

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

Between

TOWN OF CHEEKTOWAGA

and

CHEEKTOWAGA CAPTAINS AND
LIEUTENANTS ASSOCIATION

Case Nos. IA-8; M77-360
145-7-M10F

DETERMINATION AND AWARD

Before

Fred L. Denson, Public Panel Member and Chairman
Christopher P. Moen, Employer Panel Member
Charles Switalski, Employee Organization Panel Member

Appearances

For the Town of Cheektowaga

Timothy J. Kane, Attorney

For the Cheektowaga Captains and Lieutenants Association

Nicholas J. Sargent, Attorney

BACKGROUND

The Cheektowaga Captains and Lieutenants Association (hereafter referred to as the Association) is the bargaining agent for nine (9) captains and fourteen (14) lieutenants. Its preceding agreement with the Town of Cheektowaga (hereafter referred to as the Town) was for a two (2) year period which expired 12/31/76. Negotiations for a new agreement commenced on or about 9/24/76. Impasse was declared and subsequent mediation efforts did not bring about agreement. A petition for compulsory arbitration was filed on 7/18/77

and the answer to the petition filed 7/21/77. Pursuant to the petition, the undersigned panel was designated on 8/16/77. A hearing in the matter was scheduled for 9/22/77 but was adjourned at the Town's request.

The hearing was held on 10/3/77 at the Town Hall, in the Town of Cheektowaga, 3223 Union Road, Cheektowage, New York. Full opportunity was afforded each party to present testimony, to summon witnesses and to engage in their examination and cross-examination. Swearing of the panel and witnesses was waived. The parties further agreed that the notes of the Chairman would be the official record of the proceedings. Briefs were submitted on 10/13/77 and reply briefs on 10/20/77. The panel reconvened on 11/22/77 in executive session to discuss the matters at issue.

On 11/30/77, the Association requested withdrawal of the issue regarding overtime pay. The Chairman advised the Association representative, Nicholas Saregent, that the matter could not be unilaterally withdrawn from consideration but could be withdrawn only pursuant to a mutual request by the parties. Further deliberation on the issue was held in abeyance until 12/22/77 when the Association withdrew its request and at which time the issue was considered and determined.

THE ISSUES

The following issues have been considered:

Wages

Longevity pay

Overtime compensation

Briefing time pay
Out-of-rank pay
Uniform and cleaning allowance
Accumulated sick leave pay
Continuation of insurance benefits during suspension
Unused vacation time pay
Life and medical insurance for retirees
Bill of rights
Continuation of benefits clause
Term of agreement

APPLICABLE STATUTORY AND CONTRACTUAL PROVISIONS

The pertinent statutory provisions are set forth in Section 209.4 of the Taylor Law. Pertinent contractual provisions are contained in the expired agreement between the parties (Employer's Exhibit A). In arriving at its determination, the panel has, in accordance with Section 209.4(c)(v), taken into consideration, in addition to other relevant factors, the following:

"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 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. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security."

The wages, hours and conditions of employment of members of the Association have been compared to those of public employees in several other municipalities including West Seneca, Orchard Park, Lancaster, Hamburg, Tonawanda, Amherst and North Tonawanda. The Towns of Tonawanda and Amherst are of substantial significance for comparative purposes in view of their geographic proximity to Cheektowaga and in view of their similarities in population, police personnel, assessed real property valuation, financial situation, police activities (i.e. complaint calls and crime rate), etc. Since police work is almost exclusively unique to the public sector, comparison to private sector employment is of little value.

The Town's ability to pay has been carefully considered and the determinations reached herein are deemed to be reasonably compatible with the Town's available financial resources. Moreover, the determinations have no adverse effect upon the interests and welfare of the public but instead are believed to be consistent therewith. In its deliberation, the panel has remained aware of the inherent hazards of police work and the special physical, mental and educational qualifications required for such work together with the specialized training and skills which are also required by such employment.

The history of negotiations, as more particularly pointed out in the subsection entitled "Wages", has had substantial significance

in the present determination. The terms of the expired agreement are also of significant relevance as mentioned hereafter.

Specific reference to these and other criteria such as the Consumer Price Index are set forth under Determinations. The panel is also aware of the interest arbitration award of November 4, 1977 for the Town and its bargaining unit of patrolmen, the Cheektowaga Police Club and further that such award provides a 7% increase in wages in 1977 and 7% increase in 1978.

THE POSITIONS OF THE PARTIES

The respective positions of each of the parties are adequately set forth in the briefs and reply briefs, and thus it is not necessary to here restate their contentions.

DETERMINATIONS

Wages

The base salaries for captains and lieutenants under the 1976 agreement were \$18,173 and \$16,536 respectively. The Association seeks a 12% increase for 1977 and a 12% increase for 1978. The requested 12% for each year reflects a 6% cost of living adjustment and a 6% increase to catch up with salaries paid in comparable communities. The Town has proposed a 4.8% increase for 1977 based upon the increase in the cost of living from November, 1975 to November, 1976. It further proposes that a salary increase be made effective in January, 1978 to reflect any additional increases in the cost of living for 1977.

A review of the negotiating history indicates that a 10% increase in salaries was granted in 1975 and a 7% increase in 1976.

The Town has indicated that in the past negotiations, the increase in the CPI from November to November has been used as a guide for salary adjustments to be effective in the following January (e.g. the increase in CPI from November, 1973 to November, 1974 would have been used to ascertain the increase effective January 1, 1975). As shown in Table A, from November 1973 to November, 1974, the cost of living increased by 11.9% while the increase was 6.9% from November, 1974 to 1975. The cumulative increase in the cost of living for this period was 18.8% whereas, the cumulative increase in salaries for 1975 and 1976 was 17.0% which indicates that salaries did not keep pace with the increases in the cost of living.

In comparison to other similarly situated towns, the 1976 salary for captains and lieutenants in Amherst was \$20,046 and \$16,988 respectively and in Tonawanda was \$18,982 and \$17,256 respectively. The average 1976 salaries for all three (3) towns were \$19,067 and \$16,927 respectively. Cheektowaga's captains were \$894 below average and the lieutenants were \$391 below average (see Table B).

The 1977 pay for captains and lieutenants in the Town of Amherst was increased by 4.5% and 5.3% respectively over the 1976 levels to \$20,946 and \$17,888. The pay increase in the Town of Tonawanda was 5.0% to \$19,931 and \$18,119 (see Table C). From November of 1975 to November of 1976, the cost of living rose by 4.8%.

In considering the extent of the 1977 increase for the Association, it is noted that the Town has provided no persuasive

TABLE A

Consumer Price Index*

<u>Y R</u>	<u>FEB</u>	<u>MAY</u>	<u>AUG</u>	<u>NOV</u>	<u>NOV to NOV</u> <u>COL INCREASE</u>
1973	---	---	---	138.6	11.9%
1974	144.2	147.6	151.5	155.1	6.9%
1975	157.6	160.4	163.5	165.8	4.8%
1976	167.2	169.1	172.0	173.8	6.5%
1977	177.5	181.3	182.7	185.1	

*Buffalo Area
1967 base.

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TABLE B

1976 Salary Comparison

<u>TOWN</u>	<u>CAPTAINS</u>	<u>LIEUTENANTS</u>
AMHERST	\$20,046	\$16,988
TONAWANDA	18,982	17,256
CHEEKTOWAGA	18,173	16,536
TOWN AVERAGE	19,067	16,927
CHEEKTOWAGA VARIANCE FROM AVERAGE	(894)	(391)
WITH 200 ADM DUTY PAY	(694)	(191)

TABLE C

1977 Salary Comparison

<u>TOWN</u>	<u>CAPTAINS</u>	<u>LIEUTENANTS</u>
AMHERST	\$20,946	\$17,888
TONAWANDA	19,931	18,119
CHEEKTOWAGA	19,372	17,627
TOWN AVERAGE	20,083	17,878
CHEEKTOWAGA VARIANCE FROM AVERAGE	(711)	(251)
WITH 200 ADM DUTY PAY	(511)	(51)
* * *	* * *	* * *

TABLE D

1978 Salary Comparison

<u>TOWN</u>	<u>CAPTAINS</u>	<u>LIEUTENANTS</u>
AMHERST	\$21,746	\$18,688
TONAWANDA	21,227	19,297
CHEEKTOWAGA	20,631	18,773
TOWN AVERAGE	21,201	18,919
CHEEKTOWAGA VARIANCE FROM AVERAGE	(570)	(146)
WITH 200 ADM DUTY PAY	(370)	+54

argument concerning its inability to pay a reasonable increase to members of the bargaining unit. It is clear from the record and from Table B that the salaries of bargaining unit personnel are somewhat lower than the average of comparable communities. However, it is further noted that the prior salaries (and any difference from the average salary) were the product of negotiations between the Town and the Association and did not result from a legislative or arbitral determination. Moreover, as previously mentioned, comparability is only one of the criteria mandated by statute for arbitral consideration. Nonetheless, these factors coupled with the negotiating history compels the conclusion that the 1977 wage should provide a cost of living adjustment plus an additional increase to render the new wage more comparable with other similarly situated towns. Thus, a 6.6% increase for 1977 is seen as appropriately meeting the statutory criteria. It is recognized that this increase does not allow for total comparability. However, this percent is deemed to be reflective of the negotiating history and the uncertainty associated with the universe of comparison (i.e. perhaps the comparison should have included more towns than the three (3) herein discussed). The Cheektowaga increase exceeds the average of the other towns by 1.8% for captains and 1.4% for lieutenants.

In 1978, the salaries for captains and lieutenants in Amherst were increased to \$21,746 (3.8%) and \$18,688 (4.5%) respectively. The increase in Tonawanda is set at the increase in the cost of living but no less than 6% and no more than 8%. Since the cost of living increased by 6.5% from November, 1976 to November, 1977, the Tonawanda

salaries were presumably increased by a corresponding amount. Thus, in both towns, the average increase for captains for 1978 was 5.5% and for lieutenants was 5.2% (see Table D). A 6.5% increase for the Association allows it to further narrow the comparability gap yet keep pace with increases in the cost of living. The base salaries for 1977 and 1978 do not include the \$200 administrative duty allowance per the addendum of the expired agreement. Obviously, when such is included, the comparison with other salaries is very favorable.

Longevity Pay

The previous contract provided for cumulative longevity increases at \$100 after 8 years, \$150 after 12 years and \$250 after 18 years. The Association has proposed \$100 after 8 years, \$150 after 12 years, \$250 after 15 years and \$100 after 20 years. The Town suggests that no increase is necessary. Over a 25 year period the cumulative longevity payments in accordance with the 1976 agreement totaled \$5400 per man. A review of the record indicates that this is substantially out of line with other prevailing longevity schedules. In this regard, the 25 year cumulative figure for Tonawanda is \$8,700 per man and for Amherst is \$9,700 per man. The Association's proposal is a reasonable one in that it would increase the cumulative per man longevity payment to \$6,650. In view of the foregoing, the longevity payment shall be adjusted in accordance with the Association's demand effective January 1, 1977.

Overtime Compensation

The 1976 agreement contained no provision for overtime pay for Association members. The Association seeks time and one-half pay for all overtime hours worked. The Town suggests that since members

of the bargaining unit are supervisory in nature, compensatory time off would adequately compensate employees for any overtime hours worked. With the exception of 1977, the parties agree that relatively few overtime hours are worked and the cost is minimal. 1977 provided more than the usual amount of overtime because of the severity of the winter. Overtime pay at time and one-half for captains and lieutenants is provided in Tonawanda but not in Amherst. In view of the traditional notions of overtime compensation in both the public and private sector at time and one-half, the inclusion of such a provision in the new agreement effective January 1, 1978 is appropriate.

Briefing Time

Under prior agreements, no provision was made for briefing time or pay therefor even though it has been a practice for members of the Association to arrive a few minutes before the start of the shift for briefing purposes and to remain a few minutes after the end of the shift for debriefing. However, as compensation "for the responsibility of filing reports and the necessary administrative procedures required, previously to and immediately subsequent to their regular scheduled turn of work", the Town agreed to pay \$200 pursuant to an addendum to the 1976 agreement. The Association proposes pay for ten (10) minutes briefing at the beginning and end of each shift or pay for twenty (20) minutes at time and one-half (30 minutes total). The Town opposes the demand based upon the estimated \$900 per man annual cost and based upon the Chief of Police's opinion that such time was unnecessary in that such information is available on a

continuing basis at the front desk. Tonawanda makes no provision for briefing time while Amherst provides compensation for two (2) hours per week.

The previous agreement called for an 8 hour work day. If employees are required by the employer to work more than 8 hours, then under the new contract, they are to be paid at time and one-half. Based upon the foregoing considerations, the demand is rejected conditioned upon the continuation of the \$200 payment to employees for administrative duties as set forth in Supervisor Weber's letter to the Association of December 20, 1974.

Out-Of-Rank Pay

The 1976 agreement contained no provision to pay employees who are required to work in a higher rated position for a fixed period of time. The Association seeks the inclusion of such a provision in the 1977-78 agreement and points out that both the Amherst and Tonawanda contracts contain this type of provision. The Town is opposed to the demand based upon anticipated difficulties in drafting a provision which would sufficiently meet the number of variables which could occur in making such assignments. Opposition is also based upon the blurring of duties between the captain and lieutenant positions in that they both supervise patrolmen.

Employees who are required by the employer for specified periods of time of 8 hours or more to fulfill the duties of a higher rated position are entitled to be compensated therefor. The panel is confident that the parties can draft a mutually satisfactory provision in this regard using, if necessary, the Cheektowage PBA

contract as a model.

Uniform and Cleaning Allowance

The Association seeks to increase the contractually mandated 1976 allowance from \$200 to \$300. The Town feels that a \$200 allowance is adequate. The panel recognizes that the cost of a complete uniform is approximately \$700, that uniforms for captains and lieutenants contain more accouterments and thus are slightly more expensive than patrolmen's uniforms, that patrolmen were granted \$225 effective 1/1/77 and \$250 effective 1/1/78 for a similar allowance and therefore concludes that the allowances as outlined in the 1976 contract be increased to \$250 effective 1/1/77 and to \$300 effective 1/1/78.

Accumulated Sick Leave Pay

Pursuant to an addendum to the 1976 agreement, Association members are permitted to convert unused sick leave to cash (according to a formula) so long as one year's prior notification of intention to retire is timely submitted. According to the formula, an employee who has accumulated the maximum of 262 days receives \$2,000, (\$1,000 in wages and \$1,000 in paid up health insurance benefits upon retirement). The Association seeks cash payment for 50% of the accumulated sick leave and removal of the requirement for notice for retirement. The panel recognizes the incentive associated with this type of provision, but is concerned about the financial implications of further extending this benefit. Moreover, the record does not indicate that there is a comparable benefit in other similarly situated municipalities. Thus, the proposal must be denied.

Continuation of Insurance Benefits During Suspension

The Association's proposal is to reduce to contractual language the present practice of continuing insurance benefits for officers under suspension pursuant to Section 75 of the Civil Service Law. The Town is not opposed to the inclusion of such a provision but requests the panel to include a time limitation upon the benefit. The Association's proposal is accepted and such benefits are to continue for the duration of an employee's suspension.

Unused Vacation Time Pay

Section 10.02 of the expired contract entitles employees to payment for the value of unused vacation time and overtime at the time of retirement. The Association proposes that unused vacation time be "sold back" to the Town for the purpose of having such amounts be part of the member's computation of salary for his last year prior to retirement. The Town opposes the proposal based on the fact that the retiring officer may need the cash payment to meet his financial obligations until the first retirement check is received.

The Town's interest in the financial plight of prospective retirees is laudable, however, each member of the bargaining unit is a prospective retiree. Since each prospective retiree (and thus each member of the unit) knows his own personal financial situation better than the Town yet collectively have chosen to seek a change in the method of allocating these moneys, and since the proposal has no apparent financial impact on the Town and is already included in the PBA contract, the demand is granted.

Life and Medical Insurance for Retirees

The Town currently provides a \$20,000 life insurance policy on each member of the Association. The Association seeks to extend this benefit and medical insurance to members after retirement. The cost of such life insurance would, in the opinion of the panel, be prohibitive. The health insurance benefits for retirees are adequately provided for in the sick leave conversion provision of the expired agreement. No other town has a similar benefit relating to life insurance or health insurance for retirees. The proposal is denied.

Bill of Rights

The Association proposes to incorporate into its agreement with the Town the Bill of Rights clause presently contained in the PBA contract. The panel representatives of both parties agreed to remand this issue for the purpose of working out suitable language for inclusion in the new agreement. The issue is therefore remanded in accordance with Section 209.4(c)iv) of the Taylor Law.

Continuation of Benefits Clause

The Association proposes that a clause be included in the new contract providing for a continuation of benefits until a succeeding contract has been reached. It submits that such a provision is necessary in view of a Court of Appeals decision holding that an employer did not violate its duty to negotiate in good faith by discontinuing payment of increments during negotiations (Rockland County BOCES v. PERB 41 NY 2d 753). No similar provision is contained in the contracts of comparable communities. This demand must be

denied since it is inconsistent with Section 209.4 (c)(vi) that "the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement" (emphasis added). Pursuant to the present award, the new contract covers a two (2) year period. Continuation of benefits beyond this period must be acquired through the legislative rather than the arbitration forum.

Term of Agreement

The maximum period for agreement provided by statute serves to enhance harmonious relations between the parties. The panel thus deems that a two (2) year agreement is appropriate.

The undersigned arbitrators, having been duly designated pursuant to the provisions of Section 209.4 of the Taylor Law, hereby make the following

A W A R D

Wages shall be increased by 6.6% effective 1/1/77 and by 6.5% effective 1/1/78.

The longevity pay schedule shall be modified to provide \$100 after 8 years, \$150 after 12 years, \$250 after 15 years and \$100 after 20 years effective 1/1/77.

Overtime work shall be compensated at time and one-half effective 1/1/78.

The proposal for briefing time pay is denied but \$200 administrative duty pay shall be continued.

The uniform and cleaning allowance shall be increased to \$250 effective 1/1/77 and \$300 effective 1/1/78.

The proposal for accumulated sick leave pay is denied.

Insurance benefits shall be continued during the period of an employee's suspension.

Bargaining unit members shall be permitted to have unused vacation time pay computed in their final year's salary.

The proposal regarding life and medical insurance for retirees is denied.

The proposal regarding continuation of benefits is denied.

The term of the agreement shall be from 1/1/77 to 12/31/78.

Fred L. Denson

FRED L. DENSON, Public Panel Member
and Chairman

Christopher P. Moen

CHRISTOPHER V. MOEN, Employer Panel
Member

Charles Switalski

CHARLES SWITALSKI, Employee Organization
Panel Member

STATE OF NEW YORK:
COUNTY OF MONROE :

On this 24th day of FEBRUARY, 1978, before me personally
came and appeared FRED L. DENSON, to me known and known to me to be
the individual described herein and who executed the foregoing
instrument and he acknowledged to me that he executed the same.

Joseph A. Giorgi

JOSEPH A. GIORGI, Notary Public
State of New York, Monroe County
Commission Expires March 30, 1979

STATE OF NEW YORK:
COUNTY OF ERIE :

On this 21 day of Feb, 1978, before me personally
came and appeared CHRISTOPHER P. MOEN, to me known and known to me to be
the individual described herein and who executed the foregoing
instrument and he acknowledged to me that he executed the same.

Dorothy S. Bodnar

DOROTHY S. BODNAR
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1978

STATE OF NEW YORK:
COUNTY OF ERIE :

On this 21 day of Feb, 1978, before me personally
came and appeared CHARLES SWITALSKI, to me known and known to me to be
the individual described herein and who executed the foregoing
instrument and he acknowledged to me that he executed the same.

Emil J. Jancz

EMIL J. JANCZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1978