

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

OCT 03 1994

In the Matter of Dispute in the Negotiations )  
Between )  
TOWN OF ORANGETOWN )  
and )  
ORANGETOWN POLICEMEN'S BENEVOLENT ASSOCIATION )  
Case No. IA92-053; M92-535 )

**CONCILIATION**

INTEREST

ARBITRATION

AWARD

**BEFORE:**

Martin Ellenberg, Esq.  
Public Panel Member &  
Chairperson

\*Paul W. Melone

\*Jack Schloss, Esq.

Public Employer Panel Member

Maureen McNamara, Esq.

Employee Organization Panel Member

**APPEARANCES:**

For the Town:

\*Jack Schloss, Esq.  
Labor Counsel

Ron Hansen

Director of Finance and Personnel

John Slattery

Director of Finance

John M. McAndrew

Administrative Lieutenant

Orangetown Police Department

Karl F. Kirchner

Real Estate Consultant

\*Paul Melone, the Designated Public Employer Member resigned from the Panel after the conclusion of Hearings; the Town, effective May 2, 1994, appointed Mr. Schloss as his replacement. Following receipt of a Letter from Mr. Bunyan, waiving any objection to Mr. Schloss' appointment, the Public Employment

Relations Board, by letter dated May 17, 1994, designated Mr. Schloss as the Public Employer Panel Member. The Board's letter permitted Mr. Schloss to be substituted due to, "the fact that seven hearing days have already been held and the consequent gross waste of time and tax-payer money which would be caused by a re-hearing, the fact that Mr. Schloss is the only person now associated with the Town who was present all seven days of hearing and above all, because the Union respectfully consented to the designation of Mr. Schloss despite his having presented the Towns' case."

APPEARANCES (CONTINUED):

For the Association: Richard P. Bunyan, Esq.  
Attorney

Tim Sheridan  
President

Michelle Killian  
Legal Assistant

Having determined that a dispute continued to exist in the negotiations between the Town of Orangetown and the Orangetown Policemen's Benevolent Association, Inc. ("PBA"), and that such dispute was within the provisions of Civil Service Law Section 209.4, the New York State Public Employment Relations Board, under the authority vested in it by Section 209.4, designated this Panel of Arbitrators for the purpose of rendering a just and reasonable determination in this Matter.

The dispute submitted to this Panel is the culmination of the failure by the Parties to reach agreement in their negotiations for a new collective bargaining agreement as of January 1, 1993.

By mutual agreement of the Parties, seven hearings were held, commencing on August 10, 1993 and concluding on January 19, 1994, at the Town Hall, in Orangeburg, New York. Each Party, by its representatives, had full opportunity to present its position through witnesses, testimony, evidence, exhibits and argument and briefs, made in the presence of, and subject to cross-examination and rebuttal by, the opposing Party.

Both Parties waived their rights to a copy of a transcript of the hearings.

The Panel met in executive session on January 25, 1994; Paul Melone resigned from the Panel before an award was issued and, following the designation, on May 17, 1994 of Jack Schloss as his replacement, the Panel met, again, in executive session on May 26, 1994.

The Association submitted forty-four exhibits, in support of more than fifteen demands for revision of the collective bargaining agreement which expired December 31, 1992. Many of the proposals and exhibits had multiple sections and provisions.

Demands included provisions regarding salary increases, longevity pay, night shift differential, uniform allowance, vacations, holidays, paid time for Union business, sick leave, meal allow-

ance, computation of overtime, life insurance, reimbursement for eye glasses, tuition reimbursement, etc.

The Town submitted eighty-one exhibits and offered seventeen proposals concerning wage increases, longevity pay, vacation, personal, sick and bereavement leaves, contribution by new employees toward health insurance premiums, overtime scheduling, grievance procedure, disciplinary arbitration, drug testing, holidays, etc.

A review of the bargaining history between the Parties indicated that their Agreements for the periods 1985-86, 1987-88 and 1991-92 were all the products of Interest Arbitration. The exception was the 1989-90 Agreement which was the result of a negotiated settlement.

Now, once again the Parties did not reach agreement and this Panel has, for seven full-day sessions, listened to their proposals and argument, their testimony and cross-examination and scanned their exhibits. Clearly, with the number of issues and demands submitted, this Panel has the authority, by law, to rewrite virtually their entire labor agreement. To do so, however, at least in the opinion of this Panel Chairperson, would be to substitute interest arbitration for collective bargaining.

Accordingly, following study and review of the testimony and exhibits, and recognizing that the Parties will enter, shortly, their negotiations for the contract period commencing January 1995, this Award will address only those issues for which adjustment during the 1993-94 contract period is required in order to permit the Parties to enter negotiations under stabilized conditions.

**TERM OF AGREEMENT:**

The Parties have both stated that they have no objection to an award covering a two year period and, accordingly, the term of the collective bargaining agreement, under this Award, shall be for the period January 1, 1993 through December 31, 1994.

**SALARY:**

**POSITIONS AND ARGUMENT OF THE PARTIES:**

The Town proposed that the salary schedule for 1993 should be the same as in 1992. It argued that other unions in the Town and County had recently accepted contracts which provided for no salary increases for one year and which, in addition, called for contributions by new employees to medical insurance costs.

The Town stated that the Orangetown Police were among the best paid departments and had the highest starting salary in the County. It argued that expenditures for the Police Department

constituted 40% of the Town Budget, and that the Town was facing financial difficulties and could not continue to maintain its historical position in comparison to the salaries paid by other communities.

Ron Hansen, the Town's Director of Finance through December 1993, and John Slattery, Director of Finance as of January 1994, both testified and stressed the Town's concern that its future tax revenues will be reduced due to the settlement of a matter concerning earlier over-assessment of certain properties and the number of tax certiorari cases still pending. It stressed, also, the expense, to the Town, of a law suit, still in the courts, concerning a zoning matter and the still undetermined, but substantial liability, which may result. The Town noted, also, the costs of required improvements to the sewer system and to the Town Hall, where the additional space also provides improved working conditions for Police Department employees.

The Town also emphasized that economic conditions in the County and in the Town were unfavorable, with local employers reducing employment.

The PBA asked for an increase of eight per cent in the salary schedule for 1993 and for a "fair and equitable" increase for 1994.

The PBA agreed that the Town of Orangetown Police Department salary schedule was among the highest in Rockland County, that it traditionally compared to the salaries paid by the Towns of Clarkstown and Ramapo, although, it argued, that the collective bargaining agreements between those Towns and their police unions provided for benefits superior to those enjoyed by the Orangetown Police.

The PBA placed in evidence the salary schedules for 1992, 1993 and 1994 for the Towns of Clarkstown, Ramapo, Haverstraw and Stony Point, which with Orangetown, are the five towns in Rockland County.

It noted that for 1992 the rate for a First Grade Police Officer in Orangetown was \$54,800, in Clarkstown \$54,341 in Ramapo \$53,998, in Haverstraw \$51,604 (7/92) and in Stony Point \$52,787 (7/92). It stressed the traditional relationship to Clarkstown and Ramapo and noted that in Clarkstown, as a result of a negotiated settlement, that salaries were increased by five percent (5%) in 1993 (to \$57,058 for First Grade) and by six percent (6%) in 1994 (to \$60,482). It noted, similarly, that in Ramapo, where salaries through 1994 were also established by negotiated settlement, that the increases for 1993 and 1994 were five and one half percent (5.5%) for each year, to \$56,968 and \$60,101.

The PBA argued that Orangetown could afford to maintain the traditional relationships with Clarkstown and Ramapo, that the Town's Mood's Bond Rating was A-1 and that it had the strongest financial condition in the County. It argued, also, that the zoning case was still in the courts, that appeals were pending and that it would be several years before any judgment would be final. On cross-examination, Ron Hansen testified that an adverse judgment could be paid via bonding and, as such, would represent less than one percent (1%) of the Town's annual budget.

The PBA noted, also, that more recent economic news in the County was more favorable and that a major employer, in Orangetown, had announced significant plans for expansion of its facility.

In rebuttal, the Town's Counsel stressed that Moody's rating was evidence of good past financial management by the Town but that such a rating would not be maintained if the Town didn't control its costs and that it could not continue to pay top salaries.

OPINION:

Although the Town has demonstrated that salary increases for non-police employees were settled at significantly lower levels

and that settlements for police in some communities (e.g. New York City and Yonkers) were also curtailed, the most meaningful comparisons, based on the evidence and exhibits, would appear to continue to be with the Clarkstown and Ramapo Police. For at least the last decade, these communities have paid their police personnel at a generally comparable level, which is also clearly among the most favorable in the County.

While the Town is appropriately concerned about a number of events which may, potentially, reduce its ability to continue to offer such favorable salaries, the evidence is not convincing that such negative influences will impact the Town's revenues imminently or as severely as it suggested. The evidence and exhibits do not sustain the argument that Orangetown is experiencing events or circumstances noticeably different from other communities in the area.

We might note, as well, that for the Town of Haverstraw, in 1993, the rate for First Grade Police Officers was increased, via Interest Arbitration, by four percent (4%) effective January 1st and, again, by four percent (4%) effective July 1st to \$55,815. A negotiated settlement in the Town of Stony Point increased rates by five percent (5%) on January 1, 1993 to \$55,426 and, by the same percentages, on January 1, 1994 to \$58,198 and on January 1, 1995 to \$61,108.

The data, cited above, indicates that all towns in Rockland County increased the rates for their Police Department by no less than five percent (5%) for 1993 and for 1994. In addition, these agreements all contained improvements in employee benefits, as well.

Consistent with the foregoing, and recognizing both the fiscal concerns of the Town as well as the established relationships of the Orangetown Police Department to Clarkstown and Ramapo as well as the clearly prevailing increases granted in the other four Rockland Towns, we make the following

**AWARD:** Effective January 1, 1993, except for the Fifth Grade Police Officer rate, which shall remain unchanged, all rates in the Salary Schedule shall be increased by five percent (5%).

Effective January 1, 1994 All rates in the Salary Schedule shall be increased by five percent (5%).

(See Appendix A.)

Employees' salaries and retroactive payments shall be adjusted in accordance with their positions on the Schedule.

**NIGHT SHIFT DIFFERENTIAL:**

**POSITIONS AND ARGUMENT OF THE PARTIES:**

The Union asked that the salary differential for Officers who are regularly scheduled to work between the hours of 2300 and 0800, presently at \$2,650 per year, shall be increased to ten

percent (10%) of their normal salary while assigned to that shift.

It explained that the differential had been six percent (6%) until December 1985 when it was set at a flat rate, by an Interest Arbitration Award. The PBA noted that \$2,650 is only 4.8% of the First Grade rate, 4.2% for Sergeants and 3.6% for Lieutenants.

The PBA presented exhibits to show that the differential in Ramapo is 8% and that in Clarkstown, it had also been 8% but was increased to 10% effective January 1, 1994.

The PBA seeks to reestablish a percentage relationship for night shift differential to "facilitate having enough officers volunteer for the midnight shift and provide reasonable compensation for the disruption in their family lives."

The Town argued that it had no difficulty in getting Police Officers to volunteer for midnight shift positions, although it acknowledged that the Sergeants and Lieutenants on the shift were not volunteers. It argued that there was no need to add financial incentives for employees and expense for the Town in order to staff the midnight shift.

OPINION:

While the staffing of the midnight shift does not appear, presently, to be a critical matter for the Parties, the PBA did clearly establish the existence of an inequity, between Orangetown and Clarkstown and Ramapo, with regard to the night shift differential. This Award seeks to eliminate, now, prior to the onset of the 1995 negotiations, what will obviously become a more significant problem.

Although recognizing that this Award will not meet the Clarkstown - Ramapo levels, it is deemed appropriate to re-establish the earlier differential that existed in Orangetown. No overriding need to award retroactive pay for 1993 was established.

AWARD:

Effective January 1, 1994, Officers who are regularly scheduled to work between the hours of 2300 and 0800 shall receive a Shift Differential of six percent (6%) of their regular earnings, including overtime and longevity and for all such time that the Officer is on paid status, such as vacation, holiday and paid sick, personal and bereavement leave. Officers absent while covered by Workers' Compensation shall receive the Shift Differential for a period not to exceed one (1) year.

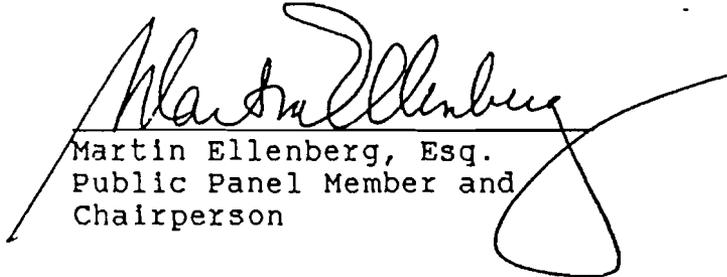
ALL DEMANDS AND PROPOSALS by the Parties, which are not awarded, above, or which were not settled, mutually, by the Parties, shall be deemed to have been denied and, except as revised by this Award, the terms and conditions of the 1991-92 Agreement

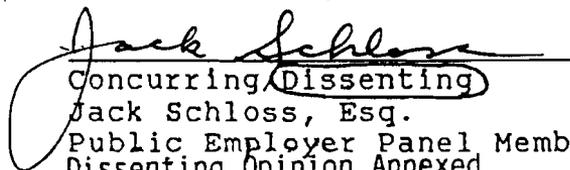
shall be extended and maintained in the 1993-94 Agreement.

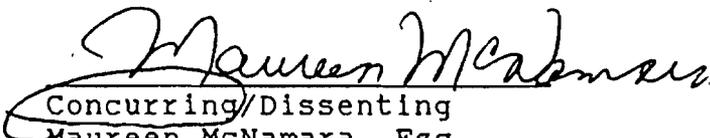
Finally, consistent with discussion, in Executive Session, to determine a reasonable period for the Employer to implement revised salaries and to compute and issue retroactive payments, the Employer is directed, upon receipt of this Award, to commence payment of current rates as soon as reasonably practicable and to complete retroactive payments by August 5, 1994. In the event that retroactive payment is not issued by that date, interest at the rate of nine percent (9%) per year, on unpaid retroactive pay, shall be payable to the employee from that date.

Respectfully submitted,

July 22, 1994

  
Martin Ellenberg, Esq.  
Public Panel Member and  
Chairperson

  
~~Concurring/Dissenting~~  
Jack Schloss, Esq.  
Public Employer Panel Member  
Dissenting Opinion Annexed

  
~~Concurring/Dissenting~~  
Maureen McNamara, Esq.  
Public Employee Organization  
Panel Member

SCHEDULE A

	<u>1/1/92</u>	<u>1/1/93</u>	<u>1/1/94</u>
5th Grade	\$36,475	\$36,475	\$38,299
4th Grade	43,212	45,373	47,641
3rd Grade	46,374	48,693	51,127
2nd Grade	49,360	51,828	54,419
1st Grade	54,800	57,540	60,417
Sergeant	63,020	66,171	69,480
Lieutenant	72,474	76,098	79,903
Detective	58,637	61,569	64,647
Det./Sgt.	66,857	70,200	73,710
Det./Lt.	76,310	80,126	84,132

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	)	DISSENTING
TOWN OF ORANGETOWN	)	OPINION
	)	BY PUBLIC
and	)	EMPLOYEE
	)	PANEL MEMBER
ORANGETOWN POLICEMEN'S BENEVOLENT ASSOCIATION	)	
	)	
Case No. IA92-053; M92-535	)	

The majority opinion acknowledges that the Town introduced 81 exhibits and submitted 17 proposals for panel consideration. None of these exhibits or proposals appear to have been substantively addressed in the majority award. Among the exhibits and charted salary and benefit comparisons submitted by the Town were 26 collective bargaining agreements, all appropriate for panel consideration, including the 1991-1995 collective bargaining agreement covering New York State Troopers. The State Troopers have permanent barracks in Orangetown and the Town offered evidence proving that this police unit, just like police units in Yonkers and New York City recently accepted contracts containing wage freezes for one year to 18 months. The majority award fails to analyze the relevancy of the collective bargaining agreements and exhibits submitted by the Town. In determining the extent of salary increases, the majority appears to have considered only the contract salary schedules submitted by the Union.

The majority opinion states that, "the most meaningful comparisons, based on the evidence and exhibits, would appear to

continue to be with the Clarkstown and Ramapo Police." Orangetown is experiencing serious financial hardships. In view of the reduced revenues resulting from numerous and substantial tax certiorari proceedings, the multi-million dollar Magee judgment, the extensive local private sector employee layoffs within the Town, and the Town's current bonding obligations, in the opinion of this panel member, the salary award is excessive.

The public sector agreement covering New York State Troopers who actually work within the Town of Orangetown and the public sector Civil Service Employee's Association contract covering the majority of the Town's employees are in the opinion of this panel member at least as meaningful and appropriate comparisons as Clarkstown and Ramapo in determining a fair and fiscally responsible level of compensation for Orangetown's police officers. Collective bargaining awards must be based upon present fiscal realities and should not be based upon obsolete historical comparisons.

The majority opinion awards an increase in the night shift differential. Again the majority placed greater reliance on an artificially contrived historical linkage than on the facts and evidence introduced at the arbitration hearing. The majority opinion states that, "While the staffing of the midnight shift does not appear, presently, to be a critical matter for the Parties, the PBA did clearly establish the existence of an inequity, between

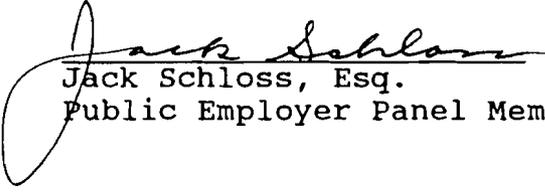
Orangetown and Clarkstown and Ramapo." The testimony offered at the arbitration established that the town had no problem in staffing the night shift. In fact, the number of officers seeking night shift positions far exceeded the number of available night shift positions. Under such circumstances, to increase the cost of the night shift differential seems to be an unjustified waste of limited resources. Again, the majority award gives greater weight to obsolete historical comparisons with Ramapo and Clarkstown than to present factual reality.

The method of calculating the night shift differential adopted in the majority award adds insult to injury. It states in part that "Officers absent while covered by Workers' Compensation shall receive the Shift Differential for a period not to exceed one (1) year." The majority award also requires that the Town add the 6% night shift differential to ordinary longevity increments. No testimony or evidence was introduced at the arbitration proceeding which would justify extending the applicability of the night shift differential in the fashion adopted in the majority award.

This panel member strenuously objects to the unfair procedure followed by the neutral arbitrator during the course of revising his original award. The Union panel member had been provided with an original signed copy of an award which stated that "Effective January 1, 1994, the night shift differential for employees who work the steady midnight shift (set at \$2,650 per

year per Section 6.3 of the 1991-92 Agreement) shall be six percent (6%) of normal base salary." This Town panel member was never provided with the same original signed award sent by the neutral panel member to the Union panel member. When the Union panel member objected to the language contained in the original night shift differential portion of the award (about one (1) week after the Union panel member had received an original signed award) the neutral panel member engaged in a series of lengthy telephone conferences which resulted in the issuance of a second original award signed by the neutral panel chairman and containing a method of calculating the night shift differential which further increases the cost of the night shift differential to the Town. If this panel member had been provided with the same original signed award as had been provided to the Union panel member, then, this panel member would have signed the original award signed by the neutral arbitrator thereby converting the original award into a majority award in order to limit the cost of the night shift differential to the amounts described in the award originally signed by the neutral arbitrator.

For all of the above reasons I must respectfully dissent from the majority award.

  
Jack Schloss, Esq.  
Public Employer Panel Member