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State of New York Public Employment Relations Board

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IN THE MATTER OF INTEREST ARBITRATION :

 between :

CITY OF BATAVIA :

 and : OPINION AND AWARD

BATAVIA POLICE BENEVOLENT ASSOCIATION :

PERB Case No. IA84-3; M83-614 :

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September 18 , 1984

Before

PUBLIC ARBITRATION PANEL

Herbert L. Marx, Jr.
Public Panel Member and Chairman

Barry Whitman, Esq.
Employer Panel Member

Nicholas J. Sargent, Esq.
Employee Organization Panel Member

A P P E A R A N C E S

For the City:

William Reemtsen, Assistant to the City Administrator

David G. Mullen, Chief of Police

For the Association:

David A. Ferster, Esq.
Sargent and Repka

Ned L. Murray, Police Officer

Gregory Q. Stule, Police Officer

Edward R. Doody, Sergeant

I N T R O D U C T I O N

This matter was heard and resolved as directed by the State of New York Public Employment Relations Board under the terms of statutory provisions applicable to compulsory interest arbitration pursuant to Civil Service Law, Section 209.4, as amended. At issue are the terms of a new collective bargaining agreement (the "Agreement") to be effective as of January 1, 1984 between the City of Batavia (the "City") and the Batavia Police Benevolent Association (the "Association"). The Agreement is to supercede the previous collective bargaining agreement, as amended, in effect until December 31, 1983.

Representatives of the City and the Association met for the purpose of negotiations in a series of meetings between July 1983 and January 1984. The parties requested and received mediation services of the Public Employment Relations Board. Accord on a new agreement was not reached.

Under required procedure, a three-person Public Arbitration Panel (the "Panel") was designated on May 8, 1984 to hear the dispute and render an award. Upon due notice, a hearing was held in Batavia on June 22, 1984. Representatives of the City and the Association waived the

right to a stenographic record of the proceedings. The parties were offered full opportunity to present evidence and argument and to examine and cross-examine witnesses.

The parties submitted post-hearing briefs to the Panel which were received on July 6, 1983. The Panel Members met in executive session in Rochester on July 11, 1984 to consider their findings.

The collective bargaining unit consists of 23 Police Officers of the Batavia Police Department. Sergeants and Lieutenants are included in a separate bargaining unit, not under review here.

O P I N I O N

In addition to and as part of the argument by the parties and in reaching a "just and reasonable determination of the matters in dispute", the parties took into consideration the following factors as required by law:

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.

Without minimizing the significance of proposals from parties on a variety of topics, it is fully apparent to the Panel that the single predominant issue is the amount of salary increase to be granted to Police Officers during 1984. There is even relatively little disparity in the parties' position in reference to a 1985 salary adjustment. The discussion which follows concerns the first-year salary dispute, although the Panel's rationale for its conclusions on other issues is also based on the factors prescribed by law.

The dispute concerning 1984 salaries is based on three principal factors:

- a) the City's ability to pay
- b) comparison of salary levels and negotiated increases with other police units
- c) the City's argument as to an existing salary increase pattern among its various collective bargaining units for 1983-84.

Ability to Pay -- The City offered convincing evidence that its general economic situation is not an encouraging one.

The City points to a declining population and the continuing loss of major employers in the community with resulting high levels of unemployment. There is the threat of long-range stability or decline in property assessments.

On the other hand, as noted by the Association, the City has determined that there will be no increase in the property tax levy rate for 1984, and the City has a comfortable margin in its available unused real property tax levy. The 1984 City budget includes provision for unspecified increases in salary levels of City employees.

In view of this, the Panel finds no basis to determine that the City would be unable to pay, or would even be seriously affected by, the salary increases for Police Officers which the Panel will award.

Support for this is found in the interest arbitration award prepared in January 1984 concerning the collective bargaining unit encompassing the City's Firefighters (PERB Case No. IA82-50, City of Batavia and International Association of Firefighters, Local 896). That Award commented as follows:

/The City/ pointed out that the City's population had been declining, that the unemployment rate for both the City and the county was among the highest in the State, that the City's two largest industrial employers had recently withdrawn from the City, that real property taxes constituted only a small part of its revenue, far more reliance having been placed for some years on the sales tax, revenue from which had declined with the decline in local economic activity. The City also noted that in the near future it would have to embark upon large capital expenditures in order to repair its sewer

facilities and deal with a serious landfill problem. In addition, the City presented evidence of substantial increases in tax delinquencies in the past several years. In considering the statutory factor - "the interests and welfare of the public and the financial ability of the public employer to pay" - the City insists that the Panel is required to consider more than the constitutional power of the City to raise taxes in order to grant higher economic benefits to employees; that it must consider as well the public employer's over-all fiscal situation and prospects.

Considering the evidence in the light of the statutory factor, the Panel is satisfied that the City's present and prospective financial situation is such as to make appropriate justifiable improvements in terms and conditions of employment of its 32 Firefighters.

As with that award, this Panel finds the City able to "make appropriate justifiable improvements" in relation to Patrol Officers salaries.

Comparison with Other Police Units - The Panel has given careful review to Police Officer salaries as compared to police units in other communities, both as to comparative level and the rate of increase negotiated elsewhere. For this purpose, both the City and the Association provided data. As is frequently the case, the parties did not select the same universes for their comparisons, but the Panel has given appropriate weight to all the data.

Using the City's statistics on comparable communities (in City Exhibit #12), the Batavia 1982 minimum and maximum

salaries were five per cent higher than the average. The difference was even greater in 1981 (6.9% and 10.2%, respectively). The Panel sees no reason to disturb this ongoing relationship. More significant is that the 1984 salaries for the same group, chosen by the City, are five per cent (minimum salaries) and six per cent (maximum salaries) higher than 1983. There is ample justification for a similar increase for Batavia to maintain existing relationships.

The Association relied on PERB data concerning what it considered comparable communities. On this basis, Batavia 1983 salaries were 1.7 per cent lower than the average. Settlements in 1984 for this group of communities were not supplied to the Panel, but there is no basis to suggest that such settlements would be different than those reported in the City's data.

The Association also reported state-wide settlements for 1984, also based on PERB data. While the Panel finds that appropriate comparisons for salaries are vital, comparisons of increases may logically be used on a broader basis. The 1984 reported settlements average slightly in excess of seven per cent (Association Exhibit #11).

Thus, on a comparative basis to like bargaining units, there is substantial support for the Panel's 1984 salary increase award.

The Batavia "Pattern" -- The City argued emphatically that a Batavia/Genesee County pattern of wage settlements had been established for 1983-84 for virtually all units except

the Police Department and that the Police Officers should properly fit into such pattern. The Data supplied (City Exhibit No. 14) shows the following:

CITY OF BATAVIA	1983	1984	TOTAL
AFSCME (Dept. of Public Works)	0%	8%	8%
IAFF (Fire Department)	4%	4%	8%
Non-Union and Management	0%	8%	8%
PBA (Police Department)	6%	?	?
GENESEE COUNTY			
CSEA	5%	3%	8%
Genesee Co. Nursing Home Assn.	0%	8%	8%
Genesee Co. Deputy Sheriffs Assn.	0%	7.85%	7.85%
Non-Union and Management	0%	7.5%-8%	7.5%-8%

What the City perceives here is a pattern of 1983-84 increases totaling eight per cent over two years, with the Association already having received in 1983 (through a previous interest arbitration award) an increase of six per cent. The Fire Department settlement was also based on an interest arbitration award, cited above.

The Panel does not agree that there is a pattern here which necessarily requires conformance by all units. The year 1983 was obviously a "dry" period for non-arbitrated units, with relatively generous (eight per cent) increases in 1984. The Panel is, however, dealing with realities of the present. It could as readily be argued that comparisons should be made for 1984 only, in which other units received from three to eight per cent.

Arbitration awards for the Police Department in 1982-83 and the Fire Department for 1983-84 discussed in great detail

the question of salary comparison between the two groups. There are differences between the two groups. One of these, as an example, is service years for retirement eligibility. Another is the relatively high standing of the Fire Department among comparable units in other communities.

In sum, the Panel does not believe that a 1983-84 Batavia pattern of employee salary increases is of such significance that it must determine the increase for the Association.

As to an increase in 1985, there are, of course, few guideposts to follow. Both parties have shown some interest in relating salary increase to changes in the Consumer Price Index, and this is reflected in the variable award which the Panel makes.

* * * * *

Health Insurance -- The Association proposed that health insurance for retired Police Officers be restored to the Agreement. The City proposed language to permit the City to change its pre-existing health insurance coverage for Police Officers to a self-funded plan, without change in benefits. The City also seeks to have Police Officers share in the cost of health insurance premiums (or, in the alternative, to increase the deductible portion of the coverage, now paid by Police Officers).

According to uncontradicted Association information, the City provided health insurance coverage for Police

Officers from 1974 through 1981. That coverage was dropped by the City for the past two years. In the limited form as proposed by the Association, the Panel agrees that this benefit should be restored. Necessarily, such restoration may be imposed by the Panel only prospectively, that is, for those Police Officers who retire on or after January 1, 1984. While not a predominantly applied benefit elsewhere, health insurance for police retirees is found in many other agreements.

There has been considerable discussion and legal action involving the parties in reference to the City's self-insured health insurance plan. Such differences are not for the Panel to resolve. As a collective bargaining issue, the Panel finds it eminently reasonable to permit the City to provide health insurance in what it considers the most economical and effective way -- provided, however, that existing benefits are not diminished. Any savings achieved thereby for the City will assist in meeting other employee costs; at the same time, employees will not suffer loss of benefits, which should be their prime concern.

The City's proposal to have Police Officers share in the cost of health insurance premiums is not adopted by the Panel. To require payment of premiums by employees is simply to make employees use after-tax salary for such purpose -- a meaningful reduction in income. While the cost of health

insurance continues to rise generally, there is no compelling reason offered to make this change.

Sick Leave Conversion -- The Agreement provides for the accrual of sick leave credit at the rate of one day per month of service (12 days a year), with a limit of 180 days accumulation. In addition, accumulated sick leave at \$5 per day is paid to retirees eligible to retire under the N.Y. State Police and Firemen's plan. The Association seeks to remove the limit on accumulation and to increase the payment upon retirement to \$25 per day (approximately one-third of current daily equivalent of salary).

The Panel finds reasonable the proposal on increasing the payment for sick leave accumulation from \$5 to \$25 per day. This is well under the range of such payments paid in many other communities. On the other hand, the limit of 180 days' accumulation (equivalent of 18 years of unused sick leave) is not unreasonable, and there is no convincing logic for changing it at present.

Retirement Incentive -- The Association proposes a payment of \$10,000 for Police Officers retiring during 1984 with more than 20 years' service or during 1985 for any Police Officer who retires during his twenty-first year of service. Such payments are intended as an incentive for early retirement (early as to age, if not length of service). This is opposed by the City. The Panel notes that a retirement

incentive plan is attractive only if both parties perceive it as advantageous. When the employer sees an advantage in replacing longer service employees (or not having to reduce the force by terminating short-term employees), such a plan makes sense by offering a one-time financial gain to persuade employees to leave voluntarily. Such is not the case here, however. Retirement incentive plans are best negotiated by the parties on a bilateral basis, rather than being imposed on them.

Upgrading of Vehicles -- The Association proposes that all vehicles purchased for use by the Police Department be equipped with air conditioning and power windows. Testimony was offered as to the merit and convenience of such equipment in the performance of police duties. The Panel does not doubt that such equipment would be beneficial to Police Officers and to the performance of their duties. This, however, is not considered by the Panel as best achieved through inclusion in a collective bargaining agreement. Such equipment specifications are best left to managerial judgment, with recommendations, as here, by the users of the equipment.

Shift Assignment -- Article VII, Section 3 of the Agreement provides that Police Officers shall have the right "as far as practicable" to choose their tour of duty on the basis of seniority. The City seeks to achieve greater flexibility in this arrangement. The Panel was not presented

with compelling reasons for the change and suggests that this is better left to direct bargaining between the parties in the future.

A W A R D

The collective bargaining agreement between the City of Batavia and the Batavia Police Benevolent Association as in effect through December 31, 1983, shall remain in full force and effect with the following changes:

1. Such changes already negotiated and agreed upon by the parties prior to interest arbitration shall be included.

2. The duration of the Agreement shall be from January 1, 1984 to December 31, 1985.

3. The 1983 salary schedule for Police Officers shall be increased by six per cent, effective January 1, 1984.

4. The 1984 salary schedule for Police Officers shall be increased effective January 1, 1985 by the amount of the percentage rise in the Consumer Price Index for Urban Wage Earners and Clerical Workers, Buffalo area from October 1983 to October 1984, to the nearest one-tenth of a percentage point, but not less than four per cent nor more than seven per cent.

5. Effective on or after the date of this Award, the City may institute and/or continue its self-funded health insurance program for Police Officers, provided the coverage shall remain equal to the previous program.

6. The City shall provide health insurance coverage, as described above, for Police Officers who retire on or after January 1, 1984 until age 65, provided, however, that such insurance shall not be provided to retirees receiving health insurance either as an employee of any employer other than the City or as the eligible dependent of any employee of any employer.

7. Article IX, Vacation and Sick Leave, Section 6 shall be changed to read as follows:

Twenty-five dollars (\$25.00) per day for accumulated sick time will be paid to a retiree eligible to retire under the current N.Y. State Police and Firemen's plan.

8. Proposals for air conditioning for patrol cars; retirement incentive; shift assignment change; and employee contribution to health insurance premium shall not be included in the Agreement.

Dated: September 18 , 1984

Herbert L. Marx, Jr.
HERBERT L. MARX, JR.
Public Panel Member and Chairman

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

On this 9th day of September, 1984, before me personally came and appeared Herbert L. Marx, Jr., 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.

ELEANOR C. PULEO
NOTARY PUBLIC, State of New York
No. 31-4730237
Qualified in New York County
Commission Expires March 30, 1986

SEE ATTACHED DISSENT.

Barry R. Whitman
BARRY WHITMAN, ESQ.
Employer Panel Member

STATE OF NEW YORK)
) ss:
COUNTY OF)

On this _____ day of _____, 1984, before me personally came and appeared Barry Whitman, 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.

Nicholas J. Sargent
NICHOLAS J. SARGENT, ESQ.
Employee Organization Panel Member
(Concur) ~~(Dissent)~~

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

On this 7th day of September, 1984, before me personally came and appeared Nicholas J. Sargent, 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.

JULIANA E. TRZYBINSKI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires March 30, 1986

Juliana E. Trzybinski
Notary Public

DISSENT

For the reasons outlined in the discussion below, I am constrained to dissent from the Award of Chairman Herbert L. Marx, Jr. and Nicholas Sargent, Esq., attorney for the Police Benevolent Association. In my view, the Award will inevitably be disruptive of the relationship between the City and its labor organizations, and is, in any event, not justified under a common sense analysis of the statutory criteria set forth in the Taylor Law.

The most recent collective bargaining agreement between the City of Batavia (the "City") and the Batavia Police Benevolent Association (the "PBA"), expired on December 31, 1981. On May 3, 1982, an arbitration Award covering the calendar years 1982 and 1983 was issued by Howard G. Foster, Chairman of a Public Interest Arbitration Panel under the Taylor Law. At the time the Foster panel heard the arguments of the parties resulting in this Award, the City was only beginning to experience the economic adversity which subsequently led to the highest unemployment rate (14.9%) of all counties in New York State in 1983, the inevitable consequence of the plant closings and other curtailment of industrial activity in the area. The Award took cognizance of the facts that (1) the annual increase in the Consumer Price Index was approximately 9.6%, (2) the City Firefighters had received a 9% increase for 1982, and (3) the average negotiated increases for police in New York cities for 1982 was 8.5%. Taking those factors into account, the Foster panel awarded an increase of 9% to City police officers for 1982 and then made a 6% Award for 1983, although noting that "unlike 1982, there is no comparison to be made with the Firefighters, since their 1983 salary has not yet been established."

By late 1982, the economic climate in Genesee County had reached a point where both the City of Batavia and, as it developed, the County of Genesee, felt that significant steps toward cost containment had to be taken. The City did not grant salary increases to non-union and management personnel for 1983, and in its negotiations with AFSCME, Local 392B, the City negotiated a contract which provided for no wage increase in 1983 for Public Works employees. During this same period, the County froze the salaries of non-union and management personnel and reached a collective bargaining agreement with the Genesee County Deputy Sheriffs' Association which contained no salary increase for 1983. The County held a legislative hearing in early 1983 under the Taylor Law and imposed a wage freeze policy for employees represented by the Genesee County Nursing Home Association (GCNHEA).

In the case of the City's Firefighters, an interest arbitration proceeding, similar to the present proceeding, was held in late 1983 to determine, among other things, what salary conditions should prevail for 1983 and 1984. By the time that this arbitration took place, a pattern had been established for 1984 by both the City and County for most of its employees. The City, in its negotiations with AFSCME, Local 392, had granted its Public Works employees 8% for 1984 in the contract referred to earlier, and had also granted its non-union and management personnel 8% as well. The County, for its part, had granted employees represented by the GCNHEA an 8% increase for 1984 and had granted its non-union and management personnel increases averaging between 7.5% and 8%. GCNHEA employees received 7.85% in 1984 in the contract referred to earlier.

In short, there was a clearly established pattern for all City and County employees whose salaries were subject to adjustment during the period 1983 and 1984 of a total increase of 8% for those two years. Under these circumstances, the Hyman panel awarded a 4% increase to Firefighters for 1983 and an additional 4% in 1984.

The County employees represented by CSEA had received a 5% increase in 1983 through an earlier 3-year agreement, while Highway Department employees represented by AFSCME had received a 6.7% increase, also under an earlier agreement. Prior to the present arbitration award, the County had negotiated a 3% increase for CSEA employees for 1984 and had imposed, by legislative hearing, a 1.3% increase for Highway Department employees for 1984. At the time of this arbitration Award, therefore, the following pattern was known to the arbitration panel:

<u>City of Batavia</u>	<u>1983</u>	<u>1984</u>	<u>Total</u>
AFSCME (Dept. of Public Works)	0%	8%	8%
IAFF (Fire Department)	4%	4%	8%
Non-Union and Management	0%	8%	8%
PBA (Police Department)	6%	?	?
<u>Genesee County</u>			
CSEA	5%	3%	8%
Genesee Cty. Nursing Home Employees Association	0%	8%	8%
Genesee Cty. Deputy Sheriffs' Association	0%	7.85%	7.85%
Non-Union and Management	0%	7.5-8%	7.5-8%
AFSCME (Highway Dept.)	6.7%	1.3%	8%

This pattern of settlements is so remarkably consistent that to disturb it would, in my view, inevitably disrupt the rela-

tionships between the City and its other labor organizations. In both the 1982 PBA arbitration award by the Foster panel and the 1984 IAFF award by the Hyman panel, there was an express acknowledgment of the relationship between the salary scales of the Police Department and Fire Department employees.

"Finally, we are mindful of the traditional parity between police officers and firefighters. Firefighters in Batavia received a 9 percent increase for 1982. Absent compelling reasons to treat police officers differently, we feel that the pattern established by the firefighters should carry considerable weight."

[Foster arbitration panel award to PBA: May, 1982]

"In the light of the record, as briefly summarized in the foregoing discussion, the following award is made with respect to the salary scale of the Firefighters. The result will be to lessen the gap which Firefighters claim to exist between the compensation of the Firefighters and the police because of the retirement difference."

[Hyman panel award to IAFF: January, 1984]

It is extremely unfortunate, in my view, that the Marx panel has elected to disregard this extensive history. While the text of the arbitration Award goes so far as to suggest that it is "dealing with realities of the present," it is my view that it does quite the opposite. In granting the PBA an increase of 12% for the period 1983 and 1984, the panel has made the PBA the only bargaining unit in either the City or the County to receive more than 8% for that period. (And even though the Consumer Price Index for the City of Buffalo (the nearest city which the Federal Bureau of Labor Statistics includes in the CPI) for June, 1984 was only 1.4% higher than in June, 1983.)

The considerations which guided the Hyman panel are equally applicable here and indeed more so, since the pattern of wage settlements for City and County employee's now completely clear except for PBA employees. It is unfortunate that the panel, in the face of currently adequate police salaries and a 20-year retirement plan (which the Firefighters do not have) considered it "realistic" to award the police employees an extra 4%. I am not persuaded of either the realism or the fairness of this Award.

I dissent, as well, from the holding of the panel that health insurance should be restored for Police Officers retiring

after January 1, 1984. This coverage has not existed for the past two years and while the panel asserts that it is a benefit "found in many other agreements," Exhibit 18 of the City's Brief to the arbitration panel demonstrates that of 15 other comparable communities, only 4 provide it, and 2 of those pay only between 25% and 50%. Moreover, this benefit does not exist for other City employees. While the coverage was reinstated by the majority of the panel as part of a compromise on other issues, I am simply not persuaded that this was the proper or fair method of reaching such a compromise.

Putting aside the technical grounds on which this dissent is based, I would observe that it is obvious to anyone who has extensive experience in public sector labor relations that the kinds of salary and other numerical comparisons which are available to an arbitration panel are not precise, hard figures on which calculations can be based with certainty. And, of course, successful labor relations depend in the long run as much or more on consistency and fairness as on efforts to gauge statistically what is occurring in other communities or even whether those communities are truly "comparable." In this case, I am afraid the emphasis has been placed on statistics and not on addressing the factors consistently applied by earlier arbitration panels, nor with an eye to the practical result of disturbing a wage pattern which has been applied to virtually every other City and County employee.



BARRY R. WHITMAN, ESQ.
Employer Panel Member