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CONCILIATION

In the Matter of the Interest Arbitration

between

Village of Owego

and

Owego Police Benevolent Association

AWARD

Case # IA91-037; M91-320

Public Employment Relations Board

APPEARANCES

For the Village: Martin H. Tillapaugh, Esq.
Village Attorney

For the Union: Anthony J. Hynes, Consultant

BACKGROUND

The Village of Owego (Employer or Village) has a population of approximately 4500. It is a generally rural community and the largest municipality in central Tioga County, located in the southern tier of New York State, just west of Binghamton.

The Village employs ten (10) police officers, who are represented by the Owego Police Benevolent Association (Union or OPBA). Most all police officers have (or will have) six (6) or more years of service.

The most recent contract between the OPBA and the Village ran from August 1, 1989 through July 31, 1991. J.3. Nine (9) negotiation sessions took place, June 4, 1991 through November 11, 1991. On October 7, 1991, a Declaration of Impasse was filed by the OPBA, and the parties sought the assistance of PERB for Mediation. Failing to resolve the matter in the mediation process, the OPBA petitioned PERB on January 13, 1992, for Interest Arbitration, pursuant to Sec. 209.4 of the Civil Service Law of New York State (as amended July 1, 1977).

At or about the same time, the Village filed two Improper Practice charges, pursuant to Section 205.6 of the Rules and Procedures of the New York State Public Employment Relations Board (PERB). The matter of the Improper Practice charges is being addressed by PERB, and, at the specific direction of PERB, that matter remains separate from and does not impact or limit the deliberations and decisions of this Panel.

On February 19, 1992, Judith A. La Manna was designated by PERB to serve as Chair of the Interest Arbitration Panel, and concurrent notice of same was given to the Village, the OPBA and, separately, to Employee Organization Panel Member Edward J. Fennell and Employer Panel Member John Loftus. A full hearing on this matter took place on April 27, 1992.

At that hearing, the OPBA and the Village addressed the following matters, as listed in the OPBA Petition and the Village Response (J.1, 2), which the parties consider open terms of their contract negotiation efforts:

1. Article I, § 2 - Contract Duration
2. Article V, § 1 - 3, 6 - Vacation
3. New Article - Holidays
4. Article VI, § 1 - Health Insurance
§ 2 - Safety glasses
5. Article VII, § 2 - Life Insurance
6. Article X, § 1 - Personal Leave
7. Article XIII, § 1 - 7 - Wages
New Section - lunch pay
8. Article XIV, § 3 - Overtime
9. Article XVIII, § 2 - Union Leave

Following the hearing day, the parties were given the option of submitting summary briefs responsive to the significant number of exhibits presented, and both exercised that option. Appearances are noted above. During the course of these proceedings, well over 700 pages of documents, exhibits and narrative were presented for review by the Arbitration Panel.

The parties were clear, thorough and articulate in their presentation of this often complex and detailed material and are to be complimented therefor. Also, an enormous amount of time was spent by the parties in preparing and making their respective arguments, who were fully cooperative in this process and by this Public Arbitration Panel in review of same and in deliberations over those issues. The parties are thanked for their assistance in this effort.

This Arbitration met in executive session on June 30, 1992, to discuss a draft report issued to the Employee Organization and Employer Panel Arbitrators on June 4, 1992.

This opinion and award was drafted by the Panel Chair, Judith A. La Manna, Esq. She is solely responsible for the language selected.

ITEMS IN DISPUTE

1. Article I, § 2 - Contract Duration

The OPBA seeks a two year contract, from August 1, 1991 through July 31, 1993. The District wants only a one year contract.

2. Article V, § 1 - 3, 6 - Vacation

Section 1, 2, 3 - The Village seeks to change the vacation accumulation for a new employee to five (5) days from the present sixteen (16), to change the next accumulation time from two (2) years to six (6) years, and the accumulation from twenty-five (25) to ten (10) days, and to change the next accumulation time from five (5) years to ten (10) years and the accumulation from thirty (30) to fifteen (15) days. In addition, the Village seeks to limit and change the amount of vacation time that can be taken in each instance.

3. New Article - Holidays

The OPBA provides a list of thirteen (+) holidays which it seeks to add as time off under this agreement.

4. Article VI, § 1 - Health Insurance

The Village seeks a 50% contribution toward medical and dental health insurance premiums from new hires, and a contribution by current employees of 75% of any increase in the present premiums for those insurance, all by bi-weekly payroll deduction.

§ 2 - Safety glasses

The Village seeks to reduce and limit its reimbursement on eyeglasses, and to change the number of reimbursements to one every two years from one per year.

5. Article VII, § 2 - Life Insurance

The OPBA seeks fully paid, \$10,000 life insurance coverage for unit members, \$5,000 per spouse and \$1,000 per dependent child.

6. Article X, § 1 - Personal Leave

The Village seeks to formalize and limit clearly the taking of and usage of personal leave, and to reduce the number of personal leave days from three (3) to two (2) per year.

7. Article XIII, § 1 - 7 - Wages

The OPBA seeks an increase in wages of 12% per year for all unit members; the Village offers a two per cent increase for one year. The Village wants to change the longevity time-table from 9, 12, and 15th years to 12, 15 and 18th years, and to change the language to require specific recommendations and approvals for the waiving of years of service for grade.

New Section - Lunch Pay

The OPBA wants to add language to require payment of one hour additional straight time pay for work required of unit members if they are called to do so during meal periods and breaks.

8. Article XIV, § 3 - Overtime

The Village seeks to remove "holidays, personal leave, sick leave at full pay or other leave at full pay" from the present contract language as time considered as time worked for the purpose of computing overtime.

9. Article XVIII, § 2 - Union Leave

The OPBA seeks new language, providing for time for attendance by OPBA representatives for union activity and specifically to provide for attendance at PCNY conferences and seminars.

ARGUMENTS

Introduction

It comes as no surprise that the parties here have a distinct polarity of position, represented and covered most clearly in the arguments made on wages, on entitlement to proposals made and ability to pay or continue to pay for those contract items. The parties agree, at least, that there are costs associated with various benefits, time off with pay, benefit coverage, etc., beyond the wage increases discussed. The discussion below, then, presumes inclusion of all above noted items, as relates to ability to pay for same and as these costs may effect overall contract cost. No attempt is made herein to repeat all of the figures and comparisons made. The materials presented in argument speak for themselves, in quantity and quality, and will be referenced here following summary reference only to same.

Positions

The OPBA compares itself to other PBA's communities in the geographic area, including all of the following: City of Binghamton, Village of Cayuga Heights, City of Corning, Village of Elmira Heights, Village of Endicott, Village of Horseheads, City of Ithaca, Village of Johnson City, Town of Vestal, and the Village of Waverly. UC 1-8, 10, 11. It argues the comparison is appropriate because of geographic proximity, common areas for shopping and employment, and similarity in some work obligations as being on the "Route 17 corridor", a traffic-way for some criminal activity travel between New York City and Upstate New York.

The OPBA provides tables of comparisons for those municipalities (for fiscal year 1990-91 or 1991 and employment, by year, for up to twenty years of service) for police officers for salary (U.1), longevity pay (U.2), salary plus longevity pay (U.3), and percent variations between salary plus longevity pay as compared to Owego (U.4). The only one of the Union compared municipalities with a lower percentage variation was the Village of Waverly. In addition, the Union offered comparisons on shift differential pay (U.5) and noted that none of the cited municipalities provide for meal allowance (U.7).

The OPBA argues that since the Village present taxation is well below the constitutional tax limit, the Village can increase taxes by 3.49% to provide for a 12% OPBA salary increase and the cost of other OPBA proposals (first year). U.16. The OPBA cites numerous documents on Village budget, revenue and expenditures (U.17-22, 25-27), and provides other documents and calculations

dependent thereon, to support its argument that the Village can afford to pay for the proposals it seeks. U.13 - Annual Financial Report for the Village, U.14- Village Constitutional Tax Limit, FY ending 7/31/91, U.15 - Village Constitutional Tax Limit, FY 1991-92 (actual) and 1992-93 (projected).

The Village denies the local geographic comparisons made by the OPBA, claiming a more valid comparison to municipalities in New York State of perceived relative comparable size, make-up, employment base and population: Mount Morris, Lyons, Ganville, Waverly, and including the parent County of Tioga. E.G, G-1, G-2. In making those comparisons, the Village claims that its police officers are presently comparably paid, with generally comparable benefits and a generous leave time policy in Owego. In addition, the Village, using number of arrests as an index, argues a decrease in the overall numbers represents a lessening of burden on its police officers, while, at the same time noting numerous County Sheriff Department "assists" over time. E.H.

The Village provides considerable and recent data and reports on the economic composition and tax base of the Village as well as national and state-wide reports on economics, public sector contract settlements and cost-cutting in municipalities. It notes that the economy in this community is primarily agricultural; the major employer is an IBM facility located just outside of the Village. It cites declining employment in the surrounding geographic area with a significant change in wage base from manufacturing to service employment. Specifically, the Village notes major present and projected reduction in force by IBM and therefore sees an increase in unemployment. E. A-1 through A-13 and E.B-4.

The Village presents the results of a 1991 Household Survey Study of the Village, designed to "gauge Village residents' opinions about the current level of economic and social development of the Village and what form and content future development in the Village should take" to support its position that a large portion of the present tax base of the Village is retired, on limited income, who are both long term residents and property owners. The Village argues that it is limited by these factors in its ability to increase property tax. E.B-1.

In addition, the Village offers the results of a 1991 State Audit review of the Village (prepared to establish the Village's ability to repay a State Corporation loan for improvements to its wastewater treatment plant). E.B-2. That study showed a 1987 per capita income of \$12,986, information of Village indebtedness and a June 1991 unemployment rate in Tioga County of 6.2%. The 1990 U. S. Census results (E.B-3) demonstrates that about 25% of the population is over age 55 with about 41% of the population earning less than \$25,000. E.B-3.

Finally, the Village tabulates actual pay received by each police officer in 1991, including hours off (sick leave, vacation, personal leave, and transition time converted to actual dollars and excluding employers share of social security, disability workers compensation and annual uniform and eye glass replacement allowances). From those results, it produces equivalent hourly rates for actual hours worked (total average \$18.25) and the average number of days per week of actual work for each police officer in this unit (four days). E.I. It uses these figures to support its position that it offers the most generous time and leave package of any comparable police unit and, it suggests, most units state-wide of any size, which time-off translates to equivalent hourly rates.

FINDINGS AND AWARD

In weighing the arguments of the parties, primarily economic in nature, in reviewing the relative comparisons to other PBA units as argued by the OPBA and the Village, and in an examination of the present contract and the overall demands of these parties in this contract negotiation process, this Panel finds as follows:

1. Article I, § 2 - Contract Duration
7. Article XIII, § 1 - 7 - Wages
New Section - lunch pay

We see a limited ability of the Village to pay the kind of increase demanded by the OPBA, especially because of both the nature of the income base and the composition of the population. Accordingly we cannot recommend a significant increase to the base wages of these employees, who have the benefit of a generous time and leave program.

In light of the minimal recommended change in the salary area (see below), and for the sake of labor relations rest between the parties,

WE ORDER that this contract shall be two years in duration and retroactive to August 1, 1991.

WE FURTHER ORDER a three per cent wage increase for the first year, retroactive to August 1, 1991.

WE FURTHER ORDER a five per cent wage increase in the second year of this contract.

WE REJECT the Village proposal to change the present longevity table.

WE REJECT the Union proposal for "lunch pay".

2. Article V, § 1 - 3, 6 - Vacation
3. New Article - Holidays
5. Article VII, § 2 - Life Insurance
6. Article X, § 1 - Personal Leave

Given the present generous time and leave benefits of the collective agreement and the limited ability of the Village to compensate its police officers in actual dollars (as reflected in the conclusions as to wages),

WE ORDER that, effective August 1, 1992, the vacation accumulation table of Article V, §§ 1-4 be adjusted to provide for an allowance of

five (5) days after one year of service;

ten (10) days after three years of service;

fifteen (15) days after five years of service; and

twenty (20) days after seven years of service.

and that Article V, §7 be adjusted to allow for a maximum accumulation of twenty (20) days of vacation leave.

WE REJECT all remaining Union and Village proposals.

4. Article VI, § 1 - Health Insurance

The matter of health care cost to any employer is presently a pressing issue as those cost rise in geometric proportions. This issue faces municipalities as well as private employers. In light of these considerations, and given the limited ability of the Village to fund these increasing costs (as reflected in the conclusions as to wages),

WE ORDER that, effective August 1, 1992, all new employees pay 25% of the cost of medical and dental insurance and that present employees pay 15% of any increased cost of the present program coverage.

§ 2 - Safety glasses

For the same reasons as noted above,

WE ORDER a change in the payment for safety glasses as proposed by the Village, to be effective August 1, 1992.

8. Article XIV, § 3 - Overtime

Under the present contract language, the Village pays overtime based on a good deal of time not actually worked. It is not unreasonable to expect a reduction of that practice, under present economic conditions. Accordingly,

WE ORDER a change in the payment of overtime, effective August 1, 1992, to the language proposed by the Village.

9. Article XVIII, § 2 - Union Leave

This is a very small police force with a variety of contract leave time available to it. In light of same,

WE REJECT the Union proposal for additional language allowing for Union Leave.

Unless specifically indicated to the contrary, all provisions awarded above are to be retroactive to August 1, 1991. Those proposals not awarded or discussed in this Award are rejected. All other provisions and language contained in the prior collective bargaining Agreement, or as otherwise agreed by the parties, are hereby continued, except as specifically modified in this Award.

Concur
Dissent

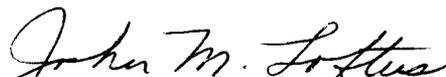
Date: 7/13/92



Judith A. La Manna, Esq.
Public Panel Member and Chair

Concur
Dissent

Date: 7/13/92

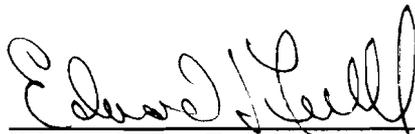


John Loftus
Employer Panel Member

Concur
Dissent

Date: 7/13/92

(w/ comments
7/24/92)



Edward J. Fennell
Employee Organization Panel Member

State of NEW YORK
County of Oranadaga SS.:

On this 30th day of June, 1992, before me personally came

to me known and know to me to be the individual described in the
forgoing instrument, and he acknowledged to me that he
executed same.

MARTINA CHUDYK
Notary Public, State of New York
Qualified in Onon. Co. No. 4945866
My Commission Expires 7-27-93

Martina Chudyk
Notary Public

State of NEW YORK
County of Oranadaga SS.:

On this 30th day of June, 1992, before me personally came

John Hoffman
to me known and know to me to be the individual described in the
forgoing instrument, and he acknowledged to me that he
executed same.

JUDITH A. LaMANNA
Notary Public in the State of New York
Qualified in Onon. Co. No. 34-4513478
My Commission Expires 7-31-93

Judith A. Lammanna
Notary Public

State of NEW YORK
County of Oranadaga SS.:

On this 30th day of June, 1992, before me personally came

Edward J. Fennell
to me known and know to me to be the individual described in the
forgoing instrument, and he acknowledged to me that he
executed same.

Notary Public in the State of New York
Qualified in Onon. Co. No. 34-4513478
My Commission Expires 7-30-93

Judith A. Lammanna
Notary Public

JUDITH A. LA MANNA

ATTORNEY AND ARBITRATOR

224 HARRISON STREET-#210, SYRACUSE, NEW YORK 13202
(315) 478-3500 FAX (315) 478-0204

Dated: July 6, 1992

TO: John Loftus, Trustee
161 Talcott Street
Owego, NY 13827
(607) 751-4291

Edward J. Fennell
32 Zelenke Drive, RD #4
Wynantskill, NY 12198
(518) 426-3513

Case No. IA91-037;M91-320 PERB Village of Owego/Owego PBA

Enclosed is the final Award in the above interest arbitration.

You will recall that you each signed the back sheet of this award in my presence on June 30, to facilitate processing. At that time, we agreed that following receipt of this Award, you would each call me and allow me to record your "vote" on the signed form.

Please call my office and indicate your vote no later than Monday, July 13, 1992. If you wish to submit comments to be included with this Award, let me know by July 13. All comments must be received by July 20, 1992. Your cooperation is appreciated.

Judith A. La Manna, Esq.
Arbitrator

JAL/jj

Village of Owego
90 HARRISON STREET
OWEGO, NEW YORK 13827

Area Code 607
687-3344

July 9, 1992

Judith A. LaManna
Attorney and Arbitrator
224 Harrison Street-#210
Syracuse, NY 13202

Re: Interest Arbitration
Village of Owego vs. PBA
Case# IA91-037; M91-320

Dear Ms. LaManna:

This is to confirm our phone conversation of today wherein I consented on behalf of the Village of Owego to the final Arbitration Decision in the above. There will be no comments forthcoming.

Very truly yours,

John M. Loftus

John Loftus
Village of Owego
Panel Member

JL/mew

Donlon & Son, Inc.

143 MOHAWK STREET
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COHOES, NY 12047
(518) 237-0200
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TO FAX NUMBER: (315) 478-0204
ATTENTION: Judith A. LaManna
COMPANY: _____
FROM: Edward J. Fennell
NUMBER OF PAGES: (Three) (including this sheet)
DATE: 20 July 1992.
SUBJECT: Owego PBA: Dissenting Opinion
Case # IA91-037; M91-320 PERB

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest
Arbitration Between

OWEGO POLICE BENEVOLENT ASSOCIATION

Petitioner,

and

DISSENTING OPINION

VILLAGE OF OWEGO, NEW YORK

Respondent.

INTRODUCTION

The award in this case is not a "just and reasonable determination of the matters in dispute" as required by the statute.

APOLOGY TO THE PBA

As a panel member for the Owego Police Benevolent Association, it is my opinion that the award is unjust, unreasonable and punitive and, I hereby publicly apologize to the Owego PBA for what I believe to be an award which imposes a punitive and regressive pay schedule, that damages their personal and family interests and, therefore, the public interest.

FACTS

The principal items of the award affecting active members are the two year agreement raising base pay 3% - 5%, while requiring ten (10) additional days of work as a result of amended vacation schedule. Since the PBA currently works a 248 day schedule, the increase of 10 days represents a loss of 4.0% in compensation or minus one percent in year one. There is not a shred of evidence in the opinion and award as to relative salary comparison. Hence, I will summarize for the record the undisputed evidence submitted by the PBA as to salary comparabilities in their region.

MUNY	YEAR	SALARY AT STEP 6	PERCENT DIFF.
OWEGO	FY 90-91	\$23,112	
BINGHAMTON	FY 91	\$32,842	42.1%
CAYUGA HTS	FY 90-91	\$28,918	25.1%
CORNING	FY 90-91	\$29,178	26.2%
ELMIRA	FY 91	\$29,493	27.6%
ELMIRA HTS	FY 91-92	\$28,333	22.6%
ENDICOTT	FY 90-91	\$29,586	28.0%
HORSEHEADS	FY 90-91	\$27,020	16.9%
ITHACA	FY 91	\$34,053	47.3%
JOHNSON CITY	FY 90-91	\$26,972	16.7%
VESTAL	FY 91	\$29,325	26.9%
WAVERLY	FY 90-91	\$20,500	-11.3%
AVERAGE		\$28,747	24.4%

This unit is 24.4% behind all in the region including Waverly which negotiated a 7.0% - 6.5% - 6.0% for fiscal years 1992, 1993 and 1994, without having to increase their work schedule. However, in drafting the award, the Chairperson concludes after weighing the evidence that "... we see a limited ability of the Village to pay the kind of increase demanded by the PBA, especially because of income base and composition of the population", despite an affirmation at the hearing by the Village attorney that the issue was priorities, not ability to pay.

There is an absolute lack of any balancing test here, evidenced by the Chair's total lack of consideration and citation of the ghastly low levels of salaries paid in Owego, the County's seat. Instead, the Chair chose to use a one-sided scale weighted to inability to pay and tied to community income and composition. If we were to buy this theory, we would be required to cap the salaries of policemen in all core cities and reward suburban police, thereby punishing the poor with substandard police services and rewarding suburbanites.

SUMMARY

IT IS THIS PANEL MEMBER'S OPINION THAT THE AWARD AS WRITTEN HAS LIMITED ITS JUSTIFICATION TO INABILITY TO PAY SO AS TO MAKE ONE CRITERION DISPOSITIVE. IN DOING SO, I BELIEVE THE PANEL MAJORITY HAS AT LEAST VIOLATED WHAT I BELIEVE TO BE THE SPIRIT OF THIS LAW. HOPEFULLY, FOR THE INTERESTS OF PUBLIC SAFETY AND WELFARE, NO SUCH PANEL WILL REASON SO IN THE FUTURE.