

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

In the Matter of the Compulsory
Interest Arbitration

DEC 29 1997

CONCILIATION

Between

Town of Ellicott

OPINION AND
AWARD

And

PERB Case No
IA 96-038:
M96-360

Town of Ellicott Police
Civil Service Employees Association
Local 1000, AFSCME, AFL-CIO

Before:	John G. Watson	-	Neutral Chairperson
	Mark Higgins	-	Employee Organization Panel Member
	Norman J. Stocker	-	Public Employer Panel Member

Appearances on Behalf of the Parties:

Richard A. Maggio, Labor Relations Specialist for CSEA

Sergeant Timothy S. Johnson, CSEA President

Robert Van Every, Esq., Attorney for the Town

INTRODUCTION

This Interest Arbitration arises under the provisions of Section 209.4 of the New York Civil Service Law. By letter dated April 7, 1997, from Richard A. Curreri, Director of Conciliation for the New York State Public Employment Relations Board (PERB), this Panel was advised it had been designated as the Panel Members of this Compulsory Interest Arbitration Panel and that John G. Watson would serve as the chairperson of the Panel. The function of the Panel was to make a just and reasonable determination of the parties' bargaining impasse between the Town of Ellicott (hereafter referred to as the Town) and the Town of Ellicott Police CSEA (hereafter referred to as the Association). Pursuant to statutory authority, the Panel conducted a hearing in Ellicott on June 19, 1997, at which time the parties were afforded a full opportunity to make their arguments, offer exhibits and the testimony of witnesses, and to otherwise engage in a defense of their respective contentions. Each of the parties submitted written presentations with supporting documentation to the Panel.

During the hearing the Association was requested to verify some of the data contained in Union Exhibit 1. In a letter dated June 25, 1997, Donald J. Kelly, Deputy Director for Labor Relations/Research for CSEA, noted that the salary figures submitted by the Association in Union Exhibit 1 are the current wages available as of April of 1997 and were obtained by

reviewing contract language or by calling the actual jurisdictions when contract language was not available. He also noted that for the Towns of Eden, Evans, Gates, Hamburg, Orchard Park, Tonawanda, and West Seneca, and for the City of Dunkirk, the salary figures are for Lieutenant as first-level supervisors rather than Sergeant as was listed in the comparison.

At the conclusion of the hearing, the parties agreed to submit post-hearing briefs to be postmarked no later than August 1, 1997. A post-hearing letter was received from the Association in a timely fashion. The Town determined not to submit a post-hearing brief.

The following are the open issues in the instant Interest Arbitration:

1. Article 15 - Insurance
2. Article 17 - Sick and Other Leaves, Section 1
Article 22 - Retirement, Section 3
3. Article 17 - Sick and Other Leaves, Section 5
Article 23 - Holidays, Sections 1, 2, and 5
4. Wages

The Panel met in Executive Session in Buffalo on August 16, 1997. In addition, a conference call was conducted among the Panel members on August 21, 1997. A second conference call was conducted among the Panel members on October 30, 1997. Several additional phone calls were made by the chairperson to the other panel members between November 1, 1997, and December 8, 1997. The Panel has extensively reviewed the positions of the parties including their respective testimonies at the hearing as

well as their written documentation in rendering the Interest Arbitration Award. The Panel has also taken into consideration the provisions of Section 209.4(c)(v) which provides:

In arriving at such a 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 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 bargaining 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.

Comparable Communities Issue

Both of the parties very competently argued the "Comparable Communities Issue" for purposes of the Panel's evaluation of the various proposals which are the subject of this Interest Arbitration Proceeding. It is obvious, however, the parties have

been selective in applying the provisions of a particular community's police contract to a given issue. While both of the parties cited a number of comparable communities throughout the written information provided to the Panel, there is a degree of commonality as well as divergence found in the data submitted by the parties. Consequently, the Panel has attempted to ferret through the information in order to come to what the Panel construes to be a fair and equitable award based upon its deliberations. Furthermore, the Panel has attempted to evaluate each proposal on its own merit.

Town's Ability to Pay

In reviewing the information submitted by the parties concerning the Town's ability to pay, the Panel has little question that the Town has the ability to pay for the economic improvements awarded herein. The Town is financially sound, and this factor was taken into consideration by the panel.

Prior to reaching a decision, the Panel carefully studied and discussed the information submitted by the parties which had been carefully prepared and presented by them at the Hearing. Particular attention was given to the comparative data presented by the parties.

After due consideration, a majority of this Panel has arrived at the following conclusions concerning the impasse and its resolution.

ISSUES**1. Article 15 - Insurance****TOWN**

The Town proposed that Article 15 - Insurance, be amended as follows:

Proposed Language:

SECTION I - Effective January 1, 1996, the employer shall provide the employee with individual and family plan, as applicable, Group Health Insurance and Drug Prescription Plan. The Group Health Insurance Plan will be Plan I with North Americare. The Prescription Plan will be with Blue Cross. The employee shall contribute toward the cost of his/her group insurance, based on his/her coverage, through payroll deduction as follows:

For Family Plan - \$10.00 per bi-weekly payroll

For Individual Plan - \$ 5.00 per bi-weekly payroll

Drug Prescription program with a \$3.00 co-pay.

Any Change in the carrier of health insurance coverage can only be with approval of CSEA.

ASSOCIATION

SECTION 1 - Effective July 1, 1992, the employer shall provide the employee with individual and family plan, as applicable, group health insurance, major medical insurance, and drug prescription program with Chautauqua County's Medical Benefits Plan Group No. 497 for municipalities. The employee shall contribute toward the cost of his group insurance, based on his/her coverage, through payroll deduction as follows:

For Family Plan - \$8.00 per bi-weekly payroll

For Individual Plan - \$3.00 per bi-weekly payroll

Drug Prescription program with a \$3.00 generic/\$6.00 brand-name drug co-pay feature with Chautauqua County's medical benefits plan.

Any Change in the carrier of health insurance coverage can only be with approval of CSEA.

Current Contract Language

SECTION 1 - Effective July 1, 1992, the employer shall provide the employee with individual and family plan, as applicable, group health insurance, major medical insurance, and drug prescription program with Chautauqua County's Medical Benefits Plan Group No. 497 for municipalities. The employee shall contribute toward the cost of his group insurance, based on his/her coverage, through payroll deduction as follows:

For Family Plan - \$4.00 per bi-weekly payroll

For Individual Plan - \$2.00 per bi-weekly payroll

Drug prescription program with \$2.00 generic/\$6.00 brand name drug co-pay feature with Chautauqua County's medical benefits plan.

Any change in the carrier of health insurance coverage can only be with approval of CSEA.

POSITIONS OF THE PARTIES

TOWN

The Town stated health insurance premiums increased effective January 1, 1995, for both family coverage and individual coverage representing an eight (8) percent increase. The Town noted it researched available providers of health insurance, and the proposed health insurance plan is as near as possible to the current plan for coverage. The Town indicated it is also requesting a slight increase in the employee's contribution toward health insurance. The Town noted a 1994 survey conducted by Deloitte & Touche indicates that employers are moving toward HMO plans. In addition, the survey shows in order to contain costs, there are greater employee contributions

being made toward health insurance. The HMO plans represented the lowest cost per plan. The Town also cited the type of plan and the employee contribution for several communities in the area.

ASSOCIATION

The Association indicated the turnover rate among the Ellicott police officers is extremely high due to the fact that Association members are overworked, poorly paid, and do not have a benefit package comparable to police officers in other communities. Therefore, it is necessary for the total benefit package to be maintained in order to attract police officers in the Town of Ellicott.

OPINION AND AWARD

After thoroughly reviewing the positions of the parties concerning Insurance, it is the opinion of the Panel that the following insurance plan be included in the new agreement:

Article 15

Insurance

SECTION 1) Effective with the ratification of this agreement, the employer shall provide the employee with individual and family plan, as applicable, Group Health Insurance, Major Medical Insurance and Drug Prescription program with Chautauqua County's Medical Benefits Plan Group #497 for municipalities. The Employee shall contribute toward the cost of his or her group insurance based on his or her coverage, through payroll deduction as follows:

For Family Plan - \$8.00 per bi-weekly through payroll deduction.

For Individual Plan - \$3.00 per bi-weekly through payroll deduction.

Drug Prescription program with a \$2.00 generic/\$6.00 brand name drug co-pay feature with Chautauqua County's Medical Benefits Plan.

In addition to the current Chautauqua County Medical Benefits Plan Group #497 for municipalities described above, the employer shall offer each employee an HMO Plan as follows:

North Americare Plan I - In-Network Benefit with no employee contribution.

North Americare Plan II- Out-of-Network Benefit.

Drug Prescription Program with a \$3.00 generic/\$6.00 brand name co-pay.

For the purpose of implementing the provisions above, employees shall exercise their choice of enrollment in one of the plans described above during the month of January 1998, with the coverage selected to be effective as soon as practicable thereafter. The next enrollment period shall take place in the month of November 1998 with the coverage to be effective January 1, 1999, and future enrollment periods shall take place in November of each year thereafter with the coverage effective the following January.

Any change in the carrier of Health Insurance coverage can only be with approval of CSEA.

ISSUES**2. Article 17 - Sick and Other Leaves, Section 1****TOWN**

The Town proposed the following language be added to the new agreement.

Proposed Language:

SECTION 1 - All employees covered by this Agreement shall be given one day sick leave per month. All employees shall be allowed to accumulate sick leave to a maximum of 200 days.

c) The sick leave herein provided shall be cumulative to a maximum of 200 days, but no member shall be entitled to use more than sixty-five (65) work days within one year of service. However, the maximum of sixty-five (65) work days per year shall be waived upon certification of extended illness by a physician.

ASSOCIATION

The Association indicated it is not willing to change this section in the new Agreement.

Current Contract Language

SECTION 1 - All employees covered by this Agreement shall be given one day of sick leave per month. All employees shall be allowed to accumulate all sick leave beginning from the date of employment.

C) The sick leave herein provided shall be cumulative from the date of employment, but no member shall be entitled to use more than sixty-five (65) work days within one year of service. However, the maximum of sixty-five (65) work days per year shall be waived upon certification of extended illness by a physician.

ARTICLE 22 - Retirement, Section 3**TOWN**

The Town proposed Section 3 of Article 22 be changed from 220 days to 200 days.

ASSOCIATION

The Association indicated it is not willing to change this section in the new Agreement.

Current Contract Language

Section 3) Upon retirement, all members shall be reimbursed 100% for all unused accumulated sick leave up to a maximum of 220 days. Such reimbursement will be at the employee's daily rate in effect at the time of retirement. The employee may request a deferral of this payment for a period of up to ten (10) years following retirement.

POSITIONS OF THE PARTIES**TOWN**

The Town indicated the current language in the CBA is ambiguous as it seems to indicate an unlimited number of sick days can be accumulated. The Town noted Article 22 - Retirement places a cap of 220 days, and the Town is requesting a cap of 200 days in both Article 17 and Article 22. Data was submitted by the Town showing the number of accumulated days for the current police officers. Only one of the officers has an accumulation in excess of 220 days. In addition, the Town submitted data

concerning the cap on the number of days for surrounding communities. None of those towns has a cap in excess of 200 days.

ASSOCIATION

The Association indicated it is necessary to maintain the current provisions in the new CBA in order to reduce the turnover of police officers in the Town of Ellicott. It is important that the benefits received by Association members be competitive with surrounding communities.

OPINION AND AWARD

In reviewing the data submitted by the Town concerning the Accumulation of Sick Leave, it is the opinion of the Panel a cap of 200 days be placed in the new Agreement for both Section 1 of Article 17 and Section 3 of Article 22. Relative to the police officer who has accumulated more than 200 days, that individual shall be able to retain the number of days in excess of 200.

ISSUES**3. Article 17 - Sick and Other Leaves, Section 5, Personal Days****TOWN**

The Town proposed Section 5 of Article 17 be changed as follows in the new Agreement:

SECTION 5 - Personal Days - Each employee shall be entitled to four (4) personal days leave with pay, per year. Except in the case of an emergency beyond the control of the employee, the employee shall give his department head at least 24 hours' advance notice of his intention to take personal leave day.

The Town further proposed unused days to convert to sick leave each year.

ASSOCIATION

The Association proposed Section 5 of Article 17 be changed from two (2) personal days leave to three (3) personal days leave with pay per year. Delete the second sentence of Section 5.

Current Contract Language**ARTICLE 17**

Section 5) Personal Days - Each employee shall be entitled to two (2) personal days leave with pay, per year. Except in the case of an emergency beyond the control of the employee, the employee shall give his department head at least 24 hours advance notice of his intention to take personal leave day.

ARTICLE 23 - Holidays - Sections 1, 2, and 5**TOWN**

The Town proposed the following changes in Sections 1 and 2 of Article 23:

SECTION 1: Eliminate (1) Election Day
(2) Employee's Birthday

SECTION 2:

OPTION 1 - Change two (2) times his/her normal hourly rate of pay for all hours worked to one and one-half (1-1/2) times his/her normal hourly rate of pay for all hours worked.

OPTION 2 - Same (2) times to (1-1/2) times.

ASSOCIATION

The Association proposed Section 5 of Article 23 be changed as follows:

Requests for vacation, compensatory time, holidays, or any paid leave of absence, excluding personal days, which are for a period of seven (7) days or less, shall not be unreasonably denied.

Current Contract Language

ARTICLE 23 - Holidays

Section 1 - Employees of the Police Department of the Town of Ellicott covered by this Agreement shall be given the following paid holidays:

- | | |
|--------------------------|----------------------------|
| 1. New Year's Day | 9. Veteran's Day |
| 2. Washington's Birthday | 10. Thanksgiving Day |
| 3. Memorial Day | 11. Day after Thanksgiving |
| 4. Independence Day | 12. Christmas Eve |
| 5. Labor Day | 13. Christmas Day |
| 6. Columbus Day | 14. New Year's Day |
| 7. Election Day | 15. Employee's Birthday |
| 8. Good Friday | |

Section 2) Full time members of the Police Department shall receive one (1) day's pay or one (1) day's compensatory time off at the employee's discretion if the Holiday falls on a normal day off. Members required to work a major part of a shift on a Holiday shall select one of the following options:

Option 1) Employees selecting Option 1 shall be paid at the rate of two (2) times his/her normal hourly rate of pay for all hours worked. Additionally, they shall receive one (1) day's pay for the Holiday.

Option 2) Employees selecting Option 2 shall be paid at the rate of two (2) times his/her normal hourly rate of pay for all hours worked on the Holiday. Additionally, they shall receive one day's pay or one (1) day's compensatory time for the Holiday at the employee's discretion.

Section 5) Requests for vacation or compensatory time off by members of the Police Department shall be submitted in writing eight (8) working days prior to such day(s) off. Members requesting such time off will receive confirmation or denial of such time request in writing not less than (5) working days prior to such time off. Requests for time off submitted less than eight (8) working days prior to such day(s) off will be granted only upon the discretion of the Police Chief.

POSITIONS OF THE PARTIES

TOWN

The Town stated it is proposing to increase personal leave days by two and reduce the number of holidays by two. The Town noted 15 holidays is above the average in Western New York. The Town also noted that when a holiday falls on a police officer's day off, they are entitled to one day's pay or one day's compensatory time off. The Town further stated that when a police officer works on a holiday, he/she has the option to be paid two times the normal hourly rate, plus one day's pay for holiday, or two times his/her normal hourly rate, plus one day compensatory time. Under either circumstance, a police officer receives triple time. Therefore, the Town is proposing to increase the number of personal days by two and reduce the number of holidays by two.

The Town stated to delete the last sentence of Section 5 of Article 17 is confusing as it is essential for advance notice to be given in order to provide adequate services to the community.

Also, the Town indicated when a police officer is off, he/she has to be replaced.

ASSOCIATION

The Association indicated it is requesting the number of personal leave days be increased from two (2) to three (3). The Association further indicated it is unwilling to alter Sections 1 and 2 of Article 23 of the new Agreement, and it is proposing Section 5 of Article 23 be changed from eight (8) days to seven (7) days.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Articles 17 and 23, it the opinion of the Panel that the proposed changes not be added to the new Agreement.

ISSUES4. **Wages****ASSOCIATION**

The Association has requested a five and one/half (5.5) percent wage increase during the first year of the new Agreement and a four and one/half (4.5) percent increase during the second year of the new Agreement.

TOWN

The Town has proposed a two and one/half (2.5) percent increase during the first year of the new Agreement and a two (2) percent increase during the second year of the new Agreement.

POSITIONS OF THE PARTIES**ASSOCIATION**

A significant amount of information was submitted by the Association to support its proposed wage increases for the new Agreement. The Association indicated the Ellicott Police Unit salaries have lagged behind the salaries of other towns and nearby city police salaries. Several charts were submitted demonstrating the differences between the minimum and maximum salaries for several jurisdictions in Chautauqua County and the surrounding area. The Association cited the difference in the salaries of police officers in Jamestown and police officers in Ellicott. The Association also noted that it is distressing to

the Ellicott police officers that the Town's Highway Department employees earn close to the same salary as the police officers at the maximum of their respective salary schedules.

The Association further noted that the Town of Ellicott has the ability to pay the proposed salary increases. A budget analysis was submitted to support this view. The Association also noted there are four major funds within the Town of Ellicott to finance services.

On the revenue side, the Association indicated the real property tax levy was less in 1997 than in 1996, representing good news for taxpayers. As the Town of Ellicott is growing, the tax base is also growing. The Association noted the Town underestimated the general fund revenue in 1996, and this would be more than enough to pay for the five and one-half (5.5) percent proposed salary increase for Association members.

Relative to expenditures, the Association noted the following:

a) The Town budgeted less than a one (1) percent increase in personal services expenditures for 1997, and police unit salaries showed no increase at all budgeted for 1997;

b) The Town does not expect an increase in employee benefits in 1997;

c) The Town budgeted a \$7,400, or 4.3 percent, increase in contractual expenditures for 1997;

d) The Town has allocated \$41,744 in a Special Items Contingent Account for use in 1997.

The Association indicated the Town appropriated \$60,000 from the 1995 fund balance for use in 1996. The Town must have accumulated a decent fund balance in 1996 because they were able to appropriate \$88,000 of their 1996 fund balance for use in their 1997 budget. The Association argued this is further evidence of underestimated revenue and possibly overestimated expenditure projections in 1996.

Finally, the Association cited the other communities it felt should be considered for comparing the salaries of police officers in the Town of Ellicott. Those communities include: Jamestown, Eden, Evans, Tonawanda, West Seneca, Hamburg, and Dunkirk. Recent salary increases and the populations for those communities are as follows:

<u>COMMUNITY</u>	<u>1997 SALARY INCREASE</u>	<u>POPULATION</u>
City of Jamestown	4.0%	34,681
Town of Eden	4.0%	7,416
Town of Evans	4.5%	17,478
Town of Tonawanda	4.0%	82,464
Town of West Seneca	4.0%	47,830
Town of Hamburg	4.0%	53,735
City of Dunkirk	4.2%	13,989
Town of Ellicott		9,455

TOWN

The Town noted the City of Jamestown is not a comparable community to the Town of Ellicott and, therefore, should not be considered in determining a wage increase for police officers in the Town of Ellicott. The Town further noted the communities it has included in its analysis for comparable communities is more

appropriate than the list submitted by the Association. A list of those towns and recent wage increases is as follows:

Community	Percentage Increases Last Agreement					Population
	Salary Increase By Year					
Lakewood	06/01/95 4.0%	06/01/96 4.0%	06/01/97 3.5%	06/01/98 3.5%		3,564
Cnty. Sheriff	01/01/95 3.0%	01/01/96 3.0%	01/01/97 3.2%			
Fredonia	06/01/95 4.0%	06/01/96 4.0%	06/01/97 4.0%			10,436
Silver Creek	12/01/95 3.0%	12/01/96 4.0%	12/01/97 3.0%			2,927
Westfield	04/01/97 2.0%	04/01/98 2.0%	04/01/99 2.0%	04/01/00 2.0%	04/01/01 2.0%	3,451
Ellicott	01/01/95 3.0%	01/01/96 3.0%				9,455
Note:	01/01/95	01/01/96	01/01/97			
Jamestown	4.0%	1.0%	4.0%	Av. 3.0%		34,681

OPINION AND AWARD

In reviewing the information submitted by the parties concerning wages, certain factors are of paramount importance. The parties disagreed as to which cities or towns are comparable to the Town of Ellicott. In reviewing the cities or towns and the respective populations of those cities and towns, it is very apparent Jamestown, Tonawanda, West Seneca, and Hamburg are considerably larger than Ellicott. While Lakewood, Silver Creek,

Westfield, and Eden are somewhat smaller than Ellicott, Fredonia, Evans, and Dunkirk are somewhat larger than Ellicott. If Jamestown, Tonawanda, West Seneca, and Hamburg are eliminated from consideration as comparable communities, the average salary increase for 1997 for the remaining communities is 3.6%.

Further, as noted by the Association, wages of Ellicott police officers are considerably less than that of police officers in comparable cities and towns. The Town, on the other hand, argued wages of Ellicott police officers are consistent with comparable cities and towns. The data supports the view of the Town. Also of significance, the Association indicated the Town of Ellicott has the ability to pay. This factor was not contested by the Town.

After reviewing the above information, it is the majority opinion of the Panel that the Police Officers receive a 3.6 percent salary increase the first year of the new Agreement retroactive to January 1, 1997, and a 3.6 percent salary increase the second year of the new Agreement effective January 1, 1998.

Date: *December 16, 1997*

John G. Watson

John G. Watson
Arbitrator
Panel Chairman

Mark Higgins

Mark Higgins
Employer Organization Panel Member

Norman J. Stocker
Public Employer Panel Member
