PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

VILLAGE OF OSSINING, NEW YORK

AND

VILLAGE OF OSSINING POLICE BENEVOLENT ASSOCIATION

PERB CASE NO. IA 87-8; M86-441

FOR THE VILLAGE: Thomas Barnes, Village Attorney
Gennaro Faiella, Village Manager

FOR THE PBA: Kenneth J. Franzblau, Esq.

PANEL MEMBERS: Terence M. O'Neil, Esq.
John P. Henry
Dr. James R. McDonnell, Chair

BACKGROUND

The parties to this dispute were covered by a collective bargaining agreement that terminated on December 31, 1986. A petition for interest arbitration was filed by the PBA on or about June 17, 1987 and the Village's response was filed on or about July 1, 1987.

Hearings were held on November 16, 1987 and November 30, 1987 in Ossining, New York.

DESCRIPTION OF THE VILLAGE

The Village of Ossining occupies 3.33 square miles in Northern Westchester County and has a population of approximately 20,000 residents. Its police force consists of approximately 45 paid officers. It has one of the highest tax rates in the County and the median income of its residents is among the lowest in the County.

ARTICLE VII - SHIFT DIFFERENTIALS

Position of the Village

The Village wishes to eliminate this provision from the CBA.

The Village argues that since all employees work three (3) shifts they share equally the "inconvenient" work schedules. There is, therefore no justification for paying extra wages to anyone. Moreover, the notion of shift differentials is rare in the County since only one other Village (Buchanan) has it as part of the CBA.

Position of the PBA

The PBA wishes to increase the amounts of monies paid for shift differentials.

They argue that the provision has been long-standing in the CBA and has become an earned benefit. It does, in fact pay people for working "inconvenient" hours.

FINDINGS

It is ordered that the parties agree to the sum of $400 per year payable to the members of the unit, effective January 1, 1988, working three (3) rotating shifts.

It is ordered that the parties agree to the sum of $200 per year payable to persons working two (2) rotating shifts. (8 a.m. to 4 p.m. and 4 p.m. to midnight)

The same shall be applied to hours worked on overtime, e.g., either .20 per hour or .40 per hour.

Payments thereunder shall be made in the first pay period of December for that calendar year and shall be pro rated based on the actual time the rotating shifts are worked.

RATIONALE

The award maintains the benefit for the PBA, and includes the rate as part of overtime pay, while giving the Village less of a problem in keeping records and bookkeeping on the matter of shift differentials.

Although there was some basis for eliminating this benefit, its unusual nature was taken into account in the salary award.

ARTICLE VIII - VACATIONS

Section 3

FINDINGS

It is ordered that the parties adopt the following language, to be made part of the CBA.

Section 3: Vacation wages shall be paid in advance of vacation periods provided the employee submits a written request to the Chief of Police at least three weeks prior to the payroll date.

RATIONALE

The demand for increased advance notice is fair and provides the Village with adequate time to make the necessary arrangements for the payment.

ARTICLE XI - TRANSFER CREDITS

Section 2

FINDINGS

It is ordered that the parties adopt the following language, to be made part of the CBA.

Section 2: Members with prior police service anywhere in New York State shall receive credit for such prior police time in computing benefits due under this agreement, unless there is a break in police service of more than one year when transferring into the Village.

RATIONALE

The order complies with the current Civil Service philosophy in Westchester County.

ARTICLE XIII - WELFARE BENEFITS

Section 1
Section 2
Section 5

FINDINGS

It is ordered that the parties adopt the following language, to be made part of the CBA.

Section 1: Any employee who chooses not to be covered by the Empire Health Insurance Plan, or its successor, shall be entitled to 33.3% of the premiums paid on their behalf for the Empire Plan coverage, payable on December 1, based on and prorated for the months they were out of the Empire Plan.

Section 2: No order.

RATIONALE

This item is too vital to be determined in Interest Arbitration.

We order that the parties continue to research the question and make it part of their next negotiations. Moreover, the Health Insurance premiums are presently in a major state of flux and anything recommended could well be either inadequate or irrelevant to those changes.

Section 5: It is ordered that Section 5 be amended to read:

> Post-retirement health insurance benefit shall be provided through the Village's health insurance carrier.

RATIONALE

The amended language eliminates any restrictions on keeping only the existing plan at the time of retirement. The old language made no new plans possible for retirees.

ARTICLE V - WORK DAY - WORK WEEK

Section 1

FINDINGS

It is ordered that the item be negotiated by the parties in the next CBA period.

RATIONALE

Neither party provided the panel with information, data or knowledge sufficient to make an order.

ARTICLE XX - WORKING CONDITIONS AND SAFETY COMMITTEE

Section 3

FINDINGS

It is ordered that this be removed from the CBA.

RATIONALE

The item is covered by PERB Decision U95-34.

ARTICLE XXI - TRAINING

FINDINGS

It is ordered that this item be continued in the CBA.

RATIONALE

Neither party provided the Panel with information, data or knowledge sufficient to make an order.

ARTICLE XXII - JOB DESCRIPTION

Section 2

FINDINGS

It is ordered that Section 2 be amended to read:

> The Chief of Police will be permitted to assign unit members as detective trainees at no additional compensation for a period not to exceed sixty (60) working days. No unit member may be assigned such duty more than once per year.

RATIONALE

The Panel understands that the amended language conforms to the intent of the Parties, during negotiations.

ARTICLE XXIII - PAY PERIODS

Section 2

Position of the Village

The Village argued that Section 2, which calls for the issuing of separate checks for holidays, overtime, longevity or when entitled to incentive pay, provided the payments exceed $100, is an undue burden on the Payroll Department. It requires some 14 steps to process and audit the procedure.

Position of the PBA

The PBA argued that an elimination of this section would have a negative impact on the taxes paid by their members.

FINDINGS

It is ordered that Section 2 of Article XXIII be continued in the CBA.

RATIONALE

The Panel was not persuaded by the arguments provided by the Village in view of the longstanding practice in this area.

ARTICLE XXIV - DAMAGE TO PERSONAL PROPERTY

Section 1

FINDINGS

It is ordered that Section 1 be amended to read as follows:

> Upon review and approval of the Chief of Police, the Village shall replace any damaged clothing and/or personal property of a member of the Department up to a maximum of one hundred dollars ($100) per incident, per member provided: a) such damage was sustained in the line of duty and b) the member receives no other reimbursement for the damaged item from any source whatsoever, including, but not limited to, any personal insurance policy of the member. The maximum provided above shall not be applicable to damage to, or destruction of detectives clothing.

RATIONALE

Most of the claims from Officers deals with the damage of wrist-watches and the $100 maximum represents a reasonable limitation for the Village.

Detectives usually wear street clothes which they must purchase and therefore should not be limited to the amounts provided above.

ARTICLE XXIX - PAYROLL SAVINGS PLAN

Section 1

FINDINGS

It is ordered that Section 1 be amended to read as follows:

> Employees may elect to have deducted from their bi-weekly paycheck a specific amount of money to be deposited in the Employee's name in one of three designated savings institutions, one of which shall be the Federation Credit Union. Employees shall be responsible for filling out all forms required by the savings institution and be allowed to increase or decrease the amount to be deducted from payroll only once during the Village's fiscal year. This will take effect upon the date of the signing of this Agreement.

RATIONALE

It is reasonable to limit the choice of institutions where employee's deductions may be deposited.

ARTICLE XXX - MATERNITY LEAVE

Section 1

FINDINGS

It is ordered that this Article and Section of the CBA be eliminated.

RATIONALE

The provision is duplicative; the matter is covered in Article X, Section 5 of the CBA, Sick Leaves.

ARTICLE XXXII - RESIDENCY

Section 1

FINDINGS

It is ordered that Section 1 be amended to read:

> All employees shall be allowed to maintain their primary residence anywhere within a twenty (20) mile radius of the Village of Ossining.

RATIONALE

There is no justification for different residency standards based on the date of hire.

ARTICLE XXXV - DISPUTES

Section 2

FINDINGS

It is ordered that Section 2 not be made part of the CBA.

RATIONALE

This provision is most unusual and although the Village has demonstrated a need in this area the Panel is not persuaded that such a drastic clause should be added. If a supervisory member of the bargaining unit takes action which is contrary to the CBA and which causes the Village to defend itself and incur damages, that individual may be brought up on charges.

ARTICLE IV - SALARY

FINDINGS

It is ordered that the salaries of the unit be increased by 5% in each of the years of the CBA. Payment of the increase shall be retroactive to the appropriate dates.

The salary for a 1st year Ptl. shall be $20,000 effective with the date of this award. The rates between the starting rate and the top grade shall be computed by taking the difference between the top grade and the $20,000 starting rate and dividing that amount into equal steps.

RATIONALE

See Below.

ARTICLE VIII - VACATIONS

FINDINGS

It is ordered that there be no changes in this provision of the CBA.

RATIONALE

A careful study of CBAs from comparable Villages in Westchester County finds that the present vacation schedule is appropriate to the Village of Ossining/PBA CBA.

Further rationale: See Below.

ARTICLE XVI - LONGEVITY

Section 1

FINDINGS

It is ordered that Section 1 be amended to read as follows:

> The Village will make longevity payments as follows: after the completion of five (5) years of service, the Employee shall receive a longevity payment of two hundred ($200) dollars per year. After the completion of ten (10) years of service the employee shall receive a longevity payment of four hundred ($400) dollars, per year. After the completion of fifteen (15) years of service, the employee shall receive a payment of five hundred ($500) dollars, per year.

RATIONALE

A comparison of comparable Villages in Westchester County showed the Village of Ossining is somewhat behind in this area of compensation.

Further rationale: See Below.

ARTICLE XIII - OPTICAL BENEFITS

Section 1

FINDINGS

It is ordered that Optical Benefits not be made part of the CBA.

RATIONALE

See Below.

ARTICLE XIII - LIFE INSURANCE

Section 1

FINDINGS

It is ordered that $10,000 Life Insurance coverage be made part of the CBA. This provision shall be added to Article XIII, with a new Section number, and shall become applicable as soon as practicable following this Award.

RATIONALE

This important benefit should be added to the CBA; it is a major benefit for the Employee at a relatively low cost to the Village.

Further rationale: See Below.

RATIONALE FOR ALL ECONOMIC ISSUES

The Village of Ossining is not a prosperous community; it has serious problems of income taxing abilities while it works to provide necessary community services, including police services.

Historically, since negotiations began between the Village and the PBA, the economic benefits earned by the Union have fallen somewhere in the middle range of the various Villages in Westchester County. And, this seems both fair and realistic. The present award attempts to continue that level of fairness and reality.

The present CBA between the parties has many strong points for the PBA. Most importantly the total annual earnings of the staff is inflated by a number of supporting provisions in the CBA, namely:

1. Shift Differentials
2. Holidays and Super Holidays
3. Annual Payments for Unused Sick Leave
4. Health Benefits
5. Longevity
6. Personal Days
7. Uniform Allowances
8. College Tuition Payments
9. Overtime Payments
10. Maintenance Allowance

It is clear that the total take-home pay and benefits in one year reflects an economic status beyond the basic salary schedule.

The Village's willingness to pay based on their ability to pay is acceptable.

The changes made in the coming CBA as ordered by this report of findings are offered in an attempt to maintain and in some areas improve upon what we see as a strong CBA negotiated to date by the parties and earned by the PBA.

SIGNATURES

The Panel Members approve the Award.

See Dissent statements on specific items (attached).

John P. Henry

John P. Henry Dissent (9 pages)
Panel Member

Sworn before me this 5th day of May, 1988 - By Terence M. O'Neil.

Terence M. O'Neil, Esq.
Panel Member

Dr. James R. McDonnell
Panel Chairperson

PAUL D. HARTMAN
Notary Public, State of New York
No. 4741118
Qualified in Westchester County
Commission Expires March 30, 19 89

DAVID S. GOODMAN
NOTARY PUBLIC, State of New York
No. 4902015
Qualified in Nassau County
Commission Expires July 27, 1989

DISSENTING OPINION

As a member of the Panel I feel compelled to dissent with the majority on the following issues:

(1) **Article VII- Shift Differentials**

Although I recognize that the Award provides the Village with some relief in this area, I believe that there was adequate evidence presented to justify the elimination of the shift differentials. This unique clause is almost non-existent in Westchester County and is really inappropriate for employees who work rotating shifts, as opposed to a straight evening or night shift. Shift differentials are commonly paid for people performing the same job who work a "inconvenient" shift (evenings or nights). I do not believe such a stipend is appropriate when all members of the unit work rotating shifts. In such cases, the basic wage rate is established by taking into account the fact that the employees work rotating shifts.

(2) **ARTICLE XIII- Health Insurance**

Although I recognize the importance of this item and the majority's opinion that it is better resolved in negotiations, employers faced with a recalcitrant position on such an important issue have no recourse other than interest arbitration. I also recognize that the wage adjustments took into account a failure to provide the Employer with relief in this area. Nonetheless, I believe a contributory factor, at least for new hirees, was justified.

Terence M. O'Neil

Sworn before me this 5th Day of May, 1988 By Terence M. O'Neil.

DAVID S. GOODMAN
NOTARY PUBLIC, State of New York
No. 4902015
Qualified in Nassau County
Commission Expires July 27,

Dissenting Opinion

As a Panel member in this matter, I must strongly dissent to the majority award on the following issues:

Article XIII, Section 2, Welfare Benefits (page 6)

Article V, Section 1, Work Day-Work Week (page 7)

Article XXI, Section 1, Training (page 9)

Article XXXII, Residency (page 15)

Article IV, Salary (page 17)

Article XVI, Longevity (page 19)

The majority of the Panel, on page 22 of this award, attempts to rationalize their award on the above issues by a comparison with other villages in Westchester County. In this Panel members opinion the comparison with other Westchester Villages further illustrates the unjustment and unreasonableness of the majority award for reasons stated herein.

Article XIII, Section 2, Welfare Benefits

The majority Award of the Panel makes no change in the existing contractual benefit of the full cost of health insurance being paid by the Village. On this portion of the award I concur.

The award does, however, order that the parties continue to research the question and make it part of their next negotiation. The majority of the Panel has made an award which exceeds the statuatory limitations of the Interest Arbitration Panel. The Panel cannot direct what or what not the parties are to negotiate in their next collective bargaining agreement. The Panel may

suggest, but may not dictate that any particular item be negotiated in the next round of collective bargaining.

Article V, Section 1, Work Day-Work Week

Again, the majority award of the Panel has directed the parties to negotiate an issue in their next collective bargaining. The majority vote of the panel has exceeded their statuatory limitations as I have explained above.

Article XXI, Section 1, Training

The majority of the panel has awarded that the present contractual wording be continued:

"The Village will reimburse members of the Police Department on a straight time basis for attendance of authorized training sessions or programs".

The majority of the Panel have based their award on the other Villages in Westchester County. The P.B.A., as part of their evidence at the hearings, submitted the most current contracts for all Villages in Westchester County. A reading of those Village contracts reveals that in over 90% of the contracts pay at time and one half rate for authorized training sessions and programs if the member attends on off duty time. The denial of time and one half payment for off-duty attendance at authorized training sessions and programs by members of the Ossining P.B.A. bargaining unit leaves them short of a common benefit enjoyed by other Police Officers in other Westchester Villages. I also wish to note that violations of the Fair Labor Standards Act will certainly occur as a result of this award.

Article XXXII, Residency

The issue of residency, though a non-economic issue, was

submitted to Interest Arbitration by the P.B.A. so that members of the bargaining unit could locate their families in areas in Putnam, Rockland, and Dutchess Counties that would provide a more rural upbringing for their children and open up an expanded area where they could find homes to purchase at a price range that they can afford.

There is no other Village in Westchester County that has a contractual clause that limits their Police Officers residency to a defined mileage limit. The failure of the majority of the Panel to at least extend the current twenty mile limit is unreasonable and unjustified based with comparison the other Villages in Westchester County.

Article IV, Salary

The chairman, with concurrance of the other Panel member, has, by their majority vote, awarded a salary increase of 5%, effective January 1, 1987 and another 5% effective January 1, 1988. This salary award, they contend, can be justified by the fact that "since negotiations began between the Village and the P.B.A., the economic benefits earned by the Union have fallen somewhere in the middle range of the various Villages in Westchester County."

An examination of the evidence submitted by the P.B.A. at the hearings, other Westchester Village Contracts, shows that the 5% for each of two years award will take the members of the Village of Ossining P.B.A. bargaining unit from the "middle range" to the very low range; in fact they wind up as the lowest paid of Westchester Villages.

The majority of the Panel (page 22) lists ten (10) points in the village of Ossining P.B.A. contract which they alledge are "strong points" in the collective bagaining agreement and therefore "inflate" the total annual earnings. These benefits appear in other Westchester Village contracts and are not unique to the Village of Ossining, so they therefore have the same effect on other Westchester Village contracts. A review of those ten (10) inflation items set forth by the chairman on page 22 of the award shows as follows:

1.-Shift Differential- The $400 per year shift differential received by the members of the bargaining unit is more than offset by the fact that the average top base salary in other Westchester Villages in 1986 were $1183.00 higher than the top base salary in the Village of Ossining.

2.- Holidays and Super Holidays- Members of the bargaining unit are entitled to 11 paid holidays, plus 2 paid half holidays. Of the twenty-two villages in Westchester County, 3 have 11 paid holidays; 6 have 12 paid holidays; 11 have 13 paid holidays; 1 has 14 paid holidays and 1 has 15 paid holidays. Of the 22 Villages, 12 have super holiday provisions.

Based on these facts, there is no way that the Panel could consider the paid holiday benefits received by members of this bargaining unit to be "middle range".

3.-Annual Payment for Unused Sick Leave- The present conntract states as follows:

> "An employee shall receive, as an incentive, two days as incentive, two days in addition to his/her regular salary if said employee has not used any sick

leave for a period of six (6) months. No employee shall receive more than four days' incentive pay, under this section, in one calendar year."

A review of other Westchester County Village Contracts reveals that 9 have unlimited sick leave and 13 have limited annual sick leave with a maximum accumulation. Of the 22 Villages, 15 pay members for unused sick leave. The Village of Ossining P.B.A. benefit for unused sick leave is "middle range" at best.

4.-Health Benefits-

Of the 22 Westchester Villages, 16 pay 100% of health insurance benefits on the member and the member's eligible dependants. Five (5) have provisions for the member to pay a portion of health insurance for at least their first 5 years of employment. One (1) village will pay 100% on the member and 100% on eligible dependants except if the dependant is covered by another plan, in which case the Village will pay 100% on the member only. Once again, the members of the Village of Ossining P.B.A. are in the "middle range" on health insurance benefits.

Dental Plan benefits are provided by 21 of 22 of the Westchester Villages in the form of payments to a Welfare Fund or direct payments to a Dental Plan. The dental plan benefits provided to the members of the Village of Ossining P.B.A. bargaining unit could be considered as "middle range".

5.- longevity

Of the 22 Villages in Westchester County, all pay Police bargaining unit members longevity. The unanimous vote of the

Panel award the members of the Village of Ossining P.B.A. bargaining unit a $100 increase in longevity. Even with the $100 increase awarded the the Panel, longevity is, less than "middle range" when compared to payments being received by other Westchester Villages.

6.-Uniform Allowance

Of the 22 Westchester Villages, 5 supply uniforms to their Police Officers as Ossining does, in the other 17 Villages, Police Officers receive an annual uniform allowance of an average of about $400 per year. Since the Village argued that the P.B.A. demand in Interest Arbitration for a $500 per year, per member, Uniform Allowance was too costly to the Village as apposed to the cost of supplying uniforms as in the past, it must be assumed that the benefit of uniforms being supplied by the village is less than "middle range" for their uniformed Police Officers. It should be noted further that in the Village of Ossining, detectives receive a clothing allowance of $275 per year, which is substantially less than the annual allowance in other Westchester Villages.

8.- College Tuition Payment

Of the 22 Westchester Villages, 20 provide some form of College Assistance for Police Officers. In the Village of Ossining, payment of $10 per year to a maximum of $500 per college credet earned is not received by members hired after January 1, 1975. Again, the members of this bargaining unit are receiving a "middle range" benefit.

9.- Overtime Payments

All 22 Villages in Westchester pay their Police Officers for

overtime worked. The amount of overtime worked is a direct result of the services and needs of the Police Department and the manpower available. If the Village feels that the payment of overtime is too costly, a subject which they never raised at the Arbitration Hearings, then they must make the determination to cut services and/or hire more manpower.

Since all other Villages in Westchester pay premium rate for overtime worked, this is a general benefit.

10.-Maintenance Allowance

The members of the Village of Ossining P.B.A. bargaining unit receive an annual uniform maintenance allowance of $150 per year. This benefit is only for uniform members and not those assigned as detective or plain clothes.

A review of the Westchester Villages reveals that 7 of the 22 pay uniform maintenance to Police bargaining unit members. In many of the villages where members receive annual payment for uniform purchase, the amount paid is sufficient to partially offset the cost of maintenance of uniforms, so again, there is a less than "middle range" benefit being received by the members of the Village of Ossining P.B.A. bargaining unit.

The expressed purpose of the majority of the Panel of the Panel was to keep the village of Ossining P.B.A. bargaining unit members in "middle range" in salary and benefits. In the area of annual salary, the majority of the Panel has in fact removed the numbers of this unit from the "middle range" and has placed its members in the lowest range.

The average salary for Police Officers at top base pay in

the 22 Villages in Westchester County on December 31, 1986 was $32,958.00, this would be the "middle range" annual salary for Westchester Villages. The 1986 annual salary for a Police Officer in the Village of Ossining at top base pay was $31,775.00, $1,183 less than the Westchester Village average.

The average salary for the 15 settled Villages in Westchester County for a Police Officer at top pay on December 31, 1987 was $35,195. The award of the majority of the Panel puts a top paid Police Officer in the Village of Ossining at $33,364, this is $1831.00 less than the average. As of December 31, 1988, based on the 5 Westchester Village contracts settled to date, the average salary for a Police Officer at top grade pay is $36,980.00. The Village of Ossining Police Officer at top grade pay is awarded $35,032.00 by the majority vote of the Panel, $1,948 less than the average.

In two years, the alleged "just and reasonable" award of the majority of the Panel, which the Chairman states attempts to continue a level fairness and reality, and keep the members of the bargaining in "middle range" in fact, reduces the base salary of the members of the Village of Ossining P.B.A. bargaining unit from the Chairman's quoted "middle range" to the lowest paid of any Village unit settled in 1987 and by far the lowest paid of all units who have settled in 1988.

It is unconceivable to this Panel member that the majority of the Panel with their full awareness of the 1987 and 1988 settled contracts in Villages of Westchester County, plus being aware that Village Officials had received annual salary increases

from 6% to 13% for the year 1987 (the Chief of Police received 8% salary increase for 1987) would Award the member of the Village of Ossining P.B.A. bargaining unit a 5% salary increase for the year 1987.

Mr. Edward Fennell, a municipal finance consultant reviewed the village of Ossining Budgets for the years 1986 and 1987 and his conclusion was that the Village of Ossining's fiscal condition was such that they could pay an annual salary increase commensurate with the other Westchester Villages for the years 1987 and 1988.

Based on all of the facts that I have set forth in my dissent, I can see no justification or rational in the salary Award of the majority of the Panel. In the opinion of this Panel member, the majority of the Panel in their annual salary Award has not come to a reasonable and just award based on evidence and testimony presented to the Panel at the hearings.

The rationale set forth by the Chairman, that the Village of Ossining P.B.A. has in their collective bargaining agreement provisions which inflate the total annual earnings of the staff, fails to take into consideration the same impact of similar benefit clauses in other Westchester Village Contracts.

In this Panel members opinion, the ability of the Village of Ossining to pay salary increases, as well as other criteria set forth in Section 209.4 of the New York State Civil Serivce Law, have not been adhered to by the majority of the Panel on the issue of annual salary. Further the majority of the Panel has exceeded their statuatory authority by directing the parties to address the issues of Welfare Benefits and Work-Day-Work-Week in

their next negotiations.

John P. Henry Date: 5/13/88
John P. Henry