

RECEIVED  
JUN 20 1980

OPINION AND AWARD

---

In the Matter of the Compulsory Arbitration  
between  
TOWN OF BRIGHTON  
- and -  
THE BRIGHTON POLICE PATROLMEN'S ASSOCIATION

---

OPINION AND AWARD  
PERB CASE NO. 1A-146

APPEARANCES:

For the Town

Karl R. Krause, Attorney

For the Association

Gary VanSon, Attorney

-----

On January 11th, 1980, the New York State Public Employment Relations Board determined that a dispute continued to exist in negotiations between the Town of Brighton and the Brighton Police Patrolmen's Association. Pursuant to the provisions of the Civil Service Law, Section 209.4, a Public Arbitration Panel was designated for the purpose of making a just and reasonable determination of the dispute. The designees of the Panel are Public Panel Member and Chairman, Thomas N. Rinaldo, Esq., Employer Panel Member Karl Essler, Esq., and Employee Organization Panel Member, Al Sgaglione, then President of the Police Conference of New York, Inc. Hearings

were held in Rochester, New York on March 18th, 1980. The proceeding was not stenographically recorded. The official record consists of the Panel Member notes together with the evidence in the form of briefs and exhibits submitted by the parties.

After carefully reviewing all of the evidence, briefs and reply briefs, the Panel met in Executive Session in Buffalo, New York and as a result thereof, issues this Opinion and Award.

The Panel compared wages, hours and conditions of employment of employees involved with those of other persons performing similar service and requiring similar skills and with other employees in public and private employment in comparable communities. Consideration was given to the interests and welfare of the public and the financial ability of the Public Employer to pay. The Panel also considered the hazards of the job; physical, educational and mental qualifications; job training and skills; and the terms of collective agreements negotiated between the parties in the past as well as all other relevant factors.

#### INTRODUCTION AND HISTORY OF NEGOTIATIONS

By a letter dated June 26th, 1979, the Brighton Police Patrolmen's Association gave notice to the Town of Brighton of their

intent to alter, amend or change the 1978-79 Collective Bargaining Agreement between the parties and to enter into good-faith negotiations thereon. Three weeks later, the Town replied and negotiation sessions were scheduled in an effort to collectively negotiate new terms and conditions of employment for the 1980 year.

Unsuccessful negotiations compelled the designation of a mediator to determine if the parties could achieve agreement with concilatory help. Mediation was likewise unsuccessful and on November 28th, 1979, the Town of Brighton petitioned the New York State Public Employment Relations Board for an Interest Arbitration Panel.

The Brighton Police Patrolmen's Association (the Association) has presented to this Panel thirteen proposed changes in its Collective Bargaining Agreement with the Town of Brighton. The changes cover both economic and non-economic issues.

The Town of Brighton (the Town) has presented to this Panel one proposal for their consideration.

#### THE ISSUES

1 - Salary and Cost of Living. The Association is asking for an award equalling an increase in salary for 1980 of

13.4 percent of a patrolmen's base salary plus a cost of living adjustment [cola] calculated quarterly and equal to the percentage increase in the consumer price index. The Association's wage proposal is designed to catch up for losses occasioned by the affects of inflation and to insure against future cost of living increases. The Association has presented a detailed, analytical and graphical presentation on the impact of inflation on a patrolmen's salary. Using the base year 1973, the Association established that a Brighton Patrolmens salary increased from \$12,000 to \$17,815, a 47.2 percent salary increase. In 1973, a Patrolmen had real buying power of \$9,091 [in terms of 1967 dollars] while in October of 1979, this buying power decreased to \$7,009.04 or a net loss of \$1,187 or 13.1 percent. According to the Association, a 13.1 percent increase would not bring a Patrolmen's wages up to wage levels enjoyed in 1973. In order to catch-up, the Association argues a 15 percent salary increase is needed to regain the position enjoyed in 1973.

The Association graphically compared the increase in a Patrolmen's salary to the increase in the following six fixed payments incurred by a Patrolmen: mortgage, car payment, oil, heat, utilities, telephone, food and gas for an automobile. The comparison illustrated that fixed expenses outstripped a Patrolmen's increase in salary.

The Town agrees that inflation has taken its toll on members of the Association as well as all taxpayers of the Town of

Brighton. The Town points out that a Brighton Police Officer is not at a disadvantage when compared to fellow Policeman in Monroe County and similar communities throughout the State. Comparing salaries of Brighton Police persons to salaries of other comparable communities, a Brighton Police Officer is not seriously disadvantaged. The top step Patrolmen in 1979 exceeded salaries for the same position in comparable communities except for the City of Rochester where the Town argues that the Police work justifies an extra \$52.00 that City Police Officers earn. The Town further argues that increases already negotiated for 1980 in other communities in the Rochester area range from 5.1 percent to 10.5 percent.

#### ANALYSIS AND DECISION

A Town of Brighton Police persons entry level salary for 1979 is \$13,530 and at top step is \$17,815. Sergeants salaries total \$20,486. Comparing Brighton Police salaries to other comparable communities, a Town of Brighton Patrol person is not seriously disadvantaged. For 1979, a Patrolmens salary at top step equals in the Towns of Greece--\$17,800; Fairport--\$16,554; Irondequoit--\$17,767; and the City of Rochester--\$17,867; Monroe County Sheriff's Department--\$16,689. The Town has maintained salaries at a level comparable to other Police Departments in the County. The Association's proposal would surely place the Town of Brighton in the position of having the highest paid Police Department in the County and generally throughout the State except for the down state areas.

The Town of Brighton does not argue that it is unable to afford an increase in police salaries. The Town admits that it is in good financial condition and is willing to pay reasonable salary increases.

The Panel is mindful of the painful facts of inflation and its impact on a police officers salary. Today's economic turmoil affects all workers. One only needs to read a newspaper, look at a television or radio broadcast, to discover higher prices in all goods and commodities. The purchasing power of the average worker has decreased with the steady increase in inflation. The wage rate of the average working American jumped 8.7 percent during 1979, but that was short of last years 13.3 percent rise in consumer prices. The Consumer Price Index in October 1979 stood at 225.4.-- This means goods and services that cost \$100 in 1967, sold for \$225.40. The October index was 12.2 percent higher than 12 months earlier. The Labor Department reported that the salary rate of privately employed workers grows by a record 2.4 percent during the fourth quarter to cap the highest pay boost for one year since the government began issuing its employment cost index in 1975. However, because inflation advanced at a faster rate, workers real purchasing power declined for the second consecutive year. The Bureau of Labor Statistics reported consumer prices increase exceeded an 18 percent annual rate for the third consecutive month in March 1980 and earning power fell 0.8 percent and is down 7.9 percent

from a year ago. The Panel is well aware of the present inflationary spiral and its impact on food, housing, clothing, transportation, medical care, and other necessities of life.

The Panel in arriving at its determination was mindful of the President's recent voluntary wage and price guidelines which were modified to permit salary increases ranging from 7.5 percent to 9.5 percent per year. Although the guidelines are not mandatory, they are an expression of public policy and concerns to control inflation.

Monroe County's industrial employers including Eastman Kodak, Xerox, Rochester Products Division, Sybron Corporation have reported increased profits leaving Monroe County with a low unemployment rate for New York State. Private wage settlements in Monroe County were generally higher than public employees.

Monroe County traditionally has a skilled and semi-skilled labor force and wages are historically higher in the area. Monroe County residents have the highest personal income in the State, outside the New York City area, according to Department of Commerce figures.

Cost of living is the single most important factor in determining wages and salaries in both the public and private sectors of the economy. An employee's income must keep pace with the changes in the cost of living especially with today's run away inflation. The

Panel realizes that employees, including public employees, must be protected against increases in the cost of living and that pay increases must parallel the general rise in prices.

The New York State Public Employment Relations Board analyzed, arbitrated and settled Police contracts through March of 1980. Of 102 contracts studied by PERB, the weighed average top step of a Patrolmens salary is \$18,963 with an increase over 1979 of 6.8 percent or \$1,208. Total compulsory arbitrated contracts resulted in a 7.1 percent increase or \$1,479. The top step in Patrolmens salary in total arbitrated contracts was \$22,054 and of fourteen towns studied throughout the state, the top salary step was \$19,594.

PATROLMEN SALARY INCREASES ON TOP STEP IN 1980<sup>/a</sup>  
 FOR NEGOTIATED AND ARBITRATED CONTRACTS<sup>/b</sup>  
 NEW YORK STATE  
 ANALYZED BY PERB THROUGH MARCH 18, 1980

	No. of Agreements	No. in Department	Top Step <sup>/c</sup>	Weighted Average	
				Increase over 1979 Amount	%
TOTAL	102	9,144	\$18,963	\$1,208	6.8
Arbitrated	24	4,209	22,054	1,471	7.1
Cities	4	911	18,331	1,089	6.3
Towns	14	678	19,594	1,314	7.2
Villages	5	91	16,632	1,167	7.6
Counties	1	2,529	24,529	1,662	7.4
Negotiated	78	4,935	16,326	983	6.4
Cities	37	4,051	16,085	950	6.3
Towns	12	380	17,845	1,070	6.5
Villages	29	504	17,115	1,180	7.2

<sup>/a</sup> Fiscal years ended in 1980.

<sup>/b</sup> Excludes New York State and New York City police forces.

<sup>/c</sup> Salary after consecutive increments are received, generally 3-5 years.



Considering all of the above as equally important in arriving at a fair and equitable settlement and considering the nature of police work, this Panel feels that a salary increase for the Town of Brighton should be limited to 9 percent for the year 1980, retroactive to January 1st, 1980. This increase is justified by settlements in the Monroe County area, the ability of the Employer to pay, comparisons with private industry, and the present and projected increase in the cost of living. A 9 percent salary increase for the Town of Brighton Officer on a base of \$17,815 at the top step will result in a \$1,603 pay increase or a total Patrolmans salary at the top step of \$19,418. A 9 percent pay raise is a responsible pay increase for a police patrolmen and will result in a Town of Brighton Police Department being among the higher paid departments in Monroe County.

This Panel has rejected a Union proposal for a cost of living allowance in addition to a salary increase. It is this Panel's opinion, mindful of the statutory criteria that a 9 percent pay wage is consistent with comparable police departments and parallels the increased cost of living. A cost of living index addition would not, in the Panel's opinion, at this time, considering all of the relevant data before it be consistent with the public interest and welfare. We, accordingly, reject any cost of living allowance awarding instead a 9 percent pay raise retroactive to January 1st, 1980.

2 - Dental Plan. The Association proposes that the Town shall provide and pay for the G.H.I. Type "N" Spectrum 2000 Dental Plan full, basic and 100 percent prosthetic to Union members with single and family coverage at the employee's option.

The Association makes a persuasive argument for providing oral and dental health coverage. The Town does not dispute the relative merits of the plan but only points to the cost provided in supporting such program. The Town also reminds the Panel that they provide a Town of Brighton Patrol Officer with excellent health coverage with prolonged illness protection and additional major medical insurance including coverage for major dental work such as extraction or a root canal therapy.

Dental insurance is one of the more attractive fringe benefits today considering increasing dental care and costs. Dental insurance programs provide meaningful benefits to employees at a generally reasonable cost to employers. More and more collective bargaining agreements are adopting and accepting dental insurance as an additional fringe benefit to be provided to employees.

We, the Panel have considered the four basic types of dental programs and are of the opinion that the "Basic Type 'N' Plan" should be provided by the Town to their police personnel.

3 - Release Time. The Association is proposing that the President of the Association, or his designee, be provided full release time to attend Union functions. This proposal would be a new clause in the parties' Collective Bargaining Agreement and would grant the Association necessary and needed release time to afford its President and/or designee the opportunity to engage in Union affairs.

Release time for a Union President is not a unique proposal and is enjoyed by many Unions, and contained in many collective bargaining agreements in Monroe County and other counties in the state.

Release time can, however, result in a substantial cost to the Employer who must pay for time not worked but must also pay another employee to replace the absent Union representative. As pointed out by the Association, the President devoted approximately 250 hours alone last year to Union business. Had the release time proposal been in effect, this would have amounted to roughly 31 working days or one out of every seven scheduled working days. At the 1979 average daily rate per top step patrolmen, this amounts to a cost to the Town in the amount of \$2,272.61.

This Panel is persuaded that a reasonable amount of release time should be granted to the President of the Association. We hereby award that the President should receive a total of three (3) days

per year release time for the purpose of conducting Association business.

4 - Longevity. The current Collective Bargaining Agreement between the parties provides for longevity payments in addition to base salary for fixed increments at each five years of salary. The Association is proposing a change in the longevity pay structure that provides for yearly increments in longevity pay based upon a percentage of base salary [1.50 percent after three years to 8.26 percent after twenty years of service and thereafter].

The Association's proposal was merely a request for increase in longevity benefits with automatic increase in future years as salaries rise.

The Panel is not persuaded by the Association's arguments for a needed change in the present longevity schedule or payments. The Union argues that the present longevity schedule does not adjust for inflation. While admittedly the Union's argument may have some merit, this Panel is of the opinion that we have adequately compensated for inflation by our award herein. Accordingly, the Association's proposal is rejected.

#### REMAINING ISSUE

The Association has presented other proposals for changes in the parties' collective bargaining relationship. Their

proposals may be summarized as follows:

A. Safety Arbitration -- The Association has proposed the addition of a new article on safety, which calls for binding arbitration in the event the parties are unable to resolve any safety related issue. The Town argues that the current Collective Bargaining Agreement presently has a labor management safety committee and that the Association's proposal is without precedent in the area and will seriously hamper the Police Department's safety efforts and seriously disrupt normal police functions.

B. Seniority Shift Selection -- The Association proposes the deletion of Article 14, Section 9, which permits the Chief of Police to change an employee's shift selection provided that he is not hereby transferred to a less desirable shift in the amendment of Section 7 of the Article to reflect an individualized determination of shift desirability. The Town points out that the current shift selection language was introduced in the 1976 agreement as a result of hard collective negotiations between the Association and the Town. Any change at the current time is unnecessary according to the Town, and the Union's proposal would seriously interfere with the efficient operation of the Department.

C. Disciplinary Procedure -- Currently, the parties' Collective Bargaining Agreement provides in Article 5, Section 2

---

that all disciplinary matters are to be governed by Section 155 of the Town Law and the Department rules and regulations promulgated thereunder. The Association proposes to replace the current disciplinary procedures with a binding arbitration proposal or at the employee's option, the procedures contained in Section 75 of the Civil Service Law. The Town strongly resists this proposal, suggesting that the current language should remain intact.

D. Vacation Selection -- Beginning in 1979, the rules and regulations of the Brighton Police Department have contained the procedure for the selection of prime-time vacation periods. The Association now demands that this procedure be incorporated as a provision in the current Collective Bargaining Agreement. The Town resists the proposal arguing that the current rules and regulations have worked well in the past and the Association has failed to establish any need for a change.

E. Personal Leave for Perfect Attendance -- The Association is proposing a new Section 7 of Article 10 of the Contract which will enable employees to earn one personal leave day for each 90-day period of perfect attendance without calling in sick. The Association's proposal is in response to a provision in the current Collective Bargaining Agreement which is referred to as the Six-Frequency Rule which, according to the Town, is designed to prevent abuses of sick leave by permitted forfeiture of vacation when an officer is absent on six or more occasions.

---

F. Compensatory Time -- The parties agreed in a Memorandum of Understanding that compensatory time in lieu of cash payment for overtime hours would be permitted in 1979 and would be computed at an employees straight-time rate. The Association is now proposing that compensatory time be incorporated into the agreement to be paid at time and one-half rate and with the maximum accumulation and carry-over of thirty days per year. The Town maintains that compensatory time creates problems and should not be included in the Collective Bargaining Agreement in any form, particularly at the time and one-half rate.

G. Sick Time and Calculation of Overtime -- The Association is proposing the deletion of that part of Section 2 of Article 14 which states that sick time shall not be counted as hours worked in the calculation of overtime. Instead, the Association proposes that overtime is to include any time worked in excess of eight hours on a regularly scheduled work day or any time worked on a scheduled day off.

H. Retirement Incentive -- The Association proposes a retirement incentive to early retiring police officers in the amount of \$7,500.00. Charts and figures are presented by the Association to prove the cost savings resulting from a retirement incentive proposal.

I. Public Employer's Proposal- 5-2 Work Schedule --

The only proposal that the Public Employer brings to the arbitration Panel is for a change in the work schedule from a 4-2 schedule to a 5-2 schedule. The Association protests strongly a change in the current 4-2 scheduling practice which has prevailed in the Brighton Police Department for many years. The Town provides supporting arguments for the 5-2 schedule rather than the 4-2 work schedule.

DISCUSSION

The Town of Brighton and the Brighton Police Association has been unable in collective negotiations to resolve any of their differences. The Association blames the Town for being inflexible and unwilling to respond to any of the Association's proposals. The Town, on the other hand, blames the Association's new bargaining team for being unaware that most of the language that they now seek to change or remove from the Contract was the result of extensive negotiations occurring in 1976 and represented a dramatic improvement in the terms and conditions of employment for the Association and its members. The Town argues that the Association is attempting to undermine a carefully structured settlement by destroying rights gained through non-compulsory negotiations without any quid pro quo.



The compulsory arbitration provisions of the Civil Service Law were never intended to have a chilling affect upon the bargaining process so as to undermine collective bargaining. Experienced participants to the process will, in most cases, reach agreement on all but a few critical issues before arbitration will be utilized. Compulsory arbitration should not serve to rewrite the parties' Contract and destroy those provisions previously achieved through hard and sincere collective negotiation.

The Association's proposals, many of which have merit, represent drastic surgery of the parties' current contract. The Association's proposals if adopted in whole or part by this Panel, would represent a severe change in the parties' relationship. We, the Panel do not perceive our responsibility to be that far-reaching and certainly do not intend to destroy the parties' incentive to reach, in the future, their own negotiated settlements. This Panel was convened for the purpose of considering a one-year Contract. We have, in meeting our responsibility, considered and passed only on those critical issues and reserved to the parties for future negotiations all remaining items.

We, believe that our Award is a fair and equitable settlement of the parties impasse and is consistent with our responsibility within the provisions of the Civil Service Law.


AWARD

1 - It is hereby directed that the Collective Bargaining Agreement between the Town of Brighton and the Brighton Police Association be continued for a one-year period from January 1st, 1980 until December 31st, 1980.

2 - It is hereby directed that the salaries of the Police Officers be increased nine (9) percent retroactive to January 1st, 1980.

3 - It is hereby directed that the Town of Brighton provide at no cost to the Association members, the "Basic Type 'N' Dental Program.

4 - It is hereby directed that the Town of Brighton grant release time to the President of the Association only for a period of three (3) days per year to be used for Association business.

  
\_\_\_\_\_  
THOMAS N. RINALDO, Chairman and Public  
Member of the Panel

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:  
CITY OF BUFFALO )

On this 25<sup>th</sup> day of June, 1980, before me, the subscriber personally appeared THOMAS N. RINALDO, to me personally known and known

to me to be the same person described in and who executed the within Award, and he duly acknowledged to me that he executed the same.

DENIS A. SCINTA  
Notary Public, State of New York  
Qualified in Oneida County  
My Commission Expires March 30, 1981

Denis A. Scinta

Karl Essler  
KARL ESSLER, Employer Panel Member

STATE OF NEW YORK )  
COUNTY OF MONROE ) SS.:  
CITY OF ROCHESTER )

On this 24<sup>th</sup> day of June, 1980, before me, the subscriber personally appeared KARL ESSLER, to me personally known and known to me to be the same person described in and who executed the within Award, and he duly acknowledged to me that he executed the same.

Judy E. Koelle  
JUDY E. KOELLE  
Notary Public in the State of New York  
MONROE COUNTY  
Commission Expires March 30, 1981

Al Sgaglione  
AL SGAGLIONE, Employee Organization  
Panel Member

STATE OF NEW YORK )  
COUNTY OF ONEIDA ) SS.:  
CITY OF UTICA )

On this 12<sup>th</sup> day of June, 1980, before me, the subscriber personally appeared AL SGAGLIONE, to me personally known and known to me to be the same person described in and who executed the within Award, and he duly acknowledged to me that he executed the same.

Angeline Maril  
ANGELINE MARIL  
Notary Public in the State of New York  
Appointed in Oneida County  
My Commission Expires March 30, 1981

10



112 1.1.16  
2.1.16