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In the Matter of the Interest Arbitration :  
   between :                  Case No. CA-0136 M76-761  
 THE TOWN OF WEST SENECA, NEW YORK :                  OPINION  
   and :                  and  
 RED JACKET POLICE CLUB :                  AWARD

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Before: IRVING R. MARKOWITZ, Public Panel Member and Chairman  
 CHRISTOPHER P. MOEN, ESQ., Employer Panel Member  
 AL SGAGLIONE, Employee Panel Member

OPINION

Introduction

Pursuant to the provisions of Section 209.4 of the Civil Service Law, the New York State Public Employment Relations Board on May 25, 1977, designated a public arbitration panel, consisting of the members hereinabove named, to make a just and reasonable determination of the dispute over issues at impasse between the parties concerning a successor collective agreement to that which had expired on December 31, 1976.

Hearings were held on June 8, 1977, before the panel, at which time each of the parties had full opportunity to present its written and oral testimony and examine and cross-examine witnesses. Thereafter, representatives of the respective parties submitted post-hearing briefs and material, all of which were carefully read and considered by the panel.

Timothy J. Kane, Esq., appeared for the Town and Anthony J. DeMarie, Esq., for the Club.

Subsequent to the hearing and filing of briefs and on August 19, 1977, the panel convened in executive session to analyze the issues and the evidence relating thereto and discuss matters concerning their resolution.

Background

The Town of West Seneca constitutes a community of slightly over 50,000 residents and is a contiguous town of the City of Buffalo, in the County of Erie. Its police force consists of 61 officers ranging from captain to patrolman, whose payroll,

excluding supplemental benefits, overtime and court pay is \$884,810. The 1976 base salaries of the various grades in the unit are as follows:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
Captain	\$14,830	\$16,230	\$17,630
Patrol Lieutenant	13,730	14,930	16,130
Desk Lieutenant	12,780	13,830	14,880
Detective	12,380	13,380	14,380
Patrolman	11,630	12,630	13,630

The parties have had a collective relationship for some time and their last expired contract ran from January 1, 1975 through December 31, 1976. During negotiations for the proposed contract and with the assistance of a mediator, they have been successful in achieving tentative agreement on at least twelve items at issue, most of which are characteristically termed non-cost items. However, they were unsuccessful in reaching a mutual understanding on the following:

1. Salary
2. Vacation
3. Longevity Pay
4. Uniform Allowance
5. Retroactivity

The parties have indicated that they both desire a two year contract.

#### Statutory Requirements

Section 209.4 of the Civil Service Law authorizing these proceedings states:

"(v) The Public Arbitration Panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by 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 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 interest and welfare of the public and the financial ability of the public employer to pay;

"c. comparison of 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."

### Fact Finder's Recommendations

On April 11, 1977, a Fact Finder, previously appointed by the Board in connection with the impasse herein, recommended the following:

1. Salary - A general increase of \$750 per year for each of the years of the contract's duration.
2. Vacation - Eligibility for a five(5)week vacation be reduced to 18 years of service.
3. Longevity Pay - No change from expired contract.
4. Uniform Allowance - An increase of \$50 per year for each of the two years' contract duration beyond the allowance provided in 1976.
5. Retroactivity - Adjustments be retroactive to January 1, 1977.

### Positions of the Parties

As previously indicated, the parties are desirous of a two year contract. Additionally, there appears to be no objection to providing retroactive adjustments to any modification that may be determined in this award. It further appears that the Town had previously proposed the vacation adjustment contained in the fact-finder's award; however, the Club has proposed further modifications in these proceedings.

The Town has specifically stated that it does not argue that it lacks ability to pay increases of salaries and the like. Nonetheless, it maintains that in the interest and welfare of the public, the economic plight of the entire Buffalo region should be considered as well as the community's resentment toward tax increases, especially at a time when its constituents are or reasonably may be faced with losses or curtailment of gainful employment.

In connection with increases in cost of living, a factor normally used in wage and salary determination, the Town maintains (1) that BLS indices are an unreliable indicator in determining wages for a particular group or class of employees in a specific geographic or demographic area and (2) even if this factor were to be used, it should properly cover the period from January 1, 1976 to December 31, 1976, when the previous contract expired, rather than from June 1, 1976 to May 31, 1977, when approximately these proceedings were instituted. Furthermore, in this connection, it maintains that members of the police force as well as all other Town employees have at least kept pace over the years with increases in cost of living.

Finally, concerning the standard of comparable wages and conditions, the Town notes that the comparability figures offered by the Club are of communities which, while adjacent or close to the Town, are nonetheless of different size and complexion, - that is, they are either larger or smaller and are more or less industrialized. The Town additionally maintains that probably some of these communities may deem it potentially expedient to be more financially supportive of their police force than others.

The Club calls attention to the Town's avowal of its ability to pay reasonable salaries and supplemental benefits and to its enjoyment of the lowest tax rate of all neighboring communities. Additionally, and almost as a matter of course, it points to the special qualifications and skills of police officers and to the extreme hazards of their profession or occupation, which both sides acknowledge, are substantially similar to those in neighboring communities.

The Club gives special and more detailed attention, however, to the salaries and benefits enjoyed by police forces in the various communities adjacent to or close by the Town of West Seneca. Thus it maintains that the Town of Hamburg, adjoining West Seneca on its southwest border, and similar to it in size and police force composition, has paid in 1976 \$500 more to its patrolmen and \$1370 more to its lieutenants than West Seneca and in 1977 will pay \$1750 more to its patrolmen and \$1880 more to its lieutenants than their counterparts presently receive in West Seneca. Furthermore, the Village of Depew, a smaller adjacent community with a 4-2 schedule, presumably less onerous than the Town's in 1977, pays its patrolmen \$1131 and its lieutenants \$1608 more than present Town police salaries. Cheektowaga, an adjacent town of somewhat more than twice the population and police force of West Seneca, in 1976 paid its patrolmen \$526 and its lieutenants \$1070 more than West Seneca. Amherst, an adjacent town of little more than twice the population and police force of West Seneca, in 1977 pays its patrolmen \$1335 and its lieutenants \$1870 more than their counterparts in West Seneca receive. Similar differences exist and have existed in nearly all other bordering or neighboring communities.

The Club further argues that skilled employees in the private sector in the Buffalo area receive substantially higher wages than West Seneca police officers and that wage increases in 1976 and 1977 in the private sector have generally exceeded 7%.

## Discussion

Essentially, the parties have locked horns on the issues herein as follows:

The Club believes that a general increase of 9% plus upward adjustments in vacation, uniform allowance and longevity pay would result in a fair and just determination of the issues herein in that they would then achieve an approximate comparability with adjacent communities and meet the other standards expressed in the statute.

The Town believes that an endorsement of the Fact Finder's report would be fair and proper under the circumstances herein and would reflect statutory criteria.

In support of the Club's position, there is impressive evidence showing that the salaries paid to the Town's police force do not yet measure up to those in surrounding communities. While it is true, as the Town has maintained, that there are differences in population and character between the Town and its adjacent political subdivisions, there is a sufficient identity among all of them so that a suitable basis of comparison for purposes of wage and salary determination can be made and a resulting "going wage" determined. Certainly, in developing comparative data, one may seek the ideal situation where all components are identical. But this is rarely if ever found and where, as in the instant case, there are strong similarities of position, description and specification in a closely knit geographical area, all adjacent to a large city, of generally similar population and size of the police force, all these form a sufficient basis to comply with statutory criteria.

The evidence is clear that the salaries of the police force in West Seneca are substantially lower than those in comparable communities although they all require similar skills, perform the same duties under substantially the same conditions.

This panel is mindful, as well, of the special skills and more importantly of the hazards of members of a police force, although presumably this has been previously considered in the initial stages of wage determination. Having been so previously considered, it is not expected that extra skill or hazard pay be continually added in further determination, unless substantial changes in such factors have been shown.

The Town, with commendable frankness, does not plead against a fair ability to pay. Nonetheless, it should be noted that "ability to pay" as a statutory standard means only that inability to pay will reduce an otherwise justified increase beyond

what is justified by other statutory factors. Thus, in the instant case, our determination must be based on the other relevant statutory criteria and should not be affected by the Town's admitted ability to pay.

As indicated, the evidence on salary comparability is impressive in favor of the Club. There is and has been a clear gap at least in salaries between the Town and its surrounding communities. This gap has been previously noted in an arbitrator's award relating to the 1975-76 contract as well as the fact finding award for the 1977 agreement.

Nonetheless, the gap should not necessarily be completely bridged in one contract. Other factors normally considered in wage determination would tend to reduce the proposal which the Club deems imperative for equalization. The present trends and patterns in public employment burgeoning in New York State are generally in the area of 4 to 6%. While it is true that such settlements reflect a real inability of the public employer to pay, there is only a rare occurrence of increases beyond the 6 to 7% range, even when ability to pay is an insignificant factor.

Moreover, one must consider the ability of the community to digest a 9% increase of wages herein, when many of its constituents are or may be soon faced with personal economic crises.

A review of the Fact Finder's report herein, indicates in our judgment a general understanding of the problems herein. However, in the area of salary increases, it has not given the emphasis to comparability that we believe it deserves under the facts and circumstances herein. The Fact Finder's recommendation, in our judgment, would serve to perpetuate or even enlarge the gap between police salaries in the Town and those of neighboring communities. Our judgment compels us to continue to bring the salaries of comparable towns in line with each other, subject to statutory criteria.

Our award will thus reflect our agreement with the Fact Finder's recommendations on all the pending issues except salary. The essential differences are reflected in salaries rather than longevity increases, or in vacations, or uniform allowance, beyond those recommended. As to these latter benefits, there is a functional comparison between those enjoyed by the Town's police force and those in other towns.

The award herein will reflect an increase averaging about 6.2% of salaries for the ensuing two year period, rather than the approximate 5.3% recommended by the Fact Finder. While such rate of increase is strikingly similar to the latest BLS cost of living annual increase, it is essentially based on wage comparability. Our endeavor has been essentially aimed at attempting to bridge the gap between members of the Town's police force and those in substantially comparable and adjacent communities.

AWARD

We therefore hereby Award

1. There shall be a two year contract executed between the parties commencing January 1, 1977.
2. All present salaries shall be increased by the sum of \$875 for the calendar year 1977 and an additional sum \$875 for the calendar year 1978.
3. Service eligibility for five (5) weeks of vacation annually is reduced to 18 years of service.
4. There shall be no changes in longevity pay from the previous contract.
5. The present uniform allowance shall be increased by \$50 in 1977 and an additional \$50 in 1978.
6. All adjustments stated herein shall be retroactive to January 1, 1977.

Dated: August 29, 1977

Irving R. Markowitz

*Signed per IM  
8/29/77*

Christopher P. Moen

*Disputed*

Al Sgaglione

*Signed per IM  
8/29/77*

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:  
CITY OF SYRACUSE )

On this 29th day of August, 1977, before me personally came and appeared Irving R. Markowitz, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

s. Carol O. Benedict  
Notary Public, State of New York

