

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD (PERB)
COMPULSORY INTEREST ARBITRATION

THE TOWN OF CORTLANDT (Town, Employer)	:	
and	:	OPINION
	:	
	:	and
TOWN OF CORTLANDT POLICE ASSOCIATION -NEW YORK FEDERA- TION OF POLICE (Federation, Empl oyees)	:	
	:	AWARD
	:	PERB IA95-014
	:	M95-020

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
PERB

MAY 09 1996

CONCILIATION

Eric W. Lawson, Jr. Esq. Chairman, Tripartite Panel
Glen Cestaro, Town Representative
Ralph M. Purdy, Employee Representative

APPEARANCES:

For the Town, by, Thomas F. Wood, Esq.

For the Employees, by, Thomas P. Halley, Esq.

PROCEDURE:

The parties, bound by a collective bargaining agreement (cba) which expired on December 31, 1994, entered into negotiations for a successor agreement. Those negotiations failed to produce complete agreement, an impasse was declared on April 21, 1995 and mediation was undertaken. On June 30, 1995, mediation having failed to produce agreement on all open items, the Federation filed a petition for compulsory interest arbitration with PERB. On August 1, 1995 PERB designated an interest arbitration panel naming Glenn Cestaro and Ralph M. Purdy as the advocate members and Eric Lawson Jr., Esq. as the impartial chairman.

After the Chair rescheduled a pre-hearing meeting four times, he met with the parties on October 3, 1995 at which time a procedure was agreed upon for further negotiation on a stipulated list of open issues. It was agreed that any items remaining in disagreement at the end of these bargaining sessions would be submitted for interest arbitration (Exhibit A). By December 1, 1995, by which time the procedures adopted at the October 3rd pre-arbitration meeting should have been completed, neither party had contacted the Chair so in a letter of that date January 1, 1996 was established by the Chair as the date when briefs would be submitted on the items remaining open.

On January 7, 1996 briefs were received. When additional submissions were made directly to the Chair by Mr. Purdy, the Chair sent copies of the material to the Town. The Chair then ruled that no additional communication with him, by writing or phone, could occur without the other side being copied.

A draft award dated March 6, 1996 was sent to the parties. Thereafter two submissions were received from the Federation and one submission was received from the Town. In a letter dated March 14, 1996 the Chair reiterated for the parties that the submission of evidentiary material ended with the submission of the briefs. The reason for the ruling was to assure each side that in making their closing remarks, they would not be prejudiced by the submission by their opponent of additional evidentiary material. [The final submission from the Federation, received on April 22nd, contained additional exhibits.]

During this process, new positions were taken on some of the open issues. The award which follows was prepared by the Chairman. It reconciles the positions of the parties on the issues to the extent that such a reconciliation meets the statutory requirements. Only those issues endorsed by a majority of the panel members are binding upon the parties.

OPEN ITEMS:

The items which the parties submitted to arbitration are:

Wages: The Federation seeks a 5% raise on January 1, 1995, 4.7% on October 1, 1995 and 6% on October 1, 1996. The Town offers a 2.85% wage increase on January 1, 1995 and on January 1, 1996, a reduction of 5.5 days in the length of the work year, the equivalent, it said, of a 2.75% wage increase. In their final submission, the Town altered its second year offer to no change in the length of the work year and a 3% salary increase. The Town also proposes a 3% wage increase for 1997. (The panel is prohibited from an award covering more than two years)

Work Chart: The Federation proposes reducing the present work year of 255.5 days to 243 days beginning on January 1, 1996. Six days above 243 days (249 days) would be available in 1996 for training but would be dropped as of December 29, 1996 leaving a work year of 243 days commencing on January 1, 1997.

The Town argued that the work chart proposal is a non -mandatory demand. However, the Town proposed reducing the work year to 249 days broken into 243 days of regular work and six days which could be used as training days or days which could be used as regular work days to avoid the payment of overtime. (Note the modification of the Town's work year proposal as described at "Wages")

In closing statements received from the parties in March and April 1996, both acknowledged the impossibility of adjusting the work year for calendar year 1996 since the first four months of the year had already passed.

Vacation Schedule: Presently employees with 10 years of service receive 20 work days of vacation each year and after 16 years of service, the vacation rate increases to 21 work days each year. The Federation proposes adding a new step at 15 years of service with 25 work days of vacation. Presently the cba provides for 25 work days of vacation after 20 years of service, the maximum vacation allowance. The Federation proposes adding a new step at 25 years of service and funding it with 30 work days of vacation. The Town does not propose changing the vacation schedule.

Personal leave: The Federation proposes allowing unused personal leave to be rolled over into the next year where it would be accumulated as personal leave. Presently the roll over of unused days is to sick leave accruals. The Town wishes to leave the provision unchanged.

Sick leave accumulation: The Federation proposes to be able to sell back unused sick leave time "on a pro-rata basis" in a manner "similar to the procedure used in the Town of Yorktown."

While initially proposing to retain the current ceiling of 261 days of sick leave which may be accumulated, the Federation nonetheless proposed unlimited sick leave time availability with a wage bonus available at the end of each year based on the number of days actually used. (3 days = 4%, 6 days = 2.5%, 8 days = 1.5%).

The Town proposes eliminating the present sick leave provisions by (A), valuing all sick leave accruals as of December 31, 1994 and making said values available for payment to employees in a lump sum at the time they leave the Town's employment and (B), allow employees to accrue 7 days of sick leave each year with unused days available to be accumulated to a total of 14 days or to be "liquidated." Liquidation is understood to mean paid at the employee's per diem. (C), Employees hired before January 1, 1995 who suffer a "catastrophic" illness (an illness resulting in an absence of seven or more days) would be paid for up to one year of absence. Employees hired after January 1, 1995 would have one half of a year's leave available, i.e. presumably 3.5 days each year with a maximum of 7 days that may be accumulated.

Drug testing: The Town stated that drug testing had been agreed to, however, the Federation stated that it believed the matter had been dropped but if not dropped the Federation reinstated its education benefit proposal, a proposal which the Town stated it believed had been dropped.

Education benefit: No education benefit proposal was submitted on April 21, 1995 when the Federation petitioned for interest arbitration. The education benefit pro-

posal contained in the Federation's December 16, 1994 letter to Supervisor Puglisi requested full tuition payment for all courses taken by employees as long as a grade of "C" or better is obtained. In addition, employees with an associates degree would receive \$500, those with a bachelors degree \$1,000, those with a masters degree \$1,500 and those with a juris doctor degree \$2,500. It is presumed that these would be annual payments. In their final submission in April 1996, the Federation stated that this proposal was still on the table.

Calculation of hourly rate: The Town proposes dividing employees' annual salary by 2080 (40 hours times 52 weeks). No proposal was offered by the Federation. Presently, straight time work is 8 hours of work per day and/ or 40 hours per week at straight time pay. Time and one half is applied against this figure for overtime pay (See Article XX).

STATUTORY MANDATES:

The standards to be employed by the tri-partite, public arbitration panel, which must obtain a majority vote upon all items submitted to it for determination, are found at Article XIV (CSL), Section 209 4, and are:

v. the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the 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.

...

OVERVIEW:

The bargaining unit includes all titles in the Town of Cortlandt Police Department except chief. There are ten employees in the unit. The Town of Cortlandt is located in northern Westchester County. The statutory guidelines are met by a comparison of salaries and benefits for the police officers who make up the bargaining unit in Cortlandt with police officers serving in other near-by communities where the terms of employment there are similar with those in Cortlandt and where there is a similarity in the economic condition of the communities. This comparison base is justified because of similarities between the criteria described at subparagraphs (a) (b) and (c) of the controlling statute [supra]

For purposes of comparability, the Federation proposes using the Towns of New Castle, Yorktown and Bedford, located in northern Westchester County and the villages of Buchanan and Croton on Hudson, located within the Town of Cortlandt. Exhibits offered in their brief however, consisted of The Town of New Castle cba, for 1995-1996, portions of the City of Peekskill cba for 1994-1995, portions of the City of New Rochelle cba for an unspecified year, and a rights arbitration award for the Village of Tarrytown dated 1995. In their final submission in April 1996 exhibits containing a summary of benefits in the Towns of Bedford and Yorktown were offered by the Federation.

The Federation also offered in their brief as exhibits, a report from State Auditor H. Carl McCall, regarding the Town of Cortlandt, several newspaper articles and a "Staffing Analysis for the Town of Cortlandt Police Department" compiled by the State of New York Division of Criminal Justice Services.

The Town offered as exhibits the villages of Buchanan and Croton and the Town of Yorktown as a comparable base for the Town of Cortlandt. The only documentation offered in support of the Town's position however, was a one page analysis of salary increases and sick time provisions in the Town of Yorktown, salary raises, sick time policy and holidays available in the Village of Croton and brief reference to holidays and salary paid in the Village of Buchanan under a cba which expired in May 1994. [In letters dated January 27, 31, 1996 Mr. Purdy challenged the accuracy of Town Exhibits stating that Yorktown police received a 4% salary increase in 1996, not 2% as the Town stated. Purdy also stated that top step pay in Croton in 1994 was \$50,914, not \$48,714 as cited by the Town. Purdy also objected to the accuracy of the Town's petition regarding paid holidays available in Cortlandt. Holiday availability however, is not an open issue.]

DISCUSSION:

Since agreement was reached at the October 3, 1995 pre-arbitration meeting conducted by the Chair, as to what items remained open, no consideration shall be given here to drug testing, calculation of the hourly rate or personal leave. The items remaining open are, wages, work chart, vacation, sick leave and educational benefits.

Wages and work chart (limited to only the number of days of work per year) are inextricably entwined. The Town asserts that the scheduling of work is a non-mandatory item. In a letter to the chair dated October 9, 1995, copy of which the Chair provided to the Town, Purdy enclosed several PERB decisions purporting to support the Federation's position that the length of the work year is a mandatory subject of negotiations.

A tri-partite interest arbitration panel is an inappropriate forum to rule on the subject of what are mandatory or non-mandatory subjects of bargaining. Except where the issue has been so clearly decided so as to require no more than that the panel take judicial notice of PERB rulings, the panel must defer disputes over the duty of bargaining back to the parties where procedures are available for them to submit the disputed items to PERB for decision. Here the parties did not submit the issue of the length of the work year to PERB before proceeding to arbitration.

Generally PERB has held that the impact of scheduling decisions is mandatory (See Amsterdam, 10 PERB 3007 et al.) Thus, an annual wage covering a set number of hours of work would be subject to negotiation if the employer proposed to change the number of hours of work. Similarly, a change in the number of days worked in a calendar year would fall under this analysis based on the impact of that change.

The Town's willingness to voluntarily enter into negotiations on the subject of the number of days of work to be performed each year by the employees is relevant. It implies a waiver of their position that they are not compelled to negotiate a non-mandatory issue.

Here both parties propose reducing the length of the work year in the second year of the cba. The Town characterizes this reduction as similar to a salary increase, calculating the value of each day of work at .05%. Given the willingness of the parties to negotiate the value of each day of work and to offer proposals on the number of days of work each year and because PERB decisions have described hours of work as mandatory subjects of negotiation, the panel is within its statutory authority to make a ruling on the length of the work year. The analysis remains valid, even though in their final position the Town backed away from offering to reduce the length of the work year. The Town's final second year offer of a 3% salary increase should be compared to its earlier offer to reduce the length of the work year since in defending that offer it equated the reduction to a percentage salary increase.

The Federation proposal would increase the aggregate salary level by 6.2% the first year (5% plus 1.2% - the effect the first year of increasing the salary level in October by 4.7%) In the second year the Federation proposal would increase salaries by 3.5% on January 1st (This is the residual effect of increasing salaries by 4.7% in October of the first year). An additional 2% must be added to accommodate to an increase on October 1, 1996 of an additional 6%. While the Federation did not

propose a third year, the effect of its second year increase of 6% in October would be to raise the base upon which salaries would be paid in 1997 by 4%.

In addition to wage adjustments, the Federation proposes to reduce the work year to 249 days in 1996, 6.5 fewer days than are presently worked. At a valuation of .05% per day, (A valuation challenged by the Federation, *infra*) this proposal would cost 3.25%. In addition, the elimination at the end of the second year of the 6 days available for training in the second year would raise the per diem cost of the unit by 3% as of January 1, 1997.

Accordingly, the Federation proposal would cost 6.2% in year one and 8.75% in year two (5.5% wages and 3.25% in reduced work time). In addition, the salary and the per diem cost would rise by 7% at the outset of 1997 (3% is the cost of eliminating the 6 training days and 4% is the pick up cost of the 6% increase to become effective on October 1st of year two of the cba). Changes sought by the Federation in 1996 would become fully effective in 1997. Because of statutory limitations on rendering a three year award, the panel cannot rule on wage adjustments in 1997. However the panel can not be indifferent to the impact in 1997 of an award made on salaries in 1996. Here the Federation proposal for 1996 would substantially affect wages beginning on January 1, 1997.

For its part, the Town initially proposed a 2.85% increase in year one, an adjustment in the work year in year two, with a value of 3.25%, and a 3% salary increase in year three. Subsequently, when it was determined that the length of the work year could not be adjusted during the effective time period of this Award (calendar years 1995-1996), the Town modified its position to offer a second year salary increase of 3%.

The differences in these positions are vast.

Given the delay in completing these negotiations, a three contract is desirable but, since the panel is statutorily limited to an award of no more than two years, that is the length of the contract found by the Panel.

The Federation defends its wage demands on the basis of the Town's ability to pay. It states that the Town has ..." an existing budget surplus of more than ten million dollars," citing newspaper accounts and a review by the Comptroller. The Town's per person expenditure for police, at \$24, is far below that spent in the Towns of Bedford, New Castle and Yorktown each of which spent over \$100 and the \$200 per person spent by the communities of Croton and Buchanan.

The Federation also cites the higher salaries paid police in the Towns of Bedford, New Castle, North Castle and Yorktown in defending its salary demands.

Finally, the Federation challenges the accuracy of the Town's estimate of the per

diem cost for police officers in Cortlandt. By dividing the 255 days in the current work year with a salary of \$48,000, the Federation says that the per diem cost is .00392, not .005 as the Town claims. The Federation's use of the annual salary figure however, does not take into consideration significant other wage related costs associated with fringe benefits and retirement. The difference is important.

The benefit to a police officer for providing a day (shift) of service is the wage and the benefits, including the pension benefit, the officer derives for the service. Therefore, a calculation of the officer's per diem based only on the salary paid is not an accurate calculation of the benefit the officer derives. Since pension costs alone add at least one fifth to the cost of a police officer's salary (Without considering other fringe benefit costs), .005% is not an inflated calculation of the total per diem cost.

The Town claims that inflation was less than 3% in 1995 and states that its police officers are "well compensated" when payments for longevity and holiday pay are considered. No statistical analysis of this assertion was offered however.

The Town did not challenge its ability to pay salary increases, an ability which appears to be documented in the Comptroller's report and in newspaper articles. Its per person expenditure for police services, while relatively low based on the comparison sheet submitted, may be the consequence of several unexplained factors. For example, the data sheet relied upon by the Federation shows Village of Harrison residents paid only .43 cents per resident in 1990, for police services but the City of Harrison paid \$199.85. Larchmont residents paid \$348 and are expected to pay \$730 in the year 2,000. There was no explanation offered to explain these vast swings. The data sheet offered by the Federation was incomplete.

The data submitted by the Town is equally sparse. Yorktown raised its police salaries 5% in 1995. The data offered for increases in 1996 is unclear. The 2% figure offered by the Town was challenged by the Federation. Top step salaries paid in Yorktown in 1994 were \$49,400 as compared to \$48,000 in Cortlandt. The Town's description of the top step salary paid in Croton in 1994 was also challenged by the Federation which stated that the figure should be \$50,000. A three year contract negotiated in Croton commencing in 1996 raised salaries 4% each year.

The salary increases negotiated in the Village of Buchanan are 5%, 5.5% and 6% for contracts apparently commencing on June 1, 1994. The top step salary in Buchanan in 1993 was \$52,533.

In their final submission in April, the Federation attached as exhibits summaries of wages and benefits paid in Bedford, New Castle, Yorktown, Buchanan and Croton-on-Hudson.

Based on the data submitted, the salary and work year adjustment positions of each side are unacceptable. Salary increases negotiated for Yorktown, Croton and

Buchanan, as described in the Town's brief, average slightly more than 4% in each year of two contracts covering three years each and one covering two years. (There is a dispute as to the second year increase in Yorktown)

The statutory requirements obligate the tri-partite panel to consider only the evidence submitted in formulating its award. Based on those submissions, which include (1) comparable benefits available in other Westchester communities, (2) the cost of living, which was less than 3% in 1995 but has risen to approximately 3.5% as of the date of this award (US Cities Average) and (3), the benefits and wages in the existing cba, the following award is made regarding wages and the length of the work year (work chart):

- A. January 1, 1995 a 3% salary increase with an additional increase of 2.5% to become effective on October 1, 1995 (net increase, 3.6%);**
- B. In the second year of the contract (and in lieu of the work year being reduced) a salary increase of 4.65% is made.**

In its final submission in April, the Federation offered a comparison of vacation eligibility in Cortlandt with that available in New Castle, Yorktown and Bedford. **Based on this comparison, an increase of one day of vacation (to 26 days) after 20 years of service is justified.**

The Town proposes a wholesale change in the provision of sick leave days. The proposal is incomplete. For example, the Town offers veteran employees a full year off for "catastrophic" illness, which is defined as absences of seven days or more. Are these seven consecutive days of absence? Does the absence have to relate to a single injury or illness or may the days be cumulative? Is the absence record annualized on a calendar year basis or is it a measuring period of 365 days? Once an employee has been absent for seven days, do they become eligible for unlimited additional absence, up to a full year?

The Federation proposal regarding sick leave is incomplete. The sell back provision proposed by the Federation was unaccompanied in its brief by the Yorktown provision which, apparently, it was copied after. The Federation also proposes a wage bonus for unused sick leave days.

The description of the Yorktown sick leave provisions, offered by the Town, pays employees a bonus at 75% of their per diem for unused sick leave calculated at one day per week. Croton allows a slightly greater accumulation than Cortlandt (300 vs. 261 days) and allows a 50% conversion to cash at retirement, in contrast to a sliding scale in Cortlandt which pays up to 60% of the per diem for employees having an average of 9 unused days per year since 1987 and 100% for those using no sick leave days at all.

In their final submissions, the parties pressed for consideration of their respective

sick leave provisions [The Federation submitted a summary of the Yorktown provision]. The Town stated that a number of questions not addressed in its sick leave proposal, nor explained elsewhere in its submissions, were nevertheless resolved by the parties. However, the sick leave proposal would produce vast change in the sick leave provisions of the cba. The novelty of the Town's proposal is further illustrated by the fact that no other community described in the exhibits has sick leave provisions similar to those being sought by the Town.

If these changes are to occur, the parties need to negotiate the details themselves.

The only area where a change is justified based on the submissions regarding sick leave, is to raise the ceiling of sick leave accruals in Cortlandt to 300 days. No further changes in the sick leave provisions are awarded.

Perhaps because it was on and off the table several times during negotiations, the Federation's education benefit proposal was not addressed substantively in either parties' brief. Since the statutory scheme requires that interest arbitration awards be based on evidence (supra) and nothing substantive was offered in support of the education benefit proposal, the panel is without authority to make any recommendation on this matter.

AWARD:

- 1. Length of contract: Two years, January 1, 1995 to December 31, 1996.**
- 2. Salary and work year (work chart) Year One: On January 1, 1995 the salaries shall be raised by 3%. On October 1, 1995, the salaries shall be raised by 2.5%. Year Two: In lieu of reducing the work year to 249 days, salaries shall be raised by 4.65% as of January 1, 1996.**
- 3. One additional vacation day (26 days) is to become available to employees with 20 years of service.**
- 4. Sick leave accruals may be accumulated to a maximum of 300 days.**
- 5. No education benefit change is made.**
- 6. The award is retroactive to January 1, 1995.**
- 7. All other items upon which tentative agreement have been reached are incorporated into and made a part of this Award.**

State of New York:

County of Erie :

I, Eric W. Lawson Jr., the chairman of the tri-partite panel captioned above, do hereby affirm that I am the individual described in and who executed this instrument, which is the award of the tri-partite panel.

I concur with all of the findings set forth above.

May, 7 1996


ERIC W. LAWSON JR.

State of New York :
County of Westchester :

GLENN
I, ~~Glen~~ Cestaro, the Town representative in the tri-partite arbitration panel captioned above, do hereby affirm arbitrator that I am the individual described in and who executed this instrument, which is the award of the tri-partite panel.

I concur with all of the findings set forth above.

April ,1996

GLEN CESTARO

I dissent from all of the findings above (and attach my reasonings hereto)

April 30 ,1996

Glen Cestaro

GLEN CESTARO
GLENN

I dissent from the findings set forth, in the manner described below and for all others, I concur

April ,1996

GLEN CESTARO

State of New York :
County of Westchester :

I, Ralph M. Purdy, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is the award of the tripartite panel.

I concur with all of the findings set forth above.

~~April~~ ^{MAY 3}, 1996

Ralph M Purdy
RALPH M. PURDY

I dissent from all of the findings above (And attach my reasonings hereto)

April ,1996

RALPH M. PURDY

I dissent from the findings set forth, in the manner described below and for all others, I concur

April ,1996

RALPH M. PURDY

ERIC W. LAWSON, JR.

ATTORNEY-AT-LAW
Arbitration - Mediation

420 LINWOOD AVENUE
BUFFALO, NEW YORK 14209-1629

Telephone: (716) 885-1382 :: FAX (716) 886-7398

EX A.

October 4, 1995

Ralph M. Purdy
NYS Federation of Police
540 N. State Rd.
Box 76
Briarcliff Manor, NY 10510

Glenn Cestaro, Comptroller
Town of Cortlandt
1 Heady Street
Cortlandt Manor NY 10566

Thomas Wood Esq.
135 Albany Post Rd.
Buchanan, NY 10511

Thomas Halley, Esq.
297 Mill Street
Poughkeepsie, NY 12601

Gentlemen:

At yesterdays pre-hearing arbitration conference regarding the matter of IA95-014, the following agreements were reached:

1. The matters which remain unresolved are : work chart, wages, longevity, vacation, duty apparel (uniform), on call time (beeper), education, sick time and health and dental for new employees. All other items have either been dropped from negotiations, are tentatively settled or shall continue in the new cba without change.
2. You will hold bargaining sessions on these matters on October 27 and November 13 and 14. If additional session are needed, they will be mutually agreed upon.
3. If all items are not settled by November 14th or at the end of the last mutually scheduled bargaining session, only those items which remain unresolved shall be submitted to arbitration.
4. Where arbitration is required, the submissions shall be by briefs. After the briefs are received and both before and immediately after tentative recommendations are made, a



conference call with the two advocate members of the tripartite panel shall be held and/or a meeting with the panel members shall take place. Thereafter the decision shall be rendered.

Very truly yours,

Eric Lawson Jr.