

In the Matter of Arbitration between

CRYSTAL CITY POLICE  
BENEVOLENT ASSOCIATION

and

CITY OF CORNING, NEW YORK

OPINION and AWARD  
PERB Case # IA-80-24;  
M80-353

I. INTRODUCTION

The present proceeding is an Interest Arbitration instituted and conducted pursuant to the provisions of New York Civil Service Law, Section 209.4. The petitioner was the Corning Police Department's Crystal City Police Benevolent Association (hereinafter referred to as the "Employees," "The PBA," the "Policemen," or the "Union"), and the respondent was the City of Corning, New York (hereinafter referred to as the "Employer," the "Administration," or the "City").

The PBA formally petitioned the New York State Public Employment Relations Board for designation of a Public Arbitration Panel on October 2, 1980, with the City's response being received on October 14, 1980. Ultimately, on March 9, 1981, the present Public Arbitration Panel was designated by the State of New York Public

Employment Relations Board pursuant to the provisions of Section 209.4 of the New York Civil Service Law. The Panel was constituted as follows:

Public Panel Member and Chairman:

Sumner Shapiro  
64 Darroch Road  
Delmar, NY 12054

Employer Panel Member:

Gerald F. Rossettie  
212 Walnut Street  
Corning, NY 14830

Employee Organization Panel Member:

Peter J. Reilly, President  
Police Conference of  
New York, Inc.  
112 State Street, Suite 1120  
Albany, NY 12207

The sole issue before the Panel is resolution of the impasse over the level of salary adjustment to be instituted for the second year of a three-year Agreement, which pay period commences on July 1, 1980, through June 30, 1981. This salary adjustment is the only provision of the Agreement subject to renegotiation at this time. The Agreement itself is effective for a period commencing July 1, 1979, through June 30, 1982. The parties stipulated both to this being the only question before the Panel, and to agreement that all prior offers made in the course of negotiations were null and void.

A hearing was held at the City Hall in Corning, New York, on June 1, 1981, at which time both parties were afforded the opportunity fully to develop their respective positions and submit supporting evidence, as

well as to cross-examine or otherwise respond to adversary submissions. Appearances were as follows:

For the Employer:

Dr. Charles J. Ganim, Chief  
Negotiator - President of Value  
Management Consultants, Inc.,  
1386 Parker Blvd., Buffalo, NY 14223

Rita M Ganim, Executive Vice-  
President of Value Management  
Consultants, Inc. - Negotiator

For the Union:

Gerald Washburn, NYS Police  
Conference - Chief Negotiator

Edward Fennell, Municipal Finance  
Consultant, 44 North Reservoir St.,  
Cohoes, NY 12047 - Fiscal Consultant  
for the Union

James Ewanyk, Crystal City Police  
Benevolent Association, President  
and Negotiator

Leslie Taylor, Patrolman, Corning  
Police Department - Negotiator.

II. BACKGROUND

The Agreement by and between the parties covers the period commencing July 1, 1979, and concluding June 30, 1982. That Agreement provides for three annual salary adjustments commencing July 1, 1979; July 1, 1980; and July 1, 1981, respectively. The adjustments applicable to 1979 were fixed at 7% across-the-board at the time of negotiation. The adjustment to become effective July 1, 1980, was made subject to a formula linking the increase to the Consumer Price Index increase. This

was set forth in Section IV-2 of the Agreement (Joint Exhibit VI, City Exhibit J). These provisions state as follows:

"Effective July 1, 1980, through June 30, 1981, the aforesaid pay scale shall be increased seven percent (7%), if the Consumer Price Index for April, 1979, through March, 1980, Northeastern, is seven percent (7%) or less. If the aforesaid Consumer Price Index exceeds seven percent (7%), the increase in pay scale shall be as follows: (Northeastern D area)

C.P.I. INCREASE

PAY INCREASE

8.0% to 8.99%  
9.0% to 9.99%  
10.0% to 10.99%  
11.0% (or more)

8%  
8.75%  
9.25%  
Only the PBA has the right at its option to re-open negotiations on wages.

That increase for the designated area and time period exceeded 11%, with the consequence that the PBA became entitled to reopen negotiations on wages. The Union's final demand was for a 13% across-the-board increase based on the fact that the Consumer Price Index increase for April, 1979, through March, 1980, for all Urban Wage Earners and Clerical Workers (CPI-W) for the Northeast D Region was 13%. The Union further asserted that the implementation of the 13% increase would narrow, but not close, the gap between salary levels in the Corning Police Department and those prevailing in

representative, comparable jurisdictions. The Union's fiscal analyst argued that the City's ability to pay is beyond question, and that the City is, in fact, financially robust.

The Employer maintained the second year increase, which is here in dispute, was to have been implemented under the second year Rules and Regulations of the Council on Wage and Price Stability which it interprets to limit permissible adjustments to a range of from 7.5% to 9.5%. In offering 9.5% in mediation, the City maintains it had acceded to the legally-permissible limit. Moreover, the Employer notes it had committed to certain fringe benefit improvements in the second and third year of the Agreement which, coupled with the 9.5% salary increase, would have provided a very equitable and an at-least-competitive compensation package for a small upstate community. The Union, it asserts, was attempting to compel the City government to violate the Federal guidelines and sustain possible harm to the City in its future financial dealings with the Federal government.

The City further argues that the Union demand greatly exceeds modal increases in Corning, and that it is Corning and its immediate environs which provide the only valid comparison. The City alleges the percentage increases recently awarded in the jurisdictions consti-

tuting a standard are lower than those which the City had proposed for the Policemen prior to impasse. Such increases were proposed, the City notes, despite the fact of a rise in its unemployment rate from 6.4% to 7.2% from 1979 to 1980.

The Employer further argues that Corning Patrolmen have enjoyed substantial increases since July of 1976. It relies upon case histories - such as that of a Patrolman who has moved from Step 1 to Step 3. That Employee's wages would have virtually doubled in four years, assertedly averaging out to a yearly increase of 52.3% without adding the 13.5% demanded by the Union. With this demand added, the average increase would allegedly rise to 65.8%. The yearly average of the Consumer Price Index rise was claimed to be 34.07%. The Employer further argues that the Consumer Price Index in itself reflects biases which grossly overstate increases in the Cost of Living. Moreover, the Employer asserts, reliance upon CPI references and other Union arguments violate "the natural laws of labor supply and demand," which the City is obligated to respect.

### III. OPINION

The Panel has assiduously reviewed the submissions of the parties in their entirety. The

portion of the record dealing with wages, hours and conditions of employment of Corning PBA members relative to those of employees similarly employed - and those portions dealing with the jurisdiction's financial ability and obligations to the public constituency were repeatedly reviewed in compliance with the requirement imposed upon the Panel by Section 209.4(c)(b). While some differences persist among Panel members respecting certain positions, the members ultimately adopted compromises enabling them to fashion a unanimous award. Certain basic premises crucial to this process will be reviewed at this juncture.

The fundamental premise upon which the award is built is that the parties arrived at a meeting of minds set forth in the Agreement covering the period from July 1, 1979, through June 30, 1982. This Agreement was actually signed in March of 1980, at which point in time the year-two standards of the Council on Wage and Price Stabilization had been known for a number of months. Moreover, the clarifications to these standards issued by the President's Pay Advisory Committee and adopted by the Council had specified that pay adjustments above the narrowly defined ranges might occur under certain circumstances, and that "payments in excess of the guidelines that are dictated by legally-mandated binding arbitration

will not put a company out of compliance with the pay standards." We consequently conclude that the parties had bound themselves to compliance to the Agreement, rather than voluntary adoption of the criteria of the Council on Wage and Price Stabilization, and that, moreover, the constraints, even if applicable, would not have precluded the award flowing from these proceedings. We similarly refrain from a detailed review of the Employer's critique of the Consumer Price Index and his analysis of the average rate of past increases of junior members, both of which were the subject of detailed analyses. Suffice it to say that Step increments do not constitute salary increases as implicitly defined in Article IV, Rates of Pay, of the Agreement. The critique of the CPI as a measure of Cost of Living, however intellectually stimulating, is hardly conclusive and in any event does not contravene the fact of its adoption - "warts and all" - by the parties. A critique of the critique would contribute no useful illumination.

The Agreement permits the matter of salary adjustment determination to be resolved by an Arbitration Panel only where the Consumer Price Index increase for the period of April, 1979, through March, 1980, (Northeast D Region), exceeds 11%. It is clear from an analysis of the relationship between CPI increases of less than 11% and

corresponding pay increases that the parties envisioned an increasing divergence between the CPI increase and the pay increase, with the pay increase lagging as the CPI rose above 7%. There are, however, some mathematical inconsistencies or anomalies in the correlation between these two rates of increase. It seems rather clear that if the CPI increase had been 11.25%, the appropriate pay increase would have been slightly more than 9.25%. Differences in the formula inferred would make little difference in this range of CPI increases. However, as the range increases and the CPI increase rises to 13%, differences among possible inferred formulae begin to become more meaningful. This, however, does not alter the fact that the parties agreed to rely upon the Consumer Price Index in devising a measurement scale. While it may be logically argued, depending upon the assumptions adopted, that this measure understates or overstates the rise in actual Cost of living, the fact remains that the parties agree to that standard of measurement and, in doing so, ipso facto imposed it upon the Panel. We resist, therefore, the temptation to indulge in a more thorough and perhaps pedantic review of this aspect. The Panel has relied upon extrapolation of the formula to develop boundaries or constraints within which it was apparent that an equitable resolution would lie. It has further examined

the comparability and prevailing salaries in jurisdictions which the parties submitted as comparables. While no two jurisdictions match precisely, we have, in the end, relied upon the free-standing upstate communities removed from the penumbra of large municipalities. On this basis, we have recalculated averages, removing Tonowanda, Brighton, and the New York State Police.

In reviewing the entry and top level Steps, we found the top level Corning salaries compare more favorably with practice elsewhere than did the entry level Steps. We were also mindful that entry level persons are likely to experience Cost of Living increases which are essentially comparable to those sustained by people at higher Steps. Out of deference to this condition, we have adopted a formula incorporating a flat annual dollar increase of \$150 per person to be applied to the 1979-80 salary before increasing by 9.5%. The formula, therefore, is:

$$1980-81 \text{ Salary} = ('79-'80 \text{ Salary plus } \$150) \times 1.095$$

The resultant salaries for each Step from the application of this formula are tabulated in Table I, following.

| <u>Position Designation</u> | <u>Salary Level Effective<br/>July 1, 1980, through<br/>June 30, 1981</u> |
|-----------------------------|---|
| Patrolmen:                  |   |
| Entry Level, Step 1         | \$11,365/annum  |
| Step 2                      | 13,844/annum  |
| Step 3                      | 15,619/annum  |
| Lieutenant                  | 17,441/annum  |
| Captain                     | 19,306/annum  |

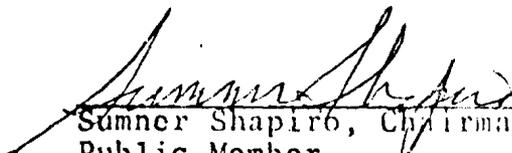
IV. AWARD

Pursuant to the provisions of Article IV, Paragraph 2, of the Collective Agreement between the City of Corning, New York, and the Crystal City PBA for the period of July 1, 1979, through June 30, 1982, annual salaries for the period retroactive to July 1, 1980, through June 30, 1981, shall be as set forth in the following schedule:

|             |                |
|-------------|----------------|
| Entry Level | \$11,365/annum |
| Step 2      | 13,844/annum   |
| Step 3      | 15,619/annum   |
| Lieutenants | 17,441/annum   |
| Captains    | 19,306/annum   |

The determination of salary was the sole issue involved in the impasse and addressed by this Arbitration Panel.

Respectfully submitted,

  
Sumner Shapiro, Chairman and  
Public Member  
Date: July 31, 81

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

Sworn to before me this 31st day  
of July, 1981.

Michael D. Malinoski  
Notary Public

**MICHAEL D. MALINOSKI**  
Notary Public, State of New York  
No. 4657133  
Qualified in Albany County  
My Commission Expires March 30, 19 83

CONCURRING:

Gerald F. Rossette  
Gerald F. Rossette  
Employer-designated Member  
Date: 7-23-81

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF STEUBEN )

Sworn to before me this 23rd day  
of July, 1981.

Thomas J. Rosette  
Notary Public

THOMAS J. ROSETTIE  
NOTARY PUBLIC, STATE OF NEW YORK  
STEUBEN COUNTY, NO. 4687602  
TERM EXPIRES MARCH 30, 1983

CONCURRING:

Peter J. Reilly  
Peter J. Reilly  
Employee Organization-designated Member  
Date: 7-28-81

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

Sworn to before me this 28th day  
of July, 1981.

Kathleen M. Smith  
Notary Public

KATHLEEN M. SMITH  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires March 30, 1982