

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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In the Matter of the Interest Arbitration

between

TOWN OF ERWIN

and

ERWIN POLICE ASSOCIATION

PERB Case No. IA89-002

*188-552*

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**AWARD OF ARBITRATION PANEL**

**August 1989**

On May 3, 1989, the New York State Public Employment Relations Board appointed the undersigned as members of a Public Arbitration Panel to resolve the dispute between the Town of Erwin and the Erwin Police Association. On July 26, 1989, a hearing of this case was held in Painted Post, New York.

Appearing or testifying for the Association were: Paul S. Mayo, Labor Relations Consultant, and Sergeant Roger McCann.

Appearing or testifying for the Town were: Robert Biehl, Negotiator; Lynn Morse, Supervisor; and Robert C. Wylie, Councilman.

At the outset of the hearing, the parties signed the following Memorandum of Agreement in settlement of Improper Practice Charge U-10834:

1. The Town accepts and agrees the present contract language of article 10.0 Breaks, is to continue in any successor contract made between the parties.

2. The Association accepts and agrees the present contract language of article 13.0 Management Rights, is to continue in any successor contract made between the parties.
3. The term, "present contract language" in Points 1 and 2 above refer to the 1/1/87 - 12/31/88 contract between the Town and the Association.

In accordance with Section 209 of the Taylor Law, the parties were given the opportunity at the hearing to present "orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions...." At the conclusion of the hearing, the members of the Arbitration Panel urged the parties to reach a voluntary settlement and suggested terms on which such a settlement might be based. That effort failed, however, and the Arbitration Panel then met in executive session. Panel members agreed that the chairman would draft a tentative award and circulate it to the other panel members. As a result of that process, a majority of the panel agreed on the following determination of this dispute.

#### AWARD

For reasons to be described, the Panel awards as follows:

1. A two-year agreement, covering the period January 1, 1989, through December 31, 1990. All increases in salary and benefits retroactive to January 1, 1989.
2. Salaries:
  - (a) For Patrolman Twist, a 15 percent increase in annual salary effective January 1, 1989, and another 10 percent increase in annual salary effective January 1, 1990.
  - (b) For Sergeant McCann, an 8 percent increase in annual salary effective January 1, 1989, and another 8 percent increase in annual salary effective January 1, 1990.

(c) Effective January 1, 1989, the starting salary shall be \$14,200 and the part-time rate \$6.83 per hour; and effective January 1, 1990, the starting salary shall be \$15,200, and the part-time rate shall be \$7.30 per hour.

3. Health Insurance: The Town shall pay 100 percent of the health insurance costs for full-time police officers, effective January 1, 1989, and continuing through December 31, 1990. The Panel also directs the Town to reimburse the full-time officers for the insurance costs deducted from their paychecks in 1989.
4. Sick Leave: A total of 9 days per year and 110 maximum days in the first year of the new contract, and 11 days per year with a maximum of 120 days in the second year.
5. Personal Leave: A total of 3 personal leave days in each year of the new contract.
6. Paid Holidays: A total of 11 paid holidays in the first year of the new contract and 12 in the second year. We leave to the parties the selection of the additional holidays.
7. Emergency Recall and Off-Duty Appearances: For both *emergency recalls* and off-duty appearances, employees will be paid for the hours they work, with a guaranteed minimum of two hours' pay at time and one-half in the first year of the new contract and a guaranteed minimum of three hours' pay at time and one-half in the second year.
8. Night Differential: In the first year, a total of 20 cents per hour for those working the 4 p.m. to midnight shift and 25 cents per hour for the midnight to 8 a.m. shift; in the second year, no further change.
9. Scheduling: No change in the present contract language concerning scheduling.

#### STANDARDS OF JUDGEMENT

Section 209.4 of the Taylor Law directs interest arbitration panels to take into consideration, "in addition to any other relevant factors," the following criteria:

- (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 of 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.

In this case, we find that the first criterion -- comparison with similar employees in comparable communities -- is the most important standard for judging all of the issues in dispute. The Town's representative explicitly stated that "the financial ability of the public employer to pay" was not an issue. Similarly, the Town did not dispute the Association's claims concerning the "peculiarities" of the police function "in regard to other trades or professions," including the Association's claim that the task of the Erwin police force had become more difficult in recent years as a result of the growth in the population and number of businesses in the Town.

The fourth criterion -- the terms of previous agreements between the parties -- is a trifle ambiguous. We give some weight, however, to the Town's argument that because the relationship is so young -- the parties have previously negotiated only two contracts -- the Association cannot expect to

"catch up" immediately with the employment terms negotiated over a longer period by other unions in the area. We assign less weight to this criterion than to that of comparisons, however, since the parties have dealt with each other for at least three years and since, as noted, the Town made no claim of inability to pay.

#### SALARY

The Erwin police force consists of two full-time officers (Patrolman Bruce Twist with five years' service and Sergeant Roger McCann with nine years' service) and two part-time officers (Mark Brandt and Aaron Redsicker). In 1988, the starting salary for full-time officers was \$12,500 for those with no prior experience and \$13,000 for those with at least two years' experience or with a college degree. In 1988, Patrolman Twist's salary was \$15,934 and Sergeant McCann's salary was \$21,853. The part-time officers received \$6.00 per hour for each hour worked in 1988.

The Association's final proposal was that the salary of Patrolman Twist be increased 19.4 percent (to \$19,028) in 1989 and 13 percent (to \$21,500) in 1990; that Sergeant McCann's salary be increased 10.3 percent (to \$24,100) in 1989 and 8.7 percent (to \$26,200) in 1990; that the hourly rate of part-time officers remain at \$6.00 per hour; and the starting salary be increased 32 percent (to \$16,500) in 1989 and 6.1 percent (to \$17,500) in 1990.

The Town's final proposal was to increase Patrolman Twist's salary by 6.7 percent (to \$17,000) in 1989 and by 5 percent (to \$17,850) in 1990; to increase Sergeant McCann's salary by 2.3 percent (to \$22,353) in 1989 and by 5 percent (to \$23,471) in 1990; to increase the starting salary (for those with no experience) by 13.6% (to \$14,200) in 1989 and by 7 percent (to

\$15,200) in 1990; and to compute the part-time rate as the hourly equivalent of the full-time starting salary, resulting in a 13.8 percent increase (to \$6.83 per hour) in 1989 and a 6.9 percent increase (to \$7.30 per hour) in 1990.

As noted above, in evaluating these salary proposals, we relied heavily on the standard of comparability. That standard can be defined in many different ways, of course, and it is not surprising that in this case, as in most cases, the parties disagreed over which other employees in the geographic area should be considered comparable to the members of the Town's police force. The table on the following page presents the salary comparisons we find most persuasive among the several offered by the parties. Our selection was guided by the following considerations:

1. We agreed with the Town that the cities of Corning, Elmira, and Hornell, included in the Association's comparative data, are so much larger than the Town of Erwin that they should be excluded.
2. On the other hand, we also excluded the Town of Cohocton, included by the Town in its comparative data, because its police force, consisting of a single officer, is too small to be considered comparable.
3. We excluded the Village of Addison for lack of data on its 1988-89 salaries. Town exhibit 4 provided salary figures for "1988," but those figures -- \$14,964 to \$20,124 -- were apparently for the contract year of June 1, 1987 through May 31, 1988, since the salary data provided by the Association (in Sergeant McCann's testimony) for the year beginning June 1, 1989 -- \$20,500 to \$25,150 -- are about 30 percent higher than the 1988 data presented by the Town. In short, we believe neither party presented data for the contract year beginning June 1, 1988, the year for which data are available for five of the communities shown in the table.

TABLE

Police Salaries in Town of Erwin and in Comparable Communities, 1988 or 1988-89

Community	Salary Year	<u>Annual Salary for Full-Time Officers</u>		Hourly Wage For Part-time Officers	Starting or Minimum Annual Salary
		Patrolman or Police Officer	Sergeant		
<u>Town of Erwin</u>	Jan.-Dec. 1988	<u>\$15,934</u> (Twist)	<u>\$21,853</u> (McCann)	<u>\$ 6.00</u>	<u>\$12,500</u>
Painted Post	June 1, 1988- May 31, 1989	\$19,028 (all officers)	-----	\$ 6.49	-----
Bath	"	<b>\$21,750</b> (Step 5)	\$24,100 (Step 3 and above)	\$ 7.67- 7.89	\$16,480
Elmira Heights	"	\$24,360 (5th year)	\$26,593 (all)	-----	\$19,023
Horsheds	"	\$25,132 (5th year)	\$31,728 (5th year and above)	-----	\$23,132
Watkins Glen	"	\$18,138 (5th year)	-----	-----	\$17,763
Canisteo (nonunion)	Unknown whether calendar or fiscal year	\$16,273 (seniority unknown)	\$17,015 (seniority unknown)	\$ 7.10	-----
Steuben County (Sheriff's Dept.)	"	\$20,570 (step, if any, unknown)	\$21,296 (step unknown)	-----	-----
<u>Average Salary Excluding Erwin</u>	-----	<u>\$20,750</u>	<u>\$24,146</u>	<u>\$7.09-\$7.16</u>	<u>\$19,100</u>

Sources: Joint exhibit 1, Town exhibit 4, and Association exhibits 2, 4, 7, 8, and 10.

4. The Association objected to the inclusion of the Village of Canisteo because it has no police union, but we do not agree that fact is a basis for exclusion.
5. We also included the Steuben County Sheriff's Department, as urged by the Town, although we have some doubts about the comparability of this unit to the Erwin unit.
6. We excluded Hammondsport and Wayland, included in Town Exhibit 4, since those villages hire only part-time officers (plus a police chief in Hammondsport).
7. The choice of the "salary year" presented problems, since Erwin's contract is on the calendar year, the contracts in the next five communities listed in the table are on the fiscal year beginning June 1, and the Town did not indicate in its exhibit 4 whether the last two units listed are on a calendar or fiscal year. There is obviously no perfect solution to this problem with respect to the five contracts on fiscal years -- the Town might prefer the fiscal year beginning on June 1, 1987 and the Association might prefer the fiscal year beginning June 1, 1989 -- but we believe the choice of the 1988-89 fiscal year is a reasonable compromise.
8. Finally, we agreed with the Association that the salaries selected to represent other communities should represent, to the extent feasible, those paid to officers with five years of service (Patrolman Twist's seniority) and to sergeants with nine years of service (Sergeant McCann's seniority).

The data in the table strongly support the Association's claim that the salaries paid Erwin police officers badly lag the salaries paid to police in comparable communities. We find particularly telling not only the gap between the Erwin salaries and the all-community average salaries (in the last line of the table), but also the extent to which Erwin salaries trail those paid to full-time and part-time officers in Painted Post -- a police unit posing no problems of comparison, since the village is located literally within the Town of Erwin and the unit size is nearly identical to Erwin's, consisting of three full-time and two part-time officers. Specifically, Patrolman Twist's

salary lags the all-community average by 30 percent and the Painted Post salary by 19 percent, and Sergeant McCann's salary lags the all-community average by 10.5 percent. (Painted Post has no sergeant.)

We therefore find just and reasonable the following salary increases:

1. For Patrolman Twist, a 15 percent increase in annual salary effective January 1, 1989, and another 10 percent increase in annual salary effective January 1, 1990.
2. For Sergeant McCann, an 8 percent increase in annual salary effective January 1, 1989, and another 8 percent increase in annual salary effective January 1, 1990.
3. Increase both the starting salary and the hourly rate for part-time officers as the Town proposed: effective January 1, 1989, the starting salary shall be \$14,200 and the part-time rate \$6.83 per hour; and effective January 1, 1990, the starting salary shall be \$15,200 and the part-time rate shall be \$7.30 per hour.

#### HEALTH INSURANCE

The other major financial item in dispute concerns the cost of health insurance. Article 8.2 of the 1987-88 contract states somewhat confusingly:

Through the duration of this contract, the Town shall provide at no cost to the employee the health insurance in effect in 1986.

For the year 1987, the cost to the Town for said insurance shall be \$2,170 per employee. For the year 1988, the cost shall be \$2,270 per employee.

The sums named were sufficient to cover the entire insurance cost in 1987 and 1988. In January 1989, however, the annual cost of the health insurance policy in effect increased sharply -- from \$2,270 per employee to

\$3,624 per employee. During 1989, the Town has continued to contribute at the same dollar rate it paid in 1988, and it has covered the increase in premiums by deducting the amount of the increase from the paychecks of the two full-time officers. (The two part-time officers are not covered.)

The Association proposed that the new contract require the Town to continue paying the complete cost of health insurance, and the Association also requested the Panel to direct the Town to reimburse the full-time officers for the deductions made in their 1989 paychecks to date to cover the increased premium costs. The cost of this proposal to the Town in 1989 would be \$2,708 (the increase in premium costs for the two officers) a 6.4 increase over the cost, \$42,327, of salaries and insurance for the two full-time officers in 1988. The Town proposed either that the insurance cap remain at the 1988 level of \$2,270 per employee or that the cost of granting 100 percent coverage be deducted from any salary award that might otherwise be made.

Once again, the comparative data strongly favor the Association's position. Not only does the significant Painted Post contract provide that the employer will pay 100 percent of health insurance costs, but so too do the police contracts in Bath, Elmira, Horseheads, and Watkins Glen. (The Town provided no information on the distribution of insurance costs in Canisteo or in the County Sheriff's department. In the excerpts of the Addison contract provided by the Association, there is no mention of health insurance.)

In addition, the Town agreed to provide 100 percent coverage of health insurance costs in the 1989-1991 contract with the employees in its Highway Department (Association exhibit 9). The Town countered that the highway unit accepted a zero salary increase in the first year of that contract in exchange for the 100 percent coverage. The Town's representatives also acknowledg-

ed, however, that perhaps two or three of the seven or eight employees in the Highway Department would probably receive 4 percent annual increments in the first year of the contract.

Given those compelling comparisons (and the Town's acknowledgement that its ability to pay was not an issue), the Panel directs that the new contract between the parties provide that the Town shall pay 100 percent of the health insurance costs for full-time police officers, effective January 1, 1989, and continuing through December 31, 1990. The Panel also directs the Town to reimburse the full-time officers for the insurance costs deducted from their paychecks in 1989.

#### OTHER ISSUES

We will discuss the remaining issues in dispute more briefly than we have discussed salaries and health insurance, since the remaining issues are both less complex and less costly. When we refer to "area practice" or "the prevailing pattern in area contracts," we are referring to the relevant provisions in the following contracts (all entered as Association exhibits): Addison, Painted Post, Bath, Elmira Heights, Horseheads, Watkins Glen, and the Erwin Town Highway Department.

#### Sick Leave

The present contract language provides seven sick days a year up to a maximum of 100 days. The Association proposed an increase to 15 and 150 days. The Town proposed an increase to 8 days in 1989 and 9 days in 1990, with no increase in the maximum.

Area practice is typified by the provision in the Erwin Highway Department contract of 12 days per year up to a maximum of 120 days. We there-

fore award 9 days per year and a maximum of 110 days in the first year of the new contract, and 11 days per year and a maximum of 120 days in the second year.

#### Personal Leave

The present contract provides two personal leave days each year. The Association proposed increasing this allowance to three days, and the Town proposed no change in the current allowance.

Area practice ranges from two personal leave days in Addison to six in Bath. We award a total of three personal leave days in each year of the new contract.

#### Paid Holidays

The present contract provides ten paid holidays each year. The Association proposed the addition of two more holidays, and the Town proposed the addition of one in the second year of the new contract.

The prevailing pattern of area contracts is again typified by the Erwin Highway Department contract, which provides 12 paid holidays. We award a total of 11 paid holidays in the first year of the new contract and a total of 12 in the second year. We leave to the parties the selection of the additional holidays.

#### Emergency Recall and Off-Duty Appearances

The present contract provides the following on these subjects:

Employees called to respond to an emergency, or assistance call while on a regularly scheduled day off or a period between regularly scheduled shifts, will be entitled to be paid for the hours worked, with a minimum pay of one (1) hour.

Any required attendances for breathalyzer operations or hearings, shall be treated as overtime.

The Association proposed that both emergency recalls and off-duty appearances be compensated at the same rate, namely, that employees be paid for the hours they work, with a minimum of four hours paid at overtime rates. The Town proposed that employees on emergency recall be paid a minimum of two hours' pay at overtime rates, and no change be made in the pay for off-duty appearances.

Area practice ranges from a guarantee of two to four hours' pay for emergency recall, with all contracts except the Erwin Highway Department's providing that the overtime rate shall apply to each hour of the guarantee. (The Highway Department's contract is ambiguous, calling for "a minimum of 4 hours' time" to be paid to employees responding to "emergency calls.") Practice with respect to off-duty appearances ranges from time and one-half for actual time spent (Elmira Heights) to the Painted Post clause providing for "court time" either four or five hours of minimum pay (depending on the location of the court) at time and one-half.

We agree with the Association that there is no good reason for applying different compensation rules to these two types of required work outside normal work schedules. We therefore award that for both emergency recalls and off-duty appearances, employees will be paid for the hours they work, with a guaranteed minimum of two hours' pay at time and one-half in the first year of the new contract and a guaranteed minimum of three hours' pay at time and one-half in the second year.

#### Night Differential

Officers working the 4 p. m. to 12 midnight shift now receive an additional 10 cents per hour, and those working the midnight to 8 a. m. shift receive an additional 15 cents per hour. The Association proposed increasing

the differentials to 25 cents and 35 cents, respectively, and the Town proposed increasing them to 20 cents and 25 cents, respectively.

Area practice is difficult to summarize. There is no mention of night differentials in the contract excerpts the Association provided for Addison, Elmira Heights, and Horseheads. On the other hand, the Painted Post contract provides hourly night differentials of 12 cents and 42 cents; Watkins Glen, 30 cents and 40 cents; and Bath, 3 percent of base pay for those "assigned to permanent shifts." We award the Town's proposal that 10 cents be added to both of the present shift differentials in the first year of the contract, and no further increase be made in the second year.

#### Scheduling

The present contract language specifies three "basic shifts", one beginning at midnight, one at 8 a.m., and one at 4 p.m. The Town proposed the following addition to the shift provision:

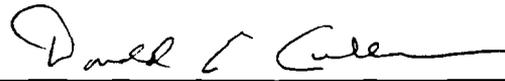
Town shall be able to start and end shifts up to one hour before and one hour after the current starting and ending times. Such changes shall occur no more than 12 times per year.

The Association opposed any change from the present contract language.

The Town argued in the hearing that in a small police department, it is wise to change the predictability of where officers will be at any given time. The Association countered that the Town did not present any evidence that such a change was necessary, and also that the Town's proposed language was too general, leaving unanswered such questions as who is to make the decision to change the starting time of a shift, how far in advance an officer was to be notified of any change, and how such changes might affect the shift differential.

We find the Association's argument persuasive, and we therefore award no change in the present contract language concerning scheduling.

Dated: August 14, 1989

A handwritten signature in cursive script, reading "Donald E. Cullen", written in black ink.

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Donald E. Cullen  
Public Panel Member and Chairman

I (~~concur in~~) (dissent from) the chairman's award.

Dated: August 14, 1989



H. Robert Richter  
Employer Panel Member

I (concur in) ~~(dissent from)~~ the chairman's award.

Dated: August 14, 1989



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Jack Shamel  
Employee Organization Panel Member