

State of New York  
Public Employment Relations Board  
Case No. IA 2006-036; M2006-138

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**In the Matter of the Arbitration**

between

City of Hornell

and

Hornell Police Association

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AWARD OF THE  
ARBITRATION PANEL  
PUBLIC EMPLOYMENT RELATIONS BOARD  
**RECEIVED**

APR 17 2008

**CONCILIATION**

On June 19, September 10 and 11, and November 5, 2007, hearings on the above matter were held at City Hall in Hornell, New York. At these hearings both sides were represented and given full opportunity to present oral and documentary evidence. At the outset of the hearings the City, without objection from the Union, replaced Public Employer Panel Member Mayor Shawn Hogan with David Oaks.

In accordance with the provisions of Section 209.4 of the New York Civil Service Law the parties hereto submitted the following issues to the undersigned panel for its determination and submitted post-hearing briefs thereon:

1. Off-Duty Injury or Illness
2. Health Plan
3. Shift Differential
4. Salary
5. Leave of Absence with Pay
6. Longevity
7. Out of Title Pay
8. Posting of Duty Schedule (i.e., platoon rotation)

The parties further agreed that some of the issues raised during negotiations between the parties have been resolved or partly resolved prior to the interest arbitration, and the resolutions reached would be incorporated by reference into this Award. Other

issues were withdrawn prior to the arbitration. Those resolved, partly resolved, or withdrawn issues are as follows:

1. Vacations--**resolved**
2. Holidays--**partly resolved and partly withdrawn**
3. Retirement Incentive--**resolved**
4. Investigators--**withdrawn**
5. Court Appearances--**withdrawn**
6. Salary Schedule (i.e. change to a 5 step system)--**resolved**
7. Seniority & Overtime Callout Procedure--**resolved**
8. Post Duty--**resolved**

On December 14, 2007, and March 27, 2008, the panel deliberated in executive session, fully reviewing all data, evidence, argument, and issues submitted by the parties. After significant discussion and deliberations, the panel reached agreement on the terms of this interest arbitration Award. This Award is based upon that discussion and those deliberations, as well as upon the respective beliefs of the individual panel members. The Award consists of many compromises induced by the panel chair and represents a complete package. Neither of the concurring panel members would accept each individual recommendation in isolation. However, as only a simple majority is required on each item, the support of all items by at least the panel chairman and one other panel member results in this binding Award. Accordingly, set out herein is the panel's award as to what constitutes a just and reasonable determination of the parties' contract for the period of April 1, 2006 through March 31, 2008.

In arriving at such determination, the panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

- 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 has carefully weighed the parties' arguments. In this regard it should be noted that the Union has focused on comparisons with what it believes are appropriate communities: Geneva, Corning, Canandaigua Wellsville, Penn Yan, Horseheads, Geneseo, and Bath. The City argued that the Union's list of comparable communities should include Olean, Salamanca, and Dansville. The Union has also offered data relating to its belief that the workload of the Hornell Police is disproportionately heavy. The Union's data demonstrates that the number of reported crimes in Hornell exceed those of other communities, including the villages, but excluding Canandaigua, for which no data was available. The Union's data also show that the number of criminal arrests made in Hornell is higher than in the city of Corning but lower than the cities of Canandaigua and Geneva. The panel, or a majority thereof, has concluded that the Hornell Police work hard, as do police in other jurisdictions. Absent a showing that the City lacks the ability to pay, the Hornell Police should receive salaries approximately equal to the salaries of their neighboring colleagues. The City argued and presented evidence that it lacks the ability to pay for "hefty" increases for the Police.

Because the parties' collective bargaining agreement expired on March 31, 2006, the Award may, by law, extend only to March 31, 2008. The panel recognizes that the parties, therefore, will be back at the bargaining table shortly after they receive our decision.

Set forth below is our rationale with respect to each outstanding issue:

## Salary

Relying on its data, the Union contends that the bargaining unit is "grossly underpaid" when compared to neighboring police departments. In essence this data compares the minimum and maximum salaries of ranks of Officer, Sergeant and Investigator in Hornell with minimum and maximum salaries of these ranks in the aforementioned communities.

If one adds the 3% which the parties had tentatively agreed upon during negotiations (but which was not ratified by the Union) for April of 2005 to the Union's data, then Hornell would rank 5 of 9 instead of 6 of 9 in minimum Police Officer salaries. It would still rank 7 of 9, as the Union's data indicates, in maximum Police Officer salaries. Neither would a 3% increase change Hornell's position for Sergeants, where its minimum salary ranks 5 of 9 and its maximum is 7 of 9. If one adds both the \$3000 stipend that Investigators already receive and 3% to Investigators' salaries, Hornell would rank 4 of 7 (two communities not having this classification) in minimum salaries and 3 of 7 in maximum salaries. All in all, after making the adjustments described above, the panel, or a majority thereof, has concluded that the parties' settlement would not have left the Hornell police "grossly underpaid."

On the other hand the Union cogently argues that under the expired contract it took 10 years to reach the maximum, while most comparable communities take substantially fewer years. While the parties have apparently agreed to reduce the number of steps in their salary schedule, it still takes more time for a Hornell officer to reach the maximum salary than it does in most other communities. The panel, or a majority thereof, has given some weight to this fact in reaching its determination.

The panel, or a majority thereof, has concluded that a 3% increase does not quite suffice to keep Hornell in line with those communities. This is particularly true given the fact that Hornell employees hired after 1990 contribute 30% of health insurance

premiums, which the Union's data show is substantially more than the contributions made in other communities. Similarly, we have considered the fact that 6 of the 8 comparable communities, unlike Hornell, add longevity pay to police salaries.

With respect to the City's ability to pay, the panel recognizes that Hornell's poverty rate exceeds that of any of the comparable communities. We have given substantial weight to this fact, as well the fact that Hornell has been declared a "city in distress" and is, therefore, eligible for Aid and Incentives for Municipalities (AIM). However, the panel, or a majority thereof, does not believe that the City is unable to pay an across-the-board increase of 4% per year for two years. This figure is 1% over the minimum it had agreed to with every other bargaining unit. Since the cost of a 1% increase is approximately \$4800, the marginal cost of this Award will be some \$15,000 over two years. This figure is too small to lead the panel, or a majority thereof, to conclude that the City (which has a balanced budget and two years without property tax increases) is unable to pay it.

Additionally we note that the employer's health insurance plan requires a higher average employee contribution than most of its neighbors. Moreover, as officers hired after 1990 continue to replace those hired before that year, the City percentage contribution to health insurance will continue to decrease.

Other than health insurance, the panel, or a majority thereof, identified salary as the most important economic issue in this interest arbitration proceeding. Further, it is the belief of the panel, or a majority thereof, that economic increases are most equitably and appropriately distributed, and should come, in the form of salary. Accordingly, having taken all of the above factors into account, the panel, or a majority thereof, has determined that the bargaining unit shall receive an increase of 4% in each of the two years following the expiration of the 2002-2006 contract. This increase shall, of course, be retroactive to the expiration of said contract.

### Off Duty Injury or Illness

The expired contract provides for paid leave for employees "absent from duty because of sickness of off duty injury" for 30 days. The Union has proposed that this be changed to 30 "working" days. After careful consideration of the arguments made by both the Union and City, the panel, or a majority thereof, rejects this proposal as it finds no compelling need for the change and finds that the change may unnecessarily add to the employer's financial burden.

### Health Plan

The current health plan requires a contribution of 15% of the health insurance premium by employees hired before 1990 and 30% by those hired thereafter. The Union has proposed that all employees contribute 20%. After careful consideration of the arguments made by both the Union and the City, the panel, or a majority thereof, rejects this proposal for three reasons. First, we note that all bargaining units in Hornell are subject to the same bifurcated health plan, because some 17 years ago the City successfully attempted to reduce its health insurance costs. Presumably the bargaining units, including the police, received something in exchange for the concession. The panel, or a majority thereof, does not believe a city-wide system that has been in place for so many years should be disturbed at this time. Second, the panel, or a majority thereof, believes that officers hired after 1990 were well aware that they would be paying twice the health insurance costs of their colleagues when they were hired. Nonetheless, they accepted employment. Third, as noted above, we have taken the health costs into consideration in making the salary determination set forth above.

### Shift Differential

The Union has proposed increasing the shift differential in the expired contract by \$.40 for each of the two shifts receiving a differential. The panel, or a majority thereof,

rejects this proposal because we have determined that economic increases are most equitably and appropriately distributed, and should come, in the form of salary.

#### Leave of Absence with Pay

The Union has proposed that the City give each of its elected officials up to 4 days per year of paid leave to "attend national conferences, conventions, executive board meetings of the Law Enforcement Officers Union, council 82, seminars, leadership schools or other legitimate Union business sponsored by the Union or an affiliate of the Union." After careful consideration of the arguments made by both the Union and the City, the panel, or a majority thereof, rejects this proposal as it finds that there is no compelling need to burden the City with paying salaries to employees for the purpose of engaging in Union business.

#### Longevity

The Union has proposed increasing salaries through a series of four longevity payments to be made after 5, 10, 15 and 20 years of employment respectively. The panel, or a majority thereof, rejects this proposal as we have noted above because we have determined that economic increases are most equitably and appropriately distributed, and should come, in the form of salary.

#### Out of Title Pay

The Union has proposed that "When there is no ranking uniform officer (Sgt.) on duty in the patrol division, the designated uniform officer-in-charge will receive the lowest rate of pay of that of a Sergeant, for the actual time he/she is in charge." The panel or a majority thereof, rejects this proposal. First, we have determined that economic increases are most equitably and appropriately distributed, and should come, in

the form of salary. Second, it is not clear at this time that the officer designated to fill in for the absent Sergeant actually has all the responsibilities that the Sergeant has.

#### Posting of Duty Schedule

The City has proposed that it be permitted "to establish a work schedule that provides for the rotation of each platoon, in whole, every four months." The employer has attached to its brief a letter from Chief T.J. Murray and a memorandum from Capt. Michael Sexsmith setting forth the reasons for this proposal.

The aforementioned officers make several arguments for rotation. One is that because shifts are assigned by seniority, junior officers work the 3-11 p.m. shift, with the outcome that police, in general, only experience a single shift and a single sergeant. This not only results in a lack of cross training but also reduces productivity by creating a "blurred" relationship between sergeants and patrol officers. Additionally, the Chief believes that the current system makes evaluations difficult and forces the most junior sergeant onto the busiest shift with the most junior officers. Further, rotation would distribute the workload more fairly. Captain Sexsmith makes similar arguments, and also states that rotating shifts would cause alterations in routine that would "keep the criminal element guessing."

The panel, or a majority thereof, rejects the City's proposal. While all that the City says may be true, the fact remains that rotating shifts every four months is disruptive to the lives of the officers. While it may be easier to carry out these tasks if shifts were rotated, there has been no demonstration that the City has discipline or evaluation problems that it cannot solve. Disciplining and evaluating the workforce is the job of the City through its Chief and its Captain.

As noted above, the parties are about to enter into negotiations. The panel, or a majority thereof, believe that issues of seniority and rotation are complex and, therefore, best resolved through negotiations by the parties. Those parties have managed to live

with the current system without demonstrable problems. Undoubtedly there is room for improvement, but it is the parties themselves who should resolve this issue.

## CONCLUSION

As stated above, other than health insurance, the panel, or a majority thereof, identified salary as the most important economic issue in this interest arbitration proceeding and believes that economic increases are most equitably and appropriately distributed, and should come, in the form of salary. Clearly, the panel, or a majority thereof, could have placed some of the “economic eggs” in other baskets such as shift differential, longevity, or out of title pay, but determined not to do so this time. Obviously, doing so would have resulted in a lower salary increase. To the extent that the parties are unsatisfied with breadth or scope of this award, the parties are directed to address any unresolved outstanding issues in their upcoming contract negotiations with each other.



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Public Panel Member and Chairman



David Oakes  
Public Employer Panel Member



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