

STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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AWARD

In the Matter of Arbitration
between
Town of Clay
and
Clay Police Benevolent Association

PERB Case No. IA-151
M79-463

Appearances

Town
Dennis Jones

Clay PBA
Vincent Marano

Arbitration Panel

Public Panel Member and Chairman - Dr. Thomas G. Gutteridge
Employer Panel Member - Mr. Ernest Casale, Town of Clay Supervisor
Employee Organization Panel Member - Raymond G. Kruse, Esq.

Introduction and Background

The two-year contractual agreement between the parties expired December 31, 1979. The parties declared impasse on December 20, 1979, and PERB assigned a mediator to the case. The parties were unable to resolve the outstanding issues through mediation and on January 25, 1980 the PBA, representing the police officers of the Town of Clay, New York, petitioned the Public Employment Relations Board for arbitration pursuant to the provisions of section 209.4 of the Civil Service Law. Ernest Casale, Town of Clay Supervisor, was designated by the Town to represent it on the panel; while Raymond Kruse, Esquire was selected by the PBA to be its representative. The parties in turn jointly selected Dr. Thomas G. Gutteridge from the PERB panel to serve as chairman.

An arbitration hearing was held on April 22, 1980 in the Town of Clay offices. By means of a written pre-hearing brief and both oral and written testimony during the hearing, the parties were afforded full opportunity to present argumentation and supportive documentation with regard to the outstanding issues. The parties did not file any post-hearing briefs and, thus, upon completion of the hearing the record was closed.

After due evaluation of the rationale and evidence presented by both parties, the following represents the panel's determination of the matters in dispute. As required by law, this award represents the best judgment of the panel as to what constitutes "a just and reasonable determination of the matters in dispute." In arriving at this award, the panel gave careful consideration to the factors prescribed by law including:

1. Comparison of the wages, hours and conditions of employment of Clay police with police officers and sheriff deputies in comparable communities, especially those within Onondaga County (which includes the Town of Clay).
2. Welfare of the public and financial ability of Town of Clay to pay.
3. Special requirements and unique qualifications of police officers in comparison with other trades or professions.
4. Terms of collective agreements negotiated between Town of Clay and Clay PBA in past years.

Outstanding Issues

1. Agreement Scope - Article 1

Article 1 currently provides in part:

"This agreement may be amended or supplemented only by further written agreement between the parties. A party desiring amendment or supplement will notify the other party in writing, stating the substance of the amendment or

supplement desired; but the other party will not be obliged to discuss or agree to such proposed amendment or supplement".

The PBA is seeking to add the following to the last sentence of this clause "except to the extent required by law". The intent of this change is to contractually prohibit the Town from unilaterally changing a condition of employment which is a mandatory subject of bargaining. The Town argues the requested change is unnecessary and superfluous.

Discussion

The panel is unpersuaded of the need to change Article 1 and, therefore, supports the Town's position on this issue.

2. Compensation Rate - Article 5

The current Town of Clay salary schedule is as follows:

<u>Entry Rate</u>	<u>After Six Months</u>	<u>After 1 Year</u>	<u>After 2 Years</u>	<u>After 3 Years</u>
\$11,490	\$12,120	\$13,020	\$13,390	\$13,770

Sergeant - \$14,750

Lieutenant - \$16,120

Longevity - \$125 after five years of consecutive service and each five years thereafter

The PBA's salary demand for 1980 is:

<u>Entry Rate</u>	<u>After Six Months</u>	<u>After 1 year</u>	<u>After 2 Years</u>	<u>After 3 Years</u>
\$13,322	\$14,059	\$15,103	\$15,800	\$17,500

Sergeant - \$20,125

Lieutenant - \$23,144

plus

a. \$450 longevity increment after three years of consecutive service and every three years thereafter

b. Eight percent shift differential

The Town has offered a two year package including:

	<u>Entry Rate</u>	<u>After Six Months</u>	<u>After 1 year</u>	<u>After 2 years</u>	<u>After 3 years</u>
1980	\$12,294	\$12,968	\$13,931	\$14,327	\$14,734
1981	\$13,155	\$13,876	\$14,906	\$15,330	\$15,765
	<u>Sergeant</u>	<u>Lieutenant</u>			
1980	\$15,783	\$17,248			
1981	\$16,888	\$18,455			

The Town indicated it is unwilling to agree to the requested change in longevity pay or the night shift differential.

In support of its position, the PBA noted the Clay bargaining unit consists of a lieutenant, four sergeants, and nine full time police officers who are responsible for covering a population of 36,274 individuals. There are also seven part-time officers not included within the unit. The overwhelming majority of police officers in Onondaga County are employed either by the City of Syracuse (approximately 475 policemen) or the Sheriff's Department (approximately 150 Road Patrol Deputies). There are also town police departments in Camillus, Cicero and DeWitt as well as nine smaller villages.

As a primary argument for its salary demands, the PBA noted that, during the last nine months, six Clay police officers have transferred to the Sheriff's Patrol, one has transferred to Camillus and two have transferred to the Syracuse Police Department. Further, there are another five Clay officers who have been accepted by the Sheriff's Patrol and are awaiting the end of a hiring freeze before transferring. The vast majority of the officers leaving the Clay police department have from two-four years of service, and the PBA asserts this is graphic evidence the pay scale in Clay is not competitive at its top step.

According to evidence submitted by the parties, the entry level wage in 1980 for Syracuse police officers is \$13,612 and the top police officers salary

is \$17,738 over six steps. The Sergeant's wage is \$19,151 and the Lieutenant's wage is \$20,576. The longevity payments in Syracuse are \$200 beginning with the tenth year and an additional \$200 every five years thereafter.

Wages in the Sheriff's Patrol start at \$12,972 in 1980 and go up to \$16,215 for a top-grade deputy in four steps. The pay for Sergeants ranges from \$14,269 to \$17,386; while that for lieutenants in the Sheriff's Patrol for 1980 range from \$14,720 to \$18,440.

In addition to the issue of comparability, the Clay PBA cited the dramatic increase which has occurred in the cost of living as support for its demands. The PBA submitted exhibits, from the Bureau of Labor Statistics, indicating an intermediate budget for a four-person family in the Autumn of 1978 was \$18,622, which the PBA notes exceeds its 1980 wage demand of \$17,500 for a top step patrol officer. The PBA also noted the CPI increased by some thirteen percent in 1979, thereby further eroding a police officer's salary.

Finally, the PBA argues that ability to pay should not be an issue in these negotiations because the Town of Clay is comparatively wealthy. Of the nineteen towns in Onondaga County, Clay is the fifth wealthiest in terms of a ratio of population to true valuation, e.g., Clay has an average of \$14,578 of assessed property per person, whereas the average in the balance of the townships in the County is \$12,069 per person. And, if one takes the ratio of annual budget to true valuation, it is evident the budget of the Town of Clay is the lowest in the entire county as a ratio to its true valuation.

With respect to the night shift differential, the Clay PBA noted Syracuse police officers receive \$.15 per hour; while the Sheriff's Patrol contract calls for \$.25 per hour in 1980 and \$.30 per hour in 1981.

The town argues the PBA demand represents a 16-27 percent increase in the salary schedule for patrolmen, a 36 percent increase for sergeants and a 44 percent increase for lieutenants. In addition, the requested longevity

Increase approximates 360 percent. Thus, the Town argues the PBA demand is totally unrealistic.

Moreover, the Town argues its salary schedule is competitive with other police agencies in Onondaga County. For example, the Town notes that, in 1979, its entry level salary of \$11,490 was higher than five of the seven other comparable jurisdictions in Onondaga County. The Town also noted that patrolmen having three years of experience earned \$13,770 in 1979 whereas the comparable salaries in the surrounding localities were:

Sheriff's Department	\$13,887
Camillus	\$12,966
DeWitt	\$15,629
Baldwinsville	\$13,400
North Syracuse	\$13,243

Likewise, the Town argued the salaries paid Clay sergeants compare favorably with the rates paid sergeants in other surrounding police departments, as evidenced by the following:

	<u>1979 Sergeant's Starting Rate</u>	<u>1979 Midpoint Rate</u>
Clay	\$14,750	\$14,750 (max.)
Sheriff's Department	\$13,179	\$14,325
Camillus	\$13,347	\$14,307
DeWitt	\$17,457	\$17,457 (max.)
Baldwinsville	\$14,500	\$15,050
Fayetteville	\$14,380	\$14,580
Liverpool	\$13,563	\$14,282
North Syracuse	\$14,541	\$14,541

The Town argues these data indicates it takes sergeants in these other agencies longer to reach the earning capacity at which Clay sergeants begin.

Only the Sheriff's Department and DeWitt employ lieutenants. The flat rate paid Clay lieutenants in 1979 of \$16,120 exceeds the Sheriff's minimum rate of \$13,984 and the range's midpoint of \$15,732. It should be noted, however, the top rate for lieutenants in the Sheriff's Department is \$17,480, while DeWitt pays its lieutenants \$17,992.

The Town noted its salary proposal represents an increase in the schedule of seven percent in 1980 and another seven percent in 1981. Thus, patrolmen at the top of the schedule as well as sergeants and lieutenants will receive a seven percent increase in 1980 and again in 1981. Those officers moving through the schedule will receive increases significantly greater than seven percent each year. The Town notes its proposal is equal to or greater than that provided police officers in DeWitt, North Syracuse and Baldwinsville,

The Town rejects the argument that salary increases should equal 100 percent of the cost of living. It also cited evidence that cost of living increases in the Syracuse area are smaller than in the U. S. as a whole. The Town also rejects the requested night shift differential noting that only the Sheriff's contract provides such a differential.

Discussion

The issue of salaries is at the heart of the contract dispute between the Town of Clay and the PBA. On the one hand, the panel readily acknowledges the impact double digit inflation has had on the purchasing power of all workers. And, the fact that living costs in the Syracuse area are the lowest in the state is small comfort to the Clay police officers faced with ever increasing prices in the costs of housing, food, clothing, gasoline and other essentials of daily living. As a general proposition, the panel does not think it unreasonable for public employees to expect their income to increase by enough to maintain their purchasing power. And, under normal circumstances,

It is understandable for an employee to anticipate that his/her real income will improve over time. These are not normal times, however, and the panel recognizes that relatively few public sector salary settlements are approaching the cost of living. Thus, although the cost of living taken by itself lends some support to the PBA salary demands, the panel believes its award must be moderated by other considerations such as comparability and the level of prevailing settlements in the area.

The panel also recognizes the Town's assertion that the salary schedule for Clay police officers is generally competitive with that provided by comparable police departments within Onondaga County. A close examination of the salary schedules included in Exhibit 8 of the Town's brief indicate that only DeWitt and the Onondaga County Sheriff's Department consistently pay their officers at a higher level than does Clay. It should be noted, however, that the salary differential between Clay and most of the lower paying police departments in the area is not very large and that the Clay schedule is less competitive at the upper end because of its fewer steps. Thus, in terms of comparability, it is the panel's conclusion that police officers in the Town of Clay receive salaries which are above average but not exceptional in comparison with their colleagues in other Onondaga police departments.

The panel is also mindful that the Town of Clay did not raise inability to pay as the primary rationale for its salary offer. However, it must also be recognized that an ability to pay should not and does not necessarily imply willingness to pay. Nor does it mean the panel can ignore economic considerations in making its award.

Based upon the foregoing factors, it is the opinion of this panel that the final salary proposal provided by both parties is inadequate and unacceptable. The panel concurs with the Town that, even given inflation's impact, the PBA's salary demands are unrealistic. The requested percentage increases are totally out of line with prevailing salary settlements and, as the Town

argued, would result in Clay sergeants and lieutenants earning salaries above those paid to most area police chiefs and commissioners.

The Town's offer of a fourteen percent increase in the salary structure for Clay police officers over a two year period appears reasonable in light of prevailing settlements and the factor of comparability. However, the panel is persuaded that the recent high level of turnover among Clay police officers is symptomatic of a salary compression at the higher salary steps. Granted, police officers can and do change jobs for many reasons besides salary such as additional challenge and greater opportunities for advancement. However, in the panel's view, the fact that the vast majority of departing Clay police officers are moving to the Sheriff's Department where their lifetime earnings will be higher than they would have been had they remained in Clay can not be ignored. Thus, it is the panel's conclusion that, while the Town's salary offer is reasonable, it should be improved slightly and repackaged so as to make the Clay salary structure more competitive at the upper end. The award, therefore, is designed to accomplish that objective.

The panel also believes the PBA's request for a night shift differential is reasonable. Working the evening and graveyard shift carries with it some additional responsibilities and represents a stronger intrusion upon a police officer's private life. Thus, a night shift differential appears to the panel to be an appropriate reward for the special employment conditions endemic to second and third shift work.

3. Uniform Allowance - Article 6

The contract currently provides an annual uniform allowance for cleaning, maintenance and replacement of necessary items of \$250. The PBA is seeking to increase this allowance to \$500 and requiring the Town to replace, at no expense to the employee, uniforms and equipment lost, destroyed, damaged or worn out in the line of duty.

In support of this demand, the PBA submitted evidence that the annual cost of cleaning police uniforms approximates \$550; while another \$225 per year is needed to replace police uniforms and equipment. Thus, the PBA asserts its request is quite reasonable. The Town, in turn, submitted evidence that the current uniform allowance is superior to that provided other Onondaga County police, as illustrated by the following:

<u>Employer</u>	<u>Uniform Allowance</u>
Sheriff's Department	\$150
Camillus	\$200
DeWitt	none
Baldwinsville	\$ 60
North Syracuse	\$100

Discussion

The evidence submitted by the PBA that the current uniform allowance is inadequate is rather compelling. Further, the comparisons cited by the Town are somewhat misleading. For example, in addition to its \$200 uniform allowance for replacement, the Town of Camillus pays all charges for cleaning and repair of said uniforms. While DeWitt does not pay for cleaning, it does supply without charge, all members of the department, necessary uniforms, clothing and equipment. The allowance in Baldwinsville and North Syracuse is solely a cleaning allowance, with replacement picked up by the department as needed.

However, although the available data support the need for an increase in the uniform allowance for Clay police officers, the panel does not believe the amount requested by the PBA is appropriate. Nor, in the absence of any discussion on the issue, does it feel free to change the current purposes of the uniform allowance to the more restrictive use followed by other police agencies. Thus, the panel believes the most appropriate decision is to provide

a modest increase in the uniform allowance from its current level of \$250.

4. Vacations and Holidays - Article 7

The vacation schedule in the expired contract provides for seven days after six months, 14 days after one year and 21 days after fifteen years.

The PBA is seeking to improve this to the following schedule:

<u>Service</u>	<u>Vacation Days</u>
Less than 10 years	18
Ten - 14 years	25
15 years or more	28

The PBA is also seeking contract language stating "no standing restriction shall be placed upon the minimum or maximum number of vacation days which may be used at any given time or the number of segments into which the total number of vacation days may be broken or the day on which such vacations may commence." The PBA argues this language proposal simply incorporates past practice into the contract.

With respect to holidays, the PBA is seeking contract language whereby police officers assigned to work on paid holidays shall be compensated by receiving twelve (12) hours of overtime pay in addition to their holiday pay. In support of this demand, the PBA noted double time for working holidays is a normal benefit for most private sector employees and many police officers in other jurisdictions receive time and one-half.

The Town contends there is no need to improve the current vacation schedule since it is comparable to or better than that provided other area police. The Town also argues it must be able to exercise reasonable control over how much and when vacation time is to be taken. Thus, it argues it cannot agree to the PBA's requested language change on vacation scheduling. The Town also argues its police are being paid an annual salary rate for working, including eleven days pay for "holiday pay". Thus, it argues the PBA's request for time

and one-half for working holidays for which they are already receiving additional pay is unreasonable.

Discussion

While the panel understands the desire of Clay police officers to be with their families on holidays, it also recognizes the need for continuous police protection. The panel further believes that, given the relatively small size of the Clay police force, it should be possible to schedule holiday duty so that no one officer must handle an unfair share of this responsibility. The panel further notes that while some New York State Police departments grant time and one-half for working holidays, this is by no means a common practice. Moreover, as evidenced by the Town's brief, no other police departments in Onondaga County pay time and one-half for holidays. Rather, their contractual provisions regarding holiday pay are similar to those in Clay. Given these factors, the panel is persuaded by the Town's demand for status quo with regard to holiday pay.

Likewise, the panel remains unconvinced of the need to improve the vacation schedule for Clay police. As the PBA indicates, it is somewhat difficult to compare vacations from one municipality to another because there are drastic differences in the pattern of the various years at which vacation time increases. However, a reasonable method of comparison, as suggested by the PBA, is to compute the average number of vacation days during a twenty year period but excluding the first year of employment. Using this comparison, the average number of vacation days for Clay police over the standardized nineteen year period is 16.2 days (not the 15.8 figure contained in the PBA brief). This compares with the figure of 17.7 for the fifty-seven municipalities cited in the PERB report contained in the Association's brief. More to the point, however, this figure should be contrasted with 15.8 days in the Sheriff's Department, 12.9 days (Camillus), 14.2 days (DeWitt), 19.1 days (Baldwinsville),

and 15.7 days (North Syracuse). This comparison suggests the number of vacation days provided Clay police officers is, in fact, quite competitive with the norm for other Onondaga police departments. Thus, the panel believes the Town has sustained its case for not changing the current vacation schedule.

The panel is also unpersuaded of the need to alter the current contractual language on vacations. In the absence of any compelling evidence that the current practice is likely to be changed or is in conflict with the contract language, the panel sees no reason to adopt the PBA's proposed change.

5. Sick Leave - Article 7

The PBA is seeking several modifications in the current sick leave provisions, including: (a) an increase in the monthly accumulation from one day per month to two days per month, (b) elimination of the sixty day maximum on sick leave accumulation and (c) elimination of the last two paragraphs in the current language which state:

"When incapacitated for work by reason of personal illness or injury, each employee shall be entitled to compensation at his currently effective rate of compensation for each working day of such incapacity for which he has an accumulated day of sick leave up to a maximum of sixty (60) working days except those cases where benefits are received under the Workman's Compensation Law."

and

"Sick time shall not be included when computing over-time pay."

The PBA argues the second paragraph is redundant; and that the third paragraph could be construed so as to deny a police officer pay for a day worked if a sick leave day does not count as time worked

The Town is willing to increase the maximum sick leave accrual from sixty to ninety days. However, it is unwilling to accede to any of the other requests. The Town notes no police officer is currently near the maximum sixty

day accrual. The Town also noted it has every intention of paying police officers for each day worked and that a sick day counts as a day worked for purposes of regular salary payments. However, the Town is not willing to utilize paid time off (including sick time) in computing overtime payments. The Town also cited the number of sick days per month and maximum accumulation for surrounding police departments to justify its argument that the sick leave provisions offered to Clay police officers are competitive.

Discussion

The panel is persuaded that the Town's proposed compromise on sick leave is eminently reasonable and so awards. There is simply no justification for an unlimited sick leave accrual nor is there a compelling need at this time, in the panel's opinion, to increase the monthly sick leave rate beyond one day. The panel, likewise, does not believe the PBA sustained the need to delete the last two paragraphs from the current sick leave language. However, the panel does appreciate the PBA's need for further clarification of the language concerning sick leave so as to not deprive a police officer of pay for a day worked. Thus, the panel directs the parties to develop language indicating that a sick leave day counts as time worked for payroll purposes but not for overtime computation.

6. Bereavement and Personal Leave - Article 7

The PBA is seeking to amend the bereavement leave provision so as to eliminate the need for prior approval of such leave. The PBA is also seeking to add a new category entitled personal leave stating:

"Five (5) days personal leave shall be granted to each member of the Department. Unused personal leave may be accumulated from year to year."

The Town argues it is absolutely necessary for staffing purposes to require that an employee obtain prior approval for bereavement leave. However, the Town has offered the following compromise language on personal leave:

"Full time employees will be entitled to 8 hours of personal business leave per year after one (1) year of service. Personal leave shall be non-cumulative and shall not be included when computing over-time pay. Personal leave must be authorized by the Commissioner of Public Safety upon advanced written notification, when possible, and shall be allowed manpower requirements permitting. Personal leave is considered time off to attend to emergency or personal business matters which requires the personal attention of the employee and cannot otherwise be scheduled outside of the employee's work day. Personal leave is not granted for the purpose of a day off or a holiday."

Discussion

The panel is not persuaded of the need to modify the bereavement leave clause and, therefore, supports the Town's position on this issue. The panel, likewise, believes the Town's compromise proposal on personal leave is more reasonable than the PBA demand. However, the panel believes the Town's proposal should be modified so as to eliminate the need for police officers to indicate the reason for requesting personal leave. In some cases, personal leave requests can be quite personal, (e.g., divorce or child custody case) and an employee may not want to indicate the reason for making such a request. This change would leave the remainder of the Town's proposed language intact including the need for advance notice, granting of leave subject to departmental needs and indication that personal leave is not intended to be used as a holiday, etc. In order to ensure that personal leave is not used frivolously, the panel also believes the Town's proposal should be amended so as to permit a police officer to add any unused personal days to his sick leave accumulation. The panel also believes the number of personal leave days should be increased to two effective with 1981 calendar year.

7. Overtime Compensation - Article 8

The PBA is seeking to amend the overtime compensation provisions of the contract by providing:

- (a) "If an officer shall be called out one-half (1/2) hour or more prior to his regular shift, or if an officer is called back more than one-half (1/2) hour after going off duty, he shall be compensated with a minimum of four (4) hours."
- (b) "Overtime which is worked contiguous with the beginning or end of a shift and which does not fall within the purview of Section 5 above, shall be paid in segments of not less than one (1) hour each."

and

- (c) Add b' and c' to Section 2 of paragraph A.

"b' Anything in excess of forty-eight (48) hours in any work week."

"c' The work week shall commence at 2300 hours Sunday and continue for a period of one hundred sixty-eight (168) consecutive hours."

Section 2 of paragraph A provides "overtime shall be computed as follows - Anything in excess of eight (8) hours in any twenty-four (24) hour period."

The PBA is also seeking to delete paragraph B from Article 8. Paragraph B deals with the compensation for court time.

The current schedule for Clay police officers is a six day wheel - six days on and three off. As indicated above, the contract currently provides for overtime only when a police officer works more than eight hours in a twenty-four hour period. The Town argues the PBA demand is excessive and unnecessary.

The PBA, in turn, maintains its overtime demands are proper compensation for asking a police officer to give up even more of his personal and family life.

Discussion:

The panel is generally persuaded by the PBA's arguments regarding overtime compensation. Premium pay is intended to compensate employees for unusual working conditions such as working a longer than normal work day or work week. In fact, the Fair Labor Standards Act was established in order to require private sector employers to compensate individuals for a burdensome work week which was defined as more than forty hours.

In this instance, the panel finds the rationale for paying Clay police time and one-half for hours worked beyond the normal six day (48 hour) week to be rather convincing. First, the panel believes working more than six consecutive days is a burdensome work week. Second, many of the neighboring police departments (e.g., Sheriff's Department, Camillus, DeWitt, Baldwinsville, and North Syracuse) pay their officers time and one-half for any hours worked beyond their normal work schedule. Third, time and one half beyond forty hours or beyond the normal work week is a common practice in many other police departments within New York State.

The panel likewise believes police officers should be entitled to some minimum standard of call-in or call-back pay if asked to report for work when they are off-duty. Requiring off-duty police officers to work at a time other than their regularly scheduled hours for any given day does interfere with their private lives and, as the PBA asserts, they should be compensated for it. However, the panel believes the four-hour call-in pay provision requested by the PBA is excessive and considers a minimum of two (2) hours compensation, whether worked or not, paid at the rate of time and one-half is adequate. It should be noted that some other Onondaga police agencies

(e.g., Camillus, Baldwinsville) as well as many other New York State police departments provide call-in pay.

The panel is less persuaded by the PBA's arguments regarding the payment of consecutive overtime in one hour blocks and the deletion of paragraph B. These do not appear to be major problems and the panel believes the demands should be withdrawn. Finally, the panel should note once again its decision with respect to sick time upholding the current language that "sick time shall not be included when computing overtime pay".

8. Hospital and Medical Benefits - Article 9

The PBA is seeking to amend the current hospital/medical program to include the GHI M-1 dental plan for each employee and his dependents, with the full cost to be borne by the Town. The schedule of dental rates for GHI coverage is as follows, according to the PBA.

<u>M-1 Comprehensive Dental Plan</u>	<u>Individual</u>	<u>Family</u>
Basic - no prosthetics	\$3.67/month	\$16.43/month
25%	\$4.70	\$19.06
50%	\$5.30	\$20.28
75%	\$5.95	\$21.83
100%	\$6.83	\$23.76
Orthodontics	---	\$ 3.05

The Town is unwilling to grant this benefit, arguing it is too costly and is not yet common in Onondaga County. Only the Sheriff's Department and North Syracuse in Onondaga County provide a dental plan.

Discussion

While dental insurance is not yet a common benefit in Onondaga County, the number of police departments in New York State which provide this benefit

is increasing at a substantial rate. Moreover, the panel recognizes the value of this benefit to an employee, especially one with a family. And, the panel is cognizant of the need for Clay to improve its competitive labor market position vis-a-vis the Onondaga Sheriff's Department. Given these factors, the panel is inclined to agree with the PBA that instituting a dental plan in Clay is a reasonable demand.

However, the panel is equally cognizant of the Town's need to maintain some degree of control over the rising cost of health insurance benefits. Thus, the panel believes the plan selected should be the basic (no prosthetics) plus orthodontics. Finally, the cost of this plan is to be shared equally (50-50) by the Town and the employees selecting the plan, beginning in 1980. The Town's share shall be increased to 75 percent effective 1981. In the panel's view, this is the most equitable way of providing the Clay police officers the desired benefit at a reasonable cost to the Town.

9. Grievance Procedures and Disciplinary Hearings - Articles 10 and 11: The PBA is seeking to amend Article 10 (Grievance Procedures) as to: (a) make employee discipline subject to the grievance process, (b) eliminate the requirement that grievances must be submitted within fourteen (14) days from the date the alleged grievance occurred and (c) require the cost of arbitration to be borne equally by the parties rather than two-thirds by the submitting party and one-third by the responding party. The PBA also submitted a proposed discharge and discipline clause (Article 11) which they are seeking to incorporate into the contract.

The Town argues it has received no indication the current grievance procedure is inadequate. Thus, it sees no reason to make the requested language changes. Likewise, the Town believes Section 75 of the Civil Service Law provides adequate protection for its police officers and does not desire to

have its right to discipline and discharge employees relinquished to an arbitrator. And, the Town does not want to defend disciplinary actions in multiple forums. The Town also argues that since binding grievance arbitration is uncommon in Onondaga police departments, the PBA should be satisfied with the two-thirds/one-third split. Finally, the Town maintains eliminating the fourteen day period for filing a grievance could result in a grievable matter going unresolved for an indefinite period of time before a resolution was sought, a possibility which the Town considers unacceptable.

Discussion

The panel believes the grievance procedure can be as effective as Article 75 for resolving matters of employee discipline and notes language can be written so as to prevent the Town from having to defend disciplinary decisions in multiple forums. Nonetheless, the panel acknowledges that many New York State police departments exclude employee discipline from the grievance procedure. And, the panel is loath to change the current contractual language regarding employee discipline in the absence of any evidence that the Town has a history of disciplining employees in an arbitrary and capricious manner. Thus, the panel believes the PBA should withdraw its proposed discharge and discipline language and its demand to include disciplinary matters within the grievance process.

The panel is somewhat more persuaded by the PBA's position on the two remaining issues relating to the grievance procedure. The panel believes the fourteen day restriction on grievance submission should be revised to require that a grievance must be submitted within fourteen days from the date the grievant knew or should have known the alleged grievance occurred. This slight modification retains the time limit required by the Town, while also providing a little more flexibility to the employee.

Finally, the panel supports the PBA demand for a fifty-fifty sharing of

the cost of arbitration. This is the prevailing practice in labor relations today and acknowledges the fact that both parties must assume responsibility when a grievance ends up at arbitration. To assess the submitting party a greater burden of the cost of an arbitration hearing is not conducive to a sound labor relations climate.

10. Retirement Plan - Article 12

The PBA is seeking to replace the current 25 year Career Retirement Plan (375G) with the Special 20 year Plan (384-d) with the final average salaries based upon earnings during the last twelve (12) months of employment.

The Town argues North Syracuse is the only police department in Onondaga County which provides a better retirement plan than Clay does. The Town also notes that if the proposed retirement system was adopted its estimated billing rate would increase from 27.5 percent of salaries to 45.5 percent, which the Town considers to be excessive.

Discussion

The panel finds the Town's arguments on this issue persuasive and believe the PBA demand for improved retirement benefits should be withdrawn. The retirement benefits currently being provided are highly competitive and it is not reasonable to expect them to be improved at this time.

11. Conformity to Law - Article 14

The PBA is seeking to amend the conformity to law contractual provision (Article 14) so as to require that if any provisions of the Agreement are found to be illegal the "provisions shall be amended in such a manner as to relate the original intent, but within the limits permitted by law, and the remainder of said Agreement shall remain in full force and effect." The Town contends this amendment would be impossible to comply with where the

original intent of a particular contract provision might be unknown. Moreover, there may not have been any other intent except what was specifically covered by the "illegal provision".

Discussion

The panel believes the current contract language on conformity to law is adequate and sees no justification for modifying it.

12. Agency Fee - Article 16

The PBA is requesting contractual language requiring all employees to either become a member or pay a service charge equivalent to union dues. At present, every Clay police officer is a member of the PBA. The Town argues that an agency shop provision is not common in Onondaga County. At present, only the Sheriff's Department contract provides for an agency shop and that is on a modified basis. The Town is also philosophically opposed to agency shop arguing it is an unwarranted intrusion upon individual rights and represents a major change in terms and conditions of employment. The Town also argues the PBA ought to be able to attract its membership on the basis of the benefits of the services provided rather than compelling employees to support it.

The PBA's rationale for this demand is the traditional "free rider" argument which opposes individuals who benefit from the services being rendered, such as contract negotiations and grievance administration, but are unwilling to support such efforts.

Discussion

The panel is not especially persuaded by either the pro or con philosophical arguments regarding the general issue of agency shop. Rather, they view it as primarily another term or condition of employment which is of value

to unions in improving both their financial picture and their bargaining strength vis-a-vis the employer. Thus, the panel's decision on this issue is guided more by the specifics of the immediate situation rather than the philosophical practices set forth by the parties. And, given 100 percent membership in the Association coupled with the general absence of agency shop provisions in other Onondaga County police departments, the panel believes the PBA should withdraw this demand. Given the other dimensions of this arbitration award, the panel is unpersuaded of the need to incorporate an agency shop clause into the Agreement.

13. Manning Compensation - New Clause

The PBA is seeking to add a manning clause to the contract providing officers additional compensation on any shift in which there are less than three (3) officers assigned to road patrol. The Town argues this issue is non-negotiable since it is a reserved management right.

Discussion

While the Town has the right to direct and control its workforce, the demand in question is negotiable because it concerns the impact of manning standards rather than postulating any minimum manning standards. Having arrived at this conclusion, however, the panel remains unpersuaded of the need for this demand and believe it should be withdrawn.

Award

- A. The following PBA demands shall be withdrawn:
1. Proposed change in Agreement Scope (Article 1)
 2. Increase in vacation schedule and proposed language change (Article 7)
 3. Time and one-half for holidays (Article 7)

4. Increase in monthly sick leave rate, elimination of maximum sick leave accrual and proposed deletion of sick leave language (Article 7)
 5. Proposed change in bereavement leave (Article 7)
 6. Payment of contiguous overtime in one hour segments, deletion of paragraph B under overtime compensation and language change specifying work week (Article 8)
 7. Proposed discipline and discharge clause and demand to include disciplinary matters within grievance process (Articles 10 and 11)
 8. Request for improved retirement plan (384-d, Article 12)
 9. Amendment in conformity to law clause (Article 14)
 10. Agency fee request (Article 16)
 11. Manning compensation (New article)
- B. The following salary schedule and related compensation shall be adopted for 1980 and 1981.

1. 1980

<u>Entry Rate</u>	<u>After Six Months</u>	<u>After 1 year</u>	<u>After 2 years</u>	<u>After 3 years</u>	<u>After 4 years</u>
\$11,500	\$12,200	\$13,400	\$14,200	\$14,800	\$15,600
Sergeant	\$16,700				
Lieutenant	\$18,200				

2. 1981

<u>Entry Rate</u>	<u>After Six Months</u>	<u>After 1 year</u>	<u>After 2 years</u>	<u>After 3 years</u>	<u>After 4 years</u>
\$12,000	\$13,100	\$14,400	\$15,200	\$15,800	\$16,700
Sergeant	\$18,200				
Lieutenant	\$19,500				

3. Longevity - \$175 after five years of consecutive service and each five years thereafter commencing with the 1980 calendar year

4. Shift differential - \$.15 per hour commencing with the 1981 calendar year

- C. The uniform allowance shall be increased from \$250 to \$300 effective with the 1981 calendar year
 - D. There shall be an increase in maximum sick leave accrual from sixty days to ninety days effective with 1980 calendar year. Also a language change shall be adopted reflecting that a sick leave day counts as time worked for payroll purposes but not for overtime computation.
 - E. Full time employees will be entitled to eight hours of personal business leave after one year of service, per Town proposal. This benefit will take effect with the 1980 calendar year. The Town's proposal is to be modified so as to eliminate the need for an employee to indicate a reason for requesting personal leave. Also, an unused personal day can be added to an employee's sick leave accumulation at the beginning of the next calendar year. The number of personal leave days will be increased to two effective with 1981 calendar year.
 - F. Clay police officers are to be paid time and one-half for hours worked beyond the six day (48 hour) week. Also, off-duty officers called in to work are to be guaranteed a minimum of two hours compensation, whether worked or not, paid at the rate of time and one-half. These contractual improvements are to take effect with the 1980 calendar year.
 - G. Beginning with the 1980 calendar year, the Town is to provide the basic (no prosthetics) plus orthodontics dental plan for police employees. The cost of this plan is to be shared equally (50-50) by the Town and the employees selecting the plan. The Town's share will be increased to 75 percent (75-25) split effective with 1981 calendar year.
-

H. The grievance procedure clause (Article 10) shall be modified so as to:

1. require the cost of arbitration to be borne equally (fifty-fifty) by the parties
2. provide that a grievance must be submitted within fourteen days from the date the grievant knew or should have known the alleged grievance occurred.

ACCEPT REJECT

Thomas G. Gutteridge
 Thomas G. Gutteridge
 Arbitrator and Panel Chairman

ACCEPT REJECT

Ernest Casale
 Ernest Casale
 Employer Representative

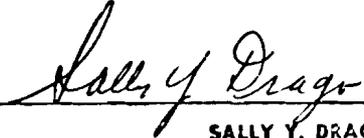
ACCEPT REJECT

Raymond G. Kruse
 Raymond G. Kruse, Esq.
 Employee Representative

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On this 14th day of May, 1980, before me appeared

Thomas G. Gutteridge, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



SALLY Y. DRAGO
NOTARY PUBLIC, State of New York
No. 4522863
Qualified in Onondaga County
My Commission Expires March 30, 1982

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On this 15th day of May, 1980, before me appeared

Ernest Casale, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

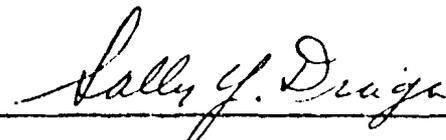


SALLY Y. DRAGO
NOTARY PUBLIC, State of New York
No. 4522863
Qualified in Onondaga County
My Commission Expires March 30, 1982

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On this 17th day of May, 1980, before me appeared

Raymond G. Kruse, to me known and known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



SALLY Y. DRAGO
NOTARY PUBLIC, State of New York
No. 4522863
Qualified in Onondaga County
My Commission Expires March 30, 1982

