

NEW YORK STATE  
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CONCILIATION

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration Between :  
VILLAGE OF HORSEHEADS :  
and :  
HORSEHEADS POLICE BENEVOLENT ASSOCIATION :  
Case Nos. IA-52; M78-1 :  
(111-8-M10F (A-60) -PERB) :

DETERMINATION  
AND  
AWARD

Before

Fred L. Denson, Panel Chairperson  
Robert A. Groff, Employer Panel Member  
Richard N. Aswad, Employee Organization Panel Member

Appearances

For the Village of Horseheads  
John Groff, Attorney

For Horseheads Police Benevolent Association  
John B. Schamel, Jr.

BACKGROUND

The Horseheads Police Benevolent Association (hereafter referred to as the Association) is the bargaining agent for nine (9) patrolmen and three (3) sergeants. Its preceding agreement with the Village of Horseheads (hereafter referred to as the Village) was for a two (2) year period which expired 5/31/78. Negotiations for a new agreement commenced on or about 12/16/77. Impasse was declared after seven negotiation sessions and subsequent mediation efforts did not bring about agreement. A petition for

compulsory arbitration was filed on 6/6/78 and the answer to the petition filed on 7/24/78. Pursuant to the petition, the undersigned panel was designated on 8/3/78.

A hearing for the matter was held on 9/25/78 and 10/6/78 at the Village Hall in the Village of Horseheads, New York. Full opportunity was afforded each party to present testimony, to summon witnesses and to engage in their examination and cross examination. The panel was duly sworn and the parties agreed that the notes of the Chairperson would be the official record of the proceedings. Briefs were submitted on 11/13/78. On 11/18/78, the Association submitted a letter objecting to certain allegations in the Village's brief. On 11/28/78, the Village responded to these objections in letter form. After reviewing the hearing record and post-hearing information, the panel reconvened in executive session on 2/16/79 at the Law Office of Aswad & Ingraham, 106 Oak Street, Binghamton, New York, to further deliberate the matter at issue.

#### THE ISSUES

The following issues have been submitted for consideration by the Association in its document entitled, "Issues for Arbitration":

- "1. Art. I - Association Recognition  
Request use of Village duplicating and copying equipment.
2. Art. III - Dues Checkoff  
Request Agency Fee.

3. Art. V - Holidays  
Request one additional holiday.
4. Art. VI - Longevity Increments  
Agree to delete Longevity Increments for all new employees.
5. Art. VII - Retirement  
Write in current practice in contract.
6. Art. IX - Hospitalization Insurance  
Request Dental and Prescription Riders.
7. Art. X - Vacations  
Request five additional days vacation and vacation time may be accumulated to total of 30 days.
8. Art. XI - Sick Leave  
Request one day vacation per month after accumulation of the 72 days and upon retirement the Village will pay each Officer for his accumulated sick days.
9. Art. XII - Additional Leaves of Absence  
Request three additional days upon death of grandparents.
10. Art. XIII - Released Time  
Request unlimited release time to be granted at Association's discretion. Was willing to settle for 20 days a year.
11. Art. XVI - Clothing Allowance  
Request clothing allowance from \$259.00 to \$350.00
12. Art. XVIII - Duration of Agreements  
Request contract be in effect until signing of a new contract, if an Agreement cannot be agreed to.

NEW ITEMS

13. Overtime  
Request to be paid time and one-half for time worked in excess of eight hours and/or over forty hours.
14. Replacements  
Request personally owned items which become lost or damaged while in performance of those duties will be replaced or repaired by the Village.
15. False Arrest Insurance  
Request Village to provide a copy of False Arrest Insurance and guarantee it will not diminish coverage.
17. Evening Coverage  
Request two Officers working road patrol between hours of 4 p.m. to 8 a.m.
18. Disciplinary and Laudatory Action  
Request Just Cause Dismissal. Personnel File language

- to protect employee against derogatory material that is not fully documented.
20. Court time and Call Up Time  
Request each Officer be compensated for four hours pay minimum.
  21. Precedence  
Request this contract supercedes policies, etc., which are inconsistent with this Agreement.
  23. Definition  
Request Police Officer as defined in Section 58-3 of Civil Service Law.
  24. Rates of Pay  
year 1 - 6% cost of living + \$800.00  
year 2 - cost of living + 2%"

The following issues have been submitted for consideration by the Village in its Exhibit No. 16:

- "1. Termination of Longevity increments (10, 15 and 20 years) for all police officers employed on or after June 1, 1978.
2. Elimination of Article VIII Accidental Death Benefit of June 1, 1977-May 31, 1978, Village of Horseheads, PBA Contract from all future contracts.
3. Overtime compensation shall be paid to all employees represented by the Horseheads PBA, Inc. at the employee's regular hourly rate plus one-half ( $\frac{1}{2}$ ) of that rate for each authorized hour that the employee works in excess of his regularly scheduled forty (40) hours per week in accordance with Section 90 of the General Municipal Law. Overtime hours shall be authorized only in designated emergency situations or when an officer's attendance is required at court proceedings which cannot be scheduled during the officer's normal forty-hour work week. When an officer is called in, from being off duty, for a designated emergency or is required to attend a court proceeding other than during his scheduled forty-hour work week he shall be credited with a minimum of two (2) hours call back payable at the rate of time and one-half. The Chief of Police may designate a situation to be an emergency, thus permitting an officer to work overtime, subject however to final determination and approval by the Village Manager. Overtime shall be authorized in advance, whenever possible, by the Chief and the Village Manager before credit for over-

time work may be allowed. If prior authorization is impracticable or impossible, the Chief and Village Manager shall make a determination after-the-fact of the necessity for overtime and, if justified, authorize it. The officer shall be given a choice, when there are sufficient funds in the proper Police Budget Account for overtime, between receiving overtime payment or compensatory time off. After the Chief has authorized the overtime, authorization must be obtained from the Village Manager. If overtime is made necessary due to an emergency condition the Officer may be required to make himself available for overtime duty.

4. The Village proposes that any and all wage or salary increases for the June 1, 1978-May 31, 1979 contract year be limited to six percent (6%) of the individual officer's previous year's wage or salary."

At the onset of the hearing, the Association withdrew its issue numbers 16, 19, and 22.

#### APPLICABLE STATUTORY AND CONTRACTUAL PROVISIONS

The pertinent statutory provisions are set forth in Section 209.4 of the Taylor Law. Pertinent contractual provisions are contained in the expired agreement between the parties (Joint Ex. No. 1). In arriving at its determination, the panel has, in accordance with Section 209.4(c)(v), taken into consideration, in addition to other relevant factors, 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."

The wages, hours and conditions of employment of members of the Association have been compared to those of public employees in several other municipalities including those mentioned in the briefs, those having geographic proximity to Horseheads, and those in which there are similarities in population, police personnel, financial situation, police activities, etc. Since police work is almost exclusively unique to the public sector, comparison to private sector employment is of little value.

The Village's ability to pay has been considered and the determinations reached herein are deemed to be reasonably compatible with the Village's available financial resources. Moreover, the determinations have no adverse effect upon the interests and welfare of the public, but instead are believed to be consistent therewith. In its deliberation, the panel has remained aware of the inherent hazards of police work and the special physical, mental and educational qualifications required for such work together with the specialized training and skills which are also required by such employment.

The history of negotiations, and particularly those negotiations which took place during the course of this hearing,

has had substantial significance in the present determination. The terms of the expired agreement are also of significant relevance as mentioned hereafter.

Specific reference to these and other criteria such as the Consumer Price Index have been made in reaching the Determinations set forth below.

#### THE POSITIONS OF THE PARTIES

The respective positions of each of the parties are adequately set forth in the briefs and reply briefs, and thus it is not necessary to here restate their contentions.

#### DETERMINATIONS

Pursuant to the foregoing considerations, the panel makes the following determinations regarding the Association's proposals:

1. The Association should be permitted to use the Village's copying machine. A fair and reasonable charge is 10¢ per copy payable by the Association to the Village.
2. With the exception of one employee, all members of the bargaining unit are dues paying members of the Association. Under these circumstances, the panel is of the opinion that an Agency fee is not warranted.
3. The panel is of the opinion that the holidays as provided for in the expired agreement (Joint Ex. No. 1) are adequate.

4. The parties agree that longevity increments should be eliminated for all new employees. The panel endorses this agreement.

5. The Village currently maintains a practice of contributing 50% toward the cost of a retiree's health insurance and 35% towards the cost of a spouse's health insurance. This practice should be incorporated into the new contract.

6. The panel finds no compelling reason to change the contract language regarding hospitalization insurance and is of the opinion that it should remain the same as it was in the expired agreement.

7. Our review of the vacation allotment and work schedules of the employees indicates that additional vacation benefits are warranted to the extent of two (2) additional days during the first year of the agreement and one (1) additional day during the second year of the agreement, for a total of three additional days. The remaining portions of Article X should remain the same.

8. The panel is of the opinion that the sick leave provision of the expired contract should remain the same in the successor contract.

9. The panel is of the opinion that the provisions of the Additional Leaves of Absences section as set forth in Article XII of the expired agreement are adequate and should remain un-

changed in the new agreement.

10. The Association has not shown that the present allowance of ten (10) days per year for Association business is inadequate. The panel believes that the current allowance should not be changed.

11. The panel is of the opinion that the current uniform allowance of \$259.00 is insufficient and should be upwardly adjusted to \$350.00 annually.

12. The maximum period for agreement provided by statute serves to enhance harmonious relations between the parties. For this reason, the panel concludes that a two (2) year agreement is appropriate.

13 and 20. The practice of paying employees at time and one-half rates for all hours worked in excess of 40 hours is widely accepted. The panel believes that the new contract should contain a provision to this effect as well as a provision calling for a guaranteed minimum payment of three (3) hours for all off-duty call ins or off-duty court time.

14, 17, 21, and 23. The panel is of the opinion that there presently are no compelling circumstances to warrant the inclusion of new provisions in the contract regarding the issues of replacements (14), evening coverage (17), precedence (21) or definition (23).

15. The concern of the Association regarding false

arrest insurance has been resolved by the Village providing the Association with a copy of the policy. Thus, there is no need to include this subject in the new contract.

16, 19, and 22. These issues were withdrawn by the Association at the onset of the hearing.

18. Where disciplinary or laudatory actions are involved, the panel is of the opinion that the harmonious relationship between the parties can be promoted by including a provision in the new agreement which permits the employee to select either the procedures of the Village Law, Civil Service Law (Article 75) or a contractual grievance procedure for a review of the matter. The contractual grievance procedure, in the interest of fairness and due process, should contain a just cause standard, should be binding in nature and should provide for the mutual selection of an arbitrator to decide the matter. The following language is deemed to be suitable:

A. No employee shall be disciplined without just cause. A notice of discipline shall be made in writing and served upon the employee. The specific acts for which discipline is being imposed and the penalty proposed shall be specified in the notice. The notice shall contain a description of the alleged acts and conduct, including reference to dates, times and places. Two copies of the notice shall be served on the employee. Service of the notice of discipline shall be made by personal service, if possible. If service cannot be effectuated by personal service, it shall be made by registered or certified mail, return receipt requested.

B. The notice of discipline served on the employee shall be accompanied by a written statement that the matter will be reviewed pursuant to applicable Village Law unless within ten (10)

days the employee notifies the Village that the employee desires to have the matter reviewed pursuant to Article 75 of the Civil Service Law or pursuant to the grievance procedure set forth in section D below.

C. The penalty proposed may not be implemented until (i) the employee fails to file a grievance within 10 days of the service of the notice of discipline or (ii) having filed a grievance, the employee fails to file a timely appeal as provided below, or (iii) the penalty is upheld by the disciplinary arbitrator or a different penalty is determined by the arbitrator to be appropriate, or (iv) the matter is settled.

D. 1) If not settled or otherwise resolved or appealed pursuant to Village Law or Civil Service Law, the notice of discipline may be the subject of a grievance before the department head and shall be filed either in person or by certified or registered mail, return receipt requested, by the employee within 10 days of service of the notice of discipline. The employee shall be entitled to a meeting at the department level to present his position to the department head or his designee within 10 days of filing the grievance. A response shall be rendered in writing, if possible, in person, or by certified or registered mail, return receipt requested, no later than four days after such meeting. When the department fails to respond within four days, from such meeting, the grievant has the right to proceed directly to arbitration without receipt of the written response by filing a notice in accordance with Section D. 2). If possible, the department head should render the written response at the close of such meeting. The employee has the right to have an Association representative or an attorney present or to decline such representation. If such representation is requested, the employee will be given a reasonable period of time to obtain a representative. If the employee requests representation and the Association or employee fails to provide a representative within a reasonable time, the meeting may proceed. The purpose of the department level meeting shall be the possible settlement of the matter. The procedure followed will be the non-formal disclosure first by the department and then by the employee, of the evidence which will be presented and the defenses which will be offered if arbitration occurs, provided, however, that such meeting need not involve the presentation of witnesses. The employee shall have the right to remain silent at such meeting, except that the Association or the employee's attorney shall present a summary of his or her answer to the charges. The meeting provided for herein may be waived, in writing, on the grievance form.

2) If the grievance is not settled or otherwise resolved, it may be appealed to independent arbitration by serving a notice personally or by certified or registered mail, return receipt requested, on the Village within 10 days of service of the department response. If there is no department response within four days after such meeting, filing of such notice shall be within 14 days of the department level meeting.

3) The arbitrator may be selected by mutual agreement between the parties. In the event the parties fail to mutually agree to an arbitrator within ten (10) work days from the date of receipt of notification to arbitrate, either party will have the right to request a list of the names of five arbitrators from the New York State Public Employment Relations Board. The rules and procedures of the New York State Public Employment Relations Board shall govern the selection of the arbitrator. All fees and expenses of the arbitrator, if any, shall be divided equally between the parties. Each party shall bear the costs of preparing and presenting its own case.

E. Disciplinary arbitrators shall confine themselves to determinations of guilt or innocence and the appropriateness of proposed penalties. Disciplinary arbitrators shall neither add to, subtract from nor modify the provisions of this Agreement. The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, and probable cause for suspension, if any, shall be final and binding upon the parties, and the disciplinary arbitrator may approve, disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of any period of suspension. If the arbitrator upon review finds probable cause for the suspension, he or she may consider such suspension in determining the penalty to be imposed. He or she has full authority, if the remedy proposed by the Village is found to be inappropriate, to devise an appropriate remedy including an increase in the penalty sought.

F. A disciplinary matter may be settled at any time following service of the notice of discipline. The terms of the settlement shall be agreed to in writing.

G. Prior to exhaustion or institution by an employee of the grievance procedure applicable to discipline, an employee may be suspended without pay only if the Village determines that there is probable cause to believe that the employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations.

In accordance with the above proposed language, an employee is given ten (10) days after the notice of discipline is served to select the procedure he desires for review of the matter (i.e. Village Law, Civil Service Law or disciplinary grievance procedure.) In the absence of any selection within the specified time period, the Village Law applies and the matter may only be reviewed pursuant thereto.

The panel is further of the opinion that employees should be given the opportunity to review the contents of their personnel files upon giving 24 hours notice to the Village.

24. For reasons previously articulated at pages 5, 6, and 7, the panel is of the opinion that the salary schedule set forth in Annex A of the expired agreement (Joint Ex. No. 1) should be upwardly adjusted by 8% effective 6/1/78 for the first year of the new agreement. The salary schedule for the second year of the agreement should provide for a cost of living adjustment plus \$300.00, effective 6/1/79. The cost of living adjustment should be based on the May 1978 to May 1979 index as provided by the Bureau of Labor Statistics. While the indicated increases seemingly exceed the President's 7% guideline, the panel recognizes that an additional increase is required to bring the employees' wages into favorable comparison with those of police officers in similarly situated communities. Moreover, the negotiations for a new agreement commenced and should have been concluded long before

the President's guidelines were suggested. If the matter had been timely settled when the old agreement expired on May 31, 1978, the guidelines would not have been a factor since they were not in existence at that time. Fairness and equity require that the wage increase be measured from June 1, 1978 rather than the time the guidelines were implemented.

Village proposals 1, 3 and 4 (termination of longevity increments, overtime compensation and wages) have been considered with the above discussion of Association proposals 4, 13, 20 and 24. As to Village issue 2, the panel finds no compelling reason to eliminate Article VIII, Accident Death Benefit, from the new contract since it merely incorporates the provisions of 208-B of the General Municipal Law.

The undersigned arbitration panel, having been duly designated pursuant to the provisions of Section 209.4 of the Taylor Law, hereby makes the following

A W A R D

A. The Association shall be permitted to use the Village's copying machine and shall pay the Village 10¢ for each copy made.

B. Article VI, Longevity Increments, shall not be applicable to new employees.

C. The Village shall contribute 50% toward the cost of a retiree's health insurance and 35% toward the cost of a spouse's health insurance.

D. The vacation allowance shall be increased by two (2) additional days during the first year of the agreement and one (1) additional day during the second year of the agreement.

E. The annual uniform allowance shall be \$350.00

F. The agreement shall be for a period of two years from 6/1/78.

G. Employees shall be paid at the rate of time and one-half for all hours worked in excess of forty (40) hours. Employees shall be guaranteed a minimum payment of three (3) hours for all off-duty call ins and off-duty court time.

H. No employee shall be disciplined without just cause. An employee shall be entitled to have a disciplinary matter reviewed pursuant to Village Law, Civil Service Law or disciplinary grievance procedure which includes binding arbitration. Village Law shall prevail unless the disciplined employee selects an alternative procedure within ten (10) days. The above suggested language, modified only to meet the mutual desires of the parties, shall be incorporated into the new agreement.

I. Employees shall be entitled to review the contents of their personnel files upon giving 24 hours notice to the Village.

J. The salary schedule shall be adjusted by 8% effective 6/1/78 and by the cost of living plus \$300.00 effective 6/1/79.

K. The panel retains jurisdiction of this matter for a thirty (30) day period to allow for the parties to draft specific contract language.

Fred L. Denson  
FRED L. DENSON, Panel Chairperson

Robert A. Groff  
ROBERT A. GROFF, Employer Panel Member

Richard N. Aswad  
RICHARD N. ASWAD, Employee Organization  
Panel Member

STATE OF NEW YORK)  
COUNTY OF MONROE ) ss:

On this 2<sup>ND</sup> day of APRIL, 1979, before me personally came and appeared FRED L. DENSON, to me known and known to me to be the individual described in the foregoing Instrument and he acknowledged to me that he executed the same.

Kenneth J. Vorrasi  
NOTARY PUBLIC  
KENNETH J. VORRASI  
Notary Public in the State of New York  
MONROE COUNTY, N. Y.  
Commission Expires March 30, 1980

STATE OF NEW YORK)  
COUNTY OF STEUBEN ) ss:

On this 17<sup>TH</sup> day of April, 1979, before me personally came and appeared ROBERT A. GROFF, to me known and known to me to be the individual described in the foregoing Instrument and he acknowledged to me that he executed the same.

Marilyn L. Andrus  
NOTARY PUBLIC  
MARILYN L. ANDRUS  
Notary Public, of New York State  
Chemung Co. - 0076970  
Commission Expires March 30, 1981

STATE OF NEW YORK)  
COUNTY OF BROOME ) ss:

On this 2<sup>ND</sup> day of MAY, 1979, before me personally came and appeared RICHARD N. ASWAD, to me known and known to me to be the individual described in the foregoing Instrument and he acknowledged to me that he executed the same.

Winnie M. Zavarico  
NOTARY PUBLIC

WINNIE M. ZAVARICO  
Notary Public, State of New York  
Residing in Broome County, N.Y.  
My commission expires March 30, 1981

