

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

Opinion
and
Award

In the Matter of an Interest Arbitration between
Village of Medina, New York

- and -

Medina Firefighters Association, Local 2161

Case Number: NYSPERB IA 85-17, M85-96

FOR THE VILLAGE

Norman J. Stocker, Labor Consultant
Loyal P. Morse, Trustee
R. Jack Punch, Negotiating Team
Joseph P. A. Romanowski, Coordinator
M. Tom Miller, Trustee

FOR THE UNION

Bernard E. Stack, Attorney
Doug Maynard, Local President
Jason Drought, Local Secretary-Treasurer
David R. Ehrenreich, Member

ARBITRATORS

Charles J. Morello, Union Appointed Arbitrator
Joseph Randazzo, Esq., Employer Appointed Arbitrator
Donald P. Goodman, Public Member Arbitrator and Chairman

On September 24, 1985, the New York State Public Employment Relations Board determined that an impasse between the above named parties and designated the individuals indicated as Arbitrators. The Arbitration then conducted oral hearings at which time the parties had ample opportunity to present testimony, to introduce evidence and to summon witnesses and

engage in their examination and cross-examination. Thereafter, the Arbitration panel met in executive session and issued this opinion and award.

THE ISSUES

I. Grievance Procedure - Finality

Union

Presently, the Labor Agreement does not indicate that an award of an arbitrator is final and binding. The parties have consistently treated an arbitration decision in that fashion. The Union simply proposes that the contract contain such language so as to insure that in the future there be no problem in that regard.

Village

The present procedure has proven acceptable to the parties and the Village sees no need to modify the current language.

Conclusions

Although the parties have consistently treated arbitration decisions as final and binding, there is no assurance that this will be true in the future. The Union merely seeks to codify what the parties have done in the past. The Panel awards that the language be modified to reflect that the award of an arbitrator is final and binding.

II. Grievance Procedures - Panels and Selection

Union

Presently, the contract specifies both the method of striking names and that lists from which arbitrators are selected will be obtained from the American Arbitration Association. In interest arbitration, arbitrators must be selected from lists supplied from PERB. It seems only natural that rights arbitrators be selected through the same source.

Village

The present language has served the parties well over the years and the Village sees no need to make changes.

Conclusions

Although the proposal of the Union has logic, the present language seems to work. The Union did not demonstrate that the current language has caused problems or is unworkable. The Panel awards that no change be made in either the method of striking or in the name of the agency through which lists of arbitrators will be obtained.

III. Association Rights

Union

The Union proposes that the contract provide that the Local President or his designee have release time for Union

duties and/or business. Many parts of the labor agreement need to be brought up to date. Release time would permit the Local President to work with the Village on changing contract language. Too, a demand for reasonable time to conduct Union business would have its own controls in that prior to having time off, the President would request time off from his supervisor. A comparison of other fire contracts reveals that release time is common.

Village

The Village states that the proposed language invites abuses. The amount of time off is not specific. In addition, there has been no demonstrated need for release time.

Conclusions

The Panel sees the possibility of never ending conflicts with the proposed language. This is not a large bargaining unit. The number of individuals in the unit does not seem to warrant release time. Some parts of the contract may need to be updated but that, in and of itself, does not require release time. The Panel awards that the Union proposal is rejected.

IV. Health Insurance - Retirees

Union

There is no language which currently provides for health insurance for retirees. Coverage can be continued after retirement if the full cost is borne by the retiree. Twelve municipalities were surveyed and only one made no provision for such. Nine of the 12 provide for 100% coverage for retirees. Dependents should have some coverage after the death of the retiree. Some departments provide for retirement at an earlier time but Medina permits retirement only after 25 years of service. After that much service to the Village, the Village should provide the individual with some protection. The provision would only affect those who retire after the date of this arbitration award.

Village

The Village believes this to carry high never ending costs. Individuals could live for many years after retirement (perhaps 40) and such a provision would saddle the taxpayers with such an expense. It may be true that medicare would bear some of the costs past age 65 but the Village is of the opinion that Blue Cross and Blue Shield raise costs for those over 65.

Conclusions

We would agree that a person could live 35 to 40 years after retirement. It is also true that medical costs and insurance premiums have risen greatly over the years. Too, many retirees find other employment after retirement. The Panel does not believe that the Union proposal should be adopted at this time. Retirees should be able to continue under the Village's group plan at their own costs upon retirement and we so award. The Panel further awards that unused sick leave in excess of 90 accumulated days may be converted to health insurance upon retirement. Such unused sick leave may be accumulated up to any amount for this purpose and that the dollar value of the unused sick leave so converted shall be at the rate of 1/260th of the annual rate of pay excluding overtime at the time of retirement. Employees, at their option, are permitted to bank payments for non-use of sick time as indicated in Section 17 of the current agreement.

V. Holidays

Union

The present 11 holidays should be increased to 12 by adding Martin Luther King Day. It is a State and Federal holiday. The average number of holidays for departments surveyed exceeds 11. Certainly, Medina needs improvement in the number of holidays granted.

Village

The Village is facing increasing costs. The number of holidays is within the norm of other departments. The cost of granting this proposal is about \$1500 per year. The increased costs simply can not be justified.

Conclusions

Even though some comparable municipalities provide for 11 holidays, the average number of holidays approaches 12 when a large number are compared. There is a trend to eliminate Washington's Birthday and Lincoln's Birthday as holidays and to substitute President's Day. The costs are recognized associated with granting an additional holiday. The Panel is also aware that some, perhaps many, are opposed, on philosophical grounds, to celebrating the birthday of Martin Luther King, Jr. Taking all of this into consideration, the Panel awards that Lincoln's and Washington's birthdays be combined as President's Day and the birthday of Martin Luther King, Jr., be added.

VI. Salary

Union

A 10% increase for 1985-86 and an additional 10% increase for 1986-87 are warranted. Administrators received increases

ranging from 7.55% for the Police Chief to 12.7% for the DPW Chief. The average of fire contracts across the state is 6.99%. Wage increases have outpaced the CPI resulting in real increases for firemen. For 1984 Medina firemen received wage increases of 6%. The State average for firemen was 7%. Wages of Medina are very low compared to other fire units. The 10% increases are certainly in order.

Village

At the last negotiation session the Village offered 3.5% for each of two years. The Union asked 7% for each of the two years. Firemen in Medina should be compared with firemen in comparable municipalities. When Medina is compared with Hornell, Norwich, Oneida, Salamanca and Geneva, only Geneva has a higher starting salary. Furthermore, each of those cities granted wage increases of either 5% or 5.5%. The CPI increased by only 3.7% in the 12 months following the last increase enjoyed by Medina Firemen. The Village offer of 3.5% is proper.

Conclusions

The Panel notes that even though only Geneva pays beginning firemen more than does Medina, the same can not be said as the firemen attains service. Medina has a six step

schedule. The top pay at Medina is \$18,407 per annum. Only Salamanca pays less. Too, the top step is reached sooner in those other municipalities than at Medina. The 3.5% offer of the Village would put Medina further behind since the others will receive 5% or 5.5% increases. The Panel has also examined the CPI-W. Data available to the Panel reveals that the Village has substantial taxing ability, has used only 4.2% of its debt limit, and the budget anticipates less sales tax revenue than was actually received in 1984-85. Yet, the economy is growing. The ability to pay a realistic salary increase is apparent. The Panel awards salary increases as follows:

<u>Effective Date</u>	<u>% Increase</u>
June 1, 1985	4
January 1, 1986	2
June 1, 1986	4
December 1, 1986	3

VII. Ambulance Service

Union

For several years the contract provided that members of the bargaining unit be provided for free ambulance service by the Medina Municipal Ambulance. The Village terminated the contract it had with the Medina Municipal Ambulance. The Union makes the simple proposal that the contract merely

reflect the change of name from Medina Municipal Ambulance to the current party providing ambulance service. Currently, if the Medina Municipal Ambulance is not available, the Village pays that part of the costs of a substitute service not paid for by a third party. The proposal merely reflects the changes.

Village

In the past, the Village provided its own ambulance service. The costs of that became prohibited and the Village arranged for service by LaSalle Ambulance Company. Since the Village no longer provided its own service, taxpayers are upset at the current language in that taxpayers must individually pay for service whereas police officers do not. Since the Village no longer operates "Medina Municipal Ambulance" Section 27 of the contract should be deleted.

Conclusions

As a contract right, firemen have enjoyed free ambulance service. It should be noted that the fringe benefits, when viewed as a total, at Medina are not lavish and lag other places in many aspects. Obviously since Medina Municipal Ambulance does not exist, some changes must be made to Section 27. The Panel awards that the current Section 27 be deleted.

VIII. Final Average Salary

Union

The Union requests that the provisions of Section 502 (9) d of the Retirement and Social Security Law be made available. This benefit is not available unless the Village agrees. The eligible employees deserve this benefit.

Village

The benefit would apply to only eight firefighters and would cost \$6095.00. Of comparable municipalities only Geneva and Hornell have adopted it.

Conclusions

The cost of the benefit is high for the number of employees involved. It is not a widely enacted benefit. The Panel awards the Union proposal be rejected.

IX. Clothing Allowance

Union

The clothing-leather allowance should be increased from \$150 to \$225 per year. Policemen already receive \$225. Most municipalities provide appropriate clothing and leather items. Medina does not. Many not only furnish uniform items but also grant an amount for the upkeep of uniforms. Medina must purchase and maintain uniforms on the \$150 a year allowance. This is abysmally low. Clearly, the request should be granted.

Village

The clothing allowance should be reduced. Dress clothing is no longer needed as the Municipal Ambulance service no longer

exists. This proposal of the Union did not exist on July 16, 1985.

Conclusions

The need for dress clothing may have been reduced due to the demise of the Medina Municipal Ambulance Service but firemen still wear the uniform just as do police. The wear and tear still exists. The Panel awards the clothing allowance be increased to \$185 effective upon the signing of the Collective Bargaining Agreement and to \$225 effective December 1, 1986.

X. Longevity

Union

The longevity increments should be as follows:

<u>Time</u>	<u>Present Amount</u>	<u>Proposed Amount</u>
7-9 years	\$100.00	\$150.00
10-14 years	\$250.00	\$250.00
15-19 years	\$300.00	\$350.00
20 years and over	\$400.00	\$450.00

Comparisons with other departments around the state indicates the intervals for longevity are longer than most and that the amounts of the longevity payments is almost the lowest in the state.

Village

This is just another avenue to increase wage costs. The Village's wage offer is fair. There is no need to change the present language.

Conclusions

After due deliberations and review of longevity payments elsewhere, the Panel awards the Union proposal is rejected.

XI. Work Schedules

Union

The present schedule is silent on the work schedule. Problems exist with the absence of contract language on the work week, work day, work per shift, and shift differentials. Overtime must also be addressed. The administration has changed work schedules with very little notice, has required men to work a double shift and giving time off to avoid overtime payments. Too, some have been required to work straight afternoons for a long period thus ignoring the work schedule. The schedule should provide for a ten hour-fourteen hour schedule. This is common for firemen. Clearly, a 1014 schedule is appropriate. In the event the Panel does not see fit to award the Union proposal, it should at least require the schedule that now exists be made a part of the contract.

Village

On April 16, 1986, public employers must comply with the FLSA. Schedules of work should be a management prerogative. Personnel must be used as effectively and as efficiently as possible. Arrangements were made at one time for discussion of this proposal with the Village by a Union spokesman. That spokesman has not contacted the Village.

Conclusions

This is a very small unit. Ordinarily, firemen do work a wheel. The wheel is a matter of negotiating. Certainly, the FLSA must be adhered to by the Village. However, the ramifications of Garcia vs. San Antonio have been lightened by new legislation. The Panel will not at this time specify any wheel. Employees should know when they are to work and with some advance notice. Schedules should not be revised without some emergency or unforeseen circumstance. We have commented on what are sound personnel management principles. No specific award is made on this issue.

XII. Overtime

Union

Overtime rates should be paid for all work in excess of the normal work schedule in a 24 hour period and especially when a double shift is worked. Changes are made at the last minute. Sometimes a fireman does not know when he will work or how long he will work. The contract should state: 1) that firemen are to work either the present schedule or the 1014 schedule for the life of the contract, 2) the number of hours per shift, 3) the actual work schedule, 4) the right to refuse overtime, and 5) shift differentials.

Village

The present language has proven satisfactory in the past. The present situation should not be tampered with and especially not until some experience has been realized with the FLSA application.

Conclusions

We have previously stated that the present schedule be incorporated into the agreement. The FLSA requires that, for firemen, overtime be paid for all work beyond 80 hours in a two week period. The Panel awards rejection of the Union proposal except as elsewhere addressed in this report.

XIII. Length of Agreement

The Panel awards a two-year agreement.

XIV. Salary Steps

Union

The Union proposes the salary schedule be changed so that a firemen would reach the top step after his third full year rather than the current six. A comparison with other departments reveals the method proposed by the Union is common.

Village

Schedules do vary in length. Here again, the Union simply is attempting to inflate the economic package.

Conclusions

The Panel awards that the present schedule be unchanged.

XV. Grievance Procedure - Probationary Employees

Village

The Village proposes a new paragraph be added to state that a probationary employee may be terminated at any time and that such termination is not subject to the grievance procedure. The Village makes this proposal to clarify to a probationary employee that his dismissal is not subject to the grievance procedure.

Union

The Union sees no need for the language and believes such language may give to the Village more power than granted by law.

Conclusions

The Panel awards the proposal on probationary employees be adopted.

XVI. Vacation

Village

The Village proposes that the contract provide that vacation can not be taken until earned.

Union

The Union objects to any change in this section and states this is just another way to erode hard fought gains in benefits.

Conclusions

Vacation is generally considered to be an earned benefit. It is highly conceivable that an individual could take vacation before it is earned and then never in fact earn what had already been taken due to death, retirement, resignation, or termination. The Panel awards that the current language remain.

XVII. Medical Coverage

Village

Presently, the Village pays the full cost of the premiums for health insurance. The Village proposes that it pay the full cost of coverage in effect on the date of execution of the agreement and that increases in costs after that date be borne by the employee. The Village further proposes that the present prescription rider of \$1.00 co-pay be changed to \$3.00 co-pay. The Village further proposes that a no-duplication of benefits clause be included. In furtherance of its position, the Village states that since it first agreed

to bear the full costs of medical insurance the costs have doubled and that Blue Cross/Blue Shield has filed asking for increases in its basic plans, major medical and prescription riders of as much as 35% in some categories. It states that insurance increases are generally effective in January while the Village fiscal year begins on June 1. It is difficult to budget for such increases and in fact, the present budget does not provide for increases in these costs. Increasing the prescription co-pay from \$1.00 to \$3.00 would serve two purposes. First, increases in premiums for \$1.00 co-pay have escalated tremendously whereas the increases have been more moderate for \$3.00 co-pay. Too, employees appreciate and realize benefits more when they share the costs. In regard to duplication of benefits, the Village simply believes that if employees are eligible for coverage elsewhere they would not be eligible at Medina.

Union

The Union protests this erosion of benefits. The vast majority of municipalities not only provide medical insurance at no cost to the employee but also cover retirees. Medina is trailing in retiree coverage and now seeks to trail in

other health insurance as well. The seeking of reducing coverage in this area may be in response to the Union's proposal for health insurance for retirees.

Conclusions

We will first address the matter of dual coverage. On the surface it would appear that the Village proposal is straight forward and should be adopted. A Catch-22 situation could develop when a husband and wife are employed by different employers each of whom would have such a clause in contracts. Which contract would be controlling? Too, a person might be eligible for coverage elsewhere but such coverage might not be as comprehensive as the coverage at Medina. In respect to prescription co-pay, the Panel is aware that increases for \$1.00 co-pay have exceeded those for \$3.00 co-pay. Yet, \$1.00 co-pay is the most common rider provided by municipalities. The matter of basic plan coverage is another matter. Increases in premiums have occurred virtually each and every year. It is difficult to budget exact amounts for possible future increases especially when increases effective dates do not coincide with the Village budget year but it is possible to budget for anticipated increases and it is prudent to do so. The Panel is aware that

some contracts provide for the sharing of insurance expense. This includes State of New York employees. The \$50.00 deductible for Major Medical should also be considered. Many agreements provide for larger deductibles. The State has a larger deductible. Raising the deductible would result in decreased major medical costs thus freeing funds for increased basic plan costs. Studies have indicated that when employees bear part of the costs there is a tendency to utilize services more realistically. That is part of the theory behind co-pay and deductibles. The Panel awards that the Village continue the \$1.00 prescription co-pay. The Panel further awards that if an employee is eligible for basic plan coverage and riders elsewhere, the employee will not be covered by the Village provided the coverage elsewhere is reasonably comparable to the benefits provided by the Village. The Panel awards that the Village continue to bear the full costs of coverage for the life of the agreement. Effective January 1, 1987, the deductible for major medical will be increased to \$100.00.

XVIII. Retroactivity

The Panel awards that salary matters be retroactive to June 1, 1985.

XIX. Call-In Time

Village

The Village proposes that Section 33 be deleted. Presently when an employee is called for duty in addition to his regular hours, he is guaranteed at least two hours of pay at time and one-half. The FLSA will adequately cover this. The language in Section 33 is not needed.

Union

The Union states employees who are called to work during their time off should have some guaranteed pay.

Conclusions

Call-in pay is common in both the public and private sectors. The FLSA will not adequately address the problem. The Panel awards the Village proposal is rejected.

XX. Training

The Panel awards that the present language be retained.

XXI. Other Issues

The Panel awards that issues raised by either party and not addressed herein be rejected.

General

The Panel makes the awards contained herein after due consideration of all the factors contained in Section 209.4 of the New York State Civil Service Law.

State of New York
County of Niagara

We do hereby affirm upon our oaths as arbitrators that we
are the individuals described in and who executed this
instrument which is our award.

Dated May 24, 1986

Charles J. Morello
Charles J. Morello
Union Appointed Arbitrator

Joseph Randazzo
Joseph Randazzo
Employer Appointed Arbitrator

Donald P. Goodman
Donald P. Goodman
Public Member Arbitrator and Chairman

Dissent _____

