

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration

Between:

CITY OF PEEKSKILL

-and-

FINAL AND BINDING OPINION AND AWARD
OF TRIPARTITE ARBITRATION PANEL

CITY OF PEEKSKILL
POLICE BENEVOLENT ASSOCIATION, INC.

CASE NO: IA 2005-020
M 2005-011

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The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.

PUBLIC EMPLOYEE PANEL MEMBER: Christopher Harold, Esq.
Harold, Salant, Strassfield & Spielberg

PUBLIC EMPLOYER PANEL MEMBER: David M. Wirtz, Esq.
Grotta, Glassman & Hoffman, PA

Appearances:

For the City of Peekskill: Lisa M. Brauner, Esq.
Grotta, Glassman & Hoffman, PA
City Labor Counsel

For the PBA: Richard Strassfield, Esq.
Harold, Salant, Strassfield & Spielberg
Counsel to the PBA

Date February 10, 2008

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 City of Peekskill ("City") and the Police Benevolent Association of the City of Peekskill Police Benevolent Association ("PBA" or "Association") The bargaining unit consists of approximately 58 police officers. A hearing was held in Peekskill, New York on July 17, 2006 during which time both

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. A telephonic executive session was held on April 30, 2007 at which time the Panel discussed the issue and carefully and fully considered all the data, exhibits and testimony received from both parties. 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. 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; (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.

BACKGROUND

The City of Peekskill is located in Westchester County in the Hudson Valley. The other cities in the County include Yonkers, Mount Vernon, White Plains, New Rochelle, and Rye. There are

approximately 44 police departments within the County including those of the aforementioned cities. The instant Interim Award is the result of impact bargaining and is limited to one item, police jackets and the payment of same. The bargaining unit at impasse consists of approximately 58 full-time police officers. This *Opinion* constitutes the findings of the Panel, however, the language contained herein is the responsibility of the Chairman. The sole issue at impasse submitted to the Panel for an Opinion and Award was:

UNIFORM ALLOWANCE PAYMENT FOR POLICE JACKET

ISSUE NUMBER ONE

UNIFORM ALLOWANCE PAYMENT FOR POLICE JACKET

1. It is the position of the PBA that when in January 2005 the City demanded that all unit members purchase a new uniform jacket that the City provide such items and that unit members not be required to purchase same from funds available from their negotiated contractual uniform allowance. That the City ordered new jackets by a specific date was a managerial prerogative not challenged by the PBA; however, the PBA claims it was their statutory right to demand impact negotiations regarding a non-mandatory subject of negotiations.
2. The PBA relied on the testimony of three police officers to establish the past and current uniform allowance practice. Detective Gallagher stated that during the last round of negotiations he was told by the City Manager that no changes to the uniform were anticipated. In 2004 Gallagher spoke with Chief Tumolo who told him that new jackets would be required and that they were to purchase a certain brand and to pay for them out of pocket. Gallagher agreed that the City could order the wearing of the new jacket but that the City would have to pay for it while the responsibility for upkeep rested with the unit member.
3. Detective O'Buck testified that with the exception of minor uniform changes, in the past the City had paid for the cost of uniform changes and used as an example a police leather jacket purchased in 1975 [circa] and paid for by the City and that said monies were in addition to the then existing uniform allowance.¹ PBA President Police Officer Polay testified that he was able to acquire the new jacket for approximately \$250.00. He noted that discussions were held with the Chief and that the parties tried to resolve the problem but were unable to do so. The jacket deadline had been extended from October 2005 until November 2005 and the individual officers were permitted to spread the cost between two calendar years of uniform allowance. In addition, some officers were given PBA loans to purchase the required jacket.
4. The PBA argues that the uniform allowance is intended to address the new police officer's

¹

In addition to the 1975 jacket, the only other uniform changes for the Peekskill Police Department since 1973 appear to have been minor and have included such items as flags, hash marks, and new buttons.

initial uniform purchase and the cleaning, maintenance and replacement thereafter. The Association contends that the cost of the jacket [\$250.00] was approximately one third of the \$850.00 annual uniform allotment. It is the position of the PBA that while the jacket could be purchased through the \$850.00 uniform allowance that there are certain obligations placed on police officers to clean, maintain and replace the uniform from the same allowance.

5. Patrol Commander Lieutenant Gary Dasecke testified for the City. He noted the history of uniform changes and detailed the value of the new uniform jacket. He stated that in 1987 he purchased a new dress blouse and paid for it personally. With respect to other officers purchasing what the City considered as necessary items, he noted that certain items were approved while others were denied.
6. With respect to the City's argument that PBA members have in the past purchased superficial items, demonstrating that the existing uniform allowance is adequate to pay for the jackets, and that, accordingly, the requirement to purchase them had no impact on the PBA members, the PBA notes that each and every uniform reimbursement claim form is now submitted to the City for payment.² The Association further contends that if there was any item submitted for reimbursement by a PBA member that was not contractually authorized, their claim could have been rejected and then the burden would have shifted to the union to determine if they should or should not submit a contract grievance. The PBA notes that the uniform allowance was properly used by unit members, and that the City's additional requirement to purchase a new jacket using the then existing uniform allowance, would reduce the monies previously available for other authorized uniform items. The PBA also notes that even after the January 2005 order came through ordering the new uniform jackets, the City continued to accept similar uniform claims from PBA members. Additionally, that the City increased the uniform allowance from \$825.00 in 2004 to \$850.00 in 2005 is evidence that increases in the uniform allowance were necessary.
7. The City argued that it is a management prerogative to unilaterally prescribe the nature of a uniform and that their ruling is consistent with the PERB case law.³ The Panel Chairmen does not quarrel with that contention and notes that PBA did not challenge the jurisdictional aspects of this question. In essence the PBA has conceded the legitimacy of the order but claims that the impact placed upon them to spend monies from the existing uniform allowance for the jacket was improper. It is the contention of the City that the \$850.00 uniform allowance is so substantial that unit members have a difficult time in even exhausting that amount and that there is sufficient monies available to individual officers to purchase the jacket.
8. The relevant CBA language provides:

2001-2002 CBA

²

Personal items have included Victoria Secret thong underwear [\$262.00] (CX #2) jeans (CX #3) and off- duty weapons, (Officers Popure and Halmy). As noted by the City these items were meant to serve as a representative sample and were not an exhaustive list. These items were apparently approved and paid for from the existing uniform allowance.

³

See, *Matter of City of Buffalo and Buffalo PBA*, 15 PERB 3027 (1982)

Article VI Uniform Allowance

Section 1. All unit members shall be paid the uniform allowance listed below on the dates herein May 1, 2001 \$825.00, May 1, 2002 \$825.00.

2003 and 2005 CBA

Article VI Uniform Allowance

Section 1. The City shall pay all unit members the uniform allowance of \$825.00 for the calendar years 2003 and 2004 and \$850.00 for the calendar year of 2005.

Section 2. Effective January 1, 2005 the uniform allowance shall be applicable to the purchase of uniforms and uniform-related items such as undergarments, outer garments, court-appropriate attire, related equipment, supplies, materials, professional alterations and cleaning relating to the unit member's performance of duty or responsibility. Those uniform-related items previously provided by the City in addition to the uniform allowance shall continue. Examples of these items are: semi-automatic weapons, self-defense spray with holster, radio holder, department police badge with cap device, and bulletproof vests. These additional items shall remain the property of the City. The annual uniform allowance shall be applicable for covered items purchased during the applicable calendar year. Unit members shall submit a copy of the itemized receipt for the purchased item along with a City of Peekskill reimbursement form... (JX # 1)

9. The PBA submits that this is an isolated one shot issue and that the purchase of the new police jacket at issue in this proceeding by an individual officer is not covered by the existing uniform allowance. They seek reimbursement for the new jacket aside from the uniform allowance provided for in the CBA.
10. The evidence in the instant matter is mixed at best. The only analogous fact appears to be the purchase of the new leather jacket in 1975 which was apparently paid for by the City. Aside from that the parties have relied heavily on anecdotal evidence. The records suggest that the actual impact of the order by the City exceeds that of a specific uniform jacket. What the parties appear to be doing through the instant Interest Arbitration process is negotiating the potential *per se* impact of any additional prospective uniform changes.
11. The City contends that the purchase of the new police jacket from existing uniform allowance funds has no impact on individual officers since sufficient monies exist in the present allowance to cover any jacket costs. They contend that officers have purchased numerous personal items from their existing allotment and that money has often been spent in a frivolous manner. This

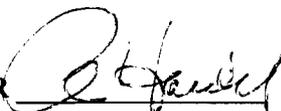
indeed may be correct; however, that argument is not dispositive before the Panel.

12. The record documents that the 2003-2005 CBA was signed on October 14, 2005 and that the jackets were required to be purchased by that date. However the uniform allowance benefit was effective January 1, 2005, a short time before the new jacket was required. At the time of the negotiations the issue of jacket payment was apparently unresolved. Ergo, to require the PBA to absorb the entire cost of the jackets diminishes the value of the benefit creating a negative impact.
13. In terms of impact the actions of the City bears directly upon all unit members inasmuch as the jacket requirement to be paid for out of existing funds diminishes the previously negotiated benefit.
14. Based on the record and the statutory criteria, the Panel Awards the following.
 1. The initial purchase of the Police Jacket shall be paid for by the City of Peekskill and shall not be taken from the existing \$850.00 uniform allowance.



1. UNIFORM ALLOWANCE PAYMENT FOR POLICE JACKET

- A. The initial purchase of the Police Jacket shall be paid for by the City of Peekskill and shall not be taken from the existing \$850.00 uniform allowance.

CONCUR  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.



Christopher Harold, Esq.
Employee Panel Member
Dated: 3-4-08

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.

David M. Wirtz, Esq.
Employer Panel Member
Dated: _____

AWARD AFFIRMATION

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this -- day of 2008 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:

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this ^{1st} day of *March* 2008 before me personally came Christopher Harold 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:

Paula Thomas

PAULA THOMAS
Notary Public, State of New York
No. 4842350 *Dutchess*
Qualified in Westchester County
Commission Expires 10/31/09

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this -- the day of 2008 before me personally came David M. Wirtz 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:

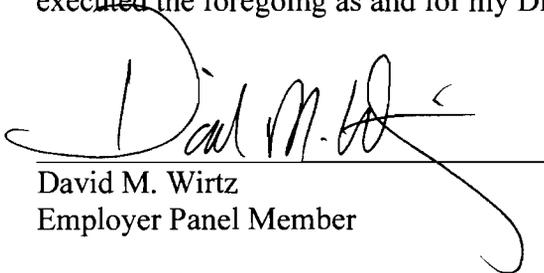
Public Employer Panel Member's Dissent:

The Arbitration Panel concedes the lawfulness of the Police Department Order. It nonetheless concludes that the Order, requiring Police Benevolent Association ("Association") members to buy a matching winter jacket costing \$265, caused a negative impact on Association members despite their annual uniform allowance. The Award is unsupported by the record evidence.

That record shows that Association members were given a two-year period to absorb the jacket's cost. (The assertion at Paragraph 12 of the Award that they had to be purchased by October 14, 2005 ignores the record.) Each member had a combined uniform allowance of \$1700 over that two-year period. The City's evidence revealed that Association members struggled during this period to exhaust the \$1700, resorting to the purchase of such things as Victoria's Secret thongs and bikini lingerie, SpongeBob Squarepants pencils, bluejeans, and off-duty weapons and related accessories in a transparent effort to avoid leaving any of the uniform allowance unspent. The City's evidence thus revealed that the Order had no cognizable impact on Association members, and the Association offered no evidence to the contrary. Not a single unit member took the stand to say that he or she did not have enough money from the uniform allowance to spend \$132.50 per year to purchase the jacket.

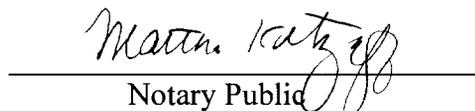
The Panel nonetheless concludes that the value of the uniform allowance benefit was somehow theoretically diminished by the Police Department Order. It should be obvious that a benefit cannot be diminished in fact, when the only evidence in the record showed the struggles unit members went through to use that benefit, and literally no evidence was offered to show that it was inadequate to cover the cost of the jacket, and it is the facts that should have governed the decision.

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



David M. Wirtz
Employer Panel Member

On the 11th day of March, 2008, before me personally came David M. Wirtz, to me personally known and known to me to be the same person described in and who executed this instrument, and he acknowledged to me that he executed the same:



Notary Public

MARTHA C. KATZEFF
Notary Public, State of New York
No. 5002463
Qualified in Bronx County
Commission Expires 12/22/2010