

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Compulsory Interest Arbitration)

Between

Village of Sleepy Hollow

and

North Tarrytown PBA, INC.

)
) Award
) of
) INTEREST
) ARBITRATION
) PANEL
)
) IA-2003-001
)
)
)
)

Before the Public Arbitration Panel

Terence M. O'Neil, Esq. Employer Panel Member

Anthony V. Solfaro Employee Organization Panel Member

I. Leonard Seiler, Esq. Public Panel Member and Chairman

APPEARANCES

For the Village:

Craig Olivo, Esq.	Attorney for the Village
Dwight Douglas	Village Administrator
Abraham Zambrano	Village Treasurer
Jimmy Warren, Jr.	Chief of Police

For the Union:

John K. Grant, Esq.	Attorney
Angelo Guzzo	PBA President
Sonia Hennessey	PBA Secretary
Kevin Decker	Financial Expert
Gabriel Hayes	Lieutenant
Gregory Camp	Sergeant
Vincent Lombardi	Police Officer
Bobby Chechi	Police Officer
Shawn D. Harris	Police Officer
Josie Quinoy	Police Officer
Antonio Benitez	Police Officer
Jeffrey D'Agostinis	Police Officer
Charles Zekus	Police Officer
Rich Delessandro	Police Officer
Frank Hrotko	Sergeant
Anthony Bueti	Police Officer
Barry Campbell	Lieutenant

On May 27, 2003, the New York State Public Employment Relations Board having determined that a dispute continued to exist in negotiations between the Village of Sleepy Hollow (hereinafter referred to as the "Village") and the North Tarrytown PBA, Inc. (hereinafter referred to as the "Union") designated the undersigned Public Arbitration Panel (hereinafter referred to as the "Panel") pursuant to Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of the matters in this dispute. The Panel then proceeded under the applicable statutes, rules and regulations to inquire into the causes and circumstances of this continued dispute and at the conclusion of its inquiry made the findings and Award which follows.

Upon notice duly given, after several postponements, hearings were held on May 6, June 4 and June 18, 2004, in the Village Hall. Both parties were present and represented by counsel throughout these proceedings as shown in the above List of Appearances. The Parties were afforded full and equal opportunity to be heard and present statements of fact, supporting witnesses and other evidence and arguments, both oral and written, in support of their respective positions regarding the issues in dispute. The Public Interest Arbitration Panel admitted into evidence fifty-nine (59) Union exhibits and ninety-one (91) Village exhibits.

The parties mutually agreed on June 18, 2004, to postmark their post-hearing briefs by August 20, 2004. After their receipt, the Panel closed the hearings.

The Panel met in Executive Sessions on August 27, and September 30, 2004 and engaged in a conference call on October 25, 2004. Prior to the second Executive Session on September 30, 2004 and the conference call on October 25, 2004, the Panel Chairman submitted drafts of the Award to his fellow Panel Members. After due and deliberate consideration of all of the evidence, facts, exhibits and documents submitted and in accordance with the applicable criteria prescribed by P.E.R.B., the Panel arrived at the Award which follows. The Panel in arriving at such determination based its findings on the mandated statutory criteria which follow: New York Civil Service Law, Section 209.4 (v)

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.

The Panel's objective was to arrive at a fair and reasonable Award which logically considered the statutory criteria previously cited.

The Panel carefully considered each of the outstanding issues and at the urging of the Chairman sought to reach unanimous consensus on each of them. The Chairman commends his fellow Panel Members Messrs. Solfaro and O'Neil for the time and effort they devoted to the process and their sincere attempts to resolve each of the issues submitted to the Panel in accordance with the above stated criteria. It was their hard, realistic and professional bargaining that made this Award possible.

The Panel deemed it advisable to concentrate the limited funds available primarily in improving the salary schedule rather than on any new contractual benefits.

BACKGROUND:

The Village of Sleepy Hollow is one of the many riverfront communities in Westchester County. It suffered the loss of taxes and/or significant pilot payments from its largest taxpayer (General Motors) in 1997 (Village ex. 55) and has not fully recovered though it has some new riverfront projects in development.

The Sleepy Hollow Police Department presently employs (24) sworn personnel who are assigned primarily to the Village's two (2) patrol areas - northern and southern districts.

The Village which was incorporated in 1874, is a public employer situated in the Town of Mount Pleasant and most of its students attend the Tarrytown School District. It lies on the eastern bank of the Hudson River and is referred to as one of the riverfront communities. The Village has an estimated population of 9,214 in 3,174 households according

to the 2000 Census (Union ex. 37 & Village 39))and covers approximately 2.30 square miles.

The Village has two other bargaining units, the Teamsters and the Municipal Employees Unit, who have already concluded negotiations and received raises of 3.25% and 3.75% for the years 2002-2003 and 2003-2004.

CONTENTIONS OF THE PARTIES:

The PBA maintains that it should be compared with the other river front communities of Buchanan, Dobbs Ferry, Hastings-on-Hudson, Ossining and Tarrytown in accordance with the Interest Arbitration Statute. Whereas, the Village wishes to include all Westchester Villages in any comparisons.

The parties agree that the wages of the Village Police Department are the second lowest amongst the comparable communities -PBA's or Village's -but, they differ as to why. The PBA contends that the Village is unwilling to try to catch up, while the Village emphasizes its fiscal inability to do so.

The PBA called the Panel's attention to the fact that in the years concerned in this impasse 2002-03 and 2003-04, the Village received from GM \$670,000. in 2002, \$640,000. in May 2003 and \$690,000 ~~was~~ payable in 2004. (Tr. 1 pgs. 41 & 78 and Village ex. 35) The Village maintained that these moneys were used to offset even higher tax increases.

The Union while acknowledging that the Village lost its major taxpayer (GM some 48%) a few years ago and has suffered, states that the Village now has several major projects underway which will boost tax revenues. The Village received from the Kendal-on-Hudson Continuing Care Retirement Community a development fee of \$500,000 in 2002 and \$574,000 in 2003. It also received a first pilot payment of \$86,000 ~~in~~ May 2004 and this was not included in the prepared budget. In May 2005 the Village is to receive a \$117,000 pilot payment. (Tr. 1 pg. 48) Additionally, it pointed to the Ichabod Crane River Front Development and County House Road cluster subdivision as sources of additional tax revenue. (Tr. 1 pg. 46) Furthermore, the Village received a million dollar grant from the State of New York. (Tr. 1 pg. 74 and Village ex. 34)

The Village noted that today, GM's contribution is now only 2.3% of the Village's tax revenues. This has shifted an enormous tax burden onto the already struggling Village residents. (Tr.2 pg.51) The Village agrees that there are several major projects underway but contends that the tax revenues from them will not be recognized now but sometime in the future. The Ichabod Crane River Front Development, according to Dwight Douglas, the Village administrator,

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still needs to apply for a building permit so that it can commence construction. (Tr. 1 pg. 41) Once construction takes place it should generate taxes of about \$200,000 annually starting in 2005-2006. (Tr. 1 pg.44)

Pilot payments made to date, were used to offset rising tax increases. (Tr. 1 pg. 57) "Had it not been for one shot revenues such as the State's million dollar grant expended in 2001 & 2002, the residents from Sleepy Hollow would be facing even higher tax increases than the projected 15% increase for 2005." Other moneys collected "were restricted for use in capital projects' and were "not available for use to fund any part of an Award which raises PBA salaries or fringe benefits." (Tr. 1 pgs. 57-60) It noted that it has been forced to raise taxes and fees and layoff personnel to try to stay afloat.

If not for several one-shot revenues, the Village's economic position would be truly dire. (Tr. 2 pg.51) It pointed out that the GM Pilot Payments were only for 2002-03,, 2003-04 and 2004-05 in the sum of \$150,000 per year. (Tr.2 pg. 75)

THE PBA financial expert, Kevin Decker, noted that: "The Village's adopted budget for 2003-04 included a contingency account of \$210,650. The Village's recommended budget for 2004-05 includes a contingency account of \$280,000. Typically, a contingency account will be set aside to help fund the cost of labor settlement." (Tr. 1 pg. 66) A 1% raise plus associated roll-ups for overtime, holidays, FICA and retirement is approximately \$23,000. (Tr. 1 pg. 66) He noted on cross-examination that in: "The last couple of years, there are many communities that have had double-digit tax rate increases." (Tr. 1 pg. 84) Additionally, he acknowledged that the Fund balance in 1997 represented 10.78 percent of the budget and in fiscal year ending '03, it was down to 3.8% and that the State Controller implicitly agrees with a recommended 5% that Moodys kind of sets out there. (Tr. 1 pgs. 103-4) The Village contended that this was a theoretical legal liability to pay, based on its legal constitutional taxation limit. But, practically a Village should not tax its citizens to the highest limits. It must consider what its citizens can reasonably afford to maintain all its needed services and to maintain a stable infrastructure. (Tr. 2 pg. 48)

It also maintained that "the Village is among the poorest communities in all of Westchester County, and, arguably, the poorest in the river front." It claimed that the Village "has one of, if not the largest, percentage of tax exempt properties;" "fourth lowest per capita income;" "seventh lowest median household income;" "fifth lowest median family income and fifth highest poverty rate of all Villages in Westchester County." (Tr.2 pg. 47)

The PBA noted that the Village sales tax rate increased March 1, 2004, and the Village can expect an additional \$200,000. in revenues. (Tr. 1 pg.55)

Additionally, it noted that some non-bargaining unit employees received very significant raises. The Village stated that those raises were due to promotions and/or eighteen (18) month raises for salaries converted to January 1 from June 1 calendar dates, and others were for additional duties or promised increases when they were hired and became effective when they became more familiar with their duties and responsibilities. (Tr.3 pgs.70-72)

The Village admitted that it had budgeted for two (2) additional officers in the 2003-04 budget. However, the two they selected decided not to come and the Village was unable to find replacements. That budgeted money the PBA argued could be used for salary increases for its members. The Village claimed that it was most likely used up in paying overtime. (Tr.3 pgs.132-133)

The PBA contended that the \$50,000. found and spent by the Village in 2001, for a review by DeSanto & Associates of the Village's Police Department, which was never officially adopted, could have better been spent on the salaries of Police Department personnel. The Village disagreed noting that many of the recommendations were very helpful and adopted.

IN GENERAL:

1. The dispute involves the continued impasse between the Village and the Union over the terms and conditions of a new contract to be effective as of June 1, 2002, the last four-year contract of the parties having expired on May 31, 2002.

2. A review of the parties negotiating history shows a tendency to resort to Interest Arbitration to obtain successor Agreements, their having done so in impasses for June 1, 1990-May 31, 1992, June 1, 1994-May 31, 1996 and June 1, 1996--May 31, 1998. Their last contract negotiated with the Mayor was for the years of June 1, 1998 to May 31, 2002.

3. The Union represents 24 members - Lieutenants, Sergeants, Detectives and police officers.

4. Prior to the request for the appointment of this Arbitration Panel the parties engaged in ten (10) negotiating sessions and three (3) mediation sessions with a PERB appointed mediator.

5. The parties exercised their right to have a full and complete record of the Public Arbitration Panel Hearing as set forth in Section 209.4 (iii) of the New York State Civil Service Law.

6. The "position" of the parties and the Panel's

"discussion" are only summaries and are not intended to be all inclusive.

7. It was agreed by both parties that all terms of the expired Collective Bargaining Agreement not changed by this Award shall be continued "as is" in the new Agreement.

8. The following issues were submitted at the arbitration hearings for Determination and Award by the Panel:

Issues:

A. Union

1. Duration
2. Recognition
3. Base Wage and Longevity
 - a. Base wage
 - b. Longevity
 - c. Shift differential
4. Overtime
5. Welfare Benefits and Fund
6. Pension and Severance Pay
7. Uniform Allowance and Cleaning
8. Tuition Payment
9. Previous Practice Clause
10. Sick Leave
11. Mileage Allowance
12. General Municipal Law Section 207-c Procedure
14. Jury Duty Leave
15. Out Of Title Pay

B. Village

- I. Housekeeping/Minor Changes and/or Clarifications
 - a) All dates shall be conformed
 - b) Compensatory Time for Negotiations
 - c) Retirement Incentive
 - d) Personnel Files
- III. Work Schedules
 - a) Lieutenants
 - b) Detectives
 - c) Youth Officer Work
3. Posting of Tours
4. Mutuels
5. Definition and Selection of Posts
7. Training
8. Holidays
9. Vacation
10. Holidays during Vacation
13. Personal Leave
15. Previous Practice Clause/Rules and Regulations

- 16. Sick leave/Attendance Incentive
 - a) Doctor's note
 - b) New Incentive Plan
- 18. Safety Clause
- 19. Labor Management Committee
- 20. Grievance Procedure

Award of Public Arbitration Panel:

The Public Arbitration Panel renders the following Award:

Union 1. Duration

The PBA proposed a two-year contract covering June 1, 2002 through May 31, 2004, the maximum period permitted by the Act.

Award:

Except as otherwise noted, this two (2) year Award shall be effective from June 1, 2002 to May 31, 2004.

Union 2. Recognition (Art. 1 (pgs 1-2))

The PBA sought to collect Association membership dues weekly rather monthly.

Discussion:

The PBA's request for a change in transmittal of Association membership dues to conform with payment of wages, i.e. weekly, is a bookkeeping function involving minimal costs.

Award:

Effective with the issuance of this Award, amend the 1st and 2nd sentences of Sec. 3 ~~shall be~~ by inserting "weekly" where "monthly appears."

Amend the 3rd sentence to read as follows:

Within one month of the issuance of this Award, the dues deduction shall be paid to the Association every pay period.

*gmo 11/24/04
JWS 11/24/04
LSD 11/30/04*

Union 3. Base Wages and Longevity (Art. 3, pgs 2-4)

- a. 4.5 % each year except for Police Officer I for which it requested a \$750. per year increase and then apply the 4.5% increase.
 - b. Longevity increase of \$100. per year paid on the employee's credited anniversary date of employment.
 - c. Shift Differential.
- The Village rejected these proposals.

a. Base Wages
Contentions of the Parties:

The Panel's objective is to arrive at an equitable and reasonable wage award which logically considers the statutory criteria previously cited.

The PBA maintained that the Village can afford the proposed increases which are deserved because the Village's officers are behind officers in the comparable communities. In 2001-02, the Village's base salary for police officers when ranked with those of comparable communities, were the lowest for officers with five (5) or more years of service, 2nd lowest with four (4) years, 3rd lowest with two (2) years and 2nd with one (1) year. (Union ex. 22) Thus, an Award of less than that requested will cause the Village's police officers to "fall further and further behind the other officers in comparable Villages." It contended that this was so though "they perform identical duties under virtually identical working conditions in terms of level of crime...merely steps away from fellow officers who are making substantially more."

The PBA noted that "after the arbitration hearings were concluded on June 22, 2004, the Village found the money to approve salary increases for 5 exempt employees averaging 6.58.2%" Additionally, there was "a \$1,000 longevity payment to the Village Clerk." (Union post-hearing brief Appendix C)

The PBA pointed out that in the negotiated expired Agreement the Village received a new rate for uncertified police officers and the Detective/Sergeant rate was reduced by 4%. (Union ex. 2C) Both of these were beneficial to the Village. Now it was time to close the salary gap with other comparable communities.

The Village response was that "It must spread its limited resources over a number of public functions and services, of which police protection is but one." The Village alleged that "the Village is among the poorest communities in all of Westchester County, and second poorest of the river front communities" and not "getting any better." The Village maintained that since 1990 "Sleepy Hollow has historically been the lowest or second lowest paid Village in all of Westchester." (Village ex. 71)

It noted that "in 2004 the Village has already reduced the number of individuals it employs in an effort to cut expenses."

The Village pointed out that it has encountered "rising expenses outside of its control" such as escalating insurance costs with premiums rising between 12-17% in 2003 and 12-14% in 2004 (Village ex. 63) and pension costs that saw an increase of over approximately 390% for 2003 and in 2004 an additional approximate 71%. (Village ex. 30)

The Village contended that it couldn't afford more than what it gave the Village's other bargaining units. It noted that the Village bargaining units over the years have been granted the same salary increases and there was no need to break the pattern now. (Village ex. 61) The PBA argued that since only two (2) contracts had been negotiated since 1990, as the others were concluded in Interest Arbitration, how could there have been pattern bargaining.

For 2002, the average salary increase in comparable communities was over 3.5% and for 2003 was also over 3.5%

Discussion:

It is evident from the oral and written testimony submitted to the Panel in this impasse that the Village has been struggling financially since the closure of the GM plant, its largest taxpayer. The Village has and wishes to continue to manage its financial affairs in a prudent and conservative manner. However, based on the information submitted by the parties, the Panel finds that the Village has the ability to pay a wage and benefit settlement for the years 2002-03 and 2003-04 that is "just and reasonable" and in accordance with the mandated criteria of law previously cited. The base wage award must be viewed as part of a total package that includes fringe benefit determinations and contractual changes appearing later in this Award.

Salary increases in comparable communities for 2002 range from one at 2.86% to one at 4.04%, with three (3) more at 3.5% and the remaining two at 3.9% and 3.62%. For 2003, they range from 2.25% to 4.03% with one at 2.69%, two at 3.5%, one at 3.62%, one at 4% and another at 4.03%. (Union ex. 13)

Award:

For 2002, for Police Officers I through V, a 2% increase at 6/1/02, 2% at 12/1/02, 2.5% at 6/1/03 and 2.0% at 12/1/03.

The foregoing increases and retroactive payments shall be implemented as soon as possible.

b. Longevity:

Contentions of the Parties:

The PBA maintained that their proposed increase was warranted because there has been no substantial increase in longevity for a number of years. It noted that proposed longevity increase together with salary provided the base for retirement benefits, which it maintained would still have Sleepy Hollow police officers behind all comparable communities.

The Village contended any longevity increase was part of the total economic package to be determined. It pointed out that unlike salary increases, longevity increases only affected long term employees.

Discussion:

The majority of the Village's police officers (13) have less than six (6) years of service with the Department and there are five (5) with between 10-12 years of service. Thus, longevity only affects a minority of the Department's employees. (Union ex. 52)

In 2001-02, the Village's police officers with nine (9) or more years of service enjoyed the highest longevity of comparable communities and those with six (6) to eight (8) years of service the 4th highest. (Union ex. 23)

After twenty (20) years of service, however, the combination of base salary plus longevity for the Village's policemen ranks last in comparable communities for 2001. (Union ex. 24)

Award:

Longevity payments shall be increased 6/1/03 by \$25. and shall be effective on the officers employment anniversary date.

c. Shift Differential

Contentions of the Parties:

The PBA claimed that a shift differential was warranted due to the difficulty and stress in working rotating tours of duty in adverse conditions.

The Village's rejoinder was that rotating tours of duty and night work are intrinsic to a policeman's job.

Discussion:

Based on the documentation submitted and the economic package awarded, the Union's demand is rejected.

Award:

PBA demand be denied.

Union 4. Overtime (Art. 5, Secs 1,3, & 5, pgs. 6-7)

PBA sought to define overtime, increase the 3-hour minimum call-back to 4-hours and delete Sec. 5 which provides for the first 20 hours of training each fiscal year to be paid at straight time.

Discussion:

Insufficient evidence was submitted to determine if a change was necessary.

Award:

PBA demand be denied.

Union 5. Welfare Benefits and Fund (art. 8, Secs 6-12, pgs 10-12)

PBA requested: (a) title of this Article be changed to Health Insurance And Welfare Benefits Fund. Additionally, it (b) wanted to include language providing a procedure and standard should the Village seek a change in the health insurance plan. It also wanted (c) to have the Village pay 100% of all costs in providing the following benefits rather than a contribution to a welfare fund:

- a) \$25,000 of term life insurance for each employee;
- b) dental plan mutually agreed upon for individual coverage;
- c) optical plan;
- d) prepaid legal plan services; and
- e) drug prescriptions

Discussion:

There is no problem with a name change and writing language covering any proposed change in health insurance.

The balance of the PBA demand, however, seeks a major change from the present language and as such is best left to negotiation by the Parties.

It is noted that though there have been significant increases in benefit costs and despite the PBA's best efforts to keep costs at a minimum, the cost of coverage for Association members have exceeded the \$90. increase in yearly contribution that the Village has made since 6/1/98. The current deficit covered by the PBA members is \$3,032.20, an average of \$121.29 per member. (Union ex. 4b)

Award:

(a) Article heading be changed to read: Health Insurance And Welfare Benefits Fund as the PBA requested.

(b) Amend Sec. 6 to read as follows:

In the event the Village seeks to change the health insurance carrier, plan and/or its benefits, the change(s) shall be submitted, in writing, to the Association President. The Association shall respond to the Village, within sixty (60) calendar days of receipt of notice from the Village, that they agree or disagree that the changes are substantially equal to those of the existing carrier plan and/or benefits. In the event the Association does not agree that the new health insurance carrier, plan and/or its benefits are substantially equal, then the parties agree to submit the matter to expedited arbitration through the American Arbitration Association (AAA), pursuant to their voluntary rules and procedures then in effect. The parties,

however, reserve the right to choose an arbitrator to hear the matter. The arbitrator's decision and function shall be as set forth in Article 21 - Grievance Procedure and Arbitration. In no event shall any change in health insurance carrier, plan and/or benefits be effectuated until such time as an arbitration award has been issued which approves the change(s).

(c) Starting 6/1/02 increase the Welfare Fund Payment of \$950. by \$100. to \$1,050. and starting 6/1/03 increase the Welfare Fund Payment of \$1050. by \$100. to \$1,150.

Union 6 and Village 1c: Pensions and Severance Pay (Art. 9, Sec 2. Pg 12)

Discussion:

The parties are in agreement that this provision sunsetted and, therefore, should be deleted.

Award:

Delete this provision in its entirety.

Union 7: Uniform Allowance and Cleaning (Art. 10. Pg 13)

The PBA demanded that a provision be included in Section 1 requiring the Village to provide an initial uniform and equipment allotment and replacement of uniforms and equipment destroyed in the line of duty at no cost to employees.

Additionally, the PBA sought an increase in uniform allowance (Sec. 1) of \$150 effective as of 6/1/02 and an additional \$50. as of 6/1/03, and in cleaning allowance (Sec. 2) of \$400 effective as of 6/1/02 and an additional \$75. As of 6/1/03

Contentions of the Parties:

PBA pointed out that the last increase in uniform allowance was in 2000 and last cleaning in 2001.

Discussion:

Uniform and cleaning costs have increased and some relief is due.

Award:

Effective as of 6/1/03, increase uniform costs (Sec. 1) by \$25 to \$75 and cleaning costs (Sec. 2) by \$25 to \$150.

Union 8: Tuition Payment (Art. 12, pg 14)

PBA proposed a \$3,000. increase to \$15,000. in annual tuition payments for the entire unit.

Discussion:

The PBA noted that despite rising tuition costs the Village's contribution has remained unchanged for seven (?) years.

The Village's response was that the utilization of this benefit in 2003 was \$0. And so far in 2004, less than \$2,000. (Village ex. 84) Therefore, there is no demonstrated need for an increase.

Award:

PBA demand be denied.

Union 9 and Village 15: Previous Practice Clause (Art. 13, pg. 14)

PBA wished to amend the existing provision to provide that the Village will not alter or revoke any benefits enjoyed by the employees and/or the Association through a past practice.

Whereas, the Village sought to eliminate the last sentence which referred back to Department Rules and Regulations adopted back in 1978.

Discussion:

Both sides were in agreement that this article needed simplification and clarification.

Award:

New language to replace previous provision. Effective with the issuance of this Award, the Village shall not alter any existing "terms and conditions" of employment including any contained in the Department's written Rules and Regulations, without prior agreement of the Association.

Union 10 and Village 16. Sick Leave (Art. 14 pgs. 14-15)

Both parties sought to change Sec. 4 pertaining to incentives for not using sick leave, which is unlimited. The PBA wants to convert from flat dollar amounts to percentages, while the Village seeks to reduce the number of sick leaves not taken to qualify for incentives.

Village sought to add to Sec. 3 a provision that the Village may require a doctor's note when it has reasonable grounds to believe that sick leave is being abused. PBA noted that in the negotiated expired Agreement it had agreed to providing a doctor's note after three (3) consecutive absences and, therefore, there was no need for the Village's demand.

Discussion:

The parties' contract in Section 1. Provides: "Each employee shall be entitled to unlimited sick leave use with full pay." In an attempt to keep said use to a minimum, the parties' in Section 4. set forth an incentive program to accomplish same. Now each side is seeking to revise that incentive.

The PBA noted that the incentive had been unchanged for at least 14 years and Sec. 3 already provides the Chief of Police with the right to require a physician's certificate for absences of more than three (3) consecutive days.

The Village alleges that the present provisions are too lenient and there has been some abuse. The Village maintained that the provision has failed to do what it was intended to do for 15 members of the Department used 4 or more days in 2003-4 and received an incentive for good attendance. (Village ex. 79)

As to abuse, the Village claimed it was hampered by Section 3 as presently constructed in that the Chief, when he has reasonable grounds to believe sick leave is being abused, can only request a doctor's note if the officer is absent for "more than three (3) consecutive days".

Insufficient convincing evidence was introduced for this Panel to make any changes in the present provisions as to incentives.

Award:

As to Section 4 involving incentives, both parties' demands are rejected.

As to Section 3 begin with: Effective with the issuance of this Award, then in 2nd line after "incurred on the job" add "or when the Village has reasonable grounds to believe that sick leave is being abused."

Union 11: Mileage Allowance (Art. 17, pg. 16)

PBA sought to change the mileage allowance which dates back to December 11, 1981. It asked that it be the IRS rate.

Discussion:

The parties recognized that the present provision was out-of-date and needed to be updated.

Award:

Replace the present provision with the following: Effective with the issuance of this Award, an employee required and authorized to use his/her personal vehicle for Village use shall be reimbursed, via a separate check, at the Internal Revenue Service (IRS) approved rate per mile.

Union 12: General Municipal Law Section 207-c Procedure
(Art.23 pgs.20-25)

The PBA requested several changes.

Discussion:

Following discussion, by the Panel, as to whether or not there was a pressing need to make changes in this provision, they only agreed that in Sec. 3 there was a need to clarify "business day."

Award:

Effective with the issuance of this Award, wherever "ten (10) business days" appears replace it with "fifteen (15) calendar days".

Union 14. New Article Jury Duty Leave

Discussion:

The PBA pointed out that Sleepy Hollow was only one of two (the other being Hastings On Hudson) of the nine (9) communities cited that didn't have a Jury Duty provision.

The Village responded that the hearing record had insufficient testimony to show they didn't get the time off.

Like in the majority of communities a contract clause spelling out how jury duty will affect employees is warranted.

Award:

Effective with the issuance of this Award, in the event an employee is noticed to appear for Jury Duty, and that employee is scheduled to work that calendar day, he/she will be released from that scheduled tour of duty with pay and without charge to any other paid leave accrual to fulfill his/her jury duty. The employee must, however, provide the Chief of Police with a copy of the Jury Duty notice upon receipt.

The employee shall use the "call-in" system if available. If he/she is not required to report for jury duty, he/she shall report for their regularly scheduled tour of duty.

All Jury Duty fees paid to the employee shall be endorsed over to the Village when an employee is released from work to perform Jury Duty. In the event an employee is scheduled to be off that day, the employee shall retain the fees. However, any mileage, tolls, parking and any other reimbursements paid for appearing at Jury Duty, shall be retained by the employee.

At the completion of jury duty, the employee shall provide the Chief a record of attendance if made available by the court.

Union 15: New Article Out Of Title Pay

The PBA proposed the following:

In the absence of a patrol sergeant on a tour of duty, the senior employee shall be paid for all hours worked, the Sergeant's Base Wage as set forth in Article 3.

Discussion:

PBA maintained that of the 9 communities cited only Sleepy Hollow, Village of Croton and Village of Hastings On Hudson were without such provision. It argued that individuals required to perform the duties of a higher rank assume the additional responsibilities inherent in that higher rank, so they should be compensated at the higher rate during said employment at the higher rank.

The Village maintained that it was just another demand for money it didn't have and noted that almost 50% of all Villages do not have any provision for out of title pay. (Village ex. 82)

Additionally, the Village maintained that the PBA did not present evidence that the Village was abusing its ability to temporarily fill required positions and being able to evaluate employees for possible future promotions.

Award:

PBA Demand be denied.

Village I: Housekeeping and/or Clarifications

a. All dates shall be conformed to the duration of the negotiated agreement.

Discussion:

The Parties agreed that this change was not intended to change the substance of any Agreement provision.

Award:

Village request be granted, except substitute "Award" for "negotiated agreement".

b. **Compensatory Time For Negotiations** (Art. 1(b), pg. 2)

The Village sought to clarify as to who is eligible.

Discussion:

No evidence was introduced to show that there was a problem that needed to be addressed.

Award:

Village request be rejected.

e. **Personnel Files** (Art. 18, pg. 1b)

The Village sought to add "within ten (10) days" to the end of the second sentence.

Discussion:

The present provision offers no time limits as to when the employee must respond and fifteen (15) calendar days is reasonable.

Award:

Effective with the issuance of this Award, at the end of the second sentence in Article 18 in place of "therewith" add "fifteen (15) calendar days."

Village III Work Schedules (Art. 4, pg. 4)

2. The Village sought more flexibility in scheduling Lieutenants (Sec. 2), Detectives (Sec. 3) and Youth Officer (Sec. 4).

Discussion:

The Village pointed out that in the parties' contracts prior to the last one, "there was no schedule for lieutenants or detectives and/or youth officer in there." (Tr. 3 pg. 128)

The Village maintained that present provisions negotiated by the Mayor without any input of the Chief (Tr. 3 pg. 152) were too restrictive and caused additional overtime. The Village stated that it had eliminated the youth officer position several years ago, but the Village had a grant for money to hire a School Resource Officer pending with the Department of Justice. It noted that a majority of his work day would be school days and hours but he would be available for school evening functions. (Tr. 3 pgs. 94-5)

The work of Detectives-crime solving- is not an 8:00 a.m.-4 p.m. or 4p.m.-midnight Monday through Friday job. It needs to be conducted at all times and any day of the week.

PBA noted that there was no Youth Officer at present, so, when he is hired his/her employment conditions can be addressed then. As to Lieutenants and Detectives it pointed out, as Village indicated, the proposed changes will cost those involved losses in pay. It also pointed out that they must be on standby during part of their non-scheduled hours for which they are not paid unless they report to work.

There are some advantages to each party under the present provisions. However, the Village does need more flexibility in handling its operations.

Award:

Sec. 2 **Lieutenants** Add a new paragraph as follows:

Should the Village hire a third lieutenant, the work schedule for that Lieutenant shall not thereafter exceed more than the equivalent of five (5) days per week and no more than forty (40) hours per week. The five (5) working days shall be consecutive.

Sec 3. Detectives Add new para.: Effective with the issuance of this Award the Chief of Police or his designee shall be able to flex the Detective(s) starting and ending times for up to (2) hours. (e.g. a Detective scheduled to start work at 8:00 a.m., can be required to report as early as 6:00 a.m. or as late as 10:00 a.m., or any time in between.) The Detective(s) may also flex their starting and ending times asset forth herein, with the approval of the Chief of Police or his designee. The Chief of Police or his designee shall make every effort to provide as much advance notice as possible to the Detective(s) when flexing their tour of duty.

Sec.4 Change Youth Officer to School Resource Officer. The terms, conditions and work schedule of his/her employment shall be made known to applicants and shall not exceed more than the equivalent of five (5) days per week and no more than forty (40) hours per week consistent with the needs of the Schools and the Department, which shall conform with any New York State guidelines that may exist.

Village 3: Posting of Tours (Art. 4(5) pg. 5)

- a. Change ninety (90) days notice to thirty (30) days notice.
- b. Amend first sentence to allow changes be made without such notice for education/training, promotions (clarification), or reassignments to other positions with different work schedules (clarification), emergencies, medical leaves, injuries, suspensions, 207-c assignments, plus, with the agreement of the officers involved, other extenuating circumstances.

Discussion:

The PBA noted that in the negotiated expired Agreement the posting of tours was reduced from six (6) months to ninety (90) calendar days (Union ex. 2D) and, therefore, it saw no need for a further reduction in time. It contended that Agreement provisions and Parties' practices, such as in 207-c, already provides waivers of the ninety (90) day notice.

As claimed by the Village, the present provision does appear to be very inflexible and in need of modification.

Award:

Effective with the issuance of this Award, change "ninety (90) calendar days to (60) calendar days" wherever it appears in Section 5. At end add: However, such posting shall not prevent the Chief or his designee a reduction in notice, at the discretion of the Chief or his designee, when necessary changes are needed due to promotions, reassignments, medical leaves, injuries requiring lengthy absences and disciplinary suspensions, plus with the agreement of the officers involved and the Association, other extenuating circumstances.

The Chief or his designee shall provide as much notice as possible to employees who's posts are about to be changed and the reason for it.

Village 4: Mutuals (Art.4(b) pg. 5)

Village sought a forty-eight (48) hours' notice and the right for the Chief to deny it if it results in sixteen (16) consecutive hours of work or adversely affects special details(e.g. breathalyzer operator).

The PBA contended that mutuals are an integral part of law enforcement and should not be altered without a compelling need which it claimed had not been demonstrated. Additionally, it pointed out that the Village has the right to compel 16 hour tours, so it asked: "Why can't officers voluntarily agree to them?"

Discussion:

No compelling need , other than it would be helpful in scheduling, was provided to the Panel to justify a change in this provision of the contract which already requires the "prior approval of the Chief or designee."

Award:

Village demands be denied.

Village 5: Definition and Selection of Posts (Art. 4(7) pg. 6)

Village sought to delete.

Village claimed that this unique, outrageous provision negotiated by the Mayor without input from the Chief (Tr. 3 pg. 152) or professional police contract negotiators, had no place in the contract for it restricted the Chief from utilizing his men most productively and prevented him from employing his most experienced officers where needed. Additionally, the Village stated that restricted 207-c officers on limited duty can only serve on desk duty and there are times when they are not the most senior on the squad, so two (2) officers wind-up manning the desk and

another officer may have to be brought in on overtime to fill out the patrol squad.

The Chairman in his "in camera" inspection of the DeSanto Report, learned that they, too, found: "This provision hampers Department supervisors in their ability to tailor patrol assignments to the strengths and weaknesses of the officers working any given shift." It recommended that the Department should seek its elimination but make provisions designed to minimize or eliminate the potential misuse by management of its prerogatives vis-à-vis daily assignments." (Report pg. 27)

The PBA argued that it not be changed as this was a new provision in the expired contract and was an important part of the package that was negotiated.

Discussion:

The Village has provided sufficient evidence to show that this unique provision, not found in any other comparable communities' Collective Bargaining Agreement, severely impedes the Chief in utilizing his staff's abilities and experience where they can best serve the needs of the Village. (TR-3 pgs. 105-106) It is unreasonable to have an unneeded second officer on the desk just because someone has seniority over another officer on 207-c restricted duty who can only serve on the desk.

The Village is supported in their contention by the DeSanto report as quoted above which also warned of potential management abuse.

Award:

In Section 7, delete the first paragraph at top of page 6 and replace with:
Effective with the issuance of this Award, employees, by seniority, can express their choice of posts as set forth above on their regularly scheduled tour, but final assignments shall be made by the Chief or designee. The post assignments shall be posted for each week no later than the week preceding their effective date.

Village 7: Training (Art. 5(5) pg. 7)

Village asked to delete the last sentence which specifically states what subjects and for how long the training will be. It noted that CPR training and Pr-24 training can each be accomplished in 4 hours on a recertification basis and that shotgun training does not require 4 hours of training. (Tr. 3b pg. 110)

Discussion:

The Village stated that the present provision is too restrictive and doesn't really relate to the present or future training the Village wishes to provide to its police officers.

Police officers should be acceptable to receiving the proper training for their jobs.

Award:

Begin with: "Effective with the issuance of this Award", then replace second sentence with: "Each employee shall receive training in CPR, PR-24 and shotgun."

Village 8. Holidays (Art. 6(4) pg. 8)

Village sought to add the following language to the end of this paragraph.:

Employees must give the Chief of Police or his designee at least forty-eight (48) hours' prior notice to take holiday leave days. The Chief may, in his discretion, waive or diminish such period of notice in emergencies or unusual circumstances.

Should an employee terminate before accruing the days "borrowed," the excess shall be deducted from his final paycheck(s) or, if such final paycheck(s) are insufficient, paid back to the Village.

Discussion:

The taking of time off for holidays under Section 4 (contract pg. 8) is already subject to "the approval of the Chief."

The Village maintained that it was unfair to employees who work the whole year and receive the thirteen (13) holidays provided during the course of the year, when other officers take the same number of paid holidays but quit before the year's end, e.g. taking nine (9) holidays during six months of employment and quitting on June 30th. It is a windfall that should not be permitted.

PBA objected to any change in this Article as it would diminish benefits members have been enjoying. The PBA also pointed out there was no contractual language which states that holidays only accrue after they occur.

The inequity pointed out by the Village, especially in view of its tight fiscal position, supports the Village's demand.

Award:

Village demand on recouping is granted but notice request is denied.

Village 9: Vacation (Art. 7(2) pg. 9)

Village sought to add the following language to the end of this paragraph.:

Employees must give the Chief of Police or his designee at least forty-eight (48) hours' prior notice to take vacation leave days. The Chief may, in his discretion, waive or diminish such period of notice in emergencies or unusual circumstances.

Should an employee terminate before accruing the vacation days utilized, the excess shall be deducted from his final paycheck(s) or, if such final paycheck(s) are insufficient, paid back to the Village.

Discussion:

Village pointed out that under the expired Collective Bargaining Agreement, employees are permitted to take their 2-3 weeks of vacation in individual days which can be very disruptive to proper scheduling.

It noted that it was unfair to employees who work the whole year and receive their allotted vacation during the course of the year, when other officers take their same allocated vacation but quit before the year's end, e.g. taking 2-3 weeks of vacation during six months of employment and quitting on June 30th.

The PBA objected to any change because it would take away from present benefits its members have been enjoying and noted that Sections 1 & 6 of the Article refer to "annual vacation".

Section 3 provides time for selection of vacation May 5th and Section 9 covers split vacations which are "left to the Chief's judgment."

The inequity pointed out by the Village, especially in view of its tight fiscal position, supports the Village's demand.

Award:

Village demand on recouping is granted, but notice request is denied.

Village 10: Holidays During Vacation (Art. 7(5) pg. 9)

Village sought to delete this provision which reads: "Legal holidays during the vacation period will not count as a vacation day."

Discussion:

Village noted that this meant you are paid and get day off.

PBA maintained that employees are entitled as stated in Art. 6 Holidays, Sec.2 "All holidays shall be paid..."

Award:

Village demand be denied.

Village 13: Personal Leave (Art. 11 pg. 13)

Village sought to add the following:

Employees must give the Chief of Police or his designee at least forty-eight (48) hours' prior notice to take personal leave days. The Chief may, in his discretion, waive or diminish such period of notice in emergencies or unusual circumstances.

Should an employee terminate before accruing the personal leave utilized, the excess shall be deducted from his final paycheck(s) or, if such final paycheck(s) are insufficient, paid back to the Village.

Discussion:

As to notification, insufficient evidence was submitted to justify a change in the present practice.

The Village noted that Section 2 requires the payment of any unused personal leave by the end of the contract year. Therefore, there should be the forfeiture of any payment for excessive use prior to termination. (e.g. use of all five (5) personal days prior to terminating in the first month of the contract year.)

The PBA claimed that given employees are paid for unused personal leave, it is fair to assume that they will only use a personal leave day when absolutely necessary and so they should not have to forfeit any they do use.

As stated above the Parties' Agreement already provides an incentive for not using personal leave prematurely.

Award:

Village demands are rejected.

Village 18: Safety Clause (Art. 16, pg. 16)

Village wished to add the following:

In the event an unsafe condition is discovered, the Association shall provide written notice to the Village regarding such condition and shall provide the Village with a reasonable opportunity to correct the situation before pursuing any other corrective alternatives.

Discussion:

It is to everyone's advantage to have unsafe conditions attended to as soon as reasonably possible.

Award:

The following paragraph be added: In the event an unsafe condition is discovered in the Village's facilities

or equipment, the employee who discovers the unsafe condition shall, no later than the end of that scheduled tour of duty, provide immediate written notice to the Chief of Police or his designee, with a copy to the Association President, of the unsafe condition on a form developed by the Chief of Police.

Village 19: Labor Management Committee (Art. 20(2) pg. 17)

Village asked to delete and replace with the following:

The Association and the Village shall maintain a Labor/Management Committee comprised of the Association President and not more than two (2) members of the Association and no more than three (3) members appointed by the Village.

Article 20(4) pg. 17 delete and replace with the following:

Members of the Committee shall conduct meetings and set the time, date and place of meetings. Members of the Committee shall make a reasonable effort to make the time, date and place of the meeting by mutual agreement of the Committee members.

Article 20(4) pg. 17 Replace "The Chairman" with Members of the Committee.

Discussion:

The parties agreed that the article in the expired contract was cumbersome and needed revision.

Award:

Authorized spokespersons for the Village and the Association, not to exceed five (5) each, shall meet at the request of either party, to discuss matters of interest to the Village and/or the Association and to seek a mutually agreeable resolution of those matters.

The request shall be in writing, addressed to the Village or Association President, at their respective addresses, and shall contain the reasons for said requested meeting. The time, date and place of the labor management meeting shall be by mutual agreement.

Village 20: Grievance Procedure (Art. 21 Step II pg. 19)

Village wanted to add "within fifteen (15) days" to the end of the first sentence.

Discussion:

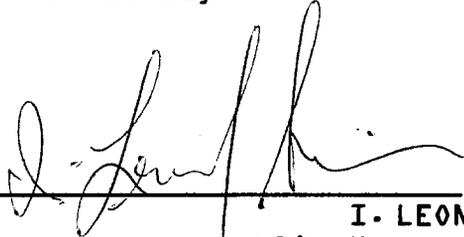
The exhibits presented showed that a reasonable time period was needed.

11/24/04
CWO
The MAYOR
~~Request~~
11/24/04
11/30/04

Award:

Effective with the issuance of this Award, add "within fifteen (15) days" to the end of the first sentence.

Dated: November 30, 2004
Hackensack, New Jersey



I. LEONARD SEILER
Public Member and Panel Chairman

I concur with ~~as~~ All of the Award except

I dissent from: ~~as~~ p 13 Welfare Fund (C); p 16 Jury Duty Leave; p 20 Mutuals;
p 22 Holiday Notice; p 23 VACATION NOTICE; p 24 Holiday During Vacation; p 24
PERSONAL LEAVE;

TERENCE M. O'NEIL
Village Appointed Arbitrator

I concur with ~~as~~ All of the Award, except

I dissent from ~~as~~ BASE WAGE, LONGEVITY, SHIFT DIFFERENTIAL, OVERTIME,
UNIFORMS AND CLEANING, TUITION PAYMENT, SICK LEAVE, OUT OF TITHE,
HOUSELENDING (A/E), WORK SCHEDULES, POSTING OF TOURS, DEFINITION AND

ANT V SOLFARO 11/24/04
ANTHONY V. SOLFARO
PBA Appointed Arbitrator

SELECTION OF POSTS, TRAINING, HOLIDAYS (A) & VACATIONS (B)

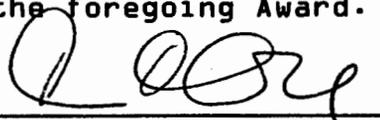
AFFIRMATIONS

Pursuant to CPLR 7507, I hereby affirm that I am the Impartial Arbitrator in the above matter and that I have executed the foregoing as and for my Opinion and Award.



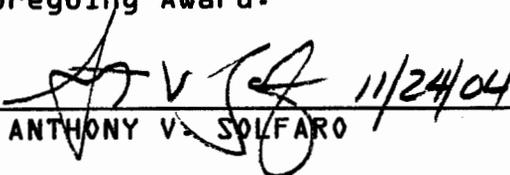
LEONARD SEILER

Pursuant to CPLR 7507, I hereby affirm that I am the Village appointed Arbitrator in the above matter and that I have executed the foregoing Award.



TERENCE M. O'NEIL

Pursuant to CPLR 7507, I hereby affirm that I am the PBA appointed Arbitrator in the above matter and that I have executed the foregoing Award.



ANTHONY V. SOLFARO