

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CONCILIATION

In the Matter of the Arbitration between

The Village of Tupper Lake

and

Unit 2 (Police) C.S.E.A.

Case Nos. IA-7; M77-299

ARBITRATION PANEL

OPINION AND AWARD

Appearances: For the Village

Donald Smith, Mayor

For the Union:

Donald J. Browse, C.S.E.A. Representative
Lawrence Sexton, Patrolman

The New York State Public Relations Board determined on August 29, 1977 that a dispute continued to exist in the negotiations between the above named parties. Accordingly, pursuant to the provisions of Civil Service Law, Section 209.4 a Public Arbitration Panel was designated for the purpose of making a just and reasonable determination of the dispute. The members of such designated panel are:

Public Panel Member and Chairman: Eric W. Lawson, Sr., Canastota, N.Y.
Employer Panel Member: J. Maurice Frechette, Tupper Lake, N.Y.
Employee Organization Panel Member: Gerald H. Savage, Tupper Lake, N.Y.

A hearing was held on the village premises on September 30, 1977. Both sides to the dispute were present and presented their arguments and facts in each others presence. Each side was given an opportunity to question the statements of the other side and to offer rebuttal arguments and facts.

Additional information was requested from both sides, which information was subsequently received by the panel. The opinion and award which follow are based on the record as so developed.

The issues not agreed upon in prior negotiations and thus the issues constituting the dispute were determined by the Panel to consist of the following: (1) Salary. (2) Retirement Benefits. (3) Overtime Premium Pay. (4) Night-time Differential Pay. (5) Health Insurance. (6) Duration of the Contract.

The Issues, Facts and Arguments

1. Salary - The Union proposed that the salaries of all members of the unit be increased by \$1,152.00 per year. The City proposed that all salaries be increased by \$500.00 per year in the first year, by \$450.00 per year for the second year and by a cost of living adjustment in the third year.

The existing salary schedule, taken from the expired contract, is as follows:

			(Number in position)
Patrolmen:	Start thru 1 year	\$7,644.00	1
	1 thru 3 years	8,164.00	2
	4 thru 6 years	8,424.00	0
	7 thru 9 years	8,684.00	2
	10 thru 12 years	8,944.00	1
	13 years and over	9,204.00	2
Sergeant:	1 thru 5 years	9,724.00	1
	6 years and over	9,984.00	1
Assistant Chief		10,504.00	1

The average salaries for the above positions, calculated from the data, are: Patrolmen, \$8,586, Sergeants, \$9,854.00 and Assistant Chief, \$10,504.00. The average for the 11 positions is \$8,991.00. The increase proposed by the Union

averages 12.8% and would cost \$12,672.00. The increase proposed by the City would cost \$5,500.00 in the first year and would average 5.5%.

The argument set forth by the Union in support of its proposal related to 3 factors: (1) Increase in the cost of living, (2) Comparative salaries, and (3) Ability to pay.

The cost of living data submitted by the Union showed that the U.S. Bureau of Labor Statistics Index of Consumer Prices rose during the first 7 months of this year at an annual rate of 6.38%. The data submitted also showed that on an annual basis the index rose at an annual rate of 6.7% from July 1976 to July 1977.

The Union submitted salary information for policemen in 14 villages in the State and for the New York State Police. The villages chosen were of comparable size with Tupper Lake, ranging from 3,770 to 13,800, Tupper Lake's population being 7,000. The list included Sarnac Lake, Lake Placid, Potsdam, Canton, Massena and Malone which are located within a 70 mile radius of Tupper Lake. Relevant information for these 6 villages and for Tupper Lake is given below:

<u>Village</u>	<u>Population</u>	<u>Contract Year</u>	<u>Base Pay</u>	<u>Top Pay</u>	<u>No. of Years to Top</u>
<u>Tupper Lake</u>	7,000	1976-77			
Ptlm.			\$ 7,644	\$ 9,204	13
Sgt.			9,724	9,984	6
A/Chief			10,504	-----	--
<u>Saranac Lake</u>	6,300	1977-78			
Ptlm.			8,200	12,000	20
Sgt.			11,263	15,046	20
A/Chief			-----	-----	
<u>Lake Placid</u>					
Ptlm.			9,398	10,173	--
Sgt.			11,416	-----	--
A/Chief			-----	-----	--

<u>Village</u>	<u>Population</u>	<u>Contract Year</u>	<u>Base Pay</u>	<u>Top Pay</u>	<u>No. of Years to Top</u>
<u>Potsdam</u>	9,985	1976-77			
Ptlm.			\$10,252	\$12,235	5
Sgt.			13,530	-----	--
Lt.			15,150	-----	--
<u>Canton</u>	6,398	1976-77			
Ptlm.			9,405	11,305	4
Sgt.			11,905	12,805	2
A/Chief			-----	-----	--
<u>Massena</u>	13,800	1976-77			
Ptlm.			8,754	10,274	6
Sgt.			10,273	12,096	6
A/Chief			10,601	12,509	6
<u>Malone</u>	7,900	1976-77			
Ptlm.			7,400	10,200	20
Sgt.			8,000	10,800	20
A/Chief			8,500	11,300	20

Note: A blank indicates data not available.

In addition to data on police salaries in comparable villages the Union noted a recently negotiated contract in which the Village of Tupper Lake granted the following increases to village Electric Department employees:

<u>Title</u>	<u>Old Rate</u>	<u>Raise</u>	<u>%</u>	<u>Annual Cost</u>
1 Foreman	\$5.53 per hr.	.50	9.0	\$1,040
3 Linemen	5.11	.40	7.8	2,496
2 Groundsmen	4.30	.25	5.8	1,040
2 Meter Repairmen	5.19	.25	4.8	1,040

The Union cited recent salary increases given to the Mayor, the Trustees, the Assessor and the Accountant ranging from \$1,000 per year to \$2,200.

As evidence of ability to pay the requested increase the Union reported the following bank balances in the various Village accounts:

	<u>5/31/77</u>	<u>8/31/77</u>
Revenue Sharing	\$ 36,068.81	\$ 38,183.83
Water	10,063.19	11,991.10
Sewer	15,944.26	24,293.83
General Fund	141,778.15	174,184.73
Electric	81,494.46	38,747.81

The Village defended the increases for the other village employees on the ground that the wages for the water and Electric Department employees were too low in the past. It also said that tax money was not involved in such increases. As for the increases for the elected officials it was stated that they were the first increases in 7 years. The Village indicated that it had budgeted only a \$300 increase for the members of the Police Department, hence the current offer was adequate. The Village reported that its tax rate was \$28.50 per thousand of assessed valuation with the assessment rate approximately 60% of true value. The tax increase for the 1977-78 year was reported as being \$1.50 per thousand. It was reported by the Village that Tupper Lake taxes are lower than in surrounding villages. Finally, the Village argued that the bank balances do not demonstrate an ability to pay because of the expenditures which lie ahead. The Village, upon being asked, did not allege financial hardship. Despite the absence of such a claim the Village was asked to submit budget and other financial information for the review of the panel. Such information was submitted and will be discussed below.

2. Retirement - The Union proposed that the present retirement plan for the Department which is generally known as the Section 375-g plan be upgraded to the ~~Special~~ 25 Year Plan generally referred to as the Section 384-g plan. The basic difference between the 2 plans is that in the first a minimum age of 55 years must be attained, whereas the second plan permits retirement after 25 years of service regardless of age. The proposed plan also provides for the 1/60th supplement.

The Village indicated that it might be receptive to instituting such a plan later but that the cost factor prevented it from agreeing to the plan for this contract year.

Exact figures for the cost of the proposed plan were not available. It was estimated that the additional cost would be approximately \$4,000 per year. The essential difference in cost between the plan now in effect and the proposed one related to the premium rate applied to the payroll for those members in the department who were hired before 1973. The old rate was 18.8%, the new rate was estimated to be 23.8%. The premium rate on the payroll of those hired since 1973 would be reduced from 10.8% to 10.1%.

The main argument of the Union in support of its proposal was that the more attractive terms of the new plan would induce more members to retire which would have 2 benefits for the Village: a. It would, as a result of such turnover, reduce the payroll costs and thus compensate the Village for higher premium rates. The Union also noted that the retirement program in effect for other Village employees costs the Village at the rate of 20% whereas the present plan for the police costs only 18.8%. Finally, the Union cited Malone, Potsdam, Massena, Gouverneur and Canton as nearby villages which have adopted the Section 384-g plan.

The argument of the Village was directed against immediate adoption of the new plan and was largely centered on the cost of the plan. The Village noted that the plan now in effect is a good plan and is made available to the members at no cost. It also reported that Saranac Lake has adopted the Section 384 plan whereas Lake Placid uses the Section 375-g plan.

3. Overtime - The Union proposed that the contract provide that the payment for overtime work by members of the department be at the rate of 1 and 1/2 of the regular rate, or that the member be allowed compensatory time off at the 1 and 1/2 rate. The Village objected to the proposal. The cost of the proposal was estimated at \$3,150 to \$4,000.

The argument of the Union in favor of its proposal noted the excessive workload which is inherently associated with overtime work. It called attention to the requirement that premium rates be paid in private industry as a matter of law. It reported that Malone, Potsdam, Massena, Gouverneur and Canton are villages which pay premium overtime rates to their police employees. In addition, it named other public employers such as Sunmont Development Center, the Town of Altamont and the New York State Police which pay premium overtime rates.

The Village pointed to the additional cost as a reason for objecting to the proposal. It also noted that other Village employees do not receive premium pay for overtime work.

It was agreed between the parties that much of the overtime work could be eliminated by better management. The Union did not object to the elimination of overtime. Its objection to its use was that the men were required to work on an overtime basis, subject to discipline if they did not, but were not compensated on a premium basis.

4. Nighttime Differential - The Union proposed that those members who worked between the hours of 4 p.m. and 8 a.m. be paid a wage differential of 20¢ per hour. The Village opposed the proposal. It was estimated that the proposal would cost \$1,168.

The argument of the Union was that a nighttime duty shift is less desirable than daytime and that since there was no rotation the men on night duty should be compensated for the less desirable aspect of their schedule. Without citing individual cases the Union alleged that shift pay differentials are a well established practice in both public and private employment.

The argument of the Village pointed out the additional cost. The Village also pointed out that some of the night workers preferred to work at night. It called attention to a minor split-shift situation which might cause some bookkeeping problems. The Village suggested that the element of equity might be solved by adopting a rotating schedule.

5. Health Insurance - The Union proposed that the present health insurance program be improved to include coverage for dental and eye care. The Village opposed. Various cost figures were submitted ranging from \$25.08 per month for individual coverage without false teeth coverage to \$174.35 per month for family coverage including false teeth. Eye care costs were reported to be \$11.00 per month for individual care and \$39.60 per month for family coverage. The above figures are total monthly costs for the present staff of 11.

The argument of the Union was that the rising cost of medical services placed a burden on its members and that the proposal would provide some relief. It cited the various State-wide contracts as evidence of other public employers who provide the type of coverage proposed.

The Village objected largely on the basis of cost. Some questions were raised about the way in which the program would work in a village like Tupper Lake.

Discussion

1. Salary - The arguments and evidence of both sides were not entirely persuasive with respect to the specific salary adjustments proposed. Thus, the Union proposal of a 12.8% increase is not justified by either the cost of living figures cited or the comparisons with other villages. The cost of

living figures reported would justify an increase of about half of that proposed. The cost of living argument of the Union is accepted by the Panel as being valid and relevant.

The village comparisons cited by the Union show a significant discrepancy between the lower salaries for Tupper Lake and prevailing salaries for five of the six area villages cited. However, a variety of factors need to be considered in making comparative studies of salary schedules. Such factors as clothing allowances, health insurance coverage, leave days and vacations need to be taken into account. It is unlikely that the observable out-of-lineness of the Tupper Lake salaries would be significantly altered if such data were in the record and thus available for a complete analysis. However, the record is incomplete in this regard and thus we cannot give full weight to the comparability evidence submitted.

The argument of the Village that the raises for the employees of the Electrical Department were justified by the need for correcting their out-of-lineness does not stand up very well when analyzed. Thus, the raises average out to 6.7%, which is approximately the measure of the increase in the cost of living during the past year. Further, there is no evidence that the previous wages were any more out of line than those of the Police Department. The argument that the Electrical Department is a self-sustaining unit whereas the Police Department must be supported out of tax receipts can only be persuasive if there is a genuine inability to pay on the part of the government. The Village did not allege such inability. The issue of ability to pay will be discussed below with respect to the financial impact of all of the issues taken together.

The Panel concludes that the evidence and arguments justify schedule increases of \$550.00 per year for each of 2 years. Such increases will provide

slightly more than 6% salary adjustment in the first year and slightly less than 6% in the second year. Such adjustment, taken together with the clothing allowance adjustment of \$50.00 already agreed upon by the parties and with the other adjustments provided in the Award, are considered to be fair and just in accordance with the statutory standards.

2. Retirement - The argument of the Union with respect to the proposed change in the retirement plan was persuasive largely because of the comparative data submitted. Five of 6 area villages cited provide the retirement plan proposed by the Union. The Village generally conceded the merits of the proposal but indicated that it wanted to institute the new plan later. The finding set forth in the Award that the new plan be entered into in the second year of the contract accomodates the Village with respect to its concern about timing.

3. Overtime - The argument of the Village that the overtime premium pay proposed by the Union would be too costly was largely negated by its agreement that much of the overtime work required in the past could have been avoided by good management. The argument that premium pay is not paid to other employees of the Village and thus should not be paid to the police was not persuasive. The conditions under which the members of the Police Department work make them "captive" in the sense that issues of public safety are involved if they do not work overtime as directed. Virtually having no choice as to whether they work overtime or not the members of the Police Department are thus to be distinguished from the civilian employees of the village. The fact that premium pay for overtime work by policemen is provided by most of the other area villages was also persuasive to the Panel in reaching the finding that premium pay is to be provided in the contract. The Award provides that the premium pay provision will not take effect until December 1, 1977. This delay is to avoid the bookkeeping problems involved if the provision

were made retroactive to the effective date of the contract. It also permits the management adjustments which might result in reducing the amount of overtime required. Lastly, it reduces somewhat the cost impact of the provision. The Award does not provide for compensatory time off at a premium rate because such a provision would aggravate the manpower shortage which contributes to the need for overtime work.

4. Nighttime Differential - The argument of the Union in favor of a night wage differential was not persuasive. The argument was based on equity considerations. However, it was shown that new inequities would be created inasmuch as some of the members prefer the night assignments. The panel hereby strongly recommends that the Union and the Village consider the installation of a rotation system which would spread the less desirable assignments evenly.

5. Health Insurance - The Union was not successful in showing that the proposed increased benefits were justified. There was no showing that employees of local governmental bodies either in the vicinity of Tupper Lake or elsewhere in the State generally enjoy dental and eye care coverage. Likewise, there was no showing that the existing program negotiated in the past is not adequate when compared with other municipalities.

6. Duration - Both parties indicated, in general, a willingness to enter into a multi-year contract although the Union made no formal proposal for a second year salary adjustment at the hearing. In the opinion of the Panel it is in the best interests of the public and the respective parties that a two year agreement be entered into. The differences between the parties were not overwhelming. Further, the addition of a second year makes possible a compromise with respect to the issue of the retirement plan.

The Ability to Pay Issue - Although the Village did not enter a claim of inability to pay, the Panel made a limited inspection of certain financial data. The General Fund Balance declined during the fiscal year ended May 31, 1976 from \$91,500.91 to \$87,935.09. However, in the fiscal year ended May 31, 1977 the General Fund Balance increased from \$87,935.09 to \$122,127.10. The total of All Indebtedness declined during the fiscal year ended May 31, 1977 by \$47,700.00 to \$339,344.00.

The estimated cost of the items provided for in the accompanying Award is as follows:

	<u>First Year</u>	<u>Second Year</u>
Salary	\$6,050	\$ 6,050
Retirement	0	4,000
Overtime	2,500	4,000
	<hr/>	<hr/>
Total	\$8,050	\$14,050

The above estimates amount to \$3,050 in the first year and \$8,550 in the second year over the proposals of the Village. When examined in light of the current fiscal position of the Village and the relatively low tax rate in effect these costs are not viewed as excessively burdensome and may be absorbed out of the normal fluctuations of the General Fund.

In summary, the panel concludes that the adjustments provided for in the accompanying Award are merited when measured against the standards of comparability and welfare of the parties. Furthermore, the increased costs are well within the ability of the Village to pay.

AWARD

The undersigned arbitrators, having been designated pursuant to the provisions of Section 209.4 of the New York State Civil Service Law, and having heard the proofs and allegations of the parties, hereby make the following determinations as to the terms and conditions of employment specified as not agreed upon:

1. Salary - The new Agreement shall provide for and the Village shall pay salaries for each of two years for each rank and/or step in the old schedule heretofore set forth in Appendix A of the Agreement which covered the period June 1, 1976 to and including May 31, 1977. The new schedule shall be as follows:

Annual Salary

Members covered by the provisions of this agreement shall receive a basic salary pursuant to the following schedules on the effective dates indicated:

<u>Rank</u>	<u>Years in Grade</u>	<u>Yearly Salary*</u>	
		<u>1977-78</u>	<u>1978-79</u>
Assistant Chief		\$11,054.00	\$11,604.00
Sergeant	6 years and over	10,534.00	11,084.00
Sergeant	1 thru 5 years	10,274.00	10,824.00
Patrolman	13 years and over	9,754.00	10,304.00
Patrolman	10 thru 12 years	9,494.00	10,044.00
Patrolman	7 thru 9 years	9,234.00	9,784.00
Patrolman	4 thru 6 years	8,974.00	9,524.00
Patrolman	1 thru 3 years	8,714.00	9,264.00
Patrolman	Start thru 1 year	8,194.00	8,744.00

(*Effective June 1, 1977 to and including May 31, 1979.)

2. Retirement - The new Agreement shall provide for and the Village shall take the necessary steps to implement a change in the Retirement Program provided the members covered by the Agreement. The plan to be provided is the non-contributory one designated under the New York State Policemen's and Firemen's Retirement System as the Special 25 Year Plan (Section 384) with the Additional 1/60th Supplement. The Village shall take the necessary steps by June 30, 1978 to implement the change to the new plan. The new plan shall take effect in the second year of the Agreement.

3. Overtime - The new Agreement shall provide that overtime shall be defined as time worked in excess of 8 hours per day and that such time worked shall be paid at a rate 1 and 1/2 times the regular straight time rate applicable. This provision shall take effect on December 1, 1977.

4. Nighttime Differential - The new Agreement shall not provide for the payment of a nighttime differential in wages.

5. Health Insurance - The new Agreement shall provide for Health Insurance Benefits in accordance with Article VII of the Agreement which covered the period June 1, 1976 to and including May 31, 1977.

6. Duration - The new Agreement shall cover the period June 1, 1977 to and including May 31, 1979.

J. Lawrence Frchette
J. Donald S. ...
Eric W. Lawson

State of New York)
County of *Onondaga*) ss.:

On this *3rd* day of *Nov*, 1977, before me personally came and appeared Eric W. Lawson, Sr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

DONNA J. GRAUER
Notary Public in the State of New York
Qualified in Onon. Co. No. 34-4519673
My Commission Expires Mar. 30, 1978
Donna J. Grauer
Notary Public

State of New York)
County of *Franklin*) ss.:

On this *31st* day of *October, 1977* before me personally came and appeared J. Maurice Frechette, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

Charles F. Murray
Notary Public

CHARLES E. MURRELL
Notary Public
No. 100-1-1000
10/31/78

State of New York)
County of *Franklin*) ss.:

On this *31st* day of *October, 1977*, before me personally came and appeared Gerald H. Savage, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

Charles F. Murray
Notary Public

CHARLES E. MURRELL
Notary Public
No. 100-1-1000
10/31/78