

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

PERB PUBLIC EMPLOYMENT  
RELATIONS BOARD  
RECEIVED  
DEC 7 - 1981

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IN THE MATTER OF ARBITRATION :  
BETWEEN :  
TRI COUNTY FEDERATION OF POLICE, :  
INC. (MONROE UNIT), PETITIONER :  
AND :  
VILLAGE OF MONROE, RESPONDENT :  
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CASE #1A-80-16  
M-80-68

CONCILIATION

AWARD

Pursuant to the authority vested in the New York State Public Employment Relations Board under section 209.4 of the New York Civil Service Law, a Public Arbitration Panel was designated on September 12, 1980, consisting of the undersigned as Chairman; Terence M. O'Neil, Employer Member and John P. Henry, Union Member, for the just and reasonable resolution of the dispute between the parties hereto.

This matter arose as the result of a petition for such appointment by the Tri-County Federation of Police, Inc., filed with PERB on August 11, 1980, and replied to by Respondent Village of Monroe on August 15, 1980. The dispute is over what terms and conditions are to be embodied in a new agreement between the parties to replace the two-year agreement which expired May 31, 1980. It arose after negotiations and mediation were unsuccessful.

Pursuant to the above, a hearing date was scheduled for November 18, 1980, at which time the parties met and resolved numerous items in dispute. Additional hearings were scheduled for December 10, 1980, and January 7, 1981, but were cancelled when the parties notified the Chairman that an agreement had been reached on all remaining issues.

Thereafter, the union membership failed to ratify the agreement, so that hearings were rescheduled and held on May 21 and June 24, 1981, at Village Hall in Monroe. The hearings were closed at the end of the second day, and it was eventually agreed that briefs would be filed by the parties postmarked September 28, 1981, after several exchanges of correspondence relating to admissibility of further documentary evidence. At the hearings both sides were allowed full opportunity to present facts and argument orally and through written exhibits and to cross-examine witnesses. A number of rulings were made by the Chairman during the hearing and thereafter with respect to the admissibility of evidence; all of them are herewith affirmed. The Union was represented by Reynold A. Mauro, Esq.; the Village by Albert P. Mishkin, Esq.

Certain items originally in dispute were resolved by the parties and do not, therefore, appear in the award (see Joint X.4). The remaining items are dealt with as set forth below.

The Village of Monroe is situated in Orange County. The police force consists of ten officers and the Chief of Police, comprising one sergeant, two acting sergeants and seven patrolman. The police are, and have long been, represented by the Tri-County Federation of Police, Inc. (Monroe Unit).

We turn now to the specific demands of the parties. Both the Federation and the Village made demands, and their disposition is set forth below.

### UNION DEMANDS

#### RETIREMENT

The Union demands the Village adopt Section 384(d) of the New York State Retirement and Social Security Law, claiming that the twenty-year retirement plan is received by the "overwhelming" majority of police departments in New York State, specifically Cornwall and Walden Villages and Middletown and Newburgh Cities in the area.

The Village opposes, stating that few other agreements, in fact, contain such requirements; that the Union presented no justification for the demand; and that the current provisions provide retirement at half-pay after 25 years of service, which was not shown inadequate.

It would appear that allowing retirement after 20 years does not meet, on the evidence, the area contract pattern. The Union did not show any other justification for the demand. It is, accordingly, denied.

#### PAID HOLIDAYS

The Union seeks to increase the number of paid holidays from 12 to 13, but stating that the average for the comparison areas is approximately 12 per year, ranging from 14 to 9. The Village opposes, stating that only 3 contracts in the area have 13 holidays, and that the expense of increasing the number would be excessive at this time.

The Union position is not supported by the evidence. Accordingly, this demand is denied.

### LIFE INSURANCE

The Union demands (#'s 2 and 3) that the Village assume the full cost of a \$50,000 life insurance policy on each employee through the Federation Plan. It also seeks Village institution of a fully-paid Dental Plan for each employee and eligible dependents, also through the Federation. It cites several municipalities that have higher provisions for life insurance than Monroe.

The Village opposes, stating that it currently provides a fully-paid \$15,000 life insurance policy, that any increase would be quite costly (\$2,100 annually or 20% on current salary for starting patrolman); and that the demand is far in excess of area provisions. It also cites the almost total lack of dental plan coverage in the surrounding communities as well as Monroe, and Union failure to present any support whatever for the demand.

The Union failed to present evidence in support of either demand. Neither appear prevalent in the area. These demands are denied, except that the life insurance coverage for the officers is raised to \$25,000, to be purchased through the New York State Federation of Police, unless a lower premium can be secured through another carrier providing the same benefits.

### OUT-OF-TITLE

The Union demands that an employee assigned to so-called out-of-title work to duties of a higher rank be paid at the higher rate for the time such duties are performed. The Village opposes on the ground that such demand is expensive, unprecedented, inflexible and unnecessary, citing Section 61 of the Civil Service Law as affording protection against the Village requiring substantial out-of-title work.

The Union presented no justification for such demand. It is accordingly denied.

### NEW JOB DESCRIPTION

The Union demands that, when positions "not covered by the agreement" are established, the Village agree to negotiate salaries and other terms and conditions of employment for them. The Village opposes, stating that it is a non-mandatory subject of negotiations. It adds that the Union has no authority to negotiate for positions outside the bargaining unit, and that it is protected if the position (non-civilian) is created in the unit.

The Village has a point. The Union did not support the demand. It is denied.

### INVESTIGATIVE ASSIGNMENT

The Union demands that officers assigned as investigators receive an additional 15% on top of "normal salary" for such time assigned. The Village opposes, stating there was no support presented for this demand; that area practice is overwhelmingly the other way, and that there are currently no detectives on the Village force.

The Village position is sustained and the demand is denied.

### NIGHT DIFFERENTIAL

The Union demands that employees who work between 4:00 p.m. and 8:00 a.m. receive a ten percent shift differential for times worked between those hours. The Village opposes, on the ground of unnecessary expense; lack of current provision; the fact that night work and rotating tours are an integral part of the job, and that this factor is taken into account in setting police salaries; that all officers are subject to such work; and that the demand is for an additional salary increase in disguise.

The Union did not support its position, and the demand is accordingly denied.

### COLLEGE INCENTIVE PLAN

The Union demands the Village reimburse employees for cost of tuition, books and other reasonable expenses incurred in seeking a college degree. In addition, it wants additional annual pay for those who have acquired or will acquire such degrees in the amount of \$500 for an Associate's; \$750 for a Bachelor's; and \$1,000 for a Master's.

The Village opposes as a costly money item; stating there is no current provision for it; and that the Village will receive no benefit from such education and training. The Union shows that four other municipalities in the area have certain stated educational benefits.

The Union data, however, falls well short of justifying the demand, and none of the cited municipalities made any provisions at all for additional pay for attainment of a degree. The evidence does not justify granting the demand and it is, accordingly, denied.

### SERGEANT DIFFERENTIAL

The Union demands that sergeants receive as annual salary the annual salary of a police officer after three years of service plus a 15% differential.

The Village opposes, stating that this is an expensive demand, which would, for example, increase the current sergeant's salary from \$15,588 to \$20,381; \$4,793 or 31% annually. It adds that 15% would be the highest such differential in the area. It states that a 4.9% differential over the salary schedule previously agreed to would raise the sergeant's salary to \$16,361 as of June 30, 1980, which would be greater than three of the eight municipalities cited on Page 18 of the Village brief.

The Union states that the current differential between a top-paid patrolman's and a sergeant's rate of pay is now only 3.1%, far below that applied in numerous area communities, which in many cases is applied to top patrolman's salaries greater than those in the Monroe schedule.

It is clear that the Union's demand of 15% is excessive, in terms of area comparisons and expense. Yet, the 4.9% differential proposed is below that of all of the municipalities cited in the Union brief (Page 4). It is awarded, therefore, that the sergeant's rate of pay be set at 8% over the pay of a top patrolman, and that appropriate language recognizing such percentage differential be placed in the agreement.

#### LONGEVITY

The Union demands that employees, in addition to salary, receive longevity payments based on an added 2% of salary after five years; 3% after nine years; 4% after thirteen years; and 5% after seventeen years. It cites numerous other municipalities that provide longevity payments, and states that adding such provision to the contract would thus be appropriate. It states that, assuming an \$18,000 annual salary, the employee would get an additional \$900 annually after seventeen years of service. The percentages it wishes to apply are not, apparently, cumulative.

The Village opposes. There is no current provision for such benefits. Such benefits are found in only a few Orange County contracts. The Union failed to support its unusual demand, and has also, says the Village, couched it in terms of percentages which only one other contract provides.

The evidence shows that provision for longevity payments are almost evenly split between the communities cited by each side (although fewer have provisions for such payments than otherwise). No cost figures are cited, either to show the cost to the Village or to show the effect of such payments on the salaries of the employees; nor did the 1980 agreement contain provision for such payments.

On balance, there is more reason to say that such payments should not be made at the present time. Increases in salaries for greater service are taken into account in the basic salary schedules, which provide step increases for each year of service up to six (6). This demand is denied.

### VILLAGE DEMANDS

#### WORKWEEK

The Village demands certain language changes in Article 6 of the agreement to eliminate Article 6(B), and add to 6(C)(2) language stating that "unless such time runs into an officer's normal tour of duty". The Union took no position on this demand.

The elimination of Article 6, Section B, would remove the requirement that employees rotate shifts on weekends and holidays on an equal basis, changing monthly. The addition to 6(C)(2) would allow the Village to avoid paying a guaranteed minimum amount where an employee is called in to work when the call-in time runs into the start of his normally scheduled tour of duty.

The Village states that the current provision in 6(B) deprives it of the necessary flexibility to run the department properly. It urges that the matter is a non-mandatory subject of bargaining. It states that the proposed added language to Section 6(C)(2) is needed to "conform the contract to the realistics of emergency call-ins", and states that when a call-in runs into an officer's regular tour, the inconveniences of early arrival is slight; however, no need of compensation for a special trip exists. It is agreed that all call-in hours worked should be paid at time and one-half, as at present.

As to Section 6(B), the Village has a point. The small size of the police force does tend to limit the department's flexibility, and a measure of freedom should, therefore, be restored. However, it is also true that weekend and holiday shifts should be shared by the employees on the force as equally as possible, although the Chief should be able to change assignments to provide coverage as required. Accordingly, 6(B) will be amended, in the light of the above consideration, to require the Village to use its best efforts to rotate shifts and to equalize over the period of an extended year the weekend and holiday assignments. The Village, however, shall be afforded the right, in case of demonstrable necessity, to change assignments.

As to the proposed additions to Section 6(C)(2), the inconvenience of a trip to the station at an hour earlier than the officer's normal schedule can, in some circumstances, be of some considerable inconvenience. However, call-ins of up to one hour early, where the worktime runs into the regular shift, do not fall into this category. The Village demand is granted to the extent that call-in under Section 6(C)(2) shall be compensated where the officer is called to duty in an emergency situation, unless the call-in is one hour or less in length and the time runs into the officer's normal tour of duty.

COPIES OF CONTRACT

The Village demands that there be deleted from the contract Article 15, which requires that the Village furnish copies of the contract to the employees at its expense. The Union takes no position on this matter.

The Village cites Addison v. Central School District, 11 PERB Paragraph 3107 (1978) as ruling that this type of demand is non-mandatory. The Village is persuasive in its contention and its demand is granted.

UNIFORM ALLOWANCE

The Village demands that Article 14, Uniform Allowance, be changed to ensure that an officer, newly uniformed as required when hired, is not held entitled to an additional allowance for the first year, but only annually thereafter. The Union takes no position on this matter.

The Village rationale, that this is a clarification of the practice of the parties and the intent of the agreement, is persuasive. In return for granting this demand, which is so awarded, it would appear fair and reasonable, particularly in the light of increased clothing prices, that the allowance be raised to \$275 annually, effective June 1, 1981. Accordingly, Article 14, Section A, shall now read as follows: "Each member of the force shall be uniformed at the expense of the Village. Initial issue shall include summer and winter uniforms in full. After one (1) year of service, up to \$250 annually shall be paid as a uniform allowance, provided a like article of uniform is turned in to the Chief. The initial expense of any change in the type or fashion of the uniform shall be at the expense of the Employer. Effective June 1, 1981, the uniform allowance shall be raised from \$250 to \$275."

The Village also demands that Section C, Article 14, read "maintenance" costs, rather than "cleaning" costs. This is not opposed by the Union and appears reasonable with an appropriate adjustment in cost requirements so that Article 14, Section C, shall now read: "Uniform maintenance shall be borne by the Employer up to a maximum of \$170 per year, provided appropriate individual receipts are submitted."

PERSONAL AND BEREAVEMENT LEAVE

The Village demands that Article 9 be changed to curtail the full bereavement leave provisions to situations where a reasonably close relative is involved and reduce the entitlement to two (2) days. As to other than close relatives, one (1) day bereavement leave is to be granted. It also states that personal leave should be cut back to two days entitlement, and that it be used only for such actual personal business purposes.

The Union takes no position on the demand. The Village asserts that relief is clearly needed from current provisions and that its demand is consistent with provisions in other contracts, although admitting that some municipalities do grant up to three days of such leave.

There has been no showing or allegation of abuse of these provisions on the part of the employees, or that applications has been onerous to the Village. Such a showing might have been persuasive. However, the potentiality exists, as to leave for other than close family members and there should be a provision for processing personal leave requests. Accordingly, the Village is granted relief on its demand to the extent of reducing bereavement leave to one (1) day for family members other than those named; providing for the submission of personal leave requests to the Chief; and amending current Article 9 to read as follows:

"A. Bereavement Leave. Employees shall be entitled to three (3) days bereavement leave upon the death of their mother-in-law, father-in-law, grandparents, grandparents-in-law, or other relatives residing in the employee's household, spouse, mother, father, brother, sister, son, daughter, stepmother, stepfather, stepson, or stepdaughter. Such leave is to be used for attendance at the services for the deceased family member or to handle necessary affairs involving the deceased.

Employees shall be granted one (1) day of bereavement leave to attend the funeral of any other family member."

"B. Personal Leave. Employees shall be entitled to three (3) days personal leave. Requests for personal leave must be submitted to the Chief not less than five (5) days in advance. The Chief shall advise of his decision three (3) days following the submission of the request. These time limits may be waived in the event of an emergency."

#### HOLIDAYS

The Village demanded the elimination of Easter Sunday as a holiday, thus reducing the number from 12 to 11. It also demanded that a provision regarding employee options for reimbursement for holiday compensation be granted so that it would be the same as for overtime. The Union took no position as to these demands.

As to the second part, the Village failed to support its position. It is, accordingly, denied. As to the reduction in holidays demanded, it stated that the average of holidays in the contracts listed was 11.4, and that the Village was thus paying "more than the going rate" for holidays. However, a substantial number of municipalities do provide 12 or more holidays, and the Village claim, however accurate arithmetically, does not support a reduction in holidays below the average cited. The first part of the demand is also denied.

DURATION OF AGREEMENT

The Village demands a three-year agreement, clearly retroactive to June 1, 1980. The Union takes no position on contract term length, although its wage demand speaks in terms of one increase effective June 1, 1980. The previous agreement was two years in length. The agreed-on compensation increases in November, 1980, provided for a two-year schedule of increases.

Accordingly, although the Village would be satisfied with a three-year contract, there appears no reason to depart from previous practice. A two-year agreement is granted.

UNION DEMAND

COMPENSATION

The Union demands that increases be given according to the schedule set forth below, and that the number of steps necessary to reach top patrolman salary be reduced from seven to four; i.e., seeking top rates after three years service, rather than six. The Union demands, also, that effective June 1, 1980, the annual salaries be increased "by the C.P.I." plus an additional 5%.

The Union schedule above referred to is:

Probationary	\$11,700
After 6 months	12,600
After 1 year	14,300
After 2 years	14,900
After 3 years	15,200

The Union cites as justification for its demand the testimony of Edward Fennel, that the Village has the ability to pay a "reasonable award" in all the areas submitted to the panel. The Village, it was said, had not approached its constitutional tax margin and has a \$200,000 cushion regarding its tax limitations. The Village tax rate compared favorably with the rate in other municipalities; it ranked 12 out of 16 in Orange County. The Village budget was balanced for the 1979 fiscal year, and should have an unencumbered balance of \$32,905 from that budget which has decreased to \$29,200 for the current fiscal year. The combined tax for Monroe was \$35.20, higher than 22 in the county, lower than 19; approximately in the middle.

The Union continues that the Village Police Department is active as compared with others, showing a total of 307 incidents of crime for 1980, which included robbery, aggravated assault, burglary, larceny, and car theft. The training of the Department is as required by statute and is equated with that of other municipalities.

The Union compared the top patrolman's pay for Monroe with the top level of departments in surrounding areas. Of 17 municipalities cited, Monroe was ahead only of three. The highest was New Windsor at \$20,250; the lowest was Port Jervis at \$13,253. It also stated that larger increases have been given in other surrounding areas, either in arbitration or through negotiations. It cites ranges of 12-19.7%. It concludes that a substantial increase is due the Monroe officers to prevent their salary gap from widening even more inequitably. The Union notes that welfare benefits and other elements of compensation such as longevity, sergeant's differential and the like, exceed Monroe's in several other communities.

Finally, the Union cites a 12% yearly increase in the cost-of-living as warranting granting of their demands.

The Village opposes granting of any increase. It submits that the award should reflect a picture of its own economic realities. It continues that the Union has failed to provide necessary supporting data for its demands and has thus, in effect, abandoned such demands.

It states that Monroe citizens are already paying more than their fair share of taxes. It shows that, of 35 communities, Monroe ranks 14 as to tax rate, stated as a full value range. The top rate is \$53.28. The bottom is \$18.84-31.32; Monroe at \$35.20 is at a higher level than 21 other communities. It dismisses the point that the Village has not reached its constitutional tax limit by saying that no village in Orange County is taxing at its limit, and that it would be unreasonable to raise tax burdens on the citizens of the Village merely to pay for a generous award to its employees.

The Village states that Monroe officers already enjoy attractive compensation and benefits, especially when the generous package of fringes is taken into account. It notes that the increases in the last contract were split-year increases, such that, even though the agreement has expired, the salaries of the officers actually increased by 1.7% from 1979-1980 to 1980-1981. The Village states that the increase in actual earnings of a top-paid patrolman in 1980 over 1979, considering the actual settlement reached last year and rejected by the bargaining unit would be 8%, a generous settlement it states, which should not be increased on the strength of unsupported Union claims.

The Village also says that Monroe officers, even if their wages are frozen at current levels, would rank in the upper half of the area contracts it cites, and would, with the stipulated increases, be fourth in the list. The salaries cited here were for patrolman with one year's service. The Union demand, if granted in full, would amount to a 16.6% increase over the Union's proposed increased base schedule, and would result in raises ranging from 17% to 33%.

In sorting out the above, it is clear that the factors which the statute requires the panel to consider cannot permit the granting of the Village demand for no increase in compensation. By the same token, these same factors, especially the salary levels in other communities, do not support full acceptance of the Union demands. The large percentage increases cited in the Union brief for various other surrounding localities were over a two-year, not a one-year, period. The rise in the cost-of-living (CPI) indexes is tempered by the fact that prices are also increasing for the taxpayer. No other community was cited as being precisely comparable to Monroe in so far as compensation and other terms of employment were concerned, but it is clearly deducible from the positions of both of the parties that the Orange County communities generally retain the same sort of relationship in these areas over a period of time. No incentive to pioneer is provided this Board of Arbitration, therefore.

Finally, one and one-half years have elapsed since the expiration of the last contract. The parties will soon be obliged to negotiate a successor agreement to this one awarded herein. It is, accordingly, appropriate to settle the current situation now so as to free the parties for the next negotiations to take place during the first half of 1982.

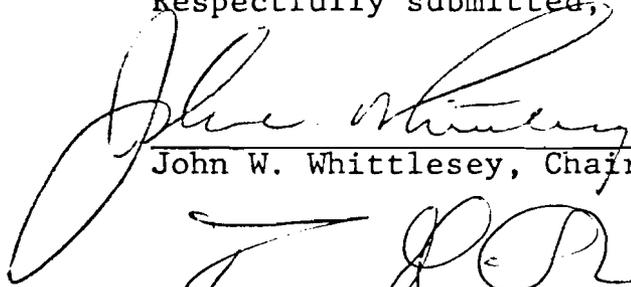
It is accordingly awarded that the Union demand for a compression of the salary schedule from 6 to 3 years be denied. The salary schedule for the term of the 1980-1982 contract, to expire May 31, 1982, is established as follows:

<u>Patrolman</u>	<u>6/1/80</u>	<u>12/1/80</u>	<u>6/1/81</u>	<u>12/1/81</u>
a. Probation	\$11,200	\$11,200	\$11,800	\$11,800
b. After 6 months	12,155	12,706	13,515	13,750
c. After 1 year	13,012	13,563	14,461	14,712
d. After 2 years	13,951	14,576	15,497	15,767
e. After 3 years	14,807	15,467	16,442	16,728
f. After 4 years	15,126	15,800	16,795	17,087
g. After 5 years	15,448	16,134	17,149	17,448
h. After 6 years	15,722	16,420	17,452	17,756
i. Sergeant	As provided <u>supra</u> .			

RETROACTIVITY

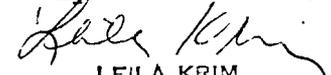
The new rates shall be reflected in the pay checks for the first pay period after receipt of the award. Retroactive compensation in accordance with the above schedule shall be paid by the Village within a reasonable period of time and preferably within two pay periods following receipt of the award. Retroactivity shall be paid to all officers currently on the force and who were on the force at the time of the stated increases. It shall also be paid to any patrolman who have retired, but were on the force at the time of the stated rate increases. It shall not be available to any officers who transferred or voluntarily quit the employ of the Village police force between May 31, 1980, and the date of the award.

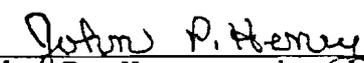
Respectfully submitted,

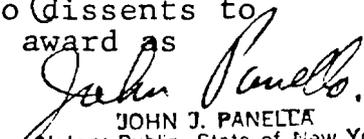
  
\_\_\_\_\_  
John W. Whittlesey, Chairman

  
\_\_\_\_\_  
Terence M. O'Neil, who dissents to so much of the award as appears below: Life Insurance, Sergeants' Differential, Compensation

Sworn to before me this 30th day of November 1981.

  
LEILA KRIM  
Notary Public, State of New York  
No. 30-4729622  
Qualified in Nassau County  
Commission Expires March 30, 1982

  
\_\_\_\_\_  
John P. Henry, who dissents to so much of the award as appears below

  
\_\_\_\_\_  
JOHN J. PANELLO  
Notary Public, State of New York  
No. 4715961  
Qualified in Westchester County  
Commission Expires March 30, 1982

Union Demands  
Retirement  
Night Differential  
College Incentive Plan  
Longevity

Village Demands  
Personal and Bereavement Leave  
Retroactivity

JWW/pjc

DISSENTING OPINION: Union Member

As the Employee representative on the Public Arbitration Panel, I feel that I must address and object to a number of the issues resolved by the Public Arbitration Award in the above case.

The Award refers to a tentative agreement reached by the parties on or about December 4, 1980. A copy of that tentative agreement and Mr. O'Neil's covering letter was submitted as Village Exhibit 1. A reading of these documents reveals three important facts. First: Mr. O'Neil's covering letter dated February 3, 1981 refers to the "Stipulation" as a "final draft". Second: The "Stipulation of Agreement" states in section (1) "The provisions of this Stipulation are subject to ratification by the respective parties to the contract." The third and most important fact is that the Stipulation was not signed, either by the PBA nor the Village.

While I concede that the terms and conditions of the Stipulation were rejected by the members of the bargaining unit, there is no evidence, either by documentation or testimony of any Village witness at the Arbitration Hearings, that the Village Board had ratified the Stipulation or, in fact, had even reviewed the Stipulation.

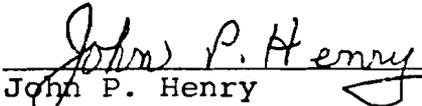
The Stipulation, while it was evidence of what happened during the course of negotiations, should have been considered by the members of the Arbitration Panel as a portion of the history of

what had transpired during the parties' attempt to reach a negotiated agreement. It is also important to note that the negotiations, at all stages, were conducted on a package basis (Joint Exhibit 1, Enclosure #2). Therefore, the unratified, unsigned Stipulation (Village Exhibit 1) represents only an attempt by the parties to come to an agreement on package agreement, but in no way should be construed to be the top line for the Village or the bottom line for the bargaining unit. 11 P.E.R.B.-3005, Middletown PBA and City of Middletown (Case No. U-274, 1-23-78) indicates that the parties in negotiations have a wide latitude when dealing on a package basis in negotiations but may revive all demands on a demand for interest arbitration.

The Public Arbitration Award in this instance, by their majority vote relied heavily on Village Exhibit 1 in formation of the Award of the panel. By doing this, the majority of the panel has inhibited future negotiations between the Village and the bargaining unit, with a possible impact on collective bargaining in other municipalities when they become aware of the fact that a Stipulation, even though not ratified by either party or signed by either party, may have so drastic an impact on an Arbitration Award.

The Award of the majority of the Panel on "Retroactivity" in the opinion of this Panel Member is so singularly distasteful that I must address that issue in particular. Members of the bargaining unit who "transferred or voluntarily quit" prior to the date of the award did so for reasons not known to the members of the Panel, but in any event, up to the date of their transfer or

resignation performed the same duties and had the same responsibilities which they accepted up to the date of their transfer or resignation are worth less is a mutilation of the accepted standard in public and private employment of equal pay for equal work. What, in fact, this Award does is penalize those members who transferred or resigned. It should be further noted that the issue of retroactivity was not raised by the Village in the Arbitration Hearings, now was the issue raised by the Village Exhibit 1, except for Item (20) which addresses the length of time in which the members of the bargaining unit would receive their retroactive pay.

  
\_\_\_\_\_  
John P. Henry  
Employee Panel Member

JPH:mjb

DISSENTING OPINION: Village Member

The Village representative is compelled to dissent to that portion of the Award dealing with compensation, including the Sergeants' differential.

Although I do not believe the changes from the stipulated agreement are justified, I believe they are offset, at least to some degree, by the limiting provisions contained in the retro-activity section of the Award.

A handwritten signature in black ink, appearing to read "T. O'Neil", written over a horizontal line.

Terence M. O'Neil  
Employer Panel Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Arbitration )		
Between )		
Tri-County Federation of Police, Inc. )	Case 1A-80-16	
(Monroe Unit) Petitioner )	M-80-68	
and )		
Village of Monroe Respondent )		
----- )		

FEB 01 1985  
CONCERN

SUPPLEMENTAL AWARD

On November 30, 1981, an arbitration award was issued in the above-captioned matter setting certain terms and conditions of employment for the parties to this interest arbitration. Both Petitioner and Respondent dissented to certain provisions of the award, although each dissent was to different requirements therein, and thus a majority vote was obtained on those matters dissented to. Other portions of the award were unanimous.

Thereafter, on December 23, 1981 petitioner petitioned in the Supreme Court of the State of New York, Orange County to review the award and reverse and nullify such portion as "excludes former employees of the Village (Respondent herein) for compensation for the period May 31, 1980 and the date of the determination". The matter was heard before Acting Justice Irving A. Green who decided, under date of June 18, 1982, that:

"Since the Court is unable to modify the award without affecting the merits of the decision upon the issue submitted, the award is vacated, and the issues of compensation and retroactivity shall be redetermined by the same panel of arbitrators within 30 days of service of this judgment with notice of entry."

Respondent duly appealed to the Appellate Division, Second Department which, on February 28, 1983 unanimously affirmed Judge Green's order. Respondent moved for reargument or leave to appeal to the Court of Appeals. That motion was denied January 17, 1984.

Thereafter, certain preliminary matters were cleared away and the panel of arbitrators who heard and made the original determination met on December 19, 1984 to redetermine the issues as required by the court order herein. As a result the following supplemental award is herewith issued.



1. With respect to the original award, all of its determinations are unanimously affirmed, including the award of compensation made in such original award, with the exception of those portions relating to retroactivity. It was the view of the panel that it would be impractical now to redo the wage package at this time.

2. With respect to the issue of retroactivity, the panel discussed the issue at great length. There was no issue raised as to the grant of retroactive pay made in the original award to:

"all officers currently on the force and who were on the force at the time of the stated increases. It shall also be paid to any patrolmen who have retired but were on the force at the time of the stated increase."

The parties were in continual<sup>ed</sup> disagreement over the provisions of the original award which denied retroactivity to "any officers who transferred or voluntarily quit the employ of the Village police force between May 31, 1980~~7~~ and the date of the award." It was to this portion of the award to which Panel Member John Henry dissented in 1981 and which formed the basis of the court action by the Petitioners.

Mr. O'Neil for Respondent stated that the vote he provided for the compensation award was conditioned upon the denial of retroactivity to the three officers who had resigned or transferred before the award, and that the compensation provisions were as large as they were because of those considerations. He urged that the award remain unchanged in this respect.

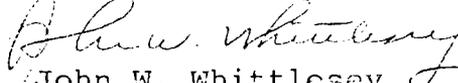
Mr. Henry for Petitioner pointed out that he hadn't voted for any such wording in the original award in this request. He also pointed to the language of his dissent in which he objected to a "number" of issues resolved by the . . . award," and in particular to an over-reliance on a stipulation of agreement in formulating the award. This agreement, he stated, was not signed and had been rejected, after negotiations, by the bargaining unit and thus should not have been allowed to play so large a part in the original award.

He also pointed out that the court had set aside the retroactivity provisions of the award not only because the denial of it to 3 officers had not been presented to the panel, but also because such denial was arbitrary and capricious; excluded the 3 officers in question from the benefits of the agreement and their right to be represented, and was contrary to public policy in favor of equal pay for equal work.



As a result of the deliberations and the evidence and argument submitted in connection therewith, the panel hereby rules and awards that retroactive pay shall be granted not only as stated in the original award, but also to those three officers on the Village police force on May 31, 1980 and who thereafter resigned or transferred prior to the date of the award, in accordance with the pay schedule set forth in the compensation section of the original award, provided however, that each of the three officers, in order to obtain the benefits of the award, shall apply for payment within 30 days from the date of the award set forth below.

Respectfully submitted,

  
John W. Whittlesey  
Chairman

  
Terence M. O'Neil

  
John P. Henry

*Dissenting*

*1/7/85*

DATED: December 31, 1984



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
FEB 01 1985  
CONCILIATION

-----X  
In the Matter of the Arbitration  
between

TRI-COUNTY FEDERATION OF POLICE,  
INC. (Monroe Unit),

CASE NO. IA-80-16; M80-68

Petitioner,

DISSENTING OPINION

- and -

VILLAGE OF MONROE,

Respondent.

-----X

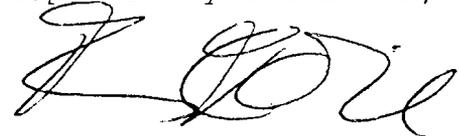
DISSENTING OPINION

The undersigned dissents from the Supplemental Award in this matter since the underlying Award was based upon and contingent upon a denial of retroactivity to the officers covered by the Supplemental Award.

I believe the opinion of the Supreme Court setting aside that portion of the Award was incorrect. I also believe that a granting of the monies without the concession to the Village on the retroactivity issue is not supportable based on the evidence in the Record.

Finally, I believe that the Award as now finalized would be set aside on appeal by the Court of Appeals and the initial Award would be confirmed.

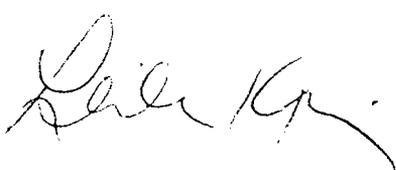
Respectfully submitted,



Terence M. O'Neil for  
RAINS & POGREBIN, P.C.  
Attorneys for VILLAGE  
OF MONROE

Sworn to before me this

17th day of January, 1985.



LEILA KRIM  
Notary Public, State of New York  
No. 30-4725622  
Qualified in Nassau County  
Commission Expires March 30, 1986

