

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF AN INTEREST ARBITRATION STATE EMPLOYMENT RELATIONS BOARD  
BETWEEN

TOWN OF COLONIE

-and-

COLONIE POLICE BENEVOLENT ASSOCIATION

Case No. NYS PERB IA83-41; M83-527

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JUL 18 1984

CONCILIATION  
Opinion and  
Award

BEFORE:

PUBLIC PANEL MEMBER & CHAIRMAN:

Thomas N. Rinaldo, Esq.  
Scinta, Rinaldo, Collins  
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APPEARANCES

For the Town of Colonie

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On February 17, 1984, the New York State Public Employment Relations Board determined that a public arbitration panel was appropriate under Section 209(4) of the Civil Service Law and appointed Thomas N. Rinaldo, Esq., as Public Member and Chairman, Joel L. Hodes, Esq., as Employer Panel Member and Peter J. Reilly as Employee Organization Panel Member. A hearing was held in Albany, New York on April 11, 1984. Subsequent thereto, the Panel met in executive session on June 15, 1984, and as a result thereof, issues this opinion and award.

The Panel compared wages, hours and conditions of employment of the employees with those of other persons performing similar services and requiring similar skills under similar working conditions and with other employees, generally, in public and private employment in comparable communities. The Panel at all times took into consideration the interest and welfare of the public and the financial ability of the public employer to pay. It also considered the hazards of the jobs, physical qualifications, educational qualifications, mental qualifications, job training and skills and the terms of collective agreements negotiated between the Parties in the past.

The award of the Panel is made in accordance with Section 209(4)(c)(v) and (vi) of the New York State Civil Service Law.

**BACKGROUND**

The Parties' predecessor agreement expired on December 31, 1983. In the negotiations for a new agreement, the Parties were unable to agree on the issue of salaries for members of the Bargaining Unit. It is this sole issue which is the subject matter of this arbitration. The Colonie Police Benevolent Association ("PBA") has demanded comparability of the top step patrol officer with the top grade New York State Trooper based on the 1984 Trooper salary. A 15.8% increase in the salary of a top step Colonie patrolman would be required to fulfill the PBA's demand. The PBA has further demanded that this rate of increase also be given to all lower step patrolmen, and that the differential between top step patrolmen and detectives be maintained at \$1,500, and the differential between top patrol and sergeant equal \$3,000.

The Town of Colonie ("Town") has proposed that the salaries of the bargaining unit members in effect at the expiration of the Parties' 1982-83 Collective Bargaining Agreement be increased by 3%.

**POSITIONS OF PARTIES**

The PBA acknowledges that the raise it seeks on behalf of its members can be described as extraordinary. Such a raise is nonetheless justified, according to the PBA, due to the unique

characteristics of the Town of Colonie, the quality of police services provided by the PBA membership, and the financial status of the Town. The PBA's position in regard to each of these factors will be hereafter discussed in some detail.

According to the PBA, the Town of Colonie is unlike any other town located in Albany County as well as in the surrounding Counties in the area known as the Capital District (Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington Counties). No other town in this area qualifies as an "urban township". That is to say, no other town in this area has the intense commercial and recreational aspects of the Town of Colonie. The Town is more than a "bedroom community", and the police in the Town are confronted with duties and dangers of a significantly different nature than other towns in the area.

Likewise, the PBA rejects any comparison between the Town and cities within the Capital District region. As a general proposition, the PBA argues that cities do not have the financial resources that the Town in fact possesses to pay members of the police force. Moreover, the PBA points to the differences in police functions between city policemen and its members.

Having disclaimed any valid comparisons between the Town of Colonie and other towns and the cities in the Capital District area, the PBA has accepted as a valid basis of comparison the concept of "urban township". This universe of comparability, in the PBA's estimation, consists of towns located throughout the

State that have characteristics similar to those of the Town of Colonie. As selected by the PBA, these towns are: Amherst, Cheektowaga, Clarkstown, Greece, Greenburg, Hamburg, Irondequoit, Ramapo, Tonawanda, and West Seneca. In this particular universe, the PBA notes that its salary structure is below the average salary earned by police officers and that recent salary increases gained by the PBA are only slightly above the average rate of salary increase.

The PBA urges, however, that the most valid comparison that can be made is that comparison between its membership and the New York State Police. Focusing on entrance qualifications, key elements of the job, nature of the task performed, workload, hazards of the job and training, the PBA claims to have established a great deal of similarity between its members and the State Police. Indeed, it is the PBA's position that any dissimilarity on these points of focus between its members and the State Police works to its benefit. For example, the PBA asserts that the workload of its membership is greater than the workload of State Troopers stationed in the Town of Colonie and that this workload also subjects the PBA membership to hazards that are greater than those faced by the State Police.

The PBA has also relied on the quality of work performed by its membership in justifying the pay increase it seeks. No other local police force in the local community, argues the PBA, is as respected as the Town of Colonie Police. According to the PBA, this conclusion underscores its arguments in the

comparability area, particularly in connection with the PBA's claim that the New York State Police provide the most appropriate universe of comparability.

A central theme to the PBA's position is the Town's financial ability to meet the PBA's salary demands. The PBA notes that the Town has stipulated to this condition. In connection with its comparability argument, the PBA has also focused on the Town's financial ability as a point of difference with local police, arguing that the financial wherewithal of the Town is itself a reason why local police are not suitable to use as a basis for comparability.

The Town concedes its ability to pay what it perceives as "reasonable" salary increases to the PBA membership. Moreover, the Town does not dispute as a general proposition the PBA's contention that the Colonie Police provide the Town with high quality police services. What the Town does dispute is the PBA's stance on comparability. The Town's justifications for a 3% across the board increase in salaries are primarily based on the Town's position that municipalities utilized by the Parties in prior negotiations should constitute the appropriate universe for purposes of comparability. The municipalities are: the Towns of Glenville, Greece, Niskayuna, Rotterdam and Bethlehem; the Cities of Troy, Saratoga, Schenectady and Watervliet, and the New York State Police. The Town notes that these municipalities bear a rational relationship to the Town of Colonie in that two of them are relatively affluent suburbs of Albany (Niskayuna and

Bethlehem), two of them are towns of a comparable size in the Capital District region (Glenville and Rotterdam), four of them are cities in the Capital District (Troy, Saratoga, Schenectady and Watervliet), and one is a suburban town of a size similar to that of the Town of Colonie (Greece). The Town states that the Parties used these municipalities as a universe for comparability in the negotiations leading to predecessor agreements between the Parties and, as a result, the PBA received average annual salary increases of 10.0% in 1980, 9.8% in 1981, 11.9% in 1982 and 10.1% in 1983.

The substantial increases gained by the PBA in the predecessor agreements, according to the Town, reveal that the Town accepted the PBA's argument, based upon this universe of comparability, that its members were underpaid. The Town argues that the PBA is not now justified in seeking a different universe of comparability to justify its present demands. In addition, the Town argues that because the PBA's present salary structure ranks among the top of the municipalities in the universe upon which the Parties previously relied, there is no need for the PBA to be given the increase it seeks in this arbitration. As the Town puts it, the need for "catch up" is over.

Although claiming that the municipalities used in prior negotiations is the best determinant for comparability, the Town has used two other areas of comparisons in support of its position. One such form is a comparison between the Town and all municipalities located within the Capital District region, i.e.

municipalities located within Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington Counties. In this area of comparison, the Town notes that the salary of the PBA membership ranks near the top on the salary scale of municipalities within the area.

A second area of comparison used by the Town is a universe consisting of all cities and towns throughout the State with populations between 50,000 and 100,000. On this scale of municipalities of comparable size, the Town argues that the Colonie Police salaries should and do fall somewhere in the middle of the scale. In the Town's estimation, this ranking of PBA salaries is appropriate, and therefore supportive of the Town's position, since one would expect to find higher salary ranges in the suburban New York City counties and in the counties located in the Buffalo area.

The Town rejects the two universes offered by the PBA, i.e. the New York State Police and "urban townships", for a variety of reasons. Insofar as the latter are concerned, the Town claims that the PBA has failed to establish comparability in terms of the difficulty of police work. Moreover, the Town argues that the "urban township" universe is inappropriate because the majority of the towns in this scheme are located in areas that have the highest cost of living in the State.

The State Police comparability urged by the PBA is one which the Town vigorously asserts has not been proven. The PBA, in the Town's estimation, has compared the working conditions of

its membership with the working conditions of the State Police stationed within the Town and has ignored State-wide working conditions of the State Police. This failure to take into account State-wide working conditions of the State Police renders the PBA's comparison with the State Police invalid. Another significant factor to the Town in this area of comparisons with the State Police is the Town's analysis of the State Police contract to the effect that in the area of fringe benefits the PBA does as well or better than the State Police.

As noted above, the Town has not claimed any financial obstacles to meeting the PBA's demands. The Town, however, does quarrel with what it perceives to be the PBA's position that the wealth of a community in itself justifies a substantial increase in salary. Finally, the Town argues that increases in salary obtained by the PBA since 1980 have been greater than increases in the cost of living, and with cost of living increases presumably slowing down, the Town maintains that this factor does not lend any support to the PBA's demands.

#### ANALYSIS

The Town of Colonie is located in Albany County with a population of approximately 75,800 people. In addition to serving as a residential suburb to the metropolitan areas of the Capital District Region, the Town has experienced intense commercial and recreational development over the years. The Town of Colonie

Police, consisting of 86 individuals in the ranks of sergeants, detectives and police officers, thus services a community with a wide array of law enforcement problems.

Of the four criteria set forth in Section 209(4)(c)(v) of the Civil Service Law, the Parties appear to be in substantial agreement about two of the criteria. There is no real impediment on the Town's part concerning its financial ability to provide the PBA with a reasonable increase in pay (v, b). Nor has any evidence been presented to indicate that a reasonable increase in the PBA's salary structure would adversely impact on the interest and welfare of the Town's citizenry (id.).

The second criteria about which the Parties voice no disagreement is the comparison of police work to other professions (v, c). Although the Parties offer differing views as to comparability in terms of other police forces, they both agree that it is not particularly meaningful to compare the work of the PBA membership with the work performed by other trades or professions. This point of agreement between the Parties certainly reflects a rather common sense observation about the uniqueness of police work.

The last two criteria of Section 209(4)(c)(v), comparisons within the same profession and the terms of past collective bargaining agreements (v, a, d), contain the essential areas of the Parties' disagreements. While both Parties have organized their positions on the comparability criteria, it is evident that they also disagree about the relevancy of the salary

structure of their past agreements. To the Town, the Parties' past agreements reflect an understanding between them as to what is the proper universe of comparability and that the substantial increases provided to the PBA membership in past agreements have placed the PBA near the very top of the salary structure of the police forces contained within this universe. From this perspective, the Town attaches a great deal of significance to the Parties' past agreements. The PBA, on the other hand, eschews the relevancy of past agreements insofar as they can be utilized to locate an appropriate area of comparisons. According to the PBA, past contracts derive their relevancy to this arbitration only as they reflect substantial pay increases to the PBA membership, which increases, in the PBA's estimation, prove that the Town considers its police to provide the most important service rendered by the Town.

As to the PBA's interpretation of the Parties' past agreements, the Town has not, nor could it, on the state of this record, dispute the fact that the Town of Colonie Police provide vital services to the Town in a manner that is highly professional. The Town, of course, maintains that its recognition of this factor was what lead it to agree to the substantial pay increases the PBA membership has enjoyed under prior contracts. It is the Town's insistence that the areas of comparison used in prior negotiations should remain the same which enables it to resist the PBA's claim that past agreements lend support to the PBA's demands in this arbitration.

Essentially, the disagreements expressed by the Parties over the effect of their past agreements are a result of their disagreements concerning the fourth criteria under Section 209 of the Civil Service Law, namely, comparisons with other police forces. On this issue, the Parties have staked out positions which are diametrically opposed. The Town wishes to maintain an area of comparability which is essentially local in character while the PBA urges, by its reliance on the State Police, an area of comparison that is State-wide. Each side, however, has seemed to realize that a flexible approach to this problem might well be in order. Thus, both parties have at least reluctantly acknowledged the possible appropriateness of universes of comparability other than the ones they have primarily touted.

Turning first to the PBA's claim that the New York State Police should be considered the most appropriate universe of comparability, the Panel, after fully considering the PBA's evidence and arguments submitted in conjunction with this claim, concludes otherwise. The New York State Police, unlike the Town and unlike every other municipal police force brought to the Panel's attention in this arbitration, is State-wide in scope, both in terms of working conditions and employer status. Members of the State Police, for example, are subject to transfers throughout the State with the resultant dislocation in their personal and family lives, and, although it may well be that the PBA membership is confronted with working conditions at least as difficult as those confronting the State Trooper's stationed

within the Town, there is no basis in this record to conclude that this comparison of working conditions is valid for those Troopers stationed in all other parts of the State. Moreover, the appropriateness of the PBA's proper comparisons with the State Police is weakened when one takes into account the substantial differences inherent in a comparison of a public employer at a local level and a public employer at the State level.

Accordingly, it is the Panel's considered opinion that in this arbitration, comparability under Section 209(4)(v)(a) of the Civil Service Law should be measured in terms of municipal police forces rather than the State Police. The Parties, as previously discussed, differ in their approaches to the appropriate universe of comparability at this municipal level. On this point, the Panel notes that there is no legal requirement under Section 209 of the Civil Service Law that it consider for purposes of comparison only municipalities within the Town's geographical region. Nor does the fact that the Parties in their past negotiations used an essentially local basis of comparison lead to a valid theory of estoppel so as to prevent the PBA from relying on municipalities throughout the State and this Panel from considering municipalities without the capital district area for purposes of comparisons.

In fact, this Panel, in arriving at its award, has considered under the comparability issue not only the municipalities relied on by the Parties in their past negotiations, but also municipalities of a comparable size and

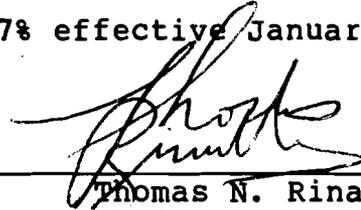
with characteristics similar to those of the Town of Colonie. This Panel, it should be added, has attached a great deal of significance to comparability within the context of the essentially local municipalities used by the Parties in the past negotiations. An analysis of this latter universe reveals that in 1979 the PBA was in the lowest quartile of the pay scales reflected among these municipalities. However, by virtue of the rather substantial salary increases which the PBA was able to gain in agreements since 1979, the PBA membership now stands in the top quartile of the pay scales in this universe.

What this Panel firmly rejects is the 15.8% one year salary increase demanded by the PBA and the 3.0% salary increase offered by the Town. Both positions are extreme attempts to attain a contract which would substantially alter the PBA membership's current status with similar municipal police departments and would impede the otherwise good past relationship which has moved the Town of Colonie PBA to one of the highest paid departments among the municipalities cited by the parties in past negotiations. This Panel is firmly of the opinion that the award herein should continue to enhance the PBA's ranking in the top quartile of the pay scales among these municipalities. To insure this, and after carefully studying and analyzing the areas of comparisons cited by the Parties, including salaries and fringe benefits of similar municipal police departments, this Panel is of the opinion that a **15% salary increase over two years is a fair and reasonable salary package**, one that is consistent with other

comparable police departments and contract police settlements within the State of New York. The 15% salary increase is to be paid as follows: 4% effective January 1, 1984; 4% effective July 1, 1984; 7% effective January 1, 1985. A step 5 police officer's salary of \$21,630, for example, will be increased on schedule in 1984 by \$1,765, or 8.2%, with actual dollars being paid of \$1,315. By the end of 1985, a step 5 officer will receive, both in actual dollars and on schedule, a raise of \$3,403 or 15.7% compounded.

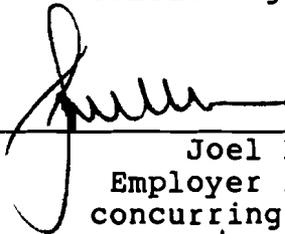
AWARD

Salaries for the PBA membership are to be increased by 4% effective January 1, 1984, by an additional 4% effective July 1, 1984, and by an additional 7% effective January 1, 1985.



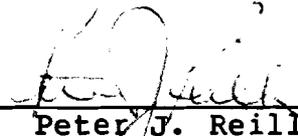
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Thomas N. Rinaldo  
Public Panel Member  
concurring / dissenting



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Joel L. Hodes  
Employer Panel Member  
concurring / ~~dissenting~~



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Peter J. Reilly  
Employee Organization Panel Member  
~~concurring~~ / dissenting



DISSENTING OPINION

Town of Colonie and Colonie PBA  
Case No. NYS PERB IA83-41; M83-527

I must dissent from this Award. The Town of Colonie is an Urban Township and as such is the center for much of the business, recreation and entertainment in the Capital District. As such its police force is faced with a large workload common only to other large urban towns throughout New York State. In the fact of this workload, the Colonie Police have responded admirably. I was impressed with the overwhelming amount of factual data presented by the PBA through testimony and exhibits establishing the criteria pursuant to Civil Service Law, Section 209.4.

We have the unusual circumstance of a town that concedes it has the ability to pay. In light of this I believe a much higher award is justified, based upon facts substantiated by both the PBA and the Town.

I also believe that the comparison of the Colonie Police Officer to the New York State Trooper is a valid concept. I believe the facts of the case show this comparison to be an appropriate one. Based on this comparison, and that of the local police agencies in the Capital District; testimony of all witnesses both lay and professional; again, the ability to pay, this documentation should have established a greater percentage award than has been rendered here.

I am very disappointed that Panel Members Rinaldo and Hodes did not heed that call and therefore I respectfully dissent.



Panel Member  
Peter J. Reilly, President  
Police Conference of New York, Inc.