

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR

: :
In the Matter of the Compulsory : :
Interest Arbitration between : :
: :
TOWN OF TONAWANDA : : AWARD OF
: : PUBLIC ARBITRATION PANEL
and : :
: : Case No.: CA-0019;
TOWN OF TONAWANDA : : M74-680
POLICE CLUB : :
: :

BEFORE Alice B. Grant, Neutral Chairperson
Joseph L. Randazzo, Esq., Employer Panel Member
Brian P. Shields, Club Panel Member

APPEARANCES

For the Town

Norman J. Stocker, Director of Labor Relations
James R. Halter, Consultant to the Town
Lawrence A. Hoffman, Jr., Chief of Police
Jack T. Morris, Assistant Chief of Police

For the Club

Anthony J. DeMarie, Esq.
Thomas Keleher, Negotiating Committee
Robert C. Berlinghoff, Negotiating Committee
Donald L. Meidel, Negotiating Committee
Robert T. Mayer, Negotiating Committee

PROCEDURE

A hearing in the above matter was held in the Town of Tonawanda, New York, on June 3, 1975, before the undersigned members of the Public Arbitration Panel who were selected in accordance with the compulsory interest arbitration procedures of the New York State Public Employment Relations Board. At the hearing both parties were

give a full opportunity to present their evidence, testimony, and argument; the record was closed at the conclusion of the hearing on that same day. The public arbitration panel met in a pre-hearing administrative session and again on June 19, 1975, in Batavia, New York, to decide on the issues presented at the hearing.

BACKGROUND

In October, 1974, the parties began negotiations for a successor contract to the one which was to expire on December 31, 1974. After efforts to mediate were unsuccessful, the New York State Public Employment Relations Board appointed a Fact Finder who held two days of hearing and issued his Report and Recommendations on February 3, 1975. These recommendations were accepted by the Club, but were rejected by the Town. The impasse was subsequently carried to the present Compulsory Interest Arbitration proceeding under the provisions of the Civil Service Law, Section 209.4.

AWARD

In arriving at its determination the Public Arbitration Panel gave full due consideration to the report and recommendations of the Fact Finder; the comparison of wages, hours, and working conditions of the Town Police Officers with those in comparable areas; the interests and welfare of the public and the financial ability of the Town to pay; and the working conditions which are unique to policemen.

After due consideration of the above criteria, the Public Arbitration Panel hereby makes its final and binding award on the

following issues which were designated by the parties as not agreed upon.

Since the parties have always negotiated two-year contracts, the panel directs that the Agreement between the parties shall extend from January 1, 1975 to December 31, 1976. The provisions of the Agreement, including the economic provisions for the first year of the Agreement, shall be retroactive to January 1, 1975.

After examining the Fact Finder's recommendations and the Town's Exhibits #5, 6, 7 and 8, the Panel is persuaded that the Fact Finder gave careful consideration to area comparisons and to the Town's financial structure and that, therefore, in accordance with the Town's proposal, the salary increase for the first year of the contract shall be 8.2%.

The Panel also determines that an increase in longevity payments is justified since there has been no change in longevity payments from the time the first contract was negotiated, and since the Town has fallen behind the surrounding area by not offering a 20th year longevity step. The Club also pointed out at the hearing that the comparison of longevity payments (Town Exhibit #10) does not take into consideration that City of Buffalo's payments are cumulative, which puts it ahead of the surrounding communities.

Furthermore, according to Town Exhibit #14, the cost of this increased longevity pay, is not excessive.

Based on the above reasoning the Panel awards an increase in longevity payments to \$200, \$300, \$400, \$500 and \$600 at the 5th, 7th, 10th, 15th and 20th years of service, respectively. The Panel

For the same reason the Panel supports the Fact Finder's recommendation in regard to Out of Rank Pay and directs that no change be made in this provision.

Section 7.14 Uniform Care

No persuasive arguments were presented at the arbitration hearing to reverse the Fact Finder's recommendation that this demand not be granted.

Sections 7.16 and 7.17

The Fact Finder did not recommend the inclusion of these sections. Since insufficient testimony was provided at the arbitration hearing, the Panel has no reason to change the Fact Finder's recommendation.

Section 7.18

The Panel agrees with the Fact Finder in not recommending this section, since the Town now follows Civil Service procedures.

Section 8.02 Sick Leave

The Arbitration Panel agrees with the Fact Finding proposal that the following language proposed by the Club be incorporated in the contract:

"Sick leave for illness or injury covered by Workmen's Compensation shall not be deducted from a policeman's sick leave."

Section 10.01 Vacation

Although the Club argued that its vacation time is inferior to that granted to Buffalo and the State Police, the Panel did not find this sufficiently compelling to change the Fact Finder's recommendation. The Panel, therefore, directs that the present vacation schedule remain unchanged.

Section 11.01 Insurance (Prescription Plan)

The Fact Finder recommended the adoption of the "One Dollar Co-Prescription Plan," and at the arbitration hearing, the Town agreed to this plan if it were inaugurated in the second year of the Contract. In defense of this the Town argued that it has incurred substantial increases in premium rates and, therefore, it would like to defer this benefit to the following year. Based on the above reasoning, the Arbitration Panel awards that the Co-Prescription Plan be adopted in the second year of the Contract.

Section 11.01 Insurance (Blue Cross-Blue Shield benefits)

The Fact Finder made the following recommendation in regard to Blue Cross-Blue Shield coverage for retired Police Officers:

"With respect to retired Police Officers it is recommended that the place of their domicile or residence not be made a condition for the payment of Blue Cross and Blue Shield insurance premiums by the Town when such payments result from a conversion of accumulated sick leave not used by the Policeman into a dollar amount. The condition that retired Policemen can enjoy this benefit, provided that they continue to live in New York State is on its face not reasonable. There cannot conceivably be any benefit to the Town whether a retired Policeman lives in New York City, some 400 miles from Tonawanda, or if he lives in Bradford, Pennsylvania or in Fort Erie, Canada, both of which are considerably closer, but either place, if chosen as a domicile, will deny to him this benefit."

The Fact Finder's reasoning is persuasive and the Panel, therefore, directs that any reference to the place of residence be removed from Section 11.01.

the surrounding area, including West Seneca, Cheektowaga and East Aurora. The Town submitted a past Arbitration Award in which the Arbitrator pointed out that this was a "strong past practice clause." The arbitration panel notes, however, that the Arbitrator also pointed out that the Management Rights clause in the contract was equally strong (Town Exhibit #12). Since the Town won the Arbitration Award, there is no evidence that the Town has suffered as the result of having the past practice clause in the Contract. Based on this reasoning and on the evidence presented by the Club that this clause is found in other comparable areas, the arbitration panel finds no reason to change the recommendation of the Fact Finder.

Section 14.03 Air Conditioned Cars

This is a new clause proposal which the Fact Finder did not recommend. The Panel found insufficient evidence at the hearing to change the Fact Finder's recommendation.

Section 14.05 Polygraph Examinations

The Fact Finder recommended that the "Club's proposed Section 14.05 be adopted, to wit: 'No policeman shall be given a polygraph examination for any purpose,' provided, however, that a policeman may voluntarily submit to such an examination."

The Fact Finder points out that this is consistent with the N. Y. State Police Contract, and the Club argues further that results of polygraph tests are not admissible as evidence in N. Y. State courts and that, accordingly, policemen should be accorded the same civil rights as all other N. Y. State citizens. While the Town argues that ~~these~~ these tests are used only for internal

investigations, the Town's arguments are not persuasive since there is too little evidence of the validity of polygraph tests. For this reason the arbitration panel upholds the recommendation of the Fact Finder.

Section 14.07 Club Space

This is a new proposal by the Club to have the Town provide office space for the Club. The Panel awards that this provision not be included in the contract, but notes that this does not bar any informal arrangement for Club space which may be worked out between the Town and the Club.

Dated: June 26, 1975
Rochester, New York

Alice B. Grant
Alice B. Grant
Neutral Chairperson

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 26th day of June, 1975, before me personally came and appeared, ALICE B. GRANT, to me known and known to me to be the individual described herein and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Linda F. Sanford
LINDA F. SANFORD
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1977

Dated: 6/30/75

Joseph L. Randazzo
Joseph L. Randazzo, Esc.
Employer Panel Member
Dissenting on:

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On this 30th day of June, 1975, before me personally came and appeared, JOSEPH L. RANDAZZO, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Mary Jane Matyjakowski
MARY JANE MATYJAKOWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

Dated: 7-7-75

Brian P. Shields
Brian P. Shields
Police Club Panel Member
Dissenting on:

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On this 7th day of June, 1975, before me personally came and appeared, BRIAN P. SHIELDS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

David W. Evans
DAVID W. EVANS
Notary Public in the State of New York
Qualified in Erie County
My Commission Expires March 30, 1976

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR

N.Y. STATE
PUBLIC EMPLOYMENT
RELATIONS BOARD
JUL 10 1975
RECONCILIATION

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AWARD OF
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BEFORE Alice B. Grant, Neutral Chairperson
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Furthermore, according to Town Exhibit #14, the cost of this increased longevity pay, is not excessive.

Based on the above reasoning the Panel awards an increase in longevity payments to \$200, \$300, \$400, \$500 and \$600 at the 5th, 7th, 10th, 15th and 20th years of service, respectively. The Panel

awards further that longevity pay be considered as part of the basic annual salary for the purpose of computing holiday pay add-on.

The salary increase for the second year of the contract shall be 8%. The Panel bases this decision on its findings that this increase is comparable to settlements already negotiated for the same period in surrounding communities.

Section 7.04 Daily Rate of Pay

The Fact Finder's recommendation that a uniform rate be used by the Town for all employees is reasonable and provides equal treatment for employees. The daily rate of pay, therefore, shall be obtained by dividing the basic annual salary by 261 days the first year and 262 days the second year, provided such number of days are applicable to other Town employees.

Section 7.09 Holiday Pay

The Panel finds that the Club's arguments for an additional holiday are not persuasive in changing the Fact Finder's recommendation that no change be made in the number of holidays.

Sections 7.07 and 7.15 Shift Premium and Out of Rank Pay

Since the Fact Finder recommended no change in Shift differential and since the Town points out that none of the five comparable areas receives a shift differential, the Panel awards that no change be made in the existing shift differential.

The Fact Finder also recommended "that when a Policeman works an equal number of hours on two shifts on an eight-hour assignment, he should be paid at the rate provided for by the higher paying shift." Although the Club argues that the policemen should receive the shift differential for actual time worked, it presented no comparative data which persuaded the arbitration panel to alter the recommendation of the Fact Finder.

For the same reason the Panel supports the Fact Finder's recommendation in regard to Out of Rank Pay and directs that no change be made in this provision.

Section 7.14 Uniform Care

No persuasive arguments were presented at the arbitration hearing to reverse the Fact Finder's recommendation that this demand not be granted.

Sections 7.16 and 7.17

The Fact Finder did not recommend the inclusion of these sections. Since insufficient testimony was provided at the arbitration hearing, the Panel has no reason to change the Fact Finder's recommendation.

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The Panel agrees with the Fact Finder in not recommending this section, since the Town now follows Civil Service procedures.

Section 8.02 Sick Leave

The Arbitration Panel agrees with the Fact Finding proposal that the following language proposed by the Club be incorporated in the contract:

"Sick leave for illness or injury covered by Workmen's Compensation shall not be deducted from a policeman's sick leave."

Section 10.01 Vacation

Although the Club argued that its vacation time is inferior to that granted to Buffalo and the State Police, the Panel did not find this sufficiently compelling to change the Fact Finder's recommendation. The Panel, therefore, directs that the present vacation schedule remain unchanged.

Section 11.01 Insurance (Prescription Plan)

The Fact Finder recommended the adoption of the "One Dollar Co-Prescription Plan," and at the arbitration hearing, the Town agreed to this plan if it were inaugurated in the second year of the Contract. In defense of this the Town argued that it has incurred substantial increases in premium rates and, therefore, it would like to defer this benefit to the following year. Based on the above reasoning, the Arbitration Panel awards that the Co-Prescription Plan be adopted in the second year of the Contract.

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The Fact Finder's reasoning is persuasive and the Panel, therefore, directs that any reference to the place of residence be removed from Section 11.01.

Section 11.04 Life Insurance

The expired contract does not provide for death benefits beyond those which are payable by the Retirement System, which at this time has a \$20,000.00 ceiling. The Club requested that the Town provide their members with a \$10,000.00 term policy.

The Club argues that individuals cannot convert their present insurance upon retirement, and that it is possible to do this with term insurance. The Town objects to the additional cost factor and to adding a fringe which is presently not granted to other city employees.

After weighing these contentions, the Panel has concluded that the Club's arguments are persuasive, especially in view of the particular tensions and stresses associated with the work of Police Officers. The Panel, therefore, awards that the Town provide Police officers with a life insurance policy which will provide for a death benefit of \$10,000 regardless of the cause of death and which can be converted upon retirement. This provision is to take effect in the second year of the contract.

13.02 and 13.04 Table of Organization and Desk Lieutenants

The Panel found insufficient evidence at the hearing to change the Fact Finder's recommendation that these not be included in the contract.

Section 14.02 Past Practice Clause

The Fact Finder recommended that no change be made in the language of Section 14.02, the past practice clause. The Club argues that this is a standard clause found in other Police contracts in

the surrounding area, including West Seneca, Cheektowaga and East Aurora. The Town submitted a past Arbitration Award in which the Arbitrator pointed out that this was a "strong past practice clause." The arbitration panel notes, however, that the Arbitrator also pointed out that the Management Rights clause in the contract was equally strong (Town Exhibit #12). Since the Town won the Arbitration Award, there is no evidence that the Town has suffered as the result of having the past practice clause in the Contract. Based on this reasoning and on the evidence presented by the Club that this clause is found in other comparable areas, the arbitration panel finds no reason to change the recommendation of the Fact Finder.

Section 14.03 Air Conditioned Cars

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Dated: June 26, 1975
Rochester, New York

Alice B. Grant
Alice B. Grant
Neutral Chairperson

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 26th day of June, 1975, before me personally came and appeared, ALICE B. GRANT, to me known and known to me to be the individual described herein and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Lidia E. Santo
LIDIA E. SANTO
Notary Public in the State of New York
MONROE COUNTY, N. Y.

Commission Expires March 30, 1977

Dated: 6/30/75

Joseph L. Randazzo
Joseph L. Randazzo, Esq.
Employer Panel Member
Dissenting on:

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On this 30th day of June, 1975, before me personally came and appeared, JOSEPH L. RANDAZZO, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Mary Jane Matyjakowski
MARY JANE MATYJAKOWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

Dated: 7-7-75

Brian P. Shields
Brian P. Shields
Police Club Panel Member
Dissenting on:

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On this 7th day of June, 1975, before me personally came and appeared, BRIAN P. SHIELDS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

David W. Evans
DAVID W. EVANS
Notary Public, State of New York