

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

JAN 02 1986

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In the Matter of the Interest Arbitration

Between :
TOWN OF POUGHKEEPSIE : OPINION AND
And : AWARD
TOWN OF POUGHKEEPSIE PATROLMEN'S :
BENEVOLENT ASSOCIATION :
PERB Case No. IA85-7; M84-554 :
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Public Panel Member and Chairman:
Jonathan S. Liebowitz, Esq.

Employer Panel Member:
David Kennett

Employee Organization Panel Member:
Joseph Sanchez

Preliminary Note

This compulsory interest arbitration proceeded under §209 (4) of the New York State Civil Service Law, the Taylor Law, and under part 205 of the PERB Rules of Procedure.

An arbitration hearing was held on August ³⁰ 10, 1985 at White Plains, New York. The parties presented their evidence and arguments; the presentations included a

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brief on behalf of the Town of Poughkeepsie. John M. Donoghue, Esq., of Plunkett and Jaffe, P.C., appeared for the Town. Joseph F. Touhey, President, Town of Poughkeepsie PBA, appeared for the PBA. Immediately following the hearing, the panel members met in executive session and considered and discussed the evidence and arguments of the parties. A second executive session was held on November 12, 1985, at the request of the PBA panel member.

Review of the Case

For a contract to succeed one which covered calendar year 1984, the parties have agreed on a two-year duration and have resolved all open issues except for those dealt with here: the pay level for 1985 at the second contractual level, patrolman after one year. The difference between the parties affects the 1985 salary for the next contractual level - patrolman after two years - and the 1986 pay at those two levels. The contract has a starting salary and five steps to the patrolman top step, reached after five years.

Each side presented its case as to why its last proposal should be awarded. That is the way the issue was defined by the parties. While the Panel has the statutory authority to award a salary level different from that proposed by either side, both centered their presentations on acceptance by the Panel of one proposal or the other. All other salary steps are as follows. With the exception of the differences at issue, all salary steps have been agreed on, at a 10% across the board increase for 1985 and 6% for 1986. The new contract is to cover calendar years 1985 and 1986.

According to the PBA, the 1984 first step salary of \$21,904 should go to \$24,094 in 1985 and to \$25,540 in 1986.

Per the Town, that \$21,904 salary should go to \$22,465 in 1985 and \$23,813 in 1986.

The 1985 figures for the patrolman after two years step would be \$25,121 per the PBA and \$24,901 per the Town. For that step in 1986, the PBA's

figure is \$26,628; the Town's figure, \$25,122.

The disparity arises because in the 1984 contract, the patrolman's starting salary was frozen at \$19,483. The PBA argues that the effects of the freeze should be erased and that it should catch up here. The Town maintains that the PBA's proposal would represent for 1985 a 24% increase for entry level patrolmen (\$19,483 to \$24,094). It comes to 23.67%. Per the Town, the PBA dealt with it a year ago on the basis of the starting level freeze and has now changed its mind.

The Town states without contradiction that its pay levels are the best in the County (Dutchess) and argues that, therefore, there is no catchup factor involved on a comparability basis. The PBA maintains that its salaries should remain at the top.

In the 1984 agreement, while the starting salary for patrolmen was frozen, patrolmen's salaries at all other steps were increased by 7.6%. Under both parties' proposals, the starting salary would increase, to \$21,431 in 1985 and to \$22,717 in 1986.

Applying the direction of Taylor Law §209 (4) (v) that the panel make a just and reasonable determination of the matters in dispute, and weighing the respective proposals for a change in the starting salary, the Town's proposal appears to be the more reasonable one. While the PBA computes only a 2.56% increase in 1985 for the first salary step, that is a change on the same first step from 1984 to 1985. That figure overlooks that there is a step movement, too; per the Town's proposal, the move is from \$19,483 to \$22,465, \$2982, or 15.3%, achieved in one calendar year. The PBA's move of \$4611 or 23.67% would be too high. The Town states without contradiction that only one patrolman is involved with this move. Three more were hired in August, 1985, at the \$19,434 figure.

The differences, and resulting compression in Steps 1 and 2 for 1985, and in Step 2 for 1986

(computed by the PBA, again without regard to step movement, at 0.89%) arise out of the fact that the parties agreed in 1984 on a freeze in starting salaries. The testimony from both sides shows that there was no agreement on when the effects on the salary guide of the freeze agreed on for that year were to end. Put another way, as to continuing impact of the freeze, there was no discussion in the 1983 negotiations for the 1984 contract as to what would happen at Steps 1 and 2 to the salaries of officers hired at the frozen starting salary. So the testimony does not establish that the parties agreed to a catch-up for 1985 or 1986 in this respect.

The respective proposals show identical salary figures at the third, fourth and fifth steps for 1985 and 1986; so there is an eventual catch-up or dissipation of the effects of the freeze. While the PBA's figures appear uniform, 10% and 6% horizontally at each step for 1985 and 1986, respectively, the

PBA's proposal would represent a jump in catching up which is not as "just and reasonable" under the statutory criteria as is the Town's proposal, in the opinion of the Panel.

The comparability data (§209 (4) (v) (a) were submitted by the Town; they have been considered and show, in summary, that the ranking of the salaries at the top would continue; there is no showing on comparability of a need for the PBA's catch-up. The data show that the Town's offer compares favorably with those in other surveyed jurisdictions.

Statutory criterion (b), the interests and welfare of the public and the financial ability of the public employer to pay, has not been shown to be impacted by the position of either party; the same is true of criterion (c), comparison of peculiarities in regard to other trades or professions.

Criterion (d), the terms of collective agreements negotiated between the parties in the past

providing for compensation and fringe benefits, does affect our determination because of the negotiated starting freeze; both parties knew that in that respect, the negotiated salary guide was not wholly consistent, in the absence of evidence to the contrary, it may and should be inferred that they understood that the agreed-on freeze would have a continuing, although diminished, effect.

Both offers exceed BLS CPI figures for the cost of living (3.6%, year to year, reported December 5, 1985); that point is not in dispute.

Award

Having considered all of the evidence and arguments of the two sides, and for the reasons stated above, the panel determines that the Town's contract proposal for calendar years 1985 and 1986 will be awarded, as set forth in "Town Board Contract Proposal, 1985-86," received in evidence as Union

Exhibit 1B and annexed to and made a part of this award.

Dated: December 10, 1985

Jonathan S. Liebowitz
Jonathan S. Liebowitz
Public Panel Member and
Chairman

David Kennett
David Kennett
Employer Panel Member

Joseph Sanchez
Joseph Sanchez
Employee Organization
Panel Member
(Dissenting)

MAM
CONNECTICUT
STATE OF ~~NEW YORK~~ *MARTFORD*)
COUNTY OF ~~WESTCHESTER~~) ss:

On this ^{10th} day of December, 1985, before me personally came and appeared Jonathan S. Liebowitz, 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.

MB Morganbesser

MARVIN B. MORGANBESSER
NOTARY PUBLIC STATE OF CONNECTICUT
Term Expires March 31, 1987

STATE OF NEW YORK)

ss:

COUNTY OF DUTCHESS)

On this 18th day of December, 1985, before me personally came and appeared David Kennett, 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.

Ann D. Costa

M - RS
STATE OF NY
NOT. H. Co.
3-30-87

SEAL
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STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

On this 26th day of December, 1985, before me personally came and appeared Joseph Sanchez, 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.

Phyllis Cotter

PHYLLIS COTTER
Notary Public, State of New York
1984
County of Nassau
Commission Expires March 30, 1986

TOWN BOARD CONTRACT PROPOSAL
1985-1986

VIB

	<u>1984 CONTRACT CURRENT PAY SCALES (PATROLMAN)</u>	<u>PROPOSED 1985</u>	<u>% INCREASE</u>
STARTING	\$19,483.00	\$21,431.00	10.00%
1ST YEAR	\$21,904.00	\$22,465.00	2.56%
2ND YEAR	\$22,838.00	\$24,901.00	8.03%
3RD YEAR	\$23,776.00	\$26,154.00	10.00%
4TH YEAR	\$24,712.00	\$27,183.00	10.00%
5TH YEAR	\$25,654.00	\$28,219.00	10.00%

<u>PROPOSED 1985 PAY</u>	<u>PROPOSED 1986</u>	<u>% INCREASE</u>
\$21,431.00	\$22,717.00	6.00%
\$22,465.00	\$23,813.00	6.00%
\$24,901.00	\$25,122.00	0.89%
\$26,154.00	\$27,723.00	6.00%
\$27,183.00	\$28,814.00	6.00%
\$28,219.00	\$29,913.00	6.00%