

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF NEW YORK
Case No. CA-0106; M76-193

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In the Matter of the Arbitration :
-between- :
City of Corning :
-and- :
Corning Police Department, :
Steuben County Chapter, CSEA :
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AWARD

Appearances:

For the Union:

Kevin F. McDonough, Esq., Attorney

For the Employer:

Richard H. Wyssling, Esq., Attorney

Before the Public Arbitration Panel:

Prof. Walter L. Eisenberg, Public Panel Member and Chairman
Al Sgaglione, Employee Organization Panel Member
Charles J. Ganim, Employer Panel Member

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THE ISSUES

Corning Police Department, Steuben County Chapter, CSEA
(hereinafter "Chapter") and the City of Corning (hereinafter
"Employer") ultimately submitted to the Undersigned as the
designated Public Arbitration Panel for final and binding

determination some thirteen issues which remained unresolved in direct negotiations, mediation and fact-finding over the terms of a contract to succeed the parties' Agreement which expired on June 30, 1976.

A hearing on the issues was held on November 9, 1976 at the Broome County Airport in Binghamton, New York. The parties were ably represented, and were afforded the opportunity to introduce evidence, examine and cross-examine witnesses, and present argument on the issue. The parties filed briefs and extensive exhibits (27 in number) on the matter at issue.

The Panel met and conferred on the ample record before it and reached its decisions on the issues after giving consideration to comparative data pertaining to salary levels and negotiated pay increases; hours and conditions of employment; the interests and welfare of the public; the Employer's ability to pay; the special characteristics of police employment and performance in the community involved; the terms of employment of other public sector employees and of private sector employees; consumer price trends; and other relevant factors typically related to the type of public sector employment here involved.

ISSUES

The unresolved issues before the Panel for determination include the following:

1. Duration of contract
2. Salaries
3. Number of work days in the annual schedule
4. Distribution of days off
5. Work-week definition
6. Posting of duty rosters
7. Individual work schedules
8. Overtime pay
9. Notice of shift change
10. Personal leave
11. Service date definition and application
12. Pension improvements
13. Education incentive

The parties arrived at mutual understandings on at least eight other issues, not before the Panel.

DISCUSSION

The Panel's thorough review of the issues led it to the early conclusion that it would be unable to reach a unanimous position on the matters at issue. Thus, the AWARD of the Panel represents the majority's views, tempered to some extent in a number of instances by the position taken by the dissenting member of the Panel. It was the Chairman's view that the Recommendations of the Fact Finder in this case justifiably deserved to be employed as a principal guide to the Panel's AWARD, with the Fact Finder's Recommendations modified in part

to reflect the difference between the Fact Finder's proposed one-year contract and the Panel majority's decision to award a two-year contract. In the main, the Fact Finder took into account the necessary considerations in reaching his Recommendations. In general, where a Fact Finder's Recommendations are soundly developed an Arbitration Panel should have compelling reasons for rejecting or modifying such Recommendations. Additional or more recent information available to the Panel and not previously available to the Fact Finder served in certain instances to reinforce and in other instances to weaken the thrust of the Fact Finder's Recommendations on the issues involved.

The Fact Finder confined his suggestions for resolving the open issues to the framework of a one-year contract. However, he was evidently belatedly advised of a possibility that a two-year contract could become the basis for a settlement. He urged the parties to reach agreement on a two-year contract, suggesting that "consideration" be given to the addition of the following to his Recommendations for a one-year contract: "Salaries -- A 6%-cost-of-living formula; Personal Leave -- Add one more day; Education Incentives -- Provide a modest differential for additional education". The parties not only failed to reach agreement on the two-year basis for a contract urged by the Fact Finder, they were unable to agree upon his Recommendations for a one-year contract.

The award herein of a two-year contract, with the specified terms and conditions incorporated in that two-year contract, is warranted on several grounds: the increases in prices paid by consumers already recorded nationally and regionally since July 1, 1976; reasonable projections of the increases in consumer prices from the present to June 30, 1977 and June 30, 1978, the end of the two-year contract here awarded; the fact that the police officers involved are restricted by law from obtaining significant improvement in pension benefits to levels already applicable to police officers employed by various small, medium and large communities in the State and by police officers employed by the State -- improvement for which there may be justifiable but not compelling grounds in the present negotiating round; the anticipated advantages to the police officers involved, to the City government, and to the taxpayers of the City of the sustained quiescent interval between negotiating rounds that a two-year contract will effect in what has been an unduly prolonged, administratively burdensome, expense-absorbing, uncertain, and apparently rancorous series of contract negotiations between the City of Corning and the police organization in the past few years; the indicated need for salary adjustments which would offset to some extent the inroads of inflation and which can help to preserve and hopefully enhance slightly the standard of living of the employees and

families involved; the absence of a mitigating factor such as City inability to pay, the finances of the City being in apparent sound enough condition to support readily the moderate improvements in pay and benefits embodied in this AWARD; the currently prevailing salary levels for police officers in comparable communities in the general area, coupled with information about police pay settlements and general estimates of the likely levels police pay will reach in comparable communities in fiscal 1977-78; prevailing private sector pay levels in the area during the contract period, a factor which can not be ignored in any broad evaluation of factors bearing on the pay levels of employees engaged in performing a vital public service as police officers; the general thrust as well as the specifics of the Fact Finder's Recommendations for a one-year contract and his suggestions for a two-year contract; the allocation to salaries in the second year of the contract of whatever cost was entailed in the Fact Finder's suggestion that "a modest differential" be added in the second year as an education incentive -- a suggestion which was considered by the Panel majority and discarded in favor of a more general addition to salaries; among other considerations.

The Panel majority has adopted the salary Recommendations made by the Fact Finder for the contract year beginning July 1, 1976. These involve increases to salary levels

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averaging 9.2% higher than those in effect on June 30, 1976. For the second year of the contract, the Panel majority has determined that based on more current information than that available to the Fact Finder when he made his Recommendations on July 23, 1976, not only was a further 6.0% cost-of-living related increase warranted but that an additional 3.2% more over the June 30, 1976 salary levels, or 2.4% over the July 1, 1976 salary levels, was justified by the as yet uncompensated inflationary erosions of pay that have taken place and can be anticipated to the end of a new two-year contract, by the substitution of an addition to the general pay adjustment for the education incentive proposed by the Fact Finder, by considerations involving the indefinitely operative legal restrictions on even justifiable grounds for pension improvements for the police officers involved, and by various other obvious and subtle comparative factors, all of which justify repeating in the second year additional salary increases equal in dollar terms to those of the first year. In percentage terms, the second year salary increases in the AWARD average 8.4% over the first year salary levels -- 2.4% more than that recommended by the Fact Finder -- payable in two steps, an average of 5.6% on July 1, 1977 and the remaining 2.8% on January 1, 1978. While the Fact Finder suggested a further 6% "formula" pay increase for the second year of a two-year contract, the Panel majority found that --

for the reasons indicated elsewhere herein -- an additional 2.4% (for a total of 8.4%) over the June 30, 1977 level was warranted, in two installments in the second year of a two-year contract.

The Panel's AWARD adopts much of the Fact Finder's Recommendations pertaining to scheduling, except that which was withdrawn by the Chapter after a finding by PERB on December 21, 1976 that two of the work schedule demands made by the Chapter (and covered in the Fact Finder's Recommendations) were "not mandatory subjects of negotiation", except for the definition of an "emergency" proposed by the Fact Finder, and except for certain revisions in the formulation of the daily overtime, weekly overtime, and days off provisions. The changes adopted by the Panel majority reflect its view that these would represent needed improvement in application and effectiveness. For example, a definition of an "emergency", with reference to the provision for prior notice of shift changes, is deliberately not provided. The definition proposed by the Fact Finder does not meet the problems involved and would impose a needless restraint on a significant prerogative of departmental administration in police service. There is no single and readily definable concept of an "emergency" which is widely acceptable within the context of police service. The Panel prefers not to impose any limit on the prerogative of the Department's ad-

ministrators to change assignments when in their judgment an emergency makes a change necessary within 48 hours. The notice requirement in the Panel's AWARD is wholly consistent with the Panel's view of the need for Department flexibility in adjudging the existence of and in meeting an emergency.

The Panel majority has also provided a more detailed provision on the use of the date of hire as the service date for vacation purposes, to avoid any confusion about or conflict with its utilization in conjunction with the present vacation benefits clause.

To help assure the minimization of occasions for renewed dispute between the parties over incorporation in their new contract of previously agreed upon revisions not before the Panel for decision, the Panel will indicate briefly the nature of those revisions and will require their incorporation in the parties' new contract. Proposals made by the parties to each other or to the Panel and not withdrawn, and proposals at issue and not otherwise mutually resolved which are not specifically dealt with in the AWARD will be deemed denied by the Panel.

AWARD

The Undersigned, constituting the duly authorized Public Arbitration Panel to whom was voluntarily submitted the matter in controversy (PERB Case No. CA-0106;M76-193) between the par-

ties above-named, and having heard the allegations and received evidence and argument bearing on the controversy, makes the following AWARD by majority decision of the Panel, the Employer Panel Member dissenting:

1. Duration of Contract -- The term of the new Contract shall be two years, from July 1, 1976 through June 30, 1978.

2. Salaries -- The following salaries shall be incorporated in the new Contract and shall be made effective as of the dates shown:

	<u>Effective July 1, 1976</u>	<u>Effective July 1, 1977</u>	<u>Effective January 1, 1978</u>
Patrolmen-entry level(Step I)	\$8,725	\$ 9,220	\$ 9,465
-Two full years service (Step II)	9,925	10,480	10,755
-Four full years service (Step III)	<u>11,200</u>	<u>11,835</u>	<u>12,150</u>
Lieutenants	<u>12,525</u>	<u>13,230</u>	<u>13,580</u>
Captains	<u>13,875</u>	<u>14,655</u>	<u>15,045</u>

3. Schedule -- (1) The schedule shall require 260 work days per year.
- (2) The schedule shall provide for equal distribution, that is, rotation, of days off.
- (3)(a) The work-week shall consist of 7 consecutive days beginning 5:00 AM Sunday.
- (b) The start of a week's duty roster shall be as of 5:00 AM Sunday and said roster shall be posted at least 7 days prior to the week covered in the posting.
- (c) the work-week for each individual shall consist of 40 hours within the week beginning 5:00 AM Sunday, and a work-day shall consist of 8 consecutive hours within the 24 hours of the day.
- (4) Overtime in excess of 8 hours in a day and 40 hours in a week shall be paid for at the rate of time and one-half.
- (5) Shift changes other than those regularly scheduled shall be made with at least 48 hours of prior notice except in the event of an emergency. Except as provided below, any failure to give at least 48 hours of prior notice of an unscheduled shift change, regardless of whether said failure was for emergency or any other reasons, shall result in the payment

of time and one-half for all work performed on a changed shift where the change followed notice of less than the required 48 hours minimum, provided, however, that if an unscheduled shift change with less than 48 hours notice is made necessary in order to replace a police officer who is away from work due to an absence for illness or an absence on a personal leave for either of which absence the Department did not have at least 48 hours of prior notice, the failure to give at least 48 hours advance notice to the police officer whose shift is being changed shall not in such case as either of those specified above require the payment of time and one-half for work performed by the public officer whose shift was changed.

4. Personal Leave -- Effective July 1, 1976 the Contract shall provide that each employee is entitled to one paid personal leave day per year, and effective January 1, 1978 the Contract shall provide for one additional paid personal leave day per year, making available a total of two such days per year to each employee.

5. Service Date -- (1) For the purposes of seniority, salary schedule increases, and vacation benefits the service date shall be the anniversary of the individual's date of hire.

(2) In the application of the date of hire to vacation eligibility, effective as of the date of this AWARD in each contract year the service date shall for all purposes be the anniversary of the date of hire, except that for an employee's first vacation an employee hired prior to February 1st who would accrue less than one year of service by June 1st shall be entitled to one week of paid vacation.

6. Issues Settled by the Parties -- The mutual understandings reached by the parties on issues which were not referred to the Panel for decision shall be incorporated, by means of appropriate amendments, in the new Contract. These understandings include:

(1) Bereavement Pay -- bereavement leave also to be permitted in the event of the death of a stepchild, step-parent, and grandchild.

(2) Holidays -- one additional paid holiday.

(3) Accumulated Sick Leave -- to 120 days in the first year, and to 150 days in the second year.

(4) Uniform Allowance -- an increase of \$50.

- (5) Vacations -- vacation picks to cover the entire year; and unused vacation is not to accumulate from year to year.
- (6) Grievance Procedure -- shortened time periods.
- (7) Health Insurance -- improve by dropping the \$8,000 limitation.
- (8) Service Date -- to be anniversary date of hire.

7. Implementation -- (1) The terms of this AWARD shall be added to the terms and conditions of the prior CONTRACT AGREEMENT between the parties and shall be in addition to the terms and conditions mutually agreed upon by the parties, and shall be in addition to the terms and conditions in applicable prior arbitration awards.

(2) The terms of this AWARD shall be implemented by the parties in a manner consistent with and to the extent permitted by applicable law.

Walter L. Eisenberg

 Walter L. Eisenberg
 Public Panel Member and Chairman

Charles J. Ganim

 Charles J. Ganim
 Employer Panel Member
 (Dissenting)

Al Sgaglione

 Al Sgaglione
 Employee Organization Panel Member

Dated: _____
 New York, New York
 March 8, 1977

Richard H. Wyssling

 RICHARD H. WYSSLING
 NOTARY PUBLIC, State of New York
 No. 62-9789350
 Qualified in Suffolk County
 Commission Expires March 30, 1978

Madeline M. Spaulding

 MADELINE M. SPAULDING
 Notary Public, State of New York
 Commission Expires March 30, 1978

State of New York)
 SS:
 County of Kings)

On this 8 day of March, 1977 before me personally appeared WALTER L. EISENBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Beatrice Eisenberg

 Notary Public

BEATRICE EISENBERG
 NOTARY PUBLIC, State of New York
 No. 24-1092397
 Qualified in Kings County
 Commission Expires March 30, 1978

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STATE OF NEW YORK
Case No. CA-0106; M76-193

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- between - :

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DISSENTING OPINION

Respectfully submitted by:
Charles J. Ganim
Public Employer Panel Member

DISCUSSION

After a thorough review of the majority panel's proposed AWARD, I must dissent from their award. The City took the approach that the Fact Finder's AWARD should be accepted in total except where there were extenuating circumstances which had to be proved beyond the shadow of a doubt or that the Fact Finder was not aware of certain facts because of the change in circumstances since his AWARD. It is my opinion that the arbitration panel should have a deNovo hearing and that they should take into consideration the Fact Finding's recommendations but it should not use the Fact Finding recommendation as the sole basis for its determination.

I should limit my dissention to three basic points made by the panel: (1) Salaries, (2) Schedules and (3) Personal Leave.

(1) Salaries -

The salaries recommended by the panel are excessive and the theory that was used by the panel members is completely without justification. The AWARD results in a top patrolman with four years receiving \$1900.00 over the year and one-half period. In any method of calculation, it is felt that this is a clearly excessive award.

(2) Schedule -

Although I must commend the panel as in their ability to look into the scheduling problem an attempt to resolve the matter to the benefit of both the City and the patrolman the result that the panel members have awarded

will not solve the problems in the department; in fact, they will create more problems. Any time management rights are taken away with respect to scheduling, the cost is difficult to calculate but where here we are given rules and regulations as to how the department is to be run, this is a definite intrusion into management rights and should not have been granted by the panel. The panel neglected to realize that the Police Department is a twenty-four hour, seven days a week, fifty-two weeks a year operation. It is not a department that starts at one time and closes at another time; because of this, the panel misinterpreted their ability in which to lay down rigid rules which would be difficult for the department to adhere to without an excessive cost in overtime.

(3) Personal Leave -

The thrust of the issues that were settled by the parties in the area of bereavement, leave, holidays and accumulated sick leave was an attempt to alleviate an excessive number of personal leave days being rampant. Irregardless of this fact, the panel members determined that the members of the department be awarded two (2) personal days per year. What happens with personal days many times they are abused by the individuals and are merely extra vacation days. Because of these factors it was incumbent upon the panel members not to grant excessive amount of leave days.

For all of the above reasons, I thereby dissent from the
AWARD of the panel members.



Charles J. Ganim
Public Employer Panel Member

Dated: March 24, 1977

State of New York)
County of Erie) ss:

On this 24th day of March, 1977 before me personally appeared
CHARLES J. GANIM, to be known and known to me to be the individual
described in and who executed the foregoing instrument and he
duly acknowledged to me that he executed the same.



Notary Public

RICHARD H. WYSSLING
NOTARY PUBLIC, State of New York
No. 52-9759850
Qualified in Suffolk County
Commission Expires March 30, 1978