In the matter of the impasse

between

Village of East Hampton, N.Y.

and

East Hampton Police Benevolent

Association

CA 0072 M75-933

Panel of Arbitration

Decisions

and

Awards

In accordance with the applicable provisions of Section 209.4, of the New York Civil Service Law, and the rules and procedures of the New York Public Employment Relations Board, hereinafter known as PERB, it having been determined that an impasse exists in negotiations between the Village of East Hampton, hereinafter known as the Village, and the East Hampton Police Benevolent Association, hereinafter known as the Union, the Village having designated Daniel G. Vorhees, Esq. as its Arbitrator; the Union having designated Eugene A. Roemer as its Arbitrator, and PERB having designated Rev. Msgr. James A. Healy, as Chairman of the Panel of Arbitrators, a hearing was held at East Hampton on July 8, 1976.

The Village was represented by Leonard S. Kimmell, Esq. The Union was represented by Reynold A. Mauro, Esq.

Witnesses for the Union were Robert Krempler; Richard LeVesconte and Joshua Okun. Douglas E. Dayton, Mayor, was a witness for the Village.

The Panel of Arbitrators met again at Islip, N.Y. on September 9, 1976.

This award represents the judgment of the majority of the Panel, viz, Chairman Healy and Mr. Roemer. Daniel G. Vorhees dissents.

BACKGROUND: The Village of East Hampton is a well-known Long Island summer resort, having a permanent population of 2,000, which rises in the summer to 6,000-8,000 people. The Village Police Department has 13 Civil Service officers, including the Chief. Additional manpower is hired during the peak summer months.

Evelyn S. Brand was the Fact-Finder in this impasse. Her Findings and Recommendations, dated January 26, 1976, have been considered carefully by the Panel of Arbitrators.

The past contract between the Village and the Union expired on July 31, 1975. References in this document to "first year," means the period from August 1, 1975 to July 31, 1976. "Second year," as used herein, means from August 1, 1976 to July 31, 1977.

General Argumentation of the parties.

The Union stresses that acceptance into the East Hampton Police Department is in virtue of a Suffolk County Civil Service examination. This examination determines eligibility for all Police Departments in the County. After selection from the eligible list, the Police candidate must attend the Suffolk Co. Police Academy, taking a six-months course. There is also a six-months probationary period. All police in Suffolk Co., whether they be County, Town or Village police, in order to achieve civil service Police Officers' status, must follow the same procedures as outlined above.

In addition to the comparability, implicit in selection and training of East Hampton's police, with neighboring communities, the Union produced a dozen Fact-Finding reports and contracts supporting comparability in its demands with recommended or existing contract provisions in more or less neighboring communities.

The Village, in general, did not argue financial hardship nor inability to pay. For purposes of comparability, the Village primarily pointed to the wages and fringes paid to the police of the Town of East Hampton, in which the Village is situated. This comparison favors the Village salary structure.

The Village points out that residents pay both Village and Town taxes. By the Village's computation, its residents must pay a premium of $3.663 per hundred over Town residents, much of this differential going to support a separate Village police. The average fulltime resident carries a $7404 assessed valuation and pays a premium of $271.21 for living in the Village. Summer residents have an average $11,396 assessment and pay a premium of $417.44 for living in the Village rather than in the Town.

In an unusual and closely reasoned document prepared and presented by Mayor Dayton, the Village made a very strong case for the thesis that because of hidden fringe benefit costs, such as retirement; improvement pay; longevity; overtime and compensatory time, every dollar of increased police salary costs the Village one dollar and fifty-eight plus cents.

An interesting comparison is made between a Village policeman, who is single, with an income of $17,138.72 plus having $6021.63 paid for his retirement, and a single person in private industry, who would have to earn $28,750, if both were to have disposable incomes of $13,096.89 to $13,007.74.

Very favorable comparison between existing Police health plan benefits, life insurance and retirement, and similar private sector benefits are made by the Village.

The philosophy of the Village was put this way by the Mayor, "This Village in microcosm represents society's collective folly over the years --from State Legislature to policeman in his cruiser. If some of our follies are to be corrected, it may take years and a collective willingness to endure gracefully significantly curtailed services and benefits. In my opinion this is for East Hampton happily not yet a question primarily of ability to pay - but rather willingness to pay a fair wage in accordance with acceptable local standards and a sense of propriety as to overall scale of departmental operations and costs."

"It is my judgment that our police budget and operations have soared beyond all reason."

"In eleven years...the average base cost plus retirement per man has risen...228%."

Items in dispute.

1. Length of contract. Insofar as we are already into the second year after the expiration of the past contract, the Panel agrees this shall be a two-year contract, as described above, and so orders.

2. Change of tours. The Police currently work a "5-96" duty chart. An officer works 3 tours within 21 days then rotates, eg., 8-4 tour for 5 days, off 72 hours; 4-12 for 5 days, off 72 hours and 12-8 for 5 days, off 96 hours.

The Union desires a"4-96" duty chart. It argues the hazards of police work; the need for more time off for family purposes and the fact that the Suffolk County Police have this duty chart.

The Village points out that police, by its computation, presently work only 197 days per year. To institute the "4-96" would lose 5½ additional days per man per year because of shift slippage.

The Village counterproposes a fixed shift schedule of 5 days on and 72 hours off.

It appears to the Panel that a compromise in their positions might be worked out by the parties, aside from the adversial postures to be expected in bargaining, Fact-Finding and arbitration.

Therefore, the Panel recommends the establishment of a committee of three, one to be appointed by the Village, one by the Union and a third resident of the Village to be chosen mutually, to investigate the possibility of changing the duty tours and make such recommendations as it sees fit to the Village and the Union.

DECISION: The Panel orders that there be no change in the present tours of duty, until and if such changes mutually are agreed to.

Neither party presented strong enough evidence of the need for change, for the Panel to mandate a change.

3. Cleaning allowance. The present allowance is $100. Originally the Union sought $200 but reduced this amount to $150 before the Fact-Finder.

The Village offered a voucher system during bargaining.

This economic item was not argued before the Panel at any length, aside from the context of the general argumentation of the parties as set forth previously.

DECISION:

The Panel directs that cleaning be paid for by the Village as needed.

This strikes the Panel as equitable and safeguards the expressed needs of both parties.

4. Clothing allowance. The present clothing allowance for detectives is $300.

The Union requests an increase of $50 in this clothing allowance. The Village wishes the allowance to remain unchanged.

This item was also argued in the context of the general argumentation described earlier.

DECISION:

There be no change in the clothing allowance. The Union argument did not persuade the Panel of a need for an increase in this item. $300 seems to compare favorably with other clothing allowances in similar communities.

5. Night differential. There is no night differential at present.

The Union originally proposed $175 a quarter, which was reduced to $125 per quarter before the Fact-Finder.

The Union argued from the existence of night differentials in similar Police departments. The physical and psychological difficulties of night work were explored.

The Village contends that night work is an essential part of police work and has to be accepted as such by one who would be a policeman.

DECISION:

The Panel directs a $200 per year night differential be paid in the second year of the contract to each employee who works a regular rotating shift.

The Panel agrees with the Fact-Finding report that payment of night differential is growing. The minimal amount of money involved here poses no financial burden of consequence on the Village.

6. Sick leave, vacation leave and longevity.

The Union seeks improvement in each of these fringe benefits. It supports its requests by citing various, more or less neighboring, police contracts which have provisions comparable to its requests.

The Village counters with the cost factor and comparisons of these benefits sought by the Union with much lower or no such benefits in the private sector. The Village's profile of the composition of permanent residents and their occupations supports the Village's position.

DECISION:

That there be no change in these three items as they exist under

the expired contract. The Panel agrees with the Fact-Finding report that there be no changes in these items. The Union arguments for improvement were not persuasive.

7. Salary. The Union originally proposed a 16% salary increase in a one-year contract.

The Village wishes no increase.

The Argumentation of the parties has been summarized previously. Comparability; cost of living; the rigors of police work; and the Village's ability to pay highlighted the Union presentation.

Similarily, comparability, particularly with the Town police; the relative ease of police work in this Village; the ever-rising tax rate; the hidden cost of fringes; the possibility of the Village police pricing themselves out of their positions and their duties being taken over by the Town police; the significant gains already made in police salaries in the past few years and the need for someone, somewhere, to begin holding the line, were the main arguments of the Village.

DECISION:

In the first and second year of the contract there be no increase in the first three steps for patrolmen and no increase for Grade 1 detectives.

In the first year of the contract, the other steps and grades be given a 7% salary increase.

In the second year of the contract, there be a 6% increase for the other steps and grades.

The increases mandated above are in line with the Fact-Finding report. In the opinion of the Panel, the mandated increases will assure East Hampton of maintaining its relative position salary-wise with comparable communities. The eloquently voiced arguments of the Village to hold the line are met, at least in part. The excessive cost of fringes in the public sector have been noted by the Panel and the negative decisions relative to most of the fringes have taken the Village's position into account.

On the other hand, the Panel feels the Police salary increases should keep pace with cost of living increases as they have occured and are projected.

The increases directed are also comparable to increases granted other Village employees.

Signed _____
(Rev. Msgr.) James A. Healy
Chairman
Dated October 15, 1976

Signed _____
Gene A. Roemer
Arbitrator
Dated Oct 21, 1976

RICHARD A. SLUSZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

Dorothy J. Dugan
DOROTHY J. DUGAN
Notary Public, State of New York
No. 52-4637150
Qualified in Suffolk Co.
My Commission Expires March 30, 1977

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October 20, 1976

Public Employment Relations Board, State of New York
50 Wolf Road
Albany N Y 12205

RE: CA-0072; M75-933 VILLAGE OF EAST HAMPTON AND EAST HAMPTON P.B.A.

Gentlemen:

Enclosed please find duplicate original copies of my Panel of Arbitration Decisions and Awards Dissent.

Very truly yours,

DANIEL G. VOORHEES

DGV:am
Encls.

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
OCT 2 2 1976
CONCILIATION

In the matter of the impasse

between

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CA 0072 M75-933

PANEL OF ARBITRATION DECISIONS AND AWARDS DISSENT BY PUBLIC REPRESENTATIVE

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
.....x

Arbitration Award in the Matter
of the Arbitration of the

POLICE DEPARTMENT OF THE INCORPORATED VILLAGE OF EAST HAMPTON, Suffolk County, New York.
.....x

DISSENT BY EMPLOYER REPRESENTATIVE FROM ARBITRATION AWARD OF 9/9/76

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

DANIEL G. VOORHEES, being first duly sworn, deposes and says:

I am an attorney at law with offices at 78 Main Street, East Hampton, New York, and am the attorney for the Incorporated Village of East Hampton, and was the employer representative at arbitration meeting of 9/9/76.

This is a dissent from the Arbitration Award agreed to by the public panel member, Rev. Msgr. James A. Healy, and the employee organization panel member, Gene Roemer, at a meeting held on September 9, 1976, in favor of the East Hampton Village Police.

The award granted a two-year contract covering the period of August 1, 1975 through July 31, 1977. The members of the Police Benevolent Association (PBA) were granted a seven (7) percent salary increase for the first year of the contract, and a six (6) percent salary increase for the second year of the contract, both exclusive of longevity increases, steps-up-in-grade, and educational incentives. In addition, a night differential of $200.00 per annum was granted to employees on a regular rotating shift for the second year of the contract.

The old contract (fiscal 1974/75) was otherwise incorporated in the award. That contract includes the following provisions: A so-called

"5-96" work schedule which results in the men working but 239 days per year, exclusive of vacations, holidays, personal leave days, sick days, and so on; 21 working days vacation after 4 years on the job; 12 holidays per year; Section 384-d retirement plan computed on the basis of the 1-year final average salary; fully paid health insurance; 18 sick days per year, cumulative; Section 360-B life insurance and Section 208-A death benefits; cleaning allowances. Taken together, these fringe benefits cost the Village approximately 58 cents for every one dollar of salary it paid its policemen under the 1974/75 contract. Under the new contract, the cost was 72 cents for every one dollar of salary in 1975/76 and will be 61.2 cents in 1976/77, exclusive of overtime. The worth of these fringe benefits, of course, are not taxable to the police. Indeed, retirement pay, amounting to no less than 50 percent of final average salary, is not even subject to New York taxes upon receipt.

The curious thing about these arcane contracts - with all their steps-up-in-grade, educational incentives, longevity pay, retirement pay, and various insurance coverages - is that neither the public nor the employee is aware of their true worth, from the employees' perspective, and their true cost, from the public's perspective. Attention is riveted on salary.

Such attention is misdirected. Average base salary under the contract awarded was $16,874.84 for 1975/76 and is $18,147.20 for 1976/77. However, gross compensation, that is, taxable wages, averaged $17,500.00 for 1975/76 and averages $18,897.59 for 1976/77. These are not mean wages.

Meanwhile, the cost to the Village is literally skyrocketing. For 1975/76 the average cost per employee was $29,016.95. This translates

into a step-up in cost over base salary to the Village for 1975/76 of 72 percent (including overtime), and for 1976/77, 61.2 percent (exclusive of any factor for overtime).

The majority of the arbitration board casually granted the 7 percent and 6 percent salary increases, arguing that such percentile increases were small both absolutely and relatively. Perhaps so- but, I would suggest that, due to the nature of the contract with its built-in compensation factors other than simple "salary", such increases over base salary really amount to an increase in the magnitude of 12.9 percent for the employee, exclusive of overtime, for the first year of the contract alone. The cost of the increases to the employer for the first year alone amounts to 21.6 percent!

The arbitration majority likewise argued that the increase was "relatively" small. Relative to whom? To the private community? Hardly. The Village's testimony at the arbitration hearing developed the fact that the police constitute an economic elite in the community: Without regard to productivity (i.e., days worked), the police are at least in the top 5 percent in the community in salary received plus fringe benefits.

The Mayor, Douglas E. Dayton, pointed out in his testimony what these positions are worth. For example, a private citizen with two children would have to earn upwards of $32,750.00 in 1975/76, prior to taxes, to have the same disposable income as the average Village policeman, and put aside for retirement what the Village pays into the retirement system. There are few people in East Hampton area making that kind of money.

Much of the problem of course, stems from the Legislature, which

seems to do the public employee's bidding, and the Taylor Law. The net effect is to place municipalities in untenable bargaining positions on two matters. First, the law dictates comparisons. The only available comparables are other police contracts. As a consequence, the police have the municipalities leap-frogging over one another.

Second, the costliest fringe benefit, the retirement plan, is constitutionally protected. Indeed, the retirement system has taken the position that the Village cannot opt out of Section 384-d for even future employees.

Thus, in sum, the Village, due to its own past mistakes as well as those of the police and the legislature, are left with only two items over which to negotiate: Time and money.

The majority of the arbitration panel disregarded the first item, despite the fact that the police now are required to work only 239 days before vacations, holidays, sick days, and so on (most of us work at a basic year of 260 days).

Despite this, and the current state of the economy, unemployment and the decline of disposable income for the public at large, the majority of the panel refused to consider a change in work schedule so as to result in greater productivity, at least as measured by time on the job.

In sum, this award, and similar awards, are a prescription for disaster, fiscal and otherwise. Public employees and arbitration panels must take cognizance of a simple fact: Public coffers are not unlimited and, indeed, should not be. Employees cannot expect increases of the magnitude the majority of the panel granted without an increase in productivity.

I therefore dissent from the Arbitration Award granted the East Hampton Village PDA.

DANIEL G. YOCHELES

Sworn to before me this
19th day of ~~September~~ October, 1976.

Angela M. Mott
NOTARY PUBLIC

ANGELA M. MOTT
Notary Public, State of New York
Qualified in Suffolk County
Suffolk County Clerk's No. 52-2797485
Term Expires March 30, ~~1975~~ 1977