

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of Interest Arbitration Between :
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THE CITY OF ROCHESTER, N. Y. :
:
-and- :
:
THE ROCHESTER POLICE LOCUST CLUB, INC. :
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CONCILIATION

CASE NO. CA0125;
M76-303

The New York State Public Employment Relations Board, by a designation dated April 21, 1977, pursuant to Section 209-4 of the New York Civil Service Law, appointed a Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute in the above-captioned case.

The Public Arbitration Panel members so designated were: Public Panel Member and Chairman - John F. Hans; Employer Panel Member - William L. Holcomb; and Employee Organization Panel Member - Al Sgaglione.

Prior to the submission of the dispute to the Public Arbitration Panel, the matter had been referred to (Rev. Msgr.) James A. Healy in the capacity as Fact Finder in accordance with an appointment by the New York State Public Employment Relations Board on June 2, 1976. Recommendations for the settlement of the dispute were subsequently issued, and ultimately rejected.

The Public Arbitration Panel held a hearing on June 6, 1977, at Rochester, New York. An executive session of the Panel was held in Albany, New York, on June 24, 1977. At the Rochester hearing, both sides were afforded opportunity to present exhibits, testimony, and briefs. Post-hearing briefs were filed and available at the executive session of the Panel. No verbatim transcript of the testimony was taken.

The genesis of the dispute reveals that many of the items originally disputed were resolved during negotiations and during the Fact Finding procedure.

After the issuance of the Fact Finder Healy's recommendations, agreement was reached by the parties on other issues which were still in dispute at that time. The present Panel has addressed itself to those issues which both sides agreed were still unresolved.

The first unresolved issue was the matter of police salaries. A 6% across-the-board increase, retroactive to July 1, 1976, is being sought by the Police Locust Club. In addition, a cost-of-living formula (unspecified) was requested for the second year of a two-year agreement.

The basic position of the City rested on a several-pronged argument in opposition to such increase. It was emphasized by the City that salary parity, at least historically, has always existed between the principal public safety groups in Rochester, namely the police and fire organizations.

The Rochester Fire Fighters Union and the City had reached a tentative wage agreement which was subsequently rejected by the membership. An interest arbitration panel awarded a general increase of 2½% on July 1, 1977, and a general increase of 8% on April 1, 1978. The previous contracts of both, the Rochester Firemen and the Rochester Police, had expired on June 30, 1976.

As a major point in its argument, the City urged that the parity pattern not be disturbed in view of the history previously recited. The salient thrust of that argument was based on prospective difficulties with other employee organizations in future negotiations. Parity, until recently, had attained the status of "the sacred cow". Recent decisions, judicial and otherwise, have tended to diminish, if not entirely erode, that sacred aura.

Police officers usually work shift arrangements which provide less flexibility in the amount of successive days free from duty. This binds them to a schedule more restrictive than that of the firemen. The police officer and the fireman are both engaged in hazardous occupations vital to the safety and well-being

of the community. Both are deserving of proper compensation. It is the contention of a majority of this Arbitration Panel that the firemen enjoy benefits from their shift patterns that police officers do not enjoy. For this reason, the majority of the Panel rejects the parity argument of the City. Panel Member Holcomb dissented from this view.

As the second prong of its arguments in opposition to the wage increase demands of the Union, the City does not, in essence, plead inability to pay. This is not meant to indicate that Rochester, like most urban areas of a similar size, does not suffer from those financial ills affecting other cities. Increase in tax-exempt property, expenditures increasing faster than revenues, prospective decreased State Aid distribution, are among the factors affecting the amount of money available to pay any increases to its employees. All is not bleak, however. Rochester enjoys a Moody bond rating unique among upstate cities. The economic climate of Rochester, apparently because of prudent care in the past enjoys a reputation of not being as sorely afflicted financially as other New York State cities of similar comparability. The City of Rochester has, in effect, requested that no salary increase be granted for 1976. The reasons are varied. It is pointed out by the City that July 1977, is already upon us, that other agreements have been consummated, and that budgetary difficulties of enormous proportions would result. The arguments are persuasive and practical, and the Panel will award no increase for 1976.

In determining the amount of increase to be awarded, however, the Panel has kept in mind that the cost-of-living-increase impact on the police officer is just as great as that on any employee, public or otherwise.

For the above reasons, subject to the dissent by Panel Member Holcomb, the majority of the Panel awards as follows:

The term of the contract shall be of two-year duration as agreed upon by the parties; with a general wage increase of 4% effective July 1, 1977; a 4% general wage increase effective January 1, 1978; and a 4% wage increase effective April 1, 1978.

Another item of economic importance involves the request by the Club for a night shift differential. The arguments advanced, in the estimation of the Panel, are not of sufficient strength to warrant the imposition of this extra cost to the City, at this time, and in consideration of the monetary impact of the salary award made above.

The request for a night shift differential is denied and such is not awarded.

The salary of Investigator within the Central Investigation Division is an item of economic as well as legal dispute. The Police Locust Club has proposed that the salary of Investigators be placed at Bracket 92 (grade B detective). The Investigators are now chosen from the ranks of Police Officers on the basis of an internal-merit examination.

It is the contention of the City that the proposal of the Locust Club would be illegal, and that the salary of Investigators must be fixed with reference to the salary being paid to Police Officers (Bracket 90) and Sergeants (Bracket 92).

Investigator is an assignment rather than a rank. The briefs and testimony submitted indicate that the work being done by the Investigator is the work of a Grade B Detective. The majority of the Panel feels that the salary should be placed at Bracket 92. The Club, the City and the Civil Service Commission have jointly requested a determination from the Civil Service Commission as to its legality. The Panel has not concerned itself with the legal question involved. If the Investigator is doing the work of a Grade B Detective, he should be so compensated. Panel Member Holcomb dissents from the view of the majority.

It is awarded that Investigator's salary be placed at Bracket 92.

Presently, the Police Department of Rochester is working on a 5-2, 4-2 work wheel. This, of course, means that a police officer works 5 days with 2 days off, then works 4 days with 2 days off. The Club has requested the institution of a 4-2 work week. It would seem obvious that the institution of such a system would mean a loss of police coverage that would necessitate hiring more personnel to maintain the present standard of police coverage. Significant cost factors would be involved. For these reasons, the Panel denies the change requested by the Club.

It is awarded that no change be made in the 5-2, 4-2 work schedule.

One of the unresolved questions at the time of this arbitration involved the payment by the City of the premium for an ordinary death insurance policy of \$2500 for all members of the bargaining unit who retire. It is apparent, from an economic point of view, that the cost of such a program is minimal and, as a matter of equity, be granted. The Panel makes the following award:

A sentence shall be added to Section 4, Article 11 of the contract to read as follows:

"The City agrees to pay the full premium of an ordinary death insurance policy of \$2500 for all members of the unit who may hereafter retire from service".

Section 3 of Article 8 of the collective bargaining agreement pertains to injury in the line of duty. The Club seeks a refinement of definition of "line of duty" in keeping with that concept as outlined in the Workmen's Compensation Law; and the opinions and case law that have flowed therefrom. The entire concept of police personnel injured in the line of duty is basically different from the concept of injuries under the Compensation Statutes.

For this reason the Panel awards the following language change in Article 8, Section 3:

Section 3: Bills for Services.

Bills for professional service by private medical or surgical specialists rendered to members injured on duty or while on police department premises will not be paid from City funds unless such services are provided by express order of the police physician. This rule will not apply to necessary first aid or emergency services rendered in cases of injury in line of duty.

A change is sought by the Police Locust Club in Article 9 of the collective bargaining agreement. Under the present wording of that Article, an employee may earn one (1) day of personal leave for each three months of perfect attendance. Currently, the Rochester Police Department calculates the eligibility of the employee on the basis of calendar quarters. The Club argues that, in certain instances, the intent of the language may be subverted, and cites an example where an officer could have perfect attendance for 178 days but, if he happened to be absent on January 1 and June 30, would earn no days.

The basic counter-argument to the proposed change in procedure sought by the Club would substantially compound the problem of monitoring records and reports to determine eligibility.

Neither side to the dispute on this matter professes a desire to increase or decrease the benefits contained in the Article. There is merit to both points of view as expressed in the briefs of both parties. Cognizant of that fact, the Panel awards that Article 9 be changed to read as follows:

"Effective July 1, 1977, employees covered by this agreement will earn one (1) day of personal leave for each 90 days of perfect attendance. Any personal leave earned according to this section shall be credited in the quarter following the period in which it was earned. The employee may use such leave for any purpose subject to advance approval of his absence. The employee may accumulate up to four (4) days of personal leave for this purpose, which may be carried across contract fiscal years, provided that the four (4) day maximum is not exceeded."

Certain changes in the disciplinary procedures existing in the present contract are being sought by the Club. In furtherance of the argument for change, the Club cited recent legal and arbitral determinations. It is claimed that the changes in language sought would bring the meaning of the discipline section of the contract more in keeping with the principles of those recent determinations.

The major thrust of the City's argument in opposition to the changes sought relies on the differentiation between departmental proceedings and actual criminal prosecution. The City claims that the provisions of Article 20 and Article 21 of the present contract provide adequate protection for the officer under investigation in an internal disciplinary proceeding, as well as in a criminal proceeding.

The Panel, in dealing with this problem, recognizes the sensitive nature of internal disciplinary proceedings. It is also aware of the need for a feeling of confidence in the police officer that all his rights are being protected when he becomes subject to an investigation. The Panel feels that the language of Article 20, Section 2:B should be changed, and awards that the language of that section shall read as follows:

(B) "Subsequent to the filing of a complaint alleging a violation of departmental rules and regulations or general orders, and prior to the filing of Departmental charges, the member against whom the allegation was made shall be advised of the name of the complainant and the nature of the complaint, and shall be afforded the opportunity to be heard. The member may have counsel of his own choosing, which may include a representative of the Club."

Article 3, Section 3 of the present agreement provides for a longevity payment. The City seeks a change in the manner of payment. Presently, a member whose anniversary date falls between January 1 and June 30 commences receiving the longevity payment beginning on the first pay period following January 1. Similarly,

when the anniversary date falls between July 1 and December 31, the longevity payment commences with the first pay period following July 1. It is possible, under some circumstances, that a member could sever his employment relationship prior to his anniversary date, after having received his longevity payment.

The Club maintains that the change requested by the City would, in effect, reduce the longevity payment of some officers by changing the date upon which the longevity is calculated. This, according to the Club, would be taking away an economic benefit from the police officers.

The Panel feels that this problem is minimal and that no change should be made in the present contract language. The Panel awards as follows:

There shall be no contract language change in Article 3, Section 3, Longevity.

The Club has proposed a full-time release for the Club President for proper administration of his job in handling the various matters with which he must deal. Released time in a lesser amount has also been proposed by the Club for the Vice President utilizing the same argument anent increased duties attendant to proper club duties; particularly in the relationship of the Club to the City with the various problems arising from the administration of the contract.

Presently, Article 26, Section 2, provides for 3 working days a week of released time. There is no provision for released time for the Club Vice President.

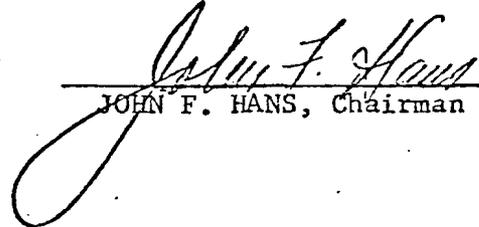
The Panel is in accord on the justification for increased released time for the President, but finds no logical rationale for the request for released time for the Vice President.

The Panel makes the following award:

Article 26, Section 2: Release time for Club President shall provide for detached duty with full pay for four (4) days.

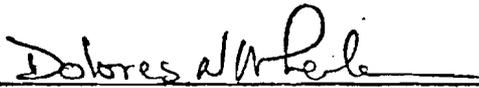
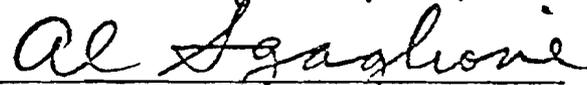
The above constitutes the Award of this Public Interest Arbitration Panel. The dissents of Employer Panel Member, William L. Holcomb are noted above.

DATED: June 28, 1977
Albany, New York


JOHN F. HANS, Chairman

STATE OF NEW YORK
COUNTY OF ALBANY

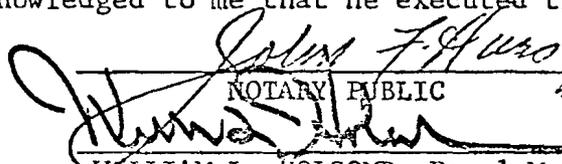
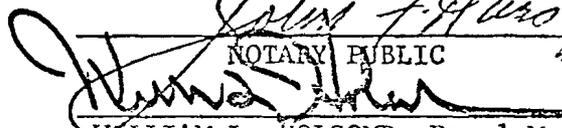
On this 28th day of June, 1977, before me personally came and appeared, JOHN F. HANS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


NOTARY PUBLIC
State of New York # 4645786
Comm. expires 3/30/79

AL SCAGLIONE, Panel Member

DATED:

STATE OF NEW YORK
COUNTY OF

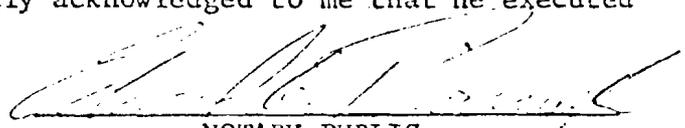
On this 28th day of June 1977, before me personally came and appeared, AL SCAGLIONE, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


NOTARY PUBLIC
State of New York # 4645786
Comm. expires 3/30/79

WILLIAM L. HOLCOMB, Panel Member

DATED:

STATE OF NEW YORK
COUNTY OF

On this 28th day of June 1977, before me personally came and appeared, WILLIAM L. HOLCOMB, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


NOTARY PUBLIC
EDWARD G. PIWOWARCZYK
Notary Public, State of New York
Qualified In Erie County
My Commission Expires March 30, 1978

