

State of New York  
Public Employment Relations Board  
Case No. IA89-36; M89-361

NEW YORK DEPARTMENT OF LABOR  
RECEIVED  
AUG 27 1990  
CONCILIATION

In the Matter of the Arbitration

between

City of Elmira

and

Elmira Police Benevolent Association

AWARD OF THE  
ARBITRATION PANEL

In accordance with the provisions of Section 209.4 of the New York Civil Service Law the parties hereto submitted the following issues to the undersigned arbitration panel for its determination:

1. Hours of Work
2. Vacation
3. Bill of Rights
4. Equipment Allowance
5. Retirement
6. Wages and Longevity

Hearings on the above matter were held on April 5 and May 11, 1990 in Elmira, New York. At these hearings both sides were represented and given full opportunity to present oral and documentary evidence. Both parties submitted post hearing briefs.

On July 27, 1990 the arbitration panel deliberated in executive session. This Award is based upon these deliberations, as well as upon the respective beliefs of the individual panel members.

The panel has attempted to take a balanced approach, realizing that not all proposals can be granted at the same time. More important, however, was the fact that the panel used specific criteria in reaching its conclusions. Some of the criteria were afforded great weight and others lesser weight. Where applicable, the undersigned have given great weight to

comparative data. The Award, therefore, attempts to reflect police settlements in communities near Elmira and similar to it in nature.

The panel has given considerable weight to the City's ability to pay. The panel believes that its decision avoids placing undue economic burdens upon the employer.

Some weight has been given to the issue of attracting and maintaining a high quality police force. In addition some weight has been given to the history of bargaining between the parties as well as the problems created by increases in the cost of living.

### 1. Hours of Work

The City has proposed changing the hours of work so that each shift would start and end one hour earlier than it presently does. The City believes that the new hours would "make more efficient use of manpower without unduly impacting the workforce." This, says the City, would be accomplished by providing more officers at statistically busy hours.

The Union objects to this proposal because it believes that it would require some employees to arise at 4:45 a.m. after retiring at 7:00 p.m. The Union contends that this would leave little time for a home life. Other employees, says the Union, would leave home while their children were at school and not return until they had gone to bed.

The panel is not persuaded that the current work shifts create a hazardous situation. While some small efficiencies might be gained by changing these shifts, the panel has not been convinced that these would overcome the inconveniences imposed upon some employees. For these reasons the proposal is denied.

### 2. Vacation

The Union has proposed granting officers twenty-one days of vacation from the first year of employment through the fourteenth year. Currently officers receive twenty-one days commencing with the tenth year. The Union justifies its position by arguing that

many officers do not get a good vacation choice during the summer months and do not get weekends off. In addition, says the Union, officers often do not receive either holidays or compensatory time off.

The City argues that the Union's proposal is unsupported by comparability or need. Further, says the City, it lacks any cost estimate or any other sound rationale for its recommendation.

The panel has not found that Elmira lags behind comparable communities in the area of vacation. Undoubtedly police officers suffer unusual stress on the job. The Union, however, has failed to demonstrate that the cost of increased vacation time would be reasonably related to the amount of stress that would be eliminated. By and large the Union's argument is that employees would be happier with increased vacation benefits and they deserve such benefits regardless of cost. The panel cannot agree with this approach and, therefore, denies the proposal.

### 3. Bill of Rights

The City seeks to modify Article 26(c), Rights of Members While Under Investigation, to exclude a clause which permits officers to remain silent when questioned by a superior investigating the officer's alleged act of misconduct. The City wishes to be able to charge an officer who refuses to answer such questions with insubordination. The City argues that the subsection is obstructive, nonmandatory and illegal. Moreover, says the City, the remainder of Article 26 provides sufficient protection for officers whose conduct is being investigated.

The Union argues that the primary motivation of the City in making this proposal is its desire to force officers under investigation to give evidence against themselves. The Union maintains that the City's proposal would have officers surrender rights possessed even by the criminals whom they arrest. The City, says the Union, has produced no

evidence that the current language has obstructed any previous investigation or that there is any other compelling need to change the current contract language.

The panel has not been persuaded that the current language has posed any serious problems for the City. The evidence adduced in this regard has been hypothetical rather than empirical. For this reason the panel denies the City's proposal.

#### 4. Equipment Allowance

The Union seeks to have its contractual clothing allowance increased from \$250 to \$400. It further seeks to have the \$350 allowance for those required to work in civilian clothes increased to \$500. The Union argues that it has not received an increase in clothing allowance since its 1984-85 contract. In the past six years, says the Union, the cost of clothing and dry cleaning has approximately doubled. It maintains that the increase it seeks will not even cover these costs.

The City contends that the Union's proposal is unsupported by meaningful testimony or physical evidence. Given the Union's undocumented assertions, says the City, the proposal should be denied.

The panel has carefully reviewed the evidence adduced by the parties. It finds that the most significant element in this regard is the fact that, despite increases in the cost of living, the clothing allowance had not been increased in several years. For this reason the panel has determined that the maintenance allowance contained in Article 21(c) shall be increased from \$250 to \$300 in 1990 and increased to \$350 in 1991. In addition the panel has determined that the civilian clothing contained in article 21(d) shall be increased from its current level of \$350 per year to \$100 per quarter in 1990. No further increase in 21(d) is granted for 1991.

## 5. Retirement

The City had originally proposed a "roll back" in retirement benefits and, at the same time, an enhancement by the granting of Section 375i of the Retirement and Social Security Law. The City's brief, however, suggests that it now would prefer *status quo* on the Retirement issue.

The Union argues that it was misled in negotiations regarding what was contained in 375i. It, however, did not make a specific proposal on Retirement.

The panel has determined that the parties presented evidence on this issue that was, at best, confusing and ambiguous. What it believes has emerged was a general agreement that 375i would cost the City little and would be of some benefit to employees. The panel, therefore, finds that the only change that should be made in the current retirement provision is that 375i should be added to it.

## 6. Wages and Longevity

The City has proposed that a wage increase of five percent be granted in each of two contract years. It argues that this is equitable and comparable to similar City settlements as well as those for like employee groups within the County of Chemung. The City maintains that a higher settlement would be onerous for the taxpayer.

The Union seeks a nine percent increase in each of two years plus movement on the longevity step at 7, 9, 11 and 15 years. The Union argues that Elmira is behind other comparable cities and that it has the ability to pay. This is especially true, says the Union, given the fact police work in Elmira has grown increasingly dangerous over the years.

The panel has carefully analyzed the evidence adduced at the hearing and concluded that the following four across-the-board wage increases shall be granted:

On January 1, 1990 wages shall be increased by 4%

On April 1, 1990 wages shall be increased by 3%

On January 1, 1991 wages shall be increased by 4%

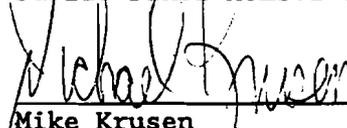
On April 1, 1991 wages shall be increased by 3%

In addition the panel has concluded that a longevity movement shall be granted at 17 years rather than 20 years as in the existing contract.

August 21, 1990



James R. Markowitz  
Public Panel Member and Chairman



Mike Krusen  
Public Employer Panel Member

I respectfully dissent from the determination of the panel majority. I believe that the credible evidence offered at the hearings by the respective parties requires a substantially higher pay increase, further movement on longevity, further increase in equipment allowance, and improved vacation for younger officers.



James F. Young  
Employee Organization Panel Member