

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration between

PERB Case No.  
IA2004-015;  
M2004-109

**VILLAGE OF NORTHPORT,**  
Public Employer,

JS Case No. 3407

and

**NORTHPORT POLICE BENEVOLENT  
ASSOCIATION,**  
Employee Representative,

**OPINION  
AND INTERIM  
AWARD**

Re: Night Shift Differential Issues.

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Before **JOHN E. SANDS**, Impartial Arbitrator.

**OPINION**

On November 15, 2005, the parties agreed to submit the following  
issues to arbitration by me:

1. On what "base pay" amount must the Village compute night pay differential payable to PBA bargaining unit personnel?
2. Must the Village pay overtime on a base that includes night pay differential for day shift personnel who are "red-circled" under paragraph 3.C of the parties' May 23, 2005 Memorandum of Agreement?
3. If so, what shall be the remedy?

In accordance with my authority under the parties' agreement, I conducted a hearing in Islandia, NY on November 15, 2005. Both parties appeared by counsel and had full opportunity to adduce evidence, to cross-examine each other's witnesses, and to make argument in support of their respective positions. Neither has raised any objection to the fairness of this proceeding.

On the entire record so produced, I find the following relevant facts. Section 8 ("Night Pay Differential") of the parties' expired collective bargaining agreement provided,

- A. A night pay differential per year for a Police Officer shall be NINE and TWENTY-FIVE HUNDREDTHS (9.25%) PERCENT of the base salary of a 6<sup>th</sup> year Police Officer. The night pay differential per year for superior officers shall be NINE and TWENTY-FIVE HUNDREDTHS (9.25%) PERCENT of their base salary. Said amounts shall be payable in two (2) equal installments in each year on or about July 1 and January 1.
- B. To be entitled to the foregoing pay differential, an Employee shall work at least seventy-five (75) hours of 4:00 p.m. and 8:00 a.m. during a quarterly period of three (3) months.

[Joint Exhibit 1, p.6.]

The impact of that language was to entitle all bargaining unit personnel who worked the twelve-hour day and night shifts to receive that full benefit. A

significant bargaining objective of the Village was to eliminate that arrangement and establish a night pay differential that truly compensated night work.

The parties' negotiations reached impasse, and, on January 31, 2005, Richard A. Curreri, the New York State Public Employment Relations Board's Director of Conciliation, designated me as Impartial Chair of the Public Arbitration Panel for that impasse to make a just and reasonable determination of the matters in dispute. In accordance with the parties' request, I successfully mediated a voluntary resolution of all issues; and, on May 23, 2005, the parties executed a Memorandum of Agreement that continued in effect their expired collective bargaining agreement subject to the Memorandum's specific modifications.

Section 3 ("Night Shift Differential") of the May 23<sup>rd</sup> Memorandum reads,

- A. Night Shift Differential shall be paid for all work performed during the hours 4:00 p.m. to 8:00 a.m., including overtime.
  1. Officers working the 6:30 p.m. to 6:30 a.m. shift shall receive Night Shift Differential pay at the applicable rate for their entire shift.
  2. Officers Working the 6:30 a.m. to 6:30 p.m. shift shall receive Night Shift Differential pay at the applicable rate for four hours of that shift.

B. The applicable Night Shift Differential rate shall be:

1. 9.25% as of March 1, 2004
2. 10% as of March 1, 2005
3. 11% as of March 1, 2006
4. 12% as of March 1, 2007

C. Current day shift employees shall be red-circled at \$7,700 per year Night Shift Differential compensation for Police Officers and at \$9,159 for Sergeants until the amount payable under paragraph A.2 above reaches the red-circled amount. (The current day shift Police Officers are Bruen, Hayes, Glozek, Ramonetti, and Howard. The current day shift Sergeants are Schneider and Schramm.)

D. All new employees entering the day shift or existing employees transferred into the day shift will come in on the new schedule without entitlement to red-circling. Any red-circled employee who leaves the day shift will lose his or her entitlement to red-circling permanently.

[Joint Exhibit 2, p. 1-2.]

The parties' compromise enabled the Village to achieve its goal of establishing a true night pay differential while protecting current day shift personnel from loss. The parties' current dispute concerns that Section's application to overtime work by "red-circled" day-shift personnel and the "base salary" figure on which night shift differential payments must be made under Section 8 as amended by the May 23<sup>rd</sup> Memorandum.

As to the overtime issue, the parties' disagreement is limited to red-circled day shift personnel. Both parties agree –and, as mediator familiar with the parties' negotiations, I agree– that night shift personnel and non-red-circled day shift personnel who work overtime hours between 4:00 p.m. and 8:00 a.m. must be paid overtime based on their night pay differential rate. In other words, they should receive their regular hourly rates plus the applicable night pay percentage times one and one-half.

With respect to red-circled day shift personnel, the Village argues that any overtime they earn should first be charged against the \$7,700 or \$9,159 guarantee so that such an officer would not receive a night pay supplement to his or her overtime pay until after that officer had accrued \$7,700 or \$9,159 of night pay compensation (including the overtime supplement) in a given year. PBA, on the other hand, contends that the guaranteed amounts cover only night pay for the four straight-time night hours that fall during their regular twelve-hour day shift.

On this record I must agree with the union's position and reject the Village's. I reach that conclusion for the following reasons.

First, Section 3 of the Memorandum of Agreement's language is clear and unambiguous. It requires night pay differential "*for all work performed*" during night hours, "*including overtime.*" The Village's contention would

effectively eliminate that clause from the parties' agreement with respect to red-circled personnel until their night-shift entitlement had reached the specified amounts. Nothing in the Memorandum's language supports that result. To the contrary, it expressly requires the payment at issue for "*all work performed [during night hours], including overtime.*"

Second, Section 3.C's language, which establishes the red-circling compromise, expressly relates the \$7,700 guarantee for Police Officers –\$9,159 for Sergeants– to the four night hours that fall within the day shift's twelve-hour stint. Section 3.C requires red-circling of the named day-shift personnel "... until the amount payable under Paragraph A.2 above reaches the red-circled amount." And Paragraph A.2 only speaks to night shift differential entitlement during day shift work. I accordingly conclude that red-circled day shift personnel are entitled to night pay differential for all overtime work in addition to the amounts that Section 3.C guarantees for straight-time work.

The remaining issue requires determination of the "base pay" amount on which the Village must compute night pay differential payable to PBA bargaining unit personnel. Section 3.B of the Memorandum of Agreement increases the applicable night pay differential percentage from 9.25% to 12% over the first four years of the agreement's five-year term. Section 8.A of the parties'

underlying collective bargaining agreement applies that percentage rate to “. . . the base salary of a 6<sup>th</sup> year Police Officer.” (Joint Exhibit 1, p.6.) Section 4 (“Wages”), Paragraph A.1.b establishes the “*wage schedule* for Police Officers and Sergeants.” (Joint Exhibit 1, p. 3; emphasis added.) Since March of 1976, however, Section 15 (“Work Schedule, Tour Days, Meal Periods”) of every contract has increased 6<sup>th</sup> year Police Officers’ base salaries by either six or twelve additional days’ straight-time pay. Since that time every contract benefit that requires computation of base salary rate –daily and hourly pay rates, overtime, accrued leave payable at retirement, night pay differential, vacation pay, and the like– has been computed on the basis of annual wage rates adjusted by the additional days’ straight time pay.

On these facts, the Village argues that, for nearly thirty years, its Police Chiefs have been erroneously interpreting Section 8's night pay differential obligation and that the differential percentage should have been and should now be applied to Section 4.A.1.b’s annual wage rates without adjustment by Section 15’s required additions. PBA opposes that contention as the self-indulgent and wasteful agenda of a particular Village Trustee who is unhappy that Northport’s police personnel earn more money than he does.

On the entire record before me I must reject the Village's position as a legalistic "gotcha" that lacks basis in the parties' contract, in their consistent past practice and bargaining history, and in common sense. I reach that conclusion for the following reasons.

First, Section 4.A.1.b establishes a "wage schedule," not "base salary." The Village's contention accordingly lacks foundation in Section 4.A.1.b's clear words. Moreover, Section 15 expressly increases "base salary" to a higher value. It does not change "base salary" to some other concept. The base salary number so adjusted accordingly remains "base salary" for all contractual purposes, including computation of night pay differential.

Second, even if Section 8's language were ambiguous—and I find it is not—the parties' nearly thirty years' consistent practice of computing night pay differential on the basis of adjusted base salary would resolve that ambiguity in PBA's favor. In addition, the credible and uncontradicted testimony of former PBA President Gene Roemer, who participated in the parties' relevant negotiations, confirms that the practice at issue has been strictly in accordance with the parties' across-the-table undertakings.

Third, the Village's contention beggars common sense. For nearly thirty years the Village has used base salary figures including Section 15's

additional days' pay to compute every relevant contract benefit including night pay differential. Although the Village expressly disavows such an intent, its contention on this issue would not only require overhaul of its entire pay system for police personnel; it would require the Village to recoup past overpayments from current and former bargaining unit members. Not once during the parties' negotiations did the Village suggest such a purpose; not once did it suggest that "base salary" underlying computation of night shift differential should be anything other than what it had been for nearly thirty years, and not once did PBA indicate awareness or acceptance of such an absurd proposition.

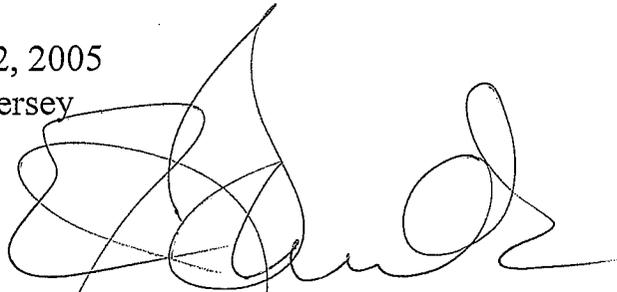
By reason of the foregoing I issue the following

**INTERIM AWARD**

1. The Village must compute night shift differential payable to bargaining unit personnel on employees' base salary that includes the additional straight time pay required by Section 15 as amended by the parties' Memorandum of Agreement.
2. The Village must pay overtime on a base that includes Night Shift Differential for day shift personnel who are "red-circled" under Paragraph 3.C of the parties' May 23, 2005 Memorandum of Agreement.
3. I retain jurisdiction of this matter for a period of three months following the date of this Interim Award to resolve any disputes concerning its implementation. Either party may invoke that retained jurisdiction in writing with a copy to the other party. If neither party so acts prior to February 22, 2006,

that retained jurisdiction shall lapse, and this Interim Award shall become final in all respects.

Dated: November 22, 2005  
West Orange, New Jersey

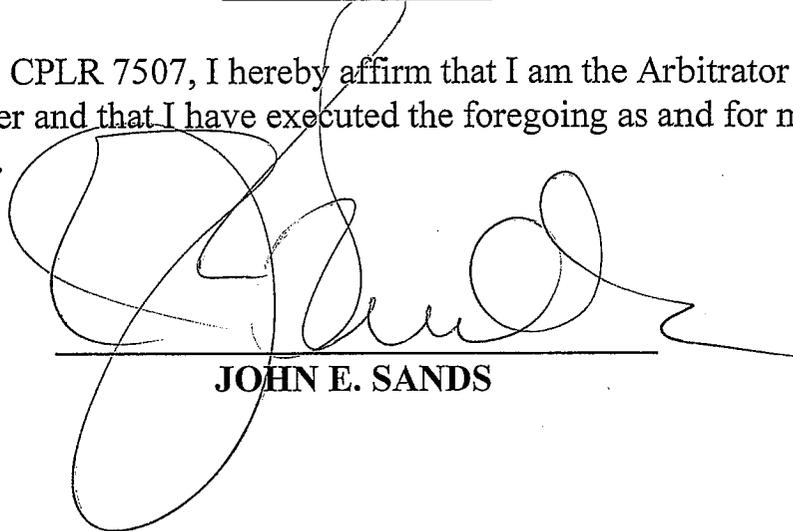


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**JOHN E. SANDS**  
**Impartial Arbitrator**

**AFFIRMATION**

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



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**JOHN E. SANDS**