

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
ARBITRATION TRIBUNAL

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In the Matter of the Compulsory Arbitration between

City of Oneonta

and

Oneonta Police, AFSCME, Council 82

PERB Number: IA87-1; M86-450

DISCUSSION AND OPINION

OF

ARBITRATION PANEL

Appearances: For the City: Richard Wyssling, Esq.

For the Police: Edward Dean, Regional Representative

Before: Tri-partite Panel as follows:

Eric W. Lawson, Sr., Neutral Arbitrator -- Public Member - Chairman

John Insetta, Director of Personnel -- Employer Representative,
City of Oneonta

Robert Maloney, Regional Representative -- Employee Representative,
AFSCME, Council 82

The above named parties reached an impasse in their negotiations for a successor Agreement to the one which expired December 31, 1986. Accordingly, pursuant to the provisions of Civil Service Law, Section 209.4, the New York State Public Relations Employment Board appointed, on April 29, 1987, the above named panel for the purpose of making a just and reasonable determination of the dispute. Hearings were held on the premises of the City on June 10 and November 2, 1987. By agreement the parties filed post hearing briefs which have been received by the panel. The Panel considered the record on February 16, 1988 and hereby issues its findings and Award.

The Issue

At the time of the first hearing numerous unresolved issues, including that of wages, were listed on the proposed agenda. During the course of the hearings and over the course of the intervening period the parties reached agreement, or withdrew their respective proposals, with respect to all but the issue of wages. Consequently, the sole issue to be determined by this panel is that of the increases to be applied to the existing salary schedule.

Proposals

City -- The City proposed that the existing wage scale be increased by 5% and 7% respectively for the years 1987 and 1988.

Union -- The Union proposed that the new salary scale in the Agreement, Article VII, be as follows:

	<u>January 1, 1987</u>	<u>January 1, 1988</u>
Police Officers		
Starting Salary	\$18,730.00	\$20,041.00
Step 1	19,859.00	21,249.00
Step 2	20,987.00	22,457.00
Step 3	22,116.00	23,664.00
Step 4	23,245.00	24,872.00
Sergeants		
Step 1	24,044.00	25,853.00
Step 2	25,934.00	27,886.00

Facts and Arguments

Exhibits submitted by both sides in support of their positions are listed as follows:

City Exhibits

1. Comparison Summary -- 14 Cities -- Size and Per Capita Income.
2. Comparison Patrolman -- 1986 -- 14 Cities.
3. Percentage Increases 1987 and 1988 -- 14 Cities.
4. Internal Comparisons -- Oneota CSEA -- Firefighters.
5. Issues Settled Prior to Arbitration.
6. Longevity Comparisons CSEA -- Firefighters -- Police.
7. Letter to Dean from Wyssling -- January 2, 1987 -- Firefighters Memorandum
8. Firefighters Agreement -- 1987 and 1988.
9. CSEA Agreement -- 1986 -- 1987.
10. Memorandum of Agreement -- City/CSEA -- January 22, 1986.
11. Consumer Price Index -- January 1984 to January 1987.
12. Regional Planning Development Board Memorandum -- March 2, 1987 -- HUD Income Limits for New York State.
13. Labor Force -- Otsego County -- July 1, 1985 -- June 30, 1986 -- 3 pages Wage Ranges -- Representative Hourly Wages.
14. Employment Standards -- U.S. Department of Labor -- Davis -- Bacon Data -- Selected Rates dated 10/7/87.
15. Management's Clarification of Union Exhibit #5.
16. Comparison Median Family Income -- 10 Cities and Oneonta.
17. Comparison Patrolmen (Salaries) 10 Cities Min/Max 1987.

Union Exhibits

1. Excerpts from police agreements in cities used in subsequent comparative tables showing salaries.
2. Graph Showing Salaries for 17 Police Departments and SUNY -- No date.
3. New York State map showing locations of Cities used in Comparison Tables.
4. PERB Release -- Wage Settlement Data for Negotiated/Arbitrated Settlements as of 12/3/86 -- Police and Firemen.
5. Police Patrolmen Salaries -- 1987 -- 17 Cities and SUNY -- Start and Top -- Original and Revised.
6. Memorandum of Agreement Electrical Workers and New York State Electric and Gas Corporation -- July 1, 1987.
7. New Contract Changes -- 1987 Negotiations -- Corning Glass Works, Oneonta Plant.
8. Excerpt -- State of New York and United University professors -- 1985-1988.
9. Excerpt -- Norwich Schools/Educators' Organization 1987-1989.
10. Excerpt -- Oneonta School/Teachers' -- July 1987/June 1988.
- 11a and b. Excerpt -- Postal Workers Agreement 1984-1988.
12. New York State LADS Police Data -- 9,000 to 19,000 population -- June 30, 1987 -- 19 pages.
13. List of Police Departments Polled by Oneonta PBA -- No date.
14. PERB Release -- 1986 Negotiated/Arbitrated Wage Settlement Data -- 9/4/87.
15. Median Family Income by Municipality -- All of Otsego County -- Undated.

Union Position

The Union proposed that there be a 19% increase for 1987 and an 8% increase for 1988. The suggested salary scales listed above were set forth in the Union Brief and presumably reflect the proposed percentage increases set forth at the hearing.

The primary argument of the Union was based on a claim that the existing Oneonta police salaries are extremely low in comparison with other units around the State. In support of this argument the Union submitted a list of comparison units (Union #5 Revised) as follows:

1987
POLICE PATROLMAN SALARY
Cities, Villages and Towns

<u>City, Village Town</u>	<u>Population</u>	<u>Dept. Size</u>	<u>Start Salary</u>	<u>Top Salary</u>	<u>Top Salary + Longevity</u>
Batavia	16,700	30	\$19,373	\$23,539	\$24,939
Cohoes	19,111	31	17,048	22,625	23,275
Cortland	19,715	37	16,863 (21,778)	21,523	23,926
Depew	19,361	30	--	26,634	27,234
Hornell*	9,850	21	18,330 (17,457)	24,501 (21,876)	24,501 (23,334)
Hudson	9,250	23	16,337	19,899 (18,087)	22,899 (20,587)
Ithaca	28,212	61	19,421	26,659	27,659
Johnstown	9,300	22	16,530	21,252	21,852
Kenmore	19,000	29	20,531	25,482	26,182
Massena*	17,000	22	19,801 (17,920)	21,785 (23,221)	22,535 (24,221)
Monticello	6,500	21	17,787 (18,943)	23,509 (25,037)	24,859 (25,709)
Niskayuna	18,000	26	20,708 (15,000)	27,034 (26,973)	28,084 (28,023)
Olean	18,100	37	22,243 (19,477)	23,355 (22,649)	24,105 (23,399)
Oneida	11,000	21	19,172	21,172	22,572
Oneonta (1986)	14,000	20	16,507	19,042	19,942
Orchard Park	24,016	26	23,973	28,919	29,419
Watervliet*	11,000	24	20,244 (20,322)	24,419 (23,256)	25,319
Webster	29,026	27	21,852 (21,646)	31,032 (30,739)	32,232 (32,239)
Average--17 Depts.			19,388	24,314	25,388
SUNY			19,928	24,816	27,871

*No contract information available as yet. Amount is based on a 3% raise each year since last known salary.

The Union stated that the criteria for choosing the above localities for comparative purposes was the population of the political entity and the size of the department. The entities were chosen from the Upstate area excluding New York City and environs; Oneonta has 20 patrolmen, with a total of 26 in the unit. The average size of units in the comparative list is 23 patrolmen.

In its brief the Union presented a corrected list of starting and top salaries for the 17 departments which showed Oneonta to be 9.3% and 22% lower, respectively, than the average starting and top salary of the 17. By removing Cortland, Ithaca and Olean from the listing because of a criticism from the City that they did not meet the selected criteria the Union stated that Oneonta was 9.9% and 22.2% lower than the respective averages.

The Union modified the list of comparative entities subsequently submitted by the City and stated that the data showed that Oneonta was 5% and 13.1% lower than the averages shown by the City for 12 units.

In an exhibit in its brief using 1986 data for Cohoes, Cortland, Oneida and Watervliet the Union stated that Oneonta was shown to be 8% and 16.25% below the averages for the four communities. It chose the four communities because they were all included in both the Union and the City exhibits.

In its summary the Union stated that in 1986 the Oneonta police were 13% below the average of \$21,618 (maximum annual base salary for negotiated contracts) in Upstate New York (Union #4). Since the average increase in 1986 was 6% the 19% (13 + 6) requested was justified. The Union also argued that the 8% requested for 1988 was in line with the 7% granted the firemen because the policemen had more duties to perform than the firemen.

City Position

The City argued that its offer was in line with the agreements reached with other City bargaining units (City #4) and that its offer would produce a salary schedule which was consistent with those in comparable communities.

In support of its position the following data were submitted (City #1 and #2):

COMPARISON: PATROLMEN 1986

	<u>Unit Size</u>	<u>Population</u>	<u>Per Capita Income</u>	<u>Minimum Base Pay</u>	<u>Maximum Base Pay</u>
Beacon	29	13,579	\$8,848	\$19,707	\$25,161
Cohes	31	17,775	8,652	18,412	21,548
Corning	26	13,032	9,415	16,284	22,381
Cortland	37	19,353	6,758	16,060	22,787
Fallsburg	15	10,600	7,347	13,700	15,932
Fulton	12	13,597	8,725	18,039	23,516
Geneva	27	14,665	8,051	16,936	20,944
Glens Falls	32	16,132	8,208	17,277	21,006
Gloversville	34	17,619	8,426	15,880	21,269
Johnson City	36	17,223	9,040	17,423	18,723
Newark	17	10,059	8,505	15,056	19,407
Oneida	22	10,655	8,259	18,962	20,962
Saugerties	16	18,345	9,120	14,450	19,121
Watervliet	26	11,688	8,989	19,280	23,256
Average	27	14,594	8,453	16,962	21,143
Oneonta	26	14,565	6,454	16,507	19,043
Difference			Dollars	-455	-2,100
			Percentage	-2.7%	-11%

The City stated that the criteria used for selecting the comparative communities were unit size, distance from Oneonta, population and per capita

income: unit size -- a range of 11 up or down; distance -- within approximately 100 miles; population -- a narrow range; per capita income -- \$3,000 more or less than Oneonta. The City stated that Oneonta is the hub of a relatively rural area with no large cities near by, with agricultural activities dominating the economy, with only one large employer in the area-- SUNY. Thus, it argued the criteria used provided communities with similar characteristics.

The City pointed to the similarity of the \$2,000 difference between the average per capita income of the comparison communities and that of Oneonta with the same difference between the average maximum pay for policemen in the comparison communities and that of Oneonta policemen. The City defended its use of per capita income figures for comparative purposes on the grounds that it was a standard comparative figure used by the Census Bureau and by New York State agencies such as the Department of State in its LADS reports.

The City also cited the recent movement of the consumer price index showing an annual increase as of January 1987 of 2.6%. It argued that the City offer more than compensated for such movements.

The City submitted data (City #3) showing that the average 1987 increase for patrolmen in its comparison list of municipalities was 5.5% and for 1988 was 5.2%. The Union did not dispute these figures.

Counter Arguments

The Union objected to the use of per capita income figures on the ground that the Oneonta figure was biased because of the presence of so

many students in the area. It also argued that the figure was irrelevant.

The Union objected to the City's comparative figures (City #2) on the ground that no source for the figures had been supplied. However, in its brief, it presented a corrected list which showed that Cohoes had a minimum figure of \$17,048 rather than \$18,412 and that Glens Falls had a minimum figure of \$17,273 rather than \$17,277. Thus, the City figures were shown to be substantially correct.

The City objected to the choice of comparative communities by the Union on the grounds that such municipalities as Webster, Orchard Park and Ithaca are too large, that other communities such as Depew and Kenmore, as well as Webster and Orchard Park, are in the vicinity of large cities such as Buffalo and Rochester and thus are not comparable from many standpoints. Further, such cities are geographically distant from Oneonta and thus not relevant. The City objected to the use by the Union of PERB blanket figures for Upstate New York on the grounds that such figures include the metropolitan areas of Syracuse, Albany, Rochester, Utica and Buffalo.

Other Area Wage Data

Both sides supplied the panel with information on wage rates and wage contracts applicable to employees, both private and public, in the Oneonta area: City Exhibits 12, 13 and 14; Union Exhibits 8, 9, 10 and 11. This information did not reveal any large private employer in the area nor did it reveal any employer whose wages were excessively out of line. The Davis-Bacon data (City #14) showed Union wage rates to be between \$6.00 per hour and \$16.17 (one classification) with a heavy concentration between \$8.00 and \$10.00 per hour for carpenters, electricians, painters and plumbers.

An informal spot check of the submitted contracts carried out at the hearing by the parties showed that 1987 and 1988 wage and salary increases were in the range of 2% to 7.5%. The Union reported that hospital nurses in the area had received increases substantially higher than the range indicated above.

Discussion

Comparability

Section 209.4 of the Civil Service Law requires that comparisons be made of the wages and conditions of employment of the employees involved in a proceeding such as this with wages and conditions of employment of other employees performing similar services under similar working conditions in comparable communities. The word comparable has a dictionary definition of "capable of or suitable for comparison." Thus, the choice of comparable communities for wage level evaluation purposes is restricted by the requirements of similarity and suitability. In addition to size of community and size of the work unit such factors as the economic environment, population density and other features of a labor market need to be considered.

Judged by the above statutory considerations the comparable data submitted by the Union fails to validate its claim that the Oneonta policemen are substantially underpaid. Union Exhibit #3, a map of New York State showing the location of its comparable communities, reveals that four of the communities are in or near the metropolitan area of Buffalo and Erie County. A fourth, Webster, is adjacent to Rochester. In addition to these four communities, Olean, Hornell and Massena are located from 150 to over 200 miles away from Oneonta. In addition, Niskayuna, Webster

and Orchard Park are relatively affluent suburban communities. In no meaningful way are these communities part of the labor market of which Oneonta is a part. It is difficult to see the direct relevance of police salaries in such communities to the situation in Oneonta.

As both sides recognized, Oneonta is a relatively isolated community. It is located in a rural, agricultural setting. It is not adjacent to a large metropolitan center. It is not affluent as measured by average income data.

The list of comparable communities submitted by the City substantially conforms to the restrictions imposed by the Civil Service Law. By restricting the geographic area to a distance of about 100 miles an attempt was made to reflect local labor market conditions. The restrictions on unit size and community population as well as the elimination of extremes of community affluence resulted in a choice of communities which are suitable for comparison with Oneonta.

City Exhibit #2 demonstrated that the Oneonta policemen's pay scale is 2.7% lower than the average for the minimum, its ranking being sixth from the bottom in an array of 15 units. At the maximum level Oneonta is 11% below the average and ranks second from the bottom. These data indicate that an upward adjustment is warranted although there is no compelling reason to bring the Oneonta scale up to the average of the comparative communities. The data also indicate that a larger adjustment is called for at the maximum than at the minimum.

Ability to Pay

The issue of ability to pay was not raised by the City. In response to a query from the panel the City responded that it had the ability to pay a reasonable increase in salaries. The City indicated that an increase of the size requested by the Union might raise the question of ability to pay.

Cost of Living

Data submitted on the applicable increases in consumer prices showed them to be relatively modest. The Panel considered such increases to carry little weight in its determinations in this case.

The Adjustment

The accompanying Award provides for a 7% increase in the base salary for the first year and a 5% increase in the second year. It also provides for a phased-in upward adjustment in the longevity allowance such that by the second half of 1988 that allowance will have increased from its present maximum of \$900.00 (\$200.00 in fifth year and \$50.00 per year thereafter for fourteen years) to \$1900.00 (\$500.00 in fifth year and \$100.00 per year for fourteen years).

The effect of the base adjustment will be to bring the minimum Oneonta base pay for 1987 up to \$17,662 which figure is \$332 less than the average minimum for the comparison municipalities, assuming an average increase for them of 5.5%. The maximum base pay for Oneonta patrolmen for 1987 will be increased by \$1,333.00 whereas the average increase for maximum base pay for the comparison municipalities was \$1,163.00. The adjustment thus closes the gap at the maximum base by \$270.

The 5% increase provided for 1988, in comparison with the average increases for the comparison municipalities, will keep the Oneonta scale approximately at its new and higher relative position for 1988.

The upward adjustment in the longevity increase, which adjustment will amount to a maximum of \$1,000.00 when fully implemented on July 1, 1988, was designed to offset in part the adverse gap between the Oneonta base maximum salary and that of the average comparison units. The new maximum longevity increase for Oneonta patrolmen, after nineteen years of service, will be \$1900.00.

Neither party had presented a specific longevity adjustment to the panel. Each side, however, had indicated an interest in an adjustment to the existing arrangement. City Exhibit #6 showed that the Oneonta policemen's longevity scale was cumulatively ahead of that of the City CSEA unit but was behind that of the City firefighters unit by over \$2,000; thus there was a precedent for an adjustment in the patrolmen's longevity pay.

The minimum salary for an Oneonta patrolman at the end of 1988 will be \$18,545.00 and the maximum, including longevity pay, will be \$23,295.00.

Eric W. Lawson

Eric W. Lawson, Sr., Panel Chairman
and Neutral Arbitrator

3/14/88

Date

John Insetta

John Insetta, Employer Representative

3/8/88

Date

Robert Maloney

Robert Maloney, Employee Representative

3-4-88

Date

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
LABOR ARBITRATION TRIBUNAL

In the Matter of the Compulsory Arbitration

between

City of Oneonta

and

Oneonta Police, AFSCME, Council 82

PERB Number IA 87-1; M86-450

AWARD OF THE PANEL

The Arbitration Panel named below, having been duly appointed and having heard and considered the facts and arguments presented by the parties named above as set forth in the accompanying Opinion does hereby Award and direct as follows:

1. The new Agreement shall be for a period of two years effective January 1, 1987.
2. The new Agreement shall contain the applicable portions of Article VII, Section 1, of the expired Agreement with the following modifications:
 - a. The salaries listed for 1987 shall be increased by 7% over those listed for 1986.
 - b. The salaries listed for 1988 shall be increased by 5% over those listed for 1987.

3. The new Agreement shall contain the applicable portions of Article VII, Section 2, of the expired Agreement with the following modifications:
 - a. The schedule of longevity increases shall be increased as of July 1, 1987 by \$300.00 for each of the listed annual increases.
 - b. The schedule of longevity increases shall be further modified as of July 1, 1988 to reflect a \$100.00 annual increase (instead of the existing \$50.00 annual increase) for each of the years listed beginning "after six (6) years of continuous employment."
4. Other Sections of Article VII shall remain as in the expired Agreement except for appropriate changes in dates and other modifications, if any, heretofore mutually agreed to by the parties.
5. All of the other matters heretofore mutually agreed to by the parties shall be incorporated in the new Agreement.

Eric W. Lawson, Sr.
 Eric W. Lawson, Sr., Panel Chairman
 and Neutral Arbitrator

Barbara F. Schneider
BARBARA F. SCHNEIDER
 Notary Public in the State of New York
 Qualified in Onon. Co. No. 4691869
 My Commission Expires March 30, 1990

State of)
 County of) SS.: *Onondaga*

On this 14th day of ~~February~~ *March* 1988, before me personally came and appeared Eric W. Lawson, Sr. 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.

Elizabeth Goodman
ELIZABETH GOODMAN
 Notary Public, State of New York
 Otsego County Reg. No. 1GO4858394
 Commission expires May 12, 1988

John Insetta
 John Insetta, Employer Representative

On this 8 day of ~~February~~ *March* 1988, before me personally came and appeared John Insetta, 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.

Robert Maloney
 Robert Maloney, Employee Representative

On this 7 day of ^{March}~~February~~ 1988, before me personally came and appeared Robert Maloney, 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.

Mark Schnitzler

MARK SCHNITZLER
Notary Public in the State of New York
Livingston County, N.Y.
Commission Expires March 30, 1989