

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

JAN 18 2002

In the Matter of the Interest Arbitration *

CONCILIATION

between *

Town of Vestal *

OPINION

and *

AND

Town of Vestal Police Benevolent Association *

AWARD

PERB Case No. IA200-026, M200-228 *

Public Arbitration Panel	Ronald E. Kowalski, Ph.D.
	Public Panel Member and
Chairperson	
	Anthony V. Solfaro
	Employee Organization Panel
Member	
	Daniel Gorman, Esq.
	Public Employer Panel Member

Representatives:

For the Employee Organization:	John Grant, Esq.
For the Town:	John Rittinger, Esq.

INTRODUCTION

On February 27, 2001 the New York State Public Employment Relations Board (hereinafter "PERB") having determined that a

dispute continued to exist in negotiations between the Town of Vestal (hereinafter "Town") and the Town of Vestal Police Benevolent Association (hereinafter "Association"), and acting under the authority vested in it under Section 209.4 of the Civil Service Law, designated the above-listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

A hearing was held on July 11, 2001 in Vestal, New York. Panel discussions were held during the hearing to clarify the issues. At the hearing both parties were provided opportunity to introduce evidence, present testimony and to summon witnesses and engage in examination and cross-examination. The parties submitted briefs on September 10, 2001.

On September 20, 2001 after phone consultations, the Panel met in executive session. Subsequent consultations took place with Panel members and, thereafter, a draft was circulated by the Chairperson, which is finalized in this Opinion and Award.

THE STATUTORY STRUCTURE

Subdivision 4 of Section 209 of the Civil Service Law was

enacted to provide a means for resolving negotiation impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a petition requesting referral to a Panel contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed

upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearing on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria, which must be taken into consideration, when relevant:

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 qualification;

- (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.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel. The maximum period is for two years.

BACKGROUND FACTS

The Collective Bargaining Agreement between the parties extended from January 1, 1997 to December 31, 1999. The parties began negotiations for a successor agreement in the Spring of 2000. The parties met on April 10, 2001, May 1, 9, 22, 2001, October 13, 2000 and November 3, 2000 in an effort to reach an agreement. Bargaining was not successful and the parties filed a Declaration of Impasse and requested the appointment of a mediator. The mediation process failed to resolve the outstanding issues and a Petition for Compulsory Interest Arbitration was filed on January 17, 2001.

ISSUES

In accordance with the provisions of Section 209.4 of the New York Civil Service Law, the parties hereto submitted the following issues to the undersigned arbitration panel:

- (1) Salary
- (2) Longevity Pay/Shift Premium
- (3) Health Insurance
- (4) Disability Income
- (5) Shift Scheduling
- (6) Compensatory Time
- (7) Vacation and Personal leave
- (8) Discipline and Grievance Procedures
- (9) Uniform Allowance
- (10) General Municipal Law 207-C Procedures
- (11) Retirement
- (12) Life Insurance and Benefits

The Panel has carefully weighed the evidence and testimony submitted to it during the hearing and in post-hearing briefs at its determinations. The Panel has attempted to take a balanced approach to the proposals, one that recognizes the fiscal considerations of the Town and the legitimate concerns of the members of the Association. The Panel has applied the criteria set forth in the law in assessing the merits of the parties' proposals. The Panel will make its award for a two-year Agreement.

DISCUSSION AND DETERMINATION OF THE ISSUES

1. Salary

The Association seeks an increase of five percent (5.0%) for each year of this Award. The Association argues increases of the size put forth in its proposal are necessary to maintain the competitive position of the Town's police and address the fact that Vestal's officers are among the lowest paid in the region. The Association notes that area settlements in the past few years, including the most comparable municipality the City of Binghamton, have been 4.0%, widening the current disparity with wages in the Town.

The Town has argued it does not have the means or ability to pay the wage increase sought by the Association without placing an undue burden on its taxpayers if it were to equal salaries in Binghamton. The Town believes it has maintained a competitive salary with respect to similar departments in the region and does not need to offer increases of the size proposed by the Association to maintain its position in the region and recruit good officers.

Determination:

The Panel has carefully reviewed the extensive data submitted on salary and believes there is a need to at least maintain the existing salary relationship with comparable municipalities in the region and make additional adjustments to more senior officers' pay where growing disparity with other departments exists. Comparable municipalities in the area are the City of Binghamton, Johnson City and Endicott. Recent salary settlements in these three municipalities averaged 3.5% to 4.0% over the two years encompassed by this agreement. The Panel has determined that adjustments need to be made in salaries of more senior officers and this will be specifically addressed in longevity. The Panel would award the following wage increases after considering the comparables noted above.

January 1, 2000 wages of all officers in the unit shall be increased by 3.5%.

July 1, 2000 wages shall be increased by another .5%.

January 1, 2001 wages of all officers in the unit shall be increased by 3.5%.

July 1, 2001 wages shall be increased by another .5%.

2. **Longevities/Shift Premium**

The Association has argued that wage disparities between its members and those of comparable local municipalities including the City of Binghamton, Johnson City and others are most pronounced at the senior level. The Association contends its exhibits and the data clearly demonstrate that officers with five or more years of service in the Town fall far behind similar officers in other regional departments. The Association therefore argues it is necessary to make an upward adjustment in the existing longevities as well as compress the number of years between them to help alleviate this growing inequity. There is also a need to adjust shift premiums and the investigator's shift stipend currently \$550. The Association proposes accomplishing these goals by converting longevities into percentages of pay, 2.0% in years 5 to 9, 3.0% after 11 years, 4.0% after 15 years, 5.0% after 20 years and 6.0% after 25 years and increasing shift premiums and the investigator's stipend.

The Town believes the current longevity payments and

shift premiums are adequate. The Town argues that when the existing longevities and wage rates are combined with the savings unit members realize by being the only officers in the area to have no contribution to health insurance premium costs, the compensation for unit members is similar to other officers in neighboring municipalities. The Town thus does not believe there is a need to add to the existing longevity schedule or shift premiums.

Determination:

The Panel has studied the data submitted on longevities and as noted earlier, has concluded that there is a greater disparity between salaries of officers in the Town and those of the most comparable municipalities, the City of Binghamton, Johnson City and Endicott at more senior levels. The disparities grow at the 5 year, 10 year, 15 year and 20 year points. The Panel has therefore determined that there is a need to increase the current longevities at those years to help reduce those disparities and provide greater salary equity. As most officers retire before the

twenty fifth year, the Panel does not believe there is a need to maintain a longevity payment at that point. The Panel utilizing the comparables noted above would award the following changes in the existing longevity schedule to become effective January 1, 2001:

5 years	\$250
10 years	\$600
15 years	\$850
20 years	\$1100

The 25-year longevity shall be abolished effective January 1, 2001. The Panel believes the current shift premiums are adequate but does see a justification for an increase in the investigator's stipend from \$550 to \$850 effective with the 2000 contract year.

3. Health Insurance (Article 8)

The Association has argued that the Town has changed health insurance plans without consulting or negotiating with the Association. This change has resulted in a new plan, a Blue Preferred Plan, under Blue Cross and Blue Shield, that has benefits as well as deductibles that were not negotiated by the Association. The Association seeks

elimination of deductibles in the new plan and a change in the co-payment for prescription drugs which increased in some cases as a result of the adoption of the new plan by the Town. The Association also seeks an increase in the current buyout for those not electing the plan from \$500 to \$1500.

The Town believes the new plan contains enhanced benefits and lower deductibles for Association members. The benefits added far exceeded any minor increases in costs for prescriptions if any exist. The Town is opposed to any changes in the existing health insurance plan or buyout as it believes the plan already has reduced deductibles and enhanced benefits. The lower costs of the plan also allow the Town to continue to afford to pay the full cost of premiums for employees.

Determination:

The Panel is of the opinion after examining the arguments submitted on health insurance that the matter is really a local one in nature. The question of whether Blue

Cross and Blue Shield Plan adopted by the Town has similar benefits and costs is not a matter for interest arbitration. There appears to be an improvement in deductibles as well as other changes.

The Panel would therefore make no award in this area but would recommend the parties include in any new Collective Bargaining Agreement the name and basic specifications of the Blue Cross and Blue Shield plan that is the provider of health benefits. The Panel does believe the current \$500 buyout for those electing not to participate in the Town health insurance program should be raised to \$1000 effective January 1, 2001 as it provides a greater incentive for those already covered by other plans and not in need of such insurance.

4. Compensatory Time Policy (Article 11)

The Association is seeking two changes in the current provisions for the treatment of compensatory time. The first is to delete the current requirement in Subsection 7 of Article 11 that an officer give 24 hours' notice if he or she

wants to cancel a compensatory time request. The second change is to allow officers to receive payment for up to 48 hours of accumulated compensatory time in a given year if they do not take the time. The Town believes the current provisions are adequate. The Town argues the deletion of the 24 hours requirement would result in undue scheduling problems at the last minute. The Town believes the current provisions for utilizing rather than paying for the 48 hours have worked well in the past and are an adequate way of addressing the problem.

Determination:

The Panel believes a review of the evidence indicates that the maintenance of the 24 hour notification requirement for cancellation of scheduled compensatory time is reasonable given the need to be able to schedule such time as part of the overall operation of the department. The Panel would therefore not award any change in those provisions.

The matter of payment for up to 48 hours of

accumulated compensatory time in a given year is a reasonable request as such payment has been earned by service. The Panel would therefore direct such a change in the existing provisions of Article 11 with new language to provide for the payment at the rate of pay in effect at the time of payment for accumulated compensatory time in any given year up to 48 hours. This payment shall be made in the last pay period of December each year. Similar provisions exist in comparable municipalities.

5. Disability Income (Article 9

The Association has proposed increasing the current payment for long-term disability from \$400 per week to \$800 per week as a maximum. The current \$400 per week maximum has been in place since 1987 and no longer reflects a reasonable portion of a disability officer pay.

The Town recognizes there has been no change over a period of years in the maximum weekly payment. However, the Town does not believe an increase to \$800 is reasonable given the maximum payment is two-thirds of

salary which would not even approximate \$800.

Determination:

There has been no change in the current \$400 maximum benefit since 1987. However, salaries have continued to rise and thus the \$400 maximum no longer represents the two-thirds salary payment set forth in this disability provision. The Panel would therefore award an increase effective January 1, 2001 to \$600 in the maximum weekly payment, as it would provide for at least the two-thirds weekly salary for officers in the unit. The Panel strongly recommends that the parties create a more traditional sick leave provision in place of the current benefit, as it may be more advantageous to both the Town and the Association.

6. Uniform Allowance (Article 17A)

The Association argues the current provisions for a \$600 uniform allowance are not adequate nor competitive with other comparable municipalities in the area. City of Binghamton currently provides \$900 and Johnson City

\$750. The Association seeks an increase to \$900 and also provisions that would require that the \$900 be granted each year and not be reduced by amounts not expended in the prior year as currently is the practice.

The Town believes the current provisions for uniform allowance are sufficient given the Town provides the initial issue of clothing and the money is for cleaning and replacement. The Town has not seen evidence that would justify the kind of substantial increase in this allowance sought by the Association. The parties have also discussed alternative vouchers and quartermaster systems but no agreement was reached on adoption of a different plan.

Determination:

The Panel has reviewed the data and arguments submitted on the question of the uniform allowance and believes a comparison with comparable municipalities in the region, City of Binghamton, Johnson City and Endicott, provide the basis for some changes in the existing provisions. There has been no change in the current \$600

allowance since 1995. City of Binghamton and Johnson City have allowances that exceed the current \$600. The Panel thus believes an increase is warranted and would therefore direct that the allowance be increased to \$650 in the 2001 year. Officers shall receive \$650 each year thereafter, regardless of whether or not the total amount has been expended each year.

The Panel would further recommend that the parties explore a quartermaster system as an alternative in future negotiations. A system of this nature may better address the question of increasing costs for both maintenance and replacement of clothing and equipment.

7. Other Issues

The Town and the Association have also proposed changes or additions to the existing provisions of the Collective Bargaining Agreement in the areas of shift scheduling, personal leave, retirement, life insurance, benefit provisions, disciplinary and grievance procedures. Given the protracted nature of the negotiations and the

length of these proceedings lasting as they have well into the end of the second year of this Award, the Panel believes these issues be addressed in future negotiations. The Panel would therefore deny these proposals and awards no changes. All other terms and conditions of employment of the expired Collective Bargaining Agreement shall continue unchanged except as modified by this Award.

