

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Arbitration Between

VILLAGE OF BUCHANAN

and

BUCHANAN POLICE DEPARTMENT

ARBITRATOR'S FINDINGS

and

AWARD

Case No. CA0054; M75-340

APPEARANCES

For the Village of Buchanan:

Jack Loeber

Village Trustee

David Goodman

Representative

For the Police:

Herbert E. Hesselgrove

Patrolman

Robert E. Frey

Attorney

Before:

William J. Burke

Village Designee

Raymond Lowery

Police Designee

I. Leonard Seiler, ESQ.

Impartial Chairman

On April 8, 1976, the New York State Public Employment Relations Board determined that a dispute continued to exist in negotiations between the Village of Buchanan (hereinafter referred to as the "Village") and the Buchanan Police Department (hereinafter referred to as the "Police") designated a Public Arbitration Panel (hereinafter referred to as the "Panel") pursuant to Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of this dispute. Due to several delays in holding the first arbitration hearing, the Police appointed arbitrator was forced to withdraw and Raymond Lowery was appointed in his place. The newly con-

stituted panel then proceeded under the applicable statutes, rules and regulations to inquire into the causes and circumstances of this continued negotiations impasse and at the conclusion of the inquiry made the findings and award which follows.

After several postponements, a hearing was finally held on July 8, 1976, in the Buchanan Village Hall, at which time the parties were given ample opportunity to present oral and written statement of facts, supporting witnesses, and other evidence and were provided with the opportunity to argue their respective positions regarding this dispute. At the hearing, the parties expressly waived their right to have a record made of the proceedings.

The parties mutually agreed on July 8th, to submit post hearing briefs by July 23rd and reply briefs by August 6, 1976. Following their receipt, the Panel on August 11, 1976, officially declared the hearings closed.

The Panel met in Executive Session on August 19, 1976. After due and deliberate consideration of all of the evidence, facts, exhibits and documents presented and in accordance with the applicable criteria the Panel arrived at the Award which follows. The Panel was mindful at all times of the statutory provisions of Section 209:4 of the New York Civil Service Law such as, comparable wages, hours and conditions of employment of other employees performing similar services or requiring similar skills, financial ability of the public employer to pay and such other factors which are normally or traditionally taken into consideration. The Panel also considered the recommendations made by the Fact-Finder in this dispute.

IN GENERAL:

1. The dispute involves the continued impasse between the Village and Police over a successor agreement to their first written labor contract that expired on May 31, 1975. The new agreement to be effective as of June 1, 1975.

2. The parties agreed that they did not desire to have a record made of the Arbitration Hearing.

3. A fact-finding report issued by Edward D. Depew on June 27, 1975, failed to resolve the dispute.

4. The "position" of the parties and the Panel's "discussion" are only a summary and are not intended to be all inclusive.

5. The parties at the Arbitration Hearing submitted the following issues for determination by the Panel:

- a) Salary
- b) College Educational Benefits
- c) Reimbursement for Unused Sick Days on Retirement
- d) Longevity
- e) Life Insurance upon Retirement
- f) Vacations

Hearings, analysis of the testimony, evidence, the comprehensive post-hearing and reply briefs filed by both parties, research and study of the issues in dispute have now been concluded and the Panel after due deliberation, consideration and evaluation makes its Findings and Award in the matters in dispute, which were the only issues submitted to the Panel.

STIPULATIONS BY THE PARTIES:

1. A five-step pay plan be included in the new contract providing \$500. per step between a 5th Grade Patrolman and a 1st or Top grade Patrolman.

2. The College Educational Benefit awarded by the Panel be paid to any police officer who has been receiving such supplement and in the future to any recipient of the appropriate degree or degrees in police science.

3. The parties were in agreement that the Panel should recommend terms for a two-year agreement.

A. SALARY INCREASE:

Fact-Finder's Recommendation:

The Fact-Finder recommended a \$1,150. or 8½% increase commencing June 1, 1975, for the year ending May 31, 1976.

Position of the Parties:

The Police accepted the fact-finder's recommendation but the Village rejected it and instead offered \$700. for each year of a two-year agreement. Police requested the same percentage increase in the second year of a two year agreement as the fact-finder had recommended for a one-year agreement.

The Police argued that because of the uniqueness of the Buchanan Police Department, i.e. "four experienced First Grade Patrolmen" who comprise the Department headed by a Chief, each of them when "on duty" are the entire shift and, therefore, must perform every type of police work including detective's without detective or premium pay and any opportunity for advancement in rank, so they are at least entitled to the salary increase of 8½% recommended by the fact-finder. Police said it should also be noted "that the Village of Buchanan Police Department is currently the lowest paid department in the County including all forty-six municipalities within the County." although "the tax rate for the Village has remained constant for the last twenty-five years, a fact that no other municipality within the County of Westchester can add to its credit."

The "Village of Buchanan...is in the unusual position of having within its jurisdiction the major part of Consolidated Edison's generating plants." While Con Ed was building the four patrolmen for some 8-9 years enjoyed overtime pay which they no longer receive.

Additionally, because "it is bordered on its north by the City of Peekskill and to its south by the Montrose Veterans Hospital" and has a train line running through, the Police Department has inherent problems "over which the Village nor its Police Department have any control."

Furthermore, Police stated that even if the Fact-Finder's salary recommendation "was adopted Buchanan would still be at the exact median for Villages."

The Village, in turn, argued that any determination of proper wages must go beyond basic wages and take into account the value of the wage supplements or fringes the patrolmen are receiving which are quite substantial and for the last contract year 1974-1975 "came to the astonishing rate of 87.08% of base pay of \$13,600). The New York City financial situation has focused public attention on the magnitude of the wage supplements granted public employees."

It pointed out that the Village ranked near the top of Westchester Communities in each of the following wage supplements: holidays granted, personal days given, vacations, longevity, Dental Plan, Life Insurance, Eye Glasses, uniforms and uniform maintenance.

The Village called the Panel's attention to the fact that the Village had increased the tax rate for 1976-77 by \$2.00 per thousand over the previous year's rate and that there has been a "sharp decrease in assessments from \$75,457,685 to \$42,956,282 because Con Edison Nuclear Plant #3 has been acquired by the New York State Power Authority and is no longer carried in the taxable section of the roll. However, the Village is entitled to receive pay-in-lieu of taxes in an ever decreasing amount until the zero figure is reached in approximately 20 years."

The Village also noted that it was not "on a pay-as-you-go basis" for 24% of its 1976/77 General Fund Budget was assigned to debt service."

The Village agreed "that being a member of the police force in Buchanan is totally unlike doing police work in any other jurisdiction" and because it is good duty is why the present force came to work in Buchanan from other Police Departments.

In summary, the Village said "Considering all factors, including the character of the work required and the salary and supplements now being paid, the Village's offer for improvements is most generous. In fact, considering the state of general municipal employment, the Village could easily be accused of being excessively generous."

In its reply brief, Police maintained that "the financial condition of the Village in no way can be construed as anything close to the financial condition of the City of New York."

Additionally, Police strenuously objected to the Village's raising for the first time in the negotiation proceedings in its post-hearing brief the hypothesis "that if the Association wants higher salaries (as recommended by the Fact Finder) then they must realize reductions in wage supplements. (Village Brief Page 15 and 17)...a position such as proposed by the Village would mean that the Employee Organization would have a net gain in salary and/or benefits of zero, notwithstanding the general rise in the cost of living and in the accompanying inflation rate."

Village in its reply brief took exception to Police's geographical description of the Village and the problems which resulted therefrom and stated: "Between the southernmost portion of Buchanan and the Montrose VA Hospital is approximately three miles of the unincorporated portion of the Town of Cortlandt. This area is patrolled by the State Police who, incidentally, are paid a lesser salary than that proposed by the Village for its 76/77 year. The only problem caused to the Village by the hospital is the returning to the hospital of harmless patients who wandered away.

"As to what problems the City of Peekskill creates there is no evidence of any spillover which produces any particular problems for the Buchanan police."

DISCUSSION:

Section 209.4 of the Civil Service Law directs the public arbitration panel to "make a just and reasonable determination of the matters in dispute" and in so doing shall consider the recommendations of the Fact-Finder "and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

- "a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- "b. the interests and welfare of the public and the financial ability of the public employer to pay;
- "c. comparison of the 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 and skills;
- "d. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment."

Inasmuch as public employees are prohibited by Law from withholding their services (may not strike) to achieve in collective bargaining what they consider to be equitable salary increases, public employers should be morally obligated in equity to treat them fairly and, if economic conditions permit, at least grant a salary increase that will restore to their employees the purchasing power they enjoyed at the start of their last contract year.

The public employer, however must also be cognizant of the extraordinary pressures budget increases exert on its taxpayers. Thus, the duty imposed on the public employer is to strike an equitable balance between satisfying its mission of providing adequate public safety and meeting the financial needs of its employees at a cost that does not place an undue tax burden on the taxpayers for whom the service is being provided.

In fashioning its Award, the Panel considered the uniqueness of police duties in Buchanan and the excellent fringe benefits it provides the patrolmen.

The panel is of the unanimous opinion that as determined by the Fact-Finder there does exist the ability to pay, i.e., namely, that the Village is not ^{an} impoverished community with a high tax rate and that the Patrolmen involved "have been somewhat underpaid in relation to their professional counterparts in other communities."

In its deliberations, the Panel also unanimously agreed that a four-step (six month intervals) salary increase should be proposed for it would grant police officers the largest reasonable increase at the least cost and impact to the Village. Thus, the Panel has rejected the recommendation of the Fact-Finder, which was acceptable to the Police, and the proposal of the Village.

Granting four \$500. increases at six month intervals effective June 1, 1975, December 1, 1975, June 1, 1976 and December 1, 1976, would only cost the Village \$750. for the year 1975-76 (\$500. for 12 months and \$500. for 6 months or \$250. for the 12 months). However, because of the roll-over factor of \$250. the year 1976-77, would cost the Village a \$1,000. The total two-year cost of \$1,750. does not greatly exceed the \$1,400. proposed by the Village but does put the police in better respective position with their professional counterparts in other Westchester Communities.

PANEL'S AWARD:

1. Retroactive to June 1, 1975, First Grade Patrolmen's salaries be increased by \$500. to \$14,100.
2. Retroactive to December 1, 1975, First Grade Patrolmen's salaries be increased by \$500. to \$14,600.
3. Retroactive to June 1, 1976, First Grade Patrolmen's salaries be increased by \$500. to \$15,100.
4. Effective December 1, 1976, First Grade Patrolmen's salaries be increased by \$500. to \$15,600.

B. COLLEGE EDUCATIONAL BENEFITS:

Fact-Finder's Recommendation:

Increase the \$100. extra pay granted a Patrolman in the expired contract to \$200. for an Associate Degree but no "extra pay for men earning a B.A. degree."

Position of the Parties:

Both parties accepted the Fact-Finder's recommendation to increase the educational benefit for an Associate degree from \$100. to \$200. and they also agreed that in the future any acquired Associate degree be in Police Science. The Police did not agree with the Fact-Finder's recommendation for no extra compensation for earning a B.A. degree.

The Police requested that the "Panel grant an extra \$400. per annum for a police officer who has completed his Bachelor's Degree."

In support of its request, Police indicated that men usually performed better with college training and "The 'Village' would have a maximum exposure of only \$200. in that only one officer of the four currently on the Force is in any reasonable position to take advantage of this provision."

Village's response was that there was a limit to what the Village could pay its police officers.

Discussion:

The Panel, after carefully considering the arguments of the parties and the Fact-Finder's reasoning and recommendation, considers the Fact-Finder's recommendation on this issue to be just and reasonable. Therefore, it determined that his recommendation should be adopted i.e. increase the compensation for an Associate Degree but nothing additional for a B.A. Degree.

Panel's Award:

That the \$100. extra pay granted a Patrolmen in the expired contract for an Associate Degree be increased to \$200. and that all future Associate Degrees to be eligible for this \$200. in

extra pay must be acquired in Police Science.

C. REIMBURSEMENT FOR UNUSED SICK DAYS ON RETIREMENT

Fact-Finder's Recommendation:

The Fact-Finder rejected the Police demand for payment of accumulated sick leave on retirement.

Position of the Parties:

Village accepted and the Police rejected the Fact-Finder's recommendation.

Police sought a plan for reimbursement for unused sick days on retirement. They admitted that such a plan is not included in a majority of Westchester Communities but said it was required in this unique unit "where day-off man or working man is required to take another shift to cover the sick-man at overtime rates which is more costly to the Village." Police stated that any of the plans proposed would provide incentive for accumulation "and would reduce the over-time paid by the Village for sick days used."

Village's rejoinder was that sick days was not a property right but made available for a legitimate need if required and accumulated sick days should take care of long-term illnesses.

Discussion:

In today's times when limited funds are available, the various requests for improvement asked by the Police must be carefully weighed one against another. This demand compares less favorably with other pressing needs of the Police and, therefore, the Panel is in agreement with the Fact-Finder that no change be made in the present contract provision.

Panel's Award:

No change be made in the sick leave provision of the expired contract.

D. LONGEVITY

Fact-Finder's Recommendation:

This issue was assumed to have been settled by the Parties and was thus not submitted to the Fact-Finder.

Position of the Parties:

At the Arbitration Hearing the Parties were in dispute as to what the Village's counter-offer on this issue was which the Police had accepted. Therefore, the Panel was asked to make an Award on this issue.

Police claimed that page 2 of the History of Negotiations dated May 23, 1976, shows that the Village counter-offer calls for "longevity pay of \$1100.00 for a man who has been on the force for 15 through 19 years." The entire reported proposal was as follows:

5-9	years	\$500.
10-14	years	800.
15-19	years	1,100.
20	years	1,400.
21	years	1,900.

Village, in turn, maintained that it did and is offering the following:

10	years of employment	\$300.00
15	" " "	600.00
20	" " "	900.00

Police declared that inasmuch as there was "no opportunity for upward mobility beyond 1st Grade Patrolman" longevity was particularly important for Police Officers in Buchanan.

Village answered that "longevity is still money to the Village and a way around the Westchester Town and Village Act which states that everyone in the same grade must be paid the same salary."

Village additionally argued that its alleged offer on page 2 of the PBA's History of Negotiations exhibit was inconsistent with the PBA's demand on page 1 of that same exhibit which re-

ported the Police's longevity demand as follows:

5 years	\$300.
10 years	600.
15 years	900.

and the Village's initial counteroffer on that same page as:

10 years	\$300.
15 years	600.

Discussion:

The granting of longevity benefit is quite common in Westchester Communities and is particularly appropriate in Buchanan where there are no chances to advance in rank. Both parties appear to be in agreement to include such a provision but are in disagreement as to what it should be.

The last purported counter-offer of the Village as reported by the Police appears to be inconsistent with the Village's first counteroffer and even more important it far exceeds the Police's original demand. In view of all other positions taken by the Village on the Police's demands, it is not plausible that it's counter-offer would exceed the Police's demand as to longevity.

The Panel ascertained at the Arbitration Hearing that two (2) of the police officers have been with the Village six (6) years, one with credit for prior service in another police department has fifteen (15) years of service and the Fourth, also with credit for prior service in another police department has sixteen and one-half (16½) years of service.

It is thus obvious that the Police's demand sought to have all four (4) police officers receive a longevity benefit, whereas the Village's offer stated at the Arbitration Hearing would only benefit two (2) of the men.

Panel's Award:

Longevity shall be granted effective June 1, 1976, in amounts non-cumulative as follows:

\$150. after five (5) years of employment
\$300. after ten (10) years of employment
\$600. after fifteen (15) years of employment
\$900. after twenty (20) years of employment

E. LIFE INSURANCE UPON RETIREMENT

Fact-Finder's Recommendation:

The Fact-Finder recommended no change in the provision in the expired contract.

Position of the Parties:

Police asked that the Village paid \$5,000. Life Insurance Policy for each Patrolman be continued in effect after retirement because they will still need the coverage for their families and the cost of individual coverage would be prohibitive based on their age at retirement. Police suggested that costs "could be greatly reduced through the use of group plans", perhaps through the Police Association.

Village responded that it was not a usual police contract provision and was prohibited by law.

Police rejected the Village's contention that its proposal was prohibited by law and argued "that this request is certainly reasonable and is quite affordable in light of the unique size of the Buchanan Police Department."

Discussion:

The Panel like the Fact-finder is unaware of any legal prohibition. But, inasmuch as no member of the Department is ready to retire yet this question can be resolved.

Panel's Award:

A joint committee be formed to explore the legality and cost of such a program and report its findings to the parties to the contract no later than January 31, 1977, in time for negotiation of the parties' next contract.

F. VACATIONS

Fact-Finder's Recommendation:

Recommended adoption of the Police's proposal that eligibility for 25 days of vacation be shortened from 17 years to 15 years of service, but rejected its request that 15 days vacation after 5 years of service be increased to 20 days.

Position of the Parties:

Police accepted the Fact-Finder's recommendation but the Village rejected any "change from present generous schedule." It indicated that other Village employees were not eligible for 25 days until after 25 years of service. Additionally, it argued "nobody is eligible so leave it alone."

Discussion:

The present vacation schedule does not compare unfavorably with other Westchester Communities and in view of the other monetary improvements awarded previously in this Award and the costs involved paying the remaining men overtime to cover for the man on vacation in this unique Police Department, the Panel feels no improvement is warranted.

Panel's Award:

The vacation schedule remain "as is" in the previous contract.

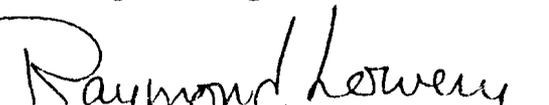
This concludes the Panel's determinations of all the issues submitted to it. The Panel commends the Fact-Finder for his thorough, thoughtful and well reasoned Report which provided a sound basis upon which this Panel was able to proceed with its deliberations.

Dated: September 2, 1976

Respectfully submitted,



William J. Burke (I concur)
Village Designee


Raymond Lowery (I concur)
Police Designee

I. Leonard Seiler
I. Leonard Seiler, Chairman

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 2 day of September, 1976, before me personally came and appeared William J. Burke 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.

FRANK R. COLACINI
Notary Public, State of N.Y.
#60-0696560
Cert. Filed with West. Co. Clk.
Comm. Expires March 30, 1977

Frank R. Colacini

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 2 day of September, 1976, before me personally came and appeared Raymond Lowery to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

FRANK R. COLACINI
Notary Public, State of N.Y.
#60-0696560
Cert. Filed with West. Co. Clk.
Comm. Expires March 30, 1977

Frank R. Colacini

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss:

On this 3rd day of September, 1976, before me personally came and appeared I. Leonard Seiler 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.

*expiring
3/30/77
#2049745*

Paul Carpenter

N.Y.S. PUBLIC EMPLOYMENT
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