

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

ONS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

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In the Matter of the Arbitration

Between :

TOWN OF STONY POINT :

And :

STONY POINT POLICEMEN'S
BENEVOLENT ASSOCIATION, INC. :

PERB Case Nos. IA86-11; M86-75 :

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OPINION AND AWARD

Public Arbitration Panel:

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

David Schlachter, Esq., Employee Organization
Panel Member

Anthony V. Solfaro, Employer Panel Member.

Appearances:

For the Town:

Arthur J. Ferraro, Esq., Counsel

For the Association:

Reynold A. Mauro, Esq., Counsel.

Hearings: December 8, 1986, January 5, 1987 (panel and counsel), March 20, July 15, July 29, October 5* and November 6, 1987; the last was an (executive session). A verbatim transcript of the evidentiary hearings was made and constitutes the official record of those hearings. Both sides filed briefs; the Town, a reply brief.

Review and Award

This interest arbitration proceeding continued over a considerable period of time with a large number of issues on the negotiating table and considered by parties and panel during the course of the proceedings. The panel made every effort to assist in a negotiated resolution of this dispute; that result did not occur.

The issues were narrowed, however, by a September 10, 1987 letter from counsel for the PBA stating that the parties had agreed on a duration of two years and withdrawing

*Status conference.

all PBA proposals except those for increases in salary, longevity and uniform allowance; that the Town adopt the provisions of §384-d of the Retirement and Social Security Law; that all employees be entitled to continue existing medical and dental plans upon retirement; overtime rotation based upon seniority; that police officers be permitted to use up to eight days of sick leave per year for illness in the immediate family without requiring a physician's note; adding Martin Luther King's Birthday to the list of paid holidays; two provisions about material in an officer's personnel file; abolition of the chronic sick leave plan; that the Town pay the full amount of the Federation dental plan; a provision as to bereavement leave; and a provision for final and binding arbitration in accordance with PERB procedures.

The PBA's position on salaries was a 10% across the board increase in each year of the agreement; the Town

limited its closing proposal to across the board increases of 6-1/2% and 7-1/2% in each of the two years of the award. The duration of the award is January 1, 1986 - December 31, 1987.

In arriving at its determination of this dispute, the panel has reviewed all of the evidence, the voluminous evidentiary submissions and the extensive presentations including those made in the Town's brief as evidence by stipulation, and the arguments of both sides. It has made its review consistent with the statutory mandate, Civil Service Law §209.4 (c) (v), setting forth the statutory criteria to be considered by the panel in making an interest arbitration determination.

The most important statutory criteria here were comparability of wages, hours and conditions of employment and the interests and welfare of the public and the financial ability of the public employer to pay (a and b of subsection (v) of the statute). The panel

also found relevant subsection d, the terms of collective agreements negotiated between the parties in the past. The expired contract was the starting point for consideration of the issues; the panel also considered the time period necessarily involved in completing this proceeding. That is, this award comes close to the end of the contractual period covered by it.

The bargaining unit comprises two lieutenants, four uniformed sergeants, one detective, one detective sergeant and 13 members of patrol. The expired contract was negotiated and covered 1983-1985 inclusive. The PBA presented as witnesses municipal finance consultant Edward J. Fennell on the ability to pay criteria and PBA President Patrick Brophy on the PBA's proposals and justifications for them. The Town presented the testimony of Supervisor John Shankey on the Town's position as to finances and its and the PBA's proposals. Under the ex-

pired contract, the top salary for patrolmen (calendar year 1985) was \$31,745.16. The top salary for lieutenant, the highest rank in the bargaining unit, was \$41,982.97. The comparability data support the award made herein. The PBA's comparability data show a lag as against the average for Rockland County towns in annual salary; the amount awarded takes cognizance of that lag and also of the differences among the towns in Rockland County with Clarkstown, Orangetown and Ramapo being arguably distinguishable from the other towns and with Haverstraw, a contiguous town, being arguably most comparable to Stony Point. Detailed comparability data for the towns and villages in Rockland County were submitted and carefully considered by the panel. So were the data submitted as to contract settlements and awards. A plus factor has been built in to the salary increases representing a catch-up as against the increases which may be stated at around 7% in other towns for the years

in question; Haverstraw was higher but there were reductions in benefits in that contract which are not provided or ultimately demanded here.

The comparability data also show a lag in 1985 salaries for patrolmen top for Stony Point as compared to the other towns in Rockland County; the only one that is comparable is the Town of Haverstraw for which the top was some \$600 less at the end of 1985. But the Haverstraw Town agreement dated August 11, 1987 advances the salary for patrolmen first to \$34,059 for 1986, \$34,909 for January 1, 1987 and to \$35,759, July 1, 1987. The salary increase to be awarded herein for 1986 will take the patrolmen top to \$34,046.68 for 1986; for 1987, to \$36,600.18, above the level of the Town of Haverstraw for 1987; the Town of Haverstraw contract runs from January 1, 1987 ^{Thru} to December 31, 1989; the patrolmen's first salary effective July 1, 1989 will be \$40,009. Each town and village is different from the others; there are benefits in the pre-

sent Stony Point contract which are not present in other contracts; all of this has been considered by the panel. There are provisions in the Town of Haverstraw contract as to vacation, sick leave and longevity, effective for new employees on and after January 1, 1987. On the other hand, §384-d is to be implemented on or before December 31, 1989. We cannot reach such a term in the instant award.

The salary increases awarded herein maintain comparability and build in a needed catch-up factor shown by the evidence for Stony Point. The panel notes also that the Village of Haverstraw arbitration award dated October 21, 1987 sets forth a salary schedule which specifies as to the percentage amount by which it is increased, it amounts to a split 7% and a split 5% increase, with separate salary schedules for employees employed before and one and after June 1, 1987, with an eventual catch-up.

As to ability to pay, the Town budget is in evidence along with many other data pertaining to tax rates and an analysis of the Town's financial position by Mr. Fennell. There is a difference between the situation as to villages and as to towns regarding ability to pay; this award maintains the relationship among the Town of Stony Point and the Town of Haverstraw and the Village of Haverstraw as to comparability.

Mr. Fennell's review of the fiscal documents of the Town of Stony Point demonstrates sufficient finances in the general fund and available funds to permit the salary increases awarded herein without any demonstrated impact on the Town's tax rate. There is sufficient in the budget and available in general fund revenues so that the Town is not placed under any hardship by this award under the statutory criteria, with particular reference to the interests and welfare of the public and the financial ability of the

public employer to pay. Mr. Fennell's testimony on the Town's ability to pay was consistent with his analysis. Mr. Fennell testified that there is room in the Town's budget for expenditures which would cover a "just increase" in economic benefits. The panel has concentrated that increase in wages, rather than spreading it among wages and fringes, because of the need to maintain comparability and a catch-up factor; we have stayed well within the Town's ability to pay as shown by the testimony of Messrs. Fennell and Shankey. Mr. Shankey testified as to tax rates and systems in the Town and as to funds available; we have considered that testimony, including his dispute with part of Mr. Fennell's report, and as to anticipated financial responsibilities of the Town of Stony Point. We have also considered the rebuttal testimony of Messrs. Fennell and Shankey.

The panel has determined, based on all the evidence and the statutory criteria, and on the fact that because

of the attenuated nature of these proceedings, the period of the contract being awarded is almost over, to award as a monetary benefit, salary increases; they shall be 7-1/4% across the board on all salaries in the bargaining unit, effective January 1, 1986, the 7-1/4% being figured on the salaries in effect at the conclusion of 1985, and 7-1/2% across the board on January 1, 1987, the same being computed on the salaries at the conclusion of 1986. Contract provisions calculated on salaries shall be adjusted accordingly. All other monetary demands are denied.

An important issue was the PBA's request for the 20 year retirement plan, §384-d, in place of the 25-year plan presently in effect. We have determined not to award that benefit in this contract because there were cost and benefit implications on both sides which could not be fully developed and require further consideration in bargaining or in presentation to a panel. But we do feel that based on comparability, with that benefit generally in effect

in Rockland County, that the 20-year retirement plan should be a part of the next contract between the parties. We have given this issue very careful consideration; as to the PBA's other monetary demands, we deny them because of our focus on increasing salaries and because granting them in addition to a fair salary increase would exceed the ability to pay statutory criteria and the "just and reasonable determination of the matters in dispute" mandate of §209(4) (c) (v).

The Town's salary proposals impress us as too low; they are not consistent with comparability; the PBA's salary proposal is too high.

We award based on comparability and general acceptance of the procedure, that final and binding grievance arbitration shall be in effect as of the date of this award in accordance with PERB procedures, with the parties to share the fees and expenses of the arbitrator and to otherwise pay their own expenses of arbitration.

This provision is more fair than final determination by one of the parties (the Town Board).

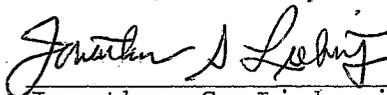
As to the personnel file demands, we award that a police officer will have the right to inspect his personnel file, the right to comment at reasonable length on matters appearing therein, that the Town will have the right to delete confidential material, and that the officer shall have the right to request deletion of critical material, with the determination of such a request being made by the Town Board subject to the grievance and arbitration procedures which will now provide for impartial final and binding arbitration. As to this item only, such review shall be limited to whether the Town's determination is arbitrary, discriminatory or capricious.

All other bargaining demands are denied; those items which were settled between the parties shall remain

settled. In all respects other than those stated above, the contract expired December 31, 1985 shall remain in full force and effect. That agreement, with those settlements and this award, shall constitute the new agreement, effective January 1, 1986 through December 31, 1987.

Although we have treated some of the demands not granted in summary form, they have been fully considered by the panel, as have all submitted items. We commend to the parties the concept of early and scheduled negotiations for a contract to succeed the one awarded here so that it may be arrived at as promptly as possible.

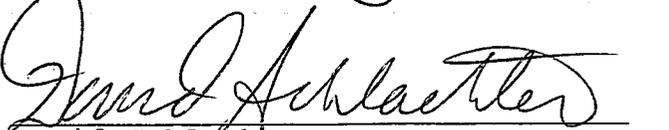
Dated: November 30, 1987



Jonathan S. Liebowitz
Public Panel Member and Chairman



Anthony V. Solfaro
Employer Panel Member



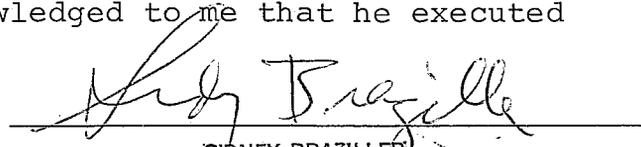
David Schlachter
Employee Organization Panel Member

STATE OF NEW YORK)

SS:

COUNTY OF WESTCHESTER)

On this 30th day of November, 1987, 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.



SIDNEY BRAZILLER
Notary Public, State of New York
No. 44-5431275
Qualified in Rockland County
Term Expires March 30, 19.....

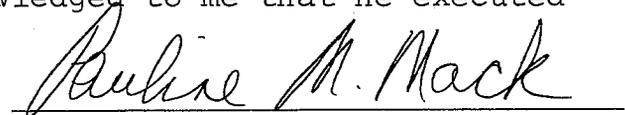
12-31-88

STATE OF NEW YORK)

SS:

COUNTY OF ROCKLAND)

On this 2nd day of December, 1987, before me personally came and appeared Anthony V. Solfaro, 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.



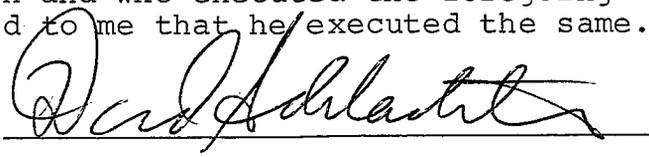
PAULINE M. MACK
Notary Public, State of N.Y.
No. 4851348
Qualified in Rockland County
Commission Expires Jan. 27, 1988

STATE OF NEW YORK)

SS:

COUNTY OF SUFFOLK)

On this 15th day of December, 1987, before me personally came and appeared David Schlachter, 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.



DONNA A MCHUGH
Notary Public, State of New York
No. 4718078
Qualified in Suffolk County
Commission Expires 8/31/88

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration
Between

TOWN OF STONY POINT,

SEPARATE
OPINION & AWARD

and

STONY POINT POLICEMEN'S BENEVOLENT
ASSOCIATION, INC.

PERB Case Nos. IA 86-11; M86-75
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I write this separate opinion in order to dissent from that portion of the panel award which denies the PBA proposal for twenty-year retirement pursuant to Retirement and Social Security Law Section 384-d.

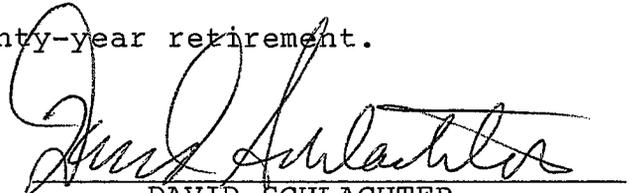
Based upon the evidence presented to the panel, it is respectfully submitted that the panel should have awarded the twenty-year retirement. While arbitration panels frequently shrink from awarding major modifications of benefits, it is respectfully submitted that the twenty-year retirement benefit is now the prevailing benefit in Rockland County, and that comparability therefore indicates that it should have been awarded.

The evidence and testimony indicated that there has been a very substantial reduction in the cost of retirement so

that the addition of this benefit would not place a financial burden on the Town. Moreover, the evidence indicated that there was substantial benefit to be derived by the Town by encouraging police officers to leave their positions after twenty years.

In the course of negotiations both the Town and the PBA agreed that a final package should be developed including the twenty-year retirement, and the panel's award recognizes that this provision ought to be part of the next agreement. It is certainly my hope that this be accomplished.

Accordingly, I dissent from that portion of the award which fails to award the twenty-year retirement.


DAVID SCHLACHTER