

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR

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IN THE MATTER OF THE IMPASSE

Between

TOWN OF NEW CASTLE,

Public Employer,

-and-

NEW CASTLE, POLICE BENEVOLENT ASSOCIATION

Employee Organization.

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:
:
: COMPULSORY
: INTEREST
: ARBITRATION
:
: PERB #CA-0087
: #M75-767
:

Before a Tripartite Public Arbitration Panel:

LAWRENCE I. HAMMER, Public Panel Member and Chairman
JOHN R. HAROLD, PBA Designee
ARTHUR OLICK, Town Designee

Pursuant to Section 209.4 of the Civil Service Law of the State of New York the aforementioned panel was selected through the procedures outlined in that law to hear and decide on the contract dispute that exists between the Town of New Castle and the New Castle PBA.

APPEARANCES

FOR THE TOWN OF NEW CASTLE

LAWRENCE R. DITTELMAN, Esq. Town Attorney
RICHARD E. BURNS, Supervisor
FRANK COMITO, Chief of Police

FOR THE PBA

BRIAN M. LUCYK, Esq.
LOUIS DIFOLCO, President
ROBERT DESIDERIO, Vice-President
HERBERT PETERSON, Treasurer

Hearings in the within impasse were held at the Town Hall in New Castle, at which the full negotiating teams of both parties were present and at which all parties were given an adequate opportunity of giving testimony and presenting both orally and in written form, documentation and data to substantiate its respective positions.

The following items were at impasse, and positions, arguments and data were presented thereon: -

1. Salaries
2. Longevity (Improvement vs Limitation)
3. Welfare Fund
 - A. Life Insurance
 - B. Dental Insurance
4. Overtime
5. Stand-by Time
6. Holidays
7. Vacations (Increase vs. Limitations)
8. Work Schedules - Work Week
9. Tuition Reimbursement
10. Uniform Allowance
11. Rotation of Duty Assignments
12. Fire Arms Training
13. Bullet-Proof Glass at Headquarters
14. Two Men Patrol Cars
15. Patrol Car Equipment
 - A. Flashlites
 - B. Shot-guns
 - C. Walkie-Talkies
16. Reprimand or Punishment Procedure
17. Deletion of Lieutenant from Bargaining Unit
18. Management Rights
19. Basic 40 hour Work Week
20. Sick Leave
21. Productivity
22. Terminal Leave Reducation
23. Table of Organization - Elimination
24. Grievance Response Time-Increase
25. Salary Increases Based On Educational Credits - Elimination

At the conclusion of the formal hearings on September 15, 1976, both parties were afforded an opportunity to submit Briefs or Memorandums in support of their respective positions. Both sides thereafter submitted detailed and voluminous Briefs as well as Reply Briefs.

The panel, after examining all of the materials presented, met in Executive Session on December 13, 1976 and again on December 29, 1976, at which a determination was reached, subject however to the parties once again meeting directly in an effort to amicably reach agreement without the formality of the issuance of the Panel's report. The panel was advised on February 10, 1977 that agreement could not be reached, and that its Award would have to be issued.

BACKGROUND

The Town of New Castle Policemen's Benevolent Association and the Town of New Castle were parties to a one year collective negotiating agreement which expired December 31, 1975. Following face to face negotiations, an impasse was declared and the Public Employment Relations Board appointed Steven J. Goldsmith to serve in the capacity of Fact-Finder. Under date of March 26, 1976, a Fact-Finder's Report & Recommendations was issued, which document was ultimately rejected by both sides, leading to the present Compulsory Interest Arbitration.

The negotiating unit includes some 29 officers (19 patrolmen, 3 detective-patrolmen, 5 sergeants and 2 lieutenants), and is commanded by a Chief.

The town lies in Westchester County, covers an area of about 23 square miles and has a population of about 15,000.

In arriving at its determination the Public Arbitration Panel gave full and due consideration to the report and recommendations of the Fact-Finder; the comparison of wages, hours, and working conditions of the Town Police Officers with those in comparable areas; the interests and welfare of the public, as well as the financial ability of the Town to pay; and the working conditions which are unique to policemen.

After due consideration of the above criteria, the Public Arbitration Panel hereby makes its final and binding Award.

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SALARIES

During 1975, the following salaries were earned by the members of the New Castle Police Department: -

Patrolman	Grade 3	\$12,546.00
	Grade 2	\$13,963.00
	Grade 1	\$15,386.00
Detective		\$16,228.00
Sergeant		\$16,820.00
Lieutenant		\$18,310.00

The PBA sought to increase the bench-mark salary that earned by a top grade patrolman (Grade 1) to \$20,000.00, with those of higher rank being paid commensurately more, while Second and Third Grade Patrolmen receive proportionately less.

The Town offered to increase police wages across the board with a one-time payment equal to 2% of the salary of a 3rd Grade Patrolman (\$250.00) for 1976, and a similar 3% one-time payment (\$375.00) in 1977.

The Fact-Finder recommended that there should be a salary increase of 6.3% for the contract year commencing January 1, 1976, with such 6.3% increase being applied to each step of the 1975 salary schedule. The Fact-Finder made no recommendations for a second year of the contract.

The Panel cannot find that the expectations on duties of members of the New Castle Police Department differ from what is expected of officers employed in similar departments. By the same token New Castle's Police salaries are highly competitive, with only two (2) of the eleven (11) comparable forces cited by the PBA, being higher in 1975.

The all important figure generally used when comparing Police salaries is the "bench-mark" figure, the salary of a First Grade Patrolman - the officer who, without promotions, gets no increment and absent negotiations, no raise.

In New Castle a Grade 3 Patrolman receives an increment in excess of 11% on his first anniversary in the Department, when he becomes a Grade 2 Patrolman.....A Grade 2 Patrolman when becoming a Grade 1, automatically receives an increase, to the bench-mark figure, an increase in excess of 10%.... The concern is the "bench-mark" figure, the salary of the Grade 1 Patrolman.

After examining the Fact-Finder's Recommendations for settlement, and after examining Town exhibits 1-12 and PBA exhibits 1-6, 8, 9, 11, 13, 14 and 15, as well as the Briefs and Reply Briefs, the Panel is persuaded that the Fact-Finder did give careful consideration to area comparisons and to the Town's financial structure, and that the Fact-Finder's Recommendations should be the basis of the settlement, with only slight modification.

A W A R D

1. That the 1975 salary for a Grade 3 Patrolman continue for 1976 to be \$12,546.00.
2. That the salary for a Grade 2 Patrolman for 1976 continue at \$13,963.00.
3. That the bench-mark salary, the salary of a Grade 1 Patrolman for 1976 be increased by the 6.3% recommended by the Fact-Finder to \$16,355.00.
4. That all other salaries for 1976 be increased by a sum equal to 6.3% over what was earned in 1975.
5. That all 1976 salaries be made retroactive to January 1, 1976.

XXXXX

LONGEVITY

The current longevity schedule provides officers upon completion of 5-10 years of service in the Department, an additional \$35.00 per annum, while those who have completed 10-15 years receive an additional \$75.00 per annum. Upon completion of 15-20 years of service an additional \$175.00 per annum is paid, and upon completion of 20 years of service in the Department, an additional \$400.00 per annum is paid.

The PBA proposed eliminating the set dollar longevity and replacing same with a percentage of salary, namely 3% of base salary per annum upon completion of 5-10 years of service, 5% between 10-15 years of service, 10% on completion of 15-20 years of service and 15% of base salary of a Policeman in excess of 20 years.

The PBA also proposed that all Westchester County Police service be credited towards longevity, rather than only service in New Castle.

The Town sought to continue the existing longevity stipend, but to eliminate same entirely after a member of the Department has completed 25 years of service.

There is no question, but that the longevity payments received in New Castle are comparatively low. This, however, is offset by the relatively favorable position in New Castle for salaries as a whole.

For that reason, and that reason alone, the Panel is compelled to reject the PBA proposal.

(The parties could always mutually agree to allocate some of the 6.3% salary improvement recommendations, towards improving the longevity).

AWARD

1. That the current longevity provisions continue without change or modification.

XXXXX

WELFARE FUND

The Town currently provides a \$10,000.00 life insurance policy to each officer.

As part of a Welfare Fund concept, the PBA proposes that a sum of money be contributed by the Town into a PBA Welfare Fund of a sum sufficient to allow the purchase of (1) a \$25,000.00 Life Insurance Policy on each officer and (2) a fully subsidized Dental Plan covering the officer and his family.

The Town opposed any and all fringe improvements.

The Fact-Finder, without discussion thereon, rejected the PBA proposal.

In this day of spiraling costs and increasing unemployment, coupled with the tax hardships on all wage earners and property owners, any monies available by a Municipality to improve the lot of its employees, must go to salaries, rather than fringes.

AWARD

1. That the PBA proposal be rejected.

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OVERTIME

The 1975 contract covered under Article 5 the question of overtime, the gist of which called for compensatory time at the rate of 1½ hours for each hour of overtime worked...or double time when work is performed on a sixth or seventh day in any week.

The PBA sought overtime payments to be in cash or compensatory time, at the employees option.

While the Town resisted the sought after change, it argued that overtime is a routine and expected part of police work, and that from a budgeting perspective, paying for same in cash was not practical.

The Fact-Finder recommended the adaption of the PBA proposal effective May 1, 1976, thereby making same cover what was then future overtime only.

The delay in implementation of a contract makes a future overtime "cash" provision meaningless for 1976.

The Panel cannot overlook the fact that almost all Municipalities do offer its employees an option, cash or compensatory time.

AWARD

1. That all overtime which accrued on or after May 1, 1976, and for which compensatory time off has not been received by the unit member, shall be payable at the employee's option in cash or compensatory time, at the rate of time and one-half, for all hours worked in a regular week, as defined by the Fair Labor Standards Act, between 40 hours and the then applicable F.L.S.A. "base" for police officers.
2. In the event that the employee works longer than the applicable F.L.S.A. "base" during a particular work week, all hours up to the "base" be paid in straight time cash only and hours above, at time and one-half.
3. Compensatory time, when elected, must be taken within 60 days of the time earned.
4. All other provisions of Article 5 shall continue and be maintained and paid for in a manner and fashion consistent with the above recommendations.

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HOLIDAYS

During Fact-Finding and again during the instant Arbitration, the PBA charged that the Town pays all officers on a bi-weekly basis and attempts to juggle work schedules so that a few officers as possible work on a holiday so as to avoid paying overtime rates.

The Department currently receives 12 annual Holidays. The PBA proposed to increase the number of holidays to 14, and to require that same be paid for in cash, 7 in June and 7 in December.

The PBA also proposed that men scheduled to work on a holiday, receive in addition to the cash for 14 holidays as indicated above, but a days pay for working the holiday PLUS an additional days pay for coming to work on the holiday, which in essence, would be triple time.

The PBA also proposed that all Veterans be allowed both the State and Federal Veterans Day Holiday, as an additional paid holiday.

A work schedule is not something a Panel can determine. Same should rest in the Chief of Police.

There is no justification to improve upon the number of paid holidays. The present number is both fair and comparable.

Triple time is almost unheard of, and will not be recommended herein, no matter what holiday is involved.

Holidays when worked should be paid for within a reasonable period of time thereafter. Twice a year is both reasonable, comparable and equitable.

AWARD

1. That any holiday worked by a member of the force be paid on a semi-annual basis, namely that 6 be paid for during the first two weeks of July, and 6 be paid for during the first two weeks in December.

XXXXX

WORK WEEK

The PBA sought "a substantially reduced work week" of 4 days and followed by 3 days off, etc.

The Town proposed that all officers work a full 40 hours each week.

Under the present arrangements, a policeman works 5 consecutive days and then is off for 72 hours.

The PBA claims it now works an average of $38\frac{1}{2}$ hours per week, while the Town claims only $30\frac{1}{2}$ hours weekly.

The Panel must agree with the Fact-Finder that a schedule change is something that can only be effected after careful studies and after direct negotiations. It is not something that should be a part of an Arbitration Panel's Award.

AWARD

1. That the PBA proposal be rejected.

XXXXX

VACATIONS

As regards to the current vacation provisions of the contract, the PBA proposed that the selection of vacations be within each rank and that within each rank, selection be made according to seniority.

The Panel can find no valid reason as to why seniority should not be a basis, within individual ranks, for the selection of one's vacation.

AWARD

1. That selection of vacation periods be afforded members of the department on a seniority basis, within each particular rank, with the most senior individual within the rank, having first choice, the next most senior individual the next choice, etc.
2. That all other vacation provisions of the most recent contract, not inconsistent with the above continue.

XXXXX

EDUCATION

The Town currently reimburses employees for the cost of tuition and books incurred by police officers who take police related educational courses.

The PBA has proposed that officers in addition, receive an increment to their basic salary of \$10.00 for each such credit they receive.

The Panel finds that the salaries of Police Officers in New Castle, are sufficiently high when compared with those offered in other locales, that an additional educational increment is neither warranted or justifiable.

AWARD

1. That the PBA proposal be rejected.

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The Panel has only addressed itself in detail to the above nine (9) proposals.

The Panel in hereby lumping together the remaining 16 items, does so only because of the manner in which the presentations thereon were made. Those above spelled out in detail, in the opinion of the Panel, represented the nitty-gritty of the impasse.

Apparently, the Fact-Finder was of the same opinion, as he made specific recommendations on even fewer proposals than discussed in detail herein by the Panel.

Let both parties, however, be assured, that the Panel, individually and collectively has examined the data presented by each party on each item, and has considered same in both their individual and collective deliberations. None were glossed over lightly.

In undertaking its deliberations the Panel bore in mind the pertinent provisions of Section 209.4 of the Civil Service Law, which admonishes the Panel as follows: -

- (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 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 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.

XXXXX

In addition to the specific Awards made throughout this document, some should be read so as to include the following

AWARD: -

1. That all portions of the 1975 contract, not inconsistent with these AWARDS,

shall continue in full force and effect, and be carried over and be incorporated into the 1976 agreement.

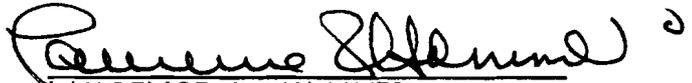
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The Panel hereby is unanimous in all aspects of this Award, except that the Employer designee, Arthur Olick, dissents on those portions of the Award set forth under "SALARIES" and "OVERTIME".

Respectfully Submitted,

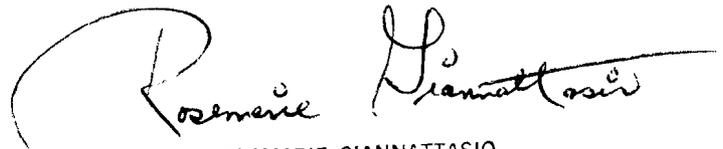
MARCH 8,

Dated: ~~February~~ 1977
Massapequa, N.Y.


LAWRENCE I. HAMMER
Public Panel Member & Chairman

State of New York)
County of Nassau) ss: -

On this *8th* day of *MARCH*, 1977, before me personally came and appeared, LAWRENCE I. HAMMER, to me known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

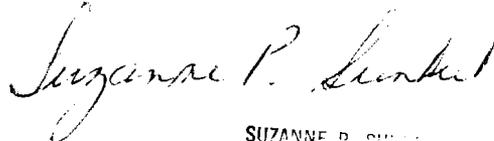

ROSEMARIE GIANNATTASIO
NOTARY PUBLIC, State of New York
No. 01618 6336
Qualified in Suffolk County
Commission Expires March 30, 1977

Dated: [REDACTED]
New York, N.Y.


ARTHUR OLICK
Town Panel Designee

State of New York)
County of New York) ss: -

On this ^{March,} 3rd day of February, 1977, before me personally came and appeared, ARTHUR OLICK, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.



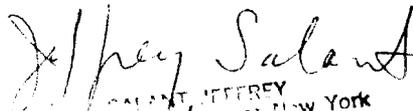
SUZANNE P. LUNKIN
NOTARY PUBLIC, State of New York
No. 41 650002
Qualified in Westchester County
Commission Expires March 30, 1978

Dated: [REDACTED]
Elmsford, N.Y.


JOHN R. HAROLD
PBA Panel Designee

State of New York)
County of Westchester) ss: -

On this 2nd day of February, 1977, before me personally came and appeared, JOHN R. HAROLD, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.


JEFFREY SALANT
Notary Public, State of New York
Qualified in Westchester County
Commission Expires March 30, 1978