

State of New York Public Employment Relations Board		
-----}	}	
	}	
In the Matter of Interest Arbitration	}	
	}	
between	}	
	}	
TOWN OF SOUTHAMPTON	}	PERB CASE NO.
Public Employer	}	IA201;M201-107
	}	-020
and	}	
	}	OPINION
PATROLMAN'S BENEVOLENT ASSOCIATION	}	AND
OF SOUTHAMPTON TOWN, INC.	}	AWARD
Employee Organization	}	
	}	July 29, 2003
-----}	}	

Before the Public Arbitration Panel

Kevin Gwinn, Employee Organization Member
Vincent Toomey, Esq., Public Employer Member
Herbert L. Marx, Jr., Public Member and Chairperson

OPINION

On May 1, 2002, Michael R. Cuevas, Chairman of the State of New York Public Employment Relations Board, designated the Public Arbitration Panel to hear the above matter and make a just and reasonable determination pursuant to Civil Service Law, Section 209.4. Pursuant to authority under that statute and PERB's Regulations, the Panel conducted hearings in Hauppauge,

NY on October 1 and November 13, 2002. The Panel also met in executive session on July 2 and December 1, 2002 and April 1 and May 20, 2003.

The Town of Southampton ("Town") and the Patrolman's Benevolent Association of Southampton Town, Inc. ("Association" or "PBA") were represented by counsel at the hearings and were granted full opportunity to present evidence and argument and to examine and cross examine witnesses. The witnesses were sworn. The parties submitted post-hearing briefs, which were received by the Panel by May 9, 2003.

The collective bargaining unit represented by the Association includes Police Officers, Sergeants, Detectives, Lieutenants and Captains. The Town currently has 96 employees in these classifications. This proceeding constitutes only the second arbitral intervention in the parties' relationship over the past decade. Following an Agreement for 1992-1994, an Interest Arbitration Award provided an Agreement for 1995-96. The parties reached accord for 1997-2000, which -- with two later Memorandums of Agreement on specific items -- constitute the existing Agreement.

During the course of current hearings, the parties provided the Panel with the authority to formulate an Award for three

years (January 1, 2001 to December 31, 2003), one year beyond the statutory limit of two years.

In its deliberations, the Panel followed the criteria established by New York State Civil Service Law, Section 209.4, which reads in pertinent part as follows:

(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 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) 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.

Under the first requirement (comparison with other similar employee groups), the Panel follows previously established guidelines, which establish as appropriate comparative collective bargaining agreements those covering police units of towns and villages in the eastern portion of Suffolk County. As to comparison with "other employees generally", the Town provided evidence of a detailed study and resulting findings concerning all Town employees as related to responsibilities and skills of positions in the PBA bargaining unit. This aspect will be discussed further, below.

As to the "financial ability of the public employee to pay", the Town presented extensive data in support of its view that wages and benefits for newly hired Police Officers should be modified downward and that upward wage adjustments for Police Officers hired prior to 2002, if any, should not exceed those provided in other comparable police units. (The term "Police Officers", unless otherwise specifically stated, is used by the Panel to refer to all classifications in the bargaining unit.)

The Town relies on the following factors to support this position:

1. Increased costs must be supported by taxes paid by the Town residents. The Town's current property tax rate increases already "have been outpacing the rate of inflation".

2. Health insurance costs under existing plans continue to escalate for all employees, including Police Officers. The Town states that such costs increased 13 to 14 per cent for 2001 and 14 to 15 per cent for 2002, with a similar increase anticipated for 2003.

3. Under new accounting regulations, the Town is faced with potentially drastic increases in required accruals for liability for post-retirement insurance benefit for current employees and retirees.

Taking a different approach, the Association offered testimony contending that the Town's "ability to pay" is sufficient to include increased wages and benefits sought by the Association. The Association pointed out that the Town "has exhausted [only] about 5.16 per cent of its constitutional debt limit; that a two percent transfer tax on the sale of homes (while not directly available for increased police costs) is expected to provide \$15,000,000 to \$20,000,000 annually for the Town; and that the new accounting standards in reference to accrual of health benefit liabilities is of so widespread and

huge effect that their actual application as related to the Town remain to be determined.

As will be reviewed in the discussion which follows, the Panel has utilized certain guiding principles which are designed to meet the needs of both the Town and the PBA. These are:

1. A recognition that Police Officers are entitled to wage adjustments generally equivalent to those already in place for 2001-02 and in some instances for 2003 in other comparable police units. There is no showing that current wage rates are, on an historical basis, so out of line with other comparable units as to require a "freeze" or downward adjustment.

2. Recognition of the Town's financial status, as briefly referenced above, also requires attention. As a result, the Panel has acted in the Town's favor in certain aspects, which will serve to reduce expenditures for wages and benefits to an increasing degree in the future,

3. In general, the Panel sees no justification for certain drastic adjustments in some of the proposals made by both the Town and the Association. As noted above, with a single exception in the past decade, the parties have reached voluntary accord in their bargaining relationship as memorialized in their current Agreement. There is no looming crisis in the Town's financial stability; there are no perceived

singular deficiencies in Police Officer wages and benefits requiring drastic change.

4. The Award, as a whole, is designed to offset some necessarily increased costs with measures to increase efficiency and to modify or eliminate other costs.

Salary Schedule

The Town proposes to freeze the salary schedule (Schedule A) for employees hired prior to January 1, 2001, and to institute a new schedule (Schedule B) with increases in the Academy and Start level and decreases in the remaining Steps, including the addition of a new Step 5. For reasons expressed above, this is entirely unrealistic and unwarranted.

The Town presented the results of a study entitled, "Internal Equity Based Job Evaluations", prepared by an independent auditing firm. The study employed a point system to evaluate various position classifications, including Police Officers, within the Town. The study resulted in placing in the same "grade" (presumably a salary level) the positions of Police Officer (called "Patrol Officer") (385 points); Bay Constable (339 points); and Ordinance Inspector (245-50 points). Whatever value this study may be in terms of setting salary levels for Town employees generally, the Panel finds the results inapplicable to the public safety requirements of police work.

For example, the mandated criteria involving "hazards of employment" and "job training and skills" uniquely distinguish Police Officers from other Town employees

The Association seeks continuation of the present schedule, with five per cent increases each year for Police Officers, and increased differentials for all other classifications.

As to the salary schedule itself, the Panel believes, on principle, that the establishment of two distinctly different schedules (based on date of hire) for performance of the same duties is not an effective solution to reducing salary costs. As a means of providing some relief to the Town, however, the Award will provide for two additional Steps in order to reach the existing top Step. These added (new) Steps 4 and 5 will not be applicable to Police Officers hired prior to January 2, 2001.

For the rank of Detective, the Panel finds appropriate the establishment of a three-step separate Salary Schedule. As to the other ranks, the existing differentials continue to be appropriate.

Salary Increases

The Panel directs increases as stated in the Award to the Salary Schedule, as revised. These increases are intended to maintain the relation of Town Police Officer pay with that of other appropriately comparative police units. While the average

comparative increases are slightly higher than other units, particularly for 2001 and 2002, this is offset to a substantial degree by the newly added salary steps, as well as certain economies to be gained by changes, as set forth below.

Work Schedule

As one of its "primary proposals" the Town seeks to increase the basic work week to provide 260 scheduled tours a year. Police Officers are now assigned 232 scheduled tours which, the Town points out "is the fewest number . . . among police departments on the East End of Long Island". The Panel notes, however, the bargaining history in this matter. In the Interest Arbitration Award for 1995-96, the Panel therein made reference to "a list of six subjects agreed to between the parties for incorporation" in the Award, noting that the hearing transcript included a "joint and detailed explanation" justifying their inclusion. One of these items was the establishment of the 232-day work schedule. No change in this provision was made in the 1997-2000 Agreement reached without arbitral intervention.

This Panel recognizes the validity of some change in the work schedule, based on work schedules in other comparable units. In addition, increase in scheduled work days will offset to some degree the effect of salary schedules provided herein.

However, given the recent bargaining history recounted above, it would be unreasonable to approve the significant change sought by the Town.

The Award, therefore, will provide for a change to 240 days for Police Officers hired on and after January 1, 2003, reducing to 232 days in the fourth year. This change does not disturb the schedule for other Officers under the provision adopted by mutual agreement for 1995-96 and left undisturbed thereafter.

Longevity Pay and Night Differential

Recent bargaining, as well as the 1995-96 Interest Award, provided modest increases in longevity pay and night differentials. The Association seeks further increases in these compensation items. The Panel determines that these should be granted, but only at the same rate of increase as in the past.

Canine Stipend

A Stipulation of Agreement, dated December 31, 1997, established the position of K-9 Officer, which included necessary expenses for that Officer in the care and custody of the trained dog. This amount was increased in 1999 and 2000. Justification was provided for further increases in this amount, and the Award provides for such changes in 2001 and 2002.

Pick Ups

The Agreement fixes as a contract term the practice under which an on-duty Police Officer picks up and relieves from duty non-town-resident Police Officers at their homes or at relief points. This is an obvious benefit to Police Officers receiving this service. As the Town points out, however, the practice involves considerable lost service time of on-duty Police Officers. The Town's proposal to eliminate this service is a reasonable one, and it also serves to enhance the availability of Police Officers while on duty.

Preservation of Benefits - Section 207-c

The Town seeks to clarify the provision concerning benefits to which Police Officers are entitled when they become sick or are injured in the performance of police duty. This clarification is in line with recent Court action on the subject. The change is warranted.

Leave for Association Officers

Bargaining history shows frequent changes as to the paid time to be allotted to the Association President and Association Officers in performance of their Association responsibilities. The Panel has reviewed these provisions, which currently have become complex and, according to the Association, inefficient for the purpose they intend to serve. The Panel has provided a simplification of Association leave, without increasing the overall cost thereof.

Those proposals not specifically discussed in the Opinion and/or omitted from the Award are rejected for inclusion in the revised Agreement. The Panel, however, has given full and careful attention to each of the proposals, together with the evidence and argument in support thereof by the parties.

* * * * *

Prior to the implementation of this Interest Award, the parties have had as documentation of their collective bargaining relationship a full written Agreement dated November 6, 1992; an Interest Award dated October 21, 1996; a Memorandum of Agreement dated June 1997; a Stipulation of Agreement dated December 31, 1997; and a Stipulation of Agreement dated July 21, 1998. To this point, there has been, to the Panel's knowledge, no

compilation of these prior existing Agreements into a single document. Now the terms of this Interest Award must be added with its further revisions.

Until this state of affairs is remedied, the so-called "Agreement" governing the parties' collective bargaining relationship is without the clarity and orderliness which it deserves. The Public Member and Chairperson of this Public Arbitration Panel urges the parties now to undertake a compilation of these documents covering the past 11 years. This would be of genuine assistance in ease of comprehension and knowledgeable acceptance of the Agreement by bargaining unit members, Town and PBA representatives and officials, and, as occasion may require, neutrals called by the parties to interpret its provisions.

AWARD OF PUBLIC ARBITRATION PANEL

1. Duration of Agreement

The Award shall provide for a revised Agreement for the period commencing January 1, 2001 through December 31, 2003. Except as specifically provided below, the terms of the revised Agreement shall be effective as of January 1, 2001. As employed below, the use of the phrase, "existing Agreement", refers to the 1997-2000 Agreement(s) between the parties up to December 31, 2000 and as continued unchanged since that date.

2. Revised Steps in Salary Schedule (Article II, Section 1)

A. Except as to Detectives, the steps in the Salary Schedule shall be as follows:

Academy

Start

Step 1

Step 2

Step 3

Step 4

Step 5

Step 6

B. (1) The new Step 4 shall be set at the existing Step 3 rate plus one-third of the difference between existing Steps 3 and 4.

(2) The new Step 5 shall be set at the existing Step 3 rate plus two-thirds of the difference between existing Steps 3 and 4.

(3) The new Step 6 shall be equal in amount to Step 4 of the existing schedule.

C. (1) Employees hired prior to January 1, 2001 shall continue on the existing schedule.

(2) Employees hired between January 1, 2001 and December 31, 2002 shall be paid on the revised schedule but omitting Step 5.

(3) Employees hired on and after January 1, 2003 shall be paid on the revised schedule.

D. A new salary schedule shall be established for Detectives (see Section 3, below).

3. Salary Schedule for Detectives

A new, separate salary schedule shall be established for Detectives and Detective Sergeant. Three salary steps shall be initially established, as follows:

Detective, First Year	--	Top P. O. Step + \$1,000
Detective, Second Year	--	Top P. O. Step + \$2,000
Detective, Third Year	--	Top P. O. Step + 7 per cent
Detective Sergeant	--	Sergeant salary + 7 per cent of Top P. O. Step

4. Increased Salary Rates

The salary schedules provided in Sections 2 and 3, above, shall be increased by the following percentages:

January 1, 2001 -- 4.3 per cent

January 1, 2002 -- 4.25 per cent

January 1, 2003 -- 4.25 per cent

5. Longevity Pay (Article II, Section 2)

Effective January 1, 2003, each step in the Longevity Pay schedule shall be increased by \$150.

6. Night Differential (Article II, Section 3)

Night Differential pay shall be increased in each calendar year of the revised Agreement in the same amount and manner as provided in the June 1997 Memorandum of Agreement.

7. Work Schedule (Article III, Section 1)

- A. The existing work schedule referring to 232 work days shall remain in effect for employees hired prior to January 1, 2003.
- B. (1) For employees hired on and after January 1, 2003, the following shall be substituted for 232 days (except as provided in B. 2., below):

First year of employment -- 240 days

Second year of employment -- 240 days

Third year of employment -- 236 days

Fourth year of employment -- 232 days

- (2) However, employees hired in 2003 prior to the implementation date of the revised Agreement shall not be scheduled more than one additional day a month to meet the 240-day schedule in their first year of employment.

8. Leave for Association Officers (Article 4, Section 9)

Article 4, Section 9, shall be revised to read as follows:

[Subsections A and B shall remain unchanged.
Subsections E., F., and I. shall be deleted.]

C. Officers and members of the Association shall be restricted to a "PBA Time Bank" of 75 PBA days per annum. Distribution of these PBA days shall be as determined by the PBA President.

D. No more than two (2) employees (Association Officers or members) shall be granted time off on any one day.

E. [former Subsection G.] For the purpose of Suffolk County Police Conference Directors meeting, the Director of the Suffolk County Police Conference and the elected officers of said conference shall be granted release time to attend such meetings in Suffolk County, provided at least four (4) days' advance notice is given in writing to the squad sergeant. Excused time under this section will not be charged against the "PBA Time Bank".

F. [former Subsection H., to be retained]

G. [former Subsection J., to be retained]

H. [former Subsection K., to be retained]

9. Preservation of Benefits (Article IV. Sections 12 and 13)

Article IV, Sections 12 and 13 shall be deleted and replaced with the following new Section 12:

A. Police officers who become sick or injured in the performance of police duty shall be entitled to the benefits of General Municipal Law section 207-c. For purposes of determining which activities constitute police duty, the following are guidelines:

Any officer injured

- dealing with a prisoner.
- attempting to effect an arrest.
- in an adversarial contact with a member of the public.
- in the process of providing first aid to a member of the public.
- during active police training.
- in a motor vehicle accident while actively engaged in patrol duty.
- in any other conduct which is unique and peculiar to police work.

The initial determination of whether an injury is sustained in the line of policy duty shall be made by the Chief of Police subject to review in accordance with the grievance procedure of the Agreement.

A determination that an officer was not injured in the performance of policy duty shall not bar any claim an officer may otherwise have to benefits pursuant to the Workers' Compensation Law.

B. An employee shall not lose vacation time, sick leave entitlement, holiday allowances, job designation or assignment, or tour schedule because of absence due to sick leave, resulting from an on-duty injury to a maximum of one year. Such benefits may be carried over and taken upon the employee's return to active duty or paid the employee or the employee's legal representative in the event the employee's service is terminated for any reason.

C. In the event that an employee is sick or disabled as a result of an off duty injury or illness, the employee shall not lose job designation or assignment for a maximum period of 60 working days. This clause shall in no way interfere with or waive any individual's right to interpose a challenge involving job designation or assignment under an applicable provision of law such as Detectives tenure provision.

10. Pick Ups (Article VII, Section 18)

This Section shall be deleted.

11. Canine Stipend (Stipulation, December 31, 1997)

The stipend for the K-9 Officer provided in Section 2.a. of the December 31, 1997 Stipulation of Agreement shall be amended to read as follows:

During 2001 -- \$2,250

Commencing January 1, 2002, annually -- \$3,000

