

STATE OF NEW YORK  
COUNTY OF NIAGARA

JUL 12 1981

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IN THE MATTER OF  
COMPULSORY INTEREST ARBITRATION,  
THE CITY OF NIAGARA FALLS, NEW YORK

AND  
THE CAPTAINS & LIEUTENANTS ASSOCIATION  
Case # IA80-43; M80-613

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The Compulsory Arbitration Panel consisting of:

Angelo Massaro, Esq. - City Representative

Keith G. Mills - Association Representative

John W. McConnell, Public Representative and Chairman

Awards as follows:

1. Salary increase:

6% + \$300.00 - 1981

6% + \$560.00 - 1982 is approved.

2. Association demand for payment of time and a half for time spent in supervisory replacement described in Schedule "C" is denied.

3. Association demand for payment of time and a half for holidays worked, is approved.

4. The City demand for a modification of the accumulation of vacation time and cash payment therefore is approved as follows:

As of Jan. 1, 1981, employees may bank vacation earned on every other year with the requirement to dispose of accumulated

vacation banked in the year next succeeding the year it was banked, provided however, that any vacation banked for the year previous to the year of retirement shall be paid at the rate earned.

Any <sup>un</sup>used vacation accumulated by a member before Jan. 1, 1981, will be exempt from the application of the provision, ~~(Sub-section 10.2.8)~~. Any unused vacation before this date could have been accumulated within the following limits:

*Am  
Tom  
Jesse*

- If hired before Nov. 15, 1979 - a maximum of 12 weeks
- If hired after Nov. 15, 1979 - a maximum of 8 weeks

5. These provision are retroactive to January 1, 1981.

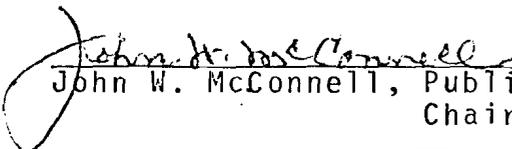
City dissents from the retroactivity.



Angelo Massaro, City Representative



Keith G. Mills, Association Representative



John W. McConnell, Public Representative & Chairman

STATE OF NEW YORK  
COUNTY OF NIAGARA

On the 25th day of June, 1981, before me came Angelo Massaro,  
Keith G. Mills, and John W. McConnell, to me known to be the  
individuals described in, and who executed the same.



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HAROLD E. DESPRES REG. #3505  
Notary Public, State of New York  
Qualified in Niagara County 82  
My commission expires March 30, 1982

### Background

The collective bargaining agreement between the City of Niagara Fall and the Police Captains and Lieutenants Association, effective January 1, 1979, expired on December 31, 1980. The Association represents the City's 13 Police Captains and 22 Lieutenants.

After eight formal sessions between July 19, 1980 and January 19, 1981, negotiations between the parties for a new agreement broke down and the Captains and Lieutenants Association filed a Declaration of Impasse on January 22, 1981. Mediation failed to produce agreement. The Association filed a petition for compulsory arbitration on February 11, 1981. A Public Arbitration Panel consisting of Angelo Massaro, City designee; Keith Mills, Association designee, and John W. McConnell, Public designee, was appointed on March 27, 1981.

A hearing on the above matter was held in Niagara Falls on May 11, 1981. Bernard E. Stack, Esq. represented the Association. Thomas Insana, Labor Relations Specialist, was spokesman for the City. Witnesses were questioned and documentary evidence submitted. A transcript of the proceeding was made. A comprehensive brief was presented at the hearing by the City. The post-hearing memorandum was filed by the Association.

The Public Arbitration Panel met in the Niagara Falls City Hall on June 25. After carefully reviewing the testimony and documentary evidence, the Panel made unanimous decisions on all substantive issues in dispute. On the question of retroactivity, the City member of the Panel found it necessary to dissent on the grounds that expectation of "automatic retroactivity" (City Brief) encourages unions to delay unreasonably reaching a settlement through negotiations, and therefore must be discouraged.

### The Issues

The parties submitted several issues for consideration by the Panel,

each one of the issues was in some manner dependent upon a decision with respect to other issues. In summary the issues were as follows:

1) Salary Increase The City offered the Captains and Lieutenants the same salary as had been offered and accepted by the Fire Officers with whom the Police Captains and Lieutenants had a long history of comparable salary. The offer was

1981-6% plus \$300  
1982-6% plus \$560 an increase of 16.8% over the two years.

This increase was acceptable by the Captains and Lieutenants provided

- 2) The City would pay time and one-half for holidays worked instead of straight time as at present (Article X Section 1) and
- 3) The City would pay time and one-half for all brass on brass replacement assignments which are now paid at straight time in accordance with Schedule C of the Agreement.

The City would agree to the time and one-half payments demanded by the Association provided

- 4) The present accumulation of vacation time is limited to two years as provided in the Fire Department Officers Agreement (Article X Section 2h; Jt. Ex. #1R)

....bank of vacation on every other year with the requirement to dispose of accumulated vacation banked in the year next succeeding the year banked provided, however, the vacation banked for year previous to year of retirement shall be paid at the rate earned.

Any unused vacation accumulated by a member before January 1, 1981, will be exempt from the application of this provision.

- 5) The present manning requirements of Schedule C be eliminated.

As a sixth but separate issue, the City opposed any retroactivity for the provisions of the new Agreement.

#### Discussion and Award

##### The Salary Issue

There was no dispute between the parties with respect to the salary offer and its acceptance by the Association. As noted above, the Captains and

Lieutenants had accepted the City's offer if agreement could be reached on the Association demand for time and one-half for holidays and replacement assignments. Since the City would not agree to this demand, the salary issue remained in dispute.

The City argued, with respect to salary, that its offer was identical to the salary increase accepted by the Fire Department Officers with whom Police Officers had had comparable salaries and increases through successive contracts. The increase was in line with both negotiated increases and arbitral awards for police officers in the State. The new salary would be in line with salaries for police officers in other cities of comparable size. While noting that the City had serious financial problems, the ability to pay was not advanced as an argument against a salary increase for the police officers.

The present annual salary of the police officers averages \$20,246. With the cost of benefits, the average compensation of a police officer is \$34,649. City Exhibit F indicated clearly that salary and fringes have been comparable to Fire Department Officers' salaries and fringes from 1974 to the present. Increases in the intervening years have amounted to 44.2% for Police Lieutenants and 43% for Fire Captains; 41.5% for Police Captains and 40.4% for Fire Battalion Chiefs. The CPI for the Buffalo area has increased 48.6% from February 1974 to February 1980. (City Ex. #G)

The City also points out that the proposed increase will keep salaries for police officers in Niagara Falls in a comparable position with those in (City Ex. #H based on City survey)

North Tonawanda  
Lackawanna  
Lockport  
Tonawanda  
Cheektowaga  
Rochester  
Syracuse  
Binghamton  
Town of Tonawanda  
West Seneca

In this survey, cities with smaller population than Niagara Falls have slightly lower salaries; those with larger populations have somewhat higher salaries; and those with similar populations are about the same as that of Niagara Falls.

Based upon PERB surveys as well as the City's own figures, the 16.6% increase over a two year period appears to be fairly close to the average of other settlements. PERB (News May 1981) shows that 1980 settlements for policemen and officers together averaged about 7.0% for salary only. Increases negotiated or awarded in neighboring cities or cities about the size of Niagara Falls were about the same as the City's offer of 16.8% over two years, keeping in mind that there were no increases in fringe benefits accompanying the City's offer.

A review of the evidence presented persuades the Panel that the salary increase of 16.8% over a two year period meets the criteria set forth in Section 209.4(v) of the Civil Service Law, namely, 1) comparability with salaries and working conditions of other employees performing similar services in comparable communities; 2) welfare and interest of the public and the ability of the City to pay; 3) comparison of hazards and qualifications of police employment with other trades and professions; and 4) historical relationship to salaries and fringe benefits negotiated by the parties. The Association found the City salary offer acceptable provided certain demands for payment of time and one-half were met by the City.

The Panel, therefore, awards a salary increase as follows:

1981-----6% plus \$300  
1982-----6% plus \$560

amounting to 16.8% increase over a two year period.

#### Time and One-half for Holidays

The Association argues that Fire Department Officers and all other employees under contract with the City receive time and one-half when they work on holidays. The present Captains and Lieutenants contract provision (Article X

Section 1 paragraph 2) reads

Members of the Bargaining Unit may elect to receive one day's compensation calculated at straight time in lieu of one day's time due them because of a paid holiday exclusive of the member's birthday or they may elect to take one day's time off at a date and time approved by their unit commander.

The Association contends that the Captains and Lieutenants should be treated the same as other city employees and employees in the private sector generally.

The City opposed the Association demand because it was an added cost and exceeded the money cost of settlements reached with Fire Officers and other City employees.

The Panel concludes that, since all other City employees under collective bargaining agreements receive time and one-half if they work on a paid holiday, the Police Captains and Lieutenants should also benefit from the same arrangement. There was no evidence presented that made the time and one-half payment impractical or excessively costly for police officers. The City's estimate of the cost of this item amounts to 3.3% for 1981 and 3.4% for 1982.

The Panel, therefore, awards that the Association demand for payment of time and a half for holidays worked be approved.

Payment of Time and One-half for all Replacement Assignments

Schedule C of the present Agreement between the parties provides for an intricate system of replacement for "brass on brass" at straight time pay. Certain positions on each shift are identified as "the minimum number of supervisory personnel essential to the efficient operation of the department and should be filled by qualified members of this bargaining unit". The Association now demands that such replacement assignments be paid at the time and half rate.

The Association's primary argument is that

the Officers can't or shouldn't be required to work these extra hours over and above their work schedule forever at straight time rates.

Further, the Association points out that all overtime is paid at premium rates in other City contracts, but in the Police Officers' contract a replacement assignment, even though time over and above the Officer's regular work schedule, is paid at only straight time.

As noted in the summary of the issues in dispute, the City would grant the Association demand for time and half pay for replacement assignments provided the Association would agree to delete the manning requirements from Schedule C. The City argues that this is another cost item amounting to 2.3% increase in each year of the contract. The City is determined to hold the line at an overall cost of 16.8%. It therefore, cannot pay time and one-half for replacement assignments without either a reduction in the salary offer itself or change in the manning requirements.

The Panel concludes that Schedule C was arrived at in the past on the basis of give and take between the parties and now represents a balance in which certain manning requirements and brass on brass replacement are weighed against the straight time pay for working replacement assignments. The Panel is reluctant to disturb this balance, especially since the issue of manning has been held as not a mandatory subject for collective bargaining. The Association demand for time and a half for replacement assignments is denied.

#### The Modification of Accumulation of Vacation Time

The City stated with great emphasis its opposition to any contract which increased its cost beyond the 16.8% salary adjustment. Any award providing for time and one-half pay, as demanded by the Association, would have to be offset against the salary item or some other concession by the Captains and Lieutenants. As a possible quid pro quo for the time and one-half payment for holidays worked was a modification of the accumulation of vacation time provision in Article X Section 2h which permits the accumulation of unused vacation

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time up to twelve (12) weeks and conversion of the accumulated vacation into cash at the "individual employee's per diem rate in effect at the time of conversion". The City argued that this provision was in excess of the accumulation provision negotiated with the Fire Officers (Jt. Ex. #1R)

The Panel notes that the arguments of both parties have continually stressed the comparability of the salary and fringe benefits negotiated by the City with the Police Officers and the Fire Officers. We have awarded time and one-half pay for holidays worked to the Police Officers largely because time and one-half was paid to Fire Officers for holidays as well as to other of the City's employees. The Panel, therefore, awards that the Captains and Lieutenants have the same vacation accumulation provision as the Fire Officers, namely,

As of January 1, 1981, employees may bank vacation earned on every other year with the requirement to dispose of accumulated vacation banked in the year next succeeding the year it was banked, provided, however, that any vacation banked for the year previous to the year of retirement shall be paid at the rate earned.

Any unused vacation accumulated by a member before Jan. 1, 1981 will be exempt from the application of the provision. Any unused vacation before this date could have been accumulated within the following limits:

If hired before November 15, 1979, a maximum of 12 weeks  
If hired after November 15, 1979, a maximum of 8 weeks

#### Retroactivity

The Association requests that all items awarded by the Panel be retroactive to January 1, 1981, the effective date of the new contract between the parties. The City opposes such retroactivity on the ground that unions representing various City employees delay serious negotiating until after they have examined the details of the City's budget and can plan a strategy of demands and bargaining to their best advantage. (City Brief) The alternative suggested by the City is that the several unions be required to negotiate and reach agreement in advance of the City's budget making and prior to the expiration of the

existing contract, thus avoiding strategic maneuvering and mounting liability based on retroactivity.

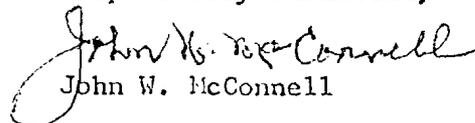
The Union argues that it has bargained in good faith without undue delay and is entitled to receive money items retroactive to the date of the new contract.

The Panel is not unanimous on this issue. The Association Panel Member and the Public Member make the award retroactive to January 1, 1981. The City Member of the Panel dissents and has set forth his reasons in a dissenting opinion.

It is the opinion of the majority of the Panel that the Association has bargained in good faith and has followed the impasse procedures set forth in the Civil Service Law Section 209 in timely fashion. As recounted in the background statement above, the parties met in eight formal bargaining sessions before the Association declared impasse on January 22, 1981. Following a fruitless mediation session, the Association petitioned for compulsory arbitration on February 11, 1981. The Panel was designated on March 27 and a formal hearing took place on May 11, 1981. The procedures of compulsory arbitration are time consuming. The schedules of the numerous people on the Panel and those directly concerned with the proceedings must be accommodated. The Association is in no way to be blamed for the time lag and it would be very inequitable to penalize the employees because of legal procedures set forth as a substitute for the right to strike.

The majority of the Panel, therefore, directs that the provisions decided herein be retroactive to January 1, 1981.

Respectfully submitted,

  
John W. McConnell

