STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

---X

In the Matter of the Interest Arbitration between

Town of Mount Pleasant

-and-

Town of Mount Pleasant Police Welfare and Benefit Association

PERB Case Number: IA83-5; M83-1

Opinion of Chairman

Award of Panel

---X

Panel of Arbitrators:

Maurice C. Benewitz, Impartial Chairman
John P. Henry, Employee Panel Member
Bertram B. Pogrebin, Esq., Employer Panel Member

Appearances:

For the Union: David Schlachter, Esq., Attorney

For the City: Ernest R. Stolzer, Esq., Attorney

On June 7, 1983, the Public Employment Relations Board, pursuant to Section 209.4 of the Civil Service Law, designated a public arbitration panel to make a binding award concerning the contract of employment to be effective January 1, 1983 between the Town of Mt. Pleasant and the Mt. Pleasant Police Welfare and Benefit Association. The prior agreement which terminated on December 31, 1979 was extended until December 31, 1982 and amended by the the award of an interest arbitration panel.

Hearings were held before the panel on July 21, and September 14, 1983. Briefs were submitted by the parties. An executive session convened on November 7, 1983. On that date, the proceedings were closed. (By agreement of the parties, a transcript of the proceedings was waived.)

The opinion is that of the chairman. The award is adopted by those members signing as assenting. Dissenting members are afforded the opportunity to attach an opinion concerning their dissent.

Following the executive session, counsel for the PBA wrote on November 18, 1983 indicating that the Town had not yet submitted as exhibits the statement of the supervisor or the CSEA contract with the Town. The PBA had submitted a brief without objecting that these exhibits were required. The PBA Arbitrator John Henry participated fully in the executive session without any statement that the CSEA contract or the supervisor's statement was necessary. Nevertheless, on November 23, 1983 the chairman recalled the awards which he had already mailed to Arbitrator Pogrebin for consideration and requested the missing exhibits which were received on November 29, 1983. The chairman has read and considered the statement of the supervisor and has reviewed the CSEA contract. These were submitted primarily in support of a number of Town proposals which were not adopted in the final document and in support of an increase less than the chairman considers equitable in all of the circumstances. He shall not alter his analysis or recommendations on the basis of the review which was undertaken.

On November 22, 1983, Mr. Henry wrote to protest failure of the chairman to provide draft copies of the opinion for review of the parties before affixing his executed signature. The chairman finds that the Civil Service Law requires him to have one other executed assenting signature before he may file this award. If neither interest arbitrator assents, further review will become necessary, but the law does not require a review after a full and complete executive session if at least one arbitrator signs the chairman's opinion and award. He so informed the parties by letter of December 1, 1983.

On November 21, 1983, Mr. Schlachter requested a reopening of the proceeding so that the PBA could present "further exhibits concerning hours of work." Mr. Stolzer objected to the reopening on the ground that the PBA had received full opportunity at the hearings to present any evidence it considered relevant. The chairman ruled on December 1, 1983 that in the absence of a joint request of the parties, he had no authority to reopen the proceeding. He declined to do so.

Upon consideration of all of these letters and of the additional exhibits, the chairman issues the following opinion and award. He includes herein the full exchange of correspondence.

Schlachter & Mauro
ATTORNEYS AND COUNSELORS AT LAW
666 OLD COUNTRY ROAD • SUITE 301
GARDEN CITY, NEW YORK 11530
(516) 222-1844

DAVID SCHLACHTER
REYNOLD A. MAURO

November 18, 1983

Mr. Maurice Benewitz
261 Thompson Shore Road
Manhasset, New York 11030

Re: Mount Pleasant Binding Arbitration
PERB Case: IA 83-5; M 83-1

Dear Mr. Benewitz:

It is my understanding that you are about to issue the final award on behalf of the panel. I wish to remind you and your co-panel members that the evidence in this matter is not yet complete. The attorney for the Town had commented during the second arbitration session on the CSEA Agreement, an objection was interposed, and counsel agreed to provide a copy of the relevant CSEA Agreement.

During that same session the Town Supervisor testified and read from a statement. He and counsel had promised to provide a copy of the statement.

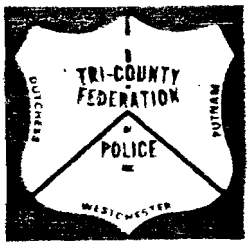
In both instances the panel overruled my objection based upon the representation that the information would be provided; it never was.

I must, therefore, insist that no award be issued until the evidence is completed and counsel has met his agreed upon obligations.

Very truly yours,

David Schlachter

DS/dg
cc: B. Pogrebin, Esq.
E. Stolzer, Esq.
John P. Henry



Tri-County Federation of Police, Inc.

5 SKYLINE DRIVE
HAWTHORNE, NEW YORK 10532
Telephone: (914) 592-7350

November 22, 1983

Mr. Maurice Benewitz
261 Thompson Shore Road
Manhasset, New York 11030

Re: PERB Case IA 83-5; M-83-1

Dear Mr. Benewitz:

At the executive session of the arbitration panel held at your home on November 7, 1983, it was my understanding that you as chairman of the arbitration panel would submit to both panel members, Mr. Pogrebin and myself, a draft copy of the arbitration award in the above matter which would be subject to review by both sides. Your letter of November 19, 1983, received at my office on November 21, 1983, came as a surprise to me since the letter indicated that the final award was sent to Mr. Pogrebin for his signature prior to my receipt of a draft of the arbitration award. At this time I would like to advise both you and Mr. Pogrebin that I waive no rights of argument on the wording of the award nor do I waive any right to which myself or the bargaining unit representatives are entitled to under the Taylor Law.

Your determination to send a finalized award, without an opportunity for me or the bargaining unit to exercise any rights under the Taylor Law is highly irregular.

A copy of this letter is being sent to Mr. Pogrebin, the Town's advocate on the arbitration panel.

Sincerely,

John P. Henry

John P. Henry
Director of Labor Relations

JPH/dg
cc: E. Stolzer, Esq.
B. Pogrebin, Esq.
D. Schlachter, Esq.

Schlachter & Mauro
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666 OLD COUNTRY ROAD • SUITE 301
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(516) 222-1844

DAVID SCHLACHTER
REYNOLD A. MAURO

November 23, 1983

Maurice Benewitz, Arbitrator
261 Tompson Shore Road
Manhasset, New York 11030

Bertram Pogrebin, Esq.
Rains & Pogrebin
210 Old Country Road
Mineola, New York 11501

John P. Henry
Tri-County Federation of
Police
5 Skyline Drive
Hawthorne, New York

Re: Town of Mount Pleasant

Gentlemen:

I hereby request that the public arbitration panel reopen hearings in the above matter to present further exhibits concerning hours of work.

In addition, we would request that materials to have been submitted by the Town be submitted on that date.

Very truly yours,

David Schlachter

David Schlachter

DS:ju
cc: Ernie Stolzer, Esq.

516 - 627-0114

Maurice C. Benewitz
PRACTICE OF LABOR ARBITRATION

261 Thompson Shore Road
Manhasset, New York
11030

November 23, 1983

Bertram B. Pogrebin, Esq.
Rains & Pogrebin, P.C.
Rains Building, 210 Old Country Road
Mineola, New York 11501

John P. Henry
Director of Labor Relations
Federation of Police, Inc.
5 Skyline Drive
Hawthorne, New York 10532

Re: Town of Mt. Pleasant -and- Mr. Pleasant Police Welfare and Benefits Organization

Sirs:

In view of Mr. Schlachter's letter I am recalling the copies of my award which I mailed to Mr. Pogrebin. When I receive the missing exhibits I shall consider whether any further action is necessary. I note that both exhibits were offered in support of the town's original position.

Very truly yours,

Maurice C. Benewitz
Impartial Chairman

cc: Ernest Stolzer, Esq.
David Schlachter, Esq.

MCB:pk

RAINS & POGREBIN, P.C.

RAINS BUILDING

210 OLD COUNTRY ROAD

MINEOLA, N.Y. 11501

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CABLE ADDRESS RAINSLAW

OF COUNSEL
HARRY H. RAINS
DAVID M. WIRTZ

November 29, 1983

Maurice Benewitz, Arbitrator
261 Thompson Shore Road
Manhasset, New York 11030

David Schlachter, Esq.
Schlachter & Mauro
666 Old Country Road
Garden City, New York 11530

Mr. John P. Henry
Tri-County Federation of Police
5 Skyline Drive
Hawthorne, New York 10532

Re: Town of Mt. Pleasant and PBA Interest Arbitration

Gentlemen:

On behalf of the Town of Mt. Pleasant I must strenuously object to the PBA's request that the arbitration panel reopen the hearings to allow it to present further exhibits concerning hours of work. The PBA had ample opportunity at the hearing to present whatever evidence it believed was relevant to the Town's proposal to alter the work schedule of the officers. The PBA has offered no reason in support of its request to reopen the hearing or its failure to offer at the hearing the evidence it now wants the Panel to consider.

Very truly yours,

RAINS & POGREBIN, P.C.

Ernest R. Stolzer

ERS:sja
cc: Supervisor Rovello
Chief Paul Oliva

516 - 627-0114

Maurice C. Benewitz

PRACTICE OF LABOR ARBITRATION

261 Thompson Shore Road
Manhasset, New York
11030

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
December 1, 1983

David Schlachter, Esq.
Schlachter & Mauro
666 Old Country Road, Suite 301
Garden City, New York 11530

Ernest R. Stolzer, Esq.
Rains & Pogrebin, P.C.
210 Old Country Road
Mineola, New York 11501

Re: Mount Pleasant Interest Arbitration
PERB Docket: IA 83-5; M 83-1

Sirs:

I write in reference to a number of letters which have been exchanged since the executive session on the Mount Pleasant police arbitration met on November 7, 1983.

On November 18, 1983, Mr. Schlachter wrote to insist that no award issue until the Town provided copies of the supervisor's statement and the CSEA contract which were promised as exhibits. An award executed by the chairman had already issued. But on November 23, 1983, the chairman recalled the award and requested the exhibits with the statement that he would reconsider the recommendations. This was true despite the fact that both exhibits were offered in support of the Town position that the panel find for a lower money increase than resulted from the executive session discussions, primarily.

More importantly, the PBA wrote a brief, and its arbitrator participated in the executive session with no notice that the PBA considered the exhibits necessary before argument could be written and/or the executive session discussions proceed. Nevertheless, the chairman recalled the award lest there be any possibility that full due process be lacking.

On November 22, 1983, Arbitrator Henry wrote protesting that a draft copy of the award was not issued to the interest arbitrators before the chairman completed his exection of the awards and then sent them to Arbitrator Pogrebin. The instructions of the chairman in his covering letter were that Mr. Pogrebin

execute the award as assenting (which Mr. Pogrebin had indicated he would do at the executive session) and then send them to Mr. Henry for his action. Mr. Henry had indicated at the executive session that he opposed the award. If he held to that position, he had a full right to attach a dissenting opinion to each copy of the award. The chairman knows of no requirement in the Civil Service Law requiring him to submit a draft so long as a full and free discussion occurred at the executive session. At the executive session such a discussion occurred and a different document resulted than the chairman had considered likely from his preliminary study before the session.

On November 23, 1983, Mr. Schlachter wrote to request a reopening of the proceeding "to present further exhibits concerning hours of work." Mr. Stolzer objected to reopening by letter of November 29, 1983 on the ground that the PBA "had ample opportunity at the hearing" to present relevant evidence.

The chairman has no authority to reopen the proceeding without the concurrence of both parties. He shall not do so.

The chairman shall now reconsider and rewrite the award as he deems necessary in light of the letters and the additional exhibits.

Very truly yours,

Maurice C. Benewitz
Impartial Chairman

cc: John Henry, PBA Interest Arbitrator
Bertram Pogrebin, Esq., Town Interest Arbitrator
Erwin Kelley, Esq., PERB

MCB:pk

It became clear during the hearings and executive session that a town demand for a change in the work chart, which the chairman found to be justified, was vigorously opposed by the PBA. No package was found to be possible which would allow an award including most of the significant proposals of the parties to issue if the change in work chart was included. Yet no package excluding the work chart change would be acceptable to the public employer.

The chairman concluded that it would best meet the objectives of Section 209.4 to award a minimal one-year package and to leave the remaining items for the 1984 bargaining between the parties. This conclusion does not mean that there were not many items of merit in the proposals of the parties. Some of the hospitalization and sick leave proposals of the town should be carefully considered in negotiations where trade offs are possible. Similarly, the PBA proposals concerning detective and sergeant differentials; an improved longevity schedule; changes in vacation schedule; clarification of sick leave certification; and others are worthy of considered judgment. Both parties have clothing allowance proposals for which bargaining is clearly possible.

But exploration and accommodation could not occur where one item, necessary to remove a significant difference from comparable police contracts, had to be addressed. That work chart item dominated the proceeding.

To award on the other items here, even if a compromise could be found which would command the assent of a majority of the panel, would be to remove negotiable matters from the next bargaining. Since the work chart item will be resolved here, it is best to leave those matters on which the parties can bargain and agree to future negotiations between them.

The panel majority shall award on the work chart, on wages, on a welfare fund improvement, and on duration. All other items, including those from each party with possible merit, shall be denied.

Duration

Except as modified by the three items discussed below, the existing agreement as extended and amended by the public interest panel award which expired on December 31, 1982, shall be extended for the one year period January 1, 1983 through December 31, 1983. We so award.

The Work and Economic Items: General Statement

In coming to a conclusion concerning the work chart and salary and welfare fund, the panel considered all of the criteria set forth in Section 209.4(v) of the Civil Service Law. That section reads:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any 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 chairman concludes that the best comparisons for this unit are to police units in other Westchester County towns. Some information on police conditions in Westchester villages will also be noted.

A review of the work week of the police forces of 11 Westchester County towns (Exs. PBA 2 and 3) shows that the average 35 hour schedule worked in Mt. Pleasant is the lowest among all of them. A possible exception is the average week of Yorktown which includes in its average 37½ hour week 12 training days. If the 21 Westchester villages with police forces are considered, only 2 of them, Bronxville and Mt. Kisco, have lower schedules. Tarrytown has a 35½ hour average schedule. Thus in comparison to all other employees performing the same work in the villages and towns of Westchester County, the Mt. Pleasant police officers have the third, or possibly fourth, lowest schedule among 29 units.

It is difficult to compare basic compensation of the Mt. Pleasant unit to that of the other units. The data provided by the union (Ex. PBA 2) shows very few settlements for 1983 among the towns and villages of the county which have police forces. Those salaries which are available for January 1983 are all higher than the 1982 top step salary of $24730 in the Mt. Pleasant unit. A number of the 1983 salaries are the result of previous multi-year bargains. One 1983 increase is split over the year (North Castle). Among the villages, most of the 1983 salaries, whenever negotiated, took effect after January 1 and did not reflect true percentage increases for 1983 alone. For Westchester County towns, increases have been negotiated, by the PBA information, in 6 units. Several of these are second year increases arising in multi-year contracts. Four of these provided 8% increases, and the overall average increase was 8.3%. Of the 1982 top salaries in the towns with police forces, 4 of the 11 were lower than in Mt. Pleasant, and 6 were higher.

In its brief, the town calculates the impact of the lower average work week in Mt. Pleasant together with the top step salary paid. For a 52 week work year at the average work week for each town and for the 1982 top step salary shown in the PBA data, Mt. Pleasant paid the highest hourly compensation among the 11 comparable towns. When the same computation was applied to the 6 towns for which 1983 salaries were available at the time of the hearings, only a 3.5% salary increase was required to maintain Mt. Pleasant at the top of the hourly wage array. (Of course, if the work week is increased for Mt. Pleasant, this conclusion would no longer be true.)

The PBA presented an analysis of town fiscal documents and history by expert witness Edward J. Fennell to show that the town has the ability to pay a significant salary increase. (The PBA requests a 15% basic salary increase plus increases in a number of other items such as longevity and differentials.)

Mr. Fennell found that 59% of the property in Mt. Pleasant was taxed in 1982 at $26.60 per thousand of full value or lower. The range was $25.56 to $52.47. A review of the full value tax rates for the other towns and villages of Westchester County which are set forth in Mr. Fennell's report (Ex. PBA 1) shows that the rate of $26.60 was low for the county. PBA Exhibit 14 is the town's announcement concerning the 1983 budget. The rates therein set forth are not comparable to those used by Mr. Fennell since the town-announced rates are for assessed valuation. However, the announcement does speak of "moderate tax increases" for both village and unincorporated area taxpayers. Over the 5 years 1978-1983, the increase for unincorporated area taxpayers was 1.71% and the "entire town" rate in 1983 is 28.6% less than in 1978. Newspaper reports (Exs. PBA 15 and 16) show a 1983 tax increase in the unincorporated area of Mt. Pleasant of 5%.

Mr. Fennell found that only 19.3% of the debt limit was exhausted. He further concluded that the debt ratio of 1.6% of the full value of taxable property "is considered low." (Whatever the law may be, an award which required the town to borrow in order to pay it ordinarily would not be in "the interest and the welfare of the public," in the opinion of the chairman. Very inequitable rates of pay or other unusual circumstances might lead to some easing of this conclusion. But no such circumstances pertain in Mt. Pleasant.) Mr. Fennell also points to surpluses, a contingent fund, and unbudgeted state aid as other

sources for funding any salary increase awarded.

The town properly notes that there are other identified needs which also must be met out of available funds; that income will be reduced in 1983 by the fall in return paid on invested funds because of decreasing interest rates, and that any budget must allow for unforeseen contingencies which may arise after the budget is adopted.

The town submits that the increases sought by the PBA are requested at a time when the percentage increase in the all urban consumer price index is in the range of 4 to 5% annually while that for "wage earners - clerical" is increasing at a lower annual rate (Ex. T-14). In addition, Mt. Pleasant is shown by the Westchester Department of Planning to rank low among towns and villages in the economic indices which evidence ability to pay. Per capita income in 1980 ranked twelfth among 14 towns and twenty-seventh among 37 towns and villages. (Exs. T-8 and T-9.) Median family income for 1980 in Mt. Pleasant was seventh among 9 towns for which the department of planning presented data (Ex. T-10) and eighteenth among 37 towns and villages (Ex. T-11).

Among 15 towns for which 1980 data was presented, the median value of owner occupied non-condominium houses was ninth for Mt. Pleasant (Ex. T-12).

The chairman concludes that the town was below the average for the county in income and value of property holdings no matter which of the indices one wishes to consider. At the same time it pays salaries to police officers which range at about the middle of the 11 town salary range; and it has a work schedule which is one of the lowest in the county. While the police officers of Mt. Pleasant are entitled to salaries comparable to their brother officers in other

towns (and villages), there is no reason why their work schedule should be so much better than the average for all of the towns and villages in Westchester.

By making comparison to other police units, the chairman has obviated the necessity to discuss the various factors set forth in criterion c. of Section 209.4(v). These comparable units share the same conditions of work and require the same skills, qualifications, and training.

The chairman has considered the predecessor contract and the predecessor public interest award (as required in criterion d.). He has concluded, for the reasons set forth above, that it would be in the best interests of all parties to issue a more limited award than the predecessor.

Weekly Work Schedule

We find and award that police officers in Mt. Pleasant shall work on a 5/72 chart effective January 1, 1983.

Despite this language, the town will not gain the benefits of this change for most of the contract year in issue. No adjustment in compensation will be provided in recognition of the fact that work charts cannot be altered retroactively. The economic benefits which the town will gain from this provision are thus prospective, although the salary and welfare fund increases awarded below are retroactively applied.

Salary and Welfare Fund

We find and award that retroactive to January 1, 1983, the contribution per PBA unit member to the PBA Welfare Fund shall be increased by $200 to $450 per year. This provides an in-pocket increase to police officers of $200 and a before-tax increase of more than $200. The monies will be used to replace after-tax payments of insurance.

We find and award that each step and salary on the basic salary schedule set forth in the contract shall be increased by 8% effective January 1, 1983.

The welfare fund and salary increases are in the same range as the putative 1983 salary increases negotiated or awarded for other Westchester towns and villages. But, as noted earlier, some of the increases granted elsewhere were in 2 steps over the year. These yielded less in actual increases than the percentage increase found by comparing year-end salaries for 1982 and 1983. Furthermore, many of the other increases became effective in March, April, or June 1983. They also yielded smaller in-pocket increases during 1983 than comparison of year-end salaries would suggest.

The higher in-pocket increase paid to the Mt. Pleasant police officers, which arises because the new schedule is made effective January 1, 1983, is justified by the change in work schedule above awarded. An increase higher than the rise in the cost of living is justified both by the change in work schedule and by the fact that comparable contracts also provided increases greater than those in the CPI.

In light of the foregoing discussion and specific awards, we, the undersigned chairman and employer panel member (the employee panel member dissenting) having been designated pursuant to Section 209.4 of the Civil Service Law, the chairman having been duly sworn, and the panel having received, reviewed, and discussed the testimony and evidence presented at hearings at which both parties were ably represented by counsel, rule that except for the above awarded changes in duration, work chart, salary, and welfare fund, the contract extended to December 31, 1982 by the prior interest award shall remain in effect

for the period ending December 31, 1983, and the awarded changes in work chart, salary, and contributions to the welfare fund shall take full force and effect as provisions of the January 1, 1983 through December 31, 1983 contract.

Maurice C. Benewitz
Impartial Chairman

Dated: December 2, 1983

STATE OF NEW YORK)
ss:
COUNTY OF NASSAU)

On the second day of December, 1983, before me personally came Maurice C. Benewitz, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PATRICIA G. KOSTER
NOTARY PUBLIC, State of New York
No. 30-4738136
Qualified in Nassau County
Commission Expires March 30, 19__

I (concur with) (~~dissent from)~~ the above award.

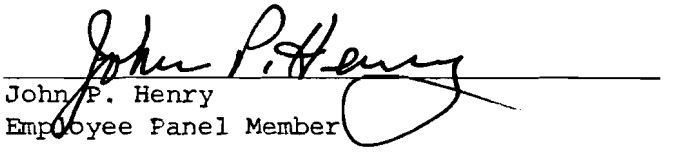
Bertram B. Pogrebin
Employer Panel Member

Dated:

STATE OF NEW YORK)
ss:
COUNTY OF NASSAU)

On the 6th day of December 1983 before me personally came Bertram B. Pogrebin, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

I (~~concur with~~) (dissent from) the above award.



John P. Henry
Employee Panel Member

Dated:

STATE OF NEW YORK)
ss:
COUNTY OF WESTCHESTER)

On the [illegible] before me personally came John P. Henry, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

DIANA J. GARDNER
Notary Public, State of New York
No. 4692141
Qualified in Westchester County
Commission Expires March 30, 198__

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[illegible]

[illegible]

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[illegible]

John Pittenger

Dec. 16, 1983

DIANA J. GARDNER
Notary Public, State of New York
No. 4692141
Qualified in Westchester County
Commission Expires March 30, 198__