

MAY 21 1979

PUBLIC EMPLOYMENT RELATIONS BOARD  
STATE OF NEW YORK

CONCILIATION

In the Matter of the	X	
	X	<u>CASE NO.</u>
Compulsory Interest Arbitration	X	IA-41; M77-727
	X	
between	X	
	X	OPINION AND AWARD
The City of New Rochelle	X	
	X	OF
and	X	THE PUBLIC ARBITRATION
	X	
The Police Association of the City of	X	
New Rochelle, Inc.	X	PANEL
	X	

Before the Public Arbitration Panel:

Josef P. Sirefman, Chairman  
Ralph Purdy, Employee Organization Panel Member  
Bruce R. Millman, Esq., Public Employer Panel Member

Appearances:

For the Union: Hartman & Lerner  
By: Reynold A. Mauro, Esq.

For the Employer: Rains, Pogrebin & Scher  
By: Bertrand B. Pogrebin, Esq.

Pursuant to Section 209.4 of the New York State Civil Service Law, Harold R. Newman, Chairman of the Public Employment Relations Board, on July 18, 1978 designated a Public Arbitration Panel to make a just and reasonable determination of issues resulting from collective bargaining negotiations between the parties (hereinafter referred to as the "City" and the "Association" respectively). A preliminary meeting with the parties was held on September 6, 1978. Hearings

were conducted by the Panel at the New Rochelle City Hall on September 15, October 9th and November 6th, 1978, at which the parties were afforded full opportunity to present oral and written evidence, examine and cross-examine witnesses, provide oral argument and otherwise support their respective positions. Extensive exhibits were introduced by both sides. Subsequently briefs were filed. Thereafter, the Panel met in executive session on January 8th, January 29th, and April 25th, 1979 and conferred on the sizeable record before it.

The most recent collective bargaining agreement (Joint Ex. 1, referred to as the "current" contract) covering the unit--which consists of one hundred and forty Police Officers including thirty Detectives--expired December 31, 1977. The issues have been considered within a two year context (January 1, 1978 to December 31, 1979).

Issues placed before the Panel by the Association at the opening of the Hearing are:

- A. Salary
- B. Longevity
- C. Night differential
- D. Vacation
- E. Sick leave days and accumulation
- F. Payment of unused sick leave

Issues placed before the Panel by the City at the opening of the Hearings are:

- G. Termination and Modification
- H. Deletion of Association President's Work Chart
- I. Deletion of Association Office Space
- J. Work Week

- K. Overtime Pay
- L. Compassionate Leave
- M. Charges against Sick Leave
- M. Welfare Benefits

In the course of the arbitration proceedings the parties by consent added the following items for consideration by the Panel:

- O. Personal Days
- P. Holiday Pay
- Q. Uniform Allowance

In arriving at the Award the extensive presentations at the hearings and the numerous exhibits have been carefully reviewed. Full consideration has been given to the following statutory criteria:

- 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. 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;

as well as to other relevant factors.

## Discussion

### Term of the Contract

The period covered by this award is from January 1, 1978 through December 31, 1979.

#### A. Salary

Current (December 31, 1977) pay for a top grade Officer is \$16,617. The Association seeks four raises of four per cent each together with cost of living increases over two years to bring maximum base pay to \$19,436. This proposal is based, inter alia, on the claim that with the recent police reorganization and staffing police work is more effective, the impact of cost of living increases, and salaries for police in the Metropolitan New York area.

The City offers a twelve percent increase on the schedule spread over two years (2% on 1/1/78; 2% on 4/1/78; 2% on 7/2/78; 2% on 1/1/79; 2% on 4/1/79 and 2% on 7/1/79). Its proposal is based, inter alia, on a claimed historic tandem relationship between the Police and Firefighters in New Rochelle (the latter having settled with the City for 2% on 1/1/78; 2% on 4/1/78; 2% on 7/2/78) and general comparability of Police Officers in the Cities of White Plains, Mount Vernon and New Rochelle as established by prior Fact-Finding Reports and Arbitration Awards.

In the Arbitrator's opinion the following wage adjustments for 1978 and 1979 would be just and reasonable:

i) Effective January 1, 1978 the current scheduled pay rate for top grade Police Officers shall be increased by three (3) per cent; effective July 1, 1978 this rate shall be further increased by three (3) per cent; effective February 1, 1979 this rate shall be further increased by \$683.00; and effective 9/1/79 this rate shall be further increased by \$689.00.

ii) Officers still on increment will move along a new scale to be constructed by the parties.

iii) There shall be a new salary schedule established for Police Officers hired after the effective date of this Agreement to be based upon the first step as of December 31, 1977 and the top step as of each increase and an equal increment for each step from one to four. This schedule shall be adjusted with each increase in the top step, the first step shall remain as is for the duration of the Agreement.

In arriving at the above increases weight was given to the following: A) past fact-finding reports and awards between the parties which focus on the tandem relationship between the Police and Firefighters in the City. The first year awarded (1978), which is now subject to full retroactivity, conforms with this relationship. At the same time the overall award appears to be consonant with the range paid to the Police in Mount Vernon and White Plains. B) The increase in the Metropolitan New York Consumer Price Index was 5.1 percent in 1977 and 5.7 per cent in 1978. C) The new schedule for Officers hired after December 31, 1977 is reflective of current conditions. D) The

newly instituted reorganization of the Police Officer's duties, permitting more contact with the incident than before, seemingly presents the opportunity for more effective operations.

#### Ability to Pay

A substantial part of testimony at the hearings and exhibits submitted by both parties were devoted to the City's financial condition. The City has had some financial problems as evidenced in part by the layoffs in 1976, and recent budgets have been deficit budgets. However, the property tax rate has remained stable for several years while these deficits were financed by drawing down the Tax Stabilization Fund ( a Fund derived principally from the sale of certain properties). Nonetheless, the overall tenor of the City Manager's November 10, 1977 budget message alerted citizens, in its Summary and Conclusions, that "next year and the years to follow, there will be a pressing need for new sources of revenues", and that in a desire to maintain the level of services there is always the option of a property tax increase, as well as resort to other sources of revenues and savings.

In the November 10, 1978 message, which is a matter of public record, there was a decided tone of optimism; "Many people now perceive that New Rochelle is beginning to turn itself around. The revitalization plans are taking effect, and

this budget reflects the new confidence we have in our City's immediate progress as well as in its long-range promise". This report also noted that "our overall fiscal condition has not deteriorated, and the \$450,000 (final draw out of the Fund--Arb.) represents a much smaller contribution from this source than we have previously needed to balance our expenditures." To sum up, the fiscal outlook for the City seems to have improved somewhat, and the Arbitrator is persuaded that the increases awarded are within the City's ability to pay.

#### B. Longevity

Current longevity is \$100 after 5 years, \$200 after 10 years and \$350 after 15 years non-cumulative. The Association seeks 3 per cent of base pay after 7 years; 4% of base pay after 10 years; 5% of base pay after 13 years; 6% of base pay after 17 years. The City opposes this as a cost item.

Any percentage figure tied to a base means that an increase in that base raises the amount measured by the percentage. Dealing with fixed amounts explicitly and expressly focuses on the sums in dispute. Moreover, the current longevity provisions seem reasonable in the context of the total terms and conditions of employment available to members and no change is indicated. This Associations proposal is denied.

### C. Night Differential

Currently there is no night differential. The Association seeks a \$750 differential for those working night hours, (4 PM to 8 AM). The City opposes this as a cost item. Night differential has had only minimal acceptance in Westchester County, and its introduction in a contract covering 1978 and 1979 is not indicated. This proposal is denied.

### D. Vacation

Currently there are 10 days vacation for 1--5 years; 15 days for 6--15 years; and 20 days after 15 years. The Association would have no change from 0--4 years; 5 additional days from 5--9 years; 10 additional days from 10--15 years; 7 additional days after 15 years. The City opposes this as a costly item. Based upon the vacation schedules in the County some improvement is indicated. The vacation schedule should provide that effective for the next pick that shall take place in 1979 there shall be 20 duty tours after twelve years of service.

### E. Sick Leave

Currently there are 12 sick days per year with an accumulation of 180 days. The Association would have the number of sick days doubled with unlimited accumulation. It sees this as an ultimate cost savings because members will view the accumulation as a retirement incentive. The City opposes this

as a costly item.

Whether or not increases in sick days and accumulations necessarily lead to fewer sick days taken by members remains debatable. What is more persuasive is that few jurisdictions provide such a benefit, and that the current sick leave provision appears to be reasonable in the context of total pay and benefits available in New Rochelle. This proposal is denied.

F. Payment of Unused Sick Leave

Currently there is no payment for unused sick leave at retirement. The Association seeks 100% of accumulated sick leave only if retirement occurs between 20 to 25 years of service. It sees this as a no cost item because replacements would involve lower retirement contributions under the two tier system. The City points out that this proposal contemplates the maintenance of a current special Severance Vacation Leave Pay provision for retirees, that the extent and timing of any savings remains unsettled, and that this is a costly item. Fundamental to the denial of this Association proposal is the belief that the Public Arbitration Panel's purpose is to end the impasse for this round of negotiations, rather than to "legislate" basic changes

whose ultimate impact could be substantial yet lack definitive estimation at this time. This proposal is denied.

G. Termination and Modification

Currently Article I (5) of the Agreement provides that if negotiations go beyond the expiration date "the Agreement shall continue in full force and effect until completion of those negotiations". Article III(3) is in the nature of a maintenance of existing practices clause. The City would eliminate the continuation clause in Article I (5) and Article III(3) to be consistent with PERB rulings on mandatory and non-mandatory terms and conditions of employment.

In recent years PERB has been delineating with growing frequency and specification mandatory versus non-mandatory terms and conditions of employment. The City's proposal would conform these rulings to the contract between the parties and is granted.

H. Deletion of Association President's Work Chart

Article II paragraph 8 of the Agreement provides that the Union President or his designee "be granted leaves of absence, without loss of pay, to attend" various police organization conventions and educational conferences to the extent of 15 working days in a calendar year. It further provides 15

working days leave to attend to "official business of the UNION" with the Union reimbursing the City at the applicable "actual per diem rate of pay." The City seeks to eliminate this provision as an improper allocation of work time.

Provisions for the President of a unit of this size are not uncommon, nor has any basis been furnished for determining that the current provision is excessive. This City proposal is denied.

I. Deletion of Association Office Space

Article II, paragraph 10 provides that "Employer agrees to provide private appropriate office space in Police Headquarters for use by the UNION. That the UNION shall have the right to install and maintain a telephone at its own expense." The City seeks to also eliminate this provision as an improper allocation of its property.

A provision of this nature is not unique, and no basis was provided for determining that its performance has a deleterious effect upon the City's operations. This City proposal is denied.

J. Work Week

The current work week is 35.5 hours per week based on 1844 and a fraction hours per year. The City would return to a 40 hour week, claiming inter alia that New Rochelle's

traditional comparison municipalities, Mount Vernon and White Plains, work longer schedules. Therefore, comparability with those municipalities on hours worked should be restored.

The current work week was established in 1972 through negotiations between the parties after a 1971 "landmark" Fact-Finding Report. It has survived subsequent negotiations and can be characterized as a major change in schedule which now has a history of being in place. Comparison has been made by the prior arbitration panel with Mount Vernon and White Plains, while retaining the 35.5 hour week, and no persuasive basis for making a change has been presented at this time. This City proposal is denied.

#### K. Overtime Pay

Under the current contract Article VI, paragraph 6 provides that "Overtime shall be computed on the basis of a 35.5 hour work week". This fits in with the 4/72 work chart negotiated back in 1972. The City would make overtime payable on a 2,080 hour rate, based primarily on making New Rochelle consistent with the overtime provisions in Nassau and Suffolk Counties where police have a similar work year, which is shorter than most police in Westchester County have.

The current overtime provision has been part of the contractual history of this municipality going back to the

1972 negotiations stemming from the 1971 Fact-Finding Report. There was no evidence presented that any savings in overtime by enlarging the denominator to 2080 hours would be so substantial as to justify ignoring a formula in place for a number of years and at one with the existing chart. This City proposal is denied.

L. Compassionate Leave

The City proposes adding a new section to Article VII to provide for compassionate leave. Its purpose is to reflect a longstanding City policy in the Agreement, thereby eliminating any conflict between policy and the Agreement. The translation of policy into an agreement is an appropriate device for eliminating conflict. Therefore this City proposal is granted.

M. Charges Against Sick Leave

Current Article VII (6)(d) provides that:

If an employee reports to duty and is then excused by the City Physician due to illness, there shall be no charge made against his accumulated sick leave for that day.

This is a departure from the prior contract, and the City, claiming abuses, would delete it. The change not having proved wholly satisfactory, the City's proposal is granted to the extent that Article VII (6)(b) shall be replaced by reversion to the language in the prior contract.

#### N. Welfare Benefits

As health insurance and other rates automatically increase the City claims that its contributions represent an automatic "un-negotiated" increase to members. Therefore the City proposes placing flat dollar limits for the City's costs on these items. As the furnishing of these benefits by the City has been well established as part of the total package for members no persuasive reason to make the change has been presented. The City's proposal is denied.

#### O. Personal Days

Current Article VII (4) provides in the last sentence that "Personal leave days will not be taken on Holidays except in case of emergency." The Union seeks a liberalization of this arrangement. Liberalization seems fair and reasonable in view of increased emphasis on family life and so the Association proposal is granted to the extent that personal leave days will not be taken on the following holidays except in case of emergency: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Election Day and Christmas Day.

P. Holiday Pay: Option

The Association seeks to have employees with less than twelve (12) years service elect for 1979 only to take up to five (5) days vacation in lieu of five (5) days of holiday ~~time~~<sup>PAY</sup>. Such a substitution of days seems fair and reasonable and the proposal is granted. However, as much of 1979 has already passed the parties shall determine the timing of the election.

Q. Uniform Allowance

Under Article X (2) of the current Agreement the annual uniform and cleaning allowance is \$275. The Association seeks an increase to \$400 per year. Maintenance costs having gone up since the end of 1977 this allowance shall be increased to \$300.00 per year effective January 1, 1979.

Retroactivity

The increase in Salary discussed above shall be entitled to full retroactivity, as <sup>is</sup> the increase in the Uniform Allowance.

Extension of Collective Bargaining Agreement

The collective bargaining agreement between the parties which expired on December 31, 1977 is renewed and extended in all its terms and conditions except as modified by this award.

AWARD OF THE PUBLIC ARBITRATION PANEL

1. Contract Term The term of the contract covered by the Award shall be January 1, 1978 through December 31, 1979.
2. Salary The Association proposal is granted to the extent that members of the unit shall receive increases as follows:
  - i) Effective January 1, 1978 the current scheduled pay rate for top grade Police Officers shall be increased by three (3) per cent; effective July 1, 1978 this rate shall be further increased by three (3) per cent; effective February 1, 1979 this rate shall be further increased by \$683.00; and effective 9/1/79 this rate shall be further increased by \$689.00.
  - ii) Officers still on increment will move along a new scale to be constructed by the parties.
  - iii) There shall be a new salary schedule established for Police Officers hired after the effective date of this Agreement to be based upon the first step as of December 31, 1977 and the top step as of each increase and an equal increment for each step from one to four. This schedule shall be adjusted with each increase in the top step, the first step shall remain as is for the duration of the Agreement.
3. Longevity The Association proposal is denied.
4. Night Differential The Association proposal is denied.
5. Vacation The Association proposal is granted to the extent that effective for the next pick that shall take place in 1979 Article VII (2), Vacation Schedule, shall be amended to provide 20 duty tours after twelve (12) years of service.
6. Sick Leave The Association proposal is denied.
7. Payment of Unused Sick Leave The Association proposal is denied.

8. Termination and Modification Article III (3) of the current agreement is to be deleted in its entirety. Article I (5) of the current agreement is amended to read as follows:

This agreement shall be effective as of the 1st day of January, 1978 and shall remain in effect until the 31st day of December, 1979. This agreement shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing on or before one hundred and eighty (180) days prior to the termination date, that it desires to modify this AGREEMENT. In the event that such notice is given, negotiations will commence not later than thirty (30) days thereafter.

9. Association President's Work Chart The City's proposal is denied.

10. Association Office Space The City's proposal is denied.

11. Work Week The City's proposal is denied.

12. Overtime Pay The City's proposal is denied.

13. Compassionate Leave A new section shall be added to Article VII to provide as follows:

Compassionate Leave. In the event of critical or serious illness of an employee's grandparents, brother, sister, spouse, child, father or mother of the employee, father or mother of his spouse or a relative of the employee or his spouse living in the same dwelling with the employee, compassionate leave with pay up to four days in any one calendar year may be granted upon certification by the employee's private physician or the City Physician that the employee's presence at the bedside of the critically or seriously ill member of the immediate family was absolutely essential to the treatment, care and possible recovery of the ill person from a medical or therapeutic standpoint. Such certification shall be presented to the Police Commissioner or his representative before such leave with pay is granted.

14. Charges Against Sick Leave The City's proposal is granted to the extent that current Article VII (c)(d) shall be replaced by a reversion to the language contained in the prior contract.

15. Welfare Benefits The City's proposal is denied.

16. Personal Days The Association proposal is granted to the extent that the last sentence of Article VII (4) of the current agreement shall be amended to read as follows:

Personal leave days will not be taken on the following holidays except in case of emergency: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Election Day and Christmas Day.

17. Holiday Pay: Option Effective for the vacation year 1979 only, employees with less than twelve (12) years service may elect to take up to five (5) days vacation in lieu of five (5) days of holiday ~~time~~<sup>PAY</sup>.

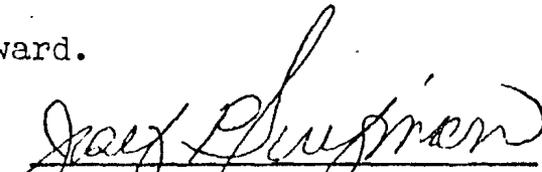
As much of 1979 has already passed the parties shall determine the timing of the election.

18. Uniform Allowance The Association's proposal is granted to the extent of increasing the uniform and cleaning allowance to \$300.00 per year effective January 1, 1979.

19. Retroactivity The increase in Salary and Uniform Allowance awarded shall be entitled to full retroactivity.

20. Extension of Collective Bargaining Agreement The collective bargaining agreement between the parties which expired on December 31, 1977 is renewed and extended in all terms and conditions except as modified by this award.

Dated: May 9, 1979

  
Josef P. Sirefman  
Chairman

I concur with the Chairman's conclusions as to the following paragraphs in the Award: #1 - #2 - #5 - #9 - #10 - #11 - #12 - #15 #16 - #17 - #18 - #19 - #20

but dissent as to paragraphs: #3 - #4 - #6 - #7 - #8 - #13 - #14

Dated: MAY 10<sup>th</sup> 1979

S/ RALPH PURDY

Ralph Purdy  
Employee Appointed Panel Member

I concur with the Chairman's conclusions as to the following paragraphs in the Award: #1, #3, #4, #5, #6, #7, #8, #13, #14, #17, #19, #20

but dissent as to paragraphs: #2, #9, #10, #11, #12, #15, #16 #18

Dated:

S/ BRUCE R. MILLMAN

Bruce R. Millman, Esq.  
Employer Appointed Panel Member

STATE OF NEW YORK

COUNTY OF Nassau

ss.:

On this 9 day of May, 1979 before me personally appeared Josef P. Sirefman, 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.

Mary A. Smith  
Notary Public

MARY A. SMITH  
Notary Public, State of New York  
No. 30-3738195  
Term Expires March 30, 1981

STATE OF NEW YORK

COUNTY OF Westchester

ss.:

On this 10<sup>th</sup> day of MAY, 1979 before me personally appeared Ralph Purdy, 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.

S/THOMAS J. ABINANTI  
Notary Public, STATE OF  
NEW YORK

NO. 60-4615471  
TERM EXPIRES MARCH 30, 1981

STATE OF NEW YORK

COUNTY OF Nassau

ss.:

On this 15 day of MAY 1979 before me personally appeared Bruce R. Millman, Esq., 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.

S/SUSAN ANSERUS  
Notary Public

SUSAN ANSERUS  
NOTARY Public, STATE OF NEW YORK  
NO. 30-4103977  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES MARCH 30, 1981