

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

In the Matter of the Arbitration :
 between :
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THE CITY OF UTICA, :
 Public Employer, :
 :
 -and- :
 :
JOHN E. CREEDON POLICE BENEVOLENT :
ASSOCIATION, :
 Employee Organization. :
 :
PERB Case No. IA93-018; M92-604 :
_____ :

NOV 16 1994

CONCILIATION
OPINION
AND
AWARD

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Ronald G. Dunn, Esq.
Employee Organization Panel Member

Benjamin J. Ferrara, Esq.
Employer Panel Member

APPEARANCES:

For City of Utica:

Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.
Henry F. Sobota, Esq., of Counsel

For John E. Creedon Police Benevolent Association:

Gleason, Dunn, Walsh & O'Shea
Mark T. Walsh, Esq., of Counsel

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board, to make a just and reasonable determination of a dispute between the City of Utica ("City") and the John E. Creedon Police Benevolent Association ("PBA").

The City of Utica is a municipal corporation located in Oneida County. Its population is currently estimated as approximately 70,000 people.

The PBA is the certified bargaining agent for all Police Officers employed by the City, exclusive of the Chief of Police and the Deputy Chiefs. There are 164 unit positions, but due to unfilled vacancies, there has consistently been less than the full complement.

The last collective bargaining agreement between the parties covered the period commencing October 1, 1987 and ending March 31, 1991. For the period commencing April 1, 1991 and ending March 31, 1993, the parties were subject to an Interest Arbitration Award, which was issued on September 25, 1992. That Interest Arbitration Award expired on March 31, 1993.

Prior to the expiration of the 1991-93 Award, the parties began negotiations for a successor contract in late 1992, but such negotiations were unsuccessful, and in February of 1993 the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and on July 28, 1993, the PBA filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on August 16, 1993, and thereafter, on December 16, 1993 the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law.

Hearings were conducted before the undersigned Panel in Utica on December 21, 1993, February 17, March 23 and June 16, 1994. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions. After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met in several Executive Sessions, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Sessions, the Panel members reached unanimous agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

The parties extended the jurisdiction of the Panel and requested that a three year Award be issued. Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period April 1, 1993 through March 31, 1996.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

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

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

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

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

HEALTH INSURANCEDiscussion on Health Insurance

The continuing problem with increasing health insurance costs is at the center of the instant dispute. Under the current contractual commitment, the City provides 100% of health insurance coverage for all members of the police unit, except for those employees hired after April 1, 1990, who are required to contribute 25% of the cost of health insurance. All parties recognize that the continued escalation of employee benefit costs significantly affects the City's ability to pay for a fair and reasonable increase in salary. During the instant arbitration hearings, the City indicated that the cost of providing family health insurance and related benefits coverage under the existing plan for police members is \$6,917 for 1994-95 (City Exhibit 40). This represents an increase of 10.4% over the cost for the same health coverage in 1993-94 (PBA Exhibit 31).

To its credit, the City is attempting to have all City employees, not just members of the Police unit, contribute 10% of the cost of health insurance, in addition to those hired after April 1, 1990, who are already contributing 25%, and under the City's proposal, will continue to pay 25%. The City has reached agreement with the CSEA unit that if other city employees, including either police or fire are required to contribute 10%, then CSEA unit members will contribute 10%. Additionally, the City is seeking significant changes in the current health

insurance coverage, including increased deductibles, increased prescription co-pays and a less expensive dental plan, all of which should serve to lower the costs. However, it is important to note that the City cannot indicate just how much will be saved by either the changes in the current plan, or by having all members of the police unit hired pre-April 1, 1990 contribute 10% of health insurance costs.

There is no question that the Panel is concerned with the overall financial health of the City. In that regard, the Panel takes notice of how the City is attempting to manage health insurance costs in the other bargaining units. However, the focus of the Panel herein must be to continue to provide quality health insurance benefits for members of the police unit at a fiscally prudent and reasonable cost to both the City and the members of the police unit. What will or will not be done in other City bargaining units (excluding fire) is merely collateral to the decisions which must be made herein by this Panel. More importantly, the Panel must consider other proper police comparables to determine a fair and equitable resolution to the health insurance issue for police in Utica.

In viewing the appropriate police comparables¹, it is apparent that all municipalities continue to struggle to find ways to cope with increasing health insurance costs. Binghamton and Niagara Falls continue to pay 100% of health insurance costs for police (PBA Exhibit 1, tabs 2 and 5). However, Schenectady and Troy provide for a health insurance contribution which is scaled back during the first five years of employment, resulting in the payment of 100% of health insurance costs by the employer (PBA Exhibit 1, tabs 8 and 11). Furthermore, Rome currently provides 100% of health insurance costs for all employees except for those hired after December 31, 1985, who contribute 25% (PBA Exhibit 1, tab 6).

Also of interest herein is that the City of Utica is currently providing 100% of the cost of health insurance to City firefighters, except those hired after April 1, 1990, who pay 25%. The City has made efforts to maintain parity in health insurance coverage for police and fire, and now indicates that it seeks to provide consistent cost-benefits and a reasonable contribution from all City employees, including management personnel.

¹ The parties have agreed that the proper comparables for Utica police are those which were used in the 1991-1993 Interest Arbitration Award issued by Chairman Selchick on September 25, 1992. Those cities--all in New York State--are Niagara Falls, Schenectady, Troy, Binghamton and Rome.

It is the view of the Panel, after careful study, that the City's high cost of health insurance is a direct result of the present system of being self-insured in this area. The self-insurance method of paying claims, coupled with the necessary cost of the third party administration of benefits, has evolved to the point at which the City has no choice but to pay what the Panel views as an excessively high cost for health coverage--that of almost \$7,000 per year per police employee for family coverage. While the City is correct that assessing all police members hired before April 1, 1990 a 10% contribution will provide some immediate relief, it does not realistically solve the problem for the future.

As health costs under the current City plan will continue to rise at an alarming rate, the City will have to seek additional contributions beyond the 10% from members hired before April 1, 1990, until such time as all police are paying 25% of their health insurance costs. Providing the City with the requested 10% contribution to the current plan merely solves an immediate shortfall, and does not address the real problem. That is, the City's cost of providing health insurance coverage is simply too high.

There is no question that the City has recognized that the cost of the current health insurance program is too high, and in response to a consultant's study (City Exhibit 35) has requested changes in coverage and increased co-pays as mechanisms to help reduce costs. Nonetheless, even the consultant's study recognizes that such changes and increased co-pays will not reduce costs by any certain amount; as it all depends on the frequency and nature of claims presented to the plan. This is the essential problem with the concept of self-insurance, and it is the view of the Panel that such changes and co-pays as requested by the City, along with the 10% contribution for all members, are insufficient to resolve the health insurance problem on a long term basis.

Rather, it is the finding of the Panel that the only certain way to reduce costs is to change to a more efficient and better managed health insurance program. In the face of continuing health insurance costs, it is necessary to change to a plan which recognizes that managed care is the key to keeping costs down, and yet still providing a high level of benefits. Accordingly, it is the finding of the Panel that effective April 1, 1995, the City shall provide health insurance coverage for members of the police unit by joining the New York State Government Employees Health Insurance Program as a participating agency, and shall adopt a resolution to such effect, providing that police shall be covered by the Empire Plan benefits described as Core plus Medical and Psychiatric Enhancements.

The Panel has been advised by representatives of the NYS Government Employees Health Insurance Program that under State law it must accept the Utica police unit in the NYS Government Employees Health Insurance Program (often referred to as the Empire Plan), and that the approximate cost of requested coverage will be slightly over \$5,000 per year per employee for family coverage.² That represents a very significant savings for the City from the existing coverage provided through self-insurance for the duration of this Award and the future years.

While there is no doubt some differences in coverage and/or benefits provided, as well as required co-pays, the Panel finds that the Empire Plan as designated herein provides substantially similar coverage to that currently enjoyed by Utica police---at a much reduced cost to the City.

It is important to emphasize that the Panel is only directing a change in the health insurance coverage for members of the police bargaining unit. While the City has indicated a desire and even had entered into separate agreements for other bargaining units to make changes if such are made for the police, this Panel is aware and cognizant that our jurisdiction extends only to members of the police bargaining unit.

² The Panel recognizes that there may be other cost-effective managed health insurance plans available which would fit the needs expressed herein. The Panel has decided upon the NYS Empire Plan because it is required by law to accept the City of Utica as a participating agency at an established cost, and because it has a proven and ongoing track record in the Utica area.

The savings gained from changing to the Empire Plan will both serve to help to fund salary increases provided in this Award and to help the City avoid future unbudgeted and unplanned for increases beyond the norm in the area of health insurance. The Empire Plan is gaining notice for its concept of managed care and for providing a high level of benefit at the lowest cost possible. The Panel believes that such astute management will continue in the future and will save the City future dollars.

However, the Panel further finds that some contribution to health insurance should be required of every employee in the police unit, not just those who were hired after April 1, 1990. All police share equally in the dangers of their chosen profession and all should share equally in the costs of benefits provided to them. Therefore, effective with the changeover to the Empire Plan on April 1, 1995, all members of the police unit will contribute 10% of the cost of their coverage, whether individual or family. The 25% contribution now paid by police hired after April 1, 1990 shall be reduced to 10% effective with the changeover to the Empire Plan on April 1, 1995. The City shall adopt and implement a Flexible Benefit Plan pursuant to Section 125 of the Internal Revenue Code. All contributions made by Utica police for health insurance coverage shall be made and taken by the City in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan.

It is not the intent of the Panel to disturb the current enrollments of any members of the police unit in Health Maintenance Organizations ("HMO's"), but only to replace the City's existing self-insurance known as the Blue Cross/Blue Shield UB17X Plan. All such HMO's in which police are currently enrolled shall continue in accord with current practice.

For those police enrolled in an HMO, including police hired after April 1, 1990, there shall be no employee contribution required, unless the net cost of HMO coverage exceeds 90% of the cost of Empire Plan coverage (individual or family coverage as selected). In the event selected HMO coverage exceeds 90% of the net cost of Empire Plan coverage, the employee must contribute that portion of the increased cost, up to a maximum of 10% cost of the Empire Plan (individual or family coverage as selected).

Members of the police unit who retire on or after the date of this Award shall be bound by the health insurance provisions herein, and shall, effective April 1, 1995, contribute 10% towards the cost of their health insurance coverage, individual or family coverage as selected.

The Panel has found herein that changing to the Empire Plan provides substantial benefits at a significantly lower cost than the City is now incurring. However, in the event the Empire Plan premiums increase, the City shall have the right to change to a

different health insurance plan if the Empire Plan premiums have increased to the extent that another plan providing substantially similar coverage is more cost effective. This shall not affect the contribution rates specified in this Award.

Upon determination by the City that another health insurance plan is more cost effective, it shall give the PBA 90 days advance notice of such change, and shall allow the PBA to examine the new plan and present any arguments of objection to the City.

The City shall have the unilateral right to change to a different health insurance plan, so long as the coverage provided is substantially similar to the Empire Plan. The issue of whether or not the new plan is substantially similar shall be arbitrable at the request of the PBA, and the Panel Chairman retains jurisdiction of this issue during the term covered by this Award.

While not discussed in detail herein, this Award continues the current Dental Plan provided to members of the police unit. The Panel also finds that there should be a 10% employee contribution for the Dental/Optical Plan for precisely the same reasons as Health Insurance generally. The Panel Award further provides that the City shall have the right to change to a different Dental Plan of substantially similar coverage upon 90 days notice to the PBA, if the City determines that such new plan would be more cost-effective. Upon such determination by the

City, and notice to the PBA, the PBA shall be allowed to examine the new plan and present any arguments of objection to the City. The issue of whether or not the new plan is substantially similar is arbitrable at the request of the PBA, and the Panel Chairman retains jurisdiction of this issue during the term covered by this Award.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON HEALTH INSURANCE

1. Effective April 1, 1995, the City shall adopt the necessary resolution and take all other required action to adopt the New York State Government Health Insurance Program, Core plus Medical and Psychiatric Enhancements, for members of the police unit.

2. Effective April 1, 1995, all members of the police unit will contribute 10% of the cost of their coverage, whether individual or family. The 25% contribution now paid by police hired after April 1, 1990 shall be reduced to 10% effective with the changeover to the Empire Plan on April 1, 1995. The City shall adopt and implement a Flexible Benefit Plan pursuant to Section 125 of the Internal Revenue Code. All contributions made by Utica police for health insurance coverage shall be made and

taken by the City in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan.

3. All HMO's in which police are currently enrolled shall continue in accord with current practice. For those police enrolled in an HMO, including police hired after April 1, 1990, there shall be no employee contribution required, unless the net cost of HMO coverage exceeds 90% of the cost of Empire Plan coverage (individual or family coverage as selected). In the event selected HMO coverage exceeds 90% of the net cost of Empire Plan coverage, the employee must contribute that portion of the increased cost, up to a maximum of 10% cost of the Empire Plan (individual or family coverage as selected).

4. Members of the police unit who retire on or after the date of this Award shall be bound by the health insurance provisions herein, and shall, effective April 1, 1995, contribute 10% towards the cost of their health insurance coverage, individual or family coverage as selected.

5. The City shall have the right to change to a different health insurance plan if the Empire Plan premiums have increased to the extent that another plan providing substantially similar coverage is more cost effective. Upon determination by the City that another plan is more cost effective, it shall give the PBA 90 days advance notice of such change, and shall allow the PBA to examine the new plan and present any arguments of objection to

the City. The issue of whether or not the new plan is substantially similar is arbitrable at the request of the PBA, and the Panel Chairman retains jurisdiction of this issue during the term covered by this Award.

6. The current Dental/Optical Plan provided to members of the police unit shall be continued unless changed by the City as provided herein. Effective April 1, 1995, all members of the police unit will contribute 10% of the cost of coverage, whether individual or family. All contributions made by Utica police for Dental/Optical coverage shall be made and taken by the City in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan. Effective on the date of this Award, the City shall have the right to change to a different Dental/Optical Plan of substantially similar coverage upon 90 days notice to the PBA, if the City determines that such new Dental/Optical Plan would be more cost-effective. Upon such determination by the City, and notice to the PBA, the PBA shall be allowed to examine the new Dental/Optical Plan and present any arguments of objection to the City. The issue of whether or not the new Dental/Optical plan is substantially similar is arbitrable at the request of the PBA, and the Panel Chairman retains jurisdiction of this issue during the term covered by this Award.

SALARY

Discussion on Salary

Notwithstanding the health care cost concerns raised by the City, the paramount issue as articulated by the PBA is in gaining a significant increase in salary so that the Utica police are no longer the lowest paid police when compared to similar cities. The PBA is seeking a 15% salary increase effective April 1, 1993, and a 15% salary increase effective April 1, 1994. The PBA maintains that such proposed significant increases are required and justified based on comparable salaries received by police officers in similar cities. The PBA argues that the Utica police remain the lowest paid police when viewed against the agreed upon comparable cities--Niagara Falls, Schenectady, Troy, Binghamton and Rome. The PBA also indicates that the Utica police remain below the Utica firefighters in overall compensation.

The City argues that its economic condition has not significantly improved since the 1991-93 Interest Arbitration Award for police, and that increased costs in providing health insurance for City employees, including the police, prevents it from funding the high salary increase sought by the PBA. The City offers a 4% increase effective 4/1/93 and a 4% increase effective 4/1/94, but only if coupled with an extensive cost containment award on health insurance.

The City points out that through prior Interest Arbitration Awards and subsequent collective bargaining, police officers salaries in Utica have increased 47% between 1984 and 1991. In the last Interest Arbitration Award, covering the 1991-1993 period, the PBA unit received a 6% increase effective April 1, 1991, a 4% increase effective April 1, 1992 and a 2% increase effective January 1, 1993. It is the position of the City that due to past increases, the current City salary offer is fair and reasonable, and is comparable to that received by other police in the agreed upon comparable cities. The average of the increases received by police in such comparable cities for the relevant time period is only 2.5% and no increase larger than 4.5% was received by any of the police units in such comparable cities during this time period.

The City argues that when looking beyond the five agreed upon comparable cities, it is clear that police settlements and interest arbitration awards have ranged from 0% to 6% per year, with the majority coming in below that which is currently being offered by the City herein (see Cities of Auburn, Town/Village of Harrison, City of Kingston, and City of Amsterdam settlements and Awards).

The City points out that the rate of inflation has steadily declined, and reached a 7 year low of 2.7% in 1993. The most recent figure (May 1994) puts the rate of increase at 0.1% for the month and 2.3% during the previous 12 months.

The City reminds the Panel that Utica must be considered a relatively poor city, consisting of large numbers of retired residents living on fixed incomes, and that it has a declining property tax base. During the past decade, city taxes have increased nearly every year (City Exhibit 4). In 1993-94 City taxes were increased by 22%. Due to increases in City school taxes, the real property tax burden has continued to rise sharply each year. In addition to increased real property taxes, the City has implemented a system of user fees for garbage removal, which impacts upon the same property owners as the increase in real property taxes (City Exhibits 22, 28 and 29). Further, the City has encountered a problem in collecting taxes, with uncollected taxes increasing to 7.1% in 1991-92.

In reaching the salary determinations herein, the Panel has considered the current state of the Utica area's economy, and the attendant loss of jobs from the realignment of nearby Griffis Air Force Base (City Exhibit 14). The Panel has also reviewed the City's budget for 1993-94 (City Exhibit 11) and 1994-95 (City Exhibit 18), as well as the budget history for the past 10 years (City Exhibit 26). The Panel has also reviewed Utica's current bond rating (City Exhibits 13 and 31) and the City's overall financial status (City Exhibits 1, 2A, 2B, 23, 24, 25A, 25B and 32). The Panel notes that the City has implemented a tax cut in the property tax rate for 94-95 and that the previous budget deficit has been addressed by the issuance of Special Revenue

Bonds pursuant to State legislation (Chapter 711, Laws of 92; PBA Exhibit 4).

The Panel has considered all of the data and arguments presented by both parties, and has applied such data to the criteria mandated by statute as specified in Section 209.4 of the Civil Service Law.

It is clear that the proper comparables for Utica police officers are the New York State cities used in the 1991-93 Interest Arbitration Award. Those cities are Niagara Falls, with a population of approximately 62,000 people and a police department of 154; Schenectady, with a population of approximately 65,000 people and a police department of 142; Troy, with a population of over 54,000 people and a police department of 126; Binghamton, with a population of approximately 53,000 people and a police department of 136; and Rome, which although smaller than Utica in both population and the size of the police department, has many similarities with Utica. The Panel also has compared Utica police officers with Oneida County Deputy Sheriffs, where appropriate.

As the Panel stated in the 1991-93 Interest Arbitration Award, there are many factors that must be considered under the Taylor Law to reach a just and reasonable determination of the proper compensation to be awarded to the Utica police herein. The issue of Utica's ability to pay is an important factor that

must be given paramount attention, but it must be viewed against the obvious importance of maintaining an acceptable level of police services which are necessary to protect the citizens of Utica. The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Utica police officers with a fair and equitable wage for the important and in many cases, dangerous work which they perform.

As of 3/31/93, the top base salary for a Utica police officer was \$31,672. A review of salaries of police officers with similar service experience, in the comparable cities as of 3/31/93 is revealing:

Niagara Falls	\$34,383
Schenectady	\$35,126
Troy	\$34,662
Binghamton	\$34,813
Rome	\$33,957

Although the Utica police starting salary of \$25,756 is still either above or at the starting salaries of the comparable cities, it is clear that the top base salary for experienced Utica police officers is below that of comparable cities and requires adjustment.

As of 3/31/93, a Utica police sergeant earns \$34,842, while police sergeants in comparable cities earn as follows:

Niagara Falls	\$34,717
Schenectady	\$37,516
Troy	\$41,055
Binghamton	\$38,214

It is clear to this Panel that Utica police sergeants are behind police sergeants in comparable cities, with the exception of Niagara Falls, in terms of base salary. Albeit, the Utica sergeants are not nearly as far behind when compared to other departments as are Utica police officers.

The City has made provisions in its budget for a 4% salary increase for police for 1993-94 and an additional 4% salary increase for police in 1994-95. The salary increases awarded herein utilize the money previously budgeted, and fund the increase for 1995-96 with the savings garnered from the change in health insurance and the 10% health insurance contribution to be made by all members of the police unit. It is the considered opinion of the Panel that such increases as provided herein are within the ability of the City to pay and will not require any additional tax levy or bond issuance to be met.

The Panel has also considered the fact that the complement of Utica police officers remains unfilled under the authorized positions of 164 (PBA Exhibit 2). This has resulted in significant savings to the City in salary and other benefits. While some increased overtime for the remaining officers has resulted from this reduction in complement, the overall effect has been of a monetary saving to the City (PBA Exhibit 14).

Therefore, after careful consideration and review of all the data and material presented herein, the Panel has concluded that

salary increases to Utica police officers are warranted, and that the City does have the ability to pay such modest increases. Such increases are necessary, and will bring Utica police up to par when viewed against comparable police departments in upstate New York.

However, it is apparent that the entry level salary for Utica police continues to be acceptable, based on number of applicants seeking employment as Utica police, and when compared with the starting salaries of other comparable police departments. The Panel has therefore, excluded entry level salaries from any of the salary increases awarded herein, and has frozen the entry level salary for a Utica police officer at \$25,756 until March 31, 1996.

The Panel also finds that second year salaries for Utica police are equal to the norm in other comparable police departments, and therefore excludes second year police from receiving any increase until 4/1/95, as more fully detailed in the Award infra.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY

1. All police unit members who were on the police payroll on 4/1/93 and were at the third year base salary or above, and remain on the payroll on the date of this Award, shall receive a lump sum payment of \$1,250 in lieu of any percentage increase to salary or any other payment. This payment of \$1,250 shall be placed on the salary schedule effective 4/1/95, with the exception of the entry level salary and the second year salary.

2. All police unit members who were on the police payroll on 4/1/94 and were at the third year base salary or above, and remain on the payroll on the date of this Award, shall receive a lump sum payment of \$1,250 in lieu of any percentage increase to salary or any other payment. This payment of \$1,250 shall be placed on the salary schedule effective 4/1/95, with the exception of the entry level salary and the second year salary.

3. The above two payments of \$1,250 each to eligible unit members shall constitute the sole and full retroactive payment for the period commencing 4/1/93 and ending 3/31/95.

4. Effective 4/1/95 the salary schedule shall be increased by 3%, with the exception of the entry level salary which remains frozen at \$25,756.

5. Effective 1/1/96 the salary schedule shall be increased by 3.5%, with the exception of the entry level salary which remains frozen at \$25,756.

6. The salary of superior officers shall continue to be at least 10% higher than the salary of the comparable officer at the next lower rank.

7. The salary schedule for the 1993-96 Agreement is attached hereto as Appendix A.

LONGEVITY PAYMENTS

Discussion on Longevity

The PBA seeks increases in longevity payments made to police officers for years of service. Specifically, the PBA requests that longevity increments be a percentage of base salary and requests that the number of years of service required to be eligible for such increments be modified. The City is opposed to any increase in longevity payments.

The issue of longevity payments arose after the issuance of the 1991-93 Interest Arbitration Award and resulted in all increments being added to the salary schedule. That salary schedule, including longevity increments, was used as the basis of the salary award made herein. Therefore, longevity increments are now included on the salary schedule for 1993-96 attached hereto as Appendix A. Accordingly, the PBA proposal is denied, as there is no need to make any award on longevity. Further, that Section 4 of the 1991-93 Agreement which pertains to Longevity payments should be deleted from the 1993-96 Agreement as unnecessary.

AWARD ON LONGEVITY PAYMENTS

The PBA proposal seeking increases and modifications to longevity payments is denied, as such payments are included in the attached salary schedule (Appendix A). Accordingly, Section 4 of the 1991-93 Agreement which pertains to Longevity payments shall be deleted from the 1993-96 Agreement as unnecessary.

SENIORITY

Discussion on Seniority

In the 1991-93 Interest Arbitration Award, the Panel modified the definition of seniority to include only service as a police officer, and further provided that seniority be the determining factor for vacation scheduling, subject to the operating needs of the Police Department. In the instant arbitration, the PBA requests that a more precise definition of seniority be adopted, and that seniority be utilized for bidding for assignments, vacancies, transfers, and overtime assignments, in addition to vacation scheduling. The PBA asserts that every single comparable police department--Binghamton, New Hartford, Niagara Falls, Rome, Troy and Schenectady, all have seniority based bidding for assignments, vacancies and transfers.

The City responds that the current system of making assignments has been based upon the use of stated criteria by the Police Chief (see PBA Exhibit 21), and that such system has worked well over the years and has served to allow the Department the necessary flexibility for making assignments and transfers. The City argues that seniority should be only one of many relevant criteria utilized for making assignments and transfers, as has been the custom and practice for over two decades.

The Panel finds that a more detailed definition of seniority is needed to avoid disputes over use of seniority, and generally

adopts the definition as proposed by the PBA with minor modifications. The exact text of the seniority definition awarded by the Panel is set out in the Award section.

In connection with the application of seniority as a "specific criteria" to particular benefits and conditions contained in the contract, the Panel received much testimony, opinion and forecasting from the parties on its feasibility and the practical impact on decisions which affect the day-to-day operations of the department.

With regard to vacation scheduling, the Panel finds that there have been problems with vacation scheduling by seniority, in that some members of the unit are deprived of any vacation whatsoever during the summer vacation period. Therefore, Section 15 of the 1991-93 Agreement shall be amended to provide that while seniority shall determine the granting of vacation days, all members of the unit shall be entitled to bid for and be granted 1 week vacation during the period commencing June 15 and ending September 15 of each year. However, all granting of vacation days remains subject to the necessary operating needs of the Department, as provided in Section 15 of the 1991-93 Agreement.

Regarding transfers, the Panel heard some testimony concerning what was perceived by the PBA as disciplinary transfers of certain police officers during August/September 1993

and in December 1993 (PBA Exhibits 20A through 20D and 22). This was disputed by the City's witnesses. The Panel does not believe that seniority should be the sole determining factor for transfers, but rather agrees with the City that it is one of many relevant criteria to be considered.

However, the Panel does find that unit employees should not be subject to disciplinary transfers without proper procedural safeguards, and awards that such protection should be added to the Agreement. Any such claim of a disciplinary transfer shall be subject to grievance and arbitration under the Agreement.

As to vacancies, the Panel does not believe it to be appropriate to have seniority be the sole determining factor. The Panel is of the view that seniority is a primary factor to be considered. In the past, the Utica Chief has given seniority equal weight with other criteria when filling vacancies. The Panel finds that seniority is entitled to greater weight than the other criteria, but that such relevant factors regarding the performance in the vacancy must be considered when filling vacancies which the City in its discretion determines should be filled. Therefore, the Panel adopts a modified seniority provision for filling vacancies, which shall establish that when all other relevant factors concerning qualifications, including performance in the vacancy are substantially equal, seniority shall be used as the final determining factor. In the event the most senior candidate is not selected, he/she shall be entitled

upon request to the reasons for such non-selection. If not satisfied, the non-selected candidate may file a grievance, which shall be subject to arbitration. The initial decision as to the relative qualifications of the candidates shall remain in the discretion of the City subject to review as noted above.

The PBA has also requested that overtime assignments be made based on seniority. While the Panel does not accept the PBA proposal, it does find that the current method of assignment of overtime has led to perceptions of inequity and favoritism among certain members of the unit. Although the Panel recognizes that unscheduled overtime must continue to be assigned at the discretion of police management based on operational needs, the Panel is of the view that the opportunity to work scheduled overtime should be assigned equitably amongst all members who desire to be called for such overtime.

Therefore, the Panel awards that all scheduled overtime shall be equitably distributed among all qualified members of the department by seniority, who have expressed an interest in being assigned such overtime. Commencing on January 1, 1995, and every six (6) months thereafter, members of the department interested in working scheduled overtime shall place their name on a scheduled overtime roster with a telephone number where they can be reached on short notice, from which scheduled overtime shall be assigned in order of seniority using a rotating wheel. If a member refuses the overtime or cannot be reached at the telephone

number they have designated, that person shall be skipped and will not be eligible for scheduled overtime again until the wheel rotates again to their position.

All other PBA proposals for modifications in the current practices in the department which would require the use of seniority as an exclusive, controlling or determining factor are rejected by the Panel.

AWARD ON SENIORITY

Accordingly, the Panel Awards that the definition of seniority contained in Section 19 be changed to read as follows:

Section 19 Seniority

a. Definition of Seniority

The employee's seniority shall be determined by the employee's length of service as a police officer in the Utica Police Department. The effective date of employment as a sworn police officer shall be used as the original date of employment. Seniority in rank shall be determined by the effective date of the employee's permanent appointment to that rank from a civil service list provided that the first date of employment is the same. For the purpose of determining relative seniority between employees who receive appointments to the rank of patrolman on the same day, the employee who receives the higher mark on the civil service examination shall be deemed to have the greater seniority. Should the marks be tied, a flip of a coin shall determine relative seniority. For the purpose of determining relative seniority between employees who receive promotional appointments effective on the same day, the employee with the greater seniority in the department shall be deemed to have the greater seniority between the two employees. Any periods of unpaid leave shall be deducted from the calculation of an employee's seniority date.

b. Seniority List

A current seniority list showing the names, length of service, department assignments and rank shall be furnished to the PBA on or about January 1 of each year. A copy of the list shall be maintained by the department for inspection by members of the unit.

c. Loss of Seniority

An employee shall forfeit seniority rights only for the following reasons:

1. Resignation without reinstatement within one (1) year.
2. Dismissal without reinstatement.
3. Retirement.

As regards vacation scheduling, the Panel awards a modification of Section 15 of the 1991-93 Agreement, which shall be amended to provide that while seniority shall determine the granting of vacation days, all members of the unit shall be entitled to bid for and be granted 1 week vacation during the period commencing June 15 and ending September 15 of each year. All granting of vacation days remains subject to the necessary operating needs of the Department, as provided in Section 15 of the 1991-93 Agreement.

Regarding the issue of involuntary transfers, the Panel rejects the PBA proposal to have all such transfers determined by seniority. The Panel awards that a new provision be added to the 1993-96 Agreement which provides that all decisions regarding involuntary transfers of employees to positions or job assignments (except for filling of vacancies) shall remain in the sole discretion and authority of the department management.

However, absent agreement by an employee, transfers made for the purpose of imposing discipline shall be subject to review under the grievance and arbitration provisions of the Agreement.

As to vacancies, the Panel awards that a new provision be added to the 1993-96 Agreement which will read as follows:
"If all other factors relevant to the filling of the vacancy are substantially equal, seniority shall be the determining factor for the filling of vacancies. In the event the most senior candidate is not selected, upon request, he shall be provided with the reasons for such non-selection. This provision shall be subject to grievance and arbitration under the Agreement."

As regards the assignment of scheduled overtime, a roster shall be created by the department on January 1, 1995, and updated every six (6) months, of all members who wish to be assigned scheduled overtime. A member who wishes to be considered for scheduled overtime will leave their telephone number on the list where they can be reached on short notice. Such assignment of scheduled overtime shall be equitably distributed pursuant to such roster in order of seniority using a rotating wheel. If a member refuses the overtime or cannot be reached at the telephone number they have designated, that member shall be skipped and will not be eligible for scheduled overtime again until the wheel rotates again to their position.

OUT OF TITLE WORK

Discussion on Out of Title Work

The 1991-93 Agreement provides in Section 8 that an employee assigned to perform the duties of a higher rank shall receive the higher rate of pay only when the employee is replacing a superior who is sick or on a leave of absence. Therefore, if an employee is assigned to perform the duties of a higher rank while such position is vacant, he receives no additional pay for performing the work at the higher rank. Section 8 further provides that when out of title pay is awarded as a result of performing duties of a higher rank when filling in for a superior who is sick or on a leave of absence, such out of title pay is only provided commencing with the sixth (6th) full day of such assignment.

The PBA seeks a modification of the Agreement providing that out of title pay be provided for all the time an employee performs the duties of a higher rank, regardless of the reason for such assignment. The PBA requests that such pay be provided commencing on the first day of such out of title work assignment. The City opposes the PBA proposal as suggesting a de facto promotion for officers regularly assigned to perform the duties of a higher rank, and constitutes a violation of Section 61(2) of the Civil Service Law.

The Panel finds that there is no basis for the distinction as to the reason an employee is assigned to perform the duties of a higher rank which should serve as the basis for out of title pay. It is the view of the Panel that regardless of reason, if an employee is specifically assigned to perform the duties of a higher rank on a temporary basis, he should be compensated at the rate of pay for the higher rank. This is exactly what is currently provided for Utica Firefighters in their collective bargaining agreement (see Article V, Section 5). This is also what is found in a review of the other comparable police departments. Further, neither the Utica Fire Department nor the other comparable police departments have a six day waiting period before such out of title pay will attach for providing work at a higher rank.

Therefore, it is the finding of the Panel that Utica police are entitled to the same benefits in the area of out of title pay as are currently received by Utica Firefighters and by other police in comparable police departments.

AWARD ON OUT OF TITLE WORK

Accordingly, the Panel Awards that the Section 8 of the 1991-93 Agreement be replaced with the following provision:

Section 8 Out of Title Assignment and Pay

- a. An employee specifically assigned to perform out of title work at a higher rank shall be compensated on a per diem basis at the salary rate of the higher rank when such temporary assignment is made for more than one (1) day, regardless of the reason for such assignment.
- b. The Chief of Police, or his designee, may specifically assign a bargaining unit member to perform on a temporary basis the duties of a higher rank. The selection of the member to be assigned the duties of a higher rank shall be at the discretion of the Chief, or his designee.
- c. The PBA, individually and collectively, on behalf of its membership, does hereby voluntarily waive and intentionally relinquish any rights afforded under the provisions of Section 61, Subdivision 2 of the NYS Civil Service Law, for employees assigned out of classification duties pursuant to this section.

INDEMNIFICATION

Discussion on Indemnification

The 1991-93 Agreement provides in Section 33 that the City will defend and indemnify police officers in actions arising from the officer's activities in the performance of duty. The PBA seeks broader protection for members when faced with the threat of punitive damages assessed against them personally for actions taken while in the performance of police duties. The Utica Police Chief indicated his support for such protection for Utica police officers (see PBA Exhibits 33 and 34).

The Panel also takes note of the fact that this type of indemnity protection is not unique. Municipalities within the relative universe of comparable employers, including the Cities of Troy, Niagara Falls, Rome and the Town of New Hartford, among others, already provide Section 50-j defense and indemnity protection for their police officers.

The City opposes this proposal on the basis that no Utica police officer has been required to pay punitive damages in any case arising out of the proper performance of police duties, and further argues that New York State public policy prohibits the awarding of punitive damages against a municipality.

In the current climate of increasing civil rights litigation against police officers who act in the performance of their police duties it is not unusual for a police officer to be sued and for punitive damages to be sought against such officer. Under the existing contract provisions, any award of punitive damages, even against a Utica police officer who acted in the performance of his duties, must be paid out of the officer's personal assets. This undue exposure to civil liability for municipal police officers has been addressed by the New York State Legislature by the adoption of Section 50-j of the General Municipal Law.

Section 50-j of the General Municipal Law provides, in relevant part, as follows:

6. a. In addition to the requirements of subdivision one of this section, upon discretionary adoption of a local law, ordinance, resolution, rule or regulation, any city, county, town, village, authority, or agency shall provide for the defense of any civil action or proceeding brought against a duly appointed police officer of such municipality, authority or agency and shall indemnify and save harmless such police officer from any judgment of a court of competent jurisdiction whenever such action, proceeding or judgment is for punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his duties and within the scope of his employment. Such municipality, authority or agency is hereby authorized and empowered to purchase insurance to cover the cost of such defense and indemnification.

b. The determination of whether any such police officer properly discharged his duties within the scope of his employment shall be made in a manner which shall be promulgated by the chief executive officer, and adopted by the governing board of such municipality, authority or agency.

While the Panel agrees with the City that a police officer should not be protected from acts of wrongful misconduct, Section 50-j of the General Municipal Law clearly provides protection for an officer who acts in the "proper discharge of his duties" and "within the scope of his employment." The statute further provides that the determination as to whether the officer acted "within the scope of his employment" shall be made in accordance with procedures promulgated by the chief executive officer and governing board of the city.

The Panel notes that the demand for indemnification pursuant to Section 50-j of the General Municipal Law is a mandatory subject of bargaining under New York law [see City of Newburgh, 18 PERB 3065 aff'd sub nom. City of Newburgh v. Newman, 19 PERB 7005 (Sup. Ct. Co. Alb. 1986)]. Acceptance of the demand to include the provisions of Section 50-j of the General Municipal Law in a collective bargaining agreement requires the City to adopt a resolution to such effect, as provided in paragraph 6(a) of such law.

It is the finding of the Panel that under the circumstances adoption of Section 50-j of the General Municipal Law is a reasonable and prudent request, and will provide Utica police officers with necessary indemnification from the fear of punitive damages awarded by juries for acts committed in the proper discharge of their police duties, and at the same time, not

require the City to defend or indemnify an officer who has acted wrongfully and outside the scope of his employment.

Indeed, it appears that ultimate judicial protection of the municipal employer and its taxpayers from inappropriate indemnification remains viable in New York. See, for example, Miller v. City of Rensselaer, 94 A.D.2d 862 (3rd Dept. 1983) wherein the court explained that punitive damages are available against individual police officers only for "maliciously engaging in conduct far in excess of their rightful authority."

The Panel further notes that the City may purchase liability insurance to protect itself in the event it must indemnify a police officer for punitive damages.

In view of the above Award, the City's obligation contained at Section 27 "Legal Plan Benefits" of the Agreement to contribute towards a legal defense fund for participating employees is hereby eliminated from the Agreement.

AWARD ON INDEMNIFICATION

The Panel awards that the City take necessary legal action to adopt the provisions of Section 50-j of the General Municipal Law and that the 1993-96 Agreement contain a provision providing that Utica police officers are covered both for defense costs and punitive damages, pursuant to the provisions of Section 50-j of the General Municipal Law.

The Panel deletes that portion of Section 27 "Legal Plan Benefits" that requires the City to contribute.

LABOR MANAGEMENT COMMITTEE

Discussion on Labor Management Committee

The PBA seeks the creation of two new committees; a labor management committee and a safety committee. The PBA argues that the formal creation of such committees will provide a needed forum for constructive dialogue between the PBA and police management concerning day to day issues and problems. The City indicates that the PBA has not shown a need for such committees, as the Police Chief meets on a regular basis with the PBA leadership on a variety of topics.

There is no doubt that Labor-Management Committees, when used properly, serve to promote cooperation and dispute resolution between the parties. While the Police Chief has

demonstrated a willingness to meet as needed with the PBA, it would be beneficial to establish a contractual mechanism which promotes such meetings and discussions. This will allow the parties to meet on a regularly scheduled basis, and discuss and resolve matters which are not covered by the Agreement, or which arise during the course of the Agreement, and are of mutual concern to the parties.

Accordingly, the Panel accepts the PBA concept to create a Labor-Management Committee, but finds that one committee is sufficient. Most importantly, the meetings of the Labor-Management Committee shall not constitute negotiations under the Taylor Law, and no agreement reached by the Labor-Management Committee shall contravene the provisions of the collective bargaining agreement. The members of the Labor-Management Committee shall be the Police Chief and one (1) other person selected by the City, and the PBA President and one (1) other person selected by the PBA. Additional members may be added by mutual agreement of the parties. The Committee shall meet quarterly at a minimum, but more often as agreed upon by the parties. The Committee shall discuss and hopefully resolve matters of concern to both the department and the members, but cannot amend, modify or contravene any provisions of the collective bargaining agreement. Agreements and understandings reached by the Labor-Management Committee shall not be arbitrable.

Creation of a Labor-Management Committee is not intended to be a substitute for the normal and customary meetings which may occur on a frequent basis between police department management personnel and members of the PBA.

AWARD ON LABOR-MANAGEMENT COMMITTEES

The Panel Awards that a new provision be added to the 1993-96 Agreement which provides for the creation of a Labor-Management Committee, consisting of the Police Chief and a member selected by the City, and the PBA President and a member selected by the PBA. The Committee shall meet on a quarterly basis to discuss and resolve issues of mutual concern to the parties. The Committee may have additional members, and may meet more often, as mutually agreed upon by the parties. The Committee shall not have the authority or power to amend, modify or contravene any provision of the collective bargaining agreement. Agreements and understandings reached by the Labor-Management Committee are grievable, but shall not be arbitrable.

PAST PRACTICES

Discussion on Past Practices

The 1991-93 Agreement contains a provision in Section 49 which provides for the continuation of past practices. The City seeks the modification of this provision, arguing that it is unduly vague. The PBA agrees that the current provision requires modification, but does desire the inclusion of a past practice provision.

Therefore, the Panel adopts a new past practice provision, which fully replaces Section 49 of the 1991-93 Agreement.

AWARD ON PAST PRACTICES

The 1993-96 Agreement shall contain a new provision on Past Practices, which fully replaces Section 49 of the 1991-93 Agreement. The new Past Practice provision reads as follows:

Past Practice Clause

A past practice will be any practice or rule relating to a condition of employment which is established by (1) its clarity and consistency, (2) longevity and repetition, (3) acceptability and mutuality. There will be no change in such condition without first having obtained agreement and consent of the PBA.

NECESSARY EQUIPMENT/UNIFORMS

Discussion on Necessary Equipment/Uniforms

Section 9, paragraph 3 of the 1991-93 Agreement contains a provision which requires the Department to provide all newly appointed officers with "official equipment." The City seeks to clarify this provision, and insure that the only "official equipment" which must be furnished to a newly appointed officer is what is necessary for the proper performance of his duties. The PBA has no objection to such clarification.

AWARD ON NECESSARY EQUIPMENT/UNIFORMS

The Panel awards that Section 9, paragraph 3 be modified to indicate that only equipment deemed necessary by the Department for the performance of police duties shall be provided to a newly appointed officer.

REMAINING ISSUES

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

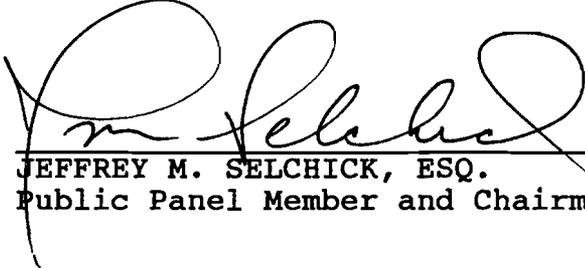
REVISION OF CONTRACT

The Panel directs the parties herein to revise the 1991-93 Agreement in accordance with the provisions of this Award, and, to prepare and execute a 1993-96 Agreement which reflects the provisions of this Award, to be completed no later than 4/1/95.

DURATION OF CONTRACT

The Panel has been authorized by the parties to exceed the two year maximum contract duration as provided by the Taylor Law in Section 209.4(c)(vi).

This Award therefore provides for an Agreement for the period commencing April 1, 1993 and ending March 31, 1996.



JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

11/15/94

Date

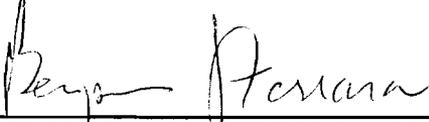
Concur

RONALD G. DUNN, ESQ.
Employee Organization Panel Member

11/15/94

Date

Concur



BENJAMIN J. FERRARA, ESQ.
Employer Panel Member

11/15/94

Date

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

On this 15th day of November, 1994, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

CATHY L SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 1995

Cathy Selchick

Notary Public

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

On this 15th day of November, 1994, before me personally came and appeared Ronald G. Dunn, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Ronald G. Dunn

Notary Public

RECEIVED
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STATE OF NEW YORK)
COUNTY OF Albany) ss.:

NOV 20 1994

On this 15th day of November, 1994, before me personally came and appeared Benjamin J. Ferrara, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Ronald G. Dunn

Notary Public

NOV 20 1994

	CURRENT	4/1/95	12/31/95
POLICE OFFICER			
Entry Level	25,756	25,756	25,756
Second Year	29,724	30,616	31,687
Third Year Base	31,672	35,197	36,429
Step 1 (6 to 10 years)	32,010	35,545	36,789
Step 2 (11 to 15 years)	32,347	35,892	37,149
Step 3 (16 to 20 years)	32,684	36,240	37,508
Step 4 (21 years and over)	33,022	36,588	37,868
SERGEANT/DETECTIVE			
Base	34,840	38,717	40,072
Step 1 (6 to 10 years)	35,211	39,100	40,468
Step 2 (11 to 15 years)	35,582	39,481	40,863
Step 3 (16 to 20 years)	35,953	39,864	41,259
Step 4 (21 years and over)	36,324	40,247	41,655
LIEUTENANT			
Base	38,324	42,589	44,079
Step 1 (6 to 10 years)	38,732	43,010	44,515
Step 2 (11 to 15 years)	39,140	43,429	44,949
Step 3 (16 to 20 years)	39,548	43,850	45,385
Step 4 (21 years and over)	39,956	44,271	45,821
CAPTAIN			
Base	42,156	46,848	48,487
Step 1 (6 to 10 years)	42,605	47,311	48,966
Step 2 (11 to 15 years)	43,054	47,772	49,444
Step 3 (16 to 20 years)	43,503	48,235	49,924
Step 4 (21 years and over)	43,952	48,699	50,403