

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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**In the Matter of the Compulsory Interest  
Arbitration between**

**OPINION & AWARD**

CITY OF NIAGARA FALLS

-and-

NIAGARA FALLS POLICE CAPTAINS  
& LIEUTENANTS ASSOCIATION

PERB Case No. IA2006-026;M2006-076

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**Before Interest Arbitration Panel:**

**Thomas N. Rinaldo, Esq., Chairman**

**Richard J. Rotella, Esq., Public Employer Member**

**Edward W. Guzdek, Employee Organization Member**

The New York State Public Employment Relations Board, pursuant to the New York Civil Service Law, Section 209.4, designated the Chairperson and the Public Employer and Employee Organization Panel Members on December 1, 2006, in this proceeding.

A hearing was held in Niagara Falls, New York on May 4, 2007. Appearing on behalf of the City of Niagara Falls ("City") was Damon A. DeCastro, Esq., Acting Corporation Counsel by Christopher Mazur, Esq. Assistant Corporation Counsel, and on behalf of the Niagara Falls Captains and Lieutenants Association ("Union") was Anthony J. DeMarie, Esq.

At the hearing, the Parties were given a full opportunity to produce witnesses and

present documentary, video, and other evidence in support of their respective positions, as well as the opportunity to cross-examine witnesses appearing on behalf of the Parties. This Opinion and Award constitutes the results of the Panel's consideration of the evidence presented within the context of the criteria set forth in Section 209.4 of the Civil Service Law. Before issuing this Opinion and the Award, the Panel met in executive session on June 25, July 23, and July 26, 2007, and engaged in substantial deliberations.

Specifically, it is noted that the evidence presented by the Parties and the Authority was considered against the criteria set forth in Section 209.4 of the Civil Service Law, including, but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interest and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazards, educational qualifications, training and skills; and the terms of collective agreements negotiated between the Parties in the past providing for compensation and fringe benefits.

### **UNION PROPOSALS<sup>1</sup>**

(Section numbers, unless otherwise noted, refer to the collective bargaining agreement, which was effective January 1, 1994 - December 31, 1996,)

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Various of the Parties' proposals were taken off the table as a result of proceedings before PERB based on an Improper Practice Charge filed by the Union. These proposals are not listed.

1. Section 12.02 - DURATION OF AGREEMENT

January 1, 2004 through December 31, 2005.

2. Section 6.01 - BASE PAY

Increase base salaries, across the board, at the rate of 5 %, effective January 1, 2004 and an additional 5% increase, effective January 1, 2005.

3. Section 6.03 - LONGEVITY PAY

Longevity increment to increased by the sum of \$500 for officers with 15 years of service.

4. Section 6.12 - UNIFORM ALLOWANCE

Increase uniform allowance \$300 effective January 1, 2004 and an additional \$250 effective January 1, 2005.

5. Section 9.01- HOLIDAYS

Substitute "Election Day" in place of "employee's birthday" as an authorized annual holiday.

6. Section 9.02.07 - VACATIONS

Amend this section to change "twenty-five (25) years" to twenty (20) years for entitlement to six weeks vacation.

## CITY PROPOSALS

- ...
- b. Base Pay (§6.01): 2004 - 0%, 2005 - 0%.
  - ...
  - e. Work Week (§5.02): Eliminate Equalization days for Patrol Captains; also amend to state Patrol Captains on the A Shift will work Monday-Friday, B Shift Tuesday-Saturday and C Shift Wednesday-Sunday.
  - f. Equalization of Time-off (§5.08): Delete entire section from contract.
  - ...
  - h. Relief Captain (§5.13): Amend to state that the Relief Captain will relieve Captains on the A, B and C shifts when they are absent.
  - ...
  - k. Overtime Distribution (§6.05): Amend to include language stating that the City will not be liable for any grievance or claim under this section if the City used good faith efforts to distribute overtime equitably.
  - ...
  - o. On-Call Compensation (§6.08): Delete entire section from contract.
  - p. Call-In Pay (§6.09): Amend to state that officers will receive a minimum of 2 hours compensation.
  - q. At Home Calls (§6.09.01): Amend to language that duty related business shall be defined as requiring the direct involvement of the Supervisor, not merely business information or Delete from contract.
  - r. Acting Pay (§6.10): Delete entire section from contract.

- s. Additional Compensation (§6.11): Amend subsections to eliminate \$750.00 payment and 5% bonus for C.I.U. and C.I.D. assignments and 10% Desk Lieutenant compensation.
- t. Uniform Allowance (§6.12): Amend to reduce allowance to \$500.00.
- u. Payment (§6.13): Amend to direct that all payments made to officers pursuant to the collective bargaining agreement be made through direct deposit. Also, any payment of additional compensation or premium pay will be made between April 1 and May 31 each year.
- v. Briefing Time (§6.13): Delete from contract.
- w. Education Incentive (§6.15): Delete from contract.
- y. Standards and Principles (§8.03): Amend language so that grievances must be presented within 14 calendar days from the day the cause of the grievance occurs, except where the nature of the grievance is not readily known; grievance must then be presented within 180 days from the date the grievance occurred.
- z. Grievance Procedure (§8.05): Amend subsection C - Arbitration - to allow PERB to provide a list of seven (7) arbitrators from across New York State.
- aa. Holidays (§9.01.3): Delete subsection from contract.
- bb. Accumulation of Vacation (§9.04): Amend language in order to reduce maximum accrual to 10 weeks.
- cc. Sick Leave for Family Illness (§9.06): Delete section in its entirety.
- dd. Personal Leave (§9.10): Amend language to indicate that in the case of separation from service, personal days will be pro-rated for the entire year; also, upon retirement, any unused personal days will be forfeited.
- ee. Bereavement Leave (§9.12): Amend language to state that officer will be excused from duty "...to a maximum of four (4) work days..."
- ff. Health Insurance for Retirees (§ 10.02): Amend language to state that

to be eligible for hospitalization insurance upon retirement, an officer must reach age 50 with at least 20 years of service; also, hospitalization insurance will be the same plan as provided to active employees, with the same requirements, including payment of contributions, if any.

- gg. Life Insurance (§10.04): Delete language regarding \$500.00 insurance coverage for retirees.
- ...
- ii. Uniform Committee (§ 11.02): Eliminate language regarding replacement of items and equipment by the Committee.
- jj. Replacement of Uniforms (§ 11.03): Amend language to require officer to apply uniform allowance toward replacement of any uniform or equipment damaged in the line of duty.
- kk. Hearing Officers (§12.01): Amend language to state that the City will select the hearing officers for disciplinary proceedings.
- ll. Productivity (§12.03): Amend to state that all officers will be subject to a yearly evaluation conducted by the Superintendent or his designee.
- mm. Random Drug Testing (New): The City and the Police Club have yet to act upon their agreement contained in paragraph 19 of the 2000-2003 Memorandum of Agreement; nonetheless, an agreed upon policy will be instituted prior to 7/1/05.
- nn. Physical Fitness Testing (New): All employees will undergo a yearly physical fitness evaluation; employees will be tested in the areas of strength, dexterity and endurance. Employees will be evaluated based upon minimum fitness standards for employee's age group.
- oo. Captains Assignments (§5.12): Amend language to eliminate requirement that a Captain be assigned to the Traffic Division and Youth Services Division; supervisory assignments with regard to those Divisions will be filled at the discretion of the Superintendent.
- pp. Amendment: The City reserves the right to amend, delete or otherwise

modify this docket at any time during the negotiation process.

- qq. Captain's Assignments (§5.12): In addition to item #41 on the City docket, amend language to eliminate requirement that a Captain be assigned to each of the listed divisions; add that the Superintendent will, at his discretion, designate supervisory assignments within the Department.
- rr. Relief Captain (§5.13): In addition to item #8 on the City docket, add that the Superintendent, at his discretion, will designate and assign Relief Captains.
- ss. Patrol Shift Supervision (§5.16): Delete from contract.
- ...
- uu. No Rank Reduction (Section 3.08): Delete from contract in its entirety.

### **POSITION OF THE UNION**

The Union contends that the Panel must make a comparison of wages, hours, conditions of employment of supervisory police officers in other communities and that the comparison need not be limited to communities of the same size, whether measured by population, area, affluence, or size of the police force. The Union offers comparables to the Panel consisting of ten municipalities. It notes that it has presented five issues for resolution other than the duration of the Agreement.

The Union notes that it seeks a five percent increase in base salaries for all its members, effective January 1, 2004, and an additional five percent, effective January 1, 2005. It claims that members of the Union are paid well below the average salaries of supervisory

officers in the comparable communities. Further, it notes that in 2000 and in 2001 its members received no increase in salary or other benefits while in 2002 and 2003 the salary was increased three percent, leaving an average from 2000 to the end of 2005 of an increase of one percent per year. The Union argues that the raises it seeks are modest in amount and should be awarded by the Panel.

As to longevity pay, the Union observes that it is seeking an increase in longevity for Officers with 15 or more years of service in an amount of \$500 per year. It notes that these Officers, according to its understanding of the record evidence, are paid significantly less than Officers performing the same work in comparable communities and their “total compensation” falls even below this figure. It observes, for example that, in 2004, Police Lieutenants received \$13,694 less than Lieutenants in the Town of Amherst and \$7,700 less than the average paid to Lieutenants in the comparable communities. In 2005, the differences in these two calculations, the Union observes, were \$17,574 (Amherst) and \$10,170 (average).

The Union also observes that Captains, in 2004, received \$15,331 less than Captains in Amherst and were \$6,402 below the average in the comparables. In 2005, the Union notes, these calculations saw Union Captains receive \$16,353 less (Amherst) and \$8,867 less (average). The \$500 a year increase in longevity pay, the Union asserts, though it will not even bring its members “close to average,” nevertheless “will help and should be approved.”



Regarding uniform allowance, the Union notes that its members receive an annual allowance of \$700, which it describes as “totally inadequate for the cost of replacement of uniforms and the equipment (i.e. flashlights), which these officers must purchase, each year.” Various other Police Departments, the Union observes, issue all uniforms and equipment and eliminate a uniform allowance whereas other Departments supply all uniforms and equipment and, in addition, pay an annual uniform allowance. The Union also observes that Officers must wear summer and winter uniforms, which requires them to own “six trousers, six shirts, three pairs of shoes/boots, ties, leather, caps, gloves, a scarf, socks, winter coats/jackets, spring/fall-type outerwear, etc.” Only several suppliers offer these items, the Union notes, and there is never a “sale.” Accordingly, the Union asserts that its request of a \$300 increase for 2004 and an additional \$250 increase must be considered modest. It notes Officers in Amherst receive \$1,400 as an annual allowance and Officers in Cheektowaga are paid \$1,700 for a uniform allowance. Further, the Union identifies the payment of \$950 to Officers in the Town of Tonawanda.

Concerning holidays, the Union observes that under its Agreement with the City, its Officers receive 12 holidays. Other Departments, the Union notes, offer six additional holidays. The Union asserts that it is requesting only “the name of one of these holidays be changed” and yet the City has refused approval. It asks that the holiday designated as the “employee’s birthday” instead be designated as “Election Day,” which would have no adverse effect on the City. The City’s refusal to honor this request, the Union maintains,

must be considered “typical of its attitude regarding the workers.”

As to vacations, the Union notes that, at present, there is an annual vacation allowance of six weeks to Officers hired before 1979, and that the proposal seeks to extend this six weeks to all Officers with 20 years of service or more regardless of the date of hire. According to the Union, there is no other employment contract with Police Officers in any municipality that contains any restriction that discriminates against an Officer by virtue of appointment after a particular date. Further, the Union argues that there is no other community that allows for fewer vacation days than the City and that the four week limit “does not apply in any other police department, in any other community.”

### **POSITION OF THE CITY**

The City claims that, in light of the criteria of ability to pay and the interest and welfare of the public, that the record evidence clearly establishes that it “is not only a small city in distress, it is a city in decline.” Moreover, the City points to its contractual obligations in the form of workers’ compensation premiums, which increased in 2007 by \$320,000 from the previous budget, personnel costs, including the fact that the Police Department budget increased by nearly \$900,000 in 2007, and the costs of health insurance. As to health insurance, the City observes that it pays 100% of health insurance premiums for all its employees and retirees. In 2007, the City further notes, Blue Cross and Blue Shield raised its premiums by 12%, which was an increase of \$1.2 million. In addition, the City observes

that it is under a mandate to construct a new City Court complex, estimated to cost \$42 million. Against these increased obligations, the City claims, its revenues continue to decline, and with no guarantees available concerning State Aid, it is fair to conclude that “[t]he situation only continues to worsen.” The City also observes that casino gambling “has proved to be quite underwhelming.”

The City claims its position that there should be no increase in wages for 2004 and 2005 should be considered acceptable given the fact that Union members received, as the City calculates it, 14% in salary and longevity increases in 2002 and 2003. The City argues that it must “keep its employment costs in check over the next few years” and further observes that four other labor organizations agreed to a zero percent increase in 2004 and 2005.

The City notes that its proposal to eliminate equalization days for Patrol Captains and to require Patrol Captains on the A shift to work Monday through Friday, those on the B shift, to work Tuesday through Saturday, and those on the C shift to work Wednesday through Sunday. Additionally, the City observes that it seeks to delete the shift and pager compensation set forth in Section 5.09 of the Agreement. The proposals on workweek will increase efficiency and reduce overtime costs, the City alleges, and the shift and pager compensation will result in great savings for the City.

The City seeks to amend Section 5.13 regarding the Relief Captain position by providing for the Relief Captain to relieve Captains on the A, B, and C shifts when they are

absent. It notes that, at present, the Relief Captain can only cover for an absent Captain if the absence is for two consecutive days or more. The City claims the provision as presently worded “is being manipulated to enhance overtime opportunities.” Further, the City wishes to grant the Superintendent of Police the discretion to designate and assign Relief Captains.

The City notes its proposal to amend Section 6.04 regarding overtime pay for work in excess of fifteen minutes as well as Section 6.07 concerning in-service training. Further, the City identifies its proposals to delete Section 6.08, which grants Officers 20% of their hourly wage while on “on-call” status and Section 6.09, concerning the two hours of minimum pay when an Officer is called in. Additionally, the City observes that it seeks to amend Section 6.09.01 for at-home calls and Section 6.11 to eliminate the \$750 payment and 5% bonus for C.I.U. and C.I.D. assignments and the 10% Desk Lieutenant compensation.

The City further notes its attempt to delete Section 6.10 concerning acting pay. In terms of Section 6.12 and uniform allowance, the City observes that it seeks to amend the Section by reducing the allowance to \$500. It claims that the \$700 currently provided “is a significant amount of money” and that the “savings” amount to \$5,600 annually. The City notes its proposal to amend Section 6.13 to provide all payments made be through direct deposit and that additional compensation or premium pay is to be made between April 1 and May 31 of each year. The City contends that its proposal will “enhance” its “economic flexibility.”

The City notes that it seeks to amend Section 6.13, briefing time, by deleting the entire

section that mandates that Officers are paid time and a-half for the briefing during the 15 minutes prior to the beginning of a shift. According to the City, this provision actually provides for Officers to be “paid while not working.” Briefing time, the City notes, between the Police Club and the Union, costs \$250,000 per year.

The City notes its proposals to delete the education incentive found in Section 6.15 and its desire to amend Section 6.16 by creating a separate pay scale for overtime hours worked that would mirror the provision in the Police Club contract.

The City identifies its proposal to amend Section 8.03, Standards and Principles, to allow for grievances to be presented within 14 calendar days and 180 if its cause is not “readily known.” This proposal, the City argues, “will streamline the grievance procedure.” The City further seeks to modify Section 8.05 of the grievance procedure to allow PERB to provide a list of seven arbitrators from across the State.

The City also identifies its proposal to delete holidays, and amend Section 9.01.3 of the Agreement, as well as Section 9.04 (Accumulation of Vacation) so as to reduce the maximum accrual to ten weeks. Further, the City notes its proposal to delete Section 9.06 for sick leave for family illness and to amend Section 9.01 (Personal Leave) to pro-rate personal days for separation from service and to forfeit unused personal days upon retirement. Bereavement Leave, in Section 9.12, the City notes, is another object of its desire to amend the Agreement by providing that an Officer will be excused from duty “to a maximum of four (4) work days.”

The City identifies its proposal to amend Section 10.02 (Health Insurance for Retirees) and to delete 10.4 concerning the \$500 insurance coverage for retirees. The City also seeks to eliminate the language in Section 11.02 concerning replacement of items and equipment by the Committee, claiming the language therein is unnecessary, and to amend Section 11.03 to require Officers to apply uniform allowance toward replacement of uniform or equipment damaged in the line of duty.

Further, the City seeks to amend 12.01 by giving it the right to select Hearing Officers in disciplinary proceedings and to amend 12.03 to provide that Officers are to be subject to a yearly evaluation.

The City notes an agreement, in its estimation, has been reached concerning random drug testing. It also seeks to have Officers undergo a yearly physical fitness evaluation.

The City also identifies its proposals to amend Section 5.12 by eliminating the requirement that a Captain be assigned to the Traffic Division and Youth Services Division and to further eliminate the requirement that a Captain be assigned to each of the listed Divisions, and provide that the Superintendent can designate supervisory assignments within the Department. Patrol Shift supervision in Section 5.16, the City observes, is a provision it seeks to eliminate. Further, the City seeks to amend Section 6.16 concerning paid time off so that the amount actually paid corresponds to the employee's wage that is listed on the wage schedule. The City seeks to delete Section 3.08 which prevents a unit member from being demoted or having his position eliminated other than for cause. The City claims that

only by attrition can it reduce the number of employees represented by the Union.

## **PANEL DETERMINATIONS**

### **Term of the Agreement**

The Parties, through their authorized representatives, have agreed and expressly given their consent and authorization to the Panel for a four year Award for the period covering January 1, 2004 through December 31, 2007. The Parties' last Agreement was set forth in a Memorandum of Agreement dated May 22, 2001, for the period from January 1, 2000 through December 31, 2003. It was discussed by the Parties that a two year agreement which is required by the New York State Civil Service Law would serve neither parties best interest. A two year agreement would only result in an agreement through 2005 and would not give the Panel the opportunity to award fair compensation to these officers and also provide some cost savings for the City. The Parties therefore determined that a four year agreement would best serve their interests and worked with Panel members to achieve a fair and equitable resolution to this dispute.

### **Statutory Factors**

As set forth above, the Panel has considered all of the criteria contained in Section 209.4 of the Civil Service Law. Several observations are appropriate at this juncture regarding certain of the statutory factors. The Panel is mindful of the record evidence of the

City's financial plight as evidenced by a number of factors as well as the somewhat disappointing contributions the City has realized to date from the casino gambling experience. Nevertheless, the Panel finds that, over a four year term, the City is not without resources to address some kind of fair wage increase for members of the Union. In this regard, the Panel notes that the public interest, while it must be served by economic constraint is also served by adequate wages paid to law enforcement personnel, including the supervisory personnel in the Union herein. Additionally, the Panel notes that a review of the comparable communities, set forth in the evidence offered by the Union, shows that the Union members are not compensated in the top half of any set of local comparables, which also supports the conclusion that a fair wage increase over a four year term is in order.

On balance, therefore, the Panel finds that a wage increase must be sensitive to both the City's substantial fiscal difficulties and the right of Union members to receive fair compensation as measured, in part, by evidence of comparables before the Panel. Thus, the Panel's Award for each year of the period of this Award as to wages is as follows:

1. A zero percent (0%) wage increase for the two year period commencing January 1, 2004 and ending December 31, 2005.
2. A three percent (3%) across the board increase in salaries for the period January 1, 2006 to December 31, 2006, which increase is retroactive to January 1, 2006.
3. A three percent (3%) across the board wage increase in salaries for the period January 1, 2007 through December 31, 2007, which is retroactive to January 1, 2007.
4. In addition, a two thousand dollar (\$2000) lump sum payment to be



made to Union members, which payment will constitute a salary adjustment effective January 1, 2007, after the aforesaid three percent salary increase is calculated.

### **Relief Captain-Section 5.13**

Currently, the Relief Captain is considered a Patrol Captain and can “relieve captains on the A, B, and C shifts when they are absent for two or more days.” Hence, if a Captain on the A, B, or C shift is absent only for a day, than Section 5.13, as presently worded, provides that “[c]aptain working overtime will fill absences on the A, B, and C shifts not filled by the Relief Captain.”

It is the Panel’s belief that the City is entitled to achieve some savings by allowing the Department to place the Relief Captain in place of the Day Shift Captain at regular pay any time the Day Shift Captain is away from work. This will reduce the overtime the City has to pay when the Day Shift Captain is absent only for a day.

Accordingly, the Panel amends Section 5.13, as follows:

Delete the second sentence in Section 5.13 (“the Relief Captain shall be considered a Patrol Captain and will relieve captains on the A, B and C shifts when they are absent for two or more days”) and add:

The Relief Captain shall be considered a Patrol Captain and will relieve captains on the B and C shifts when they are absent for two or more days. The Relief Captain will relieve a Captain on the A shift when that Shift Captain is off for any reason. The Relief Captain shall fill the vacant position of the Captain on the A shift at regular pay.

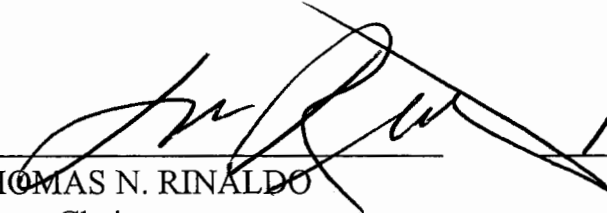
**Random Drug Policy**

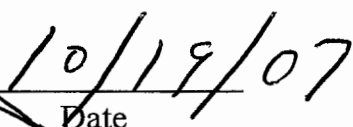
The Panel, after careful consideration, and in light of all the statutory factors, concludes that it is in the best interest of both the City and the Union membership for the Random Drug Policy now in effect between the Niagara Falls Police Club, Inc., and the City of Niagara Falls to be added to the Parties' Agreement. Therefore, the Panel Awards:

That the Random Drug Policy as agreed to by the Niagara Falls Police Club, Inc. and the City of Niagara Falls is also made applicable to the Niagara Falls Captains and Lieutenants Association.

**Award on Remaining Issues**

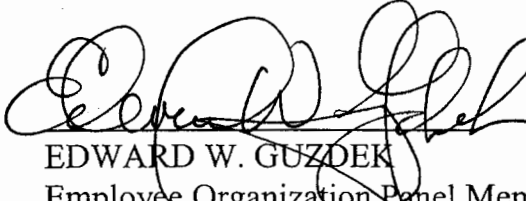
Any items other than those specifically addressed by this Award remain "status quo" as they existed in the Parties' Memorandum of Agreement dated May 22, 2001.

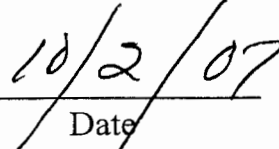
  
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THOMAS N. RINALDO  
Chairman

  
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Date

  
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RICHARD J. ROTELLA, ESQ.  
Public Employer Panel Member

  
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Date

  
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EDWARD W. GUZDEK  
Employee Organization Panel Member

  
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