

COMPULSORY INTEREST ARBITRATION

New York State Public Employment Relations Board (PERB)

In The Matter of an Tripartite Interest	:	NYS PUBLIC EMPLOYMENT RELATIONS BOARD
Arbitration	:	RECORDS
	:	DEC 9 1991
between	:	CONFIDENTIAL
	:	O P I N I O N
THE TOWN OF EVANS NEW YORK (Town, Employer)	:	and
	:	A W A R D
and	:	
	:	PERB IA90-019
EVANS POLICE BENEVOLENT ASSOCIATION, INC.	:	M90-024
(PBA, Employees)	:	
	:	

Before: Eric W. Lawson Jr., Esq., Chairman
 Anthony DeMarie, Esq., Employee Member
 Nicholas Sargent Esq., Employer Member

APPEARANCES

For the Town, by: Norman J. Stocker, Labor Consultant

Witness, John Malloy, CPA

For the PBA, by: Dennis Hamilton, Esq.

PROCEDURE

The parties, bound by a collectively bargained agreement [cba] which expired on December 31, 1989 entered into negotiations for a successor cba. Having failed to reach agreement by utilizing the services of a mediator who met with the parties twice, the PBA petitioned the PERB for compulsory interest arbitration on December 12, 1990. Following receipt of Respondent's Response to the Petition for Compulsory Arbitration and upon a determination as to the matters to be submitted to arbitration, the PERB designated the tripartite panel set forth above on April 4, 1991 to decide the issues to be presented.

With the concurrence of the members of the panel and with the consent of the parties, the Chairman convened the parties on May 29 and June 21, 1991 for the purpose of mediating the dispute. Mediation having failed to resolve all of the open items the matter was heard by the tripartite panel on Wednesday, September 18, 1991 at which time the parties, who had earlier prepared briefs on the open issues, presented arguments and evidence thereto. A Reply brief was submitted by Petitioner on October 30, 1991 at which time the record closed. The members of the panel met on October 1, October 25 and December 3, 1991 for the purpose of formulating their findings and making their decision. The meeting on December 3, 1991 followed the preparation by the panel of preliminary findings and the purpose of the meeting was to clarify those findings in a manner which would obtain the concurrence of all panel members. At all relevant periods prior to the issuance of the panel's decision, the Chairman encouraged the parties to meet to attempt to secure a voluntary resolution of the items at impasse.

APPLICABLE STANDARDS

The following statutory provisions of Article XIV CSL, section 209.4 (as amended July 1, 1977) shall control the disposition of the matters presented to the tripartite panel for its decision:

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar skills under similar working conditions and with other employees generally in public and

abuse is occurring, T5, add a \$100 deductible, increase the drug co-pay from \$1.00 to \$3.00, give the Town the option of providing two single person medical insurance plans where the covered parties are employees, are married and have no dependent children, give the Town the right to change health insurance providers, the assessment of paying costs for increases in health insurance premiums occurring on or after January 1, 1990 will be negotiated and where agreement is not obtained, the issue will be submitted to the Federal Mediation and Conciliation Service (FMCS) with costs divided equally, employees hired after January 1, 1990 to pay 10% of their health insurance costs, relocate the dental insurance provisions outside of the health insurance article, eliminate the Town's insurance obligation to pay for off-the-job disability, establish eligibility for retired employees to receive health insurance paid for by the Town only to those employees hired on or before January 1, 1987, T6 only mandatory subjects of bargaining shall be continued, T7, no salary offer has been made

Proposals submitted by the PBA are: A1, uniform maintenance allowance increased from \$100 to \$200 and detectives in lieu of payment for uniforms to increase from \$550 to \$700, A2, overtime police work to be assigned to members of the unit with recipients being given the option of pay or compensatory time off at the overtime rate, A3, longevity to be increased by \$50.00 at each step in each year of the contract, A4, the afternoon shift premium pay to be increased from .15 per hour to .25 per hour and the night shift premium pay to be increased from .25 per hour to .35 per hour, A5, an associates degree in a course of study related to police work a \$250 annual payment and for those with a bachelors degree a \$500 annual payment, A6, new provision granting a shift officer two hours pay where that shift is changed on less than seven hours* notice, A7, a new provision requiring payment of three hours pay to detectives required to stand by on call, A8, a new provision allowing officers to swap shifts between themselves, as long as the change occurs within a pay period and, if approved, shall not be eligible for overtime pay, A9, officers with ten or more years of service shall be allowed to increase their present four week vacation entitlement each year by one day for each year of service beyond ten years and shall be able to convert unused vacation time to pay at the end of each year, A10, the death of a grandchild shall authorize the taking of bereavement leave with five days available for

taking such bereavement leave, one day of bereavement leave shall be available for the death of a spouse's aunt, uncle, niece, nephew or first cousin, All, annual personal leave entitlement shall increase from three to four days beginning January 1, 1991, A12, in the second year of the contract annual sick leave accumulation shall increase from 15 to 18 days and all limitations on the conversion of sick leave to pay, upon a police officer's employment being terminated, to be eliminated with the proviso that said payment shall be made to the officer's estate as appropriate, A13, a new provision to be added granting female officers 12 weeks of non-paid maternity leave, A14, a new provision requiring that meal allowance be set at \$7.50 per meal, A15, health insurance coverage to include Community Blue with major medical and drug rider, an increase from age 62 to 65 the period for which retirees will be eligible to receive coverage with said coverage to be available without regard to the date of hire, dental coverage to be expanded to cover orthodontic care and A16 a new provision allowing officers interested in attending a school or training seminar to which one of their number is being sent to request that they be allowed to attend as well with selection to be made on the basis of seniority and with work schedules adjusted so as to facilitate attendance during regular work times, A17 salaries to be increased by 10% in each of two years.

*A6, change in shift. The Association's petition requested two hours pay when change is made on less than seven days notice. The Association's brief states that the pay shall be made on less than 7 hours notice.

In making its award, the interest arbitration panel is obligated by statute to observe certain standards including:

General standards:

Comparability between hazards and qualifications of the job
and comparability between municipal police forces
(Statutory criteria a. and c.)

The parties agree that police forces (as opposed to non-police, public sector employees) are inherently more comparable with each other as

regards the statutory criteria (similar skills,, similar working conditions, hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training and skills) than they are to other public employees. Except for citing settlements with the Town's other employees no effort was made by either party to offer settlements or the terms and conditions of contracts other than police contracts, for comparison with the police contract in Evans.

Although generally agreeing that for the statutory reasons, comparisons are best made between police forces, the parties differ substantially as to what criteria should be used in selecting comparable police forces.

The Town argues that per capita income, size of the bargaining unit, population of the community, size of the police budget, and taxable assessment are the relevant criteria. **By applying these standards, the Town proposes using the Cities of Batavia, Dunkirk Olean and Tonawanda and the Village of Lancaster as the appropriate comparison base (TE#3)**

The PBA's comparison base is drawn from eight police departments, all located within Erie County and includes the **Towns of Lancaster, Cheektowaga, Tonawanda, Hamburg, Amherst, Orchard Park and the Villages of Hamburg and Kenmore.** The criteria for selecting these police forces include population, police officers per capita, per capita cost for police protection, the tax per capita, size of the geographic area.

In addition, the PBA argues that police officers working within Erie County only should be considered as a comparison base because these populations of police officers "...perform the same types of service under the same or similar working conditions and posses the same or similar skills." (Association Brief [AB], p.7)

Criteria cited by each side include the following three standards:

Based on the size of the bargaining unit, the following six communities identified by the parties are closest to Evans: Lancaster Village (15), Hamburg Village (17), Lancaster Town (21), Dunkirk City (25), Kenmore Village (27) and Orchard Park Town (26).

Based on population*, the following seven communities identified by the parties are closest to Evans: Lancaster Village, Batavia, Dunkirk, Olean, Tonawanda City, Kenmore, and Orchard Park.

Based on per capita cost for police protection, the following six communities identified by the parties are closest to Evans whose cost is \$59 [police budget 1,075,936 (TE#1) ./ population 17,961 (AE#B)]: Cheektowaga (63), Orchard Park (65), Olean (72), Tonawanda City (80), Tonawanda Town (81) Hamburg Town.

*The population in Evans declined from 17,961 in 1980 to 17,478 in 1990 (TE#1, pg 75)

AS would be expected in an adversary proceeding, the comparison base offered by each of the the parties produces statistics which support their positions, i.e. the Town's comparison base supports modest benefit improvements, the PBA's vase supports significantly enhanced improvements.

The following five communities appear in at least two of the three standards cited above: **Lancaster Village, Dunkirk City***, **Kenmore Village, Orchard Park and Tonawanda City** All but one of these five communities is located within Erie County, a consideration favored by the PBA. The City of Dunkirk is the one community situated outside of Erie County however, it is geographically closer to Evans than several communities located within Erie County and cited by the Association.

*The panel acknowledges the Association's complaint that there are errors in the Town's comparisons with Batavia, Olean, Tonawanda and Dunkirk. It is noted however that only Dunkirk is included in the comparison base and is included because of the size of its population and the size of the bargaining unit, not because of the size of its police budget, the

subject complained of by the Association.

Of the five communities cited above, three were proposed by the Town (Lancaster Village, Dunkirk City and Tonawanda City) and two (Kenmore, Orchard Park) were proposed by the Association.

While the three criteria used for identifying the five communities does not specifically address all of the criteria cited by each party (i.e tax assessment, tax per capita) the criteria which were considered are collateral to the criteria not specifically measured. For example, the per capita cost for police protection measures the relationship between the cost for police protection services and the size of the community. The resulting figure is more helpful in making the determinations at issue here than the size of the budget generally or the per capita cost of the general budget since additional variables must be considered if these standards are to be validated.

In reaching its conclusion regarding the comparison base, the panel recognizes factors cited in the PBA closing brief which make comparisons between tax rates in different communities subject question because of wide ranging considerations including services provided, quality of life factors etc. However, with regard to the per capita rate for police services, a useful comparison between the five communities can be derived. Funds for municipal budgets are collected from various sources including real property and income tax, with the latter derived through revenue sharing from the state. Since revenue sharing funds are generated largely through income tax collections at the state level and are historically returned to local government, it follows that income tax may be considered as contributing to local revenues. Inasmuch as significant changes have recently occurred regarding this source of income, it is reasonable for it to be incorporated into the per capita costs for police protection in the comparison base of the five communities.

A significant difference between the five communities cited for comparison is their geographic size. (Evans, 41 Square Miles [SM], Dunkirk, 3 SM, Lancaster 2.8 SM, Kenmore, 1.4 SM, Orchard Park, 39 SM,

Tonawanda 3 SM) The difference in area can be categorized as urban, suburban and suburban/rural. Evans is classified in the latter category. Differences in the nature of police work between communities with highly concentrated populations such as cities, as opposed to communities with lesser populations concentrations such as Evans, make precise comparisons between the terms and conditions of employment difficult. The differences are evened out on the comparison base adopted here however, by the fact that population and size of the police forces in all five communities and in Evans assures that where cities are used in the comparison, they are of modest size.

The fact that Evan's population increases substantially in the summer months further complicates comparability determinations. Since neither side sought to compare Evans with the City of Buffalo, the panel concludes that there is tacit agreement that the nature of police work does vary substantially depending on the size of the community.

For the reasons cited above, the police forces in the City of Dunkirk, Lancaster Village, Kenmore Village, Orchard Park and the City of Tonawanda shall constitute the comparison base.

Ability to pay (Statutory criteria b.)

The Town argued in oral testimony supplemented by the Town's financial report (TE#1) that its ability to pay wage and benefit increases has been compromised particularly with regard to state aide (revenue sharing) reductions. While its budget, including that part allocated for public safety, has approximately doubled between 1981 and 1990, increases of this magnitude shall not occur in the future in Evans because of present and anticipated reductions in aid received from the state. (See TE#4, estimating an increase in the per capita burden for the state's debt from \$2,068 on April 1, 1990 to \$2,205 on April 1, 1991 as a result of a state debt in excess of 6 billion dollars)

Because long term obligations to the state employee's retirement system increased substantially in 1989 and 1990, short term debt relief was granted to the Town regarding its retirement system contributions. This shifting of obligations was a result of new accounting principles adopted

by the state (PUC).

Because changes in the retirement system contribution relieved local governments of a portion of their immediate obligations to pay into the employee's retirement system, the state simultaneously reduced municipal assistance in the form of revenue sharing. Malloy stated that these reductions were particularly onerous because they occurred with virtually no advanced warning. Historically, approximately 12.5% of the Town's general funds were supplied in the form of revenue sharing. With this source of aid ceasing in 1992 and with the normal increase in the Town's budget, Malloy estimated a shortage of approximately 15% of funds available to balance the budget in FY 1992.

While the tax rate declined in Evans from 1989 to 1990 (See pge 62, TE#1), Malloy pointed out that this was the result of a revaluation in assessments in the Town.

A loss of approximately \$18,000 in state aid occurred in 1990. This loss reduced aide received by the Town to \$170,058. John Malloy estimated that a further loss of \$60,000 in aid would occur in 1991, for a total loss in aid of \$107,000 (TE#3). He stated that all state aid will cease by 1992. Malloy estimated that without a tax increase there will be a \$341,133 shortfall in Town revenue for the 1992 budget. The contract at issue here is for calendar years 1989 and 1990.

With regard to budgeted funds for police operations, Malloy stated that the fiscal year ending in 1990 required an additional transfer of \$23,262 to the original police appropriation of \$1,035,423. Most of these funds were allocated to pay salaries and overtime.

The Town's total debt (long and short term) is approximately 6.8 million dollars, a figure which Malloy stated is about average for towns of the size of Evans.

The PBA argues that the Town is in solid financial shape. In bond offerings, the Town stated that it has added 24 million dollars of taxable property to its rolls between 1985 and 1990. Given the increase in the number of building permits issued by the Town between 1988 (350),

1989 (425) and 1990 (553), this estimate of enhanced taxable property may be too conservative argues the Association (AE#F).

The Town's contribution to the retirement system for both Tier 1 and Tier 2 employees has decreased steadily from 1978, when it was 36.8% (of salary), to 5.4% in 1991 (AE#G).

Were it not for the fiscal crisis facing the state, there would be little argument regarding the ability of Evans to continue to fund salary and benefit increases at approximately the same rate it has increased its police budget in the last ten years. However, there can be no disregarding the fact that changed circumstances at the state level shall have an immediate impact upon the Town's ability to pay increases at traditional levels. The fact that other communities have absorbed revenue losses of a proportionate magnitude to those lost by Evans and have had to make adjustments in services and wages and benefits provided to their employees, cannot be disregarded. (See TE#8).

Prudent investment decisions in the 1980s by the state comptroller allowed for a reduction in the contributions made to the state employees retirement system. However, the significance of these reductions was lessened in the last fiscal year and shall be further decreased in the years ahead by both substantial reductions in revenue sharing and because of the long-term cost imposed by PUC to pay back retirement system contributions not paid for in the current fiscal year. (The financing cost is approximately the same as the contribution obligation itself, over the period covered by the pay-back obligation, See TE#2). In addition, the recession present in the country has depressed returns from investments to a level significantly below that attained in the decade of the 80s.

The Town shows continuing signs of modest growth, based on increases in the number of building permits issued and in increased assessment. However, here as above the growth figures stretch back five years to the mid-eighties and, given other economic indicators, cannot be interpreted standing alone as an accurate harbinger of future growth in the Town. The Town's ability to fund only modest salary increases is substantiated in the data.

Finally, it is to be noted that this award is statutorily limited to the two year period ending in December 1991 a period which shall have passed by the time this award is completed. The statistics strongly indicate erosion of the Town's fiscal position in 1992 and thereafter. However, the fiscal position the Town occupied in 1990 and 1991, the years covered by this award and years in which no salary or benefit adjustment have yet occurred for members of the bargaining unit, is the relevant period for making comparisons.

Comparison of past cbas (Statutory criteria d.)

The level of benefits previously negotiated in Evans, may be best compared with the five municipal police departments identified above on an item-by-item basis. The panel notes however, that the benefits provided for in the existing contract are the result of many years of bargaining between the parties. To the extent these benefits do not compare favorably with benefits received in other police departments, it is not the province of the panel to overcome these unfavorable comparisons in a single award.

DISCUSSION AND AWARD

In considering proposals which have a direct economic cost, the panel has given consideration to the total cost of all such proposals in fashioning their award. Items within this category which shall be taken up individually below include, salary, longevity, overtime work now being performed by part-time employees, uniform allowance and compensation for associates and bachelors degrees. Most of the other items, including those summarily dismissed and those individually discussed below, contain economic consequences even though their primary consequence to the employees may be non-economic. Such items include leave and vacation entitlements.

The parties bring virtually every item originally proposed in negotiations to the panel for resolution. Officially, almost nothing has been taken from the table. Because of the plethora of open items the panel chooses to list without separate discussion or explanation certain

items which are denied. It is sufficient to observe that the arguments and data presented for and against the proposed changes were considered by the panel but were not sufficiently persuasive to justify awarding in favor of the proposed change. Finally, the panel believes that some issues are inherently more important than other items and it is those matters which require separate discussion.

The following items are denied:

Town Proposals:

T1, bidding, T2, restrict grievances, T4, accumulation of sick leave in each month..., T5, Town to have right to change health insurance carriers, right to mid-term negotiations over premium increases, obligation for new hires to pay 10% of health insurance costs, T6 mandatory subjects in the contract not to be continued.

Association Proposals:

A6, two hours additional pay when is changed with less than minimum notice, A7, three hours additional pay to detective on stand-by, A10, additional bereavement time, A12, elimination of restrictions on the conversion of unused sick leave pay at retirement and with payment to estate, A15, health and dental insurance.

With regard to the remaining open items:

The panel awards in favor of a two year contract. Practically speaking this award shall issue near the end of the second year following the date the former cba expired (12/31/1989). Unfortunately even a two year award will not give the parties any relief from bargaining since the period covered by the award shall have expired by the time the award is implemented.

T3, placing grievances in writing:

The Town proposes changing the present provision which allows for either an oral or a written presentation to the chief of a first step grievance to a written filing only. By citation to Elkouri... the Town argues that a writing preserves the record, both as to the issue grieved and the date of the filing and encourages potential grievants to give additional consideration before initiating the filing of the grievance.

Having heard no significant opposition to the proposed change, the Town's position is persuasive and the change sought is awarded.

T4, delete the obligation of the Town to give notice regarding suspected abuse of sick leave:

Presently, prior to the Town requesting a physician's statement regarding an officer's absence and claim for sick leave, where the Town suspects that abuse is occurring, the Town is required to set forth in writing "...the officer's actions or pattern,..." upon which it concluded that abuse was taking place.

The Town argues that this pre-requisite stymies any effort to curb abuse by placing on the Town an initial obligation to disclose its reasons why it believes abuse has occurred. Association members on the other hand may feel that the removal of any pre-condition to the Town's requesting a physician's statement would allow for abuse to take place.

The following language addresses both concerns and shall replace the last paragraph of page 13 and the first paragraph of page 14 in the 1987-1989 cba.

The Town may request a physician's statement from any employee returning to work after an illness or injury requiring said officer to utilize three or more continuous days of sick leave. Where the Town believes that sick leave has been taken for an unauthorized purpose, the affected officer shall be so notified and shall be given a reasonable time within which to supply the Town with information or evidence, including a physician's statement, which he or she believes establishes their claim for the sick leave. Thereafter, with regard to the sick leave, the Town may take whatever action it wishes, consistent with the terms of the cba.

T5, health insurance deductible, increase in drug co-pay, Town's option to provide two, married employees with two, single person insurance policy coverages.

By denying changes in the scope of coverage and the provider, the panel wishes to continue the present coverage. Increases in health insurance premiums occurring over the last several years have far out-paced increases in inflation. Health insurance has become a fringe benefit approximating the value of pension for many public employees. By continuing the existing coverage for the two years covered by this cba, officers are guaranteed that protection against health care costs will continue. With the exception of the holdings below, employees will be shielded against paying for premium increases, increases which shall inevitably occur during the period of this contract.

A contribution toward premiums, by way of a deductible, is reasonable and is consistent with current trends in labor agreements. By sharing to even a small extent in the cost of this valuable fringe benefit, bargaining unit members may gain an enhanced appreciation for its value to them and their families.

Since the two year period covered by this award is virtually completed - with the result that no deductible was taken for the first year - a \$100.00 deductible to become effective on the last day of the contract is reasonable and is awarded.

An increase in the co-pay for drug coverage to \$3.00 to become effective on the last day of the agreement is also awarded, the rationale being similar to that set forth above.

No reason was offered nor is the panel aware of any logical reason why the Town should not have the right to provide each of two employees, married to each other and without dependents, with single person coverage, where that coverage provides the same or superior benefits than would be available under a family plan and it is, accordingly, so awarded.

The Town's request to relocate dental insurance to another section of the cba is granted.

Presently an employee injured off the job receives disability insurance benefits to cover disabilities occurring off the job. The Town argues persuasively that this benefit is inherently illogical since it provides disabled employees with higher per diem wages when they are at home on sick leave arising from an off the job disability, than they would receive when healthy and at work.

The issue was not addressed by the Union. The panel recommends that the parties negotiate this matter and if their good faith negotiations fail to produce agreement, it is awarded that the language shall be changed to provide for employer paid disability coverage for off the job injuries said coverage to become effective when the injured employee has exhausted their sick leave accruals.

The Town proposes a mechanical change in the language of Section 15.02 which would establish the date of January 1, 1987 as the date of hire before which retired officers will be eligible to receive health insurance benefits. No objection was heard regarding this proposal and it is awarded.

A1, increase in uniform maintenance allowance from \$100 to \$200 for uniformed personnel (uniforms provided by the Town) and from \$550 to \$700 for detectives:

Comparables are:

Lancaster Village - \$750 per year
Dunkirk City - \$700 per year, initial uniform provided
Kenmore - uniforms furnished and \$600 per year
Orchard Park - uniforms furnished and \$350 per year
Tonawanda City - \$400 per year

This data establishes that the Town's uniform allowance is substantially below that paid in the comparable municipalities. The Association's

proposal is justified and it is **awarded that the uniform maintenance allowance shall increase to \$200 and the detectives clothing allowance shall increase to \$750 each year with the adjustment to become effective in the second year of the contract,**

A2, overtime assigned to bargaining unit members ...:

In 1990 the Town employed part-time police officers to work 238 days. The Town opposes the use of bargaining unit members to perform this work because of the cost. The Town estimates the cost of providing coverage for work now performed by part-time employees, over the life of the cba, to be in excess of \$100,000. Moreover, the Town believes that the consequence of unit members bidding on work now performed by part-time employees, would be to leave the most undesirable of such work un-bid, thereby making it difficult to assign such work to part-timers.

In estimating its cost, the Town disregards the cost of paying the part-timers who now perform the work. It is conceded however, that the cost of bargaining unit members performing the work would be higher than the part-time employee cost, because the per diem rate of bargaining unit members is higher and because of the overtime rate.

Police forces in the comparison base do not employ part-time police officers. The recognition article (Section 2.01) of the cba excludes part-time police officers from the bargaining unit.

This proposal has an immediate economic impact, and therefore falls into the category of economic proposals described above. It may be analyzed on the basis of both cost and benefit to those receiving the overtime work. Since this proposal if awarded, would distribute economic resources disproportionately, (to those working overtime) resources that would otherwise be available for distribution in a fashion already agreed upon by the parties (i.e. salary, longevity, etc.) **the panel will refrain from recommending the proposal, leaving to the parties the option of negotiating the matter at a later time.**

A3, longevity to be increased \$50 at each step in each year.

The comparison base reveals the following regarding longevity payments for 1990:

	5 yrs	10 yrs	15 yrs	20 yrs	25 yrs
Lancaster (1988)	350	450	550	600	650
Dunkirk	no longevity pay				
Kenmore	350	400	600	700	800
Orchard Park	250	500	750	1250	1500
Tonawanda (1989)	375	575	675	775	900
Average	265	405	515	675	770
Evans (1989)	250	350	500	600	700

A need for a modest increase is established by this data and it is awarded that in the second year of the cba each longevity step shall increase by \$50.

A4, shift premium pay:

The comparables indicate:

	evening	night
Lancaster	0	0
Dunkirk	.75	.90
Kenmore	.25	.30
Orchard Park	.15	.25
Tonawanda	.10	.16
Average	.25	.26
Evans	.15	.25

The data supports raising the afternoon shift pay premium .10 to .25 per hour but does not support changing the evening shift pay premium and so, accordingly, the change is awarded to take effect in the second year of

the cba.

A5, associates and bachelor degree payments of \$250 and \$500 respectively:

The comparison base reveals the following regarding this issue:

Lancaster	none
Dunkirk	none
Kenmore	none
Orchard Park	none
Tonawanda	2 year degree \$125, 4 year degree \$250

Several municipalities including Evans supply officers with books, tuition and pay other costs associated with the attendance of officers at authorized educational programs. Given the data set forth above the parties shall have to negotiate this matter in the future, **the panel awards against this proposal.**

A8, allowance for officers to swap shifts...

The Association seeks placement in the contract of a provision allowing officers to exchange shift assignments, with the approval of the shift, and with the understanding that no overtime benefits which would accrue as a result of the swap, shall be paid. The association observes that the practice described in their proposal is commonplace in police departments but is not regularly included in the cbas.

The Town opposes the proposal objecting to it on similar grounds to which it objected to the proposal for paying relief officers premium pay when a shift change was made on short notice. For both proposals the Town stated that it would be hampered in its ability to manage and direct the police force by frequent changes in the manning schedule. The Town pointed out that the police force in Evans is of modest size making it difficult to absorb assignment changes made on short notice.

Unlike the relief officer change proposal (A6), which required the Town pay the affected officer, this proposal not only carries no cost to the

Town but it also grants the Chief an absolute veto of a shift schedule change, without explanation required. The Town observed that the Chief carefully considers requests for shift assignments and makes those assignments on the basis of seniority as he goes about the task of manning the department. Since this practice presumably assigns personnel to shifts which they already have bid for, or have a claim upon because of seniority, it would not seem as though the practice of officers swapping shifts would occur with great frequency.

Based on this analysis, the panel **awards the proposal sought by the Association. It shall take effect in the second year of the cba.**

A9, additional day of vacation after ten years service and conversion of unused vacation time to pay:

With regard to vacation entitlements, the comparables show:

	years of service	vacation
Lancaster	1	2 weeks
Dunkirk	1	2 weeks
Kenmore	1	2 weeks
Orchard Park	1	2 weeks
Tonawanda	1	2 weeks
Evans	1	2 weeks
Lancaster *	5	3 weeks
Dunkirk	5	3 weeks
Kenmore	5	3 weeks
Orchard Park	5	3 weeks
Tonawanda	7	3 weeks
Evans	3	3 weeks
Lancaster	10	4 weeks
Dunkirk	10	4 weeks
Kenmore	10	4 weeks

Orchard Park	10	4 weeks
Tonawanda	10	4 weeks
Evans	5	4 weeks
Lancaster	15	5 weeks
Dunkirk	15	5 weeks
Kenmore	15	5 weeks
Orchard Park	15	5 weeks
Tonawanda **	15	5 weeks
Evans	15	4 weeks
Lancaster	20	5 weeks
Dunkirk	20	6 weeks
Kenmore	20	5 weeks
Orchard Park	20	5 weeks
Tonawanda	20	27 days
Evans	20	4 weeks

* 1 additional day of vacation available for every two years of service over five years.

** 22 days vacation available after 12 years of service (1989).

1990 schedules

each week = 5 days

The following are the 1990 provisions allowing for the conversion of unused vacation days: Lancaster, unused days paid at the time of termination, Dunkirk City, non-cumulative, Tonawanda, non-cumulative except for narrow circumstance, Orchard Park and Kenmore data is unavailable.

As the charts indicate, an Evans police officer receives eight additional weeks of vacation during his first fifteen years of employment than the average received in the comparison base. Between 15 and 25 years of service however the officer loses 6 weeks of vacation. These figures are

approximate since they do not include adjustments for different rotations nor for peculiarities in the vacation allotment such as is found in the Lancaster and Tonawanda schedules.

The Town argues that since most of the bargaining unit would be eligible to benefit immediately from any increase in the vacation entitlement, the cost of the proposal would be prohibitive. No data was produced regarding the years of service of police officers working in other communities.

The data support a modest change in the rate of accumulation. **It is awarded that beginning in their twentieth year of service, police officers shall have one additional day of vacation available for each year of service thereafter with a maximum of 25 days available. No changes shall be made regarding the conversion of unused vacation days.**

All, an increase from 3 to 4 personal leave days per year:

The comparison base data indicate the following:

Lancaster, 5 days, Dunkirk, 4 days, Kenmore 4 days, Orchard Park, 4 days, Tonawanda 3 days, Evans 3 days.

The average number of days, excluding Evans, is four. The panel **awards one additional day of personal leave, said day to become available in the second year of the contract.**

A12, increase in the second year of the contract, from 15 to 18 the number of days available for sick leave:

The comparison base data reveal the following:

Lancaster, 18 days, Dunkirk, 1.25 days per month (15 days), Kenmore, 14 days, Orchard Park, 18, Tonawanda, 1.25 days per month (15 days), Evans, 1.25 days per month (15 days).

Without including Evans, the average number of days is 16. Since the averages are derived from contracts that are no more recent than 1990, it

is more likely than not that some further enhancement of the sick leave benefits will occur within the comparison base for the years covered by the Evans contract at issue here. For this reason and because the comparison base justifies an adjustment, the panel awards an **additional day to be available as sick leave time at the end of each calendar year and leaves the current monthly rate of accumulation unchanged. The change is to become effective in the second year of the contract.**

A13, female officers to receive 12 weeks of non-paid maternity leave.

The Town states that none of the comparable communities have a maternity leave program, that other leave, such as sick and personal leave, along with relief available pursuant with the the Humanitarian Clause, more than adequately provides for time off for pregnancy related leave. Nothing was offered by the Association which established the existence of a provision such as that sought in other contracts.

Under these circumstances and in light of expansions in other leave benefits made as part of this decision, the panel believes this issue is best left to the parties to negotiate and **does not recommend in favor of the proposal.**

A14, raising the meal allowance from \$5.00 to \$7.50 per meal.

Meal allowances available for police officers in the comparison base are:

Lancaster, \$6.00, Dunkirk, \$5.00, Kenmore, Orchard Park, N/A, Tonawanda, \$5.00 (Note, conditions attach to the taking of meal allowances)

The data does not support an adjustment in the meal allowance, **therefore, the panel awards against changing the allowance.**

A16, allowance for officers to attend school or training seminar...:

The proposal would require the Town to send officers interested in attending a school or seminar to select according to seniority. The Town opposes the proposal arguing that it would loose flexibility to assign officers needing specific training and to assigning officers who, as a

result of the training, may be expected to best serve the community.

The Association did not offer data in support of its proposal. In its present form, the proposal could prevent the Town from assigning specific police officers to receive specialized training where other, more senior officers applied for the training. While there may be justification for seniority to be a factor in assigning officers to schools or seminars, the present proposal too severely impinges on the Town's authority to operate the police force and is unacceptable in its present form. The **panel awards against this proposal.**

A17, salaries to be increased by 10% for each of two years and an increase in the acting lieutenant's pay:

Data for police officers in the comparison base reveals the following:*

	Lan.(89)	Dun (91)	Ken.(90)	Or. Pk.(90)	Tona.(90)	Evans(89)
End of						
one year	24,582	26,808			25,470	24,255
End of						
second yr.	31,290	28,377			27,399	26,460
End of						
fourth yr		31,653	32,040	34,606	31,256	29,369

*The data includes fixed salary enhancements such as line-up pay and court time, where reported by the parties in the data.

The Town has made no proposal to increase salaries. It argues that economic malaise in Evans, compounded by a shift by the state of tax obligations back to local taxing authorities has created an intolerable burden upon the residents of the community. Salary increases of the magnitude sought by the Association are unjustified argues the Town, both on the basis of the ability of the local community to pay these increases and also because salaries being paid police officers in Evans are

compabable with salaries paid officers working in the comparison base which the Town believes is appropriate.

The Town concludes its brief with an estimate of the total economic impact of the Association's demands, including demands to increase salaries by 10% a year. The total cost is estimated to be 27% in 1990 and 14% in 1991.

The Association offers statistics comparing total compensation paid police officers (salary, longevity, holiday pay, vacation, personal and sick leave, shift pay, briefing pay, shooting pay "etc.") in the comparison base offered by the Association. The comparison shows that Evans police officers are more than \$5,000 behind the aggregate of salaries and economic fringe benefits paid officers in these other communities, a difference which will be narrowed only marginally if a 10% salary increase is offered observes the Association.

The Association also offers random police settlements in support of its demands, citing the Erie County Deputy sheriffs at 8% for 1990 and 9% for 1991, Lockport increased by \$2021 and \$2667 in 90 and 91 respectively, Niagara Falls at 7% and 6.5% in 90 and 91 respectively, Batavia and North Tonawanda at 6% and 6% each in 90 and 91 and the comparisons concluding by citing increases of 5.5% and 5.6% in the Village of Lancaster.

Statutory criteria determining the relevance of data offered for comparison by the panel includes (209.4, d.) "The terms of [cbas] between the parties in the past, ..." The data in the comparison base used in this arbitration establishes fairly convincingly that salaries in Evans are below those paid elsewhere. It is not the duty of the panel however, to adjust in one year for the consequences of several years of bargaining between the parties.

For whatever reason, the parties, perhaps with the aid of arbitration panels, negotiated and/or arbitrated the terms and conditions of employment found in the current contract presented to this arbitration panel. The panel can only imagine that innumerable considerations, trade-offs and adjustments were entertained by the parties and by previous arbitration panels as they reconciled conflicting data and strongly

opposed positions through the bargaining and arbitration processes. In the current round of negotiations, the parties have resolved very few open matters, placing most of the "bargaining responsibility" on the panel. Unlike the parties the panel is limited by the statutory criteria in reaching its holdings.

The average 1990 salary in the fourth year of service for a police officer working in three of the communities where data was available (Kenmore, Orchard Park and Tonawanda) was \$32,634 compared to the 1989 salary paid a similarly situated officer in Evans (\$29,369). If this salary was increased by 10% to \$32,332, the result sought by the Association, the salary would still be slightly below the comparison base. This data and a comparison of other data establish that Evans police officers are paid wages somewhat lower than those paid their counter-parts working in other police departments. An adjustment in the salary is clearly warranted.

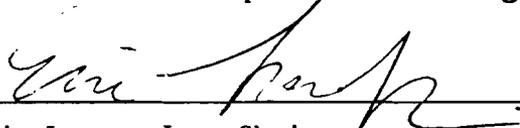
The panel has scrutinized all of the demands made by each side. It has awarded some of the demands without change, denied others and awarded the remainder in modified form. For these reasons it would be as inaccurate to accept the Association's comparison of the "total compensation" received by officers in Evans as highly probative as it would be to assign the same importance to the Town's estimate of the total cost of the Association's demands.

It is noted that the panel awarded a \$100 health insurance deductible above. Because this award will not become effective until the two year period it covers has ended and since it would be difficult to collect a deductible retroactively, the deductible was made effective on the last day of the contract thereby making it payable in future years unless removed from the contract. As a consideration to making the health insurance deductible, the panel shall award an additional 1/4% in salary in the second year of the award over what it would have otherwise awarded. Since the health insurance deductible became effective on the last day of the contract, so too shall the additional 1/4% salary increase become effective on the last day of the contract.

In fashioning its award the panel must consider recent changes in the

manner by which municipal budgets are funded. These considerations were discussed in some detail at the outset of this report and a determination was made there that the Town does have an ability to pay reasonable salary increases particularly in light of the period of time covered by these increases. In making the salary award set forth below, the panel observes that the increases are slightly greater than current inflationary increases but provide wages which are still below those paid in the comparable base. As an additional consideration, the panel is unaware of plans for reducing the size of the work force. In making its salary increase award, the panel is mindful that other provisions of the contract which have direct economic significance have been improved upon.

Accordingly, the panel awards a retroactive increase in the first year of the contract of 6% at each step of the salary schedule and in the second year an increase of 5% is made. On the last day of the second year of the contract, salaries shall be increased by 1/4% the 1/4% to be paid from December 31, 1991 forward. The acting lieutenant's pay is increased by the same per centage as awarded for the regular salaries, the parties having the option to distribute said increases pursuant with negotiation.


Eric Lawson Jr., Chairman

State of New York
County of Erie s.s.

I, Eric W. Lawson Jr., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the award of the interest arbitration panel of whom I served as chairman.

December 6, 1991


Eric Lawson Jr.


Anthony DeMarie

State of New York

County of Erie s.s.

I, Anthony DeMarie, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the award of the interest arbitration panel of whom I served as employee representative, and to which I join the majority vote of the panel on each and every item except for items,

_____ upon which I dissent from the majority.

Date

Anthony DeMarie

Nicholas Sargent

State of New York
County of Erie s.s.

I, Nicholas Sargent do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the award of the interest arbitration panel of whom I served as employer representative, ~~and to which I join the majority vote of the panel on each and every item except for~~ items,

_____ upon which I dissent from the majority.

Dec. 17, 1991

Date

A handwritten signature in black ink, appearing to read "Nicholas Sargent", written over a horizontal line. The signature is stylized with a prominent dot above the first letter and a long, sweeping tail.

Nicholas Sargent