

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

APR 5 1982

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: IN THE MATTER OF THE IMPASSE  
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Between  
:

VILLAGE OF EAST HAMPTON  
:

Public Employer  
:

and  
:

EAST HAMPTON VILLAGE P.B.A.  
:

Public Employee Unit  
:  
:  
-----X

AWARD OF  
ARBITRATION  
PANEL

PERB #IA-81-23;  
M81-74

This matter arises pursuant to the compulsory interest arbitration provisions of the Civil Service Law Section 209.4, under which the following public arbitration panel was designated on Oct. 8, 1981:

Employer Member, Richard J. Carey  
R.D. 2, Box 170, Riverhead, N.Y. 11901

Employee Member, Gene Roemer  
P.O. Box #1, Patchogue, N.Y. 11772

Public Member and Chairman, Harry F. Stark  
350 N. 4th Ave., Highland Park, N.J. 08904

Appearances:

For the Village of East Hampton, Daniel G. Voorhees, Counsel;

For the East Hampton Village PBA, Reynold A. Mauro, Counsel.

In accordance with statutory requirements, the panel held hearings and afforded the parties full opportunity to present orally and in writing statements of facts, witnesses, evidence and arguments as they deemed appropriate.

The panel further made just and reasonable determinations of the matters in dispute and took into consideration in specifying the basis for its findings, in addition to any other relevant factors, the 209.4 statutory criteria.



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
50 WOLF ROAD  
ALBANY, NEW YORK 12205

BOARD MEMBERS

Harold Newman

CHAIRMAN

Canon David Randles

IDA KLAUS

STATUTORY PROVISIONS APPLICABLE TO COMPULSORY INTEREST  
ARBITRATION PURSUANT TO CIVIL SERVICE LAW, SECTION 209.4  
(As amended July 1, 1977)

"(iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties;

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

(vii) the determination of the public arbitration panel shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.

7/1/77

An open hearing was held on Nov. 13, 1981, at the Village Hall in East Hampton, and an official record was transcribed and furnished to the parties.

The panel met in executive session to discuss and evaluate the facts, evidence and arguments on Jan. 13, Jan. 19, Jan. 28, Feb. 4, and Mar. 6, 1982.

The Panel agreed that although there were understandable differences among the principals about the number of items at impasse, the parties would be best served by the panel attempting fully to resolve the impasse through a constructive award that considered the interests of both parties and the public. This would meet the intent of the statute and regulations to have the arbitration process dispose of the matters as fully as possible without prejudicing any consequent action to which the parties are entitled by law.

The matter of the submission was fully considered by the panel in executive session following consultation by the panel chairman with the Public Employment Relations Board and with the members having fully opportunity to express their views after consultation with the parties.

The village of East Hampton is about 3.4 square miles in size, the Atlantic Ocean on its south and the Town of East Hampton on the other three sides. There are 12 men in the P.B.A. unit: 5 police officers, 4 sergeants, one detective, one detective sergeant, and one lieutenant. Radio operators are excluded from the unit. The entire department is under the direction of a chief.

The village's permanent population is about 1800 people. The panel members in their deliberations were fully aware of the importance of the area as a resort during the summer when the population and traffic increase greatly, and also of the comparative significance of the larger surrounding Town of East Hampton.

Further the panel has been cognizant of the fact that the Village population is composed of a number of relatively affluent property owners who may spend less time in the community than another group of less affluent residents who confront different economic circumstances and are more likely to be year-round residents.

Also the panel has been impressed with the attractions and favorable reputation of the Village as a residential community and the atmosphere of stability and security which is valued by the residents and to which a competent police force and constructive bargaining relationship contribute importantly.

It is the preservation of these values in a period of economic uncertainty and recession that has guided the panel in its efforts, as well as the need to afford equitable treatment to public servants upon whom the community relies.

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The following issues were at impasse:

1. The previous contract shall otherwise obtain.
  2. Firearms test.
  3. Training.
  4. Personal leave.
  5. Hospitalization.
  6. Departmental meetings.
  7. Recall.
  8. College credits.
  9. Premium holiday pay.
  10. Compensatory time accumulation.
  11. Clothing allowance.
  12. Dental Plan.
  13. Sick leave.
  14. Night differential.
  15. Longevity.
  16. Vacations.
  17. Wages.
  18. Schedule of tours.
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Issues and Awards

The parties have agreed that the panel should base its awards on a two year agreement covering the period Aug. 1, 1981, through July 31, 1983, with the terms retroactive to Aug. 1, 1981. The award decisions have been unanimous except where otherwise indicated.

1. The previous contract shall otherwise obtain.

The village requested that it be expressly understood and contained in the agreement that the terms of the prior agreement not changed by the parties themselves in negotiations or by the arbitration panel should be carried forward and continued in the new agreement.

Award. The statement "the previous contract shall otherwise obtain" shall be included in the new agreement following the other terms and before the signatures.

2. Firearms Test.

The village requested language dealing with firearms testing and practice.

Award. Each employee shall annually pass a firearms test. Employees who pass said test as Distinguished Experts shall be entitled to two days paid leave to be taken at a time mutually agreeable to said employees and the Chief of Police. Each employee who fails the firearms test shall practice during his off-duty hours until he passes the test.

3. Training.

The village requested language dealing with training.

Award. The Chief of Police may require each employee to attend either formal "in house" training classes or outside police training schools during an employee's off-duty time. Employees shall be entitled to straight-time pay for said attendance. No employee shall be required to attend such training classes or schools in excess of the lesser of 24 hours or two training schools in any fiscal year.

4. Personal Leave.

The P.B.A. requested a procedural change with respect to personal leave requests made five or more days in advance.

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Award. The following sentence shall be added at the end of Section 21 - Personal Leave: "When granted, such time must be charged to personal leave time available under this section."

5. Hospitalization.

The P.B.A. requested language dealing with the continuation of hospitalization benefits for the dependents of deceased employees.

Award. Section 6 - Hospitalization Insurance, paragraph two, shall have the concluding clause deleted and read: "Hospitalization benefits shall be continued for the dependents of a deceased employee for a period of six (6) months."

6. Departmental meetings.

The Village proposed that the Police Chief be authorized to call up to four departmental meetings each year without compensation to those attending.

Award. The Police Chief may call two departmental meetings each calendar year, without compensation to those attending provided such meetings immediately proceed or follow a regularly scheduled P.B.A. membership meeting.

2. The P.B.A. shall furnish the Chief with a list of such scheduled meetings at least six months in advance, and the Chief shall give at least fifteen days advance notice of any departmental meetings he elects to call.

3. On dates such meetings called by the Chief are scheduled, all employees must attend except those on vacation, on sick leave, on personal leave, or who are specifically excused from attending by the Chief.

4. These provisions as set forth above in paragraphs 1, 2, and 3 shall also apply to supervisory personnel for two additional meetings per year.

7. Recall.

The P.B.A. proposed that minimum recall be raised from two hours to four hours. The Village opposed the change.

Award. The P.B.A. proposal is denied. (P.B.A. panel member dissents).

8. College credits.

The P.B.A. proposed that the 4% provisions be increased to 8%, and the 1% provisions be increased to 2%. The village opposed the increase and questioned the propriety of continuing such benefits.

Award. 1. The benefits of Section 25 - college credits, will apply henceforth only to those who were members of the department prior to the date of this award.

2. Present employees are eligible and may in the future receive compensation under this section for courses completed only in either police science or criminal justice curriculums.

9. Premium holiday pay.

The P.B.A. requested one day's leave to be added to the standing of each employee who actually works a holiday.

The village opposed the request on the grounds that those in police service know they must on occasion work on holidays and presently receive pay or compensatory time for such.

Award. The P.B.A. request is denied. (P.B.A. panel member dissents).

10. Compensatory time accumulation.

The village requested language limiting the accumulation and carry over of compensatory time.

Award. No employee may accumulate more than 40 hours of compensatory time during any fiscal year, and no employee may carry over said accumulated compensatory time with the next fiscal year without the approval of the Police Chief.

11. Clothing allowance.

The P.B.A. requested that the clothing allowance for detectives be increased from \$300 to \$600.

The village opposed this increase and proposed a single standard combined uniform and cleaning allowance of \$500 per year, by voucher issued by the vendor, but that prescribed changes in required uniforms to suit the department's convenience not be charged to the \$500 limit.

Award. 1. The clothing allowance for detectives shall be increased from \$300 to \$400.

2. The other section of arrangements for clothing and cleaning allowance shall be continued unchanged. (Village panel member dissents).

12. Dental plan.

The P.B.A. proposed a dental plan with 100% coverage and a \$350 maximum per individual.

The village opposed the introduction of this new benefit.

Award. The P.B.A. proposal is denied. (P.B.A. panel member dissents).

13. Sick leave.

The P.B.A. requested that sick leave be increased from 18 to 25 days per year accumulatable to a maximum of 250 days with full payment of accumulated sick leave upon retirement. Previously the maximum payment available for unused accumulation has been 50 days.

The village opposed the change and requested a provision that "the Chief of Police may require an employee to provide him with a note from a doctor for any sick leave days taken in excess of three (3) days per fiscal year. The Chief in his discretion, may require an employee who has taken more than 3 days sick leave in any fiscal year to submit to a physical and/or psychological examination, at employer's expense, by a doctor or doctors chosen by the employer."

The request for a doctor's note appears reasonable, but there was little evidence of abuse. The Department is already able to require examinations at its own expense.

Award. The Chief of Police may require an employee to provide him with a note from a doctor for any three consecutive sick leave days.

14. Night differential.

The village proposed that the night differential be eliminated. The P.B.A. asked that the night differential be increased from the present \$200 to \$450 for the first year of the new agreement and \$900 for the second year.

The inconvenience of night shifts has been recognized in the past and continues to warrant compensatory adjustment which should however, be available only when such shifts are actually worked.

Award. Effective Aug. 1, 1982, the night differential shall be increased to \$250, and shall be payable only for those employees

who actually work shifts between 4 p.m. and 8 a.m.

15. Longevity.

The P.B.A. proposed that longevity be increased to \$500 after 5 years, \$500 after 10 years, \$500 after 15 years, plus an additional \$100 per year for each year after the 15th year.

The village proposed no change, and indicated that the entire longevity concept has outlived its usefulness given the regularity of total compensation adjustment through the periodic collective bargaining process.

The panel considers that longevity components are too engrained in total compensation arrangements to be significantly altered at this time.

Award. Section 4 - longevity pay continues unchanged. (The P.B.A. panel member dissents).

16. Vacations.

The P.B.A. proposed to increase vacation time from the present maximum of 20 days after 4 years of service to 25 days after 5 years of service plus one day per year to be added after 6 years of service. They also asked that vacation be usable in one day segments.

The village refused the increased vacation benefits and in addition proposed that "with the prior written consent of the Chief of Police, an employee may accumulate and carry over into succeeding fiscal years up to 15 vacation days. No employee may take vacation days between Memorial Day and Labor Day without the approval of the Chief of Police. In no event may an employee take more than 10 working days vacation during said period."

The panel is mindful of the importance of adequate staffing during the peak summer season and also that the force is supplemented during this period. Section 17 on vacations indicates that substantial practice has evolved over time to accommodate vacation rights and also to provide for recall from vacation in case of necessity.

The evidence did not indicate particular difficulty with the scheduling of vacations or the abuse of accumulation. There was some indication that one day segments are inconsistent with the purpose of vacation to enable a sustained change from routine.

Award. Section 17 - vacations continues unchanged. (The P.B.A. panel member dissents).

17. Wages.

The P.B.A. requested a salary adjustment of 12% as of Aug. 1, 1981, and 10% as of Aug. 1, 1982.

The village offered a 5% wage increase for fiscal year Aug. 1, 1981, through July 31, 1982, and an additional 5% for fiscal year Aug. 1, 1982, through July 31, 1983.

The panel has carefully considered both the value and limits of comparability not only with the police in the surrounding town, but also with school districts as urged by the village. Further, the panel is aware of the fringe benefit costs to the village and the substantial pension program. The public member has been duly impressed by the similarities and differences which caution against over simple comparison or contrast between east end and west end communities.

Equity, local control, and preservation of a constructive relationship are significant context factors surrounding ability to pay and comparability.

The village offer was considered both in view of the increases provided other employees not in the police department and of the decreasing, but nevertheless real erosion of living standards due to inflation.

The financial potential of the village and the consequences for both full and part time residents were amply dealt with in testimony and supporting documentation and have been most seriously considered by the panel.

The panel understands the practice of using the fifth-year police officer salary as a "benchmark" and that the prior agreement fixed this figure at \$21,400 as of Aug. 1, 1980.

Award. 1. That Aug. 1, 1980, salary amounts be increased by 9% retroactive to Aug. 1, 1981. (The village panel member dissents).

2. That Aug. 1, 1981 salary amounts be increased by 8%, effective Aug. 1, 1982. (The village panel member dissents).

18. Schedule of tours.

In essence the village proposed that the present "chart" of 5 - 72, 5 - 72, and 5 - 96 be replaced by a new pattern of 4 - 72, 5 - 72, and 4 - 96. Contingent upon the new schedule, the village proposed to eliminate the special 7 p.m. to 3 a.m. duty tour (known as "4" duty tour) which was a supplement to the prior agreement for a two year period ending July 31, 1981.

The P.B.A. opposed any change in the present 5 - 72, 5 - 72, 5 - 96 pattern.

The detailed new proposal was made a matter of record in a transmittal from the village counsel on Nov. 17, 1981, and contained

a daily schedule illustration for five squads for August 1981 through July 1982,

The panel treated this proposal with the utmost seriousness, recognizing the genuine concern of the department for enhanced ability to deploy its forces at varying times in accordance with unpredictably changing needs.

The apparent intent is to provide movement through the changing shift system more quickly and to provide an overlapping 4 to 12 shift, or double coverage, every fourth day.

The difficulty faced by the panel is that the proposed "fourth day" moves on a regularly scheduled basis and may not in fact provide the intended flexibility with any greater convenience or lesser cost than the present system affords. The department sought and obtained a degree of flexibility in the so-called "fourth platoon" added to the last contract.

The panel also recognizes the significance of an established schedule to police officers who have made collateral arrangements accordingly and who at present are obliged to be on call and respond to unanticipated service needs.

Award. The present chart or schedule of tours be continued together with the "4" duty tour or 7 p.m. to 3 a.m. tour as specified in the prior agreement. (The village panel member dissents).

#### Addendum

The gravity of the schedule issue is sufficient to warrant the panel offering a non-binding, but serious recommendation that the parties appoint a technical committee of two from each side to begin study of the matter at once with the intent to provide in advance of future negotiations a mutually satisfactory basis of facts and alternatives to accommodate the need for greater flexibility with cost minimization and consideration for the impact on police officers' personal and family obligations and options. This investment in the avoidance of future impasses would be in the public interest.

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