

DEC 10 1999

CONCILIATION

Interest Arbitration between

Elmira Police Benevolent Association

and

City of Elmira

No. IA98-039; M98-197

Decision and Award of Arbitration Panel

Before: Robert J. Rabin, Chair; James B. Reed, Employee Member; and James F. Young, Employer Member.

Background

The parties engaged in "win-win" bargaining in the late summer of 1998. By late fall, 1998, with the help of a PERB mediator, they reached a tentative agreement. The tentative agreement was submitted to PBA membership for ratification vote and PBA membership failed to ratify the tentative agreement. Further discussions ensued, but ultimately the parties reached impasse, and won the right to come before this panel.

The parties built their tentative agreement around salary increases of 3% each year for the first two years, and additional compensation in the third year. They agreed on several other issues, and further agreed that certain other issues would be removed from the table.

The tentative agreement foundered upon the PBA's reaction to a demand by the City regarding the handling of compensatory time off (the "comp time" proposal). This proposal surfaced in response to a request by the PBA for more flexible handling of time off. There was substantial disagreement in the testimony as to whether there had ever been tentative agreement on this point.

Following the declaration of impasse, the matter was submitted to this panel. The parties submitted pre-hearing briefs, and the Panel heard the matter on June 18 and 21, 1999. The parties then submitted post-hearing briefs. The Panel considered the testimony, exhibits and briefs in depth, and conferred in the fall of 1999.

Section 209.4 of the Civil Service Law (The Taylor Law) requires the panel to consider specified criteria in resolving the impasse. These include a comparison of wages, hours and conditions of employment of similarly situated employees, the interests and welfare of the public and the financial ability of the public employer to pay, a comparison of the particularities of the profession in comparison with other occupations, and an examination of the terms of prior agreements between the parties. The Panel has followed these criteria in reaching its award.

Arbitrability of City's Comp Time Demand

The PBA contended at the outset that the City's comp time demand was not properly before the Panel, in view of the ground rules that the parties had agreed upon for negotiations. The PBA argues that the negotiation rules did not permit a party to take an issue to binding arbitration if it was not contained in the original demands. The parties empowered the Chair to decide whether this issue is properly before the Panel. The Chair concludes that the City's demand on comp time was a direct response to the PBA's demand on flexibility in time off, which was already on the table. The two positions became linked in negotiations, so that the City's position on comp time was an integral part of one of the PBA's initial demands. The Chair concludes that as such the City's demand is before the Panel. However, the manner in which this demand became part of the negotiations is a factor in the Panel's conclusion on the merits of this issue.

Rulings on the Issues

1. Duration of Contract. Under the Taylor Law, an interest arbitration panel may not issue an award for longer than a two year term. Although the parties had extensive discussions over the possibility of a three year agreement, the parties did not consent to extend the panel's jurisdiction beyond the statutory limitation, so we confine our award to a two year contract term.
2. Compensation. The parties had reached tentative agreement on salaries of 3% in each of the first two years of their tentative three year agreement. This is the same figure that had been reached in settlements in the City's other bargaining units. In addition, this is the ballpark figure for settlements for those two years in the jurisdictions that the parties had agreed would be used by this Panel for comparability purposes. The evidence indicates that Elmira police are within the prevailing salary range for the comparable jurisdictions, hence no adjustment up or down is required to the prevailing wage increase in the comparable units. Finally, the City did not contend an inability to pay this wage increase. Under the Taylor Law criteria, the evidence points to wage increases of 3% in each of the two years of this Award, and the Panel so awards.

3. Certain other issues. As indicated in the background statement, the parties packaged a number of other issues with the wage settlement in the tentative agreement. The evidence and arguments submitted by the parties indicate that these tentative agreements should not be disturbed. In its deliberations, the Panel used as its inventory of open issues the items listed on pages 2 and 3 of the City's post-hearing brief. The Panel awards that items 4 and 5 be withdrawn (14 Officer Rule Modification and Bill of Rights Modification) and that item 6 (Health Insurance Changes) be resolved in accordance with tentative agreements previously reached by the parties. The parties also submitted to interest arbitration issues involving FMLA, 207-c and performance appraisal. The parties' briefs indicate that the parties are in agreement as to how these issues should be resolved, and those resolutions are incorporated into this award.

4. Personal Day. The PBA seeks to add two additional personal leave days to those already provided by the Agreement. The City has offered to grant one additional leave day. The Panel is convinced by the evidence that one additional personal leave day should be granted.

5. Comp Time. The Panel rules that this demand by the City should be withdrawn. This demand was not explored in depth at the bargaining table. In the Panel's experience and judgment, demands of this sort, which involve complex rules that affect the daily work lives of bargaining unit members, should be resolved whenever possible at the bargaining table, to insure that the changes are workable and acceptable.

6. PBA demand on compression of salary steps. This demand was not an explicit part of the PBA's initial demands, though it is an aspect of salaries, one of the PBA's basic demands. The demand was apparently brought into the Interest Arbitration procedure in response to developments in another City bargaining unit. The Panel deems it unwise to make an award on a topic that was not thoroughly explored at the bargaining table. Accordingly, the Panel rejects this demand.

7. Health Insurance for Retirees. The collective bargaining agreement currently provides that upon retirement a police officer may elect to receive health insurance for an additional number of years. In the alternative, the officer may elect a one-time, lump-sum retirement incentive award. The PBA requests an increase in the duration of this benefit, so that it would extend to 10 years after retirement, which is in line with the arrangement in effect in at least one other City bargaining unit. The PBA's demand raises questions as to whether the retiring officer would also be entitled to the one-time, lump-sum retirement.

The Panel awards additional years of paid health insurance in retirement, bringing to a total of ten the number of years of paid health insurance benefits for retirees. The employee may elect at the time of retirement to take a \$10,000 cash

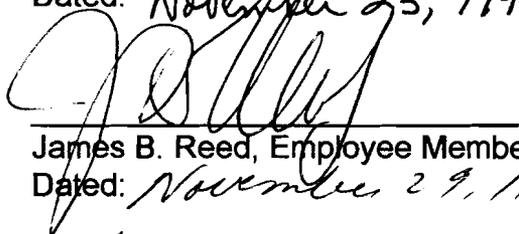
payment in lieu of the ten years of paid health insurance. This election may be made at the time of retirement provided the employee is eligible for New York State retirement benefits, regardless of when the member was first eligible for such benefits. Article 17.4 and 18.5 are amended to allow for the benefit to begin at the beginning of retirement provided the bargaining unit member is eligible for New York State retirement benefits, regardless of when the employee first becomes eligible.

Any other issues proposed or submitted to the Panel not mentioned above are not awarded. This constitutes the Panel's full Award.



Robert J. Rabin, Chair

Dated: *November 23, 1999*



James B. Reed, Employee Member

Dated: *November 29, 1999*



James F. Young, Employer Member

Dated: *Dec 3 1999*