

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD
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JUN 11 1993

CONCILIATION

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In the Matter of the Interest Arbitration

-Between- :

TOWN OF MOUNT PLEASANT, :

"Town" :

PERB Case No.
M92-012;
IA 92-005

-and- :

TOWN OF MOUNT PLEASANT POLICE WELFARE
AND BENEFIT ORGANIZATION, :

"PBA" :

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APPEARANCES

For the Town

Nancy Soper, Esq., Labor Attorney
Robert Meehan, Town Supervisor
Anne Marie Berg, Controller
Richard O'Donnell, Assessor

For the Union

Alice Wenz, Legal Assistant
Marc Gelber, PBA President
Douglas O'dell, PBA Vice-President

BEFORE: Howard C. Edelman, Esq., Chairman,
Interest Arbitration Panel
Ernest Stolzer, Esq., Town Panel Member
Raymond Kruse, Esq., PBA Panel Member

BACKGROUND

The Town of Mount Pleasant ("Town") and the Police Welfare and Benevolent Organization ("PBA") are signatories to an Agreement which expired on December 31, 1992. That Agreement covered approximately thirty Patrolmen, six Sergeants, three Detectives and one Detective Sergeant.

Negotiations for a successor contract were unsuccessful, as were mediation efforts. Consequently, pursuant to the rules and regulations of the Public Employment Relations Board (PERB), the undersigned Panel was constituted to resolve the dispute.

Hearings were held before us on October 26, 1992 and January 7, 1993. At the first hearing, the parties waived the requirement for a stenographic record. In addition, the Panel met in executive session on February 3, 1993 and March 11, 1993. This Opinion and Award follows.

POSITIONS OF THE PARTIES¹

A.

The PBA seeks salary and longevity increases as follows:

¹. In the interest of expediting these findings, parties' positions are summarized.

The base salaries for the calendar year 1992 shall be as follows:

1st Grade	\$47,413
2nd Grade	43,697
3rd Grade	39,981
4th Grade	36,264
5th Grade	32,547
Sergeant	15% above 1st Grade
Detective	10% above 1st Grade

Starting with the anniversary of the employee's fifth year of service, a longevity factor shall be added to the base salary as follows:

Anniversary	Longevity Factor (Non-Cumulative)
5	\$ 800.00
10	1,000.00
15	1,200.00
20	1,400.00
25	1,600.00
30	1,800.00

The PBA maintains that these rates are justified because wages here are below those of comparable communities elsewhere. For example, it alleges, as of December 31, 1991, a top grade Patrolman earned \$43,709. Even if only Towns are considered, the PBA asserts that members of the bargaining unit earn \$550 less than Patrolmen in the other Westchester Towns (PBA Exhibit 8).

In addition, the PBA insists that settlements have averaged 5.86% and 6.14% for 1992 and 1993, respectively (PBA Exhibit 9). Therefore, it asserts, increases far in excess of 6% are needed if it is to reach the median of relevant communities.

As to longevity, the PBA contends that its members earn far less in this category than their counterparts elsewhere (PBA Exhibit 1). Therefore, it asks that its proposal be adopted.

Regarding overtime, the PBA seeks a minimum of three hours pay when held over. For employees required to work on a day off, the minimum should be four hours, according to the PBA.

The PBA also asks for a five per cent differential for those individuals required to work between 6:00 p.m. (1800 hours) and 6:00 a.m. (0600 hours).

The PBA contends that many members are required to perform the duties of a higher paid classification, without additional compensation. Thus, it asks that an out-of-title clause be incorporated into the Agreement.

The PBA also asks for six additional tours off for those working a two tour rotation or those working a steady forty hour per week schedule. Additionally, it asks for the right to swap an unlimited number of tours, instead of the current twelve.

As to training days, the PBA asks that the current allotment of two per year be eliminated.

With respect to sick leave, the PBA makes the following proposals:

ARTICLE VI

SICK LEAVE

SECTION 1. Employees shall be entitled to unlimited sick leave. Currently accumulated sick leave will remain credited to each employee for the purpose of conversion of unused sick leave bank.

SECTION 2. The Employer shall continue to provide Workers' Compensation Insurance.

SECTION 3. An employee may use up to ten (10) sick days per year for illness in the family, upon approval of the Department Head, which approval will not be unreasonably withheld.

SECTION 4. This shall be the current SECTION 1 N.

SECTION 5. Maternity leave shall be in accordance with federal and New York State requirements, provided, however, that a leave of absence, without pay, shall be granted to a maximum of two (2) years or for the length of time granted under New York State or federal law, whichever is greater. While on maternity leave, the employee may continue to use any and all leave she has theretofore accumulated.

Also, on this issue, the PBA insists that the number of bonus days should be increased based upon an employee's attendance. This proposal will foster better attendance and productivity, in its

view. Thus, it asks that the following schedule be adopted.

Sick Leave Used	Bonus Days
1	5
2	4
3	3
4	2
5	1

In addition, the PBA asks for the right to use personal days instead of vacation days in lieu of bonus days' cash payments.

Concerning vacations, the PBA notes that employees can currently take vacation in two segments (three, if they are entitled to 28 vacation days.) In its view, this provision is overly restrictive. Therefore, it asks for the right to split vacation days in any number of segments, subject to the approval of the Department Head.

As to personal leave, the PBA asks that the current allotment be increased from four to six days and that employees be permitted to convert unused days into cash. With respect to bereavement leaves, the PBA seeks two more days for an expanded definition of the "immediate family" so as to include in-laws or any other relative living in the home.

Regarding holidays, the PBA contends that the current allotment is inadequate. Consequently, it seeks two additional "super holidays," as well as the right to a compensatory day in lieu of a day off, for holidays listed in Article X.

Concerning clothing allowance, the PBA insists that the current \$400 allotment is far below the County average (PBA Exhibit 19). Thus, it asks that this sum be raised to \$700, payable on or about April 1 of each year.

Regarding medical benefits, the PBA asks that the current \$500 payment to its Welfare Fund be increased to \$600.

The PBA also seeks a commitment by the Town that it will pay the tuition costs of courses toward a Police Science degree, including a doctorate, up to \$1,500 per year.

Finally, the PBA contends that it needs additional time off for its President or his/her designee to attend to its business. Consequently, it asks that the current five day maximum be eliminated.

In sum, the PBA maintains that given the relative rankings of its current wage and benefit allotments, and settlements in other, comparable communities, the increases it seeks are justified. Also, it insists, the Town can well afford these improvements. Consequently, it asks that its demands be awarded.

B. Town

The Town insists that it cannot afford the wage increases sought by the PBA. This is so, it stresses, because it faces a declining tax base and increasing costs, exclusive of any raises won by the PBA in this proceeding.

Specifically, the Town alleges, retirement contributions, Workers' Compensation and Health Insurance premiums have risen dramatically from 1991, i.e. from \$1,360,000 to \$1,857,000 in 1993. Most of this rise is attributable to the Police budget, the Town insists (Town Exhibit 5).

Moreover, the Town urges, it is faced with a deluge of tax certiorari proceedings. Based upon current projections, the Town estimates that its tax base will decline approximately 8.6% over its 1992 assessed valuation, since there are five major lawsuits pending before it (Town Exhibit 2).

Given these factors, the Town asserts that regardless of settlements elsewhere, it cannot afford the improvements which the PBA seeks. Instead, the Town argues, it needs substantial cost savings from this bargaining unit. Consequently, it asks for the economic givebacks, as follows:

1. Page 3, Article 1, Section 4.A, Overtime - Delete present provision
2. Page 4, Article IV, New Provision, Workday and Workweek:

In addition to the workdays described in this Article, all officers shall be assigned an additional six (6) days of work per year at the discretion of the Chief.

3. Page 13, Article VIII, Section 4, Vacations - Delete Section 4 and replace with the following:

SECTION 4. Employees shall be eligible for vacations based on length of service as follows:

- a. during the first year of employment, but not during the first 30 days - six (6) working days;
- b. during the second through fifth years - eleven (11) working days;
- c. during the sixth through fifteenth years - eighteen (18) working days;
- d. during the sixteenth year and each year thereafter - twenty-five (25) working days.

4. Page 14, Article IX, Section 1, Personal Leave - Amend Section 1 to provide as follows:

Three (3) paid personal leave days may be granted upon written request stating the specific reason for such request, which written request shall be submitted to the Chief no more than 15 days prior to the day requested, except in an emergency and a determination on the request shall be made in writing within five (5) days of the request. Personal leave is only available for personal matters which cannot be accomplished other than during the officer's assigned workday. The request shall, consistent with the needs of the Department, not be unreasonably denied.

5. Page 15, Article X, Section 2, Holidays - Delete Section 2.

6. Page 16, Article XIII, Section 2.A.1, Hospitalization and Medical Benefits - Amend Section 2.A.1 to provide as follows:

Effective January 1, 1992, all unit employees shall contribute twenty-five (25%) of the annual premium for the Health Insurance Program provided by the Town.

7. Page 16, Article XIII, Section 2.A.2, Hospitalization and Medical Benefits - Add the following language to Section 2.A.2:

" . . . , or other health plans providing benefits comparable to the New York State Empire Plan, at the time of such change.

As to non-economic issues, the Town asks that Article XVI - Grievances be amended to provide for a ten day time limit for the filing of any claim.

Also, the Town contends that a number of provisions constitute non-mandatory subjects of bargaining. Consequently, it asks that Article XVII - Discrimination, Article XXI, Section 5 - Previous Practice; and Article XXI, Section 8 - Job Description, be deleted on this basis.

In sum, the Town contends that current harsh economic realities justify wage improvements far less than those sought by the PBA or those awarded elsewhere. These same realities render

its demands reasonable, according to the Town. Therefore, it asks that the Panel grant them as proposed.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. This Panel is constituted pursuant to Section 209.4 of the Civil Service Law. As such, we are required to consider the statutory criteria contained therein in making our determination. These criteria are:

209.4 (v)

- a. comparison of the wages, hours and conditions 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.

With these principles in mind, we turn to the facts of this case.

The parties concur that the successor Agreement should run from January 1, 1992 through December 31, 1993. Unfortunately, the statute prohibits the Panel from imposing a longer contract, since the parties will enter into negotiations not long after this Award is issued. Nonetheless, given the legal constraints upon our findings, a two year Agreement is imposed.

Obviously, the most important issue is wages. A key element in setting wages for 1992 and 1993 is the comparability factor; i.e., settlements in other similarly situated communities [Section 209.4(v)(a) of the Civil Service Law]. For 1992 the record is virtually complete. As PBA Exhibit 9 indicates, the 1992 average is 5.86% for all Westchester County communities. If only Towns are considered, the average is 5.69%. Since the preparation of that exhibit other settlements have been reached, as follows:

Buchanan	- 5.5%
Dobbs Ferry	- 4.5%
Bedford	- 5.25%
North Tarrytown	- 5.9%

These settlements do not seriously alter the figures set forth in PBA - Exhibit 9.

Also of significance are Police Officers' current (i.e. 1991) wages when compared with other communities. Strict dollar comparisons are not totally accurate since Villages operate on a June 1 - May 31 fiscal year and Towns operate on a calendar year. Nonetheless, comparisons of this type afford a reasonable basis to determine if Mount Pleasant salaries rank well or poorly when matched with other Westchester County municipalities.

PBA Exhibit 9 reflects a Countywide average of \$43,709 for top grade Police Officers. For Towns only, the average is \$43,885. In Mount Pleasant, the corresponding figure is \$42,333. Clearly, some inequity exists between wages in this community and others similarly situated.

Balanced against these data is the community's ability to pay [Section 209.4(v)(b) of the Civil Service Law]. Obviously, a poorer community cannot be expected to pay its employees as well as a richer one. As such, disparities among Police Officers' wages are to be expected.

The evidence in Mount Pleasant does not indicate that the Town is financially strapped to the point where it cannot afford reasonable increases. Town Exhibit 7 reveals that taxes rose 1.9% in 1992, certainly a modest increase.

In addition, Mount Pleasant is not overburdened with debt. The average debt to debt limit ratio for all Towns in Westchester is 9.6%. In Mount Pleasant, it is 5.6% (PBA Exhibit 7). Mount Pleasant has a demonstrably lower debt structure than other comparable communities.

This is not to say that Mount Pleasant is without fiscal problems. Far from it. Town Exhibits 2-4 reveal that its tax base is in danger of substantial erosion. Numerous re-assessment petitions have been filed against the Town. Some, if successful, will dramatically reduce its ratables.

In addition, State revenues are declining. Mortgage tax receipts have declined substantially, from \$916,567 in 1990 to \$470,000. Supplemental State Aid has been eliminated (Town Exhibit 7). Also, costs for retirement contributions have risen a great deal in recent years (Town Exhibit 5).

These economic data reveal that the Town's ability to pay is not unlimited. They demonstrate that though not impoverished, the Town faces real budgetary problems.

Under these circumstances, the Panel must award wage increases which properly balance the PBA's right to fair wage improvements against the Town's genuine fiscal constraints. For 1992, such a balance results in a 3% increase effective January 1, 1992, and an additional 3% increase effective July 1, 1992.

Such increases are consistent with wage raises accorded elsewhere. When construed as a six per cent rise, they exceed the County average for Towns by approximately .3%. As such, they will improve the ranking of Mount Pleasant Police Officers.

On the other hand, the split raises reduces the economic impact upon the Town. For 1992, the basic wage package will cost 4.5%, a figure which will not unduly burden the Town's budget, the Panel is convinced.

For 1993, the wage issue is more complex. Only about 25% of Westchester County communities have settled. Four of these settlements were made in 1992 or earlier, when settlements were higher than those currently being negotiated. More recent agreements reached are as follows:

Ardsley	- 5.5%
Buchanan	- 6.0%
Dobbs Ferry	- 5.25%
New Castle	- 5.0%
North Tarrytown	- 5.9%
Croton-on-Hudson	- 3.0%

The most recent of the above settlements is Croton-on-Hudson.

Any 1993 wage improvement imposed by the Panel contains an element of prognostication. While the Croton-on-Hudson settlement does not necessarily demonstrate that future contracts will average 3% or less, it does reflect the continuing trend toward lower settlements. Consequently, the Panel concludes, an increase of

4.25% is justified for 1993. In our judgment, it will not impair Mount Pleasant's ranking when all settlements are concluded for 1993. On the other hand, it reflects current patterns toward lower wage improvements. Also, we note, it is in line with the recently bargained Mount Pleasant - CSEA Contract, which provided for a 4.0% raise for 1992. Consequently, and for the foregoing reasons, the Panel awards the following basic wage increases:

- a. Effective January 1, 1992 - 3%
- b. Effective July 1, 1992 - 3%
- c. Effective January 1, 1993 - 4.25%

We turn to the issue of longevity, another form of wages. The Panel is convinced that longevity payments deserve to be increased. Currently, a Police Officer receives \$150 after ten years of service. This figure increases by \$100 in five year intervals up to a maximum of \$550 after 30 years. By contrast, longevity in the Towns of Bedford, Eastchester, Greenburgh, Harrison, Mamaroneck, New Castle, Ossining and Yorktown is far higher than in Mount Pleasant (PBA Exhibit 11). Also, longevity has not been increased since 1984.

Given these data, the Panel finds that longevity should be raised as follows:

Effective January 1, 1993, each longevity step shall be increased by \$250.

Such improvements will add approximately .25% to the wage package. As such, it is not unduly burdensome to the Town. However, it will put Mount Pleasant's longevity schedule more in line with those elsewhere. Thus, we award it as indicated.

Concerning Clothing Allowance, the Panel is convinced that some adjustment is justified. An increase to \$425 effective January 1, 1992 and \$450 effective January 1, 1993 is reasonable and we direct that it be implemented.

We note the PBA's request for a substantial increase in the rank differential for Sergeants. This current figure is 11.5%. It is far below the County average of 13.9%. (PBA Exhibit 12). Thus, the Panel finds, a modest increase is warranted, as follows:

Effective January 1, 1992 - 12%
Effective January 1, 1993 - 12.5%

The issue of Health Insurance is of major concern to the parties. Escalating premiums constitute a mounting burden upon municipalities' budgets. Clearly, employers have a right to expect some relief in this area. Conversely, employees are reluctant to give up a hard earned benefit. Basic health insurance is a legitimate expectation that workers have.

This dilemma can best be resolved by requiring all Police Officers hired on or after July 1, 1993 to pay 25% of their health insurance premiums for the first three years of their employment.

Such a provision will save the Town, at current levels, approximately \$1,300 per employee - if the family plan is selected - for a total of \$3,900. Thus, it will produce reasonable economies. However, new employees can look forward to fully paid insurance within a reasonable time after being hired.

Also, the Panel notes, similar provisions have been incorporated into the Croton-on-Hudson and Yorktown Agreements. As such, this clause is not unique. Accordingly, it is awarded as indicated.

The PBA sought the right to swap tours and to split vacation days more frequently than currently exists. The Panel finds merit in these proposals, provided they do not hamper efficient scheduling of tours. Consequently, we shall direct that subject to the convenience of the schedule, bargaining unit members shall be allowed to swap an unlimited number of tours and to split vacations into three segments.

Both parties made numerous proposals concerning sick leave, personal leave and bereavement leave. The Panel does not find compelling evidence to grant any of these demands. They are all rejected.

Similarly, we note the parties' proposals relating to tour increase/reduction. The current number of tours is reasonably close to the County average. Nor does the evidence demonstrate a compelling need to alter the current number of training days. Therefore, these proposals are rejected as well.

Also, demands to increase overtime pay and holidays (PBA's) or to decrease same (Town's) are not supported by the record. They, too, must be rejected.

The Panel does not find sufficient evidence to incorporate an out-of-title clause into the Agreement. This proposal of the PBA is not awarded.

Nor has the PBA convinced us that additional time off is necessary for the PBA President. This demand, too, cannot be granted.

In addition, in better times payment for courses taken toward a Police Science degree might be desirable. However, in an era of fiscal restraint, the Panel cannot award this proposal of the PBA.

Nor is the Panel persuaded that a ten day time limit for the filing of grievances is necessary, as requested by the Town. Also, its claim that certain provisions of the expired Agreement should be deleted because they are non-mandatory does not afford a basis for their elimination. Thus, these proposals are also rejected.

In sum, the changes directed above reflect a proper balance between the legitimate interests of members of the bargaining unit and the equally valid needs of the Town. Consequently, they are awarded as indicated herein.

A W A R D

1. The successor Agreement shall commence retroactive from January 1, 1992 to December 31, 1993.

2. Wages shall be increased as follows:

Effective January 1, 1992 - 3%
Effective July 1, 1992 - 3%
Effective January 1, 1993 - 4.25%

3. Longevity shall be increased as follows:

Effective January 1, 1993, each longevity step shall be raised \$250.

4. Clothing Allowance shall be increased to the following rates:

Effective January 1, 1992 - \$425
Effective January 1, 1993 - \$450

5. Sergeants' differential shall be increased to the following rates:

Effective January 1, 1992 - 12%
Effective January 1, 1993 - 12.5%

6. Health Insurance: All bargaining unit members hired after June 30, 1993, shall be required to pay 25% of health insurance premiums for the first three years of their employment.

7. Effective July 1, 1993, subject to the convenience of schedules, employees shall have the right to swap an unlimited number of tours and to split vacations in three segments.

8. All other proposals of the parties, whether or not specifically addressed herein, are rejected.

DATED *May 18, 1993*

Howard C. Edelman
HOWARD C. EDELMAN, ESQ., CHAIRMAN,
INTEREST ARBITRATION PANEL

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

Sworn to before me this *18th* day of *May*, 1993.

J. Patricia D. Pezdine
Notary Public

FATRICIA D. PEZDINE
Notary Public, State of New York
No. 4921671
Qualified in Nassau County
Commission Expires Feb. 22, 1994

Concur X
Dissent _____

ERNEST STOLZER
ERNEST STOLZER, ESQ.,
TOWN PANEL MEMBER

6/3/93
date

STATE OF Nassau)
) ss.:
COUNTY OF Nassau)

Sworn to before me this 3rd day of June, 1993

Maureen MacFarland
Notary Public

MAUREEN MACFARLAND
Notary Public, State of New York
No. 4874655
Qualified in Nassau County
Term Expires October 27, 1994

