

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest  
Arbitration

Case No. IA 90-029

between

TOWN OF YORKTOWN POLICE  
BENEVOLENT ASSOCIATION

OPINION AND AWARD

and

TOWN OF YORKTOWN

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED  
APR 24 1992  
CONCILIATION**

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BEFORE

CHARLOTTE GOLD	-	Neutral Chairman
JOHN P. HENRY	-	Employee Member
ERNEST R. STOLZER, Esq.	-	Employer Member

APPEARANCES

For the Town

NANCY E. SOPER, Esq.	-	Attorney
BONNIE O'BRIEN	-	Administrative Assistant to the Supervisor
TOM STANLEY	-	Comptroller
BOB KILLEEN	-	Assessor

For the PBA

KENNETH J. FRANZBLAU, Esq.	-	Attorney
EDWARD J. FENNELL	-	Consultant
CLARENCE A. LANDER	-	PBA President
RICHARD D. MALAN	-	Negotiating Committee Member
GEORGE J. DAVIS, Jr.	-	Negotiating Committee Member

Date of Award: March 2, 1992

On April 15, 1991, an Arbitration Panel was established by the New York State Public Employment Relations Board to settle the impasse between the Town of Yorktown Police Benevolent Association (PBA) and the Town of Yorktown over the terms of a successor to the January 1, 1989-December 31, 1990, collective bargaining agreement. The parties had met for negotiations between August 28, 1990, and November 1, 1990, and utilized the services of a PERB-appointed Mediator.

Arbitration hearings were held on July 16, 1991, and September 5, 1991. A transcript was waived at the hearings. Members of the Panel subsequently conferred in the case through several conference calls and at two Executive Sessions.

APPLICABLE  
CRITERIA

Section 209.4(v) of the Public Employees' Fair Employment Act, Article 14 of the Civil Service Law (Taylor Law), requires a Public Arbitration Panel to make a just and reasonable determination of the matters in dispute, taking into consideration the following factors (among others):

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.

Each of these factors has been considered in rendering this Award.

## RATIONALE FOR THE AWARD

There can be no doubt that the parties have been bargaining for a new Agreement in an extremely difficult economic climate. The existence of so many open issues after such prolonged efforts to reach a settlement attests to that fact. Throughout the country, there is a general cessation in the pattern of growth, increasing unemployment in key industries, and an overall economic malaise. In Yorktown, as well as in other New York State communities, there is, by necessity, less reliance on State aid and more reliance on property taxes and a shrinking tax base.

In 1991, for example, the Town was forced to cut \$911,000 from its budget and lay off eight employees (as well as reduce services) because of a \$700,000 shortfall in State monies and a \$300,000 loss in other revenues. While faced with the increased cost of benefits (for health insurance and the Police and Fire Retirement System), the Town has also had to deal with the increased reluctance on the part of tax payers to support these expenditures (as evidenced, for example, by a 63 percent increase as of June 1991 in uncollected taxes).

The Town's goal in bargaining during this period has been to limit gains in salary and benefits and to obtain relief from what it believes to be onerous contractual commitments -- especially in the area of health insurance and the amount it is now committed to paying for unused sick days upon retirement of a police officer. The PBA, on the other hand, has sought to not only

maintain the unit's relative standing in regard to other comparable groups in the area, but also to improve it in both the salary and benefits area. In general, it argues that the Town is in a sound fiscal condition and that an increase in sales tax revenues will aid in supporting a reasonable settlement. -

In keeping with the inescapable economic realities of the day, the Award that follows can best be described as providing a "bare bones" Agreement. This is not the appropriate time to add a new list of costly benefits to the parties' Contract. At the same time, although some relief is granted to the Employer, this Panel does not view this an occasion to "gut" the existing Agreement or arbitrarily deprive bargaining unit members of hard-won gains obtained through tradeoffs in the past. In the final analysis, should the parties wish to alter substantially the current terms and conditions of employment for members of the Police Department, the appropriate place to do that is at the bargaining table. Given that provision is made here for only a two-year agreement (ending on December 31, 1992), they will have ample opportunity to engage in that activity in the near future.

#### FINDINGS

This Award calls for modifications in just three areas: Salary, health insurance, and the Welfare Fund. Salary and Welfare Fund payments are to be retroactive to January 1, 1991, and the new health insurance provision is to be prospective,

going into effect with new hires brought on after the issuance of this decision. All other terms and conditions of the prior Agreement shall remain in effect.

### Salary

Under the 1991 budget, combined salaries of Police personnel amounted to \$2,254,106. A one (1%) percent increase would thus be \$22,541. The PBA's initial position on salary was for an 8 percent increase per year over and above the 1990 base pay.

The parties agree that when a comparison is made of ten comparable Towns in the area, Yorktown Officers receive \$545 less than the average salary of \$41,466 (Town Exhibit No.7). They disagree as to whether Officers in Yorktown work fewer days, with the Town contending that they do, by virtue of their "selling back" holidays, and the PBA contending that they do not, because of the relatively few Officers covered by this provision. The Town, for instance, maintains that post-1980 hires in Yorktown work 242.5 days per year, while those in Bedford, Greenburgh, Harrison, Eastchester and North Castle work 248.9; and in Mamaroneck, Mount Pleasant, and Ossining work 246.9, 244.3, and 243.8 days, respectively.

There appears to be no disagreement over the fact that Officers in the majority of Towns in the area comparable to Yorktown settled or were awarded approximately 6 percent in

1991.\* Settlements for 1992 are less prevalent and thus there is no established pattern. The Town adds, however, that a 6 percent increase for 1991 is not feasible now given the fact that economic conditions have worsened since those agreements were reached. The Town also emphasizes the settlement recently reached with the CSEA in support of its argument that a 6% salary increase is not appropriate. The CSEA represents all other unionized employees of the Town (approximately 150 individuals), which comprise the vast majority of the Town's employees. The CSEA contract expired December 31, 1991. The Town and CSEA agreed to a wage settlement of 4% for 1992. The Town further points out that the CSEA unit is not only receiving that more modest wage increase but has suffered the loss of 8 positions which were abolished. This abolition of positions resulted in eight (8) people actually losing their jobs.

Finally, the Panel makes note of the award of the public interest arbitration panel in the matter of the impasse in negotiations between the Village of North Tarrytown and North Tarrytown PBA which was dated January 6, 1992 and is a matter of public record. In that award, the Panel majority awarded a salary freeze (0.0%) for the period of June 1, 1990 through May 31, 1991 (which is the Village's fiscal year), and a six (6%) salary increase for the following fiscal year (June 1, 1991 to May 31, 1992).

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\* Towns considered are Bedford, Cortlandt, Eastchester, Greenburgh, Harrison, Mamaroneck, Mt. Pleasant, New Castle, North Castle, and Ossining.

Taking into account the Town's ability to pay, as well as the interest and welfare of the public, the hazards of employment faced by Police Officers, and the special education, physical, and mental requirements of a Police Officer's job, the following is deemed to be a just and reasonable determination on salary:

<u>January 1, 1991</u>	<u>July 1, 1991</u>	<u>January 1, 1992</u>
4%	2%	4%

Welfare Fund

The PBA proposes an increase of \$100 per man/per year for the Welfare Fund (which was established instead of providing a group comprehensive dental plan). Since this provision is not common in PBA contracts, it is not possible to make a comparative analysis. When this proposal is considered in light of the overall economic package awarded in this case, however, a \$30 per man/per year increase is not unreasonable and will not add appreciably to the cost of the final agreement.

Health Insurance

The Town proposes that with the new Agreement, all employees should be required to contribute 25 percent of the annual premium for health insurance coverage. It presents the following figures in support of its position:

TOWN OF YORKTOWN  
Monthly Rate Medial Insurance

Year	Annual Premium		Monthly Premium		Percentage Change	
	Family	Single	Family	Single	Family	Single
1991	\$ 4,752	\$ 2,112	\$ 396.00	\$ 176.00	+14%	+26%
1990	4,200	1,680	350.00	140.00	+41%	+45%
1989	2,980	1,163	248.33	96.94	+20%	+15%
1988	2,487	1,015	207.26	84.60	+18%	+10%
1987	2,114	924	176.18	76.99		
Five Year					-----	-----
					+125%	+129%
					-----	-----
Base			176.18	76.99		
+125% or +129%			<u>220.23</u>	<u>99.32</u>		
			<u>396.41</u>	<u>176.31</u>		

There is no dispute that Yorktown, as well as other public employers, have been confronted with rapidly rising insurance costs. In general, the parties, through collective negotiations, have responded to this crisis by shifting some of the burden to the recipients of the health insurance. The Town's proposal in this instance, while warranting some consideration, cannot be granted in full.

The following alternate arrangement would require all future hires to pay a portion of the cost for health insurance during the first three years of service through a reduction in their salaries during that period. This arrangement would apply only to police officers hired after the date of this award. The Panel award is based upon the following rationale:

Members hired after the date of the Award would have their annual salary reduced by approximately \$1300 for the period 1/1/92 to 12/31/92. This reduction in annual salary would be from starting to completion of three years of service.

The contract language would also contain wording to reflect that in consideration of the reduced salary from start to completion of three years of service, the Town would continue to pay 100% of the cost of health insurance for unit members.

By using the salary reduction method, both the Town and the members save money.

For example, using a police officer earning \$45,000 per year, with a spouse and one child for the year January 1, to December 31, 1992:

Town Proposal

Annual Gross Salary		\$ 45,000.00
12% Federal Income Tax	\$ 5,400.00	
5.6% State Income Tax	2,520.00	
6.2% F.I.C.A.	2,790.00	
1.3% Medical (S.S.)	+ 585.00	
	11,295.00	- 11,295.00
Annual Net Salary		33,705.00
Less Contribution for health ins.		- 1,300.00
Annual Net Salary		\$ 32,405.00

The Town would pay:

Annual Gross Salary		\$ 45,000.00
11.6% Retirement (Tier 2)	\$ 5,220.00	
6.2% F.I.C.A.	2,790.00	
1.3% Medical (S.S.)	+ 585.00	
	8,595.00	+ 8,595.00
Actual Cost to Town		\$ 53,595.00

Panel Award

Annual Gross Salary		\$ 45,000.00
Less Contribution for Health Ins.		<u>1,300.00</u>
Annual Gross Salary		\$ 43,700.00
12% Federal Income Tax	\$ 5,244.00	
5.6% State Income Tax	2,447.20	
6.2% F.I.C.A.	2,709.40	
1.3% Medical (S.S.)	<u>+ 568.10</u>	
	10,968.70	- <u>10,968.10</u>
Actual Net Salary		\$ <u>32,731.30</u>

The Town would pay:

Annual Salary		\$ 45,000.00
Less Reduction for Health Ins.		- <u>1,300.00</u>
Gross Annual Salary		\$ 43,700.00
11.6% Retirement (Tier 2)	\$ 5,069.20	
6.2% F.I.C.A.	2,709.40	
1.3% Medical (S.S.)	<u>+ 568.10</u>	
	8,346.70	+ <u>8,346.70</u>
Actual Cost to Town		\$ <u>52,046.70</u>

Under this award, the police officers net salary is \$326.30 more per year and the cost to the Town is \$1,548.30 less per year.

This award, while offering some relief to the Town, also requires less of an outlay on the part of new hirees and results in the retention of more of their income. As a consequence, its terms shall be implemented.

OTHER PROPOSALS

A brief word is in order about the other demands. While some or all may be well worth considering in the future, for the present their inclusion would be either too costly or present too drastic a change in the parties' bargaining relationship.

(1) Unused Sick Leave. Perhaps the most extensive discussion centered on the provision in the Agreement for payment for unused sick leave upon retirement (Article VII, Section 8). The Town suggested that it be amended as follows:

An employee who retires with twenty (20) years of service shall receive a cash payment for fifty (50%) percent of the number of his/her accumulated sick days in excess of sixty (60) such accumulated days. In order to be entitled to this benefit, the employee must be eligible for retirement, and must properly signify, in writing, his/her intent to retire.

The PBA asks that the Contract be changed so that in the event of disability or death, 75 percent of the unused sick time would be paid to the member or his beneficiary.

At least six of the ten Towns with which Yorktown is compared provide for no accumulation. At the present time, eleven Police Officers and Sergeants in Yorktown have more than 200 sick leave days accumulated. Other suggestions for change include placing a cap on the number of days that can be accumulated in the course of a career (such as 200) and paying current employees for the number of days accrued above that level during the next three years, rather than waiting until an Officer retires.

This Panel believes that some modification in this benefit is warranted and urges that due consideration be given to these and other proposals during the next round of bargaining.

(2) Holidays and Annual Work Days. Article V, Section 5 (Holidays), of the current Agreement states that

(a) Employees hired prior to January 1, 1980, shall be given compensatory time off for a

total of eleven (11) holidays for each calendar year, provided, however, that such employee when picking his/her vacation for the following year may elect to take all or part of said eleven (11) days in cash. Payment for those days the employee elects to take in cash shall be made on the pay date closest to May 15th. In addition, each employee shall receive a lump sum cash payment equal to eleven (11) days pay in lieu of holidays, said payment to be made on the payday closest to December 1st of each year.

(b) Employees hired on or after January 1, 1980, shall receive a lump sum cash payment equal to thirteen (13) days pay in lieu of holidays, said payment to be made on the payday closest to December 1st of each year. Each employee may elect to take up to four (4) days off in lieu of four (4) days holiday pay, which days shall be added to the employee's vacation allotment for that year. Such election shall be made at the time the employee makes his vacation selection. Such employees shall be paid at the time and one-half for all time worked on New Year's Day, Easter Day, Thanksgiving Day and Christmas Day.

(c) Each employee, who is a veteran, shall be entitled to two (2) holidays in addition to those allotted in subsections (a) and (b) above.

The Town proposes that subsections (a) and (c) be deleted and that subsection (b) be replaced with the following:

All officers shall receive a lump sum cash payment equal to thirteen (13) days' pay in lieu of holidays. Said payment shall be made on the first payday in December.

A radical change such as this requires considerable justification. The record as it now stands does not contain sufficient information to substantiate the need for this change.

(3) Employee Drug Testing. The Town suggested that this issue be discussed by the parties. The Panel agrees that this is

an important matter for the Town and PBA to consider, but believes that because of the complexity of the issue, it is best left to a different forum -- where procedures and policies can be developed in full.

(4) A number of the PBA's proposals would have a considerable impact on the cost of this Agreement. They include:

- (a) Personal Days: an increase to five days a year;
- (b) Shift Differential: a 5 percent differential in pay for working the 4 to 12 shift and 10 percent for working the 12 to 8 shift;
- (c) Sergeant's Differential: Sergeants to receive 6 percent above Detectives;
- (d) Longevity Pay: to start after completion of five years; the first increment to be \$250; all present steps to be increased by \$200; additional steps of 22 years paid at \$1,975 and 25 years to be paid at \$2,175 will be included;
- (e) Retirement Option: at 18 years, each member to have the option of selling back sick days, holidays, or veterans days to a maximum of 26 days, which will become part of his base pay for retirement purposes.

In each instance, this Panel has concluded that any reasonable increase for 1991 and 1992 was best applied to the salaries of all unit members, rather than disbursed throughout a variety of benefits that would affect some and not others.

(5) The Town's remaining demands are varied:

- (a) Compensatory Time: Change maximum accumulation of 64 hours to 7 hours;

- (b) Uniform Cleaning: Delete the present language in Section 2 of Article IV and replace it with an annual flat dollar amount;
- (c) Court Appearances: Reduce the minimum hours for court appearances to 3 hours;
- (d) College Credits: Add the following Statement to Section 4 of Article V:

In order to an officer to qualify for payment under this provision, he/she must first successfully complete a typewriting and/or word processing course, if he/she does not possess such basic skills.

- (e) Sick Leave: Amend the first sentence of Article VIII, Section 1, to provide:

All employees shall be entitled to sick leave to be accrued on the basis of one and one-quarter (1-1/4) days per month.

The majority of these proposals represent a diminution of current benefits. As previously noted, this Panel concludes that these issues are best left to the parties to negotiate in the future.

#### AWARD

##### Term of the Agreement:

January 1, 1991 - December 31, 1992

##### Salary:

January 1, 1991: 4 percent

July 1, 1991: 2 percent

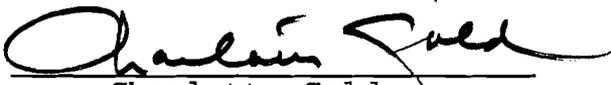
January 1, 1992: 4 percent

##### Welfare:

An increase of \$30 per man/per year (1991 and 1992)

Health Insurance:

The salary of unit members hired after the date of the signing of this award shall be reduced for each of the first three (3) years of their employment to pay a portion of the cost of their health insurance. The reduction in salary shall be equal to twenty-five (25%) percent of the annual cost of family health coverage; the calculation of the reduction during a particular calendar year shall be based upon the cost of health insurance on January 1 of that year. The Town will continue to pay 100% of the cost of health insurance for unit members. The collective bargaining agreement shall include language that reflects the reduction in salary for new hires was imposed by the Arbitration Panel in recognition of the Town's obligation to pay the full cost of health insurance for unit members.

  
Charlotte Gold

STATE OF FLORIDA     )  
                                  ) ss.:  
COUNTY OF PALM BEACH)

On the 12<sup>th</sup> day of March, 1992, before me personally came Charlotte Gold, to me known, and known to me to be the individual who executed the foregoing document, and she duly acknowledged to me that she executed the same.

  
Notary Public  
RODNEY E. DENNIS  
Notary Public, State of Florida.  
Term expires October 4, 1994.  
Bonded by Huckleberry and Associates.

John P. Henry  
John P. Henry

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF WESTCHESTER)

On the 3<sup>rd</sup> day of March, 1992, before me personally came John P. Henry, to me known, and known to me to be the individual who executed the foregoing document, and he duly acknowledged to me that he executed the same.

Robert J. Carneiro  
Notary Public

**ROBERT J. CARNEIRO**  
Notary Public, State of New York  
No. 01-4917524  
Qualified in Westchester County  
Commission Expires February 8, 1994

Ernest R. Stolzer  
Ernest R. Stolzer

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NASSAU     )

On the 2nd day of March, 1992, before me personally came Ernest R. Stolzer, to me known, and known to me to be the individual who executed the foregoing document, and he duly acknowledged to me that he executed the same.

Maureen MacFarland  
Notary Public

**MAUREEN MACFARLAND**  
Notary Public, State of New York  
No. 4874655  
Qualified in Nassau County  
Term Expires October 27, 1992