

NEW YORK STATE DEPARTMENT
PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED

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IN THE MATTER OF THE ARBITRATION BETWEEN: :
TOWN OF MAMARONECK :
-and- :
TOWN OF MAMARONECK PAID FIREFIGHTERS ASSN.: :
CASE NO. CA-0029; M75-72 :

CONCILIATION
PANEL'S
AWARD and OPINION

The PUBLIC ARBITRATION PANEL (hereinafter referred to as the "PANEL"), composed of ALAN JAFFE, Employer Appointee, ROBERT BOGART, Employee Appointee, and PAUL G. KELL, Chairman, was appointed in accordance with the procedures of the New York State Public Employment Relations Board to inquire into the causes and circumstances of the continued impasse between the TOWN OF MAMARONECK (hereinafter referred to as the "TOWN"), and the TOWN OF MAMARONECK PAID FIREFIGHTERS ASSOCIATION (hereinafter referred to as the "ASSOCIATION"), and to make an Award accordingly.

The Arbitration Hearing was held on September 23, 1975 at the Firehouse in Larchmont, New York. Additional documentation was received from the Parties by October 8, 1975. All of the evidence having been presented, the Arbitration Hearing was accordingly closed on October 8, 1975.

The Panel met in Executive Session on October 9, 1975. After due and deliberate consideration of all the evidence, facts, exhibits and documents presented, the following is the Panel's Award.

APPEARANCES: FOR THE TOWN:

JOSEPH F. VANDERNOOT, Deputy Supervisor
JOSEPH V. SANTORO, Former Chief

FOR THE ASSOCIATION:

LT. KENNETH J. VALLE, President, Local 898
FIREFIGHTER NORMAN WILSON, Vice-President, Local 898
LT. SAM GAROFALO, Negotiator, Local 898

IN GENERAL:

(A) The dispute involves the continued impasse between the TOWN OF MAMARONECK and the TOWN OF MAMARONECK PAID FIREFIGHTERS ASSOCIATION for a contract to take effect January 1, 1975.

(B) The Parties were unable to resolve the dispute for a contract to take effect January 1, 1975, and the issues at impasse were submitted to Fact-Finding. A Fact-Finder's Report was issued on April 24, 1975 by Fact-Finder Erwin M. Blant. While the Parties resolved two of the four issues submitted to the Fact-Finder, and while the Association accepted the remaining two (that of salaries and retroactivity), the Town rejected the Fact-Finder's recommendations on salaries and retroactivity. The New York State Public Employment Relations Board on July 28, 1975 appointed a three member Public Arbitration Panel pursuant to Section 209.4 of the Civil Service Law.

(C) The Parties at the Arbitration Hearing submitted two issues to impasse; namely:

Issue #1: Salaries
Issue #2: Retroactivity.

(D) The Parties have agreed to a two year agreement, with a wage reopener in the second year; in relation to the first year, all except Salaries and Retroactivity have been resolved by the Parties.

(E) The "Position" of the Parties is intended to reflect a summary of the Parties' positions, and is not intended to be all inclusive. The "Discussion" of the Panel is intended to reflect some of the major evaluating factors used in the Award and is not intended to be all inclusive.

(F) The Panel has considered all of the evidence, facts, testimony, and exhibits submitted by the Parties. After due and deliberate consideration and evaluation of the material presented by the Parties, the Panel's Report which follows contains its Award.

PERTINENT SECTIONS OF STATUTORY PROVISIONS: SECTION 209.4:

(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.

PERTINENT SECTIONS OF FACT-FINDER'S REPORT: ERWIN M. BLANT,
FACT-FINDER, DATED APRIL 24, 1975:

.....Therefore, the Fact Finder recommends that the salary of the Firemen and the Fire Lieutenants be greater than the offer of \$14,400 for the men and \$15,900 for the Lieutenants. That in regarding the salary for the first year of the contract, the Fact Finder recommends that based upon the comparability with neighboring towns, one finds the Town of Mamaroneck very low on the salary schedule and further based upon the hardship caused by the reduction of the work force as further discussed in this Fact Finding report, and also the loss of educational compensation by bringing the Education clause in parity with the new Police contract, the Fact

Finder finds that the loss of the educational benefit not as great as the Police benefit of \$660; but yet a substantial loss and further based upon all of these facts, Fact Finder recommends a salary for the first year of the contract for the Paid Firemen in the sum of \$14,700 and the Paid Lieutenants in the sum of \$16,350.

The parties have agreed to a wage reopener for the second year of the contract and negotiations will be carried out to that end at the expiration of the first year.

.....In negotiations for a new contract, if retroactivity is not accepted by the parties herein, then there will be a benefit to one party to allow negotiations to continue over a longer period of time regardless of whether or not that is done by intent or through the demands of the negotiations. In this case the Fact Finder is sure that it was done through the demands of the negotiations and not by intent. The Fact Finder further finds that on the other hand, any other party will be adversely affected by the failure to impose retroactivity. It is the belief of the Fact-Finder that no party to wage negotiations should be adversely affected by the fact that the negotiations extended beyond the length of the prior contract. It is further the belief of the Fact Finder that with regard to retroactivity, there should be status quo concerning the length of the contract regardless of when the contract is completed and consummated. That the parties in their negotiations should negotiate from the basis of that status quo or retroactivity so that there will never be any hardship placed upon either party by the time of duration of the negotiations. Therefore, the Fact Finder finds that this contract, for the above-stated reasons, should be retroactive for a period of two years with its time of inception commencing immediately after the expiration or termination of the present contract.

And further taking into consideration the ability of the municipality to pay the wage increases for the coming year and having taken into consideration past and present conditions with other bargaining units of the municipality, Fact Finder finds that the wage increases for the first year shall be \$14,700 for the men and \$16,350 for the Fire Lieutenants retroactively.

POSITION OF THE PARTIES:

The Association requests adoption of the Fact-Finder's Report. The Fact-Finder recommended that salaries be increased, retroactive to January 1, 1975, to \$14,700. for Firemen, and \$16,350. for Lieutenants (salaries are \$12,800. for Fireman and \$14,000. for Lieutenants).

The Association supports its position by arguing that there is a "disparity" between other fire departments in Westchester County, and cites said "disparity" by the submission of Fire Exhibit #2. In addition, the Association argues that they should get credit for the elimination of the "education provision", which credit should be added to the salary adjustment and made part thereof. The Association notes that they would accept the Fact-Finder's Report as a settlement, although it is lower than their proposal.

The Town offers \$14,400. for Firemen and \$15,900. for Lieutenants, noting that this amounts to a $12\frac{1}{2}\%$ increase. The Town acknowledges that agreement has been made in changing the "education provision", but notes that this has "no cost to the Town" since no Firemen have used same; that since it was not a cost item to the Town, it has "no value", and therefore no additional compensation should be granted the Association.

In addition, the Town argues that the Town's settlements with the other Town Units amounted to the following: PBA amounted to 9.1%, CSEA amounted to 8%, Sanitation amounted to 9%, and Supervisory Personnel amounted to 8%. The Town however does acknowledge that other items were included; (for example, the CSEA contract amounted to 8% in salaries, plus a 1% adjustment in salaries, plus $2\frac{1}{2}\%$ in pensions, or $11\frac{1}{2}\%$); the Town thus notes that even with these other items, this $11\frac{1}{2}\%$ compares with the $12\frac{1}{2}\%$ offer proposed for the Association.

Further, the Town acknowledges that they have "no dispute in the findings made by the Fact-Finder in relation to the 1974 position of the Firemen"; however they note that in 1975, as witnessed by Town Exhibit #1C, the "disparity has vanished"; and that the Town's offer of \$14,400. would bring the Firemen in line with the current settlements in the surrounding areas. The Town therefore argues that their proposal should be accepted.

On the issue of Retroactivity, the Association argues that if retroactivity were not granted, its salary request would have been higher; that the Fact-Finder did not find any "rationale" in denying retroactivity since neither Party delayed the negotiations, and therefore retroactivity should be granted.

The Town notes that it has no objection to retroactivity provided said retroactivity is "based upon the Town's offer".

DISCUSSION:

On the issue of Retroactivity (Issue #2), the Panel notes the findings made by the Fact-Finder. The Fact-Finder noted that if retroactivity were not granted, a benefit would accrue to one Party if negotiations were to continue a longer period of time, regardless of whether it was done "by intent or through the demands of negotiations"; that in the current case the resulting time was caused by the "demands of negotiations and not by intent". The evidence before the Panel concurs with the Fact-Finder's recommendations, and therefore the evidence requires a finding that neither Party caused a delay in negotiations.

Having found no delay in negotiations by either Party, and noting the Fact-Finder's recommendation that retroactivity should be granted from January 1, 1975, the Panel awards that, in accordance with the salary adjustments awarded below, retroactivity shall be granted from January 1, 1975.

On the question of the "education provision", the Panel does not find merit to the Town's argument that since Firemen did not use the education provision and since no money was spent by the Town, same cannot be considered a benefit and a cost item; and that the removal of the education provision from the new contract

should not be compensated accordingly. The previous agreement contained an education provision and thus Firemen were permitted to use same; therefore such a benefit did exist. A change agreed to by the Parties to remove this provision means a denial and a loss in a benefit which had been heretofore available. The Fact-Finder determined that the education provision had a value, and should be considered in compensation for the Association. The evidence before the Panel confirms the finding of the Fact-Finder that the education provision does have a value, and must be considered in the salary adjustments.

In accordance with Section 209.4 of the Civil Service Law, the Panel, in making "a just and reasonable determination of the matters in dispute" must give consideration to "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". Thus, comparisons must be made with the neighboring communities cited on Town Exhibit #1C and Fire Exhibit #2.

The Panel notes the Town's argument that the findings made by the Fact-Finder in his Report dated April 24, 1975 were "correct"; that they were based upon the statistical data available on Town Exhibit #1B and Fire Exhibit #2 for the year 1974; that additional data is now available to this Panel based upon settlements for the 1975 contracts in these same communities; that they show a different relationship and show that the "disparity has vanished"; that therefore the Town's offer of \$14,400. is equitable.

The Panel concurs that the findings made by the Fact-Finder (dated April 24, 1975) were based upon the 1974 salary schedules available for the neighboring communities cited. However, the evidence before the Panel (Town Exhibit #1C) shows that there has been a narrowing of the disparity for 1975 agreements. Therefore, based upon this additional documentation which is currently before the Panel (and was not before the Fact-Finder), and when taking into account all of the salaries cited on Town Exhibit #1C, the evidence requires a finding that adjustments are warranted.

Accordingly, based upon the additional documentation (Town Exhibit #1C) presented to this Panel, and keeping comparability within the neighboring communities, and noting the settlements as cited on Town Exhibit #1C, the Panel recommends that there be a split salary adjustment, namely: the first retroactive to January 1, 1975, and the second retroactive to July 1, 1975; this would permit the Association to start negotiations on January 1, 1976 at the rate recommended by the Fact-Finder, while staying within the Town's cost factors for 1975, and while granting comparability with neighboring communities.

Therefore, when computing the costs to the Town, and when noting the Fact-Finder's Recommendations, and when viewing the current salaries of the neighboring communities for 1975 (Town Exhibit #1C), the Panel awards that the salaries be adjusted as follows: that retroactive to January 1, 1975, the salary for Firemen shall be \$14,100., and retroactive to July 1, 1975, it shall be \$14,700.; that retroactive to January 1, 1975, the salary for Lieutenants shall be \$15,450., and retroactive to July 1, 1975, it shall be \$16,350.

PANEL'S AWARD:

The Public Arbitration Panel renders the following Award:
Salaries for members of the Town of Mamaroneck Paid Firefighters Association shall be adjusted as follows:

1. For Firemen:
 - (A) Retroactive to January 1, 1975; \$14,100.
 - (B) Retroactive to July 1, 1975; \$14,700.
2. For Lieutenants:
 - (A) Retroactive to January 1, 1975; \$15,450.
 - (B) Retroactive to July 1, 1975; \$16,350.

DATED: October 14, 1975.

Respectfully submitted,

Alan Jaffe
 ALAN JAFFE (I CONCUR)
Robert Bogart
 ROBERT BOGART (I CONCUR)
Paul G. Kell
 PAUL G. KELL, Chairman

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

On this 17 day of October, 1975, before me, the subscriber, a Notary Public of New York, personally appeared ALAN JAFFE, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

Howard L. Ganz
 HOWARD L. GANZ
 NOTARY PUBLIC, State of New York
 No. 60-6456250 Qual. in Westchester Co.
 Commission Expires March 30, 1976

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this day of October, 1975, before me, the subscriber, a Notary Public of New York, personally appeared ROBERT BOGART, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

Daniel A. Santoro
 DANIEL A. SANTORO
 Notary Public, State of New York
 No. 60-3407000
 Appointed for Westchester County
 Term Expires March 30, 1977

STATE OF NEW JERSEY)
COUNTY OF HUDSON) ss:

On this 14th day of October, 1975, before me, the subscriber, a Notary Public of New Jersey, personally appeared PAUL G. KELL, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

Sonia K. Azarow
 SONIA K. AZAROW, Notary Public of N.J.
 My Commission expires April 22, 1979