

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF NEW YORK
Case No. CA-0119; M76-629

In the Matter of the Compulsory Interest Arbitration X
between X
The Town of Stony Point X
and X
Policemen's Benevolent Association of the X
Town of Stony Point X

OPINION AND AWARD
OF
THE PUBLIC ARBITRATION
PANEL

Before the Public Arbitration Panel:

Josef P. Sirefman, Chairman
Edward J. Kiernan, Employee Organization Panel Member
James R. Taylor, Public Employer Panel Member

Appearances:

For the Union: Raymond G. Kruse, Esq.

For the Employer: Robert G. Natelson, Esq.

Pursuant to Section 209.4 of the New York State Civil Service Law, Robert D. Helsby, Chairman of the Public Employment Relations Board, on February 16, 1977 designated a Public Arbitration Panel to make a determination concerning the unresolved issues resulting from collective bargaining negotiations between the parties (hereinafter referred to as the "Town" and the "PBA" respectively). Hearings were conducted by the Panel in Stony Point on May 6 and May 13, 1977 at which the parties were afforded full opportunity to present oral and written evidence, cross-examine witnesses, provide oral argument and otherwise support their respective positions. Extensive exhibits were introduced by both sides. Subsequently both parties submitted post-hearing memoranda. Thereafter the panel met in executive session and conferred on the sizeable record before it.

The most recent collective bargaining agreement covering the unit, which consists

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of a chief, two sergeants and thirteen patrolmen, expired on December 31, 1976. Absent a new agreement the items in dispute were the subject of a Fact-Finding procedure before William J. Curtis, Esq., whose Report and Recommendations were issued on December 15, 1976, but not accepted by either party. That Report and Recommendations was brought to the attention of this Panel and has been considered by it along with the other evidence in the record. In its deliberations the Panel carefully examined and considered the evidence presented by both parties with respect to the statutory provisions applicable to compulsory interest arbitration set forth in Section 209.4 of the Civil Service Law. The Determination herein is for a two year contract. The award represents the action of at least the majority of the Panel.

THE ISSUES

In the course of negotiations the proposals advanced by the parties raised numerous issues. Broadly characterized, the PBA seeks to make contractual advances in many areas of the employment relationship, while the Town sees 1977 as an opportunity to re-trench salaries and benefits. Upon review of all the proposals there is need to comment in detail only with respect to what the Panel has determined to be the central issues:

Retirement

The PBA currently has a 25 year retirement program. It seeks to shift to a 20 year retirement program.

Fundamental to the denial of this PBA proposal is the belief that the Public Arbitration Panel's purpose is to end the impasse for this round of negotiations, rather than to legislate basic changes whose ultimate costs are admittedly major but lacking in definitive estimation. However, it should be observed by all those with an interest in this employment relationship that the trend throughout the State is overwhelmingly in the direction of 20 year retirement. Thus it can be safely predicted that this is a demand which will not fade away. On the contrary, the reasonable expectation is that 20 year retirement will continue to be pursued by the PBA with increased vigor.

Salary

A fourteen percent increase is sought by the PBA for the members of the unit. The Town, arguing for comparability with certain communities in Orange County rather than with communities in Rockland County where it is situated, would cut the 1976 salaries substantially.

It is true, as the Town contends, that many municipalities in the State the size of Stony Point have no full time police department at all. However, it should be noted that some ten years or so ago the Town, despite the ideal location of a State Police Barracks, chose to have its very own Police Force and during this past decade has repeatedly agreed in consecutive negotiations to pay this force in a clearly Rockland County mode.

As with comeliness, comparability is frequently found in the eyes of the beholder. During this decade prior to 1977, Stony Point's Town Fathers have viewed their own full-time force in a Rockland County context; and rightly so, for those aspects of comparability now relied upon by the Town do not change the fact that, albeit located in its northeast corner, the Town's natural focus remains Rockland County. Indeed, those very aspects of comparability with Orange County communities now being urged upon this Panel did not develop suddenly, only over the past year. They have been present during the past ten years, but apparently have gone unnoticed by the Town until now. Therefore, no persuasive reasons have been advanced for suddenly changing the style of operations or drastically altering the existing pay levels.

At the same time no reason has been advanced by the PBA as to why Stony Point Policemen must keep pace with the salary leaders in Rockland County, a consequence of their salary proposal. What cannot be ignored, however, is the continuing adverse impact on income of the decline in purchasing power. True, there has been considerable abatement from the double-digit period, but the impact remains substantial. In the New York-Northern New Jersey area the cost of living rose from May, 1976 to May, 1977 at the rate of 5.5 percent and from June, 1976 to June, 1977 at the rate of 5.8 percent. The

key here is not that there has been a slight increase from month to month, but that in comparison with the relatively low rate for December, 1976 (3.6 percent during a difficult winter) there has been a steady upward bias month after month into 1977. Indeed, using the 3.6 percent December rate as a base the annualized rate of change over 1977 projected by the Bureau of Labor Statistics is 7.3 percent. Conceivably new higher annualized rates can be projected May to May or June to June with a base rate of 5.5 or 5.8. This is fully consonant with the national trend which is running at 6.9 percent based upon June, 1977, and with reports of consumer expectations for continued inflation. To compensate for the current and anticipated erosion of purchasing power a 7 percent increase in 1977 (retroactive to January 1, 1977) and a 7 percent increase in 1978 is reasonable. In the absence of persuasive evidence of inability to pay, the Town is financially capable of supporting the costs of this award.

Sick Leave Accumulation

Under Article XIII (B) and (H) of the prior agreement sick leave can be accumulated two days a month up to a maximum of 240 days, and unused accumulated sick leave credits shall be compensated for in the event of the separation of an employee from service or on retirement. The Town seeks to eliminate the right to convert this accumulation into cash at any time.

Utilization of accumulated sick leave upon retirement is readily accepted as a reasonable employee benefit. However, what a member most frequently exchanges for this benefit is a commitment to long term service in a particular community, rather than the mere mechanical availability of the accumulation whether the service be of short, medium, or longer duration. Therefore, the current sick leave accumulation benefit should be modified to reflect this exchange, with the percentage of accumulation available upon separation or retirement tied to discrete lengths of service with the Town.

In effecting the transition from the prior formulation the new one, the sick leave accumulated under the prior contract by members of the force as of December 31, 1976

shall be honored by the Town in accordance with the prior contract. Commencing January 1, 1977 any further accumulation will be subject to the new formula upon separation or retirement.

Tuition Reimbursement

Article XX, College Education, of the prior agreement provides that "An employee attending college shall be entitled to reimbursement by the Town of fifty percent of the tuition cost, when so incurred during the year 1974 or thereafter." The Town would eliminate this benefit.

Surely the advantages to the Town of a well educated police officer needs no exposition here. Encouraging the furthering of a member's education via tuition reimbursement is a sensible expenditure and should receive maximum support. Nevertheless, the trend in many areas of public employment is to prefer specialized education over general education, i. e. , to support the taking of courses which have immediate relevance to the job and furnish an immediate "pay off" to the employer for the expenditure. When measured against this concept Article XX is too open-ended, too universal in its acceptance of subject matter. Combining these two themes, Article XX should provide for seventy-five percent tuition reimbursement (given the size of the force, well within the Town's ability to pay), limited to courses required to fulfill degree requirements in law enforcement or to courses related to police work.

Standby

Under Article X of the prior agreement "If any employee is called to work during the time he is off duty, he shall be entitled to a minimum compensation of \$10.00, regardless of the time actually worked. If any employee is requested to stand by during any period in which the employee is off duty, he shall be entitled to minimum compensation predicted upon four hours of work regardless of the length of time actually remaining on standby."

Given the small size of the force and the fullness of the member's actual work week, standby is not an occasional event but is becoming a common practice. Therefore it should be compensable at time and a half as has been proposed by the PBA.

Uniform Allowance

Given the general increase in prices the uniform allowance should be increased from \$225 to \$275.

Binding Arbitration

Under the current contract there is a joint consultative procedure to deal with "questions or differences of opinion" that "may arise in connection with the administration of this agreement." The final step provides that if no agreement is reached the matter "shall be submitted to PERB for determination" (Article VI), Appendix A, Grievance Procedure, states that "every employee subject to this agreement shall have the right to present his grievance in accordance with the procedures prescribed hereunder." The grievance ladder consists of the Police Chief, Police Commissioner, and ultimately the Town Board. The PBA sees this contract language as unclear, and is also concerned that the final authority on a member's grievance is the employer, the Town Board. Final and binding arbitration of all grievances is proposed as a corrective measure.

Although neither of these contract provisions is as clearly worded as it ought to be, the language is sufficiently "plain" to indicate the classic dichotomy in public employment grievance procedure, namely contract interpretation on the one hand, and discharge and discipline on the other. The apparent intention of Article VI (3) is that disputes over contract interpretation ("administration") are to be submitted to a designated third party (PERB) for "determination." The contract does not use the word "arbitration" or the phrase "final and binding." Yet the phrase "to PERB for determination" contains no modifiers. It does not say "for an opinion" or "for advisory determination." The conclusion must be that grievances of this sort ("questions or differences of opinion")

are to be determined in a final and binding manner, namely by arbitration under PERB rules.

Albeit somewhat opaque, Appendix A's reference to a member's grievance appears to contemplate discharge and discipline. There may or may not be merit in a uniform arbitration procedure for all grievances; there may or may not be merit in the PBA's contention that a third party determination is the most effective, particularly with a small force in a small town where there can occasionally be less "judicial" remove than in an urban setting with its correspondingly larger force and numerous administrative tiers; there may or may not even be merit in the PBA's contention that recent experience in Stony Point has demonstrated the need for such remove through binding arbitration. Nonetheless, a recent decision by the New York State PERB forecloses this Panel from considering the issue.

On June 2, 1977 a unanimous Board in the Matter of City of Auburn, New York and Auburn Police Local 195 Council 82 AFSCME, AFL-CIO (Case No. U-2510) determined that: "Under the present law, public employers other than the State of New York are not permitted to negotiate collective agreements containing disciplinary procedures that would supplement, modify or replace the provisions of CSL Secs. 75 or 76. Local 195's insistence upon bringing those demands to an interest arbitrator is a violation of its duty to negotiate in good faith."

While this decision seems to cast a cloud over numerous arbitration procedures already in force throughout the State, its impact here is to prevent consideration of the PBA's contentions on the merits.

Differentials between Ranks

The PBA seeks a differential above the first grade patrolmen's salary of 7.5 percent for Detectives, 15 percent for Sergeants, 30 percent for Lieutenant, and 60 percent for the Chief. Currently there is an 11.1 percent differential for Sergeant and a 26 percent differential for the Chief.

The PBA formula is based upon a generalized approach to a full table of organization

including Detective, Sergeant, Lieutenant, Captain and Chief. In Stony Point there are no Detectives, although several members are used to some extent in an investigatory capacity. There are neither Lieutenants nor Captains on the force.

A) Chief

In Stony Point the Chief is a member of this bargaining unit. When compared with five other forces in Rockland County (PBA Exhibit 12) the Stony Point Chief has the lowest absolute salary and the lowest differential. He also presides over the smallest force. In evaluating this salary there are several considerations:

- 1) the 60 percent differential for Chiefs is in many respects an abstraction based upon a full complement of officers and patrolmen.
- 2) among Rockland County Chiefs there is a wide variation of differentials, some well above and some well below 60 percent.
- 3) absolute salaries are not fully relevant because they are based upon the first grade patrolman's salary which itself varies from community to community.
- 4) all Police Chiefs are assumed to be equally responsible for law enforcement whether their jurisdictions are small or large.

Relating size of force to percentage of salary differential would appear therefore to offer a more objective evaluation of supervisory salary as an index or ratio of the scope of supervision (members supervised). Available data covers six forces in the County including Stony Point. However, the 57 percent differential for a twenty-one man force in one Town has been excluded from the comparison because it is so contrary to the pattern of the remaining five as to require an explanation other than that which the ratio represents.

ADDITIONAL VALUE OF CHIEFS DIFFERENTIAL PER MEMBER OF
THE FORCE

Force by Size	Percentage Differential	Differential Force
16	26	1.6
22	41	1.86
36	54	1.5
81-83	75	.92
95-99	79	.83

When examined in the light of this Table Stony Point's 26 percent differential, or 1.6 for each man supervised, fits into the general pattern presented. Indeed, the average differential of the three smallest forces is 1.65. On the surface this may appear to be an argument for holding the line on the current 26 percent differential. Nevertheless this generalization must be tempered by additional considerations:

- a) the force is below the complement of a few years ago. Given the current work load a return to that complement and beyond is a reasonable anticipation. It could well involve the introduction of a Lieutenant in which case salary compression with the Chief would be narrow indeed.
- b) The higher ratio associated with smaller forces cannot be explained by the fact that all positions must have an acceptable minimum salary. Clearly, without an elaborate supervisory superstructure, a Chief must have greater operational and field involvement than is typical for larger forces. All the more in Stony Point where the size of the force is probably at or approaching the irreducible minimum.
- c) Because of the small size of the force Stony Point has regularly scheduled substantial overtime assignments, enlarging the supervisory work week for operations.
- d) There is no Captain to assist in points "A" and "B".

These points argue for increased recognition of the position through an increase in the differential. An increase of 9 percent would bring the differential to 35 percent, permitting some room for a Lieutenant between the Sergeant and Chief.

Were the force to grow to 19 men the ratio (with a 35% differential) would be 1.84.

While above the 1976 average for the Table (1.65) it remains below the datum of a 41 percent differential for 22 men of 1.87 per man supervised. Granted that if the force doesn't grow this 9 percent increase would result in a 2.17 ratio. However, when viewed in terms of the potential ills attendant upon extreme salary compression (point "a) as well as the actualities of points "b", "c", and "d", the percent increase in the differential remains reasonable whether or not a Lieutenant is hired.

B) Lieutenant

The salary schedule should provide for the rank Lieutenant to enhance supervision. In view of the role of a Lieutenant in the absence of Captain, there should be a sufficient differential distance between that officer and a Sergeant. A 25 percent differential would accomplish this objective without "crowding" the Chief. This determination is not to be construed as requiring the Town to have a Lieutenant, for that would be beyond this panel's powers. However its purpose is to establish a fixed salary differential in the contract in the event such a position is created by the Town.

C) Sergeant

The current 11.1 percent differential is about midway between the range of differentials for some eight relevant forces (PBA Exhibit #12). The same rationale stated above for the Chief (including salary compression with a Detective if such a category is formally established by the Town) is pertinent to Sergeants. An increase to a 15 percent differential is indicated.

D) Detective

The salary schedule should provide for the position of Detective. A salary differential of 7.5 percent is traditional. Here again, as with the Lieutenant this determination is not to be construed as requiring the Town to have a Detective. Its purpose is to establish a fixed salary differential in the contract in the event such a position is created.

All Other PBA and Town Proposals

As suggested earlier in this Opinion and Award, the parties made numerous

proposals dealing with many aspects of their relationship beyond those dealt with above. No persuasive reason to grant any of these proposals or parts thereof were presented and these proposals are therefore denied.

Continuation of Prior Agreement

Unless specifically modified by this Award all provisions of the "Labor Agreement Between The Town of Stony Point and the Stony Point Policemen's Benevolent Association, Inc. for the years 1974, 1975 and 1976" are to remain in full force and effect for the years 1977 and 1978.

Recommendations

Foregoing the temptation to render dictum is usually good practice. However, there are times when the situation compels a neutral to make appropriate observations. Two situations with respect to the PBA and the Town, developed through the hearings, require comment:

I. Police Department Facilities

Stony Point Police Department Facilities are deplorable for all those connected in any way with the police process, and perforce for the citizens of the Town. First priority should be given by the Town to correct this situation.

II. Overtime Accumulation

Because of the small size of the force, overtime accumulations are highly significant. Unless this problem is addressed by both parties now, this overtime may well assume serious proportions and could become an embarrassment to all. First priority should be given by the parties to this matter.

AWARD OF THE PUBLIC ARBITRATION PANEL

1. Contract Term The term of the contract shall be January 1, 1977 through December 31, 1978.
2. Retirement This PBA proposal is denied.

3. Salary The Town proposal is denied. The PBA proposal is granted to the extent of a 7 percent increase effective January 1, 1977 and an additional 7 percent increase effective January 1, 1978.
4. Sick Leave Accumulations The Town's proposal is granted to the extent that commencing January 1, 1977 employees upon separation or retirement shall be entitled to 25 percent of such accumulations earned after five years within the Stony Point Police Department, 50 percent of such accumulations earned after ten years within the Department, 75 percent of such accumulations after 15 years within the Department, and 100 percent of such accumulations after 20 years within the Department, provided that members of the unit as of December 31, 1976 who have accumulated sick leave under the prior agreement shall be entitled to said accumulations up to December 31, 1976 in accordance with the prior agreement, and commencing January 1, 1977 shall be entitled to their new accumulation in accordance with the aforesaid formula.
5. Tuition Reimbursement The Town's proposal is denied. The PBA's proposal is granted to the extent of (effective January 1, 1977) increasing tuition reimbursement to 75 percent, and Article XX is modified to limit reimbursable courses to those required to fulfill degree requirements in law enforcement, or to courses related to police work.
6. Standby The PBA proposal is granted to the extent that officers on standby shall receive a four hour minimum at time and one-half, effective January 1, 1977.
7. Uniform Allowance The PBA proposal is granted to the extent that the uniform allowance is increased from \$225 to \$275 per year effective January 1, 1977.
8. Binding Arbitration The PBA proposal is denied.
9. Differentials between Ranks The PBA proposal is granted to the extent that effective January 1, 1977 the differential between the salary of the Chief and Sergeant and a first grade patrolman shall be 35 percent and 15 percent respectively. It is further granted to the extent that the salary guide in the contract shall provide (effective January 1, 1977) for Lieutenant with a 25 percent differential, and for Detective with a

7.5 percent differential. The presence of a Lieutenant's and Detective's salary in the contract is not a mandate to the Town to fill these positions. However if the Town decides to fill these positions it shall be at the aforesaid salary differentials.

10. All Other PBA and Town Proposals All other proposals presented by the PBA and Town in this proceeding are denied.

11. Continuation of Prior Agreement Unless specifically modified by this Award, all provisions of the Labor Agreement Between the Town of Stony Point and the Stony Point Policemen's Benevolent Association, Inc. for the years 1974, 1975 and 1976 are to remain in full force and effect from January 1, 1977 to December 31, 1978.

12. Chairman's Recommendations with respect to (I) Police Department facilities and (II) overtime accumulation.

Dated: *Sept 23*, 1977



(Josef P. Sirefman
Chairman

I concur with the Chairman's conclusions as to the following items in the Award:

1, 2, 4, 5, 7, 8, 10, 11 and 12, but dissent as to items 3, 6 and 9.

Dated *Sept 23*, 1977

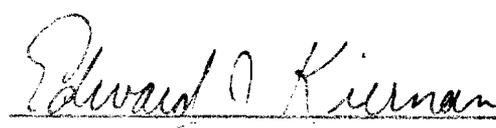


James R. Taylor
Employer Appointed Member

I concur with the Chairman's conclusions as to the following items in the Award:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

Dated: *Sept 23*, 1977



Edward J. Kiernan
Employee Appointed Panel Member

STATE OF NEW YORK)
)
COUNTY OF Rockland) SS. :

On this 23rd day of Sept, 1977 before me personally appeared Josef P. Sirefman, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Linda Galvani
Notary Public
LINDA GALVANI
Notary Public, State of New York
Rockland County, New York
My Commission Expires 12/31/79

STATE OF NEW YORK)
)
COUNTY OF Rockland) SS. :

On this 23rd day of Sept, 1977 before me personally appeared James R. Taylor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same

Linda Galvani
Notary Public
LINDA GALVANI
Notary Public, State of New York
Rockland County, New York
My Commission Expires 12/31/79

STATE OF NEW YORK)
)
COUNTY OF Rockland) SS. :

On this 23rd day of Sept, 1977 before me personally appeared Edward J. Kiernan, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Linda Galvani
Notary Public
LINDA GALVANI
Notary Public, State of New York
Rockland County, New York
My Commission Expires 12/31/79