

MEMORANDUM

TO: The Clarkstown Police Arbitration Case File, 1978

FROM: J. Phillips *J.P.*

DATE: March 21, 1980

RE: PERB Case M77-603; IA-25

(IA 77-037 ??)

It has come to our attention that the arbitration award in this case was superseded by a 3-year agreement covering the years 1978, 1979 and 1980, negotiated by the parties and signed on the 24th day of May, 1979.

JBP:peg
CC: Vera Scadura

STATE OF NEW YORK
PUBLIC EMPLOYMENT
RELATIONS BOARD

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In the Matter of Arbitration
Pursuant to Section 209 of
the New York Civil Service
Law betwee:

TOWN OF CLARKSTOWN

PERB CASE #
IA-25, M77-603

"Town"

- and -

ROCKLAND COUNTY PATROLMENS'
BENEVOLENT ASSOCIATION, INC.

"PBA"

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AWARD OF ARBITRATION PANEL

The undersigned members of the Arbitration Panel ("PANEL"), designated by State of New York Public Employment Relations Board ("PERB") on January 9, 1978 pursuant to provisions of Section 209.4 of the New York Civil Service Law, having heard the proofs and allegations of the Town and PBA. on February 18, 1978 and having met in executive sessions on July 25, 1978, October 7, 1978 and November 11, 1978, A W A R D as follows:

I. SALARY

A. Calendar 1978

1. . Continue salary structure in effect on Decem-

ber 31, 1977.

2. Maintain grade movements as earned from starting Fifth Grade P.O. through First Grade P.O.
3. Continue \$450. longevity provision as earned, provided for in Article 5.2 of the expired agreement.
4. Reasonably after January 1, 1979, pay a lump sum of \$450. to all members of the Unit as described in Article 1.1 who, in Calendar 1978, did not earn an increment referred to in I-A-2 above or the \$450. longevity referred to in I-A-3 above. Said \$450. is not to be incorporated into the salary structure of the recipient(s).
5. Members of the Unit who were not on the payroll for the full calendar year 1978, otherwise qualified for \$450. lump sum pursuant to I-A-4 above, will be limited to 8.33% of \$450., or \$37.50 for each month on the payroll. To qualify, the P.O. must have served fifteen (15) or more calendar days of such month. Provision on non-incorporation into the salary structure spelled out in I-A-4 above is applicable.

RATIONALE

The three townships in the County employing substantial numbers of P.O.'s show the following salaries:

	<u>Start</u>	<u>4 Years</u>	<u>5 Years</u>	<u>16 Years</u>
<u>1978-Orangetown</u>	\$11,766	\$18,273	\$19,104	\$20,904
<u>1978-Ramapo</u>	10,900	15,760	17,105	21,127
<u>1977-Clarkstown</u>	11,560	19,013	20,410	22,200

It is noted that the Clarkstown 1977 rates are above the 1978 rates of the two comparable towns. The Clarkstown Unit consists of about 105 personnel while the neighboring Units are about 25 below the Clarkstown count. We also note that the Town and CSEA agreed to a wage freeze in Calendar 1978 for the CSEA Unit of approximately 200, followed by 6% across-the-board increases in 1979 and 1980, each.

On the entire record, it is our¹ conclusion that a freeze is equally applicable to the PBA Unit modified, however, to provide the lump sum amounts indicated in I-A-4 and I-A-5, intended to absorb minimally the impact of rising C.O.L.

B. Calendar 1979

Increase salary schedule in effect on December 31, 1977 by 6%.

RATIONALE

The increase negotiated with CSEA coupled with indica-

¹Read "Chairman".

ted 1979 relative salaries for comparable Police Units in the County mandates the above resolution.

II. RECALL PAY

In the expired agreement, a P.O.² called in from off-duty is entitled to \$10. minimum compensation without regard to time worked. PBA proposal for four hours minimum call-in compensation at overtime rates is A W A R D E D.

RATIONALE

The Town is free to utilize the full four hours and it is no more than reasonable to minimally compensate as awarded. The formula of 4 at O.T. on a call-in is common in industry and utilization and cost control is largely within the employer's control. The 4 at O.T. is less likely to be used than \$10. minimum and is generally confined to true emergencies. For the record, the 4 at O.T. is for call-outs only, unscheduled overtime, and does not apply to regularly scheduled additional or extra hours such as court appearances.

III. SICK LEAVE

In the expired agreement personal sick leave is accumulated at the rate of two days per month up to 240 days, paid

²"P.O.", used generically, is intended to cover the Unit in accordance with established practice.

at resignation or retirement, in part or in full depending upon years of service,

after 10 years of service - 50%

after 15 years of service - 75%,

after 20 years of service - 100%.

There is also Family Sick Leave earned at the rate of two days per month cumulative up to 24 days. The change sought by PBA to raise pay-out days to 300 is adopted, subject to the following

A W A R D

A. First two hundred days paid in full.

B. Next two hundred days paid at one-half.

(Both A. and B. subject to years of service formula.)

C. Family Sick Leave reduced to one day per month cumulative up to 12 days.

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By unanimous decision of the Panel, this AWARD on Point III requires the unanimous concurrence/vote of the Panel.

If adopted, incumbents who have accumulated 200 days or more will make an election between the Plan now in effect, 240 days accumulation, and the 400 days accumulation awarded herein. Such election must be made within 90 days after signing of a new agreement between the Town and PBA. Without regard

to personal election, IIIC is applicable to all employees.

IV. DEMAND FOR NIGHT³ SHIFT DIFFERENTIAL

AWARD - Negative. (See Point VII)

There appears to be no such practice in the area.

V. All other items/demands introduced by the Town and PBA were withdrawn at the final executive session of the Panel, it appearing that the Chairman rejected both the Town and PBA proposals on the theory that the subject matters best be negotiated by the parties in the future and not mandated by a third party neutral.

VI. Except for I, II and III above, the terms of the 1974-77 Agreement shall continue intact.

VII. The Panel is confined, as a matter of law, to a two year contract term. We nevertheless urge upon the parties a third year term based on 6% across-the-board increase over December 31, 1979 rates plus \$100. per year for each P.O. (see footnote 2) on regular night shift duty. If adopted, the parties will draft a memorandum incorporating such third year term.

³Term used broadly to cover 1600 through 0800 hours.

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On this ^{20th} day of November, 1978, before me personally came and appeared MAX M. DONER 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.

Sylvia G. Doner

SYLVIA G. DONER
Notary Public, State of New York
No 30-4813928
Qualified in Nassau County
Commission Expires March 30, 1979

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On this ^{5th} day of ^{November} November, 1978, before me personally came and appeared EDWARD KIERNAN 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.

Mary B. Steel
Notary Public Rockland County
1261950
Comm. expires March 30, 1979

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On this ^{5th} day of ^{December} November, 1978, before me personally came and appeared HAROLD PETERSON 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.

Mary B. Steel
Notary Public Rockland County
1261950
Comm. expires March 30, 1979

Respectfully submitted,

Max M. Doner

MAX M. DONER (11-20-78)
Chairman of Panel

Edward J. Kiernan

EDWARD KIERNAN (12-5-78)
~~Concurs as to I II III IV~~
Dissent as to I II III IV

Harold Peterson

HAROLD PETERSON (12-5-78)
Concurs as to I II III IV
Dissent as to I II III IV

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF NEW YORK

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The following constitutes a minority
report

In the Matter of the Interest
Arbitration

between

Case No. **IA-25**
M77-603

THE TOWN OF CLARKSTOWN,

and

THE ROCKLAND COUNTY PATROLMEN'S
BENEVOLENT ASSOCIATION in behalf of
CLARKSTOWN POLICE DEPARTMENT.

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MINORITY REPORT

The following panel was duly appointed through the New
York State Public Employment Relations Board to decide the matter:

Max M. Doner, Esq., Public Panel Member and Chairman;
Harold Peterson, Employer Panel Member;
Edward Kiernan, Employee Organization Panel Member

A single, formal arbitration session took place on February
18, 1978. Present at that session, in addition to the panel, were the
following:

FOR THE UNION

Raymond Kruse, Attorney
Jerry Fleming
William Sherwood
Curt Settle
Kevin Kilduff
John Kubran

FOR THE TOWN

Richard H. Wyssling, Attorney
Phillip B. Fogel, Attorney

By agreement of the parties, the sides presented their positions by oral statement and written documentation. The following documents were presented as exhibits in evidence before the panel:

- Joint Exhibit "1" - The 1975-1977 Collective Bargaining Agreement
- Joint Exhibit "2" - A map of Rockland County
- PBA Exhibit "1" - Union proposals
- PBA Exhibit "2" - Crime Statistics
- PBA Exhibit "3" - Real Earnings Report
- PBA Exhibit "4" - Compensation Changes. Table 7
- PBA Exhibit "5" - Current Wage Developments, page 32
- PBA Exhibit "6" - Wage Changes for 1978
- PBA Exhibit "7" - G.H.I. Dental Plan
- PBA Exhibit "8" - Health Insurance Plans
- Town Exhibit "A" - Cost of Fringe Benefits
- Town Exhibit "B" - Days Off 1978
- Town Exhibit "C-1" - Salary and Longevity-1978
- Town Exhibit "C-2" - Salary and Longevity-1978-Patrolman
- Town Exhibit "C-3" - Salary and Longevity-1978-Other titles
- Town Exhibit "C-4" - Management Proposals

In addition to the aforementioned presented at the formal arbitration session, a post-hearing "Rebuttal Memorandum" was submitted by the PBA and a "Post-Arbitration Brief" was submitted in behalf of the

town. Based upon the demands by the respective parties and the evidence presented in support thereof, the undersigned makes this minority report.

LENGTH OF CONTRACT

No serious issue was raised as to the length of the contract to be decided on. The union presented a position for both a one year and a two year agreement while the town took a position that the agreement should be two years in length.

Inasmuch as the end of the first year of the contract is upon the parties, no fruitful purpose could be served by limiting the agreement to one year. The agreement should be a two year agreement which is the maximum permitted by law under Section 209(4)(C)(VI) of the New York State Civil Service Law.

WAGES

Positions of the Parties - The union's wage demand for a one year contract is 11% across the board for patrolmen. with the retention of the wage differential in increments of 15% for ranks above patrolman. For a two year contract, the union proposes a 10% increase in the first year and an 8% increase in the second year with the maintenance of the rank differential mentioned above.

The town's position on wages is that there should be no wage increase in the first year of the agreement and that there should be a 6% increase across the board in the second year of the agreement.

Discussion - In support of it's position for a wage increase, the union presented data showing the Consumer Price Index had risen 6.8% through the year 1977 and it also presented oral testimony to show that the Consumer Price Index increases has accelerated during the latter months of 1977 and were expected to continue this acceleration during 1978. The existing collective bargaining agreement was reached by mutual agreement between the parties without resorting to arbitration. The town did not raise the issue of ability to pay nor was any evidence submitted in reference thereto.

In further evidence of its position, the PBA submitted as its Exhibit "6" a comparison of wage changes for all of the various municipalities that took place for the year 1978 in the County of Rockland. The average of these wage changes was 6% in basic wages alone. The position of the PBA was that a county-wide comparison of the five towns, plus the villages of Spring Valley, Nyack, Suffern and Haverstraw was the standard comparison used for all negotiations throughout the county. The town in its behalf presented wage comparisons in its exhibits C-1, C-2 and C-3. It was pointed out by the PBA in both the oral testimony at the hearing, and in their written rebuttal memorandum, that the wage exhibits presented by the town were grossly in error. Exhibits "C-1" and "C-2" purport to represent comparisons showing a combination of salary and longevity. The longevity factors are erroneously left out of the figures presented by the town for Orangetown, Spring Valley and Ramapo. The

longevity figures included for Haverstraw are incorrect. In addition, errors appear in many of the basic salary figures set forth for these various municipalities. I cannot concur with the majority opinion on wages because their rationale is in error, both in law and in fact.

In presenting its case before the panel, the town's attorney presented wage comparison data for patrolmen for the five towns and four villages on one sheet and for the five towns alone on another sheet and then the wages for superior officers for all municipalities on a third sheet. While the PBA attorney held forth the argument that all nine municipalities had always been used for comparison, the town attorney presented no rationale as to why a town comparison alone should be used as opposed to the town and village comparison. The town arbitration panel member and the neutral compounded this by holding that only Orangetown and Ramapo should be used for the purpose of comparison, even though they presented no rationale for doing so, and then they used the incorrect wage data presented by the town to support their conclusions.* But the Orangetown-Ramapo comparison was not the sole rationale for reaching their conclusion on wages. They compounded the factual error by relying, as part of their rationale, upon the CSEA settlement which allegedly took place in Clarkstown in November of 1978. This was approximately eight months after the close of evidence in this case. Neither the undersigned nor the union were provided with copies of the prior CSEA contract, the new CSEA contract or the text of the settlement. nor was any opportunity whatsoever given for the union to present evidence in pur-

* See Appendix "1"

suance of Section 209 (V) (C) as to why the inclusion of such evidence was appropriate.

As to the rationale set forth by the arbitration panel majority for the 1979 wage increase, the undersigned remains totally in the dark. That rationale reads "the increase negotiated with CSEA coupled with indicated 1979 relative salaries for comparable police units in the County mandates the above resolution." No wage data whatsoever was presented for the year 1979, nor is there in fact any available. To my knowledge all other municipalities with the exception of the villages of Haverstraw and Spring Valley are in negotiations for their 1979 agreements. Certainly both the Ramapo and Orangetown contracts expire December 31, 1978. Neither have settled and both have applied for arbitration. What "comparable Police Units" is the majority talking about in their award? Are they different "comparable Police Units" than the ones used to arrive at the 1978 salary award?

Award -- Based upon the evidence before me that all other municipalities in the County received wage increases during 1978 and based upon the steadily increasing cost of living figures presented in evidence, I find that a wage increase across the board for patrolman's wages for the year 1978 should be 7% and for the year 1979, 7%. The current language in the collective bargaining agreement setting salary differentials for ranks of detective, sergeant and above should be continued.

The 1978 increase would be awarded retroactively to January 1, 1978.

DENTAL PLAN

Position of the Parties - The PBA has presented a demand for a fully paid G.H.I. M1 type dental plan. Under the variable schedule set forth in the exhibit, the family rates range from \$16.43 per employee per month for the basic no prosthetics plan, to \$23.76 per month per employee for the 100% prosthetics plan. The inclusion of orthodontics would be an additional \$3.05 per month per employee. The cost range for individual coverage without family is \$3.67 up to \$6.83. The union demands the 100% prosthetics plan with orthodontics.

The town states that no increase in the cost of dental should take place.

Discussion - Article 9.3 of the current agreement specifies that the town shall pay a maximum premium directly to the insurer not to exceed \$18,500 for all employees in the unit. Discussion took place at the arbitration on February 18th concerning the town resolutions to increase the 96 man force by 8 persons. The sum of \$18,500 for 96 persons would mean a town contribution of \$192.71 per person. If the force increases to 104 and the town contribution remains the same the value of this benefit will be decreased to \$177.88 per person. The PBA presented evidence at the hearing to show that the town of Haverstraw recently instituted a fully paid M1 basic plan, the town of Orangetown pays the full cost of an "80%" dental plan, Spring Valley pays the full cost of the M1 plan as does the town of Ramapo while the town of Stony Point and the village of Nyack pay partial costs on the G.H.I. J plan. It was also stated at the arbitration

hearing that about 10% of the then existing force utilize the individual plan rather than the family plan. Based on those figures the costs of the M1 50% prosthetics plan at \$5.30 for individual coverage and \$20.28 for individual and family coverage would closely approximate the current contractual costs with a small margin for the annual expected cost increase in dental plans.

Award - The town shall pay the full annual costs of the G.H.I. M1 50% prosthetic plan.

MINIMUM OVERTIME

Positions of the parties - The union has demanded a minimum of six hours pay at the overtime rate for all call-ins, call-backs or court appearances. The town takes the position that this benefit should remain unchanged from the current agreement.

Discussion - Under section 8.1 (6) of the agreement there is a minimum compensation of \$10 where the employee is called to work during the time he is off-duty. In the majority award, it was voted to give a four hour minimum for unscheduled overtime, call-outs only, but it is not to apply to regularly scheduled additional or extra hours, such as court appearances. No rational basis for such a distinction appears in the testimony or in the discussion.

Award - Four hours minimum overtime should be given for all call-ins, call-backs and court appearances.

ADDITIONAL ITEMS

Two items which were agreed to during the arbitration hearing should be included in the collective bargaining agreement. These are (1) a deadline for the use of personal leave to be 3/31 rather than 12/31 and (2), accumulated sick time shall be paid in lump sum or in two annual payments, at the employee's option.

ADDITIONAL COMMENTARY

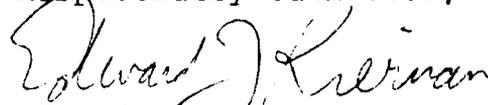
Any demand of the parties not specifically dealt with in the course of this opinion shall be considered as rejected.

Any item contained in the current collective bargaining agreement not specifically dealt with in this award shall remain unchanged in the new contract.

One further comment on the majority award is required to be made. In rejecting the union's demand for night shift differential, the majority panel's rationale was "there appears to be no such practice in the area." The fact that the Town of Ramapo has a night shift differential consisting of an increment of 5% above base salary for work performed between the hours of 2300 and 0800 (provided that at least two hours per day is worked during these hours) was presented in detail at the oral arbitration as was the fact that Spring Valley has a night shift differential of 5% for work between 1800 and 0200 hours.

I myself brought this fact up in discussions with the panel. I can see no reason for these gross factual inaccuracies which the majority incorporated in its decision in reaching the conclusions that it did.

Respectfully submitted,

A handwritten signature in cursive script that reads "Edward J. Kiernan". The signature is written in dark ink and is positioned above the printed name.

Edward Kiernan
Employee Organization Panel Member

The proper figures for Orangetown and Ramapo should read:

	<u>Start</u>	<u>4 years</u>	<u>5 years</u>	<u>16 years</u>
Ramapo 1978	<u>10,900</u> 11,600 1.	17,530 2.	19,852	21,552
Orangetown 1978	11,766	18,273	19,104	21,354

1. The starting salary is \$10,900 for probationary patrolmen. The probationary period ends during the first year of employment and the employee then moves up to \$11,600. At the commencement of the second year the employee receives 4th grade patrolmen pay. At the commencement of his fifth year of employment he is receiving 1st grade patrolmen pay just as in Orangetown and Clarkstown.
2. Hires as of May 1974 receive a \$425 longevity increment after three years just as in Clarkstown.
3. Hires prior to 12/31/72 receive \$450 longevity increment after three years just as in Clarkstown.

STATE OF NEW YORK)
COUNTY OF ROCKLAND)

ss.:

On this 5th day of December, 1978, before me personally came and appeared EDWARD KIERNAN 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.

WENZ, ALICE T.
Notary Public, State of New York
Alice T. Wenz
Certified in Rockland County
Notary Public
Commission Expires March 30, 1979