
In the Matter of Interest Arbitration

between

City of Canandaigua

and

Canandaigua Police Officers Assn.,
Communications Workers Local 1170

Opinion

and

Award

(Case No. IA88-2)

ME-444

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CONCILIATION

This arbitration was heard on December 20, 1988 and January 24, 1989, at the Hurley Office Building in Canandaigua, New York. Pursuant to the rules and procedures of the New York State Public Employment Relations Board, a panel of arbitrators was assembled to hear and determine the matters in dispute. Peter Spinelli, was selected as the City's member on the panel, Robert Flavin as the the Union's member, and Howard Foster as the neutral member. The City's case was presented by Mr. Craig Whitehead, Assistant City Manager, and the Union's case by Richard Furlong, Esq. Upon completion of the hearing, the record was closed.

BACKGROUND

Canandaigua is a city of about 15,000 people in the Finger Lakes region of New York State. Its police force, excluding command officers, numbers 19, all with the rank of patrolmen. The most recent Collective Bargaining Agreement between the parties covered the calendar years 1986 and 1987. The parties met a number of times during 1988 in an effort to bargain a successor to that Agreement. The Union petitioned for interest arbitration, pursuant to the relevant provisions of the Taylor Law, on April 14, 1988.

The award outlined below constitutes the panel's best judgment as to a just and reasonable resolution of the impasse. It addresses, seriatim, each of the issues on which the parties have been unable to reach agreement. For each issue, the discussion below presents the positions of the parties and the panel's analysis and conclusion. The panel is unanimous with respect to all issues.

Wages

The Union proposes that wages for bargaining unit members be increased by 6 percent across the board in 1988 and again in 1989. The District proposes that the increases be in the amount of 6.0 percent in 1988 and 5.5 percent in 1989. The Union argues that the wages of Canadaigua police are substantially lower than those paid for comparable public and private work. The City argues that its wages are higher than the most comparable city, Geneva, and that two other public safety units in the city have agreed to the settlement offered to this unit by the City.

The panel notes that no scientific determination of right and wrong can be made of two proposals only a half-percent apart over two years. It concludes, however, that the City's offer is generally in line with comparable jurisdictions (although some have settled for more). At the same time, it is mindful of the fact that this Agreement has been a long time in the making, and so it is appropriate to move a bit more of the total wage package into the earlier year to compensate for the delay in execution.

Accordingly, the panel AWARDS a wage increase of 6.5 percent across the board for 1988 and 5.0 percent for 1989.

Youth Officers and Detectives

The Union proposes a wage differential of \$600 for 1988 and \$700 for 1989 for unit members serving as youth officers and detectives. It argues that these positions carry greater responsibility and require more training than that of a patrolman. The City resists the proposal, arguing that these are not separate civil service positions nor do they require more effort or entail more risk.

The panel finds the evidence mixed as to whether the separate requirements of these positions are such as to warrant a pay differential, but it is particularly influenced by one factor. The Chief of Police testified without contradiction that both positions are considered desirable by patrolmen (principally because of such advantages as a regular schedule, an office, and varied, interesting work) and the City has no trouble filling openings in them on a voluntary basis. Given that the attributes of the positions are already viewed as appealing, the panel is unpersuaded that additional compensation is appropriate.

Accordingly, the panel REJECTS the proposal.

Longevity Payments

The Union proposes that longevity payments be increased to \$150 after 5 years, \$250 after 10 years, \$450 after 15 years, and \$650 after 20 years. Although the City had reservations about longevity payments after 5 and 20 years, it agreed to them as part of a larger three-year package. Although agreement was not reached on the package, the panel is persuaded that the proposal is reasonable, comparable with that paid in other jurisdictions, and well within the City's ability to day.

Accordingly, the panel AWARDS that the Union's proposal be adopted.

Reporting Time

The parties agreed on a Union proposal to introduce a 15-minute reporting time provision. The only disagreement was in respect to the effective date. The panel is unable to discern a way to implement an early reporting system retroactively. Accordingly, it AWARDS that the proposal be implemented effective March 13, 1989.

Notice of Schedule Change

The Union proposes that members be guaranteed 36 hours notice of a schedule change, failing which they will be paid overtime for all time worked within the 36 hour period. The City notes that the parties recently established a requirement that work performed before the member has had 16 hours of rest shall be paid at overtime rates. It also notes that schedules often have to be changed to respond to last-minute absences.

The panel notes that there is now effectively a 16-hour notice requirement, and that increasing it to 36 hours could have the effect of significantly increasing the City's overtime costs. While an officer's desire to plan the rest of his activities around a set schedule is readily understandable, the panel is not persuaded that the extended notice is warranted at this time. Accordingly, the panel REJECTS the proposal.

Unused Sick Leave

In response to a Union proposal on unused sick leave, the City offered to increase the payment on retirement to \$17 per unused sick day. At the hearing, the Union indicated that the City's proposal was acceptable. Accordingly, the panel AWARDS a payment of \$17 per unused sick day upon retirement, to a maximum of 165 days, effective March 15, 1989.

Health and Drug Insurance

The Union proposes several changes in the health and prescription drug insurance coverage afforded its members. The Union argues that these increased benefits are reasonable, comparable with those provided elsewhere, and within the City's ability to pay. The City contends that the cost of the proposals is excessive, that the coverage provided is generous, and that the Union provided no justification for its proposals.

The panel finds that while a desire for broader health coverage on the part of employees is readily understandable, the skyrocketing cost of this insurance requires that expanded coverage be considered only with the strongest of justifications. Here the case has not been made that existing coverage is inadequate to meet basic needs or that it is out of line with coverage afforded in comparable jurisdictions.

There is however, a part of the proposal that we find compelling, namely, one that would provide coverage for the surviving spouse and dependents of an employee killed in the line of duty.

Accordingly, the panel AWARDS a new provision to provide all health insurance coverage in effect at the time to the spouse and dependents of a bargaining unit member killed in the line of duty, such coverage to continue for one year after the death of the member. This provision shall take effect upon the execution of this award. The panel REJECTS all other proposals relating to health insurance coverage.

Dental Plan

The parties are in agreement on implementing a dental plan. The Union proposes participation in a plan operated by CWA Local 1170, at a cost to the City of \$16 family and \$8 single per month for 1988 and \$17 and \$8.50 for 1989. The City proposes participation in a plan operated by Blue Cross/Blue Shield, which would actually cost more during the period in question.

The panel finds it difficult to differentiate the relative merits of the two plans, since there are no material differences in coverage. However, we believe that once cost factors have been allowed for, the desires of the employees in selecting benefit coverage should carry great weight. As long as the City remains free to insist that its cost for the CWA plan not exceed an amount it is willing to pay, we believe the CWA plan should be adopted.

Accordingly, the panel AWARDs adoption of the CWA plan effective July 1, 1988. For the period July 1, 1988 to December, 1988, the City shall pay into the plan at the rate of \$16 (family) and \$8 (single) per month, and for the period from January 1, 1989 to December 31, 1989 it shall pay \$17 and \$8.50 monthly.

Clothing Allowance

The Union proposes an increase in the clothing allowance of \$25 for 1988 and another \$25 for 1989. The City was agreeable to this increase in the context of a three-year agreement. However, it offers no real opposition to the proposal as it currently stands, and so the panel AWARDs its adoption.

Bill of Rights

The Union proposes a clause that would outline the rights of members who may be considered for disciplinary action. The Union argues that such a clause is necessary because of certain incidents in the past where it feels fundamental due process was not observed. The City has agreed to inserting some language on the subject, although it resists the Union's proposal largely on the grounds that it would obstruct routine interactions between the employees and departmental command.

The panel has spent much of its deliberations on this issue. Its goal has been to fashion a clause that provides basic protections without hampering the operational effectiveness of the department. It has produced a clause that, in its unanimous judgment, accomplishes these goals. Accordingly, the panel AWARDS the following provision to be inserted into the parties' Agreement, effective with its execution:

BILL OF RIGHTS

Nothing in this section shall be construed to limit the right of the City to correct the actions of officers, or to counsel them without imposing discipline, or to take corrective measures to improve conduct and performance which do not constitute discipline.

Should the City undertake an investigation of the conduct of an employee which may lead to discipline, the employee shall be entitled to the rights and protections listed below. However, these procedures shall not apply to normal and routine inquiries by command concerning an officer's activities. In imposing discipline on an employee, a hearing officer or an arbitrator shall consider the effect of a failure to follow any of the procedures below.

1. The employee shall be informed of the identity of the officer in charge of the investigation as well as that of the officer conducting the interview and all persons present during the interview.

2. The employee shall be informed of the nature of the investigation, including any allegations made against him, before an interview starts.

3. The employee shall have the right to have present a representative of the Union, or he or she may waive such right to representation, provided that the presence of a representative shall not delay or interfere with the interview. The representative shall have an opportunity to pose questions to the employee at the conclusion of the investigating officer's questioning. The officer shall also have the right to make a statement. The Union representative shall not interfere with or impede the investigation.

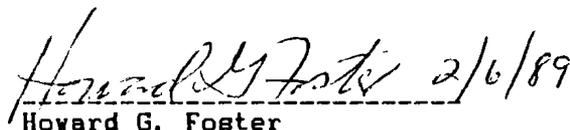
4. The employee shall have the right to a copy of any statement he or she makes to the investigating officer free of charge, provided the statement is reduced to writing.

5. Prior to the filing of departmental charges, the employee shall be afforded an opportunity to speak to the charging officer, if this is feasible under the circumstances and if the employee has not had the opportunity to present his or her views during the investigation.

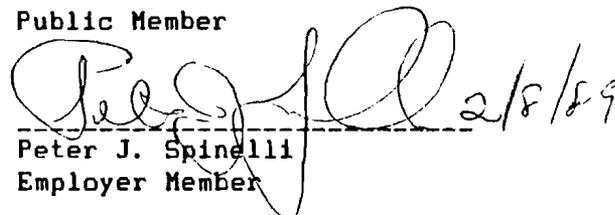
6. The employee shall be given a copy of any warning or memorandum entered in his personnel file. He or she shall have the right to submit a written response for entry into such a file.

7. Formal discipline shall be subject to applicable Civil Service Law procedures unless the employee, with the consent of both the Union and the City, agrees to make a binding election to use the arbitration provisions contained in Article XII of this Agreement.

8. The City will give the employee notice of its concerns regarding his or her conduct or performance within 60 days of the discovery of the acts or omissions that would constitute the basis for discipline, except that such limitation shall not apply where the alleged act would, if proved in a court of appropriate jurisdiction, constitute a crime.

 2/6/89

Howard G. Foster
Public Member

 2/8/89

Peter J. Spinelli
Employer Member



Robert J. Flavin
Employee Organization Member