

THE STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE COMPULSORY INTEREST
ARBITRATION BETWEEN

OPINION

THE VESTAL POLICE BENEVOLENT
ASSOCIATION, INC.

AND

AND

AWARD

THE TOWN OF VESTAL

NYS PERB Case No. IA85-35; M85-425

BEFORE: DAVID C. RANGLES, Chairman
JOSEPH J. STEFLIK, JR., Employee Member
PETER J. REILLY, PBA Member

APPEARANCE:

For the Town:

DANIEL GORMAN, ESQ.
LOUISE TAMBASCIO, Secretary
SANDRA TILLOTSON, Councilwoman

For the P.B.A.:

EARL D. BUTLER, ESQ.
INVESTIGATOR RICHARD BARNARD
PATROLMAN ALAN WOOD

SEP 12 1986
CONCILIATION

STATEMENT:

The above captioned parties have been unable to successfully negotiate a successor to the 1984-85 collective bargaining agreement. The resultant impasse in negotiations, therefore, has been referred to Compulsory Interest Arbitration pursuant to the provisions of New York State Civil Service Law, Article 14, Section 209.4. Subsequently, the duly designated undersigned Public Arbitration Panel convened hearings on July 7 and 8, 1986, on the premises of the employer, Vestal, NY. At those times full and complete opportunity was afforded for the presentation of evidence and proof and for the examination and cross-examination of witnesses. Subsequent to the hearing timely post-hearing submissions were received and the record was closed.

The PBA placed nine (9) economic proposals and one non-economic proposal before the panel for decision for a two year agreement. The substance of those proposals, their dollar cost and the percentage of new money required to fund them as related to the total salary paid this unit of employees in 1985 are:^{1/}

ECONOMIC PROPOSALS:	\$ cost	%
1. Pension: The PBA seeks to change the current 25 year eligibility for retirement to 20 years.	46,000	7.3 *
2. Salary: The PBA seeks increases in salary for 1986 totaling: (and a similar increase for 1987)	75,600	12.00
3. Shift Premium: The PBA proposes an increase on the 3-11 PM shift from 10¢ to 35¢ /hr. and on the 11 PM-7 AM shift from 15¢ to 35¢/hr.	5,559	.882
4. Clothing Allowance: The PBA seeks to increase it from \$400-\$500/annum	2,800	.444
5. Vacation: Eligibility for five weeks vacation shall be reduced from 20 yrs. service to 15 yrs.	5,940	.942
6. Holiday: Martin Luther King holiday to be added to holidays in present agreement	2,240	.355
7. Double time pay for officers who work a holiday	19,008	3.01
8. Longevity pay increases: 5 yrs.-\$165 to \$250; 10 yrs.-\$330 to \$500; 15 yrs.-\$550 to \$750; 20 yrs.-\$750 to \$1000	3,985	.632
9. Weekly Salary Payment	6,000	.95 **
	\$167,132	26.52%

^{1/} At the hearing the parties entered into a joint stipulation of cost.

* The PBA in its brief contends that this cost should be changed to \$40,192, or 6.7%.

** Town estimated cost related to bookkeeping.

NON-ECONOMIC PROPOSAL:

The non-economic proposal is related to allowing unit members to take three days vacation in half-day increments.

The Town has resisted all of the PBA's proposals except for a salary increase. It proposes that a just and reasonable settlement would be 5.0% for 1986 and opposes a two year agreement.

In its consideration and disposition of the issues before it, the Panel based its findings on the criteria set forth in the statutory provisions applicable to Compulsory Interest Arbitration, Article 74 CSL, §209.4 (c)(v):

"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. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security."

DISCUSSION AND AWARD

The Town of Vestal, a suburban community with a population of 27,500, is bordered on the east by the City of Binghamton, on the west by the Town of Owego, on the north by the Susquehanna River and, on the south, by the Pennsylvania State Line. Unlike many of the towns in the immediate area, it supports a full service police department which is represented by the PBA.

In representing the 29 unit members therein, the PBA asserts that the Town has the ability to pay for its proposals. It cites the fact that during the past year the total of assessed property values increased 3% and that the Town enjoys a \$420,000 appropriation fund balance. Additionally, the Town has already appropriated \$30,613, or 4.85%, for 1986 increases related to this unit of employees.

The Town exhibited that while the real property value increased during the last year, it was required to raise taxes by 13.64%. After the adoption of the budget, certain unexpected fiscal problems occurred. Federal revenue sharing income was decreased by \$50,000 which appears to be only the beginning of a diminution of that source of income. It noted that for each \$50,000 loss, the actual taxes on the average piece of property must increase by \$8.00. Moreover, its liability insurance costs "skyrocketed". Instead of paying a \$132,000 increase for general liability, it chose to become self-insured. Furthermore, it assumed the increased cost of \$35,000 for automobile liability insurance. The Town believes that its savings on

premium cost for general liability insurance and its unappropriated fund balance will provide it the protection it needs for any general liability claim it may be required to pay. Given these unexpected fiscal concerns and the uncertainty of what lies ahead, the Town seeks to enter only into a one year agreement.

The PBA countered this application of fund balances by noting the history of claims against the Town. That experience has been excellent and there is no need to expect that it will be faced with a financial crisis. Addressing the duration of the agreement in the context of ability to pay, the PBA noted that if the Panel were to grant the PBA proposals it would allow a "smoothing" of the Town's payments and also avoid resuming negotiations immediately for a successor to the 1986 contract.

In regard to "smoothing" the payment, the PBA posited that if the 20 year pension plan were awarded "other contract proposals advanced by the PBA could be implemented having the following impact". In 1986, it would accept a 3% salary increase and, in 1987, a 6% salary increase and an increase of 35¢/hr. in the shift differential for both evening and night shifts. The total cost thereof would be, in 1986, 10.3% by the stipulated calculation and 9.7% by the PBA calculation and approximately 6.9% new money in 1987. (Payments for either 6.7% or 7.3%, the cost of pensions, would be deferred until May 1988.)

It is the finding of the Panel that the unmistakable uncertainty of the Town's fiscal stability due to actual and contemplated loss of federal revenue sharing and the lack of any experience as a self-insurer compel a conclusion that credits the Town's proposal for a one year contract. Next, the Panel must consider the economic proposals for the PBA in total whether it be its formal position encompassing all of its economic demands or the position taken in its brief based upon granting the pension proposal and then select for award only those items which can be justified on the basis of the Town's ability to pay and the other statutory criteria.

PENSIONS - The PBA asserts that a 20 year plan (Section 384(d) is generally enjoyed by police officers in New York State, a factor which is predicated upon the inordinate stressful nature of the police profession. Through competent testimony of psychiatrist Dr. Leslie Majors, it showed that after 20 years of service the ability and efficiency of police officers significantly declines and that the emotional stress from this unique occupation leads to a higher risk of cardiovascular disease and emotional problems related to alcoholism, divorce and suicide. Turning to the cost of the Town, it noted that if the Panel awarded this 20 year plan the Town could easily accumulate the funds for the first payment which would not be billed

until May 1988. Additionally, it submitted into evidence arbitration awards where a 20 year pension was mandated along with a lower salary.

The Town resisted this proposal by asserting that if unit members could retire at 20 years the Town would substantially suffer through the loss of seasoned officers. According to Vestal Police Chief Croom, an early retirement system would impair the ability of the Town to perform a police function. Moreover, the cost is prohibitive. The Town must remain competitive in its hiring rate; therefore, it cannot afford to raise salaries and, at the same time, assume the cost of a more expensive pension system.

Given the uncertain fiscal future of the Town as treated, supra, in consideration of the duration of the agreement, it is not feasible to require the Town to set aside additional funds to pay the pension premiums. The arbitration awards exhibited by the PBA were either remote in time from the economics of today or the jurisdiction did not assert an ability to pay argument.^{2/} In the contract years which are encompassed by those awards, the CPI was higher than it is today. Thus, it may be assumed that the average comparable total increases in

^{2/} See IA84-2 (1984) and IA94 (1979).

compensation would have then allowed for the cost of a pension plan and a salary increase. The cost of the pension plan itself, whether it be the Town's or the PBA's calculation, is significantly beyond even the highest salary increase for police employees in the contiguous area. While pension plan payments may not be due until 1988, the Town must begin to hold in escrow that money for future payment. Accordingly, the pension proposal may not be granted at this time.

SALARY: 1986 increases in salary for police that were deemed comparable by the PBA and the Town ranged from 5.5% to 6.25%. Those increases are applied across the board to the 1985 salaries of Patrolmen, Sergeants and Lieutenants. In the jurisdictions exhibited by the Town, those 1985 salaries are higher on average than those paid by Vestal for Sergeants and Lieutenants but lower on average for starting and top step Patrolmen. Therefore, through the application of a percentage increase, these employees would receive a greater dollar increase than would result in the application of the same percentage on the Vestal schedule.

Notwithstanding the Town's arguments related to the increase in the Consumer Price Index which it places at 2.7%, the fact that employees in all industries have received increases averaging 4% and other comparable communities raised police salaries between 5.5% and 6.25% is determinative for decision. To

award less than an amount given comparable units of employees, of which many do have a 20 year pension plan, would serve to undermine the very goal of the Town asserted in its argument against the 20 year pension benefit, that is, to be able to attract and maintain the services of qualified personnel by addressing salary rather than pension.

In order to do so, an increase must be equal to the most favorable settlement otherwise the level of salary paid Sergeants and Lieutenants at Vestal would be further eroded. Accordingly, there shall be a 6.25% across-the-board salary increase retroactive to January 1, 1986. The cost over that already budgeted for this unit of employees would be \$8820, an amount easily assumed under the unappropriated fund balance of \$420,000.

LONGEVITY, HOLIDAYS AND UNIFORM ALLOWANCE: Having credited the comparable jurisdictions cited by the PBA for the salary award, those jurisdictions must be used to base a finding in regard to longevity, holidays and uniform allowance. In the five departments exhibited, Vestal currently has a greater longevity benefit and uniform allowance than four and more holidays than all. Accordingly, no comparable justification exists for granting these PBA proposals.

SHIFT PREMIUM, VACATION AND DOUBLE TIME PAYMENT FOR HOLIDAY WORK AND WEEKLY SALARY PAYMENT: In regard to each of these proposals, the PBA has not provided any substantial data upon which the Panel is able to base an award. Accordingly, no justification exists for granting these PBA proposals.

THE NON-ECONOMIC PROPOSAL:

What remains is the non-economic issue which would allow unit employees to take three days vacation in half-day increments. The PBA asserts without rebuttal that this is a long standing practice allowed by the Town, and it desires to guarantee that right by incorporating it into the collective bargaining agreement. The Town has not raised any significant objection to this proposal, and, accordingly, it is granted.

AWARD

1. The duration of the agreement shall be for the year 1986.
2. There shall be an across-the-board salary increase of 6.25% retroactive to January 1, 1986.
3. The PBA proposal which allows unit members to take three days vacation in half-day increments is granted.

This award constitutes the entire settlement of all issues before the Compulsory Interest Arbitration Panel. Any issues not addressed in this award are denied.

Dated: 9-8-86

David C. Randles
DAVID C. RANDLES
Chairman and Neutral Public Member

State of New York)
County of ALBANY)SS:

On this 8th day of September, 1986, before me personally came and appeared DAVID C. RANDLES 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.

KATHLEEN M. HAGGERTY
Notary Public, State of New York
Qualified in Rensselaer County
Commission Expires March 30, 1988
April

Kathleen M. Haggerty

Dated: 7/8/86

Joseph J. Steflik, Jr.
JOSEPH J. STEFLIK, JR.
Employer Panel member
CONCUR DISSENT

State of New York)
County of Albany)SS:

On this 8th day of September, 1986, before me personally came and appeared JOSEPH J. STEFLIK, JR. 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.

KATHLEEN M. HAGGERTY
Notary Public, State of New York
Qualified in Rensselaer County
Commission Expires March 30, 1988
April

Kathleen M. Haggerty

Dated: 9/8/86

Peter J. Reilly
PETER J. REILLY
Employee Panel member
CONCUR DISSENT

State of New York)
County of ALBANY)SS:

On this 8th day of SEP, 1986, before me personally came and appeared PETER J. REILLY 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.

KATHLEEN M. HAGGERTY
Notary Public, State of New York
Qualified in Rensselaer County
Commission Expires March 30, 1988
April

Kathleen M. Haggerty