

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Impasse between
CITY OF NEW ROCHELLE

and

POLICE ASSOCIATION OF NEW ROCHELLE

CASE NOS. CA-0113; M 76-52
-----X

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, N. Y. 10010

EMPLOYER PANEL MEMBER:

Mr. Bruce Millman
210 Old Country Road
Mineola, New York

EMPLOYEE ORGANIZATION PANEL MEMBER:

Mr. Ralph Purdy
101 Executive Blvd.
Elmsford, N. Y. 10523

The New York State Public Employment Relations Board, on or about December 6, 1976, invoked the provisions of the Civil Service Law, Section 209.4 and designated the undersigned as the Public Arbitration Panel for the purposes 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, Professor Theodore H. Lang of Baruch College.

HISTORY OF THE IMPASSE

This impasse exists between the City of New Rochelle and the Police Association of New Rochelle, as bargaining agent. The prior contract expired on December 31, 1975, without an agreement having been reached on a new contract.

Following extensive bargaining by the parties and a mediation effort by P.E.R.B., Mr. Herbert L. Marx, Jr., was appointed as Fact-Finder on April 7, 1976. The Fact-Finder conducted five days of hearing and issued his Report on August 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 April 4, May 6 and May 10, 1977 at which the City of New Rochelle, represented by Mr. Bertrand B. Pogrebin of Rains, Pogrebin and Scher, and the Police Association of New Rochelle, represented by Reynold A. Mauro, of Hartman and Alpert, had ample and full opportunity to present exhibits ,

testimony, briefs and reply briefs. 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, and briefs, and reply briefs supplied by the parties and that the parties affirm that they do not wish a transcript." There were five joint exhibits, 38 Association exhibits and 28 City exhibits.

The Panel met in private sessions to discuss this arbitration on January 10, July 6 and August 11, 1977.

The City filed an Improper Practice Charge (Attachment No. 2) listing items allegedly non-mandatory subjects of bargaining as follows: disciplinary procedures, "no compelled statements," equipment to be provided by employer, hospitalization for families of deceased employees and "polygraph claim." The Panel has not been advised of any decision by P.E.R.B. on this IPC. Therefore, pursuant to the provisions of Section 205.6 c of the Civil Service Law, the Panel will neither discuss nor make awards on these challenged issues.

The City's four issues are listed in the City's Response to Petition for Compulsory Interest Arbitration (Attachment No. 3)

The Association presented 39 issues for arbitration (listed in Petition for Arbitration, which is Attachment No. 1) and the Board four.

All of the data received, all briefs, statistical data, exhibits and testimony have been carefully considered. After due deliberation, this "Opinion and Award" is rendered. The issues will be discussed in sections below.

DURATION

The Association had proposed a one-year contract, modified its position after the Fact Finder's Report to a two-year term. The City also wants a two-year contract. The Fact-Finder recommended a one-year term. Since the latest contract expired December 31, 1975, a one-year contract would extend only to December 31, 1976, leaving the parties still without a contract. It is, therefore, AWARDED (AWARD NO. 1) that the duration of the new agreement be for two years from January 1, 1976 to December 31, 1977.

PAYMENT FOR COLLEGE CREDITS

The Association proposes that the City pay:

Twenty (\$20.00) per approved credit earned to be paid as a lump sum once a year with employer compensating employees for the cost of tuition, books and supplies.

The City's position is that this proposal be rejected by the Panel.

The Fact-Finder recommends:

Reimbursement for tuition, books and required supplies for college courses, upon achievement of the grade of C or equivalent; approvable courses to be subject to review in advance by the City, but such approval shall not be unreasonably withheld.

While the Panel generally agrees with the desirability of encouraging police officers to continue their education on a collegiate level and respects the Fact-Finder's judgment in regard to an advisory recommendation, it finds an insufficient basis for compelling the City to undertake this additional expense.

Accordingly the Panel finds for the City on this issue and AWARDS (AWARD NO. 2) that this item not be included in the new Agreement.

DENTAL INSURANCE

The Association proposes a Dental Plan with the employer to pay a maximum of one hundred and fifty (\$150.00) dollars per year for each employee on a dental plan. The City opposes the imposition of this new fringe benefit upon it.

In support of its proposal, the Association presents comparative data relating to other police officers in Westchester County indicating that in 17 of 39 police departments police officers enjoy a dental plan.

The District argues that most communities do not provide dental plans, and that there is always danger of soaring costs in dental insurance.

The Fact-Finder recommends:

A dental plan, to which the City shall contribute not in excess of \$100 per year per employee (pro-rated amount for the remainder of 1976), the specific nature of the plan to be determined by mutual agreement.

The Panel has carefully reviewed this matter and AWARDS (AWARD NO. 3) amendment of Article X, Section 2 by inserting "and Supplemental Allowance" in the title, and by addition of the following:

Effective July 1, 1977, there shall be a supplemental allowance of \$100.00 payable each July to each man on staff.

HOLIDAYS AND HOLIDAY PAY

At present, Article VII, Section 1 of the expired agreement provides that 11 duty tours be added to vacation allowance because police officers cannot take holidays falling within their regular tours of duty, names 11 holidays and provides for "hour for hour" extra compensation for duty rendered by a police officer on a named holiday.

The City has proposed "deletion of holiday pay for work on holidays, holidays off and substitution of 11 days pay." The Association does not wish to change the existing basis of handling holidays, but proposes, "Increases in paid holidays plus premium pay for working holidays."

The Fact-Finder recommends the following:

- A. There shall be a twelfth holiday added to the Agreement, the date to be selected by mutual agreement or, failing such agreement, to be designated by the City.
- B. The phrase "plus 11 duty tours for holidays" shall be deleted in all instances in Article VII, Section 2 (Vacations), Subsection (a).
- C. Article VII, Section 1 (Holidays), Subsection (a) shall be amended to provide for 12 days' pay per year, rather than additional vacation time.
- D. Article VII, Section 1, Subsection (c) shall be deleted.
- E. The details of applying these changes for the full year of 1976 shall be worked out mutually by the City and the Association.

In support of its position, the City argues as follows:

1. The accepted primary basis for comparison of New Rochelle Police is with White Plains Police and Mount Vernon Police.

2. The present complex basis for vacations, holidays and holiday pay in New Rochelle is much too high compared to the comparable cities, as follows:

CITY	VACATION ALLOWANCE	+ VACATION SUPPLEMENT FOR HOLIDAYS	+ EXTRA HOLIDAY PAY	TOTAL OF VACATION & HOLIDAYS
White Plains	22 days	+ 0 days	+ 11 days	33 days
Mount Vernon	22 days	+ 0 days	+ 7 days	29 days
New Rochelle	20 days	+ 11 days	+ 6 or 7 days	37 or 38 days

3. The present system for calculating holidays and holiday pay was never entered into by the City voluntarily. Rather, it resulted from the Award dated June 12, 1975 by a Panel established pursuant to Section 209.4 of the Civil Service Law. This Award effectively resulted in 17 to 18 holidays, far in excess of those received by other Police Officers. Most others have 11 days. Only a few have 12 or 13 days.

4. Since the aforementioned Award, the other cities of Mount Vernon and White Plains have not adopted the New Rochelle formula, nor have towns in Westchester County. The New Rochelle system remains an aberration.

5. As a result of this 1975 Award and general economic conditions, it has been necessary to reduce the complement of Police Officers.

6. The Fact-Finder's recommendation on holidays is not less than that available to other police forces. It is still generous, although effectively resulting in a decrease from approximately 17 days to 12 days.

7. The City believes 11 days holiday pay is adequate.

In support of its position, the Association argues as follows:

1. The Fact-Finder's recommendation is a significant reduction of the combined vacation/holiday time for the men.

2. Many of the towns have combined holiday and vacation allowances exceeding the 32 recommended by the Fact-Finder.

3. Police officers in New Rochelle deserve a continuation of their holiday and vacation plan on account of high productivity and difficult police work.

The Panel has carefully reviewed this complex and difficult situation and carefully studied all data supplied. The present system is particularly generous when compared with Mount Vernon and White Plains. An analysis of data provided concerning holidays and vacation in all police departments in the County of Westchester indicates that the greatest number fall in the 31, 32 and 33 day categories. The Fact-Finder's recommendation brings in New Rochelle at the 32 day level.

On the full record, the Panel AWARDS (AWARD NO. 4) that the Fact-Finder's recommendations on this item be incorporated into the new Agreement except that such holiday pay shall be paid 6 days in the first pay period in June and 6 days in the first pay period in December for preceding accrued holidays; and that police officers who on the signing of this Agreement have already taken their holidays in vacation form shall be treated under the preceding Agreement in regard to that part of holidays so taken.

MATERNITY LEAVE OF ABSENCE

The expired contract contains no explicit provision for maternity leave for a female police officer. The Association demands maternity leave for female police officers. The City resists this demand.

The Fact-Finder recommends, "A without-~~r~~ maternity leave provision generally as proposed by the Association in Proposal #45,

with detailed language to be resolved by mutual agreement." This recommendation of the Fact-Finder, then, is without specific form, and is not suitable for an Award under Section 209.4 of the Civil Service Law. A review of the evidence and testimony does not establish a basis for an award. Furthermore, provisions of law relating to sick leave and maternity would automatically be applicable.

Accordingly, it is the Panel's AWARD (AWARD NO. 5) that there be no change from the expired contract in that regard.

UNIFORM AND CLEANING ALLOWANCE

At present Article X, Section 2 provides as follows:

A uniform and cleaning allowance of two hundred and fifty (\$250.00) dollars per year shall be paid for the previous year by the EMPLOYER in the month of January in each calendar year, beginning with the year 1975, to each employee who is presently in the bargaining unit and shall be paid in accordance with existing practices.

The Association proposes an increase in uniform and cleaning allowance from \$250.00 to \$275.00 effective January 1, 1976.

The Fact-Finder finds for the Association on this item.

The Association presents detailed evidence of comparability in Westchester County, citing police forces granting uniform allowances in excess of \$250.00. The Association also points to the effects of continuing inflation on costs of uniforms and cleaning.

It is the Panel's AWARD (AWARD NO. 6) that the Uniform and Cleaning Allowance be increased from \$250.00 to \$275.00 effective January 1, 1977.

WORK SCHEDULE CHANGE

At present police officers work a four tour, 72 hour swing chart which constitutes a basic 35.5 hour week.

The City proposes a 40 hour work week. The Association wishes to retain the present work week.

The Fact-Finder finds for the Association on this item. The Fact-Finder's reasoning is fully acceptable to the Panel. The Panel is particularly impressed with the fact that the present work schedule was freely entered into by both parties without any Section 209.4 Award.

The Panel received no testimony or evidence to justify deviation from the Fact-Finder's recommendation.

Accordingly, it is the Panel's AWARD (AWARD NO. 7) that the duty chart, work schedule and/or work week in the expired contract, be continued unchanged into the new Agreement.

SALARY INCREASE

The Association's most recent salary demand is for an 8% increase on January 1, 1976 and another 8% increase on January

1, 1977, plus increment. The City's position is that salaries be frozen and there be no salary increase.

The Fact-Finder recommends:

The following changes shall be made in annual salaries and in added Detective compensation:

- A. The three grades of Detective compensation shall remain in the new Agreement.
- B. Changes in compensation shall be effective July 1, 1976.
- C. Compensation for Patrolmen and Detectives shall be increased by approximately six per cent.

In support of its position the Association argues as follows:

1. "In comparing only Westchester communities, the salary range for 1977 has a low of \$15,738 (North Castle) and a high of \$18,499 with the majority earning an excess of \$16,500. When contrasted with the other departments of the metropolitan area, the trend for 1977 is clearly in the \$18,000 category. Police officers in the City of New Rochelle have a current maximum salary of \$14,765."
2. "Concerning the ability of the City of New Rochelle to pay, the employer has in no way sustained any burden that it is in the midst of financial disaster."
3. While the top rate for the New Rochelle police officers' schedule is \$14,765, the equivalent rate in Mount Vernon rose to \$15,800 on July 1, 1976 and the White Plains rate went to \$15,210 on January 1, 1976.
4. The C.P.I. for the nation increased at the rate of 7.2% in 1975 and 4.8% in 1976.
5. The average wage settlement for major industries in 1976 nation-wide was 8.3% increase during the first year and 6.4% for the second year.
6. There has been a significant decrease in the salary of the police force in the City having consolidated the ranks from 10 positions to six positions and six positions to five positions. Deputy Chief [redacted] and five other officers.

7. As to ability to pay, there is a surplus in excess funds of \$1,000,000 from the new City sales tax. Although a City Council Resolution of May 4, 1976 limits the City's ability to spend this money, the Council has the authority to change its position.

8. "The City has enjoyed a stable City tax base and has been able to maintain its services and has also maintained its voluntary services such as parks and museums. Police officers should not be asked to supplement the City's budget."

9. The impact of freezing police officers' salaries would be to impose a cut in salary, in terms of purchasing power due to continuing inflation, and it is unfair to the police to ask them to supplement the City's budget by accepting a freeze.

10. The Police Commissioner is making long range plans for the continuing and growing difficulties to be encountered in an urban police department. There is a high degree of in-service training in the department to provide the men with the necessary information to meet the problems of the community.

11. Police officers in New Rochelle perform services at least equal to those performed in other metropolitan areas.

12. The Association presents a detailed table of comparison of salaries in Westchester County Police Departments to support its position.

In support of its position the City argues:

1. Only White Plains and Mount Vernon are appropriate for purposes of comparison. They are comparable in size and closely situated geographically. Yonkers is much larger and Rye and Peekskill are much smaller. Nassau and Suffolk Counties should also be considered irrelevant to New Rochelle.

2. The incidence of crime supports the above as the primary relevant basis of comparison.
3. The New Rochelle police officer works fewer hours per year than in Mount Vernon and White Plains, but receives more pay on an hourly basis due to the shorter work week.
4. As to ability to pay, New Rochelle, while not yet in imminent danger of bankruptcy, is already struggling for survival.
5. The City has been balancing its budget in 1976 and 1977 only by dipping into its reserves.
6. Real estate taxes are high, being 5.2% on full value.
7. There has been a stagnation in assessed values of real property over the past seven years.
8. There is no problem in recruiting police officers.
9. There are substantial increased costs to the City without increasing police salaries for 1976: the raise granted effective July 1, 1975 will "roll over" into the 1976 fiscal year at full-year value; longevity pay and holiday pay also impact on 1976; medical insurance costs went up for 1976, and retirement costs went up.

DISCUSSION AND AWARD ON SALARY

Although the Fact-Finder recommended a one-year contract and a one year increase, the parties have subsequently agreed to a two-year term for the next Agreement. The Panel was given no substantial argument or testimony, including that dealing with ability to pay, to convince it that the Fact-Finder's recommendations on salary be deviated from markedly. Based on simple comparability of annual salary, primarily with the two cities cited by the City of New Rochelle, namely Mount Vernon and White Plains, but eschewing the complex interrelationships between pay and

holidays and vacation and work week artfully argued by the City to justify no raise, and considering also the inflationary element, the Panel believes modest increases are justified in each of the two years of the new Agreement. Note that with the 6% increase recommended by the Fact-Finder the rates of pay on July 1, 1976 of the top police officer in each city would be the following:

Mount Vernon	\$15,800
White Plains	\$15,200
New Rochelle	\$15,650.

Even considering total pay, including salary, holiday pay and longevity, the total pay on July 1, 1976 in the three cities, if the Fact-Finder's recommendation is adopted, including the 12th holiday, would be:

Mount Vernon	\$16,608
White Plains	\$16,338
New Rochelle	\$16,814.

Accordingly, it is the Panel's AWARD (AWARD NO. 8) that:

A. There be a 6% raise on July 1, 1976, a 3% raise on January 1, 1977 and a 3% raise on July 1, 1977, calculated in such a way as to bring the top police officer salary on the schedule, not including the longevity raise, to \$16,617 on July 1, 1977, and to fix the following other rates:

		<u>1st year</u>	<u>2nd year</u>	<u>3rd year</u>
7/1/76	6%	\$13,615	\$14,295	\$14,972
1/1/77	3%	\$14,024	\$14,723	\$15,422
7/1/77	3%	\$14,445	\$15,165	\$15,885

Detectives: Detectives 1st (8% of top grade)		<u>1st year</u>	<u>2nd year</u>	<u>3rd year</u>
7/1/76		\$1,250	\$1,100	\$950
1/1/77		\$1,290	\$1,140	\$990
7/1/77		\$1,330	\$1,180	\$1,030

B. In addition, earned increments shall be paid under the schedule conditions fixed in the now expired contract.

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 evidence or argument persuasive enough to justify an award different from the expired contract. Accordingly, in regard to all other open items, and all other items in the expired contract, the Panel AWARDS (AWARD NO. 9) that the language of the expired contract be continued unchanged into the new Agreement.

CONCLUSION

The fixing of terms and conditions of employment of police in the City of New Rochelle for 1976 and 1977 is long overdue. These conditions for the period from January 1, 1976 through December 31, 1977 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.

Sworn to before me 8/11/77
Ralph Martin Purdy
#60-3176200

Respectfully submitted,

Theodore H. Lang Date 8/11/77
Dr. Theodore H. Lang, Chairman, 8/11/77

(DISSENT ON COLLEGE CREDITS & MATERNITY LEAVE)

Ralph Purdy Date 8/11/77
Mr. Ralph Purdy 8/11/77

Bruce K. Millman (Disentangle supplemental allowance; 12th holiday, excused clothing allowance, 12th holiday, more work schedule, and figure \$16,617 but not on salary schedule or other figures).
Mr. Bruce Millman Date 8/11/77

Sworn to before me this
11th day of August 1977
Bruce K. Millman
#4515668
Qualified in N.Y. Co.
Commission Expires 3/30/78

Sworn to before me 8/11/77
Ralph Martin Purdy
#60-3176200