
In the Matter of Interest Arbitration

between

Town of Tonawanda

and

Opinion

and

Award

(Case no. IA86-37)

Tonawanda Police Club

Having determined that an impasse exists in the negotiations between the above-mentioned parties, the New York State Public Employment Relations Board, pursuant to its authority under Section 209.4 of the Civil Service Law, on May 5, 1987 designated a Public Arbitration Panel to make a just and reasonable determination of the dispute. The employer member designated was Joseph L. Randazzo, the employee organization member designated was Peter Klipfel, and the public member and chairman was Howard G. Foster. A hearing in the matter was held on July 10, 1987, at the Royal Knight Restaurant in Tonawanda, New York. The parties were afforded full opportunity to present evidence and offer arguments in support of their positions on the unresolved issues. Upon submission of some additional material by counsel for the Club, the record was closed.

APPEARANCES

For the Town:

Norman Stocker, Director of Labor Relations
Brian Shields, Assistant Chief of Police
Edward D. Mongolo, Comptroller

For the Club:

Richard Wyssling, Attorney
William Grande, Attorney
Norman Francavilla, Committeeman

BACKGROUND

The Town of Tonawanda is situated in northwest Erie County, New York. Excluding the Village of Kenmore, which has its own police force, the Town's population numbers about 75,000 persons. The Town's police force includes 97 patrolmen, detectives, and uniformed officers. All members of the force are included in the bargaining unit except the Chief and Assistant Chief.

The last collective bargaining agreement between the parties covered the calendar years 1985 and 1986. (The calendar year is also the Town's fiscal year.) Their negotiations for a successor contract have succeeded in disposing of all but 16 issues, which are the subject of this arbitration. The panel members are unanimous in the awards to be delineated below.

FINDINGS AND AWARDS

The panel has determined that a just and reasonable resolution of the dispute includes the following items:

Salaries

The Club requests an across-the-board salary increase of eight percent for 1987 and an additional eight percent for 1988. It argues that the salaries of police officers in Tonawanda have lagged behind those of other towns throughout the state comparable in terms of size and wealth. It also argues that Tonawanda's salaries lag behind those of other towns in Erie County with which it has historically been compared, such as Amherst, Cheektowaga, and West Seneca. It contends that its patrolmen should receive at least \$1500 in "catch-up" increases even before reasonable increases for 1987 and 1988 are applied.

The Town offers salary increases of four percent across the board for both 1987 and 1988. It notes that its ability to pay is less strong than that of its neighbors, since its tax base has been declining while others' have been rising.

Also, federal revenue sharing has been reduced. As a consequence the Town has had to raise its taxes considerably. The Town further notes that its offer would keep its police officers ahead of increases in the cost of living.

Discussion. In evaluating the data offered by both sides in this proceeding, we must be mindful of the statutory criteria that bind our deliberations. One criterion is relative salaries of similar employees (which we construe as other police officers) in comparable communities. The most comparable communities are other large towns in Erie County. Hence we have focussed our attention on pay scales in Amherst, Cheektowaga, and West Seneca. A second criterion is the public welfare, including the employer's ability to pay. We believe that our award does not exceed Tonawanda's resources. The third statutory criterion is "peculiarities in regard to other trades and professions." We take account of this standard by attempting to keep Tonawanda in line with other police in comparable towns, whose police presumably face the same "peculiarities." The final criterion includes past agreements between the parties, from which our award is explicitly extrapolated. To these criteria we have added a fifth: the terms of settlements between the Town and its other organized employees, on the theory that these settlements reflect both the Town's ability to pay and the judgments of people who work in an environment (or at least in a location) that is to some degree similar to that of police in Tonawanda.

The record made by the parties in this arbitration permits certain conclusions about the standing of Tonawanda police compensation. First, compared to their brethren in the other large towns, Tonawanda patrolmen receive somewhat lower salaries. However, the salaries of uniformed officers and detectives are more competitive and in some cases ahead of the other towns. Second, 1987 settlements in the other towns have been somewhat higher than the

Town's offer but considerably lower than the Club's demand. Amherst has not yet settled, but West Seneca has settled for 9 percent over two years and Cheektowaga 10 percent. Third, the other two unions in Tonawanda have settled for 9.5 and 10.0 percent over two years.

The issue of salaries obviously cannot be examined in a vacuum. In the final analysis, we must ask whether there is a strong case for requiring the Town to execute a settlement with its police that is different from the ones it reached with its other employees. We come to a negative answer to that question, partly because we find that the salaries of Tonawanda police as a group are only modestly lower than those elsewhere, partly because the settlement is comparable with or exceeds those in other police departments, partly because we acknowledge the Town's argument that its tax base is eroding, and partly because there are benefits we have been persuaded to award that will add to the cost of this salary determination.

Award. The salary schedule (Section 7.02 of the 1985-86 Agreement) shall be increased by five (5) percent across the board, effective January 1, 1987. The resulting schedule shall be increased by an additional five (5) percent effective January 1, 1988.

Overtime

The present contract provides that when an officer is compensated for extra time actually worked on a call-in, that compensation takes the form of pay at time and a half or compensatory time at straight time. The compensation (in either case) is also subject to a three hour minimum. The Club requests that the minimum be raised to four hours and that the compensatory time for hours actually worked be paid at time and a half.

The Club's principal justification for this request appears to be perceived inconsistencies between the payment rates in time versus money and

between the minimum payments for overtime and court time. The panel does not discern the substantive case for the proposed change, that is, the case for the proposition that officers are undercompensated for their overtime work. Further, the record shows that in the vast majority of instances officers are actually paid the minimum three hours, a payment that would not be affected by the time-and-a-half proposal.

Award. **The proposal is denied.**

Shift Differential

The present contract provides for a differential of 30 cents per hour for the afternoon and night shifts. The Club proposes 30 and 60 cents for the two shifts respectively in 1987 and 40 and 80 cents in 1988.

We believe that there is merit to this proposal, particularly in terms of establishing a larger differential for the night shift. For practical reasons, however, the increase should not be implemented until 1988.

Award. **Effective January 1, 1988, the premium for work on the night shift shall be increased to 60 cents per hour.**

Longevity Pay

The current contract provides for a longevity increment of \$50 after five years of service, with an additional \$50 for each year thereafter until a maximum of \$1,000 is reached. The Club proposes to lift the cap and extend the \$50 per year indefinitely.

The longevity provision in Tonawanda is already generous by area standards, and we do not discern the case for raising it further.

Award. **The proposal is denied.**

Holiday Pay

The current contract provides for 13 holidays (usually taken as pay rather than time off). The Club proposes an additional holiday.

The 13 holidays are standard for the area.

Award. **The proposal is denied.**

Court Pay

The current agreement provides for compensation for court appearances similar to that for overtime (see above), except there is a minimum of four hours. The Club again proposes that officers receive compensatory time at time and a half. Again, we do not discern the substantive case for the proposal.

Award. **The proposal is denied.**

Out of Rank Pay

The current agreement provides that police officers assigned to work out of rank (as when a patrolman becomes an acting lieutenant) for at least four hours, they receive the pay of the higher rank. The Club proposes that the higher pay apply whenever there is such an assignment.

We are persuaded of the merit of paying commensurately for time worked at a position with more responsibility. However, there are practical problems with paying a premium for very short term assignments.

Award. **Out-of-Rank Pay under Section 7.14 shall be paid whenever police officers are assigned to a temporary vacancy for two hours or more. This provision shall be effective on September 1, 1987.**

Cleaning Allowance

The current contract provides for a cleaning allowance of \$400 per year. The Club proposes increasing the allowance by \$100 in 1987 and in 1988, and an extra \$100 for detectives.

We see a case for modest increases in this allowance as costs of cleaning rise. However, we do not see the case for the extra payment to detectives.

Award. The cleaning allowance shall be increased to \$450 for 1987 and to \$500 for 1988.

Educational Incentive

The Club proposes a new provision that would establish a pay differential based on certain types of educational attainment and would also pay tuition charges for college courses.

The panel is not comfortable with the principle of unequal pay for equal work based strictly on schooling. There is a stronger case for a tuition subsidy as a fringe benefit (since the schooling can lead to career advancement), but we believe that there are more effective uses for the money in an overall pay package.

Award. The proposal is denied.

Vacations

The current vacation schedule tops out at 27 days for officers with 17 years of service. The Club proposes 30 days for officers with 20 years of service.

The record suggests that the vacation benefit in Tonawanda is already competitive, particularly for the most senior officers.

Award. The proposal is denied.

Accumulated Days

The current agreement contains a provision under which officers receive credit for not taking sick days. Upon retirement, they may convert each of these accumulated days, at a rate of 1.5 times their daily pay at the time, into a "bank account" from which they may draw to pay health insurance premiums. The Club proposes to increase the multiplier to 2.5.

We see a case for some increase in the multiplier (even though it was raised in the last contract), since at the current rate the bank may not be sufficient to cover premiums until Medicare coverage begins. We think the 2.5 multiplier is excessive, however. Further, there is no evidence that officers who have retired recently have found the fund inadequate (although it is suggested that there are now incentives for officers to retire at an earlier age).

Award. The multiplier in Section 11.02 shall be increased to one-and-three-quarters (1.75), effective September 1, 1987.

Life Insurance

The Club proposes an increase in the life insurance benefit from \$10,000 to \$30,000 of coverage. While the panel sees merit in the proposal, it deems the case for other monetary improvements to be stronger.

Award. The proposal is denied.

Dental Plan

The Club has proposed increasing the amount the Town contributes toward a fund to help pay for dental services for officers and their families. The current contribution is \$170 per member per year.

We find merit in the proposal. The current amount is inadequate to purchase an insurance-based plan or even to contribute significantly to any but the most routine expenses.

Award. The Town's contribution to the dental plan shall be increased to \$225 per member for 1987 and to \$300 per member for 1988. The contribution for 1988 shall be fully paid into the fund by January 31, 1988.

Sick Leave Note

The Town proposes a new clause in the sick leave provision that would require an officer to provide a doctor's note after three consecutive days of sick leave.

The panel believes that such a requirement is not unreasonable or onerous, since it should be presumed that a person out sick for a period of time will have sought and received medical attention. However, we believe that the requirement to produce such a note should be at the explicit request of the member's supervisor. We further believe that a reasonable threshold for such a requirement is an absence of a workweek (which in this case is four days).

Award. Add to Section 8.02: "In the event a police officer is on sick leave for four (4) consecutive work days or more, he or she shall, upon request, submit a doctor's statement when returning to work."

Two-Tier Vacation Schedule

The Town proposes a reduced vacation schedule for officers hired after a certain date.

We do not see merit in the proposal, notwithstanding the Town's argument that the other unions in Tonawanda have accepted a similar one.

Award. The proposal is denied.

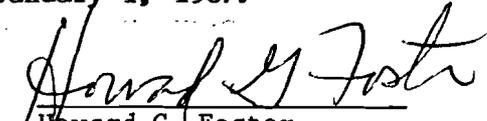
Health Insurance

The Town proposes to delete rider 21 and to require officers to pay all insurance premium increases after January 1, 1987.

The Town argues that rider 21 is superfluous in that it duplicates coverage available under the major medical program. If that is the case, then we believe the Town should propose using the money for another purpose rather than simply reducing the benefit package. For this reason, we shall deny the proposal, but we suggest that the parties consider eliminating rider 21 and directing the savings to the dental fund.

As for the proposal to require members to assume premium increases, we believe the current language requiring renegotiations when increases reach a certain level provides some protection to the Town without invading the members' benefit package.

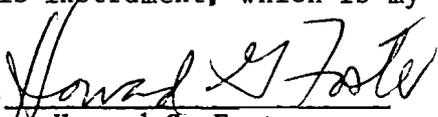
Award. The proposals are denied. However, the reference to January 1, 1985 in Section 11.01 shall be changed to January 1, 1987.


Howard G. Foster
Public Member and Chairman

STATE OF NEW YORK } SS:
COUNTY OF ERIE }

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.

Dated: August 3, 1987

Signed: 
Howard G. Foster

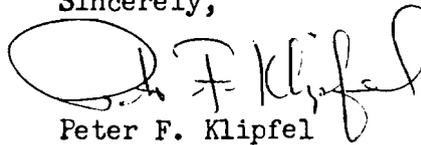
August 18, 1987

Mr. Howard G. Foster
160 Jacobs Management Center
Buffalo, New York 14260

Dear Howard:

This letter will serve as my affirmation of concurrence with the draft award that you sent on July 30, 1987.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. F. Klipfel". The signature is written in dark ink and is positioned above the typed name.

Peter F. Klipfel
Chairman
Negotiation Committee

FLAHERTY COHEN GRANDE RANDAZZO DOREN PC

COUNSELORS AND ATTORNEYS AT LAW

SUITE 210, FIRSTMARK BUILDING • 135 DELAWARE AVENUE • BUFFALO, NEW YORK 14202 716-853-7262

August 12, 1987

Prof. Howard G. Foster
School of Management-SUNYAB
280 Jacobs Management Center
Buffalo, New York 14260

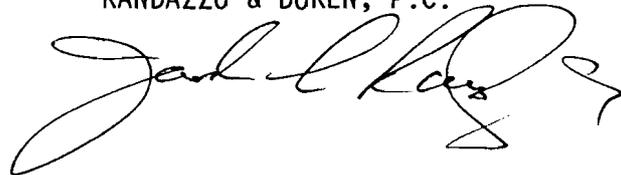
Re: Town of Tonawanda/Police Interests Arbitration

Dear Howard:

This is to advise that I concur with the decision regarding Town of Tonawanda Police Club.

Yours truly,

FLAHERTY, COHEN, GRANDE,
RANDAZZO & DOREN, P.C.



JLR:mjm