

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE NO. IA - 140
M79-312

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
JUN 2 - 1980

CONCILIATION

IN THE MATTER OF COMPULSORY INTEREST

ARBITRATION BETWEEN

TUCKAHOE POLICE ORGANIZATION

Petitioner

and

VILLAGE OF TUCKAHOE

Respondent

AWARD OF

PUBLIC

ARBITRATION

PANEL

ARBITRATION PANEL

Dr. Robert T. Simmelkjaer, Esq., Chairman, Public Panel Member
Russell Mitchell, Police Commissioner, Employer Panel Member
John P. Henry, Director of Labor Relations, Tri County
Federation of Police, Employee Panel Member

Appearances

FOR THE VILLAGE

Gordon Brown, Esq.
Henry W. Norman
Donald Bonforte

FOR THE ORGANIZATION

Ray Mauro, Esq.
Edward J. Fennel
Matthew Walsh
Nicholas Babich

BACKGROUND

The Village of Tuckahoe (hereinafter the "village") and the Police Organization of Tuckahoe (hereinafter the "organization"), began negotiations prior to the expiration of their current agreement which was in effect until May 1979. The parties held several negotiating sessions, but were not able to reach agreement.

On October 12, 1979, the Organization requested that the Public Employment Relations Board refer the impasse existing between the parties to a compulsory interest public arbitration panel. In their petition, the organization set forth twenty two contract proposals. The Village responded on December 31, 1979 and set forth fourteen counter-proposals.

Pursuant to the provisions of the Civil Service Law, Section 209.4, Harold Newman, Chairman of the Public Employment Relations Board, designated the following individuals on January 2, 1980 to serve as a Public Arbitration Panel in this proceeding:

Robert T. Simmelkjaer,	Public Panel Member and Chairman
Russell Mitchell,	Employer Panel Member
John P. Henry,	Employee Panel Member

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 shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Village maintains a fully paid police department. The bargaining unit is composed of approximately 22 members consisting of patrolmen, sergeants, and lieutenants. The most recent agreement, resulting from an interest Arbitration Award, expired on May 30, 1979.

PROCEDURES

The Panel conducted its hearings in Tuckahoe, New York from February 1980 to April 1980. The Employer and the Employee Organization were present and they were afforded full opportunity during these hearings to present evidence, witnesses, and argument in support of their respective positions.

The Public Arbitration Panel accepted into evidence forty-two (42) exhibits from the TPO and five (5) exhibits from the village. At the conclusion of the testimony on March 18th, the Panel gave both parties leave to submit post-hearing briefs by March 31, 1980. These briefs, exhibits, and extensive testimony and documentation constitute the entire record of the instant proceeding. At the commencement of the hearing the parties stipulated and agreed to waive a stenographic transcription of

the proceedings and further agreed to be bound by the "notes taken by panel members and the exhibits accepted into evidence."

The parties agreed to mutually resolve several contract issues during the course of the hearings without the involvement of the Panel. These issues referred to various safety items contained in TPO proposal #18.

After the closing of the hearing, the Panel met in several executive sessions in Tuckahoe and deliberated on each of the remaining issues, which were all the issues presented to it in either the Petition for compulsory Interest Arbitration filed by the Employee Organization or in the contract modifications sought by the Village. The results of these deliberations are contained in the accompanying Award issued by the Panel. The Panel was able to reach unanimous agreement on all but one issue it was charged to arbitrate. The Chairman would like to commend both of these gentlemen for the diligent and professional manner in which they fulfilled their responsibilities.

In reaching our conclusions, the Panel has been bound by the standards mandated by Section 209.4 (c) (v) of the Taylor Law with particular emphasis given to comparison of wages, hours, and conditions of employment, ability to pay, overall costs and the C.P.I.

OPINION AND AWARDA. Term of Contract

We award a two year agreement to commence on June 1, 1979, and to expire on May 31, 1981.

B. Salaries

The expired agreement provides for the following salaries for unit members:

Patrolman Grade I	\$19,013
Detective Patrolman	\$20,113
Sergeant	\$21,295
Detective Sergeant	\$22,395
Lieutenant	\$25,500

Arguments of the Parties

The TPO requested an across the board increase of 15% in base pay for a two-year duration. According to the TPO, an award of 15% is necessary to maintain the Village of Tuckahoe in its existing status in comparison to other Westchester communities. Counsel for the TPO argued that a 15% wage increase was not exorbitant when the average annual increase of 6.5% in salaries for Westchester villages was viewed in relation to the policeman's job responsibilities (TPO #15). The TPO also cited the November 1978 to November 1979 increase of 10.2% in the CPI as added justification for their wage demand. (TPO #9).

Edward J. Fennell, a municipal finance consultant, was called as a witness by the TPO. Fennell testified that his review of the Village's financial documents revealed that Tuckahoe is an economically stable community able to pay the TPO's salary demands. Among the data cited by Fennell was a 13.4% taxing capacity available to the Village, a 14.5% debt as a percentage of the constitutional debt limit, and an increase in the estimated expenditures of 7.3% in the Police Personal Service Account for the 1979-80 budget period. Although he testified that operating

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balances of the village have been declining, he maintained that this phenomenon was a common trend observed in most municipalities. In summation, Fennell testified that the village has a history of stable financial affairs, has anticipated the growth in certain expenses, and has engaged in conservative fiscal management, including contingency funding (TPO # 7). Additional testimony was presented by the TPO to show that: The average police salary increases provided by the Town of Westchester from January 1, 1979 to December 31, 1979 and from June 1, 1979 to May 31, 1980 was 6.5%. (TPO Exhibits # 15, #16)

Finally, the TPO maintained that Westchester County lags behind Nassau and Suffolk counties in the salaries paid police officers despite the fact their jobs are virtually identical.

The Town, in turn, offered and argued in favor of a 5% salary increase effective June 1, 1979 plus an additional 6% increase effective June 1, 1980. These increases would bring the salary of a first grade patrolman to \$19,964 effective June 1, 1979 and to \$21,162 as of June 1, 1980. These increases, according to the village would be "fair compensation for its police officers in comparison to other Westchester communities which enjoy more growth and affluence". To buttress its salary arguments the village cited the following special circumstances.

- a) a projected decline in its population from 6,236 in 1970 to 5900 in 1985.
- b) the low median income of Tuckahoe (20th out of 21) in comparison to other villages in Westchester County.
- c) the lack of growth in the tax roll-- an absolute decline from 1978 to 1979, coupled with a corresponding rise in the tax rate. "According to TPO Exhibit # 6, Tuckahoe Tax

payers pay the 18th highest overall full value tax rate of the 47 municipalities listed.

- d) a growing percentage of older persons who will resist property tax increases.

The village further argued that its proposed wage increases, with or without longevity, would place Tuckahoe third highest in the County. In addition, the village maintained that over a five year period (1975-80), the wage history of a 1st grade patrolman would exceed the rise in the CPI by 57.8% to % 52.2%.

With respect to the village's ability to pay, witness Donald Bonforte, Treasurer testified that portions of the projected surplus would be returned to the tax payers as tax reductions, that witness Jennell's estimation of state and was overstated by \$3,000 , and that total revenues were over-estimated by \$18,000. Bonforte also testified that the village would probably lose some tax rate claims which would further reduce revenues. Moreover, the witness argued that anticipated legislation requiring higher tax limits on commercial and residential property would erode the village's shrinking tax base. On cross- examination Bonforte acknowledge that a significant savings accrued to the district from the lower pension costs of police officers on tiers one and two.

Finally, the village asked that salary adjustments for other unionized village employees be considered.

Award

The Village does not argue inability to pay; rather its says that its ability to fund increases over the two year contract term is limited by, inter alia, a declining growth in the tax base, decreasing population, and a steadily increasing tax rate (52.7% from 1975-79). The other mitigating

factor presented by the village is that increases of the magnitude proposed by the TPO are not required to maintain comparability and equity in Westchester County.

We have carefully considered the positions, testimony and arguments of the parties in light of the statutory criteria for determinations by the panel, with particular emphasis on "comparison of wages and conditions of employment of Tuckahoe police officers with those of "other employees performing similar services", on the "financial ability of the public employer to pay", and on "the interests and welfare of the public".

Based on the relatively favorable salary position of the Tuckahoe police, the intervening increases in the cost of living, salary increases in comparable communities and the limited ability of the village to pay, we Award as follows:

- 1) Effective June 1, 1979, the salary schedule for the bargaining unit shall be retroactively increased by 6.4% on each step.
- 2) Effective June 1, 1980, the salary schedule shall be increased by 6.9% on each step.

C. Longevity

Present Provisions

The expired contract provides for the following longevity increments:

after 5 years	\$500
after 10 years	\$700
after 15 years	\$900

The TPO requested an increase in longevity payments as follows:

after 5 years	\$600
after 10 years	\$800
after 15 years	\$1000

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In support of this demand, the TPO presented evidence to show that longevity payments in Tuckahoe were not keeping pace with those in other Towns and Villages in Westchester County. The TPO accurately indicated that the last arbitration award significantly reduced longevity payment for employees hired after June 1, 1978 as follows: 1) 5 years, \$900; 2) 15 years, \$700; and 20 years, \$900. According to the TPO, most employees receive a substantial increase in salary as a quid pro quo for taking a percentage based longevity payments out of the contract.

The Village, on the other hand, maintains that it "bought a switch from longevity expressed in percentages.... and should not be made to pay for this change twice". The Village views the TPO's demand as an effort to recoup via salary and increased longevity what it traded off during the prior arbitration, paradoxically, the Village currently argues that dollar longevity is pushing salaries up whereas, during the prior negotiations, it argued that percentage longevity was holding salaries down.

Award

Based upon the salary increase previously awarded, Tuckahoe's favorable position for longevity payments, vis a vis other jurisdictions and the lack of persuasive arguments by either side, for changing a recently awarded alteration in the longevity provision, the panel unanimously Awards that no changes be made in the existing provision.

D. Dental Plan and Life Insurance (Welfare Fund)

Present Provision

The Village presently does not contribute to a welfare or dental plan for members of this bargaining unit.

Arguments of the Parties

The TPO demands that the village assume the full cost of a dental plan and pay the premiums for \$20,000 of term life insurance for each employee. The Tri-County Dental Plan, which is the only plan available, would cost the village \$180 per man for total coverage.

The village's position, in essence, is that the dental plan proposed by the TPO has not been sufficiently defined to protect the village's financial interest; and, more importantly, the TPO should pay for their own dental coverage and life insurance from their "advantageous salary position". With respect to life insurance, the village for their maintains that under the retirement plan, the employees already have a provision for a \$20,000 death benefit.

Award

A review of the Town and villages on Westchester County indicates that only three jurisdictions of thirty-nine listed in TPO (Exhibit #17), excluding Tuckahoe; do not provide some level of dental or welfare plan coverage for its employees. In the Panel's judgment a reasonable adjustment in these benefits seemed reasonable and equitable. Cognizant of the cost factor involved in adding an economic benefit and the total cost of other Awards, the Panel unanimously agreed to Award new language as follows:

Effective June 1, 1980, employees shall contribute the balance between the village share and the Welfare/Dental Plan ultimately selected. The village shall assume the partial cost of a Dental Plan and Welfare benefit limited to \$160.00 per employee, except that during the probationary period the village shall not contribute.

E. Detective's Differential

Present Provisions

Section 3, Article IV provides that \$1100 above the Patrolmen's salaries for Patrolmen Detective and \$1100 above Sergeant's salaries for

Detective Sergeant be paid.

Arguments of the Parties

The TPO proposes that the existing differential of \$1100 be increased to \$1750. The TPO proposal would constitute a fifty percent increase in the current compensation. The TPO argued that since the detective's differential had not been increase since 1975, while the base pay of patrolmen had increased over the same period, the relative value of the detective's differential had proportionately declined. The TPO further argued that the specialized nature of the detectives responsibilities, the additional qualifications, the lack of job security, and the overtime service for extended investigations, justified the demand for an increase in the differential.

Witness Henry W. Norman, Chief of Police, testified that the detective's differential covered the extra time work and inconvenience of the detectives assignment. He further testified that the overtime provision only became applicable after the detective's investigation exceeded three hours. The chief maintained that this interpretation of the overtime provision and the detective's differential was a 'past practice'. The relevant overtime provision is set forth in Article V, Section 1 as follows:

Overtime shall be paid for at straight compensatory time for the first hour and at the rate of time and one-half for all additional hours on the daily and weekly tours, including detectives.

Award

A majority of the Panel (Employer Member Dissenting), Awards that the current contract expressly entitles detectives to overtime; therefore we see no need to change the existing differential provisions. We also

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concluded that the differential compensation reflects the job responsibilities of detectives, independent of overtime work that job responsibility might entail. We further conclude that two of the pre-conditions for finding a past practice, namely, a) strong proof as to its existence and 2) mutuality of agreement, have not been met.

The Dissenting Employer Member of the Panel contends that the past practice has existed over twenty years and consequently the language of Article V, Section 1 has been rendered null and void.

F. Agency Shop

Award

No arguments were provided by the parties, pro or con, on this issue, therefore, the Panel did not consider the issue.

G. Overtime Pay

Present Provisions

Article V, Section 2 provides that "Court Hearing or other like appearances outside regular scheduled work shall be paid for a full day back of compensatory pay.

Arguments of Parties

The TPO proposed alteration to the existing overtime computation structure including the payment of overtime for attendance at disciplinary proceedings after finding of not guilty. It also proposed the following:

D. Overtime Administration: The first fifteen minutes of overtime work to be paid as compensatory time, and subsequent overtime work is to be paid at time and one-half. Any member ordered to report for parade, inspection or other like event during his off-duty hours is to be compensated for his time at time and one-half.

Award

Upon a review of all the facts, the Panel unanimously concludes that the past practice with respect to overtime compensation for attendance at disciplinary hearings provides an insufficient basis for changing this

provision. The Panel further finds that the paucity of disciplinary actions in the Village coupled with the terse argumentation on the issue, support an Award of No Change in the overtime provisions. The Panel also concluded that the overtime administration provision remain unchanged.

H. Other Issues Presented by the TPO.

Award

The safety items issue, as previously stated, was resolved administratively to the mutual satisfaction of the parties, therefore, they were not addressed by the Panel. The Panel incorporates by reference the March 21, 1980 letter from Chief Norman to Commissioner Mitchell indicating the steps taken regarding Security and Safety measures.

Similarly, no evidence was submitted on the out of grade pay issues; therefore, the Panel remands this matter to the parties for further negotiation.

I. Village Issue # 5, Holiday Schedule

Present Provisions

ARTICLES VI

HOLIDAYS

Section 1: There shall be twelve (12) holidays each year whether worked or not and any other holidays which may be provided other Village employees. Two (2) days shall be paid in cash; ten (10) days shall be compensatory time.

Section 2: Employees who work on a holiday shall be paid time and one-half for working, plus the holiday pay above. There shall be six (6) such days. These days are Fourth of July, Christmas, Thanksgiving, Easter, New Year's, Labor Day.

The holidays are as follows:

New Year's Day
 Lincoln's Birthday
 Washington's Birthday
 Easter
 Fourth of July
 Thanksgiving

Good Friday
 Labor Day
 Veteran's Day
 Columbus Day
 Election Day
 Christmas

Section 3: Veteran's working on Memorial Day or Veteran's Day shall be granted compensatory time off for having worked on either one or both of these days.

Section 4: Time off against the two (2) paid holidays pursuant to Section 1 shall be permitted by mutual agreement with the Chief of Police. Permission will not unreasonably be denied.

The Village has taken the position that two (2) Veteran's days be eliminated from the holiday schedule. According to the Village, "Since section 63 of the Public Officer Law requires that veteran's have Memorial Day and Veteran's Day as holidays and since Tuckahoe already provides Veteran's Day as one of its twelve basic holidays, there is no need to give two additional holidays (for a sum of Fourteen) - but only one. In short, the Village argues that Tuckahoe currently provides more than is required by Section 63 and therefore the contract could be amended without violating the law. Finally, the Village maintained that the proposed reduction would bring the police unit in line with other Tuckahoe employees.

Award

A cursory review of holiday schedules in other jurisdictions indicated the following: Buchanan, 14; Portchester 13; and Larchmont, 19. The Panel concluded that insufficient evidence was presented in accordance with the statutory criteria of comparability etc. to persuade the Panel that a reduction in the holiday schedule was warranted. For reduction of a long standing benefit, the Panel believed compelling need should be shown. Given this context, the Panel unanimously agreed to Award no change in the present holiday schedule.

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J. Education Benefits

Present Provision

Article XV, School Allowances

Section 1: One-half paid tuition for all accredited schools shall be paid provided a C average is maintained during the course work. In the event the officer resigns, prior to the expiration of two(2) years following graduation, paid tuition shall be refunded to the Village.

Village Position: The Village proposed the elimination of the above clause.

Award

The Panel unanimously (3-0) Awards that Article XV be changed to read "one-half paid tuition for all accredited courses in police science and/or criminal justice...."

K. Sick Leave

Present Provision

Article IX provides that sick leave shall be unlimited.

Village Position: The Village proposes that sick leave be reduced to twelve(12) days per year. The Village argues that such a reduction would address an abuse of sick leave problem and alleviate a compensatory time off back log.

Award

The Panel concludes that there is no evidence to support the Village's allegation of sick leave abuse. The Panel also maintains that the Village should first exhaust its internal remedies prior to requesting a reduction in the sick leave provision. Accordingly, it is Awarded that no change be made in Article IX.

L. Days Off Following Receipt of Citation

Present Provision

Article XI Article XI

Section 1: An employee receiving a trustee citation shall receive two(2) days off with pay.

Village Position: This clause should be deleted from the contract.

Award

The Panel unanimously Awarded that this clause should be deleted because the benefit does not appear in any comparable contract and its presence might tend to hinder the issuance of meritorious citations.

M. Pension

Present Provision

Article XVI

Section 1: The Village will provide the twenty-year one-half pay, fully paid pension.

Section 2: Retirement shall be based on the final year average salary.

Section 3: The Village shall permit the payment for retirement service for World War II credit.

Village Position: This language should be made consistent with the statutory retirement system by reflecting the fact that there is a tier system.

Award

After reviewing the facts, the Panel finds that Tier #3, only applies to the New York State Employees Retirement System - not to Police and Fire employees. This pension law requires that employees must retire at sixty years of age. The Panel Awards that no changes be made in the pension provision.

N. Welfare Benefits

Present Provision
Article XII

Section 1: The Village shall continue to pay the full-costs of the present state-wide Medical Plan , and such payments shall be continued for retired employees.

Village Position: The employees should assume the cost of this welfare benefit after retirement.

Award

The Panel finds no basis to change the provisions of Article XII. Therefore, the Panel Awards that no change be made.

O. Personal Days

Present Provision

Article IX

Section 1: Employees shall receive two(2) days personal leave in the first year of service and three(3) days leave after one year of service.

Village Position: Personal days should be reduced by one(1) day.

Award

The Panel unanimously Awards that since the Tuckahoe personal leave provision is comparable to other jurisdictions and no persuasive arguments were presented to the Panel supporting a change, no change be made in the current personal leave allocation.

P. Bereavement Leave

Present Provision

Article XII

Section 1: The Village shall grant employees four (4) working days off, with pay, whenever a death occurs in the immediate family; and two (2) days off, with pay, whenever an in-law shall die.

Village Position: This provision should be reduced to three (3) days.

Award

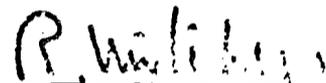
The Panel unanimously Awards that since this matter was addressed in the prior Arbitration Award and no evidence pertinent to its experience regarding Bereavement Leave was submitted by the village, no change be made in this provision.

Conclusion

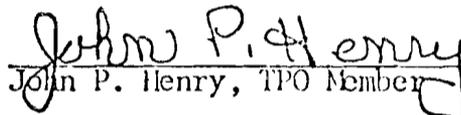
Except as changed or modified by this Award, the terms and conditions of the expired contract shall continue in force and effect over the term of the new agreement.

The Panel was unanimous (3-0) in all determinations in this Award, except that the Employer member dissents from determination "E" Detectives Differential.

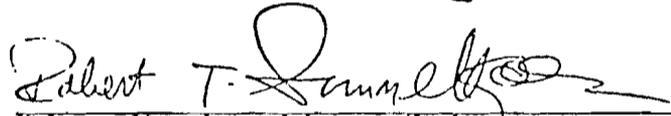
Dated: May 27, 1980



Russell Mitchell, Village Member



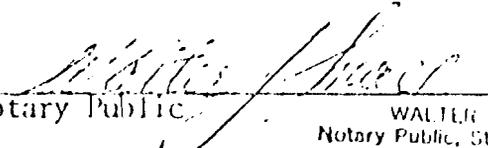
John P. Henry, TPO Member



Robert T. Simmelkjaer, Chairman

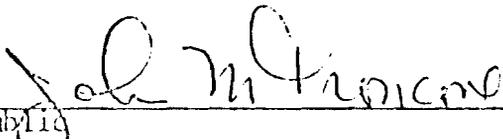
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 27th day of May, 1980 before me personally appeared
Russell Mitchell, to me known and known to be the individual described
in and who executed the foregoing instrument, and he duly acknowledged
to me that he executed the same.


Notary Public
WALTER J. SMALL
Notary Public, State of New York
No. 60 3/11172
Qualified in Westchester County,
Commission Expires March 30, 1981

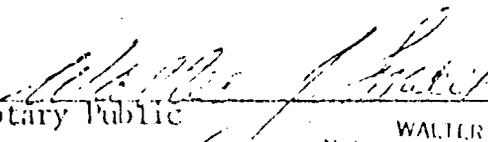
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 27th day of May, 1980 before me personally appeared
John P. Henry, to me known and known to be the individual described
in and who executed the foregoing instrument, and he duly acknowledged
to me that he executed the same.


Notary Public
JOHN M. TRONCONE
Notary Public, State of New York
No. 4686758
Qualified in Westchester County,
Commission Expires March 30, 1981

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 27th day of May, 1980 before me personally appeared
Robert T. Simmelkjaer, to me known and known to be the individual
described in and who executed the foregoing instrument, and he duly
acknowledged to me that he executed the same.


Notary Public
WALTER J. SMALL
Notary Public, State of New York
No. 60 3/11172
Qualified in Westchester County,
Commission Expires March 30, 1981