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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration
Between

PERB CASE NOS.
IA88-29;M88-345

CITY OF BUFFALO,
Public Employer,
And

JS Case No.
1423

BUFFALO POLICE BENEVOLENT ASSOCIATION, INC.,
Employee Organization

**OPINION
AND
AWARD**

Before the Public Arbitration Panel:

JOHN E. SANDS, Public Member and Chairman
RICHARD PLANAVSKY, Public Employer Member
ROBERT P. MEEGAN, Employee Organization Member

OPINION

This interest arbitration case arises under Section 209.4 of New York State's Civil Service Law. On December 28, 1988 PERB Chairman Harold R. Newman appointed this Public Arbitration Panel to make a just and reasonable determination of the parties' collective bargaining impasse.

Pursuant to our statutory authority, we conducted hearings in Buffalo, New York on May 10, 11, and 12, 1989. Both sides appeared by counsel and had full opportunity to adduce evidence, to crossexamine each other's witnesses, and to make argument in support of their respective positions. Each submitted post-hearing briefs, and neither has raised objection to the fairness of this proceeding.

This Panel met in executive session in Buffalo on July 27, 1989. We have reviewed all of the parties' evidence and arguments taking into consideration Section 209.4(c)(v)'s express criteria:

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.

Upon that consideration, a majority of us have reached the following relevant conclusions.

SALARIES

First, both in absolute and relative terms, Buffalo police compensation lags far behind that of comparable employees in comparable communities and behind relevant averages as well. Here are a few examples:

<u>Department</u>	<u>Effective Date</u>	<u>Police Officer</u> Minimum / Maximum	<u>Yrs. to</u> <u>Max</u>	<u>Buffalo Deficit</u> <u>at Maximum</u> In \$\$\$ / In %%%
Suffolk Cty	1/1/88	23,914 / 42,592	5.0	17,039 / 66.7%
Nassau Cty	1/1/88	28,620 / 43,927	5.0	18,374 / 71.9%
New York City	7/1/88	25,977 / 34,633	5.0	9,080 / 35.5%
Syracuse	1/1/88	23,749 / 28,831	4.0	3,278 / 12.8%
Rochester	7/1/88	23,105 / 33,007	2.7	7,454 / 29.2%
Yonkers	3/1/88	26,686 / 35,094	4.0	9,541 / 37.3%
AVERAGE		25,342 / 36,347	4.3	10,794 / 42.2%
Amherst	1/1/88	20,163 / 29,001	3.0	3,448 / 13.5%
Cheektowaga	1/1/88	23,338 / 30,832	3.0	5,279 / 20.7%
Tonawanda Twn	1/1/88	22,279 / 30,388	4.0	4,835 / 18.9%
AVERAGE		21,927 / 30,074	3.3	4,521 / 17.7%
Buffalo	1/1/88	18,900 / 25,553	4.0	xxx / xxx

In connection with that subject, a majority of us find unpersuasive the City's argument that Buffalo police are appropriately paid when considered (a) against a nationwide list of cities identified by an ingenious "cluster analysis" of demographic, crime and budget characteristics and (b) against local community data statistically adjusted to neutralize local income differentials.

The City's nationwide list of comparables, although chosen on a consistently applied statistical basis, fails to reflect more relevant regional impellers of compensation levels. The statutory context in which wage determination occurs, for example, will have more to do than per capita serious crime data with determining police compensation. All large New York State cities must negotiate under the Taylor Law with politically

active employee organizations. That fact makes their compensation data intuitively more relevant to Buffalo than those of cities in Alabama or Virginia that impose police wages unilaterally. Moreover, cluster analysis fails to reflect important but difficult-to-quantify cultural values that inevitably affect police compensation: attitudes concerning public safety, status in the community of police service, and ethnic and cultural diversity that can complicate police work.

The City's community income differential analysis is similarly flawed in its practical application. Notwithstanding their rank in the relatively-depressed income hierarchy of Buffalo, Buffalo police must still live on the real wages they receive. For example, when an Amherst, New York police officer goes into an area supermarket, he or she still has between four and five thousand dollars per year more to spend than a Buffalo police officer even though, compared to residents of that affluent-but-close-by community, the Amherst police officer may be less well off.

As noted, Buffalo lags far behind the large New York State cities in almost every measure of police compensation. In the parties' last interest arbitration award, Public Member and Chairman John Drotning addressed that situation with compelling candor, although that year Buffalo's serious inability-to-pay prevented significant catch-up steps:

It must be clear that the relatively low maximum and starting salary for Buffalo Police Officers cannot be corrected by this award since the amount of the adjustment would bankrupt the City. However, the difference should not be allowed to increase and the gap narrowed to some extent.

[Union Exhibits A-91 and A-140, p. 31.]

Although Buffalo now enjoys vastly improved ability-to-pay by reason of effective and responsible fiscal and political management, the need for a dramatic catch-up in police compensation has not changed. Indeed, even Buffalo's Common Council has certified that fact. In 1988 the Common Council established a tri-partite, "blue ribbon" Committee to Review Police Salaries. That Committee met and reviewed much of the same data the parties have presented to this Public Arbitration Panel. And it concluded without dissent that, before any interest arbitration proceeding to determine appropriate current compensation, Buffalo police must receive an immediate, ten-percent wage increase across-the-board. The Committee noted, also without dissent, that the City could recoup some of the cost of that increase by productivity improvements:

. . .[S]uch controversial issues raised by the City as shift realignment, judicious use of one-officer patrol cars, increased use of civilians in support positions and telephone reporting for certain matters are examples of some of the policies and procedures this Committee recommends be explored by officers, police administration and city officials alike. These issues, if properly examined, should address concerns raised by the PBA, provide additional resources to fund salary and other benefit increases and, more importantly, ensure a consistent and adequate police presence in our city.

[Union Exhibit 136, p. 3]

A majority of us find the Common Council's own Committee to Review Police Salaries' extraordinary report both compelling and impossible to ignore. We have therefore decided to grant, effective on the date of this Award, the Committee's immediate, ten-percent across-the-board increase of base annual police salaries computed on the basis of salary levels in effect on the date of the Committee's report. We have also decided to put in place the joint labor-management committee that the Common Council Committee recommended to help address the various operational issues necessary to accomplish its purpose of improving police service in Buffalo.

We note that the City has already enjoyed productivity improvements in the form of more police work accomplished by fewer police officers and limitations on off-duty employment. More important, the City can secure further productivity gains through judicious use of variable assignments, one-officer cars in relatively safe areas and duties, and civilianization of functions. Those are all within the City's managerial prerogative to do (subject, of course, to bargaining about such decisions' impact) and more "possible" to accomplish successfully after police compensation is at the level certified appropriate by the Common Council's own Committee to Review Police Salaries. We feel confident that those productivity improvements and the extraordinary character of the Commission's report are such unique factors that no other City bargaining unit should be able to justify a similar catch-up adjustment.

We further find that, having thus addressed the dramatic disparity between Buffalo police compensation and that in comparable communities, there is no reason for Buffalo police compensation otherwise to depart from the five percent/five percent two-year pattern the City has established and justified for all of its other units. And we will so

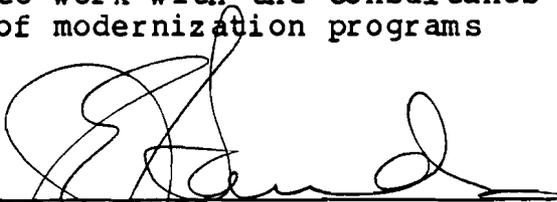
AWARD

1. Effective on the date of this Award, the base annual salaries of bargaining unit personnel shall be increased by an amount equal to ten percent (10%) of the rate in effect on July 13, 1988.

2. Effective July 1, 1988 and July 1, 1989 the base annual salaries of bargaining unit personnel shall be increased by five percent. Those increases shall not include any portion of the preceding paragraph's ten percent adjustment.

3. If the City retains a municipal law enforcement consulting organization to address modernization issues, the parties shall establish a joint labor-management committee to consider those issues and to work with the consultants to facilitate implementation of modernization programs

I concur.



JOHN E. SANDS

I dissent.



RICHARD PLANAVSKY

I concur. ✓



ROBERT P. MEEGAN

MEDICAL BENEFITS

In this area, a majority of us agree that the Union's demands are appropriate for (a) psychiatric illness rider to existing coverage and (b) catastrophic illness coverage at the base level of benefits for bargaining unit personnel hired on or after July 1, 1984, who have limited sick leave benefits. Both demands address situations that involve the unique stresses and perils of police service, and, at a cost of one-tenth of one percent, each is well within the City's ability-to-pay. And we so

AWARD

Effective on the date of this Award, the City shall improve its medical benefit program for bargaining unit personnel by adding a rider covering psychiatric illness and coverage for catastrophic illness at the base level of benefits for employees hired on or after July 1, 1984.

I concur.



 JOHN E. SANDS

I dissent.



 RICHARD PLANAVSKY

I concur. ✓



 ROBERT P. MEEGAN

DEFERRED COMPENSATION

The Union seeks a Section 457 deferred compensation plan funded by voluntary contributions of bargaining unit members. This is a no-cost item that the City has already granted to at least one other major bargaining unit. We therefore find it appropriate, and we so

AWARD

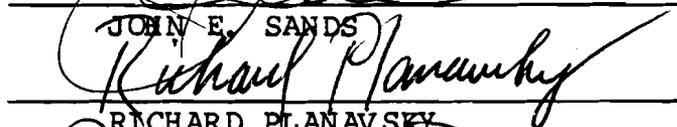
The City shall provide the Section 457 deferred compensation plan for bargaining unit personnel.

I concur.



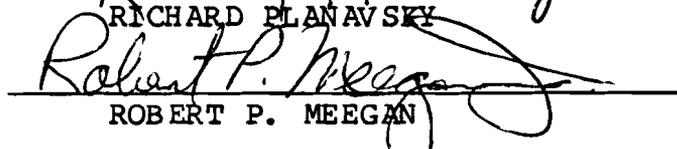
JOHN E. SANDS

I dissent.



RICHARD PLANAVSKY

I concur. ✓



ROBERT P. MEEGAN

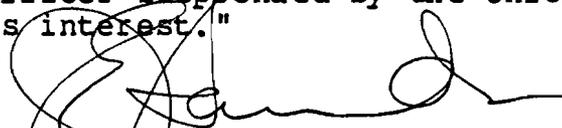
COURT TIME

On this subject, our executive conference established that the City's principal concern is a potential abuse that the Union does not seek. The City fears that the Union can use existing contract language to generate Court Time payments by subpoenaing its own members in proceedings for the Union's interest. Because the parties agree on this qualification to their contract's language we so

AWARD

Article 2.8 of the parties' collective bargaining agreement shall be amended to add this sentence: "Court Time shall not be paid to an officer subpoenaed by the Union in a proceeding for the Union's interest."

I concur.



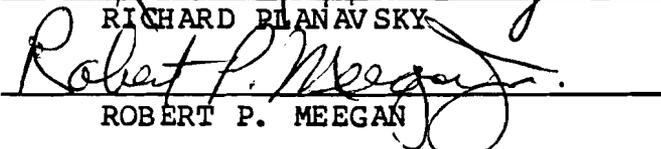
 JOHN E. SANDS

I dissent.



 RICHARD PLANAVSKY

I concur. ✓



 ROBERT P. MEEGAN

VACATIONS

A majority of us find no reason to delete the "second tier" of benefits for employees hired on and after July 1, 1984. In 1984 the Union bargained that concession to support additional benefits still being received.

Nor are we convinced that the Union's demand is appropriate for "sell-back" of up to three weeks' vacation time at either premium or straight-time rates. Vacation time is necessary for effective stress management, and the City has not expressed a need for the additional staffing this would provide.

There is, however, a real issue of fairness presented by the Union's remaining Vacation demand. Under present contract language the Commissioner "may" allow carryovers of vacation time missed by employees in instances of (a) request or order by the Commissioner to forego vacation to enable the Department to "provide and maintain adequate service to the public," and (b) line-of-duty injuries. We feel that no employee under those two circumstances should be subject to the additional sacrifice of vacation entitlement and that, as to those two instances, carry-over should be mandatory. And we so

AWARD

1. The third sentence of Article 4.4 of the parties collective bargaining agreement shall be amended to read, "The Commissioner shall allow vacation carryover in the first two specific instances which follow and may allow it in the third:"

2. Subparagraphs (B) and (C) of Article 4.4 shall be exchanged so that present (C) becomes the second specific instance and present (B) becomes the third

I concur.



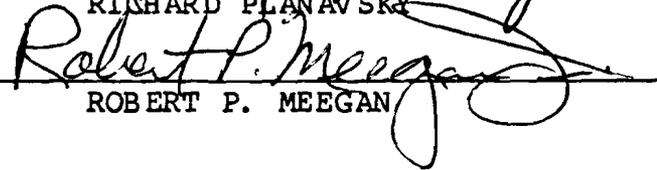
JOHN E. SANDS

I dissent.



RICHARD PLANAVSKY

I concur.



ROBERT P. MEEGAN

UNIFORM ALLOWANCE

Current practice pays \$380 per year to officers for replacement and maintenance of uniforms and equipment costing far more than that. The City Council's Commission on Police Salaries made special mention of the current uniform allowance's inadequacy. The City's objection to incurring the cost of additional uniform allowance payments is that nothing guarantees officers will use those payments for the intended purpose.

Both parties' concerns can be met by changing entirely the nature of the uniform benefit. We shall require the City hereafter to provide all mandated original and replacement items of uniform and equipment. The City shall make annual payments to officers of \$100 to be used exclusively for maintenance and cleaning to required standards of uniforms and equipment required by the City. And we so

AWARD

Effective on the date of this Award, Article XIX of the parties' contract shall be amended to read,

UNIFORMS AND EQUIPMENT

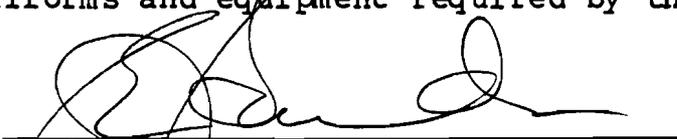
19.1 Original and Replacement Items

Effective September 5, 1989 at its own expense the City shall provide bargaining unit personnel with all mandated items of original and replacement items of uniform and equipment. For present members of the Department this provision shall apply prospectively for replacement items of currently-owned uniforms and equipment.

19.2 Maintenance and Cleaning

Effective September 5, 1989 the City shall make annual payments of \$100 to all bargaining unit employees to be used exclusively for maintenance and cleaning to required standards of uniforms and equipment required by the City.

I concur.



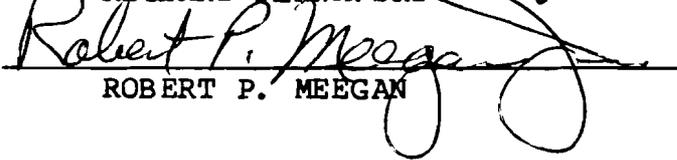
JOHN E. SANDS

I dissent.



RICHARD PLANAVSKY

I concur. ✓



ROBERT P. MEEGAN

GRIEVANCE PROCEDURE

The City seeks a number of amendments to the grievance procedure that it intends to facilitate efficient processing of grievances. After extensive discussion by the Panel, mediation by the Chairman, and compromise by the partisan Members, we unanimously direct that the Grievance Procedure be amended in the following respects to accomplish that purpose; and we so

AWARD

1. Article XI of the parties' collective bargaining agreement shall be amended in the following respects:

(a) Step 1 shall read,

The employee and/or the Union shall submit the grievance orally to the employee's direct line superior holding the rank of not lower than Captain (or to the Captain's designee when the Captain is not on duty) within twenty (20) calendar days . . . [Continue as in original.]

(b) Step 2's first sentence shall read,

If a satisfactory settlement or disposition is not made within two (2) days after the oral submission of the grievance, the employee and/or the Union may submit the grievance in writing within ten (10) days thereafter to the employee's direct line supervisor holding a rank of not lower than Division Inspector (or to the Division Inspector's designee when the Division Inspector is not on duty), who shall answer same in writing within ten (10) days.

(c) In Step 3's first sentence, the five (5) day time limit shall be changed to ten (10) days.

(d) Step 4's first sentence shall be amended to read,

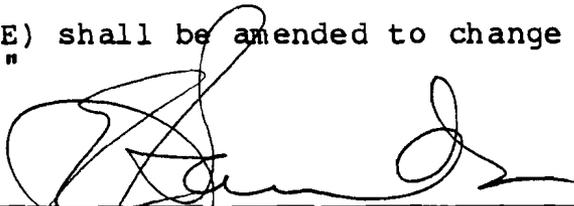
If not satisfied with the Commissioner of Police's answer, the Union may, within ten (10) days after receipt thereof, submit the grievance to arbitration by one of the following panel of Arbitrators, who shall receive cases in the following alphabetical order of rotation:

- Elizabeth B. Croft
- Howard Foster
- Paul Klein
- Wade J. Newhouse
- David Randles
- Eli I. Taub

In all other respects Public Employment Relations Board procedures shall govern the arbitration proceeding.

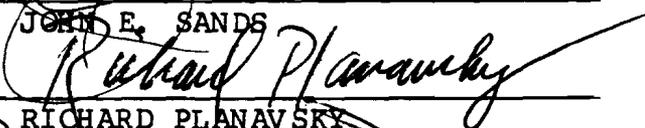
(e) Article 11.2 (E) shall be amended to change the word, "may," to read, "shall."

I concur.



JOHN E. SANDS

I dissent.



RICHARD PLANAVSKY

I concur. ✓



ROBERT P. MEEGAN

TERM

We unanimously agree that the term of the contract imposed by this Award should be the Taylor Law's two-year maximum, and we so

AWARD

The term of the parties' collective bargaining agreement shall be two years, from July 1, 1988 to June 30, 1990.

I concur.



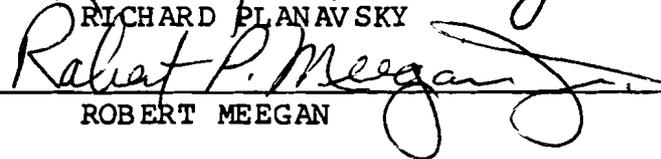
JOHN E. SANDS

I concur.



RICHARD PLANAVSKY

I concur. ✓



ROBERT MEEGAN

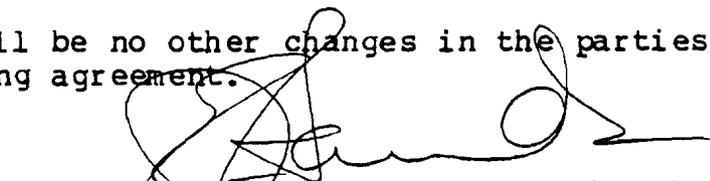
RESIDUAL MATTERS

As to all other matters raised by the parties, a majority of us as to each find insufficient evidence in the record before us to justify any change in the status quo. And we so

AWARD

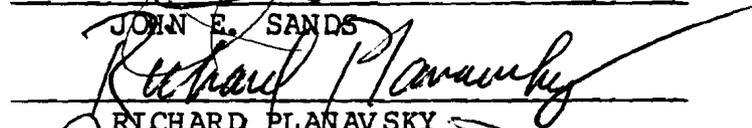
There shall be no other changes in the parties' collective bargaining agreement.

I concur.



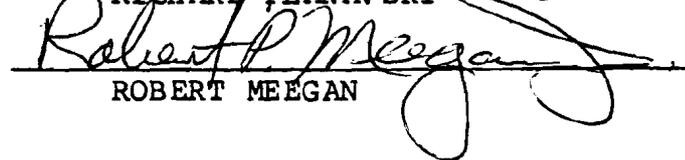
JOHN E. SANDS

I dissent.



RICHARD PLANAVSKY

I concur. ✓

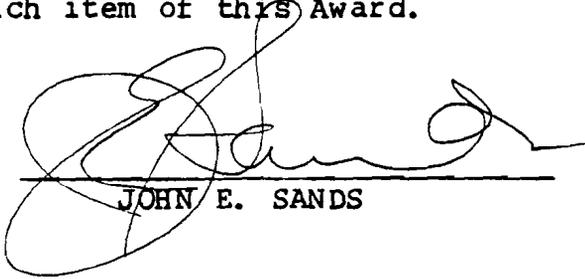


ROBERT MEEGAN

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules a majority of us affirm the foregoing as our Interest Arbitration Award in the above matter and that at least a majority of us has concurred in each item of this Award.

Dated: South Orange, NJ
September 5, 1989

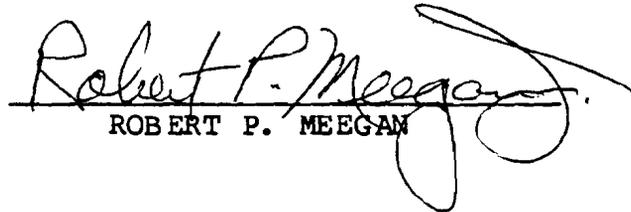


JOHN E. SANDS

Dated: Buffalo, NY
September 5, 1989

RICHARD PLANAVSKY

Dated: Buffalo, NY
September 5, 1989



ROBERT P. MEEGAN



CITY OF BUFFALO
DEPARTMENT OF ADMINISTRATION AND FINANCE

203 CITY HALL BUFFALO, NEW YORK

RICHARD PLANAVSKY
COMMISSIONER

DISSENTING OPINION
PERB CASE NUMBERS
IA88-29; M88-345

I dissent from the opinion of the majority in the above referenced case. My dissent is based primarily on the size and timing of the salary increases awarded which are 5% retroactive to July 1, 1988, 5% retroactive to July 1, 1989 and 10% (of the rate in effect on July 13, 1988) retroactive to September 5, 1989. The City Budget Director testified and provided documents which showed that the City budget contained salary adjustment accounts sufficient to fund only the 5% and 5% increase provided in the award. The cost of the additional 10%, in 1989-90 alone, is about \$2.5 million and over \$3.0 million next year and succeeding years. The City will be hard pressed to find the funding needed to provide the additional 10% increase in 1989-90 and future years.

While the majority noted that "Buffalo now enjoys vastly improved ability-to-pay by reason of effective and responsible fiscal and political management," the majority knew that the 1989-90 fiscal year was already underway and that the City budget had a severely limited ability to absorb the cost of a salary increase the magnitude of the additional 10% increase it provided on September 5, 1989. The City also showed that the natural growth in its budget revenues in recent years, if continued into future years, would be insufficient to fund salary increases of the magnitude provided in the award.

The majority based its award of the additional 10% on September 5, 1989 largely on the report of the Common Council's 1988 Committee to Review Police Salaries. The majority found the "extraordinary report both compelling and impossible to ignore and granted "the Committee's immediate, ten-percent" increase. Yet the majority was clearly aware that the Council had not provided the funding necessary to implement the findings of its Committee. It was irresponsible of the majority to mandate the additional 10% increase without determining how the City could fund such an increase in fiscal 1989-90.

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Dissenting Opinion PERB

As for future years, the City will attempt to make further productivity improvements in order to absorb the impact of the salary increases provided. The panel majority, including PBA President Meegan, stated "the City can secure further productivity gains through judicious use of variable assignments, one-officer cars in relatively safe areas and duties, and civilianization of functions" and that "those are all within the City's managerial prerogative to do". President Meegan also agreed with arbitrator Sands in stating that "those productivity improvements and the extraordinary character of the Commission's report are such unique factors that no other City bargaining unit should be able to justify a similar catch-up adjustment."

It remains to be seen, however, to what extent the productivity improvements cited by the majority can be translated into savings in the City budget. On the other hand, the cost to taxpayers of the salary increase provided herein is immediate, excessive, and unbudgeted. Therefore, I dissent from the majority in this award.



Richard Planavsky
Public Employer Member

RP:gam