

NEW YORK STATE PUBLIC EMPLOYMENT  
RELATIONS BOARD

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CONCILIATION

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In the Matter of the Arbitration Between  
CICERO POLICE BENEVOLENT ASSOCIATION, INC.

OPINION AND AWARD

- vs -

CASE NOS. IA92-014;  
M91-386

TOWN OF CICERO

Pursuant to the Compulsory Interest  
Arbitration Provisions of the Civil  
Service Law, Section 209.4

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BEFORE: THOMAS N. RINALDO, ESQ., ARBITRATOR  
305 Elmwood Avenue  
Buffalo, New York 14222

The New York State Public Employment Relations Board, having determined that a dispute continues to exist in the negotiations between the Town of Cicero and the Cicero Police Benevolent Association, Inc., convened a Public Arbitration Panel pursuant to Section 209.4 of the New York Civil Service Law.

Representing the Town of Cicero was Attorney Anthony P. Rivissigno and representing the Cicero Police Benevolent Association, Inc. was Attorney Rocco A. DePerno.

On December 30, 1992 a pre-arbitration conference was held pursuant to a joint request of Mr. DePerno and Mr. Rivissigno. At said conference it was decided that the Parties would waive a tripartite panel and instead submit all open issues to Public Panel Member and Chairperson Thomas N. Rinaldo, Esq. At the conclusion

of the pre-hearing conference the date of January 30, 1993 was set for the submission of post-hearing briefs. Said briefs were eventually received on March 5, 1993 and the record was closed.

#### BACKGROUND FACTS

On or about February 1, 1990, the New York State Public Employment Relations Board designated the Cicero Police Benevolent Association (PBA) as the exclusive bargaining representative for all of the patrolmen and sergeants in the Town of Cicero Police Department, regardless of the number of hours they work and/or whether they are employed full or part time. The Parties engaged in extensive negotiations for a first-time collective bargaining contract and reached agreement upon numerous proposals and counterproposals. Unfortunately, the Parties were unable to negotiate a complete package, and the PBA petitioned the New York State Public Employment Relations Board to designate a Compulsory Interest Arbitration Panel. It was agreed at the pre-arbitration conference held on December 30, 1993, that the following unresolved issues would be submitted for my consideration:

#### ARTICLE VII HOURS OF WORK

Section 1. The Town shall continue the present part time work schedule for part timers know as the three/8, two/8 schedule.

Section 2. The Town shall continue, and the PBA acknowledges that the Town shall have the right to continue, the following four tours of duty.

1st Shift	-	7:00 AM to 3:00 PM
2nd Shift	-	10:00 AM to 6:00 PM
3rd Shift	-	5:00 PM to 1:00 AM
4th Shift	-	7:00 PM to 3:00 AM

The union agrees, however, that the duty hours of said four shifts may be modified once, during the life of this Agreement, upon thirty (30) days notice to the union. It is understood that no such modification will be permissible if the purpose of same is to defeat overtime.

Section 3. Said work shift(s) shall continue to be selected by seniority.

Section 4. Unit employees who provide the Chief with five (5) days advance notice, shall be allowed to exchange tours of duty and/or days off, so long as the exchange does not countermand a disciplinary assignment, training requirements nor entitles either officer to overtime.

Unit employees who provide the Chief with less than five (5) days advance notice, shall be allowed to exchange tours of duty, and/or days off, so long as the exchange does not countermand a disciplinary assignment, training requirements with Chief's approval, which approval shall not be unreasonably denied. Chief's approval is required in all cases when a double shift is involved.

Section 5. When and if the Town implements a 5th Shift the hours for said tour shall be 11:00 P.M. to 7:00 A.M.

Essentially, the Parties have agreed to all of the above language, with two exceptions: The Town of Cicero has not accepted the last sentence in Section 2, to wit, "It is understood that no

such modification will be permissible if the purpose of the same is to defeat overtime"; and the PBA has not accepted the proposed tour of duty for the 5th Shift as set forth in Section 5, as "11:00 PM to 7:00 AM."

The Town of Cicero contends that the last sentence of Section 2 should be eliminated because it fails to give the Chief of Police the scheduling flexibility necessary to run the department.

The PBA contends that the Town should not have the right to unilaterally change duty hours for the sole purpose of defeating overtime opportunities.

Regarding Section 5 of Article VII, the PBA suggested that if the Parties are unable to agree, at this time, to specific duty hours for a proposed 5th Shift, then at the very least, the PBA should have the right to require the Town to negotiate the same when, and if, a 5th Shift is implemented.

AWARD

After carefully reviewing the arguments presented, it is my determination that the last sentence of Section 2 should be deleted. The Town should have the flexibility to modify the duty hours of any shift to meet the operational needs of the Department, which is a right typically reserved for management. However, this Arbitrator concludes that if the Town does implement a 5th Shift,

the hours for such tour of duty should be subject to collective negotiations.

ARTICLE VIII  
OVERTIME/COMPENSATORY TIME

Any part-time police officer required to work in excess of eight (8) hours on any one tour of duty shall be compensated for all additional time at one and one half times his regularly hourly rate, and shall be compensated for such time to the nearest one half hour. The employee may be compensated in equivalent compensatory time off (at time and one half), at the discretion of the employee, up to a maximum accumulation of eighty (80) hours. Unless otherwise mutually agreed, all such accumulated comp time shall be utilized by said employee, during the budget year in which it was accumulated.

During negotiations, the PBA proposed the first two sentences of Article VIII and the Town proposed the last sentence. The PBA contends that the last sentence is unacceptable to the Association and should be stricken in its entirety. While the PBA is cognizant of the Town's desire to simplify paperwork, it asserts that such is not a sufficient reason to justify the negative impact that this "use or lose" mandate has on those police officers rightfully having compensatory time coming to them, but for a variety of reasons, cannot take the time off.

The Town finds the first two sentences of Article VIII unacceptable because it is unwilling to pay overtime compensation to any police officer who does not work at least 40 hours in any

given week and further argues that the language the Town has proposed requiring the use of compensatory time off earned in lieu of overtime payment during a budget year is reasonable because it prevents a police officer from accumulating compensatory time in one budget year and using the time in another budget year.

AWARD

After carefully considering the Parties' arguments, I am unable to concur with the Town that no overtime should be paid to a police officer unless they work at least 40 hours per week. The scheduling of an officer's workday is clearly within the control of the Town so that if the Town wants to avoid paying overtime they can limit an officer's work day to 8 hours. If an officer is required by the Town to work more than 8 hours in a given day, it is not reasonable that he or she should be paid at an overtime rate to compensate them for the longer workday and any inconvenience resulting from the anticipated change in work schedule.

It is also my determination that the last sentence of said Article should be stricken. A police officer should have the right to accumulate compensatory time and not be compelled to use it in the budget year in which it is earned, or lose it. This right to defer compensatory time will also benefit the Town because employees with accumulated compensatory time will not be forced to

take the time off at the end of the budget year thus causing scheduling difficulties for the Chief of Police.

ARTICLE XXVI  
LONGEVITY

Section 1. Part-time officers who work 900 or more hours per anniversary year shall be entitled to receive an annual longevity bonus as follows:

After five (5) years	\$250.00
After ten (10) years	\$500.00
After fifteen (15) years	\$750.00

Section 2. Entitlement to said longevity shall be computed as of the anniversary date of appointment as a part-time officer and shall be payable in a lump sum within the contract year of qualification on or before the 15th of December of said year. If any employee leaves under honorable conditions during any particular year, he will receive a pro-rata share of longevity for that year.

Section 3. In the event of retirement or death, longevity shall be paid in full (without proration) to the retiring officer in the year of retirement, or to the decedent's estate in the year of death.

The PBA requests that longevity be paid, retroactive to January 1, 1990. The Town, on the other hand, wishes to make longevity effective as of the execution of the Contract which is anticipated to occur in 1993.

AWARD

The Parties have expended considerable time and effort to negotiate a first-time Contract. This is not an easy task because each and every issue had to be drafted, discussed, analyzed, and ultimately agreed to or submitted for consideration by this Public Panel Member and Chairperson. The record established that neither Party was responsible for delaying a settlement and both Parties worked in earnest and in good faith to negotiate a Contract. I, am, therefore, awarding longevity pay retroactive to January 1, 1991.

ARTICLE XVIII  
EMPLOYEE RIGHTS/DISCIPLINARY INVESTIGATIONS

7. The Hearing Officer in any hearing under Section 75 of the Civil Service Law shall be an arbitrator appointed by the New York State Public Employment Relations Board pursuant to PERB's Voluntary Resolution of Dispute Procedures. The Hearing Officer's decision shall be final and binding.

The Parties have agreed to all of the language involving employee's rights and disciplinary investigations except for the issue of whether the Hearing Officer should be an arbitrator appointed by the New York State Public Relations Board or whether said arbitrator should be mutually selected from a list supplied by the New York State Public Employment Relations Board.

AWARD

The Hearing Officer should be an arbitrator mutually selected by the Parties from a list supplied by the New York State Public Employment Relations Board. Because the Hearing Officer's decision under Article VIII of the Collective Bargaining Agreement will be final and binding, the Hearing Officer should be a neutral person acceptable to both Parties.

ARTICLE XXVIII  
OUT OF GRADE/RANK/TITLE PAY

Section 1. Any police officer who is assigned to perform duties of a person of higher rank, grade or title or is assigned to a position otherwise staffed by a person of higher rank, grade or title, shall be compensated for such performance on a per diem basis.

Section 2. The officer in charge shall be compensated at a Sergeant's salary rate.

The only disagreement regarding the above Article is that the Town asserts that language should be added to clarify that the officer so assigned to serve in the higher rank must have been so designated by the Chief of Police and not self-appointed.

AWARD

Section 2 should be amended to include language that the officer serving in the higher rank must be so designated by the Chief of Police.

ARTICLE XXXII  
MAINTENANCE OF STANDARDS

All terms and conditions of employment not modified by this Agreement, shall remain in effect for the duration of this agreement, unless mutually agreed otherwise between the Town and the Association. Any dispute or grievance as to such conditions or provisions shall be submitted to the grievance machinery as authorized by the Town and the Association.

The Town of Cicero is strongly opposed to any maintenance of standards provision particularly the instant Article which was proposed by the PBA. It is the Town's position since this Collective Bargaining Agreement constitutes the entire agreement, any provision concerning past practices is unnecessary.

The PBA contends that terms and conditions of employment otherwise enjoyed by a police officer should remain in effect for the duration of the Agreement.

AWARD

It is my determination that the Maintenance of Standards clause should be included in the present Contract except that the language should be modified to provide that any dispute or grievance as to such conditions shall be subject to the Grievance Procedure contained in Article XXXI. A Maintenance of Standards provision protects a police officer from the Town's unilaterally changing existing terms and conditions of employment.

**ARTICLE XXXIV  
SUBCONTRACTING**

(A) Unit work shall not be performed by non-unit employees.

(B) The Town shall not subcontract work heretofore performed by unit employees to employees of another employer who perform the same work under similar performance standards, including but not limited to, a Metro Police Force. Should the Town join, merge with, or otherwise participate in a Metro Police Force, all part-time employees shall be offered employment with said group.

(C) The Town shall not replace a unit position with a non-unit position having substantially the same duties.

This issue is of considerable concern to the PBA because when negotiations commenced, the Town suggested to the PBA that if they continue to press for a full-time Police Department, the Town was going to explore subcontracting their police services to the

Sheriff's Department. When the PBA threatened to file an improper practice charge, talks with the Sheriff's Department were discontinued by the Town. According to the PBA, the issue is still a viable one because the Town is presently discussing merging or subcontracting its police services with at least one neighboring municipality.

The Town contends that they should have the freedom to consider the elimination, merger or subcontracting of their police services to other municipalities.

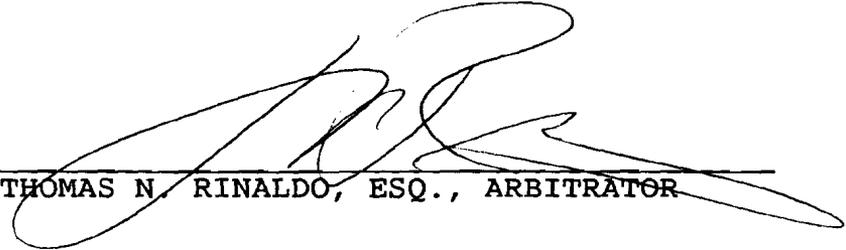
AWARD

This Arbitrator will not restrict the Town from joining, merging with, or otherwise participating in a Metro Police Force. I will, however, award language that provides that if the Town of Cicero should join or merge with another police department, that the Town of Cicero will use its best efforts to secure employment for it's existing force.

CONCLUSION

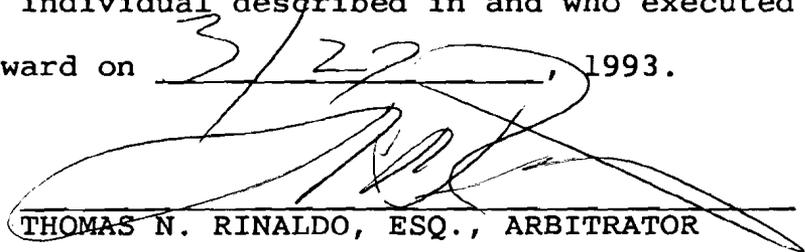
As noted in the beginning of this Award, most of the issues were collectively negotiated and agreed to by the Parties. Because only a limited number of issues, most of which were non-economic, were submitted for my consideration, an exhaustive comparative

analysis of other police departments and the ability of the Town to fund this collectively negotiated agreement was not undertaken nor submitted for my review.

  
THOMAS N. RINALDO, ESQ., ARBITRATOR

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:  
CITY OF BUFFALO )

I, THOMAS N. RINALDO, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the within Arbitration Award on 3/27, 1993.

  
THOMAS N. RINALDO, ESQ., ARBITRATOR