

State of New York
Public Employment Relations Board

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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APR 13 1989

CONCILIATION

In the Matter of Compulsory
Interest Arbitration Between

Police Benevolent Association of
the Village of Mamaroneck, Inc.,

and

Village of Mamaroneck

Case No. IA 88-3,
1787-475

Before:

Dr. Mark D. Karper
Public Panel Member and Chairman

Terence M. O'Neil, ESQ.
Public Employer Panel Member

Raymond G. Kruse ESQ.
Employee Organization Panel Member

Hearing Dates: 10/3/88, 11/2/88

Decision Date: 3/15/89

For the PBA:
Maureen McNamara, ESQ.
Kruse & McNamara
Pearl River, N.Y.

For the Village
Craig R. Benson ESQ.
Rains & Pogrebin, P.C.
Mineola, N.Y.

Introduction by Impartial Chairman

The bargaining dispute between the Village of Mamaroneck and the Mamaroneck PBA resulted in an impasse (M87-475), which eventually brought this dispute to interest arbitration (IA88-3). The parties were unable to agree on a single item during negotiations so most, if not all of the items, were presented to the interest arbitration panel for its determination. In addition, some items were withdrawn as part of the litigation involved with the Improper Practice Charges filed with NYS PERB concerning their status as mandatory bargaining subjects (U-10138). Other items remain in litigation and pursuant to current law will not be included in this award. The hearing lasted two full days (10/3/88 and 11/2/88), with voluminous briefs, rebuttal briefs, and sur-reply briefs. In summary, the parties have up until this point exhausted almost every available option and both sides have been most ably represented by counsel. The panel has carefully considered all the evidence in making its award item by item. The panel was able to achieve a majority on every item submitted for consideration. In the final analysis, the net result of any interest arbitration is a forced solution to the bargaining impasse based on a determination of those factors set

forth by the statute as the basis for an interest arbitration award.

The statute (209 A.4) lists four criteria as providing the basis for its findings which can be summarized; a) comparative terms and conditions of similar employees working under similar working conditions; b) public welfare and the ability to pay; c) comparison of any peculiarities of any occupation; and d) the previous agreement in terms of past terms and conditions of employment. The first criteria was critical in this case since absent other considerations, the purpose of interest arbitration is not to level wages by imposing a wage increase that will cause wages to reach some regional average wage. Absent unusual circumstances, the process aims to keep wages in the same relative position, so wages that were highest or lowest in the region would not necessarily change. This means that arguments aimed at showing whether Mamaroneck police are relatively high paid using one set of comparisons, or are relatively low paid using another set of comparisons, are not as important as awarding a wage increase that keeps village police relatively the same in both comparisons. Seen in this light, the arguments as to what constitutes an absolutely perfectly comparable county, region, town, or village is not the most critical factor in determining what the wage increase should be.

One of the chief considerations that could be taken into account in adjusting the relative comparison of criteria A is the ability to pay. The Village of Mamaroneck did not make a claim

of the inability to pay. The Village is in sound fiscal shape and was recently able to grant other Village employees wage increases in excess of the norms for police in Westchester county. This last point bears directly on criteria C which along with criteria A mandates that the appropriate comparison group of employees for police officers must be police officers due to the unique nature of their employment. The pay increases given by the village to other employees does impact on this dispute in that it is illogical to argue that if the Village can afford to increase the pay of one group of employees that it cannot afford to increase the pay of another group of Village employees.

The final criteria requires the panel to pay close attention to the existing agreement between the parties which in this case means that the panel should not alter the contract any more than is necessary. This criteria is intended to provide the stability which is so important in any long terms bargaining relationship.

GENERAL WAGE INCREASES Article VI A.
(Village and PBA Proposals)

Award

The panel decided the wage scale contained in the previous agreement shall be adjusted as provided for in Appendix A for 1988-89 and 1989-90.

Rationale

A great deal of information was provided by both sides as to what constituted an appropriate comparison for police in the Village of Mamaroneck. The award specified above is aimed at maintaining the relative position of the Mamaroneck officers in the comparisons made by both sides. In particular it should leave Village officers in the same position in the county as a whole as well as with respect to settlements of its immediate neighbors. In any county comparison, it leaves the Village in almost the same position since the recommended settlement reflects both the average, median, and mode settlement for the county. See V-33 or the amended V33 in the Unions Sur-reply. Given the large number of comparable units that were cited, the addition or deletion of one town or village does not appreciably change the figures. A specific comparison between any individual department will also illustrate that Village police have maintained their relative position.

Article VI B.2 Call Back Pay (Village Proposal and PBA Proposal)

Award:

The call back provision will remain unchanged from the previous agreement. Both the Village and PBA proposals are rejected.

Rationale

There is no compelling need to change this type of compensation since the primary purpose would be to provide financial incentives to the Village to avoid calling back officers unnecessarily. No evidence was presented that this was a problem during the previous agreement and in keeping with criteria D no change will be awarded.

Article VI B.3 "Approval of chief clause" (PBA Proposal)

No award will be made as this proposal by the PBA is the subject of current litigation at NYS PERB.

Article VI B.4 Change in the Definition of per diem & hourly rate
(PBA proposal)

Award:

No change in existing contract language

Rationale:

These definitions correspond to the existing work schedule.

Article VI C Longevity Pay (PBA Proposal)

Award:

Increase longevity pay by 30 dollars effective 6/1/88 and by 30 dollars effective 6/1/89 for the three levels specified in the previous agreement.

Rationale:

This award continues the practice of improving longevity found in the previous agreement. (See J-1)

Article VI D (NEW) Transfers (Village Proposal)

Award:

Do not add this language to the agreement.

Rationale

There is no evidence to believe that the Village has any problems with respect to transfers under the existing agreement.

Article VI D (New) Standby and Night Differential (PBA Proposal)

Award:

These proposals will not be incorporated into the new agreement.

Rationale:

While the PBA did present some evidence that these practices exist in some departments, the practice is not widespread enough to justify inclusion of either provision in the agreement.

Article VIII New Paragraph Sick Leave Payments for Minimal
Absence and Old paragraph B deletion. (Village Proposals)

Award:

The new paragraph will not be incorporated into the new agreement. The original paragraph B language will be maintained.

Rationale:

The primary purpose of sick leave is to compensate workers for time lost due to unavoidable illness not to reward employees for remaining healthy in a given year. In addition, this is not a widespread practice among various departments. Deletion of B was not shown to have a useful purpose.

Article IX Vacation (Village and PBA Proposals)

Award:

No change from the language of the current contract.

Rationale:

There is no compelling evidence to conclude that current vacation benefits are inconsistent with accepted norms for the region.

See PBA Brief A99.

Article X Holidays Paragraph B (PBA Proposal)

Award:

Amended Paragraph B as proposed by the PBA shall be incorporated into the agreement. (See J-3)

Rationale:

The evidence presented by the PBA (A92) as well as the previous contract both justify increasing the current number of superholidays from 3 to 5 as proposed by the union.

Article X Holidays amended Paragraph C (PBA Proposal)

This proposal is part of the current litigation before NYS PERB and no award can be made.

Article X New E (Village Proposal)

Award:

This proposal shall not be incorporated in the current agreement.

Rationale:

No evidence was presented to justify the practice of not having paid holidays during the first five years of service.

Article XI Retirement (PBA Proposal)

This proposal was withdrawn by the PBA during PERB litigation.

Article XIII Benefit Plan A (Village Proposal)

Award:

Effective June 1, 1989 new employees hired on or after this date will contribute toward the cost of the medical and hospitalization plan in effect. The employees contribution will be limited to 25% of the cost of individual or family coverage as chosen by the employee. Contributions shall be made through payroll deductions. The employee shall make such contribution until he reaches the rank of First Grade Patrolman, at which time the Village shall assume the total cost of medical and hospitalization coverage.

Rationale:

The rising cost of health insurance has caused a trend towards contributions by police officers. See exhibit V-37. Our award here follows this pattern.

Article XIII Benefit Plans C (Village)

Award:

Keep current contract language.

Rationale:

Burial expenses are rising not falling and provide no basis for lowering current amounts.

Article XIII Benefit Plan D (Village & PBA Proposals)

This is the subject of current NYS PERB litigation, so no award shall be made.

Article XIV Welfare Fund (PBA Proposal)

Award:

Village welfare contributions will be increased by \$30.00 effective 6/1/88 and \$30.00 effective 6/1/89.

Rationale:

This increase is in line with increases made in the previous agreement and consistent with the across the board general wage increases included in this award.

Article XV Schedule A & B.1 (PBA Proposals)

No award shall be made as this is the subject of current NYS PERB litigation.

Article XVI Clothing Allowance (Village & PBA Proposals)

Award:

Existing language shall be kept with the following numerical adjustments. Non-uniform clothing allowance shall be increased from \$400.00 to 425.00 effective 6/1/88 and increased from \$425.00 to \$450.00 effective 6/1/89. The work shoe allowance shall be increased from \$80.00 to \$95.00 effective 6/1/88 and from \$95.00 to \$110.00 effective 6/1/89. The uniform cleaning allowance shall be increased from \$100.00 to \$125.00 effective 6/1/88 and from \$125.00 to \$150.00 effective 6/1/89.

Rationale:

These changes in the clothing allowance are consistent with previous contractual adjustments.

Article XVII Professional Development (PBA Proposal)

Award:

Keep current contract language.

Rationale:

Improvements in professional development is in the interest of both parties and, therefore, it should not be imposed by interest arbitration.

Article XVIII Personal leave (Village & PBA Proposals)

Award:

Keep current contract language.

Rationale:

Absent evidence of serious problems with the old provision, there is no justification for imposing a change.

Article XIX Reciprocal Rights D (PBA Proposal)

Award:

Change existing contract language form "New York State Police Association" to "Metropolitan Police Conference".

Rationale:

This new language represents current practice and merely represents a revision of outdated language.

New Article Safety (PBA Proposal)

Award:

This should not be included in the current contract.

Rationale:

This type of provision cannot be justified in terms of current practice in Westchester county.

New Article Transfers (PBA Proposal)

Award:

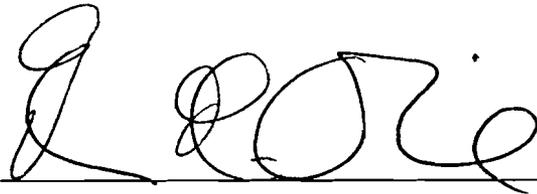
This should not be included in the current contract.

Rationale:

Absent evidence of serious problems in this area, there is no justification for inclusion of this type of provision in the contract.

CONCURRING AND DISSENTING OPINION

While there are a number of items with which I could disagree, I feel compelled to dissent only to the award with regard to Article 10B (Super Holidays). While I also believe a greater contribution towards health insurance is warranted, I concur with the Chairman with regard to this item.

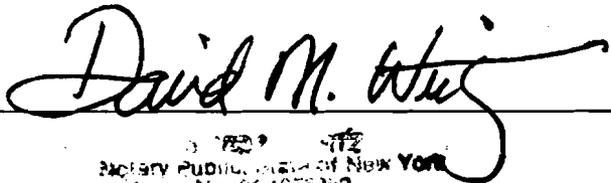


Public Employer Panel Member:

Terence M. O'Neil, ESQ

Rains & Pogrebin, P.C.

Sworn to before me this 9th
day of March, 1989.

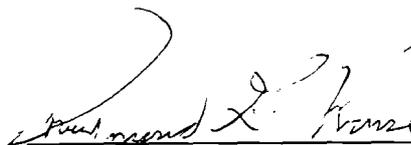


Notary Public, State of New York
No. 314672303
Qualified in New York County 8/31/90
Commission Expires ~~March 1990~~

DISSENTING AND CONCURRING OPINION

I dissent from the opinion as a whole, with the exception of Article XB, Super Holidays, with which I concur.

The Chairman apparently felt he was faced with a dilemma^A to the extent that certain items, including the very important one of additional time off on the work schedule, are the subject of unresolved IPCs. Based upon that fact, they were not dealt with by him in the Award, with the apparent expectation that they will be dealt with at some future time as a continuation of the current interest arbitration. To this extent, one could perhaps find rationale for the extremely conservative approach in deciding the issues which were dealt with in the Award. This unfortunate approach, however, unjustly provides encouragement to other employers to perpetuate existing IPCs in the hopes of achieving the very same result.



Employee Organization Panel Member:

Raymond G. Kruse, ESQ

Kruse & McNamara

Sworn to before me this
31st day of March, 1989



NOTARY PUBLIC

ALICE T. WENZ
Notary Public, State of New York
4847182
Certified in Rockland County
Commission Expires March 30, 1990
Feb 28

M. D. Karper

Public Panel Member and Chairman:

Dr. Mark D. Karper

Margaret F Arnold 4/11/89

MARGARET F. ARNOLD
Notary Public in the State of New York
Qualified in Onondaga County No. 4694876
My Commission Expires May 31, 1989