

In the Matter of Arbitration between

TOWN OF GLENVILLE, NEW YORK

and

GLENVILLE POLICE BENEVOLENT
ASSOCIATION

PERB Case #IA86-32; M86-502

OPINION and AWARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

R E C E I V E D

SEP 22 1987

CONCILIATION

I. INTRODUCTION

This document constitutes the Opinion and Award of a Public Arbitration Panel designated pursuant to the provisions of New York Civil Service Law, Section 209.4, by the Chairman of the New York State Public Employment Relations Board on April 16, 1987. The parties at impasse are the Glenville Police Benevolent Association, Petitioner (hereinafter also referred to as the "PBA," the "Union," the "Employees," or the "Members"), and the Town of Glenville, New York, Respondent (hereinafter also referred to as the "Employer," the "Village," or the "Administration"). The Panel was charged with making a just and reasonable determination to resolve the impasse encountered by the parties in their efforts to negotiate a successor agreement to the one which expired December 31, 1986.

The Panel was constituted of the following:

Public Panel Member and Chairperson: Sumner Shapiro
64 Darroch Road
Delmar, New York 12054

Employer Panel Member: Robert E. Van Vranken, Esq.
105 Lake Hill Road
Burnt Hills, New York 12027

Employee Organizational Panel: Richard P. Walsh, Jr., Esq.
5 Computer Drive West
Albany, New York 12205

The Panel convened and conducted a hearing in the Courtroom of the Public Employment Relations Board, 50 Wolf Road, Albany, New York, July 17, 1987, at which time the parties were afforded full opportunity to set forth their positions and supporting evidence and to examine and cross-examine witnesses. Appearances were as follows:

For the Glenville PBA

Thomas J. Jordan, Esq.
Lombardi, Reinhard, Walsh and Harrison, P.C.
Albany, New York 12205
Counsel

Detective Sgt. Dominick Macherone
Glenville PBA
Witness

Sgt. Carl E. Batsinger
Glenville PBA
Witness

Det. David Kownack
Glenville PBA
Witness

Patrolman Gregory Restina
Glenville PBA
Witness

Patrolman Keith G. McKenna
Glenville PBA
Witness

For the Glenville PBA (cont'd.)

Dr. Dwight Phaup, Professor
Union College, Schenectady, New York
Witness

Edward J. Fennell
Edward J. Fennell Associates
Cohoes, New York 12047

For the Employer

Robert A. Moore, Esq.
Scotia, New York 12302
Town Attorney and Counsel

At the point in time when the Glenville PBA petitioned for Compulsory Interest Arbitration, the parties' positions on a number of issues were in a state of flux. On the basis of the hearing record and further clarifications developed in executive session, the Panel has explicitly ruled on four issues and implicitly denies the petition for modification of contract terms relating to all others, as outlined in Employer Exhibit X. The issues explicitly addressed herein are:

1. Salaries
2. Longevity allowances
3. Vacation and holiday benefits
4. Petitioner's proposal to modify the contractual language of Article VII, 2, Holiday Leave, by addition of Paragraph (b) which would permit holiday leaves to be taken in blocks of five (5) days if certain other conditions prevailed.

Any issues beyond those enumerated above are deemed to have been withdrawn.

II. OPINIONS

A. Salary Issue

1) Union Position

The Union asserts salaries paid bargaining unit members lag substantially behind those in place in comparable, neighboring jurisdictions, most specifically, the towns of Rotterdam, New York, and Niskayuna, New York. They presented exhibits and testimony in support of the argument that geographic peculiarities intensify the burden of Glenville law enforcement personnel. Arrest and crime statistics were cited to reinforce their conclusion that comparable pay and benefits have not accompanied their greater than comparable responsibilities and work loads. The petitioner further asserts the PBA standards of comparability have been tacitly endorsed by Glenville officials who recently obtained approvals for their own salary adjustments on the thesis that they should be brought into line with those prevailing in neighboring Niskayuna and Rotterdam. The average Glenville patrolman's salary would average out to nominally 15% less than that of colleagues in these two neighboring jurisdictions at the present point in time according to PBA Exhibit 25. The achievement of equity vis-a-vis the jurisdictions which the Union perceives to provide appropriate standards would involve an increase of nominally 25% over a two-year period.

2) Employer's Position

The Employer maintains it proposes to preserve the long-established compensation ratios of Glenville to Niskayuna, Rotterdam,

Scotia and Bethlehem, respectively. Its Exhibit O shows an increase of nominally 160% in Glenville salaries from 1979 through 1986, inclusive. Rotterdam and Bethlehem salaries had advanced by nominally 165% but Scotia had risen by only 155% over this same period. Niskayuna was at nominally 160% but, in more precise measure, it lagged Glenville by about 3%.

The Employer's Exhibit S, consisting of a summary of wage settlement data issued by the New York State Office of Local Government Services and the Public Employment Relations Board, showed 1986 average wage increases for upstate police in the range of 6% to 6.5%. The Employer cites these data in further support of the claim that it has kept abreast of current adjustment levels having awarded a 6.5% 1986 salary increase for Glenville police personnel. The Employer further maintains the Village of Scotia, which is part of the Town of Glenville, is, indeed, a valid comparable and that Glenville's compensation levels continue to be relatively high. The Employer also cites Guilderland as a comparable, contending it is particularly appropriate because it and Glenville are very much alike in character, income, overall size and police force size. In 1986, a top step patrolman in Glenville received a base salary more than 8% above that of a similarly-classified Guilderland colleague.

The Employer emphasizes one of the four criteria statutorily imposed upon the Counsel by Civil Service Law, Section 209.4, is that the Panel shall take into consideration the terms of past collective

agreements between the parties regulating compensation and fringe benefits in particular. The Employer's position in the matter at hand is that its proposed salary adjustment of 2.5% is equitable in that it will preserve Glenville's historical position dating back to at least 1979 with respect to Niskayuna, Rotterdam, Scotia and Bethlehem.

3) Panel's Analysis

The determination of equitable compensation levels relies primarily upon inferences of prevailing practice in the labor market. That necessarily involves reliance upon comparables and, indeed, the first of the statutory criteria imposed upon the Panel specifies that it shall consider a comparison of wages, among other factors, of other employees performing similar services in comparable communities.

We concentrate firstly, therefore, on identifying comparable communities. This does not imply the jurisdictions cited by the parties constitute inappropriate references. Rather, we have attempted to formulate an independent judgment employing the broadest based objective criteria available to us. We have extracted these data from Employer Exhibits T and U, which are summaries provided by the New York State Department of State Labor Agreements Data System (LADS), setting forth data from police contracts in upstate communities of 20,000 to 40,000 populations. The jurisdictions selected for inclusion in our analysis were generally at similar population and per-capita income levels. These data are set forth in Table I, below, and indicate that Glenville top step patrolmen fell below the profile average by 7.6%

in 1986. We found similar disparities between Glenville and Bethlehem for the year 1986, as well. The disparities cited by the Union in its reliance upon Niskayuna and Rotterdam were nominally twice as great but they were comparing the 1986 salary schedule in Glenville with 1987 schedules in other communities.

TABLE I
UPSTATE POLICE SALARY PROFILE

<u>Jurisdiction</u>	<u>1984 Census</u>	<u>1983 Per Capita Income</u>	<u>1986 Patrolman Maximum Salary Only</u>
Camillus	23,806	\$11,018	\$21,630
Gates	30,288	10,982	27,963
Glenville	28,510	11,302	23,212
Guilderland	26,250	11,953	21,415
Orchard Park	23,789	11,451	27,542
Poughkeepsie	38,890	11,664	29,913
Vestal	27,448	10,772	23,093

n = 7

\bar{X} 24,967

Profile 1986 vs. Glenville 1986 + 7.6%

Bethlehem 1986 vs. Glenville 1986 + 7.0%

The identification of a disparity does not ipso facto provide a basis for reducing or eliminating that difference. In formulating its recommendation, the Panel must consider both past practice and ability to pay. The jurisdiction here involved was not adjudged to be burdened with hardships which would render rising to the profile

average over a two-year period a strenuous exercise. There remains, however, consideration of the Employer's assertion that the differential has been enshrined by past practice. In the Panel's view, even assuming arguendo that the Union had acquiesced to past agreements favorable to the Employer, the Union is not committed in perpetuity to preservation of an Employer's advantage. We recognize and appreciate that inequities may not be erased in quantum leaps but the measure of the reasonableness of an adjustment relates to ability to pay and, in the present circumstances, we do not find in that factor a basis for further deferring implementation of the appropriate adjustment.

Our focus at this juncture shifts to the question of a general increase. The Union has relied upon forecasts of Consumer Price Index changes over the term of the contract. This is an area in which there is much disagreement among experts and frequent varying reappraisals by individual experts. On a parochial basis, the prudent officials at Glenville's helm have apparently determined that its Highway and Clerical employees are entitled to a 5% increase for the calendar year commencing January 1, 1987. It appears unlikely that an increase of at least equal dimension will not be justifiable in 1988. Since the members of the Police Department work for the same Employer and live and work in the same geographic environment, their general adjustment entitlement for 1987 should be no less than that of their fellow village employees. Since we have inferred a likely equal entitlement for 1988, we, therefore, conclude a second 5% increase would be appropriate for that year.

The compounded total of two 5% increases and the 7% "inequity" adjustment ($1.05 \times 1.05 \times 1.07 = 1.1797$) is nominally 18%. We have reduced this to 17.5% to provide monies for longevity adjustments to be discussed subsequently herein. The residual 17.5% adjustment may be achieved by implementation of two 8.4% increases ($1.084 \times 1.084 = 1.175$). The Panel majority will, therefore, award two equal wage increases of 8.4%, the first of which will be retroactive to January 1, 1987, and the second of which will take effect on January 1, 1988.

B. Longevity Allowances

In the matter of longevity payments, the Union has requested an increase from \$60.00 to \$100.00 per year of service after five years. The Employer has rejected that proposal on grounds that it would be equivalent to a 2% pay increase. The Panel was unable to confirm this figure as its calculations indicate the request, if granted, would add about 1% to the payroll cost. We did not, however, find adequate support for increasing to \$100.00, irrespective of its cost. Comparative data in Employer Exhibits T and U support an increase to \$75.00 which we estimate will immediately add nominally \$1,400.00, or 1/3 of 1%, to the payroll cost per year.

C. Vacation and Holidays

1) Union Position

The Union has proposed the addition of two holidays, Martin Luther King's Birthday and Easter Sunday, to the thirteen (13) currently received. The Union contends its holiday schedule compares unfavorably

with that of other Glenville employees in the Highway and CSEA Departments, respectively, as well as with the Rotterdam, Niskayuna and Schenectady Departments, respectively. The Union has also requested a contractual clause which will automatically entitle its members to receive as a holiday any other day designated by the Town Board as a holiday for Town employees.

2) Employer's Position

The Employer maintains holiday allowances are standardized at 13 for the two other bargaining units, just as it is for the Police. It further maintains that other police contracts in the area provide for 12 or 13 holidays and that Scotia provides 11. Moreover, the Town of Glenville PBA enjoys 7 personal leave days which exceeds the number provided in other communities, as well as for the Town of Glenville's Highway and CSEA Units.

3) Panel Opinion

The hearing record indicates the Union is in error, having counted some half holidays as full days and that, in fact, a 13-holiday schedule is in place in all Town of Glenville bargaining units. Moreover, contrary to Union assertions that PBA members are only paid straight time for holiday work while other unit members receive time-and-one-half and double time for assignments in the case of Thanksgiving, Christmas and New Year's Day. Testimony adduced under cross-examination was to the effect that PBA members receive, in addition to salary, straight time pay for holidays worked plus a compensatory day off. Additionally,

an analysis of both parties' exhibits supports an inference that a 13-holiday schedule is not deficient relative to practice in other jurisdictions. The demand for adjustments to the holiday schedule was not sustained and will be denied.

The Union further demanded the addition of a new clause to the contract stipulating that PBA members would automatically be entitled to any other day designated by the Town Board as a holiday for Town employees. In the Panel's view, holiday designations should be arrived at by negotiations between the parties. There is no necessary assurance that PBA members would opt for the same holiday schedule as other Town employees or that they might not, in fact, place bargaining emphasis on entirely different benefits. The Union proposal for addition of such a clause to the contract will, therefore, be denied.

D. Vacation Leave Days

1) Union's Position

Members of the bargaining unit currently receive ten (10) days vacation leave after one year of service - and fifteen (15) days after five years plus one additional day per year for each year of service commencing with the sixth year - with a cap at fifteen (15) years, for a total of twenty-five (25) days maximum vacation entitlement. The Union has proposed removing the cap at fifteen years and raising it to twenty years, on which basis a senior employee could accrue up to thirty days vacation per year. In support of this proposal, it cites the

fact that the Highway Department works four-day weeks in the summer-time and has a three-week shutdown - and that CSEA employees are cut back to thirty hours per week during summertime.

2) Employer's Position

The Town opposes raising the maximum, contending that other police units in this area have a twenty to twenty-five-day vacation maximum - and that the Town Highway and CSEA Units similarly are limited to twenty-five-day-maximum vacation allowances.

3) Panel's Position

A review of Employer Exhibits T and U and PBA Exhibit XVIII supports the inference that the vacation provisions accruing to Glenville PBA members compare favorably with those enjoyed by colleagues in other jurisdictions. The Panel will, therefore, deny this Union demand.

E. Union Proposed Article VII-2-b

1) Union Position

The Union has requested the inclusion of contract language which would permit members to utilize holiday leave days in blocks of five (5) - or as single days. The limitation on single-day observance would be that by so doing the individual would not create a need for overtime work. When taken in blocks of five, the limitation would be that the individual would not create a need for more than two days of overtime.

The parties deferred argument of this issue to executive session.

2) Employer's Position

The Town opposes inclusion of this language, arguing that

the present system under which holidays are taken at the discretion of the Chief of Police is the best way in which to minimize overtime costs.

3) Panel's Position

The Panel concluded it would be imprudent for it to act on this proposal at this time and the Union demand will, therefore, be denied.

III. AWARD

A. Salaries

The salary schedule applicable to the bargaining unit represented by the Petitioner shall be uniformly increased by 8.4% effective January 1, 1987, with retroactive payments being effected with reasonable dispatch.

B. Longevity Allowances

Effective retroactively to January 1, 1987, the \$60.00 per annum longevity allowance where payable shall be increased by \$15.00 per annum to \$75.00 per annum.

C. Vacation and Holidays

The Union petitioned for the addition of two holidays to the existing schedule and, in addition, a contractual clause providing for automatic inclusion of additional holidays which may be granted other Town employees in the future is denied.

D. Vacation Leave Days

The Union petition for the granting of additional vacation days is denied.

E. Proposed Revision of Article VII-2-b

The Union petition for implementation of a contractual right enabling employees to elect taking holiday leave days in single days or time blocks, subject to certain constraints, is denied.

Respectfully submitted,

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Sumner Shapiro
Public Panel Member
and Chairperson

Sworn to before me this ___ day
of _____, 19__.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF Saratoga)

Robert E. Van Vranken
Robert E. Van Vranken, Esq.
Employer Panel Member
Dissenting

Sworn to before me this 10th day
of September, 1989.

Paula Christopher
Notary Public

PAULA CHRISTOPHER
Notary Public, State of New York
Qualified in Schenectady County
No. 4864727
Commission Expires July 7 1989

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Richard P. Walsh, Jr., Esq.
Employee Organizational Panel
Concurring

Sworn to before me this ___ day
of _____, 19__.

Notary Public

In the Matter of the Arbitration between

TOWN OF GLENVILLE, NEW YORK

and

PERB Case #1A86-32; M86-502

GLENVILLE POLICE BENEVOLENT
ASSOCIATION

DISSENTING OPINION

By: Robert E. VanVranken, Employer Panel Member

The issue to which I am dissenting with my distinguished colleagues relates to the first issue of salary. The analysis as described by Chairman Shapiro discusses the concept of equitable compensation levels and relates the issue of equity to comparable communities, the Consumer Price Index and prior negotiations between the parties. The opinion indicates that the panel considered "both past practice and ability to pay". The concurring panel members take the position that the Union acquiescence to past agreements does not merit consideration with respect to a stark analysis of comparable communities and the ability to erase prior negotiations by a significant adjustment set forth in the current award.

This panel member objects strenuously to the rationale that the Union must now be compensated according to the comparable communities analysis set forth in the opinion, and in addition, add to that equitable adjustment, projections for 1987 and 1988 of the Consumer Price Index. The comparable communities used by the panel are not analogous communities to Glenville for several reasons, including tax base differences, percentage of tax base allocated to residential units and per capita income. The Town representative properly argued that Guilderland was an appropriate comparable community based

on several criteria and then further properly argued that Glenville's offer with the Union would place the Glenville PBA in a very competitive position with the Guilderland PBA. The Town representative further argued that current agreements and arbitration awards ranged in the 6.5% area, which when considering the Guilderland-Glenville comparison, would have been an acceptable percentage increase over the two-year contract period for this panel member. It is the inequity adjustment described on the top of page 9 of the opinion to which this panelist dissents. It is not the function of a public interest arbitration panel to determine that an employer and union have not seriously entertained prior negotiations nor to further infer that the PBA in prior contracts was essentially dissatisfied with salary schedule and with the alleged disparity that such salary schedule presented in comparison with other comparable communities.

This dissenting panelist dissents only to the salary award and had such award been in the range of 6.0-6.5% over the two-year contract period, would have concurred with the remaining matters expressed in the opinion.

ROBERT E. VAN VRANKEN

