

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between

BATH, NEW YORK POLICE BENEVOLENT ASSOCIATION

AND

VILLAGE OF BATH, NEW YORK

PERB Case No. IA89-27; M89-106

NYSPERB PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

FINAL AND BINDING DISCUSSION AND AWARD OF TRIPARTITE ARBITRATION PANEL

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRMAN:

Peter A. Prosper
Union College
Department of Economics
Schenectady, New York 12308

PUBLIC EMPLOYER PANEL MEMBER:

James Mulcahy III
Chairman, Bath Police Commission
139 East William Street
Bath, New York 14810

EMPLOYEE ORGANIZATION PANEL MEMBER:

Diane McMordie
Collective Bargaining Specialist
703 Bonview
Elmira, New York 14902

APPEARANCES:

For the Police Benevolent Association

Paul Mayo
Labor Relations Consultant

For the Village of Bath

Robert Granger

Pursuant to the provisions of Civil Service Law, Section 209.4, Harold R. Newman, Chairman of the New York State Public Employment Relations Board, designated the undersigned on November 30, 1989, as the Public Arbitration Panel. The Panel was charged by Section 209.4 to consider the following statutory guidelines:

- (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.
- (vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

The Village of Bath, New York, the County seat for Steuben County, has a population of approximately 6,500 residents. Increases in population occur during the summer months due mainly to tourism. Relatively heavy traffic flows through the Village during the summer months as tourists pass through the Village to various vacation and sight-seeing spots in the general area. These phenomena have an impact on the workload of the Village of Bath Police Department.

The Bath Police Department is comprised of six full-time patrolmen, two part-time patrolmen, three full-time sergeants, four full-time dispatchers, and six part-time dispatchers, all under the jurisdiction of a full-time chief of police. Police officers work three shifts: 7:30 a.m. to 3:30 p.m.; 3:30 p.m. to 11:30 p.m.; and 11:30 p.m. to 7:30 a.m. Each officer works each shift for three months and then rotates to another shift. Dispatchers work permanent shifts, with permanent days off.

The parties began negotiations for a successor Agreement on March 22, 1989, and after several negotiating sessions when it the parties concluded that all remaining issues could not be resolved, the PBA declared impasse after the May 31, 1989, negotiations session. On October 6, 1989, after mediation proved unsuccessful, the parties signed a Memorandum of Understanding which provided for interest arbitration on five issues. The undersigned were appointed arbitration panel members, and a hearing was scheduled for February 13, 1990. Prior to the hearing the parties met and forged a tentative agreement, which prompted the parties to cancel the hearing. Subsequently, the PBA membership ratified the

tentative agreement, but the Police Commission at its meeting on February 21, 1990, failed to ratify. Thereafter, a second hearing date, set for May 15, 1990, was held, at which the parties were afforded full opportunity to present evidence, witnesses and argument in support of their respective contentions on the five issues which remained outstanding. After the close of the hearing the Panel met in executive session and deliberated on each of the five issues. The results of those deliberations are contained in the AWARD. The Panel has fully and carefully considered all of the data, exhibits and testimony received from both parties in light of those standards and criteria set forth in Section 209.4 of the Civil Service Law.

Terms and conditions of employment which were previously agreed to are: Vacation Extension, Funeral Leave, Health and Dental Insurance, Retirement, Part-time Article, Insurance Buy Out/In, Drug/Alcohol Memorandum, Retroactive Application of Agreement.

The following are the issues placed before the Panel for evaluation and determination: Comprehensive Just Cause Provision; Salary for Full-time Police and Dispatchers; Longevity; Eyeglass Coverage; Shift Rotation and Schedule for Dispatchers.

ISSUE NO. 1**COMPREHENSIVE JUST CAUSE PROVISION**

The current Agreement does not contain a just cause provision. Article XX, Section 3 of the Agreement provides that "No employees shall be disciplined, reduced in rank or suffer any loss of rights and benefits under this contract for any affiliations or activities engaged in while off duty." The current grievance procedure provides binding arbitration for grievances not resolved at previous stages of the process. Section 2 of the grievance procedure (Article X) states, "It is expressly understood and agreed by the parties that the grievance and arbitration procedure provided for in this article does not apply to and is not intended as a substitute or an alternative for any action permitted by or required by the employer under any article of the State Civil Service Law."

Position of the Association

The Association argues that it is the only local police agency without a just cause provision in its contract. Under the current system, not only is coverage not available to non-permanent employees, but the employer acts "as both prosecutor and judge." The PBA argues that its proposal provides an orderly, efficient and inexpensive procedure for resolution of problems. It provides due process for all employees.

The Association also proposes that a provision be included in the Agreement that would not only require the Village to maintain official personnel files on each

employees, but that each employee be notified whenever "any material" is to be placed in his/her file. Employees shall have the right to review contents of their files upon notice, and shall have the right to a written response to derogatory material placed in the file.

Position of the Village

The Village argues that employees' rights are currently protected by law, specifically Civil Service Law, Article 75 and/or Article 78, and that the protection is superior to that requested by the PBA. Civil Service Law provides a "more precise and complete protection of the employees." In addition, in this bargaining unit, no employee has ever been brought up on charges which sought dismissal. Therefore, the clause is not needed.

Discussion

The arguments of the Village are persuasive. The Association has not demonstrated a need for the proposed addition to the Agreement. A just cause provision is included in many contracts, not because many infractions arose but because such a clause offers protection to employees in the event future infractions arise. In the instant case the PBA suggests a just cause clause which would cover every employee from the first day of employment. It is commonly accepted that a probationary period is desirable in order to evaluate the appropriateness of new employees to the tasks required by the employer. To remove a probationary

period through the just cause clause would be to severely restrict the flexibility and functioning of the Village.

The Association's proposal is rejected, and shall not be included in the Agreement.

ISSUE NO. 2

LONGEVITY

The current longevity section provides employees with ten years or more of service a longevity increment of \$200.00 per year; those with fifteen years or more of service, \$300.00; and those with eighteen or more years of service, \$400.00 per year. The PBA proposes an alteration in the section to the following: Employees with ten to fifteen years service receive \$400.00 per year; employees with sixteen to eighteen years service receive \$600.00 per year; and employees with nineteen or more years service receive \$750.00 per year.

Position of the Association

The Association argues that the Village, in its offer of February 7, 1990, which the PBA accepted, should be dispositive of the issue, and is as proposed above.

Position of the Village

The Village contends that it is facing substantial cost increases, not only through salary increases, but also in fringe benefit increases. For instance, health insurance costs have been rising steadily. Adding other costs, such as longevity at the top of the pay schedule is inequitable.

Discussion

After careful consideration of all the arguments presented by the parties, and taking into account all the monetary items including those named below, the following AWARD is made:

The Association's proposal for longevity increases is to be included in the successor Agreement:

Employees with 10-15 years of service receive	\$400.00 per year
Employees with 16-18 years of service receive	\$600.00 per year
Employees with 19 or more years service receive	\$750.00 per year

These above amounts to be instituted at the beginning of the second year of the Agreement, that is, June 1, 1990. It is noted that the above amounts are not accumulative.

ISSUE NO. 3**SALARY AND SALARY SCHEDULE**

In the present Agreement, salary difference exist among Dispatchers, Police Officers and Sergeants. In addition, the number of incremental steps varies. Dispatchers presently have a starting salary of \$14,560, with eight incremental

(yearly) steps, reaching a top salary (excluding longevity) of \$19,100. Police Officers' starting salary is \$16,000, with six incremental steps, resulting in a top salary (excluding longevity) of \$21,800. Sergeants' minimum pay is \$19,500, with three additional yearly increments, providing a maximum salary (again excluding longevity) of \$22,750. The Association proposes increases for each of the categories and on each incremental step for the year 1989-90, and an additional increase for the year 1990-91. Dispatcher minimum pay would rise from \$14,560 to \$15,000 in 1989-90, and to \$15,900 in 1990-91; Police Officer minimum pay would rise from \$16,000 to \$16,480 in 1989-90, and to \$17,469 in 1990-91. Similarly, Sergeants minimum pay would increase from \$19,500 to \$20,085 in 1989-90, and to \$21,290 in 1990-91. There would be concomitant increases for each category of employee for each of the incremental steps.

Position of the Association

The Association contends that the Village's negotiating representatives had already agreed to the proposed salary increases, but the Police Commission rejected the proposal. Good faith and fair dealing would require that the proposal be accepted anew. In addition, the PBA argues that the Village has already budgeted funds for 1989-90 at the salary level tentatively agreed to in February.

Position of the Village

The salary increases proposed by the Association constitute approximately a six (6%) percent across-the-board increase in salary for two consecutive years. Such an increase would destroy the balance in a step schedule which has been in effect for many years. The Village proposes the following schedule consistent with its position:

	1989-90								
<u>Title</u>	<u>Min.</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>
Dispatcher	\$15,000	17,500	17,900	18,400	18,900	19,400	19,900	20,400	20,900
Police Officer	\$16,480	19,500	20,000	20,750	21,500	22,250	24,100		
Sergeant	\$20,100	22,000	23,100	24,100	25,100				

For the year 1990-91, the Village would increase the minimum salary and steps by approximately one thousand (\$1,000.00) dollars, with certain exceptions and adjustments.

Discussion

The Association presents data from approximately twenty-two law enforcement agencies, but asks the Panel to pay particular attention to Dansville, Horseheads, Coming and Hornell--communities close in size, characteristics and proximity to the Village of Bath. The 1989-90 starting salary for those four communities are at least \$20,000 except for Dansville, which is \$18,019. For Coming and Dansville, 1990-91 salary minima are \$21,229 and \$18,560 respectively.

The Village stipulated that ability-to-pay was not being raised as a defense in this proceeding.

Three factors prompt the salary schedule **AWARD** below: First, the two parties had tentatively agreed to the schedule below and, when the agreement was rejected by the Police Commission, it was not on the basis of salary; second, the comparative data provided by the Association was not contradicted by the Village, nor were the Association's arguments advocating increases to bring the Village of Bath closer in salary level with those of surrounding communities; third, the Village did not argue ability-to-pay, but did argue against an expansion of the dollar differences between the steps that would occur with an across-the-board percentage **AWARD**.

Considering all arguments and other input by both parties, and after careful examination and evaluation of a comparison of wages and other conditions of employment of other law enforcement employees in the geographic area, and considering the interest and welfare of the public, **the following two-year salary schedule is AWARDED:**

1989-90 Salary Schedule

<u>Title</u> <u>Step 8</u>	<u>Minimum</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	
Dispatcher	\$15,000	18,550	18,868	19,292	19,716	20,140	20,458	20,776	21,094
Police Officer	\$16,480	20,670	21,200	21,730	22,260	23,055	24,486		
Sergeant	\$20,085	23,320	24,168	25,546					

1990-91 Salary Schedule

<u>Title</u>	<u>Min.</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>
Dispatcher	\$15,900	19,663	20,000	20,450	20,899	21,348	21,685	22,023	22,360
Police Officer	\$17,469	21,910	22,472	23,034	23,598	24,138	25,955		
Sergeant	\$21,290	24,719	25,618	27,079					

ISSUE NO. 4

SHIFT ROTATION AND SCHEDULE FOR DISPATCHERS

Currently, the four full-time dispatchers work fixed shifts. Each individual dispatcher has the same shift with the same two days off each week. The Association proposes that dispatchers be on a rotating shift, with a two-month rotation cycle. Dispatchers would work (for example) Shift 1 for two months, then work Shift 2 for two months, then Shift 3 for two months, then Shift 4 for two months, then back to Shift 1. Each dispatcher would work all of the shifts over a period of eight months. Each dispatcher would also have different days off, that is, for two months a dispatcher would have (for example) Thursdays and Fridays off on Shift 1, Saturdays and Sundays off on Shift 2, Sundays and Mondays off on Shift 3, and Tuesdays and Wednesdays off on Shift 4. The shifts would be bid by seniority, and employees could change shifts by mutual agreement with other employees, but would be required to notify the Chief of Police of the intent to change at least three days prior to the change taking place.

Position of the Association

The Association argues that the current system of scheduling shifts, that is, permanent shifts with choice based on seniority, perpetuates an elite class of dispatchers that gives more benefits to some than to others. The Association claims that its proposal is a fair system for all, provides no hardship for the Village, and eliminates the disproportionate impact of the present system on the dispatchers.

Position of the Village

The Village contends that full-time dispatchers were hired for specific shifts. This fact was known by applicants, and the shift they were to work was revealed to them prior to their employment. The dispatcher's acceptance of employment connoted acceptance of the permanent shift offered. Of the four full-time dispatchers, only two seek a change. Part-time dispatchers are not affected by the Association's proposal. If the Association's proposal is accepted, then two long-term dispatchers will be deprived of their rights to a permanent shift that they chose through seniority.

The Village argues that the issue is also an economic one. The day dispatcher also serves as secretary to the Chief of Police. If the shift rotation is granted, the Village will be forced to hire a full-time secretary at substantial cost.

Discussion

The Agreement contains no reference to shifts of dispatchers, although the Compensation article provides a three percent differential for dispatchers working between 4:00 p.m. and 8:00 a.m. Long-standing practice has been that dispatchers are hired for a specific shift, and remain on that shift unless there is attrition, and then the open shift is bid on a seniority basis. The Association seeks to have a clause in the Agreement which would replace the past practice.

If the parties wish to change the past practice, it is more appropriate for them to negotiate such a change rather than have a Panel impose it. Therefore, we decline to award a shift rotation. However, it appears that one major reason for the Association's desired change is that some dispatchers are unhappy with their days off. Not only are the shifts permanent, but days off are also permanent. For example, the individual on Shift 1 has Tuesdays and Wednesdays off, the person on Shift 2 has Thursdays and Fridays off, and so forth. It would solve much of the problem if there were a rotation in days off without altering the permanence of the shifts, and **the following is AWARDED:**

Days off for each dispatcher will rotate every twenty-eight days, the same cycle implemented for police officers. The example below indicates the pattern of rotation. Shift selection will remain bid by seniority. Individuals may change shifts by mutual agreement with another employee if the Chief of Police is informed at least three days before the change. With regard to

days off, other arrangements may be made with consent of the Chief of Police. If such arrangements interfere with the rotation days off of another dispatcher, the schedule below will prevail.

Dispatcher Days Off Schedule

Month 1

	<u>M</u>	<u>T</u>	<u>W</u>	<u>Th</u>	<u>F</u>	<u>Sa</u>	<u>Su</u>
SHIFT 1	OFF	OFF					
SHIFT 2			OFF	OFF			
SHIFT 3					OFF	OFF	
SHIFT 4	OFF						OFF

Month 2

	<u>M</u>	<u>T</u>	<u>W</u>	<u>Th</u>	<u>F</u>	<u>Sa</u>	<u>Su</u>
SHIFT 1						OFF	OFF
SHIFT 2	OFF	OFF					
SHIFT 3			OFF	OFF			
SHIFT 4					OFF	OFF	

Month 3

	<u>M</u>	<u>T</u>	<u>W</u>	<u>Th</u>	<u>F</u>	<u>Sa</u>	<u>Su</u>
SHIFT 1				OFF	OFF		
SHIFT 2						OFF	OFF
SHIFT 3	OFF	OFF					
SHIFT 4			OFF	OFF			

Month 4

	<u>M</u>	<u>T</u>	<u>W</u>	<u>Th</u>	<u>F</u>	<u>Sa</u>	<u>Su</u>
SHIFT 1			OFF	OFF			
SHIFT 2					OFF	OFF	
SHIFT 3	OFF						OFF
SHIFT 4		OFF	OFF				

Alternative rotation schedules are possible. For example, Shift 1 days off could be: Month 1, Mondays and Tuesdays; Month 2, Sundays and Mondays; Month 3, Saturdays and Sundays, etc. Or, the parties could agree on some other arrangement. However, if the parties cannot agree, the above schedule shall be the effective schedule.

ISSUE NO. 8

EYEGLASS COVERAGE

When the parties entered negotiations for a successor Agreement, the Association forwarded a proposal on eyeglass coverage. Subsequently, the parties came to tentative agreement on a compromise proposal, which the Police Commission rejected. The Association urges the proposal be adopted.

Position of the Association

The Association contends that the proposal provides a substantial benefit to employees while at the same time is of minor financial impact to the Village. The cost to the Village may be less because the proposed fund does not carry over from year to year.

Position of the Village

The Village argues that the proposal is yet another financial cost which would be added to the already increased costs of salary, health insurance and other fringe benefits. In addition, if the benefit is granted to this unit, the Village would be required to expand the benefit to all other municipal employees in a short period of time, creating a significant financial burden.

Discussion

The parties negotiated an eyeglass fund previously, and in conjunction with a salary increase. The Village's argument that if it provides the benefit to this unit it will have to provide it to all is rejected. While the Village may be under some pressure in the future to provide a benefit for other employees, it may resist if it so desires. In addition, the total salary and benefits to one group of employees must be examined in their entirety, not just one item. Perhaps other municipal employees have benefits the members of the PBA are not receiving.

The total maximum cost of this benefit is estimated to be \$3,700, an amount that is relatively small. The cost of this item is considered as part of the overall financial cost of the salary and benefit package.

Considering all factors, the following is AWARDED:

"Effective June 1, 1990, the Village will establish an Eyeglass Fund for all employees in the unit. The Fund shall be in the amount of three hundred (\$300.00) dollars per year for those employees electing coverage under the family plan and one hundred fifty (\$150.00) per year for those employees

electing coverage under the individual plan. Upon presentation to the Village of paid receipts for services provided for eye examinations, glasses, etc., the Village shall reimburse the employee up to the amounts herein provided. The dollar amount of the fund is not cumulative from one year to the next."

CONCLUDING COMMENTS

This Discussion and Award has considered and ruled on all the items presented to it by both parties, including the two-year term of the Agreement. All arguments made by exhibit and orally at the hearing were duly considered and given their appropriate weight. The Panel was greatly aided by the thoughtful and considered presentation of both parties. The Chairman was immeasurably assisted by the knowledge, patience, good judgment and counsel of his fellow Panel members.

Respectfully submitted,

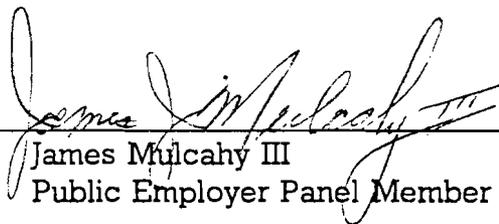
Dated: July 16, 1990



Peter A. Prosper
Public Panel Member and Chairman

I (concur) (~~do not concur~~)

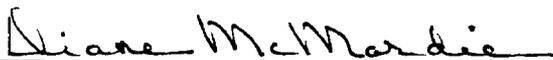
Dated: July 11, 1990



James Mulcahy III
Public Employer Panel Member

I (concur) (~~do not concur~~)

Dated:
June 5, 1990



Diane McMordie
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) S.S.:

On this 16th day of July 1990, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Mary E. Slusarz
(Notary Public)

MARY E. SLUSARZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SCHENECTADY COUNTY
COMMISSION EXPIRES 1/1/91

STATE OF NEW YORK)
COUNTY OF) S.S.:

On this 11th day of July 1990, before me personally came and appeared JAMES MULCAHY, III, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Patricia H. Cuppen
(Notary Public)

PATRICIA H. CUPPEN
Notary Public in the State of New York
STEUBEN COUNTY
Commission Expires Feb. 28, 1992

STATE OF NEW YORK)
COUNTY OF Chemung) S.S.:

On this 5th day of June 1990, before me personally came and appeared DIANE MCMORDIE, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Bonnie J. Balok
(Notary Public)

BONNIE J. BALOK
Notary Public #4670520
State of New York, Chemung Co.
Commission Expires June 30, 1990