

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
Compulsory Interest Arbitration

between

POUGHKEEPSIE PROFESSIONAL FIRE
FIGHTERS ASSOCIATION, LOCAL 596,
I.A.F.F.

and

CITY OF POUGHKEEPSIE

OPINION AND AWARD

OF

INTEREST ARBITRATION
PANEL

Case No. IA93-036
M93-202

Before: Tripartite Interest Arbitration Panel
Ronald A. Longo, Esq., Employer Member
Thomas F. DeSoye, Esq., Employee Organization Member
Randall M. Kelly, Public Member and Chairman

Appearances:

For the City:

Barry Kaufman, Esq.	Assistant Corporation Counsel
Joseph Chiseri	City Manager
Mark Newton	Commissioner of Finance
Susan Watson	Director, Community Development and Grant Writer
Stacey Ripo	Personnel Administrator
Lance Klein, Esq.	Kean & Beane, P.C.

For the Association:

Donald P. Henry, Esq.	Attorney
George Cacchione, Jr.	President
Patrick Phillips	Vice President
Herman Hess	Treasurer
Edward D. Cefall, Jr.	Negotiating Committee
Stephen Sutka	Negotiating Committee
Edward Fennell	Consultant
Duncan MacRea	Executive Vice President, New York State Firefighters

INTRODUCTION

On December 6, 1993, Poughkeepsie Professional Fire Fighters Association, Local 596, I.A.F.F. (hereinafter, Petitioner or the

"Association") petitioned the New York State Public Employment Relations Board for Compulsory Interest Arbitration pursuant to the provisions of the Civil Service Law, Section 209. On February 23, 1994, PERB appointed the undersigned as Public Interest Arbitration Panel in the impasse between the City of Poughkeepsie (hereinafter, the "City") and the Association.

Hearings were held at the City of Poughkeepsie City Hall on September 16, November 12, and December 14, 1994 at which time each party was given the opportunity to present its evidence and argument. The Panel met in Executive Session on January 20, 1995 and thereafter.

BACKGROUND FACTS AND CIRCUMSTANCES OF THE IMPASSE

The Collective Bargaining Agreement between the City and the Association ran from January 1, 1989 to December 31, 1992. The parties have been without a Collective Bargaining Agreement since that date. The parties bargained on various dates in 1993 and 1994 without success. After mediation was unsuccessful, the Association petitioned PERB for appointment of this Interest Arbitration Panel.

The City is located in the Southern part of Dutchess County on the Hudson River. It has a population of about 28,000 located in an area of 4.1 square miles. The Association represents 54 fire fighters and 11 officers (under the rank of Chief). There are three stations for six pieces of equipment, i.e., four engines and two ladder trucks.

Statutory Standards:

Civil Service Law, Section 209.4 (the Taylor Law) provides standards for the Panel, as follows:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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. 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.

ISSUES OUTSTANDING

The following are the issues listed in the Association's petition for interest arbitration and the City's response (items withdrawn by the parties in the course of the hearings are not included):

1. Term
2. a) Salary Schedule
b) Lieutenants' and Captains' Differentials
3. Overtime Rate and Conditions for Payment
4. Step Increments
5. a) Vacation Accrual
b) Scheduling of Vacation
6. Vacation Carry Over
7. a) Career Incentive
b) Delete Article XV Section 1(c) re: Continuation until retirement
8. Welfare Fund
9. Sick Leave Accrual
10. a) No Lay off without Notice
b) Severance Pay
11. Employee Assistance Program
12. Meal Allowance
13. G.M.L. Section 207-a Procedure

14. Uniform Allowance
15. Holiday Accrual
16. Health Insurance Opt-out
19. Copies of Collective Bargaining Agreement (Add Index)
20. Union Release Time
21. Tuition Plan
22. Physical Conditioning Program
23. Employee contribution toward Health Insurance
24. Leave Time Computation
25. Vacation Accrual
26. Holiday Pay
27. G.M.L. Section 207-a Entitlement Period
28. Funeral Leave
29. Health Insurance Co-Pays
30. Prescription Drug Coverage
31. Meal Allowance
32. Incorporate Section 6 into Section 1(a) of Article X
33. Minimum Manning
34. Sick Leave Incentive

Simply listing the number of open items shows the difficulty of the negotiations.

PRELIMINARY STATEMENT

As a preliminary matter, the Panel has concluded that the results of this interest arbitration are to be applied to a two-year retroactive agreement, i.e., from January 1, 1993 to December 31, 1994.

Based on this, it is clear that this proceeding is not the most appropriate forum for addressing many of the concerns raised by the parties in the negotiations. More so than normal, this

arbitration is not the forum to address needed structural changes to the parties' agreement and relationship. A striking instance is the obvious need to address the inequities present in the parties' existing salary schedule, especially the fact that step increments are skewed to the eighth year of employment. This is an issue raised by the Association in its demands and deserves serious discussion by the parties. As indicated, a retrospective interest arbitration award is not the appropriate vehicle to explore the significant issues inherent therein.

In the same vein, the Panel has chosen not to address some desirable changes in the language of the contract. The Panel found some of the language difficult to comprehend and we suggest that the parties overhaul the language in the future, either in the context of negotiations or in the spirit of cooperation and improving both language and relations. The Panel also heartily recommends the addition of an index or Table of Contents to ease the reading of the Collective Bargaining Agreement.

The other effect of this being a retrospective agreement is that the essential nature of the award becomes almost entirely financial. Indeed, the whole course of negotiations between the parties here were centered on the financial issues that divided them rather than the issues that bound them together. Accordingly, the terms of the award will deal exclusively with financial issues with the expectation that the parties can deal with these issues in the course of meaningful negotiations over future terms of employment.

As explained above, therefore, the Panel will only deal with certain limited issues and leaves all other issues to the parties' future negotiations, as follows:

**REMUNERATION ISSUES
SALARIES AND LIEUTENANTS' DIFFERENTIAL
CAREER INCENTIVES**

Association Proposals:

The Association has proposed that the annual salaries of all members be increased by eight percent (8%) for each year of a two-year agreement. It further proposes to increase the lieutenants' differential to fifteen percent and the captains' differential to fifteen percent.

As to career incentives, the Association proposes increases in the current incentives for firefighters and dispatchers from \$500 to \$900 for 9 1/2 years of service and from \$1,100 to \$1,400 for 14 1/2 years of service and to increase career incentives for lieutenants and captains from \$550 to \$950 for 9 1/2 years of service and from \$1,300 to \$1,700 for 14 1/2 years of service. In addition, the Association proposes removing the current

limitation on receiving such incentives after an employee's 20th anniversary of employment.

Other economic issues addressed by the Association demands include time and one-half pay for all time worked in excess of the regular work schedule, changing the salary schedule to reflect five years to top pay and equalizing the increments, additional vacation days, uniform allowance

Association Position:

In support of its position, the Association presented testimony and evidence from Edward J. Fennell, of Edward J. Fennell Associates (Assn. Exh. 2). He testified that, compared to other cities in New York State, the City has the ability to pay a fair wage increase, as requested by the Association. He compared the City to 25 to 30 "river-canal" towns (along the Hudson River and Erie Canal) that are older industrial towns that have experienced financial problems but that have found the wherewithal to pay fair wages to their firefighters.

Specifically, he reviewed the City's 1992 and 1993 Adjusted Annual Update Documents filed with the State Department of Audit, the 1993 and 1994 City Budgets, the 1994 City Constitutional Tax Limit Statement, a 1993 bond prospectus, and 1993 Overlapping Real Property Tax Rates (Summarized in Assn. Exh. 2). Fennell summarized his findings, as follows:

- (1) The City of Poughkeepsie has an overall real property tax rate which is in the mid range when compared with other New York cities of similar size
- (2) The City has a taxing margin of \$10,495,469 which represents 52.9% of its limit for fiscal year 1994. This margin also constitutes a reserve which is 48.3% of the 1994 General Fund Budget.
- (3) The City has exhausted 24.5% of its debt limit as of 12/31/93.
- (4) The total fund equity balance in the General Fund as of 12/31/99 was \$1,975,923. Unappropriated surplus as of this date amounted to \$1,172,288.
- (5) The relative cost to raise the Fire Department base salary and wages 1% has the effect of increasing the 1994 Tax Levy and General Fund Budget .26% and .14% respectively.
- (6) There is a Contingency Fund in the amount of \$250,000 in the 1994 General Fund Budget.

On cross examination, Fennell admitted that the City's Fund balance has come down significantly since 1990 and that tax rate increases of double digits are "significant". He conceded that general economic conditions, especially as affected by the downsizing of IBM, have had a negative effect on the City.

Fire Fighter and Local Union President George Cacchione testified concerning the nature of the fire fighters work in the City, emphasizing the hazards faced and the extra training undertaken by members to better serve the community (e.g., cold water rescue and EMS). Cacchione described the physical layout of the City and local conditions and procedures for fighting fires. He also described procedures for use of breathing apparatus.

Lieutenant Herman Hess introduced Collective Bargaining Agreements from other bargaining units in the City represented by CSEA and PBA. He also presented fire fighter Collective Bargaining Agreements from surrounding towns, including Beacon, Kingston, Newburgh, and Middletown. The Association conceded that these were the fire departments with which it compared in the past. However, it also offered for consideration fire fighter Collective Bargaining Agreements from Fairview, Arlington, Peekskill and Lake Mohecan on the basis that these are neighboring communities. Hess prepared exhibits analyzing and comparing City Fire Fighter salaries and benefits to those of these surrounding communities (Assn. Exhs. 39-41).

Hess testified that the Association demand of 8% annually was based on settlements in these surrounding communities and those achieved by other unions with the City. Thus, for example, the PBA settled for 5% and the CSEA for 2.5%/2.5% in 1993.

City Proposals:

City proposals in the area of compensation and salary include computing leave time at 8 hours per day, fewer vacation days for new hires, a six month limit on 207(a) disability benefits, establish a July 1 eligibility date for step increases, requiring certification tests for step increases.

City Position:

The City position is essentially that it is facing not only the same extreme financial conditions that plague the rest of the State, but that it is still experiencing the effects of a severe economic downturn common to other communities in the area, exacerbated by the pullout of IBM, and the City's position as the home of last resort for many of the poorer members of the county. The City argues quite strenuously that it is not in the position to accede to the Association demands.

First, it presented the testimony of Susan Watson, the

Director, Community Development and Grant Writer that the City is unique in its combination of relatively small size and financial distress. Her analysis included such information as that 7 of the 10 census tract in the City qualify as low income, that City unemployment is 10% compared to a 5.9% rate in the rest of the County, and that 14% of the population is well below the poverty level and 52% are low or very low (City Exh. 3).

City Commissioner of Finance, Mark Newton, testified that the loss of assessables has been the single biggest financial problem for the City; that there has been a wave of challenges to City assessments, both in Small Claims Court and on Certiorari, resulting in projected 7% losses in assessables in 1994 and 1995 (City Exhs. 19). For example, he cited the Sheraton Hotel's certiorari challenge looking for a \$20 million reduction. Combined with a falling residential market and the high percentage of exempt property in the City, this makes future increases in revenues difficult. Last year, the City budget increased 3%, but increasing the budget and the tax rate only leads to more uncollected taxes and tax liens (City Exh. 19). Finally, he expressed serious concerns about the Fund Balance and that if it falls any further, the City will lose its precarious credit rating.

The City Manager, Joseph Chiseri, testified that the City is in the throes of a rapidly declining economy, directly affected by corporate downsizing, especially that of IBM. And, he emphasized that the downsizing is not over, that IBM laid off 6,000 employees in the last couple of years and 300 more recently. Chiseri presented graphic evidence, in the form of photographs, of the precipitous decline in commercial values in the City. He lamented the spiraling effect of crime and the perception of crime in the City.

Chiseri testified that the City is taking steps to improve its situation. For example, in July, 1994, it was granted an Economic Development Zone, but he pointed out that this is a two edged sword. The designation (itself not a sign of economic health) encourages businesses to locate in the Zone, but by preventing the City from collecting taxes on new buildings and improvements undertaken in the Zone, including sales tax on the materials.

On the specific demands, Chiseri testified that the parties negotiated a twenty-year retirement plan in the 1980's that included as a quid pro quo, the existing provisions on overtime and the cap on career incentives after twenty years. According to Chiseri, the cap was intended to encourage Tier I employees to retire and that the City insisted on the provision as part of the agreement on the twenty-year retirement plan.

The City argues that it is not in a position to grant

salary or other financial increases even to members of its valued fire department.

Discussion:

The impasse here is the result of a classic confrontation between the legitimate needs and desires of employees for salary increases that prevent them from falling farther behind to inflation and that recognize their significant value to the health and safety of the City on the one hand and the City's unquestioned difficult financial position on the other. It is not a question of the City not wanting to better compensate these public servants, as can be seen from the years of contractual increases leading up to the current impasse. Rather, the City is faced with a financial situation that effectively prevents it from agreeing to significant financial commitments at the present time.

There is no question that the City is experiencing severe financial problems and that its ability to pay significant increases is limited. The testimony of the City Manager, the Commissioner of Finance and the Director of Community Development reflected their shared frustration at dealing with these problems. Were this the only factor mandated for consideration by the Legislature, the Panel would be constrained to award any increase. However, the Legislature also mandates that the Panel compare 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;

The Panel analyzed settlements in the surrounding communities of Beacon, Kingston, Middletown and Newburgh for purposes of this statutory comparison. The Association also sought to compare settlements in Fairview, Arlington, Peekskill and Lake Mohegan. Without making any determination concerning the validity of this comparison, the Panel decided not to extend the analysis to these communities in the context of a retrospective contract.

Contractual increases for fire fighters in these communities were either 3% or 4% per year (Assn. Exh. 39). This is in line with the inflation rate in the area of approximately 2.7%.

This analysis would justify salary increases in the 3-4% range. However, the City's financial position militates against granting the full amount of such comparable increases. Accordingly, the Panel awards the following:

Effective January 1, 1993, a 2% increase to all steps of the

salary schedule.

Effective July 1, 1993, a 2.5% increase to all steps of the salary schedule.

Effective January 1, 1994, 3% increase to all steps of the salary schedule.

These increases are less than those in surrounding communities and, while they do not maintain the City's relative position among fire departments in the surrounding communities, these increases keep the Association members roughly comparable in salaries and benefits.

And, while the City is in a difficult financial position, it was able to increase compensation for its other employees represented by the PBA and CSEA 5% in 1993. The Panel, however, is not persuaded that 5% is justified here. This is not to question in any way the value of firefighters. They certainly deserve every penny they earn. However, the City's financial position has deteriorated since these settlements and the PBA and CSEA traded substantial givebacks in health insurance to defray some of the cost.

The Association has also proposed increasing the amount of career incentives paid to members after nine and one-half and fourteen and one-half years of service. The Association presented evidence that some fire departments in surrounding communities pay larger career incentives. However, the evidence is not compelling that the City incentives are significantly less than those paid elsewhere. Thus, given the City's financial condition, the Panel cannot agree that these incentives need increasing at the present time.

Association arguments that it is unfair to place an artificial cap on career incentive payments to employees after their twentieth year of employment were more persuasive. Clearly, such a cap was intended to encourage long term employees to leave the Department after twenty years. Not only is the legality of such a provision questionable today, but it is patently unfair to decrease an employee's pay because he or she continues to work beyond twenty years for the City. Significantly, no other employee group in the City has this cap on career incentive payments. And, whatever effect that it might have had in encouraging Tier I employees to retire has already taken place. Factoring in the City's financial condition, this term will only become effective on the last day of the contract term and be prospective from that date only.

Other economic proposals were not justified on the present record.

HEALTH INSURANCE ISSUES

City Proposals:

1. All members pay 20% of health insurance costs (currently, only employees hired after 1/1/91 pay 20%).
2. The City may increase employee co-payments on health insurance plans, such increase not to exceed \$10.00.
3. Prescription drug coverage to mirror changes made to the Statewide Empire Plan effective July 1, 1991, including mandatory generic substitution and a \$5.00 employee co-payment.

City Position:

The City position is basically that it has determined that it cannot continue financing 100% of employee health insurance coverage and that the firefighter unit must now recognize its obligation to share in the allocation of these costs. According to the City, it needs to make substantial and permanent inroads in this area now in order to keep these costs in check.

Its demands in the area of co-payments are designed to bring this unit in line with payments already being made by other employees in an effort to reduce premiums (City Exh. 13).

Association Position:

The Association strongly believes that its members should not be required to contribute anything toward their health insurance.

Discussion:

Health insurance costs have become the labor relations battleground of the 1990's. It is well recognized that the cost of health insurance skyrocketed during the 1980's to the point where health insurance became more expensive than pension benefits. In prior negotiations, the parties took positive steps to moderate the effect of these increases, for example, by offering alternative options for coverage and providing that employees hired after January 1, 1991 pay 20% of their premiums.

In the last year, increases in health insurance premiums have moderated substantially, in large part due to the implementation of managed care provisions such as PPO's and HMO's. One of the City proposals is an example of the type of managed care provisions being adopted by many employers, that is, the mandatory use of generic drugs when available. While it is impossible to implement this provision retrospectively, it is a useful tool for

containing medical costs with no cost to the employee. It should therefore be included in the contract.

Two other provisions would cause an increase in costs to the employee, i.e., increasing employee co-payments in health insurance plans, such increase not to exceed \$10.00 and a \$5.00 employee co-payment for prescription drugs. These are changes already incorporated in the Statewide Empire Plan, have little impact on employees and serve to save the City substantial amounts. Again, it is impossible to implement this provision retrospectively, but the City is convincing that these increased co-payments are justified, especially in light of our finding that all employees should not be required to pay 20% of their health insurance premiums.

As noted, the City is asking that all employees pay 20% of their health insurance premiums. It has not justified this demand on the present record. Health insurance premiums in the past year have actually declined, the firefighters are receiving increases barely more than the rate of inflation, and the City will experience savings based on the increased co-payments being included in this contract. Finally, such a significant issue should be the subject of more extensive negotiations between the parties and not the subject of a retrospective interest arbitration.

AWARD

1. **TERM OF AGREEMENT:** January 1, 1993 to December 31, 1994.
2. **ARTICLE IX. REMUNERATION**
 - A. Effective January 1, 1993, a 2% increase to all steps of the salary schedule.
 - B. Effective July 1, 1993, a 2.5% increase to all steps of the salary schedule.
 - C. Effective January 1, 1994, a 3% increase to all steps of the salary schedule.
 - D. No change to career incentives payments.
3. **ARTICLE XV. RETIREMENT**

Effective December 31, 1994, delete Article XV. Section 1.(c) to provide that career incentive payments continue until the date of retirement.
4. **ARTICLE XIV. INSURANCE**
 - A. Effective December 31, 1994, the City may increase

employee co-payments under the health insurance plan, such increase not to exceed \$10.00.

B. Effective December 31, 1994, prescription drug coverage will be amended to mirror changes made to the Statewide Empire Plan effective July 1, 1991, including mandatory generic substitution and a \$5.00 employee co-payment.

C. Effective December 31, 1994, modify Article XIV to provide that any member of the bargaining unit who opts out of the health insurance plan, shall receive an in lieu payment of \$1,000 per year for each year that he or she opts out of the health insurance plan, provided further that a member may opt back into the health insurance plan at any time without notice. In order to be eligible to opt out of the health plan, a member must first produce satisfactory proof of comparable alternative health insurance through a spouse or otherwise.

D. No change as to employee contribution for health insurance premiums.

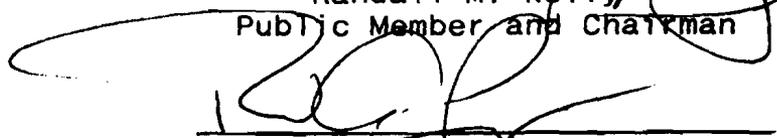
Respectfully submitted,
Tripartite Interest Arbitration Panel

April 26, 1995



Randall M. Kelly
Public Member and Chairman

~~May~~
ADIT 2, 1995



Ronald A. Longo
Employer Member

Dissent as to: 2(A+B), 3, 4D

Consent as to: Balance of Award

~~April~~
May 1, 1995



Thomas F. DeSoye
Employee Organization Member

Dissent as to: 2(c) - 1994 wages
4 Insurance (A) + (B)

Consent as to: Balance of Award.