

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

AUG 19 1996

In the Matter of Compulsory Interest Arbitration)

Between

VILLAGE OF BRONXVILLE

And

BRONXVILLE POLICE TAYLOR ACT COMMITTEE
-----)

CONCILIATION

) AWARD OF
) INTEREST
) ARBITRATION
) PANEL
)
) IA-95-001
1194-249

Before the Public Arbitration Panel

Terence M. O'Neil, Esq. Employer Panel Member
Edward W. Guzdek Employee Organization Panel Member
I. Leonard Seiler, Esq. Public Panel Member and Chairman

APPEARANCES

For the Village:

Jessica Weinstein, Esq. Attorney
Craig R. Benson, Esq. Attorney
William Regan Administrator
Bob Fels Treasurer
Alexander W. DiVernieri Chief of Police

For the Union:

Christopher Harold, Esq. Attorney
Joseph Panzarini President
Robert Thorn 2nd Vice President
Edward Fennel Financial Consultant
Richard Bunyan Negotiator
Eugene Mitchell Negotiator
Richard Romagnoli Negotiator

On June 5, 1995, the New York Public Employment Relations Board having determined that a dispute continued to exist in negotiations between the Village of Bronxville (hereinafter referred to as the "Village") and the Bronxville Taylor Act Committee (hereinafter referred to as the "Union") designated the undersigned Public Arbitration Panel (hereinafter referred to as the "Panel") pursuant to Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of the matters in this dispute. The Panel then proceeded under the applicable statutes, rules and regulations to inquire into the causes and circumstances of this continued dispute and at the conclusion of its inquiry made the findings and Award which follows.

Upon notice duly given hearings were held on July 24, November 27, December 18, 1995 and February 29 and April 10, 1996 in the Village Hall. Both parties were present and represented by counsel throughout these proceedings as shown in the above List of Appearances. The Parties were afforded full and equal opportunity to be heard and present statements of fact, supporting witnesses and other evidence and arguments, both oral and written, in support of their respective positions regarding the issues in dispute. The Public Interest Arbitration Panel admitted into evidence forty-four (44) Union exhibits, seventy-three (73) Village exhibits and seven (7) Joint exhibits.

During the course of the hearings, the Union withdrew four issues.

At the conclusion of the hearings, the Panel met in Executive Sessions on April 26 and May 15, July 11, 1996, to review all data, testimony, evidence and arguments submitted on the issues at impasse. After the completion of extensive discussions and deliberations in these Executive Sessions and a conference call on August 6, 1996, the Panel Chairman submitted this Award to his fellow Panelists for their signatures. Both the Employer and Employee Representative had serious reservations about various aspects of this Award. However, given the protracted nature of this impasse and the number of issues involved and at the urging of the Chairman, they agreed to a unanimous Award on a "package basis"..

The Panel majority feels that the Award which follows is a "just and reasonable determination of the matters in dispute" and that it is based on the mandated statutory criteria which follow:

New York Civil Service Law, Section 209.4 (v)

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 interest 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.

The Chairman commends Messrs. O'Neil and Guzdek for the time and effort they devoted to the process and their sincere attempts

to resolve each of the issues submitted to the Panel in accordance with the above stated criteria.

IN GENERAL:

1. The dispute involves the continued impasse between the Village and the Union over the terms and conditions of a new contract to be effective as of June 1, 1994, the last three year contract of the parties having expired on May 31, 1994.

2. The Union represents 22 members: 14 patrolmen, 5 sergeants, 1 detective, 1 detective sergeant and 1 lieutenant

3. Prior to the request for the appointment of this Arbitration Panel the parties engaged in eight (8) negotiating sessions and one (1) mediation session with a PERB appointed mediator.

4. The parties at the start of the Arbitration Hearing, in writing, waived their right to a full and complete record of the Public Arbitration Panel Hearing as set forth in Section 209.4 (iii) of the New York State Civil Service Law.

5. The Parties agreed that the demands that are the subject of an Improper Practice Charge filed on April 24, 1995, with P.E.R.B. would not be submitted to the Panel for resolution.

6. This is the Parties' first interest arbitration, all prior agreements having been reached by settlement of the issues by the Parties in negotiations.

7. The "positions" of the Parties and the Panel's "discussion" are only summaries and are not intended to be all inclusive.

8. The following reduced number of issues were submitted at the arbitration hearings for Determination and Award by the Panel:

Issues:

A. Union

1. Two year agreement (Article XXXIII)
2. Wages (Article IV (1))
3. Starting pay (Article IV (1))
4. Longevity (Article IV (2))
5. Night differential (Article IV (6))
6. Standby time (new Article)
7. Holiday pay (Article VI (1))
8. Vacation restriction period (Article VII (10))
9. Detective clothing allowance (Article X (2))
10. Uniform maintenance (Article X (3))
11. Steady tours (Article X (1))
12. Pay computation (Article XI (2))
13. Dental plan (Article XIV (1))
14. Optical plan (Article XIV (2))

15. Awarding attendance bonus (Article XVI (3))
16. PBA President paid time off (Article II (4))
17. Additional detective position not created or filled
18. Additional sergeant position not created or filled
19. Additional lieutenant position not created or filled
20. Department manpower drops below 23
21. Provisional appointments
22. Retirement (Article XV (1))
23. Cafeteria plan IRC Sec. 125
24. Deferred compensation IRC Sec. 457
25. Amendment to Article XX
26. Retiree health coverage
27. Deletion to Article III

B. Village (with several subdivisions):

1. Management rights (Article III)
2. Salaries (Article IV)
3. Credit for service (page 4, sec 3 last paragraph)
4. Desk duty (page 4, sec. 5)
5. Overtime (page 4, Article V, sec. 1)
6. Holidays (page 6, Article VI, sec. 1)
7. Vacations (page 6, Article VII)
8. Personal leave (page 8, Article VIII)
9. Uniforms (page 10, Article X, sec 1)
10. Tours (page 10, Article
11. Health insurance (page 11, Article XII, sec. 1)
12. Dental (page 12, Article XIV, sec. 1)
13. Optical (page 12, Article XIV, sec. 2)
14. Educational allowance (page 14, Article XVII)
15. Accrual of service while on S 207c (page 16, Article XXII, sec. 1)
16. Credit for prior continuous service (page 16, Article XXII, sec. 2)
17. Outside employment limitations
18. Limitation on tour switches
19. Release time for negotiations (Article II, sec.4)
20. ADA Clause addition
21. Health insurance
22. Grievance procedure (page 2, Article XIX, sec. 1)

BACKGROUND

The Village of Bronxville in Westchester County maintains a fully paid Police Department. It has a population of 6,028 and a land area of approximately 1.0 square miles (Union ex.A4). The Village is the 5th smallest village in Westchester County (Union ex.A8).

The Union exhibits consisted of comparisons with other city, town and village police departments within a twenty-five mile

radius of the Village of Bronxville. The Village confined its exhibits to Westchester communities, particularly Villages.

The Village has sought to moderate what it considers to be extravagant fringe and wage increases in the expired contract (Village ex. 16) which it claimed jumped Bronxville from 14th to 12th to 1st in the County in just one contract. Whereas the Union, stubbornly clung to those gains and sought still greater improvements. Thus, the Parties resolved very few issues and the Panel has been submitted some 92 impasse issues for resolution.

COMPARABLE COMMUNITIES

The Parties were in disagreement as to what should be considered comparable communities. The Union submitted comparability data for all municipalities within a twenty-five (25) mile radius (as the crow flies) of the Village of Bronxville, while the Village exhibits were devoted to only villages in Westchester County and the Town of Eastchester of which the Village of Bronxville is a part.

The Village maintained that comparisons should only be made with Westchester Villages but it was willing to include some towns since they were submitted in evidence. It noted that patrol officers in Westchester County are hired off one county-wide exam list and perform similar duties. Furthermore, it contended that it is the practice to treat police departments in the same county for comparison purposes.

The statutory criteria of "comparable communities" in the statute has been interpreted by Arbitration Panels to mean those similar communities in close geographic proximity, i.e. municipalities in the same county and that is what this Panel will consider.

ABILITY TO PAY

Careful review of the record of the hearings indicate that the Village of Bronxville has the ability, if not the desire, to pay 1) its police officers salary and fringe increases comparable to other Westchester Police Departments, 2) wage increases provided other Village employees and 3) wage increases granted other high risk employees such as Eastchester Firefighters, the Village of Bronxville being a part of Eastchester.

AWARD OF THE PUBLIC INTEREST ARBITRATION PANEL

The Panel believes that the submission of some 92 issues to Arbitration is contrary to the intent of the Taylor Law which seeks in each step-negotiations and mediation-to narrow the issues between the Parties so that they submit only a reasonable number of very difficult issues to Interest Arbitration for determination. The Panel has also taken cognizance of 1) the

fact that this is the first Interest Arbitration for the Parties and 2) that negotiations for a successor agreement to the one Awarded by the Panel that expires May 31, 1996, will commence immediately on the issuance of this Award.

The Panel has examined all the issues submitted to it and rejected all but those that follow.

All terms and conditions of the Parties' expired Collective Bargaining Agreement, except as mutually altered, contested in the Improper Practice Charge of 4/24/95 and amended as follows, shall be carried forward for two years, covering the period June 1, 1994 to May 31, 1996, the period of the Award. All provisions of the Award are to be retroactive where possible, to June 1, 1994, except where otherwise indicated in this Award.

A1. Length of Contract (Article XXIII)

Award:

The previous three year contract of the Parties, which led to this interest arbitration expired on May 31, 1994.

While the Panel believes that another three (3) year agreement is warranted for anything less means the Parties must commence negotiations on the receipt of this Award, it will award a two (2) year agreement, the maximum term the Panel is permitted by law.

A2. Wages (Article IV)

Union Demands: 1) Salary increase 10% across the board for each year of a two year agreement.
2) Raise starting pay to "first year" salary amount

Village Response: 1) 0% in the first year
2) 2% in the second year
3) Negotiate lower in grade rates for new hirees

Positions of the Parties:

The Union claims that the Village of Bronxville is one of the wealthier villages in Westchester County, first in per cap and second in family income (Union exs A 9 & 10) and sixth in per capita property value (within a twenty-five mile radius (Union ex. A 8) Thus, it argued police officer salaries should be amongst the highest in the area and asked why can't Bronxville be the best.

It maintained that its requested wage and benefit package is well within the ability of the Village to pay and is justified by the settlements reached in comparable police departments.

Union submitted that the overwhelming preponderance of Westchester Village settlements for 1995 was a 4% increase (7 of 13 settlements) and for 1996 for the seven (7) reported settlements the average was approximately 4.6% (Union ex. A20).

It noted (Union ex. A 32) that other Village employees, i.e. members of Local 456, IBT and all non-union employees were granted increases of 4% 1994-95 and 4% 1995-96. And, the Eastchester Fire Department, which encompasses the Village of Bronxville (Union ex. A 39) granted 4% wage increases for the years 1/1/95, 1/1/96 and 1/1/97.

Edward Fennell, financial consultant, frequently appearing on behalf of police unions, summarized his findings of the Village's ability to pay as follows: (Union ex. A 4)

"(1) Bronxville has an overall real property tax rate which is in the mid range when compared with all other Westchester County villages.

(2) The Village has the taxing margin of \$14,024,218 which represents 79.5% of its limit for fiscal year 1994-95. The margin constitutes a reserve which is 181.0% of the 1995-96 General Fund Budget.

(3) The Village has exhausted 10.45% of its constitutional debt limit as of May 31, 1994.

(4) The total fund equity balance in the General Fund as of May 31, 1994 was \$388,068. Unappropriated surplus as of this date amounted to \$334,474.

(5) There is a contingency fund in the amount of \$50,000 in the 1995-96 General Fund Budget.

(6) The relative cost to raise the Police Department base salary and wages one percent has the effect of increasing the 1995-96 Real Property Tax Levy and General Fund Budget .30% and .18% respectively."

The Union maintained that Bronxville's percent of tax limit used in FY 1994 was much lower than the average for Westchester communities and only Buchanan, Harrison and Rye Brook were lower (Union ex. A5).

It also called attention to Moody's Municipal Credit Report (Union ex. A13) whose analysis read: "This village, is a fully developed residential community with extremely high wealth levels and housing values. Median family income and per capita income are among the highest for any community in Westchester County...Bronxville's financial condition remains sound."

In further support of its position, it offered various newspaper articles (Union exs. A 15-18) which state that "Fund balance hits recent high mark", Budget "the best in years" per Mayor Hand, 1995-96 4.4% increase is lowest since 1991-92 and "Parking revenue increase up 11% from estimates".

Union contended that the Village not be permitted to use Interest Arbitration to correct what it feels was a poor deal in the last negotiations. It also maintained that prior contract negotiations were not wholly in its favor for it made concessions

too such as: 1) freeze of starting salary 2) converting longevity from percentage to fixed dollars, 3 contributions to health insurance beyond the first year, etc. (Union ex. A 42).

Village:

The Village countered that it ranked 6th in top pay wage rate for 36 Westchester municipalities (Village ex. 10). Bronxville rates 1st amongst the six municipalities with the highest wages (Village ex. 11) and 2nd when combined dollar fringes and top pay (Village ex. 12) are compared, despite having the best work schedule (Village ex. 13) as determined by fewest days worked. It pointed out that 1) while raises for the PBA during the last contract totaled 20.25%, it was only 13% for other Village employees (Village ex. 61), 2) its 22% increase for the period 6/90-6-7/93 as compared to eleven (11) other Westchester villages (Village ex 59) was 3% greater and 3) for the period 6/91-6-7/93 its 18% increase exceeded the next fifteen (15) Westchester Villages by 4% (Village ex. 60).

Village maintained that these increases catapulted the Village to its lofty present ranking from 14 out of 19 Villages as of 1/1/88 (Village ex. 65)

All this despite the fact that Village police officers work the fewest workdays in Westchester County (Village ex. 13).

It submitted that a 0% increase in 1994 and a 2% increase in 1995 would place the Village where it once was, i.e. 14th rank in the County (Village ex. 18). Whereas, if a 0% increase in 1994-95 and a 4% increase in 1995-96 were awarded it would rank 11th, somewhat higher than it did prior to the last contract.

It noted its decreasing ability to pay due to past and present certiorari proceedings (Village ex 72j) that has resulted in a declining tax base (Village exs. 72 b & e) with single family homes shouldering higher percentages of the tax base (Village exs. 72 d 7 f) and the Village of Bronxville's unique obligation (one of a few villages) of having to guarantee and pick-up increasing uncollected school taxes (Village ex. 73A). It also called the Panel's attention to its unfunded liabilities: 1) retirement system, 2) sewer repairs and 3) compensated absences (overtime bank) which collectively totaled \$908,285 at 5/31/85 (Village ex 72 h).

Discussion:

The Union's demand for 10% in each of two (2) years cannot be justified in today's times and under the statutory criteria. An increase which substantially exceeds those granted in the other Westchester County Police Departments Union cited would not be in the "interest and welfare of the public and the financial ability of the public employer to pay".

The Village's offer of 0% and 2% is also not realistic.

The Panel's objective is to arrive at an equitable and reasonable Award which logically considers the statutory criteria previously cited.

It is evident from the oral and written testimony submitted to the Panel in this impasse that the Village is amongst the more affluent communities in Westchester County. The Village has and wishes to continue to manage its financial affairs in a prudent and conservative manner and seeks to moderate its ranking of Westchester Village Police Departments from near the top toward the middle from whence it came.

Based on the fiscal information submitted by the Parties, we find that the Village had the "ability to pay" a wage and benefit settlement for the years 1994-95 and 1995-96 that is reasonable and in accordance with the mandated criteria of law previously cited.

The Panel is cognizant of economic times which resulted in lower salary settlements during 1994 and 1995 in both the private and public sectors than were previously negotiated as citizens reacted to the economic downturn by resisting tax increases.

Note was also taken by the Panel of the Village's settlement with the Teamster's (Union ex. A32) covering June 1, 1992 through May 31, 1996, providing salary increases of 4% for 1994-95 and 4% for 1995-96.

Additionally, it is aware that the Eastchester Fire Department, which encompasses the Village, has granted its employees 4% wage increases effective 1/1/95 and 1/1/96.

At the start of the Parties' last contract, June 1, 1991, the Village ranked 14th amongst Westchester County Villages and at its expiration on May 31, 1994 it was 3rd. Also at June 1, 1991, the Village trailed the Town of Eastchester, of which it is a part, by \$44,323-\$43,115=\$1,208. But, by 5/31/94, it trailed by only \$51,098-\$51,034=\$64 (See table 1). Thus, the Union's gains far exceeded most other Villages in Westchester County as well as the Town of Eastchester (Table 1).

At the time of these hearings, not all Westchester Village Police Department contracts had been settled. However, an examination of those that were shows that increases to the unit of 2.50% effective June 1, 1994 and a 4% split*, 2% effective June 1, 1995 and 2% effective December 1, 1995 would maintain Bronxville's relative fluctuating position in the County (Table 1) i.e. 3rd at 6-7/94, 5th at 1/1/95, 6th at 6-7/95 and 5th at 1/1/96. With the proposed increases it would exceed Eastchester by \$1,212 June 1, 1994, \$214 June 1, 1995 and would trail by \$845 at January 1, 1996, somewhat less than it did as of June 1, 1991.

* The Employer Representative was strongly opposed to any splits because of the Parties' prior Agreement and their impact on the 1996-97 fiscal year. The Employee Representative strongly urged that the 2nd year 4% raise be effective June 1, 1995

. The Panel Chairman's Award represents a compromise in this issue.

The 1994 and 1995 wage increases of 2 1/2%, 2% and 2% granted by this Award together with the prior increases from 6/1/91 to 6/1/93 of 20.25% (Union ex. A40 and Village ex. 61) totals 26.75%. It keeps PBA members well ahead of all other Village employees whose wage increases of 4% for 1994 and 4% for 1995 (Union exs. A32 A39 and Village ex. 2) added to the prior increases of 13% for the years 6/1/91 to 6/1/93 totals only 21%.

The Award granted below on base wages is also in keeping with increases in the cost-of-living and, therefore, insures the police officers no loss in income.

Award:

1. Effective 6/1/94 a 2.50% wage increase
2. Effective 6/1/95 a 2.0% wage increase
3. Effective 12/1/95 a 2% wage increase.

A3. Starting Pay And Grade Rates New Hirees(Article IV (1))
and

V2 Union demand: Raise starting pay to "first year salary"

Village response: Freeze the "Patrolman Start" and negotiate lower in grade rates for new hirees as follows:

Rank	Proposed	Current	Difference
Patrol start	\$24,500	\$24,500	\$0
Patrol 2d yr	28,500	32,310	3,810
Patrol 3d yr	32,500	36,576	4,076
Patrol 4th yr	36,500	44,099	7,599
Patrol 5th yr	51,034	51,034	0
Recruit School	19,500	19,500	0%

Positions of the Parties:

Union:

The Village should want to attract the best patrolmen available for the risks involved and low rates are not conducive to doing so. It argued that the duties and responsibilities for police officers, present or "new hirees", would be the same and, therefore, they should be paid on the same salary schedule.

It noted that the starting rate was first frozen at \$21,000 in the 1988-91 contract with \$500. raises in subsequent years. The present \$23,500 salary is far below the average of \$27,277 of Westchester Police Departments (Union ex. A35).

Village:

Village maintained it had no difficulty attracting qualified applicants at present rates and could bring them along to 5th grade patrolman rates at a slower pace. It claimed that the proposed rate schedule was more than sufficient compensation for working in a community with lower serious crime risks than most Westchester communities (Village ex. 69). Village argued that it was not Yonkers nor Mt. Vernon. It claimed that enactment of the new schedule would save the Village \$15,485 per new hiree (Village ex. 17).

Discussion:

The \$24,500 starting rate is significantly lower than the Westchester Village average of \$27,277 as of 11/93 as indicated by (Union ex. A35).

A precedent has already been set by the Parties for different treatment of the Village's police officers with different longevity schedules for police officers hired before 6/1/84 and different health contributions for those hired on or after June 1, 1979.

Village revision of the rate schedule for new hirees is too drastic, though some revision is warranted based on the change in market employment conditions.

Award:

Effective May 31, 1996, for new hirees:	
Patrol start	\$27,500
Patrol 2d year	32,000
Patrol 3d year	37,000
Patrol 4th year	44,000
Patrol 5th year	54,423
Recruit School	24,500

A6. Standby time (New Article)

Union demand: An employee of the bargaining unit assigned to standby duty shall receive one hour's pay at the employee's regular hourly rate for every six hours of accumulated standby time. An employee placed on standby must be available to report to duty within a reasonable period of time of notification to report for duty. Employees when placed on standby, shall be notified in writing by the Chief or his designee.

Village response: There is no justification for this atypical benefit.

Positions of the Parties:

Union noted that the Town of Mamaroneck collective bargaining agreement for January 1, 1994 to December 31, 1996 (Union ex. A 3BBB) includes a standby provision.

Union stated its provision would only apply to two (2) practical situations: 1. When a detective is required on a Sunday to be on standby and 2. When the Chief is away and a Lt. is required to be available to make command decisions.

Village:

Village disputed that there was any inconvenience as those on standby were furnished with pagers having a range of seventy-five (75) miles, which was not very restrictive.

Discussion:

One required to be on standby is limited in his personal and family life and it is not unreasonable nor unheard of that he be compensated in some form. However, 8 hours, a days work, is a more usual standard.

Award:

Detectives ordered in writing (stating time it starts and time it ends) to be on standby and not leave the area on a Sunday and/or Lieutenants ordered in writing (stating time it begins and time it ends) to remain in the area when the Chief is away, shall receive one (1) hour's pay for every eight (8) hours of accumulated standby time at the employee's regular rate of pay.

A13 Improve dental plan (Article XIV(1))

Union demand: Increase filing allowance from \$45 to \$65.

Village response: Cap it's contribution to Dental and Optical Plan not to exceed \$900. per year

Positions of the Parties:

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Union:

Union contended that the plan had not kept up with the times as for the past ten (10) years it has provided the same benefit allowance (Village ex. A28). It argued there was a need to upgrade the schedule of allowances.

Village:

The plan offered for PBA members is the same for all Village employees and no exceptions need to be made. However, it is possible to offer the requested change within the maximum benefits provided by the plan.

Village, however, requested that there be included in the contract the same provision that was included in the recent Village Teamster agreement, i.e. "not exceed \$900. per year per participant" (Village exs. 53 & 54).

Discussion:

It is the Panel's decision that since the Union's request can be accommodated within the plan's maximum benefit and police want it, it should be granted.

Award:

Effective May 31, 1996, Union request be granted but the plan, of which it is a part, be capped in the same manner as the Teamsters i.e. not to exceed \$900. per year per unit member.

A14. Improve optical plan (Article XIV(2))

Union demand: Optical exams be permitted every year and when contact lenses are worn every six (6) months

Village response: Cap its contribution at \$900 for Optical & Dental Plan

Positions of the Parties:

Union:

Union said the present allowance of \$125 for contact lenses was not but the restriction of every two (2) years was out of date. It felt that there was a need to have it available every year and with disposable lenses perhaps every six (6) months (Union ex. A.29).

Village:

Same position as set forth in Dental Plan above.

Discussion:

It is the Panel's decision that since the Union's request can be accommodated within the plan's maximum benefit and police want it, it should be granted.

Award:

Effective May 31, 1996, Union request be granted but the plan, of which it is a part of, be capped in the same manner as the Teamsters i.e. not to exceed \$900. per year per unit member.

A17. Additional Detective position

Union demand: If an additional detective position is not created and filled then all first grade patrolmen shall receive an annual stipend of \$1,000.

Village response: Rejected

A18. Additional Sergeant position

Union demand: If an additional sergeant position is not created and filled then all first grade police officers shall receive an annual stipend of \$1,000.

Village response: Rejected

A19. Additional Lieutenant position

Union demand: If an additional lieutenant position is not created and filled then all sergeants shall receive an annual stipend of \$1,000.

Village response: Rejected

A20. Manpower

Union demand: When manpower of the department is below 23 officers, all members of the bargaining unit shall receive a stipend of \$1,000.

Village response: Rejected

Position of the Parties:

Union claimed that demands A17-A20 were all intended to address the aggravated work load and responsibility that is incurred when sufficient supervisors and other bargaining unit members are not available. It argued that the Village, rather than increase manpower to what is needed, pays overtime because it is cheaper than paying benefits for new employees. If the Village chooses not to replace promptly budgeted positions such as that of Sgt. Moleski who retired in June 1995, and the Sgt. position restored as of 6/1/94 and not filled until 1/1/95, there are savings to the Village which should be shared with the Association members.

Village:

Chief testified that Sgt. Moleski was replaced by a detective who made Sgt. 11/95 and that everyone since 1993 has been replaced.

The Village has the absolute right to abolish a position and may at times have legitimate reasons for not filling vacancies immediately - whether it be a new patrolman or a vacancy created by a promotional opportunity to Sergeant or assignment as a Detective.

Discussion:

There is some substance to Union's position, but the Panel is aware of management's rights in this area.

Award:

Union demands A17 through A20: Effective May 31, 1996, a new clause be added to read as follows: The Department will make reasonable efforts to fill vacancies within six months, unless the position has been abolished.

A21. Provisional Appointment

Union demand: If a provisional appointment is necessary due to the exhaustion or expiration of a promotional eligibility list, such position, if filled, shall be upon two week's notice to bargaining unit members with an opportunity to apply for such position.

Village response: Was willing to consider but had some reservations about the two week notice.

Position of Parties:

Union:

Union argued its demand was strictly procedural and did not impinge on management prerogatives.

Village:

Hold for examination.

Discussion:

This is a reasonable request, places no undue burden on the Village and could improve morale.

Award:

Effective May 31, 1996, Union demand be granted.

A23. Cafeteria plan

A24. Deferred Compensation Plan

Union demand: The Village shall establish an IRC Section 125 (cafeteria plan).
The Village shall establish an IRC Section 457 (deferred compensation) plan

Village response: There are costs involved in creating a Cafeteria Plan (Village ex. 66)
As to a Deferred Compensation Plan, the Village has such a plan which was voluntarily made available to the PBA.

Position of the Parties:

Union:

Union contended that these demands were of no cost to the Village and enabled bargaining unit members to utilize pre-tax dollars to pay for their health plan contributions and retirement benefits.

Village:

Same as its response

Discussion:

It is conceivable that whatever costs the Village would incur in implementing a Cafeteria Plan would be offset by its savings in FICA payroll taxes.

Award:

A23 Effective May 31, 1996, a committee be established to determine whether there would be any costs to the Village in establishing a Cafeteria Plan and, if minimal (not to exceed approximately \$50.00 per participant) Village should offer it.

A24 The Village shall continue to make a deferred compensation plan available to members of the unit on the same basis it does with other Village employees.

A36 Past Practice

Union demand: Amend Article XX to read "all previous terms and conditions of employment not inconsistent with other provisions of the Agreement shall be maintained for the life of the Agreement"

Village response: Too broad.

Discussion:

It is customary for a Past Practice Clause to make provision for the continuance of terms and conditions of employment not inconsistent with a new agreement..

Award:

Union proposal should be adopted.

V.5 Comp Time (Article V)

- Village demands:
- d) Replace in Sec 2 lines 4 through the end of the paragraph starting with "When requests are received..." with the following: "Requests for the use of compensatory time shall be submitted at least 72 hours in advance to the Chief. The Chief may waive the 72 hour notice in emergency situations. Compensatory time may not be taken if it necessitates the payment of overtime for a replacement."
 - g) Add to Sec. 3 "officers called in for court proceedings may be required by the Chief or his designee to escort prisoners during the minimum call-in period".

Union response: Rejected

Positions of the Parties:

Village:

Village argued that for a Department of its size, the use of overtime was tremendous (Village ex. 33) and was crying for controls.

d) It maintained that no other community permits the use of Comp Time like the Village for Comp Time is presently being used to defeat the denial of Personal Leave (Village ex. 40). It

contended that, at present, it is uncontrolled and abusively used resulting in unnecessary and costly overtime (Village exs. 35-39). Chief claimed that only Bronxville incurred overtime in conjunction with the granting of Comp Time. The others didn't incur overtime unless the Chief granted the Comp Time, as in every other Village in Westchester County, the use of Comp Time is at the Chief's discretion (Village ex. 34). It contended that Village ex. 32 demonstrates that if the Chief had discretion in scheduling all unit members he would still be able to grant all the time off due them (Village ex. 32).

g) Since the Village was obligated to a 4-hour call-in for court proceedings even if it involved only fifteen (15) minutes because the defendant failed to show, it should be permitted to use any of the unused time up to 4-hours for the occasional transport of prisoners rather than have to call in another officer,

Union:

d) Union pointed out before the Chief became Chief, he enjoyed these same benefits he now seeks to control. Granting this or any Chief such control could result in the playing of favorites.

It maintained that the Village could easily reduce the need for overtime by increasing the Department's manpower.

g) The minimum call-in time is for the inconvenience of having to appear in court proceedings no matter how short the time and officers should not have to perform other duties if the time needed for the court appearance is less than four (4) hours.

Discussion:

In today's economic times, there is the need in the public sector as well as the private sector, to conduct operations as efficiently and inexpensively as possible. One area that must be considered is in the area of reduction of overtime. Restricting the unfettered use of Comp Time when it results in overtime is one method of accomplishing the necessary cost reduction. Control by the Chief of Comp Time, as is the case in other Westchester Police Departments (Village exs. 5c, 7d and 34) are needed.

Additionally, being able to have officers being paid call-in for court proceedings transport prisoners rather than call another off-duty officer in on overtime is a saving the Village should be able to employ.

An efficient well managed Police Department requires proper scheduling that keeps overtime to a minimum. Numerous examples were cited by the Village which demonstrate that the present system fails to meet the desired standard.

Award:

d) Effective May 31, 1996, the first two (2) days of Comp Time each year shall be in accordance with Article V Sec. 2 in the expired contract.

Effective May 31, 1996, but Panel realizes it can only be implemented on issuance of this Award and cannot affect Comp Time taken prior thereto, all additional Comp Time beyond two(2) days each year shall be in accordance with Village demand.

g) Village request be granted.

V.6 Holidays

Village demand: Change 15 holidays to 13 by deleting Lincoln's Birthday and the Employee's Birthday for new hirees.
Reduce the number of super holidays for new hirees from 5 to 3.

Union response: Rejected

Positions of the Parties:

Village:

Village contended that the fifteen (15) holidays it granted was out of line with everyone else.

The overwhelming number of Westchester Village Police Departments only grant 13 holidays, 14 of 21 (Village ex. 26). Despite this fact, in the last negotiated contract the number of holidays was increased from 14 to 15.

It noted that although the Villages of Ardsley, Elmsford, Irvington, Pleasantville and Port Chester as well as the Town of Eastchester granted no super holidays (Union ex. V.26), the Village in the expired contract increased the number of Super Holidays from 4 to 5 which was above the number granted by many other Westchester Villages (Village ex. 28) including the six municipalities with the highest wages (Village ex. 29).

Union:

Felt there was no need to make a change.

Discussion:

The Village's proposal, if applicable to new hirees would still compare favorably with other Westchester Village Police Departments.

Award:

Effective May 31, 1996, Village proposals be granted for new hirees.

V7. Vacation (Article VII)

- Village demands:
- a) Replace sec. 3 (pages 7-8) with the following: In so far as possible, subject to the reasonable needs of the Department and the discretion of the Chief of Police, election of vacation leaves shall be based upon seniority. No more than one member of the unit shall be on vacation during the tour.
 - b) Delete payment of vacation pay by separate checks (Sec. 9)
 - d) Provide a Dr.'s note if one is sick on vacation (Sec 11)

Union response: Rejected

Positions of the Parties:

Village:

a) The Village claimed that the present practice of unit members is to hold back vacation picks and hold days in abeyance which creates unnecessary overtime (Village exs. 42-45). It maintained that the changes requested would control the number of officers on vacation at any one time thus improving scheduling and reducing the need for overtime.

b) Since it isn't possible for the Village to do, hasn't been done and the Union never grieved it, this provision should be deleted from the contract.

d) Implementation will insure the proper allocation to sick time.

Union:

Its a small department with minimum manpower, thus, the Village proposal can create a substantial restriction for there will be fewer occasions available for vacation. Additionally, more senior patrolmen will pick before will pick before less senior sergeants.

Discussion:

a) Both the highest ranking and most senior members of the Department, like in Mt. Kisco PBA contract (Union ex. A3FFF), have earned the right to select first but it should be in reasonable units to enable proper scheduling by the Department.

b) Since it is not the practice, the Village request should be granted.

d) Sick days should be legitimate and not a subterfuge for extending vacations.

Award:

Effective May 31, 1996:

a) In so far as possible, subject to the reasonable needs of the Department and the discretion of the Chief of Police which discretion shall be neither arbitrary or capricious, election of vacation leaves, as nearly as possible, shall be on the basis of preference by rank first (Sergeants before patrolmen) and seniority second. No more than one member the unit shall be on vacation during a shift regardless of rank..

Village demands b) and d) Shall be granted.

V8 Personal Leave (Article VIII)

Village demand: Sec. 1 Change from 6 to 4 days and 2 days for new hirees
 Sec. 2 None during the period of midnight to 8:00 a.m. tour following Halloween on November 1st.

Union response: Rejected

Positions of the Parties:

Village:

Sec. 1 Village maintained that 6 days (it was increased to that from 5 days in the last contract) was a lot more than the 4 or 5 days granted by other Westchester County Police Departments (Village ex. 30) and so it was requesting that for new hirees that the number of days be capped at 4 and not be permitted to increase to 6 as provided in the expired contract (Village ex. 30).

Sec. 2 It argued that the whole period of Halloween is potentially difficult involving more than normal police activity and it should have available maximum coverage.

Union:

Saw no need to change the number of days and felt that all police officers should enjoy the same benefit.

Discussion:

Some relief in the number of days can be justified based on comparability's.

Amongst Westchester Police Departments the most frequent number of personal leave days is 5, 13 out of 31. The next most frequent is 4 with 8 of 31 so less than 6 days is reasonable.

Halloween celebrations and mischief do not necessarily end at the stroke of midnight on Halloween, so the Village's request that the personal leave Halloween restriction be extended to include the midnight to 8:00 a.m. shift on November 1st is a reasonable request and places no undue burden on unit members.

Award:

Sec. 1. Effective May 31, 1996, new hirees shall be granted 4 Personal Days during their first two years of employment by the Village and 5 days thereafter.

Sec. 2. Effective May 31, 1996, add to (e) "and the midnight to 8:00 a.m. tour following Halloween on November 1st."

V11 Health Insurance (Article XII)

Village demand: 1) Amend so Village may switch to a health insurance plan providing comparable benefits to the Empire Plan

Union response: Rejected

Positions of the Parties:

Village:

1) If it can provide comparable benefits and still save money, the Village should be permitted to do so as in other Police Departments like City of Rye (Village ex. 49) and Village of Larchmont (Village ex. 50).

Union:

Might consider as part of an overall agreement.

Discussion:

Municipalities should be permitted to save money, if it can, by employing another carrier providing the benefits are comparable.

Award:

Effective May 31, 1996, Village demand be granted with the language contained in the City of Rye Collective Bargaining Agreement (Village ex. 49).

V15..Accrual of Service While on Sec. 207-C (Article XXII)

Village demand: Delete second sentence of Sec. 1

Union response: Rejected

Positions of the Parties:

Village:

The courts have ruled that paying holiday and vacation benefits to those on Sec.-207C is at the discretion of the Employer as provided in the Collective Bargaining Agreement.

Discussion:

A police officer should not accrue vacation and holiday benefits when he hasn't been working for more than a month and collecting disability payments.

Award:

Village demand be granted, except that any officer who had less than 30 calendar days cumulative 207-c leave in a year would suffer no reduction in holidays, vacation, etc..

V17 Outside Employment Limitations

Village demand: Proposed Policy and Procedure to permit only secondary off duty employment upon written authorization of the Chief of Police (Village ex. 56)

Union response: Rejected

Positions of the Parties:

Village:

It maintained that at present there is no stated policy and the proposal is for the sole purpose of assuring that such employment does not interfere or conflict with the officers responsibilities to the Department. It maintained that it would

not restrict employment unless said employment is prohibited by law.

Union:

Union was concerned that the Chief might play favorites and the Village may be too restrictive in choices of employment it would approve.

Discussion:

The Village has a legitimate interest in a unit member's outside employment.

Award:

Effective May 31, 1996, a Joint Union-Management Committee be formed to make recommendations in keeping with potential liability of the Department. If the Committee, however, is unable to resolve this issue, it shall be submitted on a "last best offer" basis to arbitration.

The Panel suggests that the Parties complete the Committee's work prior to the start of negotiations for their next contract.

V.18 Limitations on Tour Switches

Village demand: Proposed Policy and Procedure for Mutual Exchange of Tours (Village ex. 58).

Union response: Rejected

Positions of the Parties:

Village:

Village noted that currently there was no policy other than if it required a double shift it was denied.

It will provide for written policy and procedures for requests, approval and regulation of mutual exchanges.

Any such requests will be for a reasonable number of full tours of duty that will not negatively impact efficient operations or involve an officer working a double shift without the approval of the Chief.

Union:

Saw no need for it.

Discussion:

This is an area which requires written rules and procedures and can aid in efficient scheduling.

Award:

Effective May 31, 1996, a Joint Union-Management Committee be formed to make recommendations in keeping with potential liability of the Department. If the Committee, however, is unable to resolve this issue, it shall be submitted on a "last best offer" basis to arbitration.

The Panel suggests that the Parties complete the Committee's work prior to the start of negotiations for their next contract.

V20 ADA Clause

Village demand: Add: "The Union and the Village agree that the provisions of this Agreement shall be administered so as to comply with the Americans with Disabilities Act (ADA) and any federal regulations and guidelines issued thereunder on a case by case basis."

Union response: Will consider

Positions of the Parties:

Village:

Spells out that the Parties' contract is subject to the ADA (Village ex. 57). Therefore, any claims under it, should not be held up by the contract clause.

Union:

Could be a limitation on unit members rights.

Discussion:

Village's demand acknowledges what the law is.

Award:

Village demand be granted.

V22. Grievance Procedure (Article XIX)

Village demand: Add: after "were discovered" in Sec 1, "or with the exercise of reasonable investigation or examination, should have been discovered."

Union response: No need for a change.

Positions of the Parties:

Village:

In a grievance award during the last contract, the Village won on the merits, but there was a problem raised with time limits which it wants to correct.

Union:

Union said it was satisfied with the present provision.

Discussion:

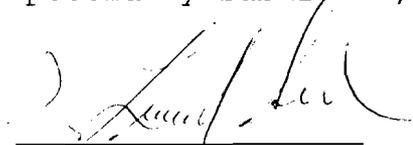
The Village's request for clarification and tightening of time limits for bringing a grievance is reasonable.

Award:

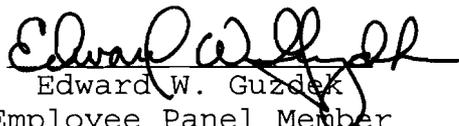
Village demand be granted.

August 6, 1996

Respectfully submitted,



I. Leonard Seiler
Chairman



Edward W. Guzdek
Employee Panel Member



Terence M. O'Neil
Employer Panel Member

ACKNOWLEDGMENTS

STATE OF NEW YORK)
)SS:
COUNTY OF ROCKLAND)

August
(B)

On this ^{06th} day of ~~July~~, 1996, before me personally appeared I. Leonard Seiler, Esq., known to me and to me known to be the Chairman of the Panel who executed the foregoing Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.

Pascal Storme
Notary Public

PASCAL STORME NO. 452304
Notary Public State of New York
Qualified in Westchester County
Commission Expires 5-31-1998

STATE OF NEW YORK)
)SS:
COUNTY OF ALBANY)

August

On this ^{8th} day of ~~July~~, 1996, before me personally appeared Edward W. Guzdek, known to me and to me known to be the Employee Organization Panel Member who executed the foregoing Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.

Janet A. Pardo
Notary Public

JANET A. PARDO
Notary Public, State of New York
No. 014500223
Qualified in Westchester County
Commission Expires Feb. 1, 1998

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

August

On this ^{12th} day of ~~July~~, 1996, before me personally appeared Terence M. O'Neil, known to me and to me known to be the Public Employer Panel Member who executed the foregoing Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.

Susan M. Majikas
Notary Public

SUSAN M. MAJIKAS
Notary Public, State of New York
No. 01MA5040164
Qualified in Nassau County
Commission Expires March 6, 1997