

STATE OF NEW YORK, COUNTY OF NASSAU
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Impasse Between

COUNTY OF NASSAU

and

NASSAU COUNTY PATROLMEN'S
BENEVOLENT ASSOCIATION

OPINION

AND

AWARD

-----x
ARBITRATION PANEL:

LEONARD COOPER, ESQ.
VITO COMPETIELLO
DANIEL GREENWALD

FOR COUNTY OF NASSAU:

ROBERT W. MAC GREGOR	Commissioner of Labor
ROBERT J. SWEENEY	County Attorney's Office
WILLIAM CORBIN	Department of Labor
TIMOTHY TURNER	County Budget Office

FOR PATROLMEN'S BENEVOLENT ASSOCIATION:

RICHARD HARTMAN	Attorney
HORACE Z. KRAMER	Attorney
EDWARD WITZKE	First Vice-President
EDWARD HISGEN	Second Vice-President
RICHARD SINISKI	President, Detective Association, Inc

Dated at Mineola, New York
March 19, 1976

P R E F A C E

The issues involved in this arbitration had previously been heard by this panel on July 15 and July 16, 1975. On July 29, 1975, the panel rendered its award.

Thereafter, the County of Nassau sought an order to vacate the award in Nassau County Supreme Court, and on September 17, 1975 Justice Burstein, in her decision, ordered that new hearings be held on the same issues and that there be a complete written record of all proceedings.

The hearings commenced on September 25, 1975 and continued intermittently through January 9, 1976. On March 1, 1976 the PBA, through its attorneys, asked for an additional hearing for purposes of introducing new evidence. A majority of the panel agreed to reopen the hearings, and on March 8, 1976, the final hearing was held. In total, there were twenty-five hearing days.

A record was made of the hearings in their entirety. The parties were present and were given full opportunity to present testimony, evidence and arguments in support of their respective positions.

At the conclusion of the January 9, 1976 hearing, the parties were asked to submit briefs particularly emphasizing certain aspects of their positions, and both parties submitted their briefs on or about January 26, 1976.

I S S U E S

1. WHAT SHALL THE SALARY BE FOR MEMBERS OF THE BARGAINING UNIT FOR THE YEAR COMMENCING JANUARY 1, 1975 AND TERMINATING DECEMBER 31, 1975?

2. ARE MEMBERS OF THE BARGAINING UNIT ENTITLED TO ONE ADDITIONAL HALF-DAY'S COMPENSATION FOR TOURS WORKED ON HOLIDAYS?

As to Issue 1:

Patrolmen's Benevolent Association Position

The Patrolmen's Benevolent Association (PBA), through its witness, Horace Z. Kramer, who also acted as co-counsel with Richard Hartman, testified as follows:

That the County of Nassau (County) has the ability to pay; that the ability to pay must be determined by:

1. Whether it is below its tax limitation;
2. Where it stands in terms of debt limitation;
3. Its record of collecting taxes;
4. The assessed property valuation behind each person;
5. The wealth and property of its residents.

Mr. Kramer stated that a deficit in and of itself does not denote an inability to pay. He testified that because unexpected things happen during the course of a budget year which

create expenditures, it should not necessarily be viewed as an indication that the County is insolvent or "out of money".

While Mr. Kramer generally agreed that the tax burden upon the taxpayer is high, he testified that this results from a totality of all taxes that Nassau County residents pay. He said that the average home in an unincorporated area is affected by sixteen taxing districts.

Mr. Kramer said "...this is a very affluent, solvent County... It is one of the wealthiest, soundest, fiscal Counties in the United States." (139)*

During the course of his testimony, he showed that the County was far below its debt limitation and significantly below its tax limitation.

PBA Exhibit 2 was introduced which showed that as at December 31, 1974, the County had utilized 44.59% of its debt limit. The testimony shows that in 1975 the County used about 67% of its tax limitation.

At the outset of the hearings, the County produced a witness, Ruth Corson, Assistant Vice-President of Moody's Investors Service, Inc., and a municipal bond analyst, who testified that the County currently has an A-1 rating and she described an A-1 rating as follows: "An A rating group is classified as upper median grade investment. An A-1 is the highest qualified within that rating group". (20)

*Numbers in parentheses refer to pages of the Transcript.

Miss Corson was asked, and answered, as follows:

"Q. In your analysis you show economic factors as favorable in this. Is it significant to you that the median family in, in Nassau County is \$14,642?

A. Yes it is.

Q. Why is it significant?

A. It indicates a level of wealth of residents. The census data overall indicated general characteristics of the population." (112,113)

County Exhibit A shows that during the 1970 census, the median family income was \$14,632.

The PBA, through its witness, Dr. Warren St. James, Professor of Economics at Nassau Community College, testified that if wage rates were too high, either inflation or unemployment would eventually develop, but that if negotiated wage rates fell between the range of 8% to 12%, it would not allow any lag. He described 15% to 20% as being too high.

Dr. Ephraim J. Felderman, a licensed physician in the State of New York, certified in pathology, formerly an assistant medical examiner and a coroner's pathologist, and presently Director of Laboratories at Central General Hospital in Plainview, New York, testified regarding the effect of police work upon the individual and stated, "We find we have an individual who is exposed in an exceptional sense to an environment which is dilatorious [sic]... These people work an 8:00 to 4:00 tour or whatever it may be, then swing to a 4:00 to 12:00 and then swing to 12:00 to 8:00.

Their dietary habits, their eating habits, their body habits,

personal hygiene, physical hygiene, bowel movements and so forth are all continually being changed, you understand, and the human cycle of an individual is being disrupted..." (489)

He further stated, "...it wears and tears at your guts, you understand, and the finality of this entire excursion in many instances is an untimely death or a foreshortening of life..." (491)

He particularly directed his testimony toward heart disease and in PBA Exhibit 36, Chart No. 7 thereof, pointed out that the mortality ratio due to coronary disease stands at 185%, meaning that the ratio is 85% above the norm.

Dr. Felderman said, "...the job of a police officer is an occupational hazard, and as such he incurs upon his body certain types of changes which are cumulative over the years and accelerates his disability..." (487,488)

It is significant to note here that during subsequent cross-examination, it could not be shown that a policeman's insurance premium rate is anything other than standard except that Dr. Felderman stated that the Metropolitan Life Insurance Company rated policemen "...one and one-half times above the overall average rate for accidental death..." (2865). Thereafter PBA Exhibit 159 was introduced which supported that statement.

John Rodda, First Vice-President of the Suffolk County PBA, testified essentially as to the present differences that exist between the Suffolk County Police Officers and Nassau County Police Officers. His testimony as to salary is substantiated in PBA Exhibits 47 and 48.

Exhibit 47 is a chart entitled "Salaries For Police Officers After Four Years of Service" which shows that as at December 31, 1974 a Nassau County police officer, after four years of service was earning \$15,410. That as of January 1, 1975, a Suffolk County police officer, after four years of service, was earning \$16,643.

Exhibit 48 is the agreement between Suffolk County, N.Y. and Suffolk County Patrolmen's Benevolent Association, Inc., January 1, 1974 through December 31, 1975, and this Exhibit substantiates the Suffolk County patrolman's salary after four years of service as being \$16,643, effective January 1, 1975.

Testimony was introduced relative to the cost of living. PBA Exhibit 144, which is a letter from Herbert Bienstock, United States Department of Labor, Assistant Regional Director for Bureau of Labor Statistics, addressed to Richard Hartman, Esq., states in part:

"...For example, the January 1974 index represents the entire month of January and not a specific date within it..

For example, the over-the-year increase in the New York-Northeastern New Jersey consumer price index for December 1973 to December 1974 is 10.9 percent $(161.8 - 149.9 = \frac{15.9}{145.9} = 10.9\%)$..."

PBA Exhibit 145 shows the increase as being 10.8%.

In addition, PBA argued:

1. That traditionally the salary level of the police in Nassau County had been \$1,000 above the salary level for the police in Suffolk County.

2. That based upon increases provided to the Suffolk County Police Department during the 1973-75 contract negotiations, in order for Nassau County to maintain the differential that existed between the Nassau County and Suffolk County Police Department salary levels, an increase to the Nassau County police officers of 14.23% is necessary.

3. That a percentage differential always existed between the CSEA settlements and the PBA settlements in that PBA always received higher percentage increases and that those differentials should be maintained.

4. That the Nassau County Police Department has the highest entrance and promotional requirements in the Country, and while it is true that this was not sought by the PBA, it nevertheless exists.

PBA, by letter of its attorneys, Hartman & Alpert, dated March 1, 1976 (Panel Exhibit 1), requested the panel to reopen the hearings "for the purpose of seeking admission of new relevant material". The letter also stated that this material had to do with "the recently agreed Nassau County Superior Officers contract".

Pursuant to the statement made by the public member of the arbitration panel: "...Now, I wish to remind both sides that although we are closing these hearings, if a majority of this panel finds it necessary to reopen the hearings for any purpose it has in mind, it will do so, but as for now these hearings are closed..."(2919), the panel met and thoroughly discussed

the hearings, and by a vote of two to one, with Mr. Competiello dissenting, the hearings were reopened and a hearing date was scheduled for March 8, 1976.

At that hearing, the PBA produced Sgt. Thomas F. Hefferan who testified as to the tentative agreement between the County and the Superior Officers Association (SOA). The SOA is an employee organization which, among other things, is certified to negotiate for members of the Police Department with the rank of Sergeant up through the rank of Captain.

Sgt. Hefferan testified essentially as to the items covered in that agreement as they appeared in PBA Exhibit 163, a newspaper called "Gold Shield". He stated that he was a Vice President of the Superior Officers Association and a member of its bargaining team. That he was present at the negotiation sessions and corroborated the details of the negotiations as they appeared in PBA Exhibit 163.

He further testified as to PBA Exhibit 164 which is a letter from Thomas G. DeVivo, Acting County Executive, to Sgt. Robert Burdewick, President of the Superior Officers Association. That letter reads as follows:

"This will confirm our conversation of Thursday, February 5 at which time I advised you that in the event any of the other employee bargaining units should secure a wage increase for calendar year 1976, we would give you the opportunity to sit down and talk about this matter."

It was Sgt. Hefferan's understanding that the only right the SOA had, in the event any other bargaining unit received

a wage increase for the year 1976, was the right to "talk" with County relative to that wage increase. It was his understanding that the SOA did not have the right to go to impasse proceedings if said "talk" was not satisfactory.

Timothy Turner who is a budget examiner in the Nassau County Office of Management and Budget, and who had previously testified at these hearings, was recalled as a witness by Mr. Hartman. During the course of that testimony, Mr. Cooper questioned him and he answered, as follows:

"Q. Have you heard Mr. Hefferan's testimony?

A. Yes, I have.

Q. Relative to the items negotiated and tentatively agreed to?

A. Yes.

Q. Have you at any time done a cost analysis of all the items you have been asked to make an analysis of which deals with the totality of that tentative agreement?

A. Yes, I have.

Q. And have you cost out that package in terms of the cost to the County?

A. Yes, I have.

Q. What is the cost to the County in terms of the S.O.A. agreement, tentative agreement?

A. Are you asking in terms of dollars or percentage?

Q. Percentage.

A. In terms of a percentage, all of the items that were testified to would come to approximately 12.3 per cent.

Q. When you say approximately, why is there not a more definite and certain number? Will it come to at least 12.3 per cent?

A. We always use the word approximately in connection with the cost figures.

Q. Could it be more than 12.3?

A. It is always an estimate that is made. It is not normally precise dollar figures. 12.3 is the most accurate estimate I can make.

Q. Your cost analysis shows 12.3?

A. That's correct." (2962,2963)

Mr. Turner also was quite emphatic that the only obligation that the County had to SOA in the event another bargaining unit received a wage increase for the year 1976, was to talk about that increase; that there was no obligation to negotiate.

As To Issue 1:

Nassau County Position

Nassau County, through Ralph G. Caso, County Executive, and Richard Camp, Nassau County Director of Budget, testified as follows:

1. That the people of Nassau County are at the "breaking point" when it comes to paying taxes. (1385)

2. That as far as the County is concerned, "we don't have one red dime". (1385)

3. "...The only money that the County has is what it extracts from the taxpayers, so the ability to pay on the part of the public employer..." means the taxpayers' ability to pay. (1385)

4. Mr. Caso pointed out that his task as County Executive involves judgments which he must make, and it is his judgment that he cannot wait for the time to come when the

County can't meet its debt payments, principle and amortization on bonds, and the anticipation notes. He must determine that there is an inability to pay before it gets to that point. He said, "...After the fact, to me, is too late; and you can never rebuild or reconstitute this County..."(1398)

5. That additional taxes will unfairly burden elderly, retired persons.

6. Mr. Camp testified that at the present rate of increasing expenditures and the present rate of increasing revenues, the County will reach its taxing limit in 1979 unless the New York Legislature approves an additional one cent in sales taxes. In that event, the County will reach its taxing limit in 1980. (1838)

Mr. Caso testified:

"...Now, what makes the deficit so difficult is that in our County, expenses are increasing 12% annually while revenue is increasing only 5% annually. So that the gap is widening, and at a very rapid rate. So that if we don't close this budget gap, we literally are going to fall into the chasm that is created as a result of just considering deficits meaning nothing..." (1409)

Mr. Camp testified as to other danger signals, as follows:

"Q. Mr. Camp, would you consider as danger signals, or danger signs of potential fiscal trouble, an imbalance of revenues and expenditures in operating funds?

A. Obviously, yes.

Q. Will you also consider a danger sign a pattern of current expenditures exceeding current revenues over several years?

A. Yes, and that is one thing that does concern us. It makes us take a look at the constitutional ability to pay and look at it more realistically." (1845,1846)

There was also testimony that property taxes in Nassau County may be the highest in the United States of America, and certainly is the highest in this State.

Additionally, the following three Mayors appeared:

William H. White, Village of Freeport

Dalton R. Miller, Village of Hempstead

William R. Fleisher, Village of East Hills.

They testified as to the impact of wage and fringe increases upon the people they represent.

Mayor White and Mayor Miller testified that it is usual for their municipalities to closely follow the contracts which are ultimately concluded between Nassau County and PBA.

Mayor Fleisher, whose Village does not have its own police department, testified with regard to the impact of a Nassau County settlement upon his Village residents.

The testimony provided by the three Village Mayors was that their residents were sufficiently burdened by taxes and could not really afford very much more.

During Mr. Kramer's cross-examination of Mr. Caso, Mr. Kramer attempted to establish that the County had a greater debt limitation in 1976 than it did in 1975, specifically attempting to solicit an answer from Mr. Caso showing that at the end of the

1975 year, the County had \$98,000,000 of unused taxes, but at the end of 1976, it would have \$115,000,000 of unused taxes. The words "unused taxes" mean that the County had the ability to tax that additional amount.

Questioning of Mr. Camp by Mr. Kramer tended to show that there was only a minimal possibility of reaching the tax limitation at the end of four or five years, instead of a probability as Mr. Camp had previously testified. (1911-1917)

Evidence adduced upon cross-examination shows that the County provided 5% in its 1975 budget for PBA increases and that that money was encumbered inasmuch as it was not used during 1975; that there is 6 1/2% in the 1976 budget, 5% of which is the continuance of the 5% placed in the 1975 budget, and 1 1/2% is "new money"; that the 1976 budget also included 2.8% in fringes.

The County did offer the PBA a total increase of 9.3% prior to this arbitration. PBA Exhibit 55 which is the Fact Finder's report issued by Jonas Silver on June 30, 1975, states that the County offered PBA an increase of 6.5% in wages and 2.8% in fringes. Testimony adduced during the course of these hearings supports the Fact Finder's report and the County agrees that such an offer in fact was made.

The County, through its witness, Thomas Lamberti, a practicing attorney specializing in labor relations for the past ten years and who, in 1974, was counsel to the Nassau County Village

Officials Association, testified at great length on the question of comparability with other police jurisdictions and made the following points:

1. That, historically, Nassau County PBA, in the course of negotiations, attempted to seek parity with its counterpart in New York City.

2. That if the arbitrators issue the same award as they did after the original arbitration hearings, Nassau County PBA would be substantially ahead of New York City police officers.

Mr. Lamberti testified with regard to County Exhibit LL which is a comparative chart of police jurisdictions, as follows:

"...That the County of Nassau's 1974 contract compared to the police jurisdictions outside of the State in terms of salaries. With one exception the County salaries exceed every other jurisdiction. That one exception is Los Angeles.

In terms of the work schedule, the County work schedule is less than any other work schedule in any of these other jurisdictions..." (2612)

All of Mr. Lamberti's testimony, based upon the comparisons he makes, and based upon the exhibits, shows that Nassau County is among the very highest paid police forces in the Country.

On cross-examination of Mr. Lamberti, Mr. Hartman attempted to show that Mr. Lamberti omitted from his comparison certain items which would indicate that New York City police officers have benefits which Nassau County police officers do not. As examples: (1) that a New York City police officer might retire at 50% of his last week's salary check; whereas a Nassau County police officer retires on an average of his last 365 days'

salary; (2) that New York City police officers receive six hours of time and a half if subpoenaed during off time; whereas Nassau County police officers get four hours of time and a half; (3) that recall time is more favorable in the City; (4) that there are college credit requirements in Nassau County, while there are none in New York City; and (5) that in New York City police officers reach top salary in three steps while police officers in Nassau County reach top salary in four steps.

Finally, through its witness, John W. Reif, a New York State pension and insurance expert, the County argued that, for purposes of insurance coverage, policemen are not rated specially or differently than those in other occupations having a standard rating. In effect, the County argued that, notwithstanding Dr. Felderman's testimony, the insurance companies did not find it necessary to place policemen in higher than standard ratings as a result of the health hazards involved in their work.

Discussion

The totality of the evidence before this panel is enormous. Much of what is in the transcript and the exhibits was allowed because this panel wishes to be absolutely certain that anything which would tend to be of any value should not be excluded.

The determination of the majority of this panel revolved about the criteria enumerated in Section 209 of the statute which is popularly known as the Taylor Law. There is no doubt that on the question of comparability as to wages, hours, and conditions

of employment between the employees in this bargaining unit and other bargaining units in this State, or, by and large, throughout the Country, this bargaining unit ranks very close to the top in all categories. Mr. Lamberti's testimony and the exhibits produced were conclusive in this regard.

During the course of these hearings, there was a good deal of testimony on the cost of living. I am persuaded that PBA Exhibit 144, which is the letter from Herbert Bienstock to Richard Hartman, is the most authoritative evidence as to the increase in the cost of living during 1974, and that letter shows an increase of 10.9%, although PBA Exhibit 145 shows an increase of 10.8%.

I was reminded, when reviewing the record on cost of living, that when this dispute was heard in binding arbitration the first time, that the parties agreed that the cost of living for 1974 was 10/1%. Obviously, the best evidence before us now, for purposes of calculating the cost of living increase for 1974, shows that figure to have been inaccurate.

Although the PBA was able to produce evidence that there are hazards involved in a police officer's job, particularly with regard to heart disease and related illnesses, as in all occupations that carry health risks, police officers are already being compensated for those risks in terms of their wages, the hours they work, other conditions of work and fringe benefits which they presently receive.

The record shows a great deal of testimony dealing with the

subject of ability to pay. I am mindful of all the pertinent evidence in the record, much of which has been restated hereinabove. The parties to this dispute had available to them, and produced, all the data that this panel would require in making a determination as to ability to pay. The abundance of evidence and exhibits provided this panel with the information it requires to make a determination.

County's Exhibit SS purportedly is part of an article written for the Albany Law Review by Martin Barr, General Counsel to the New York State Public Employment Relations Board. I believe that a portion of what Mr. Barr wrote bears repeating here for its pertinence and because I subscribe wholly with his view:

"Statutory Standards

Compulsory arbitration statutes typically set forth standards to guide the considerations of the arbitration panel. Such standards serve as a practical and legal limitation on the exercise of discretion by the arbitrators. They can, however, raise a host of problems. Thus, for example, the New York law requires the arbitration panel to consider, among other things, 'the financial ability of the public employer to pay' and a 'comparison of the wages, hours, and conditions of employment' of the employees 'performing similar services...under similar working conditions...in comparable communities.'

These criteria can involve the arbitration panel in serious difficulties. If the 'ability to pay' is literally construed, the panel must inquire into and make itself knowledgeable on matters such as budget allocations, sources of revenue (local, state and federal), transferability of allocations, borrowing capability, total labor costs (including other employee groups not before it), possible effect of its award on other employee groups. These matters can convert the arbitration panel into a substitute for the entire budgetary process. While such an extreme involvement is neither to be expected nor desirable, responsible evaluation of the government's 'ability to pay' may determine the future of compulsory arbitration in the public sector. Similarly, a careful study of 'comparable' wages, working conditions and communities will require innumerable judgments.

It is questionable whether any ad hoc arbitration panel, left solely to its own devices, in the limited time available to it, can determine with even reasonable assurance all the relevant and applicable facts that the statutory standards appear to require. Nevertheless, it is appropriate to expect a good faith effort. It is not likely that the public or the parties will be satisfied simply with 'intuitive' judgments, no matter how expert.

The dilemma suggests that the public arbitration panel should not be required to rely solely on the evidence produced by the parties. If the determination is to be an 'expert' one, the panel should have available as complete and objective data as possible. The parties cannot always be expected to produce such information, and, therefore, the panel should be permitted to seek relevant information from other sources. An obvious source is the present research staff of PERB. It may even be appropriate to establish a formal, continuing research staff to gather data to be utilized by the arbitration panels so that they may be able to perform more effectively."

Beyond this we are faced with a situation where the County had offered the PBA a wage and fringe package which totalled 9.3%. Obviously, the County is not arguing its inability to pay that amount since it has already offered it.

Its argument, therefore, must be that it does not have the ability to pay the difference between that amount and the amount which might be awarded. For example, if the County were to assume that the award might be three percent more than the County offered, as it was in the first arbitration, what the County now says is that it does not have the ability to pay that additional amount.

I am not unmindful of the duties of the Chief Executive Officer of this County, nor am I unmindful of his concern with the future.

The County Executive has an awesome responsibility, for his actions touch the lives of every resident in this County. His

judgments must be sound and his objectives in the best interests of all.

In this instance, I am convinced his testimony stands for what he deeply believes and I am confident that he will do his utmost to carry out his objectives.

We are involved here with the collective negotiating process which has, as its final step, binding arbitration where both parties have the opportunity for input and where the ultimate determination cannot be made based solely on a party's unilateral judgments or objectives. It must be made upon the evidence that is before us.

Clearly, it is the County's burden to show an inability to pay. When I consider the testimony relative to tax limitation, collectability of taxes, debt limitation, property value behind each person, the average income of the wage earners, the overall wealth of this County as compared to other counties in the State and Country, the ratings that Moody's Investors Service has given the County, I must conclude that the County has not sustained its burden to show an inability to pay. This is so despite the County's efforts to have us equate inability to pay with the possibility of what may occur four or five years hence.

PBA Exhibit 55 is the Fact Finder's Report, and it recommends as follows:

"Effective January 1, 1975 through December 31, 1975, a general increase of 8.5% at all levels in the bargaining unit, making the salary for patrolman at the beginning of the 5th year, \$16,720."

When making that recommendation, the Fact Finder recognized the value of fringes when he said on page 19 of his report:

"I have also recognized the money value of the fringe increases which augment the operating costs of the salary-fringe benefit package to the County."

Finally, we come to the testimony on the last hearing day which was March 8, 1976. I believe it is clear from that testimony that the County and the SOA have concluded a tentative agreement which provides a total wage and fringe increase of 12.3% for the year 1975. It is also clear that the parties have entered into a two-year agreement and that there is no provision for any increase in either wages or fringes for the 1976 calendar year.

However, there was a letter forwarded to Mr. Burdewick by Mr. DeVivo (Panel Exhibit 1) which is quoted in full herein. The County has taken the position that that letter is not an obligation upon them to do anything other than talk about the agreement. On the other hand, PBA Exhibit 163 which is the "Gold Shield", refers to that letter, in the President's Message, as "the written reopener commitment". In the view of this arbitrator, the County is absolutely correct. The language in that letter does not require the County to negotiate with the SOA. It is not a "written reopener commitment" as stated in the President's Message in "Gold Shield". A reopener would necessitate negotiations.

Mr. Heffernan testified that when the tentative agreement was discussed with the membership, the members were concerned with what might happen if other bargaining units were to receive a wage increase in 1976, and that certain members indicated that if other units got increases in 1976, then they, too, wanted increases in 1976.

He further testified that even before the meeting with the

members, he was present, along with others, at a meeting with Mr. DeVivo, wherein they told Mr. DeVivo that they wanted some kind of protection in the event other units received an increase. Obviously, the letter before us is the result of those meetings.

What did the County have in mind when it wrote this letter? Was it written merely to appease the SOA membership and calm its fears? Was it written to persuade them to ratify?

I believe not. It was written because the County was sincere in that if another unit were to receive an increase in 1976, then SOA might be entitled to the same consideration.

I am certain the County Executive intends to enforce his position on wage freezes for the 1976 calendar year. However, he may not be able to control that eventuality since the County must negotiate with the PBA in 1976. Unless the law with regard to binding arbitration is repealed, there may come a time when an award may be rendered by an arbitrator which will nullify the County's position with regard to a wage freeze in 1976. Under those circumstances, would the County not have the option of providing the same or similar increase for the SOA as that which was received by the PBA?

Upon all the evidence before us, it is the view of a majority of this panel that the Fact Finder's recommendation should be increased by one percent so that there be a general increase of 9.5% at all levels in the bargaining unit.

As To Issue 2

PBA Position

Essentially, the PBA's position in regard to this issue has been consistent in that it is its view that a police officer who works a holiday should get one full day's pay more than the police officer who does not work a holiday. They claim that the police officer effectively gets two days' salary for not working a holiday and, therefore, the police officer who does work a holiday should receive three days' salary.

The history is provided by the PBA as follows:

In 1961 Nassau County enacted Ordinance #94-1961. This ordinance provided that members of the police force would be paid for a certain number of holidays and that whether or not he worked on that particular holiday, he would receive holiday pay. Subsequently, during contract negotiations in 1969, the PBA, as part of its contract proposals, asked for an extra half-day's salary above that provided for by Ordinance #94-1961. This proposal was finally accepted by the County and became effective in the 1970 contract year.

On these facts, the PBA argues that the one-half day differential in salary between the police officer who works the holiday and the police officer who does not work the holiday is not sufficient and that the police officer who works the holiday is entitled to one full day's pay above the police officer who remains at home.

In support of this position, PBA introduced Exhibit 88, a fact finding recommendation issued in 1971 by George J. Scherrer who acted as Fact Finder in a dispute between these parties. He

recommended as follows:

"Recommendation: Although the compensation provided in the County's present system of holiday pay is rather unique and well rewarding, the Fact Finder feels there is an inequity in paying a man who works only one-half (1/2) day's pay more than his fellow employee who does not work. It is, therefore, recommended that this item be granted."

County Position

Mr. Thomas Lamberti testified on behalf of Nassau County as follows:

"...illustrated another way. Let's take Tuesday, July 4th. Worker A comes in. Worker B stays home. The next Tuesday, July 11, Worker A stayed home. He worked on July 4. Worker B works. Now, you look back, and what happened? Worker A had one Tuesday off. Worker B had one Tuesday off. Worker A worked on Tuesday. Worker B worked on Tuesday. Worker A got premium pay, got time and a half for that Tuesday. Worker B did not. He got straight time. Why? Because Tuesday, the 4th, was a holiday, but Tuesday, the 11th was not a holiday. It is that simple." (2637)

Mr. Lamberti went on to say:

"...so what the present holiday provision reflects which is what I said before is that certain of the 232 days is at premium pay because they are holidays, you get 50% more, and if you happen to work on it you get it and if you don't, you don't get it..." (2641)

Mr. Lamberti further testified that a police officer who works tours, works 232 tours a year, get 12 paid holidays, six

are paid on July 1 and six are paid on December 1. The policeman whose tour falls on a holiday gets an additional half day's pay. If a police officer working tours is off on a holiday, it is merely because he is not scheduled to work that holiday.

The following exchange took place between this arbitrator and Mr. Lamberti:

"Q. The man who works the holiday is already getting his holiday pay as are all police officers regardless of whether they work the holiday or do not work the holiday?

A. That's correct.

Q. The difference being that if you work on a holiday as opposed to your day off falling on a holiday, you get an additional half day's pay for working that holiday?

A. That's correct.

Q. But by working that holiday, now in summation, you do not work any more days in totality than the man who doesn't work the holiday?

A. That is absolutely correct." (2723)

Essentially, the above fairly states the position of Nassau County with regard to an additional half-day's holiday pay for the police officer who works on a holiday.

Discussion

This arbitrator must take notice of the fact that this issue has been heard by him before, and an award based on those facts which came before him at that time was rendered. When first heard, it appeared from all the testimony submitted by PBA that working a

holiday meant working an extra day. This arbitrator presumed the real problem to be not what a police officer should receive for working a holiday, but rather how much a police officer was entitled to for not working a holiday. It is clear now, based on all the testimony before us, that each police officer who works rotating tours, works 232 such tours a year. A chart is provided which shows the police officer's squad number and the tours which that squad will work. If a holiday happens to fall during his tour, he works. If a holiday happens to fall on his scheduled day off, he does not work that day. In no event does a holiday reflect an extra day's work for police officers who rotate tours. In effect, holidays, as such, have no relationship to when a police officer works or does not work.

The County provides a sum of money which is the equivalent of 12 holidays per year and distributes that sum in two equal payments yearly. Further, as Mr. Lamberti testified, because certain of the 232 days are holidays, the police officer receives premium pay if he happens to work on those holidays, and said premium pay is 50% more than a normal day's pay.

It was originally the position of the majority of this panel that when the County provided an extra half-day's pay for the police officer who works a holiday, it destroyed the principle created by Ordinance #94-1961. However, based upon all the evidence presented at this hearing, we find that that is not the case at all.

The majority of this panel believes that present remuneration for holidays is adequate.

A W A R D

As To Issue 1:

EFFECTIVE JANUARY 1, 1975, THE COUNTY SHALL PROVIDE A GENERAL WAGE INCREASE OF 9.5% TO ALL LEVELS IN THE BARGAINING UNIT, MAKING THE SALARY FOR PATROLMEN AT THE BEGINNING OF THE FIFTH YEAR \$16,874.00.

As To Issue 2:

POLICE OFFICERS WHO WORK A TOUR OF DUTY ON A HOLIDAY ARE PRESENTLY BEING COMPENSATED ADEQUATELY FOR SUCH WORK. NO ADDITIONAL PAYMENT IS NECESSARY.

Dated, Mineola, New York
March 19, 1976



Leonard Cooper, Arbitrator

Concurs:

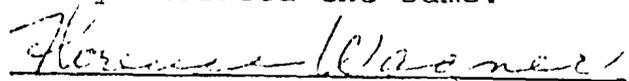

Daniel Greenwald, Arbitrator

Dissents:


Vito Competiello, Arbitrator

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

On this ^{22nd} 19th day of March, 1976, before me personally came and appeared Leonard Cooper, Daniel Greenwald and Vito Competiello, to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.



FLORENCE WAGNER
NOTARY PUBLIC, State of New York
No. 41-4120370 - Queens County
Term Expires March 30, 1977

STATE OF NEW YORK, COUNTY OF NASSAU
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Impasse Between

COUNTY OF NASSAU

and

NASSAU COUNTY PATROLMENS BENEVOLENT
ASSOCIATION, INC.

DISSENTING
OPINION

I, Vito A. Competiello, having been duly assigned and qualified as a member of a three man arbitration panel pursuant to the provisions of the Taylor Law, Section 209.,4.,(c)(ii), in the matter of the impasse in the negotiations between the County of Nassau and The Patrolmen's Benevolent Association of the Police Department of the County of Nassau, Inc., with the authority to proceed under the applicable statute and the Rules and Regulations, dissent from that part of the award granting a 9-1/2% salary increase.

D I S C U S S I O N

As a result of the decision of the Supreme Court, County of Nassau, the arbitration panel reconvened for the establishment of a written record.

The rehearings beginning on September 25, 1975 and concluded on March 8, 1976. Numerous rehearings were held which included the testimony of many witnesses and the submission of a plethora of exhibits by both sides.

A major issue throughout the proceedings was P.B.A.'s argument that the County had the "ability to pay" the original arbitration award.

Horace Kramer, P.B.A. co-counsel and P.B.A.'s chief fiscal expert, testified that the County was in a solvent fiscal position sufficient to grant the wage and fringe benefit increase of the original award.

Further, he testified that 2/3 of the county budget was mandated by Federal and State regulations: social services, health care, etc. He emphasized that the County Executive has wide discretionary powers in the determination of expenditures with the remaining 1/3 of the budget. He spoke in general terms as to how the demanded P.B.A. benefits could be realized, but stopped short of advocating the curtailment of other vital services. He testified that the County had not reached its maximum debt limitation, that its ratings by the investment services were favorable and, therefore, the County had the "ability to pay".

If we analyze the mass of his testimony, the logical conclusion to be drawn would be either the reduction of services accompanied by the dismissal of non-police employees, or an increase in the property tax. Neither of these conclusions would enhance our viable and stable County community; both would be contrary to sound public administration.

County Executive, Ralph G. Caso, and Budget Director, Richard Camp, testified to the County's precarious financial situation. Their uncontradicted testimony showed that the County was faced with an approximate \$17,000,000 budget deficit for the year 1975.

In his budget for 1976, the County Executive, in addition to seeking a 1¢ increase in the sales tax from the New York State Legislature, asked all employee unions to voluntarily accept a wage freeze for 1976 in order to balance such budget to prevent a fiscal fiasco.

The County Executive responding to the question of what "ability to pay" meant to him, replied that it is a matter of "philosophy". He stated that one of the real reasons we are in the position of severe financial strain is the ever constant demand by P.B.A. to secure parity with anybody with greater benefits. He testified that this endless "leap-frogging" was one of the causes for the financial plight of New York City. Further, with respect to "ability to pay"; the County Executive stated "---so, it is a matter of philosophy and I don't believe that I was elected as County Executive of Nassau County to preside over the demise of this County." He added that what the "---P.B.A. is trying to interpret as "ability to pay" is ability to tax; and I will not accept that as a definition." The fact that the County has the ability to tax should not be interpreted as an "ability to pay" excessive increases thereby placing the County in a situation which could cause the elimination of other essential services.

Mr. Camp, Budget Director, under questioning by the public member of this panel, gave his views as to what "ability to pay" means to him. He stated that many components go into the process of determining the County's ability to grant wage increases. He cited numerous criteria: gauging public attitudes, i.e. letters to the County Executive's office from residents, newspaper articles showing that property taxes in Nassau County are the highest in the U.S., the unemployment situation, a \$30,000,000 increase in welfare as a result of the present economic conditions. He emphasized other danger signals, budget deficits two years in a row and a serious imbalance of revenues and expenditures. Mr. Camp stated that by either 1979 or 1980 at the current rate of income and expense, the County would reach its constitutional tax limitation.

Thomas Lamberti, a leading lawyer and the County's expert witness, highlighted for the panel the historical relationships

of County collective bargaining, vis-a-vis, the City of New York and Suffolk County.

Mr. Lamberti proved that awarding anything in excess of the wage and fringe settlement previously offered by the County would destroy the relationships of the past. He reminded the panel that this was one of the criteria recited in the Taylor Law, section 209.,4.,(v)a.

Mr. Lamberti demonstrated through graphs and charts the historical relationships between the members of the Nassau County P.B.A. with other Police departments. He proved that with respect to wages, fringes and work tours, the Nassau County police force enjoyed substantially greater benefits than the vast majority of police departments in the United States. He proved conclusively that a 6-1/2% salary increase would make the Nassau County patrolman, considering the number of tours worked, the highest paid policeman in the United States.

O P I N I O N

The decision of the majority members is contrary to the weight of the evidence. Their award of a nine and one-half (9-1/2%) percent wage increase goes far beyond the "ability" of the County of Nassau "to pay".

The original arbitration award totalled 9-1/2%; 8-1/2% in salary and 1% in "triple time". These rehearings convinced the public member that the "triple time" award should not be confirmed. However, the end result of these rehearings is an identical award. PBA does not get the "triple time" but its value is added to the salary award raising it from an unconscionable 8-1/2% to an outrageous 9-1/2%. This 9-1/2% award has a more costly impact than does the original award. The 1% for "triple time" that is being added to the original 8-1/2% salary

award will now give more dollars in overtime, night differential, recall, standby and holiday pay. It will cause an increase in those costs associated with base salary, contribution to the retirement fund, etc.

The public member strongly relies on P.B.A. Exhibit dealing with the cost of living index for the year 1974. Although it is frequently used as a guide in Labor-Management negotiations to adjust wages, etc., I disagree with the base computations utilized in this proceeding.

The public member requested from the parties (page 1258 of the transcript) the cost of living increase for the period January 1, 1974 through December 31, 1974. The increase for that period was 10.1%.

Even assuming for the purpose of argument that the cost of living mentioned in the majority award is valid the County's offer of 6.5% in wages, 1.9% in fringe benefits and 1.8% to those patrolment eligible for step increases (1st year to 5th year) amounts to 10.2% and for those patrolment not eligible for step increases the County's offer including 6.5% wages, 2.8% fringe benefits (longevity) totals 9.3%. By granting a salary award of 9.5% the total award amounts to 12.3%; amount more than the cost of living increase for the year 1974 which the majority members rely on.

I cannot, logically, concur with the majority members of the panel; I can neither justify or substantiate any increase over the County's wage offer. If the majority members rely on the cost of living index, the evidence clearly shows that their award when taken together with the rest of the benefit package far exceeds such index.

Upon the reopening of the rehearings on March 8, 1976 P.B.A. sought to introduce testimony and evidence regarding the recently concluded two year contract with the Nassau County Superior Officers Association. P.B.A. attempted to prove to this panel that a two year Superior Officers Association

contract had not been negotiated; that, in fact, it was a one year contract, with a wage reopener for the second year. I think such action demonstrates a fallacious attempt on the part of the P.B.A. to discredit and/or disrupt a collective bargaining agreement mutually agreed upon, in good faith, between the County of Nassau and the Superior Officers Association.

Although the issue of a two year contract was not part of the matter before our panel, it is common knowledge, via the news media, that the provisions agreed upon between the Superior Officers Association and the County of Nassau, a two year package with an 8-1/2% salary increase effective January 1, 1975 and a wage and fringe benefit freeze in 1976 was recommended and offered to the P.B.A. by the County Executive, which offer was summarily rejected.

The fringe benefits granted to the Superior Officers Association and offered to the P.B.A. are identical. The specious reasoning that it cost more to provide these benefits to the Superior Officers Association as a function of their earnings is really beyond comprehension.

It has been demonstrated conclusively that the continuance of the historical rate of income and expenditures will cause the County to reach its maximum tax limitations by either 1979 or 1980 placing the County in bankruptcy. This disaster will effectively destroy the collective bargaining relationships that the employee groups of this County have enjoyed. The majority members have failed to recognize the financial straits which our County faces, the tremendous tax burden being further added to the already overtaxed residents of our County.

It appears to this member of the panel that the public member is of the opinion, an opinion shared by the P.B.A. member, that the County can only show an inability to pay when it is

bankrupt. On its face that is ludicrous. Yet, how else can they have awarded so unconscionable an increase in the light of the fiscal crisis facing our County.

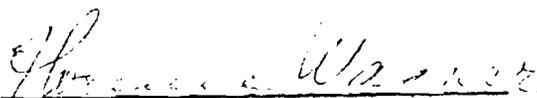
In conclusion, the County demonstrated beyond any reasonable doubt, that a 6-1/2% pay increase plus the 2.8% in fringes, taking into account the number of scheduled tours worked, will make the Nassau County police officer among the highest paid in the nation. I agree with this finding of fact and believe that in these difficult times the award should be limited to that amount.



Vito A. Competiello
Arbitrator
Dissenting Member

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

On this 2 day of March 1976, before me personally came and appeared Vito A. Competiello, 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.



FLORENCE WAGNER
NOTARY PUBLIC, State of New York
No. 41-412670 - Queens County
Term Expires March 30, 1977