

PUBLIC EMPLOYMENT
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In the Matter of the Impasse between
City of Port Jervis
-and-
Port Jervis PBA
Case Number IA 80-21; M80-347

Opinion of
Chairman
Award of Panel

_____X

Panel of Arbitrators:

- Maurice C. Benewitz, Public Panel Member and Chairman
- Fred Harding, Employer Panel Member
- Joseph F. Sanchez, Employee Organization Panel Member

Appearances:

- For the City: Hon. Robert P Rifkin, Chairman, Safety Committee
- For the PBA: Peter E. Bloom, Esq., Attorney

Pursuant to Section 209.4 of New York Civil Service Law, the New York State Public Employment Relations Board appointed the undersigned panel to make a just and reasonable determination concerning a dispute over the terms of a contract to be effective January 1, 1981. A hearing on the dispute was held on December 22, 1980. Executive Sessions were held on May 9 and June 15, 1981.

At the December 22, 1980 hearing the parties waived the oath of arbitrator for the panel members.

Correspondence was received from the parties on January 26, 1981, February 28, 1981 and on other dates. Copies of these letters were shared with all members of the panel.

The panel appointment was initiated by a petition for compulsory interest arbitration served by the PBA. The petition listed nineteen original demands and showed that a number of them had been settled or withdrawn. The position

of the City on the outstanding issues was attached to the petition.

The panel ruled that all withdrawn issues, whether withdrawn prior to the hearing, during the hearing, or by letter of Mr. Bloom dated January 28, 1981, did not remain at issue in this proceeding and were not discussed. The withdrawn demands were numbers: 4 (holidays); 6 (longevity); 8 (retirement system); 11; 12 (court duty); 16 (calendar year); 17 (seven day notice).

The panel rules that the items resolved before or during the hearings shall be incorporated into the contract effective January 1, 1981. These items shall be incorporated in whatever words the parties agreed upon at the time of resolution. (For example, certain qualifying words were adopted to limit the insurance liability for part-time officers pursuant to Item 19.) The items which were resolved in whole or in part were: 2 (selection of arbitrator); 3 (agency shop); 10 (detective pay); 15 (Section 75 hearings); 18 (part-time officers); 19.

The following items remained open for the consideration of the panel: 1 (Salary); 5 (vacations); 7 (sick time accumulation and conversion); 9 (clothing allowance); 13 (schedule); 14 (length of agreement).

The review in executive session concerned all of these open items. But the discussions of the arbitrators turned on two in particular. The city sought a unanimous agreement so that a three year contract could be awarded. Under the provisions of law, no more than a two year agreement may be awarded. A unanimous agreement to exceed this limit voluntarily could have led to a waiver of the legal limitation. Had such an agreement been reached, the current salary schedules in which many of the unit members are off of any salary step could have been corrected. If such correction occurred, by the end of the contract's life all unit members would have been on one of the five steps of the patrolman schedule or one of the three steps of the various higher officer schedules. All officers could have received significant increases in the course of achieving this result.

The PBA was very interested in achieving language in the contract which would have required a specified and predictable six-month work schedule.

The arbitrators representing the parties were unable to agree on a significant aspect of one of the issues. The chairman had already informed them that if they were unable to agree, it was his best judgement that the panel should award on only two issues: a one year contract and a fair salary adjustment over that period.

The other money fringes which were open might have been adjusted over a three year period. The shape of such a package was visible. The chairman was of the opinion that no fringe adjustment would be fair to the City if the change was initiated in the remaining six months of a one year adjustment. The chairman informed the panel members that in his judgement, it would be best to leave the parties in status quo ante if a full contract could not be achieved. He was of the opinion that in the future negotiations the parties would make the trade-offs themselves which would allow a full package to emerge. There is considerable merit to some of the open PBA demands on issues other than duration and salary. Similarly, there is merit to some of the counterproposals by the City. But, in the opinion of the chairman, none of the positions on items other than wages and duration are so clearly meritorious under the facts and the provisions of the State statute that they should be imposed by a compulsory interest arbitration panel. Without the affirmative vote of the chairman, no majority was available on any issues except duration and salary.

The legal standards governing the award of the panel are set forth in Section 209.4 as amended July 1, 1977. These standards read:

the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- 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.

Opinion of Chairman on Salary

Voluminous data were offered in the hearing concerning the open items on which the panel shall not rule. The reasons why the panel shall rule only on salary depend in part on the data concerning the financial condition of the City. That data will be discussed only as it is relevant to the salary issue. The evidence presented concerning the other issues will not be reviewed because in a one-year contract the limited resources of the City argue strongly against any increases except significant salary increase. Even in the economic condition of the City there is reason for such an increase.

The City Presentation on Ability to Pay

Regardless of the provisions by State law, the City has its own tax limit set forth in its charter. That limit is \$500,000 for current expense. By its recent increase of 94¢, the city reached the charter limit. The limitation can only be increased by referendum.

The people of the City are not receptive to any increase since they are unusually concentrated among the lowly paid and the unemployed. The 1980 census showed a decrease in population of 200 persons to 8600. The median income is \$8300 at a time when the federal government poverty level is \$8690. (As against this the median PBA salary is \$13,550.) There are 650 unemployed or 11.5% of the employable population.

City Clerk - Treasurer James Hinckley testified to a number of other facts concerning the City's economic condition. There was a contingency fund of \$57000 set aside to cover 1981 salary and wage increases to members of the PBA and CSEA units. There are continuing increases which the City cannot control in health insurance costs. The 1980 cutback in State aid was \$58,000; the City had budgeted \$28,000. The city had to close down an urban renewal project because of costs; but there had been closedown costs. To save money, the City has cut its street maintenance programs; but there will be a later cost from this deferred maintenance.

Revenues in 1980 were more than \$100,000 less than projected. And there will be further federal fund decreases in 1981.

(Subsequent to the hearing the City was subjected to a serious flood. Councilman Rifkin wrote that the loss in public property and expense exceeded \$2,000,000. Private sector losses were twice that amount.)

Subsequent to the December 22, 1980 hearing but prior to the first executive session, the parties met in an attempt to resolve the dispute before the panel. One of the items which were discussed was a City proposal for a three-year salary schedule with provision for placing all unit members on step by 1983. Increases in each year for all persons now above the final step in the schedule would be based on the proposed step 5 1983 salary for patrolman of \$15,000 or the proposed 1983 step 3 salary for sergeants of \$16,900, or the proposed 1983 step 3 salary for lieutenant of \$19,400. The 1981, 1982 and 1983 increases of such persons would be computed in the following way under this City proposal:

Subtract the present salary from 1983 step 5 for patrolman, step 3 from sergeant and lieutenant. Divide that figure by three and increase the officer's salary by that figure for 1981. Use the same dollar figure for increases in 1983 and 1984.

(These increases do not include necessary adjustment to fringe benefit costs already in place, such as social security contributions.)

In his letter to the chairman dated February 28, 1981, Mr. Rifkin stated that the percentage increase in wages under this offer would be 7% per year.

The 1981 salary base for unit members was \$227,848. The panel computed the first year wage increases required under the City proposal. (Work sheet appended). The total increase (including step movements already required if the 1980 schedule were continued) would be \$15,131 under the last City offer. (However, in making these computations no allowance was made for replacing one officer who was above minimum and who had left. Since this officer would have been replaced, even under a new and higher salary schedule, by a patrolman at the start step who would earn less, the true incremental cost would be less than \$15,131.) If the \$15,131 figure is used, the offer comes to 6.6% of payroll. (Increases for the detective and for part-time officers are not included, since these costs are not part of the \$227,848 base as the panel understands that number.)

(Subsequent to these hearings settlements were reached with the teacher and CSEA units. Percentage increases ranging from 6.5% to 8% over the three year contracts were reported to the panel. But these percentages are not helpful in deciding what a fair one year increase to the PBA unit should be. First, the percentages are part of three-year packages. Second, no comparison was possible of other gains both monetary and non-monetary which may have been won by the teacher or CSEA units. Third, no comparison of base pay or dollar cost of these increases is available.)

The PBA Presentation on Ability to Pay and Comparisons

The PBA presented, as an expert witness, Edward Fennell, a former comptroller of Cohoes, N.Y.

Mr. Fennell, using State and City documents, showed that only five cities in New York State had a lower full value tax for city, county and school taxes than Port Jervis. In the County of Orange, for the overall full value range, only two communities were lower in the high range than Port Jervis; eleven were lower in the low range (of forty-one entities listed). Only 38% of the City's taxing power under the State constitution was exhausted in 1980. For all New York cities, the average for tax margin exhausted was 72.1% in 1978. (Of course, the City has its own charter tax limit, as earlier discussed.)

In 1980, the City raised 23.1% of its total revenue by property taxes. The average raised by property taxes in the three Orange County cities of Port Jervis, Middletown and Newburgh was 33.5% in 1978.

The PBA notes that neither Port Jervis nor Orange County have exercised the power granted by the legislature to levy a sales tax. Only five counties in the State fail to levy such a tax. Port Jervis does levy a 3% consumer utility tax as does Newburgh.

Mr. Fennell drew conclusions from these facts. Within its own limits, Port Jervis has margin for an increase in real property taxes (but only if its charter limit is ignored); and the city may levy a 1½% sales tax. (The chairman notes that this panel has no power to override citizen referenda. At most, we can award a reasonable increase which the city will have to meet either by raising its taxes or by rearranging its budget.)

The witness also testified that budgets are not fixed documents. They are drawn with collective bargaining strategy in mind. To state in the preliminary budget what the contract truly is expected to cost would reveal too much to unions. A publication on budgeting issued by the Municipal Finance Officers Association of the United States and Canada is cited on these assertions.

Certain reserve funds are cited in the 1979 City budget to show that monies are available. The City, however, contends that the cited funds are encumbered. The monies cited arise from federal revenue sharing. The chairman takes arbitrary notice that this source of income is likely to decrease in the future even if, arguendo, the \$18,224.75 shown to be unexpended as of December 31, 1979 were not encumbered. Even Mr. Fennell's recapitulation shows that the City had estimated greater state and federal aid than was received in 1980.

Mr. Fennell also shows that only 9.2% of the City's debt limit was exhausted. This is important in evaluating the information received after the hearing concerning the flood losses. The usual way of meeting such major losses is to borrow rather than to meet the costs out of current income. Port Jervis is apparently in a position to use the more normal method of dealing with the capital costs occasioned by the flood.

Mr. Fennell finally testified that while the total police budget increase 12.3% between 1979 and 1980, personnel costs increased 9.22%, equipment expenditure increased 87.2% and supplies costs increased 29.9%.

As of January 1, 1981, the New York/Northeastern New Jersey CPI was increasing at an annual rate of about 10.2%. While it is true that the rate has since decreased, the panel should act in contemplation of what the parties reasonable might have known had they concluded their own bargain in timely fashion, it is argued.

The PBA offers comparisons to the police salaries in the other two cities in the County of Orange, Newburgh and Middletown. These cities also face significant economic problems it is alleged.

The 1979-80 contract for Port Jervis shows that new policemen had a start pay in 1980 of \$9,500. This rose by the fifth year to \$11,500. (But a number of patrolmen were earning more than this top salary. The highest paid earned \$13,484.)

In Middletown, as of July 1, 1980, the start pay was \$13,450 or as much as the highest paid patrolman in Port Jervis received. The top Middletown patrolman salary on the July 1, 1980 schedule was reached after four years and was \$15,283.

The Start pay in Newburgh in 1981 was \$14,155.07. It rose in five years to \$16,742.07.

Pay schedules were also cited for the Town of Newburgh. Start pay was \$12,070.76. After five years salary was \$15,264.94. New Windsor began at \$14,249.39 and reached \$20,250.42 after ten years.

In it's petition, the PBA sought a flat increase of \$2000 for each member of the unit. This would have cost \$36,000 or 15.8% of the 1980 base. In his letter of January 26, 1981, counsel for the association stated the following "final position" for a three year contract:

The final position of the PBA in that regard amounted to a salary increase of approximately 20% for each of those three years.

Discussion

The panel is faced with conflicts between two of the basic criteria set forth in Section 209.4 of the Civil Service Law. On the one hand it is undeniably true that other employees doing the same work in adjacent and somewhat comparable communities are earning salaries much higher than those paid here. Even if the \$2000 demanded in the petition were awarded in full, or the 20% last demanded were awarded, Port Jervis officers would, on the average, not equal pay received in Middletown and Newburgh.

On the other hand, the financial ability of the public employer to pay is severely constrained. Whatever the theoretical possibilities under State tax limits, this City's charter allows no further real property tax increase at this time. And it is certainly true that the imposition of a sales tax could not occur, even if it were possible to implement, in time to meet the costs of a significant pay increase. In any case, it would be presumptuous of the panel,

and probably ultra vires as well, to suggest how any increase should be financed. Much of the reserve for bargained increases has been exhausted by the settlement with the 35 person CSEA unit. And the reserve was also meant to cover increased cost of mandatory fringes as well as salary.

The terms of the predecessor contract show that in 1979 officers received \$700 to \$1000 increases. (It is not clear whether these amounts were plus step increments or included any required step increments.) In 1980, each officer received \$700 unless he fell between steps in the schedule. If he did, he received a further sum sufficient to move him to the next higher step. The lump sum increases applied to the pay for sergeants and the lieutenant as well as to the pay for patrolmen. No distinction between ranks is shown. Lump sum increases decrease the percentage differentials between ranks.

The majority of this panel has decided upon an increase which must be explained. The increase is 8% for all officers effective January 1, 1981 and a further increase at the annual rate of 4% effective July 1, 1981. Since the later increase would be in effect for only six months, the cost in 1981 would be 10% of payroll (with some slight compounding) but the pay of unit members would be 12% higher effective January 1, 1982.

For the lieutenants this increase would amount to \$1625.60. For the lowest paid patrolman presently in service, the increase would be \$965. Total cost would be \$23,149.

Section 209.4 directs consideration of criteria other than those already discussed. The panel is also directed to consider data which turn out to be the low salaries paid in the unit; the previous bargaining - which led to low dollar increases; and the fact that no improvement in fringes will result from our award. The facts justify an increase somewhat larger than the current cost of living increase, although not larger than that for January 1980 through January 1981. The 12% rate increase, amounting to 10% in 1981 expenditure

constitutes a modest catch-up. Wages of policemen in comparable communities also justify the increase. But the economic condition of the community precludes any attempt to do more to match the salaries in this unit with those of policemen in sister cities in Orange County.

The chairman and those arbitrators concurring shall award 1) a one year contract for the period January 1, 1981 through December 31, 1981; 2) an annual increase of 8% to each member of the unit effective January 1, 1981 as well as an 8% increase in the start rate and in each schedule step of the schedules for patrolman, sergeant and lieutenant; and 3) a further increase effective July 1, 1981 at the annual rate of 4% to the January 1, 1981 salary of each member of the unit as well as a 4% increase effective July 1, 1981 in the January 1, 1981 start rate and each step rate on the schedules for patrolmen, sergeant and lieutenant.

AWARD SECTION

In light of the foregoing discussion, we the chairman and the undersigned members of the arbitration panel indicating our concurrence with the award, having been appointed pursuant to Section 209.4 of the Civil Service Law by PERB letter of November 7, 1980, and having heard the argument, testimony and evidence of the parties, and having met in executive session to fairly and fully discuss such evidence and testimony, award as follows for the terms of a contract between the City of Port Jervis and the Port Jervis PBA, said contract to become effective January 1, 1981:

1. All items withdrawn shall not become part of this agreement.
2. All items on which the parties reached voluntary agreement, as noted in the body of this opinion, are incorporated into the contract in the words on which the parties agreed.
3. Items 5 (vacations), 7 (sick time accumulation), 9 (clothing allowance), 13 (schedule) are denied.

4. There shall be a one year contract for the period January 1, 1981 through December 31, 1981.

5. Each member of the unit shall receive an 8% increase in his salary (exclusive of all fringes and other costs) effective January 1, 1981.

Each starting rate in schedules for patrolmen, sergeant, or lieutenant as set forth in the 1980 agreement and each step rate in such schedules shall be increased by 8% as of January 1, 1981.

6. Each member of the unit shall receive an increase in his January 1, 1981 salary at the annual rate of 4% effective July 1, 1981.

Each January 1, 1981 starting rate and each January 1, 1981 schedule step rate as of January 1, 1981 shall be increased at the annual rate of 4% effective July 1, 1981.

Maurice C. Benewitz
Maurice C. Benewitz
Chairman of Panel and Public Panel Member

Manhasset, N.Y.
July 10, 1981

STATE OF NEW YORK) ss:
COUNTY OF NASSAU)

On the tenth day of July 1981, before me personally came MAURICE C. BENEWITZ, to me known, and known to me to be the individual discribed in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Reine M. DeMar
Notary Public

REINE M. DEMAR
NOTARY PUBLIC, COUNTY OF NASSAU, NEW YORK
QUALIFIED BY THE STATE OF NEW YORK
TERM EXPIRES MARCH 30, 1982

I concur with the above award
I dissent from the above award

Joseph Sanchez
Joseph Sanchez
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF NASSAU) ss:

On the 17th of July, 1981 before me personally came Joseph R. Sanchez, 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.

Susan Sanchez
Notary Public

SUSAN SANCHEZ
Notary Public, State of New York
No. 4723071
Qualified in Nassau County
My Commission Expires March 30, 1982

I concur with the above award.
I dissent from the above award. [checkmark]

Fred R. Harding
Fred Harding
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF) ss:

On the August 8, 1981 before me personally came Fred Harding, 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.

Robert A. Oroley
Notary Public for New York
Residing Orange Co.
Commission expires 3/30/82

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