

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

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between

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DISCUSSION

Amherst Police Club, Inc.

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AND

and

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AWARD

Town of Amherst

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PERB Case No: IA2012-005 M2011-346

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Before:

Ronald E. Kowalski, Ph.D.
Arbitrator

J. Matthew Plunkett, Esq.
Public Employer Panel Member

Edward W. Guzdek, Sr.
Public Employee Organization Panel Member

APPEARANCES

For the Public Employer
Richard Zuckerman, Esq.

For the Public Employee Organization
James B. Tuttle, Esq.

INTRODUCTION

On November 28, 2012 the New York State Public Employment Relations Board (hereinafter "PERB") having determined that a dispute continued to exist in negotiations between the Town of Amherst (hereinafter "Town") and the Amherst Police Club, Inc. (hereinafter "Union"), and acting under the authority vested in it under Section 209.4 of the Civil Service Law, designated the above-listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

On June 25 and 26, 2013 hearings were held in the Town of Amherst, New York. Representatives appeared before the Panel, which received exhibits, contracts, demonstrative evidence and testimony. After submission of all supporting evidence, the parties agreed the hearing was closed and briefs were submitted to the Panel on October 28, 2013. The Panel met in Executive Session on December 2, 2013 and held subsequent discussions on the outstanding issues resulting in this Award.

THE STATUTORY STRUCTURE

Subdivision 4 of Section 209 of the Civil Service Law was enacted to provide a means for resolving negotiation impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a petition requesting referral to a Panel contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were resolved by agreement and, as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearing on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria, which must be taken into consideration, when relevant:

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 qualification;
- (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.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel.

BACKGROUND FACTS

A Collective Bargaining Agreement existed between the parties from January 1, 2006 through December 31, 2010. The parties are and have been without an agreement since the expiration of the Collective Bargaining Agreement. Representatives of the parties met in an attempt to reach a negotiated agreement with respect to the terms and conditions of employment. The parties did not reach an agreement and the Union filed a Declaration of Impasse. The New

York State Public Employment Relations Board appointed a mediator and mediation sessions were conducted May 8, 2012 and July 17, 2012. The parties were, however, unable to reach an agreement and, subsequently, the Union filed for compulsory interest arbitration on or about July 23, 2012.

Pursuant to the provisions of Civil Service Law Section 209.4 the New York State Public Employment Relations Board ("PERB") designated the undersigned on November 28, 2012 as the Public Arbitration Panel for purposes of making a just and reasonable determination on the matters in dispute between the Town of Amherst and Amherst Police Club, Inc.

ISSUES

In accordance with the provisions of Section 209.4 of the New York Civil Service Law and by mutual agreement, the parties hereto submitted the following issues to the undersigned arbitration panel

- Wages
- Longevity
- Health Insurance

The Panel has carefully weighed the evidence and testimony submitted to it during the hearings and in post-hearing submissions

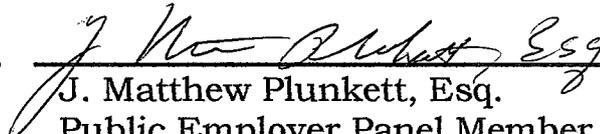
in its determinations. The Panel has attempted to take a balanced approach to the demands, one that recognizes the fiscal considerations of the Town and the legitimate concerns of the members of the Union. The Panel has applied the criteria set forth in the law in assessing the merits of the parties' demands.

TERM OF AWARD

The maximum term of the Award cannot exceed the statutory two (2) year award restriction. The Panel Award shall be for the two-year period from January 1, 2011 through December 31, 2012.

I (concur) (~~do not concur~~) with the above Award.

Date: 2/15/14


J. Matthew Plunkett, Esq.
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 2/10/14


Edward W. Guzdek, Sr.
Public Employee Organization Panel Member

DISCUSSION AND DETERMINATION OF THE ISSUES

Wages/Longevity Pay

The Union has proposed wage increases of 3.5% for each year of the award. The Union argues that salary increases of this size are

reasonable given comparisons with similar employees in comparable municipalities in the region and New York State. A comparison with comparable towns in the region including Cheektowaga, Tonawanda, Hamburg, West Seneca, Lancaster, and Orchard Park among others, clearly demonstrates that on average officers in this bargaining unit are paid similar salaries to those in these comparable communities and the proposed increase of 3.5% would maintain their current competitive positions. The Town's proposed increases of a one-time payment for each year would create a disparity with the comparable units in the region in the future as increases have averaged better than 3.5% in many of the comparable towns above as noted in the Union's exhibits.

The testimony of Edward J. Fennel, an expert in municipal finances as well as his analysis of the Town of Amherst financial statements demonstrate the Town has the ability to pay the increases sought by the Union. The Town's budget and tax base clearly can support the increase sought by the Union.

The Union also seeks an increase in the current longevity payments. The Union's proposal to increase longevity by \$100 at each

of the longevity steps is reasonable given the fact members of other bargaining units in the region have seen similar increases.

The Town argues that it has limited financial resources in the current economic conditions. The Union's proposals for pay increases including a 3.5% base wage increase as well as increases in longevity payments would place an unreasonable burden on its taxpayers.

The Town contends that when the proper comparisons are made to the comparable municipalities the total compensation package of the members of the bargaining unit are seen to be highly competitive. Wages are not out of line and members of the Union enjoy among the best longevity payments in the area. The Town's proposed increase of a one-time single payment in each year of an agreement is therefore fair and reasonable given these facts and the fiscal problems confronting the Town. These proposed increases would maintain the members' current competitive position in the region without placing an unreasonable burden on the Town's taxpayers.

The Town argues that the testimony of Darlene A. Carroll, Comptroller, along with the supporting data submitted to the Panel

clearly demonstrate the Town is not in a financial position to grant the raises sought by the Union. The Town's State Aid has decreased and given the State's current problems could continue to do so in the future. The Town thus can only afford to pay what it has offered to avoid having to place an unreasonable burden on its taxpayers. The State Property Tax Levy Cap further limits revenues for the Town and when combined with State Aid problems have resulted in a decreasing general fund balance. The Town is simply not in the position to pay the wage and longevity increases sought by the Union.

DISCUSSION

The Panel has carefully reviewed the extensive data submitted on both salary and longevity and believes there is support in the evidence for an increase in wages but not longevities given they are already competitive with others in the area. The Panel is fully aware of the fiscal difficulties facing the Town and recognizes that any wage increase must not place an unfair burden on the Town's already burdened taxpayers. However, it is in the best interest of both the Town and its taxpayers that members of its police force be fairly compensated for the difficult and often dangerous work they perform

on behalf of the public. After looking at comparables in the region and taking into consideration the health insurance recommendations addressed next in the Award, the Panel believes an increase of 2% per year in base salary in each of the two years would at least maintain the current wage levels and ensure they do not fall behind those of other similar departments in the region. However, the Panel also believes that given the Town's current fiscal circumstances these increases should in the form of 1% effective January 1, 2011 for all staff then employed and 1% effective July 1, 2011 for all staff employed. A similar 1% increase shall be effective for all unit members employed on January 1, 2012 and 1% on July 1, 2012 for all unit members then employed. The Panel would not award any change in the longevity schedule as it remains competitive. The Panel makes the following award on these issues.

AWARD

Salary

- **1% increase effective January 1, 2011**
- **1% increase effective July 1, 2011**
- **1% increase effective January 1, 2012**
- **1% increase effective July 1, 2012**

Longevities

- **No change in existing longevities.**

I (concur) (~~do not concur~~) with the above Award.

Date: 2/15/14


J. Matthew Plunkett Esq.
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 2/10/14


Edward W. Guzdek, Sr.
Public Employee Organization Panel Member

Health Insurance

The Town has proposed a number of changes in the current provisions for health insurance in the Collective Bargaining Agreement. The Town believes the changes it seeks are necessary to help it from slipping into an economic sinkhole and are justified by ~~comparison to other comparable municipalities.~~ The Town seeks increases in the co-pays for prescription drugs, office visits and out-patient emergency room and ambulance services. Cheektowaga and Lancaster police officers pay higher prescription drug co-pays and Hamburg has higher co-pays for office visits as noted in the submissions by the Town.

The Town also has proposed an increase in Retiree Health Insurance contributions which currently is fully paid by the Town. The Town proposes a 50% contribution by the employee as it can no longer afford to pay all such premium costs in the current economic environment. Once again a number of comparable municipalities have such a shared premium costs such as Cheektowaga and Depew.

The Town further argues a 15% premium contribution by current active officers effective January 1, 2011 and 20% by officers hired after January 1, 2011 is justified as many comparable units in the area have substantial contributions. Police officers in Eden contribute 20% and Hamburg contributes 10% even after 10 years. The Town believes such a contribution by current officers is a financial necessity given the Town's fiscal difficulties.

The Union argues it has provided relief in the past in the areas of health insurance. The Union further asserts that its' current premium contributions by employees up to their fifth year of employment is comparable to other municipalities in the region. In Lancaster, no active employee pays anything for their health insurance, and in Orchard Park they pay nothing for the basic plan and contribute for the more costly plan but it is free as well after ten

years. In West Seneca employees hired prior to July 1, 2007 pay nothing for health insurance and those hired after that date pay a contribution but only up to five (5) years as in Amherst. Amherst is thus in the middle and similar to other comparable municipalities justifying no increase in premium contributions. It also has similar benefit levels and co-pays. The Union therefore submits there is no basis for the concessions sought by the Town in the area of health insurance.

DISCUSSION

The Panel has carefully reviewed the arguments and supporting data submitted by the parties on the issue of health insurance and believes in the context of the modest salary increases awarded by the Panel to provide some fiscal relief for the Town that changes in health insurance either by way of increased premium contributions or co-pays are not justified and are matters best left for future negotiations. The difficulty in acquiring accurate costs and savings for the proposals put forward by the Town clearly indicates these questions require a much more extensive give-and-take between the parties. Negotiation is therefore a better forum to explore such matters given

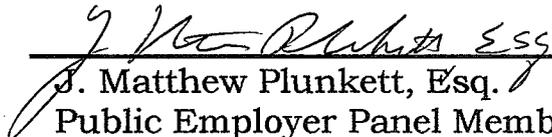
the complexity. The Panel would therefore not award any change in the current provisions governing health insurance.

AWARD

Health Insurance

No change in the existing provisions governing health insurance in the Collective Bargaining Agreement.

I (concur) (~~do not concur~~) with the above Award.

Date: 2/15/14 
J. Matthew Plunkett, Esq.
Public Employer Panel Member

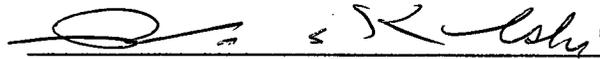
I (concur) (~~do not concur~~) with the above Award.

Date: 2/10/14 
Edward W. Guzdek, Sr.
Public Employee Organization Panel Member

The Panel chairman retains jurisdiction over any and all disputes arising out of the interpretation of this Award.

Respectfully submitted,

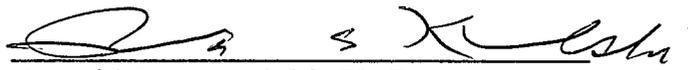
2/17/14
Date


Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

State of New York)
) SS:
County of Onondaga)

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

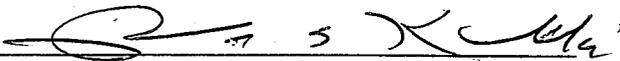
2/17/14
Date


Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

State of New York)
) SS:
County of Onondaga)

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

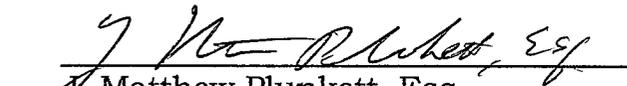
2/17/14
Date


Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

State of New York)
) SS:
County of Erie)

I, J. Matthew Plunkett, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

2/15/14
Date


J. Matthew Plunkett, Esq.
Public Employer Panel Member

State of New York)
) SS:
County of Erie)

I, Edward W. Guzdek, Sr., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

2/10/14
Date


Edward W. Guzdek, Sr.
Public Employee Organization Panel Member