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In The Matter of the Impasse between

CITY OF OGDENSBURG

-and-

OGDENSBURG POLICE BENEVOLENT
ASSOCIATION

Opinion and
Award of
Arbitration Panel

Case No. NYSPERB
M74-639, CA-0011

Appearances

For the Union:

Hubert Murdock
Ralph Edwards
David LaRose

Negotiator
President
Member

For the Employer

Neil Hess

Comptroller

On March 14, 1975, the New York State Public Employment Relations Board under the authority of Section 209.4 of the New York Civil Service Law appointed a Public Arbitration Panel for the purpose of making a just and reasonable determination of the unresolved issues remaining in collective negotiations between the parties listed above. Donald P. Goodman was appointed Public Panel Member and Chairman of the Public Arbitration Panel, Mr. Frank Culross the Employer Panel Member, and Sanders D. Heller the Employee Organization Panel Member.

Hearings were held at which full opportunity was afforded each side to present testimony, to summon witnesses and to engage in their examination and cross examination.

Subsequently, the Public Arbitration Panel met in executive session to deliberate the issues and to make this opinion and award. Full consideration was given to the report of the Fact Finder, to the ability to pay of the employer, to wages and benefits enjoyed by similarly situated employees, to the interests and welfare of the public, to the peculiarities of the occupation engaged in by the employees and to other factors.

THE ISSUES:

The Public Arbitration Panel determined that two issues remained unresolved:

Retirement

Salary

Salary

Well documented and forceful positions were presented by both parties. The tax rate for the City for 1971 - 1974 was reduced in each of those years and remained unchanged in 1975. The City is not yet at its constitutional tax limit, but the City maintains that it is at its practical tax limit and that the County tax rate has increased tremendously. The City also maintains that it is required by Charter to submit a budget by December 20 last which was prior to reaching negotiated wage settlements. That fact is uncontested, however, it cannot be the sole defense in rejecting Union demands for if it were the deciding factor, the City could budget nothing and negotiations would be for naught. Such is not the intent of the State Legislature as indicated in the Taylor Law.

This panel fully understands the impact on City revenues caused by the current local, state and national economic climates just as we are aware of the possible impact of the closing of the Penn Central Railroad Branch Line. We are also cognizant of the tax centerari situation.

The Union has proposed a two step salary adjustment. Of course, dividing the increase so that part would be paid effective January 1, 1975 and the other on September 1, 1975, the average increase for 1975 would be reduced but a higher base would exist on January 1, 1976 on which to compute salaries for the second year of the contract.

The Panel has compared Ogdensburg police salaries with those of other policemen in the county as well as with policemen throughout the State with due consideration to the City position, the Union proposals and the Fact Finding recommendation.

Due consideration must also be given to the erosion of purchasing power of Ogdensburg Police as a result of changes in the Consumer Price Index.

The Union maintains that the current budget provides sufficient funds to finance the Union demands. The Panel would remind all that the City or any employer cannot escape bargaining by failing to budget increases. By similar logic, just because a budget contains a sum certain there is no guarantee that that sum will be granted for wage increases in that line item. The Union indicates that some breakage or slack may occur due to possible retirements of older higher salaried policemen and their replacement with younger policemen at the lowest salary step.

Retirement

The City position on the retirement issue is well understood. It is true that the 20-year retirement plan is not common in the county or in nearby counties or municipalities. This does not preclude, if the facts warranted it, Ogdensburg being a leader in this area. The effect of granting 20-year retirement on the tax rate of the City is not lost to the Panel.

The Union is quite correct when it states retirement programs may be entered only when permitted by legislation and is further correct when it indicates enrollment in a 20-year retirement plan may not be permitted past June 30, 1975. But retirement legislation makes entrance permissible only. Just because it is permitted is not the determining factor here. As we have stated, Ogdensburg, if it were to grant such a request or if the Panel so awards, would be a leader on this issue in its part of the State.

The Panel must give some weight to the report of the Fact Finder. But the Fact Finding report is unclear in two respects. The fact-finder recommended that an across the board increase of \$900 be granted. Left unanswered was if the \$900 included increments or if increments were to be in addition to the \$900. It is true that members of the Unit have been receiving increments, however, this is as a result of the continuation

Schedule A-2

Salary for 1976

	1975	+ COL	+ Increment	=	1976 Salary
Cummings	12,826		-0-		
Bracy	12,826		-0-		
Warren	11,916		-0-		
Murdock	11,461		-0-		
Strader	11,916		-0-		
Dishaw	11,461		455		
Schofell	11,461		455		
Edwards	11,461		-0-		
LaRose	11,006		-0-		
Lockhart	11,461		-0-		
Burwell	11,006		-0-		
LaFlair	10,551		455		
McPherson	10,551		455		
Kiah	10,551		455		
Green, M.	10,551		-0-		
Martin	10,551		-0-		
Mart	10,551		-0-		
Green, R.	10,095		-0-		
Corrice	10,095		-0-		
Marceau	10,095		-0-		
Bertrand	9,185		455		
Ashley	9,185		455		
Fairbairn	8,275		455		

of the old labor agreement until the agreement currently at impasse is resolved. Increments under this new contract are a negotiable item. Neither party has proposed their abolishment, but the effect of the increments must be considered. Increment cost is approximately \$2870 in total.

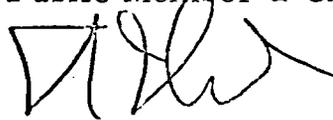
The other question concerning the Fact Finding report involves the cost of the 20-year retirement plan. The report states "This proposal would cost an additional \$36,885 or 38.9% of payroll". Readers of the report might interpret the report to state that adoption of the 20-year plan would cost an additional 38.9% of payroll. This interpretation would be erroneous. The total cost of the 20-year retirement plan would be approximately 38.9% of payroll. The present plan costs over 23% of payroll. The additional cost of the 20-year plan would be about 15% of payroll.

Ogdensburg, New York

May 27, 1975.



Donald P. Goodman
Public Member & Chairman



Frank J. Culross
Employer Member



Sanders D. Heller
Employee Organization Member

Public Arbitration Panel

Public Arbitration Panel

In the Matter of the Arbitration between

CITY OF OGDENSBURG, NEW YORK

-and-

OGDENSBURG POLICE BENEVOLENT ASSOCIATION

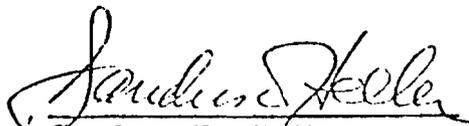
Case Number NYS PERB M74-639 CA-0011

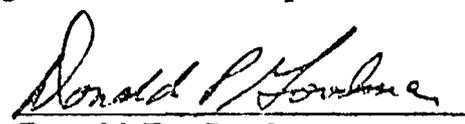
AWARD OF ARBITRATOR

The undersigned arbitrators, having been designated in accordance with Section 209.4 of the New York Civil Service Law by the New York State Public Employment Relations Board and having been duly sworn and having duly heard the proofs, positions, and allegations of the parties, awards as follows:

An annual salary increase of eleven percent retroactive to January 1, 1975 including increment for the first year of the labor agreement. Such eleven percent to be computed based on salary in effect for the period January 1, 1974 through December 31, 1974. For the second year of the agreement a salary adjustment will be made based on changes in the U.S. Consumer Price Index for the period November 1, 1974 thru October 31, 1975 within the limits of a maximum of ten percent and a minimum of seven percent. Such second year adjustment to be in addition to increments. Appropriate increments in the second year will be \$455. The Panel determines there shall be no change in retirement plans.


Frank J. Culross
Employer Member
Dated May 27, 1975


Sanders D. Heller
Employee Organization
Member
Dated May 27, 1975


Donald P. Goodman
Chairman, Public Member
Dated May 27, 1975

SCHEDULE A - 1 1975

	1974	+11%	1975
Jummings	11,555	1271.05	12,826
Bracy	11,555	1271.05	12,826
Warren	10,735	1180.85	11,916
Murdock	10,325	1135.75	11,461.
Strader	10,375	1180.85	11,916
Dishaw	10,325	1135.75	11,461
Schofell	10,325	1135.75	11,461
Edwards	10,325	1135.75	11,461
LaRose	9,915	1090.65	11,006
Lockhart	10,325	1135.75	11,461
Burwell	9,915	1090.65	11,006
LaFlair	9,505	1045.55	10,551
McPherson	9,505	1045.55	10,551
Kiah	9,505	1045.55	10,551
Green	9,505	1045.55	10,551
Martin	9,505	1045.55	10,551
Mart	9,505	1045.55	10,551
Green	9,095	1000.45	10,095
Corrice	9,095	1000.45	10,095
Marceau	9,095	1000.45	10,095
Bertrand	8,275	910.25	9,185
Ashley	8,275	910.25	9,185
Fairbairn	7,455	820.05	8,275

Schedule A-3 1975

Salary Schedule for Promotion & Appointments only

	1	2	3	4	5	6	10	15	20
Patrolman	8275	8730	9185	9640	10,095	10,551	11,006	11,461	11,916
Sergeant						11,461	11,916	12,371	12,826
Lieutenant						12,826	13,281	13,736	14,191

Schedule A-4 - 1976.

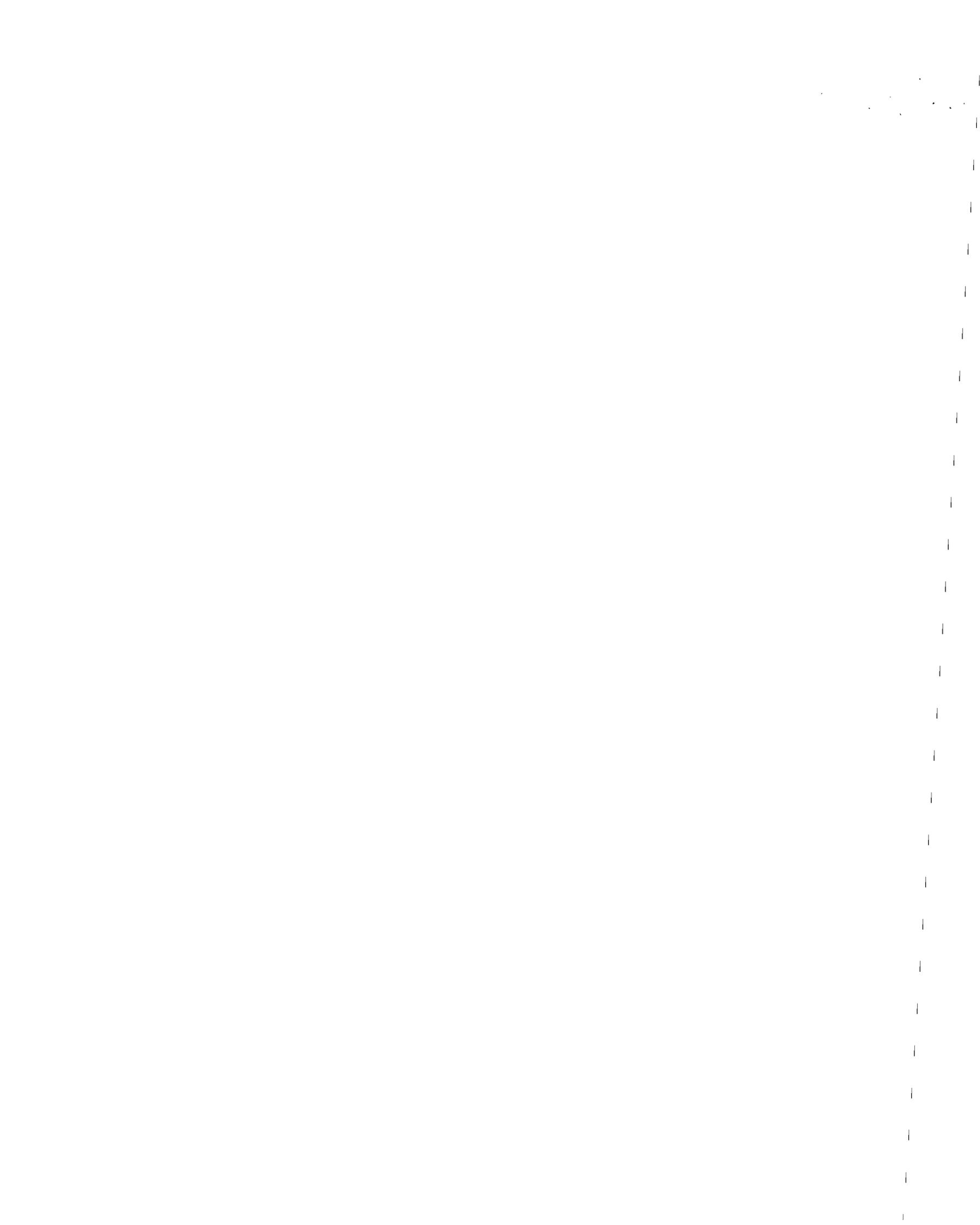
Salary schedule for Promotion & Appointments only

Schedule A-3 plus cost of living adjustment

State of New York
County of St. Lawrence SS:

On this 1st day of May 1975, before me personally came and appeared Donald P. Goodman, Frank J. Culross, and Sanders D. Heller, to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.

Mary H. Friedrichs
Comm. of Deeds
In and for City of Ogdensburg



In the Matter of the Arbitration between

City of Ogdensburg

- and -

ON REMAND

Ogdensburg Police Benevolent Association

Case Number: NYSPERB M74-639, CA-0011

Appearances

For the Union:

Hubert Murdock, Negotiator
Ralph Edwards, President
David LaRose, Member

FOR the Employer

None

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CONCILIATION

A hearing was held at the Gran-View Motor Inn, Ogdensburg, New York at 10:15 A M on June 28, 1976 as a result of an order by the Honorable Edmund L. Shea, Justice of the Supreme Court, St. Lawrence County, New York dated January 12, 1976. Said order remanded to this Arbitration Panel for further reconsideration and clarification of its award of May 27, 1975 upon such additional proceedings or evidence as the Panel may require not inconsistent with the findings and decision of the Court.

The Panel here today is the same as the Panel rendering the award of May 27, 1975.

All parties were properly notified of the hearing here today scheduled by means of letters sent to the parties by the public member and chairman. In said letter all parties were advised that the Panel would receive and consider any evidence, testimony or documentation to support their relative positions.

The City has chosen not to personally appear, however, by letter the City states that all relevant data was presented at the original hearing. (See Exhibits 3 and 4).

The employee organization presented oral testimony which is substantially the same as that included in Exhibit 1. The employee organization also presented as evidence a newspaper article as found in Exhibit 2.

Oral testimony here today by Patrolman Edwards indicated that persons when hired come to expect that increments would be granted at specifically stated times and that to do otherwise is unfair to individuals. By the same token an argument could be made that salary levels are stated at the time of hire and to change them would also be unfair. We are sure that Patrolman Edwards would not want salary levels to be now the same as they were when he was hired. Patently that is not the intent of the Taylor Law. For it to otherwise would negate the collective negotiation process and was not the intent of the Legislature when the Taylor Law was enacted. Collective negotiation conceivably might result in no increments, increments, or various combinations.

The case was remanded, in part, on Mt. St. Mary's Hospital vs Catherwood 26 NY 2nd 493, NYS 2nd 863 which is quoted, in part, in the decision of the Honorable Edmund L. Shea and again is quoted, in part, here "obvioudly the arbitrators are not empowered to adopt any plan for the conditions of employment simply to satisfy or meet the wishes either of employer or employees". The Panel would add "or specific individuals who are members of the employee organization."

It is well established that when a labor organization represents the employees, individuals may sometimes be required to subordinate their individuals wishes for the overall good of the organization, of course, without forfeiting individual rights granted by the consitution, statutes or contracts.

The Panel was well aware when it made its original award that those who ordinarily would have received increments in 1975 would not receive them. The bargaining process does not guarantee that all employees will always be treated equally. Certain provisions may benefit some employees to the detriment of others. Some may get more benefits than others. Obviously in medical insurance, employees with families get greater benefits than single members especially when premiums are paid by employers.

Federally, under the social security system marrieds receive greater benefits than those who are single. The Internal Revenue Code is another case in point.

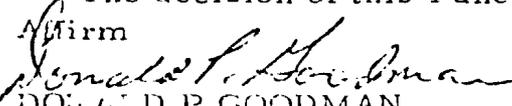
Inequities which may exist in the minds of some might very well be removed at the negotiation table.

The Panel arrived at the conclusion that it really has three options (1) it re-divide the total dollars allocatted in our original award. We considered how each member would fare under our award and believe that the decision we made was the fairest and most equitable in line, in part, on the ability to pay of the City, (2) the Panel could have awarded increments in 1976 to those who might otherwise have received them in 1975 but did not. This would have increased the total dollar amount in our award which would not be appropriate as it would impinge on our determinations on ability to pay and other factors, (3) in the event that we made the most equitable and fair decision at the time based on the evidence, testimony, and documentation available, confirm its original award.

The Panel could take the 11% granted in our award, subtract 1975 increments and reallocate the remainder. In effect this would require certain employees to repay part of what they received in 1975 in order to pay increments to those who did not receive them in 1975. To do this at this late date clearly would be unfair.

The Panel does not believe it rendered an unfair award on May 27, 1975. Full deliberation was given to all testimony and evidence and we considered all those factors listed in our original award. In view of the testimony given here today, we find no justifiable reason to modify our May 27, 1975 award. We therefore confirm the award rendered on May 27, 1975.

The decision of this Panel stated herein is by majority vote.

Affirm

DONALD P. GOODMAN
Public Member
Chairman

Affirm

FRANK J. CULTOSS
Employer Member

Dissent

SANDERS D. HELLER
Employee Organization
Member

Dissent

Based on the decision of the Supreme Court, St. Lawrence County, Honorable Edmund L. Shea presiding, dated January 2d, 1976 and the order dated January 12, 1976, the Arbitrators met for further reconsideration.

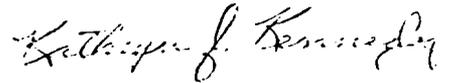
I cannot join the other arbitrators in ratifying the award previously made. Therefore, my vote is to modify the award by granting increments for the year 1976 to those who would have been entitled to those increments in 1975, as this would correct the arbitrariness and unfairness as respects those members of the Ogdensburg Police Department. In addition I find that the funds to pay such increments are available to the City.



SANDERS D. HELLER
Employee Organization Member

STATE OF NEW YORK)
COUNTY OF ST LAWRENCE) SS

On this 28th day of June 1975 before me personally case and appeared Donald P. Goodman, Frank J. Culross, and Sanders D. Heller, to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.



KATHRYN J. KENNEDY
COMMISSIONER OF DEEDS
CITY OF OGDENSBURG, N. Y.
MY COMMISSION EXPIRES 5-76

OGDENSBURG POLICE BENEVOLENT ASSOCIATION

1974 -- Members of the Ogdensburg Police Department

19 Patrolmen
3 Sergeants
1 Lieutenant

23 TOTAL

The 23 above listed were covered by the Police Benevolent Association contract with the City of Ogdensburg. The Chief of Police is not a member of the bargaining unit and not covered by the contract although his salary is included in the Department's budget. The departmental budget for 1974 was \$271,000.00 of which \$259,131.51 was expended, leaving a "surplus" balance of \$11,868.46.

1975 -- Members of the Ogdensburg Police Department

24 Patrolmen
3 Sergeants
1 Lieutenant

28 TOTAL

A senioe Patrolman who was being paid \$11,461.00 retired March 18th, 1975. A replacement for that Patrolman, whose salary was \$8,275.00, came on the payroll July 29th, 1975. The savings to the City was not only the difference between the salary of the Patrolman and that of the new officer, but also the savings from not having a replacement for a period of time so that the savings was approximately \$5,350.00.

Another Patrolman resigned on the 28th of August, 1975, and was not replaced until the 30th of September, 1975, that resulted in a savings to the City of approximately \$1,300.00.

Those two retirements in 1975 represented a budget surplus in salaries of approximately \$6,650.00 for those who had been in the contract at the beginning of 1975.

Two additional Patrolmen were appointed to the Department under the C.E.T.A. program in November of 1975 and a third in December 1975. The City receives reimbursements for the C.E.T.A. Patrolmen at approximately 90% of salary. For the year 1975, the additional amount that the City would have had to pay would be very small (salary \$8250 per year, \$687.50 per month, 5 months employment and 10% of that figure is less than \$350.00).

The arbitration panel eliminated increments in 1975. There were 7 members of the Police Department who, under the previous rules involving PERB were entitled to increments. Those would have amounted to \$410 per officer. Of the seven eligible for increments, one has since resigned and one was promoted. Six officers are thus not on the same step they would have been if the increments were provided. The cost now for those increments for 1975 would total less than \$2500.00. Since the City has already saved over \$6650.00 as above state, the City Could pay those increments for 1975 and still have savings of over \$4000.00.

1976 -- Members of the Ogdensburg Police Department

22 Patrolmen
3 Sergeants
1 Lieutenant

26 TOTAL

In 1976 there are 26 members of the Police Department who are covered by the terms of the PBA contract. This does not include the Chief of Police and a stenographer, however their salaries are included in the budget. The budget for the year 1976 for the Police Department for salaries is \$331,000.00 and it appears that the actual expenditure for salaries will be \$292,959 which should result in a balance or surplus of \$17,041.00.

Sergeant Bracy, whose annual salary is \$13,801.00 will retire April 15th, 1976. Sergeant LaFlair was promoted on March 4th and will fill that vacancy. This results in a savings to the City in the amount of \$2900.00.

If the officers who did not receive the increments to which they would have been entitled in 1975 were to be placed on the same steps that they would have been on the 1976 salary schedule, this would cost the City approximately \$410 per man, or a total of \$2940. It would thus seem that the retirement of Sergeant Bracy would create enough additional funds to pay these officers without resulting in any need for additional funds for the year 1976 for the City other than those presently in the Police Department salary budget.

Should there be a need for additional funds created (which we deny, but wish to make this point) we refer to the news article in the Ogdensburg Advance News for Sunday, January 11th, which headlined the fact that the City had "extra" revenues of \$83,890.00 left from 1975. The text of the article also carried a quote that an excess of \$12,000 was expected. These statements by Mr. Culross and Mr. Hess tend to support the PBA's contentions at the arbitration hearing that the City habitually carries a surplus in the budget.

In summary-----In 1975 the City saved \$6650 in police salaries and could pay the increments of \$2460 and still have a savings of over \$4000.

In 1976 the City will have a savings of \$2900 from police retirements and could pay police officers increments without any funding problems.

CITY OF OGDENSBURG, NEW YORK



Office of the Comptroller
NEIL P. HESS

June 24, 1976

Mr. Donald P. Goodman, Chairman
Mr. Frank J. Culross, Employer Member
Mr. Sanders D. Heller, Employee Member
Public Arbitration Panel

Re: Case No. NYSPERB
M74-639, CA-0011

Gentlemen:

Due to a previously scheduled appointment, I am unable to attend your hearing at 10:00 a.m. on Monday, June 28, 1976.

Under separate cover is a letter explaining the City's position in regards to the hearing.

Should the PBA introduce additional evidence, the City wishes to reserve it's right to respond in writing to any such evidence.

Sincerely,

NEIL P. HESS,
Comptroller

NPH/dm

CITY OF OGDENSBURG, NEW YORK

Office of the Comptroller
NEIL P. HESS

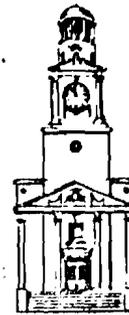


EXHIBIT 4

June 25, 1976

Mr. Donald P. Goodman, Chairman
Mr. Frank J. Culross, Employer Member
Mr. Sanders D. Heller, Employee Member
Public Arbitration Panel

Re: Case No. NYSPERB M74-639,
CA-0011

Gentlemen:

On May 27, 1975, the above arbitration panel, having been designated in accordance with Section 209.4 of the New York State Civil Service Law by the New York State Public Employment Relating Board, issued a unanimous arbitration award.

The City of Ogdensburg stands firmly behind the unanimous arbitration award based upon the following facts:

- 1) Both parties had an adequate opportunity to present their case, to summon witnesses, and to engage in examination and cross-examination.
- 2) The facts as presented by the parties have not been materially altered. Full consideration was given to the Fact-Finder's Report, to the City's ability to pay, to comparative wages and fringe benefits, to the interest and welfare of the public, to the peculiarities of the occupants, and other pertinent factors.
- 3) The City, based upon this unanimous award, has adopted it's budget and established it's tax rate of 1976.

The City of Ogdensburg feels strongly that any change in the Arbitration Panel's Award will be detrimental to the integrity of the Arbitration Panel, the arbitration process, and the intent of impasse resolution procedures under Section 209.4 of the Taylor

(Continued)

Page Two

Law.

In light of the facts that have been presented, the City strongly urges that the unanimous Arbitration Award of May 27, 1975 be upheld.

Sincerely,

A handwritten signature in black ink, appearing to read "NPH/SS", with a long horizontal flourish extending to the right.

NEIL P. HESS,
Comptroller

NPH/dm

Dismissal Of County Lab Director Finalized Friday

CANTON — The dismissal of Dr. Robert W. Long from his position as director of the St. Lawrence County Laboratory was made final Friday when final court papers were signed by Supreme Court Justice Edmund L. Shea.

Long's dismissal from the \$53,000 a year post, which he had held since April 4, 1974 was ordered by the laboratory Board of Managers in early September and was to have been effective Sept. 26. Long, however, obtained a temporary injunction from Supreme Court allowing him to retain the position until the validity of his dismissal had been tested in the courts.

In his Dec. 10, non-jury trial before Supreme Court Justice Edmund L. Shea, Long contended that he had obtained permanent Civil Service status through the failure of the Board of Managers to act on the dismissal in a timely fashion. But Justice Shea upheld the dismissal.

Justice Shea Friday signed the final papers dismissing Long's case against the Board of Managers and the county. Filed with the County Clerk's office at

12:30 p.m. Friday, the order also nullified the temporary injunction obtained by Long.

Robert Russell, chairman of the Board of Managers, reported Saturday that the board has named Dr. Hugh Frame, pathologist at Hepburn Hospital, as acting director of the county laboratory. Dr. Antonio Valero, pathologist at the St. Lawrence Psychiatric Center, will serve as consultant, and Dr. Pedro Co will continue in his post as associate pathologist.

Frame and Valero will receive the same rate of reimbursement that they received in the past when the county lab has been without a director, Russell said. In the past, the two pathologists have charged \$150 per autopsy and \$75 per hour for other work.

The Board of Managers has named a committee to search for a new director, but according to Russell, no action was taken by that committee pending Long's final dismissal. Russell indicated the search for a new director is expected to be the topic of discussion when the board meets in Canton Wednesday.

\$25,000 Libel And Slander Suit Before Supreme Court

CANTON—A \$25,000 libel and slander suit and a reported \$1 million counter suit are among the cases on the state Supreme Court calendar which are expected to be heard in Canton in the near future.

The initial libel and slander suit was filed in July by Dorothy Street, Ogdensburg. It includes charges that she and Charles Klein and both former Drive-In Theater, 1974 which a Jury in ve extortio was

Other cases on the Supreme Court calendar include actions brought by Ross E. and Florence W. Brown against Nicholas Defio, charging negligence in a personal injury auto accident.

A charge of slander brought against

May 25 and the other Aug. 25. The two payments are to represent the amount of county tax collected up to those dates. The August payment will represent taxes collected or 90 per cent of the warrant, whichever is greater. The remaining 10 per cent is to be paid Dec. 15 of the year.

A local law is to be passed that that payment schedule, according to the mayor's agenda.

Traffic Regulations

The council will also review requests for changes in traffic regulations. The first proposes parking on the east side of Denny Street from its intersection with Ford Street to its intersection with Washington Street and the second proposes a stop sign at the intersection of Ford Avenue and King Street requiring Ford Avenue traffic to stop for King Street traffic.

The two requests have been reviewed and recommended by both the city manager and the chief of police.

Other Financial Matters

Also on the agenda for Monday night is a review of the proposed contract between the city and the St. Lawrence County Society for the Prevention of Cruelty to Animals. Under the proposed agreement, the SPCA would provide an animal shelter for use by the city at an annual cost of \$10,000 payable in four equal installments. The contract is identical to the one for 1975.

A request for approval of the revised employe salary schedule from the Ogdensburg Housing Authority will be considered by the council. The authority has transmitted a letter to the council asking approval of a seven per cent salary increase for employes, effective April 1. The increase would bring the authority's salary schedule in line with that of city employes. Mayor Joseph Denny said.

The Housing Authority is funded with federal and state monies and functions as an independent city board appointed by the mayor and council.

Both the council and the Urban Renewal Agency will designate officials

\$25,000 Libel And Slander Suit Before Supreme Court

The Board of Managers... committee to search for a new director... but according to Russell... that committee pending Long's final dismissal... Russell indicated the search for a new director is expected to be the topic of discussion when the board meets in Canton Wednesday.