

BEFORE THE PUBLIC ARBITRATION PANEL  
DESIGNATED BY THE NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

Donald P. Goodman,  
Public Panel Member, Chairman

Robert M. Walker,  
Employer Panel Member

Thomas Holland,  
Employee Organization Panel Member

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In the Matter of the Interest Arbitration  
Proceeding Between

THE CITY OF OLEAN, NEW YORK,

A Public Employer,

and

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, AFL-CIO, AND  
ITS LOCAL 967 OF COUNCIL 82,

an Employee Organization,

Concerning the Patrolmen and  
Command Negotiating Units

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PERB  
Case Nos.:  
IA-13  
M77-122  
M77-123

OPINION AND AWARD

ISSUED: SEPTEMBER 15, 1978

AWARD

The undersigned Arbitrators, having been designated in accordance with the provisions of the New York State Public Employees' Fair Employment Act (Article 14 of the Civil Service Law), having been duly sworn, and having heard the proofs and allegations of the parties, AWARD as follows:

(1) For the period from 12:01 a.m. on June 1, 1977 through midnight on May 31, 1978, the salary rates shall be \$900 higher than the rates set forth in paragraph 7.11 of each of the 1975-77 Agreements covering the Command and Patrolman Units. For the period from 12:01 a.m. on June 1, 1978 through midnight on May 31, 1979, the salary rates shall be \$900 higher than the rates required in the preceding sentence for both the Command and Patrolman Units.

(2) Effective June 1, 1978 each employee in both the Command and Patrolman Units shall be paid one hundred dollars (\$100.00) ~~per~~ <sup>DM TH.</sup> shift differential.

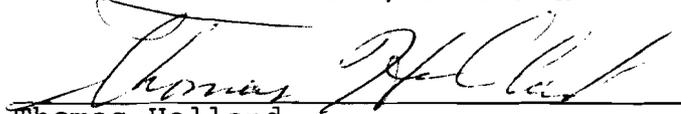
(3) Longevity payments shall not be increased.

(4) The sums allowed for the replacement of uniform items shall not be increased.

(5) This Award covers the period beginning at 12:01 a.m. on June 1, 1977 and ending at midnight on May 31, 1979.

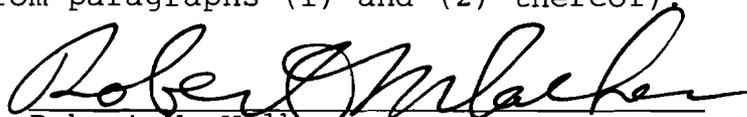
The following Arbitrators join in all parts of the above Award:

  
Donald P. Goodman,  
Public Panel Member, Chairman

  
Thomas Holland,  
Employee Organization Panel

Dated: Buffalo, New York  
September 15, 1978

The following Arbitrator concurs in paragraphs (3), (4) and (5) of the Award, but dissents from paragraphs (1) and (2) thereof.

  
Robert M. Walker,  
Employer Panel Member

Dated: Buffalo, New York  
September 15, 1978

State of New York )  
County of Erie SS.:  
City of Buffalo )

On this 15th day of September 1978 before me personally appeared each of Donald P. Goodman, Thomas Holland and Robert M. Walker, to me known and known to me to be the individuals described in and who executed the foregoing Award and each of them severally acknowledged to me that he executed the same.

  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1980.

OPINION OF  
CHAIRMAN GOODMAN  
AND MEMBER HOLLAND

APPEARANCES

FOR THE CITY

Karl W. Kristoff, Counsel  
Michael Luty, Chief of Police

FOR THE UNION

<sup>19</sup> Brian J. O'Donnell, Counsel  
Hollis Chase, Executive Director Council 82

On July 18, 1978 the New York State Public Employment Relations Board determined that a Public Arbitration Panel was appropriate under Section 209.4 of the Civil Service Law and appointed Donald P. Goodman as Public Member and Chairman, Robert M. Walker as Employer Panel Member, and Thomas Holland as Employee Organization Panel Member to act as that Panel. Hearings were held in Olean, New York on August 11, 1978. Subsequent thereto the Panel met in Executive Session and as a result thereof issues this Opinion and Award. No stenographic record was made. The official record consists of an audio tape of the hearing on July 18, 1978 made by and in the hands of the Chairman along with his notes and the evidence presented to the Panel. All witnesses at the hearings were duly sworn.

The Panel compared wages, hours and conditions of employment of the employees involved with those of other persons performing similar services and requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities. The Panel at all times took into consideration the interests and welfare of the public and the financial ability of the public employer to pay. It also considered the hazards of the jobs, physical qualifications, educational qualifications, mental qualifications, job training and skills, and the terms of collective agreements negotiated between the parties in the past as well as other relevant factors.

The Award of the Panel is made in accordance with Section 209.4(c)(v) and (vi) of the New York State Civil Service Law.

In actuality the unionized police force in the City of Olean is organized into two parts - the Patrolman Unit and the Command Unit. Both units are covered by this arbitration Award. As a result of the hearing and the Petition for Compulsory Interest Arbitration under Section 205.4 of the Civil Service Law, four issues were found to be unresolved which are salary, longevity, uniform allowance, and night shift differential. In addition the length of the imposed settlement was put before the Panel.

## THE ISSUES

1. Salary. The Union requests that salaries be increased by 11% (eleven percent) for the first year and an additional 10% (ten percent) for the second year, both as across the board increases. The City has responded with a money package of \$18,000 in each of the two years which includes a combination of salary, longevity, and uniform allowance. The City is opposed to any night shift differential. The City total money package amounts to an increase of about 4.4% in the first year and 4.2% in the second year.

Prior to proceeding on this issue, it is interesting to look at the bargaining relationships of the parties. Traditionally the parties have negotiated two year agreements with the first covering 1969-71 and the latest 1975-77. The last negotiated agreements covered the 1975-77 period. This arbitration is a result of an impasse encountered in negotiations for contracts to replace the 1975-77 agreements. Although separate units exist for the Patrolman Unit and the Command Unit, negotiations have proceeded simultaneously. The first meeting of the parties to negotiate replacements for the 1975-77 agreements took place in December 1976. An impasse was deemed to exist sometime in early Spring 1977 at which time the New York State Public Employment Relations Board appointed a Mediator/Fact Finder. Some issues were resolved through the efforts of the Mediator/Fact Finder acting as a Mediator. Other issues proceeded to the Fact Finding

stage. The Mediator/Fact Finder acting as a Fact Finder rendered a Fact Finding report in November 1977. It is further interesting to note that the Taylor Law provided for mediation and fact finding prior to compulsory interest arbitration at the time of the original impasse. Between the appointment of the Mediator/Fact Finder and the instant hearings the law was amended to remove the Fact Finding stage. Nevertheless this Panel has examined the Fact Finding Report and has carefully considered the recommendations contained therein in formulating the Award and Opinion contained herein.

The City claims that with increments the Union position would result in increases of 11.4% for 1977-78 and 10.5% for 1978-79. The City also claims that when the salaries of Olean policemen are compared against 26 statistical criteria the policemen are ahead in all but one. The City states that since bargaining began Olean policemen are ahead in salary increases by 23.1% when compared to increases in the Buffalo SMSA CPI. It would seem therefore that Olean police are more than adequately compensated. That would probably be true if the salaries that existed in 1969 were deemed to be the proper ones. The City states that the recommendations of the Fact Finder should not be adopted by this Arbitration Panel in toto. It bases its position on the premise that the \$850 increase in salaries for each of two years recommended by the Fact Finder would exceed the settlement with the Firefighters. The City is not demanding parity, but rather claims that an Award which exceeds the firefighter settlement to a marked degree would encourage the

Union in future negotiations to make a mockery of the negotiation process by carrying those negotiations to arbitration and the firefighters would do likewise. The City states that negotiations with the CSEA unit resulted in increases of \$624 for 1977-78 and \$582 for 1978-79 or 6.6% and 5.7% respectively. The Firefighters agreement calls for an increase of \$775 for the first year and \$750 for the second year.

It should be noted that a Firefighter with 3 or more years service has a salary of \$11849 for 1977-78 and \$12599 for 1978-79. A Fire Captain has a salary of \$14627 for 1977-78 and \$15377 for 1978-79 at the top step.

Salaries for Policemen in 1976-77 amounted to \$11376 at the top step and for Captains \$14566 at the top step.

A comparison of statistics is interesting. The City produced evidence and gave testimony that indicated that the top salary for an Olean patrolman since bargaining began has increased over the CPI by 23.1% (Buffalo CPI). The Union claims that since 1973 there has been a cumulative loss of purchasing power of 25.9%. At first glance it would seem that the data is in direct conflict. Such is not the case. The City data covers the period beginning in 1969 and is based on 1957=100. The Union data covers the period since 1973 and is based on 1967=100. The Union claims that the 1957=100 should not be used since the CPI data has been substantially revised since then. The City claims that the 1957=100 is appropriate since the 1967=100 data was not in existence when bargaining began and comparisons should encompass the entire period of the bargaining relationship.

To put things in proper context we may make the assumption that the 1975-77 salaries were appropriate. If such is the case we need to look at the changes in the CPI from the time the 1975-77 salaries were negotiated to the period when the salaries to be awarded would be effective. From May 1975 to May 1977 the CPI for the Buffalo SMSA increased by approximately 21.3%. But we also need to look very closely at the make-up of the CPI. The part of the "market basket" of goods and services which has been increasing at the fastest rate is that of health care. Because of Employer paid premiums to health care insurance that is an expense largely not experienced by the policemen. (It is an additional expense of the City.) Clothing has also increased rapidly, but again policemen receive a uniform allowance. When these factors are considered, policemen could receive an increase substantially less than 21.3% and still not suffer a loss in real purchasing power.

The Union provided data comparing Olean salaries with that of other law enforcement agencies to wit:

<u>AGENCY OR CITY</u>	<u>TOP PATROLMAN SALARY</u>	<u>TOP CAPTAIN SALARY</u>
Olean	11376	14566
East Aurora	14942	16770
Hamburg	15418	Not available
Brighton	15855	Not available
N.Y. State Police	15095	24884

Although that data is interesting, such comparisons may not be the most appropriate. Olean has a population of approximately 19,169, covers approximately 6 square miles, and

is located in an area that most would call rural. A further comparison with Union provided data about other localities reveals the following:

<u>CITY</u>	<u>POPULATION</u>	<u>TOP SALARY Patrolman</u>	<u>TOP SALARY Captain</u>
Dunkirk	16,000	13,000	Not applicable
Fredonia	10,326	8,000 (start)	Not available
Batavia	18,000	12,168	Not available
Evans	22,000	12,732	14,427 (Lieutenant)
Corning	17,000	12,150	15,045
Hornell	12,000	13,215	14,630
Olean	19,169	11,376	14,566
Geneva	17,000	12,284	Not applicable

The municipalities listed immediately above are more appropriate for comparison than those in the first table above. When compared with the municipalities immediately above, it can be seen that Olean police receive less than the others. The rank of Captain compares favorably.

But that is only part of the picture. We must also look at the ability to pay. City full range overall tax rates per \$1000 valuation within Cattaraugus County are as follows:

Olean	\$42.00
Salamanca	50.69

The Olean tax rate is substantially below that of the other cities.

Of 28 persons in the Patrolman unit, some 24 are at the top step. For this reason increment costs are minimal. For salaries the Union requested increases of 11% for the first year of the period covered by this Award. Salaries at the top

step for 1976-77 amounted to \$11376. The Union therefore is requesting an increase per Patrolman of \$1251. If the Union position is adopted, the total salary per Patrolman for 1977-78 would be \$12,627. The Union has requested 10% for 1978-79 or an increase of \$1263 resulting in 1978-79 salaries of \$13,890 per Patrolman at the top step. In the Command Unit the same percent increases are required. The dollar amounts would be somewhat higher because of the higher 1976-77 pay scales for Sergeants, a Lieutenant, and Captains.

The Fact Finder recommended increases of \$850 in each of two years for all ranks. It should be remembered that Compulsory Arbitration Panels in interest matters have never been required to adopt recommendations of Fact Finders although prior to the 1977 amendments to the Taylor Act such panels usually gave great weight to Fact Finder recommendations. It should also be remembered that the 1977 amendments to the Taylor Act removed the Fact Finding step from resolution of impasses in Fireman and Policeman situations.

In total money the City has proposed \$18,000 in each of two years which amounts to approximately \$500 per Patrolman at the top step or 4.4% bringing 1977-78 salaries to approximately \$11,876 and for 1978-79 an additional 4.2% or \$500 bringing salaries for 1978-79 to \$12,376. The same dollar figures applied to the Command Unit would result in somewhat lower percentages. All of this presupposes that the entire money package is applied to salaries and none to the other three issues before this panel.

The parties negotiated 1975-77 agreements. If we assume that 1976-77 salaries are the proper ones, we could then look at the Consumer Price Index and simply apply increases in the Index to determine the proper salaries for 1977-78 and 1978-79, but that overlooks at least two factors. As mentioned earlier in this Opinion, Policemen largely escape increases in the CPI due to health care costs and clothing costs (at least for uniforms) because of other provisions in the labor agreement. Such an approach would also, as mentioned, assume that the 1976-77 salaries were the proper ones. An investigation of the CPI (all cities) reveals that the Index has been increased as follows (May to May):

1975-76	6.2%
1976-77	6.7%
1977-78	6.5%
Total	<u>19.4%</u>

Members of the bargaining unit received an increase of approximately 8% in 1976. Data submitted by the Union attorney indicates that the CPI since 1973 has increased as follows:

1973-74	10%
1974-75	13.8%
1975-76	9.9%
1976-77	11.4%
1977-78	12.6%

In 1973 Patrolmen earned \$9000. Since that time salaries have increased by 24.4% and the CPI has increased by 57.7%. This would indicate that the purchasing power of Patrolman salaries has declined by 1/3. But the data submitted

by the Union attorney is incorrect. The CPI did not increase by 13.8% between 1974-75 but rather by 9.5% (May to May, U.S. all cities). The CPI for that period did increase from 145.6 points to 159.3 points (1967=100). The Union attorney confuses increases in points with increases in percentages.

Health care costs make up approximately 6.5% of the CPI. Subtracting this 6.5% for health care costs from the CPI increase of 33% results in an increase of 30.855% while salaries have increased by 24.4%. A salary increase of 6.455% might seem appropriate, but salaries are sometimes predicated on estimates of what the CPI will increase by over the following period. We know that the CPI increased by 6.5% between May 1977 and May 1978 averaging 3.250% over the year. This might lead to the conclusion that a salary increase of 9.705% would be appropriate. But again we have to look further. Clothing costs and upkeep are also included in the CPI, a cost which policemen escape to a large degree due to the fact that they receive a uniform allowance.

The City indicates that increases similar to that received by the CSEA unit would be appropriate. This seems to ignore the hazards of the lot of a policeman. The hazards of the job and the physical qualifications of that of a policeman exceed those of almost all members of the CSEA unit. If we compare the hazards and physical qualifications of policemen with that of firefighters we find that they are very similar while firefighters are actually away from the firehouse. The

policeman is faced with possible hazards each moment of the working day since he is on the street his entire shift. The fireman is not away from the firehouse his entire shift. The policeman drives in all sorts of weather constantly. The firefighter does so only when he is away from the firehouse. No direct analogy can be drawn between firefighters and policemen. Firefighters received an increase of \$775 in 1977 and \$750 in 1978. In 1976 the fireman received a salary of \$11074. In 1977 he received a salary of \$11849. This represents an increase of approximately 7%. In like manner a fireman received an increase of 6.3% in 1978. If a policeman received those same percentages he would receive approximately \$800 in 1977 and an additional \$770 in 1978 or a total of 13.3% over the two years.

Taking all the above into consideration, increases of \$900 in each of the two years of the period covered by this Award seem appropriate. We therefore Award that, effective June 1, 1977 each salary rate in paragraph 7.11 of the 1975-77 Agreements be increased by \$900 and that, effective June 1, 1978 they be increased by a further \$900.

2. Night Differential. The Union has proposed that a night shift differential be established. The City opposes this concept. It should be noted that Olean rotates each of its shifts. Under the Union proposal most of the policemen would receive the differential 2/3 of their working time. It is undeniable that all members of the Olean Police Department spend a substantial part of

their duty time during the night time hours. It would create unnecessary bookkeeping to award a night shift differential

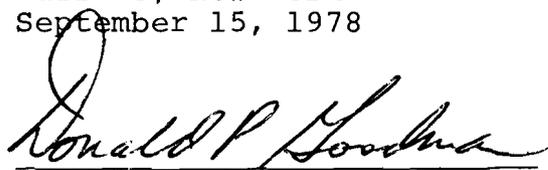
on a per hour basis. We therefore award \$100 per annum ~~\_\_\_\_\_~~ <sup>DM J.H.</sup> ~~\_\_\_\_\_~~ <sup>DM J.H.</sup> night shift differential for all members of both units to be paid in a lump sum in the last pay period of November.

3. Uniform allowance. The Union proposes that the current uniform allowance of \$187.50 per annum be increased by \$25 in each of the two years covered by this Award. The City proposes that an increase, if any, come from the \$18,000 total money package. As mentioned earlier the costs of clothing and upkeep have increased, but an increase of \$25 in each of two years cannot be justified. The Union produced evidence that at least one member of the bargaining unit on May 30, 1978 purchased uniform items costing in excess of \$60 over the uniform allowance. This alone is unconvincing. There is no indication that this is a common expense of each member of the force nor does it indicate that this is an annual event. The officer may very well have spent \$60 more than the allowance in 1978 but what did he spend in 1977, 1976, 1975, etc.? No increase in the allowance can be justified. We therefore award that the uniform allowance not be increased.

4. Longevity. Again, the City suggests that any increase in longevity payments be part of its \$18,000 total money package. The Union proposes that longevity payments be

increased by \$50.00 in each of two years. We are not convinced that longevity payments should be increased. We therefore award that longevity payments not be increased.

Buffalo, New York  
September 15, 1978



Donald P. Goodman  
Chairman and Public Member



Thomas Holland  
Employee Organization Member

OPINION OF  
MEMBER WALKER

I have dissented from so much of the Award as pertains to salary increases and the establishment of a shift differential.

The justifications presented in the majority opinion for the awarded salary increases might perhaps support increases somewhat greater than those negotiated with other City employees, but they do not support so large a difference. At most, I would have awarded no more than the \$850 per year increases recommended by the Fact Finder. Indeed, I would have preferred an increase even much closer to that agreed upon with the Firefighters.

I can see no justification at all for the establishment of a shift differential. Shift differentials are generally granted to differentiate among employees of a single employer all of whom are performing the same job but only some of whom are required to work the presumably less desirable afternoon or night shift hours. Here all (or substantially all) of the patrolmen and command officers work afternoon and night shift hours as well as day shift hours. This is because the employees rotate through all the shift hours on a month-by-month basis.

Since all share qually in the less desirable hours, there is no reason for a shift differential or any payment in lieu thereof.

Buffalo, New York  
September 15, 1978

  
Robert M. Walker  
Employer Panel Member