

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

Between

CITY OF CANANDAIGUA

and

CANANDAIGUA POLICE BENEVOLENT ASSOCIATION,

AFFILIATED WITH COMMUNICATIONS WORKERS OF

AMERICA, LOCAL 1170

PERB Case No. IA83-43, *m83-491*

AWARD OF ARBITRATION PANEL

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

On February 27, 1984, the New York State Public Employment Relations Board appointed the undersigned as members of a Public Arbitration Panel to resolve the dispute between the City of Canandaigua (hereinafter referred to as the City) and the Canandaigua Police Benevolent Association (hereinafter referred to as the Association).

On May 11, 1984, a hearing of this case was held in Canandaigua. Appearing for the Association were: Carmin Putrino, Attorney; Edward Fennell, Municipal Finance Consultant; Michael Casson, Association President; and Linda McGrath, Association Secretary.

Appearing for the City were: Carl Krause, Attorney; Carl Luft, City Manager; and Patrick McCarthy, Chief of Police.

In accordance with Section 209 of the Taylor Law, the Parties were given the opportunity at the hearing to present "orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions...." Both Parties submitted written

briefs during the hearing.

On June 7, 1984, the members of the Arbitration Panel met in executive session in Canandaigua. At that session, a majority of the Panel tentatively agreed on an award.

Award

For reasons to be described, the Panel awards as follows:

1. A two-year agreement, covering the period January 1, 1984 through December 31, 1985.
2. All salary rates shall increase in the first year of the Agreement by 5 percent, effective retroactively to January 1, 1984. All rates shall increase during the second year of the Agreement by 4.5 percent, effective January 1, 1985.
3. Longevity payments shall be initiated, effective January 1, 1984. These payments shall provide one hundred dollars annually to each member of the bargaining unit with at least ten years and no more than fifteen years of employment in the Police Department, and one hundred and fifty dollars per year for each member of the bargaining unit with fifteen years or more of service.
4. With respect to Article XIII (4), the Association President and Chief Steward shall be allowed a maximum of four days in total to attend meetings of the CWA, without pay. The Association may distribute those four days between its two representatives in whatever manner it prefers.
5. Certain changes, described below, shall be made in Article XII of the Agreement, governing the grievance and arbitration procedure.
6. No change shall be made in the provisions of the Agreement governing union security, vacations, health insurance, or incremental steps.

Salaries

During negotiations, the Association had asked for a two-year Agreement, providing either an 8 percent salary increase the first year and a 7 percent increase the second year or, if the Association's demand for wage progression (explained below) were met, annual increases of 6 percent and 5 percent.

the union
In the arbitration hearing, altered its position and proposed only a one-year

Agreement, providing an increase of either 6 percent with progression or 8 percent without. The City's final proposal was a two-year Agreement, providing increases of 2.5 percent in each year. In addition, the Association proposed that any increase be made retroactive to January 1, 1984, whereas the City opposed any retroactivity.

The Arbitration Panel appraised those salary proposals in light of Section 209.4 of the Taylor Law, which directs such panels to take into consideration, "in addition to any other relevant factors," the following criteria:

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

Of those criteria, the majority found most compelling the comparisons with other bargaining units in this city's public sector. The City has agreed to increases for its firefighters of 5 percent for 1984 and 4.5 percent for 1985; and it has agreed to similar increases for a unit of police officers (5.5 and 4.5 percent for sergeants and 4.5 and 3.5 percent for lieutenants, a unit-wide average of 5.3 and 4.3 percent for 1984 and 1985). The public-

works bargaining unit is in the final year of a two-year agreement that provided increases of 7 percent in 1983 (when police and firefighters both received 8 percent) and 6 percent in 1984.

The key comparison group is the firefighters. In this city as in most others, the police and firefighters negotiate separately and argue that because their jobs differ in important respects, a settlement reached in one of their units should not necessarily dictate what the other unit receives. As a practical matter, however, most municipal employers have found it wise, if not necessary, to provide similar increases in salaries and fringe benefits to police and firefighter units. Canandaigua is no exception. From 1976 through 1983, for example, salary increases for those at the top step totalled 53.1 percent for the police and 54.8 percent for the firefighters. In addition, both units have the 20-year retirement plan, although the police trailed the firefighters by two years in winning that gain; both have 11 paid holidays; and in 1983 the police enjoyed some advantage in maximum salary (\$18,695 after six years versus the firefighters' maximum of \$16,825 after six years and \$18,129 after eight years), vacations, sick leave, personal leave, and clothing allowance.

The majority of the Panel recognize that police and firefighter jobs differ in many ways, perhaps including, as the police argue, in the opportunity to earn outside income. Yet, a rough parity has clearly existed between these units over the years in Canandaigua, and the Association presented no convincing evidence or argument showing that this bargaining round is different and for some reason police should receive higher increases than firefighters.

Less persuasive was the evidence presented by both Parties on salaries in police bargaining units in other cities. Both Parties presented data on

cities and villages throughout upstate New York, with the Association stressing particularly the salaries in the suburbs of Rochester and the City stressing the salaries and recent settlement in Geneva, the only other city in Ontario County. The majority saw no clear pattern in these conflicting exhibits.

With respect to ability to pay, the City did not seriously challenge the persuasive evidence advanced by the Association that the City has the ability to pay a larger salary increase to its police, and probably to all of its employees, than this Panel is awarding. The City could, if necessary, fund higher increases from higher taxes without reaching its taxing limits, or it could resort to short-term borrowing, or it could rearrange its priorities within its current budget. In most cases, however, an Arbitration Panel will compel (if only indirectly) a public employer to take such drastic steps only if they are necessary to fund an increase in salaries or benefits that is dictated by some compelling criterion of equity or need. That is not the case here. The relevant fact is that the City can afford to increase police salaries at the same rate it has agreed to increase the salaries of other unionized City employees.

With respect to the peculiarities of the trade, there can be no doubt that police work is a dangerous and demanding occupation. That fact alone provides no basis, however, for awarding a percentage salary increase to the members of this bargaining unit that is higher than the percentage increase negotiated by the members of other bargaining units.

With respect to the terms of previous agreements between the Parties, the evidence again fails to support the Association's argument that its members deserve to receive higher increases than those negotiated by other units. As noted above, the economic terms of the Association's agreement

with the City are on at least most counts similar to or better than the City's agreement with the firefighters, and the increases in compensation and fringe benefits negotiated in both of these bargaining units over the years appeared to have been roughly near the average of increases in police and firefighter units in the state, although no evidence was introduced directly on this point.

Finally, the Association introduced evidence that annual salaries in this bargaining unit fall considerably short of the annual income needed to meet the intermediate family budget published by the U.S. Bureau of Labor Statistics. Unfortunately, the same can be said about police salaries in most cities in the country and, indeed, in most occupations in the country. In 1983, for example, when the intermediate family budget for metropolitan areas was \$29,097, the median annual income of all American families was about \$24,000. In this particular bargaining unit, annual salaries would need to be increased by over 50 percent to meet the standards of the BLS intermediate family budget for 1983. That gap between the actual and the desirable is so large that, sad to acknowledge, the intermediate family budget is not a persuasive salary criterion to a panel choosing between union and management demands that differ by only a few percentage points.

In summary, the award by the majority of the Panel rests primarily on the reasoning that the members of the police bargaining units should receive the same percentage increase already agreed to by the members of other bargaining units, particularly the firefighters, unless the police could show some persuasive reason for granting them more in this bargaining round than other units received. The Association did not provide such evidence.

Longevity Payments

The current Agreement contains no provision for longevity payments. The Association proposes that such payments be initiated through a provision

that each member of the bargaining unit receive an annual lump sum of \$25 for each year of service. The City opposes any such payments.

The majority of the Panel agree with the Association that longevity payments are common in the public sector, particularly in law enforcement, and that such payments not only provide recognition to long-service employees but also probably assist in employee retention. On the other hand, the City is correct in arguing that the Agreement's current provision of salary steps already provides, in effect, longevity payments for the first six years of an employee's service. The Panel's award therefore provides annual payments of \$100 to each member of the bargaining units with ten to fifteen years of service (the equivalent of \$25 for each year of service between seven and ten years) and \$150 to those with at least fifteen years of service.

Reciprocal Rights

Article XIII includes the following "sunset provision:" "Beginning with the execution of this Agreement, and only until December 31, 1983, the Association President and the Chief Steward will be allowed a maximum of four (4) days each to attend meetings of the CWA without pay."

The Association proposes that this contract provision, without any expiration date, be carried over into the 1984-85 Agreement, arguing that its officials need such time off "to assure coordination between the bargaining unit in Canandaigua and the Local in Rochester with respect to grievances in negotiations" and arguing further that the provision places no burden on the City since the time off is without pay. The City stresses that the Arbitration Panel that awarded that limited-duration provision stated it did so because the other provisions in the Agreement concerning union officers' paid leave to attend conferences were adequate. The City also argues that this provision does impose a cost, since the bargaining unit

is so small that overtime costs often result from the need to cover the absence of union officers on unpaid leave.

Because the majority of the Panel find some merit in both Parties' arguments on this issue, their award is a compromise: the clause shall be continued without an expiration date, but it shall provide a maximum of four rather than eight days, without pay, for this purpose.

Grievance Procedure

The Association proposes several changes in the grievance procedure, most of which the City argues are unnecessary. The majority of the Panel award as follows on this issue:

1. There shall be no change in the current definition of a grievance. An open-ended definition, such as that sought by the Association, can be helpful at the lower levels of the grievance procedure but is a possible source of considerable confusion if it is also applied, as the Association desires, at the arbitration level.
2. In the current language describing step one, the first two sentences shall be deleted for the reasons advanced by the Association. In addition, the grievant, not the president, shall present the grievance to the Chief of Police.
3. In step two, the second sentence shall be deleted and the third sentence shall be amended to read "five working days," for the reasons advanced by the Association.
4. In steps three and four, the current time limits shall remain unchanged, but all the references to the Director of Public Safety shall be deleted as unnecessary. Similarly, the last paragraph in step four shall be deleted.
5. In step five, the time limit in which arbitration may be invoked shall be changed from five to twenty-one calendar days, for the reasons advanced by the Association.

Agency Shop

The Association argues that an agency shop provision should be adopted for two reasons: since all members of the bargaining unit benefit from the Association's representation, all should pay their share of the cost of providing that representation; and the City agreed some time ago to such

a provision in the firefighters' contract.

The City argues, on the other hand, that there is no need for the agency shop, since all unit members are dues-paying members of the Association, and the compulsion inherent in such a provision is particularly inappropriate in the public sector.

The majority of the Panel reject the Association's proposal. No evidence was introduced that the clause is either common in other police units or necessary in this unit.

Other Issues

The Association also proposed the following changes in the Agreement:

1. That paid vacations be improved by providing for 20 working days' vacation after ten years rather than the current 14 years, and that 25 days' vacation be provided after 15 years rather than the current 20 years.
2. That health insurance be improved by the addition of a \$2.00 prescription co-pay drug plan, a Blue-Cross/Blue-Shield nursery rider and a dental plan.
3. That salary increments be improved by providing that the top salary step would be achieved after four years instead of the current six years of service, and the next higher step would be achieved after three instead of four years of service.

The Parties' arguments on all these issues are essentially the same as their arguments concerning the appropriate size of the general salary increase. On the one hand, the Association is correct in arguing that these benefit improvements would be desirable for employees and affordable, through tax increases or other means, by the City. On the other hand, the City argues that the current level of these benefits in the police agreement already equals or surpasses the level of benefits in other city agreements, particularly that with the firefighters. Thus, the firefighters receive the same health insurance benefits as the police; they receive 20 days of paid vacation after 17 rather than 14 years and receive no extra days after

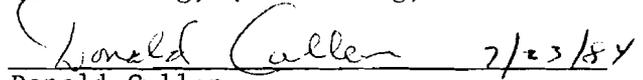
20 years, as the police do; and the firefighters reach their maximum salary after eight rather than six years, and that salary maximum is lower than the police maximum.

The majority of the Panel find it necessary to reject the Association's proposals on these three issues for the same reasons that we are awarding this bargaining unit the same general salary increase negotiated by the City and the firefighters and, to a considerable extent, by the other bargaining units. We recognize that law enforcement differs in many ways from firefighting, highway maintenance, and other municipal jobs. We also recognize, however, that the principles of good labor relations dictate that the City should maintain substantial parity among its bargaining units in making contract improvements--unless one or more units can show that for some reason they deserve better contract improvements than those negotiated in other units. The Association made no such showing with respect to these last three benefit proposals.

Dated: July 23, 1984


 Peter Spinelli 7-31-84
 Employer Panel Member
 (Concurring) ~~(Dissenting)~~

DISSENT ATTACHED
 Robert Flavin
 Employee Organization Panel Member
~~(Concurring)~~ (Dissenting)


 Donald Cullen 7/23/84
 Public Panel Member and Chairman

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DISSENTING OPINION

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AMERICA, Local 1170

PERB Case #IA83-43

Canandaigua Police Benevolent Association,
Affiliated with Communications Workers of America,
Local 1170, PERB Case #IA83-43, dissents from the decision
of the majority of the panel in the above entitled pro-
ceeding.

The panel has recognized the need or the merit
for wage increases based upon increased living costs and
inflation. The Employer does not contest its ability to
pay the wage increases proposed by the Union. It is apparent
from the majority opinion the majority relied upon the
principle of parity with the firefighter union.

While comparability of working conditions
with other bargaining units is a relevant consideration,

the panel fails to evaluate all of the working conditions enjoyed by the firefighters. Further, the majority opinion has the effect of placing the most likely wage increase in the hands of the Union proceeding to negotiations first and agreeing to a collective agreement first. But, for the fact that the firefighters concluded their negotiations just prior to the PBA, none of the arguments offered by the majority in support of its wage proposals would be supportable.

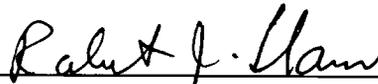
I believe the legislature did not intend that meaningful collective negotiations amount merely to a race to the door of City Hall by the smallest employee organization willing to agree to a collective agreement. The majority has chosen to ignore its obligation to consider the statutory factors and abdicated its responsibility to the City negotiators and the negotiators of the Canandaigua Firefighters.

With respect to the reciprocal rights proposal relating to Article XIII, the majority has permitted the Employer to diminish that benefit without any basis of factual support for such a change. It is apparent from the record the eight (8) days provided in the expired collective agreement were intended to continue in successive agreements. More significant is the fact the Employer offered no probative evidence supporting any reason to change or diminish the benefits. Rather, the majority has taken upon itself to reach compromise

providing for a continued, but substantially reduced benefit.

With respect to the so-called "other issues" the majority again abdicated its responsibility. Although the record contains provisions supporting these various proposals, and the majority recognizes the difference in law enforcement employment compared with firefighters, and other City employees, the majority rejects the Union's proposals because of parity.

For the foregoing reasons, I must respectfully dissent.



Robert C. Flavin

Employee Organization
Panel Member

Dated: *Aug. 6*, 1984