

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

REC'D

SEP 25 1979

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In the Matter of the Arbitration :
 Between :
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CITY OF NIAGARA FALLS : :
 : :
 -and- : :
 : :
NIAGARA FALLS POLICE CLUB, INC. : :
 : :
IA-106; M78-675 : :
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OPINION

AND

AWARD

CONCILIATION

Pursuant to Section 209.4 (iii) of the Civil Service Law, governing compulsory interest arbitration of disputes involving terms and conditions of employment of police officers for a new agreement, hearings were held in the above matter by the Panel of Arbitrators. Based upon the criteria specified in Section 209.4 (v), a number of changes in the conditions of the 1977-1978 Agreement were made.

Both parties presented proposals, the City more than a half-dozen and the Union more than 40, some of which were withdrawn or settled by the parties before or during the arbitration. All issues submitted were considered by the Panel. A number of them discussed herein, both City and Union proposals, were granted. All other items not granted by the Panel have been denied.

INTRODUCTION

Niagara Falls, a city of 82,000 population, has been heavily industrialized, although like much of the country it is moving toward a service economy. Its present financial position is not at all incapable of adjusting employee conditions, save for the unknown consequences of the Love Canal disaster. Its real estate tax rate has held stable for three years.

The imponderables connected with Love Canal, including the roles of State and Federal governments, make it impossible to assess its upcoming financial implications. In general, they are not matters of the moment. If they were, and if the City's potential liabilities were assessed against it, other municipalities' economic burdens would look like festivals.

Like many cities aiming to relieve its citizens of oppressive tax burdens, Niagara Falls also understandably seeks to hold down its expenditures in every possible area. But it has not shown an inability to make normal wage and benefit changes for its police, an instrumentality of such special significance for every municipality.

Increases in the cost of living place burdens on the police as they do on all government employees, on those in private industry and on families generally. Weight must be given to substantial alleviation of the decline in real wages, even if it does not always achieve full realization.

All of the statutory criteria must be considered. Not only cost-of-living changes, but the changes in conditions of similar employees in other jurisdictions, and comparisons with other Niagara Falls employees must play a significant part in evaluating what is appropriate under the circumstances.

There is always a problem of relevant comparisons. Some jurisdictions are much larger and others much smaller. Their mix of industry, commerce, urbanization and suburbanization, high and low incomes, ethnic mixtures, crime rates and the like vary. Data covering every corner of the State, and the State itself, have been introduced. A few localities, selected by each of the parties have also been utilized to provide rough guidelines that at least can assure no violent departures from reasonable and long-standing conditions of employment in the area.

Among the data used in analyzing the demands, in addition to surveys by the Police Club, the City, the Police Conference and PERB, the joint submission of information about selected jurisdictions has been relied upon. Both parties selected Buffalo. The New York State Troopers and the town of West Seneca, selected by the Union, did not appear particularly applicable, nor did the City's selection of Utica, a relatively distant city. The more significant relationships, taking into account shortcomings in each case, by population and size of police department seem to be:

<u>Municipality</u>	<u>Population</u>	<u>Department Size</u>
Niagara Falls	82,000	175
North Tonawanda	40,000	54
Lockport	27,000	42
Tonawanda (Town)	110,000	117
Buffalo	407,000	1,095

DICUSSION

Salary

In its proposals for a one-year Agreement, the Union seeks either a \$1,500 increase or one equivalent to the rise in the Consumers' Price Index, whichever is greater. The CPI change from 1977 to 1978 exceeded 7%, which would produce a salary increase of about \$1,000 in the first year for third-step police officers.

Three nearby communities were cited by the parties in their post-hearing submissions, which had 1979-1980 settlements. Two were presented by the City, North Tonawanda and Lockport. One, the town of Tonawanda, was in the Union's submission. While there are substantial differences in their salary levels, there is similarity in the size of the increases.

None of the three communities is directly comparable with Niagara Falls. One is half the size of Niagara Falls' 82,000 population and another one-third larger. But all are dwarfed by the major city of Buffalo, with its population of more than 400,000.

The Union's citations also included the New York State Troopers. According to the City, the State employees are not at all comparable, and the cited towns "are affluent suburbs, receiving criminal justice service from the County Sheriff's Department," and thus inappropriate comparisons. Their income was said to be higher and they lack the high percentage of Niagara Falls' tax-exempt property.

This was reflected in the relative per-capita cost of Police Department employees:

<u>Community</u>	<u>Ratio of Police</u>	<u>Per Capita Cost</u>
Niagara Falls	1:469 persons	\$25.69
Tonawanda	1:940 persons	17.60
West Seneca	1:859 persons	18.42

Even the cities of Lockport, North Tonawanda and Utica, cited by the City, have lower per-capita costs. But, as the Union observed at the hearings, Niagara Falls has a tourist influx which increases the population requiring police services beyond that of its regular residents. The influx naturally is an asset for the City. Buffalo was cited by both parties. Although its geographic proximity to Niagara Falls may exert an influence on the area's salary levels, its relative size and complexity may make it somewhat less appropriate for direct comparison. Yet there has been a rough similarity between the salaries of these nearby communities over recent years.

The following comparison of salary changes for first-grade patrolmen, showing a community selected by each party and one by both, indicates how salaries have paralleled one another:

<u>Date</u>	<u>Niagara Falls</u>	<u>Buffalo</u>	<u>Lockport</u>	<u>Tonawanda</u>
7/73		\$11,730		
1/74	\$10,946		\$10,600	\$12,204
7/74		12,415		
1/75	11,696		11,000	13,205
7/75		12,700		
1/76	12,450		12,210	14,261
7/76		12,700		
1/77	12,450		12,735	14,974
7/77	13,200	13,340		
1/78	13,701		13,720	15,947
7/78	14,201	15,627		
1/79	(15,194)*		14,543	16,744
7/79		16,252		
1/80	(16,106)*		15,488	17,749
7/80	(16,428)*			

* Awarded herein.

The town of Tonawanda, long ahead of Niagara Falls' salaries, will remain ahead through 1979. Taking into account the dates of increase, Buffalo and Niagara Falls have been close since 1975, and will remain close. In 1975 Niagara Falls was about \$700 above Lockport and in 1980 will be slightly under \$1,000 above. There have been various shifts in relationships over the years, but the awarded 1978-1979 Niagara Falls increases do no violence to either side's interests.

Other municipalities negotiated earlier and could not necessarily anticipate as well what was developing. While the Niagara Falls Agreement should have been resolved long ago, for

whatever reasons it was not. An arbitrator, in reaching conclusions on appropriate wage increases, may take into account cost-of-living trends, as well as past CPI changes.

Comparison of year-end 1978 over year-end 1977 is known. More significantly, it is increasingly clear that a very substantial jump is occurring since and will seriously affect the 1979-1980 rise in cost of living, justifying the amount that is being awarded.

Such considerations play a part in the Award of 7% for January 1, 1979, and an average cost of 7% for the year 1980, but broken down into 6% and 2%. These last two increases raise the final salary, although the annual cost is a bit less.

In reviewing other cost items, such as fringes and various individual increases sought, consideration has been given to the need this year for a larger general increase, with less weight appropriate for other cost items.

Major Medical Plan

The additional cost of major medical, especially if it is shared by the parties is minimal. It will be about one-quarter of 1%, and effective only in the second year. Both the superior officers and the firefighters have major medical with shared costs.

Dental Plan

Four of the City's bargaining units have dental plans. There is no evident justification for excluding the police from this benefit, whose overall cost is a fraction of 1%, particularly since it is not to be effectuated until July, 1980, close to the end of the Agreement.

Additional Holiday

Presently the police enjoy 11 holidays as do all other bargaining units in the City. It seeks a twelfth, Good Friday. Such nearby communities as Buffalo, Tonawanda and North Tonawanda enjoy 12 or 13. In the Police Conference survey in Erie and Niagara counties, only three jurisdictions have 11 or fewer holidays, and nine have 12 or more.

Thus there is justification for this benefit. With the other fringes awarded, it would raise measurable non-wage costs only slightly above 1% and will be effective only in the second year.

In the interests of efficiency, however, a floating holiday is deemed the more expedient at this time than the fixed day available to all.

Personal Leave

The Union seeks additional days plus the right to accumulate at a greater rate than now. At present employees have three

days per year and may accumulate one unused day per year to a maximum of five. Other City bargaining units can accumulate two days per year and that is warranted.

The City, on the other hand, is concerned that employees are entitled to three days of personal leave from the start of the year. Theoretically, an individual could have occasion to use it in the first days of January, and then if he resigns or retires pocket the costs of what was to be a benefit during the year. Thus the City proposes that one day of sick leave be allowed each four months. The Union opposes the concept.

A sensible resolution appears to be a combination of the two points of view, without any serious disservice to either. Essentially it should provide continuation of the present annual method of personal-leave allotment, but with a right of recapture by the City of a pro-rata amount should the employee leave in the first half of the year.

In other words, if an employee leaves before July 1 of any year, having used his three days, the City may deduct the value of one and one-half days' pay. If he leaves on or after July 1, no recapture is permitted and, if he has used none, he would be eligible to use any accumulated time.

Vacation Changes

A proposal to restrict vacation accumulation below that enjoyed by other units is held to be unjustified. However other

proposals have merit, including one in which the City seeks to reduce its accrued liability for vacation payments in the future by earlier payment.

The City seeks to limit vacations to four weeks, despite the present provision going to six weeks after 25 years. The City's proposal is granted only for new employees, in order not to deprive employees who have been working their way toward the higher amounts of a benefit which has previously applied to them.

Also, the City wants to pay annually for unused vacation. This would limit the size of its accrued liability for cash payment in the future. Since it is being made a matter of employee choice, employees cannot be adversely affected, and the contractual provision may facilitate achievement of a legitimate City need.

Term of Agreement

The Union seeks a one-year Agreement. As the date of this Award indicates, that would entail almost immediate negotiations for the next Agreement. Accordingly the term is fixed for two years, January 1, 1979, to December 31, 1980.

Joint Safety Committee

A Joint Safety Committee with two members appointed by the City and two by the Union has been proposed. Considering the vital nature of safety questions for the police especially,

joint cooperation is a mutual benefit. There is much to be gleaned by administrators from men in the field in so important and practical an area.

According to the Union, decisions of the committee should be made by majority vote. At least in its formative years, such a body could best function as a consultative group.

Thus, the decisions of the committee should be made as recommendations to the City Manager. On either side, it could be devastating if some important measure received a speedy, binding committee decision which was not in everyone's best interest.

Similarly the Union's proposal to submit unresolved issues to binding arbitration appears unwise. It could, for example, funnel non-mandatory items into the arbitration route, in addition to the other considerations discussed. At least for the present, the value and methodology of an advisory Joint Committee can be initially tested.

However, it would be salutary and generally educational to permit third-party review of deadlocked issues deemed to be important. Consequently advisory arbitration is being awarded. A neutral, detached view of a controverted matter can only prove helpful in as sensitive an area as safety, even if particular advisory awards are not implementable in the City's opinion, for example because of serious economic reasons, among other considerations.

Union Officer's Schedule

According to the Union, the President of the Club and the Chairman of its Negotiating Committee should be scheduled only for day work. Also, it was said, an office should be made available for the Union in the Public Safety Building.

Negotiations occur only for limited periods and there is no reason at this time to provide a permanent day assignment to the Chairman of the Negotiating Committee, if he is separate from the President. But there is logic to the demand with respect to the President. It can enable the Union to better serve its membership, and no significant drawback to granting the proposal was shown.

Office space, however, cannot justifiably be imposed on the City, considering that there may be a variety of important claims to available space.

Issuance of Portable Radios

One of the Union's proposals is that portable radios be issued to patrolmen and detectives. Safety was a major reason for the demand. It is appropriate to refer it to the Safety Committee provided herein for its consideration.

State Police Conference Meeting

Permission is sought for two Union designees to be given time off with pay "to attend one statewide Police Conference

meeting annually, not to exceed four (4) days total" plus one meeting each month. Apparently this has been done in the past, and there is no reason to exclude some affirmation of it from the Agreement.

Agency Shop

Several of the City's bargaining units have provisions mandating the agency shop, if and when State Law authorized it. Buffalo and North Tonawanda police agreements contain similar provisions.

In view of a Union's legal obligation to represent all employees in its bargaining unit, simple fairness requires each person in the unit to make his contributions to Union services on his behalf, even if he has no desire to join the organization.

While philosophers may wrangle over the implications of enforced membership in a union, society generally anticipates that all should bear the burden for the services rendered to all.

Sick Leave Administration

The City presented a detailed proposal governing how sick-leave controls might operate to prevent abuse. They deal essentially with doctors' certifications of the need for sick leave. While some of the ideas proffered are deleted, a substantial portion of the proposal is found to be a justifiable effort to ensure that sick leave is not used frivolously, but only for sickness as it was intended.

A City exhibit listed the annual amount of sick days taken. As might be expected, a wide range exists. Some employees were out for lengthy illnesses, and others were out infrequently. There was an indication that some employees used sick leave to obtain Saturdays and Sundays off. The possibility of abuse by some employees of the sick-leave allowance is an adequate reason to institute controls.

The City's proposal is neither unusual nor unduly onerous. Other police agreements have even more stringent requirements. For example, Lockport requires an employee to provide proof of disability satisfactory to the Chief, and he may require a doctor's certificate for "any" absence. In North Tonawanda a supervisor also may require a medical note for an absence of any duration, and the agreement provides dire possibilities when there is misuse of sick leave.

The Union proposes adding to Article X-3-(c), the verification section of the sick-leave clause, a provision which, in effect, means that an employee need not be at home when ill, and the City may "send a nurse to wherever the employee is to verify the employee's illness." It also would permit an ill employee to leave town "under certain situations," not defined.

If an employee absent from work on sick leave wishes to leave town, it should only be with approval, and not the employee's own decision.

Thus the Award specifies the features to be implemented. They are being made effective January 1, 1980. In view of the newness of the concept, this will permit a period of orientation, during which employees can understand exactly what is expected of them.

Holiday Eligibility

According to the City, some employees may be guilty of impropriety in taking off time on sick leave the day before and/or after a holiday, to extend it. The City proposes that anyone claiming illness at such time present a physician's certificate.

While the City is entitled to react against abuse, its method is too sweeping. It would apply as much to an employee who had never before been sick at holiday time as to one whose record shows a frequent pattern. After all, even the best employees may get ill on an occasion but may not need a doctor.

Consequently the approach should be directed at future instances where a pattern of abuse seems likely. And the requirement for future doctors' notes should be preceded by a warning letter announcing the requirement and why. Letters of that sort can be grieved, with the City being put to the test of demonstrating that its conclusion is reasonable and the requirement is justified under the circumstances.

Grievance Procedure

One aspect of the City's effort to change the grievance procedure is upheld. At present, PERB provides arbitration panels consisting of individuals throughout the State. As an economy measure, to avoid substantial travel costs of arbitrators, the City want to restrict selections to arbitrators nearby in Western New York.

While the Union is concerned about a limitation on its right to choose among arbitrators, the City is even more restricted if it is constrained to eliminate out-of-area names automatically. It then has fewer actual choices than the Union.

There are undoubtedly ample able arbitrators in the more immediate area. If the provision has overwhelming drawbacks, the parties can correct it in their subsequent Agreement.

Having reviewed and considered the record, including the testimony, exhibits, and argument, in light of the statutory criteria, the undersigned make the following

AWARD

Except as changed hereinafter, or as agreed upon directly by the parties prior to or in the course of the arbitration, all terms and conditions of the expired Agreement shall continue. The following designate the changes to be made as a result of the Arbitrators' decisions.

I. ECONOMIC ISSUES

1. Effective January 1, 1979, and retroactive to that date, all wages shall be increased by seven (7%) per cent.

Employees shall be given their retroactive pay in a separate check, not combined with a regular paycheck.

Wages shall be increased by an additional six (6%) per cent, effective January 1, 1980.

Wages shall be increased by an additional two (2%) per cent, effective July 1, 1980.

2. A major medical plan shall be instituted on a contributory basis, effective January 1, 1980. This will replace the existing XBR rider, and the City and the affected employees shall equally share the additional cost, in the same manner as specified in the City-Firefighters agreement.

3. The dental plan commonly described in other City agreements as the "low-level plan" shall be instituted on a non-contributory basis, effective July 1, 1980.

4. The employee's birthday shall be a paid holiday. If it occurs when it is not a scheduled workday for the employee, he may select either the first scheduled workday before or the first scheduled workday after his birthday as the holiday; in that event, he shall notify the Chief of Police at least one calendar week in advance.

5. Article X, Section 3(e), shall be modified to read as follows:

Employees shall be eligible to take three (3) days of personal leave per year. Such eligibility shall accrue on January 1 of each year.

Employees may accumulate two (2) unused personal leave days per year up to a maximum personal leave balance of five (5) days. Employees must give notification in advance to their department heads. Except in case of emergency such advance notification will be in direct relation to the number of days requested.

In the event of resignation, retirement or termination (but not death) prior to July 1, employees' leave entitlement for that year shall be pro-rated, whether the leave has been used or unused in whole or part. From July 1 on all three days will be fully accrued, not subject to pro-rata treatment.

6. Article X, Section 2(e), shall provide the following addition: New employees, hired on or after the date of this Award, shall not become eligible for a maximum vacation in excess of four (4) weeks.

Article X, Section 2(h), shall be changed as follows: For employees hired prior to the Chairman's date on this Award, unused vacation time may be accumulated up to and including twelve (12) weeks. For those hired on or after that date, unused vacation may be accumulated up to and including eight (8) weeks.

Add a paragraph to Article X, Section 2, which will provide: Effective January 1, 1980, in any calendar year a maximum of four (4) weeks' pay in lieu of vacation time shall be paid to qualified employees in increments of a full week of five (5) work-days, at their option. Those entitled to six (6) weeks of vacation can receive the cash payment only after two weeks of vacation have actually been taken. Payment shall be made at the rate of pay in force when it is made. Employees opting for such cash payments must so indicate to the City by July 1 of the year involved, and payments shall be made no later than December 15 by check separate from the regular payroll.

II. NON-ECONOMIC ISSUES

1. The Agreement shall commence January 1, 1979, and terminate December 31, 1980.

2. A Joint Safety Committee with two members from each side shall be appointed promptly. Meetings shall be held at least quarterly, the first no later than October 15, 1979. The Committee's decisions shall be recommendations to the City Manager.

Unresolved issues may be submitted by the Union to advisory arbitration, utilizing the arbitration provisions of the grievance procedure.

3. The President of the Police Club shall be scheduled only for day work during his term of office.

4. The Union's demand that all patrolmen and detectives be issued portable radios is referred to the Joint Safety Committee.

5. The President of the Police Club and his designee shall be granted time off without loss of pay or benefits, not to exceed four days, in order to attend one statewide Police Conference meeting annually. In addition they shall receive time off to attend one meeting each month.

6. Subject to the provisions of law, an agency-shop provision, requiring non-members of the Police Club who are in the bargaining unit to pay normal dues, shall be included in the Agreement.

7. The third, fourth and fifth sentences of Article X, Section 3(c), shall be deleted, and the following substituted, effective January 1, 1980:

Whenever an employee is absent because of personal illness for five consecutive working days, a physician's certification will be required and submitted within five

working days of the return to work, in order for the absence to be charged against sick-leave credit.

After a written notice to that effect, any periods of absence in excess of five during a calendar year may, at the discretion of the Department Head, require a physician's letter, regardless of the number of days taken in a subsequent period of absence. If an employee submits a physician's certificate for any absence, that period of absence shall not be counted toward the total of five.

An employee on sick leave, with a valid reason to leave the City, may do so only by requesting and receiving permission of the City's physician or of the Police Chief. Such permission shall state the conditions under which the approval is granted.

A Department Head may recommend disciplinary action when he has reviewed the employee's absentee record, taking into account the employee's pattern of absenteeism, efforts to improve attendance, and any extenuating circumstances which may be present.

The City shall maintain the right to have an employee examined at City expense by a physician of its choice when it believes that such an examination is warranted.

8. Article X, Section 3(c), shall also provide that when the City has good reason to find that an employee is using sick leave improperly in order to extend a holiday, he shall not be paid for the holiday unless he provides a doctor's certificate for absence on the day before and/or after the holiday.

Such a policy shall not be instituted against any employee unless there is reasonable cause based on his record and until he has been warned in writing of the requirement. Only incidents subsequent to the date of this Award shall be the basis for such action.

9. The arbitration provision of the Agreement shall be modified to state that, when grievance arbitration is invoked, PERB will be requested to provide a panel of arbitrators from the Western New York area, rather than State-wide.

Milton Friedman

Milton Friedman
Chairman

Dated: September 21, 1979

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 21st day of September, 1979, before me personally came and appeared MILTON FRIEDMAN, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Paula Santaromita

PAULA SANTAROMITA
Notary Public, State of New York
No. 24-468088
Qualified in Kings County
Commission Expires March 30, 1980

Al Sgaglione

Al Sgaglione
Union Arbitrator

Dated: September 7th, 1979

STATE OF NEW YORK
COUNTY OF *Albany*

On this 7th day of September, 1979, before me personally came and appeared AL SGAGLIONE, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Virginia Fissette

VIRGINIA FISSETTE
Notary Public, State of New York
91-1286476
Residing in Albany County
Commission Expires March 30, 1981

Robert LaSala
City Arbitrator

Dated: September

STATE OF NEW YORK

COUNTY OF

On this day of September, 1979, before me personally came and appeared ROBERT LASALA, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.