

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration Between:
County of Rockland

-and-

FINAL AND BINDING OPINION AND AWARD OF
TRIPARTITE ARBITRATION PANEL

The Rockland County District Attorney's
Criminal Investigator's Association, Inc.
(RCDACIA)

Case No: IA 99-016 M 99 - 100
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The Public Arbitration Panel members are:

- PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.
- PUBLIC EMPLOYEE PANEL MEMBER: Anthony V. Solfaro, President
NYS Union of Police Associations, Inc.
- PUBLIC EMPLOYER PANEL MEMBER: Robert Winzinger, Sr.
County of Rockland

Appearances:

- For the County of Rockland: Jeffrey J. Fortunato, Esq.
Deputy County Attorney
- For the RCDACI: John K. Grant, Esq.
- Date: June 13, 2005

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an Interest Arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the County of Rockland ("County") and the Rockland County District Attorney Criminal Investigators Association ("RCDACIA" or "Association").

A hearing was held in New City, New York on February 27, 2004 during which time both

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parties were represented and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. An executive session was held in Palisades, NY on April 21, 2004 during which time the Panel deliberated on the impasse issue and carefully and fully considered all the data, exhibits and testimony received from both parties. At the conclusion of the executive session both parties presented post-hearing closing briefs. The results of those deliberations are contained in the AWARD that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse.¹ The discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award, the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its 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 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;

¹ A delay in the issuance of this Opinion and Award was occasioned in part to the circulation of draft awards and other correspondence between the parties and the attempt by the undersigned in obtaining a unanimous Award.

(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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

HISTORICAL DEVELOPMENTS

Although not stipulated to between the parties, the following fact pattern was developed during the course of the hearing and is set forth below for the convenience of the reader:

1. The Agreement prior to the impasse covered the period 1996-1998.
2. In September 1999 the Association filed a petition for Interest Arbitration.
3. On May 5, 2000, the parties signed a MOA which resolved all but two issues.
4. With respect to the "open" issues, the County demanded employee contributions for health insurance during the first twelve years of employment. Said proposal was subsequently withdrawn and never presented to the Interest Arbitration Panel.
5. The Association demand stated:

Upon retirement, the Employer shall pay one hundred percent (100%) of the cost or premium for individual or dependent health insurance coverage.
6. Interest Arbitrator Linda Franklin was designated as Panel Chairman for the impasse covering the period January 1, 1999 through December 31, 2000.
7. The issue, the codification of the Health Insurance for retirees, was eventually submitted to Interest Arbitration and was the subject of an Award issued by Arbitrator Franklin on April 2, 2002. The one Association demand of retirees' health insurance codification was rejected by the Arbitration Panel.

8. The Union moved to have the Award set aside and on April 9, 2003 Acting Supreme Court Justice William K. Nelson vacated the Franklin Award.²
9. The undersigned arbitrator was subsequently designated as Panel Chairman to conduct a hearing and issue an Opinion and Award on the aforementioned remaining impasse item. The other two members of the original Arbitration Panel, Solfaro and Winzinger, remained on the successor Panel.

BACKGROUND

The County of Rockland is a suburban bedroom community and operates a variety of government functions including the Office of the District Attorney. Fourteen investigators are employed by the District Attorney and constitute the instant bargaining unit. The bargaining unit at impasse consists of 14 members and two retirees. The County negotiates with other employee bargaining units including the CSEA, RAM, the faculty and staff at Rockland Community College, and the Deputies and Correction Officers at the Rockland County Jail. The parties are now negotiating a successor RCDACIA Agreement covering the period 1999-2002.

² The Award was apparently vacated for failure of the Panel to make findings as required under the statute. See Index No. 5893/02 Supreme Court of the State of New York County of Rockland.

ISSUE AT IMPASSE

At the hearing the parties agreed to submit a single issue for evaluation and decision by the Panel. The Opinion constitutes the findings of the Panel, however, the language contained herein is the sole responsibility of the Chairman. The issue at impasse and submitted to the Panel for an Opinion and Award was limited to:

1. Health insurance for retirees commencing January 1, 1999.

ISSUE NUMBER ONE

RETIREMENT HEALTH INSURANCE

DISCUSSION AND AWARD

1) Retirement Health Care

Since 1973 the County of Rockland, pursuant to County Resolution 95, provided for health insurance for all retired county employees including those appointed, elected or serving in the classified civil service. The parties stipulated that upon retirement District Attorney Criminal Investigators receive 100% of the premium costs for either individuals or family coverage.

The Association notes that they have an induced benefit retirement program inasmuch as twenty years of service are required. However, due to the uniqueness of that provision, and the demographics of the bargaining unit, without codification of existing practice there may be a significant time lag where there is no health insurance protection between the age of retirement (mid forties) until they are eligible to collect social security at age 65.³

The central thrust of the RCDACIA position is related to a 1998 NYS Court of Appeals decision in Aeneas McDonald Police Benevolent Association, Inc. v. Geneva, 680 NYS2d 887 (1998).

³ It was noted that most other County employees retire at a more traditional retirement age of between 55 and 62 years of age.

In that matter the Court held that in spite of the fact that municipalities (City of Geneva) provided certain health insurance benefits to retirees, there was no prohibition from reducing said benefits without prior collective negotiations with certified bargaining units. Thus, as argued by the Association, the County of Rockland, notwithstanding the provisions of Resolution 95, could unilaterally withdraw all such benefits since there was no continuing obligation to provide benefits which resulted from a legislative act.

Had the City of Geneva PBA CBA had a provision providing health care insurance for retirees then McDonald would have no impact as retirees would have been afforded protections as a third party beneficiary of a contractual agreement. The Association response to McDonald was to propose the inclusion of retirees' health care insurance in their proposal for a successor agreement.

The County argues that the Association demand constitutes a nonmandatory subject of bargaining items which they are not required to negotiate. However, Interest Arbitrators are without authority or jurisdiction to designate such items as non-mandatory. Absent a finding from PERB that such an item is beyond the scope of permissible bargaining the Panel is obligated to consider such items and issues its findings.⁴

The County further argued that legislative action does not create rights for individuals who are not members of bargaining units. In its assertion the County is correct; however, the structure of this Award is such that it is prospective only and impacts on those who were employees or who retired commencing January 1, 1999. Those employees who may have retired before the effective date of this Award are covered by the terms of County Resolution. Those employees who may retire in subsequent years will be covered by the terms of this Award subject to such terms and conditions as may be set forth in any future CBA.

The County further argued that even if the subject at impasse was protected under Interest

⁴ The record documents that the instant issue was never the subject of a scope of bargaining petition.

arbitration, if granted it would impair its bond rating(s).

The County also argued that in some instances certain junior investigators contribute into the costs of their health insurance premiums and would therefore receive an unintended benefit upon retirement when they would receive fully paid health insurance. While this argument is of concern, the Association proposal and the Awarded benefit herein does nothing more than parallel and echo the present County Resolution 95.

In terms of the statutory requirement of comparability the record documents that all major Police Departments in Rockland County receive this benefit. (See, Haverstraw PBA CBA 1994-1995, Stony Point PBA CBA 1999-2001, Orangetown PBA CBA 2000 -2001, Ramapo PBA CBA 2001-2002- and Clarkstown PBA CBA 2001-2004.)⁵

The Taylor Law requires that the Panel consider a “comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment. . .” While the County argues that CBA for other County units including the CSEA, RAM, and RCC do not contain guaranteed retiree health care benefits, when using the universe of comparable police CBA the overwhelming evidence supports the position of the Association that in the area of employees (Police, Fire, Corrections) covered by Taylor Law Interest Arbitration statutory provisions, in Rockland County this benefit is overwhelming provided for. When coupled with the statutory retirement protections afforded police officers, the CSEA, RAM, RCC comparability argument is rejected.

The Association seeks to continue a prevailing benefit, one that they have continuously enjoyed since 1973 and one that they wish to perpetuate. With the exception of codification the demand does not increase their benefits' expectation level. The Association is seeking the health insurance coverage that is presently contained in County Resolution 95.

⁵These five Police Departments are considered as the major county departments. The others are either significantly smaller in size or serve as part of another jurisdiction such as State or Railroad Police.

The Taylor Law also requires an examination of the terms of previous CBA's. With respect to the consideration of "... the terms of collective agreements negotiated between the parties in the past providing for ... retirement benefits ... hospitalization benefits ..." in this area there is no doubt that health insurance played a vital role in such bargaining. Since the 1973 resolution was in place, the expectation of bargaining unit members was that it would persist. When the twenty-year retirement plan was negotiated, the anticipation was that health insurance would be continuously be provided. The sworn affidavit of Investigator Casey, RCDACIA President from 1987 - 1996 was that during negotiations for this time period the County always argued that "there was no need to incorporate this benefit in a collective bargaining agreement as it was something the County would never take away and was something the County always acknowledged would be continuing obligation."⁶ This position was credited.

In terms of the statutory requirement of costs and "... the interests and welfare of the public and the financial ability of the public employer to pay" the codification of County Resolution 95 into the existing CBA has no immediate financial impact. Indeed, as long as County Resolution 95 remains in place there can be no additional costs since the exact same issue and cost requirements are being transferred from a County Resolution to a CBA.

McDonald removed an integral postulate that both parties were operating under. This Award codifies said assumption and places it within the context of a protected CBA. The record must reflect that there is no indication at present that the County intends to alter the provisions of County Resolution 95 and therefore this entire issue may indeed be moot. However, the focus of the Association is in the event that County initiates a change within County Resolution 95, they would still be protected.

This Award guarantees retirees from January 1, 1999 forward the same health insurance benefits that they believed they always had and would continue to have. It does nothing more than to

⁶ See Casey Affidavit dated September 28, 2001.

codify a thirty-year past practice.

In essence the Association argues that the County seeks to preserve a benefit that it was unaware that it had. Prior to McDonald apparently neither party was aware that County Resolutions could be unilaterally rescinded. If the long-standing thirty-year practice of the County is to ensure that retirees receive, and continue to receive health insurance upon their retirement, then the Court of Appeals has spoken and has stated that such benefits, to be fully protected, must be contained within the context of a CBA. This Panel is in full agreement and so orders.

A-W-A-R-D

1. Commencing January 1, 1999, and upon retirement the Employer shall pay one hundred percent (100%) of the cost or premium for individual or dependent health insurance coverage.

CONCUR *AMS* DISSENT _____
CONCUR _____ DISSENT _____

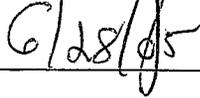
AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Joel M. Douglas, Ph.D.
Public Panel Member and Chairman

Dated: _____

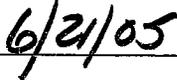


Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Anthony V. Solfaro
Employee Panel Member

Dated: _____



Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

Robert Winzinger, Sr.
Employer Panel Member

Dated: _____

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this ²⁸th day of ^{June} 2004 before me personally came Joel M. Douglas to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

*J. Douglas
ext #487 3554 West Co
6/21/04*

STATE OF NEW YORK
COUNTY OF ORANGE

On this ^{21st} day of ^{June} 2004 before me personally came Anthony V. Solfaro to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Lorraine J. McGinness

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 20 07

STATE OF NEW YORK
COUNTY OF ROCKLAND

On this -- the day of 2004 before me personally came Robert Winzinger, Sr. to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same: