

Public Employment Relations Board  
Case #M75-810

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* In the Matter of Impasse *	
* Between *	OPINION
* TOWN OF POUGHKEEPSIE *	AND
* And *	AWARD
* TOWN OF POUGHKEEPSIE PBA *	

Under the provisions of the Taylor Law of the State of New York, arbitration is resorted to when an impasse continues to exist following the publication of a fact-finder's report in collective negotiations between a public employer and a police department. In that the fact-finding recommendations of William J. Curtis dated March 9, 1976, were not successful in resolving the impasse existing between the Town of Poughkeepsie and the Town of Poughkeepsie Policemen's Benevolent Association, the Public Employment Relations Board appointed a Public Arbitration Panel on June 1, 1976. The members of the panel were James E. Neighbors, designated to be the Employer panel member, Ralph Purdy, designated to be the Employee organization panel member, and Howard T. Ludlow, named as the Public panel member and Chairman of the tripartite panel. Because of a possible conflict in dates between scheduled arbitration hearings and a trial with which he was involved in another part of the state, Ralph Purdy was relieved of his assignment as Employee organization panel member on June 17, 1976, and John P. Henry was named in his place.

APPEARANCES

For the Town of Poughkeepsie:

Leo M. Ritter, Esq.

Anthony DeRosa, Esq.

Anna Brown

John Battistoni

Helen Burnett  
Charles Hafermann  
Vincent T. Kennedy  
Wilson Shook  
Earl C. McCandlish  
David Loeks

For the PBA:

Peter L. Maroulis, Esq.  
James E. Coombs, Esq.  
Stephen J. Terstenyak  
James McDowell  
Ralph M. Purdy  
Joseph F. Touhey

At the initial meeting of the panel held on June 23, 1976, at which the attorneys for the two sides were present, it was agreed that the notes taken by the chairman of the panel and all evidence and testimony submitted at the hearings would constitute the full record and that no formal stenographic record would be made. In addition, it was necessary for the panel to determine that it would examine only those items referred to in the fact-finding report, but it was agreed that the Town could introduce other evidence that might affect those items and might have a bearing upon our decision. Counsel for the Town felt strongly that all items should be open for our consideration, but the attorney for the PBA insisted that the panel had to confine its work to those matters mentioned in the pleading to PERB. Following the initial meeting, formal hearings were held in the Town Hall in Poughkeepsie on July 1, July 22, and August 27, at which both sides were given the opportunity to present evidence and testimony to support their respective positions. Witnesses did not testify under oath. At the conclusion of the hearings, it was agreed that no briefs would be submitted, and the panel then met privately on August 30, 1976, in Elmsford, New York, to prepare the

findings that are included in this report.

ISSUES:

1. 2-year contract.
2. Two men in a car.
3. Sick leave.
4. Salaries.
5. Shift differentials.
6. Longevity.
7. Dental plan.

POSITION OF THE TOWN:

In support of its contention that the fact-finding report had not given a fair picture of the situation as it related to the Town of Poughkeepsie, Mr. Ritter introduced various exhibits and presented witnesses whose testimony described what the attorney argued was the unique position of the Town. For example, using a map of the area for illustration, Mr. Ritter contended that many of the municipalities used for comparison by the PBA were not truly representative of the situation as it pertained to his client. In addition, in order for the panel to understand the internal operations of the Town government, witnesses testified as to bookkeeping procedures, tax procedures, and similar financial matters.

Mrs. Anna Brown, a longtime employee of Poughkeepsie and its bookkeeper for a number of years, described how various police costs were allocated. She emphasized that retirement benefits, social security, and worker compensation cost the Town almost forty-seven per cent of a police officer's salary. Even if there were surplus funds available, Mrs. Brown stated that the amount of increase recommended by the fact-finder would have to be augmented by the approximately forty-seven per cent required by various retirement-type fringes. Under cross examination, the witness described how she had determined life insurance information by figuring out the premiums herself based upon the

present rate which was being paid. In like manner, she had estimated that about twenty police officers would go to college, although she had not checked this estimate with the men on the force. Mrs. Brown admitted that the municipality had the right to increase its taxes and that money could be borrowed from one account and transferred to another if authorization to do so was received.

Another witness for the Town was the Deputy Commissioner of County Social Services, John Battistoni. He testified as to the number of families who were on assistance during 1974, 1975 and 1976, and broke the figures down into those who were receiving cash grants and those who were receiving only medical payments or foster care payments. Admitting that the increases in the figures that he reported had been proportionately about the same throughout the county, he stated that he did not know the number of families or the number of dwelling units involved in the Town itself because his figures were not broken down in that manner. However, he did testify that the Town of Poughkeepsie was not obligated to pay any of this money because all of it came from the county.

Another person to testify on behalf of the Town was Mrs. Helen Burnett, Receiver of Taxes for the past seven years. The witness pointed out that there had been a gradual decrease in the percentage of tax payments made by July 1 during the past three years and an increase over the same three years in the number of people who were choosing to pay their taxes by installments. She admitted under questioning, however, that all unpaid taxes owed to the Town are actually remitted by the county before the end of the year so that the Town eventually does receive one hundred per cent of its tax collection money.

The Comptroller of the Town, Charles Hafermann, explained that Moody's Investment Service had changed the rating of the Town from A1 to A at the end of 1975 when Poughkeepsie had

applied for a new bond sale. The Town's Building Inspector, Vincent T. Kennedy, submitted information to the effect that the value of new construction in the locality had been declining in the past few years. Mr. Kennedy's testimony was supported by Wilson Shook, a town planner for five years, who stated that most major multiple residence projects had never been started even though they had been granted approvals. He said that there had been some commercial building in the area, but that only one large industrial project had been constructed during the past three years. Mr. Shook testified in answer to a question, however, that a low vacancy rate existed for apartments and for commercial property. Further data regarding the tax and rateable situation was furnished by Earl C. McCandlish, the Assessor for the past twelve years, who testified that senior citizen exemptions had increased yearly since 1972, although he admitted that the figures he was using in describing assessments included both full and partial ones.

In summing up the position taken by the Town of Poughkeepsie, its attorney stressed the fact that the governing body had been most generous over the years with the police force. In the view of the Town, the changes described in taxables and in building permits were illustrations of the financial bind in which the Town now found itself. Mr. Ritter argued that many of the comparisons which had been used by the PBA were not proper in the light of the situation as it existed in Dutchess County and certainly were not suitable for the Town. Furthermore, Mr. Ritter reminded the arbitration panel that every dollar which had to be given in a police officer's salary meant almost a fifty per cent increase beyond that number to cover the appropriate required benefits.

POSITION OF THE PBA:

A major part of the case presented by the PBA consisted of exhibits designed to show that the municipality was in an area that might be considered to be in favorable economic circumstances

as compared to others. In line with this approach, Mr. Maroulis, attorney for the PBA, submitted various documents pertaining to tax information as well as figures relating to the Consumer Price Index. On this last point, however, Mr. Ritter objected to the fact that the PBA cost of living figures actually worked out to a comparison for a one and one-half year period of time and thus were not a true yearly estimate as had been used in previous negotiations between the parties.

Generally speaking, the PBA argument at the hearings was essentially based upon economic data pertaining to comparability with other police departments included in the Westchester County Police Conference. This method of comparison was contested by the Town as not applicable to Poughkeepsie, and a city and regional planner, David Loeks, testified on behalf of the Town that Westchester communities had much higher housing costs than did the municipality involved in the dispute. On the other hand, Mr. Loeks admitted that the City of Poughkeepsie and the City of Beacon had been raising their taxes annually although the Town of Poughkeepsie had dropped its taxes recently.

A witness for the PBA was the President of the WCPC, Ralph M. Purdy. He testified that he had assisted in contract negotiations, took part in arbitrations, and had been active with the Taylor Law from its beginning. The witness furnished the arbitration panel with several examples of dental insurance premium costs, but he admitted on cross examination that police departments with dental plans generally were to be found outside of Dutchess County. He also admitted that of the twenty-six units which were part of the Westchester County Police Conference, only Beacon and the City of Poughkeepsie were member units in Dutchess County along with the Town of Poughkeepsie.

Because the members of the arbitration panel had decided that the issue of two men in a police car was not a proper subject to be considered at the hearing excepting for the question of safety as it might pertain to two-man operation, the PBA concentrated its

evidence on that safety point. Two witnesses, Stephen Terstenyak and James McDowell, both described situations in which they had been involved in police work wherein more than one man had been required in order to answer a call.

Terstenyak testified that there were five patrol zones and that it might take anywhere from one to ten minutes to respond to a call for assistance within the various zones. The officer said that most police injuries were apt to occur in family dispute calls and he indicated that tavern disturbances were also likely to be dangerous for the police officers involved. He stated that two cars responded to all bank alarms in order to give a backup to the first man who had to wait until the other car arrived, and that instructions also had been issued for the first car not to enter a fight in a tavern or to become involved in a family quarrel until another officer arrived. The witness admitted that assistance might also come from detectives patrolling in their own cars, from the Dutchess County Sheriff, or from the State Police, but he said that none of those outside agencies had ever assisted him. The second witness, McDowell, described how he had been personally injured when involved in a situation concerning a mental patient who had run away from St. Francis hospital, and testified how on another occasion he had been injured when investigating an individual who was captured with a gun.

In closing his case for the PBA, Mr. Maroulis stated that a suitable raise in salary would be required merely for the men to stay equal with the Consumer Price Index. Furthermore, in the opinion of the PBA counsel, the Town had dropped its taxes while other communities had been obliged to raise their rates, so that it seemed to be apparent that the Employer was indeed in a position to pay the raise recommended by the fact-finder. On the question of safety, the PBA argument was that witnesses had described in great detail the necessity for having more than one man in a patrol car in order to protect the occupants from

personal injury.

OPINION AND AWARD:

1. On the matter of the length of the contract, the arbitration panel makes no award because the parties have agreed on a two-year pact.

2. On the matter of safety as it relates to two men in a patrol car, the panel is in agreement that witnesses adequately described the possibility of danger under specific circumstances. On the other hand, we feel that it may not be appropriate at this time to simply order two men to be assigned to each and every patrol car for each and every zone regardless of the circumstances. It seemed obvious to us from the presentations that were made at the hearings that the patrol zones should be altered in size so that calls requiring at least two men under normal police procedure be contained in the smallest zone, although we recognize that we do not presently have the authority to order such an arrangement. On the matter of safety, however, we make the following award.

AWARD: That when a sixth or seventh man is available in a squad, that sixth or seventh officer should be assigned as the second man in a car to be used in a high crime zone.

3. On the question of sick leave, we see no reason to disagree with the recommendation of the fact-finder, and so we make the following award.

AWARD: That the sick leave recommendations of the fact-finder are endorsed by this panel.

4. Although the members of the panel were in agreement that the request for longevity payments should be denied in keeping with the fact-finder's recommendation on that point, there was disagreement among the three of us concerning the issue of police salary. The arbitrator representing the Employer feels that a flat six per cent increase for the first year and a five per cent increase for the second year would maintain the Town's police force at a parity position based upon current and projected CPI

estimates. In addition, it is his opinion that the "add-on" of almost fifty per cent required by various retirement benefits would make the total cost of the fact-finder's recommended figure too much of a burden for the taxpayers.

The other two members of the panel (the Chairman and the arbitrator representing the Employee Organization), are of the opinion that the Town does not argue from the standpoint of inability to pay, but mainly seems to fear putting its police force too far ahead of other departments. It is the opinion of the majority members of the panel that comparability with nearby towns, some of which happen to be in financial trouble, shows that the Town of Poughkeepsie can indeed meet the fact-finder's proposal. The municipality appears to be in good financial condition and had indeed reduced its taxes very recently. Therefore, we make the following award.

AWARD: That the PBA request for a longevity program be denied (all three members of the panel in agreement); that the fact-finder's formula for a salary increase over the two-year period be endorsed (one member of the panel dissenting).

5. On the issue of a shift duty differential, we are in agreement that very few contracts have this feature and that the police job is supposed to be an around-the-clock arrangement. However, while opposing the payment of a shift differential, we can see merit in an appropriate differential to be paid to an officer who is obliged to work more than two days beyond his regularly scheduled tour of duty.

AWARD: That the shift duty differential request of the PBA be denied; that an officer who is obliged to work more than two days beyond his regularly scheduled tour of duty be granted a five per cent differential in pay above and beyond whatever else he may be entitled to.

6. In dropping the question of longevity during our discussion of salary as covered in Item #4, we took into account that

the pay increase recommended by the fact-finder had included a value payment for the possibility of longevity. Accordingly, the majority members of the panel have supported the salary recommendations of the fact-finder in the belief that the CPI added to a percentage approximation for longevity would be in keeping with what the fact-finder had suggested. As already mentioned above, the third member of the panel endorsed the majority position on longevity although he disagreed with the full salary position that the majority has taken.

7. Along with the fact-finder, we could not help but observe that very little guidance had been supplied to us to help in a determination concerning the advisability of a dental plan. There is always the possibility that the police might be willing to pay for their own dental insurance premiums if the Town could obtain a group rate and agree to check off the premium from the salaries, or perhaps an arrangement could be worked out wherein each side would pay one-half of the premium. In any event, we do not believe that such a program should be instituted at this time, but we do feel that a stronger effort should be made to study the matter than had been suggested by the fact-finding report.

AWARD: That no dental insurance plan be instituted at this time, but that both parties should set up a mutually satisfactory committee whose purpose it would be to thoroughly investigate the features and costs of such plans so that a decision on the question can be made without difficulty during the negotiations for the next contract.

James E. Neighbors  
JAMES E. NEIGHBORS  
Employer panel member

STATE OF  
COUNTY OF

On this <sup>23<sup>RD</sup></sup> day of September 1976 before me, a Notary Public of the State of New York, personally appeared JAMES E. NEIGHBORS, to me known and known to me to be the individual described herein and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Margaret A. Craft  
MARGARET A. CRAFT  
Notary Public, State of New York  
Residing in Dutchess County  
Commission expires March 30, 1976

John P. Henry  
JOHN P. HENRY  
Employee Organization  
panel member

STATE OF  
COUNTY OF

On this <sup>23<sup>RD</sup></sup> day of September 1976 before me, a Notary Public of the State of New York, personally appeared JOHN P. HENRY, to me known and known to me to be the individual described herein and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Ralph Martin Purdy  
RALPH MARTIN PURDY  
Notary Public, State of New York  
No. 60-3176240  
Qualified in Westchester County  
Term Expires March 30, 1977

*Howard T. Ludlow*

HOWARD T. LUDLOW  
Public panel member  
and Chairman

Case #M75-810  
OPINION AND AWARD OF ARBITRATOR  
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF NEW JERSEY      ss:  
COUNTY OF ESSEX

On this 17th day of September 1976 before me, a Notary Public of the State of New Jersey, personally appeared HOWARD T. LUDLOW, to me known and known to me to be the individual described herein and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

*Stanley P. Kosakowski*

STANLEY P. KOSAKOWSKI  
Notary Public of New Jersey  
My Commission Expires July 26, 1978