

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYC PERB
RE
SEP 23 1985
CONCILIATION

IN THE MATTER OF THE IMPASSE BETWEEN

TOWN OF GATES

Opinion and

-and-

Award

GATES KEYSTONE CLUB

PERB Case No. IA85-6; M84-516

PUBLIC ARBITRATION PANEL

PUBLIC PANEL MEMBER & CHAIRMAN:

THOMAS N. RINALDO, ESQ.
305 Elmwood Avenue
Buffalo, NY 14222

EMPLOYER PANEL MEMBER:

MR. BERNARD WINTERMAN
39 Main Street West
Rochester, NY 14614

EMPLOYEE ORGANIZATION PANEL MEMBER:

LAWRENCE J. ANDOLINA, ESQ.
Suite 510
One East Main Street
Rochester, NY 14614

BACKGROUND

Pursuant to a designation dated July 3, 1985, the State of New York, Public Employment Relations Board designated a Public Arbitration Panel under the terms of Statutory provisions [Civil Service Law §209.4, as amended] applicable to compulsory interest arbitration. The impasse concerns the terms of a new Collective Bargaining Agreement to be effective January 1, 1985, between the Town of Gates and the Gates-Keystone Club. The agreement is to supercede the previous Collective Bargaining Agreement, in effect until December 31, 1984.

Negotiations between the Parties spanned a period of October 24, 1984, to May 10, 1985, incorporating twelve sessions, which included three sessions with mediator, Charles Leonard.

During the twelve negotiating sessions, a number of issues were tentatively agreed upon and a number of issues were withdrawn by the parties. Because the parties were unable to resolve a number of items, the Gates Keystone Club petitioned the New York State Public Employment Relations Board to designate a public interest arbitration panel, which the Board did on July 3, 1985.

The population of the Town of Gates is approximately 30,000.00 and employs 105 full-time and 35 part-time employees. The total Town budget for 1984 is \$5,028,642.00.

At the present time, the Town employs in its Police Department, 19 patrolmen and 4 Sergeants, who are represented by the Keystone Club.

The current direct payroll for the Bargaining Unit is \$602,176.00 for the year 1984, which represents 12 percent of the Town Budget.

ARTICLE 5 - COMPENSATION

The Union has proposed that effective January 1, 1985, all officers covered by this Agreement shall receive a wage increase of 10 percent and effective January 1, 1986, all employees shall receive an additional wage increase of 10 percent. The Union is also asking that there be a wage differential of 15 percent between the top pay scale for a patrolman and Sergeant.

The Town counterproposed that effective January 1, 1985, or the execution date of this Agreement, all employees on the Town payroll, shall receive a full 4 percent wage increase and effective January 1, 1986, all employees with at least one year of service shall receive a 3.5 percent wage increase.

A patrol officer currently earns \$25,123.00 as a maximum salary and a police sergeant, \$27,166.00.

The Town has surveyed the salaries of police officers and sergeants for 1984 in the 7 major jurisdictions within the

County of Monroe and the maximum salaries for the two classifications are as follows:

	<u>Police Officer</u>	<u>Sergeant</u>
Greece	\$26,331	\$28,970
Irondequoit	26,089	30,251
Brighton	25,021	29,808
Webster	26,302	31,911
Monroe County		
Sheriff's Deputy	24,335	27,878
City of Rochester	26,771	30,334
Gates	<u>25,123</u>	<u>27,166</u>
Average	\$25,838	\$29,474

According to the Town's statistics, which are not disputed by the Gates Keystone Club, the Town of Gates is 10.8 percent below the 7 jurisdiction average.

The Town does not contend that they are unable to support a wage increase, but rather argue that a reasonable pay raise is in keeping with the fiscal responsibility of the Town fathers. The figures submitted by the Club establishes that the Town of Gates, unlike other Northern cities, has experienced a steady population increase, as well as a growth in new construction. In 1985 an estimated \$28,655,000.00 worth of property will be added to the tax rolls. Of 30 various municipal governments, Gates ranks #20 in tax rate and #20 in actual costs to the tax payer. Evidence supports the club's position that as the population of the County of Monroe moves westward, the Town of Gates will continue to grow.

As noted above, the Town has not argued that they do not have the financial resources to support a pay increase, but rather

ask this panel to award one which is keeping with the historical fiscal controls of the community.

This Panel, after studying the financial information submitted and the comparison of the Town of Gates Police Department with other police departments in the County of Monroe, makes the following:

AWARD

1. All police officers are to receive a pay increase effective January 1, 1985, in the amount of 5.5 percent. After the 5.5 percent is added to base salaries, Police Sergeants are to receive an additional \$250.00 differential.
2. Effective January 1, 1986, all police officers are to receive a salary increase in the amount of 5.5 percent. After the 5.5 percent salary increase is added to base, police sergeants are to receive an additional \$250.00 differential

DENTAL INSURANCE

The Union is proposing that the Town provide to all members a family or single Blue Shield Smile Saver Dental Plan or its equivalent and shall further provide the fixed prosthetic crown rider, the bridge rider, and a full prosthetics (braces) rider. The Union is proposing that the Town pay the full cost of the monthly premium.

The Union argues that the plan proposed is currently being offered in the Rochester, Monroe County area to members of 4 police units who are employed by towns comparable to the Town of Gates, they are: Brighton, Greece, Irondequoit and Webster. The

Club has provided the cost based on two options: Option #1, 100 percent coverage and Option #2, 80 percent coverage. According to the statistics submitted by the Club, the cost to the Town will be approximately .4 percent of a member's current base salary for single coverage and approximately 1 percent for family coverage.

The Town, throughout their entire negotiations and throughout the hearings held by this Panel, has resisted any increase in fringe benefits to members of the Bargaining Unit.

AWARD

This Panel hereby awards that effective January 1, 1986, the Town will pay the cost of dental insurance for Option #2, 80 percent coverage.

RETIREMENT

The Union has requested that the Town provide Section 302.9(d) "one year final average." This retirement pension plan simply allows an officer to utilize his last year pay as the basis for his pension. The Town argues that this benefit is just too costly for it to absorb and has resisted throughout negotiations granting this requested relief.

This Panel has determined that the plan requested by the Union is presently available only to Tier 1 employees. Since the

Union has only 10 members on Tier 1, its cost is considerably less than the 3.8 percent costs claimed by the Town. Also, this benefit will have a decreasing cost to the Town. As each of the 10 eligible members retire, no new members will be allowed to join this retirement program. Therefore, it is clear to this Panel that this request is virtually not a substantial cost item to the Town.

AWARD

It is this Panel's determination that the Town shall provide Section 302.9(d), one year final average, to members of the Unit who are able to qualify for said benefit.

ARTICLE 13 -- HEALTH INSURANCE

The Union has asked that the Town continue to pay the premiums for health insurance upon the retirement of a member of the Department after 20 years of service. The Union argues that the retirement and medical benefits requested for retirees are offered to employees of eight other police unions comparable to the Town of Gates. According to the Union, continuing to provide the basic needs of a long-time employee fosters a good relationship between labor and management and is becoming a necessary responsibility of an employer.

The Town argues that this is a significant cost item to the Town, pointing out that under the New York State Retirement

System, applicable to police officers, it is possible for an employee to commence employment with the Department at age 21 and at age 41, be retired. This proposal would require the Town to continue health insurance coverage for the remainder of said police officer's life. The Town also argues that the present fringe benefits structure amounts to 64.5 percent of payroll, which the Town maintains is inordinately high and considerably in excess of the fringe benefits structure that can be found in the private sector.

AWARD

It is this Panel's determination that the cost of extending health insurance to retirees is an excessive fringe cost and, therefore, is not awarded.

SHIFT DIFFERENTIAL

The Union is proposing that effective January 1, 1985, members assigned to patrol platoons 2 or 3, or their equivalent, shall receive a 50 cents per hour adjustment for each scheduled hour during each shift for which the employee is paid, except that an employee on sick or injury leave for 5 or more days shall not receive a shift adjustment for the period of the sick or injury leave.

The current provision contained in Appendix A of the current Collective Bargaining Agreement provides for a \$100 per year shift premium for the hours 2:00 p.m. to 10:00 p.m.; \$100 per year for the hours between 3:00 p.m. to 11:00 p.m. and \$150 per year for the hours 11:00 p.m. to 7:00 a.m.

The Town maintains that there is no justification for any modification of the shift differential currently being paid under the present Collective Bargaining Agreement.

AWARD

It is this Panel's decision to award an additional \$100 per year shift premium.

PERSONAL LEAVE FOR PERFECT ATTENDANCE

The Union has proposed a new Article which would grant one personal leave day for those members who have had perfect attendance for one complete year. The Town resists any leave to an officer who the Town argues is expected to have perfect attendance.

AWARD

This Panel makes no award concerning this Union proposal.

ARTICLE 10 -- VACATION

The Club has asked for additional vacation time and has asked for the deletion of the following clause: "and provided further that there is no interference with the proper operation of the Police Department". According to the Keystone Club, this clause has been used by the Chief of Police to deny certain vacation requests. The Club also requests that vacation selections submitted after March 1st be granted on a first come/first serve basis.

The Town has rejected any increase in time off and has requested to change the heading of what is now Length of Service to Completed Service and further that Completed Service be established on January 1st based upon the employee's anniversary date in the preceding year. According to the Keystone Club, the Town's changes would effectively shorten vacation time. This Panel has spent a considerable amount of time working with the vacation article and hereby makes the following determination.

AWARD

Each employee conveyed by this Agreement shall earn a vacation with pay based upon the following schedule:

LENGTH OF SERVICE

LENGTH OF VACATION

After six months
After one year
After four years
After ten years
After fifteen years

6 Working Days
12 Working Days
17 Working Days
19 Working Days
20 Working Days

Vacation time for each employee shall be calculated on January 1st of each calendar year. For purposes of calculating vacation time, each employee whose anniversary date falls within the calendar year for which vacation time is being computed, shall be given credit towards "Length of Service" on January 1. No vacation shall accrue to any employee who has not worked at least six (6) months in the Gates Police Department, except as mandated by Town Law Section 153. Credit shall be given for previous police employment in another Town, Village or City within the County. Vacation time shall be taken within the year unless otherwise agreed to by the Chief of Police.

Each employee shall be required to notify the Chief of Police of his desire to accumulate vacation time beyond December 31st and to use accumulated vacation time at least three months prior to the taking of vacation.

Choice of vacation time shall be decided by virtue of seniority providing the employees post their vacation preferences no later than March 1st of each year and provided further that there is no interference with the proper operation of the Police Department.

Employees are entitled to actual vacations and no employee will be paid money in lieu of vacation time.

Preference for vacation shall be made by virtue of rank and seniority for the first ten (10) working days of earned vacation. After each employee has made one preference selection, the balance of earned vacation shall be scheduled by virtue of first come/first serve.

When an employee has requested and has been granted a vacation period, such vacation period may not be cancelled either by the employee or the employer unless an emergency is declared by the Chief of Police or such cancellation is approved by the Chief of Police.

One Officer (regardless of rank) shall be allowed off on each shift, unless emergency circumstances prevail. In the sole discretion of the Chief, more than one Officer may be allowed off on a particular shift, depending upon circumstances which prevail.

An Officer who has been granted his request for time off shall not be permitted to cancel such request without giving at least two (2) days' notice.

The Chief of Police shall act on a written request for time off within three (3) days following such request.

If time off has already been authorized, the following shall not be considered as absences for the purpose of canceling the approved time off:

Bereavement Leave

Maternity Leave

Reciprocal Rights Release Time

One Long Term Illness (30 days or more)

Approved Leave of Absence

In the event more than one employee is absent as a result of any of the foregoing listed items, the Chief shall have the right to cancel any previously approved requests for time off.

ARTICLE 9 -- HOLIDAYS

The Union requests that the holidays currently granted to police officers be increased to 14 from 12. The two additional days requested are Martin Luther King Day and Police Memorial Day.

The Town refuses to discuss increases in the current holiday package and has proposed language to compel an officer to work the day preceding a holiday and the day following a holiday.

AWARD

This Panel determines that there is no reason to increase the current holiday package nor to make any changes in current contract language.

ARTICLE 11 -- SICK LEAVE

The Town is seeking three substantive changes in the present Sick Leave Article. The effect of the Town's changes is to require a police officer who is capable of working light duty to be assigned by the Chief to light work. The Club resists the Town's proposal, maintaining that the Town cannot isolate an injured or sick officer from the probability that he will be called upon to handle a violent or emergency situation within the Town Hall. According to the Club, since an officer would be

eligible to retire upon a disability if he is unable to perform full police duties, this proposal would in effect create a new position.

The Town also requests to add a five day time limit in order to submit a physician's report. According to the Club, since no reason was given to support this proposal, current language should prevail.

The last request by the Town is to modify the stay at home requirement. According to a recent Court of Appeals case, the Town of Haverstraw v. Rockland County, P.B.A. as it appears resolved this matter in that a Town cannot compel a police officer to stay at home if the officer's doctor does not so certify without compensating said officer.

AWARD

This Panel, after carefully considering the arguments of both sides, hereby makes the following determination.

All employees covered under this Agreement shall be permitted continued sick leave for any illness or injury not sustained in the line of duty which prevents the full or partial performance of duty.

All full-time employees shall be entitled to Sick Leave. Employees shall be entitled to full pay for such sick period as shall not exceed 180 days within the year.

A new employee shall not accrue Sick Leave credits until he has completed three (3) months of employment with the Town.

An employee on Sick Leave is considered to be continually on Sick Leave until he returns to duty, regardless of scheduled days off or Holidays accruing during such Sick Leave.

When absence is required under the provisions of this Article, the employee shall report the illness or injury to the Department or a commanding officer within two hours prior to his normal starting time or as soon as possible thereafter. In case of failure to report within the time limit stated, unless for reasons satisfactory to the Department, the absence shall not be considered Sick Leave, but may be considered time-off without pay.

A written statement issued by an attending physician showing incapacity and/or inability of the employee to perform his duties shall be filed with the Chief of Police in cases where the duration is of more than three (3) consecutive days. The physician's statement shall specify any restrictions to the employee's full performance of duty. Such statement shall be submitted to the Chief no later than the fifth (5) business day following the commencement of such incapacity.

An employee absent from duty six (6) or more separate occasions or absent from duty for a total of 120 days during any

calendar year as a result of illness or injury not sustained in the line of duty, may forfeit Vacation time for the next year in proportion to the lost time at the discretion of the Chief of Police. This decision may be reviewed by the Town Board upon the employee's request.

Every employee shall be eligible for at least five (5) days' vacation regardless of lost days as a result of this Article.

If the Town requests a medical examination relating to the illness or injury which caused the employee's absence, prior to the employee's returning to work, the Town shall pay for such examinations. The employee shall continue to pay for medical proof of illness where proof is ordered by the Town.

A leave of absence without pay, not to exceed one year, may be granted to an employee by the Town Board upon the employee's request.

ARTICLE 7 -- LONGEVITY

The Club asked for an increase in longevity pay. The Town resists an increase in longevity, maintaining that said funds should be allocated within a police officer's wage base rather than separated in a longevity article.

AWARD

This Panel has determined not to award any increase in longevity pay.

ARTICLE 19 -- CLOTHING AND EQUIPMENT

This Panel, after carefully considering the oral arguments to modify the current Contract language regarding clothing and equipment allowances hereby makes the following:

AWARD

The Town agrees to pay for and provide all uniforms and equipment necessary and required for the proper performance of duties of the employees covered by this agreement.

The Town shall pay for repairs to all uniforms and equipment damaged by normal wear and tear while on duty. Any item damaged or lost due to carelessness of the employee shall be replaced or repaired by the employee. The Town agrees to grant an allowance for dry cleaning to all employees of the Department in the amount of Two Hundred Fifty Dollars (\$250) per year, which shall be paid by voucher.

The employee shall be required to keep his uniforms clean and neat at all times. The Town agrees to supply to each patrol vehicle a flashlight and batteries. Officers agree to exercise reasonable care to these items.

The employer agrees to repair or replace an officer's prescription eyeglasses and watches when damaged in the performance of duty, providing the situation causing the damage is promptly reported and properly documented. The Town's financial obligation in respect to damage shall not exceed Seventy-five Dollars (\$75) for each item.

ARTICLE 6 -- OVERTIME

This Panel spent a considerable amount of time to modify the Overtime Article so that it would comply with Section 7 (k) of the Fair Labor Standards Act. Said Article is hereby modified as follows:

AWARD

Employees shall receive payment at the rate of time and one-half for hours actually worked in excess of the employee's scheduled hours of work. There shall be no worktime credited unless such worktime exceeds fifteen (15) minutes in any workday unless overtime is applicable under Fair Labor Standards Act.

Payment at the rate of straight time or overtime if applicable under Fair Labor Standards Act shall apply to appearances in Gates Town Court, with a minimum guarantee of two (2) hours. Payment at the rate of straight time shall apply to appearances in any other court, with a minimum guarantee of three (3) hours.

The minimum guarantee shall not apply if the Court appearance is immediately prior to, during or immediately following the employee's regularly assigned hours of work. Court appearance immediately prior to, or following the employee's regularly assigned shift will be paid at straight time or overtime if applicable for the actual time spent in Court.

Payment at the rate of straight time or overtime if applicable shall apply for all time spent by an employee in an authorized training session.

Time paid for but not actually worked shall not be used in the calculation of overtime. Time spent by an employee outside of working hours, in respect to medical care for an on-the-job injury or in Workers' Compensation hearings, shall be without compensation.

When an officer reports an on-the-job injury and the officer is not willing to seek medical care on a voluntary basis, the officer in charge shall exercise his best judgment in deciding whether to direct the officer to seek medical care. The directive of the officer in charge shall not be unreasonable or arbitrary.

All employees covered by this agreement shall have the option of taking overtime pay in cash or in compensatory time off, to be computed at the appropriate rate. Compensatory time off may be taken in lieu of cash payment for overtime, providing there is no violation of Section 7 (k) of the Fair Labor Standards Act.

When approved by the Chief or his designee, no employee shall take more than sixteen (16) hours compensatory time off

within any quarterly audit period without the express permission of the Chief of Police. No employee will be permitted to take more than sixty-four (64) hours compensatory time off during any calendar year. No employee may carry over more than sixteen hours of compensatory time off from one audit period to another without the permission of the appropriate command officer.

Overtime will be credited and paid, as accrued, on a quarterly basis. Payment shall be made within thirty-one (31) days following the end of quarter in which the overtime was accrued. The payment shall be made following approval by the chief of Police, and any dispute arising therefrom concerning payment under this article shall be resolved through the grievance procedure.

Nothing contained in this article shall be violative of the Fair Labor Standards Act. If the Act, as it applies to states and political subdivisions thereof, is modified or rescinded, this article shall be subject to renegotiations.

ARTICLE 21 -- RECIPROCAL RIGHTS

AWARD

This Panel determines that the following additional language should be added to Paragraph 1 of said Article:

"and notify the Town of any changes in representatives or attorneys promptly when such changes are made"

ARTICLE 24 -- COMPLETE AGREEMENT

The Club has requested, over objection by the Town, that said Article be deleted from the new Contract. The Town resists the deletion of said Article, arguing that said provision embraces the understanding and intent of the Parties without opportunity for oral representations or practices to change that which the Parties agreed to.

AWARD

The Panel determines that said Article should not be deleted.

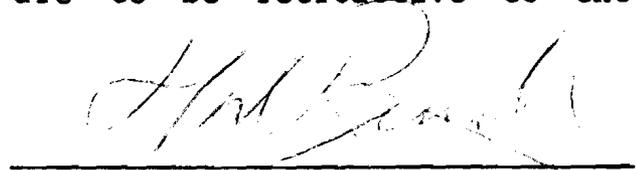
ARTICLE 27 -- TERM OF AGREEMENT

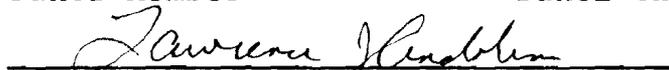
AWARD

This Panel determines that the Agreement shall become effective January 1, 1985, and shall terminate at the close of business on December 31, 1986.

This Panel also decides that the last paragraph of Article 27 should be changed so that the last sentence reads: "at which time all wage increases are to be retroactive to the expiration date."

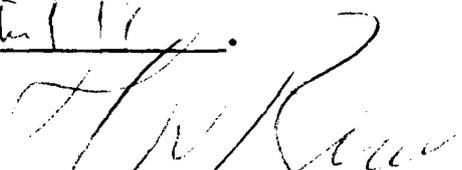

Bernard Winterman
Employer Panel Member


Thomas N. Rinaldo, Esq.
Panel Chairman


Lawrence J. Andolina, Esq.
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, THOMAS N. RINALDO, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Arbitration Award on September 11, 1985.



Thomas N. Rinaldo, Esq.
Panel Chairman

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, BERNARD WINTERMAN, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Arbitration Award on Bernard Winterman - September 19, 1985



Bernard Winterman
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, LAWRENCE J. ANDOLINA, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Arbitration Award on September 19, 1985.



Lawrence J. Andolina, Esq.
Employee Organization
Panel Member