

NYC PUBLIC EMPLOYERS' ASSOCIATION
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CONCILIATION

In the Matter of the
COMPULSORY INTEREST
ARBITRATION

between

COLONIE POLICE BENEVOLENT
ASSOCIATION

Petitioner

and

TOWN OF COLONIE

Respondent

OPINION AND AWARD

PERB Case #I89-37;
M89-397

Before: The Public Arbitration Panel

Joel L. Hodes, Employer Member
Richard P. Walsh, Jr., Employee Organization Member
Jerome Thier, Public Member and Chairman

APPEARANCES

On behalf of the Colonie Police Benevolent Association:

Lombardi, Reinhard, Walsh & Harrison, P.C.
Thomas J. Jordan, Esq. of Counsel

On behalf of the Town of Colonie:

Whiteman, Osterman & Hanna, Esqs.
Melvin H. Osterman, Esq. and Günter Dully, Esq., of Counsel

THE PROCEEDING

The Colonie Police Benevolent Association (PBA) is the representative of a unit of employees of the Town of Colonie (Town) consisting of police officers (including those assigned to the Investigative Division) and sergeants in the Police

Department. Upon a petition duly filed by the PBA, pursuant to Section 209.4 of the Civil Service Law and Section 205.4 of the Rules of Procedure of the New York State Public Employment Relations Board (PERB), this Public Arbitration Panel was duly designated by PERB to make a just and reasonable determination of the dispute in negotiations between the PBA and the Town. Hearings were held on August 30 and 31, and September 5, 1990, at which both parties were afforded a full opportunity to present evidence and arguments.¹ They thereafter submitted briefs.

The panel met to deliberate on October 1 and November 19, 1990. This determination is based upon these deliberations. In arriving at it, the panel has reviewed the evidence presented to it and taken into consideration the criteria contained in Section 209.4 of the Civil Service Law and set forth below:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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];²

¹A record was not made of the hearing, neither party requesting pursuant to Civil Service Law §209.4 (iii), that one be kept.

²The Town's ability to pay the increases sought by the PBA need not be considered because the Town has acknowledged that it has the ability to pay them.

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.

ITEMS IN DISPUTE

The PBA and the Town have been negotiating a two year successor to their January 1, 1988 through December 31, 1989 contract. As a result of their good faith negotiations, they reached agreement on all but two items; salaries and health insurance.

Salaries

The Town's proposal in negotiations and request to the Panel is that salaries be increased by 4 percent in 1990 and 4 percent in 1991. The PBA seeks 8 percent in each of those years.

Health Insurance

Under the parties' expired agreement, the Town provides unit employees with coverage under the Empire Blue Cross/Blue Shield Matrix indemnity plan at no cost to the employees for individual or family coverage. The Town also makes available to unit employees and their families two Health Maintenance

Organizations, the Community Health Plan (CHP) and the Capital District Physicians' Health Plan (CDPHP). The contract calls for the unit employees to pay any premiums for the HMOs that are in excess of the premiums for the Empire Blue Cross/Blue Shield plan. However, until the present time, the premiums for these plans have been less than those for the Empire Plan. The Town has made the following request to the Panel with respect to health insurance:

The Town will pay one-hundred percent (100%) of any premium increases each policy year, up to a ten percent (10%) increase. Any premium increase above 10% will be split equally between the Town and the Association.

POSITIONS OF THE PARTIES

The PBA asserts that the 8 percent per year salary increases it seeks are necessary in order for the salaries of unit employees to be comparable to those of police officers in comparable communities. In this regard, the PBA asserts that the police forces of neighboring towns are not comparable because those towns have much smaller populations and police forces. The PBA argues that the Town's size, and its location between three cities, makes law enforcement more difficult and hazardous than in neighboring towns, there being a higher crime rate and larger

patrol area, among other things.³ The PBA rejects cities as comparables because of their limited tax bases.

The PBA asserts the appropriate comparables to be the Towns of Amherst, Cheektowaga, Clarkstown, Greece, Greenburgh, Hamburg, Irondequoit, Ramapo, West Seneca and Poughkeepsie. The PBA claims these communities to be most comparable on the basis of a study it commissioned which took into consideration a number of factors, including population, land area, crime rate, per capita income, property tax, number of police officers, the average value of residential property and the number of serious crimes.

In urging that the appropriate increase is 4 percent in 1990 and 1991, the Town in no way questions the competency of the members of its police force. To the contrary, it takes pride in them. The Town believes, however, that because the salaries of the unit employees exceed those of police officers in communities it deems to be comparable, the 4 percent increases are appropriate. The Town argues that the comparable communities are the neighboring ones of Bethlehem, Glenville, Guilderland, Niskayuna, Rotterdam, Saratoga Springs, Schenectady, Troy and Watervliet. The Town refers to the interest arbitration award issued in the 1984 dispute between the parties, which noted that these communities and the Town of Greece were relied upon by both

³The Town of Colonie has a population of approximately 74,500 and a 111 member police force. The neighboring town with the next largest population and police force is Rotterdam. Its population is approximately 28,500 and its police force has 37 members.

parties in negotiations prior to 1984, and "attached a great deal of significance" for comparability purposes to the "essentially local" communities previously relied upon by the parties. The Town also asserts that regardless of which communities are used as comparables, except for those in the highly inflationary areas of Westchester and Rockland Counties (these are Clarkstown, Greenburgh and Ramapo), the percentage increases recently given to police officers are nowhere near those asked for by the PBA.

As further justification for its position, the Town offers a salary study done for it by Cornell University. This study developed a proposed salary plan for all Town employees. Implementation of this plan with respect to employees who are not in bargaining units calls for 4 percent increases for those whose salaries exceed the wages of their positions on the proposed schedule and higher increases for those whose salaries do not. The unit employees' salaries exceed the salaries for these positions in the proposed schedule. While acknowledging that the schedule can only be a guide because the employees at issue are in a bargaining unit, the Town urges that increases beyond 4 percent will further distort wage relationships and cause compression at the managerial levels. The PBA counters this argument by pointing out that police lieutenants, who are in another bargaining unit, were given 6 percent increases for 1990 even though their salaries similarly exceed the salaries for their positions in the proposed schedule.

With respect to health insurance, the Town points out that it has paid compounded increases averaging 17 percent over the last five years for the Empire Blue Cross/Blue Shield Plan. It urges that if health insurance costs are not brought under control, they will become oppressive. An expert witness for the Town testified that cost sharing by employees is critical to holding down costs. The Town has shown that several communities used both by it and the PBA as comparables have some form of cost sharing of health insurance premiums.

The PBA argues, based upon a study commissioned by it, that certain improvements in management practices with respect to health insurance can result in substantial savings to the Town. An expert testifying for the Town disputed this claim.

The PBA also argues that no other Town employees contribute to the cost of health insurance.⁴

DECISION

Each side asks the Panel to find that the work performed by Colonie police officers is comparable to that performed by the police officers in the communities it lists as comparables. It suffices to find, however, that the current salaries of Colonie police officers have come about through contracts voluntarily negotiated by the parties over many years and reflect their views

⁴It should be noted, however, that the Town's 1990-91 contract with CSEA, which represents another unit of employees, includes a committee to study health insurance cost-saving measures and a salary/health insurance reopener in the second year.

of comparability, among other factors.⁵ Neither party has demonstrated to this Panel that there is any compelling reason to change the status quo.

Determining an appropriate percentage increase for the 1990 year does not necessitate making a precise calculation based on the communities offered as comparables by either party. But for the towns in Westchester and Rockland Counties, areas having very high costs of living, increases range between 5 and 6 percent for 1990, regardless of the comparables used. Thus, an increase for the employees in this unit should be in that range. To determine what it should be, the Panel has looked to the Town's police lieutenants' unit, which is the most comparable unit for the purposes of this award. The lieutenants and other police officers have always been treated the same and the Town has offered nothing to show that different treatment is warranted for 1990. Since the Town agreed to give the police lieutenants' unit a 6 percent increase for 1990, it is appropriate to award the unit employees a 6 percent increase for that year.

For 1991, data presented for other communities is sparse and the Town has not reached any agreement for the lieutenants' unit. There is therefore little basis at the present time on which to render a salary award for the second year. Furthermore, there is the matter of health insurance. Its spiraling cost is a serious problem. If the Town's experts' cost increase projections, which

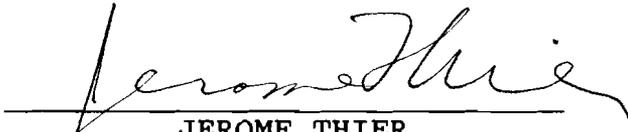
⁵The terms of these contracts are one of the criteria to be considered by the Panel under Civil Service Law Section 209.4(v)d.

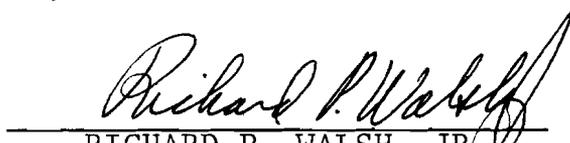
are disputed by the PBA, prove to be correct, some effective relief will in time be necessary. Through their present contract, the Town and CSEA are exploring the problem and have left 1991 salaries and the Town's opportunity to obtain relief open for negotiation. To go beyond where the Town is with CSEA is not justified at this time.

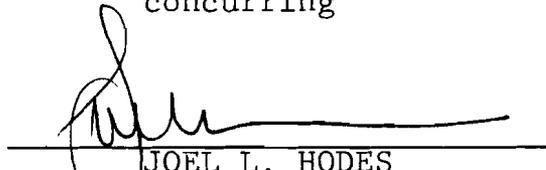
In view of the foregoing, the Panel is issuing a one year award and urges the parties to make the negotiation of health insurance their first priority in the next round of negotiations.

AWARD

The salaries of the employees in the negotiating unit represented by the PBA are increased by 6 percent effective January 1, 1990.

Date: 12/15/90 
JEROME THIER
Public Member and Chairman

Date 12/18/90 
RICHARD P. WALSH, JR.
Employee Organization Member
concurring

Date 12/18/90 
JOEL L. HODES
Employer Member
dissenting in a separate opinion,
attached

State of New York)
) ss.:
County of Albany)

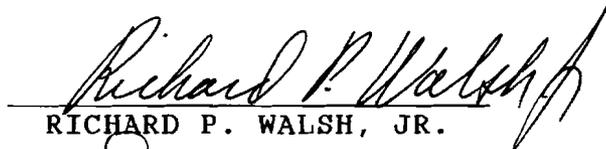
Pursuant to CPLR Section 7507, we affirm that we have executed the foregoing award.

Date: 12/15/90



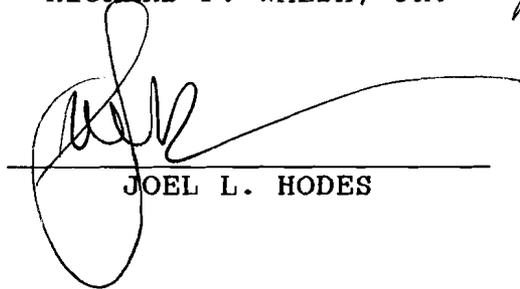
JEROME THIER

Date: 12/18/90



RICHARD P. WALSH, JR.

Date: 12/18/90



JOEL L. HODES

Dissenting Opinion of Joel L. Hodes, Employer Member

By this award, the majority has converted a process that was intended to resolve labor-management conflicts into a mechanism for creating one.

The Panel's award imposes upon the parties a "contract" of 12 months duration 11½ months into its term. After a year and a half of negotiations it establishes "labor peace" for less than two weeks. On January 1, 1991, the parties will face yet again the expenditure of time and money, the uncertainty in the relationship between them and the disruption and distraction of labor-management unrest that have been the heavy price of those negotiations and that the Panel could, and should, have spared them. Moreover, far from creating a climate for the parties to resolve their future differences and stabilize their relationship, the majority's decision will almost certainly reinforce the union's oft-stated view that litigation is more productive than negotiation.

The majority's determination ignores the fact that these police officers are the highest paid in the Capital District. It represents an unnecessary, unwarranted and unfortunate exception to the lower salaries and smaller salary increases that are the universal rule in comparable Capital District communities. It ignores the fact that the region is at the leading edge of its deepest recession in decades. The majority, asked to consider a Town proposal for a four percent salary increase and a PBA proposal for an eight percent increase (following annual salary increases from 1986 through 1989 of 10.3 percent, 7.1 percent, 8.2 percent and 8.0 percent) has come to the Solomonic conclusion that the appropriate salary increase for 1990 is six percent. That conclusion, like the majority's determination that health insurance cost sharing by the members of the PBA is not appropriate "at this time," simply and completely ignores three days of testimony and more than 1200 pages of documentary evidence. In the face of that record and in an era of public employee layoffs and mandatory furloughs, a six percent increase in the salaries of these employees is not just unsupportable; it is just plain nonsense.

In what I believe to be the public interest, a few words about health insurance: The Town of Colonie, like other public employers, is choking on health insurance costs. Since 1985, the Town's cost of providing health insurance to the members of its police department has increased by 146 percent. Empire Blue Cross/Blue Shield, the Town's principal health insurance carrier, has projected an annual premium increase of 18 percent of each of the next four years. If that projection is accurate, the annual cost to the Town of family coverage for each employee will increase from its present level of \$5,988 to \$10,282 by 1994.

There are two reasons why these astronomical cost increases have occurred and, if unchecked, will continue to occur. First, the Town's health insurance programs are "experience rated". That means that the more, and more expensive, health insurance claims that are made by unit employees, the higher will be the premiums for that insurance. Second, in the absence of some effective limitation on the utilization of health care services, a more or less constant supply of available services will face a greater and greater demand for those services. As a matter of simple economics, the price of health care services will continue to rise.

Obviously, in Colonie as elsewhere across the country, health insurance cost containment measures other than premium cost sharing by employees -- managed care, pre-admission review, second surgical opinion and concurrent review, all of which have been and are components of the Town's health insurance programs -- have failed to halt, or even to slow, the health insurance cost spiral. It is now accepted, universally by experts on the health care system and commonly by employers and employee organizations who have faced the problem responsibly, that there can be no effective health insurance cost containment or control over the cost of health care services without direct employee participation in the funding of health insurance.

Since 1988, the State of New York has had the benefit of negotiated health insurance premium cost-sharing with its employees -- including all of the members of the New York State Police -- pursuant to which employees with individual health insurance coverage pay ten percent, and those with dependent coverage a full 25 percent, of its cost. Almost one-third of the municipalities immediately surrounding the Town of Colonie -- all of which, it should be remembered, have police salary scales substantially lower than those in effect in Colonie, even without the increase awarded by the Panel -- have negotiated health insurance cost-sharing with their police officers.

For what conceivable reason, then, does the majority avoid this critical issue in this case? If Empire Blue Cross/Blue Shield is correct in its health insurance cost increase projections, health insurance cost-sharing in the form proposed by the Town would provide to the taxpayers indispensable protection against health insurance cost increases that by any standard exceed the reasonable obligation of an employer to provide health insurance benefits to its employees. At the same time, by the Town's proposal to pay the first ten percent of any year's premium increase without employee contribution, employees are provided a buffer that will save them harmless against all but the most extraordinary health insurance premium increases.

On the other hand, if the Town and its health insurance carriers are wrong in their premium projections and premiums increase not at all or at less than precipitous rates, these employees will continue to pay nothing for their health insurance coverage.

It seems to me that considerations of fairness -- not just to the tens of thousands of wage-earning taxpayers for whom the Town speaks, but to the members of the negotiating unit, who would continue to enjoy premier health insurance coverage at nominal cost (and who, in addition in light of this award, will have the benefit of a salary increase that exceeds the increase in the cost of living over its term) -- of fiscal responsibility, of logic and, I think, of cooperative labor-management relations, all compel the conclusion that a salary increase of this magnitude without substantive health insurance cost-sharing is unjustified and unjustifiable.

I consider the Panel's award to be worse than just wrong. It is not responsible. It ignores economic reality. It ignores the unassailable fact that, without participation by employees (by the Town's proposal, however small) in the cost of health insurance, that cost will be uncontrollable. It ignores the record evidence. It justifies itself by rationalization rather than by reason. In short, it does not serve the Taylor Law's dispute resolution processes or, I believe, the parties themselves.

I dissent.