

NEW YORK STATE
PUBLIC EMPLOYMENT
RELATIONS BOARD

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PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration :

between :

Case No. 1A-68;M78-178

THE TOWN OF ORANGETOWN :

And :

THE ORANGETOWN POLICE BENEVOLENT
ASS'N. :

-----x
ARBITRATION PANEL

Nicholas S. Falcone, Public Member and Chairman
Robert Bergman, Employer Member
Edward Kiernan, Employee Organization Member

APPEARANCES:

For the Town

James L. Casey, Esq., Deputy Town Attorney
Richard H. Wyssling, Esq., Counsel

For the Association

Alice Wenz
George Morse
John J. Berchielli
Bill Hayes
Terry Hutmacher
John McAndrew
Ray Kruse, Esq., Counsel

This proceeding is held pursuant to Section 209.4 (c) of Article 14 of the New York State Civil Service Law. At the request of the parties, Panel members Falcone and Bergman conducted a preliminary meeting on November 13, 1978 at Orangetown, New York. Representing the Town and the Association at this meeting were Dr. Charles Ganim and Ray Kruse, Esq., respectively. This conference was held for the exclusive purpose of identifying the issue in dispute. Approximately seventeen (17) issues were raised by the parties.

On December 13, 1978, a hearing on the merits was conducted at the Blue Hill Golf Course, Orangetown, N.Y., before the undersigned members of the Public Arbitration Panel designated in accordance with the compulsory interest arbitration procedures of the N. Y. State Public Employment Relations Board. The parties were provided full opportunity to present evidence, testimony and witnesses in support of their respective positions.

At the outset of the December 13th hearing, the Panel advised the parties that the following statutory mandates would be considered by it in arriving at Panel determinations:

1. Comparison of wages, hours and conditions of employment involved in this arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar service or and with other employees generally in public and private employment in comparable communities.

2. The interests and welfare of the public and the financial ability of the public employer to pay.

3. 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.

4. 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.

Following the close of this hearing, and with assurances made by Counsel for the parties herein that no post-hearing briefs would be submitted, the Panel met for almost seven (7) hours in executive session on December 21, 1978 at the Town Hall, Orangeburg, N.Y. Each item in dispute was the subject of it's discussion and was separately determined.

BACKGROUND

The police of the Town of Orangetown, comprising a bargaining unit of 81 officers, have been employed under the terms of an agreement expiring on December 31, 1978.

Following an impasse in negotiations seeking a successor agreement, the Association petitioned PERB, requesting that the dispute be submitted to a Public Arbitration Panel. Under date of October 16, 1978, PERB designated this Public Arbitration Panel to make a just and reasonable determination of the dispute herein.

In reaching its determination, this Public Arbitration Panel examined comparison of wages, hours and working conditions of the Orangetown Police with those in comparable areas; the interests and welfare of the public and the financial ability of the Town; working conditions which are unique to those engaged in public police activities; and, considered the terms of collective agreements negotiated between the parties in the past. In addition, the entire record of this arbitration proceeding was carefully studied and considered by the Panel in reaching its conclusions.

WAGES and DIFFERENTIALS

The Association has requested a fifteen (15) percent wage increase for each of the years, 1979 and 1980.

The Town has offered zero increase for 1979 and for 1980, it offered a "flat amount of money (equal to 6%)".

Seeking to support this Association demand, the following points were advanced by it:

1. A U.S. Dept. of Labor publication covering 153 large cities, reveals that over the 5-year period of Jan 1973-January 1978, average minimum scales for police increased at an annual rate of 6.2%.
2. Examining the 5-year (1974-78) wage increases received by the police in Orangetown when compared with neighboring communities, the Orangetown Police have received 5.6% less increase.
3. From October, 1977 to September, 1978 the cost of living increased 8.9% for all urban consumers.
4. The police received no wage increase in 1977.
5. The police received a 5% wage increase during 1978.

Therefore, the association argued, economic justice and fairness would require that the police receive a 15% wage increase for 1979 and 15% for 1980.

In its rebuttal, the town advanced the following arguments in support of its wage offer:

1. The average salary in 1978 for the 81 members of the town police force is \$20,004.
2. The total average cost of fringe benefits enjoyed by each of these 81 police officers is \$18,118.12, bringing the average total compensation for each member to \$38,122.39.
3. The Orangetown Police at all levels are paid more than police in the other communities within the County.
4. The Orangetown Police are presently overpaid.

5. The consumer price index for New York, Northern New Jersey Metropolitan Area was 5.6% for the period July, 1977-August, 1978. Considering the C.P.I. over the 10-year period, January, 1968-January, 1978, it has increased 90% whereas the wages of a top policeman have, during this period, increased 172%.

6. Considering crime reports the Orangetown Police are exposed to less risk than those police in comparable communities.

7. More than 100 Orangetown residents are included in the 726 eligibles on the County police list anxious for appointment. Therefore, the Town asserted that this panel should reject the proposed wage increases sought by the association and, it should adopt a zero increase for 1979 and a flat sum of money equal to 6% for the 1980 contract year.

The Panel is cognizant that some communities, not distantly located from Orangetown, are faced with financial difficulties requiring some sacrifices from their residents and from their public employees. The Town of Orangetown however failed to raise the issue of inability to increase police salaries. It did state that these police should receive no wage increase in 1979 because they are presently overpaid. Comparing patrolman salary grades and averages for 1978, the evidence reveals that the police of Charlestown and Stony Point, comparative areas, do enjoy a higher average salary than the Orangetown Police.

Examining other criteria for wage determination, the Association reported an increase of 8.9% in the cost of living for the period , October, 1977-September, 1978.

On the other hand, the town reported a C.P.I. increase of 5.6%. The New York Times in its November 15, 1978 issue, quoting a U.S. Dept. of Labor report, reveals that the C.P.I. increase covering the area known as New York-Northeastern New Jersey area, a geographical area inclusive of Orangetown, N.Y. , was 6.2%, compared to a national rate of 8.3% for the period, August, 1977-September, 1978.

The record is clear that the police received no wage increase in 1977 while in 1978, they did get a 5% increase. Supportive data does establish that the police have suffered a real loss in purchasing power during 1977 and again in 1978. We believe this loss should be considered when reviewing existing salary rates. The position advanced by the town, to wit, that Orangetown Police are now overpaid and therefore underserving of a wage increase during 1979 was unsupported by the evidence introduced herein, and therefore this conclusion is unacceptable.

Considering again the salary proposals offered by both parties, we have noted the monetary value of the fringe benefits provided the police at Town expense exclusively, and the cushioning effect these benefits have made on the erosion of the employee purchasing power. Therefore, considering the existing economic climate and its effect

upon Orangetown finances, we feel that the police should assume some of the continuing rise in the cost of living . Yet, some upward adjustment in wages seems to be just and proper.

Upon all the evidence introduced by the parties, the Panel awards to the members of the bargaining unit herein, a wage increase of six (6) percent across the board for the period January 1, 1979 to December 31, 1979. For the contract period beginning on January 1, 1980, and terminating on December 31, 1980, we award to these employees a wage increase of six (6) percent across the board.

1. Employer Panel members dissents on Salary award.

In our judgment, the police, after the implementation of this salary award, will have not recouped the entire loss of purchasing power suffered by them in 1978. This conclusion, we believe, has been established when one compares a six (6) percent wage increase in 1979 as against a loss of 6.2% in purchasing power suffered in 1978. Economists, both private and government, have for 1979 projected a C.P.I. increase of seven (7) to eight (8) percent. This data makes inescapable the conclusion that the Orangetown Police, at the end of the 1979-1980 contract period, will have gained no real wage advantage. In fact,

they will have lost some earning power, and therefore have assumed some share in the rising cost of living.

On the subject of salaries, the Town made three (3) proposals which we shall now consider.

The first proposal was related to the salary of a probationary police officer whose present wage is set at \$11,766.30. The Town proposed that this starting wage be "capped", that is, that it be frozen during the 1979-1980 contract period.

The second Town proposal was related to the restructuring of the existing salary scale.

The third salary proposal to be considered was related to productivity.

Town spokesmen have conceded that the likelihood of hiring police officers during the new contract period is quite remote. In fact, it was suggested that it might be necessary to reduce the staff. The present salary scale has been in existence for almost ten (10) years. With respect to the "capping" of the starting wage and the incremental steps existing between the probationary and first grade police officer, the Town offered to "grandfather" present members of the staff and suggested that any modifications made herein would not become operative until

the end of the new agreement.

Admittedly, any of these changes suggested by the Town would not affect, under the conditions proposed by the Town, the present members of the police staff. At best, the relief sought by the Town in its proposals, would become available in 1981 and thereafter. This Panel has been designated solely to determine disputed issues relating to a 1979-1980 contract. We do not therefore feel our authority extends or should go beyond the period ending on December 31, 1980.

On the question of productivity, the Town believes that some increase would result if the Town would get back some of the personal days and / or sick leave now provided for in the agreement. The Panel Chairman fails to be convinced that the means proposed by the Town to bring about a productivity increase would be efficacious.

The Panel denies each of the three(3) proposals aforementioned!

1. Employer Panel member dissents.

CLOTHING ALLOWANCE

The current agreement provides uniforms and shoes for patrolmen.

The association has requested that an allowance of \$1000.

be awarded to detectives and to youth officers, described as non-uniformed personnel. The rationale offered for this proposal was that the services performed by these individuals requires special garb at times. In addition, the association advanced the argument that the personal clothing worn by these individuals in subject to undue wear caused by service equipment carried by them.

The Town asserted that detectives presently receive a \$1500.00 differential. It contended that when this amount was negotiated during the last round of negotiations, the parties agreed that this amount would include any clothing allowance. The Town urged this Panel to maintain the current practice.

The clothing allowance is denied.¹

1. Association Panel Member dissents.

DISCHARGE and DISCIPLINE

Under current agreement, any disciplinary action taken against a member of the bargaining unit by the Department shall be subject to review under Article 14 of the Civil Service Law (Taylor Law)

The Association in its proposal, has structured a lengthy disciplinary procedure which would allow a police officer against whom disciplinary action is sought, the option to

exercise his rights under the Civil Service Law, or elect to initiate an arbitration proceeding leading to a binding award. The Town asserted that the present practice should not be disturbed.

In the private sector, binding arbitration procedures covering disciplinary matters have been almost universally adopted. In the public sector, recognition and adoption of these procedures have gained much support in the State of New York. Perhaps one of the chief reasons for the growing support of binding arbitration in the public sector is the time saved from the date the grievance is filed to its final disposition by arbitration award. In a 75 proceeding, the time element may be considerable and this might seriously effect the morale of the employee charged. Moreover, a municipality might be seriously affected by substantial expenses and back pay awards resulting from long procedural delays occurring in some 75 proceedings.

Although the Panel accedes to the philosophy as expressed by the Association and accepts its proposal that its members be permitted to elect between a 75 proceeding and binding arbitration, the Panel does not accept the draft of the provision described by the Association as Article II, Discharge and Discipline. The Panel

recommends that the parties herein meet to discuss a mutually agreeable provision encompassing procedures providing for member election of either a 75 proceeding or a procedure leading to binding arbitration as the terminal step in matters involving disciplinary action by the Department. Granted.¹

1. Employer Panel member dissents.

LONGEVITY

The current agreement provides for a longevity payment of \$450.00 after the completion of 6 years of service, and \$450.00 in the 9th, 12th, 15th, etc. years of service.

The Association has proposed that the longevity payment be increased to \$500.00, and that it be paid every three years commencing with the completion of the second full year of employment, with an additional stipend of \$500. after 14 full years of service.

The Association asserted that the \$450. was established in 1975, and therefore an upward adjustment is in order.

The Town argued that longevity should be eliminated because it is an expensive reward that is not earned. The cost of longevity is \$114,938.00 for 1978, constituting a 13.6% increase in compensation.

The Town representative conceded that longevity payments are now being made by each of the nine towns within the county.

The Panel feels that the current longevity practice should continue throughout the new contract period without any change.¹

1. Employer Panel member dissents.

NIGHT SHIFT DIFFERENTIAL

The Association, pointing out that a man's home life is totally unnatural when working around the clock, proposed that a night shift differential of 8% be paid to those officers performing duties between the hours of 2300 and 0800.

The Association pointed to Ramapo and Spring Valley where a night differential is recognized and paid.

In its rebuttal, the Town sought to establish that under the rotational system now in use, the police officer is provided more time with his family than the average 9:00 to 5:00 worker. More important, the Town pointed out that this new benefit would increase the cost of police services approximately five (5) percent.

The fact that two (2) towns out of nine (9) in the

county provide some payment for night differentials is not, in our judgment, persuasive evidence for establishing this benefit in Orangetown. This proposal, requiring additional appropriations, is not warranted at this time! Denied.

1. Association Panel member dissent.

RESIDENCY

The Town has proposed that all members of Orangetown's Police should be residents of the Town of Orangetown. It advanced the following arguments:

1. It would ease the Town's unemployment problem.
2. The Police would spend and invest their wages in the Town.
3. Resident police would have a stake in the community & develop greater interest in it.

The Association expressed opposition to this proposal.

In our judgment, residency requirements for Municipal workers have constituted, in some local areas, a volatile issue. The Town arguments advanced on its proposal were unconvincing¹ Denied.

1. Employer Panel member dissents.

SICK LEAVE

The present agreement provides that new employees shall be entitled to advance credit of 36 days upon which to draw

sick leave.

The Town proposed that such employees should earn sick leave for time worked and not be granted before it is earned. Unearned sick leave encourages, the Town stated, employees to use sick leave. In addition, the Town recommended that the rate of earning sick leave be reduced from present 2 days per month to 1½ days.

The Association objected to the changes proposed by the Town in the existing sick leave program. Moreover, the Association requested a 100% sick leave pay out upon retirement. The Town contented that existing fringe benefits are now too high and would like the Panel to eliminate this benefit.

In its exhibit 28, the Association seeking to establish a basis for its pay out proposal, we note that this benefit is absent in 3 towns and, none of the 9 Towns listed provide the amount of pay out sought by the association. We feel that the pay out benefit now enjoyed by the Orangetown Police is favorably comparable with that received by police in the other towns and no change is warranted at this time.¹ Denied.

1. Association Panel member dissents

The proposals submitted by the Town relating to the sick

leave bank for new employees and for reducing earned sick leave to 1½ days per month are denied on the ground that no relevant evidence was submitted by it to justify changes in this existing benefit! Denied

1. Employer Panel member dissents.

BEREAVEMENT

At the present time, bereavement leave is charged against sick time.

The Association has proposed that upon the death of specific relatives, the police be granted an additional leave of 5 days.

Upon the ground that the police presently enjoy too many days off, the Town urged that the number of such days not be increased.

In Union Exhibit 27, only one town is cited as providing no bereavement leave. On the other hand, 6 out of the 9 towns do provide such leave for periods ranging from 3 to 12 days.

Since this benefit exists in a majority of the Towns within the County and because the cost factor is, in our judgment, minimal, we recommend a family bereavement leave not to exceed four (4) days, and for in-laws, such leave shall not exceed three (3) days!

1. Employer Panel member dissents.

PERSONAL LEAVE

The Police of Orangetown norm receive six (6) personal days leave. The Association wants this benefit unchanged. The Town, on the other hand, urges that this number of personal days be reduced upon the ground that the police now enjoy an excessive number of days off.

Town Exhibit "H" indicates that of the 9 towns, only one provides zero personal leave. Of the remaining 8 towns four (4) provide 6 personal days, three (3) allow four(4) days and one (1) provides three days.

In our judgment, insufficient evidence was introduced to justify a reduction in the six (6), personal leave days provided the police! Denied.

1. Employer Panel member dissents.

INSURANCE

The current contract provision allows life insurance equal to twice the employees salary plus \$10,000., with a maximum of \$75,000.

The Association has proposed increasing this amount to three times the salary with no limitation.

The Town reports that the Life Insurance Underwriters Association has recommended 3 times salary for appropriate

life insurance protection. Since the present provision allows \$50,000. of protection to the average salaried employee who is earning \$20,000. and since this employee is entitled to an additional sum of \$10,000. of life insurance protection under the existing retirement plan, this employee is covered up to \$60,000., which sum conforms to the Underwriters Association recommendation. The Town therefore feels that the police are now getting the recommended life insurance coverage and its new proposal should be denied.

We feel that the argument advanced herein by the Town is sufficient reason for denying the proposal submitted by the Association. Denied.

SNOW DAYS and BIRTHDAY

The Association has requested that police officers get time off for snow days whenever such benefits are provided other municipal employees. In addition, it seeks a paid day off on the occasion of the officer's birthday.

The Town opposes both of these proposals.

No realistic supportive evidence, was submitted on behalf of these proposals! Denied.

1. Association Panel member dissents.

MINIMUM CALL-IN PAY

The Association now proposes that the officer receive a minimum of four(4) hours pay at time and one-half for callback or call-in or for a required court appearance during other than duty hours.

Presently there exists a practice of providing an officer with a minimum payment of \$20.

The Town objects to any guarantee upon the ground that it may result in a gift payment which would be violative of the N.Y. State Constitution.

Examining an Association submission relating to Call-in pay, it was noted that five (5) out of the nine (9) towns provide four (4) hour minimum call-in pay and four (4) out of five (5) towns allow payment for such minimum at the rate of time and one-half.

We do not feel the change from the existing practice to an adoption of the Association proposal will result in a substantial budgetary expense! Granted, beginning on January 1, 1980.

1. Employee Panel member dissents.

DENTAL

The existing dental plan costs the Town \$8,388., or \$103.56 for each employee.

The Association seeks a variation of the plan which it

describes as MI dental Plan, full prothetics and that it be applicable to future retirees.

Originally, the Town attempted to eliminate the present plan completely. Later, it modified its position and agreed to continue with the existing plan.

The Association conceded that its proposed improvement of the existing dental plan would result in a three fold increase in cost, that is, from \$103.56 to \$321.72 per employee.

This proposal, if granted would constitute a substantial budgetary increase which we feel the town ought not be burdened during the new contract period. Denied.

HEALTH BENEFITS

Under the present agreement, the cost of health, dental and life insurance amounts to more than \$1,000. per employee. The current cost cost of the health plan is \$735.90 per employee and premiums continue to increase year after year.

At present, the Town assumes 100% of the cost of the health plan. The Town feels that the employee should share in the cost of this plan, contending that such a requirement might lead to a decrease in the total cost of the health plan.

The Association opposes this proposal made by the Town.

The Town offered no evidence which would establish that any of the police employed within the nine (9) towns used for comparability purposes contribute to the cost of their health plans. Furthermore, the argument that sharing of the expense would lead to reduced cost of such plans is too speculative! Denied.

1. Employer Panel member dissents.

HOLIDAYS

Under the current agreement, the police of Orangetown receive eleven (11) holidays.

Union Exhibit 24, reveals that 8 of the 9 towns in Rockland County receive an identical number of holidays. The exception is the Town of Haverstraw where the police get 12 holidays.

The Association proposed that the existing contract provision be amended to provide that each employee should receive additional compensation at the rate of time and one-half for each holiday worked. It argued that because private sector employees generally receive extra compensation for worked holidays, public employees, such as police, should also get the same treatment.

The Town, replying to the proposed amendment, argued

that the Orangetown police enjoy economic benefits which are lacking in the private sector.

We do not feel that the Association proposal should be adopted at this time! Denied.

1. Association Panel member dissents.

VACATIONS

The present plan allows vacation credits for specific service rendered. The minimum vacation is 12 days for one (1) year of service and the maximum is thirty (30) days for 20 years of service. The total vacation credits now is 468 days. The Association seeks to increase this total to 569 days. The highest vacation credits is offered at present by Clarkstown with 538, followed by Ramapo, with 520. Excluding Orangetown, in considering the data on a Union Exhibit, the total vacation credits offered by the remaining six (6) towns ranges from 365 to 475. This evidence indicates that Orangetown Police are in fourth position from the top in total vacation credits received.

The Town urged that this Association proposal be rejected by the Panel. It stated that out of a total of 260 annual work days, the police now average 44 days off with pay, or one (1) day off each week throughout the contract year.

We feel that the existing vacation schedule compares quite favorably with those existing in the other eight (8) County Towns. Therefore no modification should be made at this time.¹ Denied.

Dated: January , 1979


Nicholas S. Falcone,
Chairman


Edward J. Kiernan,
Association Panel Member


Robert Bergman, Employer Panel
Member

1. Association Panel member dissents.

STATE, CITY AND COUNTY OF NEW YORK: SS:

On this day of January, 1979, before me personally came and appeared NICHOLAS S. FALCONE, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledge to me that he executed the same.

Sidney Roth

Notary Public

SIDNEY ROTH

Notary Public
No. 41-337400
Term Expires March 30, 1979

STATE OF NEW YORK)
ROCKLAND COUNTY) SS:

On this ^{16th March} day of ~~January~~, 1979, before me personally came and 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 acknowledge to me that he executed the same.

Rene Tangere

~~Notary Public~~
9 Notary Public

STATE OF NEW YORK)
ROCKLAND COUNTY) SS:

On this ^{22nd FEB} day of ~~January~~, 1979, before me personally came and appeared ROBERT BERGMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledge to me that he executed the same.

WILLIAM D. MURPHY
Notary Public, State of N.Y.
No. 41-337400
Term Expires March 30, 1979

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William D. Murphy

Notary Public

TOWN OF ORANGETOWN

TOWN HALL • ORANGEBURG, NEW YORK 10962



Joseph V. Colello
Supervisor

Telephone
914-359-5100

1979
CONCILIATION

February 22, 1979

DISSENTING OPINION IN THE MATTER OF THE ARBITRATION BETWEEN THE TOWN OF ORANGETOWN AND THE POLICE BENEVOLENT ASSOCIATION

The report of the public member and Chairman of the Arbitration Panel contained factual errors and omissions which required a response. Therefore, this document has been submitted to clarify the position of the Town of Orangetown's panel member and bring to light certain ramifications that are not revealed in the above mentioned document.

BACKGROUND: The Town of Orangetown specifically refutes the suggestion the parties would submit no post hearing briefs. At the close of the hearing, the Town of Orangetown reserved the right to submit to the panel members additional data concerning "the interest and welfare of the public and the financial ability of the Town to pay" significant additional funds for police activities.

WAGES AND DIFFERENTIALS: In considering the general issue of salary increases, the employer member of the panel is aware of the rising expectations of public employees and their real need to maintain buying power in an era of inflation. This need for increased buying power must, however, be weighed in light of the previous benefits and wage increases granted.

The Town submitted into evidence a 10 year comparison of Orangetown Police salaries in relation to the general cost of living in the New York metropolitan area. This analysis revealed that our police employees have benefited handsomely vis-a-vis the private sector. While inflation has doubled the average employee's salary in the metropolitan area, our Police Officer's salaries at a variety of ranks have nearly tripled.

A favorite method of arriving at police salary adjustments in Rockland County has been to compare salary levels between the municipalities within the County. Over the years, this type of parochial comparison has caused a leap frog affect among County Police Departments. As a result, Rockland County Police Departments are among the highest paid in the Country and are higher paid than many jurisdictions close by. The Town of Orangetown submitted documents comparing current salary scales