

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory
Interest Arbitration Between

THE TOWN/VILLAGE¹ OF HARRISON, NEW YORK,
Public Employer,

and

**THE POLICE ASSOCIATION OF THE TOWN OF
HARRISON, NEW YORK, INC.**
Employee Organization,

PERB Case Nos.
IA-93-011
M-92-534

JS Case No.
1927

**OPINION
AND
AWARD**

Before **JOHN E. SANDS**, Chairman and Impartial Arbitrator

OPINION

On August 13, 1993 Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board appointed me to chair a Public Arbitration Panel under Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of the above-captioned dispute in negotiations. Pursuant to my authority under that statute I conducted hearings in Harrison, New York on October 26 and December 14, 1993. Both parties appeared by representative and had full opportunity to adduce evidence, to cross-examine each other's witnesses and to make argument in support of their respective positions. Neither has raised any objection to the fairness of this proceeding.

¹. Harrison is a combined town and village, one of three in Westchester County. Different documents in evidence refer to the employer variously as "town," "village," and "town/village." Employer exhibits have been designated, "Town Exhibit 1," et al.

At the October 26, 1993 hearing the parties stipulated to waive their respective rights to designate partisan members of the Public Arbitration Panel and to designate me as Chairman and sole Impartial Arbitrator to determine this dispute in accordance with Section 209.4's criteria:

- 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.

By the December 14th hearing the parties had narrowed their dispute to the following issues, to which they confined their proofs:

For the Town/Village

- Demand #4 - Vacation
- Demand #5 - Holidays
- Demand #8 - Health Insurance
- Demand #12 - Disputes and Grievances
- Demand #13 - Switching Tours
- Demand #15 - Restrictions on Outside Employment

[Joint Exhibit 1C.]

For the Police Association:

- Demand #1 - Compensation
- Demand #2 - Longevity
- Demand #3 - Personal Leave Days
- Demand #7 - Compensation (Rank Pay Differential)

[Joint Exhibit 1B.]

In support of its remaining demands, the Police Association submitted excerpts from the Westchester County Department of Planning's Census '90 report showing Harrison's high family, household and per capita income measurements on both mean and median bases, all of which were well above County averages. Similarly, value of renter-occupied and owner-occupied housing units also exceed County averages by substantial amounts. (PBA Exhibit 1.)

The Village's Official Statement dated May 22, 1992 in support of its most recent issue of Public Improvement Bonds and Bond Anticipation Notes provides detailed tax, valuation and financial records for the period 1986 - 1991. Significantly, as of December 31, 1991 the Town/Village's fund balance was \$4,319,819, more than 25% of that year's total revenues of \$16,309,973. The Town/Village's healthy fiscal state was confirmed by the marketplace; the parties stipulated that the rate of interest for that issue's June 1993 bonds was 2.5%. (PBA Exhibit 2.)

The Police Association's municipal finance consultant --himself a former municipal comptroller-- produced a detailed review of the Town/Village's current financial documents that confirmed this public employer's healthy fiscal status and financial ability to pay a just and reasonable settlement with these principal findings:

(1) Harrison has an overall tax rate of \$15.80 per \$1,000 full value, which is among the lowest compared to other Westchester County towns.

(2) Harrison has exhausted only 7.1% of its debt limit, and its debt/full value ratio is a low 1/2 of 1%.

(3) For fiscal year ending December 31, 1992 Harrison's total fund equity balance in the General Fund was \$2,243,320. Unappropriated surplus as of that date amounted to \$1,715,239. In 1992 Harrison's conservative budgeting produced actual revenues greater and expenses less than anticipated, which combined to produce an actual ending fund equity balance that was \$1,272,315 greater than what had been projected in the 1992 General Fund Budget.

(4) Harrison's \$216,327 contingency fund in the 1993 General Fund Budget --roughly 2% of that budget-- is "more than most" comparable communities'.

(5) The relative cost to raise the Police Department base salary and wages 1% has the effect of increasing the 1993 Tax Levy and the General Fund Budget .31% and .23%, respectively.

[PBA Exhibit 3.]

In support of the Police Association's argument that its demands are appropriate in comparison to terms and conditions of employment for comparable employees in comparable communities, the Association produced as its Exhibit 4 the current agreements of these communities:

- A - Larchmont
- B - Town of Mamaroneck
- C - Village of Mamaroneck
- D - Town of North Castle (through 12/31/92)
- E - Town of North Castle (through 12/31/94)
- F - Port Chester
- G - Village of Rye Brook
- H - City of Rye.

The Police Association also submitted Harrison's current contracts with its Firefighters and CSEA units. (Association Exhibits 6 and 7.) PBA Exhibit 9 summarizes the relevant terms of negotiated and arbitrated contract settlements for these Westchester public employers: Westchester County, Bedford, Mt. Kisco, New Castle, North Tarrytown, Yorktown, Rye Brook, Pleasantville (4/92), Tarrytown, Cortlandt (5/92), Rye City, Pelham, Peekskill, Dobbs Ferry, Croton, Pleasantville (5/93), Hastings, Mt. Pleasant, Cortlandt (7/93), Ossining (8/93), Larchmont, Scarsdale, Ossining (11/93).

The Town/Village supplemented those data on comparables with its own proofs concerning those employers as well as Mt. Vernon, New Rochelle, Peekskill, Pelham, and Westchester County plus recent interest arbitration awards in Bedford, Mt. Vernon, Ossining, Scarsdale, Larchmont and New Rochelle. (Town Exhibits 2, 4, 5, 7-16.)

I find all these proofs establish a relevant range of terms and conditions of employment within which Harrison's entire package for police personnel fits comfortably, both currently and as increased by this Award.

In addition to its evidence on comparables, the Town/Village's proofs included a Bureau of National Affairs Government Employee Relations Report article reporting that state and local government workers nationwide had settled in the first half of 1993 for the lowest pay raises on record of 1.1% in the first contract year and 2.2% annually over their life of the contracts according to the Bureau of Labor Statistics. (Town Exhibit 17.) Town Exhibit 18, a New York State Conference of Mayors and Municipal Officials' publication, reported July 1993 Consumer Price Index increases for the year ending July 1993 of 2.75% nationally and 3.0% for the New York City area.

Harrison's comptroller, Eleanor McDonald, testified credibly to her concern that Harrison's tax roll, which had grown steadily between 1983 and 1991, had dipped slightly in 1992 to a total assessed valuation of \$174,699,180. She opined that the budgeted amounts for 1993, \$164,566,402, and for 1994, \$154,321,307, have begun a downward trend of \$10,000,000 per year.

In addition certiorari results --court judgments for decreased assessments-- required Harrison to repay \$1,126,097 during the period October 1992 through November 1993 and \$516,273 within the 90 days following the December 14th hearing. Ms. McDonald credibly testified that the resulting \$21,000,000 loss on assessments will reduce annual revenues by approximately \$1,850,000. Similarly, Harrison's percentage of tax levies collected in 1992 dipped below its customary 99% level for the first time to 97.11%.

Despite these circumstances, Ms. McDonald concedes the accuracy of the Town/Village's bond statement that pending lawsuits (which include certiorari proceedings) are not likely to have a material adverse effect on Harrison's financial condition. (PBA Exhibit 2, p. 21.) She also testified that the Town/Village's bond rating by Moody's was Aa-1 and that all local governments in New York State are subject to the same fiscal impact of general economic circumstances which Harrison is addressing effectively. Indeed, the Town/Village's tax rolls will benefit greatly from the new Hickory Pine Golf Club development, which will include a number of million-dollar homes and will progressively be reassessed as new construction goes forward.

With respect to the Employer's demands for restrictions on switching tours and outside employment, Chief Albert G. Klein

testified that Article XVIII of the parties' current agreement, Joint Exhibit 1A, p. 21, requires only that members give 48 hours' advance notice of the switch, the individuals involved, and which tours of duty will be filled by which employees. Chief Klein expressed the concern that the switches, called "mutuals," can cause problems when they conflict with scheduled training sessions or limit the availability of officers able to perform specialized functions such as radar operation for the Traffic Enforcement Squad. Town Exhibit 1, a list of mutuals for each officer during 1992 and 1993 (through December 8th), shows five of Harrison's sixty officers took 39% of the force's 403 mutuals during 1992; and the same five accounted for 43% of 342 mutuals through December 8, 1993. Chief Klein testified that two of these officers run side businesses that he is concerned interfere with their effectiveness as police officers. The Chief also observed that the officers with the most mutuals also had the highest sick leave usage.

To address these concerns, Harrison's Demand #13 would subject all mutuals to an annual limit of eight and to the Chief's discretionary approval. Similarly, Demand #15 would subject all outside employment to the Chief's discretionary approval and to a limit of 20 hours per week.

The Employer's remaining proposals would reduce the vacation and holiday schedule, would change holidays to cash or

compensatory time at the employer's option, would require all members to pay 25% of their health insurance premiums, and would impose a series of time limits on the processing of grievances.

For its part the Police Association seeks 7% annual increases, \$100 increases to each longevity step in each contract year, an additional personal leave day, elimination of the ten-day notice requirement for personal leave use, and an increase of the rank pay differentials of 1% for detectives and sergeants and 2% for lieutenants and detective lieutenants.

On the entire record before me, I conclude that the parties' collective bargaining agreement that expired December 31, 1992 should be extended in its present form subject to the changes set forth below; and I issue the following as and for my

AWARD

1. TERM

The term of the parties' new contract shall be two years, from January 1, 1993 through December 31, 1994. This is the maximum period for which Civil Service Law Section 209.4 authorizes final and binding effect of an interest arbitration determination. Any shorter term would frustrate the achievement of stable labor-management relations; any longer period would be beyond my power.

2. COMPENSATION

Taking into account all of the evidence discussed above, including my conclusions concerning Harrison's evident and continuing fiscal health and financial ability to pay and the comfortable "fit" of Harrison's current and increased terms and conditions of employment within the range of those for comparable employees in comparable communities throughout Westchester County, I direct that, with the exception set forth below, base contract rates be increased by these amounts:

Effective January 1, 1993 - 3.9%

Effective January 1, 1994 - 3.6%

Compared to other communities, Harrison's \$36,814 net entry level step for patrolmen is inappropriately high. I therefore direct that the entry level step be frozen for

patrolmen hired after the date of this Award at its current net level, \$36,814, during new contract's two-year term.

In addition, to reflect the increasing value to the community of experienced officers' service, I direct that \$100 be added to each longevity step in each contract year so that the new longevity schedule will be:

<u>Step</u>	<u>1993</u>	<u>1994</u>
5th year	\$525	\$ 625
10th year	\$925	\$1,025
15th year	\$975	\$1,075

This schedule shall replace that on page 7 of Joint Exhibit 1A, and the first sentence of the prior contract's Longevity provision shall be eliminated.

These increases will produce a total package cost of about 4% per year, which is in line with comparable data and less than 1993's 5% increase for other Harrison units that those parties negotiated for a three-year term beginning 1991, when economic circumstances were different. Harrison will also experience savings from "breakage" as high seniority officers retire and are replaced by new hires at the frozen entry level. As noted above that frozen rate shall apply only to patrolmen hired after the date of this Award. Officers hired prior to that date shall receive the benefit of the increases provided herein.

3. HEALTH INSURANCE

The parties' present agreement provides, in Article IX, Paragraph 6, for a \$2,000 per annum reduction of salary in each of their first three years' employment. To address increased cost of health insurance premiums, that provision shall continue in effect for personnel on the payroll as of the date of this Award. For future hires, the \$2,000 reductions shall be made in each of their first five years' employment.

4. GRIEVANCE PROCEDURE

The parties' current grievance procedure contains no time limits for raising grievances. That lack of limits is unique in comparable communities and should be addressed.

The purpose of grievance procedures is to surface relevant issues in a timely, responsible way. Filing deadlines ensure that grievances raise real and current problems that the parties can address immediately to avoid the disruptions of long-festering resentments. The message of a reasonable filing deadline is, "Raise what is important now; otherwise get on with life."

I accordingly direct that a 45-day deadline be imposed for filing written grievances following the date the aggrieved party either learned of the problem or, with reasonable

diligence, should have learned of the problem. Grievances not timely filed will be deemed abandoned.

5. OUTSIDE EMPLOYMENT

Harrison seeks to impose a twenty-hour limit on outside employment for all officers. Chief Klein identified that limit's purpose as preventing abuse of sick leave by a limited number of officers to make time for their outside employment.

Harrison's proposal is misdirected, for the problem is not outside employment. It is sick leave abuse. To address the real problem I direct that the contract's sick leave provision be amended to add the following paragraph:

Sick leave shall be used only for time an officer is unable to work when illness prevents his/her performing job duties. Use of sick leave for any improper purpose shall be grounds for discipline of the offending officer.

6. MUTUALS

Here too Harrison's proposal goes far beyond that necessary to address the identified problem and seeks discretionary control of mutuals that would be subject to easy abuse. So that the Chief's operational concern can be addressed, I direct that Article XVIII ("Switching of Tours") of the parties' present contract be amended to add the following sentences:

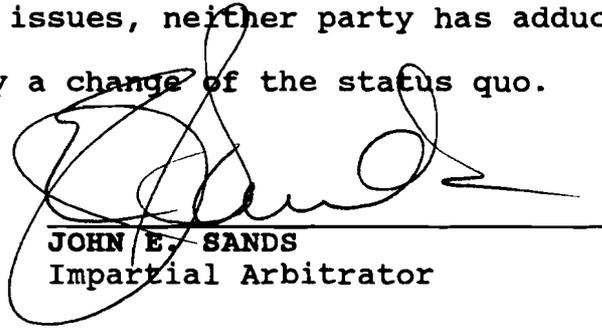
The Chief may deny a proposed switch that will have a negative operational impact such as making unavailable personnel with a special certification that precludes an actually scheduled assignment or making unavailable an

employee actually scheduled for training. Such denials shall be in writing and shall state specifically the negative operational impact that the denied switch would have imposed. Denials shall be subject to the grievance procedure.

7. RESIDUAL MATTERS

As to all remaining issues, neither party has adduced sufficient evidence to justify a change of the status quo.

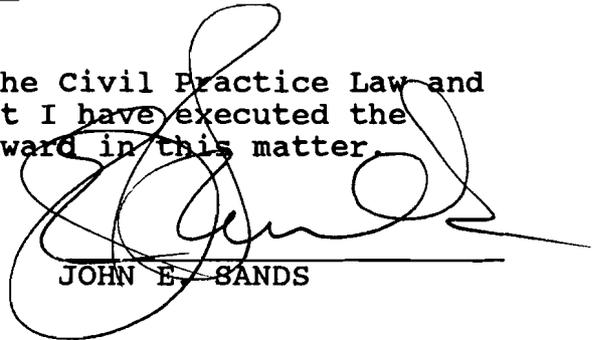
Dated: December 28, 1993
Montclair, New Jersey



JOHN E. SANDS
Impartial Arbitrator

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 and for my Opinion and Award in this matter.



JOHN E. SANDS