

THE NEW YORK STATE
RELATIONS BOARD
R B E I V
JUL 17 1975
RECONCILIATION

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD

In the Matter of the Arbitration Between

VILLAGE OF MALVERNE

and

MALVERNE PATROLMEN'S BENEVOLENT ASSOCIATION

Case No. CA-0016; M 74-741

AWARD OF PUBLIC
ARBITRATION
PANEL

The Undersigned Arbitrators, having been designated pursuant to the provisions of Section 209.4 of the New York State Civil Service Law, and having duly heard the proofs and allegations of the Parties, hereby make the following

AWARD

The terms and conditions of employment specified as "areas of contention" in the Petition filed by the Union and the Response filed by the Employer are decided as follows:

1. Increments is withdrawn.
2. Funeral expenses is withdrawn.
3. Night differential is withdrawn.
4. Performance of duty out of rank is withdrawn.
5. Personal days is withdrawn.
6. Required equipment and cleaning allowance is withdrawn.
7. Termination pay is withdrawn.
8. Veteran's holiday entitlement is withdrawn.
9. Wages is withdrawn.

10. Death Leave. The second paragraph of Article Sixteenth of the Contract shall be amended to read:

"A member, on application to the Chief of Police or his designee, shall be granted four (4) working days leave of absence with full pay in case of death in his 'immediate family' which shall be defined as his wife, husband, child, father, mother, brother, sister, parent-in-law, step-parent."

11. Sick Leave.

- a) Article Fifteenth of the Contract shall be amended by adding a new Section E to read as follows:

"If a member is entitled to cash payment for accumulated terminal leave pursuant to Article Nineteenth, he, or his legal representative, shall also be paid, in a lump sum, the value of his accumulated and unused sick leave to the extent of fifty (50%) percent thereof, but not to exceed a total of one hundred sixty-five (165) working days."

- b) Article Fifteenth, Section D shall also be amended to read as follows:

"Sick leave shall be charged against scheduled working days only. An employee on sick leave is only required to remain in his residence between the hours of 9:00 a.m. and 9:00 p.m. on a day he was regularly scheduled to have a tour of duty, except if otherwise reasonably directed by the Police Chief. The employee may be visited by a supervising officer at any time during the hours of 9:00 a.m. to 9:00 p.m. on the day he was regularly scheduled to have a tour of duty. With the consent of the Chief of Police, the provisions of this section may be waived."

12. Basic Work Week and Tour of Duty

- a) Article Eleventh of the Contract shall be amended

by adding a new provision to read as follows:

"Effective June 1, 1974, members who work a rotating schedule shall have their schedule rotated as follows:
five (5) days on duty (8:00 a.m. - 4:00 p.m.) -- a seventy-two (72) hour swing;
five (5) days on duty (4:00 p.m. - midnight) -- a seventy-two (72) hour swing; four (4) days on duty (midnight - 8:00 a.m.) -- a ninety-six (96) hour swing.

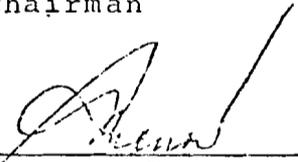
Each member shall receive, at the election of the Village, either straight time pay or compensatory days off from June 1, 1974 to the actual implementation of this shortened work schedule, prorated to reflect the 17 day reduction in the work year."

b) Article Seventh shall be amended by deleting Article Seventh H.

c) Article Ninth shall be amended to eliminate the sentence which reads "There shall be no tour shifts solely to eliminate overtime" and to eliminate overtime payments for "short swings".

13. The Agreement shall be for one year -- June 1, 1974 to May 31, 1975.


George Nicolau,
Public Panel Member and
Chairman


Stewart R. Morrow,
Employer Panel Member
I DISSENT


Paul Rychalsky,
Employee Organization Panel
Member
I CONCUR

July 15, 1975

STATE OF: NY)

COUNTY OF: Nassau) ss.:

On this 15th day of July, 1975 before me personally came and appeared George Nicolau to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

CHARLES J. ...
Notary Public
Qualified in Nassau County
Commission Expires March 30, 1976

STATE OF: New York)

COUNTY OF: Nassau) ss.:

On this 14th day of July, 1975 before me personally came and appeared Stewart R. Morrow to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

CLARE ...
NOTARY PUBLIC, State of New York
No. 30-505585
Qualified in Nassau County
Term Expires March 30, 1976

STATE OF: NEW YORK)

COUNTY OF: NASSAU) ss.:

On this 11th day of July, 1975 before me personally came and appeared Paul Rychalsky to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

RICHARD HARTMAN
Notary Public, State of New York
No. 30-1695320
Qualified in Nassau County
Commission Expires March 30, 1977

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD

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VILLAGE OF MALVERNE

and

MALVERNE PATROLMEN'S BENEVOLENT ASSOCIATION

Case No. CA-0016; M 74-741

OPINION

Pursuant to the provisions of the Civil Service Law, Section 209.4, Robert D. Helsby, Chairman of the Public Employment Relations Board, on April 15, 1975 designated the following individuals to serve as a Public Arbitration panel in this proceeding:

George Nicolau, Public Panel Member and Chairman
Stewart R. Morrow, Employer Panel Member
Paul Rychalsky, Employee Organization Panel Member

A hearing was held May 13, 1975 in Malverne, New York at which time the Parties were afforded full opportunity to offer evidence and argument and to present, examine and cross examine witnesses. The PBA was represented by Richard Hartman, Esq.; the Village by Andrew J. Wallace, Esq.

The Panel thereafter met in executive session on July 2, 1975.

In considering the issues, the Panel was charged by Section 209.4 to heed the following statutory guidelines:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may,

but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

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 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

At the outset of the hearing, the Chairman stated that he was disposed to give great weight to the recommendations of the fact finder and not to disturb them unless the Parties advanced highly persuasive reasons for doing so, including changed circumstance since the issuing of the fact finder's report.

Originally, as certified in the Petition and Response, there were seventeen matters in contention: fourteen submitted by the

PBA and three submitted by the Village. At the hearing, as set forth in the accompanying award, the PBA withdrew all of its demands except:

1. Death Leave
2. Pay for Unused Sick Leave at Retirement, and
3. Basic Work Week and Tour of Duty.

In advancing each of its contentions, the PBA relied heavily on what it characterized as both County and Village parity. In relation to the sick leave and tour of duty issues, the PBA introduced some thirty-nine exhibits. Exhibit 3 was the Nassau County PBA Contract, the other thirty-eight Exhibits were either contracts or fact finding reports embracing other jurisdictions (towns or villages) in both Nassau and Suffolk counties.

In this regard, it should be noted that all policemen in Nassau County, whether they are hired by the County or a particular town or village, take the same civil service examination. They also must meet the same qualifying requirements and they receive the same training, which is given at the County's Police Academy. As a consequence, the County PBA contract has been used as a general benchmark throughout the entire area. It should also be noted that Village police forces are optional with each village. Those villages which do not maintain their own forces are policed by the County. Those which decide to discontinue their forces, as some have, are similarly policed by the County, with the discontinued forces absorbed.

A. Death Leave

The present Agreement, in Article Sixteenth, provides that:

"A member, on application to the Chief of Police or his designee, shall be granted four (4) days leave of absence with full pay in case of death in his 'immediate family ...'"

The PBA seeks to clarify this provision to provide for "four working days" of such leave. Its position here is that the Malverne PBA Contract historically followed the Nassau County PBA Contract in this respect, and that County Contract now provides for "working" days. The evidence of historical parrallelism, recognized, in this area, by both Parties, is persuasive.

In view of that evidence, there is no sound reason why the request should not be granted. In addition, the very wording of the Article, when read in full context, suggests that "working" days is the appropriate meaning.

B. Use of Sick Leave upon Retirement

In essence, this demand is that retiring employees who have not used all their sick leave be compensated in cash for a portion of their accumulation. The PBA, again advancing parity, points out that retiring police officers employed by Nassau County have enjoyed this benefit since 1971. Under that Contract (PBA Exhibit

3), employees can be paid fifty percent of the value of a maximum of 330 days -- or a total of 165 days if such sick leave is unused. The PBA also points out, in its Exhibit 40, that the great bulk of jurisdictions and the overwhelming number of officers in both Nassau and Suffolk now enjoy either the same benefit or one that is better.

The Village argues that sick leave should be utilized as such, that it was never intended as a cash payment, and that it should not be used, in its words, as "going away money". The Village also argued that the cost, given its tax base, would be substantial.

On this latter point, it is significant that the Village has a much higher utilization of sick leave than jurisdictions which permit partial payment of sick leave upon retirement and that the difference in utilization appears to bear a direct relationship to the absence or presence of such a provision. Sick leave utilization in the 21-man Malverne unit averages eighteen days per man year. Prior to the advent of the provision in the Nassau County unit of some 3500 men, annual sick leave utilization was somewhat the same, running fourteen to sixteen days, but after the provision it dropped to 4-6 days. Malverne's Chief of Police, who talked to County officials, as well as those in Garden City and Floral Park, found that after each of those jurisdictions started paying the benefit, sick leave utilization drastically declined.

In Malverne, the major portion of the force's overtime bill is directly attributable to high sick leave utilization. A sharp decline in such utilization, by use of an accumulation incentive, should have a drastic effect on the amount of this overtime. This means, of course, that the apparent initial cost of this item can be significantly reduced, as the Chief recognizes, by the amount of overtime no longer needed.

This substantial saving does not make the item cost free, but its cost, as the fact finder recognized, is not near as much as the Village contends. In the fact finder's words:

"Any diminution in the utilization of sick leave should result in either increased police coverage or in a reduced need to pay overtime to provide the required coverage. In either circumstance the benefits achieved by providing the incentive to accumulate sick leave should go a long way to offset the costs of paying retiring policemen for some of their accrued sick leave."

In those circumstances, there seems no reason why Malverne should be one of the few jurisdictions where the benefit does not obtain. Of the twenty-six jurisdictions employing some 7200 men listed on Exhibit 40, only four jurisdictions in Nassau and one in Suffolk, employing a total of 105 men, are without some version of the benefit. All the rest have some benefit, and the great bulk -- 6900 men -- either have the Nassau County version or more. While each entity is a jurisdictional unit, police officers can

see across jurisdictional lines and are cognizant of and affected by the benefits enjoyed by their brothers. Since the services performed in these jurisdictions are substantially the same, equity requires that this request be approved.

Equity similarly requires that an Employer request related to this item also be approved. Under the present agreement, an employee on sick leave must remain in his residence subject to visitation from 9:00 A.M. to 5:00 P.M. The Village asks that these hours be extended from the present 5:00 P.M. to 9:00 P.M. The Panel; in its Award, has approved this change.

C. Basic Work Week and Tour of Duty

Here again, the PBA's argument is parity, not just with the County of Nassau, but with most community police forces, both in Nassau and Suffolk.

Police in Malverne presently work 249 days a year on a 5-72 work schedule (5 days on, 72 hours off). The PBA proposes a 4-96 work schedule (4 days on, 96 hours off) for the midnight shift, which would reduce the annual work days to 232.

Exhibit 40 shows that fourteen jurisdictions, including Nassau and Suffolk, have this or a better schedule (Nassau County

since January 1, 1974); that six other jurisdictions pay cash in lieu of days off; and that only four jurisdictions employing some 150 men (Lynbrook, Garden City, Old Brookville and Malverne) do not have the 4-96. Regardless of the original reason for the schedule coming into being, it is now there -- a historical fact in police work on Long Island.

At the hearing, the Village suggested, but did not seriously contend that the work performed by Malverne officers differs from that performed by other police forces in the Nassau and Suffolk area. That suggestion is belied by the evidence. In this regard PBA Exhibit 41, a 19-jurisdiction analysis of arrests and summonses in relation to the number of personnel, is instructive. It shows that only a very few comparable jurisdictions have a higher arrest or summons rate, given the number of personnel, than Malverne. This indicates that the work of Malverne officers is comparable to police work in other towns and villages in the area. Other testimony reveals that it is not the most difficult of jurisdictions, nor the easiest. Therefore, the comparability criteria, which the fact finder stressed, carries good weight.

The Village, however, argues an inability to pay. It points out that other jurisdictions have a broader tax base, including industrial properties, and that Malverne, from its inception and design, had no such tax base and now has no possibility of attaining one.

It also argues that Malverne should not slavishly follow the other jurisdictions, such as Nassau County, that the 4-96 schedule was adopted during what it called the "glory years", and that Malverne should now begin the pendulum's reversal. This argument is more properly addressed to Nassau County, the acknowledged negotiations leader, rather than Malverne. For Malverne to take the lead now would be a reversal of historical conditions, and, in the Chairman's view, unwarranted.

On ability to pay, there is no question that the schedule is a cost item. But the possibility of increased taxes must be measured against the right to comparability explicit in Section 209.4. As said by fact finder Meyer Drucker:

"An employee cannot be expected to finance government by accepting less than standard."*

The Village has the undoubted right to maintain its own police force, but it cannot do so without also recognizing the comparability rights of its employees. Comparability is, in fact, the price for an independent force. Fact finder Nathan Cohen recognized this fact when he suggested that a decision by the Village to abandon its force would in all likelihood result in its absorption by the County and consequent coverage for those men under the County's PBA Contract.**

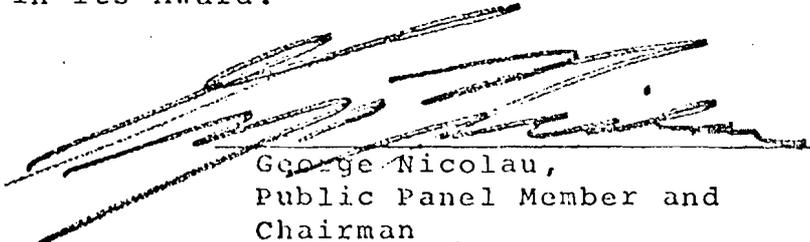
* Village of Northport and Northport PBA, Case No. M 74-25, August 18, 1974 (PBA Exhibit 38).

**Village of Malverne and Malverne PBA, Case No. M 74-741, February 25, 1975.

The weight of the comparability argument is reinforced by the substantial concessions offered by the PBA in exchange for the schedule itself. The present agreement allows officers to refuse to work overtime except in very limited circumstances (Article Seventh H). It also imposes overtime penalties on short swings and prohibits shifts of tours "solely to avoid overtime" (Article Ninth). The PBA would forego these restrictions in order to facilitate the adoption of the 4-96 work schedule.

There is no doubt that the elimination of these penalty provisions, coupled with the ability of the Chief to direct officers to work overtime, would diminish the fiscal impact of the schedule and make it feasible. Both conclusions were openly acknowledged by the Chief in his forthright testimony before this panel.

Inasmuch as the fact finder recommended the adoption of the 4-96 schedule in conjunction with the concessions above stated, and inasmuch as persuasive reasons have not been advanced for disturbing that recommendation, the Panel is of the opinion that the schedule and the concessions exchanged for it should be adopted, and provides so in its Award.



George Nicolau,
Public Panel Member and
Chairman



Stewart R. Morrow,
Employer Panel Member
I DISSENT



Paul Rychalsky,
Employee Organization Panel
Member
I CONCUR

July 15, 1975