

CA-0078

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Impasse between

CITY OF WHITE PLAINS

and

WHITE PLAINS P.B.A.

FINAL AND BINDING OPINION AND AWARD
OF TRIPARTITE PUBLIC ARBITRATION PANEL
PURSUANT TO SECTION 209.4 OF THE
CIVIL SERVICE LAW

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRMAN:

Dr. Theodore H. Lang (Prof.)
Baruch College
City University
17 Lexington Avenue
New York, NY 10010

EMPLOYER PANEL MEMBER:

Mr. Bertrand B. Pogrebin
210 Old Country Road
Mineola, New York

EMPLOYEE ORGANIZATION PANEL MEMBER:

Mr. John Harold
1 Hawthorne Rd.
Bronxville, NY 10708

The New York State Public Employment Relations Board, on or about April 22, 1976, invoked the provisions of the Civil Service Law, Section 209.4 and designated the undersigned as the Public Arbitration Panel for the purpose of making a just and reasonable determination of this dispute. This Opinion and Award was prepared by the Public Panel Member and Chairman of the Panel, Prof. Theodore H. Lang of Baruch College.

HISTORY OF THE IMPASSE

This impasse exists between the City of White Plains and the Police Benevolent Association of the City of White Plains, as bargaining agent for the Police Department of that City. The calendar year for the parties herein runs from July 1, 1975 to June 30, 1976. The prior contract expired with no agreement having been reached on a new contract. Negotiations for a new agreement commenced between the parties in September of 1975 with an impasse resulting. Med sessions through P.E.R.B. were held and were unfruitful. On August 18, 1975 Mr. Erwin M. Blant of 101 Westchester Avenue, Port Chester, New York was appointed as Fact-Finder by the Hon. Harold R. Newman, Director of Conciliation of the New York State Public Employment Relations Board, pursuant to Section 209 of the Civil Service Law of the State of New York. Fact-Finding hearings were conducted in the City of White Plains on September 18, October 1, October 17 and October 24, 1975. Mr. Blant reports:

At the conclusion of those hearings briefs were to be submitted by the parties herein thereby completely submitting both sides to the issues. The final briefs were received by the Fact Finder on about December 19, 1975. The issues were numerous and lengthy and each of them will be decided in this fact finding opinion. There was an extremely enormous amount of exhibits

submitted in support of each of the issues by both sides which have been read and digested by the Fact Finder in writing this opinion.

Mr. Blant issued his report on January 16, 1976. Unfortunately, neither a settlement of the impasse, nor a settlement of any of the issues involved in the impasse, resulted from negotiations between the parties following the Fact-Finder's Report, and, finally, Section 209.4 of the Civil Service Law was invoked and a Public Arbitration Panel named as stated above. Hearings were conducted by the Panel on May 28, 1976, June 11 and 24, 1976 and September 21, 1976 at which the City of White Plains, represented by Terence M. O'Neil and Joel Golovensky of Rains, Pogrebin and Scher, and the P.B.A. of the City of White Plains, represented by Brian M. Lucyk of the office of John R. Harold, Attorney for the Association, had ample and full opportunity to present exhibits, testimony, briefs, reply briefs and addenda. There was no official transcript of the hearings, the parties having stipulated, "...that the record of this hearing shall be constituted solely of the exhibits, testimony, briefs, reply briefs and addenda supplied by the parties and that the parties affirm that they do not wish a transcript." There were five joint exhibits, over 70 City exhibits, and approximately 40 Association exhibits. Many of the exhibits, although given a single number had numerous sub-parts, notably one Association exhibit consisting of 94 agreements and fact-finding reports.

The Panel met in private sessions to discuss this arbitration on September 17, 21 and 27.

The issues for arbitration are as follows: Old Contract Extended Except as Amended; Duration of Contract; Salary; Detective

Salaries; Longevity; Muster Pay; Special Pay For Special Duties; Shift Differential; Stand By Time At Straight Time; Meal Allowance Out of Title Work; Meal Period; Work Schedule; Premium Time; Holidays; Vacations; Personal Leave; Sick Leave; Bereavement Leave; Terminal Leave; Welfare Benefits; Pension; Educational Allowance; Uniforms; Association Rights; Hearings; Grievance Procedure; Working Conditions; Detectives Tenure; Parking; Two Man Patrol Cars; Specially Declared Holiday or Designated Holidays not Included in the Contract; Residency Requirements; Past Practice Clause; Reopener; Veteran's Service Credits and Pay Lag.

All of the data received, all briefs, statistical data, exhibits and testimony have been carefully considered. After due deliberation, this Opinion and Award are rendered. The items are not necessarily treated in the order of listing.

Salaries

The salary for the top grade patrolman for the past contract as of 6/30/75 is \$14,010. The Association demands are complex and we single out for discussion the question of the basic salary schedule. The Association, according to its "Petition for Compulsory Interest Arbitration," seeks a \$3000 increase across-the-board and a cost-of-living escalator clause. The City offers a \$500 across-the-board increase. The Fact-Finder recommends effective July 1, 1975, an 8 1/2% salary increase, or an increase of \$1,190.85 for the top grade patrolman, after reviewing the evidence and the arguments of the parties. The Panel Chairman notes the full data cited by the Fact-Finder and also the following:

.The Consumer Price Index percentage change for the New York Area from the 1974 month to the same month in 1975, for the months most relevant to a July 1975 salary

determination, are the following:

March	8.4
April	8.5
May	7.8
June	7.4
July	7.8

.However, in most of the cited evidence, police receive increases twice a year, rather than once a year.

.A number of Towns and Villages paying police salaries greater than White Plains were cited by the Association.

.Mt. Vernon and New Rochelle are most comparable to White Plains in size of population, in size of police force and in governmental status, all three being cities. According to evidence presented, White Plains paid slightly more than New Rochelle and Mt. Vernon for the top grade patrolman as of June 30, 1975. Mt. Vernon gave a salary increase of \$800 on July 1, 1975 and has under consideration a fact-finder's report recommending a further increase on 1/1/76 of \$500, or a total of \$1300 within the time frame here discussed, and a further increase of \$600 on 7/1/76 which is beyond the term of the contract period here under consideration for White Plains. New Rochelle gave a salary increase of \$780 on 7/1/75, and has a fact-finder's report under consideration granting no increase on 1/1/76, but an \$890 increase on 7/1/76. (It is noted that police in New Rochelle work 35.5 hours per week, more than 3 hours fewer than White Plains Police average work week.)

.The City of White Plains is in good financial condition and able to pay reasonable increases in salaries of the police force.

Taking the entire record into consideration, the following

award is made:

1. The top grade patrolman shall receive a \$900 increase from \$14,010 to \$14,910 on 7/1/75 and a \$300 increase to \$15,210 on 1/1/76.
2. Other patrolmen and other ranks in the police force and in the bargaining unit shall receive a percentage increase on 7/1/75 of 6.4% over their June 30, 1975 salaries; and a percentage increase on 1/1/76 of 2.0% over their December 31, 1975 salaries. All salaries resulting from this provision shall be rounded to the nearest \$5.
3. In regard to all other salary demands, except as specifically stated in this Opinion, the Fact-Finder's recommendations are accepted and are incorporated by reference as part of this binding Award.

Premium Time

The Association formally demands time and one half pay for all time before and after duty, for all call back time with a minimum of four hours, for all voluntary overtime and for off duty professional services. The City resists this demand. The Chairman of the Panel ~~expressed concern over the Fact-Finder's Report and Recommendations~~ ^{awards that there be no change in practice or contract language} in regard to premium time. ~~in view of the fact that the Fact-Finder's Report and Recommendations~~

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Holidays

At present, the City of White Plains provides payment to police for eleven (11) holidays. The Association demands at least one new or additional holiday. The City wishes to retain the present contractual provision. Citing that eleven public employers of police in Westchester County grant 12 or more holidays to police, the Fact-Finder recommended one additional holiday of pay thus increasing the number of holidays for which the police are paid from eleven to twelve. A careful review of the facts indicates that of 42 police jurisdictions in Westchester County, the median grant is eleven holidays. It is also notable that of the cities in Westchester most comparable to the City of White Plains, namely Mt. Vernon, New Rochelle and Yonkers, all three grant pay for only eleven holidays. Accordingly, it is awarded that the holiday

provisions of the 1973-75 Agreement be carried into 1975-76 unchanged.

Personal Leave

At present, police in White Plains receive one day each year for personal leave. This is not cumulative, if not used, and no reasons need be given by a policeman taking such leave. The Association demands six for the year, cumulative if not used and with "no reason." The City wishes to retain the one day, but to require "reasons." Citing comparative data, the Fact-Finder recommended an increase from one to two days, without otherwise changing the pertinent provisions of the Agreement. A careful review of the facts indicates that 25 of 42 police forces in Westchester County, including the City of New Rochelle, grant 3 to 7 personal days. Based upon this comparative data, it is awarded that for the 1975-1976 Year, the pertinent paragraph in the 1973-75 Agreement relating to personal leave be changed by deleting one day and substituting three days without any other change.

Past Practice Clause

Article XXXIII Paragraph 5 of the 1973-75 Agreement reads as follows:

It is understood and agreed that all employees' rights and benefits which are presently enjoyed but not specifically covered in this Agreement shall be maintained.

The City aggressively seeks to remove this clause, and the Association requests a new past practice clause. The Fact-Finder recommended that there be no change in the above-cited provision.

No evidence or argument persuasive on the Panel Chairman was presented by either party at the hearings. At the private sessions of the Panel, a number of "problems" and "claimed inequities" relating to disability pay were raised by the City's representative. There is no basis in the record to rule on these claims. Without commenting on the merits of the positions of the parties, the Chairman points out that these are matters properly open to bargaining between the parties in future negotiations. Accordingly, it is awarded that, for 1975-76, there be no change in the above quoted "past practices" clause.

Pay Lag

The Fact-Finder in his Report stated:

The pay lag has been a controversial issue between the parties herein. The same was discussed at the hearings but not included in the briefs of the Association but included in the City's briefs. The Fact Finder, having been informed that this same issue has been decided in an arbitration hearing and award made by Jonas Silver, Arbitrator dated November 17, 1975 involving these parties who are now bound by that award, will render no decision involving that award. The parties must exercise the rights and remedies under that award as they see it.

There is nothing in the Arbitrator's Award which makes it inappropriate for the City to seek through collective bargaining to institute a "pay lag" system rather than a "current" payroll system. However, the Panel Chairman is not persuaded by the evidence or argument to change a long-standing past practice as part of this Award.

Other Items

The Panel spent a great deal of time in reviewing all the other items open between the parties. In regard to these items, there was no new or old evidence or argument substantial or persuasive enough to justify an award different from the recommendations of the Fact-Finder. Accordingly, in regard to all other open items, the recommendations of the Fact-Finder are incorporated by reference into this Opinion and Award and are made binding.

Conclusion

The fixing of terms and conditions of employment of police in the City of White Plains for 1975-1976 is long overdue. These conditions for the year from July 1, 1975 through June 30, 1976 are hereby fixed by this Opinion and Award, pursuant to Section 209.4 of the Civil Service Law. Police protection is a most essential governmental function and speedy implementation of this Award is in the best interests of the parties and the citizens of the City.

Respectfully submitted

Theodore H. Lang 10/27/76
Dr. Theodore H. Lang Date

Bertrand Bogul 10/27/76
(Dissenting) Secretary, presently, pay lag, personal day
Mr. Bertrand B. Pogrebin Date

(Concurring) John Harold 10/27/76
Mr. John Harold Date

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