

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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In The Matter of The Interest Arbitration Between

TONAWANDA POLICE CLUB, INC.

AND

TOWN OF TONAWANDA, NEW YORK

PERB Case No.

CONCILIATION

IA93-001; M92-528

FINAL AND BINDING OPINION AND AWARD OF TRIPARTITE ARBITRATION PANEL

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRMAN:

Peter A. Prosper
Union College
Department of Economics
Schenectady, NY 12308

PUBLIC EMPLOYER PANEL MEMBER:

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Flaherty, Cohen, Grande, Randazzo
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135 Delaware Avenue
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EMPLOYEE ORGANIZATION PANEL MEMBER:

Creighton Felt, President
Tonawanda Police Club, Inc.
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APPEARANCES:

For the Tonawanda Police Club

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For the Town of Tonawanda

Norman J. Stocker
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Town of Tonawanda
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Pursuant to the provisions of Civil Service Law, Section 209.4, Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board, designated the undersigned on May 18, 1993, as the Public Arbitration Panel in the Interest Arbitration between the Town of Tonawanda Police Club, Inc., and the Town of Tonawanda. The Panel was charged by Section 209.4 to consider the following statutory guidelines:

- (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 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.
 - (vi) 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 bargain-
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ing agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

The Town of Tonawanda, New York, located in Erie County, has a population of approximately 91,269 residents, 18,474 of whom are residents of the Village of Kenmore, a village located within the Town. The Town covers 19.8 square miles, including the 1.1 square miles of the Village. The Village of Kenmore employs its own police department. The Town is a suburban area near Buffalo, New York.

The Town of Tonawanda Police Department is comprised of 101 full-time police personnel: 61 police officers, 20 detectives, 14 lieutenants and 6 captains, all of whom are part of the bargaining unit for which the Tonawanda Police Club is exclusive bargaining agent. The Town has three other employee groups: The Hourly Employee's Association, consisting of 217 unit members; the Salaried Workers' Association, consisting of 190 unit members; and 59 administrative employees who are non-union.

The parties began negotiations for a successor agreement on November 18, 1992, holding five negotiating sessions. When those meetings ended with all the issues still outstanding, the Police Club declared impasse in late April, 1993, and Charles Leonard was appointed mediator. When his mediative efforts failed

to resolve the parties' differences, the Police Club petitioned the State of New York Public Employment Relations Board for Compulsory Interest Arbitration on all outstanding issues. The undersigned were appointed arbitration panel members, and a hearing was held on July 27, 1993, in Kenmore, New York. At the hearing, the Town withdrew its proposal Number 8 that would continue only mandatory subjects of negotiation after the Agreement of 1991-92 expired. The Police Club accepted the Town's proposal No. 2, on calculating the daily rate of pay. All other items remained unresolved, and each party presented argument, evidence and other exhibits supporting its position on them. After the close of the hearing the Panel met in executive session on August 12, and August 30, 1993, and deliberated on each of the outstanding issues. The results of those deliberations are contained in the AWARD. The Police Club withdrew its proposal for an Education Incentive subsequent to the executive sessions. In arriving at its determination on each issue, the Panel has fully and carefully considered all of the data, exhibits and testimony received from both parties.

The following are the issues placed before the Panel for evaluation and determination: Work Schedules; Vacancies; Confinement Policy; Practices; Health Insurance; Health Insurance Premium For Retirees; Steady Shift; Briefing Preparation For Lieutenants; Salary Schedule; Longevity Payments.

WORK SCHEDULE

The current Agreement provides that the parties negotiate a change in the work schedule. The Town proposes deleting that section and replacing it with the following: "The Club recognizes the right of the Town to change work schedules." The Police Club opposes any change.

Position of the Town

The Town asserts that the working operation of a police department is complex and constantly changing. The current contract language requiring the Town to negotiate a change in the work schedule could result in an impasse concluding in interest arbitration. The Town's number one priority is service to the community, and if the Town determines that a work schedule change is needed to provide adequate service to the public, that change must be made even if it is unpopular with the Police Club.

Position of the Police Club

The Police Club opposes the proposed changes to this section. It argues that the Town has presented no evidence that a change is necessary. No problems have arisen with the current contract language, so there is no reason to alter it.

Discussion

The Town proposes the change to provide more flexibility when and if needed. There has been no demonstration that problems have arisen with the current contract language regarding work schedules. If problems arise, the Town can reintroduce its proposal in negotiations in the future.

The Public Arbitration Panel makes the following **AWARD**:

The Town's proposal regarding work schedules is denied.

VACANCIES

Article XIII, Section 13.05 contains provision for the filling of vacancies in the non-competitive positions of Records Review Officer, Detective, Records and Communications Officer and Field Training Officer, with appointment from the top ten qualified Police Officers who have submitted their names, based upon seniority and qualifications. The Police Club proposes that the D.A.R.E. Officer also be included in that grouping.

Position of the Police Club

The Police Club asserts that the position of D.A.R.E. Officer is appropriate for police officers, and should be staffed by police officers on a qualification and seniority basis. It states that the Town's opposition that the position requires

dealing with youths is invalid because the Juvenile Officer is appointed by selection from among the top ten police officers who apply.

Other police departments in the area have D.A.R.E. Officers selected by bid. Amherst, Cheektowaga and West Seneca all make the position biddable. In Amherst and West Seneca, the most senior qualified officer who submits his name is chosen. In Cheektowaga, the Chief must choose one person out of the top five senior officers who submit their names.

Position of the Town

The Town opposes the proposal on the grounds that the position is an "extremely sensitive job assignment" in that it requires dealing with young children about the availability and dangers of chemical substances. D.A.R.E. Officers not only represent the police department, but also represent and work under the guidance of the school system they teach in. The position requires special schooling which can only be obtained after the officer is interviewed and approved by the New York State Department of Criminal Justices Services. They are involved in the education of youth, and police officers may or may not have the ability to communicate effectively as the position requires. Jobs listed in the biddable category are positions that are oriented toward general police functions and interests. It believes that appropriate administrators should continue to be permitted to appoint the best person for the position, regardless of seniority.

Discussion

The Police Club has not presented sufficient justification to support its proposal. The Town's arguments regarding selection of a person who can communicate with youth, and who has the greatest skills and ability in teaching is more persuasive than the arguments of the Police Club. The Police Club simply asserts that the D.A.R.E. position includes an investigative function, and therefore it is appropriate to appoint a police officer.

Based on arguments presented by the two parties, the Public Arbitration Panel makes the following **AWARD**:

The Police Club's proposal for including the D.A.R.E. Officer in the list of positions in Article XIII, Section 13.05, is denied.

CONFINEMENT POLICY

The current Agreement provides that,

A Police Officer on sick leave shall not absent himself from his residence or place of confinement during his scheduled tour of duty except for necessary visits to his physician, or for such treatment as may be prescribed. A Police Officer wishing to be absent from his residence or place of confinement shall request permission for such absence from the Chief of Police or the Chief's designee.

The Town wishes to amend the section as follows:

Unless otherwise authorized by the Chief of Police, or his designated representative, a member of the Department on sick leave will not leave his/her residence or place of confinement except for:

1. obtaining professional medical treatment;
2. performing exercise prescribed in writing by his/her physician which is part of his/her recovery treatment, a copy of which must be submitted to his/her commanding officer prior to commencing such exercise.

Permission to leave the residence for reasons other than cited above must be documented, in writing, by the employee's commanding officer.

Position of the Town

The Town states that the purpose of its proposal is to tighten the requirements a police officer must adhere to while on sick leave. The Town states that it does not have a sick leave abuse problem and the adjusted language will not have any effect on the majority of the unit, but will affect only those who abuse the system.

Position of the Police Club

The Police Club asserts that the proposal is not needed, that there is no sick leave abuse among members of the Department. The current language is sufficiently restrictive that it prevents abuse, and no further tightening is required.

Discussion

The present confinement policy is relatively restrictive in that a Police Officer may not leave his home during work hours if he is on sick leave. The proposal by the Town would confine that Police Officer to his home twenty-four hours per day while on sick leave. The Town may not have the right to control an employee's actions during non-work hours. In addition, the Town admits that it has no sick leave abuse problem. If no problem exists, no changes are needed in the confinement policy.

Based on an evaluation of the presentations of both parties, the Public Arbitration Panel makes the following **AWARD**:

The Town's proposal on confinement policy is denied.

PRACTICES

Article XIV, Section 14.02 states that "established practices not specifically covered herein shall continue in force and effect during the term of this Agreement." The Town seeks removal of this Section.

Position of the Town

The Town argues that this type of section started in the first contracts under the Taylor law, and that years of bargaining have set terms and conditions of

employment specifically within the contracts. "A catch-all type language where no one knows what it means, or what it applies to, should be eliminated."

Position of the Police Club

The Police Club opposes the elimination of the Section. There are various past practices which would be lost if the section were to disappear from the Agreement. If the Town wishes to eliminate past practices, it must negotiate each one. The Police Club stands ready to negotiate over any of those that the Town wishes.

Discussion

Established past practices are as much a part of the contract between an employer and a union as are the provisions of the written Agreement. As everyone in industrial relations is aware, an established past practice is defined by specific criteria, such as recognition and acceptance over a substantial period of time by both parties. To eliminate the section on past practices would be to eliminate benefits which have been in existence for a number of years. If the parties wish to change any terms and conditions of employment, those changes must be negotiated. Therefore, the Public Arbitration Panel makes the following

AWARD:

The Town's proposal regarding past practices is denied.

HEALTH INSURANCE

The current Agreement provides Police Officers with their choice of one of four health insurance plans: Blue Cross 90/91, Independent Health, Community Blue, and Health Care. The monthly cost for family coverage varies from \$402.65 for Blue Cross to \$324.63 for Independent Health. The Town contributes one hundred percent to the premium, but a clause provides that if the premium rises more than twenty-five percent during the life of the Agreement, the parties will negotiate to determine who pays the additional premium.

The Town proposes several changes in the current clause on health insurance: A) The Town shall select a base plan each year, and employees choosing a more expensive plan shall pay the difference in premium cost between the base plan and their chosen plan; B) Increase certain deductibles, with the Town self-insuring the deductibles increase; C) Increase employee payment of prescription drugs from \$2.00 to \$5.00; D) Adopt a Pre-Care Program Rider.

Position of the Town

The Town proposes the changes in an effort to contain costs. In 1992, the Police Unit cost for health insurance was \$508,892. The increase in premium cost to the Town for 1993 is approximately \$56,888. The proposed changes would not diminish the health care coverage of unit employees, but would help reduce the Town's costs. The increase in deductibles to \$250.00 would decrease premium costs, but would have no effect on unit members because the Town would pay

the difference in deductible through self-insurance. The increase in prescription drug payment from \$2.00 to \$5.00 is a small increase to employees, but only to those who require prescription drugs. The cost saving to the Town is substantial from this change. The Pre-Care rider saves the Town a substantial amount of money, and has almost no effect on employees. It merely requires employees to notify authorities prior to seeking medical care and would, of course, not apply to emergencies.

Position of the Police Club

The Police Club states that it is sympathetic with the Town's desire to limit its costs for health insurance, and has co-operated with the Town in the past in its cost-saving efforts. It is sympathetic with several of the Town's proposals relating to health insurance, but has reservations regarding others. With respect to a base plan, the Town would obviously choose the least costly plan each year, creating havoc with employees who change plans as the Town designates a different carrier each year. The result of selecting a base plan is to either limit an employee's options or to force an employee to contribute to health insurance by paying the difference between the least costly plan and the employees preferred plan, if they differ. The increase in prescription drug payment from \$2.00 to \$5.00 is another increase in costs for the employee, and should be denied.

There have been problems with other groups in a Pre-Care plan, causing significant anxiety on people at a time when they are most vulnerable. The

savings on Pre-Care inclusion are not very high, and the disadvantages outweigh any advantages.

Discussion

The Town is attempting to minimize its payment for health insurance without substantially disadvantaging its employees, and its proposals accomplish that goal. However, several of its proposals create severe problems or disadvantages to employees. The problems associated with the Town selecting a base plan each year are substantial. While Town selection of a base plan will minimize its costs, the switch each year for employees would cause chaos amid a host of problems including pre-existing medical conditions, deductibles, inclusions and exclusions and others. In addition, it would require either a frequent change in carriers by employees or a contribution to health insurance premium of their regular preferred carrier.

The Pre-Care program has some difficulties, according to the Police Club, and those difficulties were not responded to by the Town. The Police Club cited several problems which could arise which would upset persons seeking medical care, a situation which might be avoided. There is not sufficient information on potential savings generated by acceptance of the Pre-Care Plan, and the Town has not addressed potential problems.

Based on the evidence and arguments presented by the parties, the Public Arbitration Panel makes the following **AWARD**:

The Town's proposal on selection of a base plan yearly is denied.

The prescription drug co-pay for all health insurance plans shall rise from \$2.00 to \$5.00 per prescription.

The Blue Cross hospitalization deductible Rider (C) shall be \$250.00. Such deductible shall be self-insured by the Town. An employee paying any portion of the deductible shall be reimbursed by the Town within ten (10) days of submission.

The Town's proposal on Pre-Care Program Rider 40 is denied.

HEALTH INSURANCE AFTER RETIREMENT

The current Agreement provides health insurance coverage for retirees at no cost to the retired employee, except if the retired person is employed elsewhere and receiving substantially equal coverage, or if his/her spouse is receiving equal coverage elsewhere and the retired employee is covered by that insurance. The current Agreement also provides that if a national health insurance program of equal coverage is enacted, the Town's payment shall cease. The Town proposes that the entire section be deleted.

Position of the Town

The Town states that in 1992, it paid \$147,961 for health insurance coverage for police retirees. The taxpayer can no longer incur this expense.

Position of the Police Club

The Police Club argues that withdrawing this benefit will create substantial hardship for retired employees. Their incomes are limited, and do not rise with the cost of living. Elimination of the Town's payment for retirees would erode their standard of living substantially, creating problems not only for the retirees, but for the community in general.

Discussion

The financial problems of the Town regarding health insurance for both current employees and for retirees is real. The above AWARD for health insurance for current employees considers that financial hardship. The financial problems encountered with retirees must be dealt with. As everyone knows, President Clinton has forwarded a proposal for universal health care coverage, and the proposal addresses both those working and those not working. Those not working include the unemployed, the never-employed and the previously employed (retirees). It is certainly not clear what the final program will be, assuming that an amended version passes Congress. The current Agreement contains a sentence which states that if there is enactment of a federal health

insurance program, the benefit would be eliminated. A final plan is not expected to reach Congress until sometime in 1994 at the earliest, and some predict that full coverage will not be effective for ten years, a time period too great to ease the Town's financial problems. The AWARD below acknowledges the Town's problems regarding retirees health insurance premium payments, and also the financial problems of retirees.

Based on an evaluation of the arguments and evidence presented by the parties, the Public Arbitration Panel makes the following **AWARD** applicable to those persons who retire after the date of implementation of this document:

The current clause regarding health insurance for retirees shall be amended to include the following: For those employees retiring after the date of implementation of this AWARD, if health insurance premiums for retirees increase by more than fifteen (15%) per cent in any one year, the increase greater than fifteen (15%) percent shall be shared equally by the retiree and Town, with a \$100.00 maximum payment per year by the retiree.

BRIEFING PAY FOR LIEUTENANTS

The Police Club proposes a new section which would pay each lieutenant assigned to a platoon, six (6) hours straight time per month, in addition to normal salary, as compensation for time spent preparing for briefings.

Position of the Police Club

The Police Club justifies its proposal on the grounds that lieutenants are required to be at work twenty-five minutes prior to their shift to approve time off requests, and to conduct other Department business. Because the additional time is required, the Town should pay for it. The alternative is to permit lieutenants to leave twenty-five minutes early, but since the Town does not permit them to leave early, payment is appropriate.

Position of the Town

The Town believes that it should not pay lieutenants any amount over their regular salary. All platoon personnel are required to work an 8½ hour day based upon the 4 and 2 schedule, and under normal circumstances this provides adequate time for a lieutenant to prepare a briefing without working excess time. When it is necessary for a lieutenant to be available 25 minutes before the start of a briefing, that lieutenant is excused at the start of the relieving shift's briefing, provided there are two lieutenants working on the shift being relieved. Early relief often provides less than the assigned 8½ hours. Lieutenants not assigned to give a briefing are not required to arrive early for work, yet are still permitted to leave when the relieving shift's briefing is completed. Lieutenants are compensated at a rate twenty percent above a police officer's pay, and that premium considers any extra work required. When lieutenants are required to remain beyond their

normal work hours they are compensated at time and-a-half as are all other members of the bargaining unit.

Discussion

It is not clear that lieutenants are required to work an additional six hours per month, or that they are required to work more than their shift requirement. There is some confusion between the Town's understanding of when a lieutenant may leave work and the Police Club's understanding. In addition, a lieutenant is an administrative officer who is expected to accept additional responsibilities. The Town recognizes this by paying lieutenants twenty percent more than it pays a Police Officer.

Based on arguments and testimony presented by the parties, the Public Arbitration Panel makes the following **AWARD**:

The proposal of the Police Club regarding an additional six hours pay per month for lieutenants for preparation for briefings is denied.

WORK SCHEDULE -- SHIFTS

The current work schedule encompasses a rotating shift for Police Officers. The current Agreement contains the following clause in Article VI, Section 6.01: 'The parties agree to negotiate a change in the work schedule. Pending

resolution, the Town may implement the change. The parties agree that all negotiations shall begin as soon as possible."

The Police Club seeks to implement a steady shift with no changes in other elements of the work schedule. Choice of shift would be by seniority.

Position of the Police Club

The Police Club argues that movement to steady shifts will cause no harm to the Town, its residents or police protection in general. Other groups in the Town are on steady shifts such as the Paramedics. Most other police departments, not only in surrounding areas, but throughout the State of New York and throughout the country, are on steady shifts. Cheektowaga has had steady shifts since before 1970, West Seneca since before 1975, Amherst since 1979, and Hamburg before 1980. Movement to a steady shift is not a radical change. Most other departments have moved to steady shifts long ago. The Police Club wants to move into the twentieth century.

People's lifestyles are different. Some Police Officers will choose the shift with which they are most comfortable. The Police Club estimates that there will be a mix of younger and more senior Police Officers on each shift.

Studies have demonstrated conclusively that shift work brings insomnia, mental confusion, mental lapses. In a study published in the *American Journal of Public Health*, it was stated, "The results of this study are consistent with laboratory investigations that have demonstrated that sleep deprivation and

misalignment of circadian phase as experienced during rotating shift work are each associated with frequent lapses of attention and increased reaction time, leading to increased error rates on performance tasks." The Police Club presents a number of excerpts from other studies, all concluding that shift work is deleterious to physical and mental health, and productive efficiency.

The Police Club also cites a statement from a book by O. W. Wilson, *Police Administration*, to wit: "Police duties at night are quite different from police duties during the daytime, and the officer should not be rotated if the advantages of specialization are to be derived and if the officer's skill is to be developed in handling certain types of situations."

The Police Club asserts that most of its members are strongly in favor of a move to steady shifts.

Position of the Town

The Town strongly opposes any type of steady shift. It asserts that steady shifts compromise an administrator's ability to coordinate and direct personnel effectively.

Lack of direct contact and communication between the administration and steady afternoon and evening shift workers causes a breakdown in the uniformity of policy implementation and decision-making. The Town cites several studies in support of its position regarding the breakdown of communication. It also states: "Clearly the steady shift situation creates a lack of temporal propinquity which

creates the separation necessary to negatively affect interaction between policy makers and subordinates who do not work the day shift." I believe that a reasonable translation of that statement is that a steady shift means that the brass do not often see and speak with those who work the evening and midnight shifts.

The Town also states that because shift selection is by seniority, the responsibility for assignment of personnel is taken from the administration without regard for any consequences that may result from imprudent staffing. Day shifts tend to be overstaffed with veteran officers; midnight shifts are overstaffed with novice officers.

Officers with special skills have been equalized among the three shifts to assure equal expertise and efficiency, and that equalization is sure to be upset by steady shifts.

The Town asserts that because shifts would be selected by seniority, a Police Officer being considered for promotion is in a dilemma because promotion places him at the bottom of the seniority ladder in the new position, creating a shift choice problem.

The Town also asserts that steady shift assignments tend to limit an officer's exposure to all facets of the job and all elements of society. "Each of the shifts focuses on substantially different aspects of police work and on entirely different types of clientele. Officers assigned to only one shift may lose the overall picture of the community and tend to over-focus on the more prevalent problems of their particular shift."

It should be noted that all police officers currently employed by this department accepted their positions with full knowledge of the rotating shift system employed by this Department. The present system treats all officers equally and fairly with all patrol personnel sharing equally in work load and time distribution. This system should continue in force.

Discussion

Both parties present quotes from studies to support their particular points. The Police Club asserts that movement to a steady shift should cause no problems, and that rotating shifts cause physical and mental health problems. It also asserts that each shift would be populated by police officers with a range of seniority. The Town asserts that a steady shift will result in a decrease in communication which will cause untold problems. It asserts that with a steady shift, management will be deprived of the best and most effective options for achieving its goals. There will be a disequilibrium in special skills among the shifts. Good management technique depends on active intervention by management in the placement of personnel. Police Officers may decline promotions in order to remain on a preferred shift.

All the above arguments by both the Police Club and the Town are assertions. There has not been evidence or other proof presented to support those assertions. Thus, it is not possible to assess the impact of a movement to steady shifts on efficiency, health, effectiveness of managerial ability, or any other

relevant aspect of police protection. Although the parties have been negotiating movement to a steady shift for some time, neither party has actually evaluated the impact of a steady shift on the various aspects mentioned above. Perhaps a steady shift will not disrupt protection of persons and property, and may actually increase productivity and effectiveness. Perhaps a steady shift will decrease the effectiveness of management, perhaps not. In their exuberance to support their position regarding steady shifts, both parties have neglected to evaluate the realistic advantages and disadvantages of the steady shift concept relative to the current rotating shift. The Public Arbitration Panel believes that such discussion and evaluation must take place prior to the acceptance or rejection of the concept. Therefore, the Public Arbitration Panel makes the **AWARD** below to encourage that discussion and evaluation.

It is noted that lieutenants and captains, although members of this bargaining unit, are administrative personnel. Their inclusion in possible steady shift selection may cause problems in efficiency of operations or it may not. The parties shall discuss the inclusion of lieutenants and captains through the committee structure awarded below, and the their inclusion or exclusion shall be set by the qualifications stated in the Award.

The Public Arbitration Panel makes the following **AWARD**:

The Town and the Police Club, within ten (10) days of the implementation of this AWARD, shall each appoint four (4) persons to a committee established to study and evaluate the advantages and disadvantages of moving to a steady shift of working patrol personnel, lieutenants and captains. That committee shall meet and, within sixty (60) days of the implementation of this AWARD, vote on the implementation of a steady shift. A separate vote shall be taken on the inclusion of lieutenants and captains in the group. If there is no vote, or if there is no majority after a vote, either for or against a steady shift, either party may demand implementation of interest arbitration. If either party demands interest arbitration on this issue, such shall be pursued under the rules and procedures of the New York State Public Employment Relations Board. The arbitration panel shall hold a hearing where each party shall be afforded the opportunity to present its findings on the advantages and disadvantages of the steady shift. Lieutenants and captains shall be included in the consideration of steady shift only if the two parties agree to their inclusion. Absent mutual agreement, the arbitration panel shall make a decision regarding steady shift for patrol personnel only, exclusive of captains and lieutenants. The arbitration panel's decision shall be final and binding on the parties, as provided by law.

SALARY

The Police Club proposes a nine and-a-half (9.5%) percent increase in salary for 1993, and a nine and-a-half (9.5%) percent increase in salary for 1994.

The Town proposes a salary increase of three (3.0%) percent increase in each of those two years.

Position of the Town

The Town's fiscal budget increased by 3.7%, but the tax levy increased by 6.5% due to a reduction in revenue, primarily state aid over the past two years.

The Town is unique in several respects from surrounding communities, and that uniqueness must be considered in evaluating comparisons. Erie County concluded a revaluation of assessments, placing all communities at market value instead of varying percentages of value. Because industry was receiving a greater tax burden in the past, the revaluation shifted a large portion of that burden back to the homeowner. The Town of Tonawanda is heavily industrialized, so the shift of tax burden back to the homeowner had tremendous impact. The Town states that it had three choices: (1) impose an approximate tax increase of twenty-four percent on homeowners; (2) shut down selected services and programs and reduce employment; (3). adopt a variation of revaluation under the Real Property Tax Law called "Homesteading." The Town chose a combination of all three.

The Town has seen a decrease in its tax base over the past decade mainly due to decreases in the value of industrial property. Niagara Mohawk Power Corporation is seeking a \$100 million reduction in the assessment of its Huntley Generating Station for the years 1991, 1992 and 1993.

The Town of Tonawanda is no longer comparable to Amherst, Cheektowaga and West Seneca. Those towns have a continued potential for growth, while the Town of Tonawanda does not. The Town is 99 percent saturated. Industrial properties are older and larger than those of other towns, and therefore are not

appreciating in value. Almost all major non-residential construction is exempt from taxes for 7.5 years due to incentives granted by Erie County Development Agency.

At the same time, the Town is losing industry: Ashland Oil, Western Electric, Roblin Steel, General Motors Foundry, Frontier Industries, J. H. Williams, Recticel, Allied Chemical, Roadway Express just to mention a few.

"Homesteading" had been adopted by the City of Buffalo, the City of Lackawanna, the City of North Tonawanda and the City of Niagara Falls. Homesteading has the disadvantage of placing a higher burden on industry and commercial property, resulting in the reluctance of new industry to come to the Town.

The Town's operating budget consists of ten separate funds and districts which are separate accounting entities each with its own tax levy. The Police Department's budget is contained in the General Fund - Town Outside Village budget and represents over 90 percent of that budget. Although the total tax levy for 1992 for all ten operating funds and districts increased by 6.4%, the tax levy of the General Fund - Town Outside Village budget increased by 27.9%. For 1993, the figures are 6.5% and 23.8% respectively. This represents a 58.4% tax increase for the General Fund - Town Outside Village over a two year period. The reasons for the increase are loss of state aid, reduction of fund balance and increased costs associated with police retirement.

Position of the Police Club

The Police Club argues that its members' salaries lag behind police officers in other units in comparable communities in Erie County, and a catchup must be made.

The Town's argument of the "uniqueness" of the Town of Tonawanda is invalid. The Town has been in existence for some time, and has a tax base to support its functions, including police and fire protection.

The Town of Tonawanda has fewer police officers per 1,000 population than do comparable communities. Amherst has .734 police officers per 1,000 population; Cheektowaga, .876; Hamburg, .919; West Seneca, .753; and the Town of Tonawanda, .740. The Town saves money by having fewer police officers doing more work than police officers comparable communities.

The starting salary for police officers in 1992 in the Town of Tonawanda is lower than the starting salary for police officers in Amherst, Cheektowaga, West Seneca and Hamburg. Total compensation for police officers after ten years service is 8.5% lower in the Town of Tonawanda than the average in the four above-named communities.

Because the Town of Tonawanda Police Officers must work one-half hour more per day than do police officers in other jurisdictions, a comparison of hourly rates of pay displays a greater disparity. On an hourly rate basis, Police Officers in the Town of Tonawanda receive 10.2% less than the average of Amherst, Cheektowaga, Hamburg and West Seneca.

The Town still has a fund balance of \$984,000, some of which can be used to fund the salary requests of the Police Club. In assessing the financial picture of the Town, it can be concluded that although there are some financial strictures and limitations, the salary proposal of the Police Club is well within the ability of the Town to pay.

Police Officers in the Town of Tonawanda have lower salaries and compensation than police officers in similar jurisdictions in Erie County. The Town has the ability to grant increases which will permit its police officers to narrow the gap in salaries and benefits, and should be directed to do so.

Discussion

Both parties accept the proposition that the relevant area for comparison of salaries, economic conditions, and other terms and conditions, is Erie County. Both use Cheektowaga, Amherst and West Seneca, and the Police Club adds Hamburg in its grouping.

There is some degree of acceptance that the Town of Tonawanda is different from other jurisdictions in Erie County. The largest concentration of population in the Town is located in the Village of Kenmore, which has its own police force and other municipal functions. The Town has very little excess land for building. Its industrial and commercial properties are, overall, older than those of comparable communities. The Town has adopted "Homesteading" provisions

of the Real Property Tax. These factors set the Town of Tonawanda apart from other similar size towns located in Erie County.

On the other hand, the Town must provide police protection and other services. Its police department employees are paid less, overall, than are police in most comparable communities. Although the tax base is decreasing, sufficient taxes have been raised to continue operations on adequate levels. The Town has had a fund balance for the past few years, and the current balance is \$984,000. The Town is not substantially financially disadvantaged compared with comparable communities in Erie County.

State aid to the Town has declined. Industries are leaving the Town, in part because of the impact of the reassessment. The flight of industry and commercial enterprises from the Town places a heavier tax burden on residents of the Town. There is a limit to the increase in taxes which can be absorbed by residents.

The Award below, combined with other Awards made in this document relative to financial items, considers all the above factors. After examination and evaluation of all testimony, data, exhibits, arguments and other submissions by both parties, the following **AWARD** is made:

The salary schedule for 1993 shall be increased by three (3.0%) percent on January 1, 1993. The salary schedule shall be increased by one (1.0%) percent on July 1, 1993.

The salary schedule for 1994 shall be increased by three (3.0%) percent on January 1, 1994. The salary schedule shall be increased by one and-a-half (1.5%) percent on July 1, 1994.

LONGEVITY PAYMENT

The current Agreement contains a schedule for payment of longevity increases after five years of service yearly to twenty years of service. The Police Club seeks improvement in that schedule. The Town resists.

Position of Both Parties

The arguments presented by both the Police Club and the Town reflect the arguments regarding finances presented above and shall not be repeated here. The Town asserts that its ability to pay is impaired; the Police Club asserts that the Town has sufficient funds to provide financial benefits.

Discussion

The concept of longevity payment has long been accepted in industrial relations. It is viewed by many as payment for loyal and dedicated service. It also is payment for increased skills resulting from experience on the job. As an employee gains greater tenure on the job, his loyalty is rewarded through longevity payments. He is also a more efficient employee because he is more experienced and more familiar with the required tasks.

Teachers receive a "step" increase each year for fifteen or twenty years. For the Town of Tonawanda, the salary schedule provides a step for the first four years, and then a \$50.00 per year longevity payment up to twenty years service. The AWARD below adjusts the longevity payment.

Based on the data, evidence and arguments presented by both parties, and in consideration of AWARDS made on other financial items, including salary increases, the Public Arbitration Panel makes the following **AWARD**:

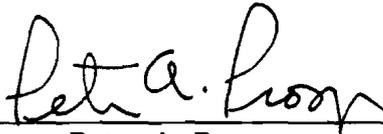
Longevity Payments for 1993 shall be increased by \$100.00.

Longevity Payments for 1994 shall be increased by \$100.00

All other provisions and language contained in the Agreement are hereby continued, except as specifically modified in this AWARD.

Respectfully submitted,

Date: 12-14-93



Peter A. Prosper
Public Panel Member and Chairman

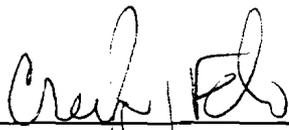
I (concur) (do not concur) with the above AWARD

Date: _____

Joseph Randazzo, Esq.
Employer Panel Member

I (concur) (~~do not concur~~) with the above AWARD

Date: 11-23-93



Creighton Felt
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF) ss:

On this _____ day of _____, 1993, before me personally came and appeared JOSEPH RANDAZZO, Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

STATE OF NEW YORK)
COUNTY OF) ss:

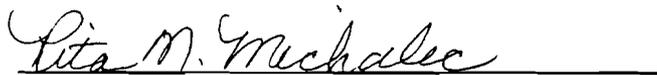
THOMAS M. FINN
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES MARCH 30, 1995

On this 29 day of Nov., 1993, before me personally came and appeared CREIGHTON FELT, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



STATE OF NEW YORK)
COUNTY OF Schenectady) ss:

On this 14TH day of December, 1993, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



RITA M. MICHALEC
Notary Public, State of New York
Qualified in Saratoga County
No. 7926980
Commission Expires June 30, 1994