

Rye Police Association of the City of Rye, Inc.
and
City of Rye

New York Public Employment Relations Board
Case No. IA 88-6

87-451

Award and Opinion
of
Tripartite Public Arbitration Panel
Pursuant to Section 209.4 of the
Civil Service Law

July 19, 1989

Arthur Stark, Chairman
George DeVito, Member
Bertrand B. Pogrebin, Member

Table of Contents

	Page
Award of Panel	
Opinion of Chairman	
The Proceedings	1
The Issues	2
Contract Term (Article 32)	4
RPA Demand I; City Proposal No. 13	
Preamble (New Provision)	5
Salaries (Article 5)	6
RPA Demand II; City Proposals 3 and 4	
Salary Differentials (Article 5)	15
RPA Demand IV	
Annual Leave (Article 7H)	20
RPA Demand X; City Proposal 6	
Night Differential (New Provision)	22
RPA Demand IV	
Holidays (Article 8)	23
RPA Demand XI; City Proposal 7	
Allowances	
Clothing (Article 20B)	26
RPA Demand XXIII	
Cleaning (Article 20A)	27
RPA Demand VI	
Uniforms (New Provision)	29
RPA Demands XVII and XVIII	
Longevity (Article 5, Sec. 2)	31
RPA Demand V; City Proposal 5	
Overtime, Overtime Supplement, Training (Article 6)	34
RPA Demands, XX, XXIX, XXIII; City Proposal 12	
Sick Leave (Article 9)	38
RPA Demands XV and XVI; City Proposal 8	
RPA Time and Negotiation Time (Article 22C)	41
RPA Demands VIII and XXV	
Working Out of Rank (New Provision)	43
RPA Demand VII	
Life Insurance, Dental & Optometry (Articles 13,14,16)	45
RPA Demands XII, XIII and XXII	
Indemnity (Article 15)	49
RPA Demand XIV	
Compensatory Time (New Provision)	50
RPA Demand XXVII	
Work Schedule and Equity of Schedule (Article 3)	51
RPA Demands IX and XIX; City Proposal 2	
Retroactivity and Interest (New Provision)	54
RPA Demand XXIV	
Agency Shop Fee Deduction (Article 2B)	56
City Proposal #1	

	Page
Personal Leave (Article 18A) City Proposal #10	57
Education and Training Fund (Article 19) City Proposal #11	58
Health Insurance (Article 12) City Proposal #9	59
Conclusions	63

Rye Police Association of the City of Rye, Inc.
and
City of Rye

AWARD
of
Tripartite Public Arbitration Panel
Case No. IA 88-6

The Proposals of the parties shall be disposed of on the following basis:

1. Preamble (New Provision) (RPA Demand)

If the parties do not completely re-write their new Agreement with the changes set forth in this Award, a Preamble shall be included which declares that:

"Unless otherwise specified, all terms and conditions of the previous contract which expired December 31, 1986 shall be renewed and remain in full force and effect."

2. Article 2. Agency Shop Fee Deduction (City Proposal #1)

The following clause shall be added to Article 2B:

"The Association shall indemnify and save the Employer harmless against any and all third party claims, demands, suits or other forms of liability that may arise by reason of action taken or not taken by the Employer for the purpose of complying with any of the provisions of this section."

3. Article 3. Work Schedule (RPA Demands IX and XIX; City Proposal #2)

RPA Demands IX and XIX and City Proposal #2 are denied.

4. Article 5. Salaries (RPA Demands II, III, V; City Proposals 3, 4, 5)

a. The increases for police officers shall be 5.5% for 1988 and 6% for 1989 and shall be made retroactive to January 1, 1988 and January 1, 1989, respectively.

b. RPA Demands III and V are denied.

- c. City Proposals #3, 4 and 5 are denied.
5. Article 6. Overtime (RPA Demands XX, XXVIII and XXIX)
RPA Demands XX, XXVIII and XXIX are denied.
6. Article 7. Annual Leave (RPA Demand X; City Proposal #6)
Article 7, Section H shall be revised to provide that, effective January 1, 1989, each employee shall be entitled to "25 working days after employment for ten years." For the year 1989, the additional annual leave days shall be paid for in cash rather than giving the employees time off.
7. Article 8. Holidays (RPA Demand XI; City Proposal #7)
a. Article 8B shall be revised to read as follows:
"Employees shall be paid 13 days' pay at straight time in lieu of holidays, to be paid semi-annually." These payments shall commence on January 1, 1990 (6 1/2 days' pay). The next payment shall be made on July 1, 1990 (6 1/2 days' pay).
b. The following sentence shall be added to Article 8 B:
"Employees who work on Thanksgiving, Christmas, New Years Day and Independence Day will be granted an additional 4 hours' pay for each such day they work".
c. This new benefit shall become effective as of Thanksgiving Day 1989.
d. The remaining proposals of both parties are denied.
8. Article 9. Sick Leave (RPA Demands XV and XVI; City Proposal #8)
a. RPA Demand XV and City Proposal #8 are denied.
b. RPA Demand XVI is granted in part. Article 9K shall be revised to provide in its opening paragraph:
"K. Emergency Sick Leave Bank. An emergency sick leave bank shall be established and administered in accordance with the sections below."
9. Article 12. Health Plan (City Proposal #9)
Article 12B shall be revised to read as follows:
The City shall have the right to change health insurance carriers, provided that:

1. Benefits shall be equivalent to the benefits under the current health plan;

2. The City shall give the RPA at least 90 days advance notice of its intention to change carriers;

3. If the RPA questions whether the new plan provides equivalent benefits, that matter shall be submitted to arbitration and a hearing held within the 90-day period. The insurance carrier shall not be changed until the arbitrator has rendered his decision, which shall be no later than 30 days from the close of the arbitration hearing.

10. Article 13. Dental Plan (RPA Demand XIII)

Article 13 shall be amended by increasing the \$295 per capita contribution to an amount that will cover the current cost of the dental plan covering single and married members, the increase to be effective 60 days from the date of this award.

11. Article 14. Group Life Insurance (RPA Demand XII)

Article 14 shall be amended to require that the City provide a \$15,000 life insurance policy for each participating employee, effective 60 days from the date of this award.

12. Article 15. Indemnity (RPA Demand XIV)

RPA Demand XIV is denied.

13. Article 18. Personal Leave (City Proposal #10)

City Proposal #10 is denied.

14. Article 19. Education (City Proposal #11)

City Proposal #11 is denied.

15. Article 20. Clothing & Equipment Maintenance Allowance (RPA Demands VI and XXIII)

a. Article 20 A shall be revised to provide that the allowance for the cleaning of uniforms and maintenance of equipment shall be \$550 for 1988 and \$600 for 1989. The increases shall be made retroactive to January 1, 1988 and January 1, 1989, respectively.

b. Article 20 B shall be revised to provide that the clothing allowance shall be \$525 per year for 1988 and \$600 for 1989. The increases shall be made retroactive to January 1, 1988 and January 1, 1989, respectively.

16. Article 22. Time Off for Association Representatives (RPA Demand VIII)

RPA Demand VIII is denied.

17. Article 28. Training (City Proposal #12)

City Proposal #12 is denied.

18. Article 32. Term of Agreement (RPA Demand I; City Proposal 13)

The contract term shall be two years, January 1, 1988 through December 31, 1989.

Proposed New Provisions

19. Night Differential (RPA Demand IV)

RPA Demand IV is denied.

20. Working Out of Rank (RPA Demand VII)

RPA Demand VII is denied.

21. Uniforms (RPA Demands XVII and XVIII)

RPA Demands XVII and XVIII are denied.

22. Optometry Plan (RPA Demand XXII)

RPA Demand XXII is denied.

23. Retroactivity and Interest (RPA Demand XXIV)

a. Certain new terms of the Agreement shall be made retroactive in accordance with the decisions on the individual items.

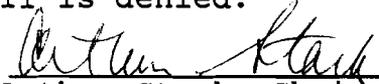
b. The request for interest is denied.

24. Negotiation Time (RPA Demand XXV)

RPA Demand XXV is denied.

25. Compensatory Time (RPA Demand XXVII)

RPA Demand XXVII is denied.



Arthur Stark, Chairman

State of New York)

ss.:

County of New York)

I, Arthur Stark, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

July 19, 1989

Arthur Stark
Signature

George A. DeVito
George DeVito, Member

Concurring in # ①, ②, ③, ④, ⑤, ⑥, ⑦, ⑧, ⑨, ⑩, ⑪, ⑫, ⑬, ⑭, ⑮, ⑯, ⑰, ⑱, ⑲, ⑳, ㉑, ㉒, ㉓, ㉔, ㉕
Dissenting in # ①, ②, ③, ④, ⑤, ⑥, ⑦, ⑧, ⑨, ⑩, ⑪, ⑫, ⑬, ⑭, ⑮, ⑯, ⑰, ⑱, ⑲, ⑳, ㉑, ㉒, ㉓, ㉔, ㉕

State of New York)

ss.:

County of New York)

I, George DeVito, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

July 19, 1989

George A. DeVito
Signature

Bertrand B. Pogrebin
Bertrand B. Pogrebin, Member

Concurring in # ①, ②, ③, ④, ⑤, ⑥, ⑦, ⑧, ⑨, ⑩, ⑪, ⑫, ⑬, ⑭, ⑮, ⑯, ⑰, ⑱, ⑲, ⑳, ㉑, ㉒, ㉓, ㉔, ㉕
Dissenting in # ①, ②, ③, ④, ⑤, ⑥, ⑦, ⑧, ⑨, ⑩, ⑪, ⑫, ⑬, ⑭, ⑮, ⑯, ⑰, ⑱, ⑲, ⑳, ㉑, ㉒, ㉓, ㉔, ㉕

State of New York,)

ss.:

County of New York)

I, Bertrand B. Pogrebin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

July 19, 1989

Bertrand B. Pogrebin
Signature

Insolar as fails to grant a contribution for health insurance for unit members.

[Handwritten initials]

Opinion of Chairman

The Proceedings

This is a compulsory interest arbitration between the Rye Police Association of the City of Rye, Inc. and the City of Rye. The parties' 1986-87 Agreement expired on December 31, 1987. (JX1A)¹ An impasse in negotiations for a successor contract led to appointment by the Public Employment Relations Board of a mediator whose efforts to break the deadlock were unsuccessful. Thereafter, on May 5, 1988, the RPA filed a petition for interest arbitration (JX18) and submitted a series of proposals. (JX1C) The City responded with its own proposals on May 24, 1988 (JX2) and also filed an improper practice charge in which it alleged that the RPA had submitted non-mandatory subjects to arbitration. On November 9, 1988 the RPA withdrew all or parts of four demands and the City dropped its improper practice charge. (JX3)

This Public Arbitration Panel was designated by PERB on August 3, 1988. It is composed of Bertrand B. Pogrebin, Employer Member, George DeVito, Employee Organization Member, and the undersigned, serving as Public Member and Chairman. The Panel conducted an organizational meeting with the parties on October 13, 1988. The RPA has been represented throughout by Alan E. Wolin, Esq. (Lecci, Wolin & Wolin) and the City by Vincent Toomey, Esq. (Rains & Pogrebin).

Hearings on the parties' proposals were held on November 9 and 30, and December 5, 1988, January 3, 13 and 25, and April 3 and 11, 1989. Testimony on behalf of the RPA was offered by

¹"JX-", "UX-" and "CX-" refer to Joint, RPA and City exhibits, respectively.

Edward J. Fennell, Louis J. Olivier, George De Filippo, F. Lee Gendron, Eugene Berry, William Capaccio, Robert Somerville, Robert Vogel, James J. Quigley, Timothy Chittenden, Mark Zettel, and Jeffrey Reichert. City witnesses included Christopher Martino, Philip McGovern, Francis J. Culross and Douglas Herron.

The parties submitted post-hearing briefs in June 1989. Thereafter the Panel met in executive session to consider the entire record on July 17, 1989. This Opinion was prepared by the Chairman.

The Issues

The RPA, which represents two bargaining units of about 36 police officers, has submitted 27 proposals covering: Preamble, Contract Term, Salary Increase, Wage Differentials, Night Differential, Longevity, Cleaning Allowance, Working Out of Rank, RPA Time, Work Schedule, Annual Leave, Holiday Pay, Insurance, Dental Plan, Indemnity, Accumulated Sick Leave, Emergency Sick Leave Bank, Initial Issue of Uniforms and Equipment, Uniforms, Equity of Schedule, Overtime, Optometry Plan, Detective and Youth Division Clothing Allowance, Retroactivity and Interest, Negotiation Time, Compensatory Time and Training.

The City's 13 proposals cover Agency Shop Fee Deduction, Work Schedule, Salaries (two proposals), Longevity Pay, Annual Leave, Holidays, Sick Leave, Health Plan, Personal Leave, Education, Training, and Contract Term.

The parties have called the Panel's attention to the provisions of the Civil Service Law, Section 209.4 (c) (v), which pertain to proceedings of this kind. They provide:

(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 specific issues will be discussed in the sections which follow.

Contract Term

Present Provision (Article 32): Two years (January 1, 1986-December 31, 1987).

RPA Proposal (Demand I): One Year.

City Proposal (No. 13): Three years.

Discussion: Section 209.4 (vi) of the Civil Service Law provides that a determination of a public arbitration panel shall be final and binding for a period not to exceed two years from the termination date of a previous collective bargaining agreement. It would not serve the parties' interests to set a one-year term for this successor contract since that year expired more than six months ago. Accordingly, we held that the contract term shall be two years.

Decision

The contract term (Article 32) shall be two years, January 1, 1988 through December 31, 1989.

Preamble

Present Provision:

None

RPA Proposal (New Provision):

"Unless otherwise specified, all terms and conditions of the previous contract which expired December 31, 1986 shall be renewed and remain in full force and effect."

Discussion: This proposal reflects the intent of the parties and the Panel. It need not be made a part of the new Agreement, however, if the parties re-write that contract from beginning to end following receipt of this Award.

Decision

If the parties do not completely re-write the 1988-89 Agreement with the changes set forth in this Award, a Preamble shall be included which contains the text of the RPA's proposal.

Salaries

RPA Proposal (Demand II):

(1) A 9% increase for the year 1988 for all employees covered by the Agreement.

City Proposals (Nos. 3 and 4):

(1) Establish a 7-step instead of a 5-step pay plan. (2) Provide that advancement on the salary schedule be based on a positive evaluation of work performance. (3) A reasonable salary increase for each of two years of not more than 5%.

Under the 1986-87 Agreement (Article 5), the Pay Plan effective July 1, 1987 provided for the following:

<u>Step</u>	<u>Patrol Officer</u>	<u>Sergeant</u>	<u>Lieutenant</u>
1	\$25,841.		
2	31,571.		
3	32,883.		
4	34,271.		
5	35,726.	40,370.	44,658.

Discussion

I

The RPA contends that the City has the ability to pay a 9% increase for one year (and to provide funds for other requested improvements in benefits as well). (AB-3-15)¹ It points to the testimony of Mr. Fennell, a government financial consultant, which shows, among other things, that: (UX1)

- Rye's population of about 15,000 enjoys an overall tax rate which is in the lower range for cities in Westchester County. It ranks second in the value of taxable property per capita among New York cities, thus providing an advantageous tax base which can support an increase in the operating budget. (I-20-23, 41, 45, 49, 50, 60)

- The City is currently taxing at only 46.8% of its capacity. (The 1988 constitutional tax limit was \$14,380,000, but only \$6,736,000 was levied in taxes.) Taxes in 1885 were comparable; the City imposed \$5,452,000 in taxes, leaving a margin of 47%. (I-27, 29, 30, 37-8)

Moreover, there has been an extraordinary rise in the actual value of taxable property since 1975, from \$293 million to \$833 million. (UX3) Similarly, assessed value has increased by about

¹"AB-" and "CB-" refer to pages in the RPA and City briefs, respectively. Numbers in parenthesis refer to pages in the transcript. Due to a change in reporting firms, however, there is a duplication of page numbers. Pages in the first four hearing volumes will therefore be designated "I-" and the second four "II-".

20%, from \$102 million to \$121 million, rising 2.7% in the 1986-87 period alone. The current median residential selling price of a home is about \$440,000. (I-141-48)

The City is not dependant on a single industry. A videotape, additionally, reveals that about 150 residential units and three to five commercial buildings are under construction or recently occupied. (UX2) (I-119-123)

- The City's debt limit is \$50,331,000 (as of December 31, 1987). Its actual debt was only \$370,000, the lowest of all cities in the State on a per capita basis. Thus, the City has the capacity to borrow up to \$50 million. Since no operating funds are required to pay interest on principal on debt, monies are available to fund salaries and other benefits. (I-53-56)

- The City's fund balance, as of December 31, 1987, was \$1,628,000, more than 13% of the general operating budget. Other municipalities usually operate at a level of 4 or 5%. This reflects a sound financial environment. (I-67, 78)

Significantly, the fund balance includes \$496,968 of unappropriated surplus, monies which could be utilized to fund improvements in salaries and benefits. (I-67, 71, 74-77, 89)

- The City has the ability to pay for a reasonable award within the statutory criteria. It made no sense, therefore, for the City to appropriate 5% less for public safety in the 1988 budget than had been forecast for 1987. (I-89, 93-95)

The RPA also finds support for its position concerning the City's favorable financial position in the testimony of City Comptroller Christopher Martino and Assistant City Manager

Philip McGovern. (AB-12-15) For example, Mr. Martino testified that the City tax had remained stable, while school and county taxes had risen dramatically; the 1988 forecast contains a decrease in budget estimates for the "personal services and employee benefits" line from which money to fund the police contract is obtained. (II-286-87, 315, 328-30, 336) And Mr. McGovern acknowledged that Rye is a very rich community with one of the best housing markets in Westchester for the years 1985-1987; the assessed values, he said, have been increasing by an average of 1.9% per year over the past ten years. (II-348-49, 358, 379)

*

The City asserts in substance that: (1) While Rye is not a poor community, it is a city with no appreciable surplus or other funds to pay the increased salaries and benefits demanded by the RPA. (2) Rye citizens are already overburdened by huge, unprecedented City, school and county taxes and cannot withstand further increases. (3) In accordance with a ruling by the New York Court of Appeals, the Panel must consider ability to pay from existing revenues, not what the municipality could raise.¹ (CB-17)

More specifically, the City makes these points among others: (CB6-17)

- Most of Mr. Fennell's testimony was based on outdated information. For example, the tax rate per thousand dollars rose to \$55.37 for 1988 and to \$60.80 for 1989. Property taxes for these two years have increased by an unprecedented 8.9% and 9.8%. (II-286, 484)

¹Buffalo v. Rinaldo, 41 N.Y. 2d 764, 364 N.E. 2d 217, 398, N.Y.S. 2d 152, 154 (1977)

- With its small area of 5.6 square miles and population of only 15,000 people, Rye cannot expand or build on undeveloped property to raise additional revenues. The tax base is 69% residential and extremely narrow. (II-285)

- Rye citizens are already taxed to the hilt. The City has obtained a steadily decreasing share of taxes. Thus, in 1968 it received about 30% of each tax dollar; in 1988 this share had fallen to less than 20%. (II-288) The City's ability to raise revenue, accordingly, has diminished.

- The years 1988-89 have been particularly difficult with respect to maintaining sound financial management. The 1988-89 budget of \$12 million is being funded by estimated revenues of \$4.1 million and the appropriated surplus of \$500,000 from the fund balance, leaving \$7.6 million to be funded by taxes, a 9.8% increase. No other revenues are available. For example, the receipts from mortgage taxes dropped from about \$800,000 in 1987 to \$538,000 in 1988 and the trend continues downward. State aid has essentially been frozen since 1980 and federal revenue sharing has been reduced to zero. (II-294-96)

Moreover, the 1987 unappropriated fund balance of \$1.6 million referred to by Mr. Fennell no longer exists; it is now a bare \$289,000, or 2 1/2% of the 1988 budget, far less than the generally accepted figure of 5%. Similarly, the contingency fund, which was \$102,000 in 1987 and \$95,000 in 1988 is now only \$80,000. That fund, in any event, is to be used for acts of God and emergency repairs, not for salary increases. (II 297-99, 336)

Other expenses have increased and threaten to continue, among them, the cost of litigation due to an extraordinary number of claims for tax reductions by residents and utilities. (II-352-59)

- Property taxes are unlikely to add significantly to the City's revenues. As Mr. McGovern noted, 33% of all Rye property is tax-exempt and there is no evidence that the properties shown on the videotape prepared by the RPA are on the tax rolls or that there have been any recent substantial increases to the rolls. Mr. McGovern's summation is in point (and essentially corroborated by Mr. Fennell): "Ultimately what you have is less land values in which to work with and you also have less property for future development and tax producing agencies." (II-347-48, I-115-16, 138, 145)

II

The parties disagree on what comparisons will satisfy the statutory direction that one criterion in rendering a just and reasonable award is a "comparison ... with ... 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".

The RPA suggests that it is appropriate to compare the salaries of police officers in the five surrounding Westchester communities: Rye Brook, Harrison, Mamaroneck Village, Mamaroneck Town and Port Chester. (UX31) Its proposed 9% increase, it asserts, will maintain Rye officers in the same competitive position that they have previously enjoyed and, additionally, compensate them for a steady increase in the number of service calls received and the more frequent assignments of senior patrolmen to serve as acting tour supervisors. (UX32) Also, it asserts that Rye officers are more highly trained and specialized than their counterparts in the other communities and have obtained some additional training since the last contract was negotiated. (Testimony of Officer Olivier, I-153-60) (AB-45-7)

The City makes several contentions: (1) The most comparable employees are the fire fighters in Rye whose Union agreed to a 5.5% increase in 1988, as did the CSEA which represents units of clerical and public works employees. (2) Towns and villages are not comparable to cities. (UX1, UX2) Hence, it would be more appropriate to compare Rye with the cities of New Rochelle, White Plains, Mt. Vernon, Peekskill and Yonkers. (3) The RPA's argument that all the communities in its universe are contiguous to Rye is inaccurate since Rye does not share a common border with the Village of Mamaroneck. (CX77) The Town of Mamaroneck does have a common border with Rye, however, and the Village is within the Town. But so is Larchmont (where salaries are substantially lower than Rye's at the top step). (CX68) (4) If by contiguous is meant touching or connecting, then it would be appropriate to compare salaries (as newspaper articles frequently do) of police officers in Rye, Rye Brook, Harrison, Larchmont, Village and Town of Mamaroneck, New Rochelle, Pelham, Pelham Manor and Port Chester. (CX68, 76, 77) (CB-19-25)

III

In terms of a stable long-term relationship there is much to be said for consistency in an approach to salary determination. Some parties, thus, opt for a continuing linkage between groups of employees. In Scarsdale, for example, PBA and Firefighter improvements have traditionally been similar. (CX43, p.7) Although there is no evidence of this kind of linkage in Rye, the record does show that the arbitration panels in 1980 and 1986 utilized generally consistent comparisons. In 1980 the Panel compared top salaries of police officers in Mamaroneck Village, Port Chester, Harrison, and Rye Town. In 1986 the area of comparison was expanded to include Mamaroneck Town. There is

precedent, therefore for using the same comparisons in this, the very next arbitration proceeding.

Interestingly, the increases negotiated or awarded for 1988 and 1989 (from information currently available) for the five communities used in the 1986 Rye Police Award, when averaged, come close to the average increases for the nine communities which the City suggests may be considered contiguous to Rye:

	<u>1988</u>	<u>1989</u>
Five Communities	5.66%	5.91%
Nine Communities	5.8%	5.85%

These figures are slightly more than the 5.5% increase negotiated by the City with its other unions for 1988. What the 1989 figures will be for those groups we do not know.

All things considered, we conclude that the increase for police officers should be 5.5% for 1988 and 6.0% for 1989. These increases shall be made retroactive to January 1, 1988 and January 1, 1989, respectively.

We are not persuaded, however, that the City's proposals for changing the pay plan from 5 to 7 steps or requiring a positive evaluation of work performance prior to advancement on the salary schedule should be granted. While other City labor agreements contain such provisions, they do not appear in any police contract in Westchester County, and the City did not show that it had a need for such changes in the Rye Agreement. (CB 39-40, AB 57-8)

Decision

1. The increases for police officers shall be 5.5% for 1988 and 6% for 1989.

2. The City's proposals for changing the pay plan from 5 to 7 steps and requiring a positive evaluation of work performance prior to advancement on the salary schedule are denied.

Salary Differentials

RPA Proposals (Demand III):

(1) Salary differentials shall be specified and maintained.

(2) The differentials between Patrolman and other officers shall be increased as follows:

	<u>Current</u>	<u>Proposed</u>	<u>Number of Incumbents</u>
Detective	5%	10%	3
Sergeant	13%	20%	7
Det.-Sgt.	20%	25%	1
Lieutenant	25%	30%	1

Present Provision: Salaries and additional compensation in Article 5.

Discussion

I

The RPA contends that its proposals should be granted for these principal reasons:

A. Detectives. (AB 21-22)

Detectives work 12 days a year more than uniformed officers, although they receive only 22 cents an hour more. They do not receive monetary compensation for overtime or a 4-hour minimum recall allowance. They are summoned to work at all hours of the day. They perform many duties not enumerated in the department manual. Moreover, when their pay is compared with that of detectives in surrounding communities they are tied for last place. (I-235, 242-44) (UX6)¹

¹UX6 indicates these differentials in 1988 contracts: 5% in Rye Brook and Port Chester; 5.5% in Village and Town of Mamaroneck; 7% in Harrison.

B. Sergeants. (AB 15-18)

Sergeants often work as acting lieutenant or acting police commissioner and serve as supervisors at all times. On weekends and after 4:30 p.m. they are in complete control. Departments in neighboring communities have higher ranking officers performing the same duties as Rye's sergeants. Except for Rye Brook, patrol work is routinely supervised by lieutenants. (I-158-62, 166, 174, 175-77) (UX4, UX5) Significantly, the sergeants in Rye Brook, Harrison and Port Chester enjoy a 15% differential. (192-93) (UX6)¹

C. Detective-Sergeant. (AB-19-21)

The differential should be greater than that accorded to sergeants because the duties are more complex. He serves as liaison to the district attorney's office, writes policy and procedure, does budgeting, prepares work schedules and vacation charts and works with higher ranked detective lieutenants in other communities. He reports directly to the commissioner and directly supervises several shifts (the patrol sergeant supervises one), works 12 more days a year than the patrol sergeant, and receives only compensatory time instead of paid overtime. (I-211-19, 225-28)

D. Lieutenant. (AB-18-19)

As the highest ranking police officer he oversees the patrol division, assists in making administrative policy, is responsible for disciplinary and morale problems, and often serves as acting commissioner. He performs work routinely

¹The figures for the Village and Town of Mamaroneck are 11.5% and 11% respectively, according to this Union exhibit. (UX6)

performed by captains and chiefs in other departments, two of which provide greater differentials for their lieutenants than does Rye. ¹ (191, 195) (UX6, UX7)

II

The City opposes the RBA's demand for several reasons, among them: (CB 49-53)

1. Under the existing contract, detectives receive \$1,786 per year more than patrolmen and the detective sergeant receives \$2,501 more. The percentages are 5% and 20%, respectively. These differentials rank first among the Westchester cities of White Plains, Peekskill, New Rochelle, and Mt. Vernon. Moreover, most cities pay detective differentials in steps, whereas Rye detectives receive the full differential at the time of appointment. Rye's differentials are much the same as those in other L.I. Sound shore communities. (CX51 and 52)

2. The differential for detective sergeant is substantially higher than that in almost all surrounding communities and the differential for lieutenant is in excess of that in most other communities, as shown by the RBA's exhibit. (UX6)

3. Most patrol officers aspire to detective status which, among other advantages, removes them from rotating tours. (I 249-50) Furthermore, the compensation of detectives widely exceeds that of other communities because the base salary and longevity pay in Rye are so much higher to begin with.

¹The lieutenant/patrolman differentials for 1988, according to the RBA's exhibit, were 30% for Harrison and Port Chester, and 23% and 22% for the Village and Town of Mamaroneck, respectively. (UX6)

4. There is no probative evidence to support the demand for increasing the sergeant's differential from 13% to 20%. Job descriptions (such as those in UX 4, 7-11, and 13) are broad and do not always reflect duties performed. Moreover, no comparable job descriptions were provided for the other communities.

III

While only twelve persons would benefit from the increasing of rank differentials, the impact on costs, over the years, would be cumulative. Even without a new clause, it should be noted, actual differences will be increased by virtue of granting across-the-board percentage increases to all classifications.

It cannot be said, moreover, that existing Rye differentials are significantly out of line with those in the five neighboring communities included in the RPA's exhibit. (UX6) The averages for these communities (where information was available) as compared with Rye are as follows:

Present Differential Above Patrolman First Grade
(Source: UX6)

	<u>Detective</u>	<u>Sgt.</u>	<u>Det.-Sgt.</u>	<u>Lieut.</u>
Average(1988)	5.6	13.5	17.8	26.3
Rye(1987)	5.0	13.0	20.0	25.0

There is no persuasive evidence that the relationships among Rye classifications have changed substantially since the last contract was negotiated or that significant inequities need correction at this time. The Award of 1986, in fact, has

succeeded in placing Rye differentials on a par with those in the neighboring communities. (CX28, pp. 24-27)

Decision

The RPA's proposals in Demand III are denied.

Annual Leave

- RPA Proposal (Demand X): (1) 15 working days after one year;
(2) 30 working days after five years
- City Proposal (No. 6): (1) 10 days after one year;
(2) 15 days after five years;
(3) 20 days after fifteen years.
- Present Agreement (Article 7H): (1) 12 days after one year;
(2) 20 days after five years.

Discussion

I

The RPA points out that there has been no change in this annual leave formula for at least fifteen years and a comparison with surrounding departments shows that, on the average, Rye officers receive 4.86 fewer leave days per year over a 20-year period than do officers in the surrounding communities. (AB 24-5) (I-228, 275-81) (UX21) Thus:

	<u>Entitlement in Days Per Year</u>					
	Years of Service					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>10</u>
Average of 5 Communities	12.2	14.2	15.2	19.2	21	26.4
Rye	12	12	12	12	20	20

Cumulative Entitlement Over 20 Years

Average of 5 communities	529.20
Rye	360.00
Difference over 20 years	169.20

II

The City suggests a decrease in vacation benefits based principally on its desire to alleviate staffing problems. It urges that the RPA's proposals be rejected, arguing that: (1) Police officers have the same benefits as all other Rye employees, although they work many fewer days than most. (2) To grant police officers an improvement now would promote disharmony among City employees. (3) A similar request was denied in the 1985 interest arbitration. (CB 40-1, 61-3, 67-8) (CX28, pp. 39-41)

III

The record does not reveal to what extent Rye officers have improved or worsened their position vis a vis officers in other communities over the years. As of the 1986 Award, however, the average for the five neighboring communities was slightly less than Rye's for the first year; the two were equal after the sixth year. Now, the Rye figure is somewhat less at both points and decidedly less after eleven years. In fact, only one other community in this group (Harrison) equals Rye's 20 days; the others are considerably higher (Rye Brook - 30; Village and Town of Mamaroneck - 27 and 30 respectively; Harrison - 25).

I conclude that the entitlement after ten years of service should be increased from 20 to 25 days and that this should be made effective as of January 1, 1989.

Decision

Article 7, Section H, of the Agreement shall be revised to provide that, effective January 1, 1989, each employee shall be entitled to 25 working days after employment for ten years. For the year 1989, the additional annual leave days shall be paid for in cash rather than giving the employees time off.

Night Differential

RPA Proposal (Demand IV): Officers assigned to either a 4 p.m. to midnight ("B") tour or a 12 midnight to 8 a.m. ("C") tour shall receive a 5% differential over base salary.

Discussion

The RPA argues, as it did before the 1986 Arbitration Panel, that a differential is necessary to compensate individuals who regularly work rotating shifts because their eating and sleeping habits, family relationships and social activities are adversely affected. (AB 5-1) (I-232-35)

The City asserts, as it did in 1986, that night differentials are almost unheard of in police work and would, if established, represent a substantial salary increase. (CB 53-4)

The evidence does not disclose any increase in the acceptance of night differentials for police officers since the 1986 Award. None of the agreements in the neighboring communities contain such a benefit. The family and personal problems caused by rotating shift work remain, to be sure, but the salary increase (differential) approach has not been accepted as the way to deal with those problems. This demand will therefore be denied.

Decision

The RPA proposal in Demand IV is denied.

Holidays

RPA Proposal (Demand XI): (1) Pay for holidays at 1 1/2 times the hourly equivalent of annual salary.
(2) Pay at a rate of two times the normal overtime rate (e.g., three times the regular rate) to any officer who works for more than one hour on a holiday.

City Proposal (No. 7): (1) Eliminate Election Day as a holiday.
(2) Delete Paragraph C of Article 8.

Present Provisions (Article 8):

Article 8A provides for 13 holidays, including Election Day.

Article 8B provides that employees will be granted time off in lieu of holidays, which will normally be taken in conjunction with annual leave.

Article 8C declares:

C. Whenever the Employer grants employees in other negotiating units time off as an additional holiday or partial holiday, similar compensatory time will be granted to the members of the police negotiating unit at a time convenient to the department head.

Discussion

I

The RPA contends that police officers should be compensated at time and one-half for having to forego family and social life on

holidays. If they work overtime on a holiday there is additional hardship and interference with personal life. Police officers in surrounding communities, moreover, enjoy holiday benefits superior to those in the last Rye contract. There is no reason to delete the 8C provision, in the RPA's view. (AB 31-2, 58) (II-38-50, 58) (UX26)

The City opposes the granting of any improvements in holiday pay. The time and one-half proposal alone, it points out, would cost an additional \$112,000, almost as much as the starting salaries of four new officers. The triple-time proposal would cost an additional \$37,000. There is no evidence, it suggests, that more advantageous holiday pay practices are prevalent in related communities. (CB 41, 72-5) (CX47, CX48, UX12, UX20)

II

The City's two proposals are without merit. All other Rye employees have 13 holidays, as do all officers in the five surrounding communities (with one exception), and there is no indication that that number has been decreased in recent years. Paragraph C has apparently not been used at all, although it has been in the agreements for many years.

The RPA's request for improvements is based on its analysis of surrounding communities which shows that: (UX26)

- In Rye Brook, double time is paid (in cash or time) if work is performed on a holiday.
- In Harrison, employees may take cash or time off.
- In Mamaroneck Village, employees have the same choice, in addition to which officers get 4 hours of additional pay if they work on Christmas, Thanksgiving or Easter.
- In Mamaroneck Town, officers are paid in cash and receive 8 hours of additional pay if they work on Christmas, New Year's Day, Thanksgiving or Easter.

- In Port Chester, officers may take cash for working six holidays.

It is evident, from the above, that the Rye police force has fallen somewhat behind the comparable communities in holiday benefits and some improvement is warranted. It is appropriate, under the circumstances, to allow employees who work on Thanksgiving, Christmas, New Years Day and Independence Day to receive an additional one-half hour off for each hour they work. This new benefit shall be made effective as of Thanksgiving Day 1989.

Decision

(a) Article 8B shall be revised to read as follows:
"Employees shall be paid 13 days' pay at straight time in lieu of holidays, to be paid semi-annually." These payments shall commence on January 1, 1990 (6 1/2 day's pay). The next payment shall be made on July 1, 1990 (6 1/2 days' pay).

(b) The following sentence shall be added to Article 8B:
"Employees who work on Thanksgiving, Christmas, New Years Day and Independence Day will be granted an additional 4 hours' pay for each such day they work."

(c) This new benefit shall become effective as of Thanksgiving Day 1989.

(d) The remaining proposals of the RPA and the City are denied.

Allowances for Clothing, Uniforms and Cleaning
(Equipment Maintenance)

A. Clothing

RPA Proposal (Demand XXIII):

The City shall annually pay each police officer assigned to Detective or Youth Division \$600 clothing allowance pro-rated on a bi-weekly basis.

Present Provision (Article 20B):

The Employer shall pay each employee assigned to the Detective Division or Youth Division for 30 days or more in a calendar year and required to work in plain clothes, \$425 per year clothing allowance, pro-rated on a bi-weekly basis.

Discussion

The RPA argues that (1) the current allowance is insufficient to enable a plain clothes officer to be attired in a suitable businesslike manner, as is required under the department manual. (UX13) (2) The cost of clothing (suits, slacks, shirts) has increased since the \$425 figure was set. (3) It is not unusual for clothing to be ruined or destroyed during the performance of duties. (4) Even \$600 would not be enough to fully compensate officers who spend as much as \$1500 a year to replace clothing. (AB 22-4) (I-252-64)

The City contends that no increase in this allowance is justified because detectives, like employees in other occupations, wear their regular clothes to work. Even the current allowance, therefore, is unnecessary and is really an addition to salary. (CB 58-9)

Insofar as the record reveals, a clothing allowance for detectives has been provided in the parties' contracts since at least 1982 and has been regularly increased over the years. The allowance was \$300 in 1982, \$325 at the end of 1983, and \$425 in 1985 - the \$100 increase having been awarded by the Arbitration Panel. (I-263) (CX28, p. 18) Given this consistent progression and the steady increase in prices, it is reasonable to improve the clothing allowance by \$100 for 1988 and an additional \$75 for 1989.

Decision

Article 20B of the contract shall be revised to provide that the clothing allowance shall be \$525 per year for 1988 and \$600 for 1989. The increases shall be made retroactive to January 1, 1988 and January 1, 1989, respectively.

B. Cleaning (Equipment Maintenance)

RPA Proposal (Demand VI):

Each member be allotted \$600 per year as an allowance to be used for cleaning uniforms.

Present Provision (Article 20A):

The Employer shall pay such employee \$400 for 1986 and \$500 for 1987 in a lump sum, pro-rated, due on December 1 of each year, as a uniform cleaning and equipment maintenance allowance.

Discussion

The RPA argues that: (1) Uniforms need frequent cleaning. (2) The cost of cleaning has risen since January 1987. (3) Using the least expensive establishment in Rye, one officer had to spend over \$700 a year on the cleaning of uniforms (and another \$115 to maintain equipment). (AB 30-31) (II 10-27)

The City opposes any increase because (1) "allowances" are not intended to cover all expenses; rather they should ensure that expenses do not cut drastically into overall compensation; (2) the RPA failed to produce any competent or documentary evidence as to the annual cost of dry cleaning; (3) the \$500 allowance is already above the \$480 average for ten L.I. Sound shore communities (CB 57-8) (CX42, 64)

The record reveals that the parties have periodically increased this allowance over the years. It was \$250 in 1983 (and probably before), \$350 in 1984 and 1985 (as the result of an Arbitration Award), \$400 in 1986 and \$500 in 1987.

While no documentary evidence was presented regarding annual cleaning expenditures and the testimony of the RPA witness is unsubstantiated, it is true that prices have continued to rise. (UX33 contains current cleaning prices.) It is not unreasonable, therefore, to increase this allowance by \$50 for 1988 and \$50 for 1989. (Rye Brook already provides \$600 and Harrison was at \$575 in 1987; Port Chester provided \$525 for 1988-89 and \$550 for 1989-90) (CX42, CX64)

Decision

Article 20A of the contract shall be revised to provide that the allowance for the cleaning of uniforms and maintenance of equipment shall be \$550 for 1988 and \$600 for 1989. The increases shall be made retroactive to January 1, 1988 and January 1, 1989, respectively.

C. Uniforms

RPA Proposals (Demands XVII and XVIII):

(1) Every police officer shall be issued a new and full complement of uniforms and equipment within one week of employment with the City and this will consist of but not limited to (itemization).

(2) The City shall issue uniforms on a timely and annual basis and shall allocate for the purchase of uniforms \$400 for each uniformed police officer.

Present Provision:

None. A Departmental Memorandum to all officers dated March 31, 1988, however, specified that each man would be allotted \$400 for the purchase of uniform items (which were itemized).
(UX25)

Discussion

The first proposal, RPA asserts, is based on unfortunate experiences of newly-hired officers who have been given used clothing and equipment on a haphazard basis and sometimes clothing which is not appropriate to cold weather or the season at hand. There have also been undue delays in issuing a full complement of uniforms and equipment. The listed items (shirts, trousers, ties, windbreakers, hats, overcoat, sweater, dress blouse, raincoat, holster, bulletproof vest, riot helmets, and flashlight) are basic and necessary if an officer is to conform to the department's "neat and professional" appearance standards. (AB 27-8) (I-301-7)

The RPA, in the second proposal, seeks to codify what the City has done by way of memorandum and to insure that the purchases are made annually and without undue delay. There is no request for additional money. (AB-28-9) (I-316-25)

The City contends that the problem concerning the supplying of new clothing has been corrected and that there is nothing it can do to insure the prompt delivery of uniforms by suppliers over whom it has no control. (CB 59-61) (I-305, 309, 316, 327)

The testimony does show that there have been delays in providing appropriate uniforms to newly hired officers, and replacement uniforms to incumbents. (I-301-305) (UX24) But the number of new hires is small (three since 1986) and the matters of delay should more appropriately be dealt with through administrative procedures. There is no indication that the City intends to reduce its \$400 annual allotment or that such allotment is insufficient. It seems doubtful whether a contractual clause will markedly improve these uniform-related problems and, accordingly, the RPA's proposals will be denied.

Decision

RPA Demands XVII and XVIII are denied.

	Patrolmen	Sgts.	Lieutenants
After 9 years	\$650	\$700	\$800
14	1350	1450	1650
19	2100	2250	2550

The RPA contends that: (1) It would be fair to eliminate the distinctions based on date of hire. (2) The proposed changes will not have any appreciable impact during the life of this award because more than half the employees receive no longevity payments at all. (3) No other community maintains a system based on date of hire. (4) Officers in surrounding communities receive their increments sooner than those in Rye. (5) The Rye officer (hired after 1979) with 20 years of service will receive less than his counterparts. (AB 37-39) (II-93-104) (UX29)

The City acknowledges that it will soon begin to receive some relief from what it considers extraordinary longevity provisions (one officer has more than 30 years of service, two have between 20 and 25, seven have between 15 and 20, and five have between 10 and 15). But, it points out, Rye is the only police department in the county which provides cumulative longevity; Rye is far above other communities when salary and longevity are combined; Rye's top \$600 is still comparable to top longevity in Village of Mamaroneck (\$600), Harrison (\$625), Town of Mamaroneck (\$550), Port Chester (\$775) and Rye Brook (\$600). (CB 40, 54-6) (UX30)

At some point in the future, when the long service employees have retired, Rye's longevity payment schedule will be generally similar to those in the comparable communities except for the years of service requirements. But this is not the time to change these provisions in Article 5, particularly in light of the 1980 arbitration award which reduced longevity payments for new hires "as part of a package establishing a lighter work schedule

and substantial increases in wages". Largely for this reason proposals similar to those made here were rejected by the arbitration panel in 1986. (CX28, CX29) The reasoning still holds true.

Decision

RPA Demand V and City Proposal No. 5 are denied.

Overtime, Overtime Supplement, Training

RPA Proposals (Demands XX, XXIX, XXVIII):

Demand XX. This is a general demand that Article 6 be re-written to lessen the likelihood of discord over travel time and overtime matters.

Demand XXIX. This contains several proposals:

1. The City will pay police officers at the rate of time and one-half for any authorized overtime worked plus travel time.

2. Authorized overtime shall be defined to include (but is not limited to) such activities as arrests and off duty arrests, recall to work after leaving an assigned shift, attendance at MVD hearings, prisoner transport and award details, transportation details, regular work assignments, covering vacant schedule slots, court hearings and related waiting time, uniform fitting, disciplinary hearings, work-related discussions, translation work, training and preparation time for schools and seminars, mileage for use of a private vehicle.

3. A minimum of 4 hours pay at time and one-half shall be guaranteed any officer who is recalled to work (1) after leaving at the end of an assignment, (2) on a day off, (3) on a vacation day, (4) on a personal day off, (5) while using time owed.

4. Travel time will be paid at the rate of time and one-half in conjunction with authorized overtime and with minimum recall for periods of time determined by the roundtrip distance between the officer's legal residence and department headquarters. Four zones are established for purposes of administering this provision:

<u>Zone</u>	<u>Radius from H.Q. in Miles</u>	<u>Travel Time in Minutes</u>
1	Up to 15	45
2	Between 15 and 30	60
3	Between 30 and 45	90
4	45 and over	120

If the overtime connects with an officer's regular tour of duty, only one-way mileage shall be applicable in determining the time zone.

5. Officers shall have the choice of receiving cash payment or compensatory time as payment for overtime (all at the overtime rate).

Demand XXVIII.

1. An officer attending a training program on off-duty time will be compensated at the overtime rate, paid for travel time, and guaranteed a minimum of 4 hours pay at the overtime rate.

2. The City shall either provide a departmental vehicle or reimburse the officer at 30 cents per mile for training sessions outside the confines of Rye City.

City Proposal (No. 12):

Amend Article 28, Training, to provide this additional paragraph:

"Any training which is scheduled for times other than an officer's normal shift shall be compensated at the officer's straight time rate determined by dividing the officer's annual base salary by 2080 hours."

Present Provision (Article 6):

OVERTIME

A. The Employer will pay police officers for any authorized overtime worked, while attending hearings before the State Department of Motor Vehicles or while attending court under subpoena in relation to their duties of law enforcement, including travel time, (to a maximum of 2 hours travel time) at the rate of 1 1/2 times the hourly equivalent of the annual salary.

B. Employees recalled to work after leaving at the end of an assigned shift shall be guaranteed a minimum period for recall of four (4) hours. For time actually worked, including travel time, compensation shall be paid at the rate of 1 1/2 times the hourly equivalent of the annual salary; straight time rates shall apply for time paid to meet the 4 hour minimum, but not actually worked.

C. The provisions of Sections A and B of this Article shall not apply to employees while assigned to the Detective Division or Youth Division for which additional compensation is paid. Such employees shall receive compensatory time off, at time and one-half, for authorized time worked. The City may, at its election, pay such employees for such accumulated compensatory time.

Discussion

The RPA contends that the overtime and travel provisions of Article 6 should be changed because they are ambiguous and incomplete and some officers have been denied overtime pay in situations where others were paid. Under the present provision officers have not received more than one-half hour of travel time although many live more than 40 miles from Rye. The proposed change is necessary to insure that travel time is to be separately compensated (not "included" in overtime). (AB 39-44) (II-111-16, 133-42, 183-85) (UX34, 35, 36)

The zone system for determining travel time was originally proposed by the City, the RPA points out. The amendment to Paragraph C would give to Detective and Youth Division officers the same choice of receiving overtime pay or compensatory time off as all other officers receive. (AB 44-5) (II-124-26)

The proposed new training pay provision, the RPA states, is designed to eliminate an inequity: officers are frequently directed or ordered to attend training programs on their own time but receive no compensation. (AB 45) (II-129)

The City contends, among other things, that there is no appreciable discord regarding overtime, there have been few grievances, the travel time proposals would unjustly compensate a large number of officers, and Rye's benefits are not inferior to those in other communities. (CB 79-84) (CX58 & 59)

There is insufficient evidence in the record to support these broad RPA proposals, nor is there any indication as to how much they might cost the City. Surrounding communities have differing benefits but none come close to this proposed package. The City has not pressed its proposal.

Decision

RPA Demands XX, XXIX, XXVIII and City Proposal No. 12 are denied.

Sick Leave

RPA Proposals (Demands XV and XVI):

1. Revise Article 9J to provide that the City shall make a one-time cash payment, equal to 20% of accumulated sick leave, upon the retirement of any officer who has accumulated more than 100 days of sick leave.

2. Delete from Article 9K, Emergency Sick Leave Bank, the sentence which provides that such bank "be established and administered on an experimental basis during 1986 and either the City or the Association may elect to cancel it at the end of the year". Also, delete from Section K4, Eligibility for Benefits, the sentence in Subsection "6" which provides that "Vacation, personal leave and sick leave credits shall not be earned for periods when an employee is on such leave with pay".

City Proposal (No. 8):

1. Reduce the maximum allowed accumulation of sick leave from 365 to 165 days. (Article 9B)

2. Replace Article 9J with the following provision:

J. 1. The City will make cash payments annually for unused sick and personal leave according to the following schedule:

<u>Sick and Personal Days Taken</u>	<u>Bonus Hours</u>
0	24
1	20
2	16
3	12
4	8
5 or more	0

2. Cash payments will be made according to an equivalent hourly rate, determined by dividing the annual base salary by 2080

hours. Payment will be made on or about December 15 of each year.

3. Benefits under this program are based on attendance from December 1 each year through November 30 the following year. The bonuses will be awarded to eligible employees who are on the payroll on November 30 and who are continuously employed by the City for the year immediately preceding that date.

4. The intent of this program is to reward individuals who have outstanding attendance records. Each unpaid absence, not previously approved prior to a scheduled workday, will be considered as a sick day taken for purposes of computing this benefit.

Present Provisions (Article 9J):

"The Employer will make a one-time cash payment equal to one day's salary per year of service (to a maximum of 20 days) upon retirement, to employees who have accumulated sick leave in excess of 220 days upon retirement."

Discussion

The RPA seeks to clarify the status of the emergency sick leave bank provision (Article 9K) and to eliminate certain restrictions in Article 9K4b, arguing that officers in all neighboring communities have unlimited sick leave. (AB 34-5) (I-73-8) (UX27) An improvement in the cash payout, it suggests, would lead to better attendance and increased productivity. (AB 34-5, 50) (II-76-84, 227) (UX27)

The City opposes the RPA's proposals because (1) the present payout provision is already generous and many departments have no such provision at all, (2) the emergency sick leave bank has not been and will probably never be activated. The City has not pressed its proposals. (CB 84-5) (II-229)

The RPA's position concerning clarification of Article 9K is well taken. The "experimental basis" for establishing an emergency sick leave bank applied to 1986 only. Neither party exercised its option to cancel the arrangement at the end of 1986 (or subsequently); nor has the City proposed eliminating 9K from the contract. The RPA, moreover, has stated that it now intends to implement the 9K2 machinery (although it has not moved in that direction since 1986). (II-83)

No pressing need has been shown to change other Article 9 provisions and the remaining proposals will therefore be denied.

Decision

1. RPA Demand XV is denied.

2. RPA Demand XVI is granted in part; namely, Article 9K shall be revised to provide in its opening paragraph as follows:

"K. Emergency Sick Leave Bank. An emergency sick leave bank shall be established and administered in accordance with the sections below."

3. City Proposal No. 8 is denied.

RPA Time and Negotiation Time

RPA Proposals (Demands VIII and XXV):

1. Demand VIII

The Rye Police Association's President, Vice President, Treasurer and Secretary shall be entitled to one work day per month off from police duty. Two weeks prior notice will be given to the Police Commissioner by the PBA official as to which day will be used as his/her PBA day. The choice will be at the PBA official's discretion and for no reason can this time be denied.

2. Demand XXV

Contract negotiators and witnesses called upon who are Rye Police Officers representing the Rye Police Association, shall not be expected to incur unreasonable or unnecessary hardship from the negotiation process. Police Officers that are scheduled for both police duty and a contract meeting on the same day, shall be relieved of police duty for that entire day. Police Officers on vacation or on a day off from police duty, shall be compensated at the rate of 1 1/2 times their hourly equivalent of their annual salary. The City shall grant a 4 hour minimum pay compensation per day. Any meeting cancellation by the City without a 24 hour prior notice, will render the City obligated for compensation to all police officers scheduled for the cancelled meeting.

Present Provision (Article 22C):

Up to two (2) officers (President, Vice President, Secretary or Treasurer of the Association) may be permitted to attend the monthly meeting of the Association, while on duty, subject to the approval of the Commissioner of Police, which shall not be unreasonably withheld. It shall be the responsibility of the Association to provide advance notice of at least two weeks to the Police Commissioner of such meetings and the officers requesting time off from duty. Such time off shall be for the duration of the meeting only, plus a reasonable period for travel.

Discussion

With respect to Demand VIII the RPA points out that its officers spend considerable time at a variety of meetings, negotiations, grievance and disciplinary matters, correspondence and bookkeeping. These necessary tasks require time away from family and friends which should be appropriately compensated. As for Demand XXV, witnesses at negotiations (including interest arbitration) often attend on their own time. Great inconvenience can be caused if an officer must attend immediately after completing a midnight tour. (AB 51-3) (II-238-52)

The City urges that these demands be rejected as unnecessary, expensive, and interfering with Management's scheduling rights. (CB 62-7, 70, 85)

No comparative data was presented in support of these demands. Demand VIII would require the City to give one-ninth of its force twelve days off a year with full pay, a total of 48 man-days or the equivalent of almost ten weeks. Demand XXV is open ended in terms of costs since there is no limit on how long negotiations may continue. (The instant interest arbitration took nine days; the previous one lasted six days.) According to the RPA, moreover, the City has regularly released on-duty officers to attend proceedings without loss of earnings (i.e., at straight time). In light of all these considerations, the demands will be denied.

Decision

RPA Demands VIII and XXV are denied.

Working Out of Rank

RPA Proposal (Demand VII):

Police Officers when assigned to and working on desk duty (when no one of the rank of Sergeant or Lieutenant is also assigned and working on that shift), shall be paid the Sergeant's rate of salary; and any police officer assigned to a Sergeant or Lieutenant slot shall receive the respective salary for the assignment.

Sergeants, when assigned or designated to the title of acting Lieutenant, shall be paid at the Lieutenant's salary rate for the entire duration of the assignment.

Current Provision: None

Discussion

The parties disagree on whether out-of-title assignments are permissible under the Civil Service Law, Section 61. A suit against the City making such claim was brought by the RPA in 1987 but was dismissed in 1988 on procedural grounds (for failure to state a cause of action), although without prejudice and with specific leave to properly replead. (Rye Police Association, Inc. v. The City of Rye, Index No. 87-23956, Supreme Court of New York, County of Westchester, May 31, 1988.) Significantly, Judge Thomas A. Facelle noted in his judgment that "under Civil Service Law section 61, a civil service employee may be assigned to perform out-of-title work. However, the law prohibits such an employee from performing the duties of a higher position absent a temporary emergency..." (CX24)

The record does not show whether the RPA has refiled its law suit. But, given the open legal question, the lack of evidence

concerning the potential cost of this proposal, and the absence of any comparable data, the demand will be denied. (AB 54-5, CB 71-2) (II-260-68)

Decision

RPA Demand VII is denied.

Life Insurance, Dental and Optometry Plans

RPA Proposals (Demands XII, XIII and XXII):

1. Demand XII. The City shall provide group life insurance in the amount of \$20,000 for currently employed members and \$10,000 for retired members.
2. Demand XIII. Each member and their family shall receive 100% dental coverage.
3. Demand XXII. The City shall provide an allowance of \$200 per officer for vision care. This shall be an annual allowance and will cover costs for vision and eye examinations, lenses, frames and eye protection equipment.

Current Provisions:

Article 14. The Employer shall pay up to \$3.50 per month per participating employee for the purpose of purchasing group life insurance in the amount of \$10,000.

Article 13. The Employer shall pay up to \$295 per participating employee, pro-rated from the employee's effective date of coverage, for the purpose of purchasing a dental insurance program covering bargaining unit employees and/or their dependents. The Association shall provide the City Comptroller with proof of the existence of participating employees as a condition of any payment by the City.

Article 16. The Employer will provide for the guaranteed ordinary death benefit as permitted under the provisions of Section 360-b of the Retirement and Social Security Law. The

Employer will provide the death benefits permitted under Section 208-b of the General Municipal Law during the term of this agreement, in addition to the death benefit payable under the Policemen's and Firemen's Retirement System.

Discussion

With respect to life insurance (Demand XII), the RPA argues in substance that: (1) Coverage should be increased because of the great stress and danger inherent in the work of a police officer. (2) Officers in all surrounding communities receive more favorable benefits. (3) If a new policy were purchased from the America International Life Insurance Company of New York (as the RPA proposes), the additional coverage of \$10,000 would cost only 70 cents per employee per month. This would also cover retirees over age 70 in the amount of \$10,000. (AB 47-8) (II-190-95, 205-9) (UX37)

The current dental plan is deficient, according to the RPA, because (1) it covers only about 60% of the cost of the family plan; (2) it does not allow for the possibility that premiums may increase and the \$295 may not be sufficient to pay the full cost of the individual officer plan; and (3) it compares unfavorably with plans in surrounding communities. In Demand XIII the RPA seeks to correct these deficiencies and, at the same time, replace the current Tri-County Federation of Police Plan with a plan issued by Connecticut General which, the RPA believes, is more beneficial in coverage and cost. (AB 48-9) (II-196-200, 210-15)

The RPA justifies its request for an optometry plan (Demand XXIII) on the grounds that (1) other Rye employees have such a plan, (2) a third of the officers already wear glasses, and (3) eye protection equipment is needed during firearms practice. (AB 55-6) (II-269-70)

The City opposes these RPA demands for a variety of reasons:

Life Insurance. Officers' families have the benefit of a life insurance policy. They also have the death benefits provided in Section 16 for which the City pays all premiums. These benefits are substantial and could come to as much as \$82,314 in the event of an officer's death. (CB 76-8)

Dental. The present cost to an officer of full family coverage is not exorbitant. His own costs are fully covered. To pay 100% of any health insurance could devastate the City's budget. Even the RPA's insurance agent acknowledged that premiums are guaranteed only for a year. (CB 78-9)

Optometry. There is no real need for such a plan. Optical benefits are rarely provided in police departments. (CB 76) (II-273-4)

*

1. Life Insurance. The record shows that the surrounding communities have more advantageous benefits either in the form of higher coverage for currently employed officers or coverage for retired officers. Harrison and Town of Mamaroneck provide \$15,000 coverage for each employee - and Mamaroneck provides additional death benefits; Port Chester and Rye Brook provide \$10,000 coverage for each employee and \$5000 and \$7500, respectively, for retired officers. (The Village of Mamaroneck is difficult to compare because it provides a fixed sum which the officer may spend for "Welfare Fund" benefits, including life insurance, dental and medical.) None of the surrounding communities provide as much as \$20,000 coverage. (CX56 and 57) (II-192-95) All things considered, it would be

appropriate to revise Article 14 to require that the City provide a \$15,000 life insurance policy for all participating employees. The matter of which carrier should be used is not one which this Panel should determine.

2. Dental Plan. The plan was started in 1983 and funded at the rate of up to \$250 a year per employee (\$9000 a year). The 1986 Arbitration Panel increased the City's contributions to \$275 per employee effective January 1, 1984 and \$295 effective January 1, 1985. The purpose of increases (by \$1620) was to insure that the then current annual costs (\$10,620) could be met. (CX28, pp. 16-17)

It is appropriate that Article 13 now be revised to increase the \$295 per capita contribution to such figure as will cover the current cost of coverage of the plan for single and married members. As with the previous issue, the matter of which carrier should be used is not for this Panel to determine.

3. Optometry Plan. The evidence reveals that only one other police department in the county (Rye Brook) has an optical plan. This demand will be denied. (II-268-82)

Decision

1. Demand XII. Article 14 shall be amended to require that the City provide a \$15,000 life insurance policy for each participating employee, effective 60 days from the date of this award.

2. Demand XIII. Article 13 shall be amended by increasing the \$295 per capita contribution to an amount that will cover the current cost of the dental plan covering single and married members, the increase to be effective 60 days from the date of this award.

3. Demand XXII. This demand is denied.

Indemnity

RPA Proposal (Demand XIV):

Indemnity. The employer shall save harmless and indemnify any police officer in an amount not to exceed \$50,000.

Current Provision (Article 15):

Unless insurance coverage is otherwise provided, the Employer agrees to save harmless and indemnify any police officer in an amount not to exceed \$10,000, if such police officer shall be obligated to pay damages for personal injury or property damage where the officer is charged with negligence, assault, false arrest or false imprisonment and the acts or conduct upon which such charges are founded arise out of and during the course of his employment with the Employer. The Employer will defend any suit against the police officer alleging such charges and seeking damages even if any of the allegations are groundless, false or fraudulent, but the Employer may make such investigations and settlement of any claim or suit as it deems expedient.

Discussion

The RPA believes the provision for indemnity is already statutory. (AB 50) The City agrees. (CB 79) The demand will be denied.

Decision

Demand XIV is denied.

Compensatory Time

RPA Proposal (Demand XXVII):

All compensatory time will be earned at the rate of at least time and one-half. Police officers may at any time request payment for all or any part of their accumulated compensatory time.

Present Provision: None

Discussion

The main thrust of the RPA's demand is that, under current practice, compensatory time accumulated between January and October 31 must be used by December 31 or it will be lost. Since time off is granted at the discretion of the department it is possible that earned time may be lost due to no fault of the officer. (AB 33-4) Without more detailed information on how frequently this has occurred and under what circumstances, however, it is not possible to fashion an appropriate provision. The demand will therefore be denied.

Decision

Demand XXVII is denied.

Work Schedule and Equity of Schedule

RPA Proposals (Demands IX and XIX):

Demand IX. The uniform police officers assigned to rotating shifts shall work a schedule which consists of the following:

- Five 8 a.m. to 4 p.m. tours followed by 72 hours off;
- Four 4 p.m. to 12 a.m. tours followed by 72 hours off;
- Four 12 a.m. to 8 a.m. tours followed by 72 hours off.

Demand XIX. All uniform police officers and detectives shall have an equivalent annual amount of scheduled work days and off days.

City Proposal (#2):

Amend Article 3 to provide that: "In order to ensure that all officers are able to commence their scheduled shift in a timely, efficient manner, all officers will report to duty 15 minutes prior to the commencement of the officer's shift."

Current Provision (Article 3):

"The work schedule for employees assigned to rotate shifts around the clock is 5-5-5/72, i.e., employees will work a five-day week, but upon the change of shift every week, shall be off for a 72-hour period."

Discussion

According to the RPA, the proposed 5-4-4 schedule (Demand IX) would enhance the 8 to 4 tour by utilizing an extra officer three days a week who could be assigned to such areas as training and radar. The other tours would be unchanged.

Although this change would reduce the work year from 248.9 to 237.25 days, the efficiency of the force would not be affected and officer morale would be increased. (AB 25-6) (UX23) (I-284-300)

The City urges that this demand be rejected, as it was in 1986, because: (1) Staffing has been a continuing problem, particularly because of personal, sick, holiday and vacation leaves. (2) The amount of time off received by police officers is already equal to or more than other Rye employees and police officers in comparable communities. (3) The proposed schedule would result in a very substantial reduction in available man hours amounting to 23,080 (308 tours). Two additional officers would have to be hired or current employees would have to be assigned overtime work. (CB 61-7) (II-432, 476) (CX28, CX65)

While the chart submitted in support of this demand (UX23) has all the assigned days accounted for with no increase in personnel, logic would dictate that a 4.6% reduction in each officer's work year (11.65 tours), multiplied by 28 officers, cannot but result in substantial added expense to the City. The apparent anomaly is accounted for by the use, on the proposed schedule, of two officers who now fill in for individuals who are on leave and who would not appear on a current chart in a regularly assigned post. When one considers that the police officers in each of the five communities with which Rye has been compared also work 248.9 days a year (three work slightly more hours per week), there is no persuasive basis for granting this demand.

The RPA's position with respect to Demand XIX is that detectives, who are paid at about the same hourly rate as patrolmen (actually 22 cents an hour more), should not be required to work more days. Detectives may be summoned to duty at any hour to report for duty, unlike at least some patrolmen who have fixed tours. (AB 29) (II-3-9) (UX12)

The City opposes this demand as costly, inappropriate and unjustified on comparative grounds. (CB 68-70)

The evidence shows that, under the expired contract, detectives receive \$37,512 and patrolmen \$36,726 (top pay), a difference of \$1,782 a year. Detectives work about 11 more days a year than patrolmen. They do not have to work rotating shifts. If the five detectives worked 11 days less a year the City would lose 550 hours or almost 70 man-days. There is no indication that any other police department schedules detectives for the same number of days as patrolmen. This demand, accordingly, will be denied.

The City has not pressed its proposal and it will not be granted. (CB 39, AB 57) (II-436-7)

Decision

RPA Demands IX and XIX and City Proposal #2 are denied.

Retroactivity and Interest

RPA Proposal (Demand XXIV):

"If an agreement is made and entered into between the Rye Police Association and the City after January 1, 1988, then all terms agreed to shall be retroactive from January 1, 1988 and any salary agreement shall include interest at a percentage rate that is deemed fair by the Rye Police Association."

Current Provision: None

Discussion

The RPA contends that (1) in the past improvements in wages and benefits have been made retroactive and should be made so here, and (2) an interest payment would be appropriate because the City, in effect, is collecting interest on the employees' money while terms are being negotiated. (AB 36) (II-85-90) (UX28)

The City suggests that the interest proposal is possibly illegal as it conflicts with state usury laws and Article VIII of the State Constitution. (CB 85)

The RPA's retroactivity demand is reasonable with respect to certain items and appropriate notations have been made in the affected sections of this Opinion. There is no precedent for the granting of interest and this request will be denied.

Decision

Demand XXIV is granted to the extent that certain new terms

of the Agreement shall be made retroactive in accordance with findings contained elsewhere in the decision. The request for interest is denied.

Agency Shop Fee Deduction

City Proposal (#1):

Add to Article 2B the following clause:

"The Association shall indemnify and save the Employer harmless against any and all third party claims, demands, suits or other forms of liability that may arise by reason of action taken or not taken by the Employer for the purpose of complying with any of the provisions of this section."

Current Provision (Article 2B):

B. Agency Shop Fee Deduction. All employees, hired after January 1, 1981, who are included in the bargaining unit but who are not members of the Association, shall be required to pay to the Association an Agency Shop Fee as provided by Civil Service Law, which is an amount equivalent to the amount of dues payable by a member of the Association. The Employer will make deductions from the wages of said employees and transmit them in the same manner as specified in Article 2, Section A, as an Agency Shop Fee deduction.

Discussion

This proposed clause already appears in Article 2A (which calls for the deduction of dues and insurance charges that are authorized by employees). Although no legal claims have ever arisen in Rye under either Article 2A or 2B, the "hold harmless" principle should apply equally to the deduction of agency shop fees which are the equivalent of dues. (CB 37-9, UB 56-7)
(II-435)

Decision

City Proposal #1 is granted.

Personal Leave

City Proposal (#10):

Amend Article 18 to provide that: "Effective January 1, 1988, all members of the bargaining unit shall be entitled to three (3) days personal leave annually."

Current Provision (Article 18A):

"During 1986, all members of the bargaining unit shall be entitled to three (3) days personal leave annually. During 1987, all members of the bargaining unit shall be entitled to five (5) days personal leave annually..."

Discussion

The City bases its proposal principally on comparisons with personal leave benefits in five other cities (Mt. Vernon, New Rochelle, Peekskill, White Plains and Yonkers). (CB 41-2) (CX60) No comparisons are made with the surrounding communities, however, nor has the City suggested that any of these have three day leave provisions. The record shows that two personal leave days were provided in the Rye contract which expired at the end of 1984; the 1986 Arbitration Award provided for three days, effective January 1, 1985; the parties subsequently negotiated an increase to five days, effective 1987 (that included one emergency day which was made a personal day). (II-432-34, 450) (CX28, pp 41-3) There is no compelling evidence to support the City's proposal to now reduce this benefit.

Decision

City Proposal #10 is denied.

Education and Training Fund

City Proposal (#11):

This would amend Article 19 to provide that the annual \$6000 allocation be earmarked for "courses and training in law enforcement and related subjects" and that the funds be used for "college courses, seminars, training programs and the like". Other changes are also suggested.

Current Provision (Article 19):

The \$6000 is for "college education in courses relating to law enforcement or leading to a degree in a law enforcement related area".

Discussion

The record is devoid of any explanation as to the basis for this proposal. (II-434) (UB 58)

Decision

City Proposal #11 is denied.

Health Insurance

City Proposal (#9):

Modify Article 12 to provide that the City will pay 90% of the cost of premiums of the Health Plan for presently covered employees and 50% of the cost of premiums for persons hired after January 1, 1988.

The City also seeks the right to replace the Empire Plan with one providing comparable benefits.

Current Provision (Article 12):

A. The Employer shall, pursuant to the provisions of Section 167 of the Civil Service Law, continue to participate in the State Health Insurance Plan whereby it shall pay, during the term of this agreement, 100% of the cost of the premium on behalf of the police officers of the Police Department of the City of Rye and 100% of such premium for coverage of dependents of such police officers.

B. The Association agrees that the Employer shall have the option to request discussions with the Union on any proposed change in the health insurance plan. This request shall not be unnecessarily denied.

Discussion

The City justifies its proposals on these principal grounds:
(CB 26-37)

- (1) The increases in the cost of health insurance have had a devastating impact on the City's budget and taxes.
- (2) Other City of Rye employees contribute toward the cost of their health insurance premiums.
- (3) Police officers in numerous other communities contribute toward their health insurance.

(4) Municipalities have been awarded contributory health insurance plans in recent interest arbitration awards. (5) The Association's own witnesses acknowledged that there is an overwhelming trend in the public and private sectors toward contributory health insurance. (6) Other City employees have agreed to allow the City to switch health insurance plans to a plan with comparable coverage. (7) Other police unions have granted municipalities the right to switch health insurance plans or the municipalities have received that right in interest arbitration. (8) Other comparable communities have switched to alternative plans and realized substantial savings. (9) The City's budget cannot be balanced without contributions and/or a conversion to a less expensive health insurance plan. (CB 36-7)

The RPA opposes any change in Article 12. It argues, in substance, that: (1) Only a small minority of Westchester police departments provide for contributory health insurance. (2) No contracts (including the Rye/Firefighters 1986-88 agreement) provide for contributions by then-current officers. (3) Most contracts provide for employee contributions for only a limited period. (4) The City has made no effort to require its non-union employees (who outnumber the police officers) to contribute to their health insurance coverage although it has the unilateral right to do so. (5) It would not be fair to allow the City to recoup what has already been appropriated and budgeted for 1988. (6) Comparisons with contracts covering other bargaining units in Rye are inappropriate. (7) By proposing to obtain both employee contributions and change in

plans the City is seeking, in effect, to have its cake and eat it too. (AB 58-61)

Health insurance costs have become a matter of concern throughout the nation. (CX73) Rye is no exception. The record shows, for example, that:

- Annual premium rates for individuals and families have increased since 1970 by 1224% and 1005%, respectively. The related dollar have costs from \$152 to \$2017 for an individual and from \$415 to \$4583 for a family. (CX70)

- From January 1986 to January 1989 costs have increased as follows: (CX70)

	<u>1/1/86</u>	<u>1/1/87</u>	<u>1/1/88</u>	<u>1/1/89</u>	<u>% Increase 1986-89</u>
Individual	\$1098	\$1220	\$1698	\$2017	91%
Family	2332	2630	3877	4583	96%

- In October 1987, just before the City's 1988 budget was submitted to the City Council, the Civil Service Department announced that, effective January 1, 1988, premiums would be increased by 54% and 63.5% for individual and family coverage, respectively. (CX69) (454)

Among the ways to place some kind of control on the increases in expenditures to the City are those which have been suggested here: a change in plan "and/or" employee contributions.

A fruitful approach for Rye is the one reflected in the City's "conversion" proposal. Thus, City Manager Culross testified that an insurance plan with benefits comparable to those in the existing Empire Health Insurance Plan is available through the Westchester County Municipal Employees Benefit

Consortium (MEBCO) at an estimated cost of \$690,000 a year instead of \$890,000 from Empire.(II-466-67) Several of the municipalities which have been deemed comparable have transferred to MEBCO, as have many others. Accordingly, this part of the City's proposal will be granted.

As for employee contributions, however, only a few employees (about 11) in the Rye firefighters' unit are presently covered by such a provision. None of the other larger union and non-union groups in Rye have contributory plans. Although this type of arrangement may well be necessary in the future, the time is not ripe for holding, in effect, that the tail should wag the dog. Moreover, little would be gained now by requiring contributions only of future employees (as has been the general approach) since the turnover is very low. Thus, only two employees were hired in 1988, none in 1987, two in 1986 and one in 1985. (UX29)

Decision

City Proposal No. 9 is granted to the extent that Article 12B shall be revised to read as follows:

The City shall have the right to change health insurance carriers, provided that:

1. Benefits shall be equivalent to the benefits under the current health plan;
2. The City shall give the RPA at least 90 days advance notice of its intention to change carriers;
3. If the RPA questions whether the new plan provides equivalent benefits, that matter shall be submitted to arbitration and a hearing held within the 90-day period. The insurance carrier shall not be changed until the arbitrator has rendered his decision, which shall be no later than 30 days from the close of the arbitration hearing.

Conclusions

The City has the ability to pay for the improvements set forth above which have been determined to be just and reasonable within the meaning of Section 209.4 (c) (v) of the Civil Service Law.

July , 1989

A handwritten signature in cursive script, appearing to read "Arthur Stark", is written over a solid horizontal line.

Arthur Stark