

N.Y.C. ...
RESEARCH ...
DEPARTMENT

SUFFOLK COUNTY PUBLIC EMPLOYMENT
RELATIONS BOARD
Case No. CIA 78-1

RESEARCH

In the Matter of the Compulsory Interest *
Arbitration Between

AWARD OF ARBITRATION

THE COUNTY OF SUFFOLK *

PANEL

and

THE SUPERIOR OFFICERS ASSOCIATION,
POLICE DEPARTMENT, COUNTY OF SUFFOLK,
INC. *

The Arbitration Panel

Nathan Cohen, Chairman and Neutral Member
Edward Maher, Arbitrator designated by the Association
Joseph Fasbach, Arbitrator designated by the County

APPEARANCES:

For the County
Leonard S. Kimmell, Esq.

For the Association
Robert C. Rapp, Esq.

The Arbitration Panel, after duly considering the
evidence submitted at the hearing, hereby makes the
following:

A W A R D

The most recently expired collective
negotiations agreement between the parties
is renewed and extended through December 31,
1979 with the following modifications:

1. Productivity: Amend Section 46 to
provide that the Commissioner may require
any Superior Officer working a 3 tour
schedule to work a maximum of 10 additional
days annually. This provision is to be-
come effective when the lower ranks in

the Department supervised by such Superior Officers are assigned to work additional days.

2. Salaries: Section 37 - All Superior Officers shall have their annual salary rates increased by \$1,000.00 effective January 1, 1978, an additional \$1,000.00 effective July 1, 1978 and an additional \$1,500.00 effective January 1, 1979.

3. Section 4 - Blood Donors: Reduce maximum of 4 paid leave days to a maximum of 1 paid leave day per year.

4. Section 6 - Court Time: Mileage allowance to be increased to 17¢ per mile effective January 1, 1979. All court or subpoena fees received by a Superior Officer for appearances during work hours shall be refunded to the County.

5. Section 8 - Disciplinary Procedures: Amend wording in paragraph A with respect to 60 days to 90 days.

6. Section 11 - Firearms: Eliminate paragraph A. Paragraph C shall be amended to provided that a Superior Officer shall have his pistol permit automatically approved at the time of his retirement. Subsequent renewals of such permits shall be subject to investigation and payment of the requisite fees by the retired Superior Officer.

7. Section 14 - Holidays: Holiday overtime pay shall be paid in the same manner as is presently utilized with respect to P.B.A. holiday overtime pay.

8. Section 19 - Meal Periods: \$3.00 for breakfast, \$4.50 for lunch and \$7.50 for dinner shall be paid to Superior Officers in the same manner as is presently utilized in making meal payments to management employees. Paragraphs B and C are to be deleted.

9. Section 20 - Negotiations: Insert the words "or when" on the 8th line of paragraph A between the words "meetings" and "dealing".

10. Section 22 - Outside Employment: Modify paragraph B to provide that Superior Officers who hereafter contemplate entering into any type of security activity shall be required to secure prior approval from the Commissioner. Present Superior Officers and others who may be promoted into the S.O.A. unit at a later date who are presently engaged in security activities may continue to do so without seeking approval from the Commissioner.

11. Section 34 - Retirement: Eliminate present paragraph B and substitute therefore the provision that the parties will investigate and implement, if practical, a five year payout plan for all monies due a Superior Officer upon retirement.

12. Section 38 - Separation: Eliminate this Section.

13. Section 39 - Sick Leave: Eliminate in Paragraph E the phrase "...due to disease of the heart....(Code 301)".

14. January 31, 1977 Letter: Those portions of the January 31, 1977 letter from the S.O.A. to the County which still remain pertinent shall be incorporated into the Agreement.

15. Inspection Overtime: To be paid at straight time pay.

All other contract changes proposed by either the County or the Association are rejected. *

Nathan Cohen
NATHAN COHEN, Chairman

STATE OF NEW YORK
COUNTY OF

SS:

On this 30th day of December 1978, before me personally came and appeared NATHAN COHEN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

CHARLES DORNBAUM
NOTARY PUBLIC, State of New York
No. 52-1000400
Qualified in Suffolk County *
Qualified in Nassau County *
Term Expires March 30, 1979

Charles Dornbaum
Notary Public

* Edward Maher *
EDWARD MAHER, Panel Member
(Dissenting as to Item #1 only)

STATE OF NEW YORK
County of

SS:

On this 30th day of December 1978, before me personally came and appeared EDWARD MAHER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

* *
CHARLES DORNBAUM
NOTARY PUBLIC, State of New York
No. 52-1000400
Qualified in Suffolk County
Qualified in Nassau County
Term Expires March 30, 1979

Charles Dornbaum
Notary Public

* *
Joseph Fasbach
JOSEPH FASBACH, Panel Member
(Dissenting as to Item #2 only)

STATE OF NEW YORK
COUNTY OF

SS:

On this 30th day of December 1978, before me personally came and appeared JOSEPH FASBACH, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

CHARLES DORNBAUM
NOTARY PUBLIC, State of New York
No. 52-1000400
Qualified in Suffolk County
Qualified in Nassau County
Term Expires March 30, 1979

Charles Dornbaum
Notary Public

SUFFOLK COUNTY PUBLIC EMPLOYMENT
RELATIONS BOARD
Case No. CIA 78-1

In the Matter of the Compulsory Interest *
Arbitration Between

STATEMENT OF CHAIRMAN

THE COUNTY OF SUFFOLK *

OF

and *

ARBITRATION PANEL

THE SUPERIOR OFFICERS ASSOCIATION,
POLICE DEPARTMENT, COUNTY OF SUFFOLK,
INC. *

Hearings were held before the Arbitration Panel on July 24, August 21, 25, 28, September 20, October 26, November 2, 11, and 16, 1978 at Hauppauge, N. Y. and at Patchogue, N. Y. Deliberative sessions of the Arbitration Panel were held thereafter.

Both parties presented expert witnesses who testified at length and submitted numerous exhibits in support of their positions with respect to the various criteria enumerated in the compulsory interest arbitration provisions of the Taylor Law and other factors which they deemed pertinent.

The statutory criteria consist of:

1. A comparison of the salaries and conditions of employment of the employees affected by the proceeding with the salaries and working conditions of other similarly situated employees.
2. The interests and welfare of the public and the financial ability of the Employer to meet the demands made by the employees.
3. A comparison of the peculiarities of

the working conditions of these employees with the working conditions of individuals engaged in other trades or professions.

4. Consideration of the terms and conditions of employment established by the parties in their previously negotiated agreements.

The primary goals of the parties in this proceeding centered upon the issues of productivity and salaries. The County strenuously sought to have the Superior Officers work additional days during the course of the work year before any consideration was to be given to salary increases. The Superior Officers, on the other hand, sought to resist any inroads being made on the contractual gains they had achieved in collective bargaining in prior years, while simultaneously demanding salary increases which would both maintain the traditional salary differentials between the Superior Officers and the lower ranking officers in the Police Department and which would offset the present high rate of inflation as reflected in the Consumer Price Index.

This disparity in the goals of the parties is reflected in the fact that the arbitrator designated by the Superior Officers has dissented from that portion of the Award pertaining to productivity increases while the County's designated arbitrator has dissented from the salary aspects of the Award. Although mediation efforts

were made during the course of the several deliberative sessions of the Arbitration Panel to achieve unanimity on these portions of the Award, the parties remained deadlocked on these issues. The Award thus reflects the minimum productivity increase that the County would agree to with the knowledge that the Award would provide salary increases, and the minimum salary increase that the Superior Officers would agree upon faced with the fact that they now may be required to work additional days. Such an approach of seeking possible consensus was necessitated by the tripartite nature of the statutory requirements for arbitrations of this nature wherein a majority of the Arbitration Panel must agree on every aspect of the Award. Thus, the personal preferences of the neutral member of such an Arbitration Panel must also be tempered to some degree if there is resistance by other Panel members, as was the situation here, and the Award is to have the requisite majority vote of the Panel behind all aspects of the Award.

Aside from the principal salary and productivity issues involved in this proceeding, the partisan members of the Arbitration Panel did make concessions and compromises during the deliberative sessions of the Panel and unanimity was achieved with respect to all other aspects of the Award. These items dealt with mainly

housekeeping items, primarily to achieve uniformity in practices in the Police Department, to correct possible ambiguities in the contract and to implement agreements made by the parties prior to the commencement of this proceeding. As these portions of the Award appeared to be based upon reasonable and rational criteria and as they were of a non-controversial nature, I concurred with the agreements reached by the other Panel members.

Both in the hearings and in the deliberative sessions of the Arbitration Panel repeated references were made to the factors specified in the law to be considered in proceedings of this nature. Thus, lengthy testimony was taken and voluminous exhibits were received in evidence which made comparisons between the salaries and working conditions of these Superior Officers with those in Police Departments in nearby geographic areas, in the State and in the Nation. Great stress was placed by both parties on the County's financial ability to pay additional salaries and the potential impact on the public if salaries were to be increased. Detailed testimony was also given by individual Superior Officers regarding their educational background and training to become members of the Police Department, the additional study and expense involved in preparing for promotional examinations and the hazards of being a Superior Officer in a large

Police Department where unexpected dangerous situations are likely to be confronted at any time.

The evolution of present salaries and working conditions of Superior Officers, which are reflected in the terms of the contracts previously negotiated by the parties, was developed at the hearing. Comparisons were also made between the terms of the most recent agreement covering these Superior Officers and agreements covering similar employees in other jurisdictions, agreements covering lower ranking police officers in Suffolk County and elsewhere and agreements covering non-police Suffolk County employees.

Much of the hearing evidence dealt with the ability of Suffolk County to pay any salary increases which may be awarded in this proceeding. Although both parties appear to have relied largely on the same statistical data, the opinions expressed and the conclusions drawn by their respective fiscal witnesses regarding the import of that data varied considerably. Part of this diversity of opinion was due to the fact that much of the data reflected conditions which existed in the past and there was uncertainty as to projections based on such data in the current economic situation.

With respect to the constitutional limitations on taxing powers, Suffolk County has limited itself to a taxing limitation of no more than $1\frac{1}{2}\%$ of average full valuation of real estate in the County and it has not

opted to attempt to raise that limitation to 2%, as other counties have done, even though the means to do so are available to the County. The evidence also indicated that in recent years the increased taxing capability of the County under the 1½% limitation has exceeded the actual taxes which have been levied. The County argued, however, that it would be highly irresonsible and dangerous to the community's economic health to push taxes to the authorized legal limit.

The County's maximum borrowing powers, similarly, have not been fully exercised. Although the County is authorized to borrow up to 7% of average full valuation of real estate in the County, it has utilized such borrowing power only to a limited degree. Once again the County noted that it would be exceedingly foolhardy to borrow excessively and to assume debts resulting in subsequent taxes which many individual taxpayers cannot afford to pay. The evidence did indicate that the County's fiscal status was given an "A" rating by Moody's and that the County has been able to borrow money at favorable interest rates.

With respect to taxes levied, the evidence indicated that over 98% were collected on a current basis and that much of the delinquencies from past years has been eventually repaid with interest and penalties. The County

pointed out that some of the delinquencies were never repaid and that the number of delinquencies has been rising in recent years.

The evidence indicated that the per capita and per family income in the County was relatively high in comparison with other counties in the State and in the nation. However, according to the County's witnesses, the amount of disposable income of County residents was comparatively lower because of the amount of taxes County residents had to pay.

The per capita amount of full valuation of real property in the County in 1974, the last year for which statistics were available, was nearly \$900.00 above the State average. The evidence indicated that the value of such property would still be higher had the tax situation been more favorable.

Both retail sales and spendable income per household in the County in 1976 were characterized as being substantially above the average for the State. The County Executive, in his budget preparations for fiscal 1978, anticipated that revenue from retail sales taxes would rise by 7½%. However, it was questioned whether such increase reflected a rise in units of sales or simply reflected inflationary price increases.

An analysis of the assessment roles in the County indicated that about two-thirds of the property consist of one-family residences and one-third of either rental or other commercial property. From 1970 to 1978 residential property has risen about 67% in actual value while taxes on such property has risen a lesser percentage. It was contended that residential property owners usually have more than twice the net worth of home renters and that home owners receive special tax advantages to offset real property taxes in the form of deductables from gross income when federal and state income taxes are computed. However, because of the recent change in federal income tax deductions, the value of mortgage interest and property tax deductions has been somewhat vitiated for lower income home owners. It was also noted that the number of foreclosures of one-family homes was on the increase.

The fiscal expert witnesses for both parties differed in their analysis of the available evidence insofar as detecting economic trends and making forecasts for the future. The County witnesses viewed the employment, construction, foreclosure, tax delinquency, income and spending data as indicating a possible troubled future for the County while the S.O.A. expert took a more optimistic view of the import of the same data.

The witnesses also attempted to assess the impact of a monetary award in this matter on the taxpayers of the County.

Although it was obvious that a tax increase would be inevitable if salaries are increased while all other factors comprising the tax structure remain constant, it was also obvious that it was hardly likely that all other elements contributing to the tax rate would remain constant. Thus the necessary taxes to be raised as a result of this proceeding can be diminished if there was an increase in assessable property upon which taxes are levied, if the type of police/^{service} or other services rendered to the County residents were made more efficient or if increased revenue was derived from other sources such as state and federal aid or revenue sharing or increased income from sales taxes. The existence of so many variables which comprise the tax processes appeared to make any prediction of the impact of salary increases increasingly unreliable.

The voluminous evidence submitted by the parties clearly indicated that the County had the technical ability to pay salary increases but that such increases could have a possible adverse impact on the economic well-being of the County. Thus, while urging caution in the awarding of substantial salary increases the County strongly urged the Arbitration Panel to increase the number of days to be worked by Superior Officers and it expressed a willingness to accept reasonable salary increases if such increased productivity could be achieved.

It was also obvious, after reviewing the evidence, that the Superior Officers had made a number of meritorious arguments which could justify the continuance of the present number of work days. They noted that they had achieved their present work schedules through the collective bargaining process where in return for the favorable work schedule they had abandoned ^{demands for} other equally valuable fringe benefits and larger salary increases. The Superior Officers also pointed out that their work schedules were not unique insofar as similar work schedules are worked by the Nassau County Police Department and also by the lower ranking employees they supervise in Suffolk County. In this respect, the Superior Officers ^{noted} the fact that they supervised the lower ranking Officers and that their work tours coincided with the tours worked by the lower ranks. Thus, they argued that if they were required to work schedules which differed from the lower ranks there would be administrative chaos rather than greater productivity which is being sought by the County. It was because of the cogency of this last argument that the implementation of the requirement that Superior Officers work additional days was deferred until such time as the requirement is imposed uniformly on all ranks in the Police Department.

With respect to salaries, the Superior Officers noted that if their present salaries were not increased, Sergeants

would be earning less than what is already being paid to some of the lower ranking Officers whom they supervise. The Superior Officers argued that substantial salary increases were necessary if their supervisory authority and status are to be given any recognition and the customary salary differentials between ranks are to be maintained. They also argued that substantial salary increases were necessary to compensate them for the loss of purchasing power resulting from the continuing rise in the Consumer Price Index and to compensate them for the additional days of work which are being imposed upon them by this proceeding.

In summation, the Arbitration Panel, despite its tripartite composition, did take cognizance of the arguments and goals of both parties in this proceeding. Thus, the Award gives the Police Commissioner the capability of requiring three-tour employees to work a maximum of ten additional days yearly, it eliminates certain days off for shooting proficiency, for blood donations and for certain uncommon forms of sick leave. In return for such increased productivity and in recognition of the need to maintain meaningful salary differentials between the upper and lower ranks in the Department, a salary program was adopted, which overall appears to fall well within the voluntary wage increase guidelines suggested by the President. In this respect it should be noted that the same dollar wage

increases are being awarded to Lieutenants, Captains and Inspectors as is being awarded to Sergeants. Because of the higher salaries that are paid to Lieutenants, Captains and Inspectors, the percentage increase that will be received by them will be substantially less than the percentage wage increase that will be received by Sergeants.

NATHAN COHEN, Chairman

Dated: December 1978.