

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

In the Matter of the Arbitration :
Between :
VILLAGE OF KENMORE : Case Number IA-14; M77-18
And :
KENMORE POLICE BENEVOLENT ASSOCIATION :

In accordance with the provisions of the Civil Service Law, Section 209.4, as amended July 1, 1977, the New York State Public Employment Relations Board, on September 29, 1977, designated the following individuals ¹⁾ to serve as a Public Arbitration Panel in these proceedings:

F. James Kane, Employer Panel Member
Thomas Hinchey, Employee Organization Panel Member
Irving R. Markowitz, Panel Member and Chairman

Pursuant thereto, the panel held hearings on November 15, 1977, and December 13, 1977, in the City of Buffalo, State of New York, at which time the parties, in support of their respective positions, presented written and oral arguments and adduced written and oral testimony with respect thereto. Thereafter, the representatives of each of the parties submitted post-hearing briefs and documents.

Frank P. McGarry, Esq., appeared for the Village and Nicholas J. Sargent, Esq., for the employee organization (KPBA).

THE ISSUES

The issues in these proceedings result from unresolved proposals for modification of an Agreement preceding the one at impasse. They are generally as follows:

Salary Increase
Night Differential
Hazard Pay
Education Incentive Pay
Shooting Incentive Pay
Additional Out of Rank Pay
Additional Longevity Pay

1) A change in the designation of the Employer Panel Member was made by the Board on November 9, 1977.

Modified Holiday Provisions 2)
Additional Vacation Pay
Uniform Cleaning Compensation
Sick Leave Enlargement
Organization Leave Enlargement
Personal Leave Enlargement
Pension Modification
Range Officer Increase
Medical and Drug Insurance Enlargement
Dental Insurance Coverage
Life Insurance Coverage
Restriction on Release of Information
Payroll Deduction

BACKGROUND

The Village of Kenmore is located within the Town of Tonawanda, Erie County, immediately adjacent to the City of Buffalo. It is essentially a residential community consisting of some 21,000 residents. Its police force, represented by the KPBA, consists of 16 patrolmen, one detective, four desk lieutenants^{five lieutenants} and two captains, making a total of 29.

The proceedings herein concern the resolution of an impasse arising out of negotiations for a collective agreement to succeed a three-year agreement which expired on May 31, 1977.

While a mediator appointed by the Public Employment Relations Board sought to aid the parties in achieving a resolution of their dispute, apparently through mutual understanding between the parties, the appointment of a fact-finder was waived.

POSITIONS OF THE PARTIES

Kenmore Police Benevolent Association seeks a modification or enlargement of the provisions of the previous contract and on the basis of a projected two-year agreement commencing May 1, 1977, generally as follows:

- "1. Salary
 - (a). 6% catch-up plus cost-of-living clause commencing June 1, 1977.
 - (b). 6% catch-up plus cost-of-living clause commencing June 1, 1978.

2) This proposal was withdrawn at the hearings.

- (c). Shift differential for 12 mid-night - 8 a.m.
- (d). Hazard pay for motorcycle officers.
- "2. Pay Incentives
 - (a). Educational
 - (b). Shooting
- "3. Out-of-Rank Compensation
(Article VIII (B.))
- "4. Longevity Pay
(Article VIII (E.))
- "5. Holiday Pay
(Article VIII (F.)) - (Withdrawn)
- "6. Vacations
(Article IX)
 - (a). Increase
 - (b). Accumulate with Compensatory time
- "7. Uniforms
 - (a). Cleaning Allowance
(New)
 - (b). Damage Replacement
- "8. Sick Leave
(Article XV (B.))
- "9. Organization Leave
(Article XV (C.))
- "10. Personal Leave
(Article XV (D.))
- "11. Pension Benefits
(Article XVI)
- "12. Range Officer's Pay
(Article XVIII)
- "13. Insurance
(New)
 - (a). Life - \$10,000 plus one year's pay to beneficiary upon death in line-of-duty
 - (b). Dental
- "14. Payroll and Savings Bond Plan
(New)
- "15. Miscellaneous
(Article XXI)

- (a). No releasing of personnel file without prior authorization. (New)
- (b). Where sickness occurs on-the-job, if individual leaves, he will not be charged for sick leave.

"16. Length of Award - 2 years

"17. Retroactivity"

The Village opposes any modification of the expired agreement on the basis of statutory criteria.³⁾

STATUTORY CRITERIA

Section 209 of the Civil Service Law, as amended, requires the Arbitration Panel to make a just and reasonable determination of the matters in dispute between the parties and to specify the basis of its findings in accordance with the following statutory criteria.

III. Statutory Criteria. "a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities;

"b. the interests and welfare of the public and the financial ability of the public employer to pay;

"c. comparison of peculiarities in regard to other trades or professions, including specifically,

1. hazards of employment;
2. physical qualifications;
3. educational qualifications;
4. mental qualifications; and
5. job training and skills.

"d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security."

3) The positions of the parties will be further explained and treated in the accompanying sections of this Award.

THE EVIDENCE AND FINDINGS

It is noted that the issues herein are generally economic in nature and oral and written testimony and arguments have thus been adduced to support the positions of the parties as may be embraced by statutory considerations. We shall therefore set forth the positions of each of the parties with respect to the specific statutory criterion or criteria applicable thereto and our findings in respect thereof. In such connection, it may be useful to generally set forth the salaries and benefits stated in the last expired contract.

The present salaries are as follows:

Captain	\$19,358
Lieutenant	\$17,268
Detective and Desk Lieutenant	\$15,625
Patrolman (Top Grade) ⁴⁾	\$14,305

Additionally, there are provided special out-of-work compensation, overtime pay, court appearance pay, longevity pay, holiday pay, vacation compensation, furnishing and repair (but not cleaning) of uniforms, sick, funeral, organization and personal leaves, as well as pension benefits and medical insurance.

a. Comparability: Public Sector.

Kenmore Police Benevolent Association maintains that the salary rates of the Village compare unfavorably with villages and townships of similar size within Erie County. In such respect it shows that present annual salaries of patrolmen in the ^{town} village of Cheektowaga are \$15,168; Hamburg (village) \$15,004; Hamburg (town \$15,004; West Seneca \$14,505; Amherst \$15,957⁵⁾; Tonawanda \$15,945⁵⁾ and Depew (1976) \$14,802⁵⁾. (Further comparisons are made in the area of supplemental or fringe benefits, including longevity pay, overtime compensation, uniform allowance, vacation pay and insurance.)

4) While there is a three-step range for patrolmen, all present patrolmen are at the top grade and the parties have generally confined their comparability studies to this grade only.

5) These stated salaries include compensation for briefing time.

It further maintains that negotiated or arbitrated increases in salaries in the past year for comparable communities in Erie County have averaged over six-and-one-half per cent. It points specifically to the Town of Tonawanda which it claims has traditionally acted as a pattern-setter for the Village and has striking similarities in position specifications and duties in that both police forces take identical civil service examinations, undergo the same physical examinations and perform the same job duties in the same or similar areas. While Tonawanda as of January 1, 1977, pays an annual patrolman's salary of \$14,975, the hours of employment are fewer (37½ hours per week averaged on a four-on and two-off shift).

The Village maintains that its present salaries of patrolmen and officers exceed the average paid in other communities in the State and more especially in the large cities; e. g. Buffalo, Syracuse, Elmira, Schenectady. It further claims that average salaries for the Village police are close to or exceed salaries of neighboring villages in Erie County; e. g. Hamburg - \$14,545, East Aurora - \$14,142, Depew - \$12,895, Lancaster - \$15,134⁶⁾.

It further maintains that supplemental benefits provided by the Village are either generally equal or greater than those paid by communities in the surrounding area.

FINDINGS

One of the most difficult tasks in wage or salary determination is the analysis and sorting out of comparable studies. Important though it is in this area, comparability statistics, especially of a multiplicity of units, are never precise. Inevitably, there are differences in size, complexion and ancillary factors among the various units and even more significantly, profound distinctions in conditions of employment and supplemental benefits that cannot easily be measured.

6) It claims, however, that salaries for superior officers are substantially larger than Lancaster.

Nonetheless, in the instant case, a study of the material submitted by the parties shows disturbing phenomena. Thus, the figures do show that the Village pays higher salaries to its police force than some of the largest cities in the state - e. g. Buffalo 7) and Syracuse, and in the same vein, that a number of villages in Erie County pay higher salaries than their neighboring larger subdivisions of cities and townships.

However, it does appear that the police salaries of the Village have generally been in line with those of comparable communities in Erie County, especially when compensation in the form of supplemental benefits is considered.

We thus Find that generally there has been a fairly close similarity of salaries of the employers involved herein with those of other employers in the State and more importantly in the County, who perform similar services with similar skills under similar working conditions in public employment.

Private Sector.

Kenmore Police Benevolent Association maintains that factory workers in Buffalo average \$286.42 per week, among the highest in the nation, and that a new steelworkers contract increases the average hourly wages of workers from its current \$8.08 by 40 cents the first year and 20 cents each for the next two years. It compares these figures with the current \$6.75 per hour received by patrolmen of the Village.

The Village maintains that it is improper to (a) compare salaries of patrolmen with steelworkers whose conditions of employment are vastly different and (b) to use the patrolman's salary alone rather than the average of all unit employees in such comparisons. It thus claims that the average worker in greater Buffalo receives \$4.17 per hour against an average paid to the entire police unit of some \$8.00 per hour, and to the patrolman of some \$7.00 per hour as

7) Buffalo Police Benevolent Association states that Buffalo pays additional compensation for "briefing time". However, it does appear that this is the equivalent of overtime which, although guaranteed, may make it somewhat difficult for proper comparison.

against a private sector guard (whose position is most closely related to patrolman) who averages \$6.36 per hour.

FINDINGS

Comparisons with employees generally in the private sector are not statutory valid unless their skill and conditions of employment are shown to be comparable. It is thus obvious that the earnings of a steelworker cannot properly be compared to a police officer. Moreover, the comparisons of supplemental benefits were not precisely shown by either side which further complicates the problem. On a broad basis it has not been shown that there are marked differences between the salaries of police officers and private sector employees in the greater Buffalo area.

We thus Find that the parties have not submitted any significant data that indicate substantial differences between the salaries and benefits of the employees in these proceedings with employees in the private sector with similar skills and conditions of employment.

b. Financial Ability to Pay and Public Interest.

Financial Ability to Pay:

The Village maintains that while it has not reached its taxing limit, it has the functional inability to fund further salary increases for the contract's duration. In this respect it claims

1) Its tax base, consisting primarily of residential housing, has not increased in the last ten years. Thus the assessed valuation for fiscal 1977-8 is \$28,312,273, compared to fiscal 1967-8 when it was \$28,310,347;

2) The tax rate has increased 106%, from \$31.60 per thousand in 1967-8 to the current rate for 1977 of \$65.24 per thousand.

3) As a residential community, the increase in taxes impacts almost exclusively on the homeowner rather than against industry or commerce as in many other political subdivisions;

4. The Village form of government is discriminated against by State and Federal tax policies. Thus cities in New York

State of the same population range as the Village receive five to six times more in state revenue-sharing than the Village, and towns receive \$2.00 more per person in the base rate. The State Legislature has frozen the total revenue-sharing allocations at the 1976-77 level. Additionally, the federal revenue-sharing distribution is weighted in favor of the City form of government as is the formula for allocation of community development funds. Moreover, cities are favored in the distribution of county sales tax revenues by virtue of state laws which permit cities to preempt a portion of such tax or impose their own 1% tax, denied to both villages and towns;

5) The Village has maintained a static population whereas towns have continued to grow. Thus in the town of Tonawanda (to which Kenmore Police Benevolent Association desires to closely compare the Village), the assessed valuation has risen \$22,000,000 in the past ten years while the assessed valuation of the Village decreased \$111,000;

6) The Village is "doubly" taxed - that is, its residents are required to pay property taxes to more than one local government below the County - the Village and the Town of Tonawanda - even though it may neither need nor use town services.

7) Anticipated revenues have not been realized and \$60,000 anticipated Community Development funds lost. Additionally, the Village has been assessed \$203,000 by the Town for a new secondary sewage treatment plant; its insurance costs have substantially increased and street lighting has skyrocketed by 12%.

Thus, the Village claims that neither it nor its residents can meet additional labor costs.

Kenmore Police Benevolent Association maintains that the Village, far from suffering an inability to pay, enjoys the highest real property value at full equalization of all villages in Erie County and is part of the second wealthiest town in the County in terms of property values. Additionally, its residents are generally

employed in the greater Buffalo area, whose salaries are among the highest in the nation.

FINDINGS

We Find that while the Village is not financially bankrupt or totally unable to finance a reasonable salary increase herein, its resources have been substantially eroded and it must therefore carefully control its expenditures to avoid undue hardship to its residents.

Public Interest:

It would seem that the interest of the public is not only affected by the impact of greater costs and a possible consequent tax increase, but also by its need to attract and retain a suitable workforce by providing fair wages and reasonable working conditions. It would appear to us that in such respect, its interests would be better preserved by a concern for the real earnings of its employees as well as the patterns and trends in salary increases by neighboring communities, so that its own employees would maintain a fair degree of morale and not seek better employment elsewhere. In that connection, while the criteria of costs of living and patterns and trends (both important aspects of salary determination) are not explicitly stated in the statute, they should be carefully considered and evaluated.

We have previously recounted the possible impact of an increase of salary on the residents of the Village. We shall now turn to the criteria referred to.

a. Cost of Living:

It is statistically apparent that consumer prices for the period of time since the expiration of the previous contract has exceeded six per cent per annum and we so find.

b. Trends and Patterns:

It is difficult to precisely determine in public sector collective negotiations recent trends in the Buffalo area.

Nevertheless it would generally appear that such patterns indicate that during 1976-77, police contracts were generally settled at somewhere between 4½% to 6½% of their current salaries, while other public sector contracts were settled at a somewhat lesser percentage figure. In the private sector it would appear that settlements ranged between 4% and 10%, with an average range of about 6% to 7%. While no precise findings can be made herein, the panel has considered these phenomena in its deliberations.

c. Comparison of Peculiarities of Specifications or Conditions of Employment:

While five sub-divisions in this area appear in the statute, it would seem that hazards of employment and physical qualifications are most important.

In such respect, Kenmore Police Benevolent Association has extensively shown the dangers inherent in police work and the consequent strain on a police officer resulting therefrom. It has also shown that a police officer must be in excellent physical condition to successfully pass the hiring tests and maintain such condition during his employment.

The Village disagrees that the hazards inherent in the job of police officer exceed those in other trades or professions; e. g., fireman, mining and quarry, construction, etc. More particularly, it maintains that in Kenmore, no police officer has been shot at in 20 years and no accidental injury was suffered by him in 1976. Additionally, it states that the incidence of violent crime in the Village is negligible when compared to surrounding communities.

FINDINGS

While we recognize that there are substantially greater hazards in the work of police officers than in other trades or professions, it would appear that actual experience does not reflect that there is a special or peculiar hazard in the Village.

We thus Find that while hazards generally exist in such

employment, they are not of significant nature in the Village. We further Find that by comparison, physical qualifications are higher than most trades or professions. Nonetheless, in the consideration of these criteria, it should be noted that they are more relevant in connection with an initial determination of salaries. Here the parties have had a collective negotiation history of nearly ten years and it has not been shown that physical qualifications or hazards of employment have increased since the initial contract.

d. Terms of Previous Collective Agreements Between the Parties Hereto:

The Village has shown that from 1971 to 1977 police officers' salaries have increased by 54%, by successive contracts as follows:

1970-1	\$ 9,293	
1971-2	10,250	10.2%
1972-3	10,705	4.4%
1973-4	11,294	5.5%
1974-5	11,915	5.5%
1975-6	13,369	12.2%
1976-7	14,304	7.0%

Additionally, the Village maintains that in 1975-6 the addition of an improved pension plan increased the annual cost of pensions by 14.9%. Thus, the pension costs for police-fire units are \$5,000 per employee, whereas the costs for other Village units are \$2,271 per employee.

The Village thus concludes that in the past 10 years, unit salaries have far outstripped the consumer's price index and that the cost of benefits has risen from \$1,379 per employee to \$7,860.

Kenmore Police Benevolent Association maintains that salary increases have been modest at best since 1971 and in the past three years have accelerated only because they were tied in

with cost of living increases. As to pensions, it maintains that the change occurring in 1975-6 resulted from an improved pension plan which was generally granted by a substantial number of public employees to police units.

FINDINGS

We Find that there has been a significant increase in salary and benefits in the past ten years and more especially in the three-year period from 1974-5 to 1976-7.

CONCLUSIONS

The statutory criteria of most significance, in our judgment, are the increases in living costs during the period contemplated by the new contract, the previous contract settlements between the parties, and the ability of the Village to finance a reasonable settlement. The other criteria are of lesser significance in connection with a proper determination to be had herein.

We have found that increases in the cost of living since the expiration of the last contract have exceeded six per cent and from the current B.L.S. statistics and other cost of living data, it would appear that such increases would continue and indeed might accelerate somewhat during the second year of the projected contract.

However, the record does indicate that during the period 1971-76, the increases in salaries in the unit have to some extent outweighed the cost of living increases, and especially so when increases in the cost of benefits are considered. Thus, in the three year period covered by the previous contract, there appears to have been a consolidated, weighted annual increase of salaries and benefits of about 12%.

As to ability to pay, it would appear that the Village has not shown that it has an inability to finance reasonable increases in salary, although sound fiscal policy suggests that it must carefully supervise its expenditures in order to remain a viable community.

We have in our deliberations considered all the statutory criteria and our conclusions are based on a consideration on balance of such criteria with emphasis on those we have hereinabove stated.

Nearly all of the issues herein have economic impact; we have thus given priority to those which are most significant, as salaries, or which are more urgently needed and digestable to both sides.

We have recognized that justice and fairness require that financial burdens be shared by both employees and their employer. Both of them face problems of increases in cost and in financial responsibilities to their families or constituents. A delicate but suitable balance between their needs (rather than expectations) should thus be sought.

AWARD

After careful consideration of the facts and circumstances and in accordance with statutory criteria contained in Section 2094 of the Civil Service Law, the undersigned award that the parties shall forthwith enter into a Collective Agreement commencing June 1, 1977, and terminating May 31, 1979, which shall contain the provisions of their predecessor contract with the following additions and modifications:

1) There shall be an annual increase of \$650 in each grade and step of the present salary schedule, made effective from June 1, 1977, through May 31, 1978, payable by lump sum on the last pay period of May, 1978;

2) There shall be an annual increase of \$800 in each grade and step of the present salary schedule, effective from June 1, 1978, through May 31, 1979, payable in accordance with the present mode of payment;

3) There shall be a cleaning allowance for uniforms to all unit members of \$50 for the first contract year, payable in the last pay period of May, 1978; and a sum of \$75 for the second contract year, payable in the first pay period of December, 1978;

4) Article VIII-B (Out of Rank Compensation) shall be modified so as to add to its present provision the following (in words or substance):

If a policeman is so assigned for a period of more than one full day or more than eight hours during a pay period, he shall receive an additional amount equal to the full salary compensation ascribed to such higher paying position for all of the hours he has been assigned thereto during said pay period.

5) Article XV-B1 (a-2) (Sick Leave) shall be amended by changing "June 1, 1971" to "June 1, 1977" and changing "165 days" to "200" days.

6) Article XVI (Pension Benefits) shall be amended by deleting the word "establish" in the first line of the first paragraph; the phrase "effective June 1, 1976", on the third line of the first paragraph, and the entire fourth paragraph, all as stipulated.

7) Article IX (Vacations) shall be amended by adding thereto, in words or substance, the following:

A policeman entitled to vacation of 15 working days or more may apply to the Village for an opportunity to work for up to five days of his vacation period and be paid therefor in addition to his vacation pay. Said application must be filed 30 days prior to its desired effective date. The Village shall have absolute discretion in either granting or denying said application and no grievance or arbitration may be filed by the employee or the Association seeking to vacate or set aside the decision made by the Village on the application so made.

8) Article XX (Medical Insurance) shall be amended by adding the following in words or substance:

"All of coverage hereinabove described in this article at the option of a policeman and at his own cost and expense, shall be extended to the policeman's children, aged 19 to 23 years of age".

And We So Award.

F. JAMES KANE (s)
Employer Panel Member

THOMAS HINCHEY (s)
Employee Organization Panel Member

IRVING R. MARKOWITZ (s)
Panel Member and Chairman

STATE OF NEW YORK)
COUNTY OF ERIE) ss
CITY OF BUFFALO)

On this 11 day of May, 1978, before me, the subscriber, personally came and appeared F. James Kane, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

s/Nicholas J. Sargent, *NOTARY PUBLIC*
Commission Expires 3/79

STATE OF NEW YORK)
COUNTY OF ERIE) ss
CITY OF BUFFALO)

On this 11 day of May, 1978, before me, the subscriber, personally came and appeared Thomas Hinchey, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

s/Nicholas J. Sargent, *NOTARY PUBLIC*
Commission Expires 3/79

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss
CITY OF SYRACUSE)

On this 13 day of May, 1978, before me, the subscriber, personally came and appeared Irving R. Markowitz, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

7 CAROL O. BENEDICT
Notary Public in the State of N. Y.
Appointed in Oneida County
My commission expires Mar. 30, 1980