

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAN 25 1980

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In the Matter of the Arbitration :

CONCILIATION

between :

THE VILLAGE OF NYACK :

Case No. 1A-131;M79-88

And :

THE NYACK POLICE ORGANIZATION :
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ARBITRATION PANEL

- Nicholas S. Falcone, Public Member and Chairman
- Michael Condello, Employer Member
- Ray Kruse, Esq., Employee Organization Member

APPEARANCES:

For the Village

- James L. Casey, Esq., Counsel
- Thomas Coffey, Chief of Police

For the Association

- Arthur Keenan
- Brian Lennon, President
- Edward O'Grady
- Gary Manford

This proceeding was held pursuant to Section 209.4 (c) of Article 14 of the New York State Civil Service Law. At the request of the parties, the Panel conducted a preliminary meeting on November 27, 1979, at the Village Hall, Nyack, New York. Present at this conference were the Panel members, Mayor Alex Caglione, Police Chief Coffey and James Casey, representing the Village, and Association representatives, including, Brian Lennon, Edward O'Grady and Gary Manford.

During the November 27th meeting, the issues in dispute were reviewed, and the following were withdrawn by the Association:

1. Organization Business
2. Equipment
3. Education
4. Terminal Leave
5. Foot Patrol
6. Days off
7. Outside
8. Transfers
9. Current Benefits to Remain in Effect
10. Amendment to Article 24 of the 1974 Agreement.

On December 6, 1979, a hearing on the merits of this dispute was conducted at the Village Hall, Nyack, 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 afforded full opportunity to present evidence, written and oral, in support of their respective positions.

The Panel advised the parties that the following statutory mandates would be considered by it in arriving at Panel determinations:

1. Comparisons 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 working conditions 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. Comparisons 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 hospitalization benefits, paid time-off and job security.

Formal presentation of evidence was completed during the December 6th meeting. Following assurances made by the representatives herein that post-hearing briefs would not be submitted, the Panel members convened in executive session on January 4, 1980, at the Village Hall, Nyack, New York, at which time there was full discussion of all the evidence submitted and all the arguments advanced.

The Award which follows is the product of the Panelists' unanimous agreement.

BACKGROUND

The police of the Village of Nyack, comprising a bargaining unit of 20 officers, have been employed under the terms of a collective bargaining agreement which expired on May 31, 1979. Following an impasse in negotiations directed toward a successor agreement, the Association

petitioned PERB, requesting that this controversy be submitted to a Public Arbitration Panel. Under date of October 30, 1979, PERB designated this Public Arbitration Panel to hear the dispute and thereafter make just and reasonable determinations.

In reaching its determinations this Panel examined all evidence relating to comparison of wages, hours and working conditions of the Nyack police with those police in comparable geographical areas; the interests and welfare of the public and the financial ability of the Village; working conditions which are unique to those engaged in public police activities; and, also considered were the terms of collective agreements negotiated between the parties in the past. Finally, the entire record of this arbitration proceeding was carefully studied and thoughtfully considered by each member of the Panel in arriving at its determinations.

ORGANIZATION DUES

The Organization requested a contract provision incorporating an agency shop. During its formal presentation, the Village agreed to this proposal. The Panel recommends that the parties adopt the language appearing in Association Exhibit 19, and make it a part of the new agreement.

ARBITRATION OF DISCHARGE AND DISCIPLINARY GRIEVANCES

Again, during formal presentation of its evidence, the Village agreed to the Organization proposal on this item. However, the Village made its agreement conditional upon the Organization assuming the complete cost of the arbitration proceeding. The Organization objected to this condition and advanced the position that both parties should share

equally in the aforesaid costs. It is the Panel opinion that ninety (90) percent or more of bargaining agreements provide for arbitration costs to be assumed equally by each party. Furthermore, we feel that the advantages of this arbitration procedure flow to each of the participants. Therefore, the Panel has determined that the fees and disbursements resulting from arbitration shall be shared equally by the parties. The parties shall, in structuring the arbitration clause, consider Association Exhibit 22 for appropriate form and substance. In the event a disagreement arises between the parties, this matter shall be re-submitted to this Panel for final action.

DENTAL PLAN

Under the current agreement, the Police have a dental plan described as GHI "J" plus 50% prosthetics. Each employee contributes approximately \$80.00 annually towards its cost and the Village contributes about the same sum. The Organization seeks an improvement in this plan, contending that out of 9 towns and villages in the comparable geographical area, the Nyack plan is the cheapest available and that only this Village requires its police to make contributions. The Organization seeks a GHI M-1 Family Plan which is said to cost \$225.00 annually. During its presentation, the Village agreed to contribute \$112.50 towards this Plan. The Panel recognizes the 50% improvement offered by the Village and therefore has determined that its offer be adopted as of January 1, 1980.

PERSONAL PROPERTY

The parties agreed that, during the performance of police duties, damage or destruction of an officer's watch and/or eye glasses might

occur. The Organization sought reimbursement up to a maximum of \$100.00 to cover any such loss. The Village stated that it presently takes care of any such property losses. It is the determination of this Panel that the new agreement provide that an officer be reimbursed up to a maximum of \$100.00 for each watch and/or eye glass damage or destruction sustained during his performance of police activities.

UNIFORM ALLOWANCE

The current agreement provides for an officer clothing allowance of \$300.00 per year, and a similar allowance of \$500.00 per year for detectives. The Organization sought a \$50.00 increase in each allowance. The Panel grants this increase.

PERSONAL LEAVE

The expired agreement provided for four (4) personal leave days. The Organization surveying the comparable area contracts asserted that, excluding Nyack, the police are provided with 5.12 personal days. It sought therefore an increase from the present 4 days. The Village contended that, considering the four areas classified as villages, only one, Spring Valley, provides 5 instead of 4 leave days. The County parity argument advanced by the Organization was sufficiently persuasive to cause this Panel to increase personal leave to 4½ days.

MINIMUM CALL-IN PAY

At present, members of the bargaining unit receive a minimum of two (2) hours call-in pay at a rate of time and one-half. The Organization has proposed that this minimum be increased to four (4) hours. The Village requested that no change be made in the existing minimum. Of

the nine (9) areas appearing on Association Exhibit 14, Ramapo and Suffern have no minimum and Nyack provides 2 hours. The others provide a four (4) hour minimum. The Panel has determined that the minimum call-in shall be increased to four (4) hours effective upon receipt by the Village of a completely executed copy of this Award.

SICK LEAVE

The relevant provision in dispute reads:

"When on sick leave, a member of the department shall not leave his place of confinement or residence except by permission of the Police Surgeon or as required for medical aid or treatment."

The Organization raised certain questions relating to the interpretation and application of the language hereinabove set forth and sought clarification. The Village offered no recommendation on this issue. The Panel accepts the clarification offered by the Organization and recommends that the following language be included in the above provision:

"Confinement shall be required only during that period in which the individual is actually ill."

HOLIDAY PAY

The Village police receive eleven paid holidays. If a member is required to work on a holiday, he receives pay for the day worked at straight time. The Organization, in its Exhibit 13, revealed that of the nine (9) comparable areas appearing thereon, seven (7) areas provide better holiday pay benefits than does Nyack. The Organization seeks a pay rate of time and one-half for work performed on a designated holiday. The Village objects to any improvement on this item. The Panel denies the proposal made by the Organization.

VACATION DAYS

The Organization asserted that the Village police average 20.25 vacation days, the second lowest among the nine (9) comparable areas. It seeks to improve this item to 24.05 vacation days bringing the average up to 24.05 annual vacation days per member. The Village contested this proposed vacation improvement by pointing out that the Nyack vacation benefit is comparable with that existing in all 4 villages. However, during the formal hearing, the Village brief was amended to indicate that of the four (4) villages, Suffern and Spring Valley have recently modified their vacation program to include a maximum of 30 vacation days for those police with 11-20 years of service. During the Panel executive session the following vacation improvement was devised and accepted by the parties.

Department members with one (1) to five (5) years of service shall receive fifteen (15) vacation days annually; those with six (6) to nine (9) years of service, shall receive twenty (20) days; those with ten (10) to fifteen (15) years, shall receive twenty-five (25) days; and those having sixteen (16) or more years of service shall receive thirty (30) vacation days.

LONGEVITY

Under existing contract practice, those police hired prior to 1974, receive a longevity payment of \$390.00 after having completed a required three (3) years of service. Those members hired after 1974, acquire this benefit after having completed six (6) years of service. The Village revealed that currently this provision carries a cost of \$24,570.00. Again, basing its claim for some improvement upon County

parity, the Organization sought an increase amounting to \$50.00. The Panel agreed to raise this benefit to \$400.00.

ODD SHIFT DIFFERENTIAL

The Organization, arguing that a patrolman's home life becomes totalling unnatural when required to work around the clock, proposed that a night differential amounting to six (6%) percent be paid to those officers on hours worked during any shifts except those shifts covering hours, 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. Only Nyack among the nine (9) County police departments, has, according to the Organization, what it describes as "bastard" work shifts. It contended that men working on these so-called "bastard" shifts are subject to undue stress, both physical and psychological. Until a more adequate cure has been devised, the Organization believed that some monetary reward should be offered to those required to work the objectionable shift hours. Although the Panel chairman recognized this problem and expressed hope that some cure would be devised soon, he did not believe that a few pennies was a soluble method. The Panel rejects at this time the proposal made by the Organization.

SHIFT CHANGES

This topic resulted in perhaps the greatest discussion between the parties. Detailed exhibits were introduced by the Village and the Organization. The basis for the dispute in this area originated with an Organization demand that its members be given a 48 hour notice before a specific shift change takes effect. Whenever possible, the Village attempts to place senior patrolmen on the more desirable shifts. Its Exhibit 3

indicates that 32% of the department works the 3:00 p.m.--11:00 p.m. shift; 29% of the department works the 11:00 p.m.--7:00 a.m. shift and 29% also work the 7:00 a.m.--3:00 p.m. shift. Six (6) percent of the department work the 8:00 p.m.--4:00 a.m. shift and one (1) percent work the 6:00 p.m.--2:00 a.m. shift. Lieutenant Philip Herman, testifying for the Village, provided the following data concerning department personnel and shifts worked:

1. The Department comprises 4 Sergeants and 15 patrolmen.
2. Seventeen (17) of this combination work 4 days and are free 2 days.
3. The work schedule is based upon a 6 week cycle and each member works four (4) 40 hours per week and two (2) 32 hour week, averaging a total of 37-1/3 weekly work hours on an annual basis.
4. Four (4) Sergeants and one (1) patrolman work 3 basic shifts, that is, 3:00 p.m.--11:00 p.m.; 11:00 p.m.--7:00 a.m., and 7:00 a.m.--3:00 p.m.
5. Twelve (12) patrolmen work four (4) shifts.

The Village objected strenuously to this Organization proposal, contending that the Village could not possibly anticipate its needs for police activities two (2) days in advance to accommodate Department members. Although the Village voiced some regrets concerning its objections to the Organization proposal, it felt that the nature of police work requiring 24 hour service around the clock must not be compromised by the modification advanced by the Organization. Perhaps the cure might result if and when the Village decides to increase its departmental manpower. The Panel denies this Organization demand.

WORK SAFETY

The Organization seeks a premium to be paid under certain conditions whenever less than four (4) men work a shift. Specifically, it proposes that where a minimum of four men working per shift with two radio patrol cars in service in the Village at all times are not provided, the sum of \$60.00 shall be paid for each policeman less than four scheduled on each such shift. In addition, the proposal would require the payment of \$15.00 for each vehicle less than two available on each such shift. The total of such money accumulated shall be divided equally among the officers working such shift.

Responding to this item, the Village offered the opinion that the Organization, under its proposal, was attempting to usurp management prerogatives. Further, the Village asserted that the Police Chief is solely responsible for providing adequate manpower for a scheduled shift. The Village, it stated, should not be financially penalized whenever less than four (4) officers report for work on any shift. Finally, the Village raised the issue of possible collusion which might be encouraged for the purpose of reaping this suggested premium pay benefit.

The Organization provided no supportive data seeking the introduction, for the first time, of the aforesaid premium pay. This proposal is not acceptable. Denied.

SALARY

The Organization sought a fifteen (15) percent increase in wages. The last wage offer made by the Village was \$1200.00 across the board.

The Organization offered as supportive evidence for its wage increase demand the following data:

1. Consumer Price Index -- The C.P.I. increase for Urban Wage Earners and clerical workers for the relevant New York area was 10.16% for the period July, 1979--September, 1979. The C.P.I. increase for all Urban Consumers for New York was 9.6% for the same time period. This data was unchallenged by the Village.

2. The Organization cited comparability as another ground upon which its wage demand was justified. With the exception of the Village of Haverstraw, Association Exhibit 5, shows that Nyack police received less wages in 1978 than those employed in seven (7) other communities comprising the major population areas of Rockland County. The maximum salary for a Nyack patrolman is \$18,450.00, established on June 1, 1978. In each of the seven (7) communities referred to hereinabove, the maximum patrolman salary in 1978 was in the range of \$18,863.00 to \$20,292.00. With the exception of the Villages of Haverstraw and Nyack, 1979 patrolman salaries have already been established by agreement in the 7 communities and the maximum 1979 salaries range from a low of \$19,994 in the Town of Haverstraw to a high of \$21,357.00 in Clarkstown.

Based upon this data, the police in Nyack contend that the offer of \$1200.00 made herein constitutes a percentage increase of slightly above six (6) percent for those patrolmen on maximum scale. Such a salary increase would not approach the 9.6% increase in the cost of living cited hereinabove. Economic justice and ordinary fairness, the Organization argued, would require that the police receive a 15% wage increase.

In its rebuttal, the Village advanced the following arguments supportive of its wage offer:

1. The average salary in 1979 for the Village police is \$18,710.
2. Total fringe benefits for 20 officers (Sergeants and Patrolmen) amounts to 84% of their combined salaries.
3. The total average compensation in 1979 for each of the 20 officers was \$34,412.00.
4. The size, population and tax base for each Village is different. The geographical area and total population affect the type of police service required, while the tax base affects the total revenue for use. Nyack has a population of approximately 6700. Its total budget was \$1,182,640 of which 59% was allocated for the police department. On the other hand, Spring Valley and the Village of Haverstraw allocated 30% and 31% respectively of its total budget for their police.
5. The police in Nyack work a 37-1/3 hour week while police in other villages work a 40 hour week. This six (6) percent reduction of work hours should be considered in seeking resolution of the existing wage dispute.

Although the Village failed to raise the issue of its financial inability to meet the wage demand of its police, it contended that its wage offer was fair and equitable, based upon the arguments advanced and evidence introduced during this hearing.

Except for a shorter work week presently existing in Nyack over other Villages and Towns comprising Rockland County, the fringe benefits received by Nyack police are generally identical or similar generally in all of these communities.

Each of the nine (9) villages and towns comprising the major area recognized as Rockland County have an independent police department, and each grades its patrolmen from 1 to 5. In 1978, Nyack paid its novice patrol-

man \$12,850, which placed this Village second among the nine towns and villages recognized for comparability. In 1978, the Village paid its top grade patrolman \$18,450, which placed it eighth on the list of these communities.

Seven (7) of these nine (9) communities have established 1979 salaries and the maximum wage for top grade patrolman runs from a low of \$19,994 paid by the Town of Haverstraw to a high of \$21,357.00 paid by Clarkstown.

The offer of \$1200.00 across the board made by Nyack would, if implemented, raise the present patrolman maximum salary to \$19,650, making this the lowest police salary in Rockland County for those members on the top grade.

The wage increase of \$1200 offered by the Village would, if adopted by this Panel place its top patrolmen at the bottom of seven (7) out of nine (9) of the Towns and Villages in Rockland County which have established 1979 wage scales. Two political units, including Nyack, have not completed 1979 negotiations. The average salary for top grade patrolman in these seven (7) areas for 1979 is \$20,657. It is therefore clear from the evidence submitted herein that the police of Nyack receive at present a salary below that existing in all the comparable communities. A wage increase in excess of \$1200 appears to be warranted in this matter. The Village offer constitutes an increase of about 6.5% which would be about 3% below the reported C.P.I. of 9.6% for the period July 1979--September, 1979. Many economists have predicted that the cost of living increase for the period January, 1979--December 1979 will reach 12 or 13% with a similar trend during 1980.

The Nyack police have already sustained sizeable loss in purchasing power, and the end of this loss is illusive. Of course, C.P.I. increases

affect not only police but also other workers as well as taxpayers and others. All must share in this burden, including police officers. Following considerable discussion, the Panel agreed upon the following wage pattern:

1. The salary of those officers in the first step shall remain unchanged at \$12,850.00.

2. Each of the officers on the 2nd, 3rd, 4th and 5th steps shall receive a salary increase of nine (9) percent.

SERGEANT AND DETECTIVE SALARIES

Currently, the sole detective in the department receives a salary of \$19,650. and the four (4) sergeants receive \$20,850 annually. If the Village offer of \$1200 were applied to these existing salaries, the detective's salary would increase to \$20,850, and each of the sergeants would receive \$22,050. For both categories, the offer increase would consistute slightly above 6%.

In the seven towns and villages recognized herein as comparable geographical areas, sergeants in 1979 receive an average salary of \$23,464. The lowest sergeant salary for 1979 is \$21,867, paid by the Town of Haverstraw, and the top salary exists in Suffern at \$24,202.

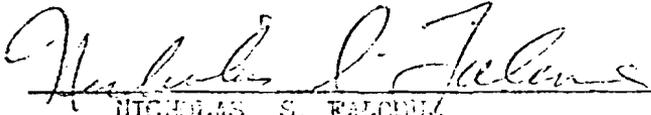
The Panel agreed upon a salary increase of nine (9) percent for both detectives and sergeants. This increase will adhere to the wage differential existing between these two classifications and Top grade patrolman employed in the Village police department.

TERM OF AGREEMENT

Although the Organization was prepared to accept a two year contract, the Village insisted upon a single year agreement. The Panel has

determined that the new agreement shall be dated June 1, 1979, and shall terminate on May 31, 1980. All wage increases provided herein shall be paid retroactively to June 1, 1979.

Dated: January, 10, 1980.


NICHOLAS S. FALCONE


MICHAEL CONELLO


RAYMOND R. KRUSE

STATE, CITY AND COUNTY OF NEW YORK: SS:

On this 7th day of January, 1980, 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 acknowledged to me that he executed the same.

Sudney Roth
Notary Public
No. 41-33333
Term Expires March 30, 1981

STATE OF NEW YORK)
COUNTY OF ROCKLAND) SS:

On this 14th day of January, 1980 before me personally came and appeared MICHAEL L. CONDELLO, 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.

Robert P. Gordon
Notary Public
6589926 - Rockland County
Term expires 3/30/80

STATE OF NEW YORK)
COUNTY OF ROCKLAND) SS:

On this 17th day of January, 1980, 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 T. WENZ
Notary Public, State of New York
4647162
Certified in Rockland County
Term Expires March 30, 1981

Alice T. Wenz
Notary Public

