

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration	:	
between	:	
	:	
THE CITY OF RYE,	:	
Public Employer,	:	OPINION
	:	
-and-	:	AND
	:	
RYE POLICE ASSOCIATION,	:	AWARD
Employee Organization.	:	
	:	
PERB Case No. IA96-045; M96-325	:	

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Richard P. Bunyan, Esq., of Counsel
Trager, Cronin & Byczek, LLP
Employee Organization Panel Member

Christine A. Gaeta, Esq., of Counsel
Law Office of Vincent Toomey
Public Employer Panel Member

APPEARANCES:

For Rye Police Association:

Trager, Cronin & Byczek, LLP
Keith I. Braunfotel, Esq., of Counsel

For City of Rye:

Vincent Toomey, Esq.
Law Office of Vincent Toomey

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board, to make a just and reasonable determination of a dispute between the City of Rye ("City") and the Rye Police Association ("PBA").

The City of Rye consists of an area of approximately 5.8 square miles in the eastern part of Westchester County, New York. The City is located 25 miles north of New York City and was listed in 1990 as having a population of approximately 15,000 people. The City is bordered by Port Chester, Rye Brook, Harrison and Mamaroneck. The City is headquarters for several large corporations, and is served by commuter train to New York City.

The PBA is the certified bargaining agent for all employees of the Police Department in the positions of Police Officer, Detectives, Sergeants and Lieutenants. There are currently 33 sworn Department members in the bargaining unit.

The last collective bargaining agreement between the parties covered the period which commenced January 1, 1994 and ended December 31, 1996 (Joint Exhibit 1), and was the result of an Interest Arbitration Award (Sands Award, Joint Exhibit 5).

Prior to the expiration of the 1994-96 Agreement, the parties began negotiations for a successor contract, but such negotiations were unsuccessful, and thereafter, the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and thereafter the PBA filed a Petition for Interest Arbitration, dated March 26, 1997, pursuant to Section 209.4 of the Civil Service Law (see Petition, Joint Exhibit 2).

The City filed a Response to said Petition on April 18, 1997 (see Response, Joint Exhibit 3), which Response included the City's proposals to be submitted to interest arbitration.

On June 9, 1997, the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law.

Hearings were conducted before the undersigned Panel in the City of Rye on October 27 and December 18, 1997. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions. After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met and engaged in discussions in Executive Session on April 30, 1998 and on subsequent dates, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Sessions, this Panel was able to reach unanimous agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period commencing January 1, 1996 and continuing through December 31, 1998.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

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.

SALARY

Discussion on Salary

The paramount issue as articulated by the PBA is the award of an appropriate wage increase so that Rye police maintain comparable wages with police working in similar communities. The PBA maintains the proper comparison with Rye should be other similar communities in Westchester, Nassau and Rockland Counties. The PBA argues that since Rye is in the general geographic area as towns and villages in Nassau and Rockland Counties, the comparables for purposes of salary and other terms and conditions of employment should not be limited to other cities in Westchester County (see PBA Exhibit 2). In fact, the PBA argues that since Rye is the smallest city in New York State, it is really not properly compared to large cities in Westchester County (such as Mount Vernon and New Rochelle) but is more appropriately compared to towns and villages in the geographic area. This would include Long Island Sound Shore communities directly across Long Island Sound in Nassau County.

The PBA is seeking an 7% salary increase for each year of the two years which will be covered by this Award. The PBA maintains that such proposed increases are required and justified based on comparable salaries received by police officers in similar towns and villages in the geographic area.

The PBA argues that City has the ability to pay such increases, as the evidence establishes that the City is in excellent financial health. Financial Consultant Edward Fennell testified that the City has attained the highest (Aaa) municipal bond rating through Moody's of any municipality in Westchester County (see PBA Exhibit 39). For the past four years, 1995 through 1998, the City has been able to produce an annual budget without any tax increase (PBA Exhibits 4 and 5). As testified by Mr. Fennell, the City has a designated surplus in excess of that required for municipalities by the Office of the State Comptroller (see PBA Exhibits 5 and 37). The testimony of Mr. Fennell also indicated that the City has the second lowest tax rate in Westchester County, and the City's debt load is one of the lowest when compared with the 61 cities within New York State. The PBA indicates that the City's fund balance at the end of 1996 was 4.3 million dollars, which Mr. Fennell testified was an indication that the City typically overestimates expenditures and underestimates revenues when preparing the annual budget.

The City responds that in arriving at a fair and reasonable award under the statute, the Panel must balance the City's ability to pay with the City's overall responsibility to provide necessary services to its citizens. The City maintains that it should not be penalized for maintaining fiscal responsibility in past years and avoiding the overspending exhibited by other cities.

The City proposes that a moderate increase of 3% for each of the two years covered by this Award is reasonable and fair and within the City's means to pay. The City indicates that although the fund balance is high, it was inflated by three "one shot" revenue sources: a State aid payment of \$605,660 in 1996, and the sales of two parcels of property--the Parsons Estate, which resulted in \$1.5 million in proceeds to the City, and a property located on Ellis Court, which generated revenue of \$237,000. Such revenue sources are not recurring events. The City maintains that it should not be required to raise taxes to fund salary increases for Rye Police, and argues that a 3% increase per year is fair and supported by the City's limited ability to pay.

In reaching the salary determinations herein, the Panel has considered the current state of the City's economic health, as evidenced by its past and present budgets and fund balances (City Exhibits 1 and 2), and the annual *State of the City* report, released in January 1997 (PBA Exhibit 4). The Panel has also reviewed the current municipal rating ascribed to the City by Moody's Financial Service (see PBA Exhibit 39). Further, the Panel has also considered and reviewed the testimony and financial report prepared by PBA Financial Consultant Fennell, which indicated that the City currently has adequate fund

balances to pay the raises and other benefits sought by the PBA in this proceeding (see PBA Exhibits 37 and 38).

In that regard, the Panel has also considered the testimony of City Comptroller Michael Genito, and the financial report he prepared (City Exhibit 4), and the adopted budget for 1998 (City Exhibit 1).

The Panel has carefully considered all of the financial data and arguments presented by both parties, and has applied such data to the criteria mandated by statute as specified in Section 209.4 of the Civil Service Law.

Upon review, the Panel finds that it is clear that the proper comparables for Rye police officers are other Westchester cities¹, and other Long Island Sound Shore Communities located in Westchester County². These cities, towns and villages are appropriate comparables based on geographic location, population, and the relative size of the police departments which serve them. Further, several prior Interest Arbitration Awards involving the City and the PBA have found these communities to be the appropriate comparables. Specifically, in the 1988-89 Award (Joint Exhibit 8; PERB Case No. IA88-006, Panel Chairman Stark;

¹ City of Mount Vernon, City of New Rochelle, City of Peekskill, City of White Plains and City of Yonkers.

² City of New Rochelle, Town of Harrison, Town of Mamaroneck, Village of Larchmont, Village of Mamaroneck, Village of Pelham Manor and Village of Port Chester.

Award dated 7/14/89), the Panel noted that it would continue to use the Westchester communities which had been previously used by interest arbitration panels in 1980 and 1986. In the 1990-91 Award (Joint Exhibit 7; PERB Case No. IA91-025, Panel Chairman Kelly, Award dated 7/26/92), the Panel adopted the reasoning of the prior interest arbitration panels and found the noted Westchester communities to be the appropriate comparables. In the 1992-93 Award (Joint Exhibit 6; PERB Case No. IA92-047, Panel Chairman Jacobs, Award dated 1/5/94), in seeking the most appropriate comparables to the City of Rye, the Panel found that:

"The City is most closely aligned and comparable to other communities along New York's Long Island Sound Shore and it is their salaries and working conditions which should be given most weight." (Joint Exhibit 6 at p.1).

In the most recent 1994-96 Award (Joint Exhibit 5; PERB Case No. IA94-015, Panel Chairman Sands, Award dated 12/7/95), the Panel did not deviate from these comparables. Accordingly, this Panel does not find the inclusion of Rockland County communities to be appropriate for comparison to the City of Rye and continues the use of the aforementioned Westchester County cities, towns and villages as the appropriate comparables.

This Panel is of the view that there are many factors that must be considered under the Taylor Law to reach a just and reasonable determination of the proper compensation to be awarded to the Rye Police herein. The issue of the City's ability to pay

is an important factor that must be given paramount attention, but it must be viewed against the obvious importance of maintaining an acceptable level of police services which are necessary to protect the citizens of Rye. The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Rye police officers with a fair and equitable wage for the important and in many cases, dangerous work which they perform.

Therefore, after careful consideration and review of all the data and material presented herein, the Panel has concluded that salary increases to Rye police officers are warranted, and that the City does have the ability to pay such modest increases. These salary increases are based on the comparison with other police jurisdictions, and on the City's financial ability to pay. In determining salary increases to be provided herein, the Panel has also reviewed recent contract settlements in the cited Westchester communities, wherein salary increases have ranged from 3.0% to 4.0% for 1997 and 1998 (see City Exhibits 30 and 31, and attached settlements).

The Panel has therefore determined that Rye Police shall receive a 3.5% raise for each of the two years covered by this Award. This salary increase shall result in Rye police officers remaining in exactly the same position in relation to comparable salaries of other police in the cited Westchester communities.

However, the Panel notes that the starting salary of \$39,704 remains competitive and shall not be increased during the term of this Award.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following AWARD ON SALARY

1. Effective 1/1/97, and fully retroactive to that date, the salary schedule for Rye police shall be increased by 3.5%

2. Effective 1/1/98, and fully retroactive to that date, the salary schedule for Rye police shall be increased by 3.5%

3. The starting salary of \$39,704 shall not be increased by the general salary increases provided herein, and shall remain at \$39,704 during the term of this Award.

DETECTIVE DIFFERENTIAL

Discussion on Detective Differential

The 1994-96 Agreement provides in Article 5(1)(B) that those officers assigned to the Detective Division shall receive an annual stipend of \$2400 per year. This stipend is equal to approximately 4.37% of the top salary for police officers of \$54,889. The PBA seeks an increase in the detective differential to 10% of the top salary.

The City is opposed to any increase in detective differential and contends that they are adequately compensated with the current annual stipend.

The Panel finds that the salary differentials received by detectives in other comparable Westchester police departments ranges from a low of 5% in the Village of Mamaroneck to a high of 7% in Harrison and Portchester (see PBA Exhibit 22). Based on such comparables, the Panel finds that it is appropriate to increase the current stipend to \$3000 per year effective 1/1/98.

AWARD ON DETECTIVE DIFFERENTIAL

Effective 1/1/98, the annual differential for employees whose rank is Sergeant or below, who are assigned to the Detective Division, shall receive a stipend of \$3000 per year.

LONGEVITYDiscussion on Longevity

Pursuant to Article 5(2) of the 1994-96 Agreement, employees receive annual longevity payments based on years of service and based on their individual hire date. Regardless of hire date, longevity payments do not begin until the completion of 9 years of service.

The PBA seeks to increase longevity payments for all employees hired after 1/1/79 from the current schedule of \$300 cumulative after completion of years 9, 14 and 19.³ The PBA also seeks longevity payments to begin after 5 years of service.

The City is opposed to any increase in longevity payments and argues that the Rye police officers currently receive longevity payments which are well within the range of those received by police officers in comparable Westchester County communities.

The Panel finds that a Rye police officer hired after 1/1/79 will receive \$6300 in longevity payments over a 20 year employment career. If the PBA proposal on longevity increases was granted, it would result in an officer hired after 1/1/79 receiving \$15,688 over a 20 year career. A review of the

³ An employee after 9 years of service currently receives \$300; after 14 years receives \$600; and after 19 years receives \$900.

appropriate comparables in Westchester County indicates that cumulative longevity payments over 20 years ranges from \$4150 to 23,262 (PBA Exhibit 23). While the Panel finds that longevity payments provided to Rye Police fall within the low end of the comparable range, the Panel does find that a modest increase is warranted. This is based on the recognition that an experienced police officer brings increased value to the Police Department and the community. Accordingly, for all employees who have been hired on or after 1/1/79, the annual longevity payments shall be increased by \$100 effective 1/1/98.

AWARD ON LONGEVITY

Effective 1/1/98, annual longevity payments for employees who have been hired on or after 1/1/79, shall be as follows:

- At the completion of 9 years of service \$400
- At the completion of 14 years of service an additional \$400
- At the completion of 19 years of service an additional \$400

DENTAL PLAN

Discussion on Dental Plan

Under the 1994-96 Agreement, the City pays up to \$650 per year for each employee who participates in the dental insurance plan. Notwithstanding this payment, each participating member is required to pay \$553 per year to cover the full cost of the dental plan (see PBA Exhibit 27).⁴

The PBA proposal seeks an increase in the City's portion of the contribution to \$900 per year per employee, which would result in a lower contribution payment by the participating employee.

The City indicates that the increased contribution on the part of Rye police is the direct result of a high utilization of the dental plan by members of the bargaining unit. Non-police City employees, enrolled in the same plan, have a much lower utilization rate and contribute approximately \$400 per year per participating employee (see City Exhibit 3). Simply put, the City argues that police officers pay a higher contribution rate for the dental plan because they use it more. Therefore, the City maintains that there is no justification for an increase in the City's contribution rate for the dental plan.

⁴ This has been recently increased to \$812 per year.

The Panel finds that in addition to the high rate of usage by members of the bargaining unit, there have simply been increased costs of dental care. Therefore, the Panel finds that a modest increase of \$100 per year to the City's contribution rate will help to offset such costs and attempt to more fairly apportion the costs of dental care between the parties.

AWARD ON DENTAL PLAN

Accordingly, the Panel Awards that effective 1/1/98, the City shall contribute \$750 per participating employee for the dental plan.

LINE OF DUTY DEATH BENEFIT

Discussion on Line of Duty Death Benefit

There is no provision under the 1994-96 Agreement which provides for reimbursement for funeral expenses to the family of a police officer who has been killed in the line of duty. The PBA asserts that such expenses are ever increasing and represent a financial burden to many families who are suffering the effects of such a tragedy. As a result, the PBA seeks a \$7500 line of duty death benefit in the collective bargaining agreement, to be payable to the estate of the member.

The City indicates that under the 1994-96 Agreement, Rye police officers have a guaranteed ordinary death benefit as provided under Section 360-b of the Retirement and Social Security Law and under Section 208-b of the General Municipal Law. The City finds no justification to add to such benefits currently provided.

The Panel takes note of the fact that burial and funeral expenses are significant, and that the possibility that an officer can be killed in the line of duty is real. Accordingly, the Panel sustains the PBA's proposal.

AWARD ON LINE OF DUTY DEATH BENEFIT

Accordingly, the Panel Awards that effective 1/1/98, the City shall provide a death benefit of \$7500 to the estate of a member who has been killed in the line of duty.

GROUP LIFE INSURANCE

Discussion on Group Life Insurance

Article 14 of the 1994-96 Agreement provides that the City shall provide a group life insurance policy for each participating employee in the amount of \$15,000, with the City's expenditure not exceeding \$7.00 per month per member.

The PBA proposal seeks an increase in the life insurance benefit provided to \$50,000 per member, based on the increased costs of education and other living expenses which a police officers' surviving family would be faced with upon the death of the member.

The City is opposed to any increase in this benefit, and maintains that it currently provides a life insurance policy comparable to several other Westchester County communities (see City Exhibits 26 and 27).

The Panel notes that a \$15,000 life insurance policy provides minimum coverage in the current economic climate.

Without increasing the City's contribution of \$7.00 per month per participating employee, the Panel directs that such contribution be used to obtain the maximum amount of insurance coverage.

AWARD ON GROUP LIFE INSURANCE

The Panel Awards that effective 30 days from the Date of this Award, the City shall seek to obtain the maximum amount of life insurance coverage by spending \$7.00 per month per employee.

JURY DUTY

Discussion on Jury Duty

In 1996, the New York State Legislature repealed the occupational exemption for police officers, thereby making them eligible to be called for and to serve on civil and criminal juries. The 1994-96 Agreement has no provision dealing with the situation where a police officer is required to be absent from duty to serve on a jury.

The PBA proposes that a new provision be added which provides that a police officer who is required to serve on a jury be relieved of duty regardless of the shift they are working on the day that they are required to attend to jury duty. The PBA indicates that it would be unreasonable and dangerous for an officer to work a midnight to eight shift, then attend jury duty, and then work again that night from midnight to eight.

The City is opposed to the PBA proposal, and indicates that jury duty is a civic responsibility, which can be fulfilled by an officer charging personal or vacation leave. In the alternative, the City proposes that an officer be excused from duty with pay only for the actual hours which an officer spends performing jury duty. The City maintains that an officer should not profit as a result of being called to serve on jury duty.

The Panel notes that police officers are now being required to serve on juries in both civil and criminal cases throughout the State, and that many collective bargaining agreements now provide leave from duty with pay for jury duty. Additionally, due to the 24 hour nature of police schedules, it is necessary to provide that an officer may be excused from his/her shift as a result of jury duty.

If a member is called to jury duty and works an 8:00 a.m. to 4:00 p.m. shift, he/she shall be excused from work with pay for the first day of jury duty. Thereafter, if the member is merely required to call-in pursuant to a jury service call-in procedure, he/she shall report to work unless required to be present for jury duty.

Depending on the actual time involved in jury service, a member shall be excused from an evening or night shift if he/she is required to serve on jury duty during the day. The actual time when released from jury duty should be determinative of whether or not a police officer shall be excused from his/her evening or night shift as a result of serving on jury duty. There shall be a minimum of 4 hours between the beginning or end of a shift and the beginning or end of actual jury duty service, which includes time spent if required to be present in the jury pool at the courthouse.

AWARD ON JURY DUTY

Effective on the Date of this Award, a member shall be excused from work with pay if he/she is required to report for jury duty during the hours of his/her regular work shift. Additionally, a member shall be excused with pay from his/her full regular work shift if it begins or ends 4 hours or less from the beginning and ending time of jury duty service.

It is the actual time spent on jury duty which shall govern whether or not a member shall be excused from his/her work shift. Members shall utilize the jury service call-in procedure if available. A member called to jury duty but subject only to the jury service call-in procedure shall report to his/her regular work shift at all times except for the actual day or days when the member is required to appear for jury duty.

A member on jury duty shall receive his/her regular pay and shall transmit to the City any and all amounts received as jury duty *per diems* or allowances.

REMAINING ISSUES

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

DURATION OF CONTRACT

This Interest Arbitration Award covers the period commencing 1/1/97 and continuing through 12/31/98, as provided by the Taylor Law in Section 209.4(c)(vi).



JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

7/16/98
Date
of Award

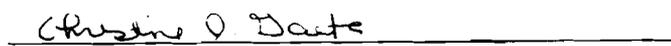
(Concur)
~~(Dissent)~~



RICHARD P. BUNYAN, ESQ.
Employee Organization Panel Member

7/15/98
Date

(Concur)
~~(Dissent)~~



CHRISTINE A. GAETA, ESQ.
Employer Panel Member

7/14/98
Date

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this 16th day of July 1998, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Cathy L. Selchick
Notary Public

CATHY L. SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30, 1999

STATE OF NEW YORK)
COUNTY OF Rockland) ss.:

On this 15 day of July 1998, before me personally came and appeared Richard P. Bunyan, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

STEVEN M. LANDAU
NOTARY PUBLIC, State of New York
No. 02LA47966751
Qualified in Rockland County
Commission Expires September 30, 1999

Steven M. Landau
Notary Public

STATE OF NEW YORK)
COUNTY OF Nassau) ss.:

On this 14th day of July 1998, before me personally came and appeared Christine A. Gaeta, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and she acknowledged to me that she executed the same.

Daisy Welch-Stewart
Notary Public

DAISY WELCH STEWART
Notary Public, State of New York
No. 01WE8014304
Qualified in Queens County
Commission Expires July 15, 1999