

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF THE ACT 111 OF
1968 INTEREST ARBITRATION
BETWEEN:

BOROUGH OF ROCHESTER, PA
POLICE COMMISSION

AND

BEAVER VALLEY LODGE #4, F.O.P.

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Case No. 01-23-0001-9869

ACT 111 INTEREST ARBITRATION AWARD

Board of Arbitration:

Michael D. McDowell, Esq.
Impartial Arbitrator

Joshua C. Hausman, Esq.
Arbitrator for Borough of Rochester, PA

Eric C. Stoltenberg, Esq.
Arbitrator for The Beaver Valley Lodge 4, Fraternal Order of Police

BACKGROUND

The Borough of Rochester and the Beaver Valley Lodge 4, Fraternal Order of Police are parties to a collective bargaining agreement which expired on December 31, 2022, with an extension pending the finalization of this Interest Arbitration Award. In accordance with Act 111 of 1968, when the parties were unable to resolve the collective bargaining negotiations they pursued interest arbitration. The Beaver Valley Lodge 4, Fraternal Order of Police appointed Eric C. Stoltenberg, Esq. as its arbitrator, and the Borough of Rochester appointed Joshua Hausman, Esq. as its arbitrator. These two party-arbitrators struck from the list of three arbitrators provided by the American Arbitration Association with the result that Michael D. McDowell, Esq. was appointed chairman of the tri-partite panel of arbitrators. A hearing on this case was held on September 21, 2023 at Rochester, PA at which time both parties were afforded a full and fair opportunity to present evidence and witness testimony in support of their positions. Attorney Stoltenberg presented the case for the Beaver Valley Lodge 4, Fraternal Order of Police and Attorney Hausman presented the case for the Borough of Rochester. Executive sessions were subsequently held on November 2, 2023, December 11, 2023, and December 22, 2023. Telephone executive sessions were held with individual panel arbitrators on January 15, 18, 23 and 24, 2024. There were numerous email exchanges. The following Award is hereby issued for terms and conditions of the collective bargaining agreement to replace the agreement extension that expired on December 31, 2022 but was extended pending this Interest Arbitration Award.

It is noted that this Award is not unanimous as to every issue. However, there are at least two supporting votes for every provision in this Award. The provisions of the expired collective bargaining agreement that remain unchanged by this Award shall continue but this arbitration panel shall reserve jurisdiction to resolve any disputes concerning the compilation of an integrated collective bargaining agreement.

AWARD

1. Article III – WAGES. A. WAGES

The existing language of Article III – WAGES, A. WAGES shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

WAGES – The basic hourly rate for full-time police officers shall increase ~~3~~ 2.5% each year for 2023, 2024 and 2025 as follows:

	2021	2022	<u>2023</u>	<u>2024</u>	<u>2025</u>
Sergeant	\$31.20	\$31.98	<u>\$32.94</u>	<u>\$33.93</u>	<u>\$34.95</u>
Patrolman	\$29.62	\$30.36	<u>\$31.27</u>	<u>\$32.21</u>	<u>\$33.18</u>

The Borough will pay an annual bonus of \$600 each year to a full-time officer who is appointed a Detective by the Borough Council. (Prorated for partial years)

2. Article III – WAGES, B. WAGE SCALE

The existing language of Article III – WAGES, B. WAGE SCALE shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

B. WAGE SCALE – A wage tier is hereby established to provide for a learning curve while newly hired full-time officers gain practical experience in the Borough of Rochester. Newly hired full-time police officers after January 17, 2017 will receive the following (%) of a Patrolman's hourly rate as their hourly rate for that period:

1 st 6 mon.	2 nd 6 mon.	2 nd Year	3 rd Year	4 th Year	5 th Year+
(75%)	(80%)	(85%)	(90%)	(95%)	(100%)

The date of hire will be used as the anniversary date for wage increases as well as January 1st for any percentage increase the regular patrolmen receive. It is understood that all newly hired police officers are hired under a one (1) year probationary period in which that officer may be terminated without cause, which may include ~~but for~~ financial reasons.

3. ARTICLE IV – BENEFITS. A. HOSPITALIZATION

ARTICLE IV – BENEFITS. A. HOSPITALIZATION shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

HOSPITALIZATION - Hospitalization/Medical coverage will be provided to the full-time officer and his/her dependents by the Borough. Coverage will be paid 100% by the Borough with the officer contributing to the Borough for this coverage as follows: 4% of the monthly premium paid per month not to exceed \$150 \$250 per month. No sooner than the date of issuance of this Award, officer contributions toward the monthly premium may be required to the same percentage paid by the Borough's non-unionized employees, not to exceed 6% in 2024 and 8% in 2025 and thereafter, not to exceed \$250 per month. In the future, any premium increase identified for covering smokers that increase will be paid 100% by the officer in addition to his/her annual contribution as stated above. Coverage to remain as currently provided, subject to the Borough's right to change to comparable coverage as set forth below.

- A. Opting out of Coverage-A full-time officer may choose to opt out of medical coverage. If an officer so chooses, they must obtain coverage from some other source. In lieu of accepting this coverage, the employee will be entitled to receive a lump sum payment of \$3000 annually. Half paid on the last pay in June and half paid on the last pay in December. Payment will only be made if the employee has opted out of coverage all six months prior to that semi-annual payment. An Officer may opt back in the should they lose their coverage or their other coverage changes.

NOTE: The Borough shall have the right to change existing hospitalization/medical insurance to a plan that is comparable to the coverage which is presently being provided. Comparable in this context does not mean exactly the same. The employees, however, retain the right to grieve the Borough's determination that the plan is comparable. It will so state, in writing, to the Borough within fourteen (14) calendar days of the plan being provided to the employees by the Borough, or such longer period as mutually agreed by the parties in writing. In that event, the Borough may not unilaterally implement the proposed new plan, however, it may immediately process the dispute before a neutral arbitrator selected pursuant to the arbitration step of the grievance procedure. The decision of the arbitrator on the issue of comparability shall be issued within forty-five (45) calendar days of the Union's written notice contesting that the plan selected by the Borough is comparable and shall be final and binding and will determine if the Borough is authorized to implement the new plan.

4. ARTICLE IV – BENEFITS. B. DENTAL COVERAGE, VISION COVERAGE

ARTICLE IV – BENEFITS. D. PERSONAL DAYS/VACATION DAYS shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

DENTAL COVERAGE - Dental coverage will be provided to the full-time officer and his/her dependents by the Borough **if requested**. Coverage will be paid 100% by the Borough. **No sooner than the date of issuance of this Award, officer contributions toward the monthly premium may be required to the same percentage paid by the Borough's non-unionized employees, not to exceed 6% in 2024 and 8% in 2025 and thereafter.** Coverage provided as noted below. ~~Should there be a need to change providers, the Borough and Union Members will work together in reviewing alternatives and securing a plan which is representative of the current plan in place. It is understood that securing the exact same coverage that is impracticable but every effort will be made to substantially meet the existing coverage. The Borough cannot change coverage without involving the Union Members and providing a review process.~~

VISION COVERAGE - Vision coverage will be provided to the full-time officer and his/her dependents by the Borough **if requested**. Coverage will be paid 100% by the Borough. **No sooner than the date of issuance of this award, officer contributions toward the monthly premium may be required to the same percentage paid by the Borough's non-unionized employees, not to exceed 6% in 2024 and 8% in 2025 and thereafter.** Coverage provided as noted below. ~~Should there be a need to change providers, the Borough and Union Members will work together in reviewing alternatives and securing a plan which is representative of the current plan in place. It is understood that securing the exact same coverage is impracticable but every effort will be made to substantially meet the existing coverage. The Borough cannot change coverage without involving the Union Members and providing a review process.~~

NOTE: Both parties agree to select the Highmark Gold Option 5 for vision coverage and the Delta Dental Plan with a \$2000/person annual maximum for dental coverage. For these

upgrades, the Officers agree to contribute to the Borough for this coverage five dollars/Month.

NOTE: The Borough shall have the right to change existing dental and vision insurance to a plan that is comparable to the coverage which is presently being provided. Comparable in this context does not mean exactly the same. The employees, however, retain the right to grieve the Borough's determination that the plan is comparable. It will so state, in writing, to the Borough within fourteen (14) calendar days of the plan being provided to the employees by the Borough, or such longer period as mutually agreed by the parties in writing. In that event, the Borough may not unilaterally implement the proposed new plan, however, it may immediately process the dispute before a neutral arbitrator selected pursuant to the arbitration step of the grievance procedure. The decision of the arbitrator on the issue of comparability shall be issued within forty-five (45) calendar days of the Union's written notice contesting that the plan selected by the Borough is comparable and shall be final and binding and will determine if the Borough is authorized to implement the new plan.

5. ARTICLE IV – BENEFITS. E. SICK DAYS

ARTICLE IV – BENEFITS. E. SICK DAYS shall be modified as follows (additions shown as underlined bold italics):

SICK DAYS – Each full-time officer shall be entitled to 12 sick days per year and may accumulate up to 90 days. Sick time shall be converted into hours. One (1) day represents eight (8) hours of sick time. A medical note will be required for any single three-day equivalent absence. At the end of the calendar year, an officer who will accumulate more than 90 sick days may sell back ½ of the excess sick days at the officer's then regular hourly pay rate. At normal retirement, an officer may sell back ½ of all unused sick days at the officer's then regular hourly rate of pay. The remaining sick days will be forfeited. Sick days sold will be paid in a lump sum at retirement or may be consecutively taken immediately prior to retirement, with proper notice of retirement received in writing by the Borough.

Sick leave is not considered a privilege or benefit which is a "right of taking" but, subject to the last sentence of this paragraph, is instead available only in the event of personal illness or physical incapacity resulting from causes beyond the officer's control. Sick leave abuse is a serious disciplinary offense which may subject the abuser to corrective action up to and including dismissal.

6. ARTICLE V – RETIREMENT BENEFITS. F. POST-RETIREMENT MEDICAL BENEFITS

ARTICLE V – RETIREMENT BENEFITS. F. POST-RETIREMENT MEDICAL BENEFITS shall be modified as follows (additions shown as underlined bold italics):

POST-RETIREMENT MEDICAL BENEFITS – The Borough will provide for the officer *hired prior to the issuance of this Award*, and his eligible family to continue membership in the Borough's group health care coverage. The Borough will pay 50% or a maximum of \$300, whichever is less, of the monthly premium cost for the officer to remain on the group health care plan. When the officer reaches age 65 the Borough will then pay 50% or a maximum \$100, whichever is less, for supplemental coverage.

7. ARTICLE VIII – MISCELLANEOUS, LEAVES OF ABSENCE

ARTICLE VIII – LEAVES OF ABSENCE shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

LEAVES OF ABSENCE - A full-time police officer with a minimum of at least 5 years of continuous service shall be *eligible, at the sole and exclusive discretion of the Borough, for* entitled to a maximum of 6 months of leave without pay. Said leave of absence shall not be taken for the purpose of obtaining other employment. All other contract benefits shall remain in full force and effect during said leave of absence.

8. ARTICLE IX – REGULARLY SCHEDULED PART TIME OFFICERS (RS P-T O)

ARTICLE IX – REGULARLY SCHEDULED PART TIME OFFICERS (RS P-T O) shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

A. The starting hourly rate for all regularly scheduled part time officers shall be as follows:

<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
<u>\$19.26</u>	<u>\$19.74</u>	<u>\$20.33</u>	<u>\$20.94</u>	<u>\$21.57</u>

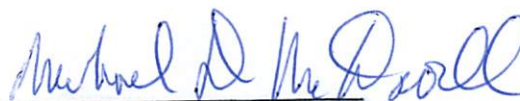
9. ARTICLE X – TERM

ARTICLE X – TERM Shall be modified as follows (additions shown as underlined bold italics, deletions shown as strike through):

The term of this Agreement will run from January 1, 2021~~3~~ through December 31, 2022~~5~~.
All wages and benefits ~~agreed to~~ will be retroactive to January 1, 2021~~3~~.

The collective bargaining agreement, as extended pending this Interest Arbitration Award shall be revised to integrate the terms and provisions of this Award. The Borough shall prepare a new agreement which accurately reflects the modifications this Award imposes on the December 31, 2022 extended Agreement and shall distribute the same to the Beaver Valley Lodge 4, Fraternal Order of Police within ninety (90) days from the execution of this Award. The new collective

bargaining agreement, in addition to implementing the provisions of the Award set forth above, shall at the current collective bargaining agreement in order to eliminate inaccurate section references, incomplete material, incorrect grammar or outdated language. In the event the parties are unable to agree on any specific provision of the collective bargaining agreement to be drafted in conformance with this Award, any disputes between the parties shall be resolved by the Board of Arbitration. It is the specific intent of the Board of Arbitration that no right or benefit to either party shall be added or diminished by the writing of the new collective bargaining agreement mandated by this paragraph except as it is set forth in the Award. The Board of Arbitration shall retain jurisdiction over this matter until both parties have ratified and executed a new agreement incorporating the terms and conditions of this Award and solely for the purpose of resolving disputes concerning that integration.



Michael D. McDowell, Esq.
Impartial Arbitrator

Date: 1/30/2024

BOROUGH OF ROCHESTER

*Dissent in part **

By: 

Joshua Hausman, Esq.

Date: 1/29/24

THE BEAVER VALLEY LODGE 4
FRATERNAL ORDER OF POLICE

By: 

Eric C. Stoltenberg, Esq.

Date: 1/29/2024

*see attached 2 pages.

Borough of Rochester
Arbitrator Joshua C. Hausman, Esq.
Dissent to Act 111 Award

The two words which best describe this Award are “insufficient” and “irresponsible.” The Award is insufficient because it largely perpetuates a total benefits package which is in many ways both unaffordable and gratuitous given the Borough’s economic condition. It is irresponsible because the Award inexplicably fails to address a pension fund which is in Level II Distress when it could have easily, and without affecting any existing officer’s pension benefit, set the fund on a course for a more sustainable future. For this reason, I dissent to Paragraph 8 of the Award which, in extending the existing agreement as modified, allows these issues to continue.

As a combined effect of this insufficiency and irresponsibility, it will continue to be the case in Rochester Borough that police officers approaching their retirements—as many now are—will be able to “spike” their pension benefits—as many inarguably now do—to lock in lifelong monthly payments which will far exceed fifty percent (50%) of such officer’s salary. A prospective-only change to the pension plan whereby officers not yet part of the pension system would have their future benefits calculated on their base salaries alone would be truer to the intent of public sector pension law and is a common-sense, responsible safeguard against pension abuse even in a system which is well-funded. In the case of the Borough’s police pension fund—which has been dangerously underfunded for at least sixteen (16) years and which is projected to remain distressed until at least 2036—it is a no-brainer. There would need to be a compelling justification of the highest possible order for this Panel to have ignored this issue entirely, and having heard such purported reasons, this Arbitrator must report, quite disturbingly, that there are simply none to be found. If, as the proverb goes, a great society plants trees in whose shade those who planted them will never sit, what is an Arbitration Panel which ignores an issue simply because of the time it will take to bear fruit?

While this failure to act would be egregious enough standing alone, compounding the matter is the fact that the Panel also failed to address demonstrated rampant overtime abuse throughout the Police Department. Following this Award, officers will continue to be entitled to earn overtime in the very same week they are on vacation or take a sick day. In this context, “overtime” as a premium payment for working hours in excess of a weekly maximum loses all meaning. These concerns are not hypothetical. This Panel was provided astounding evidence—which it inexplicably chose to ignore—that officers in this Borough in recent history have worked anywhere from eight (8) to sixteen (16) to twenty-four (24) to *eight-eight (88!)* hours of overtime in a single biweekly pay period. The Borough provided this Panel with several proposals to tackle this problem, from eliminating contractual overtime guarantees which exceed what the law requires to providing that overtime shall only be earned based upon hours actually worked. From these options, a majority of this Panel again chose nothing, instead buying into a gambler’s fallacy of an argument that “just one more officer” was the solution to the Borough’s financial woes.

This is hardly ever true, and certainly it is not true in the case of the Borough where it costs an average of \$156,953 per year to employ one (1) full-time police officer. Of this total expense, \$101,607—more than 287% of the annual median income of an entire household of wage earners

in the Borough—is compensation paid directly to an officer. Included within this amount is a first-in-class longevity benefit, a first-in-class vacation benefit, a first-in-class sick leave benefit, and near first-in-class holiday benefits. In a municipality with more than 20% of the population living in poverty, with the second-to-highest municipal tax rate in the County, where general fund expenditures exceeded revenues in three (3) of the last four (4) years at the time of the hearing in this matter, and where fifty percent (50%) of the entire Borough budget is dedicated to its Police Department of less than ten (10) members, one might be forgiven for assuming that the Panel would take some meaningful steps towards a more sustainable and more equitable balance. Once again, the Panel did nothing with respect to these matters.

In so doing, or more accurately in so not doing, this Panel has made a conscious decision to further enrich a small subset of employees at the continued expense of an entire community. The Award considered in its entirety—most particularly this Panel’s egregious and unjustifiable failure to take any action whatsoever with respect to its distressed pension fund—is a shameful display, and it will not take long at all for its shortcomings to become apparent. While it is regrettable that a majority of this Panel could not be moved to more meaningful action, future arbitrators might be less willing to rubber stamp an unsustainable status quo, and more willing to provide the Borough with the attention and consideration its residents deserve.