
In the Matter of Interest Arbitration

between

City of Salamanca

and

Civil Service Employees Association
Local 805

Opinion

and

Award

(PERB Case No. IA099-32) **NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD RECEIVED**

APR 23 2001

CONCILIATION

This arbitration was heard on February 12, 2001 at the Buffalo offices of the New York State Public Employment Relations Board (PERB). In The undersigned was designated to serve as neutral member of a tripartite arbitration panel through the procedures of PERB. The other members of the panel are Norman Stocker for the City and Vincent P. Sicari for the Union. The City was represented by Kevin Stocker, Esq., the Union by James Jayes, CSEA Labor Relations Specialist.

BACKGROUND

The Union represents for collective bargaining purposes eleven full-time and three part-time police officers employed by the City. The last collective bargaining agreement between the parties expired on March 31, 1999. Negotiations for a successor agreement were conducted through September 1999, when impasse was declared. Mediation efforts from October 1999 to February 2000 were unavailing, whereupon the Union petitioned for arbitration. The neutral member of the arbitration panel was appointed in May 2000, as talks continued sporadically.

The parties met informally with the neutral member on July 28, 2000, to discuss the status of the impasse and a possible settlement. There had been tentative

agreement on a number of issues, but a key outstanding issue was a City proposal for drug-testing. This proposal was eventually withdrawn, but in early 2001 negotiations still had not been completed, and the arbitration hearing ensued. At the hearing the parties agreed on the issues to be resolved, many of which involve only the effective date of an agreed-upon change. For convenience, we will list all the issues, and then address them sequentially in terms of the parties' positions, our analysis, and our award.

- M-6 Deletion of standby pay.** Article X, Section 1, of the contract provides that an employee recalled to work after completion of his shift is guaranteed a minimum of three hours' pay. The City proposes to reduce this guarantee to one hour's pay.
- M-9 Use of sick time.** Article XIII, Section 6, permits employees to use part of their sick leave and personal leave for family illnesses, and it provides that "the City will require all such time used under this Section to be verified." The City proposes adding the phrase "to the acceptance of the City."
- M-12 Health insurance for part-time employees.** The parties have agreed to eliminate health insurance eligibility for part-time employees; the issue is the effective date of this change.
- U-1 Salary.** The parties have agreed on three years of salary increases. The issue is whether employees who have separated from service are eligible for retroactive salary payments.
- U-3 Shift differential.** The parties have agreed on an increase in the shift differential. At issue is the effective date of this change.
- U-7 Holiday.** The parties have agreed on an additional holiday (Martin Luth King Day). At issue is the effective date.
- U-9 Uniform allowance.** The parties have agreed on an increase in the uniform allowance. At issue is the effective date.

DISCUSSION AND AWARD

M-6. The City contends that the current three-hour guarantee is excessive and disadvantages the employee by discouraging the City from using overtime. The Union argues that the City's proposal would discourage employees from agreeing to come in. We believe that the three-hour guarantee may be longer than necessary to serve the needs of the citizens as well as the employees, but if the guarantee is reduced, employees should not have to remain on standby duty after performing the task for which they were called in. **AWARD:** Change the three-hour guarantee in Article X, Section 1, to two (2) hours, and delete Sections 2 and 3 of the Article.

M-9. The City contends that employees have been using the family illness benefit without providing an adequate explanation of the reason for its use. The Union argues that the contract already provides the City with a remedy. We agree. The contract currently says that "the City will require all such time . . . to be verified." Under this language, the City is entitled to receive information or documentation, beyond the employee's statement, showing that the employee is missing work for a *bona fide* family illness. If the City believes the information is inadequate, it may withhold sick leave payments, subject to redress under the grievance procedure. The City need only enforce this provision; it does not need additional language. **AWARD:** The proposed change is denied.

M-12. The City contends that the original proposal, which was tentatively agreed to, carried an effective date of April 1, 1999. The Union says that the effective date should be when the new agreement is executed. We believe that in the early negotiations the parties contemplated that this change would be effective in 1999.

There is a potential problem, however, if part-time workers have been hired in the interim and are now receiving health insurance. Such workers should not have such a benefit withdrawn. The record is not clear on whether there are any such workers.

Hence, **AWARD:** The elimination of health insurance for part-time workers shall apply to all part-time workers hired on or after April 1, 1999, except for any part-time worker who was hired after April 1, 1999, and was receiving health insurance from the City on the date of this award.

U-1. The Union contends that the tentative agreement provided for retroactive salary payments, and that agreement should not be disturbed because the negotiations became protracted. The City argues simply that there should be no retroactivity. We do not see the case for diverting from the normal practice of making a salary settlement retroactive to the expiration of the previous contract, and it is clear that if the contract had been settled earlier, retroactivity would not be an issue. **AWARD:** Base salaries shall be increased by three percent effective April 1, 1999, and another three percent effective April 1, 2000, with full retroactivity to those dates. Moreover, employees who left the employment of the City after April 1, 1999 shall also be entitled to retroactive base salary payments.

U-3. There is some evidence that the parties contemplated increasing the shift differential effective with the execution of the agreement. However, given the protracted negotiations, we do not believe it is appropriate to deny the agreed upon benefit for the whole time. **AWARD:** The shift differential shall be increased by five cents effective April 1, 2000, with retroactive payments to that date.

U-7. Again, had the contract been settled when many of the tentative agreements were made, the employees would have enjoyed the Martin Luther King holiday benefit in January 2000 and January 2001. **AWARD:** Martin Luther King Day shall be added to the list of paid holidays, effective April 1, 1999. All employees and former employees on the payroll on January 17, 2000 shall receive one day of pay, and all employees on the payroll on January 15, 2001 shall receive one day of pay.

U-9. The City notes that employees receive a uniform allowance only for clothing that they actually buy, and that purchases must be pre-approved. Thus there appears to be no issue of employees having had to spend their own money, for which retroactive reimbursement might be appropriate. Accordingly, we believe that this benefit should be prospective. **AWARD:** The uniform allowance shall be increased by \$25, effective March 31, 2001.

STATE OF NEW YORK} SS:
COUNTY OF ERIE }

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

April 4, 2001
(dated)

Howard G Foster
(signature)



Local 1000 AFSCME, AFL-CIO

April 10, 2001

Howard Foster, Arbitrator
Office of the Dean
160 Jacobs Management Center
P.O. Box 604000
Buffalo, New York 14260-4000

Dear Dr. Foster,

CSEA is in concurrence of the award you rendered regarding the City of Salamanca and CSEA (PERB Case Number IA 099-032).

Sincerely,

Vincent P. Sicari,
Labor Relations Specialist

VPS/mm

cc: Norman Stocker
James Jayes
file



Associated Labor Consultants

Labor / Management Consultants

April 19, 2001

Mr. Howard G. Foster
 160 Jacobs Management Center
 P.O. Box 604000
 Buffalo, New York 14260-4000

RE: City of Salamanca
 and CSEA
 PERB Case No. 1A099-032

Dear Mr. Foster:

This letter will represent my concurrence with your proposal award dated April 4, 2001, provided Union 1 is clarified to reflect the increase is applied only to the base salaries as set forth in Article XXXI and Union 9, the twenty-five dollar increase, does not apply in contract year 2000/2001 but in the future.

Very truly yours,

A handwritten signature in cursive script that reads 'N. J. Stocker'.

N. J. Stocker

NJS/ms

Tonawanda Office

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