

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration :
 between :
CITY OF NORTH TONAWANDA, :
 Public Employer, : OPINION
 and : AND
NORTH TONAWANDA POLICE BENEVOLENT : AWARD
ASSOCIATION, :
 Employee Organization :
PERB Case No. IA87-9: M86-517 :
:

BEFORE: Jeffrey M. Selchick, Esq.
 Public Panel Member and Chairman

 Paul Sikora, Esq.
 Employer Panel Member

 Dennis Grinnell
 Employee Organization Panel Member

APPEARANCES:

For City of North Tonawanda

Jeffrey N. Mis, Esq.
City Attorney

For North Tonawanda Police Benevolent Association

Dixon, DeMarie and Schoenborn
Anthony J. DeMarie, Esq., of Counsel

Pursuant to the provisions contained in Section 209.4
of the Civil Service Law, the undersigned Panel was
designated by the Chairman of the New York State Public
Employment Relations Board, to make a just a reasonable
determination of a dispute between the City of North
Tonawanda ("City") and the North Tonawanda Police Benevolent
Association ("PBA").

The prior Agreement between the parties, which covered the period January 1, 1985 through December 31, 1986 (Joint Exhibit A), expired with the parties at impasse over the terms of a successor agreement. Efforts at mediation did not result in agreement, and by petition dated June 15, 1987 (Employer Exhibit 1-E), the PBA filed for compulsory interest arbitration pursuant to Section 209.4 of the Civil Service Law.

On June 30, 1987, the City filed its response (Employer Exhibit 1-F) to the PBA's petition.

A hearing was conducted before the undersigned Panel on October 30, 1987 in the City of North Tonawanda, at which time both parties submitted numerous exhibits and presented argument on their respective positions.

Both parties filed post-hearing memoranda; that of the PBA was received on January 6, 1988, and that of the Village was received on January 21, 1988. Upon receipt of the parties post-hearing memoranda, the record in this dispute was declared closed.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties contract for the period January 1, 1987 through December 31, 1988.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4, Civil Service 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 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.

BACKGROUND

The City of North Tonawanda is located in Niagara County and has an approximate population of 36,000 people. The City Police Department is headed by a Chief of Police, and consists of approximately 34 Police Officers, 5 Detectives, 4 Lieutenants and 6 Captains. The PBA is the recognized employee organization for all police officers employed by the City, except for the Chief of Police.

The undersigned Panel met in Executive Session in Buffalo on February 10, 1988. During that session, the Panel members reached unanimous agreement on many of the provisions to be awarded in this arbitration proceeding. The positions originally taken by both parties are quite adequately specified in their hearing memoranda, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award.

The Panel is unanimous in the award of the following:

TERM OF THE AGREEMENT

The Panel awards a 2 year agreement, to commence January 1, 1987 and continue through December 31, 1988.

SALARY

Effective January 1, 1987, all base pay shall be increased by 6%.

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All retroactive salary payments shall be made as expeditiously as possible.

CALL IN PAY

When an officer is recalled to duty pursuant to Section 7.15(c) of the contract, the minimum payment for such recall is increased from 1 hour to 3 hours, paid at one and one-half time.

ACCRUED COMPENSATORY TIME

The court time buy-back contained in Section 7.24 of the contract, shall be reduced from 120 hours to 80 hours, retroactive to January 1, 1987.

BEREAVEMENT LEAVE

Section 11.13(a) of the contract shall include "grandchildren" under the definition of "immediate family."

Section 11.13(e) shall be modified to allow the Chief of Police to grant an officer 8 hours of leave with pay, to attend the funeral of a relative not included in the definition of "immediate family."

HEALTH INSURANCE RIDER

An Emergency Room Rider shall be added to the present health insurance coverage, effective January 1, 1988. The cost of this Rider shall be paid by the City.

LIFE INSURANCE COVERAGE

The life insurance benefit contained in Section 12.11 of the contract shall be increased to \$18,000.

DENTAL COVERAGE

The monies contained in Section 12.12(c)(i) of the contract, used toward the payment of dental bills, shall be increased by \$2,500 effective January 1, 1988.

OPTICAL COVERAGE

The monies contained in Section 12.13(a) of the contract, used toward the payment of optical bills, shall be increased by \$2,500 effective January 1, 1988.

RETIREMENT PLAN

Effective October 1, 1988, employees may retire in accordance with the provisions of Section 384-d of the Retirement and Social Security Law.

DETECTIVE CLOTHING ALLOWANCE

The clothing allowance provided in Section 12.24 of the contract, shall be increased by \$100 to \$400, effective January 1, 1987.

The following provisions are awarded by majority action of this Panel, as follows:

HEALTH INSURANCE

City Proposal

The City proposes that new hirees contribute to the cost of health insurance by paying 40% of such cost. The City maintains that such payment is necessary to cover the increased costs in the area of health insurance.

The City has achieved this concession in negotiations with both its Fire Unit, its Department of Public Works Unit, and its Clerical and Other Employee Unit. In the Fire Unit, a 25% contribution was agreed upon for employees hired after January 1, 1987, with a provision that such clause will be subject to renegotiation after December 31, 1989 (see Employer Exhibit 1-B). In the case of the remaining 2 bargaining units, a 25% contribution was agreed upon for new employees, without any sunset provision (Employer Exhibits 1-C and 1-D).

PBA Response

The PBA is opposed to the City proposal. The PBA argues that data indicates that not a single municipality in the Erie-Niagara District requires police officers to

contribute to payment of health insurance premiums (PBA Exhibit 3). The PBA also is opposed to the concept of providing less benefits to newly appointed police officers, and desires that all officers be provided with the same health insurance benefit.

Discussion and Award

Section 209(a) of the Civil Service Law requires, among other factors, that this Panel make a comparison of the conditions of employment of other employees performing "similar services" or having "similar skills" under "similar working conditions" when determining the issues in dispute. While this Panel has carefully considered the arguments made by the City, both concerning its financial ability to pay, and the health insurance contribution to be made by other City employees, it cannot agree that such factors warrant the acceptance of the City proposal.

A majority of the Panel, consisting of the Chairman and the Employee Organization Panel Member, are in agreement that police must be compared to police. While other jobs, such as firefighting, require placing oneself in dangerous situations, such other jobs are not proper comparisons to police work. Police work is unique unto itself, and carries with it a degree of responsibility, stress and danger that cannot be shared by those not employed in the law

enforcement arena. Under the provisions under which this Panel is authorized to act, the law is clear that police should be compared to other police, and not to other employees working for the same municipality.

A review of the health insurance benefit provided to other police departments in the Erie-Niagara County area (PBA Exhibit 3), reveals that not a single department provides less than full payment of health insurance for its officers. There is no justification for the North Tonawanda Police Department to have any less of a benefit. The Panel rejects this City proposal.

RETIREMENT INCENTIVE PACKAGE

PBA Proposal

The PBA proposes that the Retirement Incentive Package contained in Section 12.4 of the contract, be continued and modified so as to provide health insurance coverage for retired officers after they have reached the age of 65, without cost to the employee.

The PBA also seeks to reduce the eligibility requirement contained in Section 12.41(a) for the Retirement Incentive Package to 20 years, to conform to the new 20 year retirement option made available under Section 384-d of the Retirement and Social Security Law.

City Response

The City is opposed to the PBA proposal to provide health insurance to retired members over the age of 65. The City is also opposed to reducing the eligibility for the Retirement Incentive Package from 25 years to 20 years.

Discussion and Award

The Retirement Incentive Package is offered by the employer to induce 25 year or more employees to retire. It is not the desire of the employer at this time to seek to induce officers with less than 25 years of service to retire. A majority of the Panel, consisting of the Chairman and the Employer Panel Member, award the continuation of the Retirement Incentive Package, for the period January 1, 1987 through December 31, 1988. This continuation is with no change in contract language, and rejects the PBA proposal to reduce the eligibility to 20 years of service.

The same majority of the Panel also rejects the PBA proposal to require the City to provide health insurance to retired members over the age of 65. Since this arbitration Award is not granting the City's proposal to require new officers to contribute to health insurance, and in effect, retains the status quo, any corresponding increase in health insurance benefits as sought by the PBA would not be justified.

BRIEFING TIME

PBA Proposal

The PBA proposes that briefing time payable under Section 7.16 of the contract, be compensated at the rate of time and one-half. Comparable data for other police departments (PBA Exhibit 6) indicates that the North Tonawanda police receive the lowest compensation for mandatory briefing time.

City Proposal

The City proposes that payment for briefing time shall not include sick days, personal leave, vacation leave, and compensatory leave days. The City argues that the purpose and rationale for briefing time was to encourage and enforce the prompt reporting of personnel 15 minutes prior to the start of the shift. The City maintains that such purpose is not served by paying briefing time for days when an employee does not show up for work.

Discussion and Award

The Panel is unanimous in the awarding of briefing time to be paid at the rate of time and one-half for the 15 minute period per day, retroactive to January 1, 1987.

A majority of the Panel, consisting of the Chairman and the Employer Panel Member, accept the City's proposal that briefing time shall only be paid when such period is actually worked, and shall not include sick days, personal leave and vacation days, and compensatory days. The exclusion of said leave days from the payment of briefing time shall be effective January 1, 1988.

SICK LEAVE ACCRUAL

City Proposal

The City proposes to reduce the number of sick days provided to 1 day per month, for all new hirees. Such reduction has been accomplished for all other City employees in their recent contracts (Employer Exhibit 1-B, 1-C, 1-D). The City further argues that the 18 sick days presently provided to members of the police department, calculated at 1-1/2 sick days per month, is at the very top of the scale with regard to sick leave days earned by officers in comparable police departments (Employer Exhibit 1-G). The City maintains that the high number of available sick days has resulted in sick leave abuse and difficulty in staffing during certain shifts.

PBA Response

The PBA is opposed to the reduction of sick leave for new employees. The PBA argues that accumulation of sick leave at the rate of 1-1/2 days per month is relatively standard. Those police departments that provide less annual sick leave provide more holiday and personal leave or more annual vacation (PBA Exhibit 3). The PBA further argues that the City has not supported its claim of sick leave abuse, and that if such abuse has occurred, the City should address the abuse through the disciplinary provision of the contract.

Discussion and Award

A majority of the Panel, consisting of the Chairman and the Employee Organization Panel Member, are in agreement that all officers should receive the same sick leave benefit, and that a lesser benefit would be unfair for new hirees. However, based on the data of other comparable police departments, it is apparent that the present 1-1/2 day per month accrual of sick leave is high. Accordingly, it is awarded that the number of sick days accrued per month shall be reduced to 1-1/4 for all employees, effective January 1, 1988.

LONGEVITY

PBA Proposal

Presently, City police officers receive longevity payments as follows:

After 5 years	\$100
After 10 years	\$200
After 15 years	\$300
After 20 years	\$400

The PBA argues that the present longevity payments are far behind those paid in comparable police departments (PBA Exhibit 11). Based upon the present payment schedule, a City police officer who works 25 years will have received longevity payments of \$5,000. During the same 25 years, the average longevity payment to officers in the Erie-Niagara District, based on the 1986 average, would have been over \$10,700--more than 100% more than that received by officers in North Tonawanda.

The PBA requests that longevity be paid as follows:

After 5 years	\$100
After 10 years	\$300
After 15 years	\$600
After 20 years	\$1000

The PBA argues that even with this requested increase, the City police department will still be receiving less longevity payments than officers in comparable departments.

Discussion and Award

A majority of the Panel, consisting of the Chairman and the Employee Organization Panel Member, agree with the arguments presented by the PBA that the present longevity payments are inadequate in comparison to those paid in other police departments in the Erie-Niagara County district. Accordingly, the Panel awards longevity to be paid in accord with the following schedule, retroactive to January 1, 1987:

After 5 years	\$200
After 10 years	\$400
After 15 years	\$600
After 20 years	\$800

OTHER PROPOSALS

The Panel has made awards on specific proposals as set out supra in this arbitration Award. All proposals and arguments made by both parties have been reviewed and considered by the Panel. Any proposals not awarded or discussed in this Award are rejected. All other provisions and language contained in the 1985-86 contract (Joint Exhibit A) are hereby continued, except as specifically modified in this Award. Said award including the attached addendum on page 19.



Jeffrey M. Selchick, Esq.
Public Panel Member & Chairman



Paul Sikora, Esq.
Employer Panel Member



Dennis Grinnell
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this 23Rd day of February, 1988, before me personally came and appeared Jeffrey M. Selchick, to me known and known to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

STATE OF NEW YORK
COUNTY OF ALBANY
No. 4697131
Qualified in Albany County
Commission Expires March 30, 1989

Cathy L. Selchick

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF) ss.:

On this 24th day of February, 1988, before me personally came and appeared Paul Sikora, to me known and known to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

DAVID E. JAKUBASZEK Reg. No. 4697131
Notary Public, State of New York
Qualified in Niagara County
My commission expires 8/31/89

David E. Jakubaszek

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF) ss.:

On this 24th day of February, 1988, before me personally came and appeared Dennis Grinnell, to me known and known to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

DAVID E. JAKUBASZEK Reg. No. 4697131
Notary Public, State of New York
Qualified in Niagara County
My commission expires 8/31/89

David E. Jakubaszek
Dennis Grinnell

NOTARY PUBLIC

ADDENDUM

The Panel is unanimous in the award of the following:

HOLIDAY PAY

The Panel changes the language in Section 8.11 from the current language of "effective on the first pay day in December of each and every year" to "effective on the first pay day in November of each and every year".

H.M.O. PAYMENTS

The Panel awards the PBA proposal with regard to full payment for H.M.O. plans elected by any employee effective 1/1/88 by adding a subdivision of Section 12.12 indicating as follows:

"The Employer will pay any co-payments required for any employee participating in an H.M.O. (Health Maintenance Organization) medical insurance plan, effective January 1, 1988." Said sections shall be added as Section 12.12 subdivision (5) (f).
