

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of the Compulsory
Interest Arbitration

OCT 12 1993

CONCILIATION

Between

VILLAGE OF SCARSDALE

DETERMINATION

and

AND

POLICE BENEVOLENT ASSOCIATION OF SCARSDALE

AWARD

PERB Case No. IA92-013; M91-160
86-92-M10F (A-72)

Appearances

Before Public Arbitration Panel

Fred L. Denson, Public Panel Member and Chair
Terence M. O'Neil, Public Employer Panel Member
Edward W. Guzdek, Employee Organization Panel Member

For Village of Scarsdale

Rains & Pogrebin, P.C.
Craig R. Benson, Of Counsel

Police Benevolent Association of Scarsdale

Thomas J. Troetti, Attorney

A hearing for the above matter was held in Scarsdale, New York on April 5 and April 26, 1993 before the undersigned who were designated to serve as members of the Public Arbitration Panel under Section 209.4 of the New York Civil Service Law. Each party was provided with a full opportunity to present evidence, to call witnesses and to engage in the examination and cross examination of witnesses who testified. All witnesses were sworn. The hearing was declared closed on receipt of post hearing submissions. The

Panel met in executive session on September 16, 1993 in New York City.

DEMANDS

The petition filed by the Police Benevolent Association (hereafter, PBA or Union) contained proposals pertaining to the following (Joint Ex. No. 2):

1. Two year agreement
2. Salary and related items:
 - a. Three years to reach first grade police officer compensation level
 - b. 10% across the board increase
 - c. 17% salary differential between Sergeant of Police and first grade police officer
 - d. 10% salary differential between members of Detective Division and uniformed officers of the same rank
 - e. 3% salary differential above contract increase for members assigned to special duty
 - f. "compensatory time/backtime" use
 - g. withdrawal and pay for "backtime"
 - h. filling of vacancies in Sergeant's positions by Sergeants
3. Longevity pay schedule upgrade
4. Six (6) personal days per year with option to place accumulated days in retirement bank
5. Vacation schedule upgrade
6. Sick leave
 - a. Twenty (20) sick days per year with unlimited accumulation

- b. sick leave bank
- 7. Bereavement leave
 - a. increase to 5 days and include additional relatives
 - b. include certain relatives for 3 days of leave
- 8. Holidays
 - a. increase to 15 per year
 - b. double time pay on 4 holidays
- 9. Other matters
 - a. increase uniform cleaning and shoe allowance to \$150
 - b. increase detective clothing allowance to \$750
 - c. \$100 and uniforms for support squad
- 10. Insurance
 - a. increase dental insurance to \$500
 - b. increase life insurance to \$200
 - c. \$78 per member for optical plan
 - d. health insurance coverage for retirees hired after January 1, 1984
 - e. total premium payment for medical coverage for employees hired after September 9, 1988
- 11. Retirement leave calculation
 - a. increase amount of unused sick leave time for retirement calculation
 - b. pay for "backtime" at time of retirement
- 12. Employee rights in disciplining matters
- 13. Educational benefits
 - a. compensation for credits earned

14. Computer related matters

- a. Schooling for employees required to operate computers
- b. \$275 per year to be paid to members who are required to operate computers
- c. two (2) eye exams per year for members who operate computers

PBA proposals 2h, 10d, 10e and 12 were "scoped" when the Village filed an improper practice charge contesting the submission of these demands to arbitration on the basis that they were non-mandatory subjects of bargaining. The charge further alleged that the Union had sought to retain in the successor agreement Article XV A, PBA Union Business, which the Village also viewed as a non mandatory subject.

The Village's proposals (Joint Ex. No. 3) as presented in its responding petition are outlined below:

- 1. Three year agreement
- 2. Deletion of the second sentence of the Management Rights article
- 3. Compensation
 - a. Reduction in the longevity schedule
 - b. increase the time for an employee to be in a acting capacity (60 days) before receiving pay at the higher rank
- 4. Overtime
 - a. overtime to be compensated at straight time rates or compensatory time
 - b. two (2) hour minimum call back time

- c. pay for 12 hours compensatory time upon retirement
- 5. Vacations
 - a. reduced schedule
 - b. reduced extended entitlement in last year of employment
- 6. Reductions in sick leave maximum accumulation and elimination of pay for unused sick leave
- 7. Reduction in holidays
- 8. Elimination of pay for unused personal leave
- 9. Health care benefits
 - a. "- All employees shall contribute toward the cost of health care.
 - Private duty Nursing shall be eliminated as a paid benefit.
 - The number of paid days for hospitalization shall be reduced.
 - The number of paid visits for chiropractic and outpatient psychiatric care shall be reduced.
 - The Participating Provider Plan shall be eliminated.
 - Prescription co-payments increased for nongeneric drugs."
 - b. reduction in contribution to dental plan
- 10. Reduction in retirement leave calculation
- 11. Deletion of Article XV A, PBA Union Business.
- 12. Drug/alcohol testing at discretion of the Chief
- 13. Non retroactivity if negotiations not completed by June 1, 1991.

BACKGROUND

The PBA bargaining unit includes 11 sergeants, 23 patrolmen, 2 detectives and 1 detective sergeant. Before two recent retirements, the unit consisted of 39 members. The most recent agreement was for a two year period which expired on May 31, 1991. The parties engaged in negotiations in 11 sessions between April 3, 1991 and January 21, 1992. No agreements were reached on any of the proposals and the matter was referred to arbitration.

During the arbitration hearing, evidence was presented on statutory criteria relating to comparables, financial ability to pay and past collective bargaining agreements. The evidence presented at the hearing on the proposals was limited to those proposals which related to compensation, longevity, uniform allowance and health insurance.

POSITIONS OF THE PARTIES ON SELECTED PROPOSALS

The positions of the parties on the proposals for which evidence was submitted has been fully stated in their post hearing submissions and therefore are only briefly summarized herein. The Union's modified salary demand as set forth in its post hearing brief calls for a 7.5% increase in each year of a two year proposed contract. The Village has contended that an increase reflective of the cost of living for each year (4.7% and 3.8%) is appropriate. The Union has also argued that its longevity schedule is behind the

majority of other comparable units. The Village's position on longevity pay is that since it is intertwined with salary, it cannot be considered in a vacuum but instead must be viewed in context with total compensation and benefits. It therefore urges that any awarded increase in longevity payments should be offset by reductions in awarded salary increases.

The current allowance for shoes and/or uniform cleaning is \$75 per year for uniformed members. The Union urges that this be increased to \$150 to more accurately reflect actual cleaning and/or shoe costs. The Village has argued that the members can get their uniforms cleaned at more reasonable rates than suggested, that it does not grant uniform allowances to its non uniformed services and that a fair analysis of comparable does not support the Union's position.

The Village has argued for the elimination of the participating provider organization plan (PPO) from its health care plan and for an increase in the amount of the prescription co-payment from \$2 to \$5. In support of this proposal, the Village has noted that this is necessary to bring the police into line with all of its other employees in order to control recent and significant increases in the cost of its health care plan. The Union has argued that such changes are not justified by the history of health care costs for the members of its unit and that the changes would be more detrimental to the police if implemented,

than to the Village if they were not implemented. It also contends that the fact that these changes have been made for other employees is not relevant and that the matter should be negotiated by the parties at the table.

DETERMINATIONS

Because the evidence submitted at the hearing by the parties was limited to proposals on compensation, longevity, uniform allowance and health insurance, the Panel has limited its consideration to these matters as well. While the Panel believes that a three year agreement would be in the best interest of the parties since the preceding agreement expired more than two years ago, it recognizes that its statutory authority is limited to a two year determination. The award herein calls for a two year contract with changes in salary only and is based on the Panel's expectation that the parties will immediately enter into a negotiated successor agreement for the period from June 1, 1993 to May 31, 1994 with terms that provide for a) an across the board salary increase of 4.5%, b) elimination of the PPO, c) an increase in the prescription co-pay from \$2 to \$5, d) an increase of \$50 per member in the Village's contribution to the dental plan, e) an increase of \$25 in the uniform/shoe for each uniformed member and f) an increase of \$25 for detectives' clothing allowance.

The Panel's unanimous determinations are set forth below. All proposals on which no determinations are made will be held in

abeyance pending immediate and successful negotiation of a successor agreement for the period from June 1, 1993 to May 31, 1994.

1. The agreement shall be for a two year period commencing on June 1, 1991 and expiring on May 31, 1993.

2. Across the board salary increases shall be for 5.75% effective June 1, 1991, 4.0% effective June 1, 1992 and 1.85% effective December 1, 1992.

Our determination on salary is based on our review of the evidence concerning a) other police departments in comparable communities, b) increases in the cost of living during the period under consideration, c) prior negotiated agreements between the parties and d) settlements reached with other bargaining units within the Village. There is no issue regarding the Village's ability to pay in view of the unrebutted testimony of Union witness Edward Fennell, a municipal financial consultant. This has been distinguished from the Village's willingness to pay which is not a statutory criteria. We are of the opinion that the implementation of this determination will permit the unit to maintain its relative standing with the departments in other comparable communities as well as with other units within the municipality, but will not place an undue financial burden on the Village.

As the duly designated Public Arbitration Panel, we hereby make the following

A W A R D

1. The agreement shall be for a period of two years commencing on June 1, 1991.

2. The across the board salary increase shall be:

5.75% effective 6/1/91
4.0% effective 6/1/92
1.85% effective 12/1/92

DATED: 9/22/93

Fred L. Denson
FRED L. DENSON
Public Member and Chair

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, I affirm that I have executed the foregoing as my Determination and Award in this matter.

DATED: 9/22/93

Fred L. Denson
FRED L. DENSON

I concur with Determinations 1 and 2 of the Award.

DATED: 9/28/93

Terence M. O'Neil
TERENCE M. O'NEIL
Employer Member

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, I affirm that I have executed the foregoing as my Determination and Award in this matter.

DATED: 9/28/93

Terence M. O'Neil
TERENCE M. O'NEIL

I concur with Determination 1 and 2 of the Award.

DATED: 9/28/93

Edward W. Guzdek
EDWARD W. GUZDEK
Employee Organization Member

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, I affirm that I have executed the foregoing as my Determination and Award in this matter.

DATED: 9/28/93

Edward W. Guzdek
EDWARD W. GUZDEK