

In The Matter of The Interest Arbitration Between
THE POLICEMEN'S BENEVOLENT ASSOCIATION
OF THE TOWN OF HAVERSTRAW

AND

THE TOWN OF HAVERSTRAW

PERB Case No. IA2005-023; M005-004

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRPERSON:

Peter A. Prosper
P. O. Box 5436
Clifton Park, New York 12065

PUBLIC EMPLOYEE PANEL MEMBER:

Raymond G. Kruse, Esq.
865 North Main Street
Spring Valley, NY 10977

PUBLIC EMPLOYER PANEL MEMBER:

Ronald A. Longo, Esq.
Keane & Beane, P.C.
445 Hamilton Avenue
White Plains, NY 10601

APPEARANCES: For the Policemen's Benevolent Association of the Town of Haverstraw

John Lawless, President
P.O. Box 345
Garnerville, NY 10923

For the Town of Haverstraw

Lance H. Klein, Esq.
Keane & Beane, PC
445 Hamilton Avenue
White Plains, NY 10601

NYSPUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

DEC 08 2006

CONCILIATION

Pursuant to the provisions of Civil Service Law, Section 209.4, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board, designated the undersigned on November 7, 2005, as the Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute between the Town of Haverstraw ("Town") and the Policemen's Benevolent Association of the Town of Haverstraw ("Association" or "Union"). The prior Interest Arbitration Award covered the period from January 1, 2003 through December 31, 2004. Although the Award expired, it remains in full force and effect pending this Award.

The Town of Haverstraw is situated in Rockland County and has a population of 33,811 and covers a geographic area of 22.4 square miles. The Town Police Department has 62 employees (Patrol Officers, Detectives, Sergeants) excluding Lieutenants and the Chief. The Village of Haverstraw eliminated its police force on January 1, 2006, and the Town assumed responsibility for policing services for the Village. The twenty-two then-current members of the Village police force were integrated into the Town police force. The Department operates twenty-four hours per day on a three shift basis.

The parties commenced negotiations for a successor agreement and met on several occasions, but were unable to reach agreement. The New York State Public Employment Relations Board assigned Philip Maier as mediator but he was unable to resolve the matter. The Association filed a Petition for Compulsory Interest Arbitration on August 29, 2005. The Town filed its response on September 7, 2005. The Interest Arbitration Panel was appointed by PERB on November 7, 2005. Hearings were held in Haverstraw, New York on February 28 and May 8, 2006, at which all parties were provided opportunity to introduce evidence, present testimony, summon witnesses, cross-examine witnesses, and otherwise support their respective positions on the outstanding issues. The hearing had a transcribed record which was the official record of proceeding. The parties filed post hearing briefs which were received in a timely manner.

All issues which have attendant support submitted by each party were carefully considered, as well as the responses by the opposing party. The Public Arbitration Panel met in executive session

on July 12, and September 5, 2006. The parties submitted further documentation and argument on the Mirant issue (see below). At the executive sessions and in telephone conversations subsequently, the Panel deliberated on each of the outstanding issues, carefully and fully considering all the data, exhibits, briefs and testimony of the sworn witnesses who appeared on behalf of both parties. The Panel determined that because the parties were about to enter negotiations for a successor agreement, the Interest Arbitration Award would be restricted to an examination and finding on the sole issue of Salary. The Panel concluded that since negotiations on a successor agreement were about to commence, all parties concerned would be better served by having the remaining issues negotiated by the parties rather than having the Panel impose terms and conditions at this time. The results of those deliberations are contained in this OPINION AND AWARD, which 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 contained in this OPINION AND AWARD were also carefully considered by the Public Arbitration Panel, but are remanded back to the parties for further negotiation, and therefore no Award is made on those matters. The discussion below presents the positions of the parties and the Panel's analysis and conclusion. The Public Arbitration Panel made its judgment concerning what would provide a just and reasonable result for all parties.

In arriving at the determination contained herein, the Public Arbitration Panel has considered the following statutory guidelines with which it was charged by Section 209.4:

(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. 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.

THE SALARY ISSUE

In arriving at a just and reasonable determination of wage rates, the Panel is required by the legislation to evaluate, among other factors, the wages paid in comparable jurisdictions and the employer's ability to pay a wage increase.

The Police Benevolent Association asks for a six and-a-half (6.5%) percent increase in salaries for 2005 and a six and-a-half (6.5%) percent increase in salaries for 2006. The Town has proposed a zero increase in both years.

WAGES PAID IN COMPARABLE JURISDICTIONS

Position of the Parties. The Association offers the towns and villages within Rockland County as the appropriate comparable jurisdictions. ~~They include the Town of Clarkstown, the Village of Haverstraw, the Town of Orangetown, the Village of Piermont, the Town of Ramapo, the Village of South Nyack, the Village of Grandview, the Village of Spring Valley, the Town of Stony Point and the Village of Suffern.~~

The Association argues that the towns and villages within Rockland County have traditionally been the units which the parties used in comparing various economic and non-economic

factors required by Section 209 of the Taylor Law in assessing relative potential salary and benefits increases. The Association argues that the close proximity of the towns and villages to each other situated in the second smallest county in New York State creates a single labor market from which potential officers are recruited. The Association also points to prior interest arbitration awards in which the Public Arbitration Panel concluded that the appropriate area for comparison is Rockland County. The Association argues that the Town's choice of Towns in Orange and Westchester Counties is inappropriate.

The Town suggests that the only comparable community within the County of Rockland is the Town of Stony Point; other Towns in Rockland County are simply not comparable. The Town argues that Haverstraw is quite different from the Town of Clarkstown, the Town of Ramapo and the Town of Orangetown. The Town does not consider villages to be comparable communities.

The Town forwards the following towns as comparable: Carmel, Yorktown Heights, Eastchester, Harrison, Mamaroneck, Mount Pleasant, Newburgh, Warwick and Ossining.

The Town states that the Town of Carmel which is located in Putnam County closely parallels Haverstraw's non-economic factors. Carmel's population is 33,006, almost identical to that of Haverstraw, its area is 36.1 square miles, its police force includes thirty-two officers. Both Haverstraw and Carmel are considered suburbs of New York City.

Likewise, the Town draws similarities between it and the other towns that it uses to compare, such as population, geographic area and the number of police officers.

The Town also asserts that its choices of comparable communities are comparable to Haverstraw relative to economic factors. It compares Haverstraw to the other communities in property tax, budget and tax base.

The Town rejects the Association's submission of comparable communities, arguing that just because they are in the same county is not sufficient. The Town argues that because a practice has been followed in the past does not automatically mean that it must be followed in the future. The Town point out that Haverstraw's population is not comparable to the other four Rockland County

towns including Clarkstown, Orangetown, Ramapo and Stony Point. Nor is it comparable to the villages within the County. The Town argues that the other economic and non-economic factors such as number of police officers, geographic size, per capita tax base, median income, median home values, poverty status and unemployment rate are also not sufficiently similar to compare the Town of Haverstraw to other towns and villages within the County.

Discussion

In earlier Interest Arbitration Awards in 1999 and 2004, arbitrators Joel Douglas and Howard Edelman held that the position of the Association was more tenable than that of the Town, that is, the appropriate comparable communities are the communities within Rockland County.

Arbitrator Douglas held that "Rockland County police departments by custom and longstanding practice have utilize County comparability as a measure of comparison and have not looked to Westchester, Putnam or Orange County..." He further stated, "...for the arbitrator to upset over twenty-five years of bargaining history through an interest arbitration award and unilaterally revise comparability standards is unwarranted at this time." In reference to Arbitrator Douglas' statement, Arbitrator Edelman stated that he did not suggest that such a finding may never be modified, but that "to upset such a longstanding practice requires new evidence warranting a change. The record before me does not contain such evidence."

The majority of the Panel believes that simply because the comparability standard has not changed in over thirty years it should not be modified. But, Arbitrator Edelman was correct in standing that such a modification should be made by evidence warranting a change. Such evidence would be dramatic changes in the standards suggested by the Town: Population, geographic area, the number of police officers, property tax rates, budget and the tax base. The Town presents data that shows relative comparability among the various towns that it suggests are comparable to Haverstraw, but has not demonstrated any significant changes in those variables to persuade a majority of the Panel to move to its position.

One of the important variables that must be considered is the relative labor market. Whether private or public sector, employers know from where their employees come and where they go, and know that their wages and/or benefits must be in line with their competitors. When a municipality finds members of its police force moving to other municipalities in the area, or police officers moving to the municipality, such movement indicates a common labor market area. It is assumed that in the past the parties have agreed that Rockland County is a local labor market area, and that municipalities in Westchester, Orange and Putnam counties are not. The Town has not presented data to lead to a conclusion about a local labor market area. Given that fact, and the facts relative to the economic and non-economic factors stated above, it must be concluded that the appropriate communities for comparison are those presented by the Association.

ABILITY TO PAY AND THE WELFARE AND INTEREST OF THE PUBLIC

The overwhelming emphasis placed by both parties on the ability of the Town to pay any wage increases is the situation with the Mirant issue which has impacted the Town budget and residents' tax bills. For several years the Bowline and Lovitt plants of the Mirant Corporation have been fighting the assessments placed on them by the towns of Haverstraw and Stony Point. The Bowline plant is in the Town of Haverstraw. The Corporation filed for bankruptcy and the issue of tax payments was placed in the hands of the courts. The impact on the Town and school districts was uncertain, and many dire predictions of the impact were announced in newspaper articles. Predictions of property tax increases of thirty-three percent and higher were predicted.

The Town states that it will be required to bond between 31 and 35 million dollars to cover a lawsuit that alleges that the Town over assessed the Haverstraw Bowline plant. The Town avers that the Mirant lawsuits and the company's failure to pay its current taxes have created a skyrocketing tax crisis for the Town. That will cause a substantial strain on the financial condition of the Town. The Town also states that real property taxes have increased between twenty-three and twenty-six percent since 2002. In addition, school

tax rates have increased by 15.5% in 2001-02, 24.06% in 2003-04, and will increase by 46% in 2005-06.

The Association points out that all the speculation about huge increases in taxes as a result of the Mirant decision have been just that—speculation. It states that on September 22, 2006, the Town Board, headed by Howard Phillips, announced that because New York State Supreme Court Judge Dickerson rendered his decision, the Town will be losing more than 600 million dollars in assessments from the Bowline Plant and the court-ordered refund of 28 million dollars to the Mirant Corporation. The Board also stated in its letter that because of the reassessment some residential homes would see a decrease in taxes, some will stay the same, while others will see an increase. The Board also stated that there would be no increase in Town taxes for 2008.

The Association argues that the financial impact on the Town has been grossly overstated, and that the Town has the ability to pay the asked-for wage increases. It points to the savings realized from the decision of the courts, the amounts of money the Town has already set aside to meet the court-determined financial obligations and the gains from the Letchworth Village procedures.

Discussion

The data reveal that for the years 2004 and 2005 the Town has had certain financial problems. In addition, because of the uncertainty regarding both the New York State court and the reassessment and the Texas court in the bankruptcy, the Town set aside amounts of money to attempt to cover some of the anticipated losses. That money was raised through taxation. Granted that much of that money will be recovered, but it will affect the financial situation in 2007 and beyond, not the years 2005 and 2006. In a newspaper article dated October 5, 2006, Supervisor Phillips stated that the 2007 budget would reduce spending and cut taxes. He stated that the Mirant tax challenge will not impact the 2007 budget because the Town has already set aside a contingency fund for that purpose. The Association argues that because the Mirant Corporation was over-assessed in the

past, taxes paid by residents were less than they would have been if the Mirant assessment was correct. That is a valid point made by the Association, and will be taken into consideration in the Award below.

In comparing the salary levels between police officers in the Town of Haverstraw and other jurisdictions in Rockland County, it is apparent that Haverstraw police officers are paid a lower salary than those in other jurisdictions. The Town's choices of comparable communities show that Haverstraw police officers are competitive with police officers in those communities and, in some cases, wages exceed those officers; for example, in the Town of Greenburgh the average salary of police officers is \$78,838, while Haverstraw police officer receive, on average, \$84,678. It is noted that Greenburgh's population, police force, median home value, family income and other demographic factors are better than those in Haverstraw. Other data reveal that salaries of police officers in the Town of Haverstraw lag behind those of police officers in other jurisdictions in Rockland County.

The data also show that average salary increases for towns in Rockland County for the year 2004-05 was 3.56 percent, and for 2006 salary increases for towns and villages in Rockland County average about 3.75 percent.

It is acknowledged that for the years covered by the Interest Arbitration Award (the years 2004-2006), residents of the Town have had their Town taxes increased, and the financial condition of the Town has been less than sterling. Under those circumstances, police in the Town must be moderate in their request for wage increases. Considering the financial situation of the Town, the ~~burden on taxpayers, and general financial conditions, wages of the members of the Police~~ Benevolent Association should have a wage adjustment sufficient to prevent complete erosion of their spendable income so that they are in the same relative position as other residents of the Town. If inflation rises by five percent, in order to have income to purchase the same bundle of goods and services, an individual must receive a five percent increase in income. A lesser increase would reduce his/her ability to purchase those goods and services.

The standard measure of inflation is the Consumer Price Index. Taking inflation into account, an individual must earn sufficient income to offset any increase in the Consumer Price Index, if his/her "real income" is to remain constant. The appropriate Consumer Price Index for the Rockland County area is the Index for New York-Northeastern New Jersey, as determined by the Bureau of Labor Statistics. For 2005, that Consumer Price Index increase was 3.9%, and for 2006 the Consumer Price Index increase was 4.0%. Adjusting those data to partially offset the rise in inflation, the appropriate wage increase for members of the Police Benevolent Association for the two years of this Award is stated below.

The financial condition of the Town warrants providing a modest increase in salaries for police officers. The improved financial condition of the Towns finances, as related by Supervisor Phillips, will provide the Police Benevolent Association a better bargaining position during its negotiations for a 2007 collective bargaining Agreement.

Therefore, considering all the data, evidence, arguments and submissions of the parties, and after due deliberation, the Panel makes the following

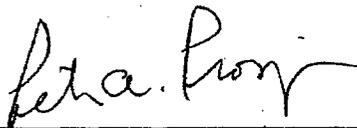
AWARD

The salary schedule shall reflect a two (2.0%) percent increase retroactive to January 1, 2005.

The salary schedule shall reflect a two (2.0%) percent increase retroactive to July 1, 2005.

The salary schedule shall reflect a three (3.0%) percent increase retroactive to January 1, 2006.

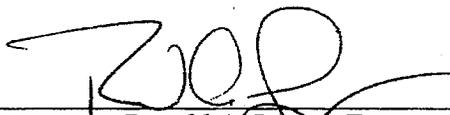
Date: 12/7/06



Peter A. Prosper
Public Panel Member and Chair

I (concur) (do not concur) with the above Award

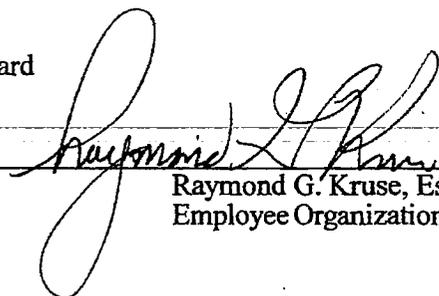
Date: Nov. 30 2006



Ronald A. Longo, Esq.
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: Nov 18, 2006

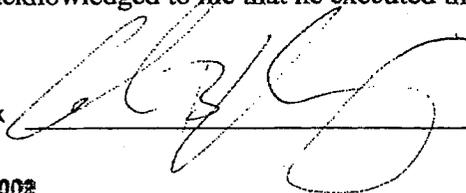


Raymond G. Kruse, Esq.
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF Westchester) SS:

On this 7 day of December, 2006, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

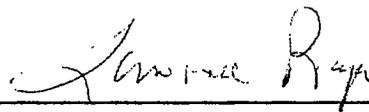
ALEXANDER B. ZABAWSKY
Notary Public, State of New York
No. 01ZA6125950
Qualified in Albany County
My Commission Expires April 25, 2008



STATE OF NEW YORK)
COUNTY OF Westchester) SS:

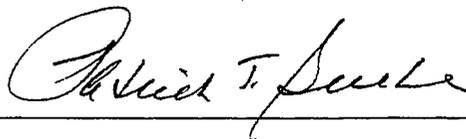
On this 30th day of November, 2006, before me personally came and appeared Ronald A. Longo, Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LAWRENCE PRAGA
Notary Public, State of New York
No. 4666200
Qualified in Westchester County
Commission Expires December 31, 2006



STATE OF NEW YORK)
COUNTY OF Rockland) SS:

On this 18th day of November, 2006 before me personally came and appeared Raymond G. Kruse, Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



PATRICK T. BURKE
Notary Public, State of New York
No. 4607159
Qualified in Rockland County
Commission Expires December 31, 12 2010

-----x
In the Matter of the Interest Arbitration Between
THE POLICEMEN'S BENEVOLENT ASSOCIATION
OF THE TOWN OF HAVERSTRAW

-and-

THE TOWN OF HAVERSTRAW
PERB Case No. IA2005-023; M005-004
-----x

DISSENTING OPINION
REGARDING AWARD OF
INTEREST ARBITRATION
PANEL

The following constitutes the dissenting opinion of the duly appointed Public Employer Panel Member in the above-captioned matter.

The Award as rendered by the majority of the Panel is as follows:

“The salary schedule shall reflect the two (2%) percent increase retro active to January 1, 2005. The salary schedule shall reflect the two (2%) percent increase retro active to July 1, 2005. The salary schedule shall reflect a three (3%) percent increase retro active to January 1, 2006.”

The undersigned feels strongly that the Award as issued by the majority of the Panel ignores that portion of the Act which requires the Panel to take into consideration the interest and welfare of the public and the financial ability of the public employer to pay. See Civil Service Law §209 subdivision 4(v)(b). It is also respectfully submitted that the Panel majority erred in its determination as to what municipalities should be taken into account with regard to the analysis of similar working conditions with other employees generally in the public and private employment in comparable communities. See Civil Service Law §209 subdivision 4(v)(a).

While the undersigned respects the efforts made by the majority of the Panel to attempt to apply the standards as set forth in the Statute, it is respectfully submitted that the majority the decision fails to do so. The majority simply relies upon prior Awards as the basis to what communities constitute comparables. It is respectfully submitted that to do so abrogates the obligation of the Panel to review the Record to determine numerous factors, demographic and otherwise. The majority has failed to meet its obligation in this regard. The majority suggests that one important variable is the relative labor market. Yet, the Panel includes comparables

provided by the PBA (i.e., villages) that were not considered by prior panels with no apparent basis as to why.

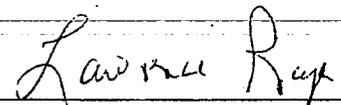
The primary issue in this proceeding, in the opinion of the undersigned, is the Town's ability to pay. The Record is replete with the impact of the decrease in the tax base within the Town. The Record is also filled with a pattern of double digit tax increases for Town taxpayers, be it from Town tax bills or School District tax bills. Yet, the burden placed upon the taxpayers of this municipality is not adequately taken into account by the majority with regard to the award of seven (7%) percent salary increases compounded over two (2) years. While the majority decision acknowledges that the years covered by the interest arbitration award resulted in high tax increases it, in essence, provides the bargaining unit with a "going rate" increase in salaries for unit personnel (i.e., 7.0% increase in Town of Haverstraw vs. the majority's determination that the average annual increase in Rockland County is 7.3%). The Panel uses inflation as a key determinant based upon the suggestion that if inflation rises an individual must have a similar increase in salary in order to purchase the same bundle of goods. However, this argument ignores the fact that the taxpayers who have to pay the increases awarded have been adversely impacted far in excess of inflation by the tax increases generated in no small part by the salaries that are at issue in the Award.

Based upon the above I respectfully dissent from the award and do not concur with its results.



Ronald A. Longo
Public Employer Panel Member

Sworn to before me this
30th day of November, 2006



Notary Public

LAWRENCE PRAGA
Notary Public, State of New York
No. 4666200
Qualified in Westchester County
Commission Expires December 31, 2006