

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Compulsory Interest Arbitration :
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 between :
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 Town of Tuxedo Policemen's Benevolent Association, :
 Petitioner :
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 and :
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 Town of Tuxedo, Respondent :
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CASE NO.: IA-44 M-77-736

Before:

Joel M. Douglas, Ph.D., Arbitrator

Public Arbitration Panel:

Dr. Joel M. Douglas, Chairman

Brent, Phillips, Dranoff and Davis, P.C.
Raymond G. Kruse of Counsel, Employee Member

Cline, MacVean, Lewis, and Sherwin, P.C.
Monty Rosenstein of Counsel, Employer Member

OCT 17 1979
CONFIDENTIAL

Pursuant to the collective bargaining agreement between the parties, and in accordance with the statutory provisions applicable to compulsory interest arbitration pursuant to Civil Service Law of the State of New York, Section 209.4, as amended July 1, 1977, the undersigned Panel was designated to make a just and reasonable determination of the matters in dispute. In arriving at such determination the undersigned Panel will specify the basis for its findings, taking into consideration the mandated statutory criteria as set forth below:

New York State Civil Service Law, Section 209.4 (v); a,b,c,d:

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.

Issues:

The following issues were submitted to the Interest Arbitration Panel for its determination and award:

1. Salary Schedule to Include Compression of Old Step System into a Five Year Schedule
2. Longevity Pay
3. Holiday Pay
4. Minimum Overtime Pay
5. Vacation Schedule
6. Sick Leave Accumulation
7. Dental Plan
8. Tuition Reimbursement Plan
9. Retirement Plan
10. Annual Physical Examination

Hearings were held in the above stated matter in the Town of Tuxedo, New York, during which time both parties were afforded full opportunity to present oral and written testimony, cross-examine witness, and submit briefs. The Award of this Panel is based on the materials submitted in accordance with the statutory criteria set forth. The terms and conditions of the Taylor Law with respect to Interest Arbitration were carefully studied by the members of the Panel and by its designated Chairman pursuant to the applicable rules of law. This Award is based solely on the facts derived therein.

Background:

"The Town of Tuxedo is a township of approximately 2,590 people consisting of about 48 square miles. It is totally distinct from the Village of Tuxedo which has 965 people and which maintains its own police department. Located in Orange County New York, it is contiguous with the Town of Warwick, the Town of Monroe, and the Town of Woodbury. The Town includes hundreds of acres owned by the City Investing Corporation under the subsidiary name of Sterling Forest." The Patrolmen's Benevolent Association maintains that Sterling Forest, with its adjacent ski facilities, is an area which the Town must develop if it is to continue to grow and keep pace with the towns around it.

The residents of the Town shop and work in Rockland County, New Jersey, New York City, as well as in their own township.

There are six police officers in the bargaining unit, two of whom are sergeants while the other four serve as patrolmen. The department also employs a chief and civilian dispatchers although they are not involved in this collective bargaining process directly. The working chart of the Town of Tuxedo police includes a seven day week, two ten hour shifts, the first operating from 07:00 to 17:00 hours and the second from 17:00 to 03:00 hours.

Positions of the Parties:

All of the items presented to the undersigned Panel were economic ones. Therefore, the report shall consist of an economic analysis with respect to a total package being offered to the parties in terms of this final Award.

Position of the Town of Tuxedo:

The Town maintains that it cannot in any way meet the demands as put forth by the Union. The Town contends that it is a rural, small town with access to the New York State police; and for the Town to continue to run a six man police

force raises serious questions as to the viability and the cost economic benefit analysis derived from such police protection. The Town contends that it is seriously considering the elimination of the police force as has been done in certain parts of New York State and the use of part-time police constables along with New York State.

With respect to the overall economic items as put forth by the parties, the Town contends that the annual growth rate of the township is one of the poorest in Orange County and that it cannot increase police salaries as proposed. If the Union's package were bought in toto, the two sergeants who now receive a substantial rate of pay would receive an income greater than that of most police chiefs in the county. The proposal as put forth by the Patrolmen's Benevolent Association would give each sergeant a 20% increase in Year 1 of the agreement. This amount of 20% far exceeds all guidelines and cannot in any way be economically justified.

With respect to the Union's contention that the parties should look toward Rockland County as a contiguous guideline area, the Town emphatically rejects this. The townships of Rockland County are larger and have greater full-time police and detective forces. Crime rates and average income, according to the Town, are far greater in Rockland

than they are in Orange County. Furthermore, the County maintains that Rockland County's proximity to New York City and Westchester brings it closer to those pay scales than to those of rural Orange County.

The Town categorically and emphatically denies the Patrolmen's Benevolent Association's request for compression of all existing schedules into a five step schedule. For a union to seek such compression and then to seek an additional raise and increment in that same year is totally unconscionable according to the township.

The Town argues that the employer is under no obligation to meet the cost of living in any category and that the increases as proposed by the Town, 5% in Year 1, 6% in Year 2, and 6% in Year 3, if there were to be a Year 3, plus increment is compatible with the prevailing wage rate with respect to police officers.

The new Patrolmen's Benevolent Association demand for a \$500 longevity payable every third year, applied retroactively if accepted, would have the Town in the position of having to pay the sergeants more money than the chief of police himself receives. This item alone would cost the Town an immediate \$6,000 for a unit of only six men.

The Town repeatedly stresses the fact that while the numbers appear small, i.e., \$6,000 over the unit, when applied to a unit of six the numbers become astronomical.

The Town has completed a study which purports to show that most Orange County townships do have part-time police departments. The average pay of the part-time police officer in Orange County ranges from \$3.50 to \$3.75 an hour without fringe benefit costs whatsoever. The Town could pay these officers a flat \$150 per man over a 40 hour time period with a substantial savings since the lowest paid Tuxedo police officer now receives approximately \$200 for a 40 hour time period plus a 30% fringe package. The Town maintains that if it is forced to pay these wages, layoffs must be considered.

The Town especially finds the longevity pay concept reprehensible in view of the fact that no other township in Orange County with a comparable population has any provision whatsoever for longevity pay.

The Town submits that within the area of comparability with other police departments in the vicinity of the Town of Tuxedo, the Town's position is a generous one and can be supported with the overwhelming burden of documentary evidence.

With respect to the Village of Walden, containing a population twice that of Tuxedo, with a much poorer growth rate, the police department averages \$11,580 or almost \$1,000 less than the average officer of Tuxedo. Yet, Walden has a far greater crime rate; and if any place needs an increase it should be a town like Walden.

Concerning the Town of Newburgh, with a population ten times greater, and with a much larger tax base, there too the pay is less than what the Town of Tuxedo Patrolmen's Benevolent Association has proposed. The disparity between Newburgh and Tuxedo becomes great when one realizes that Newburgh has approximately seven times the crime rate that the Town of Tuxedo has.

The Village of Greenwood Lake, with a population almost identical in number to that of the Town of Tuxedo, pays its police officers an average of \$11,006 while only two of that department are full-time---an omen of what may happen to the township of Tuxedo.

The Town of Cornwall in Orange County is also paying its police department at a lower rate than that proposed by the Tuxedo Patrolmen's Benevolent Association.

The Town of Tuxedo additionally submits that the City of Port Jervis, with a much larger police department and population, has an average salary of \$11,500. This city, located in Orange County is, therefore, able to pay at approximately the same rate as Tuxedo.

With respect to the Town of Mount Hope in Orange County, with a larger population than Tuxedo, the town fathers therein have no full-time police officers and are utilizing an eight man, part-time police force.

The Town of Crawford, also in Orange County and with twice Tuxedo's population, has a police department made up completely of part-time police officers.

Once again, the Town of Deerpark, with twice the population of Tuxedo, has only part-time police officers. Deerpark's budget is approximately one-fourth that of the Town of Tuxedo.

The township of Montgomery with a greater population than those of Deerpark, Crawford, Mount Hope and Tuxedo, likewise has only part-time police officers.

The Town of Walkill, the third largest town in the county, also maintains a completely part-time police force. In fact the vast majority of Orange County townships operate in this manner.

With respect to Woodbury, the Town acknowledges that the average pay is a bit higher than the average pay in Tuxedo; but if the Tuxedo 5% raise were to be granted Tuxedo would, therefore, be in line with Woodbury and rank among the highest in Orange County.

Yet of all of these towns which were surveyed, the Town of Tuxedo maintains that nowhere are salary schedules compressed to the extent that the Patrolmen's Benevolent Association demands in Tuxedo. Neither are there longevity programs; nor are there in existence in Orange County any of the economic fringe benefits on which the Patrolmen's Benevolent Association seeks to break ground. Indeed, the Town submits that the Tuxedo Patrolmen's Benevolent Association is totally unrealistic in its total package and that the Patrolmen's Benevolent Association spends too much of its energy and time looking toward Rockland County, Westchester County, and the City of New York, without realizing what they really are.

Position of the Patrolmen's Benevolent Association:

The Patrolmen's Benevolent Association contends that the township of Tuxedo is living in an "idyllic forested setting" and is intent on keeping its world idyllic. The Town continuously rejects development by the City Investment Corporation with respect to the Sterling Forest area in order to preserve its rural identity while at the same time the Town continues to pay its patrolmen what the patrolmen consider to be primeval wages. In addition, the Patrolmen's Benevolent Association contends that the political structure of the Town is such that a constant controversy exists over the building of 600 new homes in this forested area. Thus, Tuxedo is on the verge, according to the Patrolmen's Benevolent Association, of changing its identity from a rural one to that of a sophisticated suburban community if the Town fathers are willing to let go.

In addition, the Patrolmen's Benevolent Association contends that the 1970 census showed the average family income in Tuxedo to be almost double that of the rest of the county. (This claim will be refuted by the Arbitrator in his discussion of the problem.) Tuxedo is a bedroom community for the New York suburban area and must be treated as such.

The Patrolmen's Benevolent Association contends that areas of comparability should include Warwick, Woodbury, Ramapo, Monroe, Ringwood, Haverstraw, and Stony Point. While acknowledging that the majority of these townships are not in Orange County, the Patrolmen's Benevolent Association claims that of all these areas Tuxedo has the lowest starting salary, or nearly the lowest starting salary and does not offer a sufficient career pattern to its police officers. In addition, the Patrolmen's Benevolent Association maintains that the overall fringe package and compensation package rank among the lowest in the area. The Patrolmen's Benevolent Association uses an average 11 step column showing what an average patrolman would earn over this time span. Eleven was chosen because this is the number of steps that Tuxedo has had over that time period; and in this area Tuxedo would be somewhat lower than surrounding communities.

The Patrolmen's Benevolent Association maintains that the cost of living is so high as to make the Town's offer meaningless in these days of rapid inflation. With respect to the consolidation of the existing salaries into a five step schedule, while acknowledging that it might be expensive, the Patrolmen's Benevolent Association maintains that this is the only way to go in terms of justice and equity.

Discussion of the Arbitrator:

Item 1 and 2: Salary Schedule to Include Compression of Old Step System into a Five Year Schedule and Longevity Pay

Economics and wage and salary administration are not purely scientific topics. One cannot take a series of inputs and come out with one that all parties believe is an equitable, economic award. Yet the Arbitrator is bound by law to follow the statutory criteria as set forth by the legislature of the State of New York. These criteria have been specified in an earlier section of this award and need not be repeated in toto here. Yet the Arbitrator wishes once again to point out that the "interests and welfare of the public and the financial ability of the public employer to pay" must be considered. The demands as set forth by the Patrolmen's Benevolent Association in their initial position are not persuasive to the undersigned with respect to this criterion. In addition, concerning the "comparison of wages, hours and conditions of employment of the employees involved in the arbitration," this Arbitrator does not find that the Tuxedo Patrolmen's Benevolent Association suffers greatly in this area. Indeed, when realizing that this award is some one and a half years retroactive, the township of Tuxedo police department has indeed kept pace in accordance with the statutory criteria as set forth.

The initial Patrolmen's Benevolent Association demands average out to approximately 28% per man in the first year of the collective bargaining agreement. While realizing that initial demands are set forth in the need for negotiations and for political purposes, this Arbitrator cannot understand the rationale of going in Year 1 for a wage increase plus step, in addition to a new compression of a schedule. When schedules are to be altered, or when schedules are to be modified across the bargaining table by the collective agreement of the parties involved, it is rarely done in such a manner as to reflect both the schedule modification along with the so-called traditional raise plus step contract. It is usually one or the other, not both. In this case, based on the record before him, the Arbitrator selects the traditional model of awarding a wage increase plus step which will be set forth below. A salary schedule for a six man police force is a rare commodity. Indeed, throughout Orange County and even in the areas surveyed by the Patrolmen's Benevolent Association, it is not the norm.

With respect to the Patrolmen's Benevolent Association's contention on starting salaries being among the lowest in the area, the problem with this argument is

that no one is at the starting salary and we are not dealing with real dollars. In a unit this size it is essential that real dollars and not the so-called negative/positive spill-over effect are the only dollars with which we are to be concerned.

The economic indicators are well known to all of us. Double digit inflation is prevalent; New York State just negotiated with its Civil Service employees for a raise of 7% in Year 1 plus a series of Merit Pay Raises in Years 2 and 3. The Federal government has set forth a so-called 7% guideline to be followed on a voluntary basis. Considering these economic indicators along with the current cost of living increase which is rising at a substantial rate, and with the overall ability of the Town of Tuxedo to pay, the Arbitrator awards the following wage increase retroactive to January 1 of 1978:

1. All officers be returned to the salary schedule that traditionally has existed in Tuxedo effective January 1, 1978. This shall not be construed as being granted a step for 1977 since negotiations for that year spoke to that issue and the parties did not negotiate said increase.
2. Each officer is to move on the salary guide one step effective January 1, 1979 if he is entitled to said step.
3. Each officer is to receive a raise of \$1100 effective January 1, 1978 in addition to any earned increments.
4. Each officer is to receive a raise of \$1100 effective January 1, 1979 in addition to any earned increments.
5. No increments are to be paid for the year 1976.

The Arbitrator wishes to point out that these amounts are in addition to any steps that may be earned by the members of the Town of Tuxedo police force. The proposals as set forth by the Town always included the incremental structure to be added to the raise, and this Arbitrator sees no reason why this should not be carried forward. The Arbitrator also wishes to point out that there shall be no change in the hiring rate in the Town of Tuxedo so as to afford the township itself flexibility to hire in today's job market. Should it need to meet the market price, then the Town has a degree of discretion to do so. By this method of "freezing the initial step", as it is called, the moneys that might have gone into this area can better be directed into the overall wage and compensation package of the members of the unit.

With respect to the question of longevity, this Arbitrator has found no evidence whatsoever that would warrant any consideration of the Patrolmen's Benevolent Association's proposal.

Item 3: Holiday Pay

The present agreement provides for 11 paid holidays per year. In the event that any member was on active duty on such a holiday, he received an additional day's

pay for working that holiday. The Patrolmen's Benevolent Association wishes to modify this to receive an increase to time and one-half for working said holiday. In addition to this present holiday plan, the current agreement between the parties provides for a degree of discretion afforded to the chief of police in accordance with the manpower needs of the police department. He "may at the request of the member grant an additional vacation day."

Recommendation:

No increase in the number of holidays is recommended at this time. Officers working holidays shall receive an additional half day's pay for said work.

Item 4: Minimum Overtime Pay

The Patrolmen's Benevolent Association seeks an increase from two to four hours for minimum overtime for each unscheduled event. The Town maintains that the two hours is reasonable and that the number of unscheduled events in Tuxedo is very, very rare. However, based on the record before us and consistent with the statutory criteria of examination of contiguous police departments and other standards that are applicable, the Arbitrator awards that the minimum call-back pay be changed from two hours to three hours for each unscheduled event. This provision should not be made retroactive but shall be enforced effective the date of the signing of the new collective bargaining agreement.

Item 5: Vacation Schedule

After a careful examination of the current vacation plan in effect and in accordance with the statutory criteria, the Arbitrator finds no reason to change the existing vacation plan. All requests with respect to this item are hereby denied.

Item 6: Sick Leave Accumulation

The Town has indicated a desire to move the present accumulation from 100 days sick leave days to 120. The Patrolmen's Benevolent Association seeks 240. The arguments have been set forth in accordance with the economic needs of replacing various members of the police department and consistent with the needs of a small police department. The Arbitrator is persuaded that the position of the Town is correct with respect to this point and awards 120 accumulated sick leave days. However, there shall be no change in the annual sick leave or personal leave allowances. The accumulation of increased sick leave shall be applicable to the year 1978 as well as 1979.

Item 7: Dental Plan

The Patrolmen's Benevolent Association was unable to show, in accordance with any of the criteria as set forth

in the Taylor Law, that a dental plan should be awarded to the members of the unit. Dental plans are considered to be major economic items, and for the Patrolmen's Benevolent Association to seek such a plan it must come at a time when economic trade-offs can be considered. This is not the appropriate time. Request denied.

Item 8: Tuition Reimbursement Plan

The desire for a tuition reimbursement plan was not put forth by the Patrolmen's Benevolent Association in a manner that would warrant a change in the collective bargaining agreement. While this Arbitrator is sympathetic to such programs, he must rule consistent with the existing situation before him. In this case, that burden was not met to a sufficient degree to warrant the inclusion of this plan. Request denied.

Item 9: Retirement Plan

The Patrolmen's Benevolent Association, in addition to a substantial wage increase, seeks the modification of the present retirement plan. Arbitrators long experienced with this item are aware of the impact and cost of it. Indeed, New York State has had several commissions and is now in the process of redesigning certain aspects of the pension plan for new employees as well

as seeking modifications of it for others. To warrant a change in an existing police retirement plan, such as the one proposed by the Patrolmen's Benevolent Association in this situation, is an extremely expensive item. What is more, the expense is one that is compounded as it continuously escalates dependent on the actuarial statistics of the group involved. If the Patrolmen's Benevolent Association truly seeks an increase in this plan, then this too must come across the table or in lieu of substantial wage increases. This is not the case in this instant proceeding; and, thus, the request is denied.

Item 10: Annual Physical Examination

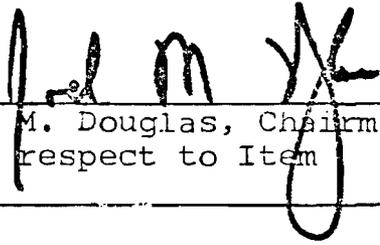
The Patrolmen's Benevolent Association requests a fully paid annual physical examination for members of the police department who desire to utilize it. The Town fully agrees with the need for such a plan; however, the Town will offer it only if it is made mandatory for all members of the police department.

Within the statutes of the collective bargaining laws of New York State, the emphasis is on the concept of "collective" not individual. This Arbitrator is convinced of the need for such a plan; however, he is not

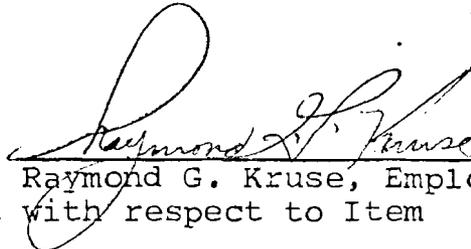
persuaded by the Patrolmen's Benevolent Association's arguments that this should be done voluntarily. Thus, the Arbitrator awards a fully funded examination to be paid for by the Town; however, it must be made mandatory for all members of the police department.

The following report concludes all items submitted to the undersigned Arbitration Panel. The Panel has met in executive session and has discussed the various items submitted. Unanimity was not reached with respect to the total Award. Therefore, the Arbitrator has issued this

Award as a package and has asked the other members of the Panel to join him and/or to dissent where they see necessary. In accordance with the Taylor Law, two votes of the three are needed on each item; and, thus, this Award is submitted as a final and binding document from the Chairman with the appropriate signatures of the other Panel members in a variety of items.


Joel M. Douglas, Chairman

I concur with this report with respect to Item
Numbers: ENTIRE Report


Raymond G. Kruse, Employee Member

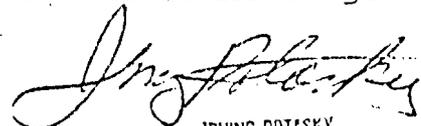
I concur with this report with respect to Item
Numbers: entire report

Monty Rosenstein, Employer Member

I concur with this report with respect to Item
Numbers: _____

State of New York
County of New York

On this 10th day of May, 1979, before me personally came and appeared Joel M. Douglas to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



IRVING POTASKY
Notary Public, State of New York
No. 41-3141765
Qualified in Queens County, N.Y.

STATE OF NEW YORK)
COUNTY OF ROCKLAND)

ss.:

04/24/79
CONCILIATION

On this 14th day of May, 1979, before me personally came and appeared RAYMOND G. KRUSE, 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.

ALICE J. WENZ
Notary Public, State of New York
4077182
Certified in Rockland County
Commission Expires March 30, 1981


NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ORANGE)

ss.:

On this day of 1979. before me personally came and appeared MONTE ROSENSTEIN, 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.

NOTARY PUBLIC

