

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

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: In the Matter of :  
: :  
ORANGE COUNTY POLICEMEN'S BENEVOLENT :  
ASSOCIATION, :  
: Petitioner, : Case Number  
: -and- : 1A-36; M77-614  
: TOWN OF NEW WINDSOR, :  
: Respondent. :  
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Hearings were held in the above-entitled matter on April 4, 1978, and April 21, 1978, at the New Windsor Town Hall, New Windsor, New York, before a Board of Arbitration appointed by the New York State Public Employment Relations Board. The members of the Board of Arbitration were as follows:

CHAIRMAN:

FRANCIS J. O'CONNELL, ESQ.  
11 Barnes Lane  
Garden City, New York 11530

EMPLOYER MEMBER:

PHILIP A. CROTTY, JR., ESQ.  
Duggan, Crotty and Lucia, Esqs.  
First Chartered Savings and Loan Building  
375 Windsor Highway  
New Windsor, New York 12550

EMPLOYEE MEMBER:

FRANK J. ZECCOLA, ESQ.  
542 Union Avenue  
New Windsor, New York 12550

The Police Benevolent Association was represented by Peter DiGregorio, its president, and the Town of New Windsor was represented by John A. Petro, Town Supervisor.

The bargaining unit consists of eleven patrolmen and three sergeants. The last collective bargaining contract between the parties covered the two-year period which expired on December 31, 1977.

The Town of New Windsor has approximately 125 employees in collective bargaining units, of which about 111 are employees of the Highway Department, Sanitation Department and the Water Department, who are represented by the Civil Service Employees Association (CSEA).

Employees represented by the CSEA are currently under a two-year contract covering the period January 1, 1978, through December 31, 1979.

The contract between the Town and the P. B. A., which expired December 31, 1977, contained the following provision:

"The Town agrees in the event that no agreement has been reached between the party of the first part and the party of the second part on January 1, 1978, the members of the Town of New Windsor Police Department shall receive cost of living increase as of December 1977 as determined by the latest available figures showing the increase of the New York State annual cost of living as determined by competent New York State authorities and will become effective January 1, 1978, and until such time as a superseding agreement is reached between the parties."

In accordance with this provision, the P. B. A. unit was granted a 5.1 per cent salary increase as of January 1, 1978.

The unresolved demands of the Union submitted to the Board of Arbitration for decision were as follows:

1. Substitution of a four-day on, two-day off work schedule for the current five-day on, two-day off schedule;
2. Institution of an allowance for cleaning of uniforms;
3. Improvement of the present individual and family medical coverage;

4. Establishment of a dental plan to be paid for by the Town;

5. Institution of the New York State twenty-year, half-pay retirement plan in lieu of the current twenty-five year, age fifty-five plan;

6. The addition of three paid personal days per year to make a total of five;

7. The addition of six paid sick days per year to make a total of twenty-one, with accumulation of up to 250 days instead of the present 185 days;

8. Easter Sunday, Election Day and the employee's birthday to be added to the present twelve paid holidays;

(The P. B. A. also requested that employees be permitted to take compensatory time off in lieu of holiday pay at the employee's option.)

9. Additional paid vacations to be provided as follows:

<u>Present Schedule</u>		<u>Proposed Schedule</u>	
6 months to 1 year:	3 days	6 months to 1 year:	5 days
1 to 3 years:	10 days	1 to 2 years:	10 days
3 to 5 years:	15 days	2 to 4 years:	15 days
More than 5 years:	20 days	4 to 5 years:	20 days
		5 to 10 years:	25 days
		More than 10 years:	30 days

(The P. B. A. also requested that employees be granted a ten-vacation-day carry-over privilege instead of the five-day privilege they now have.)

10. Eighty hours per year of mandatory in-service schooling to be provided each employee by the Town;

11. Patrol cars to be replaced every 65 thousand miles instead of 75 thousand miles;

12. Each employee to receive a salary increase of \$2,000 per year, in addition to the 5.1 per cent increase previously granted;

13. The number of steps in the salary schedule to be increased from fifteen to twenty-five with a \$400 increment between steps;

14. The present salary differential between patrolmen and sergeants and detectives to be increased by \$500 per year;

15. A night shift differential of ten per cent for the four to twelve shift, and fifteen per cent for the twelve to eight shift, to be instituted;

16. A minimum of four patrolmen, excluding sergeants and detectives, and a minimum of one supervisor, excluding the Chief of Police, to be provided for each shift;

17. Two additional detectives to be employed.

The Town requested the following changes in present contract provisions:

1. Deletion of the requirement that the Chief of Police must approve all police employees hired by the Town, as provided in Article IV, Section 7, of the expired agreement;

2. Addition of a requirement that attendance by police officers in court be approved in advance by the Town in order to qualify the police officer for the payments provided for in Article VIII, Section 25, of the expired contract;

3. Triple time for work on designated holidays to be reduced to double time for the first eight hours of work, and triple and one-half time to be reduced to double and one-half time for work in excess of eight hours (Article XIV, Section 44, of the expired contract);

4. Promotions below the rank of lieutenant to be filled from the ranks of the department, instead of the requirement of Article XVI, Section 50, of the expired contract, that all promotions below the rank of Police Chief be so filled.

In the course of the hearing, the parties agreed that the new contract would run for the two-year period commencing January 1, 1978, and ending December 30, 1979.

#### DECISIONS OF THE

#### BOARD OF ARBITRATION

In arriving at its decisions, the Board of Arbitration took into consideration, among other things, the following:

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. 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.

1. Four-day on, two-day off work schedule. At present, members of the bargaining unit have a five-day on, two-day off work schedule. The P. B. A. has requested that this be changed to a four-day on, two-day off schedule, and, in support of its request, it argued that the change could be made without cost to the Town even though it would result in approximately sixteen less working days per man per year.

This is not a new issue. It was brought up by the P. B. A. in the course of negotiating the preceding contract and was rejected by the Town. In the instant case, it was considered by a fact-finder, and the demand was rejected by him. Apparently, the four-day on, two-day off work schedule was tried in the Town a few years ago, but, according to the Town, " was abandoned as unsatisfactory and too expensive."

The Town claims that the proposed change in work schedule is a non-mandatory bargaining issue. This argument, however, is not acceptable to the Board of Arbitration. In the opinion of the Board, the question of the number of employees on the police force is a non-mandatory subject of collective bargaining, but the work schedule itself is subject to bargaining.

The Board of Arbitration, however, is unable to accept the argument of the Union that no cost would be involved in the institution of the four-day on, two-day off schedule, and, instead believes, that added expense to the Town would result. In view of this, the Board is unwilling to accede to the P. B. A. 's demand for a change.

2. Cleaning of uniforms. At present, members of the bargaining unit receive a clothing allowance of \$420 to \$470 per year, which includes the cost of replacement of uniforms and their repair and maintenance. The P. B. A. is requesting that a separate allowance be granted for the cleaning of uniforms, and it cites the practice of eight other communities in the area which have unlimited clothing allowances and which pay for all repairs, cleaning and replacements.

While the present Town of New Windsor clothing allowance appears to be reasonably equitable, the Board of Arbitration, in view of the practices of neighboring communities, directs that a separate cleaning allowance of \$50 per man per year be provided by the Town, payable in a lump sum with the first pay check of July of each year.

3. Liberalization of the present medical plan. At present, members of the bargaining unit are covered by the Statewide hospital, surgical and major medical plan, which is paid for by the Town, without contribution from the members of the Police Department. The P. B. A. is demanding that the best available Blue Cross, Blue Shield and major medical plans be substituted for the Statewide Plan, at the expense of the Town.

The Town has refused to deviate from the State Plan on the grounds that the P. B. A. 's proposal would increase its cost from \$58 per man per month to approximately \$85 per man per month, and on the further ground that a concession of this nature, if granted to the Police Department, would have to be granted to all other employees of the Town. This, the Town contends, would result in an added cost of approximately \$48,000 per year.

The P. B. A. was unable to produce data relating to the practices of other communities in the area.

In view of the lack of information about practices of other communities in the area, and of the additional cost burden that the P. B. A.'s demand would inflict on the Town, and of the adequate coverage which the Town currently provides, the Board of Arbitration rejects the demand of the P. B. A. for a change in medical coverage.

4. Institution of a dental plan. The P. B. A. has requested that the Town, at its sole expense, institute a dental plan for the benefit of the members of the bargaining unit and their families. The Town has rejected this demand on the ground that it would cost approximately \$11.65 per employee per month and, if extended to all of its 124 employees, would cost \$17,000 per year.

The P. B. A. was unable to produce any evidence that neighboring communities provide dental plans for members of their Police Department.

In view of the additional cost which would be involved, and the lack of evidence of the existence of dental plans in area communities, the Board of Arbitration rejects the P. B. A.'s demand for institution of a dental plan in the Town of New Windsor.

5. Retirement plan. The P. B. A. proposed that the present twenty-five year--fifty-five years of age retirement plan be changed to permit retirement after twenty years of service regardless of age. In support of its proposal, the Union stated that such a plan was in effect in the Town of Warwick, the Village of Cornwall, the City of Newburgh, the Town of Woodbury and the Village of Walden.

The Town rejected the P. B. A.'s proposal on the ground that the total cost of fringe benefits available to members of the Police Department is already high and that an increase in such cost for the purpose of increasing retirement benefits would be unreasonable.

According to the Town, the cost of the present retirement plan is 16 per cent of the average salary of employees hired before July 1, 1973, and 10.8 per cent of the average salaries of those hired after July 1, 1973. The Town also claims that compliance with the Union's demand would increase these costs to 39.7 per cent, and 29.6 per cent, of average salaries, respectively.

In view of the substantial increase in cost which would result, and the fact that the twenty-year plan is available in only five neighboring communities, the Board of Arbitration rejects the Union's proposal for a change in the existing plan.

6. Personal leave. At present, members of the P. B. A. unit are allowed two days per year paid personal leave. The P. B. A. contends that this is inadequate and requests that the number of days be increased to five.

In support of its contention, the P. B. A. produced evidence that the Town of Tuxedo, the Village of Washingtonville, the Town of Woodbury, the Village of Cornwall, the Village of Monroe and the Town of Blooming Grove provide three personal leave days per year and that the Village of Warwick provides four per year. The P. B. A. also pointed out that employees covered by the contract between the Town of New Windsor and the Civil Service Employees Association are allowed three personal leave days per year.

The total cost of providing an additional paid personal leave day for all members of the P. B. A. unit would only be equivalent to a total over the entire unit of fourteen days pay per year. In view of the overwhelming practice of the neighboring communities, and the insignificant annual cost involved, the Board of Arbitration directs that the number of paid personal leave days be increased for members of the unit from two to three per year.

7. Sick days. At present, each member of the Town of Windsor Police Department is allowed fifteen fully-paid sick days per year, and can accumulate unused sick days up to a total of 185. Upon retirement, or termination of status as a police officer, the value of the accumulated, unused sick days is paid to the police officer, or applied to early retirement, at the officer's option. The P. B. A. requests that the number of paid sick days per year be increased to twenty-one, and that the number of sick days which may be accumulated be increased to 250.

The Town of New Windsor contends that the present 15-185 day plan is liberal and should not be changed. The Town claims that the present provision allows for accumulation of more than six months' pay, and, that if a police officer is sick for a period in excess of six months, he should be placed on disability.

Data submitted by the P. B. A. on the issue states:

"Area Police Departments have an average of fifteen sick days with an accumulation of 150 days."

In view of the sick leave practices of other communities in the area and the liberal nature of the present plan, the Board of Arbitration is unwilling to direct the Town to increase the number of paid sick days per year, or the number of days which may be accumulated, as proposed by the P. B. A.

8. Holidays. At present, the P. B. A. unit has twelve paid holidays per year. The Union has requested that this number be increased to fifteen by the addition of Easter, Election Day and the employee's birthday. The Town objects to this increase on the basis of the added cost involved and because any of these additional days can be taken as a personal day if the officer so desires. The Town also points out that a police officer, who is a local resident, is able to go into a voting booth and vote in the course of his regular shift or during his lunch break.

Data submitted by the P. B. A. indicates that only two neighboring communities, i.e., the Village of Cornwall and the Village of Warwick have more than twelve paid holidays. Cornwall has thirteen and Warwick has fourteen. None of the neighboring communities have fifteen as requested by the P. B. A.

In view of the cost of the P. B. A.'s holiday proposal and the substantial number of paid holidays already available to members of the unit, the Board of Arbitration rejects the P. B. A.'s request.

The P. B. A. also requested that employees be permitted to take compensatory time off in lieu of holiday pay. This proposal was objected to by the Town on the ground that it does not have the necessary manpower and that such an option exists only in four neighboring communities, i.e., the Town of Tuxedo, the Village of Walden, the Village of Washingtonville and the Town of Blooming Grove.

In view of the current shortage of manpower, the Board of Arbitration will not direct the Town to comply with the Union's request.

9. Vacations. The P. B. A. proposed that the present vacation schedule be modified as set forth below:

<u>Present Schedule</u>		<u>Proposed Schedule</u>	
6 months to 1 year:	3 days	6 months to 1 year:	5 days
1 to 3 years:	10 days	1 to 2 years:	10 days
3 to 5 years:	15 days	2 to 4 years:	15 days
More than 5 years:	20 days	4 to 5 years:	20 days
		5 to 10 years:	25 days
		More than 10 years:	30 days

The Union also requested that employees be granted a ten-vacation-day carry-over privilege instead of the five-day privilege they now have.

The Town is unwilling to grant additional vacations and claims that the present vacation plan is liberal in relation to the plans of neighboring communities. The Town also objects to increasing the carry-over provision because it believes that police officers should take their vacation when scheduled and that vacations should not be carried over beyond the current five-day program.

In the data submitted to the Board of Arbitration by the Union on this subject, the Union states that "area Police Departments have less" vacations than those of the Town of New Windsor, and that only the Village of Walden has a carry-over privilege longer than the current New Windsor five days.

In view of the added cost which would be involved, the current manpower shortage, and the practices of area communities, the Board of Arbitration will not direct the Town to liberalize its present vacation policy, except that it will, and does hereby, direct that the carry-over privilege be extended to ten days. The Board does not believe that such extension will cause any great inconvenience to the Town, nor be responsible for any appreciable addition to its cost.

10. In-service schooling. The P. B. A. proposed that the Town provide eighty hours per year mandatory in-service schooling for all employees in the unit. At present, in-service schooling is provided by the Town, as, and when, it considers it advantageous. The Town claims that the amount of in-service schooling is a matter of management discretion and is not a matter of mandatory collective bargaining. The Board of Arbitration is of the opinion that this is not a matter of mandatory bargaining, but, even if it is, the Board will not direct the Town to set

up an arbitrary schooling program of eighty hours per man per year, whether such schooling is needed or not.

The Town should be permitted to determine what in-service schooling it will provide members of its Police Department in the light of the particular needs and character of the community.

11. Patrol Cars. The P. B. A. requests that new patrol cars be provided after 60 thousand miles of operation instead of after 75 thousand miles as at present.

The Town maintains that it is its responsibility to determine when police cars should be replaced, and that replacement is not a matter of mandatory collective bargaining. The Board of Arbitration is of the opinion that replacement of police cars after a designated number of miles is a management prerogative and is not subject to collective bargaining; therefore, it will not direct the Town to adopt the P. B. A.'s proposal.

12. Salary increase.

As heretofore stated, members of the unit received a salary increase of 5.1 per cent on January 1, 1978, as a result of the carry-over cost-of-living clause in the expired contract. The P. B. A. has demanded that a further yearly salary increase of \$2,000 be granted.

The Town has proposed that the 5.1 per cent increase already granted be decreased to 4 per cent.

The parties were asked to produce comparative salary data showing amounts paid for similar work by other communities in the area. While it did not produce comparisons with specific area communities, the P. B. A. submitted salary information which contained the following statement:

"Town of New Windsor highest paid."

The Town produced salary data relating to the Town of Cornwall, the Town of Newburgh and other neighboring communities, which appears to indicate that the above statement of the Union is true.

In view of the current advantageous salary position of the members of the New Windsor police unit, the Board of Arbitration rejects the P. B. A.'s demand for a

\$2,000 increase in addition to the 5.1 per cent which the unit has already received. The Board, however, directs that the 5.1 per cent increase be continued.

Also, as heretofore stated, the parties have agreed upon a two-year contract to run until December 31, 1979. In view of this, the Board of Arbitration also directs that a further percentage increase in rates be granted, effective January 1, 1979, equal to the percentage increase in cost of living between December, 1977, and December, 1978, as determined by competent New York State authorities.

13. Increase in number of salary steps.

The P. B. A. has requested that the present fifteen steps in the salary schedule be increased to twenty-five, with a \$400 increment between steps. This would have the effect of ultimately providing additional increases to individual P. B. A. members which could amount to as much as \$4,000. Of all the area communities, the P. B. A. was able to show that only the Town of Warwick has a salary schedule in excess of fifteen steps. The other surrounding communities, including Blooming Grove, Goshen, and the City and Town of Newburgh, appear to have considerably fewer steps.

The Board of Arbitration does not believe that the additional steps are warranted, and it rejects the Union's demand for this change.

14. Salary differential--Sergeants and Detectives.

At the present time, Sergeants and Detectives receive \$1,500 per year above the rates of Patrolmen. The P. B. A. has requested that this differential be increased to \$2,000.

The Town is opposed to any increase in these differentials.

Data submitted by the P. B. A. relating to the Town of Woodbury, the City of Newburgh and the Villages of Greenwood Lake and Goshen, and data submitted by the Town relating to the Town of Cornwall, the Town of Newburgh and other local communities indicates that present differentials are reasonably in line. Accordingly, the Board of Arbitration rejects the P. B. A.'s request for an increase in such differentials.

15. Shift differentials.

The P. B. A. has demanded that shift differentials of ten per cent for the 4 p.m. to 12 midnight shift, and fifteen per cent for the midnight to 8 a.m. shift be instituted, but failed to submit data relating to area practices which would justify this demand. As a matter of fact, the P. B. A., in its documentation, stated that shift differentials were "not stipulated in any other contract we have on hand."

Data submitted by the Town apparently indicates that the Town of Cornwall has shift differentials of 15 cents and 25 cents per hour for the shifts in question, but no other information was submitted to the Board of Arbitration on the subject.

In view of the added cost which would have to be borne by the community if the P. B. A.'s demand is met, and the lack of evidence that shift differentials are common practice in the area, the Board of Arbitration rejects the Union's demand.

16. Increase in number of Patrolmen per shift.

The P. B. A. has demanded that the number of Patrolmen (excluding Sergeants and Detectives) per shift be increased from three to four, and that at least one supervisory officer be assigned to each shift.

The Town claims that the number of employees assigned to each shift is a management prerogative and not subject to mandatory collective bargaining.

The Board of Arbitration is in accord with the Town's position on this matter, and, therefore, will not direct the Town to increase its force as demanded.

17. Additional Detectives to be employed.

The Town currently employs one Detective, and the P. B. A. has requested that two additional Detectives be added to the staff. The Town also claims that this is not a matter of mandatory collective bargaining, and the Board of Arbitration is in accord with this view. Accordingly, the Board will not order the Town to hire additional Detectives as requested by the P. B. A.

18. The Town's request for a change in Article 1V, Section 7, of the expired agreement.

Article 1V, Section 7, of the prior agreement between the parties reads as follows:

"The Town shall have the right to hire police employees provided said employees meet the standards set by the Civil Service Law; the Chief of Police must approve said employees."

The Town wants to delete that portion of the above quoted section which requires that new employees must meet the approval of the Chief of Police.

Since qualifications of applicants for employment are subject to the approval of Town Administration, the Board of Arbitration directs that the above quoted clause be rewritten as follows:

"The Town shall have the right to hire police employees provided said employees meet the standards set by the Civil Service Law. The Town will consider the recommendation of the Chief of Police in all cases."

19. Town's request for change in Article VIII, Section 25, of the expired agreement.

Article VIII, Section 25, provides for payments to police officers for mileage while traveling in their own cars to and from court appearances, and for time spent in court outside of regularly scheduled work hours.

The Town demands that before any such payments are made, the Court appearances must be approved in advance by the Chief of Police.

In view of the lack of evidence of abuse of the prior contract provisions, and the fact that it would be impractical in all cases to obtain advance approval from the Chief of Police, the Board of Arbitration refuses to order the inclusion of an approval provision in the new contract.

20. Town's request for a reduction in holiday pay.

At present, work on designated holidays is paid for at triple time for the first eight hours, and triple and one-half time for work in excess of eight hours. The Town wants to reduce this to double time for the first eight hours, and double and one-half time for hours in excess of eight.

Since pay levels for holiday work have been previously established, the Board of Arbitration is unwilling to direct a reduction.

21. Town's request for a change in Article XVI, Section 50.

Article XVI, Section 50, of the expired contract reads as follows:

"All promotions below the rank of Police Chief shall be filled from the ranks of the department on the basis of qualifications pursuant to Civil Service Regulations."

In the new contract, the Town wants to substitute the word "Lieutenant" for the words "Police Chief" in the above quoted section.

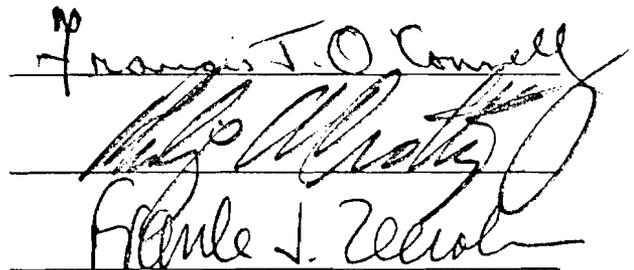
Since it is the basic right of the Town to determine the qualifications which it requires of its police officers, the Board of Arbitration directs that the requested change be made in the new contract.

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Philip A. Crotty, Jr., dissents from the opinion of the Board of Arbitration in item number 20 as set forth above.

Frank J. Zeccola dissents from the opinion of the Board of Arbitration in items numbered 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21 as set forth above.

Dated: June 5, 1978

  
Francis J. O'Connell  
Philip A. Crotty, Jr.  
Frank J. Zeccola

STATE OF NEW YORK)  
                  *Orange* )  
COUNTY OF ~~MASSACHUSETTS~~ ) SS.:

On this 5<sup>th</sup> day of June, 1978, before me personally came and appeared FRANCIS J. O'CONNELL, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Nancy R. Swenson

NANCY R. SWENSON  
NOTARY PUBLIC, State of New York  
Official Num. 4648785  
Residence on appointment-Orange County  
Commission Expires March 30, 1979

STATE OF NEW YORK)  
                  *ORANGE* )  
COUNTY OF *ORANGE* ) SS.:

On this 5<sup>th</sup> day of June, 1978, before me personally came and appeared PHILIP A. CROTTY, JR., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Nancy R. Swenson

NANCY R. SWENSON  
NOTARY PUBLIC, State of New York  
Official Num. 4648785  
Residence on appointment-Orange County  
Commission Expires March 30, 1979

STATE OF NEW YORK)  
                  *ORANGE* )  
COUNTY OF *ORANGE* ) SS.:

On this 5<sup>th</sup> day of June, 1978, before me personally came and appeared FRANK J. ZECCOLA, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Nancy R. Swenson

NANCY R. SWENSON  
NOTARY PUBLIC, State of New York  
Official Num. 4648785  
Residence on appointment-Orange County  
Commission Expires March 30, 1979