

NEW YORK STATE EMPLOYMENT RELATIONS BOARD

In the matter of the interest arbitration between,

THE VILLAGE OF EAST AURORA, NEW YORK,

Employer,

-and-

THE EAST AURORA QUAKER CLUB,  
POLICE BENEVOLENT ASSOCIATION,

Union.

OPINION AND AWARD

PERB CASE NO.

IA2005-034

M2005-176

Before the following Public Arbitration Panel:

- Chairperson: Michael S. Lewandowski  
Chairman
- Member: Mr. Nicholas J. Sargent, Esq.  
Sargent & Colliins, LLP  
Public Employer Panel Member
- Member: Thomas Hassett  
President, East Aurora Quaker Club PBA  
Employee Organization Panel Member

Appearances:

- For the Village: Richard Collins, Esq.  
Sargent & Collins, LLP
- For the PBA: W. James Schwan, Esq.  
Of Counsel

The Village of East Aurora, New York ("Village") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The East

Aurora Quaker Club Police Benevolent Association ("PBA") responded to the petition. The Village and the PBA had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement ("Agreement") between the parties that expired on May 31, 2005. The unit is composed of 16 members holding the title of Police Officer or related titles.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated April 25, 2006 from the New York State Public Employments Relations Board ("PERB"). The panel met and conducted a hearing in the Village on July 19, 2006 and July 20, 2006. The panel held an Executive Session on November 3, 2006.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning police departments that they considered to be comparable to that of the Village.

The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Civil Service Law. It also represents a good deal of give and take on the part of both parties. It is further recognized that the outcome is not what either party

would accept as their ultimate position on the issues but instead represents the incrementalism and compromise inherent in instances where more than one person is empowered to decide an outcome.

Specifically considered were the interests and welfare of the public and the financial ability of the Village to pay any salary increase or benefit increases awarded; comparable wages, hours and conditions of employment provided employees involved in similar work or requiring similar skills (police); comparison of peculiarities in regard to other professions such as hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills. The panel noted that individuals holding police titles in other municipalities were comparable to the officers here. The panel also considered the terms of the collective bargaining agreements negotiated between the parties in the past. The final disposition of the issues is the result of the deliberations of the panel. Although the panel may have been split with regard to certain issues such as the designation of comparable units, shift differential as it applies to Command Pay, health insurance contributions, etc., the panel reached unanimous agreement with respect to this award as it pertains to the length of the award. While the panel members' expressed disagreement over issues, the members agreed that award would be accepted because it is based on the general acceptance of the panel that the award contains our collective best opportunity to provide an award that is fair

to both parties and the interests and welfare of the public. Each party understands that the award, when taken in total is not what it would be if only one party had full authority to decide. Despite the differences of opinion, the award contains provisions of salary increases, benefit changes and working condition changes that, in the panel's opinion, meet the criteria contained in the Law.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

There was unanimous agreement that the duties performed and the responsibilities assumed by the members of the PBA are consistent with those performed by employees who hold the title of Police Officer or associated titles in the jurisdictions offered by the parties for consideration and comparison by the panel.

**FINDINGS**

After extensive review of the significant amount of evidence presented at the arbitration and in the closing briefs, the panel reached agreement on the Award that follows. The Award is a product of the consideration of all the factors specified in the Civil Service Law. It modifies terms and conditions of employment in a manner which benefits both the PBA and the Village.

**TERM.** The parties reached unanimous agreement on the term of the award. The term of this award shall be for a three year period commencing on June 1, 2005 and expiring on May 31, 2008. The agreement to extend the term of the award was made with the express authorization of the primary parties.

**DIRECT COMPENSATION:** The PBA proposed increasing wages five percent (5%) in each year of a three-year award. The Village proposed increasing wages closer to three percent (3.0%) in each year of the Agreement.

Even the data presented by the PBA shows that during the period of this award, base wages for comparable police units will rise on average just below 3% per year. Union exhibit 3 shows the 2004 base wages for three municipalities offered by the PBA as comparable departments (Town of Hamburg, Town of Orchard Park and Town of West Seneca) approximately on par with

the East Aurora PBA; the East Aurora PBA lags on average -0.2%. The same data for 2005 shows this unit lagging 2.8% for the average; meaning the PBA comparable units got slightly less than 3% increases (on average) to their base wages. East Aurora lagged 5.8% for 2006; meaning that they fell behind less than 5.9% for the two-years reviewed. The two-year data thus shows that the other units received approximately 3% on average over this period. The PBA's proposal is out of sync with what their comparable units received if one looks only at base wages.

Any review of proposed salary increases must also include a review of the employer's ability to pay. No data was presented nor was argument made that would lead to the conclusion that the Village does not have the ability to pay the wage increases found in this award. The wage increases listed below exceed the percentage increases received or to be received by other Village employees however the increases agreed to are tied to changes made to health insurance and other modifications in the agreement. The members of the panel unanimously agreed to the wage increase amounts listed below.

**Effective:**

June 1, 2005, wages shall be increased 3.75% across the board.

June 1, 2006, wages shall be increased 3.75% across the board.

June 1, 2007, wages shall be increased 3.25% across the Board.

**HEALTH CARE:** The Village made several proposals in this area. The Union opposed the Village's proposals.

The panel considered data that showed the Village has seen a significant increase in the cost of providing health insurance and drug coverage. The data presented showed that, but for members of this unit and members of the DPW, every Village employee is contributing 25% of the premium for health insurance and all have relinquished access to the Traditional Plan. Employees of the DPW hired after June 1, 2006 will contribute 25% of the health insurance premiums. Considering the sizable increase in cost and the modifications agreed to by other Village employees; the majority of the panel found that relief in the area of health insurance is appropriate and supported by the data.

Based on the foregoing, the following changes shall be made. Effective on the day after the execution of this award, the Village will provide to all police officers one of the following HMOs at the option of the officer: Community Blue Option II with 5/20/40 co-pays; Univera Health Care Plan Preferred, with 5/15/35 co-pays, and Independent Health Silver, with 5/15/30 co-pays. Any employee hired following the execution of this award, will contribute fifteen percent (15%) toward the premium of health insurance selected by the employee from the three plans offered by the Village. Effective on the day after the execution of this award, employees will be no longer be reimbursed for co-payments for prescription drugs that exceed plan co-pays. This does not include co-payments that exceed plan co-pays that were incurred prior to the day after the execution of this award.

Also effective the day after execution of this award, the language of Article XI – Health Insurance, Section 2 will be further modified by deleting the language “An officer hired after May 31, 2000” and replaced with “all officers shall not be entitled to Blue Cross and Blue Shield Select 66/61 insurance coverage, except in the case of an unusual need for such coverage. Such unusual need must be agreed to, in writing, by both the Village and the Association. In such event, the Village will provide such coverage to the Officer at the Village’s cost, except that the Officer shall pay fifteen percent (15%) of the cost of the coverage.

The Village will hold a special open enrollment for PBA members who currently receive coverage under the Blue Cross/Blue Shield Traditional Plan. This special open enrollment will run for the month of December, 2006 and the new coverage will take effect January 1, 2007. Applications for the new coverage must be filed with the Village by December 18, 2006.

The majority of the panel found the Village's proposal concerning the **Waiver of Health Insurance** acceptable. This proposal reads as follows. "During the annual enrollment period, an officer who is eligible for coverage, at his/her option, may waive health insurance coverage and receive 50% of the premium value of the officer's health insurance plan less contribution. The officer will receive quarterly cash payments (taxable) during each year that the officer waives coverage. The officer (and his/her eligible dependents) must have other health insurance to be able to elect this option. The officer can change his/her election only during the open enrollment period which is the month of October of each year."

**COMMAND PAY:**

There was agreement that an officer serving as Shift Commander should not lose the shift differential paid for working a premium shift. Effective the date of this award, Shift Commanders shall receive both Shift Commander pay and shift differential.

**UNIFORM ALLOWANCE:**

Relying on the fact that this payment has not been increased for a number of years and that this award provides the Village with relief in the area of health insurance cost, the panel finds it appropriate to increase the Uniform Allowance payments as follows, Year One: \$1250.00; Year Two: \$1300.00 and for Year Three; \$1350.

**DETECTIVE CLASSIFICATION AND WAGES:**

The data presented shows the following data regarding the Detective classification.

	Hamburg	Orchard Park	West Seneca	Average
2004	\$61,360	\$60,824	\$60,173	\$60,786
2005	\$63,211	\$62,648	\$61,979	\$62.613
2006	\$65,104	\$64,528	\$63,838	\$64,490

Currently, the Village does not use a separate classification for Detective work but has an "add on" stipend that brings the salary of the Village's Detective to \$59,872. Based on the above data, the panel unanimously agreed that the Village should set up a separate Detective classification and increase the salary for the person serving in that title to

\$60,786 (1.5 %) effective June 1, 2005 before the application of the percentage increases contained in this award. The percentage increases contained in this award for 2005 and forward shall be applied to the \$60,786 salary.

**ACADEMIC INCENTIVE PAY:**

The Village proposed the elimination of Academic Incentive Pay. The PBA opposed this proposal.

The expired Agreement provided an incentive of 2.5% for officer who had an Associates degree and another 2.5% for an officer who had a Baccalaureate Degree. Since the inception of the incentive, the minimum requirements for becoming a police officer have increased; officers now appointed must have an Associate's degree therefore an incentive for an educational level that must be obtained to enter the profession is nonsensical. Further, data presented shows that most comparable municipalities pay no incentive and compared to those who do, East Aurora now pays more than double the amount the other municipality pays. The data would dictate either greatly reducing or eliminating the academic incentive altogether however, the payment has been factored in to the conclusions reached with respect to comparability of base wages paid. To

simply reduce or eliminate 2.5% to 5.0% of the wages paid to current officers would provide a great financial hardship and would skew the salary data relied upon by the panel as it made determinations in other areas. For the above reasons, the majority of the panel determined that the academic incentive should remain as it is for current employees but for those officers hired after the effective date of this award, the academic incentive shall be eliminated.

**SICK LEAVE CONVERSION:**

The Village proposed modifying ARTICLE XII, LEAVE, Section 3h – Sick Leave Conversion on Retirement. The PBA opposed this proposal. The current language provides that certain officers, upon retirement, may convert sick leave to cash. The Agreement contains a formula that spell out the amount of sick leave that may be converted and the conditions for the conversion.

The majority of the panel paid particular attention to the data presented that showed that during the period 2005-2006, the Village faces a potential payout of \$193,140.54. This amount equal approximately 3% of the Village's entire general fund from which police salaries are paid. The panel also paid particular attention to the fact that reducing or modifying this benefit for current officers would impose great financial hardship on

officers at time of retirement, an event not too far off for some of the Village's officers.

Based on the foregoing, the majority of the panel determined that the benefit would remain intact for current officers however any officer hired after the execution of this award would be hired with the understanding that the following applies. Each officer with twenty (20) or more years of service including at least fifteen (15) years of service with the Village of East Aurora Police Department shall be entitled to convert up to one hundred twenty-five (125) accumulated sick days to cash upon retirement or leaving of employment. For each year of service beyond twenty (20) years, such officer may convert an additional ten (10) days of accumulated sick days. An officer hired after the execution of this award must use his/her first one hundred sixty-five (165) days of accumulated sick leave toward credited service with the NYS Police and Fire Retirement System (Section 341-j) allowance. Days in excess of one hundred sixty-five may be converted to cash.

**PART-TIME OFFICERS:**

The majority of the panel concluded that there is not sufficient evidence to accept the Village's proposal regarding use of part-time employees. This proposal is rejected.

**REMAINING PROPOSALS:**

Finally, the majority of the panel voted that there is not sufficient justification presented to approve any of the remaining proposals. The panel thus rejects any proposal not explicitly accepted in this award.

**AWARD**

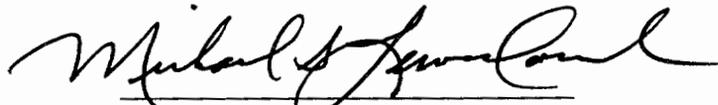
The terms of this award are provided explicitly in the FINDINGS section of this award.

**AFFIRMATION**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ERIE )

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

Date: 12/7/06

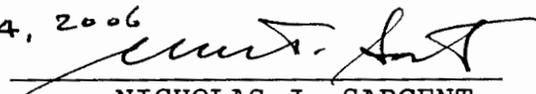
  
MICHAEL S. LEWANDOWSKI

DEC 6 '06 13:44

Date: December 06, 2006   
THOMAS HASSETT

I concur with the above award except for the following items Page 8 Line 7 Forward New Employee Paying 15.0% of Health Care Ending Line 15 Pg 8

A letter of dissent is \_\_\_\_\_, is not  attached.

Date: December 4, 2006   
NICHOLAS J. SARGENT

I concur with the above award except for the following items PART-TIME OFFICERS. p 14

A letter of dissent is \_\_\_\_\_, is not \_\_\_\_\_ attached.