

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest
Arbitration Betwen

The New York Finger Lakes Region
Police Officers, Local 195,
Council 82, AFSCME, AFL-CIO,

OPINION AND AWARD

PERB Case No. IA89-17;
MEB-481

-and-

The City of Auburn

PUBLIC PANEL MEMBER AND CHAIRMAN : THOMAS N. RINALDO, ESQ.
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BACKGROUND FACTS

The City of Auburn, and Police Officers Local 195, Council 82 AFSCME, are parties to a Collective Bargaining Agreement which expired on June 30, 1988. After a number of bargaining sessions, the parties were unable to reach an agreement on any issues, and on July 17, 1989, the Union filed a Petition requesting the Public Employment Relations Board to refer the impasse to arbitration.

The New York State Public Employment Relations Board under Section 209.4 of the New York Civil Service Law, designated the undersigned public arbitration panel to inquire into the dispute

and to resolve any issues at impasse.

Hearings on all matters relating to the dispute were held in the City of Auburn on December 12 and December 13, 1989. After receiving post-hearing Briefs, an Executive Session was held in Albany, New York on February 8, 1990.

This panel, in arriving at its determination, considered the wages, hours and conditions of employment of the employees involved in this dispute 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; the interest and welfare of the public and the financial ability of the public employer to pay; 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; and the terms of Collective Agreements negotiated between the parties in the past.

The City of Auburn had settled with its two other bargaining units in the City: The Civil Service Employees Association and their Firefighters.

The Police Union have limited their economic comparisons to the other Bargaining Units, particularly the Auburn Fire Department.

The City has rejected any comparison with the Auburn Fire Department claiming that there is a distinct difference in the type of work performed and the number of hours worked - the Fire Department works a 40 hour week and the Police Department works a 37.5 hour week.

The City has emphasized in its Brief the severe economic conditions of the City. There have been reductions in the overall City work force over the past 10 years, with the noted exception of the Police Department, which has been spared significant reductions. The City has also presented comparable statistics establishing that the City of Auburn Police Department wages compare very favorably to 10 other police departments in cities in Upstate New York. The City also points out to this panel that the two other Bargaining Units have agreed to a freeze in their cost of living adjustment and a change in their health insurance program.

The City would also like to achieve a change in the Police work schedule from a 4 and 2 schedule (37.5 hours per week) to a 5 and 2 schedule (40 hours per week).

The following issues have been submitted for our consideration:

1. Article 2, Section 2 - Union Business
2. Article 3 - Management Rights
3. Article 4 - Grievances and Arbitration
4. Article 7 - Hours of Work and Overtime

5. Article 8 - Wages
6. Article 9 - Work Force Changes
7. Article 11 - Seniority
8. Article 12 - Sick Leave Bonus
9. Article 13 - Holidays
10. Article 14 - Vacations
11. Article 15 - Uniforms and Clothing
12. Article 23 - Health Insurance
13. Article 24 - Pensions
14. Article 25 - Out-of-Title Pay
15. Article 30 - Duration
16. Personal Days

The City of Auburn has submitted the following proposals to interest arbitration:

1. Miscellaneous (Effective Date)
2. General Condition
3. Article 5 - Discipline and Discharge
4. Article 8 - Wages
5. Article 7 - Hours of Work and Overtime
6. Article 9 - Work Force Changes
7. Article 12 - Sick Leave
8. Article 13 - Holidays
9. Article 14 - Vacations
10. Article 15 - Uniforms and Clothing
11. Article 19 - Education Benefits

12. Article 23 - Health Insurance

13. Article 30 - Duration

The City of Auburn has a population of approximately 31,000 citizens, and has experienced a decline in population over the past 10 to 20 years. The present Police Department Budget approaches \$3,383,000.00 and represents approximately 20% of the overall City Budget.

ARTICLE 2 - SECTION 2 - UNION BUSINESS

The Union desires an increase from 6 hours to 12 hours in any two week period of time permitted for in-house union business. The Union also proposes increasing from 14 to 18 days the time available for union business. The Union claims that their proposal is a realistic and conservative increase in the amount of time in which a Union Steward may spend on Union business and the increase in days for Union delegates is necessary in order to permit local leaders to participate fully in Council 82 activities.

The City opposes any increase in Union time claiming that whenever the Union has made a request to conduct Union business, it has been granted. There is no justification, argues the City, for any additional relief.

ARTICLE 3 - MANAGEMENTS RIGHTS

The Union is offering a proposal which would greatly simplify the current Management Rights Clause which the Union claims is long and cumbersome. The City strongly objects to any alteration of their basic Management Rights clause.

ARTICLE 4 - GREIVANCES AND ARBITRATION

The Union requests that under Section 1-B that the procedures for the Step 2 and Step 3 grievance process be amended to provide that Step 2 will be heard by the Assistant Chief and Step 3 will be heard by the Chief of Police. Under the present Contract, Step 2 is heard by the Chief of Police and Step 3 is heard by the City Manager as the Chief Administrative Officer of the City.

The City vigorously opposes this change which is intended to eliminate the City Manager who is the Chief Administrative Officer of the City. The City claims it is essential to the proper administration of the City that the City Manager participate in the final step of grievance procedures as is the case in all of the Collective Bargaining Agreements within the City of Auburn.

ARTICLE 5 - DISCIPLINE AND DISCHARGE

The Union is proposing that the current language be changed to eliminate a Section 75 Civil Service Hearing and in its place substitute final and binding arbitration.

The City wishes to amend Section 1 of this Article to the extent of increasing from 3 days to 5 days the time within which the employer shall notify the Union and the employee in writing of a Notice of Discipline.

ARTICLE 7 - HOURS OF WORK AND OVERTIME

Section 1 - Work Week

The City is proposing that the current 4 and 2 schedule of 37. hours per week be changed to a 5 and 2 schedule, which results in an average 40 hour work week. The Union vigorously opposes a change from a 4 and 2 schedule to a 5 and 2 schedule.

Section 4 - Shift Changes in Patrol Division

The Union is proposing under Sub-Section D that employees be afforded a first and second choice for work shifts based upon seniority.

Section 5 - Shift Changes in the Command Division

The Union is proposing a requirement that one captain and one sergeant be assigned to every shift under Sub-Section E. The City is proposing under Section 5-A that shift changes in the Command Division be rotated every three months rather than the present two months. This would be consistent with shift changes in the patrol division which also occur every three months.

Section 6 - On-Call Pay

The Union is proposing under Subdivision B that the City be required to place a detective on call to be paid four hours for every eight hours on call.

Section 7 - Overtime Pay

The Union is proposing under Sub-Section B that overtime be paid for all hours in excess of 37. hours.

The City is proposing under Sub-Section G that an additional provision be added to overtime which would provide that should the process for voluntary overtime not result in obtaining minimum manpower, the Chief of Police would then have the authority to assign and require an employee to work under a rotating schedule, for a maximum of 2 work shifts per year.

Section 8 - Call Back Time

The Union is proposing that any employee called back to duty should be paid a minimum of four hours pay.

Section 9 - On-Call and Stand-By Pay

The Union is proposing a minimum payment of four hours for any stand-by or on-call time.

Section 10 - Court Appearances

The Union is proposing minimum pay of four hours for any required Court appearance.

ARTICLE 8 - WAGES

The City has proposed that the cost of living adjustment be eliminated and added to the base salary of every employee. The COLA for a police officer is \$2,535.00. The City proposed, that after adding the COLA payment to the base salary, a wage increase of 3% for the period effective July 1, 1988 through June 30, 1989 and an additional 2.% wage increase for the period July 1, 1989 to June 30, 1990.

The Union is proposing salary increases of \$2,250.00, across

the board together with the cost of living adjustment and a 9.5% and 10% increase in years 2 and 3 of the Contract.

ARTICLE 8 - LONGEVITY

Currently, each employee receives longevity pay of \$150.00 annually for each consecutive five years of service to a maximum of \$750.00. The Union has proposed increasing longevity pay to \$300.00 annually for each consecutive five years of service to a maximum of \$1,500.00. The Union argues that an increase in longevity is justified based on the increased productivity and performance of seasoned, experienced officers.

The City resists any change in longevity payments claiming that the longevity payment made by the City of Auburn is the same for all bargaining units.

ARTICLE 8 - COST OF LIVING ALLOWANCE

The Union recommends retaining the COLA as set forth in the current Agreement. Although the firefighters have agreed to a freeze in their COLA, the Police Union is not willing to agree to a similar freeze.

ARTICLE 8 - SHIFT DIFFERENTIAL

The Union is requesting a payment of shift differential of \$.25 per hour for the second shift and \$.50 per hour for the third shift. The City resists any shift differential arguing that there is a rotating shift schedule in the Police Department. This rotating shift equalizes the work, with ample provisions to exchange shifts at the request of the police officers. To a large extent, argues the City, most officers in the Police Department can elect their own shift. On this basis alone, there is no need for shift differential.

ARTICLE 9 - WORK FORCE CHANGES

The Union is proposing under Section 1 that the City be required to fill vacancies no later than thirty (30) days. The Union is also proposing under Section 3 that a Civil Service Exam be established as a qualification for the position of detective. The City has proposed a revision of Sections 3 and 4 of the Contract to essentially provide that the assignment of detectives to and from the Detective Bureau be by the Chief of Police. The City feels strongly that assignments to and from the Detective Bureau shall be in the discretion of management and not restricted by the Collective Bargaining Agreement.

The Union's proposal to make the detective promotion by Civil

Service examination would ensure their promotions be based on merit and fitness and help avoid the appearance of favoritism.

ARTICLE 11 - SENIORITY

The Union is proposing a new section significantly altering the current seniority system for shift rotations. The Union would require all shifts to be rotated every three months by seniority. The City opposes shifts to be determined by seniority because this would take away from the Chief of Police his authority to determine the best allocation of manpower and experience.

ARTICLE 12 - SICK LEAVE

The Union is proposing the following bonuses for low sick leave utilization:

0 days in calendar year - \$ 300.00

1 day in calendar year - \$ 200.00

2 days in calendar year - \$ 100.00

The Union argues that offering financial incentives for low sick leave utilization pays for itself in that it results in a more productive work force. The City opposes sick leave bonuses.

The City proposes under Subdivision C establishing a continuing 12-month review for chronic sick leave review as opposed to the present Contract, which works on a contract year.

ARTICLE 13 - HOLIDAYS

The City has proposed that any employee requesting and being granted a future work day off, shall be required to take said day within 30 days. The Union has proposed under Section 1, the addition of Martin Luther King as an additional holiday. The City opposes the establishment of Martin Luther King as a added holiday in the Contract. The current holiday structure for the Police Union is, argues the City, consistent with the two other Bargaining Units in the City.

ARTICLE 14 - VACATIONS

The City has proposed under Section 1(C) that no longevity day be permitted on a holiday. The Union is proposing a new section to grant vacation days in one day segments. The City resists the Union proposal, arguing that allowing police officers to take vacations in one day segments, would result in scheduling nightmares and would seriously disrupt the existing vacation schedule for all employees of the Department.

ARTICLE 15 - UNIFORMS AND CLOTHING

The City has proposed reducing the current uniform allowance from \$550.00 to \$400.00 annually and that replacement of damaged uniforms take into consideration the age and condition of the uniform. The Union is proposing maintaining the \$550.00 uniform allowance and adding to it an additional \$300.00 per year maintenance payment. The City resists this increase in benefits arguing that they are moving toward the elimination of non-salary payments to employees.

ARTICLE 18 - LEAVES OF ABSENCE

The Union is requesting increasing the number of personal leave days from one to five per year. The City vigorously opposes any increase in personal leave days pointing out that the police unit under its 4 and 2 schedule, work 16 less days per year than any other Bargaining Unit.

ARTICLE 19 - EDUCATION BENEFITS

The City seeks to add a sentence to Section 1(A) which requires an employee to make a good faith effort to apply for any tuition assistance, grants, or benefits from the State to offset any costs to the City for education benefits. The Union resists this proposal.

ARTICLE 23 - HEALTH INSURANCE

The Union is proposing full payment of health insurance, dental, eye care, and drug prescription by the City. The Union is also asking that retirees be covered in the same manner as active employees.

The City is proposing that the current health plan with the prescription card be maintained, that the cost for said plan be paid primarily by the City, but with contribution from employees to the extent that the payment made by the health plan for employees as of June 30, 1988 be increased by 10% for the contract year July 1, 1988 to June 30, 1989 and be increased by an additional 10% for the contract year July 1, 1989 to June 30, 1990.

The City argues that health care costs have increased dramatically over the past several years and the City is now looking for ways to curb this increase cost.

ARTICLE 24 - PENSIONS

The Union is proposing a 20-year retirement plan and/or in the alternative, that employees be transferred from the present Section 375(e)(g) to the 1/50th Retirement Plan of the Police and Fire Pension.

All employees of the City of Auburn are now under a 25-year pension plan and the City vigorously opposes the 20-year pension program claiming that the cost is too prohibited.

ARTICLE 25 - OUT-OF-TITLE PAY

The Union is requiring that any employee who works at a higher grade, shall be paid for all hours worked in that grade. The City opposes any change in the current contract language.

GENERAL DISCUSSION

What is clearly noticeable to this panel is that there is a strong mistrust between the parties. This is evidenced by the lack of movement on many of the issues at impasse. Contract proposals approached from a problem solving point of view, rather than from an air of mistrust, have a strong possibility of being resolved without third party intervention. Significant benefit is achieved when the parties are able to settle their own problems. Relying on outsiders to solve internal problems is not a good approach to contract negotiations. Moreover, the legislature in enacting provisions creating public arbitration panels, never intended that the panels would resolve all the parties' differences. It was viewed more as a release valve after significant negotiations occurred, leaving remaining issues unable to be settled, submitted to the public arbitration panel for determination.

This panel, in reaching its conclusions, was cautious not to significantly alter the status of the parties. After careful

consideration and concern for all proposals submitted by the parties, we make the following Award.

AWARD

ARTICLE 2 - SECTION 2 - UNION BUSINESS - No change in current Contract language.

ARTICLE 3 - MANAGEMENT RIGHTS - No change in current Contract language.

ARTICLE 4 - GRIEVANCES AND ARBITRATION - No change in current Contract language.

Article 5 - DISCIPLINE AND DISCHARGE - Amend Section 1 to the extent of increasing from 3 days to 5 days the time within which the Employer shall notify the Union and the employee in writing of a Notice of Discipline. Eliminate from current Contract language Section 75 Civil Service Hearings and provide for final and binding arbitration in lieu of Section 75.

ARTICLE 7 - HOURS OF WORK AND OVERTIME -

Section 1 - Work Week - No change in current Contract language.

Section 4 - Shift Changes and Patrol Division - No change in current Contract language.

Section 5 - Shift Changes in Command Division - Change in the current Contract language to accept the City's proposal under Section 5(a) that shift changes in the Command Division be rotated every three months rather than the present two months to be consistent with shift changes in the patrol division.

Section 6 - On Call Pay - No change in current Contract language.

Section 7 - Overtime Pay - No change in current Contract language.

Section 8 - Call Back Time - No change in current Contract language.

Section 9 - On-Call and Stand-By Pay - No change in current Contract language.

Section 10 - Court Appearances - No change in current Contract language.

ARTICLE 8 - WAGES - The Cost of Living Adjustment will be frozen for the life of this Contract and a pay raise of 5.5% shall be granted for the year 1988-89 and an additional 5.5% for the year 1989-90. Applying the percentages to the police officers' salaries, the wages compute as follows:

1988-89 WAGES

	A	B	C	D
	22,534	23,092	23,851	26,016
5.5%	<u>1,240</u>	<u>1,270</u>	<u>1,312</u>	<u>1,431</u>
	23,774	24,362	25,163	27,429

1989-90

	23,774	24,362	25,163	27,429
5.5%	<u>1,308</u>	<u>1,340</u>	<u>1,384</u>	<u>1,508</u>
	25,082	25,702	26,547	28,937

Under the 1986-88 Contract, COLA was frozen at \$1.20 an hour but, pursuant to Article 8, Section 1(F), COLA rose to \$1.30 per hour on August 1st, 1989 and subsequently rose to \$1.38 on February 1st, 1990. COLA should be frozen at that amount for the life of the Contract.

ARTICLE 9 - WORK FORCE CHANGES - No change in current Contract language.

ARTICLE 11 - SENIORITY - No change in current Contract language.

ARTICLE 12 - SICK LEAVE - Change the current Contract language to adopt the City's proposal establishing a continuing 12-month review period for chronic sick leave review. No other changes in current Contract language.

ARTICLE 13 - HOLIDAYS - Accept the City's proposal that any employee requesting a future work day off in lieu of holiday pay shall be required to take said work day within 60 days of the holiday. No other changes in current Contract language.

ARTICLE 14 - VACATIONS - No change in current Contract language.

ARTICLE 15 - UNIFORMS AND CLOTHING - Increase current uniform allowance from \$550.00 to \$600.00 annually. No other changes in current Contract language.

ARTICLE 18 - LEAVES OF ABSENCE - No change in current Contract language.

ARTICLE 19 - EDUCATION BENEFITS - Accept the City's proposal to add a sentence to Section 1(a) which would require an employee

to make a good faith effort to apply for any tuition assistance, grants, or benefits from the State to offset any costs to the City for education benefits.

ARTICLE 23 - HEALTH INSURANCE - Change current Contract language to eliminate the prescription drug card in favor of a major medical prescription payment plan with the following essential features:

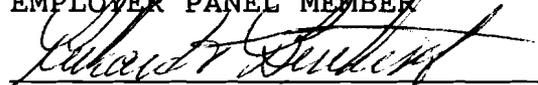
1. The prescription card is eliminated.
2. Prescription expenses to be paid 80% by insurance and 20% by the employee.
3. There is no deductible for prescription expenses, payments are made from first dollar costs.
4. There is a cap of \$250.00 per year per individual for prescription expenses. Any amount in excess of the cap is to be paid by the City.

ARTICLE 24 - PENSIONS - Change Contract language so that employees be transferred from the present Section 375(e)(g) to the 150th Plan of the Police and Fire Pension.

ARTICLE 25 - OUT-OF-TITLE PAY - No change in current Contract language.

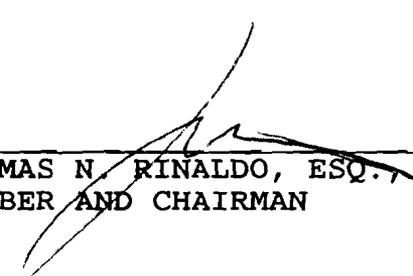

THOMAS N. RINALDO, ESQ. PUBLIC PANEL
MEMBER AND CHAIRMAN


MICHAEL McKEON, ESQ., PUBLIC
EMPLOYER PANEL MEMBER


RICHARD J. BISCHERT, EMPLOYEE
ORGANIZATION PANEL MEMBER

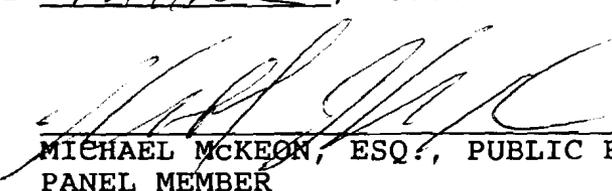
STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

I, THOMAS N. RINALDO, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Opinion and Award on the 24 day of March, 1990.


THOMAS N. RINALDO, ESQ., PUBLIC PANEL MEMBER AND CHAIRMAN

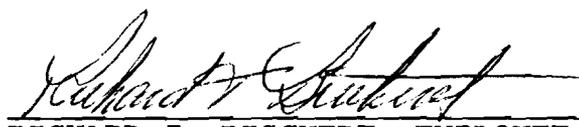
STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

I, MICHAEL MCKEON, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Opinion and Award on the 15 day of March, 1990.


MICHAEL MCKEON, ESQ., PUBLIC EMPLOYER PANEL MEMBER

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

I, RICHARD J. BISCHERT, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Opinion and Award on the 31st day of March, 1990.


RICHARD J. BISCHERT, EMPLOYEE ORGANIZATION PANEL MEMBER