

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

IN THE MATTER OF THE INTEREST ARBITRATION

- between -

THE TOWN OF LANCASTER

- and -

THE LANCASTER CAYUGA CLUB PBA

PERB CASE NOS. IA96-017; M96-072

FINAL AND BINDING

OPINION AND AWARD

OF TRIPARTITE

ARBITRATION PANEL

PUBLIC ARBITRATION PANEL MEMBERS

Miriam Winokur
Neutral Member and Chairperson

Chief Thomas E. Fowler
Employer Designated Panel Member

Timothy R. Murphy
Union Designated Panel Member

APPEARANCES

For the Cayuga Club:

Richard H. Wyssling, Esq.
Wyssling, & Montgomery
1230 Delaware Avenue
Buffalo, NY 14209

For the Town:

William L. Holcomb, President
William L. Holcomb Associates, Inc
1965 Sheridan Drive
Buffalo, NY 14223-1204

PERB PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

APR 09 1997

CONCILIATION

BACKGROUND FACTS

The Town of Lancaster ("Town") covers a total of 36.64 square miles including the Villages of Depew and Lancaster. The Town reports that according to the 1990 Census there were 6,399 residents in the Village of Depew, 11,940 in the Village of Lancaster and 13,842 in the Town outside the Villages for a total population of 32,842 (Town Exhibit 4). The Lancaster Cayuga Club PBA ("Union", "Club" or "PBA") is the bargaining representative for all Police Officers in the Town's Department of Police ("Department") below the rank of Captain and at the time of the instant hearing, there were two Detectives, five Lieutenants and twenty-three Patrol Officers in the Bargaining Unit. During December 1995, after negotiations between the parties they agreed to and executed a Collective Bargaining Agreement ("Agreement" or "Contract") which was effective January 1, 1996 to December 31, 1998 (Joint Exhibit 1). Included in the Agreement was language under Section 17.02 - Residency, which provided that: "Residency shall be negotiated by the parties on or after January 15, 1996." On January 19, 1996, PBA President Timothy R. Murphy ("Murphy") wrote to Town Supervisor Robert Giza ("Giza") requesting negotiating dates prior to February 9, 1996. The issue of residency remained unresolved after an initial meeting between the parties on February 8, 1996, and the Union then requested a second negotiation date. By letter dated March 12 1996, the Town's Chief Negotiator William L. Holcomb ("Holcomb") responded:

"I regret the delay in responding to our commitment to set another meeting to discuss this issue of residency. During the interval, I have been reviewing this matter with Town officials to gain their guidance and direction.

Although we are available to meet further, we feel that in fairness to the PBA it should be aware of the Town's position.

The Town holds that it does not waiver from its position as expressed by the new Town Board (effective 1/1/96), that it does not desire to expand upon the current policy of residency as it affects all Town employees. It feels that there are many advantages and benefits to having a residency policy and would prefer not to see it expanded.

We respect your position that the previous administration may have left the issue open, but the Board holds to its herein described position.

Please advise us of your further intentions in this matter."

On April 1, 1996, Giza and Murphy discussed the residency issue and by letter dated April 2, 1996, the Union's Negotiating Committee ("Committee") informed Giza that the PBA would take the issue to the general membership for a vote to either declare impasse or continue negotiations. At a meeting on May 6, 1996, the Union's general membership requested that the Committee declare impasse and by letter to Giza dated May 8, 1996, the Union confirmed that it would. Thereafter the Club filed a Declaration of Impasse with New York State Public Employment Relations Board ("PERB") on May 22, 1996 and the parties engaged in mediation with a PERB appointed mediator in an attempt to finalize the matter, but were unsuccessful.

On August 30, 1996, the Club filed a request for compulsory interest arbitration with PERB and pursuant to the provisions contained in Section 209.4 of the Civil Service Law, on October 1, 1996, Pauline R. Kinsella, Chairperson of the designated an Interest Arbitration Panel ("Panel") to make a just and reasonable determination regarding the matter in dispute between the Town and the PBA. Miriam Winokur was designated as Neutral Chairperson, Richard J. Sherwood as Employer Designated Member and Timothy R. Murphy as Union designated member. By letter dated February 3, 1997, PERB confirmed with all concerned parties that the Town had advised that it was substituting Police Chief Thomas E. Fowler for Richard J. Sherwood, Esq. as its' designated member.

The hearing was held on February 18, 1997, in Lancaster, New York, at which time the parties were provided with the opportunity to present evidence and testimony in support of their respective positions. Richard H. Wyssling, Esq., represented the Club and William L. Holcomb represented the Town. Neither party offered the testimony of witnesses. At the hearing's conclusion the Panel met in executive session and deliberated on the issue before them, thoroughly reviewing and considering the data and arguments of both parties. The positions put forth by each party are herewith summarized followed by a discussion of their submissions. The results of the Panel's deliberations are contained in the Award, which is the result of compromises induced by the Panel Chairperson, which represent an accommodation of the concerns of each party, and constitutes the Panel's best judgment for a just and reasonable solution of the impasse which gave rise to these proceedings.

ISSUE

The parties agreed and stipulated that the issue before the Panel is:

Should residency be modified from the current limitation of having to reside in the Town? If so, what should the remedy be?

RELEVANT CONTRACT PROVISION

Section 17.02 - Residency

Residency shall be negotiated by the parties on or after January 15, 1996.

APPLICABLE STATUTORY PROVISION

Section 209.4

(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 bargaining 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.

THE PARTIES POSITIONS

The Club

The Union has proposed for a residency requirement that an Officer in the Department have 10 Years of service as a Police Officer in New York State and reside within 50 Miles of Headquarters. The Club asks that the Panel consider what is fair and reasonable in light of other municipalities, contending that the only reasonable comparison is with comparable municipalities in Erie County that have full-time Police Departments. The Union submits data to establish that Erie County is comprised of the following Towns and Villages (Union Exhibit A):

Towns:

Alden	Concord	Marilla
Amherst	Eden	Newstead
Aurora	Elma	North Collins
Boston	Evans	Orchard Park
Brant	Grand Island	Sardinia
Cheektowaga	Hamburg	Tonawanda
Clarence	Holland	Wales
Colden	Lancaster	West Seneca

Villages:

Akron	Farnham	Orchard Park
Alden	Hamburg	Sloan
Angola	Kenmore	Springville
Blasdell	Lancaster	Williamsville
Depew	North Collins	East Aurora

That the following Towns and Villages do not have full time Police Departments (Union Exhibit B):

Towns:

Alden	Collins	Newstead
Aurora	Concord	North Collins
Boston	Eden	Elma
Brant	Grand Island	Sardinia
Clarence	Holland	Wales
Colden	Marilla	

Villages:

Akron	Orchard Park (full-time policing by Town of Orchard Park Police Dept.)
Alden	Sloan
Angola	Springville
Blasdell	Williamsville (full-time policing by Town of Amherst Police Dept.)
Gowanda	Farnham
North Collins	

The Club also reports that including Lancaster, eight Towns and five Villages have full-time departments, among them the Towns of Hamburg and Evans and the Village of Hamburg which require residency within the municipalities, while the remaining Towns and Villages have the following residency requirements (Union Exhibit C):

	<u>MUNICIPALITY</u>	<u>YEARS OF SERVICE</u>	<u>LIMITATION</u>
Towns:	*Amherst	15	within 30 miles of HQ
	*Cheektowaga	15	Anywhere in Erie Cty
	Orchard Park	12	Anywhere outside of Town w/in 30 mi. of HQ
	*West Seneca	15	Anywhere outside of Town w/in 30 mi. of HQ
	Tonawanda	8	within 30 miles of HQ
Villages:	*Depew	15	Anywhere outside of Village
	East Aurora	NONE	Within 15 miles of Village or Town
	Kenmore	NONE	No Limitations
	*Lancaster	15	Within 30 miles of HQ
	AVERAGE	10.5	within 54 miles of HQ

*located within 48 miles of Town of Lancaster HQs

The Club argues in response to the Town's position that the current Board should not be bound by section 17.02, that Boards sit for two years while the parties have negotiated multi-year agreements which have consistently bound successor Boards to the terms of the Contract; that the current Agreement is a three year document that was signed in December 1995, commenced in January 1996, and contains terms and conditions which are binding on Boards not yet elected; that there are clauses in the Agreement that don't start until 1998, and a number of things in the Agreement start in different years. The Club does not dispute the Town's claim that the issue of residency is non-mandatory, but it contends that the issue is permissive because while the Town had the unilateral right to establish the residency requirement in 1978, the Town agreed to negotiate over the issue of residency during negotiations for the current Agreement, making the issue permissive.

The Town

The Town objects to any change in the residency requirement, contending that the Town Board which succeeded the Board that executed the CBA should not be burdened with a negotiation requirement without the opportunity to participate in a complete contract negotiation. The Town contends that the Interest Arbitration Panel should defer this issue until the next negotiation period; that the "new" Town Board would not have executed the contract with that inclusion; that the Chief was unaware of the negotiation status; that the "public policy" of the Town is reflected in the resolution approved June 5, 1978 which established residency requirements (Town Exhibit 1); that the opportunity to favorably reside in the Town is confirmed by a map which describes thirty-six (36) square miles (Town Exhibit 5); that the scope of the Town limits would delay officer response in "emergency" call-outs, examples of such call-outs being the motorcycle gang "shoot out" at Lancaster Speedway when all officers were called in, and a Thruway bus accident when an estimated twelve (12) officers were called in.

The Town also contends that the physical presence in the Town, particularly in transporting of officers, is a visible crime deterrent; and that at the least, the "new" Town Board should not be bound by this contract provision for future considerations in that Sub-section 4 of the Public Officers Law, Section 30 was usurped by the previous Board, therefore new officers and promoted officers should maintain residence in the Town per the June 5, 1978 resolution (Town Exhibit 1). The Town submits PERB decisions ¶13-3051; ¶12-3079; ¶16-4527 (Town Exhibits 6, 7, 8) to support its' position. The Town claims that the previous Town Board agreed to the proposal which resulted in Section 17.02 being incorporated in the Agreement two days before leaving office and the Panel has a responsibility in the interest and welfare of the Public and it wants the Panel to conclude that the present Board did not have the opportunity to negotiate regarding Section 17.02; that the only thing left to negotiate was residency and this Panel has the ability to fashion a remedy to address that.

DISCUSSION

A majority of the Panel feels there is no merit to the Town's argument that the present Board should not be burdened with a negotiation requirement under Section 17.02 without having had the opportunity to participate in a complete contract negotiation. The PERB decisions cited by the Town to support its position are not applicable to the instant case, since none of the employers in those cases had agreed to negotiate the issue of residency. In addition, in Part 5 Opinions of Counsel (¶16-5001) PERB notes the "...opinion is advisory only, since binding determinations are restricted by statute to the Board in actual cases presented to it." (Town Exhibit 9 - emphasis added). A majority of the Panel feels there is no proof that the Town had refused to negotiate the Union's proposal or that the Town had declared at any time during negotiations that it was a non-mandatory subject of negotiation.

The Town's contention that the present Board should not be bound by the actions of the previous Board is not reasonable. The fact that the current Board did not participate in the negotiations for the contract containing Section 17.02 is irrelevant, since the uncontradicted facts establish that the Union entered into negotiations with the Town in good faith and the Agreement that resulted from those negotiations was duly executed by both parties. Notwithstanding that the Town had the right to unilaterally impose a residency requirement in 1978, when it agreed to negotiate the issue of residency the Town effectively waived the right to object to its commitment. As correctly noted by the Club, if the Town were to prevail, that would render without force and effect collective bargaining agreements which include terms and conditions which extend beyond the expiration of the term of office of sitting town boards. Followed to its logical conclusion, the parties would have to re-negotiate a contract every time there was a change in the Board. The current Town Board is bound by the Agreement containing Section 17.02 and to now take the position that it is not binding on the Town renders the bargaining process meaningless.

The Town has also asserted that it opposes a change in the residency requirement because there is a need for immediate response time and it cited two occasions in the past when it had to call in officers from the Department. A majority of the Panel felt there was insufficient proof to support the

Town's argument that a change in the residency requirement would have a negative impact on the Department's function or on the well-being of the Town.

Under Section 209.4(v)(a), in addition to any other relevant factors, the public arbitration panel is obligated to consider comparisons of conditions of employment of the employees involved in the arbitration proceeding with the 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. The Town did not contradict the information supplied by the Union in Exhibit C that established that a majority of the eight Towns and five Villages that have full-time departments also have residency requirements which extend beyond their jurisdictional boundaries.

On the other hand, the comparability data supplied by the Union does not support its proposal that an Officer in the Department should only have served 10 Years of as a Police Officer anywhere in New York State and reside Within 50 Miles of Headquarters. According to Union Exhibit C, without exception, those departments which do allow residency outside the jurisdictional boundaries only require that the years of service that are credited for eligibility must be for service within the department. In addition, when one considers the overall mileage as obtained from the data provided, extending residency limits to fifteen (15) miles outside the jurisdictional boundaries of the Town would approximate the average of what is currently available to police officers in similar departments in contiguous municipalities, as well as in the County.

AWARD

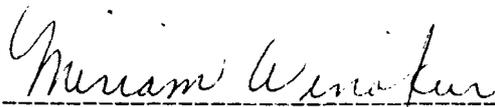
The instant record establishes that a majority of full-time departments in municipalities contiguous to the Town do not limit residency to the municipality. After due consideration of all arguments and evidence submitted by the parties, the Interest Arbitration Panel unanimously makes the following Award:

A. Except as is otherwise stated herein, officers with 15 years or more of service with the Town of Lancaster Police Department can reside up to 15 miles from the jurisdictional boundaries of the Town of Lancaster, exclusive of Canada.

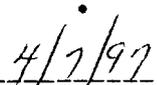
1. The above residency provisions also applies to detectives serving in that position at the time of execution of this award.
2. Detectives appointed after the date of execution of this award shall be required to live in the Town of Lancaster, including the Village of Lancaster, and the Town of Lancaster portion of the Village of Depew.

This provision shall not be subject to negotiation in the future except upon mutual consent of the parties to the Town of Lancaster/Cayuga Club Contract.

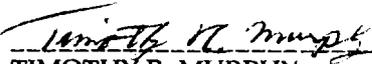
B. Any officer living outside the Town of Lancaster will be required to provide his own transportation to and from work. He shall be required to report for duty at least 10 minutes prior to the start of his scheduled shift. He shall be required to remain at duty until the end of his scheduled shift, or until that officer's relief arrives at headquarters, whichever event first occurs.



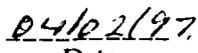
MIRIAM WINOKUR
Public Panel Member and Chairperson



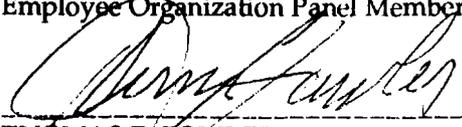
Date



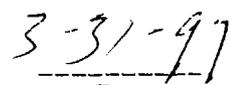
TIMOTHY R. MURPHY
Employee Organization Panel Member



Date



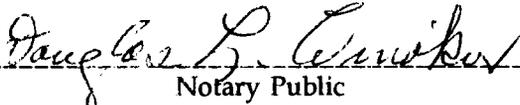
THOMAS E. FOWLER
Employer Panel Member



Date

STATE OF NEW YORK)
COUNTY OF ERIE) SS

On this ^{7th} day of ~~March~~ ^{APRIL}, 1997, before me personally came and appeared MIRIAM WINOKUR, 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 she executed the same.



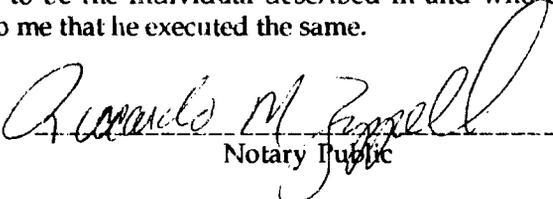
Notary Public

DOUGLAS L. WINOKUR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES DECEMBER 31 1998

STATE OF NEW YORK)
COUNTY OF) SS

On this ^{21ST} day of March, 1997, before me personally came and appeared TIMOTHY R. MURPHY, 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.

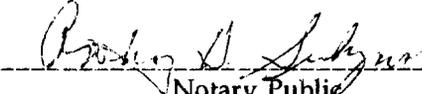
Riccardo M. Zuppelli
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 3-21-98



Notary Public

STATE OF NEW YORK)
COUNTY OF) SS

On this ^{3rd} day of March, 1997, before me personally came and appeared THOMAS E. FOWLER, 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.



Notary Public