll checks being distributed on Thursday of each week.

e. The City's response.

The City states that the proposal with respect to method and time of payment is not a "cost" item, and simply identifies it as an "open issue". (Brief, page 19.) The City opposes the other wage proposals for the reason that it is financially unable to provide any economic increases for this contract period. That position cuts across all economic issues, and is summarized below.

7. Thus, the APBA withdrew some of the demands in its original submission. See Petition, Exhibit B, pages 23-24 (C-1).

1 **2. On-call pay. [Issue #6]**

2
3 **a. The APBA's proposal.**

4
5 The APBA's proposal for "on-call" pay (premium rate or compensatory time off) is summarized as
6 follows in Exhibit 3, to the Response (J-2):
7

8 Members, during their off duty time, who's movements are restricted and/or who
9 are required to constantly keep the department apprised of where they can be reached,
10 and/or who are required to carry a device so that the department can reach them at any
11 time, and/or who are placed on an on-call list or schedule, shall be compensated for such
12 off duty time at an hourly rate equivalent to fifteen percent (15%) of their current hourly
13 rate of pay.

14 At the individual member's option, such member may receive compensatory time
15 off in lieu of any payment for such member's on-call time, at the rate of twenty-five percent
16 (25%), or 15 minutes of accumulated compensatory time for each hour such member is on
17 call.
18

19 In its Brief (pages 25-26), the APBA elaborates upon this proposal, and claimed that five unit members are
20 either investigators or assigned to the Investigative Unit, and that during each fifth week, an investigator is
21 obligated to be on-call for a period of seven days. The impact of on-call status is described as follows:
22

23 [The officer on-call] must stay within "beeper" range so that they can be quickly
24 reached if there is an emergency or other incident which requires an immediate presence of
25 an investigator. At this time, the five APBA members are not being compensated for the
26 time that they are required to stay within "beeper" range; by the City's own numbers, every
27 fifth week each APBA member is on call for 88 hours in the week; each member is on call
28 10 weeks per year, or for approximately 880 hours (10 x 88) per year. Each of these
29 APBA members has his movements restricted for approximately 880 hours per year, or 5.5
30 weeks, with no additional compensation.

31 The consequences on the on-call officer's personal life are described in some detail. The APBA notes that
32 in the City of Oneida, \$600 per year is paid in lieu of stand-by pay.
33
34

35 **b. The City's response.**

36
37 The City computes what it estimates the cost of this proposal would be (Brief, pages 23-24), first,
38 for the premium rate; and then a minimum for the compensatory time option, with the actual cost unknown
39 since this would depend upon the times the compensatory time option was taken. Using its computation of
40 the average daily salary under the current salary schedule, the City concludes that the premium rate would
41 require \$1,778.04 additional money for each of the four day detectives, and \$1,857.74 in additional money
42 for the one night detective. It estimates that the compensatory time option would require \$19,950.70 at
43 minimum, times the number of officers needed (an unknown). Without addressing the merits of the pro-
44 posal, the City opposes it on the basis of its general position of no economic increases at this time.
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3. Health benefits.

a. Health Insurance. [Issue #7]

Health Insurance coverage is provided for under the expired Agreement in Article IX.2, which reads as follows (underlining added):

The employer agrees to provide hospitalization and medical coverage for the employee and his family; the plan to be equal to the former Blue Cross Blue Shield with Major Medical New York State Health Insurance Plan or comparable, with prescription drug rider. Under this plan all employees shall contribute \$3.00 per week toward premium costs for said insurance except for new entering police officers, who shall contribute 25% of the cost of said health insurance plan for the first 3 years of their employment, after which time, upon the anniversary of their third year, they shall contribute the same as all other members of the Department.

The actual benefit currently provided, is described by the City (Brief, page 26; italics added):

The City currently provides Blue Shield's Par Plus health insurance and a health maintenance organization option, MVP-3; until September 1990, the major medical deductible for the Blue Shield plan was \$50.00 for individuals and \$150.00 for family coverage. Effective September 1990 that deductible was raised to \$100/300 *with the City reimbursing the additional costs to all unionized employees, pending negotiation.* * * *

(1) The APBA's proposal and the City's response.

The APBA's Health Insurance proposal (Response, Exhibit 3 (J-2)) would repeat the present provision, substituting for the underlined words the following: "or better than health insurance coverage provided for in the agreement which expired on June 30, 1990". In other words, it would continue the present benefit. In addition, the APBA proposal would add the following sentence to the paragraph in the expired contract and an additional paragraph, as follows:

The coverage and contribution rate for employees who retire during this contract term will not change after such member's retirement.

The employer agrees to maintain health insurance coverage under a plan equal to, or better than, that provided for in the agreement which expired on June 30, 1990, for the dependents of APBA members who retire during this contract term and then die; the coverage for such dependents will continue at the same contribution rate as was in effect on the member's retirement date.

The City's response to the APBA's proposal is its proposal, which is set forth in the next section of this opinion. In addition, the City asserts (Brief, page 25):

Any reference to payment of health benefits to retirees is a non-mandatory subject of negotiation. It is the City's position that the Panel has no jurisdiction to address this issue.

(2) The City's proposal and the APBA's response.

Apart from its general position on its inability to provide any economic increases for this contract period, set forth below, the City has specific arguments for its proposal based upon "the need for health insurance cost containment [which] cannot be understated." (Brief, page 29.) The City sets forth, in some detail, the rising costs under the current programs (Brief, pages 26-27):

City Exhibit #12 details the BS and MVP-3 premium costs for family, individual and two-person coverage from 1987 through 1990. As indicated therein, the BS family coverage (for example) rose from \$312.78/month in 1987 to \$358.09/month in 1989. If the City maintained the \$50/150 major medical deductible into 1990, the family rate per month would have been \$373.98 (information provided by Blue Shield of Northeastern New York). By increasing the major medical deductibles to \$100/300, the monthly family premium cost was contained at \$357.91 (C-12). The Individual, Two Person and medicare costs, with retention of the \$50/150 major medical deductible would have been:

Individual: \$155.16/month
Two Person: \$316.10/month
Medicare: \$ 99.13/month

As can be seen, the increase in deductible aided the City in its goal of cost containment across the board.

With respect to the MVP program, City Ex. 12 shows that from 1987 to 1990 the monthly premium cost for family coverage rose \$171.25 while the individual coverage increased by \$66.62.

Against this background introduction, the City submits its proposal:

To contain costs of these skyrocketing premiums, the City proposes a move to MVP-10+. * * * As testified to by Controller Rodd, MVP intends to increase the MVP-3 monthly premium to \$179.62 for single coverage (from its current level of \$138.07) and increase family coverage to \$460.44 (from its current level of \$354.52). If the City undertakes MVP-10+, the family monthly premium would be reduced to \$313.66 and the individual monthly cost would go down to \$122.46 -- a significant savings. (C-14.)

The employee could be incurring an additional cost with respect to the Blue Shield deductible (only if the employee uses the health insurance) and increase in payment for a doctor visit under MVP of \$7.00. * * *

The APBA's response is to characterize the City as "appear[ing] to want the best of both worlds: no increase; in wages, and an increase in health insurance deductibles, co-payments, and other out-of-pocket expenses while benefits decrease." (Brief, pages 10-11.) The APBA briefly describes some of the decrease in benefits, as follows:

[T]he Blue Shield doctor list is more expansive than the MVP list, giving the members greater choice of physicians. With MVP, members and their families must get referrals from their primary care physicians to see a specialist, whereas with Blue Shield this is unnecessary. These differences, as well as the copayment difference of \$7.00 (\$10.00, MVP-10 minus \$3.00, MVP-3) show that the City is attempting to drastically reduce benefits to its employees.

1 **b. Sick leave. [Issue #8a]**

2
3 The expired Collective Bargaining Agreement provides for "Sick Leave" in a section in Article IX,
4 which reads as follows:

5
6 **ARTICLE IX**

7 [Section] 4. A. Sick Leave.

8 (a) Full-time employees in the bargaining unit shall be entitled to unlimited sick leave for
9 line of duty injury in accordance with applicable law.

10
11 (b) For non-line of duty injury or illness, full-time employees in the bargaining unit shall
12 accrue sick leave at the rate of two (2) days per month up to a maximum of 240 days.
13 Sick leave credits shall not be used for retirement purposes, except as set forth in
14 Paragraph 4B hereafter.

15
16 (c) Full-time bargaining unit employees on the City's payroll as of the date of the arbitra-
17 tion award, dated October 1, 1975, shall, in exchange for losing their current right to
18 unlimited sick leave, be credited with an accrued sick leave entitlement of 240 days.

19
20 (d) To avoid abuse of sick leave privileges, the City may, at its own expense, require a
21 covered employee to submit to medical examination for certification of inability to
22 work under the following circumstances:

23
24 (1) When a employee has been absent from work on five (5) consecutive work days;

25
26 (2) When a employee has a pattern of attendance which suggests unreasonable use of
27 sick leave;

28
29 (3) When, during or after a claim period or illness, the City discovers facts which
30 indicate abuse of sick leave;

31
32 (4) An employee who claims sick leave the day before or after a holiday or vacation
33 must submit medical certification of inability to work.

34
35 **(1) The proposals.**

36
37 As stated in its Petition (J-1; Exhibit A, City Proposal #7), the City proposes that "Section 4(a)
38 be modified to provide that:

39
40 Full-time employees who are determined to be injured in the line of duty, shall be entitled
41 to leave as set forth in Section 207-c of the General Municipal Law.

42
43 It is fair to assume that the proposal is to simply modify §4.A(a), and leave the remainder of §4.A intact.
44 (The APBA proposal with respect to §4.B, concerning unused sick leave, is set forth below.)

45
46 The APBA proposes to keep §4.A(a)-(d), as set forth above, unchanged; that is, it wishes to "keep
47 the status quo." (Brief, page 34.)

(2) The positions of the parties.

The City argues that the APBA is "seeking" unlimited sick leave for line of duty sick injury (although it also states that the APBA appears to be "merely restating what is currently in the Agreement), and supports its proposal with the following rationale (Brief, page 22):

It is the City's position that line of duty injury is subject to General Municipal Law ("GML") Section 207-c. This statute was enacted to provide police officers with certain rights if injured in the line of duty. The statute does not mandate or require, or even suggest, that sick leave should be credited for line of duty injury but provides appropriate leave status for those officers injured in the line of duty. It is the City's position that GML §207-c should be applicable to line of duty injury matters and not sick leave provisions.

The APBA responds that the existing provision is adequate and that, in effect, GML §207-c already controls (Brief, pages 11-12):

It is the APBA position that the definition that is presently in the contract is adequate as it states that "full-time employees in the bargaining unit shall be entitled to unlimited sick leave for line-of-duty injury *in accordance with applicable law*". General Municipal Law §207-c is the applicable law. It states, in pertinent part,

"... any member of a police force of any City of less than one million population who is injured in the performance of his duties or who is taken sick as a result of the performance of his duties so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased, and, in addition such municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness..."

General Municipal Law §207-c controls, and no adequate reasons for the City's proposed change were given at any time during negotiations, mediation, or arbitration.

It is not clear whether the City's proposal is grounded in cost considerations, although this may be the implication of its assertion that the APBA seeks "unlimited" sick leave. Nevertheless, the discussion and determination with respect to this proposal concerning sick leave will be deferred to the discussion and determinations of the economic issues, generally.

c. Unused sick leave at retirement. [Issue #8b]

(1) The APBA proposal.

A provision concerning unused sick leave is included in Article IX of the expired Collective Bargaining Agreement, as Section 4.B, following the Section A set forth above. The APBA's proposed revisions of that Section are indicated as follows: Deletions are indicated by [underlined words in brackets]; additions are indicated by *italics*. Also, the APBA would apparently make it paragraph (e) of Section 4.A. (Brief, page 34.)

[B.] E. Unused Sick Leave.

1. A unit member who officially retires under the rules of the NYS Policemen and Firemen Retirement System shall be entitled to be paid for [1/4th] 1/3 of his accumulated sick leave days at his regular rate of pay at the time of retirement. *Said retiring APBA bargaining unit member has the option to use the accrued sick leave in lieu of a lump sum, at a rate of 1/3 of the unused days.⁸*

The APBA states (Brief, pages 34-35) that six unit members will be eligible for retirement during the proposed two year contract period, and that any cost "would be more than offset by the advantages to the City in preventing any leave abuse by the APBA members, as the proposal substantially increases each member's incentive to save his sick leave so that he can receive additional monies at his retirement." The APBA also notes that all of the six members eligible to retire during the contract period might not do so, so that the immediate cost would be less.

(2) The City's response.

The City notes that this proposal would increase the number of days which might be paid out upon retirement from 60 to 80, and for four unit members eligible to retire, it computes the cost as an additional amount equal to \$8,787.00. (Brief, page 22 and Appendix K.)

8. The final sentence of the Section now reads: "This benefit shall be paid to the designated insurance beneficiary of a unit member who dies while in the employ of the City." It is not clear from the APBA documents, but it may intend that this sentence be retained and placed as paragraph "2" under "E. Unused Sick Leave."

1 **4. Working expenses.**

2
3 **a. Clothing allowance. [Issue #9]**

4
5 **(1) The APBA's proposal.**

6
7 The expired Collective Bargaining Agreement contains a provision concerning "clothing
8 allowance", which reads:

9
10 **ARTICLE XIV**

11 A. Clothing allowance for the Police Department shall be \$450.00 per year, effective
12 on July 1, 1987. The City shall have the option to institute and administer a quarter
13 master program in lieu of a clothing allowance and in the event that program is not instituted
14 during any one-half year of this contract, the clothing allowance shall continue at the rate
15 of \$450.00 per year and one-half of such payment is to be made on the 1st day of each one-
16 half year segment.

17
18 In its post-hearing Brief, the APBA has proposed an increase in the above allowance and a new
19 provision for new hires (Brief, page 24):

20
21 at a minimum, in increase in the clothing allowance to 2.5% of starting salary per year,
22 payable in two equal payments.

23
24 an additional clause for new hires, stating that they will be entitled to a clothing allowance
25 of 5% of starting salary. Said payments should be a special starting clothing allowance to
26 be paid to such APBA member prior to graduation from the Basic School for Police, and
27 available to such APBA member as a single payment in addition to any other Clothing
28 Allowance.

29
30 The APBA argues that the price of clothing which a police officer must purchase has "greatly in-
31 creased" since the last contract was entered into in 1987, and that the clothing allowance should be modified
32 "to reflect this escalation". It argues that the current allowance is "woefully inadequate" in comparison to
33 the APBA "comparables", and some of the City "comparables". And it argues that the initial outlay for a
34 new member is "extremely high". The APBA adds (Brief, page 25):

35
36 Based upon information the APBA received from the City's legal counsel, the proposed
37 increase would cost the City \$725 more per year; they also indicated that they do not expect
38 to hire any new members immediately and did not address the second issue.

39
40 **(2) The City's response.**

41
42 The City does not address this proposal by the APBA, in its Brief. It does not list the issue among
43 those "considered open issues for the Association" (Brief, page 11), where it states: "It is the City's further
44 understanding that all issues not listed above or in the Response (J-2) have either been agreed upon by the
45 Parties or withdrawn from consideration by the Association." Later, the City states (Brief, footnote 5, page
46 17): "the items have been narrowed to items which appear as part of the Response (J-2). Exhibit 3 to the
47 Response details items which have not been agreed upon prior to the Interest Arbitration. We will only
48 address those issues which are outstanding." Exhibit #3, in the Response (J-2) does not include any refer-
49 ence to "clothing allowance". Therefore, it is understandable that the City did not address this proposal, in
50 its post-hearing Brief. However, we may assume that the City would oppose the proposal based on its
51 general position about cost limitations, whatever other reasons it might have.

1 **b. Meal allowance. [Issue #10]**

2
3 **(1) The APBA's proposal.**

4
5 The expired Collective Bargaining Agreement contains a provision concerning "meal allowance",
6 which reads:

7
8 **ARTICLE XIV**

9 C. Members of the Police Department shall receive a meal allowance of \$4.00
10 when required to work four (4) hours or more overtime, upon presentation of receipts.

11
12 The APBA has proposed the following revision of the above provision (Response, Exhibit 3 (J-2)):

13
14 A. APBA members shall be reimbursed for meals at a rate not to exceed \$10.00
15 per APBA member per meal, under the following circumstances:

- 16 1. When an APBA member is required to work four (4) or more hours over-
17 time;
18 2. When an APBA member is required to attend any out-of-the City function
19 for four (4) or more hours.
20

21 The APBA's rationale for this proposal is that "a meal allowance of \$10.00 is required to adequately
22 compensate them when they are required, due to the exigencies of the job, to obtain meals while they are
23 working." (Brief, pages 22-23.)
24

25 **(2) The City's response.**

26
27 The City notes that the proposal would increase the allowance by \$6.00 per meal; that, currently,
28 the City pays for 250 meals, so that this would be "an additional cost of \$1,500.00 per year." (Brief, page
29 25.) Thus, the basis for rejecting the proposal is the City's general position on cost containment, discussed
30 below.
31

32 **c. Travel expenses. [Issue #11]**

33
34 **(1) The APBA's proposal.**

35
36 The expired Collective Bargaining Agreement contains a provision concerning "travel expenses",
37 which reads:

38
39 **ARTICLE XIV**

40 D. In the event an employee is order to use his personal car on business of the
41 City, he shall receive mileage therefor in the amount of \$.23 per mile.
42

43 The APBA proposes that the allowance be increased to \$.27 per mile. It's rationale is that: "The
44 allowable IRS deduction for mileage for 1991 is \$.27½, and the APBA feels that its members should receive
45 at least \$.27 per mile, which is less than the IRS deduction, in order to adequately compensate them for out-
46 of-pocket expenses." (Brief, page 22.)
47

48 **(2) The City's response.**

49
50 The City opposes this proposal on the general cost containment principle, discussed below, and
51 states specifically that (Brief, page 25): "In 1990, the police used approximately 312 miles. An additional
52 4¢ per mile would have cost the City \$12.48. To figure out the exact cost (for future) of this proposal
53 would be impossible as the amounts of miles traveled for which reimbursement is appropriate is speculative
54 at best."
55

d. Educational incentive. [Issue #12]

(1) The APBA's proposal.

The expired Collective Bargaining Agreement contains a provision concerning "Education", which reads:

ARTICLE XVIII - EDUCATION

Educational incentives are as follows:

- A. \$225.00 per year for certification or successful completion of thirty (30) hours of college level Police related studies;
- B. \$300.00 per year for degree or successful completion of sixty (60) hours of college level Police related studies;
- C. \$450.00 per year for degree or successful completion of one hundred twenty (120) hours of college level Police related studies (Criminal Justice);
- D. The total amount payable, in any event, shall not exceed \$450.00.

The APBA has proposed the following text for an "Educational Incentive" provision (Response, Exhibit 3 (J-2)):

1. Education incentives are as follows:
 - a. One and one quarter percent (1.25%) of starting salary per year for certification or successful completion of thirty (30) hours of college level, police-related studies;
 - b. One and three quarter percent (1.75%) of starting salary per year for certification or successful completion of sixty (60) hours of college level, police-related studies;
 - c. Two and one half percent (2.5%) of starting salary per year for certification or successful completion of one hundred twenty (120) hours of college level, police-related studies.
2. Educational incentives shall be pro-rated equally amongst the pay periods in each calendar year.

The APBA argues that this proposal concerns a matter which "is extremely important *to the City*", because it better prepares the officers, and "therefore" it should be supported. (Brief, page 23, italics added.) It notes the cost documentation it had received from the City, and concludes that "The actual increase payable by the City would total \$82, plus FICA tax."

(2) The City's response.

The City opposes this proposal on the general cost containment principle, discussed below, and identifies the cost associated with this proposal as follows. (Brief, pages 24-25.) It points out that no one is in the category under 1a of the proposal, so that the cost cannot be calculated. Referring to the two officers currently within item 1b, the City computes the additional cost to be a total of \$712.00. Referring to the one officer currently within item 1c, the City computes the additional cost to be \$25.00.

The City also observes that the proposal would require these incentives to be calculated into the weekly salary, which would require an additional .65% be added for FICA. "Currently these incentives are paid on voucher and do not cost any FICA or additional retirement monies to the" City.

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5. Leave benefits.

a. Union leave. [Issue #13]

(1) The APBA's proposal.

The expired Collective Bargaining Agreement contains a provision concerning leave for union purposes, which reads:

ARTICLE XXIII

The President of the [APBA], or his designee, shall be entitled to twelve (12) paid days annually to attend to union business.

The APBA has proposed the following revision to the quoted provision (Response, Exhibit 3 (J-2)):

The APBA President, or his designee, shall be entitled to not more than twenty four (24) days annually to be paid at the individual's regular rate of pay to attend to APBA Obusiness. The APBA President may designate any or all of this leave in whole hour increments.

There is more of the same, and the APBA concludes that the number of days of this allowance should be increased "in order to cover the increase in activity which has been brought about through no fault of the Union."

(2) The City's response.

The City observes that the proposal would result in an additional 12 of this category of leave annually. Using the current base salary of the incumbent president of the APBA, the City computes the cost of this proposal as being \$1,319.00 to the City per year. (Brief, page 25.) Apart from any other reasons, the City opposes this proposal on cost containment grounds, discussed below.

b. Personal leave. [Issue #14]

(1) The APBA's proposal.

"Personal leave" is currently provided for in Article XIII of the expired Collective Bargaining Agreement. The APBA's proposed revisions of that Article (Brief, page 31) are indicated as follows: Deletions are indicated by underlined words in brackets; additions are indicated by *italics*.

ARTICLE XIII

C. Personal Leave. Each full-time employee in the bargaining unit shall be entitled to take three (3) *five (5)* days of personal leave with pay to attend to pressing personal matters. *Bargaining unit members requesting emergency personal leave shall be given preferential treatment over other leaves except for those other leaves taken in blocks of four (4) days or more.* Employees must give at least one week's written 24-hours notice to the Department of *his or her* intention to use such leave, except in cases of dire emergency. Requests for personal leave shall be in writing and shall be promptly responded to in writing.

The APBA characterizes the current benefit as "woefully inadequate [in this day and age] for the family and other emergencies which unexpectedly arise each year." (Brief, page 31.) It also relies upon five City comparables (Herkimer, Ilion, Johnstown, Montgomery County Sheriff), which it states give four or more personal leave days. And both Rotterdam and Scotia are said to pay higher wages to police officers and given five days personal leave.

(2) The City's response.

The City computes the cost of two additional personal leave days (if utilized by each of the employees), under the current salary schedule, using its computation of the average daily salary, as \$5,596.55. Again, the City opposes this proposal for additional personal leave days on cost containment grounds, discussed below.

1 **c. Bereavement leave. [Issue #15]**

2
3 **(1) The APBA's proposal.**

4
5 "Bereavement leave" is currently provided for in Article VII of the expired Collective Bargaining
6 Agreement. The APBA's proposed revisions of that Article (Brief, pages 31-32) are indicated as follows:
7 Deletions are indicated by underlined words in brackets; additions are indicated by *italics*.

8
9 **ARTICLE VII**

10 Full-time employees in the bargaining unit shall be granted a maximum of [four
11 (4)] *ten (10)* days leave of absence with pay for absences due to death in the employee's
12 immediate family. Immediate family means spouse, natural child or step-children, parents,
13 brother, sister, father-in-law, or mother-in-law, brother-in-law, or sister-in-law. *Also,*
14 *adoptive child, foster child, step-parent, foster parent, grandparent, grandchild, and rela-*
15 *tive living in the APBA member's household. [A leave of absence not to exceed one (1)*
16 *day may be granted of any other blood relative.]*

17
18 The APBA's rationale is limited to the statement that (Brief, page 32):

19
20 This type of leave is obviously an "as needed" provision. APBA members who lose a close
21 relative, including a grandparent, grandchild, adoptive or foster child, etc. need time to
22 recover mentally as well as take care of the myriad of details that inevitably arise.

23
24 **(2) The City's response.**

25
26 The City computes the cost of six additional such leave days as being \$16,790.00, using its compu-
27 tation of the average daily salary under the current salaries. The City recognizes that it is referring to the
28 maximum possible cost, when it adds that "This is the anticipated cost should every one of the bargaining
29 unit members use the additional six days bereavement leave." (Brief, page 22.) It does not try to compute
30 the hypothetical cost if the expanded categories are taken into account. Again, the City opposes this propos-
31 al for additional bereavement leave days on cost containment grounds, discussed below.

1 **d. Child care leave. [Issue #16]**

2
3 **(1) The APBA's proposal.**

4
5 The APBA proposes the addition of the following provision to the Collective Bargaining Agree-
6 ment, which would deal with this matter (Brief, page 30):
7

8 APBA members shall be entitled to up to thirty (30) days paid leave to care for a
9 newborn or newly adopted infant. Any other leave credits, including sick leave, can be
10 used to care for a newborn or newly adopted infant. Members shall be entitled to take an
11 unpaid leave absence for the purpose of caring for a new born or newly adopted infant; said
12 APBA member shall be guaranteed reinstatement for up to one (1) year.
13

14 The APBA offers the following rationale (Brief, page 30):
15

16 When a child is born or adopted, one of the most important aspects to his or her
17 development is bonding with his parents. Including the child care leave provision in the
18 contract would enhance this with a maximum cost to the City of \$3,173.64 per man. In any
19 event, many of the 27 bargaining unit members have grown families and most will not need
20 to take advantage of this clause; the benefits to those few members who do use child care
21 leave, and their families far outweighs any potential loss to the City.
22

23 **(2) The City's response.**

24
25 The City computes the "potential" cost of this proposal as \$83,948.40. It reached that total by the
26 following method (Brief, page 23; italics added):
27

28 The cost of 30 additional leave days is as follows: 30 days x \$103.64 = \$3,109.20 x 27
29 employees = \$83,948.40, as a potential cost to the City *should each member of the bar-*
30 *gaining unit* request this leave time.
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32 Again, the City opposes this proposal on cost containment grounds, discussed below.
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e. Carry over of unused leave time. [Issue #17]

(1) The APBA's proposals.

The APBA proposes the addition of the following provision to the Collective Bargaining Agreement, which would deal with this matter (Brief, page 27):

All unused leave days are carried over only into the subsequent calendar year, at the Chief's discretion.

The APBA offers the following rationale in support of this proposal (Brief, page 27):

[T]he City of Amsterdam Police Department is extremely short staffed, and therefore there are times when leave cannot be used by the Police Officers because of training classes, leave used by members with more seniority, sick leave, or because of leave due to on-duty injuries. The APBA feels that as the shortage in staffing is not caused by the APBA members, but rather by the City, that the APBA members should be able to carry over all unused leave days into the subsequent calendar years.

The APBA finds support in both the City's comparables (Rensselaer, Herkimer, and Saratoga) and the Union's comparables (Schenectady and Scotia).

(2) The City's response.

The City opposes this proposal on cost containment grounds, although it the cost is said to be difficult to calculate (Brief, page 19):

[I]t is unknown whether there will be any leave days unused which can carry over into a subsequent year. If in fact the leave days are carried over and subsequently used, then there will be an additional cost to the City, arguably, in terms of overtime for manning the days which are left vacant by individuals taking their leave.

6. Holiday pay. [Issue #18]

a. The APBA's proposal.

"Holidays" are currently provided for in Article XII of the expired Collective Bargaining Agreement. The APBA's proposed revisions of that Article are indicated as follows: Deletions are indicated by underlined words in brackets; additions are indicated by *italics*.

ARTICLE XII - HOLIDAYS

A. Covered department employees shall receive compensatory time for the [twelve (12)] thirteen (13) guaranteed holidays per year. It is understood that the [twelve] thirteen (13) days to be given to each member will be mutually arranged with the Chief of the Police Department and it is further understood that the days taken are in lieu of compensation therefore (sic). [However, for the Good Friday holiday only, the unit member shall have the option of compensation in cash or compensating time off.]

B. However, the unit members shall have the option of compensation in cash or compensatory time off for all holidays.

C. APBA members are to decide on payment for all unused holidays prior to the second pay period in November of each year, said payment to be made in the first pay period in December of each year.

[B.] D. Employees shall work on holidays according to the natural rotation of their schedules [and shall receive no extra compensation whether or not they work on any holiday in a given calendar year.] , *and shall receive double time if they actually work on designated thirteen (13) holidays.*

[C.] E. For information purposes, the parties intend that the following days comprise the [twelve (12)] thirteen (13) paid holidays referred to in Paragraph A above:

- a) New Years Day
- b) *Martin Luther King Day*
- c) Lincoln's Birthday
- d) Washington's Birthday
- e) Good Friday
- f) Easter
- g) Memorial Day
- h) Independence Day
- i) Labor Day
- j) Columbus Day
- k) Veteran's Day
- l) Thanksgiving Day
- m) Christmas Day

The APBA's rationale for this proposal is limited to stating that "There are other municipalities in the area who have additional vacation days.⁹ In addition, some municipalities will pay time and one-half when holidays are actually worked by the police officers."¹⁰ (Brief, pages 29-30.)

9. Citing Little Falls from the City comparables, and Rotterdam from the Union comparables.

10. Citing Canajoharie from the City's comparables, and Scotia from the union's comparables.

b. The City's response.

The City computes the cost of the proposal to pay double time for those working on holidays as follows, without include the addition of Martin Luther King Day. It states that 5 holidays are designated as "major", on which 12 officers work; and 7 holidays are designated as "minor", on which 21 officers work. Using its computation for the average daily salary for the bargaining unit, it concludes that the double time requirement would cost an additional \$21,453.48, under the current salaries. (Brief, page 20, and table in Appendix J to that Brief.) Using the same average daily salary figure, the addition of the Martin Luther King Day would add \$2,798.28 annually, to Holiday costs. Again, the City opposes this proposal for Holidays on cost containment grounds, discussed below.

Referring to Paragraph B in the APBA proposal, the City states that "This proposal was not discussed at the bargaining table. The City believes that the Association seeks to receive double pay (if taking cash option) for all holidays." (Brief, page 20.)

7. Vacation. [Issue #19]

The expired Collective Bargaining Agreement contains a provision concerning vacation time, which reads as follows:

ARTICLE XIII

A. Vacations shall follow the present existing procedure which is understood to be as follows for police: During the first year of employment he shall be entitled to one (1) week of vacation; after the first year to the fifth year fourteen (14) days; from five (5) years to ten (10) years one (1) day a year shall then be added to his vacation time until a maximum of twenty-one (21) days vacation to which he shall be entitled after ten (10) years.

In its post-hearing Brief, the APBA does not address the matter of vacation time. However, in Exhibit 3, of the APBA Response (J-2), there is the following proposal which would increase vacation time (page 4, of unnumbered pages):

Vacation

A. New hirees receive one (1) day for each two (2) full months remaining in the calendar year, from their date of appointment.

B. Commencing on the first day of January of the year following an APBA member's appointment, such APBA member shall be entitled to fifteen (15) paid vacation days per year.

C. Commencing on the first day of January of the fifth (5) year following an APBA member's appointment, such APBA member shall be entitled to one (1) additional vacation day per year, until a maximum of thirty (30) days is reached.

In its post-hearing Brief (page 21), the City has responded to, and opposed this increase in vacation time. The City attached a table (Appendix E), which it claims show that the current vacation schedule is in line with those in comparable jurisdictions. And it opposes this proposal on cost containment grounds, discussed below, asserting that the City is unable to incur any additional leave time.

V. DISCUSSION AND DETERMINATION OF THE ISSUES.

What is centrally at stake in this Arbitration, and the focus of the differences between the parties, is readily apparent. The APBA began the Conclusion of its Brief with this statement (Brief, page 37):

The issue of wages is the most important issue in this Arbitration Hearing; the City of Amsterdam throughout negotiations, has offered a zero (0%) percent wage increase and has tried to limit the medical benefits which are currently being provided under the contract which expired on June 30, 1990.

The City, in turn, concludes its Brief with the following statement (Brief, page 29; the capitals are the City's):

* * * THE CITY MAINTAINS THAT IT IS FINANCIALLY UNABLE TO PROVIDE ANY ECONOMIC INCREASES FOR THIS CONTRACT PERIOD. FURTHERMORE, THE NEED FOR HEALTH INSURANCE COST CONTAINMENT CANNOT BE UNDERSTATED. ADOPTION BY THE PANEL OF THE CITY'S HEALTH INSURANCE PACKAGE AND NEGOTIATIONS PROPOSAL IS SUPPORTED BY THE COST DATA PROVIDED.

Thus, cutting across and dominating almost all of the open issues, is the matter of the City's "financial ability to pay" -- to quote the words of the statute. The City contends that it has proven its "inability to pay". The APBA sharply contests the City's conclusion, and argues that the matter of ability to pay is not dispositive of the matter.

The APBA, in turn, seeks to support its demands by comparison of benefits in what it claims are the most relevant comparable municipalities. The City responds with its own comparisons, broadening the scope of what it claims are relevant comparable municipalities.

These two matters: the City's "financial ability to pay", and comparison of surrounding municipalities, are very important with respect to almost all of the open issues. Therefore, before Discussion and Determination of the open issues, it is best to summarize the arguments of the parties on these two questions.

A. THE COSTS AND THE CITY'S "FINANCIAL ABILITY * * * TO PAY".

1. The City's position.

The City bleak picture is based upon its analysis of the current economic situation, with declining employment and loss of economic base in the City; declining State aid; and City's declining tax revenue (based upon a shrinking tax base and the City's taxing capacity; and upon sales tax revenues).

With respect to the economic base in the City, and the declining rate of employment, the City notes the interaction, stating (Brief, page 3):

City Controller, Agnes Rodd, testified that the City has faced much loss with respect to businesses located within City limits. For example, Coleco laid off about 700 people and several stores in the Amsterdam Mall have closed. Haasbro has cut back on its number of employees and GE has laid off many of its workers. In terms of new business, a Super 8 Motel has been constructed and a photo film processing plan has come into the City's jurisdiction. In terms of residential construction, there have been approximately eight new homes built over the past two to three years.

In its Exhibit #4, the City has submitted data from the New York State Department of Labor, Division of

Research and Statistics:

Area/County	Unemployment Rate	
	Apr. 1991	Apr. 1990
New York State	7.3	4.8
Albany-Schen-Troy Area	5.8	3.5
Montgomery	9.9	6.9
Rensselaer	6.1	3.8
Saratoga	6.1	3.8
Schenectady	5.5	3.5
Utica-Rome Area		
Herkimer	9.1	5.5
Oneida	7.0	4.3

The City points out that, as of April of 1991, the unemployment rate in the County of Montgomery -- in which the City of Amsterdam is located -- was up 3% from the same period in 1990.

While the state aid figures were not yet final, the City stressed the negative predictions -- or warnings -- coming from Albany. It states (Brief, page 4):

Controller Rodd * * * testified concerning State Aid Per Capita received by the City since 1987.¹¹ * * * State Aid Per Capita reflects monies received once a year from New York State based upon the City's population. In 1987, 1988 and 1989, the City received (and budgeted) roughly \$1.579 million * * *. For the City's current fiscal year (July 1990 through June 31, 1991), the City budgeted \$1.563 million * * *, based upon information received from the State Comptroller's Officer (testimony of Controller Rodd). Thereafter, in December of 1990, the State Legislature acted to reduce aid to local governments by significant amounts. Amsterdam anticipated a loss of approximately \$400,000.00 as a result of this Legislative action (Testimony of Controller Rodd). Furthermore, according to the testimony of Association witness Ed Fennel, every city, including the City of Amsterdam, could expect to lose between 42-43% of its State aid funding from previous years.

The City described the impact of this anticipated loss upon the budgeting undertaken by the City (Brief, pages 4-5):

Due to the severe gap created by the State Legislative action, the City was forced to appropriate or invade its General Fund Balance to maintain levels of services (Testimony of Controller Rodd). The amounts appropriated are those amounts which the municipality hopes to convert into receivables sometime during the budget period (Testimony of Controller Rodd). These receivables appear in the form of taxes received and other monies owed to the municipality.

As indicated, the Fund Balance invaded is part of the City's General Fund. The General Fund is the Fund out of which general expenses, including public safety functions, are paid. These public safety functions include salaries for police officers. When the General Fund is invaded, the result is less money available to pay for items such as salary. Due to the severe loss in State Aid, the General Fund is not amply equipped to meet the salary and other economic needs of the City.

¹¹ City Exhibits 5 through 8 are, respectively, copies of the City's Budget for a four year period: 1987-1988, 1988-1989, 1989-1990, and 1990-1991. The data referred to in the quotation is from those Exhibits.

The City described actions taken to face such anticipated budget deficiencies, as follows (Brief, page 5):

To be prepared for such deficiencies, the City has what is known as a contingency fund (Testimony of Controller Rodd). According to the testimony of Controller Rodd, each fund, by law, is required to have a contingency. This "contingency" money is used if and when money is depleted in a particular budgetary line item. In the past, according to Controller Rodd, the Contingency Fund has been used to pay unexpected increases in Niagara Mohawk bills as well as other unanticipated expenses. Compared to previous years, the contingency fund has increased due to previous budget short falls. To cover the short falls, the budget is amended to provide for additional line item funding from contingency monies.

The City's situation with respect to its taxing authority is unique in New York State, at this particular time. The City describes the situation, as follows (Brief, pages 5-6; italics added):

The City tax rates and levies further exemplify the City's inability to meet the [APBA's] economic demands. In 1987-88, the City tax rate was \$44.65 per thousand; in 1988-89, it was \$54.31 per thousand; in 1989-90, it was \$60.82 per thousand; and in 1990-91, it was \$52.15 per thousand.¹² * * * In 1990, the tax rate dropped significantly due to a taxpayer imposed "1% tax cap" (Testimony of Controller Rodd). In 1988-89, the tax rate went from \$54.31/thousand to an all-time high of \$60.82 per thousand in 1989-90. This increase was caused by negotiated salary and fringe benefit packages (Testimony of Controller Rodd). In response to this major increase in taxes, *the taxpayers, via petition, forced the legislative body to place on (an election) ballot a referendum concerning the imposition of a 1% tax cap. Under the current 1% tax cap, the maximum tax rate permissible for the upcoming 1991-1992 fiscal year is \$54.32 per thousand.* This 1% tax cap, as explained by Controller Rodd and Mr. Fennell, restricts the amount of money which a municipality can raise for additional revenues. *The New York State constitutional taxing limit is set at 2%.* With a 2% tax cap, the City would have a current tax margin of \$2,246,395.00. Under the 1% taxpayer imposed tax cap, the tax margin for the City is \$6,582.00 (a difference of approximately \$2.24 million). * * *

The City asserts that its situation resulting from the taxpayer imposed tax cap, is compounded by its shrinking real property tax base. It has submitted, as City Exhibit 9, a form which is filed annually with the New York State Comptroller's office. It covers the fiscal year July 1, 1990 through June 30, 1991. It states that the most recent assessment roll on which taxes for the current year will be levied was March 1, 1990, and that the "taxable assessed valuation" of the city is \$53,198,901. The following figures appear on the form:

For Fiscal Years Ending	Taxable Assessed Valuation of Real Estate	State Equalization Rate	Full Valuation of Taxable Real Estate
	Column (1)	Column (2)	Column (3)
9. 6-30-86	53,299,744	26.67	199,849,059
10. 6-30-87	53,262,574	25.18	211,527,299
11. 6-30-88	53,166,683	24.02	221,343,393
12. 6-30-89	53,300,463	22.78	233,979,205
13. 6-30-90	53,198,901	21.01	253,207,524

¹². See footnote 11, above.

Below the above figures, on the form, the following computations appear:

14.	Total Full Valuations (column 3, lines 9 through 13	1,119,906,480
15.	Five-Year Average Full Valuation (1/5 of line 14)	223,981,296
16.	2% of Five-Year Average Full Valuation	4,479,626
17.	Total Exclusions	560,002
18.	Maximum Taxing Power (Line 16 plus Line 17)	5,039,628
19.	Tax Levy - General City Purposes	2,793,233
20.	Constitutional Tax Margin (Line 18 minus Line 19)	2,246,395

A handwritten notation on the bottom of the form indicates the impact of the City 1% tax cap. Line 18 represented the State constitutional tax limit of 2%. When the self-imposed 1% cap is substituted for that figure resulting from the state limit, then the computation is as follows, as the handwritten computation indicates:

+ Line 18.	2,799,815
- Line 19.	2,793,233
= Line 20.	6,582

This is the computation upon which the conclusion in the paragraph quoted above (page 31, lines 17-32) is based.

Beyond the consequence of the self-imposed tax limitation, the City points to other factors reflected in the declining tax base, represented in the data on City Exhibit 9 (Brief, pages 6-7; italics added):

[W]e can see that the taxable assessed valuation of real estate has declined since 1986. As explained by Controller Rodd, this reflects a decrease in total taxable value of real estate, destruction of buildings, depreciation of equipment and challenges to property tax assessments. In the area of challenged tax assessments, there have been some significant victories for the taxable entity. For example, New York Telephone received a 25% tax reduction when it challenged its present tax assessment and Niagara Mohawk and First American Bank also received reductions. These three entities are major property holders within the City limits (Testimony of Controller Rodd). As a result of these reductions, less property is available to levy against in the future.

The City states that it anticipates continued problems with respect to tax delinquencies and challenges to the assessment value (Brief, pages 7-8):

With respect to tax levies, the City billed out tax levies for 1987, in the amount of \$2,373,892.00; in 1988 the City billed out \$2,894,747.00; in 1989 the City billed out \$3,243,414.00; and in 1990 the City billed out \$2,793,233.00 (Testimony of Controller Rodd).¹³ * * * *The significant drop from 1989 to 1990 was caused by the imposition of the 1% tax cap.* Even though the City billed out these amounts, it did not collect these amounts; the delinquency rates are as follows: in 1987 there was an 11% delinquency; in 1988: 10% delinquency; in 1989: 7% delinquency and 1990: a 10% delinquency (Testimony of Controller Rodd). The 1991-1992 anticipated tax levy is \$2,810,000.00. However,

¹³. See footnote 11, above.

1 the City is awaiting rulings concerning tax assessment challenges by New York Telephone
 2 and other similarly situated entities. A further decrease in the tax levy will cause less
 3 money to be available for use in City-related matters. The only way to recoup these losses
 4 is to find other revenue sources, if any are available; appropriate monies from the fund
 5 balance up to the amount believed convertible to cash; cut appropriations and/or cutback on
 6 services and jobs. (Testimony of Controller Rodd).
 7

8
 9 In addition to the declining revenue from the real property tax, the City points to a drop in revenue
 10 from that alternate source, the sales tax (Brief, page 8):
 11

12 The City has also seen a significant drop in Sales Tax Revenues. According to the
 13 "Revenued Posting of May 31, 1991"¹⁴ * * *, the City estimated revenues in the amount of
 14 \$1,475,000.00 in sales and use tax. As of the end of the month of May, only
 15 \$1,199,845.97 was received, leaving a balance of \$275,154.03 to be collected before the
 16 June 30 fiscal year end. According to testimony of Controller Rodd, normally by the
 17 beginning of June, the City has well-over \$120,000.00 in hand. This year, sales and use
 18 tax receipts only amounted to \$60,000.00. According to Controller Rodd, this was a result
 19 of GE layoffs, Amsterdam Mall store closings, including the Carl Company, reductions in
 20 car sales, recession and State layoffs. Based on these figures, there will be a short fall in
 21 sales and use tax revenues.
 22

23
 24 Given the City's position that not a single additional dollar is available for settlement of this im-
 25 passe, it is not surprising that it has not totaled up the cost of the several economic issues. With respect to
 26 the wage proposals (page 12, above), the City computes the cost of the APBA general wage increase
 27 demand of 8% as being \$58,203 for the first year, and \$62,863 for the second year. (Brief, page 18,
 28 Appendix H.)¹⁵ It computes the cost of the night differential as being \$10,590 (Brief, pages 17-18); and the
 29 cost of the investigators' differential as being \$27,032 (Brief, page 19, Appendix I). The costs of the
 30 APBA's on-call pay demand is said to be uncertain (page 13, lines 37-44, above). It insists that its Health
 31 Insurance proposal is necessary to simply contain rising costs (page 15, above). No cost is computed for the
 32 sick leave proposals (page 17, above); but the unused sick at retirement proposal is computed to cost an
 33 additional \$8,787 (page 18, lines 28-30, above). We have no cost estimate of the clothing allowance pro-
 34 posal (page 19, above). The meal allowance is computed to cost \$1,500 annually (page 20, lines 27-29,
 35 above); but it claims it is impossible to estimate the cost of the travel expense proposal (page 20, lines 50-
 36 54, above), and the educational incentive proposal (page 21, lines 39-43, above). The union leave proposal
 37 is estimated to cost \$1,319 annually (page 22, lines 46-49, above); and the personal leave proposal would
 38 cost \$5,595 annually (page 23, lines 27-30, above). The City does not attempt to put a cost on the bereave-
 39 ment leave proposal (page 24, lines 26-31, above); and its estimated cost of the child care leave is largely
 40 speculation (page 25, lines 25-30, above). It claims the carry over of unused time is difficult to cost out
 41 (page 26, lines 25-31, above); but puts a total cost of \$24,251 on the holiday pay proposal (page 28, lines 3-
 42 10, above). The City does not estimate the cost of the vacation proposal (page 28, lines 43-46, above).
 43

44 As stated, the City has not put a total cost figure on the package of proposals, either for one year or
 45 two years, or for a combination of two years. However, a quick addition of the estimates it has made would
 46 indicate it estimates the total package as costing more than \$140,000 annually.
 47
 48
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50
 51 ¹⁴. See footnote 11, above.

52
 53 ¹⁵. Not surprisingly, given the large amount of dollar figures, there are some minor inconsistencies between some of the
 54 Exhibits. For example, the current salaries listed in Appendix H and the current salaries listed in City Exhibit 11. But the differences
 55 are minor, and do not significantly affect the general conclusions.
 56

2. The APBA's position.

The APBA sharply contests the City's position that it is financially unable to pay for the union proposals, and -- in any case -- insists that the city's ability to pay is not dispositive.

The APBA expressed its skepticism about the financial condition of the City (Brief, pages 18-19), and did its own analysis of the budget data submitted by the City, seeking to prove that the City could afford its demands (Brief, pages 19-20):

There are * * * some common sense rules for evaluation [of the] scope of [the financial impact of the demands]. To give an example, should the Union be demanding an adjustment that is 4% greater than offered, then it is reasonable to measure the scope of the impact on that basis. If the employer has offered 4%, then it can be assumed he can and will pay and has prudently appropriated at least that amount.

The City has appropriated \$1.530 million for wages and benefits in the Police Department for fiscal year 1991-1992. The effect of a 1% raise is \$13,587; therefore, utilizing the above example, an award 4% greater than offered would call for an .8% adjustment in General Fund priorities this year. Next year if it were passed on in a tax increase, it would mean a 2.0% adjustment in the levy.

The APBA Brief then sets forth the following chart, with the source identified as "FY 91-92 Appropriations, City of Amsterdam".

Police Department Personnel costs FY 91-92	Costs subject to rollup	Costs not subject rollup	Total
Salaries	\$1,002,093		\$1,002,093
Overtime	86,000		86,000
Holiday pay	5,000		5,000
Sick pay	19,000		19,000
Retirement	167,000		167,000
Medical		131,000	131,000
FICA	79,574		79,574
Worker's Comp.		15,000	15,000
Insurance		32,000	32,000
Total	\$1,358,667	\$178,000	\$1,536,667

Impact of 1% increase	As percent of levy or fund	Total
1% raise		\$13,587
General Fund 91-92	0.2%	\$7,488,348
Tax levy 91-92	0.5%	\$2,915,233

Based upon its analysis, the APBA concludes that "The City can well afford to make adjustments in the 1991-92 Budget since it has provided for a contingency account of \$105,312 (1991-92 Fiscal Year Appropriation Schedule, account 1990-9900-00)." (Brief, page 20.)

1 With respect to the City's claim of inability to pay, the APBA also insists that the City has been
2 inconsistent because of its treatment of the Superior Officers Association (Brief, page 21; and see page 3).¹⁶
3

4 It should also be noted that although the City has steadfastly maintained that they are unable
5 to approve a raise, they approved a 5% raise for the members of the SOA, also members of
6 the APBA, in January, 1990, one month before the APBA contacted the Mayor to com-
7 mence negotiations. In addition the agreement included a provision that "there shall be
8 maintained a differential of five percent (5%) between the rank of Sergeant and Lieutenant;
9 and between the rank of Lieutenant and Captain. The salary for the rank of Sergeant shall
10 not fall below seven and a half percent (7.5%) above the next lowest rank.
11
12

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14 With respect to the 1% tax cap, relied upon by the City to support, in part, its position that it does
15 not have the ability to pay, the APBA asserts (Brief, page 18):
16

17 The City's ability to pay is not dispositive in an Arbitration hearing. In City of
18 Buffalo v. Rinaldo, 41 NY2d 764 (1977), the Court of Appeals held that the Arbitration
19 Panel was given broad powers under Civil Service law §209.4 to "balance the ability of the
20 City of Buffalo to pay against the interests of the public and the PBA members". Id. at
21 767. It is clear that here, the interests of the public and the APBA members would be best
22 served by a substantial increase in their wages; the City's claim that they are financially
23 unable to afford a raise is not dispositive.
24

25
26 The APBA concludes by observing that the "issue of wages is the most important issue" before the
27 Panel; that the City "throughout negotiations, has offered a zero (0%) percent wage increase and has tried to
28 limit the medical benefits which are currently being provided under" the expired contract, and argues (Brief
29 pages 37-39):
30

31 The City is expecting the APBA members, who are public employees, to subsidize the
32 City's budget by accepting no increase in their salary *and* a cut in their health benefits.
33 Throughout the Winter and Spring and into the Summer of 1991 the City has repeatedly
34 mentioned layoffs as a possible solution to their fiscal crisis.¹⁷ The City appears to want
35 the best of all possible worlds while forcing its public employees to subsidize the tax payers
36 unwillingness to allow their taxes to go up.

37 The police force in the City of Amsterdam has been reduced in numbers in the past
38 few years, while the work load has greatly increased in both complexity and amount. The
39 City is asking APBA members, who take their lives in their hands every day that they go to
40 work, and even sometimes while they are off duty, to *increase* their output with *less*
41 compensation.
42

43
44
45 ¹⁶. See page 4, lines 40-49, concerning the split up of the previous bargaining unit.

46
47 ¹⁷. The APBA asserts that it indicated its willingness to cooperate in dealing with the fiscal crisis, and -- in fact -- agreed
48 to a "lag payroll" proposal that was never implemented (Brief, page 6):
49

50 [I]n early March * * * the City of Amsterdam indicated that they were laying off three APBA members due to a
51 financial crisis and the Mayor held a meeting for all union heads in which the Mayor indicated that he was going
52 to lay off various people from each of the departments in the City. * * * The APBA and the SOA held a joint
53 meeting, and it was agreed that all members of the Amsterdam Police Department, including the Chief and
54 Deputy Chief would agree to a "lag payroll" similar to that instituted against New York State workers. This
55 proposal was submitted to the Mayor and the layoffs were averted, although the lag payroll was never instigated.
56 The Mayor indicated that he had invaded the contingency fund to avert the proposed layoffs.
57

B. GEOGRAPHY, DEMOGRAPHY, THE NATURE OF POLICE WORK AND COMPARATIVE HAZARDS.

Both parties had offered extended comparisons of selected municipalities; and the APBA has emphasized the evolvement of police work in Amsterdam. The two matters are interrelated.

1. The "comparables".

a. The APBA's "comparables".

The Union submits comparative data with respect to wages and other selected economic benefits, from the Town of Rotterdam, the City of Schenectady, and the Village of Scotia. It argues (Brief, page 15):

These municipalities are much closer to Amsterdam in types of crime experienced and ethnic makeup, than are the comparables submitted by the City. Amsterdam is, in effect, the end of the highway of crime that comes from New York City, up the Hudson River, into the Capital district, through Schenectady, Scotia, and Rotterdam into Amsterdam. The Thruway goes right through the City of Amsterdam and this facilitates drug trafficking in and out of Amsterdam. In addition, the Hispanic population has many ties to New York City, Albany, Schenectady, and Puerto Rico, which also increases the likelihood of drug use and sale.

Union Exhibit 7 includes three sets of data. The first is "Salary Comparisons 1990". There is no further identification. It is reasonable to assume that the figures are from the collective bargaining agreements for the three comparables, submitted as Union Exhibits 1-5. The second set of data is labeled "Benefit Comparisons - Leave", without a date. It is reasonable to assume those are 1990 figures. The third set is labeled "Benefit Comparisons", without a date. That data is reproduced in the following two charts:

Salary Comparisons - 1990 [Column (1), completed years of service]								Leave Benefit (2) Amsterdam (3) Rotterdam (4) Scotia (5) Schenectady			
(1) yrs	(2) Amsterdam 1990	(3) Rotterdam 1990 1991		(4) Scotia 1990 1991		(5) Schenectady 1990 1991		(2)	(3)	(4)	(5)
0	19,051	23,303	23,303	17,204	23,430	22,902	24,047	5			10
1	24,593	25,680	25,731	17,893	24,868	23,854	25,047	14	10	10	15
2	"	28,058	28,287	20,067	26,305	25,764	27,052				15
3	25,579	30,437	30,843	23,052	27,743	28,625	30,056				20
4	"	30,937	33,400	23,875	29,181	33,453	35,126				28
5	26,444	"	"	24,698	30,619	34,028	35,701		15	15	
6	"	"	"	24,753	30,674	"	"	15			
7	"	"	"	24,808	30,729	"	"	16			
8	"	31,437	33,900	24,863	30,784	"	"	17			
9	"	"	"	24,918	30,839	"	"	18			
10	26,844	"	"	24,973	30,894	34,278	35,951	21	20		
11	"	"	"	25,028	30,949	"	"			16	
12	"	31,937	34,400	25,083	31,004	"	"			17	
13	"	"	"	25,138	31,059	"	"			18	
14	"	"	"	25,193	31,114	"	"			19	
15	27,244	"	"	25,248	31,169	34,578	36,251		25	20	
16	"	32,437	34,900	25,303	31,224	"	"			21	
17	"	"	"	25,358	31,279	"	"			22	
18	"	"	"	25,413	31,334	"	"			23	
19	27,644	"	"	25,468	31,389	34,978	36,651			24	
20	"	32,937	35,400	25,523	31,444				30	25	
21	"	"	"								
22	"	"	"								
23	"	"	"								
24	"	33,437	35,900								

	Holidays (1)	Personal Leave (2)	Retirement (3)	Health Insurance (4)	Clothing Allowance (5)
Amsterdam	12	5	20 yr/half non-contrib	BS w/MM or MVP Prescrip \$3.00/wk after 3rd year	450/year
Rotterdam	13	5	20 yr/half non-contrib	non-contrib w/Dental and Prescrip	Uniforms provided 150/yr clean 450/yr plainclothes
Scotia	11 1½ if work	5	20 yr/half non-contrib	non-contrib w/Dental	150/yr Uniforms provided
Schenectady	12	3	20 yr/half non-contrib	non-contrib after 5th yr w/Dental & Prescrip	600/year

In the "Salary Comparison" chart, the first underlined salary is identified as "top", or "maximum", and the subsequent increases are identified as "longevity". In fact, nothing in any of the contracts condition the "longevity" increments on anything other than years of service, which is the same basis for the increments applied before the "maximum" salary is reached. Realistically, the true "maximum" salary, for comparative purposes, is the "maximum" salary, which is the second underlined salary in each column.

There are only a few specific references to the "comparables" submitted by the APBA, in their arguments as to specific proposals. Those references will be noted in the Discussion, below.

The APBA notes that the City's "comparables" are "the Cities of Johnstown and Gloversville, Montgomery and Fulton County, Little Falls, Oneida, Ilion, Herkimer, Rensselaer, Canajoharie, Scotia, and Saratoga Springs." It argues that those comparables "are widely scattered geographically and were obviously selected as being on the lower end of the salary scale." More specifically, it argues (Brief, pages 13-14):

Fulton County is located directly north of Montgomery County. There are no major highways going through Fulton County, such as the Thruway or other interstate highways. Fulton County is one of the most economically depressed Counties in New York State. Although Fulton County, and Johnstown and Gloversville, which are adjoining cities located in Fulton County, are quite close geographically to Amsterdam, the ethnic background of the citizens of Fulton County and the citizens of Amsterdam, as well as the types of crime experienced in these jurisdictions, is hugely different from the ethnic background and type of crime experienced in the City of Amsterdam.

The City of Amsterdam is a community of about 20,000 people, with a large Hispanic population of approximately 6,000. The Hispanic population is primarily located in the Eastern End of Amsterdam. Amsterdam is located approximately 30 miles from the City of Albany, and approximately 17 miles from the City of Schenectady, and has become in essence a suburb of the Capital District, a bedroom community to commute to work there.

Most of the comparables chosen by the City * * * have an entirely different ethnic makeup and experience different types of crime than the City of Amsterdam. In addition, other than the City of Saratoga Springs and the Village of Scotia, none of the comparables presented by the City are as close to the Capital District as is Amsterdam; none of them have the huge Hispanic population that Amsterdam has; and none of them have the huge heroin and cocaine drug problem that the City of Amsterdam has. Major drug trafficking is being conducted in Amsterdam, with connections to New York City, Springfield, Massachusetts, New Briton, Connecticut, Utica, Syracuse, and Buffalo, but the major drug connections in Amsterdam are from Albany and Schenectady, New York. Amsterdam gets

a serious overflow of crime, drug related and otherwise, from the Capital District, which overflow is not experienced by the majority of the comparables presented by the City to the Arbitration Panel.

The City's presentation *** stressed that they expect a cut in State aid. It should be noted that the cut in State aid to Cities in the Governor's original proposal averaged 40-42% over what they had received in 1989-1990; Villages were cut 55-60%, and Counties were cut as much as 100%. It should be noted that the City of Amsterdam's comparables are villages and counties which were cut in a much higher percentage than were cities.

b. The City's "comparables".

The City has offered thirteen municipalities as "jurisdictions *** comparable to the City of Amsterdam, in terms of economic and other terms and conditions of employment". (Brief, page 12.) The bargaining unit sizes and populations of those jurisdictions were set forth in City Exhibits 2 and 3. Those exhibits may be reproduced as follows, but with the jurisdictions rearranged according to size:

	Population 1990	Bargaining Unit Size 1990-1991 (full-time personnel only)	Located in county of:
[1] Fulton County	54,191	59	Sheriffs (no clerical) Sheriffs Saratoga Springs: Patrolmen 39 Investigator 10 Sergeants 6 Lieutenants 5 Chiefs 2 Total: 62
[2] Montgomery County	51,981	56	
[3] City of Saratoga Springs	23,906	62	
[4] City of Amsterdam	21,872	28	
[5] City of Gloversville	17,836	32	
[6] City of Oneida	10,810	19	
[7] Village of Ilion	9,450	15	
[8] City of Johnstown	9,360	22	
[9] City of Rensselaer	9,047	25	
[10] Village of Herkimer	8,383	19	
[11] Village of Scotia	7,280	3	
[12] City of Little Falls	6,156	12	
[13] Village of Canajoharie	2,412	3	

In Appendix A to its Brief, the City has submitted comparative data for salary schedules from 1989 through 1991. (Note that the City comparison is limited to patrolman's salary.) The data in Appendix A is collated, and rearranged in the following charts to reflect their 1989 rank order.

PATROLMAN - MINIMUM SALARY							
	1989		1990		1991		
1.	City Oneida	\$21,897 7.5%	Scotia	\$23,430 36%	Scotia	\$24,953 6%	
2.	City Saratoga Spr.	\$19,984	Oneida	***	Oneida	****	
3.	Village of Ilion	\$19,597 5%	Ilion	\$21,807 4%	Ilion	****	
4.	City Rensselaer	\$19,201 5.5%	Saratoga Spr.	\$20,983 5%	Saratoga Spr.	****	
5.	City Amsterdam	\$19,051 5%	Rensselaer	\$20,353 6%	Rensselaer	****	
6.	City Johnstown	\$17,705 4%	Amsterdam	***	Amsterdam	****	
7.	City Gloversville	\$17,692 4%	Fulton Co.	\$18,886 *	Fulton Co.	****	
8.	Fulton County*	\$17,534 *	Montgomery Co.	\$17,987 5%	Montgomery Co.	\$18,707 5%	
9.	Montgomery County*	\$17,295 **	Johnstown	***	Johnstown	****	
10.	Village Scotia	\$17,204 6%	Gloversville	***	Gloversville	****	
11.	Village Herkimer	\$16,078 4%	Herkimer	\$17,056 4%	Little Falls	\$17,364 6%	
12.	City Little Falls	\$15,454 6%	Little Falls	\$16,381 6%	Herkimer	****	
	Village Canajoharie	???	Canajoharie	???	Canajoharie	****	
	* Sheriffs	* \$750 + 4%		*** No 1990 Contract		**** No 1991 Contract	
		** Schedule reorganized					

PATROLMAN - MAXIMUM SALARY							
	1989			1990		1991	
1.	City Saratoga Spr.	\$26,764		Scotia	\$30,619 49%	Scotia	\$32,609 6%
2.	City Amsterdam	\$26,444 5%		Saratoga Spr.	\$28,934 5%	Saratoga Spr.	****
3.	Village Scotia [? A]	\$26,345 6%		Amsterdam	***	Amsterdam	****
4.	City Rensselaer	\$24,769 5.5%		Rensselaer	\$26,255 6%	Rensselaer	****
5.	City Oneida	\$23,897 7.5%		Ilion	\$24,114 7%	Ilion	****
6.	City Gloversville	\$23,695 4%		Oneida	***	Oneida	****
7.	City Johnstown	\$23,163 4%		Gloversville	***	Gloversville	****
8.	Village Ilion	\$21,670 5%		Herkimer	\$23,213 4%	Little Falls	\$23,223 6%
9.	Village Herkimer	\$21,466 4%		Johnstown	****	Herkimer	****
10.	City Little Falls	\$20,668 6%		Fulton County	\$22,214 *	Johnstown	****
11.	Fulton County	\$20,613 *		Little Falls	\$21,908 6%	Canajoharie	\$23,109 7%
12.	Village Canajoharie	\$19,989 5%		Canajoharie	\$21,549 8%	Fulton County	****
13.	Montgomery County	\$18,950 **		Montgomery Co.	\$20,000 5%	Montgomery Co.	\$21,100 5%
	° Sheriffs	* \$750 + 4%		*** No 1990		**** No 1991	
	** Schedule reorganized			Contract		Contract	

In other Appendices to its Brief, the City has submitted comparative data concerning holidays, vacation time, personal leave, bereavement, union leave, sick leave, educational benefits, clothing allowances, mileage, and health insurance. That data, which is in Appendices D, E, F, and G has been consolidated in the two charts on the following two pages, and the thirteen jurisdictions rearranged according to population. The specific references made by the City with respect to the comparative data, will be noted in the Discussion, below.

The City makes the following observation with respect to the APBA's selection of comparable municipalities (Brief, page 15):

The Association focused much of its testimony on the comparability of the City of Schenectady. The City of Schenectady bargaining unit for the Schenectady PBA includes 147 police officers of all rank; the Amsterdam unit includes 27 patrol officers, but does not include the rank of sergeant or above. Furthermore, the City of Schenectady has a population of 67,972 (roughly 3 times that of Amsterdam) * * *.

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COMPARISON OF LEAVE TIME; VACATION TIME; AND EDUCATION							
Columns: (1) Holidays -- (2) Personal leave -- (3) Bereavement leave -- (4) Union leave -- (5) Sick leave -- (6) Vacation -- (7) Education Benefits							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Fulton County	12	24 hrs/yr	5	-	12 (165)	1 yr - 7 days 3 yrs - 10 days 5 yrs - 15 days 10 yrs - 20 days 15 yrs - 25 days	Assoc. = \$200 bonus Batch. = \$400 bonus
Montgomery County	10	4	4	-	12 (165)	1 yr - 10 days 2 yrs - 11 days <See contract>	N/A
City Saratoga Spr.	9	-	3	-	18 (150)	1 yr - 7 days 2 yrs - 14 days 3 yrs - 21 days 10 yrs - 23 days 15 yrs - 24 days	tuition reimbursement
>>City of Amsterdam	12	3	4	12	24 (240)	1 yr - 7 days 2 yrs - 14 days 5 yrs - 10 days plus add'l day to 10 yrs - max 21 days	30 hrs = \$225/yr 60 hrs = \$300/yr 120 hrs = \$450 yr
City Gloversville	12	3	-	-	15 (150)	6 mos - 5 days 1 yr - 10 days 3 yrs - 15 days 5 yrs - 21 days	50% of tuition reimbursed Assoc. = \$150/yr Batch. = \$350/yr
City Oneida	10	12 hrs/yr	3	12	-	1 yr - 10 days 5 yrs - 15 days 20 yrs - 20 days	N/A
Village Ilion	12	5	3	12	18 (115)	1 yr - 14 days 5 yrs - 21 days 10 yrs - 28 days 20 yrs - 35 days	N/A
City Johnstown	12	4	3	-	12 (175)	1 yr - 7 days 3 yrs - 10 days 5 yrs - 15 days 10 yrs - 20 days 15 yrs - 25 days	Paid in Full; 2 yr degree = 1% of salary 4 yr degree = 2% of salary
City Rensselaer	11	-	3	3	Unltd.	1 yr - 10 days 3 yrs - 15 days 10 yrs - 20 days 19 yrs - 25 days	Cost of tuition
Vill. Herkimer	12	6	4	-	18	1 yr - 14 days 3 yrs - 21 days 10 yrs - 28 days <See contract>	N/A
Vill. Scotia	11	5	5	5	10 hrs/mo.	1 yr - 14 days 5 yrs - 21 days 10 yrs - Add add'l up to 25 days	Batch. = \$300/yr Assoc. = \$150/yr
City Little Falls	13	5	-	6	12 (170)	6 mos - 5 days 1 yr - 14 days 5 yrs - 21 days <See Contract>	Tuition reimbursement
Vill. Canajoharie	11	Discretion	3	-	-	1 yr - 14 days 7 yrs - 21 days 15 yrs - 28 days 20 yrs - 35 days	Tuition reimbursement

2. The Nature of Police Work and Comparative Hazards.

a. Position of the APBA.

The APBA argues that the substantial increase in wages is justified by "the increase in their workload and the ever-increasing complexity of their jobs." It elaborates, as follows (Brief, pages 16-17):

In the past few years the nature of police work has changed drastically, while at the same time the police force in the City of Amsterdam has been reduced. In the past year alone, two police officers have left the Amsterdam Police Department and were not replaced. Police work has become much more technical; documentation must be precise and complete so that the arrest made can be successfully prosecuted to a conviction. The Police Officers are now held to a much higher standard, as can be shown by an increase in training of more than 200% in recent years. Police officers are also now required to complete paperwork which takes many hours of their work time; they are unable to be out "on the road" while completing the police work.

The Amsterdam Police Department has various programs which require extensive training and man hours, such as the Drug Awareness Resistance Education Program (D.A.R.E.), which addresses the worsening drug problem from an educational standpoint, and the Weight Enforcement Program (Scales Team) which helps keep the overloaded trucks off the road. The Amsterdam Police Department has several certified instructors who teach at the Zone 5 Law Enforcement Academy, training Police Officers and Supervisors from all over the State, including the Capital District. There is also a dive team with a certified public safety dive instructor as dive master; this team has so much experience that it is called upon throughout the region to perform underwater police work. The Department is in the process of forming a tactical entry team, necessitated by the many drug raids in recent years in the City of Amsterdam. In addition, the Department is in process of computerization so that efficiency can be increased.

See page 38, lines 42-58, above, for the APBA's argument about the specific hazards of working in the Amsterdam Police Department.

b. The City's response.

The City has responded to the APBA's arguments with respect to the particular hazards it works under, with the following comments (Brief, pages 15-16):

The Association offered testimony in support of the comparability of the municipalities offered. Richard Stearns, Association President, testified that the criminal activity found in these jurisdictions flows into the City of Amsterdam, and as such, the Association membership should be paid as much and earn similar benefits to the officers in Rotterdam, Scotia and Schenectady. However, it must be noted that no documentary evidence was introduced to support claims that either Schenectady, Scotia and/or Rotterdam performed similar functions at similar crime reporting levels and nature of crime as does the City of Amsterdam. The only evidence was the testimony (admitted to be opinion) of Richard Stearns.

* * *

President Stearns further testified that the City has a lot more drug dealers and drug trafficking than either Gloversville or Johnstown * * * and a much greater degree of organized crime in terms of gambling and narcotics * * *. President Stearns also indicated that the uniform crime report would show that the City handles more than twice the crime handled by peace officers in the rest of the County. However, no Uniform Crime Report was introduced to support this testimony. * * *

1 C. DISCUSSION AND DETERMINATIONS.
2

3 1. Some general statements and conclusions.
4

5 As should be indisputable, after a review of the preceding pages, the dominating question which
6 influences the determinations with respect to almost all of the open issues in this impasse, is the matter of
7 the City's claim that it is financially unable to provide any economic increases for this contract period. (See
8 page 29, above.) Inherent within such a claim, is the need for cost containment of health benefits. The idea
9 of comparative fairness stands in line, close behind, and also will influence almost all determinations of this
10 Panel.
11

12 The APBA is indubitably correct, when it asserts that the matter of the "City's ability to pay is not
13 dispositive" for this Panel's determinations, and it properly cites the 1977 Buffalo case, by the Court of
14 Appeals, for that proposition. But having said that, it would be disingenuous to leave the matter without
15 recognizing that a public employer's economic situation is clearly a relevant consideration. It would be
16 irresponsible, at any time, to fail to consider the employer's "ability to pay". But it is no secret that the
17 question of a public employer's "ability to pay" is, realistically, a question of "inability to pay" because of
18 choices made with respect to priorities. And that question -- that is, of priorities -- is a complicated one,
19 requiring an understanding that each piece of the pie which goes to one priority, may have to be subtracted
20 from those pieces going to other public needs and services. Thus, while not dispositive, the economic situa-
21 tion of the City is a relevant consideration. That would be so, at any time, and it is particularly so at a time
22 when the economic situation, generally -- private sector, as well as public sector --, is claimed by many to
23 be bleak.
24

25 Those general propositions are reflected in the text of the Taylor Law. Section 209.4(c)(v), which
26 was quoted above (page 4), sets forth the criteria which a Panel is required to "take into consideration" in
27 making "a just and reasonable determination of the matters in dispute." Those criteria may be usefully
28 repeated here (italics and underlining added for emphasis):
29

30 In arriving at such determination, *the panel shall specify the basis for its findings, taking*
31 *into consideration*, in addition to any other relevant factors, the following:

- 32
- 33 a. comparison of the wages, hours and conditions of employment of the employees in-
34 volved in the arbitration proceeding
35 *with the wages, hours, and conditions of employment of other employees performing*
36 *similar services or requiring similar skills under similar working conditions*
37 *and with other employees generally in public and private employment in comparable*
38 *communities;*
39
 - 40 b. *the interests and welfare of the public*
41 *and the financial ability of the public employer to pay;*
42
 - 43 c. comparison of peculiarities in regard to other trades or professions, including specifical-
44 ly,
45 (1) hazards of employment;
46 (2) physical qualifications;
47 (3) educational qualifications;
48 (4) mental qualifications;
49 (5) job training and skills;
50
 - 51 d. the terms of collective agreements negotiated between the parties in the past providing
52 for compensation and fringe benefits, including, but not limited to, the provisions for
53 salary, insurance and retirement benefits, medical and hospitalization benefits, paid
54 time off and job security.
55

1 Thus, the "financial ability of the public employer to pay" is explicitly made a criterion which must
2 be "taken into consideration". But the statute also explicitly pairs that criterion with this criterion: "the
3 interest and welfare of the public". In any dispute, and particularly in disputes concerning the security
4 services, that second criterion can cut both ways. The "interest and welfare of the public" may well be
5 served by not increasing taxes -- but, then, it may well be served by promoting the effectiveness and effi-
6 ciency of the police force in a way which requires increase of taxes.
7

8 Moreover, note that while the Panel must "specify the basis for its findings", it is directed to do so
9 by "taking into consideration" the enumerated factors, "in addition to any other relevant factors", and no
10 one factor is required by the statute to be the "basis for [the panel's] findings". In other words, the proc-
11 ess is not a mechanical balancing of identified counters, placed on a simple scale with some mathematical-
12 like unit of measurement. The process is not as precise and free of value judgments, as a litmus paper test
13 might be. This is a familiar conclusion to anyone who has reviewed the litigation involving challenged
14 Panel awards which have been upheld. Nevertheless, all of this is not to deny that the Panel, necessarily,
15 must view the total "package", the total "cost" -- to the extent that the "cost" can be translated into dollars --
16 and take that cost "into consideration", along with the public employer's "financial ability * * * to pay".
17

18
19 But for all of the above, is the situation involved in this particular interest arbitration unique --
20 unique because of Amsterdam's self-imposed 1% cap upon its taxing capacity under the real property tax?
21 (See page 31, above.) First, it must be said that the balance remains the same, even under the 1% cap limi-
22 tation on the real property tax -- the matter of "inability to pay" is still essentially a matter of choices among
23 competing priorities.¹⁸ The situation may be unique for Amsterdam, . . . the squeeze may be tighter with
24 the 1% cap, . . . but that simply makes the choices more difficult.
25

26 There is an additional -- and more legally ambiguous -- aspect of the "unique" Amsterdam situation.
27 The City tells us that "In response to [a] major increases in taxes, the taxpayers, via petition, forced the
28 legislative body to place on (an election) ballot a referendum concerning the imposition of a 1% tax cap."
29 (Page 31, lines 24-26, above.) And it refers to the APBA witness, Mr. Fennel, as indicating "that Amster-
30 dam has put itself in a unique situation, *by virtue of taxpayer action.*" (Brief, page 10, italics added.) The
31 City has contrasted the 1% cap, to the "New York State constitutional taxing limit [which] is set at 2%."
32 (Page 31, lines 29-30, above.) And well it might. There are significant differences between the limitation
33 imposed by a superior body or document -- such as the State Constitution or the State government acting
34 under authority delegated by the State Constitution --, and a *self-imposed* limitation.
35

36 Make no mistake. The limitation *is* self-imposed. Internally, as between the taxpayers and the
37 legislative body, the taxpayers may have the last word. But the members of the bargaining unit represented
38 by the APBA are not employees of, and bargaining with, "the legislative body" or "the executive branch".
39 They are employees of the "City of Amsterdam". To what extent, for purposes of these collective negotia-
40 tions, is there a difference between the *taxpayer* imposed limitation, and a vote by the legislative body enact-
41 ing a law which says, in effect, "we limit the taxes which we may levy"? We are not without an analogy, in
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43

44
45 ¹⁸. In its Brief (page 9), the City refers to the testimony of the APBA witness, Mr. Fennel, and states that he testified that
46 each of the City's comparables face similar problems as those faced by Amsterdam, and the City sums up his testimony in this regard
47 as follows (italics added):
48

49 Mr. Fennel did indicate that the City of Oneida perhaps is unique in that it has a low real property tax and it has
50 a large utility company which helps off-set this; as concerns the City of Saratoga Springs, Mr. Fennel indicated
51 that it has a large income structure from sales tax as a recreational area. He indicated that none of the other
52 jurisdictions offered by the City as comparable to Amsterdam could operate with the 1% tax limit and provide
53 the services it must. He indicated, from a publication that he had handy, but which was not made part of the
54 record testimony and/or evidence, that with a 1% tax capy (in 1988) the City of Johnstown would have gone over
55 its tax limit by 51%; Gloversville by 57.6%; Little Falls by 82.4%; Illion by 96%; Herkimer by 83%; Rensse-
56 laer by 85%; Canajoharie by 49.5%; and Scotia by 89.7%.
57

1 the precedent concerning the extent to which school districts may levy a tax to fund a collective agreement,
 2 without regard to budget limitations imposed by the Education Law. That development will not be followed
 3 up in this Opinion, and the matter of the self-imposed tax limitation, which makes the City of Amsterdam
 4 "unique", will be left with the observation that interesting and, as yet, unresolved legal questions are raised
 5 when that self-imposed limitation comes into conflict with state statutorily required collective negotiations
 6 with public employees.
 7



8
 9
 10 The APBA's arguments about comparative skills required of the unit members, in police work
 11 today, and the comparative hazards which the members of the Amsterdam Police Department face in carry-
 12 ing out their duties, are relevant to the criteria spelled out in §209.4(c)(v)(c) of the Taylor Law, and quoted
 13 above: "hazards of employment", as well as qualifications. (See page 44, lines 43-49, above.) However,
 14 the City is correct, in pointing out that no evidence to support the APBA's argument that the Amsterdam
 15 police have a more hazardous job than police in surrounding municipalities was introduced, other than the
 16 opinion of the President of the APBA. Nevertheless, consideration of the hazards inherent in police work,
 17 generally, are appropriately to be considered.
 18



19
 20 We now proceed to a determination with respect to the several open issues presented to this Panel
 21 for its consideration. But in order to avoid cluttering repetition, it is now stated that *with respect to each of*
 22 *the issues, the Panel has taken into consideration each and every criteria set forth in §209.4(c)(v) of the*
 23 *Taylor Law*, and quoted above at page 44, lines 30-54. This will avoid repetition of that statement for each
 24 of the twenty-four issues which are considered. That statement is important, should these determinations
 25 ever be subject to judicial review. In addition, with respect to each issue, the comparative data submitted by
 26 both parties, and their carefully constructed arguments have been taken into consideration.
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1 **2. Resolution of the issues.**

2
3 **a. Agency fee indemnification clause. [Issue #1]**

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5 The City's proposal and the APBA's response are set forth above, on page 7. At best, the City can
6 speculate that it might need such a provision. But no evidence is presented that the lack of such a provision
7 has created, or will create in the future, a problem for the City.

8
9 **Determination.** The Panel declines to impose the proposed language with respect to an agency fee
10 indemnification clause. Therefore, the City proposal is denied.

11
12 **b. Definition of grievance. [Issue #2]**

13
14 The respective proposals of the parties are set forth above, with their arguments, on pages 8-9. The
15 City proposal is a very common, and understandable, description of "grievance" which appears in public
16 sector collective agreements. On the other hand, the APBA proposal opens up broad and controversial
17 questions about the scope of negotiations and employee participation in governance. In fact, this is the sort
18 of issue which the parties should be able to resolve at the negotiations table. During their negotiations for
19 their next agreement, which will be soon, the parties should seriously consider their respective proposals.
20 But they are not appropriate for consideration in this impasse arbitration.

21
22 **Determination.** The Panel declines the imposed the language proposed by either party, with re-
23 spect to the definition of grievance. Therefore, both the City proposal and the APBA proposal are denied.

24
25 **c. Representation at all stages of disciplinary proceedings. [Issue #3]**

26
27 The proposal of the APBA is set forth above, on page 10, with the City's response. The City over-
28 states the implication of §75 of the Civil Service Law. Section 75 simply identifies a point in the process at
29 which representation is *required* by that section. There is absolutely no implication in that requirement, that
30 representation is not appropriate at earlier stages, if the parties agree. The City offers no legitimate reason
31 for opposing this proposal, and there is nothing to suggest it would delay the process or hamper the City in
32 inquiring into possible disciplinary situations. It is a reasonable proposal and the Panel accepts it.

33
34 **Determination.** The Panel determines that the APBA proposal (page 10, lines 8-9, above) should
35 be included in an appropriate provision of the new contract.

36
37 **d. Scheduling of leave time. [Issue #4]**

38
39 The APBA proposal is set forth above, on page 11, with its rationale. Whether a mandatory or non-
40 mandatory subject of negotiations, the City is persuasive that there is no reason to impose the language in a
41 new contract during interest arbitration.

42
43 **Determination.** The Panel declines to imposed the proposed language concerning the scheduling of
44 leave time. Therefore, the APBA proposal is denied.

1 e. General wage increase. [Issue #5a]

2
3 The APBA proposal for an eight (8%) percent general wage increase for each year of the agreement
4 is set forth above, on page 12. As noted (page 29, line 6, above), the APBA has characterized the issue of
5 wages as the most important issue before the Panel. The general wage increase proposal is the major
6 element of the several wage proposals.

7
8
9
10 The APBA has submitted data comparing the Amsterdam 1990 salary for *patrol officers* to the 1990
11 and -- more relevant -- 1991 salaries in the three "comparables" it has chosen. See the Chart on page 37,
12 lines 29-62, above. First, consider what is called the "maximum" salary, which occurs on the fifth step of
13 the schedule. This can be reasonably compared with the fifth step on the 1991 salaries of the comparables.
14 (Line 42, page 37, above.) The Amsterdam salary is \$6,956 less than Rotterdam's (33,400 - 26,444), which
15 would require a 26% increase to come even. The difference with Scotia is "only" \$4,175 (30,619 - 26,444),
16 or a 15.8% difference. The difference with Schenectady is \$9,257 (35,701 - 26,444), or a 35% difference.
17 Or, consider the true "maximum" salary which can be reached in each of the four jurisdictions. The differ-
18 ences are substantially the same. However, even the APBA is not suggesting a 35% across the board in-
19 crease. Its proposed 8% increase is just over half the difference with Scotia at step 5 on the schedule.

20
21 As noted before, the APBA has done its own rearrangement of the City's FY 91-92 budget figures,
22 and concludes that the City can "afford" the proposed 8% increase. (Pages 34-35, above.) And it justified
23 tying its proposal to its "comparables" on the basis of comparable hazards. (Page 37, lines 14-21, above.)
24 Cuts in state aid, shrinking economic base, and 1% tax caps do not preclude the APBA from asserting that
25 its 8% proposal is fair, deserved, and affordable.

26
27
28 Aside from arguing inability to pay, the City has a very different perspective on the comparative
29 state of the Amsterdam salaries. The City also offers a comparison of the salary for patrol officers, using
30 the "minimum" and "maximum" salaries from the Amsterdam schedule. See the Charts on page 39 (lines
31 40-61), and page 40 (lines 1-22). As the Chart reconstructed from the APBA data indicates (page 37,
32 above), the so-called "maximum" salary does not necessarily occur at the identical salary step in different
33 schedules. However, the difference is probably not sufficient to skew the comparisons in the Charts recon-
34 structed from the City data. (The salary listed for the Scotia minimum, indicates the parties are not always
35 in agreement on the numbers they are using. Compare line 45, page 39, with line 37, on page 37.) Accord-
36 ing to the City's data concerning its chosen "comparables", the Amsterdam "maximum" salary is competi-
37 tively higher than the beginning salary. From the data it submits, the City concludes (Brief, page 13):

38
39 [I]n terms of salary rankings, the Amsterdam PBA were paid 8 out of 12 highest in the
40 comparable jurisdictions for patrolmen starting salaries; Amsterdam ranked 12 out of 13 in
41 terms of patrolmen's maximum salaries. In terms of the number of years of service needed
42 to reach the top of grade, a review of Appendix "C" [Note: not included in this Opinion]
43 * * * indicates that it takes an Amsterdam patrol officer five years to reach maximum sal-
44 ary. Other jurisdictions range from 1 to 7 years to reach the top of grade.

45
46
47 Whatever the differences between the Amsterdam salaries and the salaries in the "comparables" --
48 whether those chosen by the APBA, or those chosen by the City -- a decision with respect to a general wage
49 increase simply cannot be made without serious consideration of the state of the economy, at this time, in
50 Amsterdam and in New York State generally. It may not be dispositive, but it would be foolhardy to brush
51 off the problems. From New York City to Buffalo, one municipality after the other repeats the refrain heard
52 from the state level -- there is a budget crisis. In this context, it would be irresponsible to impose an 8%
53 increase. But the APBA is persuasive that, even within the limits of the 1% cap, the City has the capacity to
54 fund some general increase in wages. (See pages 34-35, above.)

1
2 On considering the comparative data, the hazards of the job, and the difficult but not impossible
3 budget situation of the City, a reasonable compromise is a 4% increase for the first year and 6% for the
4 second year. Consider the so-called "maximum" salary. A 4% increase for 1990 would increase \$26,444 to
5 \$27,502. That would not affect the Amsterdam location on the City's Chart, it would still be less than the
6 "maximum" in Saratoga Springs. (Page 40, line 8, second column, above.) And a 6% increase for 1991
7 would move the "maximum" to \$29,152, which is still less than Scotia and only slightly more than Saratoga
8 Springs for 1990. (Page 40, line 8, third column, above.) The City has estimated the cost of the double 8%
9 proposal as \$58,203 + \$62,863, for a total of \$121,066. (Page 33, lines 26-27, above.) Using the City's
10 Appendix H to its Brief, a 4% + 6% increase would cost \$29,104 + \$45,406, for a total of \$74,506. The
11 APBA analysis of the 1991 budget figures indicates that cost could be managed. An increase of 4% + 6%
12 would leave Amsterdam's position static with respect to the City's comparables, and not make a dent in the
13 significant difference with respect to the APBA's comparables. Note, also, that the APBA Exhibit 6 is a
14 copy of a release from the U.S. Department of Labor, Bureau of Labor Statistics, which states that the
15 Consumer Prince Index for the New York-Northeastern New Jersey area increased 6.2% for all of 1990.
16

17 **Determination.** The Panel determines that the "Police Department Salary Schedule - July 1, 1989
18 through June 30, 1990", in the expired contract, shall be amended to provided that (1) effective July 1,
19 1990, the salary for all positions in the bargaining unit shall be increased by 4% on all titles and all steps,
20 and (2) effective July 1, 1991, the salary for all positions in the bargaining unit shall be increased by 6% on
21 all titles and all steps. This determination is retroactive to July 1, 1990.
22

23 **f. Night differential.** [Issue #5b]
24

25 The APBA proposal for a night differential increase in set forth on page 12, above. The City has
26 estimated the cost for the night differential proposal as being \$10,590. (See page 33, line 30, above.)
27 While the amount is relatively modest, in light of the determination with respect to a general wage increase,
28 this proposal must be rejected. The APBA has not offered a justification for an increase of this differential,
29 on the top of any general wage increase.
30

31 **Determination.** The Panel declines to impose an increase in the night differential for wages of unit
32 members. The APBA proposal for an increase in the night differential is denied.
33

34 **g. Investigators' differential.** [Issue #5c]
35

36 The APBA proposal for an increase of the Investigators' of 8%, in addition to any general wage
37 increase, is set forth above, on page 12. The City has estimated the cost for the increase of the investiga-
38 tors' differential as being \$27,032. (See page 33, line 29, above.) This is a somewhat more substantial
39 amount than the cost for the night differential proposal, above. The APBA has not offered a justification for
40 increasing this differential, and in light of the determination with respect to a general wage increase, this
41 proposal must be rejected.
42

43 **Determination.** The Panel declines to impose an increase in the differential for investigators'
44 wages. The APBA proposal for an increase in the investigators' differential is denied.
45

46 **h. Method and time of payment.** [Issue #5d]
47

48 The APBA's proposal with respect method and time of payment is set forth above, page 12. The
49 City does not state a reason for opposing this item, and simply states that it is an open issue. The proposal
50 appears unexceptional, and in the absence of any demonstration of serious problems of administration which
51 might arise, it is a reasonable request.
52

53 **Determination.** The Panel determines that the expired contract should be amended by inserting at
54 an appropriate place the APBA proposal that payment of wages be by check no later than Friday of each
55

1 week, unless Friday is a holiday, in which case payment will be made prior to the end of the current week.
2 The pay period will cover Sunday through Saturday of each week, inclusive with the payroll checks being
3 distributed on Thursday of each week.

4
5 i. On-call pay. [Issue #6]
6

7 The APBA's proposal with respect to on-call pay is set forth on page 13, above, along with the
8 City's response. As the City's response indicates, the cost of this proposal is a matter of speculation. (Page
9 13, lines 37-44, above.) Moreover, apart from the fact that investigators are paid a differential, the APBA
10 does not really provide a sufficient justification for the percentage increase it proposes, and the case for a
11 compensatory benefit is not persuasive. Moreover, the APBA points to only one comparable which provides
12 a form of stand-by pay.

13
14 Determination. The Panel declines to imposed the APBA proposal for on-call pay. Therefore, the
15 APBA proposal is denied.
16

17 j. Health insurance.
18

19 The proposals of the parties, with respect to Health Insurance, are set forth on pages 14-15, above.
20 Next to a general wage increase, the matter of the cost of health insurance is critically related to the City's
21 concern about cost containment. We have a comprehensive view of the way health insurance is treated by
22 all of the "comparables", both the City's and the APBA's. See column (4) on the APBA Chart (page 38,
23 lines 1-18, above); and column (10) on the City Chart (page 42, above). The similarities and the variations
24 that appear in the manner in which all of these jurisdictions handle health insurance, are apparent. These
25 abbreviated descriptions also reflect the complexities in dealing with, understanding, and evaluating health
26 insurance programs. It is also indisputable that throughout the nation, in both the private and the public
27 sectors, the cost containment of health benefits, on the one hand, and the adequacy of health benefits cover-
28 age, on the other, are of major concern and matters involving substantial controversy.

29
30 In this instance, both the City's concern about cost containment and the APBA's concern about
31 adequacy of coverage are understandable. In fact, the details and consequences of each of the proposals are
32 so complex that they are best dealt with between the parties at the negotiations table. Only in that context,
33 can the parties sort out the elements of plans championed by each, and work out the necessary trade-offs. In
34 the interest arbitration context, the existing plan is best continued and changes left to be worked out in the
35 next round of negotiations. We are talking about negotiations for a contract to come into effect on June 1,
36 1992. Negotiations must begin very soon for that contract. Thus, we are talking about what is essentially a
37 one year period from this date, during which the City must manage any increase cost in the current plan.
38

39 Determination. The Panel determines that the provision for Health Insurance in Article IX of the
40 expired contract, should remain unchanged and continued in the next contract. Thus, the Panel denies the
41 proposals of both parties.
42

43 j. Sick leave. [Issue #8a]
44

45 The proposals of the parties, with respect to sick leave, are set forth on page 16, above. But, as
46 noted, the APBA "proposal" is simply a demand that the current sick leave provision remain unchanged.
47 The City's argument is set forth on page 17, above. The City's argument is not persuasive. Indeed, there is
48 no apparent reason why the proposal was made, and what difference the City proposal would make even if it
49 were imposed. The City has provided a sick leave comparison with respect to its "comparables". See
50 column (5), in the Chart on page 41, above. Among those listed, the Amsterdam benefits are the most
51 favorable to the employees. However, there is nothing in that comparison to justify the City's proposal.
52

53 Determination. The Panel declines to impose the City proposal with respect to sick leave. There-
54 fore, the City proposal is denied and the sick leave provision in the expired contract shall remain unchanged.
55

1
2 **k. Unused sick leave at retirement.** [Issue #8b]
3

4 The APBA's proposal with respect to unused sick leave at retirement is set forth on page 18, above.
5 The cost of this proposal, as computed by the City, is not minimal. (See page 18, lines 28-30.) The APBA
6 proposal is not without ambiguity. (See page 18, lines 15-17, and footnote 8.) The APBA's proposal is not
7 persuasive, on its merits. The City might find it desirable to agree to such a proposal at negotiations, as part
8 of a trade off. But strictly on its merits, the proposal distorts the underlying purpose of sick leave provi-
9 sions.

10
11 **Determination.** The Panel declines to impose the APBA proposal with respect to unused sick leave
12 at retirement. Therefore, the APBA proposal is denied.
13

14 **l. Clothing allowance.** [Issue #9]
15

16 The APBA's proposal with respect to the clothing allowance is set forth on page 19, above, along
17 with a notation that the City did not address this proposal in its Brief. However, both parties have provided
18 comparative data with respect to clothing allowances. See column (5) on the APBA Chart, page 38, above;
19 and column (8) on the City Chart, page 42, above. A review of that data, indicates that the present allow-
20 ance for the Amsterdam police is competitive. Moreover, the APBA offers no substantial justification for
21 changing the formula for determining the clothing allowance, from the flat rate method used in all of the
22 "comparables". The APBA exaggerates when it states that its present allowance is "woefully inadequate" in
23 comparison to its "comparables". Indeed, that allowance is competitive when compared to the City's
24 "comparables".
25

26 **Determination.** The Panel declines to impose the APBA proposal with respect to clothing allow-
27 ance. Therefore, the APBA proposal is denied.
28

29 **m. Meal allowance.** [Issue #10]
30

31 The APBA's proposal with respect to the meal allowance is set forth on page 20, above, along with
32 the City's response. Neither party provided comparative data with respect to the meal allowance. The costs
33 the proposal as requiring an additional annual cost of \$1,500. The cost is very minimal, and the proposal
34 appears reasonable on its face.
35

36 **Determination.** The Panel determines that the provision for meal allowance in Article XIV of the
37 expired contract, should be amended to reflect the APBA proposal set forth on lines 14-19, of page 20,
38 above.
39

40 **n. Travel expenses.** [Issue #11]
41

42 The APBA proposal with respect to travel expenses is set forth on page 20, above, along with the
43 City's response. The City is concerned with the cost of the proposal, but finds an estimate speculative, at
44 best. The City provided comparative data on this matter. See column (9) of the Chart on page 42, above.
45 The present allowance is competitive with that provided by the City's "comparables". However, the APBA
46 proposal is eminently reasonable. The IRS allowance is not known for being excessive, and provides a
47 sound benchmark.
48

49 **Determination.** The Panel determines that the provision for mileage reimbursement in Article XIV
50 of the expired contract, should be amended to provide that the amount shall be \$.27 per mile.
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1 **o. Educational incentive. [Issue #12]**

2
3 The APBA proposal with respect to educational incentive is set forth on page 21, above, along with
4 the City's response. The City has submitted comparative data on this matter. See column (7), on the Chart
5 on page 41. It is clear that the current position of the Amsterdam police is competitive. The justification
6 offered by the APBA may be sound as a theoretical matter, but when cost containment is a very legitimate
7 concern this proposal is better deferred to the bargaining table for the next round of negotiations.
8

9 **Determination.** The Panel declines to impose the APBA proposal with respect to educational
10 incentives. Therefore, the APBA proposal is denied.
11

12 **p. Union leave time. [Issue #13]**

13
14 The APBA proposal with respect to Union leave time is set forth on page 22, above, along with the
15 City's response. The City has submitted comparative data. See column (4) on the Chart on page 41, above.
16 Based on that data, limited to the City's "comparables", the APBA is out front. The cost for the proposed
17 increase is minimal. (See line 48, on page 22.) The present allowance amounts to one day a month, or
18 every four weeks. If prorated over the month, that would be 1/4 of a day per week, approximately 2 hours.
19 The task of seeing to all of the legitimate demands of the bargaining relationship, even in a comparatively
20 small unit of less than 30 members, is barely served by this limited amount of available time. True, the unit
21 members must bear share the cost for enforcing their interests. However, it is not unreasonable to increase
22 the number of union leave days. A fair compromise is an increase of 6, for a total of 18 days.
23

24 **Determination.** The Panel determines that the provision with respect to union leave time in Article
25 XXIII of the expired contract, should be amended to provided that the number of paid days annually provid-
26 ed is eighteen (18).
27

28 **q. Personal leave. [Issue #14]**

29
30 The APBA's proposal with respect to personal leave time is set forth on page 23, above, along with
31 the City's response. Both parties have provided comparative data on this matter. See column (2) on the
32 APBA Chart, on page 38, above; and see column (2) on the City Chart, on page 41, above. On this one,
33 the APBA -- understandably -- has chosen to rely on a comparison with the City's "comparables". This
34 matter should be deferred to the bargaining table for the next round of negotiations, where the parties can
35 consider relevant trade-offs.
36

37 **Determination.** The Panel declines to impose the APBA proposal with respect to personal leave
38 time. Therefore, the APBA proposal is denied.
39

40 **r. Bereavement leave. [Issue #15]**

41
42 The APBA's proposal with respect to bereavement leave is set forth on page 24, above, along with
43 the City's response. The City has provided comparative data. See column (3) on the Chart, on page 41,
44 above. The Amsterdam benefit is competitive. Perhaps more important, with all due respect, the APBA's
45 justification does not impress.
46

47 **Determination.** The Panel declines to impose the APBA proposal with respect to bereavement
48 leave. Therefore, the APBA proposal is denied.
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s. Child care leave. [Issue \$16]

The APBA's proposal with respect to child care leave is set forth on page 25, above, along with the City's response. Neither party has provided comparative data for this matter. In an extraordinarily exaggerated computation, the City envisages a substantial cost for this proposal. The subject of this proposal is very important, and for some time has been the subject of national debate with various legislative proposals surfacing. But one need not wait for legislative action. The APBA rationale is persuasive on its merits, and the APBA is persuasive that this benefit will not be used by many members. The cost will be substantially less than the City's excessive estimate.

Determination. The Panel determines that the provision proposed by the APBA with respect to child care leave, set forth on lines 8-12, page 25, above, shall be included in the new contract between the parties.

t. Carry over of unused leave time. [Issue #17]

The APBA's proposal with respect to carry over of unused leave time is set forth on page 26, above, along with the City's response. The thrust of this proposal is reasonable, and it is not an uncommon provision in collective agreements. However, this subject is better dealt with at the bargaining table, where details can be worked out and, if necessary, trade-offs made. The concern is legitimate, and as a general matter the proposal is reasonable, but it is best left to the next round of negotiations.

Determination. The Panel declines to impose the APBA proposal with respect to the carry over of unused leave time. Therefore, the APBA proposal is denied.

u. Holiday pay. [Issue #18]

The APBA's proposal with respect to holiday pay is set forth on page 27, above, and the City's response appears on page 28. Both parties submitted comparative data on this matter. See column (1) on the APBA Chart, page 38, above; and column (1) on the City Chart, on page 41. The similarity of all jurisdictions is striking. Like the matter of carry over of unused leave time, this matter is better dealt with at the bargaining table. The concern here is reasonable, but the matter is best left to the give and take of the next round of negotiations.

Determination. The Panel declines to impose the APBA proposal with respect to holiday pay. Therefore, the APBA proposal is denied.

v. Vacation. [Issue #19]

The APBA's proposal with respect to vacation time is set forth on page 28, above, along with the City's response. The City has submitted comparative data on this subject. See column (6) on the Chart on page 41, above. The City is correct in asserting that the Amsterdam benefit is in line with that benefit in its "comparables". The APBA has offered no justification for its proposal, and like holiday pay, the subject is best left to the next round of negotiations.

Determination. The Panel declines to impose the APBA proposal with respect to vacation time. Therefore, the APBA proposal is denied.

VI. THE "PERIOD PRESCRIBED" FOR THE PANEL DETERMINATION; CONTINUATION OF THE EXPIRED CONTRACT.

This Award is for a two year period, beginning July 1, 1990 and ending June 30, 1992. During that period, the expired contract between the parties shall continue to be in effect, except in those instances in which it has been changed by the determinations of this Panel, and except in those instances in which the parties have agreed to changes. Where relevant, dates specified in that expired contract shall be modified to reflect the period of this new contract.

VII. THE AWARD.

For the reasons set forth above, and after taking into account the relevant criteria enumerated in §209 of the Taylor Law, the Panel determines that a just and reasonable determination of the matters in dispute between the City of Amsterdam and The Amsterdam Police Benevolent Association, is as follows:

- [#1] **Determination.** The Panel declines to impose the proposed language with respect to an *agency fee indemnification clause*. Therefore, the City proposal is denied.
- [#2] **Determination.** The Panel declines the imposed the language proposed by either party, with respect to the *definition of grievance*. Therefore, both the City proposal and the APBA proposal are denied.
- [#3] **Determination.** The Panel determines that the APBA proposal concerning *representation in all stages of disciplinary proceedings* (page 10, lines 8-9, above) should be included in an appropriate provision of the new contract.
- [#4] **Determination.** The Panel declines to imposed the proposed language concerning the *scheduling of leave time*. Therefore, the APBA proposal is denied.
- [#5a] **Determination. General wage increase.** The Panel determines that the "Police Department Salary Schedule - July 1, 1989 through June 30, 1990", in the expired contract, shall be amended to provided that (1) effective July 1, 1990, the salary for all positions in the bargaining unit shall be increased by 4% on all titles and all steps, and (2) effective July 1, 1991, the salary for all positions in the bargaining unit shall be increased by 6% on all titles and all steps. This determination is retroactive to July 1, 1990.
- [#5b] **Determination.** The Panel declines to impose an increase in the *night differential* for wages of unit members. The APBA proposal for an increase in the night differential is denied.
- [#5c] **Determination.** The Panel declines to impose an increase in the *differential for investigators' wages*. The APBA proposal for an increase in the investigators' differential is denied.
- [#5d] **Determination. Method and time of payment.** The Panel determines that the expired contract should be amended by inserting at an appropriate place the APBA proposal that payment of wages be by check no later than Friday of each week, unless Friday is a holiday, in which case payment will be made prior to the end of the current week. The pay period will cover Sunday through Saturday of each week, inclusive with the payroll checks being distributed on Thursday of each week.
- [#6] **Determination.** The Panel declines to imposed the APBA proposal for *on-call pay*. Therefore, the APBA proposal is denied.

- 1 **[#7] Determination.** The Panel determines that the provision for *Health Insurance* in Article
2 IX of the expired contract, should remain unchanged and continued in the next contract.
3 Thus, the Panel denies the proposals of both parties.
4
- 5 **[#8a] Determination.** The Panel declines to impose the City proposal with respect to *sick leave*.
6 Therefore, the City proposal is denied and the sick leave provision in the expired contract
7 shall remain unchanged.
8
- 9 **[#8b] Determination.** The Panel declines to impose the APBA proposal with respect to *unused*
10 *sick leave at retirement*. Therefore, the APBA proposal is denied.
11
- 12 **[#9] Determination.** The Panel declines to impose the APBA proposal with respect to *clothing*
13 *allowance*. Therefore, the APBA proposal is denied.
14
- 15 **[#10] Determination.** The Panel determines that the provision for *meal allowance* in Article
16 XIV of the expired contract, should be amended to reflect the APBA proposal set forth on
17 lines 14-19, of page 20, above.
18
- 19 **[#11] Determination.** The Panel determines that the provision for *mileage reimbursement* in
20 Article XIV of the expired contract, should be amended to provide that the amount shall be
21 \$.27 per mile.
22
- 23 **[#12] Determination.** The Panel declines to impose the APBA proposal with respect to *educa-*
24 *tional incentives*. Therefore, the APBA proposal is denied.
25
- 26 **[#13] Determination.** The Panel determines that the provision with respect to *union leave time*
27 in Article XXIII of the expired contract, should be amended to provided that the number of
28 paid days annually provided is eighteen (18).
29
- 30 **[#14] Determination.** The Panel declines to impose the APBA proposal with respect to *personal*
31 *leave time*. Therefore, the APBA proposal is denied.
32
- 33 **[#15] Determination.** The Panel declines to impose the APBA proposal with respect to *be-*
34 *reavement leave*. Therefore, the APBA proposal is denied.
35
- 36 **[#16] Determination.** The Panel determines that the provision proposed by the APBA with
37 respect to *child care leave*, set forth on lines 8-12, page 25, above, shall be included in the
38 new contract between the parties.
39
- 40 **[#17] Determination.** The Panel declines to impose the APBA proposal with respect to the *carry*
41 *over of unused leave time*. Therefore, the APBA proposal is denied.
42
- 43 **[#18] Determination.** The Panel declines to impose the APBA proposal with respect to *holiday*
44 *pay*. Therefore, the APBA proposal is denied.
45
- 46 **[#19] Determination.** The Panel declines to impose the APBA proposal with respect to *vacation*
47 *time*. Therefore, the APBA proposal is denied.
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AFFIRMATION

We do hereby affirm upon our oaths as Arbitrators that we are the individuals described in and who executed this instrument, which is our Award.

W. Newhouse
Wade G. Newhouse,
Public Panel Member and Chairman

Date: Aug 26, 1991

See attached Dissenting Opinion

Determination #1	<u>Dissent</u>
#2	<u>Concur</u>
#3	<u>Dissent</u>
#4	<u>Concur</u>
#5a	<u>Dissent</u>
#5b	<u>Concur</u>
#5c	<u>Concur</u>
#5d	<u>Dissent</u>
#6	<u>Concur</u>
#7	<u>Dissent</u>
#8a	<u>Dissent</u>
#8b	<u>Concur</u>

Determination #9	<u>Concur</u>
#10	<u>Dissent</u>
#11	<u>Dissent</u>
#12	<u>Concur</u>
#13	<u>Dissent</u>
#14	<u>Concur</u>
#15	<u>Concur</u>
#16	<u>Dissent</u>
#17	<u>Concur</u>
#18	<u>Concur</u>
#19	<u>Concur</u>

William M. Wallens
William M. Wallens,
Public Employer Panel Member

Date: 8/26/91

Concur in all determinations

Determination #1	<u>✓</u>
#2	<u>✓</u>
#3	<u>✓</u>
#4	<u>✓</u>
#5a	<u>✓</u>
#5b	<u>✓</u>
#5c	<u>✓</u>
#5d	<u>✓</u>
#6	<u>✓</u>
#7	<u>✓</u>
#8a	<u>✓</u>
#8b	<u>✓</u>

Determination #9	<u>✓</u>
#10	<u>✓</u>
#11	<u>✓</u>
#12	<u>✓</u>
#13	<u>✓</u>
#14	<u>✓</u>
#15	<u>✓</u>
#16	<u>✓</u>
#17	<u>✓</u>
#18	<u>✓</u>
#19	<u>✓</u>

Edward W. Guzdek
Edward W. Guzdek,
Public Employer Panel Member

Date: August 26, 1991

DISSENTING OPINION OF PANEL MEMBER WILLIAM M. WALLENS

As a member of the arbitration panel, after hearing all of the testimony of the witnesses, and after review of the exhibits in the record. I am constrained to dissent from the Opinion and Award of the majority, which I find to be excessive and unreasonable, taking into consideration the current financial situation facing the City of Amsterdam, and thus, "its ability to pay".

As pointed out by the majority, the Taylor Law charges this panel to "make a just and reasonable determination of the matters in dispute" (Civil Service Law Section 209.4(c)(b)), taking into consideration the following factors:

(a) Comparison of wages and terms and conditions of employment of the employees involved in the arbitration with similarly skilled employees;

(b) The interests and welfare of the public and the financial ability of the public employer to pay;

(c) Comparison of peculiarities;

(d) Terms of previous collective bargaining agreements negotiated by the parties.

While we agree on the criteria which the panel must take into consideration in making its determination, we disagree on the application of the criteria and its affect on the ultimate Award, based upon the record.

The major issue in the negotiations and the issue preventing a negotiated settlement, was, obviously, related to economics and the City's financial condition. Apart from the general downturn in the economy in New York State, and its affect on Amsterdam, the City is confronted with a tax payer-initiated taxing limitation. In 1990, as a result of a taxpayer initiative, a local referendum was passed imposing a taxing limitation upon the City. This limitation is commonly known as the 1% tax cap. This contrasts with the State constitutional limitation of 2% (based upon a five year average of assessed property values). In fiscal year 1991-1992 the City would have had a constitutional taxing margin of \$2,246,395.00. However, under the City's 1% taxing limitation, the City's tax margin is \$6,582.00, a difference of approximately \$2.4 million! These facts were not rebutted by the union. The majority, however, in the opinion of this panel member, failed to give proper consideration to this serious revenue raising problem and its affect on the City's "ability to pay."

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CONCILIATION

While the majority seeks to dispose of this limitation as being "self-imposed", make no mistake about it, the taxing limitation is real and has a significant impact upon the City's ability to raise revenues and pay this Award. With respect to the majority's disposal of the 1% tax limitation as being self-imposed, this statement is inaccurate and misleading. The tax limitation was not imposed by the legislative branch of City government. It was imposed by the citizens and tax payers of the City of Amsterdam, who have spoken: taxes and expenditures have gotten out of hand, and must be controlled.

In 1987-1988, the City tax rate was \$44.65 per thousand; in 1988-1989 it was \$54.31 per thousand; in 1989-1990 it was \$60.82 per thousand. This is a three year increase of 36.2%. Testimony was offered at the arbitration that the significant increase in the tax rate was caused by negotiated salary and fringe benefit packages for employees of the City. In response to this significant increase in taxes, the taxpayers enacted the 1% tax cap. As a result of the local referendum, the tax rate in 1990-1991 was \$52.54 per thousand. Under the 1% tax cap, the maximum tax rate permissible for 1991-1992 fiscal year is \$54.32 per thousand, an insignificant margin.

The imposition of the 1% tax cap by the citizens of the City of Amsterdam is quite different than a self-imposed limitation enacted by a legislative body. Rather than being a limitation imposed by the City Council of the City of Amsterdam, it is a limitation which the City of Amsterdam City Council must deal with, and live with, everyday and significantly restricts the City's ability to raise revenues.

While the majority opinion states that the issue confronting the City is between competing priorities for the revenues of the City, there was no evidence presented by the union, in its analysis of the 1990-1991 City budget, that the expenditures of the City were misplaced or wasteful. There was no evidence presented by the union that the City had "hidden money" to avoid having to pay wage increases. The union did not argue that the City could raise taxes to satisfy the Award. The only evidence presented related to the City's dismal fiscal situation. The majority has taken upon itself to usurp the legislative function of the City and determine how the City will spend its limited resources and thus, has rearranged the priorities of the City council. However, it is the responsibility of the elected officials of the City of Amsterdam to determine how to spend the limited resources and not this arbitration panel.

At the arbitration hearing, the City comptroller testified in detail with respect to the specific financial problems confronting the City of Amsterdam. She testified with respect to the loss of businesses located within the City. A number of stores in the Amsterdam Mall have closed. There has also been the loss of a number of major employers within the City resulting in increased unemployment.

The comptroller also testified with respect to the loss of significant State aid. As a result of action taken by the State legislature in December of 1990, the City of Amsterdam lost approximately \$400,000 of State aid. The union's own witness testified that Amsterdam can anticipate the loss of between 42 and 43 percent of its State aid funding from previous years. As a result of this reduction in State aid, the City has had to invade its general fund balance just to maintain current levels of services.

The City also presented evidence with respect to the taxable assessed valuation of real estate within the City. This evidence consisted of the filing which is required with the New York State Comptroller's Office. For fiscal year ending June 30, 1986, the taxable assessed valuation of real estate in the City of Amsterdam was \$53,299,744.00. For fiscal year ended June 30, 1990, the taxable assessed valuation of real estate was \$53,198,901.00. This evidence establishes that in the last five years, the taxable assessed valuation of real estate in the City of Amsterdam has decreased. This comparative valuation would be further reduced taking into account the inflation rate over the last five years. Thus, not only has the ability of the City to raise taxes been limited by the 1% tax cap, the total value of property which the City must tax has actually decreased in the last five years.

In addition to the tax cap of 1% and the reduction in taxable assessed valuation of real estate, the City has also experienced a significant drop in sales tax revenues.

On the expenditure side, the City can expect a significant increase in the tipping fees that it must pay for disposal of solid waste.

At the arbitration hearing, the union did not rebut the factual testimony offered by the City with respect to the City's fiscal affairs.

Based upon this un rebutted evidence, it is the opinion of this panel member that the majority's award of 4% retroactive to July 1, 1990, and 6% effective July 1, 1991, is unreasonable, unwarranted, and beyond the means of the City.

HEALTH INSURANCE

In the award, the majority failed to award the City's modest modifications that it sought with respect to health insurance (Issue Number 7). The City's proposal sought to have the employees pay increased deductibles and copays with respect to various health benefits. The City did not seek to have the employees pay any increased share of the insurance premium. The majority of the panel failed to recognize the spiraling costs of

health insurance confronting the City of Amsterdam and the modest relief that the City sought. The effect of the majority's failure to award the modifications in health insurance is further compounded by the excessiveness of the salary increase. I dissent.

CHILD CARE

In its award, (Issue Number 16) the majority granted the PBA's proposal with respect to the granting of 30 days paid leave for child care for a newborn or newly adopted infant. At the arbitration, the union did not offer any testimony with respect to its justification nor need for this proposal. The majority, in its award, noted that neither party provided comparative data for this matter. It was the responsibility of the union to present evidence to justify its demand. The majority, however, rather than relying upon the record and evidence presented by the union with respect to this proposal (there was none) substituted its personal feelings on the issue. This is clearly improper. The arbitration panel must rely upon evidence presented in the record as to justification and comparability, and not substitute its own personal feelings on a particular issue. I dissent.

SUMMARY

There are other issues to which I have dissented which I otherwise would have concurred with the majority. I must, however, look upon the Award of the majority in its totality, and not dissected into individual issues. Based upon the entire Award, I cannot concur with other aspects of the majority's opinion which, but for my opinion as expressed in this dissent, I would have otherwise concurred.

Dated: 8/26/91



WILLIAM M. WALLENS, Public
Employee Panel Member

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