

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest :
Arbitration Between :

THE VILLAGE OF NORTH TARRYTOWN :

and :

THE NORTH TARRYTOWN POLICE BARGAINING :
COMMITTEE :

Case No. 1A-83-27;
M83-270

APPEARANCES

Public Arbitration Panel:

Edward Levin, Public Panel Member and Chairman
James Timmings, Employer Panel Member
John P. Henry, Employee Panel Organization Member

For the Village of North Tarrytown:
Robert J. Ponzine, Attorney

For the North Tarrytown Police Bargaining Committee:
Christopher Harold, Attorney

On November 30, 1983, the Public Employment Relations Board (hereinafter PERB) determined that the dispute continued to exist in the negotiations between the Village of North Tarrytown (hereinafter Village) and the North Tarrytown Police Bargaining Committee (hereinafter PBC). Pursuant to Section 209.4 of the New York Civil Service Law, a panel was appointed for the purpose of making a just and reasonable determination of this dispute in accordance with the applicable statutory provisions and rules of procedure.

On October 11, 1983, a dispute arose between the parties concerning the matters to be submitted to the compulsory interest arbitration panel and the dispute was submitted to PERB for its determination. On March 21, 1984, PERB Administrative Law Judge Sabin ordered that the only items properly before the public arbitration panel are salaries, personal days, and sick leave incentive. A hearing was held on June 20, 1984 at which time the parties were accorded a full opportunity to present documentary evidence, testimony and oral argument in support of their respective positions with regard to these three remaining issues before the panel. The parties subsequently submitted post hearing briefs and an executive session panel members was held on July 26, 1984.

ISSUES BEFORE THE PANEL

Pursuant to the decision of the Administrative Law Judge, the following issues are properly before the panel:

1. Salary
2. Personal Days
3. Sick Leave Incentive

Salary

The parties presented numerous documents addressed to the statutory requirements that the panel must consider in arriving at its determination.

The PBC is asking for a twenty percent (20%) increase over a two year period. According to the statistical data presented by the PBC with respect to the amount of salary increases received by other Westchester County Villages for fiscal year 1983-1984 and 1984-1985, the PBC claims that it shows the average percentage rate increase over these two years was seventeen point seventy-one percent (17.71%). The two point three percent (2.3%) difference over and above the average received by other villages in Westchester County proposed by the PBC is justified because North Tarrytown police officers do not get paid time and one-half for overtime and are barred from negotiating for this benefit by the PERB Administrative Law Judge's decision. The PBC argues that the salary should reflect that discrepancy by being two point three percent (2.3%) in excess of the average settlement in Westchester County for the comparable two year period.

The PBC compares longevity benefits enjoyed by other Westchester village and town police departments with that of North Tarrytown Village police officers many of whom do not enjoy a longevity benefit. It was also pointed out that many municipalities in Westchester County receive more holidays than North Tarrytown and that these officers get paid the days pay for actual holidays worked unlike police officers in North Tarrytown. The PBC in this respect draws

the panel's attention to the fact that premium pay for all holidays worked was removed as a benefit by a previous arbitration panel.

The PBC believes that the evidence shows that North Tarrytown police have fared poorly in salary, overtime and holiday pay when compared to other Westchester County municipalities. The PBC therefore believes that the additional amount over and above the average of other municipalities in Westchester County for the 1983-1984 and 1984-1985 calendar years is justified to offset the deficiencies of the contract.

With respect to police officers' salaries as measured against increases in the consumer price index over the last ten years, the PBC concludes that there has been a real decline in the purchasing power of approximately five percent (5%). The PBC believes that this decline in the police officers' purchasing power further justifies a salary increase in excess of the seventeen point seventy-one percent (17.71%) average received by municipalities in Westchester County.

The PBC points out that the Village's Exhibit K shows a \$656,028.00 cash balance at the conclusion of 1983-1984 fiscal year. This amount when reduced by \$439,845.00 leaves a "cash surplus" of \$216,183.00. They then add an additional sum of \$167,000.00 from the 1984-1985 budget

representing "recoup" funds and the receipt of certain taxes, and maintain that the amount of cash surplus is thereby substantially increased. When another \$47,500.00, representing funds allocatable to the 1983-1984 police salaries is added to the adjusted cash surplus, that total amount of funds available to the Village for salary increases comes to \$430,680.00.

The PBC points to the budget for payroll and non-payroll benefits affected by a salary increase which amounts to \$858,829.69. A six percent (6%) salary increase offered by the Village for the year 1983-1984 would cost \$55,824.00 as compared to the ten percent proposed by the PBC which would cost \$85,883.00. The difference between the two proposals being only \$30,059.00. Using the same calculations for the fiscal year 1984-1985, taking into account the Village's seven percent (7%) salary proposal compared to the PBC's ten percent (10%) salary proposal an additional \$30,145.00 emerges as the cost between the parties' positions. Thus adding the two figures of \$30,145.00 and \$30,445.00, the PBC arrives at a total of \$60,504.00 of additional funds needed to meet the PBC's demand. According to the PBC's calculations, this amounts to fourteen percent (14%) of the adjusted cash surplus already existing in the Village's budget.

The PBC contends that a comparison of statistics reveals

that the Village of North Tarrytown is economically much healthier now than it was in the past. The PBC points to the current increase in assessed value of property and the \$.09 decrease in tax rate as indications of the better tax position enjoyed by the Village as compared to previous years in which tax rates increased by substantial amounts. The PBC concludes that the Village is in a financial position to grant its police officers a fair increase. The PBC believes that the Village's claim that the pending litigation concerning tax assessments will result in a substantial decrease in assessed value is merely speculative and does not contradict the statistics that show the Village's present position as being in an advantageous tax position.

The Village's fears with regard to General Motors remaining in the community appears unfounded in the light of the State's agreement to reconstruct low hanging bridges objected to by General Motors and a proposal whereby the plant would be designated a federal free trade zone with respect to reduce duties for imported parts. These improvements would further enhance the Village's tax base.

For all these reasons, the PBC believes that it's salary proposal of ten percent for each of two years is reasonable and supported by the facts.

The Village takes issue with many of the documents and allegations and assumptions made by the PBC in support of its position for a substantial salary increase over and above the amount offered by the Village.* First it challenges the PBC's interpretation of a reported cash balance that appears in the minutes of a special Board of Trustees meeting. The Village points out that a cash balance is different from a surplus in that a cash balance is necessary for the day-to-day operation of the village for routine expenditures. The Village maintains that after the appropriate expenditures are deducted from the cash balance there is no large untapped cash surplus available for salary increases for police officers.

The Village also questions the use of the Village of Ossining and the Village of Buchanan for comparison purposes inasmuch as both of these municipalities reflect anomalies in their operation rather than models for comparison purposes. The Village also pointed out that it is rapidly approaching its 90 percent constitutional tax limit and unless it conducts its financial affairs in a prudent manner it could be in serious fiscal straights in the not too distant future.

*The Village has offered a salary increase of six percent (6%) for 1983-1984, and seven percent (7%) for 1984-1985.

When North Tarrytown police are compared to other groups as reported in a 1982 article in the magazine, Public Management, a North Tarrytown patrolman first class was revealed to have received proportionately greater salary increases than local public managers, engineers, accountants, and secondary teachers, all of whom require a higher degree of education, training and experience.

In considering the consumer price index, the Village urges the panel to keep in mind that a significant portion of that index is made up of items that are fully paid for by the Village and therefore not a realistic reflection of the increased cost of living for North Tarrytown police officers. Such items as uniform allowances, apparel upkeep and medical benefits make up a substantial portion of the CPI and should not be included in determining how well North Tarrytown police officers are doing with respect to inflation. When viewed over a fifteen (15) year period of time rather than the ten (10) years arbitrarily selected by the PBC, North Tarrytown police officers are actually receiving a twenty-eight percent (28%) higher salary adjustment than inflation would warrant. During this same time period, patrolmen in North Tarrytown have had their work cycle reduced one day and sargeants two days resulting in a two point six percent (2.6%) and four point seven percent (4.7%) reduction for these employees respectively.

These changes reflect a higher dollar amount for the actual work performed by these two groups of employees. The Village also points out that longevity increases represent a cost to the Village as well as other changes such as payment for overtime instead of compensatory time and have resulted in more dollars for North Tarrytown police officers overtime. To this can be added the cost of increased holidays. All these items taken together should be considered in determining how North Tarrytown police officers have fared with respect to the consumer price index over the past fifteen (15) years.

While the Village finds the performance of its police officers satisfactory and in some areas exemplary, a contract that results in a reduction in manpower, thus reducing its efficiency would not be in the interest of either the police officers or the public. Inasmuch as financial crisis is a real threat, the Village must act in a prudent, responsible way to avoid the disastrous consequences and may be required to take drastic actions should an excessive increase be granted by the Arbitration Panel.

The Village points to the pending tax suits by the General Motors assembly plant and a real estate property that if won would make a significant impact on the Village's financial standing. Even if the taxpayer's suit

was marginally successful it might require the Village to borrow in order to refund the amounts granted by the court.

The Village maintains that it is burdened with tax exempt property located within its boundaries and that approximately 31 percent of all real estate improvements in the Village of North Tarrytown are tax exempt. All these exemptions create a substantial drain on the ability of the municipality to provide for the interest and welfare of the public.

Based on the above the Village opposes granting of the PBC's demands as they are excessive and are not reflective of salaries paid to employees in both the public and private sectors as well as similar professions and that they are beyond the Village's ability to pay and not within the public's interest.

Personal Days

The PBC has requested an increase of personal days from three to five. The Village has offered an increase in the number of personal days to four. The PBC believes that its proposal for five days is justified when this benefit is examined and compared to other Westchester County jurisdictions.

The Village stated that an examination of a patrolman's attendance record reveals that employees who need time off

are granted such leave. In addition, police officers' swing shifts provide police officers with free time during day time hours to take care of their personal business and they are in no need of additional personal days.

Sick Leave Incentive

The Village has proposed a sick leave incentive which the PBC does not oppose as long as it is not used to reduce an otherwise fair salary increase. In addition, the PBC believes that no police officer should be denied sick leave incentive bonus for job related injuries or illnesses.

The Village stresses the importance of its sick leave incentive proposal which would not penalize officers who are justifiably ill and unable to work but would offer an incentive or bonus to those officers who made a special effort above and beyond that which is required to report to work and perform their assignments.

ARBITRATION PANEL'S OPINION

The Panel has carefully examined the arguments of the parties and has designed a package made up of the three outstanding issues that it believes minimizes the financial strain on the Village while meeting some of the needs and concerns of the PBC. In doing so it has taken into account the Village's ability to pay which it finds somewhat

precarious at the present time due to the unsettled tax status of one of its largest tax payers, General Motors and other tax suits that might have a significant impact on the Village's financial standing. The Panel is also cognizant of other financial difficulties of the Village and recognizes its position relative to its tax limit. The Panel has also studied comparable settlements, particularly of police officers in other municipalities in Westchester County. It is the Panel's belief that the structure of the salary increases as set forth by this Panel, in conjunction with the modifications in the number and use of personal days, as well as the sick days incentive, constitute a manageable financial burden while giving the police officers of North Tarrytown a reasonable standing with their fellow officers in surrounding communities.

Therefore, the Panel finds the following:

1. Salaries. There shall be an increase of salaries based on the Patrolman I salary for 1982 of \$24,489 as follows:

Six percent (6%) effective 6/1/83 raising the salary to \$25,958.00.

Two percent (2%) effective 12/1/83 raising the salary to \$26,478.00.

Six percent (6%) effective 6/1/84 raising the salary to \$28,067.00.

One point five percent (1.5%) effective 12/1/84 raising the salary to \$28,488.00.

2. Personal Days. The number of personal days shall be increased to four (4) per year. Any days not used shall be compensated at the rate of \$75.00 per day to be paid the first pay period in June by separate check.

3. Sick Leave. The sick leave provision of the contract shall be amended to include the Village's sick leave incentive proposal:

For those officers who utilize less than eight (8) days of sick leave per year, a salary bonus of one percent (1%) of their annual salary; for those officers who utilize less than five (5) days of sick leave per year, a salary bonus of one and one half percent (1.5%) of their annual salary.

The Panel believes that its determination is a fair and equitable settlement of the dispute between the Village and the PBC and is consistent with the applicable statutory requirements of such a determination.

PANEL MEMBERS:

Date: 7/30/84

Edward Levin
Edward Levin
Public Panel Member

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

Appeared before me this 30 day of July, 1984,
EDWARD LEVIN, to me known, who did swear and affirm that he
has executed the above and that all statements herein are
true and correct to the best of his knowledge and belief.

JAMES P. SMYTH
Notary Public, State of New York
No. 03-000010
Qualified in Bronx County
Commission Expires March 30, 1986

James P. Smyth

Date: August 15, 1984
Concur (X) Dissent ()

James Timmings
James Timmings
Employer Panel Member

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

Appeared before me this 15th day of August, 1984,
JAMES TIMMINGS, to me known, who did swear and affirm that
he has executed the above and that all statements herein
are true and correct to the best of his knowledge and
belief.

Filomena A. Fallacaro
FILOMENA A. FALLACARO
Notary Public, State of New York
No. 60-1155725
Qualified in Westchester County
Commission Expires March 30, 1985

Date:
Concur () Dissent ()

John P. Henry
John Henry
Employee Panel Organization
Member

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

Appeared before me this 2nd day of August, 1984,
JOHN HENRY, to me known, who did swear and affirm that he
has executed the above and that all statements herein are
true and correct to the best of his knowledge and belief.

Ralph M. Purdy
RALPH M. PURDY
Notary Public
Qualified in Westchester County
Commission Expires March 30, 1985

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

Case No. 1A-83-27
M83-270

This report is written to confirm my affirmation vote in support of the arbitration panel award and also to express my opinion of information presented to the panel.

The PBC in their presentation (see A10) placed great emphasis on the fact that North Tarrytown is the only Village in Westchester County to pay straight time for overtime and used this lack of a benefit as an argument to justify a salary increase in excess of the County average. Inspection of PBC A1 (the present contract) shows the overtime (Article VI) to contain conflicting sections. Under questioning, it was determined that PBC had been paid time and one-half for overtime, but during prior PERB mediation had given up the overtime premium in order to gain a more desired benefit and that the wording of section 3 was the mediators proposal to protect against this present PBC argument. PBC A11 is intended to show excessive overtime requirements, but even in the patrol force (the highest overtime hours), overtime averages less than 4 hours per week per man. Further, Village exhibit E shows the potential reason for overtime to be an abnormally high absentee rate.

In the area of comparability, which has become a major but undefined tool in implementing the Taylor Law, the PBC seeks to make this a one issue subject in comparing salaries in dollar per year. Village exhibit a and b do make a valid comparison in that the General Motors plant in North Tarrytown is a major area employer and is a potential employer of people with skill levels for police work. As such, it is interesting to note that during the 1983-84 contract year, the GM worker averaged \$12.64 per hour (in an industry that for a number of years has paid higher than normal wages in an effort to buy the loyalty of employees) while the N.T. Police were paid an average of \$12.65 an hour prior to any award of this panel. More importantly, the N.T. Police have a "benefit package" that is approximately \$5 per hour more than GM. The PBC in exhibit A11 and page 6 of the reply brief makes the point that not all members of the bargaining unit are paid longevity (common for all levels of government). The more important information contained in Village exhibit C is that compared to other police contracts in Westchester County, only the Bronxville contract would provide a higher payment to the members of the North Tarrytown Police. PBC exhibits A8B and A8C do not provide any information on work schedule while Village 0-2 and verbal testimony indicate that N.T. Police work fewer hours now than in 1967 (the Federally established base year for CPI information). There is also a strong probability that not all Police Departments have the same work schedule. Consequently, while the Village did not furnish cost comparison with other Police Departments this comparison is the only meaningful measure if comparability is going to work.

Information provided in Village exhibit M (Public Management May, 1982 issue) makes a valid comparison between public and private salaries. Further, the data shows that over a 10 year period the N.T. Police have had salary increases that outpace Secondary Teachers and Public Managers (both Public Sectors), as well as Engineers and Accountants (both private sector). Consequently, in this period of minimum inflation only a modest salary increase is called for and the application of comparability says that New York State in its Public Employment Policy is out-of-touch with reality.

The other major tool used to establish salary under the Taylor Law is "Ability to Pay". While this panel was presented a volume of conflicting data on this subject, the truly important data in this area include:

1. All Village Police Departments in Westchester recruit from the same Civil Service list.
2. The Comptroller of the State of New York has issued a report indicating that any community taxing in excess of 90% of its constitutional tax limit can be considered a financial risk.
3. Village exhibit L is a graphical comparison of the Tax Levy to the Tax Limit for North Tarrytown to the Villages that the PBC choose to compare to in A8B and A8C. Clearly, the Village with the highest salary has the best ability to fund Public Service, while the second Village is considered a "Risk" and North Tarrytown is in need of sound management to prevent becoming a risk. It must be asked, "How can Villages maintain the ability to recruit effectively when a provision in a State Law forces neighboring Villages to pay even higher salaries?"

In conclusion, salary administration is an art rather than a science and from a management point-of-view should be defined as the lowest salary that will attract and retain competent people.

James J. Timmings
James J. Timmings

*Personally appeared
before me this 15th day
of August, 1984*

Filomena A. Fallacaro

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