

JUN 10 1992

New York State Public Employment Relations Board
Interest Arbitration Panel

CONCILIATION

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In the Matter of the Interest Arbitration :
between the : FINAL AND BINDING OPINION AND
Village of Washingtonville ("Village") : AWARD
and :
New York State Federation of Police : PURSUANT TO SECTION 209.4
("Federation") : OF THE CIVIL SERVICE LAW
Case No: IA 91-014; M 90-463 :
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By: Tri-partite Arbitration Panel:

Theodore H. Lang, Neutral Chairman, 795 Addison St., Woodmere, NY 11598
Terence M. O'Neil, Esq., Member designated by the Village
Anthony V. Solfaro, Member designated by the Federation

APPEARANCES:

For the Village: Mark M. Reinharz of Rains & Pogrebin, Attorney
for the Village
Mayor Marge Dalnodar
Robert Johnson, Trustee, Police Commissioner
Hector Cintron, Trustee
Nicholas Kuzmiak, Police Chief
Melanie Lanc, Clerk-Treasurer
For the Federation: John Henry, Vice President of the Federation
James Ascione, PBA President
Edward Fennell, Consultant

The New York State Public Employment Relations Board, Hon. Pauline R. Kinsella, Chairperson, on or about September 9, 1991, invoked the provisions of the Civil Service Law, Section 209.4 and designated the Under-signed as the Public Arbitration Panel for the purposes of making a just

and reasonable determination of this dispute. This "Opinion and Award" was prepared by the Public Panel Member and Chairman of the Panel, Dr. Theodore H. Lang, Ph.D.

HISTORY OF THE IMPASSE

The latest formal Agreement between the Federation and the Village covering a unit consisting of "all full-time police officers of the Police Department of the Village of Washingtonville, excluding the Chief" was for a two year period from March 1, 1988 through February 28, 1990. The parties were unsuccessful in negotiating a settlement of contract negotiations for the period from March 1, 1990 through February 28, 1992 and P.E.R.B. assigned a Mediator. The parties were unable to reach a settlement even with the assistance of the Mediator and on July 18, 1991 the Federation petitioned P.E.R.B. for Compulsory Interest Arbitration on a total of 22 numbered issues, many with multiple parts. Under date of August 5, 1991, the Village responded to the said petition incorporating 16 of its own proposals, many with multiple parts, and filed an "Improper Practice Charge" (identified as P.E.R.B. Case No. U-12742). On December 2, 1991, the parties resolved this I.P. Charge by a Stipulated Settlement, which incorporated a number of agreed amendments of the expired Agreement and the Federation modified a number of its proposals which had been challenged by the Village.

Hearings were held on January 28 and February 7, 1992. The parties entered into a stipulation that the Record of this Case shall be constituted solely of the exhibits and testimony supplied by the parties and the notes of the Chairman, and that the parties do not wish a transcript.

The Village and the Federation had ample and full opportunity to submit exhibits, examine and cross-examine witnesses, and make oral argument. There were six joint exhibits, 45 Federation exhibits, and 23 Village exhibits. The Federation presented testimony by Edward Fennell, Consultant on Government Finance. The Village presented testimony by Nicholas C. Kuzmiak, Police Chief, Robert T. Johnson, Village Trustee, and Melanie Lanc, Village Clerk-Treasurer.

The Panel met in executive sessions on April 1 and April 27, 1992.

In regard to all items, the Panel has considered seriously the provisions applicable to compulsory interest arbitrations pursuant to §209.4 of the Civil Service Law, which provides in part:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective 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.

The balance of this Opinion will deal with each of the proposals submitted to the Panel for final and binding interest arbitration.

The following items are denied. There is no comparative data justifying the change sought by the party, and there is no persuasive argument which, in the judgment of the panel ² justifies the proposal:

Federation Proposals:

<u>Number</u>	<u>Subject</u>
1	Agency Shop
2	Time Off for Union Business
5	Shift Differential
6 (b)	Rounds of Ammunition
7	Vacation
8 (a)	Holidays
8 (b)	Personal Days 1
9	Bereavement Leave
10	Unlimited Sick Leave
11	Overtime, Call Back Time, Meal Allowance
12	Discipline
13	Court Appearances
14	Education
16	Police Safety
17	Leave of Absence
18	Promotion
20	Seniority
21	Personal File
22	Loss or Damage of Personal Property

(1) In the prior Agreement, the parties eliminated the three days of personal leave and added the three days to the vacation allowance.

(2) When the term Panel is used hereafter in the Opinion, it refers to a majority of the Panel.

Village Proposals:

<u>Number</u>	<u>Subject</u>
4 (b)	Three Hours of Work
5 (a)	Employer to Contribute 25% of Premium (Health Insurance)
5 (b)	Spousal Health Insurance
6	Delete Article X C (Severance)
7 (a)	Reduction of Sick Leave Payout
7 (b)	Earning of Vacation and Sick Leave
8 (a) and (b)	Holidays
14	Training Costs
16	Random Drug Testing

The Federation Proposal on Work Schedule and Village Proposals on Vacation and Work on Holidays:

In this set of issues, there is comparative data which favors the Village on most items but favors the Federation on work schedule. The proposals in this set are the following:

<u>Proposal</u>	<u>Comparative Data</u>
<u>Federation No. 15 (Work Schedule)-</u> Change from 255.5 days per year schedule to a 243.3 days per year schedule (4 days on and 2 days off).	Strongly supports this Proposal.
<u>Village No. 9 (Work on Holidays)-</u> Give one day off in addition to the day of pay instead of paying the employee 2½ times the normal rate of pay.	Supports this Proposal.
<u>Village No. 10 (a)</u> (a) reduce maximum vacation from 33 to 18.	Strongly supports a reduction from 33 days.

Proposal

Comparative Data

Village No. 10 (b) and (c):
earning vacation on a monthly basis

No Comparative Data.

Village No. 11
Vacation days to be taken only on a
weekly basis.

No Comparative Data.

Discussion on the Set of Time Items:

This collective bargaining unit has the poorest work schedule and the most favorable vacation and "pay for work on holiday" provisions among the five police departments identified as the most comparable, namely: the Villages of Wahingtonville, Monroe, and Goshen, and the Towns of Blooming Grove and Cornwall. The conditions which exist were negotiated by the parties. If the Panel were to recommend the 4-2 Work Schedule sought by the Federation, it would do so only concomitant with reducing the vacation allowance and the "pay for work on holidays" benefits. It is better that such a radical adjustment of terms and conditions be made by the parties. They may prefer to make no changes. Also, of course, the Panel is mindful of the fact that this Award is fully retroactive and will be implemented retroactively after its date of expiration.

Under all these circumstances, it is the decision of this Panel that Federation Proposal No. 15 and Village Proposals Numbers 9, 10, and 11 be denied.

Federation No. 3 - Wages:

The Federation seeks 10% for each of two years. In support of its position, the Federation makes the following points:

(a) The parties are agreed that the most comparable other police forces are those of the Towns of Blooming Grove and Cornwall and the Villages of Monroe and Goshen. The Village of Washingtonville is within the Town of Blooming Grove.

(b) The Washingtonville Police are compensated substantially lower than the police in the four police departments most closely comparable and in the other towns and villages in Orange County.

(c) The Village is financially able to bring the police up to comparable salaries in Orange County:

- The Village utilizes only 67% of its total taxing power and has \$1,255,131 of taxing ability left for 1991-92.
- The Village has \$144,673 in unappropriated General Fund balance as of February 28, 1991, and the 1991-92 Budget contains \$31,573 of Contingency Funds.
- Where wage increases have not been negotiated in a past budget and where, hypothetically, there are insufficient funds in the Budget to pay increases negotiated or awarded in an interest arbitration, the Village can issue budget notes up to 5% of the amount of the annual budget. In the Village this should not be necessary because for Fiscal Year ending February 28, 1991, the Village had an unexpended General Fund balance of \$205,358, of which the Village appropriated only \$60,685 for the 1991-92 Budget, leaving \$144,673 in an unappropriated balance.
- The 1991-92 Budget estimates its revenues very conservatively, being \$135,299 lower than 1990-91 actual revenues.

(d) Each 1% of police officer base salaries costs \$2,785.

The Village has made no salary offer on the negotiating table and argues against the Federation's proposed 10% increase, making the following points:

(a) The officers have earned about 10% over their base pay due to overtime and holiday work.

(b) An increasing percentage of the Budget has been charged to this unit.

(c) In 1988 and 1989 salary increases of 6.8% and 8.56% far exceeded the comparable Consumer Price Index (C.P.I.) rates of 4.4% and 4.6%, respectively.

(d) Average non-governmental union settlements were 2.6% and 4% for 1988 and 1989.

(e) For 1990 and 1991 C.P.I. rates were 6.1% and 3.1%, respectively, and average non-governmental union settlements were 4.0% and 3.8%, respectively.

(f) There is a recognized fiscal crisis throughout the State.

(g) The Village has a low incidence of criminal activities - only 200 to 275 arrests in a year.

(h) The Police Force is very small, consisting of seven officers and a Chief of Police. Of the five communities most comparable, namely: the Village of Washingtonville, the Town of Blooming Grove, the Town of Cornwall, the Village of Goshen, and the Village of Monroe, Washingtonville is the smallest in population and in land area.

(i) The value of real property in the Village has declined more rapidly than in the other communities with which comparisons are made.

(j) The Washingtonville Central School District is operating on an austerity budget in 1991-92 School Year due to two budget defeats.

Discussion and Award on Wages:

After considerable study, the Panel concludes that the salary proposals of both parties are not justified by any comparisons provided.

The Panel finds that the Village has the financial ability to pay a reasonable wage increase. The wage increase sought by the Federation is unreasonable. The Village is also unreasonable in having no salary offer on the table after extensive negotiations and mediation.

By agreement of the parties, the most significant comparative data are the salaries paid police officers of the Village of Monroe, the Village of Goshen, the Town of Blooming Grove, and the Town of Cornwall. To pay officers of Washingtonville the average top salary of the other four would require increases totalling over 11.68% over the wages in the expired Agreement. However, the Panel is mindful of the Village's strong argument concerning fiscal stringencies and prudence.

Based upon the entire Record, the Panel hereby awards to the Police a 5.5% increase in each step of the Pay Plan* effective March 1, 1990 and a 5.5% increase effective March 1, 1991.

Federation Proposal No. 4(a) Rank Differential:

Article IV d of the expired Agreement provides a 5% differential to Sergeants and IV e provides a 3% differential to Corporal.

The Federation proposes the following differentials:

Detectives	7.5%
Corporals	10%
Sergeant	15%
Lieutenant	30%

There is no justification given for adding Detective or Lieutenant to the Agreement. The comparative data justifies increasing the salary of Sergeant. Accordingly, the Panel hereby awards that 10% replace 5% in Article IV d for anyone serving in the title of Sergeant.

* This does not apply to officers in their first year of service in which the officer and the Village negotiated an appointment rate for a one-year term.

Federation Proposal 4 (b) Longevity Differentials:

Article IV c of the expired Agreement provides longevity of 1% after six years of service and 2% after ten years of service.

The Federation seeks seven longevity increments of \$500 each. The comparative data does not support the Federation proposal, but does support some improvement after 14 years of service. However, there are no officers with 14 years of service. Therefore, this proposal is denied in this round of negotiations.

Federation Proposal 6 (a) Uniform Allowance:

Article VII A of the expired Agreement reads as follows:

One complete set of uniforms shall be provided to all employees immediately upon joining the police force. A list of what constitutes a full set of uniforms is annexed as an Exhibit hereto. A \$300.00 uniform allowance shall be paid to each full-time member of the force every six (6) months, payable on the anniversary date of contract. The Village shall reimburse Police Officers for any cost resulting from mandatory changes in the styles of the uniform.

The Federation proposes that this be increased to \$350 every six months. The comparative data indicates that three of the four most comparable departments are at \$650 or \$700 per annum. Furthermore, the wider comparisons indicate that a majority of the departments are at \$650 or \$700 or more per year.

Accordingly, the Panel awards that Article IV C be amended retroactive to March 1, 1991 by substituting \$325 for the figure of \$300 therein.

Federation Proposal No. 6 (c) Service Weapon:

The Agreement is silent in regard to providing and repair of service weapons. It is not clear in the Record what the practice is. The Federation proposes that the Village provide and repair service weapons as needed. The four police departments in the closest comparison all provide service weapons and three also repair them. The wider comparison also strongly supports this proposal.

Accordingly, the Panel awards that the following new clause be added to

Article VII:

The Village shall at its own expense provide and repair employees' service weapons, effective February 28, 1992.

Village Proposals 1, 2, and 3 - Deletion of Article IV (Village Rights):

These three proposals were agreed to by the Federation as part of the Stipulation settling I.P. Charge No. U-12742. They are, therefore, withdrawn from consideration by the Panel.

Village Proposal 4 (a) Overtime:

Article V of the expired Agreement reads as follows:

The workweek for members of the units shall consist of forty (40) hours. In the event that a member of the force shall be obliged to work in excess of eight (8) hours at the direction of the Chief of Police, in given shift, such member shall be paid at the rate of time-and-one-half for each hour, which may be taken in cash or in compensatory time off at the rate of time-and-one-half.

The Village proposes that the following be added to the above article:

The form of payment will be at the sole discretion of the Chief of Police.

In support of this proposal the Village makes the following argument:

Article V of the contract permits officers who work in excess of eight hours in one day to receive overtime or compensatory time off at the rate of time-and-one-half. Compensatory time off can lead to a "pyramiding" of overtime as reflected in the following example. Assume Officer A works 10 hours of overtime in week 1 and that he uses the compensatory time off the following week. Officer B, who fills in for A, will be entitled to additional compensatory time and so on.

<u>Officer</u>	<u>Hours Worked</u>	<u>Comp. Time (1½)</u>
A	50	15
B	55	22½
C	62½	33 3/4
D	73 3/4	50 5/8

The Panel finds the Village's argument persuasive, but it fails to provide a time limit for a decision and fails to give any choice to the employee.

The Panel awards that the following be added to Article V of the expired Agreement, effective February 28, 1992.

If the officer chooses compensatory time off, he must use such earned overtime within a one year period, with the officer requesting the time off he wants and with the approval of the Chief. After said one year period, if the time has not been taken, the officer shall be paid in lieu of given time off.

Village Proposal 5 (c) Health Insurance:

Article VIII A, Health Insurance, of the expired Agreement reads as follows:

The Village shall continue to provide group health insurance to active members of the unit through The Association Hospital Services of New York (Blue Cross and Blue Shield). Such coverage shall be individual coverage or family plan according to the marital status of the member. Such health insurance plan shall be that of the Statewide Plan as presently exists, which plan includes Major Medical coverage. The cost of such health insurance shall be borne by the Village. When a member retires the Village shall pay the

cost of coverage for that member during the term of the contract. Any cost for dependent coverage shall be borne by the individual member. The Village has the right to select another plan as long as said plan would provide at least the same coverage as the Statewide Plan and provided the Association is given 90 days notice before the change takes place.

The Village wishes to substitute the following for the last sentence in the above cited clause:

The Village has the right to select another health insurance plan, as long as said plan would provide similar coverage as the current plan and provided the Association is given 90 days notice before the change takes place.

The Village, like all other employers, public and private, finds the provision of health and hospital insurance a heavy burden. It would like to explore whether substantially similar benefits can be provided more economically through an insurance carrier other than the Statewide Plan. Of course, the Federation is extremely sensitive to any modification of the health insurance plan or any change of carriers.

The Panel believes that both parties should cooperate in the provision of health insurance benefits at a competitive price. To assist the parties in accomplishment of this objective, the Panel awards the deletion of the final sentence in this clause and the substitution of the following:

The Village may select another plan with substantially equal benefits, subject to agreement by the Federation, or, if there is no agreement that the benefits are substantially equal, subject to binding expedited arbitration, prior to implementation, as to whether the benefits are substantially equal.

Village Proposal No. 12 Education:

Article XVI A of the expired Agreements reads as follows:

Reimbursement for police-oriented education courses will be paid by the Village. The member shall notify the Village of the courses to be taken upon enrollment. The total reimbursement under this provision shall not exceed \$700.00 per member per fiscal year.

The Village proposes that the following be added:

Any employee who leaves the employ of the Village within one year of the completion of the course shall reimburse the Village for the cost of the course.

arguing that an officer who leaves shortly after taking a course and collecting the tuition from the Village should reimburse the Village.

The Panel finds some justification in the Village's position. When an officer leaves within six months after completion of the course, the Village gets little, if any, benefit from the additional education of the officer. However, this should apply only to voluntary resignations. Accordingly, the Panel awards that the following sentence be added to Article XVI A:

An employee who resigns within six months of the completion of the course shall reimburse the Village for the cost of the course.

Village Proposal No. 13 Payroll:

At present all employees of the Village are paid on a bi-weekly basis on Friday morning on a work week from Saturday to Friday. The Village proposes the following:

All employees shall be paid on Friday after 10:00 a.m. on a biweekly basis. The work week shall be changed from Saturday-Friday to Thursday-Wednesday.

Ms. Lanc, The Village Clerk-Treasurer, testified that, at present, employees are paid on Friday morning in advance of completing the work week, that it permits a better payroll procedure to pay on Friday for the work completed on Wednesday, that the employee suffers no loss of pay but only a deferral of two days pay,* and that, if the proposal of the Village

* An officer leaving service at close of business on Friday will receive the deferred two days at that time.

is approved, the same payroll procedure would be extended to all the rest of the Village's employees.

The Panel finds this argument persuasive. The Village asserts that the change can be made at the same time as the officers receive their back pay, thus minimizing the effect on the officers. Accordingly, the Panel awards that a clause be added in the Agreement reading as follows:

All employees shall be paid on Friday after 10:00 a.m.
The work week shall be changed from Saturday-Friday
to Thursday-Wednesday.

Village Proposal No. 15 Mandatory Annual Physical:

The Village proposes the incorporation in the new Agreement of a clause reading as follows:

Police officers shall be required to undergo one physical annually; costs incurred over the insurance shall be borne by the Village.

This proposal is a neutral proposal benefitting both the Village and the officers. Sometimes unions seek an annual medical examination as a fringe benefit. The Federation insists that such examination be without cost to the employee.

Accordingly, the Panel awards that a new clause be incorporated in the Agreement, as follows:

Police officers shall undergo one physical examination annually, including any extension thereof necessary for diagnostic purposes, such as blood tests and other laboratory work. Said physical shall be without cost to the officer; the Village shall pay all costs not covered by insurance. The examination shall not include testing for any drugs or alcohol.

Federation Proposal No. 19 Retirement:

Article IX (Retirement) of the expired Agreement reads as follows:

The Village shall pay the cost, in full, of a Retirement Plan for all members of the unit covered by this Agreement. Such retirement plan shall be the "Non-Contributory 25 Year Career Plan (Section 375G-Police and Firemen's Retirement System)." Negotiations will continue with regards to implementing Section 384 D of the New York State Retirement and Social Security Laws. (Non-Contributory 20 Year Career Plan). If the Village fails to meet with the Association prior to 9/30/88 then the Association will submit this question to binding arbitration.

The Federation proposes the substitution of the following:

The employer shall, prior to the expiration of this Agreement, at no cost to the employee, provide the twenty (20) year retirement plan (Section 384-d under New York State Retirement and Social Security Law).

The Panel believes it is without power to make any pension change, retroactively, and since the Award incorporated in this Opinion will have expired on February 28, 1992, there is no way of awarding a pension plan which would not have a retroactive effective date. Accordingly, the panel makes no Award in regard to this proposal. The Panel leaves this issue to the parties' future bargaining.

CONCLUDING REMARKS

All terms and conditions of the expired Agreement, as it has been hertofore amended by the parties in the settlement of the Improper Practice Charge, which are not affected by this Opinion, shall be continued into the March 1, 1990-February 28, 1992 Agreement unchanged. It is most unfortunate that the history of this Case has resulted in an Award which is retroactive for its entire term. The fixing of salaries and terms and conditions for the police collective bargaining unit in the Village of Washingtonville for the period from March 1, 1990 through

DISSENTING OPINION OF EMPLOYER PANEL MEMBER

While I dissent from the majority opinion on the following issues: Village Proposals 4b, 5a, 5b, 7a, 7b, 8, 9, 10, 11, 14, and 16; and PBA Proposals 3, 4a, 6a and 6c; my opinion herein will deal with only two issues.

1. Health Insurance - The cost of health insurance has skyrocketed over the past few years. From 1989 - 1991 insurance rates rose over 20%. The Village was forced to incur every penny of the increased cost.

A family plan under the Empire plan now costs the Village over \$5,000. The Village must pay these premiums even if the officer's spouse provides similar coverage under another plan. In effect, the Village is paying for double coverage. Such a system is a waste of taxpayer monies and should be eliminated. In difficult times like these, minimumally, the Village should not be expending taxpayer's money on items which are simply duplicative or not necessary.

Officers should also be required to make a percentage contribution to the health insurance costs. There is a growing trend towards employee contributions and a small Village like Washingtonville should not be forced to incur the full cost of such premiums. At their present rates of pay they can afford to contribute some percentage towards their coverage.

Other Village employees have switched to a different plan which costs several hundred dollars a month less than Empire. At the very least, the Panel should have permitted the Village to

provide the officers with the same plan as other Village employees.

2. Salary Increases - At a time when businesses are closing, employees are being laid off, and the State of New York is in nothing less than a fiscal crisis, granting police officers a 5.5% increase in both years of the award is simply not prudent. The increases must, of course, be borne by the taxpayer - many of whom are the ones who have been laid off or perhaps are living on a fixed pension. The Washingtonville taxpayer has recently told their elected representatives that they have had enough by voting down the school budget several times and forcing an austerity budget. The electorate's position is clear and we should not be so eager to disregard their wishes.

While the award covers a time period which is in part prior to the nationwide recession, one simply cannot overlook the fact that New York State municipalities are suffering now. State aid has been cut which means that the revenue to pay the increases must come from higher taxes.

Except for the "aberration" of the Village of Monroe, none of the other comparable Towns and Villages which negotiated contracts after 1989 settled on increases which are as large as those awarded by the Panel. The Town of Blooming Grove settled on 5% increases in both years of the contract and the Town of Cornwall gave just 4% increases. Moreover, overall union settle-

ments throughout the country have during the relevant time period been at or less than 4%.

There is no reason why a small Village like Washingtonville, with its relatively low crime statistics and wealth, should be forced to pay increases greater than those of surrounding communities. Exhibits submitted at the hearing clearly show that the average salary, median value of homes and per capita income are less than those in surrounding communities.

In addition, while the country continues to wallow in a recession, Washingtonville police officers have seen their incomes rise significantly over the past few years. For example, the Village's payroll cost for full-time police officers for the 1991-92 payroll over the previous fiscal year increased by 16.5%. The increase in payroll costs from 1990-91 over the previous year was 12.4%. Thus, full time police officers have received rather generous increases in their overall wages allowing their take home pay to be significantly greater than their contract salary.



Terence M. O'Neil
Employer Panel Member