

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Compulsory Interest Arbitration

Between

**POLICE BENEVOLENT ASSOCIATION OF
WHITE PLAINS, INC.,**

Petitioner,

and

CITY OF WHITE PLAINS,

Respondent,

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

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CONCILIATION

**CHAIRMAN'S
OPINION & AWARD**

Case No. IA97-032

**RE: TERMS & CONDITIONS OF EMPLOYMENT,
JULY 1, 1997 THROUGH JUNE 30, 1999.**

-----X
BEFORE: TRIPARTITE STATUTORY ARBITRATION PANEL

DAVID N. STEIN, ESQ., IMPARTIAL CHAIRMAN, PUBLIC MEMBER
ROBERT J. BURZICHELLI, ESQ., P.B.A. MEMBER
RICHARD K. ZUCKERMAN, ESQ., CITY MEMBER

APPEARANCES:

**FOR THE WHITE PLAINS P.B.A.: SOLOMON RICHMAN GREENBERG P.C.,
BY: HARRY GREENBERG, ESQ., & SUZANNE DARROW, ESQ. OF COUNSEL**

**FOR THE CITY OF WHITE PLAINS: RAINS & POGREBIN, P.C., BY SHARON
N. BERLIN, ESQ. & JAMES P. CLARK, ESQ., OF COUNSEL**

DATES OF HEARING: JUNE 24, JULY 13, JULY 22 & SEPTEMBER 23, 1998

OPINION OF THE IMPARTIAL CHAIRMAN

Preliminary Statement

Pursuant to Section 209 of the *New York State Civil Service Law* (the "Taylor Law" and the "Act") and in accordance with the Rules and Procedures of the Public Employment Relations Board, this interest arbitration proceeding was conducted to resolve a collective bargaining impasse between the City of White Plains (the "City") and the Police Benevolent Association of White Plains, Inc. (the "PBA"). Throughout the course of the proceeding, each party had the opportunity to examine and cross-examine witnesses, introduce evidence and other materials and present argument in support of their respective positions. In addition, each party designated its member of the arbitration panel, and, in turn, designated me as the public (impartial) member and chair.

At the outset of the hearing, the parties stipulated that the term of the Award would be for the two year period commencing July 1, 1997 and ending June 30, 1999.

Consistent with their arrangements, each party submitted a brief supporting its proposals by overnight mail on or before October 29, 1998.

Upon the record so produced, I find the following to be relevant.

Positions of the Parties

The Taylor Law requires, at Section 209.4 (c)(v) that the arbitration panel, convened in accordance with its provisions, make a just and reasonable determination of the matters in dispute. In arriving at its determination, the panel must take into its consideration the following criteria, in addition to any other relevant factors:

- (a) comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- (b) the interests and welfare of the public and the financial ability of the public employer to pay;
- (c) comparison of peculiarities in regard to other trades and 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.

Neither party objected to this panel's jurisdiction over any of the proposals submitted by the other. The parties' proposals are set forth below.

THE PBA'S ARGUMENTS:

1. General Wage Increases

Section 9: Wages: Effective July 1, 1997, 7% increase for all applicable titles.

Effective July 1, 1998, 7% increase for all applicable titles.

These increases are compounded and applied to wages, differentials, stipends and allowances.

The PBA seeks a general wage increase effective July 1, 1997 of seven percent (7%) and July 1, 1998 of seven percent (7%) as necessary to begin to place its members in an economic position comparable to police officers in similar Westchester County

communities as well as begin to get back to the median salary they received in 1976 before the erosion of salary had begun. By 1997, the PBA points out, White Plains police officers' wages had fallen well below many of their counterparts in comparable jurisdictions. (PBA Exhibits 162 & 163). For instance, it notes that by 1992, White Plains Police Officers were ranked 37th out of 39th for maximum base salary. (Exhibit 3). It submits that the requested increase is conservative in nature, considering that it will not substantially raise the relative ranking of White Plains police officers, but will allow them to begin to escape the very bottom.

2. Detective Differential

Section 9D: Effective July 1, 1997, increase detective differential as follows:

1. Detective Supervisor and Grade 3 to 7% above top P.O. salary
2. Grade 2 to 8% above top P.O. salary
3. Grade 1 to 10% above top P.O. salary

The PBA proposes an increase in the detective differential as necessary to maintain parity with other jurisdictions, provide police officers with an incentive to become detectives by creating a meaningful career path, and keep officers from leaving the White Plains Police Department in an on-going "badge drain." The PBA provided evidence that as in 1998, White Plains Detectives were ranked 36th out of 38 police departments in pay differential between police officers and detectives.

3. Foreign Language Proposal

Section 9E: Effective July 1, 1997, create a stipend of \$1500.00 per annum for Spanish-speaking members of the Department who utilize a second language speaking ability in the course of their employment.

The PBA proposes this stipend as a reward to officers who bring unique skills and expertise to the City of White Plains. The PBA asserts that the ability to speak and understand Spanish or another foreign language fluently is a tremendous asset to the Department, given the ethnic diversity of the City's population. It urges that the City of White Plains take every opportunity to recruit such skilled and competent employees and to take every opportunity to retain them.

4. Section 9E: Effective July 1, 1997, create a stipend of \$1500.00 per annum for members of the Department who utilize their management information system knowledge to maintain the Department's computer system in the course of their employment.

The PBA proposes a stipend of \$1,500 per annum for members of the Department who utilize their management information system knowledge to maintain the Department's computer system in the course of their employment. It argues that computer skills are highly valuable and members with such skills should be rewarded. The PBA reasons that this is necessary to both attract competent professionals to the City of White Plains and to keep such officers from leaving.

5. **Longevity Pay**

Section 9F: Longevity: increase as follows effective July 1, 1997:
(3%) at five (5) years
(4%) at ten (10) years
(5%) at fifteen (15)
(10%) at twenty (20)

The PBA's demand seeks to allow the City's police officers to keep pace with other comparable jurisdictions and recognize the experience of senior police officers. It

insists that an increase in longevity would be a vehicle for addressing and correcting the precipitous drop in ranking of White Plains police officers in relation to all the other Westchester County police departments. The PBA states that the last increase in longevity pay was extremely conservative in relation to the CPI index, a factor that contributes to the problem of badge drain and loss of morale within the department.

6. Night Shift Differential

Section 9G: Effective July 1, 1997 Night Differential: increase from 7% to 10%, include the hours between 4:00 p.m. to 12:00 a.m. when calculating night differential.

The PBA states that its demand for an increase in night differential pay is necessary in order to keep up with other jurisdictions and provide police officers an incentive to work night tours. The PBA maintains that the City can well afford this increase. It calculates that the demand would raise the cost of the night differential to \$294,849, an increase of \$88,000 at the current salary rates. If the proposed seven percent (7%) wage increase is adopted, the cost would be \$94,646 in year one of the contract and \$101,272 in year two, for a total two year cost of \$295,918. (Tr. 33, July 13, 1998) (PBA Exhibit 9L).

The PBA also proposes that the hours between 4:00 p.m. to 12:00 a.m. be included when calculating the night differential because "night hours" rightly should be construed to be commensurate with the hours that it is "dark." The hours from 4:00 p.m. to 8:00 a.m. properly reflect this reality, and, asserts the PBA, the risk to the officer increases when it is dark and this is the very risk that is compensated by a night shift differential.

6. **Ammunition Allowance**

Section 9H: Effective July 1, 1997, Ammunition Allowance: increase from \$50 to \$750.

The PBA seeks an increase in the ammunition allowance as an inexpensive means (\$139,000) of increasing Department morale and spirit. It points out that the officer would be encouraged to practice beyond the minimum which would be a benefit to the public.

7. **Work Schedule**

Section 5: Work Schedule: (a) effective July 1, 1997, amend as follows: Those employees now presently scheduled to work 261 tours per year will be scheduled to perform 249 tours per year and those employees currently scheduled to perform 249 tours per year will be scheduled to perform 232 days per year.

(B) Effective July 1, 1997 add three more holidays to Section 5B in addition to Thanksgiving, Christmas and New Year's Day when a member shall be given the day off with pay, without charge against accrued leave time.

The PBA presents the panel with two proposals for a change in work schedules: the first is a proposal for a 232 appearance work schedule and the second is for a 243 appearance work schedule. (PBA Exhibits 4 & 5). Currently, the PBA argues, the White Plains police perform the most number of tours of any police department in Westchester County. In comparison to the 249 tours of duty that White Plains officers work, the PBA notes that Mount Vernon officers work a 238.5 duty chart and New Rochelle officers work a 231.5 duty chart. (PBA Exhibit 9G). When a lower salary is combined with a higher number of hours worked, White Plains police officers fall further and further behind their Westchester counterparts, the PBA reasons.

The PBA cites the testimony of Captain John Quin, the Commanding Officer of Administration and Personnel for the City of White Plains who is responsible for the work scheduling of all four divisions of the Police Department, who it asserts testified that the uniformed officers work a "249 chart. They work 249 days a year, as opposed to administration, which is 261 days a year. They work a 5 and 2, 5 and 2, and then a 5 and 3, and the purpose for the third day is so you can rotate through the schedule." (Tr. 35, June 24, 1998).

Captain Quin further testified, the PBA notes, that there are two charts for patrol: one chart is for a steady midnight tour and the other is an 8 to 4 and a 4 to 12 chart. (Tr. 37, June 24, 1998). It adds that he said that there are two separate charts but they are structured the same and result in the same number of appearances. (Tr. 37-28, June 24, 1998). The PBA points out Captain Quin stated that he considered the cost of service, the number of calls for service on the three tours, and the prior staffing levels when devising these charts and that he said there were no other factors. (Tr. 40, June 24, 1998).

Subsequently, Captain Quin testified that for 1997 and in 1998, there were sufficient police officers to perform the patrol's function as assigned. (Tr. 54, June 24, 1998). Upon questioning and review of the work charts in place for these years, Captain Quin acknowledged that one time each cycle, there were 30 and 31 people coming to work, a much higher number than the generally consistent staffing levels of 19, 20, 21 or 22. (Tr. 47, June 24, 1998), the PBA stresses. The Captain admitted that this high number was simply a result of the repeating cycle of days as designed and implemented, the PBA emphasizes. (Tr. 47, June 24, 1998).

The PBA points out that Captain Quin then testified that as long as the current staffing levels were maintained in the White Plains Police Department for patrol, the patrol function would be adequately staffed. (Tr. 55, June 24, 1998). It notes that Captain Quin further testified in response to the direct question of whether there are any minimum number staffing levels within the White Plains Police Department that "there are not." (Tr. 59, June 24, 1998).

The PBA cites PBA Exhibit 3, the current White Plains Police Department duty charts for 1997 and 1998, which it says, yields the following information: For the first platoon, on any particular day, 18 people come to work 45 percent of the time. Nineteen (19) officers come to work 27 percent of the time. When you add these two figures together (45.45% and 27.27%), you get 18 or 19 people scheduled to work approximately 73 percent of the time, the PBA calculates.

Twenty officers come to work on a given day, only 20 percent of the time and that is unrelated to any particular need or event the PBA notes. That amounts to less than one-third on the late tours, it reasons.

The PBA submits that a review of the second and third platoon on the second page of PBA Exhibit 3, shows that in 1997, on the 8-to-4 day tour, 19 or 20 people came to work approximately 36 percent of the time, and that fifty-five percent of the time, there were 21 officers reporting to work. The PBA reasons, therefore, that approximately 91% of the time, there were 19 - 21 officers coming to work. The scheduling for 1998 varied only slightly, with 20 or 21 officers reporting for duty approximately 64% of the time, the PBA notes.

The 4-to-12 tour is very similar, the PBA contends. In 1998, 20 or 21 officers reported to work approximately 66 percent of the time, it points out.

The PBA 232 appearance proposal as outlined in PBA Exhibit 4 would maintain the current level of service now enjoyed by the community, it asserts. The PBA maintains that this proposal contemplates the factors that Captain Quin considered relevant while recognizing that the City observes no minimum staffing levels. (Tr. 59, 72, June 24, 1998).

The first page of PBA Exhibit 4 is the PBA proposal for the First Platoon, midnight to 8:00 a.m. It is a 22 squad chart wherein an officer works 14 tours every 22 days, for approximately 16 and a half cycles per year. In making the appropriate calculations, the PBA calculates that the result is 232.27 days. This results in two swings of 88 hours and one swing of 64 hours per cycle.

The PBA points out that this 232-proposal contemplates using the White Plains staffing levels of 28 police officers. It notes that its proposal yields a 22 squad chart staffed by 28 police officers, with all squads having one police officer - except squads 2, 6, 8, 12, 16 and 20 will have two officers. The result is to have seventeen police officers reporting to work eight of 22 days (36.36%), eighteen officers report to work on ten days and nineteen come to work on the remaining four days (63.63%), the PBA concludes. That accounts for the 28 police officers.

The second page of PBA Exhibit 4 reflects its proposal for the Second and Third Platoons. Both charts on this page are 44 squad charts. There are 28 tours in 44 calendar days for 232 appearances. The first chart utilizes 61 police officers. The swings

are 56, 72, 80 and 96 hours. Sixty-three percent (63%) of the time, there are 18 or 19 officers reporting for duty. Twenty officers report 34 percent of the time. This remains relatively constant for both the 8-to-4 and 4-to-12 tours.

The second chart utilizes 65 officers. Here the numbers change dramatically. There are 20, 21, or 22 officers reporting for duty a full 93 percent of the time. There are 18 and 19 officers reporting only 9 percent of the time. Virtually the same numbers apply to the 4-to-12 tour. The PBA argues that as Captain Quin testified, White Plains was adequately staffed with sufficient police officers to perform the patrol function with these numbers. (Tr. 54, June 24, 1998).

The PBA 243 appearance proposal is outlined in PBA Exhibit 5. Like the 232 proposal, it would maintain the current level of service now enjoyed by the community of White Plains, the PBA insists.

Two work schedules are proposed, one for the First Platoon and the other for the Second and Third Platoons. The First Platoon features a three squad chart calling for 243 appearances. The PBA calculates that where 28 officers are assigned with this chart, there are 18 or 19 police officers coming to work 99.99% of the time.

The PBA provides two options for the Second and Third Platoons: the first option provides for 60 officers and the second option contemplates 63 officers. The 60-officer option results in a 15 squad chart with 20 officers reporting to work 100 percent of the time. Thus, the PBA concludes there is a savings of four or five officers one hundred percent of the time. These officers could be allocated elsewhere or could be assigned to

the late tour, which would increase the number scheduled to work well beyond the current 20, the PBA reasons.

The 63-officer option, under either the 8-to-4 or 4-to-12 duty charts, results in 21 officers reporting to work 100 percent of the time, the PBA concludes. This option also means six (6) less tours and saving a head count of two, it stresses. Those two officers could be more fully utilized in the late tours, bringing those numbers from 18 or 19 numbers up to 20, the PBA points out (and that would be 100 percent of the time, it adds).

The PBA concludes that its proposals effectively reduce the number of appearances while maintaining the number of officers. There would be no impact on the services provided to the City of White Plains, it contends. Specifically, the 243 tour proposal results in a substantial savings, a savings that went unrefuted by the City, the PBA stresses.

The PBA notes that while Captain Quin expressed reservations about the theoretical ability of a 232 chart to provide the same coverage as the current 249 chart, it emphasizes that he conceded that he had not reviewed the staffing levels by "tak[ing] each officer that we have in the patrol division and plug[ging] him into a squad and then review[ing] staff levels, no, I did not." (Tr. 69, June 24, 1998). The PBA adds Captain Quin further testified that his belief that something would be lost if there was a reduction in scheduled days was based not on "in-depth analysis" but rather on the "common sense" assumption that 232 cannot be made to equal 249. (Tr. 74, June 24, 1998). The PBA rejoins that sometimes, however, even "common sense" can be improved upon through the application of technical "know how."

For the administrative tours, the PBA proposes a reduction in the current 261 scheduled tour work schedule to 249 scheduled tours. This is accomplished by having each employee excused for one tour per month or three tours per calendar quarter with excusal in accordance with existing department guidelines. (PBA Exhibit 8). This would not impact staffing levels, the PBA argues because as Captain Quin testified, the City of White Plains Police Department does not have minimum staffing levels. (Tr. 59, 72, June 24, 1998). Therefore, there is absolutely no cost to the City to implement this proposal and the City offered absolutely no testimony to refute this fact, the PBA submits.

The PBA concludes that its work schedule proposals demonstrate that it is possible to provide the City with the same coverage it currently enjoys while simultaneously experiencing a reduction in the scheduled number of appearances. Moreover, the PBA emphasizes its charts utilize the police department's own numbers in meeting the preferred range of 18, 19, 20, and 21 officers scheduled for duty at the desired frequency.

8. Compensatory Time

Section 10D: Compensatory Time Cap Effective July 1, 1997, increase compensatory cap to 96 hours at overtime rate which is the equivalent of 144 hours of straight time. Compensatory time may be carried over indefinitely up to the agreed upon compensatory cap.

The PBA insists that this demand imposes no financial cost to the City since the deferment of the time is taken solely in "time." Moreover, it adds, the proposal provides an increase in availability of officers for patrol and, because the Department has discretion to approve leave requests, it can operate in a more efficient manner. Because the City has

no minimum staffing requirements as Captain Quin has testified, there can be no possible conflict with scheduling needs, the PBA adds.

9. Benefit Plan

Section 11: Benefit Plan: Effective July 1, 1997, amend section C Health Insurance by deleting a 25% contribution towards cost of health insurance for those members with less than five years of service.

The PBA demands the elimination of the employee contribution of 25% towards the cost of health insurance for those members with less than five (5) years of service with the City. It asserts that other comparable jurisdictions do not make this demand of their police officers. The PBA points out that the City of Mount Vernon assumes the full cost of health insurance for its police officers on active duty. (City Exhibit 21). In New Rochelle, police officers hired after January 1, 1983 contribute only 18% for family and individual coverage premium costs (PBA Exhibit 51), the PBA adds.

This added expense for White Plains police officers only serves to significantly diminish their compensation and further erode their rank in terms of total compensation among comparable jurisdictions, the PBA reasons. Furthermore, it continues, the officers required to make this contribution are those officers earning the least in the Police Department and are consequently least able to afford it. This is an onerous burden for officers just beginning their career, the PBA concludes.

10. Health Insurance Declination Bonus

Section 11E: Health Insurance Declination Bonus: Effective July 1, 1997, increase payment to employees opting out of City health insurance program from 40% of premium savings to 50% of premium savings.

The PBA seeks to increase the payment to employees opting out of the City health insurance program from 40% of premium savings to 50% of premium savings. This is both good for the City and the police officer because it would provide an incentive for police officers to opt out of the plan which would result in increased savings to the City, the PBA submits. It would also allow the police officer and his family to share equally in the savings due to their actions, the PBA notes.

11. Vacation Allowance

Section 12: Vacation Allowance: Effective July 1, 1997, with an employee's fifth anniversary of employment, said employee shall be entitled to 21 working tours vacation in that calendar year. Effective with an employee's tenth anniversary of employment, said employee shall be entitled to 22 working tours vacation in that calendar year.

Effective July 1, 1997, amend Section 12F annual vacation weekly blocks. Employees may split their annual vacation entitlement into daily blocks and carry up to 10 unused vacation days to be utilized on a daily basis in future years.

The PBA's demand of one additional vacation tour at both the five (5) and ten (10) year levels provides a modest increase in the vacation period for White Plains police officers, an increase that has not been granted for many years, it maintains. Because there is no minimum staffing requirement in the City of White Plains Police Department, there is no additional cost to this proposal, the PBA reasons.

There should be no operational impact or administrative costs associated with the adoption of the PBA's demand to amend Section 12F because all vacation time is approved by the Department, the PBA suggests. Indeed, the PBA postulates that this

proposal may well prove beneficial to the City because individual days may be scheduled in such a manner that the Department's operational needs are better accommodated.

12. Sick Leave and Leave of Absence

Section 14: Sick Leave and Leave of Absence: Effective July 1, 1997, delete "subject to the Commissioner of Public Safety's discretion" provision of footnote to Section A.

Section 14E Personal Leave Days. Effective July 1, 1997, increase personal leave days from 3 to 5. Personal Leave Days cannot be lost and if unused can be accrued without limitation.

If an officer's sick leave is truly "unlimited", then it should be unfettered by another's "discretion", the PBA reasons. If there were to be an abuse, then disciplinary remedies are available, it stresses.

13. Uniform Maintenance Allowance

Section 15B: Uniformed Maintenance Allowance: Amend to increase uniform maintenance allowance from \$335.00 to \$500.00 effective July 1, 1997 and \$700.00 effective July 1, 1998.

The PBA insists that this proposal is necessary because of the increased cost of maintaining clothing properly. Cleaning costs, like all costs of living, increase annually and the maintenance allowance should be increased to reflect this reality, the PBA points out.

14. Education

Section 17: Education: Effective July 1, 1997, increase Education Tuition Fund from \$1500 to \$2000 dollars. No cap for textbook purchases.

This PBA demand would enable the police officer to keep pace with the ever rising cost of education, it points out. The increases in the cost of education well exceed the cost of living, the PBA stresses. The purpose of an education reimbursement benefit is to enable the City to have a more professional, better-educated police officer -- a definite benefit for the entire City of White Plains and the citizens, the PBA professes.

15. Release Time

Section 21: Release time for Association Business: Effective July 1, 1997, modify release time for Association Business from 22 days to 100 days per year.

Add: Effective July 1, 1997, the Association President shall be released full time with pay and benefits.

The PBA seeks release time to meet the ever increasing demands of its members and allow for more efficiency in the conduct of labor-management relations in the City. The cost to the City would be minimal and it would be in keeping with the very purpose and spirit of the Taylor Law which seeks to "promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government," the PBA submits.

16. Grievance Procedure

Section 24: Grievance Procedure: Effective July 1, 1997, amend Section 24, Subsection 2E by deleting "but shall not" on line 5 and replace with "and shall." Effective July 1, 1997, amend Section 24, Subsection 2E by deleting "nor any."

Effective July 1, 1997, amend Section 24, Subsection 5C of the grievance procedure from 30 to 60 days in which to commence a grievance proceeding.

The PBA demand would expand the scope of what is grievable to include any matter involving disciplinary proceeding, serving to “even the playing field” and ensure that the grievance process is the neutral proceeding that was intended by the parties, the PBA asserts. This proposal also allows the PBA to more effectively and comprehensively protect the rights of its members, it continues.

17. Grievance Procedure

Section 24E: Effective July 1, 1997, after the word “agreement” insert “the Police Department, the rules of the Police Department of the City of White Plains and the statutes and ordinances of the City of White Plains.”

The PBA demand seeks to enlarge the scope of what is grievable to protect the rights of the police officers in relation to the power and authority of the City to promulgate rules, statutes and ordinances affecting their work duties and obligations. By incorporating this language into the contract, the PBA seeks to protect its members from what it postulates may be arbitrary and capricious actions.

18. Incorporation of Work Charts

The PBA proposes that all current charts be incorporated in the Collective Bargaining Agreement.

19. Overtime

Section 10: Overtime: Amend as follows:

- “All members shall receive overtime compensation as indicated below:
- a. Effective July 1, 1997, overtime compensation shall be paid at the rate of time and one-half, in cash or compensatory time off at the employees sole option, for all time worked prior to or after the regularly scheduled tour of duty.

- b. Effective July 1, 1997, an employee shall be paid a minimum of a full tour of duty overtime compensation as indicated in "a" above, in the event the employee is called in on a regular day off whether or not the employee performs a full tour of duty. In the event the employee performs more than a full tour of duty on his/her regular day off, the employee shall receive overtime compensation for all time the employee is assigned to work.
- c. Effective July 1, 1997, in the event the employee is called into work while on authorized leave the employee shall have the following options:
 - (1) Save the leave recredited to the employees appropriate leave accrual; or
 - (2) Paid overtime compensation, as indicated above, and the authorized leave is removed from the appropriate leave accrual.
- d. Effective July 1, 1997, delete all reference to voluntary overtime. All overtime shall be considered ordered overtime unless expressly otherwise indicated by the supervisor of the overtime earner prior to the commencement of overtime.

The PBA's proposal seeks to provide a clear, concise, current contract clause that conforms to the law, i.e., the Fair Labor Standards Act, whereas the overtime provisions of the expired agreement are complicated, confusing, and can be construed to have more than one meaning, the PBA charges.

The PBA maintains that this proposal seeks to make White Plains consistent with the overwhelming majority of Westchester County Police Departments. The time and one-half rate has been applied in 32 of the 38 Westchester County Police Departments, including the cities of New Rochelle and Mount Vernon, the PBA maintains.

THE PBA'S RESPONSE TO THE CITY'S PROPOSALS ARE AS FOLLOWS:

1. Continue all mandatory subjects of bargaining not changed by the Award.

The PBA concurs.

2. **Section 6 - Exchanges of Duty**

Change "forty-eight (48)" to "five (5) days."

The expired collective bargaining agreement provides that police officers who wish to exchange shifts with each other must give forty-eight hours' notice to the Department (Jt.Ex.7, p.4). The City proposes that the notice period be increased to five days (7/22, T.12-13; Jt.Ex.2).

James Bradley, White Plains' Police Chief, testified that the current forty-eight-hour notice period is inadequate for staffing and administrative purposes. For example, a police officer could notify the Department on a Friday afternoon that he/she proposed an exchange of a tour effective the following Monday morning. In such a case, the administrative officer might not have an opportunity to review the request and ensure that it would not create a staffing problem (7/22, T. 12-13).

Bradley believed that a five day notice period would not be onerous to police officers, but would give the City adequate management control and would be consistent with the contract's requirement of five days' notice for a proposed personal day (id.; Jt.Ex.7, p. 19).

The PBA opposes this proposal. It argues that the City has neglected to show that it is in any way prejudiced or harmed by the 48 hours requirement nor has it submitted any legitimate reason for its substantial increase to five days. The PBA opposes

this proposal on the grounds that the current procedure adequately addresses the notice requirement.

3. **Section 7 - Recall**

1st Paragraph: Delete "a minimum of four (4) hours."

Under the expired collective bargaining agreement, a police officer who is recalled to duty is required to receive four hours pay at time and one-half rate regardless of the length of time actually worked. (Jt.Ex.7, p.4). The City's proposal would eliminate the four hour minimum. (Jt.Ex.2). Chief Bradley testified that on many occasions when officers are recalled to duty, they are only needed to work for only a few minutes. (7/22' T. 13-14). As an example, the Chief cited to the Department's radio specialist, who is often recalled to fix problems with the radio system that only require about 20 minutes of work. (Id.) In such situations, under the expired Agreement, that officer is contractually guaranteed to received six hours pay, notwithstanding the fact that he was needed to work for less than one-half hour. (Id.)

The PBA opposes this proposal because, theoretically, an officer could be recalled for one minute and could have traveled great distances. There is tremendous potential for abuse with this proposal: it could be used to interfere with an officer and his family's life and there would be no incentive for the City to prevent against such abuse of the recall situation, the PBA submits.

5 and 6. **Section 8 - Court Time**

Proposal 4

Insert "or a conference with the district attorney" after "attend court" and as appropriate throughout this Section.

Proposal 5

Delete four hour minimums.

Under the expired collective bargaining agreement, a police officer who is called in by the District Attorney's office for a conference is entitled to "recall time" of at least four hours' pay at time and one-half (Jt.Ex.7, p.4). Thus, the City points out, an officer may be paid six hours' pay for as little as one-half hour of work. (7/22, T. 15). Moreover, the City adds, when an officer is required to appear in court, he or she is entitled to four hours' compensatory time at the straight time rate (Jt.Ex.7, p.5). This, the City submits, is inconsistent.

The City proposes that District Attorney conferences be classified as "court time" rather than "recall time," and that the four-hour minimum for court time be eliminated (Jt.Ex.2). Under this proposal, officers would be paid for the time they actually work, without an extra premium, when they appear in court or at the District Attorney's office.

The PBA opposes this proposal because the City is seeking to extend the times over which officers are required to perform duties outside regularly scheduled tours of duty without premium compensation. Chief Bradley testified that the basis for this proposal is that the Department has "no control" over recalling officers for conferences with the DA. (Tr. 14, July 22, 1998). If the Police Department has no control over an officer's recall, the officer certainly has no such control, the PBA reasons. The PBA maintains that the City offered no basis, either operationally or financially, to pass on this burden to the officer, the person least in control and least able to bear its cost. This is not good public policy and the demand should be denied, the PBA concludes.

The PBA also opposes the City's demand to the delete four hour minimum to which the officer is entitled when he or she appears for court time. The City, therefore, would remove a current incentive which functions effectively to allow the City to properly compensate officers at a minimum for disrupting their family time off when required to report to duty, the PBA contends.

Chief Bradley testified that the Department has no control over the length of time that the officer would be in court and for this reason, it should not have to pay the officer for four hours if less time is required. (Tr. 16, July 22, 1998). If the police Department has "no control" over the length of time required for court appearance, the officer has even less control, the PBA reasons.

The City has the ability to pay for this contract benefit and offered no evidence to the contrary, the PBA claims.

6. Written Notice Requirement

In order to be compensated under this Section, the employee must notify the Chief or designee, in writing, at least four calendar days in advance.

The City proposes that a police officer who wishes to receive compensation under the court time provision be required to notify the Police Chief in writing at least four calendar days in advance of the scheduled court appearance (Jt.Ex.2; 7/22, T. 16-17). Chief Bradley testified that such a notice period is required in order to give the administrative captain the opportunity to make the adjustments in work schedules required by the absence of the officer from his/her usual duties. The four calendar day notice

requirement would be relaxed if the subpoena is issued fewer than ninety-six hours in advance, the City notes.

The PBA opposes this demand. Currently, there is no notice requirement placed on the officer when that officer is required to go to court, the PBA points out. The lack of such requirement is in recognition of "reality" where it is typically the department that is notified to produce the officer in court and not the other way around, the PBA stresses. The officer has no control over when he is summoned to go before the court, the PBA reiterates. The City's proposal to require the officer to notify the Chief in writing at least four calendar days in advance in order to be compensated under this Section would not only place an undue and unfair burden on the officer, but it is illogical, the PBA charges.

7. Section 11 - Benefit Plans

C. Clarify that the five years of service are within the Police Department.

The expired collective bargaining agreement provides that officers who are appointed on or after January 1, 1990, shall contribute twenty-five percent (25%) of the cost of the health insurance plan in which they are enrolled until they have completed five years of service with the City. The City's proposal is to clarify this provision of the agreement to provide that the "five years of service" must be within the Police Department, not simply with the City of White Plains.

The PBA opposes this proposal. It insists that the City presented no evidence in the record that any clarification is necessary in the wording of the contract.

8. **Section 12 - Vacation Allowance and Procedures**

A. Add after the first sentence that, "The Chief of the Department shall have the authority to reschedule vacations on an as-needed basis."

The City proposes to amend Section 12 of the contract to codify the Department's position that it has the authority to reschedule vacations when necessary (Jt.Ex.2). Chief Bradley testified that staffing problems sometimes occur because vacations are scheduled many months in advance (7/22, T. 18). By the time the vacations are actually taken, officers often have been transferred to different squads or different duties, creating the possibility that too many officers in the same squad or division may be scheduled to be out at the same time, the Chief pointed out.

Proposal 9

E. Picks to be made on October 1 rather than November 1.

Proposal 10

F. (second sentence). Add to the end of the sentence: ", said selection subject to prior approval by the Chief."

Proposal 12

Add: Any vacation days in excess of 20 in a year must be scheduled with the prior approval of the Chief.

The expired agreement permits police officers to make their vacation picks no earlier than November 1 and no later than December 1 for the following calendar year (Jt.Ex.7, p. 16). The City proposes that vacation picks be made no earlier than October 1 rather than November 1. (Jt. Ex.2). As articulated by Chief Bradley, the current 30 day period places a great deal of stress on the administrative division. (7/22, T. 18). This is so,

he testified, because the Department's schedules for the next calendar year are developed based, in part, upon the vacations picked by the officers. (Id.) If officers do not pick their vacation blocks within the 30 day period (by December 1), the administrative division has less than a month to finalize the schedules for the coming year, he noted (Id.) Accordingly, this proposal would create a 60 day period within which officers could select their vacation blocks and would alleviate some of the scheduling difficulties that existed under the expired contract, Bradley stated.

The expired agreement also permits officers to add "excess" vacation days to any one of their weekly vacation blocks (Jt.Ex.7, p. 16). This practice creates the possibility of overlapping vacations within the same squad or division, the Chief maintained (7/22, T. 19-20). To remedy this problem, the City proposes that the scheduling of all vacation days, including the "excess" days, be subject to the Chiefs approval (Jt.Ex.2).

Similarly, City's proposal number 12 seeks to add a provision that would require any vacation days in excess of 20 in a year to be scheduled with the prior approval of the Chief. Due to the large number of officers who earn more than 20 vacation days in a year, it is important, for staffing purposes, that the Department have some additional control over when those excess vacation days are taken (7/22, T.20), the City believes.

The PBA opposes this demand. Clearly, the wording of this demand indicates that current vacation provisions do not provide for management to have the authority to reschedule vacations on an as-needed basis, the PBA asserts. The City provided no evidence or testimony in the record to support a need for this change, the PBA

claims. Such a dramatic change should be supported by a substantial basis, a basis that the City has failed to provide, the PBA concludes.

The PBA opposes City proposal #9. It contends that the City has provided no basis in the record to support its proposal for requiring police officers to submit vacation requests one month earlier than the present date of November 1.

The PBA also opposes City proposal #10. In requesting this proposal, the City has failed to offer any evidence that the current vacation selection process, either of days or blocks, has been abused or has had a deleterious effect on department operations, the PBA argues. There is no basis, either operationally or administratively, for giving the Chief this power of approval as requested, the PBA concludes.

The PBA opposes City proposal #12. The PBA insists that the City offers no history or pattern of abuse nor any financial basis for the requested change.

13. Accrual of Leave Benefits.

Add: "Notwithstanding any practice or provision to the contrary, vacation time and holidays shall not be earned/paid when an employee is on a leave of absence, including extended sick leave and suspensions, but not including line of duty injury."

The City proposes that an officer be precluded from accruing vacation time or being paid for holidays while he or she is absent on a leave other than a line-of-injury duty (Jt.Ex.2).

The PBA opposes this proposal. Currently, these leaves have been earned while on sick leave or suspension. There has been no evidence or testimony in the record that serves as a basis for granting this proposal, the PBA argues. Furthermore, there has

been no evidence or testimony that the amount of vacation or holiday time earned/paid has had a negative effect on the operations of the police department and its budget, the PBA adds.

13., 14., 15.

Section 14 - Sick Leave and Leave of Absence

Proposal 13

B. Change "termination" to "retirement."

Proposal 14

E. Insert after the first sentence: "The Chief may deny a request for personal leave due to staffing needs for that tour."

Proposal 15

E. Add: Prorate personal leave days for employees in their last year of service.

The expired collective bargaining agreement provides that members of the Department may accumulate bonus days for unused sick leave. (Jt.Ex.7, p. 18). The agreement provides that those bonus days shall be paid to a member or a member's estate or beneficiary upon "termination." (Id.) The City proposes to insert the word "retirement" in place of the word "termination" in this section. (Jt.Ex.2). This proposal is intended to ensure that payments for unused sick day will only be made to officers who retire from the Department or who die while still a member of the force, not those who are "terminated."

The expired contract also requires that the Department allow one person per tour to take a personal leave day. (Jt.Ex.7, p. 19). Chief Bradley has testified that, depending on the day of the year and the Department's staffing needs, it may not always

be in the Department's best interest to allow even one officer to take a personal leave day. (7/22, T.21).

The City also proposes that the expired contract be amended to provide that the three contractual personal leave days be prorated for employees in their last year of service. (Jt.Ex.2). Under the expired agreement, each officer gets three personal leave days per calendar year. (Jt.Ex.7, p. 19). The City believes that if an officer decides to retire in February of a given year, he or she should not be entitled to three personal days during the month of January of that same year.

The PBA opposes City proposal 13. The PBA maintains that the City has failed to offer any testimony or evidence of the need for this change. It has alleged no abuse of the current practice nor any anticipated cost savings or administrative advantages to warrant the proposal's adoption.

The PBA opposes City proposal 14. It notes that the Department's own witness, Captain Quin, testified that there are no minimum staffing requirements in the department.

The PBA opposes City proposal 15. It notes that employees who contemplate retirement often have additional needs to conduct personal business. Moreover, the PBA adds, officers do not always know at the beginning of a year, or even well into it, that they will retire.

16. **Section 16 - Veterans**

In the second line, insert "a regularly scheduled tour" after "who works on any part of."

The expired contract provides that any member of the unit who is a qualified veteran and who works "on any part of" Veteran's Day or Memorial Day shall receive one compensatory day or night off. (Jt.Ex.7, p. 20). The City's proposal is to amend this provision to read that any veteran who works on any part of "a regularly scheduled tour" on Veteran's Day or Memorial Day would be entitled to a compensatory day or night off. (Jt.Ex.2). This proposal is intended to ensure that only those officers whose regularly scheduled tours fall on Veteran's Day or Memorial Day are eligible for this benefit, as required by Public Officers' Law Section 63.

The PBA opposes this proposal. The City has presented no evidence or legal justification to support any change in the collective bargaining agreement concerning the rights conferred on its members by Section 63 of the Public Officers Law or New York State Military Law, the PBA maintains.

17., 18.

Section 18 - Personal Property

Proposal 17

Insert: "which is required to be worn on duty" after "Personal property."

Proposal 18

Add "up to a maximum of \$50.00 per item" to the end of this Section.

The expired collective bargaining agreement requires the City to reimburse officers for personal property that is damaged while in the line of duty. (Jt.Ex.7, p.2 1). The City has two proposals regarding this provision of the Agreement. (Jt.Ex.2). The City proposes that the language be amended to provide that the City will be obligated to pay for property that

is damaged only if that property "is required to be worn on duty, and that its reimbursement exposure be limited to \$50 per item." (Id.)

Chief Bradley testified that these proposals originated out of the fact that some officers have submitted reimbursement requests on items that are not required to be worn on duty. (7/22, T.2 1). For example, although the Department requires officers to wear watches, he has received reimbursement requests for "very expensive watches" which officers claim have been damaged while they were on duty. (Id.) The Chief also stated that he has received reimbursement requests for broken chains, also not required to be worn on duty. (Id.) Further, he stated that the \$50 cap on reimbursements is consistent with that provided to the City's firefighters in their contract. (Jt.Ex.8, p.25).

The PBA opposes City proposal #17. It assures that the City has provided no substantive evidence that the current contract provisions regarding personal property has been abused.

The PBA opposes City proposal #18. The City has presented only anecdotal evidence of any possible abuse of this provision, alleging claims for "Rolex watches", the PBA charges. (Tr. 21, July 22, 1998). The City failed to present any specific claims or costs to the City the PBA adds. The PBA asserts that the arbitrary limit of "\$50" bears no relation to the reality of costs in today's marketplace given the costs of even such basic items as a pair of shoes and a wristwatch.

19, 20, 21, 22

Section 24 - Grievance Procedures

Proposal 19

Section 2(E). Revise to read, "Grievance' shall mean any claimed violation, misinterpretation, or misapplication of any of the express terms of this Agreement, but shall not include" Also, insert the phrase "or any other decision relating to approving or denying a request for leave time."

Proposal 20

Section 5(C). Change 30 days to 10 days.

Proposal 21

Section 6(2)(A). Insert ", within 72 hours of the determination at Stage 1, "after "written request."

Proposal 22

Section 6(3)(A). Change "employee" to "Association" in the second line.

The City proposes to streamline and shorten the grievance process and does not intend to affect any substantive rights of the employees.

The PBA opposes City proposal #19. The PBA claims that the City failed to allege any basis for such a change.

The PBA opposes City proposal #20. The PBA submits that the City presented no evidence to warrant a reduction in the number of days in which to file a grievance. The PBA opposes such a change in that it erodes the period of time in which the officer can bring forth a grievance to ten days, an exceedingly short and unreasonable period of time given the realities of the workplace, for example, work schedules.

The PBA adamantly opposes City proposal #21. The City presented no evidence to warrant any change in the number of days in which to appeal the

determination at Stage 1 of the process, the PBA claims. The PBA argues that the current contract language and provisions should be maintained.

Moreover, the City's proposal requiring a written request by the aggrieved employee "within 72 Hours" of the determination at Stage 1 would be a denial of its members' due process rights. Because its members work a rotating chart and do not have a full-time union representative, the imposition of this arbitrary and artificial time limit would virtually ensure that some members would not be able to file their requests "on time", the PBA charges. In short, the window in which to file would be lost due to job demands, the PBA concludes.

The PBA opposes City proposal #22. The City is proposing to change the entity that can seek arbitration of a grievance from the "employee" to the "Association." The City provided no evidence or testimony in the record that there has been any abuse of the current practice, the PBA argues.

23, 24, 25

Section 25 - Police Trainee and Probationary Period

Proposal 23

A. Change "three (3)" to nine (9)." Make same change in paragraph "B."

Proposal 24

C. Change "three (3) to "six (6), exclusive of time spent at school."

Proposal 25

Add: Six (6) months' probationary period for all other superior officers.

The City proposes that the pre-probationary training period be increased to nine months, to more accurately reflect the amount of time spent in training (Jt.Ex.2). This would

permit the full year of on-the-job probation contemplated by the collective bargaining agreement. Similarly, the City proposes an increase in the probationary period for sergeants from three months to six months (Jt.Ex.2; Jt.Ex.7, p.29), and a six month probationary period for other superior officers, so that the City can have a full opportunity to ensure that new superior officers will be successful in their new positions. (7/22, T.22-24).

The PBA opposes City proposal #23. Lieutenant David R. Burpee, an officer with the City of White Plains since 1980 and currently responsible for the training of its police officers, testified that its officers are very well-trained police professionals. The record is replete with evidence that the additional training given in the White Plains Police Department is more than sufficient to maintain New York State accreditation and ensure the competency of its police force.

On the other hand, the PBA insists the City failed to provide any evidence of the necessity for extending the trainee period to an actual total of 21 months. (Tr. 51, July 22, 1998). The PBA points out that Chief Bradley testified on cross examination that within the current 15-month probationary period, the need to terminate a police officer has arisen only "rarely." (Tr. 52, July 22, 1998).

The PBA opposes City proposal #24. The PBA presented the Panel with evidence and testimony that the White Plains Police Department training program is one of the most comprehensive and well-rated in all of Westchester County, if not the State. The PBA contends that the City has failed to offer a scintilla of evidence justifying the need to extend the length of probationary periods for probationary sergeants. Moreover, should

the need to address performance arise, the Department has recourse to disciplinary measures, the PBA adds.

The PBA opposes City proposal #25. The City is proposing to add a six months probationary period for all other superior officers. However, the PBA asserts, the City failed to present any credible evidence for the need to create a probationary period for this class of officer. Rather, the PBA points out, Chief Bradley testified that the lieutenants and captains under his command since he has been chief "generally perform well." (Tr. 4, July 22, 1998).

26, 27, 28

Section 29 - General Provisions

Proposal 26

Section 5. Delete

Proposal 27

Section 6. Change to provide that the City shall recover any monies recovered by any officer up to the extent of the City's payout.

Proposal 28

Add: Americans with Disabilities Act. "The City and the PBA agree that the provisions of this Agreement shall be administered so as to comply with the Americans with Disabilities Act and any federal regulations and guidelines issued thereunder on a case by case basis."

Because the federal regulations urge that such provisions be included in a collective bargaining agreements (id.), this proposal should be awarded, the City asserts.

The PBA opposes City proposal #26. This proposal seeks to remove the benefit of past practices, the PBA maintains. However, because the City has failed to

present the Panel with evidence of the nature of these past practices, this demand is vague and should not be addressed, the PBA concludes.

The PBA opposes City proposal #27. This proposal goes beyond the current contract provision that requires the reimbursement for sick pay or loss of wages, the PBA notes. The City has presented no evidence or rationale for the adoption of its proposal, nor has it shown any savings that would have a budgetary impact, the PBA concludes.

The PBA agrees with the City on proposal #28 in that the City and the PBA will conform to the provisions of the Americans with Disabilities Act.

THE CITY'S ARGUMENTS:

The City, for its part, vigorously maintains that the historical comparability between the cities of White Plains, Mount Vernon, and New Rochelle should be maintained. The City asserts that the statute requires analysis of "comparable communities." It points out that White Plains, as a city, is subject to constitutional tax limitations peculiar to cities and administrative problems created by the size of its large police force. The City notes that fact finders and interest arbitrators have traditionally, and almost exclusively, found White Plains, Mount Vernon and New Rochelle to be comparable communities. The City submits that the three cities remain comparable in terms of population, size of police force and other historically applied criteria.

The historical parity in salary, wage increases and benefit improvements among White Plains police officers and other White Plains municipal bargaining units should be maintained, the City continues. It points out that the Act requires comparison of terms and conditions of employment of the City's police officers with those of other City employees performing similar functions. Historically, White Plains' police officers and other unionized employees have enjoyed almost identical salary and fringe benefit improvements and concessions regardless of which settled first, the City emphasizes.

The City reasons that there are critical reasons to continue this pattern. First, it asserts that there is more than a 25 year tradition of successful collective bargaining process in the City due to pattern bargaining. In this contract period it points to a 4% wage increase for 1997-98 that it negotiated with each of its other bargaining units (CSEA, Local 456 IBT, the firefighters and the Deputy Chiefs), and the 2% increase effective 7/1/98 and

the 2% increase 1/1/99 with the firefighters and Deputy Chiefs, as the pattern which has been set for this Award.

Secondly, the City focuses on the "tandem relationship" in wage increases, salaries and benefit (vacation, holiday, uniform allowance, longevity, health insurance and welfare benefits) packages between PBA and PFFA (Professional Fire Fighters Association) that dates back at least to the early 1970's, the City submits. It insists that the pattern of parity has held regardless of which union first settled or received an interest arbitration award.

There are practical limitations on White Plains' ability to pay, the City points out. It contends that the statute and case law require an analysis of practical, not theoretical, ability to pay.

The City stresses that its internal bargaining process has defined the ability to pay to be the same as what other employees received: 4% retroactive to 7/1/97, 2% retro to 7/1/98 and 2% retroactive to 1/1/99.

The streets of White Plains are not paved with gold, the City adds. It argues that the record conclusively establishes that the property tax was the City's primary revenue source. The City emphasizes that in the past ten years, the City has experienced a 27% or \$119 million decrease in assessed valuation.

Due to corporate downsizings, high commercial vacancy rates, a drop in noncommercial construction, tax certs, and an almost 50% decrease in special franchise assessments over the past ten years, the City notes, the sales tax is now City's primary revenue source. The City points out that fiscal year 1998 saw a 4% drop in sales tax

revenue and this was the first year since fiscal year 1991 with a decrease. Moreover, the City emphasizes that it now receives emergency assistance aid.

The City was forced for the first time in several years to draw down its fund balance rather than add to it. It points out that the fund balance has historically been appropriated to stabilize taxes. The City expresses its concern that the fund balance could be needed to do so again in the immediate future if the City's 1/2% sales tax increase expires or if the City doesn't opt out of the NYS sales tax exemption program. If its fund balance had not been appropriated to balance the 1998-99 budget, property taxes would have increased 25%. The City asks that the panel take note that the County (20%) and school (30%) taxes have increased dramatically over the past few years.

The City emphasizes that it already has more debt per capita than any other Westchester city, that its median household income is 9% lower than the County average, and that it contains the highest percentage of units of low income housing per 100 dwelling units of any city in Westchester.

PBA Exhibits 9E, 9F and 9H each contain inaccurate financial information, the City charges. It asserts that "miscellaneous revenue" funds were based on a change in the governmental accounting standards relating to the City's reporting of its pension liability and have already been appropriated, the City submits.

The PBA's demands are unreasonable and largely unsupported by any evidence, the City charges. White Plains police officers' terms and conditions of employment are as good, if not better, than those in Mount Vernon and New Rochelle, the City professes.

1. **Workweek/Work Year.**

The City asserts that this panel cannot and should not author an award that interferes with well-settled managerial prerogatives on staffing decisions or forces the City to either curtail services or create new police officer positions.

Those on rotating schedules currently average 249 scheduled days; those on steady tours are scheduled to work an average of 261 days per year. The PBA demands a reduction to 232 days rotating and 249 days steady, prior to use of authorized leave time. This would require the City to either change its established staffing practices and hire at least thirteen additional police officers, a nearly 6% increase, or significantly reduce public services and reevaluate priorities and activities for the entire Department, the City calculates. Higher overtime costs would be incurred as would a tremendous reduction in administrative flexibility, the City predicts.

In reality, those scheduled to work 249 days per year actually work an average of only 218 days per year when paid vacation, sick leave, and personal leave days are considered, the City points out. Those on steady tours work approximately 230 days per year, it adds. The PBA's work year demand, exclusive of its other proposals to increase some of these additional benefits, would further reduce the actual work year to approximately 200 days for members working rotating shifts and 218 days for members working steady tours, the City postulates. This amounts to 12 lost days per steady officer and 17 lost days per officer on rotating tours, it calculates.

Even without the other additional leave days sought by the PBA, a cumulative total of 3,045 days would be lost per year, the City predicts. If these were recouped

through new hires, the cost would exceed \$1,000,000 per annum, excluding the added administrative difficulties and additional overtime that would be caused by a shorter work year, it submits.

Mount Vernon's work schedule was negotiated and implemented on an annual basis, with renewal solely at that city's discretion, and affects only employees rotating among three shifts, the City asserts. The New Rochelle chart has been in effect for approximately 25 years and PBA demands for a reduction in its chart based on New Rochelle's have been rejected for just as long, the City insists.

"Badge drain" is experienced by each of these cities, yet there is no evidence of defections from White Plains to New Rochelle or Mount Vernon, the City contends.

2. Salary

The "tandem relationship" among the City's police officers and other bargaining units requires that they receive the same wage increases and salaries. All other units negotiated a 4% raise effective 7/1/97; the PFFA, the only unit to settle for 1998-99, negotiated a 2% wage increase effective 7/1/98 and an additional 2% effective 1/1/99. The PBA was offered the same settlement but turned it down, the City notes.

The PBA's salary demands are excessive when examined on their face, or compared with increases in the consumer price index, private sector raises, settlements with other City bargaining units and settlements in other communities in the County, the City concludes. The City points out that PBA member salary increases have far outstripped increases in the consumer price index. The current inflation rate is the lowest

that it has been since 1986. Nationally, median wage increases for first, second and third contract years are 3% for 1997 and 1998, the City argues.

The City's wage proposal would give White Plains' police officers virtually the same annual salary as for New Rochelle officers and more than Mount Vernon's for 1997 and 1998, the City charges.

There is no evidence that White Plains' job is more onerous than those in the other cities, the City submits. White Plains has the highest number of police officers per capita in Westchester and nearly double the number of officers per 1000 residents than in any other city in the County, it notes. White Plains' rate of serious crimes and murders is far lower than Vernon and New Rochelle, the City emphasizes.

"Badge drain" is neither unique to White Plains nor as serious as it is in Mount Vernon and New Rochelle, the City asserts. It is a function of personal preference and, to some extent, "raiding" by smaller police departments, more so than lower pay, the City argues.

3. Overtime

The City charges that the PBA submitted absolutely no evidence to support this demand. On the other hand, in 1997, each White Plains officer earned an average of \$3,253 in overtime, whereas New Rochelle's and Mount Vernon's officers averaged only \$2,166 and \$1,966, respectively, the City stresses.

4. Night Differential

The City asserts that the PBA presented no evidence in support of this demand. Rotating tours and night work are intrinsic to a police officer's job, the City insists.

The PBA's demand would increase the City's costs by \$1,715 per unit member, or 504%, with no corresponding increase in productivity, it reasons.

5. Longevity Pay

The present benefit is identical to that enjoyed by the City's firefighters, the City argues. It is already much higher than the corresponding ten and fifteen year payments for Mount Vernon and New Rochelle, the City claims. The PBA's proposal would equate to a 14.5% wage increase, the City calculates.

6. Holiday Pay

The PBA presented no evidence to support this financial demand, the City concludes.

7. Detective Pay

The total cost would equate to a more than 2% unit-wide wage increase for only this group of employees, the City calculates. Again, it maintains the PBA submitted no evidence in support of its demand.

8. Uniform Maintenance

The PBA seeks to more than double the uniform maintenance allowance, the City notes. But the City provides each new hire with a uniform and replaces uniforms as necessary for current employees, on top of a \$335 annual clothing maintenance allowance. The cost of this demand is more than 3/4 of 1%, the City asserts.

9. Educational Achievement Pay

The City already provides an incentive for members to seek educational achievement by reimbursing police officers for tuition costs and promoting qualified

candidates, it claims. There is no evidence about how many employees would be affected by this demand, or why it should be granted, it charges. The skills involved are tangentially related to police employment, the City asserts. Firefighters don't receive similar stipends, it notes.

The PBA demands an increase in the Education Tuition Fund from \$1,500 to \$200,000 and the elimination of the cap on textbook purchases. The City urges that the PBA has failed to provide any rationale for the changes it seeks in the Education Tuition Fund. The present benefit is identical to what the firefighters receive, the City points out.

10. Personal Leave

The present benefit is identical to that enjoyed by the City's firefighters and all other City employees, the City maintains. The Department cannot afford to increase leave time, the City claims. There is no evidence supporting this demand, it concludes.

The PBA demands that personal leave days be accrued if not used. No such benefit is found in the firefighters' contract, the City points out. The PBA has provided no evidence to establish a need for such a change, the City concludes.

11. Vacations

The City maintains no evidence has been submitted supporting the PBA demand of an increase in vacation for senior officers.

With respect to the PBA proposal that members be permitted to split their vacation entitlement into daily blocks and accrue up to ten unused vacation days to be utilized on a daily basis in future years, the City claims that the PBA has failed to set forth

any reason for such a change. This does not exist in the fire contract and it would cause an administrative scheduling nightmare, the City concludes.

12. Ammunition Allowance

The PBA has provided no evidence justifying this 1400% increase in the current ammunition allowance, which equates to a more than 2% salary increase, the City maintains.

13. Health Insurance

The City argues that the PBA has submitted no evidence to support its demand to eliminate the health insurance contribution for officers with less than five years service, while the City has shown that the health insurance contribution requirement in the PBA contract is identical to that in its firefighters' contract. The elimination of the contribution would cost at least \$42,000 per year, the City calculates. With the exception of Mount Vernon, all of the cities in Westchester County receive health insurance contributions from their police officers, and of those cities, only White Plains discontinues contributions after five years of service, the City argues.

With regard to the PBA's request for an increase in the existing health insurance declination bonus from 40% of the premium savings to 50%, the City maintains that the PBA has failed to set forth any evidence establishing a need for the proposed increase. The current bonus is the same as in all other City contracts, the City notes. It also exceeds that paid in Mount Vernon and New Rochelle, as well as virtually every other city in Westchester County, the City contends.

14. Compensatory Time Cap

The City asserts that the PBA provided no rationale for, nor evidence in support of this demand. Granting this demand would alter the provision that was negotiated into the contract during the last round of bargaining, the City claims.

15. Sick Leave and Leave of Absence

The City insists that the PBA has provided no evidence for this provision, nor shown any reason why the Commissioner should have this discretion stripped away. This discretion must be maintained due to problems with a few malingerers, the City insists.

16. Release Time For Association Business

The PBA has provided no evidence in support of this demand, nor shown any need for the addition of 78 release time days. The City seeks to increase, not decrease, the number of people on duty. The PFFA did not receive an increase.

The PBA also requested that the contract be modified to allow the Association President to be released full time with pay and benefits. Here again, the City insists that the PBA has provided no evidence to support this demand or establish the necessity for this proposal. The City does not provide the President of the Firefighters' Association with paid full time release, it notes.

17. Grievance Procedure

The PBA has presented no evidence supporting these demands, the City argues.

18. Incorporate All Current Charts Into The Collective Bargaining Agreement.

Regarding the PBA demands that all "current charts" be incorporated in the

Agreement, the City submits the PBA has not presented any evidence about why they should be incorporated into the contract.

With regard to its proposals, the City concludes each is meritorious and should be awarded.

Exchanges of Duty (City Proposal #2)

The expired collective bargaining agreement provides that police officers who wish to exchange shifts must give forty-eight hours' notice to the Department. The City proposes to increase the notice period to five days. The current notice is inadequate for staffing and administrative purposes, the City submits. A five-day notice period would be consistent with the contract's requirement of five days' notice for a proposed personal day, the City concludes.

Recall time (City Proposal # 3)

Under the expired collective bargaining agreement, a police officer who is recalled to duty is required to receive four hours pay at time and one-half rate. The City seeks to eliminate the four-hour minimum. On many occasions, when officers such as the Department's radio specialist are recalled, they are only needed for a few minutes, the City notes. The present system thus provides a windfall to the employees, the City charges.

District Attorney Conferences and Court Time (City Proposal # 4, 5)

Under the expired collective bargaining agreement, a police officer who is called in by the District Attorney's office for a conference is entitled to "recall time" of at least four hours pay at time and one-half. The City proposes that District Attorney conferences be classified as "court time" so that the officer is entitled to four hours'

compensatory time at the straight time rate. This way, an officer will no longer be paid as a minimum of six hours' pay for as little as one-half hour of work, the City stresses.

The City also proposes that the minimum recall guarantee be eliminated. The City already pays for travel time to court appearances. District Attorney conferences and court time are integral parts of police duty over which the City has no control, it emphasizes.

Court Time Notification (City Proposal # 6)

The City proposes that a police officer who wishes to receive compensation under the court time provision be required to notify the Police Chief in writing at least four calendar days in advance of the scheduled court appearance. This will permit the administrative captain the opportunity to make the necessary adjustments in work schedules, the City points out. The requirement would be relaxed if the subpoena is issued fewer than ninety six hours in advance, or if the officer were not provided with four (4) calendar days notice, the City asserts.

Benefit Plans (City Proposal #7)

The expired collective bargaining agreement provides that officers who are appointed on or after January 1, 1990 contribute twenty-five percent of the cost of their health insurance premiums until they have completed five years of service with the City. The City proposes to clarify this provision to provide that the "five years of service" must be within the Police Department, not simply with the City itself. This will memorialize that which was intended by the parties when this provision was negotiated and put a potential issue to rest before it arises, the City submits.

Vacation Rescheduling (City Proposal #8)

The City proposes to amend Section 12 of the contract to codify the Department's position that it has the authority to reschedule vacations when necessary. Staffing problems have occurred when officers are transferred to different squads or duties, resulting in too many officers being scheduled to be out at the same time, the City claims. This change will confirm the City's managerial right to unilaterally address the problem, the City notes.

Vacation Scheduling (City Proposal ##9,10,12)

The expired agreement permits police officers to make their vacation picks no earlier than November 1 and no later than December 1 for the following calendar year. The City proposes that vacation picks be made no earlier than October 1. The current 30 day period is a problem because some officers do not pick their vacation blocks by December 1, leaving less than a month to finalize vacation schedules, the City complains.

The expired agreement also permits officers to add "excess" vacation days to any one of their weekly vacation blocks, creating the possibility of overlapping vacations within the same squad or division. The City proposes that the scheduling of all vacation days, including the "excess" days, be subject to the Chief's approval. This would cure the problem without any unfairness or undue burden to police officers, it submits.

City proposal number 12 seeks to add a provision that would require any vacation days in excess of 20 in a year to be scheduled with the prior approval of the Chief. It is important, for staffing purposes, that the Department have some control over when those excess vacation days are taken, the City urges. This proposal would alleviate a

serious problem without placing any burden on the members of the Department, the City concludes.

Vacation Time Accrual (City Proposal #11)

The City proposes that officers be precluded from accruing vacation time while they are absent on a leave other than a line-of-injury duty. This proposal is based upon simple fairness, the City maintains. The present system unfairly discriminates in favor of employees who are not working since they are not required to work in order accrue leave time, the City insists.

Sick Leave and Leave of Absence (City Proposal ## 13-15)

The expired collective bargaining agreement provides that members of the Department may accumulate bonus days for not using sick leave, payable upon "termination." The City proposes to replace the word "termination" with "retirement" so as to overturn a prior arbitration award involving the Fire Department.

The expired contract permits one person per tour to take a personal leave day. Depending on the day of the year and the Department's staffing needs, the Department cannot always permit even one officer to take a personal leave day, it submits. The City's proposal would confirm the City's inherent managerial right to deny a request for personal leave due to the staffing needs of a tour.

The City also proposed that the expired contract be amended to provide that the three contractual personal leave days be prorated for employees in the last year of service.

This proposal is based upon simple fairness as it would preclude a windfall to an employee working only one day in the fiscal year, the City submits.

Veterans (City Proposal # 16)

The expired contract provides that any member of the unit who is a qualified veteran and works "on any part of" Veteran's Day or Memorial Day receives one compensatory day or night off. The City proposes to amend this provision to read that a veteran who works on any part of "a regularly scheduled tour" on Veteran's Day or Memorial Day would be entitled to a compensatory day or night off. This would conform the contract to the statutory requirement set forth in Section 63 of the Public Officers Law.

Personal Property (City Proposal ##17-18)

The expired collective bargaining agreement requires the City to reimburse officers for personal property that is damaged while in the line of duty.

The City proposes to amend the language so that the City will be obligated to pay only for property required to be worn on duty. Officers have submitted reimbursement requests on items such as expensive watches and broken chains that are not required to be worn on duty, the City points out.

The City also proposes that its reimbursement exposure be limited to \$50 per item. This is the same as that in the PFFA contract, the City notes.

Grievance Procedure (City Proposal ## 19-22)

The City seeks to streamline the grievance process and expedite the processing of grievances. The City proposes to amend the definition of a "grievance," require the commencement of all grievances within 10 days of when the employee knew

or should have known of the act or condition on which the grievance is based, require members to make a written request for review of a Stage One determination within 72 hours of that determination and permit only the PBA to bring a grievance to arbitration.

The PFFA settlement made many similar and other changes to the procedure which do not affect any substantive employee or Union rights, the City argues. The PBA and PFFA should have similar procedures to ease administrative review of grievances, the City maintains.

Police Training And Probationary Periods (City Proposal ##23-25)

The expired collective bargaining agreement provides for a training period of three months, to be followed by a one-year probationary period. The City proposes that the pre-probationary training period be increased to nine months to more accurately reflect the amount of time spent in training.

In practice, the current training period is far longer than three months, leaving insufficient time for real probation under actual work conditions, the City argues. This is too little to determine if a police officer has the right skills to be a productive member of the Department, it complains. The change would permit the full year of on-the job probation contemplated by the collective bargaining agreement, the City submits.

The City proposes an increase in the probationary period for sergeants from three months to six months so that the City can have a full opportunity to evaluate whether superior officers will be successful in their new positions.

The City also proposes a six month probationary period for other superior officers. The same rationale applies as for increasing the sergeants' probationary period, the City submits.

General Provisions (City Proposal ## 26-28)

The expired contract provides that all rights and benefits that are terms and conditions of employment and presently enjoyed by unit members but not specifically covered in the Agreement shall be maintained. The City proposes that this provision be deleted from the new Agreement. This change will eliminate any question about what unit members' terms and condition of employment really are, the City submits. Any existing practices that are identified would be explicitly incorporated into the contract.

The expired contract also provides that the City is entitled to be reimbursed for all monies paid as a result of an employee injury or illness where the employee has been paid or compensated for the loss of wages or sick pay reimbursement. The City proposes to overturn an arbitration award precluding the City from recouping workers compensation monies paid to an employee for pain and suffering as part of a workers compensation award.

The City also proposes adding a section requiring that the contract be administered in accordance with the Americans with Disabilities Act and any regulations and guidelines issued thereafter. The federal regulations strongly encourage the inclusion of such language into contracts. This change will thus bring the City into better compliance with the ADA, it claims.

Discussion

Central to any interest arbitration is the question of comparability, i.e., to which groups of employees is the bargaining unit in issue to be compared. Previous interest arbitration panels have held that there are two base lines for comparison of White Plains police: the increases and compensation levels of police in two other Westchester County cities: New Rochelle and Mount Vernon and the other White Plains bargaining units.

The population and the size of the police forces in New Rochelle and Mount Vernon are much closer to White Plains than the smaller cities in Westchester: Peekskill and Rye, and the population of Yonkers is three times the size of White Plains, and it is currently under the regulation of a State Financial Control Board. Therefore Yonkers, Peekskill, and Rye are not appropriate municipalities for the panel to weigh on the issue of comparability.

At the same time, previous panels have found that more significant than the settlements and/or interest arbitration awards affecting police bargaining units in Mount Vernon and New Rochelle are the settlements and/or awards governing the City's other employees, if it has preceded the settlement and/or award covering the City's police. Consistent with these determinations were others which held the firefighters to a preexisting police settlement and/or award.

The PBA accurately distinguishes the criteria for interest arbitrations arising under the Taylor Law which stresses external comparisons between or among similar employees and the binding impasse procedure under the New York City Collective Bargaining Law which provides predominant weight to the internal settlements or impasse awards affecting

the first significant group of employees to settle with the City of New York. In fact New York City has successfully persuaded the Governor to veto legislation which would have placed the New York City police under the jurisdiction of interest arbitration provisions of the Taylor Law, rather than the provisions of the *New York City Collective Bargaining Law* because it would have increased the weight to be accorded external settlements involving police in Nassau, Suffolk and Westchester and decreased the weight to be accorded settlements between the City and unions representing its other employees.

Because the applicable patterns covering police in New Rochelle and Mount Vernon differ from the pattern established by the recent 1997-2000 agreement between the City and the firefighters and the agreements with other City units for 1997-1998, I need not select which pattern is more significant in disposing of this case. Therefore, in this round I believe that absent other unique circumstances which I will address, the contracts between the City and the PFFA and the Deputy Chiefs, the contract between the City and Local 456 IBT and the contract between the City and the CSEA, all set the pattern which should apply to the members of the bargaining unit represented by the PBA. I am not prepared to say more, as, in my view, arbitrators should refrain from construing a statute in the same way as they interpret a collective bargaining agreement because the latter is a product of the parties' negotiations like the arbitrator himself, while the former is a product of the legislative process.

Pattern bargaining is nothing new to labor relations and it predates negotiations in the public sector. Thus, the largest or most influential union representing a private employer's employees has long set the pattern for the settlement with its other unions, and,

as noted by the City, it promotes stability, sets guideposts, and in the private sector, limits strikes.

In the New York public sector, of course, public employees cannot strike. Nevertheless, the factors cited by the City concerning retardation of the negotiation process if the first group to settle is embarrassed by a more generous award or settlement which later groups may achieve is a very real concern, and cannot be ignored. However, in a unique situation, a strict application of internal pattern bargaining can lead to a situation which becomes economically irrational and smothers the employer, as well as prejudices the employees involved. That is what both parties acknowledge has occurred in this case.

As stated by the City in its brief:

The City recognizes that the police officer base salaries have "slipped" over the past twenty years in comparison with those in most other Westchester police departments.

Brief. p 12.

The City attributes this to the PBA, and the PBA blames a process which it believes has become too brittle by the strict application of the internal pattern, and which, it believes, has ignored wages earned by police in other departments in Westchester. In my opinion, it is immaterial, for purposes of the public interest and welfare which of the two is at fault. The current circumstances present a problem which must be resolved.

Thus, in 1996, the top officer's salary in every city, village and town in Westchester County was greater than the top officer's salary in the City. From 1976 to 1997, the salary of a City police officer eroded from where it was at the median, and only \$51 less than the

mean to its current position, to where it is more than \$5,100 less than the mean. The average top salary for a City officer is now 15% less than the average for a top officer in Westchester. The application of the City pattern will only serve to widen these gaps.

The City's position that the case for so-called "badge drain " which was presented by the PBA in this case is no better, and perhaps worse, than in years where arbitration panels rejected the argument and applied the firefighters' pattern misses the point. The City does not dispute the existence of the problem.

A panel is not required to ignore the application of well established economic principles, which if allowed to operate unchecked, will most certainly result in the City's inability to retain its experienced officers upon whom it has expended considerable revenue and effort to train. The public interest mandates that proof of a manpower crisis in public safety does not have to arise before preventative action can be taken.

Moreover, certain irrefutable facts exist which will inhibit any panel which might be convened in the next round to award any settlement beyond the firefighters pattern which this panel may award to the police, and in turn, to the firefighters, thereby initiating a spate of undesirable "leapfrogging".

The foremost of these factors is that the City's firefighters are not at or close to the bottom in compensation when compared to the County's other fire districts, as are the police. Moreover, there are only eighteen fire districts, which amounts to a limited market for the services of a professional firefighter. On the other hand, the potential competition for the services of a police officer from the municipalities in Westchester County are much greater since more governments have professional police officers (38) than do firefighters.

The fact that the economy is enjoying and has enjoyed a low rate of inflation makes this a particularly propitious and unique time to remedy the compensation gap which has developed between the City police and their colleagues throughout the County, as the pressures to increase wages have been limited, and there is less of a gap to close than would otherwise be the case. The application of the same percentage increases to differing wage bases always increases the difference between the lower base and the higher base.

Nevertheless, while I conclude that the City has the ability to offer compensation in addition to the pattern settlement it has proposed, the City streets are not paved with gold as it has so emphasized.

Although the City has conceded that its ability to pay is not in dispute in this proceeding, it has pointed out several disquieting facts which require prudence in arriving at an amount which should be applied to the base to address the problem of badge drain. The City is correct when it maintains that it should not tax its citizens to the limit set by the New York State Constitution.

Certainly, the panel must allow sufficient flexibility in terms of the City's finances for it to accommodate change and unforeseen emergencies, or even an economic downturn. Moreover, I concur with the City that any package should not have the impact of retrenchment of police, firefighters or any group which would reduce services to the taxpayers.

The sales tax, in the current era of prosperity, and in the shopper friendly environs of White Plains, has become the City's most significant source of revenue. The opening of the Westchester Mall in March, 1995, and the ½ % increase in the City's sales tax rate

in September, 1993 increased that source of revenue significantly. Thus, the City's sales tax receipts climbed from fiscal 1994 through fiscal 1997. Yet, in fiscal 1998 the sales tax revenue dipped four percent, the first decrease since fiscal 1991.

The assessed valuation of real estate in the City has decreased 27% since 1988-89. There is a 26% commercial vacancy rate in the City and many of these properties are commercially obsolete because they are not configured for corporate use, and are not wired for computers and other business office equipment. The estimated value of building permits for new non-residential construction has declined, as well.

The State is currently providing the City with emergency assistance of one million dollars annually to offset the impact of the decrease in assessed valuation. The City, as other municipalities in Westchester, has faced numerous reductions in its property tax assessments due to the growth in tax *certiorari* proceedings.

As if to add insult to injury, the ½ % City sales tax is about to expire in 1999 and the City has no guarantee that the Legislature will extend it.

Therefore, with prudence in mind, my conclusion is that the police officer's base should be increased by \$2,100, effective January 1, 1999, in addition to the increases which would flow from the application of the pattern settlement achieved by other White Plains unions for their members. This is a result of the unique circumstances which presently exist including the dire need for this additional adjustment. It will maintain the existing pattern while providing what I believe to be a necessary across the board increase in police officer base salaries. I do not foresee that circumstances are likely to arise in the future which will again justify this departure from the pattern, and, in any event, nothing in

this Opinion should be viewed as an endorsement of what has been the two factors limiting the scope of comparability to the sister municipalities of Mount Vernon and New Rochelle and the internal settlement or awards, if any, achieved by the Firefighters union.

As in the pattern settlement, the City's contribution to the PBA Welfare Fund should be increased by \$75 per bargaining unit member effective and retroactive to July 1, 1997. Assignment stipends, whether annual or by title, shall also be increased in accordance with the pattern, i.e., by 4% effective and retroactive to July 1, 1997; and by two percent effective and retroactive to July 1, 1998; and by another two percent effective on January 1, 1999.

In order to place the City in a better position to absorb the additional \$2,100 increase, I find that certain changes sought by the City to save expenditures and to operate the Department more efficiently are in order. I conclude that these changes are appropriate as consideration for the additional increase, and thus, it is not necessary that I locate something to justify them in a pattern agreement.

I therefore concur with the City that officers on paid sick leave for more than sixty calendar days, exclusive of 207-c leave, should not earn additional annual vacation leave after sixty days; that officers must make their vacation picks by October 1, rather than November 1 to provide the Department with additional flexibility and notice; that the notice time to the Department with respect to exchanges of tours of duty should be increased in order to ease administrative strains and improve operations as well as to conform to the contract's provisions on notice for personal leave; and that the Chief should be notified in

writing when an officer receives timely notice to attend court 48 hours in advance to qualify for overtime in order to help the Department with scheduling and cost containment.

Certain cost neutral changes, such as improvements to the grievance procedure and changes to conform with advantages allowed by the internal revenue code should be adopted.

The changes in the grievance procedure that eliminate a step and speed the process of resolving disputes reflect the reality of the decision making process and create a mutuality on time limits.

The new provision which will allow for officers with less than five years service who must make a contribution toward their health insurance to pay in pre-tax dollars will provide them with a savings while not adversely impacting the City. The insertion of a clause which clarifies that such employees must continue to make contributions until they have completed five years of service "within the Department" merely clarifies the current practice.

I will clarify that the Chief has the discretion to deny personal leave while at the same time providing protection for the individual officer against arbitrary, capricious or discriminatory denial.

In order to avoid any dispute about the contract modifications ordered by this Award, I am directing the City to prepare a draft contract to be annexed hereto.

Finally, the PBA raised some interesting, if not compelling arguments with respect to the work charts, as did the City regarding scheduling time off from work. In other years, these proposals may have triggered some alterations in the terms and conditions of

employment enjoyed by the PBA's members. However, given the economic impact of this Award, I was loathe to further intrude on an important area of the parties' relationships. Instead, I will direct that the parties are to continue their discussions in these two areas.

Thus consistent with this Opinion, I issue the following Compulsory Interest Arbitration.

AWARD:

1. Work Schedule (Section 5). The parties are directed to continue their discussions about the PBA's proposals regarding the work chart and the City's proposals regarding the scheduling of time off from work.

PBA CONCURS  PBA DISSENTS _____
CITY CONCURS  CITY DISSENTS _____

2. Exchanges of Duty (Section 6). Effective upon the issuance of this award, "forty-eight (48) hours" shall be changed to "five calendar days."

PBA CONCURS _____ PBA DISSENTS 
CITY CONCURS  CITY DISSENTS _____

3. Court Time (Section 8). Effective upon the issuance of this award, add a new paragraph to end of this Section: "In order to be compensated under this Section, when the employee is notified by other than the Police Department to report to Court, the employee must notify the Chief or his designee, in writing, at least 48 hours from the time when the employee receives notice. In the event there is less than 48 hours notice to the employee, from other than the Police Department, then the employee shall, as soon as reasonably possible, notify the Police Department in writing.

PBA CONCURS _____

PBA DISSENTS AKS

CITY CONCURS AK

CITY DISSENTS _____

4. Wages (Section 9(A)).

A. Effective and retroactive to July 1, 1997, each step (1-4) on the base salary schedule shall be increased by 4%.

B. Effective and retroactive to July 1, 1998, each step (1-4) on the base salary schedule shall be increased by 2%.

C. Effective January 1, 1999, each step (1-4) on the base salary schedule shall be increased by 2%.

D. Effective January 1, 1999, each step (1-4) on the base salary schedule shall be increased by and additional \$2,100.

PBA CONCURS AKS

PBA DISSENTS _____

CITY CONCURS AK

CITY DISSENTS _____

5. Plainclothes Assignment (Section 9(C)).

A. Effective and retroactive to July 1, 1997, the plainclothes and superior officers' stipend shall be increased by 4%.

B. Effective and retroactive to July 1, 1998, the plainclothes and superior officers' stipend shall be increased by 2%.

C. Effective January 1, 1999, the plainclothes and superior officers' stipend shall be increased by 2%.

PBA CONCURS AKS

PBA DISSENTS _____

CITY CONCURS AK

CITY DISSENTS _____

6. Assignments with additional per annum stipends (Section 9(E)).

A. Effective and retroactive to July 1, 1997, each stipend shall be increased by 4%.

B. Effective and retroactive to July 1, 1998, each stipend shall be increased by 2%.

C. Effective January 1, 1999, each stipend shall be increased by 2%.

PBA CONCURS *RJR* PBA DISSENTS _____
CITY CONCURS *ML* CITY DISSENTS _____

7. Health Insurance (Section 11(C)). Effective upon the issuance of this award, the phrase "with the City" shall be revised to read, "within the Police Department."

PBA CONCURS *RJR* PBA DISSENTS _____
CITY CONCURS *ML* CITY DISSENTS _____

8. Flexible Spending Plan (Section 11(F)). Effective as soon as practicable after the issuance of this award, the present plan shall be expanded to permit unit members to use pre-tax dollars to pay for their health insurance premium contributions.

PBA CONCURS *RJR* PBA DISSENTS _____
CITY CONCURS *ML* CITY DISSENTS _____

9. Welfare Fund (Section 11(G)). Effective and retroactive to July 1, 1997, the City's contribution shall be increased by \$75 per employee per year.

PBA CONCURS *RJR* PBA DISSENTS _____
CITY CONCURS *ML* CITY DISSENTS _____

10. Vacation Allowance (Section 12 (B,C,D)). Effective upon the issuance of this award, the following sentence shall be added to the end of each paragraph: "Notwithstanding any practice or contract provision to the contrary, vacation time shall not be earned when an employee is on a leave of absence, including paid and unpaid sick leave and suspensions, but not including line of duty (Section 207-c) injury, exceeding 60 calendar days."

PBA CONCURS _____

PBA DISSENTS RPB

CITY CONCURS M

CITY DISSENTS _____

11. Vacation Picks (Section 12(E)). Effective January 1, 1999, "November 1" shall be replaced with "October 1".

PBA CONCURS _____

PBA DISSENTS RPB

CITY CONCURS M

CITY DISSENTS _____

12. Personal Leave (Section 14(E)). Effective upon the issuance of this award, the following shall be added to the end of the first sentence: "The Chief may not unreasonably deny a request for personal leave."

PBA CONCURS RPB

PBA DISSENTS _____

CITY CONCURS M

CITY DISSENTS _____

13. Veterans (Section 16). Effective upon the issuance of this award, "a regularly scheduled tour of duty" shall be inserted after the phrase "who works any part of."

PBA CONCURS RPB

PBA DISSENTS _____

CITY CONCURS M

CITY DISSENTS _____

14. Grievance Procedure (Section 24). Effective for all grievances filed after the issuance of this award, the grievance procedure shall be revised as follows:

1. Delete Section 1. First Stage.
2. Change "2. Second Stage" to "1. First Stage".
3. Paragraph "A" first line change "second" to "first".
4. Paragraph "A" line ten delete "of the second stage of such grievance proceeding."
5. Paragraph "A" line twelve delete "fourteen (14) calendar" and insert "ten (10) Chief's business."
6. Paragraph "A" line fourteen change "Personnel Officer" to Corporation Counsel."
7. Paragraph "B" change "Personnel Officer" to "Corporation Counsel".
8. Change "3. Third Stage" to "2. Second Stage"
9. New Stage 2. Paragraph "A" change "Stage 2" to "Stage 1".
10. New Stage 2. Paragraph "A" and "B" change "Personnel Officer" to "Corporation Counsel".
11. New Stage 2. Paragraph "C" change "Personnel Director" to "Corporation Counsel".

PBA CONCURS _____

CITY CONCURS _____

PBA DISSENTS _____

CITY DISSENTS _____

15. Americans With Disabilities Act. Effective upon the issuance of this award, the following paragraph shall be added to the contract as a new Section 29, subsection 13: "The provisions of this Agreement shall be administered on a case by case basis so as to comply with the Americans with Disabilities Act and any federal regulations and guidelines issued thereunder."

PBA CONCURS 

PBA DISSENTS _____

CITY CONCURS 

CITY DISSENTS _____

16. Term of Agreement (Section 30). Revise to read, "... commencing July 1, 1997 and terminating June 30, 1999."

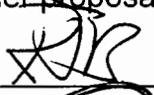
PBA CONCURS 

PBA DISSENTS _____

CITY CONCURS 

CITY DISSENTS _____

17. All other proposals are denied.

PBA CONCURS 

PBA DISSENTS _____

CITY CONCURS 

CITY DISSENTS _____

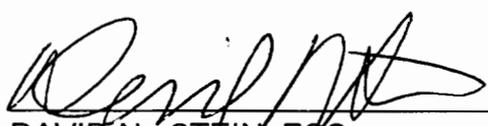
18. The City shall prepare and send to the PBA a typed version of the new contract as per the attached draft contract. Any dispute about the contract that is prepared by the City would be resolved by arbitrator David N. Stein, Esq.

PBA CONCURS 

PBA DISSENTS _____

CITY CONCURS 

CITY DISSENTS _____


DAVID N. STEIN, ESQ.
Impartial Chairman, Public Member

RICHARD ZUCKERMAN, ESQ. CITY PANEL MEMBER, CONCURRING:

I concur with the result reached by the Chairman in this case. Nevertheless, I cannot overemphasize my view that the award of the additional \$2,100 beyond the pattern set by the Firefighter's Union is to remedy a unique problem, and that I cannot envision that such circumstances will recur in the foreseeable future. My opinion, and that of the City, remain that the scope of comparability is not altered in any way by the result reached by this panel, and that in the next round of negotiations, I expect any panel which may be convened to be bound by any internal pattern which may have been set by an agreement or award governing one of the two public safety groups, i.e., fire or police.

I also emphasize that there is nothing in the record which would support a change in the workforce's charts concerning the number of appearances an officer must make. Nonetheless, there is nothing wrong with continuing a discussion of the issue as it is mandatory subject of bargaining, in any event.

The parties must be mindful of those economic factors cited by the Chairman which mandate that fiscal prudence must be the foremost consideration of any panel when the public interest and welfare is weighed.

Finally, the majority's acceptance of some of the changes in the contract sought by the City makes the additional \$2,100 payment more palatable. As a result, the City will save some funds and obtain more discretion in operating the police department. Moreover, from a personnel standpoint, the spectre of substantial turnover in the City's police force will disappear.

Dated: Mineola, New York
November 10, 1998



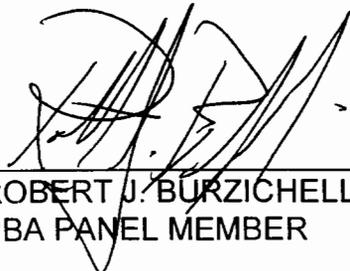
RICHARD ZUCKERMAN, ESQ.
CITY PANEL MEMBER

ROBERT J. BURZICHELLI, ESQ., PBA PANEL MEMBER, CONCURRING, IN PART AND
DISSENTING, IN PART:

While I am not confident that the \$2,100 adjustment to the base will represent a long-term solution to the compensation problem which has arisen due to an overly rigid application of the pattern bargaining concept, it does amount to a meaningful beginning. At the same time, the changes which the City has successfully sought are not justified by the amount of the adjustment to the base, and therefore, given the imposition of these changes, a more generous adjustment would have been appropriate. Thus, my dissent is predicated on the changes sought by the City, and not on the adjustment to the base, with which I concur.

I also wish to add that, in my opinion, the PBA made a strong case for adjustment to the charts, although I understand that with the adjustment to the base of \$2,100, it may have been too much to expect a reduction in appearances from this round of negotiation. Nonetheless, I must emphasize that the PBA intends to press forward on the charts issue during the discussions which will follow this Award, and in the negotiations for the next collective bargaining agreement if the parties cannot resolve the issue before they commence.

Dated: Lake Success, New York
November 10, 1998



ROBERT J. BURZICHELLI, ESQ.
PBA PANEL MEMBER

11/10/98
Date

Richard K. Zuckerman
RICHARD K. ZUCKERMAN
Public Employer Member

On this 10th day of November, 1998, before me personally came and appeared RICHARD K. ZUCKERMAN to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

ELAINE C. SMITH
Notary Public, State of New York
No. 01SM5040188
Qualified in Nassau County
Commission Expires March 6, 1997⁹

Elaine C. Smith
Notary Public

10 November 1998
Date

Robert J. Burzichelli
ROBERT J. BURZICHELLI, ESQ.
Employee Organization Panel Member

On this 10th day of November, 1998, before me personally came and appeared ROBERT J. BURZICHELLI, ESQ. to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

MARY GORDON
NOTARY PUBLIC, State of New York
No. 4979073
Qualified in Nassau County
Commission Expires 3/18/99

Mary Gordon
Notary Public

11/10/98
Date

David N. Stein
DAVID N. STEIN, ESQ.
Chairman Public Member

On this 10th day of November, 1998, before me personally came and appeared DAVID N. STEIN, ESQ.. to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Mary Gordon
Notary Public