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 In the Matter of Compulsory Arbitration  
 Between  
 VILLAGE OF DEPEW  
 and the  
 DEPEW POLICE BENEVOLENT ASSOCIATION  
 (PERB CA-0074; M76-34)  
 \*\*\*\*\*

OPINION  
 AND  
 AWARD

JUL 27 1976

APPEARANCES:

For the Employer:

Joseph J. Schultz, Village Attorney

For the Association:

Anthony J. DeMarie, Attorney  
 Richard C. Maciuba, President

A hearing in the above matter of compulsory arbitration was held at 7:00pm May 25, 1976 at the Village Hall, Depew, New York, before a public arbitration panel consisting of Patrolman Robert Hall, Employee Organization Member; Mayor John J. Potter, Employer Member; and the undersigned public member and chairman, appointed by the New York State Public Employment Relations Board pursuant to the provisions of Section 209.4 of the Civil Service Law.

Both parties were provided full opportunity to call witnesses and to engage in their examination and cross-examination and to present documentary evidence, proofs and arguments. No witnesses were called; however documentary evidence and arguments were presented by counsel for the parties.

At the conclusion of the hearing, the public arbitration panel requested that briefs be submitted, postmarked no later than June 7, 1976. The Association's brief was not posted until June 10, and when received by the Chairman, the record was closed.

THE ISSUE:

The sole issue to be decided by this arbitration is the salary increase to be effective June 1, 1976 for the final year of the current three-year collective bargaining agreement (Joint Exhibit #1).

BACKGROUND:

The parties negotiated a three year agreement, effective June 1, 1974 through May 31, 1977. Salary increases of six (6) percent were agreed upon for the first and second years, to be effective on June 1, the beginning of the Village budget year. However, the salary increase for the third year was not specified, but it was made subject to negotiations which were to begin no later than January 1, 1976. The parties were unable to reach agreement on the salary issue and impasse was declared.

Mr. Mark Beecher of PERB's Buffalo Office, appointed as Fact Finder, conducted a hearing on February 12, 1976 and issued his report dated February 23, 1976 recommending a six (6) percent increase.

The Fact Finder's report and recommendations were not accepted by either the Village of Depew or the Depew Police Benevolent Association. The Association, on March 16, 1976, petitioned for compulsory arbitration of the salary issue.

POSITION OF THE PARTIES:

The Village of Depew offered a salary increase of three (3) percent to be effective June 1, 1976, the beginning of the Village's fiscal year. It believes the salary increase to be adequate for a number of reasons:<sup>1</sup>

1. Village Brief, dated April 28, 1976, Employer's Exhibit No. 1

1. Salaries of Village Police personnel have increased six (6) percent in each of the five previous years.
2. Comparisons with Villages in Erie County show the present salary meets the average salary of all other departments.
3. The Fact Finder's recommendation would have placed Depew police slightly above the average for 11 towns and villages, \$13,629.
4. The Village's financial situation shows an anticipated tax increase of \$3.50/\$1000 assessment, a prohibitive interest rate on borrowing for capital improvements and replacements ( $9\frac{1}{2}\%$ ), a reduced growth rate in the Village's tax base, a decrease of \$200,000 in federal revenue sharing for 1976, and lastly, a decrease in state aid and a decrease of \$13,785 from three railroads both resulting from a decrease in the equalization rate from 20.00 to 18.09.
5. The Village further contends that it provides extraordinary fringe benefits costing 42 percent over and above salary so that when all is considered a three (3) percent salary increase is fair and equitable.

The Village documented its position by the following submissions:

1. Depew Police Vacation Pay Schedule
2. 1974-75 Assessment Rolls Totals
3. 1975-76 Assessment Rolls Totals
4. 1976-77 Assessment Rolls Totals
5. Notice of Tentative Railroad Ceiling, 1976
6. Notice of Tentative State Equalization Rate, 11/75
7. Fact Finder's Report, 2/23/76
8. Comparative Salary Schedules (1975)
9. Estimated Contribution for Retirement (3/31/75)
10. 1975 Fed., State and FICA Tax Run of W-2's
11. Blue Cross-Blue Shield Insurance Cost
12. Erie County Villages -1975 Police Contracts

The Association's position is that patrolmen should receive an increase in salary of sixteen (16) percent and lieutenants should receive an increase of seventeen (17) percent.

It believes that the increases are justified by the following:

1. The increase in the cost of living as measured by the Consumer's Price Index has outstripped the salary increases granted each year so that the Association's members have had their purchasing power reduced eight (8) percent from the beginning of 1974 until the beginning of 1976. The cost of living continues to increase and a widely accepted method of making wage and salary adjustments is to gear the adjustments to the cost of living.

2. "A Buffalo-area family of four requires \$16,434 a year to maintain a moderate standard of living, the Labor Dept. reported Saturday.

The same family can live at an austere level for \$10,000 a year and would need \$23,818 a year to live at a level allowing for some luxuries, the annual analysis of hypothetical budgets said." (from Association Exhibit 2, Courier Express excerpt dated April 11, 1976).

The Association points out that the 16 percent increase requested would raise the present salary of \$12,895.00 to \$14,958, a figure well below that required for a moderate standard of living.

3. The Towns of Cheektowaga and Lancaster in which the Village is situated currently pay their patrolmen \$14,176.00 and \$13,653 respectively and they both provide a 20 year retirement plan.

Other salary comparisons made by the Association show the following maximums paid to patrolmen:

Town of Amherst	\$14,256
Village of Lancaster	13,506
Village of Kenmore	14,598
Town of Tonawanda	14,261
Town of Hamburg	14,155
Village of Hamburg	14,545
Town of W. Seneca	13,651

4. The Association believes that not only is the salary paid in the Village of Depew low but that the Village of Depew also pays less in fringe benefit cost in that it provides benefits which are either less than or equal to those prevailing in area towns and villages.

5. Finally, the Association contends that when the present agreement was signed, it was assured that no village employees would receive increases of more than six (6) percent annually. The Village subsequently concluded an agreement with the Public Works Department employee organization providing for increases of eight (8) percent and seven (7) percent. It consequently feels the six (6) percent increases agreed to were inadequate.

In support of its position, the Association submitted the following documents:

- 1. Petition
- 2. Courier Express Article, 4/11/76
- 3. Table IV-A, Special Retirement Plans for Policemen
- 4. Agreement, Town of W. Seneca, 1975-76
- 5. " Village of Lancaster, 1973-76
- 6. " Village of Kenmore, 1974-77
- 7. " Town of Cheektowaga, 1975-76
- 8. " Town of Lancaster, 1975-76
- 9. " Town of Tonawanda, 1975-76

O P I N I O N

The positions of the parties have been well presented and well documented. Unfortunately, they do not provide ready assistance in resolving the issue as to the most appropriate salary increase. The difficulty faced is in determining comparability between police departments on all of the statutory criteria which must be considered. While it can be argued that the policeman's job is the same no matter where it is located, this is true only in a broad, over-all sense. It is not necessarily true as to the actual, detailed job

requirements. For example, highly industrialized towns and villages, agricultural towns and villages, suburban communities which serve as the bedroom for metropolitan areas, inner-city communities and combinations of these, all appear to present different needs which are translated into police requirements and the differing terms and conditions of employment. Population served, geographic area, the tax base, the priorities assigned for the use of revenue through the political process and the efficiency of management are additional important factors which must be considered in making meaningful comparisons. It is not an easy job for the parties or for a panel of arbitrators to analyze and properly weigh all relevant factors in making such comparisons.

The Village of Depew has not been persuasive that its financial situation is different from or less favorable than other communities. All cities, towns and villages appear to be faced with financial problems. Costs continue to increase as measured by the Consumer's Price Index although at a slower rate. The percent change for 1975 was 7.6 for the US as a whole; the increase for US Cities was 9.2 percent, average. (1967 = 100). These cost increases are faced by governmental employers and by the citizenry which includes retirees on relatively fixed incomes, employed members of the work force and a significant number of unemployed members of the work force, approximately eight (8) percent nationally. While it is difficult to add to the cost of government which must be translated into tax increases, government must provide essential services effectively. It cannot do this unless it is able to compensate its employees at a level that will enable it to attract and retain competent personnel.

In trying to determine what salary increase should be granted, the comparative salary data provided by the Village and the Association were closely

examined. Additionally, it was noted that of 109 police agreements which were concluded in 1975, covering 8300 employees, the weighted average maximum for patrolman was \$13,994.<sup>2</sup> The Village of Depew patrolman salary of \$12,895 is low in comparison here as well as in the comparison with the data submitted by the Association.

At the Panel's request, the Village submitted a summary showing the assessed valuation, equalization rate, tax rate and 1975 and 1976 patrolmen's salaries for 13 municipalities. In utilizing this data, it was noted that the Village of Depew has a tax base of \$31,730,000. Amherst with ten times that valuation (\$315,266,000) has a 1976 top of \$14,100.<sup>3</sup> E. Aurora with an assessed valuation of \$14,700,000, less than half of that of Depew, pays its patrolmen \$14,142 - \$14,742. Kenmore with an assessed value slightly less, \$28,171,000 pays over \$14,300. A salary figure about \$14,000 would not appear excessive based on this comparison.

The Village of Depew pointed out additional facts to be considered by the Panel in its June 7, 1976 memorandum-brief. First, the work schedule for Village of Depew police is four days on - two off so that the work week averages 37½ hours, 16.4 days less per year than if it were five days on - two off or 40 hours average. Second, the Village gave a \$200 across-the-board increase to non-represented employees. And, third, a four (4) percent increase was granted to D.P.W. employees based upon the Fact Finder's recommendation.

Since the Village did accept the Fact Finder's recommendation for D.P.W. employees, it would appear that it logically should accept the Fact Finder's recommendation for the Association's salary increase. All comparisons made indicate that such an increase would be fair and reasonable.

2. PERB Bulletin, March 1976, p. 4

3. There are discrepancies in the salary data with that provided by the Assoc. but for our purposes they appear inconsequential, and they were not objected to by the Association.

The question might well be raised by the Association as to why a greater increase should not be granted based upon the Consumer's Price Index and comparisons with higher paying towns and villages. There are three basic reasons why this arbitrator feels such an increase would be inappropriate.

1. The change in cost of living is highly individualized in its effects depending on age, marital status, children, the person's financial starting point, and his preferences in spending. While the Index is a valuable general indicator, it does not tell how the individual police officer in Depew has been affected.

2. It is difficult to establish comparability with other towns and villages.

3. On balance, the current agreement between the Village and the Association has not been a disadvantageous one but has benefitted both parties. Arbitrators, including this one, are reluctant to interfere with the collective bargaining process so that either the employer or employee organization will utilize compulsory arbitration to obtain that which can't be obtained readily at the bargaining table. Arbitrated settlements, tend, therefore, to be somewhat less than negotiated ones.<sup>4</sup> In less than six months, negotiations can commence for a successor agreement. The parties then will have an opportunity to work out that agreement which best reflects their individual as well as their mutual interests.

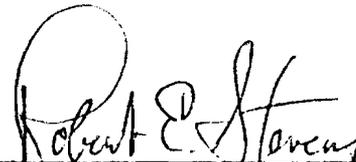
After careful review of the total record and the above considerations as the duly designated Panel Chairman and public member, for the Panel, I make the following ....

4. PERB Bulletin, March 1976, p. 4

A W A R D

It is directed that the Village of Depew increase the salaries of the Depew P.B.A. unit members four (4) percent, effective June 1, 1976. It is further directed that an additional increase of four (4) percent be granted effective November 1, 1976. This award will have the effect of increasing the salary cost to the Village approximately six (6) percent for the final year of the current agreement. The maximum salary for patrolman, however, will be increased about eight (8) percent. Effective June 1, 1976, the patrolman salary maximum will increase from \$12,895 to \$13,410; on November 1, it will increase to \$13,947.

It is further directed that the percent increase in salary for lieutenant be the same as that for patrolman.



Robert E. Stevens  
Chairman and Public Arbitration  
Panel Member

July 12, 1976

STATE OF NEW YORK     )  
  SS:  
COUNTY OF MONROE     )

On this 13<sup>th</sup> day of July, 1976, before me personally came and appeared ROBERT E. STEVENS, to me known and known to me to be the individual described herein, and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



Notary Public

ANN L. IVES

NOTARY PUBLIC, State of N. Y. Monroe Co.  
My Commission Expires March 30, 1976

Robert A. Hall  
Patrolman Robert Hall  
Employee Organization Member  
(Concurring - ~~Dissenting~~)

Dated:

STATE OF NEW YORK     )  
                                  SS:  
COUNTY OF ERIE         )

On this *18th* day of July, 1976 before me personally came and appeared ROBERT HALL to me known and known to me to be the individual described herein, and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

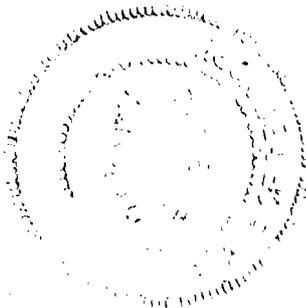
Raymond J. Cybulski  
Notary Public  
RAYMOND J. CYBULSKI  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1977

John J. Potter  
Mayor John J. Potter  
Employer Member  
(Concurring - ~~Dissenting~~)

Dated:

STATE OF NEW YORK     )  
                                  SS:  
COUNTY OF ERIE

On this *18th* day of July, 1976 before me personally came and appeared JOHN J. POTTER, to me known and known to me to be the individual described herein, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.



Raymond J. Cybulski  
Notary Public  
RAYMOND J. CYBULSKI  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1977