

198-010; M97-37

**PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF NEW YORK**

**In the Matter of the
Arbitration between
the CITY OF OGDENSBURG
and
OGDENSBURG POLICE
BENEVOLENT ASSOCIATION**

Opinion and Award

**PERB Case Nos.:
IA98-010; M97-359**

012520

Conclusion

INTRODUCTION

On June 15, 1998, the New York State Public Employment Relations Board, pursuant to Section 209.4 of the New York State Civil Service Law (provisions applicable to compulsory interest arbitration), appointed a Public Interest Arbitration Panel for the purpose of making a just and reasonable determination of the contract negotiation dispute between the City of Ogdensburg, hereinafter referred to as the City, and the Ogdensburg Police Benevolent Association, hereinafter referred to as the PBA.

The Public Interest Arbitration Panel members so designated are:

Dale S. Beach, Public Panel Member and Chairman

Rocco A. DePerno, Esq., Counsel,

Employee Organization Panel Member

John C. Krol, City Manager,

Public Employer Panel Member

The arbitration hearing was held on October 1, 1998 at the Stonefence Motel, Ogdensburg. At the hearing both parties were afforded full opportunity to present testimony, exhibits, and arguments in support of their positions and to cross-examine opposing witnesses.

APPEARANCES

For the PBA

Theresa M. Girouard, Attorney for PBA
Edward Fennell, Witness
Steven M. Fisher, President
Arthur J. Spriggs, Negotiation Team
Andrew D. Kennedy, Secretary-Treasurer

For the City

Katherine Hannan Wears, City Attorney
Andrew P. Wells, Chief of Police
Philip A. Cosmo, City Comptroller

Our Public Arbitration Panel met in Executive Session on December 21, 1998 at the Best Western Syracuse Airport Inn. Fifteen issues that were at impasse have been presented to this Panel. The actual award for each issue has been based upon a vote in the Panel, unanimous on all but one issue with a majority decision on that one issue.

The attorney for the PBA submitted a post-hearing brief.

STATUTORY CRITERIA

In analyzing the issues and making its determinations this Panel has given consideration to the criteria stated in Section 209.4(v) of Article 14 of the Civil Service Law (Public Employees' Fair Employment Act). Section 209.4(v) states that in addition to other relevant factors the Panel shall take into consideration the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

Section 209.4(vi) states:

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

Ogdensburg is located on the St. Lawrence River in St. Lawrence County. It had a population of 13,521 in 1990. There are 19 police officers (patrolmen) in the bargaining unit.

The last collective bargaining agreement between the parties expired on December 31, 1997. The City and the PBA were unsuccessful in reaching agreement for a new contract. The PBA filed a Petition for Compulsory Interest Arbitration with the Public Employment Relations Board on or about April 22, 1998. The City filed its response to the Petition on or about May 5, 1998.

It is well recognized that police work is stressful and hazardous. Police must protect law-abiding citizens from those known or believed to be dangerous. In Ogdensburg the job is rather unique because it is on the border with Canada. Immigration problems are added to those of normal police work.

The PBA submitted to the Arbitration Panel ten issues for its determination. The City has submitted five issues to the Panel.

The ten issues submitted to the Panel by the PBA are the following:

- Salary
- Health Insurance
- Uniforms and Equipment
- Members' Rights
- Afternoon and Night Differential
- Hazard Duty Compensation
- GMH 207-c
- Longevity Compensation
- Shift Schedules
- Defense and Indemnification

The five issues submitted to the Panel by the City are the following:

Sick Leave
Sick Leave Evaluation
Lateral Transfer
Substitution
Term of Agreement

THE ECONOMIC AND FINANCIAL SITUATION OF OGDENSBURG

Both the PBA and the City provided information and testimony about the economic and financial status of Ogdensburg.

In its presentation the City emphasized the situation in comparison with the communities of Malone, Massena, Potsdam, Gouverneur, and Canton. Two of these comparisons are as follows:

	Full-Value Tax Rate per \$1000 (1996)	% of Tax Limit Exhausted (1998)
Ogdensburg	\$16.91	79.7
Malone	15.21	78.1
Massena	12.25	61.8
Potsdam	15.11	70.0
Gouverneur	9.96	44.6
Canton	7.08	15.0

In its brief the City states that 72% of the property within Ogdensburg is tax-exempt as of 1998. (Two New York State Correctional facilities in Ogdensburg account for a large share of the tax-exempt property).

Edward Fennell, for the PBA, presented information on the City's financial situation. The New York State constitution has established taxing limits that are related to the five-year average

of the full value of taxable real estate. For cities under 125,000 population the tax limit has been fixed at 2 percent for city purposes alone. For fiscal year 1998 Ogdensburg has a taxing margin of \$808,217 which represents 23.2% of its limit.

The constitutional debt limit for cities of under 125,000 population is 7 percent of the full value of taxable real estate. As of December 31, 1996 Ogdensburg had exhausted 6.1% of its debt limit. As of December 31, 1997 the City had a General Fund balance of \$2,866,988. The unappropriated and unreserved portion was \$1,677,994. This represented 21.9% of the 1998 General Fund budget. This is well above the policy of retaining a 10% reserve.

THE ISSUES

1. DURATION OF THE AWARD

The City wants a one-year arbitration award only. The PBA seeks a three-year contract.

Discussion

Section 209(vi) of the Public Employees' Fair Employment Act states that an interest arbitration panel can make an award not to exceed two years from the termination date of the previous collective bargaining agreement. The previous agreement between the parties expired on December 31, 1997.

Award

This award shall cover the two-year period from January 1, 1998 through December 31, 1999.

2. SALARY

The 1996-1997 contract between the parties provides that as of 1/1/97 the annual training salary is \$22,879. There are 8 yearly steps in the schedule. For year 1 the salary is \$25,421. Top step at year 8 is \$34,787.

Position of the PBA

The PBA proposes that salaries be increased 8% for 1998 and 8% for 1999.

Among the information provided by the PBA is a table showing the percentage increases of police arbitration awards for 1997 (19 communities plus the New York State Troopers) and similar data for 1998 (9 communities plus New York State Troopers). In both years the pay increases averaged 3.86%.

Another PBA table shows the cumulative salaries to the 8th year (Ogdensburg's top) for 7 northern New York State communities in comparison with Ogdensburg. The average of these 7 other jurisdictions in 1997 was \$247,473. Ogdensburg's cumulative amount was \$228,927.

A PBA table shows the hourly starting salary for Ogdensburg in comparison with the salaries of 7 northern New York State cities and villages. Ogdensburg is \$0.28/hour below the average of these other communities for 1997. Ogdensburg's top annual salary of \$34,787 is very close to the average of the top salaries of these 7 other communities. However, in its brief, the PBA notes that it takes 8 years to reach the top in Ogdensburg whereas it takes fewer years to reach the top step in all the other communities except

Plattsburgh, which had a top of \$39,385 in 1997.

Position of the City

The City proposes a zero (0%) salary increase for 1998.

The City has provided data on negotiated contract settlements for certain police departments in the St. Lawrence Valley. For 1998-99 these are: Canton 3.50%, Potsdam 3.00%, and Gouverneur 4.00%. For 1999-2000 these are Canton 3.50%, Potsdam 3.00%, and Gouverneur 3.50%.

The City of Ogdensburg and its Firefighters have negotiated a contract that provides for a 2.75% salary increase for 1998. The U.S. Bureau of Labor Statistics data show that the Consumer Price Index rose only 1.39% from August 1997 to August 1998 (U.S. City Average). For Northeast Urban the C.P.I. rose 1.33% from August 1997 to August 1998.

The City argues that Ogdensburg salaries should only be compared with those of Potsdam, Canton, Gouverneur, Malone, and the County Sheriff's Department. Among these communities Ogdensburg has the highest full-value tax rate, the highest level of tax-exempt property, and the highest level of constitutional taxing limit exhausted.

Discussion

In arriving at its salary decision the Arbitration Panel has fully considered the data and arguments submitted to it by the City and the PBA. The City does have the ability to pay reasonable salary increases for 1998 and 1999.

For 1997 the City's police salaries are approximately in line

with the salaries paid in other northern New York State communities. To keep the salaries in line for 1998 and 1999 requires increases that are consistent with the averages of other Upstate and northern New York communities.

The Arbitration Panel has determined that its salary award shall cover the two-year period from January 1, 1998 through December 31, 1999. The year 1998 has already passed and we are now into 1999. A one-year award would only cover the past year. If the Panel only issued a one-year award the parties would again face the time and expense of negotiations for 1999 and possibly another arbitration proceeding.

The Arbitration Panel is fully cognizant of the characteristics of police work, the interests of the public, and the City's ability to pay reasonable salary increases.

Award

Effective January 1, 1998 raise salaries 3.25% across the board. In addition there shall be a 1.00% signing bonus on the 1997 salaries.

For the second year of a two-year agreement (January 1, 1999 through December 31, 1999) raise salaries 3.00%.

Eliminate Step 1 on the salary schedule such that the schedule will have a training step; the Year 1 step will be eliminated; and Year 2 becomes Year 1 and 2. Police officers will stay at steps 1 and 2 for two (2) years.

3. HEALTH INSURANCE

Currently each employee pays \$7.50 per payroll period for health insurance (\$195 per year). Retired police officers pay 50% of the cost of health insurance for themselves and 65% of the cost for dependents.

Position of the PBA

The PBA proposes that the City pay 100% of the cost of health insurance for retirees and their dependents. In other words the PBA wants to eliminate co-payments for retirees and their dependents.

The PBA submitted data on health insurance payment practices for Canton, Gouverneur, Malone, Massena, Plattsburgh, Potsdam, and Watertown. Practices vary from community to community. A few do pay 100% for retirees.

Position of the City

The City wants no change from the current contribution rates for retirees and their dependents. It cites the rising cost of health care for the City.

Discussion

The rising cost of health care impacts retirees just as it does the City. Whereas practice does vary among northern New York State communities, there are some that do pay 100% of the cost for retirees and their dependents. These are Canton and Plattsburgh. Malone pays 100% for retirees and 50% for dependents of retirees.

If the retiree were required to pay 40% of the cost of his own health insurance (down from 50%), he would save about \$160 per year

based upon current health insurance costs. Likewise by increasing the City's share to 60% (up from 50%) the cost of the City would increase \$160 per year per police employee.

Award

The City shall pay 60% of the cost of health insurance for the individual retiree (up from 50%). Therefore the retirees' share shall be reduced from 50% to 40%. This change shall begin on January 1, 1999.

There shall be no change in the contribution rate for dependents of retirees.

4. LONGEVITY COMPENSATION

Currently there are no longevity payments provided in the contract between the City and the PBA.

Position of the PBA

The PBA proposes that there be a longevity payment of \$500 after 8 years of service plus \$100 for each year thereafter. It notes that the three other bargaining units in Ogdensburg do get longevity payments. Also longevity payments are provided in Canton, Malone, Massena, Potsdam, and Watertown.

Position of the City

The City opposes the adoption of longevity payments. Previous contract negotiations eliminated longevity provisions in lieu of an existing step system.

Award

On their anniversary dates police officers will receive \$300 per year upon completion of ten (10) years of service. This policy commences on January 1, 1999.

5. SICK LEAVE: ATTENDANCE EVALUATION CRITERIA

Currently the contract between the parties contains nothing on attendance evaluation criteria.

Position of the City

The City is concerned that excessive use of undocumented sick leave reduces staffing levels and often requires the call-in of off-duty personnel on overtime. The City proposes the adoption of a procedure for dealing with excessive sick leave usages on a progressive disciplinary basis. The City provided data on sick leave usage by officers for 1996 and 1997. It also provided a rather detailed written policy and procedure for handling sick leave usage problems.

Position of the PBA

The PBA opposes the City's proposal.

Discussion

The City has demonstrated that there is a problem with excessive use of undocumented sick leave, at least among some officers. The award, here to follow, adopts the City's sick leave proposed policy and procedures.

Award

The City's proposal for a sick leave review process will become effective on January 1, 1999. The "Occasion time frame" given in the procedure shall not commence before January 1, 1999.

The policy and procedure shall be as follows:

Section 17. Declaration of Policy. It is the purpose of this Section to delineate the City of Ogdensburg's attendance expectations for its employees with respect to sick leave usage. The components of this procedure are designed to identify and deter excessive sick leave usage, and abuse. An employee's attendance history, and any other pertinent factors, shall be considered before any type of action, as outlined, is taken against an employee. All other contractual obligations and requirements are to be adhered to.

(A) Definitions.

- (1) "Employee" shall mean any person covered by this agreement as provided for under ARTICLE II - Recognition.
- (2) "Employer" shall mean the City of Ogdensburg or its designee.
- (3) "Sick Leave" shall mean any full or partial work day taken off by means of sick leave usage.
- (4) "Family Sick Leave" shall mean any full or partial workday taken off by means of sick leave usage for illness of an immediate family member, as defined in Section 16 of this Article.
- (5) "Sick Leave Occasion" shall mean any usage of sick leave, hours or days, unbroken by a return to work.
- (6) "Occasion Time Frame" shall mean any continuous 12 month period.
- (7) "Prior Approved Sick Leave" shall mean sick leave usage for doctors appointments, medical testing, etc., for which employer notification was made, and approval granted.
- (8) "Attendance Evaluation Criteria" shall mean the total number of sick leave occasions in any Occasion Time Frame, and the possible actions to be taken against an employee.
- (9) "Hardship" shall mean unusual cases which may be determined exempt from this procedure, i.e., chronic serious illness, Employee Assistance Program referrals, serious family emergencies, etc..

- (B) **Absence Review.** The employer shall, on a continual basis, monitor sick leave usage records of all employees covered by this agreement. Such review shall include, but not be limited to:
- (1) The total number of sick leave occasions in any Occasion Time Frame,
 - (2) Whether such number of sick leave occasions exceeds the following pre-determined guidelines (Attendance Evaluation Criteria),
 - (3) A determination as to whether the Attendance Evaluation Criteria should be strictly adhered to, taking into account sick leave usage history, hardship, overall work record, number of young children in household, or any other extenuating factors or circumstances.
- (C) **Attendance Evaluation Criteria.**
- (1) Number of sick leave occasions in any Occasion Time Frame exceeds five - the employee may be subject to informal discussion with the employer.
 - (2) Number of sick leave occasions in any Occasion Time Frame exceeds six - the employee may be subject to formal counselling by the employer.
 - (3) Number of sick leave occasions in any Occasion Time Frame exceeds seven - the employee may be subject to a written warning.
 - (4) Number of sick leave occasions in any Occasion Time Frame exceeds eight - the employee may be subject to disciplinary action that shall include refusal or revocation of secondary employment, suspension of shift switching privileges, suspension of any other non-contractual privileges, or any other allowable penalty which is deemed appropriate by the employer.
- (D) **Sick leave Occasions Not Counted in Occasion Time Frame.**
- (1) Prior Approved Sick Leave, with medical documentation provided by the employee.
 - (2) Family Sick Leave, with medical documentation provided by the employee.
 - (3) Any sick leave usage documented by a doctor does not count against employee in evaluation criteria.

REMAINING PROPOSALS

AWARD

THE PROPOSALS THAT FOLLOW HERE (7 BY THE PBA AND 3 BY THE CITY) SHALL REMAIN STATUS QUO. THERE SHALL BE NO CHANGE FROM THE PRESENT SITUATION. EACH OF THESE ISSUES SHALL BE EXPLAINED VERY BRIEFLY HERE.

A. Uniform and Equipment

The PBA proposes that the uniform allowance for 1998 be increased to \$800, for 1999 it should be \$1,000, and for 2000 it should be \$1,000. The City wants no change from the present allowance.

B. Member Rights

The PBA seeks a Public Employment Relations Board-appointed arbitrator for Civil Service Section 75 disciplinary hearings. The City wants no change from the present system.

C. Afternoon and Night Differential

The PBA proposes that those working during the hours of 3 p.m. to 7 a.m. be paid a shift differential of \$0.75 per hour in 1998, \$1.00 per hour in 1999, and \$1.25 per hour in 2000. The City opposes enacting a shift differential.

D. Hazard Duty Compensation

The PBA proposes that if there are less than three officers on the road during a shift, the remaining road officers are to be compensated at time and one-half for risks associated therewith. The City opposes this as it would impose a minimum staffing level and impinge upon management rights.

E. GML 207-c

The PBA proposes final and binding arbitration for evaluation of claims for work-related disability or injury in the event of a dispute. The City opposes this.

F. Shift Schedules

The PBA proposes a change from the current rotating shifts to permanent shifts or else 4 - 10 hour days. The City wants no change from the present system.

G. Defense Indemnification

The PBA wants the City to enact a law to indemnify officers who may be sued relative to the discharge of their duties. The City states that it has already passed a law that indemnifies police officers relative to the discharge of duties.

CITY PROPOSALS

H. Sick Leave

The City wants the option to require a physician's certification after the 2nd day of sick leave utilized. A "day" is to include a partial day. Currently a physician's certification can be required after the 3rd consecutive day of sick leave. The PBA wants no change.

I. Lateral Transfers

The City proposes to restore the previous ratio of one-to-one credit for outside experience. Currently those who transfer into the Police Department from other departments receive one year of experience credit for every one and one-half years of outside experience. The PBA wants no change from the present contract provision.

J. Substitution

The City wants to change the current practice of having indiscriminate trading of shifts by the officers. Management policy is to rotate shift coverage responsibilities. The privilege of trading shifts could be withheld potentially as a penalty in disciplinary actions. The PBA is opposed.

LISTING OF FINAL POSITIONS TAKEN BY PANEL MEMBERS ON EACH ISSUE

1. DURATION OF AWARD

The Panel is unanimous on this issue.

2. SALARIES

The Panel is unanimous on this issue.

3. HEALTH INSURANCE

Members Beach and DePerno concur. Member Krol dissents.

4. LONGEVITY COMPENSATION

The Panel is unanimous on this issue.

5. SICK LEAVE: ATTENDANCE EVALUATION CRITERIA

The Panel is unanimous on this issue.

A. UNIFORM AND EQUIPMENT

The Panel is unanimous on this issue.

B. MEMBER RIGHTS

The Panel is unanimous on this issue.

C. AFTERNOON AND NIGHT DIFFERENTIAL

The Panel is unanimous on this issue.

D. HAZARD DUTY COMPENSATION

The Panel is unanimous on this issue.

E. GML 207c

The Panel is unanimous on this issue.

F. SHIFT SCHEDULE

The Panel is unanimous on this issue.

G. DEFENSE INDEMNIFICATION

The Panel is unanimous on this issue.

H. SICK LEAVE

The Panel is unanimous on this issue.

I. LATERAL TRANSFERS

The Panel is unanimous on this issue.

J. SUBSTITUTION

The Panel is unanimous on this issue.



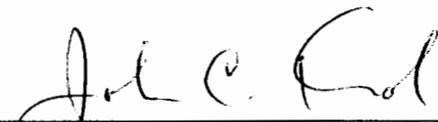
DALE S. BEACH
Public Panel Member and Chairman

3-25-99
Date of Award



ROCCO A. DEPERNO
Employee Organization Panel Member

3-18-99
Date of Award



JOHN C. KROL
Public Employer Panel Member

3-22-99
Date of Award

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In the Matter of the Arbitration between
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Opinion and Award

PERB Case Nos.:
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MINORITY OPINION

The City of Ogdensburg demonstrated the rising cost of providing healthcare benefits to employees and retirees, during the arbitration hearing held on October 1, 1998.

The cost of the healthcare benefit for employees rose by \$229,028 in the past year alone. While the healthcare benefit added 13.5% to payroll expenses in 1997, it increased to 17.1% of payroll expenses in 1998.

PBA members currently contribute only \$195 annually as a co-pay during their working careers. Deductibles for major medical expenses remain at exceptionally low levels for PBA members during their career and during their retirement (\$100/individual; \$200/family maximum).

Rapidly escalating costs for employee healthcare benefits is universal among employers. The universal response by employers and virtually all PERB arbitration awards has been to maintain or increase the employee's proportionate share of the cost of his healthcare. This arbitration award is unique in that it reduces the employee's share of the cost of his healthcare benefit, despite the demonstrated dramatic escalation in the cost of that benefit.

The arbitration award reads in part,

“The rising cost of health care impacts retirees just as it does the City.” (Page 10)

This is a truism. However, the Panel majority failed to demonstrate a rational basis for overturning a previously negotiated equal sharing of retiree healthcare costs by the City and its PBA retirees. Instead of maintaining the negotiated equal sharing of healthcare costs and increases in those costs, the Panel majority arbitrarily imposed a shift of the cost-sharing formula such that the full impact of the cost escalation falls upon the public employer’s shoulders. Witness the following.

In 1998, the retiree’s cost for his own healthcare benefit was based on 50% of the actual expenditures that the City incurred during 1997 in providing that coverage. As such, 50% of \$1,612 would require a retiree co-payment of \$806 during 1998.

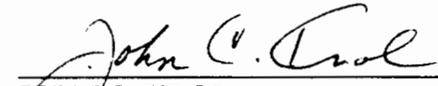
The escalation of healthcare expenditures during 1998, generated a rate increase for individual healthcare coverage in 1999. The 1999 individual retiree total premium equivalent will be \$2,032. However, because of the imposed reduction in the retirees’ share, their annual individual expense would be \$813, a mere \$7 increase from 1998. The public employer, on the other hand faces a \$413 annual cost increase in providing this benefit during 1999 over 1998. This increase is vastly more significant than the \$160 cited in the Arbitration Panel’s majority report.

In summary,

1. The Panel majority has demonstrated no rational basis for overturning a previously negotiated 50/50 cost sharing for retiree healthcare expenses.
2. The dollar impact of this action greatly exceeds the impact assessed to it by the Panel majority.

- 3. The Panel majority arbitrarily shifted the full impact of a cost increase in an employee benefit from a shared cost basis to that of an impact to be borne fully by the public employer.

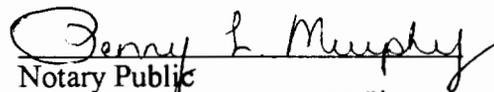
This minority panel member can not support an imposition to overturn a previously negotiated cost-sharing concept.



 JOHN C. KROL
 Public Employer Panel Member

State of New York)
) ss:
 County of St. Lawrence)

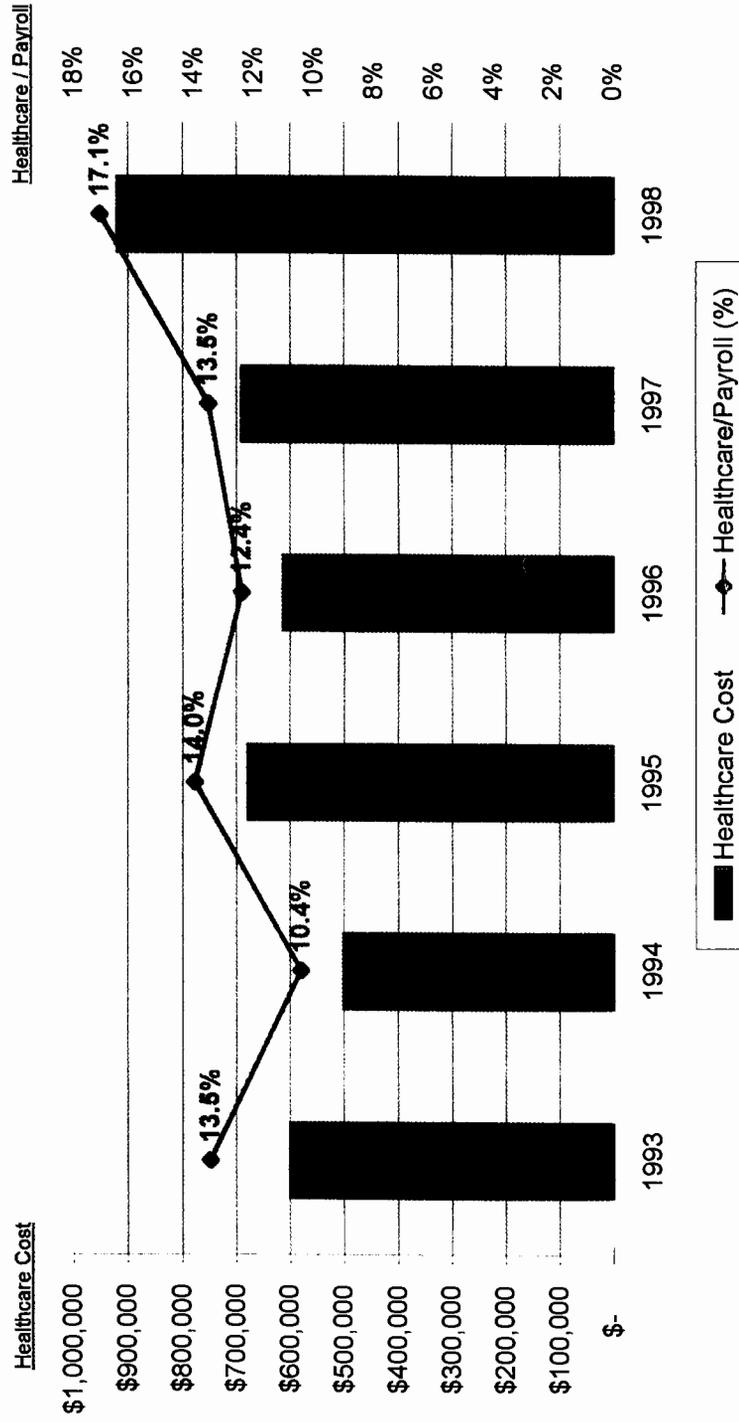
On this 29th day of January 1999, before me personally came and appeared John C. Krol, to me known and known to me to be the individual described in the foregoing instrument and he acknowledge to me that he executed the same.


 Notary Public
 PENNY L. MURPHY
 Notary Public in the State of New York
 St. Lawrence County #01MU4832143
 My Commission Expires Sept. 30, 1999

Employee Healthcare Expenditures / Total Payroll

	General Payroll	Water Payroll	Sewer Payroll	Lib/Mus Payroll	Total Payroll	Healthcare Cost	Healthcare/Payroll (%)
1993	3339170	365152	401871	341981	\$ 4,448,174	1993 \$ 598,815	13.46%
1994	3604773	392652	427652	368115	\$ 4,793,192	1994 \$ 500,486	10.44%
1995	3667277	388137	413988	375303	\$ 4,844,705	1995 \$ 677,651	13.99%
1996	3745528	404016	399531	381459	\$ 4,930,534	1996 \$ 611,599	12.40%
1997	3888060	376880	425703	403133	\$ 5,093,776	1997 \$ 689,432	13.53%
1998	4124530	405763	434199	395744	\$ 5,360,236	1998 \$ 918,460	17.13%

Employee Healthcare Expenditures and As a Percentage of Total Payroll



Annual Cost of a PBA Retiree's Individual Healthcare Coverage

City of Ogdensburg : PBA Retiree Share				
1998	\$	806	\$	806
1999	\$	1,219	\$	813

