

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO: M78-538;
IA-94

* * * * *
In the Matter of Arbitration *
- between - *
TOWN OF WEBSTER *
- and - *
THE WEBSTER ONE THOUSAND CLUB *
(POLICE) *
* * * * *

AWARD OF PUBLIC ARBITRATION PANEL

Pursuant to the provisions of the Civil Service Law, Section 209.4, Harold R. Newman, Chairman of the Public Employment Relations Board designated the following individuals on February 8, 1979 to serve as a Public Arbitration Panel in this proceeding:

Samuel Cugalj, Public Panel Member and Chairman
Al Sgaglione, Employee Organization Panel Member
Adrian B. Stanton, Employer Panel Member

The Panel was charged by Section 209.4 to observe the following statutory requirements:

- "(v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
- 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 and 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;
 - (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."

This Arbitration Panel conducted its Hearing in Webster, New York on April 30, 1979. Both parties, hereafter referred to as "Club" and "Town" were present, and they were afforded full opportunity to present evidence in support of their respective positions. They filed one (1) Joint, three (3) Club and one (1) Town Exhibits. The option to file Post-Hearing Briefs was utilized by the parties and both were received by the Panel on June 1st and 2nd.

The Panel met in Executive Session after the Hearing, and agreed that each member would spend the next few weeks reviewing the voluminous material in depth, including the Post-Hearing Briefs. The Panel met again in Executive Session on June 4, 1979 to discuss and review the issues. Results of these deliberations by the Panel having duly heard the proofs and allegations of the parties, are contained in the Award below.

AWARD

ISSUE #1 -- RETIREMENT PLAN - SECTION 384 (d)

Effective September 1, 1979, Article IV, Section 1 of their Collective Bargaining Agreement shall

be amended to provide 384-d (twenty year plan) of the New York State Retirement and Social Security Law for eligible employees.

The Town shall adopt a resolution to this effect any time within sixty (60) days from the date of this Award, so that the transition can be timely.

ISSUE #2 -- RETIREMENT PLAN -- SECTION 384 (f)(g)(h)

Demand for change is denied.

ISSUE #3 -- RETIREMENT PLAN -- SECTION 302.9(d)

Demand for change is denied.

ISSUE #4 -- WAGES

The Wage Schedule in effect on 12/31/78 shall be increased by six percent (6%), and police officers shall move on step accordingly.

Demand for change in part-time police officer rate is denied.

Command differential demand is denied.

Demand for changes in the investigator differential is denied.

ISSUE #5 -- OVERTIME

All demands for change are denied.

ISSUE #6 -- VACATION

Demand for change is denied.

ISSUE #7 -- EDUCATION BENEFITS

Demand for change is denied.

ISSUE #8 -- CLOTHING ALLOWANCE AND UNIFORM ISSUE

Demand for change is denied.

ISSUE #9 -- PREMIUM PAY

All demands for change are denied.

ISSUE #10-- RETROACTIVITY OF BENEFITS

Wage schedule change shall be retroactive from
January 1, 1979.

ISSUE #11-- TERM OF CONTRACT

The Collective Bargaining Agreement that expired
on 12/31/78 shall be extended in its entirety until
12/31/79, except as amended in this Award.

Now that negotiations for the 1979 Agreement between the parties is complete, the parties are reminded of Article XVII.

Samuel Cugalj
SAMUEL CUGALJ, CHAIRMAN
PUBLIC ARBITRATION PANEL

Adrian B. Stanton
ADRIAN B. STANTON
EMPLOYER REPRESENTATIVE

Al Sgaglione
AL SGAGLIONE
EMPLOYEE REPRESENTATIVE

State of New York ss:
County of Erie

On this 30th day of June 1979, before me personally appeared Samuel Cugalj, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Kathleen A. Mehls

KATHLEEN A. MEHLS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 22, 1984

State of New York
County of Monroe

SS:

On this 27th day of June 1979, before me personally appeared
Adrian B. Stanton, to me known and known to me to be the individual
described herein and who executed the foregoing instrument and he
acknowledged to me that he executed the same.

Margaret E. Clute

MARGARET E. CLUTE
NOTARY PUBLIC State of N. Y., Monroe County
My Commission Expires March 30, 1980

State of New York
County of Albany

SS:

On this 28th day of June 1979, before me personally appeared
Al Sgaglione, to me known and known to me to be the individual
described herein and who executed the foregoing instrument and he
acknowledged to me that he executed the same.

Virginia Fissette

VIRGINIA FISSETTE
Notary Public, State of New York
01-1236478
Residing in Albany County
Commission Expires March 30, 1981

STATEMENT OF THE CHAIRMAN,
PUBLIC ARBITRATION PANEL

ISSUE #1 -- RETIREMENT PLAN - SECTION 384 (d)

The Panel initially determined that it had jurisdiction over this issue because the Club's demand covered only active employees. Club members presently have the twenty-five (25) year retirement plan, and are requesting 384(d), a twenty (20) year plan. They clearly indicate that this is the priority issue for them.

They presented an impressive list of larger and smaller municipalities who have negotiated 384(d). The Club alleges, not controverted by the Town, that ninety-five percent(95%) of police personnel in Monroe County have the twenty (20) year plan, thereby setting a very clear norm for the geographical area surrounding the Town. Is the Club's request for 384(d) a reasonable one? In view of the area's norm, yes. The Town has not demonstrated why its overall situation is so unusual that its police force should not be part of the ninety-five percent (95%) of County police who have this plan. While, clearly, the Panel would have preferred to have the parties agree to 384(d) in the collective bargaining arena, it is also clear that the Town has not chosen to take advantage of the trade-off opportunities in bargaining. The unavailability of 384(d) for Club members is too conspicuous in Monroe County, without any overriding justification being established by the Town, to allow this "issue-impasse" to continue indefinitely.

Secondly, the Panel believes that the granting of 384(d) will be in the public interest by maintaining the motivational level and productivity of police officers on a high plane. Statistics indicating the strength of the latter were particularly noteworthy. Their increased efficiency, in time, has or can lead to lower labor costs than would otherwise exist, if the officers were demotivated and demoralized.

While some intermediate and long term savings to the Town will result from 384(d), they will not offset its total cost. But this is also true of municipalities that have already negotiated 384(d). The Town estimates the additional first year cost of fourteen (14) Tier I and five (5) Tier II employees at \$47,800. As Tier I employees retire at twenty (20) years, as has been the general experience, there will be savings in the 20th year to the 25th years -- longevity and vacations; replacement of a top step salary; and an approximate 12.4% lower retirement cost for Tier II (newer) officers than retiring Tier I officers.

Another factor in the decision equation was the fact that the Police Department is not growing in terms of numbers of police officers, so from that standpoint, overall costs will not be affected. A working relationship with the County Sheriff's Department to provide police services is also in effect, and is expected to be maintained. In terms of spending trends for police services, the Club introduced data (presented to a County Legislature Committee in August 1978) showing that of five (5) "comparison" town-

ships in the County, the Town of Webster has the lowest per capita cost for police services, and the lowest such cost per \$1,000 of Full Valuation. In the 1979 budget, the Club notes that the other Town Departments averaged salary appropriation increases of twenty-one percent (21%), while Police Department salary appropriations showed a six percent (6%) increase -- the latter funds being "created by the attrition and layoffs which occurred in the calendar year 1978," and are not what is referred to as "new money."

Another major consideration is the ability of the Town to financially support this Award. The Town would have us believe that there are no monies in the current budget. The budget itself was not submitted to the Panel; however, the Club presented a written Financial Analysis dated April 30, 1979, prepared by an independent consultant, and the Town provided verbal commentary on its behalf. First, the Analysis points out that for the last several years, the Town has ended its fiscal year with positive balances in almost all accounts, thereby operating prudently and conservatively. Since 1973, with the exception of fiscal 1978, the Town's General Fund surplus exceeded \$200,000 each year. No evidence was presented that would lead the Panel to believe that this fairly consistent budgetary practice has been changed for the 1979 budget. The Analysis further points out that there is an unappropriated \$23,430.36 from General and Federal Revenue Sharing funds in the current budget; additionally, a \$163,788.69 surplus in the Federal Revenue Sharing fund was available as of 12/31/78, and was appropriated in the current budget. These funds are used

in many localities, in whole or in part, for collective bargaining purposes, and pose no strain on the tax-paying community because they are not raised directly from the Town's taxpayers. In reviewing the tax rate structure of towns in the County, the Analysis shows the Town having the ninth (9th) lowest of nineteen (19) towns in Full Value tax rates. The Town is growing as indicated by a fifty-five percent (55%) increase in Full Valuation from 1973-1978, while Assessed Valuation increased twenty-two percent (22%) over the same period. From 1977 to 1978, Full Valuation increased nine percent (9%), and Assessed Valuation increased three percent (3%), while both the Full and Assessed tax rates decreased. They increased for the period 1978-1979. The Panel believes that additional tax need not be levied to support this Award; however, the data above does indicate the Town's taxing structure to be a favorable one in terms of ability to raise revenue.

The Panel, in its Award, has given the Town more than a reasonable amount of time to begin funding for 384(d). A check with the State Retirement System indicates that under the timing of this Award, the initial payment is not required until December 31, 1980; the first billing with the amended pension improvements is due May 1982, and will be adjusted for the initial payment. This provides the Town with the opportunity of consolidating monies from the 1979 and 1980 budgets initially, and from the 1981 and 1982 budgets for the first of annual billings thereafter. This

greatly eases the transition from 384 funding (now) to 384(d) funding (this Award).

ISSUE #4 -- WAGES

This Award increases the wage schedule by six percent (6%), and basically adopts the Town's position. The Town acknowledges that the monies are in the budget, and as mentioned earlier, it represents a surplus accrued through attrition and cut-backs, and not from additional tax monies being allocated.

The overriding factor in determining the level of the wage increase was the Panel's granting of 384(d) of the retirement issue. The evidence provided by the Club was very persuasive for a larger wage increase -- the ever rising Cost Of Living Index, particularly as it reflects the necessities such as food, medical, transportation, housing, utilities; the economic strength of area private employers and the subsequent wage increases of their employees; the wages paid to police officers in "comparable" municipalities; and the 6.6% wage settlement of a local non-professional employee group. Yet while persuasive, the Panel justifies the six percent (6%) wage award by recognizing the 384(d) decision, and its impact on the Town, even though the cost of the latter need not be supported by the 1979 budget alone.

ISSUE #10 -- RETROACTIVITY OF BENEFITS AWARDED

The Panel awards the wage increase retroactive to January 1, 1979, the beginning of their new contract. Their previous Agreement expired December 31, 1978. The concept of retroactivity is widely acknowledged and accepted, and there is no justification for its denial here.

ISSUE #11 -- TERM OF CONTRACT

The highly uncertain economic situation is such that any recommendation for a labor contract beyond one (1) year would be detrimental to the parties, and would make their next round of collective bargaining much more difficult.

ISSUE #2 -- RETIREMENT PLAN - SECTION 384 (f) (g) (h)

ISSUE #3 -- RETIREMENT PLAN - SECTION 302.9 (d)

ISSUE #5 -- OVERTIME

ISSUE #6 -- VACATION

ISSUE #7 -- EDUCATION BENEFITS

ISSUE #8 -- CLOTHING ALLOWANCE AND UNIFORM ISSUE

ISSUE #9 -- PREMIUM PAY

In view of the impact of the 384 (d) award, the Panel believes that despite the merits, if any, of these demands, their denial is more appropriate and justified at this time.

This Arbitration Panel believes it has responded to its responsibility under the Statutes to the very best of its ability, and that its decisions on the issues were in the best interests overall.



JUNE 29, 1979
BUFFALO, NEW YORK

SAMUEL CUGALJ, CHAIRMAN
PUBLIC ARBITRATION PANEL