

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Arbitration :
 :
 between :
 :
 INCORPORATED VILLAGE OF FREEPORT :
 Employer, :
 :
 and :
 :
 FREEPORT POLICE BENEVOLENT ASSOC. :
 Employee Organization :
 :
 CASE NO. CA-0088; M75-713 :
 :
 :
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FINDINGS AND AWARD

Public Arbitration Panel
Pursuant to Section 209.4
Public Employment Relations Act

BENJAMIN RUBENSTEIN,
Chairman & Public Member
Two Penn Plaza
New York, N.Y. 10001

THOMAS LOVELIDGE,
Employer Member

ARTHUR BURDETTE,
Employee Member

Hearings were duly held on July 30, 1976; August 24, 1976 and September 23, 1976, which hearings were attended by all members of the panel, and representatives of the parties who were given full opportunity to be heard and present evidence, arguments, and exhibits, and having given due consideration thereof the panel makes the following Findings and Award.

APPEARANCES:

For the Employer:
Robert Sweeney, Esq.
5 Broadway, Freeport, N.Y. 11520

For the Employee Organization:
Richard Hartman, Esq. &
Ray Mauro of Counsel
300 Old Country Road, Mineola, N.Y. 11501

Richard Muldowney, Vice President of
Police Benevolent Association.

PROCEEDINGS:

This is an arbitration proceeding pursuant to Section 209.4 of the Civil Service Law of the State of New York upon a petition by the Freeport Police Benevolent Association, after a Fact-Finding Report and Recommendations, dated May 24, 1976, was duly made and filed herein.

The original negotiations for a renewal of the existing contract involved a total of ninety six (96) issues. In the process of negotiations and mediation, all issues were settled except: 1) wages; 2) longevity; and 3) night differential.

The Fact Finder's Report and Recommendation recommends a 7½% increase of wages retroactive to March 1, 1975, with the remark that "6½% seems too low, particularly in light of Garden City and Hempstead contracts. 7½% seems fair".

POSITIONS OF THE PARTIES.

The PBA opposed the recommendations of the Fact Finder as to wages, insisting that they be raised to 9½% or at least to the same amount that is finally determined in the dispute between the Nassau County Administration and the Nassau County P.B.A.

It insisted that the longevity and night differential demands be determined and granted.

The Village, by its counsel, is in support of the Fact-Finders recommendations, to wit: that the salaries of the employees be increased by 7½% retroactive to March 1, 1975, and that there be no change in the existing positions of longevity and night differential.

The PBA submitted 36 exhibits consisting of several contracts between the Village of Freeport and Freeport PBA:(1-6) * several contracts between the County of Nassau and Nassau P.B.A. (7-10); a copy of the Nassau County and PBA 1975 Fact Finding Report and Recommendations for (11); the Nassau County & PBA 1975 arbitration award (12); the affirmance of the award by the Appellate Division (13); Freeport & PBA 1974-1975,

*The numbers in parentheses refer to the exhibit numbers of the P.B.A.

Fact-Finding Report and Recommendations (15); Kings Point P.B.A. contract for 1975-77 (33); Hempstead P.B.A. contract for 1975-1976 (34).

It also submitted a number of charts, articles, reports and newspaper clippings some of them dealing with the issues in arbitration, and others, irrelevant and inapplicable.

In addition, it offered in evidence the agreements between the Village of Sands Point and the Sands Point P.B.A., dated August 13, 1976; the agreement between the Village of Kings Point and Kings Point P.B.A., dated July 7, 1976; and the agreement between the Village of Kensington and the Kensington PBA.

AB The village also submitted 36 exhibits, designated A to ~~AK~~*. They included "A Study of Taxes in Area" (A); "Fact-Finders Report" of Garden City (C); "arbitration award - Garden City (D); Post Hearing Memorandum, Nassau County PBA (H); and numerous articles, reports and newspaper clippings dealing with the economic situation in the area, comparisons of police activities in the villages, and fringe benefits.

ISSUE #1 - WAGES

The PBA argued, that there is a historical parity between the Village of Freeport and Nassau County. It claimed that the police of the village equal the police of the county in almost all respects: training, abilities, devotion, etc. etc. Since the development of labor relations between the police departments and the municipalities in Nassau County, the contracts were almost identical in benefits and conditions. A break in parity, especially, on wages and other economic

*The letters in parenthesis designate the respective exhibits of the village.

conditions would adversely effect all police departments in the county and especially those that were on parity with the county. It would artificially create classes and distinctions in the economic conditions of the police, and would lower the morale and devotion of the police departments. It is because of the long history of parity that the PBA demanded increases equal to those of the county PBA.

Most of its exhibits, especially those dealing with wages and other economic conditions in the county and village, support this contention. Thus, the very first agreement between the Village of Freeport and Freeport PBA, dated, December 12, 1967, provides in part:

AB 77

"FIRST: The village agrees to adopt all pay raises granted to the Nassau County Police Department for the members of the Village of Freeport Police Department immediately upon being approved by the Nassau County Board of Supervisors" (PBA-1)..

The agreement was executed by the Mayor of the Village of Freeport , on behalf of the Village, and Joseph F. Backety, a President of PBA, on behalf of Freeport PBA.

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The second agreement between the parties, dated December 16, 1969, provides:

"TWELFTH: PAY RAISES - the Village agrees to adopt all pay raises granted to the Nassau County Police Department...for the members of the Village of Freeport Police Department immediately upon being approved by the Nassau County Board of Supervisors. It is further agreed that said pay raises shall be effective the first succeeding budget year following the approval by the Nassau County Board of Supervisors of any such pay raises to the Nassau County Police

Department, i.e. March 1, 1970".

And further:

"It is is the intent herein to have the Freeport Police Department on parity of pay with the Nassau County Police Department..." (PBA-2).

This agreement was executed by the Mayor of the Village of Freeport and Richard Muldowney, as President of PBA.

The next agreement between the parties, dated February 22, 1971, similarly provides that: "The Village agrees to adopt all pay raises granted to the Nassau County Police Department, for the members of the Village of Freeport Police Department..." (PBA-3). This agreement, too, was executed by the Mayor of Freeport and the President of PBA.

A comparison of the salaries of Nassau County and Freeport Village for 1974, shows that they are exactly alike, for each title, starting with police officers of less than one year service at \$11,447, up to and including detective lieutenant at \$21,600.00. (PBA -2 and 10).

The Village argued that parity is a myth, it should not be followed; the duties of village police are different than those of the county; the economic situation in the villages is growing worse, and an increase over 7.5% would necessitate increases in village taxes and may bring about a tax-payers revolt, as happened in some other villages.

B. R. M.
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In support of its position the village submitted 36 exhibits (A to KK). Of all the exhibits: C, (Fact-Finders Report, Garden City); D, (Arbitration Award, Garden City); H, (Post Hearing Memorandum, Nassau County PBA Arbitration); I, (Raise Unlikely for County Staff-a newspaper clipping of Newsday, dated August 3, 1976); JJ, (Superior Officers Nassau County Contract); and KK, (Freeport Benefits), have any relation to, or comparison of P.B.A. parity wages between the county and the Village of Freeport. The rest of the exhibits deal either with economic conditions generally, unemployment, fringe benefits, newspaper stories or contracts not within the area of the Village of Freeport/^{and}Nassau County, or the PBA, i.e. New York City contract, Teachers contracts, etc.

We shall, therefore, discuss here only those exhibits that have a direct or remote relationship to the parity issue and a comparison between the Village of Freeport and Nassau County.

The village has strongly emphasized the Garden City Fact-Finding and Arbitration Award, in support of its opposition to the parity claim of the P.B.A. We, therefore, closely studied the Fact-Finder's Report and Recommendations as well as the Award of the Public Arbitration Panel.

The Garden-City Fact-Finder's Report and Recommendations.

An analysis of the Report and Recommendations discloses the following findings:

1. An unusual protracted duration of the proceedings (seven months) was influenced in no small measure

by the extended contract deliberations between Nassau County and its PBA. (Page 1.)

2. While holding that parity "can not become the absolute standard", the Fact-Finder found, that:

"...the PBA in its Exhibit 51 does demonstrate many similarities in the comparable benefits enjoyed by county and village policemen since 1968-69. The use of the county contract is understandable and can not be summarily dismissed".

3. There is "an absence of explicit language contract on parity",* the PBA demands "can not be projected in terms of 'absolute parity' with the county, but rather toward 'comparability' with other jurisdictions in the area".

The Fact-Finder recommended an absolute increase of 6½% which in addition to interdated issues "reflects an increase of 9.35%".**

The arbitration Award. (Village ex. D1)

The computations of the Public Arbitration Panel (village ex. D-1) differ from those of the Fact-Finder in that the recommended increase amounts to 8.9% instead of 9.35%.

It then finds that, "the Nassau County PBA contracts have, historically, greatly influenced settlements in the village's departments". (emphasis added).

* The Freeport contract; cited above, explicitly provides for parity.

** The Nassau County Fact-Finders recommendation, which went to arbitration was 8½%,

BA
AB

Comparing PBA salaries in Nassau County and surrounding villages, the panel awarded a 7.5% increase on the PBA salaries in Garden City, holding that such increase would bring the salaries of patrolmen after four years to \$16,802, and comparing it with the Nassau County award of 9.5% which would bring up the Nassau County maximum to \$16,874, the amount demanded by the P.B.A. in the instant proceeding. The difference is almost de-minimus to warrant^{with} extended discussion.

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The Nassau County Post Hearing Memorandum and Argument (Village ex. H).

The document consisting of over 80 pages was prepared in the dispute between Nassau County and its PBA. Although very thorough, interesting and learned, it contains nothing on comparability between the parties in the instant proceedings. It compares the conditions of the county PBA with those of New York and other police departments over the country. After reading and studying the contents of the memorandum the Public Arbitration Panel awarded an increase of 9.5%, which award was sustained by the appellate division, and is now before the Court of Appeals.

Nor do the other exhibits cited above, and others submitted by the village indicate wherein the PBA of Freeport differs from that of the county, and why their wages, after so many years of parity should be differentiated. Nor do they show that any other village in the county has veered from the parity history of the county, except, possibly, in some minor details.

On the contrary, the latest contracts signed by villages and submitted in evidence, show that the parity situation is still continuing: Kings Point, Sands Point, Hempstead and even Garden City, which is relied upon by the village for support. Thus, the village of Kings Point provides for similar wages sought by the Freeport Village in the instant proceeding, which, in turn, are the same as agreed to by the county for the same period.

So does the Village of Sands Point provide for similar wages, with the statement:

"Wages for the year commencing July 1, 1975 are predicated on a Nassau County salary increase of 9½% for the calendar year 1975. If the county increase is less than 9½%, Sands Point wages will be reduced accordingly".

The Hempstead contract provides for an 8½% increase over the 1974/1975 levels. "The percentage increase shall be revised to the levels of the Nassau County Police Department contract for 1975 in terms of percentage increase".

The Kensington contract does not easily lend itself to comparison for the reason that the salaries are based on named individuals rather than years of service and it would take some time to figure out the exact percentages.

Discussion

Although only three issues out of 60 remained unresolved and submitted to arbitration, they are of the utmost importance in completion of the agreement, and for continuing peace and proper labor relations between the village and its

police force. The police department is one of three most important departments, if not the most important, in the life of a community, especially, in our present times of violence and law enforcement status. The safety of a community and its residents depends on the strength, ability and devotion of its police force.

The Public Arbitration Panel has carefully listened to the arguments and read and studied the thousands of exhibit pages.

Although not specifically stated in the law, public boards of Arbitration, under the provisions of Section 209.4 of the Civil Service Law, are called upon to review the Findings and Recommendations of the Fact-Finder, preceding the appointment of the Public Arbitration Board, if either or both of the parties disagree with the Fact-Finders recommendation. Because of the importance of avoiding strikes of policemen, the compulsory arbitration provisions were added to Section 209.4. They eliminate the rights of the legislative bodies to reject the unwelcome reports of a Fact-Finder, thereby leaving the parties hanging in mid-air and facing strike action.

The duties of the arbitration panel are clearly set forth in subdivision V of Section 209.4:

"(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

"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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment".

The recommendation of the Fact-Finder herein, while finding that "the pattern of parity with Nassau County goes back many years", also found that "parity is not a God-given right, if circumstances outweigh it". Both findings are correct: the first, based on facts shown at the hearings and in the exhibits; and the second - based on philosophy.

The mere assertions that parity is "not a God-given right, if circumstances outweigh it", assumes, that if "circumstances" do not outweigh such right, it must be seriously taken into consideration, and disregarded only, if circumstances do outweigh it. Apparently, the Fact-Finder in the instant proceeding chose to disregard the long history of parity, because "the circumstances outweigh it". Unfortunately however, the Report and Recommendations of the Fact-Finder does not show where and in what respect the circumstances outweigh the history of parity.

It, thus, becomes incumbent on this arbitration panel to review the evidence and exhibits to determine which of the above maxims are applicable to the instant proceeding and, if so, to what extent.

One of the guidelines set down for public arbitration panels is to take into consideration 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...".

The Fact-Finder in the 1974 dispute between the parties herein found, that:

"The current collective agreements, the history of previous village negotiations, and the arguments of the parties indicate, that at minimum, Nassau County has historically set the pattern for village police officer's wages and hours. With the Nassau County police force, the second largest in New York State this is to be expected...wage and hour parity reflects this and is not an exception".
(P.B.A. ex. 15)

The Fact-Finder's Report in the instant dispute cites the testimony of the County Executive, that: "we don't have the ability to pay; we are at our taxing limits, and therefore, that's it". It also cites the testimony of the county expert: "If we keep going the way we have been, in four short years we'll be on the rocks".

It then found that Freeport PBA adduced no evidence that Freeport is in any better position fiscally.

The report fails to state whether the Fact-Finder fully credits the quoted testimony, which was given at a public hearing in a dispute between Nassau County and its PBA, and if so, what is the basis for fully crediting it. The testimony, quoted in the memorandum, filled over 3000 pages and the PBA, undoubtedly, had presented some evidence on the question of ability of the county to pay the demanded increases. None of it is mentioned in the Fact-Finders Report and Recommendations.

The public arbitration panel which heard the testimony of the county and PBA witnesses in the hearings referred to by the Fact-Finder in the instant dispute, awarded 9½% increase in the wages of the county police officers, which award was sustained by the Appellate Division, upon review of the evidence before the panel.

Is it incumbent upon the PBA of Freeport to show that Freeport is in a better position fiscally, than the county in order to get parity of wages with the PBA of the county? Isn't it, rather, incumbent upon the village to present evidence, that its fiscal situation is so much worse than that of the county as to justify a destruction of the parity which admittedly existed for many years?

This the village failed to do.

The Fact-Finding Report and Recommendations of 1974 states: "The village's burden of showing to pay as the basis for denying historical parity has not been sustained".

The numerous exhibits of the village submitted at this year's Fact Finding hearing do not contain any facts as to the financial position of the village. Nor do the 36 exhibits submitted by the village at the hearings before this board. The chairman of this board requested the parties and especially the village to present financial evidence orally or in writing, but none was forthcoming.

The only conclusion that can be drawn from this fact is that the financial situation of the village was not and can not be advanced as a reason for breaking the existing historical parity. This was admitted on several occasions during the hearings, when the representative of the village stated that the financial condition of the village is not relied on as an argument.

Evidence of parity, not only between Freeport and the county, but also between various other villages in the county is overwhelming.

The agreement of the village of Hempstead and PBA executed on March 9, 1976, provides in part: (34)

"The salaries for the 1975/1976 year shall be increased by eight and one-half (8½%) percent over the 1974/1975 levels... The percentage increase shall be revised to the level of the Nassau County Police Department Contract for 1975 in terms of percentage increase".

The agreement between the Village of Sands Point and Sands Point PBA, reads:

"Wages for the year commencing June 1, 1975 are predicated on a Nassau County salary increase of

9½% for the calendar year 1975. If the county increase is less than 9½% Sands Point wages will be reduced accordingly".

The Kings Point agreement dated July 7, 1976 provides for salaries almost equal to the salaries of the county for 1974, after inclusion of a 9½% increase.

It is incumbent upon this arbitration panel to compare, in addition to the claim of "historic parity" the conditions of employment of the Freeport PBA with those of the County PBA, as well as other comparable villages in the county as to wages, hours, and other conditions of employment.

Both parties agreed that the skills, abilities, duties and education of Freeport police officers, compare favorably and are equal to those of the County PBA and similar villages in the area. With some variations as to the median income of Freeport residents, from those of some other villages in the area, the economic requirements of the police officers of Freeport are similar to those of other village police officers as well as those of the county. B.R.
AB

Why then should the police officers of Freeport receive almost 20% less of an increase than officers of the county or comparable villages?

Had the village claimed and demonstrated an inability to pay, it could have been some ground for denying equal treatment and historical parity. But no such claim was forthcoming. On the contrary, the village asserted on several occasions that it does not claim financial inability. Under these circumstances the panel does not see why the parity comparison

should be disregarded and why the police officers of Freeport should receive less than their brothers in the area.

We, therefore, find that the claim of Freeport PBA of historical-parity with the County of Nassau on wages has been overwhelmingly sustained, and we will award to the Freeport PBA, the same salaries as are finally determined for the county PBA, for the similar contract year.

In view of the fact, however, that the Court of Appeals has not yet, at the time of writing of this award, determined the appeal, and there may be some possibility of reversal of the county award, we deem it advisable to adopt the provisions of some of the agreements recently executed between villages and their PBA in Nassau County, to wit: award an immediate increase of 8½% retroactive to March 1, 1975, provided that if the Court of Appeals sustains the county award of 9½%, the salaries of the Freeport Village PBA, be adjusted accordingly and be paid the difference retroactively; and further provided, that if as a result of the decision of the Court of Appeals the salaries of Nassau County PBA are reduced to an amount below the 8½% provided for herein, the village shall redeem the overpayments from the future salaries of the Freeport Village PBA.

AWARD

The wages of the members of Freeport PBA shall be increased, retroactive to March 1, 1975, by the percentage increase received by the Nassau County PBA members, as a result of the presently pending dispute between the County of Nassau and its PBA. In the interim and pending final determination of the issue in Nassau County, the members of Freeport PBA shall receive an immediate increase of 8½% on their current wages retroactive to March 1, 1975. Should the final increase of Nassau PBA, exceed the amount of 8½%, the salaries of Freeport PBA, shall be increased in the same percentage, and be paid the difference retroactively to the date hereinabove provided for. Should the final increase of Nassau County be less than 8½% the salaries of the PBA of Freeport, shall be reduced accordingly and the overpayment of the difference shall be deducted by the Village of Freeport from the future salaries of the PBA members of Freeport.

This award covers the one year period from March 1, 1975, to February 28, 1976 .

ISSUE 2 - LONGEVITY.

The expired contract provides for longevity payments of three hundred fifty (\$350.00) dollars after six years of completed service, four hundred (\$400.00) dollars more after fifteen (15) years of completed service, for a total of one thousand two hundred (\$1,200.00) dollars after 15 years of service. The same longevity provisions were included in the 1973 agreement.

The PBA seeks an increase of fifty (\$50.00) dollars per year after fifteen years, making it twelve hundred fifty (\$1250.00) dollars instead of twelve hundred (\$1200.00) dollars. Their original demand was for an increase of fifty (\$50.00) for each year after 15 years until 35 years.

A review of the longevity provisions of the various contracts submitted in evidence shows: (1) the Nassau County Contract Village Ex. E) provides for fifty (\$50.00) dollars increases each year after fifteen up to the 35th year; (2) the Sands Point agreement provides for fifty dollars additional between fifteen and twenty years of service, up to a total of thirteen hundred fifty (\$1350.00) dollars; (3) the Hempstead agreement provides for additional twenty five (\$25.00) dollars yearly after 15 years, to fifty (\$50.00) dollars effective June 1, 1976; and the Kings Point agreement provides for fifty (\$50.00) per year after fifteen years of service up to 35 years.

The remaining provisions of the longevity clauses, differ somewhat as to the amounts of longevity payments between the sixth and fifteenth year.

In view of the fact that a comparison in the present longevity payments also shows that the Village of Freeport is somewhat higher in such payment than the comparable contracts, we shall grant an increase of only fifty dollars in the present total amount after fifteen years, bringing the maximum up to \$1250.00 per year after fifteen years.

AWARD

The longevity provisions of the expired agreement shall be included in the new agreement, with the added provision that after fifteen years of service the total longevity increment shall be increased to twelve hundred fifty (\$1250.00) instead of twelve hundred (\$1200.00) dollars.

ISSUE 3 - NIGHT DIFFERENTIALS

The expired agreement provides for a seven hundred seventy (\$770.00) dollars night differential for each police officer up to and including the grade of lieutenant. As in the case of longevity there is no uniformity of night differential provisions in the comparable contracts.

The PBA is asking for an increase in night differentials to one thousand (\$1000.00) dollars for police officers, twelve hundred (\$1200.00) dollars for sergeants and fourteen hundred (\$1400.00) dollars for lieutenants.

In view of the fact that night differential provisions are part of wages, we shall grant the PBA officers covered by this agreement an increase equal to the percentage, granted on wages increases.

AWARD

The night differentials shall be increased immediately by 8½%, retroactive to March 1, 1975 on the same terms and conditions as is awarded in Issue #1 hereinabove.

Dated, Freeport, New York
October 21, 1976

Public Arbitration Panel



BENJAMIN RUBENSTEIN
Public Member and Chairman

THOMAS LOVELIDGE
Employer Member

*I signed & agree
I consent from the majority opinion
that it is necessary to the interests of the discipline*

ARTHUR BURDETTE
Employe Member



STATE OF NEW YORK)
COUNTY OF *New York*)

On this *21st* day of October 1976, before me, personally, appeared BENJAMIN RUBENSTEIN to me known and known to me to be the person who executed the above awards and he acknowledged to me that he executed the same.

NOTARY

Genevieve Robertson
GENEVIEVE ROBERTSON
Notary Public, State of New York
No. 413305-00
Qualified in Queens County
Commission Expires March 30, 1977

11, 11/76

*I distinct from the above person,
that it is contrary to the weight of the
evidence showing knowledge*

STATE OF NEW YORK)
COUNTY OF)

On this *21st* day of October 1976, before me, personally, appeared THOMAS LOVELIDGE to me known and known to me to be the person who executed the above awards and he acknowledged to me that he executed the same.

NOTARY

STATE OF NEW YORK)
COUNTY OF *New York*)

On this *21st* day of October 1976, before me, personally, appeared ARTHUR BURDETTE to me known and known to me to be the person who executed the above awards and he acknowledged to me that he executed the same.

NOTARY

Genevieve Robertson
GENEVIEVE ROBERTSON
Notary Public, State of New York
No. 413305-00
Qualified in Queens County
Commission Expires March 30, 1977