

FEB 12 1985
CONCILIATION

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration)
between:)
THE CITY OF ONEIDA)
and)
THE ONEIDA PBA)

AWARD OF THE PANEL
Case No.
IA84-12; M83-615

Before: The Public Arbitration Panel, consisting of:

- Norman Brand, Public Member and Chair
- Robert F. McDermott, Esq., Employer Member
- Joseph Sanchez, Employee Organization Member

Appearances:

- For the Employer: Frederic N. Rann, City Attorney
- For the PBA: Rocco A. Deperno, Esq.

On August 16, 1984, Harold R. Newman, Chairman of the New York State Public Employment Relations Board, appointed us as the Public Arbitration Panel under Section 209.4 of the Civil Service Law to make "... a just and reasonable determination of the matters in dispute." In accordance with our statutory authority, the Chair met with the parties on September 7, 1984, to clarify the issues and explain the nature of the pre-hearing briefs which the Panel would require. The Chair informed the parties that any factual material contained in the briefs would

be considered accurate unless challenged or contradicted at the hearing. The parties submitted pre-hearing briefs on November 5, 1984. We conducted hearings on November 14 and 15, 1984, and on January 10, 1985. On January 11, 1985, the Panel met in executive session to decide the matters before us. At the formal hearings, both parties appeared through their respective counsel, and were given a full and equal opportunity to present documentary and testimonial evidence, and to examine and cross-examine witnesses under oath.

The petition of the PBA put the following issues before the Panel: (1) personal leave; (2) detective pay; (3) uniform allowance; (4) meal allowance; (5) overtime; (6) release time for PBA President; (7) 20 year retirement; (8) wages.

At the hearing, both parties proposed a two-year contract. The parties also agreed to withdraw items 1-6 from consideration by the Panel, because they had reached agreement on them. Thus, the Panel was left with only the 20-year retirement proposal and wages to consider.

The Panel carefully considered each of these issues, in light of the statutory criteria contained in Section 209.4(c)(v) of the Civil Service Law. These criteria are:

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 interest 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 agreement 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 our consideration of the evidence in light of the statutory criteria, we have reached the following conclusions:

(1) **20 Year Retirement:**

Police Officers in Oneida currently have a 25 year retirement plan (384-F). For Tier I employees (16), the plan is fully paid by the City. Tier II employees (6) are required to contribute to the retirement plan (PBA Exhibit AA). The PBA proposed instituting a 20-year retirement plan (384-D). This plan would be more costly for the City, but would still require all Tier II employees, including newly hired employees, to contribute to it.

A. Comparability

Both sides compared the Oneida Police with police forces in

other jurisdictions. The City of Oneida has a population of approximately 11,000 citizens and a police force of 22 sworn personnel. The cities chosen by the PBA (see, Brief, at 8) have populations ranging from 22,000 to 170,000 and police forces ranging in size from 40 to 300 sworn personnel (excluding the Division of State Police, which is a statewide force having over 3,000 employees). All of the cities used by the PBA had 20-year retirement plans for their police officers.

The City chose both cities and villages with populations ranging from 8,000 to 18,000 (City Exhibit 15). The police forces in the City's exhibit range from approximately 15 to approximately 29 sworn personnel. None of the Departments chosen by the City has the 20-year retirement plan. In its rebuttal of the City's argument on comparability, the PBA named four cities which could have been included on the City's list and do have a 20-year retirement plan.

In reviewing this data, the Panel finds that the PBA has failed to show that a 20-year retirement plan is a benefit that is so uniformly available to police officers in cities like Oneida that to deny it to the Oneida police would be manifestly unfair.

B. Interest and Welfare of the Public and Ability to Pay

Both parties addressed the interest and welfare of the public. The PBA introduced a portion of a report of a citizen's

committee on public safety (PBA Exhibit B). In the recommendation of the police subcommittee, the group suggests that "Attention should be given to analyzing the economic and other advantages of a 20-year retirement plan for police and fire personnel...." The document then goes on to indicate that there may be certain advantages, both to the City and to the police, of a 20-year retirement plan. The PBA urged that this document constituted a recommendation for and endorsement of a 20-year retirement plan.

Mayor Kidd testified that she had received "input" from citizens who were opposed to a 20-year retirement plan. In addition, she indicated that the City Council, the elected representatives of the people, were opposed to the 20-year plan.

It is asserted, by the PBA, that a 20-year retirement plan will result in a younger police force, which could be more capable of providing the citizens of Oneida with the high level of police services to which they have become accustomed. The City responded to this assertion by pointing out that the 20-year plan does not require employees to retire after 20 years, but merely permits it. Thus, there are no guarantees that police officers will take retirement after 20 years.

In reviewing this evidence, the Panel is obliged to conclude that interest and welfare of the public, by itself, neither compels nor forbids awarding a 20-year retirement plan. Therefore, the Panel finds that other factors must weigh more

heavily in its decision of whether a 20-year plan is appropriate.

Both parties made excellent presentations on the City's ability to pay. The parties agreed, on the basis of the data provided from the Policemen's and Firemen's Retirement System, that the 20-year plan would initially cost approximately \$31,000 more than the current 25-year plan. This cost would be incurred during fiscal year 1985, although the City would not actually be billed at the new rate until fiscal year 1987. At that time, the City would be credited for the \$31,000 paid in fiscal year 1985, and would have to pay an additional sum or would be entitled to a refund, based upon what contribution rate the fund determined was appropriate for 1985.

Since the parties agreed that a 1% pay increase costs the City approximately \$5700, this new retirement benefit would be the immediate monetary equivalent of approximately a 5.5% wage increase. Moreover, in arguing against the benefit, the City noted that retirement costs are not predictable. That is, unlike straight salary increases, the City cannot predict how much it will have to pay for the benefit in the future; the rates are set by the Retirement System. Thus, in the City's view, if the Panel awarded a 20-year retirement plan, the City would be exposed to some risks that are not associated with a normal wage increase.

The City currently has a risk associated with the 25-year

plan. For the majority of police, who are Tier I employees, the rates for the 25-year retirement plan have moved within the range of 25.3% to 29.6% of salary, for a variance of 4.3% over the last 10 years. For the 20-year retirement plan, the rates for Tier I employees have ranged from 31.1% to 37.1% of salary, for a variance of 6.0% over the last seven years. While the trend in both has been down, the 20-year retirement plan has more volatile rates. The testimony also indicated that there are no guarantees of what will happen in the future.

In addition to being somewhat more volatile, the rates for the 20-year plan are and always will be higher than the rates for the 25-year plan, simply because the benefits are greater. Thus, as salaries increase, the dollars at risk for the City increase as well.

This is not an argument against ultimately providing a 20-year retirement plan. Rather, the Panel must attempt to quantify the risk in order to properly determine the City's ability to pay. While any absolute quantification would require actuarial expertise that the Panel does not have, a rough estimate can be made from the retirement system figures. The system estimates a 3.2% increase in the 1985 cost of the 20-year plan for Tier I employees and a 2.3% increase for Tier II employees. This estimate is for the benefit of municipal budget makers. According to the testimony of a representative of the System, the figure is always estimated high. A weighted average of

these two figures, based upon the number of employees in each tier, yields 2.95% as the projected increase for the City of Oneida for the 1985 cost of the 20-year plan. Taking into account the high projection, we can use 1.5% to 2.5% of salary as a workable estimate of the City's "risk factor" in adopting the 20-year retirement plan. Adding the "risk factor" to the direct costs of the plan provides an imputed cost of 7% to 8% of salary for the plan, against which the panel can examine the evidence provided by the parties on the City's ability to pay.

The City of Oneida appears to have engaged in prudent budgeting over the years. The PBA's examination of the City's budget, which was not contested in these respects, shows that the City is using only 10% of its taxing power and only 11% of its debt limit (PBA Exhibit W). While there is a question about the excludability of some hospital debt, its inclusion would not change matters dramatically. Over the years, the City has followed accepted formulae for estimating revenues and expenditures. It has also maintained appropriate contingency funds and unappropriated fund balances. The former was \$100,000 for 1984, and the latter \$440,000, of which approximately \$350,000 was not in cash. Oneida's property taxes were the 48th lowest among 61 cities (excluding New York City) in the state. For the coming year, the City Council voted to raise taxes 4%.

The City is not, of course, without its liabilities. Beginning in 1975, water rates rose enormously, as the City was

required to undertake major capital improvements in the system (City Exhibit 7). Recent reports show that further work will have to be done (City Exhibits 11 and 12). In addition, the City has outstanding litigation claims against it. Nevertheless, the Panel is obliged to conclude that the City has the financial ability to pay the \$31,000 immediately required for the 20-year plan, as well as the estimated \$8,550 to \$14,250 in uncertainty costs. This money is available in the contingency funds, in unappropriated fund balances, and through short-term borrowing. This is not to say, however, that the money should be expended on the 20-year plan.

C. Peculiarities of the Profession

Police work has unique hazards. As the testimony showed, regardless of where a car stop occurs, there is always danger to a police officer. In some regards, as the PBA pointed out in its brief, police work is similar in its hazards to military duty. Just as the military has a 20-year retirement system, many police departments have one. The physical, educational, and mental qualifications for Oneida police officers are set forth in the Civil Service announcement introduced as PBA Exhibit B. Candidates for the job must pass a medical examination and an agility test. They must have a high school degree or equivalency and either an Associate's degree in Police Science or 60 semester hours in a college or university which

include 18 semester hours in Police Science or Criminal Justice. Furthermore, besides taking a written examination, candidates must pass a psychological evaluation. Thus, the requirements for new Oneida police officers are quite high.

After being accepted as a police officer candidate, a new employee must undergo municipal police training. In addition, the testimony showed that various officers have completed specialized schools in arson, crime scene photography, and dealing with juveniles. Thus, the members of the Oneida police force receive significant training and learn skills not associated with other jobs.

D. Terms of Previous Collective Agreements

No previous collective bargaining agreement contains a provision for 20-year retirement. Both parties, however, introduced a tentative agreement that they had reached in mediation during this round of contract negotiations. That tentative agreement provided for a 20-year retirement plan in its third year. That agreement was not a final one, and did not resolve all of the issues between the parties. Ultimately, the City declined to sign the agreement.

Much was made at the hearing of what was said during negotiations about the retirement plan. The Panel is convinced that there was a great deal of confusion. There was not, however, any misrepresentation. Rather, each side saw things in

the light most favorable to its own position.

E. Conclusion

A 20-year retirement plan represents a significant cost to the City. While it is found in numerous police contracts, it is not so widespread a benefit among cities of Oneida's size that the Panel feels it must recommend it. Although this city has the money to pay both the immediate and the uncertainty costs of the benefit, that would leave very little for wage increases. While it may be that PBA members are willing to take very small wage increases in return for a 20-year retirement plan, the Panel feels that a trade-off of that sort is best reached through negotiations. Since only two or three employees would be immediately affected by a 20-year plan, and since negotiations for a post-1985 contract will begin shortly, the Panel concludes that it should focus on an appropriate wage award.

(2) **Wages**

The City's final wage offer was 6% wage increases as of January 1, 1984 and January 1, 1985 with full retroactivity. The PBA's last proposal was for a 7% increase retroactive to January 1, 1984, a 3% increase retroactive to January 1, 1985, and the institution of a 20-year retirement plan. The Panel assumes that the PBA intended that the retirement plan be instituted during the second year of the contract. The PBA

brief asks for the retirement plan as it was in the tentative agreement of March 14, 1984. This is impossible, however, since that tentative agreement called for the 20-year plan to be implemented half way through its third year and the Panel has no power to make an award for more than two years.

The cost of the City's wage proposal, on an additive basis, is \$68,400. The cost of the PBA's total proposal, ignoring the uncertainty costs, is \$88,000.

A. Comparability

The comparison group chosen by the PBA consists of eight cities and the Division of State Police. The smallest city has twice Oneida's population; the largest has fifteen times its population. All of the cities have much larger police departments. The comparison shows that the City of Oneida has competitive starting salaries but lags somewhat behind these larger cities when it comes to first grade patrolmen. Given the large difference in city sizes, Oneida's pay scale is competitive. No evidence was introduced to show that Oneida police officers are uniquely disadvantaged in their hours or other terms and conditions of employment. While the PBA's evidence showed that the clothing allowance and personal leave are somewhat low, with the new agreement they will be less so.

The average police officer's 1983 salary increase, according to PBA Exhibit U, was 8%. The 1984 increases for the PBA

comparison group averaged 7%. Those cities in the group for which 1985 figures were available averaged 6.4%. By comparison, Oneida police officers received a 10% increase in 1983, are asking for a 7% increase in 1984, and over 8.5% (adding only the direct cost of the 20-year retirement plan) for 1985.

The City of Oneida negotiated a 6% increase for its civil service employees in 1984, and a 7% increase for its firefighters. In 1985, it negotiated a 5% increase for civil service employees. Its offer to the PBA for 1984 is below what it negotiated with the firefighters, and below the average for other police units. Its offer for 1985 is above what it negotiated with civil service employees, but slightly below the average of police settlements. Thus, the comparability data suggests that the City's offer for 1984 is significantly below settlements in the protective services for that year. For 1985, the comparative data shows that the City is somewhat low, but not substantially so.

B. Interest and Welfare of the Public and Ability to Pay

The interest and welfare of the citizens of the City of Oneida are best served by maintaining police salaries at a level that will attract and retain police officers of the same high caliber as the present force. Moreover, the City of Oneida has the ability to pay the increases we recommend below. Given the comparative data, we believe that a 7% increase for 1984 is

appropriate. This will cost \$39,900, including salary-driven fringe benefits. Since the salary must be paid retroactively to January 1, 1984, it represents, in effect, money not expended during that year. Thus, it would be appropriate to use a portion of the unappropriated surplus for that purpose. If the money is no longer available within that fund, the contingency fund would be an appropriate source.

The City also has the ability to pay a 7.5% increase retroactive to January 1, 1985. This will cost approximately \$43,000. Since there was no indication that the City made an explicit appropriation for increased salaries in the 1985 budget, the money will have to come from other sources. The City regularly budgets a \$100,000 contingency fund. This is one possible source for the money. If the money is not available in that fund, short-term borrowing is appropriate. That is, since this is a current obligation for which the City could not definitively budget, it is appropriate to fund it by short-term borrowing. According to the evidence provided by the PBA (see Exhibit W), the City could borrow over \$200,000 short-term, in accordance with Section 29.00(a)(2) of the Local Finance Law. Thus, there is no doubt that the City has the ability to pay the raise we recommend in this Award.

C. Peculiarities of the Profession

The hazards of police employment have traditionally

resulted in police wage settlements being slightly higher than those negotiated with other employee groups. The physical, mental and in particular, educational qualifications for Oneida police officers require keeping their salary levels competitive. The somewhat unusual requirement of an Associate's degree or 60 semester hours of college argues for keeping salaries high enough to attract police officers who have invested in their own education. Finally, the job training and skills of Oneida police officers are of a higher level than many employees in the civil service unit.

D. Terms of Previous Collective Agreements

No evidence was introduced to suggest that the terms of previous collective bargaining agreements were so advantageous or disadvantageous as to have a necessary impact on this agreement. On the other hand, the terms of the mediated settlement do have an impact. The Panel has neither the authority nor the desire to impose the rejected tentative agreement on the parties. It does recognize, however, that once an offer is made it has a psychological impact. While it may later be withdrawn, it is never forgotten. In this instance, the employer first offered a 20-year retirement plan in the third year of a proposed agreement. Then, because of its uncertainty as to future costs, it withdrew that offer. The Panel has already noted that uncertainty has a price. While it is not easily

quantifiable, it is present. The opposite side of that coin is that certainty has a value. Thus, since we have used that quantified uncertainty in determining the City's ability to pay for the proposed 20-year retirement plan, it is proper for us to assign a value to the certainty which the City seeks through a fixed wage settlement. We believe that a 1 1/2% increase over the City's last offer for 1985 is a reasonable price for the certainty involved in a straight wage agreement rather than a new retirement plan.

E. Conclusion

We find that a straight wage settlement is more appropriate than the combination of wages and a new 20-year retirement plan. The wage settlement will provide an immediate benefit to all of the members of the bargaining unit. A wage settlement and new retirement plan combination would provide an inadequate improvement in wages to the entire bargaining unit, while giving an immediate benefit to only two or three employees. Moreover, if it is the desire of the members of the PBA to have a 20-year retirement plan, they can negotiate it for 1986.

We have not found the wage offer of the City to be sufficient. There are two reasons for this. First, the proposed 1984 increase is not comparable with increases received by police officers in other departments or the settlement reached with the City of Oneida firefighters. Second, the

proposed increased for 1985 neither kept up with those negotiated in other police contracts, nor reflected the monetary value of the certainty achieved by having a straight wage settlement.

By reason of the foregoing the Panel makes the following:

AWARD

- 1. We do not recommend the 20-year retirement plan.
- 2. Salaries for each member of the bargaining unit will be increased by 7% over the member's 1983 base, effective as of January 1, 1984. This increase will be paid retroactively.
- 3. Salaries for each member of the bargaining unit will be increased by 7.5% over the member's new December 31, 1984, base, effective January 1, 1985. This increase will be paid retroactively.

Norman Brand

Davis, CA
January 16, 1985

Norman Brand
Chair

STATE OF CALIFORNIA)
) ss.:
COUNTY OF YOLO)

On this 21 day of January, 1985, 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.

William D. Kopper



