

NYS Public Employment Relations Board

In the Matter of the Interest Arbitration

between

Case # IA96-039; M96-069

Town of Webb Police Benevolent Association

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

and

FEB 02 1998

The Town of Webb, New York

CONCILIATION

ARBITRATION PANEL: Arthur T. Jacobs, Ph. D., Public Member and
Chairperson
LeRoy C. Kotary, Representing Employer
Rocco A. DePerno, Esq. Representing PBA

HEARING: August 8 and October 8, 1997. Briefs received November
11, 1997. Conference calls and correspondence through
January 17, 1998.

REPRESENTATION: For the Association - Ann McGrath, Esq.
Edward J. Fennell

For the Town - Roger Kane, Esq.

BACKGROUND

This arbitration is the result of an impasse in the first negotiations, which began in October 1995, between the parties after the Association was recognized as the collective bargaining agent for the Town's police force of five officers, two working part time; the Chief of Police is not part of the bargaining unit.

An administrative study by the NYS Division of Criminal Justice Services, FEASIBILITY OF CONSOLIDATING THE TOWN OF WEBB AND TOWN OF INLET POLICE DEPARTMENTS, pointed out that there is usually one officer on each of the three shifts to cover the largest town in New York State which has, however, only approximately 150 miles of roadway and, according to the last census, only 1,637 residents, who swell to as high as 35,000 during the peak summer season.

At the hearing the parties agreed that some 70 per cent of the Town consists of forests and lakes owned by the State Government. The policing problems of the rest is described in the State study:

Many of the secondary roads are not paved and can be difficult to traverse, considerably adding to response time to calls for

service. Many of the residents live in remote areas which do not have telephone service, resulting in requests to the police department to make notifications when an urgent message needs to be relayed. Many areas to which the police must respond have to be accessed by foot, small plane, or boat. ... a police officer's total committed time during a shift is increased, thereby, reducing the uncommitted time which is essential to effective proactive law enforcement.

The study concluded that given the number of calls for service and the average time of 45 minutes to respond to a call and to complete a preliminary investigation, the Town should add two more police to its force. The Town does employ two part time officers who are not members of the bargaining unit.

Mr. Fennell, an expert analyst of municipal finances, presented an analysis of the Town's revenues, expenses, tax rates, and constitutional debt limit, ending with the comment: "This is a real no brainer, plenty of money". The Town has the lowest tax rate in the county, none of its \$1,977,000 debt is applicable to its seven per cent constitutional debt limitation, its unappropriated fund balance was \$789,873 and its contingency fund totaled \$275,000.

The Town did not dispute its ability to pay whatever salaries and benefits the panel might mandate. It simply contends that its offers are in line with the salaries and benefits provided police by comparable communities.

Unfortunately the parties did not agree on 24 issues which the Union seeks to include in the Collective Bargaining Agreement. These with the decisions of the Arbitration Panel will be discussed below in the order presented in the Union's brief.

The statutory criteria for determination of the Arbitration Panel's decisions are, briefly: The wages and working conditions of comparable workers in comparable jurisdictions, "the interests and welfare of the public" and the employer's financial ability, the "peculiarities" of the trade or profession, and the terms of previous collective bargaining agreements between the parties. This last criterion does not apply here, we being concerned with the Union's first Agreement. The other criteria were followed.

RECIPROCAL RIGHTS

The Union wants officers to have paid time off "to enjoy conferences and conventions with other law enforcement officers,

and to utilize such time as a means of understanding the collective bargaining process". The Town does not agree. This request must be denied. Considering that officers normally work alone, granting this benefit would upset the ability of the Town to provide proper police coverage with the staff it has.

PERSONNEL AND JOB DESCRIPTION

The Union requests the establishment of junior and senior ranks based on length of service. The Town sees no need for a differential classification among the officers. Based on the evidence available to the arbitrators this request is denied.

WORK DAY AND WORK SHIFT

Officers now work a 48 hour shift. The Union wants a 40 hour work week, eight hours a day, with four hours at time and a half pay if called in for more hours. It presented a table showing nine jurisdictions with call in pay at time and a half ranging from two to four hours. None of the nine are deemed comparable by the Town. It wishes to maintain the present schedule and establish a bilateral committee to study the issue and make recommendations for thereafter. Theoretically, it is not opposed to a 40 hours' week.

A 40 hours' week with mandatory overtime at time and a half after eight hours a day is what the police now have. If the Town were to adopt a standard 40 hour week and eliminate or reduce overtime to a minimum, it would have to hire more officers, thereby accepting the recommendations of the State Administrative Study. Staffing is the prerogative of the employer solely; it cannot be part of the Agreement with the Union.

The new request essentially, therefore, is to eliminate mandatory overtime and to require call in pay when overtime is assigned, which is common in many Collective Bargaining Agreements. It seems reasonable to us that if an officer is called in to work, thereby upsetting or restricting his leisure and family time, after completing his current 48 hour shift, he should be guaranteed at least two hours pay at the overtime rate, and we so order. We also order that a joint committee be established within the next two months to study this problem and to agree if it can on how shifts shall be set up in the next Agreement.

COMPENSATION

The Union is requesting a salary of \$15 an hour for "Senior Patrolmen", \$12.50 an hour for "Junior Patrolmen", and \$9.50 an

hour for a "Recruit". The Classification is the Union's, a proposal which we have denied. Presently the starting salary is \$5.25 an hour. The Union presented a table showing the starting rate for 14 northern tier jurisdictions; the rates ranged from \$8.65 to \$12.64 an hour. The two jurisdictions among them, which the Town believes are somewhat comparable to Webb, are Booneville paying \$9.61 and Inlet paying \$8.65 an hour. The actual salary rate for the Town's patrolmen, which included a 3 per cent raise in 1995, is currently \$9.98 an hour, for Booneville \$9.61 and for Inlet \$9.84.

The Town urges a 3 per cent increase each year, the same increase it has granted its other employees. It points out that for 1996 and 1997 Booneville gave 3 per cent raises, Inlet none but an improved retirement benefit in 1996 and 5 per cent for 1997, and for its other comparable town, Dolgeville, the increases were 5 per cent and 3.5 per cent, respectively. It points out, too, that the cost-of-living index rose 3.3 per cent in 1996 and only 2.2 per cent in 1997 through August.

The Union contends with data covering the 14 jurisdictions it considers comparable that the Town's starting salary is less than half the average of the others and the top salary it is paying veteran officers is only around 42 per cent of the average top salary paid by the other 14 jurisdictions. It concludes that Webb police earn \$7000 a year less than the closest comparable jurisdiction pays its officer.

The Union also pointed out the Town pays its nurses a minimum of \$11.80 an hour, which Webb justifies by their mandated continuous training and 24 hour on call status; and that Department of Public Works' employees receive wages ranging from \$9.67 for laborers to \$10.75 an hour for mechanics, all of which occupations, in its judgment, do not rank as high as police officers.

It further listed the police interest arbitration awards for 1995 and 1996, the 18 in 1995 averaging 4.15 per cent and ranging from 3.5 to 5.25 per cent and the nine in 1996 averaging 4.44 per cent and ranging from 4 to 5 per cent.

We do not have the information about any of the jurisdictions listed by the Union or the Town necessary to determine which ones among them, if any, are comparable to Webb; in their ability to pay, the type and size of area and population being policed, the industries, if any, in them which pay wages to occupations comparable to their police officers, the kind and volume of

criminal offenses, etc., although the very rural Inlet, Boonville and Dolgeville do seem to come closest and some of the other jurisdictions are probably of relevance. Moreover, without knowing what other factors affected the police arbitrations cited, such as the impact of fringe benefits and previous bargaining history, we can only give minimum relevance to them. Therefore, our finding mainly relies on more general considerations.

We are limited by the statute governing interest arbitrations of the police to awarding contracts of no more than two years. The officers received a raise covering 1995. We shall let that stand and award a contract for the years 1996 and 1997.

In recognition of the fact that Webb police almost always work alone on a shift and consequently are under more pressure than police who have companions on their shifts and of the Administrative Study showing that they in effect are doing the work for which two more officers are needed; that their salaries are generally significantly less than the salaries of their peers in northern tier communities; that police settlements including interest arbitration awards in the State often go as high as 5 per cent; and further that the Town agreed in mediation that the officers should in the last two years of a three year contract receive raises greater than 3 per cent, we award as follows:

For 1996 the police are to be given a raise of 4.0 per cent and for 1997 another 4.0 per cent and the starting wage henceforward will be \$8.65 an hour for the first year of employment and \$9.98 during the second year of employment.

HOLIDAYS

Presently the officers like all Webb employees receive only the eight statutorily mandated holidays. The Union points out that except for Inlet, all the other 14 communities it considers comparable give more, the most common number being 12, the number which it requests. The Town in mediation offered one additional holiday, which we agree is a reasonable increase at this time especially given the wage increases granted above and we so order.

The Union and the Town should make a good faith effort to agree on the day which will be the additional holiday, but should they fail to agree, the Town shall determine the day.

The Union also wants officers who work on a holiday or whose day

off happens to be a holiday to obtain equivalent time off. This demand makes sense, a holiday is not a holiday for workers unless they do not work on it or are allowed to take a day off at another time. It is granted.

The Union also seeks the right for officers to receive pay instead of time off for holidays. We leave this option to the discretion of the Town, because the available information on this practice was not available.

PERSONAL DAYS

The Union wants four personal days off each year, the Town seems willing to give one; currently it provides none. The Union supports its proposal again with the practices of its designated comparable jurisdictions where, except for Inlet, personal days off range from two to six. We award one, again in consideration of the substantial wage increases mandated above.

The Union would also like unused personal leave to be added to sick leave at the end of each year, but based on the data available to the panel this demand is not granted.

We grant the following provision as stated in the Agreement proposed by the Union:

Personal leave days may be taken at any time provided 24 hours notice is given to the Chief of Police and approved by him. Refusal by the Chief of Police may not be arbitrary or capricious, nor shall same be unreasonably denied.

The Union also asks that in case of death in the family of an officer, he be allowed four paid days off. While again this demand is unsupported with data, we know that some such allowance is common in collective bargaining agreements. We, therefore, grant another personal day if the death is of a spouse, child, parent, or sibling.

LONGEVITY

There is no longevity pay now. The Union seeks longevity pay at four year intervals beginning at 1 per cent of base pay and rising in 1 per cent increments. The Town in mediation offered \$500 after some unstated period of time. The Union's comparable communities, 11 this time, have severance pay provisions, most beginning after five years or more employment and most providing increased payments

in five year steps up to 20 years of service. The first longevity payments among these communities range from \$100 to \$800 and the increases to the next longevity period range from \$25 to \$800 (at the 10 years' completion point).

We believe that the \$500 offered by the Town is a good concession in an initial Agreement and we order it granted after five years continuous employment by the Town. Another \$100 shall be given after 10 years of continuous employment and another \$500 after 15 years of employment.

VACATION

With the other employees of the Town the police receive five days' vacation after five years' employment, 10 after two years, 15 after 8 years, and 20 after 15 years. The Union seeks three weeks after eight years of service, four after 15, and five after 20 years. It cited five comparable jurisdictions which do provide more. The Town believes the present vacation provisions are adequate.

So do we. There are insufficient other comparable communities, even if we were to concede that they are comparable, that do better to establish a pattern sufficient to justify an increase at this time.

SICK LEAVE

The Union seeks to extend the maximum accumulation of sick leave from 60 to 120 days and have the Town pay for unused sick leave at time of retirement at the rate of 70 per cent of the officers' current hourly rate. The Town does not agree.

Again the Union's 14 comparable villages and towns, except for Inlet, allow at least 120 days accumulation, and all but Inlet and two others pay for unused sick leave at time of retirement. The retirement payments range widely, three of them at or above the rate requested by the PBA, the rest less.

We believe that the accumulation of sick leave to 120 days is a well established pattern and so order it. However, pay at time of retirement while common does not provide a clear pattern and, therefore, in an initial Agreement between the parties we believe a payment of 25 per cent of accumulated time at the officers' current rate of pay is sufficient and so order.

The Union also asked for annual payments for unused sick leave,

restriction on when the Town could ask for proof of illness, and special use of sick leave for a family illness. There being no data justifying these demands, they are denied,

PENSIONS

It is our understanding that both parties have agreed that PBA members are to be covered by the 384-D of the Retirement and Social Security Act of the State. However, there was no consensus as to the effective date. We order its implementation as of December 31, 1997. All the Union's comparable communities, including Inlet, use this retirement plan.

CLOTHING AND UNIFORMS

Presently the officers buy their own guns and they are not all the same, which can lead to problems. The Town agrees that it should furnish at its expense the same type gun to each officer and, again, just in the event we are wrong, we so order.

GRIEVANCE PROCEDURE

The Union proposes a standard grievance procedure culminating in binding arbitration with each party paying an equal share of the arbitrators' costs. Again, we understand that the Town agrees, and we so order. Virtually all collective bargaining agreements contain this understanding.

LEGISLATIVE ADVANTAGE

The Union believes a clause granting it whatever benefits for police are enacted by the State or Federal governments is additional protection that its members need. We do not agree. Laws supersede any conditions to the contrary in private contracts.

POLICE ACTION

The Union wants the Town to legislate the protections provided police by GML 50-j and Public Officer's Law 18. It is our understanding that local legislation is necessary to protect an officer from suits arising out of "the proper discharge of his duties and within the scope of his employment", quoting 50-j. This insurance seems essential both to the well being of the officers and the Town and we so order.

CHAIN OF COMMAND

It is the PBA's contention that when the Chief of Police is unavailable, the officers have no one to turn to for orders or help; therefore, the officer on duty should be in charge.

As we see it, the chain of command exists because of the existence of the Town's Supervisor, who is the head of the municipal government and the supervisor of the Chief of Police. When the Chief is not available, the officers who need direction or guidance must rely on the Supervisor as the next authority in the chain of command. Therefore, this demand is denied.

PAYMENT TO ESTATES

The Union seeks for accumulated unpaid vacation, overtime, holidays and personal days to be paid to the estate of any officer who dies. We agree that any overtime and holidays earned before an officer's death are owed to his estate. Personal and vacation leaves, however, are earned on a purely annual basis and are not earned unless the officer has worked the year and personal leave is at the discretion of the Chief of Police except in the event of death in the family other than one's own. So overtime and holidays earned are to be paid the estate. So too vacation earned because the officer has served out the year, But unused personal leave is not eligible for such payments. We so order.

PERSONNEL FILE

The PBA wants notice within 72 hours of any documents placed in an officer's personnel file with the right of the officer "to respond contemporaneously to such items". This request is a basic provision in collective bargaining agreements and we so order. We agree that an officer should have 72 hours to respond.

SCHEDULES

The Union wants schedules to be posted at least two weeks in advance. They apparently normally are, but - to quote the PBA's Brief - they "sometimes fail". We agree that the longer in advance the men learn what their shifts are, the better they can plan their lives. However, the Town apparently usually does give them such notice and we do not see what is gained by making the requirement part of the Agreement and so it is denied..

COMPENSATORY TIME

Currently the officers are paid for over time work. The PBA would like them to have the choice of pay or one and a half hours off for each hour of over time. We can not agree to this demand because with only one officer normally available for each shift, the granting of time off would mean less coverage by the police of the Town.

EFFECTIVE DATE AND DURATION

The Union wants this Agreement to begin on the date its collective bargaining rights were recognized by the Town, June 13, 1995. The Town wants the contract to run for two calendar years. We agree with the Town, because the police received and accepted the wage increase and fringe benefits given all Town employees for 1995. As we stated above under COMPENSATION, we order a two year contract to begin January 1, 1996 and expire December 31, 1997.

SECTION HEARINGS

Officers being disciplined have the right to grieve under the grievance provisions of their Agreement with the Town or to request a hearing under Section 75 of the State Civil Service Act. The PBA requests that the hearing officers employed under Section 75 be mutually acceptable to the Town and the Union and that his/her decision shall be final and binding.

We agree with the Union's request and so order.

RIGHTS OF EMPLOYEES

The PBA sets forth an extensive list of rules which it wants followed should officers be subject to an investigation of their actions. Most of them, numbers 1 through 8 of the Union's proposed Article XXXIII in a contract, simply repeat the requirements of due process and, of course, should be followed. Should the Town not follow them, it lays itself open to losing any disciplinary actions it might take against an officer. We see no need to enshrine these rules in a contract.

E in this proposed Article states that "No member shall be reprimanded, suspended, or discharged without just cause". This clause is standard in almost all collective bargaining agreements and is so ordered here.

E in this proposed Article states that during interrogation an officer shall not be "threatened with dismissal or disciplinary action". With this demand we can not agree; there may be times when an officer should be informed of the consequences of his actions if they are true or if he falsifying his statements.

E also prohibits the use of polygraph tests and of promises of award to answer questions. We agree with this demand, because polygraph tests are still often unreliable and bribes when given for truth telling render the truth telling suspect.

F in this proposed Article requests that only police personnel and the Supervisor be present during an interrogation. We do not agree. Other Town officials and lawyers, even ordinary citizens, may be involved in the actions being investigated and they have a legitimate right to hear the officer's version of his actions from him directly and not indiectly though a third party.

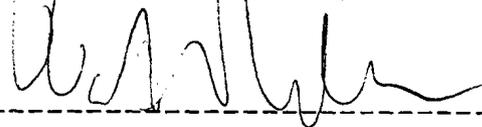
APPLICABILITY

The Union wants the benefits of the contract to be applicable to all officers employed on June 13, 1995, the date of union recognition. As stated above, we have rejected that date and have ordered the Agreement to be effective January 1, 1996 for a two year period. Hence, officers on the payroll any time during these two years are entitled to whatever wages and other benefits existed in this Agreement during their employment.

January 19, 1998



Arthur T. Jacobs, Chairman



1/23/98

Rocco A. DePerno, Esq., Arbitrator Representing PBA

LeRoy C. Kotary, Arbitrator Representing Town of Webb