

Award of Arbitration Panel

In the Matter of Arbitration

Between

Town of Evans

And

Town of Evans Police
Benevolent Association, Inc.

Interest Arbitration

PERB Case No. IA 82-21
M82-127

Appearances

Town

Earl C. Knight, Chief Spokesman

Association

Anthony J. De Marie, Chief Spokesman

Arbitration Panel

Public Panel Member and Chairman - Dr. Thomas Gutteridge

Employer Panel Member

- Ralph Hogg, Jr., Member of Evans Town Board

Association Panel Member

- Norbert D. Chazen, Police Officer--Town of
Hamburg

INTRODUCTION AND BACKGROUND

The three-year contractual agreement between the parties expired December 31, 1981. The Police Benevolent Association (hereafter PBA) attempted to enter negotiations for a successor agreement by notice dated July 31, 1981. The Town of Evans (hereafter the Town) refused to

negotiate on the grounds that the PBA had waived its right to enter into a successor agreement since the contract (Article II) indicated that a request to reopen the agreement may be submitted on or before July 1, 1981. The PBA thereupon filed an Improper Practice Charge and, on March 24, 1982 PERB directed the parties to meet and negotiate a successor agreement. A negotiation session was held on May 3, 1982, May 13, 1982 and May 20, 1982. After the third meeting, the parties declared themselves at impasse and PERB assigned a mediator. After three mediation sessions, only a few additional issues were resolved, and the parties petitioned for compulsory interest arbitration.

Pursuant to the provisions of section 209.4 of the New York Civil Service Law a Public Arbitration Panel was designated by PERB on October 14, 1982. Ralph Hogg, Jr., Town Councilman, was appointed by the Town as its representative; while the PBA selected Norbert D. Chazen, Town of Hamburg police officer, to be the Employee Organization representative. The parties in turn jointly selected Dr. Thomas G. Gutteridge from the PERB panel to serve as Chairman.

A preliminary meeting was held on Friday, December 10, 1982 for purposes of clarifying the issues in dispute and to discuss the procedures to be followed for the arbitration hearing. Several issues were remanded to the parties for further discussion and possible settlement.

The arbitration hearing was held on February 7, 1983 in the Evans Town Hall. By means of a pre-hearing written brief and oral testimony during the hearing, the parties were afforded full opportunity to present argumentation and supportive documentation with regard to the outstanding issues. Upon receipt of some clarifying material from the

PBA, the record of this hearing was declared closed on February 11, 1983.

After due evaluation of the rationale and evidence presented by both parties, the following represents the panel's determination of the matters in dispute. As required by law, this award represents the best judgment of the panel as to what constitutes "a just and reasonable determination of the matters in dispute." In arriving at this award, the panel gave careful consideration to the factors prescribed by law including:

1. Comparison of the wages, hours and conditions of employment of Town of Evans police officers with police officers in comparable communities, especially those within Erie County.
2. Welfare of the public and financial ability of the Town of Evans to pay.
3. Special requirements and unique qualifications of police officers in comparison with other trades or professions.
4. Terms of collective agreements negotiated between Town of Evans and PBA in past years.

OUTSTANDING ISSUES

1. Agency Shop

The PBA is requesting contractual language requiring all police officers to either become an Association member or pay a service charge (agency fee) equivalent to union dues. At present, every Town of Evans police officer is a member of the PBA.

Discussion

The PBA rationale for this demand is the traditional "free rider" argument which opposes individuals who benefit from the services being rendered, such as contract negotiations and grievance administration, but are unwilling to financially support such efforts. The PBA notes that the requested agency fee language is permitted under Article 14 of the Civil Service Law and authorized under Section 93b of the General Municipal Law. The PBA further asserts that many police department contracts in Erie County include agency fee language. Finally, the PBA has agreed to establish a refund procedure so that, upon demand, the pro rata share of dues devoted to political or ideological activities only incidentally related to terms and conditions of employment will be returned to the requesting employee.

The Town opposes the agency fee clause as a matter of principle and believes the decision to join or refrain from joining the Union should be a personal matter, not to be imposed upon the parties by an Arbitration panel. The Town also believes the Union should sell itself by providing proper representation rather than forcing membership upon police officers. Finally, the Town notes that a number of area police department contracts do not include agency fee language.

Award

The panel is not especially persuaded by either the pro or con philosophical arguments regarding the general issue of agency shop. Rather, this issue is viewed primarily as another term or condition

of employment which is of value to a union in maintaining its financial strength and retaining its bargaining position vis-a-vis the employer. Thus, the panel's decision on this issue is guided more by the specifics of the immediate situation rather than the philosophical principles set forth by the parties.

As demonstrated by the PBA data, it is evident that agency shop is a common benefit among Erie County police departments, even though some of the smaller police departments in the Southern Tier of Western New York do not have it. Thus, given the prevalence of agency shop language in comparable departments coupled with the fact that 100 percent of the Evans police officers currently belong to the Association and in light of the other dimensions of this award, the panel supports the PBA position on this issue. Therefore, the panel awards that Section 3.01 of the contract shall be modified to provide the requested language relating to agency fee.

2. Uniform Allowance for Detective's

The current contract language provides for all required uniforms to be furnished by the Town of Evans. In addition, the Town provides an unofficial clothing allowance of \$300 for Detectives. The PBA is requesting that this clothing allowance be incorporated into the contract and increased to \$500.

Discussion

The PBA argues that in all other Erie County municipalities where uniforms and items of equipment are furnished some provision is made for a clothing allowance for detectives. The PBA notes that, due to the nature of their assignments, detectives are required to expend additional sums to purchase civilian clothing (e.g., suits) to wear on the job, and this clothing sustains the same wear and tear as the officer's uniform would have if he was wearing one.

While the Town is willing to continue the unofficial allowance, it questions whether a business suit is considered as a uniform.

Award

The panel is persuaded by the PBA's arguments on this issue. Detectives are required to purchase and wear civilian clothing, other municipalities provide a uniform allowance and Evans currently provides an unofficial allowance of \$300. Thus, the panel sees no reason the uniform allowance should not be incorporated into the agreement as a term and condition of employment. Based on the PBA's figures, the average allowance for 7 municipalities in Erie County is \$360. Given this information, the panel awards that effective January 1, 1983, officers assigned as detectives will be paid the sum of \$350 per year as a uniform allowance.

3. Court Pay

The Town now compensates police officers for required Court appearances during non-scheduled working hours at their regular hourly rate of compensation with a

guaranteed minimum of three (3) hours pay for each such appearance. The PBA is seeking to be paid time and one-half the police officer's regular hourly rate for court appearances with a minimum payment of four hours for appearances in courts outside the Town of Evans. The minimum will remain at three hours for a court appearance within the Town of Evans. The PBA is also requesting that police officers be paid the minimum appearance time in the case of an adjournment unless he is given at least 72 hours notice of such adjournment.

Discussion

The PBA notes that Evans police officers required to appear at the County Seat and the City of Buffalo in places such as the Bureau of Motor Vehicles, Grand Jury, Erie County or New York State Supreme Courts, Erie County Family Court, etc. must travel the furthest^{est} distance of any police officer employed by municipalities in Erie County. Court attendance, both in the Town of Evans and elsewhere, represents an interruption in the police officer's day-off and often, his usual hours of sleep. The PBA notes that this schedule disruption is particularly unfortunate when a police officer has made necessary arrangements for a court appearance only to be notified of an adjournment at the last moment. According to the PBA, it is not unreasonable for police officers to request prompt notice of court adjournments so they can plan their personal affairs. Also, the PBA notes that court appearances are in addition to the police officer's regular work week

and, thus, should be considered overtime work. Finally, the PBA noted that many Erie County police departments pay the four (4) hour minimum for court appearances outside the area and three (Village of Kenmore, Town of Lancaster and Village of Hamburg) pay for court appearances at the rate of time and one-half. The PBA also noted that many of the Erie County police departments compensate police officers if they don't receive minimum notification.

The Town argues that payment of straight time for court appearances with a guaranteed minimum of three hours is both sufficient and in line with the standard in many other police departments.

Award

The panel concurs with the Town that payment of straight time for court appearances is the prevailing norm for Erie County police departments. Thus, it does not believe the evidence supports the PBA request for time and one-half. On the other hand, the panel notes that a preponderance of Erie County police departments pay a four hour minimum for court appearances outside their territorial boundaries. And, the panel believes this one hour differential between in-town and outside court appearances is warranted by the distance Evans police officers must drive to Erie County and Buffalo courts. Finally, the panel is persuaded that some type of minimum notice of court adjournments is both reasonable and in accord with the practice in some Erie County police departments. Given all these factors, therefore, the panel awards (1) the request for time and one-half payment for court

appearances shall be withdrawn, (2) police officers shall be entitled to a minimum of four (4) hours pay for court appearances outside the territorial boundaries of the Town of Evans and (3) police officers shall be entitled to the applicable minimum court pay in the event that they are not notified four (4) hours prior to their scheduled court appearance of an adjournment or other disposition.

4. Out-of-Work Pay

Section 3 of Article XIV (Schedule of Salaries) provides that when a police officer is required to work a full normal day on a position of higher rank, he is credited with two (2) hours of compensatory time. When this time has accumulated to eight (8) hours the police officer is scheduled for a day off with pay. The PBA is requesting that the amount of compensatory time granted for working one day in a higher classification be increased from 2 to 4 hours. The PBA is also asking that these assignments to higher ranks be made based on seniority. The Town is proposing to eliminate the compensatory time provision and pay the police officer the higher rate of the position.

Discussion

The PBA argues that two (2) hours of compensatory time is inadequate compensation when a police officer must temporarily perform the duties of a higher classification, e.g., Acting Lieutenant. Also, the PBA argues that the filling of a temporary vacancy should be based upon seniority

since the senior police officer, on the shift on which there is a vacancy, has the most experience and training and is the officer most respected by the younger police officers. Moreover, the PBA argues that by practice other Erie County police departments fill temporary vacancies by seniority.

The Town argues its proposal would provide police officers added compensation and eliminate the problem of scheduling compensatory time off. It argues the PBA's proposal unduly restricts management's rights to assign the best qualified officer to a vacancy and that four (4) hours compensation equates to a greater rate than the higher rank normally pays.

Award

The panel is not especially persuaded by any of the proposed changes on this issue. While the prevailing standard in Erie County police departments is to pay the difference between the police officer's regular salary and that of the higher classified position, as per the Town of Evans proposal, the PBA appears to prefer the compensatory time approach. Since this system appears to be working well and scheduling the time off is not a major problem, the panel is reluctant to charge the payment system for out-of-rank work from comp time to dollars. However, the panel is not convinced that two (2) hours of comp time for one day of out-of-rank work is inadequate. Nor is it willing to restrict the Town's right to assign the best qualified officer, on a temporary basis, to a higher rank. By practice the senior officer on the shift in question may receive the assignment to the higher rank. The panel is not willing,

though, to contractually guarantee this. Given the foregoing discussion, the panel has concluded that both the Town's and the PBA's proposals relating to out-of-rank pay should be withdrawn.

5. Overtime Pay

The contract (Section 1-d of Article XIII) currently provides overtime compensation at the rate of time and one-half for all hours worked beyond the regular forty hour week. The PBA is seeking overtime for all work beyond an eight hour tour of duty. Also, it wants full-time police officers to have the right of first refusal of any overtime work available and also wants the offer to work overtime to be made based on seniority.

The Town is proposing contract language that would bring it into compliance with Article 971 of the NYS Unconsolidated Laws which provides that, except in an emergency, no police officer may be assigned on duty in the open air to more than one eight (8) hour tour of duty in a 24 hour period.

Discussion

The PBA notes that all of the Erie County police departments surveyed pay officers who work beyond an eight hour shift at the rate of time and one-half. The PBA is also seeking a system for allocating overtime among the officers on a given shift. Finally, the PBA is demanding that full-time Evans police officers be given priority over the part-time officers in working needed overtime. In support of this position,

the PBA argues that the part-time employees lack the experience, training and knowledge of the full-time officers. The PBA notes that the Town of Evans is the only municipality in Erie County which employs part-time police officers.

The Town believes the area of overtime compensation is legally controversial and better left alone. Also, it argues it is both philosophically and financially opposed to assigning all emergency overtime to full-time police officers.

Award

The panel is not persuaded that there are legal prohibitions preventing the payment of time and one-half for hours beyond an eight hour shift. Moreover, it notes the prevailing standard in Erie County police departments is to pay overtime at 1-1/2 when officers must work beyond 8 hours per day or 40 hours per week. The rate of pay for overtime is fixed and it is then up to management whether or not to schedule overtime. The panel also concurs that some equitable means for distributing available overtime among all the police officers is appropriate. Finally, the panel is sympathetic to the PBA's desire to give full-time officers first crack at the available overtime. However, the estimated cost of implementing this proposal is high (about \$14,000 per year) and there is no evidence the part-time officers are performing in a less than satisfactory manner. Based on this analysis, the panel awards: (1) Effective January 1, 1983 time and one-half overtime shall be paid for all hours beyond a normally scheduled eight-hour tour of duty and beyond the normally

scheduled forty (40) hour work week, except for briefing time which shall continue to be paid at straight time, (2) the parties shall develop a system whereby on each shift overtime shall be equalized among police officers according to their seniority and the number of hours overtime already worked, (3) all other proposals relating to overtime shall be withdrawn.

6. Educational Incentive Pay

The PBA is seeking to add language to the contract which will provide \$250 a year to police officers with associate degrees in art or science and \$500 a year to those officers with a Bachelor of Science or Bachelor of Arts degree.

Discussion

While acknowledging that only those police officers in the Town of Amherst, Village of Hamburg and the Town of Cheektowaga presently receive educational incentive pay, the PBA argues such a clause will encourage officers to obtain additional education and, therefore, make them better employees. The Town questions whether obtaining a general degree at the associates or bachelors level makes the police officer better prepared to perform his job. Also, it emphasized these educational credentials are not a civil service requirement for the job.

The Town notes it currently pays for any required training. And, while it agrees that an associate or bachelors degree in police science may better qualify a police officer for advancement, it suggests this is still a personal matter. Moreover, the Town argues this is not a common benefit in area police departments. Finally, the Town suggests the real reward from education should be individual growth not increased compensation.

Award

The panel is persuaded by the Town's arguments on this issue. Education incentive pay is not a common benefit among comparable police departments, and there remains some questions as to the immediate work value of a college degree for police officers, especially in the general education area. Also, as the Town argues, while increased education for police officers is a beneficial goal, it is not a responsibility of the taxpayer. For these reasons, the panel concludes the PBA should withdraw its demand relating to education incentive pay.

7. Work Shift

Article XIII, Section 1b of the Contract specifies the officers' work shifts and provides that officers will also work "other special schedule as needed as determined by the Chief of Police." Section 1c of Article XIII permits officers to bid for their work shift once a year based on their seniority. The PBA is seeking to continue

the present work shifts but is asking that police officers be allowed to bid on the special schedules such as radar patrol and lake patrol.

Discussion

The PBA believes that, like the regular work shifts, all special schedules should be allocated based on seniority. In its view, this is a fair, equitable method and prevents charges of favoritism. The Town argues this demand would restrict its ability to most effectively utilize police officers in filling its manning requirements.

Award

The panel is sympathetic to the PBA argument that, assuming they possess the basic qualifications, the senior officers who so desire should have the opportunity to work the special schedule. On the other hand, the panel also understands that the Town must have the freedom to establish temporary special assignments and assign police officers to them according to their abilities and qualifications. In the panel's view these two positions are not mutually exclusive, and a compromise could be worked out allowing the Town to establish the necessary qualifications and experience for these special assignments and then allowing qualified officers to bid, with the senior officer(s) obtaining the assignment if their qualifications are equal

to the other candidates. Of course, such a system would not apply to short-term, emergency schedules. In this instance, the panel is refraining from such an award because it believes the current method of assigning officers to these special schedules is equitable and takes seniority into account, assuming the officer has the basic qualifications. Thus, although not contractually required to do so, it appears the Town of Evans is willing to consider police officer preferences in establishing its normal special schedules such as lake patrol and radar. Also, the panel notes the practice in assigning officers to special schedules in other Erie County police departments is mixed--some consider seniority and some do not. Based on the foregoing analysis, the panel declares that the language regarding work shift shall remain as currently in the contract and the PBA shall withdraw its demand pertaining to this issue.

8. Briefing and Report Time

Article XIII (Hours of Work and Overtime) provides for a paid 15 minute briefing time prior to the police officer's regularly scheduled tour of duty and a paid 15 minute report writing time immediately following his shift. The Town is seeking to delete both briefing and report writing time from the contract. It should be noted that, while briefing and report writing time both constitute overtime, they are paid for at a straight time rate. The parties concur that the dollar value of the briefing and report writing time is \$1250 per officer per year or \$625 for each 15 minute period.

Discussion

The Town argues that neither briefing nor report writing time are a requirement for the position of police officer in the Town of Evans. In the Town's mind, a police officer can obtain an ample briefing by scanning the police blotter prior to commencing his shift. With respect to the report writing, the Town believes the police officer can complete any necessary paperwork during his work shift. In fact, the Town maintains that police officers are only rarely staying around beyond their regular quitting time. In sum, the Town believes briefing and report writing time are unnecessary, are not a job requirement and represent an unwarranted taxpayer expense. Moreover, the only other area police department with these provisions is the City of Buffalo, which the Town submits is not comparable to the Town of Evans.

The PBA submits that the briefing time is a useful vehicle whereby officers on the two adjoining shifts can share information. Also, it argues that report writing time can maximize the patrol time an officer can spend during his regular work shift. The PBA is, however, willing to forego those benefits, provided the equivalent salary represented by this 1/2 hour per day is incorporated into the salary schedule.

Award

After considerable discussion, the panel has determined that, while there is some inherent value in the pre-shift briefing time, the Town is correct that the post-shift report writing time is not really necessary. The briefing time provides the officers on the incoming and outgoing shifts an opportunity to discuss important issues and concerns and to share relevant data. For the most part, the needed paperwork can be completed during normal work hours and, under unusual circumstances, on a overtime basis. Thus, the panel has decided to agree to part of the Town's proposal by deleting report writing time from the contract. In so doing, however, the panel is mindful that this is an economic benefit and the police officers should not suffer a financial penalty by foregoing the extra 15 minutes at the end of their shift. For these reasons, the panel awards that effective January 1, 1983, the language and compensation regarding show-up time will remain in the contract, while the language and compensation regarding report writing time will be deleted. However, the dollar value of the report-writing time (\$625 per police officer) is to be incorporated into the regular salary schedule.

In other words, besides the salary award discussed elsewhere in in this document, effective January 1, 1983 each police officer's regular salary will be increased by \$625. This is a permanent increase to be added to the base.

9. Holidays

The current contract provides for twelve (12) holidays. The PBA is seeking two more holidays (Easter Sunday and officer's birthday), time and one-half if they work the holiday and an agreement that they will be granted any other special holidays given by the Town of Evans to employees. Also, the PBA wants police officers to have an opportunity to elect either compensatory time-off or pay for the holidays. At present, the police officers receive one compensatory day off with pay for each holiday.

Discussion

The PBA argues that most Erie County police departments allow officers to elect either compensatory time off or the value of their holidays or some combination of the two. Moreover, it maintains that if the Town grants other employees a holiday by resolution or declaration that said holiday should be extended to all police officers.

The Town argues the current holiday schedule is fair and reasonable, and notes that the state-wide average of holidays for police departments is 11-12 days per year.

Award

The panel concurs with the Town that the holiday schedule for Evans police officers is adequate. Moreover, most Erie County police departments do not pay time and one-half for holiday work. And, the panel sees little reason to include the requested PBA language on special holidays in the contract on the assumption that some day such a special occasion might occur. Presumably should such circumstances arise that the Town would declare a special holiday it would extend that benefit to all municipal employees, unless there was some compelling reason not to do so. The panel, however, agrees with the PBA that officers should have the right once a year to elect to be paid for holidays, to receive compensatory time off or some combination of the two. Based on this rationale, the panel has concluded that the PBA should withdraw all proposals relating to holidays except the language concerning the option of pay or compensatory time. On this issue, the panel concludes Article XII - Section 1 (Holidays) should be amended to allow Evans police officers to elect by December 1 those holidays during the following year they wish to be paid for and those for which they want compensatory time off.

10. Vacation

The current vacation schedule is as follows:

<u>Period of Continuous Service</u>	<u>Vacation Time Off With Pay</u>
After six months or more	1 week
After one year or more	2 weeks
After three years or more	3 weeks
After five years or more	4 weeks

The PBA is seeking to add a fifth vacation week after ten years and six weeks after 15 years. The Town is proposing to create two different schedules (one for police officers and one for full-time clerks-dispatchers) for employees hired after January 1, 1982. The vacation schedule for new employees would be:

<u>Police Officers</u>		<u>Dispatchers</u>	
<u>Service</u>	<u>Weeks</u>	<u>Service</u>	<u>Weeks</u>
After 1 year	2 weeks	After 1 year	2 weeks
After 5 years	3 weeks	After 5 years	3 weeks
After 10 years	4 weeks	After 15 years	4 weeks

Discussion

The PBA argues its proposal will keep the Town of Evans apace of other Erie County police departments. The Town maintains the vacation schedule for police officers is better than that of most other Erie County police departments. Also, the Town argues its proposal will bring vacation schedules for new hires more in line with that of the Highway and Water Departments.

Award

The panel is not persuaded by the proposals or supporting arguments made by either party on this issue. Based on the available evidence, vacation schedules for Evans police officers are equal to or better than those offered by other Erie County police departments. If one looks at the total compensation package, however, it is clear that Evans police officers are below average for Erie County. Thus, the superior vacation schedule does not seem unreasonable. And, the panel sees little merit in creating two classes of police officers by creating a second (inferior) vacation schedule for new hires. Therefore, the panel has concluded that all proposals relating to the amount of vacation for a given length of service should be withdrawn.

11. Vacation Scheduling

At the present time, by practice, vacation days are granted, subject to approval, at a time requested by the officer and, if so requested, vacation days can be granted one day at a time. The PBA is concerned that this past practice will not be honored because it is not in the contract.

Discussion

The PBA argues that the ability to schedule vacations one day at a time is both reasonable and has been the practice in the Town of

Evans. The Town maintains that scheduling vacations one day at a time will make it impossible to either schedule regular work shifts or to schedule vacation periods for other employees.

Award

The panel is reluctant to incorporate past practice into the contract as a matter of course, especially if there is little evidence that the practice involves a significant issue. In this case, however, the panel is persuaded by the PBA's arguments for incorporating the scheduling clause into the contract. And, it believes there is little evidence to support the Town's claim that scheduling vacations one day at a time is not feasible. Of course, the approval of the police chief will still be required. In view of these considerations, the panel concludes that Article XI - Section 1 (Vacations) should be amended to provide that vacations may be taken one day at a time upon approval of the Police Chief.

12. Bereavement Leave

Article XVI (Leave of Absence) of the contract provides for five (5) days of bereavement leave for death in the immediate family (parent, mother-in-law, father-in-law, spouse, child, son-in-law, daughter-in-law) and two (2) days for grandparent, grandchild, brother, brother-in-law, sister, sister-in-law, aunt,

uncle, niece, nephew and first cousin. The PBA is seeking to expand the definition of immediate family to include stepchild, brother and sister as well as brother-in-law and sister-in-law. In addition, it is seeking language so that an officer who is on vacation will be credited with bereavement leave without loss of vacation time, provided he attends the funeral. At present a police officer is paid bereavement leave only if the leave falls on a regularly scheduled work day. The town is seeking to reduce the length of bereavement leave to one (1) day for the death of aunt, uncle, niece, nephew and first cousin. Also, the town is asking for language requiring the officer to furnish proof of death and attendance at the funeral if so requested.

Discussion

The PBA argues that most Erie County Police Departments provide bereavement leave in instances of a death of a stepchild, brother and sister, as well as brother-in-law and sister-in-law. The PBA also suggests this arrangement is equitable and just.

The town argues that reducing bereavement leave to one day for distant relatives is in line with the labor agreement in other Erie County police departments and is a small move in the desired direction for greater accountability of time out of service. The town also maintains the request to charge bereavement leave rather than vacation time in the event a death occurs when the officer is on vacation is inappropriate.

Award

The panel is not persuaded by the PBA request to utilize bereavement leave in lieu of vacation days. In the panel's view, the purpose of bereavement leave is to permit individuals to attend the funeral of a loved one without incurring a financial penalty. If the funeral occurs during the police officer's day off or vacation, the Town should not have to assume the responsibility of providing a bereavement leave day. The panel is also not convinced of the town's rationale for verification of death or attendance at the funeral. In the absence of compelling evidence that bereavement leave is being abused such a requirement appears unwarranted. The panel finds the other two proposals much more compelling. Based on the available evidence, it is clear the town's bereavement leave policy is better than that of other area police departments, except that stepchild, brother and sister, and brother-in-law and sister-in-law are left out of the definition of immediate family. The addition of these two categories appears warranted and is in line with other contracts. Likewise, limiting bereavement leave to one day for distant relatives is reasonable, especially given that many other police departments do not include such relatives in their bereavement leave clause at all. Based on the foregoing analysis, the panel awards that stepchild, brother and sister and brother-in-law and sister-in-law shall be added to the definition of immediate family in the bereavement leave clause, while Article XVI - Section 3 shall be amended to provide up to one day of bereavement leave in the death of an aunt, uncle, niece, nephew or first cousin. All other proposals on this issue shall be withdrawn.

13. Personal Leave

Article XVII (Personal Leave Days) provides for two personal leave days without loss of pay. The PBA is seeking to increase the number of personal leave days to five (5) and to change the language so as to minimize the restrictions upon its use. The Town is seeking language defining personal leave, requiring three (3) days notice of the requested use of personal leave and a statement that personal leave cannot be used before or after a holiday.

Discussion

The PBA notes that most of the Erie County police departments grant 4-5 personal days per year and police officers are not required to indicate the reason for the requested leave. According to the PBA, personal leave days are for personal reasons and police officers should not be required to divulge the reason. The Town feels the need to tighten up on absenteeism and believes its proposed language accomplishes this. The Town also notes the current language is working well.

Award

The panel is reluctant to write language for the parties, especially when there is no compelling evidence that the current language is inadequate or flawed. While some of the language proposals submitted

by both the PBA and the Town appear reasonable, the panel believes that it is better for the parties to work out compromise language themselves during the next round of negotiations. On the other hand, the panel is persuaded that, given comparative data, an increase in the number of personal leave days is warranted and three (3) personal days per year is not unreasonable. Given these considerations, the panel awards effective January 1, 1983 the number of personal leave days shall be increased from 2 to 3. All other proposals on this issue shall be withdrawn.

14. Sick Leave

At the present time Evans police officers are granted 13 sick days per year which they can accumulate up to 150 days. Upon retirement, the officer is paid the value of his unused sick days or he can use them to continue in the health insurance program. The PBA is seeking to expand the number of sick days per year to 18 and to allow officers to use accumulated sick leave for family illness as well as their own. The PBA is also seeking language stating that there will be no charge against accumulated sick leave if an officer becomes ill after being on duty for two hours or more.

Discussion

The PBA noted that in every other Erie County Police Department except Kenmore (14 sick days per year) police officers receive 18 sick days per year. And, in Hamburg and the Town of Lancaster, police

officers can use some of their sick days for family related illness. The PBA also argues that the physical, out-of-doors nature of a police officer's job is ample justification for more sick leave than that granted persons engaged in other occupations. Finally, it notes the concept of using sick leave for family illness is reasonable since an officer is going to want to help a spouse or child who is seriously ill or has been injured.

The Town argues that 13 sick leave days per year is adequate and meets the average for police contracts across New York State. The Town is also concerned about sick leave abuse and is unwilling to allow the use of sick leave for other than police officer illness. Finally, the Town suggests that if police officers become sick on the job and take the day off it should be charged to their sick leave.

Award

According to both parties, the past practice in the Town of Evans is that on the rare occasion when an officer goes home sick he is not charged a sick day. Thus, the panel sees no reason to incorporate the PBA proposal on this issue into the contract. Also, while the panel is sympathetic to the idea of using sick days for family illness, this is not yet a common benefit in Erie County. And, the panel is reluctant to make the Town of Evans a pace-setter on this issue, especially given the other improvements included in this award. It is clear, however, that the available sick leave days in Evans are below the prevailing

standard and a modest increase is warranted. Also, with respect to sick leave abuse, the panel is of the firm opinion that the Town has the right and responsibility to take disciplinary action when it occurs. The many should not be penalized for the transgressions of the few. Given this rationale, the panel has concluded that, effective January 1, 1983, the number of sick days for police officers should be expanded to 1-1/4 days per month which is 15 days per year. All other proposals relating to sick leave shall be withdrawn.

15. Sick Bank

The PBA is proposing the establishment of a sick bank to aid officers who suffer prolonged illness and whose regular sick leave has been exhausted.

Discussion

The PBA notes that most of the other Erie County police department contracts provide for a sick leave bank. Moreover, the PBA notes that the establishment of a sick bank represents little risk to the Town since police officers must contribute to the sick bank to make it effective. While the Town acknowledges that a sick leave bank may have some merit in the event of a catastrophic illness, it argues the primary beneficiaries of this provision would be those police officers who have used up all their available sick leave. And, as previously discussed, the Town is concerned about instances of sick leave abuse on the part of some Evans' police officers.

Award

The panel is sympathetic to the concept of a sick bank. It agrees that a sick bank can provide employees important protection against a catastrophic illness at a relatively low cost to the employer. Moreover, the panel notes that, in response to the Town's concern, that sick banks can be designed so that employees who abuse their sick leave can not draw from the bank. For all these benefits, however, the panel is reluctant to mandate a sick bank because, in order for it to work, both parties must agree to the language regulating its operation. Thus, the panel believes the concept should be studied further in order to draft language the parties can live with. For these reasons, the panel has concluded the proposed sick leave bank language should be withdrawn. As indicated, however, the panel encourages the parties to jointly negotiate such a provision into their successor agreement.

16. Health Insurance

The Evans police officers are currently covered by hospitalization benefits (50-51 Blue Cross/Blue Shield, Major Medical with Drug Rider, \$1.00 co-pay plan) and a Dental Plan. The Town pays for all of the hospitalization coverage plus \$2.50 per employee per month for the dental plan. The PBA is seeking to improve the dental plan, add vision coverage (\$1200 per year estimated cost) and to continue all health insurances for retired officers up to age 65. The PBA is also requesting disability coverage for police officers. The Town is seeking language

providing that it will pay only the cost in effect at the time of budget adoption, with the PBA paying any increases. Also, the Town is requesting language that would make police officers ineligible for health care coverage if their spouses have such coverage through another employer.

Discussion

The PBA argues that improvements in the health insurance coverage for Evans police officers is warranted in terms of comparisons with other Erie County Municipalities. In particular, the PBA argues the Town of West Seneca provides its police officers optical and dental coverage. And, according to the PBA, other towns are presently negotiating for such benefits. The PBA furthermore notes that all the Erie County Municipalities it surveyed provide some form of continuation of health increase coverage after retirement. Finally, the PBA notes police officers do not presently have any form of disability insurance of the type normally provided employees covered by Workmen's Compensation.

The Town maintains that the escalating cost of health insurance must be brought under control. In particular, it wants employees to share the cost of funding the fringe benefits and desires to eliminate situations where husband and wife have duplicate health care coverage since it means the Town is paying for coverage its employees are not able to utilize.

Award

The panel is sympathetic to the position of both parties on this issue. On the one hand the cost of health care coverage is increasing at a rapid rate. There is a need to obtain the best coverage at the lowest rate. On the other hand, quality health care is an important employee fringe benefit. With respect to the Town's proposals, the panel notes that the norm in Erie County police departments is for the employer, not the employee, to assume the cost of health care coverage. And, the Town's cost in these areas is not unreasonable in comparison to other departments. Thus, the panel is not persuaded that the police officers should pay any increase in the cost of health care coverage once the budget has been adopted. This proposal is much too open ended. Nor does the panel concur with the Town's language eliminating health care coverage for police officers who are also covered under a spouse's plan. While the panel generally concurs with the idea of eliminating double health insurance coverage, it is concerned that the Town's language will leave holes in employee protection, especially if the two health care policies are not identical. In the panel's opinion, this issue needs more study before a final solution is developed.

The panel is not in agreement, either, with the PBA demands for vision coverage and continuation of health care for retirees. Vision care is not yet a common benefit and, under the current contract, retirees can apply their unused sick leave to continue their group hospitalization insurance. In the panel's view, this is sufficient.

The panel does, however, support the PBA's request for improved dental coverage and the addition of disability insurance. The current dental plan appears adequate, however, the town pays only part of the cost and the plan does not include family coverage. The estimated annual cost of such coverage is about \$6600, which the panel considers reasonable. There is some discrepancy as to the cost of disability coverage with the town suggesting it will be about \$4000 per year and the PBA indicating \$500 or so is a more accurate figure. In either case, the panel believes this is an important and worthwhile form of protecting employee income. For all the foregoing reasons, the panel concludes that the town shall pay the full cost of the current dental plan at the family rate and shall provide each employee a plan to cover off-the-job disability. All other proposals on this issue are to be withdrawn. Full coverage at the single rate shall become effective January 1, 1983, while family dental coverage and the disability coverage shall become effective as soon as possible.

17. Indemnification

The PBA is seeking language whereby the town will indemnify each police officer for claims made against him based upon false arrest, false imprisonment, and other civil rights violations.

Discussion

While this is a complex legal issue, the PBA is basically asking that the town purchase indemnification insurance or otherwise indemnify its police officers against alleged violations of a citizen's Civil rights. Although the General Municipal Law of New York State provides

that police officers must be saved harmless for any negligent act or tort that they may commit in the performance of their duties, the PBA suggests it is legally unclear whether claimed Civil rights violations fall under the provisions of General Municipal Law. Therefore, the PBA wants the Town to provide such protection by means of insurance coverage.

Award

According to the PBA, the Town of Cheektowaga has managed to incorporate the requested indemnification insurance in its overall insurance coverage. While the panel is basically sympathetic to the concerns raised by this issue, it does not believe the proposal should be incorporated as a contractual provision. This area is fraught with legal complexities and confusion and, in the panel's view, is best dealt with outside the contract. For this reason, the panel believes this proposal should be withdrawn and so awards. However, the panel urges the Town to seek to include the requested coverage when it next puts its insurance package out for bid.

18. Retirement Benefits

Town of Evans police officers are currently covered by Retirement Plan 384(d) known as the twenty (20) year plan at half pay. The cost of this plan is fully paid by the Town. The PBA is seeking to augment this plan by adding two options:

- a) An alternative 25 year plan (384f,g,h)

- b) A plan which changes the computation of final average salary from the last three years worked to the final year worked (302-9d).

Discussion

The PBA notes that the Special 25 year plan allows workers to accumulate additional retirement benefits if they work more than twenty years. In the PBA's view, this is an incentive for police officers to continue working and is available to police officers in most Erie County Police Departments. Likewise, the PBA notes that most police departments provide the 302-9d plan which bases retirement salaries on the last year of employment, thereby providing a higher base for calculating retirement income. The cost of the Special 25 year plan is about 1.4 percent of annual salaries, whereas Section 302-9d costs about 2.8 percent of annual salaries.

The Town argues that the current retirement plan is the most expensive one available, and is entirely adequate. And, it is unwilling to pay the cost associated with the other retirement proposals.

Award

The PBA is correct that many Erie County police departments provide both 384 (f,g,h) as well as 302-9d, however, most do not also offer the more costly 20 year at half-pay retirement plan (384-d). There are only a few Erie County police departments which offer all three alternatives, and the panel agrees with the Town that the cost of adding the

PBA's requested retirement options is unwarranted. Thus, in view of the other economic improvements included in this award, the panel has concluded that the PBA's proposed improvements in retirement benefits should be withdrawn.

19. PBA Representatives

The contract currently provides release time for a PBA representative to investigate grievances. The PBA is seeking to improve this language by a) allowing the PBA president eight (8) hours per week to conduct union business, b) by designating five PBA members who will receive time-off with pay, as needed, to conduct union business and c) by providing time-off and funding for PBA representatives to attend meetings of the Western New York Police Association (WNYPA) and the Police Conference of New York, Inc. (PCNY).

Discussion

The PBA is seeking to ensure that its representatives be permitted a reasonable amount of time from their regular duties to adjust grievances, negotiate agreements, administer the agreement and otherwise attend to union business. It also wants to ensure that the PBA President can use some of his work time to handle union business and that PBA officers have an opportunity to attend important professional meetings. In addition to being a reasonable request, the PBA notes that the contracts of most other Erie County police departments contain language similar to what it is seeking.

The Town argues that the current language is working well and that its manning requirements will not permit the amount of union release time requested by the PBA. In particular, the Town opposes release time for the PBA president or for attendance by PBA officers at state-wide meetings.

Award

The panel concurs with the PBA premise that its representatives should be permitted a reasonable amount of on-duty time to adjust grievances, negotiate agreements and attend to other union business. Also, the panel concurs that the PBA request to allow its officers to attend meetings of the WNYPA and PCNY is reasonable. However, the panel does not agree with the proposal requesting a guarantee of eight hours per week for the PBA president to attend to union business. In the panel's view, this amount of time, on a guaranteed basis, is excessive. Also, the panel understands and appreciates the Town's concern that it has a police operation to maintain.

Given the above concerns, the panel believes a reasonable resolution of this issue is as follows and so awards (a) The PBA will be allowed to name one individual per shift as grievance representative and this person will be granted such time as reasonably required to investigate grievances, (b) the PBA negotiating Committee will be allowed time off, as required, to negotiate a successor agreement and (c) the Town will provide a pool of six days per year paid leave so as to enable one-two PBA representatives

to attend PCNY and/or WNYPA meetings. Attendees must give prior notice of desire to attend such meeting. All other proposals on this issue are to be withdrawn. It is not the panel's intent to write language for the parties. Instead, the panel's purpose is to ensure that a PBA representative be allowed to investigate grievances in an expeditious manner, that, if needed, a member of the PBA negotiation team can get time off to attend a negotiation session and that some limited Town support be provided so PBA representatives can attend their professional meetings. The award does not provide for the Town assuming any of the expenses for attending the meeting and the total pool is six days off with pay to be divided among the PBA's designated attendees, not six days per attendee.

20. Record of Complaints

The PBA is seeking language stating "no record or reference to a complaint, either departmental or external, lodged against a police officer will be entered into his record if after investigation the complaint is decided by the Town to be unfounded."

Discussion

The PBA argues there is no logical reason why the Town should insist upon retaining a complaint in an officer's personnel file if the complaint

is determined by the Town to be unfounded. The PBA also notes that almost all the police departments in Erie County contain a similar provision in their contract. The Town argues the PBA proposal infringes on its right to maintain business and personnel records. In the Town's opinion, it has a responsibility to investigate all complaints against its employees and to keep a complete record of the resolution of these complaints regardless of their outcome. Of course, the Town agrees that if the complaint is found to be unmerited and unsubstantiated the file record will so indicate.

Award

The panel concurs with the PBA on this issue. It does not believe the requested language infringes on the Town's management rights and it does provide employees some important protection against unwarranted complaints. Also, the panel agrees that the proposed language is a common stipulation in most Erie County police contracts. For these reasons, the panel agrees the requested PBA language regarding complaints should be incorporated into the contract.

21. In-Service Training

The current practice in the Town of Evans is when officers are required to attend in-service training on their off-duty time,

they are compensated for such time at their regular rate of pay with a minimum guarantee of two (2) hours. The PBA is seeking to incorporate this practice into the contract and to have those officers requesting training to be granted their request based on seniority.

Discussion

The PBA argues that, like court appearances, the scheduling of a training program during an officer's off-duty hours can interrupt his sleep and/or personal time. Moreover, the PBA notes that most area police contracts contain a similar provision. Also, the PBA argues that offering training opportunities on a rotation basis based upon seniority would be non-discriminatory and is preferable to a random or more selective basis of allocation.

The Town argues there is no need to guarantee two (2) hours since on-the-job training is offered infrequently and is usually limited to one hour or less. Also, the Town maintains that it must send the best qualified police officer, not the most senior one, to training courses. To do otherwise, in the Town's view, would seriously handicap the development of a professional police department.

Award

The Panel concurs with the Town that the needs of the police department and individual ability, not employee seniority, should determine who is assigned to particular training opportunities. However, it agrees with the PBA that off-duty officers who must come in for training should receive a minimum time guarantee. While the panel is reluctant to incorporate existing practice into the contract; it believes this is appropriate in this case given the Town's position that training sessions may only be for an hour or so. For these reasons, the panel concludes that the PBA language covering a two (2) minimum guarantee of training time for off-duty officers should be incorporated into the contract, but the requested language concerning a two (2) minimum of training opportunities by seniority should be withdrawn.

22. Bill of Rights

The PBA is requesting that the Town agree to the adoption of a Bill of Rights for police officers, which rights would be limited to matters of a non-criminal nature and to non-criminal investigations. The requested language is as follows.

Bill of Rights--Article XXI

The provisions of this Article shall not apply to criminal investigations or investigations of possible criminal activity or violations.

SECTION 21.01 TIME OF INTERROGATION

The interrogation of police officers shall be conducted at reasonable hours, preferably, when the officer is on duty and if not on duty during daylight hours, unless the exigencies of the investigation dictate otherwise.

SECTION 21.02 IDENTIFICATION OF INVESTIGATING OFFICERS

A police officer who is under investigation for a matter, which would not constitute a crime, must be informed of the name of the officer in charge of the investigation and the names of the officers who will be conducting any portion of interrogation or investigation.

SECTION 21.03 INFORMATION REGARDING INVESTIGATION

An officer must be informed of the nature of an investigation before any interrogation begins. The information must be sufficient to reasonably inform him of the investigation which is being conducted.

SECTION 21.04 LENGTH OF INTERROGATION

Interrogation shall be completed with reasonable dispatch. Reasonable rest periods will be allowed and time will be provided for personal necessities, meals, telephone calls and rest periods as reasonably required.

SECTION 21.05 COERCION

A police officer shall not be subjected to offensive language and shall not be threatened with transfer, dismissal or other disciplinary punishment. No promise or regard shall be made as an inducement to answering questions. Nothing herein is to be construed as to prohibit the investigating officer from informing an officer that his conduct may be subject to other disciplinary action with resultant disciplinary punishment.

SECTION 21.06 RIGHT TO COUNSEL

A police officer who is under investigation has the right to have a representative of the PBA present and also has the right to the presence of an attorney, with him, during any questioning, hearing or interrogation.

SECTION 21.07 RECORDING OF INTERROGATION

Interrogation of a police officer for any disciplinary investigation will be recorded, either mechanically or by a stenographer, and there will be no off-the-record statements.

SECTION 21.08 ADVICE OF CONSTITUTIONAL RIGHTS

If a police officer is the subject or target of a disciplinary investigation he shall be advised of his constitutional rights.

SECTION 21.09 FURNISHING OF COPIES

A police officer under investigation will be furnished with a copy of any statement he has signed or made or of any proceedings that have been recorded, in any manner.

SECTION 21.10 POLYGRAPH

Police officers will not be given polygraphic examinations.

SECTION 21.11 NON-WAIVER OF CONSTITUTIONAL RIGHTS

No police officer will be required to or requested to waive constitutional rights granted under the United States or the New York State Constitution.

SECTION 21.12 HEARING OFFICER

In the event the Town elects to select a hearing officer, pursuant to Section 75 of the Civil Service Law, who is not either a Town employee or Town official, then in that event, the hearing officer will be mutually selected by the Town and by the police officer who is charged. If the parties are unable to agree upon a hearing officer or if the hearing

officer agreed upon is, or becomes unable to or unwilling to act, then the parties shall mutually apply to Special Term of the New York State Supreme Court for the appointment of a hearing officer.

Discussion

The PBA asserts that the requested Bill of Rights now exists in most Erie County police contracts. Moreover, the PBA argues the proposal provides Evans' police officers needed protection and is a codification of rights which exist for most public sector employees.

The Town argues the statement that "provisions of this Article shall not apply to criminal investigations or investigations of possible criminal activity or violations" is meaningless because the Department will not know if a crime has been committed until an investigation has been completed. Also, the Town maintains that police officers' individual rights have ample protection under the law. While the Town does not disagree with all of the specific provisions in the Bill of Rights, it believes some will unduly restrict the conduct of an official investigation. Finally, the Town argues that the PBA has not sustained its burden of proof that police officers in Evans have been denied their rights in any investigation.

Award

The panel appreciates the concerns of both parties on this issue. On the one hand, it concurs that police officers have rights as

individuals and these rights should be protected in any investigation conducted by the Town. Also, the PBA correctly notes that many Erie County police departments have the requested Bill of Rights in their labor-management contracts. However, the Town properly notes that many of the rights included in the Bill of Rights are already provided for as a matter of law or the collective bargaining agreement. And, the panel is mindful that some of the requested provisions may have, as the Town maintains, some unanticipated effects. Finally, the overriding point is that, as asserted by the Town, there is no evidence that the individual rights of Evans' police officers have ever been violated by the Town. Thus, the panel does not feel a compelling need to incorporate the Bill of Rights into the contract at this time, especially given it does not believe it should be writing language for the parties. For these reasons, the panel believes the requested Bill of Rights proposal should be withdrawn. However, the panel urges the parties to resume discussion of this issue during the next contract negotiation.

23. Non-Discrimination Clause

The PBA is seeking to add a clause to the contract stating "there will be no discrimination with respect to race, color, creed, sex, political persuasion or because a police officer is engaged in PBA activities. All police officers shall receive the full protection of all of the provisions herein."

Discussion

The primary purpose of this clause is to ensure that an officer will not be discriminated against because of his activities in the PBA. According to the PBA, such non-discrimination clauses are found in many police contracts. The Town argues that this proposal is no more than a anti-discrimination clause and that this issue is adequately covered under the law.

Award

Even the PBA concurs there are legal remedies as well as improper practice charges should a police officer believe he is discriminated against for his union activity. Thus, the panel can see no compelling reason to incorporate this clause into the contract and concludes this proposal should be withdrawn.

24. Savings Clause

The PBA is seeking language stating "if any section, sub-section, sentence, clause, phrase or any portion of this Agreement is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this Agreement."

Discussion

The PBA argues this is a standard savings clause, included in most police department contracts, which allows the rest of a labor agreement to remain in force if one portion is declared legally invalid. The Town argues that, while it has no great objection to a savings clause, it believes the PBA proposal is vague and misleading.

Award

The panel did not find the proposed savings clause to be either vague or misleading. Instead, as argued by the PBA, it is a standard clause such as found in many labor contracts. Thus, the panel is persuaded by the PBA argument for this clause and the fact that the clause should not have a negative impact on the Town. Given these factors, the panel has decided the requested savings clause should be incorporated into the contract.

25. Term of Agreement

Award

This Agreement is for two years (January 1, 1982 to December 31, 1983) or until such time a subsequent agreement becomes effective. Also, the award provides for retroactivity on salary and other contract terms as indicated in the award statement for each issue.

Neither party strenuously objected to a two year award, especially since 1982 is already past, and the panel is not empowered to impose an agreement for more than two years. Also, the panel sees no reason not to grant retroactivity where possible and believes a failure to do so would be a severe injustice to the Evans police officers'.

26. Past Practice

The PBA is seeking language providing "This Agreement shall supersede conflicting rules, regulations or practices heretofore existing. Established practices, not specifically covered herein, shall continue in force and effect."

Discussion

The PBA is concerned that Article XXV - Section 1 could be interpreted by an arbitrator as a waiver by the parties of their right to rely upon past practice. This Article states "The Board and the Association hereby agree that this contract constitutes the entire agreement between the parties and that any provision hereto made and provided which are not specifically covered herein are rendered void." The PBA is seeking the requested language as a confirmation of the fact that the parties acknowledge that past practice, not otherwise

modified by the Agreement, should continue in force and effect. The PBA also notes that most other area police department contracts contain the requested provision.

The Town argues that the requested language would grandfather all employees into existing practices, conditions and policies and such language is an unwarranted infringement on its managerial prerogatives.

Award

The role of custom and past practice in grievance resolution is a significant issue in labor-management arbitration. The PBA is correct that Article XXV - Section 1 could be interpreted by an arbitrator as limiting the employer's responsibility for continuing a past practice. However, an arbitrator might also rule that this clause only eliminates those practices which conflict with the express terms of the contract. Thus, it may be that Article XXV - Section 1 would not automatically eliminate practices or customs which have continued unabated for successive contract periods as a clear, long

standing practice mutually accepted by both parties. The specific answer will depend upon the issue at hand in a specific grievance and the arbitrator.

The panel is, however, reluctant to augment the uncertainty provided by Article XXV - Section 1 with the language requested by the PBA. As argued by the Town, this language could have the impact of incorporating all past-practice into the agreement, thereby unduly restricting the Town's ability to manage its police function. In the panel's view, it is far better to resolve this question of the applicability of past practice through the grievance procedure in the context of a specific issue. For this reason, the panel has concluded the PBA should withdraw this proposal.

27. Renewal of Agreement

The PBA is seeking language stating that "the parties agree that negotiations for renewal of this Agreement shall commence on or about July 1, 1983, or on such other date as shall be mutually agreed upon." The Town is seeking language stating "on or before July 1, of the final year of this Agreement, either party may submit a written request of intent to open negotiations for a successor Agreement. Such request will include its written proposals for a successor Agreement. Not later than September 1, of the final year of this contract, the other party may respond by forwarding a copy of their written proposals for a successor Agreement to the party

requesting negotiations." The current contract states in relevant part "on or before July 1, 1981, either party may submit a request to reopen this Agreement."

Discussion

The issue here is whether the contract specifies "on or before" or "on or about" July 1, 1983 as the date for contract discussions to resume on a new Agreement. In large part the delay in the resolution of the 1982-83 contract resulted from an improper practice charge filed by the Town when the PBA failed to submit its request for a reopener by July 1, 1981.

Award

The Public Employment Relations Board has already denied the Town's IP Charge. Thus, the panel can see no merit to the Town's insistence on retaining and expanding the present language dealing with the contract renewal. And, it believes the PBA proposed language is reasonable and in keeping with other police contracts in Erie County. For this reason, the panel concludes the PBA requested language dealing with the renewal of Agreement should be incorporated into the contract.

28. Management Rights Proposal

The Town is seeking to broaden the management rights clause (Article VI) to include the following language:

"The scheduling of work, the control and regulation of the use of all equipment and properties are the exclusive function of the Town"

"The Town of Evans retains the right to schedule overtime as required and to designate the need of, or assignment of any Police Officer or a particular Police Officer"

Discussion

The Town maintains that its proposal is simply incorporating into the Agreement rights which the PBA already recognizes as managerial prerogatives. In the Town's view, the reason for incorporating these rights into the contract is to ensure there is no doubt when they are implemented in practice. The PBA argues that, although it agrees in principal that the Town has the right to determine manning requirements, etc., the proposed language is unacceptably vague and ambiguous.

Award

The panel does not dispute that the Town has the right to establish departmental manning standards and to establish the best means and method of rendering public safety needs to the public. Moreover, the panel does not have a major objection to the Town's requested language additions on the management rights clause. However, the Town did not convincingly establish that this language change was needed or that the present management rights clause was inadequate. And, the panel continues to believe it should not be in a position of writing new contract language for the parties except where absolutely necessary. For these reasons, the panel has concluded the proposal to amend the management rights clause should be withdrawn.

29. Salaries

The panel has reserved the salary issues for last. The current salary schedule as well as the position advanced by both parties in terms of salary increases is as follows:

A. CURRENT SALARY

Clerk	\$ 13,317.34
Patrolman	18,250.57
Detective Patrol	19,164.74
Lieutenant	20,082.02

29. Salaries -continued-B. PROPOSAL FOR 1982

	<u>Town</u>	<u>PBA</u>
Clerk	Not listed	\$ 15,000 (12.6)
Patrolman	\$ 19,510.11 (6.9)	21,000 (15.1)
Detective Patrol	20,506.27 (7.0)	22,000 (14.8)
Lieutenant	21,487.76 (7.0)	24,000 (19.5)

C. PROPOSAL FOR 1983

	<u>Town</u>	<u>PBA</u>
Clerk	Not listed	\$ 17,500 (16.7)
Patrolman	\$ 20,686.71 (6.0)	24,000 (14.3)
Detective Patrol	21,736.64 (6.0)	25,000 (13.6)
Lieutenant	22,777.02 (6.0)	27,000 (12.5)

It should be noted that the Town is proposing the creation of a three step salary schedule and the figures listed above are for step 3. According to the Town's proposal, all current police officers would be placed on the third step, while newly hired police officers would be placed on step 1. The figure in parentheses is the percentage increase for each category.

Discussion

The average two year increase under the Town proposal is 13.3 percent while the PBA proposal averages about 31.5 percent. In support

of its position, the PBA argues that since 1979 the real income of the Evans police officers has declined since the cost of living has out paced their salary increases. For the record, the cost of living increases in WNY compared with salary increases for Evans police officers is as follows:

<u>Year</u>	<u>Yearly Increase in Cost of Living</u>	<u>Average Salary Increase</u>
1979	9.6 percent	Not calculated
1980	11.4 percent	9.4 percent
1981	7.2 percent	8.5 percent
1982	3.7 percent	Open

It should be noted that the percentage salary figures reflect that some of the salary increases were granted at mid-year, thereby creating a differential between year end salary and year end earnings.

In addition, the PBA cited the following comparable salary figures for 1982 to support its argument that Evans police officers are substantially underpaid.

Salary Comparison

	<u>Orchard Park</u>	<u>Village of Kenmore</u>	<u>Town of Lancaster</u>	<u>Hamburg</u>	<u>Depew</u>	<u>Village of Lancaster</u>	<u>Evans</u>
Patrol	\$ 20,783	\$ 20,571	\$ 20,677	\$ 21,921	\$ 21,516	\$ 20,520	\$ 18,251
Detective	21,683	22,279	21,677	22,421	22,464	21,317	19,165
Lieutenant	23,283	24,189	23,177	-	25,820	22,821	20,082

The figures cited are the top level for each rank in question as of the end of 1982. As requested by the panel, the towns and villages cited are comparable to Evans in terms of population, number of police officers and square miles of required coverage. In making these comparisons, the PBA notes that the Town employs 18 police officers to patrol a 45 square mile township with a population of approximately 20,000 people. And, it cited the following figures to support the argument that Evans police officers are handling a workload as great or greater than other comparable departments.

<u>Locality</u>	<u>Number of Officers</u>	<u>Officers/Person</u>	<u>Calls/Officer</u>
Orchard Park	25	1/1100 (1.44 sq. mi.)	618
Kenmore	30	1/700 (0.05 sq. mi.)	265
Town of Lancaster	21	1/476 (1.95 sq. mi.)	480
Hamburg	15	1/683 (0.16 sq. mi.)	500
Depew	31	1/742 (0.26 sq. mi.)	452
<u>Village of Lancaster</u>	<u>16</u>	<u>1/812 (0.17 sq. mi.)</u>	<u>469</u>
Evans	18	1/1123 (2.5 sq. mi.)	639

The figure in parentheses under officers per person is the number of square miles of coverage per police officer. Thus, based on these data, the PBA argues the Evans police officers are each responsible for a larger geographical area and more citizens and average more calls per officer than other comparable police departments.

In terms of annual earnings the PBA cited the following 1982 figures for patrol officers.

<u>Municipality</u>	<u>Annual Earnings (1982)</u>
Orchard Park	\$ 23,381
Kenmore	23,010
Town of Lancaster	22,285
Village of Hamburg	23,779
Village of Depew	24,499
<u>Village of Lancaster</u>	<u>22,362</u>
Overall Average	23,219
Town of Evans	19,292

It should be noted, in passing, that this comparison includes salary, longevity, the value of holiday pay and other forms of compensation otherwise addressed in this award. Thus, the comparison is, at best, approximate.

The PBA also notes the Town has not raised the issue of inability to pay or to fund a reasonable salary increase. Thus, the PBA asserts that this cannot be cited by the Town as a reason for not granting its salary demand.

For its part, the Town acknowledges it has a limited ability to pay and argues its reasonable offer is a reflection of this. The Town also asks that the panel take into account the poor economic climate in WNY and the moderating cost of living in arriving at its award. In particular, the Town argues it is seriously affected by the recent closing of Bethlehem Steel and the resulting unemployment. The Town

also notes that it was required to implement an above average tax increase in 1982. And, it argues it has settled with other employee units (highway and water) for a package similar to what it is offering the police officers. Finally, it suggests that when one examines the range of police officer salaries for all of Erie County that its proposal will make the compensation of Evans police officers quite competitive. In the Town's view, this is particularly true given that Evan's police officers annually earn an additional \$1250 per officer for briefing and report time.

Award

The panel has carefully weighed the comparability, ability to pay and cost of living arguments advanced by the parties and has reached the following conclusions.

1. As argued by the PBA, Evans police officers are underpaid vis-a-vis their colleagues in comparable Erie County police departments. However, given the \$1250 for briefing and report time, which does not show up in the basic salary schedule, this difference is not as great as perceived by the PBA.
2. The panel concurs with the PBA that the salaries of Evans police officers should be increased somewhat to compensate for their greater than average work load.

However, the panel is not persuaded that the working conditions and dangers encountered by Evans police officers are as great as those experienced by officers in more urban areas such as Cheektowaga, Hamburg, etc.

3. The panel concurs that during 1980-81 the cost-of-living in Western New York increased slightly faster than did the compensation of Evans police officers. However, the rise in the cost of living declined sharply in 1982 and the wage increase proposed by the Town will compensate for much of the lost purchasing power.
4. Although the Town has not argued an inability to pay, it has clearly suggested its ability to pay is limited. Also, the panel cannot fashion an award in total disregard of the current weak economic climate in WNY. Clearly, the high rate of unemployment and the marginal financial status of many firms in Erie County must serve as a moderator on public sector salary settlements.
5. The panel notes that, during 1982, salary settlements for police/fire departments averaged 7-9 percent with some (e.g., City of Buffalo) being much less. Thus, over a two-year period, a reasonable salary settlement for Evans police officers would, in the panel's view, be closer to the Town's offer than that demanded by the PBA.
6. In sum, the panel believes that a salary increase somewhat greater than that proposed by the Town is both reasonable

and warranted in order to bring the Evans police officers more in line with their counterparts in Erie County.

Moreover, the panel is not persuaded by the Town's arguments in favor of reinstating a salary schedule.

In view of the above discussion, the panel awards a general across-the-board wage increase of 8-1/2 (8.5) percent for 1982 and another 8 (8.0) percent for 1983. The 1982 increase is to be retroactive to January 1, 1982 and the 1983 increase to 1/1/83.

This increase will provide the following base salary for Evans police officers. The number in parentheses is the number of police officers in each category.

	<u>Current</u>	<u>1982</u>	<u>1983</u>
Clerk (3)	\$ 13,317.34	\$ 14,449.31	\$ 15,605.26
Patrolman (11)	18,250.57	19,801.87	21,386.02
Detective Patrol (2)	19,164.74	20,793.74	22,457.24
Lieutenant (13)	20,082.02	21,788.99	23,532.11

Rounding off to the nearest dollar and including the \$1250 for briefing and report time, the following represents the total salary for Evans police officers under this award. It should be remembered that, although the report-writing time has been deleted, the compensation for this time has been retained.

<u>Rank</u>	<u>1982</u>	<u>1983</u>
Patrol	\$ 21,052	\$ 22,636
Detective Patrol	22,044	23,707
Lieutenant	23,039	24,782

The panel believes the recommended increase is both just and affordable, especially given the other terms of this award.

30. Longevity

The current longevity schedule for Town of Evans' police officers versus that demanded by the PBA is as follows:

<u>Number of Service Years</u>	<u>Current</u>	<u>Proposed (1982)</u>
5	\$ 100	\$ 250
8	-	300
10	200	350
15	300	450
20	-	600
25	-	650

In 1983, according to the PBA proposal, each longevity step would be increased by \$50.

Discussion

The PBA argues the longevity payments made to Town of Evans police officers are substantially lower than those paid to their counterparts in other Erie County police departments. The comparable data for these police departments is as follows.

<u>Number of Service Years</u>	<u>Orchard* Park</u>	<u>Kenmore</u>	<u>Town of Lancaster</u>	<u>Hamburg**</u>	<u>Depew</u>	<u>Village of Lancaster</u>
5	\$100 (4)	\$ 200	\$ 200	\$ 100	\$ 225	\$ 100
8	200	250 (7)	-	175	-	-
10	300 (12)	300	300	225	325	200
15	400 (16)	400	400	350	425	300
20	500	500	500	475	525	325
25	600	-	600	-	600	350

*Orchard Park pays \$100 every four years, up through 25 years.

**Hamburg pays \$25 for each year of service, after 5 years, up to 20 years of service.

The distribution of Evans police officers by seniority is as follows:

Less than five years	5 men
Five to under ten years	2 men
Ten to under fifteen years	4 men
Fifteen to under twenty years	5 men
Twenty or more	3 men

The town argues that current longevity payments are in line with most other Erie County police departments.

Award

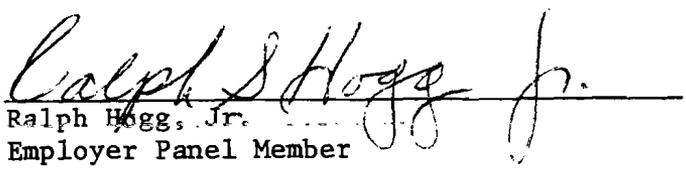
The panel is persuaded both that longevity increases are a desirable incentive for retaining officers and that the longevity payments for Evans police officers are below average. However, it does not believe the available data support the level of increase demanded by the PBA. For these reasons, the panel concludes the longevity schedule should remain as is for 1982 and increase to the following level for 1983 retroactive to January 1st.

Upon completion of 5 years	\$ 150
Upon completion of 10 years	250
Upon completion of 15 years	400
Upon completion of 20 years	500
Upon completion of 25 years	600

While modest in nature, these increases should help retain the senior officers and serve as an incentive for the junior patrolman.

On May 17th, 1983, before me came Thomas G. Gutteridge, Ralph Hogg and Norbert D. Chazen, known to be the individuals described in and who executed the foregoing instrument and acknowledged that they executed the same.

Thomas G. Gutteridge, Chairman
Public Arbitration Panel



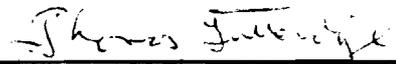
Ralph Hogg, Jr.
Employer Panel Member

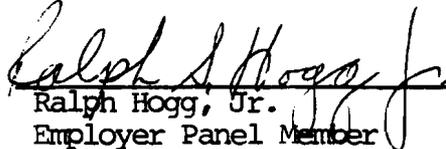
Notary Public
ADELLA E. COOK
Notary Public in the State of New York
Qualified in Erie County
My Commission Expires March 30, 19____

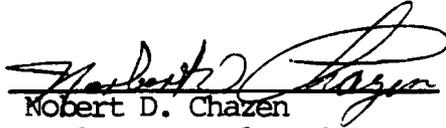
Norbert D. Chazen
Employee Panel Member

Memo of Understanding

With respect to the panel's award on report writing time, during 1983, all police officers shall receive \$625.00 minus the dollars already received from January 1, 1983 to the effective date of the agreement.


Thomas G. Gutteridge Chairman
Public Arbitration Panel


Ralph Hogg, Jr.
Employer Panel Member


Robert D. Chazen
Employee Panel Member

May 17, 1983

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
MAY 31 1983
CONCILIATION

AWARD SUMMARY

<u>Issue</u>	<u>Resolution</u>
1. Agency Fee Language (p. 5)	1. Granted
2. Uniform Allowance for Detectives (p. 6)	2. Incorporate into contract effective January 1, 1983 at \$350 per year.
3. Court Pay (pp. 8-9)	3. a) Reject request for time and one-half for court appearances. b) Grant minimum of four (4) hours for court appearances outside Town of Evans. c) Officers to receive applicable minimum if they do not receive four hours prior notice of adjournment or other disposition.
4. Out-of-Rank Pay (p. 11)	4. Reject all proposals on this issue.
5. Overtime Pay (pp. 12-13)	5. a) Effective January 1, 1983 pay overtime at 1-1/2 for all hours worked beyond an eight hour shift, except for briefing time. b) Establish rotating shift based seniority system for overtime allocation. c) Reject all other proposals on this issue.
6. Educational Incentive Pay (p. 14)	6. Reject this proposal.
7. Work Shift (p. 16)	7. Reject this proposal.
8. Briefing and Report Time (p. 18)	8. Continue briefing time but delete report writing time. In exchange, add \$625 to each police officers' salary effective January 1, 1983.

AWARD SUMMARY

<u>Issue</u>	<u>Resolution</u>
9. Holidays (p. 20)	9. a) Number of holidays to remain at 12. b) Reject request for 1-1/2 if officers work holiday. c) Reject request for special Town designated holidays. d) Allow employees once a year election of balance between pay and compensatory time off.
10. Vacations (p. 22)	10. Reject all proposals on this issue
11. Vacation Scheduling (p. 23)	11. Incorporate language allowing police officers to take vacations one day at a time upon approval of police chief.
12. Bereavement Leave (p. 25)	12. a) Include step-child, ^{brother and sister,} brother-in-law, and sister-in-law in definition of immediate family. b) Reduce maximum length of bereavement leave from two to one day for aunt, uncle, niece, nephew, and first cousin. c) Reject all other proposals on this issue.
13. Personal Leave (p. 27)	13. a) Expand number of personal leave days from 2 to 3 effective January 1, 1983 b) Reject all other proposals on this issue.
14. Sick Leave (p. 29)	14. a) Expand number of sick leave days to 1-1/4 per month which is 15 days per year. b) Reject all other proposals on this issue.
15. Sick Bank (p. 30)	15. Reject but study.

AWARD SUMMARY

<u>Issue</u>	<u>Resolution</u>
16. Health Insurance (p. 33)	16. a) Provide off-the-job disability protection plan. b) Town to pay full cost of family coverage for current dental plan. c) Reject all other proposals.
17. Indemnification (p. 34)	17. Reject proposal but seek to incorporate requested coverage in next insurance bid.
18. Retirement Benefits (p. 36)	18. Reject all proposals on this issue.
19. PBA Representatives (p. 37-38)	19. a) One grievance representative per shift. b) Can negotiate on work time as needed. c) Create pool of six days of paid leave to be used by PBA for officers to attend PCNY and/or WNYPA meetings. d) All other proposals to be withdrawn.
20. Record of Complaints (p. 39)	20. Incorporate requested language into contract.
21. In-Service Training (p. 41)	21. a) Incorporate request for minimum of two (2) hours of pay for off-duty training into contract. b) Reject seniority proposal.
22. Bill of Rights (p. 46)	22. Reject
23. Non-Discrimination Clause (p. 47)	23. Reject
24. Savings Clause (p. 48)	24. Incorporate into contract.
25. Term of Agreement (p. 48)	25. 2 years (January 1, 1982 to December 31, 1983) with retro-activity as noted.

AWARD SUMMARY

<u>Issue</u>	<u>Resolution</u>
26. Past Practice (p. 51)	26. Reject
27. Renewal of Agreement (p. 52)	27. Incorporate PBA language into contract.
28. Management's Rights (p. 54)	28. Reject
29. Salaries (p. 61)	29. Across-the-board increase of 8.5 percent for 1982 and 8.0 percent for 1983 retroactive to beginning of given year.
30. Longevity (p. 64)	30. No increase for 1982. For 1983 establish new schedule as follows:
	<u>After</u>
	5 years \$ 150
	10 years 250
	15 years 400
	20 years 500
	25 years 600