

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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CONCILIATION

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Impasse

between

RYE POLICE ASSOCIATION OF THE CITY  
OF RYE

and

CITY OF RYE

OPINION AND AWARD

OF

INTEREST ARBITRATION  
PANEL

Case No. IA91-025  
M90-059

Before: Tripartite Interest Arbitration Panel  
Alan C. Marin, Employer Member  
George DeVito, Employee Organization Member  
Randall M. Kelly, Public Member and Chairman

**Appearances:**

For the City:

Vincent Toomey, Esq.	Attorney
Frank J. Culross	City Manager
Philip McGovern	City Assessor
Chris Martino	City Comptroller
Douglas G. Herron	Personnel Director

For the Association:

Alan E. Wolin, Esq.	Attorney (Lecci, Wolin & Wolin)
Alvin Ortiz	Negotiating Committee
Thomas Walsh	Negotiating Committee
Robert Vogel	Negotiating Committee

**INTRODUCTION**

On September 26, 1991, Rye Police Association of the City of Rye, Inc. (hereinafter, the "RPA") petitioned the New York State Public Employment Relations Board for Compulsory Interest Arbitration pursuant to the provisions of the Civil Service Law, Section 209. On November 21, 1991 PERB appointed the undersigned as Public Panel Member and Chairman of the Public Arbitration Panel in the impasse between the City of Rye (hereinafter, the "City") and the RPA.

Hearings were held at the City of Rye City Hall on March 20, April 30 and May 21, 1992 at which time each party was given the opportunity to present its evidence and argument. The Panel met in Executive Session on May 21 and thereafter.

**AWARD**

1. TERM OF AGREEMENT: January 1, 1990 to December 31, 1991.
2. ARTICLE 5 - SALARIES AND WAGES: The annual salary of all Police Officers shall be increased by six percent (6%) for 1990 and an additional six percent (6%) for 1991.
3. ARTICLE 7 - ANNUAL LEAVE: No change to existing provisions.
4. ARTICLE 9 - SICK LEAVE: No change to the existing provisions.
5. ARTICLE 12 - HEALTH PLAN: The City contribution for health insurance shall be as follows:  
  
For employees hired on or after January 1, 1990; the City will contribute 75% of the premium for individual or family coverage under the health plan the City participates in.  
  
Provided that this provision will not become effective until the expiration of the contract term, i.e., December 31, 1991.
6. ARTICLE 13 - DENTAL PLAN: No change to existing provisions.
7. ARTICLE 18 - PERSONAL LEAVE: No change to existing provisions.

**BACKGROUND FACTS AND CIRCUMSTANCES OF THE IMPASSE**

The Collective Bargaining Agreement between the City and the RPA ran from January 1, 1988 to December 31, 1989. The parties have been without a Collective Bargaining Agreement since that date. The parties bargained on various dates in 1989 and 1990 without success. A mediator was appointed on May 16, 1990 and a mediation meeting was held on June 29, 1990. After being unable to reach agreement, the RPA petitioned PERB for appointment of this Interest Arbitration Panel.

The City is located in the Eastern part of Westchester County surrounded by Mamaroneck Town and Village, Port Chester, Harrison, and Rye Town. It has a population of about 15,000 located in an area of 5.8 square miles. The RPA represents 35 police officers.

It should be noted that after the filing of the petition for Compulsory Interest Arbitration, the RPA leadership changed. At the same time, the RPA changed its counsel.

**Statutory Standards:**

Civil Service Law, Section 209.4 (the Taylor Law) provides standards for the Panel, as follows:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. 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.

**ISSUES OUTSTANDING**

The parties were unable to reach agreement on any issues. The following are the issues listed in the RPA's petition for interest arbitration and the City's response:

- 1) Salaries and wages
- 2) Employee contribution to health insurance
- 3) Annual leave
- 4) Sick leave
- 5) Dental plan
- 6) Personal leave

### TERM OF AGREEMENT

The parties have agreed that the results of this arbitration are to be applied to a two-year retroactive agreement, from January 1, 1990 to December 31, 1991.

### SALARIES AND WAGES

This is one of the two principle issues separating the parties--the other being health insurance.

#### RPA Proposal:

The RPA has proposed that the annual salaries of all Police Officers shall be increased by six percent (6%) for each year of the two-year agreement.

#### RPA Position:

In support of its position, the RPA presented testimony and evidence from Edward J. Fennell, of Edward J. Fennell Associates. Fennell testified as an expert witness on municipal finances. He testified that, compared to other cities in New York State, the City has the ability to pay the increases requested by the RPA. Specifically, he reviewed the City's 1990 annual filings with the State Department of Audit, a 1990 bond prospectus, a City 1992-1994 Budget Forecast (Assn. Exh. 2), and the 1990 and 1991 budgets (Summarized in Assn. Exh. 1). According to Fennell, the City is among the lowest taxed in the State, has a greater taxing ability than most cities in the State and is one of the wealthiest cities in the State. Perhaps most telling for Fennell is the fact that the City itself projected (for forecast purposes) that salary and wages will grow by five percent (5%) annually (Assn. Exh. 2). In the Budget Forecast written in August 1991, the City assumed a steady 4.5% inflation and a 0.5% real term increase in wages and

salaries. Thus, according to Fennell, the City was already planning to pay a 5% increase and paying one percent more (the 6% the RPA is asking for) in salaries of Police Officers would represent only a .28% increase in the 1992 tax levy of \$8,919,120 (or \$24,290). In Fennell's expert opinion, ability to pay should not therefore be a factor here.

On cross examination, Fennell admitted that the City generates a higher percentage of its revenues from real property taxes (69%) than do other cities (from 30-50%) and that towns and villages are more normally in the City's range. However, he points out that the City has high per capita wealth and correspondingly less State aid. He conceded that the City has delayed its infrastructure needs as a way of cutting costs and balancing the budget during these trying times.

Finally, Fennell testified that the trend for police settlements in the State for 1990 and 1991 was averaging 5.5 to 7% for interest awards and 5-7% for negotiated settlements.

Police Officer Alvin Ortiz testified that the RPA demand of 6% annually was based on settlements in the surrounding communities that the RPA has traditionally compared itself to, i.e., Harrison, Port Chester, the Village and Town of Mamaroneck, and Rye Brook. He also included Westchester County police officers since they also work within the City (Assn. Exh. 3). According to Ortiz, 6% in 1990 and 1991 would keep the City Police Officers in roughly the same position vis-a-vis officers in those departments. Ortiz points out that the City Police Department is traditionally small, with only three cars. In his opinion, their responsibilities usually run a rank above their nominal rank,

without additional compensation. Ortiz himself works above two or three shifts a week without supervision and the senior man on the shift is in charge.

**City Position:**

The City position is essentially that it is facing the same extreme financial conditions that plague the rest of the State and that it is not in the position to accede to the RPA demands. First, it presented the testimony of City Assessor, Philip McGovern, that there has been a wave of challenges to City assessments, both in Small Claims Court and on Certiorari (City Exhs. 1-5). Combined with a falling residential market and the high percentage of exempt property in the City, this makes future increases in revenues difficult. McGovern also testified that the City is the guarantor of County and school taxes and every year is required to reimburse one or the other for non-collection or other shortfall. This past year, the City had to pay the schools \$200,000 for this reason.

City Comptroller Chris Martino testified as to the budget trends in the last couple of years since the State drastically cut its aid. Martino and the City Manager, Frank Culross, testified as to the City's short term efforts to bring the budget under control and build for the future. See, the Memorandum from the City Manager to the Mayor and Council dated April 16, 1991, entitled, "City Services in the 1990's: The New Reality" (City Exh. 16). The City lost 20% of its non-property tax revenues due to State cuts and has adopted severe cost cutting measures to maintain a balanced budget. The City has imposed a hiring freeze, curtailed overtime and stopped all discretionary spending. In

fact, its 1992 budget will be less than its 1990 budget and the 1990 budget was 2% less than the 1989 budget.

The City argues that it is not in a position to grant over generous salary increases even to members of its valued police department.

### HEALTH INSURANCE

#### City Proposal:

Article 12 - Health Plan - the City contribution for health insurance shall be as follows:

- 1) For employees hired on or after January 1, 1990; the City will contribute 75% of the premium for individual or family coverage under the health plan the City participates in.
- 2) For employees hired prior to January 1, 1990, the City will contribute 75% of the premium for individual or family coverage under the health plan the City participates in. The 25% employee contribution will however, be phased in as follows: An employee contribution of 5% of the applicable health insurance premium will be required in 1990. The employee contribution will be increased by 5% of the applicable health insurance premium each year until such time as the employee contribution is 25% of the premium.

The City is currently contributing 100% for all employees under the Collective Bargaining Agreement.

#### City Position:

The City position is basically that it has determined that it cannot continue financing 100% of employee health insurance coverage and that the Police unit must now recognize its obligation to share in the allocation of these costs. According to the City, its costs for all benefits for all employees has increased from \$1.6 million in 1986 to \$2.7 million in 1992 and health insurance costs have increased from under \$500 thousand in 1986 to \$1.1 million in 1992 (C. Exh. 17). City Manager Culross

testified that health insurance now represents 8% of the General Fund and has doubled since the mid-1980's. In fact, since 1989, it has been the most costly fringe benefit offered to employees (surpassing the cost of pension and social security).

The City was able to hold costs down somewhat by switching out of the State's Empire Plan in 1990 to the Westchester County Municipal Employees Benefit Consortium (MEBCO) (see Stark Award). However, even MEBCO costs increased 16% in 1991 and are projected to increase another 20% in 1992. The City also argued that employee contributions increase employee awareness of the costs and make them better consumers of medical services.

Finally, the City argues that it followed the recommendations of the Stark Award and has required employee contributions from all its employee groups. In fact, the City Council has demanded that all employee groups contribute (see City Exh. 18 and supporting documents, City Exhs. 19-22). As of now, all new hires in employee groups other than the police contribute 25% of the cost of health insurance premiums, a total of 40% of the City workforce.

The City argues that it needs to make substantial and permanent inroads in this area now in order to check these costs in check.

**RPA Position:**

The RPA strongly believes that its members should not be required to contribute anything toward their health insurance. However, if they are to be required to contribute, they propose that the contributions be only for new hires and then only for the first three or four years of employment. The RPA cites the same

contracts that it relies on for its salary analysis. According to the RPA analysis, Port Chester and Westchester County require no contribution (the County after an Interest Arbitration Award); Harrison requires a \$2000 per year salary reduction for new hires to pay for health insurance, but it ends after the first three years of employment; the Town of Mamaroneck and Rye Brook require a 25% contribution from new hires, but only for the first four years; and the Village of Mamaroneck requires a 30% contribution from new hires, but, again, only for the first four years (Assn. Exh. 9).

What particularly disturbs the RPA is the fact that the City proposal would require contributions from new hires for their entire careers and that this would be unprecedented for police officers in surrounding communities in Westchester County.

Finally, the RPA argues that the statute requires a comparison to other police departments in the County and not to other employee groups within the City.

**Discussion:**

On neither of these threshold issues is it necessary to reinvent the wheel. The parties are unfortunately familiar with the Compulsory Interest Arbitration process, having "settled" their 1980, 1986 and 1989 contracts through that process. In the course of these arbitrations, the Panels have established certain standards for comparison in compliance with the statutory standards.

Accordingly, the 1989 Panel under the chairmanship of Arthur Stark wrote:

In terms of a stable long-term relationship there is much to be said for consistency in an approach to

salary determination. Some parties, thus, opt for a continuing linkage between groups of employees. . . . Although there has been no evidence of this kind of linkage in Rye, the record does show that the arbitration panels in 1980 and 1986 utilized generally consistent comparisons. In 1980 the Panel compared top salaries of police officers in Mamaroneck Village, Port Chester, Harrison, and Rye Town. In 1986 the area of comparison was expanded to include Mamaroneck Town. There is precedent, therefore for using the same comparisons in this, the very next arbitration proceeding (PERB Case No. IA 88-6, July 19, 1989 at pp.12-13).

This analysis justifies the RPA's request for a 6% salary increase 1990 and 1991. According to the City's own calculations, Harrison, Larchmont, New Rochelle, Port Chester and Rye Brook all granted 6% increases to their police in 1990 and the Town and Village of Mamaroneck granted 5.5% increases (City Exh. 26). In 1991, New Rochelle and Port Chester agreed to 6% increases; Harrison and the Town of Mamaroneck, 5%; the Village of Mamaroneck, 5.75%; and Rye Brook, 5.5%. This averaged 5.85% in 1990 and 5.54% in 1991. Given that the City has already budgeted for increases in 1990 and 1991 and the City's wealth, 6% for 1990 and 1991 is a reasonable settlement. Controller Martino testified that the amounts budgeted for police increases for 1990 and 1991 was appropriated and still shows as a liability on the budget sheet. He testified that it has been invested while the City is waiting to spend it. In addition, this would also maintain the City's relative position among police departments in the surrounding communities (Assn. Exh. 3). And, while the City is in a difficult financial position, it is no worse than the situation in the surrounding communities and, probably, better due to the City's impressive efforts to keep costs under control.

On the other hand, the 1989 Panel did not use a comparison to

the five surrounding communities for analyzing the City's request for employee contributions to health insurance. The Panel stated:

As for employee contributions, however, only a few employees (about 11) in the Rye firefighters' unit are presently covered by such a provision. None of the other larger union and non-union groups in Rye have contributory plans. Although this type of arrangement may well be necessary in the future, the time is not ripe for holding, in effect, that the tail should wag the dog. Moreover, little would be gained now by requiring contributions only on future employees (as has been the general approach) since the turnover is very low (PERB Case No. IA 88-6, July 19, 1989 at p.62).

Since 1989, the City has negotiated contributory health insurance plans with all its other unions and imposed employee contributions on its non-union employees. The City's administrative and non-represented employees hired after 1/1/90 contribute 25% of the health insurance premium (capped at 5% of each employee's base salary) and those hired prior to that date are being phased in to the 25% over a five-year period (the 1992 contribution is 15%).

The International Association of Firefighters agreed that effective 1/1/86 all newly hired firefighters contribute 25% of the premium (the then 11 firefighters referred to by Stark).

The two CSEA units (Blue Collar and White Collar) agreed that all new hires after 1/1/90 will contribute 25% of the premiums (capped at 4% of each employee's base salary) (City Exh. 18 and supporting agreements).

Thus, all employees of the City hired on or after 1/1/90, except Police Officers, are paying 25% of their health insurance premiums (City Exhs. 18-21). No longer would it be a situation where the "tail is wagging the dog". For example, in a Fact Finding between the City and the CSEA (Case No. M89-016, March 23,

1990) (City Exh. 22), the Fact Finder, Herbert Jefferson, stated:

I agree with the parties hereto that the cost of health insurance has increased to a point where providing adequate benefits places an undue burden upon the municipality attempting to provide such benefits. The concept of a partnership to bear the burden is acceptable to the parties.

Accordingly, it is concluded that the City demand that new hires contribute 25% of health insurance premiums is granted.

The RPA argument is that no other police departments in the five surrounding communities have a contributory plan. That argument was arduously debated by the Panel. The RPA presented the evidence summarized above that even those departments that require contributions from new hires terminate those contributions after four years at most (Assn. Exh. 8). The City presented evidence that other cities in Westchester County have already negotiated employee contributions to health insurance (City Exh. 23). This includes New Rochelle which pays 82% (employee pays 18%) of coverage for those hired after 1/1/83; Peekskill, where the employees must pick up the cost of increases over 8% (with some caveats); and Yonkers, where those hired after 7/1/91 pay 35% of the cost for family coverage and 50% of the cost of individual coverage (those hired before 7/1/91 pay a declining percentage of coverage, reaching 10% for family and 20% for individual after 72 months of employment). Mount Vernon still pays 100% of the coverage and White Plains requires a 25% contribution from new hires for the first five years (City Exh. 23). It should be noted that police officers in Mount Vernon are the lowest paid among Count Cities; White Plains is the next lowest (City Exh. 24).

Thus, there is sufficient evidence that the City would not be pioneering in this area to the extent asserted by the RPA and the

RPA argument is rejected.

On the other hand, there is no basis for requiring that officers hired prior to 1/1/90 should be required to contribute to their health insurance. This would be a provision beyond the community norm and would be unwarranted based on the present record. In addition, in the interests of equity, it will be ordered that the 25% contribution from those hired after 1/1/90 be suspended during the term of the retroactive contract that is the subject of this proceeding. The City has already made its payments to MEBCO for those years and, accordingly, such employee contributions will commence with the expiration of this contract on 12/31/91.

#### ANNUAL LEAVE

##### RPA Proposal:

ARTICLE SEVEN - "Annual Leave" - Subparagraph H shall be amended to read as follows:

Each employee in the unit shall continue to be entitled to the following -

- a. Fifteen (15) working days after employment for one year.
- b. Thirty (30) working days after employment for five years.

The contract currently provides for three (3) days after six months, twelve (12) days after one (1) year, twenty (20) days after five (5) years and twenty-five (25) days after ten (10) years.

##### RPA Position:

Police Officer Robert Vogel testified that the RPA was seeking this improvement in the vacation schedule to compensate the members for the stress of the job and the fact that they had

to work rotating shifts. As a matter of comparison, the RPA asserts that this would bring its members closer to the position of other police officers in the surrounding communities (Assn. Exh. 5).

**City Position:**

The City reiterates its position that its financial condition prevents it from making additional commitments to this group of employees. It asserts that the RPA vacation schedule is already better than that in other cities within the County City Exh. 32).

**Discussion:**

There was insufficient evidence presented to justify changing the existing vacation schedule.

**SICK LEAVE**

**RPA Proposal:**

The RPA is proposing unlimited sick leave for all regular, full time employees in the unit.

Currently, the contract provides for the accumulation of fifteen (15) sick days per year of service to a maximum of 365 days with limited reimbursement.

**RPA Position:**

Police Officer Thomas Walsh testified that the basic reason for this proposal is to allow officers who are injured off duty the time to recover fully without having to go on disability. He pointed to a couple of situations where an officer exhausted his sick leave and was forced to get others to cover or take vacation. In addition, he presented evidence that other police officers in surrounding communities already have unlimited sick leave, i.e., Harrison, Port Chester, the Village and Town of Mamaroneck and Rye

Brook (Assn. Exh. 4).

**City Position:**

The City believes that the current sick leave accumulation is more than adequate. It points out that the RPA requested unlimited sick leave from the Stark panel and it was rejected. The City submitted evidence that of the other cities in the County, only White Plains and Yonkers have unlimited sick leave (City Exh. 33). Finally, the City asserts that the fact that it reimburses officers for unused sick leave makes its sick leave provisions more valuable than in other communities without this payout.

**Discussion:**

Given the City's current financial state and the rejection of this demand by the Stark panel (on much the same evidence), there is insufficient ground to grant this demand at this time.

**DENTAL PLAN**

**City Proposal:**

The City is seeking to limit its contribution to \$360 per employee per year for dental coverage under a plan to be determined by the City.

**City Position:**

Although the City included this proposal as part of its response to the petition for Compulsory Interest Arbitration, it did not present any evidence or argument concerning the issue.

**Discussion:**

Since the City did not actively pursue this issue, there is no grounds for changing the existing provisions for dental plan contributions.

## PERSONAL LEAVE

### City Proposal:

The City is seeking to reduce the existing five (5) days per year of personal leave to four (4) days per year and to three (3) days per year for those hired after January 1, 1990.

### City Position:

Again, the City is attempting to reduce its costs because of its financial position. It points out that police officers in some surrounding communities have fewer than five days of personal leave (Harrison, 3 days; Town of Mamaroneck, 2 days; and New Rochelle, 3 days) (City Exh. 31). At the present time, no police officers in other cities in the County have five days (City Exh. 30).

### RPA Position:

The RPA position is that its overall package of salary and benefits is roughly comparable to that of other surrounding communities and to reduce this one benefit would not make sense. It would not result in a substantial savings and would only drag them down below the level of their fellow officers elsewhere. It points out that this demand was also rejected by the Stark Panel on much the same evidence.

### Discussion:

Given the other findings of this Panel and the rejection of this demand by the Stark panel (on much the same evidence), there is insufficient ground to grant this demand at this time.

Respectfully submitted,  
Tripartite Interest Arbitration Panel

July 22, 1992

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Randall M. Kelly  
Public Member and Chairman

July , 1992

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Alan C. Marin  
Employer Member

July , 1992

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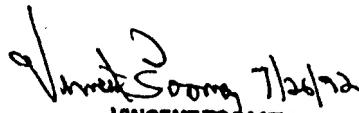
George DeVito  
Employee Organization Member

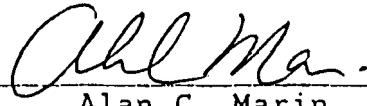
Respectfully submitted,  
Tripartite Interest Arbitration Panel

July 22, 1992

  
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Randall M. Kelly  
Public Member and Chairman

July 26, 1992

  
VINCENT TOOMEY  
NOTARY PUBLIC, State of New York  
No. 4870602  
Qualified in Nassau County  
Commission Expires August 13, 1992

  
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Alan C. Marin  
Employer Member

July , 1992

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George DeVito  
Employee Organization Member