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PERB

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

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In the Matter of the Interest Arbitration :
:
:
- between - :
: **FINAL AND BINDING**
Town of Blooming Grove :
: **OPINION and AWARD**
:
- and - ("theTown") :
:
Blooming Grove Police Benevolent Association, Inc. : **NYS PUBLIC EMPLOYMENT RELATIONS BOARD**
("PBA" or "Union") : **RECEIVED**
:
RE: Case No. 1A 98-001; M97-107 : **JUN 07 1999**
:
-----X **CONCILIATION**

By:: Tri partite Arbitration Panel
Theodore H. Lang, Ph.D., Neutral Chairperson
9290 Ocean Avenue, #414, West End, NJ 07740
John F. O'Reilly, Esq.,
Hitsman Hoffman & O'Reilly, Esqs., Town Designee
Anthony V. Solfaro, President,
NYS Union of Police Associations, Inc., PBA Designee

APPEARANCES:

For the Town:
Douglas E. Solomon, Esq.
Richard W. Cutter, Councilman
Mark Roe, Board Member
G.F. Strommer, Board Member (Retired)
Katherine E. Bonelli, Town Supervisor
Carl Schupp, Police Chief
John Georger, Consultant

For the PBA:
John Grant, Esq.
Martin K. Post, PBA President
Edward Fennell, Financial Advisor
Ronald Moraski, PBA Member
Nick Solfaro, PBA Member
Brett Weeden, PBA Member

INTRODUCTION:

The New York State Public Employment Relations Board ("P.E.R.B."), on or about July 30, 1998 invoked the provisions of the Civil Service Law, Section 209.4 and designated the Undersigned Public Arbitration Panel for the purposes of making a just and reasonable determination of this dispute. This "Opinion and Award" was prepared by the Public Panel Member and Chairperson of the Panel, Theodore H. Lang.

A. HISTORY OF THE IMPASSE

The latest negotiated Agreement between the PBA and the Town covering a unit consisting of "...all police officers of the Town," was for a three-year period from January 1, 1994 to December 31, 1996. The parties were unsuccessful in reaching agreement for a successor contract and, in fact, the parties reported having reached no agreement on any terms and conditions of employment raised by either party during the negotiations. On or about July 24, 1998, the PBA submitted its Amended Petition for Compulsory Interest Arbitration on a total of four numbered proposals, and the Town submitted its Amended Response to Petition for Compulsory Arbitration in which the Town rejected all demands made by the PBA and submitted for decision and award eight numbered proposals.

Hearings were held on November 2 and 12, 1998 and January 25, 1999. The Town and the PBA had ample and full opportunity to submit exhibits, examine and cross-examine witnesses and make oral argument. There were offerings of 39 Town exhibits and 56 PBA exhibits. The PBA presented testimony by Edward Fennell, Expert Witness in government finance. The Town presented testimony by John F. Georger, C.P.A., Expert Witness in government finance, Katherine Bonelli, Town Supervisor and Carl Schupp, Chief of Police.

The parties made no arrangements for a Reporter, made no request that a full and complete record by a qualified Reporter be kept and agreed to go forward without a Reporter. The Chairman's notes and the exhibits admitted by the Panel constitute the Record of the proceeding. After the three days of hearing, briefs were received by the Chairperson on or about March 11, 1999.

The Panel met in executive session on March 26, 1999 and continued executive session discussions in conference calls on April 21 and April 28, 1999.

B. LEGISLATIVE STANDARDS

In regard to all items, the Panel has considered seriously the legislative standards applicable to compulsory interest arbitrations pursuant to §209.4 of the Civil Service Law, which provides in part:

(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 wages, hours and conditions of employment of other employees performing 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.

C. PROPOSALS SUBMITTED TO THE PANEL

Following is a summary of the proposals submitted to the Panel:

PBA Items 1 to 4

1. Percentage increases in wages effective 1/1/97 and 1/1/98
2. Longevity increases
3. Clothing Allowance
4. Jury Duty.

Town Items 1 to 8

1. Duration of Award
2. Percentage increase in wages
3. Clothing Allowance
4. Vacation schedules
5. Conditions for "individual" days off (personal leave, day off in lieu of holiday or single vacation day off)
6. Health and dental insurance contribution
7. Grievance arbitration
8. Jury Duty.

D. THE MOST COMPARABLE POLICE DEPARTMENT

One of the principal relevant legislative standards to guide the public arbitration panel to reaching a just and reasonable determination of the matters in dispute is a comparison of the wages, hours and conditions of employment of the police officers in the Town with wages, hours and conditions of other police officers performing similar duties under similar working conditions. This is a comparison of "apples" with "apples."

The PBA, based upon such factors as number of full time officers, population, population per officer, land area population per square mile, square mile per officer, per capita income and

median household income, suggests that the police departments most comparable to the Town's are the Towns of Newburgh, New Windsor and Woodbury and the Village of Monroe.

The Town suggests that only towns in Orange County with full time Police Departments be considered comparable, which would exclude the Village of Monroe. Since the parties don't agree, the Chairman suggests to the parties that it is reasonable to compare this Town's P.B.A. to all the towns in the County, separately, and also to a subset of towns consisting of those with full time police, contiguous to the Town.

E TERM OF THIS AWARD

Town Proposal No.1 on Duration

The Town proposes two year Award. Section 209.4(vi) states, in pertinent part as follows:

the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining...

The Union did not dispute this proposal, and the Union's proposals are consistent therewith.

The 1994-1996 Agreement between the parties (PBAX2) had a term ending on December 31, 1996.

Accordingly, the period of this AWARD shall be for the period from January 1, 1997 through December 31, 1998.

F. PROPOSALS APPROVED IN WHOLE OR IN PART

The Panel has agreed on an AWARD encompassing only four changes in terms and

conditions of employment, all supported by comparative data under § 209.4 (v) as cited above, by the interest and welfare of the public and the financial ability of the public employer to pay (See § 209.4 (v)b.), by the peculiarity of police work as compared to other trades and professions (See § 209.4(v)c) and the history of negotiations of financial package and other terms and conditions of employment (See § 209.4(v)d).

PBA Proposal 1 on Wages and 2 on Longevity and Town Proposal 2 on Annual Salaries

The PBA proposes that (1) the annual salary schedule be increased by 4.5% effective January 1, 1997 and by 4.5% effective 1, 1998 and that longevity increases be changed, as follows:

Longevity:	1/1/97
5 th year to completion of 9 th year	\$ 450.00
10 th year to completion of 14 th year	\$ 575.00
15 th year to completion of 19 th year	\$ 825.00
20 th year to completion of 24 th year	\$1,075.00
25 th year and over	\$1,250.00
	1/1/98
5 th year to completion of 9 th year	\$ 500.00
10 th year to completion of 14 th year	\$ 625.00
15 th year to completion of 18 th year	\$ 875.00
19 th year and above	6% of Base Wage

The longevity proposal changes the beginning of the largest longevity increase from the 25th year to the 19th year, merges the five longevities into four and changes the fixed dollar amount of the largest longevity from a flat dollar figure to 6%.

In regard to wages, the Town proposes that annual salaries be increased across the board by 3% effective January 1, 1997 and by 3.0% effective January 1, 1998.

In support of its position, the P.B.A. highlights facts as follows:

1. The Town negotiated an agreement with the Town local of the IBEW which provides a 4% increase to base wages in each of the three years of the agreement; 1996, 1997 and 1998.

The same agreement granted the IBEW collective bargaining unit a longevity increase of \$1100 in the 20th year of service, which compares to \$1025 in the 20th year for a police officer.

2. In making comparisons, to other municipal (including cities, towns and villages) police departments in Orange County for the years 1997 and 1998, the average percentage increase was 3.79% in 1997 and 3.69% in 1998, with no give-backs, such as now proposed by the Town. Highlighted for attention are increases of 4% for 1997 and 1998 in the Town of Newburgh, 4.5% for 1998, 1999 and 2000 in the Village of Monroe and of 5% for 1998, 1999 and 2000 in the Village of Harriman.
3. The Town is in an enviable strong financial position with ability to pay the two 4.5% increases, as follows:

- a very large combined general fund balance of \$1,568,145.
- an ability to fund highway and other improvement projects from its current revenue sources and avoid bonded indebtedness.
- windfall gains from reductions in the Retirement Systems contributions.
- an ability simultaneously to reduce real property taxes while incurring no new bonded indebtedness.
- a prior period bookkeeping error in Town B Fund of \$226,882.
- Further, the PBA argues in its Brief (at p. 14):

To afford the PBA a base wage increase less than the average set forth above and that received throughout the neighboring community would disturb the balance and relative position achieved by the Blooming Grove Police Department over the history of its existence and the parties past Collective Bargaining history. There is no reason supported by the evidence presented to the

panel warranting a diminution in the standing of the Town of Blooming Grove Police Department relative to the Orange County Police community in general and the comparable communities identified above.

In supporting its position, the Town presents facts in support of its argument that the “ability to pay” criterion supports the Town’s position, as follows:

1. The B Fund is a general fund which covers non-highway government services to residents in the TOV. The Town Fund B provides basic services in the TOV, such as the Police Department, planning and zoning boards, inspections (fire and safety), info statistics and employee benefits for those services, but excluding the highway department in the TOV. The expenses for Town police services uses up almost all of the expenditures from Town B Fund. The Town Fund B depends primarily on sales tax revenues, which are collected by the State from sales in the County and distributed to municipal government in the County based upon a formula negotiated and administered by the County.
2. Sales tax revenue is less predictable than the other major revenue item in the Town budget, the property tax.
3. The “undesignated fund balance” in Town B Fund has declined from \$743,241 in January 1, 1998 to \$543,241 in January 1, 1999 because \$200,000 was shifted to the 1999 TOV budget for property tax relief. It is essential that municipalities maintain an adequate fund balance as a “hedge” against the future.
4. Funds may be, and are normally requested to be, transferred from the Town Fund B to the Highway Fund B, because all sales tax revenue is initially placed in Town Fund B. The need for highway funds is growing to properly maintain the roads. A Cornell study reported that approximately 1 million dollars would be needed over the course of the next several years for TOV road maintenance and improvement.
5. From 1996 through 1999, Town tax rates for TOV have increased from \$13.93 to \$14.29 or an increase of \$15 for a home assessed at \$40,000.
6. 1999 contributions to the pension fund will be much greater than in 1998.
7. The c.p.i. increased 2.0% in 1997 and 1.6% in 1998.

DISCUSSION ON WAGES AND LONGEVITY INCREASES

The Panel has reached the following conclusions in regard to wages and longevity increases based on the Record before it.

1. The Town is financially sound with a record of prudent management of its fiscal affairs. It is clearly established in our Record that the Town has the ability to pay for the just and reasonable improvement in wages, longevity increases, and increases in uniform allowances recommended below.
2. The Panel has considered the wage increases granted in this period of time for police in all the towns in Orange County and of a subset of the contiguous towns. Of lesser weight are the increases granted by other municipalities with police departments in the County.
3. The *percentage* increases granted to full time police officers in each of the two years average as follows:

	<u>1997</u>	<u>1998</u>
All towns in Orange County	3.53%	3.5 %
Towns Contiguous to Blooming Grove	3.82	3.35
All Municipalities in Orange County	3.79	3.69

4. The increases recommended below retain the relative ranking of the Town's Police Department among the Orange County towns with full-time police, which ranking largely resulted from the collective bargaining history of these 11 towns.
5. In regard to longevity increases, there is insufficient comparative data to change the basic structure of the longevity increases from the existing structure which has resulted from the history of bargaining with this c.b.u.. However, it is reasonable to increase each longevity level by \$25 effective January 1, 1997 and by \$25 effective January 1, 1998 maintaining the historic pattern and the historic rough relationship to basic pay.

Taking all the above facts and arguments into consideration for this set of issues of wages and longevity increases, the Panel AWARDS as follows:

1. **Increase the 1996 basic wage rate (Appendix "A" of the 1994-1996 Agreement) by 3.75% rounded to the nearest dollar effective January 1, 1997.**

2. **Increase the resulting basic wage rate by 3.5% effective January 1, 1998, rounded to the nearest dollar.**
3. **Increase the 1/1/94 longevity pay (Appendix "A" of the 1994-1996 Agreement) by \$25 effective January 1, 1997 and by \$25 effective January 1, 1998, as follows:**

	<u>1/1/97</u>	<u>1/1/98</u>
5 th year to completion of 9 th year	\$ 425	\$ 450
10 th year to completion of 14 th year	550	575
15 th year to completion of 19 th year	800	825
20 th year to completion of 24 th year	1050	1075
25 th year and over	1225	1250

TOWN PROPOSAL 3 AND PBA PROPOSAL 3 - CLOTHING ALLOWANCE

Article VII of the expired Agreement provides an \$850 clothing allowance payable 2/15 and 8/15. The Town proposes that this be reduced to \$700. The PBA proposes that it be increased by \$50 to \$900 effective 1/1/97 and by \$50 to \$950 effective 1/1/98.

In support of its proposal, the Town presents evidence and makes argument, as follows:

1. \$850 in 1996 ranked as the highest among towns in Orange County.
2. A reduction to \$700 would still leave officers with an above-average uniform allowance.
3. The PBA has not presented evidence that there is a need to increase this allowance or that the \$700 proposed by the Town would be insufficient for this purpose.
4. The Town also pays for clothing damaged while on duty (See Article VII B of the expired Agreement) and for the initial uniform and equipment issue.

In support of its position, the PBA presents evidence and makes argument as follows:

1. Comparative data support our proposal for a \$50 increase each year.
2. Officers are expected to purchase replacement uniforms and maintain and clean their own uniforms out of the annual allowance.

3. The Town's exhibits convey a misimpression because there is "a wide variance in practices relating to purchases, maintenance and cleaning with many departments not even making payments to Officers" (Br. P.17)
4. The Town proposal was unsupported by any evidence presented by the Town explaining why diminution in this benefit level was proper or appropriate. While both the Chief of Police and Town Supervisor testified during the proceeding, no explanation was given for reducing the reimbursable amount of cleaning, maintenance and purchase of clothing and equipment to levels below those provided in 1994 (See PBA Exhibit 2 and 3).

DISCUSSION

The Panel has reached the following conclusions on the facts and the arguments:

1. Most significant are the increases in clothing allowances that have been granted to police officers, which average approximately \$25 in 1997 and \$25 in 1998.
2. The relative standings of the towns in regard to uniform allowances and practices are largely the result of the history of the bargaining on this issue in each town. There is nothing in the Record to persuade the Panel to change these relationships.

Accordingly, taking all the above facts and arguments into consideration for this issue, the Panel AWARDS as follows:

The Clothing Allowances shall be increased \$25 to \$875.00 effective January 1, 1997 and be increased to \$900.00 effective January 1, 1998.

TOWN PROPOSAL 7 - GRIEVANCE ARBITRATION

Article XV D of the expired Agreement provides, in part, on p.10:

The cost related solely to the selection of an arbitrator through the AAA should be borne by the Town.

And on p.11:

Except for the selection of an AAA arbitrator set forth above, the cost of administration of this

section, including all fee expenses, shall be borne equally by both parties.

The Town proposes, “The cost related to the selection of an arbitrator through the AAA shall be borne entirely by the party filing the demand for arbitration.” In support of its position, the Town makes the following points:

1. This provision is an anomaly that does not exist in any other town in Orange County. (See Town Ex.28)
2. There is no basis for the Town of Blooming Grove to be required to pay this fee, where other comparable jurisdictions do not. The Union presented no evidence whatsoever in opposition to this proposal. As such, the evidence presented requires the Panel to award the Town’s proposal on this subject matter.

The PBA objects to this proposal.

DISCUSSION

The Panel notes that this proposal is supported only in part by the comparative data that was provided in regard to the employer paying for the selection of an arbitrator; however, the Record does not support the proposal that the party initiating the arbitration, almost always the union, should pay for the selection of the arbitrator. Our Record supports a conclusion that the parties to an arbitration split the cost of selection of the arbitrator, if there is any cost; the Panel recognizes that this is the general practice in labor arbitrations.

The Panel AWARDS that the terms of the sentence stated in Article XV Section D, second paragraph, last sentence, on page 10 of the 1994-1996 Agreement, to wit, “The cost related solely to the selection of an arbitrator through the AAA shall be borne by the Town” shall not apply and the following terms shall apply in place of the third paragraph on page 11, “The cost of administration of this section, including

fee expenses and the cost of selecting the arbitrator, if any, shall be borne equally by the parties.”

G. PROPOSALS DENIED IN FULL

The items listed below are denied. The Panel recognizes the reality that the two-year term of this AWARD has long expired and that the parties will be negotiating on some or all of these items, and on other items. In each instance, the Panel decided that, at this time, the evidence and reasons offered do not support the specific change in the terms and conditions of employment proposed.

**PBA Proposal 4 and
Town Proposal 8**

Adding a new fringe benefit relating to jury duty.

Town Proposal 4

Relating to new conditions for vacation scheduling.

Town Proposal 5

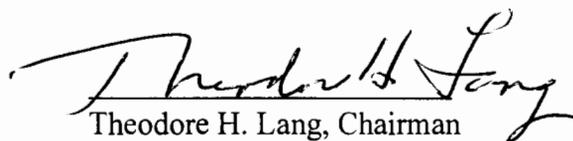
Relating to new conditions for scheduling individual days off.

Town Proposal 6

The Town seeks contributions from police officers hired after July 1, 1998 towards health insurance and dental insurance.

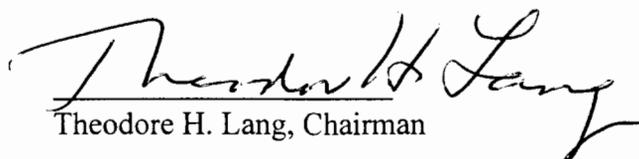
H. CONCLUDING REMARKS

The above AWARD completes the Panel’s work pursuant to Article 14, §209.4 of the Civil Service Law.

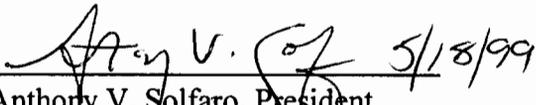

Theodore H. Lang, Chairman

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

I hereby affirm pursuant to CPLR. §7507 that I am the individual described in an who executed this instrument which is my Award.


Theodore H. Lang, Chairman

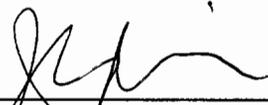
I assent on the specific changes in wages and terms and conditions of employment
Awarded. (Add comments as desired.)


Anthony V. Solfaro, President
NYS Union of Police Associations, Inc., PBA Designee


LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg No 4620194
Commission Expires June 30, 1999

SEE ATTACHED

I assent on the specific changes in wages and terms and conditions of employment
Awarded. (Add comments as desired.)


John F. O'Reilly, Esq.
Hitsman Hoffman & O'Reilly, Esqs., Town Designee

SEE ATTACHED


EVE MONROE
Notary Public, State of New York
No. 4965384
Qualified in Bronx County
Commission Expires April 16, 2000

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In the Matter of the Interest Arbitration

-between-

Town of Blooming Grove (the "Town")

Case No. IA98-001;
M97-107

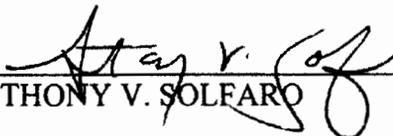
-and-

Blooming Grove Police Benevolent Association, Inc.
(the "PBA" or "Union")

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COMMENTS OF ANTHONY V. SOLFARO TO THE FINAL AND BINDING
OPINION AND AWARD:

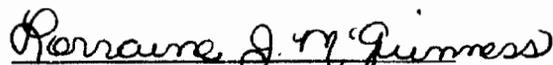
The factual content on page 9, point 3, would be clearer if the following footnote was included in the text:

"The percentage increases reflected above do not include the new After 5 Year Steps created in the Towns of Chester, Crawford and Goshen. Those new Steps had no direct relationship to the percentage increases applied to the lower Steps of the Wage Schedules which were used in the above calculations. If they were, the above percentage increases would change."


ANTHONY V. SOLFARO

Date: 5/18/99

Subscribed and sworn to before me
this 18th day of May, 1999


NOTARY PUBLIC

LORRAINE J Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 1999

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Compulsory :
Interest Arbitration Between :
 : PERB CASE NO. M97-107;
 : IA97-107
BLOOMING GROVE POLICE :
BENEVOLENT ASSOCIATION, :
 :
Petitioner :
 :
- and - :
 :
THE TOWN OF BLOOMING GROVE, :
 :
Respondent. :
-----X

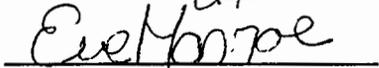
COMMENTS BY EMPLOYER PANEL REPRESENTATIVE

The representation on page 8 of the Award of the Town's presentation of facts in support of its position to the Panel is not accurate with respect to Items 1 and 7. With respect to Item 7, the Town in its Closing Brief to the Panel, at page 38, made clear that it relies on the Consumer Price Index for urban wage earners and clerical workers (CPI-W) in the New York-Northeastern New Jersey area, which the evidence demonstrates rose by 1.8% in 1997 and by 1.7% in 1998 (Town Exhibits 33 and 34). The Town did not rely on the CPI-U calculation for those years, as the Panel Award suggests. With respect to Item 1, the services covered by the Town B Fund includes "vital" statistics, rather than "info" statistics.

Further, I do not share the characterization made on page 11 in the discussion of the information presented on the clothing allowance increase as to a factor being the "most significant". My concurrence with this part of the Award, as with the other parts of the Award, is based on an assessment of all elements of the statutory criteria equally applied to the information presented to the Panel, and an assessment of the terms of the Award as a whole, including both the terms actually awarded and those terms proposed by the parties and not awarded.


John F. O'Reilly

Subscribed To And Sworn
Before Me This 27th Day Of May 1999


Eve Monroe

EVE MONROE
Notary Public, State of New York
No. 4965384
Qualified in Bronx County
Commission Expires April 18, 2000