

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR

In the Matter of the Interest Arbitration :

between :

THE CITY OF BATAVIA :

and :

BATAVIA POLICE BENEVOLENT ASSOCIATION :

Case No. IA90-0008
M89-440

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
MAY 24 1991
CONCILIATION

PANEL MEMBERS:

MONA MILLER, Chair & Public Panel Member
JOSEPH L. RANDAZZO, ESQ., Employer, Public Panel Member
ANTHONY J. DE MARIE, ESQ., Employee Organization, Public
Panel Member

APPEARANCES:

For the City:

N.J. Stocker, Labor Consultant
William Reemsten, City Administrator
Michael Consadine, Administrative Assistant

For the Association:

Dennis P. Hamilton, Attorney
Randy Baker, Union Negotiator
Mark L. Robinson, Lieutenant
Darryl D. Sehm, Officer

PRELIMINARY STATEMENT:

This arbitration award is the result of the collective bargaining impasse between the City of Batavia, hereinafter referred to as the "City" and the Batavia Police Benevolent Association, hereinafter referred to as the "Association".

The City of Batavia is situated in Genesee County, covers 5.2 square miles and has an approximate population of 15,610. The Association is bargaining agent for twenty-five police personnel (23 police officers and 2 youth officers).

The City has four other units of employees: IAFF, AFSCME, CSEA, and a non-union group.

In reaching its decisions, the Panel used the data supplied by the parties in support of their positions and determined the relevancy and weight of such data for each proposal.

The dispute concerns the terms of the agreement to replace the collective bargaining agreement which expired on March 31, 1990. The parties began negotiations in the fall of 1989. After negotiations and mediation failed to resolve the impasse, the Public Employment Relations Board appointed the undersigned to serve as a Public Arbitration Panel to determine the terms of a successor agreement, pursuant to Section 209.4 of the Civil Service Law.

A hearing in the matter was held on January 19, 1991 at which time the parties were afforded full opportunity to set forth their positions, offer supporting evidence, and examine and cross-examine witnesses. At the conclusion of the hearing, the record was closed. The Panel then met in Executive Session on March 19 and 21, 1991. The Award is based upon careful

consideration of all of the facts, evidence, exhibits and documents submitted and in accord with the applicable criteria mandated by Statute as follows:

Section 209.4 (v) N.Y. Civil Service Law

The public arbitration panel shall make a just and reasonable determination of the matters in dispute. 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 considered each of the unresolved issues submitted for its consideration and has reached a unanimous decision on each of them. Pursuant to the statutory authority the duration of this Award shall be for two years from the expiration date of March 31, 1990 through March 31, 1992. All terms and conditions not addressed by this Award remain as presently written in the Collective Bargaining Agreement.

ITEMS IN DISPUTE:

- Salaries
- Accumulated time-off
- Call-in-pay
- Court pay
- Clothing allowance
- K-9 Officers
- Sick leave
- Shift bidding
- Holidays
- Vacation leave
- Personal leave
- Accounting of time off
- Bereavement leave
- Health insurance
- Working conditions
- Managed health care
- Increases in health insurance
- Longevity
- Performance evaluation
- Drug testing
- Tuition reimbursement
- Sick leave

PROPOSALS OF THE ASSOCIATION:

1. Salaries

The Association is seeking an 8% increase in each of two years (4/1/90-3/31/90 and 4/1/91-3/31/92). The City responds with 4% and 4%.

The Association compares Batavia with the City of Dunkirk, Village of Kenmore, Town of Lancaster, and Town of Orchard Park, all of which have similar sized populations and police forces. All other communities in the Eighth Judicial District are used as a secondary comparison. The City agrees that Dunkirk is comparable but rejects the others as not being cities and as different in their taxing structure. The general comparison to all communities in the Eighth Judicial District is viewed as inappropriate and irrelevant by the City. The Panel has determined that comparability among cities of similar size, population and police force meets the statutory requirements, and that towns and villages, similarly sized, do have relevance for purposes of comparing average salaries of police officers.

CONTENTIONS OF THE ASSOCIATION:

The Association argues that its proposal is reasonable. The average salary of a Batavia Police Officer in the second year is \$5,000 less than the comparisons used by the Association (AX 1). Even with an 8% increase, the Batavia officer will remain below average in salary. The Association argues that the city has the ability to pay, as evidenced by its declining tax rate (AX 8, 9), the anticipated tax surplus (AX 10), and the decline in Employer contributions to the retirement system (JX 11). The CPI in March, 1990 was up 6% from the previous year (AX 16), and the Association has not kept pace with cost-of-living increases.

CONTENTIONS OF THE CITY:

The City compares Batavia to Lockport, Tonawanda, Olean, and, like the Association, to Dunkirk. Its offer of 4% is based upon its arguments of a declining industrial tax base, rising water and sewer rates, and a fund balance which has declined from an average of one million to \$300,000. Projected state funding cuts in revenue sharing and the consolidated Highway Improvement Program also are cited as reasons for the City's declining ability to fund large employee increases.

DISCUSSION:

The data offered by both the Association and the City indicate that the Batavia Police are paid less, on average, than their counterparts. Other City bargaining units and employees in the City have negotiated or been granted a 6% increase in salaries. While all public employers in New York State are experiencing difficulties as a result of state funding cuts, the City of Batavia is not unable to fund a comparable and reasonable increase to these City employees.

AWARD:

Effective April 1, 1990, the base annual salaries of bargaining unit members shall be increased by 6% of the base rate of the prior year.

Effective April 1, 1991, the base annual salaries of bargaining unit members shall be increased by 6% of the base rate of the prior year.

2. Accumulated Time-Off (Article V, 3.a [2])

The Association is seeking an increase in the accumulation of compensatory time off from 100 hours, in the present contract, to 150 hours. the City argues that staffing requirements make it difficult to be always fair to officers for the taking of compensatory time.

AWARD:

The panel reviewed the comparable police forces and concluded that accumulation of compensatory time off shall be increased to 150 hours. All accumulated time must be taken before retirement.

3. Call-In Pay (Article V, 3.b [1])

The Association seeks to increase call-in pay from the minimum of 2 hours at time and one-half to a minimum of 3 hours at time and one-half. The City points out that Batavia is a small community where officers live within a reasonably short distance for call-in purposes.

AWARD:

The proposal to increase minimum hours for overtime call-in pay is denied.

4. Court Pay (Article V, 3.c)

The Association seeks to expand "court pay" to include appearances before governmental or regulatory agencies, grand juries and a prosecutor's office. The intent is to compensate officers where such appearances are part of their

job. The City claims the proposal is too broad and could apply to volunteer appearances.

AWARD:

The Panel agrees that the definition of required appearances needs amplification and clarification to include compensation for required appearances before other administrative agencies. The contract language is as follows:

When an officer is required to make an appearance before a court or government administrative agency in the course of his employment during a time other than his or her regular work shift, he or she shall receive compensation at the rate of time and one-half for a minimum of two (2) hours, except as follows...

5. Clothing Allowance (Article V, 5)

The Association is proposing that the present "quartermaster system" be replaced by a payment system, as is done in all other communities. The City argues that its system of providing uniforms and replacements works well and ensures proper appearance.

AWARD:

The Panel considered comparable practices and contracts and noted that the City has just changed the color of uniforms. The Panel orders a clothing allowance to take effect May 1, 1991. The Award takes into account the reasonableness of individual responsibility for purchasing uniforms balanced with the City's need to assure uniform standards are maintained. The contract language is as follows:

All police officers in the unit covered by this Agreement shall receive an annual uniform allowance of Three Hundred Dollars (\$300.00) for the purchase and replacement of uniforms and Two Hundred Dollars (\$200.00) for the maintenance of uniforms. These amounts are to be apid during the month of May. The specific type and quality of such uniforms shall be determined by the Chief. Equipment and accessories will be purchased by the City. Equipment includes but is not limited to these items: gunbelt, rain slicker, handcuffs and case, baton holder, weapon, magazines, holster and pouch.

It is understood that any police officers who purchase or replace uniforms, accessories, weapon or holster shall be required to purchase same from the existing stock of the City at prices paid by the City for such.

6. K-9 Officers (no present contract language)

The Association is seeking \$110-\$120 a month for the care of the dog plus kenneling fees. the City points out that it now provides \$2.50 per day for care when the officer actually has the dog in his possession and pays kenneling and vet fees.

AWARD:

The Panel agrees to incorporate the following language, effective April 1, 1991, into the collective bargaining agreement.

Any police officer in the unit covered by this Agreement who is assigned to K-9 Duty shall receive Two Dollars Fifty Cents (\$2.50) per calendar day for such duty. The City shall provide or pay all expenses for food, medical and kenneling and the cost of boarding and kenneling of the K-9 dogs when the K-9 Officer is out of town. All expenses in the foregoing for which a K-9 Officer is to be reimbursed shall be subject to prior approval by the City and substantiation on any basis determined by the City.

Nothing contained herein shall be construed as requiring the City or the Chief to utilize a K-9 Unit or K-9 Officers.

7. Sick Leave (Article IX)

The Association seeks to:

- (1) increase accumulation of sick leave from 12 to 15 days per year;
- (2) to increase the cash credit at retirement for unused sick days from 50% to 100% of base pay for each unused sick day;
- (3) to establish a sick leave bank;
- (4) to allow 3 days annually of sick leave to be used for family illness;
- (5) to eliminate the sick leave penalty of pay deductions for three incidents of absenteeism.

The City argues that these proposals are expensive, unfair, and unreasonable because:

- 1) Accumulation increases will impact the retirement benefits for unused sick leave.

2) The incentive not to abuse sick leave is maintained by the present system of health insurance credit for unused sick days at the time of retirement or a 50% cash out.

3) Sick leave banks can be used by those who abuse sick leave. Presently, the City will advance sick days (with a limit) to the employee.

4) No broadening of the use of sick leave is viewed as necessary.

5) The penalty serves to deter abuse of sick leave.

AWARD:

Taking into consideration the comparable criteria and the needs of employees, employers, and facilities, the Panel awards the following:

1. Increase annual sick leave accumulation from 12 days to 15 days, effective April 1, 1990.

2. Retain the present system for credit of sick days at retirement.

3. Allow the Association to establish a voluntary sick bank program.

4. Allow one day per year of sick leave to be used for family illness, effective April 1, 1990.

5. Remove the penalty clause for sick leave.

8. Shift Bidding (Article VII, 3)

The Association seeks to change annual shift bidding by seniority with three years of service to semi-annual and two years of service.

The City argues that semi-annual shift bidding is disruptive and could interfere with vacation scheduling, which is done annually.

AWARD:

The Panel deliberated on the intent of this proposal. Having determined that the problem arises when vacancies arise within the year and are to be filled, the Panel considered the balance between the principle of seniority and management's need to ensure adequate staffing. The Panel concluded the following language meets both parties' needs:

Police officers shall be assigned to a steady platoon with the police officer having the right, as far as practicable, of choosing his tour of duty on the basis of seniority. However, the Association recognizes the right of the head of the Department to assign men with less than three (3) years seniority in rank in any shift. This shall be done annually by the second Sunday in January. Vacancies which occur on a platoon during the year which the Chief determines to fill shall be filled on the basis of seniority. In such circumstance, if the vacation of the transferring officer conflicts with the scheduled vacation of any officer on the platoon to which transferred, such transferring officer shall re-select his vacation to avoid any such conflict without regard to seniority.

9. Holidays (Article VIII, 1)

The Association seeks one additional holiday beginning April 1, 1990 to the current 11-1/2 holidays in the current contract.

The City rejects the demand on economic grounds.

AWARD:

The Panel finds that the addition of one paid holiday, beginning April 1, 1990, is comparable to other similar police forces and costs the City a manageable amount. The designated holiday shall be Martin Luther King Day.

10. Vacation Leave

Settled as agreed to by the parties.

11. Personal Leave (Article IX, 12)

The Association is seeking an increase in personal leave days from 1 day to 3 days.

The City argues that current personal leave time off is sufficient and that increasing leave time requires coverage by other officers at a cost to the City.

AWARD:

The Panel considered comparable leave patterns which indicate the Batavia Officers receive fewer personal leave days than other police forces and concluded that one additional day of personal leave, effective April 1, 1990, is reasonable.

12. Accounting of Time Off (No current language)

The Association wants officers to be provided an accounting of accruals on a quarterly basis.

The City points out that requests for time off yield such information.

AWARD:

The Panel denies the proposal.

13. Bereavement Leave (Article X)

The Association requests bereavement leave of 3 workdays be expanded to include all immediate family and 1 work day be granted for death of a grandparent, grandchild, aunt or uncle. Bereavement leave which extends beyond the date of interment and is verifiably related to the death may be granted by the Chief or his designee.

The City claims the current agreements on bereavement leave fall within the norm.

AWARD:

The Panel agrees that bereavement leave is commonly extended to certain designated family members and that travel or other extenuating circumstances may necessitate time beyond interment. Therefore, the Panel rules that grandparents and grandchildren should be added to the current language, as well as any other family members who reside in the same household with the employee. Leave time beyond the date of interment should be requested as soon as possible and may be granted by the Chief or his designee.

14. Health Insurance (Article XII)

The Association is asking the City to provide Rider 8 for student children to age 23 and to continue to provide health insurance, without cost to the officer, for officers who retire, until age 65.

The City rejects the expense of Rider 8, which benefits only those members with children, and which currently is available to employees who pay its cost. Health insurance costs for retirees are partly paid for out of unused sick days. Paying the entire cost of a retiree's health insurance would remove the incentive to conserve sick days and would amount to an obligation of undetermined length.

AWARD:

The Panel denies the proposal.

15. Working Conditions (Article XVI)

XVI, 8. Polygraph Test

The Association seeks elimination of the language which requires an officer to submit to a polygraph as part of a criminal investigation.

XVI, 5. Smoking

The Association requests smoking be permitted in the identification room except when objected to by another employee working in the room.

XVI, 7.

The Association seeks a reduction in penalty from \$100 per month to \$10 for failure to comply with height-weight standards.

Personnel Files (No current language)

The Association wants a single personnel file for each officer, the right to examine, with reasonable notice,

documents placed in it, and deletion of unfounded complaints from the file.

The City wishes to maintain some language on the use of polygraphs in criminal investigations. It rejects smoking in the building as being in non-compliance with local statute. The height-weight penalty is only applied to violators after all else has failed, but the City does agree that the height-weight table should be replaced with a mutually acceptable, updated version. Two personnel files are kept, one for payroll and one in the Police Department and are available for inspection by an officer who requests such.

AWARD:

The Panel considered these working conditions as compared to other employees within the City, as compared to similar police units, and in terms of acceptable policy and procedures designed to foster harmonious relations. The following is determined:

1. Article XVI, 8 shall be rewritten to prohibit polygraph testing of police officers.
2. The smoking proposal is denied. Smoking is prohibited by law in municipal buildings.
3. The height-weight penalty shall be reduced to \$10 a month. A new and updated table from U.S. Government sources will be used.

4. Any file related to personnel matters will be used and available as follows:

All police officers in the unit covered by this Agreement shall be provided with a copy of any written warning, reprimand, suspension or other disciplinary action and an opportunity to respond to same in writing. In addition, such officers shall be provided the opportunity, upon reasonable notice, to review any file maintained by the City or Chief containing documentation relative to such disciplinary action and an opportunity to respond to same in writing.

PROPOSALS OF THE CITY:

1. Managed health care

The parties have reached agreement on this issue.

2. Increases in health insurance

The City proposes employees pay increases from 1989 rates.

AWARD:

The proposal is denied.

3. Longevity

The City proposes elimination of longevity payments.

AWARD:

The proposal is denied.

4. Performance evaluation

The City has developed a performance evaluation form and would like it accepted by the Association.

AWARD:

The proposal is denied.

5. Drug Testing

The City seeks to initiate random drug testing of police officers.

AWARD:

The proposal is denied.

6. Tuition reimbursement

The parties have reached agreement on this issue.

7. Sick leave

The City proposes deletion of sick leave provisions and replacement of those benefits with Disability Benefits Insurance.

AWARD:

The proposal is denied.

AFFIRMATION

This Award constitutes the entire Award of the Panel concerning all issues properly before it. The undersigned are all in agreement and concur with each and every one of the items of this Award as set forth and so signify by their signatures below.

Dated: May 20, 1991 Mona Miller
Mona Miller
Public Panel Member & Chair

Dated: May 20, 1991 Anthony J. De Marie
Anthony J. De Marie
Employee Organization,
Panel Member

Dated: May 20, 1991 Joseph L. Randazzo
Joseph L. Randazzo
Public Employer, Panel Member