

PUBLIC EMPLOYMENT RELATIONS BOARD

CA-0025; M75-23

In the Matter of the Arbitration

between

City of Tonawanda

and

Police Officers Association &

Local 859 Tonawanda

Uniformed Firefighters Association

:
Arbitration Panel:

: Dennis C. Brown,
: Employer Member

: Jacob A. Palillo,
: Employee Organization
: Member

: Irving H. Sabghir
: Public Member and
: Chairman

Opinion and Award

Appearances

City

Dr. Charles J. Ganim

Employee Organization

Ronald M. Gilcart

Gary Gath

BACKGROUND

Pursuant to Section 209.4 of the Taylor Act, on May 30 1975 a Public Arbitration Panel was established to hear and make a final and binding decision with respect to a collective bargaining dispute between the City of Tonawanda (hereinafter The Employer or City) and the Police Officers Association together with the Local 859, Tonawanda Uniformed Firefighters Association (hereinafter the Employee Organization or Association). Dennis C. Brown was designated as The Employer Panel Member; Jacob A. Palillo was designated as the Employee Organization Panel Member, and Irving H. Sabghir was chosen as The Public Panel Member and Chairman.

A hearing was held in Tonawanda, New York on July 9, 1975 at which time the parties were given full and ample opportunity to present their respective positions. A verbatim record was not taken. The City did file a post-hearing statement. The record consists of the testimony, the exhibits, the arbitrator's notes and recollections and the Opinion and Award are based thereon. It should be noted that July 9 was the first mutually available hearing date for the Panel Members. As a consequence, an award could not be issued nor a contract concluded prior to the so-called June 30, 1975 cut-off date for the negotiation of any pension benefits. It was the Panel's and the parties' understanding, however, that the Police and Fire Retirement System would honor any pension changes arising out of any Arbitration Panel award where the case was set down for arbitration prior to June 30, 1975. In the instant case May 30, 1975 is the operative date.

Under the provisions of Section 209.4 of the Taylor Act, the matters in dispute ". . . shall be decided by a majority vote of the members of the panel." Moreover, the statute establishes the following as basic guidelines for the panel:

"(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable,

take into consideration the following and any other relevant circumstances:

a. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment."

In order to assure a majority vote and adherence to the guidelines, the chairman established the following procedural rules:

1. The award would be either the City's or the Association's "last best offer" on each outstanding issue. Each side was permitted to change its "last best offer."

2. The parties would be required to demonstrate or "show cause" why the Fact Finder's recommendations should not be adopted as the award.

FACT FINDING RECOMMENDATIONS

On April 8, 1975 Fact-Finder Robert K. Gailey issued his recommendations on the outstanding two issues involving salaries and pensions. On salaries, he recommended an increase of 3.0 percent and the adjustment

of court time to reflect this increase.¹ With respect to pensions, he recommended the addition of an option, Section 375(i), under which an employee covered by the current plan, could at an appropriate time, disselect coverage under the present plan and elect coverage under Section 375(i).² The Fact-Finder provided no rationale for either recommendation, but did state that his pension recommendation ". . . gives the members the option of retaining the present 25 year plan or choosing a 20 year plan with less benefits than the 20 year plan demanded, but also considerably smaller additional pension costs to the City."

It might also be noted that at Fact-Finding the City proposed a 3 percent increase and no change in the pension plan, while the Association proposed a 15 percent salary increase and Section 384(d), the 20-year pension.

Following receipt of the Recommendations, the Association accepted them in toto, and the City rejected them completely.

¹ Court time, per the police contract, is equal to 40 hours pay at the derived hourly rate. Said rate is computed by dividing the base annual salary by 2080 hours.

² The present plan includes Section 384, (f, (g) and (h) which permits retirement after 25 years service regardless of age, at half pay, i.e., 25/50, but permits an employee to accumulate 1/60 of final average for each year of service after 25 years, up to age 62. Also, benefits are computed under Section 302-9-D providing that the final average salary is based upon the last 12 months of employment. Under Section 375(i), an employee can retire after 20 years service but not earlier than age 55 at 40% of final average pay. He may, however, work beyond age 55 and continue to accumulate 1/50 of final average for each year of service after age 55 up to a maximum of 75 percent of final average pay, i.e., 37.5/50.

POSITION OF THE PARTIES

Salary

As a consequence of the "last best offer" procedure, the parties finally indicated that 8 percent was acceptable. This was accomplished through four "last best offers" by the Association, and three "last best offers" on the part of the City. The uniform 8 percent "last best offer" will be shown below as the Panel's salary award.

Pension

The Association initially proposed the Section 384(d) pension, which is the 20-year pension. It finally urged acceptance of the Fact-Finder's recommendation of providing Section 375(i) as an option. The Association urged that this did provide the possibility for an improved pension for an employee who decided to chose that option.

The City opposed establishing the Section 375(i) option essentially because it felt that this would establish the concept or principle of a 20-year pension and thus make the City vulnerable to the Section 384(d) demand in the future.

ANALYSIS

A majority of the Panel believes that adopting the Section 375(i) option is just and reasonable and consistent with the criteria in Section 209.4 subsection (v). The City did not establish a meaningful basis to justify the Panel's modifying or disregarding the Fact-Finder's recommendation on pensions. In light of this, The Panel believes that it is important and desirable to affirm the Fact-Finder's recommendation. To do otherwise, in the absence of any persuasive showing why the Fact-Finder's recommendation is not just and reasonable, would make a nullity and a farce out of the fact-finding step in The Taylor Act procedures for dispute resolution. The Arbitration step is not intended to simply give the

parties another free "bite at the apple," but rather to provide a forum where either may demonstrate the shortcomings of a fact finding recommendation. The presumption is, therefore, on the side of the recommendations, and the parties have the burden of undermining that presumption. The City has failed to carry its burden.

A majority of the Panel finds that the option would provide an increased benefit to an employee who would select it. Moreover, this option does not increase current pension costs to the City and is thus within the financial ability of the City. In fact, City pension contributions would actually decline at the time any employee chose the option. To be sure, it is not determinable whether this option would actually be utilized because there is no need for an employee to make an election prior to age 55. But the possibility for an increased benefit would exist together with the reduction in City pension costs for each such election.³

Finally, the City's basic objection and fears concerning the establishment of the Section 375(i) option are

³As an example, assuming an individual became a patrolman or firefighter at age 25 and retired at age 62 his pension would be computed as follows. Under Section 384 he would earn 25/50 or 50% by age 50 and 12/60 or an additional 20% by age 62 for a total pension of 70%. Under Section 375(i) he would earn 37/50 or 74 percent by age 62. Thus, Section 375(i) in this case, could actually provide a 4 percent greater pension at less cost to the City. In the case of an individual starting work at age 30 and retiring at age 62, the Section 384 benefit would be 62% compared to the Section 375(i) benefit of 64% at less cost to the City. Finally, for an employee starting at age 25 and retiring at age 55, he would receive 58% under section 384 and 60% under Section 375(i) at no increased cost to the City.

groundless. It seems evident that the availability of a 20-year pension only at age 55 [Section 375(i)] bears no relationship whatsoever to a 20-year pension regardless of age [Section 384(d)]. In this connection, it might be noted that under City regulations an individual may not be more than age 30 at the time he takes the police exam and age 28 when he takes the fire exam. On the assumption that a list may be active for 2 years and an individual would be allowed 2 years for military service, it is not likely that a successful candidate could normally be more than age 34 or 32 upon appointment to the police or fire department, respectively. Thus, the Section 375(i) option would normally require a minimum of 21 and 23 years for a policeman or firefighter respectively, and not 20 years of service at age 55. For employees hired at age 30 or earlier, the Section 375(i) option would require at least 25 years service before retiring. In fact, most policemen and firefighters are hired before age 30. Simply stated, the establishment of the Section 375(i) option should in no way be interpreted as an opening wedge for Section 384(d), and it would be specious for the Association, in future negotiations, to point to this Award as a fundamental justification for the flat 20-year pension under Section 384(d). Indeed, comparing Section 375(i) to Section 384(d) would be like trying to compare Phyllis Diller to Marilyn Monroe.

The Panel is unanimous with respect to items 1 and 2 in the Award below. The Public Panel Member and the Employee Organization Panel Member are in agreement with respect to item 3. The Employer Panel Member dissents from item 3 in the Award. Inasmuch as at least a majority of the Panel is in agreement on all 3 items the following is the final and binding award.

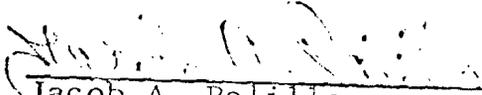
AWARD

1. The current police and firefighter salary schedules in the appropriate contracts shall be increased by 8% effective April 1, 1975. Any retroactive payments may be made periodically or by a lump sum but shall be completed within 90 days following receipt of this award.

Public Employment Relations Board
 CA - 0025; M75 - 23
 City of Tonawanda
 and
 Police Officers Association &
 Local 859 Tonawanda
 Uniformed Firefighters Association

Dated at:

Niagara Falls, New York
 July 29, 1975



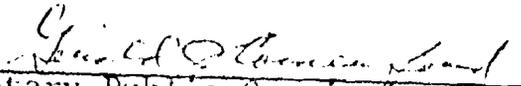
 Jacob A. Palillo
 Employee Organization
 Member

State of New York:

: SS

County of Niagara:

On this 29th day of July 1975, before me appeared Jacob A. Palillo, to me known and known to me to be the individual described in the foregoing instrument.



 Notary Public-Commissioner of
 Deeds

GERALD J. COMERFORD - Reg. No. 3076
 Notary Public, State of New York
 Qualified in Niagara County
 My Commission expires March 30, 1977

Public Employment Relations Board
CA - 0025; M75 - 23
City of Tonawanda
and
Police Officers Association &
Local 859 Tonawanda
Uniformed Firefighters Association

Dated at:
Niagara Falls PCB
Tonawanda, New York
July 29, 1975

Dennis C. Brown

Dennis C. Brown
Employer Member

State of New York:

: SS

County of Erie :

Niagara PCB

On this 29th day of July 1975, before me appeared
Dennis C. Brown, to me known and known to me to be the
individual described in the foregoing instrument.

Gerald J. Comerford

Notary Public-Commissioner of
Deeds

GERALD J. COMERFORD Reg. No. 307
Notary Public, State of New York
Qualified in Niagara County
My Commission expires March 30, 1977