

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Arbitration Between  
CITY OF KINGSTON  
and  
KINGSTON PATROLMEN'S ASSOCIATION  
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ARBITRATOR'S FINDINGS  
and  
AWARD  
Case No. CA0094;M75-952

APPEARANCES

For the City of Kingston:

Francis R. J. Koenig  
Francis H-Law  
Robert Pritchard  
Aaron E. Klein

Mayor  
Treasurer  
Planner  
Corporation Counsel

**CONCILIATION**

For the Patrolman's Association:

James Riggins  
Dominic Ausanio  
Frederick Parisi  
James F. Brophy  
George A. Beck

President  
Vice-President  
Negotiator  
Negotiator  
Attorney

Before:

Edwin F. Radel  
Al Sgaglione  
I. Leonard Seiler, Esq.

City Designee  
Police Designee  
Impartial Chairman

On July 13, 1976, the New York State Public Employment Relations Board having determined that a dispute continued to exist in negotiations between the City of Kingston (hereinafter referred to as the "City") and the Kingston Patrolman's Association (hereinafter referred to as the "Association") designated the undersigned Public Arbitration Panel (hereinafter referred to as the "Panel") pursuant to Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of this dispute. The Panel then proceeded under the applicable statutes, rules and regulations to inquire into the causes and circumstances of this continued dispute and at the conclusion of its inquiry made the findings and award which follows.

A hearing was held on August 17, 1976, in the Kingston City Hall, at which time the parties were given ample opportunity to present oral and written statements of fact, supporting witnesses, and other evidence and were provided with the opportunity to argue their respective positions regarding this dispute.

The parties mutually agreed on August 17, 1976, to submit post-hearing briefs by September 1st and reply briefs by September 15, 1976. The Association submitted its brief on September 1st and the City a combined post-hearing and reply brief on September 15, 1976. Subsequently, the Association advised the Panel that it would not be filing a reply brief. The Panel, therefore, on October 1, 1976, officially declared the hearings closed.

The Panel met in Executive Session on October 13, 1976. After due and deliberate consideration of all the evidence, facts, exhibits and documents presented and in accordance with the applicable criteria arrived at the Award which follows. The Panel was mindful at all times of the statutory provisions of Section 209.4 of the New York Civil Service Law such as, comparable wages, hours and conditions of employment of other employees performing similar services or requiring similar skills, financial ability of the public employer to pay and such other factors which are normally or traditionally taken into consideration. The Panel also considered the recommendations made by the Fact-Finder in this dispute.

IN GENERAL:

1. The dispute involves the continued impasse between the City and the Association over the terms and conditions of a successor contract to their labor agreement which expired December 31, 1975. The new agreement for the authorized 75 man force to be effective as of January 1, 1976.

2. A fact-finding report issued by Seth Towse on March 5, 1976, was rejected by both parties and so failed to resolve the dispute. Subsequently, the parties were successful in resolving all the items submitted to the fact-finder except the following four (4) monetary issues which the parties have submitted to the Arbitration Panel for determination:

- a. Salaries
- b. Cost of Living Clause
- c. Longevity
- d. Clothing Allowance

3. The "position" of the parties and the Panel's "discussion" are only a summary and are not intended to be all inclusive.

Hearings, analysis of the testimony, evidence, the comprehensive briefs filed by both parties, research and study of the issues in dispute have now been concluded and the Panel after due deliberation, consideration and evaluation makes its Findings and Award in the matters in dispute, which were the only issues submitted to the Panel.

I. SALARY INCREASE:

Fact-Finder's Recommendation:

Neither party accepted the fact-finder's recommendation of a \$376. across-the-board increase for a one-year contract and \$1,000. across-the board for a two-year agreement with \$250. to be paid in 1976 and \$750. to be paid in 1977.

Position of the Parties:

The Association sought an increase of \$1, 943. and the City offered no increase for a one-year contract.

The Association argued that said increase was necessary "to place it on a parity with other Mid-Hudson Valley communities submitted as comparable in location, size, economic outlook and police problems and risks." Additionally, it noted that some 70% of the police force have Associate or Bachelor degrees in Police Science or are pursuing them.

The Association said it arrived at the figure of \$1943. by subtracting the average Kingston Patrolman's salary of \$10,391. from \$12,334., the average Patrolman's salary of the seven (7) Mid-Hudson Valley Police Departments it considered comparable to the City of Kingston.

In further support of its salary demand, the Association submitted an itemization of the annual expenses of what it said was an average Kingston Patrolman and stated that it showed "that these Patrolman must resort to outside sources of income in order to stabilize their incomes at a point where they may meet everyday expenses." It also submitted that "it is not uncommon in the Kingston area for a truck driver, bartender, supermarket shelf stocker, bus driver, short order cook or repairman to earn in excess of \$12,000.00 per year" or professional construction craftsman to earn in excess of \$18,000.00 per year.

The Association noted that the last salary increase became effective in 1974 and maintained that "Kingston Patrolman should not be compelled to work in 1976 at 1974 salaries."

In further justification of its demand, the Association called the Panel's attention to the following: "Kingston, unlike the other comparable cities and villages except for Poughkeepsie is a County Seat and includes all of the County Court facilities (including Ulster County Supreme Court, County Court, Surrogates Court, Family Court and City Court) as well as the County Office Building, County Jail, County Infirmary and virtually all other County facilities and offices. In addition the City has two hospitals, more than its share of licensed premises for the sale of alcoholic beverages, several large private office buildings, a regional shopping center as well as its uptown shopping area, all of which generate extra police work and law enforcement problems." Adding to the burden is the fact that "seven officers and men retired during the past year and two men will retire within the next month."

The Association suggested that the Panel in fashioning a wage increase for 1976, consider other awards, agreements and fact-finder recommendations. It particularly called attention to the following language in the award rendered by the Arbitration Panel on July 12, 1976, in Village of DePew and DePew Police Benevolent Association: "All cities, towns and villages appear to be faced with financial problems. Costs continue to increase as measured by the Consumer Price Index... While it is difficult to add to the cost of government which must be translated into tax increases, government must provide essential service effectively. It cannot do this unless it is able to compensate its employees at a level that will enable it to attract and will retain competent personnel."

The City disputed the Association's attempt to compare it with other Mid-Hudson Valley communities for it claimed that when Kingston is compared to other Mid-Hudson Valley communities on the basis of median income, median school years completed, median value of single family structures and median gross monthly rental it ranks far below the others. Additionally, it is one of the few communities with a declining population, has a far greater percentage of population over 65 years of age and a greater percentage of housing units constructed prior to 1939.

The City maintained that the significance of the foregoing was that "not only may it be assumed that Kingston has in so large an over 65 population, people of limited means, it also has a large percentage of unemployables or retirees. Furthermore, under the assessment policies encouraged by the State, it may

properly be assumed most of these people, if property owners, do not share in the full tax burden. Their tax exemption is 50% of the normal full tax...Tax revenues for older structures are considerably less" and in this category the percentage of older structures in the City of Kingston stand 50% higher than that for the Mid-Hudson Valley area.

The itemization of household expenses submitted by the Association was also disputed by the City as not being truly reflective of the average household budget of the 75 man force.

In support of its position of financial inability to grant raises or improve fringe benefits, the City presented testimony dealing "primarily with the severe and increasing financial burdens" of the City as evidenced by :

1. A budget that "was drafted and adopted on an austerity basis, not only as to wages of all city employees, but most significantly, in that there is almost total avoidance of expenditures for capital improvements" and which had to take into account the spiraling cost increases of government operation expenses-particularly utilities. To this must be added the increasing costs of employee benefits such as cost of police and fire retirement plans, which for the years 1973-1976 were up 55.8%, social security, medical and dental plans, etc.
2. "the decline in real estate sales and the drop in real values of the City; the increasing number of private properties now owned by the City as a result of real property tax defaults... announced program of payroll attrition" by IBM, "the prime employer in the community"; "the closing of operations of Hudson Cement Corporation" and others and "the high rate of unemployment in the Kingston market which is one of the highest in the State."
3. "The constitutional tax margin of the City of Kingston is approaching its ceiling" and " will in fact be all but wiped out" by "an all but mandated requirement for construction of a waste transfer station and constitutionally, the requirement for reappraisal of the City on a full value assessment basis."
4. "The alarming increase of tax burdens on City taxpayers" as general taxes and school taxes "have increased 70.2% since 1970."
5. "the everincreasing numbers of tax certiorari resulting in loss of tax revenues"(during "the last two years there was a fall-off of almost three million dollars in assessed valuation notwithstanding the fact that some new construction has been added in that period"-which "equates to the sum of \$6.84 per thousand dollars of assessed valuation) and worse than that, the need to finance at spiraling interest rates "refunded taxes as a result of litigation" amounting to approximately \$587,000.

6. "A precipitous decline in total Federal and State Aid or Grants, particularly the latter" e.g. a reduction of \$60,000 in the current year of anticipated State Aid for maintenance and operation of the City's sewage treatment plant.

The Association in rebuttal of the City's position stated that "Mayor Koenig himself admitted that the problems encountered in his budget are essentially no different than the problems encountered state wide and particularly throughout the Mid Hudson Valley. The losses in sales and other tax revenue brought about by increased unemployment and the general economic down turn are, it is submitted, universally applied throughout the state and particularly within the Mid Hudson Valley communities."

The Association further maintained "that the additional revenues required to defray the cost of the City's responsibilities to its Patrolmen can be met within present budgeted structure."

Discussion:

Section 209.4 of the Civil Service Law directs the public arbitration panel to "make a just and reasonable determination of the matters in dispute" and in doing so shall consider the recommendations of 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 condition of employment."

Inasmuch as public employees are prohibited by law from withholding their services (may not strike) to achieve in collective bargaining what they consider to be equitable salary increases, public employers should be morally obligated in equity to treat them fairly and, if economic conditions permit, at least grant a salary increase that will restore to their employees the purchasing power they enjoyed at the start of their last contract year.

The public employer, however, must also be cognizant of the extraordinary pressures budget increases exert on its taxpayers. Thus, the duty imposed on the public employer is to strike an equitable balance between satisfying its mission of providing adequate public safety and meeting the financial needs of its employees at a cost that does not place an undue tax burden on the taxpayers for whom the service is being provided.

The situation is further complicated by the fact these are difficult times for everyone what with continuing inflation, coupled with the high unemployment rates which have prevailed, taxpayers revolting at shouldering increasingly difficult tax loads and governments at all levels-local, state and federal-in financial crisis, witness Yonkers, New York City and New York State's fiscal crisis and the continuing federal budget deficit.

Despite enormous tax burdens, citizens appear willing to pay reasonable compensation for continued effective police work and the advantages that flow therefrom for the community.

In fashioning a reasonable salary increase for police officers, it must be kept in mind that the erosion of purchasing power for police officers is somewhat cushioned for sharply increased health care costs, which are a significant component of

the Consumer Price Index computation, are borne for the police officers and their dependents by the City. Furthermore, they receive a uniform allowance. For the 12-months ended in December, 1975, the U.S. City C.P.I. rose 7.0%.

A review of the prior contract between the parties indicates that as of January 1, 1974, police officers received an across-the-board annual increase of \$690. and as of January 1, 1975, another across-the-board annual increase based on a calculated increase in the U.S. All Cities Consumer Price Index from January 1974 to October 1974.

On the basis of area covered, size of the Police Force, population and the problems normally faced by a city police force as well as the similar characteristics of all police work- night and weekend tours, the disagreeable job of curbing the liberties of fellow human beings and the ever present danger associated with being a policeman-the City of Kingston can best be compared to the Cities of Poughkeepsie, Middletown and Newburgh in the Mid Hudson Valley area.

All of them require, as does Kingston, five years to reach maximum. However, Kingston's maximum for first grade patrolman is considerably below theirs-Kingston \$10,391, Poughkeepsie \$11,100 as of December 1974 (last available contract), Middletown \$10,950. for year 1975 and Newburgh \$11,924. in contract expiring December 31, 1975.

The undisputed testimony of the Association was that seven (7) police officers had retired in the past year and two (2) were retiring shortly. Retirement brings a two-fold benefit to the City in that (1) it saves a police officer's salary until it appoints a replacement and (2) the starting salary for the replacement is significantly less than that of the retired officer. The total saving can be used to defray some of the cost of any proposed increase in salaries awarded by this Panel. The City's

1976 budget provided for a 75-man force.

Rendering an Award so late in the effective contract year as the Panel is doing in this contract impasse-October for a contract retroactive to January 1, 1976,-would normally cause the Panel to seriously consider making an Award for a two-year agreement, the maximum permitted by law. However, the parties to this dispute were in agreement that due to a number of financial uncertainties facing the City and the Association, they were insistent that the Panel consider only a one-year agreement and they restricted their respective presentations to financial information for 1976 only. Therefore, the Panel has adhered to their wishes and will issue an Award for a one year agreement.

The Panel unanimously concurs with the opinion expressed by the fact-finder that " the KPA is entitled to a raise despite the careful financial management now required of the City. The charges imposed by vendors upon the City and lost tax revenues are no reason to penalize the police." The Panel, however, feels that the \$376. across-the -board increase recommended by the Fact-Finder is inadequate to restore some of the police officer's loss in purchasing power and to attempt to bridge the difference with the salaries paid by comparable communities.

Keeping all of the foregoing in mind, the Panel has awarded a salary increase which will hopefully restore for the police officers their loss of purchasing power, maintain some degree of comparability with other Mid Hudson Valley police departments while staying within the City's ability to pay. An across-the-board increase of \$900. for first year Patrolman and above would amount to about an 8 2/3% increase on the top grade patrolman's salary and would meet the requirements of the preceding sentence.

PANELS'S AWARD:

Retroactive to January 1, 1976, the City of Kingston police officers' salaries be increased across-the -board by \$900. for all grades and ranks; except that the starting salary shall remain "as is".

II. COST OF LIVING CLAUSE

Fact-Finder's Recommendation:

"I would recommend a cost of living escalator only in lieu of any other salary demand. Such an escalator is completely out of control of the parties and could result in financial disaster."

Position of the Parties:

In its post-hearing brief, the Association stated: "in the event that the proposed award should be in excess of one year in duration, the Kingston Patrolman's Association seeks a cost of living escalator clause for any time period in excess of the Calendar Year 1976."

The City made no offer.

Discussion:

Inasmuch as the Association has limited this demand to any Award in excess of one year in duration and the Panel, at the mutual urging of the parties, has rendered an Award for a one-year agreement the Panel need not make a determination on this issue.

PANEL'S AWARD:

The Panel, since it is not required to, makes no determination on this issue.

III. LONGEVITY

Fact-Finder's Recommendation:

The Fact-Finder recommended no change in longevity increments.

Position of the Parties:

Association seeks to improve the present longevity program of \$200. after the completion of 10 years of service to \$200. at the completion of the fifth, tenth, fifteenth and twentieth years of service. The City says it cannot afford any change.

Association maintained that its demand "is most reasonable and in line with other longevity payments in other police departments and specifically with those submitted as comparables at the Hearing."

Association declared that patrolman are being awarded longevity increments with increasing regularity because "the longer the Patrolman works on the job the more experienced and expert he becomes in his field of endeavor. Similarly, longevity increments help to deter the experienced Patrolman from leaving for more lucrative employment in either the public or private sector."

The total cost to the City would be \$17,400., the Association said, as all but twenty-eight (28) officers would be entitled to increments in their proposed longevity plan.

The City's response was that its financial inability to pay salary increases would apply here also. It also argued that any turnover experienced by the Police Department was due to more than longevity, such as, the State's 20-year retirement incentive for police officers.

Discussion:

In view of the City's financial difficulties, whatever monies are available the Panel feels should be put into wages which benefits all police officers alike and not into improvement of the longevity plan. Especially, since the present plan does not compare too unfavorably with those of the Cities of Poughkeepsie, Middletown and Newburgh which the Panel found most

comparable to Kingston in its consideration of Salary Increase earlier in this Award. Poughkeepsie has no longevity; Middletown provides \$1,150. split at 7, 10 & 15 years while Newburgh grants \$200. at 10 years and \$300. at 15 years.

Therefore, the Panel is in agreement with the Fact-Finder's recommendation that no change be made in the longevity plan.

PANEL'S AWARD:

No change be made in the longevity provision of the expired contract.

IV. CLOTHING ALLOWANCE

Fact-Finder's Recommendation:

The Fact-Finder recommended the establishment of quarter-master system and the issuance of all uniforms by the City.

Position of the Parties:

The parties were in agreement that the Fact-Finder's recommendation was too costly for the City.

The Association requested that Patrolmen be awarded an increase in clothing allowance from the \$200. provided in the expired contract to \$350. per year. The City made no offer relying on its previous stated position of a financial inability to make contract improvements.

The Association submitted documentation that indicated that "the total regulation uniform costs \$654. 90, average dry cleaning expenses for pants and coats only amount to \$156." and stated that "\$200. per year in no way covers costs of clothing to Patrolman at present indices...clothing allowance should be made realistic in view of today's costs."

The City argued "It has been customary to pay a clothing allowance to the uniformed forces and one of the items that inevitably is used to make up the estimated cost of this item is dry cleaning. It should be borne in mind that while uniformed personnel wear their uniforms, they do not wear other clothing and that there is not necessarily a fair argument made that the total

cost of dry cleaning and replacement should fall upon the municipality. Every other employee of the City of Kingston, for example, works in his or her own clothing...We do not suggest at this time that the clothing allowance should be eliminated, but certainly, we do suggest that some of the costs thereof should be expected to be borne by the applicant as the same is nothing more than an expense in lieu of a similar expense which they should sustain in the wearing of their own apparel."

Discussion:

Again comparing Kingston to the Cities of Poughkeepsie, Middletown and Newburgh, we find that as to clothing allowance Kingston fares very well in that it exceeds Newburgh's \$150. and equals the \$200. that Poughkeepsie and Middletown pays its police officers.

As previously stated, it is the Panel's opinion that any monies available in the City's tight financial situation should be utilized for salary increases.

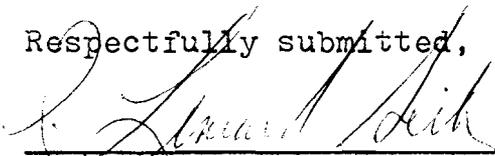
PANEL'S AWARD:

No change be made in the present clothing allowance.

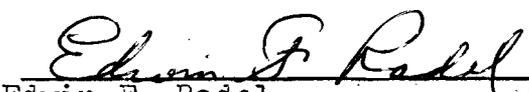
This concludes the Panel's determinations of all the issues submitted to it. The Panel commends the Fact-Finder for his thoughtful Report which provided a sound basis upon which this Panel was able to proceed with its deliberations.

Dated: October 21, 1976.

Respectfully submitted,

  
I. Leonard Seiler, Chairman

  
Al Sgaglione  
Police Designated Arbitrator  
Concurring

  
Edwin F. Radel  
City Designated Arbitrator  
Dissenting

10/22/76

STATE OF NEW YORK )  
COUNTY OF ROCKLAND ) ss:

On this        day of October, 1976, before me personally came and appeared I. Leonard Seiler 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.

Paul Kaufman  
expires 3/30/77 # 2049743

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss:

On this 27<sup>th</sup> day of October, 1976, before me personally came and appeared Al Sgaglione 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.

Marceline M. Spaulding  
NOTARY PUBLIC STATE OF NEW YORK  
My Commission Expires March 30, 1978

STATE OF NEW YORK )  
COUNTY OF ULSTER ) ss:

On this 22 day of October, 1976, before me personally came and appeared Edwin F. Radel 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.

Bruce Leonard  
BRUCE LEONARD  
NOTARY PUBLIC State of New York  
Resident in and for Ulster County  
My Commission Expires March 30, 1977