

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory           X  
Interest Arbitration Between:           X           OPINION OF  
CITY OF NEWBURGH                           X           THE  
  X           CHAIRMAN  
  X  
-and-   X  
  X  
PATROLMEN'S BENEVOLENT ASSOCIATION OF   X  
NEWBURGH, NEW YORK, INC.                X  
-----X

CASE NO. CA-0123; M 75-940

MEMBERS OF THE PUBLIC ARBITRATION PANEL:

JOEL M. DOUGLAS, CHAIRMAN  
JAMES TAYLOR, EMPLOYER MEMBER  
AL SGAGLIONE, EMPLOYEE MEMBER

U.S. PUBLIC EMPLOYMENT  
RELATIONS BOARD  
RECEIVED  
NOV 22 1977  
CONCILIATION

APPEARANCES:

For the City - John M. Donoghue, Esq.  
For the Union - Peter Bloom, Esq.

PRELIMINARY STATEMENT:

This is a proceeding pursuant to Section 209.4 of Article 14 of the New York State Civil Service Law. Under the authority vested in the New York State Public Employment Relations Board, the above named Public Arbitration Panel was designated for the purpose of "making a just and reasonable

determination" in the above cited impasse.

Meetings were held in the City of Newburgh during which time the parties were afforded full opportunity to present oral and written evidence, cross examine witnesses and present briefs. At the conclusion of these hearings the Panel met in a series of executive sessions.

This Opinion represents the view of the undersigned Chairman and does not necessarily reflect the view of either of the other Panel members.

This Panel has carefully studied and analyzed the criteria for Interest Arbitration as spelled out in the Taylor Law under Section 209. These criteria included the following:

- a. comparison of 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, all requiring similar skills under similar working conditions and with other employers generally, in public and private employment in comparable communities;
- b. the interests and the 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. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

BACKGROUND:

Newburgh is located in the County of Orange, north of the City of New York, in the Hudson River Valley. Its 1970 population was 26,219. The City has experienced a time of economic difficulty as many large industrial and manufacturing plants have left the City for a variety of reasons. While its tax base has declined, the need for services has not. Newburgh has been faced with increasing costs for social services, education and police and fire support services. While this period of economic decline has remained, the surrounding Town of Newburgh has experienced a growth factor in terms of population and tax base.

The parties brought to the Arbitration Panel some twelve items for their determination. During the course of the presentation, several of these items were either withdrawn or resolved by the parties, thus what remains is a finding tied to the following:

AWARD ITEMS:

A. Duration of Agreement:

This Agreement shall take effect January 1, 1976 and shall run through December 31, 1977. This Agreement is thus in accord with the maximum time period allowed under the statute for Interest Arbitration Awards.

B. Hours of Duty and Scheduling:

A great deal of discussion was generated over the issue of scheduling flexibility, manpower requirements and the overall hours of duty rate. There is currently an appeal of an arbitration ruling in this matter in the New York State Appellate Division. The Panel realizes that with the receipt of this Award, the parties must commence negotiations toward a successive agreement that is to take effect two months from now, and it is hopeful that the parties will resolve the scheduling and manpower question through the Collective Bargaining process. It is realized that this issue is one of

paramount importance to the City of Newburgh and its Police Department, and should receive expeditious treatment through the negotiation procedure.

C. Managements Rights Clause:

It is recommended that the following clause be added to the present Agreement:

It is recognized that the management of the department, the control of its properties and the maintenance of order and efficiency are solely the responsibilities of the City. Accordingly, the City retains all rights, except as they may be specifically modified in this Agreement, including, but not limited to selection and direction of the work forces, to hire, suspend or discharge for cause; to make reasonable and binding rules which shall not be inconsistent with this Agreement; to assign, promote or transfer; to determine the amount of overtime to be worked; to relieve employees from duty because of lack of work or for other legitimate reasons; to decide on the number and location of facilities, stations, etc...; to determine the work to be performed, amount of supervision necessary, equipment, methods, schedules, together with the selection, procurement, designing, engineering and the control of equipment and materials; and to purchase services of others, by contract or otherwise specifically limited in this Agreement and to make reasonable and binding rules which shall not be inconsistent with this Agreement.

D. Sick Leave:

The PBA sought an increase in their current sick leave provisions. Statistics showing the number of sick days allowed for comparable communities throughout New York State and the mid Hudson region were presented. The response of the City was that the number of sick days was adequate and perhaps ought to be reduced. In consideration of the criteria submitted and of the requirements as set forth in the Statute, the Panel hereby grants the increase of one additional sick day to be effective October 1, 1977. This additional day shall not be pro-rated throughout the past twenty one months of the Agreement.

E. Salaries:

The parties submitted numerous testimony with respect to the issue of salaries. At the outset of the hearing, the Panel instructed the advocates that the requirements of the Taylor Law as set forth in Section 209 would be strictly adhered to, and thus the evidence and the data submitted must be of the quantum necessary to sustain their respective positions. The two parties employed an accounting firm to gather and present material in this area.

Upon the conclusion of the hearing, the Panel requested that briefs be filed by the parties, specifically

addressing the issue of the public interest; the ability to pay, comparisons of the job and others, and on the economic structure of the City of Newburgh. The Panel gave weight to the report of the Fact Finder in addition noting that this impasse took effect prior to the Amendment to the Taylor Law of July 1, 1977 which eliminated the fact finding process from Section 209.

The City contends that it cannot afford any wage hike whatsoever. To raise the salaries of police officers would mean a severe reduction in essential services and/or layoffs within the overall City work force. They submitted their books for the year 1976 showing a substantial deficit while at the same time using the complete allowable tax levy to within \$1,000.00. The City submitted that their deficit for the year 1976 was so substantial that the only Award they could consider would be a wage freeze.

The PBA contends that while there were no funds available at the end of the year 1976, the methods and means by which the City chose to spend their 1976 tax revenues were suspect. They proceeded to inquire into a variety of capital projects, long term improvements and the use of fund balances for other personal costs not including the Police Department. The major theme presented at the hearing by the Police Depart-

ment was in essence that the City did not choose to spend their money in a way that could have afforded the police of the City of Newburgh a minimal wage hike.. They cited the decision involving the Buffalo Police during which the New York State Court of Appeals allowed a Panel to address the issue of priorities within the municipality. However, in sum, with regard to the year 1976, the only option that was open to the City was either (1) to have had a wage freeze, or (2) to have had a reduction in personnel, or (3) to have had a reduction in services provided. The City contends that the only viable option was, indeed, the wage stabilization.

With respect to the year 1977, the City once again contended that a wage stabilization was in order. They submitted the argument they used in 1976 to justify their position.

The PBA contends that given the 1976 wage freeze, a substantial increase should be granted for the year 1977, and, indeed, for the year 1978. They cite the prevailing wages in surrounding communities, the impact of the wage freeze and the whole issue of the Newburgh sales tax situation.

The Panel was persuaded that for the year 1976 a wage freeze ought to be granted. After careful examination

and scrutiny of the City's financial situation, there is no way that the City could have afforded a wage increase, outside of a substantial layoff of police officers. Given the option between two unthinkables, the Panel was persuaded that the wage freeze for 1976 should be awarded. However, the City's position could not be sustained in 1977. The City has been told on numerous occasions by numerous consultants and, indeed, by its own tax people, that a city sales tax is necessary. In fact, in the year 1977, the City projected a sales tax of 1% which would have brought in \$600,000.00 to the 1977 budget year. It was only in late February of 1977 that the projected sales tax which had been approved by the City Manager and placed into his budget was voted out by the City Council, thus creating a new budget gap of some \$600,000.00. The Council maintained that had the sales tax been left in, greater revenues would have been lost through the economic hardship created upon the local business community.

With respect to the 1977 tax structure, the City still had a tax margin of \$415,229.00 available to it which it did not choose to exercise. The City explained that this margin was available due to the fact that it did not want to make the tax rate so unmanageable as to drive away its

eroding tax payers. The Panel finds this item unpersuasive in as much as a city can not expect its employees to sustain a two year wage freeze while it still has a tax margin left. Quite obviously, this \$400,000.00 must play a significant role in the fact that a wage freeze can not be justified during year two. In addition, the Panel examined the other criteria including, but not limited to the previous wage rates, the job, per se, in Newburgh, with regard to the hazards of employment, the previous terms of the Collective Agreement, and the relative position of the Newburgh police vis à vis similar departments. The Panel is in agreement with the position that the employee can not carry a two year wage freeze alone. The wage increases were granted to other employees within the City, and for the City to maintain that a wage freeze should continue was an unrealistic demand.

It is based on the above discussion and on examination and review of the criteria imposed by the statute, as well as the records submitted to the Panel, that the Panel awards an increase of 6% retroactive to January 1, 1977. The Panel does not award any other increase in terms of any other economic items requested by either party.

F. Summary:

The parties submitted to the Panel a variety of

different items including the use of polygraph tests, and the issue of a clothing allowance. Consideration was given by the Panel to these items, and the Panel recommends no change in any other contractual items submitted by the parties. The Panel requires that negotiations commence immediately upon the receipt of this Award and that either party seeking a change in these items forthwith, bring them again to the Collective Bargaining process.

CONCLUSION:

This Award is based on the evidence submitted and the criteria as set forth under the Atylor Law. The idea of a wage freeze is a difficult concept for an employee to absorb. However, there is no other viable alternative to either of the parties in year one. The City of Newburgh does have a severe financial crisis. The City of Newburgh must address itself to its future relationships with its employee associations vis à vis the economic process. It is the feeling of this Panel that once again the point must be made that the City adopt a sales tax or seek additional sources of new revenues in order to insure that police services will be maintained on a level which will be able to insure a healthy

and safe community.

For the Arbitration Panel:

*J. M. Douglas*

Joel M. Douglas, Ph.D.  
Chairman  
October 15, 1977

Dissenting in Part:  
Management Rights Clause

*Al Sgaglione*

Al Sgaglione  
Employee Member  
November 1, 1977

Dissenting on the Award with the  
exception of:

Management Rights Clause

*James Taylor*

James Taylor  
Employer Member

On this twenty fourth day of October, 1977, before me personally came and appeared JOEL M. DOUGLAS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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J. L. B. Mancuso