

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between

Village of Herkimer,

Employer,

-and-

Charles W. Soule Police Benevolent Association,
Inc.,

Union.

AWARD OF PUBLIC
ARBITRATION PANEL

PERB Case No.: IA2008-005; M2007-244

When an impasse in negotiations between the Village of Herkimer (“Village”) and the Charles W. Soule Police Benevolent Association, Inc. (“PBA”) could not be resolved at mediation, the PBA, on June 16, 2008, filed a petition for compulsory interest arbitration with the New York Public Employment Relations Board (“PERB”). The Village filed a response on June 24, and on August 1, 2008, PERB designated the undersigned chairperson, together with Bryan J. Goldberger, Esq., public employer member, and Edward W. Guzdek, employee organization member, to serve as the public arbitration panel to resolve the dispute.

The arbitration panel conducted a hearing on October 29, 2008, at the Village of Herkimer Municipal Hall. The PBA was represented by James B. Tuttle, Esq., and the Village by Brian S. Kremer, Esq.

At the hearing the PBA presented two witnesses. Ricky J. Risi, a 16-year veteran of the police department, and member of the PBA negotiating team, testified about the

working conditions and salaries and benefits of the 20-person police force, and compared them to those in what it considered comparable municipalities. Risi also reviewed and provided justifications for the six negotiating proposals presented by the PBA in its arbitration demand.¹

Risi testified that although Herkimer has much higher crime rates than other comparably sized municipalities, and, as a result, more difficult working conditions, the wages of its police officers fall below those in the municipalities to which its crime statistics should be compared.

Edward Fennell was the PBA's second witness. He has testified extensively in hearings similar to this on the issue of ability to pay. Fennell, employing a compilation of data concerning Village finances, and publications from the Office of the New York State Comptroller, testified that the Village has the ability to pay a fair wage increase, especially when taking into consideration that, in his opinion, the Village has a large surplus.

Mr. Kremer presented, on behalf of the Village, a voluminous hearing brief, containing, among other items, the Village's position on the PBA's proposals, the Village's numerous proposals, and justifications for each (other than for some which were withdrawn at the hearing), agreements between the Village and other unions, census and comparability data, and an order in a State Supreme Court case. The order, made in a lawsuit involving Village participation in a County of Herkimer workers' compensation program, finds the Village liable to the County.

¹ Through Risi, the PBA entered into evidence a document which included crime statistics, the PBA proposals, and portions of collective bargaining agreements from the municipalities to which the PBA compares itself.

Mr. Kremer reviewed and commented upon the documents contained in the hearing brief. He first took issue with the municipalities to which the PBA compared itself, and suggested that Herkimer should be compared only to certain other villages. The rationale for using only villages was that, as testified to by Mr. Fennell, villages in the state receive less in the way of state aid than other local governments, and are largely dependent upon real property taxes. Mr. Kremer pointed out, however, that the Village has exhausted most of its constitutional tax limit.²

The Village Mayor, Mark Ainsworth, testified, and explained that, as a result of the court order referred to above, the Village is now liable to the defendants in the lawsuit for what it estimates to be 1.8 million dollars. Both he and Mr. Kremer explained that the surplus which the Village has accumulated will be needed to pay the ultimate judgment, or settlement, in the lawsuit.

Both parties submitted post-hearing briefs, and the panel members then met in executive session on December 9.

At the executive session the panel members engaged in lengthy discussions, reviewing the testimony given at the hearing and the documentation submitted by the parties.

In considering the parties' proposals, the panel members applied the following criteria, found 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 wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other

² Subsequent to the hearing, Mr. Kremer submitted collective bargaining agreements between villages to which Herkimer compares itself, and their police unions.

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.

Because the parties' contract expired on May 31, 2007, and the panel's award, which cannot exceed a period of two years, will expire in less than six months, the parties will soon resume negotiations. Given this situation, the panel chair believed that it was in the best interests of both parties to limit the items under consideration to only those requiring immediate attention, and leaving the rest for the upcoming bargaining. As a result of urging by the chair, the panel agreed to concentrate its efforts on arriving at a fair salary increase, and providing some relief to the Village in the area of health insurance.

It should be emphasized here that neither the Village panel member nor PBA panel member agreed completely with each and every rationale advanced by the chair in determining the salary increase and health insurance relief. Notwithstanding that fact, the panel members were able to reach consensus based upon their review of the evidence in the record, and their respective consideration and application of the criteria specified in Section 209.4 of the Civil Service Law.

SALARY

Position of PBA

The PBA's salary demand is as follows: "Increase all numbers on the salary chart set forth at Article VI, §1 by 10% for each year of a 5-year contract."

As mentioned earlier, at the hearing the PBA focused on its members' working conditions. It argued that, based upon crime rates and the number of calls handled, and using municipalities within a reasonably close geographic range, the Herkimer Police Department must be compared to the police departments in the cities of Gloversville, Oneida, Amsterdam and Johnstown, and the Village of Ilion.

The PBA points out that while its members have workloads comparable to those in the aforementioned cities and Ilion, salaries of Herkimer officers are lower than those of the officers in those localities.

The PBA also argues that the Village, with its surplus, has the ability to pay a reasonable wage increase. As to the workers' compensation lawsuit, and the Supreme Court order, the PBA points out that because at this time there is not even a judgment for a specific amount, and that the current order and any subsequent judgment are subject to appeal, it is only speculation as to whether the surplus will be needed in connection with the lawsuit.

Further, the PBA notes that none of the financial documents submitted by Mr. Fennell at the hearing suggest that the Village considers that it has a current liability as a result of the litigation.

Position of the Village

The Village, as discussed above, argues that villages are uniquely disadvantaged in comparison to cities in that they receive far less state aid than cities. It is not fair, therefore, according to the Village, to compare Herkimer to cities, which are able to pay higher wages.

The Village points out that most of the cities to which the PBA compares Herkimer have much larger populations and higher per capita incomes than Herkimer. Accordingly, the Village believes that it should be compared to the Villages of Ilion (also used by the PBA), Dolgeville, Mohawk, Canajoharie, Fort Plain, Hamilton and Chittenango, all of which fall within a 50-mile radius of Herkimer.

The Village contends that PBA members are already paid higher than their counterparts in the villages to which it compares itself.

The Village also argues that, under Civil Service Law Section 209.4, the panel is required to consider the terms and conditions of employment of other Herkimer employees, and that the police officers earn considerably more than other represented employees, including the firefighters.

Finally, while the Village acknowledges that it now maintains a healthy surplus, it argues that it will almost certainly be required to spend that money to defray any settlement or judgment reached in the workers' compensation litigation.

Discussion

No one, including the Village, suggests that its police do not have a difficult, and often dangerous, job. The Village acknowledged as much in its hearing brief, while also

observing that because of the nature of the job PBA members already earn more than other represented employees.

The panel chair appreciates the fact that the Herkimer crime rate appears to be more in line with some of the area cities than with other villages, and that its officers may be required to answer more calls and make more traffic stops, but the fact is that the PBA officers are employed by a village, and that villages all face the same unique financial constraints.

The panel chair does believe, however, that the Village has the ability to pay a fair salary increase, and the Village, in its hearing brief, agrees that its officers are entitled to a "reasonable increase." The Village simply suggests that the 10% increase sought by the PBA for each year of a five-year agreement is not reasonable.

The panel chair understands that here is a strong likelihood that, at some point in the foreseeable future, the Village will be required to pay a large settlement or judgment as a result of the workers' compensation litigation. Two points, however, should be made in connection with the lawsuit. First, the raises to be awarded cover time periods prior to any settlement or judgment becoming a Village obligation. Second, the fact that the Village may find itself having to pay this substantial, and possibly unanticipated, obligation cannot take away from its obligation to fairly compensate its employees.

The panel chair believes that a 3.5% salary increase in each of the two years covered by the award is fair and reasonable. While slightly higher than the 3% increases the officers have received in recent years (other than the 2.5% raise received in the final year of the expired contract) in part the raises reflect the fact that the Herkimer police officers do appear to carry a heavier workload than their counterparts in neighboring

communities of similar or even larger populations. The increases, however, are comparable to those found in other police awards and agreements covering the time period for which this award is made.

The increase in cost to the Village of 3.5% raises over ones of 3% is not high. The parties are in agreement that, based on total payroll, the cost of a 1% increase equates to between \$10,000 and \$11,000. The additional half point, therefore, comes at a total annual cost of between \$5,000 and \$5,500.

The PBA sought significantly higher increases, but given the current state of the economy, and, as just noted, that 3.5% is within the range of other police settlements and awards, higher raises are not justified. It might also be noted that Ilion, used for comparison by both parties, has an agreement for 2008 through 2010 containing 3% increases.

Based upon the above rationales it is determined that the PBA bargaining unit shall receive 3.5% salary increases in each of the two years following expiration of the parties' June 1, 2006 through May 31, 2007 agreement, and that the increases are retroactive to June 1, 2007.

HEALTH INSURANCE

Position of the Village

The Village made five proposals to change various portions of Article XII, the health insurance clause, of the parties' 2006-07 contract. The panel chair, however, in keeping with the idea of leaving most proposals from both sides for the upcoming round of bargaining, urged the Village to focus here on a single proposal.

The Village elected to seek an increase in health insurance contributions from employees hired after June 1, 1993. The pertinent language of Article XII reads as follows:

Employees hired after June 1, 1993, shall contribute 20% toward the cost of health insurance coverage during the first five years of employment. After the first five years of employment, the employees' share shall be reduced to 15% of the cost of health insurance.

The Village's proposal Ten-A reads: "New hires pay 20% for duration of employment and retirement. Village to offer the stated health plans or their substantial equivalent."

The Village argues that it must receive some relief from the ever escalating costs of providing health insurance for its employees. It notes that over the past two years costs for the two plans it provides have risen more than 33% for one, and more than 29% for the other.

Position of the PBA

According to a PBA comparison chart it presented at the hearing its members pay more in health insurance contributions than officers in at least three of the five localities to which it compares Herkimer. The PBA emphasizes that members hired after 1995 no longer receive retiree health insurance, and that it made a proposal to allow an officer to convert, at retirement, unlimited unused sick leave accruals to cash in order to pay for retiree health insurance.

Discussion

It is difficult to ignore the sharp increases in health insurance costs that all governmental entities have been faced with in recent years. The panel chair believes that

one way the Village could obtain some relief would be if new hires pay the 20% contribution rate for their first eight, rather than five, years of employment.

The determination, therefore, is that employees hired after the date of this award shall contribute 20% towards the cost of health insurance coverage during the first eight years of employment, and that after the first eight years the employees' share shall be reduced to 15% of the cost of such coverage.

AWARD

Salary

PBA bargaining unit employees shall receive 3.5% salary increases in each of the two years following expiration of the parties' June 1, 2006 through May 31, 2007 agreement. The increases are retroactive to June 1, 2007.

Health Insurance

PBA bargaining unit employees hired after the date of this award shall contribute 20% towards the cost of health insurance coverage during the first eight years of employment. After the first eight years of employment the employees' share shall be reduced to 15% of the cost of such coverage.



LOUIS J. PATAK
Public Panel Member and Chairperson



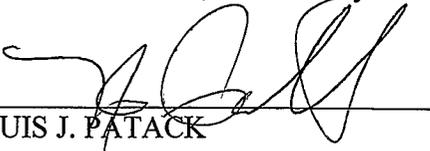
BRYAN J. GOLDBERGER, ESQ.
Public Employer Panel Member



EDWARD W. GUZDEK
Employee Organization Panel Member

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

I, Louis J. Patack, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Instrument, which is my Award.



LOUIS J. PATACK

Dated: January *20*, 2009
Loudonville, New York

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

I, Bryan J. Goldberger, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Instrument, which is my Award.

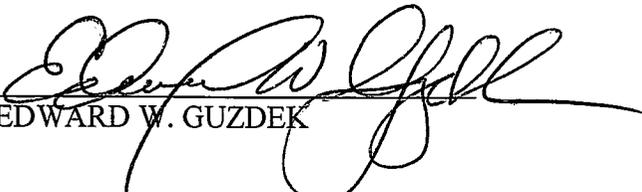


BRYAN J. GOLDBERGER

Dated: January *20*, 2009
Albany, New York

STATE OF FLORIDA)
COUNTY OF LEE) ss.:

I, Edward W. Guzdek, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Instrument, which is my Award.



EDWARD W. GUZDEK

Dated: January *16*, 2009
Fort Myers, Florida