
In the matter of
the interest arbitration
between

The Village of Waverly, New York

and

The Waverly Police Association

Case # PERB IA-82; M78-407

FEB. 1979

COACHMAN

Under the applicable provisions of the Taylor Law requiring the arbitration of contract impasse disputes between public agencies in the State of New York and collective bargaining representatives of policemen and firemen, an arbitration panel consisting of Leon U. Thomas, Village designee, Richard Aswad, Esq. Association designee and John W. McConnell, neutral, were appointed by PERB. The panel held a hearing on the above matter in Waverly on January 17, 1979. At the request of the panel, negotiations between the parties were continued after the hearing since the margin of difference between the parties on remaining issues appeared relatively narrow. Agreement was not reached. Post hearing briefs were submitted by the parties and the panel met thereafter on February 9, 1979 to make a final and binding award. The signed award is attached. This document is a summary of the bases for the the award on the issues in dispute.

Recognition

The Waverly Police Association demanded that the bargaining unit be expanded to include two officers on parttime, temporary appointment who had in fact been working full time shifts, but at the wage of \$3.00 per hour set for temporary officers and without coverage of any fringe benefits. The Village acknowledged its error in permitting temporary employees to work full shifts but objected to including the two employees (Kenneth Marsh and John Snell) in the bargaining unit since this

in effect created two new full time positions which were not budgeted. Furthermore, establishment of these positions would reduce the flexibility of the Village in meeting temporary needs for added police protection or meeting absences among the regular police force.

The panel recognizes the Village negligence in making full shift assignments to part time/temporary officers, but is of the opinion that the solution to this matter is not to expand the bargaining unit but to establish criteria for part-time work which should effectively guide the Village in its appointments. The panel therefore awards as follows:

Police officers who in the future work 80 hours or more within any four week period shall be deemed members of the bargaining unit covered by this agreement and subject to all the conditions of employment set forth therein.

Both Marsh and Snell are deserving of some compensation for the Village's oversight in their full time employment since June 1, 1978 (the effective date of the agreement between the parties). Marsh has passed his police civil service examination. Snell has not. The panel awards as follows:

Kenneth Marsh shall be paid the difference between what he was actually paid and the rate which would have been paid to a newly appointed full time officer for period June 1, 1978 to the present.

John Snell shall be paid the sum of \$500 additional compensation for his work during that period.

False Arrest Insurance

The Association demanded that the Village be required to provide insurance coverage for members of the bargaining unit against charges of false arrest. The Village sought bids on such coverage and found only one company willing to bid. However, it was an out-of-state carrier not subject to New York State Insurance Department surveillance. The cost of minimum coverage

was \$5,000. Currently the Village defends officers who may be involved in false arrest proceedings but does not pay for damages assessed. To date there has been only one such suit. The Association indicated its approval of an arrangement whereby the money which might be spent on false arrest insurance would be added to money expended for health insurance. The panel so awards.

Job Security

This issue involves the question of adequate notice and hearing procedures for police officers facing disciplinary action. The Village contends that the present procedures under Village Ordinance 804 and 806 are adequate, providing for notice, statement of charges and fair hearing in the same manner as Civil Service Law Section 75. The Association complains that the Village procedures make the Village Board both plaintiff, prosecutor and jury. The Village, however, argues that under rulings of New York State courts "just cause" procedures are not a bargainable issue.

The panel finds that the issue is bargainable. (See PERB Document Mandatory/Non-Mandatory Subjects of Negotiation up-dated to December 31, 1978. item 104 which cites Albany Police 7 Perb P.3078; Auburn Police Local 195 v. Helsby and City of Auburn, 62 AD 12, 11 PERB P.7003. In the latter case the court reversed PERB and found that the negotiation of alternative procedures to CSL, Sec. 75 are mandatory subject of negotiations.)

The panel awards as follows

Members of the bargaining unit represented by the Waveley Police Association may not be dismissed, reduced in rank or have their compensation reduced for disciplinary reasons without just cause. If a member of the bargaining unit is to be disciplined he must be notified in writing of the disciplinary action with a statement of reasons therefor. Upon receipt of such disciplinary notice the subject officer may elect to contest the discipline if he so chooses

through one, but not more than one of the following procedures:

- 1) Procedures available under Village Ordinance
- 2) Procedures available under Civil Service Law, Section 75
- 3) The grievance procedure set forth in this agreement.

Health Insurance

The Association bargaining demand as set forth in the Association brief was that the money required for false arrest insurance be allocated to that portion of the Village expenditure for health insurance for policemen be made available to the Association for the purchase of health insurance from a carrier of the Association's own choosing. The Village contended persuasively that any health insurance program should cover all members of the Village and that it would be willing to work out with the Association criteria for an improved plan and open the plan for bids from competing carriers.

It is the panel's opinion that there has as yet been insufficient discussion between the parties of either the elements of an improved health insurance plan or the availability of competitive bids on such a plan. The panel therefore awards as follows:

The health insurance program that is now in force shall remain in force for the balance of the present fiscal year. Sometime before end of the fiscal year a new contract shall be bid with the specification for the contract negotiated with the Police Association. The cost of the new contract shall not exceed \$23,000 for the entire Village. The contract will be awarded to the lowest bidder who will supply the coverage enumerated in the specifications.

Absent agreement on a new plan under the above procedures, the Police Association is free to re-open the agreement for 1979-1980 on the sole issue of health insurance and to negotiate a separate police plan. Such negotiation is subject to binding arbitration under procedures

established by PERB.

The panel is opposed to granting funds directly to the Police Association for purchase of their own health insurance plan. It is of the opinion that Village employees, police as well as others should be treated as a unit for insurance purposes on the grounds that a group of 35 employees can obtain insurance more cheaply than a smaller unit such as the 13 employees of the police department.

Salary

Negotiators for the Village and the Police Association came to agreement on salary with the assistance of a mediator, but since the Village Board objected to certain features of the contract and particularly the second year salary proposals the agreement was never ratified. The panel is of the opinion that the second year salary agreed to by the negotiators and recommended by the mediator of a \$900 general increase is within the guidelines set by law for salary increases. The longevity agreement for the second year appears to be in excess of such provisions in comparable communities. The panel makes the following award:

There shall be a general increase of \$900.

Longevity payments shall follow the schedule set forth below

5 years to 10 years service	\$150
6 years to 15 years service.	\$175
16 years to 20 years service	\$225
21 years of service and over	\$275

Sergeants pay shall be \$600 per year additional.

The Association furnished the panel with a detailed chart setting forth fringe benefit provisions of comparable communities. It was apparent that the above longevity increases are in the lower end of the scale of such payments in comparable communities.

An examination of contract agreements reached by police and villages the size of Waverly as reported in the PERB Bulletin for Mediators and Fact-finders reveals that the above award is not out of line with salary increases agreed upon or awarded for communities the size of Waverly. Furthermore, and of some importance, is that present salaries paid to policemen are well below those paid in other communities, particularly those in which salaries are set by collective bargaining. The 1978-1979 salary schedule (WPA Ex. #4) indicates the following salaries

Police Chief	\$13,500	Annual
Sergeant	10,900	"
Sergeant (Acting)	10,100	"
Patrolman	9,100	"
Patrolman	8,500	"
Patrolman	8,100	"
Patrolman	8,000	"
Patrolman	8,000	"
Patrolman, Sp.	3.00	per hour
F&P Dispatcher	9,900	Annual
F&P Dispatcher	9,000	"
F&P Dispatcher	8,700	"
F&P Dispatcher	8,700	"

There are other part time employees whose rate does not appear

There is no annual increment as found in many, if not a majority of police contracts so the salary set by negotiation is a final salary except for other negotiated increases and longevity.

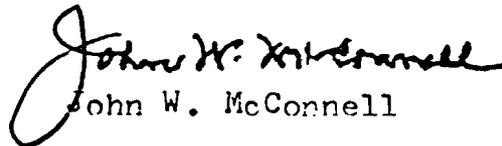
The increase of \$900 awarded in this proceeding for 1979-80 does not exceed wages paid to police and/or comparable employees in other similar communities. The Village did not claim inability to pay and, indeed, the report of the Department of Audit and Control (WPA Ex. #8) concerning Village of Waverly finances presents a confused picture which makes a judgment concerning ability to pay difficult. There was no claim either by the Village or by the Audit and Control Report that Village finances were inadequate.

The panel award in this case covering 13 employees for the second year of the contract and special payments to Marsh and Snell would amount to approximately

salary increase \$900 x 13 employees	\$11,700
health insurance covering Village employees as a whole	5,000
Snell	500
Marsh(a rough estimate) of \$1 per hour for 1000 hours	1,000
Longevity(estimated as though all employees would receive the \$50 increase which they would not)	650
Total	<u>\$18,850</u>

In our opinion this sum is well within the Villages ability to pay.

Respectfully submitted


John W. McConnell

In the matter of
The Village of Waverly, N.Y.

and
The Waverly Police Association
Contract Dispute

Case No. IA-82; M78-407

A Public Arbitration Panel consisting of Leon U. Thomas, Richard Aswad, Esq. and John W. McConnell, neutral, was appointed by PERB to arbitrate a contract dispute between the Village of Waverly, N.Y. and the Waverly Police Association. A hearing was held on the above matter in Waverly on January 17, 1979. Witnesses were questioned and documentary evidence submitted. John Schamel, Jr. represented the Police Association. Frank Roney was spokesman for the Village. Both parties filed post-hearing briefs. The panel met in executive session in Waverly on February 9, 1979 and makes the following award on the five issues in dispute, namely, Recognition, False Arrest Insurance, Job security, Health Insurance and Salary.

Recognition

Police officers who in the future work 80 hours or more within any four week period shall be deemed members of the bargaining unit covered by this agreement and subject to all the conditions of employment set forth therein.

With respect to Kenneth Marsh and John Snell classified as temporary or part time employees by the Village

Kenneth Marsh shall be paid the difference between what he was actually paid and the rate which would have been paid to a newly appointed full time officer for the period June 1, 1978 to the present.

John Snell shall be paid the sum of \$500 additional compensation for his work during that period.

False Arrest Insurance

Because of the uncertainty with respect to the availability and the cost of such false arrest insurance, and because of current arrangement made by the Village for the defense of officers accused of false arrest, the panel makes no award on this issue. However, the money which might have been spent on such insurance is allocated to health insurance as set forth below.

Job - Security

Members of the bargaining unit represented by the Waverly Police Association may not be dismissed, reduced in rank or have their compensation reduced for disciplinary reasons without just cause. If a member of the bargaining unit is to be disciplined he must be notified in writing of the disciplinary action with a statement of the reasons therefore. Upon receipt of such disciplinary notice the subject officer may elect to contest the discipline if he so chooses through one, but not more than one of the following procedures:

- 1) Procedures available under Village Ordinance
- 2) Procedures available under Civil Service Law Section 75
- 3) The grievance procedure set forth in this agreement

Health Insurance

The health insurance program that is now in force will remain in force for the balance of the current fiscal year. Sometime before the end of the fiscal year a new contract shall be bid, with the specifications for the contract negotiated with the Police Association. The cost of the new contract shall not exceed \$23,000 for the entire Village. The contract will be awarded to the lowest bidder who will supply the coverage enumerated in the specifications.

Absent agreement on a new plan under the above procedures, the Police Association is free to reppen the agreement for 1979-1980 on the sole issue of health insurance and to negotiate a separate police plan. Such negotiation is subject to binding arbitration under procedures established by PERB.

Salary

Since the parties have agreed upon adjustments in salary and longevity for the first year of the contract, this award on salary applies only to the second year of the agreement, namely, 1979-1980:

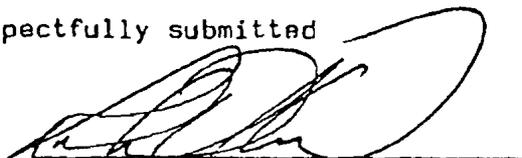
There shall be a general increase of \$900.

Longevity payments shall follow the following schedule:

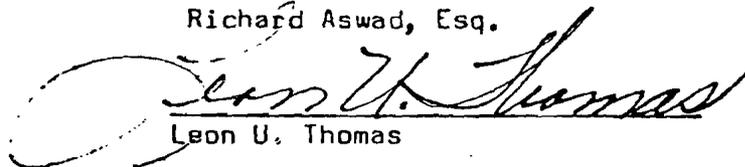
5 years to 10 years service	-----\$150
6 years to 15 years service	-----\$175
16 years to 20 years service	----\$225
18 years to 21 years 21 years of service and over	-----\$275

Sergeants pay shall be \$600 per year additional

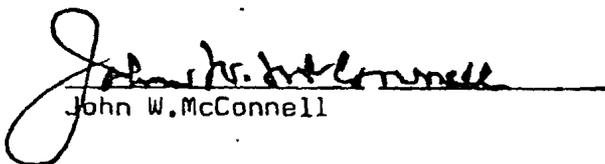
Respectfully submitted



Richard Aswad, Esq.



Leon U. Thomas



John W. McConnell

We understand that the agreement on longevity for the first year was

5 years to 10 years service	-----\$75
11 years to 15 years service	-----\$125
16 years to 20 years service	-----\$175
21 years and over	-----\$225

The agreement on salary increase for 1978-79 is \$800

The agreement includes time and half time for all overtime in both years

Association is to...
of health insurance and to negotiate a separate...