

State of New York
Public Employment Relations Board

In the Matter of
Compulsory Interest Arbitration
between

Town of Greece

and

CWA Local 1170
(Gold Badge Club)

PERB No. IA91-004, **m90-483**

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION**

Decision and Award of Arbitration Panel

Before: Robert J. Rabin, Chair, Joanne Calvaruso (Town) and Robert J. Flavin (Union)

Background

The Town filed a Petition for Compulsory Interest Arbitration on May 9, 1991, and this panel was appointed. The matter was set for a hearing on October 9, 1991. Following the format suggested by the Chair, the parties submitted briefs prior to the hearing. At the hearing, each side commented upon the briefs and presented additional testimony and information.

At the conclusion of the impasse hearing, the members of the Panel met to discuss procedures for completing the decision and award. The Chair then suggested a possible basis for resolution of this dispute, which the parties then explored. An exchange of correspondence followed in which further attempts were taken to reach settlement. These efforts failed to bring about a voluntary settlement. In the meanwhile, the decision and award of the Panel were placed on hold.

The union claims that an agreement was in fact reached, which is binding on both parties. The Town says there was no such agreement. The Chair advised the parties that he does not consider it the province of the Panel to determine whether the parties in fact reached a binding settlement of this dispute. If the union wishes to pursue that claim, it must do so in another forum. Meanwhile, the parties have agreed that the interest arbitration process should go forward to conclusion.

The Town has some 410 employees. This unit, the Gold Badge, covers 30 supervisory police officers. Most of them are classified

as detectives or sergeants. However, 7 of the employees were formerly commanders or detective supervisors. The Town has eliminated those titles, and those 7 are now carried for salary purposes as sergeants. We will say more about that later. There is another law enforcement unit consisting of 57 full time police officers represented by a different union, the Uniformed Patrolmen's Association. The Town reached agreement with that unit in November, 1990 for the same two year period that is at stake in this proceeding.

The issues

While many issues were on the table, a good number were resolved outside the impasse process, and a few others withdrawn at the last minute. Only a handful of issues remain before the Panel. The most difficult one is wages, coupled with the Town's insistence on relief in the area of health insurance.

Economic considerations

The Town asserts it has experienced its "worst fiscal crisis within anyone's memory (Town brief p. 3)." The following are the most significant items the Town lists as the causes of this crisis:

1. A drastic shortfall in the per capita aid provided by the State, of over a million dollars less than the Town estimated in its budget (Town brief p. 3).
2. Unreimbursed costs resulting from the ice storm last March. The Town spent 2.7 million unbudgeted dollars and has seen no reimbursement. The Town estimates that \$337,000 of this expenditure will not be reimbursed, and that the Town will incur interest charges of \$175,000 in 1992 on account of these expenditures (Town p. 3).
3. An unbudgeted increase in Medicare premiums of \$125,000 (Town p. 4).
4. An unbudgeted additional amount under the State Retirement System of \$223,000 (Town p. 4). Subsequent to the filing of its brief, the Town gave a revised figure of a \$235,000 shortfall.
5. A shortfall in local revenues of \$262,000, due to the recession (Town p. 4).
6. A loss of about \$100,000 in revenues for the Youth Bureau (Town p. 3).

In all, the Town estimates its budget shortfall at well over \$2 million.

After the conclusion of the interest arbitration hearing, the Town determined to impose a wage freeze for 1992. This was first presented in a letter from Ms. Calvaruso to Mr. Flavin dated November 15, 1991, citing as "a significant contributing factor" the additional amounts required to be paid to the police and fire retirement systems. The position was formally presented to the Panel in Mr. Winterman's letter of December 20, which says that the Town Board has directed the Town administration to ask bargaining units that do not have a contract to forego any wage increase for 1992. It goes on to say that "the Town has formally requested" the patrolmen's union to forego the contractual wage increase for 1992.

As expected, the Union vigorously disputed many of these contentions. Some of its salient points in rebuttal are as follows:

1. There is a greater likelihood than the Town acknowledges that all the costs of the ice storm will be retrieved.
2. The Town reorganized the Gold Badge unit, including the reduction of 4 commanding officers, and saved over \$300,000. (Union p. 8). The union says it has already paid its share in this reorganization, although it puts it more dramatically in its presentation.
3. In addition, the Town has red circled 7 members of the unit (those titles discussed earlier) for a freeze on raises until their salaries fit those in the reorganization. It appears that the union does not challenge this here, but this aspect of the reorganization is before PERB in another proceeding. For purposes of this impasse, we accept this red circling as a given. The union calculates that on a 5% salary increase the freeze results in a saving of \$21,000. (Union p. 8).
4. Despite these fiscal constraints, the patrolmen, in the unit most closely allied to this one, received a new contract for 1991 and 1992 with wage increases of 5 1/4% in each year.

With respect to the Town's position on the wage freeze for 1992, the Gold Badge union asserts that the union representing the police officers will not agree to such a freeze.

The Town says that these serious fiscal constraints must be viewed in the context of a well paid unit. The Town's data shows that the officers in this unit are relatively well paid compared to other nearby districts. (Town p. 7) The Union's data (Union p. 11), while naturally more favorable to its position, doesn't undercut this basic conclusion.

Conclusion on Salary Increase

These points of contention on economic factors were explored vigorously at the hearing on October 9. While there is some dispute as to the exact numbers, the Town no doubt faces serious fiscal problems.

But these constraints must be placed in context. Throughout the impasse procedure, the Town never took the position that a wage increase was precluded. Nor did it say it was impossible to meet the union's demands. In its brief in arbitration it offered 1.5% and 1.6%, and said it had "some flexibility" on salary increases provided the union agreed to "some relief" on health insurance (Town p. 6). The phrase "some flexibility", coupled with a call for a concession, shows that the Town was contemplating increases beyond those just stated. Further, while normally a party should not be boxed in by its willingness to talk settlement (this is apart from the question whether the Town has legally bound itself to an agreement), the Town's exploration of an agreement here shows that those closest to the scene thought that some increase was warranted and that it was not out of the question.

A key consideration is that the 30 officers in this unit work closely with the 57 full time patrolmen in the other enforcement unit. Thus the pattern of settlement in that unit is very significant. For the supervisory officers to function effectively, it is undoubtedly helpful that they maintain their salary differential over those they direct. While there is no contract language that expressly ties Gold Badge salaries to those in the patrolmen's unit, there are provisions that show that the parties are at least concerned with the relationship among salaries in various positions. Thus, the Gold Badge contract provides in the salary article, Sec. 7.2 (p. 9), that "in the event of a new or changed title, the Town agrees to maintain appropriate salary integrity between titles and to consult with the Union relative to salary slotting." The Union asserts without contradiction (Union p. 9) that a similar provision appears in the Patrolmen's contract. If the two groups were united in a single unit, we would expect to find a fixed differential between ranks.

The Union's witness testified that historically there is a 12% differential between patrolmen and sergeants, although he said the Town refused to acknowledge this in the written agreement. The Town disputes the point. While the evidence is not conclusive, it supports the overall conclusion that some pattern of equivalent raises, if not precise parity, should apply to the two closely allied law enforcement units.

Further, the unrepresented managerial employees received a 2.5% increase for 1991, and the Union points out that there was a further merit increase of nearly the same amount. A freeze in this unit would put its members in the position that those who are higher up and lower down enjoy wage increases, while these wages remain the same.

Despite the severe economic limitations that I have referred to, the Town has granted its patrolmen a 5.25% wage increase for the years in question here, although that happened earlier than the negotiations here. If the Town's position of no increase is sustained, the differential between officers and those whom they direct will shrink. This is not desirable, and the differentials among ranks should be maintained as far as possible.

The amount of money required to grant an increase similar to that of the patrolmen is not overwhelming. Because of the red circling, a significant portion of the unit will get no increase at all. The Town brief says at p. 9 that a 1% wage increase is almost \$13,000, so 5% would be about \$65,000. This is the amount at stake here, against a projected deficit of over \$2 million. If taxpayers had to absorb this increase, the Town's data shows it would entail a .75/thousand tax increase. On the basis of a current rate of \$53.96/thousand, this is not a terrible burden. While of course each dollar matters, and a cumulative wage freeze would be very helpful to the Town, this \$65,000 expenditure must be measured against the potential disruption to morale if the traditional differentials were shrunk. Even if a freeze were imposed, there would be pressure in bargaining later on to restore the traditional differential.

While the economic pressures are great, it is not clear that the officers in this unit should absorb them. For example, if it will cost the Town an additional \$300,000 or more to repair ice storm damage, then the taxpayers and not the police officers should pay for it. All taxpayers benefit from the cleanup, and it is unfair to place the burden of an act of nature upon these 30 officers.

The Town's call subsequent to this hearing for a wage freeze for 1992 demonstrates that the fiscal crisis is severe. Some of the unions closest to the situation may accept these representations and to agree to some accommodation. The Town says it would like to freeze all wages for 1992 while the crisis is at its worst, in exchange for commitments to improve wages in later years. The best course from a collective bargaining perspective is for all the parties to agree to such an arrangement. But so far that has not happened.

The Town represents that the patrolmen have been asked to forego their salary increase for 1992. Undoubtedly the officers in that unit must have an eye on what happens in this unit. The two are linked. The Panel's finding on salary increase should provide some incentive for the parties to continue to explore a voluntary solution to the Town's fiscal situation.

For the year 1991, the officers in the Gold Badge unit shall receive a salary increase of 5%, retroactive for the year. This is 1/4% lower than the increase received by the patrolmen for that

period. This reflects, however, that the Gold Badge unit members did not make a concession on health insurance, while the patrolmen did for 1991.

The Gold Badge unit officers shall receive a salary increase of 5 1/4% for 1992, effective with the fourth pay period of 1992. This is done so that there will be a period in which the parties have the opportunity to bargain for a different agreement along the lines suggested by the Town. It is much harder to agree to a wage freeze if the increase is already in hand. The delay in implementation reduces the 5 1/4% increase by 3/26, so that it is a little less over the year than the amount in the patrolmen's unit. But the related finding on health insurance, which follows, is not likely to yield as great a saving as in the patrolmen's unit.

Health Insurance

The Town makes containment of health costs a major factor in these negotiations. There is no doubt that the problem of escalating health insurance costs must be solved, and the briefs of both sides go into the familiar arguments. For this unit, an employee's family coverage is about \$3500 per year, and 23 employees take this coverage. While this is a large dollar total, it still is only 7.4% of payroll for those taking family coverage, so it is not at the crisis level.

The Town proposes to control costs by imposing the full measure of all future increases in premiums upon the employees. While this is one solution, it imposes the burden for the future solely on the employee. Other alternatives might be deductibles, a different sharing arrangement, some form of managed health care. For purposes of this award, however, the patrolmen's unit sets the pattern. In that unit the parties agreed to deal with the health insurance problem by providing that new employees shall pay a proportion of health insurance costs on a sliding scale starting at 8% and moving up to 15% by the fifth year, after which the Town pays the full cost.

Consistent with the Panel's approach to salary, there is no reason why the solution to health care costs arrived at in the patrolmen's unit shouldn't apply here. There is also no reason to tie the hands of the parties by mandatory arbitration any further into the future than necessary. This is a two year agreement and the first year is done. In the patrolmen's unit the first two year sharing is 8% and 12% respectively. It makes sense to average those figures out and rule that in the Gold Badge Unit, any officer new to the unit shall pay 10% of the cost of the health insurance premium beginning on the effective date of this Agreement. This leaves the question of subsequent years of service for later resolution by the parties.

Other Issues

As indicated earlier, there are few other issues. The Panel is guided by the principle that given the conceded economic constraints, further economic cost items should be kept to a minimum. And on non economic items the Panel is guided by the principle of generally leaving well enough alone. Change should be imposed only where there is a compelling need; otherwise it should be left to the voluntary agreement of the parties.

The remaining economic issues are discussed first. The non economic items are covered in the order presented in the Union brief. All items tentatively agreed upon prior to this proceeding should be part of the permanent agreement. These are set out in Union brief 1-3. The Union demands at page 4 of Union brief are withdrawn.

Other Items with economic impact

Compensation - Shift Differential. The Union seeks a further shift differential of 1/2%, so that the differential for the 2-10 p.m. shift would be 1 1/2% and for the 10 p.m. - 6 a.m. shift 2%. The Union argues that because of the reorganization, officers who work these shifts may take on additional command duties. The Union points to data that other comparable units pay this much of a shift differential. The Town was agreeable to the 2% figure for the later shift, but held to 1% for the earlier shift. It made a counterproposal that involved a different method of payment.

The union's arguments and facts warrant granting these increases. The figures in the Town's brief show this is a minimal expenditure. Yet because of the potential for additional duties, the adjustment is fair.

The record doesn't allow for an informed assessment of the Town's proposal for a different method of payment, so no position is taken on that in this Award.

Special Assignments. The Union seeks additional compensation for special assignments. It claims that some of the assignments involve additional duties as a result of the reorganization. The Town says the duties in question are part of the normal work day of the employee.

The contract provides for additional compensation for a number of listed assignments. These all appear on the face of the contract description to involve additional obligations outside of regular hours. On the basis of this record, that is not the case with respect to the union's FTO and Drug Force demands. compensation. Thus no change in compensation is awarded for these assignments.

Roll Call. Unlike the duties covered by the special assignment demand, roll call involves extra time outside the normal tour of duty. The Union asks only for straight time. The Town contends the amount of time involved is minimal, and that most other towns do not pay for this. But if the time is actually spent, then it seems fair to compensate, especially since premium pay is not entailed. The evidence at the hearing shows that 15 minutes is the normal additional time. The Union's demand is granted. Of course this means that the Town is entitled to require the officers to spend this time, since they are being compensated for it.

Clothing Allowance. The Union proposes a \$50 per year increase in clothing allowance, and \$25 more for shoe allowance. This is for maintenance of uniforms, not for damage to uniforms, where a different provision applies. The evidence doesn't show that the present figures are inadequate, and consistent with the Panel's caution on economic items, no change is awarded on this issue.

Bereavement. The Union proposes to add to a fairly lengthy existing list the employee's aunt, uncle, and cousin, for one day only. The evidence is mixed as to whether comparable units extend bereavement leave this widely. Following its general approach, the Panel declines to award a change in this benefit.

Management Rights Clause. The union proposes language that appears to incorporate what is required in any event by the Taylor Law and the Civil Service Law. The Town has sought a ruling from PERB on this demand. The Panel does not see that this language is necessary, or that it adds anything significant, so the demand is rejected.

Grievance procedure. The Union proposes an increase in the number of days in which to file a grievance. The present provision for 20 and 18 working days seems adequate, given that no evidence was presented of any existing problem.

Retroactivity. The Union proposes that all items be retroactive to January 1, 1991, while the Town proposes that only the wage increase be retroactive. As a practical matter, the wage increase is the only item where retroactivity makes a substantial difference. Therefore, only that item will be retroactive. The adjustment in health insurance could not as a practical matter be given retroactive effect in any event. And it would be too cumbersome for the Town to now have to recalculate any amounts due for roll call or shift differentials.

Dated:

January , 1992

Robert J. Rabin
Robert J. Rabin, Chair

Robert J. Flavin 1-28-92
Robert J. Flavin, Member (concurring)

Joanne Calvaruso 1/28/92
Joanne Calvaruso, Member (dissenting)