

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE: IA 93-008; M 92-547

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
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CONCILIATION**

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In The Matter of Interest Arbitration

- between - *

NIAGARA FALLS POLICE CAPTAINS AND
LIEUTENANTS ASSOCIATION

- and - *

CITY OF NIAGARA FALLS

A W A R D

O F

A R B I T R A T I O N

A N D

O P I N I O N

* * * * *

IN ATTENDANCE

For The Association

Robert P. Merino, Esq., Spokesman
Gordon Warne, Captain, Association President
David M. Belfield, Captain
David Bird, Lieutenant
David A. May, Lieutenant

For the City

Richard J. Rotella, Esq., Assistant Corporation Counsel
Thomas C. Zwelling, Superintendent of Police
Patrick D. Brown, City Controller
Lynne L. McDougall, Director of Personnel

For the Panel

Samuel Cugalj, Chairman and Public Panel Member
Thomas Lizardo, Public Employer Panel Member
John G. Soltys, Employee Organization Panel Member

BACKGROUND

The Collective Bargaining Agreement between the City of Niagara Falls, N.Y. and the Niagara Falls Police Captains and Lieutenants Association (hereinafter referred to as "CITY" and "ASSOCIATION" respectively) expired on December 31, 1991. Bargaining sessions were held between the parties, then with a State Mediator, but the parties were unsuccessful in resolving the open issues. On June 29, 1993, the New York State Public Employment Relations Board (PERB) designated a three (3) member Public Arbitration Panel to resolve the impasse. The parties were not prepared to proceed to arbitration until October 27, when a Hearing was held in Niagara Falls, New York in this regard. The Panel received Hearing Briefs, eight (8) CITY Exhibits, and fifteen (15) ASSOCIATION Exhibits. The parties indicated at the conclusion of the Hearing that they had full opportunity to present argument in support of their positions on the open items, introduce evidence and witnesses and to engage in their examination and cross-examination. They were given the opportunity to file Post Hearing Briefs and both were postmarked by the agreed upon date of November 27.

The Panel reviewed the material presented independently, and met in Niagara Falls in Executive Session on December 30 to discuss the structure of the AWARD in view of satisfying Section 209.4 (iii through vi) of the NYS Civil Service Law as follows:

"(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of the employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees generally in public and private employment in comparable communities.

b. the interest 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 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 of salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off, and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority."

A W A R D

[Note: The number of the open issue in each heading corresponds to the number of the issue on the docket used at the Hearing.]

THRESHOLD ISSUE - ARBITRABILITY

Denied.

ISSUE 1 - WAGES, RETROACTIVITY AND TERM OF AGREEMENT

- a) Effective 1/1/92, all steps in the 12/31/91 wage schedule shall be increased by four and one-half (4.5%).
- b) Effective 1/1/93, all steps in the 12/31/92 wage schedule shall be increased by four and one-quarter (4.25%).
- c) The term of this Agreement shall be from 1/1/92 through 12/31/93.

ISSUE 2 - SECTION 384-e RETIREMENT

The Panel has no jurisdiction in this area.

ISSUE 3 - HOLIDAY

Denied.

ISSUE 4 - PREMIUM PAY FOR DESK LIEUTENANT

Effective 1/1/92, the premium pay for the Desk Lieutenant classification shall be increased by four and one-half (4.5%).

ISSUE 7 - SICK TIME ACCUMULATION

Denied.

ISSUE 8 - SICK TIME BUY-BACK

Denied.

ISSUE 17 - GUARANTEED OVERTIME

Denied.

ISSUE 22 - SHIFT PREMIUM FOR PLATOON SUPERVISORS

Denied.

ISSUE 23 - FAMILY LEAVE DAYS

"An officer may utilize three (3) sick days per year due to illness of a member of the officer's immediate family.

Immediate family is defined, and shall be limited to: Parents, Step-parent, Spouse, Children, Step-children."

[Note: This AWARD does not increase the number of sick days as currently provided in Section 10.5 - Sick Leave.]

ISSUE 24 - COURT APPEARANCE OUTSIDE CITY

"If an officer is required to make an appearance as a witness outside the City of Niagara Falls, the Agreement will provide a minimum of four (4) hours pay for said appearance. If the officer is required to appear for both morning and afternoon appearances, the officer will be paid four (4) hours for the morning and four (4) hours for the afternoon appearance."

[Note: This AWARD does not change the three (3) hours paid to officers for a court appearance within the City of Niagara Falls.]

ADDITIONAL ISSUES

At the Hearing, the parties stipulated their earlier agreement on Issues #13 and #14 as outlined below:

ISSUE 13 - VACATIONS

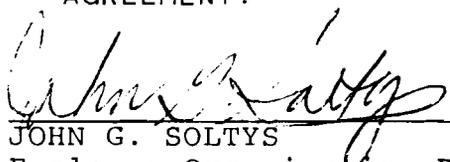
"The City will make every effort to pay the employee amount due, pursuant to this section, by the last of the month of July or December, respectively."

ISSUE 18 - BEREAVEMENT LEAVE

"For purposes of determining eligibility for the foregoing benefit, the employee's immediate family members shall be limited to: Father, Mother, Step-father, Step-mother, Father-in-law, Mother-in-law, Husband, Wife, Brother, Sister, Brother-in-law, Sister-in-law, Son, Daughter, Son-in-law, Daughter-in-law, Step-son, Step-daughter, or a relative residing within the household of the officer."

ALL SECTIONS OF THE EXPIRED COLLECTIVE BARGAINING AGREEMENT, NOT AFFECTED BY THIS AWARD, AND NOT AFFECTED BY FORCE OF LAW, REMAIN INTACT IN THE SUCCESSOR AGREEMENT.

ALL OTHER DEMANDS AND ISSUES BROUGHT UP IN THESE NEGOTIATIONS ARE HEREBY CONSIDERED NULL AND VOID FOR THE TERM OF THIS AGREEMENT.

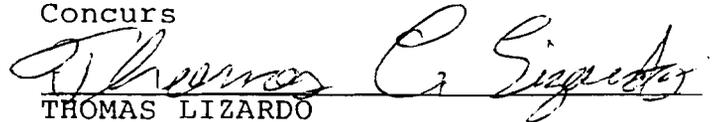


JOHN G. SOLTYS
Employee Organization Panel
Member

Concurs but Dissents on Issues
3, 7



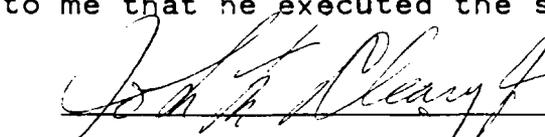
SAMUEL CUGALI
Public Panel Member and Chairman
Concurs



THOMAS LIZARDO
Employer Panel Member
Concurs but Dissents on the
Threshold Issue and Issues
1, 4, 23, 24

STATE OF NEW YORK }
 }
COUNTY OF ERIE } ss:

On this *21st* day of January 1994, before me personally came and appeared **Samuel Cugalj**, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



JOHN M. CLEARY, JR.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires *10/31/1995*

STATE OF NEW YORK }
 }
COUNTY OF NIAGARA } ss:

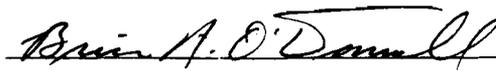
On this *19th* day of January 1994, before me personally came and appeared **Thomas Lizardo**, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



BRIAN A. O'DONNELL
Notary Public, State of New York
Appointed in Niagara County
Commission expires *11/30/94*

STATE OF NEW YORK }
 }
COUNTY OF NIAGARA } ss:

On this *19th* day of January, 1994, before me personally came and appeared **John G. Soltys**, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



BRIAN A. O'DONNELL
Notary Public, State of New York
Appointed in Niagara County
Commission expires *11/30/94*

CHAIRMAN'S OPINION

In determining the preceding AWARD, the Panel did take into account its statutory responsibilities under Section 209.4 of the Taylor Law. I have summarized both our rationale and the dissent below.

THRESHOLD ISSUE - ARBITRABILITY

The CITY takes the position that in late 1992, it signed a Memorandum of Agreement which it still believes is binding, and that open issues are more properly a matter of collective bargaining and not for an arbitration panel. A Panel majority finds the CITY position unacceptable because the signed agreement was never ratified; the retirement issue, which was a part of the agreement could not be granted by the State Retirement system; and PERB acknowledged the arbitrability of the open issues when this Panel was designated in 6/93. Finally, no improper practice charge was brought to the Panel's attention.

ISSUE 1 - WAGES AND TERM OF AGREEMENT

The Chair believes that for the term of this agreement, the public is best served by mirroring the AWARD recently granted to the rank and file police officers, 4.5% effective 1/1/92, 4.25% effective 1/1/93. A wage increase for police officers without an increase for their supervisors would likely have a damaging effect on the latter's morale, and ultimately impact the general public.

Settlements of police contracts in Niagara County cities of Tonawanda, North Tonawanda and Lockport show wage increases in the 3%-5% range. It was deemed more relevant to compare ASSOCIATION wage with cities locally, rather than with jurisdictions outside the county. Furthermore, a comparison of wages paid to Lieutenants and Captains effective 1/1/92 with the cities referred to above show this unit's wages to be generally competitive. A Panel majority took note of a practice whereby past ASSOCIATION wage settlements were similar in many cases, and identical in some years, to the CITY's rank and file police wage settlements. We took note of wage settlements with other bargaining units in the CITY, where they received a 0% wage increase for 1992, and a four (4%) wage increase for 1993. Limiting the AWARD were the CITY's negative demographics such as having the lowest per capita income of the comparative cities in the county; a declining population base; a high number (43%) of its population in the non-productive years, under 18 and over 65 years of age; an unusually high number (40%) of its population on public assistance and not able to contribute to the tax rolls. While preferring to compare unit wages with surrounding area jurisdictions, it difficult to ignore the fact that the CITY has the highest overall tax rate of comparable size cities in both the county and state. The Panel also noted the relatively low cost of living (2.5%-3%) in the general Western New York area, as rationale for moderating the eight (8%) and nine (9%) wage demands of the ASSOCIATION. 1992 wage costs from this AWARD are approximately \$46,296 on a total police budget of \$6,329,834 (or .7%); 1993 costs from this AWARD are estimated at \$45,691 on an estimated police budget of

\$6,500,000 (or .7%). In terms of the CITY's ability to pay, this settlement is estimated to be a small part of their budget, approximately .12% (1% is .32% on the tax rate). The CITY's recent ability to bond one million (\$1,000,000) after they received the rank and file AWARD was a favorable financial development. Past spending has seriously eroded the CITY's capital account, although its general fund may not be similarly affected.

The strong dissent of the Panel's Employer Representative was based on the demographic data mentioned above, and the CITY's fiscal situation, which reflect declining State aid, and negative trends in their general fund balance. The CITY believes this settlement will ultimately affect public safety, because layoffs of police officers will have to be made.

The Panel unanimously agreed on a two (2) agreement, to try to bring some labor relations stability, even though an almost immediate resumption of collective bargaining for 1994 is imminent.

ISSUE 2 - SECTION 384-e RETIREMENT

This issue is not arbitrable under the Taylor Law.

ISSUE 3 - HOLIDAY

A Panel majority believes the demand for adding Election Day to the current list of twelve (12) holidays should not be granted because no CITY employees have more than twelve (12); there

is no overriding justification for adding to the fiscal impact of the wage settlement awarded herein; finally, the fiscal impact on the CITY was given greater weight than holiday comparisons with bargaining units in other jurisdictions.

The Panel's Employee Organization member dissents on the basis of comparability with other police units on this particular issue, believing that this bargaining unit suffers in comparison.

ISSUE 4 - PREMIUM PAY FOR DESK LIEUTENANT

A Panel majority believes the additional duties absorbed by this classification are significant. While some jobs may change gradually over time, the added responsibilities given to the desk lieutenants are meaningful, ex., replacing police officers for scheduled overtime, maintaining vehicle logs and keys, bookings, evidence lockers, among others. The estimated cost of the recommended 4.5% classification adjustment is \$9,800 per year, which will have a de minimis impact on the CITY's budget. The adjustment is also a modification of the ASSOCIATION's original 6.5% demand.

The dissent of the Panel's Employer Representative is based on the fiscal impact of the AWARD on the negative financial picture of the CITY; also this classification is not unique in that new job duties are added and other duties dropped routinely.

ISSUE 7 - SICK TIME ACCUMULATION

The bargaining unit sought to increase their current sick time accumulation of one (1) day per month to one and one-half (1.5) days per month. A Panel majority awarded no change in the current twelve (12) days maximum accumulation. There was no overriding need demonstrated to warrant disrupting the current number of twelve (12) days for uniformed employees, and six (6) for non-uniformed employees. Additional cost to the CITY, in view of the lack of overriding need, was also a factor considered. At this time, the majority preferred to have consistency within the CITY's uniformed personnel rather to give more weight to outside comparisons.

The Panel's Employee Organization representative argued the ASSOCIATION's twelve (12) days was the lowest in the county and warranted upgrading for unit members to remain competitive.

ISSUE 8 - SICK TIME BUY-BACK

The ASSOCIATION seeks to buy-back sick days at a rate of forty (40%) for up to one hundred (100) sick days, eighty (80%) up to two hundred (200) sick days, and one hundred (100%) over two hundred (200+). On one hand, this issue encourages careful use of sick days, while on the other, the timing of this demand does not seem appropriate. In view of the overall AWARD, the Panel unanimously denied this issue.

ISSUE 21 - GUARANTEED OVERTIME

The ASSOCIATION seeks to require the CITY to provide eight (8) hours of guaranteed overtime per month, which the former suggests could include such activities as training, staff meetings, etc. In view of the overall AWARD, the Panel unanimously denied this issue.

In conclusion, the Chairman wishes to express his appreciation to the representatives of the CITY and the ASSOCIATION for their professional work, and especially to the two (2) Panel members, for their diligence, patience and cooperation in resolving this impasse.

January 21, 1994
Buffalo, New York



SAMUEL CUGALJ
PUBLIC PANEL MEMBER AND CHAIRMAN

cc: Richard A. Curreri, Director of Conciliation, PERB
Charles Leonard, Supervising Mediator, Buffalo PERB