

State of New York
Public Employment Relations Board

Interest Arbitration between

City of Buffalo

and

Buffalo Police Benevolent Association

No. IA96-035; M96-297

NYSP PUBLIC EMPLOYMENT RELATIONS BOARD
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DEC 31 1997

CONCILIATION

Before:

Robert J. Rabin, Public Member and Chairperson
Edward G. Piwowarczyk, Employer Member
Robert P. Meegan, Jr., Union Member

Decision and Award of Panel

This Interest Arbitration Panel was appointed on March 18, 1997. Pre-hearing briefs were filed, and evidence was taken and arguments presented at a hearing on July 1 and 2, 1997, in Buffalo, N.Y. The parties submitted post-hearing briefs at the end of August. The Panel members met in Executive Session on October 23, and subsequently exchanged positions in writing and by phone.

Issues

The primary issue in this dispute is economic. It is closely tied to several demands raised by the City for greater efficiencies and cost savings in the deployment of personnel, in the handling of disciplinary matters, and health insurance. The Panel will discuss the economic issues before turning to the demands pressed by the City.

This dispute covers a two year contractual period of July 1, 1996 to June 30, 1998. The PBA seeks a salary increase of 6% in each year, or a cost of living adjustment plus 2% in each year. The PBA also seeks a host of other economic improvements in areas that will be explained. The City proposes a salary freeze for both years. While it opposes a salary increase, it says that any increase awarded by the Panel must be tied to the cost saving resulting from its demands regarding

deployment, discipline and health insurance.

Economic Issues

The economic data, particularly as set out in the City's pre-hearing brief at page 25-40, compares police salaries in Buffalo with those of several nearby jurisdictions used historically as comparisons, such as Amherst, Cheektowaga, Hamburg, Tonawanda and West Seneca, as well as Rochester, the closest large city. Whether you look at the annual salary or the average hourly rates, the figures for 1996 and 1997 show that Buffalo police salaries are roughly equivalent to those in the comparison districts (tables at pages 37-39 of City brief). Since the Buffalo police officers have not had an increase for the last two years, for purposes of comparison the Panel assumed an aggregate 6% increase in the Buffalo police salaries for that period. With such an adjustment, the hourly rate for the highest Buffalo patrol officer would be in line with those of the comparison districts in the nearby area (p. 39). The same adjustment would bring the highest police officer salary to \$45,563, above the listed 1997 salaries in the comparison localities for 1997 (p. 38).

The PBA points out that Buffalo police salaries have run a sporadic course over the last 15 or so years (p. 16 of PBA presentation of Joseph Madison), and that the increases in the last two years, 2% and 1%, were especially low. But while the aggregate increases over these years may be slightly lower than the comparison districts, Buffalo salaries still wind up at or near the top of the comparison group. As the next section indicates, the City of Buffalo is not well off financially, and the comparison cities probably have stronger economic bases. For this reason, the Panel concludes that the salary of Buffalo police officers is competitive with the neighboring units.

The PBA does not dispute the salary comparison, but argues that the true picture must take into account the total compensation package, including such items as night shift differential, education pay differential, holidays and personal days, vacation allowances, uniform provisions and vision care. When all these figures are put together, Buffalo police lag about 6% behind their counterparts, as shown in the table at page 4 of the Madison presentation. The City does not dispute these figures as far as they go, but asserts they should be offset by the additional income an officer receives in Buffalo from overtime and court duty, as well as by the savings to the officer of not having to contribute to any health insurance premiums.

The Panel concludes that the most effective mode of comparison is to treat salaries as one item, and other economic benefits as a separate item. The salary increase should keep pace with the increases in the comparison districts. The other economic items will be discussed separately.

Economic Constraints on the City

The Taylor Law requires the Panel to consider "the interests and welfare of the public and the financial ability of the public employer to pay (Civil Service Law Sec. 209(4)(C)(v))." As the PBA correctly points out, the City does not plead inability to pay in this proceeding, nor, most likely, could it do so. But the facts do back up the City's assertion that it has only a limited ability to pay.

The evidence shows that over the years the percentage of state aid has decreased, putting more and more of a burden on the property tax to carry the load of financing city operations. At the same time, residential property values are decreasing. Meanwhile, police and fire protection consume an increasingly large share of the municipal budget. This means the individual taxpayer pays more and more for this vital service, and, with a relatively static budget, receives fewer and fewer other services, such as street repair and maintenance. The City has room under its constitutional ceiling to increase property taxes, but the wisdom and fairness of such an increase is a different matter. As the City's budget director points out, as you raise taxes without improving services, residents realize they can get a better deal elsewhere. This creates an incentive for the better off to move, leaving behind those least able to afford to support the City and the most in need of its services. An indicator of the tax squeeze is that the City had to rely on a garbage user fee to take some of the pressure off the property tax.

The City has enjoyed comfortable fund balances of up to \$30 million in the past, but suffered through years when the fund balance dropped to \$20 million in the hole. The current fund balance is a modest \$10 million, much of which is already encumbered for other purposes than salary. Use of the fund balance is at best a one-time cure, for if it is used to fund a salary increase it simply pushes the financial pressure into the next year. Recognition of the City's poor financial condition is found in the City's low bond ratings, which jeopardize its borrowing powers.

The data suggests that some of the comparison cities, especially the smaller surrounding townships, have a stronger base of economic support. See Appendix IV, tab D, of City pre-hearing brief.

The City points out that it has budgeted 3% for a salary increase for the first year of the agreement. But it contends that even with that budgeted amount, the funding of the full PBA proposed salary increase will take an additional tax increase of 4.3% (City post-hearing brief p. 51). The tax increase required to fund the full set of PBA economic demands is considerably higher, about 8.8%.

Current comparison settlements

In the Panel's judgment, a salary increase is required if the Buffalo police officers are to remain in the comparison ballpark. This increase must be in the range of the current settlements in the comparison area. The data on settlements for 1997 and 1998 is very thin. Further, it is not always possible to determine their true worth, for they don't always indicate what concessions and adjustments may have gone into the salary figure.

The Panel concludes that current settlements are in the 3-4% range, including Amherst, Cheektowaga, Tonawanda and the State troopers. The City has settled with its blue and white collar workers for 3% annually for this period.

The Public member agrees with the City that the amount of the salary increase should depend in some part on the extent to which the City is able to gain cost savings through the other demands that it has placed on the table. The Public member also agrees with the PBA that the normal expectation of a public employee is that a substantial salary increase is needed to compensate for the removal of a valuable existing contract right.

However, when the Panel met in executive concession, the PBA strongly opposed those demands that might result in significant cost savings. The validity of the City's demands and of the PBA's opposition to them will be discussed in a subsequent section of this decision. Suffice it to say that as a result of the discussions in executive session it became apparent that the opportunities for cost savings through these approaches were limited.

Since the Panel award will not result in the magnitude of cost savings hoped for at the outset, the salary award will be in the middle of the 3-4% range. The salary increase will be 3.5% of the base salary for each year of the agreement.

The City has budgeted 3% to cover the costs of an increase for one of the years in question. The balance of the cost must be met through other budget savings, or, if necessary, through tax increases. But given the City's estimate of the salary increase that would be required to fund the PBA's full set of demands, if any tax increase is necessary to fund this more limited award, it should be modest.

Other economic adjustments

In his initial correspondence with the other Panel members, the Chair indicated that some adjustment should be made for other economic benefits where Buffalo officers are behind the norm. The PBA Panel representative indicated the priority of

its demands. Based on this, and on the relative significance of the items in question, the Panel awards as follows:

1. Optical insurance. This is a benefit enjoyed in several comparison units, and is of major importance to the membership. The annual cost of this benefit is about \$75,000. This benefit is administered through the PBA, and under this award the City shall reimburse the PBA for this payment.

2. Holidays. Officers are somewhat behind their counterparts in this area, though the shortfall is offset by the fewer work hours assigned. The holiday benefit, which now calls for 48 hours of annual holiday pay, should be increased by 12 hours.

3. All holiday pay should be prorated upon retirement.

While there may be merit to some of the other fringe demands, only a limited economic adjustment can be made, given the economic circumstances.

As a practical matter, these benefits, for the most part, cannot be implemented retroactively. The changes in the agreement that will result in cost savings to the City can be realized prospectively only. The panel concludes that the most equitable and expedient resolution is to make the cost saving changes and fringe benefit improvements on a prospective basis only. With respect to the fringe benefits, this means that:

1. For the calendar year 1998 and thereafter, the City shall pay \$75,000 for the annual cost of optical insurance.

2. The 12 hour increase in holiday pay shall be in effect for the calendar year 1998 and thereafter.

3. The holiday pay proration for retirees shall be in effect for the calendar year 1998 and thereafter.

City demands that would result in cost savings

Seniority

The City made a number of demands that would give it greater flexibility in making assignments. The Commissioner testified persuasively that in a modern, effective police force, he needs to be able to place the best people in key positions. The PBA strongly opposed these demands, which it sees as dangerously jeopardizing the traditional role of seniority in the assignment of officers. In executive session the City winnowed its demands to four, all of which it deems essential.

The basic seniority provision in the current contract (Section 12.2. of City's version) says that:

"The department recognizes the importance of seniority in filling vacancies and shall make every effort to adhere to this policy, provided the senior applicant has the ability and qualifications to perform the work involved."

The existing provision is not crystal clear, since the "make every effort" clause may give the City some leeway to depart from seniority, and because there is a core requirement of "ability and qualifications" before the applicant may invoke seniority. This open-endedness may invite litigation. However, the numerous awards submitted by the PBA tend to uphold the senior bidder in almost all contested cases, suggesting that the principle of seniority is fairly clear.

Command officers

Two of the City's demands cover the City's command and investigative positions (Inspectors, certain Captains, Lieutenants, Detectives, Detective Sergeants, and officers assigned to Special Units). One such demand would permit the City to make overtime assignments within this grouping on the basis of qualifications, training, experience, job responsibilities and seniority. It says "if the other considerations are demonstrably equal, the most senior employee should be offered the overtime opportunity."

The other City demand would allow the City to make and change permanent assignments of officers in these positions on the same basis as the assignment of overtime, that is, with seniority governing assignments only if the other considerations are "demonstrably equal."

In the Public member's judgment, in the long run the City should be permitted to take into account an officer's qualifications for a key assignment, and where those qualifications are demonstrably superior, they should be allowed to trump seniority. In a labor relations climate of trust, appropriate language would protect the principle of seniority, and would insure that departures from seniority are based solely on demonstrable merit, and not on favoritism. In executive session the Public member proposed language that would require the Commissioner to give great weight to seniority, but would allow him to consider other objective and demonstrable factors that measure ability for the job. In other words, the burden would be on the City to depart from seniority, while under the City's proposal it is the other way around. The Public member also suggested that this departure from the current language should initially apply only to a small group of officers.

The PBA continued to object even to these more modest proposals. The primary basis for its resistance is its claim that historically promotions in Buffalo have been based on political factors and favoritism. As a result, the PBA has been forced to spend considerable money to protect its contractual rights through arbitration. The PBA submitted a packet of arbitration awards that it claims show that the City is not honoring the present contract language. Without repeating the details of these awards, it is sufficient to state that the language of some of the arbitrators shows that there is a real problem of trust.

The PBA's objections are significant. First, the parties will get nowhere with a marked departure from the current principles of seniority unless there is a better climate of trust. The new language demanded by the City may very well lead to an increase in the already large volume of arbitral litigation about seniority, and that is not good for labor relations or for saving money.

Second, interest arbitration is an essentially conservative process. Substantial changes should come about as the result of give and take at the bargaining table. The parties have a much greater familiarity with the history of this issue and its potential pitfalls than any third party can gain through this brief proceeding. An imposed award could do more harm than good. Nor is an arbitrator in a position to determine whether and to what extent acceptance of the demand requires additional compensation in the economic package. These are matters better resolved at the bargaining table.

While the award does not incorporate the City's demands, the Public member suggests that now that the City has narrowed down its demands, this provides a good beginning for constructive discussions in the upcoming negotiations. Until the parties come up with solutions that permit greater flexibility in deployment, the economic settlement will not be at the higher end of the range. There has to be some incentive for the PBA to work constructively with the City towards meeting a mutual need.

All officers

The City placed two other demands on the table in executive session that affect all officers, not just those in command positions.

Detailing for educational purposes

This demand would allow the City to

"detail an officer, regardless of seniority, from one shift to another for educational and/or training purposes."

The City points out that under current practice the training programs are usually offered

on the day shift. This means that an officer on any other shift not only gets overtime for the shift in which he is trained, but may be too fatigued, after serving the earlier shift, to get the most out of his training.

The City's concern is legitimate. Its proposed language would allow it to offer training on a more rational basis, without running into overtime costs. This demand does not jeopardize the larger principle of seniority, and the potential for problems is limited, given that it is confined to training and education.

Other detailing

The second City demand, as framed during the Panel discussions, allows the City to

"detail an officer between Districts within the same shift by inverse order of seniority within that officer's district."

Under an existing agreement, the City has the right to detail officers to cover short term absences. The language provides:

"The parties agree that the Department shall have the right to detail officers of any rank on the basis of seniority. Detailing may be used by the Department to cover for short term absences such as personal leave, vacation time, sickness, blood days, etc. It shall be the intent of the Department to detail on a shift by shift basis and within the officer's division."

The parties advise that in addition the City has the right, in emergency situations, to reassign officers within their shift even without regard to seniority.

In its presentation in the interest arbitration, the City gave several grounds for its various proposals on detailing. Neither the specific language of its proposals, nor their actual impact on the members of the bargaining unit, was discussed in much detail in the arbitration, though, as agreed during the arbitration hearing, this was addressed by the Panel members in their correspondence.

As the Panel understands it, the City seeks the right to make these changes in advance of an emergency, and for a broader array of reasons than now permitted under the contract. It asserts that its proposal will save some overtime costs, as officers from a lighter district may be moved to cover needs in a heavier district.

The PBA strongly opposes these proposed changes. The PBA is concerned that the City will not use this provision in good faith, but will make wholesale, long term

transfers that undermine the assignments officers have obtained through seniority. The PBA says that if the City can readily transfer employees, it will not face up to the pressing need to hire more officers to meet the City's overall law enforcement obligations.

The Public member agrees with the City that it should be allowed greater flexibility in making these assignments. These proposals do not jeopardize the larger principle of seniority that the PBA has assiduously protected. The City contends in its brief that most of the comparison jurisdictions have greater flexibility than Buffalo in deploying its officers. A review of the contracts submitted in evidence indicates that for the most part this is so, particularly in view of the managements' rights clauses in several of these agreements. A recent interest arbitration award for the City of Rochester (Selchick, 1995) recognizes the need for greater flexibility in the deployment of police personnel as we enter the 21st century.

At the same time, the Public member concludes that the City's rights in this regard should be specifically limited and defined. As with the other City deployment demands, a lack of mutual trust prevents a constructive approach to greater flexibility in detailing. Further, this is another area better suited to resolution at the bargaining table than through interest arbitration. Therefore the award supports only limited changes in this area.

The Panel does not agree that the City should have the absolute right, as asserted in its initial demand quoted above, to detail officers from one District to another. Rather, the City's right to detail between districts should be limited to two specific situations:

1. To cover short term absences.
2. To cover specific events, such as sporting events, concerts, demonstrations and the like, as represented in the City's pre and post-arbitration briefs.

In order to insure that these assignments are temporary and meet specific needs, detailing on this basis may not exceed 15 working days.

Further, the language should recognize the current practice of allowing senior officers to accept the assignments on a voluntary basis.

To accomplish these objectives, the Panel awards the following language change:

"The City may detail officers of any rank between Districts within the same

shift by inverse order of seniority within that officer's district for the following:

1. To cover short term absences such as personal leave, vacation time, sickness, blood days, etc.
2. To cover specific events, such as sporting events, concerts, demonstrations and the like.

This detailing may not exceed 15 working days

Except in cases of emergency, the City shall offer the assignment to another District to officers in seniority order. In the event that the assignment is not voluntarily accepted, the least senior officer (s) shall be assigned to the other District.

This language is to be viewed as a provisional solution to the problem. The parties may monitor the City's utilization of these provisions and propose changes and modifications in the upcoming negotiations. In any future interest arbitration, the panel should consider the parties' experience with this language.

Health Insurance

The City proposes significant relief in its health insurance costs. The City presently pays 100% of the costs of health insurance coverage for all employees in the unit. The data shows a variety of patterns in comparison districts, with some officers paying for a portion of their health insurance costs. As a result, Buffalo police officers enjoy a substantially greater benefit than officers in some comparable units. Further, the City asserts that it needs savings in this area to fund a salary increase.

As a preliminary matter, the PBA contends this matter is not properly before the Panel. However, the Panel observes that the City had placed a demand for relief in health insurance costs on the table. That proposal has been modified, but the modification is not more burdensome on the employees, nor does it change the basic nature of the demand. Hence the Panel concludes it has the authority to deal with this issue.

The City proposes to approach this issue in a way that it says is relatively easy for officers to absorb. The City is willing to continue to pay the full premiums for both single and family coverage for the two current plans, both HMO's, that presently have the lowest premium costs. It proposes that covered officers then pay the full amount of the difference between those premiums and the premiums of the more expensive plan the officer chooses. If an officer does not want to pay this additional premium, he may

elect the less expensive plan. The City saves money by not having to pay the full premium costs of the more expensive plan. The City points out that the majority of the employees have chosen the less expensive HMO plans, indicating they are competitive with the more expensive plans.

While the proposal has appeal, there are obstacles to it.

First, the cost of the choice is high. The numbers in the City's brief (p. 38) show it could cost an officer more than \$1,200 for a single plan and over \$2,200 for a family plan. The officer who wants to remain with the current plan has to pay an enormous premium --the equivalent of perhaps a 5% pay increase -- just to maintain his current coverage. This becomes a very expensive give back.

Second, because there has not been a lot of discussion at the bargaining table, the PBA has not been in a position to assess the benefits of the various plans. The best solution would be for the City to persuade the PBA at the bargaining table that all the members will have adequate coverage under the less expensive plans.

Third, there is no control over the less expensive plans. If they prove to be inadequate, officers may be forced into the more expensive plans. In executive session the City proposed to correct this risk by agreeing to take any savings resulting from a cut back of benefits and purchasing new benefits with them.

The Panel concludes that the City's proposal has merit because more officers will have an incentive to move into the less expensive plans. However, it does not take an additional charge of over \$2,000 to encourage an officer to change plans. In the Panel's judgment, a much more modest premium differential should be enough to persuade the officer to move to the less expensive plan, if the benefits are relatively similar, as the City contends.

The Panel concludes that an officer should be required to pay 25% of the differential between the premium of the second lowest of the lowest two plans and the higher cost plan he elects, for single coverage, and 15% of the differential for the family plan.

While the Panel cannot be confident that this differential will move a substantial number of employees out of the more expensive plans, this determination is at least a start in the direction of greater cost savings in health insurance plans. The experience in the next few months should give the parties a better data base if they revisit this issue in the next round of negotiations.

The City should make this change during an open enrollment period as soon as practicable after this Award is finalized.

Disciplinary matters

A third area in which the City seeks relief that may result in cost savings is in the handling of disciplinary matters. As matters now stand, the City may not terminate an employee or suspend him for more than 30 days without affording the officer a hearing. The present provision calls for the hearing to be before a hearing officer, with the costs borne completely by the City.

The City asks for the right to discipline an employee without any prior hearing, with the employee having the right to challenge that discipline through arbitration. The PBA raises substantial objections to this proposal.

First, the PBA argues that requiring officers to give up their statutory and constitutional rights to a pre-discipline hearing should only come about through voluntary agreement by the union, and not through an imposed award. Whether or not this position is mandated by the Constitution, it reflects a solid principle for interest arbitration. The Public member views interest arbitration as an inherently conservative process, in which significant changes should whenever possible be made at the bargaining table. In the wake of the concern over the Gilmer case and the general waiver of statutory rights, the Public member is reluctant to impose a new procedure on the parties.

Second, the PBA points out that the use of arbitration will impose significant costs on its treasury, as the PBA will have to share in the costs of the proceedings. This means officers must now pay, through their union dues, for the right to challenge disciplinary matters.

The Public member sees no problem with the City imposing discipline prior to hearing if it does not result in suspension or termination. In these cases, the individual's rights are adequately preserved through a hearing after the discipline is imposed. But even here the shifting of these challenges to arbitration hits the PBA's treasury. The Public member made some suggestions to the panel members for ways of resolving these cases without immediate arbitration, with the PBA reducing its objections to writing, and saving adjudication for a later day, if and when the officer is suspended or discharged. However, the parties were unable to come to agreement on this. The Panel makes no change on this issue. The Public member observes that this is another area that deserves intensive discussion in collective bargaining.

Other City Demands

The City had a several other demands on deployment of officers on the table, including the changing of rotations. These demands were subordinated to the four that the City pressed in executive session, and no further award is made in this area.

The City also demanded a reduction in union release time, which currently involves as many as three union officials who devote their full time to labor relations matters. There should be no change in the current system. The system works, and there is no evidence of abuse. This is a large unit, with complex labor relations issues, and cutting back on union service may actually make relationships worse.

Indemnification

The PBA made a demand for indemnification where an officer is acquitted after he defends a criminal charge that arises in the line of duty. The demand is generated by an actual recent situation. By law, the City is required to indemnify officers in civil matters.

While the demand may appear to be equitable, further investigation in executive session reveals that this is a safeguard that is rarely found in collective agreements. And when it does appear, there are some preconditions to its usage. Following the precept that interest arbitration is not the place to pioneer contractual provisions, the Panel does not grant the PBA's demand.

Dated:

December 15, 1997

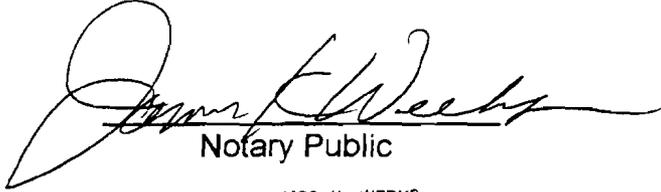

Robert J. Rabin, Public Member and Chairperson


Edward G. Piwowarczyk, Employer Member

(I dissent) 
Robert P. Meegan, Jr., Union Member

STATE OF NEW YORK)
COUNTY OF *ONONDAGA*) ss.:

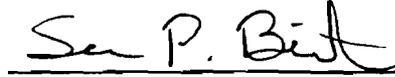
On this *22* day of December, 1997, before me personally came and appeared Robert J. Rabin, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.


Notary Public

JAMES K. WEEKS
Notary Public, the St. of New York
Qualified in Onon. Co. No. 4632280
My Commission Exp. *Mar. 30, 1997*

STATE OF NEW YORK)
COUNTY OF) ss.:

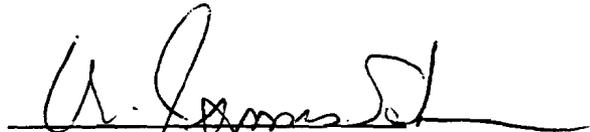
On this *23* day of December, 1997, before me personally came and appeared Edward G. Piwowarczyk, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.


Notary Public

SEAN P. BEITER
Notary Public, State of New York
Qualified in Erie County
Commission Expires Dec. 11, *1998*

STATE OF NEW YORK)
COUNTY OF) ss.:

On this *6th* day of ~~December~~ *Jan.*, *1998*, before me personally came and appeared Robert P. Meegan, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.


Notary Public
1/15/98