

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

FINAL AND BINDING
OPINION AND AWARD

December 16, 1996

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In the Matter of the Interest Arbitration :
 :
 between the :
 :
 Town of Shelter Island :
 :
 (herein, "The Town") :
 :
 -and- :
 :
 Shelter Island Police Benevolent Association :
 :
 (herein, "PBA") :
 :
 Re: Case No. IA95-005; M94-443 :
-----X

BY: Tri-partite Arbitration Panel:
 Theodore H. Lang, Ph.D., Neutral Chairperson,
 795 Addison Street, Woodmere, New York 11598
 Richard K. Zuckerman, Esq., Town Designee
 Theodore Stafford, PBA Designee

APPEARANCES:

For the Town:

Mark W. Blanchfield, Esq., of Rains and Pogrebin, Attorney for the Town
Huson Sherman, Town Supervisor
Harold E. McGee, Sean W. Widdington and Paul Mobius, Town Board
Members

For the PBA:

Reynold A. Mauro, Esq., of Schlachter and Mauro
James J. Read, PBA President
Jay Card, Jr., PBA Treasurer

A. INTRODUCTION

The New York State Public Employment Relations Board (P.E.R.B.), on or
about November 13, 1995 invoked the provisions of the Civil Service Law, Section

209.4 and designated the Undersigned as the Public Arbitration Panel for the purposes of making a just and reasonable determination of this dispute. This "Opinion and Award" was prepared by the Public Panel Member and Chairperson of the Panel, Theodore H. Lang., Ph.D.

HISTORY OF THE IMPASSE

The latest formal Agreement between the PBA and the Town covering a unit consisting of "all police officers, with the exclusion of the Chief of Police, who are employed full time", was for a two year period from January 1, 1993 through December 31, 1994. After four negotiating sessions extending from October 25, 1994 through January 18, 1995, the parties were unsuccessful in negotiating a settlement of a contract and declared impasse on January 19, 1995. Shortly thereafter, P.E.R.B. assigned a Mediator. The parties were unable to reach a settlement even with the assistance of the Mediator. On April 7, 1995, the PBA petitioned P.E.R.B. for Compulsory Interest Arbitration on a total of 26 numbered issues; but actually submitted only 18 to the Panel. The Town submitted six issues to the Panel.

Hearings were held on February 6, April 9 and May 16, 1996. The Town and the PBA had ample and full opportunity to submit exhibits, examined and cross-examined witnesses, and make oral argument. There were four joint exhibits, over 34 PBA exhibits and 38 Town exhibits. The PBA presented testimony by Edward Fennell, Expert Witness in government finance and James J. Read, PBA President. The Town presented testimony by Huson B. Sherman, Town Supervisor. Briefs were received in the Office of the Chairperson on or about August 13, 1996 and an Executive Session was held on October 3, 1996.

The Panel met in executive sessions on October 3, 1996.

B. LEGISLATIVE STANDARDS

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

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
 - a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings 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) educational qualifications; (4) mental qualifications; (5) job training skills;
 - d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

C. ITEMS SUBMITTED TO THE PANEL

Following are the subject items submitted to the Panel:

PBA Items 1 - 18

1. Wages
2. Detective's Pay
3. Sergeant's Pay
4. Longevity
5. Night Differential
6. Uniform Allowance
7. Uniform Cleaning Allowance
8. Sick Leave Accumulation
9. Personal Days
10. Unit Days
11. Family Leave
12. Vacation
13. Payment of Sick Leave upon retirement/resignation
14. Term Life Insurance
15. Dental Insurance
16. Optical Insurance
17. Binding Arbitration
18. Vacation without Restriction.

Town Items 1 - 6

1. Prorate Personnel Days to Officers for part-year services.
2. Ten day filing period for grievances
3. Grievance Definition
4. Employee Contribution to Health Insurance
5. Health Insurance Duplicate Coverage
6. Attendance at Department Meetings.

D. ITEMS DENIED IN FULL:

The following items are denied. In each case, there is no comparative data justifying the change sought by the party, and there is no persuasive argument which, in the judgment of the Panel*, justifies the proposal:

* When the term Panel is used hereafter in the Opinion, it refers to a majority of the panel.

PBA Items:

8. Sick Leave Accumulation without Limit
9. Personal days (Increase from 3 to 5)
10. Unit days (new benefit proposed)
11. Family leave with pay (new benefit proposed)
12. Increase in vacation allowance
13. Increased payment of sick leave
14. Term life insurance (new benefit sought)
15. Dental insurance (new benefit sought)
16. Optical insurance (new benefit sought)
17. Binding arbitration
18. Vacation without restriction.

Town Items:

4. Employee contribution to health insurance

E. BEST COMPARISON IS TO THE OTHER FOUR EAST END POLICE DEPARTMENTS

The Town in our Record highlighted a number of facts that distinguished it from all other towns, even the four East End ("Peconic") towns, namely, its geographical isolation, its high degree of volunteerism, its relatively peaceful police activity, its higher prudent fiscal management and its general frugality. Nevertheless, the Panel concluded that, while there are distinguishable differences among the "Peconic" towns, the Panel was required by Law to compare town police to other police and that the closest and fairest comparison would be with the other four "Peconic" town police departments, namely, Southold, Riverhead, Southampton and East Hampton.

F. ITEMS ON WHICH THERE IS NO COMPARATIVE DATA BUT PERSUASIVE ARGUMENT FOR CHANGE.

PBA Items. PBA 2 and 3. Detective's Pay and Sergeant's Pay

At present, pursuant to Article II, Section 1(A) of the expired Agreement, the Detective receives additional compensation, above basic Police Officer's pay, of \$1,350 and the Sergeant receives \$1,600. The PBA seeks supplemental compensation of 10% for the Detective and 15% for the Sergeant. The Panel has concluded that the percentage increases are not justified on the Record but that the aforesaid additional compensation shall be increased by the same percentage increases herein granted below to the Police Officers and at the same time.

Accordingly, it is Awarded that the additional compensation of Detectives and Sergeant be increased by the percentages awarded to the basic salary scale on the same dates, rounded to the nearest dollar.

PBA 6 - Uniform Cleaning Allowance

Article II, Section 2 of the expired Agreement, provides a uniform cleaning allowance of \$200. The PBA seeks an increase to \$520, or \$10 per week, arguing that the present allowance of approximately \$4 per week is inadequate for the purpose. The Town argues that there are current sales in cleaning of police uniforms and that the increase sought of \$320 per year is far excessive and unreasonable. Neither party highlights comparative data.

The Panel concludes that a reasonable increase in cleaning allowance is justified but that the increase sought by the PBA is not supported in the Record. Accordingly, the Panel Awards:

The uniform cleaning allowance shall be increased by \$50, effective January 1, 1996.

PBA 7. Uniform Allowance

Article 2, Section 2 of the expired Agreement provides a uniform allowance of \$450. The PBA seeks an increase to \$750 arguing that the \$450 is inadequate to cover the cost of a police uniform. The Town argues that the increase sought is excessive and that the Town cannot afford it.

The Panel concludes that the present allowance is too small but that the increase sought is excessive for this contract and not supported in the Record.

Accordingly, the Panel Awards:

The uniform allowance shall be increased by \$50 effective January 1, 1995 and by \$50 effective January 1, 1996.

Town 1, 2 and 3.

The following three proposals were agreed to by the parties and are embodied in this Opinion to carry out the agreed intent of the parties:

1. **Article III, Section 4.** Prorate personal leave time for all employees commencing or terminating service mid-year.
2. **Article VI, Section 5.** All grievances must be filed within 10 working days of when the employee knew or should have known of the facts underlying the grievance.
3. **Article VI, Section 5.** Define a grievance as an alleged violation of a specific provision of the Agreement.

Accordingly, it is awarded that the Agreement be amended to include these three changes.

Town 5. Health Insurance - Duplicate Coverage.

The Town proposes that "Employees shall not be eligible for family health insurance coverage if eligible for coverage under another person's health insurance

plan." The P.B.A. argues that an employee should have a financial incentive to give up health insurance and must be protected from harm. The Panel concludes that there is a "win-win" solution to this issue.

The Panel awards that the Agreement be amended to grant an employee the option of electing to reduce his medical insurance from family coverage to individual coverage and receive 50% of the resulting savings to the Town.

Town 6. Attendance at Department Meetings.

The Town Proposes:

The Chief of Police shall have the right to require attendance of all unit members at Department-wide meetings on a quarterly basis payable at straight time rates for those members who are not otherwise then scheduled for duty.

The Town does not wish to have to pay for four hours recall time. Although there is no comparative data in the Record, the P.B.A. was open to this proposal.

The Panel finds this proposal generally consistent with the culture of the community.

Accordingly, the Panel awards that an employee may be called back to attend a departmental meeting and that, in such case, the attendance shall be considered overtime police duty but the recall provision (Article II, Section 8) shall not apply.

G. ITEMS ON WHICH THERE IS COMPARATIVE DATA AND PERSUASIVE AGREEMENT.

- | | | |
|--------------|----|--------------------|
| P.B.A. Items | 1. | Wages |
| | 2. | Longevity |
| | 3. | Night Differential |

In regard to these three money items, Article II of the expired Agreement provides, in part:

Section 1(A) - The annual rate of salary for the period of this Agreement shall be as follows:

	1/1/93	1/1/94
1.	25,810	26,584
2.	31,341	32,281
3.	36,867	37,973
4.	42,400	43,672
5.	47,835	49,270

Effective January 1st of each year, each employee shall increase one longevity step, that is one step forward on the salary scale until each employee reaches the maximum rate of pay.

(B) Longevity - Longevity payments shall be made as follows effective July 1, 1994: One percent during the ninth, tenth and eleventh year; two percent in the twelfth, thirteenth and fourteenth year of service; three percent in the fifteenth year and each year thereafter, non-cumulative.

Section 4 - Employees shall be compensated for night differential as follows: \$1,550. Payment of night differential shall be made in two equal installments on July 1st and December 31st of each year.

The P.B.A. proposes that (1) the annual salary schedule be increased by 7%, effective January 1, 1995 and by 7% effective January 1, 1996; (2) the longevity be increased by the following:

1. At the completion of seven (7) years of service +5% of base pay.
2. At the completion of ten (10) years of service + 6% of base pay.
3. At the completion of fifteen (15) years of service + 7% of base pay.
4. At the completion of 20 years of service + 10% of base pay, and 1% addition each year thereafter.

and that the night differential be increased to \$3,000 for 1995 and to \$3,800 for 1996.

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

1. Officers annual pay has been lower than the other four "Peconic" towns without justification. As of the present, our Officers are below current rates in the towns as follows:

Comparison between Existing (1994) Top Scale Rate
of Shelter Island Police to the 1994, 1995 and 1996 Rates of the Police
in Other "Peconic" Towns

TOWN	1994		1995		1996	
	RATE	S.I. PERCENT LOWER	RATE	S.I. PERCENT LOWER	RATE	S.I. PERCENT LOWER
EAST HAMPTON	53,773	9.1	56,193	14.0	58,721	19
SOUTHOLD	53,346	8.2	55,501	12.5	58,309	18

2. 1994 "total" salaries, including longevity and night differentials of the five "Peconic" towns are the following:

<u>TOWN</u>	<u>TOTAL SALARY</u>
Southampton	\$62,250
Southold	\$59,953
Riverhead	\$58,529
East Hampton	\$56,958
Shelter Island	\$52,298

3. The Village of East Hampton, Southampton, West Hampton Beach, Quoque and Sag Harbor are also significantly higher in total salaries to their officers than is Shelter Island.
4. 1994 longevity comparisons of the five "Peconic" towns show that Shelter Island is far behind the others:

	<u>5 Years</u>	<u>10 Years</u>	<u>15 Years</u>	<u>20 Years</u>
Southold	\$ 0	\$ 2,667	\$ 3,201	\$ 3,734
Riverhead	\$ 0	\$ 2,087	\$ 3,130	\$ 3,652
Southampton	\$ 2,250	\$ 2,750	\$ 3,250	\$ 3,250
East Hampton	\$ 1,250	\$ 2,000	\$ 2,500	\$ 2,500
Shelter Island	\$ 0	\$ 493	\$ 1,478	\$ 1,478

5. 1994 night differential (three shifts) comparisons for the five "Peconic" towns show that Shelter Island is far behind the others:

<u>Department</u>	<u>Three Shifts</u> <u>12 - 8</u>
Southampton	\$3,450
East Hampton	\$3,000
Southold	\$2,873
Riverhead	\$2,700
Shelter Island	\$1,550

6. The Town has the financial ability to pay the increases in wages, longevity increases and night differential requested.

The Town responds:

1. A fair wage increase that the Town can afford is a C.P.I. increase (approximately under 3%) in each of 1995 and 1996;
2. Increases in longevity and night differential are not justified.
3. The Town cannot afford the increases in wages, longevity and night differential sought by the P.B.A. The cost of such extremely high increases would be scandalous.
4. The Town's culture and style are distinguishable from those of the other "Peconic" towns in that the Town is prudently and frugally managed, has virtually no debt and also relies on a great deal of volunteerism in community affairs.
5. Therefore, the only comparison the Panel should consider is to other wage increases for other Town unionized employees, which were 4% in 1995 and 1996. Then, the 4% is larger than the Town considers justifiable for this unit and increases approximating the C.P.I. are the reasonable decision of the Panel pursuant to its legal mandate.

The Panel has reached the following conclusions in regard to wages, longevity increases and night differentials based on the Record before it:

1. The Town is financially sound. It is clearly established in our Record that the Town has the ability to pay for just and reasonable improvement in wages, night differentials and longevity increases.
2. In making such a just and reasonable determination on these three issues, Section 209.4 of the Civil Service Law, subsection (v)a requires the Panel to take into consideration the following, among other items:
 - 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;

In this connection, the Panel considers most pertinent the wages of police units in the other four "Peconic" towns, namely, East Hampton Town, Riverhead Town, Southampton Town and Southold Town.

3. The Town is the second lowest in this group in overall taxes, has a negligible debt and had, on December 31, 1994 a final balance of \$451,000. The cost of a 1% increase for the police unit is approximately \$5,500.
4. The Town population has a high regard for its police. In a report by the Institute for Regional Research of Southampton College entitled, "Highlights of the 1994 Five Town Study, Shelter Island Data" (PBA x13), on page 3, "Shelter Island police were rated at 7.9 (of 10), which was significantly higher than the 7.3 average achieved in the remaining four towns of the East End." This is consistent with the policy requirements of the Town that these officers live in the Town, carry beepers at all times and have their weapons handily available at all times.
5. In wages, longevity increase and in night differential, the comparative data indicates clearly and obviously that police in the Town have substantially lower benefits.

6. Under the Law, particularly Civil Service Law, the Panel must also consider:
 - b. the interests and welfare of the public and 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.

These considerations include most of the Town's arguments stated above concerning the culture of the Town, including frugality and volunteerism, a comparatively lower volume of police actions per officer, internal comparison on wages within the Town and the fact that historically wages and money fringes have been lower in the Town than in the other four "Peconic" Towns.

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

1. Amend Article II (Compensation), Section 1(A) by increasing the annual rate of salary, to the nearest dollar, by the percentages and on the dates indicated below:

1/1/95	2.25%
7/1/95	2.25%
1/1/96	2.25%
7/1/96	2.25%

2. Amend Article II, Section B (Longevity) to read as follows, effective December 31, 1996:

Two percent during the ninth, tenth and eleventh year; three percent in the twelfth, thirteenth and fourteenth year of service; four percent in the fifteenth year and each year thereafter, non-cumulative.

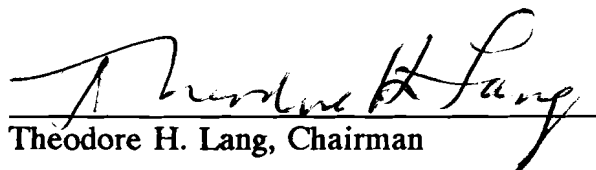
3. Amend Article II, Section 4 by increasing the night differential by \$100 on January 1, 1995 and by \$100 on January 1, 1996.

H. The Panel further Awards that the attached typed version of the January 1, 1995 through December 31, 1996 Agreement, which updates the January 1, 1993 through December 31, 1994 Agreement between the parties to incorporate the changes awarded above, shall be executed by the parties to facilitate the faithful implementation of this FINAL BINDING INTEREST AWARD.

I. CONCLUDING REMARKS

All terms and conditions of the expired Agreement, which are not affected by this Opinion and Award, shall be continued into January 1, 1995 - December 31, 1996 Agreement unchanged. It is most unfortunate that the history of this Case has resulted in an Award which is retroactive for most of its term. The fixing of salaries and terms and conditions for the police collective bargaining unit in the Town of Shelter Island for the indicated period is long overdue. The period of contract and the salaries and terms and conditions of employment are hereby fixed in this Opinion and Award pursuant to Article 14, §209.4 of the Civil Service Law. Police protection is a most essential government function, and speedy implementation of this Award is in the best interests of the parties and the people of the Town of Shelter Island.

Respectfully submitted,

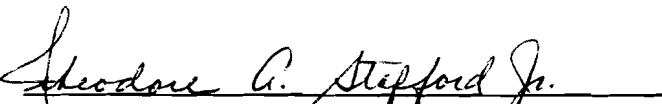

Theodore H. Lang, Chairman

Dated: December 16, 1996


STATE OF NEW YORK)
)
COUNT OF NEW YORK) SS:

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


Theodore H. Lang, Chairman


Theodore Stafford, PBA Designated Member

Concur Dissent


Richard K. Zuckerman, Esq.,
Town Designated Member

Concur Dissent