

IA 200-028, M200-252

PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

AWARD OF THE
ARBITRATION PANEL

State of New York
Public Employment Relations Board
Case No IA200-028; M200-252

In the Matter of the Arbitration
between
City of Elmira
and
Elmira Police Benevolent Association

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 panel for its determination:

- 1. Salary
- 2. Personal Days
- 3. Terminal Leave Days

A hearing on these issues was held at the offices of the City in Elmira, New York. At this hearing both sides were represented and given full opportunity to present oral and documentary evidence. At the outset of the hearings the parties stipulated that the panel was authorized to make an Award covering three years. Additionally they stipulated that because the gap separating them from voluntary agreement was so narrow and because their negotiations had taken into account the criteria in Section 209.4 of the Civil Service Law, the panel's Award would, of necessity, fall within the criteria of subsection (v) of that statute.

Upon completion of the presentations, 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.

- 2 -

The panel has attempted to take a balanced approach recognizing that not all proposals can be granted at the same time. More important, however, the panel is cognizant of the fact that the parties were, for the most part, successful in attempting to negotiate a contract and that bargaining has narrowed their differences on wages to less than one percent over three years. Moreover, the Union's documented and unrefuted presentation suggests that the parties would have agreed on a compromise on terminal leave had they been able to agree on salary and personal days. Last, we note that the parties have attempted to compromise on personal days with the result that the City has stated its willingness to increase the number from 3 to 4.

These facts support the parties' stipulation that regardless of where the panel comes down on each of the outstanding issues, the decision will fall within the statutory criteria. Nonetheless, where comparative data were supplied, those data have been weighed by the panel. While no such data were offered regarding salary, the collective and respective experience of the panel members offers no basis for believing that the position of either party runs contrary to the wages of police forces in comparable communities. Neither has there been any suggestion that the City lacks the ability to pay any portion of the package proposed by the Union. The panel has considered hazards of employment especially with regard to the issues of personal leave and terminal leave. In rendering its decision as a whole, it has also given some consideration to physical, educational and mental qualifications, as well as to job training and skills.

The panel has also considered the interests and welfare of the public and has done so specifically with regard to its awarding of a three year contract. Likewise it has also considered the parties' past collective agreements and given special attention to their recent negotiations history. These considerations are reflected most strongly in the decisions regarding the issues of personal days and terminal leave.

It should be noted that Section 209.4 (v) provides that the panel shall consider "relevant factors" in addition to those set forth above. The most salient of those relied upon

- 3 -

by the Chairman was the expertise of his co-panelists, especially as that expertise was manifested in the aforementioned executive session.

ISSUES AND CONTENTIONS

1. Duration

The parties have agreed that the contract should be of three years duration beginning January 1, 2001.

2. Salary

As is indicated above, the parties have agreed that a three year agreement is in their mutual interest. They have also agreed that in the third year of that agreement salaries will be increased by 3.5%. At the hearing both the City and the Union proposed that the salary for the first year should increase by 2% at the commencement of the contract and by another 2.5% on July 1, 2001. Thus as of the hearing date, the parties disagreed only on the second year of the salary. The City has offered an increase of 3.5% and the Union seeks an increase of 2% on January 1, 2002. and 2.5% on July 1, 2002.

The Union believes that its position is appropriate in light of the fact that it has agreed to compression of its salaries over a three year period as compared to one year for the fire department and because of its positions regarding personal and terminal leaves.

The City simply argues that its position is fair.

3. Personal Leave

The Union asks that the number of personal leave days be increased from 3 to 5. As noted above, the City is only willing to increase the number to 4. The Union argues that by its nature the profession of police officer creates a great deal of stress which, in turn, creates the need for added personal leave. This stress comes from a negative work

- 4 -

environment where decisions are viewed as either right or wrong and there is little room for personal opinions. Moreover officers are required to keep themselves under constant control regardless of the emotional state created by the actual work performed. Stress also comes from the quasi-military environment and from the isolation from society inherent in wearing the officer's badge. Last, says the Union, stress is produced not only from on-the-job risks but by higher divorce and mortality rates than the civilian work force.

The Union emphasizes that under the parties' agreement personal leave in Elmira may only be granted if there is adequate staffing and will not result in overtime. Moreover, leave can be revoked at the last minute in the event of a staffing shortage. Under these circumstances the Union contends that personal days are granted at no cost to the City. On the other hand, they reduce stress and improve morale.

The City argues that the 1996-98 contract provided for 2 personal days and that a third was added in 1998-2000. It believes that granting another one now is sufficient to deal with the issues raised by the Union and, therefore, asks that the Union's proposal for two more personal days be denied. Additionally the City asserts that a review of the number of personal days granted by 10 other comparable police departments reveals that only one grants 5 or more personal days, while the 9 others grant 3 or fewer. Under these circumstances the City believes that 4 such days is adequate. It contends that this is especially true given the desirability of maintaining a staffing level at more than the legal minimum, the fact that minimal staffing, itself, creates stress and the fact that holidays, vacations and compensatory time are already available to officers who feel the need for time off.

4. Terminal Leave

The Union argues that during "mutual gains bargaining" in 1998 the parties agreed on a "problem statement" reading "At retirement, officers do not receive an adequate separation package to allow sufficient financial resources in retirement." Because the issue

- 5 -

was not fully addressed in 1998, the Union proposed to change Terminal Leave payments from a maximum of 175 accumulated sick days at 60% of the final daily salary rate to 175 days at 100% of this rate. The City, says the Union, countered by proposing to increase the maximum accumulation to 200 days while leaving the percentage unchanged. Believing that the rest of the contract would fall into place, the Union accepted the counter offer and the parties have not since discussed the matter. Because the Union believes that the compromise reached is fair and because it believes that it will cost the City only about \$6000 per year, it asks that the maximum number of "retirement benefit days" be increased to 200.

The City believes that the current number of "retirement benefit days" is fair given the structure of the bargaining unit's whole retirement package. This includes the right to health insurance for up to 10 years, up to 20 accrued holidays and up to 480 hours of accrued compensation time. For this reason it asks that the maximum number of terminal leave days remain at 175.

AWARD

The panel has viewed the three issues placed before it as an interrelated package. It has reviewed the City's comparative data on Personal Leave Days and concluded that increasing the number of such days to 4 is appropriate. The panel recognizes that personal days in Elmira may differ from such days in other communities because they may be canceled at the last minute. It also acknowledges that no data regarding vacations, holidays or workloads from other departments have been supplied. Nonetheless, having considered the statutory criteria and having given weight to its decision on salary and Terminal Leave, the panel has decided to deny the Union's request. Accordingly it orders that personal leave be increased to 4 days.

The panel believes that at some point the parties reached an agreement to increase the maximum number of terminal leave days (also known as "retirement benefit days") to

. 6 .

200. While it recognizes that this agreement was conditioned on the rest of the contract coming together without interest arbitration, it believes, nonetheless, that the parties' compromise was fair and proper under the criteria set forth in Section 209.4 of the Civil Service Law.

Clearly both sides have recognized the need to improve the retirement package. The improvement sought by the Union is a modest one which will not have a great impact on the employer's finances and may also serve to discourage the unnecessary use of sick leave. The City's arguments regarding accumulation of holidays and compensatory time are not persuasive because these are not so much retirement benefits as limits on the right to use accrued time off after retirement has occurred. Neither is the connection between a retiree's health insurance and Terminal Leave clear to the panel. For these reasons the panel orders that the maximum number of "retirement benefit days" be increased to 200.

Last the panel orders that in the first year of the agreement salary be increased by 2% retroactive to January 1, 2001, and increased by another 2.5% on July 1, 2001. As noted, the parties are in agreement on this point.

In the second year of the agreement the panel orders that salary be increased by 2% on January 1, 2002, and increased by another 2.5% on July 1, 2002.

In the third year of the agreement the panel orders that salary be increased by 3.5% on January 1, 2003. Again, the parties are in agreement as to the third year's salary increase.

The above reflects the panel's agreement with the parties stipulation that either of their respective positions conforms with all the criteria set forth in Section 209.4. The split nature of the increases in the first two years of the contract will result in some savings to the City while still giving the employees proper wages given the nature of their jobs and the wages paid for similar jobs in comparable communities.

April 20, 2001

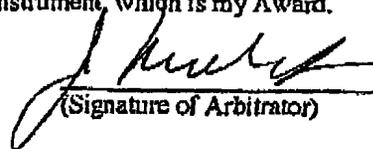
-7-


James R. Markowitz
Public Panel Member and Chairman

State of New York }
County of Tompkins } SS.:

I, James R. Markowitz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

May 1, 2001
(Dated)

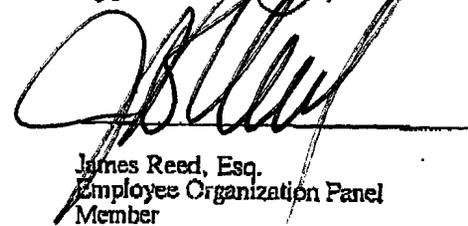

(Signature of Arbitrator)


James F. Young, Esq.
Public Employer Panel Member

State of New York }
County of Chemung } SS.:

I, James F. Young, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

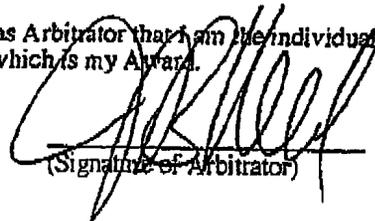
5/1/01
(Dated)


(Signature of Arbitrator)

James Reed, Esq.
Employee Organization Panel Member

State of New York }
County of Chemung } SS.:

I, James Reed, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

4/30/01
(Dated)


(Signature of Arbitrator)