

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD- ADMINISTRATOR

In the Matter of the Dispute Between \*  
\*  
VILLAGE OF NEWARK, NEW YORK \*  
\*  
-and- \*  
\*  
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC. \*  
POLICE UNIT \*

C. No. CA-0089-M75-891

N. Y. S. PUBLIC EMPLOYMENT  
RELATIONS BOARD  
RECEIVED

AUG 26 1976

CONCILIATION

Before a Tripartite Public Arbitration Panel:

Edward Ashcroft, Appointed by the CSEA  
Vincent A. Fischette, Appointed by the Village  
Rodney E. Dennis, Public Panel Member and Chairman

Appearances

For the Village:

Richard Chapman, Counsel  
August Dobish, Grants Administrator  
Charles Hausman, Jr., Village Clerk and Treasurer  
Ivan Newhard, Mayor

For the CSEA:

Gary Johnson, CSEA Collective Bargaining Specialist and Chief Spokesman  
Roger J. VanDemortal, CSEA

Pursuant to Section 209.4 of the Civil Service Law of the State of New York, the aforementioned panel was selected through the procedures outlined in that law to hear and decide on the contract dispute that exists between the Village of Newark and the Newark Police unit of the Civil Service Employees Association. Arguments, exhibits, and witnesses were presented by both sides on the following issues:

1. Personal leave
2. Vacations
3. Holidays
4. Retirement plan

5. Salaries
6. Duration of the agreement.

#### BACKGROUND

The current collective bargaining agreement between the Village of Newark (hereinafter referred to as the village) and the CSEA Police unit (hereinafter referred to as the association) expired on May 31, 1975. Formal bargaining for the successor agreement began late in May, since attempts at informal bargaining, begun in early spring, had failed. The formal bargaining continued throughout the summer of 1975 and into the fall. Numerous agreements on noneconomic items resulted. On November 14, 1975, the New York State Public Employment Relations Board determined that an impasse existed in negotiations between the village and the association. Efforts to mediate the impasse failed and a fact-finder was appointed. Hearings were held before the fact-finder on December 3, 1975 and on January 16, 1976. The fact-finder held post-hearing meetings with the parties on February 6 and March 11, 1976. The fact-finder failed to resolve the impasse through mediation at this stage and a fact-finding report was issued on March 23, 1976.

The parties to this dispute, after receiving the fact-finder's recommendations, resolved all but the issues before this panel. The association, prior to filing the demand for arbitration, indicated it would accept the fact-finder's report as a resolution to the impasse. The village, after much consideration of the report, refused to accept it. As a result, the association, on May 27, 1976, filed a petition for compulsory arbitration with the Public Employment Relations Board. On June 10, the village filed a response to that petition. On June 25,

the Public Employment Relations Board appointed the aforementioned panel of arbitrators to hear and decide the case.

A hearing was held on the matter in Newark, New York, on August 5 at 10:00 a.m. At the outset, the procedures for the hearing were explained by the chairman, who also read aloud the criteria to be used by the panel in making a decision on the issues. Both parties to the dispute had ample opportunity to present oral testimony, exhibits, witnesses, and to cross-examine and question each other. A tape recording of the hearing was made and is in the possession of the panel chairman. The hearing was officially closed at 5:00 p.m. on the same day. The public arbitration panel retired to executive session to consider the issues and to again review the requirements of the law and the criteria to be followed when making an award.

Prior to making any specific awards on the issues before it, the panel thought it important to state for the parties its philosophy on the utilization of certain of the criteria listed in the law. The panel gave special consideration to the recommendations of the fact-finder. When, however, after hearing the presentations and the facts on the issues, the panel does not think the recommendations were appropriate, it determined that it was not bound to accept them.

In regard to the concept of comparability, the panel concluded that the longer public sector bargaining continues, the less weight an arbitration panel can give to comparisons of single benefits between jurisdictions. Bargaining over the years has produced agreements that suit the individual situation; certain benefits were traded for others that, at the time, were deemed more important to the membership or to the employer. For example, it is not unlikely that a union with a very

young membership might relinquish an improved retirement plan demand for current salary and be very successful with this strategy. Other unions with much older memberships might do just the opposite; they might take improved pension benefits at the expense of current income. For the union that has foregone improved retirement benefits to now compare its retirement plan with the retirement plan of the union that considered it important over the years is inappropriate. For the panel to accept these comparisons without considering what has taken place in past bargaining would be inappropriate. Similar examples can be found in other areas--given the nine years of bargaining that has taken place under the Taylor Law.

On the issue of ability to pay, the panel subscribes to the philosophy that the employer is not obligated to push taxes to the legislation limit to support collective bargaining agreements. It is important for the employer to operate an efficient enterprise and offer the public the highest quality services possible. This is a benefit to the unit members, by ensuring their continued employment. This philosophy, however, is not accepted without qualification. The employer has the burden of proving that his reluctance to enter into agreements is based on equity, sound management, and fairness to all concerned.

In reviewing the facts in this case, the panel will apply, where possible, the abovementioned concepts. The panel, mindful of these requirements, and the arguments and exhibits presented on each issue, makes the following awards:

#### PERSONAL LEAVE

##### Position of the Parties: The Association

The association is requesting that five personal days per year be granted by the panel.

In support of its position, the association presents the following arguments:

1. The current contract allows each member of the unit to use five days each year for personal leave, but each day is deducted on a day-by-day basis from the holidays paid. Since holidays are paid at the rate of time and one-half, the unit member is actually penalized an extra half day's pay if he uses a personal day. This, the association contends, is unfair and punitive.
2. While the fact-finder recommended a change in this benefit, he did not go far enough. His recommendation authorized two personal leave days each year, but these days, if used, were to be deducted from accumulated sick leave. The union contends that this plan is also unfair, since accumulated sick leave is paid by the village in the form of continued health insurance premiums when a unit member retires.
3. The association maintains that personal leave should not be deducted from holiday pay or from sick leave and that unless personal leave days are granted over and above sick leaves and holidays, it is not benefit at all.
4. The village is providing a substantially inferior benefit in this area. One has only to compare personal leave benefits received in other similar situations to recognize that it is insufficient.

Position of the Parties: The Village

The village had, during mediation, expressed a willingness to modify its position on personal leave days to allow two personal leave

days each year, with adequate safeguards that these leave days would be used for what is traditionally considered to be personal business. It also agreed that these leave days, if used, would be deducted from available sick leave days as a safeguard against abuse of the new leave policy. The agreement, however, was contingent on a total package agreement that did not include any improved retirement benefits.

In support of its position, the village presents the following arguments:

1. The personal leave benefit contained in the former contract was intended by the village to limit the number of days that would be taken for personal leave. This, the village maintains, was successful, since very few personal leave days have been used in the past. While it might be willing to change the plan and deduct used personal leave days from sick leave accumulated rather than from holiday pay, the village thinks the five days requested by the association is excessive.
3. Police officers working on a rotating shift basis do not have a need for personal leave days, since on occasion, they are off duty during the traditional business day and can take care of their personal business need during these off-duty hours. The village further argues that it have a very liberal shift-swapping policy and, in an emergency, a police officer has only to obtain a substitute for his work assignment to be allowed time to take care of his urgent business.

4. The association's comparison of the personal leave benefit received by unit members is inappropriate, since comparisons of this type should also take into account other benefits received by the units compared. For example, very few other police units receive the same holiday payoff or accumulated sick leave benefits that is received by Newark police officers.

#### DISCUSSION AND AWARD

The panel reviewed the arguments of both sides on this issue, as well as the recommendation of the fact-finder.

The arguments presented by the association that the policy in the expiring contract is punitive and costly was given great weight by the panel. The demand for five personal leave days, however, was considered to be excessive and unnecessary. The association did not persuade the panel on a need or on an equity basis that its demand was legitimate.

The village's arguments that rotating shift workers may not have the same need for personal leave time as do day-shift workers and that some safeguards to avoid abuse must be included in the personal leave policy was accepted by the panel. While the panel is not subscribing to the village's argument that it is only equitable to consider the personal leave policy in light of all other benefits, it does subscribe to the notion that comparability confined to a single issue can be an unsound basis on which to make an award.

The panel, after reviewing the positions of both parties and the arguments presented on the personal leave issue, feels the fact-finder's recommendation affords the association the additional benefit it needs

and the village some limited safeguards against abuse. The panel therefore unanimously recommends the following:

#### AWARD

The panel recommends that two personal leave days be provided with the condition that personal leave days used be subtracted from accumulated sick leave.

#### VACATIONS

The vacation schedule now in effect for unit members in the Village of Newark is the following:

All eligible Employees covered by this Agreement shall be entitled to the following paid vacation periods:

After one (1) year of service - ten (10) working days  
 After ten (10) years of service - fifteen (15) working days  
 After sixteen (16) years of service - sixteen (16) working days  
 After seventeen (17) years of service - seventeen (17) working days  
 After eighteen (18) years of service - eighteen (18) working days  
 After nineteen (19) years of service - nineteen (19) working days  
 After twenty (20) years of service - twenty (20) working days

#### Position of the Parties: The Association

The association is requesting that the vacation schedule be modified as follows:

After one year of service - 10 working days  
 After five years of service - 15 working days  
 After ten years of service - 20 working days  
 After twenty years of service - 25 working days

In support of its request for a revised vacation schedule, the association presents the following arguments:

1. The vacation schedule provided by the employer is inferior when compared with vacations received by other police units in the area as well as by similarly situated small city

units across the state. The association argues that the local unit members not only receive fewer days of vacation than many other members of comparable units, but also have to be employed for more years to enjoy the extended vacation benefits of three and four weeks per year. To support this argument, it presents a detailed list of city and village vacation schedules with an analysis that indicates the vacation schedule is definitely inferior in many aspects.

2. Canandaigua and Geneva, two very comparable employers, in the vicinity, offer their police officers vacation schedules almost identical to the one contained in the request made by the association. This fact, the association argues, supports its contention that its demand for an improved vacation schedule is reasonable and equitable.

3. Finally, the association argues that its request for an improved vacation schedule is supported by the fact-finder's recommendations of a change to allow three weeks of vacation after seven (7) years of employment, rather than the ten (10) years now required. This recommendation, however, the union thinks, does not go far enough and it is thus asking the panel to adopt its total proposal.

Position of the Parties: The Village

The village maintains that the vacation schedule enjoyed by the police unit members at the present time (with the recent change at the one-year level required by law) is adequate and competitive with the vacation schedule of other police units, as well as other employees of the village.

1. The village admits that a comparison of vacation schedules of other police units with the schedule in effect for the local police units reveals that most units do receive three weeks of vacation before ten years of service. In all other respects, however, the local schedule is very competitive. For the panel to ignore the other benefits received by the local units when comparing vacation schedules is not proper. As stated in its brief and in oral argument, the total benefits must be taken into account when comparisons of this type are made.

2. If the association's demand for an improved vacation schedule was adopted by the panel, it would require the village to increase the number of vacations days a total of 34 percent over what is not authorized. This increase, the village argues, is excessive and would mean reduced service to the public or payment of overtime to cover the shifts of unit members on vacation.

#### DISCUSSION AND AWARD

The panel, in its deliberations of this issue, was not persuaded by the comparisons made by either side nor was it impressed by the need for police officers to receive extended vacations when they reach twenty-five years of service. The argument presented by the village that the union's demand would increase the vacation time by 34 percent, however, was weighed heavily. The panel thinks this increase is excessive and if the schedule as proposed by the association is ever implemented,

it should be adopted at the table over a period of years and not in one large jump. While the panel has no objection to bargaining additional vacation for older unit members, it thinks it inappropriate for the panel to award it at this time. The panel does, however, point to one aspect of the vacation schedule that is out of line when it is compared to most schedules. That is the length of time a unit member must work before receiving three weeks of vacation. The union, the fact-finder, and the village all agree on this point. The panel therefore makes the following unanimous award:

#### AWARD

All eligible Employees covered by this Agreement shall be entitled to the following paid vacation periods:

After one (1) year of service - ten (10) working days  
 After seven (7) years of service - 15 (15) working days  
 After sixteen (16) years of service - 16 (16) working days  
 After seventeen (17) years of service - seventeen (17) working days  
 After eighteen (18) years of service - eighteen (18) working days  
 After nineteen (19) years of service - nineteen (19) working days  
 After twenty (20) years of service - twenty (20) working days

#### HOLIDAYS

The holiday schedule contained in the expiring agreement and now in effect is the following:

##### Section 1.

The following days shall be recognized and observed as paid holidays:

New Year's Day  
 Lincoln's Birthday  
 Washington's Birthday  
 Memorial Day  
 July 4th  
 Labor Day  
 Columbus Day  
 Thanksgiving Day  
 Christmas Day

In addition each Employee who is an honorably discharged veteran of the Armed Forces of the United States shall have Veterans Day observed as a paid holiday.

Section 2.

Payment for the holidays shall be made in one lump sum at the rate of time and one-half (1-1/2), to be paid in the first pay period in December of each calendar year and each employee shall be entitled to payment for those holidays which occur during his employment year whether he worked on such holiday or not.

Position of the Parties: The Association

The association is requesting that the above-mentioned holiday schedule be modified to add Good Friday and Veterans Day, plus the day after Thanksgiving and the day after Christmas, to the list of approved holidays and that Section 2 be modified by changing pay at time and one-half to pay at a double-time rate.

In support of its request, the association presents the following arguments:

1. A survey shows that many cities and villages give their police unit members more than nine paid holidays.
2. The fact-finder's recommendation that no change in holiday schedules or method of payment be made was in error and should not be considered by the panel.

Position of the Parties: The Village

The village maintains that the holiday provision now enjoyed by the police unit member is exceptional and should not be improved.

In support of its position, the village presents the following arguments:

1. The fact-finder recommended no change in the provision.
2. A review of the available PERB surveys on the issue indicate that holidays granted by other cities vary from eight to twelve--some are paid on a straight-time basis, some time and one-half, some double time, and some as compensatory time off. Very few, the village maintains, pay a lump sum at time and one-half for the holiday whether it is worked or not.
3. The holiday provision is an escalating benefit; as wages increase, the value of the benefit increases.

#### DISCUSSION AND AWARD

The holiday and holiday pay issue was presented by both parties by comparing the present situation in Newark with what takes place in other cities and towns. If only this data were considered by the panel, the village's position would be most persuasive. The panel, in analyzing the statistics presented and the facts required to make a judgment, concluded, however, that the material presented on the issue lacked many necessary facts. It is the judgment of the panel that the current holiday provision is a better-than-average benefit, given the fact that each unit member receives a lump-sum payment whether he worked the holiday or not. In every case, this amounts to more than two and one-half weeks' pay. Given the shift-working schedule over a period of years, each employee should receive prime holidays off at one time or another. With the dearth of information to support an argument to the contrary in mind, and given the recommendation of the fact-finder and the panel's judgment that this provision is indeed a good one, the following unanimous award is made:

## AWARD

No change is awarded in the current holiday provision.

## SALARY AND RETIREMENT BENEFIT

Since, in its deliberations, the panel considered both salary and retirement together in making its award on these issues, the panel thought it appropriate to handle the issues together in this report. The pertinent salary and retirement provision of the expiring contract are the following:

Article VI--Remuneration

1. <u>SALARY</u>	<u>1973-74</u>	<u>1974-75</u>
<u>PATROLMEN</u>		
Start	\$8918	\$9489
Upon completion of probationary period and basic course	\$9218	\$9789
After 12 months of employment	\$9368	\$9939
After 24 months of employment	\$9518	\$10,089
<u>PATROLMAN INVESTIGATOR</u>	\$9852	\$10,443
<u>SERGEANT</u>	\$10,159	\$10,769

Article XI--Retirement Plan

## Section 1.

The Employer shall provide for each Employee covered by this Agreement coverage under the New York State Retirement Plan provided for in Section 375(g) at no cost to the Employee for the term of this Agreement. Such plan shall be effective April 1, 1974, if possible.

Position of the Parties: The Association

The association is demanding a \$1,200 salary increase for every patrolman and sergeant for the year 1975 and a \$1,200 increase for

these employees for the year 1976. The association is also demanding that the retirement plan now in effect be changed to the twenty-year special plan (Section 384d).

In support of its demands, the association presents the following arguments:

1. The village has not offered a total economic package that is meaningful or that is adequate to meet the needs of the association.
2. A survey of fifteen other police unit pay schedules points up that the village paid its patrolmen approximately \$1,200 less on average than all units surveyed for the year 1974-75 and \$1,650 less than average for sergeants for the same period. Where statistics were available for the same comparisons in 1976-77, the local unit, on the average, fell behind in both the patrolmen and sergeant classifications. Not only are these employees grossly underpaid, argues the union, but the village has had money due the association for almost two years and has earned interest on it. The association is demanding this interest be paid to the members of the unit. When one considers the inadequate pay together with the fact that the village does not offer an improved retirement plan (as many other jurisdictions do), the picture becomes still worse.
3. The retirement plan (Section 375g) enjoyed by the police unit members is the poorest plan of fifteen police departments surveyed. Seven of the fifteen provide a twenty-year special plan (the plan requested by the association) and seven

provide the twenty-five-year special plan (the plan recommended by the fact-finder), with most offering several additional benefit riders.

4. Even though the fact-finder awarded the twenty-five-year special plan (Section 384), the association feels this award is grossly inadequate and should be improved on by the arbitration panel.

5. The union thinks the ability to negotiate a change in retirement plans extended by the legislature has been renewed only until July 1, 1977 and, consequently, the possibility of ever obtaining the twenty-year special plan in the future is extremely doubtful.

6. The fact-finder's recommendation for the twenty-five-year special plan was to take effect during the 1975-76 year. Since this did not take place, a considerable savings has accrued to the village that can be used to finance the twenty-year special plan.

7. The association maintains that the village does have the ability to finance its demands in spite of the village's arguments throughout the bargaining that it did not. The association, in its brief, cites various sources of income the village has overlooked as well as the budget items already listed to support this contention.

Position of the Parties: The Village

During negotiations, the village offered a 5 percent increase to the top step of the salary schedule for 1975, as well as an additional

5 percent increase for 1976. It steadfastly refused to modify the current retirement plan and meet the demand of the union or the recommendations of the fact-finder.

In support of its position, the village presents the following arguments:

1. Cost-of-living increases since fiscal 1970 have been about 38 percent and salary increases to police unit members have been about the same. Health care costs represent a significant portion of the cost-of-living increase and, since the police unit members have a full paid hospitalization policy, this further enhances their real wage position vis-a-vis the increases in the cost of living. During this same period, fringe benefit costs to the village have increased dramatically, with no burden on the employees.
2. Police salaries in the village compare very favorably to police salaries in other upstate villages with similar populations and a similar number of police officers. PERB survey statistics are offered as proof of this position.
3. The union's demand for a twenty-year special retirement plan is exceedingly costly and is an unnecessary and unreasonable demand for the association to make. The association has not presented any evidence that justifies such an expensive and luxurious demand. There is no need to offer police officers in the Village of Newark an opportunity to retire at half pay after only twenty years of service. This type of provision is nothing

more than deferred income and in a traditional sense, cannot be considered to be a retirement plan. The village considers the special twenty-five-year plan recommended by the fact-finder in the same light, but feels a little less strongly about it, since the cost of it is much less than the twenty-year plan.

4. In regard to ability to pay, the village admits it has not reached its legislative tax limit, but it argues that, over the years, the taxpayers of Newark have shouldered their fair share of the burden of paying for services. The village argues strenuously that ability to pay does not mean pushing the tax to the legal limit: it means ability to finance a collective bargaining agreement that supplies adequate services to the public and still allows the village to be fiscally sound and remain competitive with other areas on tax rates. Thus, it can keep its present employers and continue to attract new ones. This argument was stressed a number of times throughout the hearing, but it was especially mentioned as a reason for the village not being willing to assume the obligations for a twenty-year retirement plan. This plan, the village argues, would almost double its present contributions to the pension fund and it would continue indefinitely. The village also made a lengthy presentation explaining its current sources of income and indicating that some of the sources might be cut at any time and it had no control over these actions. The village cited as a good

example of this type of revenue the rebate it received on the county sales tax. While cities within the county are entitled, by law, to a certain rebate, villages are not. At any time the Wayne County legislature could decide not to give any rebate to the village or to cut it drastically. If the village were to spend its present income for obligations it would have to assume on a continuing basis and its sources of income were to be reduced, it would find itself in an unusual fiscal situation, a position it is hoping to avoid. Numerous other arguments were presented to support the village's position on wages and retirement, but the panel did not think it is necessary to restate them all in this award, since the major arguments in support of the village's position have been cited.

#### DISCUSSION AND AWARD

In its deliberations on wages and retirement, the panel considered the two issues together. The panel was impressed with the village's argument that the retirement plan in question is a form of deferred income and must be considered as such. It was also impressed with the association's statement that the total economic package should be considered at one time. The association, in its brief and during the oral testimony at the hearing, emphatically stated that the most important issue before the panel was the retirement item. The panel was impressed with this statement, as well as with the arguments the association presented to support a change in this provision. The panel, however, rejected out of hand as too costly and not necessary the twenty-year special retirement plan.

The arguments presented by the village in opposition to adoption of this plan were far more persuasive than were the union's arguments in favor of it, just as the reasonableness of the village's position on wages was more realistic than was the association's position. The panel could see no justification in the facts presented at the hearing or in the economics of collective bargaining in the past two years to justify the association's demand for more than 20 percent increase over a two-year period. The village's offer of 5 percent each year was more in line (even though a bit low) with what is justified, based on other settlements and the increased cost of living.

The statistics presented by both sides to support their respective salary positions are plagued with the same shortcomings. Since, in this report, the panel has already explained its position on comparability on single items, no further statement is necessary. The panel thinks that the village, by its own admission in testimony at the hearing, has sufficient funds in the current budget to finance this arbitration award without any added burden to the village or local taxpayers.

The panel seriously considered the fact-finder's recommendations on wages and retirement and used them as a benchmark for making its award. With the thought in mind that the association has obtained a number of major concessions at the bargaining table and a number of concessions as a result of fact-finding and as a result of this arbitration, the panel makes the following recommendation on wages and retirement. The panel took the association at its word and considered the retirement plan to be the most important item at issue, just as it accepted the village's position that retirement benefits were a form of deferred income. With all the foregoing arguments in mind, the panel unanimously makes the following award:

## AWARD

The top step of the salary schedule for patrolmen and sergeants shall be increased for the year 1975 by \$600. It shall be increased for the year 1976 by an additional \$550. The special twenty-five-year retirement plan (Section 384) shall be implemented, beginning in the current year.

## DURATION OF THE CONTRACT

The panel directs that the contract continuation shall be for two years. Beginning June 1, 1975 and continuing to May 31, 1977, all awards of this panel are intended to be retroactive to the starting date of the contract. If any unit member would have been eligible for three weeks of vacation during 1975 under the new provision, it is not intended that he be given any retroactive benefit. He should, however, be authorized three weeks of vacation during the contract year 1976-77. This means that if an employee who, before this award, was authorized two weeks of vacation and took it, he should now be granted one additional week. The panel also intends that any personal days taken by unit members prior to this award should be adjusted and subtracted from available sick leave. Holidays used should be restored and if the personal leave was taken during 1975, the deducted holiday pay should be paid to the affected unit member and his accumulated sick leave debited. The retroactive pay shall be paid in a lump sum to the unit members in the first pay period that it is practically possible after receiving this award. This award is intended to finalize the impasse that has existed between the Village of Newark and the CSEA Police unit.

August 17, 1976

State of New York  
County of Tompkins

Rodney E. Dennis appeared before me

*Merle S. Hayes*

MERLE S. HAYES

NOTARY PUBLIC, STATE OF N. Y.

OFF. #49-6817700

MY COMMISSION EXPIRES MARCH 30, 1978

*Josephine M. Dole*

JOSEPHINE M. DOLE

Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1978

*Lois Van Hoover*

LOIS VAN HOOVER

NOTARY PUBLIC, State of N.Y. - Wayne County,  
# 59-4076740  
My Commission Expires March 30, 1977

Ithaca, New York

August 17, 1976

Respectfully Submitted,

*Rodney E. Dennis*

Rodney E. Dennis, Chairman

*Edward D. Ashcroft*

Edward Ashcroft

*Vincent A. Fischette*

Vincent Fischette