

**NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

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**In the Matter of the Compulsory Arbitration  
Between**

FEB 26 1996

**NORTH TONAWANDA POLICE BENEVOLENT  
ASSOCIATION**

**CONCILIATION**

**-and-**

**OPINION AND  
AWARD**

**PERB# IA95-009  
M94-470**

**THE CITY OF NORTH TONAWANDA, NEW YORK**

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**Before: Interest Arbitration Panel**

**Stuart M. Pohl, Esq. - Chairman  
Robert Sondel, Esq. - Public Employer member  
John Sedlacek - Employee Organization member**

**Appearances:**

**For Association**

W. James Schwan	- Attorney
Anthony Hynes	- Consultant
David Rousselle	- Police Officer
Patrick Daly	- Police Officer
William R. Hall	- Association President

**For City**

Jeffrey N. Mis	- City Attorney
Lloyd Graves	- Police Chief
David Jakubaszek	- City Accountant/Budget Officer

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On October 13, 1995, the New York State Public Employment Relations Board ("PERB") wrote advising I had been selected by the above parties to serve as the Chairman of the Public Interest Arbitration Panel (hereinafter, the "Panel") in the above-

entitled matter. hearings in this matter were held on October 16, 1995 and November 16, 1995, in the City of North Tonawanda, New York. At that time, the **NORTH TONAWANDA POLICE BENEVOLENT ASSOCIATION** (hereinafter, the "Association") was represented by W. James Schwan, Esq., and the **CITY OF NORTH TONAWANDA** (hereinafter, referred to interchangeably as the "City", or North Tonawanda) was represented by City Attorney, Jeffery N. Mis. At the hearing, both parties were given a full opportunity to call witnesses and to present documentary evidence in support of their respective positions, as well as to cross examination any witnesses called by the other. Each party availed itself of these opportunities. At the conclusion of the hearing, the parties agreed to submit post-hearing briefs, post-marked December 15, 1995. I received both briefs by December 19, 1995 and declared the hearing closed.

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### **I. Introduction**

This document is the Opinion and Award of the Public Arbitration Panel identified above as designated by PERB pursuant to Civil Service Law Section 209.4 on October 13, 1995. The prior collective bargaining agreement between the parties (hereinafter referred to as the "Agreement") became effective January 1, 1993 and is to continue until midnight on December 31, 1994, or until a new contract is signed. After mediation sessions with the PERB-appointed mediator, Charles Leonard, on April 19 and May 1, 1995 proved unfruitful, the Association filed a Petition For Compulsory Interest Arbitration with PERB. PERB received the Petition on May 26, 1995. The City did not file its Responsive papers until October 13, 1995, just a few days before the first scheduled day

of the hearings in this proceeding. The PBA then objected to the arbitrability of the City's proposals and filed an improper practice charge ("IP") with PERB to that effect, on October 23, 1995 (Case No. U-17228).<sup>1</sup> A pre-hearing conference with Adam Kaufman, Administrative Law Judge on the IP was held on December 21, 1995. The IP was withdrawn on or about December 21, 1995.

Subsequent to the above-noted hearings, the Panel met in executive session at North Tonawanda City Hall on Friday, February 2, 1996. At least two of the three members of the Panel concurred in the disposition of each issue within the parameters framed by Opinion and Award on each.

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## **II. Positions of the Parties and Panel's Opinion**

### **A. Comparability.**

1. **The PBA** contends that, for purposes of resolving the various outstanding bargaining issues in this impasse, the Panel should make comparisons to the base pay and total compensation levels of police officers in the following communities: City of Tonawanda, Town of Tonawanda, Town of Hamburg, Village of Kenmore, City of Niagara Falls, Town of West Seneca, and the City of Lockport. These communities are comparable, claims the PBA, because both the City and PBA agree that the City of Tonawanda is comparable and its police recently concluded interest arbitration hearings

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<sup>1</sup>Pursuant to Section 205.6 (d) of PERB's Rules, our Panel is prohibited from making an award on issues, the arbitrability of which is the subject of an improper practice charge or a declaratory ruling petition, until final determination thereof by the board or withdrawal of such charge or petition. The Panel can make an award on other issues. Thus, the awards which appear on the following pages decide issues submitted by the PBA and the overlapping responses thereto by the City. The Panel will retain jurisdiction over the separate proposals raised in the City's Response to the Petition until PERB hands down its decision on the IP and will consider those proposals if asked to do so by the City.

in which the POA<sup>2</sup>. Since the POA used the same comparables, it "makes sense" to use them in the instant proceeding.<sup>3</sup> In the alternative, the PBA claims that the communities of the City of Lockport (which is within the County of Niagara and of comparable size), the City of Tonawanda (because it is in Erie County and contiguous to North Tonawanda), the Town of Tonawanda (because it is contiguous to North Tonawanda), and the Village of Kenmore (because it is within the Town of Tonawanda) are comparable.

2. **The City** maintains that the most comparable communities to the City are the cities of Lockport and Tonawanda, since the size of their police departments are approximately comparable; they are cities; they have similar populations<sup>4</sup>; they both are geographically close to North Tonawanda and are similar in an economic sense since all have comparable per capita income, changing tax bases and a declining industrial presence.

Furthermore, the City argues that the PBA's suggested comparables are not appropriate for several reasons. First, with the exception of the cities of Niagara Falls and Lockport, none of the communities suggested by the PBA are within Niagara County. Nor do any of them have the same size population as the City of North Tonawanda. This is particularly true for the Towns of Hamburg and West Seneca which are larger. Moreover, the Towns of Hamburg and West Seneca have higher per capita income and

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<sup>2</sup>Although not cited by name, this is apparently a reference to the Police Officers' Association which represents a police officers' unit in the City of Tonawanda.

<sup>3</sup>There is no indication, however, as to the status of that interest arbitration or whether the panel in that proceeding will adopt the suggested communities as comparables. The PBA's chief witness in this proceeding, Anthony Hynes, in explaining PBA Exhibit 1b, noted that he had not included the base salaries for the City of Tonawanda because it had not settled its new contract for 1996.

<sup>4</sup>Lockport - 24,426; Tonawanda - 17,284; North Tonawanda 34,989.

are, according to a report in Business First, better places to live than North Tonawanda when the "economics" of each is considered (City 7<sup>5</sup>). Thus, these towns have higher per capita income, lower unemployment rates, fewer families below the poverty level and an overall higher economic standing in Western New York than does the City. The same can be said for the Village of Kenmore.

### 3. Opinion

The Panel recognizes its obligation to compare the wages, hours and other conditions of employment of employees involved in this proceeding with those of employees performing similar services, under similar working conditions in public and private employment in "comparable communities". The Panel further recognizes that the purpose for such comparison is to assure, as much as is possible under the circumstances, external equity for the employees of the public employer. The Panel notes that, although there are some differences between the types of duties performed by police officers and those performed by fire fighters, it is common for interest arbitrators to consider the fire and police employees of the same municipality as "comparable", since each provides valuable public security and protection services which place the health and safety of those employees at risk. Although the Panel finds the City's fire fighters unit to be comparable, the Panel will consider the wages, benefits and conditions of employment of that unit as one of many factors in determining what is a fair and reasonable award.

In deciding which communities should be used as comparables, it is appropriate for the Panel to consider such criteria as neighboring communities; population similarities;

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<sup>5</sup>All City Exhibits received into evidence by the Panel are cited, herein, as "City\_\_".

the extent of fire and crime problems in the community served; the comparable ability of each community to pay for the economic package sought through interest arbitration, including such things as assessed property values, taxes levied; budget; and constitutional taxing limits; and any distinctive characteristics of the community. While the precise job duties performed by individual officers of each police department might well vary from community to community, the Panel has assumed that, for the most part, the police employees of each of the suggested communities perform essentially the same duties, and are subject to the same physical and educational requirements. While the level of crime and crime prevention activities may vary, the Panel has also assumed that the employees of each department cited engages in a hazardous profession which has no comparable counterpart in the private sector.<sup>6</sup> It is also helpful to compare housing expenses (home costs and rents) and per capita income levels.

Having reviewed the data and arguments submitted by the parties to support their claims as to which communities are "comparable" to North Tonawanda, the Panel has decided those that are comparable include the City of Lockport, the City of Tonawanda, the City of Niagara Falls, the Town of Tonawanda and the Village of Kenmore. The Towns of Hamburg and West Seneca, located in the so-called "Southtowns" area of Western New York are geographically and economically different from North Tonawanda. On the other hand, while there admittedly are differences among the criteria for the five chosen communities, they are geographically adjacent to are near to North Tonawanda;

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<sup>6</sup>Even if we were to consider private security guard to have similar responsibilities, no data was supplied for wages and other forms of compensation provided to private security guards working in Western New York.

are located in or near Niagara County; have similar property taxes per capita; similar housing and rental costs; similar (but for Niagara Falls) per capita income; similar property taxes; and somewhat similar reported crimes per thousand residents (although Niagara Falls and Lockport are significantly more crime-ridden). Thus, the wages, hours and conditions of employment of the North Tonawanda PBA unit should be compared with the police units in the **City of Lockport**, the **City of Niagara Falls**, the **City of Tonawanda**, the **Town of Tonawanda**, and the **Village of Kenmore**.

**B. Ability to Pay.**

1. **The City** claims that the Panel must look to what it refers to as the City's "practical ability to pay" for the improvements sought by the PBA. In this regard, it notes that, although it admittedly is not yet at its constitutional taxing limit, the taxpayers of the community should not be required to shoulder the additional tax burden the PBA's demand would require. The City contends the Panel should not consider only the fact that it is far from its constitutional taxing limit or that its bond rating is an "A". Moody's rating should not be given significant weight since it is based upon the somewhat mistaken assumption that its economy relies on tourism and manufacturing. As for tourism, it claims North Tonawanda's tourism is merely overflow business from Niagara Falls. Most major industries are located in Buffalo and Niagara Falls, not North Tonawanda. Moreover, North Tonawanda's industrial base has decreased over the years, as evidenced by the closing of numerous manufacturing companies and a change in the City's property tax assessment rolls. The announced closing of the Durez/Hooker Chemical plant will cost the City much of the \$386,182.52 in taxes it has collected from

that corporation each year. The City's tax base is also being decreased by property assessment challenges by National Fuel Gas, Niagara Mohawk Power Corp. and NYNEX. In addition, the demographics of the City continue to change. A higher percentage of residents are beyond working age, the implication being that taxpayers on a fixed income such as social security will not favor a heavier tax burden. It notes also that aid from New York State has declined since 1987 and that it is likely to decline further under Governor Pataki (City 3).

2. **The PBA** contends that the evidence of record supports its opinion that the City does have the ability to pay for a reasonable and just award. It relies upon the fact that (a) the City's current bond rating from Moody's is "A", meaning that it possesses many favorable investment attributes, including sound reserve levels from a diverse revenue base and manageable capital plans; assessed valuation has increased from \$645 million in 1990 to \$666 million in 1994. Full valuation has increased from \$618 million in 1990 to \$951 million in 1994; it was at 52.5% of its constitutional taxing limit in 1994 and is at 51% for 1995; the City began fiscal 1995 (January 1 to December 31) with a general fund balance of \$2.43 million; the City has appropriated general fund balance for the past three years as a resource for the subsequent year's budget; the general fund balance at the end of fiscal year 1994 was higher than it was at the end of fiscal years 1990, 1991, 1992 and 1993. In several of these years, the City funded negotiated salary increases and adopted the Section 384-e retirement plan while the general fund balance increased; for the first ten months of fiscal 1995, the City has generated over \$275 thousand in traffic-related fines. By fiscal year end, the amount of fines will be more than double what was

anticipated in the budget and could alone fund more than a 6.5% across-the-board salary increase, or a 3% and 4% across-the-board increase in annual salaries based solely on the increase in revenues over those budgeted as anticipated revenues.

### 3. Opinion

The Panel has carefully considered this issue and the testimony and documentary evidence supplied by the City through its Accountant and Budget Officer, David Jakubaszek, and by the PBA through its consultant, Anthony Hynes. Although the City is correct to be concerned for what the future holds, the Panel is satisfied that the City has the financial ability to pay for an award which is just and reasonable within the intent of the Taylor Law. The City is concerned that using any of the almost \$2.5 million fund balance to fund the economic improvements sought by the PBA would hurt its ability to remain flexible, or might cause it to have to borrow money and pay interest. Despite this concern, it does not dispute the PBA's proof that, in each of the past three years, the City has enjoyed an appropriated fund balance in excess of \$1 million, but has utilized very little of it during each fiscal year (PBA 2a). The City did, indeed, begin fiscal 1995 with a general fund balance of \$2.434 million. While it may be true that a portion of this was needed to fund operation of the City, a significant portion of the fund balance, as in the past several years, was not being used. In fact, as noted by the PBA, even in the years 1993 and 1994, when pay raises were agreed to be the City and the more generous Section 384-e retirement plan was negotiated and adopted, the City's general fund balance increased. The City did not dispute the PBA's analysis of fiscal year 1995 (PBA 2c) which does reflect that there was a \$1.9 million unreserved, undesignated fund

balance. In addition, that budget contained \$1.24 million in unallocated funds. While it is true, as suggested by the City Accountant, that not all such funds are truly available to fund a just and reasonable award, its Brief does not really argue against the conclusions which Mr. Hynes drew from PBA 2. Rather, as noted, it focused its argument upon the "interests and welfare of the public" along with the City's "practical ability to pay". In this regard, it notes that the homestead tax rate has increased every year from 1990-1995. City 2 does supports that statement. Nonetheless, it is also undisputed that the City, in 1995, was taxing at far below its constitutional taxing limit. Although the Panel agrees with the City's assertion that the "constitutional taxing limit" argument is a "two-edged sword", in that the "average" City taxpayer already absorbs a substantial part of the tax burden, and that such burden has steadily increased as the commercial and industrial tax bases have declined, the Panel cannot accept the City's claim that it lacks the actual or practical ability to fund a just and reasonable award.

There remains to be decided, of course, what contract modifications and/or additions will constitute a just and reasonable resolution of this dispute. The Panel's Opinion with regard to each proposal will be discussed under the headings which follow.

## **C. Proposals**

### **Issue No. 1. Term of the Agreement (PBA Pr. 1<sup>7</sup>)**

#### a. Positions

**The PBA** suggests a two year agreement running from January 1, 1995 to

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<sup>7</sup>All references to PBA Proposals submitted to this Interest Arbitration Panel will be cited herein, as "PBA Pr. \_\_\_".

midnight on December 31, 1996 or until a successor agreement is executed. The Panel has the statutory authority to issue such an award and should do so here.

**The City** does not, apparently, oppose a two year award.

b. Opinion

Given the fact that the City does not oppose an Award covering the two year period commencing January 1, 1995 to midnight, December 31, 1996, the Panel will so award.

**Economic Issues**

All but two (2) of the PBA's eleven (11) proposals can be classified as entirely or partially economic in nature. Added to these are all but one (1) of the City's twelve (12) proposals. The Panel has observed that, irrespective, for the moment, of how the PBA unit's salaries and economic benefits compare to those in the comparable communities discussed above, the expired agreement contains a broad array of economic benefits for unit employees, summarized at length in the PBA's Brief at pages 11 through 17. The PBA does not seek improvements in all these areas. Nor does the City desire to reduce or curtail all these benefits. It is obvious that the cost of providing as comprehensive a package of economic benefits as is contained in the expired agreement cannot be ignored by the Panel. However, the mere possession of these levels of pay and other economic benefits does not mean that the unit has not proven the need for increases and/or improvements in some of these areas, or that the City cannot afford to fund what the Panel believes to be just and reasonable increases as awarded below.

## **Issue No. 2. Salaries (PBA Pr. 3; City Pr. 6<sup>8</sup>)**

### a. Positions

The PBA has proposed an 8% across-the-board increase in base salary effective January 1, 1995, and an additional such increase effective January 1, 1996. It argues that whether one looks at the average base salaries of police in what it perceives as the seven comparable municipalities group (i.e., City of Tonawanda, Town of Tonawanda, Town of Hamburg, Village of Kenmore, City of Niagara Falls, Town of West Seneca and City of Lockport), or at the smaller group of comparable municipalities (i.e., City of Lockport, City of Tonawanda, Town of Tonawanda and Village of Kenmore), there is a significant disparity between the base pay of police officers in those areas and police officers in North Tonawanda. Using its seven (7) "comparables", there is a disparity approaching 12%. Using its four (4) "comparables", the disparity approaches 10%. It notes that, even if total compensation<sup>9</sup> is considered, the disparity, while less, continues to a significant degree. Using its total compensation averages for 1995 for the seven (7) "comparable" municipalities, averages 7.2%. For the four (4) comparable municipalities, the disparity averages 6.4% for 1995. Using the data from PBA 1b reflecting only those municipalities whose contract has settled for 1996, the average disparity as compared to North Tonawanda's Police Department, increases. Using what the PBA characterizes as a police officer's "true hourly rate" which is calculated by dividing the average officer's

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<sup>8</sup>All references to City Proposals submitted to this Interest Arbitration Panel for decision will be cited herein, as "City Pr.\_\_\_\_."

<sup>9</sup>The PBA includes within "total compensation": base annual salary and all other forms of remuneration, except uniform allowance, overtime and court time. It has also adjusted downward those figures for total compensation categories where not all unit employees receive that item.

total compensation by the number of hours worked to earn that compensation, an average disparity of 8.2% exists as compared to either the seven (7) or the four (4) "comparable" groups. The PBA claims this data and analysis proves that its members are significantly underpaid and deserving of a substantial increase in pay which the City can afford.

**The City** proposed that wage schedules be kept at their 1994 levels. Its rationale is that, compared to the salary schedules in what it views to be the comparable communities of the cities of Lockport and Tonawanda, based on 1995 data. Its Exhibit A, referred to at page 11 of its Brief, shows that the salaries of police officers in the City compare favorably to those in the cities of Lockport and Tonawanda, since their salary levels are for 1995, while the salary figures for the City's police are for 1994. In addition, the City asks the Panel to consider the "total package" of compensation and fringe benefits when considering whether any salary increase is warranted, since the fringe benefit package enjoyed by police in North Tonawanda is much better than in Lockport and Tonawanda.

b. Opinion

The Panel has considered the arguments and data supplied by the parties which they contend are comparable. However, for the reasons related above, the Panel has chosen to compare North Tonawanda salaries with those enjoyed by police in the **City of Lockport**, the **City of Niagara Falls**, the **City of Tonawanda**, the **Town of Tonawanda**, and the **Village of Kenmore**. In comparing the salary levels of those comparable communities, we have also recognized that there are differences in the types

and levels of fringe benefits provided under each contract. In addition, we have given some consideration to the uncontroverted fact that the North Tonawanda Firefighters unit received an Interest Arbitration award increase of 3% for 1995 and agreed to a salary settlement of 2% in 1996, 3% in 1997, and 3% in 1998. Although we have considered salary levels in the Firefighters unit, we recognized that there are differences between the public services provided by firefighters which could warrant a different salary level from that enjoyed by police. Moreover, certainly the PBA is not bound to any interest arbitration to which it was not a party. We have also considered that the average percentage disparities cited by the PBA are due, in part to the fact that 1995 data is compared to 1994 salary levels in North Tonawanda. Having made comparison between the comparable communities and North Tonawanda, the Panel has determined and concluded that police salaries in North Tonawanda do lag behind those paid in comparable communities, although not to the degree which would warrant granting the PBA's entire salary increase request. Comparing first year salaries for 1994, North Tonawanda lags Kenmore by 5.4%; Town of Tonawanda by 1.2%; City of Lockport by less than 1%; and the City of Niagara Falls by 5.2%. It fairs slightly better than the City of Tonawanda (North Tonawanda is less than 1% higher). However, as a police officer's service time with the municipality increases, the disparity increases. Thus, even if the Panel used only the City's comparables of the cities of Tonawanda and Lockport, police officers at the top step in North Tonawanda would lag Tonawanda by 3%, and lag Lockport by 12.7%.

Thus, the Panel is convinced that City police are in need of a salary increase which

attempts to close the pay gap identified in the submitted data. However, we are not convinced that, given the City's limited ability to pay, and doubt as to the amount of State aid that will be forthcoming, coupled with the other economic improvements awarded herein, that an award reaching the levels sought by the PBA would be prudent. The City's costing figures set forth in City 6a were relied upon in reaching this conclusion.

Therefore, the Panel will award what it considers to be a fair and equitable salary, given the circumstances presented in this proceeding.

**Issue No. 3. Special Duty Pay - Article 7, Section 7.14(g) - (PBA Pr. 5; City Pr. 9)**

a. Positions

**The PBA** proposed increasing Special Duty Pay from \$240 annually to \$480 annually. The pay is received by officers performing extra duties requiring specialized training and /or skills. Under the language of the expired agreement, the officer receive a pro-rata amount of the annual Pay if service is for less than a year. **PBA** also proposed expanding the list of special duty assignment from the seven listed in the expired agreement, by adding thereto Major Crimes Task Force Member; Dare Officers; Dog handlers; radar Operators; Breathalyzer Operators; Field Training Officers; and Police Radio Technician-Coders. The increase in rate is needed because there has been no increase since 1989, and because, since that time, the number of employees receiving said pay has decreased by nine (9). The additional assignments should be added since each requires specialized training and/or skills which are at least as specialized as those listed in the expired agreement.

**The City** has responded that Section 7.14 (g) be deleted. It reasons that since

the comparable cities of Lockport and Tonawanda do not pay their officers any special duty pay, none should be paid by North Tonawanda. Since it believes deleting the section is necessary, it has not specifically addressed PBA's proposal to add to the list of covered assignments.

b. Opinion

The Panel has reviewed the contracts of those municipalities it has held to be comparable as discussed starting at page 6, herein. Of these, only the City of Niagara Falls pays for what its agreement refers to as "Additional Compensation" in varying amounts. None of the other comparables provide such benefit at any level. The PBA has presented no compelling reason or justification for making any adjustment to this part of the expired contract.

**Issue No. 4. Shift Differential - Article 7, Section 7.16 - (PBA Pr. 9)**

a. Positions

**The PBA** has proposed that the shift differential be increased by \$.15 per shift for currently covered shifts. Under the expired agreement, the 3:00 p.m. to 11:00 p.m. shift receives \$.30 per hour for each hour worked; the 11:00 p.m. to 7:00 a.m. shift receives \$.40 per hour; and the Relief Captain and Relief Lieutenant receive \$.35 per hour. The proposed \$.15 per hour increase is justified because City officers are paid an average of \$1.80 per hour less than officers in these communities. Thus, although it concedes the current night shift differentials are within the norms set by police contracts in the Town of Tonawanda, Village of Kenmore, City of Tonawanda, City of Niagara Falls and Town of West Seneca, an increase in night shift differential could be used to partially reduce

the \$1.80 per hour disparity in average base salary.

**The City** opposes any change in the shift differential rates. It reasons that the City of Lockport has a "frozen shift", but its police do not receive a shift differential. Moreover, as compared to the City of Tonawanda, where all members working the 3-11 p.m. shift receive \$200 per year and those working the 11 p.m.-7 a.m. shift receive \$300 per year, police officers at the top step who work steady second shifts earn \$624 per year. Those at the top step who work a steady third shift earn an average of \$832 per year in shift differential. There is no justification for further increasing the shift differentials paid under the expired contract.

b. Opinion

The Panel has considered the contracts of the comparable municipalities and the arguments of the parties in support of and in opposition to an increase in the shift differential. It is our opinion that, although the method of calculating shift differential; varies among the comparable communities, the unit currently enjoys a shift differential which is within the range of such payments. We do not deem it prudent to adjust any disparities in base pay rates by increasing the shift differential rates. The Panel will award that Section 7.16 remain unchanged in the successor agreement.

**Issue No. 5. Sick Leave Pay - Article 10, Section 10.23 - (PBA Pr. 15)**  
**Article 10, Section 10.21(a) - (City Pr. 16)**

a. Positions

**The PBA** seeks to amend this sick leave provision, effective January 1, 1995, to increase the sick leave buy-back for an employee or his estate upon termination of his

employment from the current 25% to 75% of the current value of his/her accumulated sick leave. Eligibility requirements would include ten years of service and termination which is not for just cause. It claims the proposal is in line with similar sick leave benefits enjoyed by police in comparable communities, including Hamburg, West Seneca, the cities of Lockport and Tonawanda, the Village of Kenmore, and the Town of Tonawanda.

**The City** argues that the 25% buy-back is comparable to the City of Lockport agreement. Moreover, a comparison with "all comparable contracts"<sup>10</sup> coupled with the benefits received by each union, supports the City's contention that an increase is not warranted at this time.

b. Opinion

The Panel has reviewed the contracts of the comparable communities selected by the Panel. That review revealed the following information:

Village of Kenmore:

Employees receive unlimited accumulation of sick leave and may use buyout dollars to buy health insurance upon retirement

Town of Tonawanda:

Employees receive a "non-accumulative six months' sick leave per year. In addition, employees receive a "sick leave incentive" of four hours of compensation for every month in which he does not report off with a job-related injury.

City of Lockport:

Employees can accumulate up to 240 sick leave days. Upon retirement, employees hired before January 1, 1984 receive a lump sum, at their normal rate of pay, of 50% of their accumulation. Those hired after January 1, 1984 receive a lump sum of

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<sup>10</sup>The only communities suggested by the City were the Cities of Lockport and Tonawanda.

25% of their accumulation.

City of Tonawanda:

Employees accumulate sick leave to a maximum of 210 days. Upon their retirement, a maximum of 100 days are "bought back" at an unspecified pay rate.

City of Niagara Falls:

Employees may accumulate up to 180 days of sick leave. Upon separation from the service, employees with at least three (3) years of service with the City of Niagara Falls receives a buy-back of 20% for the first 99 days; 40% for any days between 100 to 198 days; and 60% for any days over 199, unless terminated for his/her fault or delinquency.

Thus, while the types of sick leave accumulations vary by how they can be used, how much can be bought back, and the like, it can be generally stated that police in North Tonawanda enjoy a buy-back benefit which is better than some and not as good as others. More importantly, however, is the cost attached to the PBA's proposal. The PBA disputes the City Accountant's calculation that the proposal would ultimately cost the City an average of \$20,568 per retiring officer. According to the PBA's calculation, which the Panel finds to be correct, the City Accountant's figure assumed an additional 75% increase, ignoring the fact that 25% is paid for under the expired agreement. The correct cost figure for an increase from 25% to 50% is \$6,858.00. While the Panel was not advised of how many police officers, if any, will be retiring during the life of this agreement, it is apparent that, given the much lower cost figures and the City's current financial strength, a modest increase from 25% to 50% is reasonable.

**Issue No. 6. Medical Insurance - Article 12, Section 12.12(a) - (PBA Pr. 18)**

a. Positions

The PBA proposes that the City continue to provide a medical insurance rider covering full time college students.

The City does not oppose this proposal because it is a benefit already provided to unit employees.

b. Opinion

Given that this benefit is already provided by the City, and that the City has expressed no intention of changing the level or terms of this benefit, the Panel will award that the benefit be continue in full force and effect in the new agreement.

**Issue No. 7. Longevity - Article 12, Section 12.15 - (PBA Pr. 24)**

a. Positions

The PBA seeks to improve the longevity schedule for unit employees as follows:

<u>Years of Service</u>	<u>Amount</u>
After 5 years	\$ 600.00
After 8 years	850.00
After 10 years	1,000.00
After 15 years	1,100.00
After 20 years	1,250.00
After 25 years	1,350.00

It claims the amount of longevity currently being received is the lowest among its comparable communities. A 50% increase in longevity is needed to bring North Tonawanda up to the average paid in the comparable communities cited by PBA.

**The City** believes the proposed schedule is excessive. Although it concedes North Tonawanda lags behind its comparable communities (the cities of Lockport and Tonawanda), the City's police enjoy a better total benefit package than do these locales. To the extent any benefit is to be awarded, it should take into account this total benefit concept.

b. Opinion

The Panel has compared the longevity schedule for North Tonawanda with those provided in its comparable communities. In so doing, we have concluded that North Tonawanda lags far behind the rest. This is true even though the benefits package in several of these communities is comparable to that enjoyed in North Tonawanda. In Kenmore the range is \$450.00 for 5-7 years, up to a maximum of \$900.00 for over 25 years. Those amounts increase by 11-22% in 1997. In the Town of Tonawanda, police receive \$500.00 after 5 years of service, up to a maximum of \$1,200.00 after 20 years. In the City of Tonawanda, the range is \$675.00 after five years, to a maximum of \$1,200.00 after 25 years. In the City of Lockport, the longevity payment is \$700.00 after five years, up to a maximum of \$1,150 after 25 years. Finally, the City of Niagara Falls provides longevity of \$1,187 after 10 years, to \$2,106 after 25 years. Clearly, as the City readily acknowledges, longevity payments for veterans of the police department continue to lag the Panel's comparable communities. The real question is, how much of an increase in longevity payments is feasible, given the level of other fringe benefits already being received by employees, and the financial uncertainty which faces all communities. In awarding the increase in longevity set forth below, the Panel has attempted to balance

the financial limitation of the City, with in the context of an overall economic package, with the legitimate need to provide some catch-up money for valued police officers.

**Issue No. 8. Uniform Allowance - Article 12, Section 12.21(a) - (PBA Pr. 25; City Pr. 21)**

a. Positions

**The PBA** proposes that the current uniform maintenance allowance for uniformed officers be increased from \$200.00 per year to \$500.00, the amount currently received by plainclothes officers. The PBA attempted to justify this increase by use of PBA Exhibits 13 and 13b which set forth items of clothing and/or equipment which, it claims, require maintenance which is quite expensive. It also directed the Panel's attention to comparisons between the allowance paid in North Tonawanda, with communities it considers to be comparable, and points out disparities which it believes must be reduced.

**The City** is opposed to increasing the uniform maintenance allowance because unit officers already receive replacement uniforms paid for by the City. The cities of Lockport and Tonawanda provide for uniform replacement, or cash for uniform replacement. Since the City of North Tonawanda already provides this benefit, there is no need for the increase sought by the PBA.

b. Opinion

The Panel has compared the uniform maintenance allowance in North Tonawanda to the police contracts in the five comparable communities. Without detailing them here, it is immediately apparent that the police in those communities enjoy a significantly higher uniform maintenance or cleaning allowance than in North Tonawanda. It is true that the

City provides police officers with the essential uniform and pays for any needed replacements. However, maintaining the uniforms is beneficial not only to the police officer, and the public that comes into contact with him/her, but is also beneficial to the City in that well-cared for uniforms will need to be replaced less often than a poorly maintained one. In this era of slowly rising costs, even the costs of basic cleaning services can be significant. The Panel finds that a modest increase in the uniform maintenance allowance, without adding to the items already covered by the agreement is fair and affordable and it will so award.

**Issue No. 9. Education Benefit - Article 13, Section 13.22 - (PBA Pr. 26)**

a. Positions

The PBA seeks to increase the amount of money and types of degree programs for which payment will be made by the City to eligible police officers under this article, so that effective January 1, 1995, the schedule in Section 13.22 will read as follows:

A. Four year Criminal Justice Degree	\$600.00
B. Any other four year degree	\$500.00
C. Two year Criminal Justice Degree	\$400.00
D. Any other two year degree	\$300.00

The increase sought are warranted because of the general recognition that better educated police officers can better serve the public. It is also warranted because other comparable communities provide such incentives.

The City opposes the increases because of the overall economic benefits enjoyed

by its police officers, as well as the fact that not all comparable communities provide the level of incentive enjoyed in North Tonawanda. There is no need to further improve this benefit.

b. Opinion

The Panel agrees with the proposition that a better educated police officer can better serve the public. However, more is needed here to justify the significant increases sought by the PBA. A comparison of the North Tonawanda benefit with that in the five comparable communities shows that the level of benefit is better than some and not as good as for others. Although the Panel sees the wisdom in providing for the education of police officers, given the other economic improvements awarded herein, improvement in this area will have to await another day. The proposal will be denied.

**Issue No. 10. Sick Leave Bank (City Pr. 17)**

a. Positions

**The City** has proposed that Section 10.5 of the expired agreement, entitled Sick Leave Bank, be eliminated since the communities of Lockport and Tonawanda do not have such provision in their contracts.

**The PBA** argues the bank is a valuable resource for employees who have exhausted their own sick leave entitlements. The City 's bank compares poorly to other comparable communities. Moreover, it cannot be used until all leave and compensatory time has been exhausted, medical certificates have been provided and all other conditions have been met. There is no justification for deleting this provision.

b. Opinion

The Panel has compared the present sick bank to that of the comparable communities. Although some of the comparables do not have a sick leave bank, there is one present in the City of Niagara Falls. In addition, while there is no bank in place, the City of Tonawanda allows a police officer who has exhausted his/her accumulated sick leave to appeal to the Common Council for additional sick leave. Thus, the Panel has not been convinced that there is a justification sufficient to grant the City's proposal

**Issue No. 11. Overtime Wheel - Article 7, Section 7.14(f)(1) - (City Pr. 7)**

a. Positions

**The City** seeks to create a degree of fairness in how the overtime wheel is operated. There have been occasions in the past where the overtime wheel has not operated as anticipated by the parties. The result has been the occasional filing of a grievance by the police officer who may have been wronged by the improper use of the list, whether by accident or design.

**The PBA** is not opposed to the overtime wheel operating fairly.

b. Opinion

After discussions in executive session, it was the view of the Panel that use of a preference list for officers who were intentionally or accidentally by-passed for an overtime opportunity is appropriate. The preferential list would facilitate compliance with the overtime wheel procedure and lessen the likelihood that grievances would be filed where an officer was denied an overtime opportunity, although entitled to that opportunity because of his/her position on the wheel. The list will contain the names of those

employees wrongfully by-passed for overtime while on the overtime wheel. Where an employee's name is added to the preferential list, the person at the top of that list will be offered the next overtime opportunity to make up for the opportunity of which he/she was wrongfully denied. The parties will negotiate the specifics of the preferential list, including whose responsibility it will be to administer the list.

**Issue No. 12. Briefing Pay - Article 7, Section 7.15(a), (C) (c)(i), (D) - (City Pr. 10)**

a. Positions

**The City** seeks to modify Article 7 in several ways. It first wants Section 7.15(a) changed to reflect a flat amount of \$600.00 for briefing time. The change is needed to bring the North Tonawanda rate more in line with that in the cities of Tonawanda and Lockport. That change would also require a change in subsections (C)(c)(i) and (D) to redefine what a regularly scheduled work day would be.

**The PBA** is opposed to any change because the economic impact on the unit would be significant. Officers would stand to lose a minimum of between \$700.00 and \$900.00 per year under the City's proposal, for working the same amount of time as in the past.

b. Opinion

A review of the contracts in the comparable communities shows that the Town of Tonawanda does not provide for briefing pay. The City of Niagara Falls contract does not have a briefing pay section. However, it does have a provision requiring payment at the overtime rate for any work at least 15 minutes beyond the eight hour day. In Lockport, officers receive briefing and de-briefing pay, at straight time, for twenty minutes

each day (ten minutes at the start and ten minutes at the end of each tour of duty). In the City of Tonawanda, officers receive a \$600.00 payment each year for a fifteen minute briefing period at the start of each shift. In sum, as with many of the PBA's proposals, some of the comparable provide a briefing pay benefit, of varying levels, and others do not. Absent convincing proof that the drastic reduction sought by the City is financially necessary, the Panel finds that the proposal should be denied.

**Issue No. 13 Holiday Pay - Article 8, Section 8.11 - (City Pr. 14)**

a. Positions

**The City** seeks to modify this section of the expired contract by lowering the holiday payment from 8% to 7% because the 8% payment is head and shoulders better than enjoyed by police officers in the cities of Lockport and Tonawanda.

**The PBA** opposes any reduction in the 8% payment because City police officers are already underpaid. Any reduction in this aspect of their compensation is unwarranted.

b. Opinion

The Panel has reviewed the comparable communities' contracts on this benefit. We observed that the cities of Tonawanda and Lockport do get paid for thirteen holidays at their daily rate, and that this amount is less than received by the City's police officers under the 8% formula. However, we find merit in the PBA's argument that, given the City police officers' current salary standing compared to those communities the Panel has found to be comparable, a reduction in this benefit would further weaken the unit's economic standing. The City has not demonstrated sufficient justification for awarding such a reduction.

**Issue No. 14. Vacation Entitlement - Article 9, Section 9.21 - (City Pr. 15)**

a. Positions

**The City** has proposed that the vacation schedule for employees with between 21 and 24 years of service be changed to reduce the number of vacation weeks said employees would receive each year by five (5) days. According to the City, this reduction is justified because officers in the cities of Tonawanda (one additional week worth an average of \$672) and Lockport (a few additional days) with this many years of service receive fewer days of vacation (Tonawanda - one additional week worth an average of \$672, and Lockport - a few additional days) .

**The PBA** opposes the proposal. It takes the position that, although the level of vacation entitlements provided to City officers is more generous than provided to officers in other municipalities, that fact was taken into account in the PBA's calculation of City officers' hourly rate of pay. Reducing vacation entitlements below their current levels would increase the disparity in the rate of pay per hour worked.

b. Opinion

The Panel is not convinced by the City's proof or arguments, that a change in the vacation entitlement for certain long-term employees of the City is warranted, fair, or necessary at this time.

**Issue No. 15. Bereavement - Article 11, Section 11.13(c) - (City Pr. 18)**

a. Positions

**The City** has proposed that the maximum number of bereavement days for death in the immediate family be reduced from its current level of five days. It notes that the

cities of Lockport and Tonawanda only allow three and four days.

**The PBA** opposes any reduction, noting the City has provided no justification for the reduction.

b. Opinion

The Panel referred to the contracts of the comparable communities and learned that, while the cities of Lockport, Tonawanda and Niagara Falls do allow a lower maximum number of bereavement days for immediate family members, the City's contract, which provides for a maximum of five days, is comparable to Kenmore (5 days), and worse than the Town of Tonawanda (7 days maximum). Absent proof that this benefit has been abused or has proven to costly for the City, the Panel must deny this proposal.

**Issue No. 16. Medical Insurance - Article 12, Section 12.12(b) - (City Pr. 20)**

a. Positions

The City has proposed that Article 12 be amended in several ways. It seeks to have police officers switch to the Independent Health Insurance Silver Plan, rather than the Independent Health Insurance Gold Plan, and that they take Community Blue Secured Plan, rather than the Community Blue Classic Plan Health Plan Basic Package. Finally, it proposes deleting the \$50.00 deductible in Section 12.12b, replacing it with a \$100.00 deductible. The City maintains that other communities' police officers have provided some cost relief to those communities in the form of changes in plans (City of Tonawanda) and a \$100.00 major medical deductible (Lockport). While the City does not desire to eliminate coverage, it does need to make some inroads on cutting the cost of

medical insurance payments.

**The PBA** opposes any change in the medical insurance coverage presently available to the unit.

b. Opinion

It is true the City offered no direct proof to support its need for a change in this article. However, it did direct the Panel's attention to the health insurance provisions of several of the comparables used by the Panel and placed into evidence by the PBA. Notwithstanding the fact that the Town of Tonawanda self-insures an increased major medical deductible and that the City of Lockport has a \$100.00 major medical deductible, there is no proof that the medical insurance programs in the other comparables are less generous than the North Tonawanda programs, or that their major medical deductibles are higher. More importantly, the City offered no financial justification for changing the current language. Clearly, the City possesses the financial integrity to continue to provide medical insurance at the current levels. It offered no data to demonstrate the cost savings which would be effectuated by increasing the major medical deductible. It offered no data to demonstrate the cost-savings that could be realized by changing the plan options. In the absence of such proof, the Panel is not convinced that any of the changes proposed by the City are justified.

**Non-economic Issues**

A few non-economic proposals, not presently the subject of the referenced IP charge, were submitted to this Panel. These proposals will be discussed and decided in the discussion which follows.

**Issue No. 17. Shift Schedule - Article 7, Section 7.34 - (PBA Pr. 11; City Pr. 12)**

a. Positions

**The PBA** has proposed that the work shift schedule for uniformed patrol officers and their supervisors be changed to a 4-2 schedule; i.e., scheduled to work four (4) days, followed by two (2) consecutive days off, followed by four (4) days on, and so on. The proposal would eliminate so-called pay back days.<sup>11</sup> The change is needed and justified because officers in North Tonawanda already work more hours than those in the cities of Niagara Falls and Tonawanda and the Town of Tonawanda, although on average, they are paid less. While a switch to a straight 4-2 schedule, as proposed, will help to reduce the disparity in hours worked, City officers will still be working more hours than are worked by officers in Niagara Falls and the Town of Tonawanda, and just seven (7) hours fewer than the City of Tonawanda.

**The City** opposes this proposal, pointing out that awarding such contract modification would amount to granting police officers a pay increase for working fewer days. This proposal is not economically feasible. If overtime were necessary to replace officers who would no longer have to "pay back" seven (7) days, the average cost to the City in overtime payments would be \$959.84 per officer, per year (City 6c).

b. Opinion

The Panel has considered the arguments and proofs of the parties. Although

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<sup>11</sup>Under the expired agreement, these employees are scheduled to work a rotating cycle of five weeks of four straight days, followed by two consecutive days off, and one week of five consecutive days on, followed by one day off. The latter occurs anytime during the six week cycle. The fifth working day must be made up seven (7) times during the year by scheduling by the officer, or by the captain of the shift, if the officer waives his right to schedule.

police officers in a few other communities apparently do work fewer hours than the City's officers, it is impossible to ascertain what trade-offs may have been agreed to by the parties to those agreements to arrive at the schedules found therein. Moreover, because we find that the City's ability to fund a just and reasonable improvement in the officers' pay and some of their economic benefits is not without limits, we are unconvinced that a change in their shift schedules, even if needed, is warranted at this time or in the manner sought by the PBA.

**Issue 18. Work Schedule - Article 7, Section 7.35 - (PBA Pr. 12)**

a. Positions

**The PBA** proposes that employees who are not in the uniform patrol division, such as those in the detective bureau, juvenile aid, etc.) be placed on a work schedule which does not exceed the uniform patrol schedule.<sup>12</sup> The proposal is needed to address the inequity experienced by officers in the road patrol division who earn the same annual salary but work more hours each year than employees working in the uniform patrol division.

**The City** concedes that officers not assigned to the uniform patrol do work more hours per year based on their 5-2 schedule, Monday through Friday, with Saturday and Sunday off. It argues that a reduction in hours would amount to a pay increase for these officers which is not economically feasible. It also notes that The City of Lockport's

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<sup>12</sup>Under the expired contract, these employees work a five day work week, Monday through Friday, with Saturday and Sunday off. As a result, these employees work approximately sixty-nine (69) more hours than those in the road patrol division. Thus, on average, their hourly rate is lower than officers in the road patrol, resulting in internal pay inequities which effect morale.

uniformed patrol does not work the same schedule as the non-uniform employees.

b. Opinion

The Panel believes it would be prudent to alter the work schedule of employees working outside the uniformed patrol. This is an internal equity issue which should be addressed. The City concedes that these officers work more days per year, but offers no operational or other necessity for maintaining them on such schedule. Additionally, in City 6c (#12), the City notes that the PBA's proposal, if granted by the Panel, would **not** cost the City any additional money, unless the City decided to replace an employee using overtime.

**AWARD**

The Panel renders the following Award:

**1. Issue No. 1: Duration of Agreement.**

Article 1, Section 1.21 of the expired agreement is to be deleted and to be replaced with the following in the successor agreement:

"The term of this Agreement begins at 12:01 a.m., January 1, 1995, and continues until midnight, December 31, 1996, or until a new contract is signed."

**2. Issue No. 2: Base Salary Increases.**

Article 7, Section 7.11 of the expired agreement is to be modified to include the following salary increases and effective dates:

Effective January 1, 1995, base salary shall be increased by 4%.

Effective January 1, 1996, base salary shall be increased by 3%.

**3. Issue No. 3: Special Duty Pay.**

The PBA's proposal for improvements in the Special Duty Pay provisions of the agreement are denied.

**4. Issue No. 4: Shift Differential.**

The PBA's proposal on shift differential is denied.

**5. Issue No. 5: Sick Leave Pay.**

The Panel awards that the percentage buy back will be increased from 25% to 50%, effective January 1, 1995.

**6. Issue No. 6: Medical Insurance**

The Panel awards that the PBA's proposal is granted. The provisions of Article 12.12a concerning the medical insurance rider for full time college students will be continued in the new agreement.

**7. Issue No. 7: Longevity**

The Panel awards that the longevity schedule in Article 12, Section 12.15 retain the same years of service steps, but that the amounts at each step be increased by \$100.00, effective January 1, 1995, and by an additional \$50.00, effective January 1, 1996.

**8. Issue No. 8: Uniform Allowance**

Effective January 1, 1996, and payable March 1, 1996, the uniform maintenance allowance will be increased to \$300.00.

**9. Issue No. 9: Education Benefit**

The PBA proposal for an increased educational benefit is denied.

**10. Issue No. 10: Sick Leave Bank**

The City 's proposal to eliminate the sick leave bank is denied.

**11. Issue No. 11: Overtime Wheel**

Effective April 1, 1996, Article 7, Section 7.14(f)(1) will be modified to include a procedure, to be agreed upon by the parties by no later than April 1, 1996, by which an employee who is wrongfully deprived of an overtime opportunity from the overtime wheel will be placed on a preferential list and be provided with the next available overtime opportunity to make up for the missed overtime opportunity.

**12. Issue No. 12: Briefing Pay**

The City's proposal on briefing pay is denied.

**13. Issue No. 13: Holiday Pay**

The City's proposal to reduce the holiday payment percentage is denied.

**14. Issue No. 14: Vacation Entitlement**

The City's proposal on vacation entitlement is denied.

**15. Issue No. 15: Bereavement**

The City's proposal on bereavement is denied.

**16. Issue No. 16: Medical Insurance**

The City's proposal to change the medical insurance article is denied.

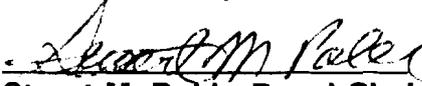
**17. Issue No. 17: Shift Schedule**

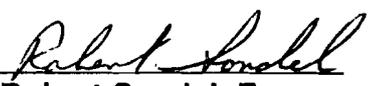
The PBA's proposal on shift schedule is denied.

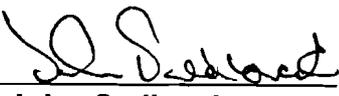
**18. Issue No. 18: Work Schedule**

The PBA's proposal on work schedule is granted. Effective January 1, 1996, the work schedules of Officers not assigned to the patrol division (i.e., detective bureau, juvenile aid, training and range, traffic unit) should be modified so that they are not scheduled to work more hours than worked by uniformed patrol officers.

**Date: February 5, 1996**

  
Stuart M. Pohl - Panel Chair

  
Robert Sondel, Esq.  
Public Employer Member

  
John Sedlacek  
Employee Organization  
Member

State of New York )  
County of Erie )

On this 5<sup>th</sup> Day of February 1996, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared Stuart M. Pohl to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

  
Notary Public

My Comm. Expires 2-28-97

State of New York )  
County of Niagara )

On this 7<sup>th</sup> Day of FEBRUARY 1996, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared Robert Sondel to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

  
Notary Public

**LESLIE J STOLZENFELS**  
Notary Public, State of New York  
No. 4622700  
Qualified in Niagara County  
Commission Expires 12-31-97

State of New York )  
County of Niagara )

On this 7<sup>th</sup> Day of FEBRUARY 1996, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared John Sedlacek to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

  
Notary Public

**LESLIE J STOLZENFELS**  
Notary Public, State of New York  
No. 4622700  
Qualified in Niagara County  
Commission Expires 12-31-97