

MAY 21 1993

CONCILIATION

In the Matter of the Interest Arbitration

between

**PERB Case No.
IA92-020
M92-071**

VILLAGE OF DEPEW, NEW YORK

and

DEPEW POLICE BENEVOLENT ASSOCIATION, INC.

The Village of Depew (the "Village") and the Depew Police Benevolent Association (the "Association") were parties to a collective bargaining agreement for the term June 1, 1989 through May 31, 1992. They began negotiations for a successor agreement on February 25, 1992. In May 1992 the parties agreed they had reached an impasse, and a mediator was appointed by the Public Employment Relations Board on May 20, 1992. Mediation meetings on June 9, August 7, and August 15, 1992 failed to produce an agreement, and on September 15, 1992, the Association filed for interest arbitration.

On November 24, 1992, the Public Employment Relations Board designated the undersigned as members of the Public Arbitration Panel (the "Panel") to which this dispute between the parties was assigned. The Panel held hearings in Depew, New York, on January 26 and March 11, 1993, and also met in executive session in Depew on March 11, 1993.

STATUTORY CRITERIA

Section 209.4 of the State Civil Service Law sets forth the following criteria to be considered by arbitration panels in the resolution of negotiation impasses between public employers and public

employee units when such units represent members of Fire or Police Departments:

- (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 employment of the employees involved in the arbitration proceeding with 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.

ANALYSIS AND AWARD

Salary

The Association proposed that the salary of each officer in the bargaining unit be increased by 6% effective June 1, 1992 and by another 6% effective June 1, 1993. The Village proposed that salaries be increased by 4% in each contract year. For the reasons described below, a majority of this Panel awards an increase in the salary of each officer of 5% effective June 1, 1992, and 5% effective June 1, 1993.

The Association presented persuasive evidence that the Village has the ability to pay a reasonable salary increase. The Village did not seriously contest the conclusions of Edward J. Fennell, the Association's Financial Consultant, that the Village has an overall tax rate comparable to that of other Erie County villages, a taxing margin representing 32.6% of its limit for fiscal year 1993, a contingency fund of \$60,000 in the 1992-93 budget, an unappropriated surplus of \$952,630 as of May 31, 1992, and has exhausted only 5.8% of its debt limit. The parties also agreed that a one-percent increase in police salaries would have the effect of increasing the 1992-93 tax levy by only .28% and the general fund budget by only .18%.

On the other hand, the parties disagreed considerably over comparability -- the question, that is, of which group of other employees should be considered most comparable to the Depew Police officers for purposes of salary determination. The Village stressed

that the only other bargaining unit of Village employees, those in the Department of Public Works, agreed in December 1992 to a three-year agreement, effective June 1, 1992, that provides 4% increases in each contract year. The Village also points to recent salary increases for police officers in the area communities of Kenmore, Eden, West Seneca, and Hamburg, all of which are close to the 4% annual increase proposed by the Village. The Association pointed to salary increases in Amherst, Cheektowaga, Lancaster Village, Lancaster Town, and West Seneca, which averaged about 5% in 1991 and 1992. In addition, the Association presented evidence that the average salary of police officers is higher in several of those communities than in Depew, and in two of those communities the salary increase was accompanied by a costly increase in retirement benefits.

We find that a 5% annual salary increase strikes a reasonable balance between the parties' proposals. Although it is somewhat higher than the increases in the Village's DPW contract and in the police contracts in the area that the Village considered most comparable, it is an increase that the Village can afford and is one that matches settlements in some neighboring communities.

Longevity Pay

The Association proposed an increase of \$50.00 in the longevity increment now paid to officers after 5, 10, 15, and 20 years of service and an increase of \$75.00 in the increment paid after 25 years of service, citing the higher longevity increments paid to police officers in Amherst, Cheetowaga, Lancaster Village, Lancaster Town,

and West Seneca. The Village proposed retention of the present longevity schedule, arguing that the present increments are about equal to the average of the longevity payments in police contracts in Kenmore, Hamburg, Lancaster, and East Aurora.

For the reasons of comparability and ability to pay described above, we find reasonable an increase of \$25.00 in each of the current longevity increments, effective June 1, 1992, with no further increase in the second year of the contract.

Health Insurance

The Association proposed that the Village continue to provide and pay 100% of the cost of the current health insurance plan, including its \$100 deductible and all its current riders; that the Village also provide, without cost to an officer who retires, continuation of the health insurance coverage provided prior to retirement, except during such times that the officer has comparable coverage from another source; and that the Village increase annual payments for dental and vision coverage from \$500 to \$600 effective June 1, 1992 and to \$700 effective June 1, 1993. The Association argued that providing a continuation of health insurance paid by the Village to officers retiring at any age after 20 years of service -- as compared to the present contract's requirement that such coverage only continues for an officer who retires at age 55 or older -- would encourage many officers to retire sooner than they now do, thus encouraging the entry of more young employees into the demanding position of police officer. Also, citing the escalating cost of health care, the

Association strongly resisted any diminution in the terms of the current health plan. In addition, the Association argued that the health insurance coverage provided retirees in comparable area communities exceeded that provided in Depew.

The Village proposed that the deductible under the current health insurance coverage be increased from \$100 to \$250; that Rider 40(Pre-Care) be included in the insurance coverage; that the Village pay 50% instead of the current 100% of the monthly premium in effect at the time an officer retires; that any increases in health insurance premiums on or after June 1, 1992 be paid for by each officer; and that the Village be given the right to change the current health insurance plan provided the schedule of benefits is substantially equivalent to the current schedule. The Village, like the Association, pointed to the escalating costs of health care to support its proposal; argued against dropping the age 55 requirement for retiring officers because, in part, the Village does not wish to encourage officers to retire sooner than they now do; and pointed to the terms of the Village-DPW contract and of other police contracts in some neighboring communities to support its argument that recent area settlements show a trend toward a greater sharing of health care costs by employers and employees.

There can be no doubt that soaring health care costs impose a heavy burden on employers and employees everywhere. There can also be little doubt that the health care plan in the 1989-1992 Contract between the Village and the Association is excellent by most

standards, providing that the Village pay 100% of the premiums of the current Blue Cross plan for active police officers and 100% of the monthly premium in effect at the time for a police officer who retires at age 55 or older with at least 20 years of service. Finally, the trend in recent bargaining settlements in this and other areas is, as the Village argues, toward requiring employees to share a larger portion of health care costs than they previously did.

For all those reasons, we find it reasonable to direct that, effective June 1, 1992, the Village continue to pay 100% of the premium costs in effect on May 31, 1992; that both active and retired officers pay any increase in premium above the premium amount being paid by the Village on May 31, 1992; that the deductible under the current plan be increased from \$100 to \$250; that the insurance plan include Rider 40(Pre-Care); and that the Village have the right to change the current insurance plan, provided the schedule of benefits is substantially equivalent to the schedule of benefits under the existing plan.

One possible complication in applying this portion of our award concerns the fact that at the present time different officers have elected coverage under different insurance plans. Because the intent of this portion of our award is to ensure that during the two-year term of the contract the Village is required to pay only the premium costs for each officer that it was paying on May 31, 1992, our award on this subject means that if an officer is currently under a plan with a premium cost on May 31, 1992 of, for example, \$100 a month, and

under the new contract the officer chooses to join a different plan that required a premium cost on May 31, 1992 of, for example, \$110 a month, he or she would be required to pay the increased premium of \$10 per month under the new contract.

Residency

The Village currently requires all police officers to reside in the Village. The Association proposed that a new section be added to the contract permitting any police officer to reside outside the Village up to 30 miles from the police station. The subject of residency is a non- mandatory subject of bargaining and therefore not subject to interest arbitration without the concurrence of both parties; in this case, both parties agreed to permit the Panel to rule on the Association's proposal.

The Association argued that its proposal would enable some officers to move to an area more suitable to their children's special educational requirements; that the children of officers are sometimes subjected to threats and abuse by other students who have had brushes with the police or whose parents have been arrested; that there are increasingly fewer areas in the Village in which officers can purchase large tracts of land for homes if they do not care to reside in developments; that living in the same village with the people whom they are, if necessary, required to arrest and testify against, places police officers and their families under unfair and unnecessary pressure; and officers living within a 30-mile radius of the police station would be readily available to respond to an emergency within the Village.

The Village argued that it was necessary to retain the present policy of requiring residency because an officer who resides in the Village has a better understanding of the Village and its residents than would a nonresident; resident officers are often active in community activities, which strengthens the harmonious relationship the police department and residents now enjoy; an officer residing in a neighborhood deters crime in that neighborhood; and an off-duty officer residing in the Village is never more than 10 minutes from the police station, permitting off-duty officers to respond to a call-in far more rapidly than they could if they lived up to 30 miles away.

The arguments of both parties have considerable merit. We find that a reasonable compromise of those conflicting positions is to direct the parties to adopt the following provision now contained in the police contracts in Amherst, Cheektowaga, and West Seneca: Officers are required to reside in the Village during the first 15 years of their service, but thereafter may reside wherever they choose.

The above subjects were plainly the most contentious issues in this case. Our ruling on the remaining issues will be presented in more cursory fashion and in two groupings: those issues on which we find the evidence and equity to completely support the Association's position and those issues on which the evidence and equity completely support the Village's position.

Provisions incorporating the Association's position

The Panel directs the inclusion in the new contract of the following provisions that were proposed by the Association:

Bereavement leave. Add to the existing section on this subject: In the event of death of an aunt, uncle, or grandparents of spouse, the officer will be granted one day of bereavement leave without loss of pay or other benefits. As the Association argued, it is unlikely that this additional leave privilege will be frequently used during the career of the average officer.

Personal leave. Add to the existing section on this subject: The granting of one such day of personal leave, annually, for each officer will not be denied. This provision does not add to the number of personal leave days now provided in the contract, but the Village did not seriously challenge the Association's claim that problems sometimes now arise in granting personal leave because platoon lieutenants are unwilling to grant permission if doing so might result in overtime work, even though that possibility is remote. The Association was also persuasive in arguing that this change will have little if any economic impact, since the Village usually does not call in an officer to replace one who is on personal leave.

Death benefits. The following provision will be added to the new contract:

The Village will provide each officer, without cost to the officer, a life insurance policy with a face value of \$25,000 pursuant to the life insurance plan provided to the Police Conference of New York, Inc., and in accordance with said plan, the Village will allow

each officer to obtain additional coverage at the officer's expense. Premium payments, for additional coverage, will be deducted from the officer's salary and payment will be forwarded in accordance with the plan's requirements.

This Village calculates that this provision, requiring that the face value of the life insurance policy covering officers increase from its present level of \$5,000 to \$25,000, will cost the Village in increased premium costs \$5.35 per officer per month, or about \$1800 per year for the 28 officers now in the bargaining unit. That sum, although certainly not negligible, is nevertheless modest when compared to the approximate cost of raising salary by one percent, namely, \$10,000 per year.

Deferred Compensation. The following provision will be added to the contract: The Village will provide a deferred compensation plan for police officers that is in accordance with the Internal Revenue Code. The provision of this plan will cost the Village little if anything in administrative costs and will provide officers with the opportunity to defer some of their earnings, and tax payments on those earnings, until a later time of the officer's choosing.

Sick leave. Section 27(b) of the 1989-92 Contract shall be retained without change in the new Contract. The Village proposed the deletion of this provision, arguing that its retention imposes a significant cost burden on the Village and its deletion would not alter the availability of this benefit for officers who are sick. This relatively major benefit has been so long accepted in this and other bargaining units, however, that the Panel believes it should be canceled only in a situation in which the employer is in considerably worse financial condition than is true in this case.

Past practice. The provision in the 1989-1992 Contract concerning this subject shall be continued without change in the new Contract. The Village proposed a more comprehensive provision concerning past practice, but the Village did not show that the present provision has created serious problems.

Provisions incorporating the Village's position.

The provision governing vacations in the 1989-1992 Contract shall be continued without change in the new Contract. The Association proposed the addition of a clause providing that an officer's unused vacation could be added to accumulated sick leave upon termination of employment. The Village notes that officers are now permitted to convert to salary a maximum of 175 days of sick leave during their final 18 months of employment, which can increase a final salary on which retirement benefits are calculated, and permitting an officer to also increase his final salary by the value of his unused vacation days would further increase his salary, his retirement payments, and the Village's contribution to those retirement benefits. As the Village notes, denying this Association proposal still leaves officers with the right to be paid at the time of their retirement the monetary value of any unused vacation time.

The above constitutes the award of the undersigned members
of the Arbitration Panel.

May 7, 1993

Donald E. Cullen

Donald E. Cullen
Public Panel Member and Chair

May 7, 1993

Nicholas J. Sargent

Nicholas J. Sargent, Esq.
Public Employer Panel Member

In the Matter of the Interest Arbitration

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VILLAGE OF DEPEW, NEW YORK

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DEPEW POLICE BENEVOLENT ASSOCIATION, INC.

**DISSENT FROM
OPINION AND AWARD
PERB Case No.
IA92-020
M92-071**

The undersigned, John Feness, the employee organization panel member and the above entitled compulsory interest arbitration strongly dissents from the opinion and award which is tentatively dated May 7, 1993 and which was issued by the public panel member and chairman, Donald E. Cullen.

In particular, the undersigned considers it to be unreasonable to direct officers, both active and retired, to pay increases in premiums for health insurance issued after May 31, 1992.

It is submitted that an interest arbitration panel lacks the authority to issue an award which affects retired employees, since retired employees are not unit members and not governed by the Taylor Law.

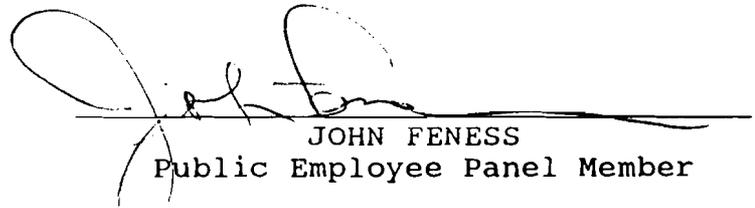
Further, the proposed award is ambiguous at the very least. The underlined portion at page 7 appears to indicate that officers will be required to pay, retroactively, premium increases which were declared by the health insurer after May 31, 1992. It is my understanding that such increases average approximately \$600 per year. However, the proposed award

seems to indicate that an officer insured under one health insurance plan may conceivably elect coverage under another plan and thus avoid, or at least reduce, the expense of premium increase. At best this portion of the award is ambiguous and defies understanding. At worst it is unconscionable to treat officers differently based upon the type of health insurance selected.

It appears the majority intends that if an officer was insured under a plan with a monthly premium of \$300 and the premium was increased by the sum of \$50 per month then the officer may change plans and obtain reduced coverage so long as the cost to the village does not exceed \$300 per month. However an officer insured under a different plan, with a monthly premium of only \$200, would be required to pay a monthly increase of \$100 (if that be the case) if he elected to remain in the same plan and the premium was increased by 50%.

I am unable to understand the difference between "equivalent" and "substantially" and for this reason I do not concur in the panel award which allows the village the right to reduce health insurance coverage at its own discretion.

DATED: Buffalo, New York
May , 1993


JOHN FENESS
Public Employee Panel Member