

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE: IA 93-033; M 93-258

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
APR 01 1993
CONCILIATION

* * * * *

In The Matter of Interest Arbitration

- between - *

SALAMANCA POLICE UNIT OF CATTARAUGUS
COUNTY, LOCAL 805 (CSEA) AND
AFSCME LOCAL 1000

A W A R D
O F
A R B I T R A T I O N

- and - *

CITY OF SALAMANCA

A N D
C H A I R ' S
O P I N I O N

* * * * *

IN ATTENDANCE

For the Police Unit

Michael G. Painter, Labor Relations Specialist, CSEA Inc.
Paul B. Woodin, President, Local 805
David H. Kinnaird, Vice President, Local 805

For the City

Earl C. Knight, Spokesman

For the Panel

Samuel Cugalj, Public Panel Member and Chair
Edward Gimbrone, Employer Panel Member
Mark Higgins, Employee Organization Panel Member

BACKGROUND

The Collective Bargaining Agreement between the City of Salamanca, Cattaraugus County, N.Y. and the Salamanca Police Unit of Cattaraugus County, Local 805, CSEA, Inc., AFSCME Local 1000, (hereinafter referred to as "CITY" and "POLICE UNIT" respectively) expired on March 31, 1993 for the twelve (12) full time and three (3) part time employees. Bargaining sessions were held between the parties, then with a State Mediator, but were unsuccessful in resolving the open issues. On December 31, 1993, the New York State Public Employment Relations Board (PERB) designated a three (3) member Public Arbitration Panel, under Section 209.4 of the New York Civil Service Law, to resolve the impasse. The parties were not prepared to proceed to arbitration until March 3, 1994, when a Hearing was held in Salamanca, New York in this regard. The Panel received Hearing Briefs, twenty-eight (28) CITY Exhibits, and seven (7) ASSOCIATION Exhibits (in a multi-indexed Brief). The parties indicated at the conclusion of the Hearing that they had full opportunity to present argument in support of their positions on the open items, introduce evidence and witnesses and to engage in their examination and cross-examination. They were given the opportunity to file Post Hearing Briefs but both declined.

The Panel reviewed their material independently, and met in Buffalo, New York in Executive Session on March 14 to discuss the structure of the AWARD in view of satisfying Section 209.4 (iii through vi) as follows:

"(v) 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 the employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees generally in public and private employment in comparable communities.

b. the interest 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 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 of salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off, and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority."

A W A R D

ISSUE 1 - WAGES AND RETROACTIVITY (ARTICLE VI)

- a) Effective 4/1/93, all positions in the 4/1/92 full time wage schedule shall be increased by two hundred fifty (250.00), and on-step employees will receive their increment as Article VI provides.

- b) Effective 4/1/93, the hourly rate for part time police officers shall increase by twelve (\$.12) per hour.
- c) Effective 4/1/94, all positions in the 4/1/93 full time wage schedule shall be increased by one thousand one hundred (\$1,100.00), and on-step employees will receive their increment as Article VI provides.
- d) Effective 4/1/94, the hourly rate for part time police officers shall increase by thirty (\$.30) per hour.

ISSUE 2 - OVERTIME COMPENSATION (ARTICLE IX)

The POLICE UNIT's request for a time and one-half (1 and 1/2) overtime rate is DENIED.

ISSUE 3 - OVERTIME COMPENSATION (ARTICLE IX, SECTION 3)

The POLICE UNIT's request for a "rotational overtime list by seniority" is DENIED.

ISSUE 4 - OVERTIME COMPENSATION (ARTICLE IX, SECTION 3)

The POLICE UNIT's request to add "and shall be rotated", to the current section, is GRANTED.

ISSUE 5 - ADJUSTMENT OF GRIEVANCES (ARTICLE XXV, STEP 1)

The POLICE UNIT's request to replace "CSEA Grievance Man", in the current section, with "Unit President or Shop Steward" is GRANTED.

ISSUE 6 - ADJUSTMENT OF GRIEVANCES (ARTICLE XXV, STEP 2)

The POLICE UNIT's request to replace "Grievance Committee Chairman", in the current section, with "Unit President or Shop Steward" is GRANTED.

ISSUE 7 - ADJUSTMENT OF GRIEVANCES (ARTICLE XXV, STEP 3)

The POLICE UNIT's request to replace "Chapter President, members of the Unit Grievance Committee", in the current section, with "Unit President and/or Shop Steward" is GRANTED.

ISSUE 8 - ADJUSTMENT OF GRIEVANCES (ARTICLE XXV, STEP 4)

The POLICE UNIT's request to replace "either party", in the current section, with "the employer, or CSEA, Inc. the Union" is GRANTED.

ISSUE 9 - ADJUSTMENT OF GRIEVANCES (PAGE 19)

The POLICE UNIT's request to replace "three employees of the City", in the current section, with "Unit President and/or his designee" is GRANTED.

ISSUE 10 - BASE SALARIES (ARTICLE XXXI)

The POLICE UNIT's request to change this section to reflect the wage change awarded in Issue 1 is GRANTED.

ISSUE 11 - SENIORITY (ARTICLE XXII)

The CITY's request to delete the current 6 month probationary period is GRANTED for all new entered on the payroll after the the date of this AWARD.

ISSUE 12 - TERM OF AGREEMENT

This successor labor contract shall be in effect from 4/1/93 through 3/31/95.

ALL OTHER DEMANDS AND ISSUES BROUGHT UP IN THESE NEGOTIATIONS ARE CONSIDERED TO BE WITHDRAWN.

ALL SECTIONS OF THE EXPIRED COLLECTIVE BARGAINING AGREEMENT, NOT AFFECTED BY THIS AWARD, AND NOT AFFECTED BY FORCE OF LAW, REMAIN INTACT IN THE SUCCESSOR AGREEMENT.

STATE OF NEW YORK }
COUNTY OF ERIE }

On this 29th day of March 1994, before me personally came and appeared Samuel Cugalj, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

SS: PAULA M. MUMM
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4-15-94
Paula M. Mumm

Samuel Cugalj
SAMUEL CUGALJ
Public Panel Member and Chairman
Concurs

STATE OF NEW YORK }
COUNTY OF ERIE }

On this 21 day of March 1994, before me personally came and appeared Mark O. Higgins, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

SS: SHARON G. THOMAS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1995
Sharon G. Thomas

Mark Higgins
MARK O. HIGGINS
Employee Organization Panel
Member
Dissents on Issue 1 and 10

STATE OF NEW YORK }
COUNTY OF CATTARAUGUS }

On this 28th day of March 1994, before me personally came and appeared Edward Gimbrone, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

SS: April M. Vecchiarella, # 4815706
Notary Public
State of New York, County of Cattaraugus
My Commission Expires 8-31-94

Edward Gimbrone
EDWARD GIMBRONE
Employer Panel Member
Concurs

April M. Vecchiarella

depending on years of service. When they are included, the overall wage increase ranges from 1.3% for police officers receiving no increment, to 2.8% for officers receiving the maximum increment. The 1993-94 North Central non-metropolitan Cost of Living Index change was noted at 2.8%.

Admittedly, wage comparisons with nearby communities are difficult due to the lack of similarity, and cross-state comparisons are not meaningful. Wage comparisons for 1994 which provide some guidance are: Cattaraugus County Deputy Sheriff - \$22,588 to \$26,644 (more pertinent); nearby Chautauqua County Deputy Sheriff - \$24,772 to \$31,803 (less pertinent). The Chair believes the Panel understands the importance of paying competitive wages. To do so is in the public interest, because it can provide the impetus toward increased morale, performance and efficiency. The Chair believes there is an appreciation by CITY representatives for the work of the POLICE UNIT. The knotty problem is how to properly fund more competitive wages, in view of some of the restraints discussed below.

While the first year wage improvement herein was not competitive, the wage schedule AWARDED in the second year was enhanced by eleven hundred (\$1,100.00). This raised the base for police officers to \$21,293 for 1994-95. It still lags in the wage comparison above, however. The Panel noted the CITY budgeted one thousand (\$1,000.00) per police officer for wage schedule improvements in its 1994-95 budget, and the Panel adjusted this modestly in its AWARD. Over a two (2) year period, total wage

CHAIR'S OPINION

In determining the preceding **AWARD**, the Panel did take into account its statutory responsibilities under Section 209.4 of the Taylor Law, as detailed earlier. Our rationale for this **AWARD** is summarized below.

ISSUES 1 AND 10 - WAGES

Both parties were not realistic in their wage proposals. The POLICE UNIT sought hourly wage increases of seventy-five (\$.75) (8%) in each year; the CITY offered \$250 (1.3%) to the wage schedule and no wage proposal for the second year. The Panel had access to some wage data of employees doing similar work, requiring similar training and job hazards, and other CITY employee wage data.

The Panel basically structured its **AWARD** over a two (2) year period. The first year of the successor agreement expires 3-31-94, and the CITY's fiscal year expires on the same date. The POLICE UNIT is the only group in the CITY who have not settled for 1993-94. The Panel felt reluctant to disturb the pattern of \$250 plus increments negotiated/paid to its other employees at this late stage in the current fiscal year. The \$250 first-year increase in the wage schedule reflects a 1.3% improvement in base wages and brings full time police officer wages to \$20,193 annually. Increments range from sixty (\$60) to three hundred (\$300) per year

increases AWARDED average 3.3% (with no increment), and 4.9% (with maximum increment) per year.

An independent auditor's report for the year ending 3/31/92 reflects sound financial management by the responsible authorities in the CITY, despite the restraints discussed below. The Report of the Comptroller on Municipal Affairs for the fiscal year ending 1991 showed the CITY's full property valuation at \$73,463,000 and an assessed property valuation of \$26,417,000. The 1994-95 budget contains all but twelve hundred (\$1,200) of the wage increase AWARDED and increment monies are funded separately. The CITY has the fiscal wherewithal to support this AWARD.

There are several wage restraints. The impact of having approximately 85% of its land on Seneca Nation territory creates an unusual fiscal situation in many respects for the CITY. It is an understatement to say the CITY's individual and business taxpayers have been faced with problems associated with their Nation lease renewals. Aggregate lease payments from taxpayers to the Nation increased from \$57,000 per year to \$800,000 per year. Essentially lease payments are a fourth (4) tax for property owners, and there is an escalation clause providing for a five (5) year re-evaluation based on fair market land value. The CITY acts as a collector of funds for lease payments, and they are responsible for any shortfall if taxpayers fail to pay their lease. In 1993-94, the shortfall amounted to \$169,451 for the CITY, for which it must now seek reimbursement, if it can, from these taxpayers. Also, the lease allows the Nation to confiscate the land when lease payments

are not made, and this property is then removed from the CITY's tax rolls. The CITY's property valuation dropped \$635,002 from 1991-92 through 1993-94; population dropped from 7,877 in 1970 to 6,100 in the 1990 census; sales tax revenue dropped by \$95,000 and revenue sharing by \$148,000; CITY taxes have increased by 28% in the last three (3) years; its 1992-93 budget increased by twelve (12%) over the previous year, the 1993-94 budget showing an increase of 8.2% over last year, and with the projected 1994-95 budget increasing 8.4%-12%. Services have been diminishing with the closing of its only hospital, although the emergency ward was recently re-opened. The CITY also recently began funding ambulance service again. Area job losses continue for its taxpayers, including Bush Industries (-250 employees), Seneca Craftsman (-126), B&O Railroad (-100), Selco (-65), Donver (-30), King Windows (-30).

The Employee Organization Panel Member vigorously dissented on this issue. He believes the overall wage level of the POLICE UNIT is inadequate when compared to local and non-local communities, including State Park police officers and Environmental Conservation officers. This negative wage differential should be reduced more aggressively. He argues the POLICE UNIT should not have to carry a greater share of the CITY's cost containment efforts. By any base of comparison, he believes a larger wage increase is called for.

ISSUE 2 - OVERTIME COMPENSATION

Although the POLICE UNIT's comparison show a prevailing use of a time and one-half rate paid for daily/weekly overtime, the Chair believes, at this time, the CITY is not financially prepared to incur larger police overtime costs. Limited resources were allocated to the wage issue above.

ISSUES 3 AND 4 - OVERTIME COMPENSATION

There was no prevailing practice of how overtime is assigned in other communities when the POLICE UNIT's comparison on this issue was reviewed by the Panel. The current practice in the CITY allows for "rotation" on an overtime wheel. No overriding problems were brought to the Panel's attention to justify deviating from the current practice.

ISSUES 5,6,7,8,9, - ADJUSTMENT OF GRIEVANCES (STEPS 1-4)

The Panel understood the wording changes requested by the POLICE UNIT to be a matter of updating their Agreement to reflect organizational changes within the CSEA and this Local. In some cases, wording changes eliminated references to the male gender, and substituting instead, a neutral gender phrase. None of the changes should impact the CITY in any way.

ISSUE 12 - TERM OF AGREEMENT

The Panel unanimously agreed on a two (2) agreement year, with the first year of the AWARD almost over, and the need to bring labor relations stability to their relationship.

In conclusion, the Chair wishes to express his appreciation to the representatives of the CITY and the POLICE UNIT for their professional work, and especially to the two (2) Panel members, for their diligence, patience and cooperation in resolving this impasse.

March 29, 1994
Buffalo, New York



SAMUEL CUGALJ
PUBLIC PANEL MEMBER AND CHAIR

cc: Richard A. Curreri, Director of Conciliation, PERB
Charles Leonard, Supervising Mediator, Buffalo PERB