

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

between

CITY OF ROME

and

PHILIP S. MCDONALD POLICE
BENEVOLENT ASSOCIATION, INC.
OF ROME, NEW YORK

* * * * *

RECEIVED
APR 13 1979
ARBITRATION

Case No. IA-75;
M77-646

On December 4, 1978 the New York State Public Employment Relations Board, pursuant to Section 209.4 of the Public Employees' Fair Employment Act, appointed a Public Arbitration Panel for the purpose of making a just and reasonable determination of the contract negotiation dispute between the City of Rome, hereinafter referred to as the "City" and the Philip S. McDonald Police Benevolent Association, Inc. of Rome, New York, hereinafter referred to as the "Association."

The Public Arbitration Panel Members so designated are:
Dale S. Beach, Public Panel Member and Chairman
Edward Tyler, Esq., Employer Panel Member
Al Sgaglione, Employee Organization Panel Member

The arbitration hearing was held in two sessions, February 8 and March 6, 1979, at the Rome City Hall. At the arbitration hearing both parties were afforded full opportunity to present testimony, exhibits, and arguments in support of their positions and to cross-examine opposing witnesses. Witnesses were sworn and transcripts were made of both hearing sessions. A post-hearing brief, dated March 19, 1979 was filed by the Association.

The Panel met in executive session in Albany, New York on April 13, 1979.

Appearances:

For the City

Frank S. Cook, Esq., Corporation Counsel, City of Rome
Joseph G. Grande, Chief of Police, City of Rome
Richard A. Fahy, Treasurer of City of Rome

For the Association

Rocco A. DePerno, Esq. Attorney for the Philip S. McDonald
Police Benevolent Association
Gerald Washburn, President of Philip S. McDonald Police
Benevolent Association
William W. Gorke, Senior Sales Representative for Blue Cross-
Blue-Shield of Central New York
Edward J. Fennell, Municipal Finance Consultant
Joseph G. Grande, Chief of Police, City of Rome
Jay Freemont, Service Officer for the Police and Fireman's
Retirement System

The last collective agreement between the parties was for the period of July 1, 1975 through December 31, 1977.

The Association brought 12 issues before the panel. These were listed in the Petition to the Public Employment Relations Board for compulsory interest arbitration and are as follows:

1. Salaries
2. 20-year retirement plan
3. Shift differential
4. Cost of Living
5. Vacations
6. Personal Leave Days
7. Longevity
8. Uniforms
9. Call Back Time
10. Dental Plan
11. Bill of Rights
12. Shift Minimum

In its written response to PERB the City submitted two issues as follows:

1. City's Rights
2. Limitation of persons from any one shift on union business

The two City issues were directly settled by the parties and hence, were not presented to the Arbitration Panel.

It ought to be noted that both parties agree that the contract that is the subject of this arbitration proceeding will be for two years and will cover the period January 1, 1978 through December 31, 1979.

POSITIONS OF THE PARTIES

In summarizing the positions of the parties at this point we shall give those matters that pertain generally to the negotiations, to the financial condition of the City, the welfare of the public, nature of a police officer's job, and related matters. Arguments of the parties regarding specific issues will be mentioned later when we take up each issue.

Position of Association

The Association submitted 26 exhibits into evidence along with 4 exhibits that were joint with the City.

The Association proposes a \$2,000 salary increase across the board for each of two consecutive years retroactive to January 1, 1978, adoption of the 20 year retirement plan, shift differentials of 7.5% and 10%, a cost of living increase, improved vacation schedule, additional personal leave days, increased longevity, and other contract improvements that will be explained later in this report when we discuss each of the specific bargaining issues.

Edward J. Fennell, Municipal Finance Consultant, presented an analysis of the financial documents of the City of Rome. The constitutional tax limit is 2% of the average full valuation of real property taxable for city purposes. For the calendar year of 1979 Rome's total tax levy of \$4,635,484 represents 67.8% of its tax limit. The average for 60 New York State cities for fiscal years ending 12/31/75 was 85.5%.

Cities having less than 125,000 inhabitants have a debt limit of 7% of the 5-year average full property valuation. As of 12/31/77 54.6% of Rome's limit had been exhausted. This compares with an all-cities average of 54.7%. Rome has operated in the "black" during the years 1972 through 1978. For the fiscal year ending 12/31/77 the positive fund balance in the "general account" was 4.78% of total expenses.

The 1979 budget shows an estimated 1978 revenue surplus of \$172,522.

Overall, the Association contends that the City of Rome is sound financially.

The Association claims the City Police Department is understaffed by about 18 police officers and this is against the City's interests. As of March 6 the Department had a complement of 68 with 2 vacancies. The understaffing forces the City to use one-person cars. The job of a police officer is hazardous.

¹ The vacancies were filled on March 13, 1979.

There is considerable stress in the life of a police officer. This gives rise to a high frequency of heart attacks, high blood pressure, and divorce. The suicide rate of police officers in the United States is 41.6 per 100,000 population.

The Association said that Rome has one of the lowest crime rates in the country and this demonstrates the commitment and performance of Rome's police.

Position of City

The City submitted 7 exhibits along with 4 exhibits that were joint with the Association. Also at the specific request of the Chairman of this Panel the City, on April 11, 1979, provided a list of all members of the Police Department together with their salaries.

The City rejects the Association's Salary proposal by contending that it would amount to a 15% increase for each of two years. This would exceed President Carter's pay guideline of 7% and the cost to the City would be excessive. The City also rejects the twenty-year retirement plan because it would cost the City 40.7% of the salaries of all those in this plan. It also rejects the shift differential proposed by the Association because it would be too costly. The cost of living proposal would be inflationary. It rejects the proposed improvement in vacation benefits because this would leave the department understaffed. The specifics of the City's position on the issues will be given later in this report.

In its testimony and exhibits the City cited the salary increases that it had negotiated with other City bargaining units. For 1978 and 1979 the Firefighters increase is 4½% each year. For Local 1088 of AFSCME the increase is 5.8% for 1978 and 5.5% for 1979.

City Treasurer Fahy testified that the Governor's 1979 budget keeps state aid at exactly the same figure as it was in 1978. Federal anti-recession aid was eliminated in the latter part of 1978.

The 1979 City budget calls for a tax increase of \$2.63 per thousand dollars of assessed valuation.

Including fringe benefits and salary the total cost to the City for a first year patrolman is \$15,984 per year. The present retirement plan cost for Tier I police under the current Section 384 retirement plan was 23.8% of their direct payroll cost.

The budget allocations for 1978 and 1979 provide for police salary increases of \$860 in 1978 and \$890 in 1979. Any possible increases beyond these figures would have to come from the surplus. Such a taking from the surplus would necessitate a tax increase the following year to restore the surplus account to a reasonable level.

In addition to its written discussion of all the issues placed before this Panel, the City also submitted documentation pertaining to the Federal Wage Guideline, a Bureau of Labor Statistics Wage Survey for the Utica-Rome area for July 1978, data on the Consumer Price Index, statistics about Rome police benefits, and copies of agreements for other bargaining units in the City of Rome.

Commentary on General Positions of the Parties

The City did not dispute the accuracy of the financial figures and ratios submitted into evidence by Association witness Edward Fennell. This Arbitration Panel considers the City of Rome to be financially healthy, to a reasonable degree.

The job of a police officer, which is semi-military in nature, entails some degree of hazard and stress in comparison with the general run of civilian occupations.

DISCUSSION AND FINDINGS

In analyzing the issues and making its determinations this Panel has given consideration to the criteria stated in Section 209.4 (v) of the Public Employees' Fair Employment Act as given below, along with other relevant factors.

- 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 services or requiring 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, medical and hospitalization benefits, paid time off and job security.

This award represents the unanimous opinion of the three members of the Panel on all issues.

The Issues

1. Salaries

Effective January 1, 1977 and continuing to the present time, the starting annual salary for a patrolman has been \$10,500; after one year and one day of service it goes to \$11,450, and after two years and one day it becomes \$12,250 (top rate).

The Association proposes a \$2,000 pay increase, across the board, for each of two consecutive years retroactive to January 1, 1978. In support of its position the Association submitted exhibits which compared the salaries of patrolmen for ten other cities and for Rome for 1978 and 1979. It asserted that both the City and the Association had been using these same ten cities for comparison purposes for many years. Association Exhibit #1 showed that the average top pay for the ten comparison cities for 1978 was \$13,846. This figure is \$1,596 above Rome's top patrolman's rate. The Association claims that the Federal Wage Guideline should not be used to perpetuate a low pay scale for Rome police.

Although its official pay offer had been \$400 for each of two years, the City made an informal offer of \$860 for 1978 and \$890 for 1979. The City states that this offer is very close to the Federal Wage Guideline. When these dollar figures are converted to percentages (about 7% each year), they are very comparable to the percentage increases negotiated throughout the State of New York. The City prefers using a somewhat different group of cities for comparison purposes than the ten used by the Association. It submitted an exhibit giving the salaries for patrolman for its group of six cities.

Analysis

Below is a tabulation of the starting and top salaries (excluding longevity) for 1978 of patrolmen in the ten cities which the Association says have been used by both parties for comparison purposes over the past ten years.

| | <u>Start</u> | <u>Top</u> |
|---------------|---------------|---------------------|
| 1. Auburn | \$11,586 | \$13,671 |
| 2. Binghamton | 10,908 | 13,750 |
| 3. Elmira | 10,874 | 13,288 ¹ |
| 4. Ithaca | 11,000 | 13,550 |
| 5. Jamestown | 10,940 | 13,104 |
| 6. Oswego | 10,675 | 13,170 |
| 7. Syracuse | 13,652 | 15,628 |
| 8. Troy | 10,450 | 14,073 |
| 9. Utica | 10,840 | 12,125 ² |
| 10. Watertown | <u>10,977</u> | <u>14,009</u> |
| Average | 11,190 | \$13,637 |

Below is a tabulation of the starting and top salaries for patrolmen for 1978 using the six cities favored by the City of Rome.

| | <u>Start</u> | <u>Top</u> |
|--------------|---------------|--------------------|
| 1. Elmira | \$10,874 | \$13,288 |
| 2. Jamestown | 10,940 | 13,104 |
| 3. Oneida | 10,432 | 12,432 (to 7/1/79) |
| 4. Syracuse | 13,652 | 15,628 |
| 5. Utica | 10,840 | 12,125 |
| 6. Watertown | <u>10,977</u> | <u>14,009</u> |
| Average | \$11,286 | \$13,431 |

| | <u>Start</u> | <u>Top</u> |
|---------------------------|--------------|------------|
| 1978 Average of 10 cities | \$11,190 | \$13,637 |
| 1978 Average of 6 cities | 11,286 | 13,431 |
| 1977 Rome salaries | 10,500 | 12,250 |

¹ Association Exhibit #1 showed Elmira top pay at \$14,585, but this included longevity pay. Correct figure is \$13,288.

² Association Exhibit #1 showed Utica top at \$12,925, but this included longevity pay. Correct figure is \$12,125.

| | <u>Start</u> | <u>Top</u> |
|--|--------------|------------|
| Amount Rome is behind the 10 cities | \$ 690 | \$ 1,387 |
| Amount Rome is behind the 6 cities | \$ 786 | \$ 1,181 |

Regardless of whether the 10 cities favored by the Association or the 6 cities favored by the City of Rome are used, it can be seen from the above figures that Rome is behind the other cities from \$690 to \$786 at the starting rate and \$1181 to \$1387 at the top patrolman's rate.

At the time of the hearing, figures for 1979 were available as follows:

| | <u>Start</u> | <u>Top</u> |
|------------|---------------|---------------|
| Auburn | -- | \$15,625 |
| Binghamton | \$12,080 | 14,922 |
| Elmira | 11,581 | 14,152 |
| Ithaca | 11,660 | 14,363 |
| Jamestown | 11,688 | 13,894 |
| Troy | 11,182 | 15,058 |
| Watertown | <u>10,977</u> | <u>14,009</u> |
| Average | \$11,528 | \$14,575 |

Turning from comparative salaries we should also examine the increases in the cost of living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers. The average of the 12 months increases (Jan. '78 over Jan. '77, Feb. '78 over Feb. '77, etc.) was 7.6%. The increases in the cost of living have accelerated in 1979. For example, the CPI for January 1979 was 9.4% above January 1978 and February 1979 was 9.9% above February 1978.

We discussed ability to pay earlier. Based upon the evidence submitted at the hearing, the City of Rome has the financial ability to bring its police salaries up to a point which is close to the average of comparison cities.

It is not possible to make really good comparisons with wages paid to private sector jobs because of lack of job comparability. Nevertheless, here are a few occupational wage rates that are available. At the Cyprus Wire and Cable Company in Rome the average millworker was paid \$6.52 per hour as of October 1978. The average foreman was paid \$9.72 to \$9.75 per hour. A July 1978 Bureau of Labor Statistics wage survey for the Utica-Rome area showed that Maintenance Carpenters received \$6.46 per hour, Maintenance Electricians - \$6.81 per hour, Truck Drivers- \$6.60 per hour and Guards,

Class B- \$4.43 per hour. (Source: City Exhibit #3).

In consideration of all the factors that have been discussed the Panel awards salary increases as follows:

| | <u>Amount of Increase (per year)</u> | |
|--|--------------------------------------|-----------------------------------|
| | <u>Effective Jan. 1, 1978</u> | <u>Effective Jan. 1, 1979</u> |
| Patrolman, start | \$ 860 | \$ 900 |
| Patrolman, after one year and one day of service | 1,000 | 950 |
| Patrolman, after two years and one day of service | 1,150 | 1,000 |
| All higher ranks | 1,150 | 1,000 |

A chart showing the exact salaries for all ranks is given later in this report in the section labeled "Award."

The cost to the City of the increase in salaries for the 66 persons in the Police Department for 1978 is \$69,552. The cost for the increase for 1979 for 68 persons is \$68,487.

2. Retirement

Currently the bargaining unit has the 25- year retirement plan (Section 384), with the option of electing the 30 year plan 375-e available to individuals.

The Association proposes the adoption of the 20-year retirement plan (Section 384-d) in addition to the present 25- year plan. In support of its position the Association argued that 8 out of the 10 comparison cities do provide the twenty-year plan. Also, at least 34 cities, 39 towns, and 68 villages in New York State do provide the 20-year plan. The Association also asserted that the general pressure and accumulated fatigue faced by a police officer made retirement at the end of twenty years desirable.

The City opposes the 20-year retirement plan. It states that the experience of police departments in other cities has shown that members do not retire at the end of twenty years but rather continue in the police service. The City's main argument is that the 20-year plan is much too expensive. It submitted evidence showing the cost of the present Section 384 and Section 375-e plans and the proposed Section 384-d plan.

Analysis

The cost to the City of Rome for its current 25-year plan (384) for Tier I members (those who joined the plan before July 1, 1973) is 27.1% of salaries for the fiscal year ending March 31, 1979. For Tier II members (those who joined the plan after July 1, 1973) the

cost is 19.8% for fiscal year ending March 31, 1979.

The proposed 20-year plan (384-d) costs 42.8% for Tier I members and 29.3% for Tier II members for the fiscal year ending March 31, 1979 (Source of figures is Witness Jay Fremont).

This Arbitration Panel is not awarding the 20-year retirement plan (Section 384-d). Retirement at the end of 20 years of service is not mandatory under this plan. Many police officers may wish to continue working when they reach their mid-forties in age. Also, the cost burden upon the City of Rome would be very substantial with the 20-year plan. In this era of rampant inflation the Panel believes that police officers need direct salary increases to protect them against this inflation. If one were faced with the "either-or" alternative of placing funds in the 20 year plan or in the pay envelop now, we feel the police officers need cash now.

3. Shift Differential

Currently the City of Rome does not pay shift differentials to those working the evening or night shifts.

The Association proposes that those working the 4 p.m. to midnight shift be paid an additional 7.5% and those working the midnight to 8 a.m. shift be paid an additional 10%. These differentials would be paid only for actual hours worked. In support of its position the Association states that both the public and private sectors use shift differentials widely. Also, such premium pay is justified in order to compensate those who must work burdensome shifts.

The City opposes shift differentials. It says they would be too costly. Also, administrative complexities would be introduced because some police personnel work fixed shifts and some work rotating shifts.

Analysis

An examination of the actual union-employer agreements of the same ten cities used by the Association reveals that only 3 (Binghamton, Syracuse, and Troy) pay shift differentials. We acknowledge that shift differentials are common practice in the private sector. However, this practice is slow in spreading to public sector police departments. PERB's First and Second 1978 Reports of Police Salaries show shift differentials for only a few communities throughout upstate New York.

The Association's request for adoption of shift differentials is denied.

4. Cost-of-Living Adjustment

The Association wants a cost-of-living adjustment, based upon the Consumer Price Index, added to its salary increases for each year of the two year agreement. It argues that inflation is eating up the salaries of its bargaining unit personnel. Even if police salaries are raised to levels comparable to those paid by other cities in the ten-city comparison group, Rome's salaries are being eroded by inflation.

The City rejects a cost-of-living adjustment by stating that it would be too costly and inflationary.

Analysis

This Arbitration Panel is awarding across-the-board pay increases to members of the unit so that their salaries are competitive with those paid by the average of the comparison cities. A principal reason why salaries go up every year is to compensate salary earners for the effects of inflation. Even though these salaries aren't adjusted through a cost-of-living formula, across-the-board increases in pay have the same net result in an approximate manner. In practice cost-of-living formulas are used to adjust pay in future years of a multi-year contract based upon the Consumer Price Index which is applied to the salaries in the first (or second) year of the agreement.

The Panel denies the request for a cost-of-living adjustment.

5. Vacations

The current vacation schedule is as follows:

| | | | |
|----------------|----|---------|------|
| After 1 year | 10 | working | days |
| After 5 years | 15 | " | " |
| After 6 years | 16 | " | " |
| After 8 years | 17 | " | " |
| After 10 years | 18 | " | " |
| After 12 years | 19 | " | " |
| After 14 years | 20 | " | " |
| After 15 years | 21 | " | " |

The Association proposes improvements in the vacation schedule as follows:

| | | | |
|----------------|----|---------|------|
| After 1 year | 15 | working | days |
| After 10 years | 25 | " | " |
| After 20 years | 30 | " | " |

Also, each individual could choose to take the cash equivalent in lieu of actually taking off the vacation time. The Association argues that to increase the vacation allowances would cost Rome very little because the City would probably let a shift complement operate short one or two persons while they were on vacation.

The City opposes the liberalizing of the vacation policy. To grant more vacation time would force an under-staffing of the various work shifts, or conversely, it would force the hiring of additional personnel. Granting cash in lieu of vacation would be too difficult to administer. It also claims the present vacation policy is adequate.

Analysis

A study of the actual union-employer agreements submitted into evidence at the hearing shows that many of the comparison cities are slightly more liberal in their vacation policies. For example, Auburn grants 3 weeks plus 1 work day for 5 years but less than 10 years of service. Binghamton grants 20 days after 2 years of service. Oswego grants 15 working days after 2 years of service.

The Panel awards the following improvements in vacation policy effective January 1, 1979.

| | |
|----------------|-----------------|
| After 3 years | 12 working days |
| After 20 years | 25 working days |

The Panel rejects the proposal of the Association that any individual could elect to take pay in lieu of taking actual vacation time off. The purpose of a vacation is to allow for rest, relaxation, and a change of activity from the routine and pressures of the job. Working during vacation would defeat this purpose.

6. Personal Leave Days

Currently there are 3 personal leave days per year. The Association asks that this be increased to 6 days per year. The City offered to keep personal days at 3 for 1978 and go to 4 days per year for 1979.

Analysis

Two to four personal leave days per year represents the prevailing pattern among 43 cities given in PERB's 1978 Report on Fringe Benefits and Related Practices Affecting Policemen. Among the comparison cities whose contracts were supplied to this Panel the most common practice was 3 days per year.

This Panel awards an increase of one day per year, for a total of 4 personal days per year, commencing January 1, 1979.

7. Longevity Pay

At present, longevity pay is granted according to the following schedule:

| | |
|----------------|-------|
| After 5 years | \$100 |
| After 10 years | 200 |
| After 15 years | 300 |
| After 20 years | 400 |

The Association wants longevity paid according to the following schedule.

| | |
|----------------|-------|
| After 5 years | \$200 |
| After 10 years | 400 |
| After 15 years | 600 |
| After 20 years | 800 |

The Association claims the current situation in which a twenty, twenty-five, or thirty year patrolman is paid only \$400 more per year than a three year patrolman constitutes a serious inequity.

The City rejects the Association's proposal by asserting it would cost the City an added \$13,100 per year. Such a cost is excessive. The last informal offer to the Association was to raise each step of the longevity schedule \$100 per year.

Analysis

A study of the longevity policies of other cities reveals that Rome's current longevity schedule is well behind the average of these cities.

The Panel also believes that greater monetary recognition ought to be accorded those officers who have demonstrated commitment and loyalty through long years of service.

The Panel awards the following longevity pay schedule to become effective starting January 1, 1978:

| | |
|----------------|-------|
| After 5 years | \$200 |
| After 10 years | 350 |
| After 15 years | 500 |
| After 20 years | 600 |

Based upon the years of service of the various members of the police force this improvement in longevity would cost the City an additional \$9050 per year.

8. Uniforms

Currently Rome provides uniforms to all police personnel on the Quartermaster Army system. Worn-out or damaged items are replaced as required.

The Association wants the City to pay \$300 per year for cleaning of uniforms. It also requests that the City furnish a minimum of four new uniforms per year. In the Association's oral testimony this was clarified to mean "shirts and pants." The Association argues that currently there is a delay of several weeks, sometimes, in getting uniform items replaced. It also referred to the high cost of cleaning.

For its part the City rejects the proposal to provide a minimum of four uniforms per year. Officers wear-out their clothing at different rates. Replacement items are issued when needed. It also rejects the proposed cleaning allowance of \$300.

Analysis

Uniform policies among comparable cities vary widely. Some use the Quartermaster system like Rome. Others simply provide a monetary allowance per year and each individual buys his own uniform items. The Panel is persuaded that each police officer does need a sum of money to pay for the cost of cleaning his uniform items. Inasmuch as uniform items are replaced as needed, we do not feel that a minimum of four uniform pants and shirts should be mandated each year.

Accordingly the Panel awards the sum of \$150.00 per year to each person for cleaning and maintenance of uniforms, effective January 1, 1979. We deny the request for a minimum of four new uniforms each year.

9. Call-Back Time

Article XIX Recall Time provides for a minimum of 2 hours pay at time and one-half when an officer is called-in to work outside his regular tour of duty. Article XX Court Time provides for a minimum of 4 hours pay at time and one-half for court appearances when the individual is not on his scheduled tour of duty.

The Association wants both the recall time and the court time raised to a minimum of six hours at time and one-half.

The City rejects the Association's proposal as being too costly and a waste of city funds.

Analysis

This Arbitration Panel determines that recall time should be increased from 2 hours minimum to 4 hours minimum (at time and one-half) so that it becomes uniform with the 4 hour minimum currently paid for court time. This becomes effective on the date of this award.

10. Dental Plan

Currently Rome does not have a dental plan. The Association wants the City to provide dental coverage for all officers and their dependents. Through testimony by William Gorke and through its Exhibit #22 the Association provided information regarding possible coverages, benefits, and rates.

The City opposes the adoption of a dental plan as being too costly. Also, no other union for the City of Rome has a dental plan.

Analysis

The contracts of the eleven comparison cities submitted into evidence by the parties show that only Auburn and Elmira provide dental insurance coverage for police officers or their dependents. Therefore, on the criteria of comparability and because of its considerable cost, the Panel denies the Association's request for the adoption of dental insurance for officers and their dependents.

11. Bill of Rights

The Association wants to strengthen the protection afforded individual members of the bargaining unit when they are interrogated by one of their superiors in regard to any matter or event that could possibly lead to disciplinary action. Specifically the Association wants to strengthen the language of Article XXVII- Employee Rights, Section 6. The Association cited both hypothetical and actual examples of interrogations in which the individual police officer was not afforded the opportunity for counsel or PBA representation, even though the current language of Article XXVII Section 6 seems to grant that right.

The City opposes the proposal of the Association. It contends that police officers are already adequately protected by the language of the section. Also, to make the language more restrictive upon the City would severely hamper any investigation if PBA representatives were present at all stages of a proceeding.

Analysis

The current language of Article XXVII, Section 6 places the burden upon the individual employee to request the opportunity to consult with counsel or to be represented by his Association before being questioned concerning a possible disciplinary matter. This Panel feels that in the presence of a strong supervisory personality the individual may be afraid to ask for advice or representation. Therefore, we feel that the language of Section 6 ought to be strengthened.

The Panel directs that the language of Article XXVII, Section 6 be modified to read as follows:

"In all cases and at every stage of these proceedings regarding any disciplinary proceeding concerning conduct unbecoming an officer, in the interest of maintaining the usual high morale of the force, the department must provide the opportunity for a member of the force to consult with counsel and/or be represented by his Association representative, unless the member specifically declines such counsel and/or representation, before being questioned concerning the violation of the rules and regulations (remainder of language to be unchanged)."

12. Shift Minimum

The Police Department has established the minimum number of police personnel to cover each shift properly. According to the Association the Department sometimes denies a person the right to take his regular day off or to take a holiday day because someone else is out sick or on vacation or is absent for some other reason. The department claims the absence of the requesting officer would drop the complement below the shift minimum. On the other hand, if the shift has dropped below the "shift minimum," the department generally lets it run short-handed, rather than call in someone else and paying him time and one-half overtime. The Association wants contractual protection to insure that the Department maintains the minimum number of men specified in its own standards.

The City opposes the Association's proposal. It states that manning or staffing is strictly a management prerogative. In support of its position the City cites a ruling of the Appellate Division, 3rd Department, upholding a PERB decision, in the City of Newburgh vs. Local 589 of the International Association of Firefighters, that determining the number of employees was clearly a basic policy decision of the city and is thus not a mandatory subject of bargaining.

Analysis

Decisions on the number of persons to be assigned to a shift are management decisions. The Panel denies this Association proposal.

AWARD

The unanimous award of this Public Arbitration Panel is as follows:

- a) The parties shall enter into a two-year agreement retroactive to January 1, 1978 and expiring December 31, 1979.
- b) Salaries. Salaries shall be increased as follows, retroactive to the dates shown:

| | <u>Amount of Increase (Per Year)</u> | |
|--|--------------------------------------|-----------------------------------|
| | <u>Effective Jan. 1, 1978</u> | <u>Effective Jan. 1, 1979</u> |
| Patrolman, start | \$ 860 | \$ 900 |
| Patrolman, after one year and one day of service | 1,000 | 950 |
| Patrolman, after two years and one day of service | 1,150 | 1,000 |
| All higher ranks | 1,150 | 1,000 |

When the above salary increases are applied to existing salaries the new salary schedule shall be as follows:

| | Effective Jan. 1, 1978 | Effective Jan. 1, 1979 |
|--|---------------------------|---------------------------|
| Patrolman, start | \$11,360 | \$12,260 |
| Patrolman, after one year and one day of service | 12,450 | 13,400 |
| Patrolman, after two years and one day of service | 13,400 | 14,400 |
| Sergeant | 14,400 | 15,400 |
| Lieutenant/Detective | 15,600 | 16,600 |
| Captain | 17,000 | 18,000 |
| Deputy Chief | 18,600 | 19,600 |
| Chief | 21,100 | 22,100 |

c) Vacations. Improvements in the vacation schedule shall be as follows, effective January 1, 1979:

| | |
|---------------------------|-----------------|
| After 3 years of service | 12 working days |
| After 20 years of service | 25 working days |

Thus the vacation schedule becomes:

| | |
|----------------|-----------------|
| After 1 year | 10 working days |
| After 3 years | 12 " " |
| After 5 years | 15 " " |
| After 6 years | 16 working days |
| After 8 years | 17 " " |
| After 10 years | 18 " " |
| After 12 years | 19 " " |
| After 14 years | 20 " " |
| After 15 years | 21 " " |
| After 20 years | 25 " " |

The Panel denies the Association's proposal that an individual be allowed to take his pay in lieu of taking off his actual vacation time.

d) Personal Leave Days. The number of personal leave days shall be increased from three (3) to four (4) days per year effective January 1, 1979.

e) Longevity Pay. Effective January 1, 1978 the longevity pay schedule shall be as follows:

| | |
|----------------|-------|
| After 5 years | \$200 |
| After 10 years | 350 |
| After 15 years | 500 |
| After 20 years | 600 |

Retroactive pay shall be granted to individuals in accordance with the above schedule.

- f) Uniforms. The City shall pay \$150.00 per year to each individual for cleaning and maintenance of his or her uniform, effective January 1, 1979.

The Panel denies the request of the Association for the issuance of a minimum of four new uniforms (pants and shirts) each year.

- g) Call-Back Time. Recall time (Article XIX in the agreement) shall be increased from two (2) hours minimum to four (4) hours minimum currently provided for under Article XX- Court Time. This becomes effective on the date of the Award.
- h) Bill of Rights. The language of Article XXVII Employee Rights, Section 6, shall be changed to read as follows:

"In all cases and at every stage of these proceedings regarding any disciplinary proceeding concerning conduct unbecoming an officer, in the interest of maintaining the usual high morale of the force, the department must provide the opportunity for a member of the force to consult with counsel and/or be represented by his Association representative, unless the member specifically declines such counsel and/or representation, before being questioned concerning the violation of the rules and regulations ... (remainder of language to be unchanged)."

- i) In addition to the above the Panel rules on the issues below as follows:
1. Retirement. The Association's request that the 20-year retirement plan (Section 384-d) be adopted is denied.
 2. Shift Differential. The Association's request for the adoption of shift differentials in pay is denied.
 3. Cost of Living. The Association's request for a cost-of-living adjustment to salaries is denied.
 4. Dental Plan. The Association's request for the adoption of a dental insurance plan is denied.
 5. Shift Minimum. The Association's request that the City must always staff its shifts with the minimum number of personnel specified in the City's staffing plan is denied.



Dale S. Beach, Chairman,
Public Arbitration Panel

State of New York)
County of Albany) SS.

On this _____ day of May 1979, before me personally came and appeared, Dale S. Beach, to me known and known to me to be the person described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

ANN W. POCILUK
Notary Public, State of New York
Qualified in Saratoga County
Commission Expires March 30, 1981

Ann W. Pociluk
Notary Public

Al Sgaglione
Al Sgaglione, Concurring
Employee Organization Panel Member

State of New York)
County of Albany) SS.

On this 8th day of May 1979, before me personally came and appeared, Al Sgaglione, to me known and known to me to be the person described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

VIRGINIA FISSETTE
Notary Public, State of New York
01-1255475
Residing in Albany County
Commission Expires March 30, 1981

Virginia Fissette
Notary Public

Edward J Tyler
Edward Tyler, Esq., Concurring
Employer Panel Member.

State of New York)
County of Oneida) SS.

On this 7th day of May 1979, before me personally came and appeared, Edward Tyler, to me known and known to me to be the person described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Rose M. Fajelas
Notary Public

