

PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration

between

VILLAGE OF NORTH TARRYTOWN,

"Village"

-and-

NORTH TARRYTOWN P.B.A.,

"Union"

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APPEARANCES

Public Panel

Stanley L. Aiges, Chairman
Terence M. O'Neil, Esq.
Luis A. Penichet, Esq.

For the Village:

RAINS & POGREGIN
Nancy Soper, Esq.

For the Union:

John Henry

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
OFFICE OF THE CHAIRMAN
100 WEST STREET
ALBANY, N.Y. 12242
COMMUNICATIONS SECTION

resolution of this dispute has not occurred earlier.

There are approximately 27 officers covered by the Agreement. The annual salary schedule in effect during the last year of the Agreement is set forth below:

<u>Level</u>	<u>Hired Before June 1, 1987</u>	<u>Hired After June 1, 1987</u>
Officer V	\$20,000	Same
Officer IV	30,572	\$24,826
Officer III	33,640	29,653
Officer II	36,828	34,479
Officer I	39,305	39,305
Detective	44,022	Same
Sergeant	44,611	Same
Det. Sergeant	47,166	Same
Lieutenant	47,756	Same

POSITION OF THE PARTIES

The parties are apart in almost every aspect of the Agreement. The single issue on which they have reached agreement is term. Both propose a two year contract expiring on May 31, 1992.

The Union's Proposals

The Union seeks the following 23 changes:

1. Wages - 10% increase in each year of the Agreement.
2. Rank Differential - Sergeant to be 15% above Officer I, Lieutenant to 30% above Officer I.
3. Night Shift - Add a new provision that employees who work between 4:00 p.m. and 8:00 a.m. be paid an additional 10%. Overtime rate to include the 10%.
4. Schedules - Detectives, Youth Officers and Lieutenants to receive an additional chart day off each month.

5. Call Back Pay - Employees to be guaranteed a minimum of four hours at time and one-half.
6. Overtime Distribution - Equalize all overtime by rank and assignment.
7. Overtime Meal Allowance - Employees who work over four hours overtime to receive \$6.00. Employees who work over eight hours overtime to receive a second \$6.00 payment.
8. Holiday Overtime - Employees who work Easter, July 4th, Thanksgiving or Christmas, to be paid at time and one-half.
9. Vacations - All vacations to be on working days. Vacations shall begin after scheduled days off.
10. Life Insurance - All employees to receive \$50,000 Life Insurance.
11. Welfare Fund - Increase contribution by \$200.00 each year of the Agreement.
12. Severance Pay - Increase to \$8,000 and eliminate all eligibility dates.
13. Uniform Allowance - Change title to "Duty Apparel Allowance." Increase amounts by \$50 in each year of the Agreement.
14. Cleaning Allowance - Increase to \$75 in the first year of the Agreement and \$100 in the second year.
15. Payment - Both Duty Apparel and Cleaning Allowance to be paid to the employee by a separate check issued once a year.
16. Personal Leave - Increase to five days each

year.

17. Mileage Allowance - Increase to \$.24 each mile, or the I.R.S. rate if higher.

18. Sick Leave - the Village to establish a bonus plan to provide: 2% of pay if less than 8 sick days taken; 4% of pay if less than 5 sick days taken; 6% of pay if no sick leave days taken.

19. Funeral Leave - Increase to seven days the leave for death in immediate family, and seven days if death is in the spouse's immediate family. Add two days leave for death of an aunt or an uncle. All days leave to be "work days."

20. Longevity - increase the longevity schedule by the same percentages as the salary increases.

21. Out of Title Work - any employee who is required to perform duties of a higher paying position for more than one day to be paid the higher rate for all time on the higher paying job.

22. Safety - any time there are not a minimum of two officers on patrol, not including the Desk Sergeant, the officer on duty will be paid two times the normal rate of pay.

23. Duty Incurred Illness and Injury - Employees should continue to receive all benefits specified in the Agreement through the entire period of leave of absence.

The Village's Proposals

The Village also made extensive proposals. Many of its 26 demands constitute reductions in terms of the current

Agreement. Its position is set forth below:

1. Wages - The Village proposes one salary increase of 3%.

2. Compensation Time - Limit P.B.A. members who receive compensation time for negotiations to the President and two other representatives. No compensatory time or overtime to be granted to P.B.A. members for time spent attending Labor Management Committee meetings.

3. Longevity - Reduce the payment for each longevity level set forth in Schedule A of the Agreement by \$100.

4. Posting of Schedules - Reduce the time that tours of duty must be posted from the current one year to six months.

5. Overtime Distribution - The P.B.A. is to be responsible for maintaining the records of overtime distribution. The Chief will make a reasonable attempt to evenly distribute overtime. Selection shall be based on the Union's list.

6. Payment of Accumulated Compensatory Time - Change the rate used in computing the amount paid for accumulated Compensatory Time from the rate in effect at time of payment to the rate in effect when the compensatory time was initially accrued.

7. Listing of Compensatory Time - Eliminate Article V, Section 2, which requires an annual listing of total compensatory time due each employee.

8. Non-contiguous Overtime - Reduce the minimum three (3) hours required payment to two (2) hours.

9. Overtime as a Result of Swaps - Add a new provision eliminating the payment of overtime created by employees who swap tours.

10. Detective Overtime - Add a new provision limiting the computation of overtime for Detectives. They would receive overtime only if they work in excess of 80 hours in two consecutive weekly tours. In addition, a maximum limit of 104 overtime hours would be paid each year.

11. Department Meetings - The Village should have the right to hold two one hour unpaid Department meetings each year.

12. Training Rate - Pay off duty employees at straight time rather than overtime when they attend training sessions, unless the overtime is mandated by Statute.

13. Holidays - Reduce the number of holidays from 13 to 12.

14. Time off on Holidays - Employees would be required to receive approval prior to taking time off in lieu of cash payment for holidays. Employees could only receive time off if it resulted in no overtime.

15. Vacations - The amount of vacation for employees with six months to one year of service to be reduced from two weeks to one week.

16. Vacation Cap - The provision requiring six weeks

of vacation beginning with 16 years of service to be eliminated. The maximum vacation would be five weeks.

17. Hospital, Surgical and Medical Benefits - The Village proposes that all employees pay fifteen percent (15%) of the cost of the benefits for both their own and dependent coverage. The employee contribution will be automatically deducted from their salary on a monthly basis.

18. Health Insurance Plan Withdrawal - Eliminate Article VIII, Section 4, which provides for payment of a stipend to employees who withdraw from the Health Insurance plan for less than one year.

19. Welfare Plan - Pro-rate contributions for new or retired officers, counting only time actually spent on the job.

20. Pensions and Severance Pay - Modify Article XII, Section 2, which provides a retirement incentive, to require that employees have 27 years completed service by June 1, 1989, and retire prior to September 30, 1990, in order to qualify.

21. Cleaning and Maintenance of Duty Apparel - Eliminate this provision.

22. Personal Leave - Reduce the number of personal leave days from four to three each contract year. Employees would be required to receive prior approval to use those days except in emergency cases.

23. Previous Practices - Delete Article XVI, Previous Practice Clause, from the Agreement, including removal of the Section which provides for payment of salary bonus to

employees who limit their use of sick leave.

24. Grievance Procedure Definition - Eliminate the inclusion of "similarly" affected employees from the definition of a "Grievant."

25. Grievance Procedure Period - Extend the time the Village has to answer a grievance in Step II from 15 to 30 days.

26. Grievance Procedure - Substitute the American Arbitration Association for the Public Employment Relations Board in the Section providing for binding arbitration.

SUPPORTING ARGUMENTS

The Union's position rests on a number of basic arguments which are briefly summarized below. It submitted 66 exhibits and presented one witness in support of its position.

First, the Union maintains its economic proposals are fully justified by contracts reached in other Westchester communities. It looks to the Towns of Bedford, Cortland, Eastchester, Greenburgh, Harrison, Mamaroneck, Mt. Pleasant, New Castle, North Castle, Ossining, and Yorktown. It cites the Villages of Ardsley, Briarcliff, Bronxville, Buchanan, Croton, Dobbs Ferry, Elmsford, Hastings, Irvington, Larchmont, Mt. Kisco, Pelham, Pelham Manor, Pleasantville, Port Chester, and Scarsdale. In each of these jurisdictions, Police Officers received "substantial" salary increases in 1990. Most were also accorded major increases in 1991. Those which do not provide for 1991 increases are now in negotiations for 1991 and future years.

The Union presented two exhibits comparing the base salary of top rated Police Officers within the various Westchester jurisdictions. It argues the exhibits further justify its salary proposal. (See Union Exhibits 18, 21.) In 1989, North Tarrytown was above both the overall County average as well as the average for Villages. The Union holds that unless its salary proposal is granted, the Village's Officers will fall below the average salary in effect for their peers in surrounding communities.

The Union points to the same municipalities to substantiate its proposals for increases in other economic provisions of the contract. It argues that those agreements, with minor exceptions, justify its requested increases in minimum call back pay, holidays, work day vacations, welfare fund, uniform allowance, cleaning allowance, and funeral leave. It submitted a separate exhibit regarding the differential in pay between Officers, Sergeants and Lieutenants, currently 13.5% and 21.5%, respectively. It notes that several communities provide as much as 15% and 30%.

The Union maintains the level of wages and benefits produced by its package are required to prevent the Village from being at a competitive disadvantage. Police activity has remained high. The calls from citizens for police service have not decreased. The number of arrests and summons rose from 10,927 in 1989 to 15,147 in 1990. Parking violations increased by more than 2,000 during the same period.

The Union takes strong exception to the Village's

proposal for numerous "give backs." It argues none of those proposals is justified. It maintains there is no basis for the Village's proposal that employees assume a percentage of the cost of Health Insurance benefits. It submitted two studies of Health Insurance coverage of 30 County towns and villages. Less than 30% require any employee contributions. In most cases where some contribution is required, it is paid only by recently hired members of the force and ceases after a specific number of years of service, or upon reaching the top Patrol Officer classification.

The Union argues that its economic offer is within the Village's ability to pay. It discounts the Village's testimony and exhibits regarding its financial woes. It called Edward J. Fennell, a consultant who specializes in government finance. Fennell testified that he had reviewed the Village's budgets and interim financial statements. He had also inspected the estimate of State aid the Village would receive, and the estimated amounts of sales tax revenue under new State legislation. The Union entered a report prepared by Fennell regarding his findings. Fennell concluded that based upon his review, the Village had the "financial ability to pay a fair and just increase."

Based on these arguments, and its numerous exhibits, the Union urges that the Panel find its proposals are justified and grant an award in its favor.

Suffice it to say, the Village takes strong

exception. It holds the Union has not considered the "real world" being faced by the Village, its residents and taxpayers. The Village maintains it is affected by both an eroding tax base and consistently escalating costs.

Its primary revenue problem is caused by the loss of General Motors as a taxable entity. From 1977 through 1985, 48.7% of the Village's total taxes came from General Motors. In 1985, General Motors sued, demanding reimbursement of \$10 million in back taxes. The suit was settled in September of 1985. The settlement removed the General Motors' property from the tax rolls and established a fixed schedule of payments (the Pilot Agreement). Those payments decrease from year to year. For example, \$1,300,000 was paid in 1986. By 1990 and 1991 payments decreased to \$1,100,000. Payments are scheduled to drop further in subsequent years. This has reduced the percentage of taxes resulting from the former General Motors' property to 25.4%. The Village stated that the loss in revenue from this agreement was \$748,676 in 1990, and the loss will be \$949,264 in 1991.

These revenue losses had to be made up from other sources. Transfers were made from other funds. Village property and buildings were sold. Property taxes were raised. From 1986 through 1991, the yearly average Village tax rate increase has been in excess of 12.5%. The Village points out that its property tax rate per \$100,000 of market value is the highest of all Westchester villages. It holds it can no longer continue to look exclusively to the revenue side for relief of

the problem.

The Village argues that during this same period, many of its expenses have escalated at alarming rates. It points to Health Insurance costs as just one example. It maintains that from 1984 to 1991, those costs have increased in excess of 125%. It changed Insurance carriers in an attempt to contain the increase. This action had only a one year effect. Then the costs resumed their upward spiral.

From 1986 to 1991, expenditures have risen from \$4,172,759 to \$5,567,335. This is more than a \$1.3 million increase. In its view, the Village must find some way to control and reduce expenditures. It argues that alone provides justification for its proposals.

The Village maintains its Police Officers already receive competitive wages and benefits. In 1989, the top step Police Officers' base salary was \$39,305. That placed them above many of the surrounding Westchester villages. Average gross earnings in 1990 was \$46,497. They are more than competitive in longevity, the number of work days each year, vacations, holidays, personal days, clothing allowances, and other fringe benefits.

The Village holds that Health Insurance merits special attention. The officers and retirees currently make no contribution towards the cost of their insurance. It argues that situation cannot continue. The P.B.A.'s own exhibits show that 11 of 22 Agreements in Westchester require some employee

contribution, or that the Union made concessions to reduce other costs to offset those charges.

Based on these arguments, the Village asks that its proposals be granted.

* * *

OPINION AND AWARD

In an attempt to reach a reasonable decision here, we have considered the final position of the parties and have carefully studied their arguments, testimony and evidence. . Of paramount importance, we have evaluated those positions and arguments under the following factors:

1. comparison of the wages,, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
2. the interests and welfare of the public and the financial ability of the Village to pay;
3. comparison of peculiarities in regard to other trades or professions, including specifically: hazards of employment; physical qualifications; educational qualifications; mental qualifications; job training and skills; and
4. the terms of collective bargaining agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

All of these factors are, of course, relevant. However, no one is necessarily controlling. It is necessary to weigh and balance all of these factors in order to reach a just and reasonable determination.

That said, we turn to the dispute at hand.

As can be seen from the positions of the parties listed above, little or no actual movement has taken place. The Union continues to press for major increases in almost every economic provision of the Agreement. The Village continues to demand reductions in those items. However, we believe both recognize the key area in this dispute is the level of a salary increase. The Union has not modified its demand for a 10% increase in each year of the Agreement. The Village has offered one 3% increase. We find neither parties' position to be realistic.

It seems to us that a balance must be struck here. It must take account of the Village's serious economic position. It must take account of the Union's right to a fair level of compensation and benefits.

There is no doubt the Village is facing serious financial hardships. The loss of the General Motors' property taxes, the reduction in State aid, the changes in the receipts from the Water Fund, combined with increasing costs, firmly establish that. They paint an extremely bleak picture. The Village is, in a word, in trouble.

We have closely reviewed the Village's financial data. Its various exhibits and the testimony of its key financial expert all support the conclusion reached above. And, it is important to recognize E. Fennell, the Union's government finance expert, effectively confirmed the Village's plight. He concluded that the Village had used nearly all of its entire

fund balance in its 1991 budget. He found that to be "unusual." He conceded that "As a budget plan, that's kind of close." (TR. 46.)

In brief, it is clear to us that the Village's financial woes are real. They cannot be ignored. The Village, we are convinced, needs some form of relief here.

On the other hand, we can hardly ignore the fact that salary settlements in Westchester County in both 1990 and 1991 have averaged around six percent. PBA Exhibit No. 19 clearly establishes that. It is true that some of the settlements have been slightly higher, and a few have been lower. However, the "going rate" certainly appears to be around six percent.*

In our judgment, based on all of the foregoing, the only fair and just way to balance the parties' conflicting needs and interests is to award the following salary increase:

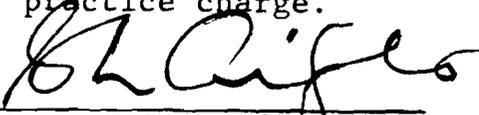
1. Effective June 1, 1990: No increase
2. Effective June 1, 1991: 6 percent

In our judgment, in light of the above, none of the proposals presented by either party should be granted. We note that they will be returning to the bargaining table in the immediate future. For reaching changes like these are best addressed in that forum.

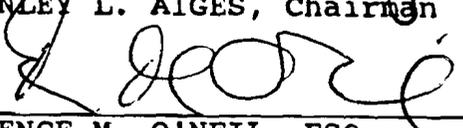
*In the face of this, it is difficult for us to understand why the PBA has pressed for successive 10 percent increases and a host of other costly benefit improvements.

AWARD

1. The term of this award shall be June 1, 1990 through May 31, 1992.
2. Salary levels shall be increased across-the-board by six percent effective June 1, 1991.
3. All other terms and conditions contained in the agreement which expired on May 31, 1990 shall continue in effect except as modified by the parties' settlement of the improper practice charge.



STANLEY L. AIGES, Chairman



TERENCE M. O'NEIL, ESQ.,
Employer Representative

LUIS A. PENICHER, ESQ.,
Union Representative

DATED: January 6, 1992