

JAN 07 1985

In the Matter of the Interest Arbitration

between
VILLAGE OF EAST AURORA

AND

VILLAGE OF EAST AURORA
POLICE BENEVOLENT ASSOCIATION

CONCILIATION
AWARD OF THE
COMPULSORY INTEREST
ARBITRATION PANEL

Case No. M83-620
IA 84-2;

BEFORE Alice B. Grant, Neutral Public Member and Chairperson
James M. Schmit, Esq., Employer Panel Member
Nicholas J. Sargent, Esq., Employee Panel Member

APPEARANCES

For the Village: Jerry C. Hiller, Village Administrator
For the Association: David Ferster, Attorney
William D. Nye, President

PROCEDURE

A hearing in the above matter was held in East Aurora, New York, on August 8, 1984 before the undersigned members of the Public Arbitration Panel who were designated in accordance with the compulsory interest arbitration procedures of the New York State Public Employment Relations Board. At this hearing both parties were given full opportunity to present their evidence, testimony and argument, to summon witnesses, and to engage in their examination and cross-examination. Both parties decided to write post-hearing briefs which were timely received on October 1, 1984, at which time the proceedings were closed.

The Public Arbitration Panel met in a pre-hearing administrative session to determine the procedures to be followed and decided not to require a transcript of the hearing. Following the close of the hearing the Panel met in executive session and on November 5, 1984 the Panel met again to make its final determination of the issues before it.

DISCUSSION AND AWARD ON THE ISSUE

In its consideration and disposition of the many issues brought before it, the Panel based its findings on the criteria set forth in the Statutory Provisions applicable to Compulsory Interest Arbitration pursuant to Civil Service Law, Section 209.4 (as amended July 1, 1977):

- 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.

After consideration of the above criteria and other relevant factors of significance to the labor relations of the Village and the Association, the Panel reached a decision on the following issues:

1. Article VIII - Discrimination shall be amended to read:

The parties to this Agreement agree that there will be no discrimination with respect to age, race, color, creed, sex, or political persuasion...

2. Article XI - Insurance shall be amended to include Rider 4.

The cost of this rider will be \$0.69 for single or \$1.76 for family coverage. Since the cost of this proposal is minimal and since the Village may benefit by its inclusion, the panel agreed to its inclusion.

3. Article XII - Leave, Section 2 - Personal Leave shall be amended to read:

Section 2 - Personal Leave - Each policeman shall be entitled to three (3) personal leave days each year provided he gives at least forty-eight hours notice to the Chief of Police, except in the case of an emergency, and also provided that his absence will not seriously hamper or impede the necessary work of the department.

4. The proposed amendments to Article XII, Section 3a - Sick Leave are denied.

5. The proposed amendments to Article XV - Work Schedule are denied.

6. The proposed amendment to Article XVII - Holidays is denied.

7. Article XVIII - Vacations shall be amended to include the following new paragraph:

Each policemen at the time of retirement, termination or discharge, shall be paid the monetary value of any unused vacation. In the event of death, the value of such vacation shall be paid to his estate.

8. The proposed amendments to Article XX - Incentive Pay are denied.

9. Article XXII - Grievance Procedure shall be amended to incorporate the following changes:

- a. In Steps II and III "calendar" days shall be substituted for "working" days and shall be inserted in the sentence in Step III which presently reads "within five (5) days..."
 - b. In Step III "Village Administrator" shall be substituted for "Mayor" in the two sentences in which the word, "Mayor," is found.
10. The Contract shall include a new Article entitled Safety Committee. This Article shall read as follows:

There shall be a Safety Committee during the term of this Agreement. The Safety Committee shall consist of two representatives appointed by the PBA and two representatives from the Village. Safety Committee Meetings shall not be held on working hours. Manning requirements are specifically excluded from the subject matter to be discussed by the Safety Committee.

11. The Contract shall include a new Article entitled Bill of Rights. This Article shall read as follows:

Article - Bill of Rights

Section 1 - Purpose

The purpose of this Article is to establish guidelines to be followed by superior officers in the conduct of investigations arising from a member's conduct as a policeman.

Section 2 - Informing the Member

- (a) The member shall be informed of the nature of the investigation before any interrogation begins.
- (b) If it is known that the member is to be interrogated only as a witness, he shall be so informed at the initial notification to appear.
- (c) If the member is under arrest, or is likely to be, (that is, if he is a suspect or the

target of a criminal investigation), he shall be informed of his rights.

Section 3 - Conduct of Investigation

- (a) The interrogation of a member shall be at a reasonable hour and of a reasonable duration.
- (b) The interrogation shall take place at a location designated by the investigating officer.
- (c) The member shall not be threatened with transfer, dismissal, or other punishment.
- (d) The complete interrogation shall be recorded, either mechanically or by a stenographer.
- (e) If a member so requests, he shall be given the opportunity to consult with counsel before being questioned concerning a serious violation of the Department rules, provided the interrogation would not be delayed unduly thereby. In such cases, the interrogation may not be postponed past 10:00 a.m. of the day following the notification of interrogation. Counsel, if available, and a representative of a line organization may be present during the interrogation.
- (f) No policeman covered by this Agreement shall be ordered to submit to a polygraph test.

12. Article XXIV - Salary Schedule shall be changed to read:

- 1. Present schedules as set forth in Section 1 and 2 are to be updated and limited to patrolmen hired prior to June 1, 1983.
- 2. Following sections are to be added to agreement:

Section 3 - The parties agree that police officers hired subsequent to June 1, 1984 shall be paid the following salaries for their services during the period commencing June 1, 1984 and ending May 31, 1985:

- (1) Probationary patrolmen and new hires with less than one year of police experience during their first year of service. \$ 7.06 per hour
- (2) Patrolmen on the first anniversary of their most recent date of employment. \$15,245.00 per annum
- (3) Patrolmen on the second anniversary of their most recent date of employment. \$17,587.00 per annum
- (4) Patrolmen on the third anniversary of their most recent date of employment. \$19,926.00 per annum
- (5) Patrolmen on the fourth anniversary of their most recent date of employment. \$20,931.00 per annum
- (6) Patrolmen on the fifth anniversary of their most recent date of employment. \$22,010.00 per annum
- (7) Police Lieutenants \$24,300.00 per annum

Section 4 - The parties further agree that police hired subsequent to June 1, 1983 shall be paid the following salaries for their services during the period commencing June 1, 1985 and ending May 31, 1986:

- (1) Probationary patrolmen and new hires with less than one year of police experience during their first year of service. \$ _____ per hour
- (2) Patrolmen on the first anniversary of their most recent date of employment. \$ _____ per annum
- (3) Patrolmen on the second anniversary of their most recent date of employment. \$ _____ per annum
- (4) Patrolmen on the third anniversary of their most recent date of employment. \$ _____ per annum

- (5) Patrolmen on the fourth anniversary of their most recent date of employment. \$ _____ per annum
- (6) Patrolmen on the fifth anniversary of their most recent date of employment. \$ _____ per annum
- (7) Police Lieutenants \$ _____ per annum

Section 5 - The Village may employ new patrolmen with prior experience at a level other than the first salary step. In such case, the patrolman will advance to the next salary step following one year of service.

13. Article XIII - Retirement Benefits shall be amended to include a new section providing the option for policemen to elect the noncontributory 20 year Retirement Plan pursuant to 384-d of the Retirement and Social Security Law. This plan is to be made available on June 1, 1985 which is the beginning of the second year of the Contract.

In reaching this decision, the Panel gave serious consideration to the criteria set forth in the Statutory Provisions applicable to Compulsory Interest Arbitration in Section 209.4 of the Civil Service Law.

By its very nature the job of a policeman is potentially hazardous and, therefore, stress-producing and can increase the possibility of health problems related to such stress. In fact, the inauguration of a 20 year retirement plan in New York state was a response both to the particular health hazards of the job and to the interests and welfare of the public which require a police force with the physical and mental ability to

handle emergencies effectively. By making it possible to retire after twenty years, it is assumed that the public will benefit by having a younger and, therefore, more physically capable work force, and also by a reduction in costs resulting from disabilities caused by the inherent health hazards of the job.

In addition to the above concerns, the Panel also examined the comparison of retirement plans offered by municipalities in New York State. This comparison revealed that the majority of communities in Erie County afford the option of the twenty year retirement plan. Furthermore, an examination of the entire State disclosed that a great majority of policemen are covered by the 384(d) plan.

Finally, the Panel considered the above factors in relation to "the interests and welfare of the public and the financial ability of the public employer to pay." Although the funding of the twenty year plan adds a substantial cost, the Village did not argue its inability to pay this cost; it argued, instead, its unwillingness to pay for this benefit. The Village contends that providing the option to retire after twenty years of service does not mean that policemen will take advantage of this option. In better economic times, a person could retire at half pay and easily find supplemental employment, but with the present economy in Western New York which includes mass industrial closings, the opportunity for new employment is severely limited. The Village, therefore, may be paying a high cost for a benefit which may not be used.

Despite the merits of this argument, it is based on the prospective use of the plan and, therefore, does not outweigh the con-

siderations of ability to pay, comparability to other communities which provide the benefit, and the particular nature of the policeman's job.

However, one important cost factor cited by the Village is the requirement by the State Retirement System to pay the increased contribution within thirty days of the change to the 384(d) plan. For this reason, the Panel determined that the 384(d) option will not be made available until June 1, 1985.

14. Salary increases shall be provided as follows:

1. 5% increase over the present salaries to be retroactive to June 1, 1984.
2. 5% increase to be granted on June 1, 1985, the second year of the Contract.

Although these increases are lower than the average increases received by policemen this year, they are comparable to or above those received in the private sector and, more important, they will help the Village to offset the high percentage increase in the cost of providing the twenty year retirement plan.

15. Article XXIX - Term of Agreement shall be changed to cover the period of this Award which is from June 1, 1984 through May 31, 1986.

This Award constitutes the entire settlement of all issues before the Compulsory Interest Arbitration Panel. Any issues not addressed in this Award are denied.

Dated: Dec. 10, 1984

Signed: Alice B. Grant
Alice B. Grant
Neutral Public Member and Chairperson

STATE OF NEW YORK }
COUNTY OF MONROE } SS:

On this 10 day of Dec. 1984, before me personally came and appeared ALICE B. GRANT, to me known and known to me to be the individual described herein and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Lucia M. Knapp

NOTARY PUBLIC, STATE OF N.Y. Monroe Co.
My Commission Expires March 30, 1985

Dated: December 21, 1984

Signed: James N. Schmit
James N. Schmit, Esq.
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

~~Concur~~ Dissent (Opinion attached)

On this 21st day of December, 1984, before me personally came and appeared JAMES N. SCHMIT, 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.

DEBORAH ANN MATSCHKE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1986

Deborah Ann Matschke
Notary Public

Dated: Dec. 17, 1984

Signed: Nicholas J. Sargent
Nicholas J. Sargent, Esq.
Employee Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

Concur Dissent

On this 17 day of December, 1984, before me personally came and appeared NICHOLAS J. SARGENT, 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.

JULIANA E. TRZYBINSKI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1986

Juliana E. Trzybinski
Notary Public

I respectfully dissent. The Award should not include imposition of a non-contributory twenty-year retirement plan pursuant to Section 384-d of the Retirement and Social Security Law. In reciting the statutory guidelines, the majority omits the fundamental principal to be applied in formulating an award - that the decision be "just and reasonable." Civil Service Law, §209(4). The statute also makes clear that the panel is to consider "other relevant factors" in addition to those specified. The retirement issue was extensively briefed and argued and it is not necessary to review the facts and contentions of the parties. In my view, however, the Village's argument that a cost benefit analysis demonstrates extraordinary on-going cost with minimum potential benefit to members of the bargaining unit during the two year period of this agreement, was the only rationale advanced by either party upon which a "reasonable" decision could be based. The PBA's argument, accepted by the panel majority, was essentially one of comparability - that is, more police forces of a like size have the twenty-year plan than do not, and, therefore, the benefit should be accorded to the Village of East Aurora's force. A bootstrap argument of this type is simply no basis upon which to impose a significant, on-going financial burden. Interest arbitration panels must stop permitting the costs of essential municipal services to escalate for the reason that a particular benefit was imposed or granted to some other bargaining unit in the past. Recent history in both the public and private sectors demonstrates the folly of such an approach.

James N. Schmit
Panel Member