

NEW YORK STATE EMPLOYMENT RELATIONS BOARD

In the matter of the interest  
arbitration between,

THE CITY OF BEACON POLICE DEPARTMENT,  
Employer,

-and-

THE PATROLMEN'S BENEVOLENT ASSOCIATION  
OF THE CITY OF BEACON,

Union.

**OPINION AND AWARD**

**PERB CASE NO.**

IA95-011  
M95-024

Before the following Public Arbitration Panel:

Chairperson: Michael S. Lewandowski  
Member: Anthony V. Solfaro  
Member: James W. Roemer Jr., Esq.

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED

FEB 09 1996

**CONCILIATION**

Appearances:

For the City: J. Jay Shapiro, Esq.  
For the PBA: Kenneth J. Franzblau, Esq.

On May 26, 1995, the Patrolmen's Benevolent Association of the City of Beacon ("PBA") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The City of Beacon ("City") and the PBA had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement between the parties that expired on January 1, 1995.

In accordance with Section 209.4 of the Civil Service Law, the

undersigned were designated as the Public Arbitration Panel members by letter dated June 23, 1995 from PERB. The panel met and conducted a hearing in the City of Beacon on September 13, 1995 and September 29, 1995. The parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning police departments that they considered to be comparable to that of the City. The Public Arbitration Panel met in executive session on December 14, 1995 and January 4, 1996 in the City of Albany, New York. The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Fair Employment Act. The final disposition of the issues is the result of the deliberations of the panel.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package

that currently exists for the bargaining unit members.

There was unanimous agreement that the duties performed and the responsibilities assumed by the members of the PBA are consistent with those performed by employees who hold the title of Police Officer and associated titles in the jurisdictions offered by the parties for consideration for comparison by the panel.

### ISSUES

The PBA advanced the following proposals during the arbitration. The proposal are summarized below.

1. Article I. Amend to include the PBA as representative in matters beyond the reference to negotiations and grievance administration.
2. Article I, C.1. Amend to eliminate 30 day "waiting period" for the deduction of the "agency shop fee."
3. Article V. Add provision that would permit members to purchase their service weapon for \$1.00 upon retirement.
4. Article VII. Increase base wages by 5.5% in each year of a new agreement commencing January 1, 1995. Provide a 5 ½% differential for members performing service as Detective, Youth Officer and/or D.A.R.E. Officer. Provide a 3% differential above base to Sergeants. Provide a 3% differential for service as Detective Sergeant. Provide a 3% above Detective Sergeant rate for service as Lieutenant and an additional 3% above Lieutenant to those who serve as Detective Lieutenant. Eliminate the first year Detective and Sergeant rate.

5. Article VII, E. Increase Detective standby rate.
6. Increase Longevity pay to a top amount of \$2,200.
7. Article XIII, Sick Leave, change references to \$200.00 to \$500.00.
8. Article XVI, Health Insurance. Amend to provide that the City pay 100% of premium for all unit members.
9. Article XVIII, Clothing Allowance. Increase from \$450.00 to \$600.00.
10. Article XXIII, Disciplinary Action. Allow members the option to appeal via Section 75 of the NYS Civil Service law or another process using a mutually selected hearing officer.
11. Article XXIV, Grievance Procedure. Amend procedure to streamline it by in-part providing a specified panel of arbitrators.
12. New Article, Bill of Rights. Provide for certain guarantees to employees who are interrogated as the result of a complaint made against them.

The City advanced the following proposals, summarized below.

1. Article II, Work Schedule. Eliminate paying Detectives holiday pay and base pay for holidays they do not work.
2. Article V, General Conditions. Eliminate provision that requires all working conditions not referred to in the Agreement to remain the same.
3. Article VI, New Classifications. Eliminate requirement that the City negotiate new classifications.
4. Article VII, Compensation. Provide language that would permit the City to select employees for out-of-title work without the requirement that the most senior employee be selected.

5. A. Vacations. Reduce vacation cap to 25 days from 30. the City proposes to buy back vacation from employees who exceed the 25 day cap.  
  
B. Vacations. Eliminate language in Article IX that restricts the City from denying time off unless two other employees are off-duty due to requested time off.
6. A. Article X, Holidays. Eliminate the super holiday provision.  
  
B. Holidays. Eliminate provision requiring the City to provide a holiday when 75 percent of the City's other employees are granted a holiday.  
  
C. Holidays. Eliminate provision to grant the employees birthday as a holiday.
7. Article XI, Personal Leave. Reduce personal leave days granted annually from 5 to 4.
8. Article XII, Bereavement Leave. Eliminate reference to aunt, uncle, niece or nephew as relatives whose death entitles employees to leave.
9. Article XIII, Sick Leave. Reduce the rate at which employees accumulate sick leave and reduce the amount of cash payment employees can receive for unused sick leave.
10. Article XVI, Hospitalization and Welfare Fund. Modify the language to permit the City to use a new carrier to achieve substantial savings in premiums.
11. Article XVI. Reduce City's retiree premium contribution rate to 50% until the retiree reaches age 55.
12. Article XIV. Amend to provide a General Municipal Law §207-c procedure.

13. Article XIX, Overtime. Modify to provide a distinction between call-ins and scheduled overtime. Eliminate requirement to pay four hour minimum for scheduled overtime.
14. Overtime. Provide the City the discretion to require officers already on duty to stay prior to canvassing off-duty officers.
15. Overtime. Permits the City to deny requests for compensatory time off regardless of number of employees that are already off-duty.
16. Article XXII, Training. Amend to permit the City to change shifts to reduce payment of premium pay when employees are scheduled for training.
17. Discipline. Add language to permit the City to suspend an employee without pay, in certain circumstances, pending the employees appeal of proposed discipline.
18. Article XXIV, Grievance Procedure. Substitute City Administrator for Mayor wherever Mayor is listed in the article.

#### DISCUSSION AND ANALYSIS

The PBA presented documentary evidence and one witness. The PBA's case regarding comparability and history of negotiations was presented to the panel in the form of numerous labor agreements affecting employees it deemed comparable to those employed by the City of Beacon. This public arbitration panel was thus charged with the task of reviewing the proposals against the documentary evidence presented.

The City presented documentary evidence and witnesses that essentially testified to why the City advanced the proposals it presented to the panel.

The Chair of the panel, with the concurrence of at least one other member concluded that, with the exception of base compensation, the evidence presented did not provide the panel with sufficient evidence to justify making the changes called for in the proposals. This finding does not convey that the panel found the proposals to be without merit. In fact, the panel recommends that the parties revisit the proposals they wish to continue to support in future bargaining. The ultimate meaning of this finding is to convey that without specific information about frequency of occurrence, projected cost figures (where possible), potential impact on the opposing party and City operations and information that would allow the panel to evaluate relative priority, the panel found that the evidence presented was not sufficient to allow the panel to reach a finding that the proposing party had met its burden of proving that the proposal should be accepted by the panel.

Based on the foregoing, all proposal, with the exception of base compensation, are rejected by the majority of the panel.

**COMPENSATION.** The PBA proposed increasing base compensation by 5% in each year of a two year agreement.

At the hearing, both parties presented evidence concerning the City's ability to fund the increases sought by the PBA. The PBA presented an expert witness who stated that his assessment of the City's financial condition, based on his review of the City's financial statements, is that the City is able to fund the increases the PBA seeks. The PBA expert testified that the City has a low property tax rate, large reserves and low debt. The City presented its Administrator as its witness, who stated that the City cannot afford the increases sought by the PBA. The City Administrator testified that since 1990, real property taxes rose thirty-two (32%) percent and that the City has a finite tax base and from which the City must fund increasing costs including the closure of a landfill and the construction of a new police/court facility. He further testified that the City's financial future is clouded by projections of the effect of reduced area employment.

After review of the above testimony and documentary evidence, the majority of the panel concluded that despite the real problems the City faces, the City has the ability to fund the increase in base salary specified later in this award.

Both the City and the PBA offered the panel agreements from police departments that they saw as comparable to the City of Beacon for consideration as the panel deliberated the merits of the salary proposals. The City proposed that the panel consider

the City of Kingston, the City of Middletown, the City of Newburgh, the City of Port Jervis and the City of Poughkeepsie as comparable employers. The PBA proposed that the panel consider the City of Poughkeepsie, the City of Newburgh, the Town of Poughkeepsie and other full-time police departments in Dutchess County as appropriate comparable employers.

Regardless of the comparables used, the majority of the panel found that Beacon currently compensates the members in this unit at or near the top of the list of comparable Employers. This comparison uses the last data (by year) available.<sup>1</sup> For example, using last available figures, Beacon paid the highest minimum salary as compared against the comparable employers considered. Beacon ranks near the top when compared with other proposed comparables.<sup>2</sup> Based on this analysis, the data does not present a case for increasing salaries beyond what is contained in this Award as would be the case if the data showed Beacon salaries to be lagging. In fact, the data tends to show Beacon employees to be competitively compensated.

Considering that the data shows that the City has the ability to fund raises in base salaries and the data also shows

---

<sup>1</sup>Because not all of the comparable employers have reached agreement in their negotiations for years that would cover the proposed term of this agreement, the panel had to rely on salary figures going back to 1993 in some cases.

<sup>2</sup>Including the City of Peekskill.

employees in this unit to be receiving base salaries which are competitive with those received by police employed by comparable employers, the majority of the panel found that the data shows it appropriate to raise salaries for members of this unit by 3% in each year of a two year Award. This figure recognizes the City's financial constraints, the economic condition the City operates in and balances those factors against its proven ability to fund a salary increase.

In the Matter of the Interest Arbitration between

THE CITY OF BEACON,

Dissenting Opinion

Employer,

-and-

PERB Case No.

IA95-011; M95-024

THE PATROLMEN'S BENEVOLENT  
ASSOCIATION OF THE CITY OF BEACON,

PBA,

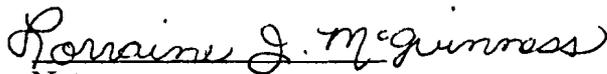
---

This dissenting opinion addresses the award as set forth on Page 12.

The PBA presented significant evidence through its financial expert witness, exhibits and post-hearing brief, that supported the Base Wage increases as proposed. The City had no wage proposal, and did not place any evidence before the panel at the arbitration hearings whatsoever, to refute the PBA's expert witness and the Base Wage increase sought. The conclusion reached by the majority of the panel is not warranted or justified, considering that the data shows the City has the ability to fund the raises proposed by the PBA, based on all of the foregoing.

With regard to other proposals submitted by the PBA, it is this panel member's opinion that economic issues such as, but not limited to, clothing allowance, longevity and Detective Stand-By pay, should have received increases, in a worst case scenario, to that of the Base Wage awarded, based on the PBA's expert witness, exhibits and post-hearing brief. There is no rationale as to why the non-economic issues were not awarded, based solely on the fact of no cost or impact to the City.

  
Anthony V. Solfaro  
Employee Panel Member

  
Notary

LORRAINE J. Mc GUINNESS  
Notary Public, State of New York  
Qualified in Orange County  
Reg. No. 4620194  
Commission Expires June 30, 1997

**AWARD**

1. Base wages shall be increased by 3% effective January 1, 1995 and the resultant wages shall be increased by 3% effective January 1, 1996.
  
2. The proposals advanced by the PBA and the City concerning changes to other terms and conditions of the collective bargaining agreement must be rejected based on a failure of the proposing party to provide evidence sufficient to prove that the proposals should be accepted.

AFFIRMATION

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

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award. The award may also contain concurring or dissenting opinions from panel members. Any such concurring or dissenting opinions are attached and made part of this award.

Date: 2/7/96

*Michael S. Lewandowski*  
 MICHAEL S. LEWANDOWSKI

Date: 2/5/96

*Anthony V. Solfaro*  
 ANTHONY V. SOLFARO

**DISSENTING**  
 OPINION ATTACHED.

Date: 2/6/96

*James W. Roemer, Jr.*  
 JAMES W. ROEMER, JR.

OPINION ATTACHED.

Signature stamped as authorized  
 by James W. Roemer, Jr.  
 Craig S. Ottman