

REC. 3/25/76  
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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
Case No. CA-0048; M75-450

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In the Matter of the Arbitration :  
-between- :  
Village of Monticello :  
-and- :  
Monticello Police Benevolent :  
Association :

AWARD  
and  
OPINION

STATE OF NEW YORK  
PUBLIC EMPLOYMENT  
RELATIONS BOARD  
RECEIVED  
MAR 23 1976  
CONCILIATION

Appearances:

For the Association:

Marvin A. Newman, Esq., Attorney  
Al Sgaglione, President, Police Conference of New York

For the Village:

Robert M. Rosen, Esq., Attorney  
Hon. Anne Kaplan, Mayor  
Donald C. Block, Village Manager

Before Public Arbitration Panel:

Walter L. Eisenberg, Public Member and Chairman  
Louis Bernstein, Employer Member  
Robert Friedland, Employee Organization Member

THE ISSUES

The Monticello Police Benevolent Association (hereinafter "Association") and the Village of Monticello, New York (hereinafter "Employer" or "Village") submitted to the Undersigned Public Arbitration Panel for final and binding determination four contract pay and fringe bene-

fit issues unresolved in fact-finding and still in dispute between them:

1. Salary increase
2. Clothing allowance increase
3. Personal leave increase
4. Overtime or compensatory time for weapons qualification

A hearing on the issues was held on January 10, 1976 at the Village Hall in Monticello, New York. The parties were ably represented, and were afforded full opportunity to introduce evidence, and present argument on the issue. The parties elected to file post-hearing briefs and rebuttal comment thereon, and upon receipt of these the hearing was declared closed as of February 21, 1976.

The issues here involved arise out of the parties' unsuccessful efforts to renegotiate a contract which expired July 31, 1975, out of their subsequent failure mutually to adopt a Fact-Finder's Report dated September 4, 1975 containing recommendations for the settlement of the unresolved issues, and out of their failure since that Report was issued otherwise to reach agreement on these issues.

The Association asks the Panel to include the following in a one-year agreement between the parties, effective August 1, 1975:

1. A 10% increase in the present salary scale
2. An increase in clothing allowance to \$300 per year (from \$250.)
3. An increase in personal leave days to 5 per year (now 3 days).
4. All officers to be given either overtime or compensatory time off for time spent in preparation and qualification in the use of weapons required by the Employer

The Employer asks the Panel to deny the Association's requests, in effect renewing the expired contract for one year beginning August 1, 1975 with no changes other than those previously negotiated and tentatively agreed to by the parties.

The Fact-Finder recommended, in his Report dated September 4, 1975, the following with reference to the four open issues here in arbitration:

1. An across-the-board salary increase of 7%, retroactive to August 1, 1975.
2. No increase in the annual clothing allowance
3. No increase in the number of days of personal leave
4. Time spent by officers within departmental regulations, norms and requirements for weapons qualification, and when such time is approved by the Chief of Police or immediate supervisor, shall be reimburseable in compensatory time (as set forth in Section IV of the contract)

The Village rejected the Fact-Finder's Recommendations, and is said by the Association to have offered thereafter a 2½% salary increase plus a fringe benefit unrelated to the issues in Fact-Finding -- an assertion the Village disputes -- as the basis for a contract settlement. In response, the Association, which apparently would have been willing to accept the Recommendations had the Village not rejected them, requested arbitration and now seeks a 10% increase in salary as one of the components of a basis for a settlement.

The police unit involved consists of 23 employees and excludes only the police chief, and there are 62 other Village employees in various employments; making a total of 85 Village employees.

#### POSITIONS OF THE PARTIES

Among the principal elements in the Union's case are the following, in briefest outline: the Association had originally sought in bargaining a 20% pay increase plus other improvements in a two-year agreement, and reduced its demands when the Village expressed an interest in a one-year agreement; the employees involved are entitled to the 10% pay increase they seek to catch up in part with the increase in cost-of-living they experienced during the year ending June 30, 1975; the police officers involved are the busiest local police force in Sullivan County; the members of the police force are professionals with a "minute" turnover rate, compared to other local police forces; the levels of pay for police officers in the nearby communities of Fallsburg and Liberty have been increased substantially over the comparative

pay rates submitted to the Fact-Finder for those communities, bringing them to levels comparable to Monticello police pay, despite the fact that neither of those villages has the volume and type of dangerous crimes of the police in Monticello, the County seat; the police officers involved are an efficient unit who have never been criticized for the quality of their work; had the Employer been cooperative, the Association would have been prepared to compromise and accept the Fact-Finder's Recommendations; the police officers involved are entitled to protection of further loss in real income and decline in their standard of living as a means for sustaining their morale while carrying their unusual workload in a highly professional manner; the Employer admits there is merit in the Association's demands but erroneously claims there is no way to meet these in the 1975-76 budget; the Employer's plan to pay off a long-time budget deficit in three years is "senseless", in that it should be paid off over a much longer period, leaving ample funds to cover increases for the police officers; the total cost of all the demands made by the police officers amounts to \$30,000-\$40,000; the Village has unilaterally imposed a "wage freeze", contrary to "the spirit of the Taylor Law", and it can more justifiably impose a freeze on the liquidation of its budget deficit; the Village can raise even more revenue for meeting a "just" pay increase by seeking authorization to put a tax on admissions to the Monticello Raceway, by foreclosing accumulated and uncollected tax liens, and by raising taxes for a year until a new shopping center is completed; and because the police officers do not have the right to strike, the Village should not seek to impose upon them the financial burden of cost-cutting and deficit reduction.

Among the principal elements in the Employer's case are the following, in equally brief outline: the Village can not afford to pay any salary increases, and if the Association's demands are granted the Village would incur a budget deficit; there is a sizeable current budget deficit; under a Village-imposed wage freeze no Village employee has received a salary increase for the fiscal year beginning August 1, 1975; the present pay, hours and conditions for the police officers involved are better than, and more comparable to, those for employees doing similar work in comparable communities; the Association has not proved that the cost-of-living has risen in Monticello or in Sullivan County; the Employer does not dispute the "competence and capability" of the police officers involved; the Village has an audited deficit of about \$400,000 as of the year ending July 31, 1974; for fiscal 1975-76 the Village is within 25 cents of its

constitutional taxing limit; the total costs of salaries and fringe benefits for the Police Department amount to about 20% of the Village's budget of \$1.9 million; the present clothing allowance for police officers is "tantamount" to additional salary, and comparable to that of other municipalities; the additional personal leave days requested by the Association would increase such leave to a week, making a total of 23 weeks of paid leave of all types each year, an increase for which the Association has provided no justification; while the Village requires weapons training it is part of the normal routine of police officers for which no overtime or compensatory time off is justified; the Village needs a "breather" to meet its cash flow problems and alleviate its financial problems; for the past two years the Village has had difficulty collecting taxes, and to do so by foreclosing its tax liens involves expense and a minimum delay of three years; the Village has "a moral obligation" to its other employees to provide them with "equal benefits" to those for police officers, a cost which would be catastrophic for the budget, and to give greater benefits or pay to police officers would be "unfair"; the Village is willing to attempt to meet "reasonable demands" by the Association beginning with the fiscal year August 1, 1976, should the present demands of the Association be denied by the Panel; the Village can not impose an admission tax on the Monticello Raceway without enabling State legislation; and the decision of the Village to pay off its deficit is a matter of its legislative policy, and postponing the time for doing so is not in the best interests of its residents or its employees.

#### OPINION

The Panel's task is unusually complex in that the respective positions taken by the parties on the issues involved are not unreasonable, do not have the earmarks of insincere "bargaining" postures, and reflect a fairly commonplace dilemma confronting good faith bargainers in public sector labor relations at every level. Simply put, there can be no doubt that there has been erosion of the real income of the police officers involved before and after the expiration of the parties' agreement. The national Consumer Price Index (CPI) rose by almost 13% from the July 1974 level to the January 1976 level, and the closest regional CPI -- that for New York and the nearby

northeastern New Jersey areas -- rose about 12% in the same period. Further, there can be no doubt that the Village is experiencing genuine fiscal hardship facing the grim budget prospect of large and small municipal governments alike, that of rising expense and the need to amortize a large accumulated deficit in a period when the thought of raising taxes depresses and disturbs officials of government and taxpayers alike.

Yet, the Fact-Finder had before him essentially the same facts and contentions pertaining to the real income problems of the employees and the fiscal problems of the Village, with two exceptions: the more current data on rising consumer price levels and the results of recently concluded contracts for police officers in Liberty and Fallsburg, with whom the Monticello police officers were compared in the matters of pay and benefits. A basic question before the Panel is whether the record before it warrants a determination that differs from the Recommendations of the Fact-Finder. As to salary level, the Fact-Finder scrupulously adjusted his recommended pay increase to reflect a year's CPI advance, exclusive of the health care component already covered by the police officer's existing fringe benefits. He also reviewed carefully comparative data for police officers in other communities, where pay and benefit levels have advanced significantly since the Fact-Finder's Report was issued in September 1975. The Fact-Finder's Report shows that he was fully mindful of the Village's budget circumstances when he fashioned his pay recommendation to the parties. Clearly, his Report represents a reasonable effort, by a neutral who was impressed -- as is the impartial member of this Panel -- with the merit in the respective positions taken by the opposing parties involved and with their good faith and mature bargaining, to recommend a moderate pay increase for police officers who are acknowledged to perform capably a vital community service in an effective and highly professional manner.

While past practice and policy on the part of the Village government may have resulted in the granting of pay increases similar to those for police to all or many of the Village's other employees, it may be sound and feasible in a time of fiscal stress to contemplate differentiating among Village employees in the matter of pay increases, based on some ordering of priorities among Village services. Such an approach is admittedly not easy in a small governmental unit with relatively few public employees, but it may be necessary under prevailing con-

ditions and circumstances.

On balance, the evidence and argument in the record before this Panel provide no significant basis for salary findings that differ from those in the Fact-Finding Report. Indeed, certain developments since that Report was issued reinforce the validity of those earlier findings as to salaries. As to the open fringe issues, here too the Fact-Finder's Recommendations appear to the Panel to constitute valid and reasonable dispositions of those issues. There is no basis in the record before the Panel for different findings on those fringe issues. The Panel's AWARD shall be consistent with the foregoing findings and conclusions.

#### AWARD

The Undersigned, constituting the duly authorized Public Arbitration Panel to whom was voluntarily submitted the matter in controversy (PERB Case No. CA-0048; M75-450) between the parties above-named, and having heard the allegations and received evidence and argument bearing on the controversy, make the following AWARD, the Employer member dissenting:

1. There shall be included in a one-year contract between the parties a 7% across-the-board increase in the salaries of employees in police titles, retroactive to August 1, 1975.
2. The Association's proposal for an increase in clothing allowance is denied.
3. The Association's proposal for an increase in the number of personal leave days is denied.
4. The parties shall include in their contract a provision to the effect that: Time spent by a police officer within departmental regulations, norms and requirements for weapons qualifications, and when such time is approved by the Chief of Police or an immediate supervisor, shall be reimbursable in compensatory time (as set forth in Section IV of the contract).

*Walter L. Eisenberg*

Walter L. Eisenberg  
Public Member and Chairman of the Panel

*Robert Friedland*

Robert Friedland  
Employee Organization Member  
of the Panel

*Louis Bernstein*

Louis Bernstein  
Employer Member of the Panel  
(Dissenting)

Dated:

New York, New York  
March 17, 1976

State of New York )  
                          SS:  
County of Kings )

On this 17 day of March, 1976 before me personally appeared WALTER L. EISENBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Beatrice Eisenberg*  
Notary Public

BEATRICE EISENBERG  
NOTARY PUBLIC, State of New York  
No. 24-1292397  
Qualified in Kings County  
Commission Expires March 30, 1977

State of New York )  
                          SS:  
County of Sullivan )

On this 19 day of March, 1976 before me personally appeared ROBERT FRIEDLAND, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Julius Hoeker*  
~~*Robert Friedland*~~

Notary Public

JULIUS HOCKER  
Notary Public, Sull. Co. CLK's No. 1022  
Commission Expires March 30th, 1978

State of New York )  
                          SS:  
County of Sullivan )

On this 18 day of March, 1976 before me personally appeared LOUIS BERNSTEIN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*John Green*  
Notary Public  
New York  
No. 1213  
Commission Expires March 30, 1977