

1A97-001 M96-082
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration:

- Between -	:	
THE TOWN OF ORANGETOWN,	:	Case No.
"Town"	:	1A97-001;
	:	M96-082
- and -	:	
THE ORANGETOWN POLICEMEN'S BENEVOLENT ASSOCIATION,	:	
"PBA"	:	

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APPEARANCES

For the Town

Lance Klein, Esq., Attorney
Kevin Nulty, Chief of Police
Terence F. Sullivan, Captain

For the PBA

Joseph Baumgartner, Esq., Attorney
Brent Newbury, PBA President
Tim Sheridan, Former PBA President

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BEFORE:

Howard C. Edelman, Esq., Chairman of Panel
Ronald Longo, Esq., Public Employer Panel Member
Richard Bunyan, Esq., Public Employee Panel Member

BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 1997.¹ In November 1995, the PBA sought impact bargaining on the issue of the reduction in superior officers assigned to the midnight shift. The parties were unable to agree upon this issue. As a result, the undersigned Interest Arbitration Panel was constituted to hear and decide this dispute.

Hearings were held before us on October 28, 1997 and October 14, 1998. At the hearings the parties waived their right to have a transcript made of the proceedings. In addition, the Panel met in executive session on November 30, 1998. This Opinion and Award follows.

POSITIONS OF THE PARTIES

PBA

The PBA asks that the following proposal be included in the Collective Bargaining Agreement commencing on January 1, 1996.

¹The bargaining unit includes all Police Officers except Chief of Police and Administrative Lieutenant.

ADDITIONAL COMPENSATION

In the event that a police officer is assigned to desk duties on the "midnight shift" when there is only one supervisor assigned to that shift, that police officer shall receive a fifteen (15%) percent differential for the shift.

In the event there is only one sergeant, and no other supervisor assigned the "midnight shift," that sergeant shall receive a fifteen (15%) percent differential for the shift.

In the event there is only one lieutenant and no other supervisor working the "midnight shift," that lieutenant shall receive a fifteen (15%) percent differential for the shift.

PBA Exhibit 1

The PBA submits that the record evidence fully justifies awarding this proposal. It maintains that the level of supervisory staffing on the 12:00 a.m. to 8:00 a.m. shift has declined substantially over the years. Specifically, it asserts, in the 1970's and 1980's at least two superior officers were on duty during the 3:00 a.m. to 7:00 a.m. period. However, the PBA notes, beginning in November 1995, the Town directed that only one supervisor shall be on duty at that time (Town Exhibit 1).

In addition, the PBA suggests that the scope of its responsibilities has increased despite the decrease in supervisory staffing. The PBA notes that in the early 1990's the Village of Nyack disbanded its police force.

As a result, the Town became responsible for police activity within the Village, the PBA points out.

Moreover, the PBA contends, when the Village's police force was disbanded, superior officers in Nyack were working the 12:00 a.m. to 8:00 a.m. tour. Hence, the PBA argues, compensation is due desk officers and superior officers who are being asked to do more work when only one supervisor is on duty at these times.

Furthermore, the PBA maintains that relevant case law supports its claim. It points out that in 1995, the parties entered into an agreement granting the then Administrative Lieutenant a ten percent differential while the Captain's position remains vacant (PBA Exhibit 4). As the PBA sees it, that agreement recognizes the principle that when a superior officer is solely responsible for certain job duties, a differential should be paid. Thus, it insists, that agreement justifies granting a differential in the instant dispute.

Similarly, the PBA asserts that the Award in Rockland County Patrolmen's Benevolent Association and Town of Clarkstown 1A-90-031, April 9, 1992 (PBA Exhibit 3) warrants granting the differential it seeks. In that case, the PBA points out, lieutenants were removed from

assignment to individual squads. The PBA notes that the the Clarkstown Award granted patrol sergeants who served as shift commanders in the absence of lieutenants a 7.5 percent differential. The reasoning of that Award is directly applicable to the instant dispute, the PBA insists.

For these reasons, the PBA maintains that its proposal is fair and reasonable. Accordingly, it asks that this demand be granted as presented.

The Town contends that no additional compensation is due any Police Officer under the facts of this case. It argues that when the Village of Nyack's police force was disbanded, the impact of any increase in workload was addressed. Hence, it urges, there is no need to award any further pay increases at this time.

In addition, the Town maintains that two supervisors are normally assigned to the 12:00 a.m. to 8:00 a.m. time period. Only when a supervisor is off due to vacation, sick leave, etc., is one supervisor on duty between 3:00 a.m. and 7:00 a.m., the Town avers. Hence, it insists, there is absolutely no justification to pay anyone a differential for an entire tour.

Moreover, the Town contends that police activity during the times in question does not justify paying a

differential to anyone between 3:00 a.m. and 7:00 a.m. In support of this position, the Town points out that for the period January 1, 1995 to September 30, 1997, 58,922 incidents were reported. Of that total only 3,872 occurred between 3:00 a.m. and 7:00 a.m., the Town notes. Joint Exhibit 6. This figure represents 6.6 percent of the total number of incidents reported, even though the 3:00 a.m. to 7:00 a.m. period is 16 percent of the 24 hour day, the Town suggests. Thus, it maintains, the decreased activity during the period in dispute fully justifies its decision not to have two supervisors on duty at those times.

Finally, the Town asserts that the supervisor on duty has the right to call in an additional superior officer or hold one over from a prior tour, if circumstances warrant. Hence, it insists, at no time has public or police safety been compromised by its actions.

For these reasons, the Town maintains that assigning one supervisor from 3:00 a.m. to 7:00 a.m. is not unduly burdensome to that individual or the desk officer on duty. Consequently, it asks that the PBA's proposal be rejected in its entirety.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. The Panel's findings are restricted to the evidence contained in the record. Moreover, we are required to apply the statutory criteria in arriving at a just resolution of this dispute. Those criteria demand that we take into account the following factors in reaching our determination.

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.

Section 209.4 (v) of the Civil Service Law of the State of New York

With these considerations in mind, we turn to the facts of this dispute.

There are two distinct issues presented by this case. The first concerns the desk officer's entitlement, if any, to additional compensation when there is only one supervisor on duty. The second involves the supervisor's entitlement to additional compensation, if any, when he/she is the only supervisor on duty. Each issue will be analyzed independently.

As to the former, the Panel is not convinced that the desk officer should receive any differential if only one supervisor is working the tour to which he is assigned. The record fails to demonstrate what additional duties or responsibilities fall upon the desk officer when a second supervisor is not available. His/her tasks do not appear materially different. He/she is still required to contact the sole Sergeant or Lieutenant on duty if emergencies arise. Indeed, to the extent that only one supervisor is available, the desk officer's task is somewhat easier for there is only one superior officer to contact.

Nor is there any evidence that desk officers in other jurisdictions receive a differential under the circumstances present in this case. Thus, the PBA has

not established to this Panel's satisfaction that the "conditions of employment of other employees performing similar services...under similar working conditions" (Section 209a(v)(a) of the CSL)...require that desk officers receive a differential when only one supervisor is on duty.

Nor does any other standard in that provision require the payment of such a differential, we are convinced. Criterion (b) involves the interest and welfare of the public and the financial ability of the employer to pay. While the employer may well be able to afford a differential to desk officers, it is difficult to conceive how payment would further the interests and welfare of the public.

Similarly, there is no basis to conclude that "other trades or professions" provide for such a differential or that they encompass similar hazards of employment, qualifications, job training and skills as do desk officers (subparagraph c).

Finally, on this issue, the Collective Bargaining Agreements negotiated in the past between the Town and the PBA afford no basis by which a desk officer differential should be granted. Thus, based upon the record before us, the Panel is convinced that this proposal of the PBA's must be denied.

A different conclusion must be reached with respect to the PBA's demand for compensation to the sole supervisor on duty. The record reveals that their responsibilities are increased during these times. As Sergeant Edward Fitzgerald credibly testified, a single supervisor has added responsibilities when emergencies arise. He/she must be able to attend to the problem, often by returning to headquarters, and still be able to supervise officers out on patrol. Some compensation is due under these circumstances, we are convinced.

It is also significant that a differential has been paid under similar circumstances in this jurisdiction. As the PBA noted, the Administrative Lieutenant was paid a differential during the time period when the Captain's position was vacant. In much the same way the Sergeant or Lieutenant who is the sole supervisor on duty is entitled to a differential in consideration of the absence of a second supervisor.

Also, it is of some significance that a differential is paid elsewhere under similar circumstances. Patrol Sergeants are paid a differential in Clarkstown as a result of the removal of Lieutenants from individual squads. PBA Exhibit 3. In the instant dispute, the

removal of a second supervisor from the 3:00 a.m. to 7:00 a.m. time frame has placed added burdens on the remaining one. Thus, as in Clarkstown, some added compensation is due affected superior officers. Accordingly, the record amply demonstrates that the conditions of employment of those performing similar services in the same or comparable communities warrants sustaining the PBA's position, at least in part. Subparagraph (a) of Section 209.4(v)(a) of the CSL.

Nor does any other criterion contained in the Civil Service Law warrant a different conclusion. To the extent applicable, the interests and welfare of the public are consistent with adequate compensation of those who bear additional responsibilities as present in this case. Also, as indicated below, the financial impact upon the public will be negligible.

In addition, nothing in criteria (c) and (d) of Section 209.4(v) suggests that a differential should not be awarded. Thus, the Panel is convinced that payment of a differential is consistent with the statutory criteria, as set forth above.

The Panel notes the Town's claim that a Lieutenant has the authority to hold over a superior officer from his/her earlier shift, if the Lieutenant believes that circumstances justify such action. This is so. However,

the Panel is directing payment where no superior is held over. Thus, if two supervisors remain on duty for the entire midnight shift no additional compensation will be due. Accordingly, the right of a Lieutenant to hold over another superior officer does not invalidate the PBA's proposal, we find.

What amount of compensation should be paid to affected supervisors? The PBA asked for a 15 percent differential. The Panel finds this request excessive. The differential between Sergeant and Lieutenant is approximately \$12,000. Officers work a 243 day schedule. Thus, if a superior officer received a Lieutenant's differential for each tour he worked alone, he would be compensated about \$50 per tour. Since a superior officer works no more than half a tour (3:00 a.m. to 7:00 a.m.) without another supervisor, the Panel finds that a \$25 payment is justified. Also, if another superior officer is held over for part of that period, the \$25 payment should be adjusted accordingly.

This level of compensation will have negligible impact upon the public's ability to pay, we are convinced. At most, it will result in an additional cost of \$9,125.² to the Town. While the record does not

²This assumes that a full \$25 stipend will be made every day of the year.

indicate what percentage of the Town's budget, or even the police budget equals \$9,125, we note that Lieutenants receive approximately \$90,000 in base wages. Surely, ten percent of one Lieutenant's annual base compensation cannot have any demonstrable impact upon the financial well being of the public employer.

Also, the stipend should be implemented effective January 1, 1996, we are convinced. The PBA made a demand to bargain this issue in November 1995, the record reveals. As such, a prospective implementation from that time forward is fair. Thus, we shall direct that the stipend be paid, effective January 1, 1996.

In sum, there is no statutory justification for the payment of a differential to a desk officer who is assigned the midnight shift with only one supervisor. The statutory criteria do justify the payment of a \$25 stipend to a Sergeant or Lieutenant assigned to the midnight shift without the presence of another supervisor. That stipend is to be pro-rated in the event such sole supervisor assignment encompasses less than four hours. Accordingly, the Panel directs that the PBA's proposal, as indicated herein, is to be implemented effective January 1, 1996.

AWARD

1. Effective January 1, 1996, the Sergeant or Lieutenant who is the only supervisor assigned to the Midnight tour shall be compensated \$25 for such assignment per tour. Said stipend is to be pro-rated in the event that the Sergeant or Lieutenant works less than four hours as the sole supervisor on the Midnight tour.

DATED: *March 8, 1999*

Howard C. Edelman

HOWARD C. EDELMAN, ESQ.
Chairman and Public Member of
the Interest Arbitration Panel

STATE OF NEW YORK)
) s.:
COUNTY OF NASSAU)

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

DATED: *March 8, 1999*

Howard C. Edelman

HOWARD C. EDELMAN, ESQ.
Chairman and Public Member of
the Interest Arbitration Panel

X
Concur

Richard P. Bunyan
RICHARD BUNYAN, ESQ.
Public Employer Member of
Interest Arbitration Panel

3/12/99
Date

Dissent

STATE OF NEW YORK)
) s.:
COUNTY OF NASSAU)

I, Richard Bunyan, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

DATED: 3/12/99

Richard P. Bunyan
RICHARD BUNYAN, ESQ.
Public Employer Member of
Interest Arbitration Panel