NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between VILLAGE OF SOLVAY POLICE BENEVOLENT ASSOCIATION and VILLAGE OF SOLVAY	PERB Case No. IA-15; M-77-66 OPINION AND AWARD OF THE ARBITRATION PANEL

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CONCILIATION

APPEARANCES

After negotiations and mediation had proved unsuccessful in resolving this dispute, the parties established this Interest Arbitration Panel (Panel) to bring about a settlement of their contract negotiations. The parties selected Dana E. Eischen, Esq., to serve as Chairman and Impartial Member of the Panel. Mr. Martin L. Bush, Manager, Labor Relations, Industrial Chemicals Division, Allied Chemical Corporation, was selected by the Village of Solvay (Village) to serve on the Panel. The Village of Solvay Police Benevolent Association (PBA) selected Dr. Garth C. Lax, Consulting Economist, to serve on the Panel. Following appointment of the Panel by the New York State Public Employment Relations Board (PERB) on January 27, 1978, preliminary conferences were held by the Chairman with representatives of the parties. Each of the parties filed pre-hearing briefs with the Panel and on April 20, 1978, the Panel convened for hearing in Solvay, New York. Both parties were represented and afforded full opportunity to present oral and documentary evidence in support of their positions. Appearing on behalf of the Village was Mr. Charles Francemone, Village Trustee. Representing the PBA was Anthony J. DiCaprio, Jr., Esq. Both parties requested leave to file post-hearing briefs, which were received by the Panel on or about May 10, 1978. After careful study of the entire record, the Panel convened in executive session on May 16, 1978, and discussed the case further in June, 1978, whereupon the instant Opinion and Award were issued.

BACKGROUND

The Village of Solvay is one of several satellite communities contiguous to the City of Syracuse, New York. The population of the Village is approximately 9,000 people. Located within the village limits are several industrial plants, including Allied Chemical, Fraser and Jones Company, Pass and Seymour, and several

other industrial plants both large and small. The Village of Solvay Police Department consists of Chief Rocco C. Fumano, four Sergeants, eight regular police officers, two special status officers hired under a federal grant (CETA), two dispatchers, and one Community Services Officer. Only the four sergeants and the eight regular police officers are members of the bargaining unit which has been represented by the PBA since 1969. The eight officers covered by the Agreement are ranked from 4th class to 1st class in inverse order of years of service. Relative to this dispute, however, it is stipulated by the parties that all of the eight covered officers are ranked at 1st class as of June 1, 1977.

The instant dispute involves the negotiations for a successor Agreement to a prior contract between the parties which expired by its own terms on May 31, 1977. Negotiations opened with an exchange of correspondence between the parties in December of 1976. The PBA served its bargaining demands on January 17, 1977, and the first direct negotiating session was held January 24, 1977. On or about February 16, 1977, the Village served its bargaining demands upon the Association and the PBA met to consider the Village's positions on February 17, 1977. Following that meeting the PBA informed the Village that negotiations had come to an impasse. On February 21, 1977, the PBA filed with PERB a Declaration of Impasse, whereupon under date of February 25, 1977, PERB appointed Staff Mediator Theodore Gerber to act as Fact-finder. Mr. Gerber met twice with the parties in an attempt to mediate a resolution of the dispute. With the assistance of Mediator Gerber the parties did substantially modify their positions in a negotiating session held March 31, 1977. By letter dated April 4, 1977, Mr. DiCaprio reported to Mediator Gerber summarizing the respective positions of the parties as of that date. At our arbitration hearing neither of the parties took exception to the statements of position set forth in the DiCaprio letter of April 4, 1977. Because the positions stated therein are in our judgment dispositive of many of the issues originally outstanding in this dispute, we set forth that letter verbatim as follows:

"April 4, 1977

"Theodore Gerber, Esq.
State of New York
Public Employment Relations Board
50 Wolf Road
Albany, New York 12205

"Re: Case No. M 77-66 - Village of Solvay and Village of Solvay Police Benevolent Association

"Dear Ted:

"Please accept this letter as my report to you relative to the response of the Village of Solvay Police Benevolent Association to the counter-offer of the Village of Solvay, which was presented to the negotiators on March 31, 1977, upon the negotiator's agreement that the entire package would be submitted to the entire membership.

"I am treating this report as a response to the Village by forwarding a copy hereof to the Mayor and all members of the Village Board of Trustees.

"The Counter-offer to which I respond was as follows:

"1. Salary increase during the first year of 5% and an additional 5% salary increase during the second year.

"2. Longevity increased to $225.00 during the first year.

"3. Uniform allowance increased to $125.00 during the first year and to $150.00 during the second year.

"4. Vacation - no change from present vacation schedule.

"5. Medical insurance and life insurance modifications and/or increases to remain open and to be renegotiated by the parties at the option of the employee group during the second year of the contract.

"6. A bonus day off for any policeman who misses three days or less of work during any contract year, which day off is to be with pay and on a day which the recipient thereof is to select.

"7. All police vehicles to be inspected annually by Village mechanics and to be maintained by reason of State inspections according to New York State standards.

"8. Policemen to work the present 6 - 2 schedule provided all members of the Police Department waive their rights under Section 971 of the Unconsolidated Laws of the State of New York, and further provided that the employee organization agrees to save harmless the Village against any and all damages which might become payable to any policeman filing a claim by reason of said schedule.

"The full membership of the PBA met or was polled on Saturday, April 2, 1977, and voted on the aforesaid counter-proposal.

"The membership found the counter-offer acceptable except in the areas of salary increases and vacation schedule, and authorized a counter-proposal which I will set forth hereafter.

"The membership fully agreed to execute individual waivers and to provide a save harmless clause in the employment contract as requested by the Village in order to continue the 6 - 2 work schedule as has heretofore existed.

"The membership also found the remainder of the Village's counter-offer acceptable, except as follows:

"Salary increase: 1st year - 8% - 2nd year - 7%

"Vacation: During the 1st year through the 4th year of employment, 14 days.
During the 5th year through the 9th year of employment, 16 days.
During the 10th year through the 14th year of employment, 23 days.
Commencing with the 15th year and thereafter, 30 days.

"I would appreciate an opportunity to discuss these counter-proposals with you either by telephone or in person and I would certainly welcome a further opportunity to meet with you and the Village at any time convenient to all concerned.

"Very truly yours,

S/ A. J. DiCaprio, Jr.
"A. J. DiCaprio, Jr.
"AJDsco"

In direct negotiations following the tentative settlement of April 4, 1977, the parties were unable to reach agreement on the remaining issues in dispute. The PBA urged Mr. Gerber to conclude the fact-finding process and in a letter dated May 9, 1977, stated that "the only issues now open to fact-finding are the questions of salary and vacations." On or about May 13, 1977, Mayor William Campagnoni, on behalf of the Village, took the position that in addition to salary and vacations two other issues remained open, to wit.: (1) Compliance with Section 971 of the Unconsolidated Laws of the State of New York, and (2) retroactivity of any new provision or changes in existing provisions ultimately agreed upon by the parties. In connection with this latter point the Village argued that the PBA had prematurely closed off negotiations and accordingly was not entitled to retroactivity if negotiations extended beyond May 31, 1977. Following this exchange Mr. Gerber set down June 20, 1977, for the filing of fact-finding briefs in the case. But by letter of June 22, 1977, he advised the parties of several major amendments to the Taylor Law relative to interest arbitration for police and firemen negotiations to take effect on July 1, 1977. One major change in the statute was the elimination of the fact-finding procedure and provision for direct progress of cases from mediation to interest arbitration. Subsequently the fact-finding procedure was waived and on July 26, 1977, the PBA served a Demand for Arbitration. Included among the moving papers filed with the Demand were the opening demands of the PBA and, significantly, the April 4, 1977, letter from Mr. DiCaprio to Mr. Gerber summarizing the positions

of the parties as of that date. In the response to the Demand the Village appended copies of its opening demands but took no exception to the contents of the April 4, 1977, letter. Thereafter this Panel was appointed by PERB to hear the matters in dispute and issue a final and binding Award.

SCOPE OF THE DISPUTE

We note that in pre-hearing briefs, during argumentation and submission of evidence at the arbitration hearing, and on the post-hearing briefs, the parties addressed only three issues: (1) salaries; (2) vacations, and (3) retroactivity. Although the PBA maintained for the record that it was reverting to its original demands for purposes of arbitration, it presented no evidence on any of the other issues nor did it repudiate the position set forth in the letter of April 4, 1977. For its part, the Village maintained that its position was as set forth in that April 4, 1977, letter except that with respect to salaries and vacations it maintained the positions set forth in its February 16, 1977, proposals. With respect to retroactivity the parties at the arbitration hearing exchanged countercharges of delay, procrastination and premature abandonment of direct negotiations. From our review of the entire record, we are persuaded that the parties have, in effect, stipulated that they reached agreements in principle in April, 1977, relative to contractual provisions covering: (1) longevity increases; (2) uniform allowances; (3) medical insurance and life insurance reopeners; (4) bonus day off for good attendance; and (5) inspection and maintenance of police vehicles. The members of this Panel believe that the best agreements, from the perspective of the parties as well as the public, are those hammered out in direct negotiations. Accordingly, we have incorporated those agreements in principle as part of our Award, with modifications only as to details of implementation. We analyzed each aspect of the tentative agreement of the parties on these points in light of the statutory criteria specified in the amended Taylor Law and found no reason to set aside those understandings. On the basis of the foregoing, our detailed discussion in this Opinion is confined to the issues joined by the parties in our proceedings, i.e., salary, vacations, and retroactivity.

POSITIONS OF THE PARTIES

Throughout the process of negotiations, mediation, fact-finding and now interest arbitration, the bargaining positions of the parties relative to salaries and

vacations have remained largely unchanged. Throughout this dispute and including the presentations to our Panel, the parties maintained consistent themes. Thus the PBA emphasized inflationary trends and increases in the cost of living to support its demands for salary increases as well as maintaining either comparability or a historical relationship with police officers in the City of Syracuse and the Town of Geddes, as well as security guards privately employed by Allied Chemical Corporation. For its part, the Village rejected the spheres of comparison urged by the PBA and contended instead that by comparison with contract benefits provided police officers in other similarly situated municipalities, employees represented by the PBA were at least as well off and in some cases received superior benefits. With respect to retroactivity, the PBA asserted that any delays in negotiations were attributable to the Village and it sought only to expedite the procedure and bring negotiations to a prompt conclusion. The Village, on the other hand, presses the argument that the PBA prematurely and wrongfully invoked outside intervention before the parties had exhausted their efforts in direct negotiations. Based upon this argument, the Village seeks to make effective the terms of this Arbitration Award prospectively only from and after its execution date, with no retroactive application of new or improved contract benefits.

The expired agreement provided a progressive salary schedule from Patrolman 4th class up through Sergeant. To the extent pertinent to this case that expired contract also provided for a longevity increment in the amount of $200 for employees who completed ten (10) years' service in the Department; and an additional longevity increment of $200 for each additional five-year period of service for each such period.

With respect to uniform allowances, the old contract provided up to $100 per fiscal year for each member of the Department in the form of reimbursement for actual outlays approved by the Chief of Police.

According to Article 7 of the predecessor agreement, the Village paid all premiums for group medical insurance as well as the premiums on a life insurance policy with face value of $4,000 for each member of the Department.

Insofar as we can determine, the former agreement was silent respecting bonus days off for attendance and the inspection and maintenance of police vehicles.

Finally, with respect to vacations, the former agreement provided that employees be entitled to annual vacation with pay (Article 5) as follows: (A) during the first nine years of service, 14 working days vacation, with full pay each year; (B) from the tenth through the fourteenth year of service, 21 working days vacation with full pay each year; and (C) for the fifteenth year of service and continuing until retirement, 28 working days vacation with full pay each year.

Examination of Article 3 of the predecessor agreement sets forth in pertinent part the salary and wages which are subject to renegotiations in this dispute as follows:

"ARTICLE 3: SALARIES AND WAGES

"3.1 - Definitions

For the purpose of fixing the salaries of the Police Officers included in this Agreement, it is agreed that:

"a. Patrolman 4th Class shall be a Patrolman during his first year of employment by the Village.

"b. Patrolman 3rd Class shall be a Patrolman during his second year of employment by the Village.

"c. Patrolman 2nd Class shall be a Patrolman during his third year of employment by the Village.

"d. Patrolman 1st Class shall be a Patrolman during his fourth year of employment by the Village and thereafter, until promoted to the rank of Sergeant.

"3.2 - Wages

"a. Commencing June 1, 1975, and terminating May 31, 1976, the salary of a Patrolman 4th Class shall be $9,874.00 per annum.

Commencing June 1, 1976, and terminating May 31, 1977, the salary of a Patrolman 4th Class shall be $10,565.00 per annum.

"b. Commencing June 1, 1975, and terminating May 31, 1976, the salary of a Patrolman 3rd Class shall be $10,215.00 per annum.

Commencing June 1, 1976, and terminating May 31, 1977, the salary of a Patrolman 3rd Class shall be $10,930.00 per annum.

"c. Commencing June 1, 1975, and terminating May 31, 1976, the salary of a Patrolman 2nd Class shall be $10,850.00 per annum.

Commencing June 1, 1976, and terminating May 31, 1977, the salary of a Patrolman 2nd Class shall be $11,610.00 per annum.

"d. Commencing June 1, 1975, and terminating May 31, 1976, the salary of a Patrolman 1st Class shall be $11,523.00 per annum.

Commencing June 1, 1976, and terminating May 31, 1977, the salary of a Patrolman 1st Class shall be $12,330.00 per annum.

"e. Commencing June 1, 1975, and terminating May 31, 1976, the salary of all Sergeants shall be $12,695.00 per annum.

Commencing June 1, 1976, and terminating May 31, 1977 the salary of all Sergeants shall be $13,584.00 per annum."

The Association

The PBA in this arbitration procedure presses for an increase across the board in salaries effective June 1, 1977, ranging from 8.6% for Sergeants, to an average of 8% for other ranks. In the second year of a proposed two-year agreement, expiring May 31, 1979, the PBA seeks an average 7% increase across the board. Diagramatically, the PBA salary demands appear as follows:

Rank	1976-77 Salary	6/1/77 Increase	1977-78 Salary	6/1/78 Increase	1978-79 Salary
Sgt.	$ 13,584	$ 1,177 (8.6%)	$ 14,761	$ 937 (6.3%)	$ 15,698
1st Class	12,330	896 (7.9%)	13,316	932 (6.9%)	14,248
2nd Class	11,610	929 (8.0%)	12,539	878 (7%)	13,417
3rd Class	10,930	874 (7.9%)	11,804	826 (6.9%)	12,630
4 Class	10,565	845 (7.9%)	11,410	799 (7%)	12,209

With respect to the vacation benefits, the PBA urges that increased vacations be provided under Article 5, as set forth in the April 4, 1977 letter supra.

Finally, the PBA urges that the new Agreement be retroactive in all of its terms and conditions to June 1, 1977. Among other arguments advanced for retroactivity, the PBA points out that every agreement in the ten-year bargaining relationship between the parties has been retroactive when negotiations proceeded past expiration date of the predecessor contract.

The Village

The Village recognized that the men of the Department are a good, hard-working police force and that they should receive a pay increase in addition to other benefit improvements. The Village emphasizes, however, that concessions already tentatively agreed to in the April 4, 1977 letter do have cost impact and that inflation has victimized the municipal employer as well as the working employee. The Village urges that appropriate spheres of comparison are other local municipalities in Onondaga County, specifically the Towns of Clay, and Geddes, and the Villages of Baldwinsville, Fayetteville, and Skaneateles. The Village maintains that there is virtually no demonstrable relationship between the City of Syracuse and the Village of Solvay Police Department benefits, even if, arguendo, a basis for comparison

could be established. On the basis of its comparative analyses, the Village throughout negotiations and during hearings before our Panel urged that across the board increases of 5% during the first year and another 5% during the second year of a two-year agreement would be appropriate. Moreover, the Village insists that the vacation benefits currently provided employees under the expired contract are superior to those in other comparable jurisdictions. Accordingly, the Village proposes that the vacation benefits be maintained at the status quo for the duration of the new contract. Finally, the Village maintains that any increased benefits should be payable only on and after the execution date of the new contract and should not be made retroactive to June 1, 1977.

Following, in schematic form is the salary proposal of the Village which was described as 5% in each of two years:

Rank	1976-77 Salary	6/1/77 Increase	1977-78 Salary	6/1/78 Increase	1978-79 Salary
Sgt.	$ 13,584	$ 616 (4.5%)	$ 14,200	$ 500 (3.5%)	$ 14,700
1 Class	12,330	560 (4.5%)	12,890	460 (3.6%)	13,350
2nd Class	11,610	530 (4.6%)	12,140	430 (3.5%)	12,570
3rd Class	10,930	500 (4.6%)	11,430	400 (3.5%)	11,830
4th Class	10,565	485 (4.6%)	11,050	390 (3.5%)	11,440

Close analysis of the foregoing salary proposal shows that it prices out at 4.6% increase for 1977-78 and only 3.5% in 1978-79. The confusion on this point, however, apparently is dispelled by the post-hearing brief filed by the Village. In that document, the Village recalculated its offer and proposed a "true" 5% increase in each year of the two-year agreement.

DISCUSSION

In support of their positions in this case, each of the parties supplemented its oral arguments and brief with volumes of statistical data, including wage comparisons, financial analyses, and fiscal projections. We have reviewed and considered carefully all of the evidence bearing on the matters in dispute. No useful purpose could be served by reiterating herein all of those data. In our deliberations and in formulating our award, we have based our conclusions upon those factors which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. Thus, among other relevant factors,

we have been influenced by comparison of the wages, hours and conditions of employment of the police employees of the Village of Solvay with those of other police forces in surrounding municipalities. With respect to the conflicting comparability contentions of the parties, we found no persuasive evidence on the record before us to support comparison of Solvay police force benefits with those of Allied Chemical security guards, nor with police department personnel in the City of Syracuse. Whether there ever was a meaningful relationship in such comparisons is arguable but there is no evidence before us to show that the relationship exists today. We likewise reject the assertion of the Village that comparison with the Village of Skaneateles is appropriate in this case. The record indicates that the Skaneateles Police Department is part of an overall municipal bargaining unit so that police officers do not have a separate bargaining identity as they do in Solvay. Finally, we cannot consider for comparability purposes the tentative settlements allegedly negotiated at Liverpool and Fayetteville following the conclusion of our Panel hearings. At the time of our deliberations in this case no final executed agreements had been reached and any information relative to tentative settlements suffers from hearsay deficiencies as well as lack of finality. Accordingly, comparability analysis in this case is restricted to the Towns of Geddes and Clay and the Villages of Baldwinsville and Fayetteville.

Aside from comparability, the factor of inflation must be considered. The evidence is persuasive that the continually increased cost of living and consequent erosion of purchasing power has diminished the real earnings of the employees. While not raging at the rampant levels of the mid-70s, inflation continues to hover at unacceptable levels above 5% per annum. With respect to the impact of inflation on the amount of salary increase, we recognize that not only the employees but the Village also has been the victim of inflationary trends. It cannot reasonably be argued that the municipal employer must insure its employees against depreciation in real earnings, but neither should the employee bear the full brunt of an inflationary economy without offsetting wage increases.

In addition to analysis of comparative wage and benefit structures, and consideration of the increased cost of living, of paramount importance in this case

is the interest and welfare of the public in terms of an efficient and highly motivated professional police force. There is raised on this record no question of the ability of the Village to pay increased benefits so that comparability, cost of living, the public interest and equity are the factors impinging upon our decision. We have also considered the cost impact of concessions already tentatively agreed to in the April 4, 1977, letter. There is some cost impact, largely through increased premiums of continued medical and life insurance, but that figure was not readily available. The cost of the so-called "bonus day" is virtually impossible to quantify. The $25.00 increase in longevity increments will generate a new dollar cost substantially less than $300.00 per annum, and the uniform allowance increase will be no more than $300.00 per annum. Based upon all of the foregoing, we award salary increases of 6% across the board in each year of the two-year Agreement, and maintenance of the status quo on vacation benefits provided by Article 5. We are cognizant that aside from the direct cost impact of such a wage increase the Village also must incur indirect pension costs, some of which will be deferred until the next fiscal year. Finally, we conclude that no useful purpose could be served by withholding retroactive application of the improved benefits because of alleged culpability in bargaining procedures. The record does suggest that both parties would be well served if, during the remaining term of this Agreement, they extended themselves to improve communications and develop procedures for the next round of negotiations. We conclude, however, that both past practice and equity require that the terms and conditions of the new Agreement be effective on and after June 1, 1977, and we shall so award.

AWARD

In full and final settlement of a dispute between the Village of Solvay Police Benevolent Association and the Village of Solvay, the Agreement between the parties bearing effective dates June 1, 1975 - May 31, 1977, shall remain in full force and effect until the 31st day of May, 1979, except for the following amendments and additions:

1. Article 3 (Salaries and Wages):

   (a) Section 3.2 (Wages) shall be amended to provide a six percent (6%) increase effective June 1, 1978. E.G., the salary of a Patrolman 4th Class shall be $11,198.90 commencing June 1, 1977, and $11,870.83 commencing June 1, 1978, with proportionate increases for salaries of other ranks.

(b) Section 3.3 (Longevity Increments) shall be amended to increase the increments from $200.00 to $225.00 increments, effective June 1, 1977.

2. Article 4 (Uniforms):

(a) Section 4.2 (Uniform Replacement and Maintenance) shall be amended to increase from $100.00 to $125.00 the obligation of the Village per fiscal year for each member who meets the qualifications of said Section. Since the first year of the Agreement has expired, and in order to give full effect to this improved benefit retroactively to June 1, 1977, the obligation of the Village for the calendar year June 1, 1978, to May 31, 1979, shall be $150.00, provided the member meets the qualifications of Section 4.2

(b) In addition to the foregoing, Article 4 shall be amended by the addition of a new Section 4.3 (Vehicle Inspection and Maintenance) to provide that all police vehicles shall be inspected annually by Village mechanics and be maintained by reason of State inspections according to New York State standards.

3. Article 5 (Vacations and Holidays):

(a) Section 5.4 (Compensation) shall be amended by the addition of the following: "Any policeman who misses three days or less of work during any contract year shall receive a bonus day off, which day off is to be with pay and on a day which the recipient thereof is to select."

4. Article 7 (Hospitalization, Medical Plan and Life Insurance): This Article shall be amended by the addition of Section 7.4 which shall provide that Article 7 is subject to renegotiation during the second year of the Agreement (June 1, 1978 - May 31, 1979) at the option of the PBA upon due notice to the Village.

5. Article 11 (Statutory Provision) shall be amended by changing "1975" to "1977."

6. Article 12 (Termination) shall be amended by changing "June 1, 1975" to "June 1, 1977" and also changing "May 31, 1977" to "May 31, 1979."

Dana E. Fischen
Chairman and Impartial Arbitrator

State of New York)
County of Onondaga) SS:

On this 17th day of June, 1978, before me personally came and appeared Dana E. Fischen, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Elizabeth C. Wesman
ELIZABETH C. WESMAN
Notary Public, State of New York
No. 4652438
Qualified in Tompkins County
Term expires March 30, 1979

Dissenting

New York
Onondaga

27 June

Garth C. Lax

My Commission Expires June 28, 19