

**NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL**

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**In the Matter of the Interest Arbitration** :  
 :  
 - between - : **FINAL AND BINDING**  
 :  
**Town of Blooming Grove** : **OPINION and AWARD**  
 :  
 ("Town") :  
 :  
 - and - :  
 :  
**Blooming Grove Superior Officers' Council** :  
 ("SOC") :  
 :  
**RE: Case No. IA 98-002; M97-106** :  
-----X

By: Tripartite Arbitration Panel  
James A. Cashen, Esq., Chairperson  
John F. O'Reilly, Esq.,  
Hitsman Hoffman & O'Reilly, Esqs., Town Designee  
Anthony V. Solfaro, President,  
NYS Union of Police Associations, Inc., SOC Designee

**APPEARANCES:**

**For the Town:**

Douglas E. Solomon, Esq.  
John Georger, Consultant

**For the Union:**

John Grant, Esq.  
Edward Fennell, Financial Advisor

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED

SEP 03 1999

**CONCILIATION**

## **INTRODUCTION:**

The New York State Public Employment Relations Board ("P.E.R.B."), on or about July 30, 1998 invoked the provisions of the Civil Service Law, Section 209.4 and designated the Undersigned Public Arbitration Panel for the purposes of making a just and reasonable determination of this dispute. This "Opinion and Award" was prepared by the Public Panel Member and Chairperson of the Panel, James A. Cashen.

### **A. HISTORY OF THE IMPASSE**

The latest negotiated Agreement between the SOC and the Town covering a unit consisting of "...any full-time member of the Town of Blooming Grove Police Department above patrolman except the Chief of Police" was for a three year period from January 1, 1994 to December 31, 1996. The parties were unsuccessful in reaching agreement for a successor contract and, in fact, the parties reported having reached no agreement on any terms and conditions of employment raised by either party during the negotiations. On or about July 24, 1998, the SOC submitted its Amended Petition for Compulsory Interest Arbitration on a total of four numbered proposals and the Town submitted its Amended Response to Petition for Compulsory Arbitration in which the Town rejected all demands made by the SOC and submitted for decision and award eight numbered proposals.

Two hearings were held by the Panel. The Town and the SOC had ample and full opportunity to submit exhibits, examine and cross-examine witnesses and make oral argument. There were offerings of 32 Town exhibits and 55 SOC exhibits. The SOC presented testimony by Edward Fennell, Expert Witness in government finance. The Town presented testimony by John F. Georger, C.P.A., Expert Witness in government finance.

Prior to the completion of the Town case at a scheduled third hearing, there was an interest arbitration Award rendered on May 28, 1999 involving the Town and the Blooming Grove Police Benevolent Association ("PBA AWARD"), which was submitted by the Panel.

The Town and the SOC then jointly requested the Panel in this case to make its award on the basis of the hearing record to that time with the additional consideration of the PBA AWARD.

The parties made no arrangements for a Reporter, made no request that a full and complete record by a qualified Reporter be kept and agreed to go forward without a Reporter. The Chairman's notes and the exhibits admitted by the Panel constitute the Record of the proceeding.

The Chairperson then prepared a draft Award which was considered by the Panel in a telephone conference executive session on July 29, 1999, and this AWARD is a result of such Panel deliberations at that time.

## **B. LEGISLATIVE STANDARDS**

In regard to all items, the Panel has considered seriously the legislative standards applicable to compulsory interest arbitrations pursuant to Section 209.4 of the Civil Service Law, which provides in part:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours and conditions of employment of other employees performing 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.

**C. PROPOSALS SUBMITTED TO THE PANEL**

Following is a summary of the proposals submitted to the Panel:

**SOC Items 1 to 4**

1. Percentage increases in wages effective 1/1/97 and 1/1/98
2. Longevity increases
3. Clothing allowance
4. Jury Duty

**Town Items 1 to 8**

1. Duration of Award
2. Percentage increase in wages
3. Clothing Allowance
4. Vacation schedules
5. Conditions for "individual" days off (personal leave, day off in lieu of holiday or single vacation day off)
6. Health and dental insurance contribution
7. Grievance arbitration
8. Jury Duty.

**D. THE MOST COMPARABLE POLICE DEPARTMENTS:**

One of the principal relevant legislative standards to guide the public arbitration panel to reaching a just and reasonable determination of this matters in dispute is a comparison of the wages, hours and conditions of employment of the police officers in the Town with wages, hours and conditions of other police officers performing similar duties under similar working conditions. This is a comparison of "apples" with "apples".

The SOC, based upon such factors as number of sergeants, population per officer, land area population per square mile, square mile per officer, per capita income and median household income, suggests that the police departments most comparable to the Town's are the towns of Newburgh, New Windsor and Woodbury and the Village of Monroe.

The Town suggests that only the towns in Orange County with full time Police Departments be considered comparable, which would exclude the Village of Monroe. Since the parties don't agree, the Chairman suggests to the parties that it is reasonable to compare this Town to all the local governmented units in the County, separately, and also to a subset of towns consisting of those with full time police, contiguous to the Town.

**E. TERM OF THIS AWARD**

**Town Proposal No. 1 on Duration**

The Town proposes a two year Award. Section 209.4(vi) states, in pertinent part as follows:

the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining...

The SOC did not dispute this proposal, and the SOC's proposals are consistent therewith.

The 1994-1996 Agreement between the parties had a term ending on December 31, 1996.

**Accordingly, the period of this AWARD shall be for the period from January 1, 1997 through December 31, 1998.**

**F. PROPOSALS APPROVED IN WHOLE OR IN PART**

The Panel has agreed on an AWARD encompassing only four changes in terms and conditions of employment, all supported by comparative data under Section 209.4(v) as cited above, by the interest and welfare of the public and the financial ability of the public employer to pay (See Section 209.4(v)b.), by the peculiarity of police work as compared to other trades and professions (See Section 209.4(v)c.) and the history of negotiations of financial package and other terms and conditions of employment (See Section 209.4(v)d.).

**SOC Proposal 1 on Wages and 2 on Longevity and Town Proposal 2 on Annual Salaries**

The SOC proposes that (1) the annual base wage be increased to 14.5% above After 5 Year Base Wage of the Police Officer effective January 1, 1997 and to 15% above After 5 Year Base Wage of the Police Officer effective January 1, 1998 and that longevity increases be changed as follows:

Longevity:	1/1/97
5 <sup>th</sup> year to completion of 9 <sup>th</sup> year	\$ 475.00
10 <sup>th</sup> year to completion of 14 <sup>th</sup> year	\$ 600.00
15 <sup>th</sup> year to completion of 19 <sup>th</sup> year	\$ 850.00
20 <sup>th</sup> year to completion of 24 <sup>th</sup> year	\$1,100.00
25 <sup>th</sup> year and over	\$1,275.00
	1/1/98
5 <sup>th</sup> year to completion of 9 <sup>th</sup> year	\$ 525.00
10 <sup>th</sup> year to completion of 14 <sup>th</sup> year	\$ 650.00
15 <sup>th</sup> year to completion of 18 <sup>th</sup> year	\$ 900.00
19 <sup>th</sup> year and over	6% of Base Wage

The longevity proposal changes the beginning of the largest longevity increase from the 25<sup>th</sup> year to the 19<sup>th</sup> year, merges the five longevities into four and changes the fixed dollar amount of the largest longevity from a flat dollar figure to 6%.

In regard to wages, the Town proposes that annual salaries be increased across the board by 3% effective January 1, 1997 and by 3% effective January 1, 1998.

The rationale of the parties in support of their respective positions are (1) summarized at pages 6, 7 and 8 of the PBA AWARD and are incorporated herein and (2) more fully set forth in their respective Amended Petition and Response to Petition for Compulsory Interest Arbitration.

**DISCUSSION ON WAGES AND LONGEVITY INCREASES:**

The panel has reached the following conclusions in regard to wages and longevity increases based on the Record before it:

1. The Town is financially sound with a record of prudent management of its fiscal affairs. It is clearly established in our Record that the Town has the ability to pay for the just and reasonable improvement in wages, longevity increases, and increases in uniform allowances recommended below.
2. The Panel has considered the wage increases granted in this period of time for police in all the towns in Orange County and of a subset of the contiguous towns. Of lesser weight are the increases granted by other municipalities with police departments in the County.
3. The Panel determination as to wages and longevity increases is patterned on the wage and longevity increases awarded recently in the PBA AWARD . Historically, wages and longevity increases negotiated or awarded in bargaining between the Town and the SOC are in direct relationship to the wages and longevity increases contained in the contract between the Town and Police Benevolent Association and this AWARD follows that tradition.
4. In regard to longevity increases, there is insufficient comparative data to change the basic structure of the longevity increases from the existing structure, which has resulted from the history of bargaining with this c.b.u. However, it is reasonable to increase each longevity level by \$25 effective January 1, 1997 and by \$25 effective January 1, 1998 maintaining the historic pattern and the historic rough relationship to basic pay.

**Taking all the above facts and arguments into consideration regarding the issues of wages and longevity increases, the Panel Awards as follows:**

1. Effective as of January 1, 1997, the Base Wage (Appendix "A" of the 1994-1996 Agreement) shall be \$47,560.00.
2. Effective as of January 1, 1998, the Base Wage (Appendix "A" of the 1994-1996 Agreement) shall be \$49,224.00.
3. Increase the 1/1/94 longevity pay (Appendix "A" of the 1994-1996 Agreement) by \$25 effective January 1, 1997 and by \$25 effective January 1, 1998, as follows:

	<u>1/1/97</u>	<u>1/1/98</u>
5 <sup>th</sup> year to completion of 9 <sup>th</sup> year	\$ 450	\$ 475
10 <sup>th</sup> year to completion of 14 <sup>th</sup> year	575	600
15 <sup>th</sup> year to completion of 19 <sup>th</sup> year	825	850
20 <sup>th</sup> year to completion of 24 <sup>th</sup> year	1075	1110
25 <sup>th</sup> year and over	1250	1275

**TOWN PROPOSAL 3 AND PBA PROPOSAL 3 - CLOTHING ALLOWANCE:**

Article VII of the expired Agreement provided in 1996 a \$900 clothing allowance payable 2/15 and 8/15. The Town proposes that this be reduced to \$700. The SOC proposes that it be increased by \$50 to \$950.00 effective 1/1/97 and by \$50 to \$1,000 effective 1/1/98.

In support of its proposal, the Town presents evidence and makes argument, as follows:

1. \$900 in 1996 ranked as the highest among towns in Orange County.
2. A reduction to \$700 would still leave sergeants with an above-average uniform allowance.
3. The SOC has not presented evidence that there is a need to increase this allowance or that the \$700 proposed by the Town would be insufficient for this purpose.
4. The Town also pays for clothing damaged while on duty (see Article VII B of the expired Agreement) and for the initial uniform and equipment issue.

In support of its position, the SOC presents evidence and makes argument as follows:

1. Comparative data support our proposal for a \$50 increase each year.
2. Sergeants are expected to purchase replacement uniforms and maintain and clean their own uniforms out of the annual allowance.
3. The Town's exhibits convey a misimpression because there is a wide variance in practices relating to purchases, maintenance and cleaning with many departments not even making payments to sergeants.
4. The Town proposal was unsupported by any evidence presented by the Town explaining why diminution in this benefit level was proper or appropriate. No explanation was given for reducing the reimbursable amount of cleaning, maintenance and purchase of clothing and equipment to levels below those provided in 1994.

## **DISCUSSION**

The Panel has reached the following conclusions on the facts and the arguments:

1. Most significant are the increases in clothing allowances that have been granted in the PBA AWARD and in other comparable jurisdictions which average approximately \$25 in 1997 and \$25 in 1998.
2. The relative standings of the towns in regard to uniform allowances and practices are largely the result of the history of the bargaining on this issue in each town. There is nothing in the Record to persuade the Panel to change these relationships.

**Accordingly, taking all the above facts and arguments into consideration for this issue, the Panel AWARDS as follows:**

**The Clothing Allowance shall be increased \$25 to \$925.00 effective January 1, 1997 and be increased to \$950.00 effective January 1, 1998.**

## **TOWN PROPOSAL 7 - GRIEVANCE ARBITRATION**

Article XV D of the expired Agreement provides, in part, on p. 10:

The cost related solely to the selection of an arbitrator through the AAA should be borne by the Town.

And on p. 11:

Except for the selection of an AAA arbitrator set forth above, the cost of administration of this section, including all fee expenses, shall be borne equally by both parties.

The Town proposes "The cost related to the selection of an arbitrator through the AAA shall be borne entirely by the party filing the demand for arbitration." In support of its position, the Town makes the following points:

1. This provision is an anomaly that does not exist in any other town in Orange County.
2. There is no basis for the Town of Blooming Grove to be required to pay

this fee, where other comparable jurisdictions do not. The SOC presented no evidence whatsoever in opposition to this proposal. As such, the evidence presented requires the Panel to award the Town's proposal on this subject matter.

The SOC objects to this proposal.

## **DISCUSSION**

The Panel notes that this proposal is supported only in part by the comparative data that was provided in regard to the employer paying for the selection of an arbitrator; however, the Record does not support the proposal that the party initiating the arbitration, almost always the union, should pay for the selection of the arbitrator. Our Record supports a conclusion that the parties to an arbitration split the cost of selection of the arbitrator, if there is any cost; the Panel recognizes that this is the general practice in labor arbitrations.

**The Panel AWARDS that the terms of the sentence stated in Article XV Section D, second paragraph, last sentence, on page 10 of the 1994-1996 Agreement, to wit, "The cost related solely to the selection of an arbitrator through the AAA shall be borne by the Town" shall not apply and the following terms shall apply in place of the third paragraph on page 11, "The cost of administration of this section, including fee expenses and the cost of selecting the arbitrator, if any, shall be borne equally by the parties."**

### **G. PROPOSALS DENIED IN FULL**

**The items listed below are denied.** The Panel recognizes the reality that the two-year term of this AWARD has long expired and that the parties will be negotiating on some or all of these items, and on other items. In each instance, the Panel decided that, at this time, the evidence and reasons offered do not support the specific changes in the terms and conditions of employment proposed.

**SOC Proposal 4 and  
Town Proposal 8**

**Adding a new fringe benefit relating to  
jury duty.**

**Town Proposal 4**

**Relating to new conditions for vacation  
scheduling.**

**Town Proposal 5**

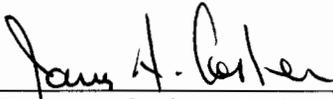
**Relating to new conditions for scheduling  
individual days off.**

**Town Proposal 6**

**The Town seeks contributions from police  
officers hired after July 1, 1998 towards health  
insurance and dental insurance.**

**H. CONCLUDING REMARKS**

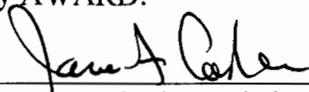
The above AWARD completes the Panel's work pursuant to Article 14, Section 209.4 of the Civil Service Law.

  
\_\_\_\_\_  
James A. Cashen, Chairperson

8/19/99  
\_\_\_\_\_  
Date

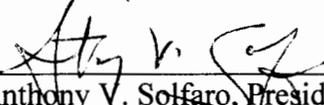
STATE OF NEW YORK        )  
                                          ) SS.:  
COUNTY OF COLUMBIA    )

I hereby affirm pursuant to CPLR Section 7507 that I am the individual described in an who executed this instrument which is my AWARD.

  
\_\_\_\_\_  
James A. Cashen, Chairperson

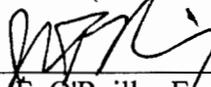
8/19/99  
\_\_\_\_\_  
Date

I assent on the specific changes in wages and terms and conditions of employment Awarded. (Add comments as desired.)

  
\_\_\_\_\_  
Anthony V. Solfaro, President  
NYS Union of Police Associations, Inc., SOC Designee

8/28/99  
\_\_\_\_\_  
Date

I assent on the specific changes in wages and terms and conditions of employment Awarded. (Add comments as desired.)

  
\_\_\_\_\_  
John F. O'Reilly, Esq.  
Hitsman Hoffman & O'Reilly, Esqs., Town Designee

8/27/99  
\_\_\_\_\_  
Date

← See Attached Comment

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

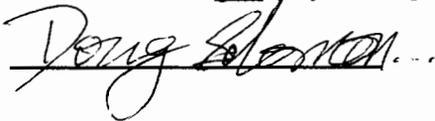
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In the Matter of the Compulsory :  
Interest Arbitration Between :  
 : PERB CASE NO. M97-106;  
 : IA98-002  
BLOOMING GROVE POLICE :  
BENEVOLENT ASSOCIATION, :  
 :  
Petitioner :  
 :  
- and - :  
 :  
BLOOMING GROVE SUPERIOR :  
OFFICER'S COUNCIL, :  
 :  
Respondent. :  
-----X

COMMENTS BY EMPLOYER PANEL REPRESENTATIVE

I do not share the characterization made on page 9 in the discussion of the information presented on the clothing allowance increase as to the first listed factor being the "most significant". My concurrence with this part of the Award, as with the other parts of the Award, is based on an assessment of all elements of the statutory criteria equally applied to the information presented to the Panel, and an assessment of the terms of the Award as a whole, including both the terms actually awarded and those terms proposed by the parties and not awarded.

  
John F. O'Reilly

Subscribed To And Sworn  
Before Me This 27<sup>th</sup> Day Of August 1999



DOUG E. SOLOMON  
Notary Public, State of New York  
No. 02S05064643  
Qualified in Westchester County  
Commission Expires August 20, 192000