

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

**NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
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 In the Matter of the :
 Compulsory Interest Arbitration :
 Between :
 : :
 CITY OF YONKERS :
 : :
 -and- :
 : :
 YONKERS PBA :
 : :
 Case No. CA-0082; M75-680 :
 -----X

CONCILIATION

AWARD
OF THE
PUBLIC ARBITRATION PANEL

1. For the two-year contract period, July 1, 1975-June 30, 1977, a general increase of \$550.00 is awarded, to be applied to the salary schedule, effective July 1, 1975. Retroactive pay for the two years shall be payable no later than August 1, 1977.

2. This Panel realizes that it may not make an award for a period exceeding two years from the termination of the previous collective bargaining agreement, i.e., June 30, 1977 (Civil Service Law, Section 209(4) (c) (vi).) However, there is nothing in statutory or decisional law that mandates when this award shall be payable or to which fiscal period it shall be attributable. On the contrary, the New York State Financial Emergency Act for the City of Yonkers, Section 10(2) (Chapter 871 of the Laws of 1975 (Section 2)) specifically provides for deferrals of salary increases upon the condition that the

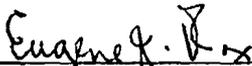
parties agree to such deferral. The employee organization has stipulated to the Panel that it is willing to defer payment of this Panel's award until July 1, 1977, or no later than August 1, 1977. It is upon that understanding that this award is made.

3. The Panel declines to rule on the proposals relating to management rights and past practices, urging the parties to negotiate any change in these matters directly.

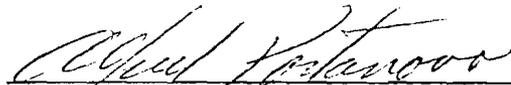
4. No other changes in the parties' agreement are awarded. All other proposals presented to the Panel by the PBA and the City are denied.



Clara H. Friedman
Chairman



Concurring: Eugene J. Fox
Employer Panel Member



Dissenting on Item 1, 3, 4;
Concurring on Item. 2

Alfred Portanova
Employee Organization Panel Member

Yonkers, New York

April 29, 1977

STATE OF NEW YORK)
 : SS:
COUNTY OF WESTCHESTER)

On this 29th day of April, 1977, before me personally came and appeared CLARA H. FRIEDMAN, to me known and known to me to be the individual described herein and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

ROBERT VILLANI
Notary Public, State of New York
No. 9166730
Qualified in Westchester County
Commission Expires March 30, 1978

Robert Villani

STATE OF NEW YORK)
 : SS:
COUNTY OF WESTCHESTER)

On this 29th day of April, 1977, before me personally came and appeared EUGENE J. FOX, 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.

ROBERT VILLANI
Notary Public, State of New York
No. 9166730
Qualified in Westchester County
Commission Expires March 30, 1978

Robert Villani

STATE OF NEW YORK)
 : SS:
COUNTY OF WESTCHESTER)

On this 29th day of April, 1977, before me personally came and appeared ALFRED PORTANOVA, 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.

ROBERT VILLANI
Notary Public, State of New York
No. 9166730
Qualified in Westchester County
Commission Expires March 30, 1978

Robert Villani

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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: OPINION
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: CHAIRMAN
YONKERS PBA :
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Case No. CA-0082; M75-680 :
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MEMBERS OF THE PUBLIC ARBITRATION PANEL:

Clara H. Friedman, Chairman
Eugene J. Fox, Esq., Employer Panel Member
Alfred Portanova, Employee Organization Panel Member

APPEARANCES:

For the City - Irving T. Bergman, Esq.
For the PBA - Frederick J. Adler, Esq.

PRELIMINARY STATEMENT

This is a proceeding pursuant to Section 209.4 of Article 14 of the New York Civil Service Law. The Public Arbitration Panel held hearings in Yonkers on 12 days between November 11, 1976, and February 23, 1977. Each side submitted numerous exhibits, and on March 21, 1977, filed briefs. The parties were afforded full opportunity to present oral and written

evidence, cross-examine witnesses, provide oral argument, and support their respective positions. The Panel met in executive session on five occasions.

This Opinion represents the view of the undersigned Chairman of the Public Arbitration Panel, and does not necessarily express the view of either of the other Panel members.

The Parties' last Memorandum of Understanding ran from January 1, 1974, to June 30, 1975. When negotiations failed to produce a new agreement, to be effective as of July 1, 1975, the items in dispute were the subject of a Fact-Finding proceeding before Philip J. Ruffo, whose Findings of Fact and Recommendations were issued on November 18, 1975, but not accepted by either party. Those findings and recommendations were, however, brought to the attention of this Panel and have been considered by it, along with the other evidence in the record.

This Public Arbitration Panel was appointed on October 19, 1976, by Robert D. Helsby, Chairman of the New York State Public Employee Relations Board. The record developed before the Panel consists of a stenographic transcript of 1,890 pages, and voluminous exhibits and briefs.

The Panel in its deliberations has carefully considered the evidence in light of all the criteria for determination set forth in Article 14 of the New York Civil Service Law. These are as follows:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel

may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

BACKGROUND

Yonkers is the fourth largest city in New York State, exceeded in population only by New York City, Buffalo, and Rochester.

The unit represented by the PBA in Yonkers consists of some 400 police officers. Superior officers are in a separate unit.

The PBA and the City operate under a Memorandum of Understanding, which incorporates by reference the terms and conditions in prior contracts, except as amended, going back to October 15, 1968. The parties' continuing attempts to

develop a complete contract have not been successful; contractual rights and obligations appear in numerous memoranda of sundry dates.

The City's mounting financial difficulties have been cited in past collective-bargaining negotiations, particularly in the bargaining which produced the 1974-75 agreement.

In November, 1975, Yonkers' fiscal problems resulted in the State Legislature's enactment of the Financial Emergency Act for the City of Yonkers, (Section 2, Chapter 871 of the Laws of 1975). The basis for the Act was explained therein, in relevant part, as follows:

...a financial emergency and an emergency period exists in the city of Yonkers. The city is unable to obtain the funds needed by the city to continue to provide essential services to its inhabitants or to meet its obligations to the holders of outstanding securities. Unless such funds are obtained the city will soon (i) fail to pay salaries and wages to employees and amounts owed vendors and suppliers to the city, and (ii) default on the interest and principal payments due the holders of outstanding obligations of the city...

This situation is a disaster and creates a state of emergency. To end this disaster, to bring the emergency under control and to respond to the over-riding state concern described above, the state must undertake an extraordinary exercise of its police and emergency powers under the state constitution, and exercise controls and supervision over the financial affairs of the city of Yonkers, but in a manner intended to preserve the ability of city officials to determine programs and expenditures priorities within available financial resources.

The Act created a State Emergency Financial Control Board, required the City of Yonkers to establish a financial plan, and gave wide powers to the Board, prohibiting making or authorizing "an obligation or other liability in excess of the amount available therefor under the financial plan..."

Under Section 10 of the Financial Emergency Act, titled "Wage freeze," salary increases to city employees were suspended as of November 20, 1975. In the same manner, the suspension applied to all post-November 20 increases in holiday and vacation pay, shift differentials, salary adjustments according to plan, and step-ups or increments. The question of whether Section 10 intends a freeze, or a suspension which might be restored retroactively at some future date, is the subject of pending litigation. The Law provided for a one-year wage freeze, which was later extended by the Control Board through June 30, 1977.

Meanwhile, police who are eligible for step-up increments and longevity increments have not received any from November 20, 1975, to the present time. Newly-hired police, who started at \$11,350 at any time since March, 1975, are still receiving the same salary.

The so-called freeze or suspension is almost coterminous with the contract period which is the subject of this arbitration: November 20, 1975-June 30, 1977 for the freeze, and July 1, 1975-June 30, 1977 for the PBA contract.

Both the 1975-76 and the 1976-77 budgets were governed by the Financial Plan, and a zero deficit was prescribed, as of June 30, 1977. In order to meet budget limitations, numerous economies were imposed, including curtailment of services, reductions in the work force by attrition, and terminations of many City employees.

The City has been successful thus far in meeting the conditions of the Financial Plan, and it expects to realize a zero deficit on June 30, 1977, with the Emergency Control Board ending six months later. But a major readjustment in the City's handling of its finances is required before its short-term debt can be converted to long-term bonds. To accomplish this, in June of 1976 the State Legislature enacted the Special Budget and Finance Act of the City of Yonkers (Chapters 488 and 489 of the Laws of 1976). Effective July 1, 1977, the Act requires various budgetary restrictions to govern the City's 1977-78 budget.

Against this background it is obvious that the City's financial problems are real and pressing, and that its resources are severely limited. The PBA itself "is not unmindful that the City of Yonkers still has a long way to go to pull itself out of the doldrums of the accumulated deficits." (PBA Brief, p.60.)

GENERAL SALARY INCREASE

The PBA proposed a general increase of \$2,960; it asked for \$740 retroactive to July 1, 1975, \$740 retroactive to January 1, 1976, \$740 retroactive to July 1, 1976, and \$740 retroactive to January 1, 1977. It based its case on cost of living, comparisons with police in other communities and with other City employees in Yonkers, and the special nature of police work.

The City offered no increase at all, chiefly claiming inability to pay.

The Panel has given great weight to the "ability to pay" criterion, in light of the City's unique financial position. Yonkers and New York City are the only two cities in the State which are circumscribed by State emergency control legislation.

However, the equities of the police can not be ignored, and the law under which the Panel operates clearly requires it to consider such equities. Yonkers police have been without any salary improvement since January, 1975, over a two-and one-half year period which has been marked by sharply rising living costs, and by salary improvements for policemen throughout much of Westchester County and New York State, and even in New York City.

The Panel is required, under the governing Law, to take into consideration such factors as are normally considered

in determining wages, hours, and conditions of employment. One such factor is indeed "the interests and welfare of the public and the financial ability of the public employer to pay." But it is not the sole criterion, blanking out all other considerations.

With respect to the first contract year in question -- July 1, 1975 to June 30, 1976 -- the Panel notes that if the parties had been able to reach an agreement timely, its implementation would have been unaffected by the Emergency Control Act or the freeze therein, which began on November 20, 1975.

A salary increase was clearly justified for the police on July 1, 1975, in light of the cost of living change which had already occurred since the date of the last PBA salary change, as well as the still greater increase in living costs looming ahead in the 1975-1976 contract year. Another consideration justifying a salary increase as of July 1, 1975, was the rising level of police salaries, with significant improvements throughout much of the State and County.

Still another consideration not to be overlooked, in determining the equity of salary increases for police, is the increased responsibilities which police handle, at a time when attrition has cut the size of the work force and higher crime rates have expanded the workload. An urban community like Yonkers relies heavily on the vital services of its

police force; the fairness of salary treatment accorded them by a financially-strapped community is an important reflection of the high regard in which the community holds its police force.

No claim has been advanced before the Panel that an increase prior to November 20, 1975, would be barred by the Emergency Control legislation. Nor can the Panel believe that such an increase, retroactive to July 1, 1975, would be barred by the Law, inasmuch for one that the teachers' salary increase on November 19, 1975 (pursuant to the terms of their 1974-77 Agreement with the Board of Education of Yonkers) was not barred.

Taking into account all the considerations, and giving heavy weight as it must to the financial stringencies in the 1975-76 budget, the Panel awards a general salary increase of \$550 annually, applicable to the salary schedule, and retroactive to July 1, 1975.

This will raise starting salaries for police from \$11,350 to \$11,900; top salary, reached after three years, will go from \$14,850 to \$15,400.

Perhaps a larger increase in the 1975-76 contract year might have been in order if the City had been in a favorable financial condition. However, under the difficult circumstances plainly present, any salary award must be moderated strictly.

As for the term of the contract, the Panel agrees with the PBA and the City that the PBA contract term should be for two years: July 1, 1975-June 30, 1977. Two-year agreements are typical for this unit. If it were not awarded now, the parties would simply have to repeat the same long process of negotiations, mediation, fact-finding and arbitration.

Accordingly, the Panel concludes that the term of the contract should be for two years, from July 1, 1975, to June 30, 1977.

For the second contract year, July 1, 1976, to June 30, 1977, it is extremely difficult to justify a further salary increase, given the financial exigencies and the State emergency controls. Leaving aside the legal question of whether or not the freeze or suspension would permit a salary increase after November 20, 1975, the over-riding question is whether further salary improvement would jeopardize the City's probable fulfillment of financial requirements which will result in a zero deficit on June 30, 1977, and in dissolution of the Emergency Control Board six months later.

On the evidence, the Panel concludes that the interests of the police, as well as of the City, will best be served by excluding further salary improvement in 1976-77. This is a very difficult decision to make, particularly when police salaries have not kept pace with rising living costs and with improved salaries in some other communities.

But sometimes a community must mark time. The police and the PBA, along with everyone in the City, have a vital stake in ensuring the success of the City's Financial Plan. This is an extraordinary time in the City's fiscal fortunes, and it requires the extraordinary measure of foregoing any salary improvement in the second contract year, beyond that awarded retroactive to July 1, 1975.

Accordingly, the Panel awards no additional salary increase for the second contract year, July 1, 1976, to June 30, 1977.

OTHER PROPOSALS

In view of the City's limited financial capacity, the Panel concluded that any monies awarded should go to a general salary increase.

Whether or not there is merit in any of the nine proposals for fringe improvements which the PBA made, the evidence demonstrated no compelling necessity for such changes at this time. Any improvement in other economic terms of the contract could only diminish the size of an already limited improvement in basic salary schedules.

Accordingly, the Panel denies the PBA proposals for night differential, social security, vacations, personal leave, holidays, uniform allowance, vacancies, detective-patrolman overtime, contract printing.

The City has presented 19 proposals which largely seek to diminish or cut back on existing conditions. Whether or not there is merit in any of the proposals, sufficient and compelling evidence to justify them has not been provided at this time.

Accordingly, the Panel denies the City's proposals for a no-strike provision, no overtime pyramiding, insurance carriers, PBA staffing, time off for Union business, duty tours, detectives' pay differential, racetrack detail, widows' pensions, personal leave days, insurance costs, vacations, uniform allowances, holiday pay, unpaid leave, compensatory time, sick pay.

The PBA has asked for a new Past Practices clause; the City has asked for deletion of such a clause which appears in a prior Agreement. Further, the City has asked for a Management Rights clause. These are subjects which particularly should be bargained by the parties directly.

Accordingly, the Panel declines to rule on a Past Practices clause and a Management Rights clause, and recommends that the parties negotiate these matters.


Clara H. Friedman
Chairman

New York, New York

April 29, 1977

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RELATIONS BOARD

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In the Matter of the Compulsory
Interest Arbitration

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CITY OF YONKERS

-and-

YONKERS PBA.

CONCURRING OPINION

Case No. CA 0082;
M-75-680

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To begin I must state that I totally agree with the opinion of the Chairman of this Panel insofar as the financial condition of the City is concerned. This condition is a fact of life with which the Panel, and all realistic people, must be bound. At the same time I am not unmindful of the equities of the situation. I am rendering this concurring opinion for the following reasons.

Firstly I do not necessarily agree with the Chairman's conclusions of law as stated in the opinion.

However, I am constrained to agree with the award. The City has, through the findings of the State Legislature and the actions of the State's Control Board, been put into a financial position where not only is every dollar counted, but also every penny in every dollar is recounted. I firmly

believe that the wherewithal of funding this award, and assuming that payment of it is deferred until fiscal year 77/78, is stretching the City's ability to pay to the sticking point. At the same time the needs of the members of the PBA must not go unrecognized.

While the PBA will say that this award is not sufficient to meet those needs, I will say that this award may be more than the City can afford. Yet, under all the circumstances, I sign my name as a member of the Panel in concurring with the Chairman.

Dated: Yonkers, New York

April 28, 1977

Eugene P. Fox
CORPORATION COUNSEL
Employer Representative