

State of New York  
Public Employment Relations Board  
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In the Matter of the Interest Arbitration  
between  
CITY OF BINGHAMTON  
and  
BINGHAMTON POLICE BENEVOLENT ASSOCIATION  
Case Number: PERB IA90-02; M89-393  
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OPINION  
AND  
AWARD

Public Arbitration Panel: Ronald E. Kowalski, Ph.D.,  
Public Panel Member and Chairman  
John B. Schamel,  
Employee Organization Panel Member  
Philip Kramer, Esq.,  
Public Employer Panel Member  
Representatives:  
For The Employee Organization: Richard W. Aswad, Esq.  
For The City: Frank W. Miller, Esq.

INTRODUCTION

On May 30, 1990, the New York State Public Employment Relations Board having determined that a dispute continued to exist in negotiations between the City of Binghamton and the Binghamton Police Benevolent Association, and acting under the authority vested in it under Section 209.4 of the Civil Service Law, designated the above listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

Hearings were held on September 6, October 4, and November 13, 1990 in Binghamton, New York. Panel discussions were held between

hearings to clarify the issues. At the hearings, both parties were provided opportunity to introduce evidence, present testimony and to summon witnesses and engage in examination and cross-examination. The parties submitted briefs by December 3, 1990.

On January 4, 1991, the Panel met in executive session. A draft was circulated by the Chairperson, and additional panel discussion continued during the next several weeks. On January 25, 1991, this Award and Opinion were issued.

#### THE STATUTORY STRUCTURE

Subdivision 4 of Section 209, of the Civil Service Law, was enacted to provide a means for resolving negotiations impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209, requires that a petition requesting referral to a Panel contain:

(3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:

(i) terms and conditions of employment that have been agreed upon;

(ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearings on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria which must be taken into consideration, when relevant:

In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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.

The Panel's determination is final and binding upon the parties for the period prescribed by the panel. The maximum period is for two years.

#### BACKGROUND FACTS

The Collective Bargaining Agreement between the parties extended from January 1, 1987 to December 31, 1989. The parties began negotiations for a successor agreement on October 20, 1989 and continued for a number of days. The parties met again on December 15, 1989 in an effort to reach an agreement. Bargaining was not successful and on January 8, 1990 the parties filed a joint declaration of Impasse and requested the appointment of a mediator. The mediation process failed to resolve the outstanding issues and a Petition for Compulsory Interest Arbitration was filed on April 13, 1990 (see Joint Exhibit #1).

#### ISSUES

In accordance with the provisions of Section 200.4 of the New York Civil Service Law, the parties hereto submitted the following issues to the undersigned arbitration panel for its determination:

- (1) Salary
- (2) Longevity Pay
- (3) Health Insurance

- (4) Shift Differential
- (5) Clothing Allowance
- (6) Bereavement Leave/Contract Language
- (7) Fifth Lieutenant

The panel has carefully weighed the extensive evidence and testimony submitted to it during the hearings in arriving at its determinations. The panel has attempted to take a balanced approach to the proposals, one that recognizes the fiscal limitations of the City of Binghamton and the legitimate concerns of the members of the Binghamton Police Benevolent Association. The panel has also applied the criteria set forth in the law in assessing the merits of the parties proposals. The panel will make its award for a two-year Agreement.

#### DISCUSSION AND DETERMINATION OF THE ISSUES

1. Salary:

The Association seeks an increase of 15% for each year of the Collective Bargaining Agreement. The Association also proposes an increase of scale between the sergeant rank and the lieutenant by an additional sum of \$900 in the first year of the contract. The Association argues increases of the size put forth in its proposal are necessary to maintain the competitive position of the City's police. The Association believes the compensation data and testimony it has introduced in the course of these hearings demonstrates the need for a salary increase of this size as well as identifies an inequity in the current scale for the lieutenant rank which justify the need for an additional sum of \$900.

The City has argued that an increase of the size proposed by the Association is not supported by the evidences in the instant case. The City contends a careful examination of salaries with comparable units in the City of Binghamton as well as police in other like cities does not justify an increase of this proportion. The City believes its proposal of four and one-half percent (4 1/2%) would maintain the competitive position of the police and is supported by the evidence.

Determination:

The panel has reviewed the evidence submitted on the issue of salary and believes there is a need for an increase which would maintain the competitive position of the City of Binghamton police. While the evidence clearly indicates an increase of four and one-half percent (4 1/2%) would not achieve this goal, the Association's proposal exceeds that which is necessary to ensure a competitive position both within the City and in the region. The panel has analyzed the evidence adduced at the hearings and concluded that the following wage increase shall be granted:

January 1, 1990 wages of all police and ranks shall be increased by six percent (6%);

January 1, 1991 wages of all police and ranks shall be increased by six percent (6%).

Retroactive payment of salary shall be in the form of a single check to be paid within thirty (30) days of the

receipt of this Award. The proposal to increase the current scale for the lieutenant's rank by \$900 is denied.

2. Longevity Pay:

The Association has proposed a number of changes in the current level and structure for longevity pay. The Association seeks to reduce the number of years required for eligibility from 10 years, 15 years, and 20 years to 8 years, 12 years, and 16 years. The Association believes the longevity rate should be increased at each of these years to \$800, \$1400, and \$1800 respectively. The Association contends a comparison of the current longevity rates with those of the Firefighters in the City of Binghamton and those found in other comparable cities as noted in the Madison report (PBA Exhibit #9) shows a significant disparity at all steps of the structures. The Association believes the new structures and pay scale it has proposed would rectify this inequity.

The City argues the current longevity payment is sufficient when it is placed in the overall framework of wages paid by the City to Association members. The City contends the lack of comparable longevity pay within the City and outside with respect to similar communities is balanced by the Association's base wage which is in excess of other comparable employee units. The City believes its evidence on comparability and salary demonstrates that the City of Binghamton is competitive with similar size cities such as Elmira and Schenectady when total compensation is the basis of that comparison.

Determination:

The panel has reviewed the evidence submitted by the parties on longevity and has determined that some adjustment is warranted in the current rate and structure. The Association clearly lags both the Firefighters in the City and other police units in comparable cities in this region. While the current level of wages for the Association does help to ameliorate this to some degree, a significant adjustment is warranted on this issue. The panel has concluded that a longevity movement shall be granted at eight (8) years rather than 10 years as per the existing Agreement and this change shall be effective as of January 1, 1990. The panel has also determined that the rate of pay for the longevity schedule shall be as follows:

January 1, 1990:		
After 8 years		\$300
After 15 years		\$500
After 20 years		\$700
January 1, 1991:		
After 8 years		\$400
After 15 years		\$700
After 20 years		\$1000

Retroactive payment of longevity shall be in the form of a single check to be paid within sixty (60) days of the receipt of this Award.

3. Health Insurance:

The Association has proposed continuation of 100% premium payment by the City for a family and individuals in the Empire Plan. The Association also seeks to open the health maintenance organization program known as F.H.P. to its members. The Association argues the Empire Plan has provided the City with a savings over the Blue Cross Plan in place for the City's other employees. The Association believes this savings justifies continued payment by the City of 100% of the premium cost as well as opening the F.H.P. plan to its members.

The City seeks an employee contribution to the premium cost of the current health insurance plan. The City contends its proposal to freeze the City's rate of contribution at the 1989 level is warranted in view of the rapid rate of increase in these premium costs in recent years. The Association's members would thereby have to share in this growing burden by assuming part of the cost of the premium. The City argues that other employee groups have made contributions to the containment of health insurance costs in recent Agreements and the Association should follow in this pattern.

Determination:

The panel is not convinced that inequities exist for either party in the current structure of the health insurance plan. The Association elected a number of years ago as the City has noted to

remain with the Empire Plan precluding opening the F.H.P. at full premium payment to its members. The City for its part has saved on the costs this additional benefit might have entailed over recent years. The panel after reviewing the evidence believes this relationship which was agreed to by both parties ought to remain intact until they shall decide mutually to alter it through negotiations. For the reasons stated above, the panel determines there shall be no changes in the current provisions for health insurance in the new Collective Bargaining Agreement.

4. Shift Differential:

The Association has proposed an increase of eight percent (8%) in the shift differential for Relief III and a nine percent (9%) increase in the differential for Relief I. The Association argues increases of this size are justified in order to maintain the competitive position of the Binghamton City police. The Association notes that a number of comparable cities including Rome and Rochester have significantly larger differentials than those currently paid in Binghamton. The Association also seeks to have the differential paid in a lump sum December 1 or biweekly at the choice of the employee.

The City contends the current shift differential is adequate when it is viewed as part of the overall compensation

package. The City argues the wages paid to its police exceed many of the comparable communities identified in the Madison report. The City also believes that any comparison with comparable communities demonstrates that the current shift differential is competitive within the region. The City contends the evidence does not support an increase in the differential.

Determination:

The panel has reviewed the evidence submitted in the issue of an increase in the shift differential. It is clear that an increase of the size proposed by the Association is not warranted when a comparison is made to other bargaining units in the City and to comparable communities in the region. However, some increase is necessary to maintain the existing relationship between base salaries and the differential paid for Relief I and III. The evidence and comparables lead the panel to conclude that this increase should be ten cents (\$.10) per hour for each shift in the two years of the Agreement. The panel therefore determines that the shift differential shall be increased ten cents (\$.10) per hour on January 1, 1990 for each shift and ten cents (\$.10) per hour on January 1, 1991 for each shift. There shall be no change in the method of payment for the shift differential. Payment of retroactive monies for

the shift differential shall be in the form of a single check to be issued within sixty (60) days of the receipt of this Award.

5. Clothing Allowance:

The Association seeks an increase in the uniform allowance of \$100 for each year of the new Agreement. The Association argues that the rapid increase in cleaning costs as well as the expense of replacing a uniform has necessitated both the size of this increase and the collateral request that probationary employees be provided an initial uniform free of cost. The cost of such a uniform is estimated at approximately \$1900.

The City has not opposed in concept an increase in the current uniform allowance but believes it must be regarded as part of the overall compensation package. The City contends the Association's proposal is excessive and not supported by a comparison to other units in the City or to similar communities in the State. The City is opposed for the same reasons to providing new officers with a uniform at no cost to the employee.

Determination:

The panel believes there is a general recognition by both parties of a need to increase the current uniform allowance. This increase must be balanced against the overall costs of the new Collective Bargaining Agreement and be based on the evidence

adduced at the hearings. The panel after examining the evidence on need and comparability would award a \$25.00 increase in each year of the two-year Agreement with no change in the current policy toward initial purchase of uniform by probationary officers.

6. Bereavement Leave/Contract Language:

The Association has submitted proposals to change the current language in the areas of Bereavement Leave as well as Grievance and Vacations. These proposals would increase the current bereavement leave up to four (4) days and change calendar days to working days in the grievance procedure. The Association also seeks a change in the award "maximum" to "minimum" in the provisions on vacation which would end the restrictions currently limiting the selection of vacation among officers. The Association argues each of these proposals make changes which bring these procedures into a more comparable and workable structure for the employees and the City.

The City opposes changes in these provisions of the Collective Bargaining Agreement and asserts that its additional proposals on workers compensation language clarification, on alcohol, smoking policy, modifications of the vacation schedule, and changes in the method of compensation for holiday time, are worthy of merit and should be granted by the panel. These proposals are opposed by the Association which argues they would deprive their members of benefits they currently

enjoy under the existing Agreement.

Determination:

The panel has heard limited testimony on these issues in the course of the hearings. While some of these proposals may have merit, the panel has not seen sufficient evidence to indicate that the current provisions in the Collective Bargaining Agreement in these areas ought to be altered in the fashion sought by the parties. The panel therefore denies these proposals.

7. Fifth Lieutenant:

The City has proposed creation of a fifth police lieutenant who would be allowed to work a flexible schedule. The City argues the additional lieutenant would ensure that a senior officer could be present during all shifts, even peak vacation periods.

The Association contends the City has failed to demonstrate a need for the additional lieutenant with a flexible schedule. The Association opposes creation of this position since it produces different work schedules for similar employees.

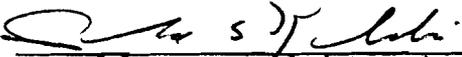
Determination:

The proposal to create a fifth lieutenant's position was brought to the panel toward the end of its hearings. The panel has not been persuaded

that the current work schedule does not provide sufficient coverage by an appropriate senior level of officer. For this reason, the panel denies this proposal.

AFFIRMATION

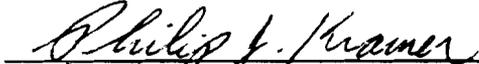
We do hereby affirm upon our oaths as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

  
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Ronald E. Kowalski, Ph.D.,  
Public Panel Member and Chairman

Date: Jan, 28, 1991

Concur: Philip J. Kramer

Dissent: \_\_\_\_\_

  
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Philip Kramer, Esq.,  
Public Employer Panel Member

Date: January 28, 1991

Concur:  \_\_\_\_\_

Dissent: \_\_\_\_\_

  
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John B. Schamel,  
Employee Organization Panel Member

Date: 1-28-91