

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
\*\*\*\*\*  
In the Matter of Compulsory Interest  
Arbitration Between

VILLAGE OF DEPEW  
and

OPINION  
AND  
AWARD

DEPEW POLICE BENEVOLENT ASSOCIATION  
(PERB Case No. IA83-31; M83-177)  
\*\*\*\*\*

APPEARANCES:

For the Association:

Anthony J. DeMarie, Esq.  
Dixon and DeMarie P.C.  
930 Convention Tower  
43 Court Street  
Buffalo, New York 14202

For the Village:

Edward G. Piwowarczyk, Esq.  
Jaekle, Fleischmann & Muegel  
700 Liberty Bank Building  
Buffalo, New York 14202

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED  
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CONCILIATION

BEFORE:

Robert E. Stevens, Esq. Public Panel Member and Chairman  
1010 Crossroads Building  
Rochester, New York 14614

Lt. John Feness, Employee Organization Panel Member  
14 Domino Court  
Depew, New York 14043

Joseph J. Schultz, Esq., Employer Panel Member  
Village Attorney  
85 Manitou Street  
Depew, New York 14043

The employee organization petitioned for compulsory interest arbitration following negotiations conducted on March 3 and 17, 1983, April 25 and 29, 1983, May 10, 20, and 23, 1983 and June 13, 1983. Further negotiations were held with the assistance of a mediator on July 28, 1983, August 8, 1983 and October 14, 1983 without success in reaching agreement on a successor contract to the one between the parties which was effective from June 1, 1981 to June 1, 1983.

During the course of negotiations, agreement was reached as to changes in the following sections of the expired contract:

1. Section 8 Grievance Procedure - Step 1
2. 9 " " - Step 2
- 3.. 11 " " - Step 4
4. 14 Grievance Committee
5. 17 Personnel Files
6. 18A Officers' Rights
7. 20 Bereavement Leave
8. 24A Educational Opportunities
9. 28A Sick Bank
10. 29B Special Leave
11. 35 Non-Competition Jobs
12. 38 Working Conditions

Terms or conditions which were not agreed upon and which have been referred to compulsory arbitration by the employee organization are as follows:

1. Section 3 Term of Agreement
2. 21 Out-of-Rank Pay
3. 23 Court Pay
4. 25 Call-in Time
5. 25A Call-in and Leave Time
6. 26 Personal Leave
7. 27 Vacations
8. 28 Sick Leave

9.	Section 29	Unused Vacation
10.	29A	Promotional Examinations
11.	30	Uniform Allowance
12.	31	Retirement Benefits
13.	31A	Final Payment for Accumulated Leave
14.	32	Death Benefit
15.	33	Health Insurance
16.	40	Union Representation
17.	41	Longevity Pay
18.	42	Holidays
19.	44	Salary
20.	45	Overtime Pay
21.	45A	Education Pay
22.	45B	Shift Premium Pay

The Employer in responding to the Employee Organization's petition for compulsory arbitration set forth its understanding of Sections 9 and 11 and additionally, cited the following proposals which it had made but which had not been agreed upon:

- 1) Deletion of "past practice" from Sections 4, 39, and 46.
- 2) Revision of Section 46 changing the title to "Entire Agreement" from "Past Practice".
- 3) Establishment of a new section titled Work Week providing for a 5 and 2 work week in place of the existing 4 and 2 work week.
- 4) Amendment of Section 3, Term of the Agreement, to make it effective upon execution rather than on June 1, 1983.
- 5) Amendment of Section 28, Sick Leave to eliminate paragraph (b), payment of accumulated sick days, up to 165, on death or retirement; elimination of paragraph (c) payment of regular salary and benefits while ill or disabled; additional language to restrict employees

on sick leave to their residence or other place of confinement except upon express permission of the Chief and attending physician.

6) Amendment of Section 33, Health Insurance to require proof of need and to have employees pay any increase in premium. Also, to eliminate payment of one-half premium for retired officers age 55 to 65 and to eliminate full payment for officers retiring at age 62 until age 65.

7) Amendment of Section 44, Salary to increase the annual base \$1000. in the first year, \$1000. in the second year and \$1500. in the third year. Further, the hourly rate of pay computation is to be made by dividing the annual salary by 260 to determine the daily rate and then by 8 to determine the hourly rate.

8) All other employee organization proposed changes in the terms and conditions of the expired agreement are opposed.

The Employee Organization and the Employer having complied with all of the requirements of the Public Employment Relations Board, the Board pursuant to Section 209.4 of the New York Civil Service Law by letter dated November 23, 1983 designated the undersigned Public Arbitration Panel members to make a just and reasonable determination of the issues in dispute in accord with the statutory criteria which must be observed.

The panel conducted a hearing at the Depew Village Offices, Depew, New York on Friday, January 5, 1984 at which time the parties were heard and evidence was received in support of their respective positions. Post-hearing briefs were exchanged and mailed to the panel members postmarked Monday, January 23, 1984, after receipt of which the record was closed.

The Public Arbitration Panel met in executive session at the Village Offices, Depew, New York on Friday, February 10, 1984 at which time the evidence and arguments of the parties were fully considered.

VILLAGE OF DEPEW:

Depew is one of the largest villages in New York State. It is located in both the Towns of Cheektowaga and Lancaster, and abutts the Village of Lancaster. Contiguous to the Town of Cheektowaga and Lancaster are the following municipalities: Buffalo, Amherst, Clarence, Newstead, Alden, Marilla, Elma, and West Seneca.

The Village covers 4.8 square miles and has a population of about 19,800. It's police force consists of a Chief, a Captain and 29 other officers, the latter are members of the bargaining unit, the Depew Police Benevolent Association.

The Towns of Cheektowaga and Lancaster in which the Village of Depew is located contain 29 and 44 square miles and have populations of 109,500 and 30,000 respectively. These figures include Depew.

The police force for Cheektowaga is 139 officers and that for Lancaster is 19 officers. The Village of Lancaster to which Depew abutts, consists of 2.65 square miles, has a population of 13,056, and its police force has 15 officers. It's figures except for police officers are included in those for the Town of Lancaster.

West Seneca and Amherst have 22 and 54 square miles with populations of 52,000 and 120,000 and police forces of 64 and 139, respectively.

Other municipalities in the same geographic area are as follows:

Village of Hamburg	2-3/4 sq mi	11,500 pop	15 officers
Village of E. Aurora	3 " "	7,000	) 13
Town of E. Aurora	33 " "	7,000	)
City of Tonawanda	3.5 " "	18,000	32
Village of Kenmore	6 " "	20,000	27
City of Lackawanna	6 " "	23,000	57
Town of Orchard Park	38 " "	27,000	25
City of N. Tonawanda	12 " "	33,000	49
Town of Hamburg	52 " "	52,000	45
Town of Tonawanda	19.1 " "	80,000	113

The Village of Depew's financial picture appears to have been fairly stable over the past four years except that the tax rate has increased about 21.4% over the period, while assessed valuations increased less than 1%. Based upon Union Exhibit 1, the appropriations, taxable assessed valuation and tax rate per \$1000 have been as follows:

<u>Fiscal Year</u>	<u>Appropriations</u>	<u>Assessed Valuation</u>	<u>Tax Rate</u>
1980-81	\$4,963,209	\$33,137,588	\$65.96
1981-82	5,197,905	33,262,538	71.71
1982-83	5,557,717	33,389,428	78.12
1983-84	5,084,919	33,452,683	80.09

The Association has viewed the Village's economic future optimistically citing the increase in assessed valuation, increases in actual revenues over estimated revenues, fund balance surpluses, police-produced revenues to the Village, building permits and business expansion. The Village, however, has argued the opposite sides of the same coin. It has pointed out that unemployment has increased and that the Village is losing real property for tax purposes. Dresser Industries employs only 70 currently instead of 2000. The D & L Plaza will likely be successful in Supreme Court in having its tax reduced by \$100,000. Also, A T & T wires are no longer taxable real property at a cost of \$70,000. to the Village. Depew is fully developed residentially, with only about 50 lots available for residential building purposes. The Village also points out that it does not receive the fines and forfeitures resulting from police-justice court activity but only a proportionate share at year end. From June 1, 1983 to January 1, 1984, the Village received only \$35,000; for the year ended May 31, 1983, the amount was \$106,528. (Village Brief)

**THE DEPEW POLICE BENEVOLENT ASSOCIATION:**

The PBA consists of 29 officers including lieutenants, detectives and patrolmen. It was stipulated that their work was similar and required similar training and skills and was performed

under similar conditions as that of police officers in surrounding communities.

The parties are agreed that the PBA members are well-trained, productive and provide the Village of Depew and its residents with high quality professional service in traffic, criminal, emergency and related matters.

O P I N I O N

The PBA has correctly pointed out that the Public Arbitration Panel must observe the statutory criteria in making a just and reasonable determination of the unresolved issues which have been referred to it. The Panel must make its determination, balancing the competing interests of the Village, the PBA and the public served. It may be as a consequence of its award, that the Village will be forced to increase its tax rate, to increase real property valuation for tax assessment by attracting new business and industry and/or to reduce the police or other services it presently provides its citizens. These obviously are economic-political decisions which must be made by the Village officials and the electorate.

The number of unresolved issues has forced the Panel to focus only on those issues which are most important in maintaining a continuing collective bargaining relationship. Issues which are not critical in the Panel's view should be reserved to the parties for

further negotiation and in the absence of agreement, are to remain unchanged from the provisions contained in the expired contract. These issues may be raised again in negotiations for a future contract.

As the duly appointed Chairman for the Public Arbitration Panel, I hereby make the following determination on the issues which have been submitted:

A W A R D

1. Section 31 - Retirement Benefits

The Village is directed to implement a 20 year retirement plan for the PBA to be effective June 1, 1984.

The Panel has considered the cost and the arguments of both parties. Utilizing the Salary and Fringe Survey submitted by the Village, the majority of jurisdictions provide the 20 year plan for their police officers. (VE-1) If one focuses on the PBA's submission, all contiguous municipalities with the exception of the Village of Lancaster provide a 20 year retirement plan (UE-1). While a 20 year retirement may appear to many to be unjustified, the Panel believes that police work is inherently stressful and disruptive of personal and family life. Police officers experience a high frequency of alcoholism and divorce in mid-life - which ~~is~~<sup>is</sup> generally accepted to be job related. The Village should have the most effective police force possible. Also, police officers themselves must be able to

fully rely on their fellow officers in the many stressful situations that occur in police work. This objective or goal will be promoted by adoption of a 20 year retirement plan and it outweighs any increased cost to the Depew taxpayers. Police work is similar in many respects to military service where a 20 year retirement has been a commonly accepted benefit accompanying such employment.

It is noted that officers with more than 20 years service will not be included in the 20 year plan and that Tier 1 officers will be replaced with Tier 2 officers as retirements occur with consequent savings to the Village. Also, the return to the Village from fines and forfeitures will also help offset the increased cost of this benefit change.

## 2. Section 44 - Salary

It is directed that each officer of the Depew Police Department receive a salary increase of five percent (5%) retroactive to June 1, 1983. Beginning June 1, 1984, each officer shall receive a salary increase of five percent (5%).

The salary increases granted recognize that Village of Depew Department of Public Works employees received increases of about five percent (5%) each year for a three-year term. More importantly, comparisons with other police organizations show that increases of five percent (5%) are fully justified. Village Exhibit 1, Salary

and Fringe Survey, January 1984, shows the following percent increases and average salaries:

<u>Municipality</u>	<u>Date</u>	<u>% Increase</u>	<u>Avg. Salary</u>
Hamburg (V)	1983-84	8	\$23,675.00
Lancaster (V)	"	7.5	23,714.50
East Aurora (V&T)	"	5.	22,010.00
Tonawanda (C)	"	6.	18,546.50
Kenmore (V)	Negotiations		
Lackawanna (C)	1983-84	0.	21,306.00
Orchard Park (T)	1983	8.	22,446.00
" " "	1/1/84	5.	24,746.00
Lancaster (T)	1983	3.	
" "	1984	6.	22,331.00
N.Tonawanda (C)	1983-84	6 / 2	20,230.00
W. Seneca (T)	1/1/83	6. )	
	1/1/84	4. )	NA
	7/1/84	4. )	
Hamburg (T)	1/83	4.	
	7/83	3.	24,360.00
Tonawanda (T)	1983	5.	
	1984	7.5	21,940.00
Cheektowage (T)	1983-84	5.5	
		7.5	23,000.00
Amherst (T)	1983	6.	21,871.00
	1984	\$1170.	23,000.00

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V - Village                      T - Town                      C - City

The Association's salary comparisons were made with five of the same municipalities (UE-1). These comparisons are as follows:

<u>Municipality</u>	<u>1983</u>	<u>1984</u>
Lancaster (V)	\$23,714.00	\$25,493.00
Lancaster (T)	22,331.00	23,559.00
W. Seneca (T)	23,006.00	24,883.00
Cheektowaga (T)	23,595.00	25,365.00
Amherst (T)	22,429.00	23,671.00

The Association also submitted a PERB summary of Patrolmen Salary Increases on Top Step for Fiscal Years Ending in 1983 New York State (Excluded New York City) (UE-2). This shows that the average percent of arbitrated and negotiated increases was 8.65%. The weighted average salary was \$24,789.

Five percent (5%) increases would have the following effect upon PBA average salaries in the Village of Depew:

<u>Year</u>	<u>Average</u>	<u>Increase</u>
1982-83	\$22,001.	
1983-84	23,101.	\$1100.
1984-85	24,256.	1155.

These average increases are not excessive especially when it is noted that lieutenants and detectives are included in the PBA average. These classifications are paid higher than patrolmen who have a 1982-83 top step of \$21,516.

The Village has argued unpersuasively that the current 4/2 work week which results in an additional 16.67 work days lost in comparison to the 5/2 work week must be changed to avoid full-time pay for part-time work and consequent fiscal disaster. Village Exhibit 1 updated by information from the Employee Organization Panel Member shows that the following municipalities have the 4/2 work week:

- Lancaster (V)
- Lancaster (T)
- W. Seneca (T)
- Hamburg (T) - Rotating 4/2, 5/2
- Tonawanda (T)
- Amherst (T)

In the absence of a strong showing that a changed work schedule is an economic necessity, the Panel cannot direct that such a change be made or that the schedule be factored into the salary paid to justify a lower salary increase. This the Village failed to do.

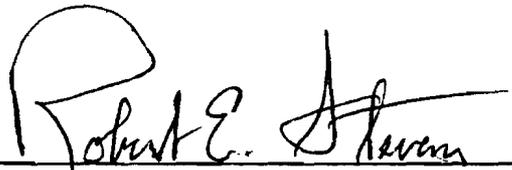
NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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3. Section 3 - Term of Agreement

It is directed that the Agreement be for a two year term retro-active to June 1, 1983 and to expire on May 31, 1985.

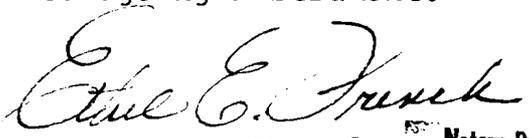
4. Other Village and PBA Proposed Changes in Terms and Conditions

It is directed that all other proposed changes in the June 1, 1981 to May 31, 1983 Agreement be withdrawn and that except as awarded above, the terms and conditions be continued for the term June 1, 1983- May 31, 1985. The parties are, of course, free to voluntarily continue negotiations on any subject. The remaining proposals, however, are not essential to the continuing collective bargaining relationship between the parties and they are best determined by them in future negotiations when the 1983-85 agreement expires if not voluntarily before that time.

  
ROBERT E. STEVENS  
Public Panel Member and Chairman

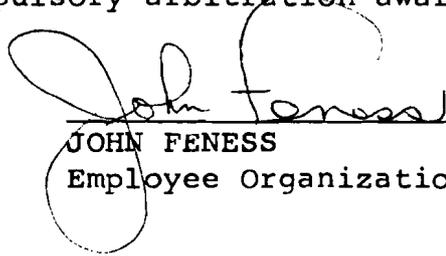
STATE OF FLORIDA )  
COUNTY OF PINELLAS )SS:

Before me appeared ROBERT E. STEVENS, on the 9th day of April, 1984 to me known and known to me and he acknowledged that he executed the foregoing instrument.



  
Notary Public, State of Florida  
My Commission Expires Jan. 24, 1987  
Bonded Thru Troy Fain - Insurance, Inc.

I concur/~~dissent~~ in the above compulsory arbitration award.

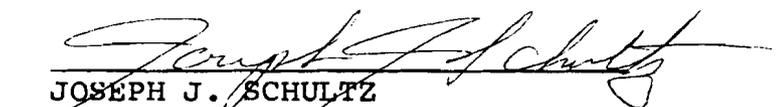
  
\_\_\_\_\_  
JOHN FENESS  
Employee Organization Panel Member

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:

Before me appeared JOHN FENESS on the 13<sup>th</sup> day of April, 1984 to me known and known to me and he acknowledged that he executed the foregoing instrument.

  
\_\_\_\_\_  
MARION R. ZIEMER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 19 86

I ~~concur~~ dissent in the above compulsory arbitration award.

  
\_\_\_\_\_  
JOSEPH J. SCHULTZ  
Employer Panel Member

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:

Before me appeared JOSEPH J. SCHULTZ on the 17<sup>th</sup> day of April, 1984 to me known and known to me and he acknowledged that he executed the foregoing instrument.

  
\_\_\_\_\_  
MARION R. ZIEMER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 19 86

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PUBLIC EMPLOYMENT RELATIONS BOARD  
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DISSENTING  
OPINION

NY'S PUBLIC EMPLOYMENT RELATIONS BOARD  
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APPEARANCES:

For the Association:

Anthony J. DeMarie, Esq.  
Dixon and DeMarie P.C.  
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1010 Crossroads Building  
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14 Domino Court  
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Joseph J. Schultz, Esq. Employer Panel Member  
Village Attorney  
85 Manitou Street  
Depew, New York 14043

In regard to my position as Employer Panel Member concerning the above arbitration case, I wish to make it noted that I am hereby formally dissenting in the arbitration award by the Public Panel Member and Chairman, Robert E. Stevens, Esq.

The basis of my dissent is two-fold:

In regard to the pay raise of 5% for each year I concur in the award; that it is within the realm of the Village's capability to meet that award. I have no qualm concerning that portion of the award.

However, I do hereby dissent to the award of the 20 year retirement award to the PBA, based on the following:

The Village of Depew financial picture, as stated in the award, states that there is a fairly stable picture, and indicates that there has been an increase of 21.4% from the period 1980 to 1983-1984. The figures of the Chairman indicate that the assessed valuation has not increased by more than 1% but the tax rate has increased 21.4% during that period of time. It was brought to the panel's attention that there was no fund balance for the year 1983; as well as the Village's being in position to lose real property assessment for tax purposes due to curtailment of employment, specifically Dresser Industries; as well as cases pending in the Supreme Court concerning assessments for D & L Plaza, and A T & T. This should all have been considered as to the ability to withstand any large increases in taxes for the residents of the Village of Depew.

As a consequence of the award the Village will be asked to increase its tax rate. As the tax rate was filed on March 20, 1984 at an increased rate of \$5.92 under State law

said rate can be decreased but not increased. The award of a 20 year retirement system will mean that the Village must find an additional \$117,000, which is the figure given to us by the State Retirement System to implement the award. The only alternative that the Village would have to meet the award would be a reduction in the size of the police force or a cut in the basic services to the community. The Village through attrition has not replaced 12 men in the Public Works Department, and this has affected the level of employment whereby the Public Works itself is short of men.

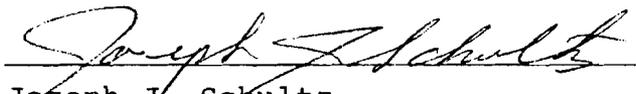
In regard to Page 10 of the opinion I feel that there is a mistake concerning the fact that officers with more than 20 years service will not be included in the plan, and that Tier 1 officers will be replaced with Tier 2 officers as retirement occurs. This is totally untrue, and we have been informed that all 31 officers have to join the 20 year retirement plan, and have no choice in doing so, and that automatically the Tier 3 officers become members of Tier 1, which is an additional cost to the Village not considered in the opinion.

As to the fines and forfeitures to offset increased cost of this benefit change, you must keep in mind that the court system has a Judge, Acting Judge, and four court personnel, which is a cost of approximately \$80,000 to the Village. This fact was not considered in awarding the 20 year retirement. The issuance of summonses also results in the officers appearances in court; adding to the overtime cost to the Village, which was not considered in the opinion.

By adding the 5% salary increase concerning 31

officers we are talking about a figure of approximately \$33,000., which amounts to an additional \$1.10 on the tax rate, and coupled with the 20 year plan, the total amount would be approximately \$4.40 increase , on top of the \$5.92 increase in the budget as submitted for adoption on March 20, 1984. That in itself amounts to a 16% increase in one year; while the the previous four years the increase was less, which makes it quite prohibitive to the taxpayers of the Village of Depew.

THEREFORE, I concur with the salary increase, and dissent as to the 20 year retirement.

  
Joseph J. Schultz  
Employer Panel Member

STATE OF NEW YORK        )  
COUNTY OF ERIE         )    SS

Before me appeared JOSEPH J. SCHULTZ on the 17<sup>th</sup> day of April. 1984, to me known, and known to me, that he acknowledged that he executed the foregoing instrument.

  
MARION R. ZIEMER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1986