STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of Dispute in the Negotiations Between TOWN OF CARMEL and TOWN OF CARMEL POLICE BENEVOLENT ASSOCIATION, INC. Case No. IA92-023; M92-126	INTEREST ARBITRATION AWARD

BEFORE:

Martin Ellenberg, Esq.
Public Panel Member &
Chairperson

Thomas J. Costello, Esq.
Public Employer Panel Member

Raymond G. Kruse, Esq.
Employee Organization Panel Member

APPEARANCES:

For the Town:

Anderson, Banks, Curran & Donoghue
by John M. Donoghue, Esq.

Thomas M. Carey
Comptroller

James McDonough
Councilman

For the Association:

John P. Henry
Consultant

Alice P. Wenz
Legal Assistant

Edward J. Fennel Associates
by Edward J. Fennel

Michael Johnson
President

For the Association: Members-
(Continued) Walter Galbraith
William Hayes
Paul O'Connor

Having determined that a dispute continued to exist in the negotiations between the Town of Carmel and the Town of Carmel Police Benevolent Association, Inc., and that such dispute was within the provisions of Civil Service Law Section 209.4, the New York State Public Employment Relations Board, under the authority vested in it by Section 209.4, designated this Panel of Arbitrators for the purpose of rendering a just and reasonable determination of this dispute.

By mutual agreement of the Parties, a hearing was held on February 26, 1993, in Mahopac, New York. Each Party, by its representatives, had full opportunity to present its position through witnesses, testimony, evidence, exhibits and argument and briefs, made in the presence of, and subject to cross-examination and rebuttal by, the opposing Party.

Both Parties waived their right to a copy of a transcript of the hearing.

Thereafter, the Panel met in executive session on April 12, 1993 for discussion and resolution of the Issues before it.

The Association submitted more then forty exhibits in support of its proposed revisions to the expired collective bargaining agreement in the areas of Salary (Police Officers, Detectives, Sergeants, shift differential and overtime/Detectives), Work Week, Holidays, Personal Leave Days, Death Leave, Vacation, Town contribution to PBA Welfare Fund, EMT stipend and tuition/books refund.

The Town submitted 29 exhibits and offered proposals concerning Salary, Scheduling, Personal Leave, Death Leave, Vacation, Sick Leave, Welfare Benefits/Health Insurance, Military Leave, Uniform Replacement and Contract Duration.

Recognizing that the Panel of Arbitrators may render an award for a Term of Agreement which is no more than two years in duration, and which will expire in approximately three months, this Award responds only to those issues which were found, by the Panel, to require revision prior to the commencement of negotiations between the Parties, for a successor Agreement.

TERM OF AGREEMENT:

The prior Agreement expired December 31, ~~XXXX~~ 1991. Being limited, by Law, to issuing an award limited to two years in duration, it is reasonable to provide for a Term of Agreement which permits the Parties to commence negotiations for a successor

Agreement, not retroactive as to effective date.

AWARD: This Agreement shall be effective January 1, 1992 through December 31, 1993.

SALARIES:

The Association's proposals called for 9% in each year of a two year Agreement.

The Town asked for a three year Agreement and offered increases of 0%, 3% and 3%.

Although the Town submitted exhibits and argued that it lacks the ability to increase Police salaries for 1992, a review of the financial exhibits submitted by both the Town and the Association supports a finding that the Town of Carmel does have the financial resources to enable it to provide, to its Police employees, salary increases which are not disadvantageous in comparison to other Departments in the area and which recognize increases in the Consumer Price Index during the term of the prior Agreement.

The Town stressed its concerns regarding the state of the economy, the possible effect on its economic status as a result of an expected IBM retrenchment and the number of pending tax certiorari claims.

Nevertheless, the Panel found that significant weight must be accorded to the improving condition of the Town's General Fund Balance, as the indication of its ability to pay. While the Fund Balance fell from $1,369,773, as of the end of 1987, to $102,128, as of the end of 1989, it improved to $445,938 in 1990 and to $526,000 in 1991. This figure was acknowledged, by the Town, to be within an acceptable range. This was further demonstrated, in May 1991, when the Town's Bond rating was improved from A to A-1.

AWARD: Retroactive to January 1, 1992, the Starting Salary for Police Officer shall remain unchanged ($29,142/ $29,557). The Salary Schedules, except for Starting Salary, shall be increased by 4.5%.

Retroactive to January 1, 1993, the Salary Schedules shall be increased by 4.0%.

Effective ~~October 1, 1993~~ January 1, 1993, the "Three Tour Differential" Salary Schedule shall be eliminated and replaced by Shift Differentials. Employees shall receive an additional payment of fifty cents ($.50) for each hour worked on the 1600 - 2400 Shift and $1.00 for each hour worked in the 2400 - 0800 Shift.

In the event that an Employee is entitled to overtime pay, the premium overtime rate shall be applicable, as well, to the shift differential appropriate for the Employee's straight time shift assignment.

Effective January 1, 1993, the overtime rate for Detectives and Detective Sergeants shall be computed in the same manner as is applicable to the Uniformed Force, as provided by Article IV, Section 3 of the expired Agreement.

DEATH LEAVE:

The Association seeks to add to those relatives whose death would entitle an Employee to five (5) workdays paid leave: sister, brother and grandparents. It proposes to add to those relatives whose death would entitle an Employee to two (2) workdays paid leave: Employee's or spouse's aunts, uncles, nieces and nephews.

The Town seeks to reduce the five (5) day provisions to three (3) days, arguing that the current allowances is "one of the most generous death leave provisions in the region, while the Town's proposal seeks to achieve comparability."

While agreeing, that based on the undisputed exhibits for Putnam, Westchester and Dutchess County Police Departments, that the present schedule is among the more generous, with regard to a five (5) allowance, it also appears that the present two (2) day allowance in the event of death of Employee's brother or sister is the lowest.

AWARD: Effective October 1, 1993, the Death Leave allowance shall be three (3) work days with pay in the event of the death of:

Employee's brother,
Employee's sister,
Any family member who had been regularly residing in the Employee's household, at the time of death.

WELFARE:

The Town presently contributes $600 per year to the PBA Welfare

Fund for each covered employee. The Association asks that that contribution be adjusted to represent 2% of the annual base salary for the "top grade" Police Officer.

Based upon the increased salaries, awarded above, the Town's contribution, for 1993, would, accordingly, increase to $905. There was no data submitted which would support an increase of such dimension. A percentage increase comparable to that which was applied to salaries, for one year, would be more reasonable, in view of the improvements to the Agreement and the resulting costs to the Town.

AWARD: The Town's contribution to the PBA Welfare Fund shall be increased, retroactive to January 1, 1993, to $625.00 per year, per employee.

TUITION/BOOKS:

AWARD: In recognition of the increased costs for college courses, for which prior approval by the Town Board is required (as provided in Article XVII, Section 3 of the expired Agreement), effective as of the Fall 1993 semester, Employees who complete such police related courses with a passing grade shall be reimbursed for 50% of the cost of tuition, required school fees and books.

* * *

The expired Agreement, as revised above, or as revised by mutual agreement by the Parties, shall continue in effect through December 31, 1993.

All Demands and Proposals of the Parties, which are not awarded above or which were not settled, mutually, by the Parties shall be deemed to have been denied.

Adrianne B. Margolis
ADRIANNE B. MARGOLIS
NOTARY PUBLIC N.Y.S.
#2528545
QUALIFIED IN WEST. CNTY.
COMMISSION EXPIRES ~~3/30/~~ 4/30/95

Respectfully submitted,

September 17, 1993

Martin Ellenberg, Esq.
Public Panel Member and
Chairperson

SEE ATTACHED DISSENTING OPINION

~~Concurring~~/Dissenting
Thomas J. Costello, Esq.
Public Employer Panel Member

Alice T. Wenz
ALICE T. WENZ
Notary Public, State of New York
4647162
Certified in Rockland County
Commission Expires Feb. 28, 1994

Concurring/~~Dissenting~~
Raymond G. Kruse, Esq.
Public Employee Organization
Panel Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

----------X

In the Matter of Dispute in the Negotiations

Between

TOWN OF CARMEL

and

TOWN OF CARMEL POLICE
BENEVOLENT ASSOCIATION, INC.

Case No. IA92-023; M92-126

----------X

DISSENT TO

INTEREST

ARBITRATION

AWARD

I dissent from the Award made by the Panel in this matter because I believe the award (a) is excessive when compared to the salaries and benefits received by comparable departments for the same years and in view of the overall compensation paid to department members and as compared to changes in the average consumer prices for goods and services, commonly known as the cost of living; (b) does not adequately address the ability to pay of the Town of Carmel for fiscal years 1992 and 1993 as well as the continued provision of services to the public; and (c) is not in the interest and welfare of the public.

The Panel on Page 4 of the Arbitration Award makes a finding "that the Town of Carmel does have the financial resources to enable it to provide, to its Police employees, salary increases which are not disadvantageous in comparison to other Departments in the area and which recognize increases in the Consumer Price Index during the term of the prior Agreement." The salary increases recommended by the Panel of 4 1/2% for 1992 as well as 4% for the year 1993 plus a "night" differential commencing January 1, 1993 for the 1600 to 2400 hour shift and for the 2400 to 800 hour shift are not comparable to those received by other police departments and other employees, public and private, in the area. Furthermore, they are not related to "increases in the Consumer Price Index during the term of the prior Agreement".

The prior Agreement between the parties ran from 1990 through 1991. In each of those years, the PBA received a 6% salary increase. No evidence was offered by the PBA to indicate that the Consumer Price Index in 1990 and 1991 exceeded this 12% increase. Indeed, to this Panel member's knowledge, the Consumer Price Index in Putnam County increased approximately 7% during that period of time. Thus, the PBA was not behind in its salary levels as of January 1, 1992 as a result of increases in the Consumer Price Index during 1990 and 1991.

The 4.5% awarded by the Panel for fiscal year 1992 and the 4% for fiscal year 1993 do not reflect the fact that other departments and other units in the County as well as the CSEA unit in the Town of Carmel received a 0% increase for fiscal year 1992 and either a 3% or 4% increase for fiscal year 1993. The Town of Carmel is very limited in its ability to fund increases in its operating budget in an economy where both Federal and State Aid to local governments is constantly being cut; the Town's tax base is not expanding and the Town's current tax assessments are under siege due to a multitude of tax certiorari suits as a result of a steadily declining equalization rate. The foregoing combined with increases in the operating budget can only result in drastic tax increases or a reduction in the provision of services to the public.

The Town presented ample evidence of this in its brief and its supporting exhibits. The only reason for making this Award given by the Panel is the fact that the Town's General Fund balance had improved in 1990 and 1991. The reason for this is apparent when one examines the tax rates of the Town as contained in Exhibit 3 of the Town's brief. In 1990 the Town increased its tax rate over 1989 by 15.4% and in 1991 by an additional 9.7%. Consequently, it is not surprising that the Town's General Fund balance rose due to the nearly 24% increase in its tax rate in two years. The Town presented testimony through its Comptroller, Thomas Carey, that the Town had adopted a policy of maintaining a

minimum 5% fund balance in the General Fund in order to maintain its bond rating. Mr. Carey testified that the Town has been issuing and will continue to issue numerous bond issues due to mandated capital projects in the Town's Water and Sewer Districts as well as highway resurfacing and drainage projects. Thus, the Town's bond rating is of critical importance to it and to the taxpayer. As stated in the Award, the Town's bond rating was upgraded in May, 1991 as a result of the increase in its fund balance in 1990. Now the fact that the Town's General Fund balance is sufficient enough to maintain its bond rating is being utilized to justify the Town's ability to pay salary increases and provide other benefits which are excessive in comparison to the area. The end result of the foregoing will be to deplete the Fund Balance again resulting in double digit increases in taxes in the Town of Carmel in order to restore the General Fund balance and to pay for salary increases and other benefits for the PBA which are not comparable to those received by public and private employees in the area and which are not within the ability of the taxpayers of the Town to pay without substantial increases in taxes in a very tough economy or without a reduction in the provision of services.

The elimination of the three tour differential salary schedule as of January 1, 1993 and the implementation of a night differential of $.50 for each hour worked in the 1600 to 2400 hour shift and $1.00 for each hour worked in the 2400 to 0800 hour shift is clearly not comparable to any department in the area. The Exhibits presented by the PBA indicate there is one department in Westchester and Putnam Counties which receives a night differential.

The increase in death leave from two to three work days in the event of the death of an employee's brother and sister is of little significance economically. However, the addition to the list of family members, for which an employee is entitled to death leave, of "any family member who had been regularly

residing in the Employee's household, at the time of death" is a significant departure from the bereavement leave granted to other departments in the area.

The addition to the contract of a 50% Reimbursement of the cost of tuition, required school fees and books for college courses where there was no provision for such in the past is another significant departure which the Panel justifies by "increased costs for college courses" although no evidence of such was presented.

For the foregoing reasons, I respectfully dissent.

Thomas J. Costello, Esq.
Public Employer Panel Member

STATE OF NEW YORK
COUNTY OF PUTNAM

On this 12th day of October, 1993, before me personally came Thomas J. Costello, to me known to be the individual who executed this document and who acknowledged that he executed this document.

Notary Public

NAOMI KATZ
NOTARY PUBLIC, State of New York
Qualified in Putnam County
Commission Expires July 28, 1994