

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration :

between :

THE NIAGARA FALLS POLICE CAPTAINS AND
LIEUTENANTS ASSOCIATION :

and :

THE CITY OF NIAGARA FALLS

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O P I N I O N

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PERB Case #IA86-1; M85-397

INTRODUCTION

This matter was heard and resolved as directed by the State of New York Public Employment Relations Board under the terms of statutory provisions applicable to compulsory interest arbitration pursuant to the provisions of New York Civil Service Law, Section 209.4, and Part 205 of the Rules of Procedure of the New York State Public Employment Relations Board. At issue are the terms of a new collective bargaining agreement (the "Agreement") to be effective as of January 1, 1986 between the Niagara Falls Police Captains and Lieutenants Association (the "Association") and the City of Niagara Falls (the "City"). This Agreement is to supercede the previous collective bargaining agreement, as amended, which was in effect until December 31, 1985.

The collective bargaining unit according to the Interest Arbitration Petition consists of twenty-five (25) officers holding the titles of Captain, Lieutenant, and Senior Communications Officer. Representatives of the parties met for the purpose of negotiating a new agreement (fifteen) 15

times since July of 1985. The parties requested and received mediation services from the New York State Public Employment Relations Board. However, no new agreement was reached. On April 4, 1986, a petition for Interest Arbitration filed by the Police Captains and Lieutenants Association was received by the New York State Public Employment Relations Board (PERB). The City responded with its Answer which was received by PERB on April 17, 1986. The predecessor agreement expired on December 31, 1985. In response to the petition, PERB on July 3, 1986 designated a Public Arbitration Panel for the purpose of making a just and reasonable determination consistent with the statutory provisions and procedural rules applicable to the Interest Arbitration process.

The designated Panel was constituted as follows:

Douglas J. Bantle, Esq.	Chairperson
David A. Fabrizio	Employer Appointee
Bernard E. Stack, Esq.	Employee Appointee

The arbitration hearing was held on October 15, 1986, at the City of Niagara Falls Convention Center. The parties were offered full opportunity to present evidence and argument and to examine and cross-examine witnesses.

Appearances for the parties follow:

For the Association:

Frank Fortunato, Spokesperson for the Team
Edward J. Fennell, Municipal Finance Consultant
James A. Gray, Negotiation Team Member

Ken Brandon, Negotiation Team Member
David Belfield, Negotiation Team Member
Gordon V. Warne, Negotiation Team Member

For the City:

Peter F. Comerford, Assistant Corporation Counsel
Patricia C. Lenhart, Deputy Comptroller-Finance

At the hearing there was an agreement between the parties to limit the number of items put before the Arbitration Panel. The original Petition listed some twenty-three (23) open areas. At the hearing this extensive list was reduced to Salary, the Work Schedule, Sick Leave, Holidays, and Uniform Allowance. The hearing was completed on October 15, 1986. The Panel met in executive session on October 16, 1986 which resulted in the determinations made in this Opinion and Award. Under the statute the Panel is empowered to make a "just and reasonable determination of the matters in dispute." In making that determination the Panel, as well as the parties, took into consideration the following statutory criteria as required by law:

- 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 the collective bargaining 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.

OPINION

1- SALARY

Not surprisingly the main issue in the dispute is the wages to be paid to unit members. The City's position has been that no wage increases were to be given for 1986. It has signed two (2) agreements with other bargaining units giving a six percent (6%) increase effective January 1, 1987, rolled back to October 1, 1986, for employees on the payroll as of January 1, 1987. This same offer was made to this unit. Essentially, there is not a dispute between the parties concerning that amount. The Association is willing to take that amount if and only if they also receive something for 1986. The City Panel member's position is that no salary increase should be given over and above the amount listed above.

The City's argument is not only the classic unwillingness to pay but also an inability to pay. (See City Exhibits 1-4) Documentation was presented at the hearing

arguing that the City has greater financial problems than many other cities its size. City Exhibit #1 shows its tax base has been shrinking since 1983. Deputy Comptroller Lenhart spoke to the issue of the State aid which is needed to pay the lease payments for the Convention Center. She also addressed the issue of challenged assessments by large property holders which could severely affect the City's ability to tax. In addition, a change in the timing of collection of property taxes has also made cash flow a problem as the receivables will not be available until well into early 1987. There are also problems with the Waste Water Plant which will potentially require the City in the future to commit large amounts of tax dollars. The basic problem is that the City must maintain the capital construction projects that it has built through the years with taxation rates based upon a declining tax base.

The Association makes several arguments concerning ability to pay. First, it argues that many of the problems which the City faces today are because of excessive capital construction expenditures. It contends that the problems such as the Convention Center lease should not stop the Panel from awarding the unit a fair increase. The Association and other unions argued from the time such facilities were proposed, that they would be a large drain on the finances of the City. They were not listened to and now the Association

and other City employees are being asked to "saddle" the burden. It argues strongly that this is grossly unfair.

Objective data has also been presented by the Association's fiscal consultant, Edward Fennell, that the City does have the ability to pay. (See Association Exhibit #1) His report argues that there is a margin, given the current constitutional real estate tax limit, of over five million dollars (\$5,000,000). He also argues that the City does not have any proximity to its constitutional debt limit, the margin being in excess of ten million dollars (\$10,000,000). Thus, the City has a clearly demonstrated ability to pay.

Fennell, in his report, did concede that the City was under some "fiscal stress". It is obvious after listening to all of the testimony that this City has some very unusual problems which make it not as fiscally healthy as many other New York cities of similar size. If this was the only criteria which the Panel was to base its findings upon, the City's position would clearly be viable.

One will note that the statutory criteria clearly indicates that comparisons with similar employees is an important ingredient in a panel's determination. The Association, in a number of exhibits (See Association Exhibits 3, 5, and 10) showed that it is far behind other comparable police units in a number of areas. The New York

State Department of State Office for Local Government Services publishes data referred to as LADS concerning collective bargaining settlements and interest arbitration awards. One should remember that police units according to all recently published data generally are somewhat ahead of fire units in the same municipality. In this case the Association currently is behind the "Fire Brass" unit and that unit is now negotiating again.

The LADS data indicates that negotiated 1986 wage increases were 6.02% for police units and 5.64% for fire units. Arbitrated increases were 6.21% for police units and 5.99% for fire units. This is based upon the latest data available as of June 24, 1986. Please note that the data that the Panel is using here excludes Nassau, Suffolk, Westchester and Rockland Counties and the City of New York.

There were lengthy discussions among the Panel members concerning this matter. All of us realized that any award of salary involved subjective balancing of the statutory criteria. The Public Member of the Panel is convinced that Niagara Falls is an unusual City with unusual fiscal problems. However, he has been convinced of the merit of a 1986 retroactive wage increase based on two (2) lines of argument; 1) that there appears to have been disparate results in past negotiations between the "Police Brass" and the "Fire Brass" and 2) the hard data shows that no 1986

increase would only put bargaining unit members well behind other comparable units throughout the area as well as for the rest of the State. The Association at the hearing proposed a six percent (6%) increase for 1986. The Public Panel member believes given the fiscal condition of the City that amount is too great. After an extensive review of the data submitted by the parties and more information obtained from the New York State Department of State and the New York State Public Employment Board the Chairman of the Panel believes that a four percent (4%) increase is realistic. While not establishing comparability it will allow the unit members to "catch-up" to a limited degree. Unfortunately, given the data presented concerning the future financial condition of the City, I doubt that this unit in the foreseeable future will ever reach a position of objective comparability with other similar units. All of the City's employees share this problem.

The Employee Representative, of course, is unhappy with this amount. If he could have dissented and still received the four percent (4%) increase he clearly would have. Given the circumstances the Chairman and the Employee member of the Panel have joined in this part of the Award, that is giving a four percent (4%) increase effective January 1, 1987 retroactive to January 1, 1986. This amount is to be put into the "schedule" before the adding of the six percent (6%)

which is a unanimous award of the Panel.

2- WORK SCHEDULE

The City has proposed a major change in work schedule for the unit. During recent negotiations the patrolmen's unit changed to what is known as a 4/2 schedule. The City believes that the officers supervising these men should also be on the same schedule.

The Association has strongly resisted this move. It argues that 1) the change will result in more problems in the unit, 2) there are likely to be safety problems because of lack of available manpower, 3) there will be lessened promotional possibilities, and 4) inherent in the schedule will be shortages of staffing because of additional time off. Under the current schedule it is extremely difficult to get time off when one needs it. The new schedule by its very nature requires more supervisory personnel. Indications are that it is unlikely that few, if any additional personnel will be added. Thus the platoons will be often running short creating safety problems.

At first glance these arguments lead one to wonder why this unit is arguing against more time off. When closely examining a potential work schedule, as was presented at the hearing, (See Association Exhibits 11(A) & (B)) one can see why units members believe the new schedule will be detrimental. Nevertheless, the Public Member is convinced

that it is critical that the supervisors work the same schedule as the patrolmen.

The City at the Interest Arbitration hearing presented a document, City Exhibit #5, originally a City bargaining proposal dated December, 1985, which addresses not only the schedule itself but a number of related areas. In order to achieve unanimity in this area some modifications were made to City #5. The Memo now reads as follows:

As a result of the contract negotiations between the Captains and Lieutenants Association (Union) and the City of Niagara Falls (Employer) the parties mutually agree to the following:

1. That a 4/2 work schedule will be implemented the effective date of the labor agreement. It will pertain to supervisory officers assigned by the Superintendent of Police to the Patrol Division. The Patrol Division shall include the Traffic and Street Crimes Unit.

2. The 4/2 work schedule will consist of the following shifts:

"A" Shift will be the Day Shift working from 0645 to 1445 hours.

"B" Shift will be the Afternoon Shift working from 1445 to 2245 hours.

"C" Shift will be the Midnight Shift working from 2245 to 0645 hours.

"D" Shift will be the Street Crimes Unit working from 2000 to 0400 hours unless directed otherwise by the Superintendent of Police.

3. Initially, the normal compliment of superior officers will be as follows:

On the "A" Shift - 4 Lieutenants and 1 Captain

On the "B" Shift - 4 Lieutenants and 1 Captain

On the "C" Shift - 4 Lieutenants and 1 Captain

On the "D" Shift - 1 Lieutenant

The number of supervisory officers assigned to each shift will be determined by the Superintendent of Police. If shifts need to be readjusted to arrive at acceptable manning

levels, the Superintendent retains the right to transfer to accomplish the proper manning levels. If a transfer is necessary, the least senior supervisory officer will be transferred.

4. SHIFT BIDDING

Each supervisory officer assigned by the Superintendent of Police to the Patrol Division which includes the "A", "B" and "C" Shifts will bid on the respective shifts using in-grade seniority. The only exception to the above will be supervisory officers who are Military Leave personnel. If there is an uneven distribution of Military Leave personnel through the normal seniority process, the Superintendent of Police retains the right to see that there is even distribution.

Bidding for the "A", "B", and "C" Shifts will be done during the month of November each year. Assignments will be posted during the first week of December. All bidding will be in writing. Once a schedule is in effect, supervisory officers will not be allowed to indiscriminately change their shift. However, if there is a voluntary request for a change between supervisory officers, the same will be accommodated if all seniority requirements are taken into consideration concerning the Patrol Division as a whole.

If vacancies occur within the "A", "B", "C" and "D" Shifts due to retirements, deaths, promotions, and transfers, the vacancies will be posted. Volunteers, based on seniority will have an opportunity to fill the vacancy posted with the exception of the "D" Shift, in which case the vacancy will be filled by the Superintendent of Police. It should be understood that Management retains the right to first determine if the shift vacancy will be filled. Vacancies will be posted five (5) days prior to permanent assignment. However, Management shall have the right to temporarily make assignments during the posting period.

In the event of a transfer from a specialized unit to the "A", "B", or "C" Shift, the supervisory officer being transferred from the specialized unit will go to the shift from where his replacement came. Voluntary "A", "B", or "C" Shift transfers can be made to accommodate the transferred officer taking into account seniority requirements as a whole. If this is not possible, the transferred officer will have to wait for the yearly bidding process. In no event will the officer be allowed to bump through the "A", "B" and "C" Shifts at the time of his initial transfer.

5. TIME OFF

Since there will always be one (1) supervisory officer scheduled off on his regular day off on every shift, it is

imperative that only one (1) other supervisory officer be scheduled off. Scheduled time off shall be vacations, holidays and Military Leave. The only exception to the one officer requirement will be when a supervisory officer requests Personal Time off. A Unit Commander may allow one (1) additional supervisory officer off.

VACATIONS

The Unit Commander on the various platoons will be the Shift Captain, and he shall have the first pick of vacations. The remainder of the supervisory officers, who will be the Lieutenants, will then pick vacations based on in-grade seniority.

At no time will vacated positions be filled on a overtime basis unless it is determined necessary by the Superintendent of Police. The Superintendent of Police at all times will retain the right to determine the necessary level of supervisory officers on a given shift.

6. If a member of the bargaining unit is injured on duty and is able to perform a light duty assignment, that assignment will be determined by the Superintendent of Police. In addition, the shift worked shall be determined by the Superintendent of Police. However, the supervisory officer will continue to receive equalized time off.

7. The Uniformed Patrol Division, which includes "A", "B", "C", and "D" Shifts will be the only division to go on a straight non-rotating 4/2 shift. However, equalization of time off will be given to all other members of the bargaining unit. This time off will be taken at the discretion of the various Unit Commanders with direction from the Superintendent of Police. Equalized time off will not be allowed to accumulate from one contract year to another. Should a supervisory officer retire during the contract year, equalized time off will be prorated. In no instance will it be converted to cash.

8. The City will compensate each supervisory officer of the Uniformed Patrol Division who is actively working 4/2 a non-rotating shift schedule in the amount of two (2) hours pay, to be paid at the straight time hourly rate per payroll period (i.e., not to exceed fifty-two (52) hours per year).

This additional compensation will be paid so long as the 4/2 non-rotating shift schedule remains in effect.

9. Any position or vacancy which may be filled by a

member of the bargaining unit will be posted five (5) days prior to assignment.

10. The City may conduct an evaluation on July 1, 1987. If the City determines that there are abuses of sick time and/or I. O. D. (Injured on Duty) resulting in insufficient manpower to properly man the various shifts, the City will meet and consult with the Association in an effort to correct the problem for a period of ninety (90) days. At the conclusion of the ninety (90) day period, if the City and the Association are unable to resolve the manpower problems, the parties shall immediately go into renegotiations regarding a work schedule on January 4, 1988.

11. ACTING PAY

When a shift Captain is not working and a relief Captain is not assigned to fill the vacancy, then a Lieutenant from that shift will be assigned command of that shift. Such assignments shall be done on a rotation basis from the Lieutenants on that shift. The personnel receiving such assignment will be paid according to Section 7.9 of this Agreement.

12. All members of the Captains and Lieutenants Association will receive three (3) compensatory days of time off, on a one time basis only, to be used during the period of this Award. The time off will be taken at the discretion of the various Unit Commanders with direction from the Superintendent of Police. There shall be no carry-over of these days beyond the term of this Award. In no instance will the days be converted to cash.

One can see that the 4/2 agreement contains a great number of elements. The Public Member of the Panel wished to express his appreciation for the cooperation of the other two Panel members in resolving this delicate issue. This was a particularly difficult area for the Employee member of the Panel.

3- SICK LEAVE

The City has been concerned over a growing use of sick leave. A document was presented at the executive session by the City member of the Panel in response to Association questions at the hearing indicating that as of October 14, 1986 over one-fourth of the unit members since January 1, 1986 had used more than twelve (12) days of sick leave. The Association at the hearing argued that there has been no problem in regard to sick leave usage. The Public Panel member believes that the new information shows at least the distinct possibility of potential abuse this year.

The proposal of the City is that "after two (2) absences an employee would have to provide a Doctor's excuse advising the Superintendent of Police as to the nature of the absence from work." The Association says there should be no change from the current language.

Sections 10.5, 10.5.1, 10.5.2, and 10.5.3 of the Contract address the subject of sick leave. The Panel after some debate has decided to address the potential, if not real problem of sick leave abuse, by creating a new section. The language which reflects our unanimous award in this area follows:

SUB-SECTION 10.5.3.(A)

Effective January 1, 1987: Any unit member who uses more than twelve (12) days of sick leave in one (1) calendar year must bring in a Doctor's excuse for each incident thereafter. The only exception to this concerns those employees who are

absent for five (5) consecutive days or longer, as referred to in Sub-section 10.5.3. As a Physician's Certificate is already required under that circumstance that period of time will only be counted as one (1) sick leave day for this paragraph.

4- HOLIDAYS

The City in its case argues for increased requirements for members to qualify for Holiday Pay. It maintains that in many other agreements such limitations exist which protect the Employer against potential abuse.

The Association again argues that there has been no demonstration of a problem in this area. It believes that no additional language is needed.

The Panel has discussed this matter at some length. There is an agreement that this area needs to be clarified, if for no other reason than the limitations for usage currently, are spread throughout the Agreement. The Panel unanimously agrees on the following new section:

SECTION 10.1.4

In order to qualify for Holiday Pay as stipulated in Sections 10.1, 10.1.1, 10.1.2, and 10.1.3 the employee must meet the following requirements:

1- If the employee is scheduled to work the day immediately before and/or after the holiday he or she must work those days in order to qualify to be paid for the holiday. There are two (2) exceptions to this general rule.

A.- An employee may still be paid for the holiday if a physician's certificate is presented showing that the employee was in fact ill and could not work on the day or

days.

B.- An employee will be paid his or her Holiday pay if he or she was on Bereavement Leave as defined in Sections 10.9, 10.9.1, 10.9.2, and 10.9.3 of this Agreement during the day before and/or after the holiday.

5- UNIFORM ALLOWANCE

The Association has asked for an increase in its Uniform Allowance covered in Sub-Section 12.1.3 of the Agreement. Currently the members receive approximately \$240.00/year. It has provided comparative data (See Association Exhibits 5E, 6 & 7E) indicating that other departments in the area and throughout the State get a considerably higher amount. It has also provided a listing of the cost of items which unit members must purchase.

The City takes the position that the unit members are adequately compensated. It asks that the Panel make no change in the contract on this issue.

The Panel in its deliberations on all of the economic items was faced, as mentioned earlier, with the fact that this City's ability to pay is somewhat more limited than others. Because of this fact we decided not to award an increase in this area. It is the belief of the Panel that the monies which might have gone into this fringe benefit would be more beneficial as part of the wage package. Putting the same dollars into the wage package allows the unit members to use the money as they wish instead of

limiting them to using it only for the specified purpose of uniforms.

AWARD

The Panel is unanimous in this Award with the exception of the dissent of the City representative on the issue of the four percent (4%) 1986 salary adjustment. This does not mean that all members of the Panel agreed on every detail of every section. Both the Employer and Employee Panel members ably represented their respective constituencies. It is a credit to them that we are able to issue this Award with just one (1) formal dissent. For clarity we now reiterate the findings of the Panel:

1- WAGES

The majority of the Panel awards a four percent (4%) increase, effective January 1, 1987, retroactive to January 1, 1986.

A unanimous Panel awards a six percent (6%) increase effective January 1, 1987, rolled back to October 1, 1986. NOTE: This is added to the schedule after the four percent (4%) increase above.

2- WORK SCHEDULE

The 4/2 December 1985 City proposal is adopted unanimously by the Panel with the additions as found on pages 10-13 of this document.

3- SICK LEAVE

The Panel is again unanimous in agreeing on the new language placing limitations on the use of sick leave which is found on page 14 of this document.

4- HOLIDAYS

The Panel is unanimous in agreeing on the new

language concerning the requirement of working on the day before and/or after the holiday as expressed in the language on page 15 of this document.

5- UNIFORM ALLOWANCE

The Panel is unanimous in its denying of the Association's proposal on this matter.

Below are affixed the signatures of the Panel members.

November 19, 1986
Mendon, New York 14506-0361

Douglas J. Bantle Esq.
DOUGLAS J. BANTLE, ESQ.
PUBLIC MEMBER OF THE PANEL

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

I, DOUGLAS J. BANTLE, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument.

November 19, 1986

Douglas J. Bantle Esq.
11/19/86

Joining with the Public Member of the Panel:

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

CONCURRING: David A. Fabrizio
DAVID A. FABRIZIO
EMPLOYER PANEL MEMBER

Sworn to me before me this 9th day of December, 1986.

M. Teresa Radogna Garbutt
Notary Public

M. TERESA RADOGNA GARBUTT
Notary Public, State of New York
Qualified in Erie County
Commission Expires March 30, 1988
Niagara August 31

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

CONCURRING: Bernard E. Stack
BERNARD E. STACK, ESQ.
EMPLOYEE PANEL MEMBER

Sworn to me before me this 1st day of December, 1986.

Nancy Pack
Notary Public

NANCY PACK Reg. No. 4881220
Notary Public, State of New York
Appointed in Niagara County
My commission expires March 30, 1988