

STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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State of New York
Public Employment Relations Board

JUL 29 1981

In the Matter of the Interest Arbitration Between
The City of Schenectady,
and
The Schenectady Patrolmen's Benevolent Association

RECONCILIATION
PERB CASE
NOS
IA80-33/M80-509

Before the Public Arbitration Panel:

Norman Brand, Public Member and Chairman
John H. Galligan, Employer Member
Frank N. Grasso, Employee Organization Member

OPINION

On March 27, 1981, Harold R. Newman, Chairman of the New York State Public Employment Relations Board, appointed us as the public arbitration panel under Section 290.4 of the Civil Service Law to make ". . . a just and reasonable determination of the matters in dispute." In accordance with our statutory authority, we conducted formal hearings on April 13 and 14, 1981, in Schenectady, New York. We met in executive session on June 29, 1981, in Albany, New York, and on July 21, 1981, in Schenectady, New York. At the formal hearings both parties appeared through their representatives and had full and equal opportunity to present documentary and testimonial exhibits and to examine and cross-examine witnesses under oath. Both parties presented pre-hearing and post-hearing briefs.

We have carefully considered the entire record before us in light of the standards contained in Section 209.4(c)(v) of the Civil Service Law for resolution of this dispute:

(v) 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.

On the basis of that consideration we have reached the following conclusion.

Background

The City of Schenectady and the Schenectady Patrolmen's Benevolent Association are parties to a collective bargaining agreement for the period January 1, 1980 to December 31, 1982 (City Exhibit "A"). Article XVIII, 11. provides for re-opening negotiations as to wages for the period January 1, 1981 to December 31, 1982. The parties agreed that it would be appropriate for this panel to make an award covering these two remaining years of the contract.

Specification of Statutory Standards

a. Comparability

The PBA compared Schenectady with a dozen other police jurisdictions in cities of 50,000-400,000 population and in the surrounding area (PBA Pre-Hearing Brief, Exhibit "F"). In the PBA comparison group Schenectady ranked number 8. However, among cities of comparable size in the comparison group (New Rochelle, Mount Vernon, Niagara Falls, Utica) Schenectady ranks 3 of 5. Thus it appears that no change in an otherwise appropriate wage adjustment is required in order to place or retain Schenectady within the wage boundaries of comparable communities.

As will be seen below, with the wage adjustment we deem "just and reasonable" for the period before us Schenectady police will move ahead of their counterparts in Syracuse, Mount Vernon, Buffalo and Binghamton. We deem this movement appropriate in light of the treatment accorded the City's ability to pay.

b. Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay

All of the evidence presented at the hearing confirmed that the citizens of Schenectady have a highly competent, professional police force, and the interest and welfare of the public requires maintenance of the high standards of police protection. The evidence further demonstrated that the City has sought to maintain levels of protection through hiring 9 police officers since January 1, 1980.

As regards ability to pay, after five years of surpluses, the City experienced a deficit in fiscal year 1980. The budget adopted for fiscal year 1981 required a 22% increase in property taxes. Furthermore, the Mayor testified that as a result of shortfalls in projected state and federal aid he had ordered each department to attempt to cut its budgeted expenditures by 10%. According to the City's Budget Director, since October, 1980, there has been a hiring freeze, 10-12 employees were laid off, and there are 20 unfilled vacancies in the City work force. As previously noted, the police have experienced no layoffs and have not been subjected to the hiring freeze.

However, as counsel for PBA forcefully demonstrated, these fiscal difficulties must be understood in light of the facts that Schenectady has utilized only 62% of its available property tax margin and depends to an unusually great extent on the property tax to raise revenues. Thus, it appears that while the City has a temporarily impaired ability to pay (in cash flow terms) this should affect only the timing and not the amount of the pay increase for police.

c. Peculiarities of Police Work

It is well known and it was amply demonstrated at the hearing that police work is complex, demanding, and hazardous. While the City argued that police have better retirement, insurance, and health benefits than other City employees, we recognize that these benefits are the result of both legislation and collective bargaining. In both instances the existing benefits recognize the

peculiarities of police work in Schenectady. Thus, these benefits have no effect on our determination of a "just and reasonable" pay increase.

d. Terms of Past Collective Bargaining Agreements

Since this impasse resulted from a wage re-opener in an existing contract, we cannot ignore the first year wage settlement in that contract. Police received a 5% increase as of January 1, 1980, and a further 7% increase as of July 1, 1980, resulting in a compounded increase of 12.4%. The City argues that since it only expended 8.6% in 1980, it should be credited with having given a 3.8% raise in 1981. We reject this position. It was the City, not the employees, that reaped the benefit of a split raise in 1980. It is neither just nor reasonable for the City to now argue that the wage increase for the remaining years of the contract should be reduced by the amount employees did not receive in 1980.

CONCLUSION

Having considered all of the evidence and argument presented in light of the statutory criteria, as specified above, we find the following to be a "just and reasonable"

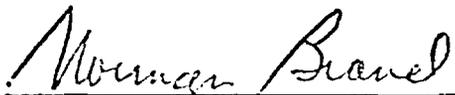
Award

Effective as of January 1, 1981, each employee's base pay shall be increased by 6%. However, the City is not required to pay that sum of money which represents each employee's increase in base pay from January 1, 1981, through June 30, 1981, until July 1, 1982, and then only to those employees who were employed on

January 1, 1981, and continue to be employed on July 1, 1982. The sum of money which represents the increase in base pay from July 1, 1981, to the receipt of this award is payable immediately. As of January 1, 1982, each employee's then existing base pay shall be increased by 9%.

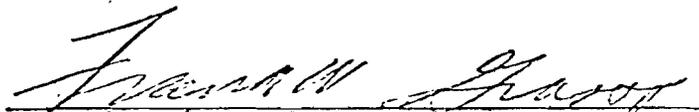
We believe that this delay in the payment of part of the retroactive portion of the increase in base pay adequately recognizes the City's cash flow difficulties. At the same time, the relative improvement in the employee's comparative rank among comparable police jurisdictions recognizes their contribution to the solution of the City's fiscal problems.

Dated: July 27, 1981
Albany, New York



Norman Brand
Public Member and Chairman

Dated: July 27, 1981
Schenectady, New York



Frank N. Grasso
Employee Organization Member

Dissent

I dissent from the Award issued by the majority of the panel.
Written dissent to follow.

Dated: July 27, 1981
Albany, New York



John H. Galligan
Employer Member

Acknowledgment

State of New York)
County of Albany) ss.:

On this 27 day of July, 1981, before me personally came and appeared Norman Brand 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.

Gloria M. Meany

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

Acknowledgment

State of New York)
) ss.:
County of Schenectady)

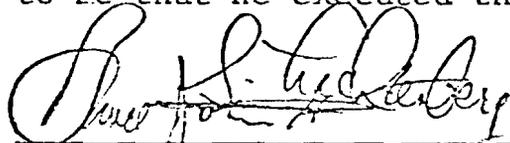
On this 27 day of July, 1981, before me personally came and appeared Frank N. Grasso to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Laura DeLoe
Comm. Notary

Acknowledgment

State of New York)
County of Albany) ss.:

On this 27 day of July, 1981, before me personally came and appeared John H. Galligan 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.


Ernest S. Trachtenberg
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN SCHOENICHTZ COUNTY
#4689547
MY COMMISSION EXPIRES 3-30-83

NOV 17 1981

CONFIDENTIAL

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IN THE MATTER OF
AN INTEREST ARBITRATION BETWEEN
CITY OF SCHENECTADY

-and-

SCHENECTADY PATROLMEN'S BENEVOLENT ASSOCIATION

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* PERB IA80-33;
* M80-509
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* DISSENT OF
* EMPLOYER PANEL
* MEMBER
*

The two other members of this panel have decided that a municipality suffering a 1980 budget deficit of nearly \$900,000 and imposing a 22% real property tax increase in response to its fiscal problems still has an ability to pay a significant wage increase to some 150 employees. The majority considers these financial facts to be a mere temporary impairment which had no effect upon the amount of the wage increase awarded. The majority asserted that the tax effort of the employer was inadequate. I refuse to consent to such a treatment of a public employer, its other employees, its taxpayers and, in fact, its priorities. The question arises how poor the financial condition of a public employer must be before an arbitration panel will choose to recognize it and consider it accordingly. The answer in this case is that the financial condition of the City of Schenectady is not yet bad enough.

The criteria which an arbitration panel must consider are set forth on page 2 of the majority's award. The majority has chosen to accord one part of one factor pre-emptive

treatment with respect to all other factors. According to the majority, the City is not taxing its residents enough. The City taxes its real property at approximately 62% of its constitutional taxing limit and has no sales tax. The majority envisions these facts in absolute terms and concludes that since these taxes are not at 100% of what they could be, the employer has an ability to pay and it should do so. There is no question that a municipality not at 100% of its taxing limits literally has an ability to pay. Few, if any, municipalities are at that point. The question then becomes: given the ability to pay, to what extent should a municipality be directed to do so in light of other statutory criteria for an interest arbitration panel to consider?

The remedy for the City as a result of this award is to curtail or deny wage increases anticipated by other employees, to re-order its delivery of services, and to increase taxes. The first two options may be somewhat related but in any event are unrealistic here. Settlements for public safety employees are generally recognized as a bell weather for other unions and their members. There is no doubt that other city unions will demand similar wage increases in their negotiations with the City. It would appear that the financial condition of the City, a factor in negotiations with these other unions, has been aggravated. The award in effect has prioritized City services by making a pre-emptive claim upon municipal resources. Furthermore, the City has, through the months prior to this award, attempted to cope with its financial problems through layoffs and hiring

freezes, neither of which were imposed upon the police department. The award implies that the City should further economize its delivery of services but not in the police department. My position is that such a decision should rest with elected public officials, regardless of whether a good or poor decision is made. According to the testimony before the panel, a significant attempt to control employment expenditures has already been made. Further retrenchment is not a viable option.

That leaves the option of a real property tax increase. It is this item upon which the majority fixates and pronounces the City's tax effort to be deficient. Their bottom line is that conscientious and determined efforts by municipal officials to manage municipal revenues well shall receive no credit. There is no question but that the City of Schenectady's position in this arbitration would have been strengthened had the City been shown to have been a profligate spender, a mismanager of its financial resources, and a taxer of its residents at the allowable maximum. The implication is that the fiscally responsible municipality will have that fact used to its disadvantage and, in this case, in a pre-emptive fashion. The message is that those who are fiscally irresponsible to the extent that taxing limits are tested or breached will gain an advantage in a compulsory arbitration proceeding. I reject this rationale.

The majority's decision that taxes in Schenectady should be higher underscores the need for remedial legislation similar to that enacted for the City of New York and applicable

to interest arbitrations there. Pursuant to Chapter 201 of the Laws of 1978, that city's ability to pay has been defined in part, to mean an ability to pay increased labor costs without requiring an increase in city taxes which existed at the time when an arbitration proceeding was initiated. There is no substantive reason why the taxpayers of other municipal corporations should not be afforded an equal protection.

Other statutory criteria have been referred to in the award. The majority focused upon wages paid police in cities with populations between 50,000 and 400,000, an exhibit introduced by the union. The employer in this proceeding also introduced evidence of wages paid police in several cities. There is no explanation why the cities submitted by the union have become the base of comparison or why cities in the metropolitan New York City area have been included in the comparison. The classification of Schenectady, population 68,000, with cities in a range of up to 400,000 is suspect and in my view erroneous. Without question, wages in the metropolitan New York City area are higher than those for similar positions upstate. The reason for this lies in the fact that the cost of several significant items, shelter and medical care, for instance, are higher. Even when the union's comparables are used, the City does not fare poorly at all.

The majority chooses to ignore the impact of benefits received by police in Schenectady in comparison to other city workers. Not only do police receive benefits which other

city employees do not, the level of benefit received and the cost to the City is significantly higher in those instances where both groups receive the same type of benefit. Furthermore, the pay differential between a police officer and a non-sworn city employee approaches a 2-1 ratio in favor of the former.

This arbitration resulted from a wage reopener clause in the existing contract. Agreements between the police union and the City cannot be overlooked. In 1980, union members received two wage increases of 5% and 7%. No other city employee union even approximated that. An agreement between the City and the union contains a minimum staffing clause and a no layoff clause. No other city union and, I doubt, no other police contract in New York has such lucrative benefits. These benefits have had a direct impact upon union members. The City has sought to trim departmental budgets by some 10% in an attempt to cope with its fiscal problems. But layoffs and hiring freezes which have affected other departments have not been imposed upon the police department. That is directly the result of the job security clauses.

For these reasons, I can not consent to the magnitude of this award.

John H. Galligan
Albany, New York
November 13, 1981