

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Interest Arbitration

CONCILIATION

between

Opinion and Award of

Town of Cheektowaga

Public Arbitration Panel

and

Cheektowaga Police Club, Inc.

(PERB Case No. IA2014-021)

* * * * *

Having determined that a dispute continues to exist in the negotiations between the Town of Cheektowaga (hereafter Town or Employer), and the Cheektowaga Police Club (hereafter Club or Union), the Public Employment Relations Board (PERB), pursuant to its authority under the Taylor Law, designated a tripartite Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The designated Panel comprises Jeffrey F. Swiatek, Esq., as the Public Employer Panel Member; Donald Strozyk as the Employee Organization Panel Member; and Howard G. Foster as the Public Panel Member and Chairperson.

Following an organizational conference among the Panel members and counsel for the parties on April 24, 2015, hearings in the matter were held on July 15 and 16, August 3, and September 1 and 9, 2015, at the offices of Union counsel and at Police Headquarters in Cheektowaga, New York. Testimony was taken from three Employer witnesses and five Union witnesses, and extensive documentary evidence was received from both sides. Upon submission of post-hearing briefs by the parties on or before November 18, 2015, the record was closed. The Panel met in executive session on

December 10 and 18, 2015. The Panel's charge under the law is to make determinations on the submitted issues for the years 2014 and 2015. This Award constitutes the Panel's unanimous determination of the issues in dispute.

APPEARANCES

For the Employer:

Joseph L. Braccio, Attorney
Jeffrey B. Same, Attorney
David Zack, Chief of Police
Mary Holtz, Town Supervisor
Brian Krause, Director of Administration and Finance

For the Union:

Richard D. Furlong, Attorney,
Donald Szumigala, Patrolman
Jeffrey Schmidt, Police Sergeant
Robert Mullen, Detective Sergeant
David Stevens, Member, Police Club Negotiating Committee
Bruce Fisher, Consultant

BACKGROUND

The Town of Cheektowaga, with a population of about 88,000 persons, is a first-ring suburb of the City of Buffalo in Erie County, New York. The Union represents, for collective-bargaining purposes, about 109 sworn personnel of the Town's Police Department who are employed in the titles of Police Officer, Detective, and Sergeant. (Police Lieutenants and Captains are in a different bargaining unit and represented by a different union.) The most recent collective bargaining agreement between the parties covered the years 2010-2013, and remains in effect pending the conclusion of this arbitration. The parties initiated negotiations for a successor agreement in early 2014, and, after several bargaining sessions failed to produce agreement, the Union declared impasse on August 11, 2014. PERB-provided mediation was not successful in resolving

the dispute, and on February 17, 2015, the Union petitioned for compulsory interest arbitration. The Panel, as specified above, was designated on April 8, 2015.

The Taylor Law sets forth four criteria that the Panel is required to consider in making its determination of a "just and reasonable" resolution:

1. 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.
2. The interests and welfare of the public and the financial ability of the public employer to pay.
3. Comparison of peculiarities in regard to other trades or professions, including specifically: (1) hazards or employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.
4. The terms of collective agreements negotiated between the parties in the past providing 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.

In addition, the statute directs that if a public employer is found to be a "fiscally eligible municipality," the public arbitration panel must "first and foremost, consider ability to pay by assigning a weight of seventy percent . . . to the public employer's ability to pay." The Town of Cheektowaga is a fiscally eligible municipality, as are the Towns of Amherst, Lancaster, Tonawanda and West Seneca (four of the five "comparable communities").

The remainder of this Award is organized as follows. We begin with a summary and discussion of the parties' general positions regarding the statutory criteria for a "just and reasonable determination" of the dispute. We then address each of the issues

in contention, setting forth the current contractual provision, if any; the changes or additions sought by the proposing party or parties; and the parties' positions on the proposed changes or additions. The final sections include the analysis and findings of the Panel and the Panel's award.

POSITION OF THE UNION ON THE STATUTORY CRITERIA

The Union contends that the "comparable communities" that the Panel should use for assessing the wages, hours and working conditions of the bargaining unit are the Towns of Amherst, Hamburg, Tonawanda, and West Seneca. These, like Cheektowaga, are first-ring suburbs in Erie County with similar economic and demographic profiles. Furthermore, when the Town was considering an increase in pay for the Chief of Police, it benchmarked his pay with that of the chiefs in these four towns. It did not use Lancaster for this purpose. As explained by the Union's expert witness, Lancaster is sufficiently different from Cheektowaga as to negate its standing as a comparable community.

With respect to "comparisons of peculiarities in regard to other trades or professions," the Union notes that other employees of the Town, who received 2.5 percent pay increases for 2014 and 2015, are not asked to work under the trying conditions that are experienced by police officers. These conditions include such job-related hazards as serious health risks due to stress, lower life expectancy, health disparities, psychological distress and alcohol use, fatigue, and the adverse effects of shift work. There are also demanding physical and mental qualifications associated with police work, as well as educational and training achievements that police officers must meet. And although these conditions are common to all police officers, the record shows

that police in Cheektowaga are expected to do more than their counterparts elsewhere, as evidenced by their unusually high arrest rates.

As for "the financial ability of the public employer to pay," the Union asserts that Cheektowaga's revenues are the strongest of any of the comparable towns. Although the Town has been rated by the State as a "fiscally eligible municipality" (as have most of the comparable towns), the record is replete with evidence of its fiscal strength. The Town's resistance to the Union's demands is not based on an inability to pay, but simply an unwillingness to pay. Its ability to pay is notably reflected in the public pronouncements of its political leaders, including the Supervisor, as well as their decisions to actually reduce property tax rates in 2014 and 2015. Further, despite its healthy finances, the Town has reduced the percentage of its revenues that it spends on police services, and it has chosen to fund some capital projects out of general revenue instead of bonding them. The Town also enjoys an excellent bond rating from Moody's, and it has received a low stress score on the New York State Comptroller's Fiscal Stress Monitoring System, a score lower than that of any other comparable town except Amherst. This evidence demonstrates that the Town's finances are healthy, a conclusion also reached by the Union's expert witness, Dr. Bruce Fisher. Dr. Fisher testified that Cheektowaga has a diverse property-tax base, a stable stream of tax revenues, projected growth in sales taxes, and anticipated declines in pension-system contributions. Based on his analysis of the Town's financial strength, he concluded that the Town has the ability to pay the compensation increases demanded by the Union. Accordingly, the fact that the statutory framework requires that ability-to-pay be given 70 percent of the weight in the Panel's determination actually supports the Union's

position, in that the Town's ability to pay argues for the increases that the Union proposes.

POSITION OF THE TOWN ON THE STATUTORY CRITERIA

The Town agrees that the municipalities cited by the Union are among the comparable communities that the Panel should consider, to the extent that this criterion is material. In addition, the Panel should consider the Town of Lancaster, which is also a suburb of Buffalo, has a police department, and shares a substantial border with Cheektowaga. The Town argues, however, that the "comparables" are actually of limited significance in this arbitration, since under the statutory framework all the criteria other than ability-to-pay can be weighted no more than 30 percent in the Panel's analysis. Moreover, the statute provides that police officers must be compared not only with other police officers but also with "other employees generally in public and private employment in comparable communities." When compared to "other employees generally," police-officer compensation routinely exceeds that of other municipal residents. That is much the case in Cheektowaga.

On ability-to-pay, the Town notes that its full-value tax rate, at \$14.82, is more than double the threshold for designating a fiscally eligible municipality. This designation was designed to encourage restraint by interest-arbitration panels. Specifically, the Panel must give primary weight to the Town's finances, including the impact of the State's "tax cap" law. As explained by Supervisor Mary Holtz, the Town has responded to its fiscal challenges by methodically reducing its full-time positions, in all units *except* the Police Department, but the capacity for further reductions is limited. Further, in recognition of the burdens borne by taxpayers, the Town's budgets for 2014 and 2015

did not include funds for salary increases, as the salaries of Town employees are generally higher than those of its average resident.

The Town also contends that its fiscal circumstances are severely constrained by mandated contributions to the NYS Retirement System. Although the rates are expected to fall slightly in the near future, they have risen dramatically in recent years, especially for police, and the future declines are likely to be temporary. In order to fund these and other obligations, the Town has been forced to draw down its fund balances and rely on one-shot revenues. Its current fund balance of 14.3 percent of expenditures is below the minimum industry standard (two months of expenditures). In addition, the Union's suggestion that there will be significant additional revenue coming to the Town from property-tax and sales-tax growth is unfounded, especially given the State tax cap. Before the cap, the property tax levy increased by 87 percent from 2001 to 2014 despite declining population. With declining or stable revenues from other sources, the property tax has thus accounted for an increasing portion of total revenue. And since 2012 the percentage of the Town budget accounted for by police spending has risen as a result of both operational and capital expenditures.

A major challenge facing the Town, it asserts, is the effect of the State tax cap, which limited the growth in the tax levy for the past year to a mere 0.73 percent. Exceeding the tax cap would not only place additional direct burdens on taxpayers, but would also forfeit State "rebate" checks that taxpayers would otherwise be eligible for. Even with allowed carryover, the funds available within the tax cap will not be sufficient to support the pay increases demanded by the Union. Other long-term challenges include concerns expressed by Moody's about further declines in fund balances and significant

additional debt due to new infrastructure obligations, a sign that the Town's bond rating is at risk; warnings from the State about lagging infrastructure funding; future obligations to retirees; and projected increases in medical costs.

For all of the above reasons, the Town contends that its ability to pay the Union's demands are severely constrained.

THE ISSUES

3.07 – Sergeants. The CBA provides that "if the Town elects to staff the front desk or cell block with a police officer, that officer must be the rank of sergeant or higher. Patrol duty sergeants will not be assigned to the front desk or cellblock." The Town proposes to delete this provision, characterizing it as "a language clean-up" since the position at issue no longer exists. This change is also necessary to accommodate the Town's proposed new language for Paragraph 6.07(d) below. The Union argues that this change is more than "cleanup," as it would permit the Town to reduce the number of officers in the field below prudent levels.

4.01 – Uniform Allowance. The CBA provides for an annual payment of \$1,700 for the purchase, maintenance and cleaning of clothing, uniforms and equipment. The Union proposes increasing the allowance by \$100 and then rolling it into base pay and deleting the provision. The Town proposes replacing the uniform allowance with a quartermaster system, with responsibility for maintaining uniforms and equipment placed on the officer.

The Town argues that this change would be a cost-saving mechanism for the Town, and that it is used efficiently by the State Police. As for the Union's proposal, the Town asserts that the Union has shown no justification for the added cost. The

Union argues that the Town's proposal was little discussed during negotiations and therefore should not be considered by the Panel. Indeed, nobody knows how a quartermaster system would work, although we do know that it would not apply to captains and lieutenants. Thus if it were implemented there would be two separate systems for uniforms. In the comparable towns, only Hamburg uses a quartermaster system, supplemented by a yearly payment.

6.01 – Salaries. The CBA contains a salary schedule ranging from \$50,614 for a first-year police officer to \$76,066 for a sergeant. The Union proposes that each salary in the schedule be increased by 4.25 percent for 2014 and another 4.25 percent for 2015; that the P/O 5 level be reached after five years of service; and that the detective base salary be set at 9 percent above the top P/O base salary. The Town makes no specific proposal for salary increases, although it notes that the other unions of Town employees, including those in the Police Department, have settled for 1.75 percent per year "plus other financial increases" of approximately 0.5 percent. The Town does propose that police officers hired on or after February 21, 2014, receive 95 percent of the salary amounts in the pay schedule.

For the reasons outlined above, the **Union** contends that the Town is able to pay the salary increases proposed by the Union. It further contends that its members make less at every step of the salary schedule than do officers in the comparable communities. In response to this fact, which the Union says is indisputable, the Town argues that its officers' "total compensation" is actually comparable, but this argument is misleading. The annual "W-2" compensation for Cheektowaga officers is inflated by sell-backs, which reduce their paid time off, and by overtime earnings, which Cheektowaga's

officers must work because of their lower salaries. Working overtime and not using time off are not substitutes for receiving base salaries that are enjoyed in the other towns. The Union also points out that the 2013 Agreement with the Captains and Lieutenants Association included raises of 2 percent per year for four years, along with a \$3,500 addition to base salary and another \$3,500 "signing bonus." The total raise for this unit was almost 16 percent over four years.

For the reasons outlined above, The **Town** contends that the salary increases proposed by the Union are beyond the Town's ability to pay. Moreover, they are not supported by the comparisons with other communities. Such comparisons are clouded by the variations among collective bargaining agreements in how and under what circumstances officers receive compensation. But to the extent comparisons are relevant, the Panel should consider the average gross wages for police officers in the Cheektowaga and in the comparable communities. In 2013, the average Cheektowaga officer received more than \$93,000, second only to Amherst among the comparables, despite the fact that Cheektowaga has the lowest median household income, the lowest median home value, the highest percentage of residents below the poverty level, and the largest percentage of children on public assistance. Moreover, since these parties have never before participated in an interest arbitration that resulted in a final award, the current terms of employment for officers are the product of multiple rounds of contract settlements that were agreed to by the parties. An inordinate salary increase in arbitration would reduce the incentive to reach a voluntary agreement in the future.

6.02 – Longevity. The CBA provides for five longevity increments totaling \$2,700 after 25 years of service. The Union proposes that the longevity payments be increased

to match those of the Captains and Lieutenants Union (up to \$4,625). The Town proposes that longevity payments be eliminated for officers hired after February 21, 2014.

The **Union** notes that the recent contract for lieutenants and captains moved \$500 from the clothing allowance into the longevity increment, so that the ranking officers now receive up to \$4,625 with 25 years of service. Since longevity is a reward for length of service to the employer, there should be no disparity between groups of personnel, much less an increased disparity as proposed by the Town. The **Town** argues that the Union has shown no appropriate basis for its proposal, which would amount to a 67 percent increase in longevity pay for 2014.

6.07(d) – Call-In. The Town proposes to add a new subsection providing that “when no Detention Officer is available, Police Officers may be assigned to work the position of Detention Officer.”

The **Town** notes that this modification would provide it with more flexibility in determining how to cover the cell block when a Detention Officer is not available. The current clause requires the payment of overtime regardless of how much manpower is on duty and available. The proposed change would allow the Town to divert manpower when possible without paying overtime.

The **Union** argues that since the Chief controls staffing in the cell block, this proposal would give him the ability to eliminate all cell-block overtime. The proposal is actually a device to emasculate the staffing guarantees in Section 3.05, which by agreement cannot be submitted to interest arbitration. The result will be that patrol officers are assigned regularly to cell-block duty, and no sergeants will be so assigned as

is currently required. As a consequence, the officers will lose overtime opportunities and the officers on the road will have less safety because of their lower numbers.

6.08(b) – K-9 Officers. The CBA requires the Town to install a dog run and warning signs at the residence of a K-9 officer. The Town proposes new language that would require the officer to install the dog run and signs at any new residence. The Town argues that it should not have to bear the expense of multiple dog runs if the officer moves his or her residence.

6.10 – Education Incentive Pay. The CBA provides for annual stipends for officer who have earned degrees in a related field, ranging from \$200 for an Associate's Degree to \$600 for a Master's Degree. The Union proposes to increase this stipend to 2 percent of the P/O 5 salary for an Associate's Degree, 4 percent of the P/O 5 salary for a Bachelor's Degree, and 5 percent of the P/O 5 salary for a Master's Degree. The Town argues that the Union has failed to provide a persuasive justification for this increase, which would cost about \$90,000 in the first year.

6.11 – Training Incentive Pay. The CBA provides for an annual stipend of \$1,950 for officers who qualify with their handgun. The Town proposes to eliminate this payment for officers hired on or after February 21, 2014, as a cost-saving measure.

7.01 – Work Day and Work Week. The Union proposes adding a new subsection providing an extra payment of 2.5 hours per week for pre-briefing sessions that officers must attend each day. The Town argues that there is no justification for this proposal.

10.01 – Vacations. The CBA provides for paid vacation in amounts ranging from 12 days after one year of service to 30 days after 20 years of service. The Town

proposes to reduce this amount for officers hired after February 21, 2014, as a cost-saving measure.

15.02 – Health Insurance. The CBA provides that active officers hired before November 1, 2012, contribute 5 percent of the cost of their health insurance, and that those hired after November 1, 2012, contribute 15 percent. Eligible officers who retire after May 1, 2013, contribute 3 percent of the cost during retirement, except those hired after November 1, 2012, will pay 15 percent when they retire. The Town proposes increasing the contribution of active officers to 15 percent if hired before November 1, 2012, or 25 percent if hired after that date. It further proposes that retired officers pay the same percentage that they paid at the time of retirement. The Union proposes additional language to the health-insurance clause providing that a surviving spouse and dependents of a retired officer retain coverage for 12 years or until the spouse becomes Medicare-eligible or remarries.

The Town contends that with the ever-increasing cost of health care all of its employees should contribute more to their coverage, and if any increases in police salaries are to be considered, there must be some offset elsewhere in the compensation package. The fact that no other Town unions were required to accept increased contributions reflects the fact that they settled for salary increases less than those demanded by the Union, and under better economic circumstances. The Union's proposed modification would add significant costs and cannot be justified absent any financial offsets.

The Union argues that the Town's demands for dramatic increases in employee contributions are wholly unwarranted. None of the Town's recent settlements with its

four other bargaining units included relief on health-care costs, and indeed none was even sought by the Town. In fact, according to the Town Supervisor, increases in the Town's cost for health insurance have been minimal in recent years. This stability, moreover, has been in large part attributable to the Union's cooperation over the years in adopting measures to contain costs. Thus the Town's draconian proposal is neither necessary nor justified. On the other hand, the Union's proposal to provide coverage for surviving spouses would carry a negligible cost, and it is a benefit that most of the comparable towns offer.

17.01(a) and (e) – Club Representatives. The CBA provides that the President of the Club or his/her designee is allowed 12 hours per week for Union business. In addition, up to seven officer (plus the President and Vice President) are given time off to attend certain conventions and meetings. The **Town** proposes to reduce these allowances to 8 hours and four officers, respectively. It argues that the time is often used to attend Union events, whereas it was intended to be used for grievances and negotiations. For those purposes, eight hours a week are sufficient. The **Union** argues that this proposal is unwarranted.

19.01(b) – In-Service Training. The CBA provides that officers may be reassigned to a different shift to attend mandated in-service training for up to six days per year, with 15 days' notice. Officers currently receive no extra pay for in-service training. The Town proposes to extend this provision to *all* in-service training without limit as to the number of days, and to reduce the notice to 7 days. The Union proposes no change in the provision except to introduce compensation of \$1,950 per year, added to base salary, for mandated in-service training.

The **Town** argues that its proposed modifications would help it to avoid unnecessary overtime when officers have to attend training. The Chief needs more flexibility to change the shifts of officers assigned to such training. As for the Union's proposal, no appropriate basis has been shown for this costly change.

The **Union** contends that the \$1,950 payment should be granted to maintain parity with the captains and lieutenants, who receive that amount for in-service training. The record shows that the budget for in-service training is rarely spent. Even this payment would not fully achieve parity, as most captains and lieutenants can do training during their regular shift, while most Club members have to undergo the inconvenience of having their shifts changed for training. And to make matters worse, the Town now proposes to increase the "inconvenience factor" by broadening the frequency and circumstances, and reducing the notice, of training that wreaks havoc on officers' lives.

22.13 – Hearing Officer. Article XXII of the CBA deals with discipline, which is conducted under Section 75 of the Civil Service Law. Section 22.13 provides that if the Town elects to proceed with a Section-75 hearing and chooses a hearing officer who is not a Town employee or official, the hearing officer is mutually selected by the Town and the charged officer. The Union proposes to change the provision so that the Union selects the hearing officer.

The **Union** contends that it is simply unfair for the Town to have sole authority to select hearing officers in cases of proposed discipline. There is no fairness or legitimacy when the prosecutor appoints the judge. The case of Sergeant Robert Mullen illustrates the point. When he was threatened with termination, the Town appointed one of its employees, the Town Attorney, to serve as hearing officer. Thus an attorney was

appointed by his client to hear his client's claims. As a result, the officer and the Union were constrained to agree to an adverse resolution, even though it had a strong case. And in another case, after another attorney employed by the Town recommended a lengthy suspension, the Town Board was persuaded by the Chief to terminate him instead. Thus the process is rigged; there is no fairness, or even the appearance of fairness, in the existing procedure. And unlike Cheektowaga, all of the comparable towns have agreed to joint selection of hearing officers or arbitrators in disciplinary matters. For these reasons, the Union urges that disciplinary grievances be treated the same as all other grievances, with the arbitrator selected jointly by the parties.

The **Town** contends the current disciplinary procedure is unremarkable, following as it does the prescriptions of the Civil Service Law. The courts have found that these procedures provide municipal employees with adequate due-process protections. The Union's emphasis on the case of Sgt. Mullen is misplaced. He admitted his misconduct and agreed to a disposition. The Union argues that it is impossible to win a case before a Town-selected hearing officer, but it presented no evidence to support that proposition. The Union's assertion that the appointed hearing officer in the Mullen case was biased is conclusory, and actually ignores the fact that any hearing officer would have been compelled to impose discipline given the record in that case. Moreover, the record shows that the discipline administered by the current Chief has been proper. However, if the Panel deems it necessary to award a different disciplinary procedure, it should simply incorporate the traditional "just cause" standard with contractual arbitration.

23.04 – Residency. The CBA provides that officers hired before January 1, 1998, may, after 15 years of employment as a police officer, reside within Erie County, but

outside the Town of Cheektowaga. All officers hired after January 1, 1998, must reside within the Town of Cheektowaga. The Union proposes that all employees with at least 8 years of employment as a police officer be allowed to reside outside Cheektowaga, but within Erie County. The Town proposes to add language requiring employees who were hired before January 1, 1998, and who receive promotions must reside within Cheektowaga within six months.

The **Union** notes that as most of the current bargaining unit was hired after January 1, 1998, in time the current residency-in-Cheektowaga requirement will cover everyone. Yet, it argues, the evidence shows that the requirement has adversely affected the lives of officers and their families while providing no benefit for the Town. Indeed, in this proceeding the Town has offered no concrete evidence to justify the continuation of the requirement beyond a single dated analysis from the City of Detroit, while the Town's own Police Chief testified to his favoring its elimination. Although the residency ordinance declares four goals, the Town was unable to marshal any real evidence that the requirement has the beneficial effects sought. Officers living outside the Town are just as capable of providing effective police services.

At the same time, contends the Union, the residency rule hurts officers. It requires that their children be enrolled in schools that are mediocre at best and that can be dangerous for children of police officers. It requires that officers police their neighbors or confront people they have arrested at places where they shop. And contrary to the position of residency advocates, they do not enhance security while they are off duty as they are not adequately equipped or supported. The literature on municipal residency

requirements supports the foregoing contentions and demonstrates that such requirements actually harm the public's perception of the police.

The **Town** notes that it has consistently been committed to a police residency requirement for the benefits it provides. It argues that police officers are seen as role models, and their presence provides a sense of safety. Moreover, as the Town makes a substantial financial commitment to officers, it is appropriate that they contribute to the Town's economy. The materials submitted by the Union in support of its proposal are of dubious value, and in any event the Union's argument ignores the fact that its own materials recognize benefits in residency requirements that observers and researchers have identified. And the Union's point about local schools ignores the fact that there are actually eight school districts located in whole or part in Cheektowaga, several of which are highly rated. Finally, it is important to note that the residency requirement was not imposed on the Union but rather agreed to by it, and it is the same requirement that has been negotiated with each of the Town's other bargaining units.

Payroll. The Town proposes a modification that would create a bi-weekly, direct-deposit payroll system. It notes that the current weekly payroll is a relic not found anywhere else in private or public employment.

ANALYSIS AND FINDINGS OF THE PANEL

Statutory Criteria

The Panel has carefully considered the parties' arguments in respect to the statutory criteria. Regarding terms and conditions of employment in "comparable communities," we are persuaded that the Towns of Amherst, Hamburg, Lancaster, Tonawanda, and West Seneca are comparable to Cheektowaga on relevant dimensions

and should all be considered in the Panel's assessment of a just and reasonable determination of the dispute. As with all comparable communities, some will have greater saliency with respect to the disputed terms of employment than others, but we deem all five of these towns as more similar to Cheektowaga than different. While there are differences between Cheektowaga and Lancaster, the only town in dispute in terms of comparability, there are also differences between Cheektowaga and the other towns in their demographic and economic profiles. Ultimately we see the similarities among all these towns as weightier than the differences.

With respect to "the interests and welfare of the public and the financial ability of the public employer to pay," we are cognizant that the public interest is served by providing police officers with wages and working conditions befitting the important work they do and sufficient to attract and retain qualified personnel, while at the same time not requiring the citizenry to shoulder an unreasonable burden or to make unreasonable tradeoffs. As for the ability of the public employer to pay, the Union's argument suggests that the Town is flush (relative to providing the economic benefits sought by the Union), while the Town's argument asserts that its resources are badly strained. We are persuaded by the record, however, that neither of these descriptions entirely fits the reality, at least with respect to the range of arbitration outcomes that could properly be considered based on the other criteria. In other words, while there is no doubt that Cheektowaga is facing fiscal challenges similar to those besetting many Upstate New York towns, we do not see a basis for concluding that it is in unusually dire straits. We are influenced in this regard by a number of the considerations proffered by the Union, including the settlements the Town reached with other unions covering the period of this

Award, the picture drawn by Town officials in their representations of the fiscal condition of the Town, the generally favorable assessments of ratings agencies, and the generally skillful management of Town resources that has allowed tax rates to remain stable in recent years. In short, we do not see in the Town's financial situation an inability to pay the compensation enhancements that are awarded below.

Although both the Public Employer Panel Member and the Employee Organization Panel Member concur with the outcomes on wages and other economic components of the Award below, they do not fully concur with the rationale expressed herein for those results, which is that of the Panel Chair.

Awards on the Proposals

Set forth below are the Panel's findings on the issues for which an affirmative award is made. These findings constitute the Panel's disposition of issues that involve changes in the current terms of the Collective Bargaining Agreement. The other issues presented to the Panel have been carefully considered, and its finding is that, with respect to those issues, no change in the Collective Bargaining Agreement should be made for the years covered by this award. These demands are therefore rejected, and no award is made.

4.01 – Uniform Allowance. The Town's proposal for a quartermaster system does not contain sufficient detail to warrant the Panel's awarding such a substantial change in how the Town provides police uniforms and related clothing and equipment. Similarly, we not see sufficient justification in the Union's presentation for requiring the Town to devote additional monies to the current allowance. We note, however, that the Town's agreement with the Captains and Lieutenants Association provided for a

diversion of some uniform-allowance money to increased longevity payments, and we consider it reasonable to make the same diversion for the Police Club.

6.01 – Salaries. Both the Town and the Union make cogent arguments for their versions of appropriate changes in police salaries. It is true that as measured by the numbers in the salary schedules alone, the members of this Union notably lag their counterparts in the comparable communities. At the same time, with other avenues of compensation included, the record shows that the gap between Cheektowaga and most of the other towns is reduced. Furthermore, the evidence on ability-to-pay persuades us that with continued strong fiscal management the Town can afford pay increases that approximate the increases that have been seen in other communities for the period in question . These increases, moreover, are not dissimilar to the increases that the Town has granted its other employees for the same period, including other employees of the Police Department. Accordingly, we find that salary increases of 1.75 percent for each of the two years of this Award are just and reasonable.

6.02 – Longevity. Neither the Union's proposal for a dramatic increase in longevity pay nor the Town's proposal to reduce the payment for future employees finds adequate support in the record. While it is true that the Captains and Lieutenants have higher longevity payments (even beyond that absorbed from the uniform allowance), there are a number of compensation methods that differ between the two groups. But while we do not see a justification for awarding new dollars to longevity, we are persuaded that the diversion of some of the existing uniform allowance to longevity pay, as was done in the Town's settlement with the Captains and Lieutenants Association, can and should be replicated for this bargaining unit. We will therefore

award that \$500 be moved from the uniform allowance to the longevity schedule once an officer becomes eligible for longevity pay.

15.02 – Health Insurance. While we appreciate that health-insurance expenditures represent a major cost for Town (as it does for all municipalities), we note that none of the settlements with other Town unions for this period included an increase in the employee's contribution to the premium-equivalent (so described because the Town is self-insured). We also appreciate the Union's observations regarding its historic willingness to cooperate in finding ways to seek cost relief in this area. But while we regard the very substantial increases in employee contributions proposed by the Town as excessive, we see a justification for some modest measures to further "bend the cost curve" in this area. As one of the major contributors to health-insurance costs is the continued coverage of retired employees (and especially for police officers who tend to retire earlier than other Town employees), it is appropriate that cost relief focus there first. At present, and for historical reasons, retired employees actually experience a reduction in their contributions from the level that they had been paying as active employees. We believe that requiring retired employees to pay contributions equal to those they were paying at the time of retirement is reasonable, and we will award a change in the contract language to accomplish that.

19.01(b) – In-Service Training. The concerns of both sides with respect to shift reassignments for training purposes are legitimate and understandable. The Town needs to provide ongoing training for its officers, and to do so it needs to be able to move some officers from their regular shifts. Those officers, however, may have planned and organized their lives around their scheduled shifts, so that accommodating shift changes

can be onerous. The parties in the current Agreement have tried to harmonize these conflicting considerations by allowing some changes but limiting their frequency. We find that the substantial increase in the number of training days proposed by the Town, and the broadening of the reasons for them, would place too much of a burden on the affected officers, but that a modest increase giving the Town a bit more flexibility is warranted. We will accordingly award two additional training days, but none of the other changes sought by the Town.

As for in-service training pay, we note that the captains and lieutenants receive a stipend of \$1,950 per year for this purpose, and based on that we see a justification for providing in-service pay for police officers as well. We are loath, however, to ask the Town to absorb the entire cost of this new benefit in one contract period, so we will award a new contract provision providing for a \$700 stipend in 2014 and increasing to \$1,400 for 2015.

22.13 – Hearing Officer. While we are not prepared to find, on the record, that the Town has abused its discretion in implementing the Section 75 disciplinary procedures for police officers, we are persuaded by the Union's argument that the current procedure, in which the Town appoints the hearing officer and then unilaterally determines the disciplinary penalty, raises legitimate questions of due process and conflicts of interest. There is certainly much precedent in labor-management relations and in the law for neutral review of disciplinary actions. Furthermore, the parties have included in their Agreement a time-honored process – the grievance procedure – for handling disputes between them, and that process is readily adaptable to disputes over the propriety of discipline that the Town has imposed. Accordingly, we will award a new

contract provision under which employees who are disciplined may challenge that discipline under the grievance-and-arbitration procedure of the CBA.

Payroll. We find the Town’s proposal to implement a bi-weekly pay period to be entirely reasonable and will award a new contract provision to effect it. In conjunction with this change, the Union has asked that the Town implement a Roth deferred-compensation option for its members, and we will award that such an option be implemented as soon as practicable.

SUMMARY OF AWARD

Uniform Allowance

Revise Subsection 4.01(a) as follows:

Each officer shall receive an annual allowance for the purchase, maintenance and cleaning of police clothing, uniforms and equipment. This allowance will be in the sum of \$1,700 annually through the officer’s fifth year of service. After five years of service, the allowance shall be reduced to \$1,200 annually.

Salaries

Revise Subsection 6.01(a) by creating columns for 2014 and 2015. The numbers for 2014 shall be calculated by increasing each of the 2013 numbers by 1.75 percent. The numbers for 2015 shall be calculated by increasing each of the 2014 numbers by 1.75 percent.

Longevity

Revise Subsection 6.02(a) as follows:

Each police officer shall be paid the following, cumulative longevity increments each year:

<i>After 5 years of service</i>	<i>\$1,100.00</i>
<i>After 10 years of service</i>	<i>\$ 525.00</i>
<i>After 15 years of service</i>	<i>\$ 700.00</i>
<i>After 20 years of service</i>	<i>\$ 425.00</i>
<i>After 25 years of service</i>	<i>\$ 450.00</i>

Training Incentive Pay

Revise Section 6.11 as follows:

- (a) *Each officer who qualifies with his handgun, as established by the Tactical Training Sergeant, shall be paid an annual sum of \$1,950.00.*
- (b) *The sum will be divided equally and paid in the regularly bi-weekly pay.*
- (c) *Any officer who does not qualify will be afforded the opportunity to qualify, as in the past.*
- (d) *For all purposes herein, annual salary shall mean salary plus training incentive pay (in addition to annual salary compensation provided in Section 19.01, In-Service Training).*

Health Insurance

Revise Subsection 15.02(j) as follows:

The Town shall provide health insurance for retired officers who at the time of retirement are otherwise entitled to coverage under this article, and who retire in accordance with Article 16, provided the officer at the time of discontinuance of service, meets the requirements for the receipt of pension benefits of the Tier of the New York State Retirement System of which such officer is a member, and, before qualifying for such pension benefits, shall have completed ten (10) years of service with the Town. Coverage under this section shall continue for the life of the retired officer and his/her spouse, provided that a retired officer must reduce coverage to Medicare supplemental coverage at the age which he/she is entitled to Medicare, and the retired officer's spouse similarly must reduce coverage to Medicare supplemental coverage at the age which he/she is entitled to Medicare; and further provided that if the retired officer dies before his or her spouse, the spouse will have the right to continue coverage for the life of spouse provided the spouse pays the premium cost of such coverage, if permitted by the carrier. The parties agree that the carrier currently permits such continuation of coverage. Retired officers shall not be permitted to add a spouse to coverage subsequent to the date of retirement. Retired officers eligible for retiree coverage under this Section and who retire on or before June 30, 2016, shall pay three percent (3%) of the cost of such coverage during retirement. Officers who were hired on or before November 1, 2012, and who retire on or after July 1, 2016, shall contribute the same percentage towards the cost of such coverage during retirement as applied to the officer as an active employee at the time of his or her retirement. Officers

hired after November 1, 2012, shall pay fifteen percent (15%) of the cost of coverage during retirement.

In-Service Training

Revise Subsection 19.01(b) as follows:

*For purposes of mandated In-Service training, if necessary, an officer may be reassigned to any shift as needed and these days need not be consecutive. A maximum of **eight** days will be utilized each year. A minimum of 15 days' notice will be given to an officer before reassignment it will be the responsibility of the officer to notify the Training Lieutenant of any conflict that may arise, (such as: scheduled vacation, court appearances, etc.) so that rescheduling may be made necessary.*

Add new Subsection 19.01(h) as follows:

Effective January 1, 2014, each bargaining unit member shall receive an additional \$700 added to his or her annual salary. Effective January 1, 2015, the amount added to each bargaining unit member's annual salary shall be increased to \$1,400. The sum will be divided equally and paid in the regular bi-weekly pay. For all purposes herein annual salary shall mean salary plus In-Service Training pay (in addition to annual salary compensation provided in Section 6.11, Training Incentive Pay).

Hearing Officer

Revise and rename Section 22.13 as follows:

SECTION 22.13 - DISCIPLINARY ACTION

The Town may impose discipline on a unit member for just cause. The Club may challenge the imposition of such discipline through the grievance/arbitration procedure set forth in Section 21.01 – Grievance Procedure. At the option of the Club, in a dispute involving the imposition of discipline the Club may initiate a "just cause" grievance at Step 3, within twenty (20) days of said imposition of discipline. If the Club is not satisfied with the Step 3 discussion between the Coordinator of Employee Relations and the Club President, it may proceed directly to arbitration as provided in Step 4.

Payroll

Revise and rename Section 23.03 as follows:

SECTION 23.03 - PAYROLL

- (a) *The Town may implement a bi-weekly, direct-deposit payroll.*
- (b) *The Town will provide a payroll savings and U.S. Savings Bond deduction plan and make it available for all police officers that desire the same.*
- (c) *Effective at the earliest possible enrollment period following the signing of this agreement, the Town will make available to all officers, through payroll deduction, a Deferred Income Plan. Officers will have the right to choose from the following carriers for their Deferred Income Plan: Copeland or Empire Financial Services. Employees shall not change carriers within a twelve (12) month period. The Town shall also offer a "Roth" deferred compensation option consistent with law.*

Award on Remaining Demands

Any demands and/or terms other than those specifically modified or set forth in this Award are hereby denied.

Duration

This Award, except as otherwise stated, will be effective 12:01 a.m. on January 1, 2014, and will remain effective until 12:00 midnight on December 31, 2015.

Retroactivity and Implementation

Retroactive pay pursuant to this Award shall be issued no later than March 30, 2016. Any Police Club member who retired on or after January 1, 2014, through the date that retroactive pay is issued shall receive retroactive pay for the base wage increases set forth above (1.75% effective 1/1/2014 and 1.75% effective 1/1/2015), including overtime, for the period worked prior to retirement.

The Panel Chair shall retain jurisdiction of this matter for six months for the sole purpose of resolving any disputes over the implementation of this Award.

Date: Jan. 27, 2016 Howard G. Foster
Howard G. Foster
Public Panel Member and Chair

I (concur) (do not concur) with the above Award.
Date: 1/27/16 Jeffrey Swiatek
Jeffrey Swiatek, Esq.
Public Employer Panel Member

I (concur) (do not concur) with the above Award.
Date: Jan 27 2016 Donald Strozyk
Donald Strozyk
Public Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

Jan. 27, 2016 Howard G. Foster
Howard G. Foster
Public Panel Member and Chair

CONSTANCE M. PAOLETTI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4-30-2018

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, Jeffrey Swiatek, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

1/27/16 Jeffrey Swiatek
Jeffrey Swiatek
Public Employer Panel Member

CONSTANCE M. PAOLETTI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4-30-2018

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, Donald Strozyk, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

Jan 27 2016

Donald Strozyk
Donald Strozyk
Employee Organization Member

CONSTANCE M. PAOLETTI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4-30-2018

