

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD
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MAY 17 1978

In the Matter of the Arbitration between the
CITY OF TROY
and
TROY POLICE BENEVOLENT AND PROTECTIVE ASSOCIATION
PERB CASE NUMBER: 1A1; M76-844

CONCILIATION
ARBITRATION
PANEL
DECISION
AND
AWARD

APPEARANCES:

For the City of Troy: ROBERT E. GRAY, Esq.

For the P.B.A.: FRANK N. GRASSO, Esq.

BEFORE ARBITRATION PANEL:

Canon David C. Randles - Impartial Chairman
Thomas V. Kenney, Jr. - City of Troy Designee
Harvey B. Diamond - P.B.A. Designee

In accordance with the provisions of the Civil Service Law, Section 209.4, as amended, the New York State Public Employment Relations Board designated the above Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute between the parties.

In accordance with statutory provisions applicable to interest arbitration pursuant to Civil Service Law, Section 209.4 (as amended July 1, 1977), hearings were held between October 21, 1977 and December 9, 1977, on which day the record was closed for all purposes except briefs relative to the evidence adduced at the hearings or stipulated to be covered in said briefs. During these hearings the parties were afforded full and complete opportunity to adduce testimony, examine and cross-examine witnesses and to present exhibits, evidence and arguments concerning their respective positions on the issues which were at impasse.

There are some 526 transcript pages of testimony and 64 exhibits. The parties were given ample time to submit briefs and reply briefs.

In considering the voluminous testimony and evidence placed before it by the parties, the Public Arbitration Panel weighed the relative position of the parties and arrived at its final determination based on the criteria enumerated in the Civil Service Law, Section 209.4, to wit:

- (v) a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. The interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, paid time off and job security.

In addition, the Public Arbitration Panel considered other factors that are normally and customarily considered in arriving at an equitable arbitration award.

As noted above, the parties submitted voluminous testimony and exhibits, all of which are recorded in the transcript. Counsel for both parties presented the case most competently, forcefully and in great detail. The exhibits and testimony of the PBA thoroughly explored the economic ability of the City to provide improved benefits for its police, comparisons with other communities, and specified comparable police officer conditions

in the Capital District area and in the State. The City's witnesses and exhibits demonstrated an all inclusive over-view of the City's financial position, its operations and budgetary requirements. Rather than burden this Decision and Award with the detailed analysis and rationale to which the Public Arbitration Panel subjected the testimony and evidence, suffice it to state that the entire record was carefully reviewed in relation to the criteria set forth as a result of which the Public Arbitration Panel unanimously makes the following Decision and Award.

The Decision generally will relate to and follow the Articles and Sections of the Contract between the parties executed December 23, 1974. Reference will be made, insofar as possible to those matters in that agreement as to which either party requested modification. Contract provisions which were not disputed was stipulated to be carried over herein without change, even if not specifically so designated. Similarly, contract provisions which were initially considered disputed by either party, and the opposition by that party was withdrawn before this Panel will not be discussed, but will be deemed to continue as written.

AWARD:

A. POLYGRAPH: The City has challenged the continuation of the prior language in Article VII, D5, on the ground that it conflicts with the decision of the Public Employment Relations Board in Case No. U2451. We have examined that decision and hereby substitute the following language which we believe conforms thereto:

"No member shall be required to submit to a polygraph test during the investigation of alleged departmental misconduct."

B. BREATHALYZER: The City similarly objects to Article VII-D6 which PERB also held not to be a valid matter for mandatory negotiation. The PBA, here also called the "Union", has agreed to abide by the Board's decision, and accordingly the section is stricken from the contract.

C. SCHEDULING: The City has requested a modification of the last sentence in Article X, Section 1A. It proposes to substitute

for the current contract language the following:

Present schedules relating to days off and normal duty hours shall continue unchanged unless mutually agreed upon, or for temporary periods in exceptional circumstances.

The panel has considered the proposed change but finds it to be too vague in two respects. The words "Present schedules" had meaning in 1974 when the contract was written, but may lead to disputes as to what they mean today. Similarly, the term "exceptional circumstances" is vague and indefinite. We therefore direct that the parties accept the following substituted sentence:

Schedules relating to days off and normal duty hours in effect on January 1, 1977, shall continue unchanged unless mutually agreed upon, or for temporary periods in the event of strikes, riots, conflagrations, or occasions when large crowds shall assemble, or other similar emergency, or on a day on which an election authorized by law shall be held.

D. LINE-UP TIME: The City has requested modification of the last paragraph in Article X, Section 1A to provide for ten minutes "show up" time or "line up" time, as it is called in other police departments. We are in sympathy with the desires of Chief Givney who expressed a need for such additional time. However, we do not believe that we are justified to impose such time upon the employees without compensating them for it. We therefore suggest that the parties may wish to adopt the following substituted paragraph:

A regular work day for each police officer shall be a period of eight (8) consecutive hours including meal periods. Employees may be required to work ten (10) minutes before the beginning of their regular shifts for roll call, inspection and briefing, provided that the City compensates them for such additional time as provided in Section 2 of this Article.

Otherwise the present contract language shall continue unchanged.

E. TABLE OF ORGANIZATION: Here too the City challenges the present language in Article X-Section 1B as being a non-mandatory matter, under PERB's decision in Case No. U2451. We note

however that the provision which the Board rejected required the consent of the Union to any proposed change in the Table of Organization. In the instant agreement it provides merely for the PBA to examine the same and present its views. We do not believe that the latter is non-mandatory and determine that the present language may continue without change.

F. SENIORITY: Article XII, Section E provides that "In determining preference for the purpose of selection of vacations or assignments seniority within rank shall control." The City desires to eliminate the word "assignments" from that sentence. We note, however, that the bidding system under Article XXV and especially under Article XXVII is based upon the right of senior employees to bid for preferred assignments. We are advised that there have been a number of grievance arbitrations on this point. Since a practice has been established for several years we see no reason to upset it by changing contract language. The request of the City is denied.

G. VACATION LEAVE: Both parties requested various changes in Article XVII. Some of those urged by the Union would require additional economic cost to the City. Since, as set forth hereafter, we have decided to limit any monetary award to salaries and clothing allowance, we reject such demands without further discussion. The City also requested a change in Section A but offered no evidence in support of its proposal. We deny the request.

There is one provision in this Article that we do believe requires modification. At the present time Section H-5 permits an employee who has scheduled a vacation but becomes ill prior to taking it, to postpone the vacation until he has physically recovered from his disability. The Union requested similar consideration for employees who become ill or disabled while on vacation. We believe that the request is too broad, since it would be most difficult for the City to verify the length of the illness or disability. We therefore add another sentence to the above section to provide:

Similarly, an employee who becomes ill or disabled while on vacation and requires hospitalization, shall have the time spent in a hospital

charged to sick leave and not to earned vacation leave.

H. INSURANCE: Both sides have requested changes in the insurance program provided in the current contract. The City desires a contributory plan for new employees in the Blue Cross-Blue Shield coverage. The Union requests a dental insurance program, a life insurance plan, and coverage under Sections 208B and 208C of the General Municipal Law. The Union's requests, except for the last, are denied for the reasons set forth in Section G above. The City's proposal is also rejected since it would create problems within the Bureau without being of substantial benefit to the employer.

We note that the City does not provide Workmen's Compensation benefits to its police and firefighters. While such employees are protected if accidentally injured in the course of employment, there is no comparable provision to take care of dependants if a police officer is killed. That would be covered under Section 208B and 208C of the General Municipal Law. We are advised, however, that those sections have been interpreted to be permissive only, and require appropriate action by the local legislature to be applicable. We direct therefore that the City provide such coverage by resolution of the City Council. *NKP* *MSD* *sdh*

I. LEAVE OF ABSENCE FOR ASSOCIATION REPRESENTATIVES: The City has requested elimination, or at least substantial modification, of Article XXIV which provides for paid leave for Association officers to negotiate agreements, adjust grievances, attend meetings etc. We do not accept the City's argument that such a provision is a non-mandatory subject of negotiation. See also, PERB's ruling in Case No. U2451. We find that comparable provisions have been held to be of benefit to the employer as well as employees and are contained in numerous published contracts in both public and private employment. We therefore reject the demand of the City.

J. SAFETY: The City objects to the present contract language in Article XXIX, Section 13. PERB had previously ruled that such a provision is too broad and encroaches upon managements rights to deploy its equipment as it sees fit. Although PERB did suggest equivocal language in Case No. U2451, we believe that it is too

vague and unenforceable to be of any real value. We therefore adopt the following substitute paragraph, which gives the City its rights but also provides certain legal protection to the employees.

The Safety Committee of the Association shall be free to inspect any equipment used in the field of police work or other work of the Bureau, and advise the Chief of any faulty equipment found. Any police officer who believes that a piece of equipment is unsafe and dangerous to life and limb may refuse to work with such equipment unless he is directed to do so by a written order from the superior officer in charge, who must certify in that order that the equipment is safe for the purpose intended.

K. MISCELLANEOUS MATTERS: In its initial proposal the City requested deletion or modification of other contract provisions (See Joint Exhibit 4). However, except as discussed elsewhere in this decision, the City offered no evidence in support of its demand, nor did it attempt to justify them in its post-hearing brief. We therefore assume that such proposals have been abandoned, and that the language in the current contract will be continued without change.

On the other hand, the Union agreed that matters covered by the PERB decision in Case No. U2451, such as parity and minimum manning, to be non-mandatory bargaining items. We therefore direct that they be stricken from the agreement, unless voluntarily agreed to by the City.

Similarly, almost all of the Union's proposals, with some minor exceptions, would require additional monetary expense by the City. (See Union Exhibit 1). As we have indicated heretofore, we have decided to limit such improved benefits to increases in salary and clothing allowance. Therefore, except as specifically provided for herein, the Union's proposals are denied, and the present contract language will continue unchanged.

L. CLOTHING: The Union requested an increase in the clothing allowance to \$350.00 for uniformed personnel, and to \$500.00 for plain clothes employees. The Union also requested that the clothing allowance be paid in cash instead of by voucher. Substantial uncontradicted evidence was introduced to show that the

cost of uniforms and equipment has increased more than fifty percent in the past five years; that civilian clothing has similarly gone up in price; and that there has been no increase in the allowance during that period. There was also evidence that the employees spent substantial sums out-of-pocket to replenish their uniforms and other necessary personal equipment.

We therefore have decided to increase the clothing allowance by fifty percent for the two year period covered by this award. Since it is not possible to issue vouchers for items purchased in the Calendar year 1977, we direct that all members of the Unit be paid \$75.00 in cash. The 1978 allowance shall be increased by the issuance of additional vouchers to a total of \$225.00 for the year. If this award is not implemented in the current year, the additional allowance for 1978 shall also be paid in cash.

Employees who heretofore have received a cash allowance shall continue to do so in the increased amounts set forth above,

M. SALARY: Both parties submitted considerable testimony, and numerous exhibits with regard to the request of the Union of improved economic benefits in a number of areas of the contract. As set forth above, the Panel has rejected almost all changes, and decided to limit the award primarily to salary increases for the period involved herein.

The Union established by competent evidence that Troy was below average compared to other communities in the State, as well as to comparable communities in the immediate area. The record shows that for the employees of the Troy Bureau of Police to reach that average would require increases of almost twenty-five percent. The Union also produced evidence to show that the economic position of the City was not as poor as the latter claimed when it denied its police any increase for 1977. And the Union witnesses tried to prove that an award payable in 1978 could be justified without too great an increase in the tax burden of the citizens.

On the other hand, the City showed that it was having serious economic problems when it failed to budget any increase for 1977, and that even in 1978, a substantial increase in benefits for police would disrupt the City's financial picture. The

City therefore urged that we limit our award by denying any increase for 1977, and allowing a six percent increase only for 1978.

As stated above, we have carefully read the testimony, studied the exhibits and analyzed the situation in the light of the criteria required by the statute. It would serve no purpose to report in detail how much of the evidence each party submitted was accepted, and how much was found to be unfruitful. Suffice it to say that we are satisfied that the City could have offered some increase in 1977, and that because of its failure to do so, its offer for 1978 is wholly inadequate. We have therefore decided upon an award of \$1,400.00 per employee, to be paid in the manner set forth in the salary schedule hereto annexed. In limiting our award in this manner, we reject the Union's demands for a larger percentage figure, for a greater spread between the upper echelon officers and the rank and file employees, as well as improved longevity and shift differential. We note that this salary increase over a two year period is comparable to salary increases awarded to police units by other arbitration panels. (PERB statistics reflect an average increase of 5.4% per annum, exclusive of N.Y.C. and Long Island.) Thus applying that percentage to the 1976 base salary of a patrolman in the City of Troy, we would arrive at a figure of \$1,345.00. The allocation of the moneys in the two year period as shown in the schedule is based solely upon the following criterion.

*Not
H.M.D. 1/1/78*

The justifiable need to increase the salaries of police in the City of Troy to move toward the mean of police salaries in comparable communities in New York State gave rise to our placing employees ~~upon~~ upon the per annum salary schedule, referenced hereunder, through the use of the double increase in the second year. While increasing the base salary by this method, we were able to minimize the actual dollar impact upon the City. Arguendo, if we were to divide the \$1,400.00 (placing one-half of it in each year), we would not have been able to accomplish the purpose of moving the salary position of this employee group approximating the mean salaries paid similar units within the State without substantially increasing the actual dollar value of the award.

Thus, by placing the bulk of the increase in the second year, we further reduced the actual dollar impact of increases for this unit by reducing substantially the effect of compounding the increase to accomplish our goal.

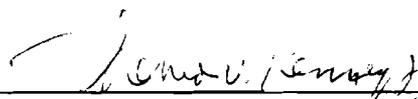
Finally, it is the expressed unanimous recommendation of the arbitration panel that the parties to this proceeding consider this arbitration award as fair and equitable, and, if it is their desire, to utilize it as the basis of continued negotiations leading to a subsequent collective bargaining agreement for the years 1979 and 1980. To this end the panel further recommends that the parties begin that process immediately.

Dated: May 10, 1978

ARBITRATION PANEL:



Public Member and Chairman
The Rev. Canon David C. Randles



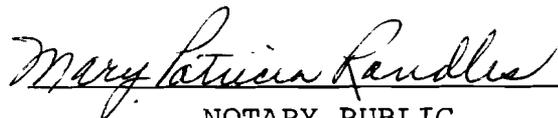
For the Employer
Thomas V. Kenney Jr.



For the Employee Organization
Harvey B. Diamond

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) SS:

On this day of May, 1978, before me personally came and appeared DAVID C. RANGLES, THOMAS V. KENNEY, JR., and HARVEY B. DIAMOND, to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.



NOTARY PUBLIC
MARY PATRICIA RANGLES
Notary Public, State of New York
Reg. No. 421624
Qualified in Schenectady Co.
My Commission Expires Mar. 30, 1979.

SALARY SCHEDULE

1 JAN 77 through 31 DEC 78

A. For Police Officers appointed after 1 Jan 77, the per annum rate shall be:

	Jan. 1, 1977 thru Dec. 31, 1977	Jan. 1, 1978 thru June 30, 1978	July 1, 1978 thru Dec. 31, 1978
1. Initial six months of employment---	8,600.00	9,350.00	10,450.00
2. Seventh through Eighteenth months--	9,100.00	9,850.00	10,950.00
3. Nineteenth through Thirtieth month-	9,850.00	10,600.00	11,700.00
4. Thirty-first through Forty- second month-----	11,350.00	12,100.00	13,200.00
5. After Forty-second month-----	12,223.00	12,973.00	14,073.00

B. For members of the Bureau of Police employed before January 1, 1977, the per annum rates of compensation during the period of this award shall be as follows:

PER ANNUM RATE OF COMPENSATION

<u>RANK</u>			
6. Police Officer-less than two years of service-----	11,404.00	12,154.00	13,254.00
7. Police Officer-more than two years of service-----	12,223.00	12,973.00	14,073.00
8. Sergeant, Detective, Juvenile Aid Detective and Identification Officer-----	13,123.00	13,873.00	14,973.00
9. Captain-----	14,307.00	15,057.00	16,157.00
10. Assistant Chief-----	15,081.00	15,831.00	16,931.00
11. Chief of Police-----	16,036.00	16,786.00	17,886.00