

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD - ADMINISTRATOR

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PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

In the Matter of the Interest Arbitration :
: between :
: Incorporated Village of Garden City :
: and :
: Garden City Police Benevolent Association, :
: Inc. :
:

Case No. IA-135
M79-49

APPEARANCES

For the Village

Thomas M. Lamberti, Esq. - Of Counsel, Cullen & Dykman

For the P.B.A.

Michael C. Axelrod, Esq. - Of Counsel, Hartman & Lerner

BEFORE A THREE-MEMBER PANEL

Brian J. Hoesl - Employee's member
Warren Wytzka - Employer's member
Rodney E. Dennis - Neutral chairman

BACKGROUND OF THE CASE

This case was assigned by PERB to the panel members on October 23, 1979. Due to delays requested by both the village and the union, the first hearing into this matter was held on February 18, 1980. Four subsequent hearings were held, with the final session conducted on April 22, 1980. Final transcripts were received in May 1980 and briefs were received at the end of June 1980. The panel held two executive sessions, with the final session on July 15, 1980.

During the executive session, the partisan panel members made a serious attempt to settle the dispute on a multi-year basis. In the final analysis, however, this attempt failed and the chairman was instructed by the panel members to draft a one-year award covering the period from June 1, 1979 to, and including, May 31, 1980.

Because of this directive, it is clear that the contract period to be covered by this award will have elapsed by the time the award is issued. All benefits gained by either side will therefore be limited to retroactive payments or deductions of one kind or another. Clearly, the arbitration process in this instance has fallen somewhat short of the parties' expectations.

Arbitration is being used as a substitute for bargaining, not as a final step that resolves the impasse that has arisen over a number of difficult issues.

All those issues introduced by both sides at the bargaining table have been submitted to the arbitration panel--nineteen by the P.B.A. and eleven by the village. The panel has heard extensive testimony and argumentation from both parties on each. It has received into evidence voluminous documents, reports, and exhibits in support of these arguments.

Despite all of this evidence, it is clear that the two most important issues in this arbitration are the rate of pay to be received by police officers and the schedule they are required to work. Simply put, money and the chart are the paramount issues. The panel is fully aware of this and has discussed the matter extensively. It is the conclusion of the majority of the panel that changes in the work chart are more satisfactorily settled by the parties at the bargaining table and that they should have followed that procedure in this case.

In the interest of brevity, this award will not deal with every issue introduced by the parties, but only those for which some concrete proposals are presented. One exception is the work schedule issue, which will be discussed in some detail.

(1) Work Schedule

At the present time, police officers are scheduled to work 255 days per year. They have a right, however, to ten days off without loss of pay. If the police officer does not choose to take these ten days or it is not possible due to manpower requirements or scheduling problems, the officer will be paid for the days not taken. This is an arrangement that was bargained by the parties as an alternative to a reduced work schedule. It allows those who want time off to have ten days each year. Those who would rather work and receive ten additional days' pay have the option.

The village argues that this arrangement is very fair and should not be disturbed by the panel. The P.B.A. argues that it is difficult to obtain the ten days off because of scheduling and manpower needs. Even if one can find ten days to take off, a Garden City policeman would, with the time off, still be working 245 days per year. This is more than the 232-day work schedule enjoyed by county police officers, as well as numerous other police departments in Nassau and Suffolk counties.

This panel is mindful of the fact that the P.B.A. has been attempting to obtain a 232-day work schedule for some years. It is also aware that in recent years (the past two or three), it

has not been fashionable for arbitration panels to award reductions in work schedules. In fact, many arbitration panels have awarded additional chart days for new employees and for special groups of employees.

This panel has reviewed the many exhibits submitted to it on the duty chart issue. It has studied and reread the comments made by both parties (as reflected in the transcript) and a majority has concluded as a result of that analysis that the parties have an obligation eventually to come to terms and satisfactorily settle the work chart issue at the bargaining table. The majority agrees that, given the facts present in this case, an affirmative award on the chart issue granting the P.B.A. a 232-day work chart would be inappropriate and could possibly have a deleterious effect on the village's ability to deliver adequate police coverage to the community.

No real evidence was presented to demonstrate how a 232-day work chart could be implemented. No facts were offered to demonstrate how any intermediate work schedule could be implemented. Were the panel to direct that a 232-day or 238-day or a 245-day work schedule be implemented in Garden City, it would make such a recommendation with no real understanding of what would have

to take place in terms of total manpower, true dollar outlay, impact on new employees, impact on level of service to be delivered, etc. It would be irresponsible of this panel or any other arbitration panel to make such a recommendation under these circumstances.

Despite the differences of opinion that exist concerning whether the Garden City police officer work schedule should be improved, the panel believes that the village and the P.B.A. must solve the work chart issue before a harmonious relationship can again exist between the parties. This panel has directed that no changes be made in the work chart as a result of this arbitration. It has not, however, concluded that no changes should be made.

Many police organizations on Long Island and in Westchester County do have work schedules superior to that enjoyed by the P.B.A. in Garden City. It is the panel's opinion that this issue must be resolved in the next round of bargaining.

AWARD

The P.B.A.'s demand for a 232-day chart is denied per opinion of a majority of the panel.

(2) Salary

The P.B.A. has requested a 10 percent wage increase. Throughout these proceedings, the village has failed to make a specific offer for a wage increase. It has, instead, agreed that a reasonable salary increase would be appropriate and it has left it to the panel to find that reasonable level. At no time did the village argue that it did not or does not have the ability to finance the economic package requested by the P.B.A. This panel therefore has not considered ability to pay as a critical issue in this arbitration and has based its decision on other factors.

It is the opinion of a majority of the panel that a salary increase of 9 percent is appropriate. The increase will become effective June 1, 1979, and retroactive payment shall be made to all affected personnel as soon as it is practical after the receipt of this award. The panel bases this award on a number of reasons: first, the impact of cost of living during this period; second, the fact that Garden City police officers, when compared with many of their neighbors, are low in salaries and this differential should be eliminated (albeit not all at once); and third, the 9 percent award is within federal wage salary guidelines.

AWARD

A 9 percent salary increase, effective June 1, 1979.

(3) Night Differential

The P.B.A. is requesting an increase of from \$756 per year to \$1,500 and that employees receive the night differential while on authorized leave.

The village argues against a payment of a night differential for time not worked, but does not present any viable arguments that would mitigate against an increase. In fact, it presented an exhibit that very clearly justifies some level of increase in the night differential (Village Exhibit #56).

It is the opinion of a majority of the panel that the night differential shall be increased to \$1,100 per year, effective June 1, 1979. This level of payment is more in line with what is paid to P.B.A. officers on Long Island in New York City. The differential shall be paid on the same basis now in effect.

AWARD

Increase night differential to \$1,100, retroactive to June 1, 1979.

(4) Longevity

The P.B.A. has requested an improvement in longevity pay

from the present rate of \$324, \$702, and \$1,080 for 6, 10, and 15 years of service to \$400-\$900-\$1,400 for 6,10, and 15 years of service--plus \$50.00 per year for every year thereafter. The village made no positive arguments against an increase in longevity payments, but only presented comparative data to show that the Garden City P.B.A. is better off in terms of longevity pay than 80 percent of all surrounding policemen. These comparisons include New York City police, the housing authority, state troopers, etc. When one studies these data (Village Exhibit #58), one cannot avoid the comparison between Garden City P.B.A.'s and other Long Island P.B.A.'s, including Suffolk and Nassau County police. When this comparison is made, it appears that some increase in longevity is warranted. The panel therefore grants the following increase, effective June 1,1979.

Longevity increased to ^{AWARD}\$400, \$800, \$1,200 at 6-10-15 years, retroactive to June 1,1979.

All other P.B.A. demands have been reviewed and studied. It is the opinion of the majority of the board that since the time period for which this award is effective has already elapsed and that bargaining for a successor contract should have begun two months ago, the remaining items are deferred to the parties to negotiate, if they choose, with their agreements to be included in the next contract.

VILLAGE DEMANDS

After a review of the village's demands, a majority of the board concluded that it would be inappropriate to award them retroactively. All of the village's demands deal with the elimination or dimunition of existing benefits. As such it is inappropriate to award them for a time period that has already expired. The village's demands can be more logically obtained across the table in future bargaining sessions, not in an arbitration hearing for a period that has already passed. Therefore, none of the village demands are being awarded at this time.

SUMMARY

The parties to this arbitration have placed the panel in a rather unusual position by requiring that a one-year award be rendered for a period that has past.

It makes no sense for this panel to grant a benefit that cannot be implemented because the contract has terminated. If the parties want such a benefit, they can agree to it across the table. Many of the village's demands are tied to the work schedule issue. Bargaining on that issue will certainly result in some gains for the village.

Respectfully submitted,

Reg. Dennis (yes)
Rodney E. Dennis

Warren Wytzka

Brian J. Hoesl
Brian Hoesl (yes)

September 30, 1980



DISSENTING OPINION

I dissent from the award written by the majority of the arbitration panel.

The award increased police officers salaries 9%, night pay 45% and longevity pay 15%. The pay of a ten year police officer rises from \$23,102 to \$25,420, an increase of 10%, effective June 1, 1979.

The panel based its award on three reasons, with which I disagree. The first reason was "the impact of cost of living during this period". The panel erroneously used the increase in the cost of living from June 1979 to May 1980. The cost of living comparison should have been made with the prior year which averaged 6.5%. The prior year comparison measures the loss of income which is a basis to increase salaries for the current year.

The second reason was a claimed comparison with other "neighboring" police officers which showed Garden City police officers "are low in salaries". On the contrary, the wages earned by Garden City police officers were higher than that received by most other police officers who work in the area. For example, in 1980 a ten year New York City police officer will earn \$22,216 while a ten year Garden City police officer will earn \$25,420. The median wage increase for police officers in this area was 7% during this period.

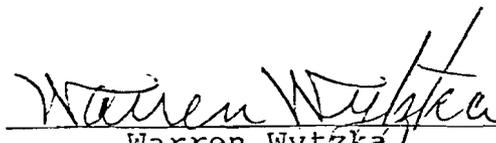
The third reason was that the award was within

the federal wage standard. However, this standard limited wage and benefit increases to 7%. This award far exceeds that.

The Village's 245 day annual work schedule was agreed to by the PBA in 1977 after extensive bargaining over previous years. It provides police officers with up to 8-1/2 weeks off a year. It treats all police officers equally, unlike Nassau County which works police officers 232, 249 and 261 days a year. It also gives police officers the opportunity to receive pay instead of time off for ten days. About one-half the police officers choose pay. Most police officers working in the area work as many or more days a year. To reduce the annual work schedule to 232 days would require the Village to hire three additional police officers or reduce services, both of which is unacceptable.

The panel denied all the Village's demands on the grounds that the period covered by the award had already passed. The Village's demands involved changes in the contract which could have been implemented prospectively. Therefore, it is illogical to grant wage increases retroactively and ignore Village demands which could have been granted without cost to police officers for the year covered by the award.

Dated: Garden City, New York
October 9, 1980


Warren Wytzka
Village Panel Member dissenting

