

NEW YORK STATE EMPLOYMENT RELATIONS BOARD

In the matter of the interest
arbitration between,

THE CITY OF JAMESTOWN, NEW YORK,

Employer,

-and-

THE KENDALL CLUB POLICE BENEVOLENT
ASSOCIATION,

Union.

OPINION AND AWARD

PERB CASE NO.

IA202-004

M201-323

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED**

MAY 12 2003

Before the following Public Arbitration Panel:

CONCILIATION

Chairperson: Michael S. Lewandowski
Chairman

Member: Charles W. Shaver, Deputy Chief of
Police, City of Jamestown
Public Employer Panel Member

Member: Edward W. Guzdek, President
Police Conference of New York, Inc.
Employee Organization Panel Member

Appearances:

For the City: Martin F. Idzik, Esq.
Phillips, Lytle, Hitchcock, Blaine &
Huber, LLP

For the PBA: Charles S. DeAngelo, Esq.
Fesenden, Laumer & DeAngelo

On or about July 10, 2002, The Kendall Club Police Benevolent Association ("PBA") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The City of Jamestown, New York ("City") and the PBA had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement ("Agreement") between the parties that expired on December 31, 2001. The unit is composed of 58 members holding a variety of police titles including Police Officer, Sergeants, Lieutenants and other titles.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated September 10, 2002 from the New York State Public Employments Relations Board ("PERB"). The panel met and conducted a hearing in the City of Jamestown on January 15, 2003 and January 16, 2003. The panel met in Executive Session in Buffalo, New York on March 14, 2003.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning police departments that they considered to be comparable to that of the City.

The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Civil Service Law. Specifically considered were the interests and welfare of the public and the financial ability of the City to pay any salary increase or benefit increases awarded; comparable wages, hours and conditions of employment provided employees involved in similar work or requiring similar skills (police); comparison of peculiarities in regard to other professions such as hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills. The panel noted that individuals holding police titles in other municipalities were comparable to the officers here. The panel also considered the terms of the collective bargaining agreement negotiated between the parties in the past. The final disposition of the

issues is the result of the deliberations of the panel.

Although the panel may have been split with regard to certain issues such as the designation of comparable police units, the panel reached unanimous agreement with respect to this award.

The panel also expressed disagreement over issues contained in this award (salary, permanent shift, shift differential, health insurance contribution, etc.) but agreed that award would be accepted as a package because the ability to agree on the provisions of the award was based on the general acceptance of the panel that the award contains our collective best opportunity to provide an award that is fair to both parties and the interests and welfare of the public. Each party understands that the award, when taken in total is not what it would be if only one party had full authority to decide. Despite the differences of opinion, the award contains provisions of salary increases, benefit changes and working condition changes that, in the panel's opinion, meet the criteria contained in the Law.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other

employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

There was unanimous agreement that the duties performed and the responsibilities assumed by the members of the PBA are consistent with those performed by employees who hold the title of Police Officer and associated titles in the jurisdictions offered by the parties for consideration and comparison by the panel.

DISCUSSION AND ANALYSIS

After extensive review of the significant amount of evidence presented at the arbitration, the panel reached agreement on the Award which follows. The Award is a product of the consideration of all the factors specified in the Civil Service Law. It modifies terms and conditions of employment in a manner which benefits both the PBA and the City.

TERM. The parties reached unanimous agreement on the term of the award. The term of this award shall be for a two year period commencing on January 1, 2002 and expiring on December 31, 2003.

COMPENSATION:

The PBA proposed increasing wages 4.5% in each year of a two year award. The City proposed increasing wages 2.0% effective January 1, 2002 and 2.5% effective January 1, 2003.

The City and the PBA both submitted lists of what they considered comparable police departments agreeing only on the following police departments as comparable to the department in

the City of Jamestown; the City of Auburn, New York, the City of Dunkirk, New York and the City of North Tonawanda, New York.

The data presented shows the following salary increases for the mutually selected comparable police departments as follows.

	<u>2002</u>	<u>2003</u>
Auburn	3.0%	
Dunkirk	3.5%	3.5%
North Tonawanda	3.5%	3.5%

The panel additionally noted that other City police departments, offered by the City but not mutually agreed to, paid the following percentage increases to their members during the period covered by this award.

	<u>2002</u>	<u>2003</u>
Batavia	3.5%	
Binghamton	4.0%	
Rome	4.0%	
Salamanca	3.0%	3.0%

The PBA provided data showing that other police departments they offer as comparable departments settled wage contracts for the period at issue here as follows.

	<u>2002</u>	<u>2003</u>
Town of Ellicott	4.0%	4.0%
Village of Fredonia	4.0%	4.0%
Chattauqua County Sheriffs	4.0%	4.0%

Most notable for the panel was the data that showed that the City settled contract negotiations with two other, non-uniform services units, CSEA and AFSCME for 2002 at 3.1% and 3.2% respectively.

Considering all of the data including a difference between data presented by the City in which it was asserted that the members of this unit are paid above their peers versus data submitted by the PBA in which it was asserted that the members of this unit are paid significantly below their peer and most notably considering ability to pay data that showed the City had a surplus in fiscal year 2001, the panel agreed to a wage increase as follows.

Effective on, and retroactive to:

January 1, 2002, wages shall be increased 3.5% across the board.

January 1, 2003, wages shall be increased 3.5% across the board.

HEALTH CARE

The City proposed the acceptance of a 15% of premium contribution towards health and dental insurance effective January 1, 2002, an increase in prescription co-payments from \$5 Generic/\$10 Brand Name to \$10/\$20 and a new provision effective January 1, 2002 that relieves the City of providing health insurance to retired members who were hired on or after January 1, 2002.

The Union opposed the City's proposals.

The panel considered data that showed from 1994 to the present, the City has seen an increase in premium from \$139.50 to \$308.00 in single person health insurance and from \$362.00 to \$800.00 in monthly premium for family health insurance. Dental insurance premiums for single coverage went from \$9.26 in 1994 to the present premium of \$14.26, family coverage increased from

\$25.61 to \$39.61. The cost of prescription drug claims has risen dramatically. While the City has had to cover the increases in health insurance cost, the amount of premium paid by the members of this unit has remained fixed at \$17.50 per month for single coverage and \$35.00 per month for family coverage or approximately 4.87% of premium for single coverage and 3.33% for family coverage.

Data from comparable police units is mixed but the City's data shows that the police and fire units within the City pay the lowest premium contributions.

Considering the sizable increase in cost, the majority of the panel found that an increase in premium was appropriate considering all of the data. Therefore, effective June 1, 2003, members in the police bargaining unit hired before December 1, 1998, shall contribute 7.5% of the total monthly premium for health and dental insurance. Members of this bargaining unit hired on or after December 1, 1998 shall continue to contribute 15% of premium as specified in the Agreement.

Considering the data, the increase in premium contribution provided above and the fact that the parties prior interest arbitration award included an increase in prescription co-payments, the majority of the panel rejected all other health insurance proposals.

SHIFT , SHIFT DIFFERENTIAL AND PERMANENT SHIFT ASSIGNMENT

The City proposed deleting Sections a, b, c and m of Article V, Section 3 of the Agreement and replacing those provisions with language that would permit the Chief of Police to assign officers to a 40 hour, not necessarily 4-2 schedule as needed. The PBA opposed the proposal. The majority of the panel found insufficient data to support the proposal and rejected it.

The PBA proposed making the current 4/2 shift permanent and open for selection on a seniority bid basis and the payment of a shift differential consisting of \$.75 per hour for the 3:00 p.m. to 11:00 p.m. shift and \$1.00 per hour for the 11:00 p.m. to 7:00 a.m. shift in the first year of the award. The differentials would be increased to \$1.00/\$1.25 for the second year of the award.

The majority of the panel rejected the PBA's proposal recognizing that officers who work a 4/2 schedule typically during non-daylight hours currently enjoy a significant benefit by working 16 to 18 less days per year than officers working a 5/2 schedule.

The panel does also note the data and other evidence presented by the PBA in support of permanent shifts bid by seniority within the patrol units working the 4/2 schedule. Eight of the twelve cities Jamestown offers as its comparable police units including the City of Dunkirk, City of Auburn and the City of North Tonawanda have permanent bid shift schedules. Based on the data, the majority of the panel finds the evidence supports the PBA's proposal to bid, by job line seniority, permanent shift assignments. Hereafter, no earlier than October 15, 2003 nor later than November 15, 2003, members of the unit working a 4/2 schedule will be permitted to bid by job title seniority, 4/2 shift schedules. The schedules will become effective December 28, 2003. Thereafter, schedules will be bid each year and become effective January 1st of the year following the bid.

The panel takes note of the negotiated language of the Agreement at Article XIV, Section 5 which provides "If the City of Jamestown decides to go to a permanent shift, the City and the Kendall Club, PBA will negotiate and agree to the appropriate differential to be paid the affected Police Officers, before the permanent shift is implemented." This award of permanent shift assignment bid by job title seniority (not departmental seniority) does not now obligate the City to negotiate shift differential as a consequence of this award nor does it preclude such negotiations should the parties choose to negotiate shift differential.

**THE PANEL RECOGNIZES THAT ANY ITEM NOT SPECIFICALLY ADDRESSED
HEREIN IS NOT INCLUDED AS PART OF THIS AWARD THEREFORE NO
COMPENSATION, TERM OR CONDITION OF EMPLOYMENT OR BENEFIT
EXISTING AT THE TIME OF THIS AWARD IS AFFECTED EXCEPT THOSE
SPECIFICALLY ADDRESS HERE.**

AWARD

1. The term of this award shall be for two years commencing January 1, 2002.

2. Salaries will be increased across the board as follows.

Effective on or retroactive to:

January 1, 2002, wages shall be increased 3.5%

January 1, 2003, wages shall be increased 3.5%

3. Members of the unit hired before December 1, 1998 shall contribute, effective June 1, 2003, 7.5% towards the total monthly premium for health and dental insurance. No other changes in the terms of the Health Insurance article are made here.

4. No earlier than October 15, 2003 nor later than November 15, 2003, members of the unit scheduled to work a 4/2 schedule will be permitted to bid by job title seniority, 4/2 shift schedules. The schedules will become effective December 28, 2003 and remain in effect until re-bid as follows. Thereafter, schedules will be bid each year and shall become effective January 1st of the year following the bid.

5. No change in wages, benefits or terms of employment affecting members of this bargaining unit not explicitly addressed in this opinion and award shall be changed as a consequence of this award.

