

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration Between:
CITY OF MOUNT VERNON:

-Employer-

-and-

FINAL AND BINDING
OPINION AND AWARD OF
TRIPARTITE
ARBITRATION PANEL

POLICE ASSOCIATION OF MOUNT VERNON

-Union-

PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

RE: INTEREST ARBITRATION
Case No: IA 96-007; M 95-377

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SEP 12 1997

The Public Arbitration Panels members are:

RECONCILIATION

PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.
PUBLIC EMPLOYEE PANEL MEMBER: Richard P. Bunyan, Esq.¹
Lysaght, Lysaght, & Kramer P.C.
PUBLIC EMPLOYER PANEL MEMBER: Terence M. O'Neil, Esq.
Rains & Pogrebin, P.C.

Appearances:

For the City of Mount Vernon:

Ernest Stolzer, Esq.
Rains & Pogrebin, P.C.

For the Police Association of the City of Mount Vernon:

Keith I. Braunfotel, Esq.
Lysaght, Lysaght & Kramer. P.C.

Date:

September 8, 1997

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an interest arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the City of Mount Vernon ("City") and the Police Association of the City of Mount Vernon. ("Association")

¹The parties stipulated that Richard P. Bunyan would replace Linda M. Cronin as the Police Association's member on the Public Arbitration Panel. Additionally, Keith I. Braunfotel was designated as the PBA representative. (See PERB letter dated January 29, 1997).

Hearings were held in Mount Vernon, New York on January 21, and March 12, 1997 during which time both parties were represented and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. Executive sessions were held in Mount Vernon and Mineola, NY on April 24 and May 7, 1997 during which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the AWARD that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. Those issues presented by the parties that are not specifically addressed in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its 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 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period

exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND:

The City of Mount Vernon is located in southern Westchester County, N.Y., and has a population of approximately 70,000. The City also negotiates with four other bargaining units -- the Firefighters, the Deputy Chiefs, the CSEA and Local 456 of the IBT. The City has a full-time police department consisting of a Police Commissioner, Deputy Commissioner, a Police Chief, a Deputy Police Chief, 3 Captains, 7 Lieutenants, 18 Sergeants, 36 Detectives and 96 Patrol Officers. The bargaining unit consists of 175 Police Officers.

The parties engaged in collective bargaining for a successor agreement to an Interest Arbitration Award whose terms were incorporated into a Collective Bargaining Agreement covering January 1992 - December 1995 CBA. (JX #1) Collective negotiations did not result in a new Agreement and impasse was declared. The Association filed a Petition for Interest Arbitration on May 3, 1996. The City then filed its response.

ISSUES AT IMPASSE:

In their Interest Arbitration petition the PBA submitted the following issues to the panel:

- 1) Article III Wages - Stipends - Longevity
- 2) Article IV Overtime
- 3) Article VI Uniform Clothing Allowance
- 4) Article VII Leaves of Absence (Personal, Vacation, Terminal, and Sick leave)
- 5) Article VIII Health Insurance
- 6) Article XI Meal Periods
- 7) Article XII Grievance Machinery
- 8) New Article Past Practice
- 9) New Article Air-conditioned Vehicles
- 10) New Article Shift Differential
- 11) New Article Minimum Man Power
- 12) New Article Promotional Examinations
- 13) New Article Disciplinary Procedures
- 14) New Article Overtime Procedures
- 15) New Article Favored Nations Clause
- 16) New Article Jury Duty

The City submitted the following demands;

- 1) Article II Dues checkoff indemnification
- 2) Article VIII Health Insurance
- 3) Article IX Association Rights
- 4) New Article Subcontracting
- 5) Article VII Jury Duty

ISSUE ONE:

SALARY:

Proposal of the Police Association:

The Association is seeking salary increases of 9% for 1996 and 9% for 1997 and argues that based on the statutory criteria and cited comparables the City has the ability to fund that increase. With respect to the statutory criteria, the Union claims the City's arguments pertaining to ability to pay are inaccurate and that the testimony of their primary financial witness (Fennel) is controlling. The Union alleges that total fund balance as of December 31, 1995 was \$4,364,631 while the unreserved - unappropriated balance was \$2,346,613. (AX #5) The PBA asserts that within these amounts are funds adequate to support their salary demands.

With respect to White Plains and New Rochelle, using 1995 salaries, the Association notes that the total salary paid to new Mount Vernon Police Officers for the first five years of their career shows a disadvantage of \$22,014 (White Plains) and \$26,171 (New Rochelle) (AX #19) For the time period 1992 - 1995 First Grade Police Officers in Mount Vernon were disadvantaged with respect to their White Plains (\$6,519) and New Rochelle (\$12,681) counterparts. (AX #20) Similar comparisons were introduced into the record with respect to total compensation paid (AX #21) detective differential (AX #22), longevity payments (AX #23), clothing allowance (AX #24) night shift differential (AX #25) personal leave (AX #26), and sick leave (AX #27). The record is abundantly clear that the Cities of Mount Vernon, New Rochelle and White Plains, are the appropriate comparables to be use in the instant case.

The Association notes that the City received \$3,319,470 from the State in December of 1996 and contained within that amount are sufficient funds to pay their increase. (AX #12) The monies were added to the 1996 General Fund Balance which contained \$5.7 million at the close of FY 1995. The Association also noted that the City took \$1.5 million from the FY 95 fund balance to balance the 1997 budget. It is their contention that reliance on general fund surpluses to balance subsequent budgets and, to eventually reduce the tax rate, is not required by law and these decisions made by the Mayor and his staff could just have easily gone to fund additional employee salary adjustments. The Union alleges that the City cannot now cry poverty when they used surpluses to curry favor with the tax payers by reducing taxes in an attempt to circumvent an accurate analysis of the City's ability to pay.

In addition, the Association contends that the City's percentage of taxes collected (93.6%) compares favorably with the City of Yonkers (93.4%) and matches exactly the average for upstate New York Cities (AX 10). Also, the Association notes, that although Mount Vernon's percentage of taxes collected has declined between years 1991 through 1995 (2.5%), this compares favorably with New Rochelle (3.0%) for the same years and White Plains (4.4%) for years 1991 through 1994.

Position of the City:

The City argues that over the years they have paid police officers a salary that exceeds the rate of inflation and that economic relief is needed. While acknowledging historical comparability to White Plains and New Rochelle, they note that they have fallen behind these two cities with respect to taxes collected, external aid, and new economic growth. Additionally, while acknowledging substantial funding from the State, to use the "one shot" funds from New York State, 3.3 million, to support salaries is unwarranted and would lead to poor fiscal planning. (CX #9)

The City notes that for the period 1987 - 1997 they have lost 17.09 % of taxable assessed value for a decline of \$35,370,581. (CX #1) As reported in the 1997 budget, the tax value of decreased assessed values divided by the total 1997 tax levy alone resulted in an increase in the city tax rate of 3.2%. Thus the City argues that raises for employees, many of whom live outside of the City boundary. is unwarranted.

The testimony of City Comptroller Walker that no raises were included in the 1996 budget was credited.

The decline in tax collections was cited by the City as a factor in their overall ability to pay. In 1996 the city collected 93.44 percent of the tax levy. It is contended by the City that the percentage of taxes collected will decline if taxes increase thereby compounding the problem. (CX #3) The percentages of taxes collected in the City compares unfavorably with White Plains (99.1%) and New Rochelle (97.5%). CX #3; AX #10).

While tax collections decline, the tax rate has increased. Over the last ten years taxes have increased almost 110%. (CX #4) For 1997 the City tax rate increased some 7.5%. (CX #4) Meanwhile, State. Aid to the City has been drastically cut from 6.4 to \$4.2 million over the last 10 years. (CX #5) The City also compares unfavorably in Median Family and Per Capita income with White Plains New Rochelle:

	<u>Median Family Income</u>	<u>Per Capita</u>
Mount Vernon	\$41,120	\$15,835
White Plains	\$56,684	\$24,330
New Rochelle	\$55,258	\$20,906 (CX #13)

The City also argues that while its police may be comparatively low paid, so are its other unionized employees and its elected and appointed officials. (CX #12)

The City proposes a two-year salary package that provides for an eighteen month wage freeze and a modest increase for the remaining six months of a two-year award. They argue that they cannot afford a large wage settlement and there are serious deficiencies in the City in both tax delinquencies and anticipated tax revenues. That the City negotiates with other units further mandates restricting contract costs for the Police Association. Directly related to the salary issue is the City's demand for health care containment. The City demonstrated that police in New Rochelle (post 1/1/83 hires 18%) and in White Plains (post 1/1/90 hires 25% for 5 years) contribute towards their health insurance. (CX #4) The City argues that to fund any salary increases they must obtain relief in the health care area.

Discussion and Recommendation of the Panel:

The statutory criteria of comparability played a considerable role in fashioning this Award. The comparable Westchester County police department contracts, especially the agreed upon comparability of the cities of White Plains and New Rochelle, and Interest Arbitration Awards from neighboring jurisdictions, were instructive. With respect to White Plains and New Rochelle, many other Interest Arbitrators who have previously visited this jurisdiction have found comparability among the three. For example, in her 1993 Interest Arbitration Award for the City of Mount Vernon Police Department, Arbitrator Parker noted that;

*".. For purposes of Section 209.4. of the Civil Service Law, it is appropriate to make comparisons among Mount Vernon, New Rochelle, and White Plains. Certainly these cities have more in common with each other than they do with the small, affluent suburban communities that comprise most of Westchester County. In fact all three cities are quite similar with respect to size, number of police officers, police department budget, and salaries. For this reason, the Chairperson has relied heavily on Mount Vernon's standing relative to New Rochelle and White Plains in fashioning her award regarding salary increases."*²

The undersigned Panel Chairman is in agreement with her assessment of the relationships among these three jurisdictions and has utilized the salary adjustments in White Plains and New Rochelle in developing this Award.

Testimony and evidence presented by the Union was received into the record concerning "badge drain." (AX #30 - 34) This refers to a phenomenon whereby many Mount Vernon Police Officers leave their job after only a few years with the Department in order to secure a higher paying police officer position elsewhere in the region. Arbitrator Parker noted this "badge drain" problem in her 1993 Award and awarded a special "leather and gun allowance" of two percent over the life of the

²See Award of Dr. Joan Parker, PERB Case No: IA 92-002., p. 23, dated May 10, 1993.

CBA. While the turnover associated with "badge drain" continues, it appears that the rate of turnover has diminished over the last several years.

The position of the City concerning "badge drain" is that it is a fact of life that cannot be prevented and if individual officers leave the Department for other positions they cannot prevent it. Indeed the City suggested that officers who remain in Mount Vernon have a stronger commitment to the community and that their work and dedication are acknowledged.

In arriving at their Award the Panel was cognizant of this issue. The Panel Chairman is concerned over the long term impact of hiring new officers only to have them leave within their first few years of employment. While no specific monies were awarded to minimize "badge drain", the overall compensation package contained within this Award keeps pace with the schedule rate of neighboring communities. It is hoped that by keeping pace with the prevailing rate that further "badge drain" will be lessened.

The Panel Chairman was concerned that police officers receive the "going rate" yet was equally as attentive that the financial situation in Mt. Vernon was not as robust as that in White Plains and New Rochelle, the two most often cited comparables. The City claims their financial position is precarious and that economic and salary relief is mandated. They submit that they have fallen behind the agreed upon comparables and although they prefer to keep pace in terms of the rate, they cannot continue to pay the same amounts "in pocket." Accordingly great deference was afforded to keeping the unit members in the six percent range over the two year time period covered by this Award while at the same time not requiring the City to pay that full amount. The salary adjustments reflected herein will enable unit members to keep pace with the adjustments received in other communities, while at the same time enable the City to continue to rebuild its financial base without seriously jeopardizing its financial future.

With respect to the numerous other items demanded by the PBA, it should first be noted that the parties will shortly be back in negotiations and that many of these items can, at that time, be bargained. For the Panel to make determinations on these items is unwarranted at this time.

The Panel has considered all the cited statutory criteria and addresses first the issue of comparability. Geographical proximity is a critical element of comparability. The panel has considered the county comparables and notes that settlements and Awards in Westchester County average in three percent range and deemed that noteworthy. However, many of these Departments are smaller and generally have a different mission orientation than the City of Mount Vernon Police Department.

The testimony of Edward Fennell, on behalf of the Association, was credited in terms of computing "ability to pay". Fennell noted that Mount Vernon has a real property tax less than the average for all NY Cities. The taxing margin of \$22,544,111 represented 47.4% of the limit for FY 97. In terms of debt load, the city of Mount Vernon had exhausted only 7.94% of its constitutional debt limit making it among the lowest in the County. In terms of the comparables, New Rochelle had exhausted 31.5 % and White Plains 22.8% of their debt limits for FY 1994. Additionally, the reported total fund equity balance as of December 31, 1995 was \$4,364,361. Previous fund balances were \$2.35 million

for 1993 and \$3.63 million for 1994. (AX #5)

The Panel is aware that every financial increase awarded has some fiscal impact; however, the City's ability to fund the increases was demonstrated. There is no evidence on the record that the City will incur any financial difficulty in funding this Award. Furthermore, the Panel is cognizant of the significance of "relative ranking" and has tried to consider that element in fashioning this Award. While it is noteworthy that among the comparables the incremental differences paid top grade patrolman is minimal, this Award does strive to maintain that relative ranking.

The relative standings of the City or Mount Vernon as reflected in Moody's Municipal Credit Report dated March 1996 reflect the following. Mount Vernon is Rated "A1" although the report notes that Mount Vernon, . . . "has not kept pace with either the state or county, resulting in a modest decline in income." (AX# 10, p.4) New Rochelle received the same "A1" rating. White Plains is rated higher at "Aa1" (AX#10) While the exact position of relative wealth is difficult to assess they are useful in gaining a macroeconomic vantage point.

Salary increases to police officers in the County of Westchester were examined in reaching this Award. The adjustments for 1996 and 1997 for Patrolman First Grade for New Rochelle were 5.0 percent and 3.0 per cent respectively. White Plains received a 4.0 per cent adjustment for 1996 with no data available for 1997. (AX# 18) Top pay for Police officers in New Rochelle at the end of the calendar year 1997 is \$51,883. In White Plains a top grade P.O. earned \$49,918 as of January 1, 1997. In Mount Vernon a top grade P.O. earned \$47,401 as of July 1995. The increases awarded below keeps the Mount Vernon police officer competitive in his or her earnings with their New Rochelle and White Plains counterparts. During the course of the hearings it was learned that the City of New Rochelle entered into a four-year Stipulation of Agreement with the Police Association of New Rochelle, said agreement providing for four annual salary increases of three per cent each year. The term of the Agreement is from January 1, 1997 through December 31, 2000. (AX # 2a):

Yet while comparability with New Rochelle and White Plains was sought, it must be noted that Mount Vernon compares unfavorably with respect to median income. As reflected in the 1990 census Mt. Vernon was listed at \$41,120, New Rochelle at \$55,258 and White Plains at \$56,684. (CX #13)

The City also pointed out that its increases far exceeded those given in White Plains and New Rochelle and that there was a 2.25 "rollover" into 1996 based on the mid-year 1995 raise. The Association argues that any "rollover" effect into the 1996 budget was realized simply because the Association took significantly less dollars in-pocket because of split raises which were awarded in 1995. Additionally, the Association urges that based upon New Rochelle receiving a five (5%) per cent increase for 1996 and White Plains corresponding four (4%) percent salary increases for 1996, significant increases should be awarded for the two(2) year period in issue.

One of the tasks facing the Panel was to fashion a salary award that would preserve the officers relative salary rankings in an equity position while at the same time acknowledging the City's fiscal condition. The Panel also expressed a concern that this Award is consistent with the majority of completed 1996- 1997 comparable contracts. The Panel acquiesced that a split payment Award

would be the most effective way to implement these goals. A split salary Award acknowledges the concerns of the parties -- the need to preserve relative employee standing and equity for employees and a concern to provide the City a degree of fiscal relief in terms of a two-year split cost payout. It is the opinion of the Public Arbitration Panel that the salary Award herein is a fair and equitable.

Based upon the evidence and arguments presented the Public Arbitration Panel awards retroactive salary increases as follows. The Interest Arbitration Panel Awards as follows:

A) There shall be no adjustments to the salary guide for calendar year 1996.

B) Effective January 1, 1997, the salary guide shall be increased by two (2) percent.

C) Effective July 1, 1997, the salary guide shall be increased by four (4) percent.

ISSUE TWO:

ARTICLE IV:

OVERTIME:

The Union is seeking a change in overtime to mandate that Police Officers, Detectives and Sergeants receive time and one half for all overtime except the first hour of an extended tour which will continue to be compensated with compensatory time on a straight time basis. The present language in Article IV A, provides that

Police officers and Sergeants, but excluding Detectives, shall receive time and one-half for all overtime except the first hour of an extended tour which will be compensated for with compensatory time on a straight time basis. (JX #1)

Discussion and Recommendation of the Panel:

The record is mixed with respect to this issue; however, both parties indicated a willingness to explore it in detail outside of the bargaining process. Accordingly, it is awarded that a joint study committee consisting of representatives from the Association and the City be created to further explore this question and make recommendations to the Police Commissioner. .

Based upon the evidence and arguments presented, the Public Arbitration Panel is persuaded that further additional information is needed in this area. The Interest Arbitration Panel Awards as follows:

1) A joint study committee shall be created consisting of representatives from the Association and the City to make recommendations to the Police Commissioner concerning overtime.

Proposal of the City

The City is seeking relief in the Health Insurance area and argues that employees in this bargaining unit should contribute twenty-five percent toward their health care insurance premiums.

Position of the Police Association:

The Association rejects any health insurance contributions, and argues that the comparables are such that the City's proposals must be rejected. The Association seeks a contractual provision which would require the City to pay the full cost of health insurance for any unit member who retires after January 1, 1996.

Discussion and Recommendation of the Panel:

The issue of rising health care insurance costs remains one of the most difficult in labor contract negotiations. The well-documented increase in premiums has resulted in a plethora of attempts to reduce costs and to seek creative financial solutions to this ever complex problem. The parties in the instant dispute have presented meritorious arguments as to this issue, which while representing opposing points of view, focuses in on the same areas -- how can we best reduce the overall costs of health insurance while at the same time continue to maintain a certain quality benefit level? Solutions to the costs of health care insurance funding are complex and generally fall into attempts to increase co-payments and deductibles, limit access, and the elimination of dual family member coverage. The parties in the instant dispute have addressed this intricate area and have already included some of these concepts in their CBA.

In terms of comparability Police Officers in White Plains hired after January 1, 1990 contribute 25% of the premium cost until they complete five years of service. In New Rochelle, Police Officers hired after January 1, 1983 contribute 18% for family and individual coverage premium costs. In Mount Vernon, Police Officers on active duty do not contribute to the cost of health insurance. (CX #14) Thus while salaries are greater in the other two jurisdictions, combined with health care costs a sense of parallelism is achieved

Based upon the evidence and arguments presented, the Public Arbitration Panel is not persuaded that further changes in Health Care Insurance are warranted at this time. The Interest Arbitration Panel Awards as follows:

The Health Care proposals put forth by the City and the Police Association are rejected. The current Contractual Language shall continue.

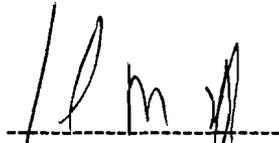
TERM OF AWARD

While this is an unanimous award, it is fair to say that both the City and Association Panel members had serious objections to the final figures. The Panel Chairman, however, persuaded both sides to support the Award and not to file any concurring opinions. Thus, while all concur in the Award, the rationale in support of the figures is that of the Chairman.

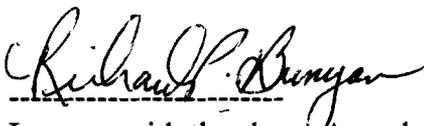
Due to the length of time that has elapsed from the termination date of the previous Collective Bargaining Agreement (December 31, 1995) it was suggested by the Panel Chairman that the parties consider a four-year successor agreement; however, unless otherwise authorized by both parties, the Public Arbitration Panel is limited by statute to a maximum two-year Award. (Section 209.4(v) of the Civil Service Law). No such authorization was forthcoming by the parties and accordingly, although the term of this Award shall be from January 1, 1996 through December 31, 1997, it is suggested by the Panel Chairman that the parties use this Award as the foundation to fashion a four-year successor Agreement.

PANEL NOTATION:

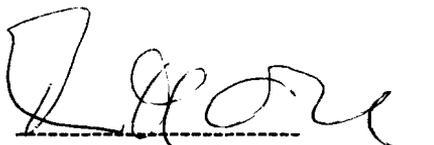
This Panel has made Awards on specific proposals as set out supra in this Arbitration Award. Any proposals not awarded or rejected in this Award are hereby rejected. All other provisions and language contained in the 1992 - 1995 City of Mount Vernon and Police Association Agreement are hereby continued, except as specifically modified in this Award.



Joel M. Douglas, Ph.D.
Public Panel Member & Chairman



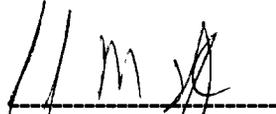
I concur with the above Award
Richard P. Bunyan, Esq.
Employee Panel Member



I concur with the above Award
Terence M. O'Neil, Esq.
Employer Panel Member

AFFIRMATION

PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK STATE, I AFFIRM THAT I HAVE EXECUTED THE FOREGOING AS AND FOR MY OPINION AND AWARD IN THIS MATTER.



**Joel M. Douglas, Ph.D.
Public Panel Member & Chairman**

PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK STATE, I AFFIRM THAT I HAVE EXECUTED THE FOREGOING AS AND FOR MY OPINION AND AWARD IN THIS MATTER.



**Richard P. Bunyan, Esq.
Employee Panel Member**

PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK STATE, I AFFIRM THAT I HAVE EXECUTED THE FOREGOING AS AND FOR MY OPINION AND AWARD IN THIS MATTER.



**Terence M. O'Neil, Esq.
Employer Panel Member**

