

Public Employment Relations Board
Case #IA-54; M77-778

*	In the Matter of Impasse	*	
*		*	
*	Between	*	OPINION
*		*	
*	TOWN OF KENT	*	AND
*		*	
*	and	*	AWARD
*		*	
*	POLICE BENEVOLENT ASSOCIATION, INC.	*	

Under the authority vested in the New York State Public Employment Relations Board by Section 209.4 of the New York Civil Service Law, a Public Arbitration Panel was designated on July 20, 1978, for the purpose of making a just and reasonable determination of the negotiating dispute between the Town of Kent and its PBA unit. Named to the panel were Ethel Forkell as Employer member, John P. Henry as Employee Organization member, and Howard T. Ludlow as Public member and Chairman.

APPEARANCES:

For the Town of Kent:
John M. Donoghue, Esq.
Barbara Reidy
Angelo A. Senno

For the Police Benevolent Association, Inc.:
Lawrence M. Gordon, Esq.
Lawrence Burdick
Edward J. Fennell

At the initial meeting of the panel on September 7, 1978, in the Kent Town Hall, it was agreed that no formal presentation would be made in a continuing attempt by the parties and their attorneys to resolve the dispute without a hearing. Unfortunately, when this effort and subsequent contacts with the two sides did not succeed in settling the impasse, it became necessary for a formal hearing to be held in Kent on October 12, 1978. It was agreed by the three panel members that witnesses did not have to be sworn and that no stenographic record would be taken. Notes made by the chairman and the evidence and testimony submitted at the hearing constituted the

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

complete record of the case. Following the hearing, the panel members met privately in Kent on November 1, 1978, to discuss the positions of the parties and to prepare the findings that are included in this report.

ISSUES:

1. Salary increase.
2. Twenty-year retirement plan (3840) to take effect when most senior officers became eligible.
3. Compensation for college credits.
4. Overtime pay for firearm compensation.
5. Improvement in holiday arrangements.
6. Individual and family dental insurance plans.
7. Unused sick leave to accumulate without limit.
8. Length of the agreement.

Although the original petition to PERB and the response by the employer included other items that were in dispute, the above list constituted the issues that were presented by the PBA at the hearing on October 12.

POSITION OF THE PBA:

The President of the Kent PBA, Lawrence Burdick, described the physical layout of the community and the structure and organization of the police department. Using various exhibits, the witness explained how the nine-man force operated, the number of calls handled in specific periods, and the extent of roadways that had to be patrolled. Burdick's main emphasis was that police work and the type of responsibility placed upon Kent officers were similar to the nearby towns of Carmel and Putnam Valley. However, he admitted under cross examination by the Town counsel, John M. Donoghue, that Kent did not have a central shopping area as did Carmel, and he also agreed that Town police did not usually handle calls on either Route 84 or the Taconic State Parkway.

Second witness for the PBA was a municipal finance consultant for labor unions, Edward J. Fennell. After establishing his professional background, Fennell testified that he had reviewed Kent's budgets and audits for recent years as well as the State Controller reports covering Kent and nearby towns. Pointing out that townships had no limitations on tax rates by law, the witness stated that the PBA demands would fit the parameters without any increase in tax being necessary. When compared to about fifty towns he had examined over the previous two years, Fennell said that Kent looked "very good."

Under cross examination by Donoghue and Angelo A. Senno, the Town Accountant, the PBA witness analyzed the tables and conclusions contained in his written report (exhibit PBA-7). Even allowing for about \$50,000 set aside for special districts and for other types of encumbrances, Fennell claimed that more than enough money could be found in order to justify his argument that Kent had the ability to pay the costs of police increases. Contending that the municipality was not even close to its debt limit, he testified that there had been a history of large unappropriated cash balances as part of a very conservative budgeting procedure.

POSITION OF THE TOWN:

While not denying the conservative business practices adhered to by Kent, and in fact pointing out that neither elected nor appointed officials had themselves received a raise in four years, counsel for the employer relied principally upon exhibits covering such matters as a state analysis of police services within Putnam County, comparable salary figures, PERB settlement reports, and a breakdown of real estate information for Kent, Putnam Valley, and Carmel. Donoghue emphasized that Kent had only about one-fifth

the number of commercial establishments as Carmel, although it was noted that Putnam Valley had fewer business firms and about the same number of private homes as Kent.

SUMMATIONS:

In closing statements, Kent's attorney reminded the panel that the community was a small town which could not afford to close the police pay gap too quickly. He suggested that PERB criteria and statistical summaries would support the Kent position.

On the other hand, counsel for the PBA, Lawrence W. Gordon, claimed that the employees were merely after "a little bit now and a little bit later." Stressing that the police were primarily concerned about salaries and a twenty-year pension plan, he agreed that Kent was not exactly like either Carmel or Putnam Valley.

METHODOLOGY:

Members of the panel, both individually and in their executive session, gave considerable weight to comparisons of police activity with other towns, the financial policies and ability to pay of Kent, raises given to other employees within the municipality, tax problems that might face the community in the future, the effect of our award upon the welfare of the citizens, and the contents of the existing agreement between the parties. Although we did not deem it appropriate to fault the governing body for its fiscal conservatism, we observed that much of the financial "bind" claimed by Kent was based upon its unwillingness to reduce large cash balances.

At the same time, even if allowance is made for the fact that Carmel is not entirely comparable to Kent from a tax standpoint, both Putnam Valley and Carmel have many similarities to Kent from the aspects of police training and duties. To phrase it another way, the panel could not ignore financial disparities among police

departments of roughly equivalent type operating within the same geographical area. In actuality, if statewide data were used and if the panel had not disregarded salary statistics representing police forces in towns more distant from Kent than either Carmel or Putnam Valley, the recommendations made in this report would most likely be more costly to the employer.

While not overlooking other issues that were presented for our consideration at the hearing, the panel is of the unanimous opinion that the key item is the salary demand of the PBA. All three of us acknowledge that a wage gap exists, but we disagree as to the type of action to be taken. It is also our view that the pension issue appears to be paramount with the employees, although we disagree somewhat as to its resolution. Finally, before stating the terms of our award, we recognize the advantages to be gained by both sides through a longer-term contract than the one we are permitted to recommend under the statute governing our activities.

AWARD:

1. The panel is in agreement that it would not be practical to pay any retroactive salary increase for 1978, but it awards a 12% non-retroactive increase for that year. On top of this figure for 1979 we award cash increases of 3.5% starting on January 1 and being granted each three months thereafter for a total of 14%. As a specific example in rounded off numbers, the salary of an officer now at \$13,244 would rise to \$14,833 as the base for the end of 1978. He would not be paid the \$1589 difference in cash. However, on January 1, 1979, he would be given \$15,352; he would receive another 3.5% on April 1 when his salary would become \$15,889; on July 1 his salary would become \$16,445; the final 3.5% increase on October 1 would raise him to \$17,020.

In arriving at this determination, the panel noted that lesser

percentages were granted recently to other employees in Kent who are part of a different bargaining unit, but the question of parity differential with similar groups in Putnam County did not appear to have the urgency shown in the PBA presentation. We emphasize that our award is not an attempt to "catch up" all at once and point out that we are not granting actual cash for 1978. For illustration, Putnam Valley is already paying \$16,271 in 1978 and Carmel police receive \$17,649, while the latter department will be at \$18,619 by January 1, 1979, and \$19,549 or more in 1980. Even if consideration is given to the cost of fringe benefits, Kent is behind the other two communities in most areas when the contracts are analyzed.

In voting upon the foregoing salary award, the panel chairman and employee organization member were in agreement, while the representative of the employer dissented.

2. The panel recognized that the improved pension plan sought by the PBA would not actually take effect for about six years when the first officer to become eligible would signify his intent to participate in what is known as Plan 384D. However, the chairman agreed with the employer representative that such a twenty-year pension plan would be too extreme for Kent to undertake. After further analysis of cost and with the proviso that the plan would not be implemented until the first police officer gave his intention to the Town of Kent in writing, the award of the arbitration panel is that the twenty-five year pension plan known as Section 384 be made part of the agreement between the parties.

Largely because of some concern over the legality of the plan implementation, the employer member of the panel voted against this item, while the public member and the union member voted for it.

3. Although the panel chairman is aware that modern police

departments recommend college courses as part of the upgrading of police professionalism, he agrees with the employer representative that Kent should not pay for such courses at this time because of its financial picture. Thus, the award of the panel on this item is in favor of the town's position.

The PBA representative on the panel dissented from this award.

4. On the matter of firearm training, the employer argued that no overtime compensation should be paid for engaging in that activity because it was part of the job of a police officer to maintain his shooting skill. The chairman agrees with the employer member of the panel and rejects this demand of the PBA.

The employee organization member voted for the PBA proposal.

5. The public member sees some merit in the desire of the PBA to improve the holiday situation for Kent police and noted from various exhibits that both Carmel and Putnam Valley are already in front of Kent in that regard. However, he reluctantly voted with the employer member against the PBA demand in order to hold down the cost to Kent of the new agreement.

The employee organization member of the panel strongly supports the PBA holiday proposal and dissented from the majority vote on this issue.

6. Dental insurance is one of the newer fringe benefits that are gradually becoming part of negotiated agreements in public and private employment. All three members of the panel observed that only Carmel of the three area towns had a dental plan, and all of the panel members were in general agreement that the premiums for such a plan could be somewhat of a financial burden at this time. Therefore, the panel voted to reject the dental plan issue, although the employee organization member favored at least some benefit along those lines.

7. While sympathetic to the theory that sick leave should be accumulated without limit as proposed by the PBA and as presently enjoyed by officers in Carmel and Putnam Valley, the chairman is of the opinion that a gradual approach to such an arrangement would be more workable for the employer. In this way, Kent can more easily anticipate any future financial obligation, and there is always the possibility that not many days of unused sick leave may ever accumulate. Therefore, the panel awards a maximum of 200 days of unused sick leave to be accumulated starting in 1979.

On the foregoing point, the employee member voted in favor of the public member's proposal even though he would have preferred the unlimited amount requested by the PBA. The employer member voted against the award.

8. As indicated in earlier discussion, the panel feels it to be advisable that the new contract extend for a longer term than the one year provided by the most recent agreement. All three members also reject the year-and-one-half proposed by the PBA at the hearing. For the obvious reason that 1978 is almost over by the date of this report, and mindful of legal limitations placed upon us, our unanimous award on this item is that the parties sign an agreement for a two-year period covering the calendar years 1978 and 1979.

PUBLIC EMPLOYMENT RELATIONS BOARD
Case #IA-54; W77-778

ETHEL FORKELL
Employer Panel Member

STATE OF NEW YORK
COUNTY OF PUTNAM ss:

On this _____ day of November 1978 before me, a Notary Public of the State of New York, personally appeared ETHEL FORKELL, to me known and known to me to be the individual described herein and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

John P. Henry
JOHN P. HENRY
Employee Organization Member

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

On this ^{December} 19th day of November 1978 before me, a Notary Public of the State of New York, personally appeared JOHN P. HENRY, to me known and known to me to be the individual described herein and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Ralph Martin Furdy
RALPH MARTIN FURDY
Notary Public, State of New York
No. 123456789
Qualified in Westchester County
Term Expires March 30, 1979

Howard T. Ludlow
HOWARD T. LUDLOW
Chairman and Public Member

STATE OF NEW JERSEY
COUNTY OF ESSEX ss:

On this 20th day of November 1978 before me, a Notary Public of the State of New Jersey, personally appeared HOWARD T. LUDLOW, to me known and known to me to be the individual described herein and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Stanley P. Kosakowski
STANLEY P. KOSAKOWSKI
Notary Public of New Jersey
My Commission Expires July 26, 1983

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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In the Matter of the Arbitration between
THE TOWN OF KENT,

Petitioner,

- and -

TOWN OF KENT POLICE BENEVOLENT
ASSOCIATION,

Respondent.

-----X

DICKINSON, J.

Petitioners move for a Judgment to remand the contractual dispute between the parties to a new arbitration panel, to consolidate the arbitration for the 1978-79 contract with a pending dispute over the 1980 contract, and for related relief.

The Petitioners seek this relief as an alternative to, or in conjunction with, this Court's decisions of March 9, 1979 and (on reargument) August 27, 1979 which remanded this matter back to the arbitration panel to develop a record from which an intelligent review of the award could be made.

The Petitioners contend that remanding this controversy to the original arbitration panel would defeat the intention of those decisions because it would prejudice Petitioner's right in obtaining an impartial hearing. Petitioners contend that such panel would simply grant the

D E C I S I O N

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same award again. They assert that a de novo hearing with a new panel is necessary to preserve the integrity of the arbitration process.

It was not the purpose of this Court's decision to necessarily give the Petitioners another crack at obtaining a more favorable decision. This Court took great pains to point out, especially in its decision of August 27, 1979, that the basis of its decision was simply to see that a proper record was presented from which judicial review could follow. Merely because the original award was not to Petitioner's liking is insufficient reason at this time to grant the relief requested herein. The best and most expeditious relief would be obtained by complying with this Court's earlier decision and developing that record.

That aspect of the Petition seeking a consolidation of the pending contract negotiations and the prior negotiations which resulted in the award in question is also misplaced. To allow that consolidation would simply be a way of granting the Petitioners indirectly what they have not yet been able to obtain directly, i.e., vacating the original award. This Court has read the cases cited by Petitioner on the question of consolidation and finds them inopposite to the facts at bar. To grant consolidation at this time would certainly not be in the best interest of all the parties (see Matter of

Symphony Fabrics Corporation, 12 N.Y.2d 409 and cases cited therein at page 412).

Petition is dismissed.

This shall constitute the full decision, order and Judgment of this Court.


J.S.C.

Dated: Carmel, New York
January 16, 1980

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Poughkeepsie, New York 12602

HARTMAN & LERNER, ESQS.
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STATE OF NEW YORK
SUPREME COURT CHAMBERS
CARMEL, N. Y.
10512

FRED A. DICKINSON
JUSTICE

August 17, 1979

Hartman & Lerner, Esqs.
300 Old Country Road
Mineola, L.I., New York 11501

Van De Water & Van De Water, Esqs.
Mill & Garden Streets, P. O. Box 112
Poughkeepsie, New York 12602

Gentlemen:

Re: In the Matter of Arbitration between THE TOWN OF
KENT POLICE BENEVOLENT ASSOCIATION v. THE TOWN OF KENT
Putnam County Index No. 121/79

I am writing this letter at the request of Judge Dickinson in regard to a development in the above matter of which this Court has just become aware.

A motion to reargue Judge Dickinson's decision of March 9, 1979 was returnable before Judge Ruskin on May 8, 1979. On May 24th, Judge Ruskin referred this matter to Judge Dickinson and forwarded the papers to the Supreme Court Clerk in Carmel. Apparently, instead of delivering the papers to us, the Clerk inadvertently placed them back in the folder and filed them in the office of the County Clerk.

Yesterday, and only by independent investigation by this office, did we come across these papers, which otherwise, would still be filed away.

I discussed this matter with Judge Dickinson in Florida, where he is currently on vacation. This matter shall receive his immediate attention upon his return in late August and a decision will then be forthcoming. This procedure will be faster than attempting to forward the papers to him now, by the mails, forcing even further delay.

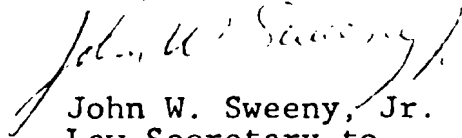
This situation is unfortunate, but not of our doing, and as I am sure you will agree, this solution will best expedite the resolution of this matter.

Hartman & Lerner, Esqs.
and
Van De Water & Van De Water, Esqs.

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We have recently received an inquiry from the President of the Lake Carmel-Kent Taxpayers Civic Association, Inc. and had advised him to consult with the attorneys in the case as to the present status. However, it wasn't until this new development was uncovered that we realized the situation.

Yours very truly,



John W. Sweeny, Jr.
Law Secretary to
Hon. Fred A. Dickinson

JWS/jcw