

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO: M78-745
IA-111

* * * * *
In the Matter of Arbitration *

-between- *

TOWN OF ORCHARD PARK *

-and- *

THE HAAG CLUB *

* * * * *

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
SEP 14 1979
CONCILIATION

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 1979 to serve as a Public Arbitration Panel in this proceeding:

Samuel Cugalj, Public Panel Member and Chairman
Al Sgaglicne, Employee Organization Panel Member
Norman Stocker, 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 Orchard Park, New York on July 17, 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, eight (8) Club and five (5) Town Exhibits. They were also given the opportunity to file Post-Hearing Briefs and both declined.

The Panel met in Executive Session after the Hearing, and agreed that each member would spend the next few weeks reviewing the twenty-eight (28) issues. The Panel met again in Executive Session on August 9, 1979 to discuss and review the issues. The results of these deliberations by the Panel, having duly heard the proofs and allegations, are contained in the Award below.

AWARD

ISSUE #1 -- SICK LEAVE (Section 3.13)

The demand to increase the number of accumulated sick leave is denied.

ISSUE #2 -- AGENCY SHOP (Section 2.17)

This demand is denied.

ISSUE #3 -- PERSONAL LEAVE (Section 3.12)

Effective 1-1-80, Personal Leave days not used may be added to accumulated sick leave.

Effective 1-1-80, leave days may not be taken in less than four (4) hour units.

The demand to change the number of leave days is denied.

The demand to increase the number of officers who are on personal leave at the same time is denied.

ISSUE #4 -- SICK LEAVE UPON RETIREMENT (Section 3.15)

The demand to pay for unused sick leave is denied.

ISSUE #5 -- WORK RELATED SICK LEAVE (Section 3.16)

Effective with the date of this AWARD, officers who are required to attend Workmen's Compensation Hearings while on duty, shall be paid for such time, without being charged.

ISSUE #6 -- SICK BANK (Section 3.17)

The demand to establish a sick bank is denied.

ISSUE #7 -- VACATIONS (Section 4.1)

The demand for improvements in the vacation schedule is denied.

The demand to increase the number on vacation at one time is denied.

ISSUE #8 -- COURT TIME AND OVERTIME (Section 5.1)

Agreement was reached by the parties during the Hearing.

ISSUE #9 -- CLOTHING ALLOWANCE (Section 5.6)

The demand to increase the allowance is denied.

ISSUE #10-- HOSPITALIZATION INSURANCE (Section 5.18)

The demand to provide coverage for future retirees is denied.

The demand to provide dental insurance is denied.

ISSUE #11-- LIFE INSURANCE (Section 5.10)

The demand to increase coverage is denied.

ISSUE #12-- TRANSFERS AND ASSIGNMENTS (Section 5.11)

and

ISSUE #14-- NON-CIVIL SERVICE VACANCIES (Section 5.13)

Effective with the date of this AWARD, the Town will establish qualifications for non-civil service job classifications. When the Town determines that a non-competitive job classification vacancy exists, notice of this vacancy will be conspicuously placed on a bulletin board in the police station for a period of at least ten (10) days so that officers of qualified rank may affix their names there to, indicating their desire to be considered for the filling of such vacancy. The vacancy is to be filled by appointing an officer possessing the necessary qualifications and experience.

ISSUE #13 -- NEW CLASSIFICATIONS (Section 5.12)

The demand is denied because the requirement to negotiate is covered under the Statutes.

ISSUE #15 - CIVIL SERVICE VACANCIES (Section 5.14)

The demand to fill vacancies within thirty days (30) is denied.

The Club's demand for use of promotional lists is denied.

ISSUE #16 -- RETIREMENT SALARY (Section 6.1)

Effective 4-1-80, the Town will provide benefits pursuant to Section 3.02 (9) (d) of the Retirement and Social Security Law, which will provide retirement salary based upon final annual salary for the last twelve (12) months worked.

ISSUE #17 -- SALARY (Section 7.1)

Effective 1-1-79, each step in the Patrolman salary schedule (Section 1a, Agreement) will be increased by six percent (6%). Also Section 1b will provide that a Lieutenant shall be paid in accordance with his rank as outlined in 1a, increased by \$1,875. Also, Section 1c will provide that a Detective shall be paid in accordance with his rank as outlined in (a) and (b), increased by \$600.

Effective 7-1-79, each step in the Patrolman salary schedule will be increased by two percent (2%). The differentials for the Lieutenant and Detective shall continue to be \$1,875 and \$600 respectively.

Effective 1-1-80, each step in the Patrolman salary schedule (Section 1a, Agreement) will be increased by six percent (6%). Also, Section 1b will provide that a Lieutenant shall be paid in accordance with his rank as outlined in 1a, increased by \$2,000. Also, Section 1c will provide that a Detective shall be paid in accordance with his rank as outlined in (a) and (b), increased by \$800.

Effective 7-1-80, each step in the Patrolman salary schedule will be increased by two percent (2%). The differentials for Lieutenant and Detective shall continue to be \$2,000 and \$800 respectively.

ISSUE #18 -- LONGEVITY (Section 7.2)

Effective 1-1-80, the longevity schedule will be changed to every four (4) years of continuous service.

ISSUE #19 -- OUT-OF-RANK PAY (Section 7.13)

The demand for automatic out-of-rank pay for filling in on a temporary absence is denied. However, when the Town specifically assigns an officer to a temporary higher position, such officer will be paid the higher rate of pay while performing those duties. It is equally equitable that unless specifically assigned to the higher position, an officer cannot be held accountable for those higher responsibilities.

ISSUE #20 -- ATTENDANCE AT MEETINGS (Section 9.4)

The demand for additional days is denied.

ISSUE #21 -- IN-SERVICE TRAINING (Section 10.1)

Agreement was reached by the parties during the Hearing.

ISSUE #22 -- EDUCATIONAL OPPORTUNITIES (Section 10.2)

Agreement was reached by the parties during the Hearing.

ISSUE #23 -- TUITION (Section 10.03)

Agreement was reached by the parties during the Hearing.

ISSUE #24 -- RECORD OF DISCIPLINE (Section 11.1)

As of the date of this AWARD, a police officer has the right to respond to any warning, reprimand, suspension or other disciplinary action and any unfounded complaints entered into his personnel record. Such response by the officer shall become a permanent part of his file.

A police officer shall have the right to view his personnel file at any time, provided he gives reasonable notice to the Town, and views his file in the presence of the Chief or his designee.

ISSUE #25 -- INDEMNIFICATION OF POLICE OFFICERS (Section 12.1)

The demand for the Town to assume additional liability on behalf of a police officer is denied.

ISSUE #26 -- BILL OF RIGHTS (Section 13.1)

Effective with the date of this AWARD, the following Section will be in the Agreement:

"13.1 Time of Interrogation

The interrogation of a Police Officer who is being investigated for disciplinary violation must be between 9:00 a.m. and 5:00 p.m. and preferably while the officer is on duty.

13.2 Identification of Investigating Officers

A Police Officer who is under investigation must be informed of the officer in charge of the investigation and the names of officers who will be conducting any interrogation.

13.3 Information Regarding Investigation

An officer must be informed of the nature of an investigation before any interrogation commences. The information must be sufficient to reasonably inform the Police Officer of the nature of the investigation.

13.4 Length of Interrogation

The length of an internal interrogation must be reasonable, with rest periods being called, periodically, for personal necessities, meals, telephone calls and rest.

13.5 Coercion

A Police Officer will not be threatened with transfer, dismissal or other disciplinary action, as a means of obtaining information concerning the incidents under investigation. A Police Officer will not be subject to abusive language, or promised a reward, as an inducement for answering questions.

13.6 Right to Counsel

A Police Officer under investigation must have counsel or a representative of the Police Club present with him during any interrogation.

13.7 Recording of Interrogation

Any interrogation of a Police Officer, for a disciplinary violation, must be recorded either mechanically or by stenographer, and there will be no "off the record" questions put to him.

13.8 Warning of Rights

If a Police Officer is suspected in a criminal investigation, he must be advised of all his Miranda Rights.

13.9 Furnishing Copies

A Police Officer under investigation will be furnished an exact copy of any statement he has

signed, or of the proceedings that are recorded, either mechanically or by stenographer.

13.10 Polygraph

A Police Officer will not be given polygraphic examination for any reason.

13.11 Non-Waiver of Constitutional Rights

No Police Officer will be required or requested to waive any constitutional rights granted to him under the United States or the New York State Constitutions.

ISSUE #27 -- CONFLICTS AND PAST PRACTICE (Section 14.4)

Both demands for contractual language are denied.

ISSUE #28 -- DURATION OF AGREEMENT (Section 14.5)

This AWARD shall become effective as of January 1, 1979 except as noted in the AWARD; and all terms and conditions of the Agreement shall continue in full force and effect thereafter until 12:00 Midnight, December 31, 1980.

The demands to automatically allow for salary increments and to permit arbitration when the Agreement has expired is denied.

Samuel Cugalj
SAMUEL CUGALJ, CHAIRMAN
PUBLIC ARBITRATION PANEL

Al Sgaglione
AL SGAGLIONE
EMPLOYEE ORGANIZATION PANEL MEMBER

Norman J. Stocker
NORMAN J. STOCKER
EMPLOYER PANEL MEMBER

State of New York ss:
County of Erie

On this 11th day of September 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. Nichols

KATHLEEN A. NICHOLS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1980

State of New York ss:
County of Albany

On this 4th day of September 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 Fozzette

VIRGINIA FOZZETTE
Notary Public, State of New York
04-1223475
Residence in Albany County
Commission Expires March 30, 1987

State of New York ss:
County of Erie

On this 30th day of August before me personally appeared Norman J. Stocker, 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.

Adeline R. Carey

ADELINE R. CAREY
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1980

STATEMENT OF THE CHAIRMAN,
PUBLIC ARBITRATION PANEL

NY STATE PUBLIC EMPLOYMENT
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CONCILIATION

ISSUE #1 -- SICK LEAVE (Section 3.13)

The evidence provided by the Haag Club tended to indicate that most of the comparative townships did enjoy a somewhat higher number of accumulated sick days. In sorting out the priorities in terms of other demands, however, the Panel believed that at this time, the Town was not able to absorb this additional cost.

ISSUE #2 -- AGENCY SHOP (Section 2.17)

The Panel took note that 100% of officers in the Police Department were members of the Club, indicating a lack of genuine need for this demand. The Panel also noted that only two (2) other police departments in the Western New York area have this benefit, indicating a lack of broad acceptance.

ISSUE #3 -- PERSONAL LEAVE (Section 3.12)

This demand was in four (4) parts. Comparisons made with neighboring townships did indicate possible slippage in the number of personal days granted annually. At this time, however, it was felt that the cost of "backfilling" in a small department, carries more weight. It denied a demand to increase the maximum number allowable from one (1) in twenty-four (24) hours to a maximum of three (3) in the same time period as being excessively burdensome in a small department. However, to encourage the conservation of personal days, the Panel approved a demand to add unused days to accumulated sick leave. The Panel also approved the taking of personal days in

not less than four (4) hour units in an effort to encourage even further conservation of these days.

ISSUE #4 -- SICK LEAVE UPON RETIREMENT (Section 3.15)

The Panel denied a demand to pay for unused sick leave at retirement. The Panel felt that while there may be some inequity in not rewarding an officer for not using sick days, the cost of this demand was more than the Panel felt the Town could absorb at this time. The Panel also took note of the fact that this was not a widely accepted benefit in other local police contracts.

ISSUE #5 -- WORK RELATED SICK LEAVE (Section 3.16)

The Panel approved a demand that an officer be paid for time spent at a Workmen's Compensation hearing while on duty, without having this time charged to his Personal Leave. The rationale was one of equity, because the hearing was not of the officer's choosing, and was for a work related injury. The AWARD only covers time the officer is on duty.

ISSUE #6 -- SICK BANK (Section 3.17)

The Panel did not believe that there was evidence that a genuine need existed for this demand to warrant a higher priority. The Panel also took note of the fact that only two (2) police contracts in the area have sick bank, indicating less than a general need/ acceptance for it.

ISSUE #7 -- VACATIONS (Section 4.1)

From the comparative standpoint, this benefit was not that deficient to warrant a higher priority in the final AWARD. Perhaps at

another time and under different cost conditions, priorities might have been different. The Panel also took note of the Club's demand to allow more officers on vacation at one time, and felt the present number allowable was sufficient, given the size of the department.

ISSUE #9 -- CLOTHING ALLOWANCE (Section 5.6)

The Panel had difficulty with this issue because of the strong justifications of this demand and the comparative data presented by the Club. This demand was denied only because in the final sorting of priorities, this cost would be better applied to other areas in the AWARD.

ISSUE #10 -- HOSPITALIZATION INSURANCE (Section 5.18)

The demand that health insurance coverage be extended to future retirees was not accepted by the Panel, because it was felt that most, who work elsewhere after retirement, have access to this coverage from that employer. Additionally, only a few municipalities provide this benefit.

The demand for dental insurance was denied mainly for cost considerations at this time.

ISSUE #11 -- LIFE INSURANCE (Section 5.10)

The comparative data and arguments presented by the Club were strong. However, the Panel felt that the other demands of the Club were higher on the list of priorities, and in taking into account the total cost of the issues granted, the Panel denied this demand.

ISSUE #12 -- TRANSFERS AND ASSIGNMENTS (Section 5.11)

The Panel combined this demand with Issue #14 in its AWARD. The Panel could see little difficulty from the Town's standpoint, in making known the qualifications for non-competitive job classifications. It would advise officers of the qualifications, set by the Town, that are needed in order to be considered for the position. These communications are invaluable in alleviating misunderstandings surrounding the filling of these positions, and would shift the unfair burden of possibly overlooking a candidate, from the Town to the officers, in making known his qualifications. The Town, of course, would still be the controlling factor in whether or not the position exists and when to fill the position.

ISSUE #13 -- NEW CLASSIFICATIONS (Section 5.12)

One of the reasons the Panel denied this demand was that this area is covered by the Statutes, and its inclusion in this Agreement may be redundant. Evidence of alleged non-cooperation was needed to justify the approval of this demand.

ISSUE #14 -- NON-CIVIL SERVICE VACANCIES (Section 5.13)

This posting demand was coupled with Issue #12 in the AWARD, and its reasonableness and equity would benefit both the Town and its officers. The only requirement the Town has, in essence, is to notify the officers of its desire to fill the vacancy. Again, the advantages of open communications are mutually rewarding, and the Town retains its prerogatives of determining that a vacancy exists, and the selection of the most qualified officer.

ISSUE #15 -- CIVIL SERVICE VACANCIES (Section 5.14)

The Panel denied this demand of the Club as it feels that their time requirements may unnecessarily infringe on management prerogatives. Further, the State conducts promotional tests with regularity every other year, which can still provide the type of important incentives for the officers the Club was properly concerned about. The Panel saw no overriding need to warrant its granting this demand.

ISSUE #16 -- RETIREMENT (Section 6.1)

The request for shortening the time base on which retirement is based from three (3) years to last twelve (12) months worked was granted due to the continuing impact of inflation on salaries, and other surrounding communities who have this 302 (9)(d). The Panel further made its AWARD effective 4-1-80, and under State Retirement procedures, the billing will be received one (1) year following this date. This obviously greatly facilitates funding in a more orderly fashion, than might otherwise be the case.

ISSUE #17 -- SALARY (Section 7.1)

The Panel found that, indeed, the salaries of officers covered in the Agreement, did not in the main, keep pace with those officers performing similar work in neighboring communities, even using 1978 salaries as a comparison in a few instances, and with most having a three (3) year schedule vis-a-vis a four (4) step schedule in this Agreement. The continued erosion by the cost of living added persuasively to the arguments of the Club. The professional caliber of the department, is evidenced by its recent State-wide Awards, and is a tribute to the Town Administration, its Supervisory staff and the

police officers. With particular regards to latter, a more competitive salary could only serve to strengthen this performance, certainly benefiting the public it serves. There was an inequity between the salary of the officers and the Detective and Lieutenant classifications, warranting the relatively modest salary adjustment given to the latter two (2) classifications. The Panel believed that the nature of the salary adjustments, every six (6) months rather than the more common every twelve (12) months, would help the Town with the funding of salary monies, although we believe that was not really necessary. The Panel had difficulty with the demands of the Club for "catch-up plus" salary request of some \$2,265 annually (or fifteen (15%) because the Town's ability to pay could not absorb so sudden a large increase above its "budgeted" five and one-half percent (5.5%) salary increase. While the Town did not plead inability to pay and did not present a complete picture of inability, the fifteen percent (15%) salary request by the Club was not entirely reasonable.

ISSUE #18 -- LONGEVITY PAY (Section 7.2)

The Panel found that using the same neighboring communities in comparison, the longevity schedule in the Agreement was not competitive. The Panel chose not to increase the monetary aspect of the schedule, and instead, the schedule was shortened by one (1) year; i.e., every four (4) years changed from every five (5) years, effective in the second year of the Agreement, thereby giving the Town additional time, if needed, for funding purposes.

ISSUE #19 -- OUT-OF-RANK PAY (Section 7.13)

The Club's demand that the senior patrol officer automatically move up to fill a temporary Lieutenant absence and receive the higher rate of pay was denied. The Town must retain the right to fill an absence, and if it chooses not to receive the benefits of that position, it need not pay the higher rate. One might legitimately question, however, whether it is in the public interest not to have supervision on a shift if the Town decides not to fill a temporary Lieutenant absence. Obviously, in this situation, the Town cannot demand accountability where it has not clearly given accountability.

Another reason for not granting the Club's demand was their automatic use of the senior patrol officer as the temporary fill-in. The Town should have the prerogative of utilizing the most qualified officer, who may or may not be the most senior officer.

As a matter of equity, the Panel did specify in its AWARD that whenever a patrol officer is specifically assigned to a temporary higher position, he will receive the higher rate of pay for that time.

ISSUE #20 -- ATTENDANCE AT MEETINGS (Section 9.4)

The Club's demand to increase paid time off for union meetings from six (6) days annually to sixty-four (64) is denied for the following reasons: no over-riding need was established; for consideration given to other demands; and the cost impact of this proposal.

ISSUE #24 -- RECORD OF DISCIPLINE (Section 11.1)

The Panel believes that as a matter of equity, a police officer should have the right to view his personnel file in the

presence of the Chief, or his designee, after giving reasonable advance notice. After all, this file is the basis for his career development.

Because of the nature of police work, the Panel also felt, as a matter of equity, that the officer should have the right to respond to any warnings, reprimands, suspension, and any other disciplinary action, and to any citizen complaints, unfounded or not, that are in his personnel file. This response would be a permanent part of his file as long as the original charge were in the file. His response would give a measure of completeness to the particular situation, and would increase trust, morale and usually, productivity. This is in the public interest.

ISSUE #25 -- INDEMNIFICATION OF POLICE OFFICERS (Section 12.1)

The Panel agrees with the Town's position that the demand is too broad in scope, and might create bigger problems in terms of conflicts with off duty employment. The Town also responded by indicating that it carries the insurance it is required to carry, and that should be all it can be reasonably expected to do.

ISSUE #26 -- BILL OF RIGHTS (Section 13.1)

The Panel agreed with the Club's contention that this demand was fair and necessary, and would not hinder the work of the department in investigating any allegation.

ISSUE #27 -- CONFLICTS AND PAST PRACTICE (Section 14.4)

The Club contends that this demand is necessary to avoid going to PERB repeatedly for allegations of a breach of past practice.

They state that such allegations should be subject to the grievance/ arbitration procedures in their Agreement, instead of going the Improper Practice charge route with PERB. Were more specific instances given to the Panel to justify this need, the Panel might have looked more closely at this demand. But for the present, and in interpreting the priorities of the Club in this Hearing, the Panel rejects this demand.

ISSUE #28 -- DURATION OF AGREEMENT (Section 14.5)

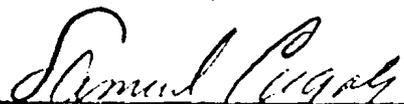
The Panel believes that a two (2) year agreement would give both parties a much needed opportunity to work together and increase communications and cooperation between them. The Panel was presented with twenty-four (24) open issues, some multiple in scope with four (4) issues agreed upon at the Hearing. The parties simply did not work hard enough at resolving their differences. A two (2) year Agreement would give them time in which to re-establish this important link between them.

The Panel did not feel that it was in the best interests of the parties and the public, to allow increments to automatically be paid, and to allow for arbitration, once this Agreement expires.

The Panel granted retro-activity to 1-1-79 except where otherwise noted, because the concept is widely acknowledged and accepted, and there is no justification for its denial here.

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.

AUGUST 25, 1979
BUFFALO, NEW YORK



SAMUEL CUGALI, CHAIRMAN
PUBLIC ARBITRATION PANEL

